



**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
COMMONWEALTH LAW COURTS, BRISBANE**

**WEDNESDAY, 15 JULY 2026
AT 10.00 AM**

DAY 36

APPEARANCES

**Mr S Wood AM KC - Commissioner
Mr E Gisonda KC - Counsel Assisting
Ms I MacNicol – Counsel Assisting
Ms M Stone - Counsel Assisting
Mr D de Jersey KC - Counsel for the State of Queensland
Mr C O'Grady KC- Counsel for the CFMEU Administration
Mr A Duffy KC – Counsel for Grace Grace
Ms A Freeman KC – Counsel for the John Holland Pty Ltd and John Holland
Queensland Pty Ltd
Ms Deanne Hawkswood - Witness
Mr David Balmer - Witness**

<THE HEARING RESUMED AT 10.00 AM

COMMISSIONER: So appearances are the same, Mr Gisonda, as yesterday afternoon, but Ms MacNicol has replaced Mr Jenkins?

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MR GISONDA: Yes, Commissioner.

COMMISSIONER: There's no other changes to the appearances, are there? No. All right. Mr Gisonda.

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MR GISONDA: Thank you, Commissioner. Can I explain what the order is for today. First of all, I will call Ms Deanne Hawkswood to give evidence. Once she has completed her evidence, I will tender a statement by Mr Neil Scales, the former director-general of the department. Then I will show you, Commissioner, some videos that were taken of the QTRIP forum in 2022, and then I will call Mr David Balmer to give evidence, and I suspect Mr Balmer's evidence will carry into tomorrow.

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We won't be calling Ms Julie Anne Mitchell this week now. She'll be moved to the following - the next sitting week, which is the last calendar week of July. And we also will get to the two John Holland witnesses tomorrow, but we won't get to Matthew Lowe. So could I begin, then, by calling Ms Hawkswood, please.

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COMMISSIONER: Is Ms Hawkswood in the hearing room? Please come forward to the witness stand, Ms Hawkswood.

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<DEANNE MARIE HAWKSWOOD, AFFIRMED

<EXAMINATION BY MR GISONDA

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COMMISSIONER: Please be seated, Ms Hawkswood. Mr Gisonda.

MR GISONDA: Thank you, Commissioner. Now, Ms Hawkswood, I'm hoping that you have in front of you a copy of your statement, which you affirmed -

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MS HAWKSWOOD: Yes.

MR GISONDA: - on 3 July 2026. Do you have that in front of you?

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MS HAWKSWOOD: I do. Thank you.

MR GISONDA: And can I ask you about some changes you might like to make to that statement. So can we go first to paragraph 45, please.

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MS HAWKSWOOD: Yes.

MR GISONDA: And in that first line, at the end of the first line, there's a reference to February 2021. Should that read as February 2020?

MS HAWKSWOOD: Yes, please. That was a typo.

MR GISONDA: Thank you. In paragraph 79 in the first line, paragraph 79 - that's on page 17 - there's a reference there in that first line to a table at paragraph 36. In fact, that table appears at paragraph 37. So should that be a reference to paragraph 37?

MS HAWKSWOOD: Yes, it should be. Yes.

MR GISONDA: And then at paragraph 247(b), which is on page 46, again, the first line, it says:

"Project-specific BPIC templates were negotiated with the relevant unions."

And you also then want to say "and industry" after "unions"?

MS HAWKSWOOD: Yes, please.

MR GISONDA: So that should read:

"Project specific BPIC templates were negotiated with the relevant unions and industry..."

Comma.

MS HAWKSWOOD: Yes.

MR GISONDA: And then if we go to paragraph 264, in the last line, there's a reference to annexure DH-28, pages 302 to 3041. Should that read 304?

MS HAWKSWOOD: I think so, yes.

MR GISONDA: So delete the 1?

MS HAWKSWOOD: Yes, please.

MR GISONDA: Then, finally, at paragraph 371, on the last line, so that's page 64. On the last line, the reference to annexure DH-39, that should read as pages 373 to 406; is that correct?

MS HAWKSWOOD: Yes.

MR GISONDA: Sorry, one more, Ms Hawkswood. At paragraph 298, the second sentence - that's at page 54 - it says:

"John Holland was not consulted before being provided with that document."

5 Is your evidence, in fact, that John Holland was consulted before being provided with that document?

MS HAWKSWOOD: Yes, please.

10 **MR GISONDA:** So we shall delete the word "not"?

MS HAWKSWOOD: Yes, please.

15 **MR GISONDA:** With those corrections made, Ms Hawkswood, is your statement otherwise true and correct?

MS HAWKSWOOD: Yes, it is.

20 **MR GISONDA:** Commissioner, I tender the statement and accompanying bundle of documents.

COMMISSIONER: There's 40 annexures, are there?

MR GISONDA: Yes.

25 **COMMISSIONER:** Are there any objections? What are we going to mark this exhibit as? The annexures are DH themselves.

MR GISONDA: This should be exhibit DH-1.

30 **COMMISSIONER:** But the exhibits are DH - the annexures to the exhibit are DH-1 as well.

MR GISONDA: Yes.

35 **COMMISSIONER:** Shouldn't we put a DXH or something like that?

MR GISONDA: Yes, okay. You don't have a middle initial, do you, Ms Hawkswood?

40 **MS HAWKSWOOD:** I do.

MR GISONDA: What is that initial?

45 **MS HAWKSWOOD:** M for Mary.

MR GISONDA: M, okay. DMH-1, Commissioner.

COMMISSIONER: Thank you. Witness statement of Deanne Mary Hawkswood -

MS HAWKSWOOD: It's Marie, actually.

5 **COMMISSIONER:** - 67 pages, affirmed 3 July 2026, 389 paragraphs with 40 annexures, as amended by the witness in the witness box just now at paragraphs 45, 79, 247, 264, 298 and 371, will be DMH-1.

10 **<EXHIBIT DMH-1 WITNESS STATEMENT OF DEANNE MARIE HAWKSWOOD 67 PAGES, AFFIRMED 3/7/2026, 389 PARAGRAPHS WITH 40 ANNEXURES, AS AMENDED BY WITNESS IN WITNESS BOX AT PARAGRAPHS 45, 79, 247, 264, 298 AND 371**

15 **MR GISONDA:** Ms Hawkswood, I'd like to start by asking you some questions about your professional background and experience. You joined the Department of Transport and Main Roads in February 2009; is that correct?

MS HAWKSWOOD: That is correct, yes.

20 **MR GISONDA:** And in 2012, you were appointed to the position of chief procurement officer?

MS HAWKSWOOD: I was, yes.

25 **MR GISONDA:** And can you tell the Commissioner what the chief procurement officer role involves?

30 **MS HAWKSWOOD:** The chief procurement officer role in the department looks after, I suppose, all of the procurement the department does. The department is one of the largest procurement agencies in the state, particularly given our infrastructure and passenger transport spend. So I am technically like the head of discipline for procurement for the department.

35 **MR GISONDA:** And in your role as chief procurement officer, who do you report to? Or what's the position that you report to?

MS HAWKSWOOD: I report to the chief finance officer, who is Nick Shaw.

40 **MR GISONDA:** And then can you tell the Commissioner about the secondment that you had in May 2020 to the position of general manager?

45 **MS HAWKSWOOD:** Yes. I was seconded over into that role in May 2020. This was at a time when - which is in my statement - when we were responding to the BPIC policy, and it was identified that we needed to do something as a department, which I'll probably talk about in my evidence, and I moved over to infrastructure management division into a newly created temporary role to lead this work.

MR GISONDA: And who did you report to in that position that you held as general manager of strategic procurement?

5 **MS HAWKSWOOD:** I reported to the deputy director-general of infrastructure management division, IMD, at the time was Amanda Yeates.

MR GISONDA: Thank you.

10 **COMMISSIONER:** Mr Gisonda said that the decision to implement BPIC in the Department of Transport and Main Roads wasn't made till October 2020, but you said six months earlier -

MS HAWKSWOOD: Yes.

15 **COMMISSIONER:** - you were appointed to a position in the infrastructure management division to, I think your words were, respond to BPIC.

MS HAWKSWOOD: Yes, correct.

20 **COMMISSIONER:** How do you square those two things?

25 **MS HAWKSWOOD:** In October 2020 was when the Transport BPIC document was approved by government. We had - going offline in 2020 was for us to lead how we were going to respond to that. So we had been briefing to government prior to that around our thoughts about the BPIC coming into the civil infrastructure space, and it became quite clear then that we needed to act and act quite quickly to be able to respond to that. So I went offline and took that on.

30 **COMMISSIONER:** Sorry, you went -

MS HAWKSWOOD: I went offline into that role and took this role on.

35 **MR GISONDA:** And when you were the general manager, were you still performing your chief procurement officer role, or was that given to someone else?

MS HAWKSWOOD: No, somebody else went into that role while I was in this role.

40 **MR GISONDA:** If I can get you to look, please, at paragraph 24 of your statement, which is on page 4. You say that in relation to procurement, the department operated under a whole-of-government procurement policy which included what was called the Queensland Procurement Policy and the best practice principles. Was the Department of Housing and Public Works, as it was then known, the owner, if I can use that word, of those policies?

45 **MS HAWKSWOOD:** Yes, they are.

MR GISONDA: And at paragraph 27, you explain that the Queensland Procurement Policy sets the rules and principles that government departments must follow when they procure goods, services, works and infrastructure. And that's to align, is it, the procurement, procurement in the State of Queensland, with broad government policies and principles. Is that a fair description?

MS HAWKSWOOD: That is correct, yes. That's a good description.

MR GISONDA: And at paragraph 29 of your statement at page 6, you explain that in about April 2018, the best practice principles were developed to apply through government procurement, and one of those best practice principles, which you say at paragraph 32, was an industrial relations component, that is, procurement, the procurement policy required contractors to implement best practice industrial relations; is that right?

MS HAWKSWOOD: That is correct, yes.

MR GISONDA: And that applied - the best practice principles applied to DTMR procurement just as much as they did to other departments' procurement; is that right?

MS HAWKSWOOD: It did. Yes, it did, and it was relevant to projects over 100 million, so more to those major projects.

MR GISONDA: And we've heard some evidence about this already, but tell me if this accords with your recollection, that at least when the policy was first introduced, there wasn't much detail surrounding what best practice industrial relations principles meant, other than the fact that contractors were expected to abide by those best practice principles.

MS HAWKSWOOD: That's right, yeah. When the BPP or the best practice principles were introduced, there wasn't a great deal of extra information to provide that guidance. They were a set of principles.

MR GISONDA: And you say at paragraph 36 of your statement at page 7 that the difficulty with the BPPs was how the best practice industrial relations could be practically implemented and that for your department this was a new obligation to be imposed as the department had previously left all industrial relations matters to our contractors, as it was their workforce and therefore their risk to manage during delivery. We've already heard evidence from some contractors, and we'll hear the same evidence from Mr Balmer, to the effect that what might be described as business as usual or the traditional position was that the department did not involve itself in industrial relations negotiations.

MS HAWKSWOOD: Correct, we did not.

MR GISONDA: And so you would agree with that assessment?

MS HAWKSWOOD: Yes.

5 **MR GISONDA:** And is it fair to say that as a consequence of that, the department didn't have any particular industrial relations expertise?

MS HAWKSWOOD: No, no, we did not. Not in this regard.

10 **MR GISONDA:** And the reason you didn't was because you didn't need to?

MS HAWKSWOOD: No, no, it was not a skill set we needed.

15 **MR GISONDA:** Now, you said you were brought on to manage, if I can use that word, the introduction of BPIC into the transport portfolio, and is it fair to say, based on what you were saying to the Commissioner a short moment ago, that the department could see this policy coming -

MS HAWKSWOOD: Yes.

20 **MR GISONDA:** - in relation to your department, that is, you could see that at some point it was highly likely, if not inevitable, that the BPIC policy in some form would be required for transport projects?

25 **MS HAWKSWOOD:** Yes.

MR GISONDA: Is that fair?

MS HAWKSWOOD: That was our concern, yes.

30 **MR GISONDA:** And at paragraph 40, which is on page 9 of your statement, you say that DTMR had serious concerns about BPICs being applied to DTMR projects, which was communicated as part of the policy development process. Does that mean that the department sought to communicate to the other departments and the ministers that there could be problems with the implementation of BPIC in transport
35 projects?

MS HAWKSWOOD: That is correct. So we would have communicated to the Department of Housing and Public Works, as the policy owner and who was developing this, to let them know what our concerns were.
40

MR GISONDA: And at paragraph 40, you say that an objection, and perhaps this summarises the core objection, is that BPIC had been developed having regard to the requirements of the building or vertical construction sector, and not the civil or horizontal construction sector, which was primarily the types of projects your
45 department procured?

MS HAWKSWOOD: That's correct. Yeah.

5 **MR GISONDA:** And at paragraph 43, you identify that the department was in fact raising its concerns from as early as late 2019 and that those who were raising those concerns in the briefings to Minister Bailey included Mr Scales, who was the director-general; Ms Yeates, who was the deputy director-general; yourself - and when you became the general manager, you reported to Ms Yeates. Is that right?

MS HAWKSWOOD: Correct.

10 **MR GISONDA:** And then Mr Uhlmann. Can you just explain who Mr Uhlmann was?

15 **MS HAWKSWOOD:** Mr Uhlmann is, or was at the time, the executive director for our program management area, which sits within that infrastructure management division. So that team, they look after all the procurement, the contracting, the pre-qualification, a number of other aspects related directly to our infrastructure program, which is delivered by our regions.

20 **COMMISSIONER:** When you said that - this is 32 - DTMR historically did not involve itself in the industrial arrangements between contractor, subcontractors, employees and unions, what - I can understand when you've got large projects, to build large roads, that you would contract that out to someone with the expertise. But when Department of Main Roads is fixing a pothole, do you have your own employees that do that?

25 **MS HAWKSWOOD:** We do. We have road tech, which is a business unit within TMR. So they're like our internal construction team. So they will do minor jobs for TMR, such as, you know, fixing potholes and smaller jobs.

30 **COMMISSIONER:** And you have to manage their industrial arrangements, don't you? Some union represents them and -

35 **MS HAWKSWOOD:** That's - so that's done through our normal employee relations, our internal employee relations, because they're employees of TMR. In the case of our contractors - so we outsource pretty much all of our construction apart from what road tech would do, and in terms of those contractors that we work with, industrial relations is their risk, was always their risk, so we at TMR did not get involved between the contractors and their industrial relations.

40 **COMMISSIONER:** So your internal employees don't do any construction; they just do repair and maintenance?

45 **MS HAWKSWOOD:** They do do some - they do do construction as well, but they will do that under their own enterprise agreement. So we have a - it's called the blue-collar EBA, which covers our road tech employees, so they're covered by that, and they will do - I think road tech can do projects up to, you know, maybe 10, 15 million dollars, so more minor projects.

COMMISSIONER: And then after that, you go outside and -

5 **MS HAWKSWOOD:** So then we go out to market, to private. So TMR work across - we call it sort of three sectors in terms of our construction. We have road tech do some of those minor construction works. Local government -

COMMISSIONER: And repair and maintenance.

10 **MS HAWKSWOOD:** And repair and maintenance, yep. We also give work out to local governments, particularly in regional areas, and then the remainder goes to private sector.

COMMISSIONER: I see. Thank you.
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MR GISONDA: Thank you, Commissioner. And, Ms Hawkswood, I might just ask if you would just move a little bit closer to the microphone, just so we can -

MS HAWKSWOOD: I'm conscious of hitting it.
20

MR GISONDA: Thank you.

MS HAWKSWOOD: They're so close.

25 **MR GISONDA:** And now, at paragraph 44 of your statement on page 10, you explain that, in fact, Minister de Brenni, who was the Minister for Public Works, wrote to your minister inviting him to be part of a joint submission about the application of the minimum conditions, the minimum conditions being the predecessor of BPICs.
30

MS HAWKSWOOD: Yeah.

MR GISONDA: And that your recollection, which you set out at paragraph 45, is that Minister de Brenni was informed about DTMR's concerns at that stage, and so as a consequence, that joint submission did not eventuate; is that correct?
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MS HAWKSWOOD: The joint submission did not eventuate.

40 **MR GISONDA:** Yes. And at paragraph 47 on page 11, you say that from your - your memory of your impression is that the concerns that were being voiced by DTMR were understood by the ministers at the time, and it was agreed that as a consequence, there should be a separate transport BPIC developed by DTMR rather than the one-size-fits-all approach that had been proposed by the CFMEU. Is that how you came to have a separate transport BPIC?
45

MS HAWKSWOOD: Yeah. Up until that stage, back in that sort of late 2019, Housing and Public Works were progressing with a draft submission. That would be

a joint submission, and that was to introduce minimum standards similar to what they had applied on Cairns, I believe, Cairns Convention Centre.

MR GISONDA: Cairns Convention Centre, yes.

5

MS HAWKSWOOD: We were concerned. I briefed the minister, and the minister shared those concerns, shared those with the department and Minister de Brenni. We really wanted to make sure that they did understand, I suppose, the nuances for the transport infrastructure program and what this decision would mean to the
10 department and to our QTRIP program. And I think as a result of that the submission was adjusted to reflect our feedback.

MR GISONDA: And if I can take you to page 2 of the bundle of documents that are attached to your statement. There's an email at the bottom of this page from Mr
15 Uhlmann. It was well understood, wasn't it, that the minimum conditions document - and the proposal was to rename that the best practice industry conditions or BPIC.

MS HAWKSWOOD: That's right.

20

MR GISONDA: It was well understood that that was effectively an enterprise agreement that had been provided by the CFMEU?

MS HAWKSWOOD: That's correct. Yeah.

25

MR GISONDA: And over the page, at page 3, the first bullet point, Mr Uhlmann says to you that the contents of that document had not been negotiated with your department or employers.

MS HAWKSWOOD: That's correct.

30

MR GISONDA: And the department was not aware whether that document had been consulted with other unions, noting that the AWU had coverage of employees on civil construction works.

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MS HAWKSWOOD: That is correct, yes.

MR GISONDA: And so you were starting to learn all of this, presumably, about questions regarding coverage and the differences between what the CFMEU might
40 demand and might be able to achieve in the building space as opposed to the specific requirements of the civil infrastructure space. Is that fair?

MS HAWKSWOOD: Yes. Yeah, that is.

COMMISSIONER: And just going back to the - what do you call that entity within
45 the department that does the small construction and the maintenance?

MS HAWKSWOOD: Road tech.

COMMISSIONER: Road tech. Presumably the employees of the department within road tech had, because it was civil construction - I mean, this question will show my
5 ignorance - asphaltting gangs.

MS HAWKSWOOD: Yeah.

COMMISSIONER: The union that represented them and with whom the
10 department had an EBA was the AWU, presumably?

MS HAWKSWOOD: I'm not 100 per cent sure who the union is for their EBA.
Sorry.

15 **COMMISSIONER:** No, that's all right.

MR GISONDA: Now, at paragraphs 48 to 49, on page 11 of your statement, you explain why the department believed it was important for your department to draft or to have implemented a separate transport BPIC, and you explain that there is what's
20 described as QTRIP, which is a four-year Queensland Transport and Roads Investment Program, and at paragraph 49, you set out some issues, which include that civil transport construction market rates were generally lower than in the building construction industry.

25 **MS HAWKSWOOD:** Mmm-hmm.

MR GISONDA: Civil transport contractors and subcontractors were either not unionised or were members of the AWU, and civil transport construction, by its nature, often involved larger project areas and greater planning, as work occurs in
30 live traffic environments. Is that a way of explaining that -

MS HAWKSWOOD: Yes.

MR GISONDA: - for some of these civil construction projects, you need greater
35 flexibility in terms of the time that work is performed and access to the site?

MS HAWKSWOOD: Yeah. Yes. Exactly. At the time when we were dealing with this, and it was one of the issues that we - we were facing was, I suppose, the - there was - I suppose we were just looking at or construction was just being broadly used
40 as a generic term, and so therefore the minimum standards document was for construction, and so therefore that should be okay for all construction. We wanted to try and make it quite clear to various parties that there were nuances between - I would sort of say it's vertical and horizontal in terms of the civil. So an example, with civil, you know, I mean, everybody has experienced civil construction with
45 roadworks, so the weather can be different from one end of a road to the other end of a road, so the footprint can be quite large.

MR GISONDA: And a large proportion - is this fair - a large proportion of projects in - let's focus on projects that are worth more than \$100 million. A large proportion of them are jointly funded with the Commonwealth; is that right?

5 **MS HAWKSWOOD:** Yes, they are.

MR GISONDA: And there was a national partnership agreement in place between the State and Commonwealth Government; is that right?

10 **MS HAWKSWOOD:** That is right, yep.

MR GISONDA: And that national partnership agreement, did that have any obligations within it in relation to industrial relations matters?

15 **MS HAWKSWOOD:** The national partnership agreement, it is a mechanism by which we get funding from the Commonwealth Government. It's very important to the state. It makes up about 30 to 40 per cent of the funding that we get for QTRIP. There is a - the national partnership agreement did have a requirement that we
20 needed to include, as part of our tender, requirements to the contractors, that they needed to be compliant with the Building Code of 2016. It does have a longer name, but I know it as the Building Code 2016. And the Building Code was sort of quite specific in terms of what its requirements were in terms of industrial relations.

