Commission of Inquiry into the CFMEU and Misconduct in the Construction Industry

WITNESS STATEMENT OF TRENT SMITH

I, Trent Smith, General Manager, Industrial Relations for John Holland Pty Ltd, affirm:

1. I make this statement in response to a notice issued by Stuart John Wood AM KC, the Commissioner appointed pursuant to the *Commissions of Inquiry Order (No. 2) 2025*.

2. Attached to this Statement is a bundle of documents (**Bundle**). In this statement, I refer to relevant documents by reference to the annexure and page number of the Bundle.

John Holland Group

3. John Holland Group is a national building, infrastructure, rail and transport business.

4. It operates in Queensland through two entities:

   (a) John Holland Pty Ltd (**JH**); and

   (b) John Holland Queensland Pty Ltd (**JHQ**);

   (together, **John Holland**).

5. John Holland's construction business is broadly divided between two units:

   (a) building, including projects like high rise buildings, hospitals and prisons; and

   (b) infrastructure and rail, including civil construction like roads, freeways and trams.

6. John Holland is one of the few construction businesses in Queensland which operates in both the building and civil construction sectors.

My role at John Holland

7. I am the General Manager, Industrial Relations of JH.

8. In this role I am responsible for managing John Holland's industrial relations risks, advisory and disputes nationally. My role sits across both the building, and infrastructure and rail units of John Holland. In each state, there are state-level managers who report to me.

9. I hold the following qualifications:

   (a) a Bachelor of Business; and

   (b) a Graduate Diploma, Employment and Industrial Relations.

10. I am a long-standing employee of JH. My employment history with JH is as follows:

(a) in 2007, I started employment with JH in a human resource role;

(b) in 2013, I started in the role of Industrial Relations Manager, NSW & Queensland; and

(c) in 2020, I started in the role of General Manager, Industrial Relations.

John Holland's relationship with the CFMEU between late 2013 and 2019

11. Between late 2013 and 2019, John Holland's relationship with the CFMEU was considerably strained. There was no engagement between senior levels of the CFMEU and John Holland throughout this period.

12. I am aware that between 2012 and 2013, John Holland experienced significant industrial pressure by way of a prolonged and concerted campaign by the CFMEU to enter into a state-wide building enterprise agreement (**EA**). The campaign was summarised in the judgment of the Federal Court of Australia which was brought by the Australian Building and Construction Commissioner for breaches of the *Fair Work Act 2009* (Cth) (**FWA**). A copy of the decision of the Federal Court of Australia is at *Australian Building and Construction Commissioner v Ingham (No 2) (The Enoggera Barracks Case)* [2018] FCA 263.

13. Having regard to the decision, I understand the following:

(a) In mid-2012, the CFMEU sought to negotiate an EA with JHQ in relation to its building and construction operations in Queensland. Negotiations between the CFMEU and JHQ continued until March 2012.

(b) On 6 March 2013, Jade Ingham, Assistant State Secretary of the CFMEU, told Colin Matthews, then Operations Manager of JH, that he was upset that JHQ had not signed an EA in respect of its Queensland and Northern Territory operations and there would be industrial action on John Holland projects until JHQ signed an EA.

(c) Thereafter, the CFMEU engaged in a campaign against JHQ to force it to enter an EA on terms acceptable to the CFMEU. The industrial action taken involved the CFMEU organising stoppages of work at two JHQ projects: the ELF2B Project at Enoggera (**Enoggera Barracks**) and the QUT Project at Kelvin Grove (**QUT Project**). The stoppages at Enoggera Barracks and the QUT Project occurred over a period from March 2013 until late December 2013, causing significant disruption and cost to those two projects and John Holland. The campaign involved:

(i) representatives of the CFMEU causing eight stoppages of work across Enoggera Barracks and the QUT Project, three of which occurred in breach of existing orders of the Fair Work Commission (**FWC**) not to engage in the conduct;

(ii) the stopping of traffic on both sites and coercion of workers not to attend work.

(d) The display of signs which read:

(i) '*CONSTRUCTION WORKERS YOUR FUTURE'S AT STAKE*';

(ii) '*THIS IS WHY YOUR ON $19 AN HOUR U GUTLESS GRUBS, SCABS AN DOGS. WEAK AS PISS*'; and

(iii) '*JOHN HOLLAND PAY THE RIGHT FREIGHT DON'T LET ANOTHER SUBBY GO UNDER*'

(e) The disruptions on the projects did not end until after JHQ and the CFMEU made an in-principle agreement to enter into an EA in respect of JHQ's building and construction operations in Queensland and the Northern Territory. That agreement was the *John Holland Queensland Pty Ltd Building and Construction Enterprise Agreement (QLD & NT) 2012 – 2016* (**2012 EA**). A copy of the approval decision of the FWC attaching a copy of the EA can be found at *John Holland Queensland Pty Ltd Pty Limited Building and Construction Enterprise Agreement (QLD & NT) 2012 - 2016* [2014] FWCA 804.

(f) The Court ordered that the CFMEU pay penalties totalling $551,900.00, and that twenty individual respondents (all members and officials of the CFMEU) pay penalties totalling $258,600.00.

14. When the 2012 EA expired in early 2016, John Holland decided not to seek a further EA with the CFMEU in Queensland. Instead, in order to meet its project programmes, JHQ prioritised the engagement of subcontractors that had sufficient flexibilities and less restrictive work practices than existed under the CFMEU pattern EA. By '*pattern EA*' I mean the form of template EA that the CFMEU routinely required employers to agree to, regardless of any differences between their operations. The pattern EA would, generally, be negotiated with some Tier 1 contractors and then rolled out across the broader industry. Other Tier 1 contractors who had not been party to the negotiations would then have to adopt the same terms if they wanted a CFMEU EA on the basis this now reflected the market.

15. From 2016, John Holland had limited interactions with the CFMEU. This was primarily because John Holland's 'building' footprint in Queensland was relatively confined at that time. These interactions were largely related to CFMEU representatives exercising right of entry powers at JHQ projects, and isolated issues on certain projects regarding unlawful entries. For example, I am aware of the following right of entry issues:

(a) on 21 June 2018, Eddie Bland, Organiser of the CFMEU, attempted to exercise a right of entry at the Mercedes Autohaus project without a valid permit under the FWA; and

(b) on 23 July 2018, Kurt Pauls and Michael Davis, Organisers of the CFMEU, attempted to exercise a right of entry at the Sunshine Coast Airport Expansion project without producing valid permits under the FWA. In respect of this incident:

(i) The Organisers entered site at approximately 8.00am purportedly under s 81(3) of the *Work Health and Safety Act 2011* (Qld). The two Organisers raised concerns around fatigue management, access to clean drinking water, toilet facilities and first aid for workers in the paddock which is about 300 – 400 metres away from the site compound.

(ii) Neither Organiser produced their FWA right of entry permits when requested and were advised they were trespassing.

(iii) Work Health and Safety Queensland (**WHSQ**) were called and two of its Inspectors attended site.

(iv) The site team explained to the Inspectors and the Organisers that it was John Holland's position that the two Organisers were not authorised to enter the site. The two Organisers told the site team that they still intended to enter the site. As a result, work on site was directed to stop because it would be unsafe for the Organisers to be walking around site while work was occurring.

(v) The site team then called the Queensland Police Service (**QPS**) and two of its officers attended site.

(vi) I was asked to contact the Australian Building and Construction Commission (**ABCC**) who John Holland asked to set out in writing the ABCC's position that union officials seeking to exercise a right of entry under s 81(3) had to hold a FWA right of entry permit.

(vii) Ultimately Wayne Jenkinson, then Team Leader – Queensland for the ABCC, spoke with one of the attending QPS officers.

(viii) I am unaware whether the QPS officers ultimately spoke to the two Organisers but I understand the Organisers left site at around 1.00pm.

(ix) Work on site recommenced at around 1.30pm that day.

(x) There were approximately 100 workers scheduled to perform work on the site that day. Work scheduled on that day included bulk civil work, repair work to the reclamation area, repair work to the polishing pond and installation of pipelines on the eastern end of the project site. I understand that certain critical path work was being undertaken that day, with a dredge moored off Brisbane Harbour waiting for other work to be completed. The dredge cost John Holland about $260,000.00 a day, cost which would be extended by disruption to work.

Expansion of John Holland's civil construction work

16. Following a change in ownership in or around April 2015, John Holland was no longer able to perform federal defence work which had previously accounted for approximately 70% of John Holland's work in the building sector. John Holland consequently sought to pivot to other types of civil and government-funded work, including the following projects in Queensland which JHQ tendered for and was awarded:

    (a) Southern Queensland Correctional Centre Stage 2 (**SQCC2**); and

    (b) Gold Coast Light Rail Stage 3A (**GCLR3**).

17. Prior to tendering for and being awarded GCLR3, John Holland did not have a significant portfolio of civil infrastructure projects in Queensland.

18. In 2019, John Holland negotiated a state-wide civil infrastructure EA for all projects in Queensland. The Australian Workers' Union (**AWU**) was involved in the negotiations, which was typical with enterprise bargaining in the civil infrastructure sector in Queensland. The AWU did not actively endorse the EA prior to a vote by the workforce, but it subsequently applied to the FWC to be covered by the agreement after it was voted up. The CFMEU had no involvement in these negotiations which was typical of the broader civil sector at that time. The agreement was approved by the FWC on 25 July 2019 and was known as the *John Holland Pty Ltd Civil Construction Agreement 2019* (**John Holland Civil EA**). A copy of the approval decision of the FWC attaching a copy of the EA is at *John Holland Pty Ltd Civil Construction Agreement 2019* [2019] FWCA 5197.

QPP, BPPs and BPIC

19. Progressively from May 2018, the Queensland Government amended the Queensland Procurement Policy (**QPP**) to include the Best Practice Principles (**BPPs**), which ultimately incorporated the Best Practice Industry Conditions (**BPIC**). A copy of the QPP published in 2018 is at **Annexure TS-1, pages 6 to 25**.

20. In August 2018, the Office of Industrial Relations and Office of the Chief Advisor – Procurement jointly published the '*Best Practice Principles: Quality, safe workplaces*' (**BPP Guidance**). This document provided some guidance as to the application of BPP and how this might be assessed in tenders. A copy of the BPP Guidance is at **Annexure TS-2, pages 26 to 45**.

21. These policies made clear, particularly from a building-sector perspective, the requirement to demonstrate strong engagement with relevant unions. By this time, John Holland was heavily reliant on tendering for State-funded building work (such as corrections and health) because of the change of ownership referred to above. The policy requirements subsequently spread into the civil sector and became a requirement for government-funded civil construction work such as transport projects.

22. The stated purpose of the QPP and BPPs was to institute, among other things, best practice industrial relations. To achieve best practice industrial relations, the wages

and conditions contained in the various BPICs were to be applied to nominated major projects. However, in practice, BPIC has caused disruption to the civil construction industry, and particularly on GCLR3. I discuss the effect of BPIC on GCLR3 in more detail below.

23. To tender for and be awarded Queensland government-funded building work, John Holland was required to demonstrate a relationship with the CFMEU. I say that John Holland was '*required*' to demonstrate this relationship because:

    (a) The CFMEU is the primary union in the building sector.

    (b) One of the BPPs was '*best practice industrial relations*'. The BPP Guidance set out the types of attributes and behaviours that tenderers for major projects should demonstrate to achieve '*best practice industrial relations*'. These included '*a demonstrated history of and commitment to positive industrial relations*' and provided guidance that an assessment of a tenderer's submission may consider the tenderer's '*approach to relationship management with employees, employee representatives and/or unions...*'.

