



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

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

**PUBLIC HEARING
BRISBANE MAGISTRATES COURT**

**TUESDAY, 16 JUNE 2026
AT 10.00 AM**

DAY 32

APPEARANCES

**Mr S Wood AM KC - Commissioner
Mr A Meagher KC - Counsel Assisting
Mr J Donnelly - Counsel Assisting
Mr D de Jersey KC - Counsel for the State of Queensland
Ms M Brooks - Counsel for the State of Queensland
Mr C O'Grady KC - Counsel for the CFMEU
Administration Ms F Fox - Counsel for the CFMEU
Administration
Mr H Clift - Counsel for the CEPU, ETUQ, PGEUQ**

<THE HEARING RESUMED AT 10.00 AM

COMMISSIONER: Deal with appearances. Mr Meagher, you appear with Mr Donnelly as counsel assisting?

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MR MEAGHER: Yes, Commissioner.

COMMISSIONER: Mr O'Grady, you continue to appear with Ms Fox for the administrator?

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MR O'GRADY: Yes, Commissioner.

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

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MR DE JERSEY: Yes, Commissioner.

COMMISSIONER: And Mr Clift, you appear as counsel for the CEPU, the ETU Queensland and the PGEU Queensland?

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MR CLIFT: Yes, Commissioner, thank you.

COMMISSIONER: Thank you. Mr Meagher.

25 **MR MEAGHER:** Thank you, your Honour.

COMMISSIONER: Call me that, but it's not going to get you any further.

30 **MR MEAGHER:** I'm sorry, Commissioner, it just rolled off the tongue. I think my learned friend wants to address the Commission before I speak.

COMMISSIONER: Yes.

35 **MR O'GRADY:** Yes, thank you, Commissioner. Can I just raise a matter of concern from my client's point of view?

COMMISSIONER: Yes.

40 **MR O'GRADY:** At 8.50 pm last night, we received some 24,562 pages of material. That included the three expert witness reports for this week, namely, Professor Paolo Campana, witness bundle of 1,775 pages, Professor Federico Varese, in a witness bundle of 1,762 pages, and Ms Natalie Faulkner's witness bundle of 3,899 pages. We wrote to the Commission on Friday 12 June at 2 pm as we were concerned we had not received any statements for this week. At paragraph 5 of that letter, we noted
45 that the hearings commence on Tuesday 16 June. Your letter asks the parties to make any application to cross-examine in writing as early as possible. Until witness

materials are provided, we are not in a position to assess whether any such application should be made or otherwise to prepare properly for the hearings.

COMMISSIONER: Yes.

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MR O'GRADY: Each of the witness statements for this week directly targets the CFMEU and its misconduct and may well require an answer from the administration as to how those issues are addressed in the statement and/or may require challenge.

10 We also have raised with the Commission that we have concerns generally about the lack of information provided to the administrator about the Commission's processes, and to that end we wrote on 10 June where we asked which witnesses will be called and the provision of any form of timetable.

COMMISSIONER: Sorry, what date is 10 June? What's that, last Wednesday?

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MR O'GRADY: Yes.

COMMISSIONER: Last Wednesday. Yes.

20 **MR O'GRADY:** And we asked for the identification of further case studies. And as the Commission will appreciate, from my client's point of view, whilst we want to assist the Commission, we do need to have some idea about what's coming under and who are the witnesses that are going to be called so that we can adequately and sensibly and efficiently resource the attendances by the administrator at this hearing.

25 We are conscious of the considerable expense being outlaid to put on this Commission, but we are concerned that the delayed provision of witness statements, such as last night, does nothing to promote the efficient running of this Commission. In short compass, Commissioner, we need more than an eighth of a day to prepare to respond to material of the type that we've been provided with and in circumstances
30 where we are required by the practice note to, in effect, put forward a contrary narrative.

COMMISSIONER: Yes.

35 **MR O'GRADY:** And I'm foreshadowing, Commissioner, that I may well have to make an application tomorrow in respect of some of these witnesses to defer cross-examination, which is not in your interests, Commissioner, but it is just the inevitable consequence of having this bulk of material provided at such late notice.

40 **COMMISSIONER:** I understand.

MR O'GRADY: If the Commission please.

MR DE JERSEY: Could I be heard on that, Commissioner?

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COMMISSIONER: Yes. Do you want to say anything on that, Mr de Jersey?

MR DE JERSEY: Commissioner, the solution may be a grant of leave to cross-examine, if an application to cross-examination is made on a later day when there's been an opportunity to consider the reports. The State would avail itself of that opportunity if it's available. Thank you, Commissioner.

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COMMISSIONER: Thank you. Very well. Mr Meagher?

MR MEAGHER: I wish to say a couple of things in response. The first is that there's no force in the criticism that it's a misuse or somehow a waste of the Commission's time because there's no time in the next three days for cross-examination to occur, so cross-examination would necessarily have to occur at a later date. The second point is that these witnesses can all be made available for cross-examination in the future, and that deals with the true concern of my learned friend. And for those reasons, Commissioner, you can deal with this simply by considering any application, and it can be - the opportunity can be afforded in the future if required.

COMMISSIONER: Well, I think it's - I mean, I'm just looking at the material I've got here on my desk, and if that's the size of the material that was provided to Mr O'Grady yesterday, then I can't see he's going to be in any position to cross-examine this week.

MR MEAGHER: No, Commissioner, and I'm not standing here to be a stick in the mud to say that we would make a submission to you, Commissioner, that that definitely be refused. We'd have to consider the application. The material in respect of the academic experts, I do note, is not controversial in the sense that those materials are academic articles and other academic literature, open-source media articles and transcript references. So there's nothing controversial; there's no prejudice that's likely to arise in that respect. In respect of Natalie Faulkner of FTI Consulting, the documents that Ms Faulkner has primarily relied on in fact originate from the union itself, and indeed, at least some of the concerns that she has or will look into are concerns that the administrator - the then administrator - Mr Irving had.

So I'm not seeking to in any way diminish my learned friend's opportunity to consider whether or not he wishes to cross-examine and make an application, but I do make the point that albeit the provision of materials is later than we would like, but nonetheless I don't think there's likely to be anything particularly controversial in them.

COMMISSIONER: Well, that's really for Mr O'Grady to judge. I mean, you can't really anticipate what he might want to cross-examine about, can you? He's got to be given a chance to read everything, have a look at it, make some assessment. I mean, one thing that the Commission has been required from the start of this Commission to inquire into is the KordaMentha report, which identified some financial irregularities in relation to how the Queensland/Northern Territory branch of the federal union and the state union had been managed over the last four years or so.

And Mr Irving when he came to give evidence in effect supported that general thrust - not the exact conclusions, but that general sense of financial irregularity.

5 It's been some months since he gave evidence. I think Mr O'Grady's client could have been given a bit more time to deal with this before presenting this case study today. One thing I know internally that you're working towards is to give the parties who have been given leave to appear three to five days, assuming it's not urgent, if something happens today, maybe you get no notice, maybe just the witness gets called. But for this sort of material, I think the parties are entitled to a bit more time
10 than the night before, and that's something you might try and strive to achieve next time.

MR MEAGHER: As it pleases the Commission.

15 **MR O'GRADY:** Firstly, I'm grateful to my learned friend for his indication that there won't be any opportunity to cross-examine this week in any event. So that addresses part of the problem. The other part of the problem is more generally moving forward with an eye to having some better idea as to when particular case studies are coming on, who's going to be called, so that my client can sensibly plan
20 so we can best assist the Commission going forward. If the Commission pleases.

COMMISSIONER: I'm just not sure. That might be something you want to take up with Mr Gisonda. I'm just not sure how achievable that's going to be, because it is - for some things, there could be more notice given. For other things, it's just a
25 question of where the investigation leads. They start down this way and then documents come in and they move here and they're just -

MR O'GRADY: Yes, I understand, Commissioner, and I can indicate to the Commission that, as you might anticipate, I have informally raised some of these
30 concerns with Mr Gisonda before taking up your time. But it was in the light of what transpired last night that I felt I should at least put on the record and bring to your attention in a more formal way the concerns that we have.

COMMISSIONER: See if you can get any further on that broader point with Mr
35 Gisonda, and if you can't, then bring it up with me. But I'm completely with you in terms of your complaints about today.

MR O'GRADY: Yes.

40 **COMMISSIONER:** But more generally about giving more than, say, three to five days' notice, I just don't know whether that's going to be achievable, having regard to the way in which the investigation occurs. Sometimes it will be.

MR O'GRADY: Yes.
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COMMISSIONER: But just don't - you just can't tell.

MR O'GRADY: I understand, Commissioner. I've said all I needed to say at this stage. If the Commission pleases.

5 **MR MEAGHER:** And before I commence my address, then, Commissioner, if I can tender first of all the rules bundle. It contains rules dating back to, I think at their earliest, 2001 and there are several iterations of them, and as a consequence it goes for several thousand pages. These are the rules of both the federally registered and the Queensland registered CFMEU and CFMEUQ, and I tender that.

10 **COMMISSIONER:** How long do they go back? How far back?

MR MEAGHER: Because they include some of the precursor bodies, in some instances they go back to 1957, but most of them are post-2000.

15 **COMMISSIONER:** What do you want to do about the - sorry, you keep going.

MR MEAGHER: It's every set of rules that we've been able to identify historically in respect of the CFMEU.

20 **COMMISSIONER:** What do you want to do about these documents, Mr O'Grady? I mean, you haven't -

MR O'GRADY: I have no objection to them being tendered, Commissioner.

25 **COMMISSIONER:** Mr de Jersey?

MR DE JERSEY: No objection, Commissioner.

30 **COMMISSIONER:** How do you describe them? 12,899 pages of the registered rules or the rules?

MR MEAGHER: Just the rules, Commissioner.

35 **COMMISSIONER:** Of the rules of the - what will we describe it as?

MR MEAGHER: The federally registered CFMEU and the State of Queensland registered CFMEUQ.

40 **COMMISSIONER:** And predecessors?

MR MEAGHER: Yes.

COMMISSIONER: What exhibit number are we going to give this?

45 **MR MEAGHER:** FM-1, Commissioner.

COMMISSIONER: Sorry?

MR MEAGHER: FM-1.

5 **COMMISSIONER:** So the bundle of, what was it, 12,899 pages of rules of the
federally registered union known as the CFMEU and the state registered union
known as the CFMEUQ, and the predecessor unions, from 1957 until present, will be
FM-1.

10 <**EXHIBIT FM-1 BUNDLE OF 12,899 PAGES OF RULES OF THE
FEDERALLY REGISTERED UNION KNOWN AS THE CFMEU AND THE
STATE REGISTERED UNION KNOWN AS THE CFMEUQ AND THE
PREDECESSOR UNIONS FROM 1957 UNTIL PRESENT**

15 **MR MEAGHER:** Thank you, Commissioner. And next I tender a tender bundle for
this case study of 5,319 pages, and that tender should exclude section H of that
bundle. And if I can just explain that, there's been objection received in respect of
some personal details in respect of the documents included in section 8.

20 **COMMISSIONER:** Section 8?

MR MEAGHER: Section 8.

COMMISSIONER: Yes.

25 **MR MEAGHER:** H, sorry.

COMMISSIONER: H.

30 **MR MEAGHER:** H. And we have agreed to deal with that by effectively uplifting
it, redacting those personal details, and I'll tender section H tomorrow as redacted.

COMMISSIONER: What are these documents in the 5,319 pages? What type of
documents are they?

35 **MR MEAGHER:** If you go to the index, the index is the simplest way of describing
them, and they are documents concerning the Building Employees Redundancy
Trust. So, Commissioner, you should see -

40 **COMMISSIONER:** Yes, I've got it.

MR MEAGHER: - in the index there, they're items 86 through to 102.

COMMISSIONER: Yes. I see. You want that excluded?

45 **MR MEAGHER:** And we'll tender the redacted versions tomorrow.

5 **COMMISSIONER:** These are financial documents of the two CFMEU entities, more particularly the Queensland/Northern Territory branch of the Construction and General Division of the federal entity, and some associated entities. I mean, there's BERT, there's BUSS, there's Future Skills, there's Windsor Management Insurance Brokers. What's the relationship between all these financial documents? Is it part of some ecosystem, is it?

MR MEAGHER: I think, Commissioner, you might be describing the entire bundle.

10 **COMMISSIONER:** Yes.

MR MEAGHER: We're only dealing with section H at the moment, which is -

15 **COMMISSIONER:** I understand. They're the ones you want to exclude.

MR MEAGHER: Yes.

20 **COMMISSIONER:** But I'm just asking, how do we - what's the connection between everything else in sections A through K, the 153 documents - well, it's now 137, because you're not tendering the 16 documents at section H.

MR MEAGHER: They can be described usefully as corporate records pertaining to the CFMEU, the CFMEUQ and related entities.

25 **COMMISSIONER:** Okay. Is there any objection, Mr O'Grady?

MR O'GRADY: No, Commissioner.

30 **COMMISSIONER:** Mr de Jersey?

MR DE JERSEY: No.

35 **COMMISSIONER:** I said there were 16 documents in section H. It's actually 17. So 5,000 - no, that's not right to say it's 5,319 pages, because you're excluding some.

MR MEAGHER: Commissioner, you may not be content to deal with it in this way, but if we can tender it subject to section H being uplifted and replaced with the redacted documents tomorrow.

40 **COMMISSIONER:** All right.

MR MEAGHER: And that way the page numbers stay the same.

45 **COMMISSIONER:** Are you content if we proceed that way, Mr O'Grady?

MR O'GRADY: Yes, Commissioner?

COMMISSIONER: Mr de Jersey?

MR DE JERSEY: Yes.

5 **COMMISSIONER:** All right. Subject to the 17 documents in section H being uplifted and redacted and replaced tomorrow, 5,319 pages comprising 153 corporate records of the CFMEU and CFMEUQ and related entities, will be FM-2.

10 **<EXHIBIT FM-2 SUBJECT TO THE 17 DOCUMENTS IN SECTION H
BEING UPLIFTED AND REDACTED AND REPLACED TOMORROW 5,319
PAGES COMPRISING 153 CORPORATE RECORDS OF THE CFMEU AND
CFMEUQ AND RELATED ENTITIES**

15 **MR MEAGHER:** Thank you, Commissioner. And in the course of today, I'm going to refer to three aide-mémoires, and I just want to check that they've been provided to the Commission and to my learned friends at the bar table. The first should be a document titled CFMEU Diagram and Charts.

20 **COMMISSIONER:** I've got that one.

MR MEAGHER: I might just check at the bar table, if I may.

MR O'GRADY: I don't think we've received that one.

25 **MR MEAGHER:** The second is a document titled Officeholders and Delegates.

COMMISSIONER: I've got that one.

30 **MR O'GRADY:** We don't have that one either, Commissioner.

MR MEAGHER: And the third is a document titled Rules Comparison. And again, I suspect my friends at the bar table won't have it, and it will be circulated.

35 **COMMISSIONER:** It's all been given to me in a folder like that, Mr O'Grady, with, I don't know, about a hundred pages or so of the aide-mémoire.

MR O'GRADY: Yes. As I say, we haven't got it, but I understand we'll get it, and I don't have any objection to it going in at this stage.

40 **COMMISSIONER:** Do you want to -

MR MEAGHER: I'm not seeking to tender it. I just rely on them by way of effectively submission at this point.

45 **COMMISSIONER:** Well, I think you should mark it, even if it's not going to be evidence, because someone's going to want to refer to it later on, I imagine. It's such a comprehensive aide-mémoire.

MR MEAGHER: Perhaps I can mark it for identification, Commissioner. My point is I don't seek to rely on them for the truth of the contents of them.

5 **COMMISSIONER:** No, I understand. Mr McLean tendered - "tendered" is probably not the right word - had marked an outline of submissions that was received on the same basis. So would you be content for it to be received on that basis, Mr O'Grady?

10 **MR O'GRADY:** Yes, Commissioner.

COMMISSIONER: Sorry, Mr Clift. I didn't ask you about objections before. I'm sorry about that.

15 **MR CLIFT:** Not at all, Commissioner.

COMMISSIONER: We hadn't seen you for a while.

20 **MR CLIFT:** No. If I have an objection, I'll let you know, Commissioner.

COMMISSIONER: Thank you. Mr de Jersey?

MR DE JERSEY: No issue with proceeding that way, Commissioner.

25 **COMMISSIONER:** So we'll call this counsel assisting's aide-mémoire to the financial - what's this case study called? Financial misconduct?

MR MEAGHER: Yes, financial misconduct introduction.

30 **COMMISSIONER:** Introduction, comprising - I don't know how many pages there are here.

MR MEAGHER: I don't know either, Commissioner. Can we provide that detail to you and update the name of it?

35 **COMMISSIONER:** Why don't we deal with this after the break and we'll mark it then, and by then Mr O'Grady, Mr de Jersey and Mr Clift will have a copy of it, I imagine.

40 **MR MEAGHER:** Thank you, Commissioner, and if there's nothing further, may I commence my address?

COMMISSIONER: Yes. Thank you.

45 **MR MEAGHER:** Commissioner, this case study, as I've just said, is an introduction to financial misconduct, and this theme addresses several of the terms of reference, and I won't traverse them all, but, for example, terms of reference 3(a)(0 misconduct

by the CFMEU against stakeholders, noting that misconduct includes not only corrupt acts or omissions but also unlawful or morally reprehensible behaviour, and I particularly emphasise that, and any scheme or arrangement designed to circumvent the law, and I also emphasise that.

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Stakeholders is defined in the terms of reference to include both employers and employees, and the various other terms of reference, such as 3(a)(viii), payment by the CFMEU of monetary orders for which the CFMEU officials are personally liable, is something that I will focus on shortly. There are also irregularities in financial
10 dealings by the CFMEU that will be examined. Any conduct that amounts to a breach of any law, policy or professional standard, particularly those that are designed to procure an advantage for an individual, the CFMEU, a CFMEU official or another person or organisation.

15 Again, these are matters that will be introduced over the course of the next three days, and the relevant terms of reference for that particular issue is 3(b). And there are several others, but I don't intend to traverse them all now.

COMMISSIONER: I think there have been a couple of examples of evidence - it's
20 all yet to be tested, of course - but of attempts to circumvent the law. One was - arose last week, and it had arisen before, which is this attempt to move the officials from the federally registered union to the state registered union in circumstances where they'd lost their federal permit or did not have a federal permit designating them as fit and proper persons to exercise federal right-of-entry laws.

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And there was also the issue that Mr Irving gave evidence about, which was the attempt to - he gave evidence about two things. One of them was the attempt to transfer assets from the federally - from the Queensland/Northern Territory branch of the Construction and General Division of the federal union to the state registered
30 union and then have the state registered union pay the fines or penalties incurred by officials of the federal union. I think they're two at least that have come up. There may be others, but two that have been the subject of some evidence previously.

And Mr Irving also gave evidence about the fact that the membership streams that
35 should have been going to the federal union, he calculated that about \$50 million or so over a number of years had been diverted to the state union. There might be many others. You might have discovered a whole lot of others, but they're three that have come up in the evidence so far.

MR MEAGHER: Yes, and I might say, Commissioner, if it's of interest, that the administrator's concerns have provided considerable guidance to us in what we've looked at, because clearly the administrator was very concerned about some of these issues. It's necessary - in order to frame it so that the Commission can consider whether or not misconduct is or is likely to have occurred, it's necessary to set out the
45 corporate structure of the two registered organisations, that being the federally registered organisation and the state registered organisation.

It's also necessary to outline in some detail the internal governance structure and rules for each of those organisations, and that is going to take some time but it's necessary to do it, because otherwise it's not easily explained how it is that the union might have contravened or the officials might have contravened those rules. And then it's also necessary to describe and analyse the network of related entities. By "related entities" I mean entities that are related to the CFMEU, either because it has some interest in them, by which I mean an ownership interest, a financial interest, or because it has common directors controlling it with officials of the CFMEU.

That will provide the framework against which financial misconduct, to some degree, can be investigated. Of course, there's a broader question in respect of unrelated third parties who have obtained benefit, and you've heard various case studies in respect of some of those entities. I'm not going to traverse any of them in the next three days, but that's not to say they're not the subject of financial misconduct inquiries as well.

It's also necessary, and we'll do this in primarily closing, just probably for 20 minutes or half an hour at the end of the three days, to touch upon some of the laws that are of immediate relevance. And just to provide a brief outline, the CFMEU and its related entities involve trusts, corporations, superannuation. This structure is such that necessarily, in considering financial misconduct, it's necessary to consider taxation law, trust law, competition law, industrial relations law and corporations law, as well as superannuation law. So it is quite a broad-reaching inquiry in terms of its scope.

