Queensland Government

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

COMMISSIONED UNDER THE PROVISIONS OF THE COMMISSIONS OF INQUIRY ACT 1950

PUBLIC HEARING
BRISBANE MAGISTRATES COURTS

THURSDAY, 29 OCTOBER 2026
AT 10.01 AM

DAY 53

APPEARANCES

Mr S Wood AM KC – Commissioner
Mr P Wheelahan KC – Counsel Assisting
Mr J McLean – Counsel Assisting
Mr C O'Grady KC – Counsel for the CFMEU Administration
Ms F Fox – Counsel for the CFMEU Administration
Ms A Hughes – Counsel for the CFMEU Administration
Mr D de Jersey KC – Counsel for the State of Queensland
Ms S Amos – Counsel for the State of Queensland
Ms K Hillard – Counsel for Grace Grace MP
Mr A Duffy KC – Counsel for Grace Grace MP
Prof. Ronald Goldstock – Expert Witness

<THE HEARING RESUMED AT 10.01 AM

COMMISSIONER: Deal with appearances. Mr Wheelahan, you're appearing with Mr McLean as counsel assisting?

MR WHEELAHAN: Yes, Commissioner.

COMMISSIONER: Mr O'Grady, you're continuing to appear for the administrator of the CFMEU with Ms Fox?

MR O'GRADY: And also Ms Hughes.

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

MR DUFFY: That is so, Commissioner.

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

MR DE JERSEY: Yes, Commissioner.

COMMISSIONER: Mr Wheelahan.

MR WHEELAHAN: Thank you, Commissioner. Today we will call Professor Ronald Goldstock. He is an internationally recognised organised crime expert. He's a former director of the New York State Organized Crime Task Force. He was a former Commissioner of the Waterfront Commission of the New York Harbor, former Chief of the Rackets Bureau in the New York District Attorney's office. He was Inspector General of the US Department of Labor. He was an adviser appointed by the Secretary of State for Northern Ireland to assist in organised crime, and he's the current director of the New York Convention Centre Operating Corporation.

As part of his tenure at the Organized Crime Task Force, the final report into corruption and racketeering in the New York construction industry was published by the New York University Press. That report traverses, much of it, the history that has analogies and similarities to the matter before you. He has prepared an expert report, and that is an important report for you to consider when under your terms of reference you are to consider policy and legal reform. I call Professor Goldstock.

COMMISSIONER: Sorry, what did you say then? I just missed the last bit.

MR WHEELAHAN: I call Professor Goldstock.

COMMISSIONER: Is Professor Goldstock in the hearing room? Mr Goldstock, would you come forward to the witness box, please.

<RONALD GOLDSTOCK, AFFIRMED

<EXAMINATION BY MR WHEELAHAN

COMMISSIONER: Please have a seat, Professor Goldstock.

MR WHEELAHAN: Your name is Professor Ronald Goldstock?

PROF GOLDSTOCK: Yes.

MR WHEELAHAN: And for this Commission of Inquiry, you have prepared an independent expert report based on your experience and expertise dated 16 September 2026?

PROF GOLDSTOCK: I have.

MR WHEELAHAN: And that report is 38 pages, including annexure A?

PROF GOLDSTOCK: The truth is I don't remember, but I assume so.

MR WHEELAHAN: And in that report at page 16, you have declared that the opinions in the report are your own genuine, independent and impartial opinions?

PROF GOLDSTOCK: Yes.

MR WHEELAHAN: I tender that report, Commissioner, dated 16 September 2026.

COMMISSIONER: Are there any objections? Independent expert report of Professor Ronald Goldstock, 16 September 2026, 17 pages with one annexure of 21 pages will be exhibit RG-1.

<EXHIBIT RG-1 INDEPENDENT EXPERT REPORT OF PROFESSOR RONALD GOLDSTOCK, 16/9/2026, 17 PAGES WITH ONE ANNEXURE OF 21 PAGES

MR WHEELAHAN: Commissioner, as is the practice, I also tender the assisting materials bundle, as it is called, comprising 2028 pages. That bundle of material was provided to Professor Goldstock with the letter of instruction contained within his report.

COMMISSIONER: What's in these 2000 pages?

MR WHEELAHAN: Evidentiary material before the Commission. It replicates the same materials that were provided to Professor Varese and Campana. It's indexed, Commissioner.

COMMISSIONER: It looks like the rules and office holders of the CFMEU, plus the commissions of inquiry - sorry, the order in council that set up this inquiry, plus some aide-mémoires, plus a witness statement of Ms Stacey Schinnerl and a transcript of the hearing on 4 December last year, and the two expert reports of Professors Federico Varese and Professor Paolo Campana; is that right?

MR WHEELAHAN: Yes.

COMMISSIONER: Are there any objections? The various documents provided to Professor Ronald Goldstock for the purposes of producing his expert report dated 16 September 2026, comprising some 2028 pages, comprising the rules and list of office holders of the CFMEU, the order in council setting up this inquiry, aide-mémoires describing the structure of the CFMEU and control of subcontractors, witness statement of Stacey Schinnerl, transcript of this Commission of Inquiry 4 December 2025, and expert reports of Professor Federico Varese and Professor Paolo Campana will be exhibit RK-2 - RG-2.

MR WHEELAHAN: RG-2.

COMMISSIONER: I'm getting everything confused today.

<EXHIBIT RG-2 VARIOUS DOCUMENTS PROVIDED TO PROFESSOR RONALD GOLDSTOCK FOR THE PURPOSES OF PRODUCING HIS EXPERT REPORT DATED 16/9/2026, COMPRISING SOME 2028 PAGES, COMPRISING THE RULES AND LIST OF OFFICE HOLDERS OF THE CFMEU, THE ORDER IN COUNCIL SETTING UP THIS INQUIRY, AIDE-MÉMOIRES DESCRIBING THE STRUCTURE OF THE CFMEU AND CONTROL OF SUBCONTRACTORS, WITNESS STATEMENT OF STACEY SCHINNERL, TRANSCRIPT OF THIS COMMISSION OF INQUIRY, 4/12/2025, AND EXPERT REPORTS OF PROFESSOR FEDERICO VARESE AND PROFESSOR PAOLO CAMPANA

MR WHEELAHAN: Professor, you are a graduate of Cornell University and Harvard Law School?

PROF GOLDSTOCK: I am.

MR WHEELAHAN: And you served as Inspector General of the US Department of Labor?

PROF GOLDSTOCK: Right. I was deputy inspector general, then inspector general.

MR WHEELAHAN: And in that position, or positions, you were responsible for investigations into corrupt unions?

PROF GOLDSTOCK: Yes. The Office of Inspector General of the Labor Department, unlike the other inspectors generals' offices, had control over labour racketeering, and I was responsible directly for that.

COMMISSIONER: Is that somebody that was set up by Robert Kennedy when he was attorney general, or does it pre-date that?

PROF GOLDSTOCK: No. No, Robert Kennedy reorganised the organised crime and racketeering section of the US Department of Justice when he was attorney general. It's interesting, because among the people that he hired and worked for him was G. Robert Blakey, who ultimately used his experience there to determine that the tools to deal with organised crime problems were insufficient, and he ultimately developed the RICO statute as a result of those experiences.

COMMISSIONER: And then when did you serve as Inspector General of the US Department of Labor?

PROF GOLDSTOCK: I was deputy inspector general in - the Inspector General Act was passed in 1978, and it was only for, my recollection is, about 10 major departments within the US Government. It has since expanded to virtually all the departments and agencies. I began as deputy inspector general in 1979, and then when the inspector general left, I took that position, and that position I held for a relative short period of time, because when the new president came in in 1980 - well, sworn in on 20 January 1981 - his first act was to fire all the inspectors general. So that ended my career there.

MR WHEELAHAN: You were also Chief of the Rackets Bureau in the New York County District Attorney's office?

PROF GOLDSTOCK: Yes. The Manhattan DA's office at the time was run by Frank Hogan, later Bob Morgenthau, and it worked on organised crime cases, initially under Thomas Dewey, who later became governor, and it was really the only agency that was doing that in a systematic way. The Federal Government had yet to recognise the existence of organised crime or the Mafia or Cosa Nostra, and so it was charged with that in New York. It was the major institution for dealing with problems of organised crime and racketeering.

MR WHEELAHAN: And union corruption -

COMMISSIONER: Sorry. So you go straight from, in January 1981, from the federal role as Inspector General of the US Department of Labor to -

PROF GOLDSTOCK: No, it was the other way around. When I left law school I went into - that was in 1969. I'm very old. And in 1969 I went into the Manhattan DA's office, and then became Chief of the Rackets Bureau.

COMMISSIONER: And that was - that's obviously a state -

PROF GOLDSTOCK: Sorry?

COMMISSIONER: That's a state role, not a federal role?

PROF GOLDSTOCK: That's - yes. In New York State, there are 62 counties and 62 elected county officials, and one of those counties is New York County, which is really known as Manhattan.

MR WHEELAHAN: You were appointed by the secretary - the Secretary of the State for Northern Ireland for a two-year period to serve as his adviser on matters relating to international organised crime?

PROF GOLDSTOCK: Right. I think it was a little bit longer. It began under John Reid, who was the Secretary of State for Northern Ireland, and then when he left, there were either two or three other secretaries of state that followed him that I continued to work for.

MR WHEELAHAN: In respect of international organised crime?

PROF GOLDSTOCK: Well, the problem was this was after the peace agreements in Northern Ireland, and those who had been involved in ideological struggles and no longer could do that under the agreement needed to find something else to do, and since they were good at extortion, coercion and threats and violence, they formed organised crime groups. And that's on both sides of the divide.

MR WHEELAHAN: You served on the faculties of Cornell, Columbia and New York University law schools and ran the Cornell Institute on Organized Crime with Professor G. Robert Blakey?

PROF GOLDSTOCK: Yes. I mean, I went to Cornell. Professor Blakey had started the institute. I was his executive director. He then left to conduct the investigations into the assassinations of Kennedy and King in Washington DC, so I took over the institute.

MR WHEELAHAN: And you say that he was the author of the Racketeering Influenced and Corrupt Organizations statute, commonly referred to as RICO.

PROF GOLDSTOCK: Right. He is the person who wrote the statute after recognising the need for it as a prosecutor.

MR WHEELAHAN: You are a past chair of the American Bar Association Criminal Justice Section?

PROF GOLDSTOCK: I am.

MR WHEELAHAN: A member of the American Bar Association Criminal Justice Standards Committee?

PROF GOLDSTOCK: I am, yes.

MR WHEELAHAN: The Task Force on Monitoring Standards?

PROF GOLDSTOCK: Yes.

MR WHEELAHAN: The "Investigative Role of the Prosecutor"?

PROF GOLDSTOCK: That also.

MR WHEELAHAN: You are currently a director of the New York Convention "Javits" Center Operating Corporation?

PROF GOLDSTOCK: Yes. That's the - that's the group - I'm on the board and I chair the audit and governance committees of the exposition centre in New York.

MR WHEELAHAN: And Javits is because of the naming?

PROF GOLDSTOCK: Jacob Javits was a New York senator, much beloved.

MR WHEELAHAN: You have served as a member of the Advisory Board of what's known as Project Rise of the International Brotherhood of Teamsters?

PROF GOLDSTOCK: Yeah. The - Teamsters was under receivership. They had been there for a long period of time. The head of the Teamsters at the time was James Hoffa, and he attempted to create a project which would demonstrate to the Federal Government that the Teamsters could run themselves. Ultimately, he got into disagreements with the person who was running the project. His name was Ed Steer, and Ed Steer left and the project ultimately did not succeed.

MR WHEELAHAN: And for those that don't know, what is the Teamsters?

PROF GOLDSTOCK: Well, originally, the Teamsters would have been truck drivers, but they expanded outward and they represent workers in a wide variety of industries.

MR WHEELAHAN: On that advisory board, it sought to institute democratic processes within the Teamsters?

PROF GOLDSTOCK: Yes. That was - that was the attempt, to show that the Teamsters could police themselves and they did not need a federal administrator.

MR WHEELAHAN: And to rid the union of corrupt actors?

PROF GOLDSTOCK: Yes. Part of it was to have a system by which they could investigate individuals within the union who were engaging in corrupt activities and remove them from their position and the union.

MR WHEELAHAN: And to create a culture of honesty and integrity?

PROF GOLDSTOCK: Yes. I can tell you one quick story. I was talking to a young man who had joined Project Rise. He was the head of the Teamsters' local - it may have been Detroit; it could have been another city - and I asked him why he did, and he said, "You know, my wife is an executive in a corporation. We get invited to a lot of cocktail parties. I get asked what I do, and as soon as I say I'm a Teamster official, the reaction is 'Where is Jimmy Hoffa buried?' And he said, "I'm tired of it. I wasn't born when he was alive, and still that is the question that's being asked, and our union should not be looked at that way. It should be looked at as a union that represents the workers and as a union which has a culture of integrity."

MR WHEELAHAN: You have lectured, consulted, written and testified as an expert witness on subject matters including organised crime, white-collar crime, corruption, labour racketeering and corporate integrity?

PROF GOLDSTOCK: I have.

MR WHEELAHAN: Mr Operator, if you could put paragraph 1.2 of the expert report, which is page 2 of the document, on screen - I'll just preface this: you served for 13 years as Director of the New York State Organized Crime Task Force; correct?

PROF GOLDSTOCK: Yes.

MR WHEELAHAN: Can you speak to these matters: why it was established, and speak to the successes during your tenure.

PROF GOLDSTOCK: Right.

COMMISSIONER: So what was the period of time? 13 years between when and when?

PROF GOLDSTOCK: It began 1981 and went to the end of '94.

COMMISSIONER: What was this, the New York State Organized Crime Task Force? How was it made up?

PROF GOLDSTOCK: So as I mentioned before, New York State is composed of 62 counties. Each county has a separate elected district attorney, and the district attorney is responsible for all criminal activity within the jurisdiction of that county. There is an attorney general in the state, but the attorney general has extraordinarily limited jurisdiction when it comes to criminal matters. It is essentially a civil unit.

There was a recognition in 1970, certainly before that time, that organised crime was not bound as the district attorneys were to county lines, and there was a need for a body to look at multi-county organised crime or organised crime between New York and other states.

And so they created this organisation called the Organized Crime Task Force. The director of the task force had to be appointed by the governor of the state and the attorney general of the state; more importantly, had to be fired by both, that is, it was seen to be an independent agency free of politics. An individual was appointed in 1970 to be the director, and that person left - I don't remember how long after, maybe six months or so - because he was appointed a judge, and there was no one that was reappointed as the official director, that is, by the governor and the attorney general, for 10 years thereafter, and -

COMMISSIONER: Because they couldn't agree?

PROF GOLDSTOCK: You know, I wasn't around at that time, and I don't know why that was the case, but it went on through a series of acting directors, and by the time I took it over, The New York Times referred to it as a moribund organisation, and in fact, there were just no pending investigations, indictments. There were a couple of indictments that had to be dismissed because of technical reasons, and so I was given a free hand in this. Let me step back a little bit. This is at the time when I had been the Inspector General of the US Department of Labor and fired by the new president, and so I was trying to figure out, as a single parent with two daughters, what I could do to feed them.

I started thinking about - and I will come back to this later - the idea of using an inspector general that existed in the Federal Government but make it better and use it in private industry. I started working on that when I got a call from New York to see if I wanted to take over the Organized Crime Task Force. While I had been in the institute of organised crime with Bob Blakey -

COMMISSIONER: This is at Cornell?

PROF GOLDSTOCK: At Cornell - he and I and Professor Charles Rogovin had done a study of organised crime units around the country, and we looked to illuminate the practices and procedures that worked and try to figure out what problems existed in all of these units, and we issued a report on that called the Rackets Bureau Study. So when I took over the Organized Crime Task Force, I had already, in effect, written the book on that, and I was given a free hand to organise it any way I wanted.

COMMISSIONER: To organise the task force?

PROF GOLDSTOCK: To organise the task force. The task force had before been a series of lawyers who controlled a series of investigators and they were mostly the state police, and in fact, the state police weren't interested in having them controlled

by lawyers, and so they really didn't get along all that well. When I came in, my view was that you can't succeed in organised crime by indicting and convicting individual people and that the industries in which organised crime operated were subject to organised-crime control for two reasons. One is they were - had racketeering susceptibility, that is, they were created in a way which allowed racketeers to obtain important roles in the industry, and they had racketeering potential, that is, they contained things that organised crime wanted, whether it be money, power or any other way of contributing to their other criminal activities.

So the idea was not to look at individuals but to look at industries, and to do it in a rather sophisticated way, and then bring cases, but also use civil remedies as a means of changing the way the industry operated. And so I created teams of individuals. Each team was an attorney, a forensic accountant, an investigator, and a tactical analyst, and they worked together - they were assigned a criminal activity area. So let's assume one was energy and environment in the Southern District of New York. And they were to look at what the problems were in that area and then come up with a plan for doing something about it.

So in that particular case, for example, the carting or the garbage industry was controlled by two families: the Gambino family controlled the union at 813 of the Teamsters, which controlled all the workers, and the Lucchese crime family in the counties of Nassau and Suffolk, which are in the eastern part of Long Island, controlled the industry association, which was the employers. And so the idea was to try to figure out what we could do to change that methodology. I mentioned that we had tactical analysts on the team. We also -

COMMISSIONER: What analysts?

PROF GOLDSTOCK: A tactical analyst on each of the teams.

COMMISSIONER: What does that mean, a tactical analyst?

PROF GOLDSTOCK: So a tactical analyst would look at the information that was flowing in, trot it out and determine we best could move next in that particular investigation. But our office also had strategic analysts, and they thought more broadly about what was occurring in the individual - in the industry as a whole and why the industry had - and what was the racketeering potential and the racketeering influence. And so they worked with the teams in coming up with what they found, and they were aided - and this was just unusual for an organisation like ours - by academics. So from various times, we had economists working with us, historians, which comes out to be particularly important in the construction industry, both of those, but we also had sociologists and other industry specialists as they were needed.

And so the idea was that as we progressed in the investigation, we would not only concentrate on individuals but concentrate on the industry as a whole, and then when we finished, try to take steps to modify the industry - obviously we couldn't do it

ourselves, but to work with the government to do this, to change the industry. And I think in many ways we were successful with both the garbage industry and the construction industry in New York.

COMMISSIONER: You said before that you analysed the industries through two concepts: racketeering susceptibility and racketeering potential. Racketeering is a word that's very commonly used in the US; it's not a word that we often use over here. What does it mean?

PROF GOLDSTOCK: So organised crime activity. So just as an aside, when organised crime political groups were formed at the beginning of the - the end of the 19th, beginning of the 20th century, one of the methods by which they obtained money was to throw big events, dinners, and the price for going to the dinner was extraordinarily high for the time and far more than the dinner cost, and everything was raked off to the benefit of the political organisation or the organised crime group or a combination of the two. And at those dinners, they made a lot of noise, or they made rackets, and so the things were called rackets, and the term racketeering comes from that. Just as another aside, when police now have dinners for somebody who is retiring or being seconded somewhere else, they will refer to them as rackets - not for the same reason, but somehow the name stuck.

MR WHEELAHAN: So at 1.2, you actually talk that in your tenure there, you had successes in combatting these organised crime families.

