



**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
FEDERAL CIRCUIT AND FAMILY COURT**

**THURSDAY, 19 MARCH 2026
AT 10.00 AM**

DAY 15

APPEARANCES

**Mr S Wood AM KC, Commissioner
Mr E Gisonda SC with Mr D Caruana, Counsel Assisting
Mr D Williams, Solicitor for CPB Contractors Pty Ltd
Mr D de Jersey KC with Ms M Brooks, Counsel for the State of Queensland
Mr C O'Grady and Ms F Fox, Counsel for the CFMEU Administration
Ms S Connolly, Counsel for the CEPU, ETUQ, and PGEUQ
Mr D O'Brien KC, Counsel for the Cross River Rail Delivery Authority
Mr Don Johnson, Witness**

<THE HEARING COMMENCED AT 10.00 AM

COMMISSIONER: There's no changes in appearances, are there? And Ms Brooks, we've got you a seat at the bar table.

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MS BROOKS: Thank you, Commissioner.

COMMISSIONER: Mr Gisonda.

10 **MR GISONDA:** Thank you, Commissioner. Can I begin with some preliminary matters. Commissioner, yesterday, you asked some questions about Royce Kupsch, K-u-p-s-c-h, and I went and had -

15 **COMMISSIONER:** In fact, there is a change at the bar table, isn't it? Ms Fox was here yesterday. She's still there. Even more room at the bar table.

MR O'GRADY: No, I think she is quite happy to be sitting back watching. Thank you, Commissioner.

20 **MR GISONDA:** Royce Kupsch - and you referred to an exchange you had with Mr Wheelahan. I went and had a look at that exchange, and Mr Wheelahan described Mr Kupsch as the President of the state registered union, that is the CFMEUQ, and I then consulted with our excellent team, who's doing great work in putting together a who's who of everyone in the union. And what I can tell you, Commissioner, is that
25 was slightly inaccurate, because the state union has divisions in the same way that the federal union has and Mr Kupsch was the State President of the Construction and General Division of the state union.

30 **COMMISSIONER:** I see. So the state union has the same divisional or a similar divisional structure to the federal union.

MR GISONDA: Certainly as far as the Construction and General Division is concerned, yes, and then there is a separate role or a separate office, which is the President of the state union as a whole.

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COMMISSIONER: I see.

40 **MR GISONDA:** And that was occupied by Mr Stephen Smyth or Smith, S-m-i-t-h, up until 20 March 2017 and then Mr Ravbar was the President, until 12 April 2021, and then on 12 April 2021, the role went back to Mr Smyth or Mr Smith, until September 2023, at which point, it appears the office was vacated.

COMMISSIONER: The office of President of the state union as a whole?

45 **MR GISONDA:** Yes. Until the appointment of the administrator. Mr Kupsch held the role of State President - State divisional President -

COMMISSIONER: Yes.

MR GISONDA: - from October 2015 until the appointment of the administrator in August 2024, he having replaced David Hanna in that role in 2015.

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COMMISSIONER: Thank you for that.

MR GISONDA: The second thing I wanted to do was seek to tender MFI 2, which was the big bundle that we've been referring to in the last two days. I imagine that the only people who have an interest in that material, as far as objections are concerned, would be Mr De Jersey and Mr O'Brien, but before we have confirmation whether there's any objection to that course, can I just make this observation, Commissioner, which is: I hope that you would have observed that the last two days have progressed seamlessly, in terms of the tender or the production or display of documents. That's not to overlook the fact that there really was a range of immunity and confidentiality minefields in some of that material, and it's a credit to the legal representatives of both the Delivery Authority, which is a manifestation of the State, but then the State proper, to a lesser extent, that those issues were resolved cooperatively before we started the hearing. But I now wish to formally tender that bundle.

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COMMISSIONER: Is there any objection? Mr O'Brien?

MR O'BRIEN: No.

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COMMISSIONER: Mr -

MR DE JERSEY: None from the state.

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COMMISSIONER: Thank you. And none from you, Mr O'Grady?

MR O'GRADY: No, Commissioner.

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COMMISSIONER: Well, that will be tendered as - what do you want to call MFI 2?

MR GISONDA: I think the name we were giving it was the Cross River Rail bundle - tender bundle.

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COMMISSIONER: I've already identified it as MFI 2, but what exhibit number do you want to give it? Exhibit reference?

MR GISONDA: I would like to give it the exhibit number that we're up to, Commissioner.

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COMMISSIONER: Sorry, what is it?

MR GISONDA: I would give it the exhibit number CRR-1.

COMMISSIONER: Very well. MFI - the documents that were marked for further identification as MFI 2 yesterday will be exhibit CRR-1.

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<EXHIBIT CRR-1 DOCUMENTS MARKED AS MFI 2 18/03/2026

COMMISSIONER: And what do you want to do with MFI 1?

10 **MR GISONDA:** I tender that as well as or seek to tender that, Commissioner.

COMMISSIONER: Is there any objection to the receipt of what was marked yesterday as MFI 1?

15 **MR O'BRIEN:** No.

MR DE JERSEY: No objection.

MR O'GRADY: No.

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COMMISSIONER: That will be exhibit CRR-2.

<EXHIBIT CRR-2 DOCUMENTS MARKED AS MFI 2

25 **MR GISONDA:** Thank you, Commissioner. Then turning to today, Mr Don Johnson has been summoned to give evidence. His evidence will finish today. You have applications to cross-examine Mr Johnson from Mr O'Brien and Mr O'Grady, and subject to hearing anything from Mr Williams, I don't resist either of those applications.

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COMMISSIONER: Sorry, who did you say? Mr O'Brien and Mr O'Grady have both made applications?

35 **MR GISONDA:** Yes. And my position as counsel assisting is that, subject to hearing anything that Mr Williams might say, that that I don't resist either of those applications and I will be done with Mr Johnson by 2.30 at the latest and that will give both Mr O'Brien and Mr O'Grady sufficient time to, as I understand it, to conclude their cross-examination and indeed it might be that Mr Williams has some questions as well for his - for Mr Johnson.

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COMMISSIONER: I've got a meeting that I couldn't move at lunchtime so we might be starting slightly later than 2.

45 **MR GISONDA:** Even with that constraint, I'll still commit to that timeline, Commissioner.

COMMISSIONER: Thank you.

MR GISONDA: You'll notice that Mr Johnson's statement has less detail than Mr Newton. Let me explain that. Whereas Mr Newton is the main witness for the Delivery Authority, there will be a number of people who were summonsed,
5 Commissioner, to give evidence from the perspective of the contractor and the worker on site. There are two main matters and so - there are two main matters that Mr Johnson will give evidence about: the negotiations of the enterprise agreement, which you heard a little bit about from Mr Newton yesterday, but this time from the perspective of the contractor. And then the topic of the safety reset in around July
10 2023, but even in relation to the safety reset, Mr Johnson will simply be telling you the beginning of that story. But what you will need to do, Commissioner, is you'll need to look at all the witnesses from the contractor/worker side, in their totality, to get the full picture, and that will continue on as this case study progresses.

15 One such additional witness will be Mr Sanfilippo, who we now won't get to until the April hearings, and he's likely to be the first witness that we come to as we resume the Cross River Rail case study in April. There are three hearing weeks in April, commencing the week of the 13th. The Cross River Rail case study won't be in that first week, but it will continue in one of those two subsequent weeks.

20 One topic that will come up in the next hearings in April - and we heard a little bit about it yesterday, and it's referred to in the report of the Queensland Productivity Commission, and you'll hear about it more today, Commissioner - is the code of conduct, the federal code of conduct. One thing I was going to do this week, but I'll
25 defer it to a later hearing, and that's the question of coverage. And on that point, we'll need to clarify paragraph 41 of Mr Johnson's statement when it's tendered, but I suspect, Commissioner, that at some point, you will end up receiving submissions from at least Mr O'Grady and myself, if I can't get out of it, that is, about questions of coverage. As you would know, Commissioner, there's a long history of debates on
30 this question, beginning with Robert Menzies in the 20s on behalf of the BLF on the Bowen Bridge project, Brian Shaw and Michael McHugh in the 70s and 80s, and if you're lucky, Gisonda and O'Grady in 2026.

35 So as excited as you are, coverage, I think, will need to wait, but can I - before we call Mr Johnson, can I just take you to some further documents, which is in a separate bundle, which was distributed to the parties just before kick-off today, and I trust that you, Commissioner, have a copy, and I just want to walk you through the six or so documents that are in here. Do you have that second -

40 **COMMISSIONER:** Mine is labelled Tender Brief Don Johnson and it's 415 pages, I think.

MR GISONDA: That's the one. Page 1 of that bundle, do you have that, Commissioner? Remember from the last two days, Commissioner, there's the TSD
45 package of works and the RIS package of works.

COMMISSIONER: Just going back to the coverage question, I was just reminded of something.

MR GISONDA: I knew you couldn't resist, Commissioner.

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COMMISSIONER: No, I'll let you develop it in April but I thought there were a couple of recent decisions of the Full Bench of the Fair Work Commission, presided over by Hatcher J, which dealt with this issue at some length. One of them might have even involved John Holland on the Gold Coast Light Rail project. I could be
10 wrong about that. But as much as I want to - I heard it from Ms Schinnerl about her opinion of the rules and I will hear your opinion and Mr O'Grady's opinion but I'm going to get the most assistance, aren't I, from the Full Bench of the Commission presided over by President Hatcher, aren't I?

MR GISONDA: From my perspective, what I would be seeking to do is just to identify for you the key decisions on this topic.

COMMISSIONER: Yes.

MR GISONDA: And I said Mr O'Grady on behalf of the administrator, but I inadvertently forgot about another important party, and that is the AWU, who also has leave to appear in this Commission. Page 1 of this bundle - as I said, there's a distinction between RIS and TSD packages of works. This is the RIS enterprise agreement that was entered into in October 2024. So this replaces the greenfields
25 agreements that we went to yesterday. And on page 2 at paragraph 7, Commissioner, you will see that the parties covered by this agreement now are the AWU and the CFMEU. And on then - sorry, then on page 55, that's the TSD enterprise agreement.

COMMISSIONER: So this agreement you're showing me is the one that Mr
30 Newton referred to as being reached after - I shouldn't say "the lawful protected action", just perhaps "the protected action" that was taken by the CFMEU in late 2023 and 2024; is that right?

MR GISONDA: Yes. So the protected action took place in 2024. The RIS
35 agreement happened first. That's 11 October 2024. But then the second enterprise agreement, at page 55, which is for the TSD works, that proved harder to get agreement from the workforce on. It was the TSD sites, if I can call them that, where the bulk of the protected action was taking place. That agreement was - is dated 31
40 January '25 and you'll see at paragraph 5 on that page, again, the CFMEU and the AWU are covered by the agreement.

COMMISSIONER: Whereas the previous agreements were just AWU agreements?

MR GISONDA: AWU greenfields agreements, yes.

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COMMISSIONER: This is what's so vexing for investors and proponents of very expensive infrastructure, that they can't get a deal that lasts for the life of the project

and in the middle of your project, when you need all hands on deck, you can be subject to lawful protected action.

5 **MR GISONDA:** And a shift from a greenfields agreement to a brownfields agreement requiring the voting up of the workers midway through a project.

COMMISSIONER: When you might be paying two or three times the award in the original agreement anyway.

10 **MR GISONDA:** Yes. Then at page 109, this is the - just for completeness, the decision approving the UGL enterprise agreement in June 2021. We'll have to get a copy of the EBA separately. It's, for some reason, not publicly available, but we were able to get it from the Fair Work Commission -

15 **COMMISSIONER:** Which page, sorry?

MR GISONDA: Page 109. So that's the decision approving it, but the agreement itself, I'll give to you, Commissioner, next time. We've just received it. But just note, that was June 2021, and that's between - you will remember you heard yesterday,
20 Commissioner, that they carved off the electrical and mechanical works.

COMMISSIONER: Yes.

25 **MR GISONDA:** And at paragraph 8, which is on page 110, those covered by the agreement were the CEPU and the ETU, and what you might find Mr Sanfilippo says, at least, is that once the - you'll remember the BTG group bargaining as a block, but his observation at least was that once the ETU, later in the piece, once the ETU and the CEPU were satisfied about the course that was to be taken, which was
30 that they would have their own greenfields agreement with the - with UGL, that their level of participation or - yes, level of participation in those meetings dissipated, whereas the CFMEU continued to lead, if I can call it, the aggression in those meetings.

35 Then at page 114, that's a copy of the federal code, the Code for the Tendering and Performance of Building Work 2016. This version came into effect - there's an earlier version at 213, page 213, but this version commenced operation on 21 March 2019. So that's two weeks before the Pulse and Unity consortia were awarded successful proponent - or preferred proponent status. So this is the document that applied when those negotiations were taking place.

40 **COMMISSIONER:** What was the date again you said, that the 2016 code came into operation?

45 **MR GISONDA:** It came into operation, Commissioner, 2 December 2016. This version here, at page - beginning at page 114, is as at 21 March 2019. Then at page 213, this is the Act pursuant to which the code is made, and if you go to page 257,

Commissioner, section 34, the minister may, by legislative instrument, issue one or more documents that together a code of practice.

5 **COMMISSIONER:** This is a well-trodden path. This is something Commissioner
Giles recommended in the 1992 or 3 New South Wales Commission of Inquiry,
picked up by Commissioner Cole in his - it might be out by a year or two, 2002-2003
Commission, then implemented, I think, administratively and ultimately with
legislative support, by Minister Abbott. Then I think with the election of the Rudd
10 Government, it was removed, or at least changed, and then this iteration that you're
showing me is presumably the reconstitution of the code under Prime Minister
Abbott - or was this Prime Minister Turnbull?

MR GISONDA: Turnbull, Commissioner. This version at least.

15 **COMMISSIONER:** I presume Prime Minister Abbott did it administratively and
then it got some legislative backing by Prime Minister Turnbull, and then that code
continued on till the demise of the Morrison Government, and then the Albanese
Government eliminated the code. That's my connection anyway.

20 **MR GISONDA:** And repealed the Act.

COMMISSIONER: And repealed the Act. I see.

25 **MR GISONDA:** Yes. And that's true for the federal level, but there are also
instances of similar type codes or arrangements at a state level as well, because the
bite of the code is, insofar as it affects projects that, in lay terms, attract federal
funding, and so similar state codes can effect a similar regime in relation to
state-funded projects.

30 **COMMISSIONER:** And I think there was, at least for a period of time - I'm not
sure how much impact it had - at least under the Newman Government, an attempt
to - I don't know if it had legislative support or it was just done administratively,
implement one of the state codes which mimic what had been in place prior to the
election of the Rudd Government at a federal level.

35 **MR GISONDA:** Yes, and any such code that might have been either contemplated
or indeed enacted was, to the extent that it mimics in any substantial which the
federal code, was in place in 2017 and 2019 when this project was let out to tender
and then ultimately achieved contractual close. There was a Queensland code of
40 conduct applying to the building and construction industry, but it didn't contain
clauses that mimic the federal code. So it didn't have the effect on industrial relations
that the federal code would have or did seek to have -

45 **COMMISSIONER:** Sorry, I cut you off. You go.

MR GISONDA: You'll hear in the evidence today the way in which, good or bad,
the Commonwealth code had an impact on the progression of negotiations.

COMMISSIONER: Not only was there no state code there was sort of a state anti-code, that is BPIC, which was introducing the conditions that the federal code would have prohibited, I assume.

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MR GISONDA: But, relevantly for today, after the events that we're looking at today.

COMMISSIONER: What was after the events, sorry?

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MR GISONDA: The introduction of BPIC.

COMMISSIONER: Oh the introduction of BPICs. Sorry. I thought we started to see the introduction of BPIC through that letter of 1 February 2019 from Minister Trad.

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MR GISONDA: Not in a formal sense, but that's the - in some respects, that was the beginning of the concept, yes.

COMMISSIONER: And I seem to recall the Productivity Commission recommended - and I think this Commission has to have regard to, I can't remember the exact terminology, I think it's "have regard to" the findings of the Productivity Commission - they recommended the reintroduction of a state code, and I think the government's response to that was to accept that recommendation, but await the - await our inquiry. Was that right?

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MR GISONDA: Yes, that's right, Commissioner, and so the evidence today will - as it was yesterday as well - will give a little bit of contextual flavour to the question of the code but, as I say, in April, the commencement of the April hearings, we're going to hear in more detail evidence squarely directed to the question of the desirability or otherwise of such a code.

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COMMISSIONER: And more particularly, the desirability of a state code?

MR GISONDA: A code at the state level, yes. Drawing upon, as is appropriate, any experiences that might have been derived at a federal level.

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At page 342 - this is the next document - this is a Courier Mail article about - titled "CFMEU site unskilled workers paid more than nurses, engineers and police". The relevant of that - this article will become apparent shortly in the evidence, Commissioner, but it's in the bundle here for your reference. It's of a similar nature to the article that I took you to yesterday about the deal that had been struck for carpenters on Queens Wharf. So those two news articles will have some further relevance shortly in the evidence, as will this final document, Commissioner, at page 344. This is a decision of the Federal Circuit Court, Jarrett J. And if I can just direct your attention, Commissioner, to page 413, paragraphs 219 and 220, there's a finding that engaging, or when considering whether to engage a subcontractor, having regard

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to whether that subcontractor - having regard to its EBA status, if I can put it more correctly, comprised adverse action, and so this is the Devine decision, and I just - as I say, that will become relevant as well in the evidence shortly. So can I tender this bundle as well, Commissioner, assuming there's no objections.

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COMMISSIONER: No objections?

MR O'GRADY: There's no objection.

10 **MR O'BRIEN:** No objection.

MR GISONDA: CRR-3, I think.

15 **COMMISSIONER:** The bundle titled Tender Brief Don Johnson, 415 pages, one folder, will be CRR-2.

<EXHIBIT CRR-3 TENDER BRIEF DON JOHNSON

20 **MR GISONDA:** CRR-3, Commissioner.

25 **COMMISSIONER:** So are you saying that what I suggested to the witness, having regard to this decision, was wrong that a proponent or an investor of a infrastructure project cannot demand of the contractor that they have an in-term ABA in order to make sure that there is it no protected action during the life of the building of the project because that might offend the freedom of association provisions or whatever they're called now, adverse action provisions of the Fair Work Act?

30 **MR GISONDA:** That's one possible ramification, interpretive ramification of that decision, yes, and that's a point that CPB sought to make in its negotiations with the union, as you will see.

COMMISSIONER: Right. All right.

35 **MR GISONDA:** So with those matters out of the way, I now call Mr Don Johnson.

COMMISSIONER: Is Mr Johnson in the body of the courtroom? There he is. Please come to the witness box, Mr Johnson.

40 **DONALD NORMAN JOHNSON, AFFIRMED**

COMMISSIONER: Thank you, Mr Johnson. Please take a seat. Mr Gisonda.

45 **MR GISONDA:** Thank you, Commissioner. Mr Johnson, could you please state your full name for the record, please.

MR JOHNSON: Donald Norman Johnson.

MR GISONDA: And your current occupation?

5 **MR JOHNSON:** Managing Director of EIC Activities, part of the CIMIC Group.

MR GISONDA: On 12 March 2026, gave a sworn statement to the Commission in answer to a notice from the Commissioner; is that correct?

10 **MR JOHNSON:** That's correct.

MR GISONDA: And it contains 43 annexures which go for 383 pages which are attached to your statement as a bundle. Subject to a clarification in relation to paragraph 41 of your statement, which we'll come to in a moment, are the contents of
15 your statement otherwise true and correct?

MR JOHNSON: They are.

MR GISONDA: I tender that statement, Commissioner, and the accompanying
20 bundle.

COMMISSIONER: Any objection?

MR O'GRADY: No.

25 **COMMISSIONER:** It's your client, Mr Williams. I guess you don't object either.

MR WILLIAMS: We don't object.

30 **COMMISSIONER:** The witness statement of Don Johnson, affirmed 12 March 2026, 21 pages, 196 paragraphs, with 43 annexures, DJ-1 to DJ-43, will be - what am I going to label this one, Mr Gisonda?

MR GISONDA: DNJ.

35 **COMMISSIONER:** DM?

MR GISONDA: N, N for Norman.

40 **COMMISSIONER:** DNY-1. Thank you.

**<EXHIBIT DNY-1 WITNESS STATEMENT OF DON JOHNSON DATED
12/03/2026**

45 **MR GISONDA:** If we could just bring up paragraph 41 on the screen, and in particular, that last sentence, which begins:

"More specifically, at the moment, the statement says more specifically, the AWU has sole coverage of tunnelling works and they have significant experience dealing with the unique requirements of tunnelling projects and understand and endorse the flexibility required..."

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If I understand the position correctly, Mr Johnson, you're not, there, intending to make any statement about the legal correctness of the statement that the AWU might have sole coverage over tunnelling; all you're seeking to do is posit a practical observation from your experience about the number of tunnelling agreements in Australia and the union that's a party to them?

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MR JOHNSON: Yeah, that's correct. I mean, I'm reflecting on, you know, the way the industry has worked for the last 20 years. So it's an observation of that, more so than trying to get into IR rules of coverage and etc.

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MR GISONDA: Thank you. Now, you said that you're the Managing Director at the moment of EIC Activities which is a member of the CIMIC Group. When did you begin that role?

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MR JOHNSON: 1 February this year.

MR GISONDA: And what were you doing prior to that role?

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MR JOHNSON: Before that I was chief operating officer and executive general manager for the New South Wales Major Projects and Tunnelling within CPB which is another arm of the CIMIC Group.

