Queensland Government

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

COMMISSIONED UNDER THE PROVISIONS OF THE COMMISSIONS OF INQUIRY ACT 1950

PUBLIC HEARING
BRISBANE MAGISTRATES COURTS

TUESDAY, 10 NOVEMBER 2026
AT 10.00 AM

DAY 54

APPEARANCES

Mr S Wood AM KC – Commissioner
Mr D Ternovski – Counsel Assisting
Ms B Sacco – 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 A Hughes – Counsel for the CFMEU Administration
Ms E Hoiberg – Counsel for Michael D'Ath
Ms J Jary – Holding Redlich for Michael D'Ath
Ms K Hilliard – Counsel for the Hon. Grace Grace MP
Mr A Duffy KC – Counsel for the Hon. Grace Grace MP
Mr C Martin – Counsel for Helen Burgess
Mr A O'Brien KC – Counsel for Helen Burgess
Mr Michael De'Ath – Witness

<THE HEARING RESUMED AT 10.00 AM

COMMISSIONER: Deal with appearances first. Mr Ternovski, you appear with Ms Sacco as counsel assisting?

MR TERNOVSKI: We do, your Honour.

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

MR DE JERSEY: Yes, Commissioner.

COMMISSIONER: Ms Hoiberg, you appear as counsel Michael De'Ath? Have I pronounced his name, correctly?

MS HOIBERG: Yes, Commissioner.

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

MR O'GRADY: I do, Commissioner.

COMMISSIONER: Mr Martin, you appear as counsel for Ms Helen Burgess; is that right?

MR MARTIN: Yes, Commissioner, that's right.

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

MR DUFFY: That is so, Commissioner.

COMMISSIONER: Mr Ternovski.

MR TERNOVSKI: Thank you, Commissioner. Commissioner, this is the fifth hearing block in which the Commission will hear evidence from the regulatory capture case study. Commissioner, you will recall our case theory, which is that starting from about 2016, but especially -

COMMISSIONER: There's a lot going on, Mr Ternovski. I wouldn't - I don't think you should expect I recall everything, so if you want to take it slowly, please do.

MR TERNOVSKI: This was a somewhat rhetorical device, Commissioner, because I'm about to remind you.

COMMISSIONER: Thank you.

MR TERNOVSKI: The case theory is that starting from about 2016, but especially after 2018, Workplace Health and Safety Queensland, also known as WHSQ, which sits within the Office of Industrial Relations or OIR - I name these abbreviations because they'll get a lot of airtime today - WHSQ became captured by the CFMEU, and what I mean by that is the CFMEU used its influence over the safety regulator to weaponise it, that is, to deploy the powers of inspectors against particular contractors, and the case theory is that the CFMEU used this influence over the OIR not to advance genuine safety complaints but to advance its industrial agenda, that is, to pressure contractors into a CFMEU enterprise agreement to favour the union's preferred subcontractors and to exclude those that had fallen out of favour.

COMMISSIONER: And to what?

MR TERNOVSKI: Exclude those -

COMMISSIONER: Exclude.

MR TERNOVSKI: - that have fallen out of favour. Commissioner, when I opened in May, I identified four broad questions that this case study raises. First, to what extent was the regulator captured, who were the public officials over whom the CFMEU exerted control or influence, and how far up the chain did that control and influence go? Secondly, how, by what means, did the CFMEU capture the regulator? What methods did it use? Three, how did the CFMEU use its capture of the regulatory to further its objectives and what were those objectives? And (4) were there any other government agencies that the CFMEU was able to exercise improper influence over? This week's evidence goes mainly to the first of those questions: how far up the chain? The large part of this week's evidence -

COMMISSIONER: Just going back to the fourth one, other agencies, I think at some point the QBCC was mentioned. Is that right?

MR TERNOVSKI: Yes. So there will be evidence this week, the next instalment of the QBCC side of regulatory capture.

COMMISSIONER: Sorry, I -

MR TERNOVSKI: But the bulk of the time this week will be dedicated to the Office of Industrial Relations.

COMMISSIONER: And the first question.

MR TERNOVSKI: And the first question: how far up the chain? And in particular, there will be evidence - I will come back to that - concerning the events of March and April 2023, when Ms Bancroft, the then deputy director-general of

OIR, tried to introduce a proper triage system for CFMEU and shortly thereafter was out of a job.

Now, let me briefly summarise the evidence to date, and most of it concerns the OIR, because that has been the focus of this case study to date. First, Ms Burgess and the CFMEU's direct line to OIR: the Commission has heard evidence from inspectors, operations managers and a regional director that after Ms Burgess became the director of construction compliance and field services in 2018, the CFMEU did not use the normal triage system -

COMMISSIONER: What was the date again? 2018?

MR TERNOVSKI: 2018. The CFMEU did not use the normal triage system, the 1300 number, also known as the AAA triage process, and instead CFMEU officials rang Ms Burgess directly and that she's then dispatched inspectors in accordance with CFMEU demands. For example, Ms Deborah Dargan, an operations manager, gave evidence in March that:

> "All requests that same from the CFMEU requesting assistance were treated as priority."

And when she asked why, the allocator told her, "It's what Helen wants." Mr David Cappelletti a WHSQ inspector, gave evidence in April that the CFMEU requests took precedence over all other stakeholders and that probably the only thing it didn't take precedence over was a serious accident. Once inspectors were on site -

COMMISSIONER: There was also someone in Cairns, a regional manager, who said it was actually affecting Cairns, I think.

MR TERNOVSKI: Yes. I am planning to get to Cairns as well, because one of the aspects of this is that Ms Burgess' reach extended beyond her actual jurisdiction into the regions and particularly into the north. Now, one component of this is Ms Burgess dispatching inspectors in response to CFMEU requests in priority. The other aspect of this is that once the inspectors were on site, we've heard evidence that Ms Burgess then piled pressure on them to write the enforcement notices that the CFMEU was seeking. For example, Mr Noel Hayes, a retired WHSQ inspector, said:

> "If the CFMEU wanted the notice, we were virtually told to write the notice."

He described a prohibition notice on a tower crane that Ms Burgess had drafted. He said:

> "None of it was my words. My signature was on it."

Asked whether he had a reasonable belief to support it, he said:

"No, never."

Mr Paul Watts, another retired principal inspector, gave evidence about how he refused to issue a notice he believed would not be lawful and was told he risked disciplinary action. He said he "turned into basically a notice-writing machine". And Ms Dargan said that inspectors who would not write the notice would be pulled off site and replaced by other inspectors that would write the notice. Mr Hayes also described being at a CFMEU protest at a CPB site in June 2018 with Mr Ingham present and Ms Burgess telling him, that is, telling Mr Hayes, "Whatever you do, don't get them arrested."

Mr Cappelletti said that he was "pulled aside many times and chastised, threatened with performance management because I wasn't toeing the party line", and he also said that when inspectors questioned what they were told, "The answer we usually got was that's what the government of the day wants so that's what - that's what you're told." Ms Dargan was told by a manager when she raised her concerns, "Well, we've got a Labor government. This is what it is. Either like it or leave."

Mr Dennett: the evidence to date is that Ms Burgess' executive director, Mr Marc Dennett, backed her. In Cairns, regional director Paul Smith said that when he would not write a notice the CFMEU wanted, about 80 per cent of the time he'd get a call from Mr Dennett and that Mr Dennett regularly said words to the effect that he was getting - he, Mr Dennett - was getting pressure from the minister's office on this. Ms Farrington's statement records Mr Dennett telling her:

> "That is the way we're operating at the moment in this political landscape. We give them what they want."

Ms Fox described Mr Dennett adopting the CFMEU position on state union officials entering sites, purportedly based on legal advice, but when she finally read the legal advice he claimed to rely on, it did not support his position.

COMMISSIONER: Who was this, sorry? This person?

MR TERNOVSKI: This is Mr Dennett. You'll recall there was evidence about -

COMMISSIONER: Sorry, yes. I'm sorry.

MR TERNOVSKI: You might recall the OIR got some advice from Mr Herbert of counsel about whether the CFMEU could bypass the federal permit requirement by having union officials employed solely by the state entity.

I now move to Cairns, Commissioner. The Cairns witnesses described Ms Burgess reaching, as I said, outside of her jurisdiction, her geographic area, to try to direct inspectors in the north. And once again, Ms Burgess pressured inspectors to attend sites and write notices sought by the CFMEU, and once again this

activity was not about safety but about advancing the CFMEU's industrial agenda. Mr John Dalamaras, an operations manager in Cairns, described his first call was from Ms Burgess: "She told me she was communicating directly with the CFMEU," he said, and when inspectors did not issue notices:

> "She'd say, 'It's not good enough; you should be issuing notices.'"

Mr Karim De Ridder, team leader and former senior inspector -

COMMISSIONER: It's quite incredible when you think of that. She's 2000 kilometres away telling an inspector on the ground what they should be doing and replacing their independent discretion and judgment about what they're seeing in real time with her mandated result.

MR TERNOVSKI: That is quite striking, Commissioner, and you'll recall there was also evidence about the fly-in squad, that when Cairns inspectors refused to write notices, more compliant inspectors would be dispatched from Brisbane and they would then write those notices. And relatedly to what you just asked me, Mr De Ridder, a team leader and former senior inspector, gave evidence -

COMMISSIONER: Who was this, sorry?

MR TERNOVSKI: Karim De Ridder - described management accepting what the CFMEU were telling them over what inspectors had reported and said that this occurred frequently. Ms Farrington, the former operations manager, was asked what the CFMEU's calls during enterprise bargaining complaints had to do with safety. Her answer was:

> "Usually nothing."

Ms Farrington described the expectation placed on inspectors as ridiculous and said that she believed it was fraud and definitely regulatory capture. Mr Paul Smith's view was that:

> "We weren't an independent regulator."

The regulator should be able to make a decision without influence or direction from the minister's office, he said. Ms Burgess' attempts to control the allocation of inspectors in the north reached a point where Mr Smith told Ms Burgess, "Helen, you may be running a rapid response team for the CFMEU, but I certainly can't."

Ms Fox: Commissioner, you will recall evidence from Ms Fox, who I think ultimately ended up at one point in tears in the witness box, and her evidence - one aspect of her evidence was to illustrate one of the instruments of influence that the CFMEU used to obtain what it wanted, which I would describe as simply good old-fashioned intimidation if anyone tried to stand in their way. And in particular,

in the June block, Ms Fox described being taken out of a meeting at the CFMEU's Bowen Hills office in January 2018, separated from her colleagues and berated by Mr Ravbar, who told her she was banned from the union's offices and meetings and that "we'd have dragged you out from here and thrown you out of the building".

Mr McKay: I want to circle - Mr McKay, as you will recall, was a deputy director-general of OIR, succeeding Ms Bancroft.

COMMISSIONER: He was the one who said, "I was the highest-paid call-centre operator" - I can't remember whether he said in the state or in the country.

MR TERNOVSKI: He said, and I quote:

> "Queensland's highest-paid and least-qualified construction call-centre operator."

I want to circle back to Ms Bancroft, but dealing with Mr McKay first, he became the DDG in June 2023.

COMMISSIONER: There were lots of DDGs, weren't there, during this period, the 10 years? There was something like eight or 10 DDGs?

MR TERNOVSKI: Yes, I think there is nine. I've got a list. I will dig that up, Commissioner. There was a lot of turnover and a lot of acting positions. But essentially the permanent DDGs were Mr Blackwood, then Mr Allen, then Mr McKay - although whether he can be described as permanent or not is open to question, because it was always a sort of a temporary arrangement - and then ultimately Ms Megan Barry became the final successor. But there were many - there were acting DDGs in between, so Ms Barry acted as acting DDG between Ms Bancroft and Mr McKay, and Ms Donna Heelan acted as acting DDG between Mr McKay and Ms Barry coming back as a permanent DDG. And I'm told there were nine DDGs in total over that period, including acting.

Now, Mr McKay, at a previous hearing - I think it was April this year - gave evidence about the lengths to which the CFMEU went to try to get Ms Burgess back once Ms Bancroft removed her from her role as director of CCFS. Mr McKay said that Mr Ravbar's answer to every problem was to return Helen Burgess to the role, and when Mr McKay refused to do so, the CFMEU rang him directly, and he took their calls, and this is when he described himself as Queensland's highest-paid and least-qualified construction call-centre operator. He said that refusing calls would have been the nuclear option and he did not know what behaviour that was going to engender from the CFMEU. He also knew, he said, that Michael Ravbar does have the ear of government.

Mr McKay also described Mr Kurt Pauls, in September 2023, telling him about OIR staff: "You need to sack the lot of them. Sack the lot of them and start

again." And he described Mr Ravbar asking Minister Grace to return Ms Burgess and the minister's response, which was essentially to the effect that "Mr McKay's managing this". Sarina Wise: Commissioner, you will -

COMMISSIONER: Just remind me, the structure is director-general, then there were these nine deputy director-generals - some acting, some permanent - then the next level down is executive director of the Office of Industrial Relations? Is that the next level down below deputy director-general?

MR TERNOVSKI: Within the OIR, under the deputy director-general, there was a number of executive directors. I can't tell you off the top of my head how many, but in terms of the construction inspectors, there was a position of executive director of WHSQ compliance and field services, which at one point in time was occupied by Mr Marc Dennett.

COMMISSIONER: Yes.

MR TERNOVSKI: And then, after Mr Dennett left, Mr Andrew Harris was acting in that role. The CFMEU didn't like Mr Harris, refused to deal with him, including potentially because he used to work for the ABCC. And then there was a recruitment process and Mr Harris was ultimately replaced by Sarina Wise, but you might remember there were two goes at that recruitment process.

COMMISSIONER: There was what? What did you say then?

MR TERNOVSKI: Two goes at that recruitment process.

COMMISSIONER: And then below the position of WHS compliance and field services executive director, there was Ms Burgess' position.

MR TERNOVSKI: Yes.

COMMISSIONER: Which is director of - what is it?

MR TERNOVSKI: CCFS: construction compliance and field services. I think the position was abolished after -

COMMISSIONER: I think it was also created for - not for her, but for someone who held it for six months before -

MR TERNOVSKI: Yes, there were I think from memory there were two rotating - there were two people briefly in that role. One of them was Rhett Moxham, the other one Daryl Brooker. I couldn't tell you in what order. I think it was Daryl Brooker first and then Rhett Moxham, and from memory Rhett Moxham was a member of the BLF, but the CFMEU still didn't like him.

COMMISSIONER: And they only lasted a short time.

MR TERNOVSKI: And they only lasted a short time, and ultimately Ms Burgess stepped into the role in April 2018. Going back to Ms Wise - she had to go through those two rounds of recruitment process that I mentioned, but when she finally started as executive director in October 2023, she in her own words quickly identified that there was regulatory capture by the CFMEU. She tried telling Mr Pauls to use the 1300 number, but his message was, "How dare you tell me to call the 1300 number. I will not deal with an AO5-level person for my urgent construction matters." When she offered to take the CFMEU's call herself, you may remember his line, "We only call the top dog; your time will come," the top dog, of course being Mr McKay.

Ms Wise's own triage proposal of August 2024 had was not supported by the acting deputy director-general Ms Heelan. And Mr Smith, you may recall, gave evidence that Ms Wise told him before the election that Ms Heelan said to Ms Wise - this is double hearsay - "Well, let's hold off till after the election," and the triage reform was finally implemented in November '24 after the change of government.

The QBCC: in June, the Commission opened another chapter of regulatory capture, the QBCC. And you'll recall, Commissioner, that Mr Graham Easterby, the QPCC's licensing manager, described CFMEU letters compiling WHSQ notices against particular contractors, and Commissioner Bassett - this is QBCC Commissioner Brett Bassett - expecting licensing action on them. Mr Easterby described the board, after Mr Ingham was appointed to it in 2018, intervening in operational matters. And those CFMEU complaint letters compiling the WHSQ notices are the link between the capture of the two regulators, and they illustrate what I called in June a double whammy: the CFMEU's capture of WHSQ produced the notices and then its influence at QBCC sought to turn those notices into licensing action against the same contractors, as an additional and even bigger stick. Because, of course, if you lose your licence you're out of business.

Mr Easterby also told the Commission that the QBCC's director of licensing services, Mr Ian Grant, had come out of a meeting with Commissioner Bassett, and Mr Grant told Mr Easterby that Commissioner Bassett said, "The reason we're here is because Watpac isn't signing an EBA with the CFMEU." Now, that was hearsay, but this week you will hear what happened in that conversation from Mr Grant himself. Let me now come back to Ms Bancroft. Commissioner, the evidence that this week's evidence will address most directly is that of Ms Bancroft. She was -

COMMISSIONER: Ms Bancroft was director - sorry, deputy director-general between Mr -

MR TERNOVSKI:

COMMISSIONER: Sorry, you go. What position did she told?

MR TERNOVSKI: She was the deputy director-general. She was the permanent replacement of Mr Craig Allen. From memory there was somebody acting in between them - Mr Tony James. And her tenure was from 1 August 2022 until she was dismissed on 21 April 2023.

COMMISSIONER: And then she was replaced by Mr McKay?

MR TERNOVSKI: Yes, with Ms Barry acting in the intervening period because Mr McKay had a trip pre-planned. Now, the chain of command here was that as the deputy director-general Ms Bancroft reported to the director-general Mr Michael De'Ath, from whom we will hear today, and Mr De'Ath in return reported to the minister, the Honourable Grace Grace. You may recall, Commissioner, that Ms Bancroft proposed a new triage system that would end the CFMEU's direct line to the inspectorate, and what she proposed was that the complaints would go through a dedicated 1300 number, in a similar way to notifications from other stakeholders, and that proposal was going ahead as of March 2023, and she wrote to the union saying it would commence.

COMMISSIONER: She was sacked six weeks later on 21 April 2023.

MR TERNOVSKI: She was, and she gave evidence, relevantly, that in April, Mr De'Ath rang her, and on her account he said to her words to the effect of, "Kym, Minister Grace has considered this triaging system. One thing Minister Grace is really good at, she's good at managing stakeholders." And that he said to her on her account that the reform would be deferred until the new executive director of WHS compliance and field services was appointed. And on 19 April 2023, she wrote to Mr Ravbar putting the triage on hold.

COMMISSIONER: Sorry, who wrote?

MR TERNOVSKI: Ms Bancroft. Well, the letter went out in her name. How that letter came about will be the subject of evidence today, but she wrote to Mr Ravbar putting triage on hold, which she described as, in effect, implementing the minister's decision. That's on 19 April. The next day, on 20 April, Ms Bancroft was called into a meeting with Mr De'Ath. He told her that her employment as the head of OIR was to end. On her account, when she asked for a reason, Mr De'Ath said words to the effect of, "Kym, there's a union group that is unhappy with you," and the next day her contract was terminated, which brings me to Mr De'Ath. Commissioner, this week, the Commission will hear from him, and he's the first witness after my opening.

Mr De'Ath was the director-general of the Department of Education from 2021 to 2024, and in that time he also led - "led" is the wrong word - he was responsible for the OIR until the end of 2023. At the end of 2023, I think it's 1 January - I'll get the exact date; I think it's 1 January 2024 - there was a machinery of government change and the OIR was transferred to another portfolio. So he

remained in the office of director-general, but he lost the responsibility for OIR at the end of '23.

COMMISSIONER: It went to some other department?

MR TERNOVSKI: The OIR went to some other department.

COMMISSIONER: Yes, responsibility - ministerial and therefore departmental responsibility changed.

MR TERNOVSKI: Yes. Now, Mr De'Ath has given a statement to the Commission and he was interviewed by the Commission's investigators, and he gives his own account of these events and we will be testing that account today. And the matters that I will explore with him today include why the triage system was put on hold and what part the minister's office played in that decision, why Ms Bancroft's employment was ended, what he told her on 20 April, if anything, about the reason why her employment was ending, and what part, if any, the CFMEU's dealing with Mr De'Ath and with the minister's office played in these decisions. And these questions that I will explore with Mr De'Ath go to the heart of the first of the four questions I posed at the start: how far up the chain the CFMEU's control and influence went. I should briefly mention that some of the documents I will take Mr De'Ath to towards the end raise questions about how the CCC has dealt with or failed to deal with some of the issues that I will explore with him.

Now, Mr De'Ath will be the first witness this week. The next witness will be Mr McKay again, recalled briefly, and he has provided a second statement in which he deals in a lot more detail about how he was - the time period surrounding his recruitment to become the DDG of OIR. The last witness this week will be Mr Grant, whom I mentioned. He was the director of licensing services at the QBCC from 2016 until he resigned in July '21. And as I mentioned, Commissioner, his name came up in Mr Easterby's evidence. He was Mr Easterby's director and was one of the three people, with Mr Easterby and Assistant Commissioner Kate Raymond, who resigned from the QBCC on the same day in July 2021. Mr Grant is a lawyer by training with a bachelor and a master of laws.

Mr Grant will describe the governance of the QBCC. The QBCC board is its governing body with powers to appoint and remove the Commissioner. In 2018, the board was extended from seven to 10 members, and Mr Jade Ingham, assistant secretary of the CFMEU, and Mr Andrew Hickman, of the company called FBS and the National Fire Industry Association was appointed to it. Mr Grant will give evidence that from around 2018 he observed an increase in the board's interest in and involvement with the QBCC's licensing activities, and that interest centred on licensing matters arising from workplace health and safety incidents. The board required monthly reports on them, not just statistics but the details of each incident and the licensing action taken or proposed, in so much detail that the QBCC's

project office was engaged to manage the reporting. The board did not ask for that level of reporting on any other category of licensing matter.

Mr Grant will also say that because of the - in effect, the influence that CFMEU had through having Mr Ingham on the board, complaints from CFMEU were harder to deal with than complaints from anyone else and were elevated within the QBCC. He will cover that in a lot more detail. Now, that evidence connects directly - Mr Grant's evidence connects directly with what you have heard about the WHSQ enforcement notices being weaponised against contractors. In about March or April 2021, Ms Raymond, assistant QBCC commissioner, told them the board was considering a policy -

COMMISSIONER: Just give me that name again, sorry.

MR TERNOVSKI: Kate Raymond.

COMMISSIONER: March/April 2021, did you say?

MR TERNOVSKI: Yes. In that time period, Ms Raymond told Mr Grant that the board was considering a policy under which a contractor who had received multiple improvement notices under the WHS Act would have its licence suspended or cancelled on the basis it was no longer a fit and proper person, even though had it had complied with the improvement notices. As Mr Grant explains, improvement notices are generally for lower-level risks, and the examples he recalls seeing reported to the QBCC included an excessively long extension cord, insufficient toilet facilities and the guard rails needed on a floor where work had not yet begun.

Mr Grant will give evidence that he and Ms Raymond had significant concerns about this approach: first, the threshold for a finding that a licensee is not a fit and proper is high; secondly, the information the QBCC received from the OIR did not say how the inspector formed the belief or even necessarily what each notice was about; and further, the policy of using the improvement notices in this way would give licensees a reason to contest improvement notices rather than to comply with them. Ms Raymond's board paper recorded that Mr Grant supported those concerns. At his exit meeting in July 2021, Ms (indistinct)'s replacement, Mr Greg Milne -

COMMISSIONER: Sorry, whose replacement?

MR TERNOVSKI: Ms Raymond's replacement, Mr Greg Milne, told Mr Grant words to the effect, "Going forward, things are going to change and we will be taking fit and proper actions for improvement notices," although to Mr Grant's knowledge the policy was never actually implemented. So this is the double whammy, Commissioner, that I described in June: the CFMEU was using WHSQ to generate these notices in the first place, particularly through Ms Burgess and her control over inspectors, and then tried to use its influence in QBCC to turn

those notices into an even bigger stick for the licensing action; and that licensing action was severe - suspension or cancellation of the contractor's notice, and the basis was to be the mere receipt of multiple improvement notices rendered a person not a fit and proper person to hold a contractor's licence.

Now, I already mentioned Mr Easterby's evidence about Mr Grant telling Mr Easterby that Commissioner Bassett said the reason they were dealing with Watpac was that Watpac was not signing an EBA with the CFMEU. Mr Grant will now give an firsthand account of that conversation. Between about April and June 2019, Mr Grant was called into a meeting with Commissioner Bassett and the QBCC's director of integrity Mr Airo-Farulla.

COMMISSIONER: 2019?

MR TERNOVSKI: 2019. Mr Grant did not know beforehand what it was about. Commissioner Bassett opened the meeting with words to the effect of, "We need to talk about Watpac. Before we start, we know the only reason we're here is because an EBA has not been signed." Mr Grant understood that to refer to an enterprise agreement with the CFMEU. In fairness, Mr Grant says that on reflection the comment may have related to PJ Walsh, a Watpac subcontractor also in dispute with the CFMEU, and also that he can't be certain that Commissioner Bassett meant the QBCC was acting because of a dispute or was explaining why the complaints had been made in the first place. Either way, Mr Grant understood this was an acknowledgement that the QBCC was being used or weaponised in an industrial dispute.

Commissioner Bassett wanted to impose a condition on Watpac's licence requiring watt tack to engage an independent assessor to report on whether all its contractors were properly licensed. He told Mr Grant he was under pressure to achieve an outcome. Mr Grant asked whether the pressure was coming from the board. Commissioner Bassett said it was not; he said it was coming from the very top. Mr Grant says that he understood that to mean the ministers and Minister de Brenni. Mr Grant told Commissioner Bassett there was no evidence to support a proper ground for the condition and that he would not exercise his delegation to impose that condition.

COMMISSIONER: So Grant told Bassett that?