PROF GOLDSTOCK: Right. So in the Lucchese family, we were able to indict the people who were involved in the criminal activity, and one way that occurred was that I think for the first time, we were able to put an oral listening device in a car that went from county to county in New York. And that required a bit of work, because we had to overcome at least four different problems. One was we had to have probable cause that conversations were occurring within the car, and of course, since only two people were in the car, that is, the head of the Lucchese crime family, Tony Ducks Corallo - the name "Ducks" came not because he quacked but he was very good at ducking subpoenas - and his driver, who happened to be the head of the - or the industry specialist for the garbage industry on Long Island. So this gave us exactly what we wanted, but to prove what they were talking about, in a car which was only the two of them was problematic, but I did come up with a theory that ultimately worked, and it had to do with the relationship of a boss of the family and the driver.

So we solved that problem, then we had the technical problem of getting the bug in the car. On that we had a really superlative technical team in our office, and it was known throughout the country. In fact, we were often asked to send people to different states to help them with problems they had in achieving - well, breaking into locations, planting bugs, under court orders. And we also had to deal with the problem of the interception of conversations, that is, the car moved and you couldn't have a single car following it because they would be seen. So we had a van with recording equipment in the back, and we had chasing cars that would repeat the

signal they received, and they would break off and break on routinely so no one could see it was the same car.

And then we also had to find a way of getting judges' authorisation to do it, because the judges generally were restricted to the counties in which they were elected or sat, and so since the car moved from one county to another, we had to have a series of judges who signed off on the same order. It is a - you know, counties were designed - I don't know how many centuries ago and how far horse and rider could go from the county seat in the day, and we are still stuck with that today, so we live with that.

MR WHEELAHAN: Right. Can you speak to the importance of RICO in combatting organised crime racketeering and corruption in the New York construction industry?

PROF GOLDSTOCK: So I would say it was essential, and not only in the construction industry, let me say: organised crime as a whole. I don't think you can be serious about combatting organised crime without having a statute like the RICO statute. It doesn't have to be precisely the same, but for us, it worked quite well, and I suppose at some point I'll explain RICO and I can explain why that is the case. But let me say also that interesting things were happening as RICO was developed by Professor Blakey, that is, the mob in the United States was roughly formed, let's say Cosa Nostra, around 1930, and they were tied together by honour and kinship and respect and the code of Omertà literally being a man, but - but the code of silence wasn't broken until the 1960s: an extraordinary period of time when you had so many people in there. And with the exception of the Manhattan DA's office and Thomas Dewey, there was no real law enforcement effort against them.

And so they succeeded dramatically, taking over industries, unions and all sorts of other illicit, illegal activity. But what was happening were there were changes within the mob, generational changes, ultimately to the #MeToo generation that were only looking out for themselves. At the same time, the ubiquitous Blakey comes back in, because in 1968 he wrote the wiretap statute. And what then happened was this circular series of events which changed the whole idea of organised crime in the United States and the notion that it was an intractable item into something that we could actually deal with. That is, electronic surveillance gave evidence which we could use in the RICO statute to prosecute people with serious consequences.

They then cooperated, which provided more information for electronic surveillance, which led to more information, which led to more RICO cases, which led to a greater number of people cooperating, and the joke has been that in the most recent cases, there are more informants working on the case than law enforcement officers because the entire structure has changed so dramatically.

MR WHEELAHAN: Well, it's probably the right time, then, for you - for those that don't know - to explain what RICO is, including its elements, importance of enterprise and predicate offences.

PROF GOLDSTOCK: Right. So let me step back a little bit on this and say that law is essentially government's response to social criminal problems. So at the beginning, in common law countries, there were the common law crimes of rape, robbery, murder. What we were concerned about is somebody hitting somebody over the head with a stick and stealing their cow, and the crimes were very basic and very simple. But for a crime to have been prosecuted, it had to have been completed, which was a problem, which was responded to by using the law of attempt. So somebody could be convicted of attempting to commit a crime without actually doing it. And then people agreed to commit crimes without even getting to the question of attempt, and we developed the law of conspiracy.

And then conspiracies became more complex. I don't know - I certainly don't know Australian or Queensland criminal law, but in the United States, we developed theories of conspiracy involving wheels and chains and combinations of the two, like complex conspiracies. But in the 20th century, we were confronted by something different, and that was organised crime, syndicated crime. And so what Blakey did was to sit down and create a statute which was directed to the problem of organised crime, that is, to lay out to the jury not that an individual crime was being committed by a person or that two people had agreed to do this but that an organisation was engaged in criminal activity over a period of time, and the structure of the organisation and the higher-ups who were insulated could now be charged.

And to do that, there are three concepts which he defines. One is - and I should say that Professor Blakey died a short time ago, six months ago, and it was widely recognised that he changed the face of organised crime and jurisprudence in the United States. I just happened to be there with him. So the three things that are defined are "person", and a person is a person like we are, or it could be a corporation. Anything with legal significance. It could be a police department, a legislature, a royal commission. Could be, for purposes of RICO, a person.

MR WHEELAHAN: A union?

PROF GOLDSTOCK: A union could be a person as well. An enterprise is one of two things. One is an organisation that has legal significance, and again, we go back to the way I was describing "person". It could be a corporation, a limited partnership, a sole proprietorship, any kind of business entity which had a charter or some legal significance, but also a union. It could be a police department. It could be something which is set up by regulations or a statute, that is, there is a piece of paper that you can point to that could be introduced in evidence to say, "This is an enterprise." But it is also more than just a legal enterprise: it is an association in fact, that is, the same kind of organisation without that piece of paper. It is an organisation like an organised crime family, a biker gang, any group of people who come together for the purpose of engaging in criminal activity and do it over a period of time.

MR WHEELAHAN: And that group of people can be, for example, the bikie gang, officials of a union, that can form that group?

PROF GOLDSTOCK: Well, it would be - it would be the union itself. So the enterprise is the organisation. But that would be an association in law and not an association in fact. Now, you could have individuals within the union that engage in activity by themselves, and they could be their own association in fact.

MR WHEELAHAN: I see.

PROF GOLDSTOCK: So, for example, if you look at a mob family, the organisation, the enterprise, could be the family, but there are individual crews within the family, and each of those could be an enterprise.

MR WHEELAHAN: So it's the case -

PROF GOLDSTOCK: This comes out - I was going to say, this comes out to be significant when you get into the weeds and you have to decide what enterprise would be used in an indictment.

COMMISSIONER: We had some evidence yesterday from a superintendent on a big project here in Brisbane, building some rail lines underground, that within the CFMEU - within one faction of the CFMEU, there was a significant figure who controlled organisers below him who then controlled delegates on site, and that was described as his group, his faction, his people, within the union proper.

PROF GOLDSTOCK: Right. And as soon as you use the word "faction", you're almost describing an association in fact. And the third is, what is a pattern of racketeering activity? And that is the commission of at least two crimes within a 10-year period, and then you can continue to go back over time, but a sufficient number of crimes so as to constitute or prove the existence of a pattern. So if one were to cheat on taxes one year and kick his dog another year, they both may be crimes, but they don't constitute a pattern. The pattern would have to be related to each other or the enterprise.

MR WHEELAHAN: And those crimes, are they what's referred to as the predicate offences -

PROF GOLDSTOCK: Right.

MR WHEELAHAN: - for a RICO charge? If you can explain that.

PROF GOLDSTOCK: Right.

COMMISSIONER: Just picking up that point, one of the problems, you read the cases involving this union over many years, about a decade or so, and the previous administrator gave evidence to this Commission the CFMEU had been involved in -

PROF GOLDSTOCK: I'm sorry, I'm just having a hard time hearing.

COMMISSIONER: Sorry. The previous administrator gave evidence that the union, pre administration, had been involved in most of the wrongdoing under the Fair Work Act. I can't remember what the figure was - 90 per cent, 95 per cent; orders of magnitude more than any other union. And when you read the cases, you can see from the judges that they're all dealing with individual cases. No one's looking over these hundreds of cases to work out whether there is a pattern. They're just dealing with the case that's dished up to them. They look at it. They decide it. They look at the priors and they give a penalty. And those penalties - they're a significant amount of money, but they're nothing like the damage that's been done by the behaviour.

PROF GOLDSTOCK: Right, the cost of doing business.

COMMISSIONER: Yes.

PROF GOLDSTOCK: Yeah, and that was one of Blakey's insights, that you looked at individual events, and the law was exclusive, that is, anything else that they did would not be allowed in court, because you're focusing on this act. And in a second I'll show why that's changed in RICO. So RICO says it is illegal to invest the proceeds of a pattern of racketeering activity into an enterprise, and that could be the criminal enterprise - that is, the association in fact - or it could be a legal enterprise, a business. So mobsters who were together - remember, what Blakey was trying to do here was to say, "What is the problem? Let me draw it out. Let me draw it out, and then we can make it illegal."

So you invest money into an enterprise. That is RICO. Well, if you're concerned about the mob getting into a legitimate business, there are other ways they do it. They can do it through a pattern of racketeering activity or they can elect an unlawful debt. So a usury debt or a gambling debt is another way they take over business. So RICO - this is (b) - makes it in RICO to acquire or maintain an interest in an enterprise through a pattern of racketeering activity or the collection of an unlawful debt. (c) - which is the one that you see most with (d), because (d) is just conspiracy to commit (a), (b) or (c) - (c) is to conduct the affairs of an enterprise through a pattern of racketeering activity.

So if you're conducting an organisation - a mob business through arson, fraud, extortion, coercion, racketeering - whatever number of crimes you can think of that they're doing, that is RICO. But if they take over an enterprise and conduct that legitimate business, or union, or any other enterprise that is a licit enterprise through a pattern of racketeering activity, that is also RICO. So they take over a business and they hijack trucks and they put the stock that they get from the trucks on the shelves and they commit fraud and they burn down the building to collect the insurance: all of that becomes another RICO.

Now, what Blakey does, which is really interesting, is he says on these predicate acts there are victims, and the enterprise which is run - that is, the licit enterprise; the

business, I'll call it - that is run illegally also has victims. Part is the people that are directly affected by the criminal acts, but also the other businesses which are operating at a competitive disadvantage. So two things happen. Blakey says, "Okay, those people injured in their business or property by reason of a RICO violation can sue those responsible in civil court, obtain treble damages, court costs and attorneys' fees." Now, there may not be a lot of people out there who want to take on the mob in civil court, but victims can also be the state. If it has lost money, it can then sue, under RICO, for treble damages, court costs and attorneys' fees, and individual companies can do the same.

MR WHEELAHAN: And the - that's the civil part of it. The criminal part of it, there are very severe penalties. Once you have the RICO charge, which is based on the predicate offences, the pattern of racketeering -

PROF GOLDSTOCK: Right.

MR WHEELAHAN: - part of the reason everybody spoke is there are very severe penalties for the RICO charge. Can you speak to that?

PROF GOLDSTOCK: Right. So if people are engaged in - let's say gambling activity, because I want to take law in with a low level of sanction. It may be that each gambling charge is five years, a maximum, and they're put together, and so that's the maximum. Make it a RICO and it's 20 years. If a single predicate act is beyond the 20 years - let's say murder - then the charge - the amount that you - the penalty can be above that. But in addition to just prison sentence, there is criminal forfeiture, which means that as part of the indictment, you can forfeit the proceeds of the criminal activity and any position held by a defendant - that is a person - which gave rise to the criminal activity. So a position in a union could be forfeit.

MR WHEELAHAN: I see. So -

PROF GOLDSTOCK: And a position in a company: if you own 80 per cent of the shares of the company, those shares now belong to the government.

MR WHEELAHAN: So with, as you said, gambling, probably to put it in a - to an Australian audience, for example: illegal tobacco shops. The penalties for selling illegal tobacco might be small, but if you had a RICO Act, is that something where it could become a RICO offence if there's a pattern with very severe penalties?

PROF GOLDSTOCK: Right. If one person were running all of the shops and you could demonstrate that there was this ownership, RICO would forfeit all of the shops. And there's no need for tracing under RICO as there might be in other forfeiture statutes where you have to find the criminal activity. This is ad personam. So whatever assets the defendant has are subject to the forfeiture decided by the jury. One more: the RICO statute also gives the court the right to institute changes so that - which, if not changed, could give rise again to another RICO. So a person who is looking at the RICO - that is, the prosecutors and investigators - can be thinking

ahead of time, with strategic analysts, for example, or industry specialists, to say, "Why did this happen? What can we do to change it? What can we do to modify it?"

MR WHEELAHAN: So before this Commission, we've heard a lot of evidence about unlawful delays to significant construction projects by the CFMEU. Now, you said before that with RICO, you can determine what is going to be an illegal predicate offence. So you could write a law, could you not, in your opinion, to make such - for example, the illegal stopping of concrete pours, stopping concrete pump trucks, blocking sites, they could become illegal acts for the purposes of a Queensland RICO statute. Is that -

PROF GOLDSTOCK: I believe that to be the case. I think that you could formulate a statute which would say - well, let me go back. In the construction industry, I had mentioned before that delay is exceedingly costly and that's one of the things that leads to racketeering susceptibility, because anybody who has the ability to slow down the process is a potential extortionist and can demand something in return for continuing the project. And that's normally the case overall, whether it's in government contracting or private, because the initial costs are extraordinarily high. But you have a greater problem, called the Olympics.

MR WHEELAHAN: "You" being -

PROF GOLDSTOCK: Queensland.

MR WHEELAHAN: Queensland, okay.

PROF GOLDSTOCK: Yeah. You have the Olympics, and it has to be done on time. Other delay just means you don't start recouping cost till later, and it's a financial loss. But this is an extraordinary loss if there is a delay in achieving the goals of construction for purposes of the Olympics. So I think it's also possible to create a predicate offence, which says any delay - and particularly it can be an enhancement - which results in delay for the Olympic infrastructure or related construction could be charged as a RICO predicate, and that would involve all of the things that you were talking about. Obviously there would have to be an exception for legitimate delays, but when it is done illegally and when it is done without cause - that is, legitimate cause - I don't see any reason why that could not be a RICO predicate.

COMMISSIONER: In terms of the wrongdoing of which evidence has been led in this Commission over almost a year now, there seems to be a pattern - and people who have been accused of this haven't been heard, so this is just a preliminary view of where the evidence seems to be going - but it seems to be the case that officials, high officials within the CFMEU, had a business strategy whereby they would impose people who were bad actors, physically intimidating, as delegates on building sites, supported by organisers who shared the same characteristics, and that those - that group or groups streaming down from the officials - the leading officials of the CFMEU would then be instructed - that's by implication, given their

behaviours - or if not instructed, those individuals seemed to have licence to do whatever they liked, that is, trespass, breach laws, intimidate people, threaten - as Mr Wheelahan said, stop concrete pours, organise blockades, stop work at a moment's notice off building sites around the city and join with others and go and blockade another place - a range of offences from very minor, like trespass, to quite serious assaults and threats to kill.

And the purpose of that business model is a little bit unclear, but it seems to be to expand the scope and power of the CFMEU, that is, increase membership, get more EBAs - that is, enterprise bargaining agreements - which themselves shower benefits back to the CFMEU. Is that the type of thing that could be dealt with under the model you're talking about?

PROF GOLDSTOCK: The specific answer is yes, and I'd also say what you're describing, if true, is almost the definition of organised crime. My friend who worked for the RAND Corporation and worked with us on the story of the carting industry and how we could change through an economic analysis, how the mob controlled the industry, wrote something about - I think the title was The Value of a Bad Reputation, and that is precisely what you do. There is no reason to have business delegates who are not unionists but who are - have bad reputations, or reputations for violence, such as people in the martial arts world or boxing world. It is typical of the way organised crime operates, and each individual offence, if it is a predicate - like the trespass, which in and of itself is minor, as you describe it, but may be critically important for purposes of achieving what they want to achieve - becomes important in the context of a RICO case.

COMMISSIONER: But how do you - and this is perhaps the importance of the - I'll just get the name exactly right - the Organized Crime Task Force. How do you administratively or from a prosecutorial level or from a governance framework, how do you get someone sitting above it who sees the whole field and can understand how all these little wrongs are being used in aid of a broader purpose?

PROF GOLDSTOCK: So I think there are several possibilities. In the Organized Crime Task Force itself, I suppose that was left in part to me but aided by a really good group of people, and particularly the strategic analysts whose job it was to look at the racketeering potential and racketeering susceptibility and see how each of these things fed into it and then issue reports about it, which then we used as the basis for remedial action at the end. But there also could be, for example, a regulatory body, whose job it would be to look at what is going on and set up regulations which would hopefully not interfere with the construction process but would enable quick action against individuals who violated specific regulations to remove them from the site and not allow them back again.

I am - I mean, we'll probably get to this later, but I am a proponent of having individuals vetted so that those without good moral character would not be allowed to participate in this project at a particular level. And the notion of business agents or delegates or, you know, they vary from - the name varies from union to union and

country to country, but they should be there for a particular purpose, not to intimidate but to - if there are legitimate grievances, to raise them through the proper channels. And, you know, when I was Waterfront Commissioner, I held hearings and sat in your seat, and we had one individual who was a delegate who was supposed to represent the workers. His last name was Giganti, the same as a major organised crime figure in New York; in fact, he was his nephew.

He testified. I don't understand why he did, but he did. And he testified that he was paid for 24 hours a day, 16 of those hours overtime. He made in excess of US$400,000 per year. He had no responsibility, he never brought a grievance, and the only time he ever did something was when the corporation called him and said, "We're having a problem." He said, "I went down there and kept my people in line." Which is the exact opposite of what he should have been doing. And, you know, when we raised it with the corporation, why he was being paid $400,000 a year, their answer was, "We were told to, and it's in the union contract that every time a ship is in port, he gets paid, no matter whether he's there or not."

And one of the problems was, as soon as the hearings came out, the New York Shipping Association and the International Longshoremen's Association, which should be adversaries, but actually who acted together in an unholy alliance, immediately amended the contract to say that no one's salary could be reduced more than five per cent a year.

MR WHEELAHAN: You referenced your tenure there when you were New York State Commissioner of the Waterfront Commission of the New York Harbor -

COMMISSIONER: Could I just go back to the task force, though, just for a moment, just that 13 years you were head of the New York State Organized Crime Task Force. I just want to understand how - you've said you've got these very skilled people - tactical analysts, strategic analysts, forensic accountants, lawyers, investigators - but how did you go about cleaning up the construction industry? You've got the right people. You've got RICO. You've got some skills in getting evidence that you've described in terms of being able to bug -

PROF GOLDSTOCK: Right. So we did not - New York State did not have a RICO statute at the time.

COMMISSIONER: You didn't have RICO.

PROF GOLDSTOCK: So when we developed the evidence we had - it's difficult to mention the name right now, but Rudy Giuliani was the US Attorney, and I had known him since 1972, and so I went to him and I laid out how he could handle these cases. And he was very proactive, and he moved with us to do those things. The Federal Government, through RICO, took over a number of unions, put them into receivership, but I think - and I know we'll get to this later, but just to answer your question - I think that the idea of using integrity monitors, what I called - well, I was going to call them private inspectors general, but the acronym doesn't work all that

well. So we called them either an independent private sector inspector general or integrity monitor, and I think that was what had the greatest impact, along with RICO. That is, you put in RICO in order to stop the mob from controlling the unions, and then you put into corporations monitors who ensure that they do not engage in criminal activity.