And you may have noted, Commissioner, that none of that canvasses criminal law. Of course, some financial misconduct does attract criminal sanctions. That's not something I'm going to seek to cover in the next three days, but it might be something that we touch upon later. Just to give a brief preface of what -

COMMISSIONER: So do I understand, what you're going to deal with, at least open on, in the next three days is at the first level the misconduct or impropriety in terms of any financial irregularities as between the federal union and the state union, and then secondly there is what I would call an ecosystem, you call related parties, but a group of entities that, in effect, hang off or thrive because of the activities of the state and federal union, and you're going to look at any financial irregularities or impropriety in relation to that ecosystem. But in relation to unrelated parties - in my mind, I think of these people as bad actors, but they could be completely legitimate commercial parties who are obtaining a benefit - you're not going to deal with that. It's just the first two levels.

MR MEAGHER: Yes, but if I might say something further, we also want to address the use the union made of the dual registration at federal and state level and how they obtained benefits for their members via use of those two structures, and that is most particularly exemplified by examples of how effectively the CFMEU or the CFMEUQ was able to subvert the effect of personal payment orders. And, Commissioner, you've already heard some evidence about that, but for the purpose of

identifying the misconduct that's potentially involved - and just pausing there for my learned friends, misconduct in the sense that it's morally reprehensible at least - it's necessary to traverse some examples of that again and to point out how it is that the union, broadly, by which I mean those two registered organisations, obtained
5 benefits for their people.

The second way that we are going to spend the day on tomorrow is the use of enterprise agreements to obtain benefits. Now, they may have been used to obtain benefits for many people. In the next couple of days, the only thing we're really
10 going to look at is how they were used to mandate recurring payments back to the CFMEU, so that's annually recurring payments, and how those payments were effectively disguised in the sense that they were not disclosed to the contractual counterparty. And then lastly, on Thursday, we're going -

15 **COMMISSIONER:** I assume not disclosed to the members who voted up the enterprise agreements either.

MR MEAGHER: And this is a point that in fact is relevant in several senses, the one that you have just mentioned, Commissioner, because that goes straight to the
20 obligations of the officeholders and also the obligations under legislation in obtaining compliance, but it goes to a broader point, which the academics that we're going to call to give evidence on Thursday identify, particularly Professor Campana, that the concerns about the misconduct of the union in respect of financial matters shouldn't be seen by the public at large as limited to concerns that are in the broader
25 public interest. They are, but they are also concerns that are in the interests of the members of the union.

COMMISSIONER: Well, there was an example of that in the Rosenlund case study that Mr Gisonda introduced, where he identified - it didn't come from the enterprise
30 agreement per se, but the enterprise agreement might have facilitated it, but one of either the organisers, Mr Cox, or the delegate - I have forgotten the delegate's name; he was a boxer - encouraged or insisted - I can't remember how forceful he was - that the employees of Rosenlund join BUSSQ as their super fund in circumstances where he didn't have a financial services licence and in circumstances where their
35 performance over the last decade was about 2 per cent, 1 or 2 per cent worse per annum than Cbus.

MR MEAGHER: Yes. And that is one of several examples. But if I might say, respectfully, to the way you've enunciated that, Commissioner, that fits very neatly
40 within the sorts of things that we are inquiring into and wish to address you on. The other purpose of the academic experts being called is in the context of both gentlemen, Professor Varese and Professor Campana, being regarded as leading global academics in criminology and specifically in respect of organised crime, is to understand the contemporary meaning of organised criminal governance, as distinct
45 from organised crime more generally, and how it is that the union had the opportunity and may have engaged in governance of that nature.

And if I can just preface that briefly by saying broadly, that is the exercise of market power to the detriment of consumers, workers, union members and the community at large, and so in this sense, it might be that some criminal activity is involved in terms of, for example, allegations of violence that the Commission has heard, but more particularly it's of particular interest to the "morally reprehensible" terms of reference, because it's concerned with the exploitation of legal rights to the detriment of the community, and exploitation in the sense that it is the use of those rights in a way that was never the intention of the legislation that provides the rights.

Now, with that said, I'd like to start by addressing the Commission on the organisational structure and governing - in fact, I won't do that. I'll do it in a slightly different order. I'll start by addressing the Commission on a point that you touched upon, Commissioner: the payment of personal payment orders. And just to frame that, it's a matter of record that since 2015 the Federal Court has, at various times, imposed pecuniary penalties on CFMEU officials, combined with orders requiring the CFMEU official to pay those penalties personally and not to seek or receive reimbursement from the CFMEU or its related entities. These orders have been the subject of appeal to the High Court, and indeed, respectfully, the High Court has commented that the union - the CFMEU broadly became well known for its contumacious disregard of court orders in this respect.

COMMISSIONER: I think that was one of the things Mr Irving said when he came to give evidence. It was something - I can't remember how far back he went, a decade or a decade and a half, but he said around - for whatever period it was, there were around a thousand - I could have that number wrong - contraventions by the union, and the next biggest contravener was around 10 or so. It was about a hundred times the size. I'm happy to be told I'm wrong about that, that I'm out by an order of magnitude, but I think that was what Mr Irving said. And what the - the point of the personal payment orders, that amendment that was made, let's say, mid-2010s, was to try to make it less easy for the CFMEU to flout the law by preventing it from funding its officials.

So the officials had to then become personally liable, and that was seen to be an additional detriment to - or an encouragement to not break the law, because you as the official would have to pay the penalty yourself. So it was in the - the amendment was made in a context of trying to stop the lawlessness of the CFMEU. I think the amendments were directed - when the amendments were made, the CFMEU was called out as the reason. I could be wrong about that, but I seem to remember that was the case. So you have to understand that these amendments were designed to try to achieve or to break the culture of lawlessness, as it was perceived.

MR MEAGHER: Yes. And that, of course, has been ineffective. And just before I move to that point, just for my learned friends, I was quoting the High Court from *Australian Building and Construction Commissioner v CFMEU* (2018) 262 CLR 157 at paragraph 131. Thank you, Commissioner, for that direction as to the basis for those laws. The easiest way to address you on this is to provide an example, and a convenient example comes from 16 June 2022, when Justice Logan imposed a

pecuniary penalty on a CFMEU member, Mr Beau Seiffert, of \$30,000, and he made orders, or his Honour made orders, with the object that Mr Seiffert be prevented either directly or indirectly from being indemnified as to 50 per cent of the penalty, so \$15,000, by the CFMEU. As with all these orders -

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COMMISSIONER: Have you got a copy of that order? Is it here in the materials anywhere?

MR MEAGHER: I do. Mr Operator, could I ask you to go to page 5241.

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COMMISSIONER: You're in the wrong bundle. That's the rules. It's the other bundle. It's exhibit 2.

MR MEAGHER: And if I can start here, this is the penal notice which the practitioners in the hearing will be familiar with, but I just wish to draw attention to the penal notice. Could you enlarge that, please, Mr Operator. And you see here, Commissioner, particularly I draw attention to that the penal notice is addressed to the CFMEU. That's the federally registered union. And the second respondent I draw attention to, Mr Beau Seiffert. And you see it contains the usual provisions about imprisonment and so forth for disobeying it.

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And then, Mr Operator, if I could ask you to go to the next page of the court book, and you see there, Commissioner, that's the court's declaration. And then the next page, please, Mr Operator, at 5423 and enlarge underneath "the court orders that". And you see there, Commissioner, these are the orders I've just been addressing you on, and perhaps rather than read them out, I'll just give you a moment to cast your eye over them.

25

COMMISSIONER: So the official had to pay 30,000, and the CFMEU was only able to subsidise the payment of that penalty in the order of 15,000. Is that what it means?

30

MR MEAGHER: Yes. And you see most particularly the orders in 13(a) and (b) are designed to achieve that effect.

35

COMMISSIONER: Yes. And this was at a time when the old coal mining union was still a part of the CFMEU before it had split off, which must have been around this time. So at this time it was the federally registered CFMMEU, because the mining division was still part of it.

40

MR MEAGHER: Yes. And if I can just describe, without going to it, or I can take you to it if it's convenient, but Mr Seiffert had admitted to having threatened a subcontractor, and the threat was that the CFMEU would withhold work on multiple sites to coerce the appointment of a particular health and safety representative in breach of section 52(c) of the Building and Construction Industry (Improving Productivity) Act 2016, and this was conduct that his Honour described as completely unlawful and as coercive threats.

45

COMMISSIONER: So coercing, what, the health and safety representative to do what?

5 **MR MEAGHER:** No, the threat was made to a subcontractor, and the intent was to coerce the appointment of a particular health and safety representative.

COMMISSIONER: I see. So you get your own appointed health and safety representative rather than an elected one?

10

MR MEAGHER: Yes.

COMMISSIONER: And the way in which, I take it, that order 13 was avoided was that the CFMEUQ paid the fine, not the federally registered body?

15

MR MEAGHER: That's correct, and I'll come to that in the minutes and so forth that effected it so that you can see how it was done. And if I might just provide this one example, and then I'll identify a few other examples, without going to the documents, where a similar pattern was adopted.

20

COMMISSIONER: So Mr Seiffert suffered no financial penalty himself personally?

25 **MR MEAGHER:** Yes, that's correct. The other order in this order that I'd like to draw your attention to is order -

COMMISSIONER: That's because I think a year earlier - I can't remember Mr Irving's evidence - a year or two earlier, straight after whichever election it was, some services agreement was entered into whereby at least the membership monetary - sorry, at least the membership fees as an income stream were transferred to the state union. I think the assets were as well, and it was those assets that were then used to pay - that is, the assets that were the assets until the day before, the assets of the federal union were used to pay the fine of Mr Seiffert.

35 **MR MEAGHER:** That's correct, yes.

COMMISSIONER: Well, I guess you don't know that, do you, because the state union might have had its own assets, so -

40 **MR MEAGHER:** Well, as we will come to, the two registered organisations effectively shared the same asset pool, but the way they treated it in their financial records changed as a result of the services agreement that you've referred to. If I can just draw the Commission's attention to order 16 on the next page, which formed part of these orders, and if I could just ask you to enlarge that, Mr Operator. You see as
45 part of these orders, the CFMEU - that's the federally registered body - was also ordered to pay \$750,000 in respect of the same contraventions. And so this was

considerably serious, in the regard of the court. The other point to note - and thank you, Mr Operator, you can shrink that - the other -

5 **COMMISSIONER:** There was no prohibition on the CFMEU Queensland paying that three quarters of a million dollars.

MR MEAGHER: There's no prohibition in the orders, no.

10 **COMMISSIONER:** Presumably that's what happened there as well.

MR MEAGHER: Well, prohibition is a term that might carry with it the suggestion that there is with certainty a breach of some legislative provision, and there might be a question as to whether obligations to members were breached, because the membership is not identical of the registered organisations.

15 **COMMISSIONER:** No, I understand that, but just in terms of - as a result of this services agreement, I assume the federal body didn't have the money to pay that fine, so it was paid by the state union, I assume. But maybe you'll come to that.

20 **MR MEAGHER:** The analysis is complicated by the - essentially there's one asset pool, and the office holders are the same, controlling the two bodies, and it's not always apparent which body is exercising authority. The point we make about this is the one that you've identified, Commissioner, that Mr Seiffert in this case didn't feel any sting or pain from the order, which was the purpose of the orders, to prevent him
25 engaging in such conduct. And it was, of course, the CFMEUQ that appears to have paid it, but as I've noted, the funds were intermingled between the two organisations, and that complicates the analysis. Those surplus funds were - sorry, surplus funds were, from time to time, passed between the two entities, and in fact there's a lengthy history of that occurring, going back to approximately 2012/2013, certainly, and I'll
30 address you on that.

The way in which this payment was made was that the state division executive - so that's of the CFMEUQ - met and considered a request from Mr Seiffert for financial assistance in relation to the penalties. And the meeting minutes of that, Mr Operator,
35 if I could ask you to go to page 622 - and on this page, if I could ask you to go to the second half of the document or page, and enlarge it. So if you can just - and you see at the top sentence there, Commissioner, the correspondence addressed to the state secretary from temporary organiser Beau Seiffert regarding relief of his financial distress was tabled, and then the state secretary, so that's Mr Ravbar, determined that
40 it was appropriate to abstain from deliberations on this point, and then the request was considered.

And in paragraph 1, you see the particular decision referred to, and then paragraph 2 sets out the orders that I've just - or refers to the orders that I've just taken you to, and
45 paragraph 3, Mr Seiffert is recorded as having requested relief in respect of those orders. And could, Mr Operator, I ask to you go to the next page.

COMMISSIONER: Just before you do, what's the significance of a temporary organiser? Does that mean he was earlier an organiser of the federally - employed by the federal body but was temporarily assigned to the state body, or does it mean something else?

5

MR MEAGHER: No, it's a - I'll come to it later in the day. If I can put it this way, it's a recognised category within the CFMEUQ. It's a term they use to describe particular people. And perhaps to just identify that, Mr Operator, could you go to the charts aids, page 5. Is that large enough for those in the courtroom to be able to read? You see there the term "temporary organisers", and this is our summary of it, but this is the most useful way of identifying it at the moment. You see there, they're appointed for up to six months and they're not regarded by the rules as officers, but they are a creature of the rules, if that makes sense. So it's provided for in the rules. And this is different to the federally registered organisation and the various terms used in it.

15

COMMISSIONER: I wonder what the point of it was? Try someone out or - anyway. But was Mr Seiffert previously an organiser employed by the federal union, prior to being a temporary organiser of the state union or, more correctly, of the Construction and General Division of the state union?

20

MR MEAGHER: Can I return to that subject? I don't have the answer to that off the top of my head. But just on temporary organisers, they work to the direction of the state executive in the CFMEUQ is the other point about them. And I'll come back to this, later in the day, perhaps open to being misunderstood, in the sentence that it's not as though they're just there for a week or something of such short duration.

25

COMMISSIONER: So they're no different to a proper organiser in that respect, that they're subject to the authority of the state divisional executive.

30

MR MEAGHER: Yes.

COMMISSIONER: Though obviously a temporary organiser can't be elected. It's only an appointed role, if that chart's correct, whereas an organiser can be either elected or appointed.

35

MR MEAGHER: Yes. Are you content if I go back to the minutes, Commissioner? Mr Operator, can you bring up page 622 of the tender bundle, exhibit 2. And if I can now ask you to go to the next page - which continues on from what I've just shown you, Commissioner - and perhaps if I just ask you to enlarge the top half of it to start with. This continues on. You note the powers are noted there. I particularly draw attention to paragraph 5, where rule B70 is relied upon. This rule provided for donations, loans and grants. This is a rule of the CFMEUQ, and it is this rule that the organisation relied upon to make payments to members or donations to members for the purpose of them using those moneys to satisfy personal payment orders.

40
45

And, Mr Operator, can you now go down and enlarge paragraphs 7 and 8 to start with. You see here in 7 the justification for providing the assistance is set out, and then paragraph 8 sets out the considered legal basis on which the CFMEUQ could make this assistance available. And the primary concern, of course, of the CFMEUQ executive was whether or not they would be in contempt of court. And that must have been a live concern, because the officers of the CFMEUQ were largely the same as the CFMEU federally registered body.

Can you please enlarge now paragraphs 9 and 10, Mr Operator. You see here that the concern is reflected in advice sought from Hall Payne Lawyers, and the advice is apparently summarised in these minutes that the CFMEUQ is a separate legal entity and was not a party to the relevant case, and the Federal Court could not impose such an order on the CFMEUQ, and nor was such an order intended. And then if I could ask, Mr Operator, you to enlarge paragraphs 11 and 12. Thank you.

COMMISSIONER: That's okay as far as it goes. I mean, there's nothing to prevent a citizen who's upset that Mr Seiffert has been fined going to a GoFundMe page and raising money for him.

MR MEAGHER: That's right, and I'm not standing here seeking to identify some case that the executives were in contempt. And of course, properly, that's a matter for the Federal Court, not the Commission. But the relevance of this is to just identify what the concerns of the executive were. And certainly, having obtained legal advice, whether or not one quibbled with the basis of the legal advice, so far as the executives were concerned, their state of mind presumably they would say was such that they relied honestly on the legal advice, and that would be, with respect, in my humble submission, a strong point against contempt being found. But this is a relevant and important step in how these two structures were used and the justification that the executive believed it had in using these two structures in this way.

The last point of note here is, in fact, just below paragraph 13, Mr Operator, there's a sentence that begins "Hall Payne Lawyers". You see that a Mr Dale Blackmore of Hall Payne Lawyers addressed the executive members regarding the request and took questions. So it was on this basis then, or with these matters having occurred, that the decision that you can see there, Commissioner, was made, to make financial assistance available in the form of a donation of \$15,000. And that serves as an example of the way in which the two registered organisations were used to effectively defeat the intent of the legislation, that being that someone such as Mr Seiffert, having been found guilty and subject to such orders, should feel the sting of those orders. And this meant, of course, that he did not. And this, of course, provides a mechanism that could be used with disturbing ease, and -

COMMISSIONER: With what, did you say?

MR MEAGHER: Disturbing ease is how I described it, to avoid the intent of such orders. The intent of Parliament was to strengthen the democratic accountability of

5 registered organisations by requiring unions to disclose the amount, purpose and destination of donations, and this occurred in end-of-year financial reporting. The register in the relevant end-of-year accounts in this particular example were attested to being true and correct by Mr Ravbar, and they describe the donation of amounts in fact totalling \$39,000 for Mr Seiffert as financial hardship, and that can be found at page - or commencing at page 5120, Mr Operator.

10 **COMMISSIONER:** So you're saying there's some rule that was passed around this time by the Federal Parliament requiring donations to members to be identified in the accounts?

MR MEAGHER: Yes, it's required in the accounting, and in fact, that occurred.

15 **COMMISSIONER:** But this is a state union - I mean, I know there's a certain opacity about the way in which - who controlled which moneys, but that looks like there's an attempt to say that those moneys came from the state union, or more correctly, the Construction and General Division of the state union. So why would a federal law have anything to do with the disclosure of those amounts? The whole point of the scheme is to get the money away from - if it is a scheme -

20 **MR MEAGHER:** Yes.

25 **COMMISSIONER:** - get the money away from the federal union into the state union. The state union can then subsidise the penalties imposed upon officials who break the federal laws that can't be subsidised by the federal union. Well, on that analysis, this is a payment by the state union.

30 **MR MEAGHER:** Yes. The state union nonetheless has to file financial statements for the year.

COMMISSIONER: Under state law?

35 **MR MEAGHER:** Yes. But also - and I'm just trying to find the start of the document, because it will make more sense.

COMMISSIONER: Yes, because you look at it - that seems odd, but maybe there's some trick to the law, but that's -

40 **MR MEAGHER:** So, Mr Operator, if you can go to page 5064, and if you just enlarge the title so the Commissioner can see the organisation. You see these are the financial statements for the year ended 31 March, and then -

45 **COMMISSIONER:** But who is that? Is that the financial statement for the Construction and General Division of the body registered under state law and known as the CFMEUQ? It looks like it. It doesn't look like the Queensland/Northern Territory branch of the Construction and General Division of the federal union.

MR MEAGHER: Yeah. So it's the CFMEUQ, and I'm just trying to find a reference to it in the document, which we'll find and present to you or take you to. And while that's being found, Mr Operator, if I can ask you to go to page 5120.

5 **COMMISSIONER:** Unless there's something in the federal law, those are the
accounts or reports, whatever they be, that should be filed with whoever regulates the
state unions, presumably some industrial registry or some body within the
Queensland Industrial Relations Commission or some - some functionary within that
body, but not the - not the general manager of the federal Fair Work Commission.
10 Unless there's some - maybe there's some rule that -

MR MEAGHER: Well, we'll find the reference to it, but at page 5066, Mr Operator,
and if you just enlarge the top part -

15 **COMMISSIONER:** There you go. That's the state Act.

MR MEAGHER: Yes. And then if you go, Mr Operator, to 5120 and enlarge the
top of that, please. And you see there the Fair Work (Registered Organisations) Act
also had to be complied with.

20 **COMMISSIONER:** I don't understand why that's - why is the state - if it's true that
this donation came from the state union, why's the state union -

MR MEAGHER: It's because the two Acts interact, and I'll come to that later in the
day. But the two Acts - so, for example, the state legislation adopts some of the
requirements of the federal Act.

COMMISSIONER: Okay. I see. When it says, "Please refer to section 237," it's a
state Act just picking up some ideas from the federal Act?

30 **MR MEAGHER:** Yes. So, Mr Operator, you should also have an authorities bundle.
And in this - please go to page 573. And then - it might not be - I think you've got the
wrong bundle. So I'll come back to that. I was going to take to you the relevant
provision of the Industrial Relations Act versus Queensland's state Act, which is 748.
35 That requires that organisations must keep a loans, grants and donations register,
and -

COMMISSIONER: That requires what, sorry?

40 **MR MEAGHER:** That organisations must keep a loans, grants and donations
register.

COMMISSIONER: Well, that makes sense that the state Act requires that of state
unions, so the members can find out where their money's gone if it's been given to
45 some third party or to one of the members.