25 **MR GISONDA:** So we've heard evidence from contractors that they were - it was very important to them that they not contravene the code.

MS HAWKSWOOD: Yes.

30 **MR GISONDA:** Because that would have ramifications for their ability to tender for projects going forward.

MS HAWKSWOOD: That's right.

35 **MR GISONDA:** But through the national partnership agreement, the State of Queensland itself had similar obligations, did it?

40 **MS HAWKSWOOD:** That's correct. That's correct. There was - there was risk for the state if we, through our procurement, through our own mechanisms, encouraged our contractors to potentially breach the national partnership agreement. We could be found to have been in breach of that agreement, and they could withdraw funding.

45 **COMMISSIONER:** We've heard some evidence that upon the election of the Albanese Government in May 2022, the federal code was rescinded, revoked, however you describe it. Did that have a flow-on effect for the national partnership agreement?

5 **MS HAWKSWOOD:** The national partnership agreement has now changed its name to a federal funding agreement, an FFA. I think it's still a very similar mechanism. I'm not 100 per cent sure as to what those changes were. What it did mean for us when it came to the BPIC was a lot of the risks to do with the Building Code had been removed.

10 **MR GISONDA:** Because that national partnership agreement effectively referred to or incorporated the 2016 Building Code, and once the Building Code had been amended, then so too were the obligations in the national partnership agreement.

MS HAWKSWOOD: Yes, I would assume so.

MR GISONDA: At page 14 of your statement, at paragraph 66, you say that:

15 "The department was concerned that smaller contractors without the capacity and capability described above would not tender for BPIC projects, thereby limiting the available market and competition, and as a result BPIC would ultimately only benefit larger contractors who could meet the additional requirements to work on major government projects."

20 So that fairly describes a real concern that was held within the department?

25 **MS HAWKSWOOD:** That was a genuine concern, yes. Yeah. And as the department, we were very - I suppose we're very deliberate to make sure that the work that we have under the QTRIP is spread across the supply market, so that I suppose in a sense we want to make sure that all parts of the market are - have the opportunity to be able to tender for those jobs, from the smaller tiers to the large tier 1s.

30 **MR GISONDA:** And at paragraph 83 of your statement, page 17, this effectively summarises the position of the department, does it, which was, first of all, it was important that the minimum conditions or BPIC was not implemented in the transport infrastructure industry at all. Alternatively, the fallback position was if there was going to be a BPIC in the transport industry, your department wanted to hold the pen to try and ensure that such a document was suitable for the industry.

40 **MS HAWKSWOOD:** That's correct, absolutely. Our preference would have been that this - the BPIC was just - just stayed within the building sector. They were more mature in terms of dealing with industrial relations. The civil space was less mature. They had more agreements between their employees and employer. There wasn't a great deal - when we started this, there was very few that had a union as a party to those agreements, and those ones that we did find, it was the AWU that they had were a signature. But there was no appetite for that, for it to bypass TMR.

45 **COMMISSIONER:** What did you just say then, sorry?

MS HAWKSWOOD: I said there was no appetite for the policy to bypass TMR.

MR GISONDA: You then describe, at paragraph 90 of your statement, page 18, that BPIC was the most difficult policy that you have implemented in your entire public service career. And could I just ask you, you joined the department in February 2009.
5 Were you a public servant before then as well?

MS HAWKSWOOD: I have been a public servant since I was 16 years old.

MR GISONDA: Well, I won't ask you what -
10

MS HAWKSWOOD: No, it was a long time ago.

MR GISONDA: A long time ago.

15 **MS HAWKSWOOD:** A long time ago.

MR GISONDA: You say it was the most difficult policy you've implemented in your public service career.

20 **MS HAWKSWOOD:** Yes.

MR GISONDA: You refer to it as:

25 "...the impossible policy, as we could not be successful in appeasing all stakeholders, that's industry, unions and government, no matter what we threw at it, and the work wore me down and I did not feel that the department was supported."

And that's all true and correct, is it?

30 **MS HAWKSWOOD:** Yes, it is. Yes. It was really hard. Really hard.

MR GISONDA: And over the page, at page 19, you say at subparagraph (b) that:

35 "The Office of Industrial Relations did not get involved in the development or implementation."

MS HAWKSWOOD: No.

40 **MR GISONDA:** And is what you're saying there that at least they had some industrial relations expertise in development?

45 **MS HAWKSWOOD:** They did. Yeah, they did. They had the expertise, but they - they provided us advice, but they did not get involved in this. It was left to agencies to do on their own. And, you know, as you were saying before, we didn't have that experience. We had not - we'd had no need to get involved in this - in this type of work previously. So we - we were learning really quickly.

MR GISONDA: At subparagraph (e) you say when Sally Stannard became the director-general in June 2023, she was very supportive. She understood the risks that the department was facing, and she became actively involved with the transport BPIC, and that was what you and the department needed.

5

MS HAWKSWOOD: Yes.

MR GISONDA: Was the sense that there hadn't been that high-level support before Ms Stannard took on that role?

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MS HAWKSWOOD: Yes. Yes. So we did have the support of Neil Scales, our original DG, but, as I say in my statement, he did back away after a while. And yeah, it was a bit isolating, navigating this policy, so I was very pleased when Sally leaned in.

15

COMMISSIONER: I thought, Mr Gisonda - this is perhaps not a question for this witness, but just to remind me of the evidence - at 90(b), where this witness says:

"The Office of Industrial Relations' purview was the industrial relations space."

20

I thought someone asked someone from the Office of Industrial Relations - I think it might have been Mr Peter McKay - about what the skill set was within the Office of Industrial Relations, and he said that office didn't have the skill set, that that office was really just concerned with wages policy, the traditional - didn't have the skill set of dealing with the industrial relations between contractors and unions on big construction projects.

25

MR GISONDA: Well, I think - I don't want to speak for Ms Hawkswood, but I think what we're saying here is that, at least relatively speaking, the Office of Industrial Relations had more industrial relations experience than DTMR. Would that be fair?

30

MS HAWKSWOOD: Yes.

MR GISONDA: So perhaps as unfit for purpose or as inapt as that might have been, it was nonetheless more than what the department had. And then you say at paragraph 91 of your statement, still on page 19, that you noticed how political this policy was, and that until working on this policy implementation, you had had little to no interaction with the minister's office. And that's true even though you were the chief procurement officer for quite some time?

40

MS HAWKSWOOD: That's right. Yeah. I would brief - in my chief procurement officer role, I would brief the minister and the minister's office on procurement matters, but with this particular policy, it was very regular.

45

MR GISONDA: So the level of involvement was high from the minister's office.

MS HAWKSWOOD: Yes.

MR GISONDA: And you then also had an additional requirement to constantly consult with the unions.

5

MS HAWKSWOOD: Yes.

MR GISONDA: And so you conclude paragraph 91 by saying it was a deeply stressful time, having regard to what you described as the impossible policy: government, unions and industry all have different expectations of you and they couldn't all be achieved.

MS HAWKSWOOD: Yeah. That's - yeah, that's exactly right. And it took us - took me a little while to I suppose realise that this was - did feel like an impossible policy to be able to implement. When I took on my secondment into infrastructure management division as the general manager, the initial secondment was meant to be for up to six months. So I suppose that was what the expectation was: I would come over, work with stakeholders, introduce BPIC document into the department, and then I would return to my role. But that didn't happen.

20

COMMISSIONER: But you ended up doing, what, two and a half years or something?

MS HAWKSWOOD: I did two and a half years directly, and I returned to my chief procurement role in January '23, and it still hung onto the program that I was delivering over at infrastructure, which included the BPIC, the implementation of the BPIC into our major projects. And I also took on my previous role of chief procurement officer, so I had sort of two portfolios I was looking after. And that was until November '25, when the current government - sorry, well, November 2025 was when the program was finalised in infrastructure management division, and in terms of BPIC was when the suspension occurred.

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COMMISSIONER: It was suspended in November 2025?

MS HAWKSWOOD: I think it was suspended in '24. I can't remember now, actually.

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MR GISONDA: '24.

MS HAWKSWOOD: It was '24? Yes. Too many dates. Yeah.

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COMMISSIONER: So you worked on it from May 2020 to the end of 2024, in two different roles.

MS HAWKSWOOD: Until - yeah.

45

COMMISSIONER: Four and a half years.

MS HAWKSWOOD: Yes. Yes. I couldn't get away from it.

COMMISSIONER: Three and a half years.

5

MS HAWKSWOOD: Mmm.

MR GISONDA: And at paragraph 94, you summarise a meeting that you had with representatives of the minister's office to discuss what was then the minimum conditions, and you've got a note of your meeting in your bundle, but you summarise some of the key points here at paragraph 94. So you had senior policy adviser - the chief of staff to the minister, Ms van Alphen, who we heard about yesterday, and the senior policy adviser, Mr Reid, and yourself and Ms Yeates attended this meeting, and you were told that the minimum conditions were a ministerial priority and that the department needed to shift its procurement approach towards the best practice principles. And at subparagraph (e) -

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COMMISSIONER: Just in terms of the - I think you said yesterday that the relevant minister was Minister Bailey. Was that for the full three and a half years from May 2020 to the end of 2024?

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MS HAWKSWOOD: No. I think Minister Bailey was replaced at some stage by Minister Mellish. I'm not sure when that was. There was a change in Cabinet. At this time, it was Minister Bailey.

25

MR GISONDA: And at subparagraph (e) of this paragraph, you were also told that the Premier's office expected that the minimum conditions be in practice already, including on TMR projects. And so it was clear to you, wasn't it, that there was government expectation that a BPIC of some description be applied to transport projects.

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MS HAWKSWOOD: Yes, as soon as possible.

MR GISONDA: As soon as possible. And paragraph 104, you also say that - which is over the page at 21 - that the minister's office also occasionally provided directions on the steps to be taken in the consultation process, including continuing to meet with the CFMEU, and these directions were usually verbal and they would include things like, "Make sure you meet with Jade to discuss this and make sure you meet with Peter to discuss this." And so it was clear, was it, to you that the government also expected there to be significant consultation with the unions -

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MS HAWKSWOOD: Yes.

MR GISONDA: - throughout this process?

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MS HAWKSWOOD: Yes. They were a key stakeholder in this process.

MR GISONDA: However, at paragraph 105, you say you can't recall the specific date, but you do recall receiving a phone call from Ms Yeates at some point in which she said something like, "We need to pull back discussing the BPIC with industry." And you say you're confident that that direction would have come from the minister's office, because your experience of Ms Yeates and Mr Scales was that they were highly consultative with the industry. Is that right?

MS HAWKSWOOD: Yes, that is right. And up until I received that message from Amanda, or do I call her Ms Yeates -

MR GISONDA: Ms Yeates.

MS HAWKSWOOD: Ms Yeates, sorry - I'd already started my consultation, so when I went offline and became the general manager, one of the first things I started was to contact all the relevant stakeholders, including the various representatives from our industry associations, which was excellent, actually. However, yeah, when I received that, it was - it was going to be very awkward to - because I'd already started consultation.

MR GISONDA: And so when Mr Balmer gives evidence about the fact that there was little to no consultation with industry in advance of the decision to introduce BPIC in the transport industry, you can understand why he would say that, because, in fact, you recall receiving a direction to do precisely that.

MS HAWKSWOOD: To stop talking to them, yes. So now they were not involved in the development of the BPIC document.

COMMISSIONER: They were not involved?

MS HAWKSWOOD: No.

MR GISONDA: And at paragraph 108, which is at page 22, you regarded this as an unusual and disappointing direction because you had spent time developing a collegiate and collaborative relationship with industry stakeholders, and I assume the reason you'd done that is because those stakeholders are the ones who ultimately need to build the very expensive and extensive infrastructure projects that the state is procuring?

MS HAWKSWOOD: That's exactly right. They're the - they were the stakeholders who were going to be most impacted by the BPIC document.

MR GISONDA: And at paragraph 126 of your statement at page 24, you say that as a result, you did not engage with industry again about BPIC until late 2020, once transport BPIC had been approved by government.

MS HAWKSWOOD: Correct. And that was awkward. So once that was - that was - we had a session with the industry stakeholders and took them through the

BPIC and other work that we were doing with them, and they were - they were angry, and they were entitled to be angry, because they were unable to contribute to the document. Our focus then was really on having them involved in how we - TMR and industry - how we implement the BPIC.

5

MR GISONDA: By contrast, you were, as you've already said, directed to consult with the unions, and, as you say from paragraph 130 onwards, you in fact did consult with the unions throughout the development stage; is that right?

10 **MS HAWKSWOOD:** Yes. Yes, that's correct.

MR GISONDA: And to assist you with that process, Mr Scott Gartrell from - who was at that point involved with KPMG, he was engaged by the department to assist with the development of the transport BPIC; is that right?

15

MS HAWKSWOOD: That's right, yeah, in about June 2020.

MR GISONDA: And was he also to assist you in consultations with the union as well?

20

MS HAWKSWOOD: Yes. Yes, he was.

MR GISONDA: And do you recall how he came to assume that position?

25 **MS HAWKSWOOD:** So we had - actually, we got advice from Mr Reid from the minister's office that Scott would - would be someone that would be quite handy, could be useful for the work that we needed done. We were under very tight time constraints, and at the time, as well as the department was saying we had not done this before, so we were open to suggestions of IR experts that we could - we could
30 bring on board.

MR GISONDA: And that gentleman you referred to, that's the Mr Brett Reid -

35 **MS HAWKSWOOD:** Mr Brett Reid.

MR GISONDA: - who you describe at paragraph 94 as the senior policy adviser for the minister.

40 **MS HAWKSWOOD:** Yes, that's right.

MR GISONDA: As part of the consultation process, at paragraph 156 of your statement on page 31, draft versions of the transport BPIC was provided to the unions; is that right, along the way?

45 **MS HAWKSWOOD:** That's right, yes.

MR GISONDA: And there's an email at page 177 of your bundle where you're providing Mr Jade Ingham and Mr Paul Dunbar from the CFMEU with - you say that - you thank them for their time, feedback and contribution to date on the BPIC document, and you then say in the second paragraph:

"We've incorporated the changes requested by you in relation to wages and conditions."

And so is it fair to say at this point, it felt peculiar to you that you were engaging in consultations and discussions and agreeing to things with the union, who admittedly are a stakeholder in the industry, but an equally significant, if not more significant stakeholder, that being the contractors, were shut out of this process?

MS HAWKSWOOD: Yes. It was a big gap.

MR GISONDA: And at paragraph 153 of your statement, you say that the most significant - so that's on page 30 of your statement, paragraph 153. You say:

"The most significant involvement the CFMEU had in the development of the transport BPICs was through its drafting of the minimum standards document."

And you recall at a meeting Mr Ingham tossed the document onto the table and said words to the effect of, "Here you go. I've done your work for you." Do you remember that incident?

MS HAWKSWOOD: I do. Yeah, I do.

MR GISONDA: And how would you describe his behaviour in your meetings with him generally?

MS HAWKSWOOD: He was - I mean, at the time then, he was quite pleased with himself. And, I mean, around that time, it was - I suppose it was somewhat collegiate, in a way. We were working towards - I mean, this was sort of right at the beginning, and I took that document that he handed to us to be the similar document that he had emailed in late December, which is in my statement.

COMMISSIONER: Late December 2020?

MS HAWKSWOOD: Yes. Yes.

MR GISONDA: And at paragraph 152 of your statement on page 30, this was essentially the - did you understand this to be the core of the CFMEU's contention, which was that the transport BPIC should not be a guidance document but should instead be mandatory for principal contractors?

MS HAWKSWOOD: Yeah, this was - this was a constant tension point throughout the whole implementation of the BPIC in TMR, was the way in which we applied it

through our procurement process and then on to our contractors. That is, that the BPIC was provided as a guidance document; it wasn't provided as a mandatory minimum standards document. And we were quite - we included - at the beginning of the BPIC document, which is in my evidence, instructions for the tenderers, also
5 for the contractors, from which they could follow that in terms of how they would look to apply the transport BPIC.

And we made it really clear that it is a guidance document and that it is not mandatory and that they can demonstrate the intent and outcomes of the BPIC in any
10 manner that they choose throughout the procurement process and that we will give full and reasonable consideration to alternative ways of achieving the transport BPIC. And that was recognising that a lot of our civil contractors already had enterprise agreements with their employees at the time.

15 **COMMISSIONER:** Just remind me, Mr Gisonda, it's not really a question for this witness, but just of the chronology. This witness has given evidence that from July to December of 2020, industry was excluded from the consultation process for the creation of the Department of Transport BPIC, and when it was - when they were provided with an update, the witness says the industry's reaction was anger and
20 exasperation. Is it during this period that the CFMEU were also publicly attacking the government about the failure to impose, in effect, BPIC conditions on Cross River Rail? Was that happening at the same - just remind me of the chronology?

25 **MR GISONDA:** Yes. So Cross River Rail, that all came to a head in 2018 to 2019. So from that point onwards, this is now their attempt - in my submission - attempt for them to ensure that that outcome didn't happen again.

COMMISSIONER: But I thought there were protests, and I thought the minister was - I can't remember the name of the minister, short-lived minister after Ms Trad - was the subject of a lot of public attack at exactly this time?
30

MR GISONDA: Yes. That was in 2020.

COMMISSIONER: Just remind me the name of the minister. I've forgotten.
35

MR GISONDA: Kate Jones.

COMMISSIONER: Kate Jones. That's right.

40 **MR GISONDA:** And in the 2020 election, she didn't -

COMMISSIONER: You introduced this evidence in the Cross River Rail case study, that there was a lot of public criticism of her by the CFMEU. There was letterboxing of her electorate because of her failure to comply with the CFMEU
45 demands in relation to Cross River Rail, and ultimately Ms Jones decided not to run in the 2020 election.

5 **MR GISONDA:** Yes. And there's an outworking of that position at paragraph 152 on page 30. You say you understood the CFMEU wanted contractors to negotiate and settle a multiunion agreement on every project. So reading those two things together, the CFMEU's core contention was the BPIC, transport BPIC, should be mandatory, and what the consequence of that would be that each contractor on a major transport project would have to enter into a multiunion agreement, including with the CFMEU?

10 **MS HAWKSWOOD:** That's right. That was - and, you know, my understanding from conversations, which is in my statement, that that was what they were expecting from government, so that they would work with, say, Transport and Main Roads and develop up a transport BPIC document that would be relevant for all those projects over \$100 million, and then that particular document would be applied on all those projects in full with all unions on the principal contractor.

15 **MR GISONDA:** And on 22 May 2020, you had - this is at page 33 of your statement - you describe a meeting that you had with the CFMEU, and in fact I think it's your first meeting with the CFMEU at their headquarters.

20 **MS HAWKSWOOD:** Yes.

MR GISONDA: And it was to discuss the transport BPIC policy. And at paragraph 168, this is yourself and Mr Scales and Ms Moffat. Who was Ms Moffat again?

25 **MS HAWKSWOOD:** Ms Moffat is the chief operations officer for TMR.

MR GISONDA: So Mr Scales, yourself and Ms Moffat and Ms Yeates was going to attend by phone.

30 **MS HAWKSWOOD:** Yes.

MR GISONDA: So you say at paragraph 168 that you arrived and you were left waiting in a small foyer, and some of the language that you overheard from some of the people in the reception area immediately put you on edge.

35 **MS HAWKSWOOD:** Mmm-hmm. Yes, they did.

MR GISONDA: And you were taken then to a large boardroom, and at paragraph 170, you say:

40 "When Mr Ravbar and Mr Ingham arrived, their manner had an air of arrogance. They sat towards the end of the table and they offered us water and then threw water bottles at us down the length of the table..."

45 When you accepted their offer?

MS HAWKSWOOD: Mmm-hmm.

MR GISONDA: And was this unusual behaviour from a stakeholder, that - I mean, you've -

5 **MS HAWKSWOOD:** I thought it was.

MR GISONDA: You consult with stakeholders all the time.

MS HAWKSWOOD: Yes. Yes.

10

MR GISONDA: And this wasn't behaviour you'd seen before?

15 **MS HAWKSWOOD:** No. No. It was a tense - very tense environment. We were left waiting for quite some time, so - which sort of I suppose demonstrated that we weren't very important at all. And we were on edge, just waiting. And going into that particular room was quite odd. The table is sort of too big for the room. And when they arrived, they did offer us water, which was appreciated, because it was pretty warm in the room, and they retrieved bottles of water, which they then - I suppose they rolled across the table to deliver the water to us. And then, yeah, so we sat at the
20 end of the table, I suppose, furthest away from the door, and they sat, you know, sort of closer to the door, and they sort of lounged in their chairs and - yeah, took ownership of the meeting.

25 **MR GISONDA:** At paragraph 172, over the page, you say that:

"Mr Scales started to set the scene."

Presumably, what he was trying to do was explain some of the issues that the department had; is that fair?

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MS HAWKSWOOD: That's correct, yeah, yeah. We had - obviously, we had come to start the consultation process with them, and it was important that we had our, I suppose, most senior people going to meet with the senior reps of the CFMEU to - I suppose to demonstrate that they were a very important stakeholder in this. And so
35 we were there to talk about how we were going to be able to approach the implementation and what some of the barriers would be or some of the concerns that we had, which is what - and it's what Mr Scales largely led that conversation.