And from the point of view of the corporations, that's very helpful, because if they're being extorted, their simple answer is - this is a corporation that doesn't want to engage in criminal activity - "I would be happy to pay you, but I have this monitor sitting on my shoulder, and as soon as I hire your delegate or bring in somebody with a bad reputation or hire somebody that we don't need who just lies down and does nothing all day, the monitor's going to report it to the regulator or the prosecutor, and we're both going to be in trouble. So go pick on somebody else."

COMMISSIONER: So come back to the monitor in a moment, but just dealing with your role as director of the New York Organized Crime Task Force, you're saying you'd get all the evidence together, and then because the State of New York didn't have a RICO statute, you'd send it off to Giuliani and he would prosecute federally?

PROF GOLDSTOCK: So in some cases, yes. In some cases, we didn't need the RICO statute; we could use ordinary criminal law to deal with the problem. But what we really did, and it was referenced initially, was to put out the final report of Corruption and Racketeering in the New York City Construction Industry, and that had, I think, the greatest impact, because it was seized by people in an authority, including the Governor of New York and the Mayor of New York, to help change the whole structure of the industry.

COMMISSIONER: So the report itself that you produced whilst you were director of the New York State Organized Crime Task Force had impact by itself?

PROF GOLDSTOCK: Right. And indeed, what's interesting is, as you'll note, one of the people in the report, the principal draftsman, is James Jacobs, who was a friend of mine. He was a professor of law at NYU Law School. That was his first foray into the issues of organised crime. He then went on to become an expert in organised crime, writing a series of books, and those are the books relied on by Professors Varese and Campana in their reports. So it all comes back to, you know, exactly the impact that we had.

COMMISSIONER: Is that the book you were holding up there?

MR WHEELAHAN: I handed it to the witness.

COMMISSIONER: That hasn't gone into evidence yet, has it?

MR WHEELAHAN: No.

COMMISSIONER: What year was that published, Professor?

PROF GOLDSTOCK: I think it was - was it '88? I don't remember. There were two reports: there was an interim report and a final report.

MR WHEELAHAN: I might hand it to the witness.

PROF GOLDSTOCK: But remember, this was - this was picked up by NYU - so NYU Press read what was essentially a government report, and it said it transcended the governmental to the academic, and then they published it as an academic piece. But it was word for word the same.

MR WHEELAHAN: So the publication was in 1990, following from that answer.

PROF GOLDSTOCK: Right. That's about right, yep.

COMMISSIONER: And what effect did you have through the New York State Organized Crime Task Force, either by producing this report, which was published in 1990, or by gathering evidence and sending it off to the feds? And in particular, I assume Mr Giuliani was the Attorney for the Southern District of -

PROF GOLDSTOCK: Southern District of New York. So the way I describe it is, today, the mob is unrecognisable and the construction industry is unrecognisable. I am not saying that there are no bad actors in the construction industry, there is no longer any extortion or coercion, but it is minimal. And I would also take the position that if your goal is to eliminate it completely, the internal controls will have to be so great that good people will not be able to do good things and construction will come to a halt. So there is a real balance here between what you want to do to stop bad actors from doing bad things and yet allowing construction to continue at the pace it should. And I think that's a serious balancing act.

COMMISSIONER: There was a witness yesterday, I think Mr Ross, he worked for a large construction company, and you could sort of feel the pressure he was under. He would allow the union to put up all its flags, all its paraphernalia, on the basis that if he ordered them to take it down they'd just put it up again, and he ended up, he said, not directly but indirectly inviting the core group of many of the people who have been identified as bad actors within the CFMEU to celebrate a particular festival here in Brisbane at a prime location. And you could - you can sense the sort of pressure that someone like that is under, who's trying to get a project built. They'll do - not whatever it takes, but they're under certain pressure and they'll try and make accommodations - it's just human nature - to try and achieve the result.

PROF GOLDSTOCK: Right. Yeah. So I mentioned before that one of the people we had working with us was a historian, and he was the sort of principal historian about the City of New York at Columbia Graduate School. And he and I guess the people working with him came up with a report issued in 1918 by the New York State legislature about corruption and racketeering in the construction industry, and it was beautifully written and described all of the problems that we have today. And so

we knew that since the mob was formed in 1930, it couldn't have been the mob that's doing this; there's something about the industry itself.

Now, here you have one union. Well, two, but I mean the one you're concentrating on now, which represents all of the workers. In New York, you have - each trade has its own union, and each union has its own locals. So there are huge numbers of potential extortionists who can delay construction. And so the mob - Tammany Hall, which was the democratic machine in New York in the 19-teens, performed the same role, but the role that the mob really performed in addition to controlling several unions and companies was that it was a rationalising body. It was able to say, "Look, anybody can be your extortionist, but we have power over everybody, so deal with us and we will control them." And it in effect became a situation in which the companies relied on the mob, and that cannot exist. I mean, that was the position we took. Even if they perform a function, somebody else has to do it, and that's what we concentrated on.

The analogy that I often used when I was looking at this was the waterfront in New York, which has a single union, the International Longshoremen's Union, and all of the companies were beholden to it, and if the union said, "We want you to fly these flags," they would do it. And the reason is that they controlled the workers, and if a ship couldn't load and reload quickly, it cost them a fortune. So they were willing to do anything. And even if you could stop them - is the term rule-book slowdown used here? Yes, okay, so -

COMMISSIONER: Work to rule, it's called.

PROF GOLDSTOCK: Okay. And, I mean, we had that situation. Trucks were supposed to be six feet apart. They would send somebody out with a tape measure, and if it was five-foot-eleven, they would stop everything, move the truck back, move the other trucks back, and nothing got done. And so it was a serious problem, and the only way of reforming that - I mean, I think we did a pretty good job in lots of areas before New Jersey withdrew from the Waterfront Commission, but without changing the union leadership, we would not achieve the results we needed. And I think, you know, assuming the facts to be as the way they were presented - even without proof, but assuming them to be true - that's something that has to be done with the CFMEU, and I believe it's possible.

COMMISSIONER: Perhaps we'll pick that up after the morning tea break.

MR WHEELAHAN: Yes.

COMMISSIONER: We'll adjourn till 25 to 12.

<THE HEARING ADJOURNED AT 11.19 AM

<THE HEARING RESUMED AT 11.37 AM

MR WHEELAHAN: Can I hand to your associate - and also a copy for the witness, please - the report referred to in evidence. That one's for the Commissioner. One for the witness.

PROF GOLDSTOCK: Thank you.

MR WHEELAHAN: This is the published final report of the New York State Organized Crime Task Force, titled Corruption and Racketeering in the New York City Construction Industry, published by the New York University Press 1990. Can you just identify that, Mr Goldstock?

PROF GOLDSTOCK: Right. We issued a report in a different form, and then this is what the New York University Press published.

MR WHEELAHAN: Can you show that to me.

PROF GOLDSTOCK: Oh.

COMMISSIONER: And how much earlier did you issue the report prepared to the publication date?

PROF GOLDSTOCK: I'm going to guess about a year, but it was quite some time ago so I don't really remember.

COMMISSIONER: Are there any objections? The final report of the New York State Organized Crime Task Force Corruption and Racketeering in the New York City Construction Industry, 1990, by Ronald Goldstock and others, will be exhibit RG-3.

<EXHIBIT RG-3 FINAL REPORT OF NEW YORK STATE ORGANIZED CRIME TASK FORCE CORRUPTION AND RACKETEERING IN THE NEW YORK CITY CONSTRUCTION INDUSTRY, 1990, BY RONALD GOLDSTOCK AND OTHERS

MR WHEELAHAN: Thank you.

COMMISSIONER: The person you described here at the start, James B. Jacobs, principal draftsman and consultant coordinator, he's the person that Professor Varese and Professor Campana - his later work was the work that Professor Varese and Professor Campana based their work on; is that right?

PROF GOLDSTOCK: Yes. And I should also say that because this is a government report, there is no trademark or anything that protects it.

COMMISSIONER: Thank you.

MR WHEELAHAN: Now, you're aware from the material provided to you who Mr Geoffrey Watson SC is?

PROF GOLDSTOCK: Yes.

MR WHEELAHAN: And he authored a report -

COMMISSIONER: Are you going to arrange copies of this for the parties represented?

MR WHEELAHAN: I will. It will take some delivery time, but we will. We don't have them on hand. So Mr Geoffrey Watson SC was the author of a report titled Violence in the Queensland Construction Industry, and I want to play you a short video of the evidence that he gave to this Commission. And this is video number 3, Operator. There's no volume.

(Video played).

MR WHEELAHAN: Professor Goldstock, my first question is this: if you take that on face value, is that analogous to the Mafia business model that you combatted in New York that you referred the Commissioner to earlier?

PROF GOLDSTOCK: Right. I think it's not only New York but it's around the world. It is the nature of organised crime to instil fear in others that if they do not obey what you do, you're going to suffer consequences. And if the threat of fear is enough, what's important is they never have to carry it out, because people will succumb to their demands. This was clearly the case in Northern Ireland.

MR WHEELAHAN: The reference to lawlessness and violence - and the Commissioner has put to you a number of - we've got evidence of violence, obstruction to construction sites and so forth. A Queensland Government, if it was drafting a RICO statute specific to the construction industry in Queensland, in your opinion can it then capture those lawless acts and violent acts in the construction industry in a RICO statute.

PROF GOLDSTOCK: Yes, as long as the predicate acts were shown to have existed and that what was done by the union or its associates constituted those predicate acts, yes, it would constitute a RICO.

MR WHEELAHAN: And in your opinion, if there was a RICO statute of that kind, including those predicate acts, is it more likely than not to be effective against the business model that's operated by the CFMEU, as Mr Watson SC has said?

PROF GOLDSTOCK: If it were done properly. That is, there are different kinds of RICOs. You can bring a bare RICO statute, prosecute a couple of people, put them in jail and nothing changes. But if you use RICO with the potential that it has, that is, to think in terms of a large group of people, think in terms of civil actions, think in

terms of remedial action, then I think that you can make a major difference within corruption and racketeering in the Queensland construction industry. And let me say also, I am a strong believer in unions, and I have been a member of the Association for Union Democracy for a substantial period of time. My objection is only to unions that are not run for the benefit of the membership, that are run for the membership of the people who control the union.

MR WHEELAHAN: And you gave evidence about being on the advisory board of Project Rise to the Teamsters Union. Was your experience there similar to the evidence that you've reviewed in forming your opinions for your report?

PROF GOLDSTOCK: So in that case we were not so much concentrating on the individual acts of corruption and racketeering but thinking more what kinds of internal institutions could be put in place so that the Teamsters could continue as a democratic union rather than the union that originally put it into receivership.

MR WHEELAHAN: And one of the remedial things to do was to put it into receivership; correct?

PROF GOLDSTOCK: That's correct.

MR WHEELAHAN: And for how long, what period of time was it required that the Teamsters be in receivership or, as we would say, have an administrator?

PROF GOLDSTOCK: I - I don't remember now. I know it was a substantial period of time. I'm going to guess 20 years, but that may be more or less.

MR WHEELAHAN: All right.

COMMISSIONER: Just going back to what you're describing about a proper - if it's done properly, that is, if you just put a couple of people in jail, nothing will change, but you've got to think in broader terms. This Commission finishes the end of next year. I can't remember what the term of the administration is. I think it's three years or five years or -

MR O'GRADY: It's five years, Commissioner.

COMMISSIONER: So that's, what, 2029? So you get to the end of next year, this Commission of Inquiry is no longer in place. You get to the end of 2029, the administration is no longer in place. Okay, you've got a RICO statute, a state RICO statute, but who does the thinking, to think in broader terms to monitor - leave aside the internal monitor of the corporations, which we'll come to, but who does the monitoring? Who does the regulation? Who tries to ensure that the broader picture or the broader view is maintained and attempts to, in effect, re-colonise the CFMEU after the administrator has gone are of little effect or are controlled or are quashed? How do you do that part?

PROF GOLDSTOCK: Well, it's been done different ways with respect to different unions, depending on the problems that the unions have had. I, off the top of my head, without having studied it in enormous detail, would say that a union like the CFMEU ought to have something like an inspector general internally, a compliance program internally, and an integrity officer or a hearing officer or administrative judge that could rule on matters of discipline or expulsion so that the inspector general would be somebody who looks at - with a team - looks at wrongdoing or allegations and can receive allegations, either directly or anonymously, from other members of the union or somebody outside who was victimised.

They would have the right to conduct investigations. If they found a basis for them that would warrant some discipline, they could bring it to the hearing officer, who would then decide whether or not to institute remedial action, whatever it might be. And the compliance program would be something separate, which would institute rules and regulations and ensure that they were being followed within the union, and if they saw violations, they were another source that could go to the inspector general.

COMMISSIONER: This is the internal inspector general within the union?

PROF GOLDSTOCK: The internal inspector general, yes. I would say that - I mean, there are others, for example, the Carpenters Union, that have a much more robust series of institutions, but I think it's a little overkill. I think the three things I mentioned - and as I say, without having done extensive work here - would be those three components.

COMMISSIONER: What about the maintenance of the administration for a longer period, along the lines of the 20 years with the Teamsters? You said before that you're a great supporter of union democracy.

PROF GOLDSTOCK: Right. Well, I assume the administrator is issuing regular reports and would -

COMMISSIONER: Twice a year.

PROF GOLDSTOCK: I'm sorry?

COMMISSIONER: Twice a year.

PROF GOLDSTOCK: Twice a year - and would be in a position - I mean, assuming that the other components of the integrity operation - that is, the compliance officer, the inspector general and what I would call an administrative law judge or some hearing officer - were in place and operating effectively for a period of time, I think the administrator is then in a position to say that the administrator is no longer needed, would give the reasons why, and then the decision would be made whether or not to increase the time for the administrator or not. I think five years is a

bare minimum but certainly enough time, once the internal processes are in existence and operating, to be able to say they're doing so effectively.

COMMISSIONER: How do you ensure that these internal processes - these internal auditors, if you like - are not strong-armed by the sort of culture - assuming it exists - that Mr Watson described?

PROF GOLDSTOCK: Well, of course, that's always the case. I mean, it depends on who is being chosen, the staff, whether is a sufficient number of people. You know, it's the role of law enforcement thereafter to see whether or not they notice that there are continuing problems. If investigators and prosecutors believe that there are, then it may be time to come back and say, "This is not working and we need to do something else." But if there aren't complaints made internally or externally about the organisation and it seems to be working, well, that's a step in the right direction.

I mean, in many ways, this is a culture change. The idea would be to get the people within the union to want to be seen as a union that supports its membership, does not engage in wrongdoing. If there is wrongdoing, it's reported. If people are engaged in misconduct, they are either prosecuted or at a minimum removed from the union, and wearing a shirt is something to be proud of rather than to be seen in the newspaper day after day as scandalous. And I think - I think that's what honest unionists want.

COMMISSIONER: But leaving aside these internal mechanisms that could be put in place within the union, what do you do externally? Just for an example, the police force here has got a budget of 3 billion, 4 billion dollars, I can't remember what it is, but the call on their resources is infinite, and there's always - always - need for extra policing, whether it's domestic violence, whether it's our current focus on getting youth crime down. How do you ensure that the - let's say a RICO Act was put in place: how do you ensure externally that those responsible for law enforcement externally actually use the tools that they're given and are not sort of distracted - "distracted" is the wrong word, because you can't say you're really distracted by domestic violence or youth crime -

PROF GOLDSTOCK: Right.

COMMISSIONER: - but whose focus remains on the problem and it's not allowed to recur?

PROF GOLDSTOCK: Well, I would say there are two things. One is - and apparently we're going to get to this later - but the whole idea of integrity monitors for corporations who would be reporting wrongdoing by the corporation or victimisation of the corporation. So there would be a place where that goes. My own sense would be to have a regulatory body that includes some people from the industry and some people from law enforcement who would be receiving this information. It also could be a place where individuals who felt that they were being treated wrongly or through illegal activity by members of the union could also report. So it wouldn't be a situation where you would have to have a large group of officers

constantly around watching what was going on, but they could be the recipients of information coming from other people, and as I say, either directly or anonymously.

COMMISSIONER: And would that group - would the structure of that group be as sophisticated as the New York State Organized Crime Task Force?

PROF GOLDSTOCK: So I wouldn't make it as the Organized Crime Task Force. I think there are regulatory bodies. For example, New York City created a Business Integrity Commission, BIC, and one of their responsibilities would be to vet the people that were in corporations, particularly if they're doing governmental work, to ensure that they were people of integrity rather than people who had a history of corruption and bribery in the past or using substandard materials or engaging in other types of fraud. Those should be eliminated from participating in the industry. They could also vet, but I would leave this primarily to the inspector general within the union, to do background checks on individuals.

But I would say the term "background check" is insufficient to convey what I really mean, because there are background checks which are purely superficial and then there are others which go into the backgrounds of the individuals in very sophisticated ways: who they're connected with, who they contact, what their telephone toll records show, what informants say. And I think the best example of that was the Waterfront Commission, when I was the commissioner, because the people who were doing this were highly sophisticated, and we found people that we had to eliminate from the industry that otherwise would have passed a regular routine background check.

COMMISSIONER: We've had, for at least 20 years, a building industry regulatory, at times federally and state, and it's waxed and waned, but the focus of that regulator has been - I'm picking up the idea from Professor Varese or Professor Campana - that it's had the wrong focus. It's focused on these issues as industrial relations issues, not issues of organised crime. So it does a very piecemeal - it's no criticism to the work of those people who have engaged in that task over the last 20 years, but it's the type of piecemeal, case-by-case approach that we talked about before the break, and it doesn't have any jurisdiction in relation to the criminal law. It doesn't have that broader structure that your New York State Organized Crime Task Force had of people with different skills working together in teams. It certainly didn't have any RICO statute on which it could rely to prosecute an overall picture.

PROF GOLDSTOCK: Yeah. So the two problems with the regulatory body and the Organized Crime Task Force. I've always found that regulatory bodies start off and do amazingly well. They are staffed with people who are dedicated to the project and appointed by people who want something to be done, and over time they lose focus and often are captured by the industry that they're supposed to regulate. When I took over the Waterfront Commission and I appointed an executive director, he found out that two weeks after he took office there was a crew set up by the New York Shipping Association and the ILA, the International Longshoremen's Association, to which all of the members of the Waterfront Commission were invited, and they were

to be fed and partied and taken around New York Harbor. And he called me and we agreed: anybody who went within 50 feet of that ship were not to report the next day to work, because they would be fired.

And it is a problem. With the Organized Crime Task Force, when I left, a new attorney general came in and he changed the entire direction of the task force to do low-level gambling offences so they could concentrate on numbers rather than remediating problems that existed. So my comment was it takes 20 years to build a tree and five minutes to chop it down. And that's just the problem, by its very nature of governmental institutions. And so in doing this, it's not so much that there's something called an Organized Crime Task Force or a Business Integrity Unit, or a Construction Integrity Unit, maybe, but that a method has to be - to exist, to review it every five years, and to find out what they're doing and how they're doing it and are there any problems, before a scandal erupts.