    (c) Subsequently, various BPICs were introduced. Whilst they varied over time and across particular designated projects, the BPICs were largely based on the CFMEU pattern enterprise agreement.

    (d) In tendering for Queensland Government-funded works to which BPPs and BPIC applied, contractors had to demonstrate how they would comply with the relevant BPIC, BPPs and QPP. This essentially meant that it would be necessary to demonstrate workplace arrangements with conditions of employment that met or exceeded the minimum conditions of employment set out in the relevant BPIC to ensure compliance with the policies.

    (e) To do so appeared to necessitate the tendering company demonstrating a relationship (at the very least) with the CFMEU and other relevant unions in the building industry.

    (f) This subsequently extended into civil construction work following the State's introduction of BPIC into the transport sector which required contractors to engage with the CFMEU in that part of the industry, despite the fact that the CFMEU did not traditionally have majority or significant coverage in civil construction.

24. As a result, in late 2019, after years of having no relationship with the CFMEU, John Holland initiated contact with senior leadership of the CFMEU to establish a working relationship. John Holland's relationship with the CFMEU from this point on was primarily facilitated by discussions with Mr Ingham. From John Holland's perspective, the discussions were primarily led by Mr Matthews, then General Manager of Building in Queensland. CFMEU officials and organisers would then liaise directly with relevant project teams at a local level.

25. Around this time, JHQ was tendering for SQCC2.

SQCC2

26. The Southern Queensland Correctional Centre is a correctional centre located approximately 12 kilometres north-east of Gatton and 100 kilometres south-west of Brisbane in the Lockyer Valley. It is also known as '*Gatton Prison*'. It opened in 2012.

27. In 2019, the Queensland Government announced it would be expanding the correctional centre. The expansion project was SQCC2.

28. SQCC2 involved the construction of a 1,500 bed, male correctional precinct and included main works construction, commissioning and completion of the maximum-security facility. The site is approximately 220,000m^2 and includes 33 buildings connected by walkways. Extensive service infrastructure across the site, perimeter fencing, carparking, landscaping and external finishes were also part of the project scope.

29. On 11 March 2020, the Managing Contractor Tender Pack for SQCC2 was issued. It was comprised of four volumes:

    (a) Volume 1, being the tender requirements. Volume 1 was amended by way of two addendums in March and April 2020. The final copy of Volume 1 is at **Annexure TS-3, pages 46 to 83.** The additional requirements introduced by way of the addendums in highlighted in yellow.

    (b) Volume 2, being the conditions of contract. Excerpts of Volume 2 are at **Annexure TS-4, pages 84 to 101**.

    (c) Volume 3, being the schedules to the conditions of contract. Schedules 16 and 18 of Volume 3 are at **Annexure TS-5, pages 102 to 222**.

    (d) Volume 4, being the project brief.

30. Volume 4 was released in February 2020, and Volumes 1, 2 and 3 were released in March 2020.

31. By the time the tender for SQCC2 was released, the Department of Housing and Public Works (**DHPW**) had released the first BPIC, which applied to building construction work managed by DHPW (**Building BPIC**). SQCC2 was one of the first projects in Queensland with respect to which a BPIC style document had full application from the outset of the procurement process.

32. The Building BPIC was included as Schedule 18 to Volume 3 of the Tender Pack and formed one of the conditions of the contract. The Building BPIC is at **pages 107 to 222 of the Bundle**.

33. The SQCC2 Tender Questionnaire required the tenderer to explain:

(a) '*how the terms and conditions of employment, including specific pay rates, for the Tenderer's personnel who will perform work under the Contract, are at least equivalent to the Best Practice Industry Conditions*';

(b) '*the Best Endeavours Process by which the Tenderer will use its best endeavours to engage subcontractors who provide terms and conditions of employment, including specific pay rates, for their personnel who perform work under the Contract, which are at least equivalent to the Best Practice Industry Conditions*'; and

(c) '*employee and employer representative organisations that the Tenderer has engaged with, the nature and outcome of those engagements, and details of proposed further engagements*'.

34. A copy of the SQCC2 Tender Questionnaire is at **Annexure TS-6, pages 223 to 227.**

35. The Building BPIC mirrored the clauses in the CFMEU pattern agreement at the time. Notwithstanding the fact that John Holland had not entered into a CFMEU EA since 2012, I was aware of the developments in the CFMEU pattern agreement from time to time through my engagement with industry and as part of my role elsewhere in the business. Appendix 3 to the Building BPIC even had the CFMEU logo in it in the RDO calendar. The logo can be seen at **page 199 of the Bundle**.

36. John Holland understood from the Building BPIC and the requirement to explain how JHQ would meet the BPPs, that it was required to enter an EA with the CFMEU and other unions in the Building Trade Group of unions (**BTG**) to comply with BPPs and the Building BPIC. This was apparent from the terms of the Building BPIC itself and what appeared to be required of tendering parties in order to show the client how John Holland would achieve best endeavours.

37. On 22 April 2020, John Holland submitted its tender for the Managing Contract on SQCC2. Volume 1 of the tender addressed John Holland's price submission, and Volume 2 addressed its non-price submission which related to, among other things, the BPPs. As part of its commitment to the BPPs, John Holland agreed to use its best endeavours to ensure that subcontractors would apply terms and conditions that at least met the Building BPIC, and to apply a 20% weighting to the BPPs in evaluating subcontractor tenders.

38. On 17 July 2020, John Holland was awarded the Managing Contract for Stage 1 of SQCC2.

39. On 29 June 2022, John Holland was awarded the Managing Contract for Stage 2 (the main works) of SQCC2.

<u>SQCC2 CFMEU EA</u>

40. JHQ negotiated a project specific Greenfield Agreement with the CFMEU, Electrical Trades Union (**ETU**), Plumbing and Pipe Trades Employees (**PPTEU**), and Australian

Manufacturing Workers' Union (**AWMU**). Mr Matthews and I were the primary points of contact with the unions during these negotiations. Mr Ingham was the primary contact with the CFMEU and the CFMEU were the primary voice for the other unions during the negotiation.

41. The negotiations for this enterprise agreement were relatively limited. This was because John Holland was required to use its best endeavours to meet the terms and conditions of the Building BPIC in any enterprise agreement it made for the project.

42. On 14 April 2020, in preparation to commence bargaining, I prepared a table setting out the clauses of the Building BPIC that John Holland should seek to amend in any EA ultimately entered with the unions. A copy of the table is at **Annexure TS-7, pages 228 to 232.**

43. One of the primary clauses John Holland sought to negotiate and have removed was the hot weather clause which had been drafted to apply in a particular area of South-East Queensland. Our initial view was that the project's location fell outside that area, such that it should have not applied to the project. If it was retained it may have had productivity impacts on the project. The CFMEU's position was that retention of the hot weather clause was non-negotiable in bargaining.

44. Except for subclauses relating to the provision of information to employees, none of John Holland's proposed amendments in the table were ultimately agreed to by the unions.

45. The agreement was approved by the FWC on 23 December 2020, and it was called the *John Holland Queensland Pty Ltd Southern Queensland Correctional Precinct Stage 2 Project Greenfields Agreement 2020* (**SQCC2 EA**). A copy of the approval decision of the FWC attaching a copy of the EA is at *John Holland Queensland Pty Ltd Southern Queensland Correctional Precinct Stage 2 Project Greenfields Agreement 2020* [2020] FWCA 7016.

46. If John Holland had not been required to meet best endeavours in respect of the applicable BPIC for SQCC2, it would have likely sought to negotiate an enterprise agreement with different terms and conditions to the SQCC2 EA. However, any enterprise agreement would have still needed agreement from the CFMEU (and other relevant unions) as a Greenfields Agreement for the Project. As such, significant departure from the CFMEU pattern EA for building projects would have been difficult to achieve.

<u>Difficulties applying the BPPs and Building BPIC</u>

47. Clause 21 of the Managing Contract for SQCC2 required John Holland to:

    (a) provide tenderers for a subcontract with a copy of the Building BPIC;

(b) require subcontractors to demonstrate, as part of their tender, the conditions of employment, specific rates of pay and how they compare to the Building BPIC;

(c) evaluate tender responses against evaluation criteria and weightings which included an evaluation of the terms and conditions of employment and rates of pay outlined in the Building BPIC; and

(d) include provisions in subcontracts that ensured that subcontractors fulfilled the commitments made at tender regarding the BPPs.

48. Clause 21 of the Managing Contract was in the same terms as clause 21 of the Conditions of Contract included in Volume 2 of the SQCC2 Tender Pack. Those provisions are at **pages 91 to 93 of the Bundle.**

49. At the time, the *Code for the Tendering and Performance of Building Work 2016* (**Code**) made under the *Building and Construction Industry (Improving Productivity) Act 2016*, applied to John Holland. If John Holland did not comply with the Code, it had the potential to be sanctioned or otherwise not be able to be awarded Commonwealth-funded building work for a period.

50. Amongst other things, the Code essentially precluded head contractors from requiring or applying pressure on subcontractors to engage their workers on terms and conditions mandated by the head contractor. John Holland sought legal advice as to how clause 21 of the head contract could be implemented in a way which did not involve a breach of the Code or other laws.

51. I am not responsible for financial, procurement or program matters on any John Holland project. However, I understand the following in respect of SQCC2:

(a) Consistent with other CFMEU pattern-style EAs, John Holland experienced a lack of flexibility in working hours, particularly around working overtime and scheduled RDOs, on SQCC2. The application of inclement weather / heat policies also had impacts on productivity.

(b) It was more difficult to attract local subcontractors for the project because working on a 'BPIC' project may have had impacts on their other operations where those terms did not apply and were otherwise out of step with their industrial arrangements.

(c) I am not aware of any significant industrial disputes or stoppages occurring on SQCC2. However, consistent with many 'building jobs' with a CFMEU-presence, John Holland had to remain vigilant in dealing with issues raised by CFMEU delegates (as it does with all unions as necessary) as failure to manage issues appropriately can lead to more significant disputation on a project and more broadly across the business.

JHQ 2020 Building EA

52. From 2020 onwards, John Holland was required to maintain a relationship with the CFMEU to satisfy BPIC requirements for other Queensland government-funded projects.

53. Because of this, JHQ entered into a state-wide EA with the CFMEU: *John Holland Queensland Pty Ltd and CFMEU Union Collective Agreement 2020-2022* (**JHQ 2020 Building EA**) in March 2022. A copy of the approval decision of the FWC is at *Application by John Holland Queensland Pty Ltd T/A John Holland Queensland Pty Ltd* [2022] FWCA 1070. A copy of the JHQ 2020 Building EA is at **Annexure TS-8, pages 233 to 308.**

54. The JHQ 2020 Building EA was in the form of the CFMEU pattern agreement which reflected the BPIC requirements for the building sector by that time. As with the SQCC2 EA, negotiations with the CFMEU were limited on the basis that the CFMEU had agreed terms with other contractors, and the pattern agreement reflected the BPIC for building work, giving John Holland limited ability to successfully negotiate significant changes to the pattern agreement. John Holland sought:

    (a) Flexibility for continuous operations for critical works to be performed. This was relevant to some potential projects where work could only be undertaken during specific periods (e.g. a rail occupation, where that work was within the scope of the 'building' EA). The 'pattern' was restrictive as to work outside the standard building working week and generally involved consultation and, in some cases, approval from relevant unions before some work on weekends or on RDOs could occur.

    (b) To remove the pattern drug and alcohol policy and include the standard John Holland policy. This was designed to ensure consistency across our projects.