MR TERNOVSKI: Yes. He told Commissioner Bassett it was open to the commissioner himself to exercise the power himself and staff would prepare the documents if he did, but Commissioner Bassett declined. Mr Grant recalls him saying it wouldn't look right for him to make the decision and referring to the need for top cover. The meeting ended when Commissioner Bassett abruptly stood up and left his office. Mr Grant thought he was under a lot of pressure and extremely stressed. The condition was never imposed.

Circling back to PJ Walsh, which I mentioned, Mr Grant will describe what happened in March 2019 when PJ Walsh, the Watpac subcontractor on the North Queensland Stadium project - Commissioner, you will recall that project; it was subject of evidence in Cairns - PJ Walsh applied to add a concreting class to its existing licence. Mr Grant will give evidence this is among the simplest applications that the licensing branch dealt with, usually processed within a couple of days. It was approved promptly by a junior QBCC officer.

The next day, Mr Grant was told that the CFMEU had complained to the minister that PJ Walsh's application had been rubber stamped and that the matter had become highly political. Mr Grant reviewed the action taken by the licensing services branch in relation to this matter, including by consulting his officers, and concluded that his officers had acted appropriately. The junior officer who had done nothing more than her job was, as he puts it, quite upset. The matter was nonetheless referred to the QBCC's integrity unit. The chair of the board Mr Dick Williams and the deputy commissioner Mr Philip Halton, former chief of staff to Minister de Brenni, were involved in deciding what external investigator to engage.

COMMISSIONER: So who was the second one? Dick Williams and who?

MR TERNOVSKI: Philip Halton. Mr Grant regards the chair's involvement as unusual for an integrity investigation. Mr Grant was not himself involved in the investigation.

COMMISSIONER: I thought Bassett - oh, Bassett's the commissioner, Williams is the chair.

MR TERNOVSKI: Yes, that's correct, Commissioner. Mr Grant was subsequently told the investigation had found nothing of concern, and he vaguely recalls being told around 800 other simple applications had been processed in a similar timeframe. So, Commissioner, the picture from Mr Grant's evidence is of a building regulator whose board after 2018 included a senior CFMEU official, whose licensing decisions involving CFMEU's industrial disputes were escalated and politicised, and the commissioner who by his own account knew that the QBCC was being drawn into an EBA dispute and it was under pressure from the very top to act anyway.

Commissioner, that is all I wish to say by way of opening. I should also clarify that the date of the machinery of government change, which took the OIR out of Mr De'Ath's portfolio, that came into effect on 1 January 2024. So he was responsible for -

COMMISSIONER: As you said, just before 1 January 2024.

MR TERNOVSKI: Yes. My recall was correct, as it turns out.

COMMISSIONER: All right.

MR TERNOVSKI: That's all I wish to say by way of opening. Unless you have any questions, I propose to call Mr De'Ath.

COMMISSIONER: No, not at the moment.

MR TERNOVSKI: I call Mr De'Ath.

MR DUFFY: Commissioner, before the witness is actually called, may I just mention this. In relation to this particular -

COMMISSIONER: Just have a seat, Mr De'Ath, while Mr Duffy is dealing with this matter.

MR DUFFY: So in relation to this witness, we have this morning at the bar table been handed a folder with quite a number of documents in it.

COMMISSIONER: Yes.

MR DUFFY: We haven't had the opportunity to see it, and this particular witness has not, it appears, provided a witness statement. Now, I'm not being critical of that, but what it really means is our ability to deal with it today is very limited, and that would include any objection as well as cross-examination. I'm merely flagging it, Commissioner, rather than complaining later.

COMMISSIONER: I understand.

MR DUFFY: Thank you.

COMMISSIONER: What do you - do you want to say anything about that, Mr Ternovski?

MR TERNOVSKI: Well, out of necessity, the documents could not be provided in advance. Obviously we understand that that makes it difficult for the other parties to deal with. I would propose that after I have finished examining Mr De'Ath, and perhaps a break, that the parties may have an opportunity to form a position as to what they want to do and whether they want to proceed, for example, with an application to cross-examine, whether they want to seek to cross-examine Mr De'Ath on another occasion, or some other course of action, once they've actually heard the evidence.

COMMISSIONER: I think your position is protected by that course, isn't it, Mr Duffy?

MR DUFFY: Yes, Commissioner.

COMMISSIONER: Mr De'Ath, will you come forward into the witness box, please.

<MICHAEL HAROLD DE'ATH, AFFIRMED

<EXAMINATION BY MR TERNOVSKI

COMMISSIONER: Thank you, Mr De'Ath. Please take a seat. Mr Ternovski.

MR TERNOVSKI: Mr De'Ath, could you please repeat your full name for the transcript?

MR DE'ATH: Michael Harold De'Ath.

MR TERNOVSKI: And Mr De'Ath, please don't audibly announce your address, but I'm just going to put to you that your address is known to the Commission?

MR DE'ATH: Correct.

MR TERNOVSKI: And what is your current occupation, Mr De'Ath?

MR DE'ATH: I am an independent operator of my own advisory firm.

MR TERNOVSKI: And that's MD Advisory, is it?

MR DE'ATH: Correct.

MR TERNOVSKI: Mr De'Ath, you were the director-general of the Department of Education from November 2021?

MR DE'ATH: Correct.

MR TERNOVSKI: And you were appointed for a three-year term?

MR DE'ATH: Correct.

MR TERNOVSKI: I saw, Mr De'Ath, that you just nodded and then added an oral reply. I know it's unnatural, but I would ask you to please verbalise your responses for the transcript.

MR DE'ATH: I understand.

MR TERNOVSKI: And, Mr De'Ath, you were appointed for a three-year term?

MR DE'ATH: Correct.

MR TERNOVSKI: And until - during that term, you were responsible for the Office of Industrial Relations for part of that term; is that right?

MR DE'ATH: Yes.

MR TERNOVSKI: And you may have - I think you were sitting in the court for my opening, so you'll correct me if I'm wrong, but as we understand it, the OIR was transferred out of your department and your responsibility from 1 January 2024; is that right?

MR DE'ATH: Yes.

MR TERNOVSKI: And during your tenure, your portfolio minister was Minister Grace Grace -

MR DE'ATH: Yes.

MR TERNOVSKI: - who was the Minister for Education, Industrial Relations and Racing?

MR DE'ATH: Yes.

MR TERNOVSKI: And the deputy director-general of OIR reported to you?

MR DE'ATH: Yes.

MR TERNOVSKI: As your direct report?

MR DE'ATH: Yes.

MR TERNOVSKI: And you were also on Ms Bancroft's selection panel?

MR DE'ATH: Yes.

MR TERNOVSKI: And you recommended her?

MR DE'ATH: Yes.

MR TERNOVSKI: And she started in her role on 1 August 2022?

MR DE'ATH: That sounds about right.

MR TERNOVSKI: And throughout her tenure, she reported to you?

MR DE'ATH: Yes.

MR TERNOVSKI: And also, during that period, Ms Katelyn Dougherty was the chief of staff to Minister Grace Grace; is that right?

MR DE'ATH: Yes.

MR TERNOVSKI: Now, Mr De'Ath, I'm going to take you to some documents. You should have next to you a very thick folder of documents?

MR DE'ATH: Thank you.

MR TERNOVSKI: I just want to say a few things about those documents before I take you to them. Firstly, I'll be directing you to a particular document basically by document number, which represents the tab number in your folder. Now, when I refer you to a document, please take the time to read it -

MR DE'ATH: Yes.

MR TERNOVSKI: - before I ask you any questions, because some of these documents are your own emails, but you wouldn't have seen for a while. Some of those documents are other people's emails that you would have - never have seen. So please take your time when I take to you a document to review it, and if you need more time, please say so.

MR DE'ATH: Thank you. I will.

MR TERNOVSKI: I want to make a couple of other points about the folder before I start. One is - I might give you an example of this - just for the sake of argument, if you go to document 8 -

COMMISSIONER: 8, did you say?

MR TERNOVSKI: Yes. The document is not important; I just want to illustrate a peculiarity about the way they're printed. So if we show the top of the page, with the from, sent to and subject, you'll see the "sent" date is listed as Monday, 31 October 2023, 3.01 -

COMMISSIONER: 2022.

MR TERNOVSKI: Sorry, 2022, thank you, Commissioner - 31/10/2022, 3.01.31 AM (UTC).

MR DE'ATH: I see that.

MR TERNOVSKI: So most of the documents are printed from our document management system. The timestamps are all in UTC rather than Brisbane time. So UTC is the Greenwich time, effectively. But mercifully, because Queensland doesn't have daylight savings, it's just a matter of adding 10 hours to those times.

MR DE'ATH: I understand.

MR TERNOVSKI: So in this case, this email was actually sent at 1.01 pm Brisbane time.

MR DE'ATH: Thank you.

MR TERNOVSKI: Not at 3 am. But in some cases, this pushes the email into the following date.

MR DE'ATH: Noted.

MR TERNOVSKI: So it's a little bit confusing. I apologise. That's just the way the documents come out of our system. The other point I wish to note is that I'll be taking you to some documents, including a call list, that contains people's actual phone numbers. Now, the Commission has a non-publication order, non-publication order 1, which prevents the publication of people's contact details, including phone numbers.

Now, the way we normally deal with this is they just redact it, and so there's no possibility of error. However, because I want to ask you some questions about phone calls, the version of - the folder that you have and the folders - the physical copies that have been provided to the parties contain unredacted phone numbers in two documents: document 3 and document 5. Please don't read out those phone numbers. You shouldn't see any other phone numbers, so you don't need to remember document 3 and document 5. I'm just telling you they're the only ones that actually contain phone numbers, but please don't read out any phone numbers, but they're there for you to use or to look at.

MR DE'ATH: Thank you.

MR TERNOVSKI: However, the version that the operator has is redacted, so there is no risk of those numbers being accidentally shown on the screen. And I assume, Commissioner, that once those documents are tendered the version that will go on the Commission's website will be similarly redacted. Now, with that lengthy detour out of the way, can I ask you, Mr De'Ath, part of your role as the CEO of the agency was to review and manage conflict declarations of your staff, wasn't it?

MR DE'ATH: Yes.

MR TERNOVSKI: And so the way that it worked, if I understand correctly, the conflict declaration was held confidentially by HR?

MR DE'ATH: I believe so.

MR TERNOVSKI: But it was really confidential -

COMMISSIONER: I don't want to get you out of order, but I've got a witness statement of Mr De'Ath. You can tender it at any time you want, Mr Ternovski. Do you want to do it now or do you want to do it later?

MR TERNOVSKI: I'll do it, later, Commissioner. I'm coming to it.

COMMISSIONER: All right.

MR TERNOVSKI: Conflict declarations were confidential between the declaring officer and the CEO, weren't they?

MR DE'ATH: I believe so.

MR TERNOVSKI: And I might just show you a document.

MR DE'ATH: Certainly.

MR TERNOVSKI: If you go to document 12 -

COMMISSIONER: You said the CEO of the agency. Is that another way of saying director-general of the Department of Education, or is there some other -

MR TERNOVSKI: In this case, yes.

COMMISSIONER: Sorry, which page? Which tab?

MR TERNOVSKI: If we go to document 12, page 2, you'll see that's a declaration of interest of Ms Bancroft. I want to take you - feel free to read the whole document, but I want to take you to footnote 1, that's all. Madam Operator, if we could blow up the footnote a bit more. You'll see it says there, last sentence:

> "The information will be accessible only by you and the relevant chief executive or statutory head."

Actually, it's not the last - penultimate sentence. So that's consistent with what I've just put to you, isn't it, Mr De'Ath?

MR DE'ATH: Thank you. Yes.

MR TERNOVSKI: And so in Ms Bancroft's case, the relevant chief executive or statutory head was you?

MR DE'ATH: Yes. I can't see a signature of mine there. It's been blanked out.

MR TERNOVSKI: You say it's been blanked out. Are you referring to the signature on page 4 of the document: signature of senior executive?

MR DE'ATH: Yes.

MR TERNOVSKI: That's Ms Bancroft's signature.

MR DE'ATH: Thank you.

MR TERNOVSKI: I can see it on my unredacted version. I don't see a space on this document for your signature, but tell me if I'm missing something.

MR DE'ATH: Thank you. There's no signature position for me I see on the document. Thank you.

MR TERNOVSKI: Thank you. Can I briefly ask you about a little side issue. Can I - can you have a look at document 77. It's very lengthy, and you probably don't - these are your travel documents, Mr De'Ath. I probably don't need to trouble you - feel free to read the whole thing if you want to, but there's only a couple of very simple propositions that I want to get from that document that I would like you to confirm.

MR DE'ATH: I have the document.

MR TERNOVSKI: It's really just about dates that I want to ask you about. You don't really need the details of your travel.

MR DE'ATH: Certainly.

MR TERNOVSKI: So if you look on page 2, you'll see there is a reference to "approved overseas travel accompanying Minister Grace this Sunday, 23 April".

MR DE'ATH: Yes.

COMMISSIONER: I think the operator's catching up slowly.

MR DE'ATH: I have the document.

MR TERNOVSKI: Thank you, Commissioner.

COMMISSIONER: Page 1 or page 2?

MR TERNOVSKI: Page 2 of document 77. If we look at the email from - on the second half of the page, first full paragraph, just before the batch of redactions. Yes. Do you see the reference to the departure of 23 April?

MR DE'ATH: I do.

MR TERNOVSKI: And then if we go to page 7, it gives a slightly different departure date, but you will see in paragraph 1 the return date is 30 April.

MR DE'ATH: Thank you.

MR TERNOVSKI: Are those accurate dates for your trip from 23 April to 30 April 2023?

MR DE'ATH: I don't recall.

MR TERNOVSKI: But you don't disagree with what's in this document? You don't have an independent recall that contradicts this document; let me put it this way?

MR DE'ATH: I don't have any independent recall that contradicts this document.

MR TERNOVSKI: Does that sound about right, that you went from 23 to 30 April, as far as you can remember? Without committing you to precise dates, does that sound about right?

MR DE'ATH: It does sound about right.

MR TERNOVSKI: And the trip was with Minister Grace and Ms Dougherty; is that right?

MR DE'ATH: I can't recall the accompanying chief of staff, but it was with Minister Grace.

COMMISSIONER: So who's Ms Dougherty, sorry?

MR TERNOVSKI: Ms Katelyn Dougherty, the chief of staff to Minister Grace. And then if we go to page 15 of the same document, you'll see in the middle of the page, it says "traveller's signature", which is probably redacted on this version, but relevantly, it's got - it redacted your name as well, but relevantly, it's got the date, 9 March 2023.

MR DE'ATH: Noted. I see that.

MR TERNOVSKI: Do you agree, Mr De'Ath, that that plan has been - that this trip has been planned since at least that date, 9 March?

MR DE'ATH: Quite likely.

MR TERNOVSKI: I tender document 77.

COMMISSIONER: Are there any objections? No. Email chain from Fiona Toogood, Friday 21 April 2023 to Lisa Pennisi, subject Michael De'Ath - Overseas Travel Application, comprising some 18 pages, will be -

MR TERNOVSKI: We propose exhibit CA-14.

COMMISSIONER: CA-14.

<EXHIBIT CA-14 EMAIL CHAIN FROM FIONA TOOGOOD FRIDAY 21/4/2023 TO LISA PENNISI, SUBJECT MICHAEL DE'ATH - OVERSEAS TRAVEL APPLICATION, COMPRISING 18 PAGES

MR TERNOVSKI: Commissioner, a couple of administrative notes for your - or really for everyone's benefit. One is I propose to - I might come back to some of these documents after I tender them, but for ease of reference, I propose to refer to them - continue to refer to them by document number, so that everyone can easily find that in the folder. And secondly, to assist you with the descriptions of the documents, of which there are many, Commissioner, you will find in the index there's a brief description.

COMMISSIONER: Yes. Thank you.

MR TERNOVSKI: This is more for future exhibits, Commissioner.

COMMISSIONER: I understand. Thank you.

MR TERNOVSKI: Now, can you go to document 5, please. And this is one of those documents that contains actual phone numbers, so the version on the screen will be redacted.

MR DE'ATH: Thank you.

MR TERNOVSKI: Now, you see it's an email from you to Mr Steven Karydas. And to help you understand what this is - and I want to ask you some questions about it - this is an email that attaches a very large set of contacts, from which list of contacts we extracted a number of people that are relevant to today.

MR DE'ATH: Thank you.

MR TERNOVSKI: Have you had the chance to have a look at it?

MR DE'ATH: I have just flicked through it, counsel assisting.

MR TERNOVSKI: Yes. Now, is it right to say that on 19 April you sent Mr Karydas your contact list from your phone or some other device?

MR DE'ATH: I'm not aware of that.

MR TERNOVSKI: I'm just referring to this email, Mr De'Ath.

MR DE'ATH: Sorry.

MR TERNOVSKI: Document 5.

MR DE'ATH: I just do not recall this, sorry.

MR TERNOVSKI: Do you know who Mr Karydas is?

MR DE'ATH: No.

MR TERNOVSKI: In any event, if you look at the contacts - and you've got the unredacted version, or I think the photographs might be redacted - you - I'm not asking you to specifically check the numbers. Obviously you can't be expected to know the numbers off the top of your head, but you don't have any reason to doubt that these were the numbers of the - the correct phone numbers of the people involved, do you?

MR DE'ATH: I don't have any reason to doubt it.

MR TERNOVSKI: Those are the numbers in this document - so feel free to come back to it - that will be shown on the call list that I will take to you in due course. Commissioner, I tender document 5. To be clear, I tender the unredacted version.

COMMISSIONER: I understand. Are there any objections? Email from Michael De'Ath to Steven Karydas, Wednesday 19 April 2023, with contact list attachment, comprising 15 contacts in the tendered version, exhibit CA-15.

<EXHIBIT CA-15 EMAIL FROM MICHAEL DE'ATH TO STEVEN KARYDAS, WEDNESDAY 19/4/2023, WITH CONTACT LIST ATTACHMENT, COMPRISING 15 CONTACTS IN THE TENDERED VERSION

MR TERNOVSKI: Mr De'Ath, could you please go to document 1 now. Madam Operator, if we could just zoom in on paragraph 1. That's sufficient, thank you. I'll let you have a look at the document first.

MR DE'ATH: Thank you.

MR TERNOVSKI: Mr De'Ath, that's your statement, isn't it?

MR DE'ATH: That is my statement.

MR TERNOVSKI: And you prepared it for this Commission of Inquiry?

MR DE'ATH: Yes.

MR TERNOVSKI: And you prepared it in response to a compulsory notice requiring you to provide a statement?

MR DE'ATH: Yes.

MR TERNOVSKI: And the statement has been affirmed?

MR DE'ATH: Yes.

MR TERNOVSKI: And of course, when you prepared it, you knew it was an important document?

MR DE'ATH: Yes.

MR TERNOVSKI: And you knew that the Commission would rely on it?

MR DE'ATH: Yes.

MR TERNOVSKI: You prepared it with the assistance of lawyers?

MR DE'ATH: Yes.

MR TERNOVSKI: You took care in preparing it?

MR DE'ATH: Yes.

MR TERNOVSKI: You read it carefully before affirming it?

MR DE'ATH: Yes.

MR TERNOVSKI: And you would say, would you, that it's true and correct?

MR DE'ATH: I would.

MR TERNOVSKI: And you also took care, didn't you, to include everything in it that you thought was relevant to the question being asked?

MR DE'ATH: Yes, at that time, yes.

MR TERNOVSKI: I tender this document.

COMMISSIONER: Are there any objections?

MR DUFFY: Commissioner, the one we have is dated I think 4 June.

COMMISSIONER: Dated, sorry, Mr Duffy?

MR DUFFY: Dated 4 June.

COMMISSIONER: I've got one dated -

MR DUFFY: Oh, 5 June.

COMMISSIONER: - 5 June, yes.

MR DUFFY: I assume that's the same document.

COMMISSIONER: That's the one I have, 5 June.

MR TERNOVSKI: Just to be clear that we're on the same page, perhaps, Madam Operator, if you could scroll through the document and get to the last page, the affirmation page.

COMMISSIONER: The page before.

MR TERNOVSKI: No, it's the page before, please. It says:

> "Affirmed at Brisbane on 5 June 2026."

COMMISSIONER: My version, Mr Duffy, is 10 pages in total, being a four-page statement dated 5 June, 18 paragraphs and two annexures, comprising pages 5 through 10.

MR DUFFY: That seems to be what we've got, Commissioner.

COMMISSIONER: Witness statement of Michael Harold De'Ath, 5 June 2026, four pages, 18 paragraphs, with two annexures, comprising pages 5 to 10, will be exhibit CA-16.

<EXHIBIT CA-16 WITNESS STATEMENT OF MICHAEL HAROLD DE'ATH, 5/6/2026, FOUR PAGES, 18 PARAGRAPHS, WITH TWO ANNEXURES COMPRISING PAGES 5 TO 10

MR TERNOVSKI: Yes, that is the next number. Can I now take you to document 2.

MR DE'ATH: Yes.

MR TERNOVSKI: Now, Mr De'Ath, you were interviewed by investigators from the Commission of Inquiry on 8 October?

MR DE'ATH: I was.

MR TERNOVSKI: And your attendance at that interview was compelled by a notice issued by the Commission?

MR DE'ATH: It was.

MR TERNOVSKI: You obviously knew it was an important interview?

MR DE'ATH: Yes.

MR TERNOVSKI: You took it seriously?

MR DE'ATH: I did.

MR TERNOVSKI: You prepared, I assume? You at least re-read your statement?

MR DE'ATH: Yes. You refreshed your memory the best you could?

MR DE'ATH: Yes.

MR TERNOVSKI: And now, the cover page of this document listing appearances is inaccurate, isn't it, Mr De'Ath, because as apparent from late in the transcript, you were represented by senior counsel and junior counsel?

MR DE'ATH: Yes.

MR TERNOVSKI: As well as solicitors?

MR DE'ATH: Yes.

MR TERNOVSKI: Just names have been omitted from the appearances.

MR DE'ATH: Thank you.

MR TERNOVSKI: And you may recall, Mr De'Ath - and by the way, I'm going to put to you -

COMMISSIONER: Senior counsel and junior counsel were at this interview?

MR TERNOVSKI: Yes. So, Commissioner, if we go to page 2 of this document -

COMMISSIONER: Yes.

MR TERNOVSKI: - you will see at around line 24, Mr Justin McWatt, senior investigator for the Commission, says:

"Okay. Yep, no worries. And you've also brought legal representation."

COMMISSIONER: Yes, I see.

MR TERNOVSKI: And so that was Mr John McKenna, senior counsel, and Ms Emma Hoiberg, who is here appearing for -

COMMISSIONER: Ms Hoiberg appears today for Mr De'Ath.

MR TERNOVSKI: As well as a partner and an associate from Holding Redlich.

COMMISSIONER: And I think Ms Jary, the partner, is also here today in court - sorry, in the hearing room.

MR TERNOVSKI: Mr De'Ath, is that correct in terms of your representation?

MR DE'ATH: Yes.

MR TERNOVSKI: Just excuse me, Commissioner. I've had a bit of an issue. Mr De'Ath, throughout this hearing I'm going to put to you a number of propositions you said in the interview. If you're not sure, you can't recall, please tell me and I'll take you to the relevant passage.

MR DE'ATH: I will.

MR TERNOVSKI: Now, Mr De'Ath, do you remember that at the interview you were warned that providing a false or misleading answer may constitute an offence?

MR DE'ATH: Yes.

MR TERNOVSKI: And you were told that it was in your interests to tell the truth?

MR DE'ATH: Yes.

MR TERNOVSKI: And at the interview, you confirmed that your statement was correct?

MR DE'ATH: Yes.

MR TERNOVSKI: And that you had no changes to it?

MR DE'ATH: Correct.

MR TERNOVSKI: And do you recall telling the interviewers, Mr De'Ath, that before the interview, you had listened to "quite a bit of Kym's evidence"?

MR DE'ATH: Yes.

MR TERNOVSKI: And that's Kym Bancroft?

MR DE'ATH: Yes.

MR TERNOVSKI: And you also listened to Mr McKay's evidence?

MR DE'ATH: Yes.

MR TERNOVSKI: And you listened to the evidence of Mr Paul Smith?

MR DE'ATH: Yes, not in totality.

MR TERNOVSKI: But indeed, you refer to Mr Paul Smith's evidence, or part of it, in your statement, don't you?

MR DE'ATH: I believe I may have, yes.

MR TERNOVSKI: I can take you to that now, if you like. If you go to paragraph 14 on page 3 of your statement.

MR DE'ATH: Sorry, counsel assisting, the statement or the transcript?

MR TERNOVSKI: I'm sorry, I'm referring to paragraph 14 of your statement, which in turn refers to the transcript of - on my reading of it, refers to the transcript of the evidence of Mr Smith.

MR DE'ATH: Sorry, can you please refer me to the tab?

MR TERNOVSKI: Oh, I'm sorry. I'm sorry. This is your statement, tab 1, paragraph 14.

COMMISSIONER: It's also on the screen, Mr De'Ath.

MR DE'ATH: Oh, thank you. Yes, thank you.

MR TERNOVSKI: And Mr De'Ath, you obviously listened to the investigators' questions carefully?

MR DE'ATH: I believe so.

MR TERNOVSKI: And you would say that you answered them truthfully?

MR DE'ATH: I believe so.

MR TERNOVSKI: And to the best of your recollection?

MR DE'ATH: Yes.

MR TERNOVSKI: Do you recall being offered breaks?

MR DE'ATH: Yes.

MR TERNOVSKI: And you could confer with your lawyers at any time?

MR DE'ATH: Yes.

MR TERNOVSKI: You may not know this, but the transcript was sent to your lawyers on 13 October 2026, about four weeks ago?