That's something government doesn't do, and, you know, it's an after-action event that corporations may or may not do but good corporations do do, and to find out if something is not working well. And I think that has to be done. I chose five years, but it could be a longer or shorter period. Well, a longer period of time.

COMMISSIONER: What if the regulatory body was time-limited to five years or - what if you just had a rule that whatever regulatory body oversaw this regime we've been talking about had a sunset clause, that it had to fix the construction industry within five years and then it went out of existence. Is that a way of dealing with it?

PROF GOLDSTOCK: Right. The problem is that people in the industry can outwait five years. I mean, they play the long game, and after five years they're back in power again, in authority again. Even if you decided that you wanted to put something out of commission or sunset it, I don't know that announcing it would be the best idea. But I think because the construction industry - I'll go back to the Lockwood Report in 1917 - because the construction industry pre-mob had always been problematic and exists - and it's not just here and in the United States, obviously in Italy, as Professors Varese and Campana have talked about, but also in Northern Ireland throughout. I mean, it is an industry which is susceptible to illegal influence and has an enormous amount of racketeering potential associated with it.

I think the permanence of an oversight body, at least one, that could exist to ensure that there are no changes and that could be looked at periodically to make sure that it is not captive is a good idea. And it's cost effective. I don't know - I never believe estimates, but in New York there was a sort of general estimate that waste, abuse and fraud due to organised-crime influence and the like was 20 per cent of the contract price. If you spent five per cent on an infrastructure to ensure that didn't happen, and even if you could only save 50 per cent of waste, abuse and fraud, you're still way ahead of the game. So I don't have any problem with paying for something that is - it looks like a cost centre but is actually a profit centre. And - well, I think that's necessary in certain industries. Not all.

COMMISSIONER: The state treasurer went and spoke to the National Press Club, I think, the end of September, and he said that the Queensland Government expenditure on roads, schools, hospitals and the Olympic expenditure would be - I think it was 117, but in his speech he said 119 billion. So almost $120 billion in the next four years, of which about 10 billion - I'm rounding it a little bit there - about 10 billion is Olympics expenditure, about 7 billion for venues and about 3 billion for other Olympic-associated infrastructure. There's a lot of expenditure in the next four years, and this Commission of Inquiry won't be around for three of those years, and the administration of the CFMEU comes to an end in the third of those years, '27, '28 '29, at the back end of that period.

So there needs to be some protection for the taxpayer in terms of - and for the government, getting value for money - in terms of an expenditure program, - on top of which is the point you made before the break that there's a deadline for the Olympic expenditure. You can't kick it out like you have with the Cross River Rail project of a five-year delay. It's got to be built by, I assume, six months, a year before the Games.

PROF GOLDSTOCK: So if this body, whatever it happened to be, sunsetted at the Olympics, there would at least be that benefit. But I would also say that it's much better for the industry as a whole - and I would get to this when we talked about monitors, but picture a situation in which you have monitors for all of the major construction companies that are operating, and they are looking at waste, abuse and fraud and economy efficiency and effectiveness, and they're looking at how money is being spent, who is coming in, whether there are particular problems, whether there's a regulation that is routinely being ignored.

And the reports of those integrity monitors are going to this regulatory body that presumably has real expertise in the construction industry, and they keep noticing that it's being ignored by this company and this company and this company. All of a sudden now they start looking at the regulation to try to figure out why it is consistently being ignored, and you find out that it is a bad regulation. It's a regulation that can't be adhered to. It makes no sense. And so now they're in a position to remove that, modify it, change it with the aid of the industry to say, "Why is this happening?" and make the industry more efficient, take away some of the problems that exist. So I think it is not only a corruption-fighting tool and a union-democracy tool, but it is also an aid to making the industry itself more effective.

COMMISSIONER: You keep saying we're going to come to it. Perhaps we should come to it -

MR WHEELAHAN: I was just about to say, if I can just say - so we will come to it now. So you actually developed and instituted the, as you named it, Independent Private Sector Inspector General Program, and you did that when you were at the Organized Crime Task Force. And in your report you say this -

COMMISSIONER: This report?

MR WHEELAHAN: No, in his expert report.

COMMISSIONER: The expert report. Sorry.

MR WHEELAHAN: For reference, it's at paragraph 7(k), and you say:

"In my opinion, the use of..."

And you use the acronym:

"...IPSIGs or Integrity Monitors has been the most successful method of reducing racketeering susceptibility and potential in a cost-effective method and one that does not materially interfere with the speed or efficiency of the construction process."

So with that, I think you should commence by explaining this program, Integrity Monitors, that you set up, and then go on to explain how it works.

COMMISSIONER: Just before you do, I don't think we've got anything like that in this country. I've never heard of this idea. This is an idea that you came up with and it was generated -

PROF GOLDSTOCK: Yeah. You may be surprised that I like it a lot, because it's my baby. No, I actually mean exactly what I said, and because I was under oath, I had to be truthful. It is - so this was proposed in 1980. We are now, what, 46 years later, and it is being used regularly.

COMMISSIONER: It's 7(k), not 7(a).

PROF GOLDSTOCK: And this is sort of interesting from your point of view. What you would have is monitors inside the corporation. They would have access to the corporation's books and records. They could speak to employees. They could speak to people who are providing services for them. And they would be looking for waste, abuse and fraud, particularly fraud, that was occurring within the particular companies that were operating, and they would have on their staff all of those skills that were necessary to do that, so forensic accountants and investigators, people who are really good at talking to members of the company to find out what is actually going on.

I mean, when I did this, I found when I spoke to management of a company, they told me one thing. We went to the workers and they said, "They don't know what they're talking about. This is the way we do it." And so you really to get into the company and find out what is happening and ensure that they're not engaging in illicit activity, like hiring people they don't know; having people on staff that are no-show/low-show employees; making payments, illicit payments; having

relationships with potentially people in government - and watching the processes and procedures that the company and its employees are going through to finish the tasks that they're assigned.

In New York - so we proposed this in this report, and we had a problem, because, as you say, never heard of this before; there were no integrity monitors or private inspectors general. And so the whole profession had to be created, and now there are a substantial number in New York and throughout mainly the East Coast.

COMMISSIONER: Just in the construction industry or other industries?

PROF GOLDSTOCK: For all possibilities, because, for example, there could be a company in some other industry that got into trouble, was being prosecuted. They said, "Can you defer the prosecution? We will take a private inspector general or an integrity monitor and they'll report to you and we will change how we're doing it, and this way by not prosecuting us we don't put people out of work." And in the construction industry, it is particularly important that you be able to do this, because if you have a company working on a project and you find they're engaged in wrongdoing and they're prosecuted and they're removed or debarred from continuing it, there is a lapse before somebody else can be brought in and continue the work. So you really want a vehicle for being able to continue the construction process.

Well, now, because this has existed and exists in multinational companies, there are companies in Australia that are capable of doing this work. There are accounting companies, there are investigative companies, there are corporate integrity companies that actually exist and would do the work, are capable of being hired to do the work. And of course, in New York - so there are many places that integrity monitors are used, but the major builders in New York are - and I'm talking about governmental buildings - are the Port Authority. The Port Authority rebuilt LaGuardia Airport, the World Trade Center. They're doing Kennedy Airport now. They're doing Newark Airport now. They do the bridges between New York and New Jersey and the tunnels. They're doing Gateway. They use monitors on every project.

COMMISSIONER: So they say to someone who - an outside contractor who's tendering to do the job rebuilding Newark Airport, say, that -

PROF GOLDSTOCK: Right. That'd be just one. It could be a number.

COMMISSIONER: All the contractors.

PROF GOLDSTOCK: Right.

COMMISSIONER: "You must have internally someone that we approve of a so-called integrity monitor"?

PROF GOLDSTOCK: "And reports to you and us. Any wrongdoing, they have to report to us." There is no lawyer/client privilege, for example. It was done with the World Trade Center. When the debris was removed from the four quadrants of the Center, each one was given an integrity monitor. And at the end of my report, I note that in an intercepted conversation - that is, a wiretap - one of the people who was being tapped was complaining that they were losing money because they could no longer leave the site with half-filled trucks, charging for a full truck, or diverting scrap, because these integrity monitors were stopping them. I mentioned the Port Authority. It is also true with the Dormitory Authority of the State of New York, the School Construction Authority, all of these major authorities and governmental entities which are involved in major construction projects.

MR WHEELAHAN: How are they financed?

PROF GOLDSTOCK: So there are two ways in which they can be financed. One is the government can pay an extra, let's say, five per cent or something of that nature.

MR WHEELAHAN: Of the contract value?

PROF GOLDSTOCK: Of the contract. Now, generally speaking, it is a requirement in the contract that the contractor hire one that is acceptable to the government agency. But it's well recognised if you're going to hire one and you have to pay them, then you have to increase the cost. So ultimately, in public construction, it's going to pay. But as I mentioned before, the savings are far beyond what the cost is. And it's not only the savings in waste, abuse and fraud, but it is also savings in the public's view of public construction. There is no longer the sense that money is just being wasted. And the other part is also true, that the industry as a whole benefits, because there are changes in regulations that occur quite frequently because of what monitors find.

COMMISSIONER: In terms of the Queensland Government's expenditure over the next four years, let's say it's 30 billion a year - I know that 120 billion is not all going to be spent exactly 30 billion a year, but let's just use that for an estimate. So five per cent of that is one and a half billion. That's a lot of money to pay auditors.

PROF GOLDSTOCK: Right. Well, I wouldn't call them auditors. I want to be careful about that. In the report, I referred to them as certified investigative auditing firms merely because the private inspector general, which I would have preferred to use, is a PIG, so I can't - but then I realised too late that the term "investigative" in "certified investigative auditing firm" could modify auditing, like it's an investigative auditor. And I meant it both as an investigator and an auditor, so then it switched to independent private sector inspector general or monitor.

MR WHEELAHAN: I might pull up your report on screen where you specifically set out the tasks. And Mr Operator, this is page 14 at subparagraph (q).

PROF GOLDSTOCK: Right.

MR WHEELAHAN: Because it's new to Australia, some people - they're going to go, "What does it actually do?" And here you set out the specific tasks.

PROF GOLDSTOCK: Right. So let me say one last thing, because I want to go back to that five per cent. Five per cent may make sense in some situations, given the contract price, and this is the amount you would need to have a private inspector general. But once you get into very large numbers, the percentages drop. I mean, it would not have to be one and a half billion dollars. It would be well below that, although the savings might be just as good.

COMMISSIONER: Of course.

PROF GOLDSTOCK: Yeah. Do you want me to read this or -

MR WHEELAHAN: I was about to say, with the savings, for example, I think there was evidence yesterday before the Commission that a pump truck for concrete pour cost the Cross River Rail project $500 million.

COMMISSIONER: $500,000 for one day.

MR WHEELAHAN: $500,000 for one day. One day.

PROF GOLDSTOCK: Right.

MR WHEELAHAN: So that gives you some perspective.

PROF GOLDSTOCK: So - and there is a perfect example of why you wouldn't need five per cent to do that. You would need somebody on site watching as the trucks come in, make sure that they're moving right along, that there is no delay. Because if a concrete truck is not emptied in time, obviously there are two possibilities: it has to empty in a place that it's not supposed to be, or it hardens within the truck and the truck is gone. Or, as Geoffrey Watson was testifying to in one of the clips that I saw, if the pour is interrupted, you may have to remove what was already done and re-pour again. So that's a perfect example where very little money has to be expended to make sure that that works correctly.

COMMISSIONER: How did the developers and builders in Manhattan or New York City react to this idea of having to take on board as a cost of or as a condition of obtaining government work the independent audit?

PROF GOLDSTOCK: Yeah. My sense is it is no longer an issue. It is what they do. It is just one more cost, as a normal cost. They have to hire certain people. They hire these as well. But they know at the end of the day they're saving more money than they're paying. As I say, I don't know if they see it as a profit centre rather than a cost centre, but it is - it's so much accepted as part of the industry now that I don't think they think twice about it.

I can tell you in my own experiences, when I first went into a corporation, whether it be in the construction industry - for example, I was the private inspector general for the Roofers Union in New York, and also an electrical company. When I first went in, they hated me, and the reason was that I came in with my little group and we asked questions: "Why did you do this? How come this isn't signed? Why isn't this filed correctly? You were supposed to report this within five days; you didn't get around to it at all or you did it two weeks later." And they'd look at me with utter disgust and say, you know, "Fine. You're coming in here with your little briefcase, and you're this consultant. You're not working. You know, this day, my wife called and this happened. This day, something else happened. Three people were in an auto accident this day. We're running a business and it's hard and you've got to concentrate and sometimes things happen."

And if you're not a crazy monitor - and some are, and that has to be dealt with - you say you understand, and perhaps this could be done to resolve that problem, or you need a backup here in case there's an issue here. And then you start working with them, and all of a sudden they see you are very helpful. Not only helpful to run their business, in a sense as a management or efficiency consultant, but you give them cover for things they do that they might otherwise be afraid of. For example, in one situation - this was a medical company - they had hired a minority doctor, and they found out later that he had previously been convicted of Medicaid fraud, and they were afraid to fire him, because they were afraid they would be sued for discrimination.

And I said, "Let me speak to the prosecutor. Let me speak to the defence attorney. Let me put together something for you." And at the end, I concluded that they could not hire that person, and they kept it in their drawer and they knew that they were bulletproof at that point. They could not be sued, or if they were sued, they had this piece of paper which they could produce. And so minor things save them huge amounts of both problems and money, and I would say there are a huge number of cases in which a monitor was assigned to a company for a period of time and the company chose to keep them on thereafter because they were useful. I have - because I'm getting older - shed a number of companies for which I was a monitor, but I have one, and he's not required to have me, but he chose to do so because at least he believes I prove helpful to him.

MR WHEELAHAN: Could I just go back. You said one of the roles of a monitor, for example, and we had the concrete truck being stopped. You said, well, if there was a monitor, the monitor's role is to make sure they get in.

PROF GOLDSTOCK: Right.

MR WHEELAHAN: But we've seen videos. If there's 50, 100 CFMEU officials, the truck's not getting in, does the monitor then report that to a regulatory body that may then prosecute, and it comes back to the RICO again, a predicate offence. So it

doesn't go unnoticed, is it right, because the monitor will take that and actually do something with it?

PROF GOLDSTOCK: Right. I believe that's the case. If the monitor expects that that's going to happen, the first thing the monitor ought to do is have a relationship with the police and have the police there. If the police choose to de-escalate rather than get into a confrontation with the workers, then they can explain what they're there for, take pictures and explain to them that they're going to be prosecuted for interfering with the trucks. It doesn't have to be a RICO, but they may very well lose their job and they may be subject to civil suits in which the cost of delay is attributable to them and they and their families are going to have to pay. Once it's done the first time and the second time and the third time, I don't think you will have the problem in the future.

MR WHEELAHAN: One problem might be, as you said with the Mafia families, who's going to sue? I mean, if the CFMEU has the stranglehold over construction -

PROF GOLDSTOCK: It's the government. The government is the victim. But I would also say this, that at that point, the monitor can go to court and ask for an injunction. Now, not only do I not know criminal law here - I don't even know civil law at home, much less here - but my guess would be that a court could order an injunction against members of the CFMEU from prohibiting trucks from coming in. If they violate it, there are summary enforcements of injunction, which mean if they do it, they're brought before the court, the court then finds them in summary contempt -

MR WHEELAHAN: Isn't that - we're back into the circle of it's the cost of doing business. I mean, you heard that evidence. You go and get the injunction. There's some fine. And isn't your thesis RICO was so effective because it's not just the cost of doing business; the penalties are extreme?

PROF GOLDSTOCK: Right.

MR WHEELAHAN: Is that right?

PROF GOLDSTOCK: I'm talking about a fine that is beyond the cost of doing business fine. I'm talking about a fine which relates to the cost of delay.

MR WHEELAHAN: Which therefore - we have a Fair Work Act with certain penalties, and as the administrator said, there's over a thousand contraventions for various things.

PROF GOLDSTOCK: Right.

MR WHEELAHAN: The fines are clearly not enough.

PROF GOLDSTOCK: Right. So -

MR WHEELAHAN: So doesn't that support a -

PROF GOLDSTOCK: It seems to me - okay, again, I am talking about something I know very little about but clearly you do, and you can say it either works or it doesn't work. But there is a difference between the Fair Labor Act and contempt of court, and if you ignore what a judge says, the judge has the possibility of not only fining independently of the Fair Labor Act, which would be to ensure that this does not occur again, and I take it there is also the possibility of imprisonment until the person agrees not to engage in that activity again. So I may be wrong, but if that is a possibility, I think all of these things have to be used together.

MR WHEELAHAN: So with using all of these things together, before the break you talked about effectively leadership - people in leadership roles, as at the Waterfront Commission, need to be removed for change.

PROF GOLDSTOCK: If they engage - if they are - if they have backgrounds that are not suitable in the first instance, and in the second instance if they engage in misconduct.

MR WHEELAHAN: Yes. So -

PROF GOLDSTOCK: And if they refuse to stop their membership from engaging in that kind of activity.

MR WHEELAHAN: I think you referred to leadership, because the counsel for the administrator is going to put to you that, "Well, we've dismissed the leaders of the CFMEU in Queensland. The bad actors are gone, all right?" But at the same time, it's only under administration for five years, and you said the problem is that people just wait it out. Now, I just want to put to you that, for example, Mr Michael Crosby is the current administrator, and they expelled, for example, a union official by the name of John Setka in Victoria, and he said, "Because the union rules limit me to a maximum period of five years, that's as much as I can do." Isn't that a problem?

PROF GOLDSTOCK: Yes, I believe it to be a problem.

MR WHEELAHAN: Is that an example of the former leadership might just wait it out until (a) the administration ends, (b) if they're expelled it's only for five years?

PROF GOLDSTOCK: Right. Once you've engaged in misconduct or have a background related to organised crime or have received illegal moneys or any other activity which violates your either fiduciary relationship with the union or your role as an officer of the union or any position of authority, it seems to me that you have no business being back in that union at any time in the future.

MR WHEELAHAN: And for organised crime on construction sites, it's not just the union. You talked about affiliates, if you like, outlaw motorcycle gangs, other people

involved in organised crime. I want to play to you a video, and it's evidence of the administrator, Mr Mark Irving. Video number 25, please. And just before it's played, the preface to this is he was asked about solutions and, "What are you going to do, given the embedded problems within the CFMEU?" And he was the administrator. Can we play this, please.

(Video played).

MR WHEELAHAN: So there's a few things in that: (a) he says there needs to be a relevant body to go to, a fit and proper person test for employers, and I can tell you, before he was asked that question, he was shown ASIC records for a construction subcontractor that was linked to outlaw motorcycle gangs. So have you got a response to his view of a solution for structural change?

PROF GOLDSTOCK: Right. I - as I said before, I believe he is right. I think there is a structural change with respect to employers, that they have to meet a test. If they're going to work for the government, they have it to show that they are free of illicit activity or connections with organised crime groups, and I think the same thing is true of the union. So I think you need both sides to use the same processes to ensure that the people who are running both the companies and the union are doing so on behalf of the company - well, on the legal behalf of the company and on behalf of union membership.

