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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE JOHN HATZISTERGOS AM
CHIEF COMMISSIONER

PUBLIC HEARING

OPERATION HECTOR

Reference: Operation E19/1595

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY 30 MARCH, 2023

AT 2.00PM

Any person who publishes any part of this transcript in any way and to any person contrary to a Commission direction against publication commits an offence against section 112(2) of the Independent Commission Against Corruption Act 1988.

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

THE COMMISSIONER: Yes. Okay. We'll resume. Mr Sanber, you're subject to the same oath to say the truth. Understand?---Understood.

MS DAVIDSON: Mr Sanber, before lunch, you were having a look at the summary table that MFI 9. Have you had a further opportunity to look at that document?---I didn't look at it in any more detail but - - -

10

Do you have any qualifications or other changes that, in your view, should be made in order for that document to be an accurate summary?---I don't, yeah. I didn't look at, I didn't check it against my bank account details or anything like that, so or any other - - -

But you don't have any reason to think the - - -?---There's no reason for me to - - -

- - - figures on there are inaccurate?---Yeah. No. Correct.

20

And it accords with the best of your recollection in relation to the work that you did?---Yes.

Could volume 3.9, page 161 be brought up on the - - -

THE COMMISSIONER: Volume 3.9?

MS DAVIDSON: Volume 3.9, page 161 be brought up on the screen, please?

30

THE COMMISSIONER: Page?

MS DAVIDSON: 161. You'll see this is a quotation given to Leichhardt Council, and to the attention of Mr Nguyen, for stockpile works in relation to the Leichhardt Aquatic Centre. If we could scroll to page 163? Do you recall preparing a quotation in relation to stockpile works at the Leichhardt Park Aquatic Centre?---No.

Is that your signature that appears on page 163?---It is.

40

Did you understand anybody else to have access to your signature?---Can you tell me if, I'm not sure if you can tell but is that a scanned in signature or is that a, a wet signature?

I can't tell from the face of the document but it's similar to other quotes that I'm shortly to take you to that might assist you in relation to it.---Yeah.

10 If we could go to the same volume, volume 3.9, that is, page 196? You'll see this is an RJS Civil document, with apparently the same signature on it, addressed to Mr Nguyen and it's a quote for construction of Trief redirective kerb and pedestrian fencing on Edna Street in Lilyfield in the amount of \$109,000. Do you recall providing that quote?---I do not.

Do you believe that you ever did or possibly did provide that quote? Is there anything about the way that it's signed that is indicative to you? ---Yeah, look, to me, again, I can't really tell from the screen but it looks like it's a scanned in signature, not a wet signature.

20 Do you think that you'd remember if, as at May 2016, you were providing a quote for works to the value of \$109,000 for - - -?---I would remember that, yes.

- - - your company that had not been set up for very long at this point? ---Correct. Yes. I would remember that, yes.

Is there anything indicative in relation to, not the signature itself, but the way in which the the letter is signed off, that is, the use of the word "warm regards"?---Yeah, I don't, I, I never used that.

30 You never used those words. Could we turn to volume 3.9 - - -

THE COMMISSIONER: So do you know of anybody else who could have access to this letterhead, your electronic signature and - - -?---Yes.

- - - want to have dealings with Leichhardt Council?---I don't recall exactly. I don't, I don't, yeah. I believe that Tony had access to a soft copy of, of a, of a, like, I can't remember, a Word document, I don't know, if safe work method statement or something that had my logo on it and he could have scanned my signature in from other, from the tenders I did submit but that's, 40 I, I'm speculating again. I don't recall specifically - - -

Which tenders are you referring to?---Sorry, the ones I, I actually submitted, so the two - - -

MS DAVIDSON: You mean the quotations for the MFI - - -?---Yeah. Sorry.

- - - 9 jobs? Is that - - -?---Yeah. Correct. Yeah.

10 Chief Commissioner, I was about to take the witness to another of these quotes that might be again further indicative.

THE COMMISSIONER: Okay. Thank you.

MS DAVIDSON: Could we have volume 3.9, page 202 brought up on the screen? This is a quote later in 9 June 2017. It relates to supply and installation of a double gate and construction of a concrete driveway at Leichhardt Park Aquatic Centre in Lilyfield. Do you recall providing a quotation for that project?---No.

20 If we scroll to the following page, 203, it's in quite small print but can you see the metadata, this is metadata in relation to this document?---Okay.

Do you see at the top of the page there's a description. It's, "Metadata for the quotation LPAC for RJS Civil Pty Ltd."---Sorry, where am I - - -

I'm sorry.---Right at the top, yep. Okay.

I'm just showing you the description so you can see what this is.---Correct, yeah. Yeah.

30 Can you see there underneath the description of the file path which goes on for several lines, there's a description of the author?---Yes.

Does that suggest to you who may have been involved in the preparation of this document?---It does.

Is that Mr Nguyen?---That's his name, yes.

40 Are you aware, or were you aware at the time, I should say, of Mr Nguyen using dummy quotes using RJS Civil?---I was not, no.

Did you ever discuss with him doing that?---No, I did not.

Did you ever give him a copy of a template document?---That's what I was saying earlier. I have given him, not a template for a quote but he had a Word document that had my logo on it. I can't remember whether it was a safe work method statement or something else but - - -

Right, but you're not aware of providing him with a quote template.---No.

10 Did you have a quote template for RJS Civil?---I did. I did.

Did you ever discuss with him or ever receive a request from him to provide that kind of document?---A Word document?

A quote template?---No. No.

Moving on to the Victoria Street project, do you recall how you first became aware of the Victoria Street project, that's the Victoria Street in Maitland project.---Yes.

20

Yes. What, how did you become aware of that project?---Nima called me and asked me if I knew anyone that would do some work on a project like that.

You understood it to be a Transport project?---I knew it was a Transport project, yes.

And how did you answer that request?---I gave him, I told him he can contact John.

30

That's John Dabit.---Yes. And I also said I'm happy to throw my hat in the ring for that too.

And when you say you were happy to throw your hat in the ring, that was in connection with your own company?---Correct, yes.

Are you aware of what Mr Abdi did with that information?---I believe, and I, yeah, that he gave it to Abdal Aziz.

40 And what was Mr Aziz's role in relation to Victoria Street project?---Now I'm just careful 'cause it's jumping in time. I had not met Abdal Aziz then.

I did not know him at that time but I subsequently was, when he called me and said, "Hey, I'm Abdal. I've spoken to Nima. He gave me your details."

Did you learn then that he worked for Downer?---Yes, that's when I knew he worked for Downer.

He was a Downer project manager in relation to the site.---Correct. Yeah.

Or the project, I should say.---Correct.

10

Were you aware of him, that is Mr Aziz, requesting that you be added into the request for quotation process? Where I say you, I mean your company? ---That request came from me so - - -

That is you asked him?---Well, I asked Nima to, well, the phone call wasn't, "This is the job," blah, blah, blah, it was a, are you happy to do - sorry, sorry, "Do you know anyone that would work up at Newcastle on a railway station?"

20 Right.---I gave him John's name.

Yep.---And I said, "By the way, I've got my company that isn't doing much."

Right.---"And I wouldn't mind tendering for that too."

So you were keen to obtain work for your company.---Correct.

30 And you understood from the beginning that it was a Transport for NSW project.---I assumed it was because it was on a railway.

Right.---Yeah.

And did you at that point, did that cause any alarm bells to ring in your head in relation to your employment by Transport for NSW?---No, because I was of the belief that if I was not working directly for Transport for NSW and on a job that I had no association with, that there was no conflict of interest.

40 And that was the discussion that we had - - -?---Yes.

- - - on Tuesday.---Correct.

You had, I think you'd said, asked Mr Abdi or said to Mr Abdi you were happy to have your hat thrown in the ring. Were you aware of Mr Aziz obtaining an extension of time in relation to the request for quotation process to have you added to that process?---No.

Did you discuss with him extending time - that is extending time for the RFQ process to have you added?---No, I, I can, may I just elaborate?

- 10 Yes.---So I did not know about that at all. But there was a process - this is just checking the time frames here - where the tender close time changed because they wanted to add some additional scope or change of scope between different packages of works. But it wasn't - - -

All right. Was that in relation to the tender process - - -?---Correct, yeah.

- - - that was a subsequent process?---Yes, correct.

- 20 And what was Mr Abdi's role at this time? That is by, we're talking early 2017 here? What did you understand his role to be in relation to this project?---At that time I did not know that he had a relationship in that project. I, I probably, at that time my understanding that he was working on the - what's that, the Wynyard Walk project I thought it was.

But if he was asking you do you know anybody who'd be prepared to tender for a railway station up at Newcastle, that would suggest that he had some involvement in that project, would it not?---Well, I believe that he told me his mate that's working for Downer is looking for someone.

- 30 Right. So you didn't understand him to have any influence on it?---No. Well, influence as in he's got a friend that works - anyway.

Was it Mr Abdi who gave you - well, did Mr Abdi give you Mr Aziz's contact details?---No, Mr Aziz called me.

If we can have volume 18.13, page 85 brought up on the screen. See this is messages from your phone from someone described as Nemo. Would you agree that that's Mr Abdi?---Yes.

You see the messages there with a telephone number, "Call him after 11.30. Call Abdal." And you say, "Done." Does that prompt any memory in relation to you first contacting Mr Aziz?---No. Is that Mr Aziz's number?

I understand it to be.---Okay. It doesn't prompt the memory, no. I don't remember that.

But you did then establish direct contact with Mr Aziz, did you not?---Yes, yes.

10

And he and you communicated in relation to the preparation of your quotation?---Yes.

And he assisted you in relation to the preparation of your quotation, didn't he?---That's not quite right but, yes, eventually he did assist, yes, but it wasn't in the preparation of the quotation.

All right.---It was in terms of a, using a particular dollar figure that would win the job.

20

So you're drawing a distinction between the - - -?---Preparation.

- - - the dollar figure that was used in the quotation and its preparation?
---Correct. Because I prepared the, the, I prepared it myself. I priced the job.

Right. And then he told you how much to price it at?---He told me what it needed to be if I wanted to win the job.

30

Okay. If we could have volume 18.13, page 98 brought up. This is messages between you and a person described as Abdal Aziz Tresca.---Yep.

Would you agree that's Mr Aziz?---Yes.

40

And this is your messages as between you and him, and if we could scroll to page 97 just to have the context for this. You say to him in the green, "We have the mechanical drawings" to which he says, "Cool. Raj, bring drawings tomorrow. Let's fix this up." What did you understand him to mean by "Let's fix this up"?---So, I have a very vague recollection but the job that I was tendering for was not a mechanical project. It was building, it was refurbishment works to the interior of the station and there was, this is

going back to what I was saying earlier, there was some change in the scope packages and I think that this, this text message exchange has something to do with that.

10 So, you didn't understand "Let's fix this up" to be let's get your quote in at a level that will enable you to win the job?---I don't recall the communication exactly but I do know that I, I received a message from him to tell - and this is jumping, moving forward, to say to me you need to put the price, this needs to, you need to put the price in at this level to get the job.