MR DE'ATH: That sounds about right.

MR TERNOVSKI: Did you - without disclosing any discussions you've had with your lawyer, did you receive a copy of that transcript?

MR DE'ATH: Yes, I did.

MR TERNOVSKI: Have you read it?

MR DE'ATH: I have.

MR TERNOVSKI: You don't have any corrections to it, do you?

MR DE'ATH: There's nothing particularly springs to mind. I would make the comment that we are talking about things from over three years ago, and one of my recollections from this interview was that it was helpful in terms of refreshing my memory around some things, but not necessarily everything, of course.

MR TERNOVSKI: Let me now move to a different topic. Mr De'Ath, you would agree, wouldn't you, that as director-general, you took your responsibilities seriously?

MR DE'ATH: I did.

MR TERNOVSKI: And in particular, you would agree, wouldn't you, that you read briefs addressed to you before signing them?

MR DE'ATH: Yes.

MR TERNOVSKI: And you wouldn't sign a brief without reading it?

MR DE'ATH: No.

MR TERNOVSKI: And if you approved and signed the brief, that means that you've read it and you've agreed with what was in it?

MR DE'ATH: Yes.

MR TERNOVSKI: And if you had any concerns, you would raise them in some way, wouldn't you?

MR DE'ATH: Yes.

MR TERNOVSKI: One way may be by a comments section in the brief?

MR DE'ATH: Maybe.

MR TERNOVSKI: It could be a question to the relevant officer preparing the brief?

MR DE'ATH: Yes.

MR TERNOVSKI: Or ultimately you would not sign it if you were not satisfied with it?

MR DE'ATH: They would generally be the options.

MR TERNOVSKI: And is this also true in terms of taking care to read documents before you sign it about documents about your executives' performance?

MR DE'ATH: Yes.

MR TERNOVSKI: Now, Mr De'Ath, a deputy director-general is among the most senior officers in your department?

MR DE'ATH: Correct.

MR TERNOVSKI: And in the case of Ms Bancroft, or the position more generally, the position of DDG of OIR, that position was effectively - the DDG of OIR was effectively the head of OIR?

MR DE'ATH: Yes.

MR TERNOVSKI: And OIR was, in effect, a semiautonomous agency in its own right, wasn't it?

MR DE'ATH: Yes.

MR TERNOVSKI: It was attached to the Department of Education, but it was, in effect, its own agency, wasn't it?

MR DE'ATH: By definition, I'm not sure that would be characterised that way, but it did - it was set up to operate relatively independently, and you would know as the machinery of government changes, it is often moved around.

MR TERNOVSKI: So when I was suggesting to you that it was a semiautonomous agency, I didn't mean it in any kind of legal sense under the Act; just in fact, it had its own HR, for example?

MR DE'ATH: Yes.

MR TERNOVSKI: Its own ethical standards?

MR DE'ATH: Yes.

MR TERNOVSKI: Which are separate from the department's?

MR DE'ATH: Yes.

MR TERNOVSKI: Now, removing a deputy director-general - oh, before I get to that, the deputy director-general of OIR is also generally the regulator under the WHS Act?

MR DE'ATH: Correct.

MR TERNOVSKI: Which is an important role, obviously?

MR DE'ATH: Very important.

MR TERNOVSKI: So removing the DDG of OIR is not a routine matter, is it?

MR DE'ATH: Not at all.

MR TERNOVSKI: It's a serious step?

MR DE'ATH: Indeed it is.

MR TERNOVSKI: Serious step for the officer being removed?

MR DE'ATH: Yes.

MR TERNOVSKI: And a serious step for the OIR?

MR DE'ATH: Yes.

MR TERNOVSKI: And for the department?

MR DE'ATH: Yes.

MR TERNOVSKI: And so it's a decision that you would have thought about carefully?

MR DE'ATH: Indeed.

MR TERNOVSKI: And you would remember?

MR DE'ATH: There are certain things about it that I recall very well.

MR TERNOVSKI: Can I ask you another, related question: would you agree, Mr De'Ath, that changing how the Office of Industrial Relations dealt with CFMEU requests for inspectors, that was also a significant decision?

MR DE'ATH: Yes, and of concern.

MR TERNOVSKI: Now, Mr De'Ath, do you stand by what you said in your statement and your interview?

MR DE'ATH: Yes, I do.

MR TERNOVSKI: You don't have anything to correct or add?

MR DE'ATH: Unless there are things that I recall throughout the course of this hearing today, I do in essence stand by that, yes.

MR TERNOVSKI: So subject to having your memory being refreshed by the documents I'm going to take you to, you otherwise stand by what's in your document to the best of your recollection as it is right now?

MR DE'ATH: To the best of my recollection. Obviously, you reflect on these things post - you know, I think that was like five hours of questioning, and there were various things that has caused me to ponder just how did a process work or what actually happened, who met with who, what I recall. So I would say I've given considerable thought to that post that interview.

MR TERNOVSKI: Thank you, Mr De'Ath. Commissioner, I'm about to move to the next section, and I note the time. Is this a convenient time?

COMMISSIONER: Very well. We'll take a break now. We'll resume at 11.30.

<THE HEARING ADJOURNED AT 11.14 AM

<THE HEARING RESUMED AT 11.32 AM

MR TERNOVSKI: Commissioner, just a couple of housekeeping matters.

COMMISSIONER: Yes.

MR TERNOVSKI: The first of which is that Ms Sacco reminds me that I forgot to tender the transcript, which is document 2. So I tender that.

COMMISSIONER: Any objections? No?

MR TERNOVSKI: The second housekeeping issue is that -

COMMISSIONER: Sorry, just let me identify it.

MR TERNOVSKI: We're up to 17, I'm told.

COMMISSIONER: 79-page transcript of Commission of Inquiry interview of Mr Michael De'Ath, 8 October 2026, will be CA-17.

<EXHIBIT CA-17 79-PAGE TRANSCRIPT OF COMMISSION OF INQUIRY INTERVIEW OF MR MICHAEL DE'ATH, 8/10/2026

MR TERNOVSKI: Commissioner, the second housekeeping matter is that there is a slight error in the index to that bundle. The error is that it names one Relativity document ID that's not actually in there and was not intended to be there, so it just needs to be crossed out. So you will see, Commissioner, that - if you look at the index, that for some documents there are multiple IDs. So there is a document in there which has two IDs, but in fact there's only one that's relevant, and that's in there. It's just an administrative error in the index. So we'll let you know in due course which one to cross out.

COMMISSIONER: All right. Very well.

MR TERNOVSKI: Now, Mr De'Ath, I'm going to take you very shortly into the full detail, blow by blow, of what happened by reference to documents. But before I do that, I just want to establish some sort of basic, uncontroversial facts, the first of which is that you will recall that by March 2023, Ms Bancroft proposed a permanent triage system for CFMEU notifications?

MR DE'ATH: Yes.

MR TERNOVSKI: And that system involved - we'll get to the details in a moment, but the key component of that system was that the unions would call a dedicated 1300 number?

MR DE'ATH: Yes.

MR TERNOVSKI: And that proposal ultimately did not go ahead, under Ms Bancroft's tenure?

MR DE'ATH: Yes.

MR TERNOVSKI: And under your tenure?

MR DE'ATH: Yes.

MR TERNOVSKI: Now, at the interview, you say - and please correct me if I'm not perfectly representing what you said, and I can take to you the relevant passages. But at the interview with the Commission, you said, in effect, that the QUT report commissioned by Ms Bancroft was infected by her procurement conflict.

MR DE'ATH: Yes.

MR TERNOVSKI: And that in your view, this in turn infected the triage proposal?

MR DE'ATH: Yes.

MR TERNOVSKI: And that's why the triage didn't go ahead?

MR DE'ATH: Yes.

MR TERNOVSKI: Do you stand by that?

MR DE'ATH: Yes, I believe so. I might add there are a range of factors that contributed to a range of things around Ms Bancroft, so - but in essence I would agree with what you have put forward there.

MR TERNOVSKI: Well, can I take you to the interview, which is document 2, page 59. And have a look at lines 39 through to 33, and then actually through to line 38.

MR DE'ATH: Sorry, counsel assisting, page 59?

MR TERNOVSKI: Yes. So page 59. Why don't you read the whole page, but I want to take you specifically to lines 29 through to 38.

MR DE'ATH: So on page 59, I do not have a 29.

MR TERNOVSKI: I see. This is document 2, the transcript of your interview, Mr De'Ath. Are you looking at the same document?

MR DE'ATH: Yes.

COMMISSIONER: The line numbers are on the left, Mr De'Ath.

MR DE'ATH: Yes.

COMMISSIONER: So it's 5, 10, 15, 20, 25, 30. So you've got to guess.

MR TERNOVSKI: Yes, sorry. Those numbers I gave you, they're not marked. I'm just counting from the ones that are printed. My apologies.

MR DE'ATH: Thank you.

COMMISSIONER: So 29 starts with Mr Sorgese.

MR DE'ATH: Thank you.

MR TERNOVSKI: So do you stand by those answers, Mr De'Ath? Particularly lines 35 through too 38. It's put to you:

> "It was the fact, if I'm understanding correctly - and correct me if I'm wrong, but it's the credibility failure of the QUT report; is that right?

MR DE'ATH: That's right.

MR TERNOVSKI: And you said:

> "Yeah, I can't recall anything else."

MR DE'ATH: Sorry, counsel assisting, I'm just going back in the transcript just a little bit just to clarify -

MR TERNOVSKI: Of course. Take your time.

MR DE'ATH: - for my own mind. Thank you.

MR TERNOVSKI: Sorry, going back, do you stand by those answers?

MR DE'ATH: Yes, I believe I do.

MR TERNOVSKI: You said "I can't recall anything else other than the credibility of the QUT report" in the interview. Do you now recall any other contributing factors?

MR DE'ATH: I think there were a range of factors that contributed to the department's side or the Office of Industrial Relations' side in relation to our overall credibility about a range of factors that were happening at that time. Essentially, though, I do believe that - that I would stand by what I have said here from my best recollection.

MR TERNOVSKI: Can I ask you - again, same sort of structure, when I get the basic, uncontroversial facts first and then - before I go into the details. So dealing now with - I've asked you some questions about the triage proposal that didn't go ahead. Can I now ask you about Ms Bancroft's employment as DDG of OIR. It's not controversial, is it, that you terminated her employment on 21 April?

MR DE'ATH: That's correct.

MR TERNOVSKI: And you claimed in the interview that the decision to dismiss her was your decision alone and no one else's. Is that right?

MR DE'ATH: Yes.

MR TERNOVSKI: You stand by that?

MR DE'ATH: Yes. Ultimately that decision was mine.

MR TERNOVSKI: Now, in your statement, if I could take you to - I think it's paragraph 5 of your statement, document 1, paragraph 5. I'll let you have a look at that.

MR DE'ATH: Thank you.

MR TERNOVSKI: Now, the CCC - now, you say there - well, firstly - I withdraw that. The CCC notification you are referring to there, that's the notification that the department made to the CCC in relation to Ms Bancroft's procurement conflict?

MR DE'ATH: Yes, and directorship, yes. So yes, correct.

MR TERNOVSKI: The broader -

MR DE'ATH: The broader -

MR TERNOVSKI: The conflict issue, if you could call it that.

MR DE'ATH: Thank you, yes.

MR TERNOVSKI: And it is that conflict issue that you say infected the QUT report and, through that, triage; is that right?

MR DE'ATH: Correct.

MR TERNOVSKI: And so that's the reason you gave - do you agree, Mr De'Ath, that in your statement, the reason - if you could look at paragraph 4 as well, 4 and 5 - do you agree that in your statement what you say is that it was because of the notification that you terminated her employment?

MR DE'ATH: Yes, I did make that - I did sign and agreed that in the statement. There are a lot of things come to mind from three years back as you listen to people's evidence and ask questions and investigations and so on, and I think I would elaborate on that and would be happy to in this inquiry about a range of factors. In this statement, I think I was - what was in my mind is what had primacy over what was quite a range of factors.

MR TERNOVSKI: All right. Because I want to take to you those factors, because in the interview, you mention some of them.

MR DE'ATH: Certainly.

MR TERNOVSKI: But in the interview, you gave the following additional factors, and please correct me if you don't agree. One was loss of trust and confidence in Ms Bancroft.

MR DE'ATH: Yes.

MR TERNOVSKI: That's a pretty broad category; would you agree?

MR DE'ATH: Yes.

MR TERNOVSKI: Then there was - you said there was a question about her competence?

MR DE'ATH: In essence, yes, due to a range of incidents.

MR TERNOVSKI: I want to come back to those incidents. And you said there was even a question of honesty.

MR DE'ATH: I can't recall saying that, but if it's in the statement, then indeed I - I must have said that.

MR TERNOVSKI: Well, perhaps - why don't we - just to clear that up, why don't we go to the transcript of your interview, which is document 2, Mr De'Ath, and if we go to page 34.

MR DE'ATH: Yes.

MR TERNOVSKI: You see starting at line 45 -

MR DE'ATH: Thank you. Yes, I believe that to be correct.

MR TERNOVSKI: "Competence and even a question" - so you agree that's one of the factors you gave at the interview?

MR DE'ATH: Thank you.

MR TERNOVSKI: Now, you referred to a range of incidents that you rely on by way of trust and confidence, loss of trust and confidence. Is one of those incidents the procurement conflict?

MR DE'ATH: One of those is.

MR TERNOVSKI: And is the other of those incidents Ms Bancroft conducting a second interview with Sarina Wise as part of the recruitment of the executive director?

MR DE'ATH: Yes. More broadly the management of processes.

MR TERNOVSKI: Can you name any other - so do you agree, Mr De'Ath, that that's one of the particular incidents, the recruitment process for Sarina Wise?

MR DE'ATH: That is one of them. May I elaborate?

MR TERNOVSKI: Please.

MR DE'ATH: I believe back in the reassigning of Helen Burgess, we needed to make process adjustments in that, as processes had not been followed, and I think I may have put into my - in my interview about the incredible level of transaction between my office and particularly my executive director and - on a vast range of issues, which would be well beyond what I would accept, or expect, as you described earlier, to be a relatively independent operating role as the head of the Office of Industrial Relations.

MR TERNOVSKI: And were those interactions, Mr De'Ath, in part because the CFMEU was pushing back pretty hard against the triage proposal and sending numerous complaints?

MR DE'ATH: Look, that would be a factor, but I don't believe it would be the only factor.

MR TERNOVSKI: Okay. Other than those things, can you name any other incident off the top of your head?

MR DE'ATH: Not - not particularly coming to mind, other than my - my recollection was often seeing my executive director under quite a lot of pressure

continuing to deal with the continued calls and so on. Now, he managed a considerable level of activity on my behalf, as you would understand, in managing my office, and so we certainly didn't talk about every single detail, nor would he have bothered with me with that, but we did have conversations at times just about the extent of the activity.

MR TERNOVSKI: And that executive - did you say executive officer or executive director?

MR DE'ATH: Executive director, sorry.

MR TERNOVSKI: And that's Mr Nick Seeley?

MR DE'ATH: Correct.

MR TERNOVSKI: You mentioned that as one of the - one of the incidents that raised questions in your mind about Ms Bancroft's competence or perhaps trust and confidence was the processes around the removal of Helen Burgess from her position?

MR DE'ATH: Yes.

MR TERNOVSKI: Now, that removal happened in February 2023?

MR DE'ATH: Oh, that sounds about - I can't recall the exact date.

MR TERNOVSKI: Now, if I understand what you said at the interview correctly, when you were asked questions about those two events, the triage not going ahead and Ms Bancroft's dismissal, you said at one point, "They're one and the same." Do you recall that?

MR DE'ATH: They're definitely related to that decision.

MR TERNOVSKI: Does that mean that by the time that you decided not to proceed with the triage, you had also decided that Ms Bancroft could not continue as DDG?

MR DE'ATH: This is interesting, counsel assisting. So to be perfectly honest, and reflecting on all of that, I'm struggling to recall exactly how some of that played out. So, for example, the processes around the selection process, which I'm sure you'll come to, were causing considerable angst for me in relation to our credibility and, of course, the credibility of the CFMEU in terms of their behaviour. I think that was early April. Then earlier than that, of course, I'd become aware of the - of the procurement issues and the conflict issues. That, combined with, you know, mounting pressure in terms of the time being spent to support Ms Bancroft. So there are a range of factors reflecting on the interview and the earlier statement.

MR TERNOVSKI: And so when you say "a range of factors", you're referring to the dismissal of Ms Bancroft?

MR DE'ATH: Correct.

MR TERNOVSKI: But at present, in terms of the pausing triage, the only factor you rely on presently as your current recollection is the credibility of the QUT report; is that right?

MR DE'ATH: That - my recollection is that that was a significant factor. I am just pausing to reflect on other things that were happening at the time. So the pausing of the triage system - I think it actually also related to the issues around the executive director appointment. That's my vague recollection.

MR TERNOVSKI: Can you expand on that?

MR DE'ATH: So we're trying - we're trying to implement a system. In the course of that, I'm informed about a conflict breach, procurement breach. I've had to take an action which albeit was to be hopefully temporarily, as to remove some delegations from Ms Bancroft. I had confidence issues around a selection process, and I was the delegate for that selection process, so essentially not part of the process but of course would have to ultimately sign off on it. So I think on reflection there are a range of factors in my mind about - we're not going that well here, and -

MR TERNOVSKI: Sorry, I didn't catch that.

MR DE'ATH: A range of factors in my mind that were contributing to my view that we were not really travelling that well here in terms of delivering something that, you know, we know a volatile stakeholder had very strong views around and, you know, I really - we did want to hold that line. But I think - and I said in my interview - that in government, it was my view that we had to be above that in terms of how we operated and that if we were making mistakes, then that made it very difficult to push down a particular path.

MR TERNOVSKI: So if I understand you correctly, Mr De'Ath, is it the case that you say that one of the factors that contributed to the triage not going ahead was issues around the selection process for Ms Wise?

MR DE'ATH: Where our credibility was waning, and that was a factor, I - I'm trying to recollect what - what was happening and what was in my mind. So what I - what I think I'm saying is that I think there were a range of factors, actually, one of them - and significantly - being what I had been alluding to around the QUT report.

MR TERNOVSKI: Can you name others? You've also mentioned the selection process. Can you name any other specific issues?

MR DE'ATH: Specifically the issues around the selection process and the QUT report. We would pick off the two top things in my mind.

MR TERNOVSKI: Thank you, Mr De'Ath. I now want to take you in a lot more detail through the chronology of what happened, and hopefully some of the documents will refresh your mind, your memory about what's happened. Can we now go to August 2022, just to orient yourself chronologically, Mr De'Ath. Can we now go to August 2022, which is the time when Ms Bancroft started as DDG of OIR.

MR DE'ATH: Yes.

MR TERNOVSKI: That's where we are in time at this point.

MR DE'ATH: Thank you.

MR TERNOVSKI: Now, Mr De'Ath, you would agree that at that time, the situation, if I may call it that, that was in place at WHSQ, was the CFMEU was calling Ms Burgess directly?

MR DE'ATH: I understood that to be the case. I think at that time, I think Mr Tony James was acting, as you mentioned in your opening, so when I first came into my role, and Tony was actually a fairly independent operator in his own right over OIR and had a lot of experience in that regard. So I - I recall that Tony and I would meet from time to time, as I would with my other direct reports, and there were various things in the course of those meetings he would inform me about, and I do vaguely recall being alerted to the fact that there were seen to be issues around Ms Helen Burgess and the way that system was operating, and I do recall that I was informed about a series of referrals to particularly the CCC and investigations.

I was also questioned in Estimates hearings about one of those - one of those investigations, where that was at, and I recall that the position we were in, as best I believe I was advised at the time, was that we really had, one, no outcome on some elements in terms of that, but some outcome in terms of - sort of the worst offence identified was Ms Burgess holding some images on her personal phone of some correspondence, if you like. I can't recall exactly. And that was sort of the best we had at that stage in terms of the issues that were being, if you like, alleged.

MR TERNOVSKI: In terms of the use of personal phone, you're referring to the matter that ultimately gave rise to a decision of the Queensland Industrial Relations Commission; is that right?

MR DE'ATH: I believe so.

MR TERNOVSKI: I'll take you to those documents in due course.

MR DE'ATH: Thank you.

MR TERNOVSKI: But I just want to break down in a little bit more granularity what was happening at OIR at the commencement of Ms Bancroft's tenure and also what you knew about that at the time. So the first proposition is - let's put aside how or why or if that's problematic. Just as a matter of fact, the CFMEU were not calling the 1300 number.

MR DE'ATH: I don't recall that being the issue at the time. It may well have been.

MR TERNOVSKI: You were not aware if the CFMEU were calling Ms Burgess directly?

MR DE'ATH: I just simply can't recall.

MR TERNOVSKI: Were you aware of allegations that Ms Burgess - when she, having been called directly, then sent inspectors to CFMEU jobs in preference to other jobs?

MR DE'ATH: At some point in time - and I absolutely cannot recall then - I had received some information, most likely in conversation, probably with Mr James, about that. I was certainly aware of that concern before Ms Bancroft - I believe, my recollection would be, before Ms Bancroft commenced.

MR TERNOVSKI: To help you, could I take you to page 42 of your interview, which is document 2, I think. Yes, document 2. And if you have a look at sort of lines 20 through to 26.

MR DE'ATH: Sorry, again, counsel assisting, what number would that be?

MR TERNOVSKI: Sorry. So tab 2.

MR DE'ATH: Yes.

MR TERNOVSKI: Page 42, lines 20 through to 26.

MR DE'ATH: Sorry, again, I have different numbers, but I'll look at the screen.

MR TERNOVSKI: Sorry. If your numbers are not matching, we should fix that, actually. Can you tell me what the issue is, Mr De'Ath? So your copy?

MR DE'ATH: So like I see on my screen, I see - I don't know what you have, sorry, counsel assisting, but I have 20, 25 and 30, as is on the screen.

MR TERNOVSKI: Yes, yes, sorry. Just to be clear, when I'm referring to transcript line numbers, every line has a number. It's just that only every fifth number is printed.

MR DE'ATH: Okay. I understand. Thank you. Yes, thank you.

MR TERNOVSKI: And you see that you said:

> "It certainly got to a point where there needed to be some action in relation to that on our part."

MR DE'ATH: Correct.

MR TERNOVSKI: And that's referring to Ms Burgess?

MR DE'ATH: Correct.

MR TERNOVSKI: So it was a real problem?

MR DE'ATH: Well, it absolutely appeared to be a real problem, and there was certainly - well, in my view, escalating chatter about it, but there was obviously activity before I came into the role about this. So there was escalating, in terms of what was being brought to my attention, in a sort of conceptual level, that this was a problem. And indeed, I think - and you'll probably come to this - it was part of my brief to Ms Bancroft, who I felt was - in the early stages, as a new appointment - quite neutral in terms of being able to have a look at this.

MR TERNOVSKI: Mr De'Ath, can I take you to document 17.

MR DE'ATH: Yes.

MR TERNOVSKI: You've seen this document before?

MR DE'ATH: I don't believe I have.

MR TERNOVSKI: Well, then, I'll help you orient yourself. Do you recall that a disciplinary action was imposed on Ms Burgess in relation to contact with CFMEU on her private phone?

MR DE'ATH: Vaguely. I was informed. I do not believe I've seen this document, though. It I may add, counsel assisting, that is my vague recollection, that some time I was - I was informed about the issue of her personal phone and that that practice was to cease. I think I was probably more concerned about - more focused on the fact that that seemed like that's all we had.

MR TERNOVSKI: As in, that's all you had against Ms Burgess?

MR DE'ATH: Yeah, that was my understanding, based on what I was advised.

MR TERNOVSKI: And why was that a problem?

MR DE'ATH: Well, because there was a lot of suggestion about it being much more than that.

MR TERNOVSKI: I see. So in other words, the problem was you thought there may be a bigger problem but you just didn't have evidence?

MR DE'ATH: Correct.

MR TERNOVSKI: Can I take you to paragraph 24 of that decision, which is on page 9.

MR DE'ATH: Yes.

MR TERNOVSKI: You see there it says:

> "On 26 August 2022..."

That's shortly after Ms - almost immediately after Ms Bancroft started, isn't it?

MR DE'ATH: If that is the chronology, I wouldn't disagree.

MR TERNOVSKI: And it says there:

> "The respondent found the allegation to be substantiated and made disciplinary findings..."

The respondent is the department, obviously.

MR DE'ATH: Thank you.

MR TERNOVSKI: Is that right?

MR DE'ATH: I would expect so.

MR TERNOVSKI: Now, if you look at the actual - now, that finding was made, according to this, on 26 August 2022. Now, I'll take you back to this document in a second, but you were aware of that finding at the time, weren't you, Mr De'Ath? Around the time?

MR DE'ATH: I would need to understand better what that finding was.

MR TERNOVSKI: I see.

MR DE'ATH: All I can really recall is that it was in relation to the use of her personal phone. That's what I believe I was informed at the time.

MR TERNOVSKI: Can I - I think that's consistent with what you said in the interview. Perhaps in fairness I'll take you to page 36.

COMMISSIONER: Of what?

MR TERNOVSKI: Of document 2, which is the transcript of interview. And if we look around the paragraph that has 35 on the left -

MR DE'ATH: Yes. Yes, I think that's consistent with what I've relayed to you.

MR TERNOVSKI: That's the finding you're referring to?

MR DE'ATH: Correct.

MR TERNOVSKI: And if we go back to document 17, have a read of paragraph 34.

MR DE'ATH: That's a very long paragraph.

