



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

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

**PUBLIC HEARING
BRISBANE MAGISTRATES COURT**

**TUESDAY, 28 JULY 2026
AT 10.00 AM**

DAY 38

APPEARANCES

**Mr S Wood AM KC – Commissioner
Mr E Gisonda KC – Counsel Assisting
Ms G Feely and Ms A Morrow – Counsel Assisting
Mr D de Jersey KC – Counsel for the State of Queensland
Ms M Brooks – Counsel for the State of Queensland
Mr C O'Grady KC – Counsel for the CFMEU Administration
Mr C Murdoch KC – Counsel for the BMD Group and Ben Weston
Mr A Duffy KC – Counsel for The Honourable Grace Grace MP
Ms K Hillard – Counsel for The Honourable Grace Grace MP
Mr C Jennings for SMEC Australia and its associated entities
Mr B Kidston for SMEC Australia and its associated entities
Mr Timothy Ellis – Witness
Ms Julie Mitchell – Witness**

<THE HEARING RESUMED AT 10.00 AM

COMMISSIONER: Deal with appearances first. Mr Gisonda, you continue to appear with Ms Feely as counsel assisting?

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MR GISONDA: Yes, Commissioner.

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

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MR DE JERSEY: Yes, Commissioner.

COMMISSIONER: Ms Vockler, you're appearing today for Mr Tim Ellis?

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MS VOCKLER: Yes, Commissioner.

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

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MR O'GRADY: Yes, Commissioner.

COMMISSIONER: Mr Murdoch, you're appearing for BMD and Mr Ben Weston?

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MR MURDOCH: Yes, may it please the Commission.

COMMISSIONER: Mr Jennings, you're appearing for SMEC Australia and its associated entities?

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MR JENNINGS: Yes, with Mr Kidston.

COMMISSIONER: With Mr Kidston. I don't see Mr - oh, there he is. No room at the bar table, I'm sorry, Mr Kidston. Mr Duffy, you appear for the Honourable Grace Grace MP with Ms Hillard?

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MR DUFFY: That is so, if it please the Commission.

COMMISSIONER: Thank you. Is there anyone I've missed? No. Thank you. Mr Gisonda?

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MR GISONDA: Commissioner, last week, or the week before last, we were exploring some issues as concerns the implementation of the BPIC policy insofar as it related to the procurement of major transport projects in the State of Queensland. That was a policy that was vigorously and enthusiastically embraced and prosecuted by the Building Trades Group, and in particular, the CFMEU. And there were really
45 three main strands of resistance to the wholesale embracing and implementation of that policy as the CFMEU would want it.

5 The first was the Australian Workers' Union. The second were certain major civil
contractors operating in the State of Queensland, and those contractors were
represented by at least two organisations, the QMCA and the CCF, and the third was
certain elements - or offices, I should say more accurately - within the public service
10 of the State of Queensland, particularly those found within the Department of
Transport and Main Roads. And you saw, Commissioner, and will have seen, not just
the week before last but in other hearing weeks as well, the manifestation of the
various campaigns that the CFMEU waged against the AWU, certain major civil
contractors and members of Parliament and senior officers of the departments of
15 state that the CFMEU believed were not fully embracing the policy as the CFMEU
would seek to have it implemented in the State of Queensland.

15 I took you, Commissioner, through a number of major projects in the State of
Queensland that were procured at around the time that BPIC was introduced into the
transport space and projects that were procured thereafter. One such project was the
north part of the Coomera Connector project. That north part was awarded to an
Acciona/Georgiou joint venture, and you heard evidence from Mr David Balmer in
his capacity as regional manager for Acciona about some of the things that arose
with respect to the procurement of that project. The central part of that project,
20 Coomera Connector Central, is the next package of works that we will look at
beginning this morning.

25 The Coomera Connector, Commissioner, is a 45-kilometre motorway that is
designed to connect the Logan Motorway to the Pacific Motorway with the aim of
alleviating congestion along the M1 between Brisbane and the Gold Coast. In
Infrastructure Australia's business case summary for that project, in February 2022, it
identified that the M1 Pacific Motorway is the primary road connection between
Northern New South Wales and Brisbane and that it experiences high levels of
congestion due to the volume of freight, commercial, tourist and commuter traffic.
30 The Coomera Connector was planned as an alternative route to the motorway for
trips with origins or destinations between Loganholme and Nerang.

35 Indeed, the need for a new transport corridor through this region was identified in the
1990s, and the corridor for the development of this infrastructure has been preserved
by the State of Queensland since then. There are a number of stages to that
45-kilometre proposed motorway, and Stage 1, which is divided into North, Central
and South packages, is currently under construction. The Stage 1 package has now
been completed by the Acciona/Georgiou joint venture. The Central package is still
under construction, and it is being delivered by a joint venture that includes Fulton
40 Hogan, JF Hull Holdings and McIlwain. You've already heard evidence from Mr
Wayne Jenkinson, who gave evidence about his experiences working for regulatory
authorities in relation to the enforcement of codes of conduct.

45 **COMMISSIONER:** He's an employee or contractor to Fulton Hogan as well, isn't
he?

5 **MR GISONDA:** He's the project industrial relations manager working on this very project. The first witness for today will be Mr Timothy Michael Ellis, who has a long and extensive experience working in the construction industry, specialising in workplace health and safety. He's presently the safety health environment and quality manager employed by JF Hull but working on this project for the joint venture. If I may now call Mr Ellis, please.

10 **COMMISSIONER:** Can you just tell me who you're going to call today? Mr Ellis, and is there anyone else?

15 **MR GISONDA:** Mr Ellis and Ms Julie Mitchell, who was a holdover from the last sitting week. She's a deputy director-general employed by the Department of Transport and Main Roads, and that will provide a little bit of a segue into the next project which we will hear evidence about, which is the Centenary Bridge project.

20 **COMMISSIONER:** So Mr Ellis is going to talk about the Coomera Connector project, is he?

25 **MR GISONDA:** The Central package of the Coomera Connector.

30 **COMMISSIONER:** The Central package, the one that isn't complete yet?

35 **MR GISONDA:** Yes.

40 **COMMISSIONER:** All right. Is Mr Ellis in the hearing room? Mr Ellis, could you come forward into the witness box, please.

45 **<TIMOTHY MICHAEL ELLIS, AFFIRMED**

50 **<EXAMINATION BY MR GISONDA**

55 **COMMISSIONER:** Please have a seat, Mr Ellis. Mr Gisonda.

60 **MR GISONDA:** Thank you, Commissioner. Good morning, Mr Ellis. Thank you for making yourself available this morning. Can I ask you to confirm that on 13 July 2026, you affirmed a statement under notice for the purposes of your evidence today?

65 **MR ELLIS:** That is correct.

70 **MR GISONDA:** And can I ask that that statement please be brought up on the screen. That statement is 16 pages long, and it has 31 annexures in a bundle of documents, as well as various video and audiovisual files.

75 **COMMISSIONER:** Is that 31 or 38?

80 **MR GISONDA:** What did I say, Commissioner?

COMMISSIONER: I thought you said 31. You might have said 38.

5 **MR GISONDA:** 31. Sorry, 38. Sorry, 38. Mr Ellis, if I can ask you first to just go to paragraph 40(p), please. There's a reference there to annexure TE-8D. Can I confirm that that should instead read as annexure 14A?

MR ELLIS: Yep, that is correct.

10 **COMMISSIONER:** Annexure, sorry, 14A?

MR GISONDA: 14-A. And the reference to the page number should read page 99?

15 **MR ELLIS:** Correct.

MR GISONDA: And then at paragraph 80, please, there is a reference in the first line there to a Mr Burgess. Should that instead be a reference to Helen Burgess?

20 **MR ELLIS:** Correct.

COMMISSIONER: So delete "Mr", insert "Helen"?

25 **MR GISONDA:** Yes. And so with those two corrections, Mr Ellis, is your statement otherwise true and correct?

MR ELLIS: Correct.

MR GISONDA: I tender that statement, Commissioner.

30 **COMMISSIONER:** Are there any objections? No. Witness statement of Timothy Michael Ellis made 13 July 2026, 16 pages, 100 paragraphs, 38 annexures, as amended just now in the witness box at paragraphs 40(p) and 80 will be exhibit TME-1.

35 **<EXHIBIT TME-1 WITNESS STATEMENT OF TIMOTHY MICHAEL ELLIS MADE 13/7/2026, 16 PAGES, 100 PARAGRAPHS, 38 ANNEXURES, AS AMENDED IN WITNESS BOX AT PARAGRAPHS 40(P) AND 80**

40 **MR GISONDA:** Thank you, Commissioner. Now, Mr Ellis, I'd like to begin by asking you a little bit about your background and expertise. So if we can look at paragraph 4 and 5 of your statement, are you able to tell the Commissioner, please, a little bit about what your previous roles in the construction industry have involved and who you've worked with?

45 **MR ELLIS:** Yes. So I started off as an environmental scientist cleaning up contaminated sites for construction projects, and that was my background, and then from there I walked into construction roles. The first sort of major construction role I

had was on the Clem7 tunnel project from 2006 to 2008, where I was the senior environmental coordinator working for the contractor, which is Leighton Contractors, Baulderstone Hornibrook and Bilfinger Berger joint venture. From there in 2009 I moved into Thiess Construction, and I was the environmental specialist for the Queensland/Northern Territory business unit from 2009 to 2011.

In 2011 I was the SHEQ manager, safety health environment and quality manager for Queensland and Northern Territory and Thiess, and then from there, Thiess and Leighton's merged to become CPB Contractors, and I was the business unit SHEQ manager for CPB Contractors from 2015 to 2018, when I then moved to their sister company, which is UGL, and became the general manager of SHEQ for their projects division from 2018 to 2021. From 2021 onwards I've been employed by JF Hull Holdings, and - yeah, been on a couple of projects.

MR GISONDA: And can you tell the Commissioner, please, what does an SHEQ manager role involve?

MR ELLIS: It's a combination of things. It's a leadership role in the business, generally, leading those functions. It's managing the teams. It can be tendering projects. It can be setting up new projects. It can be getting involved in critical events that occur on those projects, incidents, fatalities, those sorts of things, but at the same time it's also just managing those functions to ensure that they work smoothly and we can build the job in a safe and environmentally responsible way with a quality outcome.

MR GISONDA: We have heard evidence already from Mr Graeme Silvester, who was an employee of CPB. Are you aware of Mr Silvester?

MR ELLIS: Yes, from my time at CPB.

MR GISONDA: You said that you've worked on a couple of projects whilst employed at JF Hull, and you identify at paragraph 8 of your statement two such projects, the first being the Inland Rail - Border to Gowrie Project.

MR ELLIS: Yes.

MR GISONDA: And that was a joint venture that involved Bielby, JF Hull and Q Birt; is that right?

MR ELLIS: Correct.

MR GISONDA: And then the second project is the Stage 1 Coomera Connector Central package of works; is that right?

MR ELLIS: Correct.

MR GISONDA: And is it true that you are not aware of any interactions, or at least significant interactions, with the CFMEU that took place on the Inland Rail - Border to Gowrie Project?

5 **MR ELLIS:** That is true. We weren't doing a lot of construction work on that project, so yep.

MR GISONDA: You've given some evidence from paragraphs 13 onwards about your experience or your observation when you worked for CPB on the Logan
10 Motorway enhancement project, and at paragraph 13, you give some evidence that in about 2016 or '17, you were on site one day when three union officials arrived at the site office and that none of those three officials - this is then at paragraph
14 - provided permits when asked, and that when checks were undertaken, their names were not in the federal or state registers for union officials. And you say that
15 what happened was, once those three officials left, another three turned up, and this continued for some time, and over the course of about an hour, five groups of three turned up on the site. Is that consistent with your recollection?

MR ELLIS: Yes.
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MR GISONDA: And what you understood to be occurring at around that time was that the joint venture that was undertaking that project was involved in some negotiations with the CFMEU about a potential enterprise agreement; is that right?

25 **MR ELLIS:** Correct. It wasn't a joint venture. It was a CPB sole project, yep.

MR GISONDA: Sorry, CPB.

COMMISSIONER: Just say that again. I missed that.
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MR ELLIS: It was just a CPB sole constructed project. It wasn't joint venture.

MR GISONDA: And then at paragraph 17, you say as one group of three were entering the site office, the previous group that had been told their entry was
35 unlawful would attempt to - or did enter the site via a different gate. And the culmination of these five or so groups of three meant that the personnel across the site were stretched trying to deal with these various issues; is that right?

MR ELLIS: That is correct.
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MR GISONDA: And as a result, Queensland Police were called?

MR ELLIS: Correct.

45 **MR GISONDA:** And just at paragraph 17, you give some evidence about that interaction. What do you recall about what the QPS officer said to you when they arrived on site?

MR ELLIS: The QPS officer advised me at the time that it wasn't a police matter and that they wouldn't be intervening at that time. They didn't believe that there was any law, as far as what they would patrol or policed, was being broken.

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MR GISONDA: And then at paragraph 18, you give some evidence about what you were told by someone else on the project, although you can't now recall who that person was because of the passage of time. But what do you remember being told about what the police had said when on site?

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MR ELLIS: What I'd been advised - and I still can't remember who it was, unfortunately - but I was advised at the time that one of the police officers had said that they'd been told by the police union not to get involved in the dispute, because it was a union - union issue, and they were backing the union.

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MR GISONDA: Can I then turn to the Coomera Connector project. And the particular Central package of works is worth over a billion dollars; is that right?

MR ELLIS: Correct.

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MR GISONDA: And you say at paragraph 26 that the joint venture was awarded an early works package in early 2023.

COMMISSIONER: It's a 45-kilometre project all up. How much is the Central part?

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MR ELLIS: Eight kilometres long.

COMMISSIONER: Eight kilometres. A billion dollars. About 125 million a kilometre?

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MR ELLIS: Possibly a little bit more than that, yes. Yep. The difference in our section is we're building six lanes of motorway, whereas the North and South packages are building four lanes of motorway.

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MR GISONDA: And that total distance that you were just asked about, that is the entirety of the Coomera Connector proposal. It's not the Stage 1 proposal, which is about 16 kilometres; is that right?

MR ELLIS: Correct, yep, 16 kilometres. North package is four kilometres, South package is four kilometres, and we're the big chunk in the middle at eight kilometres.

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COMMISSIONER: And I think Mr Balmer gave evidence about the North section, didn't he, last time?

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MR GISONDA: Yes. Yes.

COMMISSIONER: And he said that part was about \$100 million a kilometre. This is a bit more expensive.

MR ELLIS: Yes.

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COMMISSIONER: Because it's wider.

MR ELLIS: It's wider. There's also different ground conditions. We're working in very soft soils at one end of the project and very hard rock at the other end of the project. In the middle it's a bit of a mix of everything. We've got different construction methodologies we're using. But yeah, it's comparable, but it's not comparable, because we're doing things differently.

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COMMISSIONER: Doing things differently?

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MR ELLIS: Slightly, yeah, with the way we're constructing.

MR GISONDA: And perhaps we'll just jump to paragraph 31 for the moment of your statement, where you talk about the challenging nature of this project, at least from a safety perspective. Can you just tell the Commissioner a little bit about what you mean there?

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MR ELLIS: So the project's eight kilometres long. Pretty much down the western side of the project where we've got a hard barrier with the Queensland Rail corridor from Helensvale Road to Helensvale Train Station, and from Helensvale Train Station South, we have the light rail - Gold Coast Light Rail comes in that area. On the eastern side of our project, in the northern end, we have Coombabah Lake, very close to us, which is a protected wetland under international conventions. There's migratory birds in there, there's 270-odd species of animals that live in that wetland, and we have a hard border on that. And then as we come further south on that eastern side, we have a number of properties that - with community members living in them that butt right up against our back fence, essentially, so at times we are three or four metres away from people's houses where we're building this motorway.

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So it's a challenging job. As I said, really soft soils up at the northern end, really hard rock down the southern end, and a really tight corridor. So from a safety point of view, there's a lot of activities happening in very close proximity. We can't go out and around those activities, so we have some very fixed gates and entry points where we can come in and out of the site. So it is a challenging project in that sense. We have multiple bridges. There's over 20 different bridges we have to construct, so they take up -

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COMMISSIONER: How many, sorry?

MR ELLIS: Over 20 bridges that have to be built in that eight kilometres, so they take up more or less the full width of the corridor at those locations. We've got creeks and waterways we cross over. We've got live traffic that we're having to shift

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around on the Gold Coast Highway and also on Smith Street Motorway as well. And, you know, then we move them onto their final alignments, and then we come in underneath and build the motorway underneath. So lots of traffic switches, lots of complexities around the environment we're in and a very narrow corridor with not
5 much space to actually store equipment or be able to construct effectively or efficiently.

COMMISSIONER: You were in the hearing room when Mr Gisonda opened and said this corridor had been reserved since the 1990s. Just not enough land was
10 reserved, is that the problem?

MR ELLIS: I don't know. I can't speak for why it was reserved the way it was, but, yeah, if we're a construction company, I would argue that we would always want some extra room. But if I put it on my environmental hat, there's certainly reasons
15 why we have a very narrow corridor, particularly in our northern end of the site where we have very sensitive environment in that space. But development has been allowed to creep into those areas, which is -

COMMISSIONER: You mentioned the west and the east and the south-east, and
20 what's in the north?

MR ELLIS: So we're bounded on the north by obviously the northern project, which is Helensvale Road. That's our boundary. And then in the south is the southern project, and that happens as the changeover is just south of Smith Street Motorway.
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MR GISONDA: Could I bring up, please, the photograph which I believe is labelled TME-2. You can see that picture, Mr Ellis?

MR ELLIS: Yep.
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MR GISONDA: Can you explain what that picture is of?

MR ELLIS: Yep. That is of what we call Bridge 8. That is Coombabah Creek. We're looking south. So on the western side or on the right side, you can see the
35 heavy-gauge railway, and then closest to our site is the light rail, the light gauge. You can see Coombabah Creek, where we're building our bridge, and then onto the left-hand side is some wetland area in there and then houses beyond that, which is some of the local community that live in the area.

