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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE PETER M. HALL QC
CHIEF COMMISSIONER

PUBLIC HEARING

OPERATION PARAGON

Reference: Operation E18/0736

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 1 JUNE, 2021

AT 11.00AM

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

THE COMMISSIONER: Mr Downing, good morning.

MR DOWNING: Morning, Commissioner. Just before we resume Mr Dubois' evidence, I just wanted to tender some further documents and just – obviously subject to your convenience – just update the documents that comprised a couple of the exhibits.

THE COMMISSIONER: Yes, we'll deal with that now then.

10 MR DOWNING: There should be an updated tender schedule in front of you.

THE COMMISSIONER: Yes, I have that.

MR DOWNING: If I could take you, please, to the second page in volume 5.1, which is Exhibit 86 presently. There is just four pages, 249 to 253, which has simply been updated and revised. They just include references to other parts of the schedule. So if that could be updated in respect of - - -

20 THE COMMISSIONER: So they will form part of the exhibits - - -

MR DOWNING: Existing 86, if that's convenient.

THE COMMISSIONER: 86. So the pages 249 to 253, revised pages, will be included in Exhibit 86.

MR DOWNING: Thank you. And then if we move to the last page, Exhibit 172, which are the St George bank statements, I recall for Built Engineering and when I tendered them it was only in relation to the particular pages that
30 I have taken Mr Dubois to, which were 32 and 33 but on reflection, because the other parts of the range of dates in the bank statements will become relevant later, I'd actually now seek to update the tender to involve the entire 137 pages of the Built Engineering statements from St George.

THE COMMISSIONER: Very well. In respect of Exhibit 172, St George bank accounts - - -

MR DOWNING: And then finally - - -

40 THE COMMISSIONER: I'll just finish.

MR DOWNING: Oh, sorry.

THE COMMISSIONER: The total number of pages, being 137 pages, be added to the exhibit. That's Exhibit 172.

MR DOWNING: Thank you. And then, Commissioner, exhibits 175 to 178, which are set out on the last page of the schedule I tender now as well. So, 175 is volume 6.5, Goldberg jewellery volume.

THE COMMISSIONER: Yes, very well.

MR DOWNING: 176 is the MWK extract, 177 is the WhatsApp audio file that I played yesterday and 178 is the ASIC search for Acate Pty Ltd.

10 THE COMMISSIONER: Yes. Those documents, as set out in the schedule and as just identified, will constitute respectively 175 to Exhibit 178, inclusive.

#EXH-175 – VOL 6.5 GOLDBERG JEWELLERY

#EXH-176 – MWK EXTRACT

20 **#EXH-177 – WHATSAPP AUDIO FILE ON HASSAN
ALAMEDDINE'S PHONE DATED 1 MARCH 2018 WA0038**

**#EXH-178 – ASIC EXTRACT OF COMPANY SEARCH OF ACATE
PTY LTD**

MR DOWNING: Thank you, Commissioner.

THE COMMISSIONER: Yes, thank you.

30 MR DOWNING: I'm otherwise ready to resume Mr Dubois' evidence.

THE COMMISSIONER: Yes, very well. Thank you, Mr Dubois. Mr Dubois, I'll just get you to – I take it you want to take an oath again?

MR DUBOIS: Yes.

THE COMMISSIONER: I'll have that administered. You need not actually hold but if you just hold your hand near the Koran. Thank you.

THE COMMISSIONER: Thank you. Just take a seat. Just before we resume, Ms Maynard, is there an application – is Ms Maynard here?

MR SULLIVAN: Commissioner, this is Sullivan for Transport for NSW.

10 THE COMMISSIONER: I'm sorry, could you just use the microphone?

MR SULLIVAN: I'm Sullivan for Transport for NSW, Commissioner. Ms Maynard is an internal legal counsel of Transport for NSW, so is not here to appear for any party today.

THE COMMISSIONER: All right. Well, she can make any application when she arrives.

MR SULLIVAN: Yes.

20 THE COMMISSIONER: Yes, thank you. Yes, Mr Downing.

MR DOWNING: Thank you, Commissioner. Mr Dubois I now want to take you to some of the smaller contractors that obtained RTA and RMS work through you, and start with Bilal Najjarin and his company, BMN Electrical Services. And I've asked you some brief introductory questions about him already. It's correct, isn't it, that he was someone that you met through your cousin, Nabil Habbouche?---Correct.

30 And it's the case, isn't it, that Mr Najjarin is Mr Nabil Habbouche's cousin?
---That's correct.

So that you are distantly related to Mr Najjarin?---Correct.

Now, I'm going to suggest that separate to that family connection via Nabil Habbouche that you actually encountered Mr Najjarin at what I think what was then known at the Bankstown Train Station Gym in about 2010. Does that ring a bell with you?---Maybe even before then but yeah.

40 But you recall that he was someone that you encountered at the gym you were attending then?---Correct.

Do you recall speaking to him and learning that he was an electrician?
---Yes.

And you conveying to him that you were a project manager at the RTA?
---At some point but I don't remember the exact conversations.

And I'm not putting a specific date, but I'm going to suggest at some point before, or sometime certainly after your commencement there in 2009, I'm going to suggest about 2010.---Correct.

And do you recall mentioning to Mr Najjarin that you managed projects on the roads for the RTA?---Sorry, is that the conversation we had?

Do you recall mentioning that to him?---I don't recall the conversations, but yes, it would have been something along those lines.

10

Do you recall though asking if he was interested in perhaps doing some electrical work for the RTA?---Potentially, yes.

And I'm going to suggest he told you he was interested in doing it.---Okay.

And do you recall perhaps, do you recall inquiring of him as to whether he was experienced in doing commercial work?---Maybe. I don't recall the exact conversations. It's hard, it's hard 10 - - -

20

I understand, but it's the case, isn't it, that the electrical work that you would, would fall within your area of responsibility wasn't residential work, it was commercial work?---That's correct.

Now, ultimately what happened was that he did become a contractor and he did work for a short period for the RTA and RMS. Correct?---Correct.

30

When you had that initial discussion with him about whether he was interested in doing the work, were you scoping him out effectively as someone, effectively a contractor who might be able to provide kickbacks to you at some point?---I don't think so. I mean I just, I think I just needed some, I just needed some work to be done with electrical.

THE COMMISSIONER: But I think if you'd just listen to the question.

MR DOWNING: He was someone that you knew first of all was of Lebanese origin. Correct?---Yes.

40

But secondly, that there was a family connection through your cousin, Nabil?---Yes.

Could it be that when you first raised the topic with him of potentially doing some RMS work, you had him earmarked as someone who, provided that he did some work, that down the track you might be able to seek some form of kickback from him?---It's hard to say what I was thinking when I was talking to him, I mean, to be honest with you.

But he would have been someone, I'm going to suggest to you, that you would have been fairly comfortable that you could ask for kickbacks with little risk, because of that connection through family?---That makes sense.

10 Right. Just on that point, the topic of kickbacks, I've suggest to you in respect of many, many of the contractors that you sought and obtained kickbacks from them, but can you recall what language you used when you spoke to them and raised the idea of receiving something from them? Was there a particular term or word you used?---Over 10 years ago you want me to remember if I used a specific term?

If it changed over time perhaps, but for instance did you ever describe it as a commission or a project management fee or your cut?---I don't know. It's hard to say, sorry, I don't, I don't know. I mean it's hard.

THE COMMISSIONER: Well, did you refer to it, from time to time, by a name or description?---I don't recall, Commissioner.

20 You don't recall at all, over all those years, not once using some particular descriptive term to refer to kickbacks?---I definitely, definitely didn't use the word commission or kickback, maybe cut or - - -

Cut?---Maybe. I'm not sure, like, it's hard to say.

Well, a cut, is that one way you would express yourself?---Potentially. I don't remember, Commissioner.