You did subsequently meet with him, that is after the receipt of this message about "Raj, bring drawings tomorrow"? Do you recall that?---I, I don't recall when that was and whether I went to Victoria Street to have a look at the job and meet him there to do it or not. I, I don't really remember the exact dates and sequence of, of events there, but yeah.

20 Can we scroll to page 98, which is the following page? You will agree there the following day, 20 May 2017, he's sending you a message as to how far away you are and you suggesting that you were held up, busy selling your parents' car apparently, but that you had the laptop with you, "See you soon." That would suggest that you did meet together on that date.---I would assume so, yes, but again, again, I'm not sure of that was at the station or where it was. I don't - - -

I'm not asking you where the meeting.---Oh, okay. Yeah.

30 But that you met with him and do you recall discussion with him at that meeting in relation to pricing for the job.---Pricing, no. I don't, I don't, I think the pricing, the assistance I got from him, if you want to call it assistance, or the information I received from him about what the price needed to be if I wanted to win the job, that occurred when we were, when we were separate, separated. We, he was sending me, he sent me a message. So I'm, I'm assuming you have that. This, potentially I'm assuming again, is that it was a site meeting where he walked me through and told me what the actual scope of work was.

40 He sent you, if you see the bottom message on this page, his Hotmail address.---Yes.

Any idea why he did that?---I can't recall at this stage.

He had a Downer email address presumably?---He did, yes.

So the fact that he was inviting you to communicate with him via his Hotmail address would suggest that there were some things that he wanted sent to his Downer email address and other things that he wanted sent to a Hotmail address?---Yeah. I, I, I would have jumped to that conclusion based on the fact that he was sending me text messages from a different phone number because the reason - - -

10

When you say from a different phone number, you knew him to have another phone number associated with Downer, did you?---Yes. That's why, if you read the description of the name, I've got Tresca there because he told me that's his Tresca phone number.

I see. You subsequently did submit a tender for the project.---I did, yes.

Was that via TeamBinder?---I believe so, yes.

20 And Downer then issued a request for tender clarifications. Do you recall that happening?---Yes.

Did you understand in the process of submitting the initial tender that Mr Dabit or Dabcorp was also involved in that process?---I did.

And did you discuss at the initial stages with Mr Dabit the contents of their tender submission?---Yes.

30 And what was the purpose of those discussions?---To, at that time, to make sure that his tender was going to be suitable to be, if he won the job but it - - -

At that time?---At that time, yes.

Did the purpose of those discussions change?---Not the purpose of those discussions but John's availability to undertake the work changed.

Right. Well, we'll come to the communications between you and he in relation to that.---Yeah.

40

There was a request for clarifications, I think you agreed. If we could have volume 3.8, page 10 brought up on the screen. This was an email from Mr Hidalgo to Mr Dabit on 21 June 2017. Do you recall this request for clarification being sent on to you?---I don't recall it but, yeah. I don't recall it, no.

But did you discuss the response to the request for clarifications with Mr Dabit?---I discussed the tender with, with John. I can't recall whether it was just prior to the tender submission or post or during the tender clarifications.
10 I, I don't recall the time.

Right. Did you in the course of the period allowed for the tender clarifications have further discussions with Mr Aziz?---I believe so.

And did those discussions relate to the pricing, that is, the price that you would submit?---Yeah, that's, that's the, that's my, my recollection was that submitted a tender, there were some clarifications, there were some changes in scope, that type of, and, and, and at, I believe that's the end of it, that, that was the end of the period where he, I was told by Mr Aziz that if I wanted
20 the job I would have to put this price in.

Right. Did you also have discussions with Mr Abdi in that period?---Yes.

And was that in relation to the awarding of the contract, that is, the price that would be successful, that you understood with him would be successful for the awarding of the contract?---There were, there were some communication in terms of making sure that the submission was, yeah, was of a quality, I think, I think Abdal was nervous and obviously speaking about the fact that I'm just a one-man band.
30

When you say speaking about the fact that you're just a one-man band, was that to you?---No, to, to - - -

To Mr Aziz.---No, Mr, no, Aziz to Abdal, sorry, to their names, to Mr Abdi.

You understood Mr Aziz, just to be clear on your evidence, Mr Aziz to be speaking to Mr Abdi about their nerves about you being a one-man band. Is that correct?---Correct, yeah.

40 Could we have volume 18.13, page 57 brought up. This is messages extracted from your phone from Mr Abdi that you see on 25 June there,

“You can’t send anything formally tonight, you have to wait until tomorrow night until you get a phone call from him to make the appropriate changes. So we can send it to him then, send it privately tonight.” Do you recall receiving that message?---I don’t have recollection of it but it’s obviously there.

10 Would you agree it seems to reflect a fairly intimate involvement on Mr Abdi’s part with Mr Aziz in relation to when the pricing should be submitted and also, in saying “send it privately” did you understand that to be a suggestion of sending it to Mr Aziz’s Hotmail address?---It’s a reasonable deduction from the evidence there.

And did you pass that information on to Mr Dabit?---I don’t recall that specifically, but no.

20 Can we have volume 18.13, page 71 brought up? You can see this is a message from you to John Dabit, and in the second message down you say, “Don’t send anything formally tonight,” effectively the same substance of the message that you’d been provided with by Mr Abdi.---Yeah.

What was the purpose of providing that information to Mr Dabit?---So, if I’m not mistaken, that’s around the time potentially after John advised me that he wanted to pull out of the tender because he’d been awarded another project in Sydney and he couldn’t commit to sending his resources up to Maitland.

30 All right. So to clarify you said the timing of this message is, it’s quite small, but 6.30pm is the message that you send to Mr Dabit on 25 June. Could we have volume 3.8, page 19, brought up on the screen. The second email in the chain there is an email - I withdraw that. The third message in the chain there is an email from Mr Dabit to you on 25 June at 8.34pm, so a couple of hours after you’ve sent that message, where he says, “I think we should just let this one go on this occasion only due to timing of commencement as I am currently flat out on all my projects.”---Yep.

40 You then reply a couple of hours later, saying, “I wouldn’t let this one go too easily as I understand the other contractor has not submitted their revised price. Also I’ve increased the price by almost 200,000 to make it worthwhile. Also, as I mentioned previously, I’m keen to manage this for you if it suits but I will need some support from you as needed. I will need you to reply to Alex tomorrow after I find out from Abdal if a submission

has been received. Can you please have your laptop with you so you can send it through,” et cetera.---Yep.

And then, following that, the top email in the chain is you giving instructions in relation to further increasing the price to 975,000.---Correct.

10 And you say, “And if we get it, I can quit work and pay myself a couple of years’ wages with the increases.” In providing that information to Mr Dabit in the email, it indicates that Mr Aziz, on a fairly continuous basis in that span of days, was providing you with information in relation to other contractors, their submission of prices and where your pricing should be in order to be successful?---True, yes.

20 And you were providing that information to Mr Dabit for the purposes of colluding with him on his submission of the tender, is that correct?---So just a point of clarification is that John said, said, said that he couldn’t take on any more work. During conversations I had with, with Abdal was he, he said that it’ll, it’ll ruin his, the tender process if John withdraws, so he said, get them, get him to submit a price regardless and because there was no guarantee of who, if anyone, was going to win the job, my suggestion there was to increase it sufficiently so that if he does get the job, he wouldn’t have to manage it, I would be able to manage it for him and that’s hence my comments about quitting work to be able to take that job.

So do I understand accurately that you, Mr Aziz and Mr Dabit, to the extent he was doing what you asked him to do, he was doing what you asked him to do, wasn’t he, in this process - - -?---Yes.

30 - - - had organised it as between the three of you in relation to him submitting a more expensive price than yours - - -?---Yes.

- - - and you submitting a price at a level that you and Mr Aziz understood would be successful to obtain the job?---Yes.

So it was effectively all stitched up between the three of you and Mr Abdi, wasn’t it?---Well, there, there were other tenderers as well, I’m, I’m understanding, so - - -

40 But you were being provided with information about what they were doing, weren’t you? Mr Aziz was telling you - - -?---As to whether they’ve submitted it or not and, and, and that’s how he got to the price. It’s, so if

you want it, it needs to be this price. So you'd assume it's the lowest price, yes.

Well, right. So it was not only as to whether they'd submitted. It was the price they were at also, wasn't it?---Correct. Yeah. Yeah.

So it was all the information you needed to make sure that you were successful, wasn't it?---True.

10 And, indeed, it seems that more information was provided to you on the day following the emails on 25 June, and could we have volume 18.13, page 72 brought up? This is a message from you to Mr Dabit the following day, that is 26 June, "Rapid had not yet submitted. Waiting until 3.00. If still no submission, we can submit and should get it at the price I sent last night. He has asked that we remove some items which he will then ask for later as a variation post-award. I can send you something shortly." Where that message refers to "he has asked that we remove some items" that he will later ask for as a variation, is that Mr Aziz?---I believe so, yes.

20 And do you recall removing some items from the quotation and discussing with him being able to put those back in as variations later on?---Yes.

Do you recall then giving further information to Mr Dabit in relation to sending in the Dabcorp quotation or further instructions, I should say?---I'm assuming just following on from those text messages who to send it to. I don't know.

All right. Could we have volume 18.13, page 102 brought up on the screen? This is a message from you to Mr Aziz - I'm sorry, I withdraw that, from
30 Mr Aziz to you, "Sending RJS clarification now. You may get a call from one of my engineers, as well, to confirm receipt. Send tomorrow with 954 K total for RJS and Dabcorp price at 973 K and submit Dabcorp now. Include comments as discussed where you're unsure." And, "The problem is RJS insurances." And then the following day, Mr Aziz says to you, "Need both bids ASAP, please. We have John's." Does that reflect discussions that were going on between you on those two days in relation to
- - -?---I think that's - - -

- - - where the bids needed to be?---I think that's the, yes, that's, again,
40 that's what I was saying earlier, so that's the message I was talking about.

And you understood that Mr Dabit provided a quotation at the level that you had asked him to?---I believe so, yeah.

And that you always knew that that was going to be more expensive than yours?---Correct.

And that therefore you would be successful in relation to it?---The assumption was that there was no other prices to come in at a lower level. So, yes, getting the cheapest price is usually the, makes you the frontrunner.

10

Indeed. There was then a further request for clarification. Do you recall that occurring?---I don't recall it but show me.

On 28 June at volume 3.8, page 34, if we could have that brought up. I withdraw that. That's not the correct reference for that. Do you recall having further discussions with Mr Aziz after you'd submitted the tender clarifications? That is in relation - - -?---Multiple, yeah.

20 I withdraw that. In relation to pricing and a further request for clarification. ---Changing the pricing again?

Well, further clarifications in relation to the pricing that you had submitted?---Yeah, yeah. That's common, yeah.

It continued?---Yeah, yeah.

Those discussions. And did he continue to provide you with information that would enable you, to your understanding, to be successful?---Oh, sorry, I don't recall anything until post award.

