



**COMMISSION OF INQUIRY INTO THE CFMEU AND MISCONDUCT IN
THE CONSTRUCTION INDUSTRY**

**COMMISSIONED UNDER THE PROVISIONS OF THE
COMMISSIONS OF INQUIRY ACT 1950**

**PUBLIC HEARING
BRISBANE MAGISTRATES COURT**

**TUESDAY, 14 APRIL 2026
AT 10.00 AM**

DAY 16

APPEARANCES

**Mr S Wood AM KC, Commissioner
Mr J McLean, Counsel Assisting
Mr D de Jersey KC with Ms M Brooks, Counsel for the State of Queensland
Mr C O'Grady with Ms F Fox and Ms A Hughes, Counsel for the CFMEU
Administration
Mr H Clift, Counsel for the CEPU, ETUQ, and PGEUQ
Mr Nigel Hadgkiss, Witness
Mr Wayne Jenkinson, Witness**

<THE HEARING COMMENCED AT 10.00 AM

COMMISSIONER: I'll take appearances. Mr McLean, you're appearing as counsel assisting this morning.

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MR McLEAN: May it please the Commission.

COMMISSIONER: And Mr de Jersey, you appear with Ms Brooks for the State of Queensland?

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MR DE JERSEY: For the State, yes, Commissioner.

COMMISSIONER: And Mr O'Grady, you're appearing with Ms Fox and with Ms Hughes for the CFMEU?

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MR O'GRADY: Yes, Commissioner.

COMMISSIONER: Mr Clift, you're appearing for the CEPU, the ETU, Queensland and the PGEU Queensland?

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MR CLIFT: Yes, if it pleases the Commission.

COMMISSIONER: Thank you. Mr McLean.

25 **MR McLEAN:** Thank you, Commissioner. By way of opening, I would offer the observation that in the relatively short period of time in which this Commission has been operating, the Commission has already received extensive evidence regarding prevalence of illegitimate and unlawful conduct within the Queensland construction industry. The Commissioner may recall the evidence of Mr Watson SC. I might ask
30 that that be brought up. It's exhibit GW6 at paragraph 10. We see here at paragraph 10 of his public report Mr Watson observed that:

"The CFMEU has consistently got its way in Queensland both on matters of policy and in practical negotiations through the use of intimidation and threats."

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Mr Watson explains that one common CFMEU method is to target individuals, isolate them, attack them and not let up, and he offers the observation that the CFMEU is relentless. There was also the evidence of Mr Johnson.

40 **COMMISSIONER:** I think to be fair to Mr O'Grady and Ms Fox and Ms Hughes, it was made pretty clear he was talking about the CFMEU prior to the appointment of the administrator, wasn't it?

MR McLEAN: That's the case, Commissioner.

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COMMISSIONER: Yes.

MR McLEAN: There was also the evidence of Mr Johnson, though, which is exhibit DNJ1. And indeed, if we pull up that exhibit, at page 16, specifically paragraphs 149 to 152, we see here Mr Johnson's evidence of how CFMEU officials shut down the Cross River Rail project. And Mr Johnson went on in his statement to refer to how
5 Cross River Rail agreed to hire HSRs nominated by the CFMEU as a means of buying industrial peace.

COMMISSIONER: And I think he also agreed with the proposition put by Mr Gisonda that some of them had criminal records or serious criminal records or some
10 records of violence or - I can't remember the exact phraseology, but presumably that will all get developed by Mr Gisonda in due course.

MR McLEAN: That's my understanding, Commissioner. Commissioner also heard the evidence of Ms Schinnerl, which was exhibit SLS1. I might ask if we bring that
15 up on the screen. We can see here at paragraph 37 of her statement, we see Ms Schinnerl's evidence about how more recently the behaviour of CFMEU officials escalated to the use of intimidation and threats on construction sites. There was the evidence of Mr Newton of how the CFMEU attempted to dictate which
20 subcontractors would and would not be engaged on the Cross River Rail project. You might recall the evidence of Ms Dargan of Workplace Health and Safety Queensland, who recalled CFMEU officials misusing rights of entry and pressuring inspectors to issue prohibition notice needlessly shutting down work on construction sites.

25 The Commission has also heard how the so-called best practice industry conditions, or BPICs, entrenched unproductive work practices on many of Queensland's largest construction projects. And on that point, the Commissioner might recall the evidence of Mr Long, which was exhibit DL1, if we could bring up page 11 of that exhibit, please. Paragraph 68. We see Mr Long here describe the BPICs as - his words:

30 "The most damaging policy to the productivity of the construction industry in this state that I have come across."

35 And Mr Long went on to recall how under the BPICs, productive working days at some sites fell to as little as two working days per week. We also had Senior Counsel assisting, Mr Wheelahan KC, refer the Commissioner to a recent report of the Productivity Commission, which estimated that the direct costs of the BPICs to Queensland were as much as 19.9 billion, with a further 4.9 billion to 18 billion in indirect costs.

40 **COMMISSIONER:** And I think I said to Mr Wheelahan when he referred to those observations of the Productivity Commission that we were in effect bound to adopt them. I think the phraseology in our Commission is to have regard to them, subject to
45 any party here at the bar table contesting the material upon which the Productivity Commission made its assessment or contesting its assessment, then we take that as a given in this inquiry, don't repeat the work they did, and base whatever conclusions we reach on those facts if they remain unchallenged.

MR McLEAN: That's certainly counsel assisting's position, and that's consistent with the terms of reference establishing this inquiry. So it's this combination of misconduct and unproductive work practices that were entrenched by the BPICs that has increased both the cost and delays associated with construction work in this state, and that's ultimately come at the cost of the Queensland taxpayer. More and more of their tax dollars have been spent covering unnecessarily inflated construction costs.

Now, as the Commissioner is aware, one of your functions under the terms of reference is to make recommendations, and it's in that context that counsel assisting propose the Commissioner consider recommending the introduction of a code of practice and the establishment of an independent regulator to drive improvements in behaviour and productivity in the construction industry. And I'll return to this shortly, but Queensland has previously introduced these sorts of measures, and indeed the Queensland Productivity Commission has itself recently recommended the reintroduction of an industry code.

COMMISSIONER: I think it goes further than that, doesn't it? It recently recommended and the government responded - you'll be able to dig up the response where it said, "We agree with that recommendation and we're awaiting the - any recommendation from this Commission in terms of the form of any code of practice and independent regulator," as I recall the government's response.

MR McLEAN: No, you're correct, Commissioner. So in support of that proposal, counsel assisting will call two witnesses. The first -

COMMISSIONER: When you say the proposal you've just advanced, that was advanced by the Productivity Commission and accepted by the government?

MR McLEAN: That's right. The two witnesses we will be calling today are Mr Nigel Hadgkiss and Mr Wayne Jenkinson. Mr Hadgkiss' experience is set out in detail in his written statement, and he's held leadership roles with a number of relevant regulatory bodies. At a federal level, those bodies included the Building Industry Taskforce and the Australian Building and Construction Commission, and indeed Mr Hadgkiss served as Commissioner of the ABCC during its second iteration. At a state level, Mr Hadgkiss was also the director of the Victorian Government's construction code compliance unit, or the CCCU, which was responsible for overseeing the administration of the Victorian code. Like Mr Hadgkiss, Mr Jenkinson has extensive experience administering codes of practice in the construction industry.

COMMISSIONER: This is your second witness?

MR McLEAN: Second witness. He was director of northern operations for the ABCC, and he also served as the director of the building and construction compliance branch, which was the body responsible for administering the last iteration of the code of practice in Queensland.

COMMISSIONER: You're going to take me to some of the history of these state and federal codes, I take it?

5 **MR McLEAN:** I'll do that momentarily, Commissioner. Now, both Mr Hadgkiss and Mr Jenkinson will give evidence as to the potential improvements in industry standards that an effective code can deliver, and they'll also explain the particular features of a code that should be included to ensure that those potential
10 recall that codes of practice have been a regular feature of both the state and federal industrial landscapes over the past 30 years. The basic premise of those codes has been that the government will make a contractor's eligibility to be involved with government-funded -

15 **COMMISSIONER:** So are you proposing a federal code or a state code or both?

MR McLEAN: Not a federal code, Commissioner. The terms of reference for this inquiry are obviously directed towards the activities of the state government here in Queensland. So it's in that context, consistent with the Productivity Commission's
20 recommendation, that we are advancing a proposal for you to consider of the implementation of a Queensland-based code. And again, I'll return to this, but state governments have in the past stepped in to fill the regulatory gap when the federal government has vacated the field and we've seen unlawful and unproductive practices go unchecked in the construction industry. And indeed, both Mr Hadgkiss
25 and Mr Jenkinson will give evidence about the effectiveness of those state-based codes in addressing those problems.

COMMISSIONER: And that was the rationale for the Victorian code and Victorian regulator that Mr Hadgkiss headed.

30 **MR McLEAN:** Quite right.

COMMISSIONER: And also the rationale for the Queensland code and the Queensland regulator that Mr Jenkinson headed.

35 **MR McLEAN:** That's right. Again, we'll come to this, but the introduction of both the Victorian code and Queensland code coincided with a change in government at the federal level and the repeal of the code and the regulator that up until that point had been doing a good job of addressing these sorts of issues. Now, I just want to
40 make an observation at the outset that these codes have not operated by targeting unions. The consequences for non-compliance with codes have sat exclusively with building companies and contractors, and those consequences have then promoted improvements in behaviour and productivity in two distinct ways.

45 The first is that the risk of being excluded from what are potentially lucrative government construction work serves as a significant incentive for building companies to ensure that their operations, and indeed the sites on which they operate,

are compliant with the terms of the code, and given the value of many of those government-funded projects, that threat of exclusion from being able to tender or work on those projects has proven to be a far more effective motivator than the risk of monetary fines.

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COMMISSIONER: That was - I think this had its genesis, and Mr O'Grady will tell me if I'm wrong and you'll probably tell me I'm wrong, but I think it had its genesis in the Gyles royal commission into the building industry in New South Wales in the nineties that then Commissioner Cole picked up and applied federally in the 2000s, and the idea was you use the purchasing power of government and try and drive behaviours that the government sees as important for delivering value for the taxpayer.

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MR McLEAN: That's right. And you're correct, Commissioner, that the first iteration of this code seems to have been the code that was developed in New South Wales off the back of the recommendations of the Gyles royal commission, and then we see a similar unfolding at the federal level where we have a federal royal commission making similar recommendations and the government taking up those recommendations to implement a code and a regulator at the federal level.

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COMMISSIONER: And presumably if your proposal was accepted and the Commission made a recommendation and that recommendation was accepted, it would have some teeth because of the amount of expenditure that the state government is expected to engage in in the construction industry in Queensland over the next four years.

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MR McLEAN: That's right. I believe the evidence, Commissioner, was of around \$117 billion of state government-funded construction work over the next four years. So that is the pot of work that contractors, were they not to comply with any potential code, would risk exclusion from. So you can appreciate why that's a significant motivator to ensure compliance.

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COMMISSIONER: Anyway, you said that was the first - that's the first method by which the code had some teeth.

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MR McLEAN: The second, Commissioner, is the code provides a contractor or a building contractor with a cogent justification to refuse to facilitate or to turn a blind eye to unlawful and unproductive work practices. And there's a situation when a contractor is then challenged by a union official, the contractor can point to the potential loss of that building work that we've just referred to as effectively tying their hands and leaving them with no choice but to insist on compliance with the code and to insist on compliance with relevant workplace relations laws. And I'll come back to this, but that helps shield the contractor from industrial retaliation and criticism, fairly or otherwise, that they are somehow being anti-union.

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COMMISSIONER: Because the contractor just says to the union, "I'd love to help you, because we can just pass the cost on to the government, but I can't because if I agree to this I'm going to be excluded from any government work in the future."

5 **MR McLEAN:** "I'm going to be excluded from government work. The project's at risk. Your members are at risk of losing the job. This is not a good dynamic for anyone."

10 **COMMISSIONER:** I think Mr Gisonda mentioned something to that effect during the opening of the Cross River Rail case study where I think he said something to the effect that the initial attempt to impose a CFMEU agreement - again, I might not have this correct - was resisted by the contractors because of the presence of the federal code, but presumably when the federal code - the federal code was abolished with the election of the Albanese government in middle 2022, and that dynamic was
15 no longer present for the operation of the Cross River Rail project.

MR McLEAN: Again, your recollection is correct, Commissioner. The evidence that fell from the Cross River Rail case study was that the federal code had provided a cogent justification for those contractors to say, "We understand what you're after,
20 but we can't accommodate that because that puts the entire project at risk."

Mr Hadgkiss has set out a comprehensive chronology of the use of codes at both the state and federal level in his witness statement, and I don't propose to take the Commissioner through that history in chapter and verse this morning, but there are
25 certain key milestones that I think I should take you to just to contextualise the evidence that will be presented throughout the course of today's hearing. The Commissioner mentioned the Gyles royal commission in 1992 and that prompting the first establishment of a code at the state-based level.

30 **COMMISSIONER:** In New South Wales.

MR McLEAN: In New South Wales. The first attempt at a code at the federal level, though, was the 1997 National Code of Practice for the Construction Industry. Now, the 1997 code was published jointly by the Commonwealth, state and territory
35 governments as an intergovernmental policy, and much like the codes we've already referred to, it established minimum standards for the industrial relations practices of contractors who sought to work on government-funded projects. There was then a further tranche of reforms at the federal level in response to the recommendations proposed in 2003 by the Cole royal commission, and the two most significant of
40 those reforms were probably the implementation of what were relatively prescriptive guidelines to supplement the 1997 code and the establishment of a regulatory body to administer those guidelines. And those guidelines went through various iterations throughout 2003, 2004, 2005.

45 **COMMISSIONER:** The what went through various iterations?

5 **MR McLEAN:** The guidelines that were introduced to supplement the national code. And the regulator that I mentioned that was initially established on an interim basis was then formalised on a permanent basis as the Building Industry Taskforce. I think as I mentioned earlier Mr Hadgkiss was the first director of that organisation as well.

10 **COMMISSIONER:** I thought Mr John Lloyd was the first director. Maybe he was director of - and Mr Hadgkiss was his deputy. Mr Lloyd was the director of the interim building taskforce, I thought.

MR McLEAN: Mr Lloyd might have been director of the interim building taskforce, and then when it was established on a permanent basis, Mr Hadgkiss became director of the Building Industry Taskforce without the "interim".

15 **COMMISSIONER:** And presumably those guidelines - you say they added some teeth to the general nature of the 1997 code, so presumably the '97 code said, "We want more productive workplaces, construction sites," and the guidelines said, "This is how you do it."

20 **MR McLEAN:** The guidelines were much more prescriptive in identifying the particular practices that were prohibited or that needed to be adopted on construction sites. The mechanism remained the same: if you don't comply with your obligations, whether it is under the 1997 code or the supplementary guidelines, you're going to be excluded from the government-funded building work.

25 **COMMISSIONER:** And you need a regulator which can educate the building industry and if necessary enforce those - the code and the guidelines.

30 **MR McLEAN:** Quite right. And that's a key component of any code framework that both Mr Hadgkiss and Mr Jenkinson suggest needs to be developed in tandem.

COMMISSIONER: They didn't have a regulator before that under the '97 code?

35 **MR McLEAN:** There was no regulator. Just to round out that early chronology, the Building Industry Taskforce was then superseded in 2005 by the Australian Building and Construction Commission. And I believe Mr Hadgkiss actually stepped in as the deputy commissioner of that organisation as well. The ABCC -

40 **COMMISSIONER:** That was then given statutory footing in 2005. There was a statute that was passed -

MR McLEAN: That's right.

45 **COMMISSIONER:** - before that in that period 2003 to 2006. It was just an administrative body. Might be too early to ask you, but what are you proposing in relation to a state regulator? Are you proposing that it just be an administrative body

set up under some department, or should there be a statute passed, as there was that set up the Australian Building and Construction Commission in 2005?

5 **MR McLEAN:** One of the issues I'll return to in the evidence of Mr Jenkinson in particular is the fact that the Queensland guidelines and the regulator that was established in Queensland were following a change of government abolished without -

10 **COMMISSIONER:** Which change of government are you talking about?

MR McLEAN: This was change of government in early 2015.

COMMISSIONER: At the state level?

15 **MR McLEAN:** At the state level, from the LNP to the Queensland Labor Party. And both the regulator that had been established and the guidelines that had been developed at the state level, which were akin in substance to a code -

20 **COMMISSIONER:** And those are the ones that Mr Jenkinson enforced?

MR McLEAN: That's right. Both the guidelines and the regulator were seemingly taken off the playing field without any consultation with industry, without any explanation being offered up by the government as to why they were taking that course, and so considered in the context of that evidence and the susceptibility of
25 these regulatory bodies and guidelines to be established and repealed without proper oversight, there would seem to be some sense to having a statutory body so that there needs to be that accountability and there needs to be that transparency when decisions are made to either establish or repeal or disband those guidelines and bodies.

30 **COMMISSIONER:** There was no debate about the removal of the Queensland code in 2015 and the abolition of the regulator?

35 **MR McLEAN:** Mr Jenkinson's evidence, and he was involved in the space at that time, is that it was done seemingly in the dead of the night.

COMMISSIONER: All right.

40 **MR McLEAN:** There was some incidental discussion of those matters on Hansard in the Queensland Parliament, but that principally entailed criticism from the then-Opposition on the repeal of these measures and the lack of consultation that had been engaged in prior to their repeal. So if we just return to this - high points of the chronology, the ABCC administering that 1997 code, and probably more specifically
45 the supplementary guidelines, drove measurable improvements to standards of behaviour in the construction industry. And we'll come to this in the evidence of Mr Hadgkiss in more detail, but there are two independent reports of note that I draw the Commissioner's attention to.

The first is the report by Independent Economics, which is published in 2013, and that report concluded that the productivity improvements attributable to the activities of the Building Industry Taskforce and the ABCC in the period 2002 to 2012 were
5 somewhere in the range of 10 to 21 per cent. The second report was a report in 2014 of the Productivity Commission, the federal Productivity Commission, and that report was titled The Productivity Commission Inquiry into Public Infrastructure. And that report acknowledged that the work of the ABC had led to a marked reduction in industrial -

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COMMISSIONER: ABCC.

MR McLEAN: ABCC - had led to a market reduction in industrial disputation. Now, it's perhaps surprising in that context, given the improvements that the ABCC
15 and 1997 code had brought about, that this framework that had been established at the federal level was then dismantled following a change in government at the 2007 election: the ABCC was abolished, and the 1997 code was replaced by a significantly watered-down building code of 2013. As I touched on earlier, it's in response to the dismantling of that framework at the federal level that we saw at least two state
20 governments make a concerted attempt to introduce their own codes and regulators.

The first state off the mark was Victoria with the Victorian code and guidelines. I understand Mr Hadgkiss was involved in drafting that document, and as we'll hear, the Victorian framework that was established under Mr Hadgkiss really then served
25 as the archetype upon which subsequent codes, both at the state and the federal level, were modelled. The Victorian government, as I mentioned, also set up the CCCU to administer that Victorian code.

COMMISSIONER: The CCCU was just the state version of the - what Mr
30 Hadgkiss had run as the federal ABCC, presumably.

MR McLEAN: That's right, and the Victorian comparator to the BCCB that was subsequently developed here in Queensland. And that takes me to Queensland, which then followed suit with its 2013 guidelines, and although those documents
35 were termed guidelines, as I said before, they really were -

COMMISSIONER: Say that again. I just missed that.

MR McLEAN: The document was termed a guideline, but it was more akin in its
40 substance to a code, a code that we'd previously seen in Victoria and that we subsequently saw at the federal level.

COMMISSIONER: Can you just show me one of these Victorian codes or
45 guidelines?

MR McLEAN: Certainly. Perhaps if we can bring up -

COMMISSIONER: Or the Queensland ones?

MR McLEAN: The Queensland one's at page 356 of Mr Hadgkiss' statement, which is annexure NH11.

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COMMISSIONER: So there's some code of practice that sits under these guidelines?

MR McLEAN: So there was a Queensland code that was established in around about 2000, and again the evidence of Mr Jenkinson is quite detailed on this point. Mr Jenkinson contrasts the Queensland code, which was expressed in very aspirational terms - it was a set of high-level propositions that encouraged certain behaviours, but it certainly wasn't specific to industrial relations. We can come to this, but there is a small component of the code that deals with workplace relations practices. The majority of the code is dedicated to concepts like continuous improvement, payment regulations. So it's not a tailored and prescriptive document in the way that we subsequently saw with these guidelines or the code at the federal level.

COMMISSIONER: So these guidelines were based on what Mr Hadgkiss had done in Victoria, which in turn was based on what he'd done when he was either the head of the Building Industry Taskforce or deputy commissioner of the ABCC at a federal level.

