



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

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

**PUBLIC HEARING
BRISBANE MAGISTRATES COURT**

**WEDNESDAY, 16 APRIL 2026
AT 10.00 AM**

DAY 18

APPEARANCES

**Mr S Wood AM KC, Commissioner
Mr P. Wheelahan, Senior Counsel Assisting
Mr D. Ternovski, Counsel Assisting
Mr D. de Jersey KC, counsel for the State of Queensland
Ms M. Brooks, counsel for the State of Queensland
Mr C. O'Grady, counsel for the CFMEU Administration
Ms F. Fox, counsel for the CFMEU Administration
Ms A. Hughes, counsel for the CFMEU Administration
Mr H. Clift, counsel for CEPU, ETUQ, PGEUQ
Ms R O'Gorman KC, counsel for Michael Ravbar and Kane Lowth
Mr Peter McKay, Witness**

<THE HEARING RESUMED AT 10.00 am

COMMISSIONER: I'll deal with appearances. Mr Ternovski, you're appearing as counsel assisting, and you'll be taking the witness this morning. Is that right?

MR TERNOVSKI: I am, Commissioner.

COMMISSIONER: Mr de Jersey, you continue to appear with Ms Brooks as counsel for the State of Queensland?

MR DE JERSEY: Yes.

COMMISSIONER: Mr O'Grady, you appear with Ms Fox for the administrator of the CFMEU?

MR O'GRADY: Yes, Commissioner.

COMMISSIONER: Mr Clift, you continue to appear for the CEPU, the ETU Queensland, the PGEU Queensland?

MR CLIFT: Yes, Commissioner.

COMMISSIONER: And Ms O'Gorman, you're appearing for Mr Ravbar and Mr Lowth?

MS O'GORMAN: Yes. Thank you, Commissioner.

COMMISSIONER: Have I pronounced his name correctly? Is it Lowth?

MS O'GORMAN: That's so. Thank you.

COMMISSIONER: Thank you. At an appropriate time, Ms O'Gorman, I think it might be useful to you to move to the front, maybe after lunch, when - because I understand you've got an application for you to cross-examine, and there's consent at least in part to that, isn't there?

MR TERNOVSKI: There is. So it's opposed - it's not opposed as to item 2D in the application, but it is opposed with respect to the other.

COMMISSIONER: I'll just leave you and Mr de Jersey to work it out. If you want to cross-examine from there, cross-examine from there. If you want to move to the front, come to the front.

MS O'GORMAN: Thank you, Commissioner.

MR TERNOVSKI: Commissioner, there were two applications to cross-examine, one by Mr Ravbar and Mr Lowth that you mentioned and one by the CFMEU. I understand the one by the CFMEU is not pressed. In relation to Mr Ravbar and Mr Lowth's application, would it be convenient,
5 Commissioner, for you to deal with that upfront or do you prefer to deal with it after Mr -

COMMISSIONER: Let's hear the witness's evidence, because it just depends what happens. It might be there's a change of position from Ms O'Gorman. It
10 might be that there's a hardening-up of position on - I think it's easier to do it - unless you want to deal with it now, Ms O'Gorman.

MS O'GORMAN: I'm content to deal with it now or later, as the Commission
15 pleases.

COMMISSIONER: We'll deal with it later.

MR TERNOVSKI: As the Commission pleases. In that case, I call Peter
20 Anthony McKay.

COMMISSIONER: Is Mr McKay in the hearing room?

MR TERNOVSKI: He's not. He is waiting out, pending potential argument
25 about cross-examination. So -

COMMISSIONER: Potential argument about what, Mr Ternovski?

MR TERNOVSKI: About the cross-examination application.

COMMISSIONER: I see.
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MR TERNOVSKI: So he will be brought into court.

COMMISSIONER: Well, if he can be brought into the hearing room. Is
35 someone going to get him?

MR TERNOVSKI: Yes. Yes.

COMMISSIONER: Thank you. Mr McKay, please come to the witness box.
40

<PETER ANTHONY MCKAY, AFFIRMED

<Examination by Mr Ternovski

COMMISSIONER: Thank you, Mr McKay. Mr Ternovski will ask you some
45 questions. You've got your statement there and - have you? I think there's

something on the - on a little attachment to your right, on the folder to your right.

5 **MR TERNOVSKI:** On that little coffee table. You might want to move the coffee table, Mr McKay, because I understand the witness stand doesn't have a built-in desk. Thank you.

COMMISSIONER: Mr Ternovski.

10 **MR TERNOVSKI:** Mr McKay, could you state your full name, please.

MR McKAY: Peter Anthony McKay.

15 **MR TERNOVSKI:** And your address is known to the Commission?

MR McKAY: Yes.

MR TERNOVSKI: And what is your current occupation?

20 **MR McKAY:** I am the director-general of the Department of Trade, Employment and Training.

MR TERNOVSKI: And Mr McKay, you've made a witness statement in this matter?

25 **MR McKAY:** I have.

MR TERNOVSKI: Could the witness please be shown the front of his statement, Mr Operator. Is this your witness statement, Mr McKay?

30 **MR McKAY:** It is.

MR TERNOVSKI: And it runs to some 215 paragraphs? I'll get you to check that.

35 **MR McKAY:** Yes.

MR TERNOVSKI: It was 30 annexures?

40 **MR McKAY:** Yes.

MR TERNOVSKI: Mr McKay, have you had an opportunity to review your statement recently?

45 **MR McKAY:** I have.

MR TERNOVSKI: Mr McKay, I understand you have a number of corrections that you wish to make to your statement?

MR McKAY: Yes, I do, and I apologise for that.

5

MR TERNOVSKI: Mr McKay, can I take you to paragraph 32 through to 34 of your statement?

MR McKAY: Yes.

10

MR TERNOVSKI: Is there any correction you wish to make to those paragraphs?

MR McKAY: So in 32 through to 34, on reflection, I've conflated two notices that had been issued by our health and safety representatives in OIR, that initially there had been a provisional improvement notice issued by one of our health and safety representatives, Mr John Barber, and that matter had been issued to us, I think before I started work at the Office of Industrial Relations, and that's the matter that I was involved with in a conference before Vice President O'Connor of the Queensland Industrial Relations Commission, and then there was, subsequent to that, a cease-work notice that was issued by the health and safety representatives, which was being dealt with in October - September/October - and that was one that whilst I was involved in, I wasn't involved in conferences in the Queensland Industrial Relations Commission.

25

MR TERNOVSKI: And in respect of the remedial measures set out in paragraph 34, which notice are they in respect of?

MR McKAY: So in respect of 34(a), the reinstatement of the two-inspector policy, as a result of the provisional improvement notice, I wrote to Mr Barber as the health and safety representative indicating that we had reinstated the two-inspector policy as had been requested. So that was in respect to the provisional improvement notice. And then the other measures, from memory, were measures that came out of resolution of issues on the cease-work notice.

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MR TERNOVSKI: You referred to a letter to Mr Barber, I think you said?

MR McKAY: Yes.

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MR TERNOVSKI: Have you found that document?

MR McKAY: I have, yes.

MR TERNOVSKI: It's not in your statement, is it?

45

MR McKAY: No, it's not.

MR TERNOVSKI: Commissioner, we're making copies of that document, and it will be provided and tendered in due course.

5 **COMMISSIONER:** Very well.

MR TERNOVSKI: Is there anything further in paragraphs 32 or 34, Mr McKay?

10 **MR McKAY:** No.

COMMISSIONER: Did you want to make any changes to 32 and 34, or just by way of explanation you're explaining what 32 and 34 related to?

15 **MR McKAY:** Yes, that's correct, Commissioner.

MR TERNOVSKI: Paragraph 72, Mr McKay?

20 **MR McKAY:** Yes. On reflection, and reading the material in PMK-8, the reference in 72 should be that I rang Mr Pauls about his complaint on 19 October.

COMMISSIONER: So delete 18 and insert 19?

25 **MR McKAY:** Correct, Commissioner.

MR TERNOVSKI: Paragraph 101, Mr McKay?

30 **MR McKAY:** Yes, in paragraph 101 I'm describing where the coffee shop is situated in 1 William Street, which is my place of work. It should say "in the coffee shop in the foyer of" rather than "at the front".

MR TERNOVSKI: And -

35 **COMMISSIONER:** So delete "at the front" and insert "in the foyer"?

MR McKAY: Yes, Commissioner.

40 **MR TERNOVSKI:** And paragraph 205?

MR McKAY: Yes, my numbering I think was thrown out as I changed numbering in the affidavit, but I didn't update it there. And that - my apologies - should reference - sorry - 196 through to 202. So delete 192 and replace with 196, and delete 197 and replace with 202.

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MR TERNOVSKI: Any other corrections, Mr McKay?

MR McKAY: No.

MR TERNOVSKI: Subject to those corrections, is your statement otherwise true and correct?

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MR McKAY: Yes, it is.

MR TERNOVSKI: Commissioner, I tender that statement.

10 **COMMISSIONER: Any objections? The statement of Peter Anthony McKay made 7 April 2026, 39 pages, 215 paragraphs, with 30 annexures as amended in the witness box at paragraph 72, 101 and 205, will be exhibit PAM-1.**

15 **<Exhibit PAM-1 STATEMENT OF PETER ANTHONY MCKAY MADE 7/4/2026, 39 PAGES, 215 PARAGRAPHS WITH 30 ANNEXURES, AS AMENDED IN THE WITNESS BOX AT PARAGRAPH 72, 101 AND 205**

20 **MR TERNOVSKI: Thank you, Commissioner. Mr McKay, you said that your current role was the director-general of the Department of Trade, Employment and Training?**

MR McKAY: Yes.

25 **MR TERNOVSKI: Immediately prior to that role, you were the deputy director-general in charge of Office of Industrial Relations? Is that right?**

MR McKAY: Yes.

30 **MR TERNOVSKI: When were you in that role?**

MR McKAY: I think - I commenced there on 21 June 2023 and finished there on, I think, 3 June 2024.

35 **MR TERNOVSKI: Now, Mr McKay, you annex your CV as exhibit PMK-1?**

MR McKAY: Yes.

40 **MR TERNOVSKI: Would it be fair to say that you have held executive and leadership roles in the public service since at least 2004?**

MR McKAY: Yes, that's right. Correct.

45 **MR TERNOVSKI: Would you be able to name for the Commissioner the roles you've held over the last 10 years, or do you need to refer to your CV?**

MR McKAY: So over the last 10 years, primarily my - my primary appointment for most of that period has been as deputy commissioner of the

Public Service Commission, now Public Sector Commission. During that time, I was seconded to other roles, including director-general and deputy director-general roles in other government departments as set out in my - in PMK-1, including periods as director-general of the Department of
5 Employment, Small Business and Training and deputy director-general in that department as well, and also a secondment to the Department of Premier and Cabinet to lead a review of the public sector employment laws.

10 COMMISSIONER: I just missed that last bit. Sorry, Mr McKay, secondment -

MR McKAY: Sorry. Secondment to the Department of Premier and Cabinet during late 2020 to 2022, late 2022, where I led a review of public sector employment laws.

15 MR TERNOVSKI: Mr McKay, what are your qualifications?

MR McKAY: I have an executive graduate certificate in business leadership.

20 MR TERNOVSKI: Mr McKay, moving to your role as a deputy director-general of the Office of Industrial Relations, who offered you this job?

MR McKAY: Mr Michael De'Ath, who was then the director-general of the Department of Education.

25 MR TERNOVSKI: Now, at paragraph 8 of your statement you say that you initially were not very keen on the role. Would you explain to the Commissioner why that was?

30 MR McKAY: It was a whole range of circumstances. I'd spent a fair bit of my early career in industrial relations and had hoped to have left that experience to shape me, but behind me. I knew that there had been issues within the Office of Industrial Relations. I knew from my involvement with the Office of Industrial Relations through engagement with the deputy directors-general of OIR who had preceded me of some of the issues there, and I knew that there was some
35 issues that - at the time, the ending of employment of Kym Bancroft as DDG was imminent and that there were some issues surrounding that ending of employment. I wasn't completely sure of what all of those were, but I knew that there were some concerns within the OIR.

40 MR TERNOVSKI: Putting aside - if I understand your evidence correctly, you seem to be referring to two sets of concerns: a set of concerns about OIR and a set of concerns about Ms Bancroft. Is that right?

45 MR McKAY: So I knew there were some governance issues within OIR and that some of that might have sat around Ms Bancroft's ending of employment, but I also knew that OIR had been through a challenging period for a number of years and, you know, faced some of its own internal challenges.

MR TERNOVSKI: As far as the issues within the OIR are concerned, what were you aware of at that time?

5 **MR McKAY:** That there were behavioural concerns that I was aware of. I knew that there about had issues around the involvement of the CFMEU, concerns about a senior officer, Helen Burgess and her relationship with the CFMEU. I knew that there had been essentially work bans put in place by inspectors about the behaviour of the CFMEU towards them.

10

MR TERNOVSKI: When Mr De'Ath offered you the job, did he tell you anything about what goals you were expected to achieve as DDG?

15 **MR McKAY:** So he was the - you know, said he was director-general of the Department of Education, and schools really was the primary focus of that role, and he needed to be able to focus on that and have someone in the job that he could rely on to perhaps get things back under control. He didn't feel that things were under control. He felt that some of the stakeholder relationships were not right, that the relationships with stakeholders and particularly with unions were not right, and he was looking for someone to come in and essentially manage that section in a way that, you know, accepted the accountability of that role and didn't allow things to unnecessarily escalate to him.

25 **COMMISSIONER:** This might be a question that you can't answer, Mr McKay, but why was the Office of Industrial Relations part of the Department of Education?

30 **MR McKAY:** So it's one of those parts of government, Commissioner, that move when machinery-of-government changes happen on a regular basis. My view of it, having been a bureaucrat for a long time, is that particularly within, I think, a Labor government, those things tend to follow a minister, and they tend to follow a minister of a particular faction, and it had followed Minister Grace. So when Minister Grace was appointed to the ministry, I think in 2016 or
35 thereabouts, she took over responsibility, I think, from the Treasurer, Pitt, and it moved by machinery-of-government change from Treasury to being - reporting to Minister Grace. And then when Minister Grace became the Minister for Education I think following the 2017 election and machinery-of-government change, the Office of Industrial Relations moved by
40 machinery-of-government change to that department.

COMMISSIONER: And why did it move, I think during your period as deputy director-general, to the Department of State Development and Infrastructure from education?
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MR McKAY: For the same reason, Commissioner: Minister Grace became the Minister for State Development, Infrastructure and Planning.

COMMISSIONER: I see.

MR McKAY: And it followed her.

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COMMISSIONER: I see.

10 MR TERNOVSKI: Following from that question from the Commissioner, Mr McKay, did that change in the machinery of government that you describe at paragraph 10 of your statement, which saw OIR move from the Department of Education to the Department of State Development and Infrastructure, lead to any change within the OIR itself?

15

MR McKAY: Not within OIR itself, no.

MR TERNOVSKI: Mr McKay, would you describe to the Commissioner your role as a deputy director-general of OIR?

20

MR McKAY: Well, I think because the Office of Industrial Relations needed to be what we called machinery of government resilient, or we refer to it as MOG, machinery of government or MOG resilient, it operated largely as an almost autonomous unit within a department. So wherever it went, it was set up that you could essentially plug and play. Its systems, information systems, staffing systems, etcetera, could simply follow the unit, and it would sit on the periphery of the department that it was attached to so that you didn't spend the next three years updating - unnecessarily spending taxpayer money updating systems. So it was in some ways the chief executive of OIR, although it reported to the chief executive of the department that it was attached to.

25

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So it really needed to operate as a largely autonomous unit, and my responsibility there was to make sure that the functions of the Office of Industrial Relations were executed effectively, that - and that the obligations on me as the person in charge of that unit under the Public Sector Act about the way in which we'd managed and supported staff, customers, etcetera, were given effect to. And in particular, there were a number of regulator roles that sat within the Office of Industrial Relations. So the -

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MR TERNOVSKI: Just pausing there. Are you referring to a statutory regulator or -

MR McKAY: Yes.

MR TERNOVSKI: Go on.

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MR McKAY: Sorry. So statutory regulator roles under the Work Health and Safety Act, as the work health and safety regulator, under the Electrical Safety Act as the electrical safety regulator, under the Workers' Compensation and

Rehabilitation Act as the workers' compensation regulator, and as the labour hire licensing regulator as well.

5 **MR TERNOVSKI: So you were, in effect, the head of OIR?**

MR McKAY: Yes.

10 **MR TERNOVSKI: And you reported to the director-general of whatever department it happened to be in from time to time?**

MR McKAY: Yes.

15 **MR TERNOVSKI: And that person was Michael De'Ath in the first part of your tenure?**

MR McKAY: Correct.

MR TERNOVSKI: And then Mr Fraine, Graham Fraine in the second part?

20 **MR McKAY: Yes.**

MR TERNOVSKI: Now, at paragraph 15 of your statement you set out your direct reports, which are executive directors. Could you tell the Commissioner under which of these executive directors sat the inspectorate?

25 **MR McKAY: So the inspectorate sits under 15E, WHS compliance and field services. Sorry, when you talk about the inspectorate, I'm assuming you mean the Work Health and Safety inspectorate.**

30 **MR TERNOVSKI: Yes.**

MR McKAY: Yes. There are inspectorates under some of those others, but the inspectorate for the purpose of this is under the WHS compliance and field services.

35 **MR TERNOVSKI: Who was the executive director of that unit and your - during your time?**

40 **MR McKAY: So when I first arrived, the position was substantively vacant and filled in an active capacity by Ms Stacey Ozolins, and the position had been advertised before I arrived, and it was subsequently filled with the permanent appointment of Ms Sarina Wise, which I think took effect in early October 2023.**

45 **MR TERNOVSKI: And in total during your time there, approximately how many staff did OIR have?**

MR McKAY: So it started I think at around the low 900s, and we secured some additional staff through budget submissions and other processes. And I think by the time I left, our funded establishment was about 1020, but we wouldn't have filled to that point, because we were in the process of recruiting.

5

COMMISSIONER: Say that last bit again, sorry.

MR McKAY: We were in the process of recruiting. So we'd received approval - I think my predecessor Megan Barry had been able to secure additional 30FTE, full-time equivalent staff, in around May 2023. Through the mid-year financial and economic review process in November 2023, I secured via the government processes I think 80 additional staff. And then in the 2024/2025 budget process I think we secured an additional 60 staff. But we were in the process of recruiting to those, and in a tight labour market, you know, we certainly wouldn't have been anywhere near the 1020 or thereabouts. I suspect we would have been in the mid to high 900s.

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MR TERNOVSKI: Mr McKay, as deputy director-general of the Office of Industrial Relations, were you responsible for the safety and wellbeing of the OIR staff?

20

MR McKAY: Yes.

MR TERNOVSKI: Have you ever met with health and safety representatives of the OIR?

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MR McKAY: Yes.

MR TERNOVSKI: Could you describe for the Commissioner your first meeting. When did that occur?

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MR McKAY: So in my affidavit I say that I was approached by Mr De'Ath in I think mid to late April. I - and I agreed at around that time - I was then going on an extended period of leave for six weeks in about two weeks after that. So I knew I wasn't starting there, but I knew that my appointment - my temporary appointment was going to be announced. So one of the first things that I wanted to do was to meet with the health and safety representatives from OIR and with the Together Union representative or representatives of the OIR staff. And so I did that, I think, on the day or the day after my temporary appointment was announced to staff.

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MR TERNOVSKI: Was that - what month was that?

MR McKAY: That would have been late April 2023.

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MR TERNOVSKI: Mr McKay, why meet with the health - and remind the Commissioner, when did you commence in the role?

MR McKAY: I commenced on I think it was 21 June.

5 **MR TERNOVSKI: Why meet with the health and safety representatives before you even commence?**

MR McKAY: Firstly, I knew they had concerns. And secondly, I wanted them to know that they had my support.

10 **COMMISSIONER: These are just the health and safety representatives representing the 320 people who worked, according to Ms Wise, within Workplace Health and Safety or the representatives of the just over 200 people she referred to as inspectors within Workplace Health and Safety?**

15 **MR McKAY: It was all of our health and safety representatives within compliance and field services. So I think, from memory, there were four of those, so representing the full 300 or so within Ms Wise's directorate.**

20 **COMMISSIONER: I see. But not the other 700 or so -**

MR McKAY: No.

25 **COMMISSIONER: - that reported to you because they were involved in workers' compensation or labour hire licensing or -**

MR McKAY: Yes. Yes.

30 **MR TERNOVSKI: And what were the concerns or issues that led you to have that meeting?**

MR McKAY: So they were concerned about the behaviour of the CFMEU and the tactics of bullying and harassment of inspectors.

35 **MR TERNOVSKI: Can you give some examples of that that was raised at - let me go back. Were any examples of that behaviour raised with you?**

MR McKAY: It was particularly the posting of inspectors on the CFMEU's website or Facebook account.

40 **MR TERNOVSKI: Anything else?**

45 **MR McKAY: I think at that time there was reference to the previous arrangements that had been in place with Ms Burgess as their supervisor and that they'd felt that they'd been inappropriately pressured to act in a particular way by Ms Burgess.**

COMMISSIONER: But now you seem to be talking about a very narrow group, because that's a much smaller group than the 320-odd, isn't it? The ones that -

5 **MR McKAY:** Yes.

COMMISSIONER: Yes. Is that where most of the complaints came from, that small group that reported to Ms Burgess out of the 320?

10 **MR McKAY:** Most of the health and safety representatives were from that group. So if I think of who they were now, I think there were four HSRs for that group and then another HSR representing other - I think the industrial inspectorate. But I think - my numbers are probably wrong; I apologise,
15 **Commissioner.** But if there were five HSRs, four of them were from the - from the, sorry, the construction inspectors.

MR TERNOVSKI: And what controls were in place at the time when you started to manage those issues?

20 **MR McKAY:** So there was - there were some controls in place. So the - there had been discussion around the two-inspector policy being reinstated, and I think in practice it had been - started to be reintroduced.

MR TERNOVSKI: Can I just pause you here. You refer to the two-inspector
25 policy. Can you explain what that is?

MR McKAY: Sorry, so this is where - under the operation procedure to protect the psychosocial safety of inspectors from - to protect them from occupational
30 violence and harassment, sorry, that where there were requests for assistance from CFMEU officials, that two inspectors would be dispatched rather than one. And that had fallen away, but my understanding was that that was starting to be reinstated. We hadn't formalised that in writing, but it was starting to be reintroduced. That was one of the measures. So we had the procedure, was a control measure. We had the application of the two-inspector
35 policy which had been changed, which was the result of the PIN matter that I mentioned earlier. That was coming -

COMMISSIONER: The PIN: you mean the provisional improvement notice issued by Mr Barber?
40

MR McKAY: Sorry. My apologies. Correct, yes.

MR TERNOVSKI: And I think you said that the policy had started to fall
45 away?

MR McKAY: Yes.

MR TERNOVSKI: How did that - do you know how that occurred?

5 **MR McKAY:** So my understanding from the - reviewing the material around the PIN was that there was - it was to be assumed that there was a risk where there was a request for assistance made by the CFMEU and a change was made by their then-director in what was the old structure of construction and compliance services, I think it was called. The director of that was Helen Burgess, who had unilaterally made a decision to alter that to say that two inspectors would attend if the risk was assessed as being necessary by an operations manager, I think was the change that had been made. And that was then the subject of the provisional improvement notice issued by Inspector Barber, was that there had been - not been consultation with HSRs and work units.

15 **MR TERNOVSKI:** About that change?

MR McKAY: About that change. And he was seeking a return to the previous arrangements.

20 **MR TERNOVSKI:** I'm going to come to the cease-work notice in a moment, but can I ask you this before I move on to that topic: did you have any other meetings with health and safety representatives during your tenure?

25 **MR McKAY:** So I did meet with them regularly, and I met - and certainly when the PIN was referred to the Queensland Industrial Relations Commission, I wanted to demonstrate my commitment to work with them, so I attended the conference before Vice President O'Connor so that we could not take an adversarial approach to how we resolved this, but, you know, to let them know that we were working towards the same end.

30 **COMMISSIONER:** And the people you're talking about there are not HSRs for the full thousand or indeed for the full 320 within Workplace Health and Safety; you're simply talking about the HSRs within the construction inspectorate of WHSQ?

35 **MR McKAY:** Yes, Commissioner.

40 **MR TERNOVSKI:** I think you said you met with them regularly. Were there any recurring themes or topics that cropped up during those meetings?

45 **MR McKAY:** It continued to be about the - you know, the attempts at bullying and harassment of inspectors by the CFMEU on site, that they, you know, would attend. There would be video taken by the CFMEU. It would be doctored, edited, and put on to the union's website or their Facebook page. And whilst that in itself was problematic, what was even more problematic is that it was left there for the sort of vile comments that people who comment on

Facebook posts tend to make, and there's some really vile comments that were put on there and allowed to remain on there about inspectors.

5 MR TERNOVSKI: Have you seen those posts?

MR McKAY: Yes.

MR TERNOVSKI: Can you give some examples of that those comments?

10 MR McKAY: There was a comment about, you know, "I wish this guy had a son who worked in the construction industry," or you know, "If you see this person out there, you know, let them know what you think." You know, it was really derogatory comments about the individuals, you know, calling them names, calling them, you know, dogs. I can't remember the exact terminology,
15 but, you know, quite vile and personal comments about the individuals.

MR TERNOVSKI: Can I now ask you some questions about the cease-work order.

20 COMMISSIONER: Just before you do, you said you met with the internal health and safety representatives and the Together Union. What's the Together Union?

25 MR McKAY: So the Together Union is the union that represents public sector employees in the Queensland Government and -

COMMISSIONER: So it's a state union?

30 MR McKAY: State, yes. State union. And they had an elected delegate, who was one of the industrial inspectors. And she was a very active representative of Together and, you know, worked in closely with the HSRs, given that the HSRs were also members of or eligible for membership of Together Union.