MR GISONDA: And then if I bring up photograph TME-3, please. Are you able to explain what that is a photo of?
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MR ELLIS: Yes. This is what we call Bridge 3. So again on the right-hand side we're looking south. On the right-hand side you can see the heavy rail with the train
45 passing by. You can see that it's a wet area with a waterway underneath where the bridge is being constructed, and up to the top of that photo you can see the Gold Coast Highway with existing traffic on there, and we'll actually go through

underneath that highway, and you can see where the lanes of traffic will go. The northbound and the southbound traffic will flow through off those bridges underneath the Gold Coast Highway. The bridge on the left is an off-ramp that will come up onto the Gold Coast Highway.

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MR GISONDA: And then TME number 4. This is a map. You might just try and zoom in a little bit on the central part. So that's where you begin, at Helensvale Road, is that correct, in the north?

10 **MR ELLIS:** Yep. Yep.

MR GISONDA: And then going down to the south, at Exit 41 at Southport; is that right?

15 **MR ELLIS:** Yeah, just south of Smith Street Motorway.

MR GISONDA: Can I tender those three photographs, please. They're all undated, Commissioner. The first photograph can be titled TME-2, and it's an undated image of the Coomera Connector project overlooking the Coombabah Creek.

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COMMISSIONER: Is there any objection to that? No. Exhibit TME-2 will be undated image of the Coomera Connector project overlooking the Coombabah Creek.

25 **<EXHIBIT TME-2 UNDATED IMAGE OF COOMERA CONNECTOR PROJECT OVERLOOKING THE COOMBABAH CREEK**

MR GISONDA: And then the next photograph can be TME-3. That's an undated image of construction works on the Coomera Connector Central project.

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COMMISSIONER: No objections? Exhibit TME-3 will be a photograph being an undated image of the Coomera Connector Central project construction.

35 **<EXHIBIT TME-3 UNDATED IMAGE OF COOMERA CONNECTOR CENTRAL PROJECT CONSTRUCTION**

MR GISONDA: And then the next photograph, or the map, I should say, TME-4, is an undated map of the North, Central and South stages of the Coomera Connector project.

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COMMISSIONER: No objections? Exhibit TME-4 will be undated accessible map image of the North, Central and South stages of the Coomera Connector project.

45 **<EXHIBIT TME-4 UNDATED ACCESSIBLE MAP IMAGE OF NORTH, CENTRAL AND SOUTH STAGES OF COOMERA CONNECTOR PROJECT**

MR GISONDA: So can we just understand, then, Mr Ellis, a bit about the timeline. In early 2023, the joint venture was awarded an early works package to commence design and construction works, is that right, on the project?

5 **MR ELLIS:** Yes.

MR GISONDA: And at paragraph 27 of your statement, you say that the first 12 months or so was based in Brisbane, and that's because it was mostly design and assessment works that were taking place?

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MR ELLIS: Correct. It's a design and construct project, so we have to get the design advanced in order to do the construction work.

15 **MR GISONDA:** And then at paragraph 28, early works commenced in about November 2023; is that right?

20 **MR ELLIS:** There had been some early works before that. I commenced on the project in early 2023 - in November 2023, but there had been some early works with drill rigs and soil sampling that was occurring before my time, but I couldn't tell you how much earlier than that. It would've been a few months earlier.

25 **MR GISONDA:** And at paragraph 29, you say shortly after you commenced, construction took place on the projects - of the project's main office compound at Helensvale; is that right?

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MR ELLIS: Yes, correct.

30 **MR GISONDA:** And at paragraph 30, you say that that location then had to be moved because the owner of the land sold the land; is that right?

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MR ELLIS: Correct.

35 **MR GISONDA:** And how far along was the construction of the original office compound before you had to move?

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MR ELLIS: We'd moved into it. It still required some final fit-out, but it was enough for us to be able to commence moving people in and start our activities.

40 **MR GISONDA:** And when were construction workers on site, working on the road itself?

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45 **MR ELLIS:** It would've been around that time. I couldn't give you an exact date, but it would've been around that time. But when you say "workers", it would've only been a very small crew at that stage. We didn't actually start clearing trees, which is really the first part of the construction phase, until about May/June 2024.

MR GISONDA: Now, you say at paragraph 33 that you have a total of 17 people within your team; is that right?

MR ELLIS: Yes.

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MR GISONDA: And they are all essentially workers who are focused on health and safety and environmental and sustainability matters?

MR ELLIS: Correct. They're all focused on that.

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COMMISSIONER: Your background's in the environmental space, not in the safety space, but you came to manage a group of people who were experts in workplace health and safety?

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MR ELLIS: That is correct. So I started off, as I said earlier on, with an environmental background, and then in 2011 I was promoted to a SHEQ manager at Thiess. During that time, I was provided training and mentoring by safety managers on what I needed to know. And I had a background before that. I was running remediation projects. So I was project-managing those. I had to understand work health and safety law. I had to understand construction. We were sending excavators and trucks out to dig and remove contaminated materials. So I had a fair understanding of it, and obviously, I want to understand my - from my own health perspective when I'm out sampling contaminated material, that I'm safe and understand that, you know, I'm not going to be impacted.

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So I've always had an element of safety throughout my career, but 2011, I was provided with a promotion, I was provided with some mentoring, some additional coaching, training, and from there I've grown. So I'm not strictly a safety professional with a safety degree, but I've had the years of experience -

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COMMISSIONER: 15 years. Yes.

MR ELLIS: Yep.

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MR GISONDA: At paragraph 35 of your statement, you make reference to some dealings that you've had with AWU officials. Can you just describe to the Commissioner what your impression and experience has been in your dealings with the AWU?

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MR ELLIS: Yes. So the AWU on the project to date has been - we've had very respectful discussions and, you know, they've come to site numerous times, and really, every time they've come to site it's been under the Fair Work Act, not necessarily under work health and safety notices. The times they have raised some minor safety issues, we've been able to address that. The discussions I've had with Jamie McQueen and others who have attended site have been very positive, and professional. There's none of the aggression that I've seen previously from CFMEU. It's very professional. They raise a question. We answer it. They're happy with the

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response or, you know, we'll take them out for a drive and show them what's happening.

5 But generally in most visits, they're hearing their feedback from their HSRs on site, they're hearing it from the workers, the site's safe, and they're leaving us alone from a safety perspective and dealing mainly with just the IR stuff, coming in and talking to the workers and encouraging them to join the union.

10 **MR GISONDA:** Can I take you to page 8 of the bundle of documents that's annexed to your statement. And before we look at the content of any of these documents, can you just explain to the Commissioner what this document is?

15 **MR ELLIS:** So this is what we call a right-of-entry report. After every visit by a union official on site, we write one of these reports. Even if it's for the AWU, we write these reports as well. And it's a record that's undertaken on the day of the visit. So what would typically happen is those people who've interacted with the union members or union officials would come into my office, we'd sit down and we'd go through and transcribe what happened, what was said, some of the key things, and put it into this report. This report was then sent, as soon as we'd finished with it, to
20 my project director, who was my immediate manager, and it was then distributed amongst the project leadership team, which is our client, their administrator and the steer co members of the joint venture. So every time they visited, we had a record of it.

25 **MR GISONDA:** And so in some instances, you personally had an interaction with a union on site, in which case you would be typing up your own direct observations?

MR ELLIS: Correct.

30 **MR GISONDA:** And in other instances, you are - are you yourself typing up?

MR ELLIS: Yes, I'm transcribing what they're telling me.

35 **MR GISONDA:** That is, the person who has had the direct interaction?

MR ELLIS: Correct. Generally persons.

40 **MR GISONDA:** Persons. And looking at the right-of-entry document here on page 8, which is dated or it's from 20 February 2024, just remind us, what were the extent or state of works that were happening on site in about mid-February?

45 **MR ELLIS:** So at this stage, we would've had our office being constructed at 1 Town Centre Drive. We would've had also some early works drilling and geotechnical testing and activities out on site happening at that stage. So not a lot of work, but, yeah, mainly just around our site compounds and our office.

MR GISONDA: And you'll see here at the bottom of the page, now this is a - in the middle of the page there, sorry, you've got employer representatives. Because you're not listed there, this is an example of those who did have those interactions, reporting to you -

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MR ELLIS: Correct.

MR GISONDA: - what had taken place. And as you say, that takes place on the day of the interaction.

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MR ELLIS: Correct.

MR GISONDA: And what these notes show at the bottom of the page is after they attend on site, Neil Ferguson introduces himself and asked the union representatives, who are Luke Gibson and Dean Rielly, for copies of their paperwork. Who is Neil Ferguson?

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MR ELLIS: Neil Ferguson is our general site superintendent. So he's the one who's responsible for all of our supervisors and, you know, the construction activities out on site.

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MR GISONDA: And it says there that the union rep stated that the CFMEU did not need paperwork and that they had called Nick Forde, the previous senior HR adviser, who advised that the CFMEU did not need paperwork to enter the site. The CFMEU advised that Nick had said that they could enter site at any time. Did you work on the project when Nick Forde was there?

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MR ELLIS: I know Nick Forde. He had some early involvement when I first started, but, yeah, not a lot of dealings with him on this job.

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MR GISONDA: And then a couple of entries down, at 8.40, Scott Holmberg suggested that John Peter call the cops but was advised that wouldn't - presumably "be" - advisable. Who was Scott Holmberg?

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MR ELLIS: Scott was our site superintendent at that stage, so reporting to Neil Ferguson.

MR GISONDA: And John Peter?

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MR ELLIS: John Peter was our HR and IR manager at that time.

MR GISONDA: And then at 9.02 am, John Peter called Nick Forde to state what Luke Gibson had said: Nick was his mate and he could come onto site anytime. Nick stated he was not Luke's friend and he never has said to Luke that he could come onto site when he wanted. John Peter then advised Luke that this is what was said, and Luke tried to call Nick but he was busy. Nick then called Luke back and confirmed what he said to John Peter. So that resolved that the union had not been

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told by the previous HR adviser that they could come onto site any time they wanted?

MR ELLIS: Correct.

5

MR GISONDA: And consistent with your practice and your understanding of the regulatory regime, you're entitled to ask any union officials for a copy of their appropriate documentation?

10 **MR ELLIS:** We have a legal obligation to collect and ensure that people coming onto the site as entry permit holders are entry permit holders.

MR GISONDA: And this became a common theme, did it not, particularly with Mr Gibson and Mr Rielly, about their non-production of the requisite documentation?

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MR ELLIS: Correct. This sort of became a bit of a running joke at the time when they would keep saying, "No, you know we don't have it. You know we're not going to provide it."

20 **MR GISONDA:** Then the - and at page 12, this is a continuation of the report, some more details of what took place. At the bottom of the page, it says:

"Neil Ferguson consulted with the project director and decided to shut the site down and all office staff were asked to vacate."

25

Do you remember why that decision was made?

30 **MR ELLIS:** It was just general disruption. This was our very first interaction with the CFMEU. They came through quite loud into our office environment, deliberately trying to disrupt us and cause disruption, trying to find things that they could stop us from working from. So rather than waiting for them to make the call, both Neil and our project director at the time made the call to shut the site down and send people home for the day.

35 **COMMISSIONER:** What date was this?

MR GISONDA: This is 20 February.

40 **MR ELLIS:** Yeah. Unfortunately those early reports, we didn't have a date on the actual form, but they are date-stamped on our Sharepoint.

MR GISONDA: And I'm getting those dates, Commissioner, from paragraph 39 of the statement.

45 **COMMISSIONER:** 20 February. Which year again, sorry?

MR GISONDA: 2024. And then over the page at page 13, just the last entry there, again, it says:

5 "Neil Ferguson consulted with the project director and decided to shut the site down. No notices issued by the CFMEU and said they will be back if the issues aren't resolved. CFMEU did not ask us to demonstrate that any of the actions had been closed. And then Luke Gibson of the CFMEU mentioned that he would elevate the issues to the minister."

10 And how would you describe the types of issues that were being raised by the CFMEU during this visit? You've got a list of some of them there in relation to the Pioneering Compound, just above this entry here. You might want to bring that up. Just the top half of this page.

15 **MR ELLIS:** So none of these are imminent safety risks to somebody having an immediate health and safety issue. These are what I would call generally low-level-type things that are easy to pick up in any office environment. Any construction site, you will find from time to time electrical cords are not tested and tagged appropriately, or first-aid kit, like it shows there, was not easily accessible. It was there, just not accessible. Yeah. Most of those issues that are on the screen there were what would I call relatively minor issues, but because of the disruption that was caused, because they caught us a little bit by surprise, the decision was just made to shut it down and that way they would go away, which is what they did.

25 **COMMISSIONER:** That way what would happen, sorry?

MR ELLIS: We shut it down and that they would go away. And that's exactly what happened. Shortly after we shut down the site, they left.

30 **COMMISSIONER:** How do they get on? It's a construction site, but you don't have a fence around it?

MR ELLIS: No, this is our main site office compound. So we have fences around it, but obviously because we have people coming in and out all day, we have open gates where people can drive in and out, and it's - it's one of the hardest things to do in a long, linear construction site is to ensure security across eight kilometres of project plus a site office, and having a gate that is only accessible to a few to a site office means we can't have visitors and other people come in very easily. So we have to leave it open.

40 **MR GISONDA:** And the following day, on 21 February, at page 14 of the bundle, you have - this is the following day, and you'll see there that on the bottom half of this page, at 7.30 am, Luke Gibson and Dean Rielly from the CFMEU arrive at the office again, and they were observed taking photos, and then they drove away before any joint venture reps could meet with them. Was this something that either you
45 yourself saw or had reported to you was taking place in relation to the project, that is,

that the union officials would from time to time drive up to the project and take photos?

5 **MR ELLIS:** It was a common thing. We had people who would see them and make phone calls to our superintendents and then it would funnel through to me, and then we'd have to take action at that point once we became aware of it. But yeah, everyone became very alert and aware to a black Ford Ranger, which is what Luke Gibson drove, and he was forever driving in and out of sites or into the office compound without any notice, without any calling up, and notifying people that he
10 was present on site. It was quite common.

MR GISONDA: And you see here at 7.50 am that the three joint venture representatives arrive on site and they find both Dean Rielly and Luke Gibson present, and that prior to them arriving, Dean and Luke had forced their way onto the
15 site by opening a closed gate. So there was some sort of gate, was there, that led into the office compound, but it was relatively easy -

MR ELLIS: This was actually offsite. So this was out of our office and actually onsite at gate 2 on our site.
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MR GISONDA: Right. Now, on this same day -

COMMISSIONER: This is 21 February?

25 **MR GISONDA:** 21 February - you say at paragraph 45 of your statement - because you say in that report we just looked at that you joined the conversation at about 10.30 am, but you say here at paragraph 45 that during the conversation, Mr Rielly commenced recording a conversation with you using a body-worn camera that had been placed on the desk, and he then said that he had entered site under section 81(3)
30 of the Workplace Health and Safety Act and did not need a federal permit. Now, what do you remember about what was discussed during that conversation with Mr Rielly?

MR ELLIS: So that conversation was around a lot of the site set-up that we had for
35 our compound area, particularly around - they were concerned about our water tanks that we had onsite feeding water into our toilets and also into our kitchen area. They were concerned about some of the electrical set-up we had in our generators and gen sets that we had on site as well. And a lot of that conversation was them trying to find information, and I kept saying I couldn't provide them with information until
40 they provided me with their relevant permits to enter the site; that I had no authority to be able to provide them with any information under the Act, and at that point is when he mentioned that they'd come in under section 81(3) of the Work Health and Safety Act, and mentioned they didn't need to have federal permits for that, which I'd dispute. And because the conversation kept going round and round and round in
45 circles, he got frustrated and put his camera on the table to start recording me at that point, saying, "I won't be providing you with any information until you provide me with relevant permits."

COMMISSIONER: Provide me with what, sorry?

MR ELLIS: Until they can provide me with relevant permits.

COMMISSIONER: You said there was something you disputed. What was that?

MR ELLIS: That we disputed the 81(3) requirement. He believed he didn't need a federal permit under the section 81(3), whereas I believe we did, and there's a Federal Court ruling that Fulton Hogan had a number of years - a year or so earlier, prior to that date, where they had proven in the Federal Court that section 81(3) required permit holders to be federally listed.

MR GISONDA: And at page 19 of the bundle of documents, at the bottom of the page, there's a note of how that conversation played out, and TE - that's yourself - advised that you would not be able to respond to their concerns until they were able to provide paperwork, including the Fair Work entry permits, and both Dean and Luke stated that they did not have these permits and then advised that these issues were serious and that the joint venture were not taking their obligations seriously. And then again you advised - that is, TE advised - that unless they provided a federal permit, their entry today would be considered an illegal entry and you could not legally provide any information to them. And then, over the page, you say this went backwards and forwards.

MR ELLIS: Correct.

MR GISONDA: There was quite a bit of argument about that, and then Luke removed himself from the meeting room and entered Gerard O'Connor's office. And who's Mr O'Connor?

MR ELLIS: He is the former project director on the project, my immediate boss.

MR GISONDA: And he advised him that you, Mr Ellis, were not willing to discuss their concerns, and Mr O'Connor then advised the union the same thing that you were advising, which is that they were on site illegally, to which Mr Rielly said he didn't need a permit because of section 81(3).

COMMISSIONER: Just remind me, Mr Gisonda - it might be a question for Mr O'Grady - Mr Rielly and Mr Gibson were both removed or made redundant or had their employment or officership, whatever it was, terminated by the Queensland state union and the Queensland/NT branch of the federal union. Is that right?

MR O'GRADY: Yes. So as you might recall, Mr Rielly was subsequently engaged by the New South Wales branch, but Mr Gibson had his employment terminated on 8 November of 2024.

COMMISSIONER: So not long after this, the end of this year?

MR O'GRADY: Yes.

COMMISSIONER: And when did Mr Rielly go?

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MR O'GRADY: Just bear with me. He was a Queensland organiser until 22 July 2025, when he was made redundant.

COMMISSIONER: 2025 made redundant. But he's now working on solar farms or wind turbines or something in New South Wales; is that right?

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MR O'GRADY: I'm not entirely sure as to what he's doing, but he's currently employed by the New South Wales branch.

COMMISSIONER: By the New South Wales branch. But Mr Gibson is not currently employed by another branch of the union?

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MR O'GRADY: As I understand the position. And Mr Rielly has subsequently applied for and has been granted a right-of-entry permit by the Fair Work Commission.

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COMMISSIONER: How long ago was that?