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MR GISONDA: And before we get into what that role entailed, how long have you worked in the construction industry, Mr Johnson?

MR JOHNSON: Thereabouts, 40 years.

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MR GISONDA: And are you able to give the Commissioner a broad summary of the type of roles that you've had over those 40 years?

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MR JOHNSON: Over the 40 years. I started my career, I came out of Queensland Institute of Technology, worked on a site in Central Queensland as a site engineer to start with, and progressed through the - what was then the Theiss Organisation, through project manager roles, construction manager, working up to general manager roles, then got involved in major projects about 20-odd years ago now, most particularly the CityLink project in Melbourne and the Eastlink project in Melbourne, Vic Desal.

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So there was a range of those major projects, and that's continued over the last decade, particularly with tunnelling projects, you know, a large involvement both as project director and then executive general manager for WestConnex projects in Sydney, Sydney Metro Tunnels and rail fit-out. Of course, Cross River Rail was part

of that and even now I'm still involved in, you know, Cross River Rail and the North East Link project in Melbourne.

5 **MR GISONDA:** And before the Cross River Rail project kicked off, you've mentioned significant projects in both Melbourne and Sydney. Is it fair to say that when you started working on major projects, most of your work was in those two cities? Or, sorry, the projects that you worked on were were in those two cities?

10 **MR JOHNSON:** Look, I had a period when most of my work was focussed on Melbourne. That was probably up till about 2012. After that it's been more broad. You know, up until 2015 or so, it was wherever the work was. 2015 through to 2018 was mainly New South Wales with WestConnex. 2018 through to 2025, it's been an Australia-wide role.

15 **MR GISONDA:** And from about September of 2017 through to 2019, the SIMIC Group submitted an expression of interest followed by a formal tender or bid for two separate packages of works on the Cross River Rail project. What involvement did you have, if any, on that expression of interest and then bid stage?

20 **MR JOHNSON:** I was promoted into my executive general manager role, probably towards the tail end of those bid processes, so I was involved when we were signing contracts, you know, probably final - before that, final reviews of the jobs, signing contracts, you know, and launching the jobs, but I wasn't involved in the EOI or the early part of the tender periods.

25 **MR GISONDA:** In April of 2019, the Pulse consortium was announced as the preferred proponent for the TSD works, and Unity for the RIS works. Are you able to briefly explain the TSD package of works for the Commissioner?

30 **MR JOHNSON:** Yes. So the TSD package is a public private partnership, a PPP. It involves the construction of - it's effectively a greenfield project that extends from Normanby, behind Brisbane Grammar, and South Down to Dutton Park, and there's a large portion of tunnel from just north of Roma Street station to just south of Boggo Road area, so it's about 5.9 kilometres of twin rail tunnels. In addition to that, there's
35 the four underground stations, Boggo, Gabba, Albert and Roma. We do all the track work, and you know, the mechanical and electrical systems within the tunnels, but not the train control systems. And then because it's a PPP, there's - you know, it's under a concession agreement, so another - you know, there's an operations and management contract through Pulse that takes, you know, the O & M responsibility
40 for certain aspects of that infrastructure for the concession period which I think is 20 or 25 years.

MR GISONDA: And Pulse was a special purpose that was established for the purposes of the project; is that right?
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MR JOHNSON: That's correct. It's the standard kind of PPP project set-up. They become the concessionaire. The award the contract for D & C and another contract for O & M.

5 **MR GISONDA:** And are you able to very briefly just explain the role that some of these other entities had in the consortium. So stepping outside the SIMIC group, can you briefly explain what the role of BAM was?

10 **MR JOHNSON:** The D & C subcontract, I think it's called a subcontract, comprises four construction companies so there's CPB, UGL, BAM and Galla. We form what's called a fully integrated joint venture, which means we do all the work in an integrated fashion. You know, we don't split the scope such that BAM's doing a piece of work and CPB is doing something else. We're just four partners in a JV
15 delivering that work. Each of those four parties in the design and construct joint venture sit at the steering committee table, we each have representatives and we manage the job collectively.

MR GISONDA: So perhaps a more accurate question is to ask what particular expertise ask BAM and Geller bring to the joint venture?
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MR JOHNSON: They're both longstanding construction companies. They're internationals and they're both - Geller in particular has been a longstanding partner of CPB. We've done a lot of work together in Sydney on the Metro jobs down there, but they're both quite expert in tunnelling operations and that was a large component
25 of this project.

MR GISONDA: As I understand it, it was an unincorporated joint venture, which means that under the design and construct subcontract, each of the joint venture parties were a signatory to that subcontract.
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MR JOHNSON: That's correct, yep.

MR GISONDA: And in dealing with the RIS package of works through the Unity alliance, perhaps you can explain to the Commissioner the structure of that arrange
35 minute, that being an alliance agreement as opposed to a PPP structure.

MR JOHNSON: Yes. So why is it an alliance? You know, I suspect it was set up that way because it's very much brownfield work. So it involves the work either side of the TSD contract. So it pretty much picks up at the Normanby and heads north. It
40 involved an upgrade of the Exhibition station, new stabling facilities in main yard and heads just north of the bridge over Breakfast Creek. Southbound, it goes through Dutton Park station,er long a Yeerongpilly, Rocklea, Salisbury. So it's upgrade work of existing stations. It's upgrade of existing track, et cetera, so it involves a huge amount of interface with live railway as opposed to TSD which had those obligations
45 at both ends but not through the majority of the job. So it was better suited to be done under alliance-form contract with QR as part of that - Queensland Rail ways, as Parliament of that alliance.

MR GISONDA: And some of the other entities in the alliance included ACON and Jacobs and are you able to explain briefly what their role in the alliance.

5 **MR JOHNSON:** Yeah, they were our design partners so in an alliance contract, you generally have, you know, both the construction contractors and the design engineering partners as part of the alliance, whereas in, you know, a D & C, a PPP job, D & C contract that we had the design partners would be subcontractors to the overall construction partner.

10 **MR GISONDA:** And for the benefit of the Commissioner, I assume that this alliance agreement was structured in the orthodox fashion, which is that you have each of the alliance members agreeing to cooperate effectively in good faith towards the achievement of common objectives.

15 **MR JOHNSON:** That's correct, yep.

MR GISONDA: You mentioned going back to the TSD package of works, the TSD steering committee. That was a committee that you sat on. Who else did you say sat on that or what other offers holders were on that steering committee?

20 **MR JOHNSON:** There's two representatives, each from CPB, UGL, Geller and BAM. So it's a steering committee of eight that meets with senior representatives of the project team on a regular basis.

25 **MR GISONDA:** And what was the function of that steering committee?

MR JOHNSON: The steering committee's got overall corporate responsibility for the delivery of the project. So, you know, the project team reports through the steering committee. We have oversight on all aspects of the job. We don't get into the detailed level on all aspects, but it's a typical corporate or executive governance role on a project. You know, obviously there's the overall outcome, client relationships, safety performance, relationship with other stakeholders, in this case, you know, QR and the RIS alliance itself, their other important stakeholders so it's a general governance role to make sure we're delivering to the expectations of our contract and so our own shareholders.

30 **MR GISONDA:** And how about in relation to the RIS project? What role did you have with respect to that package of works, if any?

40 **MR JOHNSON:** It was much more limited role initially. You know, alliances are structured with an alliance board and that end its to be where the decisions stop. I wasn't part of the alliance board. That was Mr Sanfilippo was our representative on the alliance board, but know, I would have, you know a bit of oversight. I knew some of the key things that were going on on the job, but you can't have a successful alliance if you've got, you know, companies butting in too much. It's up to the alliance board.

MR GISONDA: And where were you based - from April 2019, where were you based?

5 **MR JOHNSON:** I would like to think the Qantas lounge is where I was based but Sydney, Sydney was home and very often in Brisbane.

MR GISONDA: And is it fair to say that once the preferred proponents were announced - so we're now looking at the period from April, let's say, until about
10 September/October of 2019, that there were at least two mainstreams of work, one of which was negotiating the relevant project agreements and reaching contractual close, and the other was negotiating suitable enterprise agreements with the unions.

MR JOHNSON: Oh they were two of the many things that had to be done. The
15 agreement of the contract was pretty much done by June, you know, we ended up signing the contracts at the end of June 2019. The industrial agreements were an activity both before and after that date. But you know, you're starting a - you know, a multibillion-dollar job, so you know, the range of activities is a lot broader than that, as you can imagine.

20 **MR GISONDA:** Did you have much role in the negotiation of the contractual documents?

MR JOHNSON: No, there wasn't a huge amount. I mean, if there was key sticking
25 points, I might get involved - I did get involved. But not generally. I mean, we've got a very competent bid team that does that, you know, supported by commercial and legal and they worked with the - both the Pulse team, because ours is a subcontract to Pulse and Pulse was ultimately responsible for the contract with the State.

30 **MR GISONDA:** And in relation to the negotiations of enterprise agreements, what did you see as your role - so putting to one side what you actually end up doing in terms of participating in that process, what did you see your role as being in relation to those enterprise agreements or the negotiation of them?

MR JOHNSON: Well, normally I wouldn't get involved in negotiation of enterprise
35 agreements and that was the intent here as well. I guess the - the enterprise agreement was a big issue in the negotiation of this contract, and ultimately signing the contract. So I guess when you get to those situations where there's bigger problems to be solved, that's where your executive management gets involved. So I
40 found myself a bit involved in - in the EA negotiation.

MR GISONDA: When you say it was a big issue, are you suggesting there that it was a bigger issue on this project than you had experienced on other projects?

45 **MR JOHNSON:** Yes, I am, yeah.

MR GISONDA: I'll return to that topic shortly, Mr Johnson. But before doing so, can I ask you whether you have had, over your 40 years, experience - much experience dealing with unions - union officials, let's put it that way, in the past?

5 **MR JOHNSON:** Yes, yes, I have.

MR GISONDA: And is that in both New South Wales and Victoria?

MR JOHNSON: It's more Victoria than New South Wales.

10

MR GISONDA: And do those unions include the Australian Workers Union?

MR JOHNSON: Yes.

15 **MR GISONDA:** And are you able to explain to the Commissioner the extent of your dealings with the Australian Workers Union over the years?

MR JOHNSON: Yeah. Well, look, I mean, my role, you know, throughout this has been an operations person, project manager, general manager, as I said, and we
20 always have industrial experts in our company. So most of the dealings would be done by the IR people, but at times, you know, you've got to own what's going on in the industrial sphere. So I had reason to meet with senior operatives of the AWU. You know, if I go back to Eastlink in Melbourne, we wanted to get agreements in place for that job. I had dealings with Bill Shorten to get that agreement over the line.
25 You know, Victoria Desal, we had all agreements, all unions involved in that job, you know, the five unions, typically involved in construction and I dealt with each one of those unions on that project.

COMMISSIONER: The Eastlink project, that was - how many - what was the value
30 of that project again?

MR JOHNSON: The Val rue lieu?

COMMISSIONER: Yes.

35

MR JOHNSON: About 2.5 billion.

COMMISSIONER: And as I recall, that was a successful project, in the sense that it was a very substantial road project but it came in under budget and before time. Is
40 my memory right about that?

MR JOHNSON: It was thereabouts budget. We came in. We had - you know, that's at the time when the Australian construction industry was really stepping up in value and I think when we're talking about infrastructure jobs, prior to that, the biggest job
45 would've been about 1.5 billion. So we stepped up to 2.5 in one hit, you know, which big step-up. You know, dollars are worth lot less than they are these days. The

government was very keen for that job to be delivered in four years. We found a way to commit to that and we delivered in 45 minutes, not 48 minutes.

5 **COMMISSIONER:** So very close to budget and three months ahead of time?

MR JOHNSON: Yep.

10 **COMMISSIONER:** I don't want to divert you, Mr Gisonda, but I would be interested at some point in exploring why that project was successful.

MR GISONDA: Was the relevant enterprise agreement or agreements in relation to that project - so the AWU was a party. Were any other unions a party to the agreements as far as you recall?

15 **MR JOHNSON:** Look, I can't recall. You know, because - and why it's sometimes difficult to recall is, you know, you have involvement with more unions, because they all have, you know, members on the job in some way. I just can't recall whether we had agreements with anyone else other than the AWU.

20 **MR GISONDA:** Yes. But you certainly recall the most substantial or significant interactions as far as that project is concerned, you recall occurring with Mr Shorten; is that correct?

25 **MR JOHNSON:** Oh, not all the time. I mean, he had an understudy, Cesar Melhem, that I would deal with, and you know, Mr Shorten, certainly had dealings with him.

30 **COMMISSIONER:** Mr Shorten by this stage had graduated from being the Victorian State Secretary of the AWU to being the federal State Secretary and that's why he left it to Mr Melham at that stage who was the State Secretary.

MR JOHNSON: Yes.

35 **MR GISONDA:** And are you able to offer any observations as to why that project was able to be achieved at around budget, or at least not significantly over budget, and within time?

40 **MR JOHNSON:** Look, I mean, I think - I've got to say, we had a good run with the weather. That always helps. You know, we had, you know, very good relationships with our workforce and our subcontractors on the job. We had good relationships with the unions throughout. I mean, there's always a couple of skirmishes but, you know, very productive. We had a good management team and we split the job up, you know, it's a bit of a textbook study on, you know, the bigger jobs, we split it up into a number of smaller chunks and made those chunks accountable for their performance, and it worked successfully. And a good client. Very good client
45 relationship.

MR GISONDA: And so you would accept that at least one important feature of the success in relation to that job was that you had good relationships with your workforce and the employee representatives in the form of the union, or unions, and did you consider that the unions on that project were trying to work productively and with you towards a common objective of a project on time and on budget?

MR JOHNSON: Yeah, I do, and it's not just one job. I think, you know, there's a lot of that generally in the industry.

MR GISONDA: What other projects that you can recall, other than the ones that you've just mentioned in Victoria specifically, that you have had dealings with the AWU on in your career, or at least major projects, if we can limit it to that?

MR JOHNSON: Well, as I said, the Sydney projects, which all involved AWU, they were tunnelling projects fundamentally for the Sydney Metro and WestConnex. We dealt with the AWU and other unions on those. I wasn't dealing with the day to day, because it kind of rolled on, rather than, you know, it was working, it didn't need more senior intervention.

MR GISONDA: Then can I ask you a similar suite of questions now with respect to the CFMEU. So before Cross River Rail started, so that's the period of time that I'm looking at, working backwards over your 40-year career and I want to ask you the extent of the deals that you had with the CFMEU in that time.

MR JOHNSON: In Victoria?

MR GISONDA: Anywhere in Australia.

MR JOHNSON: Well, you know, again, I mean, you don't deliver these big construction jobs without extensive dealings with all unions. I particularly remember my involvement with the CFMEU on Vic Desal. You know, that was a trying environment for everybody. You know, the job got delivered, but it wasn't the easiest of journeys. In Queensland, you know, I guess, you no, the Queensland civil construction industry has generally had AWU agreements, and that goes back a period of time, so I think, you know, pretty much all Queensland is based on AWU agreements and CFMEU has a rightful role. They represented the building industry over time. So we've tended not to have agreements with the CFMEU, because we have AWU agreements for civil.

MR GISONDA: This is in Queensland you're talking about?

MR JOHNSON: In Queensland, yeah. Over the last decade. And we haven't had a building agreement. We're not the biggest builder in town, and you can deliver these jobs without an agreement in place, particularly on building, where we don't tend to employ a lot of people.

MR GISONDA: And who are some of the - just focusing on Victoria at the moment, who were some of the union officials that you can remember having to deal with from the CFMEU?

5 **MR JOHNSON:** If I go right back, I dealt with John Cummins. I found him a good guy to deal with. Trying to remember the names of the guys on Desal.

COMMISSIONER: John Cummins was trained by Norm Gallagher and was the mentor of John Setka, wasn't he?

10

MR JOHNSON: Who's that?

COMMISSIONER: John Cummins was trained by Norm Gallagher and was himself the mentor of John Setka.

15

MR JOHNSON: I think you're right with that, yeah. I haven't had a lot of dealings with John. Ralph Edwards I deal with down there.

20 **MR GISONDA:** And you said that the desal plant was a trying time. Are you able to elaborate on that any more?

MR JOHNSON: Just the general, you know, to start with the environment, it rained all the time and it blew all the time. You've got, you no, 20-odd cranes, more than that, I think, in the air, so trying to get some work done was quite difficult. It was a remote job from Melbourne. So there was a particular EA set up that had provisions for living-away allowance and whatever else. We had five unions involved in the job. You know, all seeking to make sure that the workplace was what they expected for their employees, the employees that they represented. So we had more than our fair share of industrial stoushes on Vic Desal.

30

MR GISONDA: And before leaving this topic, are you able to offer any observations about the dealings that CPB has had with the CFMEU in the State of New South Wales?

35 **MR JOHNSON:** There's not a lot to talk about, because it's - you know, we've existed and, you know, we've - you know, we have agreements with the CFMEU. The work is quite productive down there and in fact, we have, for our civil - for our civil arm in New South Wales, we have a joint agreement between the CFMEU and the AWU for work that we carry out on projects covered by that agreement. It doesn't cover all projects. You know, some of the larger projects need a project-specific agreement, but those that are covered, and I think it's less than a billion dollars or something like that, you know, we have a - a pattern agreement that, you know, covers that type of work with both unions.

45 **MR GISONDA:** And how would you then, at a broad level, describe the dealings that CPB had with the AWU on the Cross River Rail project?

MR JOHNSON: I - I'd say it was, you know, pretty much business as usual in terms of, you know, their expectations. The AWU rightly didn't want to be signing a substandard agreement in terms of terms and conditions and pay rates for the employees. But, you know, in terms of normal expectations as to how you could get on with the productivity of the job and the particular aspects that applied to, you know, particularly TSD work, which was a tunnelling operation, continuous operations, lots of weekend out-of-hours work, SKAS work, which is rail possession work. They're doing that all the time, they understand that and they're prepared to give an agreement that accommodates that type of flexibility.

MR GISONDA: And how about, then, turning to the CFMEU, how would you just, at a broad level, at this stage, how would you characterise the relationship that CPB had with the CFMEU in relation to this project?

MR JOHNSON: Well, I guess leading up to Cross River agreement negotiation, there wasn't a lot of a relationship there, because we didn't have an enterprise agreement with the CFMEU in Queensland, for the reasons I explained, civil versus building. We didn't need one for building at that time. So, you know, we probably walked into that negotiating room where, you know, there wasn't - probably the CFMEU wouldn't have had a huge amount of trust in CPB, because they wanted an agreement over the previous years and it wasn't forthcoming.

MR GISONDA: And then looking at your experience, once CPB is announced as preferred proponent, in April 2019 thereafter, how would you describe the relationship that you had with the CFMEU from that point?

MR JOHNSON: Well, I think, you know, you've got to characterise it, you know, the negotiations occurred with what was called the Building Trades Group, the BTG, and that comprised the CFMEU, the ETU, the AMWU and the CEPU. So plumbers, electricians, metal workers and the CFMEU, as well as the AWU. So, you know, certainly, on most occasions, CFMEU would lead the BTG, you know, ETU was another leader in there. So when I talk about the relation - you know, the - you know, the negotiations of the relationship, it's not only the CFMEU, but I think we've got to talk about the BTG group as opposed to the AWU. And as their name would suggest, they've - the BTG has come with an expectation of a building-style agreement to be applied to the Cross River Rail job.

MR GISONDA: Can I turn next to your observations about the involvement of the government in the negotiations phase, and if we look at paragraphs 43 onwards of your statement, you explain that many infrastructure projects in Australia involve a government client and on some projects, that's a team that's in-house within a department and on other projects you have a specially established authority with responsibility for the project. So it's not unusual - that's your evidence, is it, that it's not unusual in your experience on these large projects could have some degree of government involvement and interaction, but what was unusual about this project, you say, at paragraph 45, was the level of interest and involvement by the Delivery

Authority during the enterprise bargaining stage. Are you able to elaborate on that a bit more, focusing on this negotiation phase of the enterprise agreements?

5 **MR JOHNSON:** Yes. So most government clients, if not all, would require the submission of an industrial relations management plan or something similar, and generally, the risk profile of the contract is such that the risk of IR becomes contractor's risk, right? Obviously, alliances and the outcome there could be a bit different but generally the alliance - sorry, generally, IR is the risk of the contractor. So there's always an active interest to see that in, you know, IR agreements are progressing and whatever, that clients want to have that oversight to make sure that the contractor is doing what it should be doing. I guess on Cross River Rail, you know, we had the advent of what was called best practice principles, and that puts certain obligations on us as a contractor, and those obligations were bound into the contract, you know, and it was through those obligations that the, you know, the State here took a much more active interest in our negotiation with the union and how we were progressing and the time lines, et cetera, et cetera, than, you know, has been my experience in the past.

20 **MR GISONDA:** And you would anchor that unusual degree of interest and activity to the presence of the best practice principles?

25 **MR JOHNSON:** Well, that was the - that was the policy that was spoken about all the time, through that - through that journey, that everything was tied back to, you know, we've got a contract obligation to meet best practice, government was going to hold us to that obligation.

MR GISONDA: And just going back to paragraph 42 of your statement, in the middle there, you say that:

30 "CPB's relationship with the CFMEU in Queensland became extremely difficult following the successful tender on the project and these difficulties emerged during the bargaining phase in 2019."

35 Would you say that the best practice principles were counter-productive to trying to manage a difficult relationship with the CFMEU, or did they assist you in some way?