35 COMMISSIONER: And previously it would have been called the Public Sector Union or the Public -

MR McKAY: I think it was previously called the Queensland Public Sector Union.

40 MR TERNOVSKI: Mr McKay, at paragraph 32 you refer to the notice issued by the HSRs. Could the witness be shown attachment SW-10 to the statement of Sarina Wise that was tendered yesterday. It's on page 63 to 64 of her statement. If we could just blow that up so we can see the text of the first - of that bottom of the first page. Mr McKay, have you seen this document?
45

MR McKAY: Yes.

MR TERNOVSKI: Could we go to the next page, up to the middle of the page where the bolded section is. Mr McKay, you've clarified your evidence about that notice. Could you tell the Commissioner how - putting aside the provisional improvement notice, how this notice was resolved?

5

MR McKAY: So -

COMMISSIONER: This is the cease-work notice you're talking about now?

10 **MR McKAY:** Yes. Yes. So again, there were - there were, I think, a series of conferences in the Queensland Industrial Relations Commission, I think again before Vice President O'Connor, who kept carriage of these because of the sensitivity of the matter, and again, I think we had - we accepted that these were legitimate concerns that the staff had, that we wanted to show that we were
15 working with them rather than in an adversarial sense, and that we wanted to resolve these. So it was working through with them how do we manage this, and manage not just the issue of them turning up on site, but manage the issue of getting footage taken down, stopping the union taking footage in future, you know, getting Meta to remove posts from Facebook etcetera. So we wanted to
20 work collaboratively with them to do that.

COMMISSIONER: When you say "we", the "we" you're talking about is you and Ms Ozolins, because this was about a week before Ms Wise started?

25 **MR McKAY:** Yes. Yes. I think, Commissioner, I think I'm using the royal we. I think the leadership group of OIR in a very united way wanted to make sure we were supporting staff and not just - not just Ms Ozolins or Ms Wise, but all of us wanted to demonstrate that we were there for our staff.

30 **COMMISSIONER:** All your reports, even if they weren't responsible for Workplace Health and Safety Queensland?

MR McKAY: Correct. So I can recall Mr Andrew Harris, who was the executive director of business and corporate service I think was the title, was
35 engaged in this process in a positive way, both with Ms Ozolins and Ms Wise. I know Ms Fox, who was in - who had a unit that was involved in - you know inspector program support was leaning in as well to work out what more support can we provide to inspectors to help them deal with turning up on - you know, what are the - I think they were called forks, which was some sort of, you
40 know, card given to people that "if you're confronted, here's some simple scripts to use to deal with this". So, you know, I think OIR in totality really was trying to get behind these people and support them.

MR TERNOVSKI: What ultimately happened to the notice?

45

MR McKAY: The notice was lifted.

MR TERNOVSKI: Now, you refer to the - referred earlier to the reintroduction of -

5 **COMMISSIONER:** Just remind me who issued that notice. The first one - the provisional improvement notice was Inspector Barber. Who issued the cease-work notice?

10 **MR TERNOVSKI:** If we could bring up page 63 of Ms Wise's statement, which is the notice. So we can see there, Commissioner, this is an email from Karin Brailey-Ponting.

COMMISSIONER: Who is Ms Brailey-Ponting?

15 **MR McKAY:** Ms Brailey-Ponting is the Together Union delegate that I mentioned earlier, Commissioner. And if you look at the names in the cc column, Frank D'Allura, John Barber, Warwick Holmes, Luke Ellis were all health and safety representatives from the construction inspectorate.

20 **COMMISSIONER:** Thank you.

MR TERNOVSKI: Mr McKay, you refer to the reintroduction of the two-inspector policy. Did that reintroduction require additional inspectors to be employed?

25 **MR McKAY:** So in itself, no, is probably the short answer. The longer answer I would say is it's a demand-managed system, so if you are sending two inspectors where you would have sent one, there is one less inspector to deploy to the next thing that you would have deployed a person to, or it reduces the amount of proactive compliance work that an inspector can be doing; there's
30 only a certain number of inspections an inspector can do. And some of these would take the majority of, if not an entire day, given the complexity of some of these building sites that they would be going to. And part of this was our rationale in putting to government the need for additional inspectors part of those processes I mentioned earlier.

35 **MR TERNOVSKI:** So that you can send two inspectors to CFMEU sites?

40 **MR McKAY:** Yes, in part. It would be wrong to say that that was the entirety of it, because the - because that related to a - probably a small portion of it. The largest portion of my request for additional staff was a growth in the number of workers in the state not matched by a growth in inspectors, and a growth in the complexity of the legislation that the inspectors were enforcing.

45 **MR TERNOVSKI:** Mr Barber, I understand you have a copy of a letter -

COMMISSIONER: Mr McKay.

MR TERNOVSKI: Mr - thank you, Commissioner. Mr McKay, I understand you have a copy of a letter that documents part of the two-inspector policy that's not included in your statement?

5 **MR McKAY:** Yes.

MR TERNOVSKI: Commissioner, I'll come back to that once we've obtained copies. Can I now move to a different topic, Mr McKay. At paragraphs 38 to 43 of your statement - or 42 of your statement - you refer to your first meeting with Mr Ravbar on 4 July 2023. Now, that was in the first fortnight of you commencing your role?

10

MR McKAY: Yes.

15 **MR TERNOVSKI:** Why did you meet with him so early in your tenure?

MR McKAY: I wanted to meet with a whole range of the most significant stakeholders that we had very early on to try and get a sense of the issues that they had and to introduce myself and to perhaps talk about how I saw my role playing out. I thought it was important to meet with Mr Ravbar. The CFMEU is a significant player, and I knew that we were going to have to create a different relationship with the CFMEU if we were going to continue to improve the Office of Industrial Relations and if we were going to address the issues that staff had raised about harassment and bullying.

20

25

MR TERNOVSKI: So did you meet with other stakeholders?

MR McKAY: I did.

30 **MR TERNOVSKI:** And who did you meet first?

MR McKAY: I - from memory, I think Mr Ravbar was the first of the major stakeholders.

35 **MR TERNOVSKI:** Where was that meeting held?

MR McKAY: It was at the CFMEU headquarters at Bowen Hills.

MR TERNOVSKI: Why there?

40

MR McKAY: I thought it was important that I say, "I'll come and meet you on your turf. I'll come along on my own, not here with a note book." I'm not here with an agenda. I want to introduce myself, say hello, talk about who I am, what I think I bring to this role and to hear his concerns.

45

MR TERNOVSKI: What did Mr Ravbar say during this meeting?

MR McKAY: So it was - it was a reasonably cordial meeting. There was a couple of things that he mentioned to me. He'd said that, you know, people had told him about me and about my background, that others had vouched for me. I think others in the union movement had vouched for me with Mr Ravbar, and that - so therefore he was prepared to give me a go, or words to that effect. And then he talked about the problems that he saw. He expressed views about, I think, Kym Bancroft, who had been in the role some time prior to me, and he talked about, you know, the fact that there was dysfunction amongst the inspectors and, you know, the place needed to be sorted out. But he didn't go into any great specifics of - there wasn't - you know, there wasn't at that point a kind of, you know, a list of people that needed to be cleared out or anything to that. It was - it was a broader discussion than that. The discussion probably took, you know, 20, 30 minutes, I suspect.

MR TERNOVSKI: Going back to Mr Ravbar's comment that he's prepared to give you a go based on information he's received, in your 20 years' experience as a senior public servant, have you ever heard an external stakeholder make a comment like that?

MR McKAY: No.

MR TERNOVSKI: Now, I want to ask you some questions about the notification and triage system that existed at the OIR. What was the official system for notifying workplace hazards or seeking assistance that existed when you started as deputy director-general?

MR McKAY: So the official system for most was the 1300 number. So people would go through to the assessment and advisory services team, which was part of the compliance and field services division, and they would enter there either via a 1300 number, through an email which I think was whsqaaa@oir or something to that effect, or they could complete an online form on the department's website.

MR TERNOVSKI: And once that notification goes through to that team, what happens to it?

MR McKAY: So then there's a group of people, primarily people who are or have been inspectors with some field experience, working in there. So there's call centre operators to field the call, then there's a triaging process done by people who primarily have some field experience, who will then make an assessment of whether an inspector should be sent and if so, you know, how quickly compared to other matters that are sitting in the triaging system.

MR TERNOVSKI: Do you know what sort of criteria were used for triage?

MR McKAY: So in a broad sense, yes. In a broad sense, that would be, you know, the level of risk and the consequence of that risk. And the availability of inspectors would be the other component.

5 **MR TERNOVSKI:** So what else the inspectorate was doing at that time.

MR McKAY: Correct. If it was something that was considered lower level and remote from Brisbane or remote from an office where there were inspectors, it might be scheduled in for when an inspector was next likely to be in that
10 location. If it was, you know, imminent risk of danger, then, you know, an inspector would be allocated quickly.

MR TERNOVSKI: And did the CFMEU - at the time when you started, were the CFMEU using the official system?
15

MR McKAY: So I don't think the CFMEU had ever used the official system, and they certainly weren't when I got there.

MR TERNOVSKI: What did they do?
20

MR McKAY: So there had been an arrangement previously where I think in the construction sector in particular - and bearing in mind there was - the structure had been that there was - rather than compliance and field services generally, there was a construction compliance unit headed by Ms Burgess, and that the construction sector generally would call in to that unit, and the CFMEU
25 in particular I think would call in to Ms Burgess. There was then, when - when the structure was changed to move Ms Burgess away from that role, I think Ms Bancroft had attempted to institute some changes which were to get the construction industry to have essentially a construction hotline.
30

COMMISSIONER: Ms Bancroft was your immediate predecessor in the role as deputy director-general?

MR McKAY: Other than for that short period between - Ms Bancroft left, I think, around the end of April, and then I was on leave, and Ms Megan Barry was acting in the role for about eight weeks I think, Commissioner. But yes, she was essentially my immediate predecessor. And so that the arrangement that they - that the CFMEU had moved to in the absence of being able to call Ms
35 Burgess was to contact the regional directors.
40

MR TERNOVSKI: Mr McKay, you referred to the process of contacting Ms Burgess directly. What role was she in at that time, when that process was in place?

45 **MR McKAY:** She was the director of that construction compliance services unit.

MR TERNOVSKI: And what inspectors reported to her, if any, at that time?

MR McKAY: So all of the construction inspectors reported to her at that time.

5 **MR TERNOVSKI:** At the time you started as deputy director-general, was she still in that position?

MR McKAY: No.

10 **MR TERNOVSKI:** What position was she in?

MR McKAY: She was - I can't remember the title of the position, but she was put to the side, still within compliance and field services. She had, I think, a couple of people reporting to her, and they were working on, I think, things like
15 major campaigns. There was a silica campaign, and I think doing the prequalification checks for BPICs.

MR TERNOVSKI: Why was she moved to the side, do you know?

20 **MR McKAY:** As a result of the - there was a disciplinary process that had been undertaken where she was found to have been inappropriately using her own mobile phone to take and make calls to the CFMEU, and concern about her behaviour towards inspectors of bullying them to act in a particular way when they attended inspections.

25 **MR TERNOVSKI:** In what way, Mr McKay?

MR McKAY: To write notices that - so to attend sites that the CFMEU had asked Burgess to send inspectors to, and then, when they attended, to write
30 notices.

MR TERNOVSKI: In your meetings with the health and safety representatives at OIR, have they ever expressed concerns about Ms Burgess?

35 **MR McKAY:** Yes.

MR TERNOVSKI: What were those concerns?

40 **MR McKAY:** They told me some of the history, which was as I have just said, and their concern was that she might be back.

MR TERNOVSKI: What was your response to that?

MR McKAY: That I would not do that.
45

MR TERNOVSKI: Why not?

MR McKAY: Well, I don't think I said to them, but it was because I didn't trust her.

COMMISSIONER: Because why, sorry?

5

MR McKAY: I didn't trust her.

MR TERNOVSKI: At paragraphs 50 to 51 of your statement, you refer to CFS devising a tweak to the triage system. Firstly, can you -

10

COMMISSIONER: I perhaps should have asked this question of Ms Wise, but where is Ms Burgess now?

MR McKAY: The last I knew, Commissioner, she was suspended from duty, but that - she may no longer be in the department's employ. But you'd have to ask someone from -

15

COMMISSIONER: So you've moved on.

MR TERNOVSKI: At - thank you, Mr Operator. So in paragraphs 50 to 51, you refer to CFS developing a tweak to the triage system. What are CFS?

20

MR McKAY: Construction and field services.

MR TERNOVSKI: Is that where the inspectorate sits?

25

MR McKAY: Yes, that's Ms Wise's - what is now Ms Wise's unit.

MR TERNOVSKI: Would you describe this proposed tweak to the Commissioner?

30

MR McKAY: So that there would be a dedicated number - so we wouldn't be forcing the construction sector through the general 1300 number. We would create a separate number, and that number would be answered by construction inspectors or people who had had previous experience in construction, and they would take and triage those calls and then liaise with, I think, the regional directors to allocate inspectors, according to the priority that they'd been given.

35

COMMISSIONER: And the BTG, that's the Building Trades Group. That's the CFMEU, the - depends whether it is the federal or state union. We'll call it the electricians, the plumbers.

40

MR McKAY: Yes.

COMMISSIONER: Are the metalworkers part of that as well?

45

MR McKAY: Look, I think technically they are, but they were not part of this discussion. Because it was a construction discussion.

5 **MR TERNOVSKI:** Mr McKay, you attach a draft of this proposed tweak system as PMK-7. Mr Operator, if we could go to that now at page 57. And if we could blow up the industry considerations and OIR considerations cells at the bottom of page 57. Now, you see it says:

10 "Industry Considerations (captured from meeting on 14-6-23)."
What happened on that date?

15 **MR McKAY:** So that was a meeting that Ms Ozolins, as the acting executive director of CFS, had with the BTG or representatives from the CFMEU, ETU and PPTEU to gather information from them about what their - what they were looking for, you know, to understand what their concerns were about the triaging system and so that she could go away and devise something that might work.

20 **MR TERNOVSKI:** Now, that date, 14 June 2023, if we go back to paragraph 51 of your statement, you refer to Ms Ozolins attending a meeting on 16 June. Is that a different meeting, or is there an error in one of those dates?

25 **MR McKAY:** Sorry, that's probably an error I should have corrected as well. It would be the 14th, and I would much prefer to rely on Ms Ozolins' recollection than my own.

30 **MR TERNOVSKI:** If we go back - this is still on the screen. So industry considerations, what stakeholder is that coming from?

35 **MR McKAY:** So my understanding is that's primarily from the CFMEU, ETU and Plumbers' Union, although I think it also took into account feedback that we'd received from the Master Builders' Association as well. But I can't be completely sure of that, I'm sorry.

MR TERNOVSKI: If we look at the OIR considerations, it says here:

40 "OIR cannot have 1 person as a direct point of contact, regardless of who that person is. The risks it places the individual and agency at are too great and include risk of regulatory capture, placing the person at risk of allegations of improper relationships and providing preferential treatment to one or more select stakeholders."

45 What is this referring to, Mr McKay?

MR McKAY: Well, I think in the meeting I said we are never - whatever we do, we are never going to repeat the situation where we put someone in the position

that Helen Burgess was in. And it really relates to that arrangement that had existed previously with Ms Burgess.

5 MR TERNOVSKI: So this is code for the Ms Burgess arrangement, is it?

MR McKAY: Yes.

MR TERNOVSKI: All right. Now, can I invite -

10 COMMISSIONER: But then Ms Wise said you ended up doing this yourself, doing this very thing that you said you shouldn't do?

MR McKAY: Well, when I was receiving the calls, I was simply putting them back into the triage system, so - and I'd been really, really clear with
15 everyone - Ms Ozolins, Ms Wise, with the assessment services leadership group - that all I was doing was simply passing on the message and I think in - I can recall seeing one of my emails saying to that group, "Please remember that because it comes from me, it should be given no greater priority. If there ever is an instance where I think something should be given a priority, I will say so and
20 I will provide my reasons for doing so at that time." And I never did. I had also said to both Mr Ravbar and Mr Kurt Pauls from the CFMEU that all I would ever do would be to pass on the information, so they were really buying themselves a second-rate triaging system, because it was coming to me and when I was then able to pass it on to the triaging people, I would pass it. So all
25 they did was buy themselves an automatic delay.

COMMISSIONER: And waste your time.

MR McKAY: And a waste of my time, correct.

30 MR TERNOVSKI: Mr McKay, I want to come back to that topic of you personally taking calls, but before I do that, I would like you to explain something about this document. Perhaps if you could read to yourself the industry considerations and the OIR considerations and let me know when
35 you've done so.

MR McKAY: Yes. Yes.

MR TERNOVSKI: Now, looking at this at face value, there doesn't seem to be
40 a great deal of difference between what the industry is asking for and is captured there and what the OIR's position is. See, the industry wants - or the industry considerations - they want a dedicated construction point of contact, and the OIR is offering that. They want two dedicated persons, and OIR is offering two to three persons of which two would be dedicated. So what's really
45 the issue?

MR McKAY: You're right. There is very, very little. And there was - I think when Ms Ozolins had prepared this she was very hopeful that we would get this across the line. But the issue here is the single point of contact, and when we had the meeting, the single point of contact was, I think - continued to be an issue for each of the three unions. But I can recall Mr Lynch from the ETU saying they don't care who it is, but Mr Pauls was adamant that the single point of contact had to be Helen Burgess.

MR TERNOVSKI: Mr McKay, you're now referring to the meeting on 25 September 2023?

MR McKAY: Yes.

MR TERNOVSKI: Can you tell us who attended that meeting? You mentioned Mr Pauls and Mr Lynch. Who else?

MR McKAY: Mr Pauls, Mr Lynch and Mr Gould from the Plumbers' Union. And -

COMMISSIONER: Before you answer that, this is called industry considerations, but as I understand it, the only people that were consulted either on 14 June or 16 June - it seems that paragraph 51 of your statement should be read as 14 June, which doesn't really matter -

MR McKAY: Yes.

COMMISSIONER: - are the so-called BTG, the Building Trades Group. Were there representatives of the Master Builders' Association or anyone like that that were expressing these concerns, or it was just a meeting with the unions who were the main unions in the construction industry?

MR McKAY: Just with the unions, I think, Commissioner.

COMMISSIONER: Sorry, Mr Ternovski.

MR TERNOVSKI: Thank you, Commissioner. Mr McKay, I think you were about to describe who was present from your organisation?

MR McKAY: Sorry, yes. Myself; Ms Ozolins, who at the time was the acting executive director compliance and field services; and then the three union representatives that you've mentioned.

MR TERNOVSKI: What did Mr Pauls say at this meeting?

MR McKAY: So we presented the proposal and, you know, I made the comment that, you know, we are never again going to go down a track where we put a person in a position where they are the single point of contact. It's not

good for the individual and it's not good for the organisation. When it became clear that that was - that I was not going to shift on that, the meeting got quite confrontational. Mr Pauls then started to, you know, berate the inspectorate, that they were - that they lacked integrity, that they were incompetent, and to the point where he said, "You need to sack the lot of them. Sack the lot of them and start again. Go out and recruit from industry and get a whole new bunch."

5
10
MR TERNOVSKI: And what did Mr Pauls say about what he wanted by way of a system?

MR McKAY: He - he wanted a return to the arrangement where they - where Helen was in charge, Helen Burgess was in charge, and where they could contact her directly and that she had control over the inspectors.

15
MR TERNOVSKI: Did you agree to go back to that system?

MR McKAY: No.

20
MR TERNOVSKI: What was Mr Pauls' response?

MR McKAY: So he said if I was not the - if I wasn't prepared to make those changes, then perhaps I wasn't the man for the job I think was his comment.

25
MR TERNOVSKI: Again, in your 20-plus years' experience in as a senior public servant, have you ever heard an external stakeholder make a comment like that?

MR McKAY: No.

30
MR TERNOVSKI: What did Mr Pauls say about what the CFMEU was going to do, given your refusal to put Ms Burgess back in charge of the inspectors?

MR McKAY: I think that's the point they said they would simply start calling Ms Ozolins and making the notifications to Ms Ozolins.

35
MR TERNOVSKI: As far as you were concerned, Mr McKay, was that a threat?

MR McKAY: Yes, I think you'd put it as a threat, yes.

40
MR TERNOVSKI: What did you say to Mr McKay in response to his call for the sackings?

45
MR McKAY: Well, he'd said you need to sack the lot and you particularly need to sack - a group of four people that I've listed in there. And I said I wouldn't be sacking them. I wouldn't be sacking those four, let alone the entire inspectorate, that these are workers; they have rights. It was disappointing that

union officials sitting around the table would not understand that these were workers who had rights. I had no evidence of incompetence or inappropriate behaviour on the part of any of these people. If issues were raised with me that were legitimate, if there were performance and behaviour issues, then I would deal with those, because integrity and performance was important. But in doing so, I would deal with that according to the law.

MR TERNOVSKI: And after this meeting, did the CFMEU make good on this threat to call Ms Ozolins?

MR McKAY: Yes.

MR TERNOVSKI: And did they continue to do so throughout your tenure?

MR McKAY: They did. They did until such time as Mr Pauls took offence from a conversation he had with Ms Ozolins, the exact details of which I can't completely recall, but it I think it was Ms Ozolins trying to say something nice that Mr Pauls decided to take as an offence, reported it to Mr Ravbar. Mr Ravbar then told Pauls, apparently, "You're not to deal with Ozolins anymore."

MR TERNOVSKI: So what happened after that?

MR McKAY: And that was when they started coming to me.

COMMISSIONER: Who's "they"?

MR McKAY: The CFMEU officials who would notify of workplace incidents and requests for assistance.

COMMISSIONER: And who were they?

MR McKAY: So that was Pauls himself, Dean Mattas, I think Dylan Edward - Dylan Howard, Hoani Edwards, Mick Robinson. There are other names, Commissioner, but they escape me at this stage. But generally employees of the CFMEU. Organisers, I would have thought they were.

COMMISSIONER: Presumably there are some records, because every time you got a call you sent an email to them?

MR McKAY: Correct.

COMMISSIONER: And you'd say who had made the complaint from the union?

MR McKAY: Yes. Yes.

MR TERNOVSKI: And, Mr McKay, how often would you - firstly - I withdraw that. What number did they call you on?

MR McKAY: They called on my mobile number.

5

MR TERNOVSKI: And how often did you get these calls?

MR McKAY: I probably should clarify, I only had a mobile. I did not have a landline number. It was only a mobile, so it was the only way people could contact me by phone. And I think your next question was how often -

10

MR TERNOVSKI: Yes.

MR McKAY: - was it, sorry, Mr Ternovski? Look, it wasn't daily, but it would be probably weekly I would receive calls. They would often come in clusters, but - and you would - you could probably attribute that to campaigns they were running either against a builder or about a particular issue.

15

MR TERNOVSKI: Were these notifications that came through you, were they prioritised over the official 1300 number?

20

MR McKAY: No. They were - I simply passed them to the 1300 number. Sorry, I simply passed them to the triaging system via the whsq.aaa email address and copied in the leadership group of that group, the assessment and advisory services, and usually just providing the name of the notifier, the details - usually pretty scant details provided to me - and usually finished with a comment like, you know, "For action as deemed appropriate."

25

COMMISSIONER: When you say they usually correlated with a campaign against a builder, can you remember which builders these campaigns were against?

30

MR McKAY: So Cross River Rail featured heavily, and particularly CPB. BMD were another where there was a cluster of them around a campaign, and then the BMD-Georgiou joint venture on Centenary Bridge.

35

MR TERNOVSKI: Mr McKay, did you have a voicemail?

MR McKAY: I did.

40

MR TERNOVSKI: And so what happened when you were not able to take the direct call?

45

MR McKAY: So I got some very good advice from I think Ms Ozolins at the time to put a voicemail on my phone that essentially said - a bit like if you ring the doctor's surgery and they say, you know, "If it's an emergency, hang up and dial 000," I think it was something along the lines of, "If you are ringing to

notify of an incident under the Work Health and Safety Act or Electrical Safety Act, please contact 1300, etcetera, etcetera, or WHSQ at dadadada." So I gave the advice that if you were ringing to notify, this was the appropriate way for you to notify.

5

MR TERNOVSKI: At paragraph 65 of your statement, you give some examples of the kind of issues you received calls about.

MR McKAY: Yes.

10

MR TERNOVSKI: Mr McKay -

15

COMMISSIONER: Just going back to 54 for a moment. What was your view, the four people who had - Mr Pauls identified in this meeting - just before I ask that, who else was in this meeting? You say at 52 Mr Pauls, Mr Lynch from the ETU, Mr Gould from the Plumbers, no-one from the Metal Workers' Union. Was it just you or you and Ms Ozolins or -

20

MR McKAY: It was Ms Ozolins and I, yes.

COMMISSIONER: So just 5 of you?

MR McKAY: Correct.

25

COMMISSIONER: And then in relation to 54 where Mr Pauls in this meeting says that you should sack all inspectors and then specifically identified four of them, two of them, Mr D'Allura and Mr Barber, had almost in the months leading up to this meeting been involved in the provisional improvement notice in Mr Barber's case and the cease-work notice in Mr D'Allura's and Mr Barber's case. Did you have any sense that these two individuals were being targeted because of that?

30

MR McKAY: Look, I felt that all four of them, from memory, had history of not complying with the directions that had been given to them by Ms Burgess. Then - certainly both Inspector D'Allura and Inspector Barber had been involved in the PIN matter, and it was on my mind that it could have been information provided, but it would have been known to Ms Burgess and perhaps also to the CFMEU that these were the - those two were WHS HSRs and union delegates.

40

COMMISSIONER: And union delegates too?

MR McKAY: Sorry, I think - I apologise. I think I might have previously said Mr D'Allura was a HSR.

45

COMMISSIONER: Yes.