MR O'GRADY: It was sometime this year, in circumstances where the CFMEU was upfront about his history but argued for him to be issued a permit, and the Commission decided to issue him a permit in all the circumstances. So there's a degree of an independent umpire having looked at the issue and made a determination.

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COMMISSIONER: Was there a contradictor?

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MR O'GRADY: I don't know. I'm not sure, is the short answer.

MR GISONDA: The Commission has published reasons for its decision, so maybe we'll track that down over the break or some time today and have that tendered into evidence, just so you have it, Commissioner. Now, you say at paragraph 46 of your statement that video of this conversation that was being recorded by Mr Rielly on the body cam then found its way onto the CFMEU's Facebook page about a week later; is that right?

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MR ELLIS: Correct.

MR GISONDA: And perhaps we'll first play the video and then I'll ask you some questions about it. So the video is TE-25 to the statement.

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(Video played).

MR GISONDA: So that video, the reason you weren't responding to the request for information is because, as you said, they hadn't established the threshold point, which was to provide you with the requisite permits?

5 **MR ELLIS:** Correct, and I also knew that they were recording on the camera, and I didn't want to put anything out there that could be used.

MR GISONDA: And then you say at paragraph 48 of your statement that, in your view, it's been heavily edited to make you look inept, and once the video was posted,
10 you say you received many phone calls from people to check in with you to make sure you were okay. And you also say that about a year later, the video resurfaced on Facebook as a reel, and again, you had people reaching out to you to check in on your wellbeing. Just tell the Commissioner how that video made you feel, being published on the internet like that.

15 **MR ELLIS:** I wasn't necessarily happy to see it out there. Something that happens in the workplace I don't believe should be copied and pasted all over the internet.

COMMISSIONER: Well, they were trespassers also, weren't they? You were not
20 allowing them entry.

MR ELLIS: Correct. So it wasn't an accurate reflection of the whole conversation, let alone the issues that were being discussed at the time. I probably was a bit annoyed that it came out. I was probably a little bit upset, but I was more concerned
25 for my family. I was more concerned that it may impact them when we're out just doing some shopping or something and somebody sees that video and then wants to have a go at me or my wife or my kids. Probably had a bit more of a - that was the part that probably I was more worried about. I had great support from within the industry. I had lots of people contact me afterwards saying, you know, "It's all not
30 right. It's not true. We know it's not true. We know that, you know, you're doing the right thing." But it was more that other side of it, around, you know, somebody having a crack at me out in public or, you know, having a go at my wife and kids.

MR GISONDA: And you say that a reason for those fears, at the end of paragraph
35 48 on page 10, was given some of the comments that then surfaced on the Facebook page. Do you remember now the nature of some of those comments?

MR ELLIS: They were largely around, "Oh, this guy doesn't know what he's doing. You know, the project's crap. It's not - it shouldn't be, you know, handed to Fulton
40 Hogan. It shouldn't be up and running by these guys. They don't know what they're doing." You know, some of them were targeted towards me about, you know, me not being the right guy to run the job and all that sort of stuff. So they were the sort of nature of the comments that I was getting at the time. I tried not to look at them, actually, to be honest, but that was what I saw.

45 **MR GISONDA:** Then on 22 February, which is the following day from the previous visit that we looked at - we'll go to the report first, which is at page 30 of the bundle,

and you'll see there, from the approximate arrival time to the departure time, they were on site for a bit over two hours. And your name's not there as an employer representative, so you weren't - you didn't personally witness this event, but you were told about it?

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MR ELLIS: Not at this time, yeah.

MR GISONDA: And if we go over the page, about the middle of the page, you'll see an entry there at 11.20. It says:

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"Luke and SB walked through to the toilets."

And Luke is Mr Gibson; correct?

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MR ELLIS: Correct.

MR GISONDA:

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"Luke used the toilet and urinated on the floor. Luke and SB then queried the floor drain plug next to the urinal, stating that it didn't meet the plumbing code."

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And if we go back to paragraph 53 of your statement, on page 10, you say there that at one point during the inspection, Mr Gibson was observed in the toilets urinating on the floor, which led to a query about the floor drain plug next to the urinal, and then afterwards you had to engage cleaners; is that right?

MR ELLIS: Correct.

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MR GISONDA: And that's to clean the urine that Mr Gibson had put on the floor of the toilet, and you say that you believe - why do you believe he did that?

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MR ELLIS: So Mr Holmberg and Mr O'Neill, our safety manager, escorted him and Mr Bravo around the site that day. So if I go back a step, Mr Bravo came in with a valid permit that day from the ETU to query to query some of the electrical issues on site. They were looking around the toilet area. They looked at this floor drain on the site, they being Mr Gibson and Mr Bravo. And from what I was advised and told by Mr Holmberg and Mr O'Neill, that Luke said that plug is meant to be connected to the sewerage tank underneath the building, and the guy said, "No, it's not," and he made a point of it by urinating on the floor at that point.

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Mr Holmberg and Mr O'Neill, once they saw what he was doing, walked out of the toilets so that they could not be present when he was actually there doing it, because they'd heard of similar things happening on another project before.

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COMMISSIONER: They heard what, sorry?

MR ELLIS: They'd heard of a similar situation occurring on another project.

MR GISONDA: And is that a reference to, at paragraph 54 of your statement, the Peter Cullen incident on the Cross River Rail?

5 **MR ELLIS:** Correct.

MR GISONDA: And he's the gentleman who was accused by the CFMEU online and so forth of being - I think they gave him the name Peeping Pete?

10 **MR ELLIS:** Correct.

MR GISONDA: Because he was - he had been in the bathroom with the union organiser, and they said that he'd followed them into the toilets.

15 **MR ELLIS:** Correct. So these two both were aware of that. They excused themselves so they couldn't be accused of anything like that.

MR GISONDA: And then at the bottom of paragraph 55, you remember the cleaner confirming to you that she had to clean the floor following Mr Gibson's visit?

20 **MR ELLIS:** Correct.

MR GISONDA: At page 38 of the bundle, this is a visit now that took place on 23 February.

25 **COMMISSIONER:** This is the fourth day in a row of you having a right-of-entry issue.

MR ELLIS: Pretty much, yep. So the first day or two they didn't come under permits, then they brought in their mate Stephen Bravo from the ETU, and then they brought in Alan Temporini from the Plumbers Union so they could come in under some form of legal process.

COMMISSIONER: But I don't understand how that gets Mr Rielly and Mr Gibson in. It gets Mr Bravo in.

MR ELLIS: Correct. We queried that at the time, Commissioner, and they said, "No, we're still coming in anyway," even though we told them they weren't welcome.

40 **COMMISSIONER:** When you say "they", Mr Rielly and Mr Gibson?

MR ELLIS: Correct.

45 **MR GISONDA:** And then at the bottom of page 38, just at 10.50, this is just, again, the same point, because today, it's just Mr Rielly and Mr Gibson turning up. They don't have anyone else with them. Mr Rielly entered the reception area. He started asking about what we have done to rectify the alleged issues raised over the past few

days. Mr O'Neill explained that he had a legal right to request a right-of-entry form, and Mr Rielly stated that we know he doesn't have that shit, don't waste his time. So there was just a complete disregard for the requirements to issue - to have a permit and issue a right-of-entry documentation?

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MR ELLIS: Correct. Yep. Every time we asked - every time they attended site, we asked for their permits, as we're legally obliged to do, and every time we just got responses similar to that back.

10 **MR GISONDA:** And then earlier that day, on 23 February - this is at page 45 of the bundle - you're copied in to this email from Mr Holmberg, who says that he received a phone call from Mr Gibson at exactly 5.30 am this morning. He said he had met with the local Greens member of Parliament by the name of Jonathan. He said this local member had said EVE - and just tell the Commissioner the role of EVE on the project?

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MR ELLIS: So EVE is an acronym for Endeavour Veterinary Ecology, and they are the koala spotters that are engaged by TMR on the project. We don't have a contractual relationship with them. And their job is to go and spot the koalas and undertake health checks on koalas and, if need be, relocate koalas.

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MR GISONDA: Now, he said that his local member had said EVE and the joint venture had not handed over certain documents and that the local member would be looking to place a green ban over the entire project. I told him I couldn't help him as EVE worked for TMR and he would need to talk to them. The phone call only lasted one minute. And then Mr Holmberg says he believes he was actually referring to the Brisbane Greens Party mayoral candidate there. Was this - did you get a sense in your dealings with Mr Gibson from time to time that he would say things that perhaps didn't make a lot of sense?

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MR ELLIS: Yes. He - he had a very short attention span, I guess you could say. He would speak for a moment or two, get quite upset, pace around the room, come up with statements like this, like, "A Green mayoral candidate has no say over our project or the delivery of the project." So he'd ring up, make a statement like that and then hang up. He was - he was a little bit different.

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MR GISONDA: And at paragraph 58 of your statement, you say that following a visit by Mr Gibson on 23 February, you received a complaint from the receptionist, who stated that Mr Gibson had reached over her desk and grabbed copies of the project policies. Mr O'Neill tried to grab the policies back, and subsequently a page was torn. How did the receptionist then react to that, and what happened?

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MR ELLIS: So I wasn't there at the time, but my understanding was she was quite upset at what had happened. She took some medical leave the next day to regather herself, and then upon that, I was advised by my project director that she was looking to transfer out of that role, out of the role of receptionist.

45

MR GISONDA: And that was because you say there at paragraph 58, she didn't want to have to have further interactions with the CFMEU?

5 **MR ELLIS:** That's my understanding at the time, that she was advised - she was - the front line essentially. They'd walk into the office, they'd walk past her, they wouldn't sign into the visitor's book, they'd walk straight into the office unannounced and just wouldn't follow standard sort of office protocols, and here she was out the front by herself with these individuals. So from what I understand at the time, she put that request in.

10 **MR GISONDA:** And then on 29 February - this is at page 49 of the bundle - this is another report of an incident with Mr Gibson. You see there at 9.20 that Hayden - do you know who Hayden -

15 **COMMISSIONER:** Sorry, what's the date again?

MR GISONDA: Sorry, this is 29 February.

20 **COMMISSIONER:** So we've jumped forward six days.

MR GISONDA: Jumped forward - yes. Hayden, who I believe is the surveyor -

MR ELLIS: Yep.

25 **MR GISONDA:** - stated that he observed the guy, and the guy is Mr Gibson, break off a partly broken branch of a tree and then pulled the branch out onto the track, blocking access along the track. Do you know what that track was?

30 **MR ELLIS:** It would've been - I think at the time it would've been one of our access tracks that we'd established through the site so we could move and do geotechnical sampling.

MR GISONDA: And do you know why Mr Gibson did that?

35 **MR ELLIS:** I don't know.

MR GISONDA: And then at 9.29 am - perhaps this is another example of some of the erratic behaviour that you witnessed from Mr Gibson - it says that:

40 "SH...

That's Mr Holmberg:

45 "...found Luke driving on the site at gate 1. Mr Holmberg advised that he had called up at this point, had no response on the two-way and continued to drive on. At this point, he found Luke and Jamie Porter in the vehicle. Jamie said hello to Mr Holmberg and a short discussion occurred. Mr Holmberg then asked Luke what was

he doing on the site, and Luke stated that he 'was checking on the koalas and seeing who is representing them'. And he then handed Mr Holmberg a CFMEU membership application form."

5 And then over the page, at 9.50 am:

"Luke and Jamie were observed stopped under Bridge 5. Luke and Jamie stated that there was a lack of security to Mr Holmberg. Mr Holmberg stated that he would not answer any questions until he has seen relevant paperwork for their site entry. Jamie
10 looked at Mr Holmberg and smiled and said what sort of paper - a paper bag? He then proceeds to put his arm out the window with a gesture of handing Mr Holmberg a bag and they stated that that won't be providing any paperwork."

15 And so, again, is that consistent with the sort of strange behaviour that you saw from Mr Gibson from time to time?

MR ELLIS: Correct, yeah. He would just randomly turn up on site and drive through the site. He would, you know, turn around when we found him and then drive off without saying too much or barking out a comment about the koalas. Yeah.
20 There were times there where, because we had a number of different gates and we knew that he was in the area, we would do our best to try and work out where he was going and which gate he was going to go to next. So at times we would even try to, you know, follow him at a close safe speed on the roads to try and find out where he was going so that we could be there and present when he arrived on the site.

25 And there was times there even when I was driving in one of the vehicles behind him, he's just erratically turning, you know, doing U-turns in the middle of live traffic and acting quite, you know, irresponsible, I think, at that point. So, yeah, we weren't - we weren't trying to hound him or harass him. We were just trying to get to
30 the next point so that we would be present to try to stop him from entering the site if we could.

MR GISONDA: And then at page 64 of the bundle, this is a report from 7 March, now, of 2024, and you're present this time with Preston Chambers and Mr Ferguson.
35 And at approximately 10.10, Mr Gibson was observed parked in the front car park adjacent to the reception area, and Mr Chambers advised yourself that he was there, and then you walked to reception, where Luke was already waiting. And then just what do you remember about this incident, starting with him saying that he was preparing a media release and a briefing for the minister - this is at the bottom of the
40 page here. Just tell the Commissioner what you remember about this particular incident.

MR ELLIS: So again, it was another one of these unannounced visits where he walked into the office. His intent on this visit was to try and get some information
45 from us that he said he was using to prepare a media statement about the project. He was trying to use the statement as a means of being able to inform people that we weren't paying our contractors BPIC rates. Again, I don't know enough about

whether that's true or not, but that was what he was saying at the time, and he was there specifically to try and get the details of our project director, which was Gerard O'Connor, his phone number and name and details, as well as Neil Ferguson, who was our project general superintendent at the time.

5

So came in, he just walked into the office, then started to try and find information off our noticeboards and off our posters that we've got up around the site. We asked him to leave. I asked him to leave a couple of times. I asked him for his papers as well. And again he just ignored me and made comments like, "I own this office," and kept on walking through the office, causing disruption.

10

MR GISONDA: And so perhaps we will now play annexure TE-26, please.

(Video played).

15

MR GISONDA: When he was storming through the office like that?

MR ELLIS: My only thoughts were to try and get him out of there as quickly as possible with the least amount of damage to our people.

20

MR GISONDA: When you say "the least amount of damage to your people", what was your concern there?

MR ELLIS: I didn't want any of our people to have to face him and deal with that sort of behaviour, so if it was just me and Neil, who was our general superintendent who was there, and Preston, who was filming it, then that was fine. I could minimise it, but I just don't want him to go and start having conversations with project managers or with engineers or other safety people in the office and starting to inform them of his opinions.

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MR GISONDA: And at paragraph 59 of your statement -

COMMISSIONER: Why don't you - this is the seventh time this had happened at least, and it's probably skipped over things, but four times in February - five times in February. We're up to 7 March, so a sixth time this has happened. Why haven't you got some security people there to just march him out?

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MR ELLIS: We - we were - we were uncertain, I guess. We had talked to police about it at one stage, and saying what are our rights, particularly after that video, and the police said, "Yeah, we can help, but we don't have the resources available on the coast to do it." As far as security goes, we hadn't got to that step yet. We were still early days on our project. It was possibly something we would've considered a bit later on. We did have security at night-time on the project, but that was more for theft and break-ins. But during the daytime it's a lot harder. We have so many gates that are open and so many ways that he can come in and out of the site, and there was evidence, as I've put forward, where he even, you know, opened gates that were closed anyway. So security may or may not have done a lot at that point.

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But following that instance, we did install RFID card swipe access on the front doors. We put a duress alarm in front for our receptionist. We put a video recording device in our meeting rooms where we met with them. So we had a little bit more security in that sense, which we beefed up after that - that visit. But, yeah, we hadn't got to the point of full-time security. The cost is quite a lot, so -

MR GISONDA: Is that a convenient time, Commissioner?

10 **COMMISSIONER:** Yes. We will adjourn till 11.40.

<THE HEARING ADJOURNED AT 11.30 AM

<THE HEARING RESUMED AT 11.43 AM

15 **COMMISSIONER:** Yes. Mr Gisonda?

MR GISONDA: Thank you, Commissioner. I believe a copy of the application by CFMEU for an entry permit has been provided to you over the break. Do you have that handy, Commissioner?

COMMISSIONER: I do.

25 **MR GISONDA:** The medium neutral citation is [2026] FWC 1876. It's a decision of Deputy President Butler of the Fair Work Commission. And it's a decision granting a right-of-entry permit for Mr Rielly. The contradictor was the Fair Work Ombudsman, or at least at paragraph 11 it says that that office wished to be heard in relation to the application, and they opposed the application. The application was supported by a statutory declaration of Mr Crosby, who is now the administrator of the CFMEU, having replaced Mr Irving. It was a statement from Mr Rielly himself and a report of Mr Brian Lacy AO in support of that application, and as my friend Mr O'Grady said, the application was granted.

35 **COMMISSIONER:** Mr Lacy was also previously the - I might not have the right word - the administrator of Christmas Island. Is that the right phrase?

MR O'GRADY: Yes, of Christmas Island and the Keeling Islands.

40 **COMMISSIONER:** And he - there was a report of Mr Lacy and a statutory declaration of Mr Crosby in favour of Mr Rielly?

MR O'GRADY: As I read the decision.

45 **COMMISSIONER:** And I don't know Deputy President Butler. Is she or he a recent appointee to the Fair Work Commission?

MR GISONDA: Yes, that's Ms Terri Butler, a former member of the Federal Parliament. I believe she replaced Wayne Swan but then lost the seat in 2022 to Mr Chandler. His name escapes me now, but he was the member for the Greens Party, and that's that seat.

5

COMMISSIONER: Right.

MR GISONDA: So she would've been appointed at least some time after the 2022 federal election.

10

COMMISSIONER: And it was contested by the Fair Work Ombudsman?

MR GISONDA: Yes. She was appointed in September 2024.

15

COMMISSIONER: Ms Butler was appointed in September 2024?

MR GISONDA: Yes.

COMMISSIONER: Right. Do you want me to mark that?

20

MR GISONDA: Yes. I think that can be marked as CA-9.

**<EXHIBIT CA-9 DECISION OF DEPUTY PRESIDENT BUTLER FAIR
WORK COMMISSION [2026] FWC 1876**

25

MR O'GRADY: Before my learned friend moves on, this is obviously a matter for submissions in due course, Commissioner, but can I direct your attention to the reasoning, particularly at paragraphs 94 through to 97, and with a focus on paragraph 96, where Mr Crosby's attitude to the application is captured by the Deputy President.