40 **MR JOHNSON:** I - I don't think it's the best practice principles per se. I think, you know, in terms of that policy, what it was generally seeking to achieve from the industry, you know, to have safe work sites, to have a level of trainees on projects, to have, you know, relations with our employees and union representatives. I mean, there was nothing in particular that stood out from best practice principles that you'd say as a policy, you know, you'd be dead against. I think what happened, though, was best practice principles kind of morphed into, well, you know, this is the expectation from government as the type of agreement you're going to have, because you've signed up to best practice principles -- as to the type.

MR GISONDA: So it was - if I understand your evidence correctly - more the interpretive lens that was put over those best practice principles that created the issue rather than the best practice principles as written on the page themselves.

5 **MR JOHNSON:** Yes. And when I say that, I'm separating best practice principles from BPIC, which came later.

10 **MR GISONDA:** Yes. Now, turning then to some of the meetings that took place, and you were a participate grant in some of the unions that is between CPB and UGL on the one hand and the unions on the other, there was, if we can just turn to page 4 of your witness bundle. This is an executive summary of how the engagements that were progressing that was prepared by a member of your team at the time - when I say "your team", a member of CPB at the time. And just by reference to this document, is it accurate to say that CPB was, at this stage, and throughout the 15 bargaining process, willing to enter into - subject to appropriate terms and conditions being agreed - but willing to enter into an enterprise agreement with the CFMEU on this project?

20 **MR JOHNSON:** Yeah, absolutely, yep.

MR GISONDA: And they were invited to attend these meetings from the very beginning, and that invitation was made in good faith, in the sense that, as we've just said, you were - the company was willing to enter into an agreement with them.

25 **MR JOHNSON:** That's right. I mean, we had - we had an industrial strategy that - so I think the first meeting would've been with the AWU, because our industrial strategy was for three agreements, one for tunnel and shaft, one for simple and structural works and one for mechanical and electrical. So we sought to progress some discussion on the tunnel and shaft with the AWU and the other two agreements 30 would've been with all five unions.

35 **MR GISONDA:** If we then turn to page 2 of the bundle, this is an email that you send on 8 May. So in April, it appears that what happened were one or two meetings with the AWU only, not - that's not to say that the other unions weren't invited to meetings but only the AWU participated in April, but now, in May, we have the participation of the BTG group, and what you're doing here in this email is sending a report to Mr Santamaria and Mr Wright, among others, and Mr Nolan. Can you just explain to the Commissioner briefly who, first of all, who Santamaria was?

40 **MR JOHNSON:** Mr Santamaria was the Managing Director of CPB Contractors. So I reported to Juan.

MR GISONDA: And Mr Wright?

45 **MR JOHNSON:** He was the Chief Executive Officer of CIMIC Group, so Juan reported through to Michael.

COMMISSIONER: You said what you reported - he was the CEO of CIMIC.

5 **MR JOHNSON:** I reported as EGM to Mr Is an a Maria and Mr Santamaria reported to Mr Wright and Mr Nolan was the - I'm trying to think back at that time, because he was in CPB and then he moved to CIMIC. I think at that time he was in CPB. I may be wrong with that. But he's the people and culture - you know, most senior person. So responsible for IR.

10 **MR GISONDA:** And who's now the CEO of the CIMIC Group? The CEO of the CIMIC Group did you say, sorry?

MR GISONDA: Yes.

15 **MR JOHNSON:** Jason Spears.

MR GISONDA: And in this report that you give to Mr Santamaria, Mr Wright and Mr Nolan, you explain that at a meeting with the union representatives, that what was presented to them was the intention for the three enterprise agreements, as you've just explained to the Commissioner, and their position was that they wanted a single agreement, but may concede to two agreements, and that was the tunnel, 20 AWU and BTG and then the balance of the job, the BTG. I assume that the AWU did not agree that the tunnel agreement should include the BTG as well?

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

MR GISONDA: So the first point is single agreement or two agreements, but in any event, the tunnelling job to include the BTG. Second point is they wanted all subcontractors on the project to have the same conditions as the employees who would be covered by this, what they wanted, single agreement; is that correct? 30

MR JOHNSON: Yes.

MR GISONDA: And they say they reckon there's a mechanism to get all subs to sign duplicate agreements. Do you recall from what was reported to you or what you heard in meetings what that mechanism was that the BTG had in mind? 35

MR JOHNSON: Look, that - from memory that wasn't discussed at that meeting. There was plenty of discussion on that subsequently, but you know, there was no detail as to how that would work in that particular meeting. 40

MR GISONDA: And what about subsequently? Did you come to learn what the detail might be that laid behind that proposal?

45 **MR JOHNSON:** Yeah, I think at one stage and I think it's in my - my evidence, we were given a document from Queens Wharf as to how Queens Wharf went about getting every subcontractor on the same deal as the - as the overarching project agreement. So I think, you know, part of that involved selection of subcontractors,

part of it involved sending out the project agreement with the - to the subcontractors, when they were pricing the job to make sure that they were all aware that they had to price according to those conditions and rates of pay. Now, we - from our point of view, we say doing that is not compliant with the federal code.

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MR GISONDA: Yes. We'll come to that shortly. And so when you have here at the bottom of the email, these are essentially the key points. BTG wants to be included in a tunnel. BTG is seeking to exclude the AWU from station boxes. All subbies are to earn the same rates re project agreement being pushed and then we can skip over the fourth point. Then you say:

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"Vince [that is, Mr Sanfilippo] has briefed Matthew Martyn-Jones from the Delivery Authority, who is the conduit to Trad's office."

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What was your understanding of Mr Martyn-Jones' role in the delivery authority?

MR JOHNSON: Mr Martyn-Jones had something like the title of general manager or executive general manager for stakeholders and communication, something like that. But he was certainly - excuse me - you know, a - a go-between, I would say, between, you know, the expectations more from the government and how they fed down through the Delivery Authority down to the expectations on us as a contractor.

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MR GISONDA: And was it your experience, in the course of these negotiations, that, as far as government expectations being pushed down to you was concerned, that was not occurring so much via Mr Newton, the CEO, but rather, the likes of Mr Martyn-Jones and we'll come to some of the others as well, but in particular, Mr Gartrell, Scott Gartrell; is that right?

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MR JOHNSON: Yeah, that's right. I mean, you know, I certainly had discussions with Graeme Newton about IR. You know, they were, I would say, less regular than, you know, right in the peak of this, that mean we may have been talking to Matthew Martyn-Jones, et cetera - yeah.

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MR GISONDA: And just that last sentence there, I was going to ask you but this might be the answer to the question, as to why you're reporting these matters all the way up to the CEO of the CIMIC Group. It was a possibility, if it had not already happened already, that there might be some communication from the Deputy Premier's office with the leadership of the CIMIC Group?

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MR JOHNSON: Well, I mean, my job is always to ensure that anything that I think may be significant - you know, I don't catch by bosses by surprise by not informing them. I think, you know, this was a big enough deal. I mean, we'd been announced as preferred contractor in mid April, I think it was. We had an expectation on us to get on and sign an industrial agreement. We were being given leads as to what the government tease expectation of that agreement might look like, because, you know, best practice principles applied, you know, and it was kind of a - you know, already

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at that stage, BPP seemed to be a de facto way of suggesting that the Queens Wharf agreement needed to be applied to this project.

5 So yeah, it was just really - and - and it was becoming obvious the State wanted an agreement in place, ideally, or if not, in-principle agreement of an industrial agreement before they were prepared to sign contractual close, financial close. All parties had a target. We were trying to get that gone in the shortest possible timeframe. You know, ideally the end of June. So it was - all parties were invested in
10 an industrial agreement in place to allow - enable the contract to be signed.

MR GISONDA: If we then jump, before we adjourn for the morning break, to page 30 -

15 **COMMISSIONER:** I just before you leave page 2. I know what a tunnel is under the key points and I know - I think station there means under point 2 means railway station. Does station mean railway station in key points.

20 **MR JOHNSON:** Yes, station boxes.

COMMISSIONER: I was going to ask what a box is but station moons a railway station?

25 **MR JOHNSON:** Correct.

COMMISSIONER: And what's a railway station box? It's basically the basement excavation if you want to describe it as something like that. We have a dig a hole. I think at Albert Street we went down 53 metres so basically we put, you know, structural mechanisms around the perimeter of the we've excavated vertically down
30 to that the level that the tunnel boring machine has come through that station box and once the tunnel boring machines have been down either side, we start to build back up the tunnel structure. So it's the initial excavation of the structure necessary to form that box for the tunnel operation and the station construction.

35 **COMMISSIONER:** And when it says BTG Building Trades Group seeking to exclude AWU from station boxes, that means the whole process of digging down and then building the station back up.

40 **MR JOHNSON:** Correct. That's right.

COMMISSIONER: Right.

45 **MR GISONDA:** And do you have an understanding of why the BTG had that position?

MR JOHNSON: No.

MR GISONDA: And turning to page 30 of the bundle, this is then a report that you received from Mr Sanfilippo. There had been another meeting with the unions or at least the BTG and the RTBU, who we'll come to shortly, but not the AWU, and he says:

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"The position of the BTG was an all-in project agreement is the only structure they'll agree to. The project agreement was to cover all workers on the project and the agreement will be as per Queens Wharf."

10 Is it fair to say that you understood at all times during these negotiations that what the BTG were wanting was an agreement that had terms and conditions largely modelled on the Queens Wharf enterprise - the Queens Wharf pattern agreement?

15 **MR JOHNSON:** Look, for the most part, I think they went through a period where they called Queens Wharf an inferior agreement and they were looking for something more than Queens Wharf.

MR GISONDA: Yes.

20 **MR JOHNSON:** I took that as a bit of ambit in the negotiation and I think that's, you know, what it turned out to be, but you know, certainly, there was that period, but otherwise, yes, they wanted Queens Wharf terms and conditions to apply to Cross River.

25 **MR GISONDA:** When you say "apply to Cross River," to apply to essentially every worker on the site?

MR JOHNSON: Correct.

30 **MR GISONDA:** And there's then a discussion there about the cost implications of subcontractors being adjusted to match a project agreement, and we'll return to that shortly, but they say their view is that we - so the view of the BTG was that CPB should have known to tender that way. Was that a point that they sought to make throughout the negotiations with CPB, that despite the cost implications, that was
35 CPB's fault for not having tendered on that basis?

MR JOHNSON: Yes, that was mentioned on a few occasions.

MR GISONDA: And then this email concludes by saying that:

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"We press that we wanted to continue discussions with multiple unions to progress the way forward but they declined unless it was as per their structure above."

45 **MR JOHNSON:** Yeah, those three key points.

MR GISONDA: Yes, and then Don and Andrew, that's yourself and Mr Large, were meeting with Graeme Newton this afternoon. In the interim, we have advised the Delivery Authority of the meeting outcomes."

5 And so you've mentioned already you did have occasional discussions with Mr Newton about the progress of the industrial relations situation; is that right?

MR JOHNSON: That's correct, yep.

10 **MR GISONDA:** Is that a convenient -

COMMISSIONER: Yes. Just going back to the fourth dot point or fourth arrow point, their view is you should have known to tender that way. Is the implication from that comment that the tender that you should have submitted, according to the
15 unions, would've been at a much higher price?

MR JOHNSON: It would be, if we bid the whole thing at Queens Wharf rates, and it applied to every subcontractor on the job, yes. I mean, I think the - you know, we - we've probably seen that the - as I said earlier that the best practice principles
20 we were kind of seeing that because it places an onus on us to have, you know, terms and conditions that are going to attract employees, et cetera, that the view coming from government was that that should be Queens Wharf.

COMMISSIONER: It seems quite inconsistent with the obligation of the
25 government to try to build these large infrastructure projects at the best value for money it can get.

MR JOHNSON: I'm sorry, I'm just having a little bit of difficulty hearing you.

30 **COMMISSIONER:** That statement you just mentioned, you've mentioned a few times in your evidence, seems inconsistent with what one might have thought to be the prime objective of the government, to build these large infrastructure projects at the best value it can get.

35 **MR JOHNSON:** That's correct. If you read best practice principles, it's talking about that we need to offer terms and conditions to attract and retain employees. Now, you know, when you've got a job that's got a few thousand employees on it, unless you have agreements and unless you have, you know, check what the subcontractors agreements are that they can attract the workers, we ultimately don't
40 have the workforce to build the job so we've got that requirement upon ourselves, in a hot market, to get the workers so, you know, I think best practice principles, you know, as a headline, it's fine, you know. It's how it then morphed into, "Well, we're interpreting this to be, you know, Queens Wharf."

45 **COMMISSIONER:** All right. We'll adjourn till 20 to 12 and we might go till 1 o'clock, Mr Gisonda.

<THE HEARING ADJOURNED AT 11.29 AM

<THE HEARING RESUMED AT 11.40 AM.

5 **MR GISONDA:** Before the break, Mr Johnson, you had mentioned that at one stage
the BTG's position was that, if anything, the Queens Wharf rates and conditions were
not good enough, and that they could be improved further still. And if we go to page
31 of your bundle, that's a report that you received from Vince Sanfilippo on 27
10 May. If we bring that up on the screen, you'll see there, it's the third bullet point
under that first main heading in bold:

"On rates and conditions they have reviewed the position and Queens Wharf rates
and conditions are not good enough."

15 And what was otherwise discussed in this meeting, as reported to you, is that
whereas CPB had made a concession of down to two agreements rather than three
agreements, so a tunnelling and shaft agreement with the AWU and all other works
with all other BTG - with the BTG members and the AWU, you were otherwise
maintaining our position on subcontractors, which was in contrast to the BTG
20 position, which was that all subcontractors should be paid on the same - at the same
rate or should be engaged on the same terms and conditions as those that CPB would
engage directly on the project pursuant to a Queens Wharf-style agreement. That's
how you understood the position as at the end of May 2019?

25 **MR JOHNSON:** Look, I think I follow you. I just got a little bit lost with what you
were asking, I'm sorry.

MR GISONDA: That's certainly my fault, not yours. To summarise the position, the
BTG want a single project-wide agreement; they want that project-wide agreement to
30 be styled on Queens Wharf rates and conditions.

MR JOHNSON: Yep.

MR GISONDA: And they want that applied to all subcontractors on site.

35

MR JOHNSON: That's correct.

MR GISONDA: And so that leads you to a meeting on 7 June - and this is at page
34 of your bundle - where you send an email to Mr Newton, and you attach a draft of
40 a paper detailing matters pertaining to industrial relations that would be useful for
today's discussion and on that day, 7 June, you had a meeting with Mr Newton; is
that right?

MR JOHNSON: That's correct.

45

MR GISONDA: And if you go to page 35 of the bundle, this was the presentation
that was used for the purposes of that meeting, and if we go through some of the

points that are made in this presentation, at page 36, key elements, your objective - that is CPB's objective - was to establish industrial instruments that focused on maintaining relationships with relevant unions while providing terms and conditions that attract and retain employees, and - and this was the Commissioner's point just before the break - delivering value for money for the State. So that was a key objective of CPB; is that right?

MR JOHNSON: Well, that's our key objective but I think that that one closely aligns, if not exactly copied out of that best practice principles.

MR GISONDA: Yes. And this third bullet point is:

"To ensure industrial instruments provide flexibility for operational works throughout weekend, nights and shift works that are market on Infrastructure Projects."

And that's a feature, you would say, of the nature of tunnelling projects which require, in broad terms, or sufficiently accurate terms, 24/7 operation and, in particular, key flexibility around times where rail patronage might be, let's say, non-peak rail patronage, and that at times will correlate with public holidays and weekends and night-times; is that right?

MR JOHNSON: That's right. Now, remember, we were negotiating for both RIS and TSD with this.

MR GISONDA: Yes.

MR JOHNSON: So, you know, we had to make sure - and it's not that TSD had number but TSD had SKAS to a rail possession work.

COMMISSIONER: Had what, sorry?

MR JOHNSON: It's called the SKAS, which is another term for rail possession work. I think it's Scheduled Access - SKAS, SKAS, scheduled access corridor scheme. Rail possession is easier to remember, right. So they are planned months, years ahead, right. Now for the significance of the work that had to be done on particularly RIS but also TSD earlier days, the only time you get the windows to do that are over the Christmas break, over Easter, public holidays, et cetera . So we had to have an agreement that accommodated with certainty that we would be there, we would roll up, we would finish that work, if you're doing a rail possession.

Rail possessions you work through the rain, you work through whatever's thrown at you, within reason, to get the work finished so our agreement had to establish that at the outset. Everything that was required to do that for - so we were dealing with continuous or 24/7 tunnelling operations, afternoon shift work, you know, aligned to some of the utility relocations and other works. We had the SKASs to deal with and we had to do that with an agreement that was being put to us that had 26 RDOs, had

to go to the union to get agreement to work on those RDOs or public holidays. So it was too much of a risk to put that agreement control with the union that could determine, well, no, we don't - we're not going to give you agreement to do your SKAS. Is that you've waited 12 months for to do this Christmas. It just doesn't work like that.

5
10 **MR GISONDA:** And at page 38 of this presentation, labelled Current Engagement, you were trying to satisfy the Delivery Authority, weren't you that at least from your perspective, CPB's perspective, you were engaging in best endeavours to try and reach an enterprise agreement, is that right? And the way that you perceived it was that the BTG's insistence on one project agreement on Queens Wharf rates and conditions applying to all subcontractors was thwarting that ability to engage in good-faith bargaining.

15 **MR JOHNSON:** Look, that's correct. We had two objectives here. We wanted an agreement, because the contract would be signed and we needed a greenfield agreement in place to be able to start substantial work on the job. But also, through the contract and the best practice principles overlay, the State was saying, "You have an obligation to have this particular agreement in place, and we're not going to reach contractual and financial close until you've demonstrated to us that you've either got an agreement in place or you've demonstrated best endeavours to get that agreement."

25 **MR GISONDA:** And if we go to then page 41 of this bundle, this is just an explanation, I think, of some of the matters you've already explained about the key differences between building and infrastructure projects, but in particular, infrastructure project that involves rail works, and then turning to page 42, you set out some of the problems with the Queens Wharf agreement, so it's noted to be a lengthy and complex document. And that fourth bullet point:

30 "The agreement structure, conditions and rates are not aligned to typical major Tunnel Rail Infrastructure projects."

35 And then over the page at 43 -

MR JOHNSON: I think - sorry. Before you move over the page, I think it's important that that second point as well. I mean, you know, the Queens Wharf agreement, in itself, was 123 pages, but apparently we can't describe everything that is wanted in 123 pages, so we afffour modern awards and put another 400 pages onto the back of that agreement, which is just a recipe for, you know, absolute confusion, and, you know, a minefield for potential disputes down the track, because you'll have clauses that are not consistent between the award and the agreement, et cetera, so -

45 **MR GISONDA:** Thank you, Mr Johnson. Then at page 43, there's at least one example at the top there, which is that the Queens Wharf agreement prescribed 26 RDOs, and the dates to be taken in each other, and problem matically, those dates correspond with public holidays and form non-productive blocs, and the Queens

Wharf EA provide as significant cost disincentive to work on RDOs. That's before you get to the point that you lose 26 productive work days a year, and then you put on top of that financial cost penalties in relation to working on RDOs being subject to written approval by the union, and that last - last two bullet points:

5

"The potential impact was a four-month extension to current timing and cost implications of a 15 to 20 per cent increase to industry practice."

10 So on a variety of levels, the Queens Wharf agreement was unsuited and inconsistent with the key objectives you were trying to achieve on this project.

MR JOHNSON: Look, I think, you know, when you're dealing with Queens Wharf for a building-type project, as I said earlier, it's a greenfield-type environment. You've got a lot more certainty to what you need to do out-of-hours work are more for your own requirement than having it imposed on you from any external stakeholder or the need to keep a tunnel boring machine operating round the clock. So, you know, those clauses are perhaps manageable on a building job. But we could not enter into an agreement, as it said, I think, on the earlier page - sorry, here, "work on RDOs is subject to written approval by the union" and the shift penalties that applied for afternoon shift or working on RDOs, I think if you worked on an RDO, if it was approved, not only did you get a loading for that day but you got another day in lieu at a later date.

25 So all of those cost impositions, but you know, no certainty on when that written approval would be given, if at all it was coming. So it was just - it was not possible to enter into an agreement for the scale and complexity and type of work that we were dealing with on Queens Wharf terms.

MR GISONDA: And if you go over the page at page 44, the third bullet point, I think it's calculated that if there agreed it would add a 300 per cent loading to all works, and then, over the page at 45, there's a calculation here of the traditional Queensland agreements has an average rate of \$242,000 per annum - this is based on a rotating shift basis for a typical tunnel worker -

35 **MR JOHNSON:** This is for a tunnel worker, I think, this sheet, yeah.

MR GISONDA: Yes. And then for Queens Wharf, if you impose its terms and conditions, you're looking at a 38 per cent increase to \$334,000 per annum.

40 **MR JOHNSON:** Mmm.

MR GISONDA: And then very quickly at page 47, you've got an escalation of wages of 5 per cent on Queens Wharf, compared to a construction industry-wide escalation of 3 per cent, and then at page 49 -

45

COMMISSIONER: Just going back to 45, what roster pattern is based on that calculation? The one at 46 is based on it looks like a standard shift of 56 hours per week at 46, but 45 doesn't tell you the hours.

5 **MR JOHNSON:** 45 would be rotating shift.

COMMISSIONER: Sorry, how long are the shifts and how many hours a week?

10 **MR JOHNSON:** I think we were doing 10-hour shifts, rotating two 10s plus four-hour maintenance shift per day.

COMMISSIONER: So what would a worker work on a month?

15 **MR JOHNSON:** I think we were doing 11 shifts per week.

