

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

COMMISSIONED UNDER THE PROVISIONS OF THE COMMISSIONS OF INQUIRY ACT 1950

PUBLIC HEARING
BRISBANE MAGISTRATES COURTS

WEDNESDAY, 11 NOVEMBER 2026
AT 10.00 AM

DAY 55

APPEARANCES

Mr S Wood AM KC – Commissioner
Mr D Ternovski – Counsel Assisting
Ms B Sacco – Counsel Assisting
Mr D De Jersey KC – Counsel for the State of Queensland
Ms M Brooks – Counsel for the State of Queensland
Ms E Hoiberg – Counsel for Michael De'Ath
Mr C O'Grady KC – Counsel for the CFMEU Administration
Ms A Hughes – Counsel for the CFMEU Administration
Ms K Hillard – Counsel for the Hon. Grace Grace MP
Mr A Duffy KC – Counsel for the Hon. Grace Grace MP
Mr C Martin – Counsel for Helen Burgess
Mr Michael De'Ath – Witness

<THE HEARING RESUMED AT 10.00 AM

COMMISSIONER: Deal with appearances. Mr Ternovski, you continue to appear with Ms Sacco as counsel assisting?

MR TERNOVSKI: I do, Commissioner.

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

MR DE JERSEY: Yes, Commissioner.

COMMISSIONER: Ms Hoiberg, you continue to appear as counsel for Mr De'Ath?

MS HOIBERG: Yes, Commissioner.

COMMISSIONER: Mr O'Grady, you continue to appear with Ms Hughes for the CFMEU administrator?

MR O'GRADY: Yes, Commissioner.

COMMISSIONER: Mr Martin, you continue to appear as counsel for Ms Helen Burgess?

MR MARTIN: Yes, Commissioner.

COMMISSIONER: And Mr Duffy, you continue to appear with Ms Hillard as counsel for the Honourable Grace Grace MP?

MR DUFFY: Yes, Commissioner.

COMMISSIONER: Mr Ternovski, before you start, we will have a break at 11 am, because today marks the anniversary of the armistice, when the guns fell silent to end World War I, on the 11th hour of the 11th day of the 11th month. Three decades ago, Sir William Deane, when he was governor-general, proclaimed that all Australians are urged to observe, unless impractical, a minute's silence at 11 am on Remembrance Day each year to mark the sacrifice of those who died or otherwise suffered in Australia's cause in war. In accordance with the governor-general's urging, we will observe a minute's silence at 11 am, and my associate will indicate when that time has arrived, so you might have to time your questionings for that.

MR TERNOVSKI: I'll keep an eye on the time, Commissioner.

COMMISSIONER: We are still in the examination of Mr De'Ath?

MR TERNOVSKI: Yes, and I would - when you're ready, Commissioner, I would ask that Mr De'Ath be recalled.

COMMISSIONER: Mr De'Ath is in the hearing room? Mr De'Ath, will you come back into the witness box, please.

<MICHAEL HAROLD DE'ATH, RECALLED

<EXAMINATION BY MR TERNOVSKI

MR TERNOVSKI: Mr De'Ath, you will recall yesterday when we finished off we were talking about the evolving process for the selection panel for the executive director of WHS compliance and field services.

MR DE'ATH: Yes, I recall that.

MR TERNOVSKI: I want to come back to that in a moment, but first I want to go back and clear up a couple of things relating to the CCC matter and Ms Bancroft's conflict.

MR DE'ATH: Thank you.

MR TERNOVSKI: Can you go back to document 14, Mr De'Ath, which is your referral to the CCC. Madam Operator, if we could go to page 2 and blow up the allegations of corrupt conduct box, or at least the first paragraph of that box. Mr De'Ath, I'll just wait for to you refamiliarise yourself with that document, and then I want to ask you some further questions about it.

MR DE'ATH: Thank you.

MR TERNOVSKI: Now, Mr De'Ath, you recall yesterday you confirmed that you've read the document before signing it -

MR DE'ATH: Correct.

MR TERNOVSKI: - at the time? And you may remember that your evidence yesterday was that in relation to Ms Bancroft declaring her directorship of New View Safety, that this is something you were not aware of at the time when you learned - I think you said:

> "That is what I've discovered today."

Do you remember that evidence?

MR DE'ATH: Yes.

MR TERNOVSKI: Would you like me to take you to it, or are you comfortable -

MR DE'ATH: I'm comfortable to continue.

MR TERNOVSKI: Thank you. And you may recall that I took you to what's blown up on the screen right now, which is the first paragraph of the Corrupt Conduct Assessment, and I pointed out to you, Mr De'Ath, that it said - the allegation was that Ms Bancroft failed to declare the conflict from 1 August 2022 TO 5 October 2022, and I suggested to you that it followed from that that she had declared the conflict on 25 October 2022. And when I put that to you, your answer to that was, and I quote:

> "I just don't believe I made that connection."

MR DE'ATH: Yes.

MR TERNOVSKI: Can I take you to the following page of - there's a blank page in between for whatever reason, but it's page 4 of the document. Madam Operator, if we could bring that up. If we could blow up the first - one, two, three - four dot points.

MR DE'ATH: Thank you.

MR TERNOVSKI: And you will see, Mr De'Ath, the fourth dot point:

> "On 25 October 2022, Ms Bancroft submitted a declaration of interest form to a central email address that identified her as holding a private interest, namely, the position of Director, New View Safety.

MR DE'ATH: Yes, well after the commencement of employment.

MR TERNOVSKI: Yes, I want to come back to that, but the point I want to make is that this proposition that she had declared the directorship is actually expressly in the document. It doesn't require you to draw any -

MR DE'ATH: Yes, I agree with you.

MR TERNOVSKI: And so is it fair to say that you may not have - you may have forgotten about it, but at the time you knew that she had declared her directorship on that date.

MR DE'ATH: That's absolutely refreshing my memory now, and that would be - that would be my recollection, that at the time, I was obviously comfortable with the document.

MR TERNOVSKI: While we're on this document, I want to come back - I want to ask you some further questions about this document. But before I do that, if I can address you, Commissioner, briefly. Commissioner, you asked me a question

about whether the conduct was capable of constituting corrupt conduct, and, Commissioner, you will find part of the answer given in this document at the bottom of this page. If we could blow that up, Madam Operator: Corrupt Conduct Criteria, and then continuing on to the following page, skipping the blank page. Commissioner, you will see the relevant statutory provisions are extracted. So this is the Department of Education side of things, Commissioner, how the Department of Education put it. And then in due course I will take Mr De'Ath to the way the CCC handled it, and you will see the CCC accepted that the conduct, if proved, was capable of constituting corrupt conduct.

Mr De'Ath, coming back to page 4 of that document, which sets out the chronology - Madam Operator, if we could blow up the fourth and fifth dot point.

MR DE'ATH: Thank you.

MR TERNOVSKI: You'll see that there's a reference to that declaration which I've just taken you to, and then there's a reference to an alternative sourcing strategy signed on 29 November?

MR DE'ATH: Yes, I'm picking up on that detail now.

MR TERNOVSKI: Mr De'Ath, do you recall that there were actually two pieces of procurement involving Mr Tristan Casey that Ms Bancroft had authorised? There was a smaller piece of procurement with a company called Work Science. Do you recall that?

MR DE'ATH: I do not recall that, sorry, counsel assisting.

MR TERNOVSKI: I can - Mr De'Ath, do you recall the document I took you to yesterday, the alternative sourcing strategy, where Ms Bancroft had ticked a conflict and disclosed that she had pursued business interests with Tristan Casey? Do you remember that document?

MR DE'ATH: I do recall that.

MR TERNOVSKI: I can take you to it.

MR DE'ATH: It's okay.

MR TERNOVSKI: That document - perhaps - let's just quickly go to it now so we're on the same page. That's document 12 in the bundle. I'm sorry, Commissioner, it's not document 12.

COMMISSIONER: 6.

MR TERNOVSKI: Thank you, Commissioner. Document 6. I'll let you just have a quick look at that document, Mr De'Ath. You've looked at it yesterday.

MR DE'ATH: Thank you.

MR TERNOVSKI: If we go to page 3 of that document and we blow up the Alternate Sourcing Strategy part, you will see there, Mr De'Ath, it says:

"Who is the recommended supplier? Work Science."

MR DE'ATH: Yes.

MR TERNOVSKI: And if we blow up, Madam Operator, the previous part, Purchase Details, you see there estimated contract value $10,000?

MR DE'ATH: Yes.

MR TERNOVSKI: That's a smaller piece of procurement, Mr De'Ath. Do you agree with that?

MR DE'ATH: Yes, thank you. Thank you.

MR TERNOVSKI: And if we go - just for completeness, if we go to the next page, you'll see that Ms Bancroft had ticked the conflict.

MR DE'ATH: Thank you.

MR TERNOVSKI: And then I've taken you to her declaration.

MR DE'ATH: Thank you.

MR TERNOVSKI: And you will recall, Mr De'Ath, that the declaration specifically referred to Mr Casey?

MR DE'ATH: Yes.

MR TERNOVSKI: Can I now take you to a another document. So you'll recall that the CCC referral that I took you to in the chronology referred to an alternative sourcing strategy signed on 29 November?

MR DE'ATH: Yes, I've now noted that.

MR TERNOVSKI: Yes. Can I take you to that document.

MR DE'ATH: Thank you.

MR TERNOVSKI: Madam Operator, do you have the document attachment 2, Approval of Alternate Sourcing Strategy? Yes. If we could just blow up the third section, Purchase Details and Alternate Sourcing Strategy.

MR DE'ATH: Thank you.

MR TERNOVSKI: And Mr De'Ath, you've had a chance to have a look at the document?

MR DE'ATH: I have, thank you.

MR TERNOVSKI: So you see firstly under Purchase Details, the value of the contract is given at just shy of $10,000?

MR DE'ATH: Yes.

MR TERNOVSKI: That's the bigger piece of procurement, isn't it?

MR DE'ATH: Correct.

MR TERNOVSKI: You see under Alternate Sourcing Strategy it refers specifically to Dr Tristan Casey; correct?

MR TERNOVSKI: And then if we go on the following page, you see Ms Bancroft on 14 December, if we blow up the bit under Financial Delegate - and the requestor also, please. You see, Mr De'Ath, that it was signed by Mr Harris and Ms Bancroft on the same day, 14 December?

MR DE'ATH: Yes.

MR TERNOVSKI: Mr Harris is the requestor?

MR DE'ATH: Yes.

MR TERNOVSKI: And he ticked "no conflict"?

MR DE'ATH: Yes.

MR TERNOVSKI: And Ms Bancroft is the financial delegate?

MR DE'ATH: Yes.

MR TERNOVSKI: And she also ticked no conflict?

MR DE'ATH: I can only say, counsel, this is a relief. I believe - I was quite sure I had seen this document when I asked for this to be checked, and I see now there are two different documents.

MR TERNOVSKI: So in this case, Ms Bancroft was wrong to tick "I do not have a conflict". She should have ticked "I have a conflict"?

MR DE'ATH: Absolutely.

COMMISSIONER: Why has she got a conflict? I don't understand that. She's already declared that she's got a directorship in a public - in a private company, and that company is Work Science, and that -

MR TERNOVSKI: That company is not Work Science, Commissioner. It's New View Safety.

COMMISSIONER: Oh, sorry, what?

MR TERNOVSKI: New View Safety.

COMMISSIONER: New?

MR TERNOVSKI: View Safety.

COMMISSIONER: New View Safety. She did that on 25 October. On 9 September, she was procuring Work Science, and she declared that she had a conflict of interest.

MR TERNOVSKI: And named Mr Casey.

COMMISSIONER: And named Mr Casey. What was that conflict of interest that she had on 9 September?

MR TERNOVSKI: Are you asking me, Commissioner, or Mr De'Ath?

COMMISSIONER:

> "I've previously worked with..."

This is what she says:

> "...Dr Tristan Casey in a previous role, procured his services in previous organisations I've worked in and have pursued business interests outside of OIR with Tristan Casey."

So what's the - she declared there was a conflict, but I don't understand what it is. This is where the - $10,000 procurement of Work Science to do a desktop review. She's come in and there's problems with the governance of OIR, and she says she needs someone external to look at it. She procures a $10,000 contract with Work Science, and she discloses that she had a conflict of interest in that procurement, but I don't understand what the conflict of interest was.

MR TERNOVSKI: Commissioner, would you like me to answer that as we put it, or would you like Mr De'Ath to answer it?

COMMISSIONER: Well, either of you.

MR TERNOVSKI: I can tell you, Commissioner, how I would put it, which is that she is a co-director with Mr Casey of New View Safety. I'm going to put to Mr De'Ath some explanation that Ms Bancroft has given about New View Safety in due course, but nonetheless, the fact is that she's a co-director with Mr Casey at that time of New View Safety.

COMMISSIONER: But she's disclosed that.

MR TERNOVSKI: She has disclosed that.

COMMISSIONER: Certainly by the time of the second procurement.

MR TERNOVSKI: She has. My point, Commissioner, is that the conflict in relation to the first procurement is that Mr Casey, although she's not directly engaged, nor is Ms Bancroft's company directly engaged, nonetheless, her business partner stands to benefit from the first piece of procurement because he will be the person performing the work on behalf of the supplier, Work Science, presumably who will get paid for that work. So that's the first conflict, which she has disclosed. And in relation to the second piece of procurement, it's the same conflict, but she has ticked "no", albeit she had previously disclosed.

COMMISSIONER: So because she's procuring a contract with QUT and her business partner, which she has disclosed previously, is the person carrying out the work, there's a conflict of interest, is there?

MR TERNOVSKI: Well, the way I would put it, Commissioner, is her business partner stands to benefit from the contract she is authorising. Indirectly, because he is not being directly engaged.

COMMISSIONER: He's not directly engaged, and she's not a partner in or employed by or engaged by QUT, who are the persons who are contracting with the government. And she's disclosed already that she is in a business with Mr Tristan Casey previously. I don't - anyway.

MR TERNOVSKI: Commissioner, I propose to ask Mr De'Ath some questions about that. Mr De'Ath, just going through the general chronology, tell me if you accept this chronology. The chronology is Ms Bancroft engages, authorises, uses the alternate sourcing strategy to authorise the engagement of Work Science.

MR DE'ATH: Yes.

MR TERNOVSKI: And on that procurement, she discloses - perhaps imperfectly, but discloses her relationship with Mr Casey?

MR DE'ATH: Yes.

MR TERNOVSKI: That's the first thing that happens?

MR DE'ATH: Yes.

MR TERNOVSKI: The second thing that happens is she discloses her directorship of New View Safety in that declaration that I've taken you to?

MR DE'ATH: Yes.

MR TERNOVSKI: And the third thing that happens is there's another piece of engagement of QUT, again involving Mr Casey?

MR DE'ATH: Yes.

COMMISSIONER: Which is disclosed.

MR TERNOVSKI: And Mr Casey's involvement is -

COMMISSIONER: Sorry.

MR TERNOVSKI: Is disclosed on that?

MR DE'ATH: Yes.

MR TERNOVSKI: But what's not done is that box is not ticked, so that link is not re-articulated.

MR DE'ATH: May I elaborate, counsel assisting?

MR TERNOVSKI: Please.

MR DE'ATH: Elaborate, sorry. I appreciate that the inquiry is not necessarily expert in government procurement processes, so I acknowledge that in terms of this line of questioning. However, it is - there are extremely strict rules in government around procurement processes. Irrespective of anything that has happened in relation to other disclosures, when you procure - go through any procurement process, if you have a conflict of interest - and there is one most definitely in this case - then you must declare it, and that also triggers a management plan. What would have happened with that management plan is that that would have caused somebody - it might have been me; it might have been someone else - to notice that that required some very strict management around that procurement, of which never happened. The outcome of such an error, if you

like, like this, is that the credibility of the work is seriously compromised, and, of course, it triggered other processes that were obliged, as counsel assisting has referred to in the CCC referral, that must take place.

MR TERNOVSKI: Can I ask you some - thank you for that explanation. Can I ask you a couple of further questions about this, Mr De'Ath. Firstly, you said that what should have happened, had she declared the conflict on the second procurement, is there should have been a conflict management system put in place?

MR DE'ATH: Yes.

MR TERNOVSKI: Which may have involved someone else making a decision, for example?

MR DE'ATH: Most definitely.

MR TERNOVSKI: Now, she has disclosed the conflict on the first one, and that hasn't happened?

MR DE'ATH: That's right.

MR TERNOVSKI: In relation to the one that she has disclosed, that hasn't happened anyway.

MR DE'ATH: Correct.

MR TERNOVSKI: And that was a failure of process within the department, wasn't it?

MR DE'ATH: Well, the - the responsible executive -

COMMISSIONER: Just answer the question "yes" or "no". Was it a failure of process within the department or not?

MR DE'ATH: Yes, it's a failure of a senior executive to - to complete a process that they're obliged to complete.

MR TERNOVSKI: My point - I'm just sticking with the first procurement, where she has ticked the box. My point is simply - you saw the email - she was working with Ms Bray?

MR DE'ATH: Yes.

MR TERNOVSKI: Right. And the conflict was disclosed?

MR DE'ATH: Yes.

MR TERNOVSKI: And Ms Bray should have advised Ms Bancroft to go down the conflict management route?

MR DE'ATH: Yes. As an additional part of the process, where a senior executive had not disclosed something, to bring it to their attention, that would be an appropriate thing to do. I would expect that would happen.

COMMISSIONER: But she'd already disclosed the conflict in relation to hiring Mr Tristan Casey via a company which was - forgive me for the name - Work -

MR TERNOVSKI: Work Science, Commissioner.

COMMISSIONER: Work Science. That procurement had gone ahead in September 2022. It was a procurement for a few days' work to do a desktop review. No issue is raised about that. It goes ahead. She then gets the same person, through QUT, to do a much larger piece of work, "exploration of workplace issues in the construction compliance and field services business area", ie, directly targeting the issues that had been raised with you and her about Ms Burgess. And that was a much longer piece of work, from 7 December '22 to 6 April 2023, and she says in it: Tristan Casey is currently engaged with QUT. He's a person who should do it because combined with his experience in the Office of Industrial Relations, provides a unique skill set and experience for QUT to undertake an exploration of the range of issues raised in the CCFS unit - Helen Burgess' unit.

Mr Casey had already been doing that work, and a declaration had already been made that there was a conflict of interest in relation to the earlier work. Nothing had been done about it. And she disclosed that one of the reasons for having him do this larger piece of work was his experience in the Office of Industrial Relations.

MS HOIBERG: Commissioner, can I take objection to that line of questioning just on the grounds of fairness to Mr De'Ath. And there's an assumption inherent in that that this procurement process did go ahead.

COMMISSIONER: Which procurement -

MS HOIBERG: This one in December 2022, and I think that just hasn't, at least to my understanding, been proven before the Commission. If we go to tab 6 of this tender bundle -

COMMISSIONER: Yes, go on.

MS HOIBERG: - it's an exchange between Ms Bancroft and Ms Bray, but it's evident in my submission from the top email that this is still in draft form. The third paragraph says:

"Tristan is just making some final tweaks to the proposal today and finalising costs."

And then she goes on to say:

"If you can check forms in the meantime, that would be great."

So to my understanding, this is the only evidence at least I've seen at the moment about this procurement, and there's not a sufficient basis on this document alone, in my submission, to infer that it actually went ahead as proposed in that attachment.

COMMISSIONER: I think that's a reasonable point, isn't, it Mr Ternovski?

MR TERNOVSKI: Commissioner, I think Ms Bancroft talks about that piece of procurement. I'll find the reference. I think it did go ahead, but I'll find the reference in Ms Bancroft's statement, if I could take a moment.

COMMISSIONER: So on the assumption that what I put to you is correct - and it might not be correct because of what Ms Hoiberg has said. Maybe we'll deal with it. You deal with it - you come to it in due course, and I won't ask you to answer that question, given the reasons that have been advanced by your counsel.

MR TERNOVSKI: Commissioner, if it's convenient, I'll come back to it once we confirm the evidence of the first piece of procurement going ahead.

COMMISSIONER: Could I just ask this question, because this does strike me as strange that this is a request to have someone look into - just pull up the request for approval.

MR TERNOVSKI: Which one, Commissioner?

COMMISSIONER: The one that's just been handed to me. Is it in the -

MR TERNOVSKI: No, that's a loose document. This is the one where she did not tick "I do not have a conflict".

COMMISSIONER: Pull up those exploration of workplace issues in the construction compliance and field services business area on page 1.

MR TERNOVSKI: Madam Operator, it's under Alternate Sourcing Strategy.

COMMISSIONER: Under Purchase Details.

MR TERNOVSKI: I see.

COMMISSIONER: Do you have anything to do with this request, Mr De'Ath, to look into workplace issues in the construction compliance and field services business area?

MR DE'ATH: No.

COMMISSIONER: I wouldn't have thought so, given your position. And when were you first made aware of this request to get an external consultant to look into Helen Burgess' area?

MR DE'ATH: Commissioner, I don't - I don't necessarily recall when - exactly when, obviously, when I was informed. I am aware that at some point in time I became aware that a piece of work was going to be done.

COMMISSIONER: And some time between this document being prepared, 13 December 2022, and 9 February 2023, someone within your department made a complaint about this issue, and particularly the failure to tick the box "I do not have a conflict of interest", to you?

MR DE'ATH: Correct, Commissioner. This was brought to my attention at a point in time.

COMMISSIONER: By whom?

MR DE'ATH: I cannot recall who brought this to my attention, I'm sorry.

COMMISSIONER: Are you sure?

MR DE'ATH: I am sure.

COMMISSIONER: Is there anything - I'll let Mr Ternovski deal with the questioning.

MR TERNOVSKI: Mr De'Ath, let's put aside the question of whether the first piece of procurement actually went ahead. I think it did, but we'll find the documents and we can come back to it. But putting that aside, you accept, don't you, that she's declared or attempted to declare the conflict with Mr Casey in September in the first piece of procurement?

MR DE'ATH: Yes.

MR TERNOVSKI: Then she has declared in October the directorship with New View Safety in the conflict declaration.

MR DE'ATH: Yes.

MR TERNOVSKI: Albeit late.

MR DE'ATH: Yes.

MR TERNOVSKI: And then in the third piece of procurement she has identified Mr Tristan Casey will be doing the work, but she didn't tick the conflict box, and I think your evidence is that she should have?

MR DE'ATH: It's a blatant breach of the procurement process.

MR TERNOVSKI: Do you accept, Mr De'Ath, given that the disclosure she had previously made, that it just does not look like a dishonest attempt to conceal, does it?

MR DE'ATH: I think - my view on this, and considering now everything that's been put before me, is that where you are aware that you have a conflict and then you go on to not declare it, it's actually worse.

MR TERNOVSKI: Had Ms Bancroft been trying to conceal it, do you think it would make sense for her to first identify the conflict with Mr Casey in September and then to flag that Mr Casey will be doing the work in December? Anyone looking at those two documents would immediately join the dots, wouldn't they?

MR DE'ATH: If you were determining whether this is an element of crime or corruption, if you like, and going back to the CCC referral, that's for someone else to determine. I was deeply concerned about it.

MR TERNOVSKI: I'm not quibbling with that, Mr De'Ath. I'm simply putting to you on that the face of these documents, what it looks like is an attempt to disclose made imperfectly as distinct from a deliberate attempt to conceal a conflict.

MR DE'ATH: I don't know that I can answer that conclusively for you, sorry, counsel assisting, because I don't know what was in the person's mind as they were ticking that box and why they were ticking that box and not the one they should have.

MR TERNOVSKI: Except, Mr De'Ath, I'm asking you to speculate on what was in Ms Bancroft's mind. Let me rephrase the question. Let me put it this way: had Ms Bancroft been trying to conceal this issue, between the three documents, she did a pretty poor job at concealing it, didn't she?

MR DE'ATH: Yes.

MR TERNOVSKI: And the issue would have been obvious to anyone looking at the three documents instantly? Anyone familiar with government procurement processes, that is, like yourself?

MR DE'ATH: In the - in the public sector context, if somebody was looking at that document, the second procurement, they would question, as I clearly have, why is that not acknowledged in this case? Is this - is this an attempt to get around a process? Now, I don't know the answer to that; that is for others to determine. But that would be my concern, that there is any suggestion of that, and the perception of public sector executives would be compromised in relation to what has happened here.

COMMISSIONER: You were deeply concerned about this, but you can't remember who raised the issue with you; is that right?

MR DE'ATH: I can't recall who raised it with me, Commissioner.

MR TERNOVSKI: Can I briefly take you - sorry, Commissioner - to document 13. It's a lengthy document, and I just need to ask you about one point. So if we can go to page 44, and Madam Operator, if you could firstly blow up the heading and clause 3.2.2.

COMMISSIONER: Document which number?

MR TERNOVSKI: Document 13. One three.

MR DE'ATH: I might be on the wrong folder.

MR TERNOVSKI: If you just look on the screen, that will probably be sufficient for our purposes.

MR DE'ATH: Sure.

MR TERNOVSKI: Do you see, Mr De'Ath, that's the Declaration of Interests policy? That's the government policy?

MR DE'ATH: Yes.

MR TERNOVSKI: And you see in 3.2.2(a):

> "Executives are responsible for (a) when newly appointed, provided a Declaration of Interests within one month of taking up duty."

MR DE'ATH: Yes.

MR TERNOVSKI: Okay. So that declaration that she provided in October was required to be provided within one month of her taking up duty, so by 1 September.

MR DE'ATH: That's correct.

MR TERNOVSKI: So she was about two months late with that?

MR DE'ATH: Correct.

MR TERNOVSKI: Mr De'Ath, you referred yesterday to a conversation you had with Ms Bancroft when the issue first came up.

MR DE'ATH: Yes. I - I have some recollection of that conversation.

MR TERNOVSKI: Do you recall Ms Bancroft telling you that New View was essentially a dormant business and that the only piece of work that that business had done while she was DDG was a master class for a Canadian client and she had recused herself from that work. Do you recall that?

MR DE'ATH: I don't recall that.

MR TERNOVSKI: Do you deny that that happened?

MR DE'ATH: I can't deny it happened. I don't recall it.

MR TERNOVSKI: Now, if I suggested to you that Ms Bray did not advise Ms Bancroft, upon seeing that first disclosure about Mr Tristan Casey, that she needed to do a conflict management plan, do you have any comments on that? Is that not in your knowledge?

MR DE'ATH: So what was happening in there, I'm unsure. Certainly, it would - it would be reasonable for executives to get advice, and I think I've possibly made clear somewhere along the line that my advice to Ms Bancroft coming into the role was to use those people, and use them to advise you, and feel free to ask me at any time as well, or my office. Ultimately, for us as executives, it falls to us to be responsible for following those processes.

MR TERNOVSKI: Mr De'Ath, if I understand correctly, you're once again making the "the buck stops with her" point: the buck stops with Ms Bancroft in terms of her own conflict of interest.

MR DE'ATH: Indeed it does.

MR TERNOVSKI: I'm not quibbling with that proposition, but I'm simply putting to you that - I think you accepted it yesterday, but I'm just going to ask you again - you accept, don't you, that what should have happened is that Ms Bray - putting aside that the buck ultimately stops with Ms Bancroft, what should have happened is that Ms Bray, having seen this form, should have immediately advised Ms Bancroft, "No, no, no, hang on, we need to do something here."

MR DE'ATH: If that is Ms Bray's role, yes.

MR TERNOVSKI: I think - and I'll take you to a document in due course, but Ms Bray's role was equivalent to Mr Seeley's role in your office. Assuming that be the case, do you accept that Ms Bray should have given that advice?

MR DE'ATH: I would have thought in the first instance, for somehow, that the advice would have come from their procurement or ethics area, whichever area deals with these things, who advise on those procurement strategies. If it were my office, I think, in the case of Mr Seeley, he would have - you know, I'd like to think he would have picked something up and gone back to that area and made inquiries, or I would have picked something up and gone back to that area and made inquiries.

MR TERNOVSKI: So that's what should have happened.

MR DE'ATH: That's generally how things play out.

MR TERNOVSKI: I'm asking to you speculate, so feel free to say you don't know, but is it a reasonable inference that Ms Bray did not give that advice because, in fact, no conflict management plan was put in place?

MR DE'ATH: I can't speculate on that.

MR TERNOVSKI: I'm going to leave the conflict issue for now and go back to the questions I was asking you yesterday about the selection panel for the executive director of WHS compliance and field services.

MR DE'ATH: Yes.

MR TERNOVSKI: You might remember - I just want to do this quickly, but I can take you to the relevant documents and the transcript if I need to, so please feel free to ask for that. But in the interests of time, I'm just going to try to do this quickly.

MR DE'ATH: Certainly.

MR TERNOVSKI: Remember there was an email there that I showed you where there was a - the initial position was no union members on the panel, and then it became someone from the WHS board other than Mr Kupsch.

MR DE'ATH: Yes. I recall.

MR TERNOVSKI: And do you remember you couldn't be sure yesterday whether Mr Kupsch was the only CFMEU member on the WHS board?

MR DE'ATH: Yes.

MR TERNOVSKI: Can I give you a bundle of documents, please.

MR DE'ATH: Thank you.

MR TERNOVSKI: This is the WHS board pack, Commissioner. I think everyone should have a copy of that. This is just an extract from public records. This document is a bit hard to navigate, but to assist you, I'm just going to take you to the relevant part. If we go to page 54, Madam Operator, of that PDF. That was page 53. If we can blow up the heading. I'm not referring to the printed page numbers which are within the document; I'm referring to the page number within the PDF. So the 54th consecutive page. Hang on. That might not be right. I apologise, Commissioner. My reference was not right. Mr De'Ath, could you flip through the document until you get to the printed version. There was a printing error, Commissioner, and one document dropped off the bundle. I apologise.

COMMISSIONER: Thank you.

MR TERNOVSKI: I'm looking at the fourth page from the end, and it's a print-out entitled Work Health and Safety Board and Committees.

MR DE'ATH: Yes.

MR TERNOVSKI: Do you see that?

MR DE'ATH: I do.

MR TERNOVSKI: And there's a reference there to the meeting on 16 November 2022, which is a fortnight after that email I took you to.

MR DE'ATH: Sorry, what email, counsel?

MR TERNOVSKI: The 2 November email, where there was a reference to -

MR DE'ATH: Oh, yes. Thank you.

MR TERNOVSKI: And if you go on the next page, do you see the composition of the board is there set out:

> "The Board membership is as follows."

MR DE'ATH: I do.

MR TERNOVSKI: And you see there's only one CFMEU representative?

MR DE'ATH: I note.

MR TERNOVSKI: And that is Mr Kupsch?

MR DE'ATH: That is correct.

MR TERNOVSKI: And then if you go back in the bundle, from that Work Health and Safety Board Members and Committees page, go back two pages, and you will see there is a page - go back three pages. There's a page with printed number 81 on the bottom and at the top Work Health & Safety Board?

MR DE'ATH: Yes.

MR TERNOVSKI: And you'll see there's a list of members there and the duration of membership. And once again, you can see that Mr Kupsch is there?

MR DE'ATH: Yes.

MR TERNOVSKI: For 12 months. And there's no Mr Pauls or anyone else. Do you recognise any other names as being CFMEU officials?

MR DE'ATH: Not on a quick read, no. But can I just clarify on that, please. There were very, very few CFMEU officials that I had any engagement with, and so really the only familiar names to me would be Kupsch, Pauls and Ravbar, essentially.

MR TERNOVSKI: And only Mr Kupsch out of those three names is in?

MR DE'ATH: That's the only name that I really recognise.

MR TERNOVSKI: But in any event, the other - from this document that you're looking at now, you can't tell - for example, Georgina Davis, you can't tell what her role was?

MR DE'ATH: No.

MR TERNOVSKI: If you go to the next document, you can see that Ms Davis is a representative of WRIQ. Whatever that is, it's not the CFMEU?

MR DE'ATH: Thank you.

MR TERNOVSKI: Do you accept that?

MR DE'ATH: I'm not sure which page you're referring to, but I accept what you're saying.

MR TERNOVSKI: I'm referring to those documents that I took you to, which is the one that listed the names and who they're representing.

MR DE'ATH: Right. The page.

MR TERNOVSKI: The page. That's this page.

MR DE'ATH: Yes. Sorry, what's the page number? I think it's fine. I think I - I take your point.

MR TERNOVSKI: Third page from the back. You see there, there's a reference to employer representatives?

MR DE'ATH: I've got Work Health and Safety Board. So the name is Work Health and Safety Board, the Act or instrument, the functions, the achievements.

MR TERNOVSKI: And the following page.

MR DE'ATH: And the following page, the chair and members.

MR TERNOVSKI: Do you see Dr Georgina Davis is listed as an employer representative from WRIQ?

MR DE'ATH: Look, I don't really want to hold you up on, this counsel assisting, but that's not what my page says, so I'm -

MR TERNOVSKI: It's shown on the screen, Mr De'Ath.

MR DE'ATH: Oh, thank you. Let's look at that. Yes, I see that, yes.

MR TERNOVSKI: So I don't know what WRIQ is, but you would accept that it's obviously not the CFMEU?

MR DE'ATH: Correct.

MR TERNOVSKI: If only because she's an employer representative.

MR DE'ATH: Correct.

MR TERNOVSKI: Do you accept, Mr De'Ath, that WHS board member other than Mr Kupsch means a non-CFMEU panellist?

MR DE'ATH: Yes.

MR TERNOVSKI: Can I now take you to the - I've taken you through the, if I may call it the argy-bargy in setting up the first panel. Can I now ask you some questions about what actually happened with the first panel. Do you recall that it was aborted at your direction?

MR DE'ATH: Yes.

MR TERNOVSKI: And I'm going to take to you the documents to refresh your memory and to give you more details, but do you remember broadly there were two issues about the recruitment? One was a breach of confidentiality by the CFMEU?

MR DE'ATH: Yes.

MR TERNOVSKI: And the second one was that Ms Bancroft had conducted the second-round interview with Ms Wise?

MR DE'ATH: Yes, and it was the breach by the CFMEU that I noted on the document.

MR TERNOVSKI: Yes. Well, let's go to that document now. It's attachment 30 to Ms Bancroft's statement. If we just first go to the second email, which starts on the second half of the first page of that document.

MR DE'ATH: Sorry, counsel assisting, where are we? We're in the Ms Bancroft folder now?

MR TERNOVSKI: In Ms Bancroft's folder, attachment 30. Do you see at the top there's an email from you to Ms Bancroft, copying Mr Seeley?

MR DE'ATH: Yes.

MR TERNOVSKI: And that responds to - that's dated 2 February, and underneath it is an email of 1 February from Mr Pauls to Ms Bancroft, copying you?

MR DE'ATH: Yes.

MR TERNOVSKI: And I'll let you have a read of that email.

MR DE'ATH: Yes, I've read it.

MR TERNOVSKI: And you'll see that Mr Pauls is in summary demanding that the executive - the recruitment process restart?

MR DE'ATH: Yes.

MR TERNOVSKI: Because Ms Bancroft had conducted the second interview?

MR DE'ATH: Yes.

MR TERNOVSKI: And if we go back to the first email, if we could blow up the email header, and the first paragraph, you see there -

MR DE'ATH: I do.

MR TERNOVSKI: You see in the first sentence you say:

> "Noting Mr Pauls' concerns, I had felt that all matters could have been resolved and the process continued."

MR DE'ATH: Yes.

MR TERNOVSKI: And then you say:

> "However, the Secretary of the CFMMEU, Mr Michael Ravbar, informed in me in a meeting at the CFMMEU on Monday 31 January, that Mr Pauls had informed him about a preferred candidate and that he (Mr Ravbar) had proceeded to make inquiries about that process in New South Wales with various parties."

MR DE'ATH: That's right.

MR TERNOVSKI: New South Wales because Ms Wise was from New South Wales.

MR DE'ATH: That's correct.

MR TERNOVSKI: And you say in the second paragraph:

> "Given this breach of confidentiality, as delegate for this process I would be unable to endorse any recommendation out of the current process. On this basis alone I direct that a new process be undertaken."

MR DE'ATH: I note that.

MR TERNOVSKI: So you restart the process here or direct the process be restarted because of the CFMEU's breach of confidentiality?

MR DE'ATH: Can I elaborate?

MR TERNOVSKI: Please.

MR DE'ATH: Please.

COMMISSIONER: Just "yes" or "no". It was a "yes" or "no" question. Did you do it because of the - did you order that the process be stopped and a new process undertaken because of CFMEU breach of confidentiality? "Yes" or "no"?

MR DE'ATH: Not alone, as I have said.

MR TERNOVSKI: All right. Well, let me take you to - and are you saying, Mr De'Ath, that the second reason was Ms Bancroft's conducting second interview?

MR DE'ATH: That is the other factor.

MR TERNOVSKI: All right. Well, let me take you to this email. You see in the first line, you say:

> "Noting Mr Pauls' concerns..."

Now, "Mr Pauls' concerns" you've already agreed, I think, refers to Ms Bancroft conducting a second-round interview with Ms Wise. That's the concern?

MR DE'ATH: Yes.

MR TERNOVSKI: And your response to that is:

> "Noting Mr Pauls' concerns I had felt that all matters could have been resolved and the process continued."

MR DE'ATH: Yes.

MR TERNOVSKI: So despite Ms Bancroft conducting that second interview with Mr Wise, had it not been for the CFMEU's breach of confidentiality, this email seems to say you felt the issues could have been resolved and the process continued.

MR DE'ATH: Can I explain, please. We had made an error ourselves. It was very clear we had made an error in process. When an error like that occurs, of this nature, there was an opportunity to go back to talk to the panel about that error and see if the panel could live with what had happened there. And that's a panel decision. That never worked. On top of that - and I can't remember the chronology of it - then I became aware of this other action on the part of the CFMEU. I had two issues playing out. I think in my evidence yesterday I was talking about how when we are running processes in government, we have to be seen to do those well, and if there's a chink in our armour, it's going to be exploited. We either try and resolve that, and if we can't resolve that we take it on the chin and we go back to the drawing board. That's what happened in this process.

MR TERNOVSKI: Let me ask you some questions about this, Mr De'Ath. Firstly, let's just zoom in on Ms Bancroft's breach of process, as you I think are referring to it. She conducted a second-round interview with Ms Wise. That didn't mean the process was fatally compromised, did it, because the panel could always pick a different candidate, couldn't it? The fact that Ms Bancroft had conducted another interview with Ms Wise did not preclude the panel from saying, "Actually, we want someone else," did it?

MR DE'ATH: No.

MR TERNOVSKI: And further, nor did it preclude the panel from saying, "Well, we were not there at that second interview, and we want ourselves to have another interview with Ms Wise, so we'll do a third interview with the whole panel." That could have happened?

MR DE'ATH: It could have.

MR TERNOVSKI: So, as you said in your email, all matters could have been resolved and the process continued?

MR DE'ATH: They could have, but that didn't change the fact that we had made an error.

MR TERNOVSKI: All right. Now, Mr - I want to take you to another document where you yourself describe this error in a slightly different way, but just sticking with this email now, because it's on the screen. This is an email from you to Ms Bancroft, isn't it, copying Mr Seeley?

MR DE'ATH: Yes.

MR TERNOVSKI: It's an internal email within OIR?

MR DE'ATH: Yes.

MR TERNOVSKI: Right. Now, Mr De'Ath, I can understand that in your dealings with the CFMEU, you may want to put on a brave face and rely only on their breach, is that right, to protect the department?

MR DE'ATH: Oh, no.

MR TERNOVSKI: No?

MR DE'ATH: No, I don't believe I - I would just rely solely on - on the CFMEU's breach to protect the department. I - I don't believe so.

MR TERNOVSKI: All right. You're saying even externally, you would have no qualms admitting this was a problem to the CFMEU?

MR DE'ATH: Could you restate that, please?

MR TERNOVSKI: Well, I was suggesting to you that there may be a difference between what you're prepared to tell the CFMEU in terms of admitting a mistake and perhaps a more candid discussion internally. But you seem to be not accepting that distinction; is that right?

MR DE'ATH: This matter had already been raised by the CFMEU about the - this breach by us.

MR TERNOVSKI: Yes. And what I'm suggesting to you is that the issue has been raised by the CFMEU with you?

MR DE'ATH: I believe so.

MR TERNOVSKI: In fact, it's raised in this very email that you're responding to of Mr Pauls.

MR DE'ATH: Thank you.

MR TERNOVSKI: And your response to it internally within the department, directly to Ms Bancroft, not copying Mr Pauls, not copying Mr Ravbar, not copying anyone from the CFMEU internally within the department, you say:

> "Noting Mr Pauls' concerns..."

That's Ms Wise's issue, isn't it, Ms Bancroft's second interview issue?

MR DE'ATH: Yes.

MR TERNOVSKI: You've accepted that:

> "Noting Mr Pauls' concerns I had felt that all matters could have been resolved."

This is something you say to Ms Bancroft, isn't it?

MR DE'ATH: Yes.

MR TERNOVSKI: And that was true?

MR DE'ATH: Yes.

MR TERNOVSKI: So although that was an issue, if that was the only issue, the process could have continued? You said that.

MR DE'ATH: If the matter had been resolved. But we had a panellist who was objecting. When we have a panellist who's objecting, we have to deal with that objection, and that would have likely triggered, on that issue alone, a restart of the process.

MR TERNOVSKI: Well, let me test that, Mr De'Ath. You said "when we have a panellist objecting". Well, you have that here. And your response to that

objection is process could have been - the matters could have been resolved, isn't it? That's your response to that very objection.

MR DE'ATH: Sorry, counsel assisting, I'm not quite sure what the point is in relation to what I've already said, is that -

MR TERNOVSKI: The point is it wasn't such a big deal, was it? The process could have been - on your own words, could have been resolved?

MR DE'ATH: Oh, it could have, but it was a significant issue in its own right.

MR TERNOVSKI: Where does it say in this email from you to Ms Bancroft, your subordinate who made that error, where does it say this was a significant issue?

MR DE'ATH: Well, you're assuming that I'm communicating everything I think in this email or every conversation I've had with Ms Bancroft in this email.

COMMISSIONER: I think your answer is it's not there.

MR TERNOVSKI: Can I take you to a different document. I think I've already taken you -

(Remembrance Day announcement and silence observed).

MR TERNOVSKI: I want to take you to another document, Mr De'Ath, but just sticking with the one in front of you right now, which is attachment 30 to Ms Bancroft. I'm just going to take you to another document now, Mr De'Ath. Can we go to document 34. It's a document I was planning to take you to later, but we can have a brief look at it now, because there's one issue I want to capture that's relevant to this topic. Just have a look at document 34, please.

MR DE'ATH: Sorry, which folder?

MR TERNOVSKI: Of the tender bundle.

MR DE'ATH: Thank you.

MR TERNOVSKI: Madam Operator, if we could just blow up the email on the first page.

MR DE'ATH: Thank you.

MR TERNOVSKI: Mr De'Ath, this email attaches a file note of your meeting with Mr Ravbar on 28 March?

MR DE'ATH: Yes.

MR TERNOVSKI: 2023?

MR DE'ATH: Yes.

MR TERNOVSKI: And in the covering email, you confirm the accuracy of that file note, don't you?

MR DE'ATH: Yes.

MR TERNOVSKI: And if we go to that file note, I am going to come back to it in greater detail, but if we go to the second page of the file note itself, and then if we could blow up the first three paragraphs under 2.50 pm. You see there Mr Ravbar explains there again about what Ms Bancroft had done with the second interview?

MR DE'ATH: Yes.

MR TERNOVSKI: And you see there's the response that you and Ms Bancroft provide back to the CFMEU?

MR DE'ATH: Yes.

MR TERNOVSKI: And the response is - MD - that's you.

MR DE'ATH: Yes.

MR TERNOVSKI: And KB, that's Kym Bancroft.

MR DE'ATH: Correct.

MR TERNOVSKI:

> "...clarified that the second interview process was in order to address the points of clarification raised by the panel and referee checking and Davidson's check had been completed. KB further clarified that the communication to the panel on the follow-up process could have been clearer and that we are working to the same goal of appointing the most meritorious candidate to the role."

And then the second paragraph:

> "MD commented that KB was acting with the best intent in further speaking with and checking on the candidate."

MR DE'ATH: Yes.

MR TERNOVSKI: That was your position?

MR DE'ATH: Yes.

MR TERNOVSKI: All right. Can we now move to the second round of recruitment -

MR DE'ATH: Yes.

MR TERNOVSKI: - and the genesis of that. And I'm going to have to come back to this document, but I want to take you to some preceding documents first. Can you please go, Mr De'Ath, to attachment 31 to Ms Bancroft again.

MR DE'ATH: Yes.

MR TERNOVSKI: That's a letter from Mr Ravbar to you dated 15 March 2023. Madam Operator, if we blow up the header.

MR DE'ATH: Sorry, 31?

MR TERNOVSKI: Attachment 31 to Ms Bancroft.

MR DE'ATH: Am I in the right folder?

MR TERNOVSKI: In Ms Bancroft's folder, yes.

MR DE'ATH: Thank you.

MR TERNOVSKI: This is a letter from Mr Ravbar to you dated 15 March?

MR DE'ATH: Yes.

MR TERNOVSKI: And it concerns - or at least - well, part of it concerns the recruitment for the executive director position?

MR DE'ATH: Yes.

MR TERNOVSKI: And if we go to the last page of the letter and blow up the last two paragraphs just before Mr Ravbar's signature -

MR DE'ATH: Yes.

MR TERNOVSKI: - here Mr Ravbar is demanding that Ms Bancroft be removed from the next panel?

MR DE'ATH: Yes.

MR TERNOVSKI: And threatening to complain to the minister?

MR DE'ATH: Yes.

MR TERNOVSKI: Can we now go to your response, at least your internal response, which is document 23 of the other folder. Madam Operator, if we could blow up the email at the bottom. I'll let you have a read of the document, Mr De'Ath.

MR DE'ATH: Thank you.

COMMISSIONER: What number? Which number?

MR TERNOVSKI: Document 23 of the tender bundle.

MR DE'ATH: Sorry, we're focusing on the letter from Mr Ravbar to me?

MR TERNOVSKI: Yes. You see that in that document 23, there's an email from Ms Collie on behalf of Mr Ravbar to you, and then you respond to that. Do you see that? If you look at -

MR DE'ATH: Yes, I do.

MR TERNOVSKI: So at the bottom, if we could blow up the bottom email from Jacqui Collie, Madam Operator, that's the covering email for that letter I've just taken you to, isn't it?

MR DE'ATH: For the second process.

MR TERNOVSKI: The letter from Mr Ravbar I've just taken you to where he demanded that Ms Bancroft be removed -

MR DE'ATH: Yes.

MR TERNOVSKI: - that's a covering email for that, isn't it?

MR DE'ATH: Yes, I believe so, yes.

MR TERNOVSKI: You don't have to take my word for it, because if you keep scrolling you will see that letter is the attachment.

MR DE'ATH: Thank you.

MR TERNOVSKI: Madam Operator, if we could blow up the email from Mr - at the top of the page, from Mr De'Ath. You'll see that's your response, but it's an internal response, isn't it, within OIR?

MR DE'ATH: Yes.

MR TERNOVSKI: Or within -

MR DE'ATH: Within the department.

MR TERNOVSKI: Within the department, I should say.

MR DE'ATH: Yes.

MR TERNOVSKI: Yes. That's not a response that goes to the CFMEU as such?

MR DE'ATH: No.

MR TERNOVSKI: Right. And you say there:

> "Can I please have a succinct response to this. Mr Ravbar is clearly ill-informed as to our processes and I feel no sense of compulsion to in any justify this to him."

Presumably there's a word missing "in any way"?

MR DE'ATH: No. I think I just said what I said.

MR TERNOVSKI: It doesn't read grammatically to me, but anyway -

MR DE'ATH: Sorry, you're talking about the first sentence, are you?

MR TERNOVSKI: The first sentence:

> "I feel no sense of compulsion to in any justify this to time."

MR DE'ATH: Sense or compulsion. Yes, thank you, sorry.

MR TERNOVSKI: I think the word "way" might be missing.

MR DE'ATH: I understand. Thank you.

MR TERNOVSKI:

> "Unless you provide me advice otherwise, I have been well across this process and accept it as sound and compliant. Therefore, I expect the response to Mr Ravbar would simply say exactly that."

MR DE'ATH: Yes, our design of the second process.

MR TERNOVSKI: You were satisfied the second process was compliant?

MR DE'ATH: So let me just check his letter again, sorry. Thank you, yes. So I'm referring to our second process.

MR TERNOVSKI: That's right. You're referring to the second process. I'm not suggesting you're referring to the first process.

MR DE'ATH: Thank you.

MR TERNOVSKI: And you say that's sound and compliant?

MR DE'ATH: In our design, I believed it to have been sound and compliant.

MR TERNOVSKI: Including retaining Ms Bancroft on the panel?

MR DE'ATH: Oh, most definitely.

MR TERNOVSKI: And if we go to attachment 32 to Ms Bancroft's statement, which is the Ms Bancroft folder, not the tender bundle, Mr De'Ath.

COMMISSIONER: 32 of what?

MR TERNOVSKI: 32 of Ms Bancroft, KSB-32.

MR DE'ATH: Sorry, counsel assisting, I may have misunderstood. We're in Ms Bancroft's statement.

MR TERNOVSKI: Yes, attachment 32.

MR DE'ATH: Right.

MR TERNOVSKI: There could be a tabbing error, but it should be an email sent 17 March 2023 - sorry, a letter from you to Mr Ravbar.

MR DE'ATH: Yes.

MR TERNOVSKI: You say there in the third paragraph from the bottom:

> "I am satisfied that this current process complies with the provisions of the Public Sector Act 2022 and the current Commission Chief Executive Directive 12/20: Recruitment and Selection."

MR DE'ATH: Yes.

MR TERNOVSKI: So your response to Mr Ravbar is the process was fine.

MR DE'ATH: Yes, and I'm happy to elaborate if you would like me to.

MR TERNOVSKI: I might ask you some more questions.

MR DE'ATH: Sure.

MR TERNOVSKI: But in essence - again, I'm not suggesting this was about the first process. This is about the second process.

MR DE'ATH: No, I understand.

MR TERNOVSKI: You accept that?

MR DE'ATH: Oh, yes.

MR TERNOVSKI: So as at 17 March, you were happy with the second process, including keeping Ms Bancroft on the panel?

MR DE'ATH: Yes.

MR TERNOVSKI: And otherwise keeping the composition of the panel?

MR DE'ATH: Yes.

MR TERNOVSKI: Can I now go back slightly in time and take to you document 24 in the tender bundle, which is another communication from Mr Ravbar. It's an email from Mr Ravbar sent by Jacqui Collie to you on 15 March. If we could blow up the last two paragraphs, Madam Operator.

MR DE'ATH: Thank you.

MR TERNOVSKI: You see earlier in the email, Mr Ravbar refers to your meeting with you on 28 January?

MR DE'ATH: Yes.

MR TERNOVSKI: And then in the last two paragraphs, Mr Ravbar says:

> "There are a number of issues that are arising under your leadership, particularly in relation to the Deputy Director-General, that need to be discussed."

That's Ms Bancroft, of course?

MR DE'ATH: Yes.

MR TERNOVSKI: And then Mr Ravbar asked for the meeting to be reconvened?

MR DE'ATH: Yes.

MR TERNOVSKI: I tender that document.

COMMISSIONER: Any objections? Email from Jacqui Collie on behalf of Michael Ravbar to Michael De'Ath, 15 March 2023, will be exhibit CA - what are we up to?

MR TERNOVSKI: 28, I'm told.

COMMISSIONER: 28.

<EXHIBIT CA-28 EMAIL FROM JACQUI COLLIE ON BEHALF OF MICHAEL RAVBAR TO MICHAEL DE'ATH 15/3/2023

MR TERNOVSKI: Mr De'Ath, if you go to document 27 now, that's your response to Mr De'Ath. Madam Operator, if we could blow up the email at the top, not including the signature.

MR DE'ATH: Yes.

MR TERNOVSKI: You see you propose to bring Ms Bancroft to that meeting?

MR DE'ATH: Yes.

MR TERNOVSKI: To hear complaints about her, in effect?

MR DE'ATH: Yes.

MR TERNOVSKI: Would it be fair to say this was pushing back a bit against Mr Ravbar?

MR DE'ATH: Absolutely.

MR TERNOVSKI: Because presumably he didn't want her there?

MR DE'ATH: In fairness to Ms Bancroft, and all of the volume of commentary from Mr Ravbar in all manner of engagement, I was - and you will see an escalation in my response to Mr Ravbar over time in terms of how I chose to manage and respond to his approach, that I felt it was appropriate that if he was going to say things about people, that he could say them in their presence, rather than behind their backs.

MR TERNOVSKI: So when you say "escalation", are you saying, Mr De'Ath, that all the time, as you pushed back more and more strongly against Mr Ravbar's demands, various demands?

MR DE'ATH: Absolutely.

MR TERNOVSKI: And that's because you regarded them as unreasonable?

MR DE'ATH: Completely. Sorry, with one proviso: I was assessing everything Mr Ravbar was saying, accusing us of and so on, and in that I had to form a determination about which ones put us at risk in terms of how we were operating and what was the substance of that and which ones were clearly just - often completely irrational and bizarre.

MR TERNOVSKI: All right. And you see here, in the last line, you propose two dates, 27th and the 28th?

MR DE'ATH: Yes.

MR TERNOVSKI: And then - I tender that document.

COMMISSIONER: Any objections? Email from Michael De'Ath to Michael Ravbar, 17 March 2023, will be exhibit CA-29.

<EXHIBIT CA-29 EMAIL FROM MICHAEL DE'ATH TO MICHAEL RAVBAR 17/3/2023

MR TERNOVSKI: Mr De'Ath, while we're on this document, do you accept that this is the email that sets up the 28 March meeting?

MR DE'ATH: Yes.

MR TERNOVSKI: And do you accept also, Mr Ravbar, that as at that point the CFMEU had not been engaging at all in the triaging consultation?

MR DE'ATH: That sounds about right.

MR TERNOVSKI: And do you also accept that the way this meeting is set up doesn't refer to triage?

MR DE'ATH: No. Sorry, I accept that, yes.

MR TERNOVSKI: So this meeting is effectively, the way it's organised, is at that point the CFMEU had not engaged, and it's to hear grievances about Ms Bancroft?

MR DE'ATH: Yes.

MR TERNOVSKI: And if we go to document 28 for completeness, that's the meeting invite for 28 March in your office. If we could blow up the details,

Madam Operator. I think this particular document is just one page, Mr De'Ath, document 28 -

MR DE'ATH: Sorry, the diary entry, yes. Sorry, I didn't acknowledge it.

MR TERNOVSKI: So, Mr De'Ath, you've got document 28 of the tender bundle?

MR DE'ATH: Yes, I do.

MR TERNOVSKI: And that's a meeting invite for the 28 March meeting?

MR DE'ATH: Correct, yes.

MR TERNOVSKI: I tender that document.

COMMISSIONER: Are there any objections? Meeting invite, Michael De'Ath, Kym Bancroft, Michael Ravbar, director-general's office, Level 37, 1 William Street, Brisbane, 2.30 to 3 pm, 28 March 2023 will be exhibit CA-30.

<EXHIBIT CA-30 MEETING INVITE, MICHAEL DE'ATH, KYM BANCROFT, MICHAEL RAVBAR, DIRECTOR-GENERAL'S OFFICE, LEVEL 37, 1 WILLIAM STREET, BRISBANE, 2.30 TO 3 PM, 28/3/2023

MR TERNOVSKI: Mr De'Ath, please bear with me, because I now want to - we were talking about the panel.

MR DE'ATH: Yes.

MR TERNOVSKI: Including the set-up of that 28 March meeting. But now I want to go back in time to trace through what was happening with triage at the same time. So if I could take you to document 20. Feel free to read the whole document, but it's very lengthy. And there's a particular part of it that I want to take you to, which is page 16 of that document, but feel free to read the whole thing. But Madam Operator, if we could blow up page 16, the email - firstly, the email from Mr Pauls to Ms Bancroft on 3 March.

MR DE'ATH: Counsel assisting, it's a lengthy document. I'm happy for you to take you me to the respective -

MR TERNOVSKI: Perhaps it might be easier if we do it on the screen then, so we don't have to find the right pages.

MR DE'ATH: Sure.

MR TERNOVSKI: If you have a look at this, this is on page 16 of that tab. You see what's blown up on the screen there is an email, 3 March, from Mr Pauls to Ms Bancroft?

MR DE'ATH: Yes.

MR TERNOVSKI: And then if we go over the following page - sorry, just pausing there. You accept that this is Mr Pauls notifying Ms Bancroft of a safety incident?

MR DE'ATH: Yes, and the last para I think illustrates sort of the retaliatory sort of response to our work.

MR TERNOVSKI: Retaliatory, you mean, from the CFMEU's end?

MR DE'ATH: Yes.

MR TERNOVSKI: And can we go to the next page, Madam Operator, just blow up that one line:

> "I have tried to call you myself and left a voice message."

That's Mr Pauls trying to call Ms Bancroft directly with the safety notifications?

MR DE'ATH: Correct.

MR TERNOVSKI: And then following up with an email to her directly?

MR DE'ATH: Correct.

MR TERNOVSKI: Instead of going through the proper process.

MR DE'ATH: Correct.

MR TERNOVSKI: Which at that time was to call the regional director?

MR DE'ATH: Correct.

MR TERNOVSKI: Which you accepted was also not a very good process but better than calling Ms Bancroft?

MR DE'ATH: Correct.

MR TERNOVSKI: But even that process the CFMEU is not following; they are continuing to call her directly.

MR DE'ATH: Correct.

MR TERNOVSKI: And I think you accepted yesterday that was a very bad process.

MR DE'ATH: I did.

MR TERNOVSKI: It is unsafe.

MR DE'ATH: Yes.

MR TERNOVSKI: Because it introduced delays and it risked delaying inspector attendance.

MR DE'ATH: Yes.

MR TERNOVSKI: Madam Operator, if we can now blow up the response from Ms Bancroft from 5 March, which is at the top of page 16.

MR DE'ATH: Yes.

MR TERNOVSKI: You see Ms Bancroft in fact bats back to Mr Pauls, doesn't she?

MR DE'ATH: Yes.

MR TERNOVSKI: And she says:

> "We have previously communicated the correct notification process for the Building Trades Group unions to follow, which ensures a timely and risk-based inspector response to issues. I have dedicated resources standing by to respond to your calls."

Do you agree with that?

MR DE'ATH: I do.

MR TERNOVSKI: And then in the next paragraph Ms Bancroft says:

> "Choosing to follow your own set process of calling myself is putting your members and all workers at risk, as demonstrated in this incident below. I am extremely concerned that this could escalate, resulting in even greater injury or fatality."

Do you see that?

MR DE'ATH: Yes.

MR TERNOVSKI: You agree with that sentiment, do you?

MR DE'ATH: I do agree with that sentiment.

MR TERNOVSKI: What Ms Bancroft said was spot on, wasn't it?

MR DE'ATH: Spot on.

MR TERNOVSKI: I tender this document.

COMMISSIONER: Is there any objection? Email from Kym Bancroft to Kate Stuchbury re triaging brief, 7 March 2023, and attachments, will be exhibit CA-31.

<EXHIBIT CA-31 EMAIL FROM KYM BANCROFT TO KATE STUCHBURY RE TRIAGING BRIEF, 7/3/2023, AND ATTACHMENTS

MR TERNOVSKI: It is 31, Commissioner.

COMMISSIONER: Sorry?

MR TERNOVSKI: It is 31, Commissioner. Thank you. Can I now take you to document 19 of the tender bundle, Mr De'Ath. I'll let you have a read of that, and Madam Operator, if we could blow up from the date up to the end of the first paragraph:

"It is necessary for me..."

COMMISSIONER: Can you just remind me, Mr De'Ath - we're now at March. In August, you'd put the transfer of Ms Burgess on hold for six months. Had Ms Burgess been transferred out of her role as director of CCFS by this stage?

MR DE'ATH: Thank you, Commissioner. I can't - I can't recall. I think she was, and if I could just clarify, I didn't direct the six months; I directed that a proper process be followed. It just happened to take six months, by what I've read here yesterday.

MR TERNOVSKI: Hang on. I want to ask you some questions about this, Mr De'Ath, because I was not suggesting to you earlier that you made the decision to pause Ms Burgess' transfer, was I, yesterday?

MR DE'ATH: No, that's correct, yes.

MR TERNOVSKI: And Ms Bancroft's evidence was it was her decision, after you passed on - her evidence is she made that decision herself after you passed on, on her account, the call from Mr Ravbar.

MR DE'ATH: Yes. So I - I don't know that I've relayed the correct language on that, on what I stated just earlier.

MR TERNOVSKI: So do you now say that you've made some direction to pause the transfer of Ms Burgess?

MR DE'ATH: I - we canvassed this yesterday, and I think my evidence was that I would have - I may well have talked this through with Kym and we came to a conclusion that that's what would need to happen. So that - that stands.

MR TERNOVSKI: Well, Ms Bancroft - I've taken you yesterday, and I can take you again, to Ms Bancroft's account. That's not what she says happened, is it?

MR DE'ATH: I'm comfortable with that.

MR TERNOVSKI: May I put it this way: there is no record of any direction from you to pause, defer or redo the reassignment of Ms Burgess on the basis of some breach of process the first time around, is there?

MR DE'ATH: I'm not aware of that. I think that's where I was going with my evidence yesterday, and there's not a clear recall on that.

MR TERNOVSKI: Commissioner, to answer your question - Madam Operator, could we get CA-6 again. That's Ms Burgess' placement history, which gives the dates. And if we could blow up the first three lines.

COMMISSIONER: I took a note of that yesterday.

MR TERNOVSKI: Thank you, Madam Operator. Commissioner, you will see there that 13 February, she's being reassigned from director of CCFS to director of construction strategy.

COMMISSIONER: So by this stage Ms Burgess was out of the role, at the point at which you've just been asking Mr De'Ath questions about what happened in March.

MR TERNOVSKI: On the evidence, yes, Commissioner. And I think that's consistent with what Mr De'Ath just said.

MR DE'ATH: Correct.

MR TERNOVSKI: Can we - I'm sorry, Commissioner.

COMMISSIONER: I just wonder who made the complaint, because this - Mr De'Ath's deeply concerned about this approval of an alternate sourcing strategy of 13 December 2022 and signs off on a complaint to the CCC on 9 February, a few days before Ms Burgess is transferred on 13 February. Doesn't recall who raised

this issue with him between 13 December and 9 February. Do you know who initiated the complaint with the CCC? I mean, it relates to Ms Burgess' area.

MR TERNOVSKI: I'm sorry, are you talking about complaints about Ms Bancroft or complaints -

COMMISSIONER: The complaint about Ms Bancroft in relation to an attempt to investigate Ms Burgess' area.

MR TERNOVSKI: I'm not sure I'm aware of the complaint you're referring to, Commissioner. There were two complaints made to the CCC about Ms Burgess regarding procurement.

COMMISSIONER: No, about Ms Bancroft.

MR TERNOVSKI: Sorry, about Ms Bancroft in relation to a procurement issue.

COMMISSIONER: Yes.

MR TERNOVSKI: I'm not aware of any CCC complaint about Ms Bancroft in relation to Ms Bancroft reassigning Ms Burgess.

COMMISSIONER: The procurement issue relates to an attempt to investigate Ms Burgess' area for four months.

MR TERNOVSKI: Yes.

COMMISSIONER: A four-month investigation into her area, and this is it. Who made the complaint to the CCC?

MR TERNOVSKI: Well, Commissioner, there are two complaints, one of which went directly to the CCC. It's not in evidence right now.

COMMISSIONER: Right. And the second one?

MR TERNOVSKI: Not wishing to give evidence from the bar table, we can provide the document in due course, but in substance, it is a complaint with a made-up name. The person doesn't exist.

COMMISSIONER: Right.

MR TERNOVSKI: That's the first complaint. And then there was a complaint from the department that we have seen.

COMMISSIONER: That's the 9 February one signed by -

MR TERNOVSKI: That's the 9 February one.

COMMISSIONER: Signed by Mr De'Ath.

MR TERNOVSKI: And Mr De'Ath's, I think, evidence is that he doesn't remember who brought it to his attention, but when Ms Barry gives evidence, she may be able to enlighten us. In fact, I put it higher than that: she will be able to enlighten us. Mr De'Ath, can I take to you document 19 of the tender bundle.

COMMISSIONER: I don't have a clock in front of me, Mr Ternovski. How are we going for time?

MR TERNOVSKI: We're late. It's 11.33.

COMMISSIONER: Is that a convenient time -

MR TERNOVSKI: It's as good a time as any, from my point of view.

COMMISSIONER: All right. We'll adjourn till quarter to 12.

<THE HEARING ADJOURNED AT 11.33 AM

<THE HEARING RESUMED AT 11.45 AM

MR TERNOVSKI: Mr De'Ath, do you recall before the break I took you to a set of emails? One was a complaint notification from Mr Pauls directly to Ms Bancroft where he also says he rang her and left a voicemail?

MR DE'ATH: Yes.

MR TERNOVSKI: And then Ms Bancroft's response batting it back and saying - I'm summarising - this approach puts worker safety at risk?

MR DE'ATH: Yes.

MR TERNOVSKI: And you agreed with that proposition.

MR DE'ATH: Yes.

MR TERNOVSKI: I think you said you agreed with me it was spot on?

MR DE'ATH: Yes.

MR TERNOVSKI: Can I now take you to document 19 of the tender bundle.

MR DE'ATH: Yes.

MR TERNOVSKI: And if we blow up from the date and the first full three paragraphs, Mr De'Ath, this is Mr Ravbar responding to Mr Bancroft's email, isn't it?

MR DE'ATH: Indeed.

MR TERNOVSKI: He's calling it an appalling response?

MR DE'ATH: Yes.

MR TERNOVSKI: And in that paragraph he says:

> "You have the audacity to accuse the union of putting its members and workers at risk."

MR DE'ATH: Yes.

MR TERNOVSKI: Now, Mr Ravbar is calling it an audacious move, but it's a move that you agreed with?

MR DE'ATH: Correct.

MR TERNOVSKI: And then if we could blow up the last full paragraph of that letter at the bottom of the page:

> "Given that you, the deputy director-general, made these comments, it is necessary for you to write to the union withdrawing your statement in your email of 6 March 2023."

MR DE'ATH: Yes.

MR TERNOVSKI: So Mr Ravbar is calling for her to withdraw that statement that you've just agreed with?

MR DE'ATH: Yes.

MR TERNOVSKI: And if we go back - if you just blow up "yours sincerely" and the rest of the page on the second page of the letter, Madam Operator. You see there, Mr De'Ath, just underneath the signature, please?

MR DE'ATH: Yes, I see it.

MR TERNOVSKI: You see the letter is copied to Minister Grace and it's copied to you?

MR DE'ATH: Yes. Yes.

MR TERNOVSKI: So just note the date, 7 March.

MR DE'ATH: Yes, I've noted it.

MR TERNOVSKI: Okay. I tender this document.

COMMISSIONER: Any objections? Letter 7 March 2023, Michael Ravbar to Kym Bancroft, cc the Honourable Grace Grace, Minister for Education and Minister for Industrial Relations and Minister For Racing and Mr Michael De'Ath, DG, Department of Education, will be exhibit CA-32?

MR TERNOVSKI: 32, Commissioner.

<EXHIBIT CA-32 LETTER 7/3/2023, MICHAEL RAVBAR TO KYM BANCROFT, CC THE HONOURABLE GRACE GRACE, MINISTER FOR EDUCATION AND MINISTER FOR INDUSTRIAL RELATIONS AND MINISTER FOR RACING AND MR MICHAEL DE'ATH, DG, DEPARTMENT OF EDUCATION

MR TERNOVSKI: Can I now take you to - so this was 7 March. Can we now move nine days forward in time to 16 March, and can I take you to document 25. I'll let you read the document, and then I'll ask you some questions about it.

MR DE'ATH: Yes.

MR TERNOVSKI: Madam Operator, if we could blow up the page from Briefing Note up to but not including Key Issues.

MR DE'ATH: Thank you.

MR TERNOVSKI: Now, Mr De'Ath, this is a brief that Ms Bancroft sent to you proposing a new triaging process for the construction unions, isn't it?

MR DE'ATH: Yes.

MR TERNOVSKI: Including the CFMEU?

MR DE'ATH: Correct.

MR TERNOVSKI: And if you look at the last dot point that's on the screen, you see:

> "Subject to stakeholders identifying critical risks or impediments to the implementation of the new process, it will take effect 14 days from the date identified in the correspondence from the deputy director-general OIR.

MR DE'ATH: Yes.

MR TERNOVSKI: That's what's proposed.

MR DE'ATH: Yes.

MR TERNOVSKI: Give the unions 14 days to identify any critical risk or impediment, otherwise the process goes ahead.

MR DE'ATH: Yes.

MR TERNOVSKI: And then, Madam Operator, if we could blow up the first four dot points under Key Issues. Let me know when you're ready, Mr De'Ath.

MR DE'ATH: Sorry, yes, ready.

MR TERNOVSKI: All right. You see in paragraph 1 it says:

> "Until recently, construction unions predominantly utilised a single point of contact to lodge requests for regulator assistance."

MR DE'ATH: Yes, I see that.

MR TERNOVSKI: That's referring to Ms Burgess, isn't it?

MR DE'ATH: Yes, into that area of the OIR, yes.

MR TERNOVSKI: The single point of contact is Ms Burgess?

MR DE'ATH: It is, I understand, yes.

MR TERNOVSKI: And then the brief says in paragraphs 2 and 3 that this doesn't apply with the Events Management Policy?

MR DE'ATH: I see that, yes.

MR TERNOVSKI: You don't disagree with that proposition?

COMMISSIONER: The witness said yesterday - you asked him about whether he signed briefs and whether he agreed with them, and I think we can take it that if he's approved this brief, he agrees with it.

MR TERNOVSKI: Thank you, Commissioner.

COMMISSIONER: Unless I misunderstood something about his evidence.

MR TERNOVSKI: That was his evidence, but I just wanted to try to take him to specific points within this document.

COMMISSIONER: We've already got his evidence.

MR TERNOVSKI: All right. I'll skip this part. If we could blow up, Madam Operator, paragraphs 5 through to 7 under Key Issues.

MR DE'ATH: Yes.

MR TERNOVSKI: You see that's the proposal, isn't it, and the gist of it is the unions, the construction unions, including CFMEU, to call a 1300 number.

MR DE'ATH: Yes.

MR TERNOVSKI: That's the permanent triage system Ms Bancroft's proposing?

MR DE'ATH: Yes.

MR TERNOVSKI: And then if we go to page 3 of that document and blow up paragraph 23 -

MR DE'ATH: Yes.

MR TERNOVSKI: - you see, Mr De'Ath, it says:

> "Despite this advice, union representatives..."

This advice, if you look earlier, is referring to the temporary system of calling the regional directors, and 23 says:

> "Despite this advice, union representatives have adopted a practice of sending requests for regulatory assistance directly to Ms Bancroft."

MR DE'ATH: Yes.

MR TERNOVSKI: That's the pressure tactic?

MR DE'ATH: Yes.

MR TERNOVSKI: All right. Then if we - Madam Operator, if we just blow up the section of the page under the - just at the foot of the page under that line, just under - you see the comments line from you is blank?

MR DE'ATH: Yes.

MR TERNOVSKI: And you see at the bottom, the brief is endorsed by Andrew Harris?

MR DE'ATH: Yes.

MR TERNOVSKI: The acting ED of WHS compliance and field services?

MR DE'ATH: Yes.

MR TERNOVSKI: And endorsed by Ms Bancroft as DDG?

MR DE'ATH: Yes.

MR TERNOVSKI: And you'll see, if we then blow up the section from "noted" through to "copy to minister's office", Madam Operator, you see you've ticked "noted" and "approved"?

MR DE'ATH: Yes.

MR TERNOVSKI: Your signature is redacted, but you accept you've signed it?

MR DE'ATH: Yes.

MR TERNOVSKI: On 16 March?

MR DE'ATH: Yes.

MR TERNOVSKI: With a copy to the minister's office?

MR DE'ATH: Yes.

MR TERNOVSKI: And as I pointed out, you wrote no comments on it?

MR DE'ATH: No.

MR TERNOVSKI: You agreed with the proposal as of 16 March?

MR DE'ATH: I did.

COMMISSIONER: He's already said that yesterday. You asked him a global question, and he said it. You don't need to ask him again.

MR TERNOVSKI: Thank you, Commissioner. Can I take you to some of the other detail about the proposal, because it's relevant. Madam Operator, could you blow up paragraph 15. You see there it says:

> "The new process will be supported by monthly reporting to increase the visibility of construction union requests, including the tracking of recurring issues, regulator response times and compliance action taken by the regulator."

So this reporting that's being proposed would show, wouldn't it, what the union requests actually - what the regulator actually found in response to the union request?

MR DE'ATH: Yes.

MR TERNOVSKI: And that would include tracking union requests that were found not to be - not to have, on inspection, warranted action?

MR DE'ATH: Yes.

MR TERNOVSKI: And you obviously wanted the minister's office to know of the change, because you ticked "copy to minister's office"?

MR DE'ATH: Of course.

COMMISSIONER: Do I take it that every brief you sign, you tick "copy to the minister's office", Mr De'Ath, or close to every brief you sign?

MR DE'ATH: Commissioner, the answer to that is no. I would form a view on whether that was a significant enough issue to go to the minister. I would receive a pile of briefs about this high every day, so not everything went.

MR TERNOVSKI: Commissioner, I'm actually going to take Mr De'Ath to a document dealing with the very question you asked, Commissioner. Mr De'Ath, could I take you to document 20 in the tender bundle.

COMMISSIONER: Do you want to tender this one?

MR TERNOVSKI: It might be tendered already. Okay. It's not tendered, I'm told. I'll tender that document.

COMMISSIONER: Any objection? Briefing note, 16 March 2023, Michael De'Ath re new triaging process for construction unions, exhibit CA-23.

MR TERNOVSKI: It should be 33, Commissioner, I'm told. I think you might have said 23, unless -

COMMISSIONER: Did I? Exhibit 33.

<EXHIBIT CA-33 BRIEFING NOTE, 16/3/2023, MICHAEL DE'ATH RE NEW TRIAGING PROCESS FOR CONSTRUCTION UNIONS

MR TERNOVSKI: Thank you, Commissioner. Mr De'Ath, have you got document 20 there?

MR DE'ATH: I do.

MR TERNOVSKI: If we could blow up up to the first two paragraphs, Madam Operator. You see, Mr De'Ath, it's an email from Ms Bancroft to Ms Stuchbury?

MR DE'ATH: Yes.

MR TERNOVSKI: On 7 March?

MR DE'ATH: Yes.

MR TERNOVSKI: And you see she says in the second paragraph:

> "If you are able to review the triaging brief to have ready to send to the DG by Friday..."

MR DE'ATH: Yes.

MR TERNOVSKI: That's to send to you?

MR DE'ATH: Yes.

MR TERNOVSKI: By Friday of that week?

MR DE'ATH: Yes.

MR TERNOVSKI: And I'm not sure it happened by Friday, but obviously that's the genesis for the 16 March brief we just went to?

MR DE'ATH: I agree.

MR TERNOVSKI: Do you see Ms Bancroft says there:

> "Michael agreed that the MO won't need to see the brief."

MR DE'ATH: Yes.

MR TERNOVSKI: MO: that's minister's office?

MR DE'ATH: Yes.

MR TERNOVSKI: Michael: that's you?

MR DE'ATH: Yes.

MR TERNOVSKI: And does Ms Bancroft accurately record that you had a conversation where you agreed the minister's office doesn't need to see the brief?

MR DE'ATH: I don't recall the conversation.

MR TERNOVSKI: Do you deny that conversation?

MR DE'ATH: I just don't recall the conversation, sorry.

MR TERNOVSKI: I understand. But you don't have a positive memory that that conversation did not occur?

MR DE'ATH: No, counsel assisting, I'm relaxed about it, though.

MR TERNOVSKI: Can you explain why - actually, I'll read the last sentence of that second paragraph to you first:

> "I have left a message with Katelyn to let her know the DG is comfortable where we're at."

Katelyn, that's Katelyn Dougherty?

MR DE'ATH: Correct.

MR TERNOVSKI: The minister's chief of staff?

MR DE'ATH: Yes.

MR TERNOVSKI: So as of 7 March, according to this email, you tell Ms Bancroft that the copy - the minister's office didn't need to see the brief?

MR DE'ATH: Yes.

MR TERNOVSKI: But on 16 March you ticked "copy to minister's office"?

MR DE'ATH: Yes, I changed my mind.

MR TERNOVSKI: Can you explain why?

MR DE'ATH: That's not uncommon, counsel assisting, when you have a discussion, you're being informed about different things, someone tells you're getting a brief, the general idea about what that brief is about. And then you read it, and then you go, "Actually, that's significant, and that needs to go to the minister's office."

COMMISSIONER: Is that the answer to the question? The answer was why it you did you change your mind? Are you saying because it was significant?

MR DE'ATH: I must have considered it significant enough to go to the minister's office, yes.

MR TERNOVSKI: Do you accept, Mr De'Ath, that this was - how to triage complaints from stakeholders within OIR was an operational decision for WHSQ?

MR DE'ATH: Oh, counsel assisting, if I can explain -

COMMISSIONER: It's just a very simple question. Do you accept it's an operational decision or not?

MR DE'ATH: No. Not entirely.

MR TERNOVSKI: Not entirely. All right.

MR DE'ATH: Sorry, it's an operational decision around the triage process. To answer your question, yes. I think there's a context around that answer, though, about why it went to that office.

COMMISSIONER: Well, if counsel assisting wants the context, he'll ask you.

MR DE'ATH: All right.

MR TERNOVSKI: Can I suggest to you, Mr De'Ath, that one thing that's changed between 7 March, when you told Ms Bancroft on her account that it didn't need to go to the minister areas office, and 16 March, when you signed the brief ticking "copy to minister's office", one thing that's changed is that on 15 March, Mr Ravbar has threatened to approach the minister, as we've seen?

MR DE'ATH: I'm sorry, I can't make that connection. I don't know.

MR TERNOVSKI: Can we now go to attachment 46 to Ms Bancroft's statement, in the Bancroft folder, Mr De'Ath. To help you, Mr De'Ath, this is a bundle of letters to construction unions, but for our purposes we can just look at the first one to Mr Ravbar.

COMMISSIONER: You might not want to answer this question, Mr Ternovski, and tell me if you don't want to, but at present I can't see anything wrong with Mr De'Ath changing his mind because of a change in circumstances. At one point he says, "I don't need to"; later he says he does.

MR TERNOVSKI: Commissioner, what I'm trying to establish and will continue to try to establish through subsequent events, is a certain pattern of conduct, effectively of giving in to CFMEU demands or making changes that are not operationally warranted in response to CFMEU demands.

COMMISSIONER: All right. And this is the third one so far.

MR TERNOVSKI: Relatively minor one, on one view.

MR DE'ATH: I've noted the correspondence.

MR TERNOVSKI: Thank you. Now, Mr De'Ath, this is the letter that Ms Bancroft sent announcing the new triage system going ahead, isn't it?

MR DE'ATH: Yes.

MR TERNOVSKI: And if we blow up - skipping "good afternoon" and the next paragraph, blow up paragraph from "I am writing" through to and including "Under the new process".

MR DE'ATH: Yes.

MR TERNOVSKI: That's the permanent triage process. The union is to call 1300 number?

MR DE'ATH: Yes.

MR TERNOVSKI: More transparent reporting of key issues?

MR DE'ATH: Yes.

MR TERNOVSKI: Particularly those that relate to right of entry?

MR DE'ATH: Yes.

MR TERNOVSKI: That was a big issue for the CFMEU, right-of-entry requests?

MR DE'ATH: Yes.

MR TERNOVSKI: In fact, many if not most requests from the CFMEU were right-of-entry requests?

MR DE'ATH: I'm not - I can't recall what they were, sorry.

MR TERNOVSKI: But you recall that it was a critical issue for the CFMEU?

MR DE'ATH: I do.

MR TERNOVSKI: And then if we blow up the last paragraph, Madam Operator, you see Ms Bancroft says:

"Your advice in relation to any critical impediments to operationalising this process within 14 days from the date of this letter would be most welcome."

MR DE'ATH: Yes.

MR TERNOVSKI: So is it fair to say this letter is saying the new triage process is going ahead?

MR DE'ATH: Yes.

MR TERNOVSKI: And if you can point to some specific problem with it, you've got 14 days?

MR DE'ATH: Yes.

MR TERNOVSKI: And of course, up to that point, the CFMEU, you would agree with me, is completely not engaged in the consultation process?

MR DE'ATH: Yes.

MR TERNOVSKI: And refused numerous requests to consult that we've been through them yesterday?

MR DE'ATH: Repeatedly, yes.

MR TERNOVSKI: Repeatedly. So up until 17 March, is it fair to say, Mr De'Ath, up until the 17th the OIR has repeatedly offered to consult?

MR DE'ATH: Yes.

MR TERNOVSKI: And on 17 March: "That's it. We've had enough. We're acting"?

MR DE'ATH: Yes.

MR TERNOVSKI: Note the date, 17 March, which is the day after you signed the brief.

MR DE'ATH: Yes.

MR TERNOVSKI: Can I now take you - I tender this document. Hang on, that's already in Ms Bancroft's statement; I withdraw that. Can I now take you to 27 March, which is the day before that meeting with Mr Ravbar where he called you a boofhead.

MR DE'ATH: Yes.

MR TERNOVSKI: Can I take you to document 29.

COMMISSIONER: Of the tender bundle?

MR TERNOVSKI: Of the tender bundle.

COMMISSIONER: Just remind me of the chronology. At what point were the procurement rights of Ms Bancroft suspended? Was that a month before this, February or something?

MR TERNOVSKI: It was in February - from memory it was about -

COMMISSIONER: I thought it was the 14th.

MR TERNOVSKI: From the 14th to 16th. I think 14th would be the speaking notes and the 16th is the email to the CFO confirming to the CFO that the delegation should be withdrawn. Mr De'Ath, that's right, isn't it, from your memory?

MR DE'ATH: Sorry?

MR TERNOVSKI: Ms Bancroft's delegation was suspended mid-February?

MR DE'ATH: Oh, if that is the date on that letter, correct.

MR TERNOVSKI: Have you got document 29?

MR DE'ATH: I do.

MR TERNOVSKI: Can we blow up -

COMMISSIONER: You can just tell - sorry, you go.

MR TERNOVSKI: Can we blow up firstly the title.

MR DE'ATH: Yes.

MR TERNOVSKI: Do you agree, Mr De'Ath, that this document contains two components, if you like: it's Ms Bancroft's executive performance agreement?

MR DE'ATH: Yes.

MR TERNOVSKI: And it also contains her mid-year review?

MR DE'ATH: Yes.

MR TERNOVSKI: And Ms Bancroft signs it on 13 March?

MR DE'ATH: Yes.

MR TERNOVSKI: Under "mid-year review" column. And you sign it on 27 March approving it?

MR DE'ATH: Yes.

MR TERNOVSKI: And you leave a comment, don't you, on the right-hand side, if we can blow up that comment, Madam Operator. "Supervisor's comments": that's you?

MR DE'ATH: Correct.

MR TERNOVSKI: And you say there:

> "Significant, necessary growth with your entry to government processes Kym."

MR DE'ATH: Yes.

MR TERNOVSKI: Is that fair to characterise this as expressing - or referring to Ms Bancroft having a learning curve coming from the private sector in adapting to government processes?

MR DE'ATH: Yes.

MR TERNOVSKI: And what you say about that is "significant, necessary growth"?

MR DE'ATH: Yes.

MR TERNOVSKI: So she's improving?

MR DE'ATH: Yes. Yes, she's improving.

MR TERNOVSKI: And then on the next:

> "Sound performance in most areas."

MR DE'ATH: Yes.

MR TERNOVSKI: But then you say:

> "But ongoing care, attention and due diligence necessary for HR and procurement processes."

MR DE'ATH: Yes.

MR TERNOVSKI: Procurement processes: that's the reference to the conflict issue?

MR DE'ATH: I'm not focusing on the alignment of dates, counsel assisting, but I believe that is highly likely what I was referring to.

MR TERNOVSKI: Well, you accept, don't you, that the referral to the CCC happened in February?

MR DE'ATH: Thank you. Thanks for that assistance. So yes.

MR TERNOVSKI: Okay. And the HR: that's a reference to the panel, is it?

MR DE'ATH: Yes.

MR TERNOVSKI: This is the second interview?

MR DE'ATH: It's broader than just that. It's in relation to any HR processes, for example, the movement of staff.

MR TERNOVSKI: Did you see movement of staff?

MR DE'ATH: Yep.

MR TERNOVSKI: Are you referring to Ms Burgess here again?

MR DE'ATH: Yes, clearly in my mind is broader HR processes.

MR TERNOVSKI: Is there a single document, Mr De'Ath, that records you making any complaint to Ms Bancroft, in any way, shape or form, about the process for moving Ms Burgess?

MR DE'ATH: I cannot recall any document, counsel assisting, sorry.

MR TERNOVSKI: I put it to you it doesn't exist.

MR DE'ATH: Well, you're quite possibly correct. I can't recall a document.

MR TERNOVSKI: And the reason it doesn't exist, Mr De'Ath, is because you never made any complaint about the process that Ms Bancroft followed to move Ms Burgess in the beginning, the process which was paused after the call from Mr Ravbar?

MR DE'ATH: Counsel assisting, in the course of my duties and my engagement with my direct reports, there are many, many things that are in conversation.

There are some things that are documented. But there are many, many things that are in conversation, far more than what would be documented. That is how the role operates.

MR TERNOVSKI: I took you yesterday to Ms Bancroft's evidence about how and why she paused the move of Ms Burgess.

MR DE'ATH: Yes.

MR TERNOVSKI: Are you disputing - and you will recall that she said - I'm summarising, but I can take to you the precise passage if you like - she said words to the effect of after she got this call from you, being new in the job, she decided to revisit the issue because she wanted to understand what was going on and why Mr Ravbar is calling you about somebody three levels below your level.

MR DE'ATH: Yes.

MR TERNOVSKI: Right. And what she does not mention is any conversation with you about there being any problem with the process?

MR DE'ATH: I must have been aware of it in some form or another. Counsel assisting, I appreciate your lines of inquiry on this matter, and I have tried to be speculative in my responses about what has likely occurred here, and I've been honest in my response about not recalling a phone call. Something has happened in there, and as a result the process has had to be commenced properly. I can't recall how that happened, but I have no reason to doubt that I was quite possibly involved in that somewhere.

MR TERNOVSKI: Mr De'Ath, you haven't mentioned any problem with the process around Ms Burgess being moved in your interview with the investigators, have you?

MR DE'ATH: I don't recall mentioning it, no.

MR TERNOVSKI: Ms Bancroft - you accept that Ms Bancroft's explanation for what happened was that she made a decision for the reasons I've just outlined. You accept that's her explanation?

MR DE'ATH: Yes, and if I may add, a deputy director-general would make that decision. It doesn't say that they haven't discussed it with anyone else.

MR TERNOVSKI: Mr De'Ath, can you point us to any problem with the process that Ms Bancroft had adopted when moving Ms Burgess the first time around? What was the problem?

MR DE'ATH: I don't - I don't believe that I recall what the problem was, but in essence, it would seem that a process wasn't followed.

MR TERNOVSKI: Where are you getting this from, Mr De'Ath?

MR DE'ATH: Well, I've read a lot of information.

MR TERNOVSKI: Can you point me to any document that - I've taken you to a lot of documents. Can you point me to any document that makes any reference to there being - from you to there being some problem with the process for removing Ms Burgess?

MR DE'ATH: On the spot, no. I'm doing my best to assist you with this. I just don't have a strong recollection.

COMMISSIONER: Isn't the true position this: that the reason that you gave yesterday in evidence for terminating Ms Bancroft included reasons that you'd never given before, and one of them was - is that right? They included reasons you'd never given before, before yesterday?

MR DE'ATH: Sorry, Commissioner, I'm not entirely understanding the question.

COMMISSIONER: You gave a number of reasons in your evidence yesterday that you'd never given ever before. Is that right or not?

MR DE'ATH: So I believe the evidence I gave was that my reflection on the initial statement was that having had my memory refreshed by a volume of documentation, that it occurred to me that actually there were a range of factors.

COMMISSIONER: Right, so the answer so my question is yes, there were some reasons you gave yesterday that you'd never given at any time before as explaining your decision to terminate Ms Bancroft? Yes? Is that right?

MR DE'ATH: Yes.

COMMISSIONER: One of those reasons is that you said - and this is at transcript 4939, lines 28 to 38:

> "I believe back in the reassigning of Helen Burgess we needed to make process adjustments in that as processes had not been followed, and I think I may have put into my interview about the incredible level of transaction between my office and particularly my executive director."

You said that yesterday, didn't you?

MR DE'ATH: Yes.

COMMISSIONER: And you'd never said that before?

MR TERNOVSKI: The first part of it.

COMMISSIONER: Yes. Is that right or not?

MR DE'ATH: Yes, it would appear so.

COMMISSIONER: And isn't what's going on now, where Mr Ternovski's taking you to these documents, you're trying to back-fill to prove up the reasons that you gave for the first time yesterday? Isn't that what's really going on?

MR DE'ATH: Commissioner, I don't agree with that.

COMMISSIONER: All right.

MR TERNOVSKI: Mr De'Ath, in relation to - I put to you that there was no problem with the process for moving Ms Burgess the first time around, and the reason why that process was paused was the call from Mr Ravbar.

MR DE'ATH: I - I - well, first of all, I've been very clear: I don't recall a call from Mr Ravbar. I acknowledge the phone record, and there was a conversation with Ms Bancroft. I don't recall the conversation. And somewhere in here, it has gone to a comprehensive process, and my reading of Ms - noting of Ms Bancroft's evidence is she outlines what that proper process is. Somewhere in there, there has been something happen where a process has not been correct and the proper process has been put into place.

MR TERNOVSKI: Mr De'Ath, in fairness, I put to you that this is simply not true.

MR DE'ATH: Well, I -

MR TERNOVSKI: You just made that up.

MR DE'ATH: Counsel assisting, I completely refute the suggestion that I have not been truthful. I completely refute that. I am doing my level best to work out what has happened in this situation that you are asking me about, and I have been absolutely, I think, candid and honest in terms of what I recall about that. I've been working very hard in my mind on this issue for you to try and work out what has happened here. Based on my experience, that is the conclusion that I have formed, and that sounds fair and reasonable to me.

MR TERNOVSKI: I'm going to leave this topic now and just go back to this comment there. Now, I suggest to you, Mr De'Ath, that what this document dated - on your signature, dated 27 March 2023, demonstrates, is that as of that 27 March, the day before the meeting with Mr Ravbar, you had not lost trust and confidence in Ms Bancroft.

MR DE'ATH: I - that would be a stretch. To you, I appreciate it may look like that this is expressing trust and confidence. In public service terms, that's a fairly significant entry I have made on this document.

COMMISSIONER: When you said yesterday that one of the reasons for terminating Ms Bancroft was you'd lost trust and confidence in her, was that a reason you'd ever given at any time ever before yesterday?

MR TERNOVSKI: It was in the interview.

COMMISSIONER: Oh, in the interview. So the first time was the interview.

MR TERNOVSKI: Yes. It wasn't in the statement; it was in the interview. But if assists, Commissioner, in the fullness of time, I propose to take Mr De'Ath to no fewer than eight explanations or non-explanations for the reasons of Ms Bancroft's dismissal that were provided by him or the department at various points in time.

COMMISSIONER: So you don't want me to continue to interfere with your examination?

MR TERNOVSKI: Yes, Commissioner. Mr De'Ath, I put to you that had you lost trust and confidence with Mr Bancroft on 27 March, you would not have signed this and you would not have written this. You disagree with this, do you?

MR DE'ATH: I do disagree with that.

MR TERNOVSKI: All right. I tender this document.

COMMISSIONER: Are there any objections? Executive performance and development agreement and assessment 2022 to 2023 re Kym Bancroft, dated or signed by Michael De'Ath 27 March 2023 will be exhibit CA -

MR TERNOVSKI: 34, I'm told.

COMMISSIONER: - 34. Thank you.

<EXHIBIT CA-34 EXECUTIVE PERFORMANCE AND DEVELOPMENT AGREEMENT AND ASSESSMENT 2022 TO 2023 RE KYM BANCROFT, SIGNED BY MICHAEL DE'ATH 27/3/2023

MR TERNOVSKI: For completeness, can I take you to document 32. And feel free to have a look at it, but what you'll find, Mr De'Ath, that's an email from your EA to Ms Bancroft on 28 March attaching the performance review.

MR DE'ATH: Thank you.

MR TERNOVSKI: You don't disagree with that?

MR DE'ATH: That's the process.

MR TERNOVSKI: I tender this document.

COMMISSIONER: Sorry, which tab?

MR TERNOVSKI: 32. And that should be CA-35, by your counting, Commissioner.

COMMISSIONER: Are there any objections? Email from Lisa Pennisi to Kym Bancroft, Tuesday 28 March 2023, attaching completed performance development plan - attaching completed PDP with mid-year review comments will be exhibit CA-35.

<EXHIBIT CA-35 EMAIL FROM LISA PENNISI TO KYM BANCROFT, TUESDAY 28/3/2023, ATTACHING COMPLETED PDP WITH MID-YEAR REVIEW COMMENTS

MR TERNOVSKI: Mr De'Ath, can I take you back to document 34 in the bundle, which is your file note of the meeting with Mr Ravbar on 28 March, because I now want to take you through what happened at that meeting on that day.

MR DE'ATH: Yes, certainly.

MR TERNOVSKI: I think you've already agreed this file note is accurate?

MR DE'ATH: Yes.

MR TERNOVSKI: Okay. And I think you've also agreed that this is the meeting - the 28 March meeting ended up being the meeting that Mr Ravbar had asked for back on the 15th. I've shown that you email exchange?

MR DE'ATH: Yes, I believe so.

MR TERNOVSKI: And then shortly after that meeting was arranged, on the 17th, Ms Bancroft sends out her letter -

MR DE'ATH: Yes.

MR TERNOVSKI: - saying triage was going ahead.

MR DE'ATH: Yes.

MR TERNOVSKI: And then you have this meeting on the 28th.

MR DE'ATH: Yes.

MR TERNOVSKI: Can we look at the file note now, Madam Operator and if we could on page 2 blow up the paragraph starting with "MR proceeded" and then the dot points that follow. MR - that's Michael Ravbar?

MR DE'ATH: Yes.

MR TERNOVSKI:

> "...proceeded to talk for approximately 20 minutes without stopping. MR was erratic in his communication, with continual inflammatory statements made towards MD..."

That's you?

MR DE'ATH: Yes.

MR TERNOVSKI: KB, that's Ms Bancroft?

MR DE'ATH: Yes.

MR TERNOVSKI: Ministers and government leaders?

MR DE'ATH: Yes. Completely out of control.

MR TERNOVSKI:

> "MR's use of inappropriate language stated the following."

There seems to be some typographical or grammatical errors there, but no matter. If we could just look at the dot points. CFMEU are planning to send more letters:

> "We have letters ready to go. We have met with other unions and what we will send depends on the outcome for today."

MR DE'ATH: Yes.

MR TERNOVSKI: So Ravbar is pretty angry; he's threatening you?

MR DE'ATH: Very threatening.

MR TERNOVSKI: Fourth dot point:

> "You have decided to insult us."

Referring to KB email regarding triaging:

"You have put a slur on the union. No one has ever won taking us on."

I want to break this down. The insult and slur that Mr Ravbar is referring to, that's the comment in Mr Bancroft's email of 6 March saying:

"Your approach of calling me directly puts worker safety at risk."

MR DE'ATH: I believe that is what he is referring to, yes.

MR TERNOVSKI: Which was a statement that you had agreed with?

MR DE'ATH: Absolutely.

MR TERNOVSKI: "No one has ever won taking us on": that's a direct threat, isn't it?

MR DE'ATH: Yes.

MR TERNOVSKI: And then if we - towards other dot points:

"We will go to the Premier. This is on you."

MR DE'ATH: Yes.

MR TERNOVSKI: Then if we go on to key issues raised, second dot point, second numbered point, second dot point, you see:

"Key issues raised: why has HB been moved? What is her role now?"

MR DE'ATH: Yes.

MR TERNOVSKI: That's a reference to Helen Burgess?

MR DE'ATH: Yes.

MR TERNOVSKI: That's Mr Ravbar, in effect, asking for Ms Burgess back?

MR DE'ATH: Yes. Sorry, counsel assisting, just for accuracy, I don't think he's asking for her back there, but you could certainly infer that from what is being stated.

MR TERNOVSKI: And if we go over the page, under the heading 2.50 pm -

MR DE'ATH: Yes.

MR TERNOVSKI: - you'll see that claim that I took you to before: Ms Bancroft corrupted the ED process.

MR DE'ATH: Yes.

MR TERNOVSKI: And then you'll see in the last full paragraph under that 2.50 subheading:

> "The room agreed..."

MR DE'ATH: Yes.

MR TERNOVSKI:

> "The room agreed we will move forward with the ED CFS recruitment. KP will remain on the panel."

That's Kurt Pauls?

MR DE'ATH: Yes.

MR TERNOVSKI: That's one of the accommodations that was made to the CFMEU that I took you through yesterday, putting Mr Pauls on the panel?

MR DE'ATH: Yes, I think it's referring to the second process now, isn't it?

MR TERNOVSKI: Yes.

MR DE'ATH: Yes.

MR TERNOVSKI: Well, I do want to ask you some questions about that, but I'll get back to that. But you see there's a reference there:

> "KP will remain on the panel, and OIR will identify another panel member instead of JC, given CFMEU suggest a perceived conflict."

MR DE'ATH: Yes.

MR TERNOVSKI: Who is JC? Is it Jasmine Cox?

MR DE'ATH: I would believe so.

MR TERNOVSKI: And the CFMEU wanted her removed?

MR DE'ATH: Yes.

MR TERNOVSKI: And you agreed to it?

MR DE'ATH: I believe we did at some point in time.

MR TERNOVSKI: Well, it says that in - in "the room agreed..."

MR DE'ATH: I have noted it, thank you.

MR TERNOVSKI: "We will identify member instead of JC, given the CFMEU suggest a perceived conflict." You didn't think this was actually a conflict, did you?

MR DE'ATH: The issue that was raised, if my recall is correct, it's about someone at an equivalent level being on a panel for that - that role. So again, we're back into, you know, public service processes, and I think there's a document that was referred to at some point in time outlining that process. So my recollection is, I'll say, poor, but I - I think that was the nature of the concern.

MR TERNOVSKI: Yes, but the point I'm making to you, Mr De'Ath, is there wasn't actually any problem with Jasmine Cox; it's just that the CFMEU were complaining about a perceived conflict?

MR DE'ATH: Yes, I think that's fair.

MR TERNOVSKI: So, in other words, it's not that you had agreed that there was a problem with Ms Cox, but rather that because the CFMEU were complaining about a perceived conflict, you decided it's best just to remove her from the panel?

MR DE'ATH: I just won't go quite that far in agreeing with that, because I'm unsure about something, in that I have a vague recollection at a point in time that was sighting of, I believe, what is called the determination in relation to these processes, and I can't recall what the outcome was of us considering that. So this may not be entirely fulsome of every single word. It's not entirely fulsome of every single word in that meeting. I actually cannot recall at this stage everything that's happened around that and why that was made. They certainly objected to her; it was very clear in that meeting they didn't want her there. All the specific details I'm a bit vague on.

MR TERNOVSKI: But can you recall - I understand you're vague on the details. Can you recall whether you thought that the concern, however expressed, was well founded, or it wasn't well founded?

MR DE'ATH: I can't recall.

MR TERNOVSKI: Okay. I put to you that it wasn't well founded.

COMMISSIONER: He can't recall.

MR TERNOVSKI: Okay. All right. Can I take you now to the subheading 2.55 pm.

MR DE'ATH: Yes.

MR TERNOVSKI: MD stated the meeting - time was allowing - the meeting time allowed was coming to a close and could take a few more minutes to discuss any further comments. MR commenced talking about the changes to the triaging process and lack of consultation.

MR DE'ATH: Yes.

MR TERNOVSKI: MD, that's you, stated there had been repeated offers to consult and he would put this in writing to the CFMEU.

MR DE'ATH: Yes.

MR TERNOVSKI: That's true, isn't it? There had been.

MR DE'ATH: Absolutely.

MR TERNOVSKI: And then Mr Ravbar stated, "You never consulted with us. You can expect rallies, blues, put it in writing, you are dishonest, a liar, you are deluded enough, you are a silly man."

MR DE'ATH: Yes.

MR TERNOVSKI: And then, Mr De'Ath, to your credit, you then closed the meeting?

MR DE'ATH: After a number of cautions, yes.

MR TERNOVSKI: And Mr Ravbar called you a boofhead on the way out?

MR DE'ATH: Yes, I was in no way prepared to tolerate this highly inappropriate bullying behaviour.

MR TERNOVSKI: Now, that meeting was scheduled - we've already taken you back on the 15th - before the triage letter went out?

MR DE'ATH: Noted.

MR TERNOVSKI: And Mr Ravbar, remember, has said to you he wanted to air grievances - I'm paraphrasing - about Ms Bancroft, and you invited her to come to that. Remember that?

MR DE'ATH: Yes.

MR TERNOVSKI: But it's become at least in part about triage?

MR DE'ATH: This meeting?

MR TERNOVSKI: Yes.

MR DE'ATH: That -

MR TERNOVSKI: That was the backup.

MR DE'ATH: That is what the file note absolutely reflects. It was a complete ramble.

MR TERNOVSKI: Okay. Can I -

COMMISSIONER: How did you deal with Mr Ravbar, Mr De'Ath? It seems a very - assuming this file note is accurate and it's not disrepresentative of his - or unrepresentative of his behaviour, how do - and those assumptions might not be correct, but how do you deal with someone like - or how did you, I should say?

MR DE'ATH: Commissioner, I mentioned before my approach to this in a form of, I think you have seen, significant attempts to engage the stakeholder - significant attempts - and to move where we could to accommodate things, to keep things as calm as we could, but my threshold of tolerance would be noted throughout this pattern of decreasing over time. The behaviour was not changing; in fact, the behaviour was escalating to the point that it had significantly escalated. I had made up my mind, going into this meeting, that if I was going to encounter this behaviour again, be it my staff there or just me, then I would be concluding this meeting. And I issued that caution on a number of occasions, and at a point in that meeting I took that action. I have no qualms in standing up to this man.

COMMISSIONER: Did you have - I think you said in relation to the difficulty in consulting about triaging, you'd - I'm putting words in your mouth, and tell me if I'm wrong - never seen anything like it. It was a nine out of 10 versus a three out of 10. What about this sort of behaviour? Had you ever seen anything like it before from other stakeholders?

MR DE'ATH: Oh, never in my entire career. In fact, I can't think of a person in my career outside of it where I've encountered this sort of behaviour. It's outrageous.

COMMISSIONER: And using that scale you used yesterday, how would you rate it compared to other misbehaviour or inappropriate behaviour that you've encountered in your career with stakeholders?

MR TERNOVSKI: I think you used a nine-point scale.

COMMISSIONER: 10-point scale, I think.

MR DE'ATH: It was a nine-point scale. I think I might have used the words "off the scale" at some point; I can't recall. Yes, I was probably being generous at nine, wasn't I?

COMMISSIONER: Much, much worse than anyone you've ever dealt with?

MR DE'ATH: Oh, unbelievable. This is highly inappropriate, threatening. There were people - I had staff in that room who were being exposed to this behaviour, and that was of extreme concern to me. In fact, I had general concerns overall about any exposure of any of my staff to this - this man, and this, I think - and you can certainly see why I asked for the file note to be drafted and my input to it, and it had absolutely escalated to a point where this wasn't - this is completely unacceptable and intolerable.

MR TERNOVSKI: Mr De'Ath, is it fair to say that after numerous attempts to consult with the CFMEU, this was actually the first meeting that they - you ended up having where triage was discussed with them? They've refused previous meetings, haven't they?

MR DE'ATH: They have refused previous meetings. What I can't answer definitively on that, counsel assisting, is I'm not sure about what other conversations were had, either - you know, there were a few phone calls from Michael at times, you know, maybe he's raised it with me. There were a few meetings on other occasions; maybe it was raised. But it would be fair to say that this was following where the decision had been made, and they had failed to be part of that in any way, shape or form. In fact, I would use the word "blatantly refused".

MR TERNOVSKI: And having blatantly refused to participate, they were now - Mr Ravbar was, to put it colloquially, blowing his lid off at you, wasn't he?

MR DE'ATH: Interesting language, counsel assisting. Personally, I felt on that day that that was the point at which Mr Ravbar was just out of control.

MR TERNOVSKI: Can I ask you one question, Mr De'Ath. If you look at the bottom of page 3, you see it says meeting closed approximately 3.05 pm.

MR DE'ATH: Thank you.

MR TERNOVSKI: Can I take you to document 3 at page 3, which is a call list extract.

MR DE'ATH: Yes.

MR TERNOVSKI: You see there it records a call from the minister's office to the shared line you had with Ms Pennisi?

MR DE'ATH: Yes.

MR TERNOVSKI: At 3.02 pm?

MR DE'ATH: Yes.

MR TERNOVSKI: Do you remember, did that call come during the meeting or afterwards?

MR DE'ATH: Yeah, I don't - I don't know. If I - if I can, I don't recall a call from the minister's office. What I did following that meeting - and I can't recall when I did it - I notified the minister's office about what had transpired in this meeting. Now, I believe I did that in person, but I'm not 100 per cent sure. So a call from the minister's office to my office - look, it could have been about anything, quite frankly.

COMMISSIONER: Your office was Level 37 of - do I call it the Tower of Power? Is that what I call 1 William Street?

MR DE'ATH: 1 William Street, Commissioner, yes.

COMMISSIONER: And where was the minister's office? On which level?

MR DE'ATH: Same level.

COMMISSIONER: Same level.

MR TERNOVSKI: All right. Mr De'Ath, can I now take you to document 33 of the tender bundle. And if we could firstly blow up the email on the first page, not including "Thank you".

MR DE'ATH: Sorry, counsel assisting, I'm just going through this in a bit of detail.

MR TERNOVSKI: Please.

COMMISSIONER: Perhaps the operator can put the email on the screen while Mr De'Ath is going through it.

MR DE'ATH: Thank you.

MR TERNOVSKI: When you're ready, I want to ask you some questions about that.

MR DE'ATH: Yes.

MR TERNOVSKI: So firstly, going back to the email, this is an email from you to Ms Bancroft and others on 28 March?

MR DE'ATH: Yes.

MR TERNOVSKI: Actually, I withdraw that. It's actually 29 March, because it's at 11.39 pm UTC. So if you add 10 hours to get Brisbane time, I think you get the morning of the 29th.

MR DE'ATH: Yes. So the meeting was on the 27th?

MR TERNOVSKI: On the 28th. That's the following morning, in other words.

MR DE'ATH: Oh, right. Thank you. Yes.

MR TERNOVSKI: And you attach a draft of your proposed response to Mr Ravbar?

MR DE'ATH: Yes.

MR TERNOVSKI: And if we could blow up the first and second paragraph. So it's fair to say in the first paragraph, you refer to Mr Ravbar's inappropriate behaviour?

MR DE'ATH: Yes.

MR TERNOVSKI: And then in the second paragraph you say:

> "The first matter we discussed was the current selection process for the ED."

That's the second round?

MR DE'ATH: Yes.

MR TERNOVSKI: Is it?

MR DE'ATH: I assume so, yes.

MR TERNOVSKI: Yes:

> "I am pleased we have reached agreement that the process will move forward."

MR DE'ATH: Yes.

MR TERNOVSKI:

"Despite there being no breach of the Directive in the current process (detail) Kym and I are comfortable with replacing one of our staff on the panel given you claim a perceived conflict of interest."

MR DE'ATH: Thank you for that clarification. So that - I did refer to the directive earlier, and so that clears - I think that clears that up for me.

MR TERNOVSKI: So you accept was your view was the process was compliant?

MR DE'ATH: Yes, that would indicate that I was saying the process was compliant.

MR TERNOVSKI: But nonetheless, you're removing - replacing one of our staff on the panel. That's a reference to JC, Jasmine Cox, we saw before?

MR DE'ATH: Yes, I believe so.

MR TERNOVSKI: And you're removing her because of a perceived - perceived by whom ? By the CFMEU?

MR DE'ATH: Yes.

MR TERNOVSKI: And even though there's no breach of the process as far as you were concerned, you're nonetheless agreeing to remove her from the panel?

MR DE'ATH: Yes.

MR TERNOVSKI: Another accommodation?

MR DE'ATH: Yes.

MR TERNOVSKI: Then if we go to the - skip the next paragraph and blow up the paragraph "The first concern". I don't need to read it out to you, but would it be fair to say that you proposed to push back pretty strongly about the idea there was some lack of consultation?

MR DE'ATH: Absolutely.

MR TERNOVSKI: And you've said a number of times that claim was - I'm paraphrasing - was baseless?

MR DE'ATH: Yes.

MR TERNOVSKI: And so it's also fair to say, isn't it, Mr De'Ath, that as of the date of this document, which is the morning of the 29th, you're pushing ahead with the triage?

MR DE'ATH: Yes.

MR TERNOVSKI: And there's certainly nothing in this draft about any pause of the triage, is there?

MR DE'ATH: No. I think we make reference I think at some point, don't we, that we will accommodate feedback and so on, yes.

MR TERNOVSKI: I tender this document.

COMMISSIONER: Are there any objections? Email from Michael De'Ath to Kym Bancroft, Kate Stuchbury, Nick Seeley, re draft letter to CFMEU dated evening of 28 March 2023, Greenwich Mean Time, will be exhibit CA -

MR TERNOVSKI: 36.

COMMISSIONER: - 36.

<EXHIBIT CA-36 EMAIL FROM MICHAEL DE'ATH TO KYM BANCROFT, KATE STUCHBURY, NICK SEELEY, RE DRAFT LETTER TO CFMEU DATED EVENING OF 28/3/2023

MR DE'ATH: May I clarify something, counsel assisting?

MR TERNOVSKI: Go on.

MR DE'ATH: And you may be coming to this, so please don't hesitate to stop me. I don't know that letter was ever sent.

MR TERNOVSKI: For present purposes, I'm only taking you to it -

MR DE'ATH: Yes.

MR TERNOVSKI: - as an illustration of the position that you held on the 29th.

MR DE'ATH: Yes. Thank you.

MR TERNOVSKI: I want to ask you about some claims you made on the interview to make sure I understand them correctly. I think you claimed at the interview with the investigators that there was no pressure from above you in relation to - to the question of whether to dismiss Ms Bancroft?

MR DE'ATH: Correct.

MR TERNOVSKI: And in relation to triage?

MR DE'ATH: Correct. But - sorry, can you clarify the second part?

MR TERNOVSKI: As I understand your interview - please correct me if I'm wrong, and I can take you to the relevant passage - you claimed at the interview that there was no pressure or influence from above, that is, from the minister or the minister's office, in relation to - I think first I put to you - but let's just make sure we're clear. You claim there was no pressure from the minister's office or the minister on you in relation to the dismissal of Ms Bancroft?

MR DE'ATH: Quite correct.

MR TERNOVSKI: And you claim it was your decision alone?

MR DE'ATH: Yes.

MR TERNOVSKI: And you also claim that there was no ministerial pressure in relation to the pause of the triage. Is that what you claim?

MR DE'ATH: Yes.

MR TERNOVSKI: And you also claimed at the interview that the minister - and I can take you to the right passage if there's any issue about it - you said:

> "She was always very clear that operational matters were my responsibility."

MR DE'ATH: Yes.

MR TERNOVSKI: And you claim that the only contact you had with the minister's office about Ms Bancroft was to tell them of the termination?

MR DE'ATH: Yes.

MR TERNOVSKI: You stand by those claims, do you?

MR DE'ATH: Yes. That is my recollection.

MR TERNOVSKI: All right. Let's now - so it went on 29 March. Let me now take you to 3 April.

MR DE'ATH: Yes.

MR TERNOVSKI: Did you know, Mr De'Ath, that the minister was meeting with the building unions that afternoon, on 3 April?

MR DE'ATH: I can't recall that.

MR TERNOVSKI: Can I take you to document 22, please.

MR DE'ATH: Thank you.

MR TERNOVSKI: You'll see this is a meeting invite for 3 April.

MR DE'ATH: Yes.

MR TERNOVSKI: And the times are given in UTC again, unhelpfully.

MR DE'ATH: Noted.

MR TERNOVSKI: If we add 10 hours, we get 1630 to 1715, in other words, 4.30 to 5.15 in the afternoon.

MR DE'ATH: Thank you.

MR TERNOVSKI: And you see that the venue is minister's boardroom, Level 37?

MR DE'ATH: Yes.

MR TERNOVSKI: That's your level?

MR DE'ATH: Yes.

MR TERNOVSKI: And you see the invitees include Mr Ravbar and Mr Ong?

MR DE'ATH: I do.

MR TERNOVSKI: Advisers Katelyn and Sam. That's Ms Dougherty - Katelyn is Ms Dougherty?

MR DE'ATH: Yes.

MR TERNOVSKI: And then if you go to the next page -

COMMISSIONER: Who's Ms Durham? I thought she was a member of the Fair Work Commission.

MR TERNOVSKI: She was, Commissioner. Let me ask Mr De'Ath that. At that point, what was Sharon Durham's position?

MR DE'ATH: Yes, so interesting question. Sharon Durham was the chief of staff. I can't remember the date of the changeover. She went off to another role.

Katelyn Dougherty was the industrial relations adviser and became the chief of staff. The dates I'm unsure about.

MR TERNOVSKI: Is it a fair inference that given Ms Durham is still there, that was before she was appointed to the Fair Work Commission?

MR DE'ATH: I think that's fair, yes.

MR TERNOVSKI: Now, if you go back - there's two versions - two copies of that document that show different information in metadata. So if you go to the next page, you will see there the date and time when the invitation was actually sent from the minister's office.

MR DE'ATH: So this is page 2?

MR TERNOVSKI: Page 2. If we could blow that up, Madam Operator.

MR DE'ATH: So if I've understood you correctly, counsel assisting, if I may -

MR TERNOVSKI: Yes, go on.

MR DE'ATH: Are you indicating - these are not my meetings, obviously.

MR TERNOVSKI: No, no, no.

MR DE'ATH: But you're indicating a meeting proposed on 15 March.

MR TERNOVSKI: Yes, that's right.

MR DE'ATH: Are you suggesting it actually took place on 4 April? Two meetings?

MR TERNOVSKI: No, what this document shows and what I'm putting to you is that on 15 March at 12.10 pm the invite was sent for 3 April and those times.

MR DE'ATH: Oh, thank you. Thank you.

MR TERNOVSKI: You don't - obviously that's not your meeting. You don't disagree with that. But I just want to point out one interesting thing: If you look at that second page, you see it was sent on 15 March at 12.10 pm?

MR DE'ATH: Okay.

MR TERNOVSKI: You see that?

MR DE'ATH: I do.

MR TERNOVSKI: Now, if we go back to document 23, and if we go to the second email on that page -

MR DE'ATH: Yes.

MR TERNOVSKI: - you see that's - that meeting invite is sent about 10 minutes - from the minister's office is sent about 10 minutes after the letter from Mr - email from Mr Ravbar arrives to you at 11.55 am?

MR DE'ATH: Right. Yes. Can I just clarify where in there - I'm just trying to get the chronology right here - the meeting, the explosive meeting with Mr Ravbar and co was?

MR TERNOVSKI: That was 28 March.

MR DE'ATH: Oh, okay. Thank you.

MR TERNOVSKI: Yes. So on the 15th, if you look at this document, you see on 15 March, at 11.55 am, the email arrived from Mr Ravbar or Ms Collie on behalf of Mr Ravbar?

MR DE'ATH: Yes.

MR TERNOVSKI: And that's the letter I've taken you to where Ravbar, you might recall, threatens to go to the minister?

MR DE'ATH: Yes.

MR TERNOVSKI: And then if we go back to document 22, second page, you'll see that 10 minutes after that email arrives threatening to go to the minister, the minister's office sends an invite to the CFMEU and the ETU to meet for the - on 3 April.

MR DE'ATH: Thank you.

MR TERNOVSKI: I tender document 22.

COMMISSIONER: Are there any objections? How do I describe this document?

MR TERNOVSKI: A meeting invite sent on 15 March 2023, organising a meeting for 3 April, between Mr Ravbar and various other union officials and the minister's office, I think it's probably fair to say.

COMMISSIONER: How do you get Ravbar in the invite?

MR TERNOVSKI: Well, if you go to page 1 of document 22, Required Attendees, you will see - well, on my redacted version, unredacted version, I see Mr Ravbar's email address. We might need to produce another version of this document that unredacts the email address. This may be a question for Mr O'Grady, but I would assume that Mr Ravbar no longer has that email address and there should therefore be no issue with making it public, but perhaps we'll come back to that administrative issue.

COMMISSIONER: If you want to come back and deal with this tender at some later time, Mr Duffy - sorry, you're already standing up. Sorry.

MR DUFFY: I was going to say this: the copy that I have, the only - it doesn't include any reference to Mr Ravbar at all. It's entirely redacted. It refers to a Mr Peter Ong, who I think is with the ETU. I don't know who some of these others are.

COMMISSIONER: Mine has no reference to Mr Ravbar either. Maybe we'll just mark this -

MR TERNOVSKI: Mark this for identification, Commissioner?

COMMISSIONER: Yes, mark it for further identification. You can come back to it.

MR TERNOVSKI: I can assist Mr Duffy, because I think I understand what the issue is. In accordance with non-publication order 1, the general process of the Commission is to redact all email addresses. And normally that doesn't cause any difficulties because the name is still there, just the email address is redacted. But in this instance, with Mr Ravbar's email address, there is no name, just the email address, and so the thing is wholly redacted and you can't actually see that it went to Mr Ravbar, which is why we need an unredacted version.

COMMISSIONER: Yes. I think we should tender an unredacted version. We don't even need to mark this, do we? You'll just tender an unredacted version at some point which will properly describe the invitees and the required attendees.

MR TERNOVSKI: Thank you, Commissioner. I'll come back to that. Can I also show you, Mr De'Ath, a ministerial diary entry for that day, which you'll find at document 36.

MR DE'ATH: I have the document.

MR TERNOVSKI: And if you look under 3 April, you see there's an entry starting with Peter Ong?

MR DE'ATH: I see that.

MR TERNOVSKI: And it includes Mr Ravbar.

MR DE'ATH: Noted.

MR TERNOVSKI: The description is Portfolio Matters, and you'll see that there's no one from the department.

MR DE'ATH: That's right.

COMMISSIONER: What are we on? Number -

MR TERNOVSKI: Document 36.

COMMISSIONER: Something's a bit strange, isn't it? If you go up that page - it might all be fine, but it looks like at this stage, Sharon Durham is a commissioner of the Fair Work Commission. She has a swearing-in ceremony. So maybe she was invited on 15 March, but on 3 April, even though a required attendee, she didn't attend, because at that stage it looks like she's a commissioner of the Fair Work Commission.

MR TERNOVSKI: Commissioner, that's possible. Nothing turns for our purposes on Ms Durham's attendance or non-attendance. Suffice it to say, Mr De'Ath, you agree that based on this document, the minister - well, firstly the minister personally, because it's her diary - do you agree with that?

MR DE'ATH: Yes. I have no reason to dispute that.

MR TERNOVSKI: And she had met with Mr Ong and Mr Ravbar on 3 April without departmental officials?

MR DE'ATH: Yes, and can I add, I actually can't recall that I ever met the minister and with that union. I cannot recall ever doing that.

COMMISSIONER: Met with who, sorry?

MR DE'ATH: I don't recall ever meeting with the minister and that union.

COMMISSIONER: Which union, sorry?

MR DE'ATH: The CFMEU.

MR TERNOVSKI: And, Mr De'Ath, if it assists, this is also what you said in the interview.

MR DE'ATH: Correct.

MR TERNOVSKI: That you don't recall meeting the minister with the union in the one room.

MR DE'ATH: I don't recall.

MR TERNOVSKI: I tender this document.

COMMISSIONER: Any objections? Ministerial diary, Minister for Education, Minister for Industrial Relations, Minister For Racing, the Honourable Grace Grace MP, 1 April 2023 to 30 April 2023 will be exhibit CA -

MR TERNOVSKI: 37, Commissioner.

COMMISSIONER: - 37.

<EXHIBIT CA-37 MINISTERIAL DIARY, MINISTER FOR EDUCATION, MINISTER FOR INDUSTRIAL RELATIONS, MINISTER FOR RACING, THE HONOURABLE GRACE GRACE MP, 1/4/2023 TO 30/4/2023

MR TERNOVSKI: Now, do you - if we go back to - I can take you to it if you don't recall the specifics, but do you recall that meeting invite that we just saw was for 3 April, 4.30 to 5.15 pm? Have to add 10 hours to the UTC times.

MR DE'ATH: Okay, yes.

MR TERNOVSKI: Do you remember that?

MR DE'ATH: Yes.

MR TERNOVSKI: Just to be really sure, I'll just take you to document 22 again, and if we just blow up the start and end time, you see 3 April UTC, plus 10 hours, 4.30 pm.

MR DE'ATH: Thank you.

MR TERNOVSKI: And 7.15 plus 10 hours, 1715, 5.15 pm on 3 April.

MR DE'ATH: Thank you.

MR TERNOVSKI: Right. If we now go to the call list, which is document 3, and go to page 4 of that document.

MR DE'ATH: Thank you.

MR TERNOVSKI: You'll see at 5.38 pm there's a call from Ms Dougherty to your mobile?

MR DE'ATH: Yes, I see that.

MR TERNOVSKI: That's 23 minutes after the meeting with the unions was due to end?

MR DE'ATH: Yes.

MR TERNOVSKI: 5.15 pm? Okay. I want to ask you about that call, but before I do, I want to take you to the next document, which is document 37. So hold that thought.

MR DE'ATH: Right.

MR TERNOVSKI: The meeting is scheduled to end at 5.15 pm, and at 5.38 pm you get a call for two minutes from Ms Dougherty?

MR DE'ATH: Yes, thank you.

MR TERNOVSKI: All right. Go to document 37, please, in the bundle.

MR DE'ATH: Yes.

MR TERNOVSKI: And again, it's in this dual form, that is, page 1 shows when the meeting was scheduled for, and the next page shows when the invite was sent.

MR DE'ATH: Yes.

MR TERNOVSKI: So you'll see if you go to page 2 of document 37, there's a subject:

> "Catch up with Michael De'Ath & Minister Grace."

MR DE'ATH: Yes.

MR TERNOVSKI: And it was sent on Monday 3 April at 5.38 pm.

MR DE'ATH: Thank you.

MR TERNOVSKI: Which is, to the minute, when Ms Dougherty called you.

MR DE'ATH: I note that.

MR TERNOVSKI: And you see if you go to page 1 - and Madam Operator, if we can blow up the header on page 1 of document 37 - you'll see that's a meeting invite for 4 April for you -

MR DE'ATH: Yes.

MR TERNOVSKI: - to meet with the minister at 5.30 pm.

MR DE'ATH: Yes.

MR TERNOVSKI: Once you add the - again, you do the exercise of adding 10 hours. Okay. I tender document 37.

COMMISSIONER: Just before you do - Mr De'Ath, at this stage, Ms Sharon Durham's not on the attendee list, presumably because she's a commissioner of the federal Fair Work Commission by that stage. Ms Dougherty, who you said became the chief of staff, is there. Just tell me who Peter Lloyd is and what's the reference to McConnel Electorate Office?

MR DE'ATH: So I may be able to assist here. So I think Mr Lloyd was a - look, I'm not sure. He may have been a - he was - I think he was an adviser of some description. But in the entire tenure of working with Minister Grace, I never attended a meeting at her electorate office.

MR TERNOVSKI: And, Commissioner, to clarify, if we look at that meeting invite, doc 37, if we blow up the header, Madam Operator, you'll see that the location is listed as "minister's office".

COMMISSIONER: Are there any objections to this document? Meeting invitation from Hayley Lockyer; organiser, Grace Grace; location, minister's office; subject, catch up with Michael De'Ath and Minister Grace, 4 April 2023, 7.30 am Greenwich Mean Time -

MR TERNOVSKI: Yes. CA-38, Commissioner.

COMMISSIONER: - will be exhibit CA-38.

<EXHIBIT CA-38 MEETING INVITATION FROM HAYLEY LOCKYER; ORGANISER, GRACE GRACE; LOCATION, MINISTER'S OFFICE; SUBJECT, CATCH UP WITH MICHAEL DE'ATH AND MINISTER GRACE, 4/4/2023, 7.30 AM GREENWICH MEAN TIME

MR TERNOVSKI: I note the time, Commissioner. I was proposing to ask Mr De'Ath a couple more questions about this, then move on to the next timeframe. I note that we're going, unfortunately, much - significantly slower than I had hoped. So I foreshadow that I might request, respectfully, Commissioner, that we sit till 4 o'clock today.

COMMISSIONER: How are you going, Mr De'Ath? Would you like the full hour for a break? Or would you like to keep going?

MR DE'ATH: Commissioner, I don't feel that I need the full hour, but I'm happy to acquiesce to whatever you decide. I'm happy to keep going to - I appreciate that you're running behind and that you will want to get through this.

COMMISSIONER: But it's a difficult examination for you, and I don't want to put you at a disadvantage, so we can always, if Mr Ternovski doesn't finish today, continue tomorrow and put some other witnesses off. I don't want you to feel like you're under any pressure to have to answer these questions, which are becoming increasingly more difficult, under some sort of time pressure.

MR DE'ATH: Commissioner, I appreciate your consideration of that. I'm okay.

COMMISSIONER: Thank you.

MR TERNOVSKI: Mr De'Ath, with the benefit of that timing I just taken you through, meeting with the minister's office, shortly thereafter, call from Ms Dougherty to your personal mobile -

MR DE'ATH: Yes.

MR TERNOVSKI: - followed up to the minute by an invite to the minister's office -

MR DE'ATH: Yes.

MR TERNOVSKI: - with the benefit of that chronology, Mr De'Ath, I suggest to you that Ms Dougherty rang you about the union's meeting with the minister.

MR DE'ATH: There is one recollection I have about all of this, and I have in my evidence earlier said that I had advised the minister's office of what had happened in that meeting.

MR TERNOVSKI: The 28 March meeting, you're talking about?

MR DE'ATH: Yes.

MR TERNOVSKI: This is the boofhead comment.

MR DE'ATH: Correct, and the behaviour. Now, I'm sorry, I can't recall whether I spoke directly to the minister about that or Ms Dougherty or whoever I spoke to. I recall doing it, and I can't remember if it was on the phone or in person, but it was important to me that I did that. And I recall being informed, either by Minister Grace or by her office, that that had been addressed in a meeting with the CFMEU. Now, it is - it is quite possible that Ms Dougherty was ringing to talk to me about that, but I just can't be certain about what that call was about. I just know that I was informed that - and Minister Grace was very, can I say, good about this. Where we were facing challenges, I'd inform them of her. She would

from time to time, I believe, raise the issues with them directly herself. So that's all I can recall.

MR TERNOVSKI: Commissioner, assuming we are at some point going to break for lunch, from my point of view, this would be a convenient time, because I'm about to go into another timing sequence.

COMMISSIONER: The working arrangement being on Level 37 together, was it a sort of Seinfeld experience where you just pop into each other's office, or was there much more formality about it whereby you'd have to make an appointment and go and see the minister or her staff?

MR DE'ATH: In relation to the minister, it would be extremely rare for her to have come round to my office, extremely rare. I think it may have happened on one or two occasions and I can't recall in relation to what. In relation to her office, it would not have been unusual for me or my office staff to wander round to her, to her staff, to engage, arrange something. It was very rare for me to do that. So that's - that's generally - I think there is a - a need to respect the separation there, and so, generally, formality would have been the approach.

COMMISSIONER: Normally you'd have a diary meeting?

MR DE'ATH: Correct.

COMMISSIONER: That's with you and the minister. And what about you with the minister's staff?

MR DE'ATH: I would meet on a reasonably regular basis, maybe every few weeks, once a month, with the chief of staff, where we would just check in with each other about, you know, all manner of things. It wasn't a - it's not a decision-making meeting; it's a check-in on anything that might be going. And as I reminded the inquiry yesterday, you know, that would cover across three portfolios. Generally, those conversations were about the education portfolio mostly.

COMMISSIONER: And you're saying your staff. Is that Mr Seeley and Ms Stuchbury? Is that right?

MR DE'ATH: It'd be Mr Seeley and Ms Pennisi.

COMMISSIONER: Ms Pennisi.

MR DE'ATH: Although - sorry, Commissioner.

COMMISSIONER: No, you go.

MR DE'ATH: Although Ms Stuchbury did, I believe, act in Mr Seeley's role for a period of time, a short period of time when he was on leave.

COMMISSIONER: And they might go and pop in without a diary invite to see the chief of staff or the IR adviser or some other adviser?

MR DE'ATH: Correct.

COMMISSIONER: Presumably that's part of the rationale for being co-located on the same floor together, that there is the capacity, when you need to, to be able to meet both formally and informally?

MR DE'ATH: I would agree with that, Commissioner, and in coming into this role, my initial reaction to knowing that that was the arrangement was a bit of a concern, because I am a, you know, pretty strictly Westminsterial, non-politically aligned public servant, and so that looked close to me, but actually I think it worked well.

MR TERNOVSKI: Mr De'Ath, given what transpired - I'm asking to you speculate, based on your experience with Mr Ravbar. Based on what transpired on 28 March in the meeting with you -

MR DE'ATH: Yes.

MR TERNOVSKI: - including threats to go to the minister, do you accept that it's overwhelmingly likely that Mr Ravbar raised the triage issue when he met the minister on 3 April?

MR DE'ATH: I think you're aware I don't know what Mr Ravbar raised with the minister. My experience with working with Minister Grace in relation to the CFMEU, that she was pretty hard nosed with them, and very firm. Hence, I think she must have taken up the issue on his behaviour with our staff. As for anything else, I'm sorry, it would be absolute speculation. They would perhaps have talked about all manner of things. It's - it's probably seemingly to me a political meeting, not one that I would be particularly conscious of as a public servant.

MR TERNOVSKI: Mr De'Ath, I suggest to you that it is inconceivable, given Mr Ravbar's attitude to triage and what had transpired on 28 March, that he would not have raised triage with the minister on 3 April.

MR DE'ATH: I'm sure he did.

MS HOIBERG: I object to that question.

COMMISSIONER: I think there's two objections. I'll hear both of them.

MS HOIBERG: Sorry. My objection, Commissioner, is that it's asking Mr De'Ath to speculate about something that he's already given evidence about (indistinct).

COMMISSIONER: Mr Duffy?

MR DUFFY: I have nothing to add to that. The objection was really obvious, I would have thought, Commissioner.

COMMISSIONER: Do I really need to hear you in defence of the question?

MR TERNOVSKI: No, I can withdraw the question, Commissioner.

COMMISSIONER: Is that a convenient time?

MR TERNOVSKI: From my point of view it is, Commissioner.

COMMISSIONER: We'll adjourn till 2 pm.

<THE HEARING ADJOURNED AT 1.08 PM

<THE HEARING RESUMED AT 2.00 PM

MR TERNOVSKI: Commissioner, can I raise a housekeeping issue with you before I go back to Mr De'Ath.

COMMISSIONER: Mmm.

MR TERNOVSKI: It's been pointed out to me that Mr De'Ath's legal representatives do not have a copy currently of Mr McKay's second statement.

COMMISSIONER: Right.

MR TERNOVSKI: The reason why that happened is Mr De'Ath's legal team has not - have not - to be clear, I'm not attributing blame or anything; I'm just explaining what happened - hasn't sought leave to appear. They don't need leave to appear while Mr De'Ath is giving evidence. However, because they have not sought generally leave to appear, they haven't been included on the list of parties to whom the statement was distributed.

COMMISSIONER: I see.

MR TERNOVSKI: So obviously they need to have the statement. One way to achieve that would be to - you can probably just completely remove the non-publication order as far as it applies to Mr McKay, the second statement. There's no reason, it seems to me, for that to be confidential any more, and I'm going to refer Mr De'Ath to some documents within that statement anyway.

COMMISSIONER: All right. Well, why don't you get Ms Sacco to draft an order for me to sign to that effect?

MR TERNOVSKI: Yes. We will prepare that now and perhaps in - when that's ready, perhaps ask for a brief adjournment so that you could sign it and then we can provide the statement.

COMMISSIONER: Well, I can just say that I'll make that order orally, and we'll deal with the signing later.

MR TERNOVSKI: Yes.

COMMISSIONER: And then you can provide the statement now to Ms Hoiberg, having made the order orally.

MR TERNOVSKI: Thank you. If you're content with that course, Commissioner, I'll ask Mr Karen to send the statement now.

COMMISSIONER: Is that a convenient course, Ms Hoiberg?

MS HOIBERG: As from my perspective, yes, Commissioner.

COMMISSIONER: Very well.

MR TERNOVSKI: Mr Karen will do so. Now, Mr De'Ath, I want to go back to the triage system and to take you through some of the sequence of events in April. Before I do that, can I just ask you a further couple of questions about that pressure tactic you described - well, you referred to in your evidence with the CFMEU calling Ms Bancroft directly. That pressure tactic continued under Mr McKay, didn't it?

MR DE'ATH: I believe so.

MR TERNOVSKI: And you knew at the time that they were calling him directly?

MR DE'ATH: I believe I did.

MR TERNOVSKI: Can I take you to document 39 of the bundle. If you could blow up firstly the covering email, just the header and the body, without the signature. I'll let you read the document, and then I'll ask you some questions about it.

MR DE'ATH: Thank you. I believe we've referred to this document before, yes.

MR TERNOVSKI: Now, you see that's an email from Mr Ravbar - I'll take you to another version of that email on the following day, but on 4 April, it's just addressed to you?

MR DE'ATH: Yes.

MR TERNOVSKI: And it's sent to you, if you have a look at - it's 5.46 am UTC?

MR DE'ATH: Sorry. Yes, I see that.

MR TERNOVSKI: And converted to Brisbane time, that would be 3.46 pm?

MR DE'ATH: Thank you.

MR TERNOVSKI: Now, if we look at the letter itself, you'll see that if we blow up the first paragraph on page 2 of document 39, which is the body of the letter -

MR DE'ATH: Yes.

MR TERNOVSKI: - you see although it's a letter from Mr Ravbar he says:

> "We are responding to you as the Building Trades Group..."

MR DE'ATH: Yes.

MR TERNOVSKI:

> "...as the proposed triaging process..."

MR DE'ATH: Yes.

MR TERNOVSKI: "...effects" - I think that should be an A:

> "...affects all of our members and construction workers generally."

Do you see that?

MR DE'ATH: Yes, I do.

MR TERNOVSKI: That letter is sent the day after the unions met the minister.

MR DE'ATH: Thank you.

MR TERNOVSKI: Now, see under the heading Temporary Process, if we could blow up, Madam Operator, the first two paragraphs under Temporary Practices, and you'll see there Mr Ravbar describes the old process:

"As you would be aware, for approximately six years..."

Pausing here, six years from 2023 takes us back to 2017.

MR DE'ATH: Okay.

MR TERNOVSKI:

"...for approximately six years a process was in place whereby a union representative of a construction worker would contact the director, construction, compliance and field services, who would appropriately action a work health and safety complaint."

Now, that's referring to the system of contacting Ms Burgess, isn't it?

MR DE'ATH: Yes, I believe to.

MR TERNOVSKI: And then the next paragraph:

"As a group, it is our position that it was not necessarily to change this longstanding practice."

MR DE'ATH: I think that view has been made painfully obvious on many occasions.

MR TERNOVSKI: They want Burgess back, Ms Burgess back, don't they?

MR DE'ATH: Absolutely.

MR TERNOVSKI: Then the fourth paragraph, I think:

"We support the position that the CFMEU has adopted..."

Of course, it's a letter from Mr Ravbar, so he supports his own position:

"...being that the union representatives call the deputy director-general directly to ensure that work health and safety complaints are appropriately actioned since the process was changed."

So that's the same pressure tactic I referred to, continuing to call Ms Bancroft?

MR DE'ATH: Completely reckless.

MR TERNOVSKI: Sorry, what did you say, Mr De'Ath?

MR DE'ATH: Sorry, completely reckless, yes.

MR TERNOVSKI: Reckless because of the danger to worker safety?

MR DE'ATH: Correct.

MR TERNOVSKI: And then if we blow up two paragraphs just above Triaging Process, Madam Operator, you see Mr Ravbar says:

> "You have previously suggested that inviting our unions to meet with you satisfies your requirement to consult. This suggestion is rejected."

And the next paragraph:

> "You are aware that it is our position that the longstanding practice be reintroduced and, if you wanted to discuss any challenges to implementing that practice, we are available to do so."

So the position is "we want Ms Burgess back".

MR DE'ATH: Well, the first para you referred to is just completely bizarre. The second para you refer to certainly makes it clear they want to go back to the old world. It doesn't specifically mention Ms Burgess, but I - I accept your suggestion that that is what they want.

MR TERNOVSKI: And the way that Mr Ravbar is putting it is sort of the onus is on you to demonstrate why there is any problem with that process -

MR DE'ATH: Yes, that's right.

MR TERNOVSKI: - that they want from your department?

MR DE'ATH: Yes. Incredible.

MR TERNOVSKI: Then if we go to the next page under Your Inappropriate Conduct, would you agree it's fair to characterise what's there as an attack on Ms Bancroft about her 6 March email?

MR DE'ATH: The first para?

MR TERNOVSKI: Under Your Inappropriate Conduct.

MR DE'ATH: Yes. Let me just read it, please. My read of that paragraph is they're just saying "you haven't responded".

MR TERNOVSKI: But what it's talking about is still the 6 March letter, where Ms Bancroft made the so-called slur.

MR DE'ATH: Mmm-hmm.

MR TERNOVSKI: And then the response of 7 March, where the union, as you will recall, demanded that be withdrawn.

MR DE'ATH: Yes. Thank you, I recall.

MR TERNOVSKI: At the interview, Mr De'Ath - and again, please tell me if you'd like me to take you to the relevant passages - at the interview you said in relation to this letter, and I quote:

> "That is just unbelievable, quite frankly, and again a failure to see the impact on health and safety of workers."

Do you recall saying that?

MR DE'ATH: Yes.

MR TERNOVSKI: And you continue to stand by that?

MR DE'ATH: Yes.

MR TERNOVSKI: This was - this is my language, not yours - an outrageous letter, wasn't it?

MR DE'ATH: Completely outrageous.

MR TERNOVSKI: And you certainly didn't agree with the claims the CFMEU was making in that letter.

MR DE'ATH: No, I didn't.

MR TERNOVSKI: Including the claims about some supposed failure to consult.

MR DE'ATH: Absolutely not.

MR TERNOVSKI: I tender this document, Commissioner.

COMMISSIONER: Are there any objections? Email, Jacqui Collie to Michael De'Ath; subject, correspondence; Tuesday 4 April 2023, will be exhibit CA -

MR TERNOVSKI: 39.

COMMISSIONER: - 39.

<EXHIBIT CA-39 EMAIL JACQUI COLLIE TO MICHAEL DE'ATH; SUBJECT, CORRESPONDENCE; TUESDAY 4/4/2023

MR TERNOVSKI: Now, Mr De'Ath, you would agree, wouldn't you -

COMMISSIONER: Just remind me, Mr Ternovski, where are we in the chronology? We're about two weeks from Ms Bancroft - about two and a half weeks?

MR TERNOVSKI: Yes, that's right. We're getting there, Commissioner, but there is a number of documents I would like to see Mr De'Ath to get there. Mr De'Ath, nothing in this letter provides any genuine, legitimate reason to pause the triage, is there?

MR DE'ATH: I don't believe so, no.

MR TERNOVSKI: And if we could briefly look at KSB-45, which is attachment 45 to Ms Bancroft's statement -

MR DE'ATH: Yes.

MR TERNOVSKI: - you'll see - you will recall that the original letter was sent to you alone, on 4 April? We saw the covering email?

MR DE'ATH: Yes.

MR TERNOVSKI: And then you see on the next day at 8.49 am - I'll let you have a look at this document. You'll see that this letter is re-sent, copying in now - to Ms Bancroft copying you, and the covering letter says:

> "I confirm that this letter was intended to be addressed and sent to you and the director-general. By inadvertence it was addressed only to the director-general."

MR DE'ATH: Yes. Yes, I do have a vague recollection of that.

MR TERNOVSKI: It is your letter of 17 March 2023 and your conduct that the Building Trades Group are concerned with. The letter of 17 March 2023, that's the letter I showed you before -

MR DE'ATH: Yes.

MR TERNOVSKI: - which said the triage is going ahead?

MR DE'ATH: Yes.

COMMISSIONER: Which tab is this one?

MR TERNOVSKI: This is attachment 45, KSB-45, to Ms Bancroft. Now I want to take you to some sequence of events and then ask you some questions about it.

MR DE'ATH: Certainly.

MR TERNOVSKI: So please bear with me. If we could go to document 3, which is the call list, and page 4 of that document.

MR DE'ATH: Yes.

MR TERNOVSKI: You will see, Mr De'Ath, that at 4.49 pm you rang Ms Barry for three minutes.

MR DE'ATH: Sorry, what was the date?

MR TERNOVSKI: On 4 April at 4.49 pm.

MR DE'ATH: Yes, I see the call.

MR TERNOVSKI: And that call was less than an hour after that letter arrived in your inbox at 3.46 pm.

MR DE'ATH: I accept the time differential.

MR TERNOVSKI: Okay. Then can we look at document 38, please. I'll let you read the whole -

COMMISSIONER: When you say "that letter", you're saying the outrageous letter; is that right?

MR TERNOVSKI: Yes, that's right, the 4 April letter from Mr Ravbar complaining about the triage system. Mr De'Ath, that was the letter we were talking about, wasn't it?

MR DE'ATH: Yes. Sorry, counsel assisting, you're talking now -

MR TERNOVSKI: Tab 38 of the tender bundle.

MR DE'ATH: Tab 38. Yes, the invitation.

MR TERNOVSKI: Yes, the invitation to Premier's Awards for Excellence.

MR DE'ATH: Thank you.

MR TERNOVSKI: And again, I don't need to take you to the details, I don't think, but I'll let you have a look at the document and I just want to put some propositions to you.

MR DE'ATH: Thank you.

MR TERNOVSKI: You see that's - do you agree, Mr De'Ath, that that evening, we're still on 4 April -

MR DE'ATH: Yes.

MR TERNOVSKI: - you were due to attend the Premier's Awards for Excellence, 5.30 for a 6 pm start?

MR DE'ATH: Yes, that's what I see in this.

MR TERNOVSKI: And that day, you see your office gave Ms Barry the ticket. You'll see if you look at the body of the email "Hi Megan". That's Ms Barry, isn't it?

MR DE'ATH: Yes.

MR TERNOVSKI:

> "Please find the ticket and supporting information for this evening's event. I will try to get information to DPC..."

Department of Premier and Cabinet?

MR DE'ATH: Yes.

MR TERNOVSKI:

> "...that you are attending for Michael."

You're Michael.

MR DE'ATH: I note that.

MR TERNOVSKI: Do you accept that?

MR DE'ATH: I accept that.

MR TERNOVSKI: So you swapped out - you sent Ms Barry in your place to this event, which was due to take place on 4 April, and if you look at the timestamp - or actually, we don't need to look at the timestamp because we see in the subject 5.30 pm for 6 pm start. Do you accept that?

MR DE'ATH: Yes.

MR TERNOVSKI: And I can take you briefly to document 30, which shows that - if we go to page 5 of document 30, do you see there an email - if we go to page 5 of that document, Madam Operator, and blow up the email from Mr De'Ath to Ms Pennisi.

MR DE'ATH: Yes.

MR TERNOVSKI: You see there's an email from you to Ms Pennisi:

"Please accept."

That's accept the invitation?

MR DE'ATH: Yes.

MR TERNOVSKI: And it's dated Sunday - well, the timestamp is Sunday, 26 March at 10.25 pm UTC, and if we add the 10 hours, that would bring it into the Monday morning, wouldn't it?

MR DE'ATH: Yes. Early.

MR TERNOVSKI: So on Monday morning on the 27th you accepted it, but that day, on 4 April, you end up sending Ms Barry in your place. You didn't go to the event. Do you remember that?

MR DE'ATH: I don't recall any of this, but this would appear what has happened.

MR TERNOVSKI: All right. I might just tender - before I forget, tender those documents 38 and 30, and then I'll take you to the next document.

COMMISSIONER: Any objections? How do I describe 30?

MR TERNOVSKI: 30 is - I would suggest, Commissioner, whatever way it's described in the index is probably the easiest. And I can read that out for you if that assists.

COMMISSIONER: Meeting invite and email chain from Lisa Pennisi on behalf of Michael De'Ath regarding Premier Awards for Excellence, 4 April 2023, will be exhibit CA -

MR TERNOVSKI: CA-40, Commissioner.

<EXHIBIT CA-40 MEETING INVITE AND EMAIL CHAIN FROM LISA PENNISI ON BEHALF OF MICHAEL DE'ATH REGARDING PREMIER AWARDS FOR EXCELLENCE, 4/4/2023

COMMISSIONER: Email and attachment from Lisa Pennisi to Megan Barry attaching ticket and supporting information for Premier's Awards for Excellence event, 4 April 2023, will be exhibit CA-41.

<EXHIBIT CA-41 EMAIL AND ATTACHMENT FROM LISA PENNISI TO MEGAN BARRY ATTACHING TICKET AND SUPPORTING INFORMATION FOR PREMIER'S AWARDS FOR EXCELLENCE EVENT, 4/4/2023

MR TERNOVSKI: So if we now go to document 35 in the bundle, Mr De'Ath, you'll see what it is you did instead of going to Premier's Awards. If you look at the first entry, 4/4/2023, 1729.

MR DE'ATH: Yes.

MR TERNOVSKI: You went to the minister's office, didn't you, instead of going to the awards?

MR DE'ATH: This is - these entries demonstrate that I was in the ministerial office at those times. That's what my pass would have recorded.

MR TERNOVSKI: You don't dispute that it was you using your pass, do you, Mr De'Ath?

MR DE'ATH: Oh, absolutely not.

MR TERNOVSKI: Okay. I want to ask you about the sequence of events, but I want to show you another document. I tender this document, by the way, document 35.

COMMISSIONER: Sorry?

MR TERNOVSKI: I tender document 35, I'm sorry.

COMMISSIONER: Are there any objections? Michael De'Ath's swipe log data to Level 37, ministerial staff office, April 2023, will be exhibit CA -

MR TERNOVSKI: 42.

COMMISSIONER: - 42.

<EXHIBIT CA-42 MICHAEL DE'ATH'S SWIPE LOG DATA TO LEVEL 37, MINISTERIAL STAFF OFFICE, APRIL 2023

MR TERNOVSKI: Mr De'Ath, if we could go back to document 37, which I've taken you to before, remember that was a calendar - that was a calendar invitation for a catch-up between yourself and Minister Grace?

MR DE'ATH: At the McConnel Electorate Office?

MR TERNOVSKI: Well, no. Mr De'Ath, if you look at document 37, page 1, the location is listed as "minister's office".

MR DE'ATH: Okay. Thank you. Yes. Sorry, I apologise. I had misinterpreted looking at the attendees line when I looked at this earlier. I can see now that it's at the minister's office. Thank you.

MR TERNOVSKI: Does that make more sense, Mr De'Ath?

MR DE'ATH: That makes a lot more sense. I was confused at that point about why you thought I was at that office.

MR TERNOVSKI: Tell me if you disagree: on my reading of that document, it looks like somebody from the electorate office was invited to attend that meeting.

MR DE'ATH: Correct, and now I understand that.

MR TERNOVSKI: Okay. And you will recall that that - you will recall - I've taken you to the sequence before - that the Building Trades Group unions came to see the minister on 3 April?

MR DE'ATH: Yes.

MR TERNOVSKI: And then shortly after that meeting was due to end, Ms Dougherty called you?

MR DE'ATH: Yes.

MR TERNOVSKI: At 5.38?

MR DE'ATH: Yes.

MR TERNOVSKI: And to the minute, she sent you that invite.

MR DE'ATH: Right.

MR TERNOVSKI: For 5.30 pm that day.

MR DE'ATH: Thank you.

MR TERNOVSKI: And that clashed with the awards, didn't it? **MR DE'ATH:** Clearly. A meeting with the minister would always trump pretty much everything.

MR TERNOVSKI: And so that's why you went to see the minister at 5.29, which is basically the invited time, instead of going to the awards?

MR DE'ATH: That makes perfect sense.

MR TERNOVSKI: And if we go back to document 36, which is the ministerial diary, you'll see the last entry on the second page just above 5 April, the last entry for 4 April.

MR DE'ATH: Thank you.

MR TERNOVSKI: And you'll see that that records that same meeting as well.

MR DE'ATH: Thank you.

MR TERNOVSKI: Now, that's the meeting you had - you attended that meeting?

MR DE'ATH: I have no reason to believe I didn't attend the meeting. Minister asked me to a meeting; I went to a meeting.

MR TERNOVSKI: And, Mr De'Ath, that meeting as it happens took place about one hour and 45 minutes after that CFMEU 4 April letter reached your inbox.

MR DE'ATH: Right.

MR TERNOVSKI: Now, I suggest to you, Mr De'Ath, that at that catch-up with the minister, you discussed the union's triage letter?

MR DE'ATH: I appreciate your suggestion. I have no way of confirming that suggestion at all, but I think what it does explain to me - and again, I'm speculating myself - is that that may well be where I heard from Minister Grace that she had spoken to the Building Trades - to particularly Mr Ravbar about the behaviour.

MR TERNOVSKI: So you're suggesting, Mr De'Ath, though you can't remember, you're suggesting this meeting might have been about Mr Ravbar's behaviour rather than the triage?

MR DE'ATH: All I'm saying is that that is - I recall being - having that relayed to me in some form, and I said I was speculating. I think that's what happened on that day, but I can't be sure.

MR TERNOVSKI: And so your evidence is that you don't remember what you discussed with the minister that afternoon?

MR DE'ATH: I don't remember.

MR TERNOVSKI: Okay. You accept, though, don't you - I think - you've already accepted that, but I just want to sort of bring back the timeframe. As you've accepted, as of 29 March - remember we saw that draft email from you responding to Mr Ravbar - you were full steam ahead on triage, weren't you?

MR DE'ATH: We were.

MR TERNOVSKI: Okay. Can I now take you to document 40. We're now moving to 5 April, the next day.

MR DE'ATH: Yes.

MR TERNOVSKI: Document 40, if we could blow up firstly the header part, Madam Operator. I'll let you have a look at this whole document, perhaps, Mr De'Ath, in fairness, and then I'll ask you some questions about it.

MR DE'ATH: Just the email?

MR TERNOVSKI: Feel free to have a look at the attachments if you want. I don't particularly need to go to the attachments, but -

MR DE'ATH: Okay. Thank you.

MR TERNOVSKI: But you'll see firstly that's an email from Ms Bancroft to you, and you'll see the timestamp 4 April 2023, 10.15 pm UTC. So if you add 10 hours to that, you get 8.15 am on 5 April.

MR DE'ATH: Thank you.

MR TERNOVSKI: And if you look at the email, Ms Bancroft sets out the temporary process of calling regional directors?

MR DE'ATH: Yes.

MR TERNOVSKI: And then she says:

> "Further to this, it is no longer appropriate to contact Helen Burgess requesting technical advice."

MR DE'ATH: Yes.

MR TERNOVSKI:

> "Will supply a list of technical advisers to contact for immediate advice on technical issues. Michael, we will also need to advise that I will no longer be forwarding their letters and they need to go direct to the RDs."

MR DE'ATH: Yes.

MR TERNOVSKI:

> "Once you/the minister have advised them, we can prepare comms on the above points."

MR DE'ATH: Thank you.

MR TERNOVSKI: So what Ms Bancroft is saying there is that she is proposing to stop taking the CFMEU calls.

MR DE'ATH: Yes.

MR TERNOVSKI: That pressure tactic we've been through before.

MR DE'ATH: Yes.

MR TERNOVSKI: And instead what she's proposing is that either you and/or the minister tell the union that that is what's going to happen?

MR DE'ATH: Yes.

MR TERNOVSKI: Then in the next paragraph you see she says:

> "The permanent triaging process that has been proposed requires all Building Trades Group unions to submit their requests to the regulator assistance with a direct phone number, 1300..."

Etcetera.

MR DE'ATH: Yes.

MR TERNOVSKI: Right? So you would agree, wouldn't you, that as of 8.15 am on Wednesday, 5 April 2023, as far as Ms Bancroft is concerned, it's full steam ahead on the triage?

MR DE'ATH: Agreed.

MR TERNOVSKI: I tender this document.

COMMISSIONER: Are there any objections?

MR MARTIN: I would object on the basis that the version of the document that I have doesn't actually state the 1300 number or the email address. It's been redacted.

COMMISSIONER: I'm in the same position, I think, Mr Martin.

MR MARTIN: Yes.

MR TERNOVSKI: That might be another document we need to unredact. I don't - I don't - the precise 1300 number is irrelevant. The only thing that's relevant is that there is a 1300 number. But we can - not that the number is particularly secret either. So I -

COMMISSIONER: Well, what do you want to do? Do you want to deal with it as we dealt with the other document?

MR TERNOVSKI: Commissioner, are you content to orally release this from NPO1, which requires redaction of phone numbers, and so that this can be shown? I would seek that order.

COMMISSIONER: Does that deal with your issue, Mr Martin, or do you need to see the document before it goes in?

MR MARTIN: No, that would deal with the issue.

COMMISSIONER: Very well. I'll do that, Mr Ternovski.

MR TERNOVSKI: In which case I won't tender this version of the document, but we will supply an unredacted version and I'll tender that in due course. Now, just sticking with this email, because I want to take you to the next document, as we've established, this is 8.15 on Wednesday, 5 April.

MR DE'ATH: Thank you.

MR TERNOVSKI: All right. Now, if we go back to document 35, the swipe log -

COMMISSIONER: You said 8.15 am?

MR TERNOVSKI: Yes. You see the entry, I think it's in American format, you can tell, because if you scroll down the list, the second value goes to 21.

MR DE'ATH: Is this page 1?

MR TERNOVSKI: Page 1 of document 35.

MR DE'ATH: Yes.

MR TERNOVSKI: You can see, can't you, Mr De'Ath, firstly that the date is in the US MM/DD/YY format, months first rather than the day? Do you accept that?

MR DE'ATH: I understand. Thank you.

MR TERNOVSKI: And then with that in mind, if you look at the second entry, you see you swipe into the minister's office at 8.23 am that day, about eight minutes -

COMMISSIONER: I don't think it's the minister's office. It's the ministerial staff office. I'm not sure that's the same thing.

MR TERNOVSKI: Yes. Well, Commissioner, the way I'm using the word "minister's office" was including the staff, but it's - just to clarify, I'm not talking about Minister Grace Grace's office; I'm talking about the office of her staff. You see that? You've swiped in at 8.23, about eight minutes after Ms Bancroft's email?

MR DE'ATH: If I may, counsel assisting, I think the Commissioner has just alerted me to a point here that - I don't know how material it is, but I don't actually know which office we're talking about, because there's an office - there's a door into her staff office area. There's a door from that staff office area into her office. There's a door from the corridor into a waiting room to her boardroom, and there's a door into her boardroom. So I don't actually know where I was, sorry. I don't actually really know. But I don't know how material that is. Quite frankly, you know, when I am in and out of there, I could be on any manner of things.

MR TERNOVSKI: You'll see on the extract it says 3731. Does that help you at all, or you don't remember what that?

MR DE'ATH: No, I don't remember what door that is.

MR TERNOVSKI: But you accept that you came either to the minister's staff's office or to her office.

MR DE'ATH: I was in that precinct.

MR TERNOVSKI: In that precinct.

COMMISSIONER: Or the boardroom waiting for the minister or her officers to come in and greet you in the boardroom, or the anteroom outside the boardroom waiting for the minister for the minister's office to come and get you from the anteroom to take you into the boardroom, or to take you to some other office within the complex.

MR DE'ATH: Sorry, Commissioner, yes.

MR TERNOVSKI: Now -

COMMISSIONER: So do I understand it, there's a suite of offices. The minister has one. Is that right?

MR DE'ATH: Yes.

COMMISSIONER: And do the chief of staff and the other advisers have their own office, or are they in a - what you might call a pig-pen arrangement, open plan?

MR DE'ATH: It is open plan, but there are some separate offices there. Probably I think the only thing I could add to this is I don't believe my pass got me into the minister's private office, her own office. I'm not sure that this is particularly material maybe to where you're going with this, but I just think it's important that -

COMMISSIONER: Well, I just wondered whether the entry got you into what you might call the open-plan area or it got into you the anteroom before the boardroom.

MR DE'ATH: It could have been either. It could have been either.

COMMISSIONER: Either. And does it you through the anteroom into the boardroom or is there another - someone has to invite you into the boardroom?

MR DE'ATH: I don't recall. I think it did get me into there.

COMMISSIONER: Into the boardroom, but it didn't get you into the minister's private office, that is, the one she used personally?

MR DE'ATH: That's right. Yeah, I don't believe it did. Yeah.

MR TERNOVSKI: So to get to the minister's private office, somebody would have to let you in, one of her advisers?

MR DE'ATH: That's right.

MR TERNOVSKI: And that would be standard?

MR DE'ATH: Oh, yes. I don't believe I ever let myself into that office.

COMMISSIONER: And I presume you'd normally meet with the minister in the boardroom, because that way someone could let you into the anteroom or into the boardroom before anyone arrived and you could wait there and the minister and her staff could come in, or alternatively the minister and her staff might already be in there and you could come into the boardroom and then you could disappear without disturbing them in their open-plan area or in the minister's private office.

MR DE'ATH: That's a - that's a fair description, Commissioner.

MR TERNOVSKI: Okay. So remembering the timing, 8.15 email from Ms Bancroft, 8.23, you swiped into that area - for neutral - ministerial area, if we can use that neutral term. Are you happy with that, Mr De'Ath?

MR DE'ATH: Yes.

MR TERNOVSKI: And then if we go back to document 3 and look at page 4, that's the call list again.

MR DE'ATH: Sorry, what page?

MR TERNOVSKI: Page 4 of document 3, Mr De'Ath.

MR DE'ATH: Thank you.

MR TERNOVSKI: And have a look at the entries for 10.09 am on 5 April and then 10.38 am on 5 April.

MR DE'ATH: Sorry, 10.09?

MR TERNOVSKI: 10.09. You see at 10.09 you get a call from the minister's office to your office line?

MR DE'ATH: Yes, I note it.

MR TERNOVSKI: And then at 10.38 am, do you see that, you call Ms Bancroft from your mobile to hers?

MR DE'ATH: Thank you.

MR TERNOVSKI: Can you enlighten us as to what was said on those calls, Mr De'Ath?

MR DE'ATH: Not at all.

MR TERNOVSKI: You couldn't say it was about - you couldn't rule out it was about triage, could you?

MR DE'ATH: I have no idea what those calls were at that time.

MR TERNOVSKI: I may be able to refresh your memory, Mr De'Ath, by taking you to document 41 of the bundle. Madam Operator, if you could blow up the header, please. I'll let you read the document, Mr De'Ath, and then I'll ask you some questions about it.

MR DE'ATH: Thank you.

MR TERNOVSKI: Firstly, looking at the header 5 April 7.46 UTC, am.

MR DE'ATH: Yes.

MR TERNOVSKI: Add 10 hours, 1744, so that late afternoon/early evening of 5 April?

MR DE'ATH: Yes.

MR TERNOVSKI: If we could blow up the first set of dot points. Firstly, sorry, you see it's an email from Ms Bancroft to Ms Stuchbury?

MR DE'ATH: Yes.

MR TERNOVSKI: And then if we blow up the first debt of dot points, Madam Operator:

"As discussed, Michael suggested the following."

The Michael was you, Mr De'Ath?

MR DE'ATH: Yes.

MR TERNOVSKI:

"Start drafting an objective high-level response."

That's a response to the 4 April letter, isn't it?

MR DE'ATH: I'm -

MR TERNOVSKI: Not sure?

MR DE'ATH: I'm not sure.

MR TERNOVSKI:

"Be mindful not to inflame the situation further."

Does that help you, Mr De'Ath?

MR DE'ATH: That was a consistent theme.

MR TERNOVSKI: Inflame the situation with the CFMEU, isn't it?

MR DE'ATH: I would assume so.

MR TERNOVSKI: And then in regards to shifting to the temporary practice, that's the temporary practice of calling regional directors, isn't it?

MR DE'ATH: Yes.

MR TERNOVSKI:

> "Highlight that while we made a number of opportunities to consult, we came to a point of urgency. Pleased to hear..."

Just pausing there, do you see that?

MR DE'ATH: Yes.

MR TERNOVSKI: So that's referring to a number of opportunities to consult in relation to the regional director approach, the temporary process, of calling the regional directors?

MR DE'ATH: Yes. That's probably right.

MR TERNOVSKI: Right. And then the next part of the sentence:

> "Pleased to hear we have agreement on the process going forward."

MR DE'ATH: Yes.

MR TERNOVSKI: I want to come back to what that means. But if we can now blow up the second set of dot points, in terms of "internal key messaging for you and I to flesh out", that's for Ms Bancroft and Ms Stuchbury, isn't it?

MR DE'ATH: Yes. Point 1:

> "Stakeholders have expressed significant concern that they were not fully consulted on the change."

Do you know what that's about, Mr De'Ath?

MR DE'ATH: Well, I think it's pretty clear where that would come from.

MR TERNOVSKI: That's the CFMEU complaint that they have not been consulted, isn't it?

MR DE'ATH: Yes.

MR TERNOVSKI: And a baseless complaint, you agreed?

MR DE'ATH: Absolutely.

MR TERNOVSKI: Next:

> "It is clear that we cannot have the old system going forward and we are concerned this situation was allowed to develop and embed."

MR DE'ATH: Yes.

MR TERNOVSKI: But then look at the next dot point:

> "We've identified a process going forward to consult, and there will be a broad range of stakeholders consulted."

MR DE'ATH: Yes.

MR TERNOVSKI:

> "Will seek to get an independent facilitator. Will allow some breathing space for this to play out."

MR DE'ATH: Yes, thank you.

MR TERNOVSKI: The permanent triage process has been paused?

MR DE'ATH: Yes. Look, I appreciate this email, as I've said, all along the way, there's a whole lot of things in this activity that I don't remember, and this - this email, I - I look at and I go, "Oh, yes, okay. I think I recall that."

MR TERNOVSKI: You recall that conversation with Ms Bancroft?

MR DE'ATH: I think - I don't recall the conversation with Ms Bancroft, but I recall some of the elements of this.

MR TERNOVSKI: Yes. That will be fleshed out in the future correspondence, and I will take you to it, but the proposition I'm putting to you simply that as of 5.44 on 5 April, the triage is being paused, the permanent system, pending further consultation.

MR DE'ATH: Certainly at that point it would look like what we are doing is preparing for that.

MR TERNOVSKI: Well, the decision has been made, hasn't it? You're just preparing comms.

MR DE'ATH: Generally I think it would be fair to say that that is probably what has happened. We're certainly preparing for that activity. Whether - I'm sure you're going to show me other correspondence - whether this is a draft process to consider or whatever, I can't recall.

MR TERNOVSKI: I'll take to you further correspondence where these messages are further fleshed out and developed and evolved.

MR DE'ATH: Thank you.

MR TERNOVSKI: But I just simply - the point I wish to simply put to you, Mr De'Ath, and I think you accept that's probably what happened, that at 8.15 in the morning, at least as far as Ms Bancroft was concerned, it was full steam ahead on triage.

MR DE'ATH: Yes.

MR TERNOVSKI: And by 5.44, after your call with her, pause, more consultation.

MR DE'ATH: Yes. Independent facilitator.

MR TERNOVSKI: Now, if you go back to the first set of dot points, Madam Operator, and we can blow that up, if you look at the second half of the third dot point:

> "Pleased to hear we have agreement on the process going forward."

Agreement with whom, Mr De'Ath?

MR DE'ATH: All I think that's saying is that - is that we have an agreement on the process going forward. I note that. And that agreement on a process going forward can only really occur out of a discussion between me and the minister. That - that is what I'm - I'm interpreting that.

MR TERNOVSKI: So agreement with the minister?

MR DE'ATH: Yes.

MR TERNOVSKI: I see. Well, I want to ask you some questions about that, but I just want to ask you another proposition. You would agree, wouldn't you, that given what's happened previously, which is there was attempts, numerous attempts at consultation -

MR DE'ATH: Yes.

MR TERNOVSKI: - and - which the CFMEU refused to engage in, further consultation serves no legitimate purpose, does it, at this point?

MR DE'ATH: I don't agree with that, in that there was - you can see quite clearly, as I can see, that there were significant attempts made. This is looking like a problem-solving exercise about how we go forward and what could we possibly do to get back on track. Now, I don't remember those discussions, but on the balance of probabilities, that's highly likely what was happening here. That's not unusual.

MR TERNOVSKI: Is this fair to describe this, Mr De'Ath, as another accommodation?

MR DE'ATH: Oh, I think that's fair enough.

MR TERNOVSKI: Now, I want to put to you Ms Bancroft's version of events.

MR DE'ATH: Yes.

MR TERNOVSKI: All right. On Ms Bancroft's version of events - and if you'd like me to, I can take you to her statement and transcript.

MR DE'ATH: Yes.

MR TERNOVSKI: But I don't propose to do that in the interests of time.

MR DE'ATH: It's okay.

MR TERNOVSKI: On Ms Bancroft's version of events, on some day in April - she couldn't specify the exact date - you called Ms Bancroft and you said to her words to the effect of, "Kym, Minister Grace has considered this triaging system," and then, "One thing" - this is words that Ms Bancroft attributes to you - "One thing Minister Grace is really good at is she is good at managing stakeholders," and during that call you told her that the triaging system was not going ahead and it would be deferred until a new executive director of WHS compliance and field services was appointed. That is the truth of what happened, isn't it?

MR DE'ATH: No.

COMMISSIONER: So you didn't have a conversation with her in April along those lines?

MR DE'ATH: There are some things that I would not do.

COMMISSIONER: Just testing your recall, because sometimes you remember very well and sometimes you don't. I just want to know directly. Mr Ternovski

can put it to you again so you've got a fair opportunity to respond. Using your best recollection, do you remember or not? And if you do remember, is what Ms Bancroft said true or not?

MR DE'ATH: No.

COMMISSIONER: Which one? Do you recall?

MR DE'ATH: I don't recall the conversation, and -

COMMISSIONER: All right. Well, that's it. That's it, then.

MR TERNOVSKI: Mr De'Ath, were you about to say that you wouldn't have had that conversation?

MR DE'ATH: No, I wasn't about to say that.

MR TERNOVSKI: All right. Now, we keep seeing through this chain of emails that -

COMMISSIONER: Mr De'Ath, this is really a matter for your counsel, Ms Hoiberg, and she'll have a chance to speak to you about this, but the High Court, in a case of Keeley v Brooking - it's reported in volume 143 of the Commonwealth Law Reports at page 162 - establishes that a professed inability to remember can amount to contempt where it's proved to be deliberate evasion tantamount to a refusal to answer. In that case, Barwick CJ said:

> "A witness who, having been sworn, deliberately evades questions by some device may similarly be guilty of contempt."

And by "similarly", he says:

> "If a witness, having been sworn, expressly refuses to answer questions without lawful justification, he is guilty of contempt. One such device is a feigned inability to remember. The witness who deliberately evades questions by falsely swearing that he cannot recall interferes with or obstructs the due administration of justice just as much as the witness who openly and directly refuses to answer those questions. The interference with the administration of justice by the man who swears falsely that he has no recollection is achieved in a subtle and insidious way; but it is no less contempt than the blunt refusal of the honest but recalcitrant witness."

That's something Ms Hoiberg can raise with you at the close of proceedings this afternoon if she sees fit. She may not. Entirely a matter for her and for you. But I just wanted you to be aware of that.

MR TERNOVSKI: Commissioner, in light of what you've just said, I would propose that Ms Hoiberg, if she wishes, to be given an opportunity to confer with her client now.

COMMISSIONER: Do you want that opportunity, Ms Hoiberg?

MS HOIBERG: Commissioner, if it's proposed that some sort of finding be made on that basis, then yes, I would.

COMMISSIONER: Well, it seems to me that we're getting very close to that position, Ms Hoiberg, that there's been at crucial periods where one would expect the events that have been described by other witnesses would be very vivid in the mind of this witness, he professes an inability to recall, but then at other times, in matters that are much less serious, he seems to recall them with great ease.

MS HOIBERG: I understand what you're saying, Commissioner. But in relation to that, the inability to recall, Commissioner, you may have picked up, relates to telephone calls and conversations with certain people that happened in 2022, in 2023. And in that scenario, where, as Mr De'Ath has given evidence, he has a wide portfolio across a range of matters, my submission would be that it's not unexpected for Mr De'Ath not to have specific recall of those sorts of conversations.

COMMISSIONER: Well, just dealing with three of them, there's an inability to recall a conversation with Mr Ravbar in the first week of Ms Bancroft's employment which resulted in Ms Bancroft not executing on her decision to move Ms Burgess for some six months. There was, just in the last 15 minutes, an inability to recall what was discussed with the minister on a meeting one day after receiving an outrageous letter from Mr Ravbar. And lastly, there's an inability to recall a conversation immediately thereafter between Ms Bancroft and this witness, which on any view would live vividly in one's memory.

MS HOIBERG: Well, Commissioner, with respect, I would dispute that last proposition specifically, that it could be expected that it would be recalled. We've seen from the call logs that these conversations were mere minutes, between two and five minutes long, that happened up to four years ago. Now, I understand, Commissioner, your view about the significance of those conversations, and I appreciate that that significance arises in the context of this inquiry where the Commission is specifically looking at the conduct of the CFMEU, but it needs to be borne in mind that this formed part of a wide range of things that Mr De'Ath was doing at the time. Mr De'Ath no doubt had a wide range of meetings with the minister on a wide range of topics, some related to the CFMEU, others not. I would submit it's not unexpected for a witness to be unable to recall a meeting that happened three years ago.

COMMISSIONER: But just dealing with the last one, the biggest issue that was happening in that office was the triaging system. It had involved Mr De'Ath,

because he was being dragged into it by Mr Ravbar, and there were months and months of consultation, and leading to a very abusive meeting in the early part of that year and then this letter of late March 2023. Up till then, the triage system was going to be placed on an orthodox position. Soon after the meeting with the minister, there's a change, and on Ms Bancroft's evidence, there's a conversation with Mr De'Ath. And perhaps, Mr Ternovski, you can just remind me of the exact wording of that.

MR TERNOVSKI: If it assists, Commissioner, I can take you to the precise paragraph in the statement. Madam Operator, if we could bring up paragraph 104 and 105 of Ms Bancroft's statement. Paragraph 104 records the correction Ms Bancroft made orally.

COMMISSIONER: During this call, Mr De'Ath said the words to the effect that the triaging system, which was the biggest issue in that office, was not going ahead. When she expressed surprise, Mr De'Ath stated words to the effect that Minister Grace was good at managing stakeholders and that the decision on the triage system would be deferred.

MR TERNOVSKI: And, Madam Operator, can we bring up page 2895 of the transcript of 10 June. I don't know if this is something you can do readily, Madam Operator. 2895 of the 10 June transcript. We probably don't need the statement, Madam Operator, given how small this is. Perhaps would it be convenient, Commissioner, given that Mr De'Ath does not have a hard copy of this, to allow him to read that page of the transcript, and Madam Operator can scroll it when he's ready to go down.

COMMISSIONER: Well, you're going to go back and ask him about this again, which you can, of course, but it's just really a question of - you don't need to take up this opportunity, Ms Hoiberg. It's really up to you if you want to speak to the witness or not.

MS HOIBERG: Commissioner, in the interests of prudence, if I could have a few minutes.

COMMISSIONER: How long?

MS HOIBERG: A few minutes.

COMMISSIONER: We'll adjourn for, what, 15 minutes?

MS HOIBERG: Yes. Thank you, Commissioner.

COMMISSIONER: We'll adjourn till 10 past 3.

<THE HEARING ADJOURNED AT 2.55 PM

<THE HEARING RESUMED AT 3.10 PM

COMMISSIONER: Ms Hoiberg, if, at the end of this witness's evidence, there was a suggestion that was - that the witness's recall or lack of recall was deliberate - to use the words of the Chief Justice, a "feigned inability to remember" - then of course, you would be given an opportunity to respond to any such suggestion. You might call it a charge. And you would have the ability to put in evidence, make submissions in relation to any such charge or charges and given the time that would be needed to deal with it. I'm personally quite reluctant to deal with contempts of this Commission by the Commission. I'd prefer that any contempts went over to the Supreme Court, but this is a particular species of contempt where only the person hearing the matter can actually determine it, because it turns on the question of whether the inability to remember is legitimate or illegitimate, and that can only be assessed by assessing the witness, looking at him in the witness box, having regard to - that's at least what the judgment seems to say. You might tell me it's wrong and it - if we got to that stage, it should go across to the Supreme Court.

But that is the way, I would imagine - or that is the way it seems to be that the High Court suggests that a judge in a trial should deal with it, and I imagine under our powers the same principles would apply, because the Supreme Court will just be looking at a transcript and not be able to tell whether the inability to remember was feigned or real. And I've obviously made no findings or indeed not even drafted a charge, which would be - I'm using the language of contempt, which talks about being charged with contempt, because it sits between the civil and criminal. It's a quasi criminal procedure where they use the word "charge". But the witness hasn't been charged, and you'll be given any opportunity, if there was any move in that regard, to say and do whatever you need to do in relation to that.

It's only that in some jurisdictions, before moving that way, sometimes - and this is really a question of the statute affecting the common law of contempt - sometimes says the witness needs to be warned, and the procedure I've adopted is to, in effect, do that by the discussion we've had, which doesn't mean that there will be any charges, but it does mean that the witness has been warned.

MS HOIBERG: Thank you, Commissioner. May I make two additional comments in relation to the matters I raised before the adjournment?

COMMISSIONER: You may.

MS HOIBERG: The first is I think it's important to consider Mr De'Ath's evidence in the context in which it is given. Mr De'Ath is seeing many of these documents for the first time in the witness box as he goes. A request had been made prior to commencement of his evidence for any documents that may be shown to him during his evidence, and that request was declined. Now, I understand why, but Mr De'Ath obviously hasn't had the benefit of working

through the documents at his leisure, which as we know can sometimes assist witnesses with refreshing their memory and the like. And the second point is we -

COMMISSIONER: It can also allow some witnesses to create evidence as they work their way in between the various documents to manufacture a story. So it can have both effects, giving people a lot of opportunity to allow them to refresh their memory.

MS HOIBERG: Yes, I understand. The second point is that we are flying a little bit blind here in the sense that Mr De'Ath is no longer employed by the Queensland Public Service, so our ability to access documents is a bit limited. We've got Mr De'Ath's - a compilation of Mr De'Ath's call logs as they relate to calls that counsel assisting have identified as potentially being relevant to this inquiry. What we don't have at present is the whole gamut of Mr De'Ath's call logs that might show the length and breadth of the number of calls that he might receive in a given day, nor his calendar that might indicate the number of meetings he has and the types of meetings - the types of topics that are canvassed in those meetings. So I'd just make those two additional points in relation to - to be considered in context with Mr De'Ath's statements that he can't recall particular things that he's being asked about.

COMMISSIONER: I understand that, and you'll have the opportunity, if any charges are presented, to seek whatever material you need. I accept that it's a high hurdle to hit to say that a witness's lack of recall is deliberate, and there might be a number of things that one needs to take into account which suggests that what is - it seems to be deliberate is not in fact deliberate because of the sort of things you've mentioned. So you'll have an opportunity if this goes any further to raise those sort of things and produce such evidence as you need to negative such a finding.

MS HOIBERG: Thank you, Commissioner.

MR TERNOVSKI: Mr De'Ath, just to close this off, can I just take you back to document 41, which is that email from Ms Bancroft to Ms Stuchbury with those dot points I've just taken you to.

MR DE'ATH: Sorry, which folder?

MR TERNOVSKI: That's the tender bundle.

MR DE'ATH: Thank you.

MR TERNOVSKI: Document 41. I'll let you have a look at the document again so you can refresh yourself what it is.

MR DE'ATH: Yes, thank you.

MR TERNOVSKI: Now, I think you've accepted - I think you might have used the words "on the balance of probabilities" - that what this records is the triage being paused on 5 April.

MR DE'ATH: Yes.

MR TERNOVSKI: And it follows, does it not, that the decision to pause triage was made or at least was communicated to Ms Bancroft at some point between that morning, when she sent you an email that seems to say full steam ahead on the triage -

MR DE'ATH: Yes.

MR TERNOVSKI: - and 5.44, when we have the backflip.

MR DE'ATH: Yes.

MR TERNOVSKI: And you would accept, wouldn't you, that you must have had a conversation with Ms Bancroft?

MR DE'ATH: Yes.

MR TERNOVSKI: And indeed, that email, the first part of it, "As discussed, Michael suggested the following," that records that conversation or part of it, doesn't it?

MR DE'ATH: Yes.

MR TERNOVSKI: Now, do you recall that conversation with Ms Bancroft where you communicated to her that triage was not to go ahead?

MR DE'ATH: I don't recall the conversation with Ms Bancroft. I have no reason to believe a conversation didn't take place. If I may elaborate?

MR TERNOVSKI: Go on.

MR DE'ATH: There is some language that is used in there about what was said in that call which was of concern to me. That is - that is what I was raising.

MR TERNOVSKI: So what you're saying, Mr De'Ath, is that - I think you've accepted - very early on yesterday, I think you've accepted the proposition that the triage was an important issue that you were dealing with?

MR DE'ATH: Oh, absolutely.

MR TERNOVSKI: And this is the conversation where this very important issue gets flipped.

MR DE'ATH: Yes.

MR TERNOVSKI: And your evidence is that you don't remember that conversation. Is that your evidence?

MR DE'ATH: I don't actually remember the conversation. I honestly - but I have no reason to deny that a conversation did take place when I look at your evidence, counsel assisting, and I'm doing my level best to assist you here. I look at that and I go - I can assume that what has happened there is that there was a call and we talked about it.

MR TERNOVSKI: But what is - I just want to be really clear about this. I've taken you to Ms Bancroft's account of that call.

MR DE'ATH: Yes.

MR TERNOVSKI: What is your position? Do you deny that that - you said that, or is it that you don't remember that you said that but you may have said it, or is it something else?

MR DE'ATH: Will you allow me a little bit of licence on this, please?

MR TERNOVSKI: Please.

MR DE'ATH: Here's what I believe has taken place, and I base that not on a clear recollection, but on piecing these pieces together and going, "I think it looks like this."

MR TERNOVSKI: Just pausing there. So what you're saying, Mr De'Ath, is what you're about to give us is a reconstruction from documents rather than an actual memory; is that right?

MR DE'ATH: I - that's a hard one. I think it's more based on what I would see as a - how could this have rolled? And that's probably based on experience of dealing with difficult matters and discussions with ministers and negotiations and forming positions.

COMMISSIONER: It's not a - a reconstruction is not a lot of use to me, Mr De'Ath. Just what you recall about what Ms Bancroft says that you said to her, if anything, and Mr Ternovski can go through it point by point -

MR DE'ATH: Certainly.

COMMISSIONER: - if you like.

MR DE'ATH: Thank you, Commissioner. If I can - if I may. So what's confusing me is something - is a suggestion that I have said or a statement that says I have said "the minister has decided ", because I am feeling that there has been a discussion that has taken place.

MR TERNOVSKI: Discussion with whom, I'm sorry?

MR DE'ATH: With the minister. I think it's becoming very apparent that at a point in time there was a discussion with me and the minister - I don't recall it - and that we have problem-solved - this was a very common approach with Minister Grace on all manner of issues, that we would problem-solve what are we going to do about this situation - and have arrived at a position. And I have obviously been comfortable with that position, because I have then seemingly relayed that to Ms Bancroft. I have no reason to - to dispute the fact that I have relayed something to Ms Bancroft. I was just concerned about the way that was phrased.

MR TERNOVSKI: I just - thank you, Mr De'Ath. I just want to be - forgive me if I'm repeating myself, but I just want to be really, really clear what your evidence is on this point. Let me put to you what I understand your evidence to be, and you tell me if this is right or not. As I understand it, your evidence now is that based on these documents, you believe that what would have happened is that you would have had a conversation with the minister where some kind of a collective decision was made to solve the problem - I want to get back to what that actually means - by pausing the triage system, and that you probably communicated that decision to Ms Bancroft. However, you don't remember - you don't have any recollection of either conversation.

MR DE'ATH: I - I don't, and I appreciate - I sincerely appreciate the frustration that you will feel at that and the Commissioner has represented. I am sincere and genuine in saying that I just don't remember all those conversations.

MR TERNOVSKI: These are two of the most significant conversations from that time period, and you do not recall those conversations?

MR DE'ATH: I think as my counsel has - has attempted to represent on my behalf, is on any given day, you're responsible for the entire education system of Queensland: 100,000 direct reporting staff, $20-billion budget. You know, you could just even begin to imagine what was happening in that portfolio, and I am focused on many, many things at one point in time. I wish that I could be far more conclusive with you. I am certainly not trying to be in any way evasive or obstructive. I think you've seen my view about when people are obstructive, and I do not take kindly to it, and I'm not trying to do that to you. I am genuine and sincere in just desperately trying to recall what has happened here.

MR TERNOVSKI: Okay. Let me ask you another question or set of questions about this, Mr De'Ath. The decision that was made that day to pause triage, where

is it recorded? And the reasons for the decision itself and the reasons for that decision, where are they recorded?

MR DE'ATH: I don't know.

MR TERNOVSKI: Is the answer "nowhere"?

MR DE'ATH: I don't know.

MR TERNOVSKI: Can you - do you remember any notes being taken of that - of the decision, the conversation with the minister, the conversation with Ms Bancroft? Anything? Do you remember anything?

MR DE'ATH: I - I don't. I do recall that we referred earlier to a pretty comprehensive briefing on the triaging process, and you will note and you've raised with me that I had referred a copy of that briefing to the minister's office. The reason for doing so is that that was a significant matter. It's a matter that is verging between policy and operations, and I was mindful of the need for the minister, who is responsible overarchingly, to be aware of all of that content.

MR TERNOVSKI: Yes. I think we may be at cross-purposes, Mr De'Ath, because what you're referring to, the DDG brief - sorry, the DG brief that you signed -

MR DE'ATH: Yes.

MR TERNOVSKI: - that's a decision to proceed with the permanent triage system.

MR DE'ATH: Yes.

MR TERNOVSKI: And this is the brief that you sent to the minister.

MR DE'ATH: Yes.

MR TERNOVSKI: What I'm asking you is the other end of that, which is the decision has been made, and I think we've worked out on 5 April, to reverse that earlier decision that you've made on 16 March to proceed with the triage. And what I'm suggesting to you is that there appears to be no record of that decision at all, and the closest that we get to it is this set of emails: email from Ms Bancroft in the morning and email with Ms Bancroft in the afternoon. Do you disagree with that, and if you do, can you point to any record that exists?

MR DE'ATH: Thank you, counsel assisting. I don't disagree with that. I do not know of any record that exists.

MR TERNOVSKI: Do you accept that pausing the permanent triaging process that was announced to the industry on 17 March was a major decision?

MR DE'ATH: Yes.

MR TERNOVSKI: Are you aware that as director-general, your department had an obligation under the Public Records Act 2002, as it then was in effect, to ensure the department made full and accurate records of its activities?

MR DE'ATH: I don't - I assume you're referring to an official record, so I think you're asking me to recall something that's probably out of a very big document. So do I agree it's important that there is a record? Yes.

MR TERNOVSKI: That wasn't my question, Mr De'Ath. The question was I asking you is are you aware that under the Act, there was an obligation to ensure the department made full and accurate records of its activities?

MR DE'ATH: No.

MR TERNOVSKI: Mr De'Ath, I suggest to you that you didn't record that decision in writing, and the reasons for that decision, because you didn't want to record it.

MR DE'ATH: That - that's not correct at all. I would have no reason not to record that decision.

MR TERNOVSKI: Well, if the decision is not recorded, why didn't you record it? You said you had no reason not to record it. I'm going to put to you some reasons, but before I get to that, let me ask you: why wouldn't you - why didn't you record it?

MR DE'ATH: I don't know why I didn't record that.

MR TERNOVSKI: I suggest to you you didn't want to record that the decision came from the minister. Do you agree with that?

MR DE'ATH: No.

MR TERNOVSKI: And I want to suggest to you in fairness - I just want to put this to you in fairness - that you didn't want to record the minister stepping into an operational decision of the department in response to CFMEU pressure.

MR DE'ATH: No.

MR TERNOVSKI: And I suggest to you that what's happened is that the minister - the unions went to see the minister on 3 April and then sent that letter,

and then it was in response to that that the minister made the decision to pause the triage, and you implemented that decision. Do you disagree with that?

MR DE'ATH: I - I think I do disagree with that, because there are elements in there that I think would have to be asked of other people, because that is not - it's not my recollection. I - that would be very speculative, I think, on my part.

MR TERNOVSKI: Mr De'Ath, I want to ask you a couple of questions about your reconstruction, but I'm sure the Commissioner will stop me if that doesn't assist his inquiries. You mentioned that - correct me if I'm misstating your evidence - that you think would what have happened is that there was a meeting with the minister where some kind of problem-solving approach was adopted and this problem was solved by pausing the triage. Is that fair?

MR DE'ATH: I - I think that's - that's fair. That would be the conclusion I would draw from what I've been presented with today, yes.

MR TERNOVSKI: What's the problem you're trying to solve here?

MR DE'ATH: It's a big one. We were in a position where we had a stakeholder - the CFMEU were behaving in a way that was creating an enormous level of risk, and you've seen me take action with the CFMEU in relation to my view around that risk.

MR TERNOVSKI: Sorry, can I just pause you there just to make sure I understand your evidence. When you say "created a level of risk", what you're referring to is the CFMEU's refusal to use the temporary triage system of calling regional directors and calling Ms Bancroft directly?

MR DE'ATH: Sabotage.

MR TERNOVSKI: Isn't the solution to that, Mr De'Ath, exactly as Ms Bancroft proposed in her email to you that morning, which is to communicate to the union that she will refuse to take their calls going forward, and if they want to make notifications, then, as every other stakeholder, they need to call the 1300 number. Isn't that the solution?

MR DE'ATH: We know - I knew - that they had made it blatantly clear that they weren't going to do that, and this was the dilemma, and it's an awful dilemma where if she doesn't take that call, or somebody doesn't take that call, and it's a serious matter - this is a portfolio that's responsible for whether people are seriously harmed, injured, alive or dead, and every step of the way where that risk exists I think I've made very clear was of extreme concern to me. And - and I felt that we were in a - the term "between a rock and a hard place" has been used but I would probably characterise it as every minute of every day that went by while this was happening, I was worrying about what was going to happen.

MR TERNOVSKI: I'm sorry, Mr De'Ath.

MR DE'ATH: Very worried.

MR TERNOVSKI: Are you saying every minute of every day where the approach adopted by the union was to call the DDG directly, this is what you were worried about, every minute of every day, that there would be some kind of a safety accident as a result of the practice of calling DDG directly? Is that what you say you worried about every minute of every day?

MR DE'ATH: Correct. I was extremely worried about that, and - and I'm just being completely candid. I - that is - that is a pretty desperate situation to be put - or position to be put in, and how do you break a deadlock like that?

MR TERNOVSKI: By accommodation, is it?

MR DE'ATH: Well, this would appear to be what we have done. And an independent facilitator is mentioned here. Independent facilitators are used in government with frequency where there are accusations from either party, if you like, about how things are happening. It's often a very good way to move forward. The question would be, how successful would that have been?

MR TERNOVSKI: So your evidence now, if I understand it correctly - please tell me if I'm - I don't want to verbal you. Your evidence now is that as best you can work out, the triage pause was a collective decision with you and the minister in response to the CFMEU refusing to use the temporary triage system, which is the calling of regional directors instead of using the - calling Ms Bancroft directly?

MR DE'ATH: Yes. I - I think I'm establishing that that is what has taken place here.

MR TERNOVSKI: I want to take you back to something you said, but just before I do, Mr De'Ath, let me ask you this: what would have been wrong with simply doing as Ms Bancroft proposed: telling the CFMEU to call the 1300 number? She doesn't take their calls. That puts them in a bind. They either call her and she doesn't take their calls, or they comply and call the 1300 number, and if they use the wrong process, it's on them. What's wrong with that?

MR DE'ATH: It's not a bind to them. It's not a bind to them, because their pattern of behaviour was simply to do what they have always done, no matter what we were putting in place. That's the dilemma. What do you do when every day that risk is ever present? Because they just will not - they just will not cooperate with that. I - I think it's clear what happened further down the track is where this is an organisation that went into administration. Great.

MR TERNOVSKI: And, Mr De'Ath, what did you - on this account, what did you imagine would happen if you paused triage, the permanent triage, and

consulted someone? Did you seriously think the CFMEU would then come on board with the permanent triage system? They would change their mind?

MR DE'ATH: Well, it's hard for me - I appreciate what you're asking me. I don't know what they would have done. I'm looking at this information and going, where did some agreement for an independent facilitator come from? Did that come out of the meeting with the minister and the CFMEU? Was that what I met with the minister about? I don't know. Probably sounds plausible. So if that breaks a deadlock and helps us keep people safe, then let's give it a go.

MR TERNOVSKI: But what's the point? You've kicked the can down the road and then - I want to put to you again the question I put to you. When you were making that decision, supposedly on the basis that "the CFMEU just are not going to comply with the new system and so we'd better pause it", did you expect that if you consult some more and you pause, that they would suddenly agree to it later on?

MR DE'ATH: Well, there's always hope. And an independent facilitator, if that indeed looked like the path we were proposing, you know, it's worth a try.

MR TERNOVSKI: So an independent facilitator might convince Mr Ravbar, who is determined to get Ms Burgess back, what, to go call 1300 number? Is that a serious answer, Mr De'Ath?

MR DE'ATH: I - I don't know whether it would work or not, counsel assisting. I think it's looking like we were at a point where we're prepared to try anything to try and get this into a safer space.

MR TERNOVSKI: Okay. So the explanation you're now giving, it was about the CFMEU refusing to comply with the system which created a safety risk because they were calling the DDG directly, and that is why the triage was paused. That's your explanation?

MR DE'ATH: I think - I'm just processing what you're saying there. In essence, I would be inclined to agree that that looks like what has taken place. The pressure did not come from anywhere else. The refusal to comply, the obfuscation, the targeting of Ms Bancroft, that did not come from anywhere else. So it's a natural conclusion to say that as we're worried about safety and we need to do something, we've clearly come up with a plan.

MR TERNOVSKI: Can the witness please be shown page 4941 of transcript of yesterday, and page 4942, and I would ask you to read those to yourself, Mr De'Ath. Perhaps, Madam Operator, if you could scroll slowly to allow Mr De'Ath to read, because he doesn't have a hard copy of the transcript.

COMMISSIONER: Just tell the operator if you want her to go more slowly, Mr De'Ath.

MR DE'ATH: Thank you. I'm managing. Thank you.

MR TERNOVSKI: And can I also take you, Mr De'Ath, to your record of - transcript of your interview, document 2, page 59, lines 35 to 38. Actually, 29 to 38, starting with Mr Sorgese's question just above line 30 and then Mr De'Ath's answer and then the second question and the first line of the second answer. That's it. Thank you, Madam Operator.

MR DE'ATH: Thank you.

MR TERNOVSKI: Can I also take you, Mr De'Ath, to page 53 of your record of interview. 54, I'm sorry, lines 6 to 16. Let's start at line 4, through to 16.

COMMISSIONER: What page?

MR TERNOVSKI: Page 54 of document 2, which is the transcript of the interview.

MR DE'ATH: Thank you.

MR TERNOVSKI: I'll let you finish, Mr De'Ath.

MR DE'ATH: Thank you.

MR TERNOVSKI: Mr De'Ath, you have completely changed your evidence on this subject, haven't you, between the interview, what you said yesterday and what you're saying now, the reason for the triage was paused and how that came about?

MR DE'ATH: I'm not talking about the triage system here. I'm talking about ending Ms Bancroft's contract.

MR TERNOVSKI: Okay. Well, Mr De'Ath, you also said in the interview, didn't you, that terminating or removing Ms Bancroft and pausing triage were - I think the words you used were something like "one and the same"?

MR DE'ATH: Yes, and I'm happy to explain what I meant.

MR TERNOVSKI: I'm not going to ask you to explain, Mr De'Ath. I simply put to you that you have completely changed your evidence and you are now giving a completely different explanation to the one you gave to the investigators and gave to this Commission only yesterday.

MR DE'ATH: With respect, counsel assisting, I don't believe I'm changing my evidence in that regard, hence my request to explain what I meant.

COMMISSIONER: I think if the witness doesn't agree, you just have to do it slowly, point by point, Mr Ternovski. I don't think you can do it in any other way without being unfair to the witness.

MR TERNOVSKI: Point by point, Commissioner. Do you mean in terms of the previous reasons that have been given?

COMMISSIONER: Well, it's really up to you, but -

MR TERNOVSKI: Mr De'Ath, do you maintain your answer that you gave yesterday, as well as at the interview, that the triage - that the triage pause was because the triage proposal was based on the QUT report, which was infected by Ms Bancroft's procurement issue. Do you maintain that answer?

MR DE'ATH: Thank you, counsel assisting. There has been a volume of material here which has caused me to rethink what was going on here. That has been incredibly helpful. I've formed different conclusions. What I'm - what I would suggest back is there are two different things between the reasons for ending someone's contract and the pausing of a triage system. You've brought a lot of information to light about what happened through the pausing of the triage process. That's been helpful. That doesn't change this part of the - the problem.

MR TERNOVSKI: The termination part of the problem?

MR DE'ATH: Correct.

MR TERNOVSKI: I'm going to take you to those documents too, Mr De'Ath.

MR DE'ATH: I'm sure you are.

MR TERNOVSKI: But just on the triage, do you maintain the answer that you gave at the interview and yesterday that - I think at the interview you said "the issue". You said you couldn't remember any other issues. Yesterday you expanded the answer, but nonetheless you focused on this issue. Do you maintain the proposition that the reason or at least a key reason why the triage was paused was because it was based on the QUT report, which was - the credibility of which was undermined by the procurement conflict? Do you maintain that evidence or do you now have a different recollection?

MR DE'ATH: So this is - this is interesting for me, because one of the things I do not have a clear recollection of is did I indicate to the minister the problems that I was having around the credibility of our work in this regard? Did I? Did I not? That, I simply cannot recall. If there was a conversation that took place that we've been referring to with the minister about problems with what was happening, did I say, "We've got bigger problems than that?" Or did she already know? I apologise for not being able to recall, but in my mind, I knew I had some pretty big problems on my hands.

COMMISSIONER: Perhaps - Mr Ternovski has asked you the same question twice, and you haven't answered either time. Perhaps he'll ask it again a third time. Just see if you can listen to the question. If you don't understand it, tell him you don't understand it, and once you understand the question, just answer the question.

MR TERNOVSKI: Would you like me to repeat the question, Mr De'Ath?

MR DE'ATH: Yes, please.

MR TERNOVSKI: Do you maintain your evidence that the reason or at least a key reason for why the triage was paused was because the triage proposal was based on the QUT report and the credibility of the QUT report was in turn undermined by the procurement conflict, which is a different way of saying that it was ultimately the procurement conflict that was the reason or a key reason why the triage was paused when it was. Do you maintain that evidence?

MR DE'ATH: No.

MR TERNOVSKI: Now, you've given the Commission a reconstruction of your meeting with the minister, the problem-solving lending to an accommodation. Is that a fair summary?

MR DE'ATH: That's the conclusion I've drawn about what must have taken place there. I'm happy with your characterisation.

MR TERNOVSKI: How is that - can you explain to the Commission, please, Mr De'Ath, how that - your reconstructed version is different from Ms Bancroft's version of the conversation with you? Because they seem to be very similar.

MR DE'ATH: It would be highly unusual, unless it was specifically a decision that the minister had made independently - I don't believe the minister has made an independent decision here. I believe what has taken place is a conversation that worked out what to do. So it would be unusual for me in those circumstances, in my role, to go back to an executive and kind of lay that all on the minister. I'm very willing, where I know events have taken place, to take responsibility for whatever those events might have been, and I wish I could recall specifically, but I certainly don't ever recall having basically laid it on the minister alone. So that's what I'm really concerned about there, is that - I guess the wording in that is bothering me.

MR TERNOVSKI: How would you word it?

MR DE'ATH: Well, this is -

MR TERNOVSKI: That might be a pointless question, Mr De'Ath, because you don't remember the conversation.

MR DE'ATH: Exactly.

COMMISSIONER: I just wonder if it is pointless. I mean, the witness has been asked a number of time whether he recalls this conversation, which seems to me to be an important one, with the minister about the pausing of the triage system, and he says he doesn't recall. So what's the utility of getting him to reconstruct?

MR TERNOVSKI: I withdraw the question, Commissioner. Mr De'Ath, this concern you referred to - and I think you said you were worried about it every minute of every day; I think you put it as high as that - about the risk associated with the CFMEU calling the DDG directly.

MR DE'ATH: Yes.

MR TERNOVSKI: Right. Now, I think I've taken to you documents that showed that this calling of DDG directly is something that started in January. Do you want me to take you back to those documents?

MR DE'ATH: No, that's okay. I'm happy with your -

MR TERNOVSKI: So by the time you signed the brief approving the triage system on 16 March, you knew full well that's what the CFMEU were doing and had been doing for months, didn't you?

MR DE'ATH: Yes.

MR TERNOVSKI: And the only thing that's really changed, I suggest to you, Mr De'Ath, between 29 March, when you were full steam ahead on the triage - there's that draft email -

MR DE'ATH: Yes.

MR TERNOVSKI: - and 5 April when the triage was paused, the only thing that's happened, the only difference between those two positions is that the unions have gone to see the minister and they've sent that letter.

MR DE'ATH: Well, it's certainly a significant event in the chronology. I can't recount anything else that was happening around that time.

MR TERNOVSKI: And it's that pressure from the union, through the minister, that caused you to pause the triage.

MR DE'ATH: It certainly looks to me that we have come up with a plan to try and get through this, and there is no doubt in my mind that there was - I think it's very evident - ongoing pressure from the CFMEU.

MR TERNOVSKI: Mr De'Ath, can I take you to your interview, which is document 2 in the bundle, and can you please have a look at lines 10 through to 19 of that transcript.

COMMISSIONER: How are you going, Mr De'Ath? Do you want to call it quits for tonight, or are you happy to keep going? I think you're going to be here for a while tomorrow, so -

MR DE'ATH: Yeah. Well, may I ask counsel assisting a question about what our next steps are? Are you opening a new subject matter here, or are you - is this a continuation? I'm happy if it's a continuation. If we're going to go to an entirely separate issue -

MR TERNOVSKI: No, no, that goes to this issue. Perhaps if it assists, Commissioner, I'm probably about to finish up with that issue and then go to subsequent events. So I shouldn't be longer than a few minutes.

COMMISSIONER: What do you want to do?

MR TERNOVSKI: I would propose to finish, if that's convenient to you and Mr De'Ath.

COMMISSIONER: Very well.

MR DE'ATH: I would like to conclude this - sorry, not conclude the session, but to see this through, if that's okay.

MR TERNOVSKI: Thank you. Madam Operator - Commissioner, are you content with that?

COMMISSIONER: Yes. Very well.

MR TERNOVSKI: Thank you. Madam Operator - Mr De'Ath, could you please go to tab 2, page 48 of the bundle, which is your transcript of the interview with the investigators.

MR DE'ATH: Thank you.

MR TERNOVSKI: And Madam Operator, if you could blow up lines 10 through to 19 of that transcript.

MR DE'ATH: Thank you.

MR TERNOVSKI: You would accept - well, I read what you said there. You said:

> "I'm not an expert in triaging systems. There is a level of expertise and judgment that I would rely on the deputy director-general for, indeed employed for that purpose."

MR DE'ATH: Yes.

MR TERNOVSKI: So you relied - in approving the triage brief on 16 March, you relied, you would agree, in significant part on the expertise of OIR in proposing that?

MR DE'ATH: Yes.

MR TERNOVSKI: You've received no expert advice, have you, between 16 or 29 March, you can pick the date, and 5 April, that casts any doubt on this triage system?

MR DE'ATH: Not - not that I'm aware of. I don't believe I did. I think it was a good - to me, it seemed like a good model.

MR TERNOVSKI: Now, the effect of pausing the triage system was to leave in place the temporary system of calling the regional directors, wasn't it?

MR DE'ATH: I - I think that's how that went, yes.

MR TERNOVSKI: Because Ms Burgess had been removed from -

MR DE'ATH: She had.

MR TERNOVSKI: - the director of CCFS role.

MR DE'ATH: Yes.

MR TERNOVSKI: So that route has been cut by then.

MR DE'ATH: Yes, and did not return.

MR TERNOVSKI: And it did not return. So the system that was left in place was the system of calling the regional directors, wasn't it?

MR DE'ATH: Yes.

MR TERNOVSKI: As a result of this pause?

MR DE'ATH: That's my recollection.

MR TERNOVSKI: And you accepted yesterday that that was not a good system, was it?

MR DE'ATH: No, it's a significant compromise.

MR TERNOVSKI: Do you accept that that system, by having a single point of contact in the region, was unsafe?

COMMISSIONER: You asked all this yesterday. He said as much: it was.

MR TERNOVSKI: All right.

COMMISSIONER: He said it was unsafe, it had extra delays, it was - included risk, not as much as the system that it replaced, but still to a significant extent. You went through it in great detail.

MR TERNOVSKI: I'm done with this topic for now, and I'm ready to move on.

COMMISSIONER: Very well. We'll adjourn till 10 am tomorrow morning.

MR TERNOVSKI: Commissioner, Ms Sacco reminds me that I need to tender the unredacted versions of document 40 and document 22.

COMMISSIONER: Very well.

MR TERNOVSKI: I think they've been provided to the parties. They've been provided to the parties, but I'll just hand up the copies for you, Commissioner.

COMMISSIONER: Are there any objections to these? Document 22, meeting invite from minister's office, Hayley Lockyer, to Building Trades Group, sent 15 March 2023 and meeting scheduled for 3 April 2023 will be exhibit CA -

MR TERNOVSKI: CA-43, Commissioner.

<EXHIBIT CA-43 DOCUMENT 22, MEETING INVITE FROM MINISTER'S OFFICE, HAYLEY LOCKYER TO BUILDING TRADES GROUP, SENT 15/3/2023 AND MEETING SCHEDULED FOR 3/4/2023

COMMISSIONER: Document 40, email and attachment from Kym Bancroft to Michael De'Ath regarding triaging process overview, 5 April 2023, though identified as 4 April 2023, 10.15 Greenwich Mean Time, will be exhibit CA-44.

<EXHIBIT CA-44 DOCUMENT 40, EMAIL AND ATTACHMENT FROM KYM BANCROFT TO MICHAEL DE'ATH REGARDING TRIAGING PROCESS OVERVIEW, 5/4/2023, THOUGH IDENTIFIED AS 4/4/2023, 10.15 GREENWICH MEAN TIME

MR TERNOVSKI: Thank you, Commissioner.

COMMISSIONER: Is there anything else from anyone else this afternoon? We'll adjourn till 10 am tomorrow morning.

<THE HEARING ADJOURNED AT 4.00 PM