55. John Holland did not experience any major disputation with the CFMEU after the enterprise agreements were approved (in terms of long site stoppages). However, the terms of the agreements reduced John Holland's ability to have complete managerial control over many aspects of the day-to-day operations of its projects, including on SQCC2 and GCLR3. This includes very restrictive work practices around inclement weather and having to obtain union approvals for working overtime and weekends. Unless union organisers and/or delegates approve that work when requested on a project, the work cannot proceed as planned. This has significant commercial impacts for John Holland and results in lost time. Union organisers and delegates therefore have significant influence over productivity under CFMEU Pattern EAs and BPIC-aligned EAs.

GCLR3

56. Gold Coast Light Rail is a 20km light rail system with 19 stations that operates between Helensvale and Broadbeach South.

57. In November 2019, the Queensland Government announced that the light rail system would be expanded to Burleigh Heads. The expansion project was GCLR3.

58. GCLR3 involves an extension of the light rail system from Broadbeach South to Burleigh Heads, including 6.7km of new dual track light rail, eight new stations and the procurement of five additional light rail vehicles. It also includes an upgrade and expansion of the existing depot and stabling facilities, new light rail-bus interchanges at Burleigh Heads and Miami, signalised traffic intersection upgrades, new signalised pedestrian crossings and upgraded pedestrian and cycle facilities. GCLR3 is the largest transport infrastructure project ever undertaken on the Gold Coast. A map of the new track and stations is at **Annexure TS-9, pages 309 to 310**.

59. GCLR3 is being delivered with funding commitments from the Australian Government, City of the Gold Coast and the Queensland Government. GoldlinQ is a consortium that was appointed by the Queensland Government to design, build, finance, operate and maintain the light rail system. My understanding is that the funding split at the time was approximately:

    (a) Australian Government: $395.6 million;

    (b) Queensland Government: $1.043 billion; and

    (c) City of the Gold Coast: $110.1 million.

60. In February 2020, the GCLR3 tender was released to shortlisted bidders following an expression of interest process, including JHQ.

61. On 15 May 2020, JHQ submitted a tender for the Design and Construction Contract for GCLR3 (**D&C Contract**). At the time of tendering, JHQ intended to use the John Holland Civil EA which covered the AWU and existing JH rail enterprise agreements in New South Wales (via a fly-in arrangement) for GCLR3 and tendered for the project on that basis.

62. On 31 August 2020, the Queensland Government announced JHQ as the preferred tenderer for GCLR3. When JHQ eventually entered the contract to perform the work, its contract was with GoldlinQ who in turn contracted with the State.

63. BPIC did not apply to GCLR3 at the time that JHQ tendered for and was awarded preferred tenderer status for the project.

<u>Introduction of BPIC to GCLR3</u>

64. On 17 December 2020, representatives of John Holland met with representatives of the Department of Transport and Main Roads (**DTMR**) to discuss GCLR3. I did not attend that meeting, but I was subsequently told that during the meeting DTMR flagged that it proposed to implement a BPIC for civil construction and transport projects. Ryan Dodd, General Manager – Infrastructure Qld & NT, attended that meeting and informed me of the discussion.

65. On 24 December 2020, Deanne Hawkswood, General Manager Strategic Procurement of DTMR, emailed John Holland a draft BPIC document titled '*Best Practice Industry Conditions for Department of Transport and Main Roads Civil Construction Projects*' (**Draft Transport BPIC**). A copy of Ms Hawkswood's email is

at **Annexure TS-10, page 310**, and a copy of the Draft Transport BPIC attached to that emailed is at **Annexure TS-11, pages 311 to 398**.

66. In December 2020 and early 2021, Phil Mumford, CEO of GoldlinQ, foreshadowed to John Holland that DTMR would be seeking further information from GoldlinQ and John Holland in respect of the Draft Transport BPIC as it related to GCLR3. I became aware of this through Rob Evans, General Manager, Rail Projects.

67. On 13 January 2021, DTMR issued a letter to GoldlinQ which set out a series of questions about John Holland's proposed and existing industrial relations arrangements. A copy of DTMR's letter of 13 January 2021 is at **Annexure TS-12, pages 399 to 402**. The questions in the letter related to:

(a) the scope, application and nominal expiry dates of John Holland's existing EAs;

(b) whether John Holland proposed to enter a Greenfield Agreement with respect to GCLR3;

(c) John Holland's approach to engaging subcontractors, including how John Holland would assess subcontractor submissions against the BPPs and mitigate risks in relation to subcontractor EAs; and

(d) how John Holland proposed to mitigate risks related to demarcation disputes between unions on GCLR3.

68. The letter concluded:

> *The State also notes that the GCLR procurement process commenced and bids were submitted prior to the recent endorsement of TMR's draft Best Practice Industry Conditions (Transport BPIC) policy for major transport projects (copy attached). An objective of the government is to promote industrial harmony and continue improving safety. TMR has commenced broad industry consultation on the draft policy.*
>
> *The State would therefore like to understand the impact, if any, of the Transport BPIC on GoldlinQ's proposal (including price, program or other impacts) if this draft policy were to be adopted for the GLCR 3 Project.*

69. As a result of DTMR's letter, John Holland reviewed the potential impacts of the introduction of the Transport BPIC on GCLR3.

70. On 1 February 2021, I prepared an executive briefing regarding '*BPIC Overview – Risk and Opportunity*'. The briefing paper summarised the key risks, opportunities and proposed implementation of BPIC in the civil sector. A copy of the executive briefing is at **Annexure TS-13, pages 403 to 405.**

71. On 5 February 2021, Mr Evans participated in a fireside chat with representatives of DTMR and GoldlinQ regarding the application of BPIC to GCLR3. During the meeting, some pressure was placed on John Holland by DTMR and GoldlinQ to

execute the D&C Contract and proceed to financial close prior to resolving John Holland's concerns regarding the application of BPIC and how any additional cost or delay would be accommodated. Copies of two internal emails sent by Mr Evans following the fireside chat are at **Annexure TS-14, pages 406 to 408.**

72. On the same day, I spoke with Dean Misso, Executive Director of DTMR. During the discussion:

    (a) I told Mr Misso that during general discussions with the CFMEU the preceding week, Mr Ingham had told me that John Holland had been given the wrong BPIC document, and there would be another BPIC document that would apply to projects greater than $300 million;

    (b) Mr Misso explained that, up until that week, DTMR's position had been that the Draft Transport BPIC would apply to projects under active tender and it would work towards finalising a document for projects over $300 million for upcoming tenders;

    (c) however, Mr Misso then explained that there had been a meeting between Minister Bailey's office, the CFMEU and ETU earlier that week, and DTMR had now been advised that the unions would contact John Holland directly with a revised document for GCLR3 based on the $300 million plus document;

    (d) I explained John Holland had not received any document from, or had any communication with, the unions that week and things were starting to get messy, which Mr Misso acknowledged; and

    (e) I explained that John Holland still had concerns about BPIC from a Code perspective, which Mr Misso acknowledged.

73. A copy of an internal email I sent recording my conversation with Mr Misso is at **Annexure TS-15, page 409**.

74. On 12 February 2021, I attended a meeting with the following attendees:

    (a) **John Holland**: me; Mr Dodd.

    (b) **GoldlinQ**: Mr Mumford. There may have been others in attendance but I do not recall who.

    (c) **DTMR**: Peter Papantonio, Project Director; Mr Misso.

75. During the meeting:

    (a) DTMR informed John Holland that:

        (i) DTMR was in the early stages of consulting with industry with respect to the Draft Transport BPIC, but it did not anticipate there would be much change to the document;

(ii) The Queensland Government intended to implement the Transport BPIC on four DTMR projects which were in the procurement stage and new DTMR projects going forward with full implementation anticipated on the Centenary Bridge project.

(b) GCLR3 was identified as one of the projects in the procurement stage to which the Transport BPIC would apply. The other projects were Bruce Highway (Cooroy to Curra) Section D Contract 2, Bruce Highway (Caboolture) Bribie Island Road to Steve Irwin Way and the Walkerston Bypass.

(c) I raised that John Holland had been informed by Mr Ingham that it had been issued an incorrect version of the Draft Transport BPIC, being one that was for projects less than $300 million in value. DTMR responded that there was only one Draft Transport BPIC, but it would confirm with relevant stakeholders what document would be used for GCLR3 and advise John Holland and GoldlinQ accordingly.

(d) John Holland advised that once the BPIC document to be used was confirmed, John Holland would need to carry out a complete review and revision of its tender offer.

(e) Mr Dodd provided an initial assessment that the cost impact of the Draft Transport BPIC would be $160 million to $190 million, but stated this would need to be considered and repriced into the tender, and the potential program impacts would likely delay the project by seven to nine months.

76. A copy of an email summarising the meeting prepared by Mr Dodd on 15 February 2021 is at **Annexure TS-16, pages 410 to 412**.

77. On 25 February 2021, John Holland submitted a paper to GoldlinQ and the State outlining its proposed pathway to financial close and the impacts of BPIC. A copy of the paper is at **Annexure TS-17, pages 413 to 415**. In the paper, John Holland again emphasised its obligations under the Code and identified the following key risks:

> *How the State intends to require John Holland to adopt the BPIC on GCLR3. Prior to implementation, the State may also need to consider any obligations under the Fair Work Act 2009 (Cth).*
>
> *How the State intends to manage and communicate with subcontractors to adopt or apply the BPIC on GCLR3.*
>
> *Achieving Code-compliance in the event that subcontractors and suppliers' are required to re-price their packages prior to award.*

78. On 19 March 2021, I produced an executive briefing paper regarding John Holland's industrial relations across its national business. A copy of the briefing paper is at

Annexure TS-18, pages 416 to 418. Among other things, that paper provided an update on the BPIC position in Queensland and noted:

> *JH has met with the senior officials from Transport and Main Roads (TMR) tasked with implementing the BPIC, and they have confirmed the very clear directive from Government that the intent is for the BPIC to apply on all future projects, including those currently under active tender.*

79. On 23 April 2021, I produced a further executive briefing paper. A copy of the further briefing paper is at **Annexure TS-19, pages 419 to 421**. With respect to BPIC, the paper noted that:

> *JH is still waiting for a revised 'major project' BPIC document from Transport and Main Roads (TMR) and understand that discussions with Senior Government officials and the unions are still ongoing. Latest advice is that this document may still be a 'number of weeks away'.*
>
> *GCLR will likely commence on an early works basis, prior to the BPIC and contract being finalised, with careful consideration to be given to how the BPIC is addressed in any early works agreement.*

80. On 21 June 2021, I attended a meeting with DTMR and its advisor, Scott Gartrell of KPMG, regarding the proposed BPIC that would apply to GCLR3. The attendees at the meeting were:

    (a) **John Holland**: me; Mr Dodd.

    (b) **DTMR**: Mr Gartrell, Consultant; Ms Hawkswood; Mr Misso.

81. During that meeting:

    (a) I explained that the AWU was a relevant union with respect to John Holland's proposed workforce on GCLR3 but that it was unwilling to enter any EA with the CFMEU;

    (b) Mr Gartrell confirmed that the BPIC to be applied on GCLR3 had been negotiated by him with the CFMEU and the other unions in the BTG, and that the AWU had not engaged in those negotiations;

    (c) Mr Gartrell said the CFMEU and other BTG unions were willing to engage in respect of the BPIC and John Holland should continue to engage with them;

    (d) Mr Gartrell stressed that he had had significant engagement with the CFMEU and he had the ability to influence them.

82. On 5 July 2021, DTMR issued Clarification #OFiM3-103-Cto GoldlinQ posing a number of questions to John Holland regarding industrial relations and attaching a revised and project specific BPIC document titled '*Best Practice Industry Conditions for Transport Civil Construction Projects – Gold Coast Light Rail Stage 3 Project*'

(**GCLR3 BPIC**). A copy of Clarification #OFiM3-103-Cis at **Annexure TS-20, pages 422 to 429**, and a copy of the GCLR BPIC is at **Annexure TS-21, pages 430 to 497**.