COMMISSIONER: 11 shifts per week.

MR JOHNSON: So they'd rotate from day to night.

20 **COMMISSIONER:** So 55 hours?

MR JOHNSON: Sorry?

25 **COMMISSIONER:** Is that 55 hours that you have half the workforce doing -

MR JOHNSON: I can't recall whether it was 10 or 11, but you know - no, it's 10 hours. So they'd do 60 hours one week, 50 hours the next week on a rotating basis.

30 **COMMISSIONER:** All right. So about 55 hours average.

MR JOHNSON: Yeah.

35 **COMMISSIONER:** And the next one at 46 is - if you go to 46, that's 56 hours per week.

40 **MR JOHNSON:** That's the theoretical 56-hour week, when you don't have an RDO, which only happens one every two weeks, you know, once every two weeks, you get that type of pattern and that's if they're working on a Saturday. But it shows the big jump-up between - you know, Legacy Way, that was the last, if you like, mega project, if you want to call it that, that I think was finished in about 2014 or '15 and there was some particular rates of pay. Now, is that relevant or not to escalate it? But we did just to form a comparison to what was being paid back in that day. The more traditional Queensland agreements of that the civil industry was operating under would have earnings for a civil work of from 180,000 per annum and Queens Wharf was ramping that up to 256.

45 **COMMISSIONER:** Thank you. Sorry, Mr Gisonda.

MR GISONDA: Then at page 49, you set out some impacts on this idea that Albanese subcontractors would be on the same Queens Wharf rates on Cross River Rail, we've applied to Cross River Rail, and it includes that, in the fifth bullet point, if the subcontractor adopt the project rates for future tenders on other projects they will not be competitive, and that this then imposes - the second last bullet point - upward pressure and costs to other Queensland projects and businesses. And an example is given at page 50 of a subcontractor who was engaged on Townsville Stadium, who encountered a 30 to 40 per cent increase to existing wages and conditions, and then stuck with an enterprise agreement with the BTG at those rates, was then not competitive for other work that it then wanted to do, because it was stuck with these higher rates. Is that the gist of the -

MR JOHNSON: That's certainly the case. I mean, that's the feedback from the subcontractors, particularly in the regional areas. You know, and I think early days, there was another example in Cairns with the Convention Centre, Townsville was the stadium, but I mean, the went by policy to have these higher rates of pay, subcontractors had to make a choice as to whether they got one job's worth of work and went to work, you know, subcontracted on those particular projects I referred to, or they withdrew from participating on that, kept their existing enterprise agreement and therefore could remain competitive in the local market.

MR GISONDA: And then at page 51 -

COMMISSIONER: Just staying with the Townsville Stadium for the moment, I thought Mr Long's evidence, Mr Gisonda, was to the effect that the start of the conversion of the best practice principles in BPIC, one of the first instances where this occurred was on the Cairns Convention Centre, where there was - and this might be Ms Schinnerl's evidence as well, I can't recall - where there was a desire or demand or encouragement, however you describe it, to use the Queens Wharf agreement as in effect the pattern agreement or standard agreement on the Cairns Convention Centre. That's my recollection of the evidence. Are you saying, Mr Johnson - are you saying that something similar was happening on the building of the Townsville Stadium at the same time?

MR JOHNSON: That's right, yep.

MR GISONDA: And then at page 51, you set out - you then turn to the difficulties that you would encounter legally if you entered into some sort of scheme or arrangement whereby all subcontractors are forced to adopt terms and conditions, particular terms and conditions, Queens Wharf or otherwise, and there's references there to the Building Code and the Fair Work Act, and then at page 52, there's a reference to the Devine case, which is in the bundle of documents that I took the Commissioner to this morning, and finally, at page 53, there's a public perception issue as well you identify, by reference to articles, and one of which is the Queens Wharf carpenters earning \$300,000 a year, reported in the Courier-Mail, and the

article there at the bottom of that page, 53, which I took the Commissioner to this morning, of unskilled workers being paid more than nurses, engineers and police.

5 Is this the position you were in, Mr Johnson: you were - the company, that is - were under pressure in the sense of an expectation from the unions, if not the government of Queensland, to introduce Queens Wharf - Queens Wharf-style arrangement, both the way that it applied to subcontractors, as well as the terms and conditions in the agreement, and you were trying to say, "Look, if we did that, it's bad for the project, it's bad for us, and it's bad for the State - the industry in the State of Queensland more
10 broadly," not to mention causing us, potentially, to fall foul of the law as well."

MR JOHNSON: There's a lot in that question. I'll see if I can pick them all up. Let's start with the law. And I mean, our firm legal advice was that particularly through the code, federal code, that any agreement that was signed that forced subcontractors
15 onto the same rates of pay and to that same agreement was not permitted under the code. So as well as having those penalties in place, you would disqualify yourself from any bidding for any Federal Government work, which for a company our size that operates Australia wide was just not a risk that we wanted to entertain. In terms of the rates of pay -
20

COMMISSIONER: It wasn't a risk you wanted to entertain? What's the problem?

MR JOHNSON: Well, we viewed entering into an agreement that required what I'll call a subcontractor jump-up clause was not permitted under the code. There was
25 different views put to us that, you know, well maybe there's ways around it and it was just not a risk - it was a flat "no" us from. We weren't entertaining that risk.

COMMISSIONER: Because you'd lose all federally funded work. Is that the concern?
30

MR JOHNSON: Well, it's twofold. I mean, there's penalties under all of these particular Acts or legislation that are referred to there, but in addition to any penalty that you might pay, if you are convicted of something under that federal code, you don't get to bid for Federal Government-funded work.
35

MR GISONDA: So bad in law, bad for the project was the next one.

MR JOHNSON: Well, bad for the project. I mean, we're dealing with, you know, ideally the South East Queensland subcontract industry, and we saw on those earlier
40 slides the kick-up in pay that was going to be required for those subcontractors. Now, you know, whether it's south Queensland, whether it's the regional areas that created a problem for the subcontract industry, you know, if they were first mover and the industry didn't follow, they would find it very difficult to be competitive on any subsequent work.
45

But we were also trying to say to government, "Look at what you're asking for here. Do you understand the rates of pay that exist in Queens Wharf? The escalation which

I think at the time, you know, there was, you know, stoushes going on with maybe the nurses or the police, which was why there was reference in here and they're going for 2.4 per cent increase, the government's limiting them to 2, yet we have something like Queens Wharf and the government - sorry, the agreement that was being suggested we enter into had 5 per cent increases.

MR GISONDA: And then tied up in that, bad for the State of Queensland, at least as far as the construction industry is concerned.

MR JOHNSON: Well, I mean, you know, there's twofold with that. I mean, one is, you know, the physical rate of pay, but you know, some of the - you no the conditions and the agreements that needed to be achieved, as we saw when we looked at RDOs, et cetera, they can add months to a project. So you've got the direct cost of the job plus you've got the preliminary cost, the prelims cost of a job. So, you know, it's a double whammy when you add both of those together.

MR GISONDA: And then you give a report to Mr Santamaria at page 60 of the bundle about this meeting, and you identify at point 1 that the key points of discussion from the Delivery Authority was that the government, not necessarily the development authority, was pushing for an in-principle agreement of an industrial instrument before the project passes CBRC, and you were working towards achieving financial close by 30 June; is that right?

MR JOHNSON: That's correct.

MR GISONDA: And at point 4, in the event we are relying on best endeavours to get through CBRC, the Delivery Authority was suggesting we need to tighten up some worlds we have provided which suggest we would aim to get an agreement before the start of permanent works. The development authority was suggesting government would want a stronger statement, ie, that we commit to an agreement being in place before the commencement of permanent works.

And then you had to go on to explain the difficulty with making that sort of commitment. You then get to the point of clause - sorry, point 6 and 7. Point 6 being that the government is releasing the budget for Cross River Rail next week, and we suggested the government add significant contingency due to the incomplete IR negotiations."

But you were advised that the budget was set and it was too late and nothing could be added. And if you just go back to point 4 for the moment, the last sentence there:

"We advised we would consider an opportunity for government risk share here, given the idea of a clause that prevented the commencement of construction before an EA was not attractive."

Will you just explain that a little bit more to the Commissioner, what was going on there?

MR JOHNSON: Look, without any, you know, State Government intervention, you know, we've got the Fair Work Act and, you know, what applies in terms of getting an agreement for our workforce. Now, in order to start substantive works, you should
5 have your greenfields agreement in place. If we were to start substantive agreement without a greenfield agreement, you know, we get into the realms of potentially having to negotiate a brownfield agreement which is worker vote rather than union agreement. So that's not somewhere that you want to be. It can be done, but it's a more complicated arrangement. So we had that own - so we that own pressure on us,
10 regardless of whether the government sought to write into the contract that we must, you know, which is where they were going, we must have an agreement in place before we start work. Now, that just added to our risk profile. It probably swayed the negotiating balance, you know, if people were aware that we had to have that agreement in place before we could start work, people could just hold out, right. So
15 we weren't prepared to sign up for that. And we never did. And we suggested that if the government wanted that type of clause in there, that they would need to share that risk with us.

MR GISONDA: Hand then point 7, Delivery Authority suggested we provide a
20 document which details how best practice principles have made our task more onerous in achieving an EA, ie, a back-handed compliment to the success of BPP."

Do I take it based on your evidence earlier that it wasn't BPP per se, but rather, the way that it had sought to be interpreted by the government, which is that in some
25 measure it required the importation of Queens Wharf terms and conditions onto the project?

MR JOHNSON: That's right. You know, look, as I say, I don't know the best
30 practice principles document pack back to front and maybe there's a couple of areas that we'd prefer weren't in there but the general principle of a safe site, traineeships, Indigenous workforces, working with unions and employees in a productive manner - no-one could argue with those things. So that's fine. What the problem was was the best practice principle was being used to say, "You need an agreement before we're prepared to get to contractual financial close of the job." And more
35 importantly, it seemed that, you know, the government and the BTG were in unison in that the Queens Wharf-style agreement was what was required to satisfy our obligation under best practice principles.

MR GISONDA: Then if we go to page 69 of the bundle, these are some handwritten
40 notes you've taken of a meeting on 25 June. So this is a Tuesday. 30 June would've been a Sunday. So this is really the last - if you were to achieve financial close by the end of the financial year, this was the last week in which that could occur, and what we have in this meeting is, at the top of the page, the participants, so a range of participants from your side of the bargaining table, the representatives of each of the
45 unions, and then you see Matthew MJ, that's Mr Martyn-Jones.

MR JOHNSON: That's right.

MR GISONDA: Evan Moorhead and Paul Inches. They were there on behalf of the Delivery Authority as well, were they?

5 **MR JOHNSON:** Paul Inches was part of the Delivery Authority. I think he was kind of a government nominee in the Delivery Authority, in their industrial relations manager role or similar, and Evan Moorhead, you know, I think I only met him in that one meeting, but you know, I really just know what I'd read in the paper subsequently on what his roles are.

10 **MR GISONDA:** And you can't remember now what participation he had, if any, in this meeting?

MR JOHNSON: No, I can't.

15 **MR GISONDA:** And you don't recall him being in any other meeting other than this one?

20 **MR JOHNSON:** Look, I wasn't in all meetings. I was only, you know, in some of the meetings that we had. So he may have been present in some of the meetings that our team had, but I - I can't - I can't give you any further info on that.

MR GISONDA: And then the first dot point says:

25 "Delivery Authority must advise government on why best practice principles have been applied here."

MR JOHNSON: Yep.

30 **MR GISONDA:** Then the second point, Mr Matthew Martyn-Jones says yesterday's meeting unacceptable and not best practice principles."

You don't recall - I should say, do you recall whether that was a criticism levelled at your side of the bargaining table, the union side or the process as a whole?

35 **MR JOHNSON:** Probably process as a whole. I would need to refer to notes, if there is any, of yesterday's meeting. I don't know whether I was in it or not. But, you know, some of the meetings we had were pretty short but those three key principles, if one agreement, subbie jump-up, and Queens Wharf agreement, you know, we had
40 some short meetings because we weren't willing to - to move too much on those three key points.

MR GISONDA: And would it be fair to say that at this stage, the last week before the end of the financial year, and therefore the last chance to achieve financial close by the end of the financial year, that from your perspective, you were feeling
45 considerable pressure to revisit your bargaining position in relation to those key points, Queens Wharf, single agreement, applying to all workers on site.

MR JOHNSON: Yeah, well, look, I think - I mean, from a company point of view, you know, there certainly was a - an expectation and a target to achieve, you know, financial close on this job by the end of -o, you know, the financial year, because that
5 does impact your work in hand, et cetera, in a big way in the financial KPIs that come out. So certainly I had interest from my management to get the deal done, and at the same time, you know, the message coming from the government, through the DA, was that you're not going to get a deal unless you can demonstrate that you've complied with best practice principles. In their terminology, meaning you have an
10 agreement in place, or you can demonstrate to us that best practice - sorry that best endeavours has been applied in order to get an agreement and you've basically got a term sheet or something similar agreed that they were prepared to move on.

MR GISONDA: And then if we jump to 26 June - this is the Wednesday - on page
15 71 of the bundle, there's a report that's given to you from Mr Butler, who's a member of your team, and you were in this meeting. You will see there, company representatives includes Don Johnson. But this is his report of that meeting. And if you just look first at the attendees for the Delivery Authority, we now see the introduction of Scott Gartrell, and we'll come to him in a moment, but then at the
20 bottom half of this page, under Key Points, the second - well, Mr Martyn-Jones, who seems to be leading this meeting, opens with an overview of the topics to discuss first. Agreement structure and scope.

So that's the point as fundamental, do you have one single agreements as the unions
25 were hoping for, or at least the BTG were hoping for, or the two-agreement structure that you were advocating for, together with the AWU. Then the second point was rates and conditions. The third point was subcontractor consultative committee. We'll come to that in a moment. And point 4 was the approach to training and workforce development. We haven't heard about point 4 much. Do you recall what that issue
30 was, about training and workforce development?

MR JOHNSON: Well, that's all part of the best practice principles. As I say, you know, training and workforce development is really critical in this industry. You know, we've got workforce shortages, and you know, we must have companies and
35 we're a strong supporter of this, the training and workforce development. Now, you know, within best practice principles, it also talks about the fact that the subcontractors that we engage on projects should have similar commitments to those principles. So I think the narrative that was coming through, you know, maybe from the BTG back to government, was CPB can't be trusted the. They're going to bring
40 on a whole range of cheap subcontractors. There will be no commitment to training, workforce development. Rates of pay will be terrible. And, you know, I mean that hasn't been the case. I'm really proud to say that every - every sort of requirement or KPI that has been given to us on this contract that we've exceeded, well exceeded, and that's acknowledged. You know, I've had numerous meetings with - you know
45 with both the DA and ministers to that effect.

MR GISONDA: And then the second bullet point after those topics are discussed, Mr Martyn-Jones says:

5 "The government has provided clear direction for the development authority to assess progress. We have a narrow window. We need to report back today that we are on the right path."

10 And to give that a bit more context, if we go to page 78 of the bundle, this is - I don't know why that's not showing on the screen. Page 78. But you can see that in your hard copy, Commissioner. And do you have a copy there in front of you, Mr Johnson -

MR JOHNSON: No, I can't see it, I'm sorry.

15 **COMMISSIONER:** The top of my page is blank but the bottom half is full of text, full of writing.

20 **MR GISONDA:** Mr Caruana to the rescue. He's going to give you a hard copy. You've made here a handwritten note of your conversation with Scott Gartrell on this same day.

MR JOHNSON: Yep.

25 **MR GISONDA:** So this is when he first enters the picture, 26 June 2019, and you begin there with some introductory or preliminaries. It appears that he's telling you the work that he's done, and the experience that he's had, and in particular with Theiss in 1996 and it looks like that he knows someone that perhaps you know or that they're good mates. But in any event, there's then this next point:

30 "DP called today to ask if parties could get deal over line."

Is that a note that you've taken of him telling you that the Deputy Premier had called today to ask if the parties could get a deal over the line?

35 **MR JOHNSON:** That's correct, yep.

40 **MR GISONDA:** And then if we go through these notes, again, I think he then goes a bit more through what he's been doing, because it says he left some role eight or nine months ago. Has been involved in big tunnelling infrastructure agreements, and then he says government window, get in-principle agreement in the next day.

COMMISSIONER: I think the operator has found it now, Mr Gisonda.

45 **MR GISONDA:** Thank you for that. You see that next - yes, government window. Get in-principle agreement in the next day. So this is a message that Mr Gartrell's communicating to you; is that right?

MR JOHNSON: That's right.

MR GISONDA: Single page to give government confidence we can complete transaction. Do you remember what that was a reference to?

5

MR JOHNSON: I think - I think at that time, I've written a couple of letters, either starting that day or the next day and the following day, but you know, that was something that he was requesting that I needed to come up with something to give the government confidence that this transaction was going to be completed.

10

MR GISONDA: And then there's a reference to big issues. Tunnel excavation and civil and electrical. And then -

MR JOHNSON: So that's the two agreements. And by that stage we'd conceded we'd go for two agreements.

15

MR GISONDA: Yes. And it says Scott, that's Mr Gartrell, agrees above is existing practice. Is that what that says?

MR JOHNSON: Yeah that it's cuss topped and practice.

20

MR GISONDA: Customary practice, yes. Then Scott G reckons agreement for iconic projects should be best in class. Is that what that says?

MR JOHNSON: Correct.

25

MR GISONDA: So is what he's saying there that, yes, you have customary practice, but - and you've got this message coming from the government that it effectively wants a deal, an in-principle agreement in the next day, and then here's additional commentary - his additional commentary is that agreement, before it's for an iconic project, should be best in class. Was that effectively his way of saying that he reckons that this huge project for the State of Queensland should be best in class, ie, should adopt the Queens Wharf terms and conditions?

30

MR JOHNSON: That's - yeah, that's what was being suggested, absolutely.

35

MR GISONDA: And then perhaps you can assist me with page 82 of the bundle. I'll just check whether we'll have the same issue. There we go. We've got two notes here. The first note, is that 6 or 8.30am?

40

MR JOHNSON: I reckon it's 6.30. Not that I can read my writing but from memory I think it's 6.30.

MR GISONDA: 6.30 in the morning. So, again, this is a Thursday, I believe. Yes, the Thursday now of that week.

45

MR JOHNSON: Mmm.

MR GISONDA: You've got a note here of Mr Gartrell and Mr Martyn-Jones met to discuss what could be done after deal was pulled last night by Trad. Is that what that says?

5

MR JOHNSON: That's what it says, yeah.

MR GISONDA: And are you able to give any further explanation as to what was going on there?

10

MR JOHNSON: Well, you know, the position that I think when we looked at yesterday's documents, and you know, the position was that we had that, you know, a day, effectively, to convince the government that we were on the right track with the deal, that a deal was going to be done, the deal was going to be suitable to government expectations. We didn't meet that mark. So the deal was pulled. Not - not that we weren't going to get the contract, but financial close was not going to get approved in the timeframe. I think you said this was the Thursday. I don't recall.

15

20 **MR GISONDA:** Yes.

MR JOHNSON: But if it was the Thursday, we were now down to, you know, still trying to get the deal done by the Sunday, and we hadn't done enough to convince the Deputy Premier that the deal was going to be on.

25

MR GISONDA: And then the next note says:

"Briefing on what we've done and status."

30 And then it says:

"Left it with SG/MMJ to consider and revert."

35 And so it appears that - was it the case you're effectively at a stalemate here, where they're saying that effectively that what you've done so far is not good enough in the eyes of the Deputy Premier at least. They have to be satisfied that you're engaging in best endeavours and that that some in-principle deal is done in accordance with best practice principles, in order to get financial close, and that just, at this point in time that wasn't going to heal. That's the position you're in; is that right?

40

MR JOHNSON: That's correct.

MR GISONDA: And so then, if we go to the bottom of this page, there's then another conversation at 9.40am. You've got there Mr Gartrell and Mr Martyn-Jones. Do you recall Mr Vince Sanfilippo was also in this subsequent conversation?

45

MR JOHNSON: Look, I - I don't. I recall Mr Sanfilippo was at the 6.30am meeting with me, but I can't recall there was at this one.

5 **MR GISONDA:** And do you recall whether Mr Newton was at either of these meetings?

MR JOHNSON: Mr Newton certainly wasn't at the 6.30 meeting, and I have no recollection of him being at the 9.40 meeting.

10 **MR GISONDA:** And that first bullet point then if your handwritten notes here says:

"Tabled letter at this meeting they wanted us to sign in addition to best practice letter."

15 So is this a note of you saying that one of Mr Gartrell or Martyn-Jones gave you a letter that they wanted you, CP B, to sign.

MR JOHNSON: They showed us a letter. I think the letter was transmitted after the meeting. So the addition to the best practice letter. It must've been the previous day,
20 we'd written a letter to say, "This is how we think we've gone in terms of best practice and best endeavours to achieve an agreement." That letter didn't go far enough, it would seem. So they've then tabled - showed us this meeting. I don't - have no recollection of whether they brought their computer or hard copy or whatever it is, I don't nope. But we looked at a letter, and that was a letter that was
25 going to be unacceptable to us.

MR GISONDA: So can I just take you back to page 80 for the moment in the bundle. This is a letter dated 26 June 2019 that you had written to Mr Newton where you have set out essentially how you say you have complied with best endeavours.
30

MR JOHNSON: Yep.