30 No, don't – potentially, you keep saying potentially.---Because I don't remember, Commissioner.

No, but just listen. We're interested in questions of fact here, and we don't want, "Okay," and "Potentially" to be used by you. We want you to respond to the question. I'm not lecturing you, I'm trying to get you to focus on the questions, because if you deal with the questions in responding to their terms, it means that we spend less time here in the public hearing, it's more efficient in other words and it's also more accurate. So I think coming back to the question, the question was, your use of a descriptive term when you were referring to kickbacks. I think you indicated that one such term that you used from time to time would be a "cut." Did I
40 understand your evidence to be that, amongst perhaps other terms?---(No Audible Reply)

"Your cut", for example, "my cut"?---I honestly don't remember. I can't make up an answer, so if I say cut, it's potentially I would have used that term, but I don't remember. Refresh my memory. Show me messages, emails, and I'll say yes or no.

So you say there's no recollection whatsoever of any form of descriptive term you used so that you could convey to them what you had in mind, the contractors?---I didn't say that. I didn't say that, Commissioner. I said definitely I wouldn't – I don't recall ever using the word "commission" or maybe "kickback". That's not the language I used to use.

No.---But I could have used the word "cut". That's something that was in my vocabulary.

10 All right.---But not "commission" or "kickback". I mean, but the other terms, I don't know. I mean, that's over, spanning over a long period.

So we conclude that you would have used a word, the equivalent of "cut", a cut for you, or some similar word to that.---That's correct.

Carrying the same meaning.---Yes.

All right.

20 MR DOWNING: All right, thank you. Again, if you cannot recall, please say so. But might you have also used, as an interchangeable word for what you were describing, something like a share or profit, something like that, in the discussions with the contractors?---Yes, something similar. Along the same lines, yep.

Now, going back, then, to Mr Najjarin, can I take you to the search, ASIC search for his company? So volume 23.1, page 4.

30 THE COMMISSIONER: Sorry, could you give me that reference again?

MR DOWNING: Volume 23.1, page 4, Commissioner.

THE COMMISSIONER: Thank you.

MR DOWNING: And you'll see that BMN Electrical Services incorporates, or the registration date for its existence is 9 March, 2010. ---Yep.

40 Do you have a recollection that when you spoke to him about potentially doing RTA work, that he was incorporated or was he at that stage just a sole trader operating under the business name BMN Electrical Services?---From what I recall, that company already existed. That's what I remember.

Do you recall – I withdraw that. So your recollection isn't that you encouraged him, for instance, to incorporate in order that he might be able to put forward quotes, et cetera, for RMS work?---Sorry, can you repeat that, please?

Your recollection is that the company already existed. It wasn't you that prompted him to do it in order to be in a position to put forward quotes for RMS?---That's what I recall. I recall that he already had a company. I may be wrong, but that's what I remember.

Now, I'm going to suggest about a week or so after having the discussion with him at the gym about whether he might be interested in doing work and him expressing an interest in doing it - - -?---At the gym?

10 That – well, I'm going to suggest that's where it occurred. And then about a week later you actually brought with you some of the paperwork – that is the EFT form and the vendor form – for him to complete, and gave it to him either in the gym or gym car park. Do you have any recollection?
---Someone's got a better memory than I have. But I don't remember that, the gym conversation. But, okay, I - - -

But inevitably there would have needed to have been that discussion and the provision of those documents to him.---That's correct.

20 So that he could set up and start doing RMS work.---That's correct, yep.

Now, did you have any sort of idea what type of experience he had or what level of certification he had as an electrician when you spoke to him about doing work?---He's a licensed electrician.

Right, but do you understand or perhaps do you even now have any understanding that there are different levels of certification of electricians?
---I know there's, if you're doing high voltage or level 1, level 2, but it wasn't level 2 that we were, I think, planning, I was planning on getting him to do, so, yeah.
30

Right. Okay, so - - -?---I could be wrong. Maybe I mixed them up. Sorry, but - - -

But did you ever inquire of him? Did you find out what level of certification he had?---Look, from memory, I knew he, he'd worked on large commercial apartment projects and so, so, I mean, I was, maybe, I, I can't remember what I was thinking. This is over 10 years ago. Maybe I was confident that he was, I knew he was licensed, a licensed electrician at his own, at his own company. Mmm.
40

Right. Well, I'm going to suggest that he's never held anything more than level 1 certification, which effectively means that he can work on electrical supplies within the house but not external, so that not where it's doing work either on the electrical service network itself or on devices directly connected to it. But do you recall ever enquiring of him about that?---Level 2 is running power from poles to the house. He, I, that's not what I was asking him to do.

Had you given some thought to what it was you would get him to do when you first spoke to him about potentially doing work?---Can you repeat the question, please?

10 At the time that you first spoke to him about potentially doing some RTA or RMS work, did you have in mind particular types of work that he might be able to do?---I vaguely remember, I think, thinking about this from the other day, I, I think he may have worked on relocating cables at Mount White. So that's when I think I mentioned earlier that there was a comms room that was built by Complete Building Fitout at the time, and the, the, all the cabling needed to be re-run to the – so that's a project that I remember him doing.

20 Project for you or for Complete Building Fitout?---No. I think it was for the RMS from memory. I, I could be wrong. So that was fairly kind of in line or in, in line with what sort of work he was doing, which is running cables and, in ceilings and so that was, that was a project I remember that he potentially could, could assist.

Well, and that he did assist on ultimately?---Correct, yeah. Yeah. And I think there was older project which, we can talk about it afterwards but that's, I think, when I was thinking about the comms room, his level of experience kind of matched what was required.

30 And is your recollection that that was something that you, you already had in your mind as needing some electrical contracting work in at the time you spoke to him about potentially doing RMS?---Yeah, that's, that's correct. I would have probably, I would have gone to Mount White for multiple site visits previously.

I'm going to suggest that the other particular locations you got him to do work at were Jones Island and Twelve Mile Creek. Do you recall that?---Oh, Jones Island, sorry. Jones Island and Twelve Mile Creek. Okay, yes.

40 And I'm going to suggest that ultimately between about June 2010 and June 2011 – sorry – June 2010 and June 2011, he did work across those three locations for a total value of \$129,340.---Okay. I forgot about the Twelve Mile Creek but I do remember the first two.

And your recollection, from what you've told me, please tell me if this is correct, is that you believe that the Mount White job was the first one? ---That's what I recall.

And I'm going to indicate to you, well suggest that's correct, that the first job was at Mount White and it involved cabling and wiring at the Mount White facility.---Facility, ah hmm.

And that was in about May/June 2010 at a cost of \$29,700.---Yep.

So, I'm going to suggest that was done, billed and paid between May 2010 and July 2010. Does that accord with your recollection of time frames?

---Oh, I mean, it, it's around the same time frame as when the, the comms room was built. So, yep.

And I'm going to suggest the second job that you had BMN do was the Jones Island job.---Jones Island, yep, yep.

10

Now, do you recall that job?---I vaguely remember the job but I remember it involved running long lengths of cable from, I think, the Safe-T-Cam back to the, the checking station there. That's what I remember and I could be wrong.

And then – and I'm going to suggest that job was done and paid in July 2010 with the, the total invoice that was submitted and paid being 36,000 plus GST.---Okay.

20 The next and last job I'm going to suggest was Jones Island. And do you recall what that involved?---No, you just said Jones Island.

Oh, I'm sorry, not Jones Island. Twelve Mile Creek, I apologise. Now, first of all, do you recall that Twelve Mile Creek is up on the area just to the north of Newcastle?---Yes.

And do you recall what that job involved?---Actually, I don't recall that job. Can you please remind me?

30 Sure. If we could go, please, to volume 23.1, page 20. And you'll see that this is a 27 January, 2011, email to you from Peter Rouse. Do you remember he was an RTA official up in the Hunter area?---The name rings a bell.

In any event, read the email but you'll see that it involved some damage to street lighting at Twelve Mile. Tell me when you've finished reading that. ---Okay.

