



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

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

**PUBLIC HEARING
COMMONWEALTH LAW COURTS, BRISBANE**

**THURSDAY, 16 JULY 2026
AT 10.00 AM**

DAY 37

APPEARANCES

**Mr S Wood AM KC - Commissioner
Mr E Gisonda KC - Counsel Assisting
Ms M Stone - 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 KC- Counsel for the CFMEU Administration
Mr A Duffy KC – Counsel for Grace Grace
Ms A Freeman KC – Counsel for the John Holland Pty Ltd and John Holland
Queensland Pty Ltd
Mr David Balmer – Witness
Mr Trent Smith – Witness
Mr Glynn Ladbrooke – Witness**

<THE HEARING RESUMED AT 10.03 AM

COMMISSIONER: Mr Gisonda, you continue to appear with Ms Stone -

5 **MR GISONDA:** Yes, Commissioner.

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

10 **MR DE JERSEY:** Yes.

COMMISSIONER: And Mr Duffy, you appear for the Honourable Grace Grace MP?

15 **MR DUFFY:** Yes, Commissioner.

COMMISSIONER: Mr O'Grady, you continue to appear as counsel for the administrator of the CFMEU?

20 **MR O'GRADY:** I do, Commissioner.

COMMISSIONER: And Ms Freeman, you continue to appear as counsel for John Holland?

25 **MS FREEMAN:** Yes, that's so. Thank you, Commissioner.

COMMISSIONER: Mr Gisonda.

<DAVID ANTHONY BALMER, ON FORMER OATH

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<EXAMINATION BY MR GISONDA

35 **MR GISONDA:** Mr Balmer, where we left off yesterday was in around February 2021, and do you remember that in early of March 2021, John Holland and the CFMEU reached an enterprise agreement in relation to the Gold Coast Light Rail Stage 3 project?

MR BALMER: Yes. Yep. Yes, I do.

40 **MR GISONDA:** And the AWU were not a party to that agreement. Do you remember that?

MR BALMER: Yes.

45 **MR GISONDA:** And would you describe that as comprising significant news in the industry at the time?

MR BALMER: Yes, it was.

5 **MR GISONDA:** And at the same time, Acciona and the Georgiou joint venture commenced negotiations with all unions in the construction industry in relation to an enterprise agreement for the Coomera Connector North project; is that right?

MR BALMER: Yes, we had commenced. Just to clarify, though, there was two streams of negotiation happening in parallel.

10 **MR GISONDA:** And one stream was with what you might call the BTG, led by the CFMEU, and the other stream of negotiations were with the AWU?

MR BALMER: Correct.

15 **MR GISONDA:** And at page 785 of your bundle, there's an email that you, amongst others, including from the Department of Transport and Main Roads, received from Mr Ryan, who was your industrial relations adviser -

20 **COMMISSIONER:** Mr Murphy.

MR GISONDA: Sorry, Mr Murphy, who was your industrial relations adviser at the time, reporting on the fact that you and he and others had caught up with the BTG Group that Monday, and is it fair to say that you were negotiating with these unions because the joint venture believed that that was the direction given to it by the
25 Department of Transport and Main Roads?

MR BALMER: It was a very clear expectation, yes.

30 **MR GISONDA:** And you'll see there, in the second paragraph that begins "Jade", it says:

"Jade had been through our proposed agreement and had highlighted his concerns which he shared with us in a constructive way."

35 And just to be clear, you had circulated to all the unions a draft EBA for the project that the joint venture was hoping to have agreed, and you had run that by the department beforehand to try and get some sort of in-principle approval that that would meet the BPIC requirements?

40 **MR BALMER:** Yes, that it was consistent with the intent.

MR GISONDA: Consistent with the intent. And it then says in this email:

45 "Unsurprisingly, the unions consider the John Holland Gold Coast Light Rail Stage 3 EBA to be their log of claims."

And is that what you remember, that the now-lodged Gold Coast Light Rail Stage 3 EBA was presented to you as what the unions wanted for your project as well?

MR BALMER: Correct, yes.

5

MR GISONDA: And it also says in this email that the CFMEU have been clear that they will have the AWU as a party to the EBA; is that right?

MR BALMER: Yep. Yes.

10

MR GISONDA: But the feedback you got - and it was very clear feedback, I suggest, from the AWU - is that they were not prepared to have an agreement with the CFMEU?

15

MR BALMER: That is correct.

MR GISONDA: Now, at about this time, you were fielding questions, weren't you, from subcontractors about what BPIC might mean for them in tendering for the Coomera Connector project?

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MR BALMER: Yes. There was significant confusion in the market.

MR GISONDA: And other principal contractors who were also members of the QMCA were likewise fielding questions, which seemed to stem from uncertainty in the market about what this all meant. Is that fair?

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MR BALMER: That is fair.

MR GISONDA: And so did your organisation lead an effort to publish a guide for subcontractors on how to navigate BPIC policy?

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MR BALMER: Absolutely. The QMCA took it upon ourselves, the industrial relations working group, to draft up some guidance for reputable suppliers and subcontractors to - with a view of educating the market in regards to how this policy would be implemented, following its non-mandatory status.

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MR GISONDA: Do I take it from that that your organisation saw a gap in the market or a lack of education to the market about these matters?

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MR BALMER: Yes. Can I just be clear, when you say "your organisation", I am the regional director for Acciona, so that's probably my organisation.

MR GISONDA: Sorry.

45

MR BALMER: It's an unpaid role, the chairman of the board of the QMCA. But yes, the QMCA, very much, we saw the need for small and medium enterprise to tidy up the misinformation that was starting to permeate throughout the market and the

broad-scale confusion around how this policy - and what it would mean from the perspective of a client to be compliant with the intent of BPIC.

5 **MR GISONDA:** And the QMCA joined forces with the Civil Contractors Federation to publish a guide to the market?

MR BALMER: Yes, we did.

10 **MR GISONDA:** And at page 797 of your bundle, is that the guide that was ultimately prepared by the respective organisations?

MR BALMER: Yes, that was the guide. I think that was over a number of months and a number of drafts, that's where we were landing. Yep.

15 **MR GISONDA:** And if we look at starting at page 798, it's a series of questions and answers to those questions; that's the way the guide was structured?

MR BALMER: Very much so, just to make it very simple.

20 **MR GISONDA:** And those were the types of questions that the industry were asking others in the industry, including the QMCA and the CCF?

MR BALMER: Correct.

25 **MR GISONDA:** And the idea was to distribute this guide to contractors and subcontractors?

MR BALMER: Yes.

30 **MR GISONDA:** And did you want the input or approval or any involvement of the Department of Transport and Main Roads before doing that?

35 **MR BALMER:** Yes. As we were pulling the final draft together, we decided it would be pertinent to engage with the Department of Transport. So we provided them a copy, with a view of getting their input. We were considering that they would provide a constructive element, just to make sure that we hadn't missed anything.

40 **MR GISONDA:** And at paragraph 213 of your statement, which is at page 21, you were informed of feedback that the CEO of the QMCA, Mr Chapman, told you that he'd received from Mr Neil Scales. What do you remember about that information you were provided?

45 **MR BALMER:** Yeah, Andrew gave me a call. He said, "I've provided the - to the Department of Transport, Amanda and Neil." Neil's given him a call back and said, "If you - if the QMCA and CCF publish this document, that will be seen as an act of war by the Queensland Government." More importantly, the inference was we would be - we would be squaring up to the Queensland Government.

COMMISSIONER: I don't understand why that's the case. What's the - what's antagonistic about this explanation that would be regarded as an act of war?

5 **MR BALMER:** I think the explanation - our rationale, Commissioner, was that as you read through the FAQs, it just reinforced a number of protocols or processes that allowed people and enterprises, small and medium, to operate very much as they have been, with their own enterprise agreements, not having to do anything new, not having to deviate as a result of the non-mandatory policy. The "act of war"
10 commentary, therefore, putting that together, is that our guidance to the market that it is not as mandatory as that perceived by the Queensland Government was different.

The difference was, our FAQ reinforced the non-mandatory intent meeting concept, where the feedback of "act of war" we took as just reinforcement yet again of the
15 intent or the agenda of the Queensland Government, that the concept of being non-mandatory was a little bit of decoration; that their expectation - which must have been aligned with their arrangements with other parties - was that this was going to be enforced.

20 **MR GISONDA:** So what did the QMCA decide to do once that message was received?

MR BALMER: We put a handbrake on, and we stopped the process of providing the FAQs. And to be quite honest, we were quite disappointed, because yet again, we
25 were still seeing small and medium enterprises being informed and provided with information and misinformation that was actually changing their paths and the way they operated their business, and some to their demise.

MR GISONDA: Now, your strategy in trying to come to a landing on an enterprise agreement for the Coomera Connector project was to say to both the BTG and the
30 AWU, who you were negotiating with separately, "Don't worry about who's going to be a party to this for the moment. Let's just all negotiate on the terms and conditions and try and reach some agreement on those matters first." Is that right?

35 **MR BALMER:** Absolutely, yes.

MR GISONDA: And the message that you then said - that you were saying to the unions was, "Once those issues have been resolved, then we can come to the question of who's a party, but we're all well aware that the AWU has its very firm
40 position."

MR BALMER: Yes.

MR GISONDA: And at some point in time, the CFMEU stopped engaging with the process and wouldn't respond to requests for further comments or further bargaining
45 positions about the terms and conditions; is that right?

MR BALMER: That is correct.

MR GISONDA: And that process started in about March, and the disengagement started to occur in about April?

5

MR BALMER: Mmm-hmm.

MR GISONDA: It was a period of about eight weeks where you heard nothing from the CFMEU; is that right?

10

MR BALMER: That's right. We were quite disappointed. We'd spent three quite long meetings with them, two at the ETU offices at South Bank, one at the CEPU office on the Gold Coast, working through the document that we had verified by the Department of Transport met the intent of BPIC. They were frustrated because they - as a starting point, that is not what they wanted as the starting point. The starting point - and this is what I mentioned yesterday - we'd already set ourselves a position of having the intent agreed with the Queensland Government before, and to open the conversation with that, that was quite troubling for them.

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MR GISONDA: And just so we remain mindful of other developments in the industry at the time, on 15 June 2022 the AWU were successful in their appeal to the approval of the Kangaroo Point Green Bridge enterprise agreement. Do you remember that happening?

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MR BALMER: Yes.

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MR GISONDA: And a day later, the AWU's objection to approval of the Gold Coast Light Rail Stage 3 enterprise agreement, greenfields enterprise agreement, was also successful.

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MR BALMER: Yes.

MR GISONDA: And one of the concerns that the joint venture had along the way was that if you did an EBA with the CFMEU and without the AWU, you'd be caught up in the same types of challenges or objections or appeals.

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MR BALMER: Yes. That was a key consideration, albeit not the only consideration.

COMMISSIONER: What were the others?

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MR BALMER: Well, the others being that we had a pre-existing greenfields statewide agreement with the AWU, because our industry being horizontal, or the infrastructure sector, that was seen as appropriate and BAU. So we still had that as a point of fixity as a corporation.

45

COMMISSIONER: You already had an agreement, so you didn't need a new one, and if you entered into a new one with the CFMEU, which you didn't need, you'd get a challenge from the AWU?

5 **MR BALMER:** 100 per cent. Exactly right.

MR GISONDA: On 22 June, so that's about a week later, you were asked to attend a meeting with Minister Bailey, Neil Scales, Deanne Hawkswood and Scott Gartrell; is that right?

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MR BALMER: Amongst others.

MR GISONDA: And if we could go to page - sorry, paragraphs 251 to 255 of your statement, do you remember what they told you the purpose of the meeting was, before you attended?

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MR BALMER: It wasn't overly described, but it was to do with, obviously, the Coomera Connector North project. It was clear that that was the point of reference.

20 **MR GISONDA:** And at that point, you had agreement with the AWU, and you'd had approximately eight weeks of disengagement from the CFMEU?

MR BALMER: We believed we'd formally - we had reached an impasse with the BTG.

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MR GISONDA: And so can you tell the Commissioner what you recall about that meeting on 22 June?

MR BALMER: So the meeting was for about - took about one hour. We met at Parliament House - I think it was in an annexure - at Parliament House. The room was a small boardroom. There was myself with Glenn McIlroy, Gary Georgiou and Ryan Murphy, all representing the joint venture, GJV. The meeting was attended, as noted, by Minister Bailey and others: Scott Gartrell, Amanda and - and Neil Scales. The conversation - and it was all to do with where we were with the industrial negotiations. We as much led the first two-thirds of the meeting, outlining how we intended to meet all of the best practice principles around training, local content, Indigenous employment, amongst other things. So we certainly talked around the broader Queensland Government's agenda, best practice principles, then gravitating to the conversation around where we were with regards to an EBA.

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The conversation, we made it quite clear the process we had gone through, that we had secured agreement, that we had met the intent with the document that we led the conversations with both the parallel negotiations, outlined the fact that an impasse had been reached and that we were going to - our intention was to move forward with the AWU agreement. Do you want more than that, Mr Gisonda?

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MR GISONDA: And what then happened at the end of the meeting?

5 **MR BALMER:** So Minister Bailey did engage and did ask a few questions, but ultimately, he asked at the end of the meeting that - if we could do one thing for him, and that's to advise him of the eve that that AWU agreement was to be lodged with Fair Work, which we took on board and we subsequently did do that action. And as people got and left, I looked to Neil Scales, and Neil, with the sign of his hand, crossed his chest, as a form of - akin to a blessing.

10 **MR GISONDA:** That would be - the meeting ended on the basis that there would be - you were going to go to the Fair Work Commission now to seek approval -

MR BALMER: Yes.

15 **MR GISONDA:** - of an enterprise agreement with the AWU only -

MR BALMER: Yep.

20 **MR GISONDA:** And it appeared as though the joint venture had no objection from the minister to that course?

25 **MR BALMER:** - in parallel with that, just so we've got all the facts around it, we had lodged that document with the ABCC to verify it complied with the code. So that was ongoing. But to your point there, I - it really reinforced to me that it was Minister Bailey who had to be, in effect, signing off on this path forward. It was really obvious to me that it wasn't Neil Scales giving me the blessing; it was the fact that Mark Bailey felt that it was that critical to get involved he'd put himself in that space and asked us, you know, that simple question: "Can you just let me know?" So I took that as just again reinforcement that many parts of department and many senior bureaucrats were impaired by their ability to make the decision. They weren't authorised, almost.

35 **MR GISONDA:** And the EBA was then lodged with the Fair Work Commission, and the CFMEU did not object or otherwise seek to be heard in relation to that application -

MR BALMER: Correct. Yep.

MR GISONDA: - and the agreement was approved.

40 **MR BALMER:** Yes.

MR GISONDA: And that occurred in late - or some time in July, and their response was - do you remember that almost immediately after that there was a rally conducted by the CFMEU on 4 August 2022? Do you remember that event?

45 **MR BALMER:** Yes.

MR GISONDA: And a few weeks later, on 22 August 2022, the CFMEU disrupted a QTRIP forum meeting?

MR BALMER: Yes.

5

MR GISONDA: Have you been to a QTRIP forum meeting before?

MR BALMER: Absolutely, yes.

10 **MR GISONDA:** And can you just tell the Commissioner briefly what those events are about, what happens?

15 **MR BALMER:** So the QTRIP acronym is the Queensland Transport and Roads Investment Plan, or program. It's actually quite an important function when you have a look at the operating structure of the Queensland Government, because it is where the largest capital works program intentions are provided to the market so that they become informed. It's typically well attended, and many businesses pivot off the back of QTRIP in regards to where they lead their business and how they invest, and it's typically seen as a highlight from a Queensland Government's perspective as well. You would think it would be the jewel in the crown for the Minister for Transport. It allows him to announce his XYZ billion-dollar program intention and where the capital investment's going to be made across the state of Queensland. So it's - it is quite a significant feature of the calendar.

25 **MR GISONDA:** I'm just now going to play some videos of that event, and I'm not suggesting that you're involved in these. It's just that we're talking about this event now, and so we can show some footage to help illustrate what happened, and it also then ties into the next topic I want to raise with you, which is the concern that you in your role with the QMCA and others in the industry had about some of the - what might be described as the psychosocial consequences of some of the behaviour that was being exhibited in the industry at the time.

30

MR BALMER: Yes.

35 **MR GISONDA:** So I've got five videos, Commissioner, to show you. Can I begin by showing you - this is all body-worn camera footage from police who attended the event. So can we go to -

40 **COMMISSIONER:** Can you just remind me, Mr Gisonda, does Mr Geoffrey Watson refer to both these events in his report on violence by the Queensland CFMEU? The 4 August 2022 protest and the 23 August '22 protest?

MR GISONDA: I can't remember whether he referred to the 4 August rally, but he did refer to this QTRIP rally on 22 August.

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COMMISSIONER: 22nd. I said 23rd. Sorry, 22nd.

MR GISONDA: 22nd, yes. Okay. So if we can play video 1 first, please.

(Video 1 played).

5 **MR GISONDA:** Now video 2.

(Video 2 played).

10 **MR GISONDA:** Then video 3.

(Video 3 played).

MR GISONDA: Then I'll show video 4, please.

15 (Video 4 played).

MR GISONDA: And then video 5.

20 (Video 5 played).

MR GISONDA: This meeting goes on for approximately 15 or 20 or so minutes, so we'll just fast forward whilst the police are standing around waiting for this meeting. Nine minutes, sorry. Nine minutes, Commissioner.

25 (Video 5 continues).

MR GISONDA: Commissioner, can I tender those five videos, please.

30 **COMMISSIONER:** I think you said the date of the protest was 22 August 2022. I think it's the 23rd, isn't it?

MR GISONDA: Did I say the 22nd? Sorry.

35 **COMMISSIONER:** I think so.

MR GISONDA: The 23rd.

40 **COMMISSIONER:** And what's the address of the place where the Queensland Transport and Roads Investment Program forum was -

MR GISONDA: 61 Mary Street.

45 **COMMISSIONER:** Is there any objection? Police body-worn footage of CFMEU protest at Queensland Transport and Roads Investment Program forum, 61 Mary Street, 23 August 2022 will be exhibit DAB-2.

**<EXHIBIT DAB-2 POLICE BODY-WORN FOOTAGE OF CFMEU
PROTEST AT QUEENSLAND TRANSPORT AND ROADS INVESTMENT
PROGRAM FORUM, 61 MARY STREET, 23/8/2022**

5 **MR GISONDA:** Can I then just take you, Commissioner, to the bundle, which was the BPIC and Transport Projects Bundle 1.

COMMISSIONER: This is the document that - this is the bundle that you -

10 **MR GISONDA:** That I took you to on late Tuesday.

COMMISSIONER: Tuesday afternoon, yes.

15 **MR GISONDA:** So at page 139 - sorry, page 144, there's a document called Hot Issues Brief. You see at the bottom, it says that senior members of the CFMEU, including Mr Ravbar, Mr Ingham and Mr Dunbar, were invited to attend an industry briefing on QTRIP, and due to COVID restrictions, seating was limited to 160 invited guests. No response to those invitations were received. And then over the page, it says that approximately 200 members took the opportunity to enter the
20 building under the guise of attending the briefing and occupied the conference room. Neil Scales was attending and was scheduled to speak.

Then if you go to page 149, there's an email from Mr Langford, who says he spoke to Paul Taylor, who is a CFMEU official, and he said, "This is about Scales and about
25 procurement." He wouldn't offer anything further. And point 1, a security guard getting knocked over by a small crowd pushing into the foyer, and you saw that in the first video. And then point 2, the CFMEU holding a mock conference, with someone on stage wearing a Neil Scales mask, DG being "director-general". On page
151 -

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COMMISSIONER: In terms of that first video, I thought that first video, which is now part of the five videos which form DAB-2, had been introduced into evidence by someone else. Am I right about that?

35 **MR GISONDA:** Not that particular video, but you did have other video footage, I think, when Mr Watson gave evidence.

COMMISSIONER: I see.

40 **MR GISONDA:** And at the top of 151, they were chanting, "Neil Scales smells like corruption." And then, as a result of the incident, some workplace health and safety claims were made by those who attended on the day. If you go to page 160 of the bundle, on the right-hand side, description of the claim, where it says the incident occurred at the conference room:

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"An employee reports to be stressed by the incident as the protesters were aggressive, yelling and were pushing through employees to gain access to other areas

on the floor. Union protesters then decided to hold a union meeting in the conference room and have told the employee that they were having a meeting and to get the fuck out. The employee left the conference room and waited for the protesters to leave."

5 Then at page 163, you have under the description there on the right-hand side:

"The employee reports feeling stressed and anxious as building security were swarmed by protesters and there was no indication as to why they were in the building. The employee felt anxious that she was locked on the ground floor with the
10 protesters and concerned about being injured."

Then at page 166, a claim by another employee under Description:

"The employee was in the building when a large crowd of union protesters walked
15 into conference area. They were carrying flags, signs, director-general face masks and an effigy. The employee was locked down with the protesters. The protesters were shouting, jeering and their demeanour was boisterous, loud and unsettling. The employee felt at risk from the aggressive, angry protesters and concerned as the director-general was also on the floor in a meeting room. When the employees tried
20 to pack up the conference room the protesters stormed the area, advising that they were now having a meeting. The protesters shouted free coffees to which the employee ordered the coffee start contractor to shut down as this was only for registered attendees. Protesters continued to take over the whole of the conference area and rooms. The violence and intimidation shown towards the employee has left
25 him feeling vulnerable, traumatised and unprotected."

And then there's another detailed claim that begins at page 168. This goes into some detail about what was happening on that morning. And if you go to then page 169, that first main - the first paragraph that begins on the page, "At that point", she said:
30

"I heard the protesters shout about the coffees that were available for event attendees, calling out things like 'coffees! Come on boys, get a coffee'. I left the conference room, made my way through the crowd of protesters to the coffee machine. I asked the barista if she was okay and she nodded but looked a little uncertain about what
35 was going on. I advised that we needed to stop making coffees as they were only for registered attendees. At that point I announced to the protesters that the coffees were only for registered attendees, to which the crowd teased, shouting that they had all registered. I knew that this was not true."

40 On it goes. Then perhaps if we jump to page 171, because there is quite some detail in this statement. That paragraph that's towards the bottom that begins "the only reason":

"The only reason this event has been discussed in the public domain is that
45 journalists have found out about it and asked questions, and it has turned into a political circus about our minister. TMR's employees were not defended by TMR other than for our Minister and Premier to respond to the media. This was left me

feeling vulnerable as there appear to be virtually no consequences for any militant protesters who may choose to invade my workplace. The IB has shown me that a similar event could easily happen again at any TMR workplace, even if security guards and multiple police officers are present. Neil Scales champions TMR as a
5 White Ribbon workplace that does not violent or intimidation."

And:

10 "I have spent a lot of time successfully going to counselling to overcome those experiences."

She's talking about some other personal matters that have been redacted on personal confidentiality grounds, and says:

15 "It has given me a unique perspective to identify the parallels between my experience with a large 6 foot 2 invading my home loudly shouting and menacing my family and the 300 or so large, burly CFMEU protesters who invaded my work space and intimidated me and my colleagues. I simply don't understand how TMR can be vocal about domestic violence but not proactively condemn those who intimidate us in our
20 workplace, other than as a response to media inquiries."

The media story that was floating around at the time was that the minister, who was - should have - well, perhaps I'll ask Mr Balmer for a moment: have you been to these events before?
25

MR BALMER: Yes, I have.

MR GISONDA: And is it usual for the minister to attend and speak?

30 **MR BALMER:** 100 per cent. And I actually noticed the event in Deanne's evidence yesterday, that he was there nominated to be attending.

MR GISONDA: And so the media story was that he unusually had not attended that day, and the insinuation was that he had been tipped off about the rally in advance,
35 because, as you'll see from these documents, no one who was there on the day knew that it was going to happen. It was an event for registrants, and there had been no registration - certainly not a registration for more than 200-odd CFMEU members to attend. And you'll recall that I took you to page 139 of the bundle on Tuesday, and at the bottom of the page, that email, there's an email requesting a briefing from the
40 department because the minister has a meeting this afternoon at 3 pm with the Premier's deputy chief of staff, Ms van Alphen, and the CFMEU on BPICs.

COMMISSIONER: That's the day before?

45 **MR GISONDA:** The day before. Now, Mr Balmer, sorry about that long introduction to the next question, but there was a concern by members of the

industry, including members of the QMCA, about some of the psychosocial impacts that some of the behaviours of the CFMEU were having on workers; is that right?

MR BALMER: 100 per cent.

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MR GISONDA: And if we go to page 1787 of court bundle now, there was a meeting on 28 March 2024 between the QMCA and the Department of Main Roads and Transport where you raised some of these issues, and I was wondering if you could tell the Commissioner what you recall about the meeting or, if you can't recall specifically the meeting, what you recall about the concerns industry had in this area and what you were communicating to government or trying to communicate to government about these issues.

MR BALMER: I think it's quite clear what we're trying to communicate, is that the state of unrest within the civil infrastructure market was in a state of flux unseen before. I can't recall whether this was prior to the letter that we formally sent as the QMCA to Julie. We may be getting to that. But we did formally send a letter to the Department of Transport, very much targeting the psychosocial impacts of the conduct of the CFMEU. But this letter - these notes here, again, we're just reinforcing, you know, the positive obligation for all employees to have a safe workplace and that there's - yeah, the conduct of the CFMEU and others was - was just out of control.

COMMISSIONER: What page was this again, Mr Gisonda?

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MR GISONDA: That's at 1787.

MR BALMER: I'll just get there myself.

MR GISONDA: And then, Mr Balmer, at page 1781, you had sent Ms Mitchell a draft of a psychosocial code of practice, which begins at page 1782.

MR BALMER: Yep.

MR GISONDA: And that was your attempt to articulate the -

MR BALMER: Yes. This is - again, this is me - this is my authorship, noting - yeah, I was raising it and saying to Julie as the DDG, "This is becoming problematic. We need to escalate this issue." And I actually - this was insight into the letter that was being evolved by the QMCA on the matter. I think it's all very clear, capturing very much the QMCA's vision for the industry, which is to make it a safe, attractive and rewarding industry. And the word "safe", the breadth of that single word is physically and emotionally safe for all individuals in the workplace, safe for minorities to participate, safe for gender diversity, safe for small and medium enterprises. So the word "safe" in our vision statement as QCMA was quite broad, and this aligned to the mission and vision of the QCMA, so it was - I was giving a heads up: we're going to be pursuing a line of questioning in this area.

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MR GISONDA: And at page 32 of your statement, at paragraph 370, you talk about a meeting that you had with WHSQ on this very topic.

5 **MR BALMER:** Yes.

MR GISONDA: And can you tell the Commissioner what you remember about that meeting?

10 **MR BALMER:** Okay. So we, by that time, had formally lodged our letter as the QMCA into the Department of Transport via Julie Mitchell. Julie had reached out to WHSQ and - armed with the letter, seeking their advice, guidance, support, to which we then brought - she brought - Julie brought the WHSQ together with ourselves to have a conversation. We - yeah, so that ultimately is the meeting. We - when we
15 became aware, when Julie mentioned to me that she's organised and Helen Burgess was going to be in attendance repping WHSQ, I actually did flag with her there's an anomaly with that, but we shall - let's have the meeting anyhow, because we were genuinely concerned that Helen Burgess was compromised. But I still thought that the point of the meeting was absolutely high value, so let's - let's have the catch-up.

20 **MR GISONDA:** And then what did Ms Burgess - what did you say to Ms - what do you remember about what you said to Ms Burgess and what she said to -

MR BALMER: So in that meeting, and it's one of our - in one of our attachments,
25 I'd actually developed a PowerPoint presentation to help facilitate that conversation. In that PowerPoint, there's a single slide - there's actually - it's only three slides in the deck, but the key slide is right in the centre of the deck, and what I - I sort of opened the meeting with the point that we're looking at WHSQ, it's quite clear psychosocial harm is identified and something that they need to be acting upon. We - I put a
30 scenario up that showed a parallel scenario of a physical harm and a psychosocial harm. The physical harm was a scaffolding issue, and I made - and in that table, and I don't know if we're going to be bringing it up, because it would help.

MR GISONDA: It's at page 1843 of your bundle.
35

MR BALMER: 1843. If you could bring up, that'd be great. Yeah, here we go. So what - we tried to use this or pivot the conversation on it. So the ultimate - down the left-hand side, I just typified a type of event. So there's an observed event, and this is a safety event. Observed event. A reported event or aware of an event. In the
40 physical safety hazard, being a defective scaffolding, if there was an observed event, the scaffold obviously faulty or incomplete, observed - an observation made from the street from the public or an inspector, what the action of Workplace Health and Safety could easily include, which is stop work, isolate, interview principal contractors, interview the principal contractor engineer.

45 So I outlined the actions of what the Workplace Health and Safety would look like if they observed - had an observed event. If there was a reported event, their action

would not be that much different. So if the scaffold was reported faulty or incomplete by a concerned worker, they would act. They would get themselves involved. You'd have improvement and prohibition notices. Real-time consequences would be part of the game. And even the third one would be if Workplace Health and Safety became aware of an event through the fact that there's a an injured party in the hospital as a by-product of the scaffold failure, again they would act.

The right-hand column is now - we flipped it to say, so here we have psychosocial hazards existent, and I said, you know, you get media reports or witness verbal abuse from third parties. There's an observed event as a psychosocial - what's the action? So the question mark was ourselves, what is Workplace Health and Safety intending to do in these spaces? And again, you can see the reported event, and the last one being an individual on stress leave. And, you know, this - I did connect, in that conversation, QTRIP storming to there. You're aware that there are people who have suffered a psychosocial injury through the actions of the CFMEU, intentional; what are you going to do about it?

The next page of that PowerPoint deck, if you don't mind, Mr Gisonda. So the key questions for the conversation is how do we promote the safe and actionable reporting, without fear of retribution, of workplace-related psychosocial hazards for individuals, subcontractors, contractors, clients and regulators. So I was opening the conversation. I must admit, I didn't get much traction. Who's to monitor, investigate and prosecute third parties who create psychosocial hazards? Is it yourselves, Workplace Health and Safety? Is it the Queensland Police, Federal Police?

I then put the analogy then, if an individual or organisation has demonstrated a preparedness to create psychosocial hazards, what actions does the Office of Industrial Relations endorse to be taken by industry? Again, the left-hand side, they're the six manners in which you deal with workplace safety. You know, the lowest form of response is PPE. Administration, engineering, isolation, substitution or elimination. So that's a hierarchy of control, it's known as, working from the bottom up. So I outlined what it might look like. And then, ultimately with a view to shared learnings, how does the Office of Industrial Relations empower and protect its officers from psychosocial hazards?

And to her credit, Helen Burgess did unpack that they've got the same problem. As an employer, they've got many officers that are suffering psychosocial harm in their day to day. So we - we pushed quite firmly and tried to - tried to have a structured conversation with a view of how do we make this industry, and that's for everybody, so - a safe industry? Ultimately, the point about, you know, the prosecutability or how the Office of Industrial Relations would approach the CFMEU, she would not buy into that in that meeting. And if anything, each and every time we got close to that, it would be always reverted: well, it's the employer's obligation too, employer's obligation.

So, for example, we talked about the psychosocial harm to those public servants. Her response would have been, "Well, it's up to the Department of Transport to have

prevented them being harmed," as opposed to in any way or form stepping forward to say, "Yes, we need to approach that registered organisation, because they are quite clearly, with intent, causing harm." So it was - you know, I tried - we're trying to - yeah, we're trying to be proactive. Is that clear?

5

MR GISONDA: Yes, but you said you didn't get much traction.

MR BALMER: No. To that end, I think I've captured in the statement that there was a replay with Sarina Wise. So that meeting was 4 July, between 4 July and 22 July.

10 Ms Burgess' status within the department had altered, and we had a replay. I wasn't able to attend the Ms Wise meeting, but the - I think for the purposes of my statement, I've put what we were trying to achieve there.

MR GISONDA: Now, can I just ask you a few more questions while we have you, Mr Balmer. After the agreement with the Coomera Connector was approved by the Fair Work Commission, at around that time, you were also - now talking about Acciona - tendering for the Rockhampton Ring Road project; is that correct?

20 **MR BALMER:** Yes, that is correct.

MR GISONDA: And the Rockhampton Ring Road tender, can I just ask you, are you in a position to explain what the physical layout of that project was.

25 **MR BALMER:** Mmm-hmm. So the Rockhampton Ring Road is a brand-new road that bypasses the CBD of Rockhampton. It takes the - and creates a brand-new highway to the west of Rockhampton, around the airport, over the floodplains, across the Fitzroy and then back intersecting with the Bruce Highway. The project was broken into two parts. There was the Rocky Ring Road North and the Rocky Ring Road South project. Ultimately, the successful proponents for those two
30 packages - that's ourselves, Acciona, with Fulton Hogan - were selected for the South project, and Georgiou - Bielby and BMD were successful for the North project.

MR GISONDA: And approximately how many kilometres did the project extend for that your joint venture was working on?

35

MR BALMER: I should know the numbers, but it's probably physically indicatively about half of the 17 kilometres.

40 **MR GISONDA:** So the entirety of the project was 17.5 kilometres, and the North package was approximately half?

MR BALMER: Yeah, indicatively.

MR GISONDA: And were both projects being constructed at around the same time?

45

MR BALMER: Yes.

MR GISONDA: Sorry, both packages constructed around the same time?

MR BALMER: Were being procured and constructed, yes. And they were construct-only contracts.

5

MR GISONDA: At page 1277 of your bundle, you were provided with a copy of an email which is at the bottom of the page from a subcontractor or potential subcontractor on the Coomera Connector project, and what this subcontractor says at the bottom of that page is that:

10

"Upon our review, we also found this agreement to be more tailored to suit trades that are onsite full time for long periods or companies that currently have EBAs in place with similar pay structures. Historically these types of documents are not workable for ad hoc service providers like ourselves."

15

And what he's talking about there is the BPIC transport document that was being provided to subcontractors, and they were being told they had to meet the intent of that document; is that correct?

20 **MR BALMER:** Yes.

MR GISONDA: And what he then says over the page is:

25 "Due to the Queensland Government TMR's IR requirement for this job, I unfortunately have to confirm that we will no longer be able to move forward with the tendering process on this project. This is extremely disappointing considering our significant investment in equipment and our proud 50-plus year history of pumping concrete on Queensland's most iconic and challenging projects."

30 And so that's some direct feedback you've received from a subcontractor, and was that consistent with what other principal contractors were telling you in the industry?

35 **MR BALMER:** Yes. And it's consistent - like I mentioned earlier, there's numerous small and medium enterprises that saw that a BPIC arrangement would conflict their business and they would actually withdraw from participating.

MR GISONDA: And part of the best practice principles include principles in relation to local procurement?

40 **MR BALMER:** Yes.

MR GISONDA: And a number of these smaller subcontractors would typically satisfy that local procurement obligation?

45 **MR BALMER:** Yep.

MR GISONDA: And at page 1751 of your bundle, you spoke to the Commissioner yesterday about the impacts of BPIC on the Coomera Connector project, and remember you mentioned - you said somewhere in the vicinity of \$80 million?

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

MR GISONDA: And that's - there, that table there on the page confirms that that's the approximate \$80-million figure that you were talking about?

10 **MR BALMER:** Yes.

MR GISONDA: And that document that we're looking at there is part of a document that was provided to the PLT, and that's a monthly project leaders meeting that took place on the project each month; is that right?

15 **MR BALMER:** Yes. Every month, the project leadership team would meet, equally represented by the constructors and the client, and the project manager would take, as this would be - he would assemble this document and then deliver it to the project leadership team, giving us a clear picture of the status of the project.

20 **MR GISONDA:** Could I then ask you to look at page 1852.

COMMISSIONER: Just while you're on 1751, just tell me what the designation CPA risk allowance \$20 million is?

25 **MR BALMER:** So we had made a provision of \$21 million for - I think that one was for escalation. So we had to back out - because we had combined - because it was near on impossible to be able to delineate BPIC-driven cost increases from market escalation, we aggregated it. So what we made the point of is, you know, again, it's a collaborative project agreement. We've got absolute accounts visibility by the State of Queensland. We'd made a provision in our pricing. So of the \$100 million, we already had \$20 million in hand, effectively, in the bound arrangement. So the total cap increase, that's why we backed it out.

35 **MR GISONDA:** Now, at page 1852. Sorry, 1852. This is a document that the QMCA had prepared. What it compares is what a construction worker was receiving on, at least in that orange bar, on a civil construction project, compared to the salaries of a police officer.

40 **COMMISSIONER:** I don't think we've got it on the screen yet, Mr Gisonda.

MR GISONDA: Sorry. Page 1852. So the orange bar is - well, the yellow bar is the construction worker on a renewable energy project, and that's based on the rates that were set out in the renewables BPIC that was being circulated amongst industry by the government?

45

MR BALMER: Yes.

MR GISONDA: But then the orange bar is civil construction project workers, and then you've compared that with police officers, nurses and teachers.

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

MR GISONDA: And what was the objective of this type of analysis?

10 **MR BALMER:** We were - we were struggling with the policy, and you can see very much from its introduction in 2021, it was troubling us that we could not make any in-way or headway into having an appropriate engagement and a conversation with the policy-makers, and people that were brokering the rates of pay that are contained within the guidance information. So we took it upon ourselves - and this was published, you know, just prior to the most recent election, but there's different
15 versions and models that we had circulated prior to this, but it's a good summary document, and what we were trying to highlight is how - how the - how disruptive it was in regards to, you know, parity with other professions.

To be quite honest, we were also looking at, you know, workforces, considerable
20 workforces who were working for the same State Government directly, trying to create a little bit of engagement and an emotional response. It - we were struggling with it ourselves, you know, having - and there's other - like I say, other models that show, you know, by leaving school and doing, you know, a 10-week training course, you could be earning more than the principal who runs the school you just left. And
25 it made no sense. Yes, construction workers work hard, and they're the most valued asset within our industry; there's absolutely no doubt about it.

But there seemed to be an absolute - we really were questioning public interest in regards to - in what way did this meet some form of public interest test, why, you
30 know, we were seeing nurses, teachers, policemen struggling to get, you know, two and three per cent wage increases, and in one fell swoop, one sweep of a pen, with the deployment of a poorly considered policy, the construction workers were supercharged. And you have a look at that, both South East Queensland, but even more, you know, remote projects, it's - again, the people who are concluding that this
35 made sense, I really don't know what - I think the lights were on but no one was home, because it genuinely was the QMCA just trying to get people's attention.

You can see the back end of the - you know, most - and I will mention, there was numerous versions of the BPIC. That just reflects too. But for every new project that
40 came along, there was a new issuance of a new set of rates, and every time they were jacking up, and we repeatedly asked the question: "Who's come up with this new set of rates? No employer's been part of that conversation." And all they were doing was adding money. And to the Commissioner, you picked it up perfectly yesterday: what is this? You're almost bidding against yourself as the State of Queensland for the
45 same labour force to do the same work. It became quite nonsensical.

We really wanted to hit hard the BPIC - you know, the renewables, because the shift was going to be - and the shift was on, that each and every time you reissue a BPIC, renewables was being grabbed by the CFMEU as being the next benchmark for the next set of negotiations. So forget transport, transport-plus, guidance on fast rail, forget all the guidance stuff; our log of claims starts with renewable. Because, correctly, concrete is concrete, earthworks is earthworks; it's like work. And they were - dragging that into the conversation was highlighting to the community and to the taxpayer what the State Government policy was going to do. It was going to drive up the cost of infrastructure enormously, which would then make the volume of infrastructure needed to be - that was able to be fiscally built reduced.

It's going - the effect of this was not going to be sustainable for - for so many reasons. And it was a bit of a - it was a summary, but like I mentioned, and you have seen it in other parts of my evidence, there's numerous models where we've modelled at trade base and different ways, trying to engage a conversation. But as we heard yesterday, the government - we were struggling to engage with anybody. We couldn't get into a minister's office to save ourselves.

COMMISSIONER: Well, it's not just the bidding against yourself; it's what you do with the public finances. One of the - you can see in the impact of the wages policy, when - and this happens in every State Government and both Labor and Liberal for the last 40 years, that the Education Minister comes forward, the Police Minister comes forward, the Health Minister comes forward and says, "I want more money," and there's a process within the government to say, "We've got to keep these wages within a limit that prevents the public finances from blowing out." And you see that discipline in the curve, and you see it all - with exceptions. There's ways of getting round it we don't need to go into, but there's some problem in the process that allows the wages policy to operate as it ought to, and it has done for 40 years, through all states, and then this process.

MR BALMER: In our EBA negotiations, repeatedly got told, the failed EBA negotiations with the CFMEU, I repeatedly got told, "Why are you pushing back? This is fully funded." And my response was, "Yeah, fully funded by the taxpayer, and it's not acceptable." It makes - it's not - so the attitude of the people who believe they informed and, you know, part-owned the government policy was, you know, the money will just keep flowing. It's just - yeah, you know, the attitude was, again, difficult to -

MR GISONDA: Did you receive any feedback about whether some of these other trades were ending up in the construction industry?

MR BALMER: Yes. It is a very astute question. What we were starting to see is again, and I mentioned it yesterday, the migration of different trades and different professions into the construction industry. So we were seeing teachers and nurses appearing as traffic controllers on projects, because why would you - you start to have a look at - to be a registered nurse class 5, you can nearly earn - take your \$120,000 a year that you're earning in 2021, go and join the construction industry

and all of a sudden you're on 170. That's what - you know, looking at the blue line and the orange line intersecting with - you know, graphically represented.

5 So attractiveness to people to leave professions, and some are extensively trained professions. Policemen, policewomen. There's numerous examples of people saying, "That's a great opportunity. I'm going to get my mortgage paid off quicker. I'll move across." One really concerned me, and I mention it, is the movement from residential constructors, you know, where it's going to drive up the cost, and we've seen the cost of even residential construction climbing at a rapid pace. This was a key catalyst for
10 that for the State of Queensland.

COMMISSIONER: Residential. You're really talking about their multi - you're talking about apartment buildings, aren't you? You're not talking about detached housing?
15

MR BALMER: Well, it can be detached housing. Pouring concrete - I've had concrete finishers finishing a deck slab the same as the day they were before finishing a house slab. Steel-fixers, you know, fixing for - for, you know, hospitals, fixing for bridges. It's not - the partitioning - the construction industry in South East
20 Queensland, you've got to look at it as it's a single ecosystem. The portability of skill sets is quite high when you're talking about in the construction space, whether it's residential, commercial, infrastructure. They're very portable.

25 So there's no - there's no gate of entry. There's no - there's no - you know, especially when there's a demand, and we're about to embark upon one of our biggest demands we've ever seen going forward, which is great, but you can't - yeah, you can't look at it that people stay in the lanes. We were attracting talent - the industry was attracting talent from other already-stressed sectors.

30 **COMMISSIONER:** What do you mean by one of our greatest demands going forward?

MR BALMER: Just with the - you know, we're moving into the next phase, and I probably shouldn't have introduced it, but moving into, you know, into 2032, we've
35 got a large infrastructure program. There's a large venue construction program. There's plenty to be done. So, you know, having, you know, the earnings in the construction sector, one of our risks is dragging people out of other spaces and key spaces within - you know, pulling council teams out of council maintenance work and dragging them into construction, because there's just - the opportunity to earn
40 way more money is quite real.

COMMISSIONER: The government's figures are - I think it's 117 billion or 119 billion. That's just government expenditure over the next four years -

45 **MR BALMER:** Yeah.

COMMISSIONER: - in building and construction. I mean, it's not just Olympics, obviously. It's roads and hospitals and schools.

MR BALMER: No, yeah, railway lines, yep.

5

COMMISSIONER: That doesn't include the private sector, that figure?

MR BALMER: No.

10 **MR GISONDA:** Just two more questions for you, Mr Balmer. If you go to page 1860 of your bundle. The QMCA received a letter from the administrator of the union at the time, Mr Mark Irving, explaining that he had commissioned the investigation into the Queensland branch of the Civil and Construction Division of the union, which became the Watson Report. And I just wanted to ask you about that
15 paragraph that's third from the bottom that begins "I am committed". He says:

"I am committed to the task of rebuilding the CFMEU Construction and General Division as a strong, democratic, member-controlled, lawfully militant union, enduringly free of corruption and criminal influence."

20

What was your reaction when you saw that sentence in that letter?

MR BALMER: It's really hard to go past "lawfully militant union". It's really hard - the militancy is what we were seeing as creating psychosocial harm. It's
25 fascinating that, in reading this, not too - maybe a day later, the Deputy Premier had also read the dictionary, which I went to it to see to see what the word "militant" was, and we did take exception to it. We think it was - and certainly inspired the QMCA to provide a letter in response, because we - whilst the CFMEU going into administration was - we see it as a step in the right direction, the amount of re-work,
30 the internal culture was - it was deep and poor.

MR GISONDA: And that letter, then, is at page 1864.

MR BALMER: Yep.

35

MR GISONDA: And what this letter does is on page 1865, in the third paragraph from the bottom, it takes issue with that use of the word "militant", but then what this letter also goes on to do is identify a range of misconduct that had been witnessed by some of the members of the QMCA; is that correct?

40

MR BALMER: It is correct.

MR GISONDA: Beginning at 1867.

45 **MR BALMER:** It is correct.

MR GISONDA: No further questions, Commissioner.

COMMISSIONER: Is there any application to cross-examine this witness?

MR GISONDA: There's an application by Mr O'Grady, which is not opposed.

5

COMMISSIONER: Very well. Perhaps we can have a break before we commence the cross-examination, Mr O'Grady?

MR O'GRADY: Yes, Commissioner.

10

COMMISSIONER: We'll adjourn till quarter to 12.

<THE HEARING ADJOURNED AT 11.32 AM

15

<THE HEARING RESUMED AT 11.47 AM

COMMISSIONER: I can't see your - oh, here it is. Very well. Anyway, you've made the written application, and there's no objection.

20

MR O'GRADY: There's no objection, and I've also expressed that I might extend into some of the topics I covered off yesterday with Ms Hawkswood, and there's no objection to that as well.

COMMISSIONER: Very well.

25

<CROSS-EXAMINATION BY MR O'GRADY

MR O'GRADY: Now, Mr Balmer, I'm appearing for the administration, and you understand that many of the incidents you described in your evidence today and yesterday all pre-dated the appointment of the administrative?

30

MR BALMER: Mmm-hmm.

MR O'GRADY: Sorry, you have to answer for the purposes of the transcript.

35

MR BALMER: Yes. Yes.

MR O'GRADY: And indeed, you also understand that when the administrator was appointed there was initially a period where there was a degree of uncertainty as to whether the challenge to his appointment might be successful in the High Court?

40

MR BALMER: Yes.

MR O'GRADY: And so even though the administrator was appointed in late 2024, there was - that uncertainty continued up until June of 2025, when the High Court dismissed Mr Ravbar's challenge to the appointment.

45

MR BALMER: Yes.

MR O'GRADY: Yes. And when that occurred, the QMCA issued a public press release welcoming the High Court decision, didn't they?

5

MR BALMER: Yes, yes.

MR O'GRADY: Could I ask you have a look at this document for me, please. Madam Tipstaff. And I have a copy for the Commission, and I've circulated some copies to the bar table. So this is a statement from Mr Chapman?

10

MR BALMER: Mmm-hmm.

MR O'GRADY: And it makes it very clear that the QMCA welcomes the High Court unanimous decision to uphold the validity of federal legislation placing the Construction and General Division of the CFMEU under external administration?

15

MR BALMER: Yep.

MR O'GRADY: And on the second page, on the fourth paragraph from the foot of the page, he notes that the challenge to the laws brought by the two former Queensland-based CFMEU officials who were removed under the scheme, the High Court rejected all grounds of challenge, including claims relating to the constitutional power, including political communication, separation of powers and property rights.

20

25

MR BALMER: Mmm-hmm.

MR O'GRADY: And then two paragraphs under that, they say:

"QMCA reiterates its support for the constructive union engagement and collaborative approach to delivering real productivity improvements in industry. The association looks forward to working with reformed and accountable representatives into the future."

30

35

Do you see that?

MR BALMER: Yes.

MR O'GRADY: And in the last sentence of the press release:

40

"This decision is a win for integrity, for reform and for the future of our industry."

MR BALMER: Yes, I see that.

MR O'GRADY: Yes. And what Mr Chapman is doing is he is welcoming the appointment of the administrator?

45

MR BALMER: Yes.

MR O'GRADY: And welcoming the fact that the administration has survived this High Court challenge?

5

MR BALMER: Yes.

MR O'GRADY: Because he is expressing the view that in so doing, the prospects of there being a cooperative and collaborative interaction between contractors on the one hand and the CFMEU on the other have been greatly enhanced.

10

MR BALMER: Improved, yes.

MR O'GRADY: Yes, well, improved. All right. Well, I'll come to that in a moment if I may. I would seek to tender this document if I may, Commissioner.

15

COMMISSIONER: Is there any objection? No. I can't remember what we do with evidence tendered by - we can call it DAB-3, or do we call it something else?

MR O'GRADY: I think we're calling them COGs. The last one I'm aware of is COG-3, which I'm going to go to in a minute, so I think if we go for COG-4, and if we need to change it, I'll change it.

20

COMMISSIONER: Press release from QMCA 18 June 2025 will be exhibit COG-4.

25

<EXHIBIT COG-4 PRESS RELEASE FROM QMCA 18/6/2025

MR O'GRADY: Yes. Thank you, Commissioner. And could I ask to you have a look at this document for me, please, Mr Balmer. And again, I've got a copy for you, Commissioner. And this is COG-3, Commissioner, and it can be brought up onto the screen if you wish.

30

COMMISSIONER: I think that'd be helpful.

35

MR BALMER: Thank you.

MR O'GRADY: Now, Mr Balmer, this is the third biannual report of the CFMEU administration to Parliament. Are you aware - are you familiar with this document?

40

MR BALMER: No.

MR O'GRADY: All right. Thank you. And it was submitted to Parliament on 23 February this year. Again, you need to answer for the purposes of the transcript.

45

MR BALMER: Yes. That's when it was presented, yep.

MR O'GRADY: And in that report, Mr Irving makes the point in paragraph 1 that:

5 "The administration is making steady progress towards achieving its goal to return the union to the democratic control of members as a principled, strong and independent union."

Do you see that?

10 **MR BALMER:** Yes.

MR O'GRADY: In paragraph 2 he says:

15 "The CFMEU is changing. It's changing its personnel. It's changing its culture. It has shed what courts before the administration described as a lawless model of behaviour based on threatening and abusive conduct."

Do you see that?

20 **MR BALMER:** Yep.

MR O'GRADY: And then at the foot of that paragraph he says:

25 "It is moving towards a model based on cooperation and collaboration and less on confrontation and conflict."

Do you see that?

MR BALMER: Yes, I see that now.

30 **MR O'GRADY:** And then he goes on to say that - and this is at paragraph 10 of his statement:

35 "Second, during the administration there has been a regeneration of staff within the CFMEU. When the administration commenced, the division (directly or through the Queensland state registered union) employed about 320 employees, largely through its six branches. Since the commencement of the administration, over 50 per cent of those employees have ceased to be employed by the union and new employees have been appointed."

40 And you don't have any reason to dispute that?

MR BALMER: No, not at all.

45 **MR O'GRADY:** And you understand, of course, that the people who were the subject of your evidence, in particular Mr Ingham and Mr Ravbar, they were removed by the determination that put the administration in place.

MR BALMER: Understood, yes.

MR O'GRADY: And then in the next paragraph, paragraph 11, he says:

5 "The extent of this change is perhaps best measured by considering the position of
the three levels of industrial leadership within the union prior to the administration:
the senior leadership, the industrial coordinators and the organisers. The senior
leaders of Victorian, New South Wales, Queensland and South Australian branches
have all left the union."

10

And again, you accept that that's the case?

MR BALMER: Yes.

15 **MR O'GRADY:**

"Those senior leaders were the employed secretaries and other senior officeholders in
those branches. They are all removed persons under the Act. Immediately below those
senior leaders were coordinators, with the various titles in each state. Over 90 per
20 cent of the industrial coordinators in the Victorian, New South Wales, Queensland
and South Australian branches have left employment since the commencement of the
administration."

25

And again, you don't have any reason to doubt that?

MR BALMER: No, I have no reason.

30

MR O'GRADY: And you would accept that if we've got changes in personnel of
that magnitude, that is a - that's going to be transformative?

MR BALMER: Yep.

35

MR O'GRADY: Yes. And then the final level of industrial leadership in the union
are organisers. About 90 per cent of the organisers in New South Wales who were
engaged prior to the administration have now had their employment ended. In
Victoria, over 50 per cent of the organisers have had their employment ended since
the commencement of the administration. In South Australia the figure is over 60 per
cent, and in Queensland the figure is above 50 per cent. And again, I put it to you
that changes in personnel of that magnitude is in all likelihood going to be
40 transformative?

MR BALMER: Yep.

45

MR O'GRADY: Thank you. Just bear with me. And at paragraph 18 he says:

"One of the goals being pursued is to ensure the union is operating lawfully. In the
five years prior to the administration commencing, there were findings by various

courts that the CFMEU had engaged in 1,163 contraventions of industrial laws. Since the administration has commenced, there is no finding of any court that the CFMEU has engaged in any contravention of any industrial law concerning conduct during the administration (though there have naturally been findings about pre-administration conduct)."

And again, you don't take issue with that?

MR BALMER: No.

MR O'GRADY: And you would accept that that is a fundamental transformation of the organisation?

MR BALMER: You're on - you're on the journey.

MR O'GRADY: Well, we're on the journey, but we - and I think you acknowledged earlier, and indeed Mr Irving acknowledged in his evidence, that it's a very significant task.

MR BALMER: Agreed.

MR O'GRADY: But you'd accept that, accepting these figures, (a) the journey has been embarked upon. There's no way of reconciling this sort of - these sorts of statistics without accepting that the administration has engaged in good faith to try and -

MR BALMER: Change.

MR O'GRADY: - change.

MR BALMER: Yep.

MR O'GRADY: And you'd accept that it would appear that very significant progress - we're not there yet, but very significant progress has been made.

MR BALMER: Yep.

MR O'GRADY: Because if you're going from a figure of 1,163 contraventions over a five-year period to zero contraventions in respect of conduct that occurred post the appointment of the administrator, that is a remarkable change, I put to you.

MR BALMER: Makes you wonder why in paragraph 2 he used the word "less on confrontation and conflict" as opposed to "elimination of confrontation and conflict".

MR O'GRADY: Well, and I put it to you - as I put it to you, as you acknowledged, this is a very significant task.

MR BALMER: I appreciate that. I'm just reading this for the first time.

MR O'GRADY: Yes. And if you turn to paragraph 22, a subject of your evidence has been issues in respect of demarcation between the AWU and the CFMEU.

5

MR BALMER: Yep.

MR O'GRADY: And is it fair to say that that was an ongoing source of conflict and
disputation?

10

MR BALMER: I wouldn't say it's ongoing in the civil space.

MR O'GRADY: Well -

15 **MR BALMER:** It didn't - in Queensland, in, like I say, custom and practice, there
was - the level of conflict there pre-BPIC was minimal if not non-existent, and I
think even in my evidence, you can see we've got one project, and Mr Gisonda
highlighted it, the Steve Irwin Way, Bruce Highway. Pre-BPIC, there were zero
20 industrial confrontations there under an AWU arrangement. So I find it hard to
characterise it -

MR O'GRADY: Let me rephrase that question.

MR BALMER: Yeah, if you could, that'd be great.

25

MR O'GRADY: You would accept that custom and practice is not determinative of
which union has coverage.

MR BALMER: No.

30

MR O'GRADY: No. And you would accept that the AWU had a view about
coverage that differed from what the CFMEU's view about coverage was.

MR BALMER: Yes.

35

MR O'GRADY: And ultimately that's a matter to be determined by the tribunals and
the courts?

MR BALMER: Yep.

40

MR O'GRADY: And you would accept that the CFMEU has every right to pursue
agreements in those areas where it has a legitimate coverage.

MR BALMER: That's true.

45

MR O'GRADY: And the fact that custom and practice might've meant they didn't get into that space earlier does not debar them from seeking to do that in order to look after their membership.

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

MR O'GRADY: Again, you have to answer for the purpose of the transcript.

10 **MR BALMER:** A bit of complexity to that, but I will say yes at the end of the day.

MR O'GRADY: And the fact that the AWU had a view that civil is our area and our area only is not determinative of what is the appropriate coverage in civil.

15 **MR BALMER:** I think this is very much part of Stacey Schinnerl's letter that she wrote to the Premier and the rest of the Cabinet, but again, being the experts in the space, I understand your intent.

MR O'GRADY: Stacey might have a view, but she might be wrong.

20 **MR BALMER:** I think industry was well aligned with her view.

MR O'GRADY: Well, that might be right, but the industry might be wrong.

25 **MR BALMER:** Okay.

MR O'GRADY: And indeed, Stacey, in your own evidence, you put forward a decision where Stacey and the AWU had contested CFMEU coverage and the Commission had held that they had coverage and the agreement was appropriately certified as a greenfields agreement covering off the CFMEU.

30 **MR BALMER:** With a very narrow band. For crane drivers only.

MR O'GRADY: But Stacey had resisted that agreement being approved.

35 **MR BALMER:** And I totally understand why she did. It was to build a bridge across the Brisbane River, knowing - I've built two bridges across the Brisbane River with the AWU, so pre-dating the Kangaroo Point bridge, there's reasons why she contested it, and I'd have to align with her.

40 **MR O'GRADY:** But my point is quite simply, Stacey took a view that the CFMEU agreement could not be approved, and she challenged its approval.

MR BALMER: Yep.

45 **MR O'GRADY:** And the tribunal held she was wrong.

MR BALMER: For -

MR O'GRADY: You put the decision in your own material.

MR BALMER: Yeah, for a very narrow bandwidth if you read it.

5

MR O'GRADY: And Stacey was aware of the bandwidth -

MR BALMER: No.

10 **MR O'GRADY:** - when she made the challenge, and she got it wrong, didn't she?

MR GISONDA: Just pause it there for a moment. Ms Schinnerl is being called by the Commission for the purposes of cross-examination in August. So when she comes, she can answer questions about the approach that the AWU took. But I think
15 questions should be limited to matters that affect either Acciona or the QMCA.

COMMISSIONER: I think you've had your fun, Mr O'Grady.

MR O'GRADY: Yes, Commissioner. The simple proposition I'd ask you to accept
20 is that coverage issues can be complicated.

MR BALMER: Yes.

MR O'GRADY: And that there is a difference of views between the coverage in
25 civil as between the AWU and the CFMEU.

MR BALMER: Yep.

MR O'GRADY: And that's ultimately going to be a matter to be determined by the
30 courts.

MR BALMER: Yep.

MR O'GRADY: And if you could come back to this document for me, are you
35 aware of the fact that in order to try and progress the determination of this issue, the CFMEU and the AWU have entered into an arrangement whereby they're going to bring matters before a former member of the Fair Work Commission for him to provide an indication as to where he thinks coverage lies, and people can move on on an agreed basis through that process. You see that?

40

MR BALMER: Sounds good.

MR O'GRADY: I put it to you it's quite an important and significant development.

45 **MR BALMER:** Yep.

MR O'GRADY: And the fact that the administrator and the AWU have been able to reach agreement on that process is a positive thing for the industry, because in all likelihood it's going to limit or minimise the disputation in this space.

5 **MR BALMER:** Yes.

MR O'GRADY: Yes. And you will see that that process is described in paragraph 24 of the statement.

10 **COMMISSIONER:** And the AWU have agreed to that, have they?

MR O'GRADY: That's my understanding, and that's a process that's ongoing. The former member of the Commission, for your information, is former Commissioner Rowe. All right. Thank you. Now, in your evidence just before the break, you were
15 taken to Mr Irving's letter of 7 February 2025. And as I understand your evidence, you took umbrage with his use of the word "militant" in that letter?

MR BALMER: Yes.

20 **MR O'GRADY:** This is at page 1860, Commissioner. But he didn't use the word "militant" in isolation, did he?

MR BALMER: No.

25 **MR O'GRADY:** He referred to the CFMEU being, comma, lawfully militant union. Do you see that?

MR BALMER: Yes. I can't find it again, but they are the true words.

30 **MR O'GRADY:** They're his true words.

COMMISSIONER: It's just come up on the screen.

MR BALMER: Yeah, thank you. Yep.

35 **MR O'GRADY:** Yes. And I put it to you that that word "lawfully" necessarily confines what is meant by "militant" in that he's saying we won't do anything that's unlawful. Do you accept that?

40 **MR BALMER:** Yes.

MR O'GRADY: Yes. That's his objective.

MR BALMER: Objective.

45 **MR O'GRADY:** To have a union that will not do anything that's unlawful, but may be militant. You'd accept that that's the only reading of that part of the letter?

MR BALMER: Yeah.

5 **MR O'GRADY:** Yeah. And if that was achieved, then I put it to you there is no risk of increased psychosocial hazards by the union acting in a lawful way but pursuing the interests of its members. The various videos we saw this morning could not have occurred if the CFMEU were acting lawfully. You'd accept that?

10 **MR BALMER:** I vividly hearing words where there's members of the CFMEU taking the view that they were being lawful. They were lawfully trying to enter the building: "Can you lawfully let me in?" So it seems like the interpretation of what "lawful" is was quite fluid in that video, and what worries me a little is structuring it, if we - in your propositions, technically I could not agree more. But the problem with the word "lawful" in front of "militant", there's some operatives who aren't able to
15 delineate.

MR O'GRADY: Are you suggesting that Mr Irving KC, when he wrote this letter, was engaging in that sort of pedantry?

20 **MR BALMER:** No, I don't - I'd agree that he wasn't intending, but then I worried - it worried us as an industry about the use of the words at all. What was the purpose in including those words, as a reader, as a less-informed reader? You could have written that statement 10 different ways if the intent - to capture your intent.

25 **COMMISSIONER:** But why would psychological impact or loss necessarily be restricted to lawful actions? I mean, employees get terminated and some have serious psychological reaction to it. Some don't. Sometimes the terminations are lawful. Sometimes they're not. What's the -

30 **MR O'GRADY:** The point I'm seeking to make, Commissioner, as I understand the witness's evidence in respect of psychosocial hazards is the fact that people were being intimidated and were fearful in the way that was described by Mr Gisonda when he took to you the various incident reports following on from the invasion of the premises.

35 **COMMISSIONER:** You could reasonably find people being intimidated by lawful behaviour. People protesting outside the Antisemitism Commission, for example, lawfully.

40 **MR O'GRADY:** Yes.

COMMISSIONER: I mean, it's up to you. You continue the cross-examination, but I just -

45 **MR O'GRADY:** All right. Perhaps if I can just move on from here. You would accept that when Mr Irving wrote that letter he was wanting to signify that the union under his administration was going to act lawfully.

MR BALMER: Yeah.

MR O'GRADY: And you would also accept that that is indeed what has transpired.

5

MR BALMER: Based upon the data point of infringements, you would say that that would support that, yes.

MR O'GRADY: Yes. And I think you've also accepted that based upon the data point of infringements, that is a quite remarkable achievement?

10

MR BALMER: Indeed.

MR O'GRADY: Yes. And dare I say it, it indicates that the steps that have been taken by the administrator to date are having a very positive impact on the conduct of the CFMEU.

15

MR BALMER: Yep.

MR O'GRADY: Yes. Thank you. Now, you're currently employed as the regional director of Acciona?

20

MR BALMER: Yes.

MR O'GRADY: And you also had a role with the QMCA?

25

MR BALMER: An ongoing role. I'm the current chair.

MR O'GRADY: Ongoing role. Of course. I apologise. And you would accept that QMCA is a group representing contractors?

30

MR BALMER: There's more than contractors in our 92 members. There's designers. There's client groups. It's diverse. There's no barrier of entry at all. We have media companies, people that are part of the industry. So yeah.

35

MR O'GRADY: Okay. And its job is to advocate on behalf of its membership?

MR BALMER: Very much. Advocacy - yes, it's around - as I mentioned earlier, we've got a very clear objective, mission, vision, and it's about the construction industry's future, making it safe, rewarding and attractive for all. So that's the goal.

40

MR O'GRADY: And also looking after the interests of your membership?

MR BALMER: One and the same.

45

MR O'GRADY: Yes. And you would lobby government?

MR BALMER: We'd lobby government? I don't think we - we're participating in lots of conversations. I guess it's all around the words. We pay lobbyists. We don't have lobbyists. We're not a -

5 **MR O'GRADY:** But you certainly engage in public advocacy?

MR BALMER: We do. We hold events. We hold numerous networking events. We certainly try to get keynote speakers to provide industry with guidance around the future. We do a range of activities.

10

MR O'GRADY: And I'm not being critical of you.

MR BALMER: No, no, I appreciate that.

15 **MR O'GRADY:** But your reason for doing that is to advance the interests of your membership?

MR BALMER: Yeah, membership as the construction industry as a whole.

20 **MR O'GRADY:** I understand. And similarly, you would agree that there's nothing wrong with the CFMEU seeking to advance the interests of its membership, as long as it acts lawfully?

MR BALMER: 100 per cent.

25

MR O'GRADY: And part of that is going to be trying to obtain the best possible wages it can obtain for its membership? Sorry, you need to answer for the purpose of the transcript.

30 **MR BALMER:** Yes. Yes.

MR O'GRADY: I know it's easy. I can see you nodding, but it will come up as a blank, and then the Commissioner is going to say, "What exactly was the answer to that question?" And there's a nothing wrong with the union seeking to improve the terms and conditions of its membership, as long as it acts lawfully?

35

MR BALMER: That's right.

MR O'GRADY: In fact, that's its core business, isn't it?

40

MR BALMER: Yes.

MR O'GRADY: All right. Thank you.

45 **MR BALMER:** Can I - can I probably add some commentary around my pause?

MR O'GRADY: Yeah.

MR BALMER: Your representation is quite clear, and I think it's all, yes, true and correct, working with employers. The reason why we're here is that their advocacy has come through the government with the BPIC policy. So part of - part of - so if
5 you're saying, standing here, that the administrator is going to put into place that the CFMEU is no longer going to advocate by leveraging policy-makers and they're going to work with employers and industry for the betterment of the workforce, I can accept that. I think that some of the - you've got to appreciate I've got a lens of where we've got to, why we've got here, where they feel they've co-authored and co-owned
10 a government policy, and I don't think that's quite in keeping with your proposition. That's my bit of - I'm trying to contextualise where you're coming from.

MR O'GRADY: That's fine. But let's break it down. There's no suggestion that the administration had anything to do with the adoption of BPIC.
15

MR BALMER: That's the bit. That's why I have to explain my pause. If it was in absolute isolation going forward, and if I had the confidence, you know - nor are you representing the administration that's going to stay in place indefinitely as well. Unless you are. They're the variables happening in my small brain.
20

MR O'GRADY: I understand. But you would accept that, just as your organisation prepared the chart showing the differential in wage increases in respect of what you said was BPIC and police officers and nurses, that was you seeking to influence government policy?
25

MR BALMER: Yes.

MR O'GRADY: Yes. And there's nothing wrong with that, I put to you?

30 **MR BALMER:** No.

MR O'GRADY: And there's nothing wrong with the CFMEU seeking to influence government policy?

35 **MR BALMER:** No.

MR O'GRADY: That's part of its job? Sorry, again, you need to answer for the purposes of the transcript.

40 **MR BALMER:** Yes.

MR O'GRADY: Yes, thank you. All right. Now, you would accept that there's nothing wrong with the notion that you should be trying to increase - health, work and safety on jobs in construction?
45

MR BALMER: 100 per cent.

MR O'GRADY: You would accept that construction is inherently dangerous?

MR BALMER: 100 per cent.

5 **MR O'GRADY:** And, sadly, there are a disproportionate number of people who die in construction when compared to other industries?

MR BALMER: Yes.

10 **MR O'GRADY:** Yes. And you would accept that there's nothing wrong with seeking to increase the gender equity of people working in construction?

MR BALMER: Can I just go back one step about your fatalities perspective?

15 **MR O'GRADY:** Yes.

MR BALMER: One of the points - and you can see the QMCA is quite active in the psychosocial harm space is the reality that our industry also suffers having a 6 to 1 ratio between suicides and industrial fatalities. So we actually are quite strong in the perspective - when you talk safety, it's broader than physical. And one of the biggest concerns we've always had is the psychosocial is a problem. It's a - it's a major issue that we all need to lean into.

25 **MR O'GRADY:** Yes. And one way of addressing the psychosocial, I put to you, is taking initiatives to improve work/life balance.

MR BALMER: Yep. Yes.

30 **MR O'GRADY:** And one way you might achieve that is increasing the number of RDOs.

MR BALMER: That's one way.

35 **MR O'GRADY:** Yes. And there's nothing illegitimate in a union like the CFMEU seeking to address the psychosocial risk that you identified by advocating for an increase in the number of RDOs.

40 **MR BALMER:** Interestingly enough, we've never debated the RDOs. It was all about the RDO calendar being fixed. So when you say increasing the number of RDOs, I don't think there's ever been a contention of the number. It's the way, and the flexibility, the arrangement between a worker, an employer and an employee, to establish what makes most sense for the individual as opposed to having a third party dictate, for that individual's work/life balance, what they will and won't do.

45 **MR O'GRADY:** All right. Can I just break that down into parts.

MR BALMER: Sure.

MR O'GRADY: You agree with me, as I understand it, that a way of addressing work/life balance and, through that, addressing psychosocial hazards is increasing the number of RDOs?

5

MR BALMER: Yes.

MR O'GRADY: And you would agree with me, I put it to you, that having some degree of certainty as to when you're going to have an RDO is itself an element of improving work/life balance?

10

MR BALMER: 100 per cent.

MR O'GRADY: You can plan your holidays, you can plan your long weekends, your camping trips with your kids, etcetera, etcetera.

15

MR BALMER: And I think you'll see that's a feature of the EBA we did at Coomera Connector North, because we did fix RDOs around Christmas and Easter for exactly that purpose. So we understand the concept.

20

MR O'GRADY: Yes, I understand. You would agree with me, and there may be different ways of addressing it, but as a policy objective in itself, there is nothing wrong with a union advocating for an increase in RDOs and to have some of them fixed to provide certainty for their members.

25

MR BALMER: Sure.

MR O'GRADY: And similarly, you would agree with me that there's nothing wrong with a union pursuing an improvement or increase in the number of apprentices.

30

MR BALMER: No.

MR O'GRADY: Because that is (a) a means of providing a supply of future tradesmen, which is good for the industry as a whole.

35

MR BALMER: Yep.

MR O'GRADY: Particularly given that we are confronting a shortage of tradespeople.

40

MR BALMER: Yes. I think it's - we take great pride - industry takes great pride into our lean-in to that space. If you have a look in attachment DB-124, there is a chart on the non-BPIC project of what we're able to achieve in that space, and knocking targets out of the park. So it's not the sole ownership of the union, that space. We're all - we've all got a role to play.

45

MR O'GRADY: I'm not suggesting it, and I'm not suggesting that BPICs are the only way of achieving it.

MR BALMER: I understand. The union. I understand.

5

MR O'GRADY: And the union. But I'll go a step - and before I do that, a further element, of course, is increasing indigeneity in construction. You'd concede that that's a laudable aim?

10 **MR BALMER:** Yes. Yeah.

MR O'GRADY: Certainly something the union can and should pursue?

MR BALMER: Yep.

15

MR O'GRADY: And I put it to you there's nothing inherently wrong with government, through its procurement policies, seeking to also advance those aims.

MR BALMER: 100 per cent.

20

MR O'GRADY: Yes. And you'd agree with me that there are some rogue employers in the construction industry.

MR BALMER: Rogue employees?

25

MR O'GRADY: Rogue employers.

MR BALMER: Oh, yes, there's rogues.

30 **MR O'GRADY:** There are people who operate phoenix-type arrangements where they go belly-up, leaving a lot of unpaid wages?

MR BALMER: Yes.

35 **MR O'GRADY:** And then reinvent themselves?

MR BALMER: Yep.

40 **MR O'GRADY:** There are people who don't have the proper regard for health and safety?

MR BALMER: Yep.

MR O'GRADY: There are people who don't meet their entitlements?

45

MR BALMER: Yeah.

MR O'GRADY: And again, these are all issues that the union is perfectly entitled to be concerned about.

MR BALMER: 100 per cent.

5

MR O'GRADY: And indeed, there's nothing inherently wrong with government being concerned about getting rid of the people who don't behave appropriately who are employers in the industry.

10 **MR BALMER:** I think that's correct. 100 per cent.

MR O'GRADY: Okay. Thank you. Sorry, just bear with me, sir. Now, as I understand your evidence, it became pretty clear to you throughout that the AWU was not prepared to enter into an agreement if the CFMEU was - and the other
15 members of the BTG were also parties to that agreement.

MR BALMER: That's right.

MR O'GRADY: Yes. Yes. That even though the CFMEU and the other members of
20 the BTG were happy or at least willing to enter into a greenfields agreement with the AWU which had, among others, the AWU as members, the AWU in effect sought to veto that?

MR BALMER: Mmm-hmm.

25

MR O'GRADY: And the AWU would not cooperate in any sort of joint negotiation with the other members of the BTG?

MR BALMER: That is what happened, yes.

30

MR O'GRADY: And the AWU, in effect, indicated to your company that they were not going to - that (a) they were not going to be a party to any greenfields agreement that had the other members of the - or had the members of the BTG as parties?

35 **MR BALMER:** That's my understanding, yes.

MR O'GRADY: And that if your company entered into a greenfields agreement with the members of the BTG, then they would challenge that and they would appeal that and they would hold things up for a year or so. That was the threat, wasn't it?

40

MR BALMER: The year or so is your creation, but they would challenge it for sure.

MR O'GRADY: Well, I think in your evidence you said about 12 months in one of the documents.

45

MR BALMER: That was some advice from an external. Whether I agreed with that or not, I didn't debate, but there would be a disruption from that perspective.

MR O'GRADY: And that was a threat that had been made by the AWU? Sorry, again, you have to answer for the purpose of -

5 **MR BALMER:** Yes.

MR O'GRADY: And that in effect put your company in the invidious position of either it acceded to that threat and therefore made a deal with the AWU or it engaged in negotiations with the members of the BTG and then had to run the risk that the
10 project would be delayed because of legal challenges brought by the AWU.

MR BALMER: We actually were in a unique position on Coomera Connector, because the project was still awaiting the EPBC approval. So we actually had time to burn, because we couldn't get on site because the federal approval was not in place.
15

MR O'GRADY: Well, why didn't you then enter into an agreement with the BTG Group and -

MR BALMER: I'm just - you're representing it that we felt threatened, that we were
20 under duress by the AWU, and I'm saying well, no, not really.

MR O'GRADY: So it would've been open for you to enter into an agreement with the BTG Group and roll the dice?

25 **MR BALMER:** No, that wasn't going down the path either, because they - we arrived at an impasse after three quite long meetings that there was - we couldn't come to any form of even close to terms. They were protesting where we started the negotiation.

30 **MR O'GRADY:** Yes. Well -

MR BALMER: So, I mean, I -

MR O'GRADY: You've been involved in industrial negotiations for many years, as
35 I understand your evidence?

MR BALMER: Yep, on and off.

MR O'GRADY: And as I think was noted by your adviser, I think it was Mr
40 Murphy, there was no surprise in the CFMEU wanting it to have as a starting point the John Holland agreement?

MR BALMER: Yep.

45 **MR O'GRADY:** You could've predicted that.

MR BALMER: Yeah, it was a fair chance.

MR O'GRADY: Yeah, fair chance.

5 **MR BALMER:** Considering that it was just a top and tail of the non-mandatory guidance, yep.

MR O'GRADY: And at the same time, you had a different starting point. And dare I say it, that's the position that's as old as industrial negotiation itself.

10 **MR BALMER:** Yeah, as an employer, I'm entitled to start.

MR O'GRADY: And as a union, they're entitled to start where they want to start.

15 **MR BALMER:** Yep, 100 per cent.

MR O'GRADY: But the bottom line is you weren't going to get an agreement involving the AWU if the other members of the BTG Group were parties to the agreement?

20 **MR BALMER:** They didn't even - yeah, there was little - they weren't interested in the agreement that I wanted to work on. So I don't know. You've gone to another point of proposition.

25 **MR O'GRADY:** Well, I'm putting to you that even if they had -

MR BALMER: If you could ask it slightly differently.

30 **MR O'GRADY:** I'm happy to ask it differently. Let's assume that they'd started with your document. Let's assume that Mr Ingham had said, "All right. Here's your document. Here are the things we want." And indeed, one of the earlier emails you were taken to this morning spoke about Mr Ingham's constructive feedback in respect of that document. The reality is you were never going to make an agreement with the BTG Group because the AWU were going to challenge it and you did not want to be in a position where you could not get a greenfields agreement up?

35 **MR BALMER:** It was highly likely. That's exactly right.

40 **MR O'GRADY:** Now, you gave some evidence this morning and yesterday regarding you did not - you could not differentiate hyper escalation from the costs of BPIC, as I understand your evidence?

MR BALMER: Mmm-hmm.

45 **MR O'GRADY:** And so you treated them as all falling under the same umbrella. Is that a fair description?

MR BALMER: Yeah. Yes.

MR O'GRADY: And as I understand your answer to the Commissioner yesterday, when you were talking about hyper escalation, among other things you were talking about the costs associated with COVID?

5

MR BALMER: Hyper escalation, yeah, was the increased costs through a range of events, not specifically COVID, but yes.

MR O'GRADY: Well, not limited to COVID.

10

MR BALMER: Not limited.

MR O'GRADY: But you accept there was a significant increase in costs in respect of COVID?

15

MR BALMER: Yep.

MR O'GRADY: And indeed, in the period from to 2022 to 2023, there was an inflationary surge that post-dated the pandemic.

20

MR BALMER: Mmm-hmm.

MR O'GRADY: Again, you have to answer for the purposes of the transcript.

25 **MR BALMER:** Yes, correct. My apologies.

MR O'GRADY: And that would all come under the label of hyper escalation?

MR BALMER: Mmm-hmm.

30

MR O'GRADY: And so - but you didn't seek to, if you like, differentiate what part of any cost increases you're referring to were attributable to that inflationary surge as opposed to being associated with BPIC itself.

35 **MR BALMER:** Yeah. Just on the point - on that point, and part of the lack of inability to delineate was that - you talk about there's suppliers and subcontractors. We were not clear on how the subcontractors would start to amend, considering that they've got labour components in all of the work. Even the suppliers have labour components. So it's - when you start talking ABS, that's one thing. But you've got to
40 also - the challenge in trying to delineate is the changing commodity cost driven by the underlying shift in labour pricing, the fact that the - all of a sudden the government has established a floor price for labour and the free market's been disrupted, that was part of it, and that was part of the challenge.

45 It's not - yeah, and that's why we went with a commercial arrangement where we had flexibility to capture that, because it was near impossible to unpick it. If you're an asphalter selling asphalt per tonne, the labour component is X. Now, if you adjusted

all of your labour rates, and we didn't know where it was going to land, it was going to be Y.

5 **MR O'GRADY:** I'm not being critical. I'm just trying to understand your evidence.

MR BALMER: Yeah, no, and I just think the point where you were going - and I should listen to the question - is if you started to go to ABSes and independent escalation rates, it didn't pick up the local disruption caused by BPIC. That's a unique modifier that industry could not - we could not get our head around how much it was going to potentially add.

10 **MR O'GRADY:** You were in a world, weren't you, as I understand the evidence of that Ms Hawkswood, that if something could be said to be attributable to BPIC, then there was at least the capacity to ask for government to top up the rates?

15 **MR BALMER:** That's ultimately the commercial term we put into that arrangement, yes.

MR O'GRADY: Yes, that's right. And so there was a clear incentive, I put it to you, on behalf of Acciona and other contractors to say, "Well, this increase in costs is BPIC related."

MR BALMER: Yes.

20 **MR O'GRADY:** You would accept that?

MR BALMER: Yeah, the unique element of Coomera Connector is we had to give 100 per cent transparency down to invoice level, because our progress claim was based on our ledger. So it wasn't a contract where we - there was any ability whatsoever to shield - there was absolute fiscal transparency.

30 **MR O'GRADY:** Well, just dealing with that, you're not saying that every claim you put in and said was attributable to BPIC was ticked off by government, are you?

35 **MR BALMER:** No.

MR O'GRADY: No. So you put in claims that you said were BPIC-related, and when government applied that transparency they said, "No, that's not right."

40 **MR BALMER:** It's all based on costs on that project.

MR O'GRADY: Yes.

MR BALMER: So it was cost-based.

45 **MR O'GRADY:** So there were claims that were sought to be characterised by Acciona as being BPIC-related that government rejected?

MR BALMER: At the end of the day, no, we didn't have any rejected.

MR O'GRADY: All right.

5

COMMISSIONER: Sorry, say that again?

MR BALMER: At the end of the day, we had - we didn't have any claims rejected around BPIC.

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MR O'GRADY: I see.

MR BALMER: There's a - the project - yeah, there was none.

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MR O'GRADY: Are you saying that you were paid in full any claim without any pushback from government?

MR BALMER: No, there was third-party observers. There was auditors. There was financial teams reviewing. There was -

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MR O'GRADY: And as part of that process, amounts that had been claimed were not provided.

MR BALMER: Amounts that had been claimed -

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MR O'GRADY: Amounts that had been initially claimed came off.

MR BALMER: I don't understand. Can you restate?

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MR O'GRADY: Yes. What I'm putting to you is that initially you might have put in a claim for, let's say, \$15 million, and after going through that process, that claim might have been reduced to some lesser sum.

MR BALMER: If we put in a claim for \$15 million, there's - all of the invoices, every dollar that accounts to that number, it was one-for-one accounting. There was no - we had - it was a demonstrated auditable cost to - to the ground.

35

MR O'GRADY: What I'm putting to you is you might recall Ms Hawkswood's evidence yesterday that at least in respect of the Gold Coast Light Rail -

40

MR BALMER: Different form of contract.

MR O'GRADY: - there were claims made that were rejected by government.

45

MR BALMER: Different form of contract.

MR O'GRADY: I see. All right. Now, you said you couldn't really differentiate between the BPIC costs and the hyper escalation costs. I put it to you one way in which you could seek to differentiate is by doing comparisons between costs in Queensland and costs interstate where there was no BPIC. You would accept that?

5

MR GISONDA: I object. In the application for leave to cross-examine, my friend said that he was to be cross-examined on three topics. One was the sound policy reasons that sit behind procurement policies, for example, the Mitchell statement at paragraph 42; the legitimate adherence and reliance on government policies of the day by unions to further the interests of their members; and distinguishing and clarifying his involvement with the previous leadership of the CFMEU and the administration. It does rather feel like the questions are now venturing far from those stated topics. Mr Balmer has no notice that these are the sort of things that he was to be asked about. So I'm not trying to stop my friend, but it might just be that Mr

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15

Balmer isn't in a position to answer questions about, for example, comparing escalation costs in Queensland with interstate data.

COMMISSIONER: What do you say about that, Mr O'Grady?

20 **MR O'GRADY:** As I indicated at the outset, Commissioner, I had discussions with counsel assisting and indicated that I would pursue similar lines as I pursued with Ms Hawkswood, and this was a line that I pursued with her yesterday. Now, if the witness can't answer, then he can't answer, and obviously this is going to be the subject of further evidence in due course. But I think in fairness, where the witness

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had said there was no way of differentiating or distinguishing between BPIC-related costs and costs due to hyper escalation, I'm putting to him, well, one way is to simply look at what's happening in other states where there's no BPIC.

COMMISSIONER: I'll allow the questions.

30

MR O'GRADY: Yes. Thank you. Do you accept that proposition?

MR BALMER: It's one way.

35 **MR O'GRADY:** Sorry?

MR BALMER: That is one way.

40 **MR O'GRADY:** That is one way. And are you aware - and if you don't know, don't guess - that basically, as compared to New South Wales, using the DTMR BPIC, there was some two per cent difference between what occurred in Queensland and what occurred in New South Wales?

COMMISSIONER: You're just reading evidence out to him now, Mr O'Grady.

45

You've got to put that evidence in through somebody else.

MR O'GRADY: I will. And if he's not aware, he's not aware.

COMMISSIONER: Very well.

MR BALMER: Not aware.

5

MR O'GRADY: And similarly I take it that you're not aware of the fact that the DTMR BPIC was actually some 13 to 20 per cent less than the costs in Victoria. Again, you're not aware?

10 **MR BALMER:** Not aware. Not aware. Sorry.

MR O'GRADY: No, I understand. And I put it to you that undertaking that sort of analysis provides a more helpful guide as to the actual costs of BPIC than doing the analysis that your organisation put to government of comparing construction workers with people in completely unrelated industries, namely, teachers and nurses and the like. Do you accept that as a proposition?

MR BALMER: I'll accept that as a proposition.

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

COMMISSIONER: Any re-examination, Mr Gisonda?

MR GISONDA: No, Commissioner.

25

COMMISSIONER: Mr Balmer, thank you very much for your evidence. You are excused.

MR BALMER: Thank you.

30

<THE WITNESS WAS RELEASED

COMMISSIONER: Who's the next witness, Mr Gisonda?

35 **MR GISONDA:** Before I call Mr Smith from John Holland, can I tender the statement of Mr Neil Scales OBE. Do you have that there with you, Commissioner?

COMMISSIONER: I've got two copies now. Thank you.

40 **MR GISONDA:** Thank you. Can I quickly just go through some of the key features of his statement. He spends a lot of the statement going through matters that we've already covered in the evidence about the evolution of the BPIC policy. As he says at paragraph 38 on page 10, that, as we've heard, the BPICs was a policy spearheaded by former Minister Mick de Brenni which originated in the Department of Housing and Public Works, so not his department. Remember, Mr Scales was the
45 director-general of the Department of Transport and Main Roads.

At paragraph 43 on page 12, he says that - and this is consistent with the other evidence you've heard - that the DTMR had always left industrial relations issues to civil engineering contractors to deal with. At paragraph 48 at page 13, he says that he recalls raising concerns to Minister Bailey and to his chief of staff, Ms van Alphen, that there was a significant risk DTMR would not be able to deliver the QTRIP in full if changes were made to the minimum conditions without giving DTMR the opportunity to consider implementation and impacts, and that potential delays and cost increases were -

10 **COMMISSIONER:** What's this time? What time period are you talking about?

MR GISONDA: This is late 2019, early 2020.

COMMISSIONER: Right.

15

MR GISONDA: Potential delays and cost increases were his greatest concern, and as a result, DTMR did not support the position that had been reached by DHPW and the Department of Education, where the Office of Industrial Relations sat at that time. So you then heard from Ms Hawkswood that throughout 2020 they did work in terms of the development of a transport BPIC.

20

COMMISSIONER: Well, she came over in May 2020 to do that.

MR GISONDA: Yes. And at paragraph 71 - well, perhaps at 70 first, which is at page 21, he says that generally speaking, he actively sought for DTMR to actively design and negotiate the terms of the draft transport BPICs. And at paragraph 71 at page 22, he says he felt like it was trench warfare in seeking to resist the transport BPICs to be in the same terms as the building, construction and maintenance BPICs, that is, the BPIC that was coming out of the Department of Public Works. And this was a point that you observed on Tuesday, Commissioner: to ensure some form of reasonable return for the extra money which was to be paid out as a result of the policy. So he then continues to talk about the continuing evolution of the BPIC policy, which is not too dissimilar to what Ms Hawkswood says in her evidence and - yes, what Ms Hawkswood said.

35

At page 30 of the statement, at paragraph 102, he says that he had regular quarterly meetings with stakeholders, including the union - that's defined as the CFMEU - to discuss various issues, and at paragraph 104, he says:

40 "In doing so, I was seeking to achieve some sort of middle path on what ultimately became the transport BPICs without having to 'give away the farm'."

At paragraph 108 at page 31, he gives evidence of the same meeting that Ms Hawkswood gave evidence about at the CFMEU's headquarters. He says that during that meeting, Mr Ingham and Mr Ravbar acted in an aggressive and discourteous manner, even saying words to the effect of "contractors are raping Queensland", and he recalls Ms Hawkswood being intimidated and uncomfortable following that

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meeting, due to the manner and language used, and so they had no further meetings at union headquarters after that. Then at page 32, paragraph 11 -

COMMISSIONER: 111?

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MR GISONDA: 111, sorry, yes, the top of that page, 32, he says:

"I recall that at one of the meetings with the union..."

10 He specifically raised by the encroachment by the union in the civil infrastructure space or horizontal infrastructure space, and Mr Ravbar and Mr Ingham became very angry at that suggestion:

15 "Both Ravbar and Ingham were often openly aggressive towards me in meetings. They would shout and use profanity."

Paragraph 113:

20 "Mr Ingham would says things like, 'You can't believe the words dribbling out of the AWU'."

Then at paragraph 114:

25 "Mr Ravbar often remarked, 'I've been talking to the fucking Premier and your minister, and they all agree you are the worst fucking director-general ever.'"

At paragraph 115:

30 "When they were yelling in meetings, I would tell them not to do so as it wasn't particularly productive or demonstrating respect at all."

And at 116:

35 "It reached a point where Mr Ravbar would start every meeting with a tirade about me, which was confronting and unpleasant."

Then at paragraph 120, on that same page, he says:

40 "As noted above, staff from the minister's and Premier's office would be present for many of the meetings I attended with the union or BTG about BPICs. They would inevitably support the union. The minister's staffers I recall attending these meetings included Mr Brett Reed from the Premier's office; Ms van Alphen, who was in Minister Bailey's office initially and at some point became a deputy chief of staff in the Premier's office."

45

Then at paragraph 121, he says:

"The ministerial staffers did not intervene on my behalf or seek to have the union behave appropriately."

So he's talking about them going into tirades against him. He says:

"Instead, if I was resistant they would often intervene and say something along the lines of, 'Leave it DG'. It was usually Mr Reed who would do this. I recall a meeting where Mr Reed said to me 'Be quiet DG'. I was feeling very angry at the time and so I did go quiet in an attempt to calm myself and avoid making matters worse."

And then you'll remember Ms Hawkswood said that there was a point in time where Mr Scales withdrew from the process, and I think she felt unsupported but that changed when he was replaced by Ms Stannard. But his version or his explanation at paragraph 124 is to say:

"Eventually I stopped attending meetings at which the union would be present, because my presence seemed to inflame the union representatives to become aggressive and not willing to engage in a constructive manner. My role was about delivery and the 'art of the possible' and my presence at the meeting could prevent the development of the BPICs document progressing and it needed careful stakeholder management. I therefore asked Ms Yeates and Ms Hawkswood to lead the development of the Transport BPIC."

He says at paragraph 126 that:

"The union would not be involved in tender evaluation but would seek to influence the process by sending through a company's past safety record."

Then at paragraph 152, or 151 and 152 on page 38 -

COMMISSIONER: I mean, the inference from the evidence we've heard could be - could have come from somewhere else, but there's been a lot of evidence that Ms Burgess, who worked within WHSQ within the Office of Industrial Relations, was passing information on to the CFMEU.

MR GISONDA: He says at 126 that he suspects they had obtained that record from the Office of Industrial Relations.

COMMISSIONER: Yes.

MR GISONDA: But he's not saying that he knows that. At paragraph 151 and 152 of the statement, he says the union was the only union with which he encountered major problems with "during my time as director-general" and that:

"The union was a stand out because their modus operandi was to be aggressive and abusive. I cannot recall any meeting where union representatives engaged in a

manner which was constructive or did not involve aggression or abuse of some type."

5 He contrasts that with his interactions with the AWU, which he says were respectful, and also his interactions with Mr Peter Ong from the ETU, which he said was constructive. And then the news at the time was that - in the press was that Mr Scales had resigned from his role when his contract was up, but he now says here at page 39 in his sworn statement at paragraph 153:

10 "My contract as director-general was due to expire on 3 June 2023, which was a Saturday."

And that he anticipated that his contract would be renewed, as it had been in the past:

15 "It was a contract with the Premier on a three plus two year basis."

He was notified the prior Tuesday by Ms Rachel Hunter's office, which was the director-general of DPC, and Mr Mackie, the acting public service commissioner, at a meeting at 1 William Street, that his contract was not going to be renewed. He
20 says:

"Their manner in the meeting suggested they were embarrassed at having to give me that news."

25 At paragraph 155:

"The decision to end my employment would have been made by the Premier's office and people there. I believe Ms van Alphen was union aligned. I also had experienced Mr Reed consistently backing the union during meetings with me."
30

And then his belief - and he saw the campaign that was being waged against him, Commissioner. You've seen that in a number of parts of the evidence now, and that's led him to this belief at 156, which is that:

35 "Mr Ravbar would have sought to use his influence with the Premier and her staff to ensure my contract was ended because (a)..."

He had supported the CEO of the Cross River Rail Delivery Authority and resisted the union attempting to represent workers in Cross River Rail tunnels.
40

COMMISSIONER: Is that Mr Newton?

MR GISONDA: Mr Newton, yes. Remember, as director-general, he sat - he was one of the directors of that Cross River Rail Delivery Authority. (b), he resisted
45 implementation of BPICs for as long as he could in both Cross River Rail Delivery Authority and then in the DTMR to get a more effective policy outcome. Subparagraph (d):

"The union held rallies aimed at intimidating, abusing and discrediting me."

And (e) -

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COMMISSIONER: I thought there was only one rally. There was more than one, was there? I thought there was one. You said 4 August.

10 **MR GISONDA:** There was 4 August. There was also 23 August, where they went to the QTRIP forum.

COMMISSIONER: Was that aimed at Mr Scales, was it?

15 **MR GISONDA:** Yeah, they had the effigy of him on the podium. They were yelling out, "Scales smells of corruption."

COMMISSIONER: Yes.

20 **MR GISONDA:** One of the signs you might have seen in the video was "Resign Scales". Subparagraph (e):

"After my contract ended, the union posted on its Twitter account 'Vale Neil Scales. Don't let the door bang you on your arse on the way out.'"

25 And the post included a photo of the "effigy of me with the 'scales of injustice'" that he'd referred to earlier in his statement.

COMMISSIONER: That's the 4 August 2023? '23 or '22?

30 **MR GISONDA:** They marched on Parliament on 4 August, saying "Neil Scales, we smell corruption." And then at page 40, paragraph 157:

35 "The sudden cessation of my contract on a few days' notice robbed me of the opportunity to farewell my staff properly. I still feel bruised by it all, having given over a decade of service to DTMR and the Queensland public service. I also had to communicate with my staff and stakeholders, in the short time I had, about my abrupt exit from DTMR, and this was very difficult. I also believe the stance I adopted in respect of the union's involvement resulted in the Premier's office blocking some potential awards to recognise my service."

40

And then finally at paragraph 159:

45 "Neither Ms Mason or Mr Mackie informed me of any reason why my contract was not renewed. I did not receive reasons from any other persons in the government."

Now, I seek to tender that statement, Commissioner. We'll await to see if there's now any application to cross-examine Mr Scales, and if there is, then we will endeavour

to make arrangements to have him give - he's based in England now. We'll endeavour to have him made available, but it might be that he can't be made available because he's out of the jurisdiction. If that ends up being the position, then it might be that any person who wanted to cross-examine him on any particular paragraph might have a submission to make about whether you can ultimately rely on that paragraph or not.

COMMISSIONER: Are there any objections? No? The statement of Neil Scales, 19 December 2025, 40 pages, 162 paragraphs with three annexures, will be exhibit NS-1.

<EXHIBIT NS-1 STATEMENT OF NEIL SCALES, 19/12/2025, 40 PAGES, 162 PARAGRAPHS WITH THREE ANNEXURES

COMMISSIONER: All right. How many witnesses have you got this afternoon?

MR GISONDA: We've got two witnesses. Can I, without notice, but ask - just ask Ms Freeman to just confirm with you, Commissioner, when it would be convenient for her for us to adjourn and to come back after the luncheon adjournment?

COMMISSIONER: Sure.

MS FREEMAN: Thank you. Commissioner, I have a commitment over the lunch break, but 2 o'clock would be fine to come back at that time or any time after that. Thank you.

COMMISSIONER: All right. We'll adjourn till 2 pm.

<THE HEARING ADJOURNED AT 12.52 PM

<THE HEARING RESUMED AT 2.00 PM

COMMISSIONER: Mr Gisonda.

MR GISONDA: Thank you, Commissioner. I now want to call two witnesses from John Holland to give evidence, primarily about the Gold Coast Light Rail Stage 3 project. The first witness is a gentleman by the name of Trent Smith, who is the general manager of industrial relations for John Holland. He has been at John Holland for a very long time, so really a witness who has considerable expertise in the field of industrial relations in this country. So if Mr Smith is in the courtroom, I'll call Mr Smith, please.

COMMISSIONER: Mr Smith, could you come into the witness box, please.

<TRENT SMITH, AFFIRMED

<EXAMINATION BY MR GISONDA

COMMISSIONER: Just take a seat, Mr Smith.

MR SMITH: Thank you.

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COMMISSIONER: Mr Gisonda will now ask you some questions.

MR GISONDA: Thank you, Commissioner. Mr Smith, thank you for your attendance today. You swore a statement pursuant to a notice from the
10 Commissioner dated 30 June 2026; is that correct?

MR SMITH: That's correct.

MR GISONDA: And if I can have that brought up in front of you. And that
15 statement is 43 pages long, and it has 70 annexures that run for 1029 pages. Have you had an opportunity to read that statement recently?

MR SMITH: I have.

MR GISONDA: And can I just ask you to look at paragraph 13(a) on page 2, and there's a reference there to March 2012. Should that instead be a reference to March
20 2013?

MR SMITH: Yes, that's correct.
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MR GISONDA: And can I just ask, do you have a middle initial?

MR SMITH: I do: L.

MR GISONDA: L.
30

MR SMITH: Yes.

MR GISONDA: This statement is - sorry if I asked this already, but this statement is
35 true and correct?

MR SMITH: It is, yes.

MR GISONDA: Commissioner, I tender that statement.
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COMMISSIONER: Are there any objections? Witness statement of Trent Smith, affirmed 30 June 2026, 43 pages, 218 paragraphs with 70 annexures, as amended by the witness just now in the witness box at paragraph 13(a), will be exhibit TLS-1.

**<EXHIBIT TLS-1 WITNESS STATEMENT OF TRENT SMITH, AFFIRMED
45 30/6/2026, 43 PAGES, 218 PARAGRAPHS, WITH 70 ANNEXURES, AS
AMENDED BY WITNESS IN WITNESS BOX AT PARAGRAPH 13(A)**

MR GISONDA: Thank you, Commissioner. Now, Mr Smith, can I just ask you briefly about your history and expertise. You started - this is at paragraph 10 of your statement, on page 2. You started with John Holland first in a human resources role in 2007; is that correct?

MR SMITH: That's correct, yes.

MR GISONDA: And before then, did you have any relevant industrial relations experience, or was this your first role in that area?

MR SMITH: That was the, yeah, first role in this field. Yeah, that's correct.

MR GISONDA: And so that means you've been with John Holland for nearly 20 years now?

MR SMITH: That's correct.

MR GISONDA: And can you just briefly tell the Commissioner, what does the role of general manager of industrial relations, which you've held since 2020 now, what does that involve?

MR SMITH: Yes. So I manage the industrial relations function for John Holland nationally across each of our business units, which are infrastructure, which is civil, effectively; building; and the rail and transport business. Ultimately responsible for all things industrial relations, enterprise agreement negotiations, dispute management with the unions, litigation that may flow from that, and advising the business on industrial relations risk.

MR GISONDA: And you say at paragraph 15 -

COMMISSIONER: Do you report to the CEO or do you report through someone who's head of HR, head of people and culture, that sort of thing?

MR SMITH: Yeah, previously it was through the chief people officer. Now it's through the chief operations officer, yeah, Commissioner.

MR GISONDA: You say at paragraph 15 on page 3 of your statement that there was a period of time where John Holland had limited interactions with the CFMEU in Queensland because the building footprint in Queensland was relatively confined. Is that right?

MR SMITH: That's correct, yeah.

MR GISONDA: And we've heard some evidence already that in 2020 John Holland tendered for the Southern Queensland Corrections Centre Stage 2 project in Queensland.

MR SMITH: That's correct, yep.

5 **MR GISONDA:** And that was part of a pivot that John Holland was making away from some more - away from federal defence work and more into other government-funded civil and building works; is that right?

10 **MR SMITH:** Yeah, that's correct. We had a change of ownership in 2015 or around 2015 which meant defence work was no longer available to us. So as such, yeah, we pivoted at that point, focusing on other government-funded work, particularly corrections and health at that point.

15 **MR GISONDA:** Now, we'll just briefly touch on a couple of matters in relation to that prison project, just by way of context for when we then move to the Gold Coast Light Rail project. It was a condition of that tender that John Holland would provide terms and conditions for its workforce on that project that were at least equivalent to BPIC; is that correct?

20 **MR SMITH:** That's correct, yes.

MR GISONDA: And the form of BPIC that was provided as part of the tender from the state consisted essentially of the CFMEU's pattern agreement?

25 **MR SMITH:** That's correct.

MR GISONDA: And in July 2020, John Holland was awarded the managing contract for that project?

30 **MR SMITH:** Correct.

35 **MR GISONDA:** And you say at page 8 of your statement, paragraph 36, that John Holland understood - well, it was your understanding, John Holland's understanding, from the tender documentation, that it was required to enter into an enterprise agreement with the CFMEU and other members of the BTG in order to comply with those tender conditions?

MR SMITH: Yes.

40 **MR GISONDA:** And that's what John Holland did, ultimately?

MR SMITH: Correct, yep.

45 **MR GISONDA:** And you say at paragraph 41 of your statement that negotiations in that context were relatively limited with the CFMEU?

MR SMITH: That's correct, yeah.

MR GISONDA: Now, going forward, then, to August of 2020, John Holland became the preferred tenderer for the Gold Coast Light Rail Project Stage 3; is that correct?

5 **MR SMITH:** That's correct, yes.

MR GISONDA: And there was a state election in October of 2020, and before the state election, did you know or did you believe that the BPIC policy would be required to be implemented on the Gold Coast Light Rail project?

10

MR SMITH: Not - not at that point in October, no. I think it was December/January we became aware of that.

15 **MR GISONDA:** So it wasn't until December 2020, when John Holland was told BPIC would apply to the project, that you had any reason to believe that that's what would happen?

20 **MR SMITH:** Correct, yeah. I think there might've been industry murmurs around the back half of that 2020, but yeah, certainly, officially, at that point in time, definitely.

MR GISONDA: And is it fair to say that the tender that John Holland had submitted for the project was calculated by reference to pre-BPIC conditions?

25 **MR SMITH:** Yeah, that's correct, yeah. We had a statewide enterprise agreement that covered all our civil work in the state of Queensland, negotiated with the AWU as a bargaining representative, and that was the intent, to use that instrument on the project.

30 **MR GISONDA:** Could I ask you then to look at page 401 of the bundle, please. That's the bundle that accompanies your statement.

COMMISSIONER: What page again, sorry?

35 **MR GISONDA:** Page 401. This document is a clarification that the department issues John Holland, asking for further clarification from John Holland about five key areas of industrial relations that it would require further clarification about?

40 **MR SMITH:** Yes.

MR GISONDA: And just looking at that paragraph at the bottom of page 401, it says that:

45 "The state notes that the Gold Coast Light Rail procurement process commenced and bids were submitted prior to the recent endorsement of the [transport BPIC]. An objective of the government is to promote industrial harmony and continue improving safety."

And then it says over the page that:

5 "The state would therefore like to understand the impact, if any, of the transport BPIC on [the proposal]."

MR SMITH: Yes.

10 **MR GISONDA:** And so it was - you had some responsibility, didn't you, then, as the group manager of industrial relations, to consider what impact BPIC might have on the Gold Coast Light Rail project?

MR SMITH: Yes, I did. Yes, that's correct.

15 **MR GISONDA:** And at page 403 of your bundle, you prepared an executive briefing where you summarised some of the key risks and opportunities that would arise as a result of the transport BPIC on the Gold Coast Light Rail project; is that right?

20 **MR SMITH:** That's correct, yes.

MR GISONDA: And at page 404, you talk about under the heading Potential Opportunities, that:

25 "The Queensland Government and unions have made clear that the implementation of the BPIC will occur on future civil projects. The union have also advised that it is their expectation that the government introduce the BPIC on projects currently under tender and based on the levels of influence the union have over government, there is little doubt that the BPIC will be introduced, the key question is if it will apply to
30 those currently under (well progressed) tender processes."

But you knew at this point, didn't you, from some of the clarifications that you'd received from the state that BPIC was almost certain to apply to this project?

35 **MR SMITH:** That's correct, yes.

MR GISONDA: And then the next paragraph says this:

40 "Based on the government's commitment to introducing the BPIC, there is the potential for John Holland to position as a 'less risky' proposition to implement the BPIC in the civil sector because John Holland have demonstrated an ability to implement the BPIC [at the Gatton project] and in such a fragmented sector, they will be desperate to ensure that BPIC is implemented seamlessly."

45 Do we read from that that you appreciated that were other contractors in the civil construction space that were likely to be more resistant to entering into an enterprise agreement with the CFMEU?

5 **MR SMITH:** I think the intent of that comment was the fact that we had actually implemented the BPIC on the Gatton project. Albeit a building project, we had experience in dealing with the policy. We'd also obtained extensive external advice around how you implement that in a code compliant manner. So the federal - the government's or the Federal Government's building code was in play at that time, and that was one of our key considerations with how we implement BPIC, ensuring that we comply with both policies. So that was a huge focus for us. We put a lot of effort into getting that right on Gatton and felt that maybe puts us in a good position to manage on civil projects as well.

15 **MR GISONDA:** And at page 405, at the very end of this document, you say - you talk about there how there's considerable angst amongst the rest of the industry regarding BPIC.

MR SMITH: Yes.

20 **MR GISONDA:** Led by the QMCA, and we've heard evidence now from Mr Balmer. And you say:

25 "However, the government have been clear that the BPIC will be implemented and there may be more to be gained by engaging with the government and key clients to try and achieve some change that would make the BPIC more palatable and to also ensure that government is aware of and giving consideration to the key risks."

So were you effectively advocating for a position where you tried to work with the BPIC policy rather than actively resist it? Is that a fair -

30 **MR SMITH:** I think we kind of reached the point by February 2021 that the resistance felt rather futile. It was coming, so we thought, well, is there a way we can impact that policy to make it more workable from a contractor's perspective and engage with government on that.

35 **MR GISONDA:** And at page 406, then, of your statement, you receive an email from Mr Rob Evans, and just remind me who Rob - he's the general manager of rail projects?

MR SMITH: He was at that time. That's correct.

40 **MR GISONDA:** Was at the time. And he'd had a fireside chat with Phil Mumford from GoldlinQ and Mr Papantiniou of the Queensland Government. And do you know where Mr Papantiniou came from?

45 **MR SMITH:** He was the TMR lead for the project, as I understood.

MR GISONDA: And the second bullet point on this page, 406, is that:

5 "We need to confirm our position that we will not contemplate contracting with GoldlinQ until the BPIC issue is resolved. At present, both GoldlinQ and the State are trying to rush the financial close of the contract by getting us to execute a contract based on our 'pre-BPIC' position and then dealing with the changes in a subsequent modification."

10 So was it your understanding at the time that at least as far as the state was concerned, it wanted - it just wanted the contract executed, financial close done, and you'd worry about the BPIC consequences later?

MR SMITH: Later. That's right. Correct. Yes.

15 **MR GISONDA:** And were you given any further insight as to why that was their position?

MR SMITH: I wasn't, and only assume it was driven by trying to get the project commenced at that point.

20 **MR GISONDA:** And then you respond to that email on page 409, reporting on a discussion that you had with Mr Dean Misso, who was an executive director of that department. And there was then talk at this stage that there was going to be a separate BPIC that applied to projects that were worth more than 300 million. Do you remember that?

25 **MR SMITH:** Yes, I do remember that.

MR GISONDA: And that would certainly be this project?

30 **MR SMITH:** Yes.

MR GISONDA: And in the second bullet point you say that:

"He..."

35 Mr Misso:

40 "...understands that there was a meeting with the minister's department and the CFMEU and ETU on Monday night and [the department] have now been advised that the unions would be contacting John Holland directly with a revised document for the Gold Coast Light Rail."

45 Was he saying there that the next iteration of the transport BPIC, as it would apply to the Gold Coast Light Rail project, would be supplied to you directly from the unions?

MR SMITH: Yeah, that was the inference from that comment, which seemed a little bit strange at the time, to receive it that way. But yes, that's correct.

COMMISSIONER: Sorry, what's strange about it? I just don't quite follow.

5 **MR SMITH:** Well, we'd obviously been issued a transport BPIC which was intended to cover projects less than 300 mil, then advised that that may not be the correct BPIC for Gold Coast Light Rail. So this discussion centred around, well, what was that correct BPIC, and the suggestion that we may receive something from the unions as opposed to, yeah, TMR, Commissioner.

10 **COMMISSIONER:** I see.

MR GISONDA: And then one matter upon which your position and experience is quite valuable to the work of this Commission is by reference to the fact that you have visibility and responsibility for industrial relations all over the nation, is that right, for John Holland?

MR SMITH: Correct, yes.

20 **MR GISONDA:** And when you prepare executive briefings, you attend to matters that not only concern Queensland, but other states as well.

MR SMITH: That's correct.

25 **MR GISONDA:** And at page 419, you prepared an executive briefing in April of 2021. And at page 421, you see under the heading Union Interaction, you say:

"The increased CFMEU activity in Victoria continues, with the campaign escalating recently at the NWPA."

30 That's the level-crossing removal project, is it?

MR SMITH: Correct, yes.

35 **MR GISONDA:**

"During their most recent occupation it appears that John Holland was become their number one target as they try to secure civil EAs across the industry, and the campaign is likely to extend to other John Holland projects, including building and the CYP Project. These projects will be viewed as the most likely to create leverage over John Holland and increase the pressure to sign the regional civil enterprise agreement."

40 Can you just tell the Commissioner a bit more about what you were observing at that point in time?

45 **MR SMITH:** Yeah. Well, we were, like I said there, a target of the CFMEU as a major player in Victoria, a tier 1 contractor. We didn't have a CFMEU agreement at

the time. A lot of the supply chain did have CFMEU enterprise agreements in the civil sector by that point in time, including some contractors as well, from memory. So we were - yeah, we were experiencing some sustained -

5 **COMMISSIONER:** Some contractors had what, sorry?

MR SMITH: Had engaged with the CFMEU for a, yeah, for a civil agreement, statewide Victorian civil agreement.

10 **COMMISSIONER:** By 2021?

MR SMITH: Correct, yes.

15 **COMMISSIONER:** We had some evidence, I think by Mr Watson, where he said that two organisers, or maybe one organiser and his brother, Joe and Mick Myles, had left Queensland in 2016, '17, '18, somewhere around then, and had some success in gaining a presence in civil construction in Victoria.

20 **MR SMITH:** Yeah, correct, Commissioner. That was our experience, absolutely, yeah. We saw the supply chain - like I said before, most of the subcontractor supply chain had engaged with the CFMEU for an enterprise agreement by that point in time.

25 **COMMISSIONER:** By 2021?

MR SMITH: Yeah, correct. Yeah.

30 **COMMISSIONER:** And had that been the situation prior to the Myles brothers coming down from Queensland?

MR SMITH: Oh, look, I think it was probably around that time. So I stepped into the national role 2020, so I didn't have a lot of exposure to Vic prior to that, but yeah, it did coincide roughly with that time, Commissioner, yeah.

35 **COMMISSIONER:** Sorry, I didn't mean to cut you off from explaining the context. Can you just keep going on the context?

40 **MR SMITH:** Yeah, sure. So that was - yeah, so we were experiencing a campaign which was along the line of safety entries, disruption, the standard sort of play, and that was aimed at putting pressure on us to agree terms for a regional civil EA, quite simply. We were a bit - obviously reticent for that. We had an established relationship with the AWU, an enterprise agreement in play at that time with the AWU for civil work in Victoria. We still had that agreement in play, mind you, as well. But at the time, yeah, so we obviously had some reservations about what that
45 looked like. We were also conscious, though, that the market had moved that way, and irrespective of what we were doing from a head contractor perspective, the

reality was we were engaging with a supply chain that had CFMEU enterprise agreements, whether we liked it or not.

5 **COMMISSIONER:** And when you say "regional civil EA", by regional you mean Victorian regional?

MR SMITH: The state region, sorry, yeah, not regional areas. That's correct.

10 **COMMISSIONER:** And what Mr Gisonda said, NWPA was level-crossing removal, what does NWPA mean?

MR SMITH: North West Program Alliance is the - the acronym.

15 **COMMISSIONER:** Level crossings in Melbourne?

MR SMITH: Level-crossing removal in Melbourne. Correct, that's right.

COMMISSIONER: What's CYP?

20 **MR SMITH:** CYP is the Melbourne Metro project. Cross Yarra Partnership is the name of the alliance.

COMMISSIONER: So that's the four-station train tunnel?

25 **MR SMITH:** The underground one. Correct, yes.

30 **MR GISONDA:** And then if I can ask you to look, please, at paragraph 81 of your statement, which is on page 16. In the middle of 2021, you attended a meeting with the Department of Transport and Main Roads, which included Ms Hawkswood, Mr Misso and Mr Scott Gartrell. And then at paragraph 81, you set out some things that occurred in that meeting. Can you just tell the Commissioner what you recall about what was discussed at that meeting?

35 **MR SMITH:** Yeah, so that meeting I think we were notified of the bespoke, if you like, Gold Coast Light Rail BPIC document, so we were advised that that had been negotiated by Mr Gartrell. He was acting as an IR adviser for TMR. So, yeah, we understood that he'd negotiated that with the CFMEU and the BTG unions, the Building Trades Group of unions. The AWU had not engaged in those negotiations. We made clear during that discussion that we saw the AWU as the relevant union for
40 our proposed workforce on Gold Coast Light Rail, being a civil project primarily.

45 And the discussion went on. It was clear that Mr Gartrell made the point that the BTG unions had been willing to engage in respect of the Gold Coast Light Rail BPIC; we should then in turn engage with them in respect of the BPIC. He stressed during that discussion his significant engagement with the CFMEU through that period and his ability to have some influence over the outcomes there.

MR GISONDA: And at page 18 of your statement, paragraphs 87 to 88, you explain what, to your observation, is a key distinction between delegates who are representatives of the CFMEU as opposed to delegates who are representatives of the AWU. And it's correct, is it, that whereas the AWU delegates are typically working delegates, the CFMEU delegates would often consider their role to primarily be - to be that of a delegate rather than an employee who performs productive work on the project itself?

MR SMITH: That's correct, yeah. Our experience was - prior to that time, like I said, we had an AWU agreement in place for civil works in Queensland. We did have a nominated employee representative from the AWU that worked on Sunshine Coast airport expansion project, I believe at the time, and our experience with him was, yes, that he would perform productive work, and we were aware that that wasn't the case with the CFMEU from our experiences in the building sector.

MR GISONDA: And what do they tend to do if they're not working?

MR SMITH: Oh, look, they invariably perform the role of a work health and safety representative as well. So they're generally voted into those roles was our - was our experience. They will liaise with workers, liaise with management. I don't know how to explain much more than that than what they do, yeah.

MR GISONDA: Continuing on this page, page 18, paragraph 92, you say that throughout the enterprise agreement negotiating process, it was clear to John Holland that the preferred outcome by the department was for the CFMEU to be involved in the project and for there to be a project-specific EA that was consistent with BPIC and included the CFMEU.

MR SMITH: That's correct.

MR GISONDA: And you say at subparagraph (c) over the page that the instructions were that there is an expectation that John Holland will engage with relevant unions as identified in the BPIC, and the unions identified in that BPIC included the CFMEU?

MR SMITH: That's correct, yes.

MR GISONDA: And you also say that Mr Gartrell had emphasised to you that there was a need to engage with the CFMEU on this project?

MR SMITH: Yes, that's correct.

MR GISONDA: And at page 639 of your bundle, this document - and we'll just look at the front page first, which is at page 635 - is what's styled as a BPIC impact assessment, and it's a response to the state's request for clarification. You're familiar with this document, are you?

MR SMITH: I am, yes.

MR GISONDA: And at page 639, you're asked - John Holland, that is, is asked what approach will John Holland undertake in the event - this is (vii) - what
5 approach will John Holland undertake in the event a proposed greenfields agreement is negotiated that does not include all relevant unions as parties and how does it intend to maintain a positive industrial relations environment in those circumstances? And the response was:

10 "The AWU's unwillingness to engage in meaningful discussions with John Holland and the State presents a significant impediment in achieving industrial harmony on the project."

15 John Holland's preference is an all-inclusive enterprise agreement, and by that, that's meant, relevantly for present purposes, both the AWU and the CFMEU as signatories?

MR SMITH: Correct. Yes.

20 **MR GISONDA:** And John Holland considered there was considerable risk to the project if that was not possible, and then at the bottom of the page:

25 "Therefore, it remains imperative that John Holland and the State continue to explore all avenues that may persuade the AWU to start engaging meaningfully in such an agreement."

So John Holland wanted the state to try and intervene to get the AWU to change their position; is that fair?

30 **MR SMITH:** That's correct, yes.

MR GISONDA: And did you have success in persuading the state to intervene in such a fashion?

35 **MR SMITH:** No. They did express - they expressed concern similar to us with how the policy would be implemented without the AWU there in the civil sector, so there was concern around their lack of involvement, and that was raised at senior levels within TMR, including our CEO speaking to Mr Scales at one point. But, yeah, look, ultimately, yes, it didn't lead anywhere in terms of convincing the state to assist.

40 **MR GISONDA:** And in November of 2021, an independent advisory firm, E3 Advisory, were engaged to perform - engaged as an independent estimator to review the potential price impacts of BPICs, and the state engaged E3 Advisory as that independent estimator. And at page 835 of this document, which is the executive
45 summary, on the right-hand side, they said that:

5 "To assist the parties in understanding the assessment of BPIC impacts in accordance with the terms of reference, the independent estimator has categorised items in John Holland's revised D&C offer as follows: impacts attributable to the Gold Coast Light Rail 3 BPIC at \$91.2 million, and then other workplace relations management risks at \$37.3 million."

10 Do you know whether that \$37.3 million, being workplace relations management risks, was an outworking of the BPIC policy, or was it something separate to the BPIC policy?

MR SMITH: My understanding, from memory, was it was related to the BPIC policy, so that would have been some of the issues around productivity associated with the BPIC document that we identified is my understanding of that.

15 **MR GISONDA:** And then do you recall what the factors other than the Gold Coast Light Rail BPIC were, that \$54.6 million -

MR SMITH: No, I can't recall what that was in relation to, I'm afraid.

20 **COMMISSIONER:** Those three figures add up to about 180 million or so.

MR SMITH: Mmm.

25 **COMMISSIONER:** There was some other evidence given that the - and maybe it's not Stage 3, maybe it's the whole project, but the blow-out in costs was from about 750 million to about a billion; about 250 million, not 180.

MR GISONDA: That's why I've got Mr Ladbroke, Commissioner.

30 **COMMISSIONER:** Sorry. I'm getting ahead of things, am I?

MR GISONDA: That's okay.

COMMISSIONER: So ignore - don't answer that question.

35 **MR GISONDA:** Now, at page -

COMMISSIONER: Please don't answer that question.

40 **MR SMITH:** It's more than that figure, I can tell you.

MR GISONDA: At page 883 of the bundle, there's an email from Kirstyn Smith, who is -

45 **COMMISSIONER:** What page again, sorry?

MR GISONDA: Sorry, 883. So Kirstyn Smith is the commercial and legal manager of GoldlinQ, and I don't believe you were on this email chain.

MR SMITH: No.

5

MR GISONDA: But at the bottom of the page, there's - so there's a discussion involving her and some officers or representatives of John Holland. That'd be Andrew English and Ryan Dodd, as well as representatives of DTMR, including Ms Yeates and Mr Papantiniou. And at the bottom of the page, the reference to BPIC IR:

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"BPIC assessment and impact to be treated as open book. Acknowledging that the State's current budget allocation for BPIC is \$150 million."

15

And John Holland's direct costs of \$101 million were to be paid, subject to ordinary evidence during delivery. And then the remainder, over the pages:

"...to be treated on a cost reimbursable basis, where actual costs incurred are paid but capped at \$49 million."

20

So was this, in a way, a compromise between the state wanting you to just achieve financial close and worry about BPIC later and John Holland wanting some assurance that the impacts - the financial impacts of BPIC would actually be compensated in some way?

25

MR SMITH: Yes, correct. Yeah, there were - like you said, I wasn't actually at that meeting, but I do recall the feedback from that meeting, and it was very much about allowing the project to progress to financial close and - and get going, effectively.

30

MR GISONDA: And then at page 907 you send an email around to some other John Holland employees on 14 September 2021, and what you're doing here is trying to summarise the key issues and potential options. And this first sentence you have under the heading:

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"The transport BPIC and the Gold Coast Light Rail BPIC and major project BPIC were clearly developed to provide access for the Building Trades Group to upcoming civil projects."

Why was that your view at the time?

40

MR SMITH: I formed that view - I mean, all of those documents reflected the CFMEU pattern, in my view. Like I said earlier, we were aware that the CFMEU had been involved and the BTG had been involved in the negotiation of each of those documents to the exclusion of the AWU. That was the only conclusion I could reach based on that information, and if it was a different intent, then I imagine the BPIC

45

would' have been rolled out differently, is my view.

5 **MR GISONDA:** And we've heard from Mr Balmer, who references - and presumably you know Mr Balmer, who was at John Holland himself for a long time. He described business as usual. So if that's a shorthand way of talking about how the industry was operating before BPIC, business as usual would have seen a lot of these civil projects have applied to them an enterprise agreement with the AWU only.

10 **MR SMITH:** Correct, yes. And that's certainly how we did that, and our enterprise agreement at the time was reflective of the Ts and Cs that were in operation across industry at the time.

15 **MR GISONDA:** And then at page 911, you prepare another executive briefing, and this one's on the Queensland BPIC civil strategy. And I just want to ask you about a couple of matters that you identified in this briefing. Over the page at page 912, just that paragraph under the redacted sentence, you say:

20 "It is important to note that the AWU do not have the level of influence in Queensland compared do past years and have been suffering a steady decline in membership. There is a view within industry that they are at risk of becoming irrelevant in the coming years as the CFMEU ramp up their efforts to take control of the sector. Their decline is being seen in Victoria, where they now have little to no influence over the civil sector (and even parts of their tunnelling coverage appear under risk)."

25 Can I just ask you to just elaborate any more, to the extent you can, for the Commissioner what your observation had been about the AWU's membership and coverage in Victoria?

30 **MR SMITH:** Yeah. I mean, that was consistent with the point I made earlier, where we had seen effectively the bulk or the large majority of contractors in that sector move over to CFMEU enterprise agreements, engage with the CFMEU in Victoria. So that was something that we were seeing right at that very point in time. So we had some concerns about what that meant for the AWU. We weren't happy about that, I want to stress that point, didn't like the sound of that, but absolutely we had some concerns about what that might mean for the sector in Queensland if it continues on a similar trajectory.

40 **MR GISONDA:** So would you say, then, that Victoria, if you like, was ahead of the curve on this point, and there was a risk that that trend would then travel up to Queensland, and the transport BPIC appeared to be - I don't want to put words in your mouth, but was it accelerating it, was it enabling it, what was your observation?

45 **MR SMITH:** Absolutely. It was all of those things. Yes, it accelerated it and it enabled it. It was - like I said before, it was a CFMEU document, negotiated with the CFMEU, created an expectation from the CFMEU that they would be engaged on civil projects moving forward. So, yeah, that was the concern, that what we'd seen unfold in Victoria was potentially on its way.

COMMISSIONER: Well, one of the things Mr Watson said, and Mr Irving had a different view, he said that he thought Mr Ravbar saw what Mr Setka had been doing in Victoria, in a range of ways, including the expansion of coverage into civil construction in Victoria, to the exclusion or diminution of the AWU.

5

MR SMITH: Yeah.

COMMISSIONER: And that then that was copied by Mr Ravbar. Mr Irving had a different view. He said what was happening in the two states was different causes, different factors.

10

MR SMITH: Yeah.

COMMISSIONER: Do you have any view, at least in relation to that aspect?

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MR SMITH: Yeah, I think - look, I tend to think that Mr Ravbar probably did what he wanted to do, so I don't know whether he was influenced too much by what was happening down south. I think it was more they were aware of the pipeline of infrastructure work that was coming, significant membership base -

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COMMISSIONER: In Victoria?

MR SMITH: In Queensland, sorry. So I can only assume that was their motivation. They may have looked at Victoria and saw the success down there, if you like, and that may have been a bit of a trigger, but they tended to do their own thing in Queensland was my experience.

25

COMMISSIONER: You said the pipeline of the work, the pipeline of work, and you said something about membership. What do you mean by that?

30

MR SMITH: I mean in terms of the potential for membership growth, I guess, in the civil sector. I mean, they had the building sector stitched up, I would say, at that point in time, by and large, the civil sector. At that point, whilst the AWU had agreements in place with a lot of the tier 1 and 2 contractors, it was a fragmented market. There was a lot of non-union type subcontractors in the market, so they probably saw that as an opportunity.

35

COMMISSIONER: They being the CFMEU in Queensland?

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MR SMITH: They being the CFMEU in Queensland - to target those projects. Yeah.

MR GISONDA: And then something else I just wanted to ask you about, which is at the bottom of page 912, and that first sentence under the heading Government Position:

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"The catalyst for the BPIC policy was the CFMEU being omitted from the Cross River Rail enterprise agreement."

5 I think it's fair to say that that's a theory that I see some merit in, but I'm interested in what led you to form that view.

10 **MR SMITH:** I'm trying to recall. I mean, there was a lot of discussion. We as John Holland sit as part of the QMCA, ACA, so various different groups, and there was, as you can imagine, a lot of discussion about this policy at that time and the different permutations that were unfolding. And obviously, yeah, Cross River Rail was a huge focus as part of that. So I can only assume that, yeah, obviously there was discussion about that. It may have even come from the union discussions as well I was having at the time that - they expressed a view that they had been cut out of Cross River Rail and therefore this policy would address that. So, yeah, hard to pinpoint exactly
15 where, but based on, yeah, industry discussions, union interactions, probably the best way to describe that.

COMMISSIONER: This is your document. This is your view.

20 **MR SMITH:** This is my thoughts, yeah. Yeah. And like I said, I think I formed those - well, I did form those views based on industry discussions, discussions with the union, and joining the dots on the back of that.

25 **MR GISONDA:** And then you make the point in the next sentence, which I think is a similar point that Mr Gartrell made in some comments that he provided the department, and perhaps maybe before I ask you the question: had you had dealings with Mr Scott Gartrell before?

30 **MR SMITH:** No. No, I only met him as part of the Gold Coast process.

MR GISONDA: And he said that - sorry, you say:

35 "The CFMEU and the ETU both have considerable influence within the government. The left faction controls the ALP in Queensland, and this faction relies heavily on the support of the BTG."

40 You might say it's just part and parcel of your role and your expertise, but how do you know - how do you know this information? Where do you get this information from?

45 **MR SMITH:** Yeah, I mean, it's my political commentary there, which I didn't expect to be on the screen all these years later. However, that was - that was formed based on - so we do have government stakeholder relations people within our business. We'd had multiple discussions. Given the political aspect of this policy, there was lots of discussion about BPIC at the time. He relayed to me the factional make-up of the ALP at that time. I then kindly relayed that in my own words.

COMMISSIONER: When you say "he", your John Holland -

MR SMITH: Sorry, my government stakeholder relations manager.

5 **COMMISSIONER:** Is that a national person or a Queensland person?

MR SMITH: A national person.

10 **MR GISONDA:** And you also observed that:

"If the CFMEU continue to be excluded from DTMR projects, we can expect significant backlash."

15 And so you were concerned, weren't you, about what might happen to John Holland if they were excluded from the Gold Coast Light Rail project? Is that correct?

MR SMITH: That's correct, yeah.

20 **MR GISONDA:** And at page 196 of the bundle, there's another email which you received from Ryan Dodd, who just says that on IR strategy - this is the first bullet point - so a weekly client team meeting. That means there's a weekly meeting with GoldlinQ?

25 **MR SMITH:** GoldlinQ and TMR were present there as well.

MR GISONDA: Yes. And:

30 "We reiterated the need for a multiparty agreement to make this work that includes the AWU. All on call were aligned on this after Trent described all options - we need to escalate involvement by the State to get involved in bringing these parties together."

But it sounds like there's - well, that didn't happen.

35 **MR SMITH:** No.

MR GISONDA: Correct?

40 **MR SMITH:** Correct. Yeah.

MR GISONDA: And you're not aware of any - well, are you aware of any meaningful attempts to try and make that happen?

45 **MR SMITH:** No, no, I'm not aware. I mean, I note that Neil Scales, according to our recollection of that meeting, committed to get all the unions together, but, yeah, whether that happened or not I couldn't confirm.

MR GISONDA: And I know it's a bit unfair to you, as you've candidly admitted you are preparing executive briefings not thinking that four years later they'd be looked at in a Commission of Inquiry, but on one view, if they were trying to - if you're trying to have State Government escalation in terms of trying to bring the AWU to the party, so to speak, on this project, if the CFMEU and the ETU have considerable influence within the government and the left faction controls the government in Queensland, there might in fact not be much of an incentive for the government to do that?

10 **MR SMITH:** Correct. Yeah. Makes sense.

MR GISONDA: And then at 934 of the bundle, you report in an email in the second bullet point that:

15 "Disappointingly, the client has been very clear that they will take no further action to assist John Holland in influencing AWU involvement."

And so that was that, was it?

20 **MR SMITH:** That was the final - the final confirmation, I believe, yes.

MR GISONDA: And I then want to ask you about an email you wrote at page 982, which I don't quite understand. Now, I know you're just relaying what's told to you from the CFMEU, but perhaps you might have a better insight into what this means. This is very late in the piece now, because I think the agreement is submitted in - well, it's certainly submitted by March, I believe, of 2022. But at the last moment, the CFMEU asks - demands, I should say - that the John Holland entity that's party to the agreement changes to John Holland Queensland. It was going to be John Holland Pty Ltd, which is the national entity; is that right?

30 **MR SMITH:** That's correct, yeah.

MR GISONDA: And they've asked for the Queensland entity, John Holland Queensland Pty Ltd. And they say - this is that first paragraph, in the third sentence:

35 "They want us to use John Holland Queensland entity which is regulated the under the state based work health and safety legislation rather than the federal system under Comcare, which applies to JHPL. Put simply, their issue being that the union have little influence over Comcare but do have significant influenced over the state-based regulator, WHSQ."

And then under Next Steps:

45 "The reality is that unless we convert the enterprise agreement to the Queensland entity we will not be able to finalise a greenfield EA. The CFMEU are that submitted to this issue that they will simply not accept JHPL."

So I understand that the union's view was that it had little influence over Comcare but had significant influence over the state-based regulator, WHSQ, but why did that matter to whether the party to the agreement was John Holland Pty Ltd or John Holland Queensland?

5

MR SMITH: So the JHPL entity, we're self-insured in that entity, so it is under the Comcare federal legislation, whereas the JHQ PL entity is obviously under the state-based work health and safety system. So, yeah, there was - there was an issue that they would not agree to the greenfield agreement on the basis of - basis of that entity if we chose to push on and proceed with JHPL.

10

COMMISSIONER: Say that again: they would not what with that entity?

MR SMITH: They wouldn't sign the agreement, effectively; wouldn't endorse the greenfield.

15

COMMISSIONER: You've been involved in industrial relations since 2013; before that, in HR?

20 **MR SMITH:** Yes.

COMMISSIONER: So close to a decade and a half. Had you ever seen anything like this before?

25 **MR SMITH:** No. I mean, we were aware they didn't like Comcare, because they'd actively sort of raised submissions against our applications as they'd been renewed. So we knew that was a bit of an issue. But yeah, this was - I mean, it was incredibly frustrating. There's a bit of frustration, I think, coming through in that email. But yeah, this was - I mean, it was incredibly frustrating to have that at the eleventh hour as we were about to lodge an enterprise agreement to simply say, "We're not copping that." But it is unusual, yes, dictating what entity we're using.

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COMMISSIONER: And did you find it unusual that they said they have significant influence over the state-based regulator, WHSQ?

35

MR SMITH: I think that might be - that's my opinion there, Commissioner, rather than a direct quote from them.

COMMISSIONER: What do you think of that fact, your opinion?

40

MR SMITH: Yeah, I think that was the case, yes. I mean, we - again, we sit as part of QMCA. We sit as part of industry bodies. We were aware of what was happening out on the ground with respect to the regulator at the time, and there was concern about the CFMEU level of influence through the regulator. And I could only suggest that that was their concern in this particular issue, that if we went to the JHPL entity, then we're invoking Comcare and that was going to be a problem for them.

45

MR GISONDA: I've just lost where it is in your material, but there was - you had received advice or information from the department at some point which was to the effect that they would encourage - here we go. Sorry. It's at page 27 of - sorry for mucking you around. I've found it now, Mr Smith. It's at page 926 of your bundle.

5 And we've gone back in time a few months to November, but you are reporting on a meeting with the client to talk through the risks associated with the lack of AWU involvement in the enterprise agreement negotiations. And then the second paragraph, you say:

10 "It is clear that the State have a preference for brownfield negotiations (I think primarily based on their concern with the precedent of CFMEU-only EAs for future projects)."

15 Do you recall what took place in that conversation or what message they were trying to send you?

MR SMITH: Yeah. Yeah. The context there - and that obviously contradicts my earlier comments about a push for a CFMEU EA. I think we were in November by this stage. There'd been a good 10 months of us in pretty intense negotiations with
20 TMR in respect of the BPIC implementation. We talked them through the risks with the CFMEU approach or the BTG approach at some length. I can only assume - and, sorry, part of the discussion there was that maybe we think about going straight to a brownfield negotiation as opposed to the greenfield, given the AWU position.

25 But they - yeah, at that point, yeah, there was I think concern from their end, having heard from us for, like I said, a 10-month period about all the risks associated with the CFMEU approach, and probably from other contractors who were implementing BPIC as well, that maybe they thought that there might be a bit of a problem with that approach.

30

COMMISSIONER: When you say concern from them -

MR SMITH: From TMR, sorry.

35 **COMMISSIONER:** And who from TMR?

MR SMITH: I think in terms of who we would have been talking to then, it would have been the project lead, Peter Papantiniou, and some others I can't recall.

40 **MR GISONDA:** And then at page 991, there's another briefing note, an executive briefing from you, and in the middle of the page, just start above the redaction, you say that the Queensland civil market - well, the New South Wales and Queensland markets, you say, are slightly different:

45 "In New South Wales they have been successful on major projects and have recently established a demarcation agreement with the CFMEU for future major project

agreements. This is aimed at protecting their coverage in tunnelling given what they have seen unfold in Victoria."

And then you say:

5

"The Queensland civil market is dominated by AWU agreements for most tier 1 and 2 contractors and the subcontract market is largely non-union. The BPIC policy is clearly intended to rectify this by giving the CFMEU access to skill projects moving forward."

10

That's consistent with the point we saw you made earlier?

MR SMITH: Yes, that's correct. Yeah.

15

MR GISONDA: And you were also mindful, weren't you, now at page 992, under Key Messages, that, in that second bullet point, John Holland was a multidisciplinary contractor that had a different risk profile to other contractors. And at the third bullet point, John Holland had to maintain a relationship with the CFMEU, given that you also had a building business?

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MR SMITH: That's correct, yeah. That's absolutely the reality of what we faced in that period.

25

MR GISONDA: And perhaps ultimately, at least in Queensland and in Victoria, the outcome was to be influenced or maybe heavily influenced by what you describe there as the expectations of government in Queensland and Victoria that have a clear view of engagement with all unions. And so was that something you were also seeing in Victoria, was it, that the government wanted to see John Holland engage with all unions?

30

MR SMITH: Yes, that was the reality of - or the practical reality of what we saw down there, yes.

35 **COMMISSIONER:** But you are in a much more difficult position than a contractor that does purely civil work, because you had to maintain a relationship with the CFMEU - that is, you, John Holland, whichever John Holland entity we're talking about - with the CFMEU for the sake of your building projects?

40 **MR SMITH:** That's absolutely correct, Commissioner. Yeah, we were in a unique position, I think - well, certainly unique compared to the other civil contractors in, Queensland, where they just didn't have that exposure from a building perspective. We at the time, certainly at the time of the Gold Coast Light Rail BPIC negotiations, we had a number of significant building projects on foot: Gatton, or Southern Queensland Correctional Centre, which we've heard about. Logan Hospital was
45 commencing or near commencing. We had a lot of exposure to the CFMEU at that point, which put us in a difficult - a difficult bind, absolutely.

MR GISONDA: And then at page 994, you write an email to some of your colleagues, and in the middle of the page you say that:

5 "John Holland, following the discussion on Thursday, has raised the option with both the CFMEU and the AWU in separate meetings."

And the option is to have two mirror enterprise agreements, is that right, one with the CFMEU and one with the AWU?

10 **MR SMITH:** Yeah, that was a suggestion that I understand came from Mr Scales during that meeting. It may have been the approach that was taken on Stage 1 of Gold Coast Light Rail, as I understand it.

MR GISONDA: And what you have noted is that the AWU:

15

"...are not willing to give up any coverage in the civil space and consider the civil sector 'theirs'."

And then the second bullet point:

20

"The CFMEU were very clear that they would not entertain any demarcation arrangement with the AWU. Their position is that wherever they have coverage in the civil sector (over certain classifications) then they intend to exercise that coverage and will not be 'giving up any roles to the AWU'."

25 That's the feedback you -

MR SMITH: Provided, yeah.

30 **MR GISONDA:** - received, was it?

MR SMITH: Correct.

MR GISONDA: And what happened was that you lodged the greenfield agreement with the Commission in March '22. The application was dismissed because of John Holland's objections to approval. And then in July '22, John Holland lodged a further greenfield agreement for approval by the Commission?

35

MR SMITH: Yep.

40

MR GISONDA: And what was the difference between - so you were unsuccessful with the first application. Why did John Holland think that the second application might be successful?

45 **MR SMITH:** So this was in the context of a fair bit of desperation to get started on the project, bearing in mind we were awarded preferred back in August 2020. So by this point, yeah, there was a lot of pressure from every angle to commence the

project as soon as possible. The approach there was that - my understanding of the original decision was that the Commissioner couldn't be certain of the exact classifications that we required on the project and the numbers thereof. There was a view that if we could be clear about the exact numbers and classifications that were required, then the opportunity to land a greenfield would still be available to us.

We hadn't actually engaged any direct labour at that point in time. The project hadn't progressed to a point, in our view, that we thought were past the window for a greenfield agreement. So that was part of the strategy, was to, yeah, was to see if we could be clearer with the Commission around the actual classifications that we would need to perform - perform the project.

MR GISONDA: And then that, too, was unsuccessful. Sorry, the second greenfield agreement was approved, and the AWU appealed that agreement?

MR SMITH: That's correct.

MR GISONDA: Sorry, that decision. And on 18 October 2022, a Full Bench of the Commission overturned that decision that had approved the second greenfield agreement.

MR SMITH: That's correct, yes.

MR GISONDA: So the AWU's appeal was successful there. But you had by that stage already lodged a brownfields agreement with the CFMEU.

MR SMITH: Yeah, that's right. We'd started that process concurrently, given the urgency to commence works on the project.

MR GISONDA: And so that's how you ended up with an enterprise agreement for the project that included the CFMEU but not the AWU?

MR SMITH: That's correct.

MR GISONDA: Just two final questions for you from my end. Just at page 1010, some feedback was received from multiple people about the training that was being undertaken by a CFMEU trainer, Brian Humphrey. So he was leading an induction session on 28 June 2024. And so is that what - for new employees, they had to do an induction or training session, did they? Is that what the -

MR SMITH: It would have followed our project induction. It was workplace impairment training in my understanding. So, yeah, he was there to provide that training which occurred post the project induction.

MR GISONDA: Yes, impairment training, and the feedback from the session was that he was using coarse language throughout the induction. He continued to refer to the lack of care John Holland has to safety and wellbeing of their workers. He did

not stay on topic, kept telling everyone about his life struggles and decisions that he'd made instead of focusing on the actual topic, which was asbestos and silica. And then there was a recruitment drive by Craig Tate and himself on attendees to join the union, and those in attendance felt like you didn't have to choice to join or not.

5

And then when he turned to the alcohol and drugs section, he implied continuously to drink. He would explain what drugs would go through your system fastest. This section was about how not to get caught by John Holland, and then made jokes about alcohol and drugs. And then the point is the potential damage he is doing to the culture on this project, being the first point of contact for employees and contractors. Do you recall what happened to Brian Humphrey's role as being responsible for this training?

10

MR SMITH: Yeah, I understand that a complaint was made through to the CFMEU and he was then removed from that - from that role moving forward.

15

MR GISONDA: And then the final thing I wanted to ask you about is at paragraphs 185 to 189 of your statement. On the project, John Holland had engaged a traffic controller called Moonyah Workforce Pty Ltd; is that right?

20

MR SMITH: That's correct, yes.

MR GISONDA: And Moonyah Workforce, I believe, is an Indigenous-owned firm or is a firm that provides Indigenous labour hire; is that right?

25

MR SMITH: That's my understanding, yes.

MR GISONDA: And allegations were raised that there had been payment of money to Moonyah employees for time that wasn't actually worked. That was the allegation, was it, in early 2025?

30

MR SMITH: That's right, yes.

MR GISONDA: An independent investigation was conducted by external lawyers, and it was found ultimately that \$170,809 had been paid to three - for work that had - that Moonyah had claimed had been done by three people but had in fact not been done.

35

MR SMITH: That's correct, yes.

40

MR GISONDA: And they included a traffic controller or two traffic controllers and then a third traffic controller who was the wife of - sorry, a family member of the owner sought a John Holland manager to sign off on timesheets to pay his wife for work that she had not performed. So that was the findings that had been reached as a result of those allegations?

45

MR SMITH: That's correct, yes.

MR GISONDA: And it was found also that a traffic supervisor employed by John Holland was part of this scheme; is that correct?

5 **MR SMITH:** That's correct, yes.

MR GISONDA: And his employment was terminated as a result?

MR SMITH: Correct.

10

MR GISONDA: And what happened to Moonyah? Did they continue to be engaged or -

15

MR SMITH: They did continue to be engaged is my understanding. I believe there was action taken under the contract, and they did repay the moneys, as I understand it, as well, based on the fraudulent payments received. So, yeah, that was worked through under the contract. I couldn't talk to that specifically, though.

20

MR GISONDA: Sorry, one last - I said I had one last question. Now I've really got one last question, which is, Ms Schinnerl, in her evidence, at page 591 of the transcript - this is the secretary of the - you know who I'm talking about, Stacey Schinnerl?

25

MR SMITH: I know Stacey. Yeah, absolutely.

MR GISONDA: And she was talking about the greenfield agreement that had been made between John Holland and the CFMEU on Gold Coast Light Rail, and she said that there was a conversation she had with you, and her evidence is this:

30

"Mr Smith acknowledged that I was right, in that the CFMEU cannot meet that test in greenfield agreement-making, but he said that the building portion of their business, which I believed to be more lucrative, had determined that the jobs that were currently on foot in Queensland, being Logan Hospital - I think it was a car park that they were building there - and a prison job, those jobs were too important to the business to risk any interruption by way of retaliation from the CFMEU."

35

My question is do you - what's your response to that evidence?

40

MR SMITH: My response, yeah, to the first part of that, around the greenfield test, I absolutely recall the conversation with Ms Schinnerl, and I do recall having a rather lengthy discussion, and we acknowledged absolutely there was major concerns about the ability to get the greenfield up without the AWU, given they have the majority coverage in order to make a civil agreement in that space. So, yeah, I recall absolutely having that conversation. Whether I was as emphatic as that, I don't recall, but absolutely we had grave concerns, and that's all through my statement and certainly my bundle as well, that we had grave concerns about our ability to get there without the AWU.

45

In terms of the comments about the other - I think I touched on that before. I mean, we were mindful of the potential impact to our building projects. That was a reality for us.

5

MR GISONDA: No further questions, Commissioner.

COMMISSIONER: What's the position with the cross-examination of Mr Smith?

10 **MS FREEMAN:** Commissioner, Mr O'Grady has made an application, which is not opposed.

COMMISSIONER: Very well. Mr O'Grady.

15 **<CROSS-EXAMINATION BY MR O'GRADY**

MR O'GRADY: Thank you, Commissioner. Mr Smith, as you appreciate, I appear for the administrator of the CFMEU.

20 **MR SMITH:** Yes.

MR O'GRADY: You gave some evidence today regarding the BPIC being negotiated by the BTG to the exclusion of the AWU. Do you recall giving that evidence this afternoon?

25

MR SMITH: I do, yeah.

MR O'GRADY: And were you here yesterday when Ms Hawkswood gave her evidence?

30

MR SMITH: I wasn't, no.

MR O'GRADY: No. Well, her evidence was to the effect that the AWU refused to participate in the process giving rise to the negotiation of the BPIC. Do you dispute that?

35

MR SMITH: I don't dispute that, no.

MR O'GRADY: And in circumstances where the AWU's not participating in the negotiation of the BPIC, it's not unnatural that the BTG Group would be the ones involved?

40

MR SMITH: Yes, I mean, it was a civil project, and we would've thought that the AWU would've been there, given their coverage of that sector.

45

MR GISONDA: Yes, but you can lead a horse to water but you can't make them drink?

MR SMITH: Yes.

5 **MR O'GRADY:** Yes. Now, you also gave some evidence a moment ago regarding your conversation with Schinnerl about the coverage issue. You set out your views in respect of the potential coverage of the CFMEU in the executive summary of 24 September 2021, TS-40. That was a document you were taken to earlier.

10 **MR SMITH:** Yes.

MR O'GRADY: It commenced at page 911, and then goes on to page 912.

MR SMITH: Yes.

15 **MR O'GRADY:** You will see there in the par graft just before Government position, you say:

20 "There may be an opportunity to demonstrate majority coverage through the CFMEU (some civil classifications are dual coverage such as plant operators, carpenters, scaffolders, rigging, craneage, etcetera), the ETU (electrical scope), PPTEU (plumbers) and AMWU (metal trades), but based on the AWU's current position, we could expect that they will challenge the approval of any such greenfields EA and would likely have reasonable prospects of succeeding with such a challenge."

25 **MR SMITH:** Yes.

MR O'GRADY: And that was a note you made as part of an executive summary for your leadership team?

30 **MR SMITH:** Correct. Yes.

MR O'GRADY: And it accurately reflected your views at that time?

35 **MR SMITH:** At that time, yeah.

MR O'GRADY: Yes. And it's clear from that that there is at least the potential - it may not succeed, but there's at least the potential to get up on a greenfields agreement with the BTG?

40 **MR SMITH:** That was the thinking at that point in time, yes.

MR O'GRADY: Yes. Yes. I have no further questions.

45 **MS FREEMAN:** Commissioner, I just have a few brief questions if I may.

COMMISSIONER: Yes, Ms Freeman.

<CROSS-EXAMINATION BY MS FREEMAN

MS FREEMAN: Thank you. Mr Smith, you've given some evidence about John Holland entering into what ultimately became the brownfields agreement with
5 employees, which covered the CFMEU and the CEPU, for the Gold Coast Light Rail project. Would you have gone down that long and torturous path had it not been for the imposition of the BPICs onto the project?

MR SMITH: No. No, we certainly wouldn't have. We had managed to keep
10 historically our businesses separated in terms of civil and building. We demonstrated that over a number of years, and like I said earlier, with an AWU agreement in the civil space and CFMEU agreements in the building space. What changed with the BPIC policy was the fact that it created an expectation - well, one, an expectation that the CFMEU were going to be - in my opinion, were going to have a role to play
15 on civil projects. There was a requirement under the BPIC policy for us to engage with the CFMEU in respect of the project.

As soon as we started engaging with them, coupled with their expectation they were going to be involved, if we were to exclude them at that point, that would have come
20 with some ramifications for our building business was our view.

MS FREEMAN: Sure. And in fact, at the time that you had tendered for the D&C contract on the Gold Coast Light Rail project, you already had a civil EA in force that covered the AWU, didn't you?
25

MR SMITH: Yeah, that's correct. Yeah.

MS FREEMAN: And it was your intention to utilise that agreement to cover the project?
30

MR SMITH: Absolutely, and we tendered on that basis, yes.

MS FREEMAN: So but for the imposition of the BPICs upon the project, that's what you would have done?
35

MR SMITH: Yes, that shifted the dial dramatically, yes.

MS FREEMAN: And since BPIC was suspended, John Holland has declined requests from the CFMEU to enter into project-specific EAs in the civil industry,
40 hasn't it?

MR SMITH: That's correct, yes.

MS FREEMAN: Commissioner, that's all I had. Thank you.
45

COMMISSIONER: Thank you, Ms Freeman. Is there anything arising from that, Mr Gisonda?

MR GISONDA: No, Commissioner.

5 **COMMISSIONER:** Mr Smith, thank you very much for your evidence. You are excused.

MR SMITH: Thank you.

10 **<THE WITNESS WAS RELEASED**

COMMISSIONER: Mr Gisonda, you want to sneak another witness in?

MR GISONDA: Yes, thank you. I call Mr Glynn Ladbroke, please.

15 **COMMISSIONER:** Is Mr Ladbroke here? Please come forward to the witness box. You might have to do a hot-seat change with Mr Smith.

<GLYNN LADBROOKE, AFFIRMED

20 **<EXAMINATION BY MR GISONDA**

COMMISSIONER: Please have a seat, Mr Ladbroke. Mr Gisonda will ask you some questions now.

25 **MR GISONDA:** Thank you. Mr Ladbroke, can I ask that your statement be brought up on the screen, please, and ask you to confirm that on 2 July 2026, you affirmed a statement as required by a notice from this Commission. Is that right?

30 **MR LADBROOKE:** That's correct. I did.

MR GISONDA: And that's the statement there in front of you on the screen, which runs for 22 pages; is that correct?

35 **MR LADBROOKE:** That's correct.

MR GISONDA: And accompanying that statement is 35 annexures that run in total to 477 pages; is that correct?

40 **MR LADBROOKE:** That is correct, yes.

MR GISONDA: And can I just ask you to look at paragraph 69, and there's a reference there to page 370, which is a summary of a discussion. Can I just ask you to confirm that in fact it should be a reference to page 383 of the bundle? Perhaps 383 can be brought up on the screen.

45 **MR LADBROOKE:** Yeah, that's correct.

MR GISONDA: That's correct?

MR LADBROOKE: Yeah.

5 **MR GISONDA:** Okay. So at paragraph 69 of the statement, page 370 should instead read page 383. And can I ask you, Mr Ladbroke, whether you have a middle initial?

MR LADBROOKE: I do not.

10 **MR GISONDA:** Okay. The Commissioner will give you a middle initial for the purposes of accepting the tender, but the statement that I trust you've read recently, have you had an opportunity to read your statement again before getting into the box?

15 **MR SMITH:** I have, yes.

MR GISONDA: And it's true and correct?

MR LADBROOKE: It's true and correct.

20 **MR GISONDA:** I tender that statement, Commissioner.

COMMISSIONER: Is there any objection? No? Witness statement - did you want to say something?

25 **MR GISONDA:** No.

COMMISSIONER: Witness statement of Glynn Ladbroke dated 2 July 2026, 22 pages, 96 paragraphs, with 35 annexures, as amended by the witness just now in the witness box at paragraph 69, will be GXL-1.

30 **<EXHIBIT GXL-1 WITNESS STATEMENT OF GLYNN LADBROOKE DATED 2/7/2026, 22 PAGES, 96 PARAGRAPHS, WITH 35 ANNEXURES, AS AMENDED BY WITNESS IN WITNESS BOX AT PARAGRAPH 69**

35 **MR GISONDA:** Now, Mr Ladbroke, the advantage of being called at 3.30 on a Thursday is that I only have one question for you.

MR LADBROOKE: I'll take that.

40 **MR GISONDA:** So don't worry: there won't be a "to be continued" sign coming at the end of this episode. But it's a question that, as it turns out, the Commissioner has wanted answered all of Tuesday and all of Wednesday and we're finally going to give him the answer, which relates to the claim that John Holland made in relation to the estimated costs of BPIC on the Gold Coast Light Rail project. And can I ask, please, that page 8 of the bundle to your statement be brought up. So that's

the - what's described as the BPIC claim. And can I ask whether you had involvement in the preparation of that document?

MR LADBROOKE: Yes, extensive involvement.

5

MR GISONDA: Extensive involvement. And what was your role with John Holland at the time that meant you had extensive involvement in this document?

10 **MR LADBROOKE:** I was the project director for the Gold Coast Light Rail Stage 3 project. The claims team that compiled that, involving various internal and external legal resources and commercial resources pulled that together on my behalf and on behalf of the business unit. I then as well with a number of other people championed the negotiation of that through the - what we called the improvement framework agreement that we had between our client GoldlinQ and the state. So that document
15 that you see there that's dated 22 December, we spent most of 2024 through to September 2024 in detailed negotiations around the content of that claim.

MR GISONDA: And just very briefly, as the project director, what were your roles and responsibilities as part of that role?
20

MR LADBROOKE: So that's a single point of accountability for the delivery of the project, meeting all of the contractual obligations, covering safety, time, cost. All functions on the project report to me, quality, outside of - you know, beyond safety as well. So commercial, quality, environment, sustainability, everything required
25 effectively to deliver the obligations of that that we've got under our contract, including all of the administration of what we had in our contract, which was schedule 33, which worked through our BPIC cost-recovery mechanisms for that particular job.

30 **MR GISONDA:** And this document - is this correct - the purpose of this document was to identify to the state the claim, the monetary claim, that John Holland was making for compensation as a result of the impact of BPIC having been introduced onto the project. Is that correct?

35 **MR LADBROOKE:** That's correct, yeah. Based on our estimated costs to complete the project at around February 2024, yep, but that's - that's well summarised.

MR GISONDA: And if we go to page 88 of the bundle, this is the conclusion, after you've set out all the workings and relevant facts and matters in 80-odd pages, you
40 come to the conclusion, which is that the forecast total BPIC claim is \$428,746,000; is that correct?

MR LADBROOKE: That's correct.

45 **MR GISONDA:** And in that table, you've set out there the various components that lead you to that figure?

MR LADBROOKE: Correct.

COMMISSIONER: What was the project cost that the \$428-million claim was additional to?

5

MR LADBROOKE: I've got to do a bit of that and a bit of this. So, originally, financial close contract value was 810 million. Yeah, that's approximately. That includes an original BPIC target of 150 million. So that net out to 660, and 428 would be on top of the 660, effectively. As a result of the stuff that you've just
10 spoken about with Mr Smith, the fact that - and I didn't work for John Holland at the time, but the fact that they were preferred in September 2020 and then went through a negotiation with BPIC, there was a schedule 33 appended to the contract and a reimbursable cost mechanism added that developed the original BPIC target of 150 million.

15

Through the course of 2022, after financial close and through '23, we realised that we were going to spend significantly more than that associated with BPIC. And so in the middle of 2023, we started to develop a detailed claim, and that's where we get to in February/March of '24, the forecast BPIC claim of 428 million.

20

COMMISSIONER: If you call it 430 million, that's pretty close to 66 per cent increase on 660 million.

25

MR LADBROOKE: Yeah. It's a very significant number.

COMMISSIONER: Significant increase. I mean, if it was 440, it would be. But it's 430. So let's say 65 per cent.

30

MR LADBROOKE: Yep.

COMMISSIONER: That's the biggest number I've seen so far, unless I've missed something.

35

MR LADBROOKE: From the evidence I've heard, yes, it certainly is the biggest number I've heard to date. We did extensive - I feel we probably have done the deepest dive into this as our case study. The team that works on this broke this claim down into so many different components in trying to understand it, given that we - we were in a very hard dollar contracting mechanism, so the burden of proof was very, very high. We engaged an economist as well to give us advice about the
40 impact that BPIC had had on the market and why we saw extensive - like, a lot of reticence from the supply chain to engage with us through the procurement process and the change in the competitive nature of the civil market before that.

45

And when you - once you start breaking those things down, it drives a significant amount of cost. There are numbers in there as well which don't make up the bulk of it, but they're - administering the reimbursable-cost mechanism for us under this particular contract wasn't - it was an expensive process as well. So there's

white-collar resources and staff costs, etcetera, that are directly involved in administering just the instrument that we had under this particular contract. But, yeah, it was on - for Gold Coast, it was a significant, significant increase that BPIC brought to our project.

5

I think probably another reason for that is that we were probably one of the most brownfield projects that I've ever worked on in my life. We work in an urban corridor, directly impacting close to 25,000 dwellings, nearly a thousand businesses along the alignment that we work in. So some of the mechanisms within the agreement when we - for instance, if we were impacted by inclement weather, our ability to reschedule is very limited and we have to resequence quite quickly, but we can burn through quite a lot of additional cost very quickly as a result of some of those things.

10

15 **COMMISSIONER:** I don't know if you saw - I've forgotten the name of the witness who was yesterday from the department who was the procurement officer.

MR GISONDA: Ms Hawkswood.

20 **COMMISSIONER:** Ms Hawkswood started off - the estimates that came from the Department of Transport started off at about 3.6 per cent in early 2020. By February 2022, on all the projects, it was about a million on - a billion on 14 billion. So let's say seven, eight per cent. And Treasury said, "No, you've undercooked it because there's additional costs." By the time we get to 2024, they'd had an external - I think
25 it's an economist, but anyway, someone, external consultant, who, I think, in relation to Gold Coast Light Rail, said 26 per cent, but I might be wrong there. They might have said 17 per cent.

30 **MR LADBROOKE:** I think there was some mention of between 26 and 39 per cent in the evidence from Ms Hawkswood.

COMMISSIONER: Between 26 and 39 per cent?

35 **MR LADBROOKE:** Between 26 and 39 when they talked about those - I think that's what I heard in the evidence given, but -

COMMISSIONER: That's why -

40 **MR LADBROOKE:** But I would say that often some of what I've heard played back to us when we were negotiating the claim and whatnot tends to be that people have looked at a very narrow - have a very narrow focus in what the impact of BPIC is, what - the productivity impact. It's not linear as well. So it won't be equal - even on a project, in a certain area or against a certain trade, it won't be the same impact that you see. It will differ. So getting into the weeds of that and really unpicking that
45 is quite difficult.

I tend to think as well, without being too disrespectful, that sometimes the modelling happens around on a very desktop basis. This is lived experience. We're trying to work through getting resources out on the ground, delivering productive work, dealing with what it means to go out in a very brownfield urban environment,
5 surrounded by community, and do productive work, but then when, say, we get a shower and we have to pull off the road, and then getting everybody back out from a set of sheds, back to doing productive work, there are literally hours of time lost for us in that on Gold Coast. Certain greenfield projects won't have as large a productivity impact.

10 So that's why I think Gold Coast is probably the worst of the worst that you could see, but I think - and it would be up there on the upper limit in terms of what those cost impacts are associated with BPIC. But the case study that was done for the claim was very, very extensive, and I think it's probably the biggest - one of the soundest
15 body of works that has been done into it.

COMMISSIONER: Have you had a chance to look at those - don't worry about those early calculations of three per cent in 2019, 2020 or even that eight per cent figure, because that was based on \$14 billion of work going forward over four years,
20 but have you had a look at the external report commissioned by the Department of Transport and Main Roads that came at that 26 to 39 per cent figure? It was about the same time as you produced this.

MR LADBROOKE: Not - not in great detail. I can - it was a fairly overwhelming
25 period of time, trying to get this - take this claim. We were going through a broader project reset at the time to agree a new program. This claim that was effectively then bound into - or wound up in a reset that culminated in a deed of settlement and release. We signed - was executed 36 minutes before we went into a caretaker period before the election. I don't believe that - lots of the team didn't take a single day off
30 in September 2024, just trying to get through that. So it was a pretty - my 2024 was pretty intense, just trying to take this, and consuming other forms of data and other reports we didn't really have much capacity for at the time.

COMMISSIONER: Has there been some claim that that figure that the government
35 settled on, is that commercially confidential and we don't have it? Mr de Jersey? Mr Gisonda?

MR GISONDA: I have it, but lots of people don't want me to tell you what it is.

40 **COMMISSIONER:** I would like to know.

MR LADBROOKE: I can say it didn't compensate us to the extent that we thought we should be compensated to.

45 **COMMISSIONER:** That's a common refrain.

MR GISONDA: We'll try and work harder so that you know what the figure is, Commissioner. This document -

5 **COMMISSIONER:** Well, Mr O'Grady's point in his cross-examination so far has been, I think, legitimate, to say, "Well, these are just claims." Now, I'm not saying that what the government settles for is an accurate assessment. You really need both parties to the contract to have it assessed by someone independent. John Holland says it's 66 per cent. The government says it's this. They settle at some figure. But it would be helpful to know what they settled for, because that would at least give
10 some indication of what the government thought, subject to all the variables of people settling, because you don't want to go in to have a litigation, etcetera.

It would be helpful to know in terms of working out - this looks like it's the best - now, you shouldn't just judge it because it's an inch thick, because it doesn't
15 necessarily mean it's right, but it does look like it's the most comprehensive assessment of the impact of BPIC.

MR GISONDA: Completely agree with all of that, Commissioner, and as we try and work towards the best conclusion that you can reach on this question, step 1 is for
20 you to be provided and understand what is contained in John Holland's assessment of what the claim is, and that's this 270-page document. And I assume, Mr Ladbroke, that everything that John Holland believed it wanted to say and should say about this claim was contained in this 270 pages, including the annexure which is the report of the expert economist, Mr Greg Houston.

25 **MR LADBROOKE:** Yes. Yep. Certainly at the time - up to the time as well.

MR GISONDA: So on that basis, Commissioner, I have no further questions for this witness on this topic.
30

COMMISSIONER: Well, it's also important because if the government was receiving advice that the impact was much less than this, that could explain certain decisions.

35 **MR GISONDA:** Exactly. So it's not just the figure that it settled for but the reasons why they arrived at that figure. It might be - I'm not saying this happened, but you can have a situation where someone says - they receive a claim and they say, "Well, that's great, but we've only got so much money to give you." On the other hand, they might have had their own detailed expert report that says, "No, this is the reason."
40

COMMISSIONER: All right. Is there any cross-examination of Mr Ladbroke?

MR O'GRADY: Yes. And I don't understand it's opposed.

45 **COMMISSIONER:** Very well.

<CROSS-EXAMINATION BY MR O'GRADY

5 **MR O'GRADY:** And I will be brief, Mr Ladbroke. As you would have seen, I'm here for the administrator of the CFMEU, and please don't take this the wrong way, but as I understand the position, John Holland had an incentive to attribute increased costs to BPIC, because as we heard from Ms Hawkswood yesterday, there was an arrangement that government would reimburse John Holland for such costs.

10 **MR LADBROOKE:** We - I don't think there was an incentive, but we did have a commercial framework that put - should have provided compensation and relief in the event of any costs associated with BPIC, yes.

15 **MR O'GRADY:** And part of your job was to ensure that if there was a cost that you thought could be characterised as being attributable to BPIC, you included that in the claim that was put forward?

MR LADBROOKE: Yes, we went and applied for the costs that we thought were fairly and reasonably - should have been recovered as a result of BPIC.

20 **MR O'GRADY:** I understand. And you understand that around this time there were other factors that have given rise to increases in costs that weren't BPIC specific?

MR LADBROOKE: I am.

25 **MR O'GRADY:** Yes. You had COVID, of course?

MR LADBROOKE: We did.

MR O'GRADY: You had the 20 per cent inflation that followed on from COVID?

30 **MR LADBROOKE:** You'll know from my statement, we actually separated those items into separate claims and provided separate claims that related to those matters as well.

35 **MR O'GRADY:** You've got to disaggregate them, but all I'm saying is there were a number of factors -

MR LADBROOKE: There were absolutely, yes.

40 **MR O'GRADY:** - operating at that time. And it's the case, isn't it, that government didn't accept that all of the costs that you were attributing towards being associated with BPIC were BPIC-related?

MR LADBROOKE: Sorry, can you repeat that.

45 **MR O'GRADY:** Government didn't accept that everything you claimed as being BPIC-related was indeed BPIC-related. They rejected some of your claims.

MR LADBROOKE: Based on what we got in the settlement deed, yeah, that's a fair statement.

5 **MR O'GRADY:** And indeed, as you say and you said a moment ago, you didn't get all you wanted as part of the settlement claim. You claimed more than they actually gave you?

MR LADBROOKE: Correct.

10 **MR O'GRADY:** I understand. And you didn't do, as I understand it, an interstate analysis to see what cost increases had occurred in construction in states where they didn't have BPIC.

15 **MR LADBROOKE:** No, we didn't.

MR O'GRADY: And you'd accept, wouldn't you, that if you're trying to ascertain what cost increases are properly attributable to BPIC, it wouldn't be a bad idea to use a comparator where BPIC's not a factor?

20 **MR LADBROOKE:** I don't agree with that. I think the comparative should be the state and the civil infrastructure market within the state that we're operating in is a better - given that there's very different levels of - well, the markets in New South Wales and Victoria have benefited from very, very large programs over an extended period of time. I would understand maybe why a policy would want to address that
25 and ensure that the right people were coming in, maybe, but I don't see why, when you're comparing cost of BPIC in Queensland, you would be comparing it - you're looking at the additional cost against the Queensland market.

30 **MR O'GRADY:** What I'm putting to you is that if there were commensurate increases in costs in construction in states where they didn't have BPIC, then that would be an indicia that the increase in costs that you observed may not be BPIC-related.

35 **MR LADBROOKE:** If we're talking about, like, say, hyper escalation, for instance?

MR O'GRADY: Yes, precisely.

40 **MR LADBROOKE:** Yes, I would agree with that. And I think we did - we did that extensively through our escalation claim.

MR O'GRADY: And as I understand it, you accept that this was an exceptional project, the Gold Coast Light Rail?

45 **MR LADBROOKE:** It was an exceptional project, yes.

MR O'GRADY: And the costs that occurred - or the cost escalation that occurred on that project cannot simply be extrapolated to other projects where there would not

necessarily be the same factors at play, including operating the urban environment and the like that you described a moment ago.

MR LADBROOKE: Agreed.

5

MR O'GRADY: I have no further questions.

COMMISSIONER: Ms Freeman?

10 **MS FREEMAN:** Just briefly, please, Commissioner.

<CROSS-EXAMINATION BY MS FREEMAN

15 **MS FREEMAN:** Mr Ladbroke, I just want to ask you some follow-up questions to what Mr O'Grady has just been putting to you about the claims that were made in relation to Gold Coast Light Rail. Can we perhaps go to page 22 of Mr Ladbroke's bundle, please. So this is part of that claim document that you were taken to earlier, Mr Ladbroke.

20 **MR LADBROOKE:** Yep.

MS FREEMAN: Just down the bottom of that page, where it refers to schedule 33, if we could just home in on that part. So there we can see that, in terms of the contractual framework that these claims are being made under, there was a
25 reimbursable-costs definition provided in schedule 33. Can you see that there?

MR LADBROOKE: I can.

30 **MS FREEMAN:** And subparagraph (a) sets out part of that clause. And then if we go over to the next page, please, Mr Operator, and we see subsection (b) there, it refers to:

35 "Any other cost or expense which is incurred, mobilised or otherwise engaged by the D&C contractor as a result of, or in connection with, the D&C's BPIC commitments."

So I just want to perch on that bolded phrase there, "as a result of, or in connection with". Now, that's a fairly broadly worded provision, isn't it?

40 **MR LADBROOKE:** It is.

MS FREEMAN: And your understanding was that that was deliberate, wasn't it?

45 **MR LADBROOKE:** My understanding, having gone through the claim in detail and learning about the history - because this was negotiated prior to my time with John Holland - that was a deliberate inclusion by John Holland because of the shifting nature of the industrial relations landscape that BPIC was bringing in and the

need - the expectation there was going to be unanticipated costs which couldn't be narrowly defined and added into the costs - the reimbursable-costs schedule at the time. So those broad words were there to address the recovery of those unanticipated costs.

5

MS FREEMAN: Okay. All right. And then if we could go to page 27, please, of the same document, and the section that starts with 4.2.4, Other Costs. If we could just zoom in on that part. In addition to - we can see underneath that heading, it says:

10 "Separate from the target PIC costs, residual risk and related risk, the D&C contractor is also entitled to any other additional BPICs cost."

And then underneath that, there is a quoted part of the contract there in italics, which again refers to "any other additional cost as a result, of or in connection, with the BPICs". Now, that was an uncapped amount, wasn't it? There was no set target?

15

MR LADBROOKE: The entire costs-reimbursable regime was uncapped in our view, but yes, this was, I suppose, putting a little bit more meat on the bones of the "as a result of, or in connection with", and broadly trying to explain these unanticipated costs that we couldn't be aware of at the time and giving entitlement to seek those, subject to us appropriately demonstrating what they were.

20

MS FREEMAN: All right. So that was an extra additional category that was included in the contract that allowed John Holland to make a claim for other additional costs as a result of or in connection with the application of BPICs to the Gold Coast Light Rail project?

25

MR LADBROOKE: Correct.

30 **MS FREEMAN:** All right. And so, in accordance with that contractual framework, John Holland made a number of claims for reimbursable costs and other costs over the life of the project; is that right?

35

MR LADBROOKE: We did.

MS FREEMAN: And you were involved in the development of those claims?

MR LADBROOKE: Yes. Yep.

40 **MS FREEMAN:** And those claims were based on what John Holland considered to be legitimate costs as a result of the application of BPIC on the Gold Coast Light Rail project?

45

MR LADBROOKE: They were, yes.

MS FREEMAN: Those costs were reviewed by a particular committee; is that right? The claims, I should say.

MR LADBROOKE: Under the governance framework, it should have been the BPP committee that endorsed those. We weren't really successful at administering that process, which is why the claim effectively culminated.

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MS FREEMAN: All right. So the committee had people from TMR on it; is that right?

MR LADBROOKE: It had representatives of the state, GoldlinQ and John Holland.

10

MS FREEMAN: And you were an invited guest to those meetings?

MR LADBROOKE: I was.

15 **MS FREEMAN:** And as part of that process, the claims would be reviewed by the committee, and from time to time there would be differing views about what might fall within the ambit of those words "as a result of or in connection with". Is that right?

20 **MR LADBROOKE:** From time to time or all the time. Yeah.

MS FREEMAN: Okay. All right. Now, those differing views were in relation to what might constitute costs in connection with BPIC; is that right?

25 **MR LADBROOKE:** Yes.

MS FREEMAN: Yes, all right. But that did not mean the claims that you were putting forward on behalf of John Holland weren't being legitimately made; right?

30 **MR LADBROOKE:** No.

MS FREEMAN: And as you've already indicated, ultimately those claims were resolved as between the parties later on in 2024; is that right?

35 **MR LADBROOKE:** They were.

MS FREEMAN: But to be clear, John Holland ran at a loss on the Gold Coast Light Rail project, didn't it?

40 **MR LADBROOKE:** We did and we do.

MS FREEMAN: Thank you.

COMMISSIONER: Sorry, what was the second bit? We did and -

45

MR LADBROOKE: We did and we continue to is what I said.

MS FREEMAN: Thank you. That was all that I had for this witness. Thank you, Commissioner.

5 **COMMISSIONER:** Thank you, Ms Freeman. Anything arising from that? Thank you very much for your evidence, Mr Ladbroke. You're excused.

MR LADBROOKE: Thank you, Commissioner.

10 **<THE WITNESS WAS RELEASED**

COMMISSIONER: Are there any other applications that anyone wishes to make this afternoon? You don't want to sneak another witness in, do you, Mr Gisonda? Then we'll adjourn to the next hearing dates.

15 **<THE HEARING ADJOURNED AT 3.52 PM**