COMMISSIONER: Just dealing with the union for a moment: in this country, we have the officials who are elected to run the union. Below them are people who are organisers who could be elected or appointed. They have a geographical responsibility to organise the membership in that area, and they're employed by the union, paid by the union. Below that are the people called delegates or shop stewards. I think you called them business agents?

PROF GOLDSTOCK: We use "delegates". We use "shop stewards" and we use "business agents". It depends on the union.

COMMISSIONER: You mentioned before the break in relation to this issue of the fit-and-proper-person requirement that you shouldn't have the sort of people you referred to - you gave an example of someone working on the waterfront making a lot of money, $400,000 a year, and not doing any work. In this Commission, we've received some evidence of people I might call delegates, I might call them shop stewards, might call them business agents, and there seems to be four problems with them.

First, they're imposed on the employer by the union, that is, they're not a worker selected by the employer to perform work; they're someone who is, in effect, parachuted in. The second is after being parachuted in, they're not elected by the workers as their representative; they're appointed. Thirdly, there's been a lot of evidence in this Commission that those people who are appointed have got backgrounds that are not - to put it mildly, make them inappropriate to be delegates

or representatives. And fourthly, which you could break into a fourth and fifth point, but fourthly, they're not required to work, and they're paid lots of money to not work.

PROF GOLDSTOCK: Right.

COMMISSIONER: Assuming there is evidence of that type of shop steward or delegate who has those four characteristics, what do you think about that from your perspective and your experience in the construction industry in New York and on the waterfront?

PROF GOLDSTOCK: Right. So, first of all, those people have no business being there. They are foisted upon the employer with only one reason, that is - well, two reasons. One is to provide them with payments for the work they don't do and to intimidate other people, both by their physical presence but also by demonstrating to others that the union has the power to do what it did. I would say that the remarks of the administrator in the last clip are particularly telling, because by having that test for the employers, an employer could not pass that test of being a fit and proper person or not engaging in misconduct if they accepted people on their payroll who are doing no work and whom they did not hire. So the monitors that those companies had would immediately report that to the agency which the administrator said should exist, and there would be a question of the fitness of that company to continue within the construction industry doing government work. At the same time, the question would be raised within the union as to why those people were there, how they got chosen, who they represented and how they came to be where they were.

You also mentioned one other thing that I failed to address before, and that was the election of the people who are in office, and I would say that the processes of the election become extremely important, because if you have a union in which certain people dominate the workers and the workers are afraid to express their views, in certain types of elections they either do not vote or they vote for the people that they are told to vote for. So there have to be electoral processes that exist - I do not know what they are right now, so I can't comment on it - but that would ensure free, fair elections. One of the things we did at the Roofers Union was that in the past people were - well, I should mention the Giganti one, where he was the business agent who was elected unanimously in an open meeting every year and he was a delegate for life. And that is clearly undemocratic, so the elections have to be done in such a way.

In the Roofers Union, one person was normally put up and the membership voted for that person. We instead insisted that there be people who ran for office. They had to appear at an open meeting. They had to explain why they wanted those positions and what they were going to do, and then the electorate - the membership voted in secret ballot. And I'm not saying that's the only way to do it, but there has to be some method by which elections are free from intimidation and include the entire membership as the group that is involved in the electoral process.

COMMISSIONER: It's an interesting angle that you have on this problem, because it's not one that I think has come up from anyone in almost a year that we've been

going, that is, that you make the employer responsible for giving in to union pressure, to put on their payroll someone who is inappropriate and has those other conditions, that is, is not elected, is appointed, doesn't have to work, and therefore disqualifies the employer as a non-fit and proper person from government work. I don't believe that idea has been floated before, but it does tackle an issue that's come up recently in the last few months whereby these delegates, it appears, because they're non-working and because their loyalty is to the union, or more correctly to the organiser within that faction of the union, is available at short notice to, in effect, do the bidding of that faction of the union in ways that stretch from minor illegality to severe illegality, from anything from stopping work, abusing statutory power, blockading, to making threats of violence, intimidation and even threats to kill, we heard yesterday.

And it appears that - but none of the large contractors have been called before this Commission of Inquiry yet, so this is just an inference, and it could be wrong, but it appears that the tier 1 contractors were turning a blind eye to this, that is, they know or ought to have known what these people on their books were doing, in effect, becoming part of a roving army that could be used by that faction of the union at a moment's notice to deploy a whole mob of people but doing nothing about it. Now, I might be quite wrong from that. We'll hear from the tier 1 contractors, who might say that impression - which appears to be a strong impression - is completely wrong. But your response to that is an interesting one, is to hold those tier 1 contractors responsible for that behaviour of those persons that they've allowed to be put on their books and then roam around carrying out the union's purposes.

PROF GOLDSTOCK: Right. And if they have with them this piece of paper that in effect says, "You are going to be debarred and you will no longer work on government contracts if you keep these people," handing that to the union who insists that the people are there sort of gives them an out, because that company will no longer exist, and having the people there does no good. Yeah.

COMMISSIONER: So much depends then on the external regulation, and it's also what you said: there are background checks and there are background checks. There's proper checking and there's just running a ruler over things.

PROF GOLDSTOCK: Right. I mean, our experience was that there were people who went through background checks who were on the waterfront, and when we re-did the background checks they had no business being there. So yes, I think there are people skilled at doing that and could be working for an integrity commission that would ensure - I also think - and I don't want to take on the police department, because I know that they do have other demands on their time, but if you want to be serious about organised crime in the construction industry and elsewhere, there needs to be a concerted effort to deal with the problem, and that means a group of dedicated people who know what they're doing, who understand organised crime, who can use electronic surveillance, who, if there's a RICO statute, with work with prosecutors to engage in that, can use undercover police officers if that's allowed

under your procedural laws. There's a lot that can be done, and the successes are well within reach.

COMMISSIONER: Is that a convenient time, Mr Wheelahan, or do you -

MR WHEELAHAN: There's 10 minutes to go, am I right?

COMMISSIONER: Well, you and I have different understandings about what the hours are.

MR WHEELAHAN: That's a convenient time.

COMMISSIONER: Mr Gisonda has different understandings as well.

MR WHEELAHAN: That's a convenient time.

COMMISSIONER: Do you want to keep going?

MR WHEELAHAN: No. I was going to play one short video. It's Mr Irving again with part B of his solution, but I can do that after lunch.

COMMISSIONER: No, do it now. That's fine.

MR WHEELAHAN: Video 26, please, Mr Operator.

(Video played).

PROF GOLDSTOCK: I have no disagreement with that. In fact, as I described the role of the monitors before, that they would not only be working for the general contractor but they would have contractually the right to look at books and records, talk to the employees of subcontractors - well, major subcontractors and mini subcontractors, yeah.

MR WHEELAHAN: Is that a convenient time?

COMMISSIONER: It is. I know I've rather taken you off topic with all the questions I've been asking, Mr Wheelahan. Are there applications to cross-examine Professor Goldstock?

MR WHEELAHAN: There is, by the administrator.

COMMISSIONER: And how long - is that acceded to?

MR WHEELAHAN: Yes.

COMMISSIONER: And how long do you think you'll be, Mr O'Grady?

MR O'GRADY: I would hope to be over within a half-hour, Commissioner.

COMMISSIONER: Do you need a bit longer than that, or do you think half an hour is enough?

MR O'GRADY: Well, as I understand it, there may be scope to recall the witness, albeit remotely, in the future if I don't finish what I need to today, so -

COMMISSIONER: I don't think he's too keen on making this trip every few months.

MR O'GRADY: No, no. Well, he might be very keen.

COMMISSIONER: That depends how he -

PROF GOLDSTOCK: It's a long ride.

MR O'GRADY: I'm told I'll have 45 minutes. That will be enough.

COMMISSIONER: So I'll have to stop speaking at some point, Mr Wheelahan, to enable Mr O'Grady to cross-examine.

MR WHEELAHAN: We'll allow 45 minutes so that Professor Goldstock can finish. Thank you.

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

<THE HEARING ADJOURNED AT 12.53 PM

<THE HEARING RESUMED AT 2.00 PM

MR WHEELAHAN: Thank you. Professor Goldstock, before lunch, we were talking about the RICO statute and a regulatory body. Can I ask you this: to what extent should a body that these monitors or inspectors report to have investigative and prosecutorial powers?

PROF GOLDSTOCK: So I think there are two things. One is the regulatory body, which oversees the rules and regulations for the industry and can do background checks and the like, decide who is capable of operating within the industry with integrity and who does not. But I think there should be a separate and distinct body. The Commissioner had asked me before about an Organized Crime Task Force, and the more I thought about it, I realised that within the Organized Crime Task Force we had set up a construction industry task force, and that was a task force made up of investigators and analysts and forensic accountants and prosecutors who were charged with, among other things, using the relevant statutes to investigate and prosecute criminal activity.

And I think there should be a relationship between the two bodies, but the two bodies ought to be separate, the regulatory body to be able to have conversations with the industry without concern that they were actually a subterfuge to investigate and prosecute them, and then a separate body, but made up of a group of people who were committed to understanding and investigating organised criminal activity and corruption within the construction industry itself, and those should be investigators and prosecutors and industry specialists and forensic accountants and analysts, but who were dedicated to doing that.

I don't go along with the notion that the police have other things to do and therefore cannot do investigations of the construction industry. To me, that lets them off the hook. This is difficult work; I could understand why they may not want to do it. But I think it is part of law enforcement's job to ensure that an industry, particularly one of this size, is operated without criminal activity and, if there is criminal activity, to use sophisticated, appropriate investigative means to do that. And that may involve the use of electronic surveillance, undercover officers, calling in people under oath, and I would say also the RICO statute, but not only to prosecute, but to investigate.

The RICO statute is, I think, brilliantly designed that it serves not only as a prosecutive tool which allows for the first time a change in jurisprudence to be inclusive, that is, to allow the relationship of individual to individual, individual to organisation and crime to crime, to be put before a jury, when it was not allowed in the past, but also a way of thinking about what you're doing when you conduct an investigation. What is it about forfeiture? What is it about remedial action? How do you start developing the kinds of evidence and information that's going to be used to effect these remedies in addition to prosecution at the end? And so people have to be very skilled in both ways.

I'll point out that in the United States, the RICO statute was passed in 1970 and it wasn't used in any real effect until the 1980s. It took 10 years for investigators and prosecutors to understand what it said and how to use it. And then it became more sophisticated in the decade following. So this is something that it can't be a couple of people assigned to it for a year and then they leave and some other people; this has got to be a dedicated group of people who understand how to investigate and how to prosecute organised crime.

MR WHEELAHAN: So I take it from that you would see the Queensland Police having a significant role in prosecution and investigation?

PROF GOLDSTOCK: Right. And I think not only that, but I think that the people who do this should be seen in part as an elite group who have to understand not only normal, conventional means of investigation, but more sophisticated approaches to gathering evidence. I mean, there is a situation, for example, in the construction industry where you have deals made between two people, whether it's official corruption or union corruption or corporate corruption, where two people are sitting in a room having a conversation with each other. It may not be a totally social conversation, but it's a criminal conversation.

And the only way that law enforcement can know about it and it could be presented in court is one of three ways. There is either being a member of the conversation, that is, being an undercover officer who participates in the conversation and hopefully records the conversation. There is turning a person in the conversation, that is, making that person a witness who can tell you what went on during the course of the conversation. Or it is overhearing the conversation, if it's a telephonic communication by telephone intercept or if it's an oral communication by oral intercept, and which produces the best evidence.

MR WHEELAHAN: I just want to touch once more on the predicate offences.

COMMISSIONER: Just before you do, could I just ask you a question about that separation of the regulatory body with what you might call something equivalent to the construction industry task force, which was a subset of your Organized Crime Task Force. There was some evidence earlier this week about the Fair Work Ombudsman, and that entity tries to enforce the limited range of laws that applied to the construction industry through the lens of industrial relations.

PROF GOLDSTOCK: Mmm-hmm.

COMMISSIONER: It may have - and I don't know - it may have a broader educative role in the way that the regulatory body that you're talking about might have. One of the problems that emerged this week with that body is it - at the same time it was prosecuting the CFMEU, it was having discussions with the National Secretary of the CFMEU about those very prosecutions - it appears; it's an inference from a draft minute. It might not be correct, but that appeared to be the prosecutor also having what might be regarded as industry consultations. What do you think about that?

PROF GOLDSTOCK: I think if it's a regulatory body, it has to have conversations with all critical parties to the construction process, including the CFMEU, any other unions that are involved, corporations and contractors, subcontractors, but it ought to be focused solely on regulation. They can't be co-opted by anybody. They have to look at what is occurring. If there is criminal activity, I would suggest that they then - or allegations of it, they pass that on to a construction industry task force, or something akin to that, that is made up of investigators and prosecutors who would then conduct the appropriate investigations and conduct the prosecutions.

But I don't think the two should be combined in one area, and that's for a number of reasons. One is to facilitate communications in the regulatory body and to see if they need to make changes. But also if one becomes co-opted or corrupt, the other still exists, and when you have the two together, it makes it much more difficult. Any one person can be leaking information or compromising investigations, and so I would separate the two.

MR WHEELAHAN: What about a prosecuting authority, though, sitting down, for example, with the CFMEU that it is prosecuting and doing deals with it over charges. Is that something that you did at the OCTF?

PROF GOLDSTOCK: Well, I think at least in the United States, it would not be sitting down with the CFMEU, but it would be sitting down with the attorneys, and there could be things like prosecution agreements, deferred prosecution, pleas, penalties. I mean, I think all of that makes sense, but in the context of a prosecutor and the prosecutor's normal job, not the prosecutor's job as part of the regulatory body.

MR WHEELAHAN: And you'd expect those conversations, as you said, to be for the attorney, not direct with the union or the organisation accused of the corruption?

PROF GOLDSTOCK: In the United States, it would be unethical to do so.

MR WHEELAHAN: Okay. If I can move to some predicate offences. You've dealt with the concrete pours. Forced hiring of delegates, that could be made an offence. I want to put another matter to you in the abstract. Given your experience as the Inspector General of the US Department of Labor, the Chief of the Rackets Bureau, Director of the OCTF, you have dealt with corruption by officials, and in the abstract, if a minister was to meet with contractors on a publicly funded project in excess of a billion dollars and say to those contractors, "If you don't do a deal with the CFMEU, we'll terminate your contract," in the abstract, is that type of conduct something that could become a predicate offence in a Queensland RICO statute?

PROF GOLDSTOCK: Yes, absolutely. If it were proven that without legitimate authority an official used their official authority to coerce somebody into something that they had a right not to do, under threat of debarment, then I would say that would be a predicate act. And under the - in the United States now, that would be a predicate act under our statutes. We wouldn't need a separate statute for that.

COMMISSIONER: When did the State of New York pass its own RICO laws?

PROF GOLDSTOCK: I'm going to guess - well, some time around 1990. It was about the time we were finishing the report.

COMMISSIONER: About 1990? They did it as a result of your report?

PROF GOLDSTOCK: No, it was done separately. They were on parallel tracks, but the RICO wasn't based on the construction industry.

COMMISSIONER: Was not?

PROF GOLDSTOCK: No. I think the scandals in the construction industry helped the proponents, that is to say, mostly our office and the governor had the RICO Act passed. It was one of these situations in which no one in the legislature wanted it, and

when it looked like it was going to pass, each member of the legislature added their name as a - in support of it, because no one wanted to be, ultimately, when it passed, you know, in favour of organised crime. But it was not something that was popular at the inception.

COMMISSIONER: So no one wanted to propose it, but no one wanted to vote against it?

PROF GOLDSTOCK: Yes. When it appeared that this was going to become law, everybody was in favour of it, yeah.

MR WHEELAHAN: Now, you've spoken about the effectiveness of the civil RICO with trebled penalties. Can you speak about the effectiveness of the criminal penalties for a RICO indictment?

PROF GOLDSTOCK: Right. So as I said, you know, the RICO allowed imprisonment up to 20 years, or greater if one of the predicate offences had its own penalty more than the 20-year limit. I - you know, my wife worked in the Department of Justice and worked with Europe, and I am - because of that, tend to be familiar with European criminal law and the amounts of time that are given to people who violate the law in Europe, particularly in the Netherlands, Switzerland, and I find that our penalties are just too long.

COMMISSIONER: Too what?

PROF GOLDSTOCK: Too long. I don't think that normally - 20, 25 years for some offences are too great. People come out. It costs a fortune to keep people in prison. If we can stop them from engaging in the criminal activity in the future by denying them the ability to operate in certain industries and the like, I don't know that enormous prison sentences are necessary. The possibility of a very long prison sentence is useful in some cases, I will admit, because it encourages people to cooperate, and if they can strike a deal with law enforcement and they can plead guilty and get benefits for the aid they give law enforcement, that's helpful. And I think that's been very useful to create informants in the United States and help deal with some of the problems that exist there.

MR WHEELAHAN: And with the individual predicate offences, where the penalty might be relatively low for that - for example, obstructing the concrete pour - isn't the - one of the benefits of RICO is that when you have a pattern established of that - what you call racketeering, that will then attract a far more severe penalty as a RICO charge and therefore serve as an effective deterrent?

PROF GOLDSTOCK: Absolutely. I mean, if you look at isolated incidents, none of them seem to be particularly heinous or deserving of a substantial period in prison. But once you put them together with all of the others that constitute the pattern and show what the real purpose behind each of them was, then of course the jury can see that and the judge can make a decision on sentence based upon all of that together.

MR WHEELAHAN: And that's more likely than not, of course, to serve as a greater deterrent to those corrupt actors involved in that labour racketeering?

PROF GOLDSTOCK: I believe that to be the case. Having never been a criminal, I do not know how deterrence works. I really am not in a position to say that they sit there and they determine a cost-benefit analysis. I often think of them as, you know, being criminals because they want to violate the law and they don't do the kind of analysis that we do. But when faced with the prison sentence, it stops them from engaging it in the future and, as I say, creates more informants, which produce greater evidence, which allows you to prosecute more people. And in that sense, the individuals may not be deterred, but the people above them may find it's not in their best interest to instruct them to engage in that obstructive behaviour that they otherwise would.

MR WHEELAHAN: And RICO could be used to disrupt the business model, as you've heard, of that low-level offending.

PROF GOLDSTOCK: Right. And if you're asking me whether RICO is useful in this regard, I think the answer is yes. I think when you look back, at least in the US and New York experience, RICO, electronic surveillance and the increased sophistication of law enforcement and expertise in particular areas was what changed something that seemed intractable before. When Governor Mario Cuomo asked me to look at the construction industry after a series of revelations in newspapers, his view was this has existed since his father opened a grocery store and he didn't know that it could ever be ended. And when I told him that I thought it could and I started explaining - he was one of the smartest people I knew. Blakey was the smartest, but Mario Cuomo came in a close second, and he just took it from what I said and went beyond and beyond and beyond, and together we were able to effectuate real change in an industry.

COMMISSIONER: I find it interesting that Cuomo as a Democrat with historic ties between the Democrats and the union movement would be the one to try and push this to appoint you to try and do something about that.