MR McLEAN: Largely. The Victorian guidelines did represent an advancement in the level of prescription in the code. We saw the federal government pick up a similarly prescriptive code in 2016. But the Victorian guidelines were, for the most part, the first attempt to really develop these principles in a significant level of prescription beyond what even the initial guidelines -

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COMMISSIONER: Say that bit again.

MR McLEAN: They took the level of prescription even further than the supplementary guidelines that had been introduced to supplement the 1997 code at the federal level. And just to round out the introduction of codes at the state level during that period, I think I've mentioned this previously, but Queensland, much like Victoria did, introduced a regulator. The regulator was a product of these guidelines, and these guidelines actually contemplated the establishment of a regulator. So it wasn't a statutory body in the sense that the Commissioner alluded to before, but that body was called the Building Construction and Compliance Branch, and Mr Jenkinson, as we'll hear, was appointed as the BCCB's first director.

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COMMISSIONER: Can you show me an example of the guidelines, of - is there anything -

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MR McLEAN: Certainly.

COMMISSIONER: - in there that - you might to do it through the witnesses. Open this case study whatever way you want; don't let me divert you. But is there anything in there at this point that I should be aware of?

5 **MR McLEAN:** So perhaps if we turn up page 356 of Mr Hadgkiss' statement.

COMMISSIONER: Sorry, 356. I think you had 356.

10 **MR McLEAN:** 356. We see here the covering page of the guidelines, and over the page at page 357 we see the index of what these guidelines include. And that might give the Commissioner at least a high-level overview of the sorts of matters the guideline was directed to.

15 **COMMISSIONER:** Seems very similar to what the ABCC was concerned with and what the Victorian code was concerned with. And then what was the post-2016 federal body called? Was that the ABCC again?

MR McLEAN: The ABCC in a second incarnation.

20 **COMMISSIONER:** Second incarnation. Yes, okay. I understand.

MR McLEAN: Then if we turn up page 362 of this document, we see here in part 4 of the guidelines quite a long itemised list of various practices that are stated to be inconsistent with the requirements of the guidelines. You can see the majority of these, Commissioner, shouldn't be controversial concepts. The first bullet point is directed to coercion.

25 **COMMISSIONER:** Well, look at the fourth one. Isn't that the polar opposite of BPIC? I thought there was evidence that the BPIC rules were that you had to have a project agreement that every contractor on site had to pay the so-called site rates. There's something in the Productivity Commission report that - I think they call them jump-up clauses that mean that you can't get a subcontractor that's going to pay the market rate, you've got to pay the project rate.

35 **MR McLEAN:** That's right.

COMMISSIONER: I mean, it's directly contrary.

40 **MR McLEAN:** It is. That was a feature of the BPICs, and that is directly inconsistent with the sorts of arrangements that both the Queensland code, or the Queensland guidelines, I should say, and the Victorian code and subsequently the 2016 federal code have prescribed.

45 **COMMISSIONER:** So get rid of this code and guidelines, you say, without any discussion - I know it's a rhetorical flourish to say "in the dead of night", because there was no statutory backing, you didn't have to repeal any legislation and put in something that's directly contrary, at least in one respect, and that's BPIC.

MR McLEAN: I think that's a fair assessment, Commissioner. It's very hard to reconcile the sorts of improvements in behaviour and productivity that guidelines of this sort are attempting to drive with what was then both developed and entrenched by the BPICs. And perhaps if I could ask you to turn back to page 357 of Mr Hadgkiss' statement, which is page 2 of this document, and just the last paragraph on this page. And that paragraph really underscores what in this case the Queensland Government was attempting to bring about, but more generally what codes and guidelines of this kind are trying to bring about: greater flexibility, innovation and productivity within the State's building and construction industry with the ultimate aim of ensuring that the Queensland Government maximises taxpayer value for money on publicly funded building and construction projects.

And I'll work through specific aspects of this guideline and its Victorian counterpart with Mr Hadgkiss and Mr Jenkinson respectively in the course of their examination-in-chief. And both Mr Hadgkiss and Mr Jenkinson do give evidence about the successes of the Queensland guidelines and Victorian code. But as I touched on before, both of those frameworks were short-lived, because we have changes in government at the state level - Victoria in late 2014 and Queensland in early 2015 - following which both the Victorian code and the Queensland guidelines and the associated regulatory bodies, as I said before, are taken off the playing field. Now, by the time those state instruments were repealed, there had also been a further change in government at the federal level.

COMMISSIONER: So it didn't matter, because the new - what did you call it - the second incarnation of the ABCC had come about?

MR McLEAN: There was a period, Commissioner, before the Commonwealth - sorry, before the Coalition government could get its proposed workplace relations reforms in the form of the ABCC being re-established and the 2016 code through both houses of Parliament. That didn't occur until 2016, so there was a period between the abolition of these measures at the state level and the reintroduction of what was subsequently introduced at the federal level. But shortly thereafter, you're correct, there's then the reintroduction of a code and a regulator at the federal level. The code that was introduced at that point in time was titled the Code For Tendering and Performance of Building Work 2016.

COMMISSIONER: So that was just administrative step, was it?

MR McLEAN: That was a legislative instrument.

COMMISSIONER: That was a legislative instrument. Okay.

MR McLEAN: And the second, as I touched on, was the reintroduction of the ABCC. And at that point in time the ABCC was tasked with monitoring and enforcing that 2016 code, and Mr Hadgkiss was appointed as commissioner of the ABCC when it was re-established.

COMMISSIONER: I think this policy step was something that Minister Abbott was very keen on and proud of, because when he came into the ministry after the 2001 election following Minister Reith, Minister Reith had reformed the waterfront, but
5 in - and this is all publicly available - Minister Abbott said not enough had been done with the construction industry, and the Cole royal commission and the acceptance of the recommendations of the Cole royal commission setting up the ABCC as the Minister was something he was - he said publicly - keen on and proud of. And then
10 when he became Prime Minister, the federal ABCC having been abolished by the Gillard-Rudd Gillard-Rudd governments, it was a priority for him as Prime Minister. And I think it continued on all the way through.

MR McLEAN: It did, until about 2022, I think, and I'll confirm that date for you, Commissioner. But it was certainly Prime Minister Abbott that was very vocal in
15 reinitiating the work of this body. And the body that was established, that ABCC, and its work in administering the 2016 code did bring about significant improvements in industrial relations practices at the federal level. I might ask if we can pull up Mr Hadgkiss' statement at page 6.

COMMISSIONER: But apart from that short period of time between 2015 and 2016 when there was no federal code and no state code, it didn't really matter that the state code had been abolished here in Queensland because we had a federal code and a federal regulator run by Mr Hadgkiss all the way through to the middle of 2022.

MR McLEAN: Yes. Quite right, Commissioner. We're entering somewhat uncharted waters here where there is a significant regulatory gap with no code or guidelines presently at the state level and certainly no code or guidelines at the federal level, and there hasn't been for at least a few years now.

COMMISSIONER: Just wonder why you wouldn't recommend a federal code, given it may have been a mistake to get rid of the ABCC. You've got the situation where the government comes in federally in the middle of 2022 and gets rid of the code and the regulator, but two years later they appoint an administrator to the CFMEU. It just seems it might have been a step that was taken sort of reflexively or
35 automatically, I'm assuming, in government rather than something more considered, and it might be worth reconsidering. I don't know.

MR McLEAN: It's probably a question for the federal government, Commissioner.

COMMISSIONER: I just wonder - you might want to consider whether that's a - the recommendation from this - I know we're restricted jurisdictionally to the State of Queensland, but if there's a recommendation we can make - recommendation just might be thrown in the bin, but if there's a recommendation we can make that affects the building industry in Queensland, that might be a recommendation you
45 want to think about recommending that this Commission recommends.

MR McLEAN: I understand, Commissioner. I'll take that on notice and give that further thought. If we can perhaps enlarge paragraph 21 of Mr Hadgkiss' statement, we see here Mr Hadgkiss, who has extensive experience with these sorts of bodies, is fairly unequivocal in his assessment of the effectiveness of a code. He offers up:

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"In every jurisdiction where I have observed an active regulator administering an effective code, there have been corresponding improvements to productivity, safety, and freedom of association within the industry."

10 And that opinion is supported by the trends in days lost to industrial disputation. If we could bring up page 8 of Mr Hadgkiss' statement, specifically paragraph 27. Now, the most informative measure of industrial disruption that's tracked by the ABS is working days lost per 1000 employees, and we see here from this data that Mr Hadgkiss has extracted from the ABS, in the four-year period in which there's no
15 ABCC, the number of days lost in the construction industry sat at 11.8 per thousand employees, which was four times the all-industries average.

We then see the 2016 code and the ABCC introduced in December of 2016, and working days lost falls to an average of 4.7 per 1000 employees. That's a drop from
20 11.8 to 4.7, and the figure of 4.7 is less than twice the all-industries average. So it can't be said that this decline in industrial disruption is attributable to a change in industry practices across the board. And we then see that when the ABCC is disbanded in February of 2023, working days lost in the construction industry jumps
25 back up to 6.8 per 1000 employees, which again is then more than two and a half times the all-industries average. So there's a clear correlation between the ABCC administering the 2016 code and a marked drop in the level of industrial disruption on construction projects.

COMMISSIONER: Yes, but you've got the problem of - all these types of analyses are difficult, aren't they, because correlation does not prove causation. But I suppose you've - well, it's up to you about how you present this, but presumably there are no other major factors that are present at this time that would explain this.

MR McLEAN: The introduction of the 2016 code and the re-establishment of the
35 ABCC seem to coincide very strongly with a significant drop and then a significant uptick on their disbanding. And we see a similar trend - to underscore the point, a similar trend during the first period of the ABCC. If we could please pull up page 7 of Mr Hadgkiss' statement at paragraph 25, we see here Mr Hadgkiss has undertaken a similar exercise in relation to the first iteration of the ABCC contrasting the level
40 of industrial disruption in the period the ABCC was operative to the periods either side of the ABCC being established.

So to circle back to an observation the Commissioner made before, notwithstanding those improvements that the 2016 code and the ABCC were delivering, we then saw
45 a further change in government at the federal level which resulted in the ABCC being disbanded.

COMMISSIONER: This was in 2022 you're talking now?

MR McLEAN: This is in 2022, with the changes taking effect in early 2023. And there hasn't, since 2023, been a code of this sort in place at the federal level.

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COMMISSIONER: Or at a state level.

MR McLEAN: Or at a state level.

10 **COMMISSIONER:** Since 2015.

MR McLEAN: Since 2015. And so I said I was taking you to the high points of that history, and that history in my submission is important. It demonstrates that the use of codes is not novel, it suggests that codes and regulators operating in tandem are effective, and it underscores that the construction industry in Queensland is presently navigating this regulatory gap in which there's no code or regulator either at the state or at the federal level. Now, Mr Hadgkiss and Mr Jenkinson will give more detailed evidence about the potential benefits of a code, and I'll leave it to them to comment on those matters further.

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Just as importantly as identifying what a code can achieve, Mr Hadgkiss and Jenkinson identify the various components of a code that they suggest a code should include to ensure that it delivers the potential improvements to behaviour and productivity. If we could please pull up page 9 of Mr Hadgkiss' statement. If we enlarge paragraph 30, we see here that Mr Hadgkiss summarises those five components of a code at subparagraphs (a) to (e). Now, picking up the first of these components, which is really concerned with prohibiting unproductive work practices, Mr Hadgkiss stresses the need for a code to prohibit a number of arrangements that are anathema to productivity. Those include minimum manning arrangements, restrictions on the type of employment that can be offered, restrictions on the order of redundancies, requirements to involve unions in resourcing decisions, limitations on a contractor's freedom to allocate work, and the use of unregistered written agreements.

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Now, I earlier mentioned the significant costs associated with the BPICs. Back in the March hearing block, Mr Gisonda of Senior Counsel took the Commissioner to particular aspects of the BPICs that undermine productivity. You might recall, Commissioner, we had enterprise agreements that provided for an additional 26 rostered days off over and above an annual leave entitlement.

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COMMISSIONER: Well, it's not just they're additional 26 rostered days off; they're non-transferable, aren't they? They're not really rostered days off; they're lockdown days where no one - shutdown days.

45 **MR McLEAN:** Shut down construction sites.

COMMISSIONER: And I think Mr Newton or Mr Long or maybe Mr Johnson gave some evidence - I think it was Mr Newton - saying it's a real problem because it means that you in effect shut down the site for 10 days, I think he said, because you need work being planned and delivered before the shutdown and afterwards.

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MR McLEAN: That's right. You lose continuity of operations. There was also work on construction sites under the BPICs being shut down when the temperature exceeded 29 degrees. We had employers having to pay employees to attend an hour-long pre-start every day in addition to a two-hour union meeting and a two-hour safety meeting every week.

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COMMISSIONER: So what's that? That's six hours plus two plus two. 10 hours.

MR McLEAN: And that combined with the -

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COMMISSIONER: I'm assuming a Monday to Saturday roster.

MR McLEAN: Monday to Saturday. And we take that, we take the 26 rostered days off or the shutdown days, we take the construction sites being shut down for weather conditions, and that's how we get to the analysis that was given earlier by Mr Long about no more than two productive working days each week. It's a real problem. The BPICs also had artificially inflated wage rates, with further 5 per cent annual increases on top of the existing rates. There were jump-up clauses, which the Commissioner alluded to earlier, and those forced all subcontractors to pay their own employees the artificially high rates paid by the head contractor. And quite remarkably, we saw in the BPICs restrictions on a project's ability to engage subcontractors to complete necessary work. And so those sorts of practices that were demanded by the CFMEU -

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COMMISSIONER: What do you mean by that? I thought we had some evidence that was in effect that BPIC - I can't remember whether it was the Queens Wharf agreement or the Cairns Convention Centre agreement or some predecessor to BPIC, but I think it was described as a veto upon the use of subcontractors. You've described it, I think you just said, as a restriction on the subcontractors to produce - to provide necessary work or certain work. How did you describe the restriction?

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MR McLEAN: So there was - I think the explanation or description I gave was a restriction on the project's ability to engage subcontractors to complete necessary work, and that found substance in clauses in the BPICs that, for example, precluded a contractor engaging certain roles through subcontractors. We had hoist drivers and gate persons, for example, that were not permitted to be engaged through subcontractors. So if there was a passing need for that role to be done, the contractor was hamstrung. It couldn't go and find people to do the discrete parcels of work that needed to be completed.

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COMMISSIONER: So that's different to what I was thinking about, which is a veto.

5 **MR McLEAN:** It is an additional restriction. And so these practices that were mandated by the BPICs, as you can imagine, grossly inflated construction costs, and they ultimately meant that taxpayers in Queensland were paying more for major construction work than they should have been. And the evidence of Mr Hadgkiss makes this next point clear: a code of practice is the anti-BPIC. The code would drive productivity, it would expose misconduct, and it would ensure that taxpayers
10 get value for money on government-funded construction project.

COMMISSIONER: That's the exact - what did I describe it as? The polar opposite. It's the - what did you call it?

15 **MR McLEAN:** The anti-BPIC. Now, the second of the components that Mr Hadgkiss and Jenkinson propose that a code should include is a set of rules that preserve the integrity of the legislated right-of-entry mechanisms, and that principally refers to right-of-entry provisions under the Fair Work Act. Mr Hadgkiss and Mr Jenkinson identify non-compliant site entries as an ongoing challenge facing
20 construction contractors in Queensland, and indeed Mr Hadgkiss has annexed to his statement - I might ask that this be brought up. It's annexure NH12 on page 377. You see here a table that identifies some 25 occasions from the last 10 years on which the Queensland CFMEU has been found to have breached industrial laws through the actions of its officials and organisers, most commonly on account of refusal of those
25 officials to reserve right-of-entry requirements.

COMMISSIONER: And presumably if there was no MoU - well, the counterfactual's hard to know, but I imagine whoever is going to present the QPS/OIR MoU case study will say or might say that without that MoU restricting the
30 police's ability to intervene and in effect delegating it to OIR, there might have been some ability to stop these unlawful entries. And before it gets to court, just as a policing function.

35 **MR McLEAN:** That may well be the case. The particular vice of these non-compliant entries, Commissioner, is they disrupt productive work when you have union officials letting themselves on site other than in accordance with the legislated right-of-entry mechanisms. They present a safety risk, as we have officials moving around active construction sites unchecked. And indeed the evidence is that they often serve as a precursor to the organising of unlawful industrial action.

40 And Mr Hadgkiss and Jenkinson give evidence that contractors can often be reluctant to resist these non-compliant entries because the union officials involved often threaten to retaliate with industrial disruption should these entries not be facilitated. And so in that context a code that mandates observance of the right-of-entry
45 provisions provides contractors with that justification I referred to earlier: the justification for refusing to accommodate improper entries.

COMMISSIONER: I think that was Mr Johnson's evidence, wasn't it, that there was a refusal to comply with the right-of-entry requirements by the CFMEU in - I might have the year wrong - I think mid-2023, and that led to in effect Mr Johnson giving the officials carte blanche to enter without any requirement to possess a right of entry.

MR McLEAN: There was certainly a significant relaxation of the right-of-entry requirements that were imposed on that - or enforced on that site. And we -

COMMISSIONER: That led to - I think there was a massive spike in disputation. I think it was disputation.

MR McLEAN: That's right. And one of those examples of unlawful entries being facilitated - not being facilitated, but being imposed on a site is recorded at the first example of that table. It's up on the screen.

COMMISSIONER: That's just a standard trespass that's not enforced.

MR McLEAN: There's a mechanism available for union officials should they want to enter site.

COMMISSIONER: Say that again?

MR McLEAN: There's a mechanism available to union officials should they want to enter site. The third feature of a code that Mr Hadgkiss and Jenkinson suggest any code should include are rules that protect freedom of association. And by freedom of association I'm, of course, referring to the right of any worker to decide whether to join or not join a particular union. And Mr Hadgkiss gives some evidence -

COMMISSIONER: Just going back to that point 1, you see that the dates can be confusing, because in between the date it occurred in 2021 and the date of the judgment in 2024, there had been a relaxation by Mr Johnson of the rules. So what was unlawful in 2021 was not unlawful in 2024, because Mr Johnson relaxed the rules. But that relaxation of the rules would be in contravention of the code.

MR McLEAN: It would be in contravention of the code, and it would also have the very consequences I alluded to earlier: less productivity, safety risks, increased industrial disputation or unprotected industrial action. Returning to freedom of association, Mr Hadgkiss gives some evidence that freedom of association can be particularly fragile on construction sites, and that's due in a large part to the historical expectation of union membership on construction projects and what are, to be frank, highly aggressive tactics that are employed by officials of construction unions to preserve their industrial territory. And examples of practices Mr Hadgkiss identified as threatening that freedom of association, and that really any code or guideline should address and preclude, are no-ticket-no-start policies, show-card days, the hiring of non-working shop stewards.

COMMISSIONER: There's been a lot of evidence about that, the hiring of non-working stewards, but not a lot of evidence about the first two points so far: no-ticket-no-start policies and show-card days. Might be a question I raise with the counsel who are presenting the other case studies, but - or maybe I'll just leave it at that.

MR McLEAN: Mr Hadgkiss goes into some detail about what those policies or practices entail and the undesirable consequences they have for activities and freedom of association on construction projects. Certainly some evidence in Mr Hadgkiss' statement as well about how common those practices are in industry. So the hiring of non-working shop stewards, the excessive display of union paraphernalia on construction sites.

COMMISSIONER: Going back to the shop stewards, were there recent amendments federally to the - to give more - to give greater rights to shop stewards?

MR McLEAN: There were. You're right, Commissioner.

COMMISSIONER: And what are they?

MR McLEAN: The concern is not with the rights of employees who are elected as delegates in the conventional sense that's contemplated by delegates' rights clauses, which are now, as you've just alluded to, afforded a degree of protection both in legislation and in industrial awards.

COMMISSIONER: I'm using delegate and shop steward interchangeably there.

MR McLEAN: What does present a concern, though, are unelected shop stewards who are appointed by the union who perform absolutely no productive work for their employer. They spend their entire day attending to union business, both in relation to employees working on that site and elsewhere, and they're required to be paid two to three hundred thousand dollars by their employer for doing so. That's the concern. It's not shop stewards or delegates in the conventional sense as is now protected by legislation.

So the excessive display of union paraphernalia, and that's something Mr Hadgkiss will give some detailed evidence about and the vices of that. There also needs to be provisions that prohibit harassment of workers who elect to participate or not participate in industrial activity.

COMMISSIONER: Just going back to union paraphernalia, what's the problem with union paraphernalia?

MR McLEAN: Mr Hadgkiss gives this evidence, Commissioner. The problems are probably three-fold. The first is that the paraphernalia when it's displayed on a union - displayed on a construction site conveys, at least in practical terms, this message that membership of that union is an expected incident of working on the

5 site. The second issue is when that paraphernalia is then affixed to the property that's supplied by the contractor, it risks conveying that the contractor has a preference for or supports one union over the other. And the third is - and this is a point Mr Hadgkiss teases out - a saturation of union paraphernalia on a particular site creates this sense of a protected environment for union officials. It seems to embolden them, and it gives them this perception that it's operating, as I said, in a protected environment beyond the reach of consequence. And you can imagine the flow-on effects that has for the sorts of behaviour that are then engaged in.