MR GISONDA: That's the letter that we're talking about. And then what happens is the subsequent day, the 27th, the Thursday, back to those notes, please, at page 82.
35 We've had if I can call it the stalemate discussion at 6.30am. About three hours later, another discussion with Mr Gartrell and Mr Martyn-Jones, possibly Mr Sanfilippo as well, where a letter is given to you, shown to you, hover you want to describe it, and it's one of those two gentlemen saying, in addition to your best practice letter, we - I'll let you choose the adjective in a moment, encourage/direct/advise that you
40 also sign this further letter as well.

MR JOHNSON: That's correct.

MR GISONDA: Yes. And how did you take that, what was it, was it a direction, a
45 suggestion, advice, what's the correct adjective?

MR JOHNSON: Well, we - as I said, there was elements of that letter, in fact, I think most of the letter, that we just weren't prepared to go there. And I think the letter's in the evidence.

5 **COMMISSIONER:** Elements of that letter that made you go there?

MR JOHNSON: That we weren't prepared to go adopt.

COMMISSIONER: Oh okay.

10

MR JOHNSON: Yep.

MR GISONDA: And just continuing with these notes, just that next bullet point, I think this is where I checked out so, you'll need to tell me what this next line says.

15

"No purpose in scope and application." Is that what it says?

MR JOHNSON: It does. And I - I can't -

MR GISONDA: "Deep hole, can't solve."

20

MR JOHNSON: Yeah, look, I - I can't give you any detail. I don't know what I meant by that comment there.

MR GISONDA: And then I think the next one says:

25

"Symbolism of commitment to work."

And -

30 **MR JOHNSON:** That probably relates to the fact that this - this letter and whatever we can put in the, you know, as far as we can go in the letter is going to be, you know, demonstration of our commitment to make this best practice principles and the agreement that the government was looking for to work.

35 **MR GISONDA:** And then the next line, I think that's QW, Queens Wharf, code compliant briefing pack.

MR JOHNSON: Yep.

40 **MR GISONDA:** And that was - perhaps we'll just now go to the letter, because that will help explain what that pack is. So if we go to page 83, either during that meeting - so if that meeting beginnings at 9.40, according to your notes, either during that meeting or very shortly after, you get this email from Mr Martyn-Jones at his Hotmail account to yourself and Mr Sanfilippo, attaching the documents that - just to be clear, is it your evidence you think you were shown those documents in the
45 meeting and they were then emailed to you?

MR JOHNSON: Look, I don't think the shopfitter information was shown us to in the meet but the suggested letter was shown to us, yeah.

MR GISONDA: And then the letter is page 84.

5

COMMISSIONER: Just going back. What's the significance of the Hotmail account? Is there any significance about that?

MR GISONDA: It's a question for me, Commissioner?

10

COMMISSIONER: Well, I can ask the witness, but maybe the witness knows. I thought you might know also.

MR GISONDA: Well, Mr Johnson, had you received any emails from Mr Martyn-Jones or anyone from the Delivery Authority at their Hotmail account before?

15

MR JOHNSON: Not that I can recall. Maybe their IT wasn't working that day. I'm not sure.

20

MR GISONDA: So you don't have any views about the fact that this document was coming to you from a Hotmail account?

MR JOHNSON: I mean, it's obviously unusual, but you know, it's how they chose to give it to us.

25

MR GISONDA: So then the letter at page 84 - just to be clear, this is a letter that's been given to you that would be signed by your organisation, presumably addressed to Mr Newton or someone within government.

30

MR JOHNSON: There would be a letter to go back to Graeme Newton.

MR GISONDA: Yes.

35

"Further to our letter of 26th June - so we won't go back to it but just for reference, that was page 80 of the bundle - further to our letter 26th June regarding finalisation of the enterprise agreement, I would like to confirm the following commitments on behalf of CPB."

40

Dot point 1:

"While acknowledging that the precedents being relied on for this agreement relate to other civil engineering projects, we believe that the labour market from which we will draw our workforce for this agreement will largely come from the local and regional building trades. Therefore, we will draw relevant clauses for the agreement from the Queens Wharf Enterprise Agreement subject only to modification to suit the specific needs of this project."

45

What was the problem with signing a letter committing to that proposition, Mr Johnson?

5 **MR JOHNSON:** Well, we've signed - we committed to a variation of that. I mean, if
a Queens Wharf enterprise agreement was appropriate, had no problem picking that
up and using that in our agreement. The totality of the agreement was a problem, as I
said earlier, and it's a case of who's defining relevant clauses, right. So, you know,
10 the Queens Wharf agreement, as we saw, had four modern awards attached to it you
don't know what you're getting in that. Relevant clauses, you know, in future
negotiations it could be that someone's determined that we've agreed to the
shift-loading clauses or the RDO clauses or the heat clauses, for example. So you
know, we've said if we can accommodate a Queens Wharf clause, we will, but we
15 didn't want to go further than that to give the impression we were - we were
accepting the agreement as a whole.

MR GISONDA: And the next bullet point is:

20 "We repeat our commitment to the subcontractor procurement process to be finalised
on Friday 28th June 2019 as a way of implementing the project's best practice
commitments."

And we'll come back to that shortly, the subcontractor procurement process. But then
the third bullet point:

25 "Further, we commit to formation of subcontractor pre-qualification panels which
shall be overseen by the Procurement Standing Committee using the following
process: issuing an agreed subcontractor briefing pack to the market that will include
a signed copy of the Agreement. The briefing pack will be based on the Queens
30 Wharf subcontractor briefing pack.

Formation of panels based on the best responses, measured against agreed selection
criteria."

35 So that subcontractor briefing pack commences at page 85 of the - yes, page 85 of
the bundle, and then page 86, and I think in the interests of time, Mr Johnson, we
won't go through now the close to a hundred pages of material that subcontractors
would be provided as part of the so-called subcontractor pack, and that's before, if
you go to page 185 of this pack, you would append Appendix 4 for this pack, you see
40 there Queens Wharf Project Enterprise Agreement but presumably what would be
intended here would than the Cross River Rail project agreement.

MR JOHNSON: That was the suggestion, yes.

45 **MR GISONDA:** And, in fact, what appears to be, at least what was done on Queens
Wharf, and now sought to be done on Cross River Rail, an attempted work-around

the legal or code of conduct prohibitions that we discussed earlier in relation to imposing certain terms and conditions on subcontractors.

5 **MR JOHNSON:** Sorry, that's correct, yes.

MR GISONDA: That's what this represented?

MR JOHNSON: Yes.

10 **MR GISONDA:** And that was something that, again, CPB was not prepared to entertain?

MR JOHNSON: Well, our view was it was not code compliant, and therefore, we weren't prepared to go there.

15 **MR GISONDA:** The letter that you did sign is at page 79. So that's the email of you sending it to Mr Newton. No, sorry, that's wrong. Sorry, 186. Apologies, Mr Johnson. This is the letter you did sign.

20 **MR JOHNSON:** This is the updated letter.

MR GISONDA: Yes.

MR JOHNSON: Yep. So I think there's a few changes in here.

25 **MR GISONDA:** Yes.

MR JOHNSON: So, you know, drawing upon, you know, the letter that we received or the draft letter from Mr Martyn-Jones. We sought to include, you know, a more
30 fulsome response here. So I think if you go to, I think, paragraph 3, where it starts with Bargaining Process. I think there's a bit in there where we talk about the standing consultative committee, acknowledging the terms of reference are yet to be finalised, embrace the concept, you know, feedback on performance of subcontractors, relevant to their ability to meet the expectation of best practice
35 principles, we'll consider that.

We'll also engage with the committee to ensure assessment criteria Pulse and Unity utilising the subcontractor selection will best meet best practice principles. And you know, if there's anything that's code compliant that's being done on Queens Wharf,
40 we're open to considering that as well.

MR GISONDA: And then the last paragraph on this page, you say - the second sentence:

45 "In the spirit of collaboration, Pulse and Unity have deliberately positioned their offer to the unions to remove the normal negotiating ambit and allow rapid closure of a deal and we have been encouraged by the frog where we have agreed rates of pay,

ie, Queens Wharf and we are well progressed on other important terms and conditions."

5 So at this stage, had agreed at least to the base rates of pay in the Queens Wharf agreement; is that right?

10 **MR JOHNSON:** Yeah, base rates of pay. That's the important part of it, you know. There's a lot of penalties and whatever else applied, but the base rates of pay, by that time, we said, "Okay, we'll come to the party on Queens Wharf rates of pay."

15 **MR GISONDA:** But on one reading of this, you were - having been placed in the position where you were given a letter that they were suggesting you sign, which you just could not sign, at the very least, you would try and make some mention of Queens Wharf in a letter that went back to the Delivery Authority. That seems to be what's happening here. Is that fair enough?

20 **MR JOHNSON:** Oh, look, I mean, you know, the whole request of us, if you like, was, you know, Queens Wharf. So, you know, we were going to get nowhere if we just continued to fight every aspect of Queens Wharf. But I mean, there's elements of that agreement that we can pick up and run with, and they were fine. There's a lot that we did not agree with, as I've mentioned earlier today, and rates of pay, you know, by that time, you know, we - we figured that unless we conceded to those rates of pay, we were going to get nowhere, so we did that. But still sought to negotiate on the - you know, the large balance of Queens Wharf. There was a lot else
25 to negotiate on in that agreement.

COMMISSIONER: So in terms of the base rates of pay, are you talking there about the pay for ordinary hours?

30 **MR JOHNSON:** Yeah. Well, you know, your 36-hour base rate.

35 **COMMISSIONER:** Yeah. So if the award for - let's take a mid-ranking classification under the award, say about \$30 an hour or I think we saw something yesterday for about \$27 an hour for CW 4, it might be the day before, Mr Gisonda showed it to Mr Newton when he was going through the AWU agreement and the AWU agreement was about - about \$47 or something like that. I imagine for the Queens Wharf agreement, if the base rate was about \$27, it'd be about double for the award rate?

40 **MR JOHNSON:** On the award rate?

COMMISSIONER: How much above the award was the Queens Wharf base rate, that is, the rates for ordinary hours?

45 **MR JOHNSON:** Look, I'm - I'm guessing a bit, because I just don't remember the detail, but I think Queens Wharf was in the high 40s, mid to high 40s per hour and I think, you know, base award rates would be in the 20s. Now, if we go back to, you

know, some of those earlier numbers, you know, say Queens Wharf for 56 hour was 250,000-odd for a carpenter. I think the industry was generally many running on 180,000 per year, not hourly rates and that 180,000 was also well in advance of the base award.

5

COMMISSIONER: Yeah but that 180,000, the difference between the 256 and 180,000 is largely due to the penalty rate structure.

MR JOHNSON: Some of it.

10

COMMISSIONER: Some of it.

MR JOHNSON: There's a big step-up in the base rate of pay that we went to Queens Wharf rates.

15

COMMISSIONER: Not compared to the AWU rates in terms of the base rate.

MR JOHNSON: Look, I'd need to refer to come other -

20

COMMISSIONER: Sorry?

MR JOHNSON: I can't recall, I'm sorry.

COMMISSIONER: Okay.

25

MR GISONDA: You did, however, get financial close - just to round out that discussion, Commissioner, page 1565 of the tender bundle is where you'll see the rates of pay for construction workers in the Queens Wharf EBA. So if you can just make a note of that.

30

COMMISSIONER: Thank you.

MR GISONDA: But having sent that letter, did you - what did you think the prospects were of obtaining financial close in that following day or so?

35

MR JOHNSON: Look, I wasn't sure, because I - you know, we'd gone as far as we could. I think those in the Delivery Authority understood our position, and I'm not going to say supported our position but I think, you know, they - they certainly understood why we were taking the position we were, and the difficulties with things like the subcontractor clause, etc. So whatever's happened, you know, between discussions with the Delivery Authority and, you know, I think the other thing - the Delivery Authority could see we were fair dinkum in trying to get an agreement. You know, whatever has happened between the DA and government discussions, we were able to get to that position where it was endorsed to get to contractual and financial close.

45

MR GISONDA: If we go to page 193, please, of the bundle to - yes. That bundle on screen. 193. The bottom of this page. This is an email now that you've received from Michael Wright, who you identified earlier as the CEO of the CIMIC Group, and he's providing you - you and others with the copy of a text that he received, and that text reads as follows:

"Hi Michael, sorry to disturb your holidays. I'm also trying to get some downtime. The report out therefore morning's meeting from Scott Gartrell is very concerning. I have been advised CBP have been hostile in their approach. Comforted by the fact that the contract is finalised & financial close achieved. Clearly this is true but it is also true that this is the start of a long relationship and consistency in approach and temperament would help to build on and strengthen this important relationship.

Additionally, commitments have been given which I expect to be kept. Also, the government expects good faith and momentum achieved on IR negotiations prior to contract close to continue now that the contract has been finalised. Happy to discuss. Jackie."

Was it the case that CBP, having achieved financial close, then reverted to a hostile approach to the negotiations?

MR JOHNSON: Not at all, no. We were there, as I said earlier, regardless of BPP, we had an obligation to get an agreement in place. We wanted to employ hundreds of workers on the job. We needed an agreement so we were there to continue discussions in the best way that we could.

MR GISONDA: So you don't think that was an accurate report that Mr Gartrell had sent up to the Deputy Premier about the approach that you exhibited in that meeting?

MR JOHNSON: Not at all.

MR GISONDA: And then are you able to provide us with any insight into that last point she makes, which is:

"Additionally, commitments have been given which I expect to be kept."

Do you know what that was a reference to?

MR JOHNSON: I'd say that's twofold. It's one we had the best practice principles obligation in our contract, that, you know, I know how we're reading it. I think the government was reading it that best practice morphs into Queens Wharf. But also, the letters that we'd looked at from the previous week, I think the last one was the Thursday this was the Tuesday. So, you know, we'd given commitments there and we did nothing to back away from the commitments that we'd given in that letter.

MR GISONDA: Acted so then that this necessitated, so that Mr Wright would be able to go back to Ms Trad, an email from you, beginning at page 192, where you

send Mr Wright some notes about your take on how the meeting had transpired; is that correct?

MR JOHNSON: Yeah, that's right, yes. Yep.

5

MR GISONDA: And you see at the fifth bullet point there, there was a discussion about utilising - there was a discussion about utilising the Queens Wharf enterprise agreement as a base document pushed by the DA and the CFMEU mainly, which we pushed back on - as we had done throughout the meetings - and your position is that where the union identifies a clause for the Queens Wharf agreement for potential consideration, you'll consider it. So it was the case that both the unions and the Delivery Authority, which we can take to mean, based on your handwritten notes of the meeting, Mr Inches, Mr Martyn-Jones and Mr Gartrell - that's at page 190 of the bundle - they were saying that you should utilise the Queens Wharf enterprise agreement as the base document. Is that right?

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15

MR JOHNSON: Correct.

MR GISONDA: And then, after that, four bullet points down from there - so we're back on page 192 - and it's the bullet point that begins:

20

"Don was called out of the meeting."

That's about two-thirds down.

25

"Don was called out of the meeting by Matthew Martyn-Jones. On his return, Don told us that - sorry, I give some context to this point. 20 minutes into the waiting, the Rail, Tram and Bus Union turns up to the meeting. Your view, I assume, was that that union did not have coverage on this agreement, because they cover rail workers, not those who are involved in the construction of rail works.

30

MR JOHNSON: Yeah and rail workers involved in operations and maintenance work, but not - not in the construction aspects of it that we were dealing with.

MR GISONDA: So back to this bullet point. Don was called out of the meeting by Matthew Martyn-Jones. On his return, Don told us that Matthew agreed the RTBU should not be there and that a way for us to remove them was to offer more concessions to the other parties."

35

And then going further down the page, there has then another bullet point that said Matthew said he would push back. Do you see that?

40

"Matthew said he would push back at government level on RTBU involvement, as it was an issue for the tunnel. Ie, let RTBU into rail with similar bad outcome to CFMEU in tunnel. And also for Queensland Rail who would be exposed to massive pay increases if construction rates filtered into Queensland Rail."

45

And then you say:

5 "Matthew and Scott then tried to bounce me, saying that they would deal with RTBU issue with government but we needed to step up and progress deal quicker and not be so negative."

10 So based on these notes, is this what happened: About 20 minutes in, the RTBU comes into the meeting. Your position is, well, these people don't belong here, because the RTBU won't be covered by this agreement. And then Mr Martyn-Jones says, "Well, I agree with you, Mr Johnson, but I think we can get rid of them, but what you're going to have to do is - and we'll get rid of them at a government level or otherwise but what you're going to have to do is give some more concessions to the BTG."

15 **MR JOHNSON:** Yeah, that's the summary. I mean, why they were there, I don't know. I still don't know to this day. But you know, that was the suggestion and I mean, those notes have been - they're not just my notes. Chris Butler who's our P & C manager for the project, has largely put those together. So those that's his observation of the meeting. I filled in some of the gaps where I had the discussions
20 with Mr Martyn-Jones, but yes, that's the - you know, that was the way the meeting panned out.

MR GISONDA: And then this goes on for some time, by which I mean the insistence by the BTG that you have a single project agreement that applies to all
25 workers on site at Queens Wharf terms and conditions, and in the end, there was no - those remained principles, core principles, that CPB just could not countenance; correct?

MR JOHNSON: That's correct.
30

MR GISONDA: And so, as a consequence, in the end, you did a greenfields agreement with the AWU for both the tunnel works and, separately, the civil and surface works; correct?

35 **MR JOHNSON:** That's right. So we went back to the - you know, the proposal that we had at the start for three agreements, because you know, we were certainly recognising that we still had to do an agreement with the ETU and the metal workers and potentially the plumbers for the - you know, the works to be executed, you know
40 for the mech and elec works, but we needed to cover off, you know, the tunnel shafts, civil surface works with an agreement so that we could employ people.

MR GISONDA: But this wasn't a sham process that you won't through for four or so months. You were genuinely committed to an agreement with the BTG on that
45 two-agreement structure that we've identified, but it's the way the negotiations panned out you just couldn't reach agreement on those core -

MR JOHNSON: Well, not that I went to them all but I think Mr Sanfilippo will tell you that, you know, he was probably at 26 meetings or certainly our team was at 26 meetings. We tried to get agreement. There was not one of those meetings that we walked out of. You know, our counterparts in the unions did walk on numerous occasions, so there was plenty of unproductive meetings. Amongst that, we had the interjection of the RTBU, which, you know, whatever, you know, that negotiating position was, I don't know, but we just got to the point that, after 26 meetings, if you are going to hear the same story over and over and you're not going to have an agreement, we had to go another direction.

10 **MR GISONDA:** And construction works then commenced shortly after, in late October. I mean, there'd been some earlier preparatory works, but construction works in earnest commenced in late October 2019; is that right?

15 **MR JOHNSON:** That'd be about right, yeah, I would say, yep.

MR GISONDA: And then, as you might have heard in the opening, other people are going to give evidence about some of the things that occurred on this project over the next few years, but where we will pick up again, Mr Johnson, after the luncheon break, is in July 2023, following an accident that occurred on site, where a worker fell off a scaffold - you remember that incident, don't you?

MR JOHNSON: Very clearly.

25 **MR GISONDA:** And where were you the day that that happened?

MR JOHNSON: I was in Melbourne.

MR GISONDA: And what did you do once you heard about that incident?

30 **MR JOHNSON:** Well, we were in a steering committee meeting for a project in Melbourne. I got a text message to say that an accident had occurred. I knew it was going to be a very severe outcome. So I excused myself from the meeting, went to the airport and hopped on the first flight I could, which I think that was about 1 or 2 in the afternoon And when you say "severe outcome", what is that a reference to?

MR JOHNSON: Well, you know, the - the worker had fallen from a substantial height, so -

40 **MR GISONDA:** That's a reference to the fact that the consequences for him, the worker corks every been very severe?

MR JOHNSON: No, I mean, it's our policy that if we have, you know, severe incidents, that senior management is on the job the next day, looking at what's occurred, understanding it, talking to our team, et cetera .

45 **MR GISONDA:** Is that a recent time, Commissioner?

COMMISSIONER: Yes, Mr Gisonda. Just going back to these agreements, the three of them you entered into, the tunnels agreement, the civil agreement and then lastly the mechanical and electrical agreement -

5

MR JOHNSON: Yep.

COMMISSIONER: - I assume the challenges were only to the first two agreements there was no challenge to the mechanical and electrical agreement.

10

MR JOHNSON: When we went to Fair Work to have it -

COMMISSIONER: Yes.

15

MR JOHNSON: There - there was no challenge.

COMMISSIONER: Only to the first two?

MR JOHNSON: Yes.

20

MR GISONDA: Just to be strictly accurate, Mr Johnson was an employee of CPB that third agreement was with UGL.

COMMISSIONER: I see.

25

MR GISONDA: So still a member of the consortium, but a separate entity.

COMMISSIONER: But there was no challenge to that UGL agreement?

30

MR GISONDA: No challenge, no.

COMMISSIONER: And I read between the lines that the reason there was a challenge to the first two agreements was because they were AWU greenfields agreements.

35

MR GISONDA: Yes. Yes.

COMMISSIONER: And at that point, you were up against the ticking clock, because as soon as construction starts, at least for the tunnelling agreement, I assume, maybe for the civil agreement as well, as soon as you start employing just one worker to do those works, you were out of the greenfields stream and you're into brownfields.

40

MR JOHNSON: Even before you start employing people, which you can't employ without an agreement, but if you start employing subcontractors that are doing substantive permanent works rather than just perhaps the set-up works like some of the site hoardings, et cetera, you do run a risk that you're not going to be do a

45

greenfields agreement and the Fair Work Commission will insist that it's a brownfields voted-on-by-workers agreement.