MR McKAY: I think he may have been the union - a union delegate and not a HSR.

5 **COMMISSIONER: So there were two union delegates, were there, or was that -**

10 **MR McKAY: Karin Brailey-Ponting, and I think - look, I can't be completely sure - I apologise, Commissioner - but my memory, now that I think of it more, is that Mr D'Allura was a Together Union delegate as opposed to a HSR, but someone else might have to clarify that if it's important.**

COMMISSIONER: Thank you.

15 **MR TERNOVSKI: Commissioner, I note the time. However, I'm just about - I've got only another five to 10 minutes on this topic before moving to a different topic if it's convenient for me to press on.**

COMMISSIONER: Very well. Keep going.

20 **MR TERNOVSKI: Thank you. If we go back to paragraph 65 where you describe some of the issues you received calls about, Mr McKay, looking at the overall picture, did these direct calls to you involve genuinely serious and urgent issues?**

25 **MR McKAY: Almost never.**

MR TERNOVSKI: What sort of issues were you called about?

30 **MR McKAY: So they were fairly generic issues. There would be fall from heights, potential for falling objects, access/egress. There were issues where safe work method statements were not available at the work site or hadn't been updated or were not available for inspection or something of that nature. They were very, very rarely for anything other than that. I think there were towards - towards the end, when there seemed to be a shift in posture from the**
35 **CFMEU about entering work sites, there started to be some right-of-entry matters referred, but they were not - they certainly - I can't recall a right-of-entry one until we got to the point where I think, as I said, there was that change of posture and right of entry became an issue on building sites.**

40 **MR TERNOVSKI: You said fall from heights, and some of the examples you gave were fall from heights and access and egress. Why are these not urgent or serious?**

45 **MR McKAY: Well, if they were serious and urgent, they would have been giving me quite an amount of detail on what they were. There was no detail given about these things. But they can be - they can well be serious issues. You**

know, the ability to quickly exit a site in the event of an incident can be important, but they were - that was not how these things were presented.

5 MR TERNOVSKI: So let's, say, take access and egress: how were they presented? What particulars were provided?

MR McKAY: It was usually "access and egress".

10 MR TERNOVSKI: Without any particulars?

MR McKAY: That was it.

MR TERNOVSKI: What about fall from heights?

15 MR McKAY: So I would say, "What's the nature of the issue you're calling about?" And they would say fall from heights, access/egress, falling objects, SWMS not available for inspection.

20 MR TERNOVSKI: SWMS is a safe work method statement, is it?

MR McKAY: Sorry, yes. Safe work method statement.

MR TERNOVSKI: Why is that not urgent?

25 MR McKAY: So these are plotting out how work might be performed in a safe manner, so the potential for imminent health and safety risk is pretty low if a safe work method statement is not immediately available for inspection by a HSR.

30 MR TERNOVSKI: Mr McKay, in paragraph 65 you also refer to spray cans not being listed in the hazardous chemicals register. What sort of spray cans are we talking about here?

35 MR McKAY: It could be WD40, Glen 20. It was one of the great bugbears, I think, of the inspectorate that they were required to issue notices for things like that.

40 MR TERNOVSKI: Glen 20, Mr McKay, is that disinfectant spray that people keep in the toilet?

MR McKAY: Yes.

45 MR TERNOVSKI: And you would get notifications about that, having - not having that on the hazardous -

MR McKAY: Yes.

MR TERNOVSKI: So just to understand, Mr McKay, you're the deputy director-general of the OIR at that time?

MR McKAY: Yes.

5

MR TERNOVSKI: And you have over 900 people working under you?

MR McKAY: Yes.

10 **MR TERNOVSKI:** And you're receiving calls to complain about Glen 20 not being on the hazardous chemicals register?

MR McKAY: Yes.

15 **MR TERNOVSKI:** Did you consider this process of the CFMEU calling you directly to be an efficient and appropriate process?

MR McKAY: Absolutely, I did, yes. Inefficient. Inefficient process. An inefficient process, yes, I felt it was.

20

MR TERNOVSKI: Was it an appropriate process?

MR McKAY: No.

25 **MR TERNOVSKI:** Why not?

MR McKAY: It simply brought a delay. It was a waste of my time. I had other things that I could be doing, should be doing, and there was a system that they could use that they should be using.

30

MR TERNOVSKI: So, Mr McKay, why did you go along with it? Why not just refuse to take the union's call and direct them to the 1300 number?

MR McKAY: So I suppose there's probably -

35

MR TERNOVSKI: You talk about that in paragraph 62. Perhaps you can talk to that and explain to the Commissioner your rationale.

40 **MR McKAY:** Certainly. If - there would be a whole range of issues here, I would say. One is the triage system was a system that was under a lot of pressure. So it was working, but it could be working better, and my concern was if we try to shoehorn the union back into - or into using this system that they've not used before, I didn't have confidence that the system was managing the volume that it was currently dealing with, and that you'll have some sort of campaign tactic used here where you could have, you know, every CFMEU
45 **organiser** decide that at 7 o'clock they're going to ring and put pressure on the system or that, you know, if - that they'd record, you know, being held on - kept

on hold. You know, people weren't getting through immediately to speak to someone about this. So, you know, I had said we need to fix the triage system and make sure it's absolutely spot on. If this is a hill that we're going to die on, let's make sure that what underpins it is working and that the triage system is really working. And then when we get that right, then we can try and shoehorn them into using this system.

MR TERNOVSKI: Mr McKay, in your opinion, was the system capable of dealing with the additional calls that you yourself were receiving which you described as being not daily?

MR McKAY: Yes. Yes.

MR TERNOVSKI: So then what's the issue? Why can't they just use that system if it's capable of handling those calls that you were fielding?

MR McKAY: Well, my concern was that what we're going to have here is something that is set up to make it look like the system doesn't work.

MR TERNOVSKI: Can you elaborate on that?

MR McKAY: So that you'd have a large influx of calls and, you know -

MR TERNOVSKI: Genuine calls?

MR McKAY: No, probably not, but a whole influx of - you know, a campaign of, "Let's ring - it's 7 o'clock, let's ring and put pressure on the system," or, "Let's ring and send inspectors all over the place." That was my concern. We'd need to make sure that we've got the capability to deal with that, should that happen, before we push them into using the system.

MR TERNOVSKI: In paragraph 65 - 62, I'm sorry - you refer to some concerns about Mr Ravbar. Would you describe those concerns for the Commissioner?

MR McKAY: 65?

MR TERNOVSKI: 62. It's on your screen.

MR McKAY: 62. Well, I suppose, yeah, to that point, this is - this is the one major problem that the CFMEU have got with the inspectorate, is this entry point. Because what they want as this entry point is Helen Burgess. Or, quite frankly, probably not even Helen Burgess; their own - whoever their own person could be. Now, that's the clash that we're going to have. If we - if we absolutely make that a clash, we create a nuclear - you know, if I say, "I'm not answering your calls. No-one's - you can only do it by going this way," we create a nuclear option, right? And the nuclear option, I don't know what that

looks like. I don't know what behaviour that is going to engender from the CFMEU.

5 But I also know that Michael Ravbar does have the ear of government. So you know, I've got to, in my dealings with the CFMEU but also with all stakeholders, deal with this carefully and sensibly and try and work through how do we get to a solution without them blowing it up? Because if it's - if all of a sudden you've got ministers listening to Ravbar about what should - Mr Ravbar about what should be happening, then it creates pressure on us that I'm not quite sure how we would handle.

10 MR TERNOVSKI: You said Mr Ravbar had the ear of government. Why do you say that?

15 MR McKAY: Well, I knew that he met with ministers. I knew - you know, I would - so if you know the layout of 1 William Street, there are three lift foyers. The middle lift foyer is a lift foyer that services the floors - almost exclusively, the floors used by ministers and directors-general. It was not uncommon for me to see Mr Ravbar entering as a visitor into that middle lift foyer, so I knew he was going to visit ministers. I knew that he did meet with the Premier and with Minister Grace on at least one occasion. So I knew that there was that access.

20 MR TERNOVSKI: You said - you mentioned seeing him in the lift foyer. How often were you there?

25 MR McKAY: That was my workplace, so I would - you know, I was in the building every day.

30 MR TERNOVSKI: At paragraph 62, you also refer to a campaign by the union. Can you explain that? A media campaign?

35 MR McKAY: So - yeah, so in, you know - what I'm saying there is we've got the CFMEU doing whatever it can to damage the credibility of the regulator. And so it does so by attacking its integrity and attacking its performance. And it was doing so by media interviews being given by Michael Ravbar in respect of workplace incidents where whatever the issue, the problem was the inspectorate, the problem was the regulator. You had, you know, Facebook posts denigrating individual inspectors and WHSQ generally, and I knew that this was something that he was putting out to other stakeholders, to other unions, to industry and to ministers.

40 MR TERNOVSKI: So if you were to refuse to take the calls and require them to use the 1300 number, what did you expect the outcome of that might be?

45 MR McKAY: I don't know, other than - you know, as I say, I think it would have been a nuclear option, and I don't know where they would have gone with that and I don't know that it would have played out well for WHSQ.

COMMISSIONER: Do you mean nuclear option for you as well, that you'd lose your job?

5 **MR McKAY:** Oh, not particularly. So I was there on a secondment. If government didn't favour me to remain in that job, I had a role to go back to. So I wasn't particularly -

COMMISSIONER: Which role was that again?

10

MR McKAY: That was the Deputy Commissioner of the Public Sector Commission. So I wasn't particularly fearful for my own tenure.

15

MR TERNOVSKI: Is it a fair summary to say that you went along with the process that you considered to be inappropriate because you were concerned what the CFMEU might do if you directed them to the 1300 number?

MR McKAY: Yes.

20

MR TERNOVSKI: Would you say this is regulatory capture by the CFMEU?

25

MR McKAY: No, I wouldn't say it's regulatory capture. So I think, you know, when - and I've thought about this notion of regulatory capture. So me passing on these to assessment services is annoying; it's wasteful. But, you know, if this is the biggest problem that I'm facing in the role, then that's not a bad place to be. I would say if you think about the regulatory capture continuum of, you know, one end you've got, you know, good collaboration that's important for good regulatory practice, and at the other end you've got corruption, which is the antithesis of good regulatory practice, along the way you've got, you know, conflicting, you've got compromising, and you've got capturing behaviour. I wouldn't put this in the capturing behaviour. I would say that there was certainly some conflict created or some - potentially even some compromise created, but I wouldn't say it was regulatory capture.

30

35

COMMISSIONER: What, to turn the CEO into a call centre operator is not regulatory capture?

40

MR McKAY: I don't think so, no, because all I was doing was passing these along into the system. So I was not - they were not being given any special treatment by the regulator as a result. I certainly didn't think so, Commissioner.

MR TERNOVSKI: Did you receive any calls from - direct calls from builders?

45

MR McKAY: From?

MR TERNOVSKI: Builders?

MR McKAY: Builders.

MR TERNOVSKI: Or employers?

5

MR McKAY: I did - not seeking to notify, but I did speak to builders and entities about matters that were in the purview of the regulator.

COMMISSIONER: So the builders used the 1300 number?

10

MR McKAY: Yes.

MR TERNOVSKI: This is a convenient time from my point of view, Commissioner.

15

COMMISSIONER: We'll adjourn till quarter to 12.

<THE HEARING ADJOURNED AT 11.31 am

20

<THE HEARING RESUMED AT 11.45 am

COMMISSIONER: Mr Ternovski.

MR TERNOVSKI: Thank you, Commissioner. Just staying with the triage topic for now - and I apologise to the Commissioner; I was intending to move to the next topic, but I just have a couple of extra questions - at paragraph 62 you describe the various pressure that the CFMEU has brought to bear, and you have supplemented that orally to describe what you considered to be a risk of them flooding the - attempting to flood the official hotline. Would that in effect be a stunt?

30

MR McKAY: Yes.

MR TERNOVSKI: If it wasn't for that pressure and the perceived risk of a stunt like that, would you have gone along with the process of them calling you directly about cans of Glen 20?

35

MR McKAY: No.

MR TERNOVSKI: Mr McKay, you've provided us with a copy of your letter to Mr Barber that I referred to earlier. If that could be brought on the screen. Perhaps if we could zoom in firstly on the - on just the - on the address part, after "Dear Mr Barber". Is that the letter that you refer to, Mr McKay?

40

MR McKAY: Yes, it is.

45

MR TERNOVSKI: Could we go to the third full paragraph, please, Mr Operator. I would just ask you, Mr McKay, to read that to yourself.

MR McKAY: Yes.

5

MR TERNOVSKI: You refer there to what you describe as an existing control measure of sending two inspectors, and then you say:

10 "I understand the change from the existing control measure occurred from email advice from director construction compliance and field services dated 24 February 2022."

Who was that person?

15 **MR McKAY:** Helen Burgess.

COMMISSIONER: Sorry, I missed that.

20 **MR McKAY:** Sorry. Helen Burgess.

MR TERNOVSKI: So Helen Burgess effectively removed and modified the policy?

25 **MR McKAY:** Yes.

MR TERNOVSKI: And you were reintroducing it?

MR McKAY: Yes.

30 **MR TERNOVSKI:** If we could go to the next page, Mr Operator, the last full paragraph, including the quote. Again, Mr McKay, I'll ask you to read that to yourself.

35 **MR McKAY:** Yes.

MR TERNOVSKI: So is that the revised policy?

MR McKAY: Yes.

40 **MR TERNOVSKI:** As at that date?

MR McKAY: Yes.

45 **MR TERNOVSKI:** Were there any further revisions to that policy during your time as deputy director-general?

MR McKAY: Yes. So I think at the time of an incident that I describe elsewhere in my affidavit involving Inspector James Ross and the Multiplex site at Queens Wharf, we essentially extended that to being any site where there was a risk that the union would be present.

5

MR TERNOVSKI: And was that documented in writing?

MR McKAY: That - that was put in writing by me I think to Ms Ozolins at the time.

10

MR TERNOVSKI: But you don't have the document to hand?

MR McKAY: I don't have that document with me.

15

MR TERNOVSKI: If I could move to a different topic, Mr McKay: BPICs.

COMMISSIONER: What do you want to do with this letter, Mr Ternovski?

MR TERNOVSKI: Thank you, Commissioner. I tender that letter.

20

COMMISSIONER: Is there any objection? No. The letter - where's the date?

MR TERNOVSKI: It is at the end, Commissioner.

25

COMMISSIONER: At the end.

MR TERNOVSKI: 7 September 2023.

30

COMMISSIONER: Thank you. Letter dated 7 September 2023 from Mr Peter McKay to Mr John Barber will be exhibit PAM-2.

<EXHIBIT PAM-2 LETTER DATED 7/9/2023 FROM MR PETER MCKAY TO MR JOHN BARBER

35

MR TERNOVSKI: Thank you, Commissioner. I now want to move to a different topic, Mr McKay, and that is your involvement in the development and advising on BPICs. Can I start by asking this: in terms of your involvement with BPICs, what sort of parties did you have discussions with?

40

MR McKAY: Government officials and ministers. So other departmental officials in - sorry, officials from other departments, officials in my own department and a number of ministers.

45

MR TERNOVSKI: And what was your role or the role of OIR in the BPIC development process?

5 **MR McKAY:** So we had been asked to provide some sort of advice on comparing some elements of the BPICs claims that were being put by the various unions, things such as comparing how classification structures were being reflected in schedules to the BPICs, and also specifically asked to look at a range of clauses which went to the conditions under which work might be performed.

10 **COMMISSIONER:** Are you talking about your period as deputy director-general from 21 June '23 to 3 June 2024 of OIR, or some other period?

MR McKAY: No, during that period, Commissioner.

COMMISSIONER: During that period.

15 **MR McKAY:** Yes.

COMMISSIONER: Thank you.

20 **MR TERNOVSKI:** Mr McKay, at paragraph 177 through to 190, you describe a series of meetings you attended regarding BPICs. If we could start with the meeting on 13 October 2024, can you tell the Commissioner who attended that meeting.

25 **COMMISSIONER:** Which paragraph did you say, sorry? It's up on the screen now. Is it 180?

MR TERNOVSKI: Yes, that's the paragraph. Thank you.

30 **MR McKAY:** So it was a meeting convened by the director-general of the Department of Premier and Cabinet at the time, Ms Hunter, and it was essentially the directors-general of the departments with responsibility for either the existing BPICs or proposed new BPICs. And I think Mr Graham Newton from the Cross River Rail; the chief executive of the Cross River Rail delivery authority, Mr Dennis Molloy, who was at the time a deputy
35 undertreasurer in Queensland Treasury; and myself.

MR TERNOVSKI: Mr McKay -

40 **COMMISSIONER:** Ms Dobe was the director-general?

MR McKAY: Sorry, I missed that, Commissioner.

COMMISSIONER: Sorry, I just couldn't work out what the status of these -

45 **MR McKAY:** Ms Hunter, sorry, yes, Ms Hunter was the director-general of department of Premier and Cabinet.

COMMISSIONER: I can't see her name there. Am I missing something? Was that the right paragraph?

5
MR TERNOVSKI: At the front of 180:

"I was invited by Ms Hunter..."

10
MR McKAY: 180.

COMMISSIONER: I'm sorry. Sorry. She was the director-general?

15
MR McKAY: Of the Department of Premier and Cabinet, yes, and had convened the meeting.

COMMISSIONER: And these other people, Sally Stannard, what was -

20
MR McKAY: So Ms Stannard is the director-general of Department of Transport and Main Roads.

COMMISSIONER: And she was at the time?

25
MR McKAY: Was at the time. Mr Paul Martyn was at the time the director-general of the Department of Energy and Public Works, which had responsibility for the building BPICs but also had responsibility for procurement policy, which is what BPICs fell under. Mr Graham Newton, who was the CEO of the Cross River Rail Delivery Authority.

30
COMMISSIONER: He's come to give evidence.

MR McKAY: Yes. And Ms Linda Dobe, who at the time was the director-general of the Department of Regional Development, Manufacturing and Water.

35
COMMISSIONER: And you said Mr Molloy was undersecretary?

MR McKAY: Deputy undertreasurer is the term. The same status as a deputy director-general.

40
COMMISSIONER: Right. That seems to be a very serious group. You've got one, two, three, four director-generals, the head of the Cross River Rail Development Authority and the deputy undersecretary - undertreasurer.

45
MR McKAY: Yes.

MR TERNOVSKI: Now, Mr McKay, you annex your notes from that meeting at PMK-30. Mr Operator, if we could go to that now, which is page 136. In the middle of the page there's a paragraph that says:

5 "Will see a 40 per cent increase..."

If we can blow up that paragraph, please. You see it says there:

10 "Will see a 40 per cent increase in labour costs, which will mean a 15 per cent increase in overall cost."

Is that referring to the costs of BPICs?

15 **MR McKAY:** That's referring - I think that was Ms Linda Dobe, the director general of the Department of Regional Development, Manufacturing and Water, indicating that the proposed water BPIC would add a 40 per cent increase in labour costs to water projects that were being led by her department.

20 **COMMISSIONER:** And a 15 per cent in -

MR McKAY: And a 15 per cent increase in overall cost, yes.

25 **MR TERNOVSKI:** And if we go over the page, Mr Operator, and blow up the first full paragraph starting with "Dennis Molloy". Just the second paragraph, please. Thank you. You see it says there:

30 "Dennis Molloy - QT modelling is that it would see a 15 per cent uplift in cost, or 6 billion for the capital program."

30

Firstly, what's QT?

MR McKAY: Queensland Treasury.

35 **MR TERNOVSKI:** And what is this referring to, this uplift in cost?

MR McKAY: So this is modelling on the impacts of BPICs.

40 **MR TERNOVSKI:** So BPICs would again see a 15 per cent uplift in cost or \$6 billion in extra spending?

MR McKAY: Yes.

45 **MR TERNOVSKI:** The capital program referred to, what is that?

MR McKAY: The complete Queensland Government capital program, I understood that to be. So that would be transport and road infrastructure,

water, renewables projects, hospital builds. So anything where the construction cost was in excess of \$100 million for the project.

5 **MR TERNOVSKI:** Did this increase in costs from - as a result of BPICs, considered acceptable by the meeting attendees?

10 **MR McKAY:** No, I don't think there was anyone in that room who felt that allowing BPICs to continue in the way they were being proposed with that uplift in cost was something that we should simply accept. And I think the purpose of the meeting was to try and get an understanding of the shared views across each of the agencies and an understanding of how we would put that risk to government so the government could be best informed when it made its decision on BPICs.

15 **MR TERNOVSKI:** As far as your understanding is concerned, what benefit would the Queensland taxpayer receive from this additional cost?

20 **MR McKAY:** It was hard to see that there was any benefit. So the purported benefit I think was that by setting the conditions at the commencement of the project, you would see less escalation in labour costs by each project leapfrogging the other, and less disputation about enterprise bargaining agreements being reached, because the - the floor had been set through the BPIC. But in reality, I think the view of the meeting was that this had escalated it so much to the point where any benefit of there not being negotiation was well and truly eroded, because we'd gone to the highest - essentially the highest point for wages and conditions.

30 **MR TERNOVSKI:** Mr Operator, if we go back to the previous page, page 136, and blow up the paragraph starting with Sally Stannard. Mr McKay, if I could ask you to read that to yourself.

MR McKAY: Yes.

35 **MR TERNOVSKI:** Would it be fair to characterise this as Ms Stannard expressing concern about losing control of the sites?

MR McKAY: Yes.

40 **MR TERNOVSKI:** As a result of BPICs?

MR McKAY: Yes.

MR TERNOVSKI: Did you share those concerns?

45 **MR McKAY:** Yes.

MR TERNOVSKI: Did you communicate those concerns to the government?

5 **MR McKAY:** So I communicated those concerns in this meeting, I think in a subsequent meeting, and then our advice was an input into a submission to Cabinet Budget Review Committee that I understand that the Department of Premier and Cabinet was compiling on BPICs.

MR TERNOVSKI: You refer to your advice. Was that advice in writing or given orally?

10 **MR McKAY:** We had given - my recollection is we'd given that in writing as part of the development of the Cabinet Budget Review Committee submission. And we certainly had provided advice through to DPC and Department of Energy and Public Works about our concerns on those conditions of work type clauses.

15 **MR TERNOVSKI:** Again, in writing?

MR McKAY: In writing, yes.

20 **COMMISSIONER:** But was Energy in this meeting? Any representative from -

MR McKAY: Yes. Mr Paul Martyn, the director-general of Energy and Public Works.

25 **COMMISSIONER:** He's Energy and Public Works. Sorry.

30 **MR McKAY:** So, yes, he would then own both the building - the existing building BPIC, the proposed new renewables BPIC, as well as having responsibility for government procurement policy.

COMMISSIONER: He seems to be saying, if you look at the second page, Mr Martyn, on the third paragraph, he seems to be - this seems to be you saying - it's headed Next Steps For OIR. Tell me if it's wrong.

35 **MR McKAY:** Yes.

40 **COMMISSIONER:** That these are the clauses Paul Martyn from Energy and Public Works thought might be the ones for us to look at, but you are not sure it is, and looks like they might have amended the documents, the clauses that Main Roads and Water would claim hand control over the sites to unions, including when and how work is performed, hot inclement weather, HSR meetings, union meetings, approvals of non-standard working hours, etcetera. Is that how you should read that?

45 **MR McKAY:** Yes, so there had been a table that had been produced with the clauses that Department of Energy and Public Works wanted OIR to turn its

mind to. I think my concern were - there were some additional clauses put in there that I didn't think were ones that we were going to be commenting on. So I think I say earlier in my affidavit, Commissioner, that we really - we were reluctant players in this space. There was - there was a concern that
5 government was simply accepting the industrial relations advice from these two consultants that have been engaged that are mentioned in my affidavit.

COMMISSIONER: Who are they again?

10 **MR McKAY:** Mr Randall Fuller and I think Mr Ryan Murphy. There was a concern from the departments and departmental officials that they may have been largely captured by the unions - Mr Fuller by the Building Trades Group, Mr Murphy by the AWU - and that government should be sourcing its own industrial relations advice. They thought that OIR might be able to provide
15 that.

My position, and the position that Minister Grace had as well, was that this is not the type of industrial relations that the Office of Industrial Relations practises in. These are large project agreement type negotiations under the Fair
20 Work Act. We generally don't operate under the Fair Work Act, given that the state jurisdiction continues to operate for public sector employees. So we really didn't have a great deal of expertise that we could put into this. We had people who had - long before, had some involvement in working for - working in the construction sector who might have had some involvement in similar
25 negotiations, but it was some time ago and probably not at the level where you'd want to be advising when you're talking about a potential \$6-billion cost escalation.

30 So we were trying to limit the involvement that we had so that we weren't over-emphasising our position, but we did see that the comments being made by people, particularly like Sally Stannard, like Graham Newton, like Linda Dobe, about the control of site, we did immediately identify that it was quite relevant for them to be raising those concerns and that that could lead to an escalation beyond the modelled escalation if industrial relations on those sites got out of
35 hand.

COMMISSIONER: But I thought that would be core business for the Office of Industrial Relations. Stripping aside the labour hire licensing, workers comp, work health and safety, Electrical Safety Act, just the core of it, isn't the core of
40 industrial relations to give this sort of advice to government? That is, these terms and conditions that you're adopting, whether for the public service or for projects that the public is building, are inappropriate because we've got the skills to analyse these deals to tell you whether or not you're going to blow the budget or it's going to lead to productive or unproductive work. I thought that
45 was the very point of having that office. Or am I misunderstanding something?

MR McKAY: No, it's not been a feature of the Office of Industrial Relations ever.

COMMISSIONER: Right.

5

MR McKAY: So we simply don't employ those - people with those skills. So we're involved in - so I would say the core of the Office - I've always said the - it's badly named. It's the Office of Work Health and Safety, really.

10 **COMMISSIONER:** Right.

