



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

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

**PUBLIC HEARING
BRISBANE MAGISTRATES COURT**

**THURSDAY, 20 NOVEMBER 2025
AT 10.00 AM**

DAY 3

APPEARANCES

**Mr S Wood AM KC, Commissioner
Mr Mark Irving KC, Witness
Mr M Costello KC with Ms S Harburg, Counsel Assisting
Mr C Mandy SC and Ms E O'Brien, Counsel for Ms Jade Ingham
Ms R O'Gorman KC, Counsel for Mr Michael Ravbar and Mr Kane Lowth
Ms S Hedge, Counsel for Mr Timothy Ellis
Mr C O'Grady KC, Counsel for Mr Mark Irving KC
Mr D de Jersey KC, with Mr M. Hickey KC and Mr D. Wilson, and Ms M.
Brooks for the State of Queensland**

<THE HEARING COMMENCED AT 10.01 AM

5 **COMMISSIONER:** Are there any changes in the appearances? None. Before you commence, Mr Costello, Ms O'Gorman, in terms of next year, there are eight or nine weeks between the start of the legal year and Easter, and we have this courtroom on Tuesday, 10 February through to Friday the 13th and also Tuesday, 17 March through to Friday, 20 March. We also have it from the Wednesday after Easter. That is, Wednesday, 8 April to Friday, 10 April and from Tuesday, 28 April to Thursday, 30 April. If we do succeed in getting additional dates in the first eight or nine weeks of the year, then we probably will not sit in the school holiday period, 8 April through to 10 April, but if we can't get additional dates then we probably will. But that's the best we can do at the moment and you will get a letter as will all the other party whose have been given leave to that effect today. But hopefully we will be able to update you at the next sittings.

15 **MS O'GORMAN:** Thank you.

COMMISSIONER: Mr Costello.

20 **MR COSTELLO:** Thank you, Commissioner. Commissioner, I call Mr Irving of King's Counsel.

COMMISSIONER: Mr Irving.

25 **<MARK ANTHONY IRVING, AFFIRMED**

<EXAMINATION BY MR COSTELLO

30 **COMMISSIONER:** Thank you, Mr Irving. Please take a seat. Mr Costello.

MR COSTELLO: Mr Irving, could you state your full name for the record, please?

MR IRVING: My name is Mark Anthony Irving.

35 **MR COSTELLO:** And your business address.

MR IRVING: Is 540 Elizabeth Street in Melbourne.

40 **MR COSTELLO:** Your current occupation is the Administrator of the CFMEU?

MR IRVING: Correct.

45 **MR COSTELLO:** Mr Irving, before you were appointed to your current office you were a barrister in practice for about 27 years?

MR IRVING: Yes.

MR COSTELLO: The member of the Victorian bar?

MR IRVING: Yes.

5 **MR COSTELLO:** You were appointed Senior Counsel in 2017?

MR IRVING: Yes.

10 **MR COSTELLO:** And in your time as a practising barrister, is it fair to describe your practice as being specialised in industrial law?

MR IRVING: Yes.

15 **MR COSTELLO:** But within that specialisation you practised broadly within the specialisation?

MR IRVING: Industrial law covers a broad variety of areas of law.

20 **MR COSTELLO:** Your experience as an industrial relations barrister extends to experience in cases that concern corruption or at least allegations of corruption?

MR IRVING: Yes.

25 **MR COSTELLO:** And in that connection you have previously been involved in drafting rules of unions in a way that seeks to embed anti-corruption measures?

MR IRVING: That is true.

30 **MR COSTELLO:** And to increase the transparency of the union?

MR IRVING: Correct.

MR COSTELLO: To enhance accountability of officials?

35 **MR IRVING:** Yes.

MR COSTELLO: And to alter organisational structures in a way to make the organisation more resilient to corruption?

40 **MR IRVING:** Yes.

45 **COMMISSIONER:** Can I just ask a question, Mr Irving? I think you gave evidence in response to my learned - Mr Costello's question that you have been appointed as Administrator of the CFMEU.

MR IRVING: It's a colloquial expression. The accurate expression is I'm Administrator of certain schemes. And pursuant to the schemes of the administration

certain powers vested in me. The schemes are created under the Federal Act, the Fair Work Registered Organisation Act in relation to the federal entity. The scheme created under the Queensland Industrial Relations Act, the scheme created under the New South Wales Industrial Relations Act. Those Queensland and New South Wales schemes apply to the State-registered unions in both of those places. There is legislation in place in South Australia which is triggered on certain events. They haven't been triggered in relation to the South Australian registered entity and there is a State-registered entity in Western Australia for which there is no legislation in place.

COMMISSIONER: And in relation to the federally-registered entity, are you the Administrator of the CFMEU or just the Construction and General Division of the CFMEU?

MR IRVING: Just the Construction and General Division. If it would assist, I can explain how the divisions operate, although I don't want to interrupt your flow.

MR COSTELLO: It was my next question.

COMMISSIONER: I'm sorry, Mr Costello. I couldn't resist. I'm sorry.

MR IRVING: Just looking at the CFMEU federally, the CFMEU has three divisions. The MUA division, maritime workers; the administration has got nothing to do with that. The Manufacturing Workers Division and there's a - they are leaving the CFMEU pursuant to various legislation, et cetera. And thirdly the Construction and General Division.

Now, the Construction and General Division, like the other two entities, has appointees or positions on the overarching - what's called the cross-divisional National Executive and there are legislative provisions in the federal laws about how those powers are to be exercised. Those matters about cross-divisional matters outside of the Construction and General Division are of little or no concern to the way in which the administration is conducted on a day-to-day basis. Rather, the administration is focused upon almost exclusively the Construction and General Division. The Construction and General Division consists of six branches: Queensland-Northern Territory, New South Wales, ACT, Victoria/Tasmania, South Australia and Western Australia. And the way in which the administration is set up legally, and I appreciate I'm going on and if you wish to cut me off and redirect me -

MR COSTELLO: No, this is extremely useful.

MR IRVING: Okay. The way in which it operates, legally, is to consider the union as a democracy with different state governments and different state executives, et cetera. And so within each state like Queensland, there is a conference, which meets annually or bi-annually, of various elected representatives which might be a large number of 80 or so. Then on a monthly basis there is a Committee of Management. And the Committee of Management consists again of elected people, and the

Committee of Management consists of the principal office holders, the Secretary, the assistant Secretary, the president, the treasurer and ordinary Committee of Management members. They meet monthly and run the union on a monthly basis.

5 Further, there is, within those principal officeholders, a smaller executive with powers defined under the rules which consists largely of the Secretary, the assistant Secretary and some senior officeholders. Pursuant to the rules certain powers are vested in the branch Committee of Management. Certain powers are vested in the branch conference. Certain powers are vested in the branch executive and certain
10 powers are vested in each of those officeholders. The way the legislation operates is to say that all of the powers of all of those people is vested in me and that none of those people hold those offices.

15 That is true in relation to all of the states and territories but there is, in relation to Western Australia and the ACT, a slight exception. In relation to those places, all of the powers are vested in me, but those people continue to hold office and those people continue to exercise power through me. Indeed, all the people engaged in the CFMEU exercise power through me, through the delegations I have established, through systems I have established. And so by that mechanism, and this is replicated
20 in each of the states - now, can I then deal with the Queensland State-registered union position.

MR COSTELLO: Yes, please, which is a separate scheme.

25 **MR IRVING:** Okay. We have got a cognate scheme there, the terms of which are very similar and most cases identical and again, there is a mechanism by which I am put in effective control in relation to all of the powers, all of those folk and are able to conduct the union in a different way through employees who are subject to my direction.

30 **MR COSTELLO:** And so by the combination of the interlocking schemes you are the sole repository of executive power within the various entities in respect of which the administration operates. Is that fair?

35 **MR IRVING:** That is fair to say, subject to the cross-divisional National Executive powers and similar powers which as I've said is a minor part of - which, you know, for example I don't exercise powers in relation to the MUA. I don't exercise powers in relation to the Manufacturing Division, et cetera.

40 **MR COSTELLO:** At the apex of the union is a National Executive that is comprised of members from the various divisions.

MR IRVING: Correct. That's correct.

45 **MR COSTELLO:** And at that National Executive level do you exercise voting power on behalf of the Construction and General Division?

MR IRVING: I could if I needed to.

MR COSTELLO: I see.

5 **MR IRVING:** My attitude in relation to the approach to National Executive is if there is any resolution which is going to be passed that I consider might, affect, control, influence me in the exercise of those functions, to the extent it would ever be lawfully binding I would have the numbers to quash it. So -

10 **MR COSTELLO:** You would have a majority on the National Executive?

MR IRVING: Indeed.

15 **MR COSTELLO:** By reason of the fact the Construction General Division is the largest division, is that how that comes about?

MR IRVING: Correct. Correct.

20 **MR COSTELLO:** I see. And in terms of the functioning of the National Executive have you appointed officers to sit on the National Executive on the behalf of the Construction and General Division?

25 **MR IRVING:** I think there might have been. Now you are testing my memory here. I haven't thought about these issues for six months. I think there might have been a - a meeting of the National Executive about six months ago dealing with what I think what were relatively inconsequential issues. I think that what occurred was that I appointed a proxy to hold exercise powers - or exercise voting on my behalf about the - and required notice to be given of what resolutions were going to be considered so that it could be examined beforehand. It was a matter which would have occupied about half an hour of my time in the last year and a half, I - the precise details which I'm not really across. I do know that, pursuant to the scheme in the FWRO Act, there is a specific subsection that deals with how the Administrator is to exercise powers on such a body and I had regard to that when doing what I did -

35 **MR COSTELLO:** I see.

MR IRVING: Whatever it is I did.

40 **MR COSTELLO:** Is it fair then to say that within the - at least day-to-day operation of - I want to be precise about this, of those entities in much of which you exercised executive power, that the National Executive is not a body that has any particular role in the day-to-day operations?

45 **MR IRVING:** It has no role.

MR COSTELLO: Thank you.

MR IRVING: It has no role. It has no role. It has never sought to exercise a role and to the extent that it ever sought to exercise a role I would have the effective power to stop it exercising such a role.

5 **MR COSTELLO:** And similarly, within the union as a whole, each division operates autonomously from the others to a large degree.

MR IRVING: Yes, yes. Almost completely.

10 **MR COSTELLO:** They could almost be considered as separate unions, save for the umbrella arrangements -

MR IRVING: Correct. Correct.

15 **MR COSTELLO:** For the National Executive.

MR IRVING: Correct.

20 **MR COSTELLO:** That's a very useful explanation of the mechanics of the various entities. Perhaps you could now outline your role as Administrator. You have already given evidence that you've got - you are vested with exclusive powers in an executive sense. What is it that your role entails on a day-to-day basis?

25 **MR IRVING:** Putting it at a fairly high level of abstraction, it is to continue to conduct the union, and it is to change the union so that it becomes a lawful and effective organisation. Now, that can be broken up into 100 different subpoints, but one level of extraction it is to run it and change it.

30 **MR COSTELLO:** Thank you. Thank you. Do you conceive of your role as something in the nature of Chief Executive of the union?

MR IRVING: Well - no. Could I explain -

35 **MR COSTELLO:** Yes, please.

40 **MR IRVING:** In relation to - in relation to the arrangements a Chief Executive might be subject to a direction of a board of directors. There is no directors. I'm all of the directors as well. I'm Chief Executive and all of the directors and all of the decision-making bodies. I'm the Governor-General, the Prime Minister, all of the cabinet ministers, the parliament as well.

MR COSTELLO: So you are the president of the United States.

45 **MR IRVING:** There's no - so in that respect, the scheme is complete, and necessarily so, for if it were the case that there were divergent power bases linked - which could exercise legal power within the organisation, then what I consider to be the necessary change would not be able to affected efficiently.

MR COSTELLO: And so an essential aspect of the schemes of administration that you administer is the suspension of democracy within the union. Is that fair?

5 **MR IRVING:** Yes.

MR COSTELLO: And that suspension exists for so long as the administration continues?

10 **MR IRVING:** Yes.

MR COSTELLO: And at least as things stand the administration is intended to last for three years and that term is capable of being extended? Is that correct?

15 **MR IRVING:** Yes. That's correct, broadly. There is a number of qualifications to that.

MR COSTELLO: Yes, please.

20 **MR IRVING:** The first is that if I am satisfied that a branch of the union is operating lawfully and effectively, pursuant to the federal scheme, then I can, effectively with the consent of the Minister, or permission of the Minister, or if I think if she has reached a similar conclusion I can release that branch, so to speak, from administration. And that branch will then function as an independent - or it will
25 not be subject to the same control as they are currently subject to.

MR COSTELLO: That could be a branch of - a branch of the federal Construction and General Division.

30 **MR IRVING:** Correct, correct.

MR COSTELLO: You mean when you speak of branch there.

MR IRVING: Correct.

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MR COSTELLO: And does the same possibility exist in relation to the Queensland state entity.

40 **MR IRVING:** I would need to satisfy the Minister and I must say that I haven't spent a lot of time considering the scheme in relation to the Queensland CFMEU for its - we are not near that point yet. Once we get near that point, I will sit down and figure out the precise details of what is required and then consult and plan accordingly.

45 **MR COSTELLO:** When you say "we are not near that point", do you mean you are not near the point where it would be feasible for you or rational for you to form the view that the administration was no longer required?

MR IRVING: Correct. I'm of the view that the administration continues to be required.

5 **MR COSTELLO:** Thank you. It's clear, Mr Irving, that you come to the role with a depth of experience in industrial law and in anti-corruption-related activity in connection with trade unionism. You have now been in office for more than 12 months. Do you accept based on what you have seen in the time in - in your time in
10 office that to a very substantial degree in say the five-year period before appointment the CFMEU nationally, which when I say that I only mean those entities in respect of which you are Administrator, operated in wilful disregard of industrial law?

MR IRVING: I think one needs to distinguish between different branches in that respect.

15 **MR COSTELLO:** Please do.

MR IRVING: I think that the mode of operation in Queensland, New South Wales and Victoria - and during that five-year period probably South Australia - was in
20 disregard.

MR COSTELLO: Did you say it was in wilful disregard?

MR IRVING: Yes. I mean, we are talking about, if one looks at the number of
25 contraventions over that five-year period, 2019 to 2024, we are talking about 1,163 found contraventions. Now, you compare that to the top 10 other largest unions in Australia, one of which has had contraventions of 21, one of which has had contraventions of 10, one of which has had six contraventions and the others which
30 have had zero contraventions. So the scope of the wrongdoing was of a wildly different scale and it's something, as lawyers, we might understand but one of the things that I saw within this area, and I saw over the course of the last 15 years in reading these judgments, was that it was a challenge to bring this sector within the rule of law. And when I say "sector", I mean there is a degree of lawlessness in some
35 states, particularly about the construction industry, and Victoria and New South Wales and the role of organised crime there feeds into that. And in terms of the union's operations there's a vast amount of found lawlessness.

MR COSTELLO: And you say that that was particularly evident on the Eastern Seaboard in that five-year period and also South Australia.

40 **MR IRVING:** Effectively from 2019 or so, 2020, there was an infiltration by John Setka and his forces into the South Australian operation and it infected that and we've had to go in and remove that cancer.

45 **MR COSTELLO:** I will come back to that in a moment. Before I do, the operation of the union in wilful disregard of the law was only possible on a continued basis because officials encouraged that conduct. Do you accept that?

MR IRVING: They either encouraged or permitted. They either turned a wilful blind eye or made it part of their business - their business operations. They - which is the worst? You know, it's a complete failure of leadership either way.

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MR COSTELLO: And you are quite right to draw that line - omission, commission. But on any view there were particularly prominent members of the union in each state that weren't turning a blind eye. They were actively involved in encouraging lawlessness. Do you accept that?

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MR IRVING: Yes.

MR COSTELLO: And that was evident in Queensland, amongst other places.

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MR IRVING: Yes.

MR COSTELLO: Do you accept that some officials operated not only with disregard to industrial law but disregard to the criminal law?

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MR IRVING: Yes.

MR COSTELLO: You mentioned Mr Setka, who is not a Queensland. You have a large job and I don't anticipate that you heard the evidence of Mr Watson over the last two days but Mr Watson has a thesis which I'm sure you have heard before and he may not be the author of the thesis. One element of which is a Victorian model of unlawful operation that included violence as a tool was imported into other states from Victoria. Now, that's a high level of abstraction and there's a lot of integers in that, but just dealing with it at that level of abstraction, do you have any view about that thesis?

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MR IRVING: Yes, I do.

MR COSTELLO: And what is your view?

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MR IRVING: I disagree with the thesis. I think, you know, Geoffrey Watson has done a lot of work for and on behalf of the administration, investigating various errors of corruption and wrongdoing and he has acquired information and as a result of that and I respect his judgment. But could I just explain why I think the thesis is incorrect -

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MR COSTELLO: Yes.

MR IRVING: And why I think that it's wrong for me to act on that thesis. One of the things about Victoria - Victoria is very different to New South Wales, very different to Queensland in some respects. The role of organised crime in each of the jurisdictions is quite different. In Victoria, there was an infiltration of organised crime within the union's operations. You ended up - and by organised crime I include

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a family of folk, including outlaw motorcycle gangs and the like. In Victoria, they had some of these folk come into the union as organisers. They had some of these folk appointed as delegates on key sites and it became part of the fabric and operation, particularly post-COVID, of the Victorian operations.

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Now, that - that never happened in Queensland. In Queensland, you know, part of that - part of that structure is to share power, in a way, with organised crime. Michael Ravbar wasn't sharing power with anyone. Michael Ravbar was concentrating power in his own hands with Jade Ingham. And so the notion that he would engage and make them part of the model is problematic for one reason. The second reason, if one looks at the tip-top of the contraventions in Queensland and in Victoria, it's not as if the conduct which is the subject of the contraventions in Queensland started off benign and then got worse as the Setka model is copied. The conduct from Queensland was pretty horrific from the beginning.