MR TERNOVSKI: It is.

MR DE'ATH: Very long.

MR TERNOVSKI: Please take your time, Mr De'Ath.

MR DE'ATH: Sorry, I haven't seen this document before, so - thank you. I've read that very quickly.

MR TERNOVSKI: Obviously it says what it says, but for present purposes, do you agree that the gist of it is that Ms Burgess took a CFMEU complaint on her personal phone and didn't send it to triage?

MR DE'ATH: Yes.

MR TERNOVSKI: And that was found to be substantiated, first by the department and then ultimately upheld by the tribunal.

MR DE'ATH: I have no reason to dispute that finding.

MR TERNOVSKI: Commissioner, I realise this is the published judgment. However, I do propose to tender it just for ease of reference -

COMMISSIONER: Very well.

MR TERNOVSKI: - because I'm referring to document numbers. Subject to any issues from - I tender document 17.

COMMISSIONER: Are there any objections? Reasons for decision, Helen Burgess v The State of Queensland, Queensland Industrial Relations Commission, 6 March 2023, Vice-President O'Connor, exhibit CA-18?

MR TERNOVSKI: 18, Commissioner.

<EXHIBIT CA-18 REASONS FOR DECISION, HELEN BURGESS V THE STATE OF QUEENSLAND, QUEENSLAND INDUSTRIAL RELATIONS COMMISSION, 6/3/2023, VICE-PRESIDENT O'CONNOR

MR TERNOVSKI: Mr De'Ath, do you recall that in August 2022, shortly after Ms Bancroft started, one of the first things she sought to do was to reassign Ms Burgess from the position of director of CCFS?

MR DE'ATH: Yes, and it's a very vague recollection about what happened there, and of course, being aware of some of the evidence provided. So I was - I was aware that a decision had been made to reassign, and I do believe I was supportive of that decision.

COMMISSIONER: You weren't asked that question. You were just asked whether you were aware of the decision, and is your answer "yes"?

MR DE'ATH: Sorry, could you ask the question again?

MR TERNOVSKI: Well, were you aware of the - or do you recall that shortly after Ms Bancroft started, the OIR moved to - or decided to move Ms Burgess out of her role as director of CCFS into a different role?

MR DE'ATH: Yes, at a point in time.

MR TERNOVSKI: And that different role would remove her from having direct control over construction inspectors?

MR DE'ATH: That's what I was advised.

MR TERNOVSKI: Now, I'll put to you Ms Bancroft's version of events, which is that shortly after that decision was made to move Ms Burgess out of the role, Mr Ravbar called you.

MR DE'ATH: I - I don't recall a call from Mr Ravbar. There very may well have been one. I do not recall it.

MR TERNOVSKI: So you don't recall Mr Ravbar being very upset with you about this issue?

MR DE'ATH: He was permanently upset with me. I don't recall him being upset with me about this issue. He may very well have been.

MR TERNOVSKI: Do you recall a sequence of calls with Mr Ravbar called you about Ms Burgess and then you called Ms Bancroft about - to pass on what Mr Ravbar had said?

MR DE'ATH: I don't recall this - sorry. I have no reason to believe that this didn't take place or did take place. I just simply cannot recall any contact about that.

MR TERNOVSKI: This may or may not help to refresh your memory, but if you could have a look at document 3. Actually, this is the first time I'm referring to document 3, so in fairness, I want to explain to you what that is.

MR DE'ATH: Mmm.

MR TERNOVSKI: Now, this is an extract from Telstra call logs for the relevant - or a set of extracts for the relevant period. Now, obviously you can't, sitting in the witness box, verify that this extract is accurate. So I would just ask you to - for the purposes of my questions, to assume that it is, because that's probably the best you can do. However, you will see that this document identifies the source record?

MR DE'ATH: Yes, I do see that.

MR TERNOVSKI: And so in due course this week, I will tender the source records, which will enable your lawyers to check that this extract is accurate, but obviously we have checked it. Now, if you have a look at page 1 of that document - have you got that in front of you?

MR DE'ATH: I do.

MR TERNOVSKI: Unfortunately, I omitted to include page numbers, unhelpfully, but you can see it on the screen as well.

MR DE'ATH: Yes, no, I see it here.

MR TERNOVSKI: Can you see that there is a - Mr Ravbar rings you and then texts you at 9 am?

MR DE'ATH: I do see that.

MR TERNOVSKI: And then you appear to call him back for about two minutes at 10.20?

MR DE'ATH: I do see that.

MR TERNOVSKI: And then shortly thereafter, at 10.23, you attempt to call Ms Bancroft?

MR DE'ATH: Yes.

MR TERNOVSKI: And then she rings you back, first at 11.27 and then at 12.01?

MR DE'ATH: Yes.

MR TERNOVSKI: Now, I suggest to you that this is the sequence of calls I've just described to you.

MR DE'ATH: I have no reason to disagree with that sequence of calls.

MR TERNOVSKI: Now, do you agree, Mr De'Ath, that reassigning Ms Burgess in the way that Ms Bancroft sought to do was an internal staffing decision for the OIR?

MR DE'ATH: Yes, absolutely.

MR TERNOVSKI: And it was also an internal staffing decision that concerned an officer who was three levels below you?

MR DE'ATH: Correct.

MR TERNOVSKI: Because the chain of command -

MR DE'ATH: I think about three.

MR TERNOVSKI: Let's just be clear about this, because Ms Burgess was a director-level position; is that right?

MR DE'ATH: Yes.

MR TERNOVSKI: And so the reporting line then ran from her to an executive director?

MR DE'ATH: Yes.

MR TERNOVSKI: That's one step?

MR DE'ATH: Yes.

MR TERNOVSKI: Then from an executive director to Ms Bancroft?

MR DE'ATH: Second step.

MR TERNOVSKI: Second step, and then third step from Ms Bancroft to you?

MR DE'ATH: Yes.

MR TERNOVSKI: Now, moving Ms Burgess out of the director of CCFS role would have cut the CFMEU's direct line into OIR. Do you agree with that?

MR DE'ATH: Well, no, not entirely. It would have cut a direct line to Ms Burgess in that role. That is absolutely correct.

MR TERNOVSKI: And do you recall that Ms Burgess, Ms Bancroft rather, deferred the move?

MR DE'ATH: The only reason I recall that is because of transcript statements, evidence that I - that I'm aware of.

MR TERNOVSKI: But do you recall, Mr De'Ath, that the CFMEU wanted Ms Burgess kept in that role?

MR DE'ATH: Oh, without a doubt.

MR TERNOVSKI: And you said you can't remember the exact sequence of calls, but assuming that the calls were as I describe, would you agree that as a result of Mr Ravbar's call to you, then passed on to Ms Bancroft, Ms Burgess was not moved for another six months?

MR DE'ATH: Yes, and if you would allow me, I would like to elaborate.

MR TERNOVSKI: Please.

MR DE'ATH: I believe what has taken place there is that I was informed through Mr Ravbar - I'm speculating a little - on the movement of Ms Burgess. I think, when I look at other evidence that's been provided, it would seem that what happened at that time is we hadn't followed a process, and then - again, looking at the information that is supplied through this inquiry - that we then followed a comprehensive process about the movement of Ms Burgess. So at a director level, it's not necessarily correct to just reassign someone, and what actually then took place was a proper reassignment process. So, now, the reason I'm explaining that is because none of - none of the calls from Ravbar is a recollection for me. I - I had absolutely no interest in meeting the CFMEU requests as they related to

departmental operations, but anybody who had informed me to a breach of process would get a hearing from me.

MR TERNOVSKI: So are you suggesting, Mr De'Ath, that Mr Ravbar informed you about a breach of process?

MR DE'ATH: That is - that is the only conclusion I can draw from that phone call.

MR TERNOVSKI: And, Mr De'Ath -

COMMISSIONER: Is that your evidence really, Mr De'Ath, that you've looked at all the evidence that's been led in this Commission and you've come to that conclusion, that you don't recall what Mr Ravbar said to you?

MR DE'ATH: Commissioner, it absolutely is, if I may elaborate just a little bit more.

COMMISSIONER: Well, it just seems very unlikely to be true, that you're basing your evidence to this Commission now on what you've read other people have said, independent of your actual recollection of a meeting that I imagine would have been very eminently recollectable.

MR DE'ATH: With respect, Commissioner, it was upon reading the process that was then followed after that, which was comprehensive, as outlined in the evidence, that allowed me to form that conclusion.

COMMISSIONER: But this is about a weekend, isn't it? We've got - Mr Ternovski said that Ms Bancroft started on 1 August 2022. Is that right?

MR TERNOVSKI: I think that's right, yes.

COMMISSIONER: So -

MR TERNOVSKI: From memory, her start may have been delayed because she - her start in the office may have been delayed while she was sick. We'll check that. But it was certainly in August 2022.

COMMISSIONER: Three weeks later, there's a recommendation made about Ms Burgess, and this is, on these dates, the first week of her employment, someone you employed, and you don't recall Mr Ravbar ringing you about someone you've just employed for a week and a decision they've made?

MR DE'ATH: Sorry, Commissioner, but I do not recall.

COMMISSIONER: It seems very unlikely to be true, Mr De'Ath.

MR DE'ATH: Commissioner, with respect, it's absolutely true.

MR TERNOVSKI: Mr De'Ath, you referred to a proper process not being followed in relation to the first attempt to reassign Ms Burgess. Can I ask you some questions about that.

MR DE'ATH: Yes.

MR TERNOVSKI: Firstly, are you suggesting, Mr De'Ath, that Ms Bancroft breached some internal departmental policy or some statutory requirement by reassigning Ms Burgess in the way that she attempted to do?

MR DE'ATH: I can't answer that conclusively, sorry, counsel assisting. I am speculating on very limited recall, what I know about public sector processes -

COMMISSIONER: Just don't make up a reason. Just tell counsel what you remember and what you don't remember. What do you remember about this call in the first week of Ms Bancroft's employment? Do you remember it or not?

MR DE'ATH: I don't.

COMMISSIONER: Right.

MR TERNOVSKI: Mr De'Ath, to the extent there was some breach of process in relation to the reassignment of Ms Burgess - now, I think you're suggesting, in fairness, without recall, that this may have been something Mr Ravbar raised with you?

MR DE'ATH: It may well have been.

MR TERNOVSKI: Based on your experience with Mr Ravbar, had he raised a problem with the process in relation to Ms Burgess with you, do you think you would have sent emails and letters complaining about it?

MR DE'ATH: I may have. I do not - I do not know what I did in relation to that. It would appear that I have called Ms Bancroft in relation to the matter. So it's difficult to answer that question when I can't recall what happened.

MR TERNOVSKI: Mr De'Ath, if I put to you that there is no record of any issue being raised by the CFMEU about particular departmental policies or processes around moving Ms Burgess, would you disagree with that?

MR DE'ATH: Sorry, can you restate the question, please?

MR TERNOVSKI: Would you disagree with the proposition that there is no record of the CFMEU raising some specific complaint about departmental policies, procedures or statutory requirements about reassigning Ms Burgess?

MR DE'ATH: I wouldn't disagree that there is - I don't think I'd disagree with that.

MR TERNOVSKI: Can I take you to attachment 42 to the statement of Ms Bancroft. That's a different folder, Mr De'Ath. You should have another folder. Mr De'Ath, what does the label say?

MR DE'ATH: Evidence of Kym Susanne Bancroft.

MR TERNOVSKI: Yes, so, Mr De'Ath, that folder contains Ms Bancroft's statement.

MR DE'ATH: Thank you.

MR TERNOVSKI: And two additional documents that were tendered during her evidence, I think it was in the 9 June hearing block of this Commission. Have a look at attachment 42, please.

MR DE'ATH: I've found the document.

MR TERNOVSKI: Actually, Mr De'Ath, apologies for being out of order. If we could just put this document on hold for a second, because Ms Sacco reminds me of something you said in the interview. If we could go back to document 2, which is the transcript of your interview, line 26 onwards. It's page - I'm sorry, Mr De'Ath and Commissioner. Page 42 of document 2.

MR DE'ATH: Yes, I've found the page.

MR TERNOVSKI: If you could go, please, to lines - around about line 28, 29.

MR DE'ATH: Mmm-hmm.

MR TERNOVSKI: You said you said there:

> "I think we've already referenced the fact that at that point in time, Ms Helen Burgess was set aside to another role. All I can say is my recollection of Mr Ravbar was incredibly unhappy about that and raised that with me on a number of occasions. I can't remember the detail of those conversations other than I recall it being raised."

Is that right?

MR DE'ATH: It was.

MR TERNOVSKI: Is one of the occasions when this was raised - does that help refresh your memory about August?

MR DE'ATH: I'm really sorry, but I just do not have a recollection of that phone call.

MR TERNOVSKI: Thank you, Mr De'Ath. Can we go back to attachment 42 to Ms Bancroft's statement, please. You'll see it's an email from Ms Bancroft to Mr Ravbar.

MR DE'ATH: Yes.

MR TERNOVSKI: Look at the first full paragraph.

MR DE'ATH: Yes.

MR TERNOVSKI: Now, there's a reference there to a meeting with the director-general on Thursday, 27 October 2022.

MR DE'ATH: Yes.

MR TERNOVSKI: Do you remember that meeting?

MR DE'ATH: I don't recall the meeting.

MR TERNOVSKI: Okay. Firstly, can I take you to attachment 26 to Ms Bancroft's statement.

MR DE'ATH: Yes, I have that. A diary entry.

MR TERNOVSKI: Yes. You see it's a meeting invite or diary entry for 27 October 2022 at 9 am?

MR DE'ATH: Yes.

MR TERNOVSKI: And you see the invitees include Mr Ravbar and Ms Bancroft?

MR DE'ATH: Yes.

MR TERNOVSKI: And the location is your office?

MR DE'ATH: Yes.

MR TERNOVSKI: Does that help you refresh your memory or not?

MR DE'ATH: I think it does, counsel assisting. Thank you. I don't recall that particular - the discussion of that issue. I think that is the meeting where I really have a recollection of some behaviour.

MR TERNOVSKI: I can help -

COMMISSIONER: Please continue, Mr Ternovski.

MR TERNOVSKI: I may be able to help to refresh your memory of that meeting. You've got Ms Bancroft's statement there. Could you please go to paragraph 64 of that statement.

COMMISSIONER: Just wait for the operator to catch up, Mr Ternovski.

MR TERNOVSKI: Apologies, Commissioner. I'm going too fast. I will slow down.

COMMISSIONER: That's okay.

MR DE'ATH: Thank you.

MR TERNOVSKI: Now, that's -

COMMISSIONER: Just wait for the operator to catch up, Mr Ternovski.

MR TERNOVSKI: Thank you, Commissioner. Paragraph 64 of Ms Bancroft's statement, Madam Operator. That's Ms Bancroft's recollection of that meeting. Do you agree with it, or you can't recall, or you have a different recollection?

MR DE'ATH: I - I can't recall. I - I have a vague recollection of the meeting, and only really, if I may elaborate, because the ETU were in attendance, and I think there were only - I can only recall two meetings where Mr Ravbar also brought the ETU and the Plumbers Union representative.

MR TERNOVSKI: Do you remember the second meeting where that happened?

MR DE'ATH: Yes.

MR TERNOVSKI: Was that the - was that the boofhead meeting, if one may call it that?

MR DE'ATH: Yes, that was the infamous boofhead meeting.

MR TERNOVSKI: I'll take you to that meeting in due course.

MR DE'ATH: Thank you.

MR TERNOVSKI: But I've got another - if you go back to document - attachment 42 to Ms Bancroft, there's another part there that - well, firstly, sorry, before you do that, sticking with paragraph 64, Ms Bancroft says

there that the triaging system was discussed at this meeting. Do you remember that?

MR DE'ATH: I don't recall that. It's highly likely.

MR TERNOVSKI: Okay. If we can go back to attachment 42, you see - and look at the first full paragraph.

MR DE'ATH: Thank you.

COMMISSIONER: Just wait for the operator to catch up, Mr Ternovski.

MR TERNOVSKI: Yes. So this is attachment 42, Madam Operator, first full paragraph, after "Dear Michael". Do you see there in that paragraph Ms Bancroft says:

> "As discussed at our meeting with the director-general on Thursday 27 October, we have a process currently in place for incoming complaints whereby the trade union representative will call Ms Helen Burgess, Director, CCFS. This complaint is then passed on to assessment services unit."

MR DE'ATH: Yes.

MR TERNOVSKI: Do you remember being the Burgess arrangement, if I may call it, being discussed at this meeting?

MR DE'ATH: No. It was discussed on many occasions. It is highly likely is what I would say.

MR TERNOVSKI: Now, Ms Bancroft says back at paragraph 64 - I don't need to take you to it - but Ms Bancroft says that the meeting became heated. Do you - does that accord with your recollection?

MR DE'ATH: No, but I'm not disputing that. Like -

MR TERNOVSKI: You just have a poor recall of the meeting?

MR DE'ATH: I have a very poor recall of the meeting.

MR TERNOVSKI: And many meetings with Mr Ravbar became heated, I would assume?

MR DE'ATH: Almost without exception.

MR TERNOVSKI: So that doesn't really narrow it down, does it?

MR DE'ATH: No.

MR TERNOVSKI: Mr De'Ath, in your interview, you describe Mr Ravbar as "an extremely difficult stakeholder". Do you agree with that?

MR DE'ATH: Most definitely.

MR TERNOVSKI: And you also said in the interview - and I can take to you the relevant passages if you like - that Mr Ravbar was not open to changing the system.

MR DE'ATH: He was not open to that at all.

MR TERNOVSKI: Since we still have document 42 open, can we - Madam Operator, can we look at the second full paragraph. Does that refresh your memory, Mr De'Ath?

MR DE'ATH: I - I remember the activity - the considerable activity about the CFMEU's response to any change to that system, any movement of Ms Helen Burgess.

MR TERNOVSKI: But just in terms of the basic chronology, do you recall, Mr De'Ath, that there was protected industrial action by OIR staff in late 2022?

MR DE'ATH: I do recall.

MR TERNOVSKI: And do you recall that the immediate response to that was to require the unions to call - including the CFMEU - to call the 1300 number for the duration of that protected industrial action?

MR DE'ATH: I - I only recall that via what I've read.

MR TERNOVSKI: Mr De'Ath, could you go to paragraph 98 of Ms Bancroft's statement. Again, I'm trying to refresh your memory, but if you can't remember, you can't remember.

MR DE'ATH: Thank you.

MR TERNOVSKI: Do you see Ms Bancroft says there that you and her had advised Mr Ravbar on 27 October that after the PIA, which I take to be reference to protected industrial action, after the protected industrial action, the OIR would be reviewing the triaging process in the future and that both of you invited the CFMEU's input?

MR DE'ATH: Yes.

MR TERNOVSKI: Do you recall that?

MR DE'ATH: I recall us doing exactly that.

MR TERNOVSKI: I may be able to help you refresh your memory further if you go to document 31.

COMMISSIONER: Which bundle?

MR TERNOVSKI: Of the tender bundle. You see that's an email from Ms Kate Stuchbury to Nick Seeley, your executive director, and Ms Bancroft?

MR DE'ATH: Sorry, counsel assisting, are we still in the Kym Bancroft folder?

MR TERNOVSKI: No, no, apologies. We're at document 31 of the tender bundle -

MR DE'ATH: Thank you.

MR TERNOVSKI: - which is this other big folder. I'll let you find the document. And Madam Operator, if you could bring that up as well, firstly with the email header.

MR DE'ATH: Yes, thank you.

MR TERNOVSKI: So you see that's an email from Ms Stuchbury to Mr Seeley and Ms Bancroft on 28 March?

MR DE'ATH: Yes, I do, and I believe I requested this.

MR TERNOVSKI: And that email sets out the chronology of various attempts by the OIR to consult with the CFMEU on the new triage process?

MR DE'ATH: Indeed it does.

MR TERNOVSKI: And would you agree there had been quite extensive attempts to consult?

MR DE'ATH: Extensive? Yes, extensive would be an understatement.

MR TERNOVSKI: And the CFMEU's - I'll take you through it in a bit more detail, but the CFMEU's response was basically to refuse to engage, refuse to meet?

MR DE'ATH: Yes, and to obfuscate.

MR TERNOVSKI: And you said you requested this document. That's because - is the reason why you requested that document because Mr Ravbar kept alleging that CFMEU was not consulted?

MR DE'ATH: Correct.

MR TERNOVSKI: And you wanted to rebut that proposition?

MR DE'ATH: Correct.

MR TERNOVSKI: And staying with this document, Mr De'Ath, if we go to the sixth dot point.

MR DE'ATH: Yes.

MR TERNOVSKI:

> "DDG OIR and DG confirmed OIR would be reviewing the triaging process and encouraged unions to provide input..."

That's still that 27 October meeting that you have a poor recall of, but you don't dispute that that happened?

MR DE'ATH: Sorry, are you talking about the sixth dot point:

> "On 23 December 2022..."

MR TERNOVSKI: The one above that, on 27 October. I may have miscounted.

MR DE'ATH: Yes.

MR TERNOVSKI: I do want to take you through some of that chronology of that extensive attempt at consultation that the CFMEU has rebuffed.

MR DE'ATH: Certainly.

MR TERNOVSKI: If we could start with attachment 36 to Ms Bancroft's statement. See in the second half towards about one-third down the page there's an email from you to Mr Ravbar copying Ms Bancroft? And we'll wait for the operator to catch up. That's attachment 36 to Ms Bancroft's statement.

MR DE'ATH: I have the document.

MR TERNOVSKI: Thank you, Mr De'Ath. If you look at the last paragraph on page 1 - sorry, before we do that, do you see in the second half of the page there's an email from you to Mr Ravbar copying Ms Bancroft dated 2 November?

MR DE'ATH: Yes, I do.

MR TERNOVSKI: And then if you go to the last paragraph of that document that runs onto the next page -

MR DE'ATH: Yes.

MR TERNOVSKI: - do you see you say in that email:

> "Please note that Ms Bancroft will be reviewing the triaging process in the future, as advised in our 27 October meeting with you..."

MR DE'ATH: Yes.

MR TERNOVSKI:

> "...and will be seeking key stakeholder input into any changes that may be made."

MR DE'ATH: Yes, I see that, and probably explains why that meeting was volatile.

COMMISSIONER: Why the meeting was what, sorry?

MR DE'ATH: The meeting was volatile that counsel assisting has been referring to.

MR TERNOVSKI: Do you agree, Mr De'Ath, that's yet another attempt, one of the attempts at engaging the CFMEU?

MR DE'ATH: I absolutely agree.

MR TERNOVSKI: Now, this may not be something that you know, but Ms Bancroft's evidence is that on 22 December 2022, she asked Mr Pauls to meet to discuss triage. Do you have any knowledge of that?

MR DE'ATH: Ms Bancroft was keeping me pretty well informed at the time, so, you know, the detail of all that, you can appreciate, there was an enormous amount of activity in relation to this, and I have a vague recollection of her having a meeting with somebody, likely Mr Pauls. So yes, I would accept that that was a meeting that took place.

MR TERNOVSKI: Now, again, you may or may not know this, but Ms Bancroft's evidence is that on 13 December 2022, she was told that the Building Trades Group had made a decision not to speak to her. Does that ring any bells?

MR DE'ATH: Yes.

MR TERNOVSKI: And the Building Trades Group was a group of construction unions?

MR DE'ATH: Yes.

MR TERNOVSKI: It included the CFMEU?

MR DE'ATH: Yes.

MR TERNOVSKI: As well as the ETU and the Plumbers Union?

MR DE'ATH: Yes.

MR TERNOVSKI: Now, at the interview - I can take you to the right passage if you like - you said that the CFMEU - and this is page 42, lines 36 to 39, but I don't need to take you to it - but you said the CFMEU:

> "...completely withdrew from that process and would not participate in the design."

MR DE'ATH: Yes.

MR TERNOVSKI: Do you agree with that?

MR DE'ATH: I do.

MR TERNOVSKI: Do you recall, Mr De'Ath, that in late 2022, Working for Queensland staff survey results came out?

MR DE'ATH: Well, yes, as a matter of course, they did.

MR TERNOVSKI: And do you remember that specifically the '22 results showed or suggested serious problems within the inspectorate?

MR DE'ATH: Yes.

MR TERNOVSKI: And that prompted Ms Bancroft to engage QUT to undertake that review?

MR DE'ATH: Yes.

MR TERNOVSKI: And the way that that review was to work was that QUT was to carry out confidential interviews with inspectors?

MR DE'ATH: Yes.

MR TERNOVSKI: And it is this piece of procurement that gave rise to the conflict issue -

MR DE'ATH: Correct.

MR TERNOVSKI: - that I'll get into in more detail. Now, Mr De'Ath, if I could take you back to attachment 42 to Ms Bancroft's statement - and unfortunately, apologies for jumping between folders, but -

MR DE'ATH: That's fine. There was a lot of correspondence.

MR TERNOVSKI: That's the email from Ms Bancroft to Mr Ravbar on 12 January that I just took you to.

MR DE'ATH: Yes.

MR TERNOVSKI: If we can look at the first full paragraph - sorry, second full paragraph:

> "Due to the protected industrial action..."

MR DE'ATH: Yes.

MR TERNOVSKI: Do you see it says there:

> "Protected industrial action has now ended as an in-principle agreement has been reached."

Now, that's an in-principle agreement, I take it, with your staff, not with the CFMEU?

MR DE'ATH: I believe so.

MR TERNOVSKI: That's an agreement - that's an enterprise agreement?

MR DE'ATH: Correct.