MR McKAY: That's the core of the work. And if you look at the sheer numbers of people who work in Office of Industrial Relations, there's, you know, perhaps 30 or 40 people who are in industrial relations. The rest of them are in electrical safety or - which in some ways is an adjunct of work health and safety, or in work health and safety. The area of practice for OIR in industrial relations is in government industrial relations, so the public sector employment.

15 **COMMISSIONER:** Public sector wages policy.

20

MR McKAY: Public sector wages policy.

COMMISSIONER: That's it?

25 **MR McKAY:** And that's essentially it.

COMMISSIONER: Right.

MR McKAY: And supporting the negotiation. There is some reach into fair work, given that there is also a wages policy for government-owned corporations, which obviously operate in the fair work jurisdiction. But there's - I don't want to overplay through terminology. It's not to supervise, but it's to probably advise - to provide broad advice to government on what's happening in GOC negotiations.

30

35 **COMMISSIONER:** GOC, sorry?

MR McKAY: Government-owned corporations, I apologise. So your energy corporations, ports, sun, water, etcetera. So it's not something that OIR has ever done to provide advice to government departments about managing their contracts - third-party contracts for delivery of infrastructure projects, for example.

40

COMMISSIONER: So where's government supposed to get that advice if Mr Fuller and Mr Murphy have been captured?

45

MR McKAY: Well, they would get that through their own agency. So I think - I think the - for example, the Department of Transport and Main Roads procures that through, you know, through its own arrangements with law firms.

5 **COMMISSIONER:** I see. Just get -

MR McKAY: Go direct.

10 **COMMISSIONER:** I see. And these people - each of these departments have presumably done that, and each of them were singing from the same song sheet that this is a problem?

15 **MR McKAY:** Yes. Yes. And I think at around this time the Department of Energy and Public Works might have engaged a member of the bar here in Queensland to provide some advice as well on - a member of the bar who was experienced in these matters to provide some advice directly to them.

20 **COMMISSIONER:** So do you just have to decode this for me. You were saying, "Look, there's a whole lot of problems, but we don't have the skills in OIR to do it. You, the departments, will have to come up with the rationale."

MR McKAY: Yes. Yes.

25 **COMMISSIONER:** Right. I see.

MR McKAY: We will do what we can, and we'll provide our advice, but it was heavily caveated, I suppose.

30 **COMMISSIONER:** Is it reading too much into this to - these are a whole group of public servants trying to do the best they can in terms of their obligations to ensure that the taxpayers' money is not wasted, and coordinating amongst themselves to try and put a united view to government that this a bad idea?

35 **MR McKAY:** I think that's very well put, Commissioner.

40 **MR TERNOVSKI:** Mr McKay, following from the Commissioner's questions, do you see a benefit in having, in the future, expertise within OIR that would be able to advise government on, for example, enterprise agreement negotiations or appropriate wages and conditions?

45 **MR McKAY:** Look, I - I don't know that there is. I think it really is - given that the procurement of contractors for this work is different agency to agency, I think my preference would remain that it is a function of the department with responsibility for the project to engage its own advice.

MR TERNOVSKI: Can I now take you to the meeting that you describe at paragraph 182 on your witness statement between union secretaries and ministers on the 7th -

5 **COMMISSIONER:** Just before you leave that one, can you just decode this for me on that page. Dennis Molloy - QT modelling, that's Queensland Treasury Modelling.

MR McKAY: Yes.

10

COMMISSIONER: You see 15 per cent uplift in cost and \$6 billion extra with the capital program. There will be a second, what's that, Cabinet -

MR McKAY: Cabinet Budget Review Committee.

15

COMMISSIONER: - submission from Queensland Treasury from Mr Molloy or someone above him on the economic impacts including flow through to electricity prices and resulting job impact.

20 **MR McKAY:** Yes.

COMMISSIONER: What's this last sentence mean:

"This will pick up agency contributions to the first sub"

25

MR McKAY: So the contributions that we'd made by agencies previously would be put into that subsequent Cabinet Budget Review Committee submission being prepared by Treasury.

30 **MR TERNOVSKI:** And have you seen those earlier contributions?

MR McKAY: I don't believe I did. So they would have been contributions made directly by those agencies to Treasury.

35 **MR TERNOVSKI:** Do you know what they were?

MR McKAY: No. No.

40 **MR TERNOVSKI:** If we now move to the meeting of 7 September described in your statement between unions and ministers, where was that meeting held?

MR McKAY: So it was held in the - essentially the suite of the - Deputy Premier Miles on his floor of 1 William Street, which would have been Level 39 of 1 William Street, in the boardroom, ministers' boardroom.

45

MR TERNOVSKI: And who was originally supposed to attend that meeting?

5 **MR McKAY:** So the meeting was originally meant to be the Deputy Premier Miles, Minister de Brenni, Minister Grace with myself, Ms Tam van Alphen from the Premier's office and Mr Paul Martyn, the director-general of Department of Energy and Public Works, and then the union secretaries of the CFMEU, the ETU, the AWU, and I can't recall whether the Plumbers' Union was present at that, but I assume that they probably were or were originally intended to be there.

10 **MR TERNOVSKI:** And the union secretary of the CFMEU, that's Mr Ravbar?

MR McKAY: Correct.

15 **MR TERNOVSKI:** Who arrived to that meeting - out of those participants, who arrived first?

MR McKAY: So we were - we had a pre-meeting in the Deputy Premier's boardroom, which was Ministers Grace, de Brenni, the Deputy Premier, myself, Ms van Alphen and Mr Martyn. Someone, and I can't recall who, came in to say that - that the visitors had signed in downstairs. So to get access to those floors, you need to sign in to the building.

MR TERNOVSKI: Sorry, just pausing you there. The visitors, who are you referring to there? The union representatives?

25 **MR McKAY:** The union representatives. And indicated that it wasn't just the union secretaries, that they'd all brought someone with them. And I can't remember who all of those people were who had been brought with them. I can recall that Ms Schinnerl from the AWU had brought Mr Mark Raguse, who was essentially her deputy, I think, and Mr Ravbar had brought Mr Jade Ingham with him. I can't recall whether Mr Ong from the Electrical Trades Union had brought someone.

MR TERNOVSKI: And when that was announced, what happened?

35 **MR McKAY:** So there was concern, particularly concern from Minister de Brenni about the composition of that meeting.

MR TERNOVSKI: What did he say?

40 **MR McKAY:** He - that he refused to meet - he would refuse to meet with Mr Ingham.

MR TERNOVSKI: Did he say that?

45 **MR McKAY:** He did.

MR TERNOVSKI: Do you remember the actual words he used?

MR McKAY: I think it was words to the - there was a profanity involved, and I think it was words to the effect, "I'm not fucking meeting with him."

5 **MR TERNOVSKI:** And was the fact that Mr de Brenni didn't want to meet with Mr Ingham communicated to the union representatives?

MR McKAY: No, I don't believe it was.

10 **MR TERNOVSKI:** So was Mr Ingham excluded from the meeting in the end?

MR McKAY: I understand he was, yes.

15 **MR TERNOVSKI:** By what - how did that occur in the absence of that communication that he wasn't welcome?

20 **MR McKAY:** So my recollection is that Minister Grace came up with a proposal to essentially be a circuit breaker to that, where she said, "Look, given the number of people, the size of the room, we should say that the purpose of the meeting is for ministers to meet secretaries and so therefore the departmental officials and the Premier's deputy chief of staff would not attend the meeting, nor would these additional attendees from the unions. Only the union secretaries and only the three ministers.

25 **MR TERNOVSKI:** Was the room, in fact, too small to accommodate every one?

MR McKAY: We could have met in the room, yes.

30 **MR TERNOVSKI:** So as far as you understand, was that an excuse to get Mr Ingham excluded?

MR McKAY: Yes.

35 **MR TERNOVSKI:** And so what - who ended up meeting?

40 **MR McKAY:** So I say this from, I suppose, reports after the meeting. But my understanding is the meeting was only attended by the three union secretaries that I've mentioned, although I can't recall whether Mr O'Halloran from the Plumber's Union also attended, I apologise. So the three ministers and three or perhaps four of the union secretaries. But that - but none of the other plus-ones, if you like, attended.

45 **MR TERNOVSKI:** What did you do during that time when they were meeting?

MR McKAY: So there's a kitchenette in the Deputy Premier's suite, and Mr Martyn and I and I think Ms van Alphen sat in the kitchen at the table and had

a cup of tea and waited in case - excuse me - in case we were to be called into the meeting but also to be available at the end for a debrief.

5 **MR TERNOVSKI:** How long did the meeting go for?

MR McKAY: I think it was 30 minutes or so. Could have been longer. Could have been up to an hour.

10 **MR TERNOVSKI:** Were you aware of any reason why the union representatives couldn't just have been told, "Mr Ingham is not welcome at this meeting"?

MR McKAY: No.

15 **MR TERNOVSKI:** You mentioned a debrief after the meeting. What was said at that debrief?

20 **MR McKAY:** So at the end of the meeting I think Mr Martyn, Ms van Alphen and I went back into the meeting room and there was some discussion of what had - what the outcome as opposed to - it wasn't a kind of a blow-by-blow of what happened in the meeting, but there was some discussion of the outcome of the meeting, I think that - you know, that there wasn't agreement on the way forward between the AWU and how it might have its issues put forward as opposed to the BTG issues and how we might progress that. So I think it was
25 then being put - from memory, put back to us to find a way of getting some commonality of agreement or some agreement between the AWU and the BTG on a way forward to deal with things like how classification structures would be included in the document.

30 **MR TERNOVSKI:** In that debrief, was it mentioned to you that there was any discussion about the additional costs of BPICs with the unions?

MR McKAY: No. No.

35 **MR TERNOVSKI:** Was it mentioned to you there was any discussion about handing over control of construction sites to unions?

MR McKAY: No.

40 **MR TERNOVSKI:** I'm now going to move to a different topic, Mr McKay, and I want to ask you some questions about the incident you describe at the coffee shop at 1 William Street starting at paragraph 101. And I think you've made a correction that the coffee shop was in fact in the foyer or -

45 **MR McKAY:** In the lobby, yes.

COMMISSIONER: And you made that correction because there's now a coffee shop or perhaps there was always a coffee shop out the front of 1 William Street?

5 **MR McKAY:** There was one outside, out the front, but this is the one that's inside in the foyer and to the back of the building.

MR TERNOVSKI: What were you doing there?

10 **MR McKAY:** So I had arranged a meeting with one of my executive directors. I think it was her first week back from leave, and we were meeting to do a bit of planning of what would occur across the year. So we were meeting over coffee to plan out the year in her area.

15 **MR TERNOVSKI:** And you say in paragraph 101 that was in February 2024?

MR McKAY: Yes. Yes.

MR TERNOVSKI: So what happened during that meeting?

20 **MR McKAY:** So during the meeting my phone rang a few times, and I assumed it was CFMEU operatives ringing to notify - because they were either no number or they had come up as indicating that it was a - you know, one of their organisers whose name I'd stored into my contacts for the purpose of knowing
25 who was ringing me.

MR TERNOVSKI: And did you take those calls?

MR McKAY: No.

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MR TERNOVSKI: What happened to them?

MR McKAY: They went through to my voicemail.

35 **MR TERNOVSKI:** At that time, did you already have a voicemail message that referred to the 1300 number?

MR McKAY: Yes, I did.

40 **MR TERNOVSKI:** After you didn't take those calls, what happened?

MR McKAY: So we - I finished up the meeting. I noticed a couple of other people at another table. One person I hadn't seen for a little while, so I went over and - to say hello. As I was walking over to that table, I noticed that Mr
45 Ravbar and Mr Pauls were also in the foyer of the building. I think as I was standing there they were to my right, so on the Parliament House side of the building.

MR TERNOVSKI: Just pausing there, do you know what they were doing there?

5 **MR McKAY:** No idea.

MR TERNOVSKI: What is the nature of the building itself?

MR McKAY: Government administration.

10

MR TERNOVSKI: Is there anything else in the building?

MR McKAY: Other than a food court the level below and the coffee shop, no.

15 **MR TERNOVSKI:** Do you infer from that that they were visiting someone in that building?

MR McKAY: They would have been visiting someone in government, yes.

20 **MR TERNOVSKI:** After you saw them, what happened?

MR McKAY: So I saw them. I spoke briefly to the people that I mentioned. And I started to exit - so it's an open coffee shop, so the barrier is a bar that's probably about the height of this witness stand. I walked around to go through
25 the opening of that towards my lift foyer. As I did so, I was confronted by Mr Ravbar and Mr Pauls.

MR TERNOVSKI: What did they say or do?

30 **MR McKAY:** So Mr Ravbar sort of made a comment that, you know, his organisers have been trying to ring me, why wasn't I taking their calls. I was sitting there having coffee; I should be taking their calls. They were trying to notify me of incidents. I made a comment back to him that, "I've told you that if you want to be ringing me, there will be times when you won't be able to get
35 me. I will be in meetings. And if people - if it's an emergency, if people want to notify, then they can ring the 1300 number." He took offence at that, at being told that they should use the 1300 number. At that point, they kind of, you know, continued to move forward towards me, so I found myself backing in towards the wall of the lift foyer with these two people standing in front of me.
40 It's the point at which people - they've ordered their coffee at one end, they walk to the other end and, you know, move along as coffees are dispensed. So it's that point. It's the point at which people are going back into the ministerial suite lift foyer.

45 So, you know, having been a senior public servant for a long time and worked in that building since I think two weeks after it opened, there are a lot of people I know. So a lot of people I know are walking past me, seeing me sort of pushed

5 against - not pushed against the wall, that's overemphasising it, but left in a position where I'm backed against the wall with these two people, you know, dressed head to toe in CFMEU clothing, branded clothing, Mr Ravbar speaking loudly and forcibly to me, telling me that Work Health and Safety's - you know, lacks integrity, it's incompetent, people should be sacked, etcetera, etcetera, and I wasn't doing my job.

MR TERNOVSKI: What was the tone of Mr Ravbar?

10 MR McKAY: Angry. Aggressive.

MR TERNOVSKI: Was there any foul language used?

15 MR McKAY: Yes.

MR TERNOVSKI: Do you remember what he said?

20 MR McKAY: No. You know, there would have been a lot of F-bombs. It was, you know, reasonably typical of Mr Ravbar when he's in that mood.

MR TERNOVSKI: How loud was he?

25 MR McKAY: Not yelling loud, but, you know, speaking louder than he needed to communicate to me, given that he was really in my face.

MR TERNOVSKI: You mentioned people passing by you that could see you. Could they hear his voice?

30 MR McKAY: Yeah. Absolutely, yes.

MR TERNOVSKI: Did you find this incident intimidating?

MR McKAY: Yes.

35 MR TERNOVSKI: Did you take any action in response?

MR McKAY: No, I didn't.

40 MR TERNOVSKI: Why not?

45 MR McKAY: I did think about it at the time, and I thought this is what my inspectors face when they're out on a site and they have these approaches from the CFMEU to them. It would look fairly trite and fairly weak on me as their - as the person who is responsible for their safety, that when they've got to face this, you know, I can't immediately stop that. For me to then apply something greater to me or seek to have something greater applied to me than

they might feel was applied to them I thought would have really damaged the relationship I had with my staff.

5 MR TERNOVSKI: So is this, in effect, "they are suffering so I should suffer too"?

MR McKAY: That's not a bad way of putting it, yes. But, you know, it was - it's the sort of thing where it - you know, it did help to remind me of what our inspectors face.

10 COMMISSIONER: You said it was typical of Mr Ravbar. I think in your statement you describe your first meeting with him in this role on Independence Day, 4 July 2023. This is now seven months later, some time in February 2024. Did you have many meetings with Mr Ravbar between these - this first
15 interaction seven months earlier and this interaction in or about February '24?

MR McKAY: Look, I didn't have a lot of face-to-face meetings with Mr Ravbar in that time. I think there was a couple of others. There was one where I met with him and the Queensland Training Ombudsman about an issue that the
20 Training Ombudsman was working on where there was - at the end of that meeting, a further discussion after the ombudsman left where there was a bit of this aggressive behaviour. But certainly in telephone calls I would have had, I don't know, three or four telephone calls over the course of that time where there was that sort of behaviour from Mr Ravbar. And there certainly had
25 been, I think, a - I think it was about the week after - week or two after another incident that I mention in here around the BMD heat stress issues that - where I sent a letter to Mr Ravbar. It was typical of the way he spoke to me on that occasion as well.

30 COMMISSIONER: So when you're saying it's typical of Ravbar when he's in that mood, that's based on three or four telephone calls with him and three or four meetings directly with him?

MR McKAY: Yes. Yes.

35 MR TERNOVSKI: Mr McKay, going back to my question of the inspectors are suffer so you might as well suffer too, why didn't you stand up to the CFMEU on behalf of yourself and the inspectors?

40 MR McKAY: Well, I think I did in the conversation when I said, "You've bought yourself - if this is how you want to deal with it, you've bought yourself a second-rate system, because you know that all you're doing is coming to me and I'm going" - sorry, "all you know is I'm entering it back into the triage system. If you want to be able to deal with things urgently, use the 1300 number."
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MR TERNOVSKI: You mentioned the BMD group incident.

MR McKAY: Yes.

MR TERNOVSKI: Can we go to that now. I think that starts at paragraph 119 of your statement. Could you describe what happened?

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MR McKAY: So there seemed to have been a campaign by the CFMEU at the time around heat stress policy or heat policy, and BMD was one of the companies that they were pursuing in this campaign. There'd been an incident on a BMD site that the CFMEU were attributing to heat stress, a worker who had exhibited as unwell, and I think may have - there may have later been a further incident. That - the CFMEU did to BMD essentially what they had been doing to the inspectors. They'd gone and, you know, done some filming and put a post on Facebook calling CFMEU - you know, they've got blood on their hands because of a lack of - you know, they wouldn't accept the CFMEU's heat policy. So quite, you know, potentially defamatory, certainly in the view of BMD, defamatory comments on Facebook about them.

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MR TERNOVSKI: So what happened in response?

MR McKAY: So BMD had written to the regulator and had asked for regulatory action. It had been referred to our assessment services who undertook an assessment. I think they engaged with HBA Legal and BMD about the matter. There was no direct evidence that could be produced. So the argument - the allegation on behalf of BMD was that there was - that this had caused psychosocial harm to employees of BMD. There could be - there was found to be no evidence of any employee who did suffer psychosocial harm. I think they tried to encourage BMD to bring forward that evidence. They were unable or unwilling to do so, and so it was closed out as, you know, not being a matter where we would take regulatory action.

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MR TERNOVSKI: I think in your statement you refer to the part of the issue as being that the complaint came through the lawyers rather than from the workers?

MR McKAY: That - well, that it - not so much that it came from the lawyers but that there was - that they were unable to identify any employee who had had their psychosocial safety affected by the posts.

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MR TERNOVSKI: Did the posts identify any individual employees?

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MR McKAY: From memory, they - I can't recall that they did. I think it was a more general, you know, filming of the site as opposed to BMD officials. From memory, but I could be wrong.

MR TERNOVSKI: Did OIR take any action in response as it concerns the CFMEU in the end?

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5 **MR McKAY:** So we did take some - we did make a response to that. So as well as the response to HBA Legal on behalf of BMD, the general approach we were taking with these psychosocial claims at the time was that we didn't want to - if we got engaged in every psychosocial claim, we would be swamped. And so we were trying to take a risk-based approach. The response here was to write to the CFMEU, as we would to any other person in this circumstance, and to say, "These matters have been raised. We've not taken regulatory action, but we do remind you of your obligations under the psychosocial hazards code of practice."

10 **MR TERNOVSKI:** Can I take you to PMK-26, which is on page 128. Is that the letter that the OIR sent in response -

15 **MR McKAY:** It is.

MR TERNOVSKI: - to the incident with the CFMEU?

MR McKAY: Yes.

20 **MR TERNOVSKI:** Can I ask you just to read that page to yourself.

MR McKAY: Yes.

25 **MR TERNOVSKI:** Looks like a pretty bland letter, wouldn't you say?

MR McKAY: Yes.

30 **MR TERNOVSKI:** The only accusation that's made against the CFMEU on my reading of it is the CFMEU "may not have fulfilled" its obligation under the psychosocial hazards code of practice "because the existing systems and procedures may not have been adhered to"?

MR McKAY: Yes.

35 **MR TERNOVSKI:** Is that the extent of the allegation?

MR McKAY: That's the extent of it.

40 **MR TERNOVSKI:** How did the union respond to that?

45 **MR McKAY:** So we knew that there would be a response when that came, and I was waiting for a phone call, and it did come. So I got a phone call from Mr Ravbar, who I think had Mr Pauls present with him on speakerphone, and he essentially berated me for sending the letter, demanded that I rescind it, indicated that if I failed to rescind it, it would be World War III between the CFMEU and OIR.

MR TERNOVSKI: Just pausing there, was those actual words used: World War III?

MR McKAY: They were actual words, yes.

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MR TERNOVSKI: Continue.

MR McKAY: We - so - and his - the view he had taken of the letter was, and I think his actual words included, you know, "You've cast aspersions on us, and that's so fucked." That - words to the effect that the CFMEU had pioneered the psychosocial code of practice; they'd been at the forefront of this. To now be accused by the regulator of this was wrong. That BMD would use this letter against them. He said - I think he said words to the effect that, "They'll take this letter to Sally Stannard, the director-general of Transport and Main Roads, and tell her that we've been found in breach of the psychosocial code. They'll use it against us." And, you know, and it had to be withdrawn.

My response to that was to say to him that, "The letter does not do what you say it does. It doesn't say what you say it does." And to your point earlier, it is a standard letter that we send on all of these occasions. There's no finding been made here about the CFMEU. We are simply reminding the CFMEU of its obligations under the psychosocial code of practice, and we do that on every other occasion. That I'm not going to rescind it. That if it is not clear to him that we haven't made a finding, then I am happy to clarify that now in this conversation. "If that's insufficient," I said, "I'm happy to clarify that in writing to you, to clarify that we haven't made a finding, but I am not rescinding the letter."

MR TERNOVSKI: What did Mr Ravbar - did Mr Ravbar accept that response?

MR McKAY: No, no. This conversation batted back and forth in the same way for quite some time. He indicated that he'd make a complaint to Mr Graham Fraine, my director-general, about me and the fact that the letter had been sent, the fact that I wouldn't rescind the letter.

MR TERNOVSKI: What was the tone? What was Mr Ravbar's tone and manner?

MR McKAY: Angry and aggressive.

MR TERNOVSKI: Did Mr Ravbar make good on his threat to make a complaint to Mr Fraine?

MR McKAY: He certainly spoke to Mr Fraine. I don't know whether he made a formal written complaint to him, but he certainly spoke to him.

MR TERNOVSKI: And what action was taken by Mr Fraine?

5 **MR McKAY:** None. Mr Fraine and I spoke about it. He knew it was coming. I'd pre-warned him, I think, even before we sent the letter to let him know that I was sending the letter and that I did expect that it would provoke a response from Mr Ravbar.

10 **MR TERNOVSKI:** Can I now take you to the Queens Wharf Casino project incident that you describe starting in paragraph 130 onwards. Could you describe that incident for the Commissioner?

15 **MR McKAY:** So a notification had been received of a serious incident through the assessment services area. I understand that significant issue was a concrete pump blowout on I think it was the 57th floor or thereabouts of the development that is the Queens Wharf Casino, now the Star Casino, that something had happened to cause this blowout. Mr Ross was allocated to attend by the assessment services.

20 **MR TERNOVSKI:** And did he attend?

MR McKAY: He attended, and he attended quite promptly.

MR TERNOVSKI: And what happened when he attended, as far as you know?

25 **MR McKAY:** So when he attended, he went up to the floor where this occurred, which I think was the 57th, or thereabouts, floor of the building. He started his inspection. As he started his inspection, he noticed that Mr Vonhoff from the CFMEU and Mr Kurt Pauls from the CFMEU were both present on the site.

30 **MR TERNOVSKI:** Just pausing there, is Mr Vonhoff the person that was referred to in the cease-unsafe-work notice?

35 **MR McKAY:** Mr Vonhoff is that person, the person who videos inspectors and - that are then doctored and put on the Facebook page, yes.

COMMISSIONER: I didn't ask you about Mr Vonhoff yesterday, Mr O'Grady. Is he still employed by the union?

40 **MR O'GRADY:** Yes, he is, Commissioner.

MR TERNOVSKI: I interrupted you, Mr McKay. Please continue.

45 **MR McKAY:** Okay, so he noticed that they were there. They approached him and started badgering him with questions. He then said to them, "Look, if you leave me alone, I can complete this" - my words, not his: "If you leave me alone, I can complete this inspection. But if you're going to accompany me, then

we have a policy, and that policy is that there should be two inspectors on the site when the union is present. So you can either leave me to do my job unaccompanied or I'm going to leave and come back with a second inspector."

5 **MR TERNOVSKI:** Just pausing there, why was Mr Ross there alone without a second inspector?

MR McKAY: It is unfortunate that it happened. I suspect it's because the notification was made by the PCBU and it wouldn't have been known that union officials were on site necessarily, or wouldn't have been disclosed and/or it wouldn't have necessarily been assumed by the people doing the triaging that the union was present, bearing in mind Mr Pauls is not - was not an entry permit holder either, so he'd obviously been invited on to the site by Multiplex.

15 **COMMISSIONER:** Just remind me what a PCBU is again? Person carrying out -

MR McKAY: Person conducting a business or undertaking.

20 **COMMISSIONER:** A business or undertaking. Thank you.

MR TERNOVSKI: And that was Multiplex in this case?

MR McKAY: Multiplex was the person conducting the business or undertaking, yes.

MR TERNOVSKI: So when Mr Ross communicated that to the officials, what did they do?