MR MEAGHER: Mr Operator, in the authorities bundle, if you go to page 96, and if you just - can you see division 5 there, Commissioner, loans, grants and donations register? That's the provision I've just been referring to.

5 **COMMISSIONER:** Yes.

10 **MR MEAGHER:** And then if you go over the page, and I'll come back to this later in the day, but 749 obliges that register to be kept for seven years. And then if we return to the tender bundle and go to page 5122. So different bundle, and you might need to rotate the view. And you can see there Mr Seiffert features two down, and then he features another three entries below that for \$24,000, as well as the 15,000. And I gave a figure earlier of \$39,000, and it's the combination of those two figures that I relied on in stating 39,000.

15 Mr Operator, if you can just go back to the normal view and go to the preceding page, 5121, and if you can rotate that view, you can see down the bottom, Commissioner, some of the other items that the union gave relief for by way of donations and things such as flood relief that might sit more comfortably as a valid donation for various members. Thanks, Mr Operator, I'm finished with that.

20 This practice was adopted by the CFMEU and CFMEUQ on several occasions. In due course, we'll provide a complete list of them, but just to provide some examples - and I can take you to each of these, but I intend just to describe them, if that's convenient. On 6 February 2023, Mr Seiffert and Mr Hynes met union members, were the subject of personal payment penalties totalling \$36,000 by Justice Collier. On 29 March 2023, Mr Michael Ravbar and Mr Blake Hynes, the same gentleman, were the subject of such orders totalling \$17,000 imposed by Justice Collier.

30 On 30 May 2023, Mr Kurt Pauls, Beau Seiffert, Te Albert, Blake Hynes, Luke Gibson, Matthew Parfitt and Royce Kupsch were the subject of such orders totalling \$94,000. On 11 August 2023, Mr Ravbar was the subject of orders in the amount of \$9,320 by Judge Vasta. And in each of these cases, the CFMEUQ resolved to make donations of the sort I've just taken the Commission to, pursuant to rule B70, which is the rule I identified earlier, to relieve financial distress caused by the personal payment orders. And of course, in this way, this practice successfully circumvented the rule of law, and the investigations are ongoing as to the full extent to which the CFMEUQ paid pecuniary penalties that were the subject of personal payment orders.

40 Understanding the legislature's intent to punish unlawful conduct with fines and the court's intent to preserve the sting of those fines through personal payment orders requires examination of the laws which establish both the federally registered union and the CFMEUQ as legally separate but interlinked organisations, and the governing rules that have that effect as well, and which are subject to the legislation. And secondly, it's necessary to understand the manner in which the federally registered organisation and the CFMEUQ have historically moved their financial

resources in order to defeat potential legal provisions and to sidestep the effect of the law.

5 The point that I make about this is that in fact it was not necessarily unlawful, but it is certainly illegitimate in the sense that it's morally repugnant. It is one example of how the CFMEU exploited legal rights to obtain benefits in ways that were never intended when workers' protections were legislated. So with that in mind, I was going to go to looking at the governing laws of the federally registered body and the CFMEUQ, which established them as separate legal persons, and some of the key
10 duties imposed by those laws on the entities and their officeholders, and in doing that I'm also going to address the organisational structure and the governing rules that governed each organisational structure. Is that - do you want me to go to that now, or is that a convenient time for the break?

15 **COMMISSIONER:** It might be a convenient time. But I just wonder whether, if you look at it at a more holistic or at a higher level, whether it is more than illegitimate and it is unlawful.

20 **MR MEAGHER:** I'm sorry, I just didn't hear.

COMMISSIONER: Whether it is more than illegitimate but is unlawful. If you look at it from the point of view of a scheme, if this was a scheme to defeat the operation of these orders by transferring money from the federal body, which wouldn't be able to give the money directly to the officials without being in breach of the law, to the
25 state body, which is controlled by, in effect, the same people, in order to defeat the restriction on the federal body giving funding the state - funding the federal officials, why wouldn't that be contempt at the broadest level, the highest level of contempt: interference with the administration of justice? Not contempt as we might understand it a technical level, that is, a knowing contravention of an order, but at the highest
30 level, the way contempt - the broadest basis on which you can be charged with contempt.

MR MEAGHER: Yes. Can I respond to that by putting it in this way: we are inquiring into that, and it may be, but I don't have sufficient evidence to yet say that
35 in our view there's sufficient evidence to say that - or for us to suggest that it was a scheme as that term is known by the law in that context. So it may be, but the highest that I can put it on what I have seen to date is that it is certainly illegitimate in that it is, on any view, contrary to the policy underpinning the legislation and the rules that govern the unions.

40 **COMMISSIONER:** Well, it does make you think. It might not be unlawful, but it might be. It does look like the type of scheme that people put in place to defeat their creditors.

45 **MR MEAGHER:** That's exactly what it looks like, yes. But one of the interesting points that we will come to is, in the movement of assets between the two bodies and the arrangements that were entered into between the federally registered union and

the CFMEUQ, is, at least in recitals, the stated concern was most particularly in respect of laws that the executive feared were to be introduced by either the Federal Government of the time or the State Government of the time, and they purported to move assets to avoid the effect of laws they were worried would be enacted. And that's a different thing to moving assets for the purpose of defeating personal payment orders. And for that reason, I can't submit to the Commission that they moved assets for that reason. They may have done, and the evidence may be consistent with it, but I don't yet have sufficient to say that's why they did it.

10 **COMMISSIONER:** I understand.

MR MEAGHER: Yes. I was going to go to the laws and rules. This will take some time.

15 **COMMISSIONER:** We'll do that after the break. We'll adjourn till half past 11.

<THE HEARING ADJOURNED AT 11.19 AM

<THE HEARING RESUMED AT 11.30 AM

20 **COMMISSIONER:** Yes, Mr Meagher.

MR MEAGHER: Thank you, Commissioner. In the next part of the submissions, I'm going to address the Commission on the governing laws of the federally registered body and the CFMEUQ, which, as I said, established them as separate legal persons, and I'm just going to identify some of the key duties that they and their officers were subject to. And in doing this, I'm also going to traverse the organisational structure of each of those two organisations.

30 **COMMISSIONER:** What do you want to do? Do you want to mark this aide-mémoire now or do you want to do that after the break?

MR MEAGHER: I might do it after the -

35 **COMMISSIONER:** After lunch?

MR MEAGHER: Was it not - it wasn't marked this morning, was it?

40 **COMMISSIONER:** No, it wasn't.

MR MEAGHER: Yes. It's 207 pages total, if that's of utility, and that's charts and diagrams.

45 **COMMISSIONER:** We'll receive the 207-page aide-mémoire comprising CFMEU diagrams and charts, officeholders and delegates tables, and the CFMEU rules comparison on the basis that was indicated before the break as FM-3.

**<EXHIBIT FM-3 207-PAGE AIDE-MÉMOIRE COMPRISING CFMEU
DIAGRAMS AND CHARTS, OFFICEHOLDERS AND DELEGATES
TABLES, AND THE CFMEU RULES COMPARISON ON THE BASIS THAT
WAS INDICATED BEFORE THE BREAK**

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MR MEAGHER: Thank you, Commissioner. If I might start with the governing laws. The first - and I appreciate, Commissioner, that you and the other legal practitioners in the room may well be - and I'm sure are - very conversant with these laws, but it's just necessary to identify the ones that are of particular relevance to financial misconduct inquiries. So the first is the Fair Work (Registered Organisations) Act 2009 (Cth) and the second is the Industrial Relations Act 2016 (Qld), and each of those acts, in effect, establish these two organisations as separate organisations. However, they interact with each other in ways that I'll come to with respect to the regulation of those bodies.

15

So commencing with the Fair Work (Registered Organisations) Act, the Commonwealth Act, section 5 of the Act provides that it is intended to enhance relations with workplaces - within workplaces between federal system employers and federal system employees and reduce the adverse effects of industrial disputation by requiring associations of employees and employers to meet the standards set out in the Act. And as I'm going through these, Commissioner, I don't intend to take you to every provision I refer to, but I can if there's one that you particularly want to see as I go. The standards in section 5 of the Fair Work (Registered Organisations) Act are expressly designed to foster representation and accountability of employee organisations. That becomes an important point in our inquiries. High standards of account -

COMMISSIONER: That idea of trying to minimise industrial disputation goes back to the very dawn of the federal arbitral system, as does the idea of representation, because the idea was each union - in those days, they were small bodies - shouldn't waste time and money fighting with each other for membership but they should be given, as it were, a monopoly on membership, although that monopoly is not perfect because there's overlapping coverage, and that process of registration allows those unions to grow, to represent the persons that they have coverage of, and minimises industrial disputation, because you minimise demarcation. But the other idea that you talked about, accountability, that's a more recent idea, maybe the last 50 or 60 years, the idea that the officials should be accountable to their members.

MR MEAGHER: Yes. And added to that, section 5(3) provides that the standards of accountability should be high, and most particularly to the organisation's members. And a further intention of the Act is to provide for the democratic functioning and control of organisations, and this is a point that the academic experts particularly touch upon when they talk about the risks associated with the way the union appears to have been acting. The Fair Work (Registered Organisations) Act provides for the incorporation of an organisation -

45

COMMISSIONER: The focus on democratic control is only about 50 or 60 years old. That wasn't the focus prior to that, but it's an important focus now. It's one of the reasons that the Fair Work Act is across free jurisdiction, to enable members - originally, it was there to enable members to challenge elections and to ensure that way that the democratic control of these organisations was maintained.

MR MEAGHER: Yes. Incorporation of the organisation in the Fair Work (Registered Organisations) Act is provided for by section 26(3) and 27. The registered organisations are primarily governed by their rules, and I'm talking about here federally registered organisations. The federally - the Fair Work (Registered Organisations) Act requires registered organisations to have rules. This is provided for in section 141, and those rules must provide for, amongst other things, the manner in which the property of the organisation is to be controlled and its funds invested and the conditions under which funds may be spent.

The Act also regulates donations quite closely. This is donations that the registered organisation can make. The rules in this respect require approval of loans, grants or donations exceeding \$1,000 by the committee of management. It has to satisfy itself that the loan, grant or donation was in accordance with the rules of the organisation and that adequate security and payment - repayment arrangements have been made, and that's provided for in section 149.

COMMISSIONER: I wasn't familiar with that rule. Is that a more recent rule, this rule about the recording of and regulation of donations? The other rule generally about the use of the funds, that's an older rule.

MR MEAGHER: Can I come back to you on the date at which it was incorporated into the Act. But, Mr Operator, if you go to the authorities bundle, page 42, I'll just identify the rule -

COMMISSIONER: I should call it a law, shouldn't I, not a rule.

MR MEAGHER: Well, I think, with respect, your enunciation may be seen to be appropriate, because it is referred to in a rule in the - as rules. I see your point, though. This provision itself is a law.

COMMISSIONER: Yes. The law saying the rules must do this.

MR MEAGHER: Yes. And so just for the purpose of identification - can you read that, Commissioner, or do you want it enlarged?

COMMISSIONER: No, I can read that.

MR MEAGHER: You see there rule 149(1), that's the \$1,000 limit I referred to a moment ago, and also, you might notice subparagraph (2), in spite of subsection (1) the rules of an organisation may provide for a person authorised by the rules to make a loan of an amount not exceeding \$3,000 to a member of the organisation. And this

is a rule that features in the minutes of the CFMEU from time to time. And to this requirement can be added a further rule at section 237, and perhaps it's helpful to go to that. That's at page 48. You see there's a requirement that the organisation notify, within 90 days of the end of a financial year, particulars of each loan or donation exceeding \$1,000 with the Fair Work Commission, including the amount, purpose and security and the name and address of the recipient. So this is part of the regulatory framework that donations and loans and so forth are made within.

Relevantly, however, if, Mr Operator, I could ask you to scroll down to subparagraphs (5) and (6) of section 237 and just enlarge them. And you see in subparagraph 5(b), I draw your attention to, and in subparagraph 6(c), I draw the Commission's attention to, because where the donation is made to relieve financial hardship, these provisions apply such that the organisation is not required to lodge particulars of the name and address of the recipient. And then that is as much as I need to touch upon for present purposes in respect of -

COMMISSIONER: Did I read it correctly earlier in this section that if the loan is over \$3,000 - sorry, the only - a loan can't be given to relieve financial hardship, severe financial hardship, of over \$3,000, unless there's security? Is that the way it works, the way the \$1,000 limit and the \$3,000 limit work earlier in the section?

MR MEAGHER: So I'll take you - it's easier to read the provision when I take you back to it. It's page 42 of authorities, please, Mr Operator, and it's subparagraph (2).

COMMISSIONER: Because under subparagraph (1), it's over \$1,000, you've got to have security.

MR MEAGHER: Yes.

COMMISSIONER: But if it's under 3,000 -

MR MEAGHER: A person can be authorised by the rules to make it. And then it is perhaps useful, in light of your question, Commissioner, to just identify subparagraph (3) and its subparagraphs, because you'll see there the matters that the management or the committee of management must have regard to.

COMMISSIONER: This seems all to be predicated on the money being paid back.

MR MEAGHER: For a loan, but -

COMMISSIONER: Which would make sense, because -

MR MEAGHER: If you just look at subparagraph (1) - sorry, I've spoken over the top of you, Commissioner.

COMMISSIONER: Well, someone's - well, it makes sense that there should be provision for the repayment of the moneys.

MR MEAGHER: So the repayment of the money is a consideration in respect of loans, and if I could direct your attention to subparagraph (1)(a)(i), and then (3)(b)(i) is concerned with security for repayments of loans. But the notion of repayment
5 would be inconsistent with the notion of a donation, for example.

COMMISSIONER: I see. I see. You don't have to worry about - if it's a grant or donation, you don't have to -

10 **MR MEAGHER:** That's correct. And I don't think - I haven't gone through a detailed statutory interpretation exercise in respect of the words of this provision, but there's no suggestion in the case law that donations should be repaid.

COMMISSIONER: It rather defeats the purpose of them.
15

MR MEAGHER: Yes. In respect of the obligations imposed upon the officers of the organisation by the Fair Work (Registered Organisations) Act, and most particularly in respect of financial management of the organisation, they are consistent with the obligations on corporate directors. So section 285 is a civil obligation to act with the
20 care and diligence that a reasonable person in the officer's position would exercise. Section 286 contains an obligation to act in good faith and for proper purposes.

COMMISSIONER: What page are these, sorry?

25 **MR MEAGHER:** Sorry, page 54. So there is care and diligence, a civil obligation. And given your question, Commissioner, you see that applies to an officer of an organisation or a branch in subparagraph (1). And in subparagraph (2), the judgment rule is picked up - subparagraph (2), the business or the judgment rule, which is equivalent to the business judgment rule in the Corporations Act in broad terms, is
30 included. And then over the page at sections -

COMMISSIONER: You say it's equivalent, but it's not enforced by ASIC, is it? It's enforced by a different mechanism. I think, presumably, the general manager of the Fair Work Commission, I assume, enforces these obligations.
35

MR MEAGHER: Yes. I didn't mean to draw attention to it for that purpose. The purpose in drawing attention to the consistency in the regulations is to make the point that such duties are duties that are known to law and for the purpose of inquiring into financial misconduct. That provides some assistance to our task because of the
40 examples from that different context.

COMMISSIONER: Yes, but you've got a regulator that doesn't regulate, that doesn't do very much in relation to this issue, and -

45 **MR MEAGHER:** Of course, these provisions do enjoy a great deal of attention in the space of Corporations Law.

COMMISSIONER: Of course they do.

5 **MR MEAGHER:** And that provides some assistance to us in ways of approaching the inquiry. The further duties are on the next page. 286 is good faith, 287 is use of position, and 288 is the use of information. And the officers of the organisation or, indeed, the employees of the organisations in respect of 287 and 288, in effect, are obliged not to misuse their position or information obtained by way of their role in the organisation to gain an advantage or to cause detriment to the organisation or to another person. And these provisions are, of course, of particular interest when
10 financial misconduct is examined.

COMMISSIONER: These look fairly new to me. These must be only around the last couple of decades or so. Maybe they came in in the 2009 Act, but I can't remember these sorts of provisions being there prior to that. They were much more
15 general, the obligations on an official.

MR MEAGHER: Yes, and we will find the date for you, but certainly at around that time, and indeed, in the wake of the Heydon Royal Commission, which was a little bit later, financial accountability and the obligations of officers and employees were
20 a focus of -

COMMISSIONER: So these might have been put in as a result of the Heydon Royal Commission, these obligations?

25 **MR MEAGHER:** I just can't recall if that's correct or if it's earlier, because it may have been in the wake of the Cole Commission, which was 2003, off the top of my head. But we will find the relevant date that the provisions were enacted.

30 **COMMISSIONER:** So at some point, either as a result of the Cole Royal Commission or of the 2009 reconstitution of the rules governing the registration and regulation of trade unions, or as a result of the Heydon Royal Commission in the mid-2010s, these obligations that look like they came fairly directly from the obligations imposed on directors of corporations found their way into the Act.

35 **MR MEAGHER:** Yes. I think that's right, your Honour - sorry, Commissioner - but if I can just caveat my answer, and we will find the date that they were enacted and if I'm wrong, I'll correct the record. Sections 252 and 253, and perhaps it's useful to look at these, they're on page 51 and 52 of the authorities. So if I start with 51
40 perhaps, Mr Operator, because there's quite a bit of text there. And if you just bring up 51 on the page as a single page. Page 51, that is.

This is the obligation contained in the Act, which imposes duties on reporting units, and I'll come to that in a moment, to keep proper financial records, as records which correctly record and explain the transactions and financial position of the reporting
45 unit and also to prepare a general purpose financial report for the reporting unit, that includes profit and loss statements, balance sheets, cash flow statements and notes to the financial statements, that give a true and fair view of the financial position and

the performance of the reporting unit. These requirements have considerable correlation in respect of corporations as well, and again, that provides some utility to us in how we inquire into those matters.

5 **COMMISSIONER:** And a branch would be a reporting unit?

10 **MR MEAGHER:** Yes. So in respect of reporting units, if I can ask, Operator, that you go back a page to page 50, and here, Commissioner, you should see provision 242 of the Act, titled What is a Reporting Unit, and draw the Commission's attention particularly to subparagraph (1), first of all. It may be the whole of an organisation or a part of an organisation. Subparagraph (2), where it's not divided into branches, the reporting unit is the whole of it.

15 So that's not the circumstance in respect of the federally registered CFMEU. Instead, subparagraph (3) applies to it, because it's divided into branches, and in that circumstance, the Act provides that each branch will be a reporting unit, unless a certificate is issued by the general manager stating that the organisation is, for the purpose of compliance with the part, divided into reporting units on an alternative basis. Now, there's no indication or evidence in this case, or even any suggestion, 20 that the general manager has issued such a certificate that we're aware of, and so the branches are the reporting units for the purpose of the federal body, if that makes sense.

25 And then if I could ask, Mr Operator, that you scroll down to page 52 and look at section 253. I referred before, Commissioner, to obligations to prepare general purpose financial reports. This section is where those obligations are found. So, in summary, I will in a moment move to the Industrial Relations Act -

30 **COMMISSIONER:** The state Act?

MR MEAGHER: Yes. But after I've done that, I will look at how the state Act and the Fair Work (Registered Organisations) Act, the federal Act, interact, so I'll come back to this Act in a short while. But the critical point so far as financial reporting is concerned is that the branch of the federally registered body is what we are 35 concerned -

COMMISSIONER: The branch of the division of the federally registered body?

40 **MR MEAGHER:** Yes. Yes. And it's the branch that is the reporting unit when we look at financial misconduct. So with that in mind, I'll move to the Industrial Relations Act 2016, being a Queensland state Act, and chapter 12 of that Act contains equivalent provisions to the Fair Work (Registered Organisations) Act. So if I can start with incorporation. That's provided for by section 611, and Mr Operator, 45 you'll find that at page 89 of the authorities.

COMMISSIONER: I'm interested to know when these rules came in, particularly 253, because historically the financial records that were filed with the predecessor to

the general manager, the industrial registrar, or there might have been some body between the industrial registrar and the general manager, tended not to be in very good shape, and I had always thought it was a function of the lack of regulation. But here, at 253, depending when this came in, that looks like someone's thought about that and said, "We want the unions and employer organisations to provide financial reports that are of the type we would expect from corporations under the Corporations Law."

MR MEAGHER: Certainly the provisions have a remarkable similarity, I might say.

COMMISSIONER: So it'd be good to know when this came in.

MR MEAGHER: Yes. We will address you. I mean, the different provisions, I would anticipate, with one exception which I'm going to come to in due course, I would anticipate many of those provisions came in at the same time, because they do appear to borrow directly from Corporations Law. In respect of the Industrial Relations Act, I've just taken the Commission to the provisions requiring or pertaining to incorporation. They also -

COMMISSIONER: What it does tend to suggest is if you're obliged to prepare proper financial reports for the Queensland and Northern Territory branch or the Construction and General Division of the CFMEU, what you shouldn't do is intermingle that reporting with some body, some other body, including a body registered under the state law.