30

Can we have volume 18.13, page 103 brought up on the screen? This is a message on 28 June where you're asked to check, from Mr Aziz, you're asked to check your email urgently and Mr Aziz says, "I sent you something. Don't make it too obvious" to which you say, "Okay" and he says, "You will be getting a response shortly. Call me before you respond to A-m-t." Do you know who A-m-t might be?---I think it's, I think he dropped the I. It's Amit I think, yeah.

Is that Mr Patel, Mr Amit Patel?---I believe so, yeah.

40

And what was his role?---I don't know. Was he, he was either a procurement manager or commercial manager, something like that.

At Downer?---At Downer.

And did you understand him to have a role in approval of, or consideration of the tender process?---Yep, yep.

10 Does that prompt your memory in relation to providing any further clarification or information to Downer on 28 June?---Information. I don't know if there was any clarifications or, or prices changes or anything like that.

It wasn't revised pricing to your understanding?---Yeah, yeah.

Do you recall having any communications with Mr Aziz in relation to reference checks?---Yeah. This goes back to what I was saying before. Sorry, my memory was misplaced. I think that this is probably at the time where there was the nervousness about my being a one-man-band.

20

All right. Can we scroll to the following page from this one? Down the bottom of that page do you see a message from Mr Aziz on 29 June, "Boys, get ready. They're definitely going to call references because they couldn't find your website." What did you understand that to refer to?---I didn't have a website. I still don't.

And in relation to calling references, had you provided references to Downer in connection with your quotation?---There was a - yeah. I, I believe so.

30

Do you recall who those references were from?---I don't recall, no. But obviously - - -

Do you recall whether those references - well, let's bring up a document that might assist. Could we have volume 3.8, page 41? This is an email from you to Mr Patel on 29 June, and you say, "See attached some of the documentation requested as well as a company profile." You then provide a list of similar projects undertaken.---Yeah.

40 Had you undertaken any of those projects?---No.

In relation to the South West Rail Link you provide a name and a telephone number for Mr Nathan Sandrusi. Did Mr Sandrusi exist?---No.

Whose telephone number was that?---Again, I don't recall everyone's phone numbers but I would assume that would have been Nima's.

10 In relation to the Inner West Council, you provided Mr Nguyen, and that was a telephone number that we've seen and messages from him. What did you understand he was going to do if contacted by Downer in relation to this reference that he was, well, the documents that you provided there?---I believe I'd spoken to him and asked him if he would be a reference for RJS.

Right. And where you indicate that what you'd done for Inner West Council was construction and commissioning of council buildings, that wasn't the work that RJS had been - - -?---Correct.

- - - engaged in for Inner West Council.---Correct, it was tailored to suit the scope of work.

20 So all of, effectively all of the information you were providing, and, well, just to complete this, did Mr, the first name there associated with JLL, Mr Markaboui, was that a real person?---Yes.

And was he somebody that you'd had previously a relationship with?---Yes.

But you hadn't completed any of these projects for him, had you?---Correct.

30 So all of the information in relation to the projects that you'd completed in this email was false, was it not?---Correct.

And similarly you'll see from the list of attachments, there's a CV attached for a Mr Michael Colva, the site supervisor. Do you see the list of attachments there?---Yes.

Is Mr Colva a real person?---No, that was all put in to fill up the response requirements.

40 Right. So the same goes therefore does it for Mr Nathan Smith and Mr George Vella? They weren't real people?---Correct.

And you never intended that they were going to work on the site?---Correct.

So you'd falsified the similar projects that you were suggesting to Downer that you'd performed and the CVs of people - - -?---That's correct.

- - - that you said were going to be associated with the project.---That's correct.

10 Did that raise any concerns for you in relation to the honesty of the tender that you were putting forward?--I was doing what I believed I needed to do to win the job.

And that included falsifying both your past history and people who you were indicating to Downer would be involved in the work.---Correct.

Did it concern you that maybe Downer might check whether those people existed?---I didn't think about it at the time.

20 Did you think that Downer might ultimately want to see those people actually working in association with the project?---We didn't have a requirement in the contract to provide key resources so I didn't have that concern, no.

Did you get the idea for fabricating the existence of people for the purposes of providing this to Downer from previous activities that you were aware Mr Nguyen had been involved in?---Not from Mr Nguyen, no.

Where did you get the idea from?---I don't recall where that idea came from.

30 Was it from the fact that you yourself had agreed to act as an alias in relation to ASN Contractors or TRN Contractors for Mr Nguyen on your evidence?---My evidence was not that I would act, well, I would have an alias, no, but - - -

That you would have your name associated with a name that was not yours. ---If you're trying to find some consistency, what I'm trying to say is that at this time I was doing what I, what I believed I could to secure the job.

40 Including by fabricating information?---Correct.

That didn't raise any concerns for you at the time?---There was, there's always a concern when you do that type of stuff, yes.

You accept it was dishonest?---I, I do, yes.

And that you shouldn't have done it?---Correct.

You were attempting to deceive Downer by doing this, were you not?
---Correct.

10

And that was the purpose of creating these documents, that is the false CVs you that you attached?---Correct.

There was no other purpose in creating those documents other than to deceive Downer and hopefully achieve winning the contract?---Correct.

Did Mr Abdi provide you with any advice in relation to these references, do you recall?---Yeah. I, I spoke to him and I think that's when he told me to use that name that's listed in that - - -

20

Sorry, he told you to use that name?---That Nathan - - -

The Nathan Sandrusi name?---Yeah, yep.

And was that because you understood he could answer a telephone under the name of Mr Sandrusi?---Correct, correct.

And could therefore pretend to be somebody who could provide you with a reference?---Correct.

30

Do you understand him to have done any work in relation to the creating of these resumes, or was that you?---I have, I don't recall, I don't recall doing them to be honest.

You don't recall doing them?---No.

Do you recall providing them to Downer?---I do, yes.

Is it possible that somebody else did them?---Yeah, it's possible.

40

Who would that have been?---Nima.

Mr Abdi. You were subsequently awarded the contract?---Yes.

Do you recall receiving any indication from Mr Aziz that that was occurring? Was he the first person who told you you had been successful?
---I believe so, yes.

And you understood him to have advocated for you and for that result within Downer?---Yes.

10

Were there further checks, do you recall, being conducted by Downer that Mr Aziz told you about?---Yeah, I think there was a financial check, I think.

If we could have volume 18.13, page 108 brought up on the screen. See this is a message from Mr Aziz on the Tresca, or what you referred to as his Tresca, phone to you on 3 July 2017? "The commercial manager asked to do D&B check on your company." Just stopping there. Do you understand what a D&B check was?---Not at the time.

20

Do you understand it now to be - - -?---A financial check.

So that's what you were referring to in your previous answer?---Correct.

30

"They're double-checking because you have no website and the company was created recently. You might get a call from Dun & Bradstreet about your turnover, to ask you about turnover et cetera. They don't have your details. Fairly routine. Give me a call as I have been through this already with my company. Should say your turnover is around 10 mil and main clients include various builders and government agencies." Do you recall having a discussion with somebody from Dun & Bradstreet as part of a financial check.---I believe so, yeah.

And did you follow those instructions from Mr Aziz?---I believe so.

And that was false information that you provided to them?---Correct.

For the purposes of the financial check. Were you asked to provide any documents to Dun & Bradstreet, do you recall?---I assume so. I don't recall.

40

Did you, do you recall after being told by Mr Aziz that you'd been successful, engaging in a further pricing process or altering the price that you were offering to Downer?---I don't follow? Sorry?

Do you recall after you'd been told by Mr Aziz that you were successful, do you recall altering the price that you were offering to Downer?---I, I don't recall the, the sequence of events - - -

10 All right. Could we have volume 18.13 page 117 brought up? This is a message from Mr Aziz to you on 9 July, so two days later. Actually, to give you the context, if we could have page 116? This is following on from the discussion of the Dun & Bradstreet report, then page 117, which we had before, "I think we should also drop our price a little and say following kick-off meeting and thorough site inspection on Friday, please note that we have overestimated some of the work, attach revised pricing, et cetera. I think we should come down to high 700s, considering it's going to be a 300 K job, I think it's a good deal. Let me know and we should go through price schedule tonight." Do you recall receiving that message?---Not exactly.

20

THE COMMISSIONER: Sorry?---Where's the 300? I don't, I don't recall receiving this message but I've obviously received it, so - - -

MS DAVIDSON: Do you recall discussing with Mr Aziz dropping the price?---No, not really.

30 Did you subsequently sign a subcontract with Downer for an amount or a contract with Downer that was for less than the \$954,000 price that you'd initially submitted?---I, I'm assuming you have it? I, I, the, which ever one I signed is, whatever figure was on there.

The contract value was \$789,804.26.---Yes. Yeah. So that's the one I signed.

So that would be consistent with a drop in price consistent with what Mr Aziz is suggesting to you?---Yeah.

40 Where he said to you, "Considering it's going to be a 300 K job, I think it's a good deal," does that reflect discussions that you recall having with him about what the real price for the job was?---No, 'cause, it, well, like, it wasn't a 300 K job.

Well, I understand that ultimately it wasn't but at that time?---It, I don't think it was at that time.

Right. That seems to reflect an understanding of how much profit, that is about \$400,000 on top of the actual price, could be derived from the job?
---Yeah. That's - - -

10 That's something he wouldn't have arrived at on his own, would he?---It could be his assumption, but, no. It's, I, I don't, when I priced it, it wasn't 300.

Where he says, "Let me know and we should go through price schedule tonight," do you remember doing that with him?---With him? No.

Going through the price schedule with anyone else?---No. Sorry, I didn't - - -

20 Do you recall going through the price schedule with anyone else in - - -?---I don't remember going through the price schedule - - -

- - - at this point in time?---The only price, yeah, I'm, my recollection of all that stuff is very, I don't know. The, the timings don't sort of, aren't very accurate. So I do remember going through the schedule myself and sending it on to people within Downer, not necessarily Abdal but, yeah. I, I, I didn't go through it with someone if that's - - -

So you didn't do what Mr Aziz suggested that you should do?---No.

30 Do you recall when you signed the contract with Downer?---It was in 2017 but I can't recall exactly when.

It was 14 July 2017.---Yeah.

Could we have volume 3.8, page 113 brought up on the screen? You'll see this is the subcontract between yourself and Downer - - -?---Yeah.

40 - - - for the building works in relation to Victoria Street. If we could scroll down you'll see that was executed by you, well, your part of it was executed on 14 July.---Yep.

Could we continue to scroll. Just pausing there. Did you understand that you were, I withdraw that. At the time that you signed the contract with Downer, who did you understand was actually going to do the work?---At the time of signing the contract?

10 Yes.---I had, some context might be helpful here. When I priced the job originally I'd done it through using Rawlinsons and, and speaking to some, some contractors within the Maitland area, Newcastle area, to get some indicative prices and availability from them. As we, as I could see that there was a real possibility that I was going to be awarded the job, or I had a good chance of being awarded the job, I tried to reconfirm availabilities and it was, and I was struggling. So I'd made some calls to different people to say, "Can anyone help?" And one of the people I spoke, well, yeah, one of the, Nima suggested I speak to Tony 'cause he's got some, a friend that's a builder and Tony gave me Seng's details, or Seng's company's details, SDL.