40 And the photos that he attached, you'll see there was two JPEGs attached. If we go, please, to page 21, and then 22, you'll see that attached to the email were photographs of a light pole with a slight bend in it and then the base of it where he's suggested that there was concern that there was some distortion and cracking. Do you have a recollection that there was some issue at the time perhaps with a vehicle having hit one of the light poles? ---It's happened numerous times so, I mean, I don't remember, I, I, I don't even remember this project.

But do you recall though that this ultimately became one of the projects that you awarded to Mr Najjarin through BMN?---Yes.

And if we could go, please, to page 23 – I'm sorry. Yes, so please to page 23, and you'll see that on 28 January you actually forward the email with the attached photos to BMN Electrical.---Yeah.

10 So looking at that, it's the case, isn't it, you would have had some discussion with him beforehand to let him know that this is the job that's coming and I want you to do something in respect of it?---May have sent them to him and then called him, followed with a phone call.

In any event, whether it was before or after, there would have been some discussion about the work that was involved.---Yeah.

And did you have any understanding in respect of this job, whether he had the appropriate level of certification to do it?---I don't, I can't, I can't recall asking or - - -

20 But just thinking about the job, this obviously isn't doing, running cables within a house or a building, it's now working on street lights which are presumably connected to the electrical grid.---This is my very, this is when I, this is, I'd only been at the RMS for a short period so I'm still learning the system and not an expert at this stage.

But I take it, given the location of the work, one option would have been to get a local electrical contractor, that is in the Hunter Region, that could have done the job?---Potentially.

30 Well, isn't it the case though that the reason you were keen on him doing it was because first of all you had the connection. Correct?---Correct.

And second of all, he was someone that you ultimately had an intention that you would be seeking something in return from.---What was I thinking at the time? Maybe I just favoured him because I wanted him to benefit.

40 THE COMMISSIONER: Sorry? Couldn't hear that.---I think maybe I just wanted him to benefit from, from the, the work. I mean there could have been the likelihood of kickbacks, again I don't recall with him, because there were only several projects, but this, I mean I have to assume so, yes.

And what's the basis for you saying the likelihood - - -?---Oh, because he was - - -

- - - was that there would have been kickbacks from this particular contractor?---I, I don't recall, Commissioner, but I - - -

I know you don't, but what do you rely upon to support the statement that there's a likely, there was a likelihood of kickbacks from this particular contract that was awarded?---Because - - -

What, was it because of your practice at that time?---No, because of what I was asked earlier about I could have gotten somebody maybe more local, because Twelve Mile Creek is maybe two and half hours from Sydney, so maybe, maybe the reason I gave him the work was for, for, for that purpose. I don't recall exactly what I was thinking.

10

But I think if you just focus on the point of the last question, I think your answer was there was a likelihood of kickbacks, in answer to the question whether you had an intention of seeking something in return from the contract to this contractor. So when you said there was a likelihood of there being kickbacks from this contractor, what was the likelihood based on, was it because of something in particular about the person who operated BMN Electrical Services or was it just based upon your practice in engaging people who had either a family or friendship connection, what was it? ---That's correct.

20

That it's a combination of that sort of thing?---Correct.

So it was somebody, as I think you've acknowledged in an earlier question, somebody you feel you could trust to operate in a way that you would operate in terms of obtaining a benefit of some kind from the work that you awarded.---If I'd asked that question, yes, I felt that I could have that sort of trust, correct.

30

MR DOWNING: And so having sent on, on 28 January, 2013, the photographs, can I take you then, please, to page 26, and you'll see also on 28 January, 2011, you send an email to Mr Rouse, the RTA official, indicating that you'd sent the photos to an electrical contractor and in effect you were waiting for a response with a quote for the works?---Okay.

And that was obviously a reference to BMN.---Yeah.

40

And if you go, please, to page 27, you'll see then on 4 February you send a further email to Mr Rouse and others indicating that you'd been in contact with a contractor and he plans to go and have a look at the pole affected to find out what's needed in the next day or two, and that you foreshadow you'll be receiving a recommendation and a quote once that site visit was complete.---Okay.

And again that was a reference to BMN, wasn't it?---Yes.

Can I ask you then to go, please, to page 28. And you'll see on 14 February, 2011, Mr Najjarin at BMN receives an email from Highco Electrics.---Ah hmm.

And it's attaching quote 5751.---Mmm.

And you'll see that Mr Najjarin, on the next day, the 15th of February, 2011, forwards that on to you. And if we could go, please, to page 29, you'll see that this was a quote from Highco to Mr Najjarin, although they've misspelt his name. You'll see that they call him "Bill Najjakin". But it's quote 5751 dated 14 February, 2011. You'll see that the job address is Twelve Mile Creek.---Ah hmm.

10

And that they've provided their quote based on doing the work on that light pole at Twelve Mile Creek.---Yep.

And that the total estimate was 11,800 plus GST, so 12,980 inclusive of GST.---Okay.

You'll also see that, according to the heading, that Highco is a level 2 service provider.---Yep.

20

Now, can you recall whether it was you that told Mr Najjarin that he should go and get a subcontractor, perhaps a – well, I withdraw that. Get a subcontractor that could actually do the work?---Maybe it was this case, that he wasn't authorised and he needed – I'm not sure. I don't recall that.

But do you have any recollection whether it was you who suggested that he contact Highco for this particular job?---Highco, Highco. I don't know, maybe, potentially. I don't know if I've used them before or I've come across them. Maybe.

30

Is that a name that's familiar at all, Highco Electrics?---It kind of rings a bell. Maybe they've been used at Mount White. I'm not sure. This is going back a long time now.

It is. But do you have any recollection of perhaps him suggesting to you that he couldn't do the work because it required level 2 certification and that he would therefore get someone that could do it?---Oh, yeah, I mean, I don't remember the exact conversation, though. I don't, I don't remember the conversation at all. Not the exact conversation. But I'm looking at this, this is the only explanation.

40

Well, do you recall that ultimately you had a conversation with Mr Najjarin where you told him he should use Highco, that they should do the job? ---Maybe it was a, I mean, that name rings a bell. But again, I don't remember. I may have suggested it, yes.

Do you have a recollection of perhaps discussing with him that he should use them but charge more than they were charging in order to build in a decent margin?---I don't recall that conversation.

So do you have any recollection of a discussion with him and, again, using whatever term, whether it's a cut or a share or a profit, but telling him that, in effect, he should use that as the baseline and then bill more based on him being the contractor that would ultimately be paid for the work? And by that I mean by the RTA.---I don't recall the conversation. A long time ago.

10 THE COMMISSIONER: Is it likely that there would have been a discussion, given your practice at the time, that the contractor would understand that he needed to build in a cut/share for you into the quoted price?---As I said previously, it is likely, based on the practices and the person.

MR DOWNING: In any event, you've seen, from what I've taken you through, that by 14 February or, sorry, 15 February, 2011, what had occurred was you'd been notified of this issue involving the street light at Twelve Mile Creek. You forwarded the documents on to Mr Najjarin. You'd told the relevant local RTA person that an electrical contractor was looking at it and was going to give a quote, and that quote you get from Mr
20 Najjarin, but forwarding on a Highco quote on 15 February.---Yes.

So all of that's occurred between late January and 15 February, 2011.
---Yeah.

Can I take you then, please, to page 45, same volume, and do you see that now on 21 February, 2011, so just under a week later, you actually send him the request for quote for that particular work at Twelve Mile Creek.---Okay.

30 So effectively all of the communication with him beforehand was informal, wasn't it, in the sense that there had been no actual even request for quote issued to BMN up until this point in time?---No, there was emails.

Right. But typically the way when a contractor is being, or work's being allocated, I should say, at arm's length, is that there might be a discussion with someone but then the request for quote would be the first official communication.---Not always. Sometimes emails, emails were sufficient.