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COMMISSIONER: He has been through deradicalisation training; is that the gravamen of it?

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MR O'GRADY: Well, the gravamen of it is (a) he's done that, but (b) Mr Crosby has made it very clear that if he engages in inappropriate behaviour, his employment will be terminated.

COMMISSIONER: Yes, that's at 96. And 95. Yes.

40

MR O'GRADY: Yes.

COMMISSIONER: Thank you.

45

MR GISONDA: Thank you, Commissioner, and thank you for your patience, Mr Ellis. Could I ask you now about the - actually, I'll take you to page 76 of the bundle. This is 14 March now, so a week after that incident that we just saw that was

videotaped of Mr Gibson going through the office of the joint venture on site. At the bottom of this page at 904, a phone call is received from Mr Gibson, who:

5 "...stated that he was on his way down to the project to see if we were working in the rain. Mr Holmberg advised that we were working as it was not raining on our project site. Mr Gibson implied that it was raining at the Acciona site in the north."

That would be the northern section of the Coomera Connector?

10 **MR ELLIS:** Correct, yep.

MR GISONDA:

15 "Luke then stated that there was a media article coming out tomorrow and that he had left Mr Holmberg's name out of the article. Luke stated that it was about the joint venture not complying with BPIC and that he had some unnamed emails dictating how we were trying to avoid BPIC, and Mr O'Connor's fingerprints were all over it. He then said that now that he knows this, that he won't be forgetting about Gerard in the future. He mentioned that he had received copies of emails that had been sent to
20 contractors."

Are you aware of whether any such media article was published at around that time in relation to the joint venture not complying with BPIC?

25 **MR ELLIS:** I'm not aware of any article being published at that time.

MR GISONDA: Then on 16 April, which is at page 101 of the bundle, Mr Holmberg received a mobile phone call from Mr Gibson, who briefly spoke about outstanding payments owing to a number of workers. Mr Holmberg assured him that
30 back payments were being sorted and would be paid in the near future, and then Mr Gibson said he primarily called to enquire about the project's approach to PFAS. He said that at some point, he intended to visit the project to discuss PFAS contamination generally to ensure that workers were not exposed to same. What's
35 your awareness of the PFAS risk that existed on site, if any?

MR ELLIS: The PFAS risk was very, very low on the project. It was present. It was present due to former activities by Gold Coast City Council with a leaking sewerage pipeline through that area of the site. The levels themselves which we had assessed through various independent studies identified that the levels were present but they
40 were below human health risk levels, and as a project, we had a requirement to manage the PFAS-contaminated material. So we made the decision to remove it off the project anyway, even though it wasn't a health risk at that point.

MR GISONDA: Now, I might now play the audio file marked TE-15A, please.
45 (Audio played).

MR GISONDA: Mr Ellis, what was the reference to camping out and having a gazebo?

5 **MR ELLIS:** That was a constant threat we had from Luke, was once we started clearing trees, that he would like to have a permanent presence on the site, and he knew that we wouldn't be giving him an office or anything, so he'd set up a camp site on the site so that he could monitor and watch what we were doing at all times.

10 **MR GISONDA:** Could I ask you now to go to page 117 of the bundle. This is now a record of Mr Gibson and Mr Rielly attending the site on 24 June 2024. Again, in the middle of the page, they entered the site without providing any permits when asked. And then at the bottom of this page, it says:

15 "Did the union officials take reasonable care for their own health and safety?"
And the response is that:

20 "A number of times, Dean and Luke were asked to move away from machinery when they were walking into swing paths of the excavator. They did not move and the excavator was unable to commence work."

And they were also observed kicking up dry concrete slurry with their feet and creating clouds of dust that potentially contained RSC. What's RCS?

25 **MR ELLIS:** Respirable crystalline silica.

MR GISONDA: And then over the page in the third entry, they were observed driving on site without lights flashing through what was Gate 2. Was that a safety requirement, was it, on the site?

30 **MR ELLIS:** Yeah. We have a project rule, as do most construction sites, that most civil construction sites require light vehicles to have an orange flashing light on top of them so that they can be observed from a distance. There's other requirements. They meant to have a UHF radio with them at all times, a first-aid kit and a fire
35 extinguisher.

MR GISONDA: Then over the page at page 119, at the entry under 8.14 am in that second bullet point, this is something that you've referred to a number of times now, but it's the request for permits and a request for their reason being on site, to which
40 Mr Rielly replied, "You know we don't have permits." And the position of the joint venture at the time was to - is it fair to say that despite that requirement, they were nonetheless entering the project site?

45 **MR ELLIS:** Correct.

MR GISONDA: And at 8.31 am, the second bullet point, they were asked if they had right-of-entry forms, and they both responded that they don't need any of that.

And when asked again, they stated they can't give what they don't have. And I think you'll see on this day they were on site all day, because the last entry is at 3.05 pm. So despite having no permits, despite not producing any right-of-entry paperwork, they stayed on the project site all day; is that right?

5

MR ELLIS: Correct. Work Health and Safety came out onto site as well.

MR GISONDA: Then can I just ask you about 11.40, which is some comments from Mr Rielly towards Mr Gibson that were loud enough to ensure that KO was in earshot, and that's Kris Orford. Is that KO?

10

MR ELLIS: Correct.

MR GISONDA: And what was Kris Orford's role on the site?

15

MR ELLIS: Kris is the superintendent on our northern portion of the project.

MR GISONDA: And what they said to each other were, first bullet point, Neil - that's Mr Ferguson?

20

MR ELLIS: Correct, yep.

MR GISONDA:

25 "Nicknamed Captain Corruption and having him here will make the project Snowy 3.0."

Do you know what that reference to the Snowy project was?

30 **MR ELLIS:** I can only have a guess that it would be that it would lead to increased costs and overruns.

MR GISONDA: And Fulton Hogan was on that Snowy 2.0 project; is that right?

35 **MR ELLIS:** I - I don't know.

MR GISONDA: FH, this is the next bullet point, that's Fulton Hogan; is that right?

MR ELLIS: Correct.

40

MR GISONDA:

"Fucking Hopeless, cannot make money on any job down south even though they are a preferred contractor."

45

Just pausing at that point, did you understand at this particular time the CFMEU had any campaign on foot against your immediate employer, JF Hull?

MR ELLIS: No.

5 **MR GISONDA:** Did you understand that they had some sort of campaign on foot against Fulton Hogan?

10 **MR ELLIS:** I believe there was, as a result of that Federal Court ruling with regards to the section 81(3) entries. Luke Gibson was actually named as one of the people in there and found to have breached the law, and I believe he then targeted Fulton Hogan as a result.

15 **MR GISONDA:** And in that Facebook post, the Facebook video which we watched before the break, with yourself and they superimposed the sound of the crickets when you weren't answering the question, they refer to the project as a Fulton Hogan project; is that right?

MR ELLIS: Correct, yeah.

20 **MR GISONDA:** Then the next bullet point is:

"Coomera Connector has already asked the taxpayers for an extra billion dollars after this job was won at 685 million."

25 And Luke said:

"Taxpayers are having to fund corruption. Civil construction is full of corruption."

Dean says:

30 "Imagine buying a house and then this happens. Gesturing the works we are doing and the road corridor. 'Bloody highway in your backyard, how do you sell now?'"

35 And then something inaudible was said about koalas. Something inaudible was said about you. Something inaudible was said about Mr O'Connor. And then:

"Best part about this is everyone on the job will come around."

Do you know what that was a reference to?

40 **MR ELLIS:** Only thing I can put it down to is that we'd come around and become a CFMEU-aligned project.

45 **MR GISONDA:** Then at approximately 12.50, which is over the page at 122, there's a reference to a conversation with the traffic controller, and at this stage, WHSQ - representatives of WHSQ had arrived, and one of the officers who had come from WHSQ was a man by the name of Isaac. Do you happen to know what Isaac is at all?

MR ELLIS: Isaac Avery is a work health and safety senior inspector, I believe.

MR GISONDA: And in that third bullet point there, it says:

5

"Everyone walked down towards the gate entrance, and at that stage Luke was present in this location and mentioned that we were leaving to go back to the office to discuss the demolition query."

10 And we'll come to demolition in a moment:

"JON asked if the inspectors were going back to 1TCD for a discussion on demolition works and how this would apply to the CFMEU officials, given that they had not provided us with any permits or paperwork for the visit, and that in his
15 opinion the visit was an illegal entry. Isaac stated that they don't rule on unlawful entry anymore."

Was that consistent with your understanding that WHSQ didn't involve itself in questions about whether union officials were on site lawfully or not?

20

MR ELLIS: No, not - I'm not - apart from that one time, I've not heard that before.

MR GISONDA: So that would be news to you, if that were the case?

25 **MR ELLIS:** Yep.

MR GISONDA: And then at the bottom of this page, 1.40 pm, Luke - that's Mr Gibson - discussed with KO - that's Kris Orford:

30 BPIC and best practice principles not being enforced. Cost of the project blowing out and not being a result of BPIC as we are not paying it and neither are our subcontractors."

And then the next bullet point, the very bottom of the page:

35

"FH and BMD are the last targets of CFMEU to get them in line with the other major contractors."

So FH, that's Fulton Hogan?

40

MR ELLIS: Correct.

MR GISONDA: And BMD is another civil contractor; is that correct?

45 **MR ELLIS:** Correct. Yep.

MR GISONDA: And on 24 June 2024, were you aware that at this time, there was also a campaign by the CFMEU on the Centenary Bridge project?

MR ELLIS: Yep.

MR GISONDA: That BMD was in a joint venture with Acciona?

MR ELLIS: Yep, I was aware.

MR GISONDA: And at page 127, continuing on with this report towards the bottom of the page, part 4, psychosocial impacts as a result of the union entry, the last entry there:

"Both Justin and Tonga experienced aggressive behaviours from Mr Luke Gibson."

And was that consistent with your interactions with Mr Gibson? Was he aggressive when he came on site?

MR ELLIS: Yeah. He was always like what you saw in the video before: loud, aggressive, not a professional in his dealings, would walk past people, grab paperwork. Yeah.

MR GISONDA: Now, I saw as you came into the courtroom you're a tall man yourself, but he's also quite physically intimidating as well. Is that -

MR ELLIS: Yeah, he towers over me, and he's got a substantial amount of weight more than me too. Yes.

COMMISSIONER: This report for 24 June is very long compared to the other ones, 12 pages. Is that because you couldn't get them to leave site? It runs from 8 am till after 2 o'clock.

MR ELLIS: There were a number of issues that day, Commissioner, with some of the issues that they were worried about. They've called work health and safety in to undertake an inspection on that day, and it was a - it was a debatable topic around the demolition of a particular bridge structure. So Work Health and Safety Queensland inspectors went backwards and forwards between my safety manager and superintendents on site and the CFMEU trying to resolve the concern, or concerns, and at the end of the day they still couldn't resolve all the concerns.

MR GISONDA: Perhaps I'll ask you now about the demolition issue. So at page 11 of your statement, paragraph 62 onwards, there were works taking place on the Sage Street Bridge at Helensvale. Is that correct?

MR ELLIS: Correct.

MR GISONDA: And that's where the demolition issue presented itself?

MR ELLIS: Correct. Yeah.

5 **MR GISONDA:** And perhaps you might just briefly explain what the CFMEU's position was on this question of demolition.

10 **MR ELLIS:** So this particular bridge is an existing bridge that goes over the heavy rail and light rail in that location, and our job is to remove the access road up to the bridge abutment and to extend the bridge and put in some extra spans on that bridge to allow the Coomera Connector to go underneath it. So in order to do some of that work, we had to remove the release slab, which is the slab that connects the road and the bridge together and ties it all together, and at the same time pull the abutment wall down that sits underneath the bridge to enable us to be able to then widen the bridge spans through that area.

15 So the concerns that CFMEU raised was firstly one around - that we were generating RCS dust, which is not a good thing to have. It gets into lungs of people, creates silicosis potential. The next issue they had was that the relief slab that we were cutting up and removing, they deemed that to be demolition activities and therefore
20 we required a licensed demolition contractor to do that work, and they believed that our contractor who we had in place wasn't a licensed demolition contractor, which they weren't, because we disputed that it was demolition work; it was a concrete slab on the ground, and we disputed it.

25 **MR GISONDA:** And at the time that this issue was being debated on site, the CFMEU published a Facebook post about it; is that right?

MR ELLIS: Yeah. I think it was a day or two later, yep.

30 **MR GISONDA:** And if I can play annexure TE-27, please.

(Video played).

35 **MR GISONDA:** And what's your response to the various matters that were raised in that Facebook post?

MR ELLIS: So, firstly, on the issue of RCS, work health and safety ruled straightaway or pretty close to after arriving on site that there was no RCS issue. With regards to the demolition of the relief slab, which is what you saw in the video
40 there -

COMMISSIONER: Can you just remind me what an RCS issue is?

45 **MR ELLIS:** The generation of concrete dust from the concrete sawing that we had done. The concern was that it could become airborne, but we were using tools that wet down the dust so that it doesn't actually become airborne. With regard to the concrete slab that you saw in that video, which is the relief slab, we were using a saw

to cut it and then an excavator to lift it out of position. That slab actually sits on ground level. It's actually on - just above the soil. So there was no risk of anything falling down to anyone beneath us. Our view was that it was not demolition work. They believed that it was demolition work.

5

Work Health and Safety brought in a civil engineer, one of their own internal civil engineers, who inspected it the next day and advised that that slab and the removal of that slab was not demolition work but the abutment wall, which is described in that video, would be deemed demolition in their eyes, even though we view it as deconstruction. Essentially, that wall is held up with straps that are bound in the soil. Our intent was to expose those strap, pull the soil off the top of those straps and then lift those wall pieces off. So there was no force or energy stored behind that wall where it could collapse when we were deconstructing it. But Work Health and Safety made the ruling that the wall itself would be, but we hadn't got to that point on that day.

15

And they then said to us we had three options. One is we could engage a demolition contractor to do that work. Another option could be that we could become a demolition contractor ourselves and put in the appropriate paperwork to get the licences for it. Or we could put in an exemption for that work because we were deconstructing it. And so we went with the exemption process, and we were able to receive an exemption very quickly from Work Health and Safety, and we were able to continue doing that work in exactly the same way how we had planned the work previously. There wasn't any change to how we were planning to deconstruct it.

25

There is - just also, there is - there is some vague wording in the Work Health and Safety regulation around the definition of "demolition" and also what the demolition of a structure is, and that was also the thing that was leading to some dispute and why the regulator was unable to make an immediate decision out on site, because the definitions under the regulation were quite vague. The other - the other part to it is the regulation and the definition of a structure takes into account a pathway or a roadway, and what we were arguing with Work Health and Safety is if we were to call that demolition, then any time council or any time anyone went and dug up a footpath, they would need a demolition contractor to do that work, and that was not the intent of what demolition is about. So it had the potential to really impact the whole civil construction industry.

35

MR GISONDA: Can I now ask you about - in March 2024, a visit that the project received from WHSQ. This is at page 14 of your statement, and at paragraph 81, you say that it's "a very abnormal attendance from WHSQ on 20 March". And on 19 March, the previous day - this is at paragraph 82 - the project received a proactive unannounced visit from Gold Coast-based inspectors of WHSQ. And that was - that's something that would normally occur on a project like this; is that correct?

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MR ELLIS: Yeah, we've - in my entire time I've been working, there's always been unannounced Work Health and Safety visits. They call them proactive visits if they've got no complaints or anything, and they'll come and have an inspection to see

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what's going on to get a feel for it. I actively encourage them. I think they're positive for both Work Health and Safety and also for us as well.

5 **MR GISONDA:** And on that day a number of issues were discussed but all without incident or any follow-up requirements; is that right?

MR ELLIS: Correct. There was no notices provided or any requirement to provide additional.

10 **MR GISONDA:** And then the following day, on 20 March, you say you received an unannounced visit from Mark Schaumburg from WHSQ, who said that he was from the major project teams directed by Helen Burgess; is that right?

15 **MR ELLIS:** Correct.

MR GISONDA: And you asked why - well, if you look at paragraph 85 of your statement, what was your response or query about this visit?

20 **MR ELLIS:** Yes. So I asked him why would we get a further visit, and his response to me was along the lines of the minister had requested the major projects team undertake a proactive weekly visit of our project.

25 **MR GISONDA:** And you at 86, paragraph 86, asked who the minister was, but he couldn't - he was unsure of who it was?

MR ELLIS: He didn't provide me with the name of the minister. Correct.

30 **MR GISONDA:** And then was that the - you say at paragraph 91, then, of your statement, at page 15, that you found this visit unusual and highly irregular. Why do you say that?

35 **MR ELLIS:** Work Health and Safety generally don't do follow-up visits the day after a previous proactive visit, unless there's something that they've been notified of by a member of the public or by a worker. Two proactive visits in two days is, in my opinion, pretty rare.

40 **MR GISONDA:** And did you receive any of these - he indicates that there were going to be regular - in fact, I think weekly proactive visits on the project. Were there any more after this incident?

MR ELLIS: Not from the major projects team at that point.

45 **COMMISSIONER:** This came very hard on the heels of that visit on 7 March 2024, so less than two weeks later, where Mr Gibson went into your office and took information from the noticeboards in order to prepare what he said was a media release to give to the minister or media briefing - I haven't got the exact words. What

did you think about whether there was any connection between what had happened two weeks earlier and these proactive unannounced visits?

5 **MR ELLIS:** I suspected there was probably some link. I've got friends in the industry. I've worked with the big companies. I know what's going on. In a lot of other parts of the industry, I know the relationships that are there or the alleged relationships between the CFMEU and particularly Helen Burgess. This was the first visit where they'd specifically said they were from the major projects team and had been directed to come to site by Helen. Prior to that, we were dealing with local
10 inspectors on the Gold Coast who are just the normal inspectors that go out. They're not part of the major projects team.

So the other thing was at that point we weren't really a major project. We didn't meet the classification of what a major project was. We were only a small early-works
15 contract at that stage. Our formal main-works contract didn't come into play until September 2024. So we were still only, you know, a small project with a big potential, obviously, at that point. So, yeah, it seemed quite irregular to me to be getting that, because we weren't a major project.

20 **MR GISONDA:** Just picking up on what you just said there about the big potential, what sort of numbers were you looking at in terms of the workforce to be brought on board, say, towards the end of 2024/early '25?