10 The fourth of the five features that Mr Hadgkiss and Jenkinson propose be included in the code is the use of workplace relations management plans. Now, those plans were a feature of each of the 2016 code, the Victorian code and the Queensland guidelines. I might ask if we can pull up page 419 of Mr Hadgkiss' statement.

15 **COMMISSIONER:** A workplace relations management plan is just a document that says, "This is how we're going to manage our workplace relations on site. These are the rules we're going to apply." Is that all it is?

20 **MR McLEAN:** To an extent. But the plan needs to be tailored for the particular construction site that the work relates to. So it's not a document that can be transposed easily across sites without considered thought being given to how a contractor will address the particular risks that are likely to arise on that construction project. And it also requires a contractor to set out in quite a level of detail the various measures it's going to implement, and I might take the Commissioner through various parts of this document. This document is a template plan that was
25 made available by the ABCC back in 2017.

If we pull up part A. If we could please enlarge that. We see in this part, Commissioner, that the plan requires the contractor to identify the particular persons
30 who are going to have responsibility for monitoring and actioning various matters that relate to the workplace relations practices. So you can imagine that that generates a degree of accountability. It's no longer just a contractor in the abstract that needs to do something; there's particular nominated people that compliance can be checked with.

35 If we pull up Part B. In this section, the contractor is required to explain the strategies it has in place to manage industrial relations risks. Part C on page 420. We see how these plans start to get into a level of granularity. We see here the contractor is required to identify how site induction processes will reinforce the principles of
40 the 2016 code, and it explicitly calls out freedom of association. Part D, page 420, the plan requires a contractor to identify how it will communicate the requirements of the code to its workforce and its subcontractors.

45 So we start to get a flavour for what these sorts of plans entail. I won't take the Commissioner through every part or aspect of this document, but I might draw your attention to part I, which is found on page 422. We see there Part I sets out some specific obligations in respect of freedom of association that the contractor needs to

map out how it's going to observe and abide by. And the same in respect of Part J on page 424: the same concept but in respect of right of entry.

5 As the Commissioner identified before, the process of preparing a document of this kind helps to educate contractors on what their obligations are under the code, and it requires them to give genuine consideration as to how those obligations are going to be satisfied. The plan also then serves as a document against which the contractor's compliance with the code can be easily assessed. If the contractor is committed to doing something as it concerns a particular aspect of the code, it is a very easy
10 reference point for any regulator to assess and ascertain whether that obligation has been discharged.

A final observation on these plans: the Commissioner can probably see from the level of detail that these plans demand that there's a degree of administrative burden
15 involved in preparing them, and it's for that reason that previous codes have tended only to require the preparation of a plan for or in relation to work packages of a certain value. So it might be, for example, work projects with a total value of \$20 million or more, or in respect of which the relevant government has contributed at least \$5 million of those project costs. And the use of those thresholds is intended to
20 ensure that the benefit of having a plan prepared will outweigh the administrative impost on the contractor of having to go through the preparation of the document.

The fifth of the five features that Mr Hadgkiss and Jenkinson seem to be in strong agreement on is that any code should be supported by an independent regulator. The
25 establishment of an independent regulator reflects a recommendation that has been made by each of the Gyles, the Cole and the Heydon royal commissions. Each of those royal commissions has consistently recognised the need for a regulator to operate in this space. And Mr Hadgkiss and Jenkinson explain the regulator serves a number of important functions.

30 **COMMISSIONER:** You can add the Productivity Commission to that.

MR McLEAN: Can add the Productivity Commission to that as well. The functions of that regulator, at least according to Mr Hadgkiss and Jenkinson, involve the
35 regulator taking on responsibility for educating industry participants on the expected standards of conduct. The regulator monitors and investigates instances of non-compliance, and where necessary, that regulator can institute enforcement action, including by recommending to the relevant minister that a contractor who has failed to comply with the code be excluded from government-funded projects, at
40 least for a period of time.

Now, again, both Mr Hadgkiss and Mr Jenkinson underscore that the regulator should be one dedicated to the construction industry, and that's consistent with the recommendation that was made by the Heydon royal commission. The royal
45 commissioner, following the Heydon royal commission, observed that given the high level of unlawful activity within the building and construction sector, it's highly desirable to have a regulator tasked solely with enforcing the law within this sector.

And any regulator should also be an independent body, according to Mr Hadgkiss, and that's to avoid the potential for the interests of government as a regulator to come into conflict with the interests of government as a client for construction work.

5 The evidence also suggests that a new body should be established to administer any code that is ultimately implemented. If we can bring up Mr Jenkinson's evidence at page 12, paragraph 62. We see here Mr Jenkinson gives evidence that the existing Queensland Building and Construction Commission lacks both the experience and resources to enforce a code of practice relating to workplace relations matters. And
10 indeed Mr Wheelahan of Senior Counsel will at a later time address this Commission on the influence that the CFMEU developed on the QBCC, particularly during the period when the former CFMEU national president Mr Jade Ingham managed to have himself appointed to the QBCC's board.

15 **COMMISSIONER:** Was Mr Ingham the national president or the assistant secretary of the Queensland branch?

MR McLEAN: I stand to be corrected, Commissioner, but I think he held both roles at different times.

20 **COMMISSIONER:** No, I'm getting a no from Mr O'Grady.

MR McLEAN: Certainly the assistant secretary of Queensland.

25 **COMMISSIONER:** Do you want to just remind me, Mr O'Grady, what his -

MR O'GRADY: Mr Ingham had roles both within the national union and also the - the state branch of the national union and also the state union. But he wasn't the national secretary.

30 **COMMISSIONER:** He was the assistant secretary.

MR O'GRADY: Yes.

35 **MR McLEAN:** Assistant secretary of the -

MR O'GRADY: State branch.

40 **MR McLEAN:** - state branch.

COMMISSIONER: But in any event, he was a senior official and he was appointed to the QBCC's board.

45 **MR McLEAN:** That's right. And Mr Wheelahan will develop that issue further in a subsequent hearing block.

COMMISSIONER: So you're saying at the moment - and you haven't fully developed your recommendation, because you've got to hear all the other evidence, but you're saying it should be someone independent from the QBCC who performs this task of regulating any state-based code.

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MR McLEAN: The current evidence certainly supports that conclusion. So in addition to identifying those five features of any code, Mr Hadgkiss and Jenkinson go on to share their experience about how a code should be applied. They explain the potential benefits of extending the application -

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COMMISSIONER: Those five things are you've got to outlaw unproductive work practices, you've got to protect a limited right of entry, you've got to make sure freedom of association is upheld, you've got to have a workplace relations management plan, and you've got to have something - somebody to regulate and educate the industry.

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MR McLEAN: That's right. Both Mr Hadgkiss and Mr Jenkinson are on very strong alignment on those five features.

COMMISSIONER: And that's really been the architecture since - federally, since 2002 or 3 and before that in New South Wales.

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MR McLEAN: That's right. Mr Hadgkiss and Jenkinson also share some observations about how a code should be applied in practice. They explain that the - they identify that there are benefits of extending the application of any code to the related entities of a code-covered entity, both as an anti-avoidance mechanism and to accelerate the rate of change in the industry. They give evidence about how code-covered entities being required to ensure that the subcontractors they engage are themselves complying with the code and how that drives a sort of self-regulation within the industry. And Mr Hadgkiss proposes a particularly interesting mechanism whereby the regulator would be required to notify the ASX in the event that an ASX-listed company breaches the code, the rationale for that being that the spectre of a notification of that kind would maximise the deterrence value and would again fast-track the improvements and standards of behaviour that a code is directed to. So in the evidence of Mr Hadgkiss -

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COMMISSIONER: I just saw Mr Hadgkiss walk into this courtroom. I could ask him that question or I can ask you: is that something that's been done previously, a requirement to notify the ASX?

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MR McLEAN: Might be a question best for Mr Hadgkiss.

COMMISSIONER: All right.

MR McLEAN: I'm not aware of it having been a requirement imposed upon a regulator previously. From the evidence of Mr Hadgkiss and Jenkinson, we find not only this justification for the reintroduction of a code but also a well-developed

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framework of what any such code should include and how it should operate. As the Commissioner has touched on on numerous occasions during this opening, the Productivity Commission has recently recommended the introduction of a code here in Queensland. If we can bring up page 31 of Mr Hadgkiss's statement, paragraph
5 149. We see here the extract, at least one of the relevant extracts, from the Queensland Productivity Commission's report.

So after hearing the evidence of Mr Hadgkiss and Jenkinson today, the Commissioner may wish to give consideration to a comparable recommendation and indeed a recommendation that any such code be administered by an independent
10 regulator. And that's because, at least on the evidence of Mr Hadgkiss and Jenkinson, the adoption of those measures would drive improvements in productivity in the Queensland construction industry, would lift standards of behaviour and conduct and again deliver greater value for money for Queensland taxpayers.

15 **COMMISSIONER:** Yes, I'm just reading from the government's response to the Productivity Commission, which I don't have a date, but you'll be able to dig up the date. Page 12, recommendation 7:

20 "The government supports effective enforcement of the new code. Development and enforcement of the new code will be subject to the outcomes of this Commission of Inquiry."

25 **MR McLEAN:** With your leave, Commissioner, I might hand up a written outline that addresses various matters that I've raised this morning.

30 **COMMISSIONER:** Very well. What do you want me to do with the written outline? You've done a very - sorry, I cut you off. You've done a very comprehensive job in opening this case study. What do you want me to do with this written opening?

MR McLEAN: I might ask, Commissioner, that this opening be marked.

35 **COMMISSIONER:** I don't think I need to ask the other parties at the bar table if they object. It's merely an opening, so - but perhaps just to be cautious I should actually ask. Does anyone have any objection to this opening being received in this form?

MR DE JERSEY: None from the State, Commissioner.

40 **MR O'GRADY:** We don't object to it being received. It's obviously not evidence; it's a submission.

COMMISSIONER: Of course.

45 **MR O'GRADY:** No objection.

COMMISSIONER: Yes. What will we mark this as? JMC1.

<EXHIBIT JMC1 WRITTEN OPENING

5 **MR McLEAN:** Certainly, Commissioner. So unless there's anything else from the Commissioner at this juncture, I note the time. That's the end of my opening.

COMMISSIONER: Well, Mr Hadgkiss is in the body of the courtroom, but we might take our morning break and hear from Mr Hadgkiss at 11.30 if that's convenient.

10 **MR McLEAN:** It is for my part. Thank you.

COMMISSIONER: All right.

15 **<THE HEARING ADJOURNED AT 11.16 AM**

<THE HEARING RESUMED AT 11.30 AM

20 **COMMISSIONER:** Mr McLean, you're going to call Mr Hadgkiss?

MR McLEAN: That's right, Commissioner. I understand he's in the courtroom.

COMMISSIONER: Mr Hadgkiss, will you come forward to the witness box, please.

25 **<NIGEL CLIVE HADGKISS, SWORN**

<EXAMINATION BY MR McLEAN

30 **COMMISSIONER:** Please take a seat, Mr Hadgkiss. I think you've got your statement there in front of you, together with the annexures. You might want a smaller version of that if you've - just the actual statement itself. That might be of some assistance to you. Sorry, I'm rather taking over your task, Mr McLean.

35 **MR McLEAN:** It's appreciated, Commissioner. Thank you.

COMMISSIONER: I'll leave this to you.

40 **MR McLEAN:** Thank you. Mr Hadgkiss, can you please state your full name for the record?

MR HADGKISS: My full name is Nigel Clive Hadgkiss.

MR McLEAN: Is your address presently known to this Commission?

45 **MR HADGKISS:** It is.

MR McLEAN: And you've prepared a statement of evidence that you wish to give today?

MR HADGKISS: I have, yes.

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MR McLEAN: I understand you have a copy of that statement available to you in the witness box there?

MR HADGKISS: That is correct.

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MR McLEAN: Now, is that statement dated 8 April 2026?

MR HADGKISS: Correct.

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MR McLEAN: And it consists of 150 paragraphs with 18 annexures?

MR HADGKISS: Yes. Correct.

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MR McLEAN: I understand there's one correction you wish to make to that statement. If I can ask you to turn to paragraph 78 on page 16 -

MR HADGKISS: Yes.

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MR McLEAN: - should the preference at paragraph 78 to (iii) -

MR HADGKISS: (iii).

MR McLEAN: - be a reference to (ii)?

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MR HADGKISS: It should be (ii), yes.

MR McLEAN: And with that correction, are the contents of that statement otherwise true and correct?

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MR HADGKISS: They are.

MR McLEAN: Now, I understand, Mr Hadgkiss, that you have extensive experience with -

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COMMISSIONER: Do you want to tender the statement?

MR McLEAN: Sorry, Commissioner, of course. I tender that statement.

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COMMISSIONER: Are there any objections? No. How many annexures did you say there were, Mr McLean?

MR McLEAN: There are 18 annexures.

COMMISSIONER: 18. So witness statement of Nigel Clive Hadgkiss dated 8 April 2026, 31 pages - 32 pages, 150 paragraphs with 18 annexures will be - as amended in the witness box at paragraph 78 - will be exhibit NCH1.

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<EXHIBIT NCH1 WITNESS STATEMENT OF NIGEL CLIVE HADGKISS DATED 8/4/2026, 32 PAGES, 150 PARAGRAPHS WITH 18 ANNEXURES, AS AMENDED IN THE WITNESS BOX AT PARAGRAPH 78

10 **MR McLEAN:** Thank you, Commissioner. Mr Hadgkiss, you have extensive experience with regulatory bodies in the construction sector; is that right?

MR HADGKISS: Yes. From - it would have been from 1999 until 2017.

15 **MR McLEAN:** And your most recent appointment was as commissioner of the Australian Building and Construction Commission?

MR HADGKISS: That's correct.

20 **MR McLEAN:** You held that role from 2016 to 2017?

MR HADGKISS: Correct.

25 **MR McLEAN:** And in high-level terms, can you explain to the Commission what your role as commissioner of the ABCC entailed?

MR HADGKISS: High-level role, it was responsible for the strategic direction of the agency, its resourcing and its reporting to the Parliament through the relevant minister.

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MR McLEAN: And where did you work prior to your appointment as the commissioner of the ABCC?

35 **MR HADGKISS:** I was director of a body called the Fair Work Building and Construction Inspectorate.

MR McLEAN: Can you recall what period you worked for the Fair Work Building -

40 **MR HADGKISS:** It was immediately prior to taking up the commissionership of the ABCC. It would have been from 2013 to 2016.

MR McLEAN: And what about prior to your appointment to the FWBC?

45 **MR HADGKISS:** Prior to that, I was director of a body called the Victorian Construction Code Compliance Unit as part of Department of Treasury within the Victorian Government.

MR McLEAN: And what did your role as director of the CCCU, to use the shorthand, entail?

5 **MR HADGKISS:** Well, initially it was to establish some guidelines, Victorian guidelines, for the building and construction industry in Victoria. Then it was to progress its development, and implementation of that agency.

MR McLEAN: Can you recall what period you were director of the CCCU?

10 **MR HADGKISS:** It would have been the year prior to - it would have been 2012 to 2013, from recollection.

MR McLEAN: I understand you also have a wealth of other regulatory experience, Mr Hadgkiss?

15 **MR HADGKISS:** Prior to that I was the executive director of public prosecutions New South Wales. Prior to that, deputy commissioner of the then Australian Building and Construction Commission, ABCC. Prior to that, director of the Building Industry Taskforce, a Commonwealth body. And prior to that, director of
20 an interim Building Industry Taskforce which came out of the then Cole royal commission into the building and construction industry.

MR McLEAN: And in your statement, you regularly refer to this concept of a code. Can you explain to the commission, at least in high-level terms, what you mean
25 when you refer to a code?

MR HADGKISS: A code is a set of principles established by government that contractors are required to adhere to if they wish to undertake
30 Commonwealth-funded work.

MR McLEAN: So we see this at paragraph 17 of your statement, Mr Hadgkiss. Are you able to explain, again in high-level terms, the mechanics of how a code operates?

35 **MR HADGKISS:** As I say, firstly it establishes a set of rules or standards that reflect the government's aspirational goals in relation to behaviour and best practice in the industry. Secondly, it requires participants in the industry who wish to tender for or be involved with government-funded building and construction work to comply with those rules and those standards. And finally, it provides a mechanism
40 by which participants can be excluded from involvement with government-funded building and construction work should they fail to commit or adhere to those rules and those standards.

MR McLEAN: You've mentioned being previously involved with administering codes. I believe your evidence was during your time with the ABCC, with the
45 FWBC. You mentioned your time with the CCCU in Victoria. Can we take from that that a code is not a novel concept?

MR HADGKISS: No, the code I think originated with yet another royal commission into the industry called the Gyles royal commission, who made recommendations for a code which was subsequently adopted by most states and territories around Australia.

5

MR McLEAN: And Mr Operator, if we could please pull up page 249 of Mr Hadgkiss' statement, which is annexure NH7. I understand, Mr Hadgkiss, that here you've set out what's a rather comprehensive chronology of the use of codes and guidelines at the federal level since at least 1997; is that correct?

10

MR HADGKISS: Yes.

MR McLEAN: Do you know if there's currently a code in place at the federal level?

15

MR HADGKISS: From recollection, I think there's a 2022 code, but it's a very much watered-down version of previous codes.

20

MR McLEAN: And you mentioned earlier that there's state governments that have implemented codes of practice. What are the more recent examples of state governments implementing codes that you're aware of?

25

MR HADGKISS: 2012/2013, I was - when undertaking that head of the Victorian Construction Code Compliance Unit, I also assisted the then-Queensland Government in establishing a code here in Queensland.

MR McLEAN: So the most recent iterations of codes at a state level that you're aware of are the Victorian code and the Queensland guidelines?

30

MR HADGKISS: And they were subsequently - both codes were abolished with changes in government.

MR McLEAN: And I'll come to that. Can you recall, though, what prompted those codes being implemented in the first place?

35

MR HADGKISS: I think it was governments seeking greater productivity from the building - their building and construction industries.

MR McLEAN: And was there any particular need or justification for the introduction of codes at the state level at that time?

40

MR HADGKISS: Yes, because the - the years I've mentioned, the - there was a change in federal government and the abolition of the then federal code, so those two respective governments saw a need to implement their own codes, to fill the void as it were. Because they'd been quite effective.

45

MR McLEAN: Which had been quite effective, sorry, the federal -

MR HADGKISS: The Commonwealth code and guidelines. I say effective in terms of productivity, safety etcetera.

5 **MR McLEAN:** Now, you mentioned both the Queensland guidelines and Victorian code were repealed shortly after that period.

MR HADGKISS: Shortly after the new government's coming into being federally.

10 **MR McLEAN:** And are you aware of why those state-level documents were repealed?

MR HADGKISS: Political expediency, I think.

15 **MR McLEAN:** So you've been involved, at least personally, with administering four iterations of the code.

COMMISSIONER: What did you say then? How many?

20 **MR McLEAN:** Four different iterations of a code. If you can bring up paragraph 21 and 22 of your statement, Mr Hadgkiss. So based on your experience in administering those different codes, do you have any observations about the effect a code is likely to have on standards of behaviour and productivity in the construction industry?

25 **MR HADGKISS:** Well, in every jurisdiction where I've observed an active regulator administering an effective code, there's been a corresponding improvement in productivity, safety and freedom of association within the industry. Those improvements result from the imposition of rules and standards that the industry participants are required to adhere to. Secondly, industry participants are incentivised
30 to ensure they adhere to those rules and those standards so to better position themselves to secure involvement with government-funded construction projects and the deterrent effect of a regulator that's empowered to investigate instances of non-compliance and, if necessary, commence enforcement action.

35 **MR McLEAN:** If we bring up, Mr Operator, paragraph 25 of Mr Hadgkiss' statement. Mr Hadgkiss, would you mind just having a look at that paragraph and explaining to the Commission what the data that you refer to here in paragraph 25 demonstrates?

40 **MR HADGKISS:** Well, succinctly put, sub para (a) is from 2000 to 2005, the industrial dispute rate was five times the all-industries average. And the second sub para, I make the statement that from 2005 to 2012, that's when the ABCC was operating, that rate of disputes dropped to 9.6, which was then twice the
45 all-industries average. And then finally, in the 12 months following the disbanding of the ABCC, which would have been 2013, the industry dispute rate then increased to, again, more than four times the all-industries average.

MR McLEAN: So that middle period that you've just referred to, 2005 to 2012, is that the period in which the ABCC was in operation?

MR HADGKISS: Yes. 2012 or '13 being the year it was disbanded.

5

MR McLEAN: And so is the effect of your evidence there really that there is a significant drop in the level of industrial disputation and disruption in the period the ABCC is in operation?