MR TERNOVSKI: And do you see the next sentence:

> "We acknowledge that Mr Pauls has raised issues with this process in December 2022 and more recently advised on 11 January 2023 that trade unions will be calling me directly regarding all health and safety matters."

MR DE'ATH: Yes, and I was aware of that.

MR TERNOVSKI: And Mr Pauls, that's Mr Kurt Pauls, of course, of the CFMEU?

MR DE'ATH: Yes.

MR TERNOVSKI: Now, you would agree, Mr De'Ath, wouldn't you, that what Mr Pauls has proposed - which is to say the CFMEU calling Ms Bancroft directly to notify of safety complaints - that was not a good process?

MR DE'ATH: I would absolutely agree. Completely inappropriate and actually quite reckless.

MR TERNOVSKI: And indeed, it was unsafe, wasn't it?

MR DE'ATH: Incredibly unsafe.

MR TERNOVSKI: And indeed, on 1 February, you actually said that. If I could take you to document 10 of the tender bundle, not of Ms Bancroft's statement.

MR DE'ATH: Yes.

MR TERNOVSKI: You see if you blow up the paragraph, Madam Operator, under "Good morning Kym", you see you say there in the second sentence:

> "I am concerned that the CFMMEU position on the matter of assessment increases the risks to worker safety, as I put to Michael in my discussions."

MR DE'ATH: I recall this very well.

MR TERNOVSKI: So is what you're referring to there, Mr De'Ath, the CFMEU position, being calling Ms Bancroft directly?

MR DE'ATH: Correct.

MR TERNOVSKI: And the reason why that system wasn't safe was because Ms Bancroft was not the appropriate person to call?

MR DE'ATH: Correct.

MR TERNOVSKI: She was the head of the agency?

MR DE'ATH: Correct.

MR TERNOVSKI: She had a lot of responsibilities?

MR DE'ATH: Yes.

MR TERNOVSKI: She was also not on call 24 hours a day, seven days a week, was she?

MR DE'ATH: Completely correct.

MR TERNOVSKI: So the risks - the reason why it's - I want to put to you a number of reasons why that system was unsafe. One is that Ms Bancroft is physically not available 24 hours a day.

MR DE'ATH: Correct.

MR TERNOVSKI: So they might - the CFMEU might notify something to her, perhaps by email or by a phone call, but she might not be available. She might be sleeping. She might be doing something else.

MR DE'ATH: That's right.

MR TERNOVSKI: She might be on leave.

MR DE'ATH: Yes.

MR TERNOVSKI: And even if she does answer the call, sending notification directly to her adds an element of delay, doesn't it?

MR DE'ATH: Yes.

MR TERNOVSKI: Because she would not personally dispatch inspectors, would she?

MR DE'ATH: No.

MR TERNOVSKI: That's not her role.

MR DE'ATH: No.

MR TERNOVSKI: Instead, she would have to pass it down the line?

MR DE'ATH: Yes.

MR TERNOVSKI: To Assessment Services?

MR DE'ATH: Yes.

MR TERNOVSKI: So instead of calling Assessment Services directly, all that calling Ms Bancroft did was to add an additional step that had to be taken?

MR DE'ATH: Yes, and an enormous level of risk.

MR TERNOVSKI: Because, firstly, Assessment Services is - there is someone there on-call staff 24 hours a day.

MR DE'ATH: I understand so.

MR TERNOVSKI: Seven days a week.

MR DE'ATH: I understand so.

MR TERNOVSKI: So any time you can call and notify?

MR DE'ATH: Yes.

MR TERNOVSKI: Not the case with Ms Bancroft?

MR DE'ATH: Absolutely not.

MR TERNOVSKI: And further, given that Ms Bancroft did not personally dispatch inspectors, all that calling her did was add delay, compared to just calling the Assessment Services directly?

MR DE'ATH: Yes.

MR TERNOVSKI: And that delay could cause risk, because somebody could be injured?

MR DE'ATH: Incredible risk.

MR TERNOVSKI: Because inspectors are delayed?

MR DE'ATH: Yes.

MR TERNOVSKI: There was really no legitimate reason, was there, to call Ms Bancroft directly with safety notifications?

MR DE'ATH: No.

MR TERNOVSKI: And would you accept that that was - obviously I'm asking you to speculate, but would you accept that that was nothing more than a pressure tactic to apply pressure on her?

MR DE'ATH: Without a doubt.

MR TERNOVSKI: Now, that's a system you said was unsafe. I'm sorry, Mr De'Ath, I saw you nodded, but -

MR DE'ATH: Yes, it's unsafe.

MR TERNOVSKI: Thank you. I just would like you to verbalise for the transcript. And because it was unsafe, it needed to be fixed urgently?

MR DE'ATH: Yes, it did.

MR TERNOVSKI: Now, in that, if we go back to attachment 42 to Ms Bancroft's email, which is Ms Bancroft's email to Mr Ravbar of 12 January.

MR DE'ATH: Yes, I have the document.

MR TERNOVSKI: You see if you look at the second full paragraph, last sentence -

MR DE'ATH: Yes.

MR TERNOVSKI: - you see Ms Bancroft says:

> "Directing all matters directly to me is neither feasible nor appropriate."

MR DE'ATH: Yes.

MR TERNOVSKI: You'd agree with that?

MR DE'ATH: I absolutely agree with that. If I could just slightly elaborate, I'm not copied into this email, but I was very aware of it.

MR TERNOVSKI: And while we're on this email, that email also introduces a new process, which is to call regional directors?

MR DE'ATH: Yes.

MR TERNOVSKI: So instead of a single point of contact, this new system that's put in place is effectively multiple point of contact, isn't it?

MR DE'ATH: Yes, I think it was an interim system while we were working things through, from memory. I may be incorrect.

MR TERNOVSKI: I can help you, Mr De'Ath, because if you look at the last paragraph of this email -

MR DE'ATH: Thank you. I see that now, "temporary measure".

MR TERNOVSKI: Mr De'Ath, I want to ask you some questions about that temporary measure.

MR DE'ATH: Mmm.

MR TERNOVSKI: Now, you would agree, wouldn't you, that this system, the temporary system of calling regional directors, is much better than calling Ms Bancroft directly?

MR DE'ATH: Of course. Absolutely, I do agree.

MR TERNOVSKI: However, would you agree that it's also not the greatest system in the world, is it?

MR DE'ATH: I would also agree with that.

MR TERNOVSKI: And one of the reasons why it's not the greatest system in the world is because it still creates a single point of contact, but now it's on a per-region basis?

MR DE'ATH: Yes.

MR TERNOVSKI: So we still have the same sorts of issues as with Bancroft, but now it's moved down to regional directors?

MR DE'ATH: Yes.

MR TERNOVSKI: And we have similar issues, which is a regional director can't be expected to be available 24 hours a day, seven days a week?

MR DE'ATH: Yes. It's an improvement on what we had, but yes.

MR TERNOVSKI: But it's still a better system, would you agree, in part because at least the regional director is closer to the inspectors than Ms Bancroft is?

MR DE'ATH: I do agree.

MR TERNOVSKI: So it's a better - this temporary system of calling regional directors, that's much better than calling Ms Bancroft directly?

MR DE'ATH: Yes.

MR TERNOVSKI: But still not a great system?

MR DE'ATH: Yes.

MR TERNOVSKI: In fact, what happened was the CFMEU refused to use the temporary system and they kept trying to call Ms Bancroft directly, isn't it?

MR DE'ATH: Yes.

MR TERNOVSKI: Commissioner, I note the time.

COMMISSIONER: You can keep going if you want to.

MR TERNOVSKI: I'm in your hands, Commissioner. I can keep going or - I'm about to move to the next section, but I can keep going. Whatever is convenient for the Commission.

COMMISSIONER: This must be terribly frustrating for you, Mr De'Ath, that from this period, 27 October through to 31 January - that's three months - you're trying to negotiate what you regard as a system that increases the risk to - negotiate away a system that increases the risk to workers' safety, and at least by 31 January, it needed to be, as a matter of urgency, resolved. Were you frustrated by all this?

MR DE'ATH: Commissioner, incredibly frustrated, to the point that I - I would add that this was the most extreme obfuscation of anything in my entire career. Completely off the scale for a stakeholder.

MR TERNOVSKI: Mr De'Ath, when you say "obfuscation by a stakeholder", you're referring to the CFMEU, are you?

MR DE'ATH: Yes.

MR TERNOVSKI: And when you say "obfuscation", what are you referring to?

MR DE'ATH: I think quite a deliberate attempt to sabotage a process that they clearly did not want.

COMMISSIONER: And you say in your career, of any stakeholder?

MR DE'ATH: Without a doubt. And if I might add, Commissioner, I think you'll be aware, I've worked multiple jurisdictions with multiple stakeholders over multiple portfolios. If you had a on a scale of 1 to 9, you know, the worst I might have encountered would be a 3. This is a 9.

COMMISSIONER: We'll adjourn till 2 pm.

<THE HEARING ADJOURNED AT 12.50 PM

<THE HEARING RESUMED AT 2.00 PM

COMMISSIONER: Mr Ternovski.

MR TERNOVSKI: Thank you, Commissioner. First I'm reminded that I forgot to tender two documents I referred Mr De'Ath to. So perhaps if I deal with that first. Document 10.

COMMISSIONER: Are there any objections to the email from Mr De'Ath to Ms Bancroft of 31 January 2023?

MR TERNOVSKI: I tender that document, Commissioner.

COMMISSIONER: What are we up to? 19?

MR TERNOVSKI: Yes, we're up to 19.

COMMISSIONER: Email Michael De'Ath 31 January 2023 to Kym Bancroft, subject Follow-Up, will be CA-19.

<EXHIBIT CA-19 EMAIL MICHAEL DE'ATH 31/1/2023 TO KYM BANCROFT, SUBJECT FOLLOW-UP

MR TERNOVSKI: And the next document, Commissioner, that I didn't tender is document 31. And I tender that document.

COMMISSIONER: Any objections to the email from Kate Stuchbury to Nick Seeley and Kym Bancroft, 28 March 2023? No? That email will be exhibit CA-20.

<EXHIBIT CA-20 EMAIL FROM KATE STUCHBURY TO NICK SEELEY AND KYM BANCROFT, 28/3/2023

MR TERNOVSKI: Mr De'Ath, I'm about to move to a new section dealing with Ms Burgess, but before I do that, perhaps I'll get you to have a look at Ms Bancroft's statement and just have a read of paragraphs 37 through to 46, particularly paragraphs 44 through to 46. I'll just give you time to have a look at those paragraphs. And perhaps, Madam Operator, if we could just bring up paragraphs 44 to 46, which is on page 9 of Ms Bancroft's statement.

COMMISSIONER: 37 to 46 or -

MR TERNOVSKI: I asked Mr - I would like blown up paragraphs 44 to 46, but I've referred Mr De'Ath to the previous page as well so he can see the context.

COMMISSIONER: At 38 she says, consistently with what I was asking Mr De'Ath about, that the meeting on 5 August was in her first week of employment, so it looks like she did start on Monday, 1 August 2022.

MR TERNOVSKI: Commissioner, paragraph 6 deals with that and confirms her starting date.

COMMISSIONER: Yes.

MR TERNOVSKI: I think what I was referring to, I seem to recall she said somewhere that she didn't come to the office immediately because she was sick or something like that, but I'll see if we can find the reference to that. But in any event, her start date was 1 August. Mr De'Ath, have you had a chance to read that passage?

MR DE'ATH: I have. Thank you.

MR TERNOVSKI: Firstly, you'll see that in paragraphs 44 and 45, Ms Bancroft describes the sequence of phone calls that I put to you.

MR DE'ATH: Mmm-hmm.

MR TERNOVSKI: Mr De'Ath, am I understanding your evidence correctly that you don't have a specific recollection of those calls but you also don't dispute that this may have happened?

MR DE'ATH: Correct.

MR TERNOVSKI: Now, can I then take you to paragraph 46 of Ms Bancroft. And I just want to be very clear: I'm not suggesting to you that you were the one that made the decision for the transfer of Ms Burgess not to proceed in August 2022. I'm not suggesting that, because Ms Bancroft says in paragraph 46 that it was her decision.

MR DE'ATH: Thank you.

MR TERNOVSKI: However, you will see in paragraph 46 she gives reasons for her decision.

MR DE'ATH: Yes.

MR TERNOVSKI: And you see there, Mr De'Ath, that in describing the reasons for that decision, one thing she does not mention is any kind of process problem.

MR DE'ATH: I agree she doesn't mention that.

MR TERNOVSKI: Do you dispute her evidence that she made the decision for the reasons she describes, as far as you know?

MR DE'ATH: I have no reason to dispute Ms Bancroft's evidence on this matter.

MR TERNOVSKI: Now, although the proposal to move Ms Burgess out of the director CCFS role did not initially proceed in August 2022, it did ultimately take place, didn't it?

MR DE'ATH: Correct.

MR TERNOVSKI: And Ms Bancroft - well, perhaps - Madam Operator, I don't know if you've got exhibit CA-6 at hand? It's Ms Burgess' placement history. Yes. Can we just zoom in on the top three entries. We don't need the position, the right-most column; we just need the dates and the job title, basically. Sorry, Madam Operator, if we could just scroll to the right so we can see the full job title, because it's cut off on the screen presently. So you see there, Mr De'Ath, that it appears from this document that from 13 February she was reassigned from being director of construction compliance and field services to director of construction strategy.

MR DE'ATH: I see the position restructure, the redesignation of the (indistinct) and sorry, just noting the points below, the job titles.

MR TERNOVSKI: Yes. So based on that, you would agree, wouldn't you, that on 13 February 2023 Ms Burgess was finally moved out of her role as director of CCFS?

MR DE'ATH: I recall that she was ultimately moved out. I don't recall the exact date.

MR TERNOVSKI: You do recall, though, don't you, Mr De'Ath, that Mr Ravbar was, as you put it at the interview, incredibly unhappy about the move?

MR DE'ATH: Yes.

MR TERNOVSKI: And he raised it with you repeatedly, didn't he?

MR DE'ATH: Yes.

MR TERNOVSKI: And the reason he raised it is because the CFMEU wanted Ms Burgess back.

MR DE'ATH: Yes.

MR TERNOVSKI: Do you care to speculate as to why they may have wanted Ms Burgess back?

MR DE'ATH: Mr Ravbar did not ever pose his reasons to me that I can recall. You're asking me to speculate on something that - you know, we are working with a body of information that is expressing a considerable level of concern about her relationship with the CFMEU. And, sorry, it's a slightly longer answer than

maybe what you were anticipating, but my concern would always be that we had a thorough process in relation to any of those concerns and any reassignment. I don't know - it would be clear that there was a suggestion that it was a convenient position and person for Mr Ravbar and the CFMEU. That was what I was aware of.

MR TERNOVSKI: Convenient in what way, Mr De'Ath?

MR DE'ATH: In relation to things that I think have already been traversed, around the - through this inquiry, around reassignment of inspectors to certain places, certain times, certain events.

MR TERNOVSKI: In other words, that as far as control over construction inspectors goes, Ms Burgess was the CFMEU's person within the OIR?

MR DE'ATH: That was our concern. That was certainly our concern, and I think as I mentioned earlier, trying to get to a place of establishing that was extremely difficult.

MR TERNOVSKI: So is that what you meant earlier on when you said you had concerns but one of your concerns was that the only thing you had evidence of was that phone contact on the private phone that was the subject of the QIRC decision?

MR DE'ATH: That - that is correct, counsel assisting, and I think you've already referred, lots of information coming in from inspectors and so on, but when we have an investigation and some things are in the hands of the CCC, then we're awaiting a conclusion.

MR TERNOVSKI: All right. Let me now take you to a different matter, which we touched on briefly, but I want to look at it in more detail, which is the conflict allegations against Ms Bancroft. Can I please take you to document 6 in the tender bundle. And Madam Operator, if we could first blow up the email from Cathy Bray to Ms Bancroft at the bottom.

COMMISSIONER: What number is this again?

MR TERNOVSKI: This is document 6 of the tender bundle. I'll let you read the whole document, Mr De'Ath, then I want to ask you some questions about it.

MR DE'ATH: Thank you very much. Thank you.

MR TERNOVSKI: Now, firstly you'll see in the second half of the page and blown up on the screen is an email from Cathy Bray to Ms Bancroft.

MR DE'ATH: Yes. Sorry, yes.

MR TERNOVSKI: Now, Cathy Bray is a person that worked in the Office of the Deputy Director-General?

MR DE'ATH: I don't recall her specifically but I have no reason to dispute that she did.

MR TERNOVSKI: Well, just for completeness, I might as well take you to the second page, where there is her signature.

MR DE'ATH: Thank you. Yes, that does prompt me. I think she was some administrative support in that office. I can't recall.

MR TERNOVSKI: And you see in that email that Ms Bray sends to Ms Bancroft she says:

> "I've filled in this 'alternative sourcing strategy' form."

MR DE'ATH: Yes.

MR TERNOVSKI: Can you explain to the Commissioner what that is, if you know what it is?

MR DE'ATH: What a sourcing strategy is?

MR TERNOVSKI: Alternative sourcing strategy form that Ms Bray refers to.

MR DE'ATH: I don't know what she means by "alternate", but a sourcing strategy form would relate to the process they intended to follow for procurement, I believe.

MR TERNOVSKI: Now, if you look at the second full paragraph of Ms Bray's email, you see she says:

> "Once we have the official proposal from Tristan, we can provide to Belinda..."

And next paragraph:

> "FYI, I have also filled in the conflict of interest declaration (for procurement) in your name."

MR DE'ATH: I do see that.

MR TERNOVSKI: Now, do you remember the name of the person, Ms Bancroft's core director and the person that did the work, the key person that did the work on the QUT project? Do you remember the name of that person?

MR DE'ATH: I think that was Tristan Bray.

MR TERNOVSKI: Tristan Casey, wasn't it?

MR DE'ATH: Tristan Casey, thank you, yes.

MR TERNOVSKI: So presumably that's the Tristan Casey that's being referred to here?

MR DE'ATH: Yes.

MR TERNOVSKI: So what looks like has happened is Ms Bray has pre-filled the form for Ms Bancroft?

MR DE'ATH: Yes.

MR TERNOVSKI: And then Ms Bancroft responds, and if you look at her response, she says:

> "Thanks, Cath. Can you please check that I have filled the two forms correctly?"

MR DE'ATH: Yes.

MR TERNOVSKI: And if you look at the attachment line, you see there is a couple of attachments?

MR DE'ATH: Yes, I do.

MR TERNOVSKI: Can we please go to page 5 of that document. Hang on, I'm getting my notes mixed up. Page 4, actually of the document. It starts with section 5, Conflicts of Interest. Can I get - Madam Operator, could you zoom in on Financial Delegate? You see there Ms Bancroft ticked "I have an interest"?

MR DE'ATH: Yes, I do, and I am extremely surprised by that. Thank you.

MR TERNOVSKI: And if you look under section 7, Approval - Purchasing Delegate.

MR DE'ATH: Yes, I do see that.

MR TERNOVSKI: You see there's another tick, "I have an interest that conflicts"?

MR DE'ATH: Yes, thank you.

MR TERNOVSKI: And Ms Bancroft's signature is redacted, but you see there on the right-hand side the date, 9 September 2022?

MR DE'ATH: Yes, I do see that.

MR TERNOVSKI: Shortly after she started. Can we then go, please - skip the next page and go to the page that starts - page 6, which starts with Purchasing and Procurement - Declaration of Conflict of Interest.

MR DE'ATH: Yes.

MR TERNOVSKI: And can we zoom in, please, Madam Operator, on the bottom of that form, where there's a tick box "I have".

MR DE'ATH: Yes.

MR TERNOVSKI: Do you accept, Mr De'Ath, that this form seems to show Ms Bancroft at least attempting to declare the conflict?

MR DE'ATH: I - I absolutely do agree. I'm extremely surprised by this document.

MR TERNOVSKI: Why are you surprised by it, Mr De'Ath?

MR DE'ATH: So as I think has previously been touched on, there was a declaration made to the CCC. In fact, I was informed in the interview there was a second declaration made to the CCC in relation to this matter. And in the checks that I requested on this were two things: one is that the conflict of interest document had been completed and, I understood, had not been declared; and secondly that the directorship upon employment had been declared, and I believe I was advised had not been declared.

MR TERNOVSKI: I'm going to take you to the directorship in a second.

MR DE'ATH: Thank you.

MR TERNOVSKI: But just staying with this document, in your view - let me backtrack one step. Ms Bancroft came from a private sector background, didn't she?

MR DE'ATH: Yes.

MR TERNOVSKI: She has never worked in government?

MR DE'ATH: No.

MR TERNOVSKI: And so she was not as across government processes and procedures as a career public servant would be. Is that fair to say?

MR DE'ATH: We were very aware of that.

MR TERNOVSKI: And as I'll get to shortly, in fact, that's one of the reasons why you put Ms Stuchbury in Ms Bancroft's office, to support her with government processes.

MR DE'ATH: That is correct.

MR TERNOVSKI: Now, in terms of what should have happened here - now, Ms Bancroft you have seen has ticked those boxes.

MR DE'ATH: Yes.

MR TERNOVSKI: What should have happened from this point on, as far as you were concerned?

MR DE'ATH: A conflict of interest management plan.

MR TERNOVSKI: I see. And then as part of that plan, would it be the case that she would no longer be the decision-maker?

MR DE'ATH: That would be highly likely the outcome.

MR TERNOVSKI: And in your view, is this something that those working for Ms Bancroft in her office should have advised her to do?

MR DE'ATH: Most definitely. Could I add (indistinct)?

MR TERNOVSKI: Please.

MR DE'ATH: I do recall in bringing Ms Bancroft into the public service that along the way on various things like selection processes, procurement process, it was always my advice to her to get the advice out of the necessary people in her department to guide her on those processes.

MR TERNOVSKI: So would you accept, Mr Bancroft - Mr De'Ath, I'm sorry - would you accept that to the extent that Ms Bancroft, having filled out this form, was not advised that she should now - there should now be a conflict management plan and she should probably recuse herself, to the extent that if that didn't happen, that's something that should have happened?

MR DE'ATH: Correct.

MR TERNOVSKI: And that's something that her staff should have done for her?

MR DE'ATH: Well, if I speak from my own experience, where it's come to a conflict of management plan, where I have in the past, it was me who developed the plan, and then that was checked, in one case in Queensland by the Integrity Commissioner when I first arrived here. So it's - it's not just quite as simple as the staff prepare it for you and that's it. You actually have to go through the thought process about what is my conflict, how is that managed, and therefore the advice on what should happen from there. That is the government process.

MR TERNOVSKI: If I understand you correctly - and forgive me if I'm putting your words in a different way; tell me if you disagree - I think what you're ultimately saying is that at the end of the day, the buck stopped with her?

MR DE'ATH: Yes.

MR TERNOVSKI: Having said that, because she was inexperienced with government processes, what should have happened is that her staff, having seen this, should have advised her, "Hang on, something needs to happen here."

MR DE'ATH: Well, that certainly would have been a good idea.

MR TERNOVSKI: I tender document 6.

COMMISSIONER: Are there any objections? Email from Kym Bancroft, 9 September 2022, to Cathy Bray, attaching approval of an alternate sourcing strategy document will be exhibit CA-21.

<EXHIBIT CA-21 EMAIL FROM KYM BANCROFT, 9/9/2022, TO CATHY BRAY, ATTACHING APPROVAL OF AN ALTERNATE SOURCING STRATEGY DOCUMENT

MR TERNOVSKI: 21, yes, Commissioner, thank you. Mr De'Ath, can I now take you to document 12, and again, please take the time to read the whole document, and I will ask you some questions about it. But let's just - perhaps while Mr De'Ath is doing that, if we could blow up, Madam Operator, the email header from the first page.

MR DE'ATH: Thank you.

MR TERNOVSKI: So I'll - I just want to ask you about that email first, and then we'll go to the attachment. You'll see it's an email from Megan Barry to Mr Seeley.

MR DE'ATH: Yes.

MR TERNOVSKI: Now, Megan Barry was a deputy director-general in your - in the Department of Education?

MR DE'ATH: Yes.

MR TERNOVSKI: And she was, if I understand correctly, in charge of, among other things, HR, including integrity?

MR DE'ATH: Integrity executive support, yes.

MR TERNOVSKI: For the department?

MR DE'ATH: Yes.

MR TERNOVSKI: And she would not normally involved with OIR, because the OIR had their own HR and integrity; is that right?

MR DE'ATH: Not necessarily correct. It would depend where records were held at a particular time, given that - so she may or may not is what I could say and I think possibly provide you information later on where I had engaged her on certain activities in relation to OIR.

MR TERNOVSKI: I think I can probably put it more simply. Had it been a lower-level official, not the director - not the deputy director-general but, say, a director or an executive director level, do you agree it probably would have been handled within the OIR itself?

MR DE'ATH: Agree, and if I might add, just reflecting on this line, this may very well be as she was my direct report.

MR TERNOVSKI: Yes. So because she was the head of OIR, the OIR's ethical standards function ultimately reported to her, didn't it?

MR DE'ATH: Sorry, can you say that again?

MR TERNOVSKI: Because she was the head of OIR as a deputy director-general, the people within OIR that were responsible for integrity and HR, they reported to her?

MR DE'ATH: Yes.

MR TERNOVSKI: So therefore it was appropriate that it was handled not by OIR but by the Department of Education by people that were independent of her?

MR DE'ATH: That is highly likely. That is a very good rationale. I suspect that's what's happened.

MR TERNOVSKI: Now, I want to take you to the attachment, but you can see just from the header, the attachment is Kym Bancroft Declaration of Interest October 2022.PDF? You can see that's the name of the attachment?