MR MEAGHER: Well, I might come to that, if I may, Commissioner, because there's some contemplation in the two Acts of circumstances in which accounting of one can be adopted by the other.

COMMISSIONER: So you can do it?

MR MEAGHER: In some circumstances. So I'll come to it. And if I might just pause, since, if I may, I apprehend you've invited some discussion in respect of the policy reasons for which these provisions were introduced. It's an interesting point, I might say, those being civil obligations, as to the true effect of them, because in a corporations setting, there are people with financial resources who are able to prosecute such provisions in a civil context, by which I mean, for those in the public gallery, there are people with sufficient funds to bring an action in court to sue someone else for breach of them.

But I must say it does strike me that the ordinary member of the CFMEU is in no position to fund that sort of litigation, and I accept that in making that submission I'm engaging in a degree of speculation, but in my humble submission, the Commission can take notice equivalent to judicial notice that the average member just will not have the financial resources to fund this sort of litigation, which can go for years.

So in considering financial misconduct, one of the considerations is, well, if they're subject to these obligations, how is it - if they have potentially breached them, how is it that these provisions have not been effective? And one obvious answer to that, amongst perhaps more than one, might well be that ordinary members cannot possibly rely on these provisions and enforce them. So that is a question for a much later date, but for your own consideration, Commissioner, as to the sorts of laws that are effective, I just flag that I would have considerable concerns over the utility of these sorts of provisions in this context, in terms of how effective they are, which isn't to say you shouldn't have them, but they may well be insufficient on their own.

Returning to the Industrial Relations Act, the Queensland Act, Mr Operator, if I could ask to you go to page 90, here, Commissioner, you will see rule or law section 617, requirements for all organisations.

COMMISSIONER: Now we're at the state Act?

MR MEAGHER: This is the state Act, yes, and this is part 3 titled General Contents of Rules. And I've taken you particularly to 617, Requirements for All Organisations, and it sets out what must be in the rules, and these requirements are broadly equivalent to the federal requirements in the Fair Work (Registered Organisations) Act. And most particularly for the purpose of today, could I ask, Mr Operator, you to enlarge subparagraphs (j) and (k). And you see the rules have to provide for how the organisation's property is controlled and its funds are invested and any conditions for spending the organisation's funds, and this is a matter that's relevant both to the payment of personal payment orders but more particularly to the services agreement and the transfer of assets between the federal body and the state body that we've discussed in part already.

The key difference, or a key difference, between the Fair Work (Registered Organisations) Act and the Industrial Relations Act - so that's the federal Act and the state Act - is that the state Act does not require the notification of the particulars of loans, grants and donations to the Office of Industrial Relations. Instead, the Industrial Relations Act requires the organisation to simply keep a register of loans, grants and donations for seven years, recording the amount of it, the reason for payment and, for payments other than to relieve financial hardship, the name and address of the recipient and the arrangements to repay any loan.

And I took you to this earlier, but, Mr Operator, perhaps if you could go to page 96. It's in sections 748 and 749 of the state Act. And these are the provisions I've just referred to just for the purpose of identification, Commissioner. And if you can go to 749, please. And that's the requirement to keep it for seven years. So there's a slightly different regulatory framework. This register that's referred to in these provisions might have then -

COMMISSIONER: So no one would have known that these donations for severe financial hardship to officials who'd been penalised by the Federal Courts were being made.

5 **MR MEAGHER:** That's correct. So in a sense, there's a potential loophole, because although a register might be kept, unless someone is going - a member reads the financial statements carefully, they may not realise. And the reason that they would realise, if they read them carefully, is because there's a requirement that the register be included in the operating report that must be prepared as soon as practicable after the end of each financial year and given to members free of charge. And to substantiate that summary of the provisions, Mr Operator, if I could ask you first of all to go to page 101 and look at section 764.

10 And I'll direct you to the relevant subsection in a moment, but 764, Commissioner, contains the requirement for the reporting unit to prepare an operating report, and there's the time requirement that I referred to in my summary in subparagraph (1). Then in subparagraph (2), there are requirements as to what that report must contain, and most particularly if I can direct your attention to subparagraph (f) you'll see that it must include a copy of the loans, grants and donations register the organisation is required under section 748 to keep. So it must be included there.

20 And then, Mr Operator, if I can ask you to go to page 103 and look at section 778 and first of all subparagraph (1). This is the obligation that I referred to, that copies of the report must be given to members, and it can be the full report or a concise report. I'll come to that in a moment. And if I can just ask you to scroll down a little further, please, Mr Operator, and -

25 **COMMISSIONER:** Just in terms of members, there's been various evidence given as to the membership of the Queensland/Northern Territory branch of the Construction and General Division of the federal union. I think someone estimated as high as 30,000. I think Mr Irving said around 20,000, and Mr Gisonda, in the Rosenlund case study, produced some evidence which he qualified in a way I can't remember, which showed somewhere around 15 to 18 thousand, something like that. But I don't think there's been any evidence about the membership of this state union. There might have been, but I can't recall it.

35 **MR MEAGHER:** I don't know the answer as to whether or not there's been evidence off the top of my head in that respect, Commissioner, but again, that's something that I'll endeavour to identify over lunch. This requirement, if I can direct the Commission's attention first of all to subparagraph (1), this concerns - and (1)(a) concerns a full report. However, if the Commission looks at subparagraph (1)(b), there's an alternative that a concise report be provided, and that can only be provided if the conditions in subparagraph (2) are satisfied, that's that the management committee resolves, so that's the management committee of the relevant reporting unit, which in this case is the CFMEUQ, resolves that a concise report may be given.

45 And then what the concise report must contain is set out in subparagraph (3), and that's - those requirements are of considerably greater brevity than the full report required by (1)(a). Now, those are the reporting obligations, and I'm going to now

cover briefly the obligations of officers in the Industrial Relations Act, the state Act.
So first of all, Mr Operator -

5 **COMMISSIONER:** Why are you telling me about this full report and concise report? What's the relevance of it?

10 **MR MEAGHER:** Because the obligations in respect of the concise report involve greater discretion on the part of the management committee, and it's I think not entirely apparent from the minutes we've got, and the statements, as to whether or not resolutions were made in respect of a concise report being issued or a full report. And there's not necessarily anything wrong with that, but it's a point of interest to establish which rule they were - or which law they were purporting to operate under and just to identify whether or not they've acted consistently with their obligations.

15 **COMMISSIONER:** But to what end? I mean, the implication would be that you produce a concise report because you're trying to hide something. You're not saying that?

20 **MR MEAGHER:** I'm not saying that yet, but it's a matter that, particularly with FTI Consulting in the future, that entertains - well, that we're interested in inquiring into, because one simple way or one simple analysis that can occur is well, have all the relevant accounting standards been met, for example? And they may well have been, but it's just something to check. But they have to be checked in the context of one of those two options for reporting being satisfied.

25 The obligations of officers in the Industrial Relations Act are provided, firstly, in section 714, and that's at page 94, Mr Operator. And you'll see there the duty of honesty, good faith and proper purpose. And then at 715 - and perhaps you can probably just show the whole page for these, Mr Operator - that's duty of reasonable
30 care and diligence. So these are broadly analogous but drafted in different terms to those in the Fair Work (Registered Organisations) Act. And then, Commissioner, you can see at 716 the Act requires officers with a material personal interest in a matter involving the organisation's financial management or procurement activities to provide a written disclosure notice disclosing the nature of the interest to the
35 organisation's management committee and not to vote or participate in meetings in relation to the matter.

40 So where financial misconduct is concerned, this provision might be of relevance in several respects, most particularly if someone is personally interested and has failed to provide a disclosure, but also there are instances - and we've already seen one today - where Mr Ravbar didn't vote or participate in relation to a matter. And sometimes that may have been done to satisfy the requirements of this provision, but it's something that in assessing financial misconduct is a criteria for actions to be checked against. And just as the Fair Work (Registered Organisations) Act required,
45 the Industrial Relations Act requires each reporting unit to keep accurate financial records. And this is provided for - if, Mr Operator, you go to page -

COMMISSIONER: Those rules about officers' duties look like they're an older version.

MR MEAGHER: Yes.

5

COMMISSIONER: They don't look like they've been reformed the way they have at whatever time they were reformed federally.

MR MEAGHER: Yes.

10

COMMISSIONER: For example, there's no obligation to misuse your position, no obligation to - to not misuse information to benefit you or prejudice someone else, those provision that seem to have come direct from the corporations law.

15

MR MEAGHER: Yes. And certainly when they're drafted in that particular style of greater brevity and adopting thereby the way the common law expressed itself prior to codification of such matters, it generally does indicate that they were legislated longer ago. But again, that's something that we will identify and provide to the Commission, that being the particular date of incorporation. I won't say - I think I know when they go back to, but I'll check before I say.

20

In respect of reporting units, Mr Operator, could I ask you to go to page 99. And here, Commissioner, you'll see section 762, the obligation on reporting units to keep accurate financial records. And these obligations are broadly similar to the obligations in the Fair Work (Registered Organisations) Act, and the requirement is to - includes preparation of a general purpose financial report that accurately records the true financial position of the reporting unit. And if, Mr Operator, you could go to the next page, and you'll see there section 763, which contains the obligation I've just referred to.

30

The Industrial Relations Act adopts an identical definition of reporting units to the Fair Work (Registered Organisations) Act, and that is contained in section 752(3), which is on page 98, Mr Operator. And there, Commissioner, you will see 752, and if you look at those first three subparagraphs, they're the same as - other than the reference to the section, they're the same as the provisions in the Fair Work (Registered Organisations) Act. However, while the CFMEUQ has divisions, it does not have any branches. So the Construction and General Division of the CFMEUQ is the relevant reporting unit of the state organisation that the Commission is concerned with. Does that make - is that sufficiently clear, Commissioner?

40

COMMISSIONER: Yes. How many divisions are there in the CFMEUQ?

MR MEAGHER: Two.

45

COMMISSIONER: So there's a Construction and General Division and another division?

MR MEAGHER: Yes.

COMMISSIONER: Whereas there are a number of divisions in the federally registered body - well, there used to be. There's been a whole lot of
5 disamalgamations, but there's at least - the old Maritime Union is still there and the Construction and General Division is still there.

MR MEAGHER: Yes.

10 **COMMISSIONER:** And perhaps the old power workers union, whatever that's called, the energy side. But within the CFMEUQ, there's a Construction and General Division and everyone else.

MR MEAGHER: Effectively, and I'll come to that probably after lunch when I set
15 out the organisation structure and the rules that go with it, unless it would be convenient for me to deal with that now. But if I can finish with the law.

COMMISSIONER: Well, the reporting unit for the state body would be the Construction and General Division of the state union?
20

MR MEAGHER: That's correct, yes. It becomes a bit confusing to the uninitiated, but once one is conversant with the two structures, it's simple enough to follow.

Turning, then, to the interaction between the federal legislation and the state
25 legislation, the Fair Work (Registered Organisations) Act interacts with the Industrial Relations Act to prevent duplication of administrator costs for state registered organisations with federally registered counterparts. And first of all, this is provided for in section 597, which is at page 86 of the authorities, Mr Operator. And in 597, which is at the bottom, and it goes over the page, Commissioner, you will see the
30 definition of a counterpart federal body, and this is in the Industrial Relations Act that I've taken you to, to start with.

And the critical thing to draw attention to for present purposes is that in this chapter a
35 federal organisation or a branch or part of a federal organisation is a counterpart federal body of an organisation if the criteria in subparagraphs (1)(a) or (1)(b) are met, and I won't read those out now, but I draw them to the Commission's attention.

COMMISSIONER: So the Construction and General Division of the state registered union might be a counterpart - sorry, the Queensland/Northern Territory
40 branch of the Construction and General Division of the federally registered union is a counterpart federal body, or might be, to the Construction and General Division of the state registered union.

MR MEAGHER: Correct.
45

COMMISSIONER: If those criteria are made out.

MR MEAGHER: Yes.

COMMISSIONER: And if there's an agreement in force.

5 **MR MEAGHER:** Yes. And perhaps I will dwell on that. Subparagraph (2) refers to a section - sorry, (1)(b) refers to a section 151 agreement, and we'll come back to that in due course.

10 **COMMISSIONER:** So what's the point of this? There's some agreement that the two branches, if I might call them that, can enter into, to do what? What effect does it have?

15 **MR MEAGHER:** Section 151 - I will take you to that, if that's convenient, because it's easier to look at it. So, Mr Operator, if you can go to page 43 -

COMMISSIONER: I'm just really asking why do we have a definition of a counterpart federal body in the state Act? What's the point of it? What's it trying to do?

20 **MR MEAGHER:** It's so that administrator tasks are not duplicated. So financial reporting, for example. I mean, apart from anything else, it saves some cost where effectively they're the same organisation but registered in both federal and state jurisdictions.

25 **COMMISSIONER:** And was an agreement in force between the two what I might loosely call branches?

30 **MR MEAGHER:** No. We've asked the Fair Work Commission for copies of any such agreement, and it has, by letter, informed us that there are none that have been provided to it. And just - perhaps, Mr Operator, I'll ask you to go to page 44.

COMMISSIONER: So do we need to go to this, then, if there's no agreement in force?

35 **MR MEAGHER:** It becomes relevant to other matters. I was going to take you to it in due course anyway, so I may as well cover it now. This is a membership agreement, and most particularly, if the Commission can look at subparagraph (1), you see what the rules can provide for. And then in subparagraph (2), if an agreement is made with a state union - so this is in the federal Act - if an agreement
40 is made with a state union, the organisation must lodge a copy of the agreement with the Fair Work Commission. And then in subparagraph (3):

45 "The agreement does not come into force unless and until the general manager enters particulars in the register kept under subsection 13(1)."

And there's no agreement that's been registered with the Fair Work Commission and in respect of which the general manager has entered particulars of, in accordance

with subparagraph (3), in respect of the bodies with which this Commission is concerned. Returning to the Industrial Relations Act, the state Act, Mr Operator, if I could ask to you go to page 105.

5 **COMMISSIONER:** I don't really understand the point of that. Maybe you can tell me later, but it seems a very complicated procedure. I don't know what it's designed to achieve.

10 **MR MEAGHER:** That I can explain to you, but if I could hold off doing so until I deal with a couple of further provisions, because I'll deal with them together with section 151.

15 **COMMISSIONER:** It's also unusual, if you look at subsection (4), 151(4), normally the general manager as the successor of the industrial registrar has a degree of autonomy and authority in terms of the regulation of organisations registered, ie, trade unions, but here, the general manager is subject to the Fair Work Commission.

MR MEAGHER: Yes. Well -

20 **COMMISSIONER:** So it must be something important.

MR MEAGHER: I'll come to that very shortly, if I may, and I will in doing so cover the purpose of those provisions being introduced, which are more recent, so section 151 and section 152. But just to frame that, if I can return briefly to the
25 Industrial Relations Act. At page 105, Commissioner, you'll see that there are laws that provide for the exemptions from holding elections where there are counterpart federal bodies. And you may recall that Mr Irving, the then administrator, gave some evidence that he had concerns that elections hadn't been held for many years. And at
30 least in respect of the state body, it's therefore relevant to be aware of this provision, because if there were no federal elections held of a counterpart body, the state body was obliged to hold them. And it's not to say that the federal body wasn't also obliged, but both organisations were, in effect, obliged to have elections one way or another.

35 **COMMISSIONER:** Was he concerned there were no elections? I thought his concern was that there were no contested elections, apart from - I think from 2008, 2010, 2012 onwards, apart from one position under the federal union, there was no contested election, but there were - and I could have his evidence wrong - there were nominations. Just the same - the same crew was nominated every time, and there
40 were - the number of nominations equalled the number of positions so there was no need for an election.

MR MEAGHER: Yes, I've misdescribed that, and I apologise for that. But I don't quibble with your description of Mr Irving's evidence in any respect.
45

MR O'GRADY: If it assists, Commissioner, we've found the transcript reference. It's at page 224 of the transcript.

COMMISSIONER: And what did -

5 **MR O'GRADY:** It was in the terms that you described: a concern that there were no contested elections.

10 **MR MEAGHER:** If, Mr Operator, I can ask you to go to page 106, and subdivision 2, so focusing on section 804, and you'll see subdivision 2, exemption from keeping members or officers registered. And again, these are exemptions where the federal counterpart body's register of members are identical. And then at page 108 of the authorities, Mr Operator, if you can see section 808, under subdivision 3, this is an exemption from accounting or auditing obligations. And if I can direct specific attention to, first of all, subparagraph (1), this is something that I've referred to earlier in making submissions, that the organisation may apply for an exemption.

15 And then the registrar may grant the exemption, only if satisfied that in (a) there's a counterpart party, and in (b), the Commonwealth registered organisations Act imposes accounting and audit obligations on the counterpart federal body of the applicant that are an adequate substitute for each provision from which the applicant would be exempted. And this is the regime by which the state based body could become exempt from the accounting and auditing obligations it was subject to.

20 **COMMISSIONER:** So the state body could - subject to whatever rules there are governing whether or not there is a federal counterpart body, I don't know whether they need to be identical in terms of membership or whatever it is, the registrar who regulates the state union can then say you don't need to have an election for the state union, or more correctly, the Construction and General Division of the state union, because the Queensland/Northern Territory branch of the Construction and General Division of the CFMEU federally registered body has had an election, and similarly you don't need to provide accounts, because they've provided accounts etcetera. Is that how it works?

MR MEAGHER: In general terms, yes.

35 **COMMISSIONER:** But none of that happened. The registrar never gave an exemption. Is that what you're saying?

40 **MR MEAGHER:** Not that we've been able to find or obtain. The interaction between the Fair Work (Registered Organisations) Act and the state Act is contemplated in three ways. One is in section 151 of the Fair Work Act that I've already taken you to. The second is in respect of section 152 of the Fair Work Act, and that, Mr Operator, if you go to page 46, down the bottom of that page, Commissioner, you will see section 152, assets and liabilities agreements. This is important because this is relevant to the services agreement that you referred to earlier today.

And you see first of all subparagraph (1) provides that the rules may authorise the organisation to enter into agreements with the state unions. And in fact, the rules in this case did contain such an authorisation, and I'll come to that later in the day. The agreements must be in a prescribed form is provided by subparagraph (2).

5 Subparagraph (3) provides for the lodging of the agreement with the Fair Work Commission. Subparagraph (4) provides that it doesn't come into force unless the general manager enters particulars of the agreement in the register. And subparagraph (5) the general manager must not do that unless he or she has been directed by the Fair Work Commission to do so.

10

And subparagraph (6), the Fair Work Commission must not give such a direction to the general manager unless it is satisfied that the agreement is not contrary to Parliament's intention in acting this Act, see section 5, so that's what I started with in the analysis of this Act - or any object of this Act or the Fair Work Act and

15 subparagraph (b) does not adversely effect the interests of any lessor, lessee or creditor organisation of the state union. And just pausing there, one can see that this is obviously at the very least a compliance regime, and I'll make some further comments about it.

20 **COMMISSIONER:** You've got a lot of hurdles to get over, don't you? You've got to have - you start with the proposition that the assets and liabilities of each organisation are separate, and if you want joint arrangements for the management and control of those separate assets, you've got to have firstly an agreement between the two entities, then the general manager's got to enter that agreement in the register.

25 The general manager can't do it - which is unusual, because the general manager has a lot of autonomy - can't do it unless he or she has been directed by the Fair Work Commission to do it, and the Fair Work Commission can't do it unless they're satisfied.

30 **MR MEAGHER:** That's correct.

COMMISSIONER: And was there any agreement?

35 **MR MEAGHER:** Again, we've asked the Fair Work Commissioner, and indeed the administrator of the union, to produce any such agreement, and neither has been able to produce any such agreement. So the effect of that -

COMMISSIONER: I don't understand that, because wasn't there some advice that Mr Irving gave evidence of in '21 or '22 that somehow transferred assets and

40 liabilities from one organisation to the other?

MR MEAGHER: It purported to. But the effect of these provisions -

COMMISSIONER: Sorry, some agreement in relation to which there was some

45 advice given. I think he said there was advice given in relation to it.

MR MEAGHER: There was. There was certainly draft advice, but the draft advice appears to have been given.

5 **COMMISSIONER:** And what did the advice say about the need to have this registered with the general manager and ticked off by the general manager and the Fair Work Commission?

10 **MR MEAGHER:** There are several versions of the draft advice, and I'll come to them, but off the top of my head, it didn't approach the subject from contemplation as to requirement under this provision. It was concerned with other matters in respect of that particular agreement. And just while we have this section here, just looking at subparagraph (4), the agreement does not come into force unless and until the general manager enters the particulars of the agreement. Just pausing there, the fact that that has not occurred means that any agreement purporting to be an agreement in
15 satisfaction of this particular provision - and even if it's not, any agreement that purports to have the effect that is contemplated by this provision - is plainly unenforceable and of no effect unless the requirements of this provision have been met.