83. With respect to the GCLR3 BPIC, the letter explained:

> *In developing the GCLR3 BPIC relevant enterprise agreements, awards and legislation relevant to the transport civil construction industry were analysed to ensure the document at Attachment A [the GCLR3 BPIC] reflects modern and progressive industrial practices for the civil construction industry.*

84. The letter went on to state:

> ***The GCLR3 BPIC***
>
> *The GCLR3 BPIC is a guidance document that reflects the Queensland Government's standards and expectations to ensure that a workforce with optimal levels of skills and experience can be attracted and retained for project delivery and ensure that relevant stakeholders can interact in a positive, collaborative and productive way through to successful project completion.*
>
> *The GCLR3 BPIC document is a guidance document and is not mandatory. The GCLR3 BPIC does not require John Holland to enter into any specific agreement or require their subcontractors to enter into any specific agreement. An enterprise agreement with the named employee organisations is not a mandatory requirement. John Holland can demonstrate the intent and outcomes of the GCLR3 BPIC in any manner it chooses to nominate. However, there is an expectation that John Holland will engage with relevant unions as identified in the GCLR3 BPIC that have an interest in the Project as part of establishing and maintaining a positive industrial relations environment for this Project.*
>
> *Where a particular supplier is referred to within the GCLR3 BPIC, this entitlement or obligation relates to that supplier or any suitable equivalent that John Holland may wish to nominate.*
>
> *The GCLR3 BPIC has been developed to help to ensure that the objectives of the BPP are achieved, particularly in relation to best practice industrial relations, to minimise disruption and resulting time and cost implications for the Project. The BPP is not to be implemented in a way that breaches any law. Nothing in the GCLR3 BPIC requires John Holland to make any commitment that would breach any laws, for example the Code for the Tendering and Performance of Building Work 2016 ('the Code'). Should GoldlinQ or John Holland contend that there are any issues of such a nature with the GCLR3 BPIC or its implementation, it is expected that those matters are clearly articulated and raised early in the process (i.e. before finalising a response).*

85. Near identical wording was included in the covering pages of the GCLR3 BPIC. Like other BPIC documents, the GCLR3 BPIC otherwise took the form of a draft EA that was generally consistent with the CFMEU pattern agreement being used at that time.

86. In my opinion, the GCLR3 BPIC did not reflect the normal industrial practicalities of work in the civil construction industry. It was more reflective of terms and conditions from the 'building industry' which operated in a different programming landscape. For example, a building project tends to have a single footprint whereas a civil project (such as GCLR3) has a wide geographical spread which impacts on public infrastructure and utilities. Work on civil projects is subsequently often scheduled at non-standard times to accommodate critical works. However, work at that time would require consultation with (which in practice required approval of) unions (typically the CFMEU) if the CFMEU-pattern agreement terms applied. If approval was not forthcoming, work could not proceed resulting in project delays.

87. In addition, similar to the CFMEU-pattern, there was an expectation that a significant number of union delegates would be engaged on GCLR3 under the GCLR3 BPIC. On most civil projects with the AWU, any AWU delegate would be a 'working delegate', by which I mean someone who performs significant amounts of productive construction work while also carrying out delegate duties as necessary. AWU delegates were generally less militant in this regard.

88. In contrast, CFMEU delegates would often consider their role to primarily be a 'delegate' rather than performing productive work. The delegates would also invariably also be 'work health and safety representatives' on projects. This gave them significantly more opportunity to exercise their influence on the project because they could utilise levers in the safety legislation or applicable enterprise agreement to disrupt productivity when even minor issues were being worked through.

89. John Holland was required to deal with the unions (including the CFMEU) and delegates in a pragmatic way given the commercial risks which could arise as a result of industrial disputes on our projects.

Government's preferred option

90. The application of the GCLR3 BPIC meant that JHQ was required to consult and engage with all unions named in the BPIC, including the CFMEU and other members of the BTG.

91. John Holland did not want to enter an EA with the CFMEU in the civil industry. Generally, John Holland would not need to engage with the CFMEU to make an enterprise agreement in the civil construction industry given their limited industrial coverage of the work performed on a typical civil project.

92. Throughout the EA negotiation process it was clear to John Holland that the preferred outcome by DTMR was for the CFMEU to be involved in the project and for there to be a project specific EA that was consistent with BPIC and which included the CFMEU. I say it was clear that this was the preferred outcome because:

(a) the GCLR3 BPIC took the form of a draft EA that was consistent with the CFMEU pattern EA at the time;

(b) the GCLR3 BPIC refers to the CFMEU as relevant union. This can be seen in the definition of 'Union' at **page 462 of the Bundle**;

(c) the instructions provided to GoldlinQ explicitly stated '*there is an expectation that John Holland will engage with relevant unions as identified in the GCLR3 BPIC*';

(d) Mr Gartrell emphasised the CFMEU and the need to engage with the CFMEU, with limited regard to other relevant unions such as the AWU;

(e) Mr Gartrell proposed various options to secure an EA covering the CFMEU in the absence of the AWU. I discuss John Holland's engagement with Mr Gartrell further below.

93. John Holland was left with little option but to negotiate an EA for the GCLR3 which reflected the GCLR BPIC as a result of the State's procurement policy at the time. That resulted in the introduction of a more restrictive, 'building' style industrial instrument which differed to the industrial instruments typical in the civil construction industry in Queensland before BPIC.

John Holland's consideration of the impact of the GCLR3 BPIC

94. The imposition of the GCLR3 BPIC caused John Holland significant concern and uncertainty with respect to its capacity to first reach financial close, but also to then complete GCLR3.

95. Between July 2021 and March 2022, John Holland expended considerable time and resources attempting to quantify and mitigate the impact of the GCLR3 BPIC both in terms of financial and program impacts, but also in terms of the industrial risk to John Holland and the project. Throughout this period, John Holland continued to engage with GoldlinQ and DTMR. John Holland's internal and external assessments of the GCLR3 BPIC are set out below.

<u>Financial and program impacts of the GCLR3 BPIC</u>

96. I am not responsible for financial or program matters on GCLR3. However, I did have some involvement with identifying likely impacts of the GCLR3 BPIC on John Holland and I was otherwise provided with documents dealing with financial and program matters as discussed below.

97. On 3 September 2021, John Holland provided an Order of Magnitude to DTMR and GoldinQ, which included an impact assessment on price, program and the assumptions previously provided. The Order of Magnitude is at **Annexure TS-22, pages 498 to 621**.

98. The Order of Magnitude included a table summarising the price impact of the GCLR3 BPIC as follows:

Table 1: OoM Impact Assessment on Price

Parameter	Assumed OoM Impact	% of cost	Indicative OoM Impact Range	
Labour	$ 34,336,853	73.6%	$ 30,260,886	$ 36,187,495
Plant	$ 4,427,147	12.1%	$ 3,901,621	$ 4,665,755
Material	$ 2,252,798	3.3%	$ 1,985,379	$ 2,374,216
Subcontract	$ 53,477,059	21.8%	$ 47,129,047	$ 56,359,294
Other	$ 55,493,193	23.4%	$ 48,905,856	$ 58,484,091
Totals	**$ 149,987,049**	**23.7%**	**$132,182,789**	**$158,070,850**

99. On 8 September 2021, John Holland received Requests for Information (**RFIs**) from DTMR regarding the Order of Magnitude.

100. Also on 8 September 2021, John Holland produced a table setting out its BPIC Impact Assessment (excluding rates and allowances). The table set out the relevant provision of the GCLR3 BPIC, whether the provision was in the John Holland Civil EA, Modern Award or Transport BPIC, and John Holland's comments on the provision and its potential impact on time and cost on GCLR3. The table is at **Annexure TS-23, pages 622 to 624**. Among other things, the assessment in the table noted:

(a) based on John Holland's experience, the Rostered Day Off (**RDO**) provision would result in little flexibility to move or work RDOs;

(b) based on John Holland's experience in the building sector where this procedure was well established, the proposed '*Impairment Policy*', which deals with drug and alcohol testing on site, had become '*unworkable*' and resulted in considerable losses in time and productivity due to delayed testing processes and requirements;

(c) '*GCLR BPIC is silent on heat policy, but union position re application is clear*' and John Holland was aware that the EA with respect to the Cairns Convention Centre Expansion and Refurbishment project (**CCCER**) was silent on a heat policy, but a heat policy consistent with the Transport BPIC had been implemented through the WHS committee. John Holland was aware it has been implemented in this way through industry knowledge and discussions with the CFMEU;

(d) in respect of multiple items, '*JH is aware that in the absence of an express provision in the GCLR BPIC, the union expectation is that the Transport BPIC provisions will apply*'. This was based on my discussions with Mr Ingham; and

(e) in respect of multiple items, there would be an expectation or requirement to have increased numbers of Health & Safety Representatives (**HSRs**) and delegates on site.

101. On 8 September 2021, the State appointed Jason Malouf of E3 as an Independent Estimator (**IE**) to review the price impacts of BPICs.

102. On 10 September 2021, John Holland provided responses to DTMR's RFIs of 8 September 2021. The response set out various tables comparing the tender value of labour, plant and materials as opposed to the cost under the GCLR3 BPIC, and explaining the Order of Magnitude in dollar and percentage terms. The response is at **Annexure TS-24, pages 625 to 631**.

103. John Holland's assessment with respect to labour set out that labour dayshift rates had increased by 60% or more for all classifications and labour nightshift rates had increased by 107% or more for all classifications. This is reflected in the following tables which are at **page 625 of the Bundle**:

Labour:

Dayshift						
Classification	Tender		GCLR3 BPIC	OoM Impact		
	$ / hr	Hours	$ / hr	$ / hr	% / hr	$
CW2	54.07	156,828	86.30	32 23	60%	5,054,696
CW3	56 05	248,009	95.35	39 31	70%	9,746,756
CW4	58 30	114,680	98.62	40 32	69%	4,623,973
CW5	60.74	32,524	97.80	37 06	61%	1,205,424
CW6	62.85	11,788	101.88	39 03	62%	460,433
Total / Avg		563,829		37 59	64%	21,091,282

Nightshift						
Classification	Tender		GCLR3 BPIC	OoM Impact		
	$ / hr	Hours	$ / hr	$ / hr	% / hr	$
CW2	66 27	55,676	137 11	70 84	107%	3,944,229
CW3	68 77	34,286	149 08	80 31	117%	2,753,462
CW4	71 53	21,990	154 56	83 03	116%	1,825,774
CW5	74 65	0	156 50	81 85	110%	0
CW6	76 44	12,860	163 33	86 89	114%	1,117,433
Total / Avg		124,812		80 58	113%	9,640,898

Notes

i Maintain working hours crew ratios (e g first aid) with an additional 0 5 hours lost time each day (2 75 hr / wk) and increased L/H ratios
ii Assumes all classifications are stepped up one level e g CW2 becomes CW3 to reflect difference in classification tables
iii Reflects changes in allowance rates & types (flat vs all-purpose) additional allowances, changes in overtime meal allowances and other oncost changes (levies redundancy income protection etc)
iv Lower bounds reflect the approximate % increase in the base rate only (no other changes in conditions)
v Upper bounds reflect the average % increases calculated plus the inclusion of a modest provision on top

104. On 21 September 2021, John Broadhead, Special Counsel of Corrs Chambers Westgarth, sent John Holland the State's response to John Holland's BPIC Assessment Order of Magnitude Modelling data. A copy of the State's response is at **Annexure TS-25, pages 632 to 634**. The attachment sets out the State's preferred approach and options in respect of several parameters including labour, plant and subcontractors. In respect of labour, the response states:

> *The State's expectation is that appropriate industrial relations arrangements*

reflective of BPICs are finalised before financial close. On that assumption any
required uplift to the D&C price can be modelled prior to financial close based on the rates / conditions agreed with the unions / workforce and fair assumptions regarding labour utilisation (these assumptions would be reviewed by the Independent Estimator). OF3's BPICs Commitments would take the form of confirmations that it will pay its direct labour in accordance with the EBA's as negotiated / uplifted BPICs rates, and that the structure / scale of labour force will be deployed broadly in line with assumptions. Payment for the BPICs component of direct labour will be subject to demonstration of compliance with the relevant industrial arrangements.