30 **MR McKAY:** They continued to badger him with a whole range of questions. They, you know, wouldn't leave him alone. They wouldn't allow him to complete his work unaccompanied. And so that's the point at which Mr Ross I think approached the Multiplex supervisor on that floor, advised them that he needed to comply with the department's policy around two inspectors given the union's presence, that he would leave and come back with another inspector. In fact, he had, I think, while he was there made the phone call back to base to get another inspector to be able to accompany him and indicated that he would put a non-disturbance notice on the site to preserve the evidence and to ensure there was no further risk before he exited.

40 **MR TERNOVSKI:** What does a non-disturbance notice do?

MR McKAY: It means that, as the wording says, no one is allowed to touch anything on that site. So it's to preserve the site as it was to allow for a proper inspection to occur.

MR TERNOVSKI: And did Mr Ross leave following that?

MR McKAY: He did, yes.

MR TERNOVSKI: What did the union officials do?

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MR McKAY: So Mr Ross advised them that this was the case. He asked for the Multiplex staff to facilitate his exit. They called the hoist. And while he was waiting for the hoist, I think he finished his paperwork around the non-disturbance notice. The CFMEU officials, while he was trying to do that, continued to badger him, ask him questions. He kept saying, "I'm not going to answer your questions. I'm going to come back with a second inspector. This is our policy." They kept asking him questions: "Why are you walking away? Why won't you stay and do your job?" Words to that effect. When the hoist arrived, Mr Ross was shown into the hoist by the Multiplex employee. The door was then held open for others, including Mr Vonhoff and Mr Pauls, and a whole host of other employees clad in CFMEU-branded gear got in the lift. I would think at least 12 to 15 people in the - sorry, in the hoist with Mr Ross. Went to the ground, and he then exited the site.

20 As he was exiting the site, he was continuing to be filmed, so he had his body-worn camera on, as did Pauls and Vonhoff, I understand. As he was leaving and as he got towards the exit of the Multiplex site, there was a range of questions being thrown at him by, I think, Mr Vonhoff about, "James, why are you leaving this site? James Ross, why aren't you doing your job? James Ross, why are you walking away?" They followed him across the scramble crossing at George Street, corner of George and Margaret Street, and then followed him two blocks down the street as he went towards his car, all the time filming him, all the time asking these questions. "James Ross, why are you walking away? James Ross, why aren't you doing your job?"

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MR TERNOVSKI: Just pausing there, you annex to your statement as attachment PMK-29 the body-cam footage of Mr Ross. It's not apparent from the footage that he's being followed. Have you seen that footage?

35 **MR McKAY:** Yes. Yes.

MR TERNOVSKI: So why do you say he was followed?

40 **MR McKAY:** Because I also saw the footage that was edited and placed on the CFMEU's Facebook site.

MR TERNOVSKI: Where did that footage come from?

45 **MR McKAY:** From - I'm assuming came from the body-worn camera of either Mr Vonhoff or Mr Pauls.

MR TERNOVSKI: And did you say that footage was posted?

MR McKAY: That was posted on the Facebook site of the CFMEU to a soundtrack of Craig David "I'm Walking Away", and with the commentary being made by Mr Vonhoff down the street.

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MR TERNOVSKI: Was there any - other than the video itself, was there any commentary around that video?

MR McKAY: There was. I can't recall what that commentary was other than, you know, it was, you know, things like, "Typical WHSQ." I don't think there was anything - I don't think I can recall seeing anything personalised to Mr Ross, but there may have been, but it didn't strike me at the time. But it certainly was the usual commentary around typical WHS inspectors. Incompetent. Won't do their job.

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MR TERNOVSKI: Was Mr Ross identified in the posts?

MR McKAY: Yes.

MR TERNOVSKI: What happened -

MR McKAY: Well, that was, in fact, the purpose of, you know, Mr Vonhoff and Mr Pauls walking behind at a far enough distance that they could capture Mr Ross. I mean, Mr Ross is - has quite a unique physical presence. He's a large, strong man, and so it's obvious to anyone who knows inspectors that this would be James Ross, but to remove any doubt you've constantly got these comments on the Facebook feed of, "James Ross, why are you walking away? James Ross, why won't you do your job?" For two blocks down the street.

MR TERNOVSKI: What happened to Mr Ross following this incident?

MR McKAY: So we supported Mr Ross, and he indicated that he wanted a break from working in that construction space, and we worked with him and found him a transfer to another position where he was unlikely to encounter the CFMEU.

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MR TERNOVSKI: Did he say why he wanted to take a break from the construction space?

MR McKAY: Because of the harassment and bullying from that incident.

MR TERNOVSKI: You've described what happened to Mr Ross at this incident. Obviously, you were not there. What is the source of your information about what happened?

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MR McKAY: The body-worn camera footage from Mr Ross that's attached, what I saw on Facebook, and then the debrief that took place with Mr Ross after he returned to the office following that inspection.

5 **MR TERNOVSKI:** Did you consider that Mr Ross acted appropriately?

MR McKAY: Absolutely. He, on that day and to this day, has my complete support for everything he did. I think he acted with the utmost professionalism.

10 **MR TERNOVSKI:** Did you receive any complaints about this incident?

MR McKAY: I did, yes.

MR TERNOVSKI: From?

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MR McKAY: From Mr Pauls.

MR TERNOVSKI: And what did Mr Pauls say?

20 **MR McKAY:** So there were a couple of complaints about this matter from Mr Pauls, and then there was a very, very similar complaint from Multiplex. The complaint from Mr Pauls, I think, either that afternoon or the following day was, you know, that he'd failed to do his job properly, that he was there; he should have continued to do the work. And then there was a subsequent
25 complaint which I set out when I talk about the series of complaints that - formal complaints Mr Pauls was making around non-disturbance notices and the like. And there was a complaint from Multiplex made to us in very, very similar terms to the terms used by Mr Pauls in his complaint.

30 I spoke to Mr Pauls on the phone about his complaint either on the day that I received it or the following day to let him know that I believed Mr Ross acted entirely appropriately; he applied the department's policy appropriately and effectively. He issued the notice. He did everything that he could in the circumstances. He'd given them the opportunity to allow him to continue to do
35 the work. They had chosen not to accept that, and that - I think I made a comment in my reply that Mr Ross has my full support.

MR TERNOVSKI: What did Mr Pauls say?

40 **MR McKAY:** He didn't accept that. He didn't accept that Mr Ross had done the right thing. He wanted to know why it was that we'd only sent one inspector.

MR TERNOVSKI: Was there any discussion about the Facebook, the video
45 post?

MR McKAY: Yes, yes.

MR TERNOVSKI: What did you say?

MR McKAY: He should take down the posts. They're disgraceful.

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MR TERNOVSKI: And what did Mr Pauls say?

MR McKAY: He said - I said, "You should take this down and you should take down, you know, all of the others as well. It's a disgrace." He said, "I'll take that up with Michael Ravbar, but I doubt that he's going to want to do anything."

10

MR TERNOVSKI: And was the post about Mr Ross, in fact, removed?

MR McKAY: Not at that time, no. And not for some time afterwards.

15

MR TERNOVSKI: Now, you said Mr Pauls asked you why only one inspector was sent?

MR McKAY: Yes.

20

MR TERNOVSKI: Did you do anything in response to that?

MR McKAY: So in response to that, we - I think I mentioned earlier that's where we clarified that we would assume that any site like the Queens Wharf development, you had to assume there would be union presence, and so the two-up policy must apply. Regardless of who the notifier is, what the issue is, what the circumstances are, always send - and I think we said that should be for those sites where we knew there was active union campaigns happening, so Queens Wharf, any Cross River Rail site, and I think Coomera Connector, a civil construction - Transport and Main Roads construction project at the northern end of the Gold Coast was another one where we said you had to assume and therefore send two inspectors.

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30

MR TERNOVSKI: Was this new policy documented in writing?

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MR McKAY: I - my recollection is I put that in writing to - it would have been Ms Ozolins at the time, and I - my recollection is that that was then also put in writing out to the assessment services and to regional directors. But I don't have access to that information, I'm sorry.

40

MR TERNOVSKI: So just in terms of the - going back to the two-inspector policy, if I - do I understand your evidence correctly that there were basically four iterations of that policy? There was a version introduced before Ms Burgess modified it?

45

MR McKAY: Yes.

MR TERNOVSKI: Then Ms Burgess modified it?

MR McKAY: Yes.

5

MR TERNOVSKI: Or removed it?

MR McKAY: Modified, yes.

10 **MR TERNOVSKI:** Then you amended the policy in response to the provisional improvement notice, to effectively reinstitute it -

MR McKAY: Correct.

15 **MR TERNOVSKI:** - for right-of-entry disputes?

MR McKAY: Yes.

20 **MR TERNOVSKI:** And then, following the James Ross incident, you extended it further to sites known when union presence was expected?

MR McKAY: Yes.

25 **MR TERNOVSKI:** Even if that wasn't a union notification?

MR McKAY: Absolutely, yes. And regardless of the nature of the notification. Whether it's for a right-of-entry matter, or whatever, it didn't matter. If it was a site that we had any suspicion that the union might be present, we had to assume two inspectors.

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MR TERNOVSKI: Commissioner, this is a convenient time.

COMMISSIONER: Very well. Thank you. We'll adjourn till 2 pm.

35 <THE HEARING ADJOURNED AT 1.00 pm

<THE HEARING RESUMED AT 2.00 pm

40 **COMMISSIONER:** Mr Ternovski.

MR TERNOVSKI: Mr McKay, can I now move to the topic of Helen Burgess. Now, as I understand your evidence, when you started Ms Burgess was no longer in the role where she had control over the construction inspectors?

45 **MR McKAY:** That's correct.

MR TERNOVSKI: What role was she in?

MR McKAY: I can't recall the title of the role, but she was in essentially a special projects role at her existing level where she was managing advice on - on major campaigns, for example.

5

MR TERNOVSKI: Did she have any inspectors reporting to her?

MR McKAY: I think she had - she might have had two or thereabouts inspectors reporting to her.

10

MR TERNOVSKI: And was that a permanent position or was it a temporary transfer?

MR McKAY: Temporary.

15

MR TERNOVSKI: Now, at paragraph 167 of your statement, you refer to requests from Sarina Wise to move Ms Burgess out of her team.

MR McKAY: Yes.

20

MR TERNOVSKI: What was the basis of Ms Wise's request?

MR McKAY: So I think to the same extent that I had concerns about Ms Burgess, Ms Wise did as well and felt that her continued presence in construction and field services was a distraction and was a source of tension for other inspectors who feared that she might return to a position where she had control over the allocation of inspectors.

25

MR TERNOVSKI: Did you agree to that request?

30

MR McKAY: I agreed that that's what we should do and we just had to find the right place to put her, but at the time that Ms Wise did that, there really was nowhere else I could put her, and we were working towards what a solution could be.

35

MR TERNOVSKI: Why wasn't there another place you could put her?

MR McKAY: So if I think of the other areas within Work Health and Safety, the workplace engagement and policy services under Ms Fox was one option where I could potentially have placed her. I had serious concerns about doing that. So that's one of the - that's probably the next largest area of the Work Health and Safety Queensland in terms of position numbers. My concerns around that were multiple. One is that the work that that group was doing in large part at that time was legislative change arising out of a review of the Work Health and Safety Act that had been completed not long before that. The development of those legislative responses were very sensitive, and there were sensitive negotiations with a whole range of stakeholders: industry, the BTG

40

45

and the rest of the union movement. And I didn't want Helen Burgess anywhere near that, because I didn't trust her. The other is that -

5 MR TERNOVSKI: Sorry, just pausing there. You say you didn't trust her. Can you elaborate on what was your actual concern? What happened?

10 MR McKAY: Oh, that - anything that - any information that she might come across - the development of legislation goes through Cabinet and attracts Cabinet confidentiality. My concern would be that Ms Burgess would pass that information to the CFMEU if she had access to that.

MR TERNOVSKI: She would leak?

15 MR McKAY: Yes.

MR TERNOVSKI: What was the basis of your concern that she might leak?

20 MR McKAY: We knew that there was a relationship between her and the CFMEU.

MR TERNOVSKI: Were you aware of any instances of leaking having occurred?

25 MR McKAY: Well, I was aware that - not of - not of leaking occurring but of her engaging with the CFMEU inappropriately, such as the matter that she was disciplined for over the exchanging of information via her personal mobile phone. So that was one of the concerns.

30 MR TERNOVSKI: Yes, go on.

35 MR McKAY: And the next of those were if I was worried about having Helen Burgess report to Sarina Wise, putting her with Andrea Fox really would have disturbed me. We knew that Andrea Fox was very much in the gun sights of Mr Ravbar and the CFMEU generally. So Mr Ravbar had made it abundantly clear to me that he didn't trust Ms Fox. He blamed her for a whole range of things that had not translated into legislation that he wanted translated into legislation, particularly changes to industrial manslaughter laws that the CFMEU had attempted to prosecute.

40 There was - you know, his - what I took to be his feelings towards Ms Fox were almost of a hatred of her. I did not want to put someone who I thought was an outstanding operator in her role and doing a really tough job - the pressure on this team was significant. We were pushing through a lot of legislative change to the Electrical Safety Act, to the Work Health and Safety Act and related
45 Acts. That was changing on an almost daily basis. The pressure on that team was immense.

5 If I'd have put Ms Burgess into that team and put the additional burden on Ms
Fox of having to supervise Ms Burgess, because Ms Burgess did require close
supervision, and, you know, we'd put in some additional support behind Ms
Wise to allow for that additional supervision, I was worried that, one, it would
break Ms Fox, two, it would break the team within that area, and that would
distract us from, you know, really high-priority, high-value work that we were
doing to amend the legislation.

10 MR TERNOVSKI: Did Mr - sorry.

MR McKAY: And that was in that unit, and then I had concerns about other
units as well, which I can elaborate if and when you're ready. I don't want to
jump ahead of you.

15 MR TERNOVSKI: Go ahead.

MR McKAY: So the other unit would be the specialised health and safety
services unit. The work in that unit, given - again, the hint is probably in the
title. So most of the people working in that unit have quite specialised
20 qualifications in work health and safety. So you're talking about, you know, the
chief engineer and senior engineers. So people with engineering qualifications,
people doing really technical work to support our enforcement and compliance
arrangements. So developing codes of practice for things like tilt-up and
precast concrete was one that was happening at the time. Regulating the
25 hydrogen industry. So it required people with very specific skill sets. She did
not have any of those skill sets.

Again, it was a unit where it was under pressure, and I didn't think that Ms Fox
would be an appropriate person to be managing Ms Burgess as well, because I
30 didn't think that - I didn't want to put the pressure on her of this additional
burden of managing and closely supervising Ms Burgess. Beyond that, there
really was not anywhere else in OIR that she could perform a useful role. The
most useful role that she could perform, she was performing, and so it was a
matter of whilst we work out the best alternative, let's leave her there, but let's
35 work towards an alternative.

MR TERNOVSKI: Did she ever ask for her old role back?

40 MR McKAY: Yes, she did.

MR TERNOVSKI: What did she say?

MR McKAY: We - there were a couple of times I met with her where she said
45 she couldn't understand why I couldn't just return her to her position, that it
was only a temporary transfer, why couldn't I transfer her back into the role.
She indicated to me that she felt as though she was being disadvantaged because
of the views of a small number of inspectors, I think was her comment at the

time. This was in a meeting between her and I, and I think Ms Ozolins was present at that meeting as an observer, and where I indicated to her that this was not a small number of inspectors who had concerns. The concerns about her were widely held by most if not all inspectors and most if not all people who
5 knew of her in the Office of Industrial Relations.

MR TERNOVSKI: So did she ever go back to her old role?

10 MR McKAY: No.

MR TERNOVSKI: What happened?

15 MR McKAY: Ultimately, I think between Ms Heelan, who succeeded me in the role, and Ms Wise, they found an appropriate role for her to move into, which I think was in specialised health and safety services.

MR TERNOVSKI: Does that new role involve any - or did that new role involve any control over inspectors?

20 MR McKAY: My understanding is that it didn't.

MR TERNOVSKI: Was that deliberate?

25 MR McKAY: Yes, it would have been. Yes.

MR TERNOVSKI: Why is that?

30 MR McKAY: We simply couldn't trust Ms Burgess to be in charge of inspectors, firstly because of this concern we had about the relationship with the CFMEU, but secondly the behaviour she had exhibited towards inspectors as their manager was not what we would expect of a manager.

35 MR TERNOVSKI: Why did you retain her within the OIR? Why didn't you sack her?

40 MR McKAY: I didn't have a basis to - so the - she had been removed from that direct line of conflict role. There were issues about her performance and getting her to do the work that she was assigned and getting her to do it in a timely manner. I had worked with Ms Wise to give her an additional senior human resource officer to work on a whole range of performance and behaviour concerns within the inspectorate, but part of that was to support the supervision of Ms Burgess, to support the performance management of Ms Burgess. But there was nothing that she did that tipped the balance of providing a
45 justification for a disciplinary process to commence under the Public Sector Act.

COMMISSIONER: Do you still hold that view?

5 **MR McKAY:** Based on what I know, yes. There was nothing that she had done - so her performance, she needed to be dragged to the table to do things from time to time, but she eventually got them done. That, in my view, didn't reach the point of being performance that was so unsatisfactory that it went to the heart of the employment contract, nor was there evidence of any behaviour that would warrant disciplinary action.

10 **COMMISSIONER:** 20/20 hindsight's wonderful. Do you think you should have dug a bit deeper?

MR McKAY: Sorry?

15 **COMMISSIONER:** Do you think you should have dug a bit deeper?

MR McKAY: We did. We dug. So we were in - when I say "we", I and the ethical standards unit were in, I would say, almost constant contact with the CCC. We were trying to work with the CCC to understand where they were at.

20 **MR TERNOVSKI:** In relation to Ms Burgess?

MR McKAY: In relation to Ms Burgess. We provided information to support the CCC. There was one area that I did dig into that I thought might provide a basis for some further action which relates to the SEQ Formwork matter that ultimately led to her - to the disciplinary action that I've mentioned in my affidavit that pre-dated my time there. I thought there might have been some similar action or some evidence of other behaviour in relation to SEQ Formwork or other companies, and this relationship between her, Jade Ingham as a member of the board of the QBCC, and the QBCC compliance area. But ultimately my theory about what was happening wasn't played out in the evidence that we could find.

25 **MR McKAY:** We worked closely with the CCC about that. They agreed that that was the case. So we did look for what opportunities there were. We did look to try and get beyond. We did talk to the CCC about making sure that if there was anything that we could do - I also didn't want to be doing anything that the CCC didn't want me to be doing either. So if they were monitoring her, I didn't want to be moving her and putting her in a position where it was - it rendered void or ineffective any monitoring they were doing of her.

30 **COMMISSIONER:** I don't understand that. Why is that a relevant consideration? You've got to manage on organisation. You've got to make sure it performs well. What does it matter if there's a CCC investigation if there's sufficient grounds for you to do something with an employee? I don't understand why you wait for them.

MR McKAY: Well, I don't think there was sufficient grounds to do anything against her as an employee.

COMMISSIONER: I see.

5

MR McKAY: But we were - I was also mindful of anything we could do to support them, to support the CCC, and which might be leaving her where she is so that they could monitor her performance and behaviour, that I didn't want to affect that, because my view at the time was the most likely outcome here is the CCC will find something with their investigative powers that we are not going to find ourselves, and we could rely upon them to do that and to either take the matter on themselves or to refer that back to us to take action.

10

COMMISSIONER: Tell me if I've got your evidence straight, but I thought before lunch you said in relation to the 1300 hotline, one of the things you didn't do, the orthodox - I won't use a pejorative like "right thing", but do the orthodox thing of require the CFMEU to use the hotline was you were concerned about CFMEU reprisals. Was this a factor in relation to your decision about Ms Burgess?

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MR McKAY: No. No.

MR TERNOVSKI: And in fact, if I understand your evidence correctly, you have suffered a CFMEU reprisal from your refusal to put Ms Burgess back, which is that they called you directly?

25

MR McKAY: Yes.

COMMISSIONER: I don't follow that. Sorry, what did you say then? I didn't - what was the reprisal?

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MR TERNOVSKI: That the CFMEU were calling Mr McKay directly after he refused to put Ms Burgess back.

35

COMMISSIONER: About Ms Burgess?

MR TERNOVSKI: No, no, for the notifications.

COMMISSIONER: I see. Sorry, yes, I follow. Sorry.

40

MR TERNOVSKI: Mr McKay, you referred to Ms Burgess' behaviours. What were those behaviours?

MR McKAY: Harassment, bullying of inspectors, to - you know, to attend sites, to write notices where they wouldn't necessarily want to write them.

45

MR TERNOVSKI: And you didn't feel that justified her dismissal?

MR McKAY: That all pre-dated my time there. So those were matters that had been dealt with in the disciplinary investigation that preceded my time so that she was now not in a position where she could do that.

5

MR TERNOVSKI: Because she took -

MR McKAY: So to some extent, I had made a rod - well, we had made a rod for our own back. If we put her back, you know, we could have given her enough rope. But there was significant risk of doing that and not a risk I was prepared to take.

10

MR TERNOVSKI: So in a nutshell - tell me if you think this is fair - you felt you couldn't dismiss her, so you managed her so she could do less damage?

15

MR McKAY: Yes.

MR TERNOVSKI: Have you ever had any conversation with Mr Ravbar about Ms Burgess?

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MR McKAY: Yes.

MR TERNOVSKI: What were those conversations?

MR McKAY: I think there were probably not many, if any, conversations that I did have over that period of about a year whilst in OIR where Mr Ravbar did not mention Ms Burgess and did not mention that - that the solution to all of the problems that lay between the CFMEU and OIR was to simply return Helen Burgess to the role that she was in.

30

MR TERNOVSKI: Can I just pause you there. I think you said there were not many conversations where he - that wasn't said?

MR McKAY: Sorry, double negative. I think in almost every conversation, if not every conversation, Mr Ravbar's view was the answer to the problem, whatever the problem was, was return Helen Burgess to the role.

35

MR TERNOVSKI: To do - did he say to do what?

MR McKAY: So there were times where he said, "Give her her own inspectors. Put her back in charge of inspectors. Let her sort out the inspectors." That was the tenor of those conversations.

40

MR TERNOVSKI: Did Mr Ravbar say what he wanted her to do with those inspectors once she was in charge of them?

45

MR McKAY: Well, one of those, on one occasion he said something like - I don't think the term was "sort them out", but it was words to those - effect. I think it's in my notes somewhere, but -

5 **MR TERNOVSKI:** If it assists, Mr McKay, you set out that conversation at paragraph 160. I think the words you used there was "brought back into line."

MR McKAY: Brought back into line, yes.

10 **MR TERNOVSKI:** Which is similar to what you just said.

MR McKAY: Yeah, "bring them back into line" was the words that he used.

15 **MR TERNOVSKI:** What did you understand that to mean, bringing them back into line?

MR McKAY: To have them, you know, performing in the way in which the CFMEU wanted them to perform.

20 **MR TERNOVSKI:** As far as you know, did Mr Ravbar ever speak to Minister Grace about Ms Burgess?

MR McKAY: Yes, he did.

25 **MR TERNOVSKI:** And when was that?

30 **MR McKAY:** So there was a meeting that was held with the BTG unions and myself and Minister Grace and officers from her office. It was after a significant incident. It was either the fall from heights at the Cross River Rail Boggo Road site or it was the West End CS Developments fatality. I can't recall which. But at that time in the meeting, Mr Ravbar said words to the effect of, you know, "You should return Helen to the role." Helen Burgess to the role. And I think the Minister's response was essentially, "Look, Peter's managing this. He's - we've got to let him deal with it."

35 **MR TERNOVSKI:** Did you have any conversations with Mr Pauls about Ms Burgess?

40 **MR McKAY:** Yes.

MR TERNOVSKI: What were those conversations?

45 **MR McKAY:** So there were a number of conversations. One of those was at the meeting that we talked about earlier with the BTG around the construction hotline.

COMMISSIONER: The September 23 meeting, was that?

MR McKAY: Yes, I think about the 25th or something, was it, of September?

COMMISSIONER: Yes.

5

MR McKAY: I - from memory, that was part of the conversation there, where he -

COMMISSIONER: Yes, 25th, you're right.

10

MR McKAY: Yep. Where he said to return Helen Burgess to the role, and if I didn't return Helen Burgess to the role, then maybe I'm not the man for the job. I can recall another conversation I had with him, and I think it was following that fall from heights at the Boggo Road Cross River Rail. There was a safety reset, as it was called at the time, on the Cross River Rail projects, and Mr Pauls came to see me to express some concerns about how the safety reset was occurring, and at the conclusion of that meeting he talked about, you know, "If Helen was there, this wouldn't have been a problem. If Helen was there, Helen would be managing this. You should return Helen to the job." And the comment that he made at the end of that, I think as we were getting up to walk out of the meeting room, was, "Helen is a friend of the CFMEU."

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MR TERNOVSKI: Did you respond to that comment?

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MR McKAY: I don't think I did at the time.

MR TERNOVSKI: Did you respond to it at some subsequent time?

MR McKAY: I did later, yes.

30

MR TERNOVSKI: Go on.

MR McKAY: So I think towards the end of my tenure at OIR, I said to Mr Pauls - and I can't recall what the context of my meeting with him was, I'm sorry. But at the conclusion of that meeting, and I had said that I was leaving, I said, "You told me at an earlier time that Ms Burgess is a friend of the CFMEU's. If that's the case, then you should find her a job somewhere out of here."

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MR TERNOVSKI: What was his response?

MR McKAY: It was something like, "Yeah, we'll look after her," or words to that effect.

45

MR TERNOVSKI: Can I now take you to a different topic, which is your meetings with Minister Grace and her office. Did you have - you've described, I

think, these two meetings with Minister Grace. How regularly did you meet with her?