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COMMISSIONER: When you say, "the beginning", what was the beginning?

MR IRVING: Well, maybe 2010, the precise - the precise dates is - I haven't sort of reached a firm view and it differs from place to place. The other thing is that Mr Ravbar and Mr Ingham ran the Queensland branch as their own fiefdom. You know, they were kings of this castle. They didn't need Mr Setka. They had their own source of funds, the union was well off. It didn't rely - like South Australia, South Australia became a satellite branch because it was run into bankruptcy, effectively, by Mr Setka. But it - whereas Queensland was never in that position. It was financially strong and it could chart its own course and it didn't need - it didn't need Mr Setka or his people or its model. The fact that the - the fact that cancer has certain - certain outcomes which are common across various cancers, doesn't mean the cancer is the same in each place and it doesn't mean the treatment for the cancer should be the same in each place.

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And so it is that, you know, when I came to appoint Mr Watson to investigate the cancer in Queensland was violence, it wasn't organised crime. And so I had him focus upon violence rather than organised crime. In Victoria I have had him focus on different things. In New South Wales I've had him focus on different things. And in different states I've had other barristers investigate different things because cancers differ. And so that's why I think it's - not only do I disagree, but I think that if one is going to fix the problem you need to correctly diagnose the issue and not just say it's the same model everywhere, because it's - I don't think it is. Which is not to disrespect Geoffrey's views and Geoffrey's considered views which I have regard to.

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MR COSTELLO: No. And part of the problem with this, and it's probably a problem inherent in the way I asked the question, is with the label - labelling it the Setka model. Now, it's in the nature of things that things change over time.

45 **MR IRVING:** Yes.

MR COSTELLO: I didn't intend in asking you that question to imply that an inherent aspect of the model was the infiltration of bikie gangs. I wanted to put it at a different level, at least to begin with, which is the model is something like this: Non-adherence to industrial law as a default position; aggressive trade unionism
5 taken to the point of unlawfulness; overt aggression being displayed as a common feature of any industrial dispute. That is, aggressive trade unionism coupled with violence of one kind or another; abuse all the way through to physical violence. At least at that level, do you accept that that model was a model employed at least
10 across the Eastern Seaboard?

MR IRVING: I would want a couple of qualifications there.

MR COSTELLO: It's important.

MR IRVING: For example, overt violence as part of industrial relations. I think willingness to engage in unlawful and violent behaviour, and in some cases the inaction of that, was part of the model. For - in the resolution of 99 per cent of industrial disputes, there was no violence. But if you are dealing with someone who is willing to be violent, one as an employer is - is going to be feared. But I see there
20 is as much evidence as Setka copied Ravbar's model as Setka copied Ravbar's model. They both ended up in the same place. Whereas in Western Australia, you know, it is different practices. You know, different place, different history. South Australia, pre-the Setka takeover, different practices, different place. And in this union, in this state, and in New South Wales and Victoria, in different periods of history there has
25 been a - a lawful, proper way of conducting industrial relations.

MR COSTELLO: Do you mean by the CFMEU?

MR IRVING: Sorry?

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MR COSTELLO: Do you mean by the CFMEU?

MR IRVING: Yes. I mean, I was involved acting in a matter in 2005 or so in which there was a campaign run for a 35-hour work week by the CFMEU. And it was
35 involved - protected industrial action operating pursuant to the Act, the serving of notices, the compliance with the law and the industry was shut down lawfully, pursuant to the Act. And, you know, there were proceedings which carried on in the Commission for weeks about whether or not there should be the termination of those bargaining periods and the subsequent arbitration and the like and a deal ultimately
40 was reached, which we solved it.

MR COSTELLO: What state was that in?

MR IRVING: That was in Victoria.

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MR COSTELLO: Thank you.

MR IRVING: When the 35-hour week campaign was is - it might have been 2008, perhaps. Pre-Setka being Secretary, I think it was Martin King as the Secretary back then. Well, back then was the union without sin? No. But was it - was it in a perpetual sinful state? No, it wasn't. It had a model of conducting its affairs which was very different to its approach to industrial relations.

MR COSTELLO: That example you have just given is getting on to 20-odd years ago.

MR IRVING: Mmm.

MR COSTELLO: And so how is it that this union went so far off the rails in that period?

MR IRVING: That's a big and complex question and the reasons for it, I think, differ from place to place. The reasons for departing from ethical foundations of unionism and principal law-abiding behaviour may well differ from place to place. You know, in some states there was, and just focusing on Queensland, there was a degree of hubris and placing oneself above the law. You know, in an unchallengeable position.

And there was a concentration of power in the hands of few who in Queensland used it to maximise their influence and the means by which they did so were unhindered by both the laws of society and the laws of civil society. I appreciate that that's not a complete answer but it almost invites me to a long thesis which - into sociological and I think that's beyond my ken.

MR COSTELLO: We might get there but let's do it in part. Is it fair to say the union was inculturate with inappropriate values and behaviours?

MR IRVING: Yes.

MR COSTELLO: And that inculturation occurred over a period of time?

MR IRVING: Yes.

MR COSTELLO: And it -

MR IRVING: When we were talking about - see, when you asked me about the union -

MR COSTELLO: Yes.

MR IRVING: I immediately think of, so is that true in South Australia, is that true in New South Wales? That true in the period of this - and so if it could be limited to -

MR COSTELLO: You are quite right.

MR IRVING: If that's already.

MR COSTELLO: Let me limit it to Queensland for now -

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MR IRVING: Yes thanks.

MR COSTELLO: To the extent that you are giving your answer - your evidence - you would wish to draw on the experience of other branches, then of course you can and just say so. But assume for present purposes at least that I'm asking about Queensland. The Queensland - and when I say Queensland, I mean both entities.

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MR IRVING: Yes.

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MR COSTELLO: The Queensland union was inculturated with inappropriate attitudes and behaviours.

MR IRVING: Yes.

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MR COSTELLO: And that inculturation was in large part a function of the attitude of the leadership of the union.

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MR IRVING: It was partly a function of that. But the structures allowed that to occur.

MR COSTELLO: What do you mean by that?

MR IRVING: If one has structures in which - if you have rules of accountability that do not expose the actions that have been taken and why they are being taken, if there is lack of transparency about the affairs of the organisation, if there is - you know, we talked about how all power is centralised through this scheme in me.

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MR COSTELLO: Mmm.

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MR IRVING: But the situation in Queensland was, notwithstanding these - these purportedly democratic structures, there was no sharing of power within the structures. It was Michael Ravbar's palace. Michael Ravbar's kingdom in which he ruled. And so it's not just bad leaders, it's bad structures that allow - and it's not just bad leaders, but those within the organisation who do not have the ethical foundation, who do not have the appropriate training, who do not have proper understanding of what unions are, what unions do, what should drive unions. What is the role of unions within civil society, within the labour movement, within the union movement. You know, all of that lack of understanding is part of the structural problems. That also need to be addressed. So it's - I took issue with the - it's the bad leaders, it's not just that -

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MR COSTELLO: Yes, I think my question said largely the leadership and you say the leadership is one part but another part is structure?

MR IRVING: Yes.

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MR COSTELLO: And I'm going to deal with both with you. Let me stick with structure since that's where you've taken me. Are you aware of any particular rule changes in Queensland that led to the union going off the rails?

10 **MR IRVING:** No.

MR COSTELLO: And so this was a structure that had accommodated lawful behaviour of the trade union before.

15 **MR IRVING:** Yes.

MR COSTELLO: And does that mean then that what has happened is that people have come into positions of leadership prepared to operate in a different way notwithstanding the structure has unchanged?

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MR IRVING: Yes. I'm not aware of any rule changes.

MR COSTELLO: Yes.

25 **MR IRVING:** There may well have been rule changes but one of the things that needs to be understood about union democracies in Queensland over the last 15 years is, you know, Mr Ravbar wasn't elected in 2010, he wasn't elected in 2014. Nor was Mr Ingham. They weren't elected in 2018, 2020, or in any contested elections. In fact, for the last 15 years from recollection they weren't - there weren't any contested
30 elections. Now, that may well be a function of the membership all agreeing that they were a magnificent leader and nobody being prepared to stand up against them. It may well be a function of the fact that dissident voices were snuffed out. And if dissident voices are removed from positions of power and influence, then alternatives
35 don't get developed.

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MR COSTELLO: Yes.

MR IRVING: And so, you know, these - this rule structure can accommodate both progressive and inclusive forms of democracy and more dictatorial forms of
40 democracy. That is the current rule structure.

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MR COSTELLO: Yes. And that answer points up the difficult issue here between questions of structure and rules. Union democracy and leadership. If it is the case that this union was acting in a - within its internal organisation in a properly
45 democratic way and these members were perfectly happy, perhaps ecstatic, with the leadership of Mr Ravbar and Mr Ingham, does that in itself point out a problem?

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MR IRVING: Well, there is a number of aspects there. One of which is members can well be happy for Mr Ravbar and the CFMEU have delivered great results for the works. You know, in relation to their area of coverage and their EAs, they are wonderful set of conditions in terms of keeping workers safe at work. The CFMEU is unrivalled in the job that it does. I mean, if you compare the protection of workers on unionised sites compared to non-unionised sites, the number of deaths on unionised versus non-unionised, number of serious injuries on unionised versus non-unionised, it is chalk and cheese and some stats say you're 30 times safer on unionised sites compared to non-unionised.

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MR COSTELLO: Are you talking about Construction there and are you speaking about sites generally?

MR IRVING: Construction.

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MR COSTELLO: Thank you. But one of the things that, of course, is invested in me is the power to change the rules. A power to change the structures, a power to set up provisions whereby fiefdoms become accountable and they are no longer fiefdoms. And so the decisions made at one level are published and accountable to other levels. So to invigorate a form of democracy that makes it more accountable and transparent to members and more democratic. And if it is the case that I leave this organisation with a structure that would allow it to be perverted again in the future, then I'm obviously going to fail in my task. I'm mindful of that.

25 Have I changed rules about the internal structures? I haven't needed to yet because all of the power is vested in me. Will I attend to that before I go? Most certainly will. Most certainly will. And it will leave an organisation that in the future has levels of accountability and transparency and a more democratic structure. Now, we've spoken about the set-up of conference and committees and executive and all that sort of thing. It's - it's a very 19th early 20th century structure. In the CFMEU you've got a significant number of full-time delegates and they are a source of strength and guidance and they've got virtually no role within the rules. And so what roles should be given to delegates and delegates conferences and how regularly should they occur and should they be able to bind difficult levels? These are areas that I will work on, consult with others within the organisation and I've drawn on expertise from various unions to inform judgments about these matters.

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40 **MR COSTELLO:** Do you think that the internal rules of a trade union are capable of being developed in a way that avoids the risk of this type of strongman leadership?

MR IRVING: Yes.

45 **MR COSTELLO:** Do you think that alone - the internal rules alone can be sufficient?

MR IRVING: Alone? Well, not alone because -

MR COSTELLO: What -

5 **MR IRVING:** Because - because, the internal rules need to be enforceable pursuant to a piece of legislation and court orders and mechanisms for calling people to account. But it can - can one change the rules to prevent strongmen taking the reins and exercising their role as a strongman? Yes.

10 **MR COSTELLO:** That might involve measures being taken to ensure that people who are inappropriate to be exercising the very considerable power and influence that comes with being a union official are not permit into those roles in the first place?

15 **MR IRVING:** Yes.

MR COSTELLO: And do you have in mind there that that is something best assessed by the union itself or is it best assessed by an external authority?

20 **MR IRVING:** I think that - so there's - part of this question is do we need a Fit and Proper Person Test to stand as a candidate?

MR COSTELLO: Yes.

25 **MR IRVING:** To which the answer is as follows, or my current answer is as follows: I think that people who are candidates for office need to be appropriately qualified to fulfil that office. If one is standing to be the treasurer of an organisation with \$317 million in assets, then it would be good to have some understanding of how accounts operate. And so one can build within the rules a set of requirements about - to be a candidate for office you need to, A, have X number of years
30 continuous membership; B, have completed training in A and B and C which are appropriate for the office for which you are standing.

And so my current answer about those matters is as follows: However, when I say
35 "my current answer", the NCIF, the national construction industry forum, is a national body consisting of 80 employer groups and four unions and various government ministers and we have developed a blue print for change and one of the areas in which we are working on are behavioural standards for people within the construction industry. And whether or not that ends up being a - translating into a Fit and Proper Person Test or some other - some description or another, through that
40 consultative, collaborative process, well, I don't want to close my mind to hearing alternate views about that. But hence the qualification in my current answer. I feel like I'm going on a bit.

45 **MR COSTELLO:** I will stop you.

MR IRVING: If you need to stop me if - please do.

MR COSTELLO: You can be sure of one thing, I will stop you if I need to.

MR IRVING: Excellent.

5 **MR COSTELLO:** You just spoke about qualification. What about disqualification in.

MR IRVING: Yes.

10 **MR COSTELLO:** While there be hard and fast rules that particular conduct excludes you from being a candidate?

MR IRVING: Well, there is a number of aspects there. The first is the Fair Work Registered Organisations Act sets out a series of criteria by which a person can
15 be - have their membership terminated. And it says, you know, the union can have rules about A, B, C and D and they are the basis for disqualification. I have been given additional powers to discipline members which might result in a termination. I have developed a policy and that policy grants me the powers to further define what I consider to be areas of disqualification and if you are disqualified through those, we
20 have got a limited grounds we can do it and that would terminate your membership.

And further, in relation to the CFMEU, Mr Ravbar and Mr Ingham and 320 officeholders around Australia need to convince the Fair Work Commission that they are fit and proper people before they ever stand for election again. That's part of the
25 scheme that's being put in place. So there is a Fit and Proper Person Test for officers in place for those who were removed from office by the Federal and Queensland government actions.

MR COSTELLO: That's part of the scheme that has been put in place as the
30 administrative scheme that has been put in place that puts you into office?

MR IRVING: Correct. And that scheme - that part of the scheme lives after my legislative death.

35 **MR COSTELLO:** That applies only in respect of these organisations, not more broadly.

MR IRVING: Correct. Correct.

40 **MR COSTELLO:** And your deeply experienced industrial lawyer, does it strike you as any particular reason why those sorts of requirements ought to exist more generally so as to mitigate against the risk of this type of behaviour growing up in another union?

45 **MR IRVING:** Well, I refer to my previous answer. That I think people - people should be qualified for the offices which they are standing for. And if that requires particular types of training they should receive it before they stand for office. The.

MR COSTELLO: The Fit and Proper Person Test that you've just referred to that's an aspect of the schemes applies only to those who you have removed from office. Is that right?

5

MR IRVING: No. So the way in which the scheme operates is, in terms of removal from office, there are - everyone who is fulfilling any of those roles in, you know, the executive and the committees and the conferences, etc, were - became removed persons. There were 12 people. The most senior leaders, who were removed and had their employment terminated at the same time. There are some who were removed and continued to be employed. And there were many who were removed - whose employment was unaffected because they were a member of the conference and they were a carpenter for John Holland during the day and once a month they went into - or once a year they turned up to the Queensland branch conference. And they became removed people as a result of that.

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So the legislative scheme in that aspect created a non-differentiated guillotine. It cut off the good and the bad at the same time. And you know, the carpenter might have done nothing wrong, have never been involved in any wrongdoing. Nobody has ever - never has ever said that, you know, she is a horrible person but they are now a removed person. And as a result of being a removed person, can't stand for office again, unless they are a fit and proper person. Now, of course in those circumstances I'm sure the Fair Work Commission would quite sensibly say, well there's no reason why this person shouldn't stand for office or do whatever again.

30
In addition one can become a removed person if your employment is terminated as a result of inaction under the scheme. So if I sack someone they also become a removed person. Different if they resign, okay, because that's not action under a scheme, that's - the resignation is the act of an employee -

30

MR COSTELLO: A person who resigns doesn't meet the definition of a removed person?

35
MR IRVING: They do not meet the definition of a removed person unless they were already a removed person by virtue of being in the schedule. There is one - there is one other exception which only applies to one person, which I - is not a Queenslander so I don't need to worry about that.

40
MR COSTELLO: And what about those persons who you have made redundant?

MR IRVING: They are not removed persons unless they were already on the list.

45
MR COSTELLO: All right. And this might be an unfair question, but would there be a large number of people who have been made redundant who are not removed persons? Would you expect?

MR IRVING: Yes.

MR COSTELLO: And we will come to this a little bit later, but it's fair to say that there have been a significant volumes of redundancies across the various entities in respect of which you have powers since your appointment?

5

MR IRVING: Yes, there are redundancies currently occurring in some states. The redundancies which occurred in Queensland. In fact, no I agree with your question, the answer to your question was yes.

10 **MR COSTELLO:** And the fact that people who have been made redone ever done don't are then not removed persons and therefore not subject to the Fit and Proper Person Test is potentially a lacuna in that particular scheme. Do you accept that.

15 **MR IRVING:** In that particular scheme but as I previously indicated I have the power to amend the rules. The rules can be amended so that people who meet certain criteria, who fail to meet certain criteria, that I establish, will be ineligible to stand in the future.

20 **MR COSTELLO:** Yes.

MR O'BRIEN: Okay. So just because the lacuna exists in the legislative scheme does not mean that an identified Dr Evil would be standing in the next set of elections.

25 **MR COSTELLO:** Does it need to be persona designata?

25

MR IRVING: No.

MR COSTELLO: Do you need to identify the person or can you do that by way of a category of conduct for example.

30

MR IRVING: I can do that by a category of conduct.

MR COSTELLO: You can say that for example that anybody found to have breached industrial law by a - by a Federal Court more than twice - I'm not suggesting you would but you could.

35

MR IRVING: I could.

40 **MR COSTELLO:** I'm not saying anybody can -

MR IRVING: No, I should qualify that. Pursuant to the FWRO Act, I think that the restriction will be the rule would need to be reasonable.

MR COSTELLO: Okay.

45

MR IRVING: Yes. So that's -

MR COSTELLO: That might be open to challenge.