10 **MR HADGKISS:** When there's no enforcement body around, yes.

MR McLEAN: If we could bring up, Mr Operator, paragraph 27, please. And again, Mr Hadgkiss, a similar question: if you could read that paragraph to yourself and then just explain what the data you refer to in paragraph 27 really conveys about the
15 role of a regulator.

MR HADGKISS: Well, as I say there, a similar trend was observed in relation to the activities of the second iteration of the ABCC. That was from December '16 to when it was disbanded at the beginning of 2023. So from '13 to '16, when the ABCC
20 was operational, industrial disputes increased back to four times the all-industries average. And then the six-year period from '17 to '22, again when the ABCC was operational, the number of industrial disputes in the industry fell to less than twice the all-industries average. And then finally, in the three-year period '23 to '25, that was the years following the disbanding of the ABCC, industrial disputes in the
25 industry increased to an all-industries average of two point - sorry, to more than two and a half times the all-industries average.

MR McLEAN: So, again, I take from that that you're identifying a similar trend: a significant decrease in the level of industrial disputation and industrial disruption in the period in which the ABCC and indeed the 2016 code were in operation?
30

MR HADGKISS: Yes.

MR McLEAN: If we could bring up paragraph 30 on the monitor, please. You
35 identify here, Mr Hadgkiss, various components that you suggest should be included in any code. At least at a high level, can you please identify for the Commission what those components are?

MR HADGKISS: Well, the first point I make there is the tenderer's right to manage
40 the resourcing of their operations. The second one refers to right-of-entry mechanisms, the third one to freedom of association, and the fourth one, workplace relationship management plans, which give effect to the rules of the kind that I've set out above. And then finally, the need for an establishment of an active investigative and enforcement body.
45

MR McLEAN: I'll come back to each of those components in turn, Mr Hadgkiss, but before I do, again, if we could bring up page 30 of Mr Hadgkiss' statement on the

monitor, please, and specifically paragraph 145. Mr Hadgkiss, I might just ask you some questions about paragraph 145 and 146 of your statement. We see here at paragraph 145 that you express a view that Queensland should move to implement a new code?

5

MR HADGKISS: Yes.

MR McLEAN: I assume that remains your view?

10 **MR HADGKISS:** Absolutely.

MR McLEAN: And are you aware that Queensland already has the Building and Construction Code of Practice 2000?

15 **MR HADGKISS:** Yes.

MR McLEAN: In light of that, why is your view that a new code is then required?

20 **MR HADGKISS:** There's a need for a more robust code to deal with the problems that the industry's confronting.

MR McLEAN: And when you say a more robust code, what do you mean by that?

25 **MR HADGKISS:** Well, as I say, there is a need for - a pressing need for reform of industrial practices and behaviours in the current building and construction industry in Queensland. As I say there, you know, a code would go a long way to develop that reform.

30 **MR McLEAN:** And if you have a look at paragraph 146 of your statement, do you have a view as to what sort of matters the current 2000 code of practice is directed to?

35 **MR HADGKISS:** Yeah, an emphasis on continuous improvement, document management and environmental impacts.

MR McLEAN: And what does the 2000 code say, if anything, about workplace relations matters?

40 **MR HADGKISS:** Well, it doesn't adequately deal with many of the matters I've identified already, which are, you know, integral to having an effective industrial code.

45 **MR McLEAN:** In that context, are there any previous versions of codes that you consider would be suitable to use as a model for a new code if one was to be implemented here in Queensland?

MR HADGKISS: Well, certainly something I'm familiar with is the Victorian code and guidelines that I've referred to from 2013.

5 **COMMISSIONER:** Sounds like you were instrumental in creating the Victorian code and guidelines because of your history as deputy commissioner of the first iteration of the ABCC and before that as a director of the Building Industry Taskforce and the interim Building Industry Taskforce?

10 **MR HADGKISS:** That's correct, Commissioner. My initial job taking up that role was formulating guidelines which the Premier of the day subsequently launched, and the building industry was required to adhere to that code and its guidelines in order to obtain government-funded work.

15 **MR McLEAN:** And just before I take you back to the particular components of a code, Mr Hadgkiss, if you could just have a look at paragraph 141 of your statement. Now, at paragraph 41, you recommend against the use of transitional periods when introducing a code. By transitional periods, I understand you're referring here to the period between when a code is announced and when compliance is required; is that right?

20 **MR HADGKISS:** Yes, correct.

MR McLEAN: Why do you consider transitional periods of that kind to be a problem?

25 **MR HADGKISS:** In my experience, I've observed significant pressure being exerted on contractors and subcontractors to entered into more favourable enterprise agreements before any code comes into operation. It's a means of avoiding the prescriptions that the code will otherwise introduce.

30 **MR McLEAN:** So do I take from that that where there's been a transitional period, you've seen the behaviour in the industry, or the pressure exerted on contractors, become even worse for that short period?

35 **MR HADGKISS:** In the - in the days leading up to its implementation, yes, or official announcement, as it were.

MR McLEAN: And so is it fair to say, then, in that context that your view is any code should commence shortly after, if not immediately upon -

40 **MR HADGKISS:** Immediately upon announcement, yes, that's my recommendation.

45 **MR McLEAN:** Now, Mr Operator, if we could perhaps bring paragraph 30 back up on the screen, please.

COMMISSIONER: This might not be a question for Mr Hadgkiss, it might be a question for you, Mr McLean, but I just wonder whether they should operate retrospectively in the sense that you have a situation - maybe it would be terribly unfair to do so - you have a situation where the federal code wasn't in operation, and it seemed from Mr Johnson's evidence that there was a breach of the code in relation to the right-of-entry provisions, had it been in operation, but it wasn't in operation. I just wonder whether your recommendation would go so far as to say that those behaviours which predate the imposition of a state code should be taken into account in assessing whether a builder should get government work in the future.

And I know that's a question without notice, but I just wonder whether these codes, having been around for so long and the norms that they're attempting to create and institutionalise having been ignored by a major builder, but not unlawfully, just ignored because of the federal code wasn't in practice, whether that should be taken into account, that not only should you implement the rules as at the date of announcement, but you should look - go backwards and deal with bad behaviours that have occurred immediately prior to the code. Maybe that would be terribly unfair. I don't know. But if you're trying to create a system whereby you don't have this chopping and changing and you're trying to institutionalise productive behaviours, protect right of entry, protect freedom of association, I just wonder whether you can allow those sort of behaviours to go, in effect, unremarked upon.

MR McLEAN: It would certainly send a strong message, and it may be that there needs to be some nuance in the proposal whereas - whereby some instances of non-compliance would have that consequence and others wouldn't, depending on the nature of the non-compliance with the code that is introduced.

COMMISSIONER: Yes. As lawyers, we've got a very strong aversion to imposing a rule that has retrospective effect, so naturally you shy away from the idea that you would impose a rule that went back and examined behaviours prior to that rule coming into effect. But I just posit that question.

MR McLEAN: I'll give it some further consideration, Commissioner.

COMMISSIONER: I don't know if you've got any view about that, Mr Hadgkiss?

MR HADGKISS: No, I think that the trick is that the - when a contractor is bidding for government work, the relevant agency can look at their past behaviours. And when they say, "We do such and such," on their site, "We will, if we win this contract, our practices will be such and such," but then you look at their retrospective behaviour and say, "It's a bit of a bridge too far," so you can consider retrospectively what they've been doing up to the time of tender.

COMMISSIONER: I see. And is that what you did?

MR HADGKISS: Indeed. I talked to - and the greatest source were subcontractors. Subcontractors would talk to our investigators about the behaviour of head

contractors who were bidding for work and how they'd been treated on sites and right of entry and freedom of association and all those fundamentals. They were the enormous source of knowledge as to the head contractor's behaviour, because the head contractor would say, "We're goody-goody two shoes," and the contractors were saying they were, you know, something like Rasputin.

5
10 **COMMISSIONER:** So you might rule a contractor out on the basis that you didn't believe what they were saying in their workplace relations management plan on the basis -

MR HADGKISS: On the basis of what the industry has told us about their previous behaviour.

15 **MR McLEAN:** That might be the solution. So if we could bring up paragraph 30, please. Mr Hadgkiss, I'm going to ask you just to provide the Commissioner with an overview of each of these components in turn, the sorts of practices that each are directed to. If we start perhaps with the first of these, which is rules that preserve a tenderer's right to manage the resourcing of its operations, you give some evidence about that component of the code from paragraph 32 of your statement. What do you mean when you refer to rules that preserve a contractor's right to manage the resourcing of its operations?

20
25 **MR HADGKISS:** Well, particularly a contractor's making a competitive assessment of the labour required. That's what really springs to mind.

MR McLEAN: And in your statement you've identified various examples from the Victorian code that you suggest are effective examples of rules of that kind?

30 **MR HADGKISS:** Yes.

MR McLEAN: And I assume that's because you consider these particular provisions from the Victorian code to be effective examples of addressing these sorts of practices?

35 **MR HADGKISS:** Yes.

MR McLEAN: Perhaps, Mr Operator, if we could bring up the relevant extract of the Victorian code. I think it was found on page 270. And in particular part 6.1(b). Thank you. Now, if we start with 6.1(b)(i), Mr Hadgkiss, you give some evidence about this clause at paragraph 36 and 37 of your statement.

40
45 **MR HADGKISS:** Yes.

MR McLEAN: What practices was the clause at (i) directed towards?

MR HADGKISS: The arrangements that prescribe the number of employees or subcontractors that may be employed on a particular site. And then I give a common example of arrangement known as minimum manning.

5 **MR McLEAN:** And what's minimum manning, Mr Hadgkiss?

MR HADGKISS: Well, it's minimum head count of tender - the tenderer is required to engage a minimum number of employees regardless of their particular labour requirements. Invariably imposed by the union.

10

MR McLEAN: And what's the problem or the difficulty with arrangements of that kind?

15 **MR HADGKISS:** Well, it's - as I say, it's self-evidently inefficient. The project's required to carry surplus head count. And in the case of a code, typically at the government's expense.

20 **MR McLEAN:** Moving to the clause at 6.1(b)(ii), what practices was that clause directed to?

MR HADGKISS: That was, as I was saying, restricting the engagement of persons by reference to the type of employment being offered by the employer.

25 **MR McLEAN:** And what's the problem with those sorts of arrangements?

MR HADGKISS: Well, firstly, it limits the employment of casual daily-hire employees. And I say:

30 "In circumstances where building and construction projects necessarily fluctuate in their resourcing requirements as they move through different phases, restrictions on the type of employment that may be offered deprive employers of the flexibility required to meet those fluctuations and curtail the ability of the tenderer to acquit the work in the manner that it deems most efficient. That again leads to over-resourcing of projects and the total cost of completing work being higher than it otherwise ought to be."
35

MR McLEAN: And at paragraph 49 of your statement you give some evidence -

40 **COMMISSIONER:** The other issue, I think, Mr McLean - Mr Hadgkiss might have some view on this, might not - is that if you prevent casuals being employed by the head contractor, you are then incentivising the engagement of labour hire. And Mr Watson gave some evidence - hasn't been tested yet; he's going to be cross-examined - but at least in Victoria, and there's some evidence - I can't remember from which witness - that this is happening in Queensland, that labour hire
45 is - sorry, there's incentive to engage labour hire, and that is there's a capacity for those suppliers to be corrupted in various ways that Mr Watson gave about. So not only have the problem Mr Hadgkiss talked about, but - which is you can't actually

have top-up labour directly, but it creates another problem. Maybe. Perhaps. I don't know what you think about that, Mr Hadgkiss.

5 **MR HADGKISS:** Well, my experience with labour hire as well, it could be labour hire only recommended by the union with all that goes with it: compulsory union membership and paying more than the contractor's required to pay at a - on a profitable basis.

10 **MR McLEAN:** Subclauses (iv) and (v) of the Victorian code then deal with obligations that are imposed on employers to consult with or indeed seek the approval of unions in relation to engagement decisions. What's the difficulty with those sorts of arrangements?

15 **MR HADGKISS:** Sorry, where are you referring to?

MR McLEAN: Paragraph 47 to 49 of your statement you give some evidence -

MR HADGKISS: Right.

20 **MR McLEAN:** - about subclauses (iv) and (v) of the Victorian code?

MR HADGKISS: Yes. As I say, the prohibiting of arrangements that require a participant to consult with or seek the approval of a union in relation to the source or number of employees to be engaged and the type of employment being offered to employees.

MR McLEAN: And what's the problem with those?

30 **MR HADGKISS:** Subsection (iv).

MR McLEAN: That's subsection (iv), and what's the problem with subsection (iv) of the arrangements set out? Described by it?

35 **MR HADGKISS:** Well, it's divesting the employer's right to employ the right people at the right time in the right numbers. You're handing that over to a third party, ie, the union.

MR McLEAN: What implications does that tend to have for productivity?

40 **MR HADGKISS:** Well, you're taking the productivity basis away from the owner of a site to another party, ie, the union.

MR McLEAN: At paragraph 57 of your statement you give some evidence about the arrangements -

45

COMMISSIONER: And also, as Mr Hadgkiss says in his statement at 49 to 51, it's got the potential to lead to corruption. And the way Mr Hadgkiss describes it is jobs

for the boys, but that might be a - sorry, he says "more than simply a 'jobs for the boys' dynamic" in paragraph 51 of his statement.

5 **MR McLEAN:** We see the evidence there of -

COMMISSIONER: Beg your pardon?

10 **MR McLEAN:** We see the evidence there of the union placing particular or selected employees or subcontractors on construction projects who have, as a result of that, loyalty to the union.

COMMISSIONER: Is that a big concern for you, Mr Hadgkiss, this sort of behaviour where the union can, in effect, veto or control who comes onto site?

15 **MR HADGKISS:** Well, my experience was that until the building contractor is more frightened of the regulator than he is of the union, there will be no reform. That's the whole point of reform, is reversing that fear. But certainly my experience was that the employers were more fearful of the union than they were of enforcement bodies.

20 **COMMISSIONER:** Enforcement by -

25 **MR HADGKISS:** Until we had a robust body like the ABCC, when they had to, because it was biting the hand that was feeding them, as it were. They were reliant upon government-funded work. Most head contractors were. It was a big part of their business. So therefore they were beholden to the government and a government agency like an ABCC which could withdraw that capacity to contract government work. A strong incentive.

30 **MR McLEAN:** So if we keep working through these clauses, Mr Hadgkiss. Paragraph 57 of your statement picks up a question that the Commissioner just asked you. The clause at (vi) of the extract that we have on screen prohibits arrangements that prescribe the terms and conditions on which subcontractors might be engaged. Is there anything else you want to say about the problem with those sorts of practices?

35 **MR HADGKISS:** Well, they effectively preclude subcontractors competing on price and performance.

40 **MR McLEAN:** If you look at paragraph 55 of your statement, you there express some views about the arrangements that are prohibited by (vii) of this extract of the Victorian code. Now, (vii) prohibits arrangements that prescribe the scope of work or tasks that may be performed by employees or subcontractors. So it's effectively a demarcation prohibition.

45 **MR HADGKISS:** Yes.

MR McLEAN: What's the difficulty with the type of arrangements that that clause is directed to stopping?

5 **MR HADGKISS:** Well, they're directed to preventing a variety of unproductive practices, including demarcation of work and restrictions on the work that can be allocated to subcontractors.

MR McLEAN: And what effect does that have for productivity?

10 **MR HADGKISS:** Well, higher construction costs and longer completion times.

MR McLEAN: If you look at paragraphs 59 to 61 of your statement, in those paragraphs you give some evidence about the type of arrangement that (viii) of the extracts of the code that we have on the screen prohibits. We see at (viii) the
15 Victorian code proscribed arrangements that provide for or permit unregistered written agreements. Can you explain to the Commission what the issue with the use of unregistered written agreements is?

20 **MR HADGKISS:** Well, succinctly put, unregistered written agreements serve to constrain productivity and add to construction costs, and they impose restrictions on rostering, entitlements to special allowances and inefficient hiring practices.

MR McLEAN: And these sorts of unregistered written agreements, are they
25 different to registered agreements that are conventionally registered under the Fair Work Act or the various state-based equivalents?

MR HADGKISS: Yes.

30 **MR McLEAN:** And so does the fact that those agreements are not registered under the Fair Work Act have any implication for the likelihood for industrial disruption or industrial disputation?

MR HADGKISS: Absolutely.

35 **MR McLEAN:** And what's that implication?

MR HADGKISS: Well, the - easier to take strike action.

40 **MR McLEAN:** And that's because it's not permissible to take strike action -

MR HADGKISS: With a written agreement, yes, with a registered agreement.

MR McLEAN: With an agreement in place that's registered under the Fair Work
45 Act?

MR HADGKISS: Indeed.

MR McLEAN: So I imagine that effectively breeds an environment where the union or the employees just consistently keep asking for more -

MR HADGKISS: Indeed.

5

MR McLEAN: - and keep taking industrial action until their demands are satisfied, if they ever are?

MR HADGKISS: There's an expression "feeding the beast".

10

MR McLEAN: If you also just have a look at paragraphs 45 to 46 of your statement. Paragraphs 45 to 46, you give some evidence in relation to the arrangements that are prescribed by (ix) of the Victorian code that we have on the screen. And that's really about practices that limit the right of the employer to decide on the order of
15 redundancies. So can you explain to the Commissioner what the difficulty with arbitrary restrictions on the order of redundancies is?

MR HADGKISS: Well, as I say, they invariably result in higher costs and longer completion times, and there's a disincentive to work efficiently or productively.

20

MR McLEAN: And why is there a disincentive to work -

MR HADGKISS: Well, because senior and long-standing workers are - they know their position on the project's protected.

25

MR McLEAN: So the effect of these clauses, then, I take it, is - or these sorts of arrangements is that irrespective of who might be the most qualified or suited for a particular piece of work, the first person taken off the job is either the last person to join it -

30

MR HADGKISS: Yes.

MR McLEAN: - or the one with the least amount of seniority.

35

MR HADGKISS: So the first person on the job could be Mr Lazy, but he gets to keep his job, and Mr Efficient, who was last on, is sacked.

MR McLEAN: So that interferes with the employer's right to undertake an assessment of what work needs to be undertaken -

40

MR HADGKISS: There is no assessment.

MR McLEAN: No assessment.

45

MR HADGKISS: It's simply last on, first out.

MR McLEAN: The second of the components that you've suggested that a code should include are rules that preserve legislated right-of-entry mechanisms. So I take it from that -

5 **COMMISSIONER:** Just before you come to that, because you're going to right of
entry and freedom of association in a moment, I take it, Mr McLean. I just want to
understand your expertise, Mr Hadgkiss. This document we're looking at is the 2013
Victorian code, which I think your evidence suggests that you were the author or
prime author of this code based on your experience for almost a decade earlier in the
10 ABCC, Building Industry Taskforce and interim Building Industry Taskforce on a
national level. Is that fair?

MR HADGKISS: Yes, that's what - the prime reason I was taken away from my
DPP role, was to establish this code and then a code - a construction code
15 compliance unit.

COMMISSIONER: In Victoria?

MR HADGKISS: In Victoria.
20

COMMISSIONER: And then you had some involvement in -

MR HADGKISS: Input into the creation of a similar body here in Queensland.

25 **COMMISSIONER:** And this might be getting too far into the weeds, but what is
the - was the Queensland code a carbon copy of the Victorian code, or are there some
changes that we have to be aware of, or are they just fairly minor in the scheme of
things?

30 **MR HADGKISS:** No, from memory, there was a great interest in the Victorian
code. Whether it actually emulated it word for word, I can't recall. They
certainly - the officials I dealt with and the minister of the day were really about the
effectiveness of a code.

35 **COMMISSIONER:** Were asking about the effectiveness?

MR HADGKISS: About the effectiveness of a code and the behaviour of the
industry as a result of having a code and a code compliance unit.

40 **COMMISSIONER:** So from your perspective, your recommendation would be we
look at the Victorian code as a suitable model for Queensland.

MR HADGKISS: From my experience, yes, in terms of the efficiency and
effectiveness of that unit. But, as I've given in evidence, it was disbanded with the
45 change of government. So it's - the final fruits of its labour were never really
revealed. But certainly it changed behaviour in the industry, in my experience.

COMMISSIONER: Final fruits of the labour of the Queensland code or the Victorian code?

5 **MR HADGKISS:** No, of the Victorian code, because I went - that's when I took up the position with the - back with the Commonwealth.

10 **MR McLEAN:** If I move to the right-of-entry component, Commissioner. Where you do refer to right-of-entry mechanisms, Mr Hadgkiss, you're referring to right-of-entry mechanisms under the Fair Work Act principally?

MR HADGKISS: Yes.

15 **MR McLEAN:** In your experience, is it common for the right-of-entry provisions under the Fair Work Act to be ignored on construction sites?

MR HADGKISS: Yes.

20 **MR McLEAN:** And does that extend to Queensland, construction sites in Queensland?