PROF GOLDSTOCK: Right. I believe that a true Democrat, that is, somebody who believes in unionism, believes in an honest union, not a corrupt union. They believe in workers' rights. They believe in collective bargaining, which is done for the workers' benefit, not as a series of provisions which allow for bribery and corruption in the future, because they are impracticable to carry out. So it doesn't surprise me that he felt that way. But I understand there is a political divide; I'm not blind to it. But I think that, in the long run, people who claim to support unionism and the right of collective bargaining ought to be the same people who insist on honest unionism.

COMMISSIONER: What you've just said then, it wasn't said in quite the same way, but Mr Irving, the former administrator of the CFMEU, gave evidence to a similar

effect. Didn't say it quite the same way, but very similar tone and substance of what he said.

MR WHEELAHAN: I have no further questions, Commissioner. Mr O'Grady -

COMMISSIONER: Could I just ask a question about Northern Ireland before Mr O'Grady takes over. I take it that you were appointed to that role after - was it the Tony Blair-inspired Good Friday peace accords? Have I got that right?

PROF GOLDSTOCK: In Northern Ireland?

COMMISSIONER: In Northern Ireland.

PROF GOLDSTOCK: Yes, it was after the peace accords.

COMMISSIONER: And I thought you said earlier this morning that the paramilitary groups on both sides then had nothing to do and turned to organised crime, or something to that effect. Is that right?

PROF GOLDSTOCK: It's exactly right, yeah.

COMMISSIONER: And what did you do to try and combat that? What lessons did you learn from that process?

PROF GOLDSTOCK: So as you can imagine, the police in Northern Ireland, formerly Royal Ulster Constabulary and now the public - police Service of Northern Ireland, had spent their time trying to stop crimes from occurring. They did not want bombs to go off. They developed informants. They just basically gathered intelligence and used it proactively, but not to punish individuals who engaged in criminal activity. The DPP, the Director of Public Prosecutions, did not want to be working with the Police Service of Northern Ireland, because the Police Service of Northern Ireland, he thought, was viewed as a Protestant organisation and he wanted to be viewed as neutral. In fact, when I went out into the community, everybody assumed they worked together. They were both organisations working for the previous government, and there was no distinction between the two.

As a result, the relationship between the two was impractical. The police would do the investigations on their own, not seeking any legal advice from the DPP, would refer it to the DPP. The DPP would review it. If they found something lacking, they would send it back to the police. The police at this point were working on another investigation, so they couldn't do this, and the system as a whole just did not work. In addition, while they were using electronic surveillance for intelligence purposes, they did not use it in court. And I can go into explanations why, but it's not particularly important; they just didn't. And so my job was to see if I could get them to work together to use the appropriate investigative tools. I proposed a RICO statute for the same reasons that we were talking about here and then issued a report.

Ultimately, I thought that the two would work together, there would be a change, they could learn from what was occurring in England, where they tended to be a little more effective in dealing with these kinds of problems, and I thought maybe the whole problem would go away when people considered themselves not as Protestants or Catholics. When I was there - one quick aside - I was out in the community and somebody said to me, "Why are you here?" And I said, "Well, I know a lot about organised crime, but so do other people. Maybe because I'm Jewish and I don't have a dog in the fight." And the person looked at me and he said, "Yeah, but are you a Catholic Jew or a Protestant Jew?" And all of a sudden I realised exactly what was occurring in Northern Ireland.

And so I thought well, maybe the issues would be resolved because they would consider them citizens of the EU rather than Northern Ireland, England or part of the Republic, and of course Brexit ended that. But it is still a huge problem, and I am not sure that what I did there really ultimately succeeded. Like a lot of reports, sometimes I think maybe the benefit of the report is to have it on the shelf, and when a new scandal or a new problem occurs, somebody reaches for it, dusts it off and puts it into effect. But, you know, it was a significant problem there, and they're still facing it.

COMMISSIONER: But you weren't as successful there as you were in cleaning up the construction industry in New York?

PROF GOLDSTOCK: Well, in New York, I had a hand in it. I was actually doing it. There, I was a consultant. All I could do was talk to the police, talk to the Director of Public Prosecutions, but they were by and large set in their ways. You know, I had a conversation - I think I put this in the report, so I'm not telling tales out of school - where Special Branch, which was the intelligence part of the police, PSNI, had collected intelligence on all of their targets, and they used it for intelligence purposes, but they didn't want it used in court. And I said, "Why?" And they said, "Well, then they'll find out how we do this, what our means and methods are." And I said, "Well, it can't be that your people are just not as smart as criminals elsewhere. I mean, every other country does it. All they have to do is pick up a newspaper and they would know exactly how it's done. And indeed, you allowed your electronic surveillance to be used in foreign courts. So they know exactly what it is." And they said, "Well, we just don't think it's a good idea." I said "If you used that evidence against each of the targets of your investigations, how many could you convict?" And he looked at me and he said, "Well, all of them."

And then I just shook my head. I mean, people are used to doing things in particular ways. One of the greatest things I learned from Professor Blakey when I first went to the Institute of Organized Crime after having been six years in the Manhattan DA's office was just because we did it in New York doesn't mean that's the only way to do it and it's the right way to do it, which was my assumption. And to get people to change what they're used to - well, for example, the RICO statutes passed in 1970. It took lawyers 10 years to understand it and change their way of operating.

It is a problem, I think, with lawyers in general, and it's something that I worked on hard in hiring the people in the Organized Crime Task Force. Lawyers are taught in law school how to spot issues, and they can tell you all the times why something can't be done. But the best lawyers are those that tell you how you can achieve what you want to achieve and do so legally. And those are special lawyers, and we don't have enough of them. So I guess what I'm suggesting in part is if those lawyers are the ones that are put into a construction industry strike force with investigators who have the same mentality and they work together to produce results, there can be dramatic change in what you're facing now.

COMMISSIONER: Robert Menzies, a former prime minister of ours, was once asked about Chief Justice Garfield Barwick, who was the greatest barrister at the bar, about why he was so good, and he gave the answer you've just given: "Most lawyers can tell you why they can't do something. Barwick could tell you how you could do it." And his success was at least partly a result of that, and it's a very difficult skill to find in lawyers, because you are trained to find the holes and what's wrong rather than be creative and find solutions.

PROF GOLDSTOCK: Right. And I suppose in part that's the fault of law schools. Yeah.

COMMISSIONER: We'll be here all day if we get onto that topic.

MR WHEELAHAN: Thank you.

COMMISSIONER: I think Mr O'Grady, who acts for the administrator of the CFMEU, is going to ask you some questions now, Professor Goldstock.

<CROSS-EXAMINATION BY MR O'GRADY.

MR O'GRADY: Yes, good afternoon, Professor.

PROF GOLDSTOCK: Good afternoon.

MR O'GRADY: Now, you understand of course that the CFMEU has been put into administration?

PROF GOLDSTOCK: Yes.

MR O'GRADY: And that occurred back in 2024?

PROF GOLDSTOCK: I couldn't give you the exact date, but sure.

MR O'GRADY: I understand. And you understand that the - that Mr Watson was actually commissioned by the administration to undertake the inquiry into violence in the Queensland CFMEU?

PROF GOLDSTOCK: Yes, I guess I did know that.

MR O'GRADY: Yes. And do you understand that when that report was received, Mr Irving, who was at that point in time the administrator of the CFMEU, set out a written response to that report?

PROF GOLDSTOCK: That I didn't know.

MR O'GRADY: Commissioner, we have a folder of material that's been tendered already, but I'd like to take the witness to some of it, and I understand that you've got a copy of that folder on the bench with you.

COMMISSIONER: Have I? Thank you.

MR O'GRADY: Could the witness please be provided with a copy of the folder, please. So these are various reports and witness statements that have been generated by the administration over time, and I don't need to go through all of it, but could I ask you initially just to go to page 162 of the folder, which is behind tab -

PROF GOLDSTOCK: Which tab?

MR O'GRADY: Behind tab 10, and the numbering is at the foot of the page.

COMMISSIONER: It's also on the screen, Professor Goldstock, if that's easier.

PROF GOLDSTOCK: Did you say 210?

MR O'GRADY: No, 162.

PROF GOLDSTOCK: 162.

COMMISSIONER: It's also on the screen if that's easier, Professor Goldstock.

PROF GOLDSTOCK: Actually, this is easier. Well - yeah. Okay.

MR O'GRADY: I won't be jumping around too much, I hope, Professor. Now, if you go to paragraph 36, you can see there what the administrator said in response to receiving the report from Mr Watson that Mr Watson was speaking about in the video we saw this morning, where he said:

"I have received a report that I commissioned from Geoffrey Watson SC into violence in the Queensland construction industry. The report exposes the role played by the former CFMEU leadership (led by Michael Ravbar and Jade Ingham) running a regime that was violent, cruel, misogynist and that betrayed the core values of unionism. CFMEU members deserve better than what was delivered by the former leadership. The Union movement and Queenslanders deserve better than the

mockery of union values carried out in the name of the CFMEU under the former regime."

Now, given the observations you made to the Commissioner earlier about Mr Cuomo and what a true Democrat is and what true unionism is, I take it you would agree with these sentiments?

PROF GOLDSTOCK: I'm not sure one has anything to do with the other, but I do agree with these sentiments, yeah.

MR O'GRADY: And then he continues:

"The Union commits, at every level, to engage in cultural change. In Queensland, the tools used to achieve those changes will include disciplinary action, dismissals and expulsions detailed below, retraining and the commitment to new building standards of behaviours, the repair of relationships with the union movement, ensuring the Union is conducted in a manner fit for civil society, and the establishment of co-operative consultative forums. I have implemented a National Office restructure that aids in these changes. Those within the union who do not commit to and co-operate in achieving the required changes will be removed from positions of power."

And I take it, again, you would agree with and endorse those sentiments?

PROF GOLDSTOCK: Yes.

MR O'GRADY: Yes. And indeed, I put it to you, and I want to come to it in more detail in due course, but many of the things that you recommend in your expert report are captured by that second paragraph, aren't they?

PROF GOLDSTOCK: Yes, many are.

MR O'GRADY: Yes. All right. Thank you. Could I then ask you to go to the beginning of the folder, or towards the front of the folder, behind tab 4. And this is at page 6, Commissioner.

PROF GOLDSTOCK: I'm sorry, page -

MR O'GRADY: Page 6.

PROF GOLDSTOCK: On tab 4?

MR O'GRADY: Behind tab 4, page 6. Again, the numbering is at the foot of the page.

PROF GOLDSTOCK: Okay.

MR O'GRADY: So as you heard this morning, Professor, the administrator has to produce a biannual report, detailing what's been happening and this is the first of those biannual reports. And in paragraph 1, commencing at the second sentence, the administrator, who at that stage was Mark Irving KC, says:

"It is pursuing the core function of rebuilding the Construction Division of the CFMEU as a strong, democratic, member controlled, industrially proactive and effective union, enduringly free of corruption and criminal influence. It has taken steps to ensure that the union continues to serve its members, works to keep members safe, fights to protect and improve the working conditions and lives of members. It has sought to address corruption and confront menacing conduct within the union and within the industry."

And again, I take it you would endorse and agree with those sentiments?

PROF GOLDSTOCK: Well, I - I - I have no way of knowing whether that's true or not. But if this is true, that's exactly what should be done.

MR O'GRADY: Yes. And the Commission has heard evidence about whether or not this is true or not.

PROF GOLDSTOCK: Right.

MR O'GRADY: But you can't comment, but assuming for the moment that it is true, that is exactly what should be done?

PROF GOLDSTOCK: Well, it's in part what should be done.

MR O'GRADY: Yes. Yes. And then in paragraph 2, the administrator continues:

"The administration has continued a series of investigations that has shone light on some of the corrupt conduct and criminal infiltration of the industry an area in which much work still needs to be done. It has established an Integrity Unit which receives and deals with complaints, some of which are anonymous."

And again, you don't know whether that's happening or not, but assuming it is happening (indistinct) engage with the issue of corruption within the CFMEU?

PROF GOLDSTOCK: Yes. I can say two things about that. And again, I'm assuming this to be the case.

MR O'GRADY: Yes.

PROF GOLDSTOCK: As in many things, it shows what is done but not what was not done. So I can't tell - even if it were true, for example, it may be that it was effective in uncovering some corrupt activity but did not go far enough to uncover other. So I just - all I'm saying is I'm accepting this as being the case, but even if it is

the case, it's hard to know how ultimately effective it was. And as the same thing, is it established an Integrity Unit which receives and deals with complaints, I think that's important, but again, I can't tell how that's staffed, how - what investigations occur from that and so on. But the idea of doing something that involves a cultural change and puts into place a mechanism for receiving complaints I think is important.

MR O'GRADY: Yes. You weren't provided with these biannual reports when you were asked to prepare your expert report, were you?

PROF GOLDSTOCK: I have never seen these before.

MR O'GRADY: I understand. And so you haven't been - you're not in a position to assess the efficacy of the various initiatives that the administration under both the original administrator and the current administrator have undertaken?

MR WHEELAHAN: Objection. The report just talks about an integrity - and the witness's answer was, "Well, even if I accept what you're putting to me now is true, we don't know it's effective." And I don't think there's any evidence about how effective that Integrity Unit has been.

COMMISSIONER: Allow the question. I will allow the question.

MR O'GRADY: Thank you. All I'm putting to you, Professor, and I'm not being critical, you weren't tasked with examining the efficacy of the initiatives that the administrator has undertaken?

PROF GOLDSTOCK: Exactly.

MR O'GRADY: Yes. And indeed, you weren't even provided with the biannual reports in which the administrator tells the Parliament and has told the Commission what he's been trying to do.

PROF GOLDSTOCK: Right. Right. And let me answer in part of that: even if I were, I couldn't have done it. That is to say, I could not read this and know whether or not it was in fact working. The kind of work that would have to go into that would be beyond my capability right now merely by reading this report.

MR O'GRADY: I understand. And so what - I want to put some more aspects of these reports to you.

PROF GOLDSTOCK: Sure.

MR O'GRADY: But do so on the basis that (a) that's what the administrator is doing, and can you inform the Commission whether you endorse or agree with the sorts of initiatives that the administrator has sought to put in place. And so could I ask you now to turn to page 8 of the same document.

PROF GOLDSTOCK: Okay.

MR O'GRADY: And under the heading Corruption at the foot of the page in paragraph 11, the administrator says:

"Corruption within the union makes it weaker. Corruption subverts democratic processes. It diverts the attention of leaders - be they delegates or organisers - from performing their core function of placing the interests of the members first."

I put it to you that that is consistent with what you said to the Commission this morning in your evidence.

PROF GOLDSTOCK: Absolutely.

MR O'GRADY: Yes:

"The loss of control in some branches to the malign influences of organised crime and outlaw motorcycle gangs has rendered the union industrially fragile. Delegates and organisers under such influences serve two masters: the members and the corrupt."

And again, I put it to you that that is perfectly consistent with what you told the Commission this morning.

PROF GOLDSTOCK: Yes.

MR O'GRADY: Yes. And then if you could turn over the page to page 9, in paragraph 12 in the third sentence, the administrator says:

"Corruption can be addressed on an individual basis by identifying the corrupt, removing them and holding them to account. It can also be addressed systemically by modifying the practices of the industry. It can also be addressed culturally, by educating about acceptable behaviour and providing training, selecting value-driven leaders and thereby changing conduct. The administration is committed to this task within the CFMEU, but employers too but commit to that task."

Now, firstly, I take it you'd agree that the various initiatives that are described by the administrator in that paragraph are all important ways of addressing or attacking corruption?

PROF GOLDSTOCK: Yes. I mean, I - as my report and testimony says, I think there are additional things that need to be done, but these are certainly a number of the things that are necessary.

MR O'GRADY: Yes.

PROF GOLDSTOCK: If not sufficient.

MR O'GRADY: Yes. And as I understand your testimony this morning, you'd also agree that it's no good simply focusing on the union. If you're going to address corruption in the construction industry, you've also got to look at the other side of the coin, on employers?

PROF GOLDSTOCK: That's what I've said.

MR O'GRADY: Yes. And then in paragraph 13, in the last two sentences, the administrator continues:

"Some employers have been complicit, and in some cases drivers of, that culture..."

This is the corrupt culture:

"...and engage organised crime figures and outlaw motorcycle gangs in the conduct of their industrial relations. The infiltration of crime figures and gangs in industrial relations in the construction industry creates a whole industry problem."

And again, going on what you said this morning, I take it you would agree that it is a two-way street, that there are some employers who are responsible for corruption in the construction industry.

PROF GOLDSTOCK: Yes.

MR O'GRADY: Both certainly in your experience in New York and from what you've seen in Australia.

PROF GOLDSTOCK: Right, and throughout the world. Yes, I think there are some corrupt companies that do two things: they are corrupt internally within the company, that is, they abuse the company by stealing from it, but they also seek an advantage in the industry by obtaining contracts or other benefits, waiver of provisions of contracts and the like, by bribing union officials. I think that's absolutely the case.

MR O'GRADY: Yes. Thank you, Professor. And then if we go over the page to page 10 and paragraph 18, I think you mentioned earlier that you thought that an Integrity Unit was an important initiative. And would you agree that to have as part of that system provision for whistleblowers, including anonymous whistleblowing, is an important initiative to improve the efficacy of an Integrity Unit?

PROF GOLDSTOCK: Yes, and, you know, as I said before, it depends how the Integrity Unit is staffed, how well it can investigate complaints, whether they are direct or whistleblowing or anonymous or the like. But it is important to have something like that. I called it inspector general Unit. You call it an Integrity Unit, or the CFMEU does. I think the words are right. It's a question of how effective it has

been and how likely it is to be ineffective in the future. But I do not disagree with that at all.

MR O'GRADY: I understand. And I don't mean to be unfair to you, Professor; you're just not in a position to comment about whether or not it's been effective.

PROF GOLDSTOCK: Right.

MR O'GRADY: Yes. But you accept that. Assuming it's been done and assuming it's working, it is an important initiative to try and address any corruption within the CFMEU?

PROF GOLDSTOCK: Right. Assuming it was done correctly, it was staffed correctly, it had people within it capable of conducting sophisticated investigations and following through, I think it is critical, yes.

MR O'GRADY: Yes. Thank you. And in addition to creating the Integrity Unit, you're aware, aren't you, that the administrator commissioned various investigations into the operations of the CFMEU, both in Queensland and elsewhere within Australia?

PROF GOLDSTOCK: Are you talking about internally or -

MR O'GRADY: No.

PROF GOLDSTOCK: - Mr Watson.

MR O'GRADY: Engaged Mr Watson.

PROF GOLDSTOCK: Yes.

MR O'GRADY: Yes. And you'd accept that the idea of bringing in an external investigator and somebody with Mr Watson's experience and skills is again an important initiative in order to try and root out corruption within the union?

PROF GOLDSTOCK: Right. I mean, I - as I said before, I - I have - I think Mr Watson has done an incredibly good job from when I've seen him testify.

MR O'GRADY: Yes.

PROF GOLDSTOCK: But he is an individual.

MR O'GRADY: Yes.

PROF GOLDSTOCK: And I think what I have said before is he's able to see some stuff, but to gather the evidence and to do it in a way that could lead to serious prosecutions, I have no idea whether or not he alone is capable of doing that.