MR IRVING: That might be open to challenge.

5 **MR COSTELLO:** That may or may not be found to be reasonable but you can do it by way of category of conduct rather than by person.

MR IRVING: Yes.

10 **MR COSTELLO:** Are you still able now to exercise powers to make people removed persons?

MR IRVING: By terminating their employment, yes. And by terminating their position as a delegate, from recollection, it has the same effect, from recollection. I
15 I would need the Act in front of me to remind me. But that's - and it - and possibly in relation to two or three others who - in Australia who are in unique situations.

MR COSTELLO: Do you have the power to terminate membership of the union?

20 **MR IRVING:** I have the power to establish a disciplinary process which might result in expulsion from membership of the union.

MR COSTELLO: And you have exercised that power yet?

25 **MR IRVING:** Yes.

MR COSTELLO: There is a process in place?

MR IRVING: Yes.

30

MR COSTELLO: Could you just explain the process to the Commission, please, what it is that you have set up?

MR IRVING: There are - pursuant to the rules there is a process by which a
35 member can lay a charge and the charge goes to a committee and the committee goes to - makes a determination of guilt by reference to the criteria which is set out in the rules which reflect the criteria in the Fair Work Organisations Act.

40 After a hearing, the - after a hearing there is a separate hearing about penalty. After hearing guilt, there is a separate hearing about penalty and after a separate hearing about penalty there's a right to appeal to different bodies. Now, that whole process is completely inappropriate for the administration for I am both the layer of the charge and - or persons in my direction pursuant to the - and the determinator of guilt and the appeal body at the same time.

45

So the process that I've established is that a charge can be laid by the Head of Legal and Integrity. The - there is then material that is provided to the person charged

which will form the basis of the prosecutor's case, so to speak. They will be given an opportunity to respond in writing to that material. The material in writing will then be provided to the decision-maker. The decision-maker will make a decision on the papers. There is a possibility of having a hearing in person but it would only be in
5 extraordinary circumstances. A determination of guilt is made or innocence is made and then there is a separate process by which you determine on the papers again largely again whether or not there is any guilt.

I can receive - or the decision-maker can receive material on hearsay, they can act on
10 the basis of reports have been given to the Commission. It is not bound by the rules of evidence, it's going to be a prompt process. It's been applied to the former State Secretary of the South Australian branch who has been expelled from memory membership. I intend at an appropriate stage stake steps to take action concerning the
15 membership of a series of former leaders and those who are considered to be inappropriate for continuing membership.

MR COSTELLO: I don't expect you to have particular dates in mind, but how recently has this process been established?

20 **MR IRVING:** I think it was established in December.

MR COSTELLO: December of 2024.

25 **MR IRVING:** Yes.

MR COSTELLO: And you mentioned the former -

MR IRVING: It might have been January, it might have been November, it might
30 have been February but about that.

MR COSTELLO: You mentioned the former South Australian State Secretary has been through this process.

35 **MR IRVING:** Correct.

MR COSTELLO: And is that the only person who has been through the process or are there others.

40 **MR IRVING:** Correct.

MR COSTELLO: Just the one?

MR IRVING: Correct.

45 **MR COSTELLO:** And did you say that the power to lay a charge rests with Legal Integrity Office?

MR IRVING: Yes.

MR COSTELLO: And they make that decision independently of you?

5 **MR IRVING:** All power really flows through me. And so they make the decision independently through me, although of course everyone is subject to my direction and control.

MR COSTELLO: I understand -

10

MR IRVING: If I wish to - if I wish to direct somebody to be charged then I could - that could occur.

MR COSTELLO: And you wouldn't view that as inappropriate?

15

MR IRVING: No. I think - I think ultimately what I need to ensure is that the decision-maker does not have invincible bias and is not acting in a dual role as prosecutor and judge. Now, if I'm going to be the decision-maker then I should stay out of the prosecution process. If I'm going to play a role in directing the prosecution, I should appoint someone else as a - as the judge who can exercise powers without - without invincible bias.

20

MR COSTELLO: And is the judge an external person? Or does it vary from -

25 **MR IRVING:** It's - it's - it is - in relation to - in relation to the process that was applied in South Australia, it was a barrister of the South Australian bar who was effectively formed (indistinct) about the guilt. That's my recollection.

MR COSTELLO: It is - in any event, it's not one person holding that particular office, it will be an ad hoc appointment from time to time?

30

MR IRVING: Yes.

MR COSTELLO: You haven't seen fit to direct the relevant prosecutor within the organisation to move against the membership of Mr Ravbar?

35

MR IRVING: Yes, I have.

MR COSTELLO: You have asked for that to occur?

40

MR IRVING: Yes.

MR COSTELLO: And that process is in train, is it?

45 **MR IRVING:** Correct.

MR COSTELLO: And Mr Ingham?

MR IRVING: Yes.

MR COSTELLO: Mr Setka?

5

MR IRVING: Not today. Not as of today.

MR COSTELLO: It's a matter that you are contemplating?

10 **MR IRVING:** It's - there's a series of matters I'm contemplating about these steps in the very near future.

MR COSTELLO: Are you also contemplating taking steps to commence the process for -

15

MR IRVING: I can tell you - I can tell you frankly, I'm considering taking steps in relation to Mr Ravbar, Mr Ingham, Mr Setka, Mr Christopher, that's Derek Christopher, Elias in - one of the Myles brothers in Victoria.

20 **COMMISSIONER:** Elias is Elias Spervovasilis?

MR IRVING: Yes - who is one of the 12 who was removed. So I am considering those matters and in NSW the Greenfields and Rudemalia.

25 **COMMISSIONER:** Which one of the Myles brothers?

MR IRVING: I always get stumped with this question. It was the one who was removed from both his office and his employment. It was either Joe or the other. I - I can't recollect.

30

COMMISSIONER: I think his name was given as Mick yesterday.

MR IRVING: Yes. It might have been Mick, it might have been Joe. I cannot recollect which -

35

MR COSTELLO: Joe Myles is certainly the person who was terminated on your first - on the day that you were appointed as Administrator?

MR IRVING: Terminated by me or terminated by the legislation.

40

MR COSTELLO: Yes. Well, I think by notice from you but by function of the legislation.

MR IRVING: All right. Let me check. It will be Joe.

45

MR COSTELLO: Joe. Is there anybody else in Queensland that you are considering taking this step against at the moment?

MR IRVING: As of today, no.

5 **MR COSTELLO:** All right. Do you anticipate - no doubt there's a great many things on your to-do list, but do you anticipate that at some future point will you give consideration to whether or not there are people, for example, who have been removed from office in Queensland who you will consider seeking to have their membership terminated?

10 **MR IRVING:** It's possible. It's possible.

MR COSTELLO: Do you call that process expulsion, is that right?

15 **MR IRVING:** Yes, expulsion.

MR COSTELLO: It's possible yes.

MR COSTELLO: But it's not a firm plan as yet.

20 **MR IRVING:** No. But - as you might have gathered, part of the process over the last six months has been to focus on getting the organisers and staff within the union offices in New South Wales, Victoria and Queensland right. There are a large number of delegates. There are a large number of delegates across the country and over the course of the next 12 months we have planned process for dealing with a
25 number of aspects relating to those delegates. That will include reform of the process relating to selection, reform of the process relating to duties and training. And in the course of doing that I intend to turn my mind to the process by which in the selection process whether or not in my view by reference to criteria I develop, whether or not they are fit and proper people to perform those roles.

30 **MR COSTELLO:** Thank you.

MR IRVING: But, you know, in Queensland, I think there are 413 delegates. A mixture of site delegates and company delegates. Since the beginning of
35 administration, 138 of them have ceased to be delegates.

COMMISSIONER: How many did you say?

40 **MR IRVING:** 138.

MR COSTELLO: When you say ceased, how has that come about?

MR IRVING: In some cases they have been working on projects and the project has ended. In some cases they have been removed.

45 **MR COSTELLO:** By you?

MR IRVING: By me or pursuant or by Jared Abbott or -

MR COSTELLO: On delegation from you?

5 **MR IRVING:** Yes. Though -

MR COSTELLO: Exercising the power that -

10 **MR IRVING:** Exercising the power.

MR COSTELLO: Quite. Just while we are on delegates, what's the process for election of delegates at the moment? Is there one?

15 **MR IRVING:** So one has got to distinguish between two different types of delegates.

MR COSTELLO: Thank you.

20 **MR IRVING:** The first are company delegates and the second are site delegates. None of those different types of delegates are employed by the union. A company delegate will be, say, you had a form work company with 15 employees that goes from site to site to site performing work. The members on that site might elect their own delegates. Okay. Once you reach a critical mass of X number of works at the site or if somebody wants to take on the role as a delegate, it is their choice, that will
25 just be a show of hands; as simple as that.

Project delegates are different. Project delegates are when you have a project which might have - which might be building \$100 million structure and there will be dozens of different subcontractors and companies coming on to the job on and off on a - on
30 the basis, including our former work people. They will choose a project delegate usually for the life of the project. And that site delegate will be - that site delegate will be employed full-time, often by the company, as I understand it, the company who is running the project. So they are full-time delegates. Some sometimes they do some work on the tools depending on the size of the project but if there is a site
35 delegate on site then they perform the - those functions. Now, as some, you know, 50 subcontractors come on and off the job, part of the function of the site delegate is to engage with those companies, assess whether or not they are compliant with governing laws and introduce themselves and so that industrial issues that arise from time to time can be resolved without disruption of the project and et cetera. So does
40 it always work that cleanly? No. But that's the distinction between site and - now, the selection of those site delegates -

MR COSTELLO: Yes.

45 **MR IRVING:** Arises in this way. You are not going to have an election with all of the people on the project voting because the people on the project in the latter part of the project aren't there at the beginning.

MR COSTELLO: Yes.

5 **MR IRVING:** Okay. So what tends to happen is within a couple of weeks of the
project starting the members come together and they elect a delegate. These people
are professional delegates. In some cases the union says "You should have X". In
some cases they will say to the members, "Have whoever you like." But more often
they will say "You should have X". X has got experience running as a site delegate
10 projects before and they are really good. It's a choice for the members on a site, but it
will often very much a guided choice at best.

MR COSTELLO: Guided by?

15 **MR IRVING:** Guided by the union and appropriately so.

MR COSTELLO: Well, who within the union -

20 **MR IRVING:** It will be the organiser, it will be the -

MR COSTELLO: Officials of one type or another.

25 **MR IRVING:** Yes. For if it is the case that power is being power invested in the
union is being exercised through these folk, who can be appointed and removed by
me, having someone while the inappropriate will do that job is unwise. And so the
union has, appropriately, a role of making recommendations and guidance, et cetera,
to members. Now, how that operates in practice, whether or not the union comes in
and says to the wok workers this is going to be your delegate, you've got no choice,
well that's next year's job.

30 **MR COSTELLO:** For you.

35 **MR IRVING:** Yes. Next year's job involves going through and making sure the
selection processes are appropriate. For if there are professional delegates, they need
to be professionally trained. If there are professional delegates, they need to be
professionally changed in the sense of they have got to understand their rights, they
have got to understand their responsibilities, they have got to be able to exercise
powers and not abuse powers. They have got to be able to understand how to resolve
40 industrial disputes without relying simply on flex. You know, they have got to have a
whole set of skills.

COMMISSIONER: So what did you say then, relying simply on -

45 **MR IRVING:** Simply on flex.

MR COSTELLO: You mean muscle?

MR IRVING: Yes. I mean, many of the delegates - most of the delegates are excellent, committed, hard working people. But some of the folk, if you were in Victoria, as appears in the Building Bad report, are folk who have walked out of connections with organised crime and been placed into positions as delegates. So
5 that's wildly inappropriate. These people have no skills other than menace that they bring with them. And that's part of the process that we are going to go through in a rigorous and disciplined way to ensure that the representatives of labour represent labour and that they are appropriately and skilled to do so.

10 **MR COSTELLO:** The site or project delegates are full-time union workers but often times employed by the contractor.

MR IRVING: Always employed.

15 **MR COSTELLO:** Always.

MR IRVING: Never employed by the union.

20 **MR COSTELLO:** And - so full-time union workers as in they - their duties are to be the delegate for members - their duties as imposed by the employer are to - are to perform work for the union.

MR COSTELLO: They are never on the tools?

25 **MR IRVING:** They are rarely on the tools. In some of the smaller sites they may occasionally be on the tools but on large sites they are basically full-time delegates.

30 **MR COSTELLO:** And excuse me in a naivety in this question, is that a very long-term fact of industrial life on these types of sites that full-time union workers are paid by the contractor?

35 **MR IRVING:** So it's has arisen because - one might be called vertical disintegration of the city. It used to be, you know, 30, 40 years ago you might have a large project company, the Lendleases of the world, doing their \$200 million project and employing 300 people to do the work. Okay. And the role of subcontractors was minimal.

40 And in those sites, the organisers - you know, the workers would appoint their delegate and run their industrial affairs. But when you have the situation where Lendlease might employ six people and the 300 people are employed three people each by 100 different subcontractors, all of a sudden the conduct of industrial relations on that silent and figuring out whether people are being paid their correct wages, whether or not people have signed up to - signed up to the redundancy fund; whether or not they are making their superannuation contributions, whether - it
45 became a far more complex job.

And rather than - so part of that process of having a vast number of subcontractors and that style of industry operation, resulted in a need for somebody who spoke to all of the workers rather than dealing with, you know, 100 different union delegates. And so one ends up with this set-up with the project folk engaging a delegate on a full fine to make sure the play is done in this way. Are there different ways? Are there better ways? You know, that -

10 **MR COSTELLO:** I might take that question up with you after the short adjournment. Is that a convenient time?

COMMISSIONER: Yes, Mr Costello, we will adjourn until 11.30.

<THE HEARING ADJOURNED AT 11.19 AM

15 <THE HEARING RESUMED AT 11.31 AM

COMMISSIONER: Mr Costello, before you resume, can I just ask Mr Irving to clarify that a site delegate is the same thing as a project delegate and a site/project delegate is different to a company delegate?

20 **MR IRVING:** Correct.

MR COSTELLO: Mr Irving, on this - I'm building up to the point where I'm going to at some point tender your statement. But in a useful discussion that's taken me away. So let me stay there for the moment. On this question of site or project delegates, paid employees of the contractor -

MR IRVING: Yes.

30 **MR COSTELLO:** You gave some explanation as to how that practice came to exist. The reality of these people must be that to some extent they are in a hopelessly conflicted position. They are employees of the contractor and in that capacity at least potentially owe fiduciary duties to their employer. They expend all of their energy and effort on work for the union. At various point there's will be almost inevitably a direction collision between the interest of the employer and the interest of the union.

40 **MR IRVING:** No. Let me explain why. The scope of the fiduciary obligation is defined by reference to the scope of the duties for the employee. If one's job, for example, is to advance the interests of someone who is not the employer, then the scope of your fiduciary obligations to your employer takes into account what the nature of your job is. And so it is you have cases, you know, I don't want to refer to a textbook that I wrote, but there is a -

45 **MR COSTELLO:** You wrote it, you might as well.

MR IRVING: There are a series of cases involving being an official in the mid 60s in the UK who was acting in the interests of the union rather than the interests of the

employer and there was consideration in court over there. Stolewinder here in - in the Federal Court considered the circumstance of a CEO who was negotiating his own employment contract with the employer and was aware of the employer's error in awarding him an extraordinarily high benefit and was silent. And it was said, well,
5 you have breached your fiduciary obligation to the employer by being silent about something which - greatly to your benefit and at your employer's cost, to which Justice Finkelstein observed that the cost of his fiduciary obligation was defined by the scope of his duties and in that position he had a duty to or he had a right to pursue his own interests over that of the employer. Even - even though it was going to harm
10 his employer.

So I don't agree that the - I don't agree viewed through the fiduciary lens there is actually a conflict. But it's a legal question, better lawyers than me will turn their mind to it.

15 **MR COSTELLO:** I probably made the mistake in putting the question too legally but the answer you have given is useful and the net effect of it is that the scope of the duty might be rendered - sorry, the content of the duty might be reduced - in fact, it might be reduced to a point that it barely ceases to exist other than in theory by
20 reason of the particular relationship known to the parties at the time -

MR IRVING: Yes.

25 **MR COSTELLO:** Fully consented to. And that's - that's the lawyer - well, that's at least the equity lawyer's answer. But I want to deal with it at a slightly more practical level. Employers are paying the wages and entitlements of an employee who is not engaging in effort for the employer. There might be other benefits -

30 **MR IRVING:** Yes.

MR COSTELLO: But they are not engaging in work for the employer in any ordinary understanding of that phrase.

35 **MR IRVING:** Well, they get the benefit of the work but -

MR COSTELLO: Well, they -

40 **MR IRVING:** They don't have - they don't have the - they don't have the power to direct and control the work that is being done by that employee in the way that an employer usually would. However, if one thinks of the project of all of the 300 workers on site the employer doesn't get the right to direct and control the work performed by the other 297 workers because they are not its employees. But they get the benefit of it. And that's one of the functions of the oddness in an employment law sense of these sorts of project arrangements. They are - the traditional relationship
45 between the master controlling the servant and directing the work has had a series of different entities thrown into the middle so the control is effectuated by not the

exercise of contractual powers by the project manager but they get the benefit of the work. It's -

5 **MR COSTELLO:** But why isn't it just the case that the union appoints a delegate and the union pays the delegate? Why does the money have to come from the employer in this sense or why does it come from the employer, in a sense?

10 **MR IRVING:** Because the employer is getting a benefit. The employer is choosing to employ this person and to get the benefit of having somebody on site full-time to deal with the hundreds of issues. I mean, if -

MR COSTELLO: If it is administrative convenience.

15 **MR IRVING:** It is an administrative convenience and as well as that, you know, the project manager will often have responsibilities to make sure that the people who come on to the site are - have got workers compensation insurance, are contributing to the redundancy fund, you know, pursuant to the project agreement with the government funder, if procurement processes, procure - or there may be provisions within the enterprise agreement that sort of jump up and impose those obligations on
20 the project manager. And so they need someone to go out and check with all of these subcontractors coming in. That's one of the things that the delegate does.