40 In any event, if you go - - -?---Not disputing it, sorry, there were, there were other conversations informally, yes.

And conversations of a type that you wouldn't typically have with someone who was at arm's length, if they were literally a contractor that you didn't know.---I knew him before this, so yeah.

Can I take you, please, to page 46, which you'll see is the request for quote, and you'll see from the scope of works that it's relating to exactly this work at Twelve Mile Creek, that is, the removal and installation of light poles.
---It's a copy paste.

It is, from the Highco quote, isn't it.---Yeah, all right, yeah, okay, yeah.

So that what you've done is, used that as the basis for them wording up the scope of works.---That's correct. Okay, yeah.

10 And if we go, please, to page 47, you'll see that the closing date and time for the quote is said to be 21 February, 2011, so literally the same day you sent the request for quote, and then if you go ahead you'll see the photos at 49 and 50 are the same photos that you'd in fact sent to Mr Najjarin earlier. ---Yeah.

Can I then take you, please, to page 76 in the same volume, and you'll see now on 23 February, 2011, you receive an email from BMN Electrical with the quote for Twelve Mile light pole.---Yeah.

Do you see that? And you'll see that it's in the form of an Excel document, so it's docx.---Yeah.

20 And if you go to the next page, please, you'll see that the quote from BMN Electrical dated – sorry, it's actually undated – but it's for \$30,400 plus GST.---Ah hmm.

And if you look at the scope of works items 1 to 6, again they're effectively just plagiarising what was in the Highco quote.---Yep.

30 First of all, looking at that quote, do you believe that that was a template you set up for Mr Najjarin?---I don't, I don't remember. Doesn't look like mine.

It doesn't?---No, and I don't remember. I actually don't remember.

But looking at the quote and the sum of it and what's covered by it, it's very, very likely, isn't it, that you'd spoken to him and said, look, just incorporate into your quote what's covered by Highco but charge me \$30,400 instead of the \$12,000-odd that Highco had quoted?---I don't, that's your, you're talking in assumptions. I don't recall that conversation.

40 But can you think of an explanation for why BMN would have in effect quoted for precisely the same work that the Highco quote it had obtained and forwarded to you covered, but now for roughly two and a half times the price?---No.

If it be the case that – and I'm asking you accept this – that he was level 1 certified, what was he actually bringing to the table in performing this work where you knew that Highco was actually the company that was apparently going to perform it?---I mean it looks exactly the same, nothing, nothing's

added to this, so I don't, I don't remember if there's anything, if there's anything additional he was adding. Same work.

Well, isn't it the case that you had spoken to him and said, in effect, "You'll just be the project manager. They can do it but charge 30-odd thousand dollars so that there's going to be enough money in it for you." Isn't that the likelihood?---That is the likelihood.

10 THE COMMISSIONER: So the likelihood, is that – this price would have been based on the quote from Highco which put it at \$11,800 and then added to that was a margin.---A margin for his, his involvement and, yep.

Well, his involvement but not his performance of any work on the replacement of the lamp pole or work associated with light pole?---No. Not, not from what I can see, no.

20 So that was a fairly significant increase in the work, wasn't it, that the work would cost about, estimated 11,800, but on the screen BMN Electrical Services quoted 30,400, would represent a significant share, cut or profit to you, wouldn't it?---Even if there was a 30 per cent project management fee, it still wouldn't be that much. So, I mean, it does look like a significant increase, yes.

So, did you agree with what I put that - - -?---I agree but I just don't recall, that's all.

30 But when you agree, you bring to bear your whole knowledge of how you operated with contractors at this period we're talking now about?---About 11 years ago.

2011.---10 years ago.

Yes.---Oh, more than 10 years ago.

But you still have a recollection of what your overall practice was when dealing with contractors, reaching back to this period?---That's correct.

40 And you rely essentially upon your knowledge of how you normally did arrange to get a contract price from contractors such as BMN Electrical? ---Correct.

MR DOWNING: Thank you, Commissioner. Then can I take you, please, to page 58, same volume? And you'll see on 23 February, 2011, so the same day that you received the quote, but at 7.52pm, you send an email with the attached contract documents and letter of acceptance for the works?--- Okay.

And if we could go ahead, please, to page 61, which you will see is the letter of acceptance. You'll see it confirms acceptance of the quote of 23 February, 2011, but you'll also – and you see it's addressed to Mr Najjarin at BMN Electrical but you'll also see that at the bottom, it looks like you've made an error with the date and the date is 7 January, 2011, which is even before the request for quote went out.---This is a document we used on a regular basis. So, sometimes there were errors like this.

10 So you effectively used it as a template and updated it?---Correct. It's just the template we used, yeah.

In any event, so on 23 February, 2011, at 7.52, you send an email accepting the quote from BMN?---Correct.

Can I take you in the same volume, please, to page 76? So if we go back to page 76. But do you see the actual email attaching the BMN quote wasn't sent until 11.52?---(No Audible Reply)

20 So that's the email and you'll see, if we go to the next page, the quote accompanies it, at 30,400. So going back to the email itself, you sent that – sorry I withdraw that. Mr Najjarin at BMN sends that to you at 11.52 on 23 February, whereas if you go back to page 58, you're actually sending him the letter of acceptance at 7.52, so some hours before he's even submitted his quote.---Yeah, 7.52 is questionable. Why would I be sending it at that time? Yeah, yeah.

30 Well, is it likely, do you think, that you'd already spoken to him, you knew he was getting the job and you knew what the price was going to be, so you didn't actually need to see the quote?---That's right.

Now, if we go then, please, to page 97. You'll see this is the email correspondence in respect of the purchase order. So on 15 March it confirms the purchase order number for this job and then the sum of \$30,400 plus GST, which was what had been quoted by BMN.---Yes.

And if you go to the next page, page 98, you'll see that the date on that purchase order is 1 March, and again confirms that it's BMN to do the works at Twelve Mile Island at an amount of \$30,400.---Okay.

40 Do you recall any discussions with him at the time about what he actually did on the job? That is, what he actually physically did as opposed to what Highco did.---As I said to you, I don't even recall the Twelve Mile Creek job, so I can't answer that.

Can I take you back, please, to same volume but to page 40. And do you see on 21 February, so it's in that period just before the request for quote goes out and the quote's submitted, that on 21 February, at 12.02, you

actually receive from AMX Video Surveillance a proposal in respect of Twelve Mile Creek?---Yep.

And you'll see you then forward it on, on 21 February, at 12.08, to Mr Najjarin.---Yep.

And if you go to the next page, please, so page 41, and it runs through to page 44, but have a look at page 41. Do you recall what this work was in relation to first of all?---I don't even recall the company.

10

Do you recall there being some issue with faulty surveillance cameras at Twelve Mile Creek?---No, that happened on a regular – not a regular basis but it wasn't uncommon.

Have a look – if you go to the next page, please, to 42, you'll see that the quote was for \$19,562 plus GST. The rest of the document is simply contractual terms if you go to page 43 and 44. But can you recall why it was you were sending this on to Mr Najjarin?---No.

20

In any event, you're aware, aren't you, that they did this job and they were paid as per their quote.---For the light pole or the - - -

Sorry, no, not the cameras. I apologise. For the light pole.---Oh, okay. Okay, yep.

Consistent with the purchase order I just showed you before.---Oh, yeah, they would have been paid for in the purchase order, yep.

30

And do you recall that they actually did further jobs, that is after this job in time, that is another job at Jones Island?---That was before Twelve Mile, you were saying?

Well, do you recall there might have been a couple at Twelve Mile Island? Sorry, at Jones Island.---Jones Island, yeah. I don't, I remember there was running cables, and if there was another job, I don't recall, no.

Do you perhaps recall one involving an open-and-close sign?---Open-and-close sign. That's the one I think there was cables or cabling involved. I'm not sure.

40

So I'm going to suggest that after this particular job I've taken you to at Twelve Mile Creek, that is involving the light pole, that there were larger jobs that were done. First of all, the open-and-close sign job at Jones Island in about May/June 2011.---Yep.