MR DE'ATH: Yes.

MR TERNOVSKI: And it's clear from this email, isn't it, that at least by then, by 3 February, the allegation of the conflict had reached your office?

MR DE'ATH: I can't remember the specific date. Likely, yes.

MR TERNOVSKI: Well, let's put it this way: this email is dated 3 February, and it's Ms Barry sending Mr Seeley Ms Bancroft's conflict declaration?

MR DE'ATH: Actually, yes, and I believe that - yes. So that sounds correct.

MR TERNOVSKI: So presumably what would have happened is at some point the issue arose, and as part of dealing with that issue, Ms Barry located those conflict declarations and sent them to Mr Seeley?

MR DE'ATH: Yes.

MR TERNOVSKI: And so therefore the conflict allegation would have reached your office somewhere around then, maybe a little bit earlier?

MR DE'ATH: Yes.

MR TERNOVSKI: And you also accept, don't you, Mr De'Ath, that this attachment reached your office because it went to Mr Seeley?

MR DE'ATH: Yes, definitely.

MR TERNOVSKI: If we now look at the attachment, if we look on page 1 of the attachment, page 2 of the document, and if we blow up the top section, you'll see it's a declaration of interest by Ms Bancroft dated 25 October?

MR DE'ATH: Yes.

MR TERNOVSKI: And then just at the bottom of that page is that footnote that I showed you earlier about the declaration being confidential between the subject officer and the chief executive?

MR DE'ATH: Yes.

MR TERNOVSKI: In this case, Ms Bancroft and you?

MR DE'ATH: Yes.

MR TERNOVSKI: And then if we go to the next page, about middle of the page, Directorships In or Employment By a Public or Private Company. Madam Operator, if we could blow that up. Do you see that Ms Bancroft has declared her directorship in New View Safety?

MR DE'ATH: I do see that.

MR TERNOVSKI: Did you receive - did you or your office receive this document back in October 2022 when it was signed?

MR DE'ATH: Counsel assisting, I can't - I can't recall. There's a lot of documentation comes into the office. I don't recall. I certainly was not aware that the directorship had been declared.

MR TERNOVSKI: Because you said in the interview - I was going to take you to that later, but we may as well deal with that now - you said in the interview that directorship hadn't been declared.

MR DE'ATH: Correct.

MR TERNOVSKI: That's wrong, isn't it?

MR DE'ATH: That is wrong.

MR TERNOVSKI: Now, just so we can understand the correct process, I understand you say this document, you don't remember whether this document reached your office or not back in October '22. You obviously did in February '23.

MR DE'ATH: Mmm.

MR TERNOVSKI: But what would the normal process have been? Once this is signed, would you - is this a document that should have gone to your office?

MR DE'ATH: The conflict of declaration document is an important document, especially upon appointment, and I think it's subject to an annual review, declaration of interest. So those documents, through my office processes, would routinely be supplied to me. I would be aware of them. I actually - it is one piece of documentation that I paid particular attention to, because it is a trip point for people. So, clearly, I think I would have to say I had not seen this document, and further, when that CCC referral had been made and I had asked for these to be checked, somehow this has not been checked.

MR TERNOVSKI: Would you accept, Mr De'Ath, that to the extent this document did not reach your office back in October 2022, that's a failure of process somewhere?

MR DE'ATH: Absolutely, and it - if I may, counsel assisting, it draws my attention to the fact that these documents are only signed by the executive themselves, and wouldn't it be so helpful if it had to be signed by her direct report as well?

MR TERNOVSKI: As in yourself?

MR DE'ATH: Yes.

MR TERNOVSKI: So the form was deficient in that respect?

MR DE'ATH: I - I - well, this has just come to my attention. I believe so.

MR TERNOVSKI: So you would agree with me, Mr De'Ath, that to the extent that this form didn't - let me take you back one step. I think, if I understand your evidence correctly, you say you must not have seen this form back in October '22, because you obviously thought that she hadn't declared the directorship?

MR DE'ATH: Correct.

MR TERNOVSKI: And had you seen that form back in October 2022, you would have remembered that?

MR DE'ATH: I would have done more than remember it, counsel assisting. I would have asked for a management plan in relation to that conflict, in fact to the extent that it would most likely have resulted in the relinquishing of the directorship.

MR TERNOVSKI: And that's because, from your point of view, it was problematic for her to hold a directorship in a safety company while simultaneously being the safety regulator?

MR DE'ATH: You're 100 per cent correct. You cannot be the safety regulator and be a director of a firm that's providing advice on safety.

MR TERNOVSKI: So had you known about it back then, are you saying, Mr De'Ath, you would have advised her she needs to relinquish the directorship?

MR DE'ATH: Immediately. Well, sorry, counsel assisting, I would have got advice, but I suspect that would have been the advice.

MR TERNOVSKI: But obviously - I think you said that you didn't see this document.

MR DE'ATH: I hadn't seen that document until today. I can't have.

MR TERNOVSKI: Is it fair to assume, Mr De'Ath -

COMMISSIONER: When you say you can't have, what do you mean by that? Are you just - why do you say that?

MR DE'ATH: What I mean, Commissioner, is that if I had known this, (1) I would have acted in response to it and (2) we wouldn't have gone to the extent of a CCC submission in relation to this issue, because the first thing the CCC would do is check the documentation.

COMMISSIONER: But that assumes the CCC submission was genuine and not a cover for something else, doesn't it?

MR DE'ATH: Well, the CCC, according to me, was most genuine based on the information that I had, which was that those two declarations were not in place and that this procurement had taken place and the directorship existed. In fact, I know the directorship existed, because at some point I believe I was shown the website with Ms Bancroft's picture on it and her listed as a director.

MR TERNOVSKI: Is this the website of the firm New View Safety?

MR DE'ATH: Yes, and if I might elaborate, that was a conversation between me and Ms Bancroft at the time of which I understand she acted promptly to remove herself from that directorship. So, in other words, what should have happened upon her appointment, had I known this, happened as soon as we identified it.

MR TERNOVSKI: Later on, after that email on 3 February?

MR DE'ATH: Correct, yes.

MR TERNOVSKI: Mr De'Ath, is it fair to assume that - you say that you couldn't have seen that form because you would have acted in a particular way and you didn't.

MR DE'ATH: Mmm.

MR TERNOVSKI: Is it fair to assume that Mr Seeley also didn't see that form because he would have brought it to your attention at the time, back in October '22?

MR DE'ATH: I can't speak to what Mr Seeley did or didn't see. It's an email to him, and for some reason, that has not been brought to my attention.

MR TERNOVSKI: No, but the email here is 3 February, when the conflict issue has already arisen.

MR DE'ATH: Oh, sorry. I understand the question.

MR TERNOVSKI: I'm saying back in October 2022, is it safe to assume that you would have expected Mr Seeley, had he been privy to this back in October, that he would have brought it to your attention?

MR DE'ATH: It would be Mr Seeley or I think at the time Ms Pennisi, who was my executive assistant. Either one of those people, had they received that, they would have brought that to my attention.

COMMISSIONER: Who was the second one, sorry?

MR DE'ATH: Ms Lisa Pennisi.

MR TERNOVSKI: So therefore it's a reasonable inference, isn't it, Mr De'Ath, that that declaration back in October never went up to the director-general's office?

MR DE'ATH: I don't believe it went to - sorry, it did not go to me.

MR TERNOVSKI: And that was a failure of process of the OIR side of things?

MR DE'ATH: I - I don't know where that failure of process took place. It was most likely within the OIR, given on Kym's - Ms Bancroft's commencement, I assume she would have supplied documentation to her staff to manage that process.

MR TERNOVSKI: And what should have happened is that her staff, having received this document, should have either passed it on to your office or advised her to do so?

MR DE'ATH: They should have advised us immediately that there was an issue in there. They certainly should have passed it on to us, but they should have brought our attention to that issue.

MR TERNOVSKI: I tender the document.

COMMISSIONER: It just seems a little bit deflecting, Mr De'Ath. You're the director-general. A new deputy director-general comes in, fills out a declaration of interest form, and says the information will only be accessible by the new deputy director-general and by you, and you don't have systems in place that you say got that declaration of interest disclosure form to you, as the responsible departmental head. I don't quite understand you blaming Ms Bancroft and her staff for that. It doesn't make any sense to me. Can you enlighten me?

MR DE'ATH: Certainly, Commissioner. I'm not blaming, actually. I'm most curious about how I would agree there is some system failure here.

COMMISSIONER: But more importantly your system failure as the director-general of this department.

MR DE'ATH: I would always have to accept responsibility, Commissioner, for the fact that a system failed within this large department, and I'm certainly disappointed, but comfortable in accepting that responsibility. How that has happened would be - if I had remained, would be one of the first things I'd be going to find out.

COMMISSIONER: But you - tell me I'm intruding on your cross-examination, Mr Ternovski, but do I take it that this declaration of interest, which was declared in October 2022, that is, the directorship of a private company, New View Safety, was not revealed to the CCC when someone from your department made a complaint to the CCC about a failure to declare that directorship, which had been declared in October 2022?

MR TERNOVSKI: In fairness, Commissioner, I might answer that question in part.

COMMISSIONER: Yes.

MR TERNOVSKI: The CCC allegation that ultimately went was that she had failed to declare it from 1 August 2022 up until the date of this declaration. So I think the CCC was told about this declaration.

COMMISSIONER: Right, up until 25 -

MR TERNOVSKI: October, which is when this document is signed.

COMMISSIONER: - October 2022.

MR TERNOVSKI: Which is obviously not on her commencement in August, on 1 August, as we've just established, 2022.

COMMISSIONER: Who made this complaint to the CCC about the failure to disclose for one month, two months, two months and three weeks, almost three months?

MR TERNOVSKI: Well, I can answer that, Commissioner, and perhaps I'll assist Mr De'Ath as well by taking him to the relevant document.

COMMISSIONER: If I've taken you out of order, just tell me to stop.

MR TERNOVSKI: I'm sorry, Commissioner, I didn't catch what you just said.

COMMISSIONER: If I'm taking you off track, just tell me to stop. I'm trying to follow what's going on.

MR TERNOVSKI: No, no, that's fine. Perhaps - I'll show the relevant document, but first I'll tender this document, document 12.

COMMISSIONER: Are there any objections? Email, Megan Barry to Nick Seeley, 3 February 2023, re Kym Bancroft declaration of interest October 2022 will be CA-22?

MR TERNOVSKI: CA-22, yes, that's right, Commissioner.

<EXHIBIT CA-22 EMAIL, MEGAN BARRY TO NICK SEELEY, 3/2/2023, RE KYM BANCROFT DECLARATION OF INTEREST OCTOBER 2022

MR TERNOVSKI: And if we - Madam Operator, if we go to document 14, page 2, and blow up the allegations of corrupt conduct.

COMMISSIONER: How did that last - second-last paragraph possibly find its way into this allegation?

MR TERNOVSKI: I think there's an earlier - there might be an earlier version of this document. I think there might have been an earlier declaration. I'll get back to you on that. But for present purposes, I'm not suggesting that there is anything untoward, Commissioner, about the referral from the department as such.

COMMISSIONER: Am I allowed to ask you why not?

MR TERNOVSKI: Well, there was - ultimately was a conflict, or at least an allegation of conflict.

COMMISSIONER: Well, given there was a - given that this person was terminated in circumstances which, on one view of things, were at the direction of the minister telling Mr De'Ath to get rid of her - that's one possible construction of how this witness was - how Ms Bancroft was terminated, this particular complaint seems to form part of an alternative reason for her termination, at least on this witness's evidence.

MR TERNOVSKI: That is true.

COMMISSIONER: Is that fair? So isn't it relevant to know whether this complaint was itself genuine, in the sense that it was part of a process which went through scanning things of all employees, not picking on Ms Bancroft in particular, making sure that minor things aren't beefed up into something that's more substantial. Isn't that relevant?

MR TERNOVSKI: I think this may be a question that, Commissioner, you need to ask of Ms Barry when she gives evidence. I don't want to give evidence from the bar table, but she was involved in the genesis of the complaint.

COMMISSIONER: Well, as someone who has no knowledge of this process, it looks extremely minor to me, and I would wonder why this wouldn't just be dealt with through a process within the department to someone who's new saying, "Well, you took three months to make your declaration, but you've made it. Next time, do it quickly." And in relation to the declaration, in relation to Mr Tristan Casey, it looks like she had made it.

MR TERNOVSKI: Mr De'Ath, do you have an answer as to why this warranted a CCC referral?

MR DE'ATH: I will do my best. The advice that I received and I understand to be correct is that where there was a suggestion that there had been anything that may constitute criminal activity or corrupt activity, that I had an obligation to report that to the CCC. So first and foremost, there was no wriggle room with that; that is what had to happen. In relation to when the conflict was declared, my issue, based on the information that I had, was not about when the conflict was declared; it was more that the information I had was that the conflict was not declared.

COMMISSIONER: But I thought you just said that it was declared.

MR DE'ATH: That is what I've discovered today.

MR TERNOVSKI: Mr De'Ath, are we still on document 14, Madam Operator? Can we go to page 8 of that document. Unfortunately, the signature is redacted, but if there's any issue about it, we can produce an unredacted document. It appears to bear your signature.

COMMISSIONER: Document, sorry?

MR TERNOVSKI: That's document 14, page 8, and it's on the screen, Commissioner.

COMMISSIONER: Which bundle?

MR TERNOVSKI: Of the tender bundle. Same document that we were just looking at before with the referral.

COMMISSIONER: Tab 14?

MR TERNOVSKI: Tab 14, page 8.

COMMISSIONER: I'm sorry. I'm with you now.

MR TERNOVSKI: You'll see, Commissioner, it says "Endorsed by" and then there's a redacted signature, and after that, Michael De'Ath, Director-General, Department of Education.

COMMISSIONER: What's the date of it?

MR TERNOVSKI: The date of it - well, we can put a timeframe on that if we go to the first page of document 14.

MR DE'ATH: If I may, counsel assisting?

MR TERNOVSKI: Please.

MR DE'ATH: I believe on the last page, page 8, if this relates to the question of the Commissioner, this was assessed, and the date was 7 February '23.

MR TERNOVSKI: Yes.

MR DE'ATH: Is that what we're trying to establish?

MR TERNOVSKI: I think, if I understand the Commissioner correctly, you're trying to establish when you signed the document?

COMMISSIONER: When Mr De'Ath did?

MR TERNOVSKI: Yes. Did I understand your question correctly, Commissioner? I think we can answer that question with the email, but before I move to the email, while we're still on this - do you have that page 8 in front of you, Mr De'Ath?

MR DE'ATH: I do, yes.

MR TERNOVSKI: You see it says assessed by Gabrielle Callaghan?

MR DE'ATH: I do.

MR TERNOVSKI: She was an officer working in the integrity section of your department, wasn't she?

MR DE'ATH: I don't know that. I would assume that that is the case because that is where this - this document is prepared.

MR TERNOVSKI: And, Mr De'Ath, is it usual for to you personally sign these referrals?

MR DE'ATH: The advice I received in relation to this referral is that I was the person who was required to sign it.

MR TERNOVSKI: Because of the seniority - sorry.

MR DE'ATH: Sorry, I did ask about that.

MR TERNOVSKI: And is that because of the seniority of Ms Bancroft as your direct report?

MR DE'ATH: I think the assumption is - she is my direct report; I think you're correct - and therefore it would be me that would be signing out the referral.

COMMISSIONER: This is the referral, 7 February 2023, that you say in your witness statement:

> "I became aware of conduct by Ms Kym Bancroft, which I considered required me to make or cause to be made a notification to the Crime and Corruption Commission."

That's it here?

MR DE'ATH: Yes.

COMMISSIONER: And then you say - and that was 7 February, and Ms Bancroft was terminated on 21 April.

MR DE'ATH: Yes, Commissioner.

COMMISSIONER:

> "Given that this notification was made and there would be some period of time before the notification would be considered by the CCC, I formed the view that Ms Bancroft could not continue in her current role as Deputy Director-General of the Office of Industrial Relations."

And that's this notification of 7 February 2023?

MR DE'ATH: Correct, Commissioner.

MR TERNOVSKI: So is it right to say, then, Mr De'Ath, that that view that you formed that she could not continue as the head of OIR was not a view you formed in February 2023, was it?

MR DE'ATH: It wasn't formed on February '23. It contributed to my thinking -

MR TERNOVSKI: Later down the track.

MR DE'ATH: - throughout that period of time.

MR TERNOVSKI: If we go to page 1 of that - still sticking with document 14, if we blow up the email from Mr Seeley to Ms Barry, you'll see there Mr Seeley says:

> "Hi Megan, please find attached the referral, endorsed by the Director-General."

And the date of the email was 9 February. So is it fair to say, Mr De'Ath, as of 9 February you knew that she had declared a directorship in New View Safety, because that's what the allegation is and the document that you had signed?

MR DE'ATH: Can you restate that, please?

MR TERNOVSKI: Well, you signed this document, didn't you, Mr De'Ath? The referral.

MR DE'ATH: On 7 February? Sorry. Well, I don't know when I signed it, but yes.

MR TERNOVSKI: Well, it was assessed on 7 February.

MR DE'ATH: Mmm-hmm.

MR TERNOVSKI: So it must have been on or after that date. Do you accept that?

MR DE'ATH: Yes, correct.

MR TERNOVSKI: And if you look at the email from Mr Seeley to Ms Barry on page 1, that's the email - you had already signed the document by then? That's 9 February.

MR DE'ATH: Yes.

MR TERNOVSKI: So your signature must have happened between these two dates, between the 7th and the 9th?

MR DE'ATH: Yes.

MR TERNOVSKI: And in fact, if you look at the email from Ms Barry on the bottom of page 1 of that document, you'll see there's an email from Ms Barry to Mr Seeley on 9 February, and the email says:

> "Updated as discussed..."

MR DE'ATH: Yes.

MR TERNOVSKI: And Mr Seeley is responding to that?

MR DE'ATH: Yes.

MR TERNOVSKI: So obviously the referral must have been updated on 9 February.

MR DE'ATH: I would assume so.

MR TERNOVSKI: And you signed - and you signed the updated referral, from this chain?

MR DE'ATH: I signed this referral that's here, yes, I believe so.

MR TERNOVSKI: Well, Mr Seeley's email says:

> "Please find the attached referral, endorsed by the Director-General."

It's reasonable to infer, Mr De'Ath, that what you signed is the updated one?

MR DE'ATH: That is very safe to assume.

MR TERNOVSKI: So you must have signed it on 9 February?

MR DE'ATH: That's probably right.

MR TERNOVSKI: Well, in any event, between the 7th and the 9th?

MR DE'ATH: There's no dispute, counsel assisting, I have signed this document.

MR TERNOVSKI: So although you said at the interview that you didn't think she had disclosed her directorship of New View Safety, you must have known at least as of 9 February that she had done so?

MR DE'ATH: Sorry, counsel assisting, I'm struggling a bit to understand why I would have known that she had disclosed her directorship.

MR TERNOVSKI: Let me step you through that, Mr De'Ath.

MR DE'ATH: Please do.

MR TERNOVSKI: Firstly, it's safe to assume you would have read the document before you signed it?

MR DE'ATH: The referral?

MR TERNOVSKI: Yes.

MR DE'ATH: Yes.

MR TERNOVSKI: So if we then go to page 2 of the document and we look at the allegations of corrupt conduct, the first full paragraph -

MR DE'ATH: Yes.

MR TERNOVSKI: - you see the allegation that she had failed to declare her directorship during the period from 1 August '22 to 25 October 2022.

MR DE'ATH: Thank you.

MR TERNOVSKI: It seems to follow from that, does it not, just reading that line, that she did declare on 25 October?

MR DE'ATH: That would make sense.

MR TERNOVSKI: So you must have known when you signed the document somewhere between the 7th and the 9th that she had declared the directorship?

MR DE'ATH: I don't believe I made that connection.

MR TERNOVSKI: Perhaps you didn't read the document carefully enough at the time. Is that fair?

MR DE'ATH: Well, I would like to think I did. But I - but - and I believe I did. I just don't believe I made that connection.

MR TERNOVSKI: Madam Operator, if we could blow up the allegations of corrupt conduct, the whole - that row of the table. I just want to ask you some more questions about the allegation, the conflict allegation.

MR DE'ATH: Yes.

MR TERNOVSKI: So the issue was - tell me if I'm right, Mr De'Ath - that the key person that was to carry out the QUT work that Ms Bancroft had commissioned was Mr Tristan Casey?

MR DE'ATH: Yes.

MR TERNOVSKI: And Mr Tristan Casey was her core director of New View Safety?

MR DE'ATH: Yes.

MR TERNOVSKI: And that's a conflict?

MR DE'ATH: Yes, absolutely.

MR TERNOVSKI: And I just want to scope out the scope of that conflict with you, Mr De'Ath. New View Safety was not engaged by the department?

MR DE'ATH: No.

MR TERNOVSKI: So it's not that she had engaged her own company, is it? It's that she had engaged QUT, who in turn - intending that Mr Tristan Casey carry out that work on behalf of QUT and Mr Casey was also in a business with her?

MR DE'ATH: That's right, and that was a problem.

MR TERNOVSKI: It's a problem, Mr De'Ath, because Mr Casey stood to benefit from that work and he was also her co-director?

MR DE'ATH: Yes, and could I add - and I think you're inferring it - that the credibility of that work is compromised significantly, either real or by perception, in relation to that connection between those two parties.

MR TERNOVSKI: And you see there, Mr De'Ath, at the last paragraph of this blown-up form, the consultancy services for the contract is valued at $120,000. Now, Mr De'Ath, that's something you would have picked up at the time?

MR DE'ATH: Yes, at the time, and there's a process depending on the thresholds of the amount of the contract. I can't remember what those thresholds are and the processes around that.

MR TERNOVSKI: So when those allegations of conflict reached your office, if I can say compendiously, the office has done two things. The first is to refer it to the CCC. That's one of the things that your office did in response to the conflict allegation?

MR DE'ATH: Sorry, counsel, the - the first thing that I believe would have happened was I was informed.

MR TERNOVSKI: Yes.

MR DE'ATH: And then I believe a discussion took place about what would be the course of action. There was some checking. I had asked for checks to be made in relation to the two documents you're referring to, and - and I had asked for advice about whether this would constitute something that meant a referral to the CCC.

MR TERNOVSKI: But ultimately, in terms of the actual action ultimately taken by your office in response to the allegation, one of those actions was to refer it to the CCC?

MR DE'ATH: Yes.

MR TERNOVSKI: And the second action was that you removed her procurement delegation -

MR DE'ATH: Yes.

MR TERNOVSKI: - which I think you mentioned earlier. If I could take you to document 15, if I take you to document 15 now - if we could first blow up the email, Madam Operator, on the first page, up to the words:

> "I'm available to discuss when needed."

I'll let you read the whole -

MR DE'ATH: I recall the document.

MR TERNOVSKI: So you'll see the first page, that's an email from Ms Barry to Mr Seeley on 14 February attaching two documents, and you can see the attachment, "DG speaking notes" and "Directions Letter"?

MR DE'ATH: Yes.

MR TERNOVSKI: And if we go to the next page, there is a document that looks like speaking notes?

MR DE'ATH: Yes.

MR TERNOVSKI: And that's the speaking notes for your meeting with Ms Bancroft where you told her those procurement delegations had been removed?

MR DE'ATH: Correct. Sorry, let me just check that, please, counsel assisting. Yes.

MR TERNOVSKI: I want to come back to this, but if we go to the next page, you see there is a letter to Ms Bancroft -

MR DE'ATH: Yes.

MR TERNOVSKI: - dated 14 February. If we blow up just the header, you'll see it says:

> "By Hand delivery."

MR DE'ATH: Yes.

MR TERNOVSKI: Is that because this was intended to be handed to her in person at a meeting with you?

MR DE'ATH: I - I can't recall. That would make sense.

MR TERNOVSKI: And did you in fact have a meeting with her about removing her procurement delegation?

MR DE'ATH: I believe I did.

MR TERNOVSKI: And is it - to the best of your recollection, if we go back to page 2 of this document, the speaking notes, is what you said to Ms Bancroft along the lines of what's in these speaking notes?

MR DE'ATH: Yes.

MR TERNOVSKI: And is it fair to say that either at that meeting or somewhere around that meeting you would have provided her with a letter as well?

MR DE'ATH: Yes. May I add?

MR TERNOVSKI: Please.

MR DE'ATH: I am trying to recall whether - I believe there was a meeting prior to this where I had raised the discovery of these issues with her.

MR TERNOVSKI: With Ms Bancroft?

MR DE'ATH: With Ms Bancroft - and informed her that, you know, on the face of it, these things lead to other processes, and at some point also made this decision around the delegations.

MR TERNOVSKI: Sorry, Mr De'Ath, so I understand correctly, the meeting you're talking about, was there two meetings, one where the issue first arose and the second one where you went through these speaking notes, or was it the one meeting?

MR DE'ATH: I can't be sure. I'm pretty sure there was a meeting before this where the concerns were raised with her.

MR TERNOVSKI: With her.

MR DE'ATH: Because I remember that there was really no response from her about what had taken place. It wasn't - it sort of - my recollection was it wasn't really a discussion and an acknowledgement of "I got this wrong".

MR TERNOVSKI: So you said there was or there wasn't an acknowledgement?

MR DE'ATH: There was.

MR TERNOVSKI: From Ms Bancroft?

MR DE'ATH: Yes. And so I'm - so you can maybe understand my surprise at discovering these documents which she herself has signed and been part of the process when I had raised that they didn't exist. So the entire scenario was - I'm deeply curious about all of this.