That was Mr Laphai?---Yeah.

20 And his company was SDL.---Yeah.

And you did ultimately - - -?---Engaged in - - -

- - - subcontract the work to them?---The majority of the work, yes.

30 The majority of the work. Was it always your intention that the vast majority of the work was to be subcontracted out?---No, it was not always my intention. That was, and that's why I gave you that bit of a background. It was a circumstance where I was struggling to get security from subcontractors that they would be available.

But you had no capacity yourself to deliver the works, did you?---Correct. Yes, not by myself.

Because you were yourself engaged in a full-time job for Transport for NSW at the time, were you not?---Correct.

And that was based in Sydney?---Yes.

40 So you had no capacity to be yourself working on a project in Maitland, did you?---Not physically, no.

Right, and you understood that the project was going to require somebody to be physically supervising on the site?---Yes. And my, my forte is not supervising sites.

Right. So there was always going to have to be subcontracting out of the vast majority if not all of the work, wasn't there?---Yeah, sorry, maybe I misunderstood your question. It was, it wasn't my, it wasn't my intention to subcontract the majority of the works to subcontractor, but it was to
10 subcontract all the works, yes.

Right. And did Downer know that that was your intention?---We didn't, I didn't talk to Downer about that.

But you'd provided Downer with information in the CVs of people who you'd indicated would be - - -?---Correct.

- - - site supervisors, project engineers. One that was Mr Vella and Mr Colva, and you'd given them the name of a site manager. You'd indicated
20 that to Downer in the tender process. None of that was real, was it, you were never, you never had any employees with RJS Civil?---No, I did not. And the intention was to engage contractors and consultants, which is what I did do, to get the job done.

Did you understand Mr Aziz to be concerned about Downer finding out that you, RJS, intended to subcontract out all of the work?---I don't know if you've met Abdal. He's, he's a very excitable person and he was concerned about everything at all times.

30 Okay. Insofar as, well, did you understand one of the subjects of his concern - - -?---Yes.

- - - to be Downer finding out that you were, to use your earlier words, a one-man band.---Yes.

And why did you understand - or did you understand the basis for that concern?---Yes, because companies like, like Downer look for security in their subcontractors, and being a one-man band, being someone without the
40 experience, hence the fabrication, as your words, of the experience - - -

Well, it was a fabrication, wasn't it?---Yes, true, I'm just using your word. Is to - I lost my train of thought then, sorry. So basically what I'm saying is that Downer don't like subcontracting to new companies and one-man bands. They want security in, to make sure that if something goes wrong there is a continuation, there is stability to replace people and contractors, et cetera.

And you couldn't provide any of that, could you?---I did.

10 You shared or at least in your communications with Mr Aziz shared his desire to present people on the site as working for RJS?---Correct.

How did you do that?---I, I had SDL, well, I, I made, what do you call them, safety equipment, personal protective equipment with the RJS logo on it and provided that to SDL for their contract, for their workers to use.

And you asked those workers to use that only, rather than SDL?---I, I didn't specifically say use that only but, yes, I provided them for use onsite so there was that visibility.

20

Could we have volume 18.13, page 159, brought up on the screen? This is a message from you to Mr Aziz in August 2017. You're saying, "Please don't forward Monty's email. He left his SDL signature." Would you agree that that reflects the kind of concern that you've just been describing?---Yep.

Monty, is that Mr Nguy?---I don't know his last name.

Was he working for SDL at the time?---Yes.

30 And was he involved in the work at Maitland, that is at Victoria Street, working on the site for you?---Yes.

Were you also concerned, in addition to disguising who the SDL workers worked for, to ensure that your employment by Transport for NSW was not known? By Downer that is.---I'm not sure what that, what you're saying there.

40 Do you recall communicating with Mr Aziz about making sure that people didn't know that you worked for Transport for NSW?---I don't recall a conversation about it but it would have been my concern if I was, if, if, yeah.

And why was that a concern to you?---Because it's not a good look.

Right. But your earlier evidence was you didn't think there was a conflict of interest.---I didn't think there was a conflict of interest that required a - again, let's not revisit Tuesday. Based, it's, my response on that is the same as what I said on Tuesday. My, my concern with having people not just within, within Downer saying, well, here's a Transport for NSW employee is because it's not a good look that he's working full-time, me, is working
10 full-time on another job and being a director on this job, 'cause - - -

It wasn't just that, though, was it? It wasn't a good look also because this was a Transport for NSW project, not just that you were working full-time doing something else.---True, it's not a good look.

Right. And it's not a good look because it creates a perception of conflict of interest.---You're trying to jump to that conclusion. In my mind - - -

No, I'm putting a suggestion to you and giving you an opportunity to
20 respond.---Yeah. Refer to my previous response.

If we could have volume 18.13, page 168 brought up. This is a request from, or a question from Mr Aziz to you in relation to whether you're set up on TeamBinder and you say, "Not on TeamBinder. With your project only risk is that I am of TFNSW TeamBinder as an employee so this may be noticed".---Yep.

So you agree that at the time you did have concern in relation to it not being
30 a good look, to you use your words?---Exactly the same, yeah.

And you didn't want anybody at Downer to find out that you worked for Transport for NSW.---That is true.

And therefore you communicated, or at least Me Aziz suggested that you communicated, by email rather than via TeamBinder?---Yep.

In relation to progress claims for the work that was being performed, did Mr Aziz, to your understanding, undertake a review and approval process in
40 relation to those?---Yes, yes.

Did you involve him in reviewing progress claims before you submitted them to Downer?---Yes.

And what was the purpose of that?---Standard practice, to make sure I get paid.

10 But to the extent, when I ask if you were involving him, did you involve him in his Downer capacity via his Downer email address or were you engaged in private communications with him prior to submitting documents to Downer?---I don't think I sent them to his Gmail or anything like that, or Hotmail or whatever it was, but I do recall talking to him about it and, and was very - if you meet him you'll see he's quite a character. He, he was randomly calling me, I, from different phones all the time. So I wasn't sure at which stage I called which number.

If we have volume 18.13, page 142 brought up on the screen. Could we scroll down? "Call me once you have Farshad's spreadsheets so we all fill it out together. Claim should include all possession work as well. We'll smash it. It'll be a good claim.---Ah hmm.

20

First, who you understand Farshad to be?---I believe he was, he was a junior, I think contract administrator, I think he was.

The contract administrator. So was he a person at Downer who would have been sending you documents in relation to making progress claims?---Yes.

That is the documents that you needed to fill out in order to make a progress claim?---Correct.

30 And you agree August 2017 would have been at the time of making your first progress claim?---Correct.

And Mr Aziz says there, "We fill it out together." Do you recall filling it out together with him?---I recall being on the phone with him for the first progress claim, yes.

40 So that would suggest more than just involvement in his Downer capacity, wouldn't it?---No. Because it's, it's a Downer template. I, I had to work out how to use that template.

So where he says to you, "Claims should include all possession work as well. We'll smash it. It'll be a good claim," what did you understand that to mean?---Yeah. That's a - well, SDL were in the same position I was where they didn't really want to bankroll the job so they were asking if they could put a bid, a, a higher percentage claim in so that they can have some money to pay for materials et cetera, and I believe I passed on that same request through to Abdal.

10 So, in referring to "We'll smash it", you understood that to mean a higher percentage of the work being claimed as part of the progress claim - - -?
---Correct.

- - - than would have been standard or agreed?---Oh, I wouldn't say standard but it was to get a sizeable amount to ensure there was sufficient amount to pay for the materials being ordered. So when you order materials you have a month sometimes more to pay it off but then that due date comes, you want to be able to pay that, so my progress claim I think came in 60 days after the commencement of the job so it's - - -

20 In relation to "we'll smash it" did it also relate to it being a good claim? Did your understanding also relate to the amount that Mr Aziz or any amount that Mr Aziz might derive from that claim?---No.

Could we have volume 18.13, page 241 brought onto the screen. See this is November 2013 and Mr Aziz says to you, this is the second message there, "Send draft claim to personal email for review before Friday." Now, you gave an earlier answer that you didn't provide any progress claims.---I don't recall sending it, no. I don't recall sending it to his personal email.

30 Is there any reason to think that you didn't?---I said I don't recall sending it to him and that's, that was the reason for my previous answer, 'cause I don't see the need.

Would one explanation of the need be for him to assist you in relation to inflating the claims?---They're not, these are progress claims so it's, it's contracted works. When you say inflated claims, it's, it's, what, I, my previous answer to the previous question was that it was to maximise the amount in the initial progress claim, to have it to assist in SDL and myself making payments for supply of material, et cetera.

40 So it was bringing the amounts forward, effectively.---Yes. Correct.

Maximising the extent to which it could be brought forward.---Correct, yes.

But not more than that - - -?---I don't know what you mean.

- - - because there was a contracted amount.---Correct.

10 In relation to variations, did you have discussions with Mr Aziz in relation to the pricing of variations for the Victoria Steet works?---For every variation.

Did that include discussion in relation to, were you aware that the variations were to be approved by him?---I don't, I don't think I was aware that, I still am not clear if you're, if he was the sole approver, but he would, he, I, I assumed and I knew that he was at least a link or a, a person undertaking those reviews and providing an approval, but I'm not sure if he's the only one.

20 Right, but he was a critical person insofar as - - -?---Correct. Yes.

- - - he was the project manager from Downer.---Yeah.

Did you discuss with him, I think you'd indicated prior to the contract being signed, that you had talked to Mr Aziz about taking some things out and putting them back in as variations later? Did that transpire insofar as things that you had taken out were subsequently put back in as variations?---To be honest, I don't recall what those items were.

30 Right. Did you - - -

THE COMMISSIONER: Do you recall that there were items?---That we, that we withdrew, yes, but if I don't, I can't honestly say whether they, I did those works unless I knew which ones they were. I don't recall all the variations but I'm assuming you've got them so I'm happy if, if you put them in front of me to tell, for me to tell you.

40 MS DAVIDSON: Could we have volume 18.13, page 262 brought up on the screen. You'll see at the top that this is a message from Mr Aziz to you in December 2017, "I've added more to the varies register. I will send to you for reference shortly. I've already sent to Farshad." And then the second message, "I'm at my limit now and cannot push any more varies

through. You need to make it all happen ASAP so people don't start sniffing around and asking questions." Do you recall receiving that message?---Yeah, I do recall receiving that message.

Do you, what did you understand that to relate to, where he referred to "so people don't start sniffing around" - - -?---That's - - -

- - - "and asking questions"?---That's, I, I'm not sure.

10 And where he says, "I'm at my limit now and cannot push any more varies through," does that relate to the previous message about he's added more to the varies register?---Yes.

Was that, that is him adding matters to the varies register, the result of discussions with you about putting in additional matters as variations?---So every variation that I did was discussed with him and the variation register tracks all those variations.