105. On 6 October 2021, John Holland sent a revised BPIC Impact Assessment to the State in response to RFC #OFiM3-103-C. A copy of the revised BPIC Impact Assessment is at **Annexure TS-26, pages 635 to 643**. The key amendments to that document reflected:

(a) there were several provisions absent from the GCLR3 BPIC which would have been expected in an EA (for example it did not include clauses related to leave);

(b) John Holland expected, based on its initial discussions, that the unions would seek to include provisions from the Transport BPIC in any EA where the GCLR3 BPIC was silent (for example the heat policy);

(c) the AWU's refusal to enter a multi-union EA that included the CFMEU was presenting considerable risk to the project, and John Holland implored the State to elevate its concerns to the '*highest levels of government*' to influence the AWU to engage in meaningful negotiations and influence a positive outcome; and

(d) any action John Holland took to assess tenders or audit the conduct of subcontractors on GCLR3 would be taken in accordance with its obligations under the Code.

106. On 8 October 2021, John Holland submitted a BPIC Impact Assessment to DTMR and GoldlinQ which was comprised of:

(a) a Cover Letter, in which John Holland emphasised that where Code obligations apply, these take precedence over any tendered or contractual requirement. A copy of the cover letter is at **Annexure TS-27, pages 644 to 645**;

(b) a BPIC Impact Assessment Price in an updated Pricing Proforma with separate tab to identify changes. A copy of the assessment in the Pricing Proforma is at **Annexure TS-28, pages 646 to 664**;

(c) a BPIC Impact Assessment Price in the BPIC Pricing Tracker supplied by the State. A copy of the assessment in the pricing tracker is at **Annexure TS-29, page 665**;

(d) a BPIC Impact Assessment Program in PDF. A copy of the assessment in PDF is at **Annexure TS-30, pages 666 to 789**;

(e) a Summary of Program Impacts and Explanation dated 7 October 2021. A copy the summary is at **Annexure TS-31, pages 790 to 793**; and

(f) John Holland's Response to Items 1, 2 and 3 of Clarification #OFiM3-103-C.

107. On 22 October 2021, John Holland met with the IE, DTMR and GoldlinQ for the purpose of the IE presenting his draft findings on his impact assessment of the GCLR3 BPIC. Following the meeting, the IE circulated two copies of his presentation slides which outlined his preliminary review and assessed of the impact on costs, program and risks identified in the John Holland baseline D&C Offer that were attributable to the GCLR3 BPIC as at 21 October 2021 and 24 October 2021 respectively. A copy of the slides is at **Annexure TS-32.** The version dated 21 October 2021 is at **pages 794 to 811**, and the version dated 24 October 2021 is at **pages 812 to 830**.

108. On 9 November 2021, the IE produced a draft report on the impact of BPIC on GCLR3. A copy of the draft report is at **Annexure TS-33, pages 831 to 880**. The IE's assessment of the impact of the GCLR3 BPIC was significantly lower than John Holland's assessment.

109. On 12 November 2021, John Holland issued its response to clarification #OFiM-105C. A copy of the response is at **Annexure TS-34, pages 881 to 882**. In the response, John Holland:

(a) noted that achieving a multi-union EA including the AWU was fundamental to John Holland's tender offer and critical to the success of the project and BPIC more broadly;

(b) reiterated its request for the State to take all available actions to influence the AWU to engage with the process;

(c) stated that, despite the above, John Holland would proceed to financial close without a multi-union EA which included the AWU as a party if the State accepted any time and cost risk associated with industrial relations disputes on the project;

(d) outlined its preference to proceed with a Greenfield Agreement and identified an alternative Brownfield Agreement approach but stated it did not consider a Brownfield Agreement to be a favourable outcome for any party.

110. On 17 December 2021, John Holland met with DTMR and GoldlinQ for the purposes of revalidating JHQ's GCLR3 tender and discussing the impact of the GCLR3 BPIC.

I did not attend that meeting but I am aware based on a summary email that during the meeting, it was agreed the:

(a) baseline price for GCLR3 would be reset to $667 million (up from $633 million);

(b) BPIC assessment would be treated as an '*open book*' on an uncapped cost reimbursable basis but with a target not to exceed $150 million.

111. A copy of an email chain between the attendees of the meeting and recording the discussion and agreement is at **Annexure TS-35, pages 883 to 884**.

112. On 9 February 2022, John Holland circulated an internal email setting out the then position with respect to the commercial framework and deliverables for GCLR3. With respect to the reimbursement schedule for BPIC related costs on the project, the email notes this had not yet been agreed with the '*key sticking point*' being the '*most applicable method of assessment re: subcontractors*'. A copy of the email is at **Annexure TS-36, pages 885 to 887**.

113. On 26 March 2022, the commercial model for GCLR3 was finalised and sent to the John Holland board for approval.

<u>Industrial risks posed by the GCLR3 BPIC</u>

114. Throughout its assessment of the GCLR3 BPIC, John Holland maintained the position that any enterprise agreement for the project should include the AWU. John Holland made numerous attempts to engage the AWU in negotiations which I discuss further below. However, from very early in the application of the GCLR3 BPIC the AWU indicated it did not support BPIC and would not be a party to any EA with the CFMEU in civil construction. This caused John Holland significant concern with respect to the industrial harmony of the project and the risk posed to it by that refusal.

115. On 28 July 2021, John Holland submitted a BPIC Impact Assessment Methodology to GoldlinQ and DTMR dated 26 July 2021. The purpose of the document was to provide guidance to GoldinQ and the State on John Holland's approach to the impact of BPIC on GCLR3. Part 1.2 of the methodology emphasised John Holland's Code obligations and that these obligations would be John Holland's '*most important consideration*' and '*overriding principle*'. The BPIC Impact Assessment Methodology is at **Annexure TS-37, pages 888 to 898**.

116. On 20 August 2021, John Holland responded to the questions posed by the State in its letter of 5 July 2021. A copy of the response, titled '*Gold Coast Light Rail Stage 3 BPIC Impact Assessment: RFC103C Responses*' is at **Annexure TS-38, pages 899 to 906**. Among other things, John Holland outlined:

(a) it intended to negotiate a Code compliant, project specific Greenfield Agreement for GCLR3 with all the unions;

(b) the AWU maintained their unwillingness to be a party to an EA that included the CFMEU;

(c) the AWU had recently advised that if it was a party to an EA over GCLR3, its expectations were better reflected by an EA recently negotiated with respect to the Brisbane Metro project;

(d) the AWU's position was of significant concern to John Holland, noting that the AWU would likely have majority coverage of workers onsite;

(e) part of the tender process would include a review of a subcontractor's compliance with the Code and the BPPs, but John Holland would not assess or evaluate subcontractors tender responses against the GCLR3 BPIC;

(f) as a generalisation, those subcontractors that operate across the building and/or industrial sectors, rather than those who operate solely in the traditional civil sector, would be more likely to use their best endeavours to take the GCLR3 BPIC into account in tendering.

117. On 14 September 2021, I sent an email to Mr Dodd and Andrew Priem, Operations Manager Qld/NT, outlining issues, potential options and my recommended way forward regarding union engagement to reach agreement for an EA over GCLR3. A copy of my email is at **Annexure TS-39, pages 907 to 910**.

118. On 24 September 2021, I prepared a further Executive Briefing paper regarding the 'Qld BPIC Civil Strategy'. The briefing paper is at **Annexure TS-40, pages 911 to 915**. The briefing paper outlined the background, options and recommendations to proceed with determining the most appropriate enterprise-wide strategy for implementing BPIC. Specifically, it noted:

(a) the decision made on GCLR3 in respect of BPIC would dictate John Holland's future industrial relations approach to Queensland government-funded projects;

(b) the GCLR3 BPIC reflected the CFMEU pattern EA with increased rates to align with the ETU pattern EA;

(c) BPIC appeared to be aimed at increasing the influence of the CFMEU (and other unions in the BTG) in the civil sector, which was illustrative of the influence of the BTG unions with government. I say this because without significant influence in government, I do not believe BPIC would have been rolled out in the manner it was;

(d) the differing positions of the AWU (including its unwillingness to enter an EA with the CFMEU), the CFMEU and Government;

(e) my view that the catalyst for BPIC was the fact that the CFMEU had been omitted from the enterprise agreement entered into on the Cross River Rail project; and

(f) the risks of industrial retaliation if either the CFMEU or the AWU were excluded from an EA. The concerns were:

(i) From an AWU perspective, that they would challenge approval of a Greenfield Agreement to which they were not a party, and/or that there may be industrial impacts on John Holland's other current or future civil construction projects around Australia where we would have to engage with the AWU.

(ii) From a CFMEU perspective, the risk of industrial disputation in the wider John Holland 'building' division, and also the potential for disputes on GCLR3 in any event.

119. While I noted in the paper that there was some risk the AWU would retaliate if excluded from an EA, I considered this risk to be unlikely to eventuate on the basis that if the AWU refused to enter into agreements with John Holland in the civil infrastructure space in the future, this would likely reduce their relevance in the industry. I also noted that it appeared that the AWU's political influence in Queensland had declined because BPIC appeared to be more aligned with the BTG.

120. Comparatively, the paper reflected that the industrial risk of excluding the CFMEU from an EA was significant. The paper noted that if John Holland entered an AWU only agreement, there was a risk of:

(a) a protracted campaign by the BTG unions on GCLR3, which has considerable exposure given its 12km route with multiple access points;

(b) significant impact across John Holland building projects, including SQCC2 and the Logan Hospital Expansion project;

(c) the CFMEU refusing to finalise the JHQ 2020 Building EA (which was under negotiation at the time and necessary for John Holland to meet its BPP obligations on other projects);

(d) potential ramifications for future DTMR projects due to the CFMEU's influence on government and its procurement.

121. On 29 September 2021, I attended a weekly meeting with DTMR and GoldlinQ regarding the application of BPIC. The following were invited to the meeting, but I cannot recall whether everyone in fact attended:

(a) **John Holland**: me; Mr Dodd; Andrew English, Executive General Manager, Infrastructure;

(b) **GoldlinQ**: Mr Mumford; Clara O'Laughlin; Karlie Southwood;

(c) **DTMR**: Mr Papantoniou; Ms Hawkswood; Mr Misso; Mr Gartrell.

122. Later that day, Mr Dodd sent an internal email summarising the discussion. A copy of the email is at **Annexure TS-41, page 916**. The email records that during the meeting, we discussed:

(a) the options for an EA on GCLR3 and the meeting agreed that John Holland needed to enter an EA which included the AWU;

(b) the need for the State to escalate its involvement in bringing the AWU to the table, that Neil Scales, Director General of DTMR, had previously committed to getting all the unions together but that this had been cancelled and needed to get back on track;

(c) the price and program impact assessments flowing from the GCLR3 BPIC were complete, subject to review by the executive team;

(d) the assumed program impact arising from BPIC would be approximately six months.