20 And this is something of particular relevance, because to the extent that the two organisations purported to shift assets between one another, if the organisations did not meet the requirements of this provision, that shifting of assets was ineffective. Now, these provisions have not been in force for all that long, but they were in force by 2020, and -

25 **COMMISSIONER:** When did they come into operation, these provisions?

MR MEAGHER: They're in the wake of the Heydon Royal Commission, and they - I can go to the relevant transitional -

30 **COMMISSIONER:** No, you keep going the way you want to do things. But anyway, before the services agreement was entered into.

MR MEAGHER: It is, and I just can't find my note of the date when these
35 particular provisions came in, but again, I'll provide that date after lunch.

COMMISSIONER: Well, the Heydon Royal Commission -

40 **MR MEAGHER:** 2015.

COMMISSIONER: - 2015, so some time between - after then but before 2021.

MR MEAGHER: Again, we'll come back with the particular date, if I may. As for
45 the concept of the federal counterpart that I've addressed - in fact, before I do that, I will just point out section 153 of the Act, Mr Operator, so the one after this, also provided some avenue for further scrutiny in respect of such agreements, being agreements under section 151 or 152, because it provides the Federal Court with a

discretion to make such orders as it thinks fit on an application by a party to a section 152 agreement, having regard to the interests of any lessor, lessee or creditor of the federal or state registered body. So that's - that might be of significance, but we don't know if it is or not at the moment.

5

Just then addressing you briefly on the concept of a federal counterpart that is featured in some of the provisions that I've taken you to, that is an expression that was introduced by the Fair Work (Transitional Provisions and Consequential Amendments) Bill 2009. And the explanatory memorandum - there were several versions of the explanatory memorandum, and it provided for accounting for situations where, with reference to the eligibility of rules or officials, a state association and a federal organisation are essentially the same entity, even if not identical.

10

And that definition, in turn, was broadened to include circumstances where there was a history of integrated operations or integrated dealings, for example, reciprocal membership arrangements, shared financial arrangements, cooperative policy-making functions or shared officeholders, and these are all consents that are tied up in the expression "federal counterpart" to the extent that secondary materials will be relevant to the statutory interpretation exercise.

20

Then, lastly, to finish on the rules, it's going to be relevant, I think, for FTI's analysis to appreciate the effect of section 9B of the Fair Work (Registered Organisations) Act, and that's on page 34 of the authorities, Mr Operator. It commences on page 33. And you'll see here, Commissioner, this provides the definition of a related party for the purposes of the Act, and in subparagraph (1) it provides that an entity controlled by an organisation is a related party of an organisation unless - and then various subparagraphs. And most particularly, if I can draw the Commission's attention to (1)(b):

25

30

"The entity is an association of employers or employees registered under a state or territory industrial law and the organisation is a federal counterpart of the association."

35

So to the extent that related parties are referred to in the Fair Work (Registered Organisations) Act, it doesn't include a counterpart state body such as the CFMEUQ. The point about all this is that it's clear that the CFMEU and the CFMEUQ are probably, with some degree of certainty, the same entity, and they are probably, therefore, properly regarded as falling within the expression of "counterparts" for the purposes of these interacting provisions of the Act. Next, I'm going to address the Commission on the organisational structure -

40

COMMISSIONER: What point are you making about this? I just don't understand what the point is.

45

MR MEAGHER: It's to the - it's just to identify it, because it's something that might become relevant to FTT's analysis in respect of the movements of money between entities.

5 **COMMISSIONER:** But it's binary, isn't it? I mean, there's separate membership of each - there was a time when trade unions didn't have the benefit of corporate status, and the members of trade unions held the assets of the union as, in effect, an unincorporated association. And it was regarded as an important reform that those
10 members had the benefit of their trade unions having corporate status and thereby being able to have a separate legal personality that could be sued separately from the members, and that it held the assets.

And that's been the position that's pertained for the last 120-odd years so that each of these corporate entities - the state registered union, the federal registered union - are
15 separate. They have separate membership. They have separate assets, separate liabilities, separate rules that govern them, separate sets of officials. Now, there is some overlap between them. There's overlap between many corporations that are related to one another. But what's the point of taking me to this definition of related federal counterpart? How does it alter that analysis?

20 **MR MEAGHER:** It doesn't alter the analysis that you've just referred to. It's just to identify it so that I can come back to it at the end if I need to.

COMMISSIONER: But if there's some law that's been triggered that alters that
25 position - but at the moment you're telling me there hasn't, so why don't we just stay with the orthodox approach?

MR MEAGHER: The only purpose in identifying the various sections and provisions is so that there is our framework in the sense that the main provisions that
30 might be of interest to us in our inquiries are identified for the Commission, and these are provisions that I anticipate I'll be coming back to, either on Thursday afternoon or at some later date.

COMMISSIONER: But why? If there's no - if they're not engaged, why are you
35 coming back to them?

MR MEAGHER: I think they are likely to be engaged.

40 **COMMISSIONER:** Right.

MR MEAGHER: So the notion of the counterparts is relevant to, for example, the section 151 and the section 152 agreements.

COMMISSIONER: But only if those things have been ticked off.

45 **MR MEAGHER:** Yes, correct, but that's part of the compliance framework, that they -

COMMISSIONER: They weren't ticked off?

5 **MR MEAGHER:** They were not, but that is the framework and the legislation against which some of the misconduct that may have occurred has to be considered within, and so it's just relevant to know what the relevant definitions are in these respects.

10 **COMMISSIONER:** But is it any more complex than we have separate regulation of separate entities with separate membership, separate officials, separate assets and liabilities, and there is some regime available under the state and federal laws for that - to allow some intermingling of membership or assets and liabilities, but only if there's been strict compliance with the rules, which require the general manager and the Fair Work Commission to tick off, and that didn't happen.

15 **MR MEAGHER:** And the exemptions and so forth that I've taken you to. So they're just - they're different issues, but that's the framework.

20 **COMMISSIONER:** Exemptions by the registrar of the state union if there's been an election federally and the federal counterpart body provision has been - sorry, that the - the Queensland/Northern Territory branch of the Construction and General Division of the federally registered union has had an election, then some exemption can be given by the registrar, but none has been given.

25 **MR MEAGHER:** Yes. And the auditing and financial reporting.

COMMISSIONER: But none of that's happened. So we're just back to there are all these possibilities, that there could have been lawful ways for the entities to combine, but they haven't been availed of.

30 **MR MEAGHER:** Some of the exemptions might be available.

COMMISSIONER: But I thought those exemptions under the state Act had to be ticked off by the register.

35 **MR MEAGHER:** I say "might be".

COMMISSIONER: Right.

40 **MR MEAGHER:** But we haven't got there yet. This is the framework.

COMMISSIONER: Okay. Well, I think I've - I can understand the framework if we're going to get to a situation where one of those exemptions doesn't need the registrar or doesn't need the general manager or doesn't need the Fair Work
45 Commission and can be done by the unions themselves. Are there exemptions like that, that don't require the regulator to tick off on some - sorry, I cut you off.

MR MEAGHER: The only relevant exemptions that we wanted to draw your attention to are the ones we've taken the Commission to. I don't need to spend more time on them.

5 **COMMISSIONER:** Okay.

MR MEAGHER: And can I come to the organisational structure and governing rules next, because the rules pick up some of the provisions I have taken the Commission to. The point is the officers and the executive have to act in accordance with them.

COMMISSIONER: And they're separate rules.

MR MEAGHER: Yes.

COMMISSIONER: For separate memberships and separate assets and liabilities.

MR MEAGHER: Well, the memberships overlap. They're not identical, but they overlap.

COMMISSIONER: Yes.

MR MEAGHER: Yes.

25 **COMMISSIONER:** How do they overlap? What's the distinction?

MR MEAGHER: There are some members of each -

COMMISSIONER: I thought I saw a table you had here. Do you want to just answer by reference to that? There was some graph you had?

MR MEAGHER: Yes.

COMMISSIONER: I'm just flicking through it. There it is. On page -

MR MEAGHER: If we go to page 6.

COMMISSIONER: Page 6.

40 **MR MEAGHER:** And if you look at the CFMEUQ, that's in orange.

COMMISSIONER: I'll just wait for them to come up.

MR MEAGHER: The lighter blue on the right-hand side described as QNTB, that's the federally registered organisation that we're concerned with.

COMMISSIONER: So that is Queensland/Northern Territory divisional branch membership in the blue?

MR MEAGHER: Correct.

5

COMMISSIONER: That's the branch of the Construction and General Division of the federally registered CFMEU?

MR MEAGHER: Correct.

10

COMMISSIONER: That makes - I see. So there are no -

MR MEAGHER: Most of them are dual members, but there are some members in each organisation that are not members of the other.

15

COMMISSIONER: I understood the bit on the right. Just explain the bit on the left. You seem to have some - I thought the overlap was complete, but there's - but the Queensland/Northern Territory divisional branch was broader. But the Queensland - the CFMEU Queensland seems to be broader, at least in - is that because it's the other division of the state registered union, this so-called FFTS members?

20

MR MEAGHER: I'll just find - so the FFTS is an abbreviation that's used by the CFMEUQ itself, and they are members who were eligible as Federated Furnishing Trade Society of Australia members.

25

COMMISSIONER: So they're not part of the Construction and General Division of the CFMEUQ?

30

MR MEAGHER: Yes, that's correct. So - hang on a minute. No, I'm not sure that is correct.

COMMISSIONER: Because they would be part of the "F" of the federal CFMEU. They would be the - what you might call the Forestry and Furnishing Trades Division of the CFMEU.

35

MR MEAGHER: Yes. So I'll just find the rule.

COMMISSIONER: Because if you change that graph so it wasn't CFMEUQ versus Queensland/Northern Territory branch of the Construction and General Division of the CFMEU, but rather, on the left, it had CFMEUQ (Construction and General Division), that yellow part would disappear, wouldn't it?

40

MR MEAGHER: Can you repeat that, sorry, Commissioner? If you -

45

COMMISSIONER: Well, if I just go back to one of your other - if you look at page 6 - this is the one you took me to earlier - the previous slide, this is a slide,

CFMEUQ, the state registered union, but the Construction and General Division within the CFMEUQ, and you've set out the - in a graphical form the way the rules operate in terms of the organisation of that division. And I asked you a question about how many divisions there were of the CFMEUQ, the state registered union, and you said two: the Construction and General Division and something, I think we referred to as another division. So unlike the federally registered union, which has a number of divisions, this one just has two, the Construction and General Division and another division.

10 **MR MEAGHER:** It's Mining and Energy.

COMMISSIONER: And - are you saying that what would be the - so the F Division within the CFMEU federally is actually within the Construction and General Division of the state union?

15

MR MEAGHER: Yes, that's correct. So the FFTS is -

COMMISSIONER: Is that right?

20 **MR MEAGHER:** It's not in the Construction and General Division federally, but it -

COMMISSIONER: No, it's its own division.

MR MEAGHER: It is at state.

25

COMMISSIONER: Really? That's very strange.

MR MEAGHER: And -

30 **COMMISSIONER:** Is that right, Mr O'Grady?

MR O'GRADY: I don't know off the top of my head. I do know that there is not a complete overlap between the membership of the state union and the membership of the branch of the federal organisation.

35

COMMISSIONER: But if it's right, it makes the purported asset transfer and membership, particularly the asset transfer, more difficult to understand, because if you were - if you were in the blue group, the Northern Territory members, you'd be wondering why your assets had been transferred to another group that you weren't a member of and included persons who were never a member of your group, the FFTS members. So you're transferring money - assets from the Northern Territory members to the FFTS members who could never have been a member of the Queensland/Northern Territory branch of the Construction and General Division of the federal union, because they had their own division.

45

MR O'GRADY: Yes. And I think that was part of the concern that Mr Irving had with those transfers.

COMMISSIONER: Did he mention that, did he?

5 **MR O'GRADY:** Yes. I can't recall whether it was in the transcript, but I think that
it was part of the ongoing concern that occurred with respect to these transfers, because
it is, on my instructions, clear that there are some members of the federal branch who
are not members of the CFMEUQ - namely, the Northern Territory members, as is
reflected in the lighter shade of blue - but similarly, there are some members of the
10 state union, CFMEUQ, who are not members or eligible to be members of the federal
branch.

COMMISSIONER: But even more so, the members of the CFMEUQ (CMG)
Division who are not members of the Queensland/Northern Territory branch of the
Construction and General Division of the federal union.

15 **MR O'GRADY:** Yes, Commissioner.

COMMISSIONER: I didn't know that. Will we pick this up after lunch, Mr
Meagher, or do you want to say something else about this point?

20 **MR MEAGHER:** No, after lunch.

COMMISSIONER: We'll adjourn till 2 pm.

25 **<THE HEARING ADJOURNED AT 12.57 PM**

<THE HEARING RESUMED AT 2.00 PM

COMMISSIONER: Mr Meagher.

30 **MR MEAGHER:** Thanks, Commissioner. Can I ask you to take up the
aide-mémoire - in the aide-mémoires, the CFMEU diagrams and charts, and perhaps,
Mr Operator, if you have that as well, and if I could ask you to go to - I think it will
be your page 20. Yes, thank you. And as the title suggests, this is the organisational
35 structure of the federally registered CFMEU from 2015 to present, and this is an
aide-mémoire prepared by us. So it should be considered in that context, rather than a
document registered or attested to as true and correct by any officer of that
organisation. And just for the purpose of commencing describing the organisational -

40 **COMMISSIONER:** That's everything in the aide-mémoire, isn't it? That's the basis
on which it's been -

MR MEAGHER: Yes, it is, yes. Just for the purpose of describing the
organisational structure of the federally registered body, this is a useful document to
45 commence with. The national or federal CFMEU comprised in descending order of
national governing bodies, which I'll come to now. The first is a national conference,
which you can see depicted there. That's the supreme governing body of the national

CFMEU. It is drawn from delegates, from divisions and state and territory branches. It's responsible for constitutional matters, major policy positions and the election and confirmation of senior national officers.

- 5 The second body is a national executive, being the principal governing body between meetings of the national conference. It's composed of national officers and representatives of the divisions and branches which oversee strategy, governance and coordination across the national CFMEU. And thirdly, a national executive committee, being a subset of the national executive, which is responsible for the
- 10 day-to-day governance of the national CFMEU. None of them, of course, are separate legal persons from the national CFMEU; they sit within it.

- Beneath those sit divisions, and during the relevant period, the national CFMEU's principal industry-based divisions were the construction and general, the mining and energy. That withdrew from the union in December 2023.
- 15

COMMISSIONER: That's the next slide, isn't it, the one - that slide there is not - yes, this one here.

- 20 **MR MEAGHER:** Yes. You can go to that if that's convenient. The manufacturing, forestry, furnishing, building products and manufacturing, which withdrew in April 2025 and re-established itself as the TFTU, and the Maritime Union of Australia. Each division had its own governing bodies, being a divisional executive, divisional office holders, divisional committees and delegates, which it sent to the national
- 25 governing body. And if you can go back to the preceding slide -

- COMMISSIONER:** So it's really going to become the CMU, isn't it? Once you lose the manufacturing division, you've just got the Construction and General Division, so the name of the entity really should be - or the short name now should be CMU, shouldn't it? Because there's nothing left, other than the old BLF, BWIU, FEDFA and all the building trades unions and the old Waterside Workers' Federation and Seamen's Union of Australia, which formed the MUA.
- 30

- MR MEAGHER:** That's correct. I'm not sure what acronym they go by, but that's as at present date. But the period that we're particularly focused on of course pre-dates all of that.
- 35

- COMMISSIONER:** Yes, of course, when - the period we're talking about, all four divisions were part of the CFMMEU.
- 40

- MR MEAGHER:** Yes. Now, just pausing on this slide, the national CFMEU comprised in descending order national governing bodies, which I've described; industry-based divisions; state and territory branches; and then divisional branches, which were organised by -
- 45

COMMISSIONER: But we're not much interested in this slide, are we, because that's not really what we're concerned about. It's more the - because those branches

don't really do much, the ones on this slide, do they? It's really the divisional branches that we're concerned with, the ones on the next slide.

5 **MR MEAGHER:** Yes, that's correct. It's just for the purpose of describing the organisation.

COMMISSIONER: Yes.

10 **MR MEAGHER:** So we can go to the next slide. So as can be seen, it has had, during the relevant period, the branches depicted there, and the one we're interested this is the Queensland and Northern Territory, and each state or territory was typically governed by a state conference, a state-level divisional executive and state-level officers.

15 **COMMISSIONER:** And the way the rules work, each division has a great degree of autonomy from each other, certainly in terms of members and in terms of assets, and within the Construction and General Division, each divisional branch has a great deal of autonomy. Each branch is separate from the other.

20 **MR MEAGHER:** I'll come to that in the rules in a moment, but if I can ask, Mr Operator, you go to slide 1, in the document. That one. You can see there depicted in blue the particular branch sitting within the division that we're interested in, and it's often referred to by the acronym QNTDB.

25 **COMMISSIONER:** Yes. And that division, I think in the KordaMentha report, has about - at least when the KordaMentha report was published, had about \$235 million in assets and about 35 or 36 million dollars in profit. Victoria and Tasmania had about 18 million of that. So Victoria and Tasmania is the biggest branch within the Construction and General Division; in fact, equal to all the branches added together,
30 at least in terms of profit. I can't remember what the status was in terms of membership.

MR MEAGHER: In the aide-mémoire from slide number - I think it will be your 30, Mr Operator, we've set out the officeholders at different levels in summarised
35 form, and this continues for a great many pages. This is the 2015 year, just to provide an example, and you can -

COMMISSIONER: But we're not really interested in the national executive, are we? They don't do much, because each branch has got - each divisional branch, I
40 should say, has autonomy within the division and each division has autonomy.

MR MEAGHER: We may not be, but we also may have cause to be concerned, because the terms of reference require us to consider influences from outside Queensland, and at least in respect of financial misconduct, that may become
45 relevant. Could you just go -

COMMISSIONER: That's a different point. That's really the point about the Victorian divisional branch having influence over all the other branches because of its size and its method of behaviour. But all I'm talking about is that on this slide - I'm sorry, go on to this one.

5

MR MEAGHER: Can you go to the preceding slide, please, Mr -

COMMISSIONER: Really, both of them. I thought that these bodies, the national executive of the union and then going to the next slide, the national executive committee didn't really have much influence over the division, and the division, through the executive, didn't have much influence over each of the divisional branches, because they were all - they all had a fair degree of autonomy. I could be wrong about that, but that's what I thought.

MR MEAGHER: Perhaps I'll deal with it this way and say this is just for the purpose of identifying the structure and giving an example of the officeholders rather than seeking to, at this stage, say that they play any particular role that we're interested in. And then could I ask to you go to the next slide, please. And there we see for 2015 the Queensland branch state executive depicted.

20

COMMISSIONER: That's really the Queensland/Northern Territory branch?

MR MEAGHER: Correct.

COMMISSIONER: No, this is a different thing again, isn't it? Is that the Queensland branch, or is that the Queensland/Northern Territory divisional branch? Because remember, there's two different things.

MR MEAGHER: Yes. No, that's the Queensland branch.

30

COMMISSIONER: So that's not really what we're particularly concerned about, are we? Because going back to your other slide, the first one you started with at the very beginning, if you look at your description - sorry, where was it? Page -

MR MEAGHER: If you go to page 41, Commissioner, you'll see the branch we're interested in.

COMMISSIONER: 41?

MR MEAGHER: Yes. And Mr Operator, I might ask you to go to page 41 too, please.

COMMISSIONER: Yes. You've gone to 2016 now. There's a 2015 version of this as well.

45

MR MEAGHER: Yes, yes. But it's just to describe how the aide-mémoire works so it can be referred to.

COMMISSIONER: Yes.

MR MEAGHER: And what it's depicting.

COMMISSIONER: So that - I think there's an S that shouldn't be there - Construction and General Division 2016 Queensland and Northern Territory branch, and that's the executive of the Queensland and Northern Territory branch of the Construction and General Division of the federally registered union as at 2016.

MR MEAGHER: Yes.

COMMISSIONER: And these are the office bearers that Mr Irving said were not the subject largely - I think there was one exception - of a contested election during this time.

MR MEAGHER: So to depict that, in the second part of the aide-mémoire you're looking at, officeholders and delegates, if I could ask, Mr Operator, you to bring that up. This is a - it will have been a separate PDF document, Mr Operator. And you see there, they're the officeholders depicted across the period, and where it's in shaded grey, so across the branch secretary, being the first substantive position, you see it doesn't change across the period. And then further down, probably about six further lines down, or seven, branch assistant secretary and branch assistant secretary, the person occupying that position didn't change. Where it's blue, light blue, we've denoted a change across the period.