25 **MR ELLIS:** Oh, towards the end of '24, early '25, we would've probably had probably 120 staff and maybe 200 subcontractors and workforce, so maybe 350 at that time, approaching up towards 500, which -

MR GISONDA: And when in the life of the project would you hit around the 500 mark?
30

MR ELLIS: Oh, would've been, yeah, some time early/mid last year.

MR GISONDA: And is it fair to say that at this point in time - this is towards the beginning and middle of 2024 - you were concerned about what lay in store for the
35 project once all these workers and subcontractors came on site?

MR ELLIS: Yeah. We - we were having discussions internally to say, "Well, this is going to keep going." I know people have come to me privately that said, "I don't want to work on a project that's going to have this much scrutiny." I was concerned
40 about what it would do to my team, to the people that worked on the project, concerned around psychosocial health of some of our employees longer term. We were on edge through February, March, April, June of 2024.

45 Every time somebody saw a black ute in the driveway, I would get somebody knocking on my door saying, "CFMEU's here," and it would just be somebody's turned up in a black ute. We would have people out on site that would say that it looks like there's a somebody here at the fence line that's trying to get in, looks like

one of your union blokes. And it turns out it wasn't; it was one of our workers fixing a fence or something like that. So everyone was a little bit edgy. Everyone was on high alert. And I would hate to think what that would've done to the project culture, what it would've done to our people on the project long term for their own health and wellbeing.

MR GISONDA: And if we could just look at paragraph 75 of your statement at page 13, we've already spoken about the reference to setting up the tent so he could be present on site at all times when you started to clear trees, but then that next sentence, you said Mr Gibson -

COMMISSIONER: I think he said "camping out" or - I think he might have said "building a gazebo", in the audio that you played.

MR GISONDA: Yes. And then the next sentence there:

"Mr Gibson also mentioned at times that he would be taking an office next to the project director's office at 1 TCD."

He said that, did he?

MR ELLIS: Correct.

MR GISONDA: And then:

On numerous occasions, Mr Gibson mentioned that the Coomera Connector Central project was the next Cross River Rail project for the CFMEU to target and that we would become 'Cross River Rail 2.0'."

What did you take that to mean from him?

MR ELLIS: I took it to mean we'd have ongoing disruptions for the rest of the project. We were a target, obviously. Coomera Connector Central was at that time the largest TMR project in Queensland. So I took it when he was saying statements like that that he would be looking to use Coomera Connector Central as an opportunity to do some of the same things that were happening on Cross River Rail on our project as well. And, you know, whether that was installing their own contractors or putting in HSRs that would, you know, work to try and slow down the project, those sort of things were what I took it to mean.

MR GISONDA: And is it for that reason that at paragraph 93 of your statement at page 15, the project team, which included yourself, met with local senior QPS members? Do you see that?

MR ELLIS: Yep, correct.

MR GISONDA: And at paragraph 94, you wanted clarity from the police as to what you were lawfully able to do to forcibly remove individuals if they were trespassing or harassing employees and whether you could get assistance from QPS. Is that -

5 **MR ELLIS:** Correct.

MR GISONDA: And there was already some examples of that occurring on the site, which was still in its early-works stage, but you were particularly concerned, were you, about the extent to which this sort of behaviour would be scaled up once more
10 workers came on site?

MR ELLIS: Yeah. Once we were doing more works and we'd cleared the trees and starting to do large-scale civil works and we had a lot more workers on site, it would become more problematic.
15

MR GISONDA: And what was the - at paragraph 95, you then talk about the response of QPS. What was that response that you received at that time?

MR ELLIS: So one of the concerns we had was we had a rule: don't touch; you
20 could be charged with assault if you were even just to put your hand on one of the organisers and remove them or try and guide them off the project. The police were able to advise us that no, that's not considered assault. We were able to do that, and that we could physically guide them off the property.

25 The other things that they talked about was that they would like to be present, they would like to be able to interfere, and they would at any opportunity they could, but they had resourcing issues on the Gold Coast and we wouldn't receive the highest priority for a trespass when there may have been other activities occurring that required their assistance elsewhere on the coast. So they were happy to help and
30 happy to assist but basically said, "Yeah, we'll help where we can, but you're on your own the rest of the time."

MR GISONDA: But even then, did you have an appreciation or a concern that even establishing a trespass in this area, where there's disputes or rival interpretations as to
35 what the regulatory regime was, that the police wouldn't even be in a position to just accept that there was a trespass taking place?

MR ELLIS: Yeah. It would be difficult, and they even said that, that they can only police on state-based law, and if there's a federal entry requirement under Fair Work
40 Act, that's not necessarily something that they can police on. That's sort of my recollection of it. They also, I guess, said that, you know, when it becomes a Work Health and Safety dispute and Work Health and Safety are called in, then they take the advice from Work Health and Safety in those instances as well. So, yeah, it becomes harder for them.

45

MR GISONDA: And what's your attitude or thoughts about the prospect of at least members of your direct workforce having to try and escort or shepherd some of these union officials off the site, people like Mr Gibson?

5 **MR ELLIS:** It would be a challenge. It would've been a challenge. He would've become more abusive, possibly more physically abusive towards the people as well.

MR GISONDA: And so what options were there that lay ahead for the joint venture in that regard?

10

MR ELLIS: We did start to have discussions around psychosocial health. There was the code of practice requirements for psychosocial health, which places an emphasis on PCBU's and employers to ensure the psychosocial health of their employees. So we were concerned that we may end up breaching those requirements because of the
15 behaviours of the union. We did talk to Work Health and Safety about can visitors to site also be charged and can they also be prosecuted over psychosocial health in accordance with that regulation, and they confirmed yes, there was a small snippet in the code that allowed for visitors in those situations to abide by rules and requirements under that code.

20

Our challenge was it would be very difficult. At the end of the day, under the code, psychosocial health is something that has to be, you know, proven, and it has to be something that a doctor has to rule on and be able to make a call on. And, you know, how many people - we were trying to work out how many people would actually go
25 to a doctor and want to talk about that and put in a claim versus how people would just deal with it and manage it in their own way, and it was quite difficult to go down that path, but it was something that if these behaviours continued, that would probably be a path we'd have to take and work with Work Health and Safety to try and use that code to try and capture some of those aggressive behaviours so they
30 could at least take a ruling on it.

MR GISONDA: What about immediate security considerations, physically protecting some of the workers or physically escorting deemed trespassers off site? Were there any discussions?

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MR ELLIS: We had some minor discussions, but nothing of a serious note at that point, and it was probably - if it continued on, it would've been something we would've needed to address. We did talk about rotating people. We also brought on a safety superintendent or a safety supervisor whose job would be to try and be the
40 first person there to deal with them rather than my safety manager or the superintendents, and then we could then switch people in and out and rotate them a little bit. But, yeah, we hadn't really got into that full security mode at that stage.

MR GISONDA: And at paragraph 99 of your statement at page 16, just tell the
45 Commissioner what other - at paragraph 99 and 100, I should say - what were your fears or concerns about your own team and your own staff if this project became Cross River Rail 2.0, as threatened by Mr Gibson?

5 **MR ELLIS:** It would've worn the whole construction team down. We would've lost good people off our project. My team would've had huge rotation of people through it that would've come and gone because they wouldn't want to deal with those behaviours. It would've had a massive change in culture. We've got a really good culture out there amongst our workforce. We've got a good culture out there amongst our staff. We're a happy project, and when we're a happy project, people are safe.

10 This would've been a depressing project. People wouldn't have been happy coming to work every day knowing that they're going to get abused. People would've left the project over time. It wouldn't have - we would've had probably common-law claims or workers' comp claims for people with psychosocial issues as well.

15 **MR GISONDA:** So is it your evidence that this sort of aggressive and intimidatory behaviour can at least indirectly, through the impact it has on the mindset and wellbeing of the workers, present its own safety risks because of the negative consequences it might have on their ability to perform their job?

20 **MR ELLIS:** Correct.

COMMISSIONER: How do you assess that?

25 **MR ELLIS:** It's difficult, and that's the problem we have, Commissioner, is if people leave, they will sometimes leave and tell you why they leave. Others will tell you a story that's not necessarily true, and others will just leave and not tell you. So we can't always know why people are leaving the project, but we can just base it on conversations. You know, I have many shut-door conversations with people in the office who tell me they're annoyed about something or they're going through a period of, you know, where they're feeling very low. I've had people come into my office that have, you know, wanted to commit suicide for various reasons. So those
30 conversations probably would've increased, I would imagine, over a period of time with just the stresses associated with dealing with it.

35 But it would be very hard to actually measure it, because some of those conversations wouldn't necessarily be me; it might be with their work mates or somebody else as well. So, yeah, it becomes challenging to try and measure it and understand it. But I know, if it continued that way, there's no way many of my team would've stuck around.

40 **MR GISONDA:** And did you say earlier that some people had, in fact, said to you that if the trend or trajectory of some of these behaviours continued, that they wouldn't want to work on a project like that?

45 **MR ELLIS:** That is correct, yep. I probably wouldn't have worked on the project.

MR GISONDA: And what does that do, that sort of turnover in personnel, whether it be engineering staff or safety staff or those sorts - supervisory staff, what sort of impact does that have on the momentum of the project?

5 **MR ELLIS:** It has a huge impact. You've got change, then all of a sudden you're bringing new people in who have to understand where we're at on the construction works, understand new systems, new processes. You know, it takes, in my experience, sort of three to six months for somebody to come on board properly on a project and understand what they're doing and where they're going. So having that
10 constant turnover means you've just got people that don't necessarily know what they're doing all of the time and playing catch-up.

It also affects, you know, just as I said, the general culture out on site. Workers on site see that change. They're not happy. You get different people telling them
15 different things, and then different ways of trying to build the job, and, you know, it leads to them not being happy, and they leave the job, so then more people come on. Yeah. It's - as I said, happy jobs are better jobs.

MR GISONDA: And safer jobs.

20 **MR ELLIS:** And safer jobs, yeah.

MR GISONDA: Now, you're still working on the project; correct?

25 **MR ELLIS:** Correct.

MR GISONDA: And those fears didn't come to pass in the end, did they?

MR ELLIS: No.
30

MR GISONDA: And I don't want to put words in your mouth, but in August of 2024, the union was put into administration. Do you remember that happening?

MR ELLIS: Correct.
35

MR GISONDA: And did you have a visit from Mr Gibson after the union went into administration?

MR ELLIS: No, I do not recall a visit.
40

COMMISSIONER: I think Mr O'Grady said he was terminated in November 2024.

MR GISONDA: Yes, but the administration was in August.

45 **MR ELLIS:** August.

MR GISONDA: August.

COMMISSIONER: Three months.

MR ELLIS: Yeah. No.

5

MR GISONDA: But do you think that was an important event in the life of this project?

10 **MR ELLIS:** Yeah. There's many milestones on a project. That ruling definitely changes the mood on our project, seeing the CFMEU go into administration. I guess it left us with a bit of uncertainty what would happen, but at the same time, knowing that we were going to have legal entries after that point, we welcome legal entries. We're happy to talk safety to people. But we can't deal with illegal entries where they're not - they're not communicated to us beforehand and, you know, abusive-type
15 behaviours.

MR GISONDA: I have no further questions, Commissioner.

20 **COMMISSIONER:** What's the position with any application to cross-examine this witness?

MR GISONDA: I don't believe we've got any applications to cross-examine this witness.

25 **COMMISSIONER:** Is that correct? Very well. Thank you very much for your evidence, Mr Ellis. You're excused.

MR ELLIS: Thank you very much.

30 **<THE WITNESS WAS RELEASED**

MR GISONDA: Commissioner, given the time, I wonder whether we might break for lunch now. After lunch, I'll call Ms Mitchell, and I believe there's one application to cross-examine Ms Mitchell. I don't know how long - that's from Mr O'Grady. I
35 don't know how long Mr O'Grady intends to be, but I'm sure, even with the cross-examination, we'll conclude Ms Mitchell's evidence today.

COMMISSIONER: Do you want to come back a bit earlier?

40 **MR GISONDA:** 2 o'clock is fine, Commissioner.

COMMISSIONER: All right. Nothing else we need to do? No? All right. We'll adjourn till 2 pm.

45 **<THE HEARING ADJOURNED AT 12.43 PM**

<THE HEARING RESUMED AT 2.00 PM

COMMISSIONER: Mr Gisonda.

5 **MR GISONDA:** Thank you, Commissioner. There was a witness who we didn't get to the week before last: Ms Julianne Mitchell. So I've - and I should say, I appear now with Ms Morrow.

COMMISSIONER: I'm sorry. I didn't notice the change in appearances.

10 **MR GISONDA:** Thank you, Commissioner. And also, before lunch, when you asked a question about Ms Butler on the Commission, I think I said she held the seat - she took the seat, replacing Mr Swan. I was wrong. It was Mr Rudd's old seat. So I don't think that's something you want to get wrong.

15 **COMMISSIONER:** In any event, she's been on the Fair Work Commission as a deputy president here in Brisbane for - did you say one year or two years?

MR GISONDA: Since September 2024 or thereabouts, yes.

20 **COMMISSIONER:** Two years.

MR GISONDA: Yes. So I now call Ms Julianne Mitchell, Commissioner.

25 **COMMISSIONER:** Is Ms Mitchell in the hearing room? Ms Mitchell, would you come forward into the witness box, please.

<JULIANNE MITCHELL, AFFIRMED

<EXAMINATION BY MR GISONDA

30

COMMISSIONER: Please have a seat, Ms Mitchell. Mr Gisonda.

MR GISONDA: Thank you. Good afternoon, Ms Mitchell. Thank you for appearing today. Do you have in front of you a statement that you affirmed on 2 July 2026?

35

MS MITCHELL: I do.

MR GISONDA: And that statement is 174 paragraphs long, and accompanying that statement is a bundle of documents that is 182 pages long and consists of 37 annexures; is that right?

40

MS MITCHELL: That is correct.

MR GISONDA: And might I just ask whether you have a middle initial?

45

MS MITCHELL: I do not.

MR GISONDA: Okay. Have you an opportunity to read your statement recently?

MS MITCHELL: I certainly have, thank you.

5 **MR GISONDA:** And is that statement true and correct?

MS MITCHELL: It is.

10 **MR GISONDA:** I tender that statement, Commissioner, and that can be JXM-1.

COMMISSIONER: Are there any objections? No. The witness statement of Julianne Mitchell, affirmed 2 July 2026, 37 pages, 174 paragraphs, with 37 annexures, will be exhibit JXM-1.

15 **<EXHIBIT JXM-1 WITNESS STATEMENT OF JULIANNE MITCHELL, AFFIRMED 2/7/2026, 37 PAGES, 174 PARAGRAPHS, WITH 37 ANNEXURES**

20 **MR GISONDA:** Now, Ms Mitchell, I want to begin by asking about your personal - sorry, professional background. You commenced employment with the Department of Transport and Main Roads in 1985; is that right?

MS MITCHELL: That's right.

25 **MR GISONDA:** And can you tell the Commissioner, please, looking in particular at paragraph 9 of your statement, if you could explain to the Commissioner how your career has progressed in the department.

30 **MS MITCHELL:** I'm currently in the role of deputy director-general infrastructure management and delivery and have held that position since November 2022. Prior to that, I was a deputy director-general of infrastructure management - sorry, of policy planning and investment, which is another division within the department, from 2018 to 2022. I was chief engineer for the department from 2010 to 2018 for eight years. And before that, I was a project director of major infrastructure projects for two
35 years, from 2008 to 2010. Prior to that, I worked in metropolitan region as the manager of transport planning from 2005 to 2008, and I've been in positions of a principal policy adviser on the Gateway Upgrade Project, which is the duplication of the bridge, in 2004 to 05. And the Tugun bypass tunnel, and bypass around the airport, from 2002 to 2003, and I was looking after project development and
40 approvals for that project.

MR GISONDA: And your particular expertise or discipline is that of engineering; is that right?

45 **MS MITCHELL:** Yes, I'm a professional engineer.

MR GISONDA: And could you tell the Commissioner what your current role as deputy director-general infrastructure management and delivery involves?

5 **MS MITCHELL:** Certainly. The state-controlled road and busway network is about 33,000 kilometres long, and I manage a group of 3,500 people who manage that state-controlled and busway network, and that includes its maintenance and use, particularly by heavy vehicles and freight, and the delivery of the state's transport infrastructure program, which for the roads space, including asset management and capital works, is around \$6 billion a year, and -

10 **COMMISSIONER:** How much did you say then, sorry?

MS MITCHELL: \$6 billion, Commissioner, a year. The department's budget is much larger; that's my portion of it in the road space. And I have a significant role in
15 the engagement with industry, contractors, consultants, federal and local government communities and other stakeholders.

COMMISSIONER: So I take it you're in charge of building and maintaining all roads in Queensland. Is that -

20 **MS MITCHELL:** The state controls about one-fifth of the state's roads, so there's about 150,000 kilometres, so we do 33,000 kilometres of the major roads: Bruce Highway, Capricorn, Warrego, Cunningham, all of the major parts of the network, but they get a little bit more minor as you move further west. But all of the major
25 roads are state-controlled, and also the busways in South East Queensland are controlled by us.

COMMISSIONER: The minor ones by councils?

30 **MS MITCHELL:** The minor ones are managed by councils.

COMMISSIONER: And is there any that are funded and maintained federally, or the Federal Government just funds you?

35 **MS MITCHELL:** The Federal Government is a funder. They don't manage any of the road network. They have a national network, which includes Bruce Highway, Warrego, Cunningham, and they fund those to a certain percentage, anywhere between 50 and 80 per cent of those.

40 **MR GISONDA:** And as the deputy director-general, you report directly to the director-general of the department; is that right?

MS MITCHELL: Correct.

45 **MR GISONDA:** And can I just ask, you replaced, did you, Ms Amanda Yeates in the current role of deputy director-general for infrastructure management and delivery?

MS MITCHELL: That's correct.

MR GISONDA: And that was in November 2022?

5

MS MITCHELL: Correct.

MR GISONDA: And did Ms Yeates leave the department at that point?

10 **MS MITCHELL:** I think she had left some six months earlier, and that there was an officer acting in the role for that period of time.

MR GISONDA: Thank you.

15 **COMMISSIONER:** So in your previous role, the one you held from May '18 to November 2022, presumably you had a much - only a few staff, not anywhere near 3,500?