123. On 2 November 2021, I emailed Joe Barr, CEO of John Holland, and Mr English with my thoughts in respect of BPIC and our options if the AWU maintained its position and refused to engage with respect to BPIC and multi-union agreements. A copy of my email is at **Annexure TS-42, pages 917 to 918**.

124. On 5 November 2021, DTMR issued clarification #OFiM-105-C, requesting a response as to John Holland's '*alternative pathways to obtaining industrial / enterprise agreement(s) with employment conditions consistent with that articulated in the current offer*'. A copy of the request is at **Annexure TS-43, pages 919 to 920**.

125. On 8 November 2021, I prepared a table summarising the state-by-state risks and mitigations associated with excluding AWU from BPIC and proceeding with the building unions. A copy of this table is at **Annexure TS-44, pages 921 to 925**.

126. On 18 November 2021, I met with representatives of GoldinQ and DTMR regarding the risks associated with the lack of AWU involvement on the GCLR3 EA negotiations and presented a flowchart and summary table of those risks. It appeared to me that DTMR was pushing for John Holland to engage in 'brownfield negotiations' for an enterprise agreement on the project, which I understood to be based on its concern that there would otherwise be precedent for CFMEU only EAs on future projects. An email I sent later that day recording the discussion during the meeting is at **Annexure TS-45, pages 926 to 927**. The flowchart and summary table I presented are at **Annexure TS-46, pages 928 to 930**.

127. On 19 November 2021, DTMR issued draft Clarification #OFiM-#-C to GoldinQ. A copy of the draft request is at **Annexure TS-47, pages 931 to 933**.

128. On 22 November 2021, I emailed Mr Barr with a summary of the BPIC position in Queensland and John Holland's attempts to negotiate an EA on GCLR3 which included the AWU. In that email I reiterated DTMR's position that it would not assist with influencing AWU involvement and that it appeared to be pushing for a Brownfield Agreement approach. A copy of my email is at **Annexure TS-48, pages 934 to 935**.

129. That internal update notes that at that time, JH had informed the State that it would proceed without a multi-union EA inclusive of the AWU. There were numerous

relevant factors which resulted in JH proceeding with a Greenfield Agreement without the AWU for GCLR3:

(a) the BPP and BPIC policies meant that it was impossible for John Holland to not have to engage with the CFMEU in the civil sector (as historically had been the case);

(b) in that context, the requirement to implement and comply with the GCLR3 specific BPICs meant that John Holland was required to engage with all relevant stakeholders, including employee unions with an interest in the project to secure an enterprise agreement consistent with the GCLR3 BPICs;

(c) the AWU had refused to be involved in a multi-union EA which included the CFMEU for GCLR3;

(d) John Holland was concerned about the potential impacts of its ongoing relationship with the State if it was not able to proceed with the project;

(e) John Holland was concerned about the potential impacts on its 'building' business given the CFMEU's coverage over building work generally; and

(f) John Holland was concerned about the potential impacts of GCLR3 if it did not have an EA that involved the CFMEU given the scope of works on the project.

130. On 26 November 2021, John Holland responded to Clarification #OFiM-#-C, outlining its position with respect to alternative options to achieve an EA for GCLR3 if the AWU would not be involved in bargaining. John Holland also identified its concerns regarding DTMR's apparent preference for a Brownfield Agreement. A copy of John Holland's response is at **Annexure TS-49, pages 936 to 947**.

131. On the same day, representatives of John Holland met with DTMR and GoldlinQ to discuss a number of key project areas, including the implementation of BPIC and the industrial relations risk on the project. During that meeting, DTMR stated that it would be a 'deal breaker' if John Holland's BPIC price was non-negotiable, and that any industrial relations risk ought to be borne by John Holland as the head contractor. It was agreed that a further meeting should be held the following week and that John Holland should bring its '*negotiator*'. A copy of an internal email recording the discussion is at **Annexure TS-50, pages 948 to 949**.

132. On 5 December 2021, I sent an internal email in respect of DTMR's Clarification #OFiM3-105C:

(a) stating senior DTMR representatives would not take any further action to influence the AWU;

(b) setting out a summary table of the key risks and potential mitigations in John Holland's position at that time; and

(c) attaching a briefing paper which summarised the updates on AWU engagement and outlined the potential issues with alternative options based on the AWU's position.

133. A copy of my email and briefing paper is at **Annexure TS-51, pages 950 to 953**.

134. On 6 December 2021, GoldlinQ circulated a memo prepared by Mr Mumford in respect of the 'BPIC IR Risk – Draft Principles' being negotiated between John Holland, GoldlinQ and DTMR. A copy of Mr Mumford's memo is at **Annexure TS-52, pages 954 to 971**.

135. Between 6 and 20 December 2021, John Holland, DTMR and GoldlinQ continued to engage with respect to the BPIC IR Risk Draft Principles, which were ultimately agreed. A table setting out in tracked changes the final positions of the respective parties is at **Annexure TS-53, pages 972 to 981**.

136. On 26 February 2022, I sent an internal email noting that 'late yesterday':

> *The CFMEU expressed a major concern with the nominated major concern with the nominated JH entity for the greenfield EA, being John Holland Pty Ltd (JHPL). They want us to use John Holland Queensland (JHQ) entity which is regulated under the state-based Work Health & Safety (WHS) legislation rather than the federal system under Comcare (which applies to JHPL).*
>
> *Put simply, their issue being that the union have little influence over Comcare but do have significant influence over the state-based regulator, Work Health Safety Queensland (WHSQ). This is another extremely frustrating development at the 11th hour, but in my view, JH could not have done anything differently.*
>
> *The proposal to use the JHPL entity has been completely transparent and included in every iteration of the draft EA circulated to all unions since November last year. We need to be clear on this point if there is any suggestion from the State they we are delaying the process. The delay in lodging the EA is clearly attributable to the following:*
>
> - *ETU advising last week that they would not sign the EA (no mention to JH at any point that this was their position, but they did advise that they had informed the State of this position during the development of the GCLR BPIC guidance document). The State also actually requested we hold off lodging earlier in the week due to the ETU position.*
>
> - *This CFMEU development advised late Friday 25 Feb (as above, very little that JH could have done to further highlight the proposed entity during the process). The CFMEU explanation has been that it was 'missed' in their EA reviews.*

137. A copy of my email is at **Annexure TS-54, pages 982 to 984**.

Financial Close

138. On 28 March 2022, the D&C Contract for Gold Coast Light Rail Stage 3 was executed between JHQ and GoldlinQ. This was over 18 months after John Holland was named the preferred tenderer for GCLR3.

Negotiations for the GCLR3 EA with the unions and other stakeholders

139. John Holland initially sought to engage with the AWU in respect of the EA for GCLR3 on the basis that the AWU is the primary union in the civil construction sector. John Holland was a party to EAs with the AWU in NSW which covered another civil infrastructure project and John Holland considered it would be able to negotiate a similar agreement in Queensland.

140. On or around 30 May 2021 or 1 June 2021, Mr Priem and I met with Steve Baker, Queensland Branch Secretary of the AWU. The purpose of the meeting was to begin the negotiating process for an EA with the AWU. During the meeting, Mr Baker confirmed that the AWU:

(a) were not willing to enter into any EA with the CFMEU;

(b) would likely challenge any application for approval of an EA that the AWU were not a party to in the civil sector; and

(c) considered that the rates on GCLR3 needed to align with those on the Cross River Rail project.

141. On 2 September 2021, I attended a further meeting with the AWU in which the AWU confirmed it had no interest in the bargaining for an EA if the CFMEU were a party to it. Present at that meeting were:

(a) **John Holland:** me; Mr Priem;

(b) **AWU:** Mr Baker; Stacey Schinnerl, Southern District Secretary; Paul Cradden, Organiser.

142. On 29 September 2021, I emailed a copy of a draft GCLR EA to Mr Baker, Ms Schinnerl and Mr Cradden for comment. Later than morning, Mr Baker responded to my email as follows:

> *Thank you for your correspondence and the opportunity to comment on the attached document. The AWU has previously outlined to John Holland the Union's concerns with regards to the proposed BPIC agreement for the Gold Coast Light Rail in detail. In addition the Union has outlined the numerous industrial concerns at great length. The AWU's position has not changed since last time and as such our position still stands.*

143. A copy of the email chain is at **Annexure TS-55, pages 985 to 987**.

144. On or about 30 September 2021, I had a discussion with Mr Gartrell to provide an update on discussions with the CFMEU in respect of the proposed GCLR3 EA. In that discussion I advised Mr Gartrell of a request by the CFMEU for the 'hot weather' provisions of the Draft Transport BPIC to be included in any document agreed for GCLR3, even though those provisions were not included in the GCLR3 BPIC. During that conversation, Mr Gartrell said that he would confirm with the CFMEU that everything left out of the GCLR3 BPIC was done so deliberately.

145. On 5 October 2021, I emailed Mr Baker, Ms Schinnerl and Mr Cradden noting that the AWU's position had not changed, but seeking a meeting in any event to discuss the specific clauses that the AWU saw as having no application on civil projects. Mr Baker responded the following day as follows:

> *Thank you again for your request for a meeting and a discussion around the content of the proposed agreement. The AWU as previously stated to Holland on numerous occasions it does not intend on entering into negotiations for the proposed document for all the reasons outlined previously. The proposed meeting would constitute entering into negotiations and as such we decline the offer.*

146. On 11 October 2021, I prepared an executive briefing regarding 'Qld BPIC Civil Strategy Update', in which I set out an update on AWU engagement, and recommended options to progress. A copy of the executive briefing is at **Annexure TS-56, pages 988 to 989**.

147. On 18 October 2021, John Holland convened a meeting with the unions to discuss the proposed GCLR3 EA. Mr Baker was invited to, but did not attend, the meeting.

148. On 18 October 2021, Mr Dodd spoke with Amanda Yeates, Deputy Director-General Infrastructure Management and Delivery of DTMR. Mr Dodd subsequently circulated an internal email summarising the discussion in which he explained, among other things:

    (a) both Ms Yeates and Mr Scales were aware of the issues of not having the AWU on board for GCLR3; and

    (b) the State had sought legal advice on the risks associated with proceeding with an EA that excluded the AWU, the initial advice was that this would pose '*significant risks*' and once this advice was finalised, this would likely provide the impetus for the State's involvement.

149. A copy of Mr Dodd's email is at **Annexure TS-57, page 990**.

150. On 19 October 2021, I prepared an executive briefing titled 'AWU Briefing Note'. The purpose of the briefing was to provide background on the AWU and 'Key messages' ahead of a planned meeting between Mr Barr and Daniel Walton, the National Secretary of the AWU. A copy of the executive briefing is at **Annexure TS-58, pages 991 to 992**.

151. On or around 21 October 2021, Mr Barr met with Mr Scales to discuss John Holland's concerns regarding the lack of AWU involvement in BPIC negotiations. I did not attend this meeting. I understand that a suggestion was raised on behalf of DTMR that John Holland consider 'dual agreements' for the project with one covering the AWU work and the other covering the BTG works. This option was considered by John Holland but ultimately we did not consider it was a viable or appropriate option for the project.

152. On 21 October 2021, John Holland wrote to the unions formally advising them of John Holland's intent to negotiate a Greenfield Agreement for GCLR3. A copy of the letter John Holland sent to the AWU is at **Annexure TS-59, page 993**. Similar letters were sent to the other unions. The purpose of sending the letters was to start the six month notified negotiation period for the purpose of progressing a Greenfield Agreement under the FWA.