And then you will see further down on that page and page 2, some of it's not applicable or just left blank because we don't have the information. That's intended to provide a visual representation of who the office bearers were, and it is in the federal branch that we're interested in, divisional branch, and easily recognised when there was a change in position.

COMMISSIONER: What does grey mean? That they're consistent throughout the 10 years?

MR MEAGHER: Yes.

COMMISSIONER: No one really talks about Mr Murphy. I don't know what that position is, but anyway. There are three branch assistant secretaries, and Mr Murphy was one for the whole period with Mr Ingham and Mr Sutherland, Mr Lowth. Three branch assistant secretaries.

MR MEAGHER: And then with that in mind -

COMMISSIONER: I just wonder why you don't have data for the members of the council, because I thought the rules - sorry, the laws that you took the Commission to

before lunch mandated - do they mandate filing of the officers each year, or was it just the financial reports?

5 **MR MEAGHER:** Depending on the rules being referred to, it's the financial reports.

COMMISSIONER: All right.

10 **MR MEAGHER:** Then turning to the rules, the national CFMEU or the federal CFMEU had several sets of governing rules that reflect its multilevel structure. It had general national rules which applied to the entire federally registered CFMEU, and it had divisional rules, and most particularly it had federal or national Construction and General Division rules. They rely, for their operation and interpretation, on the national rules, that is, the general ones, and for that reason -

15 **COMMISSIONER:** Sorry, I think we're at the wrong page. Which page should we be at?

MR MEAGHER: I haven't gone to them yet.

20 **COMMISSIONER:** Right.

MR MEAGHER: The national rules are therefore necessary to describe, and all the other rules, including the state-based rules, can be described by comparison to the national rules to make it more succinct, which is what I intend to do. The national rules can be found in the tender bundle at page 2470.

COMMISSIONER: Now, why are you taking me to the rules?

30 **MR MEAGHER:** To identify them.

COMMISSIONER: I understand that, but to what end? What do you want to bring out of it? What do you want me to notice?

35 **MR MEAGHER:** I was going to take you to the provisions that I wanted to draw attention to. And so first of all, Mr Operator, if you go to the next page, you'll see here the contents described, and that's perhaps the easiest place to identify the rules. Then -

40 **COMMISSIONER:** What in particular? Do you want the eligible rules for some reason? Do you want the rules of the election of officials? Just tell me the point that we're going to.

MR MEAGHER: I'm going to take to you several points. So let's start with membership.

45 **COMMISSIONER:** Yes, and what's the point of membership you want to bring out with the rules?

5 **MR MEAGHER:** Well, membership's in issue, of course, because - or of interest, because membership is something that's affected by the transfer of assets between the federal and state-based organisations. The criteria for - well, perhaps we can go to page 2548. The criteria for membership extend over 45 pages, and I don't intend to traverse all of that, but commencing here, you can see, for example, rules binding on members, branches and divisions, and most particularly under rule 26, one can see that these rules are binding on divisions, branches and divisional branches.

10 **COMMISSIONER:** Yes.

15 **MR MEAGHER:** So that's why they're relevant, and thereafter I don't intend to traverse all the categories of membership other than to note that they're there, and to the extent that membership becomes something of interest to financial misconduct, it's these rules that have some impact on that.

20 **COMMISSIONER:** I think it's more the rules in terms of eligibility are more important to the other case studies, insofar as the other case studies, for example, the Cross River Rail case study and Ms Schinnerl's evidence seems to suggest that the rules that are set out, as you say, of 45 pages, the eligibility rules, were not complied with - and Ms Schinnerl hasn't been cross-examined and she's not an expert - in the sense that the CFMEU went beyond its eligibility rules or the Construction and General Division and enrolled persons for membership who ought not have been members, as they encroached into the civil works that were traditionally the area
25 which the AWU covered. I'm not sure they're going to be terribly relevant to the financial misconduct case study, but they might be.

30 **MR MEAGHER:** They're relevant because funds are moved and intermingled and the moneys - the contributions to those funds are not contributed to by the entirety of the membership of one union as opposed to the other, and that's due to the fact that the membership overlaps but doesn't encompass every member of the corresponding union.

35 **COMMISSIONER:** That's really the point you made on the graph that we looked at before lunch.

MR MEAGHER: Correct. But to identify the misconduct, it's necessary to go to the rules, and that's the only purpose in identifying them for the Commission.

40 **COMMISSIONER:** Are we talking about eligibility rules now?

MR MEAGHER: These are membership rules.

45 **COMMISSIONER:** Sorry. Well, membership or - the rules that govern your eligibility for membership?

5 **MR MEAGHER:** Yes. So, for example, to give an example, entrance fees and contributions. If, Mr Operator, you go to page 2525, you'll see rule 8, entrance fees and contributions are payable. And if you look at (iii), you will see the circumstances in which a member shall be deemed to be financial. In making any submission to you about difficulties associated or problems associated with transfers of funds between them, the two organisations, it will be necessary to refer back to these rules to demonstrate why something might be a breach of an obligation, for example, the sorts of obligations that I've taken you to this morning in the Industrial Relations Act and the Fair Work (Registered Organisations) Act, such as acting in the best interests of members.

10
15 **COMMISSIONER:** So you've got these federal rules that say these are the persons who are eligible for membership, and there's 45 pages' description of who is eligible for membership. And then to become a financial member, whatever that means, there's a rule that governs that. This is the rule 8 that you've taken me to?

MR MEAGHER: Correct. Exactly, yes. So -

20 **COMMISSIONER:** And Mr - sorry.

MR MEAGHER: And I'm not - there are a whole host of these rules. It's just to point out there are a whole host of rules that govern membership and that the office bearers were subject to them.

25 **COMMISSIONER:** Yes.

MR MEAGHER: And it's really just to identify that they're there in the Act, because from what I could ascertain, that had not yet occurred in the hearings of this Commission, and it's therefore useful to do so. Secondly, the objects -

30 **COMMISSIONER:** I don't want to stop you; I just want to know what it relates to. For example, 8 relates to Mr Irving's point, that these persons might not have been members of the federal union because they weren't financial members in accordance with rule 8, because their membership fees went to the state union, not to the federal union, and so in accordance with rule 8, the member hadn't - was not financial because they hadn't paid the entrance fees or contributions, levies and - leave fines aside - to the federally registered union. I think that was point he was making. Now, what that means exactly, I don't know.

40 **MR MEAGHER:** In respect of considering the obligations of the officeholders and whether or not they contravened in respect of financial misconduct, it's necessary to appreciate the objects and powers. Starting with the objects, they are set out in rule 4, which is at page 2518.

45 **COMMISSIONER:** 2518. Yes.

MR MEAGHER: And it's necessary to consider whether or not powers were being exercised in accordance with these objects in what executive members did or determined to do. So, for example, if one looks down the list at (p), you will see:

5 "To assist members by loan or otherwise."

And that's something that necessarily, when financial assistance is granted to members, although that's broadly stated, necessarily it has to be taken into account as something - a power that the executive at least had under the rules. That's just one
10 example, and I don't otherwise intend to traverse the subparagraphs there.

And it's necessary to appreciate rule 30 on page 2552. Here, you'll see rule 30 is concerned with agreements. This is relevant because of the agreements entered into between the organisations but also because it becomes evident from FTI's analysis
15 that there are agreements between the CFMEU, be it the federally registered body or perhaps at times the CFMEUQ, with other entities. Therefore, to consider whether or not the executive has contravened its powers in respect of entering into those agreements, it's necessary to do so within the framework of the powers contained in this section.

20 **COMMISSIONER:** But you're at the moment, I think - you said there had been something that happened in 2013 or '14 which I imagine you'll come to at some point, but at least in relation to the services agreement of 2020 or 2021, whenever it was, is your point that the - there was no agreement under rule 29, or there was such
25 an agreement but it was never ticked off by the general manager or the Fair Work Commission in accordance with section 151 of the Registered Organisations Act?

MR MEAGHER: Section 152 is the relevant one.

30 **COMMISSIONER:** 152. This rule says 151 on clause 29 - at clause 29 on the previous page.

MR MEAGHER: Yes, it does. That's in respect of membership.

35 **COMMISSIONER:** Right.

MR MEAGHER: 152 is assets. And the services agreement from 2020 primarily concerns the transfer of assets.

40 **COMMISSIONER:** So is the point that there wasn't even power under the federal union to make agreements under section 152 of the Registered Organisations Act, as well as the fact none was ever done, it wasn't ticked off by the general manager and wasn't ticked off by the Fair Work Commission?

45 **MR MEAGHER:** There's no express power. Whether section 30 can be read as providing that power is perhaps something that I wouldn't definitively wish to state at this point, because -

COMMISSIONER: So you might've had the power under 152, but it was never executed.

5 **MR MEAGHER:** Correct. And so in a sense it - although it's a framework for the exercise, or the existence and exercise of a power, which I think is probably exercised pursuant to section 30, so far as those rules are concerned, in that case -

COMMISSIONER: Rule 30, you mean?

10

MR MEAGHER: Yes. It's of no effect, for the reason you've stated. But it's necessary to appreciate the powers in respect of agreements, because there are - as will become obvious from FTT's analysis, there are plainly agreements between the union and various other entities. We don't have those agreements, but it's obvious they exist.

15

COMMISSIONER: Yes.

20

MR MEAGHER: And in respect of membership, another aspect of the rules that are relevant to it are rule 12 in respect of recordkeeping, which is at court book - sorry, tender bundle 2527. And you see there that there's a requirement to be kept - sorry, a register of members to be kept, and other records, and they should be kept in the registered office of the union insofar as they relate to relevantly the divisional branch. So to the extent that any records that have been requested have not been produced by the union - so, for example, the existence of a section 152 agreement - the point is it should have been kept, pursuant to that section.

25

30

COMMISSIONER: What was the status of the service agreement? Was that - even though there might not have been power to enter into it and it wasn't ticked off by the general manager, never registered with the general manager, never ticked off by the Fair Work Commission, is it the sort of agreement that 152 is concerned with?

MR MEAGHER: Yes. Because it transfers assets.

35

COMMISSIONER: I wonder why that was never done. It seems very strange to enter into a services agreement - there's something in your rules that make you realise that you can enter into agreements with state unions. The lawyers must have known that, and they must have known that it had to be registered with the general manager. I just don't - I don't understand it. Is there something I'm missing?

40

MR MEAGHER: There's no explanation provided in the documents we have, and that's a matter that perhaps a former member of the executive could provide an explanation for at that time, or perhaps the relevant lawyers. And in respect of auditing of the accounts, which is obviously important as a subject matter for financial -

45

COMMISSIONER: Did you have any case thesis or hypothesis about why this was done, apparently in contravention of the guardrails in section 152?

5 **MR MEAGHER:** There are various pockets. They're based on speculation because I don't have the evidence, but one possibility is it's simply an oversight, a compliance failure. It's relevant that section 152 and 151 were both introduced for the purpose of providing financial accountability, and ensuring it and, indeed, ensuring it in the interests of the members of the union. And therefore, as an alternative to the first possibility of a simple oversight, the other reason why one might fail to register such
10 an agreement is because one doesn't want the appropriate regulatory body looking at the agreement. The third reason -

COMMISSIONER: But then it doesn't have effect.

15 **MR MEAGHER:** Correct. And that brings me to the third reason, which is that the agreement's a sham, that is, the legal definition of a sham: it's purporting to be something that it is not. So those are possibilities, but as I said, and as I wish to make clear to others in the gallery, at the moment that's based on my speculation rather than on the basis of evidence, because I don't know why.

20 **COMMISSIONER:** But it's unlikely to be an omission. Look at the effort that the state union went to in the minutes involving a donation of \$15,000 to Mr Seiffert. You have a motion. Mr Ravbar steps aside, doesn't vote on the motion. It's then put, and carried, and there's a record. There's a very - you can see there, there's a degree
25 of sophistication in terms of the decision-makers about what they're doing. Now, that's just with \$15,000.

MR MEAGHER: Yes.

30 **COMMISSIONER:** Now we're talking about every asset, or almost all assets, aren't we?

MR MEAGHER: Yes, and most particularly something referred to as the defence fund, which I'll come to. That's the subject of a lot of legal advice as to whether or
35 not it can be moved. There are serious question marks about whether or not referring to it in those terms is even appropriate, because it's apparent from the financial statements that it's co-mingled with other moneys and treated in ways that are inconsistent with describing it in that fashion.

40 So there are various questions that arise, and as a result of that services agreement, which purports to transfer assets from one to the other, it's not possible - I mean, if you were dealing in an unrelated context with two corporations, it's far simpler, but because of the way the Industrial Relations Act and the Fair Work (Registered Organisations) Act interact with respect to unions at least having the possibility of
45 being able to treat assets and the accounting of the federal body, for example, as the same as the state body if they obtain exemptions, that presents a slightly more complex legal framework against to conduct the inquiry than it would be if

corporations were engaging in this sort of behaviour, which would be clearly unlawful.

5 And, I mean, certainly to a trust lawyer it appears most obviously to involve breaches of trust, because the funds, for example, are contributed to by members' contributions over several years. But that analysis may run headlong into provisions of the legal framework that I spent the morning going through that meant that, in fact, it was lawful. And for that reason, it is a legally complex inquiry. It's made perhaps simpler where there are failures of compliance such as this, because the purported transfer of
10 assets was ineffective, and therefore if they properly belonged in the control and management and effectively ownership of the federal body prior to 2020, then in truth, in law, that is where they remained.

15 There is an issue as to whether they in fact properly belonged there, and that in turn was the subject of a great deal of advice from Hall and Payne advising the union, because previously, in 2013, the union had engaged in the reverse activity, where it had moved everything from the state body to the federal body. So this was not the first time they'd done it, and because of that, it does raise issues, and indeed I think if my reading of Hall and Payne's advice is correct, they, with respect to them, had
20 some difficulty in establishing who the defence fund, for example, properly belonged to. And one would think it could be pretty simply answered, because you should be able to identify who contributed to it and which organisation they were members of and not least who the money was paid to and who operated that bank account.

25 **COMMISSIONER:** So there's three things that you're going to look at. One is this services agreement of 2020 or 2021, some other transfer, in effect, going the other way, in around 2013, or 2015, did you say?

30 **MR MEAGHER:** 2013.

COMMISSIONER: And then this thing called the defence fund, which you'll just have to explain to me what that is.

35 **MR MEAGHER:** Yes. So what I'll do, I think, is in the - I'll going to spend about a minute or two dealing with the rules, and then I'll go to these issues, because I note the time. So in the aide-mémoire there is a rules comparison document, and this is not intended to identify every rule where there's similarity or difference, but they're some of the more obvious ones. Where the box is left empty, that doesn't mean anything in particular. There's just no point of note that we wish to draw attention to,
40 and I'm not going to go through this document now in the interests of time other than to point out that it's there, it's our summary, and we may come back and refer to it at a later date.

45 In the charts aide-mémoire, if I can ask you to go to page 3, Mr Operator, that just visually depicts the various levels of governance, which I don't need to deal with again. And then can you go to the next page, please, Mr Operator. This is the CFMEUQ's, so the state body's, divisions and council committees depicted. And I

don't want to spend any particular time on this, but you can see the two divisions depicted in the centre, and above them sit a union council that meets every two years and a Management Committee Queensland, which you will see referred to in some of the documents, and then there's a state divisional council and a state divisional executive. In the part of the aide-mémoire that is titled Officers or Officeholders and Delegates -

COMMISSIONER: So we're really interested in the state divisional council, but particularly the state divisional executive. That's the group you showed me that Mr Ravbar had been elected to, I think uncontested, for a decade, and Mr Ingham as one of the assistant branch secretaries. No, that's not right. It's not the right body, is it? That's the divisional executive. That's the - no, this is the - we're now at the state union. Sorry.

MR MEAGHER: To Mr Operator, if you go to the aide-mémoire titled Officers, and if you go to pages 3 and 4. So I showed you this, Commissioner, in respect of the first two pages relate to the federally registered body.

COMMISSIONER: Yes.

MR MEAGHER: And then the third and fourth page concern the CFMEUQ, and you'll see the people bear some similarity, and again, the orange cells, the light-orange cells, where there's a change in the position. And if you scroll down please, Mr Operator, there will be some grey cells, and they're the officeholders that don't change during the period.

COMMISSIONER: What's going on here? For the union secretary, Mr Ravbar for a period, then Mr Whyte, then Mr Ravbar.

MR MEAGHER: Yes, the first one is the state executive, and the second one -

COMMISSIONER: That's the state executive. We want the Construction and General Division executive. I see.

MR MEAGHER: Yes. And that's halfway down the page, if that makes sense.

COMMISSIONER: Yes. Mr Ravbar's consistently the divisional executive and Mr Ingham one of the assistant secretaries, and same with Mr Murphy. Sorry, you were about to say something.

MR MEAGHER: No, no.

COMMISSIONER: What do you mean by saying 2016, 2018 are not legible? Where are the records? Where do the records come from to produce this?

MR MEAGHER: Yes, the records we have were part of the administrator's records, and they're just simply not legible. We just can't - we can't read them.

COMMISSIONER: I thought there'd be some provision in the Industrial Relations Act that would require the divisional executive of the state registered union to register each year the persons who'd been elected to their executive.

5

MR MEAGHER: Yes. The issue is the administrator's records are taken from the OIR, and the OIR records, those registrations that you're referring to, Commissioner, are not legible.

10 **COMMISSIONER:** Right. So the Office of Industrial Relations received, for two years, records of - presumably that they were required to receive, because the legislation required that - records that are illegible?

15 **MR MEAGHER:** Well, those are my instructions. We'll have it checked. Then I intend to leave the rules and the organisational structures at this juncture, and if I need to, I can revisit them in the future. But that was intended to provide some background in terms of the framework against which financial misconduct might be considered.

20 **COMMISSIONER:** Are you able to tell from the records you've got whether these elections were contested or not? At the moment we've got Mr Irving's evidence, but is there anything more substantial to say that -

MR MEAGHER: We don't have records demonstrating contested elections.

25

COMMISSIONER: So there's no record of a contest, so therefore you say there was no contest?

30 **MR MEAGHER:** Well, that's the - certainly at a civil level, that would be the inference.

COMMISSIONER: Yes. Well, it seems reasonable.

35 **MR MEAGHER:** Well, now, against that background, I want to address the Commission briefly on some of the administrative arrangements or movements of assets that you've raised with me today, and the first of these that it's convenient to consider is the defence fund, because it's got a lengthy history, and the background to this is that over time the control or management of this fund is purported to have been moved between the two organisations, and in doing that, the organisations have
40 shifted their operating costs from one to the other as well, and this was the subject of the services agreement in August 2020 that I'll come to in the course of this submission.

45 We have the benefit of the CFMEU's legal advice on this topic, and it's most useful, though, to start with financial statements from 2014, and the relevant page is at page 4101 of the tender bundle.

COMMISSIONER: I don't think the KordaMentha report went back that far to 2014. It only went back to about 2020 or so, didn't it?

5 **MR MEAGHER:** I think that's correct, but in order to understand what the defence fund is -

COMMISSIONER: I'm not critical. I'm just saying I haven't seen this material before; that's all.

10 **MR MEAGHER:** Okay. Mr Operator, you will see in the bottom third of the page there's a note 3. Just to identify this, at the top of the page, Commissioner, you will have seen these are the Queensland/Northern Territory divisional branch, so federal financial statements, for the year ended 31 December 2014. Then, Mr Operator, I'm sorry to mess you round, could you go to that note 3. You see that there is a note
15 here, and if you look at the first paragraph, there is a reference to a very lengthy historical practice. The financial results and position of the state union - so this is prior to 2013 - in respect of income, liabilities and assets was incorrectly reported as the financial position of the Queensland Construction Workers Divisional Branch. This divisional branch later changed its name and became the QNTDB, and there
20 were no financial differences between the financial results.

The historical practice in the next paragraph is referred to as entrenched, and the opening sentence there says what occurred was that for the consideration of not recovering a membership fee and treating financial members otherwise eligible of
25 the CFMEUQ, state body, that is, who applied for membership and were attached to the predecessor, to the QNTDB, as financial members of that federal branch.

COMMISSIONER: You just took me to a rule that said you can't do that. There's a rule in the federal - in the federal rules that say you've got to pay your money to the
30 federal body.

MR MEAGHER: Yes. And you see - that's correct, Commissioner. And then you see that sentence goes on: the CFMEUQ, so that's the state body, provided full administrative servicing, auditing and resourcing capability to the federal body. And
35 you see there, in the next paragraph, the references to income and expenses and where they sat. And then -

COMMISSIONER: That can't be true, that statement the divisional branch until May 2013 did not have income or expenses. That just cannot be true. It must have
40 had income and expenses for as long as it existed as a divisional branch.