25 **MR COSTELLO:** And was the effect of your earlier evidence that the reason this circumstance has come about is the particular contractual structures that exist on projects of this kind?

30 **MR IRVING:** That's - that's broadly right. It's - the effect of how this industry has chosen in the last 30 years to have - the employers in this industry have chosen in the last 30 or 40 years to structure things. Now, that's my understanding.

MR COSTELLO: Yes.

35 **MR IRVING:** And my understanding is bounded by my ignorance. I - I haven't engaged in a long-term examination of the historical development of different models. I have had a number of tasks that I have needed to focus on instead.

40 **MR COSTELLO:** Do you know from your experience either as Administrator or your earlier experiences as a barrister whether that's a model that exists outside of construction? Let me put it this way to perhaps - is it a model that exists in civil construction?

MR IRVING: I think that it exists in some parts of civil construction, yes.

45 **MR COSTELLO:** And so outside traditional building CFMEU-type coverage, civil construction, does it exist beyond those areas?

MR IRVING: I think - I think it exists in some mining sites.

MR COSTELLO: I see.

5 **MR IRVING:** I think it exists in - in construction in other nations. I think - I'm
taxing my memory to think otherwise, but - but I readily accede that it is an unusual
arrangement applying in an unusually structured industry.

MR COSTELLO: Yes. And does the employer have a right of veto so far as you are
aware?

10 **MR IRVING:** Yes.

MR COSTELLO: Are there circumstances where the employer says "I just simply
refuse to employ that person."

15 **MR IRVING:** Yes. Employers - employers are free to - to employ or not employ
any employee.

MR COSTELLO: But is that the practical reality in this circumstance?

20 **MR IRVING:** No. No it's not. The practical reality is that the - the workers - the
employer has said, in effect, I will employ whoever you elect as a delegate. And the
workers come along and say "I have elected as a delegate X."

25 **MR COSTELLO:** Yes.

MR IRVING: And the employer in that circumstance is unlikely as a matter of
practice to turn around and say, "Well I'm not employing X". Now, if they do,
then - then this dispute and that dispute can be resolved.

30 **MR COSTELLO:** Yes. Thank you. I suppose it would be fair to say that within the
scheme of a large construction project, the delegate would be a person that exercises
very considerable practical authority and power on the site. Is that fair?

35 **MR IRVING:** Yes.

MR COSTELLO: And that necessarily means that the choice of delegate can have
large repercussions for the industrial environment on the site?

40 **MR IRVING:** Yes.

MR COSTELLO: Thank you. Mr Irving, you were good enough to have a
statement prepared.

45 **MR IRVING:** In fact, I prepared most of the statement myself. So not to detract on
the work that was performed by my legal team.

MR COSTELLO: All right. Well, you will have to take responsibility for that having made that disclosure. I will have it put on the screen. It's document 1 -

5 **COMMISSIONER:** Just before you move from the question of the delegates. May I ask a couple of questions?

MR COSTELLO: Yes, please.

10 **COMMISSIONER:** I think you said before the break, Mr Irving, from your recollection that you could remove the authority of a delegate - my note may well be wrong, it says by terminating their employment as a delegate.

MR IRVING: I was wrong if I said that.

15 **COMMISSIONER:** My note might be wrong.

20 **MR IRVING:** I have the power to remove the appointment of the person as a delegate. The effect of which is that they would no longer hold the position of delegate of the CFMEU. They would remain an employee of the employer, but the practical effect of me exercising that power is that the employer would then turn to the employee and say, you are no longer required, we are terminating your employment.

25 Now, when the employer does that, they would know full well that the union, through me, would be fully supportive of them doing so and will be organising for a different delegate to be selected. If the employer did not do so then a despite may arise. And thus far that circumstance has not arisen where I have had to call an employer and say, "I have removed this person as a delegate, you need to take the obvious step".

30 **COMMISSIONER:** Just dealing with that and Mr Costello might be coming on to this in due course, but I think there was some evidence yesterday from Mr Watson - and again I could have this wrong - that Mr Desmond Savage was - his authority as a delegate was removed by you. Do you know whether he remains an employee by whoever employed him on a full-time basis as a delegate?

MR IRVING: No, I don't. But I would be very surprised if he - if he were employed.

40 **COMMISSIONER:** If he remained as an employee -

MR IRVING: As a full-time delegate.

45 **COMMISSIONER:** And in terms of the 320 officers that you described as having been removed around Australia - these are not delegate, these are levels above a delegate, that is officials or employees of the union, how many of those are in Queensland?

MR IRVING: I think approximately 80 and they are identified in the list which is annexed to the scheme and in that list there is a division of between the various decision-making bodies in Queensland and the other states, and it lists, you know, Queensland Committee of Management, 15 names. Queensland conference, 50 names; that sort of thing.

COMMISSIONER: And those -

MR IRVING: 80 might be an overstatement, it might be 50. But it's going to be somewhere there.

COMMISSIONER: And those 80 persons who were removed are persons in Queensland who are either elected to the branch conference or the branch Committee of Management or as a member of the branch executive.

15

MR IRVING: Correct.

COMMISSIONER: Is that right? And in relation to those 80 persons how many of those would you describe as being part of what you described as Mr Ravbar's kingdom?

20

MR IRVING: Well, this is where my mettle breaks down in a sense everyone, in one sense, in a very abstract sense, everyone was the isn't of Mr Ravbar's kingdom. But how many were loyal to Mr Ravbar compared to how many are loyal to Mr Ravbar? They are changing numbers. And I should also say that on that list I have not undertaken a process of interrogating who - what the nature of the relationship between those men and women and Mr Ravbar was. It hasn't been necessary for to perform my functions to do that.

25

COMMISSIONER: Well insofar as you have, how many people of which you were aware, of whom you were aware, do fall within your description of Mr Ravbar's kingdom? I take it Mr Ingham would be one?

30

MR IRVING: Yes.

35

COMMISSIONER: Anyone else?

MR COSTELLO: Can I assist with this by putting a document on the screen.

40

COMMISSIONER: Yes.

MR COSTELLO: It might assist you as well, Commissioner.

COMMISSIONER: No, have I taken over again, Mr Costello?

45

MR COSTELLO: No, Commissioner.

COMMISSIONER: I will just finish on the delegates then.

MR COSTELLO: Can I have document one on the screen and can we go to at least page 218. This is exhibit 10 and then if - Queensland is this is tab -

5

MR IRVING: Yes.

MR COSTELLO: This is tab (indistinct) if you've got a hard copy there. This is exhibit 10 to your statement. If I have taken you to the wrong place you only need say. But it relevantly starts at 218, but if you move to 241 -

10

MR IRVING: Yes.

MR COSTELLO: The bottom of the page, that's Queensland and Northern Territory divisional branch and I don't intend to further interrupt, but I will allow you to reflect upon that and those names in the answer that you are giving to the Commission.

15

MR IRVING: Okay.

20

MR COSTELLO: Given - just for the screen, given 241 is Mr Ravbar's name alone, perhaps if 242 and 243 could be put on the screen and that will then be the complete collection, save for Mr Ravbar.

MR IRVING: I am sorry, but I do not think I'm able to sensibly assist the Commission in answering those questions. Partly because - well, as a function of my ignorance. I - I literally have not interrogated, going through the list, and identified when questions - when it has been necessary for me to turn my mind to those issues I have turned my mind to them. But it's - I've dealt with issues at a different level of abstraction than going through and giving ticks it or crosses in relation to particular people.

25

30

COMMISSIONER: But perhaps I can deal with the question this way: Your evidence did surprise me somewhat. I think you said that in 2010, 2014, 2018, 2022 - and I might have the dates wrong - there were no elections - sorry, no contested elections for the position of Secretary and Assistant Secretary for the Queensland-Northern Territory branch of the Construction and General Division of the CFMEU. Was that - did I get your evidence right?

35

MR IRVING: Yes. As I understand it, by reference to the electoral returns that are filed in the Fair Work Commission and are published on Fair Work Commission's website, there is a list of the elected officers and the extent to which they are contested or not contested and from perusal of those documents my understanding is that four elections - for the last 15 years, and I might be - they are four yearly elections, the elections might have been I think in 2024, 2020, 2016, et cetera, rather than the - I might have been out by a two year date there. But it's - that's my understanding of the position in Queensland.

40

45

COMMISSIONER: And what about - sorry, were you about to say something?

MR IRVING: No.

5

COMMISSIONER: What about the other 78 officers that were the subject of election during those periods apart from Secretary and Assistant Secretary. Were they contested or not?

10 **MR IRVING:** I wouldn't want to bind myself to an answer that can be - the documentary record can be checked up in five minutes online. I think that my impression is that the elections were by and large uncontested for the best part of 15 years.

15 **COMMISSIONER:** For every position.

MR IRVING: For every position. But having said that, it's - it's an impression that can be quickly checked and corrected and I would readily admit my error if the document suggests otherwise.

20

COMMISSIONER: Would you be able to have a look at that over lunch?

MR IRVING: Sorry.

25 **COMMISSIONER:** Would you be able to have a look at that over lunch?

MR IRVING: Sure.

30 **COMMISSIONER:** And just going back to the delegates and the last question, Mr Costello, of the 413 delegates do you know how many were company delegates and how many were site/project delegates?

35 **MR IRVING:** No, I do not. But I think approximately the numbers are 250 compared - 250 site delegates compared with - but that is a very rough approximation.

COMMISSIONER: 250 site/project delegates?

MR IRVING: Correct.

40

COMMISSIONER: And 150 or just over company delegates?

MR IRVING: Correct.

45 **MR COSTELLO:** Thank you, Commissioner. Mr Irving, can I just check one matter that you gave some evidence on at the start of that exchange concerning

Mr Savage. Did you say that you would be very surprised if Mr Savage remained employed as a full-time delegate?

5 **MR IRVING:** In circumstances in which he had been removed as a delegate, yes. Yes.

10 **MR COSTELLO:** Yes. But are you aware of whether he is employed in the industry on sites other than as a delegate or is that something that you don't have knowledge of.

15 **MR IRVING:** No. Is he moving bricks somewhere on a site? I don't know.

20 **MR COSTELLO:** Yes. Thank you. One other matter that I wanted to raise as a consequence of your exchange with the Commissioner is in connection with your evidence about uncontested elections for 15-odd years. You have already said quite fairly that might be an indication of happiness and harmony or it may be an indication of something else. In terms of design of rules, one method for mitigating against the benefits of incumbency is to have term limits. Is that a matter that you have given any consideration to or seen in any other trade union rules that you've come across?

25 **MR IRVING:** Yes, it is something I've given consideration to. I once sat down and read about 30 union rules. Can I recollect whether or not any of them had term limits? No, not offhand. Would I be surprised if they were in there? No, I wouldn't be surprised. I think it's one - when I turn to figure out exactly how rules might be reshaped in this organisation going into the long-term, I will sit down with people with a great deal of experience in this area and will have wide exchange of views to make sure that what has been sought to be achieved in the course of the administration pursuant to the statutory schemes that have been set up is not unpicked, effectively, promptly. For, of course, if it is, then what am I doing here?

30 **MR COSTELLO:** Thank you. Let me just do an administrative task, Mr Irving. If that document can go back to the first page, please. This is your statement. You have a hard copy of it.

35 **MR IRVING:** Yes.

MR COSTELLO: You affirmed it on 17 November 2025.

40 **MR IRVING:** I did.

MR COSTELLO: And as you sit there now, the content of the statement is true and correct?

45 **MR IRVING:** No.

MR COSTELLO: What corrections do you have to your statement?

MR IRVING: If you look at table A.

MR COSTELLO: Thank you. That is commencing on page 14.

5

MR IRVING: Yes. I understand that in table A some of the dates may be incorrect. I understand that documents relating to the exact date of termination are recorded in resignations and correspondence which has been provided to the Commission. Some of those dates might be out by a number of days or weeks and so subject to that qualification the contents of the document are true and correct. As -

10

MR COSTELLO: If the second -

MR IRVING: As to which of the exact dates I haven't gone through and checked each one of the resignations or terminations.

15

MR COSTELLO: The second column in that table was labelled Approximate Date Employment Ended, rather than Date Employment Ended, that would be correct?

20

MR IRVING: Yes.

MR COSTELLO: All right. Well, would you wish to make that change?

MR IRVING: Yes.

25

MR COSTELLO: All right. Well we will have - we will liaise with the solicitors for the union, have that change made. Subject to that change being made I will tender that document, Commissioner, and the exhibits there to.

30

COMMISSIONER: How am I to describe this document? It a statement?

MR COSTELLO: A statement of Mr Irving, KC.

COMMISSIONER: Dated -

35

MR COSTELLO: Dated 17 November 2025.

COMMISSIONER: Is there any objection to the tender of the statement? You can tell me how many pages it is?

40

MR COSTELLO: 366, my learned friend impressively says from memory, and he is right.

COMMISSIONER: A statement of Mark Irving KC dated 17 November 2025 of some 366 pages will be exhibit MI 1.

45

<EXHIBIT MI1 STATEMENT OF MARK IRVING KC (366 PAGES) DATED 17/11/2025

5 **MR COSTELLO:** Thank you, Commissioner. Mr Irving, I'm going to come back to that report, but before I do I want to take you to another document. Could I have document 2 on the screen, please. This is a report produced by KordaMentha entitled Special Purpose Report for the Administrator Construction, Forestry and Maritime Union and Employees Union Construction General Division dated 17 March 2025. It is marked private and confidential not for release. But it is right, isn't it, Mr Irving,
10 that this has, on your authority, been released and is available on the union's website?

MR IRVING: Yes, it is.

15 **MR COSTELLO:** Thank you. Before I ask you questions about it, I will tender that document. Thank you, Commissioner.

COMMISSIONER: And I identify this as a special purpose report for the administrator from KordaMentha dated 7 March 2025.

20 **MR COSTELLO:** Thank you.

COMMISSIONER: Are there any objections to the tender of that report? How many pages is it, Mr Costello?

25 **MR COSTELLO:** 141.

COMMISSIONER: A special purpose report for the administrator by KordaMentha dated 7 March 2025 comprising 141 pages will be exhibit MI2.

30 **<EXHIBIT MI2 SPECIAL PURPOSE REPORT FOR ADMINISTRATOR BY KORDAMENTHA (141 PAGES) DATED 07/03/2025**

MR COSTELLO: Thank you, Commissioner. Mr Irving I know you prefer to work from a hard copy so I will have one handed to you.

35 **MR IRVING:** Thank you so much.

40 **MR COSTELLO:** To the extent I will take you to passages, I will have them on the screen as well. If I could start, please, at numbered page 5 which I hope is page 5 of the PDF. Yes, thank you. The introduction there notes your appointment on 23 August 2024, Mr Irving, in the first paragraph. And then in the second paragraph it notes that KordaMentha were engaged by you on 6 September 2024.

45 **MR IRVING:** Correct.

MR COSTELLO: Within a fortnight of your appointment you had engaged KordaMentha to undertake this work?

MR IRVING: Yes.

5 **MR COSTELLO:** And in general terms was the purpose of engaging KordaMentha to do this work to give you an understanding of the financial structure and position of the various entities in respect of which you were exercising powers as administrator?

MR IRVING: Yes. That was - that was one of the principal purposes.

10 **MR COSTELLO:** Were there any others that immediately spring to mind?

MR IRVING: I was - I was concerned that in the lead-up to the administration of which there was about a month and a half, where the newspaper reports, steps by the Fair Work Commission, statements by ministers, that sort of thing, that things were
15 heading into administration that some folk might have seen it as an opportunity to remove access to protect their position and to fund opposition to any administration on an ongoing basis. And so I wanted to find out from KordaMentha not only the state of play with the organisation but I wanted to get auditors quickly on to the job of identifying suspect transactions in the lead-up to the administration to deal with
20 that possibility.

MR COSTELLO: And by reason of this report or subsequent work of KordaMentha, did you come across any circumstances where there was an attempt to take assets of the union out of the union's hands?
25

MR IRVING: There was - there was transfer of I think \$3 million in the perhaps 24 hours leading up to the administration being created from the New South Wales branch or the New South Wales State-registered union. I can't recollect which. And I was alerted to that either via KordaMentha or by other means. I can't recollect which.
30 I directed that steps were taken to recover those funds. Those funds were recovered.

MR COSTELLO: Thank you. This was a backwards-facing review, obviously. It is - it notes in paragraph 4 that the review extended to the 31 August 2024 and it covered the various entities that were set out in paragraph 5. Relevantly for my
35 purposes, the Queensland and Northern Territory divisional branch of the Construction and General Division -

MR IRVING: Yes.

40 **MR COSTELLO:** And which is B, 5(b) and 5(h)(b), the state CFMEUQ.

MR IRVING: Yes.

45 **MR COSTELLO:** One matter I intended to raise with you earlier when we were discussing structure, is within Queensland there is the two entities, the Queensland-Northern Territory branch and the CFMEUQ.

MR IRVING: Yes.

MR COSTELLO: It appears there is the same arrangement in New South Wales.

5 **MR IRVING:** Yes.

MR COSTELLO: There is the State branch.

10 **MR IRVING:** The State-registered union and the branch.

MR COSTELLO: The State-registered union and the branch of the federal division. But that duality doesn't exist elsewhere?

15 **MR IRVING:** No, that's incorrect. It does not exist in Victoria for there is no industrial legislation pursuant to which State-registered unions can be - can be registered in Victoria. It exists in Western Australia, it exists in South Australia.

20 **MR COSTELLO:** Is the reason though the Western Australia and South Australia state entities are not mentioned in this list, the slightly different arrangements in connection with the administration of these schemes that you mentioned earlier in your evidence?

25 **MR IRVING:** Correct. And in relation to those branches, the people I had appointed in control were able to give me full insight to the extent I wanted insight into the operations of their related entities.