MR HADGKISS: More so Queensland than most other jurisdictions.

25 **MR McLEAN:** Mr Operator, if we could pull up annexure MH12, please. That's found from page 377. Mr Hadgkiss, I understand this is a table that sets out some 25 contraventions of industrial laws by the CFMEU in Queensland in the past 10 years?

MR HADGKISS: Yes.

30 **MR McLEAN:** And the majority of those contraventions concerned right of entry breaches; is that right?

MR HADGKISS: Correct.

35 **MR McLEAN:** Now, if you bring up paragraph 69 of your statement just in front of you there, you give some evidence in your statement about why the right-of-entry mechanisms being ignored is problematic. Can you just explain to the Commission what the issue with that behaviour is?

40 **MR HADGKISS:** As I say, the improper exercise of rights of entry disrupts productive work, it presents a risk to safety as permit holders move around a site, and it often serves as a precursor to the organising of unlawful industrial action.

45 **MR McLEAN:** So you observed a correlation between non-compliant rights of entry and unlawful industrial action following?

MR HADGKISS: Yes. Very strong.

MR McLEAN: If we just bring up page 273, please. Mr Hadgkiss, you see here at the bottom of page 273, and indeed across on to the top of page 274, the right-of-entry provisions from the Victorian code. Is this the sort of mechanism that you consider is effective and appropriate that a code include?

5

MR HADGKISS: Yes.

MR McLEAN: The third of the five components you identified were rules that protect freedom of association. Again, if we can pull up 7.1(a) of the Victorian code, which is just at the top of page 273 there. Mr Hadgkiss, you've given some evidence at 79 to 80 of your statement. As it concerns the clauses included there at (ii), do you mind just explaining to the Commission what no ticket, no start means?

10

MR HADGKISS: No ticket, no start refers to arrangements which dictate that only workers holding current union membership may work on a particular site. I talk about no-card days.

15

MR McLEAN: Show-card days?

MR HADGKISS: Show-card days.

20

MR McLEAN: What's a show-card day?

MR HADGKISS: Show-card day is an occasion invariably when work stops, the site is brought to a standstill, all the workers are paraded and have to prove physical proof of current union membership.

25

MR McLEAN: And so I assume those sorts of practices grate against the idea of freedom of association?

30

MR HADGKISS: Very much so. Compulsory unionism.

MR McLEAN: And by that, you mean that they have the practical effect of introducing compulsory unionism on to a site?

35

MR HADGKISS: No ticket, no start.

MR McLEAN: Now, if you have a look at pages - or paragraphs 94 to 96 of your statement. Mr Operator, if we could scroll down to (xi), please. Mr Hadgkiss, can you explain what a non-working shop steward is?

40

MR HADGKISS: He's a shop steward who is compulsorily employed by the contractor but performs no meaningful construction work. He attends to union business, union meetings etcetera.

45

MR McLEAN: And what's the problem or the difficulty with the hiring of non-working shop stewards?

MR HADGKISS: Well, you're hiring somebody who is effectively not doing work for the aims of the employer. He's doing work - or she - it is he - purely the work of the union and being paid by the employer. It's not very good business sense.

5

MR McLEAN: And so those - the hiring of shop stewards, or at least non-working shop stewards, is inconsistent with both freedom of association but also productivity in your -

10 **MR HADGKISS:** In my experience, those individuals concerned, because they have no meaningful work to do, would also play mischief on sites, disrupt work etcetera, to make their presence felt, justifiable.

15 **COMMISSIONER:** You said in your experience, you said he or she but then you corrected yourself and said he. Was there a reason you did that based on your experience of the type of people that get appointed?

20 **MR HADGKISS:** Commissioner, it's a male-oriented industry. There are few or far females - certainly in my time - no toilet facilities, no shower facilities for females. It's - and my experience, females were badly treated when they were brought on by subcontractors. So yeah, I corrected myself. It is a male-oriented industry. Certainly the CBD or major construction companies.

25 **COMMISSIONER:** And does that apply particularly to the choices by the union of who should become a non-working shop steward or non-working delegate?

MR HADGKISS: Yeah, in my - I can't recall any females being appointed to those roles.

30 **COMMISSIONER:** In, what, 20 years of - or close.

MR HADGKISS: I'm talking about major construction sites, yes. I'm not talking about suburbia. Wherever the CFMEU prevailed.

35 **MR McLEAN:** If we could, Mr Operator, highlight (xii), please. Mr Hadgkiss, this was an issue that was particularly topical during your time with the ABCC. Can you explain to the Commission what the issue or your concern is with the display of large amounts of union paraphernalia on construction sites?

40 **MR HADGKISS:** Well, flags in particular are an indication this is a union-run site and woe betide you if you're not a member of the union. There is also the insignia, which I found particularly abhorrent, where clothing - employers were happy to fund the clothing for workers, but they were also - there was an insistence that they put on CFMEU-endorsed logos, which didn't sit comfortably with employers, but they were
45 obliged to comply.

MR McLEAN: And again, I assume that contradicts the idea of freedom of association?

MR HADGKISS: Flies in the face of it, yes.

5

MR McLEAN: And do you have any observations about what a saturation of union paraphernalia - what effect that would have for the behaviour of union officials on that site?

10 **MR HADGKISS:** It emboldens them, the flying of flags from cranes, various graffiti, posters that litter building sites. And when employers tried to remove it, they were in serious trouble.

MR McLEAN: By serious trouble, what do you mean by that?

15

MR HADGKISS: Well, in some instances I can recall harassment, violence being put upon them.

MR McLEAN: By who?

20

MR HADGKISS: By union officials.

MR McLEAN: So a union official would visit violence upon the construction company -

25

MR HADGKISS: Yes.

MR McLEAN: - because the construction company removed the union's flag from the construction -

30

MR HADGKISS: They were told to basically put back the posters etcetera.

COMMISSIONER: Was this an issue that you had, in terms of enforcing this requirement upon head contractors in Queensland or throughout Australia?

35

MR HADGKISS: Queensland and Victoria were particularly bad. If there was - if I describe a lead table, Victoria would be first, Queensland would be second and perhaps Western Australia third. And New South Wales was pretty tame compared with the industrial unrest in the other jurisdictions.

40

COMMISSIONER: And in relation to this particular issue about logos, clothing, mottos, other indicia, was that an issue that you had problems educating or directing head contractors not to, in effect, give in to?

45 **MR HADGKISS:** Well, obviously contractors were - I say again, it's when contractors were more afraid of the enforcement body around than it was of the union, then there would be a change of behaviour. But as soon as there was no

enforcement body, then they would succumb to the demands of the union. They had to, because - to obtain industrial harmony. Don't know about harmony, but industrial peace.

5 **MR McLEAN:** The fourth component of the code you referred to, Mr Hadgkiss, was the workplace relations management plan.

MR HADGKISS: Yes.

10 **MR McLEAN:** Did any of the codes that you were involved with administering have a requirement for a workplace relations management plan?

MR HADGKISS: All of them, yes.

15 **MR McLEAN:** And when you say "all of them", you mean the 2016 code, the Victorian code and also your involvement in preparing the Queensland code?

MR HADGKISS: And the Queensland and Victorian codes had a requirement for a workplace relation management plan.

20

MR McLEAN: If we can bring up page 415, please, Mr Operator. Do you recognise this document, Mr Hadgkiss?

MR HADGKISS: Yes.

25

MR McLEAN: Can you explain to the Commission what this document was?

MR HADGKISS: It's a 2016 version of a workplace relations management plan that the agency required contractors to submit when tendering for government-funded work.

30

MR McLEAN: And by the agency, you mean the ABCC?

MR HADGKISS: By the ABCC, yes.

35

MR McLEAN: And so this is, as I understand it, the template plan that was circulated to contractors for their use in complying with the requirement to prepare?

MR HADGKISS: And they in turn would require their subcontractors to also comply with their obligations.

40

MR McLEAN: What did requiring a plan of this kind achieve?

MR HADGKISS: It was resisted at first, it's fair to say, and there was a cry that was too much administrative involvement, and my experience was there was a lot of cut and pasting on the part of contractors, but -

45

COMMISSIONER: What did you say then? I just missed that.

MR HADGKISS: Sorry?

5 **COMMISSIONER:** What did you say then, sorry?

MR HADGKISS: There was a tendency when we first introduced the concept of a workplace relations management plan for contractors to take shortcuts. And it was a cut-and-paste job; one size fits all. And when we rejected them, much to their
10 annoyance, they put serious consideration into it. There were complaints it was going to be a costly exercise, but in the scheme of things, when you're talking about multimillion-dollar projects, the cost of putting together a plan as to how you're going to conduct your workplace relations in respect of that project, they - there was
15 a movement to comply with what we were seeking, and the standards increased, and it was a document that we could hold them - like a contract that we could inspect their sites that they were adhering to what they had set out in their plan. It was a very useful tool.

MR McLEAN: And so preparing that document required the contractor to actually
20 map out how it was going to comply with various aspects of the code?

MR HADGKISS: Various aspects, like how am I going to deal with right of entry? How am I going to deal with industrial disputes? How am I going to deal with various aspects of workplace relations on this particular site? Not all my sites, but
25 where it's a hospital or a road or a piece of infrastructure, specific to that project. Not all my sites.

MR McLEAN: And that's because each different construction site with would have its own risks and variables that would need to be addressed?
30

MR HADGKISS: Indeed, and each jurisdiction had its different characteristics.

MR McLEAN: And so that plan was then provided to, in this case, the ABCC?

MR HADGKISS: We would examine closely what had been submitted. Sometimes it may be backward and forward. They would go back for another draft and come back again until we were happy that it would suit the necessary purposes. And we would then inform the government agency concerned that it was proposing to build whatever it was, a hospital or whatever, that the - it fitted our purpose.
40

COMMISSIONER: So this was something that the builder had to convince you of prior to winning the contract or after winning the contract?

MR HADGKISS: Yes, how I, the builder, are going to conduct my workplace relations in this particular project on this particular site.
45

COMMISSIONER: But was it a condition precedent to winning the contract?

MR HADGKISS: Absolutely. Yes.

COMMISSIONER: Right?

5

MR HADGKISS: And a lot of government departments did not like it, it's fair to say.

COMMISSIONER: The government departments don't?

10

MR HADGKISS: Government departments were interfering. They wanted to get on with it. There was a little bit of resistance, we found, with agencies, because they had cosy deals going with contractors. They had already done a deal, and who is this external body now coming to stick its nose in wanting to talk about a silly thing like workplace relations? So we had - there was some resistance from government departments. There's no doubt about that.

15

MR McLEAN: That probably feeds, Mr Hadgkiss, into what you identify as the fifth component of a code which you say is the establishment of an independent regulator.

20

MR HADGKISS: Yes.

MR McLEAN: And you give some evidence in your statement that it's important for the regulator to be independent of government rather than sitting within a government department?

25

MR HADGKISS: Absolutely, yeah.

MR McLEAN: And I take it from the answer you've just given that's the very reason why there's this conflict between -

30

MR HADGKISS: Absolutely. I had no end of trouble with department heads etcetera coming to me and trying to sort of push us aside, you know, "Your silly workplace relations thing. I've got an expensive hospital to build or a road to construct and I couldn't be bothered with this silly - your silly workplace relations." And we would say, "Well, this is pretty important from the taxpayers' point of view, you know? You're talking about a multimillion-dollar project, and we're trying to make savings here and productivity."

35

40

MR McLEAN: But it might be expedient in the short-term for the relevant government official to wave things through, but that then comes at a cost to the taxpayer down the track when there's industrial disputation, construction cost blowout because of unproductive practices.

45

MR HADGKISS: Yeah, and we had all these (indistinct) appearing wanting to do it their way, the way it had always been done.

5 **MR McLEAN:** At paragraph 105 of your statement, just continuing with this idea of an independent regulator, you give some evidence about what the regulator would do. Can you just explain to the Commission what functions a regulator has in your experience?

10 **MR HADGKISS:** As I point out, it's four-fold. Firstly, emphasise the education of the industry. The powers necessary to investigate non-compliance. Thirdly, recommendations to the relevant minister that a particular entity be sanctioned. And finally that you have to have enforcement action.

15 **MR McLEAN:** And I'm just interested in that fourth function of enforcement action. And you touch on this at paragraph 128 of your statement, but why is that enforcement power necessary when parties to disputes can otherwise run their own litigation? Why do you need the regulator to be able to step in?

20 **MR HADGKISS:** Well, in my experience, if you leave it to the parties concerned, they'll go to the position of lowest resistance. The contractor wants to get on with his work. The union want their agenda adhered to. So you need an independent regulator to say what's best for the taxpayer.

MR McLEAN: And so the parties themselves wouldn't take steps to enforce compliance?

25 **MR HADGKISS:** In my experience, most contractors just want to settle as soon as possible. They don't want to get involved in litigation or prolong the construction of their particular project.

30 **MR McLEAN:** So again, that dynamic where it might be expedient for the contractor but it comes at the cost of the taxpayer?

35 **MR HADGKISS:** Absolutely. And that was our regime, as it were. At the end of the day it's the taxpayers' money at stake here. And we're talking about, you know, multimillions of dollars. Rationale (indistinct).

MR McLEAN: You talk about the regulatory bodies that you've been involved with -

40 **COMMISSIONER:** Just before you go to that, you just asked a question about enforcement. What about what you described as the first thing that the regulator needs to be involved in doing, that is, educating industry? How important is that?

45 **MR HADGKISS:** Crucial. Whenever there's a change in legislation, change in a regime, contractors, subcontractors, they're about making money. You have to explain to them what we're trying to achieve and how we can help them, So holding forums, etcetera, and industry associations were very good at facilitating that, inviting their members, be they plumbers, be they bricklayers or whatever, to such

forums and educate them about their responsibilities in adhering to this new concept of a code, because most of them haven't got a clue what a code was about and what they were obligated to do.

5 **MR McLEAN:** Just on that enforcement function, Mr Hadgkiss, taking you to the evidence given at paragraph 130 where you talk about the regulatory bodies you've been involved with utilising their enforcement powers to pursue strategic litigation with deterrent and guidance value. So just reflecting on your time with various regulators, is there an example of that sort of enforcement litigation that comes to
10 mind?

MR HADGKISS: Well, the one that comes to mind, as I point out there, is the first action that we undertook. It was against a gentleman by the name of John Setka. At the time he was a CFMEU organiser. I think he went on to be state secretary until
15 recently. He was put before the Melbourne Magistrates' Court for threatening and intimidating a project manager. And that was prior to an appearance at the Australian Industrial Relations Commission.

COMMISSIONER: This must be two decades ago or so. This must be 20 years ago or so.
20

MR HADGKISS: Yes. One of the many actions against Mr Setka. I say it's a significant prosecution as it reinforced to the industry that attempts to interfere with legal processes, including in the industrial tribunal, were entirely unacceptable and
25 would be met with consequences.

MR McLEAN: So that's indicative of the sort of litigation or enforcement action that the regulators that you were involved with would take: it's enforcement action that has greater public purpose or significance to it?
30

MR HADGKISS: Yes, but I make the point it wasn't off our own bat. We always sought independent legal advice from members of the bar or DPP or relevant bodies. Even though it's in the name of the ABCC or a particular inspector, they were all - we always had independent legal advice before taking action.
35

MR McLEAN: Mr Operator, if we could just bring up paragraph 148, please. It's found on page 31. Thank you. Just a final question, Mr Hadgkiss. You say here that a state-based code is particularly pressing at the present time. Why do you hold that view?
40

MR HADGKISS: As I say there, due to the current absence of an effective code at either level, federal or state, and proliferation of inefficiency, misconduct and illegality throughout building and construction sites, particularly in Queensland.

45 **MR McLEAN:** Thank you, Mr Hadgkiss. That's the examination.

COMMISSIONER: What's the position in relation to the cross-examination of Mr Hadgkiss? Has anyone applied to cross-examine Mr Hadgkiss, Mr McLean?

5 **MR McLEAN:** There's been one application from the administrator, Commissioner. I might let my learned friend speak to that, but I understand the position is an adjournment is sought of the determination of that application until a later time.

COMMISSIONER: All right. I will hear from Mr O'Grady.

10 **MR O'GRADY:** Thank you, Commissioner. Commissioner, we wrote to the Commission last night and indicated that we would seek to cross-examine Mr Hadgkiss but in circumstances where we received the material in respect of this round of hearings at 3.45 pm on Wednesday. And given the volume of the materials - some 2000 pages was served on us - and in circumstances where it had
15 not previously been foreshadowed that this hearing would be devoted to the ABCC and codes of the type that Mr Hadgkiss has given evidence about, we would be seeking to have the opportunity to prepare some material, file a statement and put forward documents going to the issues raised in Mr Hadgkiss and Mr Jenkinson's statements, in compliance with the practice notes that the Commission has issued,
20 and then seek to cross-examine in due course.

Now, I spoke to my learned friend about that earlier this morning. He's indicated to me that that application for an adjournment of any cross-examination is opposed, but he indicated that I'd be at liberty to make the application to you, which is what I'm
25 doing. It's a matter of basic fairness, with respect. And as you noted in the course of my learned friend's opening this morning, correlation is not causation. Mr Hadgkiss has given evidence going to industrial disputation. We need to do some work to actually dig down or drill down on those figures so that we can properly assist you, Commissioner, in respect of your task, which is ascertaining the utility of the codes that Mr Hadgkiss has been putting forward. So it's really with an end to assisting the
30 Commission that we'd like an opportunity to put forward appropriate material and then ask Mr Hadgkiss some questions based upon that material.

35 **COMMISSIONER:** What do you say about all that, Mr McLean?

MR McLEAN: Commissioner, the administrator has had this evidence, as my learned friend identified, since last Wednesday. It's effectively a week. A week is a not insignificant period of time in a Commission of Inquiry of this nature. And so in that context, for counsel assisting's part, we don't accept that the CFMEU
40 administrator shouldn't be in a position to undertake that cross-examination today. I also note the evidence -

COMMISSIONER: Sorry, you go.

45 **MR McLEAN:** I note that the evidence that Mr Hadgkiss has given is, whilst not tendered as an expert report, is really, in substance, akin to his expert opinion. And so the Commissioner will necessarily give that the appropriate weight. Submissions

can be made, including to the effect of the observation my learned friend has just volunteered about the distinction between causation and correlation, and that can be a matter that the Commissioner would take into account. But it's not clear to us why Mr Hadgkiss would need to be cross-examined. The administrator is of course at liberty to apply to lead its own evidence from its own equivalent expert engaging with any of these concepts, but we don't for our part see what utility cross-examination would serve.

The concern about the BPICs as well has been front and centre in this Commission since the first hearing blocks. This sort of a code is simply offered up as an antidote to the practices that have flowed from the BPICs. So the concept of improving productivity standards in the industry is not a novel or new concept for this commission to be dealing with. And the final observation I make is, as the Commissioner is aware, there is a practice note that governs applications to cross-examine. And so putting aside the fact that that practice note hasn't been complied with at this time, we certainly oppose the application for an adjournment and we emphasise and we reiterate that for our part we don't see what utility cross-examination would have.

COMMISSIONER: Well, I'm not sure I'm with you on the utility point, because Mr O'Grady says that he wants to put forward some material that - and put a statement - I think he said put forward a statement, presumably that he's got instructions that contradicts what Mr - I don't assume he'd say this without instructions - that contradicts what Mr Hadgkiss says.

MR McLEAN: If he's got those instructions, Commissioner, I don't understand why the cross-examination can't be undertaken today.

COMMISSIONER: But one of your arguments was that there shouldn't be cross-examination. Now I think you're saying there should be cross-examination, but it should be today.

MR McLEAN: For our part, we don't see the utility in it, but if it is going to occur, they've had the material for - since last Wednesday. If he's got those instructions, that cross-examination, if the Commissioner was to accept there would be utility in it, should occur now.

COMMISSIONER: So your point's really it should have been done with greater alacrity, that Wednesday -

MR McLEAN: Yes, Commissioner.

COMMISSIONER: Having received it on Wednesday, there could have been steps taken over the last few days to comply with the practice note, to put on material and to cross-examine Mr Hadgkiss today.

MR McLEAN: That's the submission, Commissioner.

COMMISSIONER: But you'd accept, wouldn't you, that - leaving that aside, whether it is done in a sufficiently timely manner - Mr O'Grady's clients should have the right to contradict what Mr Hadgkiss says, both through cross-examination and putting on their own material.

MR McLEAN: They can certainly contradict it through putting on other material.

COMMISSIONER: But also cross-examination. Because how are you going to - Mr O'Grady puts on a statement from some expert who says the ABCC was actually really bad. How are we going to determine, in the absence of cross-examination, who's right and who's wrong?

MR McLEAN: The submission, Commissioner, is you can ultimately weigh that up and form your own view. But if you're inclined to allow the application -

COMMISSIONER: Cross-examination - I'm sorry, I cut you off.

