



**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
FEDERAL CIRCUIT AND FAMILY COURT**

**WEDNESDAY, 11 MARCH 2026
AT 10.00 AM**

DAY 11

APPEARANCES

**Mr S Wood AM KC, Commissioner
Mr P Wheelahan KC with Mr A Smith, Counsel Assisting
Mr D de Jersey KC with Ms M Brooks, Counsel for the State of Queensland
Mr C O'Grady KC with Ms A Hughes and Ms F Fox, Counsel for the CFMEU
Administration
Mr D O'Brien KC, Counsel for the Cross River Rail Delivery Authority
Ms Deborah Dargan, Witness
Mr Noel Hayes, Witness**

<THE HEARING COMMENCED AT 10.00 AM

COMMISSIONER: Ms Dargan is there, I see her. Mr Wheelahan, you still appear with Mr Smith as counsel assisting.

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MR WHEELAHAN: Yes, Commissioner.

COMMISSIONER: Mr de Jersey, you appear for the State of Queensland, together with Ms Brooks.

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MR DE JERSEY: I do, Commissioner.

COMMISSIONER: Mr O'Grady, you appear with Ms Fox and Ms Hughes, who seem to have swapped positions.

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MR O'GRADY: They have. They could only sit next to me for so long, Commissioner.

COMMISSIONER: Okay. We understand. And Mr O'Brien still appears for the Cross River Rail Delivery Authority but is late today. Mr Wheelahan, I thought Mr Smith had the witness.

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MR WHEELAHAN: He did, Commissioner. But I have a couple of matters that I wish to raise with you -

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COMMISSIONER: Very well.

MR WHEELAHAN: - given the open and transparent nature of the inquiry. As you know, Mr Cappelletti was relieved. What I would like to do is - you read the medical report from Dr Ansell, and I seek to tender that report.

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COMMISSIONER: Yes.

MR WHEELAHAN: I've provided a copy to those at the bar table.

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COMMISSIONER: Is there any objection to the tender of the two-sentence report dated 5 March 2026 from Dr Sonia Ansell?

MR DE JERSEY: No.

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MR O'GRADY: Not from my client.

COMMISSIONER: That will be marked as CA-2.

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<EXHIBIT CA-2 TWO-SENTENCE REPORT DATED 5/03/2026 FROM DR SONIA ANSELL

COMMISSIONER: Is that right, Mr Wheelahan?

5 **MR WHEELAHAN:** Yes. It has a redaction under the name with the address and, as has been your practice also, the signature. Date of birth, sorry. Now, I can inform
10 the Commissioner that the notice to Dr Ansell to attend at 10 am tomorrow has been served, and my instructor has advised me that at this stage Dr Ansell will attend so that I may ask questions of her. Secondly, Dr Ansell has also had provided to her clinic a notice from the Commission to produce documents with respect to that two-line report. Thirdly, I raise - and it's a matter whether we can get consent to this
15 position at this stage in any event - whether there would be a consent position for Mr Cappelletti to be examined by an independent medical practitioner as to whether or not he's able to attend to give evidence.

15 **COMMISSIONER:** Why don't we wait to see what Dr Ansell says first before - are you just asking to get some confirmation from - I don't know whether Mr de Jersey and Ms Brooks could give you that confirmation. I think they appear for the State.

20 **MR DE JERSEY:** I can assist, Commissioner. I informed Mr Wheelahan before we resumed this morning that there are two things going on, and the first is that Mr Cappelletti (indistinct).

25 **COMMISSIONER:** One of the microphones is apparently not working, Mr de Jersey. I'm not sure whose it is that's not working. It might be yours. I can hear you, but apparently the people behind you can't.

MR DE JERSEY: Perhaps if I borrow Mr Wheelahan's microphone.

COMMISSIONER: No, apparently not. That's not a good idea.

30 **MR DE JERSEY:** No objection.

COMMISSIONER: Well, there is an objection from the back of the room from the -

35 **MR DE JERSEY:** I hope I won't be long.

COMMISSIONER: There we go. I think you're live now. Is that right? Yes.

40 **MR DE JERSEY:** My junior is actually speaking with Mr Cappelletti in about 25 minutes' time to ascertain his current condition. There are also efforts being conducted behind the scenes, obviously, to speak with Dr Ansell in order to ensure that the Commission is informed accurately about the current state of Mr Cappelletti's health and also the current state of Dr Ansell's opinion. Now, given
45 those things are occurring, it may be premature at this stage for there to be cross-examination of Dr Ansell or any further applications made in relation to Mr Cappelletti's appearance or otherwise this week. And I just repeat that the evidence and the application before the Commission is not for a permanent hiatus in Mr

Cappelletti's appearance, but only temporary for this week, and so that's why efforts are being conducted now to ensure that the information that's before the Commission remains current.

5 I should just say as well, the other thing I spoke with Mr Wheelahan about was the letter to the CCC, about which a direction was made yesterday. It's pages 22, 23 and 24 to the exhibits to Mr Hayes' statement.

10 **COMMISSIONER:** Just let me turn that up. Sorry, the exhibits at pages -

MR DE JERSEY: 22, 23 and 24. And, Commissioner, I think what you had yesterday when this was tendered was those pages with the names not redacted but with the signatures redacted.

15 **COMMISSIONER:** That is right. That's the form that I've got it in, but the form that was tendered had the names redacted, as I understood it.

20 **MR DE JERSEY:** Yes. The State no longer presses any redaction of names. So to the extent that there was a direction made yesterday that those names be redacted, in my submission that direction can be vacated.

25 **COMMISSIONER:** Very well. I did wonder about that, because it did seem strange that this letter from Mr Geraghty of 6 March 2026 stated that the basis for the redaction of all the names of the inspectors, save for Mr Hayes, from the statement be redacted so that any of the copy of the statement which is disclosed to the parties with leave to appear is not to contain their names. It was on the basis that it's submitted there's significant public interest in protecting the names of those that have made complaints to the CCC about the CFMEU from publication. Such publication could result in harm coming to those inspectors who signed the complaint document.

30 Leave aside the basis for the solicitor from Crown Law for making that statement, which - if it went on, but now the application has been withdrawn, it doesn't need to. I just wonder whether the solicitor might be confused about the exact basis upon which he acts. Does he act for the Crown in the right of the State of Queensland, or
35 does he act for the 14 inspectors? Because if he acted for the Crown, the Crown having set up this inquiry, the letter itself saying all persons who have signed this submission are willing to give statements, be interviewed by any investigative agency or present themselves to give evidence before any inquiry or Royal Commission, and the fact that this Commission has been set up, presumably means
40 that the Crown Solicitor has been instructed by the Crown to cooperate with this inquiry, I would assume. I mean, I'm not privy to your instructions. And I just wonder how a solicitor, consistently with those instructions, if they be his instructions, could make this application. But anyway, that's -

45 **MR DE JERSEY:** That's why. That's why it has been withdrawn.

COMMISSIONER: I see.

MR DE JERSEY: And the only basis on which it was put forward was the bit that I think you just read out, Commissioner that is, that harm might come to those inspectors, those inspectors being employees of the State for whom the solicitor who signed the letter acts. Now, I understand my learned friend wishes to tender this email as well. There's no objection to the tender of it if that's what he wishes to do.

COMMISSIONER: There's not a lot of utility in it now, from what you say.

MR DE JERSEY: That's my submission.

COMMISSIONER: What do you say about that, Mr Wheelahan?

MR WHEELAHAN: On one basis, it ought be tendered, because those publicly watching the inquiry ought to know why you made an order redacting the names, and now they're being unredacted, and the letter, as a public inquiry. And what I propose - I have actually redacted this email from Mr Geraghty, but as you rightly point out, it is confusing that he's seeking the redactions of names and he's making some submissions on the basis of harm. Where are those instructions from? And I know it's no longer pressed, but if it had been pressed, potentially I might want to cross-examine Mr Geraghty about the basis of those instructions. But it's a matter for you, Commissioner, whether you -

COMMISSIONER: I understand. You say it's relevant because it explains why the order was made in the first place.

MR WHEELAHAN: Correct.

COMMISSIONER: Do you have any objection to the tender?

MR DE JERSEY: No objection on that basis.

COMMISSIONER: Any other objections? No. Tender the letter - sorry, email from Thomas Geraghty, Crown Law, Department of Justice, Friday 6 March 2026, to Jack Kerin, who is a solicitor assisting this inquiry, and it's in a redacted form.

MR WHEELAHAN: Yes.

COMMISSIONER: Sorry, do you want to say something else, Mr Wheelahan?

MR WHEELAHAN: On a different matter.

COMMISSIONER: Could I just pick up the matter that Mr de Jersey just raised. Just follows from what you said, I think, then, Mr de Jersey - forgive me if I'm wrong. You and Ms Brooks do not act for Mr Cappelletti - or indeed, Mr Wilson, all three of do you not act for Mr Wilson in his personal - sorry, Mr Cappelletti in his personal capacity?

MR DE JERSEY: Not in his personal capacity, but as an employee of the State we do.

5 **COMMISSIONER:** But that - your instructions, I assume, would be - again, you tell me if I'm wrong - would be to cooperate with this inquiry, that is, being the instructions that are given to the Crown Solicitor from whoever gives those instructions - the Attorney-General, the Cabinet, whoever it is.

10 **MR DE JERSEY:** Those are our instructions.

COMMISSIONER: And that form of cooperation would include complying with requests for the provision of documents?

15 **MR DE JERSEY:** Yes, they do.

COMMISSIONER: And also assisting with the preparation of evidence by persons who are to be summonsed to give evidence before this inquiry?

20 **MR DE JERSEY:** Yes, those are our instructions.

COMMISSIONER: And I think in compliance with those instructions, the statement of Mr Cappelletti that has been prepared is really first class. It's a very good statement. Here it is. It's someone from Crown Law who prepared it. No, it's
25 just the affirmation by Mr Sleep employed by Crown Law; doesn't say which solicitor from Crown Law prepared it. Then do those instructions - was it consistent with your instructions to then inform a witness or a potential witness or a person in relation to whom a summons is being issued that there are grounds that that person could - has a basis for not complying with the summons?

30 **MR DE JERSEY:** That is, that before an objection is taken, that, for example, these inspectors be contacted and asked whether they wish for the objection to be taken or waived. Is that the -

35 **COMMISSIONER:** Well, perhaps I could just step back more, step back one step earlier. There is a letter from a Helen Freemantle, who's the assistant Crown Solicitor, dated 6 March 2026. I can't remember whether this was tendered, but this is one of the pieces of correspondence I think you said you rely upon in making an application, not on behalf of Mr Cappelletti but on behalf of the State, that there is a
40 reasonable excuse for Mr Cappelletti to be - to not comply with the summons, and that letter is from Ms Freemantle.

MR DE JERSEY: Freemantle.

45 **COMMISSIONER:** Mr Wheelahan or Mr de Jersey, is that letter being tendered?

MR WHEELAHAN: No, and on the same basis of the former letter, subject to any redactions that Mr de Jersey might ask for, I'll ask my instructor to obtain a copy of that and seek to tender that after the morning break.

5 **COMMISSIONER:** The letter says:

"We have obtained instructions from Mr Cappelletti ..."

That is, the assistant Crown Solicitor, for the Crown Solicitor:

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"We have been instructed that Mr Cappelletti is currently suffering from significant anxiety and stress and doesn't have capacity to attend the Commission of Inquiry in compliance with the notice."

15 That looks to me like the sort of letter that would be written by a lawyer who's acting personally for Mr Cappelletti, but you say it's consistent with these instructions that the Crown Solicitor has received from the Crown to make an application that an employee of the Crown not - sorry, be excused from complying with the summons?

20 **MR DE JERSEY:** It is consistent with that, because Mr Cappelletti is an employee of the OIC, which is a State body.

COMMISSIONER: Employee of, sorry?

25 **MR DE JERSEY:** The OIR, sorry, which is a State body. So it is consistent with what you just put to me, Commissioner, that is, that second scenario.

COMMISSIONER: I don't understand how that could be the case, though, because the whole point of this inquiry is to shine a light on things that have not, as yet, been exposed to the sunlight of public attention, and the case theory that's developed by Mr Wheelahan is to the effect that there was a significant problem within an important agency of the State where a senior official of that agency perverted the objects of that agency and did it in - and none of this is proved, this is the case thesis, this is yet to be tested - but did so at the instigation of the CFMEU, and there were many people who both employees of that organisation and people in relation to whom the organisation was supposed to independently serve who have been affected by that.

40 Now, in those circumstances where one of the inspectors who's - I can now say, because the redactions have been lifted - has written a letter to the - or made a complaint to the CCC in August 2022 saying they want to give evidence before any inquiry if one is called. And one has now been called. Isn't it the obligation of the Crown Solicitor to say to this employee, "This is a serious public issue. There's a public inquiry. This is a public inquiry that you asked for, that you made a complaint in relation to, that we are instructed to try to assist, and in circumstances where you feel that you have a reasonable excuse for non-compliance, you should go and get your own independent lawyer and make that application."

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MR DE JERSEY: In answer to your question, Commissioner, one can infer that that statement was made to Mr Cappelletti, perhaps not in those terms, but in terms like it, because Crown Law facilitated the taking of the statement he affirmed on 3
5 March, which -

COMMISSIONER: Yes, which is an excellent statement.

MR DE JERSEY: And so where we're at presently, then, is that indicates
10 unambiguously that he wishes to assist the Commission by giving evidence as to the matters that are contained in the statement, but where we're presently at is that there's a temporary impairment in his capacity to do so, based only upon the medical evidence which you have. Now, things might be different next week, for example, and that's why, to assist the Commission, there are the two things I described that
15 started happening. So Mr Cappelletti's being spoken to, I think, right now, in 10 minutes' time, and Dr Ansell is being spoken to in order to ensure that as soon as he is able to give evidence, he will. In person, that is.

COMMISSIONER: But I don't understand how that is assisting the Commission,
20 for the reasons I've just given. Isn't the obligation of the Crown Solicitor to say to this employee, this public servant, to say, "Our obligation is to the Crown to make sure that all available evidence comes forward in this public inquiry to ensure that the truth can be revealed. That's our obligation. Your interest might be, at the moment, in not attending, and we understand that. But if you want to make an
25 application that is inconsistent with the basis upon which we have been appointed to act for you, you'll have to get your own solicitors to make that application." I just don't understand why the State is doing it, why Mr Wilson is out interviewing the witness or speaking to the GP.

MR DE JERSEY: If Mr Cappelletti sought to justify non-appearance based on
30 something other than medical grounds, then yes, I respectfully would agree that it would be appropriate for Mr Cappelletti to have his own solicitors. But where it's medical grounds that are relied upon in order to support an application for a temporary excusal from appearing, then in my submission, it's appropriate that he be
35 assisted in making that application by Crown Law.

COMMISSIONER: There's no doubt about that. He should be assisted. There's no
question about that. It's just a question of who gives him that assistance. The
40 obligation of the Crown Solicitor is to assist this Commission, not to assist a witness who doesn't want to turn up. At that point, the witness needs to be instructed - you can tell me I'm wrong about all this.

MR DE JERSEY: I respectfully submit otherwise in respect of the contention that
45 Mr Cappelletti - or there might be an inference that Mr Cappelletti doesn't want to appear, and that is inconsistent, in my submission, with the fact that he has affirmed a statement, which you have, Commissioner. So the only evidence presently before the Commission that Mr Cappelletti relies upon to apply for a temporary excusal is

his medical certificate, his doctor's medical certificate. But there's no suggestion that he doesn't wish to give evidence, and the evidence is to the contrary, because he has given his statement, which is lengthy.

5 **COMMISSIONER:** No, I just don't understand. This is the correspondence of the Crown Solicitor, acting for the Crown to assist this inquiry, received from Mr Cappelletti:

10 "I'm very concerned and anxious about giving evidence at the Commission. I don't think in my current mental state I can give evidence at any Commission hearings due to my current levels of severe anxiety."