40 **MR GISONDA:** And what was the reaction of Mr Ravbar and Mr Ingham to that sentiment from Mr Scales?

MS HAWKSWOOD: They were quite aggressive, actually, and, you know, said things along the lines of, "Don't come here and start telling us what you're not going to do."

45

MR GISONDA: If you look at paragraph 173.

MS HAWKSWOOD: Mmm-hmm.

MR GISONDA: There was swearing from Mr Ravbar?

5 **MS HAWKSWOOD:** Yes, there was. Yes.

MR GISONDA: And you say that whenever any DTMR representative would speak, so that's either yourself or Mr Scales or Ms Yeates, they would aggressively argue back and challenge them using language such as swearing at them or saying,
10 "That's a cop-out."

MS HAWKSWOOD: Yeah. They - yeah, it was quite an aggressive meeting, and for our first meeting it was just so unexpected, I think, for all of us. It certainly was for me. I'd literally just started in this role, so it was - it was just a big surprise. I
15 honestly couldn't believe how they speak to Mr Scales and also Ms Yeates, who was on the speakerphone on the table, and she was certainly trying to, you know, sort of back up what Mr Scales was talking about, and she was also advocating for industry and some of the challenges that they would have. So, you know, they were trying to put across, I suppose, a fairly balanced view so that the CFMEU could understand
20 some of the constraints that we were going to - we were going to have to work within to be able to implement this policy. But they were very negative about the department. They didn't have very nice things to say about DTMR at all.

MR GISONDA: They called the department "useless, terrible and the worst"?
25

MS HAWKSWOOD: Yes. Yes.

MR GISONDA: At paragraph 175, you say that they were acting in a condescending and belittling way and they were particularly rude to Ms Yeates.
30

MS HAWKSWOOD: Yes.

MR GISONDA: And then at paragraph 106, you say that you felt somewhat terrified and you did not feel comfortable at all throughout the meeting.
35

MS HAWKSWOOD: No. No.

MR GISONDA: And you felt a bit powerless because you wanted to interject, but -

40 **MS HAWKSWOOD:** Thank you for using the word "powerless". I think I wrote "gutless" in my statement.

MR GISONDA: You felt gutless.

45 **MS HAWKSWOOD:** I was terrified. I mean, this was - I was so shocked by the behaviour and the way they spoke to Mr Scales and the way they almost dismissed Ms Yeates in terms of, you know, they were flicking their hand, like they were sort

of swatting her away as she was trying to speak. And, you know, I thought - I didn't think - we did have some really valid points that needed to be heard, and we really wanted them to just understand and work with us.

5 And as I was watching how they were behaving towards two of our most senior people in the department, I was scared, and I didn't want to - I wanted to say something, but I was too chickenshit to say anything. I didn't want to be targeted by them. And I was going to have to work with them. Amanda - sorry, Ms Yeates and I were going to have to work with them ongoing. So yeah, we just had to cop it on the
10 chin, I suppose.

MR GISONDA: At paragraph 160 of your statement, you just describe a bit more about Mr Ingham's behaviour, because you met with him a few times.

15 **MS HAWKSWOOD:** Yes.

MR GISONDA: And over at page 32, you just describe some of the things he would say, including that DTMR - this is at subparagraph (a):

20 "DTMR are shit. Your projects have the worst safety record."

Subparagraph (b), he says AWU are lazy, don't care about workers. And then at subparagraph (d), you say:

25 "He would criticise Mr Scales both to his face and about him, referring to Mr Scales as fucking useless, a shit leader and gutless."

You recall, do you, just the general profanity and aggressiveness towards Mr Scales along the journey?
30

MS HAWKSWOOD: Absolutely. Yeah. They had no respect.

MR GISONDA: And there was a - I mean, it was public, and we've seen evidence of it, but there was a - did you understand that there was a definite campaign by the union against Mr Scales?
35

MS HAWKSWOOD: Yes. Yes, I did.

MR GISONDA: And just confirm your evidence there at the end of subparagraph (d). You say:
40

"The CFMEU took credit for his departure and you recall Mr Ingham saying words to the effect of 'we're glad he's gone' and 'our campaign worked'."

45 **MS HAWKSWOOD:** Yes. They were quite proud.

COMMISSIONER: This was very soon after you'd started this meeting at the CFMEU's headquarters in Bowen Hills on 22 May 2020. Was it typical, did you know, that Mr Scales and Ms Moffat would meet other stakeholders at their offices, or you don't know?

5

MS HAWKSWOOD: I think where they could, they would. Otherwise, they would meet at William Street. I think in the case of this particular meeting it was to meet the CFMEU at their office, not for them to come into William Street.

10 **COMMISSIONER:** Sorry, say that again?

MS HAWKSWOOD: It was them to come in - it was for us to go to them and for them not to come to us, sorry.

15 **COMMISSIONER:** But was that - again, this is very soon after you started in this role.

MS HAWKSWOOD: Yes.

20 **COMMISSIONER:** Was that, from your knowledge, typical or atypical?

MS HAWKSWOOD: Probably more atypical.

25 **COMMISSIONER:** Do you want to pick this up after the morning break, Mr Gisonda?

MR GISONDA: Yes, Commissioner.

30 **COMMISSIONER:** We'll adjourn till half past 11.

<THE HEARING ADJOURNED AT 11.16 AM

<THE HEARING RESUMED AT 11.30 AM

35 **MR GISONDA:** Ms Hawkswood, could I ask you to look at page 49 of your statement at paragraph 263. And at the second half of that paragraph, you say that some of the practical consequences of the transport BPICs included that workers and resources were migrating from non-BPIC projects to BPIC projects, especially if geographically close, which was causing delay on non-BPIC projects, and there were
40 escalating labour rates and difficulty attracting and retaining critical resources. And that was the feedback you were getting from contractors on your department's projects; is that right?

45 **MS HAWKSWOOD:** Yeah, that is - that is correct. And what we were - pardon me - what we were starting to see by 2022 were some of the concerns that we had raised earlier were occurring, and particularly - there's an example within my statement on a project up on the Bruce Highway at Cooroy to Curra where there

were two projects, a package 1 and a package 2, which were right beside one another. One was a BPIC project and one was not a BPIC project, and workers were from the non-BPIC project were moving to the BPIC project because the wages were more attractive.

5

MR GISONDA: At paragraph 267 of your statement, page 50, you had a phone conversation, or a discussion, sorry, with Mr Ingham. This is in 2023. Can you just tell the Commissioner what you recall about that discussion?

10 **MS HAWKSWOOD:** Yes. So in that phone call, Mr Ingham had said to me that our transport BPIC as a guideline was weak and that he had not seen it implemented yet on any of our projects. Coverage was an issue, and we were allowing the system to be gamed to drive down wage costs and conditions on DTMR projects. He said that the BPIC was really about putting more fairness back into the civil sector, but
15 nothing had changed from three years ago, except for Gold Coast Light Rail Stage 3 in which the contract was awarded to John Holland, and as they were friends with the CFMEU, and that he said that he would report back to the QLAC, and I interpreted that to mean that he was going to let them know that DTMR was not doing a very good job implementing the BPIC in terms of their expectations.

20

MR GISONDA: And do you know what the QLAC is?

MS HAWKSWOOD: I think it stands for the Queensland Labour Advisory Council. I had not heard of it until it was raised.

25

MR GISONDA: And just to summarise that conversation, is it fair to say that the one transport project where he was pleased with the outcome was the Gold Coast Light Rail Stage 3 project, and that was the only transport project post BPIC where the CFMEU were a party to the enterprise agreement?

30

MS HAWKSWOOD: That's right, yeah. All other TMR projects, BPIC were applied, and where the contractor did a greenfield agreement, they were done with the AWU.

35 **MR GISONDA:** At paragraph 269, you said there was an increasing frequency of phone calls and discussions with the CFMEU and that they were frustrated that contractors were not adopting the transport BPIC. And at paragraph 270, you say that he just kept telling you how terrible and useless DTMR and its contractors were; is that right?

40

MS HAWKSWOOD: Yeah, that's right. This was quite common in terms of the conversations we were having. He was very frustrated with the department, and it seemed to, I suppose, confirm his thoughts about what he thought of the department in terms of that we were one of the worst departments around.

45

MR GISONDA: At paragraph 271, you were being told by the minister's office that Mr Ingham was putting pressure on them as well; is that right?

MS HAWKSWOOD: Yes, yes, and they would relay those concerns that would be raised with them through to the department, including myself, and I would then investigate and find out what was - what the issue was. So that would normally involve getting in contact with the contractor or the TMR project manager to understand what had happened. In - I think in almost all the cases in terms of what those concerns were, I was very comfortable with what the contractor or our project manager was doing. They were doing the right things by TMR.

MR GISONDA: And then at paragraph 314 of your statement at page 56, by this stage, the Centenary Bridge project - this is late 2022 - the Centenary Bridge project had been awarded to the BMD/Georgiou joint venture, and that joint venture finalised an industrial agreement with the AWU for that project. Do you remember that occurring?

MS HAWKSWOOD: I do, yes.

MR GISONDA: And you then describe in this paragraph a conversation you had with Mr Ingham. Can you tell the Commissioner what you remember about that conversation?

MS HAWKSWOOD: I can, yes. He was very angry. He was very angry at that outcome, and he - I've got in my statement here that he sort of said what a shit deal it was, that the joint venture did not follow the policy, being the BPIC policy, and that DTMR let them do it. And I sort of reinforced with him that the agreement did align with the transport BPIC, going back to how we had introduced it through the procurement process, that it is a guide, it's not mandatory, and the way in which they could implement it was really up to the contractor. In terms of the conditions that were in the agreement, that was done by the JV. The workers were - were no worse off. If anything, they were probably better off, slightly better off.

And he - he was very, very - he was very angry, and when he left, he said, "Well, like, that's it then. We're gonna - we're gonna bomb that site, and you've been warned." And I didn't take "bomb that site" to actually be that he was going to, you know, bomb it, but they were going to cause a lot of disruption on that site.

MR GISONDA: So that was a warning - you took that as a warning that that site was now going to be a target of the CFMEU?

MS HAWKSWOOD: Yes. Yes.

MR GISONDA: And at page 59 of your statement, paragraphs 333 to 334, you just describe a bit about the online and in-person bullying and harassment that was occurring towards the department and some officials within the department. And chief amongst those had been Mr Scales; is that right?

MS HAWKSWOOD: That's right, yes.

MR GISONDA: And just tell the Commissioner what your mindset was at this point and the concerns you held.

5 **MS HAWKSWOOD:** I didn't want to get on the wrong side of him at all. I needed to keep working with Mr Ingham throughout this implementation of the policy. So it was - became really clear to me that anyone who got on the wrong side of him would pay, and I didn't want that to be me. I maintained a - I suppose I tried to maintain a fairly neutral perspective, but one that also was quite clear what my role was and
10 how the department was implementing the BPIC onto our transport projects. And that was - that was, I suppose, my - that was my pathway. So we did not deviate from that, despite what the CFMEU wanted us to do.

MR GISONDA: Ms Hawkswood, I just have a couple more questions for you now about the cost impact of the policy, and back at page 42 of your statement, at
15 paragraph 225, you explain that the BPIC policy had been presented by the Department of Housing and Public Works as a cost-neutral policy, on the basis that if you had better treatment of workers with better rates, you'd have productivity increases and more industrial harmony.

20 **MS HAWKSWOOD:** Yes.

MR GISONDA: But you say you never saw any modelling that supported that cost-neutral statement; is that right?

25 **MS HAWKSWOOD:** That is - that is correct, yeah. It was presented as a cost-neutral policy, so the benefits would outweigh the costs. Yeah, however, there was - there was no modelling to demonstrate how that would happen, and nor was there any metrics to be able to measure the benefits of this particular policy onto
30 Queensland Government construction projects.

MR GISONDA: And at paragraph 233, which is at page 43, you explain that your department initially had done some modelling which estimated - so this is when the policy's still being developed - the estimated - the modelling estimated an increase of
35 3.6 per cent for the project value of projects that would be subject to BPIC. But you also say in this paragraph that the maturity level of the department at that stage was quite low?

40 **MS HAWKSWOOD:** Yeah.

MR GISONDA: Does that -

MS HAWKSWOOD: It was.

45 **MR GISONDA:** Yes, sorry, please explain that.

MS HAWKSWOOD: So this was right at the - I suppose I'm going to say at the beginning, where we would be in 2020. So our industrial relations capability was, you know, still growing. I think I used to refer to myself as having an L-plate on my back all the time with this for quite some time, as we learnt that -

5

COMMISSIONER: Having what on your back?

MS HAWKSWOOD: An L-plate, like a learner. So when we were doing the modelling to understand what the BPIC was going to mean - and this was our - the systems, how we were briefing up with government - was looking at the - so in the QTRIP, all of our projects are listed in the QTRIP for the next four years. I think we're one of the few agencies in the state - in Australia who actually does that. The project values were - at that stage were also publicly available.

10
15 **COMMISSIONER:** One of the only agencies. One of the only transport agencies?

MS HAWKSWOOD: Yes, that produce a four-year pipeline of infrastructure projects. So looking at those costs, approximately - I think it was about 30 per cent of those costs are related to labour, and so when we did our modelling, it was based on an uplift on the labour component of those costs. We used a baseline project, which was a large TMR project that was - was over 500 million, and that was our - I suppose our baseline, which we used to measure any of the impacts in terms of the impacts of the BPIC against.

20
25 And looking at that and doing an uplift on the - what we were putting forward with the transport BPIC, we estimated for those projects between 100 and 300, because the transport BPIC, our very first version, was - the threshold, the top threshold, was 300 million, projects. The estimated increase we thought would be about 3.6 per cent. So I would say our modelling was rudimentary.

30

MR GISONDA: And then jumping forward to 2023, at paragraph 234, when your modelling could be based on real-life examples and would be more sophisticated, it was more in the order of around 25 per cent; is that right?

35 **MS HAWKSWOOD:** That is right, yeah, and that was from the Fission report.

MR GISONDA: Some modelling was undertaken by Fission Consultants; is that right?

40 **MS HAWKSWOOD:** Yes, yes.

MR GISONDA: And at page 396 of the bundle to your statement, they in their modelling focused on two case studies which was the Gold Coast Light Rail and Coomera Connector Stage 1 North.

45

MS HAWKSWOOD: Yep.

MR GISONDA: And those two projects were chosen as suitable case studies, in particular the Gold Coast Light Rail, because there had been - that had initially started as a non-BPIC project and then BPIC was retrospectively applied; is that right?

5

MS HAWKSWOOD: That's correct, and the same with the Coomera Connector Stage 1 project. So both of those projects were ideal as a case study, because we had costings before BPIC, and then we had costings post BPIC.

10 **MR GISONDA:** And what this table shows is that you have - it's the fourth entry down. The price impact attributable to BPIC on the Gold Coast Light Rail is 174 million, and on Coomera Connector Stage 1 North it was 43 million.

MS HAWKSWOOD: Yes.

15

MR GISONDA: And at your statement at page 66, paragraph 389, you summarise there that the cost impact on the Gold Coast Light Rail was 26 per cent and the time impact was 17 per cent.

20 **MS HAWKSWOOD:** Yes.

MR GISONDA: And then on Coomera Connector Stage 1 North, 12 per cent cost impact and 10 per cent time impact.

25 **MS HAWKSWOOD:** Yes.

MR GISONDA: And that was the modelling -

MS HAWKSWOOD: That was the modelling, yes.

30

MR GISONDA: - presented by Fission Advisory. And then just one last question for you, Ms Hawkswood. In 2023, and going into 2024, there was a proposal coming out of the Department of Energy and Public Works for a renewable energies BPIC; is that right?

35

MS HAWKSWOOD: Yes.

MR GISONDA: And were you aware that the CFMEU were involved in the development of that policy too?

40

MS HAWKSWOOD: Yes. Yes, they were.

MR GISONDA: And just looking at page 64 of your statement, and at paragraph 374, that BPIC set a very high wage and conditions bar from what you could see when you saw that document?

45

MS HAWKSWOOD: Yes, it did. Yes, it did.

MR GISONDA: And then at page - sorry, paragraph 376, what did the modelling show and what was the concern about the impact of renewable energy BPICs on transport projects?

5

MS HAWKSWOOD: What it showed was it was raising the bar again, which was happening at the time, and that the cost - the additional cost would be another - I think I've got in there another 15 per cent on top of our 300 to 700 million BPIC.

10 **MR GISONDA:** So was the concern that the renewable energies BPIC, which had much higher rates and more prescriptive conditions, onsite conditions, would then be used as the benchmark by the unions for any transport projects going forward?

15 **MS HAWKSWOOD:** Absolutely, yeah. So Mr Ingham made it very clear that this was the new agreed level by government and that our transport BPIC wasn't going to matter any more. This was going to be the new standard for our transport projects.

MR GISONDA: I have no further questions for this witness, Commissioner.

20 **COMMISSIONER:** This Fission Advisory report that was commissioned by the department in early 2024 to look at the cost impact of BPIC in the Department of Transport and Main Roads, did you commission that report?

MS HAWKSWOOD: We did, yes.

25

COMMISSIONER: When you say "we", who's "we"?

30 **MS HAWKSWOOD:** It would have been between - so it would have been myself, Julie Mitchell as the DDG of IMD, with the support of Sally Stannard, our director-general.

COMMISSIONER: That conclusion would seem to be a fairly startling one, that for Gold Coast Light Rail and for the Coomera Connector, you've got an average cost of about 20 per cent increase but no increase in the scope of the project.

35

MS HAWKSWOOD: That's correct.

COMMISSIONER: And delays of between 10 and 17 per cent, so 15 per cent.

40 **MS HAWKSWOOD:** That's correct.

COMMISSIONER: What was done with that report?

45 **MS HAWKSWOOD:** We used that report to really inform government around what the impact of this policy was going to have on our infrastructure program. It was - it was quite powerful. I feel like it was quite powerful, because it was - up until then, we really hadn't seen a great deal of modelling. We were doing a lot of modelling

and a lot of advising up to government. We had shared it with Treasury, Queensland Treasury, as well. Actually, we shared the modelling with other agencies, anyone who wanted to understand it.

5 Treasury were also doing their own modelling. They were also getting very concerned with where the BPIC was heading, particularly around renewables, and they were also doing a water BPIC document, which was identical to renewables, and Treasury, their modelling was also showing similar increases, similar concerns.

10 **COMMISSIONER:** This is not meant to be any criticism of you or Ms Mitchell or Ms Stannard, Mr Scales, but it seems very late in the piece to be doing this. This is - you started in May 2020. We've got all of the - four and a half years on. You said at 225 when this was presented to you and the Department of Transport and Main Roads by the Public Works department, there was no modelling, and it was said to
15 you to be a cost-neutral policy. That's in the middle of 2020.

MS HAWKSWOOD: Mmm-hmm.

COMMISSIONER: And it's taken four and a half years for you and Treasury to do
20 some analysis that shows that the un-modelled cost-neutral policy was very far from cost neutral.

MS HAWKSWOOD: Being neutral.

25 **COMMISSIONER:** Yes.

MS HAWKSWOOD: We did do modelling throughout. So supporting the majority of our submissions to government was modelling to - to show how the transport BPIC and how that was represented against, say, the building construction BPIC.
30 Other civil or other building enterprise agreements of large projects as well was some other modelling that we had done. We also had - it might be included in my documents - modelling against other states and large construction projects in other states to see how the transport BPIC compared, how it compared to Cross River Rail, Queens Wharf, Brisbane Metro, which was active at the time as well.

35 So we - we did do as much as we probably could, and it did take - it did take a little while to start to see what the actual impacts were going to be on projects in terms of the dollar impacts, in terms of once we - we negotiated our BPIC document, and that would then get approved, which is in the chronology there, would be approved by
40 government. That advice would be supported by financial information, including the modelling, to see how that - how it compared. And when it came to - when it came to, I suppose, the threat of the renewables BPIC was when we commissioned Fission to do a deeper modelling as to what the true costs were.

45 **COMMISSIONER:** That doesn't seem likely to me. I mean, if you've got a - you know you've got this policy coming in that says you've got 26 mandatory RDOs, you've got - I've just been watching the World Cup. They have hydration breaks

when it gets too hot. They don't just stop work over 29 degrees; they stop the match and have a hydration break. You've got jump-up clauses in BPIC. Some people describe one of the clauses as a veto on subcontractors or at least a very tough consultation regime. You've got jack-up of the rates. Surely industry could have told
5 you when you presented BPIC to them in December 2020, "This is going to blow up costs by 20 per cent, 25 per cent." It just seems a long time to wait, four years, to get this analysis.

MS HAWKSWOOD: So I - yes. The whole - literally from 2019 all the way
10 through, we were constantly briefing government to say this was going to have an impact. Our QTRIP program is budgeted and costed, so we were very - we didn't have a lot of flexibility, really. One of the risks as well under that national partnership agreement was if we had to ask for more money, we would probably also have to go back to the Commonwealth Government and ask for more funding from
15 the Commonwealth Government as well. So we were trying to stick within those - within those budgets.