MR McLEAN: If you're inclined to allow the application, then I've taken the submission as far as I can.

COMMISSIONER: But even if it's expert evidence, and it is quasi-expert evidence, because Mr Hadgkiss is clearly an expert - he's probably the expert - you have to have some method of having the experts communicate with each other. Cross-examination used to be the way we did it. Now we do it through hot tubs. There's got to be some way of having the two ships meet in the night.

But what do you say about the timeliness, Mr O'Grady? I mean, we're being fairly considerate of the parties, that is, counsel assisting have been, in terms of, I think, granting every application for an adjournment to enable people to have sufficient time to cross-examine. Is it really something that you shouldn't have done by now, given you had Thursday, Friday, Monday?

MR O'GRADY: Thursday, Friday, Monday. And we wrote on Monday, and we found out on Sunday the order of witnesses for this week. And it was in those circumstances we wrote to counsel assisting last night saying, you know, this is the position and this is what we'd seek to do. And I do point to the bulk of material, Commissioner. You know, we were confronted with some 2000 pages of witness statements and attachments at 3.45 or thereabouts on Wednesday evening. And so we had to, (a), read it, (b), consider it, (c), get instructions. And in those - and again, in circumstances where it had not been foreshadowed that this session was going to be devoted towards this particular topic. If we had have been given notice in January that this session was going to deal with this topic, we could have done some pre-emptive work about it.

But again, I come back to the core point, Commissioner, which is we are seeking to assist the Commission in discharging its function. We have read the material, we

have some preliminary instructions, but we are seeking to put that material into a form that will assist you so that you can make the proper determination. And in my respectful submission, my client would not be accorded procedural fairness if it was required to cross-examine at this juncture.

5

COMMISSIONER: One of the problems the Commission has is it's got a reporting deadline of August. The other problem is, at least in relation to the evidence of BPIC, it seems to be evidence that's accepted to date, that is, it hasn't been the subject of cross-examination that BPIC's a problem. That's certainly the government's attitude, that BPIC was a problem, be that as it may. But if the evidence remains as it is and there's no - there's no-one as yet who's come forward to suggest what Mr Long says is wrong, the Productivity Commission has also said that those BPIC conditions are embedded in enterprise agreements that are up for renegotiation in mid-2027.

15 Now, we have to accept that's correct. It might not be correct but that's what the Productivity Commission says. In the absence of any evidence, we have to have regard to what the Productivity Commission says. So if there is a need to deal with BPIC in terms of the legacy aspects of BPIC, that's something that needs to be done sooner rather than later. And part of the - what lay behind my question was there is a
20 need, having regard to the subject matter of this topic and the fact that I think this will now be the fourth witness that has been called back for cross-examination, I think Mr Watson, Ms King, Ms Schinnerl and Mr Hadgkiss, we have to get into a position in the running of the Commission that - I'm not saying the sort of pressure that the Hayne royal commission was said to have put upon parties in terms of
25 deadlines, but we do have to pick up the speed a little bit.

MR O'GRADY: And I understand that, Commissioner. And again, if we had have been given notice that this was a topic that was to be dealt with in this session, we would have done what we could to accommodate the Commission's timeline. But,
30 with respect, three business days, when confronted with 2000 pages of material and finding out on Sunday the order of witnesses, it does not give my client a - in our respectful - in my respectful submission, a proper and fair opportunity to put on material which we need to in order to comply with the practice note, and also to prepare the cross-examination that I'd seek to pursue with Mr Hadgkiss. And, of
35 course, it wasn't just the one statement. There were some four other statements that we received.

COMMISSIONER: For the witnesses later this - sorry.

40 **MR O'GRADY:** Sorry, I'm reminded that we had been provided with some of those other statements earlier, but certainly in respect of Mr Hadgkiss and Mr Jenkinson, the first we knew that there was a proposal to call him, or them, was Wednesday evening.

45 **COMMISSIONER:** I'm inclined to grant your application, Mr O'Grady, to adjourn the cross-examination of this witness to allow you to do what you need to do. But we'll have to - in your consultations with Mr McLean, there will have to be a fairly

tight timeframe. I know Mr Hadgkiss has got some availability problems concerning his travel, so they'll have to be built in. But at some point, we'll have to make a ruling that these adjournment applications are not successful, even if it puts a lot of pressure on people over two or three days.

5

MR O'GRADY: Yes.

COMMISSIONER: Otherwise we're simply not going to get through the work that the Commission's obliged to get through.

10

MR O'GRADY: I understand, Commissioner, and thank you.

COMMISSIONER: Mr Hadgkiss, you heard all that discussion. I'm sorry that my ruling has meant that we'll have to ask you to come back at some other stage. Could I leave it to you talking to Mr McLean with Mr O'Grady to work out a time that's suitable to you and to Mr McLean and Mr O'Grady. Are there any other applications to cross-examine Mr Hadgkiss?

15

MR McLEAN: Not that I'm aware of, Commissioner.

20

COMMISSIONER: Can the witness be excused? He can be given a summons for another time, can't he?

MR McLEAN: That's convenient. Thank you.

25

COMMISSIONER: Thank you for your evidence, Mr Hadgkiss.

MR HADGKISS: Thank you, Commissioner.

30

<THE WITNESS WAS RELEASED

MR McLEAN: Is that a convenient time?

COMMISSIONER: It is. What do you - we'll come back at 2, but what are we doing at 2 o'clock? Hearing from?

35

MR McLEAN: Mr Jenkinson.

COMMISSIONER: All right. Very well. We'll adjourn until 2 o'clock.

40

<THE HEARING ADJOURNED AT 12.58 PM

<THE HEARING RESUMED AT 2.00 PM

45

COMMISSIONER: Mr McLean.

MR McLEAN: I call Mr Jenkinson, Commissioner.

<WAYNE JENKINSON, SWORN

<EXAMINATION BY MR McLEAN

5

COMMISSIONER: Please take a seat, Mr Jenkinson. You should have your statement there beside you. Mr McLean.

10 **MR McLEAN:** Thank you, Commissioner. Mr Jenkinson, can you please state your full name for the record.

MR JENKINSON: Wayne Jenkinson.

15 **MR McLEAN:** And your address is presently known to this Commission?

MR JENKINSON: Yes, it is.

MR McLEAN: And you're attending under compulsory summons to give evidence?

20 **MR JENKINSON:** Yes, I am.

MR McLEAN: And you have prepared a statement of the evidence that you wish to give to this Commission?

25 **MR JENKINSON:** Yes.

MR McLEAN: And do you have a copy of that statement available to you in the witness box?

30 **MR JENKINSON:** Yes, I have.

MR McLEAN: Is that statement dated 8 April 2026?

35 **MR JENKINSON:** Yes.

MR McLEAN: And does it comprise of 63 paragraphs with six annexures?

MR JENKINSON: Yes, it does.

40 **MR McLEAN:** Are the contents of that statement true and correct?

MR JENKINSON: Yes, they are.

45 **MR McLEAN:** I tender that statement, Commissioner.

COMMISSIONER: Is there any objection to the tender of the witness statement of Mr Jenkinson? No. How will we mark this, Mr McLean? We've got - can't call it WJ1, because its annexures are WJ1 through to WJ6.

5 **MR McLEAN:** Mr Jenkinson, do you have a middle name?

MR JENKINSON: No.

COMMISSIONER: What about WXJ?

10

MR McLEAN: WXJ1.

COMMISSIONER: The witness statement of Mr Wayne Jenkinson made 8 April 2026, 13 - 14 pages, 63 paragraphs with six annexures will be exhibit WXJ1.

15

<EXHIBIT WXJ1 WITNESS STATEMENT OF WAYNE JENKINSON DATED 8/4/2026, 14 PAGES, 63 PARAGRAPHS WITH SIX ANNEXURES

20 **MR McLEAN:** Mr Jenkinson, I understand you're currently employed by Fulton Hogan in the role of project industrial relations manager?

MR JENKINSON: That's right.

25 **MR McLEAN:** Prior to that role, you worked for a number of regulatory bodies in the construction industry?

MR JENKINSON: Yes.

30 **MR McLEAN:** I understand the first of those roles with the regulator was with the Building Industry Taskforce?

MR JENKINSON: That's right, the interim Building Industry Taskforce initially in late 2003, and then the Building Industry Taskforce until 2005.

35 **MR McLEAN:** And what role did you have first with the interim building taskforce and then the permanent -

40 **MR JENKINSON:** With both those agencies I was a workplace inspector carrying out investigations into alleged breaches of workplace law on building and construction sites, commercial building and construction sites.

COMMISSIONER: You weren't here before lunch, Mr Jenkinson, but Mr Hadgkiss gave evidence, and presumably you worked either directly or indirectly for him?

45 **MR JENKINSON:** I worked for Mr Hadgkiss in that capacity in both those organisations, Commissioner, yes.

MR McLEAN: And the Building Industry Taskforce was then superseded by the Australian Building and Construction Commission; is that right?

5 **MR JENKINSON:** That's right. In 2005 the Australian Building and Construction Commission came into being.

MR McLEAN: And did you have a role with the Australian Building and Construction Commission at that point?

10 **MR JENKINSON:** Yes, I did. Initially I was a workplace inspector at that organisation. I eventually took on the role of the Queensland manager, which became the Queensland director. It had a few different names, but essentially I was in charge of the operations area in the Queensland ABCC office.

15 **MR McLEAN:** The ABCC was then wound up following a change in government at the federal level. What did you do from that point?

20 **MR JENKINSON:** In about 2012 the ABCC was wound up and the agency became the Fair Work Building Industry Inspectorate. I worked for the Fair Work Building Industry Inspectorate as the director of operations in the Queensland office until about 2013.

MR McLEAN: And I understand you then did a stint with a state-based regulator?

25 **MR JENKINSON:** Yes. At that time, I was seconded to the state government. The Queensland Government had set up an organisation or an office called the Building and Construction Compliance Branch, the BCCB, and they had implemented or set up and produced implementation guidelines for the Queensland code of practice for the building industry, and so I went to work for the BCCB for 12 months.

30 **MR McLEAN:** Following your stint with the BCCB, did you return to the FWBI?

35 **MR JENKINSON:** I did return to the building industry inspectorate with the Commonwealth Government, and a short time after that, in about late 2016, the second iteration of the Australian Building and Construction Commission came about, and I subsequently took on the role in the ABCC as the director of operations for the northern region, which comprised Queensland and the Northern Territory.

40 **MR McLEAN:** When did you hold that role until?

MR JENKINSON: Until late 2022. My role was made redundant at that time when the federal government abolished the ABCC.

45 **MR McLEAN:** Mr Operator, if we could please pull up page 88 of Mr Jenkinson's statement. Mr Jenkinson, do you recognise the document that's currently on the screen?

MR JENKINSON: Yes, that's the Queensland Code of Practice For the Building and Construction Industry, yes, a Queensland Government document.

5 **MR McLEAN:** Does a version of this document still exist?

MR JENKINSON: I believe it does.

10 **MR McLEAN:** And if we turn up part 5.3 of this document, Mr Operator, which is found from page 108 of Mr Jenkinson's statement, and if we just move through pages 108, 109 and 110, with one additional clause then at the top of page 111. Are these three or so pages, Mr Jenkinson, the extent of what this Queensland code says about industrial relations matters?

15 **MR JENKINSON:** Yes, they are.

MR McLEAN: If we could then bring up page 86 - sorry, page 66.

COMMISSIONER: This is the current code, is it?

20 **MR McLEAN:** That's the code as initially implemented. The parts I've just taken Mr Jenkinson to are unchanged in the current iteration in their substantive form. So, Mr Jenkinson, do you see the document on the screen there? Do you recognise that document?

25 **MR JENKINSON:** Yes, I recognise that document as the Implementation Guidelines to the Queensland Code of Practice.

MR McLEAN: Do you know how the guidelines came about?

30 **MR JENKINSON:** I understand they were based largely, almost identically, on the Victorian Government's implementation guidelines to their code of practice. I believe they were - these Queensland guidelines were produced by the Queensland Government's Department of Justice and Attorney-General. That's how I believe they came into existence, yes.

35 **MR McLEAN:** Can you explain, at least in high-level terms, how the Queensland guidelines operated?

40 **MR JENKINSON:** The guidelines operate as essentially a procurement document, a procurement policy for the Queensland Government. The guidelines say that if a builder wants to tender for a state government-funded project, they're required to have their industrial relations practices to a certain standard, and it was these guidelines that set out the standard that a building contractor had to follow. So a builder would be required to follow the guidelines insofar as operating its business
45 from an industrial relations perspective. If they didn't want to follow the guidelines or didn't want to follow those industrial relations practices, there was no obligation

on them to do so, but they were precluded from tendering for state government-funded projects.

5 **MR McLEAN:** You referenced there various rules or requirements that the contractor was required to comply with. Mr Operator, if we just bring up page 67, please, and then move through pages 67 to 72. When you referred, Mr Jenkinson, to the rules or the requirements that the contractor was required to comply with, it's the sort of things that are demonstrated on these pages here that they're expected to adhere to?

10 **MR JENKINSON:** That's right. Those sorts of things. Yeah, the various clauses and sections of the guidelines.

15 **MR McLEAN:** And so how did this 2013 guideline then compare to the 2000 code that I took you to just before?

20 **MR JENKINSON:** They were related documents, but the 2000 code was a very high-level - it's an aspirational document, I would describe it as. It was very brief. As we saw, there were only a few pages, a few clauses on workplace relations and industrial relations. The guidelines, however, were much more detailed, more prescriptive. Went into a - yeah, there was a lot more in them that the contractors had to follow.

25 **MR McLEAN:** And so do you have a view as to how the guidelines compared to the code as it concerns bringing about changes in industry practice?

30 **MR JENKINSON:** Well, the guidelines were put in place and the BCCB as an office was put in place to improve productivity and provide value for money for taxpayer-funded projects. That's what the whole purpose of the guidelines were for. And I believe they did that.

MR McLEAN: And it was identified that there was a need for guidelines to achieve that, notwithstanding there was already the 2000 code in place?

35 **MR JENKINSON:** That's right. The code, as I said, was very high level. It was relatively brief. Largely aspirational. These guidelines were much more detailed. They put the meat on the bones, so to speak, for what a contractor and subcontractors were required to do on code-covered projects.

40 **MR McLEAN:** Are there still guidelines in place in Queensland?

MR JENKINSON: No.

45 **MR McLEAN:** Do you know what happened to those guidelines?

MR JENKINSON: These guidelines were repealed by the state government at the time in, I believe, about 2015.

MR McLEAN: You say the guidelines were repealed by the state government. Do you recall there being any consultation with industry before those guidelines were repealed?

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MR JENKINSON: No, I don't recall any consultation.

MR McLEAN: Was there any public inquiry into the benefits of the guidelines before the decision was taken to repeal them?

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MR JENKINSON: No, not that I'm aware of. I don't believe there was, no.

MR McLEAN: Do you recall any press conferences being held at which the government explained the decision to remove or repeal the guidelines?

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MR JENKINSON: No.

MR McLEAN: Do you recall there being any press releases addressing the justification for the removal of the guidelines?

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MR JENKINSON: No.

MR McLEAN: So you don't recall there being any consultation, any inquiry, any press conference, any substantive press release. Did the process by which those guidelines were repealed surprise you somewhat?

25

MR JENKINSON: Well, it disappointed me. I wasn't greatly surprised. The - in my view, the Labor government had been under pressure from I believe the CFMEU for a long time to repeal both the BCCB and the guidelines. I believe they were receiving that pressure when they were in opposition, and when they formed government, I wasn't surprised to learn that they had been repealed because I don't think the BCCB or the guidelines suited the CFMEU.

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MR McLEAN: So I take from that that you were perhaps not surprised by the ultimate outcome that was landed on, but you were disappointed, to say the least, in the process that was adopted getting to that point?

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MR JENKINSON: That's a fair assessment. I wasn't completely surprised, and I was disappointed because a lot of work had gone into those guidelines and the implementation of the guidelines by our office. There was, I suppose you'd say, much fanfare when the implementation guidelines were introduced. Our office spent a lot of time consulting with industry, industry associations, contractors, subcontractors to let them know what was happening, what it was all about, how we believed it would benefit the construction industry, and then when the new incoming Labor government took power, the whole thing was just shut down quietly. Again, I wasn't surprised but I was disappointed.

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MR McLEAN: You mentioned before that you thought that was because of the influence that the CFMEU had on the government at the time?

MR JENKINSON: Yes.

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MR McLEAN: So your evidence is that guidelines that were introduced to drive productivity in the construction sector - and I believe your evidence before was to deliver value for money for taxpayers -

10 **MR JENKINSON:** That's right.

MR McLEAN: - on government-funded work.

MR JENKINSON: Yes.

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MR McLEAN: Guidelines that had been implemented for that purpose were repealed by the Labor government at the behest of the CFMEU?

MR JENKINSON: I believe that to be the case.

20

COMMISSIONER: And you said because those guidelines didn't suit or didn't - didn't suit the CFMEU - I think you said suited the CFMEU?

25 **MR JENKINSON:** Yes, Commissioner, that's right. The guidelines themselves nor the code was binding on the CFMEU or any union, but the provision - some of the provisions of the guidelines went against, I suppose, the business model, the way the CFMEU went about business. Things like right of entry having to be done in accordance with the law, freedom of association having to be observed, restrictions on some of the clauses that could go into a subcontractor or contractor's enterprise agreement. These things were all covered in the guidelines and the code, and it - I don't believe that those provisions suited the CFMEU.

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COMMISSIONER: You talked about the CFMEU's business model. What do you mean by that?

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MR JENKINSON: Perhaps that was a turn of phrase. The way they conducted their business. They liked to have ready access to construction projects. They liked to have all the workers as members of the union. They wanted clauses - certain clauses in enterprise agreements that were not necessarily productive for everybody, and that's what I meant when I said that. So these guidelines prevented these things from occurring on state government-funded projects.

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MR McLEAN: So the guidelines that we've just spoken about, Mr Jenkinson, they were administered by the BCCB?

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MR JENKINSON: Yes.

MR McLEAN: And I think you said earlier that you were -

COMMISSIONER: Just remind me what BCCB stands for.

5 **MR McLEAN:** Building and Construction Compliance Branch, Commissioner.

COMMISSIONER: Of which department again?

10 **MR JENKINSON:** Department of Justice and Attorney-General and, more specifically, the Office of Industrial Relations.

COMMISSIONER: Right.

15 **MR McLEAN:** So you were the first director of the BCCB?

MR JENKINSON: Yes.

MR McLEAN: And what was the BCCB established to do specifically?

20 **MR JENKINSON:** Well, there was five - it could be summarised with about five points. They're in my statement. Section 10.1 of the Queensland guidelines do set that out. But essentially promoting awareness of the Queensland code and the guidelines within industry.

25 **COMMISSIONER:** Can we just look at those, Mr McLean, as Mr Jenkinson talks about them?

30 **MR McLEAN:** If you could bring up page - exhibit WJ3, please, Mr Operator, specifically page 81 and 82.

COMMISSIONER: I'm sorry, Mr Jenkinson, I cut you off.

35 **MR JENKINSON:** Thank you, Commissioner. The five points - or the points can be summarised down to five. The - as I said, promoting awareness of the code and the guidelines within industry, monitoring compliance with those documents by builders and subcontractors, investigating suspected breaches of the code and guidelines, actioning non-compliance by contractors or subcontractors, and making
40 recommendations for sanctions in the event that a breach was established. What I mean by sanctions is the ability for the minister, by the Attorney-General in the case of 2013, the ability of the Attorney-General to exclude a builder or subcontractor from tendering for state government work in the event that they were seen or a breach was proven, a sanction could be brought down which precluded them from tendering.

45 **MR McLEAN:** So there weren't monetary fines attached?

MR JENKINSON: No, there were no fines. It wasn't a traditional matter that you would bring before the court as a regulator. There was no penalty provisions. There was no fines. There was no judgments. As I said, it was a procurement policy, and the minister had the power within the guidelines to sanction a company. It was
5 really - the sting was the commercial ramifications of being unable to tender for state government-funded projects, as well as the reputational embarrassment that went along with a sanction. If the minister chose to make it a public sanction, it could be embarrassing for the company to be named and shamed essentially as breaching the guidelines, operating outside of the rules and being excluded from tendering.

10
MR McLEAN: And you mentioned there the consequences of naming and shaming and also the exclusion from government-funded building work. Do you have a view as to how that compares, from an effectiveness standpoint, to a document or a code that would use monetary fines? Do you see any difficulties with these being the
15 sanctions under the code?

MR JENKINSON: Well, I didn't see any difficulties. It is a quite - the regime that was in place was quite a powerful incentive for companies to do the right thing. Sometimes, depending on the amount of a fine that a court levies, it can be seen as
20 the cost of doing business and easily paid and forgotten about. But a sanction of this nature can be significantly more embarrassing and commercially damaging to a company than a fine, particularly if it's at the lower end.