5 **COMMISSIONER:** And is that part of the negotiations tactics of the CFMEU, to just keep running the clock down so that -

10 **MR JOHNSON:** It could - could well be. I mean, you know, they'd have to speak for their own negotiating tactics, but that's - that's why, you know, we had to issue bargaining notices, because, you know, whilst we were in there and we we resisted we had the request from the unions very early on not to issue bargaining notices. We complied with that request initially, but when we could see that we weren't getting progress, we felt compelled to issue bargaining notices so that we had that safety net, in the event that we just couldn't reach an agreement.

15 **COMMISSIONER:** Can we come back at 2.15?

MR GISONDA: Yes, Commissioner.

20 **COMMISSIONER:** Adjourn till 2.15.

<THE HEARING ADJOURNED AT 1.01 PM

25 **<THE HEARING RESUMED AT 2.15 PM**

COMMISSIONER: Mr Gisonda.

30 **MR GISONDA:** Thank you, Commissioner. Mr Johnson, when we left things before the lunch break - was that you had flown up from Melbourne to Brisbane as a result of a serious safety incident on site, and I want to talk briefly about what you encountered over the next couple of days on the project sites, and if we go to your statement at page 16 of your statement, beginning paragraph 149, and perhaps before we get to that - there was a suggestion in the evidence yesterday - sorry, I withdraw that. The evidence yesterday was that the CFMEU claimed, in one of its public statements, that CPB had sought to impede a full investigation into the safety incident. Was that true?

40 **MR JOHNSON:** I'm - I have no idea what the CFMEU have said, but you know, we're very open and WorkSafe Queensland has fully investigated that incident, so I've got no idea what that's referring to.

MR GISONDA: Certainly, you didn't give any instructions to try and hide what really happened on site that day?

45 **MR JOHNSON:** Absolutely not.

MR GISONDA: And you're not aware of anyone else giving any such instruction?

MR JOHNSON: It's not our manner. We're very transparent. Safety issues are particularly important. The regulator has a very necessary role. We fully cooperate with the regulator.

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MR GISONDA: Thank you. In paragraph 149 you say that from 26 July, that's the day after the incident, CFMEU representatives, in conjunction with individuals from the other BTG unions, attended at a number of sites and locked them down, preventing workers from entering site. Workers were told, "No-one will be working today." And the following day, representatives from the CFMEU and ETU were present at the gates with a picket, locks and chains had also been placed on site gates. The unions and picket did not allow workers to enter site, and intimidated workers from doing so."

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15 And then you say at 151 that a small number of white-collar workers were able to enter site through other means and throughout the day, individuals in the picket yelled abuse at them and said "You're going to have blood on your hands."

20 Apart from a small number of white-collar workers, is it the case that the entirety of the project was shut down from 26 July onwards until the following week? Is that correct?

MR JOHNSON: That is correct.

25 **MR GISONDA:** And just going further, at paragraph 152, you say:

30 "The picket, locks and chains remained in place on 28 July and further acts of intimidation from the picketers and unions occurred. A senior supervisor was told there would be "bloodshed" if the project allowed people to go to work. We received reports that workers had been told that the numberplates of persons entering the site had been recorded, including two named individuals, and that the CFMEU had no issue following these people home to help them understand what the union wanted."

35 I presume these were matters that were being reported up to you. You didn't personally witness these threats being made.

MR JOHNSON: No, that's correct.

40 **MR GISONDA:** But you did personally witness that there was a picket on some of the site gates; is that right?

MR JOHNSON: Yes, I - I was in Brisbane and getting around the sites and witnessed that, yes.

45 **MR GISONDA:** And how would you describe the atmosphere on these sites when you went and had a look at them?

MR JOHNSON: Look, I was on - I was on site at Boggo Road, the station site. First up on, I - it would've been a Wednesday, I think, and you know, I inspected the site with - with the minister, with Graeme Newton from the authority and others, because I wanted to see the site myself as to what had exactly happened, what had caused the incident, et cetera. That was fully explained to us, and we had no intention of people working at the Boggo site on that day. You know, we have - we understood what had happened. We wanted to make sure that we went through a process, first up with, you know, offering counselling to individuals on the site, then going through, you know, just reviewing safety procedures. Wanted to refresh training, given what we thought had happened.

So those sorts of things were always planned for the Wednesday at Boggo, and, you know, that training, we had to ensure was going to run out across the whole job as well, that's refresh training, not first-time-round training, refresh training. But I guess through the day, you know, Boggo wasn't working when I went there first up in the morning. As I say, I didn't expect it to be. But the other sites were all shut down by union representatives, HSRs, et cetera, through the day, you know, to the point where, you know, there was people outside the gates preventing access to the sites and, you know, giving firm direction to employees and staff and anyone else who wanted to listen as to there wouldn't be work being undertaken.

MR GISONDA: And did you have any indication from any of the unions involved in those pickets as to how long the stoppages would last?

MR JOHNSON: Not an exact timeframe, but it was clear from what was in place and with the locks on the gates, and you know, the amount of people at the gates that it was going to go for a fair while.

MR GISONDA: And so at paragraph 153 of your statement, you explain that the stoppages were highly disruptive and had the potential to significantly delay progress on the project, and that if a resolution was not reached, there would've been extraordinary costs implications for the project. And that's in a context, is it, that at least before 28 July, you did not know for how long these stoppages would last.

MR JOHNSON: No. We didn't know how long they'd go, no.

MR GISONDA: And at paragraph 154, you then say that on 28 July '23, in an attempt to break the impasse, you convened and led what is described as a safety reset meeting with all unions that had a presence on the project. And so this was - that's accurate, isn't it, that you were the one who came up with this idea of having the meeting and leading a discussion about what could be done to resume work on the site?

MR JOHNSON: I couldn't say for sure whether it was my idea, but - it may have been but certainly I endorsed it and certainly led the meeting. Made sure each of the unions were invited and led the meeting.

MR GISONDA: If we just go to page 242 of your bundle for the moment, this document is described as a Cross River Rail reset commencing Monday, 31 July '23 Executive Summary. Is this a plan that your team had put together for the resumption of work on the sites on 31 July '23? Is that what this document is?

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MR JOHNSON: Our objective was to get the site to return to work and, you know, this plan - my recollection was this plan was put to the meeting. It may not have been this piece of paper, but you know, certainly the plan was put to the safety reset meeting we had with all the unions and I think, you know, there was probably a little bit of finessing we did to it after the feedback from the unions, but you know, certainly, the thrust of this was discussed in the meeting, endorsed in the meeting and we did get a return to work the following Monday.

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MR GISONDA: Yes. And that's quite right, what you say. It looks as though there was some - a version of this document was presented to the meeting. There were some suggestions or suggested changes or amendments by the union and it sounds like this document then reflects some sort of consensus about what would need to occur on the Monday in order for work to resume, and this is essentially, is it, a schedule of events to take place on the Monday. Is that what's happening in this document?

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MR JOHNSON: I think it was Monday and beyond. There wasn't a one-day exercise.

MR GISONDA: It's ongoing. If we go to page 243, and the way I read this - correct me if I'm wrong - is that this is setting out events that are to happen on the Monday, and to the extent that there is ongoing obligations, if I can put it that way, you have, at the very end of the table on page 244, ongoing consultation and HSRs, the detail there being agreed process for ongoing consultation and engagement with HSRs.

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MR JOHNSON: Yes. That was certainly part of it. You know, the HSRs were an important part of the reset.

MR GISONDA: Yes. But just so we're clear about this document, it's a plan for how things that would need to happen on the Monday, certain steps that would need to be taken before you would have a staged return to work areas, which would be session 6 on that first day.

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MR JOHNSON: Just let me take a moment to look at the document, please.

MR GISONDA: It's page 243 and 244.

MR JOHNSON: That's right. So this was our process to get the sites - well, firstly, to make sure that the workforce was understanding of the condition of Nation Kouka, the injured worker. Just outline what he and his family were going through and making available for them to help with that. We wanted all the subbie owners there and we go through, you know, the kind of standard safety reset where, you know, we

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inspect the site, we revisit SWMS, we went through particular training, retraining for things that were directly attributable or related to that particular incident that occurred, and then, you know, it wasn't just to stop there. It was to be, you know, working with the HSRs to get their confidence that the work sites were safe.

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MR GISONDA: And then, separate to that, at page - so that was a plan that you took to the safety reset meeting and there was some discussion about that and it appears that there was some form of consensus about that document and the process to be followed on the Monday. But if we then go to page 236, please, of the bundle.

10 We've tried to locate a document that shows how this document that's going to be brought up on the screen in a moment - page 236 of the bundle - how this email, which is addressed from Mr Ingham to Kevin Mara of the Delivery Authority and the various union representatives, as I say, we haven't been able to locate a document where it's sent to CPB, but you accept, don't you, that you had a copy of this
15 document or you knew about this document during that safety reset meeting?

MR JOHNSON: Yeah, I do. I've got no idea how I got it, but yes, I'm certainly aware of the document.

20 **MR GISONDA:** And these contain what are seven demands that Mr Ingham said needed to occur before work could resume. And before we look at those matters, the safety reset meeting, that took place at CPB's head office; is that right?

MR JOHNSON: Yeah that was meeting was in Fortitude Valley office.

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MR GISONDA: And at paragraph 155 of your statement, you set out the attendees at that meeting, and from your team, there was Mr Spears, Mr Large and Mr Sylvester, Graham Sylvester, who was then the safety manager, or sorry, general manager responsible for, among other things, safety, and then you had Mr Ingham,
30 Mr Ravbar and Mr Mattas from the CFMEU, representatives from ETU, the Plumbers and the AMWU and then from the AMWU, and then from the AWU, Ms Schinnerl and Mark Reguse, and you took a neat of that meeting, which is at page 234 of the bundle and just reading through this note, there is an executive summary of the reset process, make it clear no work over the weekend, and then there's a
35 comment there about Shane rat mussen, Northern Portal, last Saturday directed something into tunnel and overrode HSRs. Do you remember what that - why you've made that note, what was said on that topic?

40 **MR JOHNSON:** I - I couldn't tell you who from the unions raised that, but they had a concern that, you know, Shane Rasmussen was a supervisor of ours and they were concerned that he was just directing people to get to work or to form tasks or go to somewhere in contravention to when the HSRs felt that there was a particular safety issue that they shouldn't be working.

45 **MR GISONDA:** The next item there says "Claims Jade" and presumably that's a reference to the seven claims that Mr Ingham had set out in his email. Tell me if that's incorrect.

MR JOHNSON: Yes. That's right.

5 **MR GISONDA:** And he says "Reset, CFMEU, standard of safety terrible, some -

MR JOHNSON: Some sections worse than others. That's the union allegation about the safety on the project.

10 **MR GISONDA:** Yes. And then what's the next comment there?

MR JOHNSON: They just saw us as pushing program, and, you know, one of the union complaints throughout the job was insecure employment arrangements, casual arrangements, et cetera.

15 **MR GISONDA:** And then what does Mr Ravbar say there?

MR JOHNSON: What does which, I'm sorry?

20 **MR GISONDA:** See the next item says Ravbar and what have you written there after Ravbar's name?

25 **MR JOHNSON:** "Won't accept the regulator presence." So part of our suggestion was, you know, if there was, you know, if we couldn't get agreement on whether particular parts of the site were safe to return or not, you know, that it may be appropriate for the regulator to get involved and, you know, look at particular issues, but, you know, Mr Ravbar wouldn't accept that that would be appropriate.

COMMISSIONER: He wouldn't accept what, sorry?

30 **MR JOHNSON:** To get the regulator involved to determine whether the site was safe.

35 **MR GISONDA:** The next few items seem to then concern the audit that was contemplated, but at the bottom of the page, I think we see the initials JI, being Jade Ingham, and then it says "Keep IR away from it HR/IR". Do you remember what that was a reference to?

40 **MR JOHNSON:** Yes. Mr Ingham had particular issue with the way our IR personnel on the job were managing it. You know, up until that point, we'd had numerous - in our opinion, numerous breaches of the code, in the way that the CFMEU and other unions were going about their conduct on the job. We'd referred some of those matters to the Federal Court, and you know, I guess the union point of view was, you know, we had this team of lawyers out to make a name for themselves on the job, and you know, they wanted them kept away from everything.

45 **MR GISONDA:** And then if we go over the page to 235, that appears to be - the numbers appear to correlate with the seven demands in Mr Ingham's email.

MR JOHNSON: Yep.

5 **MR GISONDA:** And you're going through what is and what isn't agreed.

MR JOHNSON: Yep.

10 **MR GISONDA:** So just working through them quickly, number 1 was a complete reset on safety across the project and you've written here you agreed.

MR JOHNSON: That's right.

15 **MR GISONDA:** So you agreed to a full safety reset, much of which was encapsulated in that document we went to earlier.

20 **MR JOHNSON:** That was our suggestion. There was a minor bit of finessing but the unions agreed with the thorough approach that we proposed, and, you know, we'd done that before. It worked successfully. You know, when you have these, you know, in the event that you do have a serious accident, you know, you have to make sure that you - you're resetting the job and the workforce and giving them confidence it return to work.

25 **MR GISONDA:** Then we'll skip over number 2 for the moment. And number 3, which concerns the audit. You've agreed to a paper review.

MR JOHNSON: Yep.

30 **MR GISONDA:** Number 4. They wanted full access provided to union organisers without restriction, now and for the life of the project, and you've written here in 4, I believe - is that word "not"?

MR JOHNSON: Not sure.

35 **MR GISONDA:** Not sure. Why have you written there Northern Portal, Albert and Boggo Road?

MR JOHNSON: Look, I can't recall.

40 **MR GISONDA:** Is it the case that you agreed to allow organisers access to some or nearly all sites, but not all of them? Is that -

MR JOHNSON: No, I mean, we can't prevent organisers going to areas of the job, provided they follow all the normal protocols. They were able to come onto the job.

45 **MR GISONDA:** If we then continue on with this note, it appears to be saying that any organiser who attends site would still be subject to random drug and alcohol

testing systems and that's not unusual. In fact, even if you attended site, is there the possibility that you might be subject to a random test?

5 **MR JOHNSON:** It seems to be more than a possibility. The number seems to come up every time for me. I've been through it.

MR GISONDA: And do you pass?

10 **MR JOHNSON:** I'm sorry?

MR GISONDA: Do you pass that test?

MR JOHNSON: Yeah, I do, yeah, yeah.

15 **MR GISONDA:** Okay. And that's done through the Damstra system, so you swipe in, and on occasion, or in your case, all occasions, you might be required to do a test before it allows you on site?

20 **MR JOHNSON:** That's right.

MR GISONDA: And what the note then says is that any union organiser who comes on site must still be escorted.

25 **MR JOHNSON:** Yeah, I mean, the union concern was we were a bit too vigilant in our escorting around the job. So, you know, we'd spoke to our team about that. You know, they still have to be, you know, escorted. We can't allow, you know, visitors to the job. I mean, the job changes every day. So all of our workers on the job go through a pre-start every day and you cannot have people rock up who are not part of that pre-start and understand the risks on the job of a particular day, wandering at
30 their will around the project site. So, yes, they follow the protocols. They can come onto the job, but they need to follow safety, you know, the safety rules, what's happening on that day, and really, for occasional visitors of any nature, they need to be escorted. I mean, I don't get to wander around the job by myself.

35 **MR GISONDA:** Number 6 is weekly safety meetings to be conducted -

COMMISSIONER: Just before you move off 4, Mr Gisonda - I didn't quite understand your evidence on this point. You said you couldn't restrict or prevent - I can't remember the word you used, Mr Johnson - the organisers from accessing the
40 site. But you can, as the occupier - the organisers have only got limited rights under whichever legislation gives them a right to enter. You're the occupier. You can expand those rights if you want. And the way I read point 4, full access provided to union organisers without restriction, is saying to you, in effect, "We want to have complete access without giving the 24 hours' notice, without having to have a
45 reasonable suspicion of some breach, whether it be of health and safety laws or industrial laws." And I don't quite understand what the response is, other than, "We'll

give you access, but you need to be escorted." It seems you are relaxing - which is your right as the occupier - the rules which would govern a non-consensual entry.

5 **MR JOHNSON:** Yeah. I mean, you know, we still wanted to enforce particular aspects of this. You know, it won't open slather. They had to go through the protocols. But in relation to -

COMMISSIONER: Your protocols, not the legal protocols?

10 **MR JOHNSON:** In relation to 294 hours' notice. We knew that there was interest each day and the organisers would probably be turning up. So okay, come on, but you know, it's not that you turn up at the front gate and you just go wandering. You follow the rest of the protocols.

15 **COMMISSIONER:** So you waived the 24-hour notice requirement. Not saying it's anything wrong.

MR JOHNSON: We relaxed that somewhat through that period, yeah.

20 **COMMISSIONER:** And you waived the requirement that will be a demonstrated reason for entry that is, some reasonable suspicion of award, agreement or a health and safety breach.

25 **MR JOHNSON:** In that initial period after the incident, you know, to try and get all parties, you know - and I mean, the circumstances of the accident are another matter, but nothing, it's a serious injury, and, you know, we needed to make sure that our workforce and the unions were confident in a return to work on the project. So yes, you know, we were trying to lean in and get that collaboration with the unions at that time.

30 **COMMISSIONER:** I'm not critical. I'm just trying to understand your evidence.

MR JOHNSON: Yep.

35 **MR GISONDA:** Thank you, Commissioner. And just to clarify, because I think then that I might have misunderstood your evidence - when you gave that answer, I thought you meant you couldn't restrict their access, assuming that the requisite - the threshold requirements for their legal entitlement to access the site had been
40 satisfied, but it sounds like you were prepared to allow them some greater degree of access and perhaps than perhaps the strict letter of the law.

MR JOHNSON: Yes, there was some degree of leniency at that time.

45 **MR GISONDA:** Okay. Then point 6 is weekly safety meetings to be conducted for the life of the project and you've got here "agreed", but then "behaviour to be monitored". And I - would've been safety meetings occurring on the site before this point; is that right?

MR JOHNSON: Correct.

5 **MR GISONDA:** Yes. Is the reference here to "to be monitored" a recognition of the fact, which we'll come back to in a moment, that at point 2 of their demands -

COMMISSIONER: Did you relax the requirement that the organisers had to have a permit and I think the basis of a permit is that they had to show that they were a fit and proper person?

10 **MR JOHNSON:** I - I don't believe we relaxed that one.

COMMISSIONER: You don't believe you did?

15 **MR JOHNSON:** No.

COMMISSIONER: Sorry, Mr Gisonda.

20 **MR GISONDA:** The fact that you're saying here "behaviour to be monitored" is a recognition of the fact, which we haven't looked at yet but we'll come to, that point 2 of these demands was that full-time union delegates and HSRs were to be employed on site.

25 **MR JOHNSON:** HSRs.

MR GISONDA: Yes. And so what you were saying here was a - yes, we're going to allow these HSRs to be employed. They'll be having weekly safety meetings but we're going to be monitoring their behaviour.

30 **MR JOHNSON:** Exactly right. I mean, we - we had concerns. We didn't have that many, if you like, union-appointed HSRs to that point in time. You know, that was part of the request with this safety reset, which -

35 **COMMISSIONER:** Should you have any union-appointed HSRs?

MR JOHNSON: No, we had HSRs.

40 **COMMISSIONER:** But I thought the way the legislation operated, at least in Queensland and I thought nationally, was that the HSRs were elected by the work group, not appointed by the union.

MR JOHNSON: That's right.

45 **COMMISSIONER:** The union's rules for delegates - and it's different to some other unions - allow the unions to appoint delegates, the union to appoint delegates but I don't believe the legislation allows them to appoint HSRs. I could be wrong.

MR JOHNSON: Look, we were fully compliant with all of our safety regulatory obligations in respect of HSRs before the incident, right. This required a reset. You know, so we leaned in a bit to try and get the job back on track, and we agreed with the union that we would have a higher component of HSRs than was required, and those HSRs were going to be nominated by the union, and, you know, we went through that process and they came onto the job. But we had concerns that they - and some of those concerns were deemed to be correct, and some the HSRs did a good job. But, you know, we were concerned about the behaviour of those, because HSRs to become full-time delegates. We weren't prepared to have any non-working delegates on the job. They had fulfil an HSR role. They had to be doing some work to be on the job and that was something I agreed with Mr Ingham but also we said that we were going to monitor the behaviour of those HSRs on a weekly basis.

MR GISONDA: I have two more topics to explore with you, Mr Johnson. The first is - requires us to look briefly at, if we can bring it up on the screen, page 465 of the transcript of this Commission from 3 December 2025. Is that something that conveniently can be brought up? This is some evidence that Ms Schinnerl gave about the safety reset meeting and she says beginning at line 4:

"The volatile issues, being physically prevented from access, accessing site and the like, so given that this safety reset was due to commence the following Monday, I asked Mr Johnson what he was going to do to ensure the safe passage of AWU officials, delegates and members to participate in the safety reset."

And then at line 19, Mr Wheelahan asks her:

"So what did Mr Johnson think of that request?"

Mr Schinnerl says:

"Mr Johnson replied to me, quite outrageously, 'What happens outside the gate is not my problem, I'm not getting involved,' to which I replied to Mr Johnson, 'Well, it is your problem. You're the PCBU.'"

Then at line 31 Mr Wheelahan interpolates and says:

"So directly told him that it wasn't his duty."

Ms Schinnerl says:

"And his response to me was, 'No, I'm not getting involved in this.'"

First of all, did you have a discussion with Ms Schinnerl at the end of the meeting where she raised her concerns about her officials, delegates and members being able to have safe access to the site?