COMMISSIONER: You weren't very curious at the time to look into whether or not these allegations were justified. One of the things that you signed off on was something that you said you weren't aware of until today, in the witness box. Isn't that right?

MR DE'ATH: Commissioner, no, I don't think that is right, because what I'm saying is that the documents that - so the checks that I had asked to be completed before a CCC referral would be made, I have clearly not been informed of those documents. And in fact, what surprises me more is it went through other people who were part of preparing the CCC referral, had also been exchanging these documents, and yet the CCC referral was proceeding, when clearly if these documents were the documents that people had at the time, they would have come to me, had they looked at it thoroughly, and said, "Actually, that's not right."

MR TERNOVSKI: Well, I mean, the first allegation that we looked at before, that she hadn't declared her directorship from her commencement up until 25 October 2022, that was correct, wasn't it?

MR DE'ATH: Correct.

MR TERNOVSKI: So in that respect, the referral was accurate?

MR DE'ATH: That part was.

COMMISSIONER: But you're missing the major point, Mr Ternovski. Are you seriously going to refer someone for taking two and a half months to declare a directorship which they ultimately declare and nothing has resulted as a consequence? Is that -

MR TERNOVSKI: Well -

COMMISSIONER: To say that that's corruption by the deputy director-general?

MR TERNOVSKI: I cannot tell you off the top of my head whether it fits the technical definition of corruption for the CCC purposes. Having said that, Commissioner, there does seem to be an issue in that there is a conflict which may have been declared but it hasn't been managed. Whether Ms Bancroft is responsible for that or her staff, that's a separate issue. But the conflict hasn't been managed, in the sense that she was still the decision-maker for the procurement.

COMMISSIONER: Well -

MR TERNOVSKI: Whether that's sufficient for a referral or not is a separate question.

COMMISSIONER: I would have thought what would happen is that Mr De'Ath would say, "Kym, sorry, I didn't realise this. You should have done it earlier. It's not a big deal. Nothing's happened. You've filled in the declaration now. Just make sure you do these things in a timely manner." And yet it becomes an application or a notification to the CCC, which then, on Mr De'Ath's evidence, at least his evidence in his statement, is the reason that she's moved from the position of deputy director-general. It just doesn't - doesn't make sense.

MR TERNOVSKI: I will consider this further, Commissioner. Is there any questions that you wish to ask Mr De'Ath arising out of this?

COMMISSIONER: You keep going, and -

MR DE'ATH: If I may?

MR TERNOVSKI: Please, Mr De'Ath.

MR DE'ATH: It's not a choice, is the advice that I have received on this on more than one occasion, that where there is anything that may constitute crime or corruption, and there is a belief - I'm sorry, I don't have the exact legal definition and the definition of that, but the advice I had received is that it's not a choice, it's an obligation, and indeed to the extent that I may face consequences if I don't do that.

COMMISSIONER: It's your choice whether you terminate Ms Bancroft for this.

MR DE'ATH: Yes, it is.

COMMISSIONER: And you said, I think, this morning that you did.

MR DE'ATH: Yes.

MR TERNOVSKI: However, that came later, Commissioner, and -

COMMISSIONER: I understand. You'll take me to it.

MR TERNOVSKI: Mr De'Ath, going back to document 15, the first set of documents about procurement delegations, it's right, isn't it, that what's happened around that date, around 14 February, is exactly what's set out in the documents, which is that you removed Ms Bancroft's procurement delegations?

MR DE'ATH: Yes.

MR TERNOVSKI: And if we look at page 2 of the document, if we could, Madam Operator, blow up dot points 3, 4 and 5 and 6, starting with "At this stage". So, Mr De'Ath, I think you said earlier that in what I think on your evidence was the second meeting with Ms Bancroft, you spoke to her along the lines of these speaking notes, I think you said?

MR DE'ATH: Yes, I believe that's - that's my recollection.

MR TERNOVSKI: Including - it would be fair to say, including those four bullet points that are on the screen?

MR DE'ATH: I think - so this would have occurred in that meeting that you're referring to.

MR TERNOVSKI: Yes.

MR DE'ATH: I was referring to, I think, maybe an earlier meeting.

MR TERNOVSKI: Where she admitted there was a problem?

MR DE'ATH: Yes.

MR TERNOVSKI: Let's now talk about this meeting where you remove the procurement delegation.

MR DE'ATH: Certainly.

MR TERNOVSKI: Did you say to her things along the lines of those four dot points?

MR DE'ATH: I would have followed those speaking points.

MR TERNOVSKI: Yes, so essentially, you can't give her the details of the specifics of the issue. However, she will get an opportunity to respond in due course - second dot point.

MR DE'ATH: Yes.

MR TERNOVSKI: And then whilst under assessment, you have to manage that issue.

MR DE'ATH: Yes.

MR TERNOVSKI: And you managed that issue by removing her purchasing, procurement and financial delegations?

MR DE'ATH: Yes.

MR TERNOVSKI: And you've handed them to the CFO of OIR.

MR DE'ATH: Of Education.

MR TERNOVSKI: Of Education. Thank you. I tender this document 15.

COMMISSIONER: Are there any objections? Email from Megan Barry to Nick Seeley, 14 February 2023, re DG Speaking Notes and letter to Kym Bancroft, 14 February 2023, will be exhibit CA-23.

<EXHIBIT CA-23 EMAIL FROM MEGAN BARRY TO NICK SEELEY, 14/2/2023, RE DG SPEAKING NOTES AND LETTER TO KYM BANCROFT, 14/2/2023

MR TERNOVSKI: Could I now briefly take you to document 16. If we can blow up the header, you'll see that's an email from you to Mr Duncan Anson?

MR DE'ATH: Yes.

MR TERNOVSKI: Mr Anson was the CFO of the department?

MR DE'ATH: Yes.

MR TERNOVSKI: And if we blow up the email, you'll see that you're informing him that you've suspended Ms Bancroft's procurement delegations?

MR DE'ATH: Yes.

MR TERNOVSKI: And in effect, the procurement now goes to him?

MR DE'ATH: Yes.

MR TERNOVSKI: And the email is dated the 16th, and also if you look at the first paragraph, it says:

"I advise that as of 16 February..."

So that's when that procurement delegation suspension took place; is that right?

MR DE'ATH: I would assume from that email that's when it took effect from, yes.

MR TERNOVSKI: I tender document 16.

COMMISSIONER: Are there any objections?

MR DE'ATH: If I may, counsel assisting - sorry, Commissioner.

COMMISSIONER: Sorry, did you want to say something, sir?

MR DE'ATH: Just to say that I believe I'd had a conversation with Duncan Anson about this matter before this email was sent, so he was aware and we had discussed the need for that.

MR TERNOVSKI: So he knew it was coming?

MR DE'ATH: He did?

MR TERNOVSKI: Yes.

MR DE'ATH: Yes, yes.

MR TERNOVSKI: And -

COMMISSIONER: Do you want me to mark it?

MR TERNOVSKI: Yes, sorry. If I might, by our counting, it should be CA-24, Commissioner. I tender that.

COMMISSIONER: Email from Michael De'Ath to Duncan Anson 16 February 2023, CA-24.

<EXHIBIT CA-24 EMAIL FROM MICHAEL DE'ATH TO DUNCAN ANSON 16/2/2023

MR TERNOVSKI: Now, Mr De'Ath, you would agree with me that suspending her procurement delegations was a prudent response?

MR DE'ATH: A very prudent response, yes.

MR TERNOVSKI: And its purpose was to mitigate future procurement risk?

MR DE'ATH: Yes.

MR TERNOVSKI: While this matter was being investigated?

MR DE'ATH: Yes.

MR TERNOVSKI: Now, you're a very experienced public servant, Mr De'Ath, aren't you?

MR DE'ATH: Thank you.

MR TERNOVSKI: And so you would have - across your career in government in various governments - have come across investigations from time to time?

MR DE'ATH: Most definitely.

MR TERNOVSKI: And so you'd be well familiar that this investigation process is something that usually takes a long time?

MR DE'ATH: Indeed.

MR TERNOVSKI: And so usually at least 12 months; is that fair?

MR DE'ATH: Oh, not necessarily. I - I don't think I could put a timeframe on this. The issue - the factor here, of course, is the referral to the CCC and the timeframe around that, which is unknown.

MR TERNOVSKI: Okay. I want to just zoom in on this a little bit. Can I take you back to document 17, which is the QIRC decision about Ms Burgess.

MR DE'ATH: Yes.

MR TERNOVSKI: So, Madam Operator, if we could go to paragraphs 21 and 22, which is on page 9 of the judgment. You see paragraph 21 says that the subject events occurred on 6 July 2021, and if you look at paragraph 22, the investigation commenced on 2 August '21?

MR DE'ATH: Yes.

MR TERNOVSKI: So at that point, on 2 August, the investigator was actually appointed, so -

MR DE'ATH: Yes.

MR TERNOVSKI: So by that point, is it fair to say, a little bit of progress has been made, because there is - the complaint's made and then there is some process and then an investigator is appointed?

MR DE'ATH: Yes.

MR TERNOVSKI: And so that process has run its course, and by 2 August, the investigator's appointed?

MR DE'ATH: Yes.

MR TERNOVSKI: Into Ms Burgess, we're talking about here, not Ms Bancroft?

MR DE'ATH: Yes.

MR TERNOVSKI: Okay. And then if you look at paragraph 25, the disciplinary sanction was imposed on 5 October 2022.

MR DE'ATH: Yes.

MR TERNOVSKI: So this particular complaint, at least, took about 15 months to get from commencement, investigator appointed, to a disciplinary finding?

MR DE'ATH: Yes, counsel assisting. I see your point about the timeframe. I would simply add to that, it's highly problematic when you are trying to deal with matters within a government employment context.

MR TERNOVSKI: But the point I'm simply making, Mr De'Ath, is that this particular one - obviously each investigation is different.

MR DE'ATH: Yes.

MR TERNOVSKI: Each complaint is different.

MR DE'ATH: Yes.

MR TERNOVSKI: Some take longer.

MR DE'ATH: Yes.

MR TERNOVSKI: Some take shorter.

MR DE'ATH: Yes.

MR TERNOVSKI: This one took 15 months from go to whoa?

MR DE'ATH: That's correct.

MR TERNOVSKI: And that's not unusual?

MR DE'ATH: That's not unusual.

MR TERNOVSKI: So at the time when you made the referral to the CCC back on 9 February 2023, you would have known that the length of time the CCC will take and the whole process will take to run is to an extent unpredictable?

MR DE'ATH: Yes, in terms of their role in determining whether there was any crime or corruption.

MR TERNOVSKI: And you would know that - you would have known at the time that there was a possibility that the CCC might devolve it back to the department to investigate?

MR DE'ATH: Yes.

MR TERNOVSKI: And you would have known at the time that the investigation, whoever did it, whether it was the CCC or the department, could easily take many, many months.

MR DE'ATH: It could.

MR TERNOVSKI: I now want to go back to the subject of triage. If we briefly go back to attachment 42 to Ms Bancroft's statement, I've already taken you to parts of that document.

MR DE'ATH: Yes.

MR TERNOVSKI: Madam Operator, it's on page 425. Well, I have the number 425 stamped on it. Whether that's right or not - it seems surprising that the number would be that high, which suggests that may be not right, but -

MR DE'ATH: Sorry, which section?

MR TERNOVSKI: Yes. So if you look at the last paragraph, just before her signature, and if we could blow that up, Madam Operator:

> "I reiterate my previous invitation to meet."

So that's yet another invitation from Ms Bancroft to Mr Ravbar and the CFMEU to meet?

MR DE'ATH: Consistent all the way through with our approach.

MR TERNOVSKI: And that's an invitation to meet to discuss the triage?

MR DE'ATH: Correct.

MR TERNOVSKI: That particular invitation was not taken up, was it?

MR DE'ATH: I don't believe so, and I believe you'll probably refer to further correspondence in relation to that.

MR TERNOVSKI: I will, yes. If I can now take you to document 9 of the tender bundle, which is the other folder, Mr De'Ath. If we could first blow up, Madam Operator, the email header. I'll let you read the document, Mr De'Ath.

MR DE'ATH: Thank you. I'm largely familiar with it, but I'll take the time. Thank you.

MR TERNOVSKI: And you'll see it's an email from you to Mr Ravbar dated 31 January?

MR DE'ATH: Yes.

MR TERNOVSKI: Follow up on meeting 30 January. And if we blow up this third paragraph, Madam Operator. You will see it says there, second sentence - no sorry, the previous paragraph, Madam Operator. You'll see it says there, second sentence:

> "As this is a temporary process..."

That's referring to the process of calling regional directors?

MR DE'ATH: Sorry, paragraph 3?

MR TERNOVSKI: Well, it's the one that's on the screen.

MR DE'ATH: Okay, sorry, I was in the para below.

MR TERNOVSKI: It depends how you count it. I've counted that "thank you" as a paragraph, but opinions may differ on that.

MR DE'ATH: Yes.

MR TERNOVSKI: You see it's referring to that system of calling regional directors. That's a temporary system put in place?

MR DE'ATH: Yes.

MR TERNOVSKI: And that's the system you agreed was better than calling the DDG directly but still pretty bad?

MR DE'ATH: Yes.

MR TERNOVSKI: Is that fair?

MR DE'ATH: Yes.

MR TERNOVSKI: And in that second sentence, you say:

> "As this is a temporary process, once again OIR seeks your involvement to help establish a permanent assessment process for work health and safety matters. Ms Bancroft will shortly send out a meeting request."

MR DE'ATH: Yes.

MR TERNOVSKI: So this yet another attempt to engage the CFMEU to consult about the permanent triage process?

MR DE'ATH: Quite correct.

MR TERNOVSKI: I tender document 9.

COMMISSIONER: Any objections? Email, Michael De'Ath to Kym Bancroft 31 January 2023, including letter, Kym Bancroft to Kurt Pauls, 7 October 2022, will be exhibit CA-24 - 25.

MR TERNOVSKI: 25 on our counting, Commissioner.

COMMISSIONER: 25.

<EXHIBIT CA-25 EMAIL, MICHAEL DE'ATH TO KYM BANCROFT 31/1/2023, INCLUDING LETTER, KYM BANCROFT TO KURT PAULS, 7/10/2022

MR TERNOVSKI: If we look at document 10 now, and we can just blow up the email up to "Thank you". I've taken you to this document before, but relevantly here, this is a follow-up, this is a subsequent email from the one I just took you to, to Mr Ravbar.

MR DE'ATH: Yes.

MR TERNOVSKI: Because you have indicated to Mr Ravbar Ms Bancroft would be sending him an invite -

MR DE'ATH: Yes.

MR TERNOVSKI: - to a meeting to consult?

MR DE'ATH: Yes.

MR TERNOVSKI: And this is an email to her telling her to do just that?

MR DE'ATH: Yes.

MR TERNOVSKI: And you say there's an urgency to that?

MR DE'ATH: Yes, I was very concerned about this.

MR TERNOVSKI: Because of the risks we've just been through in the morning?

MR DE'ATH: Correct.

MR TERNOVSKI: And I think you've confirmed that what you were referring to in particular as increasing the risk to worker safety was the CFMEU's pressure tactic of calling the DDG directly?

MR DE'ATH: Correct.

MR TERNOVSKI: Document 10 is already tendered. If I can now take you to document 11. We can just blow up, Madam Operator, the email up to the signature. We don't need the signature. Now, that's a response from Mr Pauls on the 1st of - actually, before I ask you that question, let's go to the second page. There's an email there from Ms Bancroft to Mr Pauls, copying Mr Ravbar and yourself, subject "CFMMEU Meeting Request".

MR DE'ATH: Yes.

MR TERNOVSKI: And just as you directed her to do, Mr De'Ath, Ms Bancroft here is sending an invite to the CFMEU to participate in consultation about triage?

MR DE'ATH: Once again.

MR TERNOVSKI: Once again. And she offers three dates?

MR DE'ATH: Yes.

MR TERNOVSKI: And then the response comes back, if we go to the previous page, from Mr Pauls.

MR DE'ATH: Yes.

MR TERNOVSKI: The CFMEU is not having a bar of it, is it?

MR DE'ATH: Totally uncooperative. And can I add, in my view, there was just no logic to this position.

MR TERNOVSKI: Well, I want to test that. I want to ask you some more questions about the email, but I want to test that, Mr De'Ath, there's no logic.

MR DE'ATH: Yes.

MR TERNOVSKI: There is a logic, isn't there, if, as you accept it, calling her directly was a pressure tactic?

MR DE'ATH: Yes.

MR TERNOVSKI: Pressure tactic to achieve what? To put Ms Burgess back, wasn't it?

MR DE'ATH: Oh, there was no doubt that their position was that Ms Burgess had to be in this role. That was repeatedly through all dialogue. I think I might have said that before. But I think it's a bit more than that too, because I believe it was a tactic to also try and break one of my DDGs.

MR TERNOVSKI: I see. So one potential purpose is to break Ms Bancroft?

MR DE'ATH: Correct.

MR TERNOVSKI: The CFMEU didn't like Ms Bancroft, did it?

MR DE'ATH: Sorry?

MR TERNOVSKI: The CFMEU didn't like Ms Bancroft?

MR DE'ATH: Oh, they made no qualms about - their view was very strong about they didn't like her, but they didn't like a lot of people.

MR TERNOVSKI: I will get to one of those people in due course: Mr Harris. But just sticking with Ms Bancroft, you said in the interview - I can find the passage if I need to - something to the effect of that from the beginning they opposed that appointment. Is that fair? Ms Bancroft's appointment?

MR DE'ATH: Yes. My recollection of that process - this was a challenging recruitment. This is not a popular role. And I can't recall exactly how this played out, their protest, but they certainly protested.

MR TERNOVSKI: They were opposed to the appointment from the beginning?

MR DE'ATH: Yes.

MR TERNOVSKI: Now, you said it's a difficult recruitment, not a popular role, and we'll see some of that play out when I ask you some questions about Mr McKay, but did you know at the time why it was an unpopular role?

MR DE'ATH: Oh, yes. I mean, you will see from the panel representation that, you know, I had - someone who I greatly respect was Jacqueline King, the head of

the Queensland Council of Unions, and I especially wanted Jacqueline on there because of the challenges we faced around our relationship and working with the CFMEU. You know, of all the people I could have gone to to assist in a process for this role, I was very pleased that Jacqueline accepted that.

MR TERNOVSKI: Is it fair to say, Mr De'Ath, that the CFMEU, at the time - or for a period of time, but up to the point of Ms Bancroft's appointment - was quite relentless in its attacks on OIR?

MR DE'ATH: That's a consistent theme throughout certainly all of my tenure. And before.

MR TERNOVSKI: So the reason why the job was unpopular was because they had successfully attempted to make the position almost untenable?

MR DE'ATH: Yes, I think - I can't speak for others. The impression I formed was that people were very well aware of the challenge of working with the CFMEU in this role, and that really, as I could ascertain, was the only issue that made it a difficult role to recruit to.

MR TERNOVSKI: So going back to what I was asking you before about - you said there was no - no logic or something to that effect about the CFMEU calling Ms Bancroft. But -

MR DE'ATH: Maybe the wrong word, counsel.

MR TERNOVSKI: No legitimate logic. Is that fair to say?

MR DE'ATH: That would be right.

MR TERNOVSKI: There might be no legitimate logic, but there is a logic, isn't there?

MR DE'ATH: Yes, that would be fair.

MR TERNOVSKI: And the logic is firstly, as you put it, attempts to break her, and they don't want her. That's one part of it?

MR DE'ATH: Yes.

MR TERNOVSKI: Do you accept that?

MR DE'ATH: Yes, I do.

MR TERNOVSKI: And the other part of it is it's also part of the pressure tactics, which continued after Ms Bancroft's departure, to try to get Ms Burgess back?

MR DE'ATH: Continuously, yes.

MR MARTIN: (Indistinct) Commissioner. This seems to be a continuation of the theme with some previous questions, which is really asking Mr De'Ath to speculate on what other people's reasons were, and I'm just not sure how it assists the Commission to continue asking him for this speculation rather than, you know, pointing to them having actually explained what their reasons were.

MR TERNOVSKI: Commissioner, if it assists, the point of my questions is not to use Mr De'Ath's answers to prove the CFMEU's motivation but really to understand his subjective state of mind around the time of the critical events.

COMMISSIONER: Whose subjective state of mind?

MR TERNOVSKI: Mr De'Ath's state of mind.

COMMISSIONER: But what does it matter if the point of the CFMEU was just to ensure that every - it was educative, to ensure everyone knew what their power was, or to get Ms Burgess back, or to pressure Ms Bancroft in order to get her terminated? What does it matter?

MR TERNOVSKI: I think all I'm trying to get to, and I think we got there, is that - I was pushing back, Commissioner, against Mr De'Ath's answer that there was no logic to it, and I think Mr De'Ath accepted that - clarified what he said: there was no legitimate logic to it.

COMMISSIONER: Mr Martin's point is that you can just do that by submission, can't you? You can just say, "Well, there were plenty of - plenty of reasons they were doing this." Why are you asking this witness about it? That's really his point.

MR TERNOVSKI: Perhaps I'll reframe the question purely as going to his state of mind.

COMMISSIONER: All right.

MR TERNOVSKI: Mr De'Ath, at the moment we're looking at document 11, which is dated 1 February.

MR DE'ATH: Yes.

MR TERNOVSKI: And you can see you're copied into that email?

MR DE'ATH: Yes.

MR TERNOVSKI: So at that time, was it your view that there was no legitimate reason for the CFMEU to be wanting to call Ms Bancroft?

MR DE'ATH: That is my view.

MR TERNOVSKI: Was that a view you held on the 1st of -

MR DE'ATH: Yes.

MR TERNOVSKI: And is it fair to then say that your view as of that date was also that there must be some other motives why the CFMEU was doing this?

MR DE'ATH: Yes, I was often considering what people's motives might be.

MR TERNOVSKI: Going back to the content of the email, what the CFMEU does here is two things that it's doubling down on, Mr De'Ath. One is they refused to meet?

MR DE'ATH: Yes.

MR TERNOVSKI: And two is they are going to continue calling Ms Bancroft?

MR DE'ATH: Yes.

MR TERNOVSKI: I tender document 11.

COMMISSIONER: Any objections? Email from Kurt Pauls to Kym Bancroft and others, 1 February 2023, will be exhibit CA-26.

<EXHIBIT CA-26 EMAIL FROM KURT PAULS TO KYM BANCROFT AND OTHERS, 1/2/2023

MR TERNOVSKI: Commissioner, I note the time. We are proceeding a little bit more slowly, so I'm in your hands as to whether we sit for another little bit extra time or whether you prefer to break.

COMMISSIONER: What would you prefer, Mr De'Ath? It's been a long day for you. Are you happy to keep going or would you like to have a break?

MR DE'ATH: Commissioner, I'm happy to keep going.

COMMISSIONER: Very well.

MR TERNOVSKI: Mr De'Ath, can I ask you some questions now about the recruitment for the position of executive director of WHS compliance and field services?

MR DE'ATH: Certainly.

MR TERNOVSKI: Now, that role - firstly, that executive director role is in charge of the inspectorate?

MR DE'ATH: Yes.

MR TERNOVSKI: And Mr Marc Dennett once upon a time was in that role? This was before your time, I think?

MR DE'ATH: Before my time, I believe, yes.

MR TERNOVSKI: And after his departure, the role was vacant in the sense that it didn't have a permanent appointment?

MR DE'ATH: That may well be correct.

MR TERNOVSKI: Do you remember Mr Andrew Harris was acting in it?

MR DE'ATH: Yes, I do. Thank you.

MR TERNOVSKI: And you wouldn't disagree that he was acting in that role since February 2022?

MR DE'ATH: That would seem to be about right.

MR TERNOVSKI: So it was about 14 months by April '23?

MR DE'ATH: Thank you.

MR TERNOVSKI: Now, do you recall, Mr De'Ath - and I think in fairness I should point out at the interview you said "vaguely" - do you recall that Mr Harris was one of the people that CFMEU refused to deal with?

MR DE'ATH: That's actually correct. I - I do recall that more fulsomely now.

MR TERNOVSKI: At the interview you said - I'll take to you the passage if I need to - and I quote:

> "There was a very long list of people that the CFMEU refused to deal with."

MR DE'ATH: That's correct.

MR TERNOVSKI: And Mr Harris was one of those people?

MR DE'ATH: Yes.

MR TERNOVSKI: Can I now take you to attachment 36 to Ms Bancroft's statement. And Madam Operator, if we could blow up first the email header, the

second email on the page. The first email just forwards it. Again, I'll let you read the document, Mr De'Ath.

MR DE'ATH: Thank you. Counsel assisting, can I just clarify, this is the email from Natasha Carstens?

MR TERNOVSKI: Yes, but I'm really interested in the email below that, because Ms Carstens appears to be forwarding your email to Ms Bray. I'm not interested in that; I'd like to have a look at your email.

MR DE'ATH: Thank you. Yes, thank you.

MR TERNOVSKI: I would like you to note the date, because I'm going to ask you some questions about this, 2 November 2022.

MR DE'ATH: Yes.

MR TERNOVSKI: And forgive me, the next part will be a little bit out of sequence, which is why I'm asking you to just make a note of that fact.

MR DE'ATH: Okay.

MR TERNOVSKI: So in that second paragraph of this email, you see you say, second sentence:

> "Further to this meeting..."

If we can blow up the second paragraph, Madam Operator, starting with "At the meeting". Actually, first and second paragraph, please, on reflection.

MR DE'ATH: Yes.