That came to a total cost ultimately paid of \$63,800.---Yep.

And that there was then a further job at Twelve Mile Creek, again at about the same time, May/June 2011, that involved a payment of \$52,800.---For?

That one – well, can I take you, please, to volume 23.1, page 219. You’ll see that this is the tax invoice in respect of the open-and-close sign at Jones Island. Take a moment to read through that. Tell us when you’re ready to go to the next page.---I haven’t read the whole thing, but that’s okay.

10 That’s all right. Please take - - -?---I got the gist. This is what I was referring to with, along the lines of cables.

And if you go to the next page, you’ll see the end of a description of the work, so there’s eight items, but the total was 58,000 plus GST, so 63,800. ---Yep.

And having had that opportunity, so it’s a 19 May, 2011 invoice in respect of open-and-close signs at Jones Island.---Yep.

20 Can I take you then, please, to page 255. And you’ll see that this is now a tax invoice dated 18 May, 2011 but in respect of Twelve Mile – it’s described as “Twelve Miles Creek”, but Twelve Mile Creek. And it’s also electrical works in respect of electronic open-and-close signs. ---Infrastructure works.

But again it seems related to open-and-close signs.---Yeah, running the cables and the conduits for the open-and-close signs. Okay.

30 And if we go to the next page, you’ll see that it’s 48,000 plus GST, or 52,800.---Yep.

So that across those two jobs, done in May/June 2011, the total build was \$116,600.---Okay.

So bigger jobs.---Much bigger work.

40 It’s the case, though, isn’t it, looking at those, that it’s likely that they were also priced in a way that involved a sufficient allowance for kickbacks to you.---(not transcribable) it looks cheap to me. 200 metres of excavation, running conduits and cables. Doesn’t sound, doesn’t look, doesn’t sound expensive.

THE COMMISSIONER: Yes, could you just answer the question?---No, I don’t recall, no.

Well, it might have been put, but I’ll put it. There’s likely to have been a cut or a kickback for you in those two contracts for BMN Electrical?---I, I said, I don’t recall, but I believe no. But I could be wrong.

Well, what do you base that belief on?---Oh, just the amount of work that was – I remember this. I remember the one at Jones Island, not the Twelve Mile Creek. There's a lot of cable and excavation. But I said I could be wrong. I don't recall the details.

When you first commenced to give contract work to a contractor, say a new contractor, on one view of some of the evidence, it has the appearance that the initial contract was fairly low value, and after having had an initial contract with them, they're given more work, more different jobs at a greater value as time goes on. Was that a pattern that you recall occurred with contractors, that you'd start them off on a small contract and see how they went, and then if they performed satisfactorily, then the next second or third succeeding contracts were usually of a higher value than the first.
---Yes.

And that was, what, firstly to ensure that you could trust them as contractors who are prepared to make provision for a cut to you, and if they proved to be satisfactory in that respect, or in all respects, then you'd look to giving them the high-value contract or the - - -?---I don't recall thinking like this, Commissioner.

No, was that the pattern?---No, it wasn't.

Well, some of the evidence might suggest that. What would you say if it was suggested that was a pattern, perhaps not of every contract, but in contracts that you awarded?---The pattern, that's the pattern with every contractor that you, you, a, a, a project manager engages. They normally start off on smaller works and then they build up to a larger – you know, you don't just - - -

Well, you are agreeing with the general proposition I'm putting?---That's correct, yes.

But did that also serve your purposes because once they had been tried and tested and they proved to be satisfactory, that gave you the opportunity then to be able to have those contractors return higher kickbacks given that they were then put on higher value work?---Yes.

Mr Downing, I'm sorry I interrupted you.

MR DOWNING: No, not at all, Commissioner. Mr Dubois, what I have suggested is that those two contracts, that is the two larger contracts that involved work in May/June 2011, ultimately involved the 63,800 that was due on the Jones Island open/closed sign and the 52,800 that was due on the Twelve Mile Creek open/closed sign. So a total of 116,600 being paid in one lot by the RMS on 20 June, 2011. Just bear that date in mind, 20 June, 2011. And just on the issue of whether there were a payment of kickbacks here, can I take you, please, to volume 5.1 - - -?---MWK again?

- - - page 4. Yes. And you'll see it's the MWK Developments account, the account ending in 4-5-6-9, and you'll see that it's for the period of June/July, 2011. Do you see that?---Yeah.

And you'll see that one of the deposits that's shown there is in the sum of \$50,180 and it's shown as being on 23 June, 2011, with a card entry at the Westfield Centre Court branch.---Ah hmm.

10 What I'm going to suggest is, that money, that is the \$50,180, was made up of three cheques that you received from BMN, one in the sum of 34,100, one in the sum of 14,980 and one in the sum of 1,100.---Okay.

In that respect, if we could go, please, to page 12 of the same volume. You'll see this is one of the ANZ Banking Group voucher documents, but looking at the bottom of the page, do you see, first of all, it shows the account number ending in 4-5-6-9, that's the MWK account that you and Mr Taha were signatories on?---Ah hmm.

20 And do you see down at the bottom, there's a BSB number on the last three items, 0-6-2-3-3-4 and then an account number that follows for each of them, ending in 3-1-8-8?---Yep.

And you'll see that there are three sums that correspond, 34,100, 1,100, 14,980.---Yep.

Can we go, please, then to page 13? And you'll see two things there. First of all, the date again is 23 June, 2011. It shows the card number used for that transaction, that is the deposit here, ended in 8-0-2-4.---Yep.

30 And the above that there's a transaction ID and that ends in 1-4-1-0.---Yep.

Can we go then, please, to page 15? And you'll see again 23 June, 2011, for account ending 4-5-6-9. The transaction ID again ends in 1-4-1-0 and it shows cheques totally \$50,180 were deposited.---Yep.

40 Can I then take you, please, to the same volume, page 235? And you'll see this is an account opening form from the CBA and you'll see it's for BMN Electrical Services, and you'll see that account number ends in 3-1-8-8.---Yeah.

And could I take you, please, to page 242. You'll see it's the CBA statement for BMN Electrical for the period 21 June to 16 September, 2011. And do you see those three cheques, numbers 47, 48 and 50, are all shown as being drawn on 23 June, 2011, that is 34,100, 14,980 and 1,100?---Yep.

So what I'm suggesting is, what occurred in this instance was that you obtained three cheques in those amounts, 34,100, 14,980 and 1,100, from

Mr Najjarin and then you deposited them using your card at the Westfield Centre Court branch into the MWK Developments account.---Yep.

Just thinking about how that came about, do you recall, and I know it's some years ago, did you talk to him initially about how much was going to be paid or was that something that came up at the end of all of the works he'd done?---Could have been at the end. I actually don't recall the conversation.

- 10 Given the way that you've worked with others, is it likely that you had some conversation earlier where you indicated there would be a cut, and then after the jobs had been done you then spoke more specifically about how much would be transferred or paid?---Maybe, yes. I mean I just don't, I just, I just can't make up an answer. I just don't recall the conversation.

Do you recall though why it was BMN Electrical only seemed to do work for a relatively short period of time?---Actually that I can't answer. I, I also don't recall.

- 20 Was there any falling out you can recall or any dispute perhaps about the fact that you were requiring these payments and - - -?---Not that I recall, no.

Do you recall any discussion with Mr Najjarin about whether it was financially viable for him to do the work where he was paying all-up just over \$50,000 in respect of work that was to the value of \$219,340?---I don't recall that either.

THE COMMISSIONER: Mr Downing, we might take a break I think, a morning tea break.

30

MR DOWNING: Thank you.

THE COMMISSIONER: We'll resume in 15 minutes.

SHORT ADJOURNMENT

[12.07pm]

- 40 MR DOWNING: Thank you, Commissioner. Mr Dubois, I now want to take you to the contract work obtained by Talal Rifai through UDE. You recall I've asked you some questions about him already?---Briefly, yes.