So we did modelling all the way throughout, and at the time when we started in 2020 - or really in 2021 when it really started to impact on our
20 projects - we - through the tendering process, and we made this clear as well in our advice to government, we would - the BPIC was introduced through a key result area process, so key result areas that the contractors would respond to in the tender.

COMMISSIONER: I don't know what that means, sorry. What's a key result area?
25

MS HAWKSWOOD: So the way in which we implemented BPIC into our procurement was through key result areas on our major projects. So there were five KRAs in our major projects. The first three were related to largely the local content and best practice principles. The other two were related to sustainability and delivery
30 optimisation. So it was an opportunity for the contractors to - they responded against those KRAs, so how would they sort of meet or exceed those key result areas.

In the case of the first KRA, which was about quality jobs, BPIC was the document that was sitting behind that as the guideline, and so the contractors would put a
35 tender in against that, and in that tender, they would outline things like how much of the work they will self-perform. That was one of the differences between building construction and civil construction is that they do use more of their own workforce. You know, what was the percentage of labour hire? What would the percentage of subcontractors be? So what does their workforce profile look like? What their
40 response was to the transport BPIC, so how would they, you know, meet or exceed the transport BPIC? What they would do for women in construction, Indigenous employees, training, all those type of things that were in the document.

And through the tender process, the tender process would be a staged procurement,
45 so there would be - if we take Centenary as an example, it was - an expression of interest was the first stage, then that was shortlisted to a smaller group of tenderers, then there was a request for tender process. In the request for tender process, 30 per

cent of the 100 per cent was allocated to these key result areas, and 70 per cent at that time was allocated to cost or price. The preferred tenderer, through that - after that evaluation, would then be taken through for further negotiation on their KRAs. And at the time, we called it an envelope 3 process, so that envelope would be
5 opened only on the preferred tenderer, and in that envelope would be their responses to those KRAs.

Largely it was mainly to do with the industrial relations, and those - each of those were costed so we could see what - generally, we could see what the cost would be
10 or the additional cost would be to able to meet those KRAs. So when we - so during those tender processes, we were starting to gather more data around what the cost of BPIC was. And we did that quite deliberately to get some transparency.

COMMISSIONER: But you would have had anecdotal data well before that, during
15 that process in December 2020 when, you said in your statement, industry were very aggressive or upset or aggrieved or -

MS HAWKSWOOD: Yep.

COMMISSIONER: Presumably serious people from the tier 1 contractors would
20 say to you, "What are you doing here? This is going to blow out costs."

MS HAWKSWOOD: They did. They did, and we agreed with them.

COMMISSIONER: And what -
25

MS HAWKSWOOD: And we briefed, and we advised government. We advised government of what this was going to mean, what we thought this was going to mean. At the time - you know, at the time, it was - I suppose our yardstick was what
30 was happening, what had happened on a couple of those Housing and Public Works projects, and when it came to TMR, we were trying - we did model what we thought was going to be the impact, which I spoke about before, and we got - we undercooked that. You know, we thought it would just impact the labour component of a project, and what the longer-term modelling showed is that it actually impacted
35 so much more of those construction costs.

At the time, we did not anticipate the BPIC would flow into other staff working on those projects, such as white-collar staff in the office. The BPIC flowed into those areas. What it meant for the subcontractors, those who opted out of tendering,
40 because they didn't want to -

COMMISSIONER: Industry could have told you that.

MS HAWKSWOOD: They did.
45

COMMISSIONER: If you've got a jump-up clause in BPIC, they would tell you.

MS HAWKSWOOD: They did. They did. And we were - we were very transparent in briefing on that.

5 **COMMISSIONER:** There was a document Mr Gisonda introduced in his opening
yesterday. I can't remember the date of it, but it had about - it was part of this, I think
this four-year planning process that you go through about \$14 billion in expenditure,
and it had a calculation from your department saying there was going to be about a
billion dollars added to the 14 billion because of BPIC, and Treasury said that's
10 undercooked. There was a response from Treasury saying, "No, no, you haven't
thought about the impact - you've just got wages in there. You haven't thought about
things like scheduling, for example, and the other impacts."

MS HAWKSWOOD: Yes.

15 **COMMISSIONER:** Can you just remind me what date that was prepared, Mr
Gisonda? My question is really directed to what system is there within government
or was there within government where variations of this amount, a billion dollars,
would be - government would be alerted to this fact and would have to make a
decision that it didn't matter? What is the process by which that would happen?

20 **MS HAWKSWOOD:** The process by which that happens is through that Cabinet
briefing process back to government. So through the minister, so briefing the
minister, taking the minister through the modelling, the feedback from industry, the
concerns from the department, and then taking that to government. And we were
25 sharing that with Treasury and Premier and Cabinet as well, any of those concerns,
and then we were - I feel we were very transparent around what our concerns and the
industry's concerns were going to be with the introduction of this policy into our
program, into our four-year program, and it was, I suppose, the benefit of having a
four-year program, because we could at least cost that, to get to the billion dollars.

30 **COMMISSIONER:** One of the things you said in your statement, I think it was at
paragraph 35, and maybe we can bring that up, is this seems to be an understanding
that is a very loose understanding in the sense that you seem to be saying here at
paragraph 35, at the beginning, you were told the policy rationale for the introduction
35 of BPICs to be to drive an uplift in performance of productivity in the construction
and infrastructure industries. When you say there "I understand the policy rationale",
"I understood the intent", are you saying that's what you were told when you came
into your role?

40 **MS HAWKSWOOD:** Yes. Yes.

COMMISSIONER: And what do you think about the policy rationale now, having
had that four and a half years' experience?

45 **MS HAWKSWOOD:** It didn't work, to be really blunt. At the - at the time, it made
some sense, around focusing on, you know, what that policy rationale was.

COMMISSIONER: But how could it? I mean, how could these conditions - how could you have believed that these - implementation of these conditions would drive an uplift in performance and productivity? I just don't understand that.

5 **MS HAWKSWOOD:** When - like, when we - when we started on this - or when I started on this; I will speak from my own perspective - the objective around more quality employment, more permanent employment on construction projects, safety on those projects and safe conditions, so the higher rates would attract more people, would also get better conditions in terms of safety and culture and behaviour on
10 those projects, then that will attract more - this was the rationale - that would actually attract more people back to Queensland. At the time, New South Wales and Victoria had much stronger programs that were in place, so resources were a bit of a risk.

And there was also the objective of getting more harmonisation on construction
15 projects, industrial harmonisation, which at the time for me I was trying to understand what did that really mean, but what it meant was that there was less disputes on projects. So therefore, you know, government introducing a policy which became the BPIC, the BPIC policy, would set the right rates. We would get better-quality people who would have permanent roles and be happier at work. The
20 projects will be much safer, and we'll get - we should get better productivity in terms of productive hours and be able to deliver projects on time and on budget. That was the - that was the narrative.

COMMISSIONER: You say you were told that. And is that what I understand you
25 mean by "I understood the policy rationale", "I was told the policy rationale was this"?

MS HAWKSWOOD: Yes. Yes. And when I spoke to Mr Ingham, he was -

30 **COMMISSIONER:** Sorry, who?

MS HAWKSWOOD: To Mr Ingham. Mr Ingham spoke about this, and he was - I must say he was very - he was very - quite convincing about it as well. So from my perspective, I - I was - I'm not - at that stage, I wasn't experienced in construction, so
35 it seemed somewhat logical that if you did improve the conditions on projects, people would be happier, people would be attracted to those projects, and the projects, you know, could be delivered in a more productive way. That was - that was a false reality.

40 **COMMISSIONER:** What year was that analysis done?

MR GISONDA: That was February of 2022. This is the document you asked me about: page 117 of the opening bundle.

45 **COMMISSIONER:** Thank you.

MR GISONDA: Now, I believe that Mr O'Grady has an application to cross-examine Ms Hawkswood, which Ms MacNicol will deal with it, and it might be that Mr de Jersey wants to ask some questions as well, but I'm not sure.

5 **COMMISSIONER:** All right. I don't have any applications in front of me, but maybe you can tell me, Ms MacNicol, what's going on.

MS MacNICOL: Commissioner, perhaps I can assist. You will have a copy of the document in the front sleeve of the folder for Ms Hawkswood.

10

COMMISSIONER: I do. Thank you.

MS MacNICOL: In short, I have had a chance to speak to the counsel for the administrator, and counsel assisting doesn't oppose the cross-examination of Ms Hawkswood on the three topics identified.

15

COMMISSIONER: Does or does not?

MS MacNICOL: Does not.

20

COMMISSIONER: So you no longer wish to cross-examine, Mr O'Grady?

MR O'GRADY: No, I do wish to cross-examine.

25 **COMMISSIONER:** You do.

MR O'GRADY: And as I understand it, that's not opposed.

MS MacNICOL: Sorry if I wasn't being clear. It's not opposed, the application.

30

COMMISSIONER: I see. You've got three topics you wish to cross-examine on, and it's not opposed.

MR O'GRADY: Yes, and there might be some slight expansion of that, but the themes are consistent, and I raised that with my learned friend this morning.

35

COMMISSIONER: And is there any issue with that?

MS MacNICOL: No, your Honour. Sorry, no, Commissioner.

40

COMMISSIONER: Very well. And what about your position, Mr de Jersey?

MR DE JERSEY: Not opposed on the three topics for which notice has been given, but the slight expansion, I will reserve the state's position on.

45

COMMISSIONER: All right. Do you just want to jump up if there's something that concerns you if it's gone too far beyond these three topics?

MR DE JERSEY: Thank you, Commissioner.

COMMISSIONER: All right. I will leave that to you.

5

<CROSS-EXAMINATION BY MR O'GRADY

MR O'GRADY: Thank you, Commissioner. Ms Hawkswood, you understand that Mr Ravbar and Mr Ingham have been removed from their position within the CFMEU?

10

MS HAWKSWOOD: Yes, I believe so.

MR O'GRADY: And you understand that an administrator has been appointed?

15

MS HAWKSWOOD: Yes.

MR O'GRADY: In order to address some of the issues that arose during Mr Ravbar and Mr Ingham's control of the union?

20

MS HAWKSWOOD: Yes.

MR O'GRADY: And I appear on behalf of the administrator.

25 **MS HAWKSWOOD:** Okay. Thank you.

MR O'GRADY: All right. Now, you joined as a director of strategic procurement, as I understand your witness statement?

30 **MS HAWKSWOOD:** In the department?

MR O'GRADY: Yes.

MS HAWKSWOOD: Yes, I did, yes. A long time ago.

35

MR O'GRADY: And you are the department's chief procurement officer?

MS HAWKSWOOD: I am.

40 **MR O'GRADY:** And you're not a lawyer, as I understand the position?

MS HAWKSWOOD: No, I'm not.

MR O'GRADY: You're not an economist?

45

MS HAWKSWOOD: No, no.

MR O'GRADY: Your field is procurement, not industrial relations?

MS HAWKSWOOD: Correct.

5 **MR O'GRADY:** And you haven't spent time digging into the arcane case law on demarcation disputes?

MS HAWKSWOOD: Not digging into it. I did become quite aware of it, though.

10 **MR O'GRADY:** Yes. You're aware that it was an issue.

MS HAWKSWOOD: Yep.

15 **MR O'GRADY:** But as far as who was right and who was wrong in respect of that issue, you just don't know.

MS HAWKSWOOD: No. I believe it's very complex.

20 **MR O'GRADY:** As I understand your statement, when you began this work, your knowledge of industrial relations was rudimentary at best.

MS HAWKSWOOD: Correct.

25 **MR O'GRADY:** And indeed, you first found out about demarcation issues back in March 2020, as I understand your statement.

MS HAWKSWOOD: It was quite early in 2020, yes.

30 **MR O'GRADY:** I understand. All right. Now, can I draw a distinction between a government procurement policy and BPIC on the one hand. You accept that there - it's quite legitimate for governments to have procurement policies?

MS HAWKSWOOD: Absolutely, yet.

35 **MR O'GRADY:** And it's quite legitimate for governments to seek to achieve a social agenda through those procurement policies?

MS HAWKSWOOD: They do, yes.

40 **MR O'GRADY:** And that might involve increasing the number of apprenticeships?

MS HAWKSWOOD: Yes, it does.

45 **MR O'GRADY:** And that obviously has a long-term benefit for industry if there are more people working in industry?

MS HAWKSWOOD: Yes, it's very important.

MR O'GRADY: It could also involve increasing the number of women in, say, construction?

5 **MS HAWKSWOOD:** Absolutely, yes.

MR O'GRADY: And you would accept that that is a desirable objective?

10 **MS HAWKSWOOD:** It is a desirable objective.

MR O'GRADY: And a perfectly legitimate objective for government to pursue?

MS HAWKSWOOD: Mmm.

15 **MR O'GRADY:** And indeed a perfectly legitimate objective for a union to pursue?

MS HAWKSWOOD: Yep.

20 **MR O'GRADY:** And similarly in respect of Indigenous workforce?

MS HAWKSWOOD: Yes.

25 **MR O'GRADY:** A desire to increase the number of Indigenous people working in construction is a perfectly legitimate objective?

MS HAWKSWOOD: It is, including Indigenous suppliers.

30 **MR O'GRADY:** And again, it's perfectly legitimate for the union to try and achieve that end?

MS HAWKSWOOD: Yes.

35 **MR O'GRADY:** And more generally, if we're talking about wages, you would accept that from a union's point of view, part of its core business is to try and improve the terms and conditions of its members?

MS HAWKSWOOD: Yes, it is.

40 **MR O'GRADY:** And there's nothing wrong with that, is there?

MS HAWKSWOOD: No.

45 **MR O'GRADY:** And as far as working conditions more generally, whether it be additional days off so that people can restore a work/family balance, that's a perfectly legitimate objective for a union to pursue, isn't it?

MS HAWKSWOOD: Yes.

MR O'GRADY: And to the extent that these matters are being pursued by government and a union, there's nothing inappropriate in government tailoring its procurement policies in order to try and promote those objectives, is there?

5

MS HAWKSWOOD: That's right.

MR O'GRADY: And as I understand your evidence, one of the ways in which the department sought to use procurement policy in order to achieve some of these objectives was through the KRA process?

10

MS HAWKSWOOD: That was how we implemented it, yes.

MR O'GRADY: So rather than insisting in a mandatory way on the BPIC that had been largely drafted by Mr Ingham, as I understand your evidence, you sought, and the department sought, to achieve those quite legitimate objectives through, in effect, putting a weighting on these policy objectives when assessing tenders?

15

MS HAWKSWOOD: That's right.

20

MR O'GRADY: Yes. And then following up to make sure that people were doing the right thing in respect of what they'd undertaken to do?

MS HAWKSWOOD: That's right. What they had committed to through the tender was put into their contracts, and we monitored that.

25

MR O'GRADY: Yes, I understand. So is it correct to say that what you did in your role was seek to achieve the policy objectives that were said to underpin BPIC through the process of the KRAs and putting those obligations into the contracts with the various contractors?

30

MS HAWKSWOOD: Yes. So we used the KRAs as the implementation mechanism through the tender process, and then those commitments that were agreed through the tender process were then put into the contract - into the contract, yes.

35

MR O'GRADY: So am I correct in understanding that through that process, you were giving effect to the government's procurement objectives in respect of issues like apprentices, issues like women in construction, issues like Indigenous workforces and so on and so forth?

40

MS HAWKSWOOD: Yes, we were.

MR O'GRADY: All right. I understand. And you'd agree with me that improving industrial relations on a site is a legitimate objective?

45

MS HAWKSWOOD: I - yes, I think having a - having a work site that can get on with their work is a good thing.

MR O'GRADY: Yes. And that was something that you also sought to achieve through the KRAs?

5 **MS HAWKSWOOD:** Yes. It was the third element of the best practice principles.

MR O'GRADY: Yes. I understand. Thank you. And do you agree with me that much of what you've described in your statement concerns the conduct of primarily Mr Ravbar and Mr Ingham in the way in which they were pursuing the way in they
10 wanted the best practice principles to be implemented, namely, their preferred BPIC document?

MS HAWKSWOOD: Yes. I mean, mainly Mr Ingham. I didn't have a lot to do with Mr Ravbar.
15

MR O'GRADY: Yes. Well, the one - the occasion that you did have contact with Mr Ravbar, he didn't impress you, as I understand it?

MS HAWKSWOOD: No.
20

MR O'GRADY: No, I understand. But you understand that, as you acknowledged at the outset, that Mr Ravbar and Mr Ingham are gone, aren't they?

MS HAWKSWOOD: Yes.
25

MR O'GRADY: And you understand that the administrator, both the previous administrator Mr Irving and the current administrator Mr Crosby, have committed to changing the way in which the CFMEU undertakes its role?

30 **MS HAWKSWOOD:** Yes. It's good.

MR O'GRADY: And there's been significant positive progress made in that regard, hasn't there?

35 **MS HAWKSWOOD:** Yes, there has.

MR O'GRADY: Thank you. Just bear with me. You gave some evidence earlier about a heat policy. You understand that working in high temperatures is - can be very dangerous?
40

MS HAWKSWOOD: Yes.

MR O'GRADY: And can cause death?

45 **MS HAWKSWOOD:** Yes.

MR O'GRADY: And that if you're dealing with working on roads in Queensland in summer, there is a real risk of exposure to high temperatures?

MS HAWKSWOOD: Yes.

5

MR O'GRADY: And again, that's something that it's perfectly legitimate for a union like the CFMEU to be concerned about?

MS HAWKSWOOD: Yes. And they were concerned about that, yes.

10

MR O'GRADY: And it's something that it's perfectly legitimate for a government to seek to protect against in putting in place procurement policies?

MS HAWKSWOOD: Yes. I mean, through that was where it came through the BPIC document.

15

MR O'GRADY: All right. Thank you. Now, as I understand your evidence, the CFMEU was prepared to enter into an agreement with the other building and construction unions?

20

MS HAWKSWOOD: Yes, they were.

MR O'GRADY: And that included the AWU?

25 **MS HAWKSWOOD:** Yes.

MR O'GRADY: And the AWU was the union who refused to engage in that process?

30 **MS HAWKSWOOD:** They - they were quite clear to us that they would not enter into an agreement with the CFMEU.

MR O'GRADY: They were protecting their patch, as they saw it?

35 **MS HAWKSWOOD:** That seemed to be the case, yes.

MR O'GRADY: And they refused to cooperate with the department in trying to develop the BPICs?

40 **MS HAWKSWOOD:** They did withdraw from consultation, yes.

MR O'GRADY: So they spat the dummy, didn't they?

45 **MS HAWKSWOOD:** Oh, they - I don't know if they spat the dummy, but they pulled out.

MR O'GRADY: Sorry, well, they didn't participate in trying to develop the BPICs.

MS HAWKSWOOD: No, they didn't participate.

5 **MR O'GRADY:** And they refused to enter into an agreement, even though the other unions were prepared to engage with them in developing an appropriate agreement for a particular site?

10 **MS HAWKSWOOD:** Yes. Yes. So the other unions were prepared to. The AWU were not. The AWU made it clear through the contractors, because the arrangement between - the agreement making was done between the contractor and the particular union, so our advice would normally come from the contractors as to how that process was going.

15 **MR O'GRADY:** And the AWU's attitude to the BPICs was disruptive, wasn't it?

MS HAWKSWOOD: What do you mean it was disruptive?

20 **MR O'GRADY:** Well, they refused to participate in the process. You've already said that.

MS HAWKSWOOD: Mmm-hmm.

25 **MR O'GRADY:** And they refused to enter into agreements along the lines as set out in the proposed BPIC document.

30 **MS HAWKSWOOD:** They did provide us in writing what their feedback was, so they would point us to various enterprise agreements that they would see was their feedback in terms of - this is where they would see it. And as best as we could, we would make any changes that they would provide to us, but it was - they were not - they were definitely not as active as, say, the building unions.

35 **MR O'GRADY:** I put it to you that they were petulant. They were - you know, in one of the documents attached to your statement is a meeting minutes where an AWU representative has incorrectly been listed as an apology.

MS HAWKSWOOD: Yes.

40 **MR O'GRADY:** And they wrote to you and said, "I wasn't an apology. I was never going to come."

MS HAWKSWOOD: "I wasn't even going to come." Yes, they did exactly write that. Yes. They were difficult to engage.

45 **MR O'GRADY:** Yes. And that was one of the - well, their attitude was a significant impediment to having this process move through smoothly, wasn't it?

MS HAWKSWOOD: It did make it a lot harder, because we really only had the building unions as part of the process.

5 **MR O'GRADY:** Yes. And indeed, the agreement that the AWU wanted to have implemented was the Cross River Rail agreement.

MS HAWKSWOOD: Yes.

10 **MR O'GRADY:** And that had rates that were significantly higher than what was even in your - even in the CFMEU BPIC document?

MS HAWKSWOOD: Yes, it was excessive.

15 **MR O'GRADY:** Yes. All right. And you're familiar, of course, with the Gold Coast Light Rail project?

MS HAWKSWOOD: I am - I'm familiar enough, yes.

20 **MR O'GRADY:** And you understand that John Holland were, in effect, begging the AWU to be part of that process, weren't they?