MS MITCHELL: I think it was about 600 staff.

20

COMMISSIONER: In policy planning and investment?

25 **MS MITCHELL:** That's correct. So it included the property portfolio, the development of the program, the policy area, strategic policy, transport modelling, the integrated regional transport plans, things like that. So it's a relatively large task for the state as well.

30 **MR GISONDA:** And before you assumed your current role, it's correct, is it, that whilst you had some awareness of the policy known as - we'll call it BPIC for this afternoon's purposes - you otherwise didn't have a need to involve yourself in that policy and understanding how it worked?

MS MITCHELL: That's correct.

35 **MR GISONDA:** And so why is it that when you took on this role in November 2022, you had - you needed to become familiar with BPIC?

40 **COMMISSIONER:** Sorry, did I understand that right? You weren't familiar with BPIC while you were in the policy role?

45 **MS MITCHELL:** That's correct. I was in a transport policy role. So we would look at the net-zero emissions, the electric vehicle superhighway, the transport of the future strategic planning, etcetera. So that was a transport policy role. So BPIC would be considered a procurement policy. So the policy area under policy planning investment didn't look after all policy; it looked after transport policy - transport policy and planning. So this would be considered a procurement policy.

And so I - except for understanding that there was background issues with a QTRIP briefing, that there was background noise with CFMEU and some, you know, consternation and upset with Amanda and Neil Scales, who was the DG at the time, I had no involvement with BPIC. And so it was completely new to me, moving into
5 this role.

MR GISONDA: And why did that change in November 2022? What was it about your new director-general role that necessitated familiarity with BPIC?

10 **COMMISSIONER:** Deputy director-general.

MR GISONDA: Sorry, deputy director-general role.

15 **MS MITCHELL:** That's all right. The BPIC policy or the application of BPIC involved all projects over \$100 million, and so therefore I could not avoid involvement with that, because how it would be applied to those major projects was of major interest to myself. And it was quite a complex policy, with some controversy associated with it.

20 **MR GISONDA:** And is it fair to say that before November 2022, you did not have any real familiarity with industrial relations?

MS MITCHELL: That would be correct with regard to contractor industrial relations.
25

MR GISONDA: Yes.

MS MITCHELL: So I had been, in my much earlier years, a union representative for Association of Professional Engineers, a representative for that union, so it wasn't as though I had no union dealings. It wasn't as though I hadn't been involved with EBAs that we had negotiated between, you know, government and employees, so those employee conditions. But as far as involvement in major construction projects and industrial relations, that was a matter that was left to - that we felt resided with contractors. It was their workforce. They'd bring a few things to the party. One of
35 them is productivity and programming, and the other is the workforce and the resources needed to deliver a project.

MR GISONDA: At page 5 of your statement, from paragraph 20 to 23, you give some evidence about a meeting that you say happened in late 2022 or early 2023. So
40 that would be when you were new to your - the current director - the current deputy director-general role. And that was a meeting with the chief of staff to the then minister, Mark Bailey, and that was a woman by the name of Alana Tibbitts; is that right?

45 **MS MITCHELL:** Correct.

MR GISONDA: And at paragraph 21, you say that you understood that the department was being criticised "due to the apparent ineffectiveness of its implementation of BPICs to date". Can you just tell the Commissioner a bit more about your understanding there about the criticism your department was receiving?

5

MS MITCHELL: The criticism was the same as the criticism that occurred for the next couple of years, that - why were other departments doing it differently, why weren't we doing it correctly, and why couldn't we just get it right. And it was about - I got very much the impression it was about that there was external feedback to them that was a niggle to them and that they would reflect that immediately on us, of like, "Why can't you get this right? Why am I being annoyed with this? Why do I continue to get this reporting to me?"

10

MR GISONDA: So that is external feedback being given to the ministerial office?

15

MS MITCHELL: Correct.

MR GISONDA: Which they are then passing on to the department?

MS MITCHELL: That's correct, and that feedback was - sometimes seemed to be direct from the unions through to the minister's office and sometimes through the Premier's office to the minister's office.

20

MR GISONDA: And you understood, you say at paragraph 23, that when there was a reference to other departments, that was primarily a reference to the Department of Public Works; is that right?

25

MS MITCHELL: That's correct.

COMMISSIONER: Just going back to 21, when you're saying that feedback was given to Ms Hawkswood, Ms Hawkswood was a witness two weeks ago.

30

MR GISONDA: Yes.

COMMISSIONER: And she'd been seconded into a procurement role within your division of - within the infrastructure management delivery reporting to you?

35

MS MITCHELL: That's correct. She reported to me. We were very much side by side through the journey for the next couple of years. So we could bounce off each other and work out how we could resolve this.

40

MR GISONDA: She was chief procurement officer, and she was seconded, essentially, into a BPIC role to manage the implementation of BPIC.

COMMISSIONER: All right. And you say:

45

"That feedback was given to Ms Hawkswood and I through the ministers via their chiefs of staff."

MS MITCHELL: Yes.

5

COMMISSIONER: Which ministers are you talking about there?

MS MITCHELL: This was Minister Bailey, and his chief of staff was Alana Tibbitts.

10

COMMISSIONER: You say "ministers"?

MS MITCHELL: No, Minister Bailey at this time.

15

COMMISSIONER: I'm just reading 21 there.

MS MITCHELL: Sorry. Okay, "was given to Ms Hawkswood and I through the ministers" - it should be an apostrophe S.

20

COMMISSIONER: So one minister?

MR GISONDA: One minister.

MS MITCHELL: Yes, one minister.

25

COMMISSIONER: Thank you.

MR GISONDA: And at paragraph 24 of your statement on page 6, you say that Ms Tibbitts instructed you and Ms Hawkswood to speak with Public Works to understand how their department had implemented BPIC successfully and to work out how we could replicate it; is that right?

30

MS MITCHELL: That's correct.

35

MR GISONDA: What did she also say about the pre-qualification process?

MS MITCHELL: My understanding was the pre-qualification had been talked about for some time, but at this point, we were directed to commit to government that we would introduce a pre-qualification scheme to implement BPICs, similar to how Energy and Public Works had done.

40

MR GISONDA: Okay. We'll come back to that in a moment. At paragraph 30 of your statement, the bottom of page 6, you say that:

45

"Under the BPP policy..."

That's the best practice principles policy:

5 "...on a BPICs project, the department must form a mandatory evaluation criterion in tender, and this meant contractors were required to respond about whether the terms and conditions of their own employees who will work on the project are at least equivalent to the relevant BPICs as part of the tender process, with contractors' tender commitments made with respect to the BPICs to form part of the contract."

10 And so that's how you understood BPIC effectively was positioned into the procurement process?

MS MITCHELL: That's correct.

15 **MR GISONDA:** And then at paragraph 31, you talk about one of the principal reasons for the additional pre-qualification steps as sold to you by both Mr Ingham and Ms Bailey. And before we go into that, just tell the Commissioner again who Ms Sharon Bailey was?

20 **MS MITCHELL:** Sharon Bailey was the executive director of procurement at Energy and Public Works, and she essentially was our contact for the ownership of the policy, of the BPP policy.

25 **MR GISONDA:** And what did both of them, Mr Ingham and Ms Bailey, tell you - this is at paragraph 31 - about the - one of the main reasons for imposing an additional pre-qualification step in the procurement process?

30 **MS MITCHELL:** So Transport and Main Roads already had a pre-qualification system, which was part of a national system, and that looked at the financial ability of the contractor. It looked at their staffing and whether it was appropriate and experienced. It looked at their track record in delivery of similar projects and also whether they had the quality and safety systems required. So there was already a layer of national pre-qualification. So, for example, if we pre-qualified somebody in Queensland, they could work in New South Wales and Victoria.

35 So this was an extra step that was required to be put in place, a pre-qualification overlay, a Queensland-specific pre-qualification overlay, and one of the things that was told to me, and very similarly, was that the contractors were unsafe, that there was some question mark over the safety of - the safety performance of contractors in the civil space, but more as they went from civil space to building space - because some contractors are in both spaces - and that we needed to rule out or deal with unsafe contractors and not purchase from them.

40 **MR GISONDA:** And it says there that some contractors - this is the telling of Mr Ingham, and tell me if this is wrong - but the telling of Mr Ingham and Ms Bailey was that some contractors had a reputation of being unsafe. Was there a risk that that was a reputation that had been formulated or created by the union itself?

MS MITCHELL: I came to understand yes, because when I investigated - so I was open to perhaps some contractors did building and horizontal infrastructure, which is our civil infrastructure, and that maybe I wasn't aware of their performance on the vertical infrastructure. So I was open to receiving extra information about that,
5 because safety is a cultural matter. So you would expect the same culture to prevail, whether it be horizontal or vertical. So I was open to it. But when I actually went to my safety manager within infrastructure management delivery and said to them - because we were at the time putting in place a contractor safety management system where they had to report their accidents through us, so we could keep a tab of
10 what was happening in the industry as a whole. There was no evidence that their KPIs, that they were unsafe. There was no actual figures that would support the assertion that they were unsafe.

But I came to understand, as part of the CFMEU's motherhood statements, which
15 generally are about "Everybody wants a safe workplace" etcetera etcetera - safety, you can't argue with that; everybody wants a safe workplace - would be one of the things that was sold. So how do you argue with - when you're told that these are unsafe? You have to deal with that.

MR GISONDA: At paragraph 34 of your statement, you say that in around February of 2023 you had a meeting with staff of Public Works, namely, Ms Bailey, who we've just spoken about, and Mr Logan Timms. Who was Mr Logan Timms?

MS MITCHELL: He was the executive director of strategy at Energy and Public
25 Works.

MR GISONDA: And are you in a position to say what that role involved?

MS MITCHELL: No, I'm sorry, no.
30

MR GISONDA: And moving on to paragraph 35, you say during one of these meetings in early 2023, with Ms Bailey and/or Mr Timms, you recall being told that the CFMEU had an active role in pre-qualification of the contractors who would win the contract for projects, including considering whether they were safe or not. And
35 then at paragraph 36, you talk about what you remember your response to that statement was. Can you tell the Commissioner what you remember when you heard that from the Department of Public Works?

MS MITCHELL: Yes. I remember being taken quite aback by a third
40 party - third-party involvement in a pre-qualification process. We understand, the Department of Transport and Main Roads, that there's a lot of money involved in these contracts, and we're held to pretty high account by our contractors of being quite transparent in our - the criteria that we will use and the ranking that we will use in that criteria and what rankings individuals get. And when - and we're bound by
45 confidentiality and conflict of interest and ethics and the like, and we put things specifically in place so that things can't be biased.

For example, on a major project, you might divide the criteria into five, and you'll have five different groups who will look at each one and it's only right at the end it will be brought together. So there's not a lot of area for influence on who will win these things. And so to have a third party involved in pre-qualification, even if it was just some objective assessment of this contractor is safe or not or we don't like their record was very strange to me.

MR GISONDA: I think you said "objective", but do you mean subjective, in that - wasn't the problem here that -

MS MITCHELL: Of course. Sorry. Yes, of course. Subjective assessment of whether they were safe or not.

MR GISONDA: And you say at the end of paragraph 36 there, if we just scroll down a bit, that one of Ms Bailey or Mr Timms said words to the effect of:

"Cutting out the CFMEU is not clever. Sites work well when the union is happy and then there is industrial harmony."

And then at paragraph 37, you go on to give evidence about what else they said to you. Do you have a memory now of which one of Ms Bailey or Mr Timms was saying these things to you?

MS MITCHELL: No, I don't recall which one said it. I think from my recollection, Sharon did most of the talking in the meeting. I kept some rough notes of that meeting, so that's - I can't remember exactly.

MR GISONDA: But one of them said, you think it's probably Ms Bailey, only because she was the one who did most of the talking, said:

"CFMEU want control of full site and that includes subbies."

Is that right?

MS MITCHELL: Correct.

MR GISONDA: And:

"If unions aren't happy, they will make the contractor's life unhappy and project progress very difficult with delays."

MS MITCHELL: Correct.

MR GISONDA: And then at paragraph 38, you talk about your reaction to that. What can you tell the Commissioner about your impression and your reaction to what you were hearing there?

MS MITCHELL: I felt at the time that they were so embedded in a system for vertical infrastructure that had the union in such a position of influence that they didn't even understand how much influence the union had on them and that they had actually - not only had they negotiated a BPIC with BTG, Building Trades Group,
5 that was highly favourable to them and their agendas as far as union membership and that goes, they were also putting processes in place along the line that allowed the union to have influence beyond the policy into the actual process. And I - I don't even think they understood the implications of that.

10 **MR GISONDA:** Is that why you say at the end of this paragraph that in comparing what you were hearing to what you regarded as DTMR's sophisticated procurement experience, that it was possible that Public Works had been sucked into something they had not really thought about and in various ways they were assisting the union in its influence in the sector?

15 **MS MITCHELL:** Correct.

COMMISSIONER: What do you mean by that?

20 **MS MITCHELL:** I - I was initially of the view that maybe CFMEU had an agenda of increased membership. You know, if you know who the subbies are, you can contact people, get EAs, get membership. And then I kind of went, you know, it was more about getting a cut of super and getting a cut of insurances and things like that by - through the memberships as well.

25 As - as things evolved with ratcheting up of more and more and more onerous BPIC conditions, and that we ended up with - the latest version of BPIC was a renewable energy BPIC, to me it was quite clear that it was about controlling the sites. It was about controlling the whole site. It was about - almost like they were a third party in
30 there that controlled the labour and held it for ransom to the contractor, and if the contractor didn't do what they asked, they would use that labour against them at any time, so they could control the subcontractors, control the labour. So the EAs weren't written about what was good for the members necessarily; it was written about what was good for the union, and wanting more influence and control.

35 And so there's one thing having a policy that talks about industrial harmony and ideal conditions and pay rates and things like that, but when you actually involve them in having a role in choosing who will win the work - because choosing who will be the pre-qualified contractors, that's another level altogether of influence over the whole
40 regime. There's a lot of money here. There's a lot of, you know - if you were going to be in the box seat to win this project and you don't any more, the consequences are quite large.

45 **MR GISONDA:** And then at paragraph 40 of your statement, you talk about meeting regularly with Ms Stannard and keeping her up to date with your work. And what do you recall telling her about your impression as to the position Public Works had found itself?

MS MITCHELL: Now, I must say, I think in actual fact that Neil Scales was the DG at that time, at this time, and that Ms Stannard came in later in the year, around May, I think. I'm not quite sure. But either way, I would've - and it wouldn't have been a sit-down conversation about they said this and this and this, but it would've been, "They're actually taking - they're actually letting CFMEU influence the pre-qualification. I think they're captured. They've been captured by them." So they're doing their - they're being unduly influenced in their policy outcomes by one particular stakeholder.

COMMISSIONER: Did you have any thoughts about how this might have happened, given your long experience?

MS MITCHELL: I think that because CFMEU was the contractor who was necessary to do an EA with on vertical infrastructure, and because historically - and, you know, it was well known within government that we were told that you do nothing without consulting the unions. Like, the unions are very intertwined with the Labor government. I think everybody knows that. That's nothing new. But the unions would have as much influence as they could possibly be given over government, and I think that contractors had to do agreements with CFMEU, enterprise agreements, and then the government encouraged and required that as part of the BPICs policy.

And then I suspect - and I don't honestly think the public servants were in any way devious or had any bad motivation in this. They would've been doing a lot of what they were told and didn't really have much of a choice. So you have a choice when you're in public service. You don't do what you're told per se; you argue back as long as you can, and then ultimately you have to find reason and rationale in what you're doing, and that you are - the government's role is to set policy and your role as a public servant is to implement that policy in a way that's within lawful guardrails. So that's what they would have been doing, and it probably would've been a bit of creep. Just little bits of creep along the way is probably how it occurred.

MR GISONDA: In paragraph 44 of your statement at page 9, you talk about in hindsight your department being placed in a "damned if you do, damned if you don't position". Are you able to just explain that to the Commissioner?

MS MITCHELL: Well, BPICs - so best practice - best practice procurement policy, no problem with it. Great policy objective. No issue. The implementation of that was through BPIC. It had been negotiated with the CFMEU or BTG for vertical infrastructure, who was the primary union in that sector. It was around a BTG or CFMEU pattern agreement. Everything that was in it was not foreign to contractors who do vertical infrastructure. However, when it came to trying to implement it in horizontal infrastructure, the primary union for which the civil contractors had been working with and doing enterprise agreements with was the AWU, and so there were clauses in it that were nothing to do with horizontal infrastructure and completely inappropriate and very foreign clauses.

And so one of the key things that I think that Energy and Public Works as the policy owner and the BPIC developer hadn't considered was that they didn't have control over the coverage issue, and they couldn't - what the thinking was, I think, was, "We will negotiate an EA as though we're the employer with the union and then we will ram it down contractors through a procurement process." And so we couldn't force the enterprise agreement as written on our contractors when they didn't have to do an agreement with CFMEU. They could do one with AWU. And the clauses were very - were very foreign to them.

And so the issue of coverage, which the state has no control over because it's a federal issue, made it so that it potentially was unlawful. So we were in a situation that if we maintained BPICs - we had to maintain BPICs as a guideline rather than a verbatim agreement. So they had to show us how they would meet the policy intent or the intent behind the clauses without meeting them verbatim. And that's what we ended up doing, because that was the only way that we could respect the lawful coverage of the AWU's role in those agreements with our civil infrastructure contractors. But if we tried to ram the BPIC as written onto the civil contractors, we really were in a very invidious situation where it was inconsistent with the coverage principles, and we also were interfering with that statutory bargaining framework.

MR GISONDA: And at paragraph 45 of your statement, can that be summed up by saying that the issues that could be attributed to BPICs were the result of poor policy design and irreconcilable implementation issues. Just pausing there. Is that a fair characterisation of how you perceived the situation?

MS MITCHELL: Correct. Correct.

MR GISONDA: But then you go on to say:

"But the issues also seemed to be a consequence of a union that looked like it was attempting to exploit BPICs to expand control over civil work sites."

MS MITCHELL: That is correct. While I was naive to matters of coverage - it wasn't something that I had previously had involvement with - I do not in any way believe that CFMEU were naive to the issues of coverage in the civil infrastructure industry.