153. On the same day, Mr Barr and I met with Daniel Walton, National Secretary of the AWU, over Microsoft Teams. The purpose of that meeting was to discuss the BPIC position in Queensland. Mr Walton advised us that he supported the Queensland branch's position and that he did not support the AWU entering any EA with the CFMEU.

154. Between 22 October 2021 and 8 December 2021, John Holland convened several bargaining meetings in relation to the proposed EA for GCLR3. Representatives of the AWU were invited on each occasion but did not attend.

155. On 25 October 2021, I sent internal correspondence following Mr Barr and Mr Scales' meeting. A copy of my email is at **Annexure TS-60, pages 994 to 995**. In the email, I outlined my review of the option for two mirror enterprise agreements on GCLR3, one with the AWU and a separate agreement with the CFMEU and other unions. JH had raised this option with the CFMEU and AWU on or around 21 October 2021, and noted that:

> *AWU are not willing to give up any coverage in the civil space and consider the*
> *civil sector 'theirs'. They have also made clear that they would not negotiate an EA in accordance with the BPIC document. The AWU position is that any EA for GCLR should reflect the recent Brisbane Metro EA (modelled on Cross River*
> *Rail), which has superior terms and conditions to that contained in the BPIC.*
>
> *The CFMEU were very clear that they would not entertain any demarcation arrangement with the AWU. Their position is that wherever they have coverage in the civil sector (over certain classifications) then they intend to exercise that coverage and will not be 'giving up any roles to the AWU'.*
>
> *Whilst technically there is a way for the two separate mirror EAs approach to work, practically there are some serious impediments. In short, neither union is willing to give up coverage, nor are they willing to even discuss what a demarcation arrangement may look like in Qld. Further, the AWU position*

regarding terms and conditions is superior than that of the BPIC document. The two mirror EAs approach would rely on both EAs having the exact same terms and conditions.

Based on above, I think there is little value in pursuing this option further.

156. On 3 November 2021, I spoke with Mr Gartrell who proposed that JHQ could seek to go straight to a Brownfield Agreement, rather than enter a Greenfield Agreement. A copy of an internal email I sent the following day recording my discussion with Mr Gartrell is at **Annexure TS-61, pages 996 to 997**.

157. On 12 November 2021, Mr Gartrell emailed me about a historical Greenfield Agreement that John Holland had entered with the CFMEU and suggested that agreement supported that the CFMEU had the capacity to cover a majority of light rail roles. Mr Gartrell's statements in the email were consistent with comments he had already made to me in discussions about GCLR3.

158. I did not agree with Mr Gartrell's view in his email, and responded providing context specific to the other EA (which I was involved in) as follows:

A couple of comments:

- *The AWU actively refuse to be involved in the civil sector [in the ACT]. The branch secretary openly advised that he did not want to get involved in any construction. Not sure if this is still the case but was certainly so back in 2016.*

- *Despite the above, we did try and have the AWU party, from a relationship perspective, but also from a majority coverage perspective (we had initial concern the National or NSW branch might encourage a challenge).*

- *As negotiations progressed, the AWU made clear that had no interest in challenging.*

- *Despite the final dot point below, given the EA was never challenged this wasn't properly tested by the commission. Certainly not in any detail anyway. As you know, Commission tends not to open these sort of things up unless they are forced to by a challenge.*

So unfortunately, the circumstances were quite a bit different to that which we face now in Qld.

159. Mr Gartrell responded later that day, stating:

Thanks for that context and I knew there was a risk you would already be across this. And it makes some sense – not a huge civil sector in Canberra! I think the essential thing however is that it goes to the CFMEU rule providing them with the capacity to cover a majority, regardless of it not being *challenged at certification. The rule, as you know, is consistent across the country.*

160. A copy of the email chain with Mr Gartrell is at **Annexure TS-62, pages 998 to 1000**.

161. By mid-December 2021, John Holland had essentially agreed to terms for a Greenfield Agreement with the CFMEU, ETU and PPTEU for GCLR3. Very limited changes were able to be negotiated by John Holland for the CGCLR3 EA having regard to the terms of the GCLR3 BPIC. In addition, as described above, the BTG unions' position was that where the GCLR3 BPIC was silent that the terms of the broader Transport BPIC would be applicable. Without those terms being included, John Holland would not have been able to obtain the BTG unions' agreement necessary for a Greenfield Agreement to be resolved.

<u>Appeal of the Greenfield Agreement and Approval of the Brownfield Agreement</u>

162. On 22 February 2022, John Holland signed a Greenfield Agreement for GCLR3 with the CFMEU, ETU and PPTEU named as parties.

163. On 1 March 2022, JHQ lodged the Greenfield Agreement with the FWC. The AWU sought to be heard on the application and opposed its approval.

164. On 16 June 2022, the FWC dismissed John Holland's application. A copy of the decision dismissing the application can be found at: *John Holland Queensland Pty Ltd* [2022] FWC 1524.

165. In July 2022, John Holland lodged a further Greenfield Agreement with the FWC.

166. On 2 August 2022, the second Greenfield Agreement was approved by the FWC. A copy of the approval decision appears at: *John Holland Queensland Pty Ltd* [2022] FWCA 2599.

167. In August 2022, the AWU appealed the Greenfield Agreement. The grounds of appeal are stated at paragraph 2 of the appeal decision.

168. John Holland was concerned that the AWU would succeed in its appeal of the Greenfield Agreement which would cause further industrial disharmony and delay on GCLR3. For that reason, while John Holland awaited to outcome of the AWU's appeal, it concurrently sought to negotiate a Brownfield Agreement with the BTG as bargaining representatives for the directly-employed JHQ workforce employed at that time to work on GCLR3.

169. On 2 September 2022, a Brownfield Agreement was voted up by employees of JHQ which covered the CEPU and the CFMEU (**GCLR3 EA**). The GCLR3 EA was in identical form (bar some technical differences accounting for the fact that it was now an agreement directly with John Holland's employees) to the Greenfield Agreement.

170. On 15 September 2022, John Holland lodged the GCLR3 EA for approval by the FWC.

171. On 18 October 2022, a Full Bench of the FWC overturned the decision approving the Greenfield Agreement. A copy of the Full Bench's decision on appeal appears at: *Australian Workers' Union v John Holland Queensland Pty Ltd, Construction, Forestry, Maritime, Mining and Energy Union; Australian Manufacturing Workers' Union; Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia* [2022] FWCFB 190.

172. On 21 October 2022, the FWC approved the GCLR3 EA. A copy of the approval decision attaching a copy of the GCLR3 EA appears at *Application by John Holland Queensland Pty Ltd T/J John Holland Queensland Pty Ltd* [2022] FWCA 3692.

173. The GCLR3 EA was approved shortly after JHQ commenced main works on GCLR. From this point on, there was a strong CFMEU presence on the GCLR worksites.

<u>Effect of BPIC on GCLR</u>

174. John Holland's experience on GCLR3 has been that the implementation of the GCLR BPIC (and BPIC more generally) has led to:

(a) increased direct and indirect labour costs;

(b) decreased subcontractor participation and price competition;

(c) decreased productivity; and

(d) a two-tier market where smaller subcontractors are effectively excluded due to the complexity, cost and risk outweighing the benefit to winning work.

175. Working under the GCLR3 EA resulted in a significant cultural shift from how John Holland would typically run civil construction jobs. This cultural shift stemmed primarily from the provisions of the GCLR3 EA which were requirements of BPIC. In particular, the GCLR3 EA gave union delegates much more power on worksites than they would ordinarily have and required John Holland to 'consult' with the union about working hours and the engagement of subcontractors. Although the requirement under the GCLR3 EA was to 'consult' with the unions covered by the agreement, in practice, the CFMEU operated as if they had a veto right which would impact on John Holland's ability to manage productivity and the necessary subcontractor workforce on the project.

176. The GCLR3 BPIC also required JHQ to provide certain training to its workers offered by CFMEU. Since January 2021, JHQ has paid the CFMEU or entities associated with the CFMEU over $1,434,105.00 to deliver the following training:

(a) Workplace impairment training;

(b) 11004NAT Course in Identification and Awareness of Asbestos Containing Materials; and

(c) 1083NAT Course in Crystalline Silica Exposure Prevention.

177. Consistent with the requirements of the enterprise agreement, a discussion occurred between Russ Beynon, JH Project Manager, and Dean Reilly of the CFMEU at project commencement, and the provider was agreed. I am not aware of any tendering process in respect of this training, but it is my understanding that the CFMEU's expectation was that the Workplace impairment training was to be delivered by the CFMEU's internal trainers, and the asbestos and silica courses were to delivered by Future Skills.

178. JHQ also makes contributions on behalf of its employees to entities affiliated with the CFMEU, namely the Building Employees Redundancy Trust, Building Employees Welfare Trust and BUSSQ. This is a requirement of BPIC.

179. In addition to the obvious impacts on productivity, the effect of the implementation of BPIC generally, and the GCLR3 BPIC specifically, has been to drive exponential cost increases on the GCLR3 Project and limit the pool of available subcontractors significantly.

Misconduct on GCLR

Work Stoppages

180. Having reviewed John Holland's records for the project, I am aware that between 18 April 2024 and 18 September 2025, there were thirty-three work stoppages on GCLR work sites. A document summarising the work stoppages on GCLR and other John Holland projects is at **Annexure TS-63, pages 1001 to 1006**.

CFMEU Trainers and Delegates

181. I am aware of two incidents in relation to the delivery of training by the CFMEU on GCLR3:

   (a) on 25 September 2023, Brian Humphrey of the CFMEU emailed a copy of workplace impairment training attendance record, which contained personal information that was confidential, to Craig Tait, the CFMEU Delegate on GCLR3. Ross Davidson, Training Manager of the CFMEU, subsequently confirmed to John Holland that the records had been sent to Mr Tait in error. A copy of an email chain recording the incident is at **Annexure TS-64, pages 1007 to 1009**;

   (b) on 23 July 2024, Mr Hore reported to the CFMEU that Mr Humphrey had behaved unprofessionally when delivering training sessions at the GCLR3 project induction. A copy of Mr Hore's email is at **Annexure TS-65, pages 1010 to 1011**. The email records that during an induction session on 28 June 2024, Mr Humphrey had:

      (i) sworn throughout the induction, including use the word '*cunt*' on multiple occasions;

      (ii) repeatedly referred to the lack of care John Holland has to the safety and wellbeing of its workers;

(iii) had not stayed on topic and spoke about his personal matters;

(iv) tried to recruit workers to join the union (assisted by Mr Tait) and left those workers with the impression that they did not have a choice whether to join the union or not;

(v) undermined the alcohol and drug awareness part of the training by implying workers should continuously drink, discussing what drugs go through a persons system fastest, telling workers to drink beer during their lunch breaks and making jokes about crack pipes, bongs and cocaine.

(vi) I understand that this issue was raised with the CFMEU and Mr Humphrey was replaced.

182. I am aware of two incidents involving delegates of the CFMEU working on GCLR3 and allegations that those delegates had behaved inappropriately and breached freedom of association provisions:

(a) on 23 June 2025, a complaint was made that Jermony Keven, CFMEU delegate had breached freedom of association provisions by:

(i) encouraging two traffic controllers to engage in unprotected industrial action on 19 June 2025; and

(ii) held an unsanctioned workplace meeting during a prestart that caused other workers to engage in unprotected industrial action on 22 June 2025;

(b) on 26 June 2025, a complaint was made that Mr Tait, CFMEU delegate and HSR, breached his HSR duties and freedom of association provisions by inappropriately directing a traffic controller to cease controlling traffic. It was also alleged that Mr Tait then inappropriately communicated with the management of the subcontractor who engaged the traffic controller.