MR COSTELLO: I see.

30 **MR IRVING:** So I didn't have any - I had negative insight into those. In addition, Queensland - I was appointed pursuant to Queensland legislation and I appreciated at some point that the Queensland parliament or the representatives that the Ministers might ask me about the position in relation to the Queensland State-registered union so I took steps to ensure that occurred.

35 **MR COSTELLO:** All right. And while we are on this topic before we descend to finance, what, in a practical sense, is the difference between the Queensland and Northern Territory branch of the Federal union and the State-registered union?

40 **MR IRVING:** Okay. I think it's important to explain the interaction between the two. It may take a little time.

MR COSTELLO: No, please, do because it becomes relevant on some of the questions related to finance.

45 **MR IRVING:** I appreciated it would and I just wanted to lay the foundation. The membership of the - well, the membership of the two organisations is almost identical except for 163 members in the Northern Territory. That is, in the

Construction and General Division is almost identical. The eligibility coverage is almost identical. The practical, the electoral arrangements pursuant to the legislation, which is set up governing both, is that if one is elected to the Federal organisation, then one is deemed effectively to be elected in the cognate role in the State-registered union.

So you don't ever end up with a position where you have got a State Secretary of the branch and a State Secretary of the State-registered union who are different. So there's one set of elections and it applies over. And that's an arrangement that applies in all of New South Wales and Queensland State-registered federal branch positions.

COMMISSIONER: I didn't think that was the position as explained to us two days ago. It was explained to us that Mr Ingham was, at some stage, the Assistant Secretary of the Queensland-Northern Territory branch of the Construction General Division of the federally registered union but vice president of the State-registered union.

MR IRVING: I think that needs to be clarified.

COMMISSIONER: All right.

MR IRVING: And I think that we will provide a note about these matters if it's of assistance.

MR COSTELLO: That would be very useful.

MR IRVING: But there is another - there is another arrangement which is when one turns up and pays money to become a member, to whom do you pay the money?

MR COSTELLO: Yes.

MR IRVING: Now, for many years up until about 2020 the money was paid to the branch and then - and the branch employed folk and services were provided and the membership was the same in both and so you just paid your membership to the branch and you became a financial member of the branch and then you became a financial member of the State-registered union. You are deemed to be a financial member by paying a branch.

MR COSTELLO: This deeming happens by reason of a rule or -

MR IRVING: Correct.

MR COSTELLO: It exists somewhere. It is ascertainable what happens in a practical sense.

MR IRVING: Correct. Then in 2020 there was a change an agreement was entered into between the State-registered union and the Federal - the branch. Under that new

arrangement - and it's pursuant to an agreement or a deed and pursuant to that agreement or deed signed by Mr Ravbar in his capacity as one officeholder and Mr Ingham in his capacity as another, they agreed that there would be an arrangement where, in effect, the subscriptions would be paid to the State-registered union.

5

MR COSTELLO: Yes.

MR IRVING: And -

10 **COMMISSIONER:** I just don't understand that because you have just said Mr Ravbar was, at all times, the Secretary of the Queensland-Northern Territory branch of the Construction and General Division of the Federal union and at all times the Secretary of the State-registered union.

15 **MR IRVING:** Correct.

COMMISSIONER: So shouldn't Mr Ravbar have been - as the ultimate authority, what's Mr Ingham doing signing something?

20 **MR IRVING:** It gets worse.

COMMISSIONER: Right. Okay.

25 **MR IRVING:** The agreement is premised upon a number of factual considerations that were just wrong. It was premised upon the notion that if you paid your money to the State-registered union you could pursuant to the rules be deemed to be financial in the Federal branch. And that's not what the rule said. And so one ended up with the position where 15 - 20,000 people were paying subscriptions to the wrong body pursuant to an agreement which was contrary to the rules and, in my view, contrary
30 to law and was all premised on a flawed understanding of the operation of both the legislation and the rules. And so one ended up in a position whereby some 40 to \$50 million was paid to the wrong body, and worse - well, and more and further, the people who had paid their subscriptions had not become financial members of the Federal branch. And if you are not a financial member of a branch, you can't vote in
35 the elections.

COMMISSIONER: Lucky there were no votes.

40 **MR IRVING:** Well, the arrangement ended up in a position whereby if there had have been a vote the only people who would have been eligible to vote were the 163 members up in the Northern Territory. Not - so having discovered this problem, I sought advice and I sought further advice, and I acted upon that advice to regularise the arrangements. I regularised the arrangements by, A, making determinations which enabled - which made sure that people were paying subscription to the right
45 body, that they were deemed to be continuing financial members of the federal organisation and - and what's more, the state body shouldn't be receiving this massive income stream. Now, once the stream is redirected, I then have a state body

without a source of funds but who is employing all of the organisers. And so those people would need to be made redundant or agree to transfer over. And so it is the case that there are a series of redundancies.

5 Now, I fixed up the rules, I fixed up - there was also the problem of - fact that the
wrong body had arrived 45 - \$50 million in funds which they shouldn't get and didn't
have that money in the bank, rather than what they had done was taken that money
and gone and purchased a number of properties. And that - those properties had
10 changed in value and then I was left in a position of making an assessment of what
should be transferred back. Should it be transferred back in circumstance where a
pure transfer was going to attract stamp duty of millions of dollars at the expense of
members?

15 And so after advice, I entered into arrangements whereby mortgages were taken over
those properties in favour of the federal branch to make sure that the loss of the
Federal branch was properly protected, one didn't need to deal with the stamp duty
aspects, they had to get appropriate advice about all these things and so we have
ended up with a regularised arrangement. So Mr Watson was unclear about who
20 employed the organisers, the answer is between 2024 - 2020 and 2024 it was a
State-registered union or 2025 was a State-registered union and then from about July
this year it was the branch and has been the branch. And I think it's right to say that
the State-registered union now employs nobody. I'm sorry if that was long-winded
but there was a bit of a backstory.

25 **MR COSTELLO:** It was very comprehensive and it went to a number of the matters
that I was going to take you to. Let me just see if I can break it up a little. Perhaps if
we can move to page 31 of that document and if I could have paragraphs 152 and
153 enlarged, please. This is dealing with at last part of the evidence you have just
30 given. So the starting point is that before financial year 2021 it was the branch that
was collecting membership fees.

MR IRVING: Yes.

35 **MR COSTELLO:** There was then in August 2020 a service agreement entered
between the branch and the state body.

MR IRVING: Correct.

40 **MR COSTELLO:** And that's the document that you were speaking about that was
signed on the one hand by Mr Ravbar and on the other by Mr Ingham.

MR IRVING: Correct.

45 **MR COSTELLO:** And the relevant effect of the services agreement was that the
state body became the collector of all membership fees.

MR IRVING: Yes. If the service agreement was valid and lawful, that would have been its effect.

5 **MR COSTELLO:** Yes. And the practical effect was that the state body did in effect collect the membership fees.

MR IRVING: Correct.

10 **MR COSTELLO:** And the members referred to in this report as dual members, being state and federal, but, in fact, they were not dual members because they were never in fact members of the federal body.

MR IRVING: They were members but not financial members.

15 **MR COSTELLO:** Yes. Thank you. Now, before I come to the subsequent parts of it, have you been able to ascertain what was the reason for this service agreement being entered?

20 **MR IRVING:** There are certain declarations of the reason.

MR COSTELLO: In the agreement?

MR IRVING: In the agreement.

25 **MR COSTELLO:** Yes.

MR IRVING: Whether or not -

30 **MR COSTELLO:** The recitals are concerned with deficiencies.

MR IRVING: Sorry.

35 **MR COSTELLO:** The recitals are concerned with things like efficiency to members, it appears?

MR IRVING: Yes.

40 **MR COSTELLO:** But aside from what the text of the document says, you - in the position you're in are you able to discern whether or not there were any deficiencies? Was there some particular reason?

45 **MR IRVING:** I could not ascertain whether there were any deficiencies, but I did not investigate whether or not there were, in fact, deficiencies. My concern was at an anterior step which was this whole thing, whether or not it was for a good purpose or a bad purpose, was it lawful? And your view was and is that it wasn't lawful?

MR IRVING: Correct.

MR COSTELLO: And is there any particular reason that you could point to why those then in power of the union would have wanted to put this structure in place such that the money was going into the Queensland entity.

5

MR IRVING: There are a number of reasons. The first is if one wanted to keep one's power intact and unchallengeable and beyond the reach of others within the union, one might want to create an impregnable fiefdom into which the national organisation could not reach. Now, whether or not that was in fact the reason, it is pure speculation on my part. But it certainly appears consistent with some of the other behaviours. None of these matters were reported to the National Executive. And we are talking about tens of millions of dollars -

10

MR COSTELLO: You said 30 to 40 before, is that - is that order of magnitude.

15

MR IRVING: Yes.

MR COSTELLO: 40 to 50.

MR IRVING: 40 to 50. I think it was about 10 million a year. The exact amount is recorded in the accounts of the State-registered union. None of these matters were reported to National Executive, which is - strikes me as extraordinary and, you know, one says that the secrecy is a badge of fraud.

20

COMMISSIONER: With respect, that can't be right, Mr Irving, because the National Executive would have had access to the financial reports each year and would have seen that in one year a lot of money has come in to the union in this branch and the next year it has not.

25

MR IRVING: Yes. The financial reports prepared by reference to each financial reporting unit and the national organisation doesn't create the accounts for the whole unit, it creates the accounts for the national office and then there are reports for each of the branches. There was not a process by which there was a regular financial governance oversight by the national organisation of what was occurring at the branch levels. Again, a structural transparency and accountability issue.

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35

The other thing is that what happens with the federal or the national organisation is that subscriptions are payable by each branch according to the number of members they have. The subscriptions were paid on a full membership and so the cheque was being received, it appears - I haven't interrogated members of the former National Executive, many of whom are removed officers, about but I have seen - you know, I've made some inquiries about what was presented and reached that conclusion.

40

Yes, I'm sorry, I hope that answered your question, but I think I've lost my train from your previous question.

45

5 **MR COSTELLO:** That's all right. You mentioned before the fact that to the extent there were valid members of the Queensland-Northern Territory branch, they were - those members in the Northern Territory - and presumably thus because the Queensland state entity couldn't collect membership fees from those in the Northern Territory.

MR IRVING: Yes, I think that's - that's correct. I think they were not only members - they were the financial members.

10 **MR COSTELLO:** So the entirety of the, the financial member of the Queensland-Northern Territory branch of the Construction and General Division was a couple of hundred people in the Northern Territory?

15 **MR IRVING:** Yes.

MR COSTELLO: And does that fact have any implications for elections conducted within the federal body during that period of time?

20 **MR IRVING:** Yes.

MR COSTELLO: Are those consequences limited to the Queensland and Northern Territory branch or would it have infected national elections?

25 **MR IRVING:** I don't think that there were any elections for which the whole of the - the whole of the union membership across the board is the electorate. Okay. So I think the election to National Executive was pursuant to a collegiate position whereby, as I'm sure your Honour understands - or Commissioner understands. Is it concerning? Yes. There are - there are also provisions within the federal legislation which validates certain acts done by officers invalidly elected effectively. And so -

30 **MR COSTELLO:** You are not speaking here of the legislation establishing the scheme -

35 **MR IRVING:** No, no.

MR COSTELLO: You mean the ordinary industrial legislation.

40 **MR IRVING:** So if one does the sort of - the tick-tock - the chronology, as I understand it the arrangement is effectively this: Immediately after - so there's an election in 2020, Ravbar nominates, Ingham nominates, their team nominates.

MR COSTELLO: Sorry, when you say "their team", do you mean for other executive positions?

45 **MR IRVING:** Yes, for executive, for committee, for conference.

MR COSTELLO: I see.

MR IRVING: They are unopposed. Because they are unopposed they are declared elected. Now, I think, and I might be incorrect about this, I think that within a couple of days the service agreement is entered into. And so - so it didn't affect the 2020
5 election. Would it have affected the 2024 election? Most certainly. But, of course, administration came along. Now, that's a neat narrative. Whether or not it's actually true according to the chronology can be checked against objectively ascertainable facts. That's my recollection of the events.

10 **MR COSTELLO:** You became aware of this issue because of the KordaMentha report or by other means.

MR IRVING: By other means.

15 **MR COSTELLO:** Could we perhaps have paragraph 153 exploded on the screen, please? Separately, though, perhaps connected with the change of arrangements in respect of the collection of membership fees, in - at the same time retained earnings at the value \$7.7 million were transferred to the state entity by the federal entity.

20 **MR IRVING:** Yes.

MR COSTELLO: And there's the breakdown of those amounts in the table related to the transfer of Defence Fund reserves on the basis of legal advice received?

25 **MR IRVING:** Yes.

MR COSTELLO: Are you familiar with that legal advice?

30 **MR IRVING:** No. Have I read it? Probably. Can I remember it right now sitting here today? No, I cannot.

MR COSTELLO: You think you have it in your possession though?

35 **MR IRVING:** Yes, I think I probably almost certainly do.

MR COSTELLO: Thank you. Do you have any understanding of why that \$7.7 million was transferred out of the federal body and into the state body?

40 **MR IRVING:** My recollection, though vague, is it might have been pursuant to the service agreement. It might be incorrect. What I do recollect is saying to the lawyers I engaged, "Investigate, report, advise" and they did so. And in their investigation reporting, advising, they went through the various inter-entity transactions and sought to ascertain the extent to which the State-registered union has become
45 enriched in circumstances where it should not have been happening. This transaction would have been part of that investigation.

MR COSTELLO: Now, you mentioned in the course of your longer answer before the purchase of properties.

MR IRVING: Yes.

5

COMMISSIONER: Can I just stay with this for a moment?

MR COSTELLO: Yes, of course.

10 **COMMISSIONER:** How could possibly be lawful? You have got people who should be fiduciaries for two different entities agreeing to transfer on behalf of both entities, take 7.7 million out of one entity and give it to the other?

MR IRVING: It could be lawful if it were for good consideration.

15

COMMISSIONER: Right.

20 **MR IRVING:** It would need to be very carefully managed in terms of the declarations of conflict and it would appropriately be done by reference to written legal advice laid before both bodies authorising this set of transactions. It would appear to me that those steps were not taken and if they were not taken, then there would be contraventions by Mr Ravbar and Mr Ingham.

COMMISSIONER: So we have to see what the legal advice was?

25

MR IRVING: There was no written legal advice I've seen. I've investigated it.

COMMISSIONER: There was -

30 **MR IRVING:** There was no written legal advice.

MR COSTELLO: In respect - you are speaking here in respect of the transfer of the \$7.7 million?

35 **MR IRVING:** In respect, from my recollection of the service agreement. That's my recollection.

MR COSTELLO: But is that -

40 **MR IRVING:** I received legal advice about correcting the whole thing, but I'm saying in relation to the 2020 arrangement that -

MR COSTELLO: Can you just have a look at paragraph 153 of the document in front of you, just to make sure we are all clear about what's being said here. Do you
45 see the second sentence it says:

"a breakdown of this is below and CMFEQ - legal advice received."

MR IRVING: Yes, I think the Defence Funds transfer may have been the subject of legal advice, but the service agreement itself -

5 **MR COSTELLO:** I see.

MR IRVING: Which predated that transfer, I think, was not subject to written legal advice.

10 **COMMISSIONER:** So -

MR IRVING: And if there was then it would be interesting to see.

15 **MR COSTELLO:** In any event, if there is legal advice, it ought be in your possession because you ought be in control of it all.

MR IRVING: Yes.

20 **MR COSTELLO:** And so if this Commission is to issue a summons to the union, the terms of which require production of documents in relation to these matters, including legal advice.

MR IRVING: I would give it to you.

25 **MR COSTELLO:** Thank you, Mr Irving.

COMMISSIONER: And we might find at that point some proper lawful basis for the transfer of the \$7.7 million because of that legal advice.

30 **MR IRVING:** Indeed. Indeed. Though - yes.

COMMISSIONER: We will wait and see.

MR IRVING: Yes.

35

MR COSTELLO: You mentioned in connection with this - and I don't quite have the tie firmly in mind yet - but you mentioned in connection with this that acquisition of properties.

40 **MR IRVING:** Yes.

45 **MR COSTELLO:** Let me just try and work through it to make sure that we are clear about this. If in that document on the screen we perhaps start back at page 8. At paragraph 30. Now, there is two categories of properties, at least in the way that this report is set up. There are non-investment properties which I take to be premises in fact being used by the union for union activities and then there are investment properties. That's the way this report structures it.

MR IRVING: Mmm.

5 **MR COSTELLO:** At paragraph 30 there is mention of land and buildings as at 31 March, namely six properties in Queensland and one in the Northern Territory.

MR IRVING: Mmm.

10 **MR COSTELLO:** With a value of \$16 million.

MR IRVING: Mmm.

15 **MR COSTELLO:** And as I understand it, as is perhaps better explained on page 41, paragraph 198 in the table below, these are the \$16 million worth of property that the union owned that KordaMentha considered were not investment properties. And you will see in the table there's 14 and 16 Campbell Street at Bowen Hills, another property at Bowen Hills and then another two properties at Bowen Hills and then properties in rural Queensland and the Northern Territory.

20 **MR IRVING:** Mmm.

MR COSTELLO: Now, those addresses might or might not mean anything to you, Mr Irving, but you don't have any reason to think that KordaMentha were wrong in describing those properties as non-investment properties?

25 **MR IRVING:** Correct.

MR COSTELLO: If we then move over the page to 42 commencing at paragraph 203. There is detail of properties that KordaMentha categorises as investment properties. And it outlines 10 investment properties that are noted in the management accounts of the CFMEUQ in that relevant period. And the table below sets out what the location of the properties and it appears that there is \$18 million worth of investment properties owned by the CFMEU.

35 **MR IRVING:** Mmm.