And just to recap, it's correct, isn't it, that you met him through Mr Chahine and Mr Hadid?---Sorry, can we have a small five-minute break? I just need to talk to you guys about something. This is – I can't really say.

Well, I don't have any difficulty with that, Commissioner. It's unfortunate that we've just resumed but - - -

THE COMMISSIONER: Sorry, I didn't quite hear what you said.---Just I just, just - - -

MR DOWNING: Mr Dubois has asked for a five-minute break - - -?
---Well, I don't have a solicitor, so they can't really talk on my behalf.

No, no. That's all right. I think he wants to speak to Mr Ishak about a particular matter.

10

THE COMMISSIONER: All right. Very well. Five minutes, I'll adjourn.

SHORT ADJOURNMENT

[12.27pm]

THE COMMISSIONER: Yes, Mr Downing.

MR DOWNING: Mr Dubois, I was just, before the short break, asking you
20 about the work that Talal, also known as Alan, Rifai obtained through UDE.
---Yes.

And can you take us back, please, to how you first came to meet him.---Just from the community, from the gym, one of the gyms I went to.

Do you recall also that as far as work was concerned, how was the first discussion with him or how did it come about where he was able to quote for some work?---I vaguely remember that, that he, oh, I remember that he did some – sorry, I didn't – I withdraw that. I remember that he did some,
30 he had some trucks and he did some excavation works and earthworks and, and I think some, some of the work that I was doing maybe at the time involved similar, similar works, so that – and I'd, I mean people had, certain, a number of people from the gym I mean had, had, had known that I, I was working as a, as a project manager with, within the Roads Authority.

Right.---So, so that's potentially how that conversation came about.

40 Did you have any recollection of perhaps before you ever engaged him for the RTA, that one of – well, it would have been Complete Building Fitout, had used him on a Mount White job that he was doing for the RTA, any recollection of that?---I mean – actually I don't remember that, but that maybe could have been something that, yeah, sorry, I don't, I don't recall that.

And tell me if – you can agree or disagree obviously – but is it possible that you met him on the site at Mount White where he was doing some

excavation works but not for the RMS, for Complete Building Fitout?
---Yeah, ah, I mean now, now you've mentioned it, it's, it's, yes, I, I, I, I do have some vague memory of that, but I also knew him from prior to that.

In terms of relationship leading to work though, is it possible that – and tell me if you agree, sorry, you recall or don't recall – that on encountering him at Mount White, you spoke to him about the work he was doing for Complete Building Fitout and were given his card, showing that he was doing work under the name United Demolition & Excavation?---That's correct.

And do you remember having discussion indicating that you may have some work coming up that he might be appropriate to do?---That's correct.

And do you recall the job that he ultimately got the contract for was Galston Gorge?---That's correct.

Now, I take it you had the Galston Gorge contract in mind when you spoke to him, that is that that might be something he was capable of doing?
---Correct.

And again would you accept that it's likely that when you identified him as someone that might do some work, you also saw him as someone that in effect might be able to reward you through kickbacks if he obtained some contract work?---I'm not sure. I didn't really know him very well, to be honest.

Is it correct that he actually is related through marriage to Chahid Chahine? Are you aware of that?---No, I don't think so, I don't know, I don't think so.

Tell me if you're aware of this or not, but I'm going to suggest that Mr Rifai's sister is married to Chahine Chahine, that is Chahid Chahine's brother.---Oh, I didn't know that.

But do you say that when you – I withdraw that. Why do you say you were first interested in perhaps having him do work at Galston Gorge, if not with a view to being able to seek some kickbacks from him?---I'm not sure. I don't recall a conversation, I don't know what I was thinking at the time but, I mean, it's more than likely, yes.

But given what you do say then, that is that he was someone you were familiar with at gym.---Correct.

I take it again he was someone that in terms of the risk to you in seeking a kickback, he was someone that you would have some confidence wouldn't be a risk to you in terms of going to the authorities?---There was a lot of risk, yes.

But you say you just can't recall now what was your motivator in speaking to him about potentially doing some work?---Correct.

Is it the case that – I withdraw that. Can you recall when you first spoke to him about work, whether he had already incorporated UDE or whether he was just trading under the business name, United Development and Excavation?---No, I think they already existed, from memory.

10 Well, can I take you to volume 18.2, page 203? And you'll see that the UDE Group Pty Ltd registers on 31 March, 2011.---Yep.

And I'm going to suggest that that date, 31 March, 2011, is just after you sent a request for quote to him in respect of Galston Gorge.---Okay.

Could it be that you suggested to him that if he wanted to do the work, he needed to look professional and needed to actually incorporate rather than just being a, a business name?---Sorry, can you just repeat that?

20 I'll take you to the documents in respect of Galston Gorge in a moment but if you accept from me that that date of incorporation, 31 March, 2011, is just after you send the request for quote in respect of Galston Gorge. Could it be that you encouraged him to incorporate in order to have a professional looking operation so that he could get RMS – well, sorry – what would then have been RTA work?---Yes.

Now, do you recall that the Galston Gorge contract was the only one that UDE ultimately obtained?---That's what I thought. I mean, I couldn't recall if there was any other projects but I do recall the Galston Gorge.

30 And do you recall that that project, or the part he was involved in, required pavement works to be done so as to create over-length vehicle inspection bays at each end of the gorge?---Yeah, two, that's correct, two bays.

And do you recall that when it came to the quoting process that it was one that you rigged in order to ensure the outcome, which was that he got the contract?---That's right.

40 And if I could take you, please, to volume 18.4, page 45. And you'll see on 21 March, 2011, you send an email to the TTS Group, so Towfik Taha's company, with an RFQ for the pavement works at Galston Gorge.---Yep.

And if you go, please, to page 46, you'll see that the actual request for quote document is there, and then if you go, please, to pages 47 to 50 is the actual content, but look at 47, please, and just tell me if that assists you in recalling what was involved in the job.---Can you just make it a little bit bigger, please?

Sure.---Thank you. Okay.

You'll see that there's a summary on that page which indicates that the works primarily involve mild excavation, cleaning and asphaltting and line-marking.---That's right.

And can I take you then, please, to page 58? And you'll see, also on 21 March, 2011, you sent an email with the request for quote to Mr Chahine at Complete Building Fitout.---Yep.

10 And if you go ahead, please, to page 59, you'll see you're attaching the same request for quote document. And at page 60, it's the same detail in terms of the works involved.---Okay.

And if we go, please, then to page 71, you'll see same day, 21 March, 2011. You send the same request for quote to Mr Rifai at Ultimate Demolition. ---Yep.

And if you go then, please, to page 72, you'll see it's the same request for quote.---Yep.

20

And page 73 again describes the same works that are involved.---Okay.

Looking at that, you see that on the same day, 21 March, 2011, you're sending the request for quote to all three companies.---Yes.

It's likely, isn't it, that there would have been some discussion beforehand about the fact that these three companies were going to be invited to quote and who would ultimately get the job.---Yes.

30 And do you recall whether there was any actual meeting that involved Mr Taha, Mr Chahine, or perhaps Mr Chahine and/or Mr Hadid, and Mr Rifai? ---I don't recall that.

But it's very likely, isn't it, that there would have been some discussion where you told Mr Rifai that he was going to get this job?---Yes.

And there would have been some discussion with the other two – that is Mr Taha and either Mr Chahine or Mr Hadid – about the fact that they were, in effect, going to be dummy quoters for this purpose?---Yes.

40

So that you would have had some discussion with certainly Mr Rifai, I take it, about the price he was to quote at?---Yes.

And no doubt that by the time you sent out the multiple request for quotes to the different parties, there would have been some calculation in your own head about ultimately how much would be involved in doing the work so that you could suggest a price with a sufficient margin built in for you to

receive a kickback?---I want to say most likely, but I don't recall, to be honest.