<u>Moonyah Workforce Pty Ltd</u>

183. In October 2022, John Holland subcontracted Moonyah Workforce Pty Ltd (**Moonyah**) to provide traffic control services on GCLR3.

184. In early 2025, allegations were raised regarding the conduct of Chris Oberholzer, Traffic Supervisor for John Holland, and the payment of money to Moonyah employees for time not worked. On learning of these allegations, John Holland engaged Kingston Reid, a specialist employment law firm, to conduct an independent and confidential investigation for the purpose of providing legal advice in relation to the allegations raised.

185. On or about 13 March 2025, Kingston Reid delivered the findings of its investigation to John Holland. Kingston Reid relevantly made the following findings:

(a) Bree Mead, Traffic Controller of Moonyah, had received payments for work that she had not performed on multiple days in January 2025 due to timesheet fraud by Mr Oberholzer;

(b) In or around December 2024, Emily Rose-Anderson, Traffic Controller of Moonyah, received payment for work that she had not performed, which was signed off by Mr Oberholzer; and

(c) George Faingaa, a family member of the owners of Moonyah, regularly had Mr Oberholzer sign off timesheets to pay his wife, Jacinta Faingaa, for work that she had not performed.

186. On receiving the findings, John Holland terminated the employment of Mr Oberholzer and directed that the Moonyah employees involved in the timesheet fraud be removed from site.

187. On 26 March 2025, John Holland notified GoldlinQ of the findings of the investigation, in accordance with its obligations to report an 'Event of Default' under the D&C Contract.

188. Between 26 March 2025 and 2 October 2025, John Holland continued to engage with GoldlinQ and the State with respect to the above findings and the corrective action being taken by John Holland. During this time, John Holland undertook further investigations to determine whether the timesheet issues were isolated to the above employees of Moonyah or not. This included re-engaging Kingston Reid, which in turn engaged KordaMentha to undertake an audit of pre-start data against timesheets and payment claims issued by Moonyah.

189. On 2 October 2025, John Holland wrote to GoldlinQ and reported the outcome of its further investigations. Specifically, John Holland outlined the following key findings:

(a) there was a high degree of consistency between the timesheet data and supporting documentation. John Holland's internal review processes were robust, with most discrepancies detected and resolved internally;

(b) while some exceptions were identified (such as missing PDF timesheets or attendance records), these were rare relative to the total volume of records reviewed. Where exceptions did occur, John Holland's processes generally identified and addressed them;

(c) in respect of the review period, there was no evidence that John Holland had been charged for work that was not performed by Moonyah employees and no fraud had been identified;

(d) of the timesheet fraud that was the subject of the notification to GoldlinQ, the total amount overpaid to Moonyah was $170,809.53 and John Holland had recovered this amount from Moonyah; and

(e) of the amount recovered from Moonyah, the amount repayable to the State under the reimbursable model for the BPIC Premium was $46,229.24.

190. A copy of John Holland's letter to GoldlinQ is attached and marked **Annexure TS-66, pages 1012 to 1018**. A copy of Moonyah's invoice dated 17 July 2025 which accounts for a deduction of $170,840.23 is at **Annexure TS-67, pages 1019 to 1020.**

191. On 28 October 2025, GoldlinQ advised John Holland that it had received correspondence from the State advising that the State had no further queries in relation to the findings. The letter also stated that as the reimbursement to the State had already been addressed by John Holland, GoldlinQ considered the matter closed. A copy of GoldlinQ's letter to John Holland is attached and marked **Annexure TS-68, pages 1021 to 1022**.

JHQ 2023 Building EA

192. In 2023, the JHQ 2020 Building EA was renewed through the *John Holland Queensland Pty Ltd and CFMEU Union Collective Agreement 2023-2027* (**JHQ 2023 Building EA**). As with the SQCC2 EA and the JHQ 2020 Building EA, negotiations for the JHQ 2023 Building EA were limited. A copy of the approval decision of the FWC attaching a copy of the EA appears at *John Holland Queensland Pty Ltd and CFMEU Union Collective Agreement 2023-2027* [2023] FWCA 4211.

193. A bundle of emails recording the negotiations and dated between 26 September 2023 and 24 October 2023 is at **Annexure TS-69, pages 1023 to 1028**.

194. The CFMEU refused to amend its pattern EA on the basis that the agreement reflected what had already been agreed or imposed on the remainder of industry. The 2023 pattern included a number of clauses which had not been permitted in enterprise agreements as a result of the Code. By this time, the Code had been repealed by the Federal Government.

195. One particular clause of concern for John Holland was clause 47.9 of the pattern EA, which was ultimately included in the JHQ 2023 Building EA, which stated:

> *Employees are entitled to have paid time off to attend union meetings of up to 2 hours (or more by agreement) to participate in union activities. There shall be no more than one meeting per shift. The Union shall notify the Company that a meeting is to occur prior to the commencement of the meeting.*

196. John Holland was concerned that the above clause could be misused to cause site disruptions.

197. I arranged a meeting in Sydney on 13 November 2023 between John Holland and the CFMEU to discuss the clause. The following people attended:

    (a) **John Holland**: Me; Mr Barr; David Lehmann, Chief Operating Officer; and

    (b) **CFMEU**: Zach Smith, National Secretary; Mr Ingham.

198. Much of the meeting was Mr Barr explaining his previous experience with the 2-hour meeting clause while working for another contractor on the Commonwealth Games

project in 2018. Mr Ingham suggested that it was the Builders Labourers Federation part of the union that had misused the clause previously. He then said that would not be the case under his leadership and that he had more control over his organisers. John Holland did not get much comfort out of the discussion.

199. However, the CFMEU did agree to enter a memorandum of understanding (**MOU**) with JHQ. A copy of the MOU is at **Annexure TS-70, page 1029**. The purpose of the MOU was:

(a) in respect of Item 1, to limit the potential impact that clause 28.6 of the EA would have had on two identified projects which were nearing completion. This was important to John Holland as it would have required it to engage labour hire employees as permanent employees just prior to project completion, resulting in added cost;

(b) in respect of Item 2, to clarify that clause 38.8(b) of the EA would not be limited to 'Monday RDOs', which provided John Holland with greater flexibility to roster work around some RDOs;

(c) in respect of Item 3, to clarify that JHQ was permitted to 'hire in' tower cranes from a supplier and have them operated by JHQ employees; and

(d) in respect of Item 4, to clarify that the 'two-hour meeting' clause contained in clause 47.9 of the EA would not be used 'unreasonably', with the intention that the meeting clause would not be used to consistently disrupt productive work on projects.

200. The MOU did not represent a significant watering down of the enterprise agreement conditions.

Queensland Train Manufacturing Project

201. The Queensland Train Manufacturing Program (**QTMP**) is a $9.5 billion project to build 65 new six-car passenger trains at a purpose-built facility in Torbanlea. It also includes the construction of a maintenance and stabling facility in Ormeau.

202. Through a partnership with Downer Group, John Holland is designing, building and commissioning the Torbanlea facility. The construction of the Torbanlea facility includes the construction of:

(a) a purpose-built manufacturing building;

(b) testing facilities and train tracks connection to the North Coast rail line;

(c) an administration building and car parking area;

(d) the primary access road from the Bruce Highway; and

(e) a secondary access road from Ritchie Road.

203. QTMP was subject to the BPPs and BPIC. Consequently, John Holland negotiated a project-specific Greenfield Agreement with the CFMEU to cover the building works in relation to the Torbanlea facility. It was necessary for John Holland to negotiate a project specific EA, rather than rely on the JHQ 2023 Building EA, to ensure a roster patter could be put in place that was appropriate for QTMP.

204. On 13 June 2024, the FWC approved the *John Holland Queensland Pty Ltd QTMP Building Project Agreement 2024 – 2028.* A copy of the approval decision attaching a copy of the EA appears at *Application for approval of the John Holland Queensland QTMP Building Project Agreement 2024 – 2028* [2024] FWCA 2185.

205. I am aware that there was a CFMEU delegate engaged by a labour hire provider, Lindores Pty Ltd, on QTMP named Jason Bushnell.

206. On or around 26 March 2023, it was reported to John Holland that Mr Bushnell had used abusive language towards the Project Director (Lucas Goodwin) in that Mr Bushnell:

(a) called the Project Director a '*dog cunt*' and a '*lying cunt*'; and

(b) said that the Project Director and a member of the John Holland leadership team '*can go and get fucked*'.

207. It was my understanding that Mr Bushnell was very difficult for our site team to manage. He would raise various safety issues requiring consultation and engagement with the CFMEU which frequently delayed the project. Mr Bushnell was quite difficult in terms of how he wanted issues managed. It seemed that Mr Bushnell wanted to stop work every time there was an issue, no matter how minor. This had productivity impacts on the project however I am not able to comment on any specifics beyond the above issue.

208. Mr Matthews and I raised Mr Bushnell's behaviour with Mr Ingham and Kane Lowth, Assistant State Secretary of the CFMEU. I am not aware of whether any action was taken by the CFMEU at this time. However, Mr Bushnell's behaviour improved for a time.

209. Mr Bushnell was ultimately moved off the project in late 2024 with the understanding of the CFMEU.

After BPIC was suspended

210. Following the suspension of the BPPs and BPIC in November 2024, John Holland has been able to maintain a separation from the CFMEU in respect of its civil and infrastructure work. It has done this by engaging with the AWU as the primary union in the civil construction space as required.

211. John Holland has declined requests from the CFMEU to enter into project specific EAs in respect of civil infrastructure projects commencing after November 2024. It has done this because the terms usually sought by the CFMEU would not meet operational needs.

212. However, despite the suspension, GCLR3 remains bound by the GCLR BPIC and the GCLR3 EA which further embeds the core issues of BPICs, exacerbating subcontractor reluctance and further narrowing the pool of bidders.

213. On the GCLR3 Project, JH continues to face significant cost and productivity challenges due to BPICs and expects these issues to persist until project completion.

Waterfront Brisbane Stage 1

214. Waterfront Brisbane is a $2.1 billion project being delivered by Dexus. It is designed to transform the existing Waterfront Place and Eagle Street Pier sites into a global business and tourist destination. Stage 1 of the project involves the development of a 49-storey building incorporating office and retail space and a new riverside walk with approximately 9,000sqm of open space.

215. In June 2022, JHQ was awarded the contract for Waterfront Brisbane Stage 1.

216. In 2024, the CFMEU applied significant pressure on John Holland to change glass suppliers. John Holland intended to source the required glass from an overseas manufacturer and have it installed by a local provider. The CFMEU pushed for a local manufacturer to be used at an additional cost of approximately $15 million. Ultimately, no change was made to the glass supplier.

217. However, while discussions with the CFMEU occurred, the CFMEU removed flexibilities around working overtime and weekends that had previously been in place on the project. Prior to the issue being raised, approval to work on Saturday's was usually provided by the CFMEU. Additionally, workers refused to work in certain areas of the site based on alleged 'safety concerns' about falling glass from the neighbouring Dexus site. This had not been an issue on the site prior to the CFMEU making the request for John Holland to change suppliers.

218. These restrictions obviously caused delays to productivity and unless it can be made up, likely to increase cost on the project.

I affirm the contents of this statement are true.

Signature of Deponent	

ELANORA	
Place	Date 30/01/2026

Helen Crawford

Before me (signature of witness)

JUSTICE OF THE PEACE (QUALIFIED)
QUEENSLAND GOVERNMENT
Reg.No.: 125430
DEPARTMENT OF JUSTICE

HELEN CRAWFORD

Full name of witness (please print)

Justice of Peace (Qual)

- [x] Justice of the Peace (JP #   )
- [ ] Notary public
- [ ] Lawyer
- [ ] Other authorised person (specify)