MR MEAGHER: That's correct. I mean, it's a question of how they treated it in their accounting, and that's where the error lies. And this note accepts by its title that there was a period of error. And then one can see the next paragraph:
45

"This matter is not adequately dealt with in the notes for the 2013 report for the QNTDB."

Then at the following paragraph:

5 "In making the assumption that the CFMEUQ - the state body - and the federal body would be treated as the same entity for the purposes of financial reporting, the practical outcome was that each financial report was the same and, in effect, a report reflecting the totality of the affairs of the CFMEUQ and the federal body."

10 That is, there was only one set of income and expenditure. And that raises obvious problems, if there's a difference in membership, not least the obligations pursuant to the federal and state Acts. But over the page, the note continues:

15 "Importantly, given the practical effect of the financial reporting and that the members of the CFMEUQ and the federal body were significantly the same..."

Significantly, not totally:

20 "...the same for the period up and including the financial year ended 31 December 2012, the reports that were historically provided to members appropriately advised the overall financial situation that had impacted on them as a member of the two entities. Consequently the members of the federal body have not been placed in a position to their detriment because of the error."

25 **COMMISSIONER:** Who provided this note? Who prepared this?

MR MEAGHER: We'll find the director who signed it as true and correct.

COMMISSIONER: It seems - every sentence seems to be wrong.

30 **MR MEAGHER:** Sorry, I said "director". It's the divisional branch secretary. And, Mr Operator, if you can go to court book page 4115 - sorry, tender bundle page 4155. And you will note the name of the divisional branch secretary who executed that document is Mr Ravbar. Now -

35 **COMMISSIONER:** He must have - did he prepare that note himself or have some advice?

40 **MR MEAGHER:** There's an audit report, if you go to the next page, an audit report of PKF, and that runs over the page. But as with all auditors' reports, it's audited for particular purposes, and if one looks at the auditor's responsibility - can you see that, Commissioner?

45 **COMMISSIONER:** It'd be better if it's blown up, but it's a report from the auditors to the members of the divisional branch of the Construction and General Division of the federally registered union.

MR MEAGHER: Correct. But I just want to identify, under the Auditor's Responsibility, what it is that the auditor actually looks at. Can you see - Mr Operator, can you see the words "Auditor's Responsibility"? Perhaps that's too challenging. But one can see there what it is that the auditor is attempting to assess as true and correct, and that then runs over the page to the heading Auditor's Opinion, and you see there the auditor has said:

"(a) Presents fairly in all material respects the union's financial position as at 31 December 2014."

And this is the preparation of the accounts complies with the Australian Accounting Standards and Fair Work. It's not saying that what occurred is correct, if that makes sense, if I can draw that distinction. But the following things I can say by way of summary about what I've just taken you to. The first is that obviously the state body and the federal body treated all the funds of the CFMEUQ, the state body, as being available to service the members of the federally registered union prior to 2013, and it did so even if they were not members of the CFMEUQ. The CFMEU, the federally registered body, forwent its right to levy members in return for the CFMEUQ providing that service.

The CFMEU did not generate any income, or so it says, and it did not incur any expenses, or so it says in the financial statements, but rather the CFMEUQ, the state body, incurred expenditure necessary for the CFMEU, the federal body, to service its members. And then, lastly, the CFMEU, the federal body, misrepresented itself as having an identical financial position to the CFMEUQ, whereas in reality the CFMEU - that's the federally registered body - had no assets other than those available for its use provided by the CFMEUQ.

Now, this is why those provisions about exemptions and so forth become quite important, and notably, those exemptions work in respect of the state body. I think it's fair to observe at this point that the CFMEU, the federal body, and the state CFMEUQ, clearly regarded the funds held by the state body as being available to meet expenses to service all members of both the federal and the state body.

COMMISSIONER: Just go back to that note, note 3, for this financial report for the year ended -

MR MEAGHER: 4101. Tender bundle 4101.

COMMISSIONER: The year ended 31 December 2014. If you can just blow that note up. What you just said is at the bottom:

"The practical outcome was that each financial report was the same."

Now, how can that be the situation? How could the previous year, 2013 - you couldn't have two identical reports.

MR MEAGHER: You can't.

COMMISSIONER: Because someone's otherwise reporting the assets twice.

5 **MR MEAGHER:** That's correct.

COMMISSIONER: So - and liabilities and income and expenses. So - but what did the 2013 reports look like?

10 **MR MEAGHER:** It also can't be correct just by the mere fact that on their own statements, the state body is providing services to the federal body, and the federal body, it says, has no income or expenses, whereas the state body does. Therefore, the financial records of one cannot be - or statements of one - cannot be the same.

15 **COMMISSIONER:** Exactly.

MR MEAGHER: Yes.

20 **COMMISSIONER:** Yes, the report for the federal body would be income zero, expenses zero, assets zero, liabilities zero.

MR MEAGHER: Yes.

25 **COMMISSIONER:** Was that the report in 2013? It doesn't sound like it. Sounds like it was -

MR MEAGHER: No, no, they treat them as the same. So it's got dollars and cents, etcetera.

30 **COMMISSIONER:** But that just can't be correct, because you're double-counting.

35 **MR MEAGHER:** And the purpose in drawing this to the Commission's attention is that there's a history of them treating the two entities in this way, and that informs what occurs subsequent in the period we're interested in. One of the points that's worth drawing to the Commission's attention perhaps is that it appears that the federally registered body did not have a separate bank account in the years prior to 2013, and nonetheless it regarded itself as entitled to the funds in the CFMEUQ, the state body's bank account, because it used them to service its members. Now, that, in the absence of lawful exemptions, or agreements providing for that, that raises
40 obvious issues of misconduct.

The other point that is worth just noting is that prior to 2012, the Northern Territory members had not yet joined the federally registered divisional branch that we are interested in, and -

45

COMMISSIONER: Which year was that?

MR MEAGHER: 2012 they joined. So that means there's greater possibility for the membership of the two bodies to be either more similar or the same, because they are a defining category of membership that sit outside of the state body but within the federal body that we're interested in.

5

COMMISSIONER: What was the report for the state body for calendar year ending 2014? What were the numbers that were reported in 2014 for the federal body?

MR MEAGHER: Can we find that and come back to you, Commissioner, because I just don't have it to hand. It's in there, but - so I'll come back to you on that, because we'll just work out the numbers. It's in this context that the - this period of time, prior to 2013, that this so-called defence fund was created, and it occurred in November 2004 -

COMMISSIONER: One of the tricks Trevor Sykes talks about in his book about the great frauds of the eighties was to use a trick whereby you would report for one financial year and compare it to the previous financial year, but in that particular report you would change the previous financial year's results, hoping that no one would go and look at the previous financial year, and that way you could conduct your fraud each year, as long as no one looked back at the previous year's results.

It would be interesting to look at the 2014 financial year for the federal branch, the 2014 - not financial year, sorry, calendar year - results for the federal branch, the 2014 financial results calendar year for the state union, and compare them to the previous period, that is, the calendar year 2013, for both entities. You would have all four of them together to see what that showed and to then test that against the notes and what the auditors have said.

MR MEAGHER: Yes. I think that - well, rather I know. I mean, that comparative exercise is one of the many tasks for FTI Consulting, because there are various anomalies that we're interested in.

COMMISSIONER: Just on that explanation, they can't stand together. I can't see how they could stand together.

35

MR MEAGHER: Yes. The defence fund that I've referred to appears to have been created in 2004, and Mr Operator, if I can ask you to go to tender bundle page 208, just to identify the document, and you will see here these are minutes of the state management committee of the federal body, dated 25 and 26 November 2004, and you'll see under Also Present that amongst others, Michael Ravbar was present.

40

COMMISSIONER: It seems to be minutes of two bodies when you read the title.

MR MEAGHER: Yes.

45

COMMISSIONER: The title seems to be saying -

MR MEAGHER: It is. Sorry, I omitted to identify that. It is. And then if, Mr Operator, I could ask you to go over the page, at the bottom of that page, you will see Membership Defence Fund.

5 **COMMISSIONER:** Just going back to that, it's funny, when there is a need to separate very clearly the divisional branch from the state union for the purposes of giving \$15,000 to Mr Seiffert, it's made very clear that it's a meeting of the Construction and General Division of the state union.

10 **MR MEAGHER:** Yes.

COMMISSIONER: All the way through to people recusing themselves.

MR MEAGHER: Yes.

15

COMMISSIONER: Here, you've got minutes of a meeting of both bodies when they're not separate.

MR MEAGHER: Yes.

20

COMMISSIONER: Sorry, I cut you off. So what are the financial reports that are adopted there? Are they of the divisional branch on page 1, or are they of the state union?

25 **MR MEAGHER:** We haven't been able to work that out. I'm noting the year it occurred in. That's 22 years ago.

COMMISSIONER: 22 years ago. I'm sorry.

30 **MR MEAGHER:** Yes.

COMMISSIONER: You're just doing this because this is where the membership defence fund is -

35 **MR MEAGHER:** Correct. So down the bottom of page 206, Mr Operator, if you can enlarge Membership Defence Fund and the paragraph underneath it. And you can see here, Commissioner that the state secretary discussed the need for the membership to have a defence fund to protect themselves - and this is important:

40 "Not just from the upcoming draconian industrial relations law changes and a hostile Federal Government."

45 And this concern is, I emphasise, because this is a concern that continues and repeats itself as a justification over the next at least 20 years, or in approximate terms, from this date onwards, for the movement of assets between the two bodies. But this just concerns the defence fund, which is one of those assets that is moved for those reasons. And the other reasons for the defence fund are also set out there: the ability

to be able to campaign and protect members, workers entitlements and conditions. It was agreed that the money left over from the Eagles dispute, which was an Eagles dispute which precedes the date of these minutes, and any board fees would be allocated to the defence fund, and so on. That is the first instance where we've been able to find that this defence fund was discussed, and this seems to be the basis for the inception of it.

COMMISSIONER: Seems to be a decision of the state union, because when you look at the words in brackets, furniture, that's members working in furniture trades would be members of the Construction and General Division of the state union but not of the branch of the Construction and General Division of the federal union.

MR MEAGHER: Yes, that's correct, and the words that the report be received and adopted we read the same way as you, Commissioner, respectfully, that that was received and adopted by the CFMEUQ state management committee is probably what that means. This was the subject of a Hall and Payne advice, and if I can ask, Mr Operator, you to go to page 261, and you'll see there (iii). In fact, just to identify this document, can you go to page 958. So this is - in the tender bundle. Page 958. Thank you. You'll see that this is an advice dated 4 December 2025.

COMMISSIONER: So this is 23 years after the defence fund was created.

MR MEAGHER: Correct. But the defence fund has been the subject of various advice from Hall and Payne Lawyers, and it was not the first time they considered it, but it's useful just to point out what Hall and Payne - noting that they had been the union's lawyers for many years - identified as the inception of the fund. You can see the letter here concerns the defence fund. And if you go to the next page, Mr Operator, you'll see some historical arrangements are set out, and then, on the page after that, so page 960, there's the creation of the defence fund, and there are some instructions there in paragraph 11. And then there's some analysis of the meetings of management committees, and the first one at 13(a) is the one that I've just taken the Commission to.

And then at paragraph 15 the Hall and Payne advice contemplates that the original resolutions for the raising of the fund and the imposition of the levy, which is contemplated in the paragraph above, were decisions of the then CFMEUQ, the state body, and that's the relevance of this. They're trying to work out who the fund properly belonged to at its creation. And -

COMMISSIONER: I think that's not quite right, because the Construction and General Division of that, of the state body - can you go back to those minutes of 2004, it wasn't a meeting of the CFMEUQ, was it? It was a meeting of the Construction and General Division of the CFMEUQ.

MR MEAGHER: I'll go back to them, but can I just highlight one further aspect of this advice before I go back. Paragraph 15, you see the reasons set out by Hall and Payne for their consideration that the fund was created by the decision of the then

state body, and they set out reasons, and if we look at (e), and then over the page, (iii) under (e), the fund was initially funded by leftover moneys from the Eagles dispute and board fees payable to the union, which we read as meaning the board fees referred to in (v).

5

COMMISSIONER: Sorry, I can't see (v). There we go.

MR MEAGHER: Can you see that, Commissioner?

10 **COMMISSIONER:** Yes.

MR MEAGHER: Can you just enlarge (v), please, Mr Operator. So this is the basis that Hall and Payne considered it upon.

15 **COMMISSIONER:** So some money's put into some fund, and 22 years later - 21 years later, analysis is made of whose money it was that went into the fund.

20 **MR MEAGHER:** Well, there were concerns about it earlier than that, because they effectively purported to transfer it from the state body to the federal body in 2013, and so it's something that particularly Mr Ravbar is obviously present at these meetings, it's something he had involvement with over the course of his involvement with the union. And -

25 **COMMISSIONER:** How much money is in this defence fund? What form does it take?

MR MEAGHER: It fluctuates and it's co-mingled and it's used for various purposes. And perhaps I'll -

30 **COMMISSIONER:** Is it the subject of a trust deed? Is it its own bank account? What is it?

MR MEAGHER: No, it's co-mingled with other moneys. So it's just treated in the accounts as an amount, and perhaps I'll -

35

COMMISSIONER: How much money are you talking about?

MR MEAGHER: I'll just find a reference to some - okay. So if we go to page 4092 -

40

COMMISSIONER: Just before you do, can you just pull up (vi) and (vii) of this advice on this page? It was agreed that the FFTS members, who are members of the state union - sorry, members of the Construction and General Division of the state union, would contribute to the fund and that the FFTS members were only members of the CFMEUQ. Affiliation fees to the federal office would not take any account of the levy. I don't quite understand what (vii) is referring to. I see, this is all said - and

45

it could be right - this is all said to justify the transfer in 2021 of moneys that had been -

MR MEAGHER: Correct.

5

COMMISSIONER: - held by the federal to the state union on the basis that it was always the state union's money?

10 **MR MEAGHER:** Yes. And to understand that, it's necessary to understand that in 2013, the state body and the federal body restructured their affairs so that the income of the state body was diverted to the federal body. The expenses of the state body were paid by the federal body. So they flipped the arrangement previously in place. The real -

15 **COMMISSIONER:** If that's the case, then for that period, it's the reverse of what Mr Irving said was the position for the last four years.

MR MEAGHER: Correct.

20 **COMMISSIONER:** Then the members of the state union were unfinancial - sorry, members of the Construction and General Division of the state union, for that period of time, eight years.

25 **MR MEAGHER:** Yes. To analyse what, if any, financial misconduct occurred, it's of course necessary to identify who the various assets properly should have been controlled and managed by, and hence one suspects the Hall and Payne advice. In the 2013 restructuring, the real property of the state body remained in its name, but it granted a licence to the federal body to use its property, and the federal body paid maintenance on that property.

30

COMMISSIONER: When was this, sorry?

35 **MR MEAGHER:** 2013. And the employee entitlements - this is 2013 - were transferred from the state body to the federal body for the purpose of paying state employee entitlements. The defence fund -

COMMISSIONER: The federal branch started paying for the employees of the state union?

40 **MR MEAGHER:** Yes, that's correct. The defence fund was transferred to the federal body as well in accordance - as you said, in accordance with the purpose for which it was established. So, in effect, this restructuring moved liquid assets and liabilities - expenses and income - from the state body to the federal body, and it retained illiquid assets - real property - in the state body. The precise timing of that
45 restructure is in fact unclear, but we can gain some insight from the financial accounts for the year ending 31 December 2013, the date that the Northern Territory

members commenced making contributions to the defence fund and the internal deliberations of the two bodies.

5 I might - perhaps just focusing on the defence fund, given the time. So just to - I'll just briefly make the point. Mr Operator, if you can go to page 4065, these are the QNTDB financial statements for the year ended 31 December 2013, and if we just look at revenue, this is just to make the point as to how things flipped, and it's very obvious when you look at 2012, on the right-hand side, if we just look at revenue, as against 2013, you can see that, in respect of many of the line items, there was
10 nothing in 2012, and in 2013 there is, and even the items where there was something in 2012, it dramatically increases in 2013, and this reflects this restructuring arrangement.

15 And that's the same with expenditure. So if we just go down to expenditure, just to demonstrate that point, we see the same thing here, and again, this reflects the point that we've just been making. Equally, in the CFMEU financial records for the same period, at court book page 4641 -

20 **COMMISSIONER:** Just go back there. Just that previous page. You've got a transfer of - no, sorry, the page you were just on.

MR MEAGHER: It's 4065.

25 **COMMISSIONER:** You've got a notation there at the bottom: transfer defence fund from the state union of almost \$2 million, \$1.8 million.

MR MEAGHER: Yeah, that's correct. And so that's the - that's the amount that's ascribed to it at that time.

30 **COMMISSIONER:** So it was transferred in the 2013 financial statements. I don't know how that would be done lawfully. But then, in 2025, Hall Payne say, "No, presumably that should never have been done. That was always the money of the CFMEUQ and remains the money of the CFMEUQ." Is that - and whatever other additions or earnings were made to that defence fund.

35 **MR MEAGHER:** Yes, one of the interesting things about this particular transfer of the defence fund is that it's in fact used to offset a deficiency in the federal body's general fund, even though they are or should be treated separately. And just to identify that for the Commission, if we go to court book page 4067, and can you see
40 here that 1.8. In the middle part, balance at 31 December 2012, the bottom line item, transfer from CFMEUQ, 1.863 under the column headed Compulsory Levy Defence Fund. And you see there, in the line item above it, the surplus deficit attributable to the union, the 604,000 is something that it's offset against.

45 So then if we go to the federal body's financial statements at page 4066, and if we look at the net assets as at 31 December 2013 - not sure if you can see that - the total equity after the transfer of the defence fund is 1.547 million, and the defence fund at

this time had a notional balance, in fact, of 2.1 million. So we've had some considerable difficulty in reconciling these figures, because they don't appear to be consistent with each other.

5 **COMMISSIONER:** And then how much was actually transferred back to the CFMEUQ?

10 **MR MEAGHER:** In 2020? I will take you to that in a minute. We're just finding our note of where it is. One point to note is that the audited financial statements - so this is at page 4070. At the bottom of the page, you'll see there's a heading Changes in Accounting Policies.

15 **COMMISSIONER:** Can you just blow that up? That's what I was talking about earlier.

MR MEAGHER: Yes. I thought this might be of interest, given your comment to me. So there's a restatement of comparative figures, and the 2012 figures, as were shown at 31 December 2012, are now shown in the financial statements for the state body. So this is -

20 **COMMISSIONER:** Sorry, say that again. The 2012 figures for the federal body are restated, what, two years later - or a year later -

25 **MR MEAGHER:** Yes.

COMMISSIONER: - as the figures for the state body?

MR MEAGHER: Correct. One other point, because of the -

30 **COMMISSIONER:** That shouldn't have any - that shouldn't change - even if the first sentence is true - I doubt it is - sorry, it is true. Well, it could be true. I should say that. There's no connection between the first sentence and the second sentence. So what CFMEU was restructured? So what there's a re-organisation of branches within the CFMEU, the federal body? You know, do what you like in terms of
35 reorganisation, and change the membership rules. Query how that could change, given that's all got to be approved by the general manager. But why does that mean you restate the results for the state union?

40 **MR MEAGHER:** I'm not going to provide a justification for that.

COMMISSIONER: Makes no sense.

45 **MR MEAGHER:** Mr Operator, could I also ask you just in these financial accounts to go to page 4082, and if we start with note 27, you'll see this records assets and liabilities from an amalgamation and restructure at this time, and this is referred to - or referred to as - well, it opens the possibility of a revocation by the general manager of the Fair Work Commission, but we haven't been able to obtain that. So

the obvious inference is that it's the restructure, because that's the only other explanation for it in the financial statements. And that is further reinforced by note 29, and here you can see the administration of financial affairs by a third party, and this is - the body referred to in the first sentence there I read as the CFMEUQ, and you see the description of what occurred in the next paragraph vis-à-vis collections of membership subscriptions and so forth. The defence fund levy is referred to there, but that's just the amount of the levy.

And you asked me a question in respect of the amount of the defence fund transferred back. It's in fact recorded in the financial accounts for 31 March 2021. That's at court book - sorry, tender page 4957. And if you could just enlarge the text, please. Thank you. And you will see the second line item or third line item from the bottom, transfer of defence fund received from the federal body, 4.74 million. So that's the value at the time so far as the accounts deal with it. It's recorded in the financial statements as being recorded. As being received, sorry.

COMMISSIONER: This is the state union's - this is the state union?

MR MEAGHER: This is the state union. These are financial statements of the state body.

COMMISSIONER: Saying that the defence fund which was - we set up, which was transferred somehow to the federal union, about \$1.8 million, eight years earlier, has now been transferred back to us in the value of 7.7 million.

MR MEAGHER: Yes. And this is further explained in this particular set of accounts in note 1.24 on page 497 -

COMMISSIONER: And Hall And Payne said this was kosher?