And I accept it's some years ago, but given the process you adopted in other matters, it's likely that you went through something to that effect.---Yeah, yeah, I don't want to use the word "potentially" but, yeah, but I, I actually don't recall the details.

10 THE COMMISSIONER: I think it's been put to you, as it has in other matters of this kind, that having regard to the practice which you followed in terms of having these dummy quotes and so forth, that it would have, this transaction would have been like others, following the same practice, which would involve kickbacks to you.---Yes.

Can I just ask you this. Take this particular project as an example. So in effect you asked Chahine, Complete Building and Taha to put out dummy quotes, is that right?---Commissioner, I don't recall the exact conversations I had with them, but I'm - - -

20 I appreciate you don't recall the time, but having had your memory refreshed from the documentation, it does seem, does it not, that you requested quotes from Chahine or his company and Taha?---Correct.

Tell me this. If it was known by Mr Chahine and Mr Taha in this case that they were not going to get the job but it was being set up, it was being arranged to set up Mr Rifai to get the job, in that case was there any fee or payment made to Chahine and Taha for their cooperation?---Ah - - -

30 In any of these projects. I'm generalising now. Not necessarily this particular one that we're examining concerning Mr Rifai, but in general was there any arrangement whereby they would be in receipt of – call it a fee, if you like, or a payment – for cooperating with producing a dummy quote?---I guess it was, it was some, it was more along the lines of them receiving works, other works, opportunities for other works.

Sorry, more - - -?---Well, it wasn't necessarily, there was no direct fee paid to the contractors, but it was more along the lines of them receiving opportunities for other works.

40 Receiving work, other contract work?---Correct (not transcribable)

So that was, if you like, the quid pro quo for them, made it worthwhile them cooperating to produce a dummy quote in matters such as the one under discussion at the moment. But there was an understanding they're doing it on the basis that they'll be rewarded in due course with some further contract work.---That's correct.

Okay, thank you.

MR DOWNING: Thank you, Commissioner. Bearing in mind that those three emails with the attached request for quotes I took you to were 21 March, 2011, you'll see that that was eight days before UDE was actually incorporated. Do you recall I took you to the ASIC search showing it incorporated 31 March, 2011?---Okay.

10 Can I take you then, please, to page 295, and do you see that the actual date of the quote submitted was 31 March, 2011, that is the UDE quote for the Galston Gorge vehicle length inspection bays?---Yeah.

And if you look over the page you'll see that the total price was \$194,000 plus GST, with an estimated two weeks to complete?---Yeah.

And looking at the detail of what's provided in the quote – well, first of all, I withdraw that. Let me go back a step. Do you believe, looking at page 295, that you set up the template for Mr Rifai?---I don't recall this, the logo, I don't recall setting up this logo or the template, no.

20 Given that he was someone that worked in demolition and excavation, and this work partly involved excavation but also involved asphaltting, it's likely, isn't it, that you gave him some assistance with preparing the detail of the quote?---Sorry, can you repeat that, please.

What I'm asking is, is it likely that you gave him some assistance in terms of inserting the detail into the quote?---Is it likely that I've assisted him with the detail?

30 In putting together the detail of the quote.---I mean potentially, I mean I don't, I don't, I don't remember the specific, I don't remember specifically, maybe.

But his background was in demolition and excavation. Correct?---Correct, yeah.

To your knowledge he wasn't someone that had worked in road paving in the past?---I don't know. Maybe he has. I can't remember now. But I remember he was involved with similar works, yes.

40 Do you mean asphaltting works or demolition works or, sorry, demolition or excavation works?---Excavations.

Okay. But this involved more than just excavation, excavation was only the first part. The bigger part was the asphaltting and the line marking. Correct? ---The bigger part is the excavation and the, and the, and the ground work. The asphaltting is the easy part.

But isn't it likely that you assisted him when it came to being able to put together the actual detail of the quote to describe the works involved?
---I mean it's likely that I may have given him some, some, some, some details potentially, yes.

And it's likely also, isn't it, that the \$194,000 plus GST price was one that had been discussed with him and suggested by you?---Suggested by me or in collaboration with me and Mr Rifai.

10 Sorry, with Mr Rifai. That is you discussed it with him and ultimately suggested to him, having done your own calculations as to what the work should cost, that the appropriate price to bill would be \$194,000?---That's what you're saying, is it? Okay, maybe, okay, I accept that.

And that that would have, based on your own pre-job calculations, involved enough of a margin so that you knew you could ultimately ask for a kickback from it.---Yes.

20 Now, you'll notice that literally the same day of the invoice – I withdraw that – the same day or the quote, 31 March, is when he incorporated. Just noting the fact that it's literally the same day, do you think on reflection that it may have been that you told him, before you can put a quote in you need to get yourself incorporated?---So it wasn't a Pty, is that what you're saying?

Yes.---Was it a sole trader prior?

30 It was a sole trader, but I can take you back to the search.---No, that's okay. I believe you. So it was a sole trader then he's made it Pty.

He actually incorporates, the company registers on the same day as this quote.---Okay. When was the company put into the RMS, was that potentially something that may have been raised by, by Finance or maybe by myself?

I'm not aware of any document suggesting that there was some query raised within the RMS to suggest that - - -?---Could have been - - -

40 - - - it needed to be a company.---Okay. Maybe in searching his ABN I may have, I would have been mentioning that he's got to basically make sure that it is a proprietary company, yes.

Because that's who the RMS typically dealt with.---Correct, yeah.

Now, as far as the asphaltting work, do you recall whether you had discussions with him about the fact, about identifying subcontractors to do the asphaltting work?---No, I don't recall that. I don't recall.

Do you recall whether you might have put him in contact - - -?---Maybe, maybe.

- - - with an asphalter?---I mean it's hard, it's hard to say. It was a long time ago, and knowing my knowing that I've worked with other asphalters at the time, maybe I could have mentioned other companies like Ozpave or, or the others, but I just don't recall.

10 THE COMMISSIONER: Well, you had done that many times before, had you not?---Yes, correct.

That is to say you put the potential contractor in touch with a particular subcontractor to do the actual work?---Yes. And that was after, I think, 2013 with Mr Goldberg, correct.

20 MR DOWNING: Commissioner, I note the time but I expect that it will take me until about quarter past to finish this subject matter and I just wonder whether, given the late start and the interruptions, we might sit in until then and take a luncheon adjourn then?

THE COMMISSIONER: Yes, yes. We'll sit on until 1.15.

MR DOWNING: Thank you. Now, do you recall that in this job, as well as having to have someone to do asphaltting work, there was a need for plans to be drawn up because it needed to be submitted to the Hornsby Shire Council?---Plans to be drawn up. Plans, plans. I'm trying to remember who did the plans. Yes, I remember there were plans but I don't remember who did them.

30 Well, can I suggest that it was Ghazi Sangari at GEC? Do you - - -?
---Okay. I, I, I forgot about that one. Okay.

But do you recall now whether GEC – or do you have any recollection of GEC being involved in the Galston Gorge project?---I'd completely forgotten, you just reminded me now. I, I, I remember I've done plans for other, other sites which I can name, but, which I'm sure you'll get to, but I don't recall those – I do recall there were plans but I forgot that they actually did those plans.

40 Can I take you to the same volume, 18.4, but page 306? And this is a chain of emails but because it starts at the oldest email and then moves to the newest email in reverse order, I want you to read 306, then 305, then 304, but can I ask you that you let me know when you've read the contents of emails on this page? You'll see, starting with 17 May, 2011, Mr Sangari to you, attaching Galston West design drawings.---Yep, okay.

And do you see that you forward them onto Neil Forrest?---The asset manager. I remember him.

And if we then go, please, to 305, you'll see that Brian Bestwick then corresponds with you about the particular design and provides some comments on it.---Yep. Yep.

And if we could then go, please, to page 304, you'll see that on 24 May, you send the drawings onto Max Woodward.---Yep.