20 And did you discuss with him pricing for those variations?---Every single one.

And did you discuss with him maximising the price that you could charge for those variations?---That's not how those conversations went. It wasn't about maximising. It was making sure, so I, I mentioned previously this, this was a difficult job. Sorry. Maybe I didn't mention that previously? This was a difficult job because of the location it was in, not just the fact that it was in Maitland and it was hard to get people out there. It was not a very safe environment. There was lots of vandalism. There were lots of things being, being, yeah, people didn't want to come to this job. And
30 getting people to do that, I, I had, I had to shift people from different, different locations, have them stay nearby or further, in a nearby location, so that they can actually attend site and get work done. So for all the work that he was asking us to do, every single one of them, he'd say, he, he'd tell me what the budget was and I would price it and, and contact people to, you know, get prices for the works to be done. And I'd say to him, that I can't do it for, for this budget price, this is what, what it, you know, this is what I need to get, to be able to get the work done. So it wasn't about, like, your questions was about whether it's maximising. For me, it was, the conversation we were having was this is what I need to do to get the job.
40

Were there occasions where he had told you what the budget was and that enabled you to inflate the price to be close to the budget in order to then know that you would be within budget for the variation and it would be able to be approved?---Yes. There was one or two occasions like that, yes.

And to the extent that he was referring in these messages to pushing through variations, did you understand him to be engaged in a process of trying to get approval for additional variations that hadn't been contemplated as part of the project?---Not about, not, them not being contemplated as part of the project. So one, one occasion was I, I was asked to, to rebuild a brick wall that was not part of the works and we got given some pretty rudimentary sketches to get done. It had, and that type of work needed to be done under a track possession, which is when they close down the tracks and, and, and we do the work over that weekend. I initially got Seng to price it, SDL to price it and SDL ended up doing that work. There were some issues with the work that was done. The, and there was a dispute as to who's responsible for the, the lack of quality that was performed for, in, in building that wall. I mentioned that it was a rudimentary sketch where I was able to argue the case that the errors that were made were a consequence of the, the, the, the drawings that Downer provided us, to get the work done. But I was still not very satisfied with the actual work that was done, and I was pushing to say I, it's going to be a variation to build this wall, you've got, these windows weren't lined up, they weren't in the right size - anyway. There were some problems with the actual wall itself, and I take pride in the work that I do and I'm actually pretty proud of the work that was done in my business's name for that job. It'll be a shame if anything happened to it because of the nature of, of the area that it's in. But it was - so I was pushing to get enough money to be able to get the job done properly. So to answer the question, I was pushing for the variation to cover and, and for me to get, you know, a, a modest profit from it as well to get the, a proper job done. And when you're referred to his limit it's because I was pushing on multiple occasions - that was one example - on multiple occasions where he's asked me to do some work, he's got a low budget and I kept pushing his, the, the amount that he had whatever discretion for, for variations. That's my understanding of that.

Those are his words in relation to his limit?---Yep.

That's what he's telling you.---Yep.

If you see the fourth message down on that sheet, “December claim is very healthy. Vary register’s going to look suss. Can’t put anything through.” Do you understand what he meant by “Vary register’s going to look suss”?
---Not really, no.

What would make a vary register - you’re familiar, obviously - - -?---That’s what I’m trying to understand.

- - - with the concept of variations registers.---Yeah.

10

What would make a variations register look suspicious?---I, that’s, do you have a copy of a variation register? It might prompt my memory.

Well, not, I don’t think, as at this particular date.---Okay.

But he’s obviously relating, he’s referring to a December claim, presumably a December project claim, being very healthy. Presumably that refers back to your earlier point in relation to - - -?---Yep.

20 - - - maximising those claims.---Correct.

You say for the purpose of bringing forward the work, sorry, bringing forward the payment - - -?---Yep.

- - - to you. “Vary register’s looking suss,” presumably on top of that.---I don’t, I don’t really understand that.

Right. There was a high number of variations in relation to the job, would you agree with that?---Yes, I would.

30

We can bring up the register, I think, hopefully a complete copy of that. Volume 3.9, page 82. That is a variation notice being provided to you. It’s ultimately signed by you. This is in March 2018. Can we scroll to the next page. This is a notice of variation. If we can keep going. It indicates the previous - well, provides a total in respect of the variations. Do you see that figure there? \$948,166.---Correct.

That was larger than the total subcontract sum - - -?---I agree.

40 - - - that you’d agreed with, sorry, you’d initially agreed to.---Ah hmm.

If we continue to scroll, we see a list of them.---Yes.

And they're given individual numbers coming to that total.---Yes.

Do you recall Mr Abdi being involved in the pricing of any of these variations?---Haven't I already answered that?

I'm sorry?---Haven't I already answered that?

10 Not in respect of Mr Abdi, I don't think.---Oh, Abdi, sorry. I, sorry, the names are very similar. I don't recall a particular - he kept tabs on what was going on, but I don't recall a particular conversation about pricing anything.

And when you say he kept tabs on what was going on, that was because he actually had a role in Transport in relation to this project, wasn't it?---I don't know what his position was so I can't really say, talk to that.

20 Where you say he kept tabs on, what was going on that included in relation to variations?---My comments was in terms of he spoke to Abdal quite often and he called me quite often to relay frustrations, concerns et cetera.

Why would he do that?---I, I would ask him.

What was your understanding of why he was so closely involved?---He was - oh, how do I say it? He, he would, he would speak to me fairly regularly around this time and he was, as far as I knew, quite close friends with Abdal. I don't, I don't want to be speculating as to why he did things.

30 But it wouldn't make sense though, would it, if he was full-time engaged with Transport in managing something else for him to be telephoning you quote regularly to relay Mr Aziz's frustrations in relation to this project, would it?---Well, it would because he recommended me, or he gave, he passed on my details to Abdal.

40 Can we have volume 18.13, page 92 brought up on the screen? Sorry, page 92, not 192. If you see, the fourth message down there, this is October 2017. "I just got off the phone with Abs. He really needs the quote badly to close it out with Transport. Put down 380 K and 406 K."---Sorry, where is that?

In the fourth message down on the page.---Okay, yep.

This is a message from Mr Abdi to you. Do you recall what that related to?
---No.

Would it relate to potentially pricing of a variation?---I would assume so,
yeah.

Do you recall discussing pricing of variations with Mr Abdi?---I don't recall
talking to him directly about pricing. How do I say, the word pricing, the
10 way I understand is actually going out and getting the price. If you're
talking about what you - - -

How much you would quote.---Yeah. I, I don't recall talking to him about
that, no, but there's obviously a text message that has some reference to
that.

Do you know whether any of the work that was done by you ultimately as a
variation was put to tender by Downer, that is by Mr Aziz's project
manager?---I don't think so, no. That's, you do variations so you don't have
20 to do, go out to tender.

It could all be done directly by you?---That's the point of doing a variation
to a contract.

Did Mr Aziz ever tell you a figure to claim for a variation?---We, as I said,
we discussed every single variation and there was a couple of occasions
where he told me what the budget was. Well, sorry, he told - yeah. I, he
may have told me what the budget was for each, for every single one but,
yeah.
30

And your purpose in providing figures to Downer for the variations was to
boost your profit in relation to the job, correct?---Not just to, not - to be able
to perform the work. Yeah, and also - - -

Sure. And on top of that to have a profit or margin - - -?---I'm running a
business, so yes. You, you want to make profit.

Did you have an arrangement with Mr Abdi and Mr Aziz and Mr Nguyen in
relation to the profits of the Victoria Street job?---No, I did not.
40

Did you have an arrangement with any of them in relation to the Victoria Street job, the profits that is?---An arrangement?

With any of those three individuals, Mr Abdi, Mr Aziz, Mr Nguyen.---To try to, I'm trying not to go to wherever you're going with the question. At the time, no, there was not.

When you say at the time, that is at the time that you got the job or at the time you were working on the job?---Even, yeah, while I was, well, it,
10 things changed as the job was coming to a close.

Right, so did you form some arrangement or understanding with them as the job was coming to a close?---Not form an understanding, no. That's actually the exact opposite of that.

Right. Did you understand them to have an understanding that you would be splitting profits with them at the time that job came to a close?
---Commissioner, I'm just trying, I don't want to be jumping to different sections but it's very relevant to the questions being asked, to be, to be
20 talking to different aspects that we haven't gotten to yet that relate to this.
I'm - - -

All right. Well, maybe I can take you to a document that'll assist. You were keeping track of costs in relation to the project of course, weren't you?---Very loosely, yeah.

Well, you were, it was your business.---Yep.

And your evidence that you were trying to be able to ensure that you had
30 cash flow to fund the project.---Yep.

And also try to make sure that you were getting as much profit as possible. You were interested in maximising your profit.---(NO AUDIBLE REPLY)

In order to do that, it was necessary to keep track of - - -

THE COMMISSIONER: You're nodding. You have to actually answer.
---Yes.

40 MS DAVIDSON: Thank you, Chief Commissioner.---Sorry.

That required you to keep track of costs, did it not, making sure you had enough cash flow to start with?---Yeah, we, yeah, I, I didn't have a, I didn't do a very good job in terms of having a cost-tracking sheet, no, but I did monitor my bank account.

I'm sorry, you did monitor your bank account?---Ah hmm.

10 And you did, at least at some point, prepare a cost-tracking sheet, did you not?---I did not do it as a cost-tracking sheet, and if I may, Commissioner, can I just answer where this is going? Because I need to provide some background to this. The line of questioning might be sort of angling it towards answering a question - - -

THE COMMISSIONER: Well, you're able to respond to the question, and then we can proceed from there.---Yeah, well, I, I didn't prepare a tracking sheet for the purpose of tracking the business.

20 MS DAVIDSON: All right. Can we have volume 3.9, page 114 brought up on the screen. This is a document that was located in your computer. Do you recognise this document?---I do.

Is it a document that you created?---Yes.

You see it's headed at the top Summary to 19/1/2018.---Yes.

Was that at a time the job was coming to a close?---It was - - -

30 Or earlier than that period?---Earlier, earlier than coming to a close but it was coming, it was, I don't know, months away from close.

Right. So at this stage you're recording, would you agree, in this document incomes and expenses associated with this project? That is, this is a document that relates to the Victoria Street project?---Yes it is.

And it reflects income from Downer as well as various costs.---Yes.

40 Are you able to explain in the Income and Expense columns there what the director figure of \$221,000 relates to?---Where I was trying to go in the previous response is to this spreadsheet. This spreadsheet I drafted in about two minutes and I'm not sure if you can get the metadata on that to see what time it was drafted, it was drafted quite late at night. I, at the time, to give

context, was the project manager on the Sydney Light Rail project. I was working extremely long hours at the time because at that time, the Sydney Light Rail project was going through a \$1.3 billion dispute with Acciona and in my remit, there was \$500 million that was being disputed by Acciona. And I, I was in and out of the Ashurst, the, the lawyers' offices, for, for this time, most of the days and I was, I was doing 14 to 16 hours a day at this time - - -

10 THE COMMISSIONER: Yes, but Mr - - -?--- - - - preparing
documentation, no, the reason I'm giving you the background is that this
was, I was asked to produce this after being threatened by Mr Nguyen
because he was asking for some, asking for some money and he was under
the impression that I'd owed him money for his role in assisting with SDL
and, and some imaginary agreement that he thought we had that my
company that I commenced in 2015 when I hadn't spoken to him for six,
for, for a year and a half, somehow was part of his work and, and I, I, I
received threats, "I know where you live" one of the words. So, to try to get
him off my back, I quickly drafted this spreadsheet to show what the, where,
20 where the, where, where it was at the time in terms of costs and, and, and
expenses for the job, to try to explain to him that I couldn't get him any
work. He wanted to, sorry, couldn't get him any money. It didn't make
sense because we hadn't finished, I hadn't finished performing the works
and hence it was a quickly drafted, quickly drawn up spreadsheet. So if
you're going to ask me exactly what this number meant or what that number
meant, it's not a, it wasn't very accurate. It was a quickly drafted response.
I couldn't, I didn't have time to deal with it but I had to get him off my
back.