MR O'GRADY: I understand. Do you accept, Professor, that none of these pieces individually is going to solve the problem; you need to have in effect a multifaceted approach to try to resolve the issue of corruption within the organisation?

PROF GOLDSTOCK: That's the thrust of my testimony.

MR O'GRADY: Yes. And you would accept that at least on the face of it, from this report, it would appear that the Commission - sorry, that the administrator has sought to adopt a multifaceted approach to trying to introduce initiatives to deal with the problem of corruption, which has been identified?

PROF GOLDSTOCK: Right. But as I - I don't want to denigrate this, because I do not know the efficacy of it. But what I'm saying is these kinds of things have to be done in a way in which they actually achieve results. I always used to say, law enforcement, when they announce indictments, show what they've done. They don't show what they haven't done.

MR O'GRADY: Yes, I understand.

PROF GOLDSTOCK: And so it's hard to look at this and know exactly how deep they were able to go, whether or not it was the people behind the people indicted that were actually caught and the like. But I think the words are correct.

MR O'GRADY: Yes. Thank you. And then if you could then go to page 13 and paragraph 31, you'll see there that under the heading of Cooperation with Law Enforcement and Regulatory Bodies, in the third sentence of paragraph 31, it states the administration has regular meetings with the FWC, which is the Fair Work Commission, which is the in effect industrial tribunal in this country; the Fair Work Ombudsman, which is the body charged with enforcing workplace laws; and the AFP, the Australian Federal Police:

"It further contacts regulators on an ad hoc basis to deal with issues as they arise."

And I take it you would also endorse the notion of the administration engaging with and cooperating with those official bodies as a means of addressing corruption within the industry?

PROF GOLDSTOCK: Yes.

MR O'GRADY: Thank you.

PROF GOLDSTOCK: And I will add just sort of to protect it and make sure it's not taken out of context: the fact of the meetings is one thing; the information that's exchanged and the information that is known to be exchanged is something different.

MR O'GRADY: Yes. Now, you haven't been here for this evidence, but are you aware that there were some 1000 cases alleging contraventions by the CFMEU prior to the appointment of the administrator?

PROF GOLDSTOCK: No.

MR O'GRADY: No. And there have been zero contraventions alleged against the CFMEU for conduct engaged in after the administration was put in place and the High Court upheld the validity of the administration?

PROF GOLDSTOCK: I knew neither.

MR O'GRADY: No. You would accept, wouldn't you, that if that be right, then would be a pretty good indicator that the initiatives that the administration is putting in place is effecting change?

PROF GOLDSTOCK: I guess the answer is yes, but I just don't know what the allegations were before, who they were made by and the like. I just don't - I'm not sure.

MR O'GRADY: I understand. And again, I don't mean to be unfair to you, Professor. I just need to put these propositions to you so you can respond if you can.

PROF GOLDSTOCK: Right. And I think that probably does have some meaning.

MR O'GRADY: Thank you. Could I ask you then to turn to the second biannual report, which is behind tab 5 and commences at page 98, and then turn to page 102. So the first report was the first chance that the administrator got to report to Parliament about what had happened. This is now six months later, where the administrator has gone back to Parliament, as he's required to do, to update Parliament on how the administration is progressing. And if you go to page 102 -

PROF GOLDSTOCK: Just to clarify, this is the initial administrator?

MR O'GRADY: Yes, this is the initial administration. So there's four biannual reports. Three of them were authored by the initial administrator, Mr Mark Irving KC. The last one, which I'll come to in not too long a time, is by Mr Crosby.

PROF GOLDSTOCK: Right.

MR O'GRADY: If you go to page 102, you'll see at the foot of the page where even though it's only six months since his last report, Mr Irving is reporting to Parliament:

"The breadth of the work undertaken by the administration is apparent in this report. Some numbers give a partial insight into the operations of the administration: the administration has received over 500 complaints through its anonymous whistleblowing website. The division's total asset value is..."

Sorry, I don't need to worry about the second bullet point. The fact that there were some 500 complaints through the whistleblowing website would on its face suggest that (a) it's been accessed by members of the union and members of the community more generally?

PROF GOLDSTOCK: I would guess so, yes.

MR O'GRADY: All right. Thank you. And then if I could ask you to go to page 106, under the heading Education and Cultural Change. This is at paragraph 14.

PROF GOLDSTOCK: I'm sorry, could I just go back and just ask you the question.

MR O'GRADY: Yes.

PROF GOLDSTOCK: Maybe I just didn't understand it. The question before, you said it had - in the first six months prior to the administrator, there were 1000 complaints?

MR O'GRADY: Sorry, there are different issues.

PROF GOLDSTOCK: Okay.

MR O'GRADY: In respect of the question I was asking you earlier, I was talking about in effect civil penalty prosecutions brought against the former people running - or - and/or - brought against the CFMEU and its officers and delegates prior to the appointment of the administrator, in civil court proceedings.

PROF GOLDSTOCK: Okay.

MR O'GRADY: And I said there had been some thousand or thereabouts allegations made against the CFMEU at that time. And since the administration, in respect of conduct occurring post the administration and a High Court decision vindicating the administration, there has been no allegations or contraventions brought against the CFMEU.

PROF GOLDSTOCK: Okay. And the 500 complaints here?

MR O'GRADY: These are 500 complaints through the CFMEU's internal whistleblowing mechanism.

PROF GOLDSTOCK: Right. But would these have been complaints made in other ways prior to the whistleblower website? I'm not - I think there should be a whistleblower website; don't get me wrong. I just don't - I'm trying to understand the difference between the thousand and zero and 500 here.

MR O'GRADY: Yes, well, the thousand and zero are court proceedings brought by either the regulatory authority, which used to be the Building and Construction Commission, or the Fair Work Ombudsman, or an employer against the CFMEU in a court case in which penalties were sought. What we're talking about here in respect of the whistleblowing mechanism is that after the administrator set up the whistleblowing mechanism, because there wasn't one previous to that, in the six-month period we're talking about, he's able to report to Parliament, "Look, 500 people have used it as a facility." So they're quite discrete things, but you would accept that in respect of (a) the reduction of proceedings directed against the CFMEU by the regulator, the fact that we've gone from a thousand to zero is a pretty good indicator, isn't it?

PROF GOLDSTOCK: I would say so. Of these 500 complaints, how many result in the kinds of proceedings that you had mentioned before?

MR O'GRADY: They wouldn't necessarily result in any of them. They might be somebody who is complaining about the way a delegate has behaved on a building site.

PROF GOLDSTOCK: Right. Okay.

MR O'GRADY: And the administrator is going to look into that. And as you will see in a moment, it may well result in that delegate or that organiser losing their job.

PROF GOLDSTOCK: Okay.

MR O'GRADY: If you turn to page 106 and paragraph 14, I take it you would agree with the first sentence that:

"Changing the culture of an organisation is not simply a matter of announcing policies or changing personnel."

PROF GOLDSTOCK: Yes.

MR O'GRADY:

"Cultural change is in part a function of the values of an organisation. The principles that are not only catalogued, but also exhibited in the consistent actions of the leadership will become the fundamental and distinctive characteristics of the organisation."

You would endorse those as observations?

PROF GOLDSTOCK: I wouldn't say "will become", but I think is necessary for the fundamental and distinctive character.

MR O'GRADY: I understand. A change in the leadership has got to be, I put it to you, the first step in effecting the sort of cultural change from the organisation that you were provided information about when you wrote your report?

PROF GOLDSTOCK: Right. I believe change in leadership is important and - yes, and throughout the organisation.

MR O'GRADY: And if I could ask you to go to page 108 and paragraph 21 -

PROF GOLDSTOCK: If you give me just a second. It's easier to read here than -

MR O'GRADY: Of course.

PROF GOLDSTOCK: Okay.

MR O'GRADY: Yes. And go to the third sentence:

"The administration is reviewing the rules of the union to ensure members' voices are genuinely heard in the decision-making structures of the union. The members should determine the direction of the union. Rules are needed to distribute power and prevent the excessive concentration of power into the hands of a small coterie of leaders."

You'd accept that one of the mechanisms that the union might employ to prevent the sort of behaviour that you were informed about when you wrote your report would be to change the rules to ensure that the union is democratically controlled and represents the interests of members.

PROF GOLDSTOCK: Yes.

MR O'GRADY: And similarly, that prevents the concentration of power in a small coterie of leaders who, from the material you were provided, clearly behaved very badly.

PROF GOLDSTOCK: Yes.

MR O'GRADY: Yes. And if done properly, that mechanism is a means by which the union can ensure that any cultural change is maintained, even after the administration comes to an end?

PROF GOLDSTOCK: That's hard to know. I would say, again, it's necessary in the sense that there won't be a continuation if it doesn't exist in the first place, but there have to be some mechanisms in place to ensure that it does continue over time.

MR O'GRADY: Yes. Thank you. And if you could go to page 111, paragraph 32, you'll see there in the fourth sentence:

"The union continues to investigate credible allegations of corruption and refer allegations to external agencies where appropriate. The administration has received over 500 complaints under its anonymous whistleblowing policy. It is triaging the complaints. Some are dealt with internally. Some are referred to others. The administration refers matters regularly to the Joint Agency Working Group that consists of the Fair Work Ombudsman, the Fair Work Commission, various police forces and other regulators in various jurisdictions."

Now, again, you don't know whether or not this is happening, but assuming that it is happening, you would accept that that is (a) a reflection of the fact that the administration is taking this issue of corruption seriously?

PROF GOLDSTOCK: Yes.

MR O'GRADY: And (b), at least on its face, it would appear to be engaging with external agencies in order to root it out?

PROF GOLDSTOCK: I - I assume so. I don't - I don't know what happens when matters are referred. I don't know what is done internally. I don't know to what extent the police conduct further investigations into it. And I don't know whether all of them are being done, because it talks about triage. But I think I take your point: to the extent that the union does want to achieve results, it needs to engage in this kind of activity. How well it's done, I just don't have any -

MR O'GRADY: I understand. If you could go to page 122, Professor. The administrator put in place an action plan, and you'll see that part of that action plan is to improve governance, compliance and integrity, which is point 3 of the action plan. And, again, whilst none of these things is going to be a silver bullet, you'd accept that this is an important initiative for an organisation that is seeking to effect cultural change and reduce if not eliminate corruption?

PROF GOLDSTOCK: Again, I have no problems with 3.1 through 3.4. I think that the title - there seems to be nothing about compliance within the subdivisions that follow. So I don't know quite what that means.

MR O'GRADY: I see.

PROF GOLDSTOCK: And I don't know what "world class" means, but I think it deals mainly with governance.

MR O'GRADY: Yes.

PROF GOLDSTOCK: Yeah.

MR O'GRADY: Yes. And if you could go then to 5.2 and 5.3 -

PROF GOLDSTOCK: I don't think that's sort of an odd thing to throw out, because I think a compliance program is important, as I testified before, in addition to the Integrity Program, which I would have called the Inspector General Program.

MR O'GRADY: I understand. If you'd go to 5.2 and 5.3 for me, please. I take it from your answers that you've already provided you'd agree that those initiatives are important initiatives in order to improve - change the culture and improve the way in which the CFMEU is engaging with issues including corruption?

PROF GOLDSTOCK: Absolutely.

MR O'GRADY: Yes. And then 6.1 and 6.2. And again, from the answers you've already provided, you accept that there is a need to ensure that the union operates democratically and initiatives designed to achieve that end are to be endorsed.

PROF GOLDSTOCK: Yes.

MR O'GRADY: And if you could then go to 8.1 and 8.2. And part and parcel of ensuring that the union is democratically controlled is holding leadership accountable, isn't it?

PROF GOLDSTOCK: Yeah, I don't - I'm sorry, I just don't know what those mean. To review the reporting mechanisms - it's not so much to review the reporting mechanisms; I take it is to ensure that there are effective reporting mechanisms.

MR O'GRADY: Yes, and that's picked up by 8.2, isn't it?

PROF GOLDSTOCK: And the "embed accountability and transparency into processes", I don't know what that means.

MR O'GRADY: I understand. And then -

PROF GOLDSTOCK: I mean, just as a matter of English, I don't know what it means.

MR O'GRADY: I understand. I didn't write it, Professor, so I can't take responsibility.

PROF GOLDSTOCK: I'm under oath, so I have to admit that I don't understand it.

MR O'GRADY: If you then could go and have a look at 9.1 and 9.2. I think we can blame Mr Irving for the authorship of the document. I take it you would accept that to the extent to which the union is seeking to implement those actions, (a) they're important steps to be taken, and (b), they're matters that will help address the issue of corruption.

PROF GOLDSTOCK: Right. Again, I'm going to - you know, the same qualification. It says "investigate credible allegations of corruption", and the question is who is doing the investigation, what skills they have, whether or not they're capable of in fact determining the truth and developing the evidence to refer to external agencies. I mean, it can be given to somebody who, you know, looks at it and just says, "No, I don't believe this," and then it's over. So without knowing who is doing the investigation, whether or not they have - whether or not they're union members who are assigned that job and have no background in the investigation of criminal activity, I don't know.

MR O'GRADY: You don't know because you weren't asked to look at the issue.

PROF GOLDSTOCK: Right.

MR O'GRADY: Yes. I understand. But if one goes to your report, in paragraph 7(c) - sorry, recommendation 7(c), which is at page 11 of 17, you say:

"I believe the CFMEU in Queensland is in need of cultural and structural reform, which should be designed to outlast the imposition of a temporary administrator."

And you'd accept that to the extent to which these initiatives are being implemented, they go to that issue?

PROF GOLDSTOCK: As I said, I do not know. I don't know to what - you know, the real question as always is in the details. The question is are these permanent offices? Are they staffed with a sufficient number of people? Do the people have the qualifications to do what they are supposed to do? Can they be eliminated by fiat by the next person who comes into office? Or, could they just be modified so that they take out the people who are competent and put in people who are unable to do it? So you can leave the institutions as a showpiece without really having them be effective. So I would say that in each of these cases you would need a sufficiently staffed group that is independent from the wishes of a particular person who takes over the union and continues in the future for some period of time.

MR O'GRADY: Yes. But just coming back to my question, Professor, I'm putting to you that you made a recommendation in paragraph 7(c) that the union seek to effect cultural change.

PROF GOLDSTOCK: Right. I don't think that was the question. Wasn't there something that followed the cultural change?

MR O'GRADY: And what I'm putting to you is on their face these are initiatives that would try and address your recommendation.

PROF GOLDSTOCK: Look, I - as you've shown a number of times, I did not see this and I did not investigate it. And my answer to you is the same as before: I am not saying they are not. What I am saying is I do not know whether or not these

institutions that you talk about, which I think are good - not sufficient, because I don't think there's a compliance program, but there is an Integrity Unit and a whistleblower hotline - I think that what needs to be shown is that there are permanent institutions that outlast the administrator, that are filled with a sufficient number of members of staff with the qualifications to do the job that they are required to do. The name of the organisation is insufficient to do that, and sometimes it's counterproductive, because if the people within the union do not believe that these institutions are viable and actually achieve results, they think that in effect it's back to the same old days as it was before.

MR O'GRADY: Yes. Well, firstly, Professor, you don't know whether or not these things are being effectively implemented at this point in time, do you?

PROF GOLDSTOCK: I do not.

MR O'GRADY: No. And secondly, you've got no reason to think that either Mr Irving or Mr Crosby are not acting in good faith in their attempts to effect ongoing cultural change within the CFMEU?

PROF GOLDSTOCK: I do not. What I'm saying is I think pretty clear, unless I'm not being understood: I cannot tell whether these are the right things in the long run which would effect change within the union and guarantee the integrity of the union in the future, and I think that if I were writing this, there would be an addendum which would say, "We have put together an Integrity Unit. It contains 50 people. The 50 people have the following qualifications, and they are independent of political interference by anyone who takes over from the administrator in the future." And I think those are the critical issues, and that would demonstrate not only the seriousness of the work but also the competence, and instruct the members of the union that something has been done on their behalf.

MR O'GRADY: I understand. But you're not in a position to make any assessment about any of those issues because you -

COMMISSIONER: I think the witness has answered that question.

MR O'GRADY: I understand. And then if you go to item 10, and 10.1, 10.2, 10.3 and 10.4. Now, again, these are all put at a relatively high level, but you would accept that taking steps to prevent the appointment of staff and delegates -

PROF GOLDSTOCK: I'm sorry, it hasn't come up on the screen here.

MR O'GRADY: I apologise.

PROF GOLDSTOCK: I can try to look at it here.

COMMISSIONER: It will come up in a moment, Professor Goldstock. Page 122.

MR O'GRADY: Do you have it there, Professor?

PROF GOLDSTOCK: Yes. I have 10 now.

MR O'GRADY: Yes. Preventing the appointment of staff and delegates with allegiances to organised crime or outlaw motorcycle gangs: you would accept that that is a laudable objective?

PROF GOLDSTOCK: Right.

MR O'GRADY: Identifying the underlying cultural issues that lead to corruption: again, that's a laudable objective?

PROF GOLDSTOCK: Yes.

MR O'GRADY: Developing ongoing training and education of staff: you would accept again that that's an important initiative?

PROF GOLDSTOCK: Yes.

MR O'GRADY: And establishing processes and advocating for structural changes to seek to minimise or eliminate the involvement of outlaw motorcycle gangs and organised crime in industrial relations in the construction industry: again, you'd endorse that as an objective?

PROF GOLDSTOCK: Yes.

MR O'GRADY: Yes. And then if I could ask you, Professor, to turn to page 134 - in fact, I'll skip that, Professor. If I could ask you lastly in respect of these matters to go to page 151. So this is the fourth biannual report, so this is the one that Mr Crosby issued earlier this year. And you'll see that in paragraphs 59 through to 61, Mr Crosby identifies his concerns in respect of corruption, and I take it that you would agree with those concerns, because they, in my submission, generally reflect the matters that you touched on this morning and in your report?

PROF GOLDSTOCK: I have nothing to say about 60, as you have pointed out. So I -

MR O'GRADY: Yes, but 59 and 61.

PROF GOLDSTOCK: Right, and 61.

MR O'GRADY: You'd agree with 61?

PROF GOLDSTOCK: "The power of money will make it inevitable" - I don't know what the power of money is, but do you mean the notion that individuals will

seek power and money to make themselves influential within the union? I think that's true, and I think that's just a part of the construction industry.

MR O'GRADY: Yes.

PROF GOLDSTOCK: In general.

MR O'GRADY: Yes. And indeed, Mr Crosby is speaking about the construction industry in general, isn't he?

PROF GOLDSTOCK: Right.

MR O'GRADY: Just bear with me, Commissioner. Now, in your report at paragraph 7(c) you speak about education. You'd agree that from the documents I've taken you to, it would appear at least on its face that the administration is seeking to address the issue of educating its employees, its delegates and its organisers?

PROF GOLDSTOCK: Yes. Again, without any statement as to the efficacy of the training and how well it's done and whether it's tested afterwards to determine whether or not people trained actually understand what the requirements are, I would say it's important to do that, yes.

MR O'GRADY: Yes. And if it be the case that in the six months before August 2026 the unit delivered training to hundreds of staff across the country, that would be an indication that it's not just giving lip-service to the notion of training, that it's actually undertaking a program of training?