40 **MR COSTELLO:** Now, in the course of your evidence earlier you mentioned the acquisition of properties. I'm going to let you explain what you meant by that in a moment, but before I do there is one - there is one further point in that there are another three investment properties also identified. I should say in respect of - in respect of the \$18 million worth of investment properties KordaMentha say at 206 of their report, that's all unencumbered. So that's \$18 million in unencumbered assets. Over the page at page 44 at 209, they also identify a further three investment properties not disclosed in the annual financial accounts. Although they thought on
45 further review that those properties might in fact come in or be a part of the six investment properties that had already been noted. One of the investment properties

appears to be a property development. It looks as though that there was construction intended of a development.

MR IRVING: Yes.

5

MR COSTELLO: And this is all being done - owned by the state entity?

MR IRVING: Correct.

10 **MR COSTELLO:** Does this tie into the services agreement and the arrangements put into place in some way?

MR IRVING: If you look at paragraph 203 -

15 **MR COSTELLO:** That's page 42?

MR IRVING: You will see a number of properties, investment properties that appear to have been acquired after - in the financial year ending 31 March 2021.

20 **MR COSTELLO:** Yes.

MR IRVING: They appear to be properties that have been acquired by the State-registered union after the service agreement was entered into. It strikes me - could I just take a step back -

25

MR COSTELLO: Yes, please.

MR IRVING: - and suggest a possible way forward. I'm giving you information based on my recollection of financial transactions and the role of property from six, 12 months ago in circumstances where there is a vast amount of documentary evidence, or there is documentary evidence which will set this all out which you will no doubt issue notices to produce about and I will no doubt read and, you know, provide some sort of report, et cetera as required. And once we have the relevant information in front of us my evidence might be better informed to be more helpful to explain.

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I have formed a view about these transactions. I have formed a view about the legality of those transactions, and that view will inform what actions I take against Mr Ravbar and Mr Ingham in terms of expulsion from membership and in terms of any actions that need to be taken to report things to other authorities. I'm happy to cooperate and will cooperate with the commission of inquiry in pursuing this or any other aspect, but it's - I could provide the best assistance if we all had the more complete set of documents in front of us.

40

45 **MR COSTELLO:** Thank you. You can confidently assume that there will be notices sent in respect of these matters.

MR IRVING: It is inevitable.

MR COSTELLO: Quite. Are these properties still owned by the state entity or have you offloaded them?

5

MR IRVING: I do not think I have sold any of those buildings. I have - I - in the - shortly after the commencement of the administration there was material - there was steps that needed to be taken in relation to the purchase and development of certain properties. I sought advice from initially KordaMentha about the appropriateness, whether or not there is value for money for the union. I acted on the basis of that advice. I - some of those - some of those properties were the subject of a - an ongoing property development scheme that the union is involved in and it was my obligation to ensure that the transactions were in the best interests of the members. I satisfied myself on the basis of advice and I've acted accordingly.

10

15

MR COSTELLO: Thank you. When you just spoke then about the development, do you recall - does that relate to the new urban villages development project?

MR IRVING: The -

20

MR COSTELLO: The new urban villages development project, is that something that sounds familiar to you?

MR IRVING: I think it is - I think it is - I think it is called that. I have not turned my mind to this issue for the best part of four or five months.

25

MR COSTELLO: Thank you. You will see from the table in any event at page 42 that the last entry on page 42 is the new urban villages development project, and if one works through the KordaMentha report it appears that that project in fact relates to the three Campbell Street properties immediately above it.

30

MR IRVING: Yes.

MR COSTELLO: Bowen Hills.

35

MR IRVING: Yes, that's the one.

MR COSTELLO: Do you recall - was that a residential development?

40

MR IRVING: I think it's partially residential, partly commercial.

MR COSTELLO: Thank you.

MR IRVING: I think it's - you will get the full story in the - when you see all the relevant documents.

45

MR COSTELLO: Are these sorts of investment activities common enough practice within trade unions?

MR IRVING: Yes.

5

MR COSTELLO: Thank you.

MR IRVING: But some unions simply do not have the money to -

10 **MR COSTELLO:** Quite -

MR IRVING: - invest union funds. Some unions have invested wisely over the years and these, as I understand it, the folk involved in the property development aspect of this have worked with a number of unions across Australia. The
15 Commission is probably aware of the limits of my experience in the property development world and the importance of acting on advice when engaging in this space.

MR COSTELLO: Let me just raise one matter which I will try and do briefly
20 before the adjournment. If we move to page 8, back to page 8 of that report. I'm moving to a different topic, Mr Irving.

COMMISSIONER: Just before you do, I wonder if I can just ask Mr Irving a
25 question. Is there anything federal about the history of the way in which the State union came into existence and the - the branch of the Construction and General Division of the federal union came into existence which could explain the behaviours that are referred to in the KordaMentha report?

MR IRVING: In terms of the aspects or access funds for property investments?
30

COMMISSIONER: I mean, no, the inter-entity transfers?

MR IRVING: One of the questions earlier was about why were these things done.
35 And I speculated about control, and it is speculation. Another reason it may have been done and sometimes happens with organisations, is in 2020 there were either rumours afoot or the like that the Morrison Government was going to seize the funds. And sometimes unions with the State-registered unions and federal branches sometimes flee from one system to the other for concerns real or imagined. And so
40 one of the problems with this sort of dual registration and dual fiduciary obligations which are owed to different organisations is one has without a proper understanding of one's responsibilities they treat them as two different parts of the same entity rather than understanding the - the different duties that they owe to each entity. How
45 is it in the interests of the branch for its income stream to be given to someone else? The answer is obviously it's not. But those people sort of sat there and thought, well it's okay because we have got control of that too. So we protect ourselves that way rather than focusing in on what their fiduciary - who their fiduciary obligations were owed to. Ultimately during the course of the administration when it comes out the

proper relationship between all State-registered unions and branches needs to be finalised and settled to make sure that any funds are held to be - held by the proper entity and properly held up to account pursuant to laws which require transparency and that these arrangements can't be entered into in the future. That is one of the
5 issues that I will turn my mind to in the course of the administration on an ongoing basis. It goes on the list.

MR COSTELLO: Commissioner, I see the time. Might I just ask Mr Irving a couple more questions?
10

COMMISSIONER: Yes.

MR COSTELLO: Mr Irving needs to be away by 3, and I've committed to Mr O'Grady that I will allow him some time to ask some additional questions. There
15 is a long list of matters that I have to deal with with Mr Irving, but it's going to obviously be an iterative process. So over the luncheon adjournment I will cut my cloth and only ask those things that I need to ask at least for now, but I do want to give Mr Irving an opportunity to say something about the Watson report before I sit
20 down and I do want to ask a few more questions about KordaMentha. But let me just do one before we adjourn, Mr Irving. My screen has gone dead so I can't tell what page is on the screen there, but could we have page 8?

MR IRVING: We have page 8.

MR COSTELLO: Thank you. Paragraph 24, this is not speaking of the state entity but of the federal branch, the Queensland and Northern Territory branch of the federal union notes that the branch derives approximately 95 per cent of its revenue from the apprentice scheme - from apprentice scheme grants which is an entity commonly referred to as BERT that Mr Watson gave some evidence about
30 yesterday. 95 per cent of the review from BERT.

MR IRVING: I'm not aware of the evidence that was given yesterday about that matter.

MR COSTELLO: Right. It was - for present purposes I only mention it because the name BERT will be familiar to those that were here yesterday.

MR IRVING: Yes.

MR COSTELLO: That review, is that just a straight pass through of funds coming into the union that are then immediately being paid out to members? Or is revenue in a real sense?

MR IRVING: As I understand it, it is revenue in a real sense, in that the union runs an apprenticeship program and by all accounts on my inquiries it's a very successful and well-run program. And it like all entities that run such programs receives funding from sources to enable it to do so. One will find in the annual reports of the CFMEU
45

even during the period between 2024 - 2020 and 20204 there are a limited number of employees of the Federal organisation, and they are basically the apprentice trainers. So they receive funding from BURT who may well be other sources of funding as well which enable it to run its - the program.

5

MR COSTELLO: Thank you. I might come back to that after lunch. Before I do, in some way connected to the luncheon adjournment and what you can do during it, there is obviously elements of the union movement that are greatly upset by the fact of your appointment as Administrator. Do you accept that?

10

MR IRVING: There were many.

MR COSTELLO: Not simply because its you, but rather because somebody has been appointed into the offices that you now hold?

15

MR IRVING: Yes.

MR COSTELLO: And it has been publicly reported that, on occasions, that has resulted in threats to your personal safety?

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MR IRVING: I don't think that's the source of difficulties. But -

MR COSTELLO: What do you mean by that?

25

MR IRVING: I don't want to start speculating about who has made death threats first, or giving evidence about who has made death threats. I can give - I can give evidence about the relationship between the administration and the broader union movement. I'm more than happy to explain where it was, where it is standing. In the initial - in the initial phase of the administration there was a concerted opposition which, you know, was exhibited in the streets - of a significant part of the union movement - who were opposed and one can completely understand that unions are democracies.

30

At their heart they are working people's democracies and what had occurred was the democracy had ended in the CFMEU and that was rightly the - rightly a matter of concern for those who care about democracy. Now, the - we have worked with - we have worked with QCU, we have worked with the ACTU, we have worked with a huge range of unions. We have established civil relations with a huge range of unions and work alongside them. I serve, you know, on the NCIF with bodies, some of whom - with folk some of whom were vigorously opposed to the administration. The relationship between that portion of the union movement that was vigorously opposed and the administration has evolved over the course of the administration. So it's - we are in a wildly different space now than we were in August 2024.

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MR COSTELLO: Is that a convenient time, Commissioner?

COMMISSIONER: It is, Mr Costello. Can I just ask Ms O'Gorman, I take it at some point you will consider and probably apply for leave to cross-examine Mr Irving. Can I say, having regard to his evidence, that leave is very likely to be given and do I take it you would also need some time to consider your position and the documents to which Mr Irving has made reference?

MS O'GORMAN: Yes, I would.

COMMISSIONER: And I take it I know you don't speak for Mr Ingham, but I imagine that Mr Mandy will say the same thing.

MS O'GORMAN: I think I am in a position to indicate that he would also need time.

COMMISSIONER: Thank you. Would you be able to have some discussions with Mr Costello over lunch and -

MS O'GORMAN: Yes.

COMMISSIONER: Just as you have had in relation to Mr Watson about those issues?

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

COMMISSIONER: Adjourn until 2 pm.

<THE HEARING ADJOURNED AT 12.54 PM

<THE HEARING RESUMED AT 2.01 PM

COMMISSIONER: Mr Costello.

MR COSTELLO: Thank you, Commissioner.

MR IRVING: Mr Costello, before you recommence, there is something - there is evidence I gave before the break, which I think is I need to qualify.

MR COSTELLO: What topic was the evidence concerning?

MR IRVING: I opined at one point about the appropriate qualifications for office of union officials and people standing for election. I formed a view which I express there about whether or not people should go through certain training and conduct certain courses prior to being successfully a candidate for office and I think I put that on the basis that all unions should have - engage in similar standards. That's overreach. You know, reflecting over lunch, I'm in a position to give an opinion about the CFMEU, as to other unions I'm really not in a position to speak more generally about - about that. And, you know, for - you know, 95 per cent or 99 per

cent of organisations, they are not being conducted in a corrupt and improper way. They've got - they have had these standards for who can stand for office and their own rules over the course of the last 100 years and that's obviously working quite fine for them. So I expressed an opinion which I was not qualified to give.

5

MR COSTELLO: Thank you, Mr Irving. I said that before I sit down I wanted to give you the opportunity to give some evidence about Mr Watson's work for you and in particular his report into violence in the CFMEU in Queensland. Before I come to the report, it is right, isn't it, that Mr Watson was, in fact, had already been engaged before you became the administrator?

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MR IRVING: He was engaged to do a specific report by Zach Smith who was then fulfilling a special role under the Federal rules concerning conduct in the Victorian branch. He was partially through that investigation when the administration commenced after a few weeks I contact him and said, "Carry on with your work." And so Zach had engaged him and he carried on pursuant to my authority. That was a Victorian-related investigation. After he finished that I asked him to do I think something about New South Wales and then something about Victoria and then something about Queensland. So -

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MR COSTELLO: I see. And he is currently doing something about Victoria?

MR IRVING: Yes.

MR COSTELLO: And the scope - his evidence was to this effect, the scope of his work in respect of Victoria is wider than the work that you commissioned him to do in respect of Queensland?

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MR IRVING: It's different. Yes.

MR COSTELLO: I think he might have referred to it as being off the leash in Victoria where he was on the leash in Queensland. Something to that effect.

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MR IRVING: I - if they are his words, they are his words.

MR COSTELLO: Is the variation in the scope of his engagement in respect of Victoria as compared to Queensland a function of the evidence you gave earlier that you see the circumstances in Victoria as being different to those in Queensland?

MR IRVING: Yes. And the need to identify and focus on the specific cancers which are different in each organisation.

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MR COSTELLO: I see. The specific cancer that you had identified as infecting the Queensland entities was violence.

45

MR IRVING: Effectively, yes.

MR COSTELLO: In all its forms?

MR IRVING: Yes.

5 **MR COSTELLO:** Was that the principal problem that you saw in Queensland?

MR IRVING: Yes.

10 **MR COSTELLO:** You received Mr Watson's report and clearly had careful regard to it, and then produced a response?

MR IRVING: Yes.

15 **MR COSTELLO:** And you have exhibited that response to your statement. If I could have document 1 back on the screen, please. The response is exhibit 5, which commence at page 194.

MR IRVING: Yes.

20 **MR COSTELLO:** Now, you say in the first bullet point there, and I think the format of the electronic version is slightly different to the hard copy version but the text is the same, that the Queensland branch embraced a culture which encouraged and celebrated the use of threats, violence, intimidation, misogyny and bullying. Do you see that?

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MR IRVING: Yes.

MR COSTELLO: You thought that the violence was not only encouraged, but celebrated?

30

MR IRVING: Yes.

MR COSTELLO: And who encouraged and celebrated the violence?

35 **MR IRVING:** Well -

MR COSTELLO: Was it widespread or -

40 **MR IRVING:** That dot point is - that particular dot point, I think, is largely if not exclusively based on my characterisation of the Watson report. So those folk that Mr Watson identified as effectively encouraging, celebrating, et cetera, is - is based on the Watson report, it's derived from that.

45 **MR COSTELLO:** You say under the former Ravbar-Ingham leadership.

MR IRVING: Yes.

MR COSTELLO: Obviously you consider that both Mr Ravbar and Mr Ingham encouraged and celebrated the use of violence but you don't limit it to those two?

MR IRVING: Correct.

5

MR COSTELLO: Thank you. Were you surprised by the content of Mr Watson's report? Or did it accord with your expectations of what was going on in Queensland based on what you had ascertained? Through your own inquiries?

10 **MR IRVING:** I was surprised by the particulars but not the substantive subject matter. There were - it accorded generally with what I understood to be the conduct.

MR COSTELLO: Mr Watson put a number of recommendations to you by his report.

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MR IRVING: Yes.

MR COSTELLO: And did you accept those recommendations in whole?

20 **MR IRVING:** No.

MR COSTELLO: Did you accept the recommendations substantially.

MR IRVING: Yes.

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MR COSTELLO: And did you act upon them to that extent?

30 **MR IRVING:** Yes. Though you will see in the document that you've got before you, it's up on the screen, my response goes wider. My response deals with bigger systemic issues than what Mr Watson was recommending. My response partially used the basis of the Watson report to launch systemic change within the organisation in a - in a way that wasn't let's say limited by Mr Watson's recommendations or ambition. And so my response was informed by what I knew was my plans elsewhere within the organisation and how it was going to be
35 restructured and what I was going to do. Whereas Mr Watson was drawing his recommendations based on what he had seen and what he had understood.

40 **MR COSTELLO:** Are there any particular aspects of your response that you consider to be wider than the recommendation that you would like to draw particular attention to?

MR IRVING: Paragraph 5, paragraph 9, paragraph 10, paragraph 11, paragraph 12, paragraph 13, paragraph 14, paragraph 15 - I mean, a substantial part of the response.

45 **MR COSTELLO:** One area that you -

MR IRVING: Some of them cover similar ground -

MR COSTELLO: Yes.

MR IRVING: But I'm -

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MR COSTELLO: Certainly more particularised, Mr Watson's recommendations were understandably pitched at a particular level.

MR IRVING: Yes.

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MR COSTELLO: And in some of -

MR IRVING: And appropriately so given -

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MR COSTELLO: Yes, quite, quite. And you have descended also appropriately so to a greater level of detail in giving effect to the more general recommendation. One area though where you were not prepared to fully embrace Mr Watson's recommendation concerned removal of particular officials. You made a judgment decision that was different to the judgment decision that he had made in respect of particular individuals? That's fair to say?

20

MR IRVING: Yes.

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MR COSTELLO: And I will tell you in fairness, since you didn't hear it, Mr Watson's view given in the witness box yesterday or the day before was that your view was correct and his view was incorrect.

MR IRVING: That's very gracious of him.

30

MR COSTELLO: I'm not saying it is my view. Why did you form the view that those people specifically identified by Mr Watson after his three-month investigation and recommended for dismissal, if I can call it that in a generalised sense, why did you form the view that you shouldn't adhere to that recommendation in every - in connection with every person in respect of which it was made?

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MR IRVING: Right. I will get to the particulars of that in a second, but just in a more general sense. Since the beginning of the administration, there is about 320 employees of the CFMEU across Australia. About 110 of them have ceased their employment since the beginning of the administration and some say there should have been 11 or 112. There should be - you know, this one more, that one more. I understand different views about that. And I understand that, you know, there's 138 delegates who will cease to be delegates for the CFMEU in Queensland and I understand some will say there should be 139, 140. That's fine. Getting back to the specifics of the individual concerns, you will see in paragraph 8 of my response the frank admission it states the shadow control of union employees and the union itself by Michael Ravbar and Jade Ingham will end and those who receive directions from the old leadership will be dismissed.