30 MS DAVIDSON: Right. Well, I'm not asking you at the moment in
relation to particular numbers or the accuracy of the spreadsheet - - -?
---Well, you just asked me about the director, what was, what did that mean
to - - -

Yeah, I asked you not about the figure but what director related to.---I don't know.

You were the director of RJS, were you not?---It was a two minute drafting. I have no idea what I did there.

And that would seem to reflect an entry on both sides of the ledger in relation to money that came potentially from and then was withdrawn by you. Would you agree?---Yeah.

There's a reference there to Ranieri and Health. Are you able to assist the Commission in relation to what they related to?---Different consultants that did work or contractors that did work.

10 Right. What was the work that Ranieri and Health did?---The, Ranieri did all the brickworks and Health did the windows.

Right. There's a reference there to a net figure, which is a profit figure of about \$428,000. That's roughly in accordance with what Mr Aziz had thought in his earlier communication to you in relation to dropping the price, wasn't it? Do you recall that message - - -?---The 300 K - - -

- - - about it being a 300 K job with 400 K, well, he was suggesting a 700 K price?---I don't know what the link is?

20 Well, moving on, then, there's a reference to split?---Yeah.

The figure below that seems to be half of the \$428,000 profit figure. What did that relate to?---I don't know.

By using the word "split", that would tend to suggest, wouldn't it, that you were splitting the profit figure in half with someone or for some purpose? ---I was asked to put that together on the spreadsheet.

30 All right. But you used the word "split" in a document that you generated - - -?---Well - - -

- - - and your evidence was that you were providing it as some kind of justification or to get Mr Nguyen off your back?---Correct.

You wouldn't use the word "split" if you weren't, in fact, intending to split the profit figure, would you?---Well, that's, that wasn't the profit figure.

Well, it's indicated as a net figure there - - -?---Exactly, yeah.

40 - - - once expenses are deducted.---Your interrogating a spreadsheet that was drafted in two minutes that was done at a time where you couldn't

reflect, accurately reflect the, the state of the business because, or the, or the project because the project was not complete yet. There were still further expenses to go, further income to come in. I - - -

I'm not suggesting it's a reflection of an actual figure as at the completion of the project.---Yeah.

I'm asking in relation to the use by you of the word "split".---Again, I was asked to put that in there.

10

You were asked to put that in there and you did do so.---Yes, yes.

This was a document you created, on your evidence, to get him off your back.---Correct.

You wouldn't have indicated that you were going to split any net figure with him unless you intended to do that, would you?---I did not intend to split anything with him.

20 And yet you provided him with a split figure. It simply doesn't make sense to do that - - -?---That's fine.

- - - in the context that you weren't intending or understanding that that's what you would ultimately do, does it?---As I said to you, it was too early to be able to show whether there was a figure or not to be split. It was, I, I, I'm trying to be transparent with you. I spent two minutes on this doing what I got asked to do at a time when I was very short on time, very high stress and I just needed to - - -

30 THE COMMISSIONER: Well, why would you put "split" in at all? Why would you ever refer to it?---I got asked to put in a split.

I'm sorry?---I got asked to put in the split. It, it didn't make sense. That's what I was trying to say. It didn't make sense to even put this spreadsheet together.

Who asked you to put the "split" in?---Tony did.

40 And what was your understanding of why he made that request?---Because he was under the impression that he was owed money by me.

MS DAVIDSON: But you complied with the request and used the word “split”.---I complied to get him off my back, as I said earlier.

But in getting him off your back that suggests that you were intending to, at this time - - -?---I did not intend to give him any money. That’s my, that’s, that’s my response.

THE COMMISSIONER: In that case why do you refer to a figure that’s roughly half of the net amount? I mean, this doesn’t make sense, Mr
10 Sanber. Why would put a figure like that up if you don’t intend to give him anything?---I, I just - - -

You say get him off your back?---Yeah. I just said to you it doesn’t make, it didn’t make sense. When he was asking me to do this I said the exact same thing you said, “This doesn’t make sense, we’re not at the end of the job.”

Right, right.---“I can’t be telling you what the split is.”

MS DAVIDSON: Right, but in saying to him “I can’t be telling you what
20 the split is” indicates your understanding that there would be a split, doesn’t it?---I did not intend to give him any money. I intended to send this spreadsheet to him to shut him up in, sorry, excuse my language.

So did you intend to deceive him, that is to tell him that you were going to give him a share of the profits - - -?---It was just to get him off my back. I couldn’t deal with it at the time.

And so - - -?---I didn’t have time to deal with this, this - - -

30 The way that you chose to do that, or did do that here, was by giving him an indication, you would agree that would arise from looking at this document, that there would be a split of the profits?---That’s how you would - yeah. You can say that but - - -

And that half of the profits would go to him.---I don’t know how that was going to be split. I, I don’t know what the arrangement was between anyone else. I’m trying to tell you that I spent two minutes putting this together. He asked me to put a split in there and I sent it across.

40 And after that what occurred, once you sent it to him?---Well, he, I got some abusive phone calls that I was ripping him off, this is wrong. I, I, as I said

to you earlier, it wasn't a very accurate spreadsheet. It was quickly thrown together. So there was another heated argument and he asked me to provide bank statements and - - -

So this was back in January this spreadsheet, it reflects the position as at January?---Yep.

Did it get him off your back for a while?---No, not really.

- 10 Closer to the end of the job do you recall reviewing other spreadsheets in relation to the costs and profits associated with the job?---Reviewing them?

Having them sent to you?---Yes.

Could we have volume 8.1, page 206 brought up on the screen? This is an email that's sent to you in April 2018 from an email address. It's a combination of letters and numbers @guerrillamail.com. Do you recall receiving this email?---Yes.

- 20 Who did you understand it to be from?---Abdal, I think.

Mr Aziz. He says in the body of the email, "To clarify, spreadsheet 2 shows farm costs split to all three. Spreadsheet 3 shows farm costs split between two, not RS." Do you understand what that related to?---I thought it related to the spreadsheet.

The farm costs being split different ways and the reference to between two and not RS.---I don't know.

- 30 Does it relate potentially to your evidence earlier in relation to who was partners in Mr Abdi's fig farm business or the fig farm business being conducted on Mr Abdi's farm?---The, the reference to farm costs, yes. I don't know about the split stuff but, yeah.

So "split between two, not RS"?---Yeah, I, I, that's what I, that's what my, that's the answer that I said was I don't know. I don't know what that is referring to.

- 40 All right. You understood yourself to be a partner in that business I think was your earlier answer.---Yes, in the farm, yes.

And where it said, "You guys need to resolve this tomorrow and let me know which number will be coming through," what did you understand that to relate to?---This I think relates to - now just from a timing perspective I'm not sure exactly. This looks like a little bit later.

This is April 2018.---Yeah. So, but I think it referred to Tony being angry, saying that the numbers aren't accurate.

10 And this is an email from Mr Aziz.---Yeah, so that's the - I'm drawing a conclusion about you need to sort it out.

Right. So you understood this to be a reference to you sorting things out with Tony?---I believe so.

20 And did you understand Mr Aziz to be in discussions with Tony at this time?---At, at this time I did not know what was going on. After the heated discussion with Tony and subsequent discussions, I had not been able to get in touch with Nima, who I wanted to get in touch with to complain about how, how his friend was threatening me and whatnot. So, yeah, I couldn't get hold of him anymore so I had no visibility as to what discussions were being had. My mind wandered and raced but I didn't, don't have any solid evidence as to what discussions and agreements, et cetera, were being had outside of that.

30 So is it your evidence that after January, which was the date to the spreadsheet that we were previously looking at, you provided that to Mr Nguyen and, following that, you weren't able to contact Mr Abdi?---Again, I'm not sure about this time frame, whether it was, it was sometime between, between these two times, between January and April.

Right. There became some period of time where you weren't able to contact Mr Abdi. Were you trying to do that?---I tried a couple of times but I did not.

And what happened?---He wouldn't pick up or wouldn't return my calls.

40 Right. There's then a reference to "SDL figure doesn't match RS statement. SDL's numbers are used here unless RS can show Netbank statement in real time on a laptop, as this is what SDL have done."---Yep.

What did you understand that to relate to?---This is, again, I was jumping to conclusions. People were talking behind my back about, about, about the costs for the project.

Well, it would seem to reflect a discussion at least between Mr Aziz, if he is the person who's sending you the spreadsheet, and Mr Laphai SDL's figures and SDL's numbers being used. Did you understand Mr Laphai to be in discussions with Mr Aziz at this time?---I don't think, I, no, I don't think so.

10 Where there's a reference to "RS can show NetBank statement in real time on a laptop as this is what SDL have done".---Yep.

What did that concern?-- - I don't know. I didn't pay attention to that.

Did you subsequently show figures to Mr Aziz on a laptop?---No.

Had you previously provided bank statement documents to Mr Aziz?
---Modified ones. I thought it was to Tony but - - -

20 You thought it was to Tony.---I believe so. Yeah.

Did you understand him to hold concerns in relation to the accuracy of those documents?---Yes.

And what was the nature of that?---He didn't believe me.

Had you in fact falsified bank statements that you had sent to Mr Nguyen?
---I modified them to, to, to not share key information, yes.

30 When you say you modified the, what did you do?---I changed a lot of things.

So it wasn't just personal information that you took off there, was it?
---Correct.

Chief Commissioner. I note the time. I understand that this witness is not available for the next few days but I do have more to go with him.

40 THE COMMISSIONER: How long will you - - -

MS DAVIDSON: I'm sorry?

THE COMMISSIONER: How long is left?

MS DAVIDSON: It's probably more than half an hour, Chief Commissioner

THE WITNESS: I'm happy to continue for half an hour if that gets us out.

MS DAVIDSON: I'm sorry, Chief Commissioner.

10

THE COMMISSIONER: The witness has said he's happy to continue for half an hour, is that right?---yeah.

That's what he says.

MS DAVIDSON: I'm in your hands, Chief Commissioner.

THE COMMISSIONER: Well, we can keep going if you wish, if you think you can finish the witness.