MR MEAGHER: Well, at this point, they just provided draft advice, but they do appear to have actually provided that draft advice, which is a curious notion in itself, but -

COMMISSIONER: Sorry, they provided a draft advice before this was done?

MR MEAGHER: That appears to have occurred, and that occurred in 2019.

COMMISSIONER: And you haven't got the final advice?

MR MEAGHER: Well, the closest we have to a final advice is the letter to Mr Ravbar that I took you to earlier, which is obviously four or five years later.

COMMISSIONER: 2025.

MR MEAGHER: Yes. And this -

COMMISSIONER: Sorry, you're going to take me to note 1.24, are you?

MR MEAGHER: Yes, page 4973. And at the bottom of this you'll see the heading, Mr Operator, 1.24, and it runs over the page - sorry, no it doesn't, it stops at the
5 bottom of the page there. And here you can see the note to the financial statements.

COMMISSIONER: I just can't see how either of those steps in the last paragraph could be lawful. How could the state union transfer the 1.8 million to a different entity with a different membership and then, during that period that gets built up
10 through investment, plus levies, from the members of the - what's the last three words? What does that mean, "and the union"?

MR MEAGHER: The union in these financial statements is the CFMEUQ.

COMMISSIONER: All right. So the divisional branch from 2013 to 2021 levied for
15 moneys a fund it controlled, members of the state union, some of whom could never be members of the divisional branch?

MR MEAGHER: Correct. You posed a question as to how this could be done. The
20 union itself provided some basis for doing it, both when it did it in the opposite direction and when it brought it back, and the - I think I'll skip straight to a CFMEUQ state executive meeting on 17 May 2013. And Mr Operator, if I could ask you to go to court book page 226. This meeting, in fact, occurred simultaneously as a meeting between the federal organisation, which I can take you to the minutes of, but
25 these minutes serve the purpose, and you see in the first dot point there's the counterpart federal body referred to. The federal body is referred to as a counterpart, and I made the point just before lunch that we think, properly, it's a related party, not a counterpart.

COMMISSIONER: Because there has been no agreement signed and ticked off, is
30 that the reason?

MR MEAGHER: Yes, the various bases on which it could be regarded a
35 counterpart don't exist, and one of them is the agreement that you've just referred to.

COMMISSIONER: What year is this?

MR MEAGHER: 2013. So this is 17 May 2013. And you can see in the dot points
40 that all the then arrangements were set out. And then the bottom of the page, the minutes set out the objects of the CFMEUQ. And then over the page, if I can ask you to go over the page, Mr Operator, the last dot point there, you see there the justification, the Newman LNP Government is seeking to restrict the legitimate rights and freedoms of the CFMEUQ to campaign for industrial rights and so on, which also industrially represent the dual members.

45 And on the basis of all the considerations in the dot points, but most particularly I draw attention to this one, because this concern reflects one I identified in the 2004

establishment of this fund, and it will be reflected again when it's transferred back, and that is a concern to avoid laws that are feared will be introduced by the jurisdiction to which the defence fund at the time is subject. And you see there, in the paragraph at the bottom, the last substantive paragraph, it's for those reasons that
5 they determine it's appropriate to make payment. Now, they name it as 1.5 million, and they provide a justification, a further justification for effective functioning and ongoing representation of dual members and Northern Territory members.

10 So that's, insofar as we can tell, the justification. I think it's sufficient just to say that as of 1 July 2013, the Northern Territory members commenced paying the levy, and the Hall and Payne advice in fact set out advice to the effect that they or that firm agreed that that is what occurred. That's consistent with the financial statements, and this has some relevance, of course, because of those members being members of one union and not the other. That's consistent with the financial statements for the
15 federally registered body which end 31 December 2014. That's at page 4091.

And you see the heading up the top there is the federal body that we're interested in, the income statement for the year ended 31 December 2014, and under Revenue, the second line item, compulsory levy - defence fund, 666,000. The Northern Territory
20 members by this stage were paying these fees because they'd joined in 2012, or just prior to 2012. Interestingly enough - perhaps, noting the time, perhaps I'll - but there's one other minute that's perhaps interesting to look at, and it comes at court book page 387. And just to identify the document, it starts at 385. It's a meeting of the CFMEUQ from 15 September 2014, so it's a year later, but -
25

COMMISSIONER: I've got 2021 here. On which page?

MR MEAGHER: 387. 385, sorry, is where it starts and you can see here it's a meeting of the CFMEUQ on 15 September 2014, and perhaps if you go to towards
30 the bottom of that page, you can see Resolution 1, and the state executive notes the second - well, the first dot point, the arrangements in place - note the word "arrangements", not "agreements" - between the state body and the federal body and their predecessors for the administration of the two entities and to maximise membership benefit and avoid unnecessary cost by duplication. Then the second dot
35 point:

"A number of amalgamations and mergers have occurred in Queensland that have had an effect on the way the state body operates."

40 And then the third dot point, amalgamations have occurred in the last two years. That would seem to indicate - well, perhaps that's only referring to the unification of those bodies mentioned in the subparagraphs. But then the next dot point: the amalgamations were structured to reflect the arrangements that exist in the CFMEU and utilise the divisional structure nominated there.
45

And then on 387, the fifth dot point down, you will see the reference to it being:

"...appropriate and desirable that contributions of joint members be administered by the divisional branches and not state counterparts as the CFMEU is streamlining its operations around Australia to move to a greater federal focus."

5 That's something that might become of interest. It also might just reflect changes in the law at that time. And you see then two dot points below that the structural and administrative arrangements that have been implemented by the state division. And it's at the very bottom of the page the payment of subscriptions and levies is contemplated.

10 So it's not clear to us precisely when everything was shifted from the state body across to the federal body at this time, and you might say, "Well, why does it matter?" It might matter if financial misconduct occurred at that time, as opposed to when they switched it all back in the opposite direction. It seems more likely that it matters more when it came back in the opposite direction.

15 **COMMISSIONER:** Just going back to that chart or graph, page 5 of your aide-mémoire - sorry, page 6. Is that right? If you think about it, the state union should just be representing members who work for the government. We'll have to look at the rules. The state rules are in evidence now.

MR MEAGHER: Yes.

25 **COMMISSIONER:** There shouldn't really be much of an overlap in that dual members area, should there? If you're a carpenter working on a building here in the city for Multiplex, you can be a member of the federal union or the Queensland/Northern Territory branch of the Construction and General Division of the federal union. If you're a carpenter working for QBuild, building government buildings, can you still be a member of the federal union as well as a member of the state union? I mean, is it really the truth that -

MR MEAGHER: It's a question of eligibility, and this represents eligibility.

35 **COMMISSIONER:** No, I understand. I'm just wondering whether it's - the impression you get reading all these documents is there are a large number of people who are dual members or joint members. I just wonder in law whether that's true.

40 **MR MEAGHER:** And part of our difficulty is we don't - I think I'm correct in saying we don't know with certainty who the members were at a particular time.

COMMISSIONER: I'm sure a lot of people were signed up. My point is were they lawfully signed up?

45 **MR MEAGHER:** Yes.

COMMISSIONER: Were they - I just don't know how the state eligibility rules work. Are they restricted to government work?

MR MEAGHER: No, they're not. They are -

5 **COMMISSIONER:** What's the point of the state union, then? I mean, why does it replicate the federal body in this regard? There's no utility in it. Why have it?

10 **MR MEAGHER:** I'll find the - I've got it, but can I come to it in a moment, because there was just one other part of these minutes from 2014 I wanted to draw your attention to, and the - and then I'll deal with this eligibility point, because it's obviously important to this issue.

COMMISSIONER: Go back to where you want to. We're starting to run out of time, so -

15 **MR MEAGHER:** Yes. So, Mr Operator, in the tender bundle, if you can just go to page 0395, and Resolution 5 at the top so this is part of the same minutes of May 2014. You see the defence fund is expressly contemplated there, and there is a decision here:

20 "The state executive endorses and confirms the decision of the state secretary to transfer the fighting fund to be used in accordance for the purpose for which it was established."

25 That would seem to indicate that it was transferred in 2014, even though some of the other records we've taken you to would indicate that it occurred in 2013. Perhaps this is just the endorsement of something that occurred earlier. But it's for that reason that I said we're uncertain precisely when assets were transferred between the two. So then I'll deal with this eligibility -

30 **COMMISSIONER:** You can think about it overnight and give me an answer tomorrow. It might be the fact that the eligibility rules are very similar, because these rules were created prior to WorkChoices where the federal system had, say, 40 per cent of employees. The state system had about 40 per cent. 20 per cent were not covered by either federal or state system. And so if you were a builder and you weren't subject to an interstate industrial dispute because the federal system was anchored in section 51.35 of the constitution and the need for an interstate industrial dispute, you could be employed by some commercial builder in Queensland and be covered by the state system.

40 **MR MEAGHER:** Yes.

45 **COMMISSIONER:** Therefore, the rules are the same. But the rules of the state union haven't caught up with the fact that there's been a national takeover, and because the system federally is now anchored in the corporations power, and because the current High Court conception of a constitutional corporation is so broad, it covers everyone, almost. So maybe it's just a failure in the state rules to catch up

with what's happened over the last 20 years in our constitutional arrangements in terms of the federal takeover of our industrial relations system.

5 **MR MEAGHER:** And that, if I might say respectfully, is correct, but it's just that the state rules themselves don't restrict memberships just to government employees.

COMMISSIONER: Yes. Maybe they should.

10 **MR MEAGHER:** In effect, that's all that really matters. Just before we finish -

COMMISSIONER: Or to non-constitutional corporations.

MR MEAGHER: Yes. Yes. If I can just take you to one document, just to -

15 **COMMISSIONER:** I would be interested in your views on that point at some stage, Mr O'Grady. I mean, I'm obviously just thinking out loud, and there's no sort of considered view about this. It's just a thought that came to me hearing the evidence.

20 **MR O'GRADY:** I'm instructed, Commissioner, that your analysis seems to make sense to me.

MR MEAGHER: Perhaps I'll deal with this in - is it your intention to finish now, Commissioner, or did you want to keep going?

25 **COMMISSIONER:** Well, it was my intention to finish 20 minutes ago.

MR MEAGHER: Oh. I was just enjoying it so much.

30 **COMMISSIONER:** But if you've got something to finish on, you can have a few more minutes, but -

35 **MR MEAGHER:** I'll just deal with this quickly. The justification for transferring it back, just some of the points - or one particular point it picks up on, Mr Operator, if you can go to page 293, and you'll see this is a meeting of the CFMEUQ, held on 12 November 2019, and in this - or in the minutes, it's recorded that the relationship with the federal union was the subject of consideration, and the state secretary, who is Mr Ravbar, provided a report on why the union needed to make changes where necessary and in the best interests of the union and its members. And if one goes down to page 295 -

40 **COMMISSIONER:** That just can't be true, being in the best interests of its members, nor indeed of the union. Of the union officials who sit across both entities, maybe. But because the membership's different, if you've got a pool of funds where six people own it on here, and four people from that six, plus two additional ones, are here, it's not in the interests of these members to transfer it to another group.

45 **MR MEAGHER:** Yes.

COMMISSIONER: It's just not.

5 **MR MEAGHER:** Yes. Yes. And that poses a significant difficulty with what occurred. And then under the decision here we see in numbered point 3 the reference to the number of members who are eligible to be and are members of the federal body. Reference to the dual members. That's a category contained in the rules. And then in 5, there's the reference to the collection of the membership fees being collected prior to 2013 by the state body. And you see at 6 the record of the reasons
10 for transferring assets, that's liquid assets, in 2013, between the two bodies, that is, from the state body to the federal body. And then if you skip down to 10, you see:

15 "The state divisional executive considers that since 2013 the state body has been inadequately resourced in respect of the dual members employed by the state and local government in Queensland."

And then in 11:

20 "The state divisional executive recognises that the anti-worker Newman LNP government was quickly and soundly defeated, its legislation was reversed and the significant risks of operating in the state jurisdiction were removed."

And then (b), the growth of membership in the Northern Territory did not reach the expectation, and then with the consequence that the basis for the decisions made by
25 the then state body did not in fact transpire. And then on page 297, if you look at number 12:

30 "The state divisional executive considers that the Morrison Coalition Government is now seeking to severely restrict the legitimate rights and freedoms of the federal body, just as the Newman Government sought to do to the state body, to act in the best interests of the dual members."

And on that basis, the assets are transferred back. So that justification is one that is used over the course of 15 years to justify the movement of assets between the two
35 bodies. That, of course, has nothing to do with whether or not it's a valid justification in law for doing so. You can then see at page 299 - I will just finish with -

40 **COMMISSIONER:** What are you supposed to do if you're Mr Ravbar, you're running the divisional branch of the Construction and General Division of the federal union, you've got autonomy within the union, you've got \$30 million that you've built up over time, and you fear the - the law hasn't passed yet, but you fear there's a law that's going to attack you, and take those assets. That fear might not be well founded, but assuming it's genuine, what do you do, as the executive and the state secretary of that branch? Do you just allow that law to be passed and the money to be
45 taken, or do you try and do something about it?

MR MEAGHER: Well, I mean, whatever you -

COMMISSIONER: It's the branch's money. It belongs to the members in lore, but it's actually legally the branch's money. What do you do?

5 **MR MEAGHER:** Well, first of all, ensure you're complying with your legal obligations in whatever you do.

COMMISSIONER: Sure.

10 **MR MEAGHER:** And -

COMMISSIONER: Can you transfer the money away somewhere to get it out of the reaches of any potential legislation that's - that might be passed?

15 **MR MEAGHER:** Well, if the union wanted to provide a basis for doing that, it would have to - it would have to obtain very carefully considered legal advice, because it's not obvious from the legislation, nor the law that I've taken you to today - sorry, nor the rules - that there is the capacity for it to do that. And it has to be borne in mind that it is obliged to act in the best interests of its members, but there
20 are restraints on -

COMMISSIONER: That's what they're saying. It's saying that members' money is going to be lost. This legislation is going to come into existence. We're going to be deregistered. We'd better do something with the money that's been built up over
25 generations. We set up a trust fund. I'm a trustee. Mr Kupsch is a trustee. Mr Setka's a trustee from Melbourne as an independent trustee. And we put all the money over there, waiting for the time that the legislation changes and we can transfer the money back. And the trust deed says that.

30 **MR MEAGHER:** Yeah, it's a very convenient use of the dual registration. And in that sense, it is - at least the intent appears to be, as best we can tell, to use that dual registration to defeat the effect of laws, be they state or federal, that they're concerned by.

35 **COMMISSIONER:** I understand the point in relation to the personal payment orders. That seems to - there's a very strong inference that's a scheme to get round the law as passed, when you look at it as a whole. But I'm saying if something's on the horizon and there's a threat developing, there's a gathering storm, are they allowed to dissipate their assets and try and put them somewhere beyond the reach of the
40 legislature - a legislator?

MR MEAGHER: Well, they can only do it if you can do it lawfully, and it's not apparent to me how they can do it lawfully.

45 **COMMISSIONER:** And that's why? Because it's the union's money -

MR MEAGHER: Correct.

COMMISSIONER: - and they've got to act in the best interests of their members?

5 **MR MEAGHER:** Yes. Yes. The primary purpose of much of the - in fact, really the primary purpose of the financial regulations and accountability is, in fact, to protect the members from their funds being - their contributions and so forth being dissipated.

10 **COMMISSIONER:** But if you take Mr Ravbar or take that motion at face value, that's what they're doing. That's what they say they're doing.

15 **MR MEAGHER:** Yeah. I mean, that's the sort of justification that people that gain complete control of any circumstance usually provide. But it doesn't make it lawful. And the - there are a range of measures in the legislation that are designed to prevent one person or one group of people from gaining control of unions for lengthy periods of time, because the law - sorry, the policy underpinning the law accepts that when that occurs, the risk of wrongdoing increases, and that is part of the reason for democratic elections of union officials. It's to protect members. Yes.

20 **COMMISSIONER:** What are you dealing with tomorrow?

25 **MR MEAGHER:** Tomorrow is primarily dedicated to Ms Natalie Faulkner's evidence of FTI Consulting, and that - we use tomorrow - well, tomorrow, the Multiplex 2023 to 2027 enterprise agreement is used as an example of where money flowed under enterprise agreements and how ultimately some of that money returned to the CFMEU in undisclosed ways and in the form of ultimately recurring revenue.

COMMISSIONER: And why are you using the Multiplex enterprise agreement?

30 **MR MEAGHER:** It's just a convenient example. It's reasonably proximate to the date at which the union was placed into administration; therefore, it demonstrates the practices of the union within a reasonably proximate time to the time at which it was considered necessary to appoint an administrator.

35 **COMMISSIONER:** And what she's going to say in her report - I haven't had a chance to read her report - that there are a lot of undisclosed funds that come from Multiplex paid to related entities mandated by the enterprise agreement that end up flowing back to the CFMEU?

40 **MR MEAGHER:** Not in their entirety, but in part.

COMMISSIONER: But in part?

45 **MR MEAGHER:** Yes. And I don't know that she herself says they're undisclosed, but it's obvious on the face of the enterprise agreement itself that they are not disclosed. So they're not disclosed in that sense. There's no evidence that they were disclosed. If someone says they were and can provide evidence of that, then we'd

withdraw that submission. But on what we've got, there's no evidence that they're disclosed.

5 **COMMISSIONER:** There's some evidence that the Multiplex agreement for
Queens Wharf was a pattern agreement for the industry, both as a basis for what you
might call normal commercial building but also as the basis for what later became
BPIC. So it had a very broad impact in terms of its operation over time. Have you
done any analysis on a - or has the expert done any analysis on a quantification of
10 what these amounts might add up to across all enterprise agreements that were
entered into based on that model?

MR MEAGHER: So the expert expresses opinions over the period ranging from
2015 to 2025, and she examines both the Multiplex agreement and she provides
some analysis as to the totality of fees that appear to have been realised, on the basis
15 of similar or the same means over that period of time. So in answer, yes, to a degree,
but FTI has only been retained some time in the last six weeks. So their
analysis - and they're retained as independent experts. So their analysis is necessarily
limited by the information that they've got access to and the time they've had to
analyse it.

20 **COMMISSIONER:** I thought this was all supposed to be fixed by the Heydon
Royal Commission. Didn't the Heydon Royal Commission look into the redundancy
funds that were set up under the enterprise agreements that were operating then and
call for greater disclosure about the way in which the moneys flowed back to related
25 parties and the CFMEU?

MR MEAGHER: It did. It's in the recommendations in that respect. It's the Building
Employees Redundancy Trust, and the Heydon report in volume 5 made some
recommendations about it, but they weren't implemented.

30 **COMMISSIONER:** They were not implemented?

MR MEAGHER: No. And they still haven't been.

35 **COMMISSIONER:** But this is the sort of - from my recollection, it was just the sort
of disclosure recommendations that were a focus of the Hayne Royal Commission in
the banking field, the need for people to understand where their moneys end up and
not have hidden commissions.

40 **MR MEAGHER:** Yes. Yes. I mean, the other relevant point, I suppose, in terms of
what the expert looks at is it is limited to where money is directed under an
enterprise agreement and where, to date, FTI has been able to analyse that it flows. It
doesn't look at other sources of potential interest to financial misconduct, such as
what unrelated third parties might have obtained benefits. That's a subject for another
45 day. So this is quite a limited exercise, if that makes sense. But it's still useful,
because it goes to the sorts of issues that you've just identified.

COMMISSIONER: So you are just looking at the ecosystem that's set up by the enterprise agreement and how those moneys flow back to the CFMEU but not how the related parties that are part of that ecosystem might benefit and how persons associated with them might benefit.

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MR MEAGHER: Yes. That's a much bigger topic, and that may lead to many more substantial inquiries. That's also a topic that touches upon case studies that others are conducting in this Commission. So there's some overlap there.

10 **COMMISSIONER:** And you don't have to answer this, but how are you going to take today's case study forward? Because we've really just scratched the surface in terms of these what you might call inter-union transfers.

15 **MR MEAGHER:** Yes. We've identified just a couple as an example, and the purpose in doing that is really to identify the sorts of laws and rules that might be relevant to financial misconduct and the structure of the organisation so that financial misconduct can be understood. The potential wrongdoing of the sorts that we've identified is an ongoing inquiry for us, and indeed it's something that we intend to use FTI to examine as well, because some of the accounting is reasonably difficult to
20 penetrate. As, Commissioner, you yourself have noticed today, some of it just on its face doesn't appear to make sense, and trying to go behind the documents and understand that from primary records is a task that requires considerable expertise.

25 **COMMISSIONER:** All right. So we'll hear from you again at some later stage on this topic?

MR MEAGHER: You certainly will.

30 **COMMISSIONER:** All right. Anything else, Mr O'Grady? Mr de Jersey? Mr Clift? We'll adjourn till tomorrow morning.

<THE HEARING ADJOURNED AT 4.08 PM