And I won't read out the middle sentence, for reasons that are obvious.

15 **MR DE JERSEY:** Thank you.

COMMISSIONER:

20 "In response to the email correspondence received by Mr Cappelletti, we advised him to attend his treating general practitioner, Dr Sonia Ansell, and obtain a medical letter to support his current medical circumstances."

Why is the Crown Solicitor doing that? Isn't your - sorry, I cut you off.

25 **MR DE JERSEY:** No, I cut you off.

COMMISSIONER: No, I asked you a question and then I -

30 **MR DE JERSEY:** Because, in the alternate universe, the Crown Solicitor would ignore what the Crown Solicitor was told by Mr Cappelletti, that is, in effect, "I'm unwell and I'm stressed by reason of this process," and simply to have not provided him with any options to address that issue. The option that was provided, the solution, which he might not have been aware he could have taken up, was to see a doctor, which he did.

35 **COMMISSIONER:** But this is the Crown Solicitor, when it should have said, in my view, "We do not act for you personally. You have to go and get your own advice as to what you should do, having regard to what you say your condition is." You might then go on to say, "We will notify the Commission of that," but aren't you straying
40 into the role of being a lawyer for him personally by advising him to go to his doctor and get a medical letter to support a claim to not turn up before the Commission? I know at some point -

45 **MR DE JERSEY:** The difficulty is he's an employee of the State, for which the Crown Solicitor acts, and so if he were - if there were not that relationship, then, of course, things would be different, but he is an employee. And so in my respectful submission, what was done was appropriate in those circumstances, where the

Crown Solicitor was told what the Crown Solicitor was told, which you've just read out.

COMMISSIONER: So it's appropriate to not assist the Commission -

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MR DE JERSEY: No. No, I'm not submitting that. It was appropriate to provide an option to address the matters that Mr Cappelletti raised, that is, the stress and the condition of which he made the Crown Solicitor aware.

10 **COMMISSIONER:** But that option has now led to him going to see the doctor, and then another - the next step has been someone from the Crown Solicitor has instructed you and Ms Brooks to make an application, on his behalf, that he has a reasonable excuse for not complying. Now, how can the Crown Solicitor instruct you to make that application? Isn't that the point at which he has to get independent legal
15 advice?

MR DE JERSEY: Well, the basis on which that instruction was given was Dr Ansell's letter. So there's a basis for it in -

20 **COMMISSIONER:** No, I understand that. I understand the basis. It's just on whose behalf is the Crown Solicitor acting in instructing you to make an application which would excuse - if successful, would excuse a witness from complying with the summons and giving evidence at a Commission that the Crown has set up in order to get evidence from Mr Cappelletti and other people of this type?
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MR DE JERSEY: The answer to your question, Commissioner, is on behalf of the employer of Mr Cappelletti, which is the State instrument.

COMMISSIONER: Would the Crown really want that?

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MR DE JERSEY: The Crown -

COMMISSIONER: Sorry.

35 **MR DE JERSEY:** The Crown wishes for the inquiry to be facilitated, of course.

COMMISSIONER: Then why are you making this application?

40 **MR DE JERSEY:** Because it's a temporary - it's a temporary hiatus on Mr Cappelletti appearing this week.

COMMISSIONER: Does it matter if it's temporary or permanent? Does it really matter? I mean, isn't this is the point at which the Crown Solicitor and you bow out and some other adviser acts for Mr Cappelletti in relation to this application to not
45 give evidence?

MR DE JERSEY: I'll take some instructions as to whether Mr Cappelletti wishes to obtain his own representation.

5 **COMMISSIONER:** Well, it's not whether he wishes to. It's whether the Crown Solicitor feels that they can instruct you to make this application, consistent with whatever instructions they have from the Crown to assist this inquiry. I might be quite wrong about all this. There might be some instruction that the Crown Solicitor has that makes it perfectly orthodox for it to make this application on behalf of Mr - sorry, to instruct to you make this application on behalf of Mr Cappelletti,
10 which, if successful, would have the effect of, at least on a temporary basis and perhaps permanently, depending on where the evidence goes, of denying to this Commission the evidence of Mr Cappelletti. There might be some basis for that. But you'll look into it.

15 **MR DE JERSEY:** Sorry, I'm -

COMMISSIONER: I think you said you would look into it.

20 **MR DE JERSEY:** Yes, and he should be on the phone in two minutes, Mr Cappelletti, and as I say, Dr Ansell as well during the course of the day. And I'm sure that those who are not here are listening to the exchange and taking note, as they should.

25 **COMMISSIONER:** Yes, and again, I'm not privy to the instructions, so I could be quite wrong. If you tell me I'm wrong, then I just have to accept that, I assume, unless we put one of the Crown Solicitors in the witness box and ask them about their instructions.

30 **MR DE JERSEY:** The other dynamic is I wish to, of course, on behalf of the Crown, to facilitate the hearings proceeding expeditiously, and dealing with the actual evidence. And that's why, behind the scenes, Mr Cappelletti is being contacted now and Dr Ansell is being contacted today so as to - because if things change, Commissioner, you will be the first to know. Perhaps Mr Wheelahan first.

35 **COMMISSIONER:** I beg your pardon?

MR DE JERSEY: Perhaps Mr Wheelahan first.

40 **COMMISSIONER:** Perhaps Mr Wheelahan, yes. Thank you, Mr de Jersey. Mr Wheelahan, I interrupted you, I'm sorry.

45 **MR WHEELAHAN:** Well, I think you've made the point. The notice to attend is issued under the Act, and then there's a part of the statute, Commissions of Inquiry Act, then deals with the issue of reasonable excuse. And I don't know what the instructions to the Crown are, but you've certainly raised that it does seem odd that, particularly in that letter that's not yet in evidence, it reads that they're advocating for Mr Cappelletti not to attend, and although my learned friend says, "It's just

temporary and we're making some calls and we might be able to fix all this up," it goes back to, well, what is the application? And perhaps the way forward to progress things is if there is to be an application by the Crown on Mr Cappelletti's behalf that he has a reasonable excuse, I think it now probably is appropriate that that be in writing by close of business today.

COMMISSIONER: Do we really need that?

MR WHEELAHAN: Well, I say it only has to be one page. What my learned friend has said is we only rely on the medical certificate of Dr Ansell, but yesterday, viva voce on transcript, he also relied on correspondence.

COMMISSIONER: Well, I mean, I've asked Mr de Jersey whether he's got instructions to make the application. He says he does. We know what the application is. He says he's going to rely on two pieces of evidence: the 6 March 2026 letter and the exhibit CA-2, the doctor's letter of 5 March 2026. And I think it follows from our interaction that there might be some other evidence that he seeks to put before the Commission some time later today, given the discussions that are going on with the doctor.

MR WHEELAHAN: Yes. For clarity, you just raised the very issue I raised. If my learned friend is relying on the 6 March 2026 letter - I'm just being meticulous - he didn't say that a moment ago.

COMMISSIONER: Well, he said it yesterday.

MR WHEELAHAN: Yes, but he didn't today.

MR DE JERSEY: I rely on the letter, Commissioner.

MR WHEELAHAN: Thank you.

COMMISSIONER: There you go. Do you really -

MR WHEELAHAN: I don't seek to press it any further.

COMMISSIONER: Do we really need Mr de Jersey to put something in writing?

MR WHEELAHAN: No. I don't press that any further.

COMMISSIONER: All right. He says that on behalf of the State, he's got instructions to make an application, on behalf of the State, not on behalf of Mr Cappelletti, that Mr Cappelletti has a reasonable excuse for not complying, on a temporary basis, with the summons that's been issued. We know what the application is. He says there are two bits of evidence that he wishes to rely upon, and by inference, there might be additional evidence that comes out this afternoon. You'll just have to deal with that when it comes up. And in order to challenge his - in order

to test the evidence upon which Mr de Jersey bases his application, you want to cross-examine the doctor.

MR WHEELAHAN: Yes.

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COMMISSIONER: Well, it's pretty simple, isn't it?

MR WHEELAHAN: Yes.

10 **COMMISSIONER:** Is there anything you've misstated in my understanding of what's going to happen tomorrow, Mr de Jersey?

MR DE JERSEY: No, Commissioner, and I just repeat: as soon as I have any further information, I'll inform the Commission of it. And hopefully then it will be avoided, but we'll see.

15

COMMISSIONER: Thank you.

MR WHEELAHAN: Thank you, Commissioner. My learned friend - sorry, learned junior will resume the evidence of Ms Dargan, who is in the courtroom.

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COMMISSIONER: Ms Dargan, could you come back into the witness box. I'm sorry, I rather ran out quickly and didn't thank you for your evidence and ask you to come back here tomorrow, but I'll do that now. Just have a seat in the witness box. I don't believe the witness needs to be re-sworn, Mr Smith?

25

MR SMITH: No, Commissioner. You might remind her that she is still sworn. Ms Dargan, when we finished up yesterday, we were talking still - or you were giving some evidence still about the allocation of CFMEU complaints and your role in doing that as an allocator. Can I ask you, to the extent that those complaints were allocated by you, was there a particular type of site or project that inspectors were allocated to in response to those complaints?

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MS DARGAN: The complaints generally came from the larger construction sites, and over a period of time there would be certain sites targeted. So earlier on, there was a lot of Tomkins sites we attended. Morris Property Group were there, like, every second day at one point, and then later on, Cross River Rail, we were there a lot as well, so -

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40 **MR SMITH:** And so can the Commissioner take it -

COMMISSIONER: What was the first one you said?

MS DARGAN: Tomkins.

45

COMMISSIONER: Tomkins?

MS DARGAN: Tomkins. Commercial builders, I believe they are.

COMMISSIONER: Their sites or their one site?

5 **MS DARGAN:** Their sites.

COMMISSIONER: And where were their sites?

10 **MS DARGAN:** I was Brisbane North, so it would have been somewhere in the vicinity - wherever they were building in Brisbane North area at the time.

COMMISSIONER: And what sort of builder is Tomkins?

15 **MS DARGAN:** At that stage they were doing, I guess, mid-rise type structures. They didn't do the real big work.

COMMISSIONER: Sorry, Mr Smith.

20 **MR SMITH:** Thank you, Commissioner. So you mentioned Tomkins. You mentioned Cross River Rail; is that right?

MS DARGAN: Correct.

25 **MR SMITH:** And was there another contractor that you mentioned?

MS DARGAN: Off the top of my head, Morris Property Group, MPG.

MR SMITH: Sorry?

30 **MS DARGAN:** I think they're known as MPG. I think they've changed names.

MR SMITH: And what nature of work, do you know, was Morris Property Group doing at the time?

35 **MS DARGAN:** At the time, they were building the big federal tax building on - I think it was Wharf Street.

40 **MR SMITH:** And were there any other projects that they were doing that you can remember at that time?

MS DARGAN: There was - Morris Property Group.

MR SMITH: Yes.

45 **MS DARGAN:** I think they had one down at the Gold Coast, but that was the only one I recall in Brisbane North region.

MR SMITH: All right. And were you allocating inspectors to the job down the Gold Coast?

MS DARGAN: Yes.

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MR SMITH: And you said that - something to the effect that it would be different contractors from time to time. Do you recall how long those periods would be?

10 **MS DARGAN:** I didn't really take notice of it. It would just be a gradual period of time where you go, "They haven't been bothering with Tomkins. I wonder what's happened there?" So it wasn't something that you just went, "No, they're not taking any notice." Just gradually you noticed over time.

15 **MR SMITH:** And did you know what had happened at those sites which had prompted the complaints?

MS DARGAN: Where those complaints - why they were making those complaints on that site?

20 **MR SMITH:** Yes.

MS DARGAN: I assumed that it had to do with enterprise bargaining agreements on those particular sites.

25 **MR SMITH:** And when - was there a period where the complaints in respect of those sites would stop?

30 **MS DARGAN:** I had no direct knowledge of that. I would just notice that we hadn't been called out to a certain site for quite a while.

MR SMITH: So it wasn't - or was it something you were specifically looking for, or was it something you noticed?

35 **MS DARGAN:** Something I noticed. I wasn't looking for it particularly.

MR SMITH: All right. I'm just going to move now to ask you about - further questions about right-of-entry experience on site. You gave some evidence that you attended some of these right-of-entry complaints. Can you tell the Commissioner, firstly, what would happen when you would first turn up to one of those complaints?

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MS DARGAN: When we first turned up, a variety of things would happen. Either the union would already be on site and we would meet up with them on site. Alternatively, they wouldn't have arrived on site yet, and we'd be turning up going, "Where are the union?" And the third case was they'd be there trying to get on site.

45

MR SMITH: Now, if I can just deal with firstly the occasions when the union wasn't on site. What would you do if the union wasn't on site?

MS DARGAN: We'd make a phone call to our operations manager or allocator, depending, and say, "They're not here."

5 **MR SMITH:** And what would you be told when you made that phone call?

MS DARGAN: There would be other phone calls made and it would come back either we were would stay there and wait, or they weren't coming; we were to leave.

10 **MR SMITH:** Now, can I ask you this: do you know how there could be a dispute about right of entry if the union hadn't yet attended site?

MS DARGAN: There couldn't be.

15 **MR SMITH:** And can I ask whether these allocations of work were in fact about right-of-entry disputes?

MS DARGAN: Yes, they came through one of two ways, which was under a section 117 or an 81(3), but the 81(3) was later decided that it couldn't be used.

20 **COMMISSIONER:** What did you just say then? Sorry, I missed that last bit of your evidence.

25 **MS DARGAN:** An 81(3). A later decision was made that unions couldn't use that provision for right of entry.

MR SMITH: So were you, based on what you were told about why you were attending, expecting there to be some dispute about right of entry when you turned up?

30 **MS DARGAN:** Correct.

MR SMITH: Now, you mentioned being told to wait. Can you recall how long you'd have to wait for?

35 **MS DARGAN:** I - I can't recall. Usually after it had been sort of like half an hour, we'd be told to leave and go to another job.

MR SMITH: All right. Would you ever be called back to those jobs that you'd left?

40 **MS DARGAN:** I can't recall that having happened.

MR SMITH: All right. Now, you also mentioned that, on occasions, the union would be present. Who would you speak to first when you arrived at site?

45

MS DARGAN: It would depend on the inspector. Sometimes the officials would be there, like, waiting at the - at the gate. Other times, we'd be met by the PC and they took us to where the union was on site.

5 **COMMISSIONER:** What's the PC, sorry?

MS DARGAN: Sorry, the principal contractor.

10 **MR SMITH:** And when you attended those jobs where the CFMEU was present, was there, in fact, a dispute about whether they were allowed to enter?

MS DARGAN: Sometimes there was, sometimes there wasn't.

15 **MR SMITH:** Do you have any idea now about the proportion of times that there was in fact a dispute about entry?

20 **MS DARGAN:** Very seldom. Like, the principal contractors or the builders understood the requirements for entry to site, and a lot of them had their own independent advice so understood the process. So more often than not, it wasn't an actual right-of-entry issue that we were attending for.

MR SMITH: So out of the -

25 **COMMISSIONER:** Just picking that point up, it wasn't an actual right-of-entry issue that you were attending for; what was it?

MS DARGAN: I - we'd attend to meet up with the union and walk site with them.

30 **MR SMITH:** So out of the number of entries that you - or attendances on site that you had, do you have a view now about what proportion of those were genuine right-of-entry disputes?

35 **MS DARGAN:** I couldn't give you a percentage, but there was - there was - no, I couldn't, sorry.

MR SMITH: That's okay. Could I just ask, then -

COMMISSIONER: Is it high, low, medium?

40 **MS DARGAN:** It was happening all the time. So it was hard to - hard to put a figure on it. Generally, the sites that I attended, it wasn't a right-of-entry issue that we were there to deal with.

45 **MR SMITH:** And were you aware about what other inspectors were dealing with when they'd attend these sites?