MR McLEAN: So you talk there about the consequences, it seems, sitting with the
25 contractors for non-compliance.

MR JENKINSON: Yes.

MR McLEAN: They risk being excluded from lucrative government contracts. In
30 that context, how was the establishment of the BCCB received by the industry itself in your experience?

MR JENKINSON: The industry received the establishment of the BCCB and the
35 guidelines in a positive way, in largely a positive way, in my recollection and in my experience. They saw a benefit in our agency doing the work we were going to do, rolling out these guidelines and enforcing their compliance in the industry. They were well received.

MR McLEAN: And did you have discussions with industry representatives during
40 which they passed on their feedback?

MR JENKINSON: Yes. We regularly spoke with contractors at a site level and at a
45 management level, head office level, and we were told that they were having a positive impact on productivity and they supported the continuing existence of both the BCCB and the guidelines that we were administering.

MR McLEAN: You mentioned there senior managers having a dialogue with you. How did the senior managers and indeed the boards of these contractors respond to the guidelines? Did they show any greater interest in these sorts of issues?

5 **MR JENKINSON:** Well, they were interested in the guidelines. Certainly, they were interested in the work we were doing and how it was going to impact on their operations. They were interested in making sure that they were doing all they could to comply and were keen to ensure that they were complying, and they sought advice from us about how they could get the arrangements in place if we thought they
10 weren't. So largely it was well received.

MR McLEAN: I appreciate that your time with the BCCB was brief, at least in relevant terms compared to the rest of your career in the regulatory industry, but do you have any observations about what effect the activities of the BCCB actually had
15 on productivity in the construction industry?

MR JENKINSON: I believe it improved productivity. I believe they were doing what they were set up to do and that productivity was improved because of it.

20 **MR McLEAN:** Now, you might have touched on this before, Mr Jenkinson, but can you recall what happened to the BCCB?

MR JENKINSON: Like the - like the guidelines, the BCCB was eventually
25 abolished by the incoming Labor government. I was the only person who went back to a different agency. My colleagues remained with the state government, but I believe they were moved to other areas within the state government and continued in jobs in other departments. But the BCCB itself was shut down.

MR McLEAN: And roughly when was that?
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MR JENKINSON: Roughly about I think 2015. It was shortly after the government took power.

MR McLEAN: The state Labor -
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MR JENKINSON: The state Labor government took power. Yeah.

MR McLEAN: And perhaps a similar set of questions to what I've asked you about the guidelines: do you recall there being any public consultation about the disbanding
40 of the BCCB before that decision was taken?

MR JENKINSON: No. No.

MR McLEAN: Do you recall there being any public inquiry into what the BCCB
45 had achieved and whether it was a worthwhile organisation before the decision was taken to disband it?

MR JENKINSON: No. No.

5 **MR McLEAN:** Do you recall any press releases or press conferences during which the government came out and offered a substantive explanation for its decision to disband this body?

MR JENKINSON: No, I don't believe there were any of those.

10 **MR McLEAN:** And again a similar question, Mr Jenkinson: did that absence of consultation and substantive explanation surprise you?

15 **MR JENKINSON:** Well, again, it's the same situation as with the guidelines. It didn't surprise me. I believed that the government was going to do that. It disappointed me that - it went hand in hand. The closure of the BCCB and the repeal of the implementation guidelines went hand in hand in my view. And, yeah, for the reasons I've given, I wasn't particularly surprised, but I was sorry to see both of those - both the organisation, the office of the BCCB and the guidelines go.

20 **MR McLEAN:** After your time with the BCCB, you ultimately returned to the second incarnation of the ABCC; is that right?

MR JENKINSON: That's right.

25 **MR McLEAN:** And you were appointed during that stint as director of operations for the ABCC's northern region?

MR JENKINSON: That's right.

30 **MR McLEAN:** And so that encompassed the ABCC's operations in Queensland as part of that?

MR JENKINSON: As part of that, yes.

35 **MR McLEAN:** Now, during the time you were working for the ABCC in its second incarnation, were you involved in administering any particular codes or guidelines then?

40 **MR JENKINSON:** The reintroduction of the ABCC came with the introduction of the 2016 code for the tendering and performance of building work, which we call the 2016 code. That was - administering that was part of the duties of the ABCC. I had some role in that. There were others. But, yes, it was part of the work that I oversaw, and it was part of -

45 **MR McLEAN:** And how did that 2016 code that's introduced at the federal level compare to the Queensland guidelines that we've just spoken about?

MR JENKINSON: They were very similar. The 2016 federal code was more formal.

COMMISSIONER: Was more what, sorry?

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MR JENKINSON: Formal. It was a more formal document. It was certainly longer and more complex. Had more to it. But essentially it was - it was the same in spirit as the guidelines were. It was a procurement policy that the federal government said if you're going to tender for federal government work, you're going to need to have your industrial relations practices in accordance with this document, and there were sanctions again available to the minister to exclude companies from tendering for federal government work if they were found to be in contravention of the code. So whilst it was a longer document and a bit more of a complex document, it was essentially - it meant the same thing and did the same thing.

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MR McLEAN: Required the same sorts of behaviours, enforced them through a similar mechanism?

MR JENKINSON: Yes. Yes, it did.

20

MR McLEAN: The 2016 code, though, if I'm not mistaken, was a legislative instrument; is that right?

MR JENKINSON: Yes.

25

MR McLEAN: Whereas the guidelines were just something that was introduced by the government of the day without supporting legislation?

MR JENKINSON: That's right. And again, the federal 2016 code was the same in respect of there were not court cases for breaching it. There were no fines, no penalty provisions. It was just - like the state document, it was sanctions at the behest of the minister.

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MR McLEAN: If we can pull up paragraph 33, Mr Operator, please. Mr Jenkinson, are you able to explain to the Commission what that graph at paragraph 33 of your statement shows?

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MR JENKINSON: Yes. This graph is data sourced from the Australian Bureau of Statistics. It shows the number of working days lost per 1000 employees across a period of time. The first couple of years, 2015, 2016, were the years prior to the reintroduction of the ABCC the second time. It shows industrial days - industrial activity at 29.5 per thousand employees for 2016. Moving across, the years under the green bar are the years that the ABCC were in existence, and the figures there show the number of days lost per thousand employees, and you can see that they have dropped and went down to a bottom in 2020. But, for instance, 14.7 in 2017, 5.6 in 2019, and then the years 2023 and 2024 are the two years following the abolition of

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the ABCC for the second time, and you can start to see the - or you can see the figures starting to rise again up to 14.4 in 2024.

5 **MR McLEAN:** So it shows a fairly strong correlation between the number of working days lost in Queensland per thousand employees and the activities of the ABCC. Fair to say?

MR JENKINSON: Yes, it does.

10 **COMMISSIONER:** I can guess, but do you know why no data was available for the March and June quarters in 2020, that asterisk next to the 0.9?

15 **MR JENKINSON:** Commissioner, I think my guess is as good as yours, and it would have something to do with COVID.

COMMISSIONER: That's what I would assume.

MR JENKINSON: That's all I would suspect.

20 **COMMISSIONER:** Was the construction industry in Queensland locked down during the COVID year or years?

MR JENKINSON: No, it wasn't. No, it continued to operate.

25 **MR McLEAN:** And so even though that figure for 2020 has an asterisk next to it, we still have, as I understand it, half a year's worth of data for that year, and the half a year number of working days lost was only 0.9 per 1000 employees. Is that right?

30 **MR JENKINSON:** That's right.

MR McLEAN: So I appreciate you're speculating here, but I'd imagine it, looking at the years either side, at 5.6 and 4.2 for the full year, again you've got a 0.9 figure for at least half of that year. Be fair to assume that the number of working days lost is going to be at the lower end of that range -

35 **MR JENKINSON:** I would assume -

MR McLEAN: - for 2020 as well?

40 **MR JENKINSON:** I would assume so, yes.

MR McLEAN: So we see this fairly strong trend coinciding with the activities of the ABCC. How does that data reflect your own experience based on your observations during your time with the ABCC this second time round?

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MR JENKINSON: It correlates with my experience and what I recall of the industry while the ABCC was operating. I believe the ABCC contributed significantly to reducing the number of working days lost in the industry.

5 **COMMISSIONER:** When you say in the industry, you're talking about the Queensland industry?

MR JENKINSON: Well, nationally, Commissioner, as well. I was - certainly in Queensland, but the case would be the same in every state in my opinion. The ABCC
10 operated in every state and territory, and I believe that the agency contributed to increasing productivity and reducing the number of working days lost in every state, but certainly in Queensland.

MR McLEAN: Just for completeness, Mr Jenkinson, I see you've extracted the
15 underlying source data at the top of page 8 of your statement. So that's the date that's formed the basis for the graph?

MR JENKINSON: That's correct. That's Australian Bureau of Statistics data.

20 **MR McLEAN:** Now, you've identified in your statement a number of components that you describe as being important to the operation of an effective code. I'm just going to ask you some questions about at least certain of those components. The first is that you say a code should apply to related entities of any code-covered entity.

25 **MR JENKINSON:** Yes.

MR McLEAN: What do you mean by that?

MR JENKINSON: Well, the code - both codes, the Queensland implementation
30 guidelines and the 2016 federal code, it applied to entities of a code-covered entity. Once a contractor was captured by the code and covered by the code, any related companies were similarly covered.

MR McLEAN: And what did that achieve in practical terms for -
35

MR JENKINSON: In practical terms, that achieved a widespread capture of the
code across the industry to a quicker extent than - had it just been applying as each
builder or each entity tendered for its own work, it would have been a much slower
process to have the code spread across the industry. But with the related entities
40 captured, a head contractor, a company can tender, become captured by the code, and everything underneath it, all its related entities are captured as well. Some of those companies in their own right may never tender for a federal government-funded project, but by virtue of the related entities clause, they were all immediately
45 captured in the same way as the parent entity was.

MR McLEAN: And so I take from that that in your experience, at least some of these contractor companies have quite complex or sophisticated organisational structures with different entities?

5 **MR JENKINSON:** Yes. Yes.

MR McLEAN: And so does the related entities of a code-covered entity then also serve some sort of role in an anti-avoidance capacity?

10 **MR JENKINSON:** Well, potentially. I mean, it was - because the related entities clause captures all those companies that fall under the parent company, it would have - it did preclude companies from setting up a shell company, for example, to operate separately and on the side to just tender for a job and be captured by the code that no one else in the organisational structure is affected by that. So that could have
15 been an option if the related entities clause wasn't there. So the fact that it was there prevented those sort of things from happening.

MR McLEAN: Do I take from that that the concept of the coverage being extended to related entities is a fairly important part of the mechanics of the code?
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MR JENKINSON: I believe so, and certainly you've got the - it got the code out into the industry very quickly.

COMMISSIONER: Did the code have its own definition of what a related entity was?
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MR JENKINSON: I believe it did, Commissioner.

COMMISSIONER: Do you know what it is, Mr McLean?
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MR McLEAN: One moment, Commissioner. So if we - I'm working from Mr Hadgkiss' statement.

COMMISSIONER: What does he say?
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MR McLEAN: Mr Jenkinson's also.

COMMISSIONER: Beg your pardon?

40 **MR McLEAN:** Mr Jenkinson's also annexed the code. We see at provision - clause 6 of the 2016 code, we have the clause that extends the operation of the code to related entities. And then -

COMMISSIONER: You can come back to me and answer it later if you want. I don't want to take you off course.
45

MR McLEAN: And then at the bottom - no, I have it here. I'm grateful to my instructors, Commissioner. But we see at part 3, or clause 3 of the 2016 code, I should say, at the - subclause (2), which is at the bottom of the second page of definitions, we see:

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"In this code of practice, an entity is a related entity of a code-covered entity if the second entity is engaged in building work and is either, (a), connected with the code-covered entity by being a member of the entity or, (b), an associated entity..."

10 **COMMISSIONER:** It just picks up the Corporations Act definition.

MR McLEAN: It does.

15 **COMMISSIONER:** Yes, so it just picks up related body corporates. In effect, subsidiaries.

MR McLEAN: Provided they're engaged in building work.

20 **COMMISSIONER:** Yes. Well, I shouldn't say subsidiaries: parents. Anyone within the group.

MR McLEAN: I think that's correct, Commissioner.

25 **COMMISSIONER:** But not subcontractors.

MR McLEAN: No. And that's the next point I'll take Mr Jenkinson to. Mr Jenkinson, as the Commissioner has just identified, subcontractors are at least possibly a discrete class from related entities, and you do give some evidence in your statement about the importance of a code attaching or applying to subcontractors that are engaged by a code-covered entity.

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MR JENKINSON: That's right.

35 **MR McLEAN:** Can you just explain how that mechanism worked and why that was important?

MR JENKINSON: Yes, sure. When a subcontractor tendered for work on a federal government-funded project, the subcontractor then became captured by the code and became a code-covered entity in its own right. And from that point forward, the subcontractor was required to follow the requirements of the code on all of its public and private building work from then on.

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COMMISSIONER: On all its work? Not just that particular job?

45 **MR JENKINSON:** That's right, Commissioner.

MR McLEAN: And so did that obligation also attach to the contractor that actually tendered for the government-funded building work to then ensure that its - or that any contractors that it itself engaged were complying with the code?

5 **MR JENKINSON:** Yes, that's right. The head contractor was required to ensure that the subcontractors were all working in accordance with the code, and that was an important mechanism for enforcement. In the first respect, it got - like the related entities clause, it got the code rolled out fairly quickly. All the subcontractors who
10 tendered were covered by the code. And then there was the aspect of I guess a bit of self-regulation by the industry insofar as the head contractor was motivated to ensure that subcontractors were doing the right thing so that there was no breach of the code on that project, which would have seen the subcontractor and the head contractor, you know, potentially breaching the code and exposing themselves to sanctions.

15 **MR McLEAN:** And so the head contractor in that example would take on an interest in ensuring compliance by the subcontractors it was engaging?

MR JENKINSON: Yes, very much.

20 **MR McLEAN:** And presumably that alleviates the burden on any external regulatory body, because, as you said, the industry starts to become self-regulating to a degree.

MR JENKINSON: Well, it was useful from a self-regulatory point of view, yes.
25 Yeah. We still had a role to regulate and did so, but we would certainly see that the industry was regulating. Well, the head contractors were certainly regulating their own projects to ensure compliance by their subcontractors, yes.

COMMISSIONER: It's a big penalty by the - that could potentially be paid by the
30 head contractor that might be accustomed to getting billion-dollar jobs, and some small five-person subcontractor on the project is not complying with the code and therefore the head contractor loses the ability to tender for future billion-dollar work.

MR JENKINSON: In theory, Commissioner, yes. But in reality, the ABCC would
35 look at the circumstances of the contravention, who has contravened it, what the nature of it is, what efforts were made to rectify it prior to it being, you know, brought to a head. And like any penalty, consideration would be given to the seriousness of it, the contrition, the involvement of the head contractor and the subcontractor's breach. So it wouldn't follow that a five-person subcontractor team
40 who breached the code would result in a billion-dollar company being locked out of tendering for six months. That was the theory, but it would be something a lot more serious to see a large company like that tendered - excluded from tendering for six months.

45 **MR McLEAN:** So just picking up on that, Mr Jenkinson, as I understand it, it wasn't the case that any breach of a code in your experience would necessarily exclude or have the consequence that the contractor was excluded from -

MR JENKINSON: No.

MR McLEAN: - tendering for government work.

5

MR JENKINSON: No. That's right. Breaches of the code were identified in the course of audits and inspections all the time, and the ABCC would write to the relevant party and ask for an explanation. An explanation would be given, invariably, and usually a commitment to rectify the problem and ensure it doesn't happen again, and that would be the matter usually put to bed. Where there was ongoing and consistent contravening by the same party for the same reasons, that's when things would more than likely end up in a sanction situation rather than just a warning.

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MR McLEAN: So sounds like there's a degree of common sense that's generally applied to the assessment of non-compliance.

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MR JENKINSON: Well, you'd like to think it was - yes, that's right.

MR McLEAN: You also talk in your statement about the issues with project agreements. Can you just explain what a project agreement is?

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MR JENKINSON: Project agreement was an agreement between a head contractor on a project and all of its subcontractors. The head contractor would put in place a project agreement that covered off on a lot of the arrangements that were to apply on that job, usually and primarily in relation to pay rates, allowances and entitlements, and the expectation was that they would all flow downhill across all of the subcontractors on that job. So the head contractor was putting in place the minimum conditions for wages, allowances, entitlements.

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MR McLEAN: And what's the problem with those sorts of project agreements?

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MR JENKINSON: Well, they're put in place to sit outside whatever the arrangements are that individual subcontractors have with their own employees, usually perhaps through an enterprise agreement. A subcontractor is required under an enterprise agreement to pay certain wage rates and allowances and entitlements, and a project agreement comes across the top of all that and says that despite those rates, you're required to pay these rates, which are invariably higher than the enterprise agreement's rates. And that results in a lot more cost for the subcontractor, and it's a widespread obligation across all the subcontractors.

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And that really limits the competition and the - yeah, everyone's on a level playing field suddenly, and no-one can compete against wages. No-one has the opportunity to bring in the job a little cheaper at their end because their wages are a little cheaper. They're all required to pay an uplifted rate - usually an uplifted rate - in accordance with the project agreement, which reduces competition.

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MR McLEAN: Reduces competition, and that just has a flow-on effect that the ultimate production cost on a project is -

MR JENKINSON: Inflated.

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MR McLEAN: Inflated, yes.

COMMISSIONER: It's not just rates. It's all conditions, isn't it? I mean, it's - we heard - I think the way you opened this case study, Mr McLean, was to point to conditions associated with BPIC that were unproductive, for example, the 26 RDOs, the heat policy, the requirement to spend 10 hours on non-building work during a six-day week. And presumably those conditions would apply also across the project just as rates would.

MR JENKINSON: Yes, Commissioner. All those conditions could be worked into a project agreement, certainly. The wages and entitlements come to mind immediately because they're the first - they're the obvious increase in expenses over and above what a subcontractor would have in their enterprise agreement. But certainly all of those things could be included.

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MR McLEAN: You might recall, Commissioner, you pointed out this morning that those jump-up clauses were very much a part of the BPICs. So it's difficult to see how the arrangements that were imposed upon industry by the BPICs would be reconcilable with the sorts of efficiency that a code of this kind would be trying to promote.

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COMMISSIONER: Well, I guess that's going to be - I guess it's not a matter for this witness so much as you'll make some submissions that those conditions are contrary to - would have been contrary to a code had it been in place, I presume.

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MR McLEAN: Based on the evidence, that seems to be where we end up.

COMMISSIONER: You don't have any expertise in BPIC, Mr Jenkinson?

MR JENKINSON: Not a great deal, Commissioner, no.

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MR McLEAN: Another feature you identify, Mr Jenkinson, is the use of workplace relations management plans.

MR JENKINSON: Yes.

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MR McLEAN: Can you just explain to the Commission what a workplace relations management plan is.

MR JENKINSON: Workplace relations management plans were a feature of both the state government's implementation guidelines and the 2016 code. The plans are a lengthy document that set out numerous clauses and points that a contractor has to

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respond to in the course of their tendering for a government-funded project. The document calls on the contractor to identify how they've turned their mind to all manner of industrial relations issues and how they will implement those provisions on this particular project that they're tendering for. They're a document that are
5 specific to just the job that's under tender. They're not the sort of document that a builder puts in place once and then that becomes the WRMP to be rolled out for every tender. They're site-specific, and they address how the contractor would deal with each of the industrial relations points on this particular project subject of that tender.

10 So they're a useful document for - well, there's three aspects to their usefulness, really. They serve to turn the contractor's mind to the code and what's required under the code. They serve to let all the subcontractors on the project know what the industrial relations arrangements are going to be on this job. And they are a useful
15 mechanism for an audit and inspection process by the regulator. The ABCC would be - and the BCCB back in the day - would be in possession of the head contractor's WRMP when they would do an audit or an inspection, and they would be able to, you know, assess the project for compliance with what the builder said they were going to do in the WRMP versus what they actually are doing on the ground. So they
20 were useful for that.

MR McLEAN: And just picking up on the second point you made there, I think you said that they let the subcontractors know what the industrial relations arrangements would be on a particular project.

25 **MR JENKINSON:** Yes.

MR McLEAN: How did that occur?

30 **MR JENKINSON:** Well, the document - the WRMP was not intended to be a private document that was between the builder and the government. It was a document that was to be publicly made available to subcontractors when they tendered and essentially put on a notice board for everyone's information on a job. Once the job got started and it was underway, a WRMP could be publicly made
35 available to anybody who wants to have a look at it, but certainly made available to subcontractors in the course of their tendering.

MR McLEAN: Based on your experience of both the Queensland guidelines and the 2016 code, do you have a view as to the implications that requiring the production of
40 a workplace relations management plan have for productivity on construction jobs of which one's prepared?