MS HAWKSWOOD: Yes.

25 **COMMISSIONER:** What was the verb you used, sorry?

MR O'GRADY: Begging.

MS HAWKSWOOD: That they would be involved, yes.

30 **MR O'GRADY:** Yes. Again and again and again they approached the AWU to be part of that process?

MS HAWKSWOOD: They did. Yeah, they did. They did.

35 **MR O'GRADY:** And the AWU just refused?

MS HAWKSWOOD: Yes.

40 **MR O'GRADY:** And indeed, not only did the AWU refuse, but they threatened that if John Holland went ahead with a greenfields agreement without them, then they would appeal that?

MS HAWKSWOOD: They would challenge that, yes.

45 **MR O'GRADY:** Challenge that.

MS HAWKSWOOD: Yes. They did.

MR O'GRADY: And they did challenge it?

MS HAWKSWOOD: Yes, they did.

5

MR O'GRADY: And ultimately what had to happen was John Holland had to enter into an agreement with the other unions as a brownfields agreement?

MS HAWKSWOOD: Yes.

10

MR O'GRADY: And that significantly delayed that project?

MS HAWKSWOOD: Yes.

15

MR O'GRADY: And involved significant extra expense?

MS HAWKSWOOD: Yes.

MR O'GRADY: And ultimately John Holland was successful with that strategy?

20

MS HAWKSWOOD: Correct.

MR O'GRADY: And one of the examples that you've dealt with in the Fission report deals with the Gold Coast Rail.

25

MS HAWKSWOOD: Mmm-hmm.

MR O'GRADY: I put it to you that some of the additional expense that was identified could be squarely attributed to the AWU's behaviour in the way in which they refused to engage in the process?

30

MS HAWKSWOOD: I'm not sure if I'm 100 per cent comfortable with that. The rate on the Gold Coast Light Rail project was much higher than our BPIC document. So they were probably in the sort of low to mid 50s, \$50 an hour for a CW5 worker, whereas our BPIC was in the mid 40s.

35

MR O'GRADY: Yes. And so -

MS HAWKSWOOD: So that definitely contributed to the cost.

40

MR O'GRADY: Yes. So you had a BPIC document which had a rate in the mid 40s.

MS HAWKSWOOD: Yes.

45

MR O'GRADY: The unions were prepared, the building unions were prepared to have a greenfield agreement that reflected that rate. That's right, isn't it?

MS HAWKSWOOD: Well, we negotiated a BPIC - sorry, a Gold Coast Light Rail 3 BPIC document.

MR O'GRADY: Yes.

5

MS HAWKSWOOD: And that's where those rates came from in the mid 50s, yes.

MR O'GRADY: But the position was, wasn't it, that the AWU refused to engage in that process and enable a greenfields agreement to be reached?

10

MS HAWKSWOOD: The AWU refused to be involved in the BPIC development process, and I believe - I'm not sure if - I'm sorry, but I'm not sure if they were involved with John Holland in terms of the agreement-making process at all.

15

MR O'GRADY: If you don't know, you don't know. I don't want you to guess.

MS HAWKSWOOD: No.

20

MR O'GRADY: All right. You acknowledge in your witness statement that it's difficult to measure the costs associated with the BPICs, isn't it?

MS HAWKSWOOD: Yes.

25

MR O'GRADY: Yes. Because it's not as if you're dealing with just the one variable. There were a number of other things occurring during the period of time you've covered off in your witness statement, weren't there?

MS HAWKSWOOD: Yeah.

30

MR O'GRADY: You had COVID?

MS HAWKSWOOD: Yeah, we were going through COVID at the same time.

35

MR O'GRADY: And you would accept that COVID would have made a significant impact on costs?

MS HAWKSWOOD: Yes, it did.

40

MR O'GRADY: And that wasn't something that people were aware of, to the extent that people were aware of, when some of these projects were initially tendered for?

MS HAWKSWOOD: I believe so. I believe so. And the market itself was getting quite heated in terms of demand was very high in the eastern states.

45

MR O'GRADY: Yes. And there was an inflationary surge that began during the pandemic that led to a 20 per cent cost increase over 2022 and 2023?

MS HAWKSWOOD: That sounds about right, yes.

MR O'GRADY: And that had nothing to do with BPIC, did it?

5 **MS HAWKSWOOD:** We - I must say, we were - where we could, we were trying to separate the BPIC costs from other market costs.

MR O'GRADY: Well, as you say -

10 **MS HAWKSWOOD:** Where we could.

MR O'GRADY: - that's a very difficult task to undertake.

15 **MS HAWKSWOOD:** It is difficult, but we - yeah.

MR O'GRADY: And in doing that, did you do a comparison between the costs in construction in Queensland during this period and the costs in construction in other states?

20 **MS HAWKSWOOD:** We did do a comparison of other agreements, so enterprise agreements on major projects in New South Wales and Victoria and also some of the Queensland projects. And there was one in WA as well that we did.

25 **MR O'GRADY:** And you may not know this, but I need to put it to you so that you can comment if you can.

MS HAWKSWOOD: Sure.

30 **MR O'GRADY:** That the Department of Main Roads BPIC gave rise to costs that were about two per cent above New South Wales and 13 to 20 per cent below construction costs in Victoria?

35 **MS HAWKSWOOD:** Yes, yes. That's from that modelling, yes, I just mentioned, yes.

COMMISSIONER: Sorry, where does that modelling come from?

40 **MR O'GRADY:** It will be the subject of evidence in due course, but it's basically based on ABS data. And if that be right, I put it to you that you just simply cannot attribute the cost increases that you've given evidence about to BPIC, because there was no BPIC in New South Wales, was there?

45 **MS HAWKSWOOD:** No, we weren't measuring - we were measuring the cost, so what was the cost in terms of the enterprise agreements on those projects, so greenfield-style agreements on those projects, and how that compared to what TMR were doing in Queensland. That was - we were trying to keep that measure so it was consistent across the two.

MR O'GRADY: And as I understand it, you accept that whilst they were slightly higher than New South Wales, the TMR costs were slightly higher than New South Wales, but they were broadly consistent with New South Wales?

5

MS HAWKSWOOD: We were broadly comparable, yes.

MR O'GRADY: And they were significantly, 13 to 20 per cent, below the costs of construction in Victoria?

10

MS HAWKSWOOD: Yes. So the modelling showed, yes.

MR O'GRADY: And the TMR BPIC was some 21 per cent less expensive than the Cross River Rail figures?

15

MS HAWKSWOOD: Yes. That sounds about right.

MR O'GRADY: Yes. Just bear with me. Now, in your statement you acknowledge that during this period, materials like steel and concrete went up in price very sharply?

20

MS HAWKSWOOD: They did, yes.

MR O'GRADY: And I think you've already acknowledged that wages were going up sharply because, in your words, the market was very heated?

25

MS HAWKSWOOD: Yes. Demand was high.

MR O'GRADY: Yes. Now, you've given evidence about the Fission Advisory report. That was not analysis undertaken by you or the department itself?

30

MS HAWKSWOOD: No, we outsourced that to that company.

MR O'GRADY: All right. And that was based on two case studies, the Coomera Connection and the Gold Coast Light Rail?

35

MS HAWKSWOOD: That's correct, yes.

MR O'GRADY: And you'd accept that you need to assess projects on a project-by-project basis, that they can vary significantly?

40

MS HAWKSWOOD: Correct.

MR O'GRADY: And that might be because of the geography concerned?

45

MS HAWKSWOOD: Yes.

MR O'GRADY: It might be because of the remoteness?

MS HAWKSWOOD: Yep, the type of project.

5 **MR O'GRADY:** It might be because of the weather conditions endured when the project was going on?

MS HAWKSWOOD: That's right.

10 **MR O'GRADY:** And it might be because of matters that are completely unconnected with BPIC, namely, industrial disputation?

MS HAWKSWOOD: Perhaps, yes. Could also be with other projects in that area, other demands, so just understanding the risk factors for that particular project.
15

MR O'GRADY: And you understand that the Fission Advisory report was based on the contractor's own estimate of increased costs?

MS HAWKSWOOD: It was based on - yeah, so it was based on what they had
20 tendered, so through both those processes, so both the BPIC was introduced during the procurement, and so it was the outcome of that procurement process, of the before and then the after costs.

MR O'GRADY: I understand. But the figures that were being put forward were the
25 contractor's own figures. You didn't do any auditing of those figures?

MS HAWKSWOOD: I'm not 100 per cent sure, I must say.

MR O'GRADY: I understand.
30

MS HAWKSWOOD: But I would believe that they are the contractor's figures, obviously.

MR O'GRADY: And the contractors obviously are seeking to maximise the return
35 for the work they do?

MS HAWKSWOOD: Yes, they're entitled too do that.

MR O'GRADY: And to the extent to which they can point to something like BPIC
40 and say, "Well, look, that's caused us all this extra expense," they might seek to recoup that from government?

MS HAWKSWOOD: And I think where BPIC was going to be an expense, the
45 state was prepared to pay.

COMMISSIONER: Just say that last bit again, sorry. I just missed that. What did you say then?

MS HAWKSWOOD: I said where BPIC was responsible for increased costs, the state was prepared to pay.

5 **MR O'GRADY:** Yes. And in those circumstances, the contractors had every incentive to characterise any cost overrun as being attributable to BPIC.

MS HAWKSWOOD: Yes.

10 **MR O'GRADY:** I'm not being critical of them. That's just the way business works.

MS HAWKSWOOD: No, no. Yes.

15 **MR O'GRADY:** Somebody's going to pick up the tab. You say, "Well, it's all because of BPIC."

MS HAWKSWOOD: Mmm-hmm.

20 **MR O'GRADY:** And you didn't undertake any independent analysis as to the accuracy of the characterisation of those BPIC-attributable figures?

25 **MS HAWKSWOOD:** In the case of say, light rail, yes, the department did. So there was - there was some strong, I suppose, oversight and governance put in place to manage those BPIC costs on light rail, which included assessing - I mean, I wasn't directly involved in it, but in terms of there was - there was some strong assurance to make sure that the costs that the state was reimbursing was actually attributable to BPIC and wasn't additional extras.

30 **MR O'GRADY:** Will you accept that there was an attempt by John Holland to label some costs as being BPIC related, which the state rejected?

MS HAWKSWOOD: Yes.

35 **MR O'GRADY:** Which is consistent with what we were trying earlier: they had an incentive to do that?

MS HAWKSWOOD: Yes. Yes, they did, yes.

40 **MR O'GRADY:** And there were some costs which the state was willing to compensate for?

MS HAWKSWOOD: Yeah, there was.

45 **MR O'GRADY:** In circumstances where the state had an incentive to get this project completed.

MS HAWKSWOOD: Mmm-hmm.

MR O'GRADY: And in circumstance where John Holland may have walked away from the project.

5 **MS HAWKSWOOD:** I'm not sure of that. But it's a risk.

MR O'GRADY: Yes. And that clearly would have been an undesirable outcome from the point of view of the department?

10 **MS HAWKSWOOD:** Absolutely. Absolutely. We're also committed. Like, we're far enough down the pipeline to -

MR O'GRADY: Yes. And so there was negotiation on some of these issues?

15 **MS HAWKSWOOD:** Yes. There would have been, I guess.

MR O'GRADY: Thank you. Just bear with me. You understand that the ABS keeps figures of construction output costs?

20 **MS HAWKSWOOD:** Yes, I am.

MR O'GRADY: And the Fission report estimated a 26 per cent cost increase?

25 **MS HAWKSWOOD:** Yes, that was related to Gold Coast Light Rail, yes.

MR O'GRADY: And that was slightly above but generally in line with the ABS data on construction costs, which indicated that there should be a 24 per cent increase between March 2021 and March 2023?

30 **MS HAWKSWOOD:** Mmm-hmm.

MR O'GRADY: Yes. And again, if you're dealing with an Australia-wide phenomenon, as recorded by ABS data, and there is only a marginal difference between what the Fission report says were the BPIC increases and the increases in those states where there was no BPIC, I put it to you that suggests that you cannot simply attribute the 26 per cent increase to BPIC.

MS HAWKSWOOD: I can see where you're going with that.

40 **MR O'GRADY:** Well -

COMMISSIONER: Is there a lot of utility in cross-examining this witness on this point? I mean, don't you really want to cross-examine the author of the report?

45 **MR O'GRADY:** It's only because - I accept that. And it's only because this witness - the report is being tendered through this witness, and I didn't want to leave those figures unchallenged. But I accept I've probably taken it as far as I can,

Commissioner. Just bear with me. Do you accept that a contribution to the increase in costs during this period was the behaviour of Mr Ravbar and Mr Ingham?

5 **MS HAWKSWOOD:** I don't think personally.

MR O'GRADY: I see.

10 **MS HAWKSWOOD:** No. It was - the costs were - obviously there was the uplift in terms of BPIC. You know, we started with a - a non-BPIC environment, so it was - it was a change when this came in. And then, you know, other costs were attributed to delays and disruption on some of the projects.

15 **MR O'GRADY:** Yes. By the union, under the tutelage of Mr Ravbar and Mr Ingham?

MS HAWKSWOOD: Yes. Yes.

20 **MR O'GRADY:** And as you acknowledged at the outset, Mr Ravbar and Mr Ingham are no longer there.

MS HAWKSWOOD: Yes, that's correct.

MR O'GRADY: I have no further questions, Commissioner.

25 **COMMISSIONER:** Any re-examination, Ms MacNicol or Mr Gisonda? Who's dealing with this?

MS MacNICOL: No, Commissioner.

30 **COMMISSIONER:** You don't have any questions for this witness?

MR DE JERSEY: Nothing arising out of those questions, Commissioner.

35 **COMMISSIONER:** Is that it for this witness?

MR GISONDA: Yes, Commissioner.

40 **COMMISSIONER:** Thank you very much for your evidence, Ms Hawkswood. You're excused.

MS HAWKSWOOD: Thank you very much.

<THE WITNESS WAS RELEASED

45 **COMMISSIONER:** You don't have to answer this now, Mr O'Grady, but do I take it that some of those questions that you've revealed that you're anticipating to put in some evidence, do I take it that that evidence is directed towards Mr McLean's

submissions in relation to which I think there's a timetable, end of this - you don't have to answer, but it just helps me to work out what's going on.

5 **MR O'GRADY:** Yes. Well, I'm happy to address it, Commissioner. I've had a conversation with my learned friend Mr Gisonda. We are hoping to put in place or put before the Commission some expert material on this. We are seeking - and my learned friend hasn't had an opportunity to consider this. We are seeking an extension of time in respect of the program you put forward earlier. Part of the problem, of course, is we only received counsel assisting's material just over a week
10 ago, and we've also had some difficulty, although I think it may be in the process of being resolved, in obtaining the raw data used by the Queensland Productivity Commission. You might - there's a lot of unstated assumptions in that report, we would submit, and we'd like to subject that to independent analysis. But we're trying to work that through with counsel.

15 **COMMISSIONER:** But do you really need to challenge - I thought at least the productivity figures in the Productivity Commission report were not broadly supportive, but they certainly did no damage to the case concept you want to advance in relation to the impact of the ABCC and the code in terms of productivity figures
20 on what I might call a macro basis.

MR O'GRADY: I accept that, and it's really - we just want to do some analysis - and it's in the hands of people who know this area far better than I do - in order to try to pursue that. And as I understand it, there's been a similar application
25 been made by the ETU and the plumbing union.

COMMISSIONER: By Mr Clift's clients?

30 **MR O'GRADY:** Yes. And the idea being, Commissioner, we'd like the Commission to have the assistance of a contrary view so that you can weigh everything up.

COMMISSIONER: No, I understand that. I just wondered - I was just trying to work out what the point of the questions was in terms of where it was directed to and over what timeframe, but I think you've answered that.

35 **MR O'GRADY:** Yes. Thank you, Commissioner.

COMMISSIONER: Will we resume at 2 o'clock, or do you want to cut our lunch break short, Mr Gisonda?

40 **MR GISONDA:** I think what I'll do next is call Mr Balmer, so we can either go for 15 minutes now and have the lunch break from 1 to 2.15 or stop now and come back at 2. Whatever is convenient to you, Commissioner.

45 **COMMISSIONER:** Well, our normal time is quarter to 1 till 2, but I'm happy to come back a bit earlier. I can come back at quarter to 2 if you want, if that's going to be easier for you.

MR GISONDA: 2 o'clock should be okay.

COMMISSIONER: All right. Very well. Adjourn till 2 pm.

5

<THE HEARING ADJOURNED AT 12.41 PM

<THE HEARING RESUMED AT 2.00 PM

10 **COMMISSIONER:** Mr Gisonda, you've lost Ms MacNicol but still have Ms Stone.

MR GISONDA: Thank you, Commissioner. I would now like to call Mr David Balmer, please.

15 **COMMISSIONER:** Mr Balmer, will you come forward into the witness box, please.

<DAVID ANTHONY BALMER, SWORN

20 **<EXAMINATION BY MR GISONDA**

COMMISSIONER: Just take a seat, Mr Balmer. Mr Gisonda.

25 **MR GISONDA:** Thank you, Commissioner, and thank you, Mr Balmer, for your attendance today. Can I ask that your statement, which is sworn on 20 June 2026, be put in front of you, please. Thank you. And this statement goes for 391 paragraphs, and accompanying the statement is a bundle of documents that totals 1,887 pages. Have you had a chance to read your statement recently, Mr Balmer?

30 **MR BALMER:** Yes, I have, and I just confirm, I actually signed it the 29th, not the 20th.

MR GISONDA: Yes, that is a 9. My apologies. 29 June 2026. And can I just direct your attention to paragraph 9, and in that last line there, can I confirm that it should
35 instead say:

"A revenue of 4.6 billion with an additional 6.5 billion worth of new work secured."

40 **MR BALMER:** Yes, that is correct, for 2025 calendar year.

COMMISSIONER: Replace 5.4 with 4.6 and 7.3 with 6.5?

MR BALMER: Yes, that's it.

45 **MR GISONDA:** And that statement is true and correct otherwise, Mr Balmer?

MR BALMER: Yes.

MR GISONDA: Can I tender that statement, Commissioner.

5 **COMMISSIONER:** Are there any objections? No? Do you have a middle name, Mr Balmer?

MR BALMER: Anthony.

10 **COMMISSIONER:** Witness statement of David Anthony Balmer, 29 June 2026, 391 paragraphs, 34 pages, with 144 annexures, as amended by the witness in the witness box just now at paragraph 9, will be exhibit DAB-1.

15 **<EXHIBIT DAB-1 WITNESS STATEMENT OF DAVID ANTHONY BALMER, 29/6/2026, 391 PARAGRAPHS, 34 PAGES, WITH 144 ANNEXURES, AS AMENDED BY WITNESS IN WITNESS BOX AT PARAGRAPH 9**

20 **MR GISONDA:** Thank you, Commissioner. Mr Balmer, could you please tell the Commissioner your background, your professional background and your professional experience in the construction industry, please.

25 **MR BALMER:** For sure. I - I'm a qualified civil engineer, studying at QUT in Brisbane, graduating in 1990. I've been - I've worked throughout - from that point in time to today, in the construction side of industry, which is infrastructure delivery, starting my journey as a junior engineer, working my way over the decades through to the role of project directors and then into regional management and business management. So I've - I've seen - been involved in numerous infrastructure projects. I stayed in Brisbane, as I've mentioned, and the bulk majority of my work has been in Queensland. I have done bits in Northern Territory with the Darwin Airport and a
30 little bit in Western Australia, but predominantly I've done my 35-plus years construction industry work in Queensland.

35 **MR GISONDA:** And is it correct that for 27 years, you were with John Holland, rising to the position of executive general manager for Queensland and Northern Territory, and then in June 2017 you moved across to Acciona, first as project director and now regional director, Queensland and Northern Territory?

MR BALMER: That's correct.

40 **COMMISSIONER:** Does that mean you report to the CEO in, I guess, Sydney?

MR BALMER: In Acciona?

45 **COMMISSIONER:** Yes.

MR BALMER: I report to the managing director, who is based in Melbourne.

COMMISSIONER: In Melbourne?

MR BALMER: Yep.

5 **MR GISONDA:** And who is that?

MR BALMER: Jose Angel.

10 **MR GISONDA:** And you're here in two capacities today. One is in your capacity as the regional director for Acciona, and separately, you're here in your capacity with the Queensland Major Contractors Association. Can you tell the Commissioner what your history has been with that organisation?

15 **MR BALMER:** Yes, so in - upon joining Acciona, after moving into that regional role, I joined the board of Queensland Major Contractors Association. The following year, I was elected as the deputy chair. I had been the deputy chair of the board of the QMCA for two years before being elected to the role of chair, and this is my third consecutive year of being the chairman of the Queensland Major Contractors Association board. QMCA, just as a little bit of background, just celebrated our 30th
20 year in Queensland. It's a unique body, and it is a bit unique to Queensland as well, but it is - yeah, that's a point of feature. We only operate in the State of Queensland.

COMMISSIONER: So what's the difference between the QMCA and the body that we - Mr Long was the CEO of?

25 **MR BALMER:** CCF.

COMMISSIONER: CCF.