COMMISSIONER: You say that some of these clauses that came from the vertical construction space were completely inappropriate, your phrase, and foreign to horizontal construction. Do you know what sort of clauses fall within that description of foreign and completely inappropriate?

MS MITCHELL: Well, some of the classifications were completely - like, there were pages and pages and pages of classifications that just aren't used on horizontal infrastructure, for example. The clauses were generally about the role of workplace health and safety reps, much, much higher governance role within the BPICs document than what would be in an EA - an AWU agreement. Primarily, a lot of it

was about working hours, and the - while working hours have to be consulted, there's a lot more flexibility needed in horizontal infrastructure.

Sometimes work is done in camp, and people don't want to take RDOs once a month; they want to bank them up and fly home. The hours are completely different. We have to do night shift routinely. There's very much different rostered days, five out of seven - much, much more flexible working arrangements than were on vertical infrastructure. So there's just a couple of them that were just very, very foreign and not useful to us.

MR GISONDA: At paragraph 48 of your statement, you've given some evidence about what you understood was feedback that had been given by the BTG in a briefing with the department, and that feedback included that they were disappointed with the rates of pay in the transport BPICs, and they referenced the Coomera Connector project and the Centenary Bridge project. They believed that the DTMR's implementation was not good enough. They were frustrated with the effort they had put in to date when they are not getting the outcomes they wanted. And just pausing there on that subparagraph (c), did you understand that to mean that the BTG had put a lot of work and effort into getting the BPIC policy up?

MS MITCHELL: Absolutely.

MR GISONDA: And then they felt they weren't getting the reward for that work?

MS MITCHELL: Absolutely.

MR GISONDA: And then subparagraph (d), they remained sceptical about the pre-qualification changes. I assume that meant they were sceptical about the pre-qualification changes that DTMR were going to implement?

MS MITCHELL: That's - that's correct. When - as I said, when I first came into the job, I was given a little bit of breathing room, because when we had - moving along, we were given six or eight months to actually implement a pre-qualification scheme. So during that time I could do a lot of investigation, talking to people, try to understand this, try to solve this problem, make it work, how could we mutually satisfy everybody. So the pre-qualification was about holding - getting a bit of time to breathe and literally to try to see what we could learn from how EPW had done it successfully, and so then how could we do it similarly successfully. So they were sceptical about - that the pre-qualification would any way benefit them.

MR GISONDA: Is it your understanding that it was government policy that DTMR introduce an additional pre-qualification system that would be unique to Queensland, but you had managed to get - let's use the word "indulgence", or time from the minister to have until the end of - or to have until August 2023 to come up with the policy?

MS MITCHELL: That's correct. That's correct.

MR GISONDA: And the feedback that you received - this is at paragraph 53 of your statement - from industry was that additional pre-qualification was not welcomed by the industry; is that right?

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MS MITCHELL: Correct.

MR GISONDA: And the at paragraph 55, this was a first draft of a potential pre-qualification checklist, and one such question at the bottom of the page would require contractors to confirm that they had read the BPIC for transport and that they were then able to answer "yes" to the following question over the page, which is that they understand and acknowledge that BPIC would be applied to relevant projects, and that they were prepared to express interest in pre-qualifying for projects on that understanding and acknowledgement.

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MS MITCHELL: Yes.

MR GISONDA: And even that form of pre-qualification condition was resisted by industry, was it?

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MS MITCHELL: Yes. They had a fair bit of feedback about it. They didn't like the prescriptive nature of the inclement weather clause. They didn't like the clauses about subcontractors. They didn't like the rigid RDO calendar. And then in the actual - probably wait till later, if you bring it up - the further round of feedback was about - that a lot of it was unnecessary. It was already required by law. A lot of it was covered already in the national pre-qualification scheme. A lot of it gave powers with regard to workplace health and safety that was similar to what was in the BPIC that they didn't like anyway. So we got a lot of feedback about the pre-qualification about - that many of the clauses in the pre-qual were about trying to get them to accept clauses in the BPIC that were the ones that they had exception to.

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MR GISONDA: And in 2023, in around the middle of 2023, looking now at paragraph 63 of your statement on page 13, you've identified an email that you received from Ms Hawkswood which contained an agenda item to discuss that there was some pressure to change DTMR's position from guidance to mandatory, and you say now that you think it was the development of the renewables BPIC that was the catalyst for that pressure. Can you confirm for the Commissioner that that was the case in about the middle of 2023, that there was pressure to now not make BPICs a guide but to impose it as a mandatory policy?

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MS MITCHELL: The pressure to change from guide to mandatory was ubiquitous. It was just constant. And it - it was every time anybody was developing another BPIC, and I think it was water at this time, and then it was renewables, and then we had to do a rail one, and so any time anybody's reviewing their BPIC, it would come up that DTMR was different. The constant feedback from CFMEU direct through the DG, through the minister's office, direct to D, was that we weren't doing it right, we weren't implementing it right. We needed to apply the whole thing exactly as it was,

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then they needed to be not cut out of negotiations. They needed to be involved in every EA that was agreed.

5 So that was absolutely consistent feedback, and so it was really relentless feedback.
So we were super, super conscious of that feedback, and the only way that we could
respond to it was to say, "This best practice policy guideline is about objectives and
we are achieving the objectives," and we would constantly keep data on how we
were improving the number of women who were working, the number of trainees
and apprenticeships. So we were trying to stick to implementing the objectives of the
10 policy and diverting attention away from the fact that we hadn't put the BPIC in
verbatim, that we were getting the intention of it. The pay rates were right, safety
was fine, so why do you need this verbatim?

15 **MR GISONDA:** Well, putting it in verbatim is one thing, but the other issue was,
wasn't it, that the complaint was that DTMR was not insisting that it must be
implemented as opposed to being a guide?

20 **MS MITCHELL:** Oh, the pressure was, it's - it looks like an EA because it is an
EA, and that's exactly what should be put in place on civil projects.

MR GISONDA: And over the page at page 14, at paragraph 65, you talk about a
meeting in early May that you had at the CFMEU's offices in Bowen Hills to discuss
BPICs, and during this meeting, you were told some things from Mr Ingham, and
you've got an email where you set all this out, but it's easier to read here now in your
25 statement. Among other things he said to you was that DTMR conditions on site
were the worst in Australia and safety was a joke. He said that to you, did he?

MS MITCHELL: Absolutely.

30 **MR GISONDA:** And that DTMR was by far the worst in the state and the country
on industrial relations and safety?

MS MITCHELL: Correct.

35 **MR GISONDA:** Did you have a view about that statement, just pausing there?

40 **MS MITCHELL:** I was obviously concerned about it, because this was early,
relatively early in the piece, and, you know, I undertook to go away and investigate
it. But this meeting was a meeting where I was just listening. And that's why I kept
really good notes of the meeting, because I was just listening. I wasn't arguing with
him.

MR GISONDA: He said that DTMR went out of its way to make things
45 complicated?

MS MITCHELL: Yep.

MR GISONDA: That DTMR was looking for excuses why the BPICs could not be hard-line and procurement be simple. Do you know what he meant when he said BPICs cannot be hard-line?

5 **MS MITCHELL:** He thought that we had so much procurement power that we should just go, "We're not buying off you unless you do this BPIC," and that was that.

10 **MR GISONDA:** He said DTMR was full of resistance fighters. That's pretty inflammatory or regressive language, I suggest?

MS MITCHELL: Mmm-hmm.

15 **MR GISONDA:** He said that the contractors that DTMR used were anti-union and anti-worker, and he named in particular CPB and Acciona; is that right?

MS MITCHELL: Correct.

20 **MR GISONDA:** Did you know whether there were particular projects that he was annoyed or upset about?

MS MITCHELL: Not at this stage.

25 **MR GISONDA:** He said that the AWU do substandard deals and they have a campaign against the CFMEU. Was that consistent feedback that you received from at least the CFMEU, maybe not the rest of the BTG, that there was consistent criticism of the AWU?

30 **MS MITCHELL:** Oh, the criticism was - yeah, it was a lot. It was a lot of criticism of the AWU: they were a weak union, they did substandard deals. And then I think later on I asked him, "What do you mean by substandard deals?" And it was salary, inclement weather, overtime, double time, rostered days off, income protection, redundancy and take-home pay. Those were all the things were substandard, as far as he was concerned.

35 **MR GISONDA:** And then at subparagraph (j) you say that he said that if the Building Trades Group continue to get excluded, there was no industrial certainty, and you say that you took this as a veiled threat. Why is that so?

40 **MS MITCHELL:** I came to understand that industrial harmony is equivalent to an agreement with CFMEU, and if you didn't have one, you didn't have industrial harmony, because there would be industrial disharmony, and not necessarily of your own making but that CFMEU would ensure that there was none.

45 **MR GISONDA:** What about subparagraph (m) over the page at page 15?

MS MITCHELL: Yes.

MR GISONDA: He said:

5 "BPICs were not fully implemented yet, and because we 'had not honoured the deal, they would not'."

Do you remember what that statement was about?

10 **MS MITCHELL:** I don't know what the deal was, but from my snippets of information from the minister's office, I got the impression that the promise from CFMEU was industrial harmony. Industrial peace. That if you kind of, you know, put them in the box seat for EAs, that there would be industrial harmony. That was the promise.

15 **MR GISONDA:** And then at paragraph 66 -

COMMISSIONER: I don't quite understand how Mr Ingham would have any basis to make these comparisons. How would he know how other departments of main roads or departments of transport in other states would operate, given his background as a Queensland official of a building union?

MS MITCHELL: It was just sweeping statements of criticism. You know, we were a joke, as far as he was concerned, that he wasn't shy in telling us that.

25 **MR GISONDA:** Paragraph 66, you make the point which you referenced earlier, was that:

"He said he wanted BPICs implemented in full and it looks like an EA because it is an EA."

30 **MS MITCHELL:** Correct.

MR GISONDA: And then he expressed the view, you say there at the end of 66, that he thought we did not make it mandatory because of the Building Code, but that was now abolished. Was that a point that the union started to make to you once the federal code was amended significantly?

40 **MS MITCHELL:** My understanding was that that is one of the reasons why we couldn't originally put it in as a - you know, as an EA, a compulsory. But once the Building Code left, there was still obligations that we had advice on. That was that we still couldn't insist upon making it a requirement of tender to have an EA, or have an EA with a particular party or have an EA of a particular form. So we still had that requirement. So this was - the abolition of the Building Code, the abolishment of the Building Code, did come up then, and it wasn't a major - a major thing that was slammed down, and it really wasn't the major thing in our thinking at that time. We'd had considerable feedback from the civil contractors that this - an agreement of this form was not going to work in the civil industry.

MR GISONDA: Paragraph 68, you say that:

5 "I also recall during my discussion with Mr Ingham, he said that DTMR better get real regarding safety and punish the bad ones and he suggested contractor safety could be assessed by simply counting the number of infringement notices issued against a contractor."

10 And then you say you expressed concern about that approach. Why were you concerned about such an approach?

MS MITCHELL: The number of actual penalty notices doesn't necessarily equal the safety risk. So one bad - one very bad penalty could be equivalent to a hundred small ones, where they're like a puddle or a bottle of water on the ground or something like that, because they could all be in theory penalties. But something more important like not having scaffolding to code, or trenching greater than 1.2 metres or things that could actually really kill people were much more important infringements than that the water wasn't stored correctly.

20 **MR GISONDA:** And if I can take you to page 22 of the bundle accompanying your statement, this is annexure JM-8. And at the bottom of the page, you've sent an email to Mr Logan Timms about a BPIC workshop that took place. And then you say, in the second-last paragraph, that "I met with the CFMEU", and you describe it this way:

25 "And it's clear they will never be happy with the Department of Transport and Main Roads until we (1) insist BPIC is the EBA (and enforce this) (2) do more with safety, penalising poor performers and not giving them work, and (3) ensuring they are consulted during the EBA."

30 So based on your meeting with Mr Ingham, was it your understanding that they wanted to be consulted with - whilst the EBA - let's call it the EBA - was put together, they then wanted the department to insist that that EBA had to be imposed on the project, and finally they wanted DTMR to, in your description before, use its immense purchasing power to penalise poor performers, using safety as a benchmark for deciding who would be penalised and who wouldn't be?

MS MITCHELL: Mmm-hmm. Yes.

40 **MR GISONDA:** You give a bit of evidence then from paragraph 81 onwards about Mr Scott Gartrell, who was an experienced industrial relations consultant who was used by your department to assist you with the implementation of BPIC. And at paragraph 85 on page 18 of your statement, you had a meeting with him, and you've got a file note that's annexed to your statement. But you say that:

45 "He had attended a meeting with the Premier, the Treasurer and the unions, and the unions had reported that DTMR was not applying BPICs."

And that doesn't surprise you, does it?

MS MITCHELL: No.

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MR GISONDA: That was the constant position.

MS MITCHELL: No.

10 **MR GISONDA:** And he, being Mr Gartrell, advised that the Premier reacted to this and said to make the unions happy. Was that - and I think you've mentioned something along these lines already, but was that an example of the sort of pressure that the department felt it was receiving from up top, that you have to try and make the unions happy through all this?

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MS MITCHELL: Yes.

COMMISSIONER: I just can't see it on the notes, sorry.

20 **MR GISONDA:** You're on page 18 of the statement.

COMMISSIONER: Yes.

25 **MR GISONDA:** Paragraph 85 is where we were reading from, and then the notes are at page 34 to 35 of the bundle, and -

COMMISSIONER: I just can't see that line there.

MR GISONDA: See the top of the page:

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"Meeting, Premier, Treasurer, unions. TMR's BPICs not being applied. Got a reaction from the Premier, make them happy."

COMMISSIONER: I see.

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MS MITCHELL: The third dot point, TMR BPICs not being applied.

COMMISSIONER: Yes. And who was the Premier at this stage?

40 **MS MITCHELL:** Annastacia Palaszczuk.

MR GISONDA: Annastacia Palaszczuk, and the Treasurer was Mr Dick.

45 **COMMISSIONER:** I just don't understand who else was in the meeting. At 85 you say:

"He advised..."

That's Mr Gartrell, this is paragraph 85 of your statement -

5 "...Ms Hawkswood and myself that he had attended a meeting with the Premier, the Treasurer and the unions."

Who were the unions?

10 **MS MITCHELL:** I don't know, but I would say BTG was definitely there.

COMMISSIONER: The Building Trades Group?

15 **MS MITCHELL:** I don't know whether AWU were there or not. It's not clear. The rest of the meetings about Gold Coast Light Rail, that was just a bit of introductory preamble before that meeting.

MR GISONDA: Yes. And do you know, just over at page 35, the very last entry on 35, it says "Sharon" - I assume that's Ms Bailey.

20 **MS MITCHELL:** Yes.

MR GISONDA: Strongly worded note to her minister's office that he shouldn't meet with unions. Do you know what that was about?

25 **MS MITCHELL:** That would've been Sharon Bailey, because she's mentioned earlier, and that would've been Minister de Brenni, and I suspect she was trying to tell him that - what I read into it was that he shouldn't be seen to be conflicted and he should stay out of it.

30 **MR GISONDA:** But you don't have any further information from her about what that was about?

MS MITCHELL: No.

35 **MR GISONDA:** Okay.

MS MITCHELL: No.

40 **MR GISONDA:** At paragraph 88 of your statement on page 19, you talk about receiving an email from Ms Hawkswood following a call she received from Mr Ryan Murphy, and he was another consultant engaged by DTMR to assist with IR issues; is that right?

45 **MS MITCHELL:** That's correct.

MR GISONDA: And that email is annexed to your statement at page 39 of the bundle, but you say at 89 that - you summarise what's said in that email, which is that:

5 "Mr Murphy's advice was that the CFMEU no longer saw a purpose for project-specific greenfield agreements, but rather they wanted to agree on one BPIC document which was written into all contracts and they would be briefing Ministers Butcher and de Brenni later that week."

10 Who is Minister Butcher?

MS MITCHELL: I think he was assistant minister for - I'm not sure, sorry, what his portfolio was. Maybe manufacturing. I'm not quite sure. But de Brenni was Energy and Public Works.

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MR GISONDA: And you recall at the time you say there was a discussion in relation to the development of a water BPIC?

MS MITCHELL: Yep. Yes.

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MR GISONDA: And you said earlier that there was a water BPIC that was being developed and there was also a renewables BPIC that was being developed, and would it be fair to say that with each iteration of the BPIC, that the respective sectors, the conditions - the terms and conditions were becoming more and more favourable to employees. Would that be fair?

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MS MITCHELL: The dollars went up on every BPIC, and it was surprising because each BPIC had escalation. So it wasn't as though they were anchored into one pay rate. The pay rate for the next year should've already been known. But every BPIC had massive escalation in pay rates and allowances, and every iteration seemed to have more and more favourable clauses for the union, I will say. So just two that I recollect. One, and we may talk about it later, was about access, free entry to access the sites, but one here was that one of the clauses was that there would be an ability to do a stop-work on every shift, but don't worry, it was only two hours. So that would be put into the EA.

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MR GISONDA: And at least the renewables BPIC, which has already been put into evidence, was extraordinarily detailed and lengthy. There were just an enormous number of clauses in that instrument.

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MS MITCHELL: Yes, and it had the unions in a very strong governance role. They were essentially - and I think Mr Balmer said this - the third party in there. So you weren't just contracting with the contractor any more; you had the union in there who were dictating a lot of the conditions that were critical to the productivity on site.

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MR GISONDA: Sorry, I'm told - this makes sense - that at the time, Minister Butcher, amongst other portfolios, was the Minister for Water.

MS MITCHELL: Okay. Okay, sorry, yes. The water one is of particular concern to us because it's primarily civil. It's not building. And so therefore they were most similar to transport, as in, the union that would have the coverage.

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MR GISONDA: Then at paragraph 91, which is on page 19, onwards you're talking -

COMMISSIONER: What is a water project? Is it what we used to call a dam?

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MS MITCHELL: Yes. Yes.

COMMISSIONER: Right.

15 **MS MITCHELL:** And hydro. A lot of the hydro dams, multiple-level dams, they go from the top to the bottom, pump them up and pump them down. Yeah.

COMMISSIONER: So like a Snowy type -

20 **MS MITCHELL:** Yeah, that would be a civil - a dam project would probably be considered a water project, yeah.

COMMISSIONER: And they were being commissioned in Queensland?

25 **MS MITCHELL:** They were at the time. There was hydro proposed.