5 **MR McKAY:** So there would be - each week, the director-general of the department - and this happens in most departments, I think - meets with the minister to - for about an hour to run through key issues for the week. And I think during the period that we were in the Department of Education and Mr De'Ath was the director-general, I think I attended most of those weekly meetings with Minister Grace, and I would provide an update on where things
10 were at in WHSQ - sorry, in OIR - or would be there because there might be something on the Cabinet forward timetable, because we were amending a lot of legislation, so there was quite regularly something on the Cabinet forward timetable I would give an update on. And then each Friday morning I had a meeting with the minister's advisers. Minister Grace was not present at those
15 meetings. So about once a week but not every week with Minister Grace and every week with her advisers.

COMMISSIONER: Who were her advisers at that stage?

20 **MR McKAY:** So her chief of staff was Ms Caitlin Doherty, and her industrial relations adviser was Ms Lauren Booth.

COMMISSIONER: And those are the advisers that you met with each Friday morning?

25 **MR McKAY:** Yes. And there was another adviser whose surname is escaping me at the moment. His name was Sam, and I would have to come back to you with detail of that, I'm sorry.

30 **COMMISSIONER:** Do you know what Sam's title was?

MR McKAY: He was a - so Ms Booth was senior adviser, so I think his title was just adviser.

35 **COMMISSIONER:** So every Friday morning with the three advisers and almost every week with Minister Grace?

40 **MR McKAY:** Yes, but I would have to say often the chief of staff Ms Doherty was not available for those meetings. So it was sometimes all three, but always probably the adviser and the senior adviser.

COMMISSIONER: And the meetings with Minister Grace were separate to these meetings with the advisers?

45 **MR McKAY:** Yes.

COMMISSIONER: And presumably they sometimes included the chief of staff, sometimes not?

5 **MR McKAY:** The meetings with Minister Grace, I - would have always included the chief of staff. It would be exceptional if it wasn't.

MR TERNOVSKI: In those meetings with Minister Grace, did you ever discuss the bullying and intimidation of inspectors?

10 **MR McKAY:** Yes.

MR TERNOVSKI: What did you - what was discussed?

15 **MR McKAY:** I would give an update on things such as - you know, an update on where things were at with the provisional improvement notice and the processes on the cease-work notice. In some of those meetings we would be doing things like preparation for the annual parliamentary estimates hearings, and the occupational violence towards inspectors and Ms Burgess were always topics raised at parliamentary estimates hearings, and so we would talk about
20 those at that time as well.

MR TERNOVSKI: Just dealing with the inspectors for the moment, what was Minister Grace's response to your updates?

25 **MR McKAY:** She was very supportive of the work that we were doing. She knew that we had to take action. She knew we had to be supportive of the inspectors. She knew the challenge we faced in doing so.

30 **MR TERNOVSKI:** How regularly would this topic come up in your meetings?

MR McKAY: Look, it was probably more sporadic than each week, so I wouldn't say it was each week. I would say that there would have been, around the time of the PIN and around the time of the cease-work notice, that would have been each week while those matters were on foot, and then it would have
35 been when - you know if something had - in particular had occurred.

MR TERNOVSKI: And in relation to Ms Burgess, has Minister Grace said to you anything about Ms Burgess?

40 **MR McKAY:** So, yes, in one of those meetings - and I can't recall what the context was, but Minister Grace made some comment about - well, I think her words were, "That poor woman." And to which I responded, "Well, I need to just say there, Minister, that, you know, that there are significant issues here. As well as what we know through the discipline process, there are other matters
45 that have been referred to the CCC and that are currently under investigation." So I was essentially saying I don't have any great sympathy. I think Minister Grace's intention was to say - I think she clarified to say, "Yeah, I get that, but I

feel for her that she has to go through this every year at estimates and have her name dragged through the media." So it was, in some ways, you know, an empathy towards her for that situation.

5 **MR TERNOVSKI:** Can I now move to a different topic. Mr McKay, Ms Wise gave some evidence yesterday about a report by a Mr Quinn, a review of WHSQ, being prepared around about the time of your departure.

MR McKAY: Yes.

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MR TERNOVSKI: Are you aware of that report?

MR McKAY: I am.

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MR TERNOVSKI: Can you tell the Commissioner about it?

MR McKAY: So following the fatality at the CS Development site at West End, there was a rally and march on Parliament by the CFMEU, attended by quite a number of CFMEU, ETU and Plumbers' Union members. At the conclusion of that rally, Mr Ravbar met, along with, I think, relatives of the deceased worker - met with the then-Premier Palaszczuk, Minister Grace and I believe Ms Van Alphen, the deputy chief of staff that I mentioned earlier, Premier's deputy chief of staff, and Ms Rachel Hunter, director of the Department of Premier and Cabinet. At that meeting there were a range of things put, and some of those were around the support that might be made available and additional support that might be made available for the deceased worker's mother in particular to support her.

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25

But there was also discussion about two things that were on the CFMEU's agenda, and one was the CFMEU's claims around the way in which industrial manslaughter provisions should be framed, because we were amending the Act at the time to make changes to industrial manslaughter, and the CFMEU's view was at odds with everybody else's, including the rest of the union movement. And the second was - and this had been the rallying cry of the march - was to have a review of the regulator, to sack the regulator and review them. And so that had been put to then-Premier Palaszczuk, Minister Grace and others. Shortly after that meeting, in discussions with the minister's adviser -

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COMMISSIONER: Review the regulator means sack you, does it?

MR McKAY: I'm assuming so.

COMMISSIONER: Ms Wise wasn't employed by this stage. She didn't start till October, so it couldn't be directed at her.

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MR McKAY: No, no, I'm assuming - I'm the regulator, so I'm assuming it was me. Excuse me.

COMMISSIONER: And Ms Ozolins was just a temporary person.

5 **MR McKAY:** That's right. She'd gone back into her substantive role in the electrical safety office by that stage. So then I attended a meeting I think either that afternoon or the following day, I think it was that afternoon, with Minister Grace, Ms Van Alphen and the minister's office, who gave a debrief on what had happened in the meeting with the CFMEU and the members of the family and discussion about what do we do. So we talked about, in terms of industrial
10 manslaughter, the way we might deal with that claim. Sorry, we talked about the support that we might make available, and actually Rachel Hunter was at the meeting as well, because Rachel Hunter was going to work with one of the other directors-general to make sure there was support available, family support available -

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COMMISSIONER: Ms Hunter is the director-general of Premier and Cabinet?

MR McKAY: Correct. We then talked about the industrial manslaughter provisions, and we thought that the way in which we might deal with that would
20 be to recommend that the independent work health and safety prosecutor undertake his own desktop review of the provisions, so the CFMEU provisions and the provisions that were being proposed, and to make some assessment of those. And then the third element was this WHSQ review, and it wasn't clear where that was going to land, whether that was going to happen.

25

Ultimately, I think, within the days that followed that, I had a conversation with Minister Grace's office, who suggested that I start work on preparing a draft terms of reference for a review of WHSQ, which I had already started working on. And from there I know that the draft terms of reference that we prepared
30 were provided to a small number of stakeholders, and I know that the CFMEU and other unions were provided with copies of that. Some amendments were made as a result of that feedback by the minister's office, and then there was a discussion about who might undertake the review.

35 And I understood from discussions with Ms Booth that she had been provided a small list of names by Mr Pauls of the CFMEU of people who might be acceptable to undertake the review. And one of those people was Greg Quinn, who was a former executive of Hutchinson's Builders. Ultimately, Mr Quinn was commissioned to undertake that review by Minister Grace, and he
40 undertook the review.

MR TERNOVSKI: You said a list of people that were acceptable to undertake the review. Acceptable to whom?

45 **MR McKAY:** To the CFMEU.

MR TERNOVSKI: In your view, was Mr Greg Quinn independent?

MR McKAY: No. He was still handing out his business card with Hutchies on it to people that he was interviewing for the review, so he was a builder that we were regulating.

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MR TERNOVSKI: Do you know if he had any connection to the CFMEU?

MR McKAY: He had indicated that he had a relationship with the CFMEU, that he had - you know, he knew how to have a productive relationship with the CFMEU. I didn't assume that that was an inappropriate relationship, but I did have concerns about his conflict of interest.

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MR TERNOVSKI: Being the Hutchies?

MR McKAY: Being that he was at Hutchies, yes.

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MR TERNOVSKI: And did he ever produce a report or draft report?

MR McKAY: He produced a draft report, yes.

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MR TERNOVSKI: Have you seen it?

MR McKAY: I have, yes.

MR TERNOVSKI: What did it say, in summary?

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MR McKAY: I - so I contacted Mr - so we had little involvement in the review process, because it was a review of us. That review process was managed by another part of - we were then in the Department of State Development, Infrastructure and Planning. Mr Quinn did give me a draft of the report to look at, and I indicated that I thought it was quite appalling and needed significant rework.

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MR TERNOVSKI: Appalling in what way, or why?

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MR McKAY: So the first concern I had was it had what was - I would describe as a spirited defence of the CFMEU and their behaviour on work sites and blaming this on Work Health and Safety inspectors, and I think the words used were of the nature of "inspectors doing anything possible to thwart the efforts and legitimate role of the CFMEU". They're probably not exact words, Commissioner, but I think the notion of thwarting the efforts of the CFMEU was certainly in the report.

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MR TERNOVSKI: Did you agree with that assessment?

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MR McKAY: Not at all.

MR TERNOVSKI: Why not?

MR McKAY: Because the role that the CFMEU were playing was not a legitimate role in the way in which they were treating inspectors, and I had no evidence - and, in fact, I said to Mr Quinn, "If you have evidence that these inspectors are thwarting the efforts of people who have an entitlement to do something under the Work Health and Safety Act, then you ought to refer that to the CCC, because that's misconduct." And that's the strength of feeling I had about this report. And it ultimately had a series of recommendations that I thought were fairly folksy. I didn't think that they had a place - they might have worked in a construction company on a building site, but that they would have provided a significant burden on managers and leaders in OIR and distracted them from doing their work.

MR TERNOVSKI: You said the report was appalling. Were there other findings or recommendations you disagreed with?

MR McKAY: So he was saying - so this is a report that he was writing May, I think. So I think it was May he gave me the draft.

MR TERNOVSKI: May 2024, was it?

MR McKAY: May 2024. So commissioned, I think, in February 2024, handing the draft report to me in May 2024, and described the inspectorate as being dysfunctional. Now, that certainly was not a view that I - I didn't have that view from the moment I walked in, quite frankly, in June 2023. I didn't feel that there was dysfunction, and it certainly wasn't the view of Ms Wise, who had direct control over this group, that there was dysfunction in May 2024. He'd simply listened to, you know, some disgruntled inspectors and disgruntled stakeholders, particularly the CFMEU, I suspect.

MR TERNOVSKI: Was there ever a final report?

MR McKAY: I don't believe a final report was ever either handed to government or released by government. I'm not sure. I was gone by that stage.

MR TERNOVSKI: At paragraph 67 through to 100 of your statement, you describe Mr Pauls making a series of formal complaints. In the interests of time, I don't - I'm not going to take you through them individually but just going to ask you some collective questions about them. Firstly, the wording "formal complaint": where does that come from?

MR McKAY: So I - we were interested when we saw that. The formal complaint and then the #001 being the first one.

MR TERNOVSKI: Sorry, can you explain that?

5 **MR McKAY:** So they were headed in the subject - so they came by email. The subject title was in - I think in caps "Formal Complaint, #001", and so I think we probably all had a bit of a chuckle at the time about the fact that, "Here we go, we're going to have a series of these come in. He's lined himself up to have 999 of these, if he can get to that himself and, you know, was I think trying to give this view that there was, you know, dysfunction within the - within the WHSQ.

10 **MR TERNOVSKI:** As far as you were concerned, what was the significance of the numbering #001?

MR McKAY: To say that these are piling up, you know, there's one after the other. These are going to continue.

15 **MR TERNOVSKI:** And who were these complaints sent to, the emails that you refer to?

MR McKAY: They were sent to me.

20 **MR TERNOVSKI:** Anyone else?

MR McKAY: Yes, they were copied to a whole range of people. They were copied to Michael Ravbar; Kane Lowth, who I think had taken over as the president of the Queensland branch of the construction section of the CFMEU; 25 and Mick Robinson, who was the North Queensland organiser for the CFMEU; and copied to the Office of the Minister for Industrial relations.

MR TERNOVSKI: What about your boss, the director-general?

30 **MR McKAY:** Sorry, and to the - yes, to the director-general, who I think by that stage was - it was still Mr De'Ath by the time they started coming in.

MR TERNOVSKI: And from your point of view, what was the purpose of these complaints? 35

MR McKAY: I think to show - you know, to start to put pressure on me and then on Mr De'Ath and on the Minister to do something about WHSQ.

40 **MR TERNOVSKI:** Do what?

MR McKAY: You know, to get to the point where the CFMEU had the control that they wanted over the regulator, or to move people out or, you know, to move Ms Burgess back into her role.

45 **MR TERNOVSKI:** Did you consider that - let me go back one step, Mr McKay. How many of these formal complaints were there?

MR McKAY: I think there ended up being six.

MR TERNOVSKI: Did you consider that any of these complaints raised legitimate substantial issues worthy of being elevated to the Minister's office?

5

MR McKAY: None of them, no. These were all very operational matters, and operational matters are not matters for the Minister.

MR TERNOVSKI: If I can take you to paragraphs 169 and 170 of your statement, you describe there your views about the aims of the CFMEU. Perhaps you can talk to those paragraphs for the Commissioner first, and then I'll ask you some questions about it.

MR McKAY: Yeah, there had certainly been discussion within the executive team, the board of management at OIR, about the behaviour of the CFMEU and what they were trying to do. We - you know, we know - we'd been talking to the Victorian regulator, and, you know, the view was that this is something that the Victorian branch of the CFMEU had tried in respect of the Victorian regulator and had fallen short, and it was apparent that they were probably trying to replicate that here, that the issue was they either wanted to break us or own us.

15

MR TERNOVSKI: Can you explain what you meant by that?

MR McKAY: They either wanted to completely destroy the credibility of OIR, you know, the Work Health and Safety regulator in particular, I suppose, in the eyes of the Parliament, the Minister, the public and, you know, internally within the organisation.

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MR TERNOVSKI: And what was the second option?

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MR McKAY: And - or to simply have us bend to their will.

COMMISSIONER: You said "own us".

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MR TERNOVSKI: Own us, yes.

MR McKAY: Sorry?

COMMISSIONER: You said "own us".

40

MR McKAY: Own us, yes. Not onus, yes.

MR TERNOVSKI: And, Mr McKay, as far as these things are concerned, to destroy - you said "destroy us or own us", what would be the point of destroying, in the sense you've described, the regulator?

45

MR McKAY: Well, I think this is where we thought - you know, the Victorian approach was you destroy the credibility of the regulator and then come in and say, "Well, you need to expand the powers of entry permit holders, HSRs, etcetera, in place of the regulator." So move power from the regulator to the union, essentially.

MR TERNOVSKI: And what makes you say that those were the union's objectives?

MR McKAY: Well - so in terms of the first one, about returning Helen Burgess, it would be that almost without exception, every time I spoke to Michael Ravbar, the answer to the problem was Helen Burgess returning to her role. And regularly when I spoke to Kurt Pauls, the health and safety coordinator, the answer to any of the challenges he was throwing at us was simply to put Helen back and everything goes away. So that's the first one, and the second, at the time, as I mentioned earlier, we were making amendments to the Work Health and Safety Act as a result of the review led by former Deputy President Swan of the QIRC and others.

It talked about the roles of HSRs, and it was trying to - I think one of the things that they were trying to do in that review was to make sure that only HSRs of relevant unions, and only relevant unions, were accessing the sites, so - which would essentially keep the CFMEU out of civil sites, so dealing with this AWU, CFMEU warfare that seemed to be developing. And what the CFMEU was putting in their consultation with us on the changes to the Act was that there should be further enhancements to the powers of HSRs and entry permit holders.

MR TERNOVSKI: And what conclusion - why do you draw inferences from that?

MR McKAY: Well, that fits with my - the conclusion that I'd drawn earlier that this was either - you know, show the lack - drive that lack of confidence issue and then come in and say, "Well, you need to give more power to the HSRs." They were asking for more power for HSRs at this same time that they are marching on Parliament saying that we're all incompetent, that they're writing to ministers saying that we're incompetent, that they're putting posts on Facebook and the website saying that we're incompetent, we lack integrity, etcetera. So I joined those two pieces of information together quite easily, I think.

MR TERNOVSKI: Commissioner, I'm mindful that there's a cross-examination application, so I will - unless you have questions, I will wrap up my questioning here.

COMMISSIONER: Very well. Is it just one application?

MR TERNOVSKI: Yes, Commissioner, as I understand it.

COMMISSIONER: And that's from you, Ms O'Gorman?

5 **MS O'GORMAN:** Yes, Commissioner.

COMMISSIONER: And - I'll just dig up your application, sorry. I've got an application dated 15 April for five paragraphs, and I take it Mr - and it's asking to cross-examine about five aspects of the statement.

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MR TERNOVSKI: Commissioner -

COMMISSIONER: Yes.

15 **MR TERNOVSKI:** - should we ask Mr McKay to be out of the room for this? Are you content for him to be present?

COMMISSIONER: It's really up to Ms O'Gorman. Do you want the witness out of the room?

20

MS O'GORMAN: I don't mind.

COMMISSIONER: I don't think he needs to be, unless you insist, Mr Ternovski.

25

MR TERNOVSKI: No issue from me.

COMMISSIONER: Is there something I'm not aware of?

30 **MR TERNOVSKI:** No, no issue from me.

COMMISSIONER: I take it that the fourth topic, the basis for Mr McKay's views about the aims and actions of the CFMEU as described in paragraphs 169 to 170, is agreed. That's the bit of evidence that the witness has just given. Is that right? That's what you said?

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MR TERNOVSKI: Yes, no opposition to that, Commissioner.

COMMISSIONER: And in relation to the other four issues, what's the position?

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MR TERNOVSKI: We oppose that, Commissioner, on the basis that the proposed cross-examination did appear to necessarily involve putting an alternative version of events to Mr McKay, and Mr Ravbar and Mr Lowth have not complied with the relevant provisions of the Practice Guide Number 4 about how that is to be dealt with. And if I could take you firstly to the application itself, you will see paragraph 2(a), (b), (c), and (e) all concern in summary Mr

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McKay's dealings with Mr Ravbar and their conversations, and you will see at paragraph 5 of the application that it is proposed to cross-examine him for up to one hour. Now, it seems - it's difficult to see how Mr McKay could be cross-examined for that period of time about his dealings with Mr Ravbar without some alternative version being put to him.

COMMISSIONER: Well, shouldn't we hear from Ms O'Gorman about that? I mean, she might - I'll let her explain what her position is. Is that the objection, that there's no alternative version of events? Just remind me what the practice note says, can you?

MR TERNOVSKI: Yes. So, Commissioner, if you go to paragraph 15 of Practice Guide Number 4, you will see there that in the chapeau it says:

"In determining whether a person shall be permitted to cross-examine a witness, the Commissioner may call upon the cross-examiner to (d) satisfy the Commissioner that any alternative version of events that may be put to the witness has been and will become evidence in the Commission."

And then if we go to paragraph 16 of the practice guide:

"Further to paragraph 15 above, applications to cross-examine the witnesses should where possible: be made in writing and accompanied by (iii) if an alternative version of events is to be put to the witness, a sworn statement or statements detailing the alternative version of events to be put to the witness."

And also relevant is paragraph 12(f), Commissioner, which says:

"A cross-examination will be permitted only to the extent that the Commissioner considers it will assist in the task of investigating and reporting on the subject matter of the terms of reference."

Now, I'm in your hands, Commissioner. I can address you further on why in my submission the cross-examination ought not be permitted without - an alternative version ought not be permitted without such alternative version having first been put into evidence. But I'm in your hands as to whether you -

COMMISSIONER: Is it put into evidence or just provided to you? I thought it was a question of efficiency. I didn't think it had to go into evidence, did it?

MR TERNOVSKI: Well, there are those two requirements. It has to be provided and then you have to be satisfied that it has been or will become evidence.

COMMISSIONER: Well, you understand the objection, Ms O'Gorman?

MS O'GORMAN: I do, Commissioner.

COMMISSIONER: And what do you say about it?

5 **MS O'GORMAN:** Well, with respect to the objection, can I start by indicating that it's anticipated on our behalf that Mr Ravbar will be called as a witness in these hearings. On that basis, we anticipate that the Commission will either take or will call for a sworn statement from Mr Ravbar in due course, no doubt addressing all of the matters that it wishes to adduce evidence from Mr Ravbar with respect to. If that is to be the case, then it's further anticipated that part of
10 that evidence might include Mr Ravbar's version of events with respect to interactions that he's had with - including Mr McKay.

If that's to be the case, we submit that it would be of assistance to the Commission firstly to permit some exploration and/or challenge to Mr McKay's
15 recollection of events and/or the characterisation of the conduct that is attributed to Mr Ravbar prior to Mr Ravbar himself then giving evidence about those matters. It is also a matter which is necessary for Mr Ravbar to be afforded procedural fairness in this Commission for him to be able to explore by way of cross-examination in the ordinary course adverse matters deposed to
20 by relevant witnesses, which in this case include Mr McKay.

COMMISSIONER: I don't think there's any issue with that last part that - just dealing with point (a), the - you want to cross-examine Mr McKay about what
25 that he was angry, aggressive, used foul language, F-bombs. He - I don't think there's any problem that you would be entitled to cross-examine Mr McKay about whether or not that actually occurred. The issue's really about fairness to both Mr McKay and to Mr Ravbar that all cards are on the table. This not a criminal trial; it's an investigation. Why shouldn't Mr Ravbar have been
30 required - he had the statement for a week - be required to have said, "This is my version of what happened on 4 July"? It might be, for example, Mr Ravbar might say, "Here's an airline ticket. I was in America celebrating Independence Day. It can't be correct." And Mr Ternovski might not have even led this
35 material.

This is the - there's a procedural fairness aspect and there's an efficiency aspect, and this is an all-cards-on-the-table inquiry. You get the statements a week early. If you want to cross-examine, you put on another - your version. If you
40 want to put - you don't have to put another version. I think your submission last time with Mr Wheelahan was, "I'm entitled to test the evidence," and I think, without hearing from Mr Ternovski, I'm with you on that. But if it's going to put an alternative version of events, why shouldn't Mr Ravbar be required to comply with the practice note and - he's had a week. "This happened. This didn't happen. I wasn't there. Here's my airline ticket."
45

MS O'GORMAN: Can I answer the question in this way: if, Commissioner, you're with me with respect to a submission that Mr Ravbar is entitled to

explore the evidence, then I will only, in the course of my cross-examination, take a very little more time to put a particular suggestion about what happened to this witness. So if the issue is efficiency, can I say that there will be no further dragging out of cross-examination, because I will put a particular proposition to the witness. The difficulty with respect to Mr Ravbar providing written statements in advance of every application to cross-examine particular witnesses is that it's unusually and unfairly onerous on him as a party to these proceedings to have to put on a statement every time he wishes to challenge a witness's evidence.

COMMISSIONER: But why? I don't - he just - you had a week. He speaks to his solicitors. He says, "I don't - I've got a clear recollection of what happened in the foyer of the tower of power, and this is what happened." And takes 20 minutes to do it. I don't understand why that is oppressive for him.

MS O'GORMAN: Well, I'm instructed it wouldn't be a case of 20 minutes' worth of work to do that. There is some time needed to read and respond to those statements internally. To then go to the extra step of putting on statements each time for furnishing to counsel assisting is onerous, in my submission.

COMMISSIONER: I missed the last part.

MS O'GORMAN: In my submission, that extra step is onerous, to require Mr Ravbar to do that on each and every occasion that he wishes to challenge some evidence put against him.

COMMISSIONER: Really? He's going to have to challenge it at some stage, and it's a matter of being fair to Mr McKay and to Mr Ravbar. I don't - if he didn't have sufficient time, If you got this statement yesterday, I'd be with you, but you've had the statement for a week. So why couldn't he have put a statement on saying, "This coffee shop incident didn't occur," or whatever he wants to say about it?

MS O'GORMAN: Well, quite apart of the question of it being onerous, and I don't intend to take that submission any further, and, Commissioner, of course you've made your position clear with respect to that. Can I say this: Mr McKay has put on a statement with respect to a number of interactions. I have indicated by way of my application and brief written submissions the particular parts of his statement that I wish to address in cross-examination with him. In doing so, I am necessarily going to be limited in my cross-examination of this witness to those very topics. Cross-examination, of course, is not going to be allowed at large.

COMMISSIONER: I understand, yes.

MS O'GORMAN: Given that I have indicated there is to be some exploration of or challenge to those matters, in my submission it couldn't be said that it would advance efficiency or fairness to this witness for him to have in advance some brief statement denying that the incident took place in the way described.
5 The witness has been told, no doubt, that there is to be some challenge to those parts of the statement. It's difficult to see how this witness is disadvantaged by not seeing a statement from Mr Ravbar before I ask him a short number of questions.

10 **COMMISSIONER:** Well, just depends what it is. I mean, this might not be a good example, but I can see examples happening in the future where there are a lot of documents that you might want to produce in your cross-examination the witness hasn't seen. You've got the advantage of all the documents the witness has. I will just use that example of the airline ticket just to give an example of
15 how it ambushes the witness. The witness got into the witness box and corrected his statement. He said at 51:

"It wasn't 16 June. It was 14 June. I have looked at one of the annexures."

20 And it's just a matter of being fair to both parties, and if - do you have any documents that you wish to put to this witness?

MS O'GORMAN: No, Commissioner.

25 **COMMISSIONER:** All right. Well, I'm inclined to let you do it this time, Ms O'Gorman, but next time I'm going to have to be persuaded that Mr Ravbar shouldn't have to comply with the practice note and put an alternative version of events if he - if you've got sufficient time. If you don't have sufficient time, that's a different question, but if you've got sufficient time, I think Mr Ravbar
30 and anyone who wants to cross-examine, if they want to put an alternative version of events, is going to have to comply with the practice note.