MR JOHNSON: Yeah, look, yes, there was a discussion, you know, I see there's a lot of things in that statement in inverted commas to say that they're exact quotes. I'm not sure how that's occurred, that anyone can take contemporary notes do that degree of accuracy. But let me give some context. We'd had a lot of incidents in the lead-up to that safety incident where, you know, we had gatherings of people outside the gates, and, you know, we'd sought some assistance from the police, et cetera, and, you know, whilst, you know, there may have been a little bit of, you know, we may be able to help." If the group size got too big, they were definitely not interested in helping.

MR GISONDA: You're referring to the police?

MR JOHNSON: The police.

MR GISONDA: Yes.

MR JOHNSON: And even small group sizes, you know, I don't think I can recall any incident where, you know, we've had the assistance of police to move people on gathering on what is, you know, outside our project site. So the context of this was that, you know, I gathered all the State Secretaries and whoever else they wanted to bring to this safety reset meeting. We worked through the agenda of the meeting.

You know, and I've got to say, it was the BTG group unions that were doing all the talking. The AWU, I don't recall, contributed through the duration of the meeting, and we had an agreed way forward. So we wrapped up the meeting but while everyone - everyone was still around the table, Ms Schinnerl raised this issue of what were we going to do to ensure that there was safe access for workers into the job? And, you know, the first part of that - that response really is that we'd just got an agreement. Everyone's going back to work on this basis. The groups of people outside the gates were going to be dispersed. The locks were coming off the gates, you know. We've got a plan to get back, so I don't expect that there's any issue. But in any case, I'm not about to start going down the track of putting some private enforcement agency outside the gates to tackle or disperse people that are outside the gates. I mean, if the police are unable to help, I'm not going to put a private group of people in to start doing that task.

MR GISONDA: And so whilst you might quibble with perhaps the - whether that was precisely what was said between you and Ms Schinnerl, the gist of the conversation, you accept, is that as the meeting was wrapping up, she asked you what you were going to do to ensure safe access to and from the site, and your response was something to the effect of "Well you're not able - you thought we had an agreed way forward."

MR JOHNSON: Well, we did have agreement on the way forward and everyone in the meeting agreed we were going back to work Monday morning under that reset plan.

MR GISONDA: And you didn't think that there was anything more that you could do to address that concern?

MR JOHNSON: Correct.

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MR GISONDA: So does that mean that if there is some incident not exactly on the site but very close to the entrance to the site and the police are unwilling to intervene to assist, then it sounds like, at least from your perspective, there's nothing else anyone can do about it.

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MR JOHNSON: Well, we can report it into the authorities, but I don't think it's our role as a contractor outside our construction site to be taking matters into our own hands.

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MR GISONDA: So you depend, in that instance, on the appropriate agencies, and let's just use the police for the time being, to do whatever it is that they need to do to ensure that people are safe in the immediate vicinity to the site?

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MR JOHNSON: Once they step on the construction site, they're our responsibility. Outside that, on public areas, I think I'd be in strife if I started trying to take the law into our own hands.

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COMMISSIONER: My recollection of Ms Schinnerl's evidence - and I could be quite wrong about this - was that - and I think this is why she uses the phrase PCBU the person conducting the business undertaking, was that the area she was talking about was an area that you were the occupier of, even though no construction was going on - when I say "you", the company you were working for - even though there was no construction that was being undertaken on that site, it was being used as a car park or something ancillary to a car park but it was your - when I say your land, land that you were the occupier of, even though you're not engaged in any construction.

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MR JOHNSON: I think that's - that's adding a lot of detail to that discussion that I have no recollection about. It was a general comment about safe access of workers onto the job.

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COMMISSIONER: I might be wrong about my recollection.

MR JOHNSON: Mmm.

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MR GISONDA: And there are some sites where what the Commissioner has just described might be correct, that is, you've got the perimeter of the construction site and then further areas that are provided for workers, whether that be a car park or what have you, but then there are other sites, for example, Albert Street, where you have the end of the construction site and then you're into the public area where

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MR JOHNSON: Albert Street was as you described, yeah.

MR GISONDA: Yes.

5 **COMMISSIONER:** Did you organise or initiate any investigation into the matters that Ms Schinnerl was raising with you?

MR JOHNSON: At that time? Or what has just been raised with the Commission.

10 **COMMISSIONER:** Beg your pardon?

MR JOHNSON: Sorry, at the time of the incident or subsequent to it being raised in the Commission?

15 **COMMISSIONER:** No, at the time - she raised this with you, I think, at a meeting on Friday 28 July. At that time or any time thereafter, did you initiate any investigation into the incident that Ms Schinnerl - or incidents that Ms Schinnerl raised with you?

20 **MR JOHNSON:** No, because that was the - that was what was happening that week. You know, from the time of the incident on the Tuesday, to when the meeting occurred on the Friday, there were groups of people outside the gates preventing workers accessing the job. So I don't think there was any point in investigating that. That was reality. That was why I called the safety meeting. It was cheer that wasn't going to - the safety reset meeting. It was clear that wasn't going to change, until
25 such time as we had some process and agreement to get back to work. You know, and we achieved that on the Friday, and having achieved that, the groups of people outside gates went away, and we had free access onto the job as of the Monday morning.

30 **MR GISONDA:** The final topic I want to deal with, Mr Johnson, is back to Mr Ingham's demands and item 2, which was the full-time union delegate/HSRs to be employed on all Cross River Rail sites. You agreed to that demand; is that right?

35 **MR JOHNSON:** We did.

MR GISONDA: And as a consequence of that agreement, you then - go to paragraph 165 of your statement. You started to receive resumes of Mr Ingham's nominees for these HSR roles on the email; is that right?

40 **MR JOHNSON:** That's correct, through one of the assistants in the CFMEU office.

MR GISONDA: Yes. So the office manager, Leanne Butkiss, was sending you the emails, but you understood that these were coming from Mr Ingham.

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

MR GISONDA: And just to shortcut this, you then passed those resumes on to Mr Large, with the instruction for him to begin the process of onboarding those HSRs; is that right?

5 **MR JOHNSON:** Yeah, and to be large - clear, Mr Large is our project director for the GSD project and the process of bringing them on board is not automatic. That's why it is a process. Those employees would go through the same process where we do checks on people, et cetera, suitability for employment that we would do on any employee. I'd note that of the names advanced by Mr Ingham, some were already on
10 the project in any case, so it wasn't a complete, you know, step-up in the number of people coming onto the job. Some were already there. And I should add, you know, the - the process of thinking about do we accept this requirement - I mean, we had - you've got to be a bit pragmatic sometimes when it comes to IR. We had a job that, from our point of view, we think was performing very well. From a safety point
15 of view, we had an extremely unfortunate incident that, you know, we don't believe it was due to any identified shortcomings in the way we were managing the job. You know, there's been no follow-up action by the regulator in relation to that incident.

20 But the reality was, we had to get that job back working, and, you know, the unions had assembled a long, long list of alleged safety deficiencies on the job. We didn't agree with that, but if we were to go off to any regulator to try and get an order for return to work, we would've had to wade our way through that list. It was a long, long road to get back. The other thing we had going was, by that stage - excuse me - by that stage, the BPIC regime had come into effect in Queensland, and BPIC
25 was something that gave all contractors a score card as to their suitability to undertake work and, you know, at that stage, our - even before this incident, our CPB assessment of suitability was taking a long, long time to come through. So it was clear that there was, you know, some lines of communication that were going on within government, because we still hadn't engaged in people's view, adequately with
30 all of the BTG group of unions and that was affecting the assessment and this was going to be another black mark on our score card.

35 So we needed to consider this in the long-term of our business. We needed to consider getting back to work, and there was no way that unless we gave some ground on this issue and tried to negotiate an outcome, which I was successful in doing with Mr Ingham, that we were going to get a return to work.

40 **MR GISONDA:** Is it fair to say that, at the time, you were prepared to allow these HSRs onto site to achieve the objective of getting the project back on track. Just pausing there. That's accurate, is it?

MR JOHNSON: As I've just described, they were the reasons that we agreed to that request.

45 **MR GISONDA:** But did you appreciate that this might cause problems later on in the life of the project, once these men were - and some women, but mostly men - were allowed onto the site to perform HSR roles?

5 **MR JOHNSON:** Absolutely. I mean, you know, as I said, it wasn't smooth sailing up to that point in time. We had a lot of problems without the HSRs, okay. It was probably going to exacerbate it, but you know, we had to live with that, in order to get the job back, because it wasn't going to be returning unless, you know, unless we could get a regulator to order a return and then you'd have tension in the ranks in any case. That wasn't going to happen in the short term. This was the most pragmatic way forward. I didn't like it but it was the most pragmatic way forward.

10 **MR GISONDA:** And was there an added danger here that once these HSRs came onto site, they would be known essentially as the personal picks of Mr Ingham, who had been put on site with - essentially, the endorsement of yourself, one of the highest levels of management of the company?

15 **MR JOHNSON:** Well, the endorsement of myself was to the concept, not the individuals. They weren't given free rein. You know, they went through our employment process, and, you know, we held them to account. Initially, not as strongly as I would've liked, but in time, you know, we did communicate to our supervisors the expectation of what these HSRs were meant to be doing on the job,
20 and we tightened up the control over their work over a short period of time.

MR GISONDA: Were you concerned at the time about what dangers their presence on site might be to the safety or psychosocial safety I included in that concept of the other workers on the site?

25 **MR JOHNSON:** Yeah, that's - that was a consideration. There's a - you know, a lot of workers who just want to get on and not be subject to, you know, some of the - what's the right word - you know, just some of the day-to-day performances that go on, on a project. Certainly, that was a factor. But by the same token, these - some
30 of those workers who might be concerned by that were not getting paid at that time and we needed to find an avenue to get them back to work.

MR GISONDA: Were you aware at the time that a small number of these HSRs had dangerous criminal records to their name?

35 **MR JOHNSON:** No, I wasn't, and that's why we have an employment process, to put people through.

40 **MR GISONDA:** And if I can show you page - if this can be brought up - page 389 of Graeme Newton's witness bundle. This is a graph that Mr Newton has prepared and the - that pale orange colour represents disruptions to the site caused by HSRs. You'll see there a massive increase in disruptions from about October '23, which is when these HSRs started coming on site. You're aware of that having occurred on
45 site?

MR JOHNSON: Yeah, I - certainly.

MR GISONDA: Yes.

MR JOHNSON: And it also starts to coincide with the period of enterprise agreement renewal.

5

MR GISONDA: And that was the other issue, which was that these people were being let on at the time when the greenfields agreement that we spoke about this morning was about to expire, and that - what we see there, in graphical form, was precisely the risk you knew you were taking in accepting this demand. Is that fair?

10

MR JOHNSON: We knew we were taking a risk, but this was also a risk in not taking them on or probably certainty in not taking them on.

MR GISONDA: Is your position that you felt that in order to get the project - in order to resume work on the project, you had little choice other than to not only accept the demand that had been made at a conceptual level, but unless there was a very good reason to the contrary, to also accept the individual HSRs that were put forward to you?

MR JOHNSON: Yeah. I mean, you know, the decision that we took was not mine alone and I'm not seeking to - but that's the level of decision it was. It was a big call for our company, and the joint venture, to be making the call to do this. But as I say, we needed to look at this from a commercial pragmatic point of view, and you know, as you pointed out, there's - there's risks, if we go one way, there's certainty if we go another way. How does a regulator help us? How do we get this job back on track? We've got the government in the background with their BPIC, marking what we do. We had to make a call as to which way we go forward as a business and this is the way we chose to go forward.

MR GISONDA: No further questions, Commissioner.

COMMISSIONER: Counterfactuals are often pointless because you never know what would have happened had you done something else but do you think now, looking back on it, it was the right decision under the immense pressure you were under that week from 25 to 28 July?

MR JOHNSON: Look, I think with the - you know, the - the assistance that we, you know, could or couldn't get from regulators, and this BPIC thing, I think probably we'd make the same decision again. What - you know, and it was alluded to. I think that there was some somewhat of a view that we'd given these guys a bit more free rein than they should've had and, you know, we had to tighten up over time. In fact, you know, quite a number of these, you know, HSRs went through disciplinary action on the project, and they were, you know, removed from the project. There was natural attrition to some of them. You know, I did have some discussions with Mr Ingham about conduct of some of them, and I mean, I've got to say that, you know, there was - you know, whilst there'd been a lot of, you know, delay and antagonism

caused by them, if it got to the point that it was extreme, I think there was two that, you know, in discussions with Mr Ingham, that they were dealt with by the union.

5 **COMMISSIONER:** What do you want to do in terms of cross-examination, Mr Gisonda? I've got how many applications to cross-examine? One from the CFMEU. One from the Delivery Authority. No application from you, Mr Williams?

10 **MR WILLIAMS:** No application for me to cross-examine, Commissioner, and in relation to the other two applications to cross-examine my witness -

COMMISSIONER: Say that again. I missed that.

15 **MR WILLIAMS:** There's no application for me to cross-examine, at this point at least. In relation to the two applications to cross-examine, I've had the advantage of an opening in relation to the topics to be cross-examined on, and as long as those topics are adhered to, I don't object. I reserve my right to intervene or interject if the matters went beyond the outlined issues.

20 **COMMISSIONER:** I understand. What do you say, Mr Gisonda?

MR GISONDA: Nothing further. Unless this is inconvenient, I would suggest that Mr O'Brien should go first.

25 **COMMISSIONER:** Are you happy with that, Mr O'Grady?

MR O'GRADY: Indeed, Commissioner, and in the light of the evidence and the amendments made to the witness statement this morning, as currently advised, I don't intend to cross-examine, subject to something coming out of what Mr O'Brien asks.

30 **COMMISSIONER:** I think leave for you to cross-examine in accordance with your written application is granted, Mr O'Brien.

<CROSS-EXAMINATION BY MR O'BRIEN

35 **MR O'BRIEN:** Thank you, Commissioner. Mr Johnson, I appear for the Cross River Rail Delivery Authority. I want to ask you a few questions about the role of the authority in the bargaining process. If we look at your statement and we go back to 2019, as I understand it, this was at the stage the Cross River Rail project was out to tender, you were the executive general manager for New South Wales and the ACT
40 for major projects in tunnelling.

MR JOHNSON: Not at the start of that tender period, but you know, I was promoted into the role towards the end of that. I think it was late 2018. So the tender was in progress, well in progress.
45

MR O'BRIEN: Right. Okay. Thank you. Now, could I ask to you go to page 5 of your witness statement. This is exhibit DNJ-1. You see a heading "Government", Mr Johnson?

5 **MR JOHNSON:** Yes.

MR O'BRIEN: There's a number of paragraphs here about your experience with government matters. Could I just take you through some of the things that you say, and then ask you one or two questions about it. Paragraph 43, you talk about the fact
10 that you've had involvement in many infrastructure projects where the client has been a government entity.

MR JOHNSON: Yep.

15 **MR O'BRIEN:** At paragraph 44, you then say you've had experience dealing with both types of government client representatives, that is, both departments but also separate construction authorities.

MR JOHNSON: That's correct.

20 **MR O'BRIEN:** And you particularly mention WestConnex Delivery Authority. At paragraph 45, you say what was unusual about the CRR project was the level of interest and involvement by the Delivery Authority - that's Cross River Rail - during the enterprise bargaining stage. You go on to say:

25 "Normally, the client leaves issues of enterprise bargaining to the head contractor to manage.

And you go on to say:

30 "This makes sense."

Do you see that?

35 **MR JOHNSON:** Sorry, missed that question.

MR O'BRIEN: You see those statements you have made in paragraph 45?

MR JOHNSON: Yes.

40 **MR O'BRIEN:** Then you go on to say in paragraph 46:

"In my experience, it is rare for government representatives to even attend enterprise bargaining meetings at all, let alone for them to participate or take an active role in
45 the meetings."

MR JOHNSON: That's correct.

MR O'BRIEN: This is the only instance where this has occurred.

MR JOHNSON: That's right.

5

MR O'BRIEN: Can I suggest to you, Mr Johnson, that what was unusual about the Cross River Rail project as compared to other situations that you might have encountered in your experience was that, in this situation, the State Government had instructed the construction authority that is, Cross River Rail, that any any enterprise bargaining with the unions had to be undertaken by the winning consortiums in accordance with the best practice principles which have been incorporated into the Queensland Procurement Policy. It was an unusual circumstance, wasn't it?

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MR JOHNSON: Well, that's consistent with my evidence, that I think there was certainly the government expectation, and their interpretation of their best practice principles policy, as to what that meant for that - for that negotiation and for the agreement, yeah.

15

MR O'BRIEN: What I'm suggesting to you, Mr Johnson, is that what was unusual about this particular situation, as compared to your previous experience, is that in this case, the construction authority, the separate entity, Cross River Rail, had received a direction from the State Government that any enterprise bargaining had to be in accordance with the BPP. I'm putting to you that that was unusual in your experience, to have a situation where the authority had had a direct instruction from a State Government to negotiate in accordance with best practice principles.

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MR JOHNSON: Well, look, I mean, the best practice principles, as I said, outlined some broad requirements. Now, whether you need to be in the room to see that those requirements, you know, there's fair bargaining, et cetera, I accept. I mean, best practice principles hadn't been around that long and you've got the big game in town, trying to negotiate an agreement, you know in accordance with best practice principles. Now, it may well have been that the DA felt it was obviously gated to uphold its responsibilities under best practice principles to attend those negotiations. I can accept that. I think there's another part of this where, certainly, the DA was not just having to implement best practice but it was being given quite a strong lead by government as what its expectations coming out of best practice and what the agreement may have looked like in relation to a best practice principles agreement. So I think they were caught in a hard place.

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MR O'BRIEN: And you were aware at the time that that instruction had been given by the State Government to the Cross River Rail Authority?

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MR JOHNSON: I'm not aware of a direct instruction but the day-to-day discussions, certainly there was enough narrative from DA personnel as to expectations that they had, you know, if we go back to the letters we were writing to demonstrate that we - demonstrated best practice principles, you know, certainly, the DA was the intermediary in that. It wasn't that they were questioning us, but they

45

were trying to get sufficient evidence to demonstrate to the State and I think the Cabinet Expenditure Review Committee that we had complied with government policy.

5 **MR O'BRIEN:** Now, Mr Johnson, were you aware that when the BPP were introduced as part of the procure minute policy for the State of Queensland, that there was in fact an amendment to the request for proposal that was issued to the various companies that were seeking to pursue the project, that there was actually an amendment to incorporate a requirement to deal with the BPP that has been
10 introduced.

MR JOHNSON: Absolutely.

15 **MR O'BRIEN:** And it's as a result of that request that Pulse consortium put into its proposed contractual documents a number of specific clauses about complying with WPP and undertaking best endeavours.

MR JOHNSON: That's right, that's gone into the contract.

20 **MR O'BRIEN:** Can I just take you to the provisions in your - in the contract. Could the witness be shown page 943 of CRR-1. You see that on the screen, Mr Johnson?

25 **MR JOHNSON:** Yeah, I can see 62.3 at the bottom of the page. Is that what we're referring to?

MR O'BRIEN: If we can enlarge that, Mr Operator. First thing on 62.3, and could I suggest what occurred was that the consortium put these proposed terms to the authority and ultimately they found their way into the contract.

30 **MR JOHNSON:** Sorry, I don't think we proposed best practice. It came down and we had to incorporate these clauses into the contract and we agreed to that.

35 **MR O'BRIEN:** Yes. These clauses, can I suggest to you that what happened was as part of the request for proposal you had to respond to the fact that you had to incorporate best practice principles.

MR JOHNSON: Correct, yep.

40 **MR O'BRIEN:** And then what occurred was clauses were drafted by the consortium, including these clauses, that were put to the authority to say, we have met this requirement for BPP."

45 **MR JOHNSON:** I can't comment. It would be unusual for us to be drafting the clauses to go into a contract by the State.

MR O'BRIEN: Well, this was the authority. It was a separate entity.

MR JOHNSON: Same, but I would've expected that the State would have the pen or the DA with have the pen with these clauses and would've commented on them by all means, but I - I'm not sure that I'd go along with - and I don't know, you know, it's - where those clauses have come from but the first pass that the State the DA has given us clauses we would've commented on them and they would've built up in the contract.

MR O'BRIEN: It's your evidence that you don't know exactly how it is.

10 **MR JOHNSON:** That's right.

MR O'BRIEN: I won't take you further. But you were aware in the contractual terms that I think you said had been effectively finalised by June that there were clauses such as 62.3 about complying with best practice principles?

15 **MR JOHNSON:** Yeah, sure.

MR O'BRIEN: And if we go to the bottom of page 943, if we look at clause 62.3, we can see in subparagraph (a) that the best practice principles obviously picked up from the procurement policy. We then see in (b) that Project Co, that is the consortium, acknowledges that the State values the commitment to the best practice principles. Do you see that?

25 **MR JOHNSON:** Yep.

MR O'BRIEN: And then if we go over to the next page, operator, we can see that there was also a promise being put forward by consortium to undertake to actively ensure compliance with the best practice principles, and during the D & C phase, to fulfil the commitments made in the project company's proposal (as set out in exhibit 4). Do you see that?

MR JOHNSON: Yes.

35 **MR O'BRIEN:** So you understood that at the time that the consortium had put to the authority as part of these contractual terms that were going to be entered into that they would comply with the BPP, the consortium would comply with the best practice principles and that you would, to use your words, ensure compliance with those principles when you undertook the project.

40 **MR JOHNSON:** That's correct.