MS DARGAN: Very similar.

MR SMITH: And what was - what's the source of your knowledge about that?

5 **MS DARGAN:** Again, it was our team getting together at smoko time, lunchtime, having a talk about where we'd been sent and what jobs, and there was a lot of talk around whether or not we should actually be doing what we were doing. So everybody was putting their penny's worth in about what jobs they'd been to.

10 **MR SMITH:** And in later years when you were working as an allocator, did you hear things about attendances at those sites?

15 **MS DARGAN:** Later years, because I wasn't in the office, it was more via telephone or when I was doing - I'd do the close-outs of the matters too, so I'd see the finalisation of what had been done on site and what the outcome was.

MR SMITH: And what you explain to the Commissioner what you mean by a close-out?

20 **MS DARGAN:** So when a matter is completed, so the inspector's done - has gone to site, completed everything, notices have been written, complied with, and then a close-out request is put through to the allocator or the operations manager.

25 **MR SMITH:** And to close it out, are there things that you need to inform yourselves about?

MS DARGAN: You need to - it's a bit of a quality assurance check as well. So you're checking that the inspector's collected the correct evidence, issued the correct notice and checked that the compliance actions taken were adequate.

30 **MR SMITH:** Is there material that you look at to do that?

MS DARGAN: Yes.

35 **MR SMITH:** And what sort of material is that?

MS DARGAN: We look at the computer system. So at that stage it was CISr, and we'd have a look at that. They'd also have a G drive folder that contained all the photographs, copies of inspector notes, copy of the safe work method statement or whatever other documentation had been collected on site.

40 **MR SMITH:** Was there documentation included about the reasons for the right of entry?

45 **MS DARGAN:** Yes.

MR SMITH: And did you review that as well?

MS DARGAN: Yes, that was part of the referral information that came through, so, yeah, that was the first thing, because you need to know why the inspector was going to site to ensure that the information is there to cover what that issue was.

5 **MR SMITH:** And did you look at that information, that is, in the - for the purpose of the right of entry, as against what the inspectors had found?

MS DARGAN: Yes.

10 **MR SMITH:** And was the purpose of the right of entry typically supported by what the inspectors had found?

MS DARGAN: The majority of the issues weren't substantiated, in my experience.

15 **MR SMITH:** Yes. And that's - so we're just talking about, at this stage, the reviews you conducted of other inspectors' work; is that the case?

MS DARGAN: Correct.

20 **MR SMITH:** And what about your own personal experience?

MS DARGAN: For my own experience, when I went to site, they - as I mentioned the other day, they'd have a list of matters that they believe needed to be looked at. We would then walk the entirety of the construction site, and along the way they'd be going, "What about that? That's not compliant." It would be - it wouldn't have much to do with the initial notification that came in.

MR SMITH: Now, if you were walking - why were you walking the entire construction site with the union officials if you were there for a right-of-entry dispute?

MS DARGAN: That's what we'd been instructed to do.

MR SMITH: And do you recall who you were instructed to do that by?

35 **MS DARGAN:** It came from Helen Burgess.

MR SMITH: Did it come directly from Ms Burgess or did it come via others?

40 **MS DARGAN:** Well, it was a message that we were receiving constantly, so it came - there was a while there when she was our acting operations manager, before Mark Houston came in, so information came directly from her. It came from her to the managers that then fed down to the inspectors. There was a few ways that that information was being fed to us.

45 **MR SMITH:** Would you have walked the site with the officials if you hadn't been directed to?

MS DARGAN: No.

MR SMITH: What would you have done?

5

MS DARGAN: I would prefer to have completed it independently. So the union, you know, could say, "We believe that this is an issue." I would then prefer to go speak to the principal contractor, the subbies, the workers, find out if there'd actually been a contravention, and issue notices that I believe should be issued in that case.

10

MR SMITH: You gave some evidence a moment ago about the union pointing out issues on site as you walked around.

MS DARGAN: Correct.

15

MR SMITH: Were those issues typically the subject of the entry notice?

MS DARGAN: No.

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MR SMITH: So what do you know or do you know what the basis for the union officials pointing those issues out was?

MS DARGAN: They were looking - looking for hazards to get us to write notices.

25

MR SMITH: And how long were you typically on site conducting those inspections?

MS DARGAN: It was a very, very long day. So you walked the entire site and then sat down in the office afterwards with the union and representatives of the principal contractor and discussed what was going to be done at that point, and it would basically take your whole day.

30

MR SMITH: All right. And if you hadn't have been there the whole day, what would you have been doing instead?

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MS DARGAN: Other - other reactive or proactive work that was available to us.

MR SMITH: Now, when you walked around with the CFMEU officials on site, who was deciding where you'd go?

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MS DARGAN: It was really directed by the CFMEU.

MR SMITH: All right. On occasions that you attended non-CFMEU-related jobs, who would direct where you'd go to and what you'd look at?

45

MS DARGAN: The inspector.

MR SMITH: Did having the CFMEU decide where it was that you'd go have any impact on you personally?

5 **MS DARGAN:** Absolutely. It felt - I felt as though my role as an inspector was - was being demeaned to a certain extent, because I felt I was being led around these sites and being told what to do rather than be treated like a professional and being able to manage the process myself.

10 **MR SMITH:** And did builders ever make any observations about the process to you?

MS DARGAN: Yes.

15 **MR SMITH:** And what sort of things would they say to you?

MS DARGAN: A lot of them understood - like a lot of the ones, especially the bigger builders, understood what we'd been told to do. So, like, these - the staff that I dealt with didn't take it out on - on me personally, but they did feel as though we were being led around the site by our nose, type thing.

20 **MR SMITH:** And is that based on conversations that you had with them?

MS DARGAN: Yes.

25 **MR SMITH:** And how often did those sorts of conversations occur?

MS DARGAN: It would be something that would be said in between. It would be sort of something that was said on the sly or as they were walking forward and we were walking back. So it was just sort of - yeah, it was an ongoing conversation out there in industry about how the inspectorate was doing its job.

30 **COMMISSIONER:** When you say "industry", do you mean the construction industry?

35 **MS DARGAN:** Yes.

MR SMITH: And how did - did that have any impact when you'd visit construction sites and the CFMEU wasn't present, on your relationship with those builders?

40 **MS DARGAN:** I believe it did, because when we issue a notice, we explain it to the PCBU. I find if you can explain exactly -

COMMISSIONER: You told us what a PCBU was yesterday, but I've forgotten.

45 **MS DARGAN:** Sorry. A person conducting a business or undertaking. So if you can explain the notice and they understand why they're getting it, there's less chance of them asking for a review or contesting the notice. When we were being led round

and the union were dictating it, there were a lot more notices being contested, because you couldn't justify it. Like, the number had just exploded.

MR SMITH: All right. And -

5

COMMISSIONER: What does that mean, sorry? The number of contested notices.

MS DARGAN: So when an inspector writes a notice, there's a provision which allows for a review of that decision. So when they were being reviewed or when a - like, with an infringement notice, they can be appealed and then taken to court. So that process became more active as, I feel, employers out there were starting to understand their rights and pushing back a little bit.

MR SMITH: Now, was the quality of the notices written on CFMEU right-of-entry request jobs different to the quality of notices written on other jobs, as in, whether they were compliant?

MS DARGAN: I believe so.

MR SMITH: And what was the difference in quality?

MS DARGAN: Like, an example would be hazardous chemicals. Like, there's certain elements that you need to meet. Like, you can't just write a notice on a bottle of water sitting on a table. You need to find out who actually - who owns that - who's responsible for that bottle of water. You can't just be writing a notice without actually knowing what's in there, type thing, and a lot of notices were being written for hazardous chemicals for stuff that was just household use quantities that shouldn't necessarily be in a database, for example.

MR SMITH: Yes. And were those the sorts of notices which were then subsequently being challenged?

MS DARGAN: Yes.

MR SMITH: Now, can I ask whether - can I just ask that paragraph 33 of Ms Dargan's statement be put on screen, Mr Operator, please. So, Ms Dargan, after you'd been allocated to attend a job, would you sometimes be telephoned on the way to it?

MS DARGAN: Yes. There was a lot of pressure on the estimated time of arrival of the inspector on site.

MR SMITH: And who placed that pressure on the inspectors?

MS DARGAN: It came from Helen Burgess.

45

MR SMITH: And how did she do that?

MS DARGAN: She would contact - well, when I was working as an inspector, it was often John Carmosino, who was working as the allocator at the time. He would receive the calls and then contact the inspector and go, "Where are you at?" Things like that.

5

MR SMITH: Did that happen to you?

MS DARGAN: As an inspector or -

10 **MR SMITH:** As an inspector.

MS DARGAN: As an inspector, yes, you'd often get text messages or phone calls going, "What's your ETA? How far away are you?" It was a common occurrence, especially because our office was at Brendale at that time and a lot of the jobs were
15 in the city.

MR SMITH: And at that time - or at that time, how did you know that Helen Burgess was the person behind those?

20 **MS DARGAN:** Because I'd talk to John, John Carmosino, about things. Like, everybody knew that's where it was coming from.

MR SMITH: Okay. So is that something Mr Carmosino would tell you -

25 **MS DARGAN:** Yes.

MR SMITH: - in those discussions? Do you know whether this only happened to you or whether it happened to others at that time?

30 **MS DARGAN:** It happened to - it happened to all the inspectors who attended union jobs.

MR SMITH: And how did you know it happened to all of the inspectors?

35 **MS DARGAN:** Because they would all talk.

MR SMITH: All right. And did you have any experience of this process occurring while you were an allocator?

40 **MS DARGAN:** Yes.

MR SMITH: And who would call you?

MS DARGAN: Usually - usually Helen would - would call. Sometimes it would be
45 the operations manager.

MR SMITH: And was there any particular operations manager that would call you?

MS DARGAN: Mark Houston.

MR SMITH: And what would they ask you to do?

5

MS DARGAN: They're phoning to say, "Are you at the job yet? Can you get to the job?"

MR SMITH: This is when you were an allocator.

10

MS DARGAN: Sorry.

MR SMITH: When you were an allocator, what would they ask you to do in those telephone conversations?

15

MS DARGAN: They'd ask who I'd sent out, where were they, like, what time are they going to get there, and if there'd been a delay, I'd probably get another phone call, "Are they there yet?"

MR SMITH: And what would you then do?

MS DARGAN: I'd in turn ring the inspector and say, "So sorry to bother you. Are you there yet?" And they'd go, "For goodness' sake, I'm trying to find a park. Give us five minutes." So yeah.

25

MR SMITH: And did receiving those calls have any impact on you on the way to the job?

MS DARGAN: It was huge, because everything was urgent, everything was stressful, everything was now. And of course, when you're dealing with inspectors, it's - like that chain of command, like I - if they take 10 minutes to get there or 15, I'd rather they just go safely and get there. I wouldn't pressure anybody for - for time.

30

MR SMITH: Were you ever the subject of telephone calls asking where you were when you were an inspector in relation to non-CFMEU right-of-entry matters?

35

MS DARGAN: No.

MR SMITH: Were you ever asked to provide, as an allocator, telephone updates on the attendance of inspectors on non-CFMEU right-of-entry matters?

40

MS DARGAN: Only if it was a serious - like, if you were attending a death or a serious incident. Often your managers need to know for media requests or to put out what's called a SIN, a sudden incident notification. But otherwise, if it's just your general work, no.

45

MR SMITH: All right.

COMMISSIONER: Do you have any insight into - whether from your direct experience or your discussions with your fellow inspectors or based on your long experience as an inspector - as to why these requests were being made of you?

5

MS DARGAN: I - I assumed Helen was getting some pressure from above her or - because there wasn't any - any legal reason for it. Like, yeah, we - we just thought that she was getting pressure from somebody else.

10 **COMMISSIONER:** And again, based on your experience or your direct observation or what you've been told by other inspectors, do you have any insight into where that pressure was coming from?

MS DARGAN: I - I don't know.

15

MR SMITH: Just one more matter before I move off the topic of those phone calls. What was the tenor of those calls?

MS DARGAN: The urgency.

20

MR SMITH: All right. And what manner were you spoken to?

MS DARGAN: Well, with Helen, when she got upset, her voice would - would get higher, so it was really like - it was quick. It wasn't a long conversation: "Where are they at? What's their ETA? Why aren't they there yet?" That type of thing.

25

MR SMITH: And did that have any effect on your mood when you arrived at a job?

MS DARGAN: You were completely stressed before you even turned up on the site. It was - yeah.

30

MR SMITH: And was that different to your experience at other jobs?

MS DARGAN: That didn't happen on other jobs.

35

MR SMITH: Yes, and did you feel differently at other jobs?

MS DARGAN: Yes. Well, at other jobs, you weren't under the microscope like you were with CFMEU jobs. Other jobs you'd do your job, you'd write your notices, you'd issue - that was just the way it went. On CFMEU jobs, whether you wrote the notices or didn't write the notices, everything was being scrutinised in real time.

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MR SMITH: All right. Do you remember, 6 November 2019, attending a Tomkins construction job at 19 Railway Terrace in Milton?

45

MS DARGAN: Yes.

MR SMITH: And do you recall what the nature of that job was that you were allocated?

MS DARGAN: It was a residential tower build in Milton.

5

MR SMITH: And where did the request to attend that job come from?

COMMISSIONER: Is that an apartment tower?

10 **MS DARGAN:** Yeah, yeah, a building, an apartment building. I've forgotten what it was called. Sorry?

MR SMITH: Sorry. Was that a CFMEU request job?

15 **MS DARGAN:** Yes, it was.

MR SMITH: All right. Now, when you arrived at that job, did you review an entry notice, do you recall?

20 **MS DARGAN:** No.

COMMISSIONER: Why don't you just ask the witness what happened, rather than asking closed questions?

25 **MR SMITH:** Yes.

MS DARGAN: Okay. I remember - like, I don't have the whole chronology of the job in my head. I can only just remember bits and pieces.

30 **MR SMITH:** Yes.

MS DARGAN: But I remember being up on the top, the top level, the top formwork deck at the time. The union were there. The police had also shown up at that point. The request for assistance actually noted down a few things, like they specifically
35 mentioned power boards. So on that site, I recall going, "Okay," because I was leading this one, "let's check out these power boards first," and started walking over to - and they were like, "No, no, no, we need to go round here. We're going to walk." And I said, "Yeah, but I want to follow this list." And this was sort of the first time I'd led, so I wanted to run it the way I wanted to run it.

40

And we ended up writing a notice there in relation to their system of work in relation to how trades were coming in and out, sort of like a work system notice type thing, but not in relation to - to anything else that was raised.

45 **MR SMITH:** So beyond the matters that you raised, did you look at anything else with the union?

MS DARGAN: We - we ended up doing the entire walk.

MR SMITH: All right. Now, when you finished that inspection, do you recall receiving a telephone call from anyone?

5

MS DARGAN: Yeah, that's the only reason this one stands out, because after I received a phone call from my operations manager stating that I wasn't to - to just follow a list; I was to walk around with them.

10 **COMMISSIONER:** Walk around with who, sorry?

MS DARGAN: The CFMEU.

MR SMITH: And who told you that?

15

MS DARGAN: I believe it must have been Nicholas Drapes, because he was my operations manager at the time.

MR SMITH: And do you recall when you received that call?

20

MS DARGAN: I - I can't recall if it was on site or after site. I just remember getting it and being frustrated by it.

MR SMITH: At the time that you received that call, had you submitted any materials about that site visit?

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MS DARGAN: No, nothing would have been put in the system yet.

MR SMITH: Had you told anyone, do you recall, what had happened at that site visit?

30

MS DARGAN: Not - no, not to my recollection.

MR SMITH: Do you know how it is then that Mr Drapes was able to give you that direction?

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MS DARGAN: I'm assuming that the CFMEU would have advised somebody who then spoke to him.

40 **MR SMITH:** Are you aware of any other way that Mr Drapes might have found out about how that visit was conducted?

45

MS DARGAN: Nobody else would have had any interest in it, because the principal contractor doesn't care if you follow a list or - or walk around. So they wouldn't have had a reason to - to phone anybody.

MR SMITH: And did that direction have any impact on how you felt about attending those sorts of matters in the future?

5 **MS DARGAN:** By - by that stage, I don't think there was a single inspector that liked or wanted to do union right-of-entry requests, and that included me.

MR SMITH: Right. Now, you've mentioned on a few occasions the issue of statutory notices. Mr Operator, can I just ask -

10 **COMMISSIONER:** Could I just follow up on that visit?

MR SMITH: Yes.

15 **COMMISSIONER:** You said something to the effect that this was the first time. What do you mean by that?

MS DARGAN: That I'd led. Normally I'd go along as a second, but this time I was the leading inspector.

20 **COMMISSIONER:** There was another inspector there with you?

MS DARGAN: Yes.

25 **COMMISSIONER:** And do you recall who that was?

MS DARGAN: I'm thinking in '19 it probably was John Barber.

30 **COMMISSIONER:** And you said that he - and you didn't describe who "he" was - he said to go around here. Who was the he?

MS DARGAN: A CFMEU official.

COMMISSIONER: And do you know who that was?

35 **MS DARGAN:** No. I wasn't very good at remembering their names.

COMMISSIONER: Is that the sort of thing that you would record in the records that you've just given evidence about 20 minutes ago? The CFMEU official's name?

40 **MS DARGAN:** Possibly, yes.

45 **COMMISSIONER:** You gave some evidence yesterday about the thing you described as a shopping list or the usual shopping list. You had a third name for it that I've forgotten, and you said that those records are still kept by WHSQ. And you've just given some evidence 10 minutes ago about some other records. I think they're different. These are the these so-called close-out records?

MS DARGAN: Yes.

COMMISSIONER: Are they different to the shopping list?

5 **MS DARGAN:** The shopping list is the beginning of the process, and the close-out is at the end of the process. So the initial document that I referred to as a shopping list is the - basically the complaint or the request for assistance that comes through.

10 **COMMISSIONER:** And that is derived from a complaint received by the CFMEU?

MS DARGAN: Correct.

COMMISSIONER: And the close-out documentation is prepared by whom?

15 **MS DARGAN:** By either the allocator or the operations manager, once the job's been flagged as being finished.

COMMISSIONER: Sorry, I just missed that last bit.

20 **MS DARGAN:** Once the job's been flagged as being finished, it's then closed out by the allocator or the operations manager.

COMMISSIONER: And who flags it as being finished?

25 **MS DARGAN:** The inspector.

COMMISSIONER: And once something is being flagged as being finished because the close-out documentation has been provided, that close-out documentation is still kept?

30

MS DARGAN: Yes.

COMMISSIONER: And do you - is that documentation still available, still kept by WHSQ?

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MS DARGAN: Yes. There was a change of computer system in 2024. We moved from CISr to Rapid, and a lot of that documentation was merged, and I know there's some files that have information in and some that don't, so you'd have to look each one up individually.

40

COMMISSIONER: I see. But do I take it that the records that would be available for, say, this incident on 6 November 2019 at Tomkins construction site at 19 Railway Terrace, Milton, would include - if the merger of the two software systems hasn't affected the data - would include the shopping list and also the close-out documentation?

45

MS DARGAN: Correct.

COMMISSIONER: And that would be the case for every - what do I call it - complaint? Is that the right word - that has been investigated and closed out?

5 **MS DARGAN:** Correct.

COMMISSIONER: And that would be - that would also apply to every inspector at all the regions within WHSQ.

10 **MS DARGAN:** Yes.

COMMISSIONER: Have any attempts been made to get those close-out documentations and match them up to the shopping-list documentation?

15 **MR SMITH:** Not as yet, Commissioner.

COMMISSIONER: Sorry. I interrupted you.

20 **MR SMITH:** Sorry. Now, Mr Operator, could you just blow up paragraph 36, including the subparagraphs of Ms Dargan's statement. Now, Ms Dargan, you've mentioned notices on a number of occasions during your evidence. Can you tell the Commissioner what some of the key types of notices were that inspectors would issue?

25 **MS DARGAN:** Yeah, you've got your improvement notices, which are something that needs to be fixed but it doesn't have that urgency to it. You've got prohibition notices, where there's a serious imminent risk which is occurring or likely to occur. You've got infringement -

30 **COMMISSIONER:** What's that bit? You said is occurring or -

MS DARGAN: Is likely to occur.

35 **COMMISSIONER:** Likely to occur.

MS DARGAN: You have infringement notices, which are penalty units, which is through SPER. And non-disturbance notices, so if you attend a scene, you don't want anybody to move or disrupt anything until you've got experts in or conducted further investigations.

40 **COMMISSIONER:** You said an infringement notice is through SPER?

MS DARGAN: The State Penalties and Enforcement register. So we're governed by different rules.

45 **COMMISSIONER:** Thank you.

MR SMITH: Just if I can start with improvement notices, what does an improvement notice require?

5 **MS DARGAN:** It requires a person conducting a business or undertaking to comply with a legislative provision within a certain timeframe.

MR SMITH: All right. And who nominates the timeframe?

10 **MS DARGAN:** Usually it's a negotiation. Like you would say, "Well, how long is it going to take to get a scaffolder out here?" And they said, "They're coming this afternoon." You would have a faster turnaround than someone who's - like, during COVID, for example, timeframes were blowing out, so you'd have a longer compliance to allow for the difficulty in getting tradespeople to site, so -

15 **MR SMITH:** If there was some disagreement, though, who would make the ultimate decision about how long the recipient had to comply with the notice?

MS DARGAN: The inspector.

20 **MR SMITH:** Was there some obligation for them to comply with those notices?

MS DARGAN: Yes, there's a legal obligation to comply, and if not there's an infringement notice for failing to comply with an improvement notice.

25 **MR SMITH:** And what degree of seriousness of risk would you issue an improvement notice for?

30 **MS DARGAN:** Lesser. So something that needs - something that's non-compliant but doesn't have that serious imminent going-to-happen urgency that a prohibition notice does.

MR SMITH: And just in respect of prohibition notices, what was the effect of a prohibition notice?

35 **MS DARGAN:** It stops the activity occurring at the work site.

MR SMITH: All right. And from when does that stoppage of activity occur?

40 **MS DARGAN:** Straight - as soon as you issue the notice verbally.

MR SMITH: All right. So you would issue the notice verbally, and would you then do anything else in respect of that notice?

45 **MS DARGAN:** It's followed up in written form.

MR SMITH: All right. And I think you described earlier imminent risk. Is that right?

MS DARGAN: Yes.

5 **MR SMITH:** And if you identified matters that justified a prohibition notice, is that the sort of thing that you would issue?

MS DARGAN: Yes.

10 **MR SMITH:** And would you always do that?

MS DARGAN: If there's serious imminent risk that's occurring or may occur, yes, a prohibition notice would be issued.

15 **MR SMITH:** And just moving on to, then, infringement notices, what were the sorts of matters infringement notices were issued for?

20 **MS DARGAN:** Infringement notice - Workplace Health and Safety had a priority infringement notice register, and there was certain notices that were basically an inspector didn't have any - if you saw - if it was happening, a notice, infringement notice, must be issued. Those were the priority ones.

MR SMITH: And can you remember what some of those were?

25 **MS DARGAN:** The ones that, like, I most commonly was having, like a failure to have arrangements in place to comply with a safe work method statement. That was one that was used quite often. There's a whole list of them. The other one, like, one that just jumps into my head was failure to maintain amenities. That was an infringeable - sorry, I've -

30 **MR SMITH:** And when you refer to amenities, what do you mean by amenities?

MS DARGAN: Toilets, primarily.

35 **MR SMITH:** All right. And it was a - did you say a failure to maintain?

MS DARGAN: Yes.

MR SMITH: And what does that mean?

40 **MS DARGAN:** Basically not keeping them clean, not having a cleaning register in place, that type of thing.

45 **MR SMITH:** All right. So was it the case that if the toilets weren't clean, an infringement notice might be issued?

MS DARGAN: Yes.

MR SMITH: And to what extent, do you recall, was there a requirement to issue infringement notices when you identified an infringeable offence?

MS DARGAN: For the mandatory -

5

MR SMITH: Yes.

MS DARGAN: They had be written. The inspector lost their discretion, basically.

10 **MR SMITH:** And did that relate to the priority infringement register that you mentioned earlier?

MS DARGAN: Yes.

15 **MR SMITH:** All right. And you also mentioned non-disturbance notices. Can you tell the Commissioner when they're issued?

MS DARGAN: Usually after a serious incident. It preserves the scene, stops it being disturbed until further investigations can be made.

20

MR SMITH: Yes. Now, Mr Operator, can I just ask you to blow up on the screen paragraph 43 of Ms Dargan's statement, and it goes over - over the page. Now, you've already given some of this evidence, so I'm not going to ask you about all of the paragraphs, but just in respect of notices, when you attended site on CFMEU right-of-entry complaints, was there any discussion with the CFMEU about the issue of notices?

25

MS DARGAN: Yes.

30 **MR SMITH:** And what was the nature of that discussion?

MS DARGAN: It was normally we'd be - it would normally be an argument in that they felt notices should be issued and the inspector didn't feel there was sufficient evidence on which to form the belief to issue the notice.

35

MR SMITH: So when you say "form the belief", were inspectors required to have a particular belief to issue notices?

MS DARGAN: Yes, they needed to have a reasonable belief in the state of things.

40

MR SMITH: Yes. And what sorts of things typically would that reasonable belief be based on?

MS DARGAN: Observations. Safe work method statements. Just all the - the evidence that you'd use to form a belief. Speaking to workers on site, speaking to management. There was a - a number of inquiries that are made prior to issuing a notice.

45

MR SMITH: So you mentioned evidence. So you would gather some evidence. Is that what would happen?

5 **MS DARGAN:** Yes.

MR SMITH: All right. And then you'd form a view, I think you said, about whether a notice should be issued.

10 **MS DARGAN:** Yes. If you had evidence that met all the elements of the offence, then you could feel safe to - to write a notice and know it would be upheld.

MR SMITH: And did those views sometimes differ as between you and a CFMEU official on site?

15

MS DARGAN: Yes.

MR SMITH: And when those views differed, what was the nature of the conversations that you'd have with those officials?

20

MS DARGAN: Really long circular arguments.

MR SMITH: Now, during those arguments, was it just you and the official present or were there other people present?

25

MS DARGAN: There'd usually be other people present. As I mentioned, usually there was two inspectors for all CFMEU request-for-assistance jobs and often there'd be a representative of the principal contractor, maybe the safety person on site. So there was normally a large group of people.

30

MR SMITH: All right. Would others participate in those discussions, apart from you and the officials?

35 **MS DARGAN:** If the employer had anything to add, they'd - they'd pop their two cents' worth in, but it was usually the inspector and the CFMEU.

MR SMITH: And would these discussions be about matters that were necessarily part of the reasons for the right of entry?

40 **MS DARGAN:** Not necessarily, no.

MR SMITH: How often, on a typical right-of-entry site visit, would you have to have a discussion about whether a notice should be issued or ought not be issued?

45 **MS DARGAN:** It was a very frequent occurrence.

MR SMITH: Now, on those visits, you gave some evidence that it lasted - they often lasted several hours. During that several hours, do you have - are you able to offer -

5 **COMMISSIONER:** Did the witness say that? I thought the witness said really long circular arguments.

MR SMITH: No, this was earlier evidence, Commissioner.

10 **COMMISSIONER:** Oh, earlier evidence.

MR SMITH: So on those lengthy site attendances, how many of these arguments would there be, typically?

15 **MS DARGAN:** It's really hard to tell, because they were all - all different. Really depended what was happening on site on the day, because you'd walk around and they'd say, "That's not on the hazardous chemical register," and point to something, and then you'd go get the product, go back to the hazardous chemical register. It would sort of be a long - a long process, and then you'd say, "Well, it's a domestic
20 quantity of detergent. It's not a hazardous substance being used for the explicit work use." So there'd be - there'd be a lot of arguments.

MR SMITH: So that example you just gave about domestic quantity of detergent, is that something that you can recall happening?
25

MS DARGAN: Yes.

MR SMITH: Now, what's hazardous about a domestic quantity of detergent?

30 **MS DARGAN:** Make you pretty uncomfortable if you drank a lot of it, but it's - it's - yeah, it's - it's not something - like, we are looking at things that - hazardous chemicals that are being used on site. So plumbers use certain glues. You want to make sure that the safety data sheet is for that particular glue, so if anything happens and someone gets it on themselves or eats it, you're going to know
35 exactly what needs to be done. Hence, having them on site is a requirement.

MR SMITH: And I don't want to put you on the spot, but can you recall if you had to issue a fine for a hazardous chemicals issue, how much that fine would be?

40 **MS DARGAN:** It's for a company, \$3600.

MR SMITH: All right. So just so we're clear about this, were you being asked to issue a fine of \$3600 for a bottle of detergent on site?

45 **MS DARGAN:** Yep, and some inspectors I believe it was like bottles of water that were unmarked, and the owner couldn't be identified, so there was a number of - a number of things like that that occurred as well.

COMMISSIONER: But why were you getting into really long circular arguments about these matters, or Mr Smith says you said earlier several hours. You're the referee. You're there to give the yellow card or the red card. The players might want
5 to come and argue with you when you're giving out your cards, but you wave them away. You say, "This is my decision." I don't understand why this is happening.

MS DARGAN: Because we - well, I felt as though I didn't have the power - like, on a normal construction site, you would say, "This is happening. This is your notice. If
10 you don't like it, this is the way to appeal it." And that would be the end of it. On a CFMEU job, you felt as though you had to convince them so they wouldn't then turn around and report you up the chain and subject you to an investigation. So it was like trying to say - and you would explain something, and you would think that you were explaining it well, but then they'd just taking their argument right back to the
15 beginning and start again. There was - yeah, it was - it was really hard.

COMMISSIONER: We're running a bit over time, Mr Smith. Is this a convenient time?

20 **MR SMITH:** Yes, Commissioner.

COMMISSIONER: We'll come back at 25 to 12.

25 **<THE HEARING ADJOURNED AT 11.26 AM**

<THE HEARING RESUMED AT 11.35 AM

COMMISSIONER: Mr Smith.

30 **MR SMITH:** Thank you, Commissioner.

COMMISSIONER: Just before you recommence, I just wonder if I could ask the witness a question that follows on from some of the evidence that she's given. If the Commission obtained these documents which are the so-called shopping-list
35 complaints and the close-out documents for each of the so-called CFMEU complaints for the period of time that you were employed either as an inspector or a - what's the level above inspector? What was Mr Mutton and Mr Houston? What title do they have?

40 **MS DARGAN:** Operation managers.

COMMISSIONER: Operations manager. So during the period you were inspector and operations manager, that is, for the last 10 years or so, and you analysed that documentation, what patterns, in your opinion, would it show? And the reason I ask
45 you that is you might not have been in the body of the courtroom when Mr Wheelahan opened this case study, but his theory is that the proper purposes of an independently functioning workplace health and safety regulator were captured by

the CFMEU so that those powers were devoted to the industrial objects of the CFMEU.

5 That was what he said. I'm not saying that's your evidence. I'm not even saying that's what the Commission would necessarily find. What do you think an analysis of the records that I've just described would show as being the purpose for which these instructions from people above you in WHSQ were given?

10 **MS DARGAN:** They did do something like that later on, where there was a person who was responsible for collecting that information, because we were being advised to provide the outcomes of the CFMEU inspections or site visits. So I believe that there is data there that supports that.

15 **COMMISSIONER:** And what do you think that data would show?

MS DARGAN: I believe you'd be able to see the targeting of certain - certain PCBUs. You would see the targeting of certain principal contractors, and you would see that there was some - yeah, some political, commercial - some interest other than safety that it was in relation to.

20 **COMMISSIONER:** And what did these certain PCBUs have in common? What was their feature that made them the object of the targeting by the CFMEU, in your opinion?

25 **MS DARGAN:** Their lack of an enterprise bargaining agreement with the CFMEU and their employment of certain subcontractors that weren't favoured by the CFMEU.

30 **COMMISSIONER:** Employment of certain subcontractors that were or were not favoured?

MS DARGAN: Were not favoured. So they would be going to site to - for the particular purpose of finding these people, doing wrong, distracting - disrupting the work of the principal contractor until it didn't become tenable for them to keep them on site any more. It was easier to have them removed.

COMMISSIONER: And what was the nature of these so-called certain subcontractors that made them, in your opinion, the object of the CFMEU targeting?

40 **MS DARGAN:** That I am not sure.

COMMISSIONER: You said, in answer to an earlier question, three questions ago, I think you said there was some - my note is not very good - did you say some political reason or -

45 **MS DARGAN:** Yeah. What I thought was happening was that these - either the CFMEU had a preferred provider in that particular group, so like a steel-fixing firm,

for example. They would have a CFMEU-preferred, CFMEU-aligned person that they'd want to get into that company. That's what I believed was happening.

5 **COMMISSIONER:** And that preferred provider, was there a preferred provider throughout the supply chain or just in steel-fixing, in your opinion?

10 **MS DARGAN:** Throughout the - there was different ones. Like, I didn't keep a record of who they were, but certain - I think even down to asbestos companies. I think they had, like, a preferred company they preferred for that. I think there was, like, a traffic management preferred provider. So there was - there was different aspects, but I didn't keep a record of it. I just noticed again that the same names kept coming up on different requests for assistance.

15 **COMMISSIONER:** Now, if counsel assisting seeks these records, I guess they can go through the process of identifying whether there's a pattern and what those names are, but doing the best you can here, can you identify some of those names now?

20 **MS DARGAN:** It was a while ago, so it's all a little bit blurry. Queensland Steelfixing. I think they were - they were one.

COMMISSIONER: Is that one that was targeted or one that was preferred?

25 **MS DARGAN:** That was a targeted one. Then you've got your really obvious - obvious ones, like there's BMD. No, off the top of my head, I can't recall.

COMMISSIONER: Thank you. Mr Smith.

30 **MR SMITH:** Thank you, Commissioner. Just before the break, you were giving some evidence about how site interactions would occur when you attended these right-of-entry assistance requests and talking about your experience. Do you know whether other inspectors - or what the experience of other inspectors was?

35 **MS DARGAN:** Over the period, so from 2018 to 2023 and '24, there was a huge loss of inspectors. Like, so many people left the organisation. So when I say "experienced", I kind of refer to the people that were kind of there from at least that period on.

40 **MR SMITH:** Yes. Do you know what the other - what the experience of other inspectors was when they would attend these right-of-entry assistance requests?

MS DARGAN: As in their -

MR SMITH: How those - so you've given some evidence about how it was for you.

45 **MS DARGAN:** Mmm-hmm.

MR SMITH: Do you know or have you been told how it was for others?

MS DARGAN: I believe regardless of how many years you'd been in the inspectorate or what your background was, whether it was in industry or other regulatory bodies, it was stressful for all the inspectors.

5

MR SMITH: Yes. And did other inspectors tell you about their experiences?

MS DARGAN: Yes. We would - we would discuss what was going on and what was happening to who, yes.

10

MR SMITH: And what would they tell you about their experiences?

MS DARGAN: You'd hear about people that had come to site, and again, this sort of happened a long time ago, so you'd hear about conversations what happened on site and what the CFMEU said and what the outcome was. There was conversations constantly in the office. It was a topic of conversation that everyone wanted to talk about.

15

MR SMITH: And did they talk about - were there other topics of conversation that were that popular?

20

MS DARGAN: No, that pretty much dominated.

MR SMITH: And why was it that that topic of conversation, from your perspective, was so popular?

25

MS DARGAN: I guess there was a lot of disbelief. There was a lot of inspectors that didn't feel what they were doing was right, and it was creating feelings of - of anxiety around that work. But, yeah, everyone I believe that I worked with was - was unhappy, unsure and anxious about working with the CFMEU.

30

MR SMITH: All right. And you mentioned a little bit earlier in your evidence pressure from CFMEU officials to issue notices?

35

MS DARGAN: Correct.

MR SMITH: Do you recall that?

MS DARGAN: Yes.

40

MR SMITH: Would you bow to that pressure?

MS DARGAN: I wouldn't, no.

45

MR SMITH: Did you ever bow to that pressure?

MS DARGAN: No.

MR SMITH: Do you know whether anyone else did?

5 **MS DARGAN:** There were certain inspectors who - like, I was lucky, in North
Brisbane, that I had a supportive team of inspectors around me. Down on the Gold
Coast and even, like, Mount Gravatt/Logan to a certain extent, their manager was
somebody who followed what was said by the director. So basically a good public
servant would do exactly what - what they were told, and then it would go down to
10 their staff. So the Gold Coast inspectors, some of them, were more likely to - to do
what they were told initially, until they realised that, "Hang on, this isn't right," and
then they'd kind of change camp.

So over that period of time, there were some people that went through that realisation
curve: "This is my job. This is what I do. Hang on a minute. Should I really be doing
15 this?" Start hearing what colleagues have to say and - sorry, I started chatting and I
forgot what we were talking about.

MR SMITH: So I think from your answer - I might ask you a different question. So
20 who were the inspectors that you're referring to in your answer, from down south?

MS DARGAN: Okay. So Chris Mutton is the operations manager, and there were
inspectors like John Azcune, Chris O'Donnell, and earlier on, Travis and Anzac, who
would be more compliant with what their management wanted them to do.

25 **MR SMITH:** All right. And can you recall, sitting there now, Travis' surname?

MS DARGAN: Dungey.

MR SMITH: And Anzac?

30

MS DARGAN: Te Oka.

MR SMITH: All right. And this perception that you had that you just explained that
35 they'd issue notices, what was the basis of that perception? How did you form it?

35

MS DARGAN: It was, again, inspectors talking amongst themselves. It would be,
"Oh, did you hear about that job wherever, like, down the coast," and people would
talk about what happened and what the inspectors did.

40 **MR SMITH:** All right. Now, can I ask you, then, if you held the line when you were
having one of these discussions with the CFMEU officials about a notice that you
referred to earlier, what would the CFMEU officials do if you continued to refuse to
issue the notice?

45 **MS DARGAN:** One of them would walk away, make a phone call, and then we
would get a phone call from our manager.

MR SMITH: And when the official walked away and made a phone call, would you hear the phone call?

MS DARGAN: Wouldn't hear the phone call, no.

5

MR SMITH: How would you know that they were making a phone call?

MS DARGAN: Because they were the only person that walked away and were able to give the information that the operations manager knew when they called us.

10

MR SMITH: All right. And how long after the union official had walked away would you typically get a phone call from the operations manager?

MS DARGAN: Usually within half an hour, say. It wasn't that long.

15

MR SMITH: All right. And what would be nature of the phone call from the operations manager?

MS DARGAN: It would be along the lines of, "What's going on? Why aren't you writing that notice?"

20

MR SMITH: All right. So which operations managers did you receive phone calls of that nature from?

MS DARGAN: That was primarily Mark Houston.

25

MR SMITH: All right. And when you say "writing that notice", what was the nature of that notice that they were referring to? What do you mean by that?

MS DARGAN: Well, one example was I was at a site round about Woolloongabba. It was a Woolloongabba site, and we were there to investigate - I think it had something to do with the slip form and the chains. Yeah, and we got on there, and of course the first information we're going to want is engineering to have a look at why they've come to the decision to put those chains on. And the engineer was coming in. There wasn't any work happening at the time. There was no workers on the formwork deck.

30

35

And we looked at a few other things and then went and asked for a break, because we'd been on there for some considerable amount of time by then. Everybody agreed to the break. So the other inspector and I went to a coffee shop and started making our notes and things like that, and that's when we - we got a call from Mark Houston.

40

MR SMITH: And what was the substance of that telephone call?

MS DARGAN: He wanted to know why - what we were doing, why we weren't issuing the notice in relation to the jump form.

45

MR SMITH: All right. And was that a notice that the CFMEU wanted?

MS DARGAN: Yes.

5 **MR SMITH:** Was there any other way that you know of, apart from a call from the official, that Mr Houston could have known what it was, what notice the CFMEU wanted?

MS DARGAN: Not to my knowledge.

10 **MR SMITH:** All right. And, for example, would there be any reason for the builder to ring and talk to Mr Houston about that that you can think of?

MS DARGAN: No.

15 **MR SMITH:** And how would those conversations start? Sorry, I'll withdraw that and I'll ask you a different question. What was the tone of those conversations?

20 **MS DARGAN:** They - it wasn't a "Hi, how are you going" phone call. It was like a "What's going on there? Why aren't you doing this? Why haven't you?" So they were of that - of that nature.

MR SMITH: All right. And leaving aside that particular event, which I might ask you a little bit more about later, were there other occasions -

25 **COMMISSIONER:** Which event is this, sorry?

MR SMITH: The event that Ms Dargan was just talking about with the slip form.

30 **COMMISSIONER:** And where was that?

MS DARGAN: It was at Woolloongabba. I think it was a Tomkins site from memory.

35 **COMMISSIONER:** Tomkins site at Woolloongabba. Is that the one referred to paragraph 60 of the statement?

MR SMITH: There or thereabouts, Commissioner.

40 **COMMISSIONER:** Perhaps be a bit more helpful than that. Is it the one referred to in paragraph 60 or not?

MR SMITH: It is the one referred to in paragraph 60, yes.

45 **COMMISSIONER:** Thank you.

MR SMITH: Can I come back to that incident in a moment. There's just some other things I want to close off before I ask Ms Dargan about that.

5 **COMMISSIONER:** I was just wanting to know what the incident was; that's all.

MR SMITH: Yes. That's the one. Now, these phone calls, how would they make you feel in relation to whether you should issue the notice or not?

10 **MS DARGAN:** It - it felt like pressure. It felt like - like, being on these sites was stressful in and of itself, and then to get a call from - from your manager, it felt like you were constantly doing things wrong. It made you feel - you started second-guessing yourself. You lost your - lost a lot of confidence in that process.

15 **MR SMITH:** Yes. And is there any reason that if your manager, for example, Mr Houston, had thought the notice should be issued, that he couldn't have done it himself?

20 **MS DARGAN:** He could have come down to site and written it himself, but I don't think he would have found sufficient evidence to do so.

MR SMITH: And did that ever happen?

MS DARGAN: No.

25 **MR SMITH:** Now, can I just ask that paragraph 49 of Ms Dargan's statement be blown up on the screen.

30 **COMMISSIONER:** Just before you leave that, you gave some evidence a little while ago that the basis upon which you issued a notice, a pre-condition of which was forming a belief, I think you called it a reasonable belief, about some event, maybe likelihood of serious harm or whatever the test was that you applied, you would base that on the evidence, the people you'd spoken to at site, what you had observed at site. I think you also referred to work plans at site. And you analysed all that evidence and made some decision to issue a notice or not.

35 **MS DARGAN:** Correct.

40 **COMMISSIONER:** How would Mr Houston be in a position, not having visited the site and seen what you'd seen, to give you any instruction as to whether or not a notice should be issued?

MS DARGAN: I assume he was acting on directions from - from his boss. Because that's not something that - that you would normally do at all.

45 **COMMISSIONER:** Well, how could you do it at all?

MS DARGAN: Well, you couldn't. Like, unless you've got the evidence, you cannot write the notice.

COMMISSIONER: Sorry, Mr Smith.

5

MR SMITH: Thank you, Commissioner. Now, were there occasions when after those telephone calls from operations managers you would change your mind and issue a notice?

10 **MS DARGAN:** No.

MR SMITH: If you didn't issue a notice, were there any other steps that an operations manager might take to get a notice issued?

15 **MS DARGAN:** What would normally happen if they were unhappy with the inspectors that had attended site, they'd pull you off site and send other inspectors that would write the notice.

20 **MR SMITH:** All right. And do you have a recollection now about how often that might happen?

MS DARGAN: It - how often it happened to me? I think it was only a couple of times, but it happened more often to other inspectors.

25 **MR SMITH:** And how do you know it happened to other inspectors?

MS DARGAN: Again, through conversations. Because inspectors would be pretty ropeable if they were pulled off site and somebody else sent in to complete their work.

30

COMMISSIONER: When you said "they" would pull them off site, what did you mean by that?

MS DARGAN: Management. So operations managers, usually.

35

MR SMITH: And to your knowledge, when an inspector had been pulled off site and someone else was sent, were there particular inspectors that were this be sent to those sites?

40 **MS DARGAN:** Yes. The - as the group of inspectors, we felt there were certain inspectors that would be sent if certain notices were required to be issued.

MR SMITH: And who were those inspectors?

45 **MS DARGAN:** That was Chris O'Donnell, John Azcune and at the earlier stages, Anzac and Travis.

MR SMITH: And you say the earlier stages. Did the approach of Mr Dungey and Mr Te Oka -

5 **COMMISSIONER:** Do I have to take a note of those names or are they in the statement?

MR SMITH: They're in the statement, Commissioner. They're at paragraph, so you have it -

10 **COMMISSIONER:** Is that 15?

MR SMITH: 15.

15 **COMMISSIONER:** Travis Dungey, John Azcune, Chris O'Donnell and Anzac Te Oka. Your statement there says that these were - the inspectors who remained working for Mount Gravatt would simply do as were told by management. Were there inspectors who would simply do as they were told by management working from the Brisbane, the North Brisbane construction team?

20 **MS DARGAN:** Not - no. The Brisbane team were pretty - pretty adamant that - we also had a really good health and safety representative who would say, "No, if you don't believe, you do not write a notice." So we kind of had that - that support there, whereas the Mount Gravatt/Gold Coast team, they lost a lot of inspectors around that time. So they had a few of the - but most of them were new, inexperienced people
25 who were doing what they were told because they were told to do the job and didn't understand that it wasn't right.

COMMISSIONER: And who was the health and safety representative at the - in the North Brisbane construction team?

30

MS DARGAN: That was John Barber. And Frank D'Allura. He was our union representative. He was also very instrumental in helping us understand our rights and things like that.

35 **COMMISSIONER:** And he was in the North Brisbane construction team as well?

MS DARGAN: Correct.

40 **MR SMITH:** Just picking up on the answer you just gave the Commissioner about Mr D'Allura being a union rep, which union was that?

MS DARGAN: The Together Union.

45 **MR SMITH:** Now, a little bit earlier in your evidence, you spoke about the issue of notices by the four inspectors that you mentioned, and you said, I think, something like "the early stages" in relation to Mr Dungey and Mr Te Oka. Can you tell the Commissioner what you mean by "the early stages"?

MS DARGAN: I believe that they sort of started around that 2018 stage. So at that stage, the senior inspector or the lead inspector would have been John Azcune. So he would have been providing them with mentoring and support in that space. So they were learning off him. So they were learning to do work as he did work, so it was - if that makes sense.

MR SMITH: And so did their practice, to your knowledge, change subsequently about whether they'd issue notices or not?

MS DARGAN: I - I believe that as time progressed, they realised what was - what was going on, what was happening, and changed their position.

MR SMITH: All right. Mr Operator, can I just ask that paragraph 50 of Ms Dargan's statement be blown up on the screen. Now, Ms Dargan, do you recall attending a site at the University of Queensland on 20 November 2019?

MS DARGAN: Yes, I do.

MR SMITH: And where was that?

MS DARGAN: That was at the University of Queensland, the building of the new Andrew Liveris Building.

MR SMITH: And do you recall whether you attended with anyone else?

MS DARGAN: Yes. Again, it was John Barber and I. He was my mentor. We did a lot of jobs together.

MR SMITH: And was there a principal contractor on that job?

MS DARGAN: It was a Hansen Yuncken site.

MR SMITH: And from your answers, can the Commissioner take it they'd been engaged to build the Andrew N. Liveris Building?

MS DARGAN: Correct.

MR SMITH: Do you recall what it was that you and Inspector Barber were sent there for?

MS DARGAN: Yes. There was a dispute about the health and safety representative that had been appointed. That one, we were going there to take statements and make a decision as to whether the Act had been followed in relation to the appointment of a health and safety representative.

MR SMITH: And apart from the principal contractor, was any other party on site?

MS DARGAN: Yes. The union was there. So the - the person who wanted to be the HSR, and the union person was there with them.

5 **COMMISSIONER:** I just didn't follow why you were there. You were there to do what with the election?

10 **MS DARGAN:** It was sort of to solve a conflict. There was a person that wanted to be the HSR, the health and safety rep, but it was - it was said that due process hadn't been followed. Like, they have to be nominated, they have to be elected to represent a certain work group. So there's steps that need to be followed. So we were there to see if those steps had been followed and if he'd been legally elected, I guess.

15 **COMMISSIONER:** And who had - who had - I take it the union had - sorry, the CFMEU had asked you to attend to resolve this issue?

MS DARGAN: I actually think that might have been Hansen Yuncken's request.

20 **COMMISSIONER:** You didn't mention Hansen Yuncken as one of those companies that were the subject of many complaints. You mentioned Tomkins, Morris Property Group. You also mentioned the Queensland Steelfixing and BMD. Was Hansen Yuncken a particular -

25 **MS DARGAN:** Yes, they showed up a lot at one particular point. Yes.

COMMISSIONER: At one particular point in time or one particular point in location?

30 **MS DARGAN:** One particular point in time.

COMMISSIONER: At all locations?

35 **MS DARGAN:** We just had the Hansen Yuncken site at University of Queensland. I'm not aware of where else they were based in the state at that time.

COMMISSIONER: When you say "they" showed up, what do you mean by that?

MS DARGAN: Sorry, I -

40 **COMMISSIONER:** Who showed up? They showed up a lot at that time, you said.

MS DARGAN: Sorry, Hansen Yuncken were popping up on the radar.

45 **COMMISSIONER:** Sorry. Thank you.

MR SMITH: Now, when you attended that site, I think you mentioned in your evidence a moment ago that it was a dispute about a HSR election; is that right?

MS DARGAN: Correct.

5 **MR SMITH:** And do you recall whether Hansen Yuncken had a particular position on that election?

MS DARGAN: I believe they thought that it hadn't - he hadn't been elected correctly.

10 **MR SMITH:** All right. And did you mention there was someone from the CFMEU on that site as well?

MS DARGAN: Yes, they were there with the HSR representative.

15 **MR SMITH:** And do you remember who it was from the CFMEU?

MS DARGAN: I think it was Andrew Blake, from memory.

20 **MR SMITH:** All right. And did he have a position?

MS DARGAN: He believed that - that the HSR had been legitimately elected to be a representative for the workgroup.

25 **MR SMITH:** Can you now remember who the HSR was?

MS DARGAN: Yeah. Completely gone out of my head.

30 **MR SMITH:** That's okay. I might just ask you that question again later, and if you remember it you can let the Commissioner know.

MS DARGAN: Yeah. I will remember it. It's there.

MR SMITH: Do you know whether the HSR had any other position on site?

35 **MS DARGAN:** He'd recently come on board as a concreter, I believe.

MR SMITH: And apart from being a concreter, do you recall whether he had any other role?

40 **MS DARGAN:** As part of my inquiries, I did look him up, and he had been a member of the CFMEU and involved in union things in New South Wales, I believe.

MR SMITH: All right. Can I ask you then what inquiries you undertook on site?

45 **MS DARGAN:** Took a statement. So that's sort of the start of any inquiry. So sat down and asked a series of questions around the elements that need to be satisfied to become a HSR.

MR SMITH: And who did you take that statement from?

MS DARGAN: Lorenzo White. That's the name.

5

MR SMITH: And was Lorenzo White the person that I asked you about before who wanted to be elected as - or wanted to be - or claimed to be the HSR?

MS DARGAN: Correct.

10

MR SMITH: All right. And did you speak with anyone else about the election process? Did you take any other statements?

MS DARGAN: I don't - we spoke to Hansen Yuncken, and I believe we discussed certain documents, but I have no recollection of that at the moment.

15

MR SMITH: And when you'd completed your inquiries, did you form a view about whether that gentleman had been validly elected?

MS DARGAN: No. At that stage, we - we took the statement. We were going back to the office. Normally you do a bit of a precis for the evidence. Went back to the evidence and we were told not to proceed anything more, to complete my precis and don't do anything more on it. And later I found that they'd sent John Azcune and Chris O'Donnell out to the Hansen Yuncken site to deal with the issue.

20

25

MR SMITH: And how did you find out that out?

MS DARGAN: Because Chris O'Donnell came back into the office all happy about what he'd done.

30

MR SMITH: And do you recall now what Mr O'Donnell told you?

MS DARGAN: I can't recall the exact words, but from that, I believe that he had made some kind of decision in their favour, like in the HSR's favour, and I was kind of - I went a little bit - I was just like, "I can't believe that. Like, what evidence did you actually get?" So, yeah, it got a little bit heated.

35

MR SMITH: And do you recall whether you got a response to that?

MS DARGAN: I can't recall what the response was, no.

40

MR SMITH: Was there any reason about - sorry, was there any reason why you would have been incapable of completing that investigation with Mr Barber?

MS DARGAN: No.

45

COMMISSIONER: You said "we were told", referring to you and Mr Barber, to complete the precis and do nothing further. Who were you told about that by?

5 **MS DARGAN:** It would have only come from our operations manager at the time.
So -

COMMISSIONER: Who was that?

10 **MS DARGAN:** What date?

COMMISSIONER: In your statement, it says 20 November 2019.

MS DARGAN: 2019 would have been Nicholas Drapes.

15 **MR SMITH:** All right. Now, had you requested the assistance of any other inspector to help you conduct this investigation?

MS DARGAN: The one into Hansen Yuncken?

20 **MR SMITH:** Yes.

MS DARGAN: No.

25 **MR SMITH:** Had you indicated to Mr Drapes or anyone else that you didn't have the expertise to complete this work?

MS DARGAN: Not at all.

30 **MR SMITH:** Do you know or do you have a view about the reason that Mr O'Donnell and Mr Azcune were sent to that site?

MS DARGAN: Only that somebody was unhappy with the way they thought we were going or the questions that were being asked in the interview.

35 **MR SMITH:** All right. And can I just ask you whether you know the nature of the notice that Mr O'Donnell issued.

40 **MS DARGAN:** I've went back and checked CISr at the time. At the time, I thought he'd written a notice. That's my recollection. But when I went back and had a look, I couldn't see any notice having been issued against that particular event.

MR SMITH: All right. Now, can I -

45 **COMMISSIONER:** What does that mean, sorry? I don't follow the implication. Why would you need to issue any notice if Mr Lorenzo White was purporting to be the HSR and Mr O'Donnell had decided to take his side? What notice would you need?

5 **MS DARGAN:** Yeah. That's a good point. No, we wouldn't require a notice. I guess, in my head, because of the - because it's been so long, I - you get used to people taking action when they - writing notices when they shouldn't, and my head went to that. But yes, you're correct. At this time, it was actually the - if he says that he is a duly elected HSR, yes, you're right, no notice would be required.

10 **COMMISSIONER:** If Mr O'Donnell took the view that he was, in fact, the duly elected HSR.

MS DARGAN: Yeah, the process would have been followed correctly and no notices would have been required.

15 **COMMISSIONER:** In your experience, and it might be extremely limited, how do health and safety representatives - how are elections for health and safety representatives conducted on construction sites in Brisbane, and how have they been over the last 15 years?

20 **MS DARGAN:** It's got to do with the nomination of the work group. So people who are doing the same type of work or aligned work, they self-nominate. So the employer can't pick somebody; the work group has to nominate somebody. If they're uncontested, they get the job. If there's more than one, it will go to an election. And that's all I can - those are the steps that I can recall off the top of my head. But the fact that, yeah, they need to be elected and they represent a work group.

25 **COMMISSIONER:** And was it common in your 11 years' experience as an inspector and operations manager in the construction team for there to be disputes raised about the election of health and safety representatives on construction sites in Brisbane?

30 **MS DARGAN:** That wasn't a common thing we dealt with, no.

COMMISSIONER: And do you have any insight as to why that was the case?

35 **MS DARGAN:** Why it wasn't normally a problem?

COMMISSIONER: Yes. You've given evidence there were lots of issues about so-called right-of-entry assistance.

40 **MS DARGAN:** Mmm-hmm.

45 **COMMISSIONER:** And you've given your view, opinion, about why these right-of-entry assistance complaints were made by the CFMEU. Do you have any view as to why there were few attempts made to involve the inspectorate in disputes arising about the election of health and safety representatives?

MS DARGAN: Usually because it's quite a simple - simple process. It's - it's not a complicated process. Someone puts their hand up and wants the job. The employer must provide them training within a certain amount of time. So I think I can recall one instance where someone put a complaint in because they hadn't received their training within the required time. So it's not something that really would come to us; that would be sorted within the workplace.

COMMISSIONER: And what was the issue, as far as you can recall - it's almost seven years ago now - that arose at the Hansen Yuncken build of the Andrew Liveris Building in November 2019 about the election of this particular health and safety representative, a recently employed concreter, Mr Lorenzo White?

MS DARGAN: I think he was put - like, it was more like he was put in the role by the CFMEU as opposed to being someone who'd been elected by the work group to represent their interests.

COMMISSIONER: And were you able to find any evidence either way as to whether he had been appointed or elected?

MS DARGAN: I don't believe that the election process had been followed.

COMMISSIONER: And how was it, in your opinion, that Mr O'Donnell was able to deal with this issue in circumstances where it was your view that the election process had not been followed?

MS DARGAN: I believe that he accepted the evidence of the CFMEU and Lorenzo White that it had been validly conducted.

COMMISSIONER: And do you know what that evidence was?

MS DARGAN: I believe it was - no, it's - it's too long ago, sorry.

COMMISSIONER: If we got the records of this incident, is it possible that it would be there?

MS DARGAN: I've had a look at the records, and there isn't a lot of information there, other than the precis that I did. There isn't a lot that was added.

COMMISSIONER: So not only did Mr O'Donnell not issue a notice, which is explicable, there's no other information as to the basis upon which he dismissed the complaint?

MS DARGAN: No.

COMMISSIONER: Is that typical?

MS DARGAN: Not usually, no.

COMMISSIONER: And why not?

5 **MS DARGAN:** Because it's a requirement of an inspector's job to ensure that all the information is put into the system within a certain timeframe, and, with the close-out procedure, it then needs to be checked by somebody. However, when he went to site, he did it as an advisory, rather than a complaint or a request for assistance, and with an advisory it doesn't need to be closed out by a manager or an allocator.

10 **COMMISSIONER:** And was that the reason - I don't have a good record of what your evidence was, but you said you were somewhat upset with Mr O'Donnell. Was that the reason you were upset with him or some other reason?

15 **MS DARGAN:** No, I was upset because we'd gone to site, we'd taken all the statements, we had this information, we were making progress, and then we just got pulled and he'd been sent off. And whatever he told me was basically, "Yes, we've allowed what's going to happen." And that's when I got upset, because I just didn't know how he could come to that conclusion.

20 **COMMISSIONER:** Upset at whom?

MS DARGAN: Mr O'Donnell.

25 **COMMISSIONER:** And do you recall what you said to him?

MS DARGAN: I don't recall. It sticks in my mind, because you don't normally get, like, angry in a work setting. But yeah, I was really angry.

30 **COMMISSIONER:** Do you recall the gist of what you said to him?

MS DARGAN: No, because I don't recall think I let him get a word in.

COMMISSIONER: Sorry?

35 **MS DARGAN:** I don't think I let him get much of a word in.

COMMISSIONER: Sorry, Mr Smith.

40 **MR SMITH:** Thank you, Commissioner. Now, did that incident impact in any way on your attitude towards your role as an inspector?

MS DARGAN: No. I still, like, believed in - in what I did. It was just like another - another straw in the "I hate dealing with the CFMEU" box of straws.

45 **MR SMITH:** All right. Can we just go, then, Mr Operator, please, to paragraphs 58 and 59 of Ms Dargan's statement. Now, did these -

COMMISSIONER: Could I just ask, Mr Smith, have the records been sought of this incident?

MR SMITH: No, they haven't, Commissioner.

5

COMMISSIONER: Sorry. I cut you off. You were going where?

MR SMITH: Paragraphs 58 and 59 of Ms Dargan's statement. Ms Dargan, did these cumulative matters that you've given evidence about have an impact on your mental health?

10

MS DARGAN: They definitely did.

MR SMITH: And when did that start having an impact?

15

MS DARGAN: It was something that happened gradually. It was sort of the progress of - it was like being hyper-aware every time you went to site. The knowing - and it wasn't even so much dealing with, like, the CFMEU and their arguments and the aggression personally for me; it was more what happened afterwards. So it was the dealing with our internal people that stressed me out more.

20

MR SMITH: Were there any particular individuals that dealing with would stress you out particularly? That's a very bad question, but I think you might understand what I mean.

25

MS DARGAN: Yeah. I found it really hard working with Mr Houston.

MR SMITH: All right. And do you recall when you noticed the effect it was having on your mental health?

30

MS DARGAN: It was - it was a gradual decline. Like, you sort of find yourself getting teary for - for no reason. Like, you start feeling angry, and rather than being able to articulate how you're feeling and your frustration comes out in - in tears, which distressed me, working in a primarily male environment, but it actually saved me a bit of trouble, because a lot of my peers, they would react aggressively. They'd go, "This is wrong," and then they'd find themselves being disciplined for inappropriate behaviour, whereas because I just, like, had exactly the same reaction but mine came out in tears, I was sort of just gone, "There, there."

35

MR SMITH: And did it have any effect on your home life?

40

MS DARGAN: Absolutely. I was exhausted. It was, believe it or not, worse than sitting in this witness box, as far as stress goes. It was day after day, you came home and you were just so mentally drained that I would basically go home, sleep, wake up, pick the kids up from swim training or whatever I was doing and cook dinner and go straight back to bed. My whole life was just sleeping and - and work.

45

MR SMITH: And did that have an impact on your relationship with your family?

5 **MS DARGAN:** Definitely. Those - yeah, especially because my daughter was sort of years 7 to 9, around that time, at a time when girls really need their mums, and I felt as though I wasn't there for her as I should have been.

MR SMITH: Now, on 21 June 2021, did you attend a CFMEU request for assistance at Woolloongabba for Tomkins Commercial?

10 **MS DARGAN:** Yeah, this is the one we were talking about earlier.

MR SMITH: Talking about a little bit earlier. Do you recall who you attended that site with?

15 **MS DARGAN:** Yeah, William Harris.

MR SMITH: All right. And do you recall who made the request for assistance that you attend that site?

20 **MS DARGAN:** Luke Gibson and Dennis Mitchell.

MR SMITH: All right. And who are Mr Gibson and Mr Mitchell?

25 **MS DARGAN:** CFMEU officials.

MR SMITH: All right. And what was the nature of, as best you can recall, your interactions with Mr Gibson and Mr Mitchell on that day?

30 **MS DARGAN:** It was the usual confrontation right from the - the word go. So that one, there wasn't an issue with them being on site. We met up with them around about where the hazardous chemicals were kept, and they were unhappy with how that was dealt with, and it continued around site.

35 **MR SMITH:** All right. And when you were going around site, was there anyone from the principal contractor there?

MS DARGAN: Yes, there was.

40 **MR SMITH:** Do you recall who that was?

MS DARGAN: I don't recall their name, sorry.

MR SMITH: All right. Now, do you recall how long you stayed on site?

45 **MS DARGAN:** A significant amount of time. We were - we were there for long enough that we decided to have a break, so I'm not too sure. Four, four or five hours.

MR SMITH: All right. And how did that decision to have a break come about?

5 **MS DARGAN:** We were up on the - up on the top deck, and I think Bill might have said, "Is it time for a break?" and the - whoever was there for the principal contractor agreed, and the union official agreed that we could have a break.

MR SMITH: And what was the nature of the break that you took?

10 **MS DARGAN:** Just a walk across the road and write up some notes and have a drink.

MR SMITH: All right. Do you recall where you took that break?

15 **MS DARGAN:** Yep, it was just a little cafe right across the road at the time.

MR SMITH: And were you contacted by anyone during your break?

MS DARGAN: Yes, we were.

20 **MR SMITH:** And who was that?

MS DARGAN: Mr Houston.

25 **MR SMITH:** And do you recall what Mr Houston said to you?

MS DARGAN: Again, it was words to the effect of why did we leave site when there was risk there, and issues about writing a notice. I can't recall the exact words.

30 **MR SMITH:** All right. And did you tell him all about the agreement to take a break you mentioned earlier?

35 **MS DARGAN:** I did, and we told him that there was nobody working on the form deck, so there couldn't be any imminent risk, that we were just waiting for the engineer to come to site to discuss, I think, yeah, the chains.

MR SMITH: And did he have anything that you can recall to say in response to that?

40 **MS DARGAN:** I can't - I can't recall. I just remember how I felt, just that panicky feeling of, "Oh no, I'm going to be in trouble again," kind of feeling.

MR SMITH: And do you recall what happened after that phone call ended?

45 **MS DARGAN:** We - I assume we returned - sorry, I got this out of the notes, but I haven't -

MR SMITH: When you say "notes", what are you referring to?

MS DARGAN: CISr.

5 **MR SMITH:** Okay. So are they the sorts of - and are those notes the sort of summary of the matter that's recorded in CISr you spoke about earlier?

MS DARGAN: Correct, yes.

10 **MR SMITH:** All right. Now, could I ask you, then - and this is at paragraph 62 of your statement -

15 **COMMISSIONER:** Could we just go back to the incident? Can you just describe the incident in your own words? I don't - it's my lack of knowledge, but I don't really know what a glide form was and what the chains do and - can you just explain what the issue was that you were investigating?

MS DARGAN: Yeah. They had a few issues with the slip form. So it had something -

20 **COMMISSIONER:** So what's a slip form?

MS DARGAN: It's like a formwork deck that continually moves, rather than a jump form that you do one level, wait for it to dry, jump up to the next. So - yeah. So it had something to do with the chains, and I can't remember exactly what the point was, but that was what they were - were saying was incorrect.

25 **COMMISSIONER:** And what was the problem with the chains in terms of the use of the slip form? Did it mean that there was - the slip form would jump up, jump down?

30

MS DARGAN: No, I think it was the correct - if it contained the correct weight, so the weight of the form and the chains. So - it had something to do with that, to my recollection. But in situations like that, obviously we're not engineers. We rely on - on what the engineer's reports say as to whether the chains are suitable for the task at hand.

35

COMMISSIONER: And why was it that you thought there wasn't - what was your word - an imminent risk at that stage?

40 **MS DARGAN:** Because there was no workers in the vicinity. So if the - if the chains had done anything, they weren't going to injure anybody. But there was no indication that there was going to be a failure or anything like that.

45 **COMMISSIONER:** And one of the things you say in your statement is that you - you obtained Mr Gibson's agreement to having a break after being on site for four hours. Why was it necessary to obtain the agreement of Mr Gibson, who was a CFMEU official, to have a break?

MS DARGAN: That's what we'd been instructed by Helen, that we weren't just to leave site. We were to come to an agreement with the CFMEU before we took a break or left site.

5

COMMISSIONER: And in your statement, you say you received a phone call from Mr Houston who advised that "we'd left the site with imminent risk present". What position was he in, if any, to make that assessment?

10 **MS DARGAN:** Nothing. He's just relaying what he's been told.

COMMISSIONER: And in your opinion, what was he told and by whom?

15 **MS DARGAN:** It could have only been from the CFMEU officials or from - from Tomkins, and it certainly wasn't from Tomkins.

COMMISSIONER: And what did you say to him?

20 **MS DARGAN:** Basically what we've told - what we've said here, that there was no imminent risk, that we're getting the information we need, we're - we're taking a break. But, yeah, I can't recall it word for word. It's far too long ago.

COMMISSIONER: And is that the sort of information that would be in the notes at the level of detail we've just talked about?

25

MS DARGAN: I doubt I would have recalled that, because it didn't add anything to what we were there to do. Yeah. So I very much doubt that I would have put that in my notebook notes.

30 **COMMISSIONER:** Mr Smith.

MR SMITH: Thank you, Commissioner. Now, I'm just going to ask you about some things that are in paragraph 62 of your statement. Do you recall, on 22 June 2021, attending a CFMEU request for assistance at Minicon Construction?

35

MS DARGAN: Yes, I was there with Inspector Frank D'Allura.

MR SMITH: Do you remember now who was - firstly, was anyone there from the CFMEU?

40

MS DARGAN: Yes.

MR SMITH: Do you remember now who that was?

45 **MS DARGAN:** No, I don't, sorry.

MR SMITH: All right. And did you - having had the experience that you had on 21 June 2021 that you've just given evidence about, did you particularly want to be at another CFMEU request for assistance the following day?

5 **MS DARGAN:** Absolutely not.

MR SMITH: All right. And while you were there, did you get a telephone call from someone?

10 **MS DARGAN:** Yes, I received a telephone call from Mark Houston.

MR SMITH: And do you recall what Mr Houston told you?

15 **MS DARGAN:** That there'd been a complaint about our behaviour on site the previous day and there was going to be an investigation.

MR SMITH: Did he give you any more information about the nature of the complaint?

20 **MS DARGAN:** At that point I just became really upset, and, yes, I - he wasn't getting more out of me. I was pretty upset by that point.

MR SMITH: Sorry, Commissioner, were you about to ask something?

25 **COMMISSIONER:** No, no.

MR SMITH: All right. And when you say you became upset, what do you recall what your particular reaction was?

30 **MS DARGAN:** Yeah, I'd gone out into the lobby to take the call, because at the time, we were in the meeting room. And, yeah, I just burst into tears, and I was shaking and sobbing. It was - it was just a real visceral reaction to that phone call.

35 **MR SMITH:** All right. And what did you do, having received that call and having had that reaction? What did you then do?

40 **MS DARGAN:** Frank came out to see if I was okay, and I said "I've had enough. I can't do this any more." And he sort of calmed me down a bit, walked me out to my car, said, "Look, are you okay to drive?" And I went, "Yep, I'll be fine," and I went home.

MR SMITH: And when you say that you said you can't do this any more, what was the "this" that you couldn't do any more?

45 **MS DARGAN:** It was kind of the whole thing, and, like, I'm not the kind of employee that finds myself in trouble, like, I - I've been very fortunate that I've never, up until this point, you know, been investigated or been in any trouble in the

workplace. So this - these constant - it was just too much. I - I just went, "Nope, I can't do this any more."

5 **MR SMITH:** And once - I think you said Inspector D'Allura asked you if you were okay to drive. Is that right? Or okay?

MS DARGAN: Correct, yeah. Kind of both. He wanted to make sure that I was okay before he let me drive off home.

10 **MR SMITH:** All right. And did you subsequently drive off home?

MS DARGAN: Yes, I did.

15 **MR SMITH:** And how long later was that?

MS DARGAN: Pretty much straightaway.

MR SMITH: All right. And what did you do when you got home?

20 **MS DARGAN:** Went to bed, under the blankie and just cried.

MR SMITH: Did you return to work the next day?

25 **MS DARGAN:** No, I took some time off. I went to see my GP at that point and had a discussion and decided that it would be best to take some time off work.

MR SMITH: And how long did you end up taking off work?

30 **MS DARGAN:** I was off work for three months.

MR SMITH: Did you see your GP again during that period?

MS DARGAN: I saw my GP and I also visited a psychologist to - to help me.

35 **MR SMITH:** And did the psychologist tell you anything about your condition?

40 **MS DARGAN:** Yes: I had anxiety and depression. She said that I was suffering, like, what's called a moral injury - apparently it's common in nurses and police officers - when what you feel you're doing is - is wrong and you just constantly have to keep doing something that's against what you believe in, day after day. It grinds you down.

45 **MR SMITH:** And what were the things - sorry, were there things that you were being required to do that went against what you believed in?

MS DARGAN: Yes.

MR SMITH: And can you tell the Commissioner what they were?

5 **MS DARGAN:** I believed that we were - we were forming an alliance, basically, with the CFMEU to - to follow their agenda. So what - what we were doing, the principal contractors we were targeting, it - it just - it wasn't right. It wasn't proper, and we shouldn't have been doing it.

10 **MR SMITH:** And what about - this might seem like a silly question, but what about forming an agenda with the CFMEU did you feel was not right?

MS DARGAN: I believed that they weren't interested in the health and safety of their workers; they were interested in other agendas that they had going on that I wasn't privy to.

15 **MR SMITH:** And what were the nature of those other agendas? Sorry, did you say you weren't privy to?

MS DARGAN: I weren't - I obviously didn't have a direct line to the CFMEU.

20 **MR SMITH:** No.

MS DARGAN: But it was, as I spoke of earlier, things to do with enterprise bargaining agreements, preferred contractors, that type of thing.

25 **MR SMITH:** And can you just explain which aspects of following the CFMEU agenda had a particular impact on you? So what were the things that you were forced to do that had an impact, if anything?

30 **MS DARGAN:** I believe it was the - the following the CFMEU around and being perceived as under their thumb, doing their work. I felt that people felt that I didn't have any personal integrity for - for doing that. That was - that was probably the main thing with the CFMEU, and also the subsequent treatment at the workplace for CFMEU-related jobs and being - being investigated and being questioned for - for those type of things that - that never happened out on other jobs that aren't CFMEU
35 jobs.

MR SMITH: All right. Now, I think that you said you were on sick leave for about three months; is that right?

40 **MS DARGAN:** Correct.

MR SMITH: And did you subsequently return to work after your sick leave?

45 **MS DARGAN:** Yeah, I had a graduated return-to-work program that my doctor signed off with the provision that I don't do CFMEU work.

MR SMITH: Now, you indicated - just before we come to that, you indicated that you took sick leave. Did you consider at any point filing a WorkCover claim?

5 **MS DARGAN:** I understood that that was an option available to me, but I was also in a position where the whole management structure was denying anything was wrong, and that we were doing what we should do and we were following the law, and I understood that - like, if you have a condition that's arisen out of reasonable management action done in a reasonable way that you wouldn't have a claim to compensation. And I didn't want to put myself through that, so I just took sick leave.

10 **MR SMITH:** Did you consider that the management action taken against you was reasonable management action taken in a reasonable way?

15 **MS DARGAN:** No, not at all.

MR SMITH: Were you willing to have a fight about whether it was or not?

MS DARGAN: I - I had nothing left to give at that point. I - I was exhausted.

20 **MR SMITH:** So was it your mental state that contributed to that decision?

MS DARGAN: Yes.

25 **MR SMITH:** And when you talked about the attitude of management, who specifically are you referring to? I think you said "all the way up" or words to that effect.

30 **MS DARGAN:** Yeah, well, as an inspector I only had dealings with my direct manager, Mark Houston, and then Helen Burgess. Above her was Marc Dennett as executive director, but I didn't have any direct day-to-day interaction with him at all.

MR SMITH: So to what - can I ask, to what level in management you were concerned that they'd be against you?

35 **MS DARGAN:** Well, if this - well, Marc Dennett was supporting Helen in her position, because he was her boss. So that's basically my whole - whole line of command which is sending this consistent message about the CFMEU and - and what we were required to do on site.

40 **MR SMITH:** So was Mr Dennett also sending that message?

MS DARGAN: I believe so, yes.

45 **MR SMITH:** Do you recall - is that a perception, or is there something you recall from him in sending that message?

MS DARGAN: He - he used to send out, sort of every Friday afternoon, executive director updates. And he was - he supported Helen a lot during - during her time in that role. So I don't know what his decisions were or not, but I had no reason to believe that if I went to him that he would support me in that.

5

MR SMITH: Yes. Now, you mentioned, I think you used the phrase a graduated return to work.

MS DARGAN: Correct.

10

MR SMITH: Can you just explain to the Commissioner how that occurred.

MS DARGAN: So it was done through our internal staff health unit. So, like, you initially come back on a few days a week, and I was on different duties. So I was doing - I still had, like, a full - full workload, but just not CFMEU. So incidents and non-CFMEU complaints.

15

MR SMITH: Did your doctor make any recommendations about limitations, for example, that should be put on your return to work?

20

MS DARGAN: Just the avoiding CFMEU jobs.

MR SMITH: All right. And did you have a discussion with a health and wellbeing officer about that that you can recall?

25

MS DARGAN: Yes, I did.

MR SMITH: And who was that? Do you remember?

30

MS DARGAN: I don't recall her name, but she's not there any more.

MR SMITH: And what was the nature of that discussion?

MS DARGAN: They actually came into one of my psychology sessions, so the psychologist and myself were there and they phoned in, and basically it was that unless I was prepared - the CFMEU work was a substantial part of my job, and unless I was prepared to do it, there wouldn't be any job for me.

35

MR SMITH: Right. So did you take from that that the accommodation was not going to be allowed?

40

MS DARGAN: One of the things that was said was that there was so many people actually off on stress at that time that they couldn't allow people not to do work or there'd be nobody there to do it.

45

COMMISSIONER: Who's the "they" you're talking about there?

MS DARGAN: The staff health unit, as directed by Mark Houston and Helen Burgess.

COMMISSIONER: And how many people were in the staff health unit?

5

MS DARGAN: At that time there was, like, the manager of it and another lady who primarily dealt with workers' compensation matters and this other woman that I dealt with whose name I can't recall, sorry.

10 **COMMISSIONER:** And that's the one you refer to as the health and wellbeing officer?

MS DARGAN: Yes.

15 **MR SMITH:** Now, when you said that that unit was directed by Mark Houston and Helen Burgess, do you mean that in a management structure sense or do you mean something else?

20 **MS DARGAN:** No. I know now from my role as an operations manager that the staff health works with the director and the operations manager to put together a return-to-work arrangement.

MR SMITH: Yes. And to your knowledge, were there other inspectors who were off on stress leave and those sorts of things during that period?

25

MS DARGAN: Yes. Lots.

MR SMITH: And is it the case, then - or, sorry, when you did return to work, ultimately, following that meeting, what sort of work did you end up doing?

30

MS DARGAN: Everything that didn't involve union interactions, basically.

MR SMITH: So was that request ultimately allowed?

35 **MS DARGAN:** It was when I initially came back, so yes.

MR SMITH: Right. And subsequently?

40 **MS DARGAN:** Only for the length of the graduated return, and then I just went back to usual duties.

MR SMITH: All right. And how did you feel about having to do that?

45 **MS DARGAN:** Not - not good. Like, they were good with me, like, I was probably given a little bit more flexibility than a lot of the other guys were.

MR SMITH: Yes. Commissioner -

COMMISSIONER: Why was that?

MS DARGAN: I believe it was because I was female.

5

MR SMITH: Commissioner, I'm about to move on to another topic, and I note the time. Is now a convenient time?

COMMISSIONER: I think so, Mr Smith. Just before we adjourn, is Mr Houston still employed by WHSQ?

10

MS DARGAN: No, he's not.

COMMISSIONER: All right. And then the other persons you referred to at paragraph 15, Mr Dungey, Mr Azcune, Mr O'Donnell, Mr Te Oka and Mr Mutton, are they still employed by WHSQ?

15

MS DARGAN: No, Mr Mutton's not. Mr O'Donnell's not. Anzac and Travis are. And who was the additional name, sorry?

20

COMMISSIONER: A John Azcune?

MS DARGAN: He's no longer with us either.

COMMISSIONER: So only Mr Travis Dungey and Mr Anzac Te Oka. And then what about the various operations managers that you had that you reported to? Mark Murphy - apart from Mr Mark Houston - Mark Murphy, Jason Plath, Brian Culleton and Robert McDonald.

25

MS DARGAN: Mark Murphy was only acting in the role and he decided he didn't wish to continue, so he went back to an inspector role. Jason Plath is still here. Brian Culleton and Rob McDonald are still employed by OIR.

30

COMMISSIONER: Still employed?

35

MS DARGAN: Yes.

COMMISSIONER: And Mr Smith might deal with this after lunch, but what happened to this complaint - and tell me if you're going to come to it, Mr Smith, and I won't worry about this question.

40

MR SMITH: Yes.

COMMISSIONER: What happened to the complaint that sent you into - sorry, the investigation - sorry, the threatened investigation into the complaint by Mr Houston the day after you attended the Tomkins commercial site at Woolloongabba on 21 June 2021? Did that investigation take place?

45

MS DARGAN: No. William Harris resigned after that incident, and -

COMMISSIONER: He was the inspector who was there with you?

5

MS DARGAN: Yes, and when I came back I asked about it, and he said that it wasn't going to proceed.

COMMISSIONER: Who said that?

10

MS DARGAN: Mark Houston.

COMMISSIONER: And did he give you reasons as to why it wasn't going to proceed?

15

MS DARGAN: No. I was just happy that it wasn't going to proceed.

COMMISSIONER: Were there any other discussions between you and Mr Houston about why he had decided the day after to call you - that is, the day after you'd been at the Woolloongabba site - call you and tell you there was going to be an investigation into the complaint made about you the previous day?

20

MS DARGAN: Sorry, what was the question?

COMMISSIONER: Were there any other discussions you had with Mr Houston after he told you on 22 June 2021, and prior to him telling you that there wouldn't be any further investigation, about an investigation into a complaint made about your conduct on 21 June 2021?

25

MS DARGAN: I didn't speak to Mark Houston whilst I was on leave. It was - all the communication was through staff health, I mean, health and wellbeing team. I don't recall what conversations we had upon my return.

30

COMMISSIONER: And do you have any views as to - or opinion as to why this investigation was not progressed, at least to your knowledge?

35

MS DARGAN: I'm assuming because Bill - William Harris left, and I'd been away for so long, it kind of blew the timeframes out. That's all I can guess.

COMMISSIONER: And what sort of records are kept by the operations managers about these sort of matters? That is, how would we, as a Commission of Inquiry, find out whether a complaint had been made, what the form of the complaint was, why Mr Houston had decided to call you and say there was going to be an investigation into the complaint, and any records of any further investigations conducted by him or others at his direction, with or without your knowledge?

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45

MS DARGAN: As an operations manager now, I know that there's a process that the complaint goes through, and there's actually a person whose job it is to manage it through the investigation process. What was in place during my time as an inspector, I'm not sure.

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COMMISSIONER: Very well. We'll adjourn till 2 pm.

<THE HEARING ADJOURNED AT 12.51 PM

10 **<THE HEARING RESUMED AT 2.00 PM**

COMMISSIONER: Mr Smith.

15 **MR SMITH:** Thank you, Commissioner. Mr Operator, could I ask that you blow up paragraphs 69 and 70 of Ms Dargan's statement. Now, Ms Dargan, you've raised a number of issues and concerns throughout your evidence. Did you at any time make any complaints to your leadership about the way things were going?

20 **MS DARGAN:** Yes, I spoke to Mr Houston.

MR SMITH: And when did you do that, do you recall?

25 **MS DARGAN:** I can't recall the specific dates, but we used to have monthly one-on-one meetings with our manager where we'd discuss issues.

MR SMITH: All right, and what sorts of issues did you normally discuss in that monthly one-on-one meeting?

30 **MS DARGAN:** The types of issues that would be raised was if they had any concerns with inaccuracies or some problem with our work over that month period. What I raised?

MR SMITH: And what did you raise; that was the next question, yes.

35 **MS DARGAN:** I raised issues in relation to basically dealing with the CFMEU on site, whether what we were doing was in fact legal, those type of - type of issues.

40 **MR SMITH:** And can you remember the specific nature of the issues that you raised?

MS DARGAN: Stuff that sort of I've spoken about, like how the conduct was undermining inspectors' professionalism and their discretion on site. I also was upset by the fact that inspectors were being removed from site if they didn't agree with the CFMEU. Oh yeah, and inspectors abandoning actual risk and construction sites we should be attending to be sent to CFMEU requests for assistance.

MR SMITH: All right. And was there - how much discussion was there about those issues when you raised them with Mr Houston?

MS DARGAN: There wasn't a lot of discussion, no.

5

MR SMITH: Do you recall what Mr Houston's response was?

MS DARGAN: His response was basically, "Well, we've got a Labor government. This is what it is. Either like it or leave."

10

MR SMITH: All right. And what was your reaction to hearing that?

MS DARGAN: By that point, I guess I'd been expecting that. I didn't - didn't expect anything else, really.

15

MR SMITH: All right. And did you have a view about whether you should try and escalate that issue?

20

MS DARGAN: No, because he was just acting on instruction from his boss. There was nobody really to - to raise it to. I'm aware other inspectors were taking other action around that time.

MR SMITH: All right. And just when you talked about his boss -

25

COMMISSIONER: Let's just go back to that last sentence. When you say other inspectors, you're aware other inspectors were taking other action, what do you mean by other action?

30

MS DARGAN: That there'd been, through the Together Union, I understand things were being addressed that way. There was the health and safety representative network. Stuff was trying to be raised that way. So there was a few - a few things happening around that time.

35

COMMISSIONER: Just tell me about what the Together Union did, if anything, to your understanding, about the issues the inspectors were raising around this time in 2021.

40

MS DARGAN: I wasn't actively involved in that process. I heard about it through Frank D'Allura, our union rep, but he was working closely with the Together Union to try and get things - try and make things better, basically, and that's when that - the - when the - sorry. There was a time where inspectors were refusing to write notices because we wanted something done, and that was through the union.

45

COMMISSIONER: What do you mean by refusing to write notices?

MS DARGAN: It was - it was some kind of union action. Sorry, I don't have all the details.

COMMISSIONER: And what time was this, that this occurred, this refusal to write notices, some kind of union action?

5 **MS DARGAN:** That - that whole period, like, 2018 through to 2023, it was just like one long, painful blur. Like, I'm finding it really hard to remember what happened at different stages and dates.

10 **COMMISSIONER:** And one other thing you said earlier was that there were other inspectors taking action through the HSR networks?

MS DARGAN: Yep, the health and safety representative. So that was John Barber that I spoke of earlier.

15 **COMMISSIONER:** Yeah, who's your mentor, I think you said.

MS DARGAN: Yeah, he also was my mentor.

20 **COMMISSIONER:** And what did Mr Barber do, to your knowledge?

MS DARGAN: He's a principal inspector.

25 **COMMISSIONER:** Sorry, what did he do with the HSR networks in relation to this issue that the inspectors were concerned about?

MS DARGAN: He - the HSR meets with management frequently, and my understanding is he used that forum to raise issues.

30 **COMMISSIONER:** And did he tell you how he had been received when raising those issues?

MS DARGAN: There wasn't a lot of change that resulted from it. I think he just made management very unhappy with them.

35 **COMMISSIONER:** Just going back to your conversation with Mr Houston, I know you say there wasn't a lot of response. Do you recall what he said when you said to him, "I've got concerns," or I think my note is you said, "Was it legal?"

40 **MS DARGAN:** Sorry, my notice -

COMMISSIONER: Sorry, that's a bad question. You said in evidence earlier that you raised a concern with Mr Houston. I've got a note of four of the concerns you raised with him, and one of them was, "Was it legal, what we're being asked to do?" It strikes me as a fairly serious thing to say to your manager. Do you recall what he said in response?

45

MS DARGAN: I know he - we had a conversation. He said that he was finding things hard himself, and so - and he spoke of the book Art of War, asked if I'd read it, which I indicated I hadn't, and he said it was a good book to read. That's really all I can recall of the conversation.

5

COMMISSIONER: What did you take him to mean by telling you to read what he recalled as a good book, The Art of War?

MS DARGAN: I just took that as being that it might give me some tips on how to handle working in such an environment. That's how I saw it. I didn't read the book. I can't comment.

COMMISSIONER: Yes, Mr Smith.

MR SMITH: And in your earlier evidence a moment ago, Ms Dargan, I think you mentioned something about perception about senior management -

MS DARGAN: Yes.

MR SMITH: - in relation to a response to the complaint. Can you tell me what that perception was or tell the Commission what the perception was?

MS DARGAN: Sorry, can you start from the beginning?

MR SMITH: All right. So when you - when you made this complaint and got the response that you've already described, did you decide to escalate the matter?

MS DARGAN: No.

MR SMITH: And why didn't you decide to escalate the matter?

MS DARGAN: I couldn't see the point, because all the - our instructions were coming from senior management.

MR SMITH: All right. And when you say senior management, who are you referring to as senior management?

MS DARGAN: Primarily Helen Burgess.

MR SMITH: All right. Now, did - at any point during the periods that you've described where you had concerns, did you seek other employment?

MS DARGAN: I did. I tried especially after my taking leave. I applied for a couple of jobs, but as you would appreciate, when you go for a job interview you've sort of got to be upbeat, you've got to sell yourself, you've got to believe that you can do the job. And by that stage I felt so downtrodden I didn't have a lot of confidence in

45

myself, and I just don't think I - I performed very well in the interviews, and I wasn't successful.

5 **MR SMITH:** And those jobs, were they jobs that in your opinion you were qualified to do?

MS DARGAN: Yes.

10 **MR SMITH:** Do you recall what they were?

MS DARGAN: I applied for one in the licensing unit as an investigator, and I wasn't successful for that one, and the other one, I attempted to go for another investigator position. I believe that was with NCIS, so Commonwealth government.

15 **MR SMITH:** So the licensing unit, where was that? What department was that?

MS DARGAN: It was within OIR, but it just has a - it's like a different branch. It's not part of compliance, field services. It's licensing and operational support.

20 **MR SMITH:** And was that a similar level to your existing role?

MS DARGAN: It was a level up from what I was currently doing.

25 **MR SMITH:** All right. And then you said NCIS. What's NCIS?

MS DARGAN: NCIS. Not NCIS. The NDIS, sorry. NCIS would be much more exciting, but no, NDIS.

30 **MR SMITH:** And what was the role at NDIS?

MS DARGAN: That was an investigator role. So it was looking into the people that provide services for people with a disability.

35 **MR SMITH:** And how did that compare to the level of work, your existing level of work?

40 **MS DARGAN:** I believe Commonwealth jobs, they're sort of like a little bit down on levels, so like an AO7 in state government would sort of be like an AO6 level in federal. They just don't get paid quite as well as state employees.

MR SMITH: All right. What level was this other job at?

MS DARGAN: APS6, so it would have been a little bit of a step down.

45 **MR SMITH:** Okay. Now, just moving on from that, can I ask that paragraphs 74 and 75 of Ms Dargan's statement be brought up?

COMMISSIONER: I just wonder whether we could deal with 72 first. It's one of the things you haven't expanded upon in your oral evidence. You said there:

5 "I am aware that Mr Barber made complaints to Together Union ..."

Which you've talked about:

".. and separately issued a provisional improvement notice on OIR."

10 What did you mean by that?

MS DARGAN: So as a health and safety representative, you've got certain powers under the Act and one of those powers is to issue a provisional improvement notice, and Mr Barber issued one on the Office of Industrial Relations.

15

COMMISSIONER: In relation to what?

MS DARGAN: Failing to manage - I can't recall what it was, but it was about our exposure to the bullying and - and from the union.

20

COMMISSIONER: And what did that provisional improvement notice, to the extent you can recall, require the Office of Industrial Relations to improve, to do?

MS DARGAN: I don't have a clear enough recollection of that, but it was something around how they were managing our - our exposure to stress around the union.

25

COMMISSIONER: And what, if anything, happened as a result, as far as you can recall, to your work patterns or directions as a result of or consequent upon Mr Barber issuing a provisional improvement notice?

30

MS DARGAN: They disputed the provisional improvement notice.

COMMISSIONER: Who's "they"?

MS DARGAN: Our - our employer, Office of Industrial Relations. So John Barber had to take it to the - is it Industrial Court - to argue that. What came out of it? That could have been around the time of the issuing of the cameras that attach to your uniform that you wear on site. So that was issued to us as a form of PPE, personal protective equipment, to capture what was happening on site.

40

COMMISSIONER: As a consequence of Mr Barber issuing an improvement notice?

MS DARGAN: I believe that's one thing that happened. I - I'm not too sure what else happened after that.

45

COMMISSIONER: And what impact did the - was it a requirement to wear body cameras that came in as a result of or after Mr Barber issued a provisional improvement notice?

5 **MS DARGAN:** I - yeah, I can't recall. That was something that came in, and inspectors that wished to wear them could wear them, but I'm not exactly sure where that - when exactly that came in.

COMMISSIONER: And did you choose to wear body cameras?

10

MS DARGAN: At that point I was an allocator, so I wasn't out on site.

COMMISSIONER: And what proportion of inspectors chose to wear the body cameras?

15

MS DARGAN: There was initially reluctance, because inspectors were afraid that they'd be used against them as a - as a tool for punishment, as opposed to PPE, protective equipment, which was the purpose of it. So the uptake was a little bit slow.

20 **COMMISSIONER:** And did it improve over time?

MS DARGAN: As confidence in the department increased, I believe usage increased too.

25 **COMMISSIONER:** And have you got any opinion or had any feedback about the utility of the wearing of body camera - a body camera when engaging in visits to construction sites?

30 **MS DARGAN:** The team that report to me now all value them. They find them a useful tool that they often capture evidence that you miss or the conversations you have that you can't write down verbatim in your notebook. So they're now seen as a really useful tool to have on site, as well as from an evidentiary perspective.

35 **MR SMITH:** Now, Ms Dargan, do you recall, on 12 April 2022, attending a Hutchinson Builders site at Milton?

MS DARGAN: Yes.

40 **MR SMITH:** And what was the nature of the issue you were called to attend, do you remember?

MS DARGAN: Yep. Sorry, I'm getting them all mixed up. Yes. That was one where there'd been an incident where a pre-fabricated concrete was hanging from a crane over a public road.

45

MR SMITH: And can you just describe your initial attendance at the site and what occurred?

MS DARGAN: So I arrived at site. I could see the crane. I could see the concrete. I could also see that there'd been traffic management set up. So there was - the road was preventing cars from driving up and down. There was - I believe they were
5 Hutchies staff at that point were preventing pedestrians, because it was a common shortcut to get to the walkways along the river there, were preventing pedestrians and redirecting them. So that's what I saw when I first arrived.

MR SMITH: And did you have an understanding why the Hutchinson staff were
10 redirecting pedestrians?

MS DARGAN: Because it would have been unsafe to allow members of the public or workers to go within the zone if it could possibly fall.

COMMISSIONER: What's so special about this? I mean, every crane, when it's
15 engaging in a lift, has - I don't know what the correct phrase is, it's called an exclusion zone around it, which is normally manned either by people or people and also some sort of barricade. What's different about this particular incident versus
20 every crane lift that happens on every building site?

MS DARGAN: Something had happened and it had seized. That was the point.

COMMISSIONER: I see.

MS DARGAN: So something had happened and they were unable to continue to
25 move the load, so basically it was stuck, suspended over a public road.

COMMISSIONER: But that public road, if the crane was operating properly, would
30 be the subject of an exclusion zone?

MS DARGAN