20

MS DAVIDSON: If I might just have a moment, Chief Commissioner. I understand that Mr Sanber is available on Tuesday 4 April, given that it may take longer than the half an hour that is potentially available now - - -? ---Can I just - - -

Is that inaccurate in respect of your availability?---Yeah. I'm back on Tuesday. So I'll be back Monday night, I believe. However, this whole week that I have been coming in every day, my wife hasn't been able to go to her work and she has something on on Tuesday that she needs to be at work for and I need to be available to pick up and drop off the kids. So - - -

30

Is there another day next week that's more suitable?---I would prefer to come in - - -

THE COMMISSIONER: Sorry, are you not available tomorrow?---I'm flying out tomorrow. If it's, it's only half an hour I would love to do it this afternoon.

Well, I'm told it maybe more than half an hour.

40

MS DAVIDSON: I'm hesitant to be confident in relation to that, given that some of the matters that are about to be canvassed I understand Mr Sanber will wish to be able to provide explanations in relation to, and that may take more time potentially than a half hour extension.

THE COMMISSIONER: Well, I'm prepared to sit on but if it's more convenient because you feel that it won't be - - -

10 MS DAVIDSON: Well, I'm happy to continue and see how we go, Chief Commissioner.

THE COMMISSIONER: Well, why don't you do that and we'll just see.

MS DAVIDSON: If we get to 4.30 and we're still going, however, it may still be necessary or Mr Sanber to return next week.

THE WITNESS: Thank you. I appreciate it.

20 MS DAVIDSON: Returning to volume 8.1, page 206. Could we scroll to the next page? This is the attachment to the email that's sent to you. If we could - do you recall looking at this document?---Yes.

There were, as indicated by the sender of the email, two spreadsheets attached to this email. I can show you the following page if you'd like to see it, but it appears that they are in fact - that is, the figures shown - are in fact the same. Do you recall comparing the two at all?---I remember receiving them and I remember looking at them but I didn't pay them too much attention.

30 All right, well, we might stick with this one for the moment, and I think it's your evidence you didn't understand the difference in relation to splitting the farm costs or what was said about splitting the farm costs in any event, did you?---Correct.

So you'll see the table on the left-hand side refers to costs from Raja's bank statement.---Yep.

40 So this was at a time that you'd supplied your bank statement, you thought, to Mr Nguyen.---Yes.

And you'd falsified, I think you said, a number of things in relation to it.
---Yes.

What did you falsify in that bank statement?---It was a lot of, it was almost everything.

Right. And what was your purpose in doing that?---I was concerned about who, where, where it was going to land, whose hands that was going to land in.

10

Concerned about where the bank statement would land?---Yeah, details, information. I didn't want, I did not want Tony or any of his associates - as I said, I was slightly concerned that he was potentially, there was some threatening conversations that led me to not want to have anyone that I had dealings with on my bank statement, on my real bank statements to be available to who I, to Tony or who I was dreaming up, imagining he may have associations with.

20 THE COMMISSIONER: What did you understand was the purpose of the request?---To - - -

To provide the bank statement.---To, to show what the actual profit was on the job so they can - - -

For what purpose?---Because they wanted to, I assumed, extort money out of me.

And what was the purpose in you supplying it?---Getting them off my back.

30 I see, right, yeah.

MS DAVIDSON: Why would you provide bank statement details at all to Mr Nguyen if you had no agreement with him in relation to splitting the profits?---As I said to you, I was getting threats.

And so your response to that was not to go to the police, presumably?
---I didn't think of that. I thought of getting them off my back.

40 Right, and so you thought - - -

THE COMMISSIONER: Sorry, just a moment, and you thought the way to get him off your back was to provide him with concocted bank statements?
---Yes.

I see.

MS DAVIDSON: What did you think he was going to do with your bank statements?---I did not know. My imagination was running wild, so many things.

10

But you understood he'd asked for them - - -?---Yep.

- - - for the purposes of trying to discern profits - - -?---Yes.

- - - in relation to the project?---Yes.

And that was because he had an understanding that there would be a split of profits with you?---Yes, that's what he was alluding to, yes.

20 And why did you understand Mr Aziz to have become part of these discussions?---I did not understand, I did not understand it.

Well, he had by this time, had he not?---Yes. Yeah.

You knew at the time that this email came from him.---Yes. I, sorry, yeah, the - - -

The Guerrilla Mail email.---Yeah, sorry, yeah, that's right, this came from him, okay.

30

And you knew that at the time, not just later on?---At that time, yes.

Yeah. So Mr Aziz seems to have, by this point, become concerned with the profits to be derived from the project.---Correct.

How did you understand - what was the point in time at which you understood him to have been concerned about that?---Around that initial spreadsheet that was sent. I think you had it.

40 The spreadsheet you prepared? The January document.---After, no, after that date.

Right. So what occurred, that document refers to a split in two and I think your evidence was that was with Mr Nguyen - - -?---Yes.

- - - although you didn't intend to split the profits with Mr Nguyen?
---Correct.

How did you come to understand that Mr Aziz was concerned about the split in profits?---I was receiving emails from Tony and that's why I
10 assumed this one was from Tony because Tony had sent an email and he'd copied Abdal into it and, and I believe one of the emails that Nima may have used.

Right. And was that the first time, notwithstanding all the assistance that Mr Aziz had given you in the tendering process, when you received that email from Mr Nguyen, was that the first time you understood Mr Aziz to be interested in splitting profits from the project?---Yes.

I suggest to you that's false.---Say that again?
20

I suggest to you that's false.---What's false?

That the first time you understood Mr Aziz to be concerned with splitting profits was when you received an email from Mr Nguyen sometime after January 2018.---Okay.

Is that right or not?---It is not false, well, if this, if, again, I'm worried about specific details. It was around about that time. Whether it was that date or two months later or a month earlier, I don't know exactly.
30

In fact, the reason he'd given you all that assistance back in the tendering process was because you had an agreement in relation to the profits?---I did not have an agreement with him, no.

Looking at the costs from Raja's bank statement that are indicated here, there's a reference to Mont in the left-hand column. Do you know what that related to - - -?---No.

- - - the \$642,000 figure?---I don't know.
40

Do you recall what SDL's costs were in association with the project?---It was around the \$600,000 mark, yeah.

So around \$642,000?---That's a good assumption to make.

There's then a reference to Mick?---Yeah.

Was Mick somebody who worked on the project?---Yeah. Ranieri.

10 That was Ranieri. And Paul. Is that - - -?---Health. Health.

I'm sorry?---Health.

Health. Was he the bricklayer?---No. Mick was a bricklayer.

Mick was a bricklayer.

THE COMMISSIONER: The window man, was the window person?

---Correct.

20

MS DAVIDSON: I'm grateful to you, Commissioner. There's then a series of miscellaneous costs and then costs said to be associated with farm?

---Yeah.

Are they items that you paid for or that RJS paid for in relation to the farm?

---I assume so, yes.

Where you'd indicated, well - - -?---On this, on the - - -

30 This is derived or said to be derived from a bank statement document?

---Correct.

On the document that you provided, that is the bank statement document, that you - - -?---Correct.

- - - provided to Mr Nguyen - - -?---Yes.

- - - do you recall adding costs in relation to the farm that you hadn't in fact paid?---No.

40

So if there are figures on this spreadsheet taken from your bank statement, that would have been accurate in relation to farm costs, would it?---I believe so. I - - -

Right. You'll then see down the bottom or in the middle of the page, a grand total of costs, the amounts that came in and a profit figure of \$872,985.12. Is that an accurate reflection of the profits derived from the project?---No.

10 And why is that?---Is this a good time to tender my actual bank statements so you can actually look at the real bank statements to see the, where the money went?

Documents are tendered through me.---Sorry. Well, what, what do I do?

Are you intending or offering to provide some additional - - -?---Apologies.

- - - bank statements?---Do, yeah. I'm, I assume that you have my bank statement, my, my bank statements?

20

Well - - -?---If you do not, I'm happy to provide them.

- - - where you refer to your actual bank statements, if there's an offer to provide additional documents to the Commission, I anticipate - - -?---Yeah.

- - - that we'd be grateful to receive them, but those documents, so far as I'm aware, have not previously been provided by you?---Correct. I was never asked to provide them, so, but I'm happy to provide them.

30 In relation to the costs of the project that are reflected on this document - - - ?---Yeah.

Do you understand that to be an accurate reflection of the cost, that figure of about \$1 million?---No.

The costs were higher as well in your evidence?---Yes, yes.

40 Do you recall what the costs of the project actually were?---Not exactly. I think the profit was around the 7% per cent mark when I did a quick back-of-the-napkin - - -

Sorry, you did a quick back-of-the-napkin to work out the profits?
---Calculation, about 7% for that profit. So wherever it - but, again you can work that out with the actual statements.

Did you prepare ultimately, for your own purposes or for any other purpose, an equivalent spreadsheet to this reflecting accurate figures?---I don't recall.

You will see there is then a profit breakdown reflected on the right-hand side.---Yep.

10

Taking that total profit figure and then seemingly splitting it in half to Mr Aziz.---Yeah.

Do you know how he could have come to an expectation or an understanding that half of the profits would be given to him?---I was - again, I did not prepare this and I don't - - -

I'm not suggesting you prepared it.---Yeah. So I, I, I, it was based on incorrect figures. I don't, I don't know. It's - - -

20

But at the time he seems to think by dividing \$872,000 in two to get - well, AZ would seem to refer to him, would you agree with that?---Yes, yes. I would agree that's what it reflects.

And you understood by this time he thought he was entitled to half the profits, didn't you?---I don't recall what I thought at the time. I, I don't recall paying too much attention because it was, it wasn't based on reality.

30 But it certainly seems to reflect an understanding on his part in relation to that?---Yes. I agree with that.

Is it your evidence that you had never had any discussion with him about giving him half of the profit?---That's correct.

There's then a figure of, well, two figures in blue there, a TN share combined and an RS share. What did you understand those to relate to?
---Again, I didn't pay it too much attention at the time, but I can see that it's a potentially a split with a TN.

40 Right. Would that potentially be Mr Nguyen and Mr Abdi?---Yes.

And then RS share would seem to relate to you, wouldn't it?---It would.

So it seems to suggest a three-way split of the remaining half between yourself, Mr Abdi and Mr Nguyen.---That's what it reflects.

Had you had discussions with them about a three-way split of the remaining half between - - -?---We had, I had an argument with Tony. I didn't, I did not get hold of Nima.

10 Right. So where you had, where you refer to an argument with him, was that the discussion that you referred to in your earlier evidence?---Correct.

And was that where he said to you or he explained to you what his understanding of the split was?---Well, he didn't, he, he said that I owed him money. Not, I don't recall a conversation about what the split is and how it's to be split up, et cetera, but it was - - -

Right. Did he say you owed Mr Aziz money?---He didn't, he said, "You owed us money."

20

Right. Did he say - - -?---I don't know who the "us" was.

Did you understand who "us" was?---No.

Did he refer to Mr Abdi in that conversation?---No. He said "us". I don't know who that related to.

Right. Referring back to the left-hand side, you'll see there's a number of total credit figures. Do you see those down in the bottom left?---Yep.

30

And underneath that - well, it seems to come to a total of \$554,000 which is then broken down in credit to AZ as at 15/4/2018, and total credit paid to NT as at 15/4/2018.---Yeah, I'm, I'm not sure what that is.