10 Who is someone at the Hornsby Council. You'll see that, from the top email, Max Woodward was the executive manager that works at Hornsby Shire Council.---Oh, okay.

And would it assist to actually see the drawings in order to answer questions about this?---Yeah, show me the drawings.

If you start, please, at page 308. You'll see, first of all, that they are drawn by GEC.---Yep.

20 And you'll see that they're approved by Mr Sangari.---Yep.

But it seems drawn by someone else, a Kabid, but approved by Mr Sangari.--Okay,

Tell me when you've seen enough to be able to move to the next page because there are some pages of them.---I, I, I don't know what to look at in detail but I, I, I've seen the drawing now, so - - -

And if we could go, please, this is another example, to the next page.---Yep.

30 And to the next page.---Yep.

And the next.---Yep.

So it indicates on now aerial photographs the location of the various works, that is the vehicle inspecting bay to be built.---(not transcribable) markings. Okay.

And then if just go then, please, to the next page, 312, 313.---Yep.

40 314.---Yep.

315.---Okay.

316.---Oh, I think I've seen enough.

All right, thank you. Now, just having seen that exchange of emails and the plans, do you have a recollection as to whether it was you engaging Mr Sangari through GEC directly or whether it was, in this instance, Mr Rifai

who was, in effect, having to engage Mr Sangari's company, GEC?---I think it would have been maybe, maybe myself directly.

Now, if we could go then, please, to page 320, and you'll see on 30 May, 2011, Mr Sangari sends you an email with calculations for the surface area of the east end and west end bays.---Mmm.

And you then, on the same day, forward that on via email to Mr Rifai.
---Yep.

10

So do you recall that the plans and drawings and estimations that Mr Sangari was preparing were relevant to the work that Mr Rifai was doing?
---That's right.

And if we could go, please, to page 321, you'll see that on now the 30th of May, but later in the day – so if we go back, please, to page 320, at 11.22 you sent the calculations of areas for Mr Sangari.---Yep.

20

And at 3.21 you ask Mr Rifai then to submit an amended bill of quantities and breakdown of works and costs in light of the scope and drawings as attached from GEC.---Okay.

There's also a reference to a recent meeting or, sorry, recent meetings held last week.---Okay.

Can you recall meetings involving both Mr Sangari from GEC and Mr Rifai?---No.

30

In any event, if you go, please, to page 337, you'll see there's a series of emails there, but please read from the bottom one, that is the 1 June, 2011 email at 10.57am from Mr Rifai to you. And you'll see on the same day, at 11.54, you respond to thank him for the update about what was happening with Galston Gorge. And then at the top of the page you'll see an email from Mr Rifai to you on 2 June providing what you'd asked, which was a revised work agreement from the amended plans. So do you see that, it's shown you emails over 1 and 2 June?---Yep. I don't, I don't even remember, I don't remember what the amended works were, but, yep.

40

Well, in any event, if we go, please, to page 340, you'll see that the document that he attaches, which is the work agreement, now dated 1 June, 2011. You'll see that it now reflects some area estimations for the east and west end. So do you see under Supply it indicates "Supply and pave two bays, consisting of AC14 asphalt according to specs of 100 millimetres for two bays, east location being 138 metres square, and west location being 115 metres squared."---Yep.

And if you go back, please, to page 338, you'll see that with that initial email that you got from Mr Sangari on the 30th of May, they were precisely

the measurements he put in. That is, 138 metres square for east end, and 115 square for the west end.---Okay.

So going back, please, to page 340, that is the updated work agreement, he's now taken on board those measurements for the purposes of his proposal, correct?---Okay.

You'll see that both dot items for supply involve reference to exactly those measurements.---Okay.

10

But then if we go ahead, please, to page 341, you'll see that the price ultimately was no different. Notwithstanding the update that had been provided, the price was still as had originally been quoted, 194,000 plus GST.---Okay.

Can we go then, please, to the invoice at page 345. And you'll see it's dated 13 June, 2011. You'll see – can I just ask you to note that there's an ATN that's listed under UDE Group at the top.---Yep.

20

Which ends in 005. But you'll see that it's a reference to the Galston Gorge works. And if you go through the detail and then over the page, you'll see that it's for the price that was referred to in the original quote and then the updated work agreement, so still 194,000 plus GST, so 213,400 incl of GST.---Yep.

If we go then, please, to page 347. Do you see a few things on that page, first of all, Mr Sangari, on 15 June, passes on an invoice and notes that it's for the surveyor.---Okay.

30

And you then on 15 June, at 2.22, forward that on to Mr Rifai.---Okay.

And you say please contact the relevant person and organise payment. So just pausing there, can you think, if GEC was being contracted directly to do the drawings and plans of this job, why were you asking Mr Rifai to be paying the surveyor's bill for the purpose of this job.---Again, I don't remember, but just looking at the sequence of documents that you've showed me, that Mr Rifai needed a surveyor to go out there and mark up on the ground the plans that Ghazi had designed so he knew essentially where the edge was to the road, et cetera. And that's a separate cost, yeah.

40

So in effect, Mr Sangari was a person that knew a surveyor that could do it. ---Yes.

So it was his contact and probably why he then got the invoice.---Correct. Yeah.

He was ultimately within the scope of works that Mr Rifai and UDE had - - -?---Needed to, he had to carry out, yeah.

All right, thank you. In any event, you'll see at the top of that page, on 16 June, at 16.06, so 4.06pm, Mr Rifai provides an amended invoice with the company ABN as requested.---Okay.

And if we go ahead, please, to page 349, you'll see that it's the invoice, still dated 13 June, and if you go ahead to page 350, you'll see it's still the same amount, 213,400 incl GST.---With the ABN on it.

10 But it's now with the ABN, not the ACN.---Yep.

And do you recall whether you noticed there was a problem or someone raised it within the RMS?---It could have been the Finance Team. Usually they like to have an ABN on, on – I can't recall.

In any event, ultimately the tax invoice was submitted, and you're aware, aren't you, that the \$213,400 was paid.---That's correct.

20 Now, in this instance, do you recall that you sought and received a kickback?---I actually don't recall this one. It's one project a long time ago.

Given the time frame, it wouldn't surprise you, I take it, to know that there is a record of a cheque being paid into the MWK account.---No, it wouldn't surprise me, no.

And in that regard, can I take you, please, to volume 5.1, page 4. And you'll see the bank statement for the MWK account ending in 4-5-6-9. It shows that on 12 July, 2011 there was a deposit of \$63,800.---Yep.

30 Can I take you, please, in the same volume but to page 19. And you'll see it's a letter from Westpac dated 16 November, 2020 and indicating that in respect of an inquiry that had, or a notice that had been sent to the bank, that the direct entry report for 11 July, 2011, for 63,800 related to a cheque from a particular account ending in 2-0-2-4 in the name of UDE Group Pty Ltd. ---Okay.

So, having seen both the MWK account and the record from Westpac, do you accept that what happened here was you given a cheque from Mr Rifai in that sum, 63,800?---Yes.

40

Representing the kickback you ultimately obtained from him after the completion of the works on Galston Gorge?---Yes.

So, and I take it that there would have been a discussion with him after work was completed, Nabil had been paid where you told him the, the sum that you believed was appropriate that you be paid?---Oh, I don't recall the conversation but I, I'm going to say yes.

And that being the only job that UDE ever did, was there some disagreement with Mr Rifai after the completion of the job and the payment of the kickback that led to you not allocating him any further work?
---Potentially, yes.

Do you recall it or not?---I don't feel comfortable, I have some concerns with that, sorry, yeah.

10 I'm content to leave it at that point, Commissioner, if that's a convenient time.

THE COMMISSIONER: Yes. Very well. I'll resume at 2.15.

MR DOWNING: Thank you, Commissioner.

THE COMMISSIONER: Thank you.

LUNCHEON ADJOURNMENT

[1.21pm]