COMMISSIONER: But not hydro as we traditionally knew it, where you use nature and the density of water to generate electricity, but actually ones that pump the water back up?

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MS MITCHELL: You use a renewable to pump it up to the high dam, and then you use the kinetic energy of the water as it comes down to generate power.

COMMISSIONER: And have any of those projects been built in Queensland?

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MS MITCHELL: I think most of that program ceased when the government changed.

40 **MR GISONDA:** And at paragraph 91, you're talking about - this is in the context of a rail BPIC and a submission that was being prepared in relation to the proposed rail BPIC, and you say that you received a response from Mr Timms and Ms Bailey to the effect that the submission that was being prepared by your department, which was pointing out that DTMR's guideline approach - they were pointing out that the guideline approach was not consistent with government policy, and whilst they
45 appreciated that flexible application may be appropriate, references to a guideline approach were not prudent, and they also questioned the quantum of the cost impact that the BPIC implementation was having on projects that were included in the

submission. Why were they getting involved in your department's submission about a rail BPIC?

5 **MS MITCHELL:** They were the policy owners. So any submission would routinely go to Treasury and Premier's for consultation, plus any impacted departments, but because they were the policy owners they were obviously consulted on the content of the submission to government.

10 **MR GISONDA:** Can I ask you to just look at paragraph 103 of your statement, which is on page 21.

MS MITCHELL: Mmm-hmm.

15 **MR GISONDA:** You say that in your view, the CFMEU took advantage of the real and implied opportunities to exert influence they were afforded under many mechanisms, and those mechanisms included state safety legislation, the abolishment of the ABCC, real or inferred government support, lengthy timeframes for actual enforcement methods, whether it be through the ombudsman or the QIRC, and an essentially powerless safety regulatory in WHSQ, regardless of how outrageous their
20 behaviour may be, and that it was a very uncertain and frustrating time for contractors and DTMR. Why do you - why did you form the view that the CFMEU were taking advantage of these opportunities to exert influence?

25 **MS MITCHELL:** The state safety legislation enabled some pretty lenient access if you're a permit holder, and then if you want to say a person isn't a suitable person to hold that permit, you have to go to put in an application and it has to go through QIRC, which had a six- to 12-month turnaround period at that time. The ABCC had just been abolished, and it was well known that there would now be no real-time watchdog of things like coercion and industrial things on site. So there was an actual
30 change in federal law and no one watching.

There was real government support that we had had directly. There was implied government support that - for example, that the contractors were, I believe, worried that the CFMEU were fully supported by government and so therefore would not
35 take legal action against them for things like injunctions, that that would go against them and their ability to win future work. That may be real or not. By the time it ended up happening on Centenary, certainly in transport, there was no actual support for that position.

40 There was Ravbar always saying that - and I can't remember how I knew this, but it was so well known - that he had the Premier's number. That was the threat. "I've got the Premier's phone number. Better do what I say or else." How real that was or not, I don't know. I do believe there's a lot of myth in some of the power struggles. And then the Fair Work Ombudsman, so the way to deal with something that was
45 happening on site - for example, illegal industrial activity on Centenary - was to take out - try to get an injunction on the workers - sorry, not the workers, on the union reps who were blocking access to the site for steel deliveries was you had to gather

evidence yourself and have testimony and witnesses, and there was a lot of people who weren't prepared to be witnesses against the CFMEU or put their name in writing for those sorts of things.

5 So there was a very big pot of opportunity that was occurring at this point in around 2024, and it really didn't matter how outrageous - and the other - just the other prong of that was that the regulator, the workplace health and safety regulator, could not or would not - and I believe it's probably "could not" - there was nothing in there that enabled them to call out the permit holders for their behaviour as it occurred on site.
10 And so regardless of how outrageous the behaviour was on site of the illegal blockades, the following staff to car parks, entering sites in a noisy way, taking photos of rosters with private phone numbers on them, making a lot of noise, putting posters up with fists on them, shaking AWU's cars and threatening people and threatening staff and having people relatively terrified and having a bombardment of
15 accesses, regardless of how outrageous that behaviour was, there was really no one who could regulate that. There was a real hole in regulation.

Police would come if it was a trespass. If they had a permit, they were allowed to be there. They relied on the safety regulator to decide whether they were or weren't a
20 permit holder. It was a really very frustrating time for all of us. I - I actually felt really powerless, and I've spent my whole career being a problem solver: let's solve this problem and deal with this thing that's presented to me and I'll make it better. I will, you know, go and talk to people and try to get them to change their legislation or whatever I need to do. And it was a very, very frustrating time for all of us.

25 **MR GISONDA:** I have no further questions, Commissioner.

COMMISSIONER: What is the position in relation to the cross-examination of Ms Mitchell?
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MR O'GRADY: We've filed an application, Commissioner, and I would seek to very briefly cross-examine Ms Mitchell.

COMMISSIONER: What's the attitude to the application, Mr Gisonda? Oh, sorry.
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MS MORROW: Commissioner, thank you.

COMMISSIONER: Ms Morrow.

40 **MS MORROW:** Counsel assisting. We don't oppose the cross-examination of Ms Mitchell. There were two topics identified, and we don't oppose them.

COMMISSIONER: I don't think I've got a copy of it. Thank you. Very well.

45 **<CROSS-EXAMINATION BY MR O'GRADY**

MR O'GRADY: Yes, thank you, Commissioner. Ms Mitchell, my name's O'Grady. I'm appearing for the CFMEU administrator.

MS MITCHELL: Good afternoon.

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MR O'GRADY: And you understand that as part of the administration, Mr Ingham was removed from his role?

MS MITCHELL: I understand that.

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MR O'GRADY: And you understand that similarly, Mr Ravbar was removed from his role?

MS MITCHELL: I understand that.

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MR O'GRADY: Yes. Now, this isn't on the topics I've indicated in the application, Commissioner, but it's something that's arisen out of the oral testimony. I take it from what you explained to the Commission earlier, you're not a lawyer by training?

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MS MITCHELL: I am not a lawyer.

MR O'GRADY: Yes. And you understand that the issues as between the rival coverage between the CFMEU and the AWU is a complicated issue?

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MS MITCHELL: I understand it's a very complex issue.

MR O'GRADY: Yes. And do you also understand that the administrator has sought to put in place a process, with the agreement of the AWU, to try and resolve some of those issues?

30

MS MITCHELL: That's great to hear.

MR O'GRADY: Yes. All right. Thank you. You'd also agree with me, I take it, that construction is an inherently dangerous industry?

35

MS MITCHELL: Construction has - has recognised risks.

MR O'GRADY: Yes. And would you agree with what Mr Balmer said when he gave evidence a couple of weeks ago that there are a number of rogue employers who don't have a sufficient regard for safety in the industry?

40

MS MITCHELL: I'm sorry, I didn't - I don't - didn't see Mr Balmer's testimony.

MR O'GRADY: That's fine. But just for your benefit, Commissioner, it's at transcript page 3466 on to 3467. But take me at my word, if you wouldn't mind, Ms Mitchell. If Mr Balmer said that, you wouldn't disagree with him, would you?

45

MS MITCHELL: I can't say I've seen it personally. I'd be very interested to talk to Mr Balmer about what he's seen. I can't say - I can't say that, because if I saw that, I would actually do something about it -

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

MS MITCHELL: - if it was working for us. And if it wasn't, I would talk to whoever they were working for, so -

10 **MR O'GRADY:** Yes, but you're not suggesting that Mr Balmer would've made that up?

MS MITCHELL: Oh, no. No. Not at all. But I don't know the context of what he was saying.

15 **MR O'GRADY:** I understand. But you would accept, wouldn't you, that Mr Balmer would be in a position to know that there are a number of rogue employers in the construction industry who do not pay sufficient regard to safety?

20 **MS MITCHELL:** I - I assume so.

MR O'GRADY: Yes. Thank you. And you'd accept that if that were the case, that is something that the CFMEU and indeed the other building unions are entitled to be concerned about?

25 **MS MITCHELL:** I - I would say that the role of unions is to look after their members' interests, and safety is one of those interests.

MR O'GRADY: Yes. Well, it's core business for a union, isn't it, to look after the safety of its membership?

MS MITCHELL: That would be reasonable.

35 **MR O'GRADY:** Yes. And it's something that a union like the CFMEU is entitled to try and pursue, including by lobbying government?

MS MITCHELL: Anybody can lobby government on anything that they're interested in.

40 **MR O'GRADY:** Yes. But there's nothing improper, I put to you, for a union like the CFMEU to try and address issues like rogue employers who don't pay sufficient regard to safety by trying to persuade government to do something about it?

45 **MS MITCHELL:** I'd agree with that.

MR O'GRADY: Yes. And one of the ways a government can do something about it is to alter its procurement policies so as to emphasise safety as a prerequisite for getting government work?

5 **MS MITCHELL:** I - we wouldn't use a procurement policy for that. We just have a requirement in pre-qualification that you can't even get to the first gate unless you have adequate safety systems.

MR O'GRADY: All right. Well, that's procurement by another name, I put to you.
10

MS MITCHELL: It is procurement, but it's not - it's not assessing between contractors. It's an absolute bar to be met.

MR O'GRADY: I understand. And you'd also accept, I put to you, that it's perfectly
15 legitimate for a union like the CFMEU to be concerned about job security for its membership?

MS MITCHELL: I would agree with that.

20 **MR O'GRADY:** And that's something, once again, that the union is entitled to try and pursue by lobbying government?

MS MITCHELL: I agree.

25 **MR O'GRADY:** And the same point would follow by - in respect of increasing the number of women in construction?

MS MITCHELL: It's known that the better diversity you have, the better the bottom
30 line.

MR O'GRADY: And so there's nothing at all illegitimate of the CFMEU seeking to achieve that by trying to persuade government to take that factor into account through its procurement policies.

35 **MS MITCHELL:** I wouldn't disagree with that.

MR O'GRADY: And I take it you'd also accept that the same would apply in respect of Indigeneity of the workforce in construction?

40 **MS MITCHELL:** I would agree with that.

MR O'GRADY: And increasing the number of apprentices in construction?

MS MITCHELL: I agree with that. It's nothing new for civil infrastructure.
45

MR O'GRADY: No. Yes. Thank you. I have no further questions, Commissioner.

COMMISSIONER: Thank you. Is there anything arising from that, Mr Gisonda?

MR GISONDA: No. So, I think, unless you've got any questions -

5 **COMMISSIONER:** I just had one. Ms Hawkswood gave some evidence last time
about - perhaps it was the government's costing of BPIC, or perhaps your
department's costing of BPIC, and I think Ms Hawkswood worked in this special role
of implementation of BPIC from 2020 through to 2024; is that right? And the policy
10 was announced in late 2020, and industry were, on her evidence, quite shocked by it
when it was announced. And then for the next four years, '21, '22, '23, '24, the costs
as estimated by the department kept going from about 3.6 per cent to about eight per
cent, then there was a figure, I think, of 26 to 39 per cent, and the last evidence we
15 received was through an estimate from the project director of the part of the Gold
Coast Light Rail project from John Holland, who estimated the BPIC costs on that
part of the project as increasing the costs from around 660 million - I might be out by
a few million - by about 430, so just short of 1.1 billion, about 63, 64 per cent
increase. So the costs - now, that was a contractor claiming money from the
government, so -

20 **MS MITCHELL:** I think that was Gold Coast Light Rail.

COMMISSIONER: Gold Coast - what did I say?

25 **MS MITCHELL:** Sorry, I thought you said Coomera Connector.

COMMISSIONER: No, I meant to say Gold Coast Light Rail.

MS MITCHELL: Okay. Yep.

30 **COMMISSIONER:** What involvement did you have in costing BPIC during the
period? Now, you were only there for two of those years.

35 **MS MITCHELL:** From the time that I was there in 2020, end of 2020 to
substantially 2023, I had in my mind, because I asked the question, we had evidence
that, for example - and I still have them in my head - that for the Coomera
Connector, which was an AWU agreement, the BPIC top-up was 12 per cent, and
that for the Gold Coast Light Rail, which was a CFMEU agreement, the BPIC top-up
was 24 per cent. That's what I have in my head at that time.

40 **COMMISSIONER:** What time was that, sorry?

45 **MS MITCHELL:** That was beginning of 2023. The reason why we knew that was
because the top-up was actually figures that were provided to us by the contractor at
tender, or just after tender, so they had a chance to re-price the project between a - in
a non-BPIC EA, enterprise agreement, and then with a BPIC EA, because the state
told them what the pay rates had to be within the BPIC, and that top-up was the
difference between those two things. And it was made up of both direct pay, so say,

for example, the pre-BPIC EA had \$40 an hour and it went up to 48. The \$8 an hour times the number of hours was the top-up. It was the actual labour top-up, an amount for subcontractors, so how many - how much subcontractors would be stepped up and paid extra as well.

5

And then it would have some overheads on top of that for the white collar to administer that, because it was quite onerous to administer. You had to prove that you'd done that many hours and that you'd paid that amount. So you had to look at the actual payrolls and everything, so it wasn't cheap to administer. So those were the figures at that time. So there were 12 per cent to 24, and there were ones in the middle that were around 17. So that was pretty accurate figures. We had actual figures at that time of what we were - the extra cost was at that time.

10

By the end, with the renewable, which was the end of '23 to '24, the rates were just going up and up and up, and the - they got pretty scary. They were higher than anything we'd ever seen before, and bigger than the cost impact, the direct cost impact that we could work out was what was the productivity impact that was going to occur if we did this EA verbatim and that the contractors lost this executive control over the site? That was the thing that was quite scary to us.

20

COMMISSIONER: The operator has just pulled up some evidence of Ms Hawkswood where she says the cost impact, similar to what you've just said on the Gold Coast Light Rail, it must be around that time - might not be, I have to check her evidence - 26 per cent and the time impact was 17 per cent, and Coomera Connector Stage 1 North 12 per cent and 10 per cent time impact.

25

MS MITCHELL: Mmm-hmm.

COMMISSIONER: Assuming Ms Hawkswood's evidence is the same as yours, that's the beginning of 2023, you said by late '23 and early '24 it had become pretty scary because of the rate increases and also because the impact on productivity. What modelling did you do during those two years?

30

MS MITCHELL: From about the middle of '23, we engaged Fission. They -

35

COMMISSIONER: When you say -

MS MITCHELL: I saw your - I think you mentioned with Ms Hawkswood, and I think that the key thing was that that Fission work wasn't just done in February '24. It was done over months. So we would meet with them, they would take the information into account, we would ask some questions, they would go away and answer the questions. We were continuously meeting with them, continuously getting the work done at that stage.

40

COMMISSIONER: So May '23 through to February '24.

45

15 **MS MITCHELL:** Middle of '23 through to '24. And as everybody tried to do a new BPIC, they would model that one and compare it and they would bring in new EAs from interstate and be comparing those as well. So I may not have the dates completely right, but it wasn't just a one-off report. It was a lot of meetings and a lot of discussion of "Oh my God, what's this going to mean?" There was really serious concerns by the end of '23 about the affordability of the rail program. We had some really big - the Logan-Gold Coast faster rail, multibillion-dollar job, and we just couldn't afford an extra 20, 30 per cent on top of that, because it would just blow out to be unaffordable. And we were very conscious of the cost impacts and maintained that in any of our submissions to government, we had to absolutely highlight what the cost impacts were as we saw them, and at the time the DG was engaging with her counterparts.

15 **COMMISSIONER:** Sorry, the who?

15 **MS MITCHELL:** Our director-general, Sally Stannard, was liaising with her counterparts in Treasury and Premier's and saying, "Hey, look at this. This is what we're getting." The thing is, though, if you don't have something that's really mature and factual, really data driven, they will pick holes in it and go, "I don't believe you." 20 So we had to have something that was really robust, and that's why it took a while to get some really robust figures that we could present as "Here's the facts as you see them." Because otherwise people would just shoot holes in them if they didn't suit their narrative.

25 **COMMISSIONER:** It sounds a long time, though, to have all of '21, '22, '23 and to get to '24 before you get some robust figures?

30 **MS MITCHELL:** I think they were based on what the figures we were actually getting in at that time, so we actually had tenders. We had facts. We had actual facts. Other than that, we just had conjecture.

COMMISSIONER: Anything arising from that?

35 **MR GISONDA:** No. So I think it's probably appropriate to thank Ms Mitchell and wish her well in her retirement.

MS MITCHELL: Thank you.

40 **COMMISSIONER:** Thank you very much for your evidence, Ms Mitchell. You're excused.

<THE WITNESS WAS RELEASED

45 **COMMISSIONER:** What's next, Mr Gisonda?

MR GISONDA: Unless there's something from yourself, Commissioner, or others, then that might be a convenient time to adjourn.

COMMISSIONER: Can you just tell me about the next three days, who we're hearing from, just in very, very short compass?

5 **MR GISONDA:** Yes so the next two days will be concerned with the Centenary Bridge project, and the witnesses include Mr Leigh Hahn, who was an employee of BMD but is now an employee of Georgiou.

COMMISSIONER: You don't act for him, Mr Murdoch? Just -
10 **MR MURDOCH:** No.

COMMISSIONER: No.

15 **MR GISONDA:** We have another witness from the Department of Transport and Main Roads, and that's John Ryan. Then we have two further witnesses: Mr Ben Weston, who remains - is an employee of BMD, and Mr Chris Demartini, who's an employee of SMEC. So just so you're clear, Commissioner, the Centenary Bridge project is being built by a joint venture existing of BMD and Georgiou. Even though
20 Mr Hahn now is employed by Georgiou, Mr Hahn and Mr Weston are coming forward as BMD employees, contractors building that project, part of that joint venture. It was a DTMR project, procured project, and Mr Ryan will say some things from the perspective of DTMR, and SMEC were the contract administrator on the project, and that's how Mr Demartini fits in.

25 **COMMISSIONER:** And that's why Mr Jennings and Mr Kidston are here, for Mr Demartini?

MR GISONDA: Yes. And then on Friday is the continuation of cross-examination
30 of Mr Watson by primarily Mr Ravbar and M1.

COMMISSIONER: And I take it you're not doing that; Mr Wheelahan is doing that?

35 **MR GISONDA:** Correct.

COMMISSIONER: Is there anything further for this afternoon? No? We'll adjourn till 10 am tomorrow.

40 **<THE HEARING ADJOURNED AT 3.34 PM**