PROF GOLDSTOCK: Yes, I assume so. Again, training is just a word. It doesn't indicate what the training is, how it's done, whether people are paying attention, whether they're being tested thereafter, and determining - doing an analysis of the training programs to see whether or not they are efficacious.

MR O'GRADY: You don't know.

PROF GOLDSTOCK: I do not know. What I do know is that when I talk about training in the work that I do, it is often computer-based. It is tested. It's determined whether people - after they receive the training, they're tested on it to see whether or not they are missing sort of the same issues, whether or not those issues are being taught correctly and so on. So I think there's a lot more that goes into training than just merely getting up before an audience and telling them what they can ethically do or not do. And as you know, training can be very sophisticated or very elemental. So - but if the point is should training be done and are they saying that training is being done, I agree, yes.

MR O'GRADY: And are you aware of the fact that Mr Crosby is a world-renowned expert in changing union culture and training in union affairs?

PROF GOLDSTOCK: I do not. Again, I have no idea as to that, and it may very well be that he is, and all I would do is ask the same question: is the training being done so that the people who receive it actually walk away knowing what their obligations are and how to carry them out?

MR O'GRADY: But I think you've already agreed with me that you've got no reason to think that either Mr Irving or Mr Crosby are acting in anything other than utmost good faith?

PROF GOLDSTOCK: Oh no, they could be acting in - look, I don't mean to be argumentative. You're asking me the question, and I'm trying to answer the best way I can. What I'm saying is people can act in absolute good faith and hope that the training is as good as it should be and it turns out not to be. And that I have seen over and over again.

MR O'GRADY: I understand. And just so you understand, Professor, in due course Mr Crosby's going to come and give evidence before this Commission, and he can be asked questions about the type of training that he's putting in place. But what I'm putting to you is the proposition that the fact that the union is on its face putting in place training initiatives is consistent with a number of the recommendations you have made?

PROF GOLDSTOCK: Absolutely, and it's critically important.

MR O'GRADY: Yes. And indeed, in respect of part of that training in Queensland, all existing and new delegates attend a newly developed two-day values-based delegate training that includes genuine, effective use of health and safety and proper conduct. Now, again, you haven't seen the papers and you're not in a position to comment, but taking that at its face and assuming that this is a program being implemented by people acting in good faith to address these issues, you would accept that that is consistent with what you recommend in your report?

PROF GOLDSTOCK: Yes.

MR O'GRADY: Yes. All right. And would you accept that a way in which improper behaviour in respect of organisers can be addressed is to subject them to written directions on inappropriate behaviour and putting in place a standard that's actually higher than that which the law in the Fair Work Act puts in place?

PROF GOLDSTOCK: Yes, that's admirable.

MR O'GRADY: Yes. And requiring staff members to enter into a binding statement of expectations which can lead to their employment being terminated if they don't adhere to is again on its face an initiative that is likely or could potentially effect cultural change?

PROF GOLDSTOCK: Yes, and I think that's a really good idea to have somebody sign something which can then be used against them if they violate it.

MR O'GRADY: Yes, thank you. And one of your recommendations is that there be a safe way for members to report corrupt or menacing conduct?

PROF GOLDSTOCK: Yes, and -

MR O'GRADY: And it would appear on its face from the documents I've already taken you to that that's an initiative that's been implemented.

PROF GOLDSTOCK: Right.

MR O'GRADY: Now, at paragraph 7(c), you recommend that the - that reforms should be designed to outlast the imposition of a temporary administrator?

PROF GOLDSTOCK: Yes.

MR O'GRADY: Yes. But at this stage, you haven't undertaken any assessment of the work that the administrator has done to date?

PROF GOLDSTOCK: No. This is based on having reviewed numerous unions within the construction industry.

MR O'GRADY: I understand. Now, in respect of organised crime - and you spoke earlier about how you investigate corrupt conduct when you've got a conversation between two individuals. You recall that evidence you gave after lunch?

PROF GOLDSTOCK: Yes.

MR O'GRADY: Are you aware of the fact that the Queensland Crime and Corruption Commission can already put in place undercover officers?

PROF GOLDSTOCK: I wasn't aware specifically, but I had assumed that was the case.

MR O'GRADY: Yes. And the second avenue you spoke of is overhear the conversation, ie, through surveillance and that they've got the power to do that?

PROF GOLDSTOCK: Yes, although my understanding is that it is not used to the extent that it might otherwise be used.

MR O'GRADY: Well, that's a matter for the Queensland Crime and Corruption Commission, isn't it?

PROF GOLDSTOCK: Well, yes, but that's -

MR O'GRADY: Yes. And they've also got the power to compel people to give evidence.

PROF GOLDSTOCK: Correct.

MR O'GRADY: Yes. Now, the concern you express in paragraph 4.2 regarding organised crime, that's based on what was occurring in Victoria and the 60 Minutes reports that you saw when you were in the United States, isn't it?

PROF GOLDSTOCK: I'm sorry, I don't see the -

MR O'GRADY: Okay. If you go to -

PROF GOLDSTOCK: Okay. It came up right now.

MR O'GRADY: Yes. That's based on what you understand what was occurring in Victoria?

PROF GOLDSTOCK: Yes.

MR O'GRADY: And the 60 Minutes reports you saw in the United States?

PROF GOLDSTOCK: That's correct.

MR O'GRADY: And you understand that Professor Varese found no evidence that enforcers had come to run the union?

PROF GOLDSTOCK: I'm sorry, say that again?

MR O'GRADY: You understand that Professor Varese found no evidence that enforcers had come in to run the union?

PROF GOLDSTOCK: I do not remember him saying that. I read his report.

MR O'GRADY: Yes. And Professor Campana found no substantial evidence that a major organised crime group had direct control over the union in the Brisbane area.

PROF GOLDSTOCK: I take that to be the case. I thought they had indicated that there were serious concerns about it but without direct evidence that there were.

MR O'GRADY: I understand. Now, at paragraph 7(n) of your report, you say you're not familiar with and not an expert on criminal law and procedure in Australia or in Queensland?

PROF GOLDSTOCK: Yes.

MR O'GRADY: Yes. And you also say that you're not in a position to recommend specific changes at this time?

PROF GOLDSTOCK: Yes, but the sentence continues.

MR O'GRADY: Yes. And you did not consider the existing Commonwealth and Queensland laws directed at criminal organisations?

PROF GOLDSTOCK: I'm sorry, where are we?

MR O'GRADY: No, I'm just saying, you didn't consider existing Commonwealth and Queensland laws directed at criminal organisations?

PROF GOLDSTOCK: I - no, but I am familiar in general with the laws of England, the UK, as it relates to this, and I am assuming that there are similar laws, that there is no RICO statute but there are conspiracy statutes.

MR O'GRADY: And there are also proceeds of crime laws in Australia.

PROF GOLDSTOCK: Yes.

MR O'GRADY: Yes.

PROF GOLDSTOCK: And that existed also in the United States before RICO.

MR O'GRADY: And there's also coercive powers not just by the Queensland Crime and Corruption Commission but the Australian Criminal Intelligence Commission?

PROF GOLDSTOCK: Yes.

MR O'GRADY: Yes. All right. Now, early in your evidence this morning you talked about a predicate offence involving two elements: illegality and illegitimate cause. Do you recall giving that evidence?

PROF GOLDSTOCK: I'm sorry, say that again.

MR O'GRADY: Earlier in your evidence this morning, when describing a predicate offence, you spoke about there being two elements, there being illegality and an illegitimate cause.

PROF GOLDSTOCK: I do not - what was the context? Is this as a predicate act with delaying construction?

MR O'GRADY: Yes, predicate act. Well, in general terms in construction. In respect of the concrete-pour issue, you made some comment about there being a need for there to be illegality and there need to be an illegitimate cause.

PROF GOLDSTOCK: No, I think maybe you misunderstood or I said it incorrectly. What I was saying is that the predicate acts are crimes that exist now. I was asked the question whether or not there could be a predicate act that related to the delay of construction for the Olympics.

MR O'GRADY: Yes.

PROF GOLDSTOCK: My response was I thought there could be, if somebody intentionally delayed construction related to the Olympics or related infrastructure -

MR O'GRADY: I see. You understand -

PROF GOLDSTOCK: - without having a legitimate cause that is sanctioned by law.

MR O'GRADY: I understand. And you understand that in Australia, it is open for an organisation when they're seeking - a union when they're seeking to negotiate a new enterprise agreement to take what they call protected industrial action?

PROF GOLDSTOCK: What I am saying is this is a special situation, and if there is legitimate cause, which could be a statute which authorises the delay while something is being negotiated, that that can be taken to - and this is suggestions that I think make sense, but as I say, I'm not an expert on procedure here - on an expedited basis before a court for the court to determine whether or not the delay is acceptable under law.

MR O'GRADY: I see. Well, you won't - well, yes. But do you understand that you can lawfully take industrial action in Australia when you are seeking to negotiate an enterprise agreement?

PROF GOLDSTOCK: Yes, but what I am saying is if that is the case, then the court would rule that it is a legitimate cause of delay that is not subject to the delay as a predicate of the RICO statute.

MR O'GRADY: I understand. And you would accept that a union seeking to negotiate better terms and conditions for its members is a perfectly legitimate cause?

PROF GOLDSTOCK: That I do not know. It depends on the circumstances. There may be situations in which there is a critical need to finish a project beforehand and the government has made an exception to the rule. What I'm saying is generally speaking, in construction, delay is exceedingly costly, and those who have the ability to cause delay can create financial harm and other concerns, whereas here, with the Olympics coming up and everything having to be done in advance of - well, 1932 at the end but at some point before -

COMMISSIONER: 2032.

PROF GOLDSTOCK: Sorry?

COMMISSIONER: 2032. I think you said 1932.

MR O'GRADY: You did say 1932.

PROF GOLDSTOCK: 1932, right?

MR O'GRADY: 2032.

PROF GOLDSTOCK: Oh.

MR O'GRADY: I'm sorry, Professor. I'm almost finished. I understand.

PROF GOLDSTOCK: You know, I grew up in the 1900s, so this 21st-century stuff is new to me. Yes, 2022. There may be modifications of that, and that I do not know. So I am leaving that open to say, if in fact that is the situation and a court rules on that as being a legitimate reason, then it would not constitute a predicate act.

MR O'GRADY: And I don't want to be unfair to you, Professor, but do you understand that industrial laws in Australia are largely dealt with by the Commonwealth legislature?

PROF GOLDSTOCK: Dealt with -

MR O'GRADY: By the Federal Parliament.

PROF GOLDSTOCK: Yes.

MR O'GRADY: There's a federal Act called the Fair Work Act.

PROF GOLDSTOCK: Yes. Yeah.

MR O'GRADY: And you understand that under our constitution, if there's an inconsistency between our federal law and a state law, the federal law governs the position?

PROF GOLDSTOCK: Right. But the Federal Government could pass a RICO statute with a predicate act which deals with that situation. Look, this is a very difficult situation, as you well imagine, and Queensland is in a difficult position. The construction has to be completed, and there has to be an agreement for all sides to not engage in conduct which would jeopardise the wellbeing of the state. So I - I raise that as an issue only because it is sitting there. I do not suggest that the government ought to do one thing one way or the other.

MR O'GRADY: I understand, Professor. You were asked some questions earlier about non-working delegates. Do you recall the conversation you had with the Commissioner about that?

PROF GOLDSTOCK: Yes.

MR O'GRADY: Now, one of the features that the Commissioner raised with you was that the delegates, the non-working delegates, didn't have a good background, or words to that effect. Assuming for the moment that the initiatives that I've taken you have addressed that issue, do you accept that that would be a relevant consideration?

PROF GOLDSTOCK: That?

MR O'GRADY: Well, you in effect suggested that a company that employed a non-working delegate could itself find itself be - not be able to undertake government-funded work.

PROF GOLDSTOCK: Right. If there were a certification based on whether or not the corporation were engaging in conduct that was inimical to the public good and they were putting people on staff in order to get a benefit from the union, or as an extortive matter from the union, I would say that would come into play, yes.

MR O'GRADY: I understand. But do you understand that in Australian construction, there are often significant numbers of subcontractors engaged on big building sites?

PROF GOLDSTOCK: Not only in Australia; throughout the world.

MR O'GRADY: And a function of a delegate may be to help resolve issues, whether they be underpayments, whether they be concerns about safety and the like?

PROF GOLDSTOCK: Right. It could be a delegate, it could be a shop steward, it could be - right.

MR O'GRADY: Yes. And do you accept that when you're talking about a working delegate, you're not just simply talking about somebody who is on the tools and making things. Dealing with those issues, ie, safety, complaints about underpayment, complaints about terms and conditions not being complied with, that is in and of itself a form of work?

PROF GOLDSTOCK: Right. If the individual is working, no matter what the job is, then I don't see any problem with it. But if the person is not working, in the case as I pointed out, with Ralph Giganti, he brought no grievance since he was appointed for life as shop steward and was paid 24 hours a day, that strikes me as being something that's not in - for the benefit of the union or of the company that hired him.

MR O'GRADY: Yes, I understand. It was in that context that you made your observations to the Commissioner earlier?

PROF GOLDSTOCK: Right.

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

COMMISSIONER: Thank you, Mr O'Grady. Is there anything arising, Mr Wheelahan?

MR WHEELAHAN: No, Commissioner.

PROF GOLDSTOCK: Am I allowed to just -

COMMISSIONER: Yes, please.

PROF GOLDSTOCK: It was an answer that I was going to give before and it just got moved over, but I did want to say that with respect to the issues of having codes of conduct and training and the like, you can play a little game in which every company that has been indicted for offences, contrary to the public good, you go to their website. On the integrity section, there are codes of conduct, there are training issues, there are a whole host of things where the companies commit themselves to engaging in proper conduct but they're indicted. So the issue for me is not whether or not the right words are said; it's whether or not there are institutions within the company or within the union or some other organisation which ensures that they're being carried out.

COMMISSIONER: I understand. Professor, thank you very much for your evidence. Obviously your evidence will be very important to the ultimate findings of this Commission, and without in any way wanting to pre-judge what those findings might be, because there may well be criticisms of your evidence by the parties who are represented, can I say that I am grateful for someone of your experience and expertise and insight and, might I say without any reflection on your age, your wisdom, making the effort to come here to give evidence before us today, and it seems to me it reflects your commitment, which is ongoing, to public service globally, and I'm very grateful for it. So thank you.

PROF GOLDSTOCK: Well, thank you.

MR O'GRADY: Everything in the folder has already been tendered. It may or may not be convenient to the Commission to have it marked for identification just so that it's all in the one spot.

COMMISSIONER: I might just excuse Professor Goldstock. Thank you. You're excused, Professor.

PROF GOLDSTOCK: Thank you.

<THE WITNESS WAS RELEASED

COMMISSIONER: How do you want me to - I take it there's no objections. How do you want me to mark this?

MR O'GRADY: Bundle of materials used in the cross-examination of Professor Goldstock.

COMMISSIONER: And what will I mark it as ?

MR O'GRADY: COG-6.

COMMISSIONER: Bundle of materials comprising some 816 pages of documents used in the cross-examination of Professor Goldstock will be exhibit COG-6.

<EXHIBIT COG-6 BUNDLE OF MATERIALS COMPRISING 816 PAGES OF DOCUMENTS USED IN CROSS-EXAMINATION OF PROFESSOR GOLDSTOCK

COMMISSIONER: What do we do next, Mr Wheelahan?

MR WHEELAHAN: Adjourn to the next hearing date.

COMMISSIONER: Sorry?

MR WHEELAHAN: Adjourn to the next hearing date.

COMMISSIONER: Are there any other applications that anyone wishes to make?

MR DUFFY: It's not an application, Commissioner, but may I raise a procedural matter?

COMMISSIONER: Yes, sure.

MR DUFFY: I'm cognisant of the challenge of what I'm about to say. It would be extremely useful, to us at least and probably also to other counsel, if the Commission could give an indication as soon as conveniently possible about hearing dates next year. I'll repeat, I'm cognisant of the challenge of what I've just said. Obviously counsel at least have to try and block out things, so I'll just leave that at that. And secondly, if the Commission proposes to address particular topics in blocks, that again would be extremely helpful information for which we'd be grateful.

COMMISSIONER: Can I say in relation to the first point, we're very grateful to the Magistrates Court and particularly the Chief Magistrate for the courtesy that she has shown us in making this courtroom - or not this courtroom, but courtrooms in this facility available to us. That ability, given the pressure of the work of the Magistrates

Court to allocate hearing rooms or a hearing room to this Commission of Inquiry, will not continue next year, and we're in the process of negotiating with some commercial providers, I think a hotel, to set up - in effect, set up a courtroom, or a hearing room, I should say, next year. We have to go through those negotiations, and we're in the death throes of doing that. So hopefully we can give you some hearing dates next week, but those negotiations are ongoing.

I had a request from Mr O'Grady, I think, a month ago or two months ago to that effect, and I told him something similar then. We're going as fast as we can on these negotiations, and I make no criticism of the courts in this state in not providing any courtroom to us. They've all got their own work to do, and we have to find our own home.

MR DUFFY: Commissioner, I wasn't expecting an instant answer, but I thought it would be useful to raise the matter, appreciating as we do that the Commission will be doing everything possible.

COMMISSIONER: We are very concerned about that, because counsel of the quality that the parties have engaged have always got many demands upon their time, and it's - I shouldn't say intolerable, but it's not fair to the parties to not be able to tell them what the dates are for next year. All I can say is that we're going as fast as we can and we're doing the best we can.

MR DUFFY: Thank you, Commissioner.

COMMISSIONER: In relation to the hearing blocks, the topics in the blocks, as soon as I know, I'll tell you. But it doesn't seem to be - as we move into next year, I think that facility should be made available to the parties, but at the moment there is a little bit of just trying to get through the work and going through the investigative process and seeing where it leads, and you might have an idea that you're going to do something in two weeks' time but it ends up being something else. I can say I think - but please don't hold me to this - I think the November hearings are going to be largely concerned with the issue of the Office of Industrial Relations, and under the - I think the case study is regulatory capture. But again, please don't hold me to that, but I'm reasonably sure of that fact. As for December, I just can't - I can't tell you. Is that a sufficient answer for you at this stage, Mr Duffy?

MR DUFFY: That's as much as I expected you might be able to do, Commissioner.

COMMISSIONER: Mr O'Grady, this is something you don't have to answer now, but you asked Professor Goldstock if we go from the thousand contraventions to zero - leave aside all the other evidence, just say you just had that fact, a thousand contraventions pre-2024, when the administrator is appointed -

MR O'GRADY: Well, in respect of conduct that occurred, I think I put it in terms of after the administrator was appointed and after the High Court decision in Ravbar was handed down.

COMMISSIONER: But at the same time, there was a change in the identity and the - I might say at least the evidence so far tends to suggest this - the attitude of the regulator. How is one to know - leaving aside all the other evidence, which suggests that what you're saying is correct, but assuming there's none of that evidence, just on those two data points, how do you know which of those two causes the drop-off? You don't have to answer it now, but -

MR O'GRADY: Well, that will obviously be something we'll have to address, Commissioner.

COMMISSIONER: Is there anything further for today? We'll adjourn to the next hearing block.

<THE HEARING ADJOURNED AT 3.48 PM