Right. To the extent that this is a document prepared by Mr Aziz or Mr Aziz with the assistance of others, can you explain why they would reflect, and they were keen to extract money from you, why would it include credit figures to them if you hadn't actually paid them those amounts of money?
---I did not.

40

And yet they're preparing a spreadsheet and sending it to you reflecting credit figures. It makes no sense, does it?---It does not, no.

And the logical explanation for it, which does make sense, is that they expected, as you see from the bottom right-hand side, that there would be final credits provided, deducting the credit amounts that had already been paid to them. That seems to make sense, doesn't it?---Yes, but I didn't make any payments to them. And maybe, maybe if you'd actually looked at my statements, the real statements, you'd, you can see that.

10

Well, we'll come to bank statements. Chief Commissioner, those documents have just been provided now. Plainly it will be necessary to consider those. Given they've been volunteered at this point and not previously - - -

THE COMMISSIONER: Were they requested previously?

MS DAVIDSON: I don't know the answer to that question, Chief Commissioner. I understand they were referred to on Tuesday and it was indicated they would be provided to the Commission. That didn't occur on Tuesday. Had it, there might have been an opportunity to look at them before now. I can proceed to use the remaining time, Chief Commissioner. I'm not suggesting that it's necessary to adjourn at this point, but - - -

20

THE COMMISSIONER: Yes, all right.

MS DAVIDSON: Would you agree that the cover email that we were just looking at seemed - and to the extent there's a request about seeing in real time on a screen your NetBank statements - - -?---Yep.

30

- - - it reflects a concern by Mr Aziz as to the accuracy of your bank statements?---Correct.

So they'd figured out, presumably, by this point that you'd provided them with falsified bank statements?---Potentially.

Seemingly. What did you do after you received this email?---Nothing.

Nothing. That is - - -?---I had another conversation with Tony to say that the job's not finished yet. I still don't know why you guys are pursuing this.

40

What was his reaction to that?---“We’ll see.” I don’t recall exactly the conversation.

Could we have volume 3.9, page 122, brought up on the screen. I’ve been asked if you can come a bit closer to the microphone, please, Mr Sanber.
---Sorry.

Thank you. Now, this is a scan from seemingly a Transport email address, presumably a photocopier or a scanner in a Transport facility to yourself at a
10 Transport email address. Would you agree that’s your Transport or was your Transport email address?---It was, yes.

And it says “IGA scan”, and then on the following page, if we could scroll down, you’ll see there’s a bank statement with - - -?---Yes.

- - - annotations. Are they your annotations?---Yes.

Is this a bank statement, recalling the date, this is April 2018. Do you recall what the purpose was of scanning and annotating this bank statement?---
20 Yeah, I thought we covered this. Yes, this is the one that was modified.

This is a document that you modified?---Correct.

Right. Just looking at the annotations there, there’s a reference to SDL, which is presumably a payment from you or intended to convey a payment from you to Mr Laphai?---Yeah.

There’s then a reference to Sadco. Who was Sadco?---I don’t recall exactly.

30 Do you have any idea who Sadco is or was?---I believe there were two occasions where there was some material that needed to be carted out and tipped onsite, tipped offsite, tipped somewhere and I, if I’m, remember correctly, that’s what it’s, it’s for payment for that.

Right. So there’s two payments there in April 2018 for \$53,000 and \$100,000?---Yeah.

You’ll then see, and this obviously has the most recent transactions at the top, there’s then some payments in March, three successive payments in
40 March - - -?---Yeah.

- - - in the amounts of \$100,000, \$100,000 and \$9,460.90?---Okay.

That suggests Sadco was doing something other than just removing material, does it not, if you're paying them within the space of a month more than \$350,000?---It's expensive, as far, well, I didn't organise for them to be out there. I'm not sure if it was Monty or Nima, not Nima, Abdal who organised for them to do it, but it was to, to get the material offsite. I wasn't onsite at that stage.

10 Right. Do you have any tip dockets in relation to or were you shown any tip dockets in relation to the haulage of the material that was costing you, according to this, more than \$350,000?---I believe I received dockets, I believe so, yeah.

Do you have those dockets?---Physically, no, but they, they would be on my email address.

It would be on your email address. Do you have access to that email address?---Not anymore, no.

20

Is this your Gmail address?---No, my RJS email address.

Right. Why do you not have access to that email address?---I stopped paying the monthly subscription to Microsoft a long time ago.

Did you save documents, that were invoices, in relation to this project anywhere else on your computer system?---Just on my computer.

30 Right. Do you have access to documents that were saved by you for that purpose?---I, I lost all, all my RJS Civil information completely.

Did you have a record of any of that stored in the cloud?---Potentially.

Is there a place that you think that you could look in relation to dockets for - - -?---No, no, sorry, no. I don't have them. If - - -

You don't have them?---No.

40 Is it your evidence that you did have tip dockets in relation to these amounts of money?---I, I, well, I believe it came in with the invoices.

You believe it came in with the invoices?---Yes.

To the extent that the total costs of the project shown on the spreadsheet, and I realise it wasn't your spreadsheet, but were around \$1 million at the time that spreadsheet was prepared, and I think you said the figure was, in fact, higher, but, in any event, would you agree \$350,000 plus of that million dollar costs in relation to the project, being related to removal of material, was an extremely high proportion?---Tipping material, it's not just tipping. It's haulage, loading, haulage, cartage of material is quite
10 expensive. I, I don't think it's, I wasn't sure exactly the quantity. I wasn't up there to see it, but - - -

Well, you would have asked for some additional documentation or verification, wouldn't you, if you were receiving - - -?---Yeah, the tip docketts. Correct.

And, in fact, there was more than that. If we turn to page 125, you'll see that there's additional payments in the middle of the page in January 2016, sorry
20 2018 - - -?---'18.

- - - of \$99,000 and \$24,000?---Yes. Well, they, yes.

Also said to be to Sadco?---Yeah.

So, in fact, the figure is getting towards, adding all of that up, somewhere close to \$500,000 in tipping costs?---Yes.

You weren't spending half of the costs of the project in relation to tipping or removal of material, were you?---I paid what I was invoiced. With, with
30 that, with the material cartage, my involvement was very, very minor other than, other than being told the variation was going to, sorry, that we needed to get this material out, the variation was, I was going to get paid a variation to load that material out and who actually arranged for the truck to, to, for the excavator truck and the tipping, I can't recall whether it was Monty, it could have been Tony or, or Abdal but when I, I got told the work was done and when I received the invoices, I'm quite, I'm pretty sure I've, I saw tip docketts with them, as well, so - - -

All right. Well, let's keep in mind those figures of \$99,250, 240,500 - - -?
40 ---Yeah.

- - - and coming back to page 123, if that's possible, we have the three \$100,000 payments to Sadco and \$9,460.---Okay.

If we could come back to the spreadsheet, that is volume 8.1, page 207? Then we go back to the credit figures, that is the total credit figures shown on the left-hand side, that, in fact, those amounts there, in fact correspond precisely, do they not - - -?---They do, yes.

10 - - - with the Sadco figures that are shown on your bank statements?---They do.

And you're not suggesting you didn't make payments to Sadco in those amounts, are you?---I, no, I did, I, I made those payments.

You made those payments?---Yes.

20 So at least the author of these, it seems an extraordinary coincidence, does it not, that amounts split up in exactly the same way - - -?---It's not a coincidence. It's, it's not a coincidence for me. It's alarming, yes.

It's alarming?---Yes.

And why is it alarming?---Well, I'm not the author of this spreadsheet, to be clear.

30 I understand that.---And I, when you asked me if I knew what that, that sheet was, I did not know. And you've just pointed a fact that's, that those payments, I don't know. Is, I don't, I don't know. I'm, I'm assuming Sadco is one of Abdal's companies or something like that? I don't know. That's, that's me speculating, sorry.

It seems that those credits were used at least on this spreadsheet by means of reducing the amount that was, well, you see from the total credit figures that those amounts were being used, then looking to the final credit figures said to be outstanding, to reduce the amounts owed to both Mr Aziz and whoever NT was?---Yes.

40 Would that seem to suggest that the payments to Sadco were the means, at least by the understanding of the person who authored this spreadsheet, of payments being received by Mr Aziz, Mr Nguyen and Mr Abdi?

THE COMMISSIONER: Sorry? Say that again?

WITNESS: I agree.

MS DAVIDSON: That the payment of those amounts to Sadco would seem, at least to the understanding of the person who prepared this document, to be the means of paying or providing credit to Mr Aziz, Mr Abdi and Mr Nguyen, who I think on Mr - - -?---Sanber.

10 - - - Sanber's evidence were the NT or the NT reference to Mr Abdi and Mr Nguyen?---Sorry? Am I supposed to respond? Sorry.

I'm sorry. My question was does that seem to reflect - - -?---It does seem to reflect that, yeah.

- - - the understanding, you can see how that reflects the understanding of the person who prepared this document?---Yes.

20 Were the payments to Sadco, in fact, a means that you were aware Mr Aziz was being paid?---I was not aware that Mr Aziz was a director or whatever he was on, for Sadco. I was, this is - - -

Were you aware of the payments to Sadco being a means by which Mr Abdi or Mr Nguyen were being paid?---No.

Chief Commissioner, if that might be a convenient time. It will be necessary to return with this witness.

30 THE COMMISSIONER: We'll have to bring you back. Unfortunately we can't continue at this stage.---Can I - - -

Yes?---Can I ask how long it would be? Like, if, if it's, if it's an hour tomorrow morning to get it done, I can potentially come in before the flight but I, no longer than an hour if that's - is that okay with - - -

MS DAVIDSON: I think we'll have to have discussions potentially, Chief Commissioner, with Mr Sanber's representatives.

40 THE COMMISSIONER: I also don't know if they have any questions they want to ask him at the end.---Who's they?

Your legal representatives. They may, they may not. I haven't received any requests from any other party. Is that still the case.

MS DAVIDSON: That remains the case, Chief Commissioner.

THE COMMISSIONER: I'll stand you down at this stage and there'll be some discussions between the legal representatives about when we can next

- - -

10 MS DAVIDSON: Chief Commissioner, I understand it's necessary to seek a short adjournment now and then to return.

THE COMMISSIONER: We could bring you back on another occasion convenient to you. All right.

SHORT ADJOURNMENT

[4.36pm]

20 THE COMMISSIONER: Yes, Ms Davidson.

MS DAVIDSON: Chief Commissioner, I understand that it may be suitable to continue with Mr Sanber's evidence at 9.30 tomorrow morning for an hour or so.

THE COMMISSIONER: We'll continue with Mr Sanber's evidence at 9.30 tomorrow morning.

MS DAVIDSON: I'm grateful, Chief Commissioner.

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THE COMMISSIONER: Nothing else?

MS DAVIDSON: Nothing further.

THE COMMISSIONER: The Commission will adjourn.

THE WITNESS STOOD DOWN

[4.48pm]

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AT 4.48PM THE MATTER WAS ADJOURNED ACCORDINGLY
[4.48pm]