MR TERNOVSKI: See there's again reference to that meeting on 27 October that you had a poor recollection of. And then I want to ask you about something else. If you look at the second paragraph you say in your email: "Further to this meeting, on Friday 28 October", which is the following day -

MR DE'ATH: Yes.

MR TERNOVSKI: - "you" - being Mr Ravbar, is that right?

MR DE'ATH: Yes.

MR TERNOVSKI:

> "...contacted me advising that the CFMMEU had been represented in the past on selection panels..."

MR DE'ATH: Yes.

MR TERNOVSKI: "...and expressed interest in having representation on the panel for this role."

MR DE'ATH: Yes.

MR TERNOVSKI: That's true that happened, didn't it?

MR DE'ATH: I believe so, yes.

MR TERNOVSKI: And just to be clear, and this is made clear from the first sentence of that paragraph, we're talking about the recruitment for the role of executive director of WHS compliance and field services?

MR DE'ATH: Yes.

MR TERNOVSKI: A role which ultimately Ms Sarina Wise ended up taking?

MR DE'ATH: Correct.

MR TERNOVSKI: And so what's happened is that on 20 October, Mr Ravbar spoke with you and said that they'd been represented on panels and they want to be represented on this panel.

MR DE'ATH: Yes.

MR TERNOVSKI: And then in the next sentence you say:

> "Similarly, Mr Royce Kupsch..."

Also of the CFMEU:

> "...has also put forward his expression of interest directly to Ms Bancroft..."

As far back as 23 August 2022.

MR DE'ATH: Yes, I believe, counsel, that was my attempt to bring that to Mr Ravbar's attention.

MR TERNOVSKI: And then, Madam Operator, if we go the - skip the next two paragraphs, starting with "In considering your request" and then "I have inquired".

MR DE'ATH: Yes.

MR TERNOVSKI: You say there that you made inquiries - I'm summarising - and you were informed that Mr Kupsch was one of the WHS board members on that panel?

MR DE'ATH: Yes.

MR TERNOVSKI: This is the panel that selected Mr Dennett?

MR DE'ATH: I - I'm not sure, sorry. I would assume so.

MR TERNOVSKI: And then if you look at the next paragraph:

> "I have inquired of Ms Bancroft as to her intention for the current process. Ms Bancroft has determined that, similar to the recruitment process for 2018, there will be one representative each from the union and the employer groups on the incoming panel selected from WHS board members. In the interests of diversity, OIR will rotate the selection membership. Given Mr Kupsch was on the previous panel we will be seeking to invite other board members on this occasion."

MR DE'ATH: Yes.

MR TERNOVSKI: Now, do you recall, Mr De'Ath, at that time, there were no other CFMEU board members on the board, was there?

MR DE'ATH: Oh, I don't recall about other board members on the board at that time, sorry. I've heard the earlier commentary.

MR TERNOVSKI: But in any event, do you agree that what this paragraph is conveying is that there will be WHS board representation on the panel but it won't be Mr Kupsch?

MR DE'ATH: I - I do see that quite clearly.

MR TERNOVSKI: And not the CFMEU. Do you accept the second part?

MR DE'ATH: Not the CFMEU.

MR TERNOVSKI: It doesn't say that, but -

MR DE'ATH: No, I don't believe we - so my recollection about what was happening here was, as you would have seen, there's a pattern of - with all manner of correspondence with the CFMEU - is an attempt to engage them in things, and part of that, of course, is to get their buy-in to an outcome that is achieved through these processes.

MR TERNOVSKI: Now, do you remember, Mr De'Ath, that Mr Kurt Pauls replaced Mr Royce Kupsch on the WHS board?

MR DE'ATH: I - I don't recall that, sorry. I - I do recall that we had Mr Pauls on the panel I think for the recruitment though.

MR TERNOVSKI: But in any event, if I put to you, Mr De'Ath, that as of the date of this email Mr Kupsch was the only CFMEU official represented on the WHS board, you wouldn't disagree with that?

MR DE'ATH: If that is - I have no reason to disbelieve that fact, yes, so I'm happy to agree.

MR TERNOVSKI: We'll dig up the composition of the board to look and show you.

MR DE'ATH: Yes.

MR TERNOVSKI: But do you also accept that if that is the case, then what you're really saying there is it won't be CFMEU on the panel, because it's not Mr Kupsch and it will be someone else from the WHS board?

MR DE'ATH: I - this is interesting to me. That isn't - can I just read that again?

MR TERNOVSKI: Please.

MR DE'ATH: That's a fair inference, yes.

MR TERNOVSKI: So, again, we'll come back to the composition of the WHS board tomorrow, so we can - you'll be able to confirm that without the assumption.

MR DE'ATH: Certainly.

MR TERNOVSKI: But assuming that I'm right, then what you're telling Mr Ravbar here is CFMEU - that they won't be on the board, on the panel, as of 2 November?

MR DE'ATH: That - that looks like what I'm saying. If I may?

MR TERNOVSKI: Yes, please.

MR DE'ATH: And I appreciate you're going to come through the sequence of correspondence. We certainly had a view at a point in time of engaging the CFMEU in the process.

MR TERNOVSKI: I'll -

MR DE'ATH: Regardless of this matter, sorry.

MR TERNOVSKI: I'll take you to the point where Mr Pauls gets put on the panel.

MR DE'ATH: Thank you.

MR TERNOVSKI: But it's fair to say, isn't it, it's not - it's not on the 2nd of - that's not the position as of 2 November?

MR DE'ATH: That's clear.

MR TERNOVSKI: Can I take you to the call list again, which is document 3, and can you have a look at that second page of that. Do you remember in that email we just looked at, you referred to a conversation with Mr Ravbar on 28 October?

MR DE'ATH: Yes.

MR TERNOVSKI: And then have a look at the sequence of calls on 28 October. Do you see that at 3.14 pm, Mr Ravbar calls you and you speak for just shy of five minutes?

MR DE'ATH: Yes, I see that. Yes.

MR TERNOVSKI: And then shortly - almost immediately thereafter, you attempt to call Ms Bancroft?

MR DE'ATH: Yes.

MR TERNOVSKI: And then send her a text?

MR DE'ATH: Yes.

MR TERNOVSKI: We don't know what that text is, but it could just be even an automatic missed-call notification, something like that?

MR DE'ATH: Who knows?

MR TERNOVSKI: Or could be a text from you with actual content. We don't know.

MR DE'ATH: I don't know.

MR TERNOVSKI: But then you'll see that Ms Bancroft ultimately - it looks like she attempts to call you a couple of times at 3.50?

MR DE'ATH: Yes.

MR TERNOVSKI: Three, four seconds, and then at 3.51, there's a four-minute, nine or eight seconds conversation?

MR DE'ATH: Yes, thank you.

MR TERNOVSKI: I should say for the benefit of Mr De'Ath and the Commission that the reason why this column has multiple timeframes, you see it says four minutes, nine seconds and four minutes, eight seconds for that 3.51 call, is because Telstra records often record the same call with multiple entries, perhaps as it's going through different pieces of the telecommunications equipment. So the same call is recorded with slightly different durations. Nothing turns on the differences here. So you've had a conversation with Ms Bancroft. Do you accept that this is likely the sequence of communications described in your email, that is, you spoke with Mr Ravbar and then you've made inquiries of Ms Bancroft in this sequence of calls?

MR DE'ATH: Look, it could well be. Clearly, Ms Bancroft and I have had a relatively - that would be a relatively long conversation for me in that role.

MR TERNOVSKI: You mean the four minutes?

MR DE'ATH: The four minutes. Obviously Kym and I had ongoing communication about all manner of things, but often in relation to the CFMEU. It's quite likely we had had a discussion. It's not my recollection, but it is likely that it would have been about that.

MR TERNOVSKI: Yes. So Mr Ravbar calls you, you then make inquiry with Ms Bancroft, and then you send that email to Mr Ravbar advising him of the outcome of that inquiry, in effect?

MR DE'ATH: That - like, that's pretty speculative, counsel assisting. If I - if you could indulge me for a moment, because I picked up earlier on - the Commission is - and I understand your position, Commissioner, in relation to why don't I remember certain things that look significant. I'd just like to remind the inquiry that at that point in time, I'm running a massive organisation. I have calls coming into me all the time, all manner of issues, repeatedly. Trying to recall what someone had asked me or said to me or whatever over three years ago is very, very difficult. I think you appreciate that. I will do my level best to try and make the connections, but if I can't guarantee what a call was about, I can't guarantee it. That will be why.

MR TERNOVSKI: Of course. And to be clear, Mr De'Ath, what I'm doing is trying to match up the emails with the phone calls and then draw an inference.

MR DE'ATH: I understand.

MR TERNOVSKI: If I could take you to document 7 now, which is another contemporaneous document. That's dated 28 October. If you could first blow up the email, the second email on the page, from Ms Bancroft to Mr De'Ath, Madam Operator. I'll let you read that.

MR DE'ATH: I do remember this.

MR TERNOVSKI: So I asked you earlier if the panel that Mr Kupsch was on the - that Mr Kupsch was on was the panel that selected Mr Dennett. You can see that first paragraph seems to confirm that?

MR DE'ATH: Yes, I do see that.

MR TERNOVSKI: And then Ms Bancroft is saying:

> "The feedback from others on the interview panel in regards to this was not positive."

MR DE'ATH: Yes.

MR TERNOVSKI:

> "After confirming with yourself..."

That's you, Mr De'Ath; is that right?

MR DE'ATH: Yes.

MR TERNOVSKI:

> "After confirming with yourself and ODDG..."

That's Ms Bancroft's office?

MR DE'ATH: Mmm-hmm.

MR TERNOVSKI:

> "...I advised Royce that we would not be having union delegates on the panel for this recruitment process."

MR DE'ATH: Yes.

MR TERNOVSKI: And then she says:

"If we were to decide to have union representation on the upcoming panel, my proposal would be Kurt Pauls (CFMMEU) rather than Royce."

MR DE'ATH: Yes, and you will note I've asked for Jacqueline's advice on that, with that history.

MR TERNOVSKI: Yes, so this is what I want to ask you about. So her position was, Ms Bancroft's position, as at 28 October in that email, is that her preference is that - well, I withdraw that. Her position as of the date of that email was that there would not be union delegates on the panel?

MR DE'ATH: Yes.

MR TERNOVSKI: That's what she told Mr Kupsch?

MR DE'ATH: Yes.

MR TERNOVSKI: And she told that to Mr Kupsch after consulting with you?

MR DE'ATH: Yes.

MR TERNOVSKI: So that was your joint position?

MR DE'ATH: Yes.

MR TERNOVSKI: And then she said, Ms Bancroft, as a fallback, "If we do decide to have union representation, it should be Pauls, not Mr Kupsch."

MR DE'ATH: Yes, and I do have a vague recollection of her and I talking about all of this.

MR TERNOVSKI: And then your response later that evening - you can see the time. This one is not affected by this UTC issue I've told you about. So these are actual Brisbane times, as far as we know. So you can see that Ms Bancroft's email was sent at 8.48, and you respond 9.30 that evening:

"I wouldn't mind Jacqueline's view an this matter."

MR DE'ATH: Yes.

MR TERNOVSKI: Jacqueline being Jacqueline King from the QCU?

MR DE'ATH: Correct.

MR TERNOVSKI: All right. So is it fair then to say that the sequence is Ms Bancroft and you had agreed that there would be no union delegates?

MR DE'ATH: Yes.

MR TERNOVSKI: And then you got a call from Mr Ravbar on the 28th?

MR DE'ATH: Yes, the chronology, I think, lines up there.

MR TERNOVSKI: And then suddenly you're reopening that position. Instead of sticking to the position that was agreed previously, it's now "Let's get Jacqueline's view on this"?

MR DE'ATH: Sorry, I don't know about that. I don't - I don't recall any connection between a call from Mr Ravbar and this. I can see from your perspective how that might line up. I mean, Mr Ravbar could have been calling me about anything.

MR TERNOVSKI: Well, hang on. Hang on. Let me just pause you there. That call could have been about anything, but that email I took you to before, if we go back to attachment 36 for a moment, which is your email to Mr Ravbar of 2 November -

MR DE'ATH: Yes.

MR TERNOVSKI: - right? You do refer there to Mr Ravbar contacting you to seek to be represented on the panel?

MR DE'ATH: Yes.

MR TERNOVSKI: I mean, you say that in the email.

MR DE'ATH: Yes.

MR TERNOVSKI: So whether it was this phone call or some other method of communication, on the 28th, Mr Ravbar contacted you?

MR DE'ATH: Yes.

MR TERNOVSKI: And requested to be on the panel or for the CFMEU to be on the panel?

MR DE'ATH: It would appear that way. I don't have the recollection, but thank you for the prompts.

MR TERNOVSKI: So putting aside - the call sequence is one attempt to firm up the timing around that. But in any event, do you accept that if we go back now to attachment 36, which is your exchange of emails with Ms Bancroft in the evening, do you accept that - sorry. If we go back to, I'm sorry, document 7, which is your exchange with Ms Bancroft on the evening of that day, right, by the time you're

sending your email at 9.30 pm, that conversation with Mr Ravbar had already happened earlier that day?

MR DE'ATH: Thank you.

MR TERNOVSKI: Is that fair?

MR DE'ATH: That's fair.

MR TERNOVSKI: Is it fair to assume that Mr Ravbar did not call you between 8.48 pm and 9.30 pm?

MR DE'ATH: It -

MR TERNOVSKI: Would that be something you would remember, if he called you that late?

MR DE'ATH: Yes, I probably would remember. I don't recall Mr Ravbar calling me late.

MR TERNOVSKI: So the call must have happened - the call or whatever other method of communication - you said he contacted you. That's consistent with the calls, but let's suppose for the sake of argument it could have been some other method of communication. That happened earlier?

MR DE'ATH: Yes, that's all fine.

MR TERNOVSKI: So the sequence then is the position that existed before, which is no union members on the panel, on the 28th, following the call to Mr Ravbar, changes to, "Let's check with Jacqueline."

MR DE'ATH: It may well have.

MR TERNOVSKI: And that earlier position was not just Ms Bancroft's position; that was the position she had agreed with you?

MR DE'ATH: Correct.

MR TERNOVSKI: So it's fair to say, isn't it, that as a result of Mr Ravbar contacting you to seek for the CFMEU to be represented on the panel, you had reopened a previous decision, no union members on the panel, and now you're considering it and you're asking Ms Bancroft to check with Jacqueline King?

MR DE'ATH: That - that may very well be the case. Can I say, I'm not uncomfortable with that. It's not unusual for a stakeholder to talk to you about representation on a panel. So, in essence, I'm not uncomfortable about, and I'm also not uncomfortable about it, in that if I didn't want that to happen, I would

have said "That shouldn't happen", but I was pretty determined to - for us to continue to make attempts to engage these people in this organisation in processes that would help get buy-in to our outcome; not to overly influence the outcome, that's a broader panel, but to be there to agree to an outcome.

MR TERNOVSKI: Okay. Can I put it a different way, and you tell me if this is fair. Although your preference was not to have union representation on the panel, in order to get CFMEU buy-in, you were prepared to reopen that decision?

MR DE'ATH: Yes, and I don't believe that the previous position was something set in stone that we couldn't vary from. Hence - sorry, if I may, counsel - hence, that was possibly, quite possibly, what was in mind by about going back to Jacqueline, "Is that okay?"

MR TERNOVSKI: I tender document 7.

COMMISSIONER: Any objection? Email chain between Michael De'Ath and Kym Bancroft recording interview panel members for executive director CFS role recruitment will be exhibit CA-20 -

MR TERNOVSKI: CA-27 is the next one, I'm told.

<EXHIBIT CA-27 EMAIL CHAIN BETWEEN MICHAEL DE'ATH AND KYM BANCROFT RECORDING INTERVIEW PANEL MEMBERS FOR EXECUTIVE DIRECTOR CFS ROLE RECRUITMENT

COMMISSIONER: What's wrong with that, Mr Ternovski? Mr De'Ath's in a difficult position. He's got to manage a very difficult stakeholder. Sometimes he's got to hold the line, sometimes he's got to give in. He's got to make a judgment call about that, about what he holds the line on, what he gives in on, and that's part of the skill of being in his job.

MR TERNOVSKI: Well, Commissioner, what I'm doing or will be doing today and tomorrow is to illustrate what these give-ins were. This is just one of them. I am ultimately going to be asking questions and making submissions in due course about the pattern. This is just one component of it. I note the time, Commissioner. I'm coming to a natural break. I can probably get to it by 4 o'clock, if that's convenient?

COMMISSIONER: How are you finding things? It's really up to you, Mr De'Ath, whether we keep sitting this afternoon. If you want a break, we'll break till tomorrow. If you want to keep going, we'll keep going.

MR DE'ATH: Thank you, Commissioner. I appreciate your consideration. I'm happy to conclude around that time as you've referred, at a logical break.

MR TERNOVSKI: Thank you, Mr De'Ath. If I can take you now to document 8. We're now moving in time slightly forward to 31 October. Madam Operator, if you could blow up the second email on the page.

MR DE'ATH: Thank you.

MR TERNOVSKI: I'll give you an opportunity to read that.

MR DE'ATH: I have read it.

MR TERNOVSKI: Thank you. So you can see there, in that email from Ms Bancroft to you on 31 October, that she had spoken with Jacqueline King?

MR DE'ATH: Yes.

MR TERNOVSKI: And following those conversations, she's proposing a panel?

MR DE'ATH: Yes.

MR TERNOVSKI: And the union representation on that panel, if I may call it that, that she proposes is either Kate Veach - I hope I'm pronouncing it correctly - from the Nurses Union -

MR DE'ATH: Yes.

MR TERNOVSKI: - or Mark Raguse from the AWU.

MR DE'ATH: Yes.

MR TERNOVSKI: No CFMEU representation.

MR DE'ATH: I note that.

MR TERNOVSKI: That's what she's proposing after having spoken to Jacqueline King?

MR DE'ATH: Yes.

MR TERNOVSKI: Which is what you asked her to do?

MR DE'ATH: Yes.

MR TERNOVSKI: And you approve of that course, don't you, because if you look at the first email on that page from yourself to Ms Bancroft, you say:

> "Yes, please draft."

MR DE'ATH: Yes.

MR TERNOVSKI: So the position was no union representation initially. Then Mr Ravbar calls you. You get Ms Bancroft to call Ms King, and what comes back is a proposal that you endorse for there to be union representation, but not CFMEU.

MR DE'ATH: Yes.

MR TERNOVSKI: Can I now take you to attachment 28 of Ms Bancroft, and if we could - I'll let you read the document.

MR DE'ATH: Thank you. So, counsel assisting, it looks like we're now a month forward?

MR TERNOVSKI: Yes.

MR DE'ATH: Yes.

MR TERNOVSKI: And the situation's changed, hasn't it?

MR DE'ATH: Yes.

MR TERNOVSKI: Now Mr Pauls is being invited on the board.

MR DE'ATH: Yes, onto the panel.

MR TERNOVSKI: Onto the panel, I'm sorry. Not the board, the panel. And Ms Bancroft describes how that decision was made, if I could take you to paragraph 71.

MR DE'ATH: You're talking of her statement?

MR TERNOVSKI: Of Ms Bancroft's statement. Actually, it's the wrong paragraph. Just bear with me. Yes, paragraph 70, not 71. If we could blow up paragraph 70, Madam Operator.

MR DE'ATH: Yes.

MR TERNOVSKI: And then if we could also blow up paragraph 71.

COMMISSIONER: That's really the point that I was just making, wasn't it, in 70? Mr De'Ath is in a difficult position. He's damned if he does, damned if he doesn't.

MR TERNOVSKI: Well, respectfully, Commissioner, I would push back on that. Mr De'Ath is the head of an agency. That agency is not answerable to the CFMEU.

COMMISSIONER: Anyway, Mr De'Ath has given evidence - you've given your reasons as to why you did what you did, and it's consistent with what Ms Bancroft said.

MR TERNOVSKI: I want to zoom in on a couple of things in here. Firstly, if we look at paragraph 71, you see Ms Bancroft says:

> "On 25 November I followed up with Mr Pauls about whether he would accept being part of that process."

And you saw that email exchange earlier where he accepts the proposal. So we don't know - Ms Bancroft doesn't say here exactly when she made the proposal to Mr Pauls, but it must have been before the 25th, because on the 25th she's following up about it.

MR DE'ATH: Right.

MR TERNOVSKI: Do you accept that?

MR DE'ATH: I accept that.

MR TERNOVSKI: And in paragraph 70 she says that the decision to invite Mr Pauls - that she had invited Mr Pauls after careful consideration with you.

MR DE'ATH: Yes.

MR TERNOVSKI: You don't dispute that, do you?

MR DE'ATH: No.

MR TERNOVSKI: So on the 28th - before Mr Ravbar's call, the position is no union members. Then by 2 November, it becomes union members other than - I think, or the 30th - union members other than the CFMEU. And by 25 November, CFMEU is on the panel.

MR DE'ATH: Yes.

MR TERNOVSKI: And at the interview, in fact, Ms Bancroft says she invited him after talking to you. I can take you to what you said about that at the interview. If we go to - interview is at document 2. If we go to page 29, and if we can blow up, Madam Operator, lines 17 is through to 23, by my counting, of page 29.

MR DE'ATH: Thank you.

MR TERNOVSKI: Now, you see there, you say:

"I can only feel that that would have come from me."

MR DE'ATH: Yes.

MR TERNOVSKI: Do you accept that?

MR DE'ATH: I - I accept that on the understanding that I recall Kym and I discussing this entire process on many occasions, and I think it's fair to say - in fact, I think the Commissioner put it more eloquently than perhaps what I am - is that there was no doubt from this that I was getting representation from the CFMEU, likely Mr Ravbar, and that Kym and I would have been exploring what do we do about that and the trade-offs for that. I maintain my position that we were better off to try and engage them in a process where there were other panelists who they could hear the perspectives of. It was not a situation where the CFMEU view could reign in relation to a particular candidate. That's not how panels work in the public service. So I think what has happened here is that we have, you know, had those engagements and gone with putting them on the panel.

COMMISSIONER: It didn't come from you, though. It came from Mr Ravbar, and you agreed.

MR DE'ATH: Yes. I think that's what's underlying my comment there about it came from me. So I would - I would have, you know, had that discussion and said, "Well, let's do that."

MR TERNOVSKI: It came from you on the prompting of Mr Ravbar?

MR DE'ATH: Oh, definitely, it must have been brought to my attention by Mr Ravbar about who - that they wanted to be engaged.

MR TERNOVSKI: Now, I can take to you the right passage of your interview, but would you accept that at the time you knew that there were significant allegations about CFMEU abusing WHSQ inspectors on construction sites floating around?

MR DE'ATH: Yes.

MR TERNOVSKI: And the executive director of WHS compliance and field services is the official that's ultimately in charge of the inspectorate?

MR DE'ATH: Yes.

MR TERNOVSKI: So what's happened here is that in response to the pressure from the CFMEU, you gave them a seat on the panel to choose the head of the inspectors?

MR DE'ATH: Just looking at the language you're using there: pressure. You could call it pressure. I'm not in any way subject to that pressure in terms of how I respond to that. If I felt with Kym that we wouldn't want to do that, then I wouldn't have done that. The fact is, we agreed to having them on the panel, and I think I've explained my reasons why.

COMMISSIONER: But you must have had pressure from Mr Ravbar. You were getting pressure from Mr Ravbar all the time.

MR DE'ATH: Oh -

COMMISSIONER: I think you described him as the most difficult stakeholder you'd ever dealt with.

MR DE'ATH: So, Commissioner, if I may - when I'm talking about pressure, it's did I succumb to the pressure? If I - if I had - if I had really strong reasons about why we shouldn't do that, then I would have held that position. I didn't hold that position. He could have put as much pressure on me as he likes one way or the other. We made a decision based on what we thought was best.

COMMISSIONER: At the instigation and the pressure imposed by Mr Ravbar. We've just been through it. I don't need to detain you on it, but we've just been through it in some detail day by day, minute by minute. That seems to be what happened.

MR DE'ATH: Yeah, I'm happy to accept that he applied pressure.

MR TERNOVSKI: Now, you may not be in a position to answer this question because your memory of the August conversation with Mr Ravbar is such as it is, but I suggested to you that what's happened here is the same pattern as what's occurred in August, which is Mr Ravbar rings you, you ring Ms Bancroft, and shortly thereafter there's a change of position to suit what the CFMEU wanted the department to do. In August, it was not move Ms Burgess; here, CFMEU on the panel.

MR DE'ATH: I can agree with that to some extent. I - I made very clear just how difficult this environment was and how difficult they were to work with and how we were seeking to accommodate things as they went. So, yes, Commissioner, they apply pressure, they intervene, they obfuscate and so on. What I've got to decide is what could be best in terms of how we try and achieve an outcome. And so I - I recall that Kym and I had many conversations throughout her tenure about, "Right, what are we going to do with this one?" So that's something that we form a judgment about, about what is the best thing to do.

Now, this is a particularly assertive stakeholder. It's not unusual for stakeholders to seek some position in these sort of processes and so on, though this was particularly difficult.

COMMISSIONER: I think your answer is "yes", isn't it? I mean, the same thing happened on 5 August as happened on 28 October. You had a position. It was agreed between you and Ms Bancroft. Mr Ravbar - I will just use a neutral term - lobbied you, and you changed your position to accommodate his position?

MR DE'ATH: Thank you, Commissioner. Likely. I just don't recall the call.

MR TERNOVSKI: I think this is a convenient break from my point of view, Commissioner.

COMMISSIONER: We'll adjourn until 10 am tomorrow morning.

<THE HEARING ADJOURNED AT 4.07 PM