It is the case that up until June or July last year as most of industry will inform you, as most of government there inform you, that the union was under the control of Ravbar and Ingham

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COMMISSIONER: Until which date did you say?

MR IRVING: Up until June or July. And one of the things that - one of the things that occurred in that time was the Watson report came down in - whenever it was, early July and the High Court decision was handed down. Now, at that point there was an opportunity to prize the effective control of the union away from the hands of those former leadership. Now, Mr Watson reported in great deal of detail about violence by the union against outsiders. That those who were perceived to be enemies were punished. Some of these gentlemen have tattooed on their body that the CFMEU does not forgive.

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Some of those people adhere to that proposition and the potential for good organisers to stand up to that sort of coercive control by Mr Ravbar and Mr Ingham during employment was hard, if not non-existent. Their ability to remove dissentients so quickly given how much power was focused on them, and their continued control up until the High Court proceedings came down to be able to say, "We are coming back and what's more, we do not forgive".

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Now, once that duress was removed, then I had the opportunity to really assess who were the people who wanted to step away from that model. Who were the people who were good soldiers of bad generals on a previous occasion and are prepared with new leadership to be able to perform their task in a lawful and proper way. Now, what happened with the Watson report and the High Court decision is it provided that opportunity to people to come forward and, to put it in Biblical terms, repent and genuinely disavow the previous coercive control. Now, to do so takes courage. To do so takes commitment.

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Because one has seen in the Watson report the sorts of behaviour that the Ravbar-Ingham folk are prepared to engage in to maintain and assert their power and to stand up to that and say, "I am not - I'm going to break with the past, I'm going to disavow being under the shadow control of these folk and I'm going to commit to performing my role in a lawful way in accordance with the statement of expectations that I had set out, in accordance with the new demands that I was imposing." That took commitment, courage and that counted.

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I had to continue to run and so - and so it is that in early July there were a number of people, as you will see on the list, who took redundancies. Okay. And they were folk who - and included in that list were people who wanted to continue to remain loyal to the others or did not want to commit to the administration, or in some cases people who were good people who wanted to commit but the personal price was too great and were lost to the union. And so that was - that was the moment in which - and Mr Watson talks about control of the union being acquired but to a significant extent,

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that was the point at which we moved from simply having a legal power to actual power. To be able to change things and move forward. Now, I know that - I know the commitment given by some of the people like Dylan to - to change. I know the commitment -

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MR COSTELLO: Did you just say a name?

MR IRVING: Dylan.

10 **MR COSTELLO:** Thank you. Do you mean Mr Howard?

MR IRVING: Yes. And I made an assessment and I decided to retain him. The other thing is that when one considers aspects of Mr Watson's report the - some of the basis on which he recommended dismissal was the failure to cooperate with the investigation, notwithstanding my direction that they cooperate with the

15 investigation. Having read the Watson report I understood why people would be afraid to cooperate. I mean, in relation to some of these employees, as Mr Watson indicated, they went to the meeting with Mr Watson in the most extraordinary of circumstances which -

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MR COSTELLO: You are talking about the person who conveyed them to the meeting?

MR IRVING: Conveyed them, provided them with recordings and no doubt

25 provided those recordings to Mr Ingham.

MR COSTELLO: You're aware of those circumstances, are you?

MR IRVING: I am.

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MR COSTELLO: Mr Watson gave some evidence yesterday as to the identity of the man who was said to have driven at least some, perhaps many, to interviews at the Pullman Hotel with him.

35 **MR IRVING:** Yes.

MR COSTELLO: That's a matter that you are aware of.

MR IRVING: Yes.

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MR COSTELLO: Are you satisfied that that occurred?

MR IRVING: Well, here is what occurred. I was informed of the information, I contacted the Queensland Police because I thought that - I thought that that and other

45 information that I received pursuant to the whistleblower provisions revealed criminal offences being - having occurred. And threats being made against various

people. I provided to the Queensland Police all of the information in my possession. I then contacted Bob Gee of the commission of Inquiry.

MR COSTELLO: Thank you. Bob Gee.

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MR IRVING: And I said to Mr Gee I have a duty to cooperate with the law enforcement agencies. It was late on a Friday afternoon, I said to him I don't have time to figure out whether or not I've got a duty to cooperate with you, but I can tell you if you call this person from the Queensland Police I encourage you to get that information - any information from him because it may affect - impact upon the operation of the Commission of inquiry. So I did those things to - now, in relation to further steps concerning that coercive behaviour, the individuals concerned - it is within my power to direct them to, you know, reveal all sorts of things to police and to me, et cetera. I reach a judgment about their safety and their safety of their family and I explained to them the support that we will give to them and the protection that we will give to them, but I will not compel them to make decisions that put their own safety and safety of their family in jeopardy.

COMMISSIONER: Who was the officer from the Queensland Police Service you spoke to?

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MR IRVING: I cannot recollect off-hand, but I will - I will get my office to track that down.

COMMISSIONER: And is there any reason that you're not identifying the name of this person?

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MR IRVING:

MR COSTELLO: Not at all. The name was said in open court yesterday.

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MR IRVING: The name of the guy who -

COMMISSIONER: Who is it?

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MR IRVING: I understand his name is Perrett, who was subsequently arrested for torture and being arrested for murder. And in circumstances where someone like that gives you a recorder and sending you to a meeting, the implication of what will occur if one is cooperative with the administration is going to be - now, as I said, that was pre-High Court, pre-Watson -

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MR COSTELLO: Yes.

MR IRVING: Then there was an opportunity to decide whether or not one moves in a different way. I made an assessment in relation to certain employees as to whether or not it was appropriate to continue in the service and in those circumstances.

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MR COSTELLO: You formed the view, didn't you, that these people turning up and exercising the entitlement that Mr Watson had given them to record their interview with him was done as a means of coercive control of those people.

5 **MR IRVING:** Yes.

MR COSTELLO: The recording was not being taken for the benefit of the interviewee, it -

10 **MR IRVING:** No.

MR COSTELLO: It was being taken to make sure the evidence that was given to Mr Watson was others will be satisfied with.

15 **MR IRVING:** Effectively "Don't squeal."

COMMISSIONER: And Mr Perrett was the man who was identified yesterday or the day before as the stepbrother or half-brother of Mr Ingham?

20 **MR IRVING:** I understand so.

MR COSTELLO: Returning to this dismissal topic that we were talking about just to finish it off, your view was there can be forgiveness but there first must be repentance?

25 **MR IRVING:** Yes.

MR COSTELLO: Those that couldn't repent couldn't stay.

30 **MR IRVING:** Broadly, yes. Those that didn't want to repent as well.

MR COSTELLO: Quite. Yes, yes. Couldn't, wouldn't, didn't.

35 **MR IRVING:** Yes. And I should say, you know, it's easy - it is easy to utter the words of repentance, it is difficult to have the courage to stand up and to live it. And I - I make an assessment about the genuineness of people as a result of a broad range of considerations.

40 **MR COSTELLO:** Do they repent to you?

MR IRVING: No.

MR COSTELLO: To others who recount it to you?

45 **MR IRVING:** Yes.

MR COSTELLO: And then you do the difficult evaluative judgment about the genuineness of the statements?

5 **MR IRVING:** It's - no, it's not the genuineness just of the statements. You know, to - to prise the union from the control of its former leadership is not merely a question of - it's not merely a question of saying, "Oh well, we are going to do this, we are going to walk away". There are 432 delegates. There are hundreds of worksites across the state. Now, many of those are - were, at the time, loyal to Jade and loyal, to a lesser extent, Michael, by this stage. And so the landing of that project
10 without a shut down and disruption of the construction industry in Queensland for a considerable period was - isn't just a question of a set of word, it's a carefully managed matter involving a wide range of stakeholders and dealing with - and landing that outcome.

15 **MR COSTELLO:** Those that couldn't, wouldn't, didn't repent and were then given a redundancy, unless removed from a position prior, did not become removed persons.

MR IRVING: Yes.

20 **MR COSTELLO:** We had a discussion about this at the start of the day.

MR IRVING: Yes.

25 **MR COSTELLO:** And that's a potential difficulty for the future, isn't it? That those people can return?

MR IRVING: Of a - of a minor kind.

30 **MR COSTELLO:** Why do you say that?

MR IRVING: By the time the next election occurs, we will be well and truly - will be years away from the current set of circumstances. These folk are not in the position to spend years on the inside or going out to worksites and recruiting and getting support for the next election. They will be off as they probably are now going
35 and working on their brother-in-law's farm or some other mechanism. You know, some of the ways of earning a buck. And I just -

MR COSTELLO: Do you think they are out of the industry entirely?

40 **MR IRVING:** Some of them will be. Some of them will - some of them may be back on the tools in some places. But it's - what it allows for, you know, it is conceivable that I could have sat down and just terminated their employment, okay, but let us look at what was going to occur if that occurred. I'm going to have 15 UFDs to deal with. I've got better things to do with my time and of course the win in
45 those UFDs is that I'm in the witness box for days on end asking questions - answering questions about, you know, is Jade really a bad guy. How can

you say that I was committed to him? I was prepared to sign you your statement of expectations, you know, you know -

COMMISSIONER: UFD is unfair dismissal?

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MR IRVING: Yes. And so I made an assessment about how can I move forward in the most efficient way with a clean team, a cleaner team, and achieve the end. And there will be criticisms - reasonable criticisms about the best way of achieving that, but there was an opportunity, it was taken.

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MR COSTELLO: Thank you, Mr Irving. Mr Irving, I need to make way otherwise your silk is not going to have an opportunity to ask you the questions that he wants. It will be of no surprise at all for you to hear that it will be necessary to examine you at a future sitting of this Commission and I understand that your time is extremely limited given the variety of roles that you occupy.

15

But can I tell you, perhaps, because to be forewarned is to be forearmed, on the next occasion in addition to asking you perhaps more detailed questions in connection with the matters I raised with you from the KordaMentha report, and perhaps some other matters arising from that report that we will correspond with the CFMEU about and probably issue notices to produce in respect of, I will - and we may do it in the first instance by a witness statement - I will seek to ask you some questions concerning demarcation disputes between CFMEU and AWU, coverage disputes, that is, which seem to be a particular flash point of violence in Queensland as between the CFMEU and the AWU. And it features significantly in the Watson report. I will also intend to ask you questions connected with personal payment orders and subversion of them and I will also wish to ask you some particular questions in connection with the Youth Crew which again features in Mr Watson's report and all of that can be dealt with in due course.

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MR IRVING: Can I very quickly -

MR COSTELLO: I didn't intend to be in any way comprehensive about the list, I'm just giving you -

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MR IRVING: Absolutely. I understand.

MR COSTELLO: Some of the topics.

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MR IRVING: And I'm happy to deal with personal payment of orders over with Mr O'Grady or with you and the other matters.

MR COSTELLO: Commissioner, at this stage, at least, I have no further questions.

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COMMISSIONER: Before Mr O'Grady questions Mr Irving, I asked you a question before lunch, you might not have had an opportunity to look at it, and the question related to the extent to which the 80-odd officers within the union, that is

within the Queensland and Northern Territory branch of the Construction and General Division of the federally registered body comprising the office of a member of the branch conference or the branch committee of management or the branch executive were contested or not over the past 15 years. Did you have a chance to
5 look at that?

MR IRVING: I did not, but Mr O'Grady has done the homework.

MR COSTELLO: I think Mr O'Grady has some information in connection with
10 that.

COMMISSIONER: Very well. And I asked Mr Watson a question yesterday or the day before about the extent to which any organiser employed, as it turns out, by the State-registered entity, he didn't know if it was the State-registered entity or the
15 Federal body was employed or elected, do I take it from your evidence that all of those organisers were in fact employed organisers, not elected?

MR IRVING: They were all employed, however some of them also stood for election as members of the Committee of Management.
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COMMISSIONER: I see.

MR IRVING: I should say, I think Mr Watson gave the figure of organisers as 40.

COMMISSIONER: Yes.
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MR IRVING: I think a more accurate figure is 24 to 28 over the course of the period.

COMMISSIONER: 24 to 28.
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MR IRVING: Correct.

COMMISSIONER: Thank you. Mr O'Grady, I haven't formally given you leave to cross-examine Mr Irving but I take it there has been some arrangement between you and Mr Costello and I'm content to abide by that. But it might be subject to some modification on the next occasion.
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MR O'GRADY: Yes, as the Commission pleases. Can I deal firstly with the question that you just asked and in the limited time available we have been able to ascertain that information about the division of the Federal union is contained on a website and I have provided the link to that website to Mr Costello and indeed the email that sets out what we were able to ascertain over lunch. There is no publicly available information in respect of elections in the Queensland union, if I can use
40 that language.
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COMMISSIONER: There is no publicly available information or there's no -

MR O'GRADY: We haven't been able to locate any publicly available information regarding elections in the CVMEUQ, the Queensland registered union. Now, it was a relatively short timeframe we had to look at it, but that's the situation.

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COMMISSIONER: Okay. Thank you.

MR O'GRADY: In respect of the CFMEU Construction and General Division branch, in 2008 there was a contested election for the branch secretary divisional branch delegate, to divisional conference position. That was between a Mr Fennelly and a Mr Simco, and also in respect of the divisional branch assistant secretary, that was between a Mr Daico and a Mr Hanna. In 2012 - sorry, I've just lost the computer - just bear with me.

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15 **COMMISSIONER:** As I understand it, Mr Hanna was the branch secretary prior to Mr Ravbar?

MR O'GRADY: Yes, I think that's correct. Sorry. Thank you. In 2012, there was an election for divisional branch council members for south east Queensland. Apparently there were six contestants for five positions. In 2013 there was an election for one office but it wasn't contested. In 2018 there were no contested elections. In 2020 there were no contested elections. And in 2021 there were no contested elections. Now, as I say that information was contained in an email I provided to Mr Costello over lunch.

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COMMISSIONER: And it might be necessary to dig up some further information about the Queensland-Northern Territory branch?

MR O'GRADY: Yes. Yes. And that's all we can do in the time we had.

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COMMISSIONER: Thank you, Mr O'Grady.

MR O'GRADY: Now, Mr Irving, you were taken to Mr Watson's report and some of what Mr Watson said in his evidence. One of the comments he made yesterday afternoon that, in his view, the Queensland CFMEU was under control. Are you in a position to comment about that?

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MR IRVING: I think there is a great deal of work still remains to be done. I think that I have outlined in my statement detailed the various areas of work in the strategic plan that need to be carried out. That work needs to continue. I think that - I think that the - by reference to the events that occurred in June or July the effective control of the organisation via these shadow former leaders has been prised away, but there needs to be a significant amount of reform in a wide variety of areas should continue.

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MR O'GRADY: Yes. And as I understood your evidence a moment ago, when you are referring to the events that occurred in July, you are referring to the combined

effect of on the one hand the High Court decision in Ravbar which meant that the prospect of the administration being overturned, if you like, by virtue of the High Court finding that the legislation they put you into that position was invalid, that was clarified because the scheme was upheld as being valid, and secondly the Watson report being issued.

MR IRVING: Yes, that's right. And the third limb of that is my conclusions that have been reached in relation to the financial arrangements between the two entities, leading to the redundancies which led to the opportunity to be able to - led to the opportunity of being able to move on a number of employees to effect the team that we now have.

MR O'GRADY: Yes. Thank you. Now, you were taken to some of the recommendations in the Watson report and perhaps if exhibit GW6 could you brought up and if we go to paragraph 279 which is at page 41. Now, and if you could perhaps expand, Madam Associate, recommendation 1 so that everybody can read it. Now, in recommendation 1 Mr Watson recommends that employees, delegates and members of the CFMEU be advised that from now on if they are successfully prosecuted for breaches of industrial laws they will be required to justify why they should not be disciplined for their unlawful conduct, such discipline may if the conduct is sufficiently serious - membership.

To what extent you have adopted that recommendation?

MR IRVING: My approach is to go further. I don't need to wait until the successful prosecution for contraventions of industrial laws. If a I'm not sure employee, I am satisfied, has engaged in a serious wrongdoing of any kind, whether or not it be contravention of the menacing behaviour policy that I have published or whether another it's contravention of industrial laws, then I as the employer will take action against them. It will take - it sometimes takes years for litigation to go through to whether or not it's a successful prosecution at the end of the day about contraventions, and the approach I've taken is not to wait for that but to act on wrongdoing when it occurs. In relation to expulsion from membership, there are statutory obligations imposed upon me about the basis on which somebody can be expelled from membership and the creation of prima facie rules and its interplay with the requirements of procedural fairness is somewhat problematic.

MR O'GRADY: I understand. Can I then ask you to go to recommendation 2 and this appears at paragraph 280 at page 42. Now, this concerns personal payment orders. So before going to the recommendation could you inform the Commissioner what has been the practice you have adopted in respect of personal payment orders for fines imposed in respect of contraventions of the Fair Work Act.

MR IRVING: So what appeared to have occurred in Queensland was that personal payment orders were made by the court, whether it's the Circuit Court or the Federal Court, which required the CFMEU not to pay the personal payment orders. And it appears that an arrangement had been set up whereby an entity other than the

CFMEU would simply pay the personal payment orders. An entity other than the CFMEU may well be the CFMEU State-registered union. Now, when I saw that practice I was -

5 **COMMISSIONER:** When you say, "May well be," you mean it was or -

MR IRVING: That's - that was the basis of the advice that was provided. That it was. Now, I looked at that and thought my initial reaction was that's wildly inappropriate and possibly unlawful on a range of grounds, and then the next
10 question is, if unlawful who do I report it to? Do I go back to the court? Do I go to the FWC? Do I go to the FWO? Has there been a perversion of the course of justice? I wanted to find out what needed to occur. There had been advice received by the CFMEU previously or one of its - either the State-registered union or the Federal registered union from Hall Payne which said this was a legally permissible practice.
15 And I looked at the advice and thought well, I want to get further advice.