MR JENKINSON: Well, again, I think they contribute to improving productivity. It sets out how the builder and the subcontractors are going to deal with industrial
45 relations issues. There is a certain level of - I mean, there's a certain amount of work that goes into putting those documents together. The BCCB and the ABCC both had model clauses that builders could use to - as guidance when they were putting a

document together. They weren't expected to address every single point from the get-go. Model clauses were made available through websites to assist builders in that process. So there was a certain level of work that went into them, but I think ultimately they were good for the industry.

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MR McLEAN: And on my understanding, the production or preparation of one of those documents was actually only required for certain projects.

MR JENKINSON: That's right. That's right. The WRMPs weren't required for every code project. There was a monetary threshold in the guidelines and in the 2016 code. Perhaps \$10 million, I think, or if it was a partly funded project, partly by the government and the private sector, a percentage of the - if a percentage of the funding was put in by the government, well, the WRMP would apply. But the figures actually escape me at the moment, but 10 -

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MR McLEAN: If we pull up, Mr Operator, page 74 of Mr Jenkinson's statement. Correct me if I'm wrong, Mr Jenkinson, but I think this might be the sort of -

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MR JENKINSON: Yes.

MR McLEAN: - limitation that you're referring to.

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MR JENKINSON: Yeah, that's the sort of - yes, that's what I was referring to. Dot point 1 there: projects exceeding \$10 million, road projects and civil projects exceeding \$20 million. The percentage - the percentage factor doesn't appear in that document. It was a feature of the 2016 code, I believe, but if more than 50 per cent of a 10 or 20 million dollar job was being put in by the government, WRMP was required as well. Exact details escape me. But they weren't required for every job. It was just the larger ones.

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MR McLEAN: And that was just a means of balancing the administrative impost against the potential benefits if the plan was in place, I assume?

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MR JENKINSON: Yes, that would be right.

MR McLEAN: Could we just bring up paragraph 58, please. In this paragraph, Mr Jenkinson, you give a recommendation at the last sentence. Do you see that?

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MR JENKINSON: Yes. Yes, I believe that the reintroduction of industry guidelines and a body like the ABCC and the BCCB at a state level would be essential to improving productivity. That's correct.

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MR McLEAN: Just as it concerns establishment of an ABCC-like body, you're aware that there's already a Queensland Building and Construction Commission?

MR JENKINSON: Yes.

MR McLEAN: So in your view, could the regulatory function you've referred to there be discharged by the QBCC?

MR JENKINSON: No, I don't believe so.

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MR McLEAN: Why do you say that?

MR JENKINSON: The QBCC has a wide-ranging set of roles and responsibilities, licensing builders, head contractors, subcontractors, looking into dodgy work and rectifying repairs by builders on domestic premises, security of payments, inquiries. It's a wide range. I don't believe they are set up and have the resources or the background to take on a role that was taken on by the ABCC or the BCCB going up against large, well-resourced builders and unions in the space of regulating the workplace relations laws.

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COMMISSIONER: What's the skill set that you need for the inspectorate, whether engaged through the BCCB or through the ABCC federally?

MR JENKINSON: An investigative background, analytical background. You need budget and resources. The sheer numbers of inspectors on the ground.

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COMMISSIONER: I see.

MR JENKINSON: Sheer numbers. Deal with premises in various locations. You couldn't just be a centralised office. And I don't believe the QBCC - certainly from my experience back in the day - I have been away from the ABCC for several years, as I said, but back then I don't believe the QBCC was set up to take on the role of that regulator doing the work that the BCCB or the ABCC were doing, for the reasons I've said.

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There was also - I also think the QBCC had lost a lot of its credibility with the industry from the perspective of independence. For a while, there were - there was at least one member of the CFMEU executive sitting on the QBCC's board. The industry didn't appreciate the fact that they were being influenced and directed and driven by someone very high in the CFMEU. There was a suggestion that contractors who had a problem with CFMEU in other areas, maybe other industrial issues that were underway with the CFMEU in other environments, would suddenly find themselves of interest to the QBCC and find QBCC people on their projects or in their office. And, rightly or wrongly, the industry suspected that the QBCC was being driven by the CFMEU if they had a beef with a particular contractor or subcontractor. And as I said, that was a while ago, but that was probably -

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COMMISSIONER: What did you say then? That was -

MR JENKINSON: That was a while ago, Commissioner.

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COMMISSIONER: What period of time?

MR JENKINSON: Well, when I was in the ABCC. I left the ABCC in 2022, and certainly it was the view of industry back then. They didn't have lot of faith in the independence of the QBCC.

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MR McLEAN: So just to pick up a couple of points from your evidence there, Mr Jenkinson. The senior CFMEU official who I think you said was appointed to the QBCC's board, who was that?

10 **MR JENKINSON:** I believe it was Jade Ingham.

MR McLEAN: And the QBCC, as I understand it, has at least some investigative function; is that right?

15 **MR JENKINSON:** I believe they investigate defects. A homeowner reports a defect with some work that was done by a licensed builder, and they would investigate that. I think they investigate wages, security of payments issues as well.

20 **MR McLEAN:** And so do I understand from the evidence you've just given that the understanding at least in parts of the industry was that when the CFMEU had a run-in with a contractor, because of the CFMEU's influence on the QBCC, the QBCC would then suddenly appear and start investigating that contractor for unrelated reasons?

25 **MR JENKINSON:** That was as I understood it. That was what the industry - that was what parts of the industry were telling me in the ABCC at the time.

MR McLEAN: Just a final question.

30 **COMMISSIONER:** Just before we move off that topic, Mr McLean. Just going back to your - what you say the skill sets or resources needed by a state-based ABCC or equivalent of the BCCB, you say you've got to have an investigative background and analytical background. Are you talking about - you need to be ex-police? Is that the skill set you need?

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MR McLEAN:

40 **MR JENKINSON:** Not necessarily, Commissioner, no. The ABCC did employ some ex-police, but you didn't have to be ex-police to be in that role. You just needed to be able to speak to people, speak to witnesses, take a witness statement, conduct a record of interview, compile a brief of evidence, and that - you don't have to be an ex-policeman or police officer to do that, but you do - that's an important skill set for someone in that role.

45 **COMMISSIONER:** Or lawyers?

MR JENKINSON: You would need a team of lawyers as well, certainly. The lawyers would be - they were an important part of the ABCC's role. But we had lawyers available to us at the BCCB. They weren't engaged in our office, but we had access to lawyers. But certainly there was a large team of lawyers employed by the
5 ABCC that were integral to the operations of the commission.

COMMISSIONER: But the tip of the spear are the investigators who have got this analytical investigative skill that might come from being - having history of
10 policing?

MR JENKINSON: Yes.

COMMISSIONER: Where else do you develop these skills other than policing?

MR JENKINSON: People - people - other government agencies. A lot of
15 government agencies conduct their own investigations. Customs have investigators. ASIC, the ATO, state governments have investigators in various roles.

COMMISSIONER: And you recruit those sort of people too for this sort of body?
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MR JENKINSON: Yes. Look, often we've found that if you found someone who was interested in that work, had a work ethic and was prepared to get in and learn and be told, they were better than someone who'd been in the industry for many, many years and was - had one eye on retirement and was looking at getting out and
25 didn't want to be told that things were changing. Some of the younger, keener people were better despite not having a large wealth of information as a background that you might ordinarily assume would be great for the job, but it didn't always work out of that way.

MR McLEAN: Perhaps just on that point, Mr Operator, if we could bring up
30 paragraph 63, please. So, Mr Jenkinson, I take from what you've said about concerns about the QBCC performing this function and the sorts of resourcing required and, in response to the Commissioner's questions, the importance of properly identified and selected people to perform this role, that all feeds into this recommendation that you
35 then provide at paragraph 63?

MR JENKINSON: That's right, yes.

COMMISSIONER: And do I take it that the - your recommendation would be you
40 simply repeat what - the way in which the BCCB was set up or the ABCC was set up in Queensland, perhaps with statutory background - statutory backing? Is that -

MR JENKINSON: That's right, Commissioner. I would recommend that the BCCB
45 essentially be re-established with the proper resourcing, and I think that would be a step in the right direction, certainly.

COMMISSIONER: What does proper resourcing mean?

MR JENKINSON: The right number of investigators, administrative staff, perhaps put some lawyers in there. The BCCB, when I was with it and we set it up, we had a person who was specifically there to look over WRMPs, for example. That person
5 wasn't out taking witness statements from people; they were just analysing and reviewing the WRMPs. So a wide range of people in the agency doing different things, but not being short-staffed.

COMMISSIONER: And in your view, what's the proper resourcing level? One
10 person, 10, 100, 1000? What's the number?

MR JENKINSON: We had - there was about five of us at the time that I left. We had five. There was an administrative officer.

COMMISSIONER: In the BCCB?

MR JENKINSON: In the BCCB. We had five. And we got it up and running and we got systems in place and we were moving forward. I think if the government
20 hadn't changed and we weren't wound down, I think that five would have quickly needed to be expanded.

COMMISSIONER: To what sort of number?

MR JENKINSON: I think you'd - for covering the state, you'd be looking at - I
25 think you'd need probably 20 or 30 people. You might even want to put an office in Townsville or Cairns as well, but you might need 20 or 30 people, with some lawyers.

COMMISSIONER: Are they included in the 20 or 30?
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MR JENKINSON: Yes. Yes. Yeah, that's included, yeah.

COMMISSIONER: What sort of numbers did you have in Queensland when you were in the second iteration of the ABCC when you were the Queensland director or
35 whatever it was called?

MR JENKINSON: Yeah, I was a director. I had approximately 10 inspectors, just inspectors. There was - there were three lawyers. There was several code people who just worked exclusively on the 2016 code. There was an admin officer. There was a
40 communications team person. I think the office had - the Brisbane office had probably 20 to 25 people in it. There was also, Commissioner, there was a wages and entitlements team in the Brisbane ABCC office too, as most offices did. They focused exclusively on wages and entitlements underpayments, so they contributed to the numbers. Probably 30 people.
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COMMISSIONER: 30 people in the second -

MR JENKINSON: Probably 30 people in the Brisbane office, I think, at its high point, I think.

5 **COMMISSIONER:** And there was no Central or North Queensland office of the ABCC?

MR JENKINSON: There was - there was four people in the Darwin office -

10 **COMMISSIONER:** In the Darwin office.

MR JENKINSON: - that I oversaw as part of the northern region. There was a team leader and three inspectors.

15 **COMMISSIONER:** But no-one in Central or North Queensland?

MR JENKINSON: In Central Queensland, no. No.

COMMISSIONER: Or -

20 **MR JENKINSON:** Sorry, no, it was just Brisbane. Just in Brisbane and Darwin. The ABCC didn't have any regional presences. They had an office in every capital city. No regional centres.

25 **COMMISSIONER:** Was that a problem, not having people in the major regional centres?

30 **MR JENKINSON:** It wasn't a problem. We travelled. There was - we travelled to - certainly from the Queensland office's perspective, we travelled to North Queensland from time to time. There wasn't - there wasn't a lot of work in Central Queensland. In the earlier days, we made a few trips to Central Queensland. There wasn't a lot of work out there that needed our attention. But North Queensland, we would travel as required.

35 **COMMISSIONER:** But your opinion now is if there was to be a regulator that you described as dedicated specialists and properly resourced, that resourcing should include room for resources in at least Townsville and Cairns?

MR JENKINSON: I would think probably Townsville or Cairns.

40 **COMMISSIONER:** Or Cairns.

MR JENKINSON: You could probably do both from one city, I would think. Townsville or Cairns you'd put an office, I think.

45 **COMMISSIONER:** And is that it, as well as Brisbane?

MR JENKINSON: Yeah. I don't think you would need to expand it in Queensland beyond those two centres.

5 **COMMISSIONER:** And about 20 to 30 people, people with investigative analytical skills and -

MR JENKINSON: And some legal people.

10 **COMMISSIONER:** And some legal skills.

MR JENKINSON: Yeah.

15 **MR McLEAN:** Just one final question, Mr Jenkinson. One of the criticisms that the CFMEU levelled at the 2016 code during the period that you were involved in this administration was that codes of that kind are anti-union. Do you have anything to say in response to that sort of criticism?

20 **MR JENKINSON:** Yeah, I reject the suggestion that the code is anti-union. The code, both the Queensland code and the federal code, they were instruments that created a relationship between contractors and the government. It didn't create a relationship with any union, the CFMEU or any other union. If there was a contravention which led to an investigation and possibly a sanction, the unions are not caught up in that sanction. There's no penalty being handed down to a union for a contractor or subcontractor breaching the code, either code. So it - in that respect, it
25 wasn't anti-union. They were documents that called on a contractor to just follow the law, work productively and deliver best value for taxpayer money. That was really the whole goal of both the codes. It didn't involve sanctions or penalties against a union.

30 **MR McLEAN:** That's the examination-in-chief, Commissioner.

COMMISSIONER: Sorry?

35 **MR McLEAN:** That's the examination-in-chief.

COMMISSIONER: Just had a couple of other questions. You gave some evidence that in your experience the - even though it didn't operate for a long period of time - the Queensland guidelines that were administered by the BCCB improved productivity in the industry. Why did you say that?

40 **MR JENKINSON:** Why did they improve productivity?

COMMISSIONER: Yes, why do you say that in your view the guidelines, whilst they were in operation, administered by the BCCB, improved productivity?

45 **MR JENKINSON:** Well, they set about reducing days lost to industrial disputes. It prohibited and prevented union officials from entering the project outside of the

right-of-entry laws, and an lawful right of entry by a union can have ramifications far and wide across a site. The site will be shut down for reasons that can be dealt with without a stoppage often. The codes prevent the notion of no ticket, no start. If you're not a member of a union, you can't work on this job is the no-ticket-no-start regime.

5 The code speaks against that practice, which - a no-ticket-no-start regime prevents workers coming on to the project if there's a union official inspecting cards on the gate or at an induction situation and someone isn't a member and doesn't want to join a member - doesn't want to join the union then and there, they can simply be sent off site. "You're off. You don't work here today until you buy a union ticket." That's
10 unproductive in my view.

Having sites locked down to inflexible RDO calendars is unproductive. Workers earn RDOs, and I think they should be entitled to take them when they want to in a consultation with their employer. The code says that you're allowed to do that.

15 Inflexible RDO calendars are outlawed by the codes. So they're the sort of things that were making the sites more productive in my view while these codes were in place.

COMMISSIONER: You said that the 2016 federal code was a more formal version of the 2013 Queensland guidelines, but I think you weren't able to identify - and
20 there's no criticism of this - who authored the 2013 Queensland guidelines; it was something you were presented with?

MR JENKINSON: That's right, Commissioner. I don't know who literally authored them. I believe they were based on the Victorian guidelines from the Victorian
25 Government and they were put together, authored by people within the Department of Justice and Attorney-General and/or the Office of Industrial Relations. I don't know which individuals did that, but that's where I believe they come from. They were authored by the Queensland Government, based on the Victorian Government's guidelines.
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COMMISSIONER: Before you came to give evidence, Mr Hadgkiss seemed to suggest that he was the author or prime author or main author of the Victorian guidelines upon which the 2013 Queensland guidelines were based. I think that's the nature of his evidence. In terms of the distinction between the Victorian guidelines
35 authored or mainly authored by Mr Hadgkiss, the 2013 Queensland guidelines - you don't know who the author was, but someone within the Department of Justice - and the 2016 federal code, is there anything, apart from questions of style and nuance, that is substantially different between those three instruments that we need to be aware of?
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MR JENKINSON: Certainly the Queensland guidelines and Victorian guidelines were almost identical, so there wasn't anything I can put my finger on now that differentiates them. The 2016 federal code was more lengthy. It included provisions that weren't in the state guidelines, things like contractors needing to be aware of
45 how many non-citizens they were engaging and employing on their construction projects. I think there was provisions in there for the flying of union flags and displaying union paraphernalia to a greater extent than the Queensland guidelines

did. I think there was a provision in the - sorry, I know there was a provision in the 2016 code in relation to monitoring and auditing security of payments concerns. These things were not in the Queensland code.

5 So there's a couple of aspects. There was - I'm not sure whether it finally made it into the 2016 guidelines, but there was talk about making sure there was sufficient Australian-made content in material that was supplied to federal government projects. But that wasn't part of the Queensland guidelines.

10 **COMMISSIONER:** If you were authoring or suggesting a code that the government should adopt now, the state government, what - which one would you use to base your recommendation on? The Victorian guidelines, the 2013 guidelines or the 2016 federal code?

15 **MR JENKINSON:** I think the 2013 Queensland guidelines, Commissioner. It may be a case of pulling a few pieces from the 2016 federal code as well, but largely the 2013 Queensland implementation guidelines covered the field and achieved what the intention was. They would be - it would be a great starting point to have them reintroduced.

20 **COMMISSIONER:** Anything arising from that?

MR McLEAN: Nothing arising, no. Thank you.

25 **COMMISSIONER:** What is the position in relation to the cross-examination of Mr Jenkinson?

MR McLEAN: Similar application has been made to that which was made in respect of Mr Hadgkiss by the administrator. Again, I might let my learned friend address you on that first.

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COMMISSIONER: You're down to 200 pages now, Mr O'Grady, so you're going to have to work a bit harder on this one.

35 **MR O'GRADY:** Yes, thank you, Commissioner. But I have also got to read Mr Hadgkiss' stuff. I had to read that prior to today. Look, it's virtually the same application, Commissioner. There are some issues that we would seek to put to this witness. We need to dig into some of the statistics. You will have seen, Commissioner, that this is really a very similar witness statement to that of Mr
40 Hadgkiss', although it's more focused. In our respectful submission, it would make more sense to do them both at the same time.

COMMISSIONER: Yes. I think there's some sense in that, Mr McLean, given my ruling this morning or whenever it was. Was it this morning or before lunch?
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MR McLEAN: In light of your ruling before lunch, Commissioner, there's nothing further I can say against the application.

COMMISSIONER: Sorry about this, Mr Jenkinson, but the administrator of the CFMEU wants some time to consider your statement and to make a decision as to - well, actually to apply. You've got to apply first, don't you?

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MR O'GRADY: Yes, we do. We've foreshadowed that we currently intend to apply in the correspondence that we sent yesterday, but obviously if that position changes, then we'll let the Commission know as soon as possible.

10 **COMMISSIONER:** So the administrator wants to consider whether they want to apply to cross-examine you and are not in a position to do that today.

MR JENKINSON: Yes.

15 **COMMISSIONER:** Given - well, we don't need to go into the reasons. So it may be that we can excuse you today, but we might need to recall you at some later time.

MR JENKINSON: I understand, Commissioner. Thank you.

20 **COMMISSIONER:** Can the witness -

MR McLEAN: That's the evidence for today, Commissioner.

COMMISSIONER: Can the witness be excused, Mr McLean?

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MR McLEAN: (Indistinct).

30 **COMMISSIONER:** I just wonder whether it's possible - I mean, it might be something we can do in the absence of Mr de Jersey and Ms Brooks and Mr Cliff if they want to go, be excused from the bar table. But I just wonder whether it's worth talking about timing for the recall of Mr Hadgkiss in particular and Mr Jenkinson in terms of the necessity for at least this part of the Commission's work to be done with alacrity.

35 **MR McLEAN:** I certainly heard what the Commissioner said earlier about the timing impetus to close this body of evidence, so perhaps if I can suggest I'll have some conversations with my learned friend about convenient times. One difficulty is Mr Hadgkiss, I understand, is going to be away for at least a couple of weeks now, so we might need to factor that -

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COMMISSIONER: I just wonder if we want to, instead of adjourning for the day, stand down for five or 10 minutes and see if you can reach some agreement.

45 **MR O'GRADY:** Well, I approached my learned friend in that regard before we resumed this afternoon. The position as I understand it is that Mr Hadgkiss has indicated that he is going to send some dates of his availability to my learned friend, and then we were going to have direct counsel-to-counsel discussions. And in the

absence of those dates from Mr Hadgkiss, I'm not sure we can progress the matter, with respect, Commissioner.

5 **COMMISSIONER:** Is that your position, Mr McLean?

MR McLEAN: I think that's right, Commissioner.

10 **COMMISSIONER:** All right. Are there any other applications that anyone wants to make this afternoon? No? Yes? No?

15 **MR O'GRADY:** We've forwarded an application to - seeking leave to cross-examine Mr - sorry, we are going to file an application to cross-examine Mr McKay, and that will happen this afternoon in writing. But that can be produced tomorrow, Commissioner.

20 **COMMISSIONER:** You probably don't know the answer to this, Mr McLean. When's Mr McKay on for evidence?

MR McLEAN: On Thursday, Commissioner.

25 **COMMISSIONER:** We'll deal with that then, won't we?

MR O'GRADY: Yes.

30 **COMMISSIONER:** Very well. You're excused, Mr Jenkinson, and you can adjourn until 10 am tomorrow.

<THE WITNESS WAS RELEASED

<THE HEARING ADJOURNED AT 3.23 PM