MR O'BRIEN: You might have seen that there was reference to exhibit 4, which is recorded as the commitments made in Project Co's proposal that is the consortium's proposal. If we go over to page 955 - 954, actually. , and if we look at the bottom of page 954, there was reference to a clause 5, best practice industrial relations.

MR JOHNSON: Yes.

5 **MR O'BRIEN:** And if we go over to 5.2, the D & C phase, you see there was an obligation in subparagraph (a), Project Co acknowledges that in assessing the labour conditions in comparison to those likely to be offered in similar classifications on other relevant projects.

You see that clause.

10 **MR JOHNSON:** Yes.

15 **MR O'BRIEN:** Then more particularly in paragraph (b), there was a promise that the Project Co will use all its best endeavours to reach code compliant greenfield agreements in accordance with best practice principles with all relevant unions practicable.

You see that.

20 **MR JOHNSON:** Yes.

25 **MR O'BRIEN:** So you glue at this stage in June that that part of what the authority had to do in terms of finalising and getting to financial close and ultimately the contract being entered into was to ensure that, in fact, firstly, the consortium was complying with the best practice principles, and secondly, that it was using all best endeavours to reach a code-compliant greenfield agreement in accordance with the BPP. You're aware that the authority had an obligation to ensure that you were complying with these proposals, these promises.

30 **MR JOHNSON:** Yes, I am.

MR O'BRIEN: And you accept, don't you, that, in fact, as part of the authority's role, it had to be satisfied that you were complying with the BPP and undertaking your best endeavours.

35 **MR JOHNSON:** Yes.

MR O'BRIEN: They would be the other contracting party to this arrangement.

40 **MR JOHNSON:** That's right.

MR O'BRIEN: You knew they had an obligation to ensure that you were undertaking best endeavours to try and reach an agreement.

45 **MR JOHNSON:** They - I'm not sure that best practice says we've got to undertake best endeavours.

MR O'BRIEN: I will be clearer. I was particularly referencing 5.2.

MR JOHNSON: Okay.

5 **MR O'BRIEN:** You understood that one of the obligations the authority had was to make sure that you were using all best endeavours to reach a code compliant greenfield agreement in accordance with the best practice principles.

MR JOHNSON: Yes.

10 **MR O'BRIEN:** And can I suggest to you that part of the way that the authority could be so satisfied about those matters was by actually attending the bargaining meetings that were taking place between yourself and the unions?

15 **MR JOHNSON:** Well, as I said earlier, I mean, best practice was quite new. This was the marquee project. If the DA felt that they had to attend all meetings, I could kind of understand that. It wasn't put to us, you know, from a point of view that that was the reason they were attending. You know, it's not to say it wasn't the reason they were attending, you know that they were attending, but, you know, I think there is a bit of a difference between attending to make sure that they're satisfied that we're
20 complying with our obligations, and taking on a more active, you know, facilitate role.

MR O'BRIEN: And that's what they did. You describe the authority's role, at paragraph 47, as a facilitation role that they were engaging in, at least these meetings
25 between the union and CPB, the consortium.

MR JOHNSON: It did morph into that. It moved from observer into sometimes facilitator.

30 **MR O'BRIEN:** And the timing really was, by about May, things had stalled, in terms of the negotiations between the union and the consortium, and it was really in June when there was this deadline of a 30 June close and the project going to the Cabinet budget review committee, that the authority stepped up their involvement, and became a facilitator in these meetings.

35 **MR JOHNSON:** I think - I think Scott Gartrell - now, I'm not sure that I'd classify Mr Gartrell as a DA participant. I think he was more of a government participant, but he arrived on the scene a few days before the end of June, if my timing is correct.

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

MR JOHNSON: Mr Martyn-Jones was, you know, probably a longer-term facilitator. You know, he - he certainly started off as an observer, but I think, you know, probably there was some increasing requirement from the government that he
45 get a little bit more involved to push things along, yeah.

MR O'BRIEN: And in terms - you've described the role in paragraph 47 of these representatives as a facilitator or mediator. You've obviously been in facilitations and mediations over many occasions over your years in the construction industry?

5 **MR JOHNSON:** I have.

MR O'BRIEN: And you accept that part of the role of facilitator or mediator of a dispute is to identify the real issues in dispute, to reality-test those positions, to suggest solutions, and even sometimes to push both sides to make concessions so a deal can be done. That's part of what a facilitator or mediator does, isn't it?

MR JOHNSON: It is, yes.

15 **MR O'BRIEN:** And that's what was occurring in terms of the discussions between both yourself and the union - the authority's representatives were identifying the points of dispute. They were trying to suggest solutions and sometimes, as happens in mediations or facilitations, they pushed the parties to try and make a concession.

20 **MR JOHNSON:** Yes.

MR O'BRIEN: Now, again, consistent with the facilitation or mediation, there was no compulsion for anyone from the authority to actually agree with any particular term.

25 **MR JOHNSON:** That's correct. With your line of inquiry as to how we've jumped from observing that we were complying with our requirements to being given permission to be a facilitator or a mediator in the negotiation.

30 **MR O'BRIEN:** But Mr Johnson, can I suggest to you that you were - that the consortium was more than happy for the authority to be there as the facilitator or mediator because the consortium were very much interested in being able to demonstrate to the authority that they were engaging in best endeavour - negotiations. That's right, isn't it?

35 **MR JOHNSON:** We accepted that they were in the room, yes.

MR O'BRIEN: But it was of benefit to you, because you were concerned, were you not, coming towards the end of June 2019, that no industrial agreements would be in place prior to financial close on 30 June. You were concerned about that, weren't you?

MR JOHNSON: We were, yes.

45 **MR O'BRIEN:** And you also knew that the State Government had made it clear that that's what they wanted.

MR JOHNSON: They want at least an in-principle agreement.

MR O'BRIEN: And what occurred was it was then completed, wasn't it, in discussions between you and Mr Newton, that there was this third option of you being able to demonstrate that in fact you then engaged in best endeavours. While
5 there was no agreement by 30 June, you could demonstrate that you had engaged in best endeavours in terms of reaching industrial agreement.

MR JOHNSON: I think I can recall a discussion with Mr Newton along those lines that he needed to demonstrate that best endeavours so if that came through presence
10 in the room, maybe that was, you know, an outcome of that discussion. I'm not being evasive on it, but it hasn't been portrayed in this fashion in the past.

MR O'BRIEN: What I'm suggesting to you, though, Mr Johnson is that you were prepared to accept the authority playing a facilitation role because you were keen, the
15 consortium was keen, to demonstrate to the authority that you were engaging in best-endeavour negotiations.

MR JOHNSON: We accepted it for the reason, you know, yes, we wanted to get - we wanted to get a contract in place. We had an obligation to demonstration
20 that we were complying with best practice principles. Certainly an unusual, you know, situation to have government in the negotiating room.

MR O'BRIEN: Yes.

MR JOHNSON: We never said "no", right, and we pushed back on some of the - a lot of the requests that had come through the - you know, the DA personnel, and we think we understood their position. They were pushing, at times, a government
25 agenda, right, you know, in terms of - as I've said, the Queens Wharf agreement, et cetera . So yes.

MR O'BRIEN: Just on that, though, Mr Johnson - if I read your statement and your appendixes, your email correspondence, it seemed to me that you drew a distinction, a correct distinction, if I suggest, between what the government had indicated, and what the authority's position was.
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MR JOHNSON: We did.
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MR O'BRIEN: And there were occasions where the authority were saying to the consortium, "This is what the State Government want. This is what they want."
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MR JOHNSON: That's right.

MR O'BRIEN: And indeed, there were occasions where, when you articulated your position, particularly on Queens Wharf, the authority accepted the validity of many
45 of the points that you were making.

MR JOHNSON: Most of the occasions.

MR O'BRIEN: That's right. And so there was this - you accept there was this distinction between what the authority's job was and what what they had to do and what was then sometimes being articulated by the State Government as to what they wanted.

MR JOHNSON: Absolutely and I think that's consistent with my evidence right through today.

10 **MR O'BRIEN:** Yes. Now, can I ask to you go to paragraph 49 of your statement. Even if we go back to paragraph 47. You mention a number of representatives from the Delivery Authority at the top of page 6, and you then in paragraph 48 deal with Mr Newton, Mr Graeme Newton, the CEO of the authority. You record the fact that you always found him professional in his dealings with you.

15 **MR JOHNSON:** Always. Not to say we haven't had our disagreements, as you would expect on any multibillion-dollar job over the course but there's a professional relationship that I have with Graeme Newton.

20 **MR O'BRIEN:** And there was that mutual respect between you and him in doing what was a very good job on both sides.

MR JOHNSON: Mmm.

25 **MR O'BRIEN:** Now, it's right, isn't it, that Mr Newton didn't usually attend these bargaining meetings, it was these other gentlemen who were at these bargaining meetings.

30 **MR JOHNSON:** It's stronger than generally. I have no knowledge of Mr Newton ever attending a bargaining meeting.

MR O'BRIEN: And can I then ask you to go over to page 9 of your statement, where you deal with developments in June 2019. And you record in paragraph 74 this meeting that you with had a number of people, including Mr Newton. Do you see that?

MR JOHNSON: Yes.

40 **MR O'BRIEN:** And you - this was the meeting where there was a presentation about the project generally, and particularly one of the points that was being made by you in this presentation to the authority is that Queens Wharf - the Queens Wharf arrangement, if I it use that terminology, that had been struck, had a number of difficulties.

45 **MR JOHNSON:** A number of which?

MR O'BRIEN: Difficulties.

MR JOHNSON: Yes.

5 **MR O'BRIEN:** In terms of applying that agreement to this particular project, the Cross River Rail project.

MR JOHNSON: Yes.

10 **MR O'BRIEN:** And it's fair to say, isn't it, I think your answer before indicates, those points that you made about those differences, they were understood and largely accepted by the authority in terms of the points of difference.

MR JOHNSON: That's right.

15 **MR O'BRIEN:** Now, if we go to paragraph 77, you recall what occurred or part of what occurred in the 7 June meeting and in paragraph 77(a) you refer to the fact that the Delivery Authority said that the Queensland Government was pushing for an in-principle agreement to an industrial instrument before the CRR project could pass the Cabinet budget review committee. Do you see that?

20

MR JOHNSON: Yes.

25 **MR O'BRIEN:** And again, that was this distinction that was constantly being made by the authority in your dealings with them between what the State Government was sometimes indicating and what the authority's position or role was.

MR JOHNSON: Absolutely, and I think - look, the DA's obligation was to enforce best practice principles.

30 **MR O'BRIEN:** Yes.

MR JOHNSON: As I said in my earlier evidence, best practice principles doesn't lead to you Queens Wharf.

35 **MR O'BRIEN:** That's right.

40 **MR JOHNSON:** Right? So whereas the government felt that, you know, perhaps best practice principles and reading between the lines was a de facto way of getting a Queens Wharf agreement, that wasn't the position of the DA.

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MR O'BRIEN: Yes. And could I then just ask about paragraph 77(b). You talk about the fact the delivery authority had indicated the Queensland Government was focused on equal pay across all workers of the project, and you then say that:

45 "The Delivery Authority asked to us tighten our best endeavours language and use stronger language to express our goal of achieving an agreement before commencing permanent works."

Do you see that?

MR JOHNSON: Yes.

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MR O'BRIEN: Could I suggest the context of that was - I think I touched on this before - by this stage, there was real doubt about an industrial agreement being in place prior to 30 June.

10 **MR JOHNSON:** Correct.

MR O'BRIEN: And in this meeting, the idea of in its place being able to demonstrate the consortium being able to demonstrate to the authority and to the Queensland Government that they had engaged in best endeavours to try and get that agreement, even though they didn't have agreement, they had engaged in best endeavours, that's what was occurring, that statement there is in that context. The authority was saying to you, "If you want to get this through by 30 June, in effect, put your best foot forward in terms of the way in you express your commitment to BPP and trying to strike an industrial agreement before major works."

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20

MR JOHNSON: That's right, yep.

MR O'BRIEN: Now, can we then go to the - you refer in paragraph 78 of your statement that there was - even though it's dated 10 June, in fact, it's a summary of what occurred on 7 June, at the 7 June meeting. It's at page 60 to 61 of your - do you have that in front of you?

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MR JOHNSON: No. I've got paragraph 61 but I haven't got the evidence come up on screen yet.

MR O'BRIEN: There we now.

MR JOHNSON: No we're good.

MR O'BRIEN: Perhaps we can take it paragraph by paragraph. If we can focus firstly on paragraph 1.

35

MR JOHNSON: Sorry, I missed your question.

MR O'BRIEN: Sorry, just grabbing that so you can see - can you see that, Mr Johnson?

40

MR JOHNSON: Yep.

MR O'BRIEN: And so these are the notes or your recollection of the key points of discussion between yourself and the authority, and the first point you say is the government, not the development authority, is pushing for an in-principle agreement.

45

That's the point you were just discussing. And again, it's made clear that it had to pass Cabinet review committee or budget review committee before the financial close. Do you see that?

5 **MR JOHNSON:** Yes.

10 **MR O'BRIEN:** And you can then - if we then focus on point number 2, you record the fact that there was a lot of discussion followed - a not of discussion followed on the presentation attached - that's the Queens Wharf presentation we were just talking about?

MR JOHNSON: It's the presentation that's in my package of evidence.

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

MR JOHNSON: Queens Wharf.

MR O'BRIEN: Which included in part -

20 **MR JOHNSON:** Sure, Queens Wharf presentation, yep.

25 **MR O'BRIEN:** And you record the fact the key message was that government policy was set and whilst there was apparent but not stated Delivery Authority support for a number of more philosophical positions, it was government policy with best practice that DA needed to deliver.

30 Can I suggest to you that reference to philosophical positions, your dealings with the authority, after you'd done this presentation, they accepted, with force, some of the matters that you'd raised with them about the difficulties with Queens Wharf.

35 **MR JOHNSON:** Yeah, look, I've got to say over the - you know, this journey, you know, through getting the enterprise agreement together, and over the full journey of delivery of the job, we'd been quite transparent in our industrial dealings and I really can't recall a situation where we were with odds with the DA with what we were doing, from an IR point of view -

MR O'BRIEN: Yes.

40 **MR JOHNSON:** - and, you know, what the DA thought we should be doing.

MR O'BRIEN: And that ultimately became apparent because the authority did form the view that you'd used best endeavours and told the government as much. That's right, isn't it?

45 **MR JOHNSON:** Well, I think that's what's happened. There's a couple of days missing in the thing for me between when we put our final letter in and putting the

signatures on the contract, but whoever's convinced who, the contract was signed a couple of days after our best endeavours letter.

5 **MR O'BRIEN:** But your dealings with the authority, they had indicated to you at least, the people from the authority that they were satisfied?

MR JOHNSON: They'd indicated that there wasn't much more we could do do satisfy best endeavours - sorry, nothing more we could do to satisfy best endeavours.

10 **MR O'BRIEN:** If they can then go to item 4, you recall the fact that one of the the key points of discussion was in the event we are relying on best endeavours to get through CBRC, DA was suggesting to me to tighten up some words we have provided which suggest we would aim to get agreement before the start of the permanent works. DA was suggesting government would want a stronger statement.
15 Do you see that?

MR JOHNSON: Yes.

20 **MR O'BRIEN:** And you will see that statement, we also see the letters that were subsequently written by the consortium to the authority in 26 and 27 June.

MR JOHNSON: Yes.

25 **MR O'BRIEN:** Could I suggest that all of that was directed to trying to put as positive position forward to the government so that the project would go through CBRC and reach financial close prior to 30 June.

MR JOHNSON: Absolutely. That's why we were writing the letters, you know.

30 **MR O'BRIEN:** And it's right, isn't it, from your perspective, what you observed, that the authority had - when they were suggesting that stronger words might be required, they were, in fact, trying to assist the consortium in -

35 **MR JOHNSON:** Assist, yes.

MR O'BRIEN: - to demonstrate to the State Government that they were - that you were serious, that you had engaged in best endeavours so that the project could go through.

40 **MR JOHNSON:** Absolutely. I mean, there's some seasoned operators in the DA. They know their way around the working of government. And they know when not to cross the line.

45 **MR O'BRIEN:** Yes.

MR JOHNSON:

MR JOHNSON: But you know, they too had an interest in getting the contract signed, so, you know, they had enforce best practice principles. They had to convince government that we'd complied.

5 **MR O'BRIEN:** Yes.

MR JOHNSON: That was the mechanism that they were using to try and get this contract over the line.

10 **MR O'BRIEN:** Yes. And speaking more generally in these negotiations, when Cross River Rail were facilitating these negotiations between the union and/or BTG and the consortium, it's the case, isn't it, to the extent to which there were discussions about Queens Wharf, the terms of the Queens Wharf arrangement, that what was occurring was that BTG were pushing those conditions as part of the arrangement.
15 That's right?

MR JOHNSON: Yes.

20 **MR O'BRIEN:** That the role of the authority as mediator was to test the consortium as to whether they were prepared to agree to some of those conditions going into the ultimate industrial agreement that was being sought to be struck.

25 **MR JOHNSON:** Well, maybe. I mean, I think there's a difference between, you know, best endeavours to achieve best practice principles, and best endeavours to achieve best practice principles with Queens Wharf being the start point.

30 **MR O'BRIEN:** But what I'm suggesting to you is, to the extent to which there was discussion by - or raising of topics by the facilitators, by the Cross River Rail, about Queens Wharf, it was in the context of BTG pushing those conditions as part of the arrangement that they wanted to strike with you. That's right?

MR JOHNSON: That's right.

35 **MR O'BRIEN:** And what the authority's representatives were doing as part of the mediation or facilitation process was testing and pushing the consortium to see whether there were some of those reasons in the Queens Wharf agreement that the consortium might be prepared to agree to as part of the arrangement.

40 **MR JOHNSON:** Well, I think that is the case. You know, we were doing that off our own bat.

MR O'BRIEN: Yes.

45 **MR JOHNSON:** I had enough encouragement from the other side of the the table. I didn't need the DA as well encouraging us. But yeah, I mean, I can see that that's what they were trying to do.

MR O'BRIEN: Sure. Thank you. Just bear with me. Just bear with me, Commissioner. I'll just check. Nothing further, Commissioner.

5 **COMMISSIONER:** Thank you, Mr O'Brien. Mr O'Grady, did anything come out of that?

MR O'GRADY: No, Commissioner.

10 **COMMISSIONER:** Mr Williams, do you want to deal with anything that arose out of that?

MR WILLIAMS: There's nothing from me, Commissioner. Mr Gisonda probably gets the last word.

15 **MR GISONDA:** Thank you, Commissioner. Just two things. One is to thank Mr Johnson for his attendance, coming all the way from Sydney via the Qantas lounge, and second, he can otherwise be excused.

20 **COMMISSIONER:** Thank you very much for your evidence, Mr Johnson. You're excused.

<THE WITNESS WAS RELEASED

25 **MR GISONDA:** Just one further matter, Commissioner, which is I believe Mr O'Grady seeks to tender a document consisting of a recent report prepared by the administrator.

COMMISSIONER: What's your attitude to it?

30 **MR GISONDA:** No objection, Commissioner.

COMMISSIONER: Do the other parties at the bar table know about this?

35 **MR O'BRIEN:** We haven't seen it, but I'm not saying we'd necessarily have an objection to it.

COMMISSIONER: Do you want to just tell the parties what it is, Mr O'Grady?

40 **MR O'GRADY:** Yes. On 11 March, Mr Irving, in his capacity as administrator, tabled the third biannual report of the administration. We'd be seeking to have that tendered and marked as an exhibit, particularly in the light of the fact that Mr Gisonda has now indicated that, at the next hearings, the issue of demarcation disputes between the AWU and my client will be a focus, and that issue is dealt with in this report, particularly at paragraphs 23 through to 25, including the fact that the
45 administrator has sought the assistance of a former member of the Fair Work Commission to arbitrate these issues and is engaging in that process.

COMMISSIONER: To arbitrate? How could they arbitrate?

MR O'GRADY: Well, through a consent dispute resolution process.

5 **COMMISSIONER:** I see. The first two of these biannual reports of the administrator which the administrator is required to give, pursuant to the legislation that created the administration, to the Minister for Employment and Workplace Relations, are already in evidence, aren't they?

10 **MR O'GRADY:** Yes, they are. They were attached to Mr Irving's witness statement, as I recall it.

COMMISSIONER: So that is just updating the first two?

15 **MR O'GRADY:** Yes. The administrator is required, pursuant to the terms of his appointment, to provide - to table these reports on a biannual basis. The last one was I think tabled in November. This one was tabled in March.

20 **COMMISSIONER:** You don't have the benefit of the document itself, Mr Williams or Mr O'Brien or Mr De Jersey, but having heard what Mr O'Grady has said, do you have any objection to its tender?

MR O'BRIEN: We've got no objection.

25 **MR WILLIAMS:** Commissioner, I'm sure my client will read it with great interest but we don't have an interest in whether you receive it.

MR DE JERSEY: No objection.

30 **COMMISSIONER:** What are we up to with your exhibits? Is this COG-3?

MR O'GRADY: Yes.

<EXHIBIT COG-3 BIANNUAL REPORT OF ADMINISTRATOR

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COMMISSIONER: All right. What's next, Mr Gisonda?

MR GISONDA: I think it's home time, Commissioner.

40 **COMMISSIONER:** Very well. We will adjourn until - what is it - 14 April? Is that when we're next sitting? Adjourn the Commission, please.

<THE HEARING ADJOURNED AT 3.51 PM, UNTIL TUESDAY, 14 APRIL
2026