MS O'GORMAN: Thank you, Commissioner.

35 **COMMISSIONER:** I'll let you proceed today. Sorry, I shouldn't rule. I should hear from you, Mr Ternovski. Are you strongly against that approach? About to tell me I'm wrong?

40 **MR TERNOVSKI:** Well, we've got no problems with Ms O'Gorman cross-examining Mr McKay to the extent that no alternative facts are involved. But the issue, as you've pointed out, is the alternative facts, and in my submission the purpose of the requirement to provide a sworn statement detailing the alternative version to be put to the witness is plain, and that is to
45 prevent - to assist the Commission in making its inquiries by preventing a trial by ambush. And so it's no answer to that to say that Mr Ravbar will eventually swear up to some version of events after he's heard (crosstalk).

COMMISSIONER: He'll just potentially tailor his evidence to whatever comes out in cross-examination.

5 **MR TERNOVSKI:** Exactly. And that would not assist the Commission in its inquiry. In my submission, leave - to the extent there is an alternative version that is to be put, leave should be refused today, but Ms O'Gorman, of course, will be free to - when she comes along with a sworn version, sworn account of that alternative version, to apply to have Mr McKay recalled and then cross-examined on that alternative account.

10 **COMMISSIONER:** Well, Ms O'Gorman said there's no document, so the witness is not going to be surprised by any document. So, yes, we run the risk that Mr Ravbar, when he provides evidence, if he does, will tailor the evidence to whatever the answers in cross-examination are. But that's a submission you can make or whoever makes the submissions in terms of assessing his evidence. But I'm inclined to let Ms O'Gorman proceed, including by putting the alternative - what's the phraseology - alternative version of events on the basis that she's not going to take an hour. Have to sit a bit longer. But, Ms O'Gorman, if you've got sufficient time to put on an alternative version next
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20 time, I think you understand what the ruling's likely to be.

MS O'GORMAN: I understand that, Commissioner, and to the extent that I now apprehend that part of the concern of counsel assisting is that by cross-examining this witness today Mr Ravbar might in due course tailor his
25 evidence appropriately, perhaps counsel assisting will take some comfort from the fact that if I put propositions, they're on instructions, of course, and it will become apparently - well, abundantly apparent if there's been any change in instructions. To that extent, putting a version is likely to give comfort to counsel assisting in my submission. In any event, your Honour, I'm quite confident that
30 I won't be an hour, and probably nowhere close to it.

COMMISSIONER: Thank you.

<CROSS-EXAMINATION BY MS O'GORMAN

35 **MS O'GORMAN:** Mr McKay, you will have apprehended from that discussion, I think, that the bulk of my questions for you this afternoon will relate to your interactions with Mr Ravbar in the time that you were the deputy director-general of the Office of Industrial Relations. I'm going to take a
40 moment to just move so that we can see each other. Is that all right now?

MR McKAY: Excellent. Thank you.

COMMISSIONER: Do you want to come to the front, Ms O'Gorman?
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MS O'GORMAN: Perhaps I will, and then I'm not looking over my learned friends' heads.

COMMISSIONER: Mr Clift's welcome to come to the front as well if he likes.

MR CLIFT: Happy where I am. Thank you, your Honour.

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MS O'GORMAN: I think that's better.

MR McKAY: That's better.

10 **MS O'GORMAN:** Mr McKay, I'll start again. I think you will understand my questions are really geared towards seeking to explore, clarify and perhaps test with you some of your evidence with respect in particular to your personal interactions with Michael Ravbar?

15 **MR McKAY:** Yes.

MS O'GORMAN: You understand that's the gist of what I'll be doing with you?

20 **MR McKAY:** Yes, I do.

MS O'GORMAN: Can I start by asking you then, please, about the first interaction that you recall having with Mr Ravbar. I understand that was the meeting that you had with him at the CFMEU's offices in early July 2023?

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MR McKAY: Yes.

MS O'GORMAN: Now, just to be clear, that wasn't the very first time ever that you had met or interacted with Mr Ravbar, was it? You'd had some previous dealings over the course of your career with him?

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MR McKAY: Some time ago I'd had - I'd come across him in public sector enterprise bargaining negotiations or something of the like.

35 **MS O'GORMAN:** All right. But this was a particular meeting that you had arranged with Mr Ravbar, as you indicated before lunch, so as to see whether or not you could get a good working relationship established now that you'd undertaken this new role as the deputy director-general?

40 **MR McKAY:** Yes.

MS O'GORMAN: All right. And as I understand it from both your statement and your oral evidence, it was a cordial and a positive interaction?

45 **MR McKAY:** Yes.

MS O'GORMAN: It was just you and Mr Ravbar in that meeting?

MR McKAY: Yes.

MS O'GORMAN: It wasn't a formal meeting; it was an informal chat?

5

MR McKAY: Yes.

MS O'GORMAN: Okay. It was a lengthy meeting, I'd suggest to you, perhaps up to an hour or so?

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MR McKAY: I didn't think it was quite that long, but it could have been up to an hour.

MS O'GORMAN: Okay. And the purpose of the meeting was firstly for you to introduce yourself to Mr Ravbar in your new role?

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MR McKAY: Yes.

MS O'GORMAN: And also to allow the opening of some dialogue between yourself and Mr Ravbar about issues that Mr Ravbar saw with the Office of Industrial Relations?

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MR McKAY: Yes.

MS O'GORMAN: And Mr Ravbar well and truly took that opportunity, didn't he?

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MR McKAY: He did.

MS O'GORMAN: He explained to you that he had a number of concerns about the relationship between the CFMEU and the Office of Industrial Relations?

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MR McKAY: Yes.

MS O'GORMAN: And obviously these related to concerns about that relationship, that is, the relationship between the CFMEU and the OIR before you had started; nothing to do with your involvement?

35

MR McKAY: Yes.

MS O'GORMAN: That's right. And one of the things that he expressed frustration about to you was the fact that prior to your appointment there had been a number of people in the role of deputy director-general in the preceding five years or so?

40

MR McKAY: Yes. Yes.

45

MS O'GORMAN: And that some of the tenures of the people holding that position were very short-lived, such as, for example, Ms Bancroft being there only for about nine months or so?

5 **MR McKAY:** Yes.

MS O'GORMAN: And he expressed the concern that at least from his point of view, what that resulted in was a lack of consistent leadership within the OIR itself?

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MR McKAY: I don't think so. I don't think - so I think it was a reflection that there'd been changes in the leadership, that Ms Bancroft wasn't well suited to the job and OIR was better for her - her absence.

15 **MS O'GORMAN:** All right.

MR McKAY: But I can't recall him talking about what that - what the change in leadership meant to the organisation.

20 **MS O'GORMAN:** I was suggesting for present purposes that he expressed a frustration more broadly with the changes in leadership resulting in a lack of continuity in that five-year period or so.

MR McKAY: I don't recall that, no.

25

MS O'GORMAN: Is it possible that that's so and it's just something that you don't recall one way or the other?

MR McKAY: Possible, yes.

30

MS O'GORMAN: In addition to those sorts of frustrations, he raised with you, didn't he, his concerns about how the industrial manslaughter laws were operating at that time?

35 **MR McKAY:** Yes. Yes.

MS O'GORMAN: He also raised with you some concerns about codes of practice being out of date and his desire that in your role you might attend to reviewing those and updating those?

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MR McKAY: Yes. Yes.

MS O'GORMAN: These were the sorts of safety issues that he took the opportunity to discuss with you in this first meeting?

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MR McKAY: Yes.

MS O'GORMAN: In addition to those concerns, he raised with you, didn't he, his perception that the inspectors, the Work Health Safety inspectors, had not been adequately responsive to safety concerns in recent times?

5 **MR McKAY:** Yes.

MS O'GORMAN: You recall that?

MR McKAY: Yes.

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MS O'GORMAN: I think you said in your evidence-in-chief that he described it as dysfunction amongst the inspectors?

MR McKAY: Yes.

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MS O'GORMAN: That's certainly something that he raised with you?

MR McKAY: Yes.

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MS O'GORMAN: And from your point of view at least, he raised all of those matters genuinely?

MR McKAY: Yes.

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MS O'GORMAN: It would have appeared to you, I suggest, that Mr Ravbar was genuinely frustrated about the issues that he had raised and genuinely concerned to see an increase in safety for work health and safety across Queensland generally?

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MR McKAY: Yes.

MS O'GORMAN: That's consistent, I take it, with your impression of Mr Ravbar moving forward. So I'm talking now about your interactions with him after that first time. I appreciate and we'll come to the fact that at times you found his manner to be particularly difficult, but can I suggest that at no time would you have had any doubt that Mr Ravbar's very genuine attempts in his role were to work hard to improve safety and health practices in Queensland?

35

MR McKAY: Yes.

40

MS O'GORMAN: All right. You knew him from this first meeting and, I suggest, subsequent meetings to be someone who was very passionate about those issues?

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MR McKAY: Yes.

MS O'GORMAN: And he was at this first meeting and subsequently always keen to raise safety issues with you when he could?

MR McKAY: Yes.

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MS O'GORMAN: All right. I understood your evidence to be that you recall Mr Ravbar said to you in the first meeting something to the effect that other people had vouched for you so he was prepared to give you a go?

10 **MR McKAY:** Yes.

MS O'GORMAN: Do you recall that?

MR McKAY: Yes.

15

MS O'GORMAN: I think you were asked the question whether or not any other stakeholder representative had ever said that to you, perhaps with a suggestion that it was inappropriate that he do so. Do you remember that question being asked?

20

MR McKAY: I can remember the question being asked, yes.

MS O'GORMAN: All right. You said that no-one else had ever said those words to you before?

25

MR McKAY: Yes.

MS O'GORMAN: That's right?

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

MS O'GORMAN: But I'd suggest to you that there was in fact nothing untoward in Mr Ravbar telling you those things. In fact, in the context of this meeting that you had arranged to attempt to get off your relationship with him to a good start, what he was in fact conveying to you was, notwithstanding the previously poor relationship between the CFMEU and the OIR, he too was willing to try to work cooperatively with you as you were with him. Do you accept that's what he was conveying to you?

35

40 **MR McKAY:** I think that's one construction of it, yes.

MS O'GORMAN: All right. Thank you. I want to ask you now, then, about the subsequent interactions that you say you had with Mr Ravbar, because as I understand it from your evidence, you were essentially in the deputy director-general role of the OIR for about 12 months?

45

MR McKAY: Yes.

MS O'GORMAN: In the course of that 12 months, I understand it from your evidence you had fairly limited dealings with Mr Ravbar personally?

5 **MR McKAY:** Yes.

MS O'GORMAN: I think you said in your evidence that you had a couple of occasions on which you met with Mr Ravbar?

10 **MR McKAY:** Yes.

MS O'GORMAN: And you mentioned I think in particular one occasion related to or directly before or after some ombudsman training?

15 **MR McKAY:** It was - I think my second meeting was with the Queensland Training Ombudsman and was in relation to the training requirements and arrangements for the delivery of the Certificate 1 in construction and the issuing of a white card for construction.

20 **MS O'GORMAN:** Okay. And the other occasion that you met with him in person, to your recollection?

MR McKAY: So I met with him in person, I think, in the meeting I mentioned earlier with Minister Grace and the BTG. Met with him in person in the coffee shop incident mentioned earlier.

25 **MS O'GORMAN:** Yes. Yes.

MR McKAY: And I think - I don't know that there were too many other - other than stopping and speaking to him in the foyer of 1 William Street on occasion when I'd see him there, no other formal - I can't recall any other formal meeting with him, face-to-face meeting with him.

MS O'GORMAN: Thank you. And other than those limited occasions that you had a face-to-face meeting with him, I understood you to say that you might recall that there were three or four telephone calls that you had had with him?

MR McKAY: Yeah, it's probably more than three or four, but I think when I said that, it was by that time there was three or four. I think there was - there would have been more than that over the period of that 12 months. But not significantly more. It might not have been double that, for example.

MS O'GORMAN: Thank you. I understand. Would it be fair to say that from your point of view Mr Ravbar was somebody who would speak passionately when it came to his concerns about safety issues for his members in Queensland?

MR McKAY: That's one way of putting it, yes.

5 **MS O'GORMAN:** And do you accept from me, because I understand that you said that at times when you interacted with him that he would be aggressive, do you accept that there is sometimes a fine line between somebody speaking passionately and somebody being aggressive in their manner?

10 **MR McKAY:** I accept that there can be, yes, but I think in this instance it went well beyond passion.

MS O'GORMAN: And when you say "in this instance", is it your evidence that on every occasion that you spoke with Mr Ravbar either in person or on the telephone, his manner was aggressive?

15 **MR McKAY:** No.

MS O'GORMAN: Just on some occasions?

20 **MR McKAY:** On some occasions, yes.

MS O'GORMAN: Okay. And if we're thinking about the number of times that you did interact with Mr Ravbar then, what proportion of those interactions would have been, as you assess them to be, civil and not aggressive?

25 **MR McKAY:** So I think in terms of the face-to-face interactions, probably fifty-fifty. The telephone interactions, I think the majority would have been ones that were well beyond passion to being aggressive and angry.

30 **MS O'GORMAN:** All right. Well, let's go to what I understood to be one of the interactions that stick out for you in your mind, being that interaction with Mr Ravbar at the coffee shop at 1 William Street in February of 2024.

MR McKAY: Yes.

35 **MS O'GORMAN:** As I understand it, your reaction of that was that you were at that coffee shop that you've described in the foyer area?

MR McKAY: Yes.

40 **MS O'GORMAN:** That you saw Mr Ravbar, and he was with Mr Pauls?

MR McKAY: Yes.

45 **MS O'GORMAN:** And then Mr Ravbar and Mr Pauls approached you?

MR McKAY: Yes.

MS O'GORMAN: And you've explained your recollection of what happened thereafter?

MR McKAY: Yes.

5

MS O'GORMAN: Can I suggest to you that when Mr Ravbar came up to you at the coffee shop, what he did was to say, "Hey, can I have a couple of minutes of your time"?

10 **MR McKAY:** No.

MS O'GORMAN: You don't recall him saying that?

MR McKAY: No.

15

MS O'GORMAN: Okay. And my suggestion is that you told him you were off to a meeting but you could give him a couple of minutes, or words to that effect. You don't recall that?

20 **MR McKAY:** I don't recall that, no.

MS O'GORMAN: Okay. Is it possible that happened and is something that you just don't recall?

25 **MR McKAY:** No, my recollection is that he launched straight into essentially a tirade about me not taking phone calls from his organisers.

MS O'GORMAN: Okay. By this time, there had been some tension that had developed, if I could put it that way, between the CFMEU on the one hand and
30 the Office of Industrial Relations on the other about the introduction or tweaking of this 1300 triage system. Correct?

MR McKAY: Yes.

35 **MS O'GORMAN:** Do you recall that one of the things that Mr Ravbar wanted to talk with you about at the coffee shop was the failure, as he perceived it to be, of that triage system?

MR McKAY: Only - well, that's not what he wanted to put to me. When I
40 suggested to him that if the matter was urgent, then his - or the matters were urgent, his organisers could simply have contacted the 1300 number - and that's when he complained about the triage system.

MS O'GORMAN: All right. But this wasn't the first time that he had indicated
45 to you his concern about the triage system; you knew that was a matter that he had concerns about?

MR McKAY: Yes. Yes.

MS O'GORMAN: All right. And so your recollection is that you said words to the effect to Mr Ravbar, "Well, if you or others needed to reach me this morning, you could have called the triage system number"?

MR McKAY: Yes.

MS O'GORMAN: Okay. And do you recall that he indicated that wasn't satisfactory to him, that he didn't think that he would get the appropriate response at that time?

MR McKAY: No, I think his comments were, "That's your job."

MS O'GORMAN: I see.

MR McKAY: "We're trying to ring you. That's your job."

MS O'GORMAN: Okay. Did you understand from that comment and others like it from Mr Ravbar that the concern of the CFMEU was that if there was not one central senior person who could be contacted when need be, so far as the CFMEU perceived it, that there might be a problem with there being appropriate responses by Work Health Safety inspectors to the notifications?

MR McKAY: Yes.

MS O'GORMAN: Okay. And you understood that when he said to you, "That's your job," that's what he was referring to. He was referring to the fact that it was his strongly held view and the CFMEU's strongly held view that there should be one single and senior person who could be notified when there were issues that concerned the CFMEU?

MR McKAY: Yes.

MS O'GORMAN: All right. He wasn't suggesting anything more than that, that you were somehow beholden to the CFMEU personally?

MR McKAY: No. No.

MS O'GORMAN: All right. My suggestion to you is that the coffee shop at the bottom of 1 William Street is very open in its layout, isn't it?

MR McKAY: Yes.

MS O'GORMAN: And I think you described the differentiation between the coffee shop and the foyer more broadly as involving something about this height?

MR McKAY: Yes.

**MS O'GORMAN: Okay. So there are also, in and around that coffee shop, a
5 number of tables?**

MR McKAY: Yes.

**MS O'GORMAN: And places near where you were describing where people
10 would wait standing up for takeaway coffees and the like?**

MR McKAY: Yes.

**MS O'GORMAN: In - at any given moment at that coffee shop and in the foyer
15 generally, there are lots of people coming and going. Correct?**

MR McKAY: Yes.

**MS O'GORMAN: And it would have been possible if there was anything
20 serious, and by serious I mean some kind of an assault or situation that caused
you to feel physically threatened, for you to immediately get help from any of
the bystanders near you?**

**MR McKAY: Yes.
25**

**MS O'GORMAN: So it's not the case that what you're describing in this
interaction that you clearly found to be unpleasant, that it amounted to
anything like a physical assault or physical intimidation?**

**MR McKAY: No. No, I didn't feel as though - that there was likely to be a
30 physical assault coming. No.**

**MS O'GORMAN: Okay. Is it fair to say that what it amounted to was an
interaction that you found unpleasant because, (a), you were stopped when you
35 were on your way to work, and (b), you were then talked at by Mr Ravbar and
Mr Pauls about their concerns in a way that you were unprepared for?**

MR McKAY: That's - that's one way of putting it, yes.

**MS O'GORMAN: All right. And that your recollection is that Mr Ravbar
40 spoke to you forcibly?**

MR McKAY: Yes.

**MS O'GORMAN: And that's really as high as you would put it: he was direct
45 and he was forceful in his conversation, but nothing more?**

MR McKAY: I think, you know, there was - it was forcible. There was foul language. He was probably louder and more in my face than he needed to be to have the conversation that we were having. Yes.

5 **MS O'GORMAN:** Okay. I will just suggest to you before I move on from some questioning about this that Mr Ravbar didn't at that time use any foul language towards you?

MR McKAY: My recollection is that he did, but I -

10

MS O'GORMAN: Is it possible, given the passage of time and given that you were otherwise seemingly finding the interaction unpleasant, that you're mistaken in your recollection that he in fact used foul language?

15 **MR McKAY:** I don't believe so.

MS O'GORMAN: Okay. Well, what is the language, then, that you recall him using?

20 **MR McKAY:** Oh, that, you know, he - that, you know, I needed to answer my fucking phone.

MS O'GORMAN: I see.

25 **MR McKAY:** Take these calls from the organisers. You know, it was that type of language.

MS O'GORMAN: Okay. So he might have used the word "fucking" -

30 **MR McKAY:** Yes.

MS O'GORMAN: - to emphasise something he was saying to you?

MR McKAY: Yes.

35

MS O'GORMAN: I see. But not otherwise directing any foul language at you personally?

MR McKAY: No.

40

MS O'GORMAN: Not calling you any names?

MR McKAY: Not calling me names. No, I don't think so. No.

45 **MS O'GORMAN:** All right. Thank you. You were asked then about why you didn't take action with respect to this interaction that you've spoken of, and you gave an answer about that. What action would you have taken?

MR McKAY: Oh, whether I might report that in our work health and safety reporting system as being an incident.

5 **MS O'GORMAN:** To the 1300 number or a different system?

MR McKAY: No, no, within our own internal OIR health and safety management system -

10 **MS O'GORMAN:** I see.

MR McKAY: - where we might identify instances that were likely to give rise to a psychosocial complaint.

15 **MS O'GORMAN:** Okay. Do you accept that if this was a matter which you really did think amounted to something which might have caused you a psychosocial risk that you would have reported it so as to set a good example for those who worked in your office about what they should do in similar circumstances?

20

MR McKAY: I hadn't thought of it that way, no. No.

MS O'GORMAN: Okay. Can I ask you, then, a few more questions about the CFMEU's attitudes to and representations made to you by Mr Ravbar about the 1300 triage system that you gave evidence about?

25

MR McKAY: Yes.

MS O'GORMAN: Now, do I understand it correctly that your understanding is that prior to - prior to Ms Bancroft coming into the role of DDG, there had been a centralised system whereby the CFMEU, but everybody in the construction sector, could essentially call a centralised person who would then deal with where inspectors were to go and when?

30

35 **MR McKAY:** Yes.

MS O'GORMAN: And that it was during Ms Bancroft's time that the 1300 triage system was introduced?

40 **MR McKAY:** That it was to be - that it was applied to the construction sector. So it had existed.

MS O'GORMAN: I see, yes. I see.

45 **MR McKAY:** And others were using that. But because there was a specific inspectorate for construction, that the central point of contact for that was into the construction inspectorate.

MS O'GORMAN: I see. And -

5 **MR McKAY:** And so there was to be a - sorry. There was to be a separate 1300 number for construction industry to call, including the CFMEU.

10 **MS O'GORMAN:** Thank you for clarifying. And to your understanding, was that separate 1300 number for the construction sector something that was introduced during Ms Bancroft's time or during your time?

MR McKAY: During Ms Bancroft's time.

15 **MS O'GORMAN:** All right. And accepting it was during Ms Bancroft's time, your answer might be that you don't know, but what consultation was done by the OIR with stakeholders, if any, about the change to this 1300 system rather than a centralised person to call?

20 **MR McKAY:** So my understanding from having read the documentation later is that there was - it was put to the construction industry, so to the CFMEU and other - the Building Trades Group unions and the industry generally about using this number, and they'd provided feedback. And I think that the feedback was that it was not something that they favoured, and Ms Bancroft decided to proceed with it.

25 **MS O'GORMAN:** All right. And when you say "not something that they favoured", your understanding from reviewing that documentation was it was not something that any of the stakeholders favoured, correct? Not just the CFMEU?

30 **MR McKAY:** Certainly not any of the Building Trades Group of unions, no.

MS O'GORMAN: Okay. And the reason expressed uniformly -

35 **COMMISSIONER:** What was the phrase? Something of unions?

MR McKAY: The Building Trades Group.

COMMISSIONER: Building Trades Group, sorry.

40 **MS O'GORMAN:** And the view expressed by the Building Trades Group generally was the concern was that if there was to be a 1300 number staffed by, at first instance, call centre operators and then staffed by a number of different inspectors, that safety notifications might be missed or that the importance or seriousness of them might be misunderstood, given that those people are not as
45 senior as the person who had been taking calls up until that point?

MR McKAY: I don't know about the missed component of what you've just said, but certainly the issue around not understanding the significance of the matter being notified was an issue that had been flagged in that discussion, in that consultation.

5

MS O'GORMAN: Okay. So really, it could be put this simply, that the uniform view across the BTG was that a decentralised system would or might be likely to undermine safety?

10 **MR McKAY:** Yes.

MS O'GORMAN: Okay. And that the preference was for a centralised system to remain in place to ensure that somebody who could understand the seriousness of things that were being reported was answering the telephone calls?

15

MR McKAY: Yes.

MS O'GORMAN: Okay. One of the issues I think you've accepted recalling that Mr Ravbar raised with you at the coffee shop was his continued view that that 1300 triage system was not working as of February 2024?

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MR McKAY: Yes.

MS O'GORMAN: And I think I understood your evidence earlier to be that you yourself acknowledged the 1300 triage system took a period of time to mature and to become truly reliable. Correct?

25

MR McKAY: Yes.

30

MS O'GORMAN: Is it right that your understanding was, in 2023 and 2024, that the triage system was under pressure and you weren't confident that the system could manage the demand on it?

MR McKAY: Certainly in 2023. Probably less so in 2024 when we put more resources into that area that I was - I felt that we were probably to the point where we had greater confidence in the system. It was - it was working, generally, well but could be improved.

35

MS O'GORMAN: All right. But did I understand your evidence earlier to be that you permitted people from the CFMEU to contact you with notifications in part because you wanted to ensure that the system was right before you shoehorned them, being CFMEU members, into being forced to use it?

40

MR McKAY: Yes.

45

MS O'GORMAN: So do I take it from that that into 2024 you still had some concerns that the system was not perfect and you should allow yourself to be accessible for notifications?

5 **MR McKAY:** Certainly that it was not perfect, but probably to the point where we could have more reliance on putting it back to the group. And in fact we had suggested an alternative approach to not just putting them through the triage system but to have that additional piece of the triaging up-front, you know, with a separate construction number that they come in via.

10

MS O'GORMAN: But the upshot of your evidence, as I understand it, is that notwithstanding the introduction of that 1300 triage system for the construction sector, you remained content, albeit begrudgingly, for people to call you in case the system itself wasn't working properly?

15

MR McKAY: No, no. I perhaps didn't explain myself well enough earlier. So the general 1300 number was where I felt we still had - that there had been pressure, and that I was wanting to get that right, but we had also proposed the separate construction number for them to come in via, so I wanted to make sure we had our triaging system working effectively because it was going to work alongside this separate number, but that they would still have access to this number that would be where you would have dedicated construction-experienced staff operating that so that they would be the first port of call to support the triaging process, but the triaging process would still be happening behind that through the assessment services team.

20
25

MS O'GORMAN: I see. There was a reference to telephone calls when there were notifications made to you personally rather than the triage system being made to your mobile?

30

MR McKAY: Yes. Yes.

MS O'GORMAN: Your evidence is you didn't have a landline.

35

MR McKAY: Yes.

MS O'GORMAN: So there's nothing sinister about the fact that when calls were made to you, they were made to your mobile; that was your publicly available -

40

MR McKAY: No. There's nothing sinister about that at all, no. It was on my business card -

45

MS O'GORMAN: I see.

MR McKAY: - as my only phone number, yes.

MS O'GORMAN: And you understood, from things that Mr Ravbar and potentially others said to you, that the reason that calls were still being made to you was because you were considered to be the most senior person who would understand problems that were being reported and be in a position to ensure action could be taken. That's what they told you?

MR McKAY: No, I don't think so. I don't have any experience in work health and safety. My knowledge of the Work Health and Safety Act would be far inferior to anyone working in the assessment services team. The coming to me was not about saying that they're coming to me because I'm the person who can understand that and get action quickly, because they knew, one, I didn't understand it to the extent that others below me did, and secondly, I was very clear that I'm not doing anything other than simply putting it back into the triage system. I am not giving it any level of priority and have made it clear to everyone no priority is to be given simply because it comes from me.

MS O'GORMAN: But you were, were you not, conveyed the sentiment that the CFMEU and perhaps others were concerned that when calls were being made to the 1300 number, that either they might not be answered or they weren't being actioned appropriately. You knew that remained a continuing concern of the CFMEU?

MR McKAY: Yes. Yes. Yes.

MS O'GORMAN: And you also knew that the CFMEU and perhaps others considered that you were the most senior person and therefore a person who could take action, regardless of your intimate knowledge of the particular subject matter?

MR McKAY: They shouldn't have had that view, because I disavowed them of that view on every possible occasion to say I will not be doing anything to direct inspectors or to direct the way in which things are responded to; I will simply enter them into the triaging system.

MS O'GORMAN: All right. Perhaps I could ask it this way: you accept, by virtue of your role, that you were in fact the most senior person that somebody could make a notification to?

MR McKAY: Yes.

MS O'GORMAN: All right. And it was conveyed to you, whether or not you tried to disavow them of this notion or not, that people considered that because you held that most senior role, you were the most senior person to whom a notification could be made?

MR McKAY: Yes.

MS O'GORMAN: All right. Thank you. Now, I understood you to say that most or all of the issues that were raised with you were not serious. Do you remember saying that?

5 **MR McKAY:** Yes.

MS O'GORMAN: And I understood that you said that the sorts of issues which were raised with you were things such as fall from heights?

10 **MR McKAY:** Yes.

MS O'GORMAN: Falling objects?

MR McKAY: Yes.

15

MS O'GORMAN: Access and egress?

MR McKAY: Yes.

20 **MS O'GORMAN:** And safe work method statements not being accessible to inspectors?

MR McKAY: Yes.

25 **MS O'GORMAN:** These matters are all, on their face, matters which either have caused a serious problem or at the very least do have the possibility of causing a serious safety risk. Correct?

MR McKAY: Correct.

30

MS O'GORMAN: You would be well aware, wouldn't you, that there have been prosecutions relating to serious incidents and even fatalities where the unavailability of a safe work method system or non-compliance with a safe work method system has been found to be the cause or a material contribution to a serious injury or a death?

35

MR McKAY: Yes.

40 **MS O'GORMAN:** And so it would be a matter of concern, wouldn't it, to an inspector who arrives on a site to find that the safe work method system - statement, rather - is not accessible, that perhaps that might demonstrate that workers themselves don't have access to such a statement?

MR McKAY: Yes.

45

MS O'GORMAN: And that is something which ought properly be notified in a timely way and raised with someone in a senior position if possible?

MR McKAY: No, I don't think so. I think given that there was a system to be able to do that - and almost without exception none of those notifications led to any sort of regulatory action other than an inspector attending, and, you know, in most instances there was probably no action or there was immediate compliance or a provisional improvement notice, but on almost no occasion was there any more serious regulatory action taken against those. So whilst on the face of it, as I've said earlier, access/egress might be an issue, fall from heights might be an issue, not having safe work statements available might be an issue, that's exactly the point I'm making about, you know, this is - this is a campaign. This is following people's campaigns to put these issues to say, "You need to send someone because there's a fall from heights." There was never - almost never found, in these notifications that came to me, anything of any seriousness resulting from that.

MS O'GORMAN: Can I just check a couple of things with you arising from what you've just said. I take it you wouldn't suggest that there's anything inappropriate about a union such as the CFMEU running particular campaigns aimed at improving safety on work sites?

MR McKAY: No.

MS O'GORMAN: All right. And further to that, can I suggest to you that although it appears to you that none of these issues that were raised with you by contacting your mobile number are matters which appear to carry any great risk, that reasonable minds might differ about that and that people calling you may well have considered that those particular issues, fall from heights and the like and the lack of a safe work method statement, may well very genuinely consider that they are serious matters that ought to be escalated?

MR McKAY: Well, I would have thought if they did, they'd have backed that with some significant details of what the issues were and provided them to me at the time rather than simply say, "We need an inspector on site. Issues are access and egress, fall from heights, falling objects."

MS O'GORMAN: All right. You spoke about members of the CFMEU contacting you personally to make notifications. I understood it from your evidence that builders and other entities on work sites also contacted you on your mobile phone to raise issues?

MR McKAY: Yes.

MS O'GORMAN: Not necessarily notifications?

MR McKAY: To discuss issues. Not notifications, no.

MS O'GORMAN: All right. So this notion of CFMEU contacting you on your mobile phone is certainly not something specific or particular only to the CFMEU?

5 **MR McKAY:** No.

MS O'GORMAN: Numerous stakeholders, people within the construction sector on various sides, as it were, would contact you to raise issues?

10 **MR McKAY:** Yes, senior representatives from large builders, the Cross River Rail Delivery Authority, etcetera, yes.

MS O'GORMAN: Would do so. Finally with respect to this issue, it was suggested to you that CFMEU people calling your mobile phone was reprisal for their no longer being able to call Ms Burgess, if I've understood the suggestion to you. Do you recall the word "reprisal" being used?

15 **MR McKAY:** Yes.

20 **MS O'GORMAN:** Do you accept that it's simply putting it far too high to say that it was an act of reprisal by the CFMEU to be contacting you on your mobile phone, given many other people from the construction sector were?

MR McKAY: Not for this purpose. So the people who are contacting me from the construction sector are people like the chief executive of the Cross River Rail Delivery Authority, the chief operating officer of CPB. These are, you know, union organisers who - Michael Ravbar had said to me, "I will give your mobile phone number to all of my organisers and they will ring you with everything." So, you know, this was a campaign to say to me, "You haven't done what I told you to do, and the result of that is you are going to cop all of these calls from my organisers."

25 **MS O'GORMAN:** And even on your explanation of it there, do you accept it is too high to say what was done was an act of reprisal?

30 **MR McKAY:** No.

MS O'GORMAN: All right. I want to ask you a couple of questions, then, about the interaction that you had with Mr Ravbar after the BMD Group's psychosocial complaint was made to you.

35 **MR McKAY:** Yes.

MS O'GORMAN: The circumstances surrounding that complaint can be put like this, can't they, that the OIR received a complaint from lawyers for BMD Group -

MR McKAY: Yes.

MS O'GORMAN: - about a psychosocial concern?

5 **MR McKAY: Yes.**

MS O'GORMAN: That that concern didn't include any person saying that they considered their psychosocial wellbeing had been put at risk as a result of anything the CFMEU had done?

10

MR McKAY: Yes.

15 **MS O'GORMAN: And that given you had no evidence from anybody to say that they considered their psychosocial wellbeing had been put at risk from anything the CFMEU had done, there was simply no basis for you - you being the Office of Industrial Relations -**

MR McKAY: Yes.

20 **MS O'GORMAN: - to make a finding that there had been a breach of the relevant code. Correct?**

MR McKAY: That's correct.

25 **MS O'GORMAN: And yet the letter to Mr Ravbar suggested, did it not, that it may be that the CFMEU had in fact breached the code?**

MR McKAY: Yes.

30 **MS O'GORMAN: And that that statement was made following a sentence which said that the Work Health Safety team had assessed the complaint?**

MR McKAY: Yes.

35 **MS O'GORMAN: And essentially then made a finding that it may be that the CFMEU had breached the code?**

MR McKAY: Yes.

40 **MS O'GORMAN: All right. And Mr Ravbar, to your impression, was angry about the fact that that letter had been sent to him. Correct?**

MR McKAY: Yes.

45 **MS O'GORMAN: And in the telephone conversation between you and Mr Ravbar, he conveyed to you his dismay that he had received a letter in the terms**

we've just discussed from you in circumstances when in fact there was no evidence that any person's wellbeing had been put at risk?

MR McKAY: Yes.

5

MS O'GORMAN: And that he was particularly concerned because the CFMEU had been responsible for changes to the law regarding psychosocial hazards and risks?

10 MR McKAY: Yes.

MS O'GORMAN: And he considered that it was grossly unfair for the letter to have been sent to him in the terms that it was?

15 MR McKAY: Yes.

MS O'GORMAN: And that was the upshot of his complaint to you on that occasion?

20 MR McKAY: Yes, that, and that I should rescind the letter.

MS O'GORMAN: All right. And it was made clear to you that he was saying the letter should be rescinded because there was no basis for it?

25 MR McKAY: Yes.

MS O'GORMAN: There was no basis for a statement that said that the CFMEU may have breached the code in circumstances where there was no evidence about that at all?

30

MR McKAY: That was his view, yes.

35 MS O'GORMAN: All right. I accept that you decided not to rescind the letter, but do you accept that reasonable minds might differ about whether or not the letter ought to have been rescinded in those circumstances?

40 MR McKAY: No, because whilst there was not - there was no evidence produced by BMD of a person being affected. We had seen the Facebook post, so, you know, it wasn't - wasn't beyond the pale that someone might have been affected by that, but we just had no evidence of that. So I think it was - I think a reasonable person would say it would be fair to say that it may be that the CFMEU had not met its obligations and its duties.

45 MS O'GORMAN: Is it fair to say that in the course of the WHSQ assessment of that complaint there had been no consultation with the CFMEU, that is, it hadn't been told about the complaint or asked to comment on it or otherwise?

MR McKAY: That's right.

MS O'GORMAN: Okay. And that was something also that Mr Ravbar was concerned about?

5

MR McKAY: Yes.

MS O'GORMAN: Okay. Other things that he raised with you in that meeting, according to your notes from the meeting, were his continued concerns with respects to the 1300 triage system and whether it was undermining safety?

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MR McKAY: Yes.

MS O'GORMAN: All right. And also his concern there was nee central person to call when notifications needed to be made, correct?

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MR McKAY: Yes.

MS O'GORMAN: Okay. Can I ask you about conversations that you had with Mr Ravbar directly in which you personally asked Mr Ravbar personally to attend to taking down any posts from the CFMEU website or Facebook page?

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MR McKAY: Yes.

MS O'GORMAN: What do you say about how many conversations, face to face or over the telephone, you had with Mr Ravbar for that purpose?

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MR McKAY: So there was certainly a conversation I had - I think in my notes it was around 25 August, the notes that were given in my notice to produce originally - a conversation with Mr Ravbar where I asked him to take down the Facebook and internet website posts that they'd put up, to which his response was, "No, and thank you for asking. I'm going to put up more tomorrow," or in the next few days, relating to the Gold Coast. Something had happened on the Gold Coast.

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MS O'GORMAN: All right. And do you say that the details of that conversation are in the statement that you've provided for this purpose?

MR McKAY: Not sure if it's in the statement I provided. They were in notes that I'd originally disclosed to the Commission -

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MS O'GORMAN: I see.

MR McKAY: - on a notice to produce.

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MS O'GORMAN: In addition to that conversation, do you say that you otherwise communicated personally with Mr Ravbar about taking down Facebook posts or website content?

5 **MR McKAY:** So I wrote to Mr Ravbar then ultimately in February 2024 asking him to take down the posts, and I think I also, in that conversation of 24 January, indicated that I wanted him to take down the posts and that I would be writing to him, as the PCBU for OIR, asking that he take down the notes.

10 **MS O'GORMAN:** And the letter that you wrote to Mr Ravbar is the one dated 23 February 2024, is it, that appears at page 52 of your statement? You were taken to it a little earlier.

MR McKAY: Yes, PMK-6 I think it is.

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MS O'GORMAN: Can I suggest that it's not the case in that letter that you ask Mr Ravbar to take anything down?

20 **MR McKAY:** Well, I was asking him to consider how he met his duty - we had a shared duty - how he met his part of the shared duty to the inspectors.

25 **MS O'GORMAN:** I understand, but you would appreciate that there's a difference between asking someone to consider whether they're complying with their duties on the one hand and directly asking them to remove something on the other?

MR McKAY: Yes. Yes.

30 **MS O'GORMAN:** All right. And the letter that you've referred to doesn't actually ask him to remove anything; it asks him to consider his duties. Correct?

MR McKAY: Yes.

35 **MS O'GORMAN:** All right. Can I ask you this, then, with respect to your discussions with Mr Ravbar over the 12 months that you were the deputy director-general: on how many occasions do you say that you had a conversation personally with Mr Ravbar where you raised your concerns around CFMEU treatment of Work Health Safety inspectors?

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MR McKAY: I would say at least on those two occasions, I think -

MS O'GORMAN: Well - sorry, I'll let you finish.

45 **MR McKAY:** Sorry. And I think that also featured in the coffee shop conversation as well, but I - I'm not completely sure of that. But I would say

probably two to three times that I had a direct conversation with Mr Ravbar about his treatment of inspectors.

5 **MS O'GORMAN:** All right. Do you accept from me that it doesn't appear on the face of your statement in the part of it where you refer to the coffee shop incident - this is paragraphs 101 to 108 - that you raised with him treatment of Work Health Safety inspectors?

10 **MR McKAY:** No, it's not in my statement. No.

MS O'GORMAN: All right. So it's possible that that wasn't something that you raised at that time?

15 **MR McKAY:** Possible.

MS O'GORMAN: Okay. And when you said "at least on these two occasions", just so that I'm clear and understand what you're talking about, what are the two occasions that you say -

20 **MR McKAY:** I think I mentioned that instance on the - I think it was 25 August or thereabouts, when I had a conversation with him on the phone, when he was ringing - I think that's when he said that, you know, they had no faith in Ms Stacey Ozolins. And that's when I said, you know, "You should take down the Facebook posts." And he said, "No. In fact, now that you ask, I'm going to
25 put up more in the coming days about the Gold Coast." So that was one of them. And the other, a clear recollection of, was when I had the - in that same conversation about the BMD matter when I said, "I will also be writing to you as the PCBU," so this is a letter as the regulator, "but I will also be putting on my other hat as the PCBU and writing to you asking you to take down the
30 posts."

MS O'GORMAN: Okay. And you accept that, in fact, in that letter you didn't ask him to do that?

35 **MR McKAY:** Yes.

MS O'GORMAN: All right. You made reference to a number of conversations with Mr Ravbar in which he raised his preference that Ms Burgess be returned to her previous role. Correct?
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MR McKAY: Yes.

MS O'GORMAN: Did you understand that Mr Ravbar was indicating that he considered that Ms Burgess should be returned to her previous role so that
45 there was a central and senior person who could be contacted directly when notifications need to be made? That's something he repeatedly told you?

MR McKAY: That was part of his request, to have her returned, yes.

MS O'GORMAN: And what do you recall was the other part of his expressed reason for having Ms Burgess returned to the role?

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MR McKAY: Well, he wanted her to bring the inspectors into line.

MS O'GORMAN: I see. Because he was expressing to you over the 12 months that you were the DDG that his concern was inspectors were no longer appropriately responsive to safety issues?

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MR McKAY: Yes.

MS O'GORMAN: All right. And he considered that under Ms Burgess they were more responsive to safety issues?

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MR McKAY: Yes.

MS O'GORMAN: I see. Then finally, can I just ask you this: at the end of your evidence you gave your view, as I understand it, that the aim of the CFMEU during your tenure was to destabilise the OIR - I think you said to destroy you or to own you. Do you recall that?

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MR McKAY: Yeah, I can't recall if they were the exact words, but yes.

25

COMMISSIONER: I think he said "break us or own us", and then Mr Ternovski's question was "destroy us".

MS O'GORMAN: I see. So perhaps I'll put it this way: your evidence was that your view was that the aim of the CFMEU was to break the OIR or own the OIR?

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MR McKAY: Yes. Yes.

MS O'GORMAN: Can I suggest to you that another view, equally open, is that the CFMEU's aim was to promote improvements to work health safety practices in Queensland and that it was entirely open to the CFMEU to be critical of the OIR when it saw that the OIR was not assisting in that process but that it was not the aim of the CFMEU to break or destroy or own the OIR, simply that criticism was a by-product of the aim of improving safety?

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MR McKAY: I think you could take that view if you removed all of the rest of the context of the behaviour of the CFMEU towards the OIR over a period of time, but you could only take that construction if you removed all of that context of the rallies, the marches on Parliament, the complaints to ministers and directors-general, the Facebook posts, the conversations between Mr Ravbar and I. If you remove all of that context, then yes, an outsider could say

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that they were primarily focused on improving health and safety, but that's not a construction that I could take, given the context that I knew.

5 **MS O'GORMAN:** All right. Even given the context that you knew, do you at least accept that, whether or not you accepted that the methods and some of the actions which were taken were appropriate, that it clearly remained the aim of the CFMEU during your tenure to promote work health safety practices in Queensland? That was a genuine aim at the CFMEU?

10 **MR McKAY:** I think that was a genuine aim of the CFMEU, yes.

MS O'GORMAN: All right. Thank you, Mr McKay. Those are my questions, Commissioner.

15 **COMMISSIONER:** Thank you, Ms O'Gorman. Anything arising from that, Mr Ternovski?

<RE-EXAMINATION BY MR TERNOVSKI

20 **MR TERNOVSKI:** Yes. It was put to you, Mr McKay, that the concern that was communicated to you was that the CFMEU wanted someone senior who could understand the seriousness of the calls to take the calls.

25 **MR McKAY:** Yes.

MR TERNOVSKI: In your view, who was better placed to understand the seriousness of the call: you or the operator that would answer the call if the 1300 number was used?

30 **MR McKAY:** The staff at the 1300 number.

MR TERNOVSKI: Why is that?

35 **MR McKAY:** Well, people like Sam Brooker, Joanne Sutherland and the team that worked in there had a great deal of expertise in understanding the operation of the Work Health and Safety Act. They knew how the triaging system worked. They had the direct relationships with the operations managers and the regional directors to understand how to respond to these matters. They had years of experience in doing this, compared to me with a limited
40 understanding of the Work Health and Safety Act coming into the role, and with a whole range of other duties to perform that went well beyond notification of incidents under the Work Health and Safety Act.

45 **MR TERNOVSKI:** And have you ever worked in the construction industry?

MR McKAY: Never.

MR TERNOVSKI: Do you have any experience of that industry from the inside?

MR McKAY: No. No.

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MR TERNOVSKI: Mr McKay, it was put to you, and you agreed, that you didn't have any doubts that Mr Ravbar was genuine in his attempts to improve work health and safety practices in Queensland, and also, relatedly, that was a genuine aim of the CFMEU to improve safety?

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MR McKAY: Yes.

MR TERNOVSKI: Mr McKay, in your view, did placing calls to you, including about things like Glen 20, advance safety in Queensland?

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MR McKAY: No.

MR TERNOVSKI: Why not?

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MR McKAY: My time is better spent operating at the strategic level that I am paid to operate rather than being, you know, Queensland's highest-paid and least-qualified construction call centre operator.

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MR TERNOVSKI: And, in your view, did the CFMEU mistreatment of inspectors on work sites improve health and safety in Queensland?

MR McKAY: Not at all.

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MR TERNOVSKI: What about the other tactics that you have described? In your view, were they likely to improve work health and safety in Queensland?

MR McKAY: No.

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MR TERNOVSKI: You were asked some questions about your first meeting with Mr Ravbar. I want to clarify one of the things you said. You said at some point OIR was better for Ms Bancroft's absence. Was this your view or were you -

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MR McKAY: No, no, Mr Ravbar's view.

MR TERNOVSKI: You were describing something Mr Ravbar said to you?

MR McKAY: Yes.

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MR TERNOVSKI: And then at one point when you - it was a particular construction of the proposition that the - Mr Ravbar said to you he's giving

you - he's willing to give you a go. It was put to you, and you said, "That's one construction of the message."

MR McKAY: Yes.

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MR TERNOVSKI: What's the other construction?

MR McKAY: It was, you know, "I'm pulling the strings here, and you'll be there as long as I want you to be there."

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MR TERNOVSKI: And how did you actually understand what Mr Ravbar was saying, in which sense?

MR McKAY: That's the construction I took.

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MR TERNOVSKI: In relation to the incident at the coffee shop, it was put to you that this was an unpleasant incident -

MR McKAY: Yes.

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MR TERNOVSKI: - or words to that effect.

MR McKAY: Yes.

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MR TERNOVSKI: And you said:

"That's one way of putting it."

MR McKAY: I think it was more than unpleasant.

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MR TERNOVSKI: How so?

MR McKAY: It made me feel quite uncomfortable, and whilst, you know, I - as I said, I wasn't fearful for my safety, it was quite confronting and, you know, not the sort of thing that one expects on a day-to-day basis in a role like mine.

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MR TERNOVSKI: It was put to you that you could have sought help from bystanders. Why didn't you?

MR McKAY: I suppose one element would be I - as I said, I didn't feel as though there was any physical threat likely to happen as a result of that. But, you know, nor did I want to be seen as - as weak or have, you know, me asking for support portrayed as something - and, you know, posted on Facebook by the CFMEU.

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MR TERNOVSKI: At one point in your cross-examination, it was put to you that the system that existed before Ms Bancroft's reforms, if I may put it that

way, was that anyone in construction could call a centralised person. Who was that person?

5 **MR McKAY:** Well, they called the construction and compliance services inspectorate, and that could have been a number of people within that group is my understanding. This is going before my time, so - but my understanding of it was into that group but primarily to Helen Burgess.

10 **MR TERNOVSKI:** As far as you know, did builders call directly to Helen Burgess to report notifications?

MR McKAY: Not to my knowledge, no.

15 **MR TERNOVSKI:** What did they do?

MR McKAY: My understanding is they were notifying via the normal notification process.

20 **MR TERNOVSKI:** You were asked some questions about this idea of the CFMEU calling you being a reprisal, and at some point you said you haven't done - you're attributing this to Mr Ravbar, I think -

25 **COMMISSIONER:** Do we really need re-examination on this? Isn't it up to me to make assessment about whether it's a reprisal or not? I've got everyone's opinion about whether it is.

30 **MR TERNOVSKI:** Perhaps if I can ask one final question. If I could take you, Mr McKay, to the letter PMK-6, which is your letter to Mr Ravbar. And it was put to you that the letter does not - I think you agreed that the letter does not actually ask the CFMEU to remove the posts. Mr Operator, could we please go to page 55 and blow up the paragraph under the subheading Deciding Control Measure. Mr McKay, could you ready that to yourself?

35 **MR McKAY:** Yes.

MR TERNOVSKI: What is this saying?

40 **MR McKAY:** So it says my view, as someone who has a shared duty, that the risk can be eliminated, which is the first step that you would take in addressing a work health and safety risk, is can it be eliminated? Yes, it can be eliminated, and it can be done so by the CFMEU removing the social media posts.

45 **MR TERNOVSKI:** So in light of that, do you stand by your evidence that the letter does not ask Mr Ravbar or the CFMEU to remove the posts?

MR McKAY: Well, I'm indicating to him that that's a way in which I believe he could meet his duty, yes.

MR TERNOVSKI: I've got no further questions, Commissioner.

COMMISSIONER: Is there any other applications for this afternoon?
5 Apparently, Mr de Jersey? Yes?

MR DE JERSEY: Not an application, Commissioner, but there were two matters that remain from Ms Wise's evidence. There was the -

10 **COMMISSIONER:** Yes.

MR DE JERSEY: There was the name of the ministerial staffer, which you made an inquiry about, I remember. And also the destination to which an email sent to the -

15 **COMMISSIONER:** Industrial relations email.

MR DE JERSEY: That's the one. Where that would go.

20 **MR TERNOVSKI:** Commissioner, I'm sorry to interject. May I just ask for the witness to be excused.

COMMISSIONER: I'm sorry. Sorry. Yes. Thank you for your evidence, Mr McKay. Your written and oral evidence in the witness box today has been
25 thorough and comprehensive and - very appreciative.

MR McKAY: Thank you, Commissioner.

30 <THE WITNESS WAS RELEASED

MR DE JERSEY: Ms Wise has today affirmed a statement addressing those two matters, and -

35 **COMMISSIONER:** And you're going to tender it.

MR DE JERSEY: I will.

COMMISSIONER: Is there any objection?

40 **MR DE JERSEY:** It's been provided to everyone, so -

COMMISSIONER: No objection? Thank you.

45 **MR DE JERSEY:** Thank you.

COMMISSIONER: Can I get a copy?

MR DE JERSEY: Thank you, Commissioner.

COMMISSIONER: What are we going to mark this as, Mr de Jersey?

5 **MR DE JERSEY: I think it's - it's SW-2, if memory serves.**

COMMISSIONER: SW or SEW?

MR DE JERSEY: SEW-2.

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COMMISSIONER: SEW-2, statement of Sarina Wise made 16 April 2026, two pages, four paragraphs will be SEW-2.

15 **<EXHIBIT SEW-2 STATEMENT OF SARINA WISE MADE 16/4/2026, TWO PAGES, FOUR PARAGRAPHS**

MR DE JERSEY: Thank you.

20 **COMMISSIONER: Anything else?**

MR DE JERSEY: No.

COMMISSIONER: We'll adjourn till next Tuesday, is it? Yes.

25 **<THE HEARING ADJOURNED AT 4.09 PM**

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