30 **MR BALMER:** Yeah, so the CCF is federated nationally, so they are a national organisation who has, you know, entities in each of the states, whereas the Queensland Major Contractors Association, we're more the tier 1/tier 2-led organisations as opposed to tier 2/tier 3, CCF. That said, we have a number of shared members, members of people that are - organisations that are a member of both
35 associations.

MR GISONDA: And just looking at the executive general members of the QMCA, which are listed at paragraph 12 of your statement, which is on page 2, it's fair to say that each of those entities had a role to play as eventual successful tenderers for the
40 major transport projects that were awarded in the state of Queensland and which were subject to BPIC policy?

MR BALMER: That would be correct, yes.

45 **MR GISONDA:** And as we'll come to see, having regard to that, your organisation, the QMCA, had a very keen interest in the development and then application of the BPIC policy in the civil and transport space; is that right?

- 5 **MR BALMER:** Yes, absolutely. Probably the only thing I would add to that, Mr Gisonda, is QMCA, we actually have 92 members. These 19 listed are executive general - general executive members, and they effectively - a representative from each of their organisations form the board. So I thought it just is important to get a feel for the context in the statement in bullet point 11, the 70, 80 per cent. There's a lot of associate general managers and affiliates, so it's a - we do have a broader depth than just these 19.
- 10 **MR GISONDA:** And you might have heard the evidence this morning from Ms Hawkswood, and there was a little bit of evidence from her about the impact that the BPIC policy would have on some of the smaller operators in the industry. Those smaller operators, they would comprise some of your ordinary general members and associate members; is that fair?
- 15 **MR BALMER:** Correct, yes.
- 20 **MR GISONDA:** So when the QMCA advocates for a position, it's not just advocating on behalf of the tier 1s, so to speak?
- MR BALMER:** Yes.
- MR GISONDA:** Advocating on a much broader cohort in the industry?
- 25 **MR BALMER:** Absolutely.
- 30 **MR GISONDA:** And indeed, even before the transport BPIC came into existence, the first policy that we might speak about today was something known as the best practice principles, and can I take you to page 5 of the bundle of documents that accompany your statement. This is a letter that has been sent by the QMCA in November 2019. It was the position, was it, of the QMCA that the best practice principles sought to address problems that do not exist, at least in respect of the civil infrastructure industry? Are you able to explain that for the Commissioner?
- 35 **MR BALMER:** Indeed. The position of the QMCA was fundamentally that there was a lack of need to advance past - or in the best practice principles space. We didn't see the need in the civil infrastructure for it to be brought into that - that operating sphere.
- 40 **MR GISONDA:** In fact, on the same day, now at page 7 of the bundle, the QMCA then wrote to the Department of Housing and Public Works to talk about or to give feedback in relation to the proposed minimum conditions, and do you see the heading there QMCA Concerns? It says under that:
- 45 "We are surprised that the government is considering such a proposal, given that it effectively rewards unlawful union behaviour and has the potential to increase labour costs on new infrastructure projects by between 75 per cent and 100 per cent."

Are you able to elaborate at all on what is meant by saying "it effectively rewards unlawful union behaviour"?

5 **MR BALMER:** Primarily, it was the broadening of the representation or broadening of the participation of unions who weren't a civil industry union, and the view was that through the actions of unions trying to break into the civil infrastructure market, being unlawful, we didn't see the necessity for them to be allowed in. So in summary, my -

10

COMMISSIONER: Sorry, you go.

MR BALMER: No, my familiarity with this document is not as strong as later in my statement.

15

MR GISONDA: And you're aware, though, that sometime in 2020 - and we heard evidence this morning from Ms Hawkswood that throughout 2020, the minimum conditions became what were described as the best practice industry conditions and that that was a policy first introduced for projects procured by the Department of Energy and Public Works. And you knew that had happened, didn't you?

20

MR BALMER: Indeed, yes.

MR GISONDA: And did you know in 2020 that that policy was on its way to be implemented in the transport civil construction - sorry, that it would apply to transport and civil construction projects as well?

25

MR BALMER: Yeah, we had heard that that was the intention, for it to be introduced.

30

MR GISONDA: And is it your recollection that throughout 2020, there was effectively little to no consultation with either the QMCA generally or contractors more specifically about this policy?

35

MR BALMER: 100 per cent, yep.

COMMISSIONER: What timeframe are you talking there? Sorry, I just missed the timeframe.

40

MR GISONDA: In 2020.

COMMISSIONER: In 2020.

MR GISONDA: And you were in court this morning, weren't you, Mr Balmer?

45

MR BALMER: Yes, I was.

MR GISONDA: Did you hear Ms Hawkswood's evidence that her department was effectively instructed not to consult with industry. Did you hear her say that?

MR BALMER: Yes, and I would agree 100 per cent.

MR GISONDA: Well, you certainly would agree with me that that was implemented, but did you know that there had been a direction to that effect?

MR BALMER: I became aware of it, but it wasn't - it wasn't communicated that that was in place, that there was instructions to senior bureaucrats not to engage.

MR GISONDA: And what do you think about that instruction that was given? What do you think the impact was on the industry generally in the State of Queensland?

MR BALMER: I think the sentiment was - became quite negative very quickly. I think industry saw this as a disruption, an intentional disruption, that if anything was going to create a lack of harmony; it would create problems.

MR GISONDA: Now, one of the projects that I'd like to just discuss with you in brief terms is the Bruce Highway project. This is in particular contract 1 of that project, which was the section from Caboolture-Bribie Island Road to Pumicestone Road, and this is dealt with in your statement from paragraph 31 onwards. And Acciona was successful in being awarded the works for that contract 1 in September 2020; is that right?

MR BALMER: Yes, correct.

MR GISONDA: And that was before the BPIC policy had been announced as applying to transport projects, which occurred, I believe, in December of 2020.

MR BALMER: Yep.

MR GISONDA: And so is it fair to say that that was a project that was procured and then completed without any application of the BPIC policy?

MR BALMER: Yes, 100 per cent.

MR GISONDA: And how would you then describe the pre-BPIC way in which industrial relations would be managed on a project such as contract 1 of the Bruce Highway project?

MR BALMER: A summary would be that the Department of Transport would not participate in any part of the tender process, or the award, or the execution in any way or form or in any capacity in regards to industrial relations. It was not a relevant returnable. It didn't exist. It was - BAU for industry was that the Department of Transport would be leaving that 100 per cent to the contractor.

MR GISONDA: And is that consistent with your experience over the 30-plus years in the industry when it comes to civil infrastructure projects?

5 **MR BALMER:** Yes, 100 per cent of those projects, there's over a dozen for the Department of Transport, and they never participated in the industrial relations space.

10 **COMMISSIONER:** Do I take it that's because they just don't have the skill set or a combination of not having the skill set and they'd like you as the contractor to bear the risk?

15 **MR BALMER:** Yeah, it wasn't a skill set. They'd never had the skill set. But I think it was very much important about letting the market, the free market, operate in its own right. There's different - different companies had different strengths and weaknesses in regards to how they were going to execute projects. Some had long-term workforces. Some had project hires. There's a range of combinations and permutations of how delivery was to occur. So they - it was not in their interests, nor did they ever make the effort to participate.

20 **MR GISONDA:** Then the next project I want to ask you about is the project that you deal with on page 5 of your statement in paragraph 40 onwards. And this is the Coomera Connector project, and stage 1 of that Coomera Connector project had three separate sections, which you set out at paragraph 43. There was the North package, from Shipper Drive to Helensvale Road, then there was the Central
25 package, and finally the South package. A joint venture consisting of Acciona and Georgiou were awarded the North package; is that right?

MR BALMER: That is correct.

30 **MR GISONDA:** And the Central package, which we'll hear a bit of evidence about in the coming week, that was awarded to a joint venture consisting of Fulton Hogan, JF Hull Holdings and McIlwain; is that right?

35 **MR BALMER:** Yes.

MR GISONDA: And in relation to that North package of works, that did have BPIC apply to the project, didn't it?

40 **MR BALMER:** Yes, BPIC was introduced during the tender period. It was unique to that effect. Slightly contrary to what Deanne did say this morning, we had BPIC introduced whilst there was two parties still competing for that project. Cooroy to Curra, which was Vince Sanfilippo's project, they were actually in a preferred status when BPIC was applied, so there's a bit of a unique difference there between Cooroy to Curra and Coomera Connector North, in that it was - there was still a competitive
45 element.

MR GISONDA: Yes. We'll come to that unique feature of that presently.

MR BALMER: Yep.

5 **MR GISONDA:** But can I then take you to the chronology which starts in January of 2021. So the period of time now is that the transport BPIC has been announced as a policy, meaning that the BPIC would apply to projects procured by the Department of Transport if they were worth more than \$100 million.

10 **MR BALMER:** Mmm-hmm.

MR GISONDA: So we're talking about the infancy of that policy, and just to confirm, up until that point, neither Acciona nor the QMCA had been consulted with as far as the development of that policy was concerned?

15 **MR BALMER:** No.

MR GISONDA: And so it was presented to you, was it, as a decision that had already been made that the BPIC was to apply to projects going forward?

20 **MR BALMER:** Correct.

COMMISSIONER: Can I just understand the pricing of these things, Mr Balmer? If you just go back to paragraphs 40 to 43, I'm just trying to understand what the per-kilometre cost of building these sort of roads is. This seems to be saying there's
25 one and a half billion for Stage 1 of the Coomera Connector. The Coomera Connector seems to be 45 kilometres in total, but Stage 1 is 16 kilometres. Do I read that as meaning it's about \$100 million a kilometre? Is that -

30 **MR BALMER:** Yeah, I think that would be a good guide. The North package, the four-kilometre package, we secured at a starting contract value of just a tick over 400 million. So 100 million a k would be a fair guide.

COMMISSIONER: Why is it so expensive?

35 **MR BALMER:** A combination of - that, you know, is a pure work-up of labour cost, material cost, commodities. There's - some of these projects, if you have a look at that four-kilometre stretch in the North package, it's extensively on viaduct. It's a bridge, quite a large bridge. Three lanes each direction. It's a significant piece of
40 motorway.

MR GISONDA: If we go to page, then, 29 of the bundle of documents attached to your statement. So on 25 January, this letter is sent, and it's a letter that includes - it's a joint letter from the Australian Constructors Association, AI Group, the Civil Contractors Federation, Master Builders Queensland, QMCA and Infrastructure
45 Association of Queensland. And the joint letter says - so again, to confirm, you've been told this is the policy. There's been no consultation. And so this is the QCMA's

attempt, is it, to, after the fact, but nonetheless put on the record its concerns about the policy? Is that correct?

MR BALMER: Correct, yes.

5

MR GISONDA: And what it says, in the middle of this page, or the middle of the text of the page, that third paragraph:

10 "The draft BPICs would impede the viability and growth of the construction industry in Queensland. The draft BPICs do not represent best practice industrial relations."

And then it says:

15 "They resemble a pattern enterprise agreement with highly restrictive and costly provisions. Contractors must retain the ability to implement enterprise agreements and work practices which reflect the needs of their enterprises."

20 Are you able to just explain to the Commissioner what is meant there, where it says "they resemble a pattern enterprise agreement with highly restrictive and costly provisions"?

MR BALMER: It was quite obvious to industry that it was a pattern agreement that was created by the CFMEU. It is quite obvious it had been adopted from the vertical-build space. The pattern element of it, when you worked your way through
25 the document itself, there were so many - there were many elements where, ultimately, enterprises who adopted it as written would have their enterprise control removed from them, that they would have a third party in there participating in how their business will be run and projects will be executed, and that - that flows back to the viability and growth of the industry comment. Principals - the point being very
30 much that it was written as -

COMMISSIONER: What do you mean by that? A third party - did you say dictating to them or controlling?

35 **MR BALMER:** A third party being involved, directly involved. In reading the specific words of the draft BPICs, you could see that there was - in comparison to the civil infrastructure market and the way that we - EBAs had been done prior to this guidance document, where there was a proper balance between, you know, the employer, employees and the union representation, this one had the union
40 representation being a mandatory gate on numerous different parts of processes of the EBA. And that's when I referred to bringing the third element or a third party. They were - it clearly inserted the unions and the Building Trades Group, the CFMEU, into spaces where the industry saw that as highly unusual or not typical.

45 **MR GISONDA:** And at paragraph 65 of your statement, which is on page 7, you set out what the views of the QMCA membership about the transport BPIC were from the beginning, and what you say at paragraph (a) is that:

"Much of how BPIC was intended to work remained unclear."

You say:

5

"Whilst BPIC was described as 'non-mandatory', contracts that tendered for projects were to be evaluated by reference to their 'best endeavours' in relation to meeting the intent of BPIC."

10 Are you able to elaborate at all on that point to the Commissioner?

MR BALMER: Within my annexures, I've attached some of the returnables we had for Coomera Connector North, and you can see in there the non-price criteria within the drafting required - allowed the Department of Transport to make an assessment of each of the different proponents' quality of their tender, with their response to BPIC being part of that assessment. So the - the metric was very unclear, how that would be used, but it was clearly in there that the evaluation would consider it.

MR GISONDA: Over the page, could you see there at (f) that it says:

20

"If adopted unamended, several clauses of the BPIC document would lead to an erosion of enterprise control and productivity losses during the delivery of projects."

Is that the point that you were explaining to the Commissioner just a moment ago?

25

MR BALMER: Yes. Yes.

MR GISONDA: And then what does it mean where it says at (h) that:

30 "A number of likely unintended consequences of the policy were identified, including impacts on small and medium enterprises."

MR BALMER: The point there is the - if you followed the guidance material as provided, it would become a gate of entry. It would actually - in the first instance, there'd be numerous small and medium enterprises that would make a decision not to participate and not to offer their services for the delivery of the project, because the impact of them having to enter into a different employment arrangement with their workforce would impair their business on their other projects that they might aspire to do. You've got to remember that the small and medium enterprises, they're not purely there for the delivery of government infrastructure. They may be servicing, you know, councils, subdivisions. Their skill set was across many different sectors.

So it would become - for them to adopt and to get with the program could easily impair their business in their other markets, and so we saw numerous companies decide not to participate. So that's when - it was an unintended consequence. The internal and external to the infrastructure market - we also saw, for example, because of the lucrative or the - ultimately the wage conditions that were being deployed, we

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were able to attract or we were starting to attract people that were previously working in the residential market, for example. So that would be seen in a housing crisis as an unintended consequence, as a working example.

5 **MR GISONDA:** And at subparagraph (i), it says:

"It was unclear what necessitated the need for the BPIC policy to be conceived or what concerns the policy sought to address in the industry."

10 What's the point there?

MR BALMER: We as an association asked that question in a range of different forums, about what is the burning platform for this policy to be created and introduced into the civil market? We needed a working example, because no one
15 could - and to be quite honest, the responses, we never received a material or a useful response in any way or form about what is the key problem that they're seeking to address? You know, as an industry association, we can certainly lean in to assist them. We're always ready, willing and able to lean in and assist governments to achieve their agendas and their objectives.

20 And we were asking the question: what is the issue here that you're seeing yourself needing to disrupt - comprehensively disrupt the civil infrastructure market in Queensland where you're the biggest client? And that was never answered.

25 **COMMISSIONER:** When you say "never answered", your organisation - that is, the QMCA - started writing to the government at least - the earliest we've got in your witness statement is November 2019. You're saying "never answered", up to the point the policy was scrapped in 2024?

30 **MR BALMER:** I think that's - when we attended, there was a joint facilitated industry engagement forum held with the Department of Public Works and Energy and DTMR, and that happened, and it's in my statement. I can't recall exactly the day, but the room was filled with people who ultimately were seeking the answer to that question: what is the burning platform? I remember the question being clearly
35 asked by one of our members of our industrial relations working group. The only response verbalised in that forum was by Sharon Bailey and she said wage theft.

COMMISSIONER: Sorry, wage theft?

40 **MR BALMER:** Wage theft. To which the whole - everybody had a very emotive response to - to that response. Yeah. It was just absolutely - so I don't consider that a reasonable response at all. At all. Not even close.

COMMISSIONER: Sorry, just remind me who Sharon Bailey is?
45

MR BALMER: Sharon at the time was - I think she was in the role of - she was DDG.

MR GISONDA: She was deputy director-general of the Department of -

MR BALMER: Public Works.

5

MR GISONDA: - Public Works.

MR BALMER: And to be quite honest - or simply, that's the only attempt of a response I can actually recall.

10

COMMISSIONER: Did you get a response to the letter that you and the other -

MR BALMER: No.

15 **COMMISSIONER:** - industry bodies wrote to Ms Bailey on 25 January 2021?

MR BALMER: I can't recall. I'd have to ask our - our current CEO Andrew Chapman would be aware of whether we received it or not, but not to my knowledge.

20 **COMMISSIONER:** That letter you wrote on 25 January 2021, that is, when I say "you" -

MR BALMER: The association.

25 **COMMISSIONER:** - the QMCA and others, AIG, ACA, MBAQ, CCFQ - that was a month after, if you like, the six-month consultative process from July to December 2020, which excluded industry and involved the unions and led to what the previous witness described was a meeting with industry in December 2020, with the industry being angry and aggrieved, in her words. Were you in that December 2020
30 consultation?

MR BALMER: No.

35 **MR GISONDA:** At paragraph 69 of your statement, you say that an EBA that had been agreed upon between Acciona and the Australian Workers Union, a greenfields EBA, which was to apply to the - all civil construction works in Queensland. Is that right? It was a statewide enterprise agreement with the AWU?

40 **MR BALMER:** That is correct.

MR GISONDA: And that was approved by the Fair Work Commission on 26 February 2021?

45 **MR BALMER:** Yes.

MR GISONDA: And unless another agreement, a project-specific agreement was entered into, the view or the position of Acciona was that that EBA would apply to works on the Steve Irwin Way project?

5 **MR BALMER:** Yes. And it did.

MR GISONDA: At about this time, the QMCA - this is now in February - the QMCA was provided with the proposed amendments to what was called
10 Queensland's ethical supplier mandate policy. Do you remember that development?

MR BALMER: Yes.

MR GISONDA: And at page 62 of the bundle and onwards, you've included this material that was provided to the QMCA.

15

MR BALMER: Mmm-hmm.

MR GISONDA: And just so we understand what - the ethical supplier mandate, how it fits into the procurement policies of the State Government, if we go to page
20 93 of your bundle. You will see at the top of the page it says:

"The purpose of this policy document is to assist government buyers and suppliers in complying with Clause 2.2 of the Queensland Procurement Policy."

25 And it then sets out that clause 2.2, which is saying:

"Agency use best endeavours to do business with ethically, environmentally and socially responsible suppliers, and will seek to influence the supply chain in this regard. As part of this commitment, agencies will not procure dumped goods or
30 engage suppliers suspended as a result of accruing demerit points under the Ethical Supplier Mandate."

You were aware, weren't you, that there was an ethical supplier mandate within the Queensland Procurement Policy?

35

MR BALMER: Yes.

MR GISONDA: And the idea is to ensure that, for want of a better description, bad corporate citizens don't win work that's procured by the Queensland Government?

40

MR BALMER: Yes.

MR GISONDA: Now, before I just take you to something - actually, no, we'll go to page 96. Do you see the bottom there, subheading 4, workplace Health and Safety?

45

MR BALMER: Mmm-hmm.

MR GISONDA: And it then describes instances of minor non-compliance, moderate non-compliance, major non-compliance and aggravated non-compliance, and minor non-compliance is described as:

5 "During the past three years a minor non-compliance history is demonstrated through the provision of the Compliance History check and accompanying assessment by Workplace Health and Safety Queensland."

Do you see that?

10

MR BALMER: Yep.

MR GISONDA: And see how there's a footnote after "assessment", number 4? Can you see that there on the screen?

15

MR BALMER: Right, yep.

MR GISONDA: Then if you go to footnote 4, which is at page 99, footnote 4 says:

20 "This assessment will analyse if an average number of notices (including the seriousness of the notices) have been issued over the three-year period based on the number of projects carried out by the supplier, size of the supplier and experience of the supplier."

25 Do you see that? And do you see how after the word "issued" there's footnote 5? Can you see that? It's on the screen, highlighted in yellow?

MR BALMER: Yes.

30 **MR GISONDA:** And then if you go to footnote 5, which is over the page, and it says:

35 "Notices will include improvement notices, prohibition notices and infringement notices (including the seriousness of the notices) issued by a WHSQ inspector to the supplier."

40 Now, I'm not sure if you know what Graeme Silvester is from CPB or if you saw his evidence back in April, but what he said was - a couple of things. So he was talking about his experience on Cross River Rail.

MR BALMER: Yep.

MR GISONDA: And he said at page 2273 of the transcript, line 4:

45 "Commissioner, could I say that the notices were not correct or didn't comply with the legislation? No. Could I write 56 notices on any project in Australia for the types of things we got notices for on any given day? Yes, I could. We got a prohibition

notice for plastic barbecue chairs in lunch rooms because they were domestic quality and not industrial standard. We got notices because we had puddles in walkways. That's probably right, because it was raining at the time. We got notices because there was a can of spray paint left outside a hazardous substances storage facility.
5 You'd get them any given day on any given job, anywhere."

And then he said that his read of the situation - this is now at page 2278 of the transcript at line 18 - his read of the situation was that:

10 "At that time, there were drafts coming out from the government around the new BPIC guidelines, and there was the appendix that was written into the BPIC guidelines around health and safety repeat notices, and that organisations who had repeat notices would not be able to tender for State Government work."

15 Now, was this development here of concern to the QMCA membership?

MR BALMER: Yes, it was.

MR GISONDA: And if I can just ask you about a letter that was sent to Mr De Brenni on 15 February in response to that ethical supplier mandate, and we go to page 160 of your bundle. And over the page at 161, under the heading Panel & Supplier Mandate, it says:

25 "Under the proposed Mandate, the use of a demerit system is proposed. We have significant concerns that this process does not consider the complexity of the construction environment across the State and is open to influence from outside parties. The severity of the demerit system does not appear to align to any economic loss, rather based on a perceived gravity of an infringement. This is truly subjective and unless there is a detailed understanding of all aspects of the construction industry
30 it is impossible to determine with openness and transparency."

And then your next paragraph says:

35 "We have major concerns regarding the construct and charter of the Tripartite Advisory Panel."

And just pausing there. You understood, didn't you, from the mandate - and we can go to the terms if it is necessary - but the sanctions to be applied were to be determined by a three-member panel that was to include representatives from the
40 unions. Is that correct?

MR BALMER: Correct.

MR GISONDA: And so back at this letter, it says:
45

"...major concerns regarding the construct and charter of the Tripartite Advisory Panel. The proposed approach can simply be only described as a Kangaroo Court."

Replacing existing arrangements where a panel of public servants make decisions governed by the Public Service Ethics Act with the tripartite panel consisting of third parties who are open to influence with no recourse or oversight, is simply unacceptable."

5

And it also explains in this letter it in the middle of the page, the second paragraph under the heading Guidelines - Ethical Supplier Mandate that there was an:

10 "...ability for the Panel to impose any sanction or apply demerits to a supplier regardless of any determination made in the courts."

And we find this abhorrent. Can I ask you, is the concern that the QMCA had, does that concern mirror what Mr Silvester was talking about in his evidence, which is that it would expose contractors to the whims of WHSQ issuing a notice.

15

MR BALMER: Mmm-hmm.

MR GISONDA: The sanctions to be applied as a result of a contractor receiving those notices would then be determined by a panel that would include a representative of the union.

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MR BALMER: Mmm-hmm.

MR GISONDA: Mr Silvester's evidence was that WHSQ, some of the WHSQ inspectors were beholden to or jammed by the CFMEU, and so you could have this perverse situation where the CFMEU exerts influence on WHSQ to issue notices. The notice is then issued. There's then a process where the consequences need to be determined by a panel, and the panel could include a representative of the CFMEU. Is that the essence of the problem?

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30

MR BALMER: It's perfectly captured.

MR GISONDA: And had you seen anything like that before in your experience in the industry?

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MR BALMER: No, no, never seen anything like that before.

MR GISONDA: And tell me, did you know at this time, February 2021 - because I know sometimes it's difficult to put out of your mind what you know happened after February 2021, but in February 2021, did you know or did you appreciate the type of campaigns that the CFMEU would be waging against contractors in the civil industry space?

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MR BALMER: Probably didn't have an appreciation on how - how that would explode or increase in the civil space.

45

MR GISONDA: There had already been, at least by February 2021, some experiences on Cross River Rail?

MR BALMER: Yep.

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MR GISONDA: And is it correct to say that what was happening on Cross River Rail was being keenly watched by the industry?

MR BALMER: Absolutely.

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MR GISONDA: So at paragraph 77 of your statement on page 9, you describe three issues - well, they're distinct issues, but I suppose in one sense it might be more accurate to say they were distinct but nonetheless related issues - that were confronting the QMCA membership as regards industrial relations in Queensland.

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MR BALMER: Mmm-hmm.

MR GISONDA: And they were, first, the introduction of BPIC?

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MR BALMER: Mmm-hmm.

MR GISONDA: And just to confirm there, you say:

25 "Despite the QMCA's best efforts at engaging in consultation, the State Government was proceeding with widespread implementation of BPIC, seemingly without any regard to industry's perspective and concerns."

30 Subparagraph (b), the relationship between WHSQ and the CFMEU. And are you able to elaborate there, where you say there was ongoing speculation about the relationship between WHSQ and the CFMEU?

35 **MR BALMER:** The speculation very much was that the CFMEU had control of WHSQ and were directing their efforts, their resources and their traffic. They were - yeah, we saw them as a captured regulator.

MR GISONDA: And then subparagraph (c) -

40 **COMMISSIONER:** Just before you go on to that, you go further and say you think their independence had been -

MR BALMER: Compromised.

COMMISSIONER: Why do you say that?

45 **MR BALMER:** Again, you could see in the field operations where - where if the CFMEU had an objective and an agenda that required the assistance of the WHSQ to

enable, then that would be made to happen. The WHSQ would be brought in and involved, and again, it was - it was quite unhealthy. Yeah.

5 **COMMISSIONER:** When you say the CFMEU had an objective or agenda, what sort of objective or agenda do you mean?

MR BALMER: To disrupt works, to make a statement, to impair the safe - the operation of a project to suit maybe a broader goal.

10 **COMMISSIONER:** And what were the broader goals?

MR BALMER: Again, it's just to have the influence over the contractors, particularly if the contractor had not complied with their expectations or met - met things such as the intent of the BPIC policy. An example of that would be all of the
15 activity that was suffered at the Centenary Bridge duplication. A classic example.

MR GISONDA: And then subparagraph (c) is CFMEU encroachment into civil infrastructure, and QMCA members were experiencing increased militant and violent behaviour through targeted campaigns from the CFMEU.
20

MR BALMER: Yep.

MR GISONDA: And then you refer to an effective turf encroachment from the CFMEU on the AWU. What do you mean by that?
25

MR BALMER: The AWU has industry coverage of civil infrastructure. The CFMEU don't. The reality is the AWU, you know, as demonstrated by companies prior to introduction of BPIC, if you wanted to stay greenfield you would approach the AWU, negotiate that and resolve the EBA with them. It was quite clear custom and practice. The involvement of the CFMEU in this space didn't exist, but the BPIC
30 policy was disrupting that, that harmony.

MR GISONDA: And by May 2021, it was known within the industry that the Department of Transport and Main Roads was seeking to retrofit BPIC onto the Gold Coast Light Rail project. That's correct, is it?
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MR BALMER: Yes.

MR GISONDA: And did you know or were you aware that BPIC might be applied to the Coomera Connector North project that you were tendering for?
40

MR BALMER: Yeah, I think at that point we were, yeah.

MR GISONDA: And on 26 May, Acciona received a request for information from the State of Queensland in relation to that project, which confirmed that a framework was being developed to incorporate BPIC into the project.
45

MR BALMER: Mmm-hmm.

5 **MR GISONDA:** And indeed, there was some uncertainty, wasn't there, about whether the transport - the transport BPIC applied to projects between \$100 million and \$300 million?

MR BALMER: Yep.

10 **MR GISONDA:** And the department said to Acciona that it recognised that this stage 1 North project might exceed that project value, and so, as a result, the department was in the process of developing what was effectively called transport BPIC+ to apply to projects with a total value over \$300 million. So there was uncertainty as to even which version of BPIC would apply to your project at that stage?

15 **MR BALMER:** Yep.

MR GISONDA: And you hadn't seen at that stage what the BPIC+ looked like, because it was still being developed?

20 **MR BALMER:** Developed, yeah.

MR GISONDA: And was it unusual, in your experience, to have that level of uncertainty permeating a tender process?

25 **MR BALMER:** Yes. Yep.

30 **MR GISONDA:** And you eventually received the BPIC+ about a month later, and I just want to show you - I'll come back to that. Now, at page 336 of your bundle, there's a letter from the QMCA to Ms Hawkswood providing feedback on the BPIC+ that had been given to industry. So that is the transport BPIC which at this stage now included additional clauses that were to cover projects that had a project value of more than \$300 million.

35 **MR BALMER:** Mmm-hmm.

MR GISONDA: And that was likely to include the Coomera Connector Stage 1 North project that you were bidding on.

40 **COMMISSIONER:** You just have to say "yes" for the transcript.

MR BALMER: Yes. Yep.

45 **MR GISONDA:** This letter that begins at paragraph - sorry, page 336, it can fairly be described as an angry letter, a letter that really does reveal a level of unhappiness from the QMCA. And do you think that's a fair description of this letter?

MR BALMER: Yes, it is a fair description.

MR GISONDA: And did that reflect the mood of the membership at the time?

5 **MR BALMER:** Yes, it did. We were extraordinarily frustrated.

MR GISONDA: There'd been no consultation as far as the development of transport BPIC was concerned. Had there been consultation as regards to the development of a BPIC+ by this stage, as far as you knew?

10

MR BALMER: Yeah, no.

MR GISONDA: So it was effectively the same process: "Here's a document now, which is going to be applied to significant projects."

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MR BALMER: Yep.

MR GISONDA: And in the middle of the first page it says:

20 "Collectively, we continue to struggle with the concept that current industry workplace relations practices have been deemed substandard by an unknown critic, against an undeclared set of measures that have yet to be clearly and expressly identified. As you would imagine, it is hard to see this process as 'consultation' with the limited dialogue that has occurred being nothing but one way."

25

And is that just another expression of the point you made before to the Commissioner, that it wasn't really explained what the problem was, who had that problem and why it needed to be fixed?

30 **MR BALMER:** That's correct.

COMMISSIONER: What was the difference - it might be too hard for to you explain in short order - between the Department of Transport and Main Roads BPIC that applied to projects between one and three hundred million dollars in value and the so-called Department of Transport and Main Roads BPIC+ policy?

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MR BALMER: The - probably the largest element of difference of the BPIC+ was the introduction of a site allowance, which applied to projects and - with a banding range. For example, there was supplementary hourly rate earnings for - if the project was between 300 and 400 million dollars, 400 and 500 million dollars, 500 and 600 million dollars. Each time you would move up the band, the BPIC+ would change the rate of pay, starting at \$5 an hour, add for three to four hundred million dollars, escalating all the way to, you know, \$7 an hour for a project between six and seven hundred million dollars. So it had a material effect in cost and quite rapid.

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MR GISONDA: If you go to page 544 of your bundle, it's not a memory test, but it turns out you've got an excellent memory. You will see there at Site Allowance, it's

exactly as you say. For projects of that value, additional hourly allowances. Are you able to explain why it is that a worker who is performing works on a project that's valued at, say, \$295 million is paid less than a worker who's working on a project that's worth \$305 million?

5

MR BALMER: Yeah, it's - it's not a simple explanation. I don't personally agree with it. It doesn't - there's no real logic that holds that together.

MR GISONDA: But you would otherwise think it's the same work?

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MR BALMER: It is identical work. Whether you're pouring the concrete on a bridge deck that's for a \$200-million bridge versus a \$400-million bridge, the difference is \$5.50. Why does that - that makes no - no sense at all. Again, not that we were asked to provide input into this evolution.

15

MR GISONDA: And even with respect to daily fares and travelling allowance, isn't the location of the job more important than the project value?

MR BALMER: Indeed. Indeed.

20

MR GISONDA: Now, at page 342 of the bundle, this is the criteria that you were provided with that the state would use to assess your offer for the Coomera Connector Stage 1 North project. And at the bottom of the page, it says, page 342, it says:

25

"Transport BPIC is a guidance document and sets standards and expectations to ensure that a workforce with optimal levels of skills and experience is attracted and retained for the life of the project's delivery and ensure that relevant stakeholders can interact in a positive, collaborative and productive way through to successful project completion."

30

And then over the page it says that it is not mandatory, and although the transport BPIC is set out in the form of an agreement, the successful contractor is not required to enter into an agreement. So you understood that point, that you weren't being told you had to enter into an enterprise agreement. But then if you continue on down the page, one of the assessment criteria under heading B subparagraph (a) is:

35

"How when using best endeavours the contractor intends to reflect the intent and outcomes of the transport BPIC as part of its industrial relations strategy."

40

MR BALMER: Mmm-hmm.

MR GISONDA: And then, over the page, in the middle of the page, subparagraph (f), so now at page 344:

45

"Describe how the contractor would use its best endeavours to take the transport BPIC into account when evaluating, selecting and engaging subcontractors."

5 So how did you think you were supposed to navigate on the one hand being told that the transport BPIC was not mandatory, but on the other hand, when you were being assessed, your tender was being assessed, you were being asked how you intended to reflect the intent and outcomes of the BPIC and how you would use best endeavours to take it into account when picking subcontractors?

10 **MR BALMER:** The - meeting the intent is - was the key to this, as we saw, and from that perspective, we developed a concept or we approached it with, "Well, what is the true intent behind the policy?" And we looked at the EBA itself, the non-mandatory. We actually broke it apart and came up with an assessment, and it's in our offer how we assessed what - the different parts of the EBA we would meet the intent of and what we wouldn't meet the intent of, trying to, again, maintain some commonality with the pre-existing BAU arrangements with - you know, using an
15 AWU-style agreement.

20 With regards to the subcontractors and suppliers, our approach was very much a reflection of the three-envelope mechanism that the Department of Transport had used, having envelope 1 being a price, envelope 2 your non-price, and envelope 3 is how you would respond to BPIC. We - so once we'd won the project, we reflected that mechanism. But we would only ever open the third envelope for the people who were successful on the price and non-price criteria.

25 **MR GISONDA:** And at page 348 of your bundle, is that the - where you've set out the parts of transport BPIC that you would be - the intent you would address and the intent you wouldn't address? Is that what you were referring to?

30 **MR BALMER:** That's what - that's what we started to do. That's exactly - we created that table, and each one of those BPIC-specific industrial condition, we mapped the guidance document against what we thought was appropriate, which was very much aligned with our greenfields AWU agreement, and proceeded to say, is this seen as new to the industry? Yes or no? Do we believe we've addressed the BPIC intent? Yes or no? And then the right-hand column we put the mechanism. And some of it was actually - some of the mechanisms to addressing the BPIC intent
35 was actually not actually having it within the EBA itself. It was reliance on company procedure or other mechanisms, you know, regulator obligations, to deal with the intent.

40 This was a bit of a - you know, this was - considering this was the first project to be procured under - with BPIC in the procurement process, we were breaking new ground with this document and this approach, as we saw it. We weren't filling in a table that was provided. We created this table, very much to - we didn't see fulfilling the BPIC policy by adopting the EBA as we had problems with legality. We weren't prepared to do this - to do that, so we went down this path of saying, "Well, okay,
45 what is the intent?" And we certainly leveraged the word "intent", which later in the evidence, you know, we certainly - again, the CFMEU - the only way to meet the

intent of the policy was to sign the unsigned guidance EBA, and I had that repeatedly played out in the negotiations.

5 But you're at a phase here where we're trying to still secure it in a competitive environment, and that's really important to be aware of. We really didn't understand - and noting earlier, you took us through the assessment criteria: 70 per cent price, 30 per cent non-price. We have lost - we have been the lowest price and not been selected on a \$300-million Department of Transport project only in the prior year. So the non-price criteria were quite important, because it could
10 differentiate who's going to win the work. So it's trying to stay proactive in responding, albeit creating our own solution. That's what this table is. Does that make sense?

MR GISONDA: And at this stage, you were still competing with another joint
15 venture comprising Fulton Hogan, Albem and McIlwain for this project?

MR BALMER: Project, yep.

MR GISONDA: And were you aware that the CFMEU believed - well, actually, I'll
20 ask you that question again in a little bit once we get to the point where you're successful in the tender. So at page 514 of the bundle, that's you're told that those increased rates would apply to the BPIC that was a guide for this project?

MR BALMER: Mmm-hmm.
25

MR GISONDA: And at page 516 of the bundle, you've set out there, just at the top of the page, it says:

30 "Through the post-tender correspondence, the department has issued an addendum to the transport BPIC document. This addendum has been provided in lieu of transport BPIC+. The addendum provides specific and significant changes to the wage rates, allowances and entitlements, and the department has requested the tenderer to advise of any changes to their tender price."

35 **MR BALMER:** Mmm-hmm.

MR GISONDA: And so the response from yourselves and Georgiou as the joint venture is that the total of those additional costs as a result of the transport BPIC is \$14.3 million.
40

MR BALMER: Mmm-hmm.

COMMISSIONER: Is that on a \$400-million project, or have I got the numbers wrong?
45

MR BALMER: Yeah, that's about 400 million at that stage, yep. And that delta is from our state greenfields EBA to BPIC+, because our tendered price was based upon our state - the Acciona state greenfields agreement with the AWU at that point.

5 **COMMISSIONER:** I shouldn't say it's "only", but it's not as large a figure as some of the other figures that Ms Hawkswood - it's a three and a half per cent increase?

10 **MR BALMER:** This is only part of the equation. This was - at this point, we were looking at our person hours that we had in the estimate, multiplying it out by the rate change primarily. So it was primarily the direct workforce, direct hire. What got added to this through the tender negotiation, though, is another mechanism in the contract that allowed us - this was not the - this was the beginning of what the ultimate BPIC escalation element cost, and again, this is what we were offering at this point, if I could just make that clear.

15 **COMMISSIONER:** I don't quite understand that distinction, sorry.

20 **MR BALMER:** So I'll try to say what - we'd worked up our price - our tender price was based upon our state EBA. We got provided the guidance around what rates they wanted to see. We multiplied that out by the person hours that we had, amongst other things, and came up with the \$14 million. That said, we then went on to identify, though, there's many, many unknowns to the cost of BPIC to this project, which we could not quantify at that point in time. That was accepted by the Queensland Department of Transport, and we put a commercial mechanism into the contract to
25 allow further adjustments to transpire.

COMMISSIONER: I see. Sorry. Thank you.

30 **MR BALMER:** Yeah, so we were saying, "We are not in any way or form able to provide you with a pricing of how much the market will want to adjust their prices based on BPIC, because, one, we don't have an understanding of how much they're going to adopt it, what the appetite is going to be and the flow-on effect." So we said to the extent that we could provide at that point, but we created - the mechanism was agreed and added into. And that number, to be quite honest, the project ended up for
35 a range of variations at nearly \$800 million and the BPIC escalation was probably 10 per cent of that. So it went north from there.

COMMISSIONER: 10 per cent of 800?

40 **MR BALMER:** Yeah, that's where I believe it's ended up at, yep.

COMMISSIONER: So about 80 million?

45 **MR BALMER:** Yep.

COMMISSIONER: On a project that was - you were originally going to tender for 400 million.

5 **MR BALMER:** Be mindful we had a large variation. Shipper Drive was added to that, which was - I think it was \$150 million of extra work to the north. So that's not all growth in the original contracted scope. We had scope added, so there's other drivers to that ultimate out-turn cost, but if you have a look at the commercial mechanism that we captured in there, it was circa \$80 million was the -

COMMISSIONER: Are we still talking about the same project?

10 **MR BALMER:** Yes, we are.

COMMISSIONER: A three-lane bridge that was four kilometres.

15 **MR BALMER:** Yep. And to the northern end, it didn't connect into the local road network well. There was going to be capacity issues, so the Department of Transport elected to give us that variation, \$150 million more work, but its adjacency was there.

20 **COMMISSIONER:** So that gets us to 550, and 80 million for BPIC. Where's the other 170 mil come from?

MR BALMER: Other scope variations and adds.

25 **COMMISSIONER:** More scope variations beyond that 150 million?

MR BALMER: Yeah. I haven't brought the breakdown in my head. But yep.

30 **MR GISONDA:** But you had an agreement, a statewide enterprise agreement with the AWU, that had been approved by the Commission barely a few months earlier, which would have applied to this project, and what you're saying here in this table is simply that, well, if we can no longer rely on that agreement, but we have to pay the rates pursuant to the addendum, just the pure raw calculation of the rates, that's already an additional \$14.3 million?

35 **MR BALMER:** Yes. Correct.

40 **MR GISONDA:** And so this was - you provided this table - not this table, but the previous table - of how you're saying you're going to meet the intent of BPIC, and at page 517 of your bundle is a note from Glenn McIlroy, so GMcI, who we've seen before, his name come up, because he has since left Acciona and gone to CPB; is that right?

MR BALMER: That's correct, yes.

45 **MR GISONDA:** So we've seen his name in the Cross River Rail case study. But here, in October 2021, he's still with Acciona, and -

COMMISSIONER: Sorry, which page?

MR GISONDA: Sorry, page 517, right at the top. Do you see "GMcI, informal phone call"?

5

MR BALMER: Mmm-hmm.

MR GISONDA: So:

10 "Informal phone call on 5 October encouraging Acciona be flexible when it counts in regards to BPIC, noting they have a second party, which is more responsive in regards to BPIC."

Are you able to explain what you were told about this message?

15

MR BALMER: Yeah. Briefly, Glenn took the call, and he came and shared with me that he had received a call from the Department of Transport and they had flagged with him that they were encouraging us to be more flexible. I think it's quite clear that the intent of that conversation that had been had with Glenn was for Acciona just to really consider their position.

20

MR GISONDA: And the reference to "noting they have a second party which is more responsive in regards to BPIC", that's a reference to the other joint venture that was still in the frame, is it?

25

MR BALMER: Yes, correct.

MR GISONDA: And you say in your statement at paragraph 109 that that call had been received from Ms Amanda Yeates. And what she had said was that the competing joint venture was being more responsive than Acciona and Georgiou were being when it came to BPIC. And you say in the last sentence there in that paragraph, and perhaps you can confirm if this is your recollection still, that when this was communicated to you, the insinuation was that if your joint venture did not play ball with the CFMEU, it might prejudice the successful award of the project.

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MR BALMER: Yes, correct.

MR GISONDA: Why was playing ball with the CFMEU part of the message, in your mind?

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MR BALMER: It was - I think, again, I think all the information that we collated, the positions - our understanding, interpretation, it was the building trades union group and the CFMEU were the key leaders in there. They were certainly, yeah, placing pressure on industry. It's - yeah, again, it's just reading the room, understanding what's happening.

45

COMMISSIONER: So is the perception you received because of everything that you'd experienced over the previous - well, on one view, 10 months, on another view, perhaps two years, and particularly on what Mr McIlroy told you. Is that why you say this?

5

MR BALMER: Yeah, that's true. I mean, when you consider that table that we went through before, meeting the intent, not meeting the intent, as we were developing that, we knew what we were doing. We were - we were pushing back on the non-mandatory guidance document that we knew was owned by the CFMEU. We knew, by default, that we were - were - our approach was - would easily be seen as problematic, because we weren't prepared to concede our position. And we started to build and put things into place to make it very clear that, you know, we intended to meet the intent, but we were definitely going to be exercising our right to do it in the way as we saw fit. So we were creating our method of meeting the intent, without accepting a burger with the lot, you know, taking the -

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15

COMMISSIONER: What does the burger with the lot mean? An agreement with the CFMEU?

20 **MR BALMER:** Just accepting the non-mandatory guidance document that will be our EBA, and all we needed to do is top, tail and sign.

COMMISSIONER: Sign with whom?

25 **MR BALMER:** With the Building Trades Group, BTG.

COMMISSIONER: So that's the CFMEU, the plumbers and the electricians?

30 **MR BALMER:** Yeah, and the metallies. AMWU were there as well. Yep.

MR GISONDA: Page 556 of your bundle, this is an executive summary that's contained in a document prepared in October 2021, which is setting out the IR landscape, industrial relations landscape, on this Coomera Connector job. And what it says is that - it's explaining why a project-specific agreement for Coomera Connector North is the best strategy, and the first point is that whilst you had that state greenfields agreement, it had not been developed in a landscape that sees the department wading in to the IR environment. So in other words, you had agreed that state greenfield agreement with the AWU in the pre-BPIC era, if we can call it that?

35
40 **MR BALMER:** Yep.

MR GISONDA: And then:

45 "Stated in the alternative, our ability to secure [such agreement] would be non-existent today as a by-product of BPIC."

And then you say, or the document says, sorry, that:

"[The department] as a client are looking for the BPIC intent of engagement of all unions, attempting to include the CFMEU and ETU, noting the current State Agreement is a single union AWU EBA."

5

So that was at least the perception of Acciona at this point, was that what the State wanted was to see engagement with all unions, including the CFMEU?

MR BALMER: Yes. Yep.

10

MR GISONDA: But then the difficulty is in the next point, which is that the department is aware that the AWU and CFMEU do not see eye to eye or might otherwise be described as being in a turf war, and that you, the joint venture, even using best endeavours, was highly unlikely to produce a specific project-specific agreement with both the AWU and the CFMEU?

15

MR BALMER: Probably - yeah, with the words "turf war", I think just the - I just want to make sure we're clear. The AWU owned the civil infrastructure space. This was their industry as per they've got the coverage. It was the CFMEU trying to push themselves in, just as - it was more of an attack by the CFMEU on the AWU, just for the benefit of the Commission.

20

COMMISSIONER: Well, I think this has been going on for a hundred years. I mean, the AWU and the predecessor to the CFMEU, the Builders Labourers Federation and to an extent the BWIU, had been fighting at the margins in the civil construction space since the Geelong Barwon River, whatever it was, case that Robert Menzies fought for the BLF in the 1920s. I mean, this is not new, this issue.

25

MR GISONDA: At page - I'm wondering whether you can assist us with page 615 of the bundle. It sets out the BPIC Cost Impacts - Alternate Approach. So you'll see there at the top of the page, that's the \$14.3 million that we looked at a short moment ago.

30

MR BALMER: Mmm-hmm.

35

MR GISONDA: And then are you able to then explain what the additional 24.9 million is thereafter, which gets you to 39.3 million?

MR BALMER: We did a high-level thumb-suck assessment on what that could be. We were asked to put our minds to that. We - with absolute transparency, noting that this contract was a collaborative project agreement, it was - the Department of Transport had 100 per cent visibility on costs. Your progress claim was based upon your expenditure. Every dollar was audited. So there was absolute transparency in how we were arriving in each and every one of the numbers. We had our best assessment, which is represented in that table, and there wasn't too many more calculations beyond that table to come up with that add of \$25 million.

40

45

In arriving at that number, we certainly engaged with the Department of Transport to say, "Well, you could easily dial that number up or dial it down based upon the extent of some of the inputs." So it was clearly - we were very clear that this is, you know, a view, but that is part of the driver of why we said that ultimately the best way to deal with this will be to put a mechanism into - a commercial mechanism into the contract, because there was no point in - you know, if it was less than that, then we should only be seeking less than that. But we had no idea what the final number was going to be.

10 **COMMISSIONER:** So is that, in effect, your claim, that 24.9, 25 million dollars?

MR BALMER: It was our guidance on what potentially the market response to BPIC could be. And literally, the - yeah, we, in arriving at this table, there was - you know, this was a low/medium/high take-up by market, and from memory, we had a low number of 10 million and a high of 40. But we agreed with the Department of Transport, well, let's put a pin through 25 and take it forward, because, again, we had - we may have - we had a clear understanding of the 14.3, because it was person hours times hourly rate. There was - that was a simple calculation. This below was - you know, it was new to industry. The market had never seen, you know, how the market was going to respond, only that this was going to be a leading edge for many, many businesses down on the Gold Coast. We - that's what that number is.

COMMISSIONER: So at the bottom end, all costs considered, it was 14.3, let's call it 15 million, plus low end of other costs, 10 million. So at the bottom end, 25 million; at the top end, 55 million. Is that how I read that?

MR BALMER: No, you read that - the bottom part of the table below 14 accumulates to the 24.98.

30 **COMMISSIONER:** I thought you said that was mid-range between 10 and 40.

MR BALMER: No, no, I'm saying the 24.98, that was mid-range assessment, so there was a lower and an upper of that bottom part of that table. 25 was the mid point.

35 **COMMISSIONER:** Yes, which was 10 to 40.

MR BALMER: Yeah, yeah, yeah. Okay, sorry, yeah, so we could have had 25 to 54. Yes, sorry.

40 **COMMISSIONER:** And you came in at mid-range.

MR BALMER: Yep. Yep. That's right.

45 **COMMISSIONER:** Because you could calculate one with some certain team. The 14.3 was called 15, and the other one you took a midpoint?

MR BALMER: Yeah, yeah. Yes. Exactly.

COMMISSIONER: But in terms of how it would eventually wash up, you were saying that the cost could be at the low end 25 million, at the top end 54, 55 million?

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MR BALMER: That was that assessment, with very few data points.

COMMISSIONER: And do you say that it ended up being 80 million, but that 80 million is on a project that grew because its scope grew?

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MR BALMER: Exactly. Its scope grew. And we did have escalation. In the mechanism that was in schedule 10 of the contract, it's actually called BPIC escalation. We joined the two because it became nigh on impossible to delineate hyper escalation because of changing market conditions and BPIC, you know, the COVID scenario where there was commodity price increasing, and what was accumulated increasing costs due to BPIC, so we just brought those two together.

15

COMMISSIONER: Is hyper escalation just another way of saying the cost of materials increasing because of an unpredicted event, ie, COVID? Is that what hyper escalation means?

20

MR BALMER: Yes, that's a good summary.

MR GISONDA: And in November, you were informed - that is, the joint venture was informed - that it had been awarded the contract to undertake the early works for the project.

25

MR BALMER: Mmm-hmm.

MR GISONDA: And shortly thereafter - well, in December, sorry, I should say - you are informed - and this is at page 684 of the bundle - that the deputy director-general will - and I think that's Amanda Yeates - will facilitate a meeting with the joint venture and the unions. Do you remember that proposal was communicated to you?

30

35

MR BALMER: Yes.

MR GISONDA: And is that something that you had seen before, as you're about to embark upon enterprise bargaining, that the client would seek to sit you all down and have a meeting about their expectations?

40

MR BALMER: No, that was - never seen that before.

MR GISONDA: And on page 692 of the bundle, Mr Murphy, Ryan Murphy, who at this stage was an adviser to the joint venture - he later goes on to become an adviser to the department. He's talking about a discussion that he had had with the AWU, and the AWU has made clear to him that if a deal was done only - an enterprise

45

agreement was reached only with the CFMEU, it would contest approval of the agreement.

MR BALMER: Mmm-hmm.

5

MR GISONDA: And that could lead to delay in relation to the project, as that appeal then could take up to 12 months.

MR BALMER: Yep.

10

MR GISONDA: Then for a CFMEU and AWU joining in to sign a single EBA, Ms Schinnerl mentioned that in her 17 years with the AWU, there had only ever been one instance where both CFMEU and AWU signed the same civil construction agreement, and that was by mistake:

15

"So we can rule that one out. The AWU's view is that their monopoly in civil construction would be watered down because the CFMEU wouldn't respect any demarcation rules."

20

And he then also talks about the option of having two EBAs in almost identical terms, one with the CFMEU, one with the AWU. And he concludes that at the moment, at least based on the AWU's attitude, the only option was an AWU agreement only.

25

MR BALMER: Correct.

MR GISONDA: And you say, do you, that that that's business as usual - as far as Acciona is concerned, business as usual in the civil infrastructure space?

30

MR BALMER: Yes.

MR GISONDA: And see when the CFMEU comes along and says, "We don't understand what the problem is; we're happy to have the AWU as part of the agreement," that's not really the point. The point is that if that was the agreement, they would be intruding into what the AWU regarded as their exclusive preserve?

35

MR BALMER: Yep.

40

MR GISONDA: Just a couple more questions before we adjourn, Mr Balmer, for the day. But occurring in the background of this point, at page 701, was an agreement that had been lodged between BESIX Watpac and the CFMEU, and it was approved on 1 February 2022, for the construction of the Kangaroo Point Green Bridge. You were aware that that had occurred at around that time; is that right?

45

MR BALMER: Yes. Yep.

MR GISONDA: And it was considerable news in the industry; is that fair?

MR BALMER: Yeah.

5 **MR GISONDA:** And whilst you say in your evidence that the Watpac EBA - and
this is in a decision, so it's not necessarily dependent on your evidence, but whilst the
Watpac EBA had broad coverage provisions, the evidence that had been given in that
application was that the work to be performed by employees of Watpac would be
confined to work performed by crane-related employees. And having regard to that
evidence, the AWU unsuccessfully challenged approval of that agreement, and as a
10 result, you had a CFMEU and BESIX Watpac approved agreement. And it was
a - despite the narrow nature of the evidence, it was seen - tell me if this is
correct - seen as a win by the CFMEU in its attempts to encroach into the civil
infrastructure space.

15 **MR BALMER:** Yes.

MR GISONDA: And the last thing I'll ask you about today is the meeting that then
took place on 9 February, and the minutes are at page 741 of the bundle, and you see
there that those who were present including a number of DTMR representatives,
20 including Ms Yeates and Ms Hawkswood. You have a representative of Crown Law.
Do you know why a representative of Crown Law was at the meeting?

MR BALMER: No. It was unique.

25 **MR GISONDA:** Mr Gartrell is there as an adviser. And then theres's yourself and
Mr Gary Georgiou as representatives of the joint venture. Mr Ryan Murphy, who's
your adviser.

MR BALMER: Mmm-hmm.
30

MR GISONDA: And then representatives of the unions: Mr Ingham from the
CFMEU and Mr Dean Rielly from the CFMEU, and Mr Mark Raguse of the AWU is
noted as an apology. As you might have heard in the cross-examination, he insists
that he's not an apology, and in fact, if we go to page 749 -
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COMMISSIONER: Just in terms of those representatives, Mr Ingham has been
removed by the administrator. Mr Rielly was removed but then picked up by the
New South Wales branch of the CFMEU? Have I got the right -

40 **MR BALMER:** Correct.

MR GISONDA: Yes.

COMMISSIONER: Is it right to say removed or made redundant, Mr O'Grady?
45

MR O'GRADY: I can't recall. His employment was terminated. He wasn't removed
by way of any determination; it was a decision made by the administrator.

MR GISONDA: And just if we go to page 745 -

5 **COMMISSIONER:** Can you just tell me, Mr Murphy is an internal adviser to the joint venture, or is he external?

MR BALMER: He's external. He was external.

10 **COMMISSIONER:** He's an IR consultant or -

MR BALMER: Yes, IR consultant.

COMMISSIONER: Sorry?

15 **MR BALMER:** Yes, an IR consultant.

MR GISONDA: And at page 745, this is the email where Mr Raguse says:

20 "I have just reviewed the attached correspondence and would seek to have the minutes corrected to reflect that the AWU does not participate in these meetings and that I am not an apology."

And so if you go to page 749, you'll see there then the amendment. Mark Raguse:

25 "Declined - As per correspondence from the AWU, the AWU do not participate in these meetings."

30 **COMMISSIONER:** Sorry, you're going a bit too fast for me, Mr Gisonda. Which page are we at?

MR GISONDA: Sorry. 749. It's the same list of attendees, but do you see now Mark Raguse is not an apology, but it says:

35 "Declined - As per correspondence, the AWU do not participate in these meetings."

And then at page 752, the unions were asking some questions of the joint venture, and that's Mr Ingham's question, JI:

40 "Will the joint venture do an EBA with all building unions?"

And then the response is joint venture, so presumably that's either you or Mr Georgiou or Mr Ryan, responded to say:

45 "Two parts to that answer. It's a civil project so classifications will be civil focused. EBA won't have electrical classifications for example. Secondly, there's factors out of the joint venture's control, eg, which unions will be parties to EBA with other

unions. Will need to be worked when unions have seen a draft and during the meeting."

And then CI - I think that's meant to be JI:

5

"Advised that the building unions will negotiate as a group."

Do you remember that meeting?

10 **MR BALMER:** Yeah, absolutely.

MR GISONDA: And what can you tell the Commission about your memory of that meeting?

15 **MR BALMER:** It was - again, it was a unique scenario. In preparation for that meeting, though, I just wanted it to be noted that we intentionally had sent in our intended EBA to the Department of Transport and requested that it would meet the intent of the policy. Again, it was ourselves trying to create good reasoning - you know, we were trying to put a flag on the table. So we sent in our EBA, and at
20 that - by that meeting we actually had the Department of Transport agreeing. They had noted some things they wanted to discuss. We discussed it. But we had an EBA starting point already verified as meeting the intent. We'd also sent it to the ABCC to make sure it would meet code. And we were at that point waiting on it.

25 I just feel it's important to contextualise that prior to this meeting - and I actually was requesting that we get that confirmation that we met BPIC's intent with our document in a commercial - you know, confidential way. We didn't want to be advertised or shared. So we had that in preparation for that. But this meeting was - it was unique from the perspective of again we're meeting - we took an approach, and
30 you can see in some of the minutes, the conversation, we were making it quite clear around meeting intent, and I think even in the - in one of the questions, you know, or one of the statements, question 1, you know, sought clarification of the use of the word "intent".

35 So we were being absolutely transparent that we were going to meet the intent of the policy through a mechanism that was different to the unsigned EBA, and they said that the BPIC document is the document, so there's no need for intent. Again, it was the CFMEU were saying the policy and the guidance material is one and the same; you just title it and sign it. So I think that's an important feature. We certainly talked
40 around our approach with, again, engaging with the market and talking around our - our approach to getting the three-envelope system, and I think you'll find that in agenda item 3, we talked around that we'll be going down a path for deployment. We'll get a price criteria from the market on the package. We'll get their non-price response. And then there'll be a third envelope in regards to how they were going to
45 respond to BPIC, and we wouldn't be opening that envelope with any other than the preferred.

So we'll be going through a process of agreeing a preferred, so that certainly got socialised in that meeting as well, amongst a range of other things. But, yeah, it was unique from - like you say, Crown Law's representation, chaired by the DDG, all the unions in the room. We were requested to attend. You know, it wasn't we asked for it. We hadn't asked for it. Yeah.

COMMISSIONER: Had not? Did you say had or had not?

MR BALMER: We had not asked for it. It was the DDG - and again, I think that's a byproduct of a previous event, that the Department of Main Roads had acknowledged that that's what they would do for the next project going forward. I think it was a byproduct of them seeing Cooroy to Curra as a fail, the CFMEU, that then the department said, "Well, what we'll do with the next one is we'll organise a meeting to start this" - you know, the process. And that's what this meeting was intended to be.

COMMISSIONER: So you hadn't won the tender by this stage?

MR BALMER: We had at this stage.

COMMISSIONER: Had?

MR BALMER: Yeah, we were up and away for the early works. We were waiting on - the project was waiting on the EPBC approval, so the early works was the commencement of design, getting a lot of - all our management plans in place, getting an EBA and the like, so we hadn't - we didn't have the full contract award. We'd had - we'd committed to an early works package, so we were no longer - we were it, by this point.

MR GISONDA: And you were looking to - there's a discussion earlier in the meeting about the contract being awarded mid-2022. So you had a few months to nail this agreement?

MR BALMER: Yep.

MR GISONDA: And just at the top of page 752, the joint -

COMMISSIONER: Sorry, you were preferred tenderer but you hadn't signed a contract. Is that what you're saying?

MR BALMER: No, we'd entered into an early works contract.

COMMISSIONER: Right.

MR BALMER: But it wasn't the full contract, because you can't prejudice the EPBC Act to have the full contract afoot. It allowed us to start the design, remembering it's a design and construction project. So it allowed us to spend - I think we were

allowed to spend up to a cap of 70 million of the 400-odd million. So there was a cap in place. But we all knew it was to commence the work. We weren't allowed to start the in-field physical geotechnical investigations, because the EPBC needed to be in place for it, so we were -

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COMMISSIONER: Is that some environmental approval, is it?

MR BALMER: It is, yes, the federal environmental approval.

10 **MR GISONDA:** At the top of 752 -

COMMISSIONER: This might be a question for you, Mr Gisonda, and you'll come to it, but I'm just very surprised there's someone from Crown Law there. I don't understand. This is a procurement meeting with a tenderer about - sorry, I shouldn't say "a tenderer" - about the - with the proponent. Sorry, the proponent and its contractor.

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MR GISONDA: Well, we saw in the documents yesterday it happened a few times. Crown Law attended the meeting that we saw in the documents yesterday because of the - it was really at the request of the unions, because they wanted to understand what the DTMR's legal position was, and there's also reference to an earlier meeting that took place with respect to the Gatton prison, where Crown Law attended as well.

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COMMISSIONER: So what's the issue that's going on? What's the problem that needs to be resolved here?

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MR GISONDA: I think the problem is that the CFMEU - or, sorry, the BTG is saying, "Mandate these terms and conditions, including a requirement that there be a multiunion agreement, in other words, an agreement including us." So, as Mr Balmer said, just top and tail the BPIC terms and conditions as an EBA.

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COMMISSIONER: You could lawfully do the first part, but you couldn't - until those amendments were made to the federal law last week, a couple of weeks ago, you couldn't do the second part. Is that the issue?

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MR GISONDA: The legal issue is whether that process would be a contravention of the code and also whether it would be a contravention of the national partnership that Ms Hawkswood spoke of. And also potential contravention of the Fair Work Act.

40 **COMMISSIONER:** That's what I was thinking about, the Fair Work Act.

MR GISONDA: Yes.

COMMISSIONER: So the department can say to the contractor, "You must have these conditions," but they can't say - otherwise they'd be in breach of the Fair Work Act until two weeks ago - they can't say that "you must have this signatory". They

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can discriminate on substance but not on signatory. They can now discriminate on signatory.

5 **MR GISONDA:** And remember Vince Sanfilippo said that he gave evidence - sorry, he told Mr Ingham that again they had legal advice that the proposal was a
contravention of at least the code and also the Fair Work Act, and he said that Mr
Ingham's response was, well, they had legal advice to the contrary. So the unions
were interested in the legal position. But yes, perhaps that's a convenient time,
Commissioner. I might have one more question about this meeting first thing in the
10 morning, Mr Balmer.

COMMISSIONER: Mr Balmer, we haven't finished your evidence, I'm afraid. We have to ask you to come back tomorrow morning, if you will.

15 **MR BALMER:** Yes. I'll be here.

COMMISSIONER: See you at 10 am.

20 **MR BALMER:** Fantastic.

COMMISSIONER: We'll adjourn till 10 am tomorrow. Is there anything before we adjourn? We'll adjourn until 10 am tomorrow.

25 **<THE HEARING ADJOURNED AT 3.55 PM**