So I went and got further advice. I anticipated the further advice would come back and say that this is a contravention of some law. But it didn't. Now, I've got an obligation to act in good faith in the best interests of the members and when I receive
20 advice I have an adoptive practice of not trying to second-guess it with my own legal opinion but rather to act on it. I've got those two pieces of advice, I waiver privilege about them, I will provide them to the commission of inquiry, you can have a look at the matters and as to what my practice is -

25 **MR O'GRADY:** Yes, that was the question, Mr Irving.

MR IRVING: I'm very sorry. What my practice is - not paying personal payment orders, for one. Two, number of the entities are paying personal payment orders indirectly in any way, shape or form. Three, it has been the practice of the CFMEU
30 to effectively indemnify the legal costs of - of those who are charged with breaching industrial laws. That practice has - has encouraged unlawful set of conduct because the employee knows that if they contravene industrial laws it is okay, the CFMEU has got their tab. The FWO brought proceedings in the Federal Court in about April-May this year against the CFMEU and one of its former officers and the
35 former officer - I had a look at the pleadings, I had a look at the facts, I thought that the CFMEU, this is for cricket that occurred prior to the administration. I had a look at the matters and I thought well, the behaviours unconscionable, disgraceful, we were not going to defend the indefensible.

40 The officer, one of the removed officers, then turned to the CFMEU and said, I want my indemnity. I want the CFMEU to pay for all of my legal costs. And I politely declined his request and then he commenced proceedings against the CFMEU saying that he has a right to an indemnity and I have resisted that claim in the Federal Court. That's awaiting an outcome and determination. But in terms of change in attitude
45 towards these things, well, I think that those actions give an indication of my - not just my professed approach, but my actual approach in litigation.

MR O'GRADY: Thank you, Mr Irving. If we can go into recommendation 3, and you were taken to this by Mr Costello. And perhaps if we could expand that. This concerns the immediate dismissal of several current officials of the CFMEU and the removal of several more delegates where appropriate steps should be taken
5 to - terminated. You have dealt with the issues concerning membership and the limitations in that regard. Could I ask that document 5 be brought up on the screen. Now - and perhaps expanded so that it can be seen what it is. Now, this is a list of individuals who are mentioned in the Watson report who have either had their status as officials or their status as employees or their status as delegates terminated and the
10 date upon which that occurred. Does that reflect what you did in response - at least in partial response to Mr Watson's recommendation number 3?

MR IRVING: Yes.

15 **MR O'GRADY:** Yes. I would seek to -

COMMISSIONER: Sorry.

MR O'GRADY: Sorry. Sorry, Commissioner. I was simply going to seek to tender
20 the document.

COMMISSIONER: Is there any objection? How do I describe this document?

MR O'GRADY: List of persons referred to in the Watson report who have had their
25 status as officials - status as employees or status as delegates terminated and the date upon which that occurred.

COMMISSIONER: That document will be marked as exhibit MI 3.

30 **<EXHIBIT MI3 LIST OF PERSONS REFERRED TO IN WATSON REPORT**

MR O'GRADY: Thank you, Commissioner.

COMMISSIONER: Can I ask the witness about the third name down or fourth
35 name down. Mr Sutherland you understood went to South Australia at some stage. You obviously didn't have anything to do with him, his removal?

MR IRVING: No. And -

40 **COMMISSIONER:** Sorry, the ending of his employment, I should say?

MR IRVING: I - his employment from recollection, he went to South Australia, then I think he went to the national office of the union. His employment ended of the CFMEU national office, that is the Construction and General part of the national
45 office. I think it ended within a week or so of the commencement of the administration. That date there, 13 October 2017, might be the recording of the termination of his employment with the Queensland branch prior to the move, prior

to the move. So Mr Sutherland is no longer with the Construction and General division.

5 **MR O'GRADY:** Yes. Thank you, Mr Irving. Now, I don't want to go through the remainder of the recommendations because I'm conscious of time. Perhaps if I can move on to another topic associated with the termination of employees. If you had decided to simply terminate any organiser or delegate who had been accused or even had a participated in wrongdoing prior to it the appointment of the administration, what might have been the consequence of you doing that?

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MR IRVING: Well, one of the obligations I have is to ensure the union is conducted lawfully and effectively. And for it to be conducted effectively engaging from day one or day 10 in some wholesale mass sackings of everyone would have resulted in industrial chaos. It would also most likely to have - not only would the members have lost their representation and the union would have been gather gutted in terms of the organisation.

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Now, the way in which I have dealt in various parts of Australia with - with the changes, and as I said, you know, 75 per cent of the organised in New South Wales are - have left since the commencement of the administration. 50 per cent of the organisers in Queensland. 50 per cent of the organiser in South Australia, 11 organisers in Victoria left yesterday or 11 organisers or similar folk left yesterday. These things are done in tranches gradually to ensure that there is continuity of services so that members performing work in a dangerous industry who need protection continue to get their services and yet nevertheless I end up with a set of employees who are committed to the reform that needs to occur across the union.

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MR O'GRADY: Thank you, Mr Irving. Now, as I understand it from your witness statement one of the things that you have done in your administration is engage with various employer groups, industry bodies and regulators.

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MR IRVING: Yes.

MR O'GRADY: Could you just perhaps describe what you have done in that regard?

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MR IRVING: One of the commitments I gave - one of the things I said was going to occur in response to the Watson report is that a different approach was going to be taken to industrial relations, by the CFMEU in Queensland. A simple thing to say, a more difficult thing to deliver on. In relation to consultations with - consultations with the wider union movement where relations have been broken for some time, there have been in Queensland regular meetings at least half a dozen in the last six months between the leadership of the QCU and the Queensland Council of Unions and the administration branch executive officers. The union has participated with other unions in the building trades group, the AMWU, the ETU and the like to further issues of mutual concern.

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There are monthly meetings with the MBA. There are monthly meetings with the major employer groups. There are - in the last month there have been 28 meetings with the significant subcontractors and at each of those meetings of those 28 meetings there have been five or six subcontracts. So the administration is sitting
5 down with employers across the industry seeking a more cooperative, collaborative approach. In terms of regulators in the last month, I have met with the Victoria Police, the AFP, the FWO, the FWC - I have had my chief of staff meet with the FWC twice. I've met with folk from - involved in the Big Build. I have met with major employers, one of the major employers in Australia to resolve an industrial
10 issue. I've met with - I've met with a variety of representatives of government.

Now, that hasn't played out in Queensland in the same way in that the CFMEU in Queensland stands ready and willing to engage with regulators, with government
15 bodies, with the elected representatives of the Queensland people to move forward to a new relationship, to make sure the construction industry is conducted in a more productive manner, in a more collaborative manner and a less disputatious manner. Now, I am working through the NCIF, the national construction industry forum, which is a group of all of the major employer groups in Australia, all of the major unions in Australia, the three federal ministers on a massive blueprint of change for
20 the construction industry affecting all of the its aspects.

And people are coming to the table with issues that should have been addressed a generation ago and we are working through them and working in a collaborative way to achieve mutually important outcomes. And that - that change in approach and that
25 degree of collaboration is available to all of the states who wish to participate in a similar approach.

MR O'GRADY: Thank you. Can I turn, then, to cultural change, and indeed you were asked this morning that - about whether rule changes can effect - in themselves
30 can effect change and you said no, you have got to understand that there's got to be a mechanism for enforcing mechanisms and like, so it has got to work consistently with that. What if any role does cultural change have to play in changing the way in which the CFMEU engages with society in general?

MR IRVING: It - there needs to be and there is being a change in the culture of the CFMEU, yes. The way in which, you know, we have identified that through the strategic plan the values of the CFMEU. The values it will pursue. In terms of
35 affecting - making sure that the union is strong, the union is principled, the union is fair, the union is lawful, we have - we have identified in the strategic plan the 20-odd steps that are going to be done in terms of changes in personnel, changes in policy,
40 changes in rules, changes in training. And we have established units and employed people to start to develop and deliver training for staff and delegates across the country. It's a - it's a huge enterprise to effect those sorts of changes, calling upon a wide range of people with a great deal of experience and expertise in this field that
45 I've fortunately been able to gauge.

MR O'GRADY: Now lastly, Mr Irving, I am conscious - there has been some suggestions from some sources that perhaps the response to the issues that have been raised or that are the subject to the inquiry is the deregistration of the CFMEU. What would you say about that as a proposal and what are the potential downsides associated with adopting that course?

MR IRVING: I think it will be bad for the members. I think it would be bad for the industry. I think it would be bad for Queensland. I think that, you know, if the CFMEU were deregistered there leave as a void and into the void then comes those sorts of folk who previously have engaged in these sort of tactics in an unregulated way. And if other states are any indication, then there are opportunities for other areas of organised crime and outlaw motorcycle gangs to start to move through and control sites via extortion and other means.

There will be massive industrial disruption and it would be - it would be chaos on the ground and I think anyone who - anyone who sits down and talks to any of the major employer groups would understand that they have similar concerns. This is a dangerous industry. It's dangerous for workers. They need to be kept safe. This is one of the fundamental duties and roles of the union. And one of the things that this union is really good at. Deregistration means that that representation doesn't occur on the ground and people aren't kept safe and workers suffer as a result, as would members of their family and their communities.

And in addition we've got the issues about the problems with the diminution of conditions and the chipping away which is likely to occur, so the workers would then be worse off. Workers - even at a more abstract level, workers are entitled to belong to an organisation, a union to represent them. And deregistration affects that void.

MR O'GRADY: Mr Watson yesterday referred to red unions and the threat that they posed. Can you explain briefly to the Commissioner what is meant by a red union and why that isn't an appropriate mechanism for addressing some of the concerns you just raised?

MR IRVING: A red union is an organisation often registered under the Associations Incorporation Act or alternatively simply an unregistered association. Such an association is not subject to industrial laws, it is beyond the reach of the regulation of the Fair Work (Registered Organisations) Act. The FWRO Act instils a number of fundamental principles about elections, fair elections which was referred to in the confessions of Clyde Cameron among other places, about the need for accountability and reporting to members and the publication of accounts and ensuring that rules are not oppressive and that people aren't unfairly excluded - all of those protections for workers and things that are important to the integrity of the system don't apply to red unions. They are, you know - they are the lawless manifestation of unionism in inverted commas and in my view the increased lawlessness in this field is not what is called for.

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

COMMISSIONER: Just dealing with that last point, Mr Irving, is there any distinction in your mind between deregistration of the Federal - the Queensland non-treasury branch of the construction and general division of the federal body and the deregistration of the State-registered entity. What I'm really getting at, and you don't need to answer this today, is there a lot that the State-registered entity continues to do? I understand it would have, pre-WorkChoices, had quite a bit -

MR IRVING: Not a good deal. As a result of the change in the government structures that I spoke to about the financial arguments it doesn't employ people, it holds a good deal of assets but they are mortgaged pursuant to the mortgages in favour of the - it has - I said that the eligibility coverage was largely cognate but not completely cognate so there are some people who are conceivably members of one but not members of the other and therefore there have some representation through those rules. I haven't drilled down on the detail of that.

It would be a unique situation in Australian law whereby the State-registered union is deregistered, when the Federal organisation its sister kind of red organisation remains in existence and it would be largely of - I mean, it would be practically largely irrelevant to do that act and so might be done, you know, for effect. But in terms of changing the substance I think the substance is - is part of what I'm trying to do in terms of what needs to occur. Mind you, I would say that.

COMMISSIONER: Perhaps this is a question for next time, but I just wondered on a broader basis what the State-registered union does in terms of the things that you are interested in creating. Safer workplaces, improving terms and conditions of workers. I'm just wondering if there is any real role for it in that record. Maybe you will be able to tell me next time.

MR IRVING: Yes, I will give more thought to that for the next occasion.

COMMISSIONER: There is a couple of other questions, Mr Costello and Mr O'Grady, if you need to take these up, please do. You talked about by the time of the next election there would have been change in industry. When is the next election?

MR IRVING: Some time away. The next election will occur after the conclusion of the administration, or concur at the time of the end of the administration. As I said, that will occur once I am satisfied of certain things and I'm not satisfied.

COMMISSIONER: So it could be as long as, what, another three and a half years?

MR IRVING: Yes.

COMMISSIONER: And -

MR IRVING: I'm not committing to that timeframe but it could - you are right, it could be as long as. And I'm always cautious about committing to specific timeframes, for obvious reasons.

5 **COMMISSIONER:** I think that's just the legislation isn't it?

MR IRVING: Yes, the legislation runs out after five.

10 **COMMISSIONER:** Yes. In terms of the 24 to 28 organisers, some of those, you said, were officials because they had been elected to the position of for example the members of the branch conference. When they were removed as officials of the branch conference what happened to their status as employee organisers?

15 **MR IRVING:** Pursuant to the FWRO Act they could continue as employees of the CFMEU but they could not commence employment with any other registered organisation unless they had a fit and proper person permit from the FWO - FWC.

20 **COMMISSIONER:** So the organisers who happened to also be elected officials, that is employed organisers, were removed as elected officials but remained as organisers?

25 **MR IRVING:** Correct. And as I sought to indicate earlier, the selection of the 323 was a rather blunt instrument which was necessary to effect the transfer of power required to do the job.

COMMISSIONER: And that was the 323 employees that were removed?

MR IRVING: 323 officers.

30 **COMMISSIONER:** Officers, sorry. Beg your pardon.

35 **MR IRVING:** Officeholders of various kinds who were removed. There were only 12 who had their employment terminated as a result of the commencement of the scheme, and the other 100 had been terminated on my watch.

COMMISSIONER: Mr O'Grady is there anything you want to take up there? In terms of - now, did Mr - sorry Mr Costello.

40 **MR COSTELLO:** Not at all. Did you want to put a question to my learned friend?

COMMISSIONER: No, no I just wanted to see whether he wanted to deal with anything that I had asked.

45 **MR O'GRADY:** No, I don't have anything. Perhaps if we are dealing with administrative matters can Mr Irving perhaps be excused?

COMMISSIONER: On what basis is Mr Irving here? Has he come here by way of summons or come here voluntarily?

5 **MR IRVING:** By summons, I understand.

COMMISSIONER: Sorry?

MR IRVING: By summons, I understand.

10 **COMMISSIONER:** So what do we do with the summons? I don't think we excuse Mr Irving, do we?

MR COSTELLO: Mr Irving can be excused. A fresh summons can be issued.

15 **COMMISSIONER:** A fresh summons can issue. Well, you are excused Mr Irving. Thank you for your evidence.

MR IRVING: Thank you, Commissioner.

20 <THE WITNESS WAS RELEASED

COMMISSIONER: Mr Costello.

25 **MR COSTELLO:** I only mention one matter, which is that Ms Ms O'Gorman and I have had some discussions concerning dates. I don't think there is any particular reason why we ought to do it now. Unsurprisingly it's complicated for a whole variety of reasons. The important point for now is there is no suggestion that Mr Irving ought be brought back at the next hearing block in December. If there is to be an application for leave to cross-examine him on behalf of her client or
30 Mr Mandy's client, that can be done in due course. It will probably involve some documentary exchange and can be scheduled for a date which hopefully can be made mutually convenient to everybody. Perhaps in March or April depending on how things fall. But it will probably just take a couple days to line up the various diaries.

35 **COMMISSIONER:** Does that apply also to Mr Watson, that general approach?

MR COSTELLO: Yes, yes.

40 **HIS HONOUR:** Are you happy with that, Ms O'Gorman?

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

COMMISSIONER: In terms - is there anything else.

45 **MR COSTELLO:** No, thank you.

COMMISSIONER: In terms of deregistration, Mr O'Grady, I imagine this is something Mr Wheelahan might deal with, but Mr Costello might tell me I'm wrong. It would be help for the Commission to get some understanding, on an historic basis, as to the utility or futility, whatever it is, of previous deregistrations. I'm really
5 thinking about the period between roughly 1976 and some time before 1980 when I think the New South Wales branch, the Victorian branch and perhaps the Federal union that comprised the BLF was deregistered.

10 It would then apply for re-registration on the basis that it said that the leopard had changed its spots. Almost immediately the Fraser Government then applied through the Industrial Relations Bureau for - to the Federal Court to deregister it that led to the - Royal Commission in 83, upon the Hawke Government in '83 the deregistration proceeding was dropped but then a couple of years later, and you will be able to tell
15 me the dates, the Cain, Rann and Hawke governments, I think, combined past legislation, empowering I think the Arbitration Commission, the Federal Arbitration Commission to make an assessment as to whether the BLF should be deregistered.

And I think the BLF, at least the New South Wales branch, the Victorian branch and the federal body, but not the Queensland registered body, was deregistered. And that
20 lasted for some five or six periods until the remnants of those bodies were then amalgamated into the BIWU and then the CFMEU. It would be useful to get some evidence about what the utility of those processes were given, I think, your submission will be you shouldn't recommend deregistration of either State or the Federal registered body.

25 **MR O'GRADY:** Yes. Thank you, Commissioner and it's very helpful to have those observations and we will undertake some work in that regard. To seek to assist the Commission and persuade it along the lines that you have foreshadowed.

30 **COMMISSIONER:** And you might just say the history is all irrelevant, things have changed and you don't need to have regard to it. It's up to you but I think we would be assisted by some understanding of the history.

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

COMMISSIONER: Ms O'Gorman, anything else?

MS O'GORMAN: No.

40 **COMMISSIONER:** No other applications from anyone else?

MR COSTELLO: Thank you, Commissioner.

45 **COMMISSIONER:** No. Then we will adjourn until 10am on 2 December. It will be in a different courtroom, I think, is it in the -

MR COSTELLO: It's in the Federal Court building I'm told. I'm not sure which courtroom within the building.

5 **COMMISSIONER:** That will be made available to the parties and I think at some point Ms O'Gorman, hopefully this week, you will be told who the witnesses who are proposed to be called then will be and I think from Mr Costello you understand it won't be Mr Watson and Mr Irving. But later this week you will be told who the other witnesses are. We will adjourn the Commission until 10.00am on 2 December.

10 **<THE HEARING ADJOURNED AT 3.13 PM UNTIL 10.00 AM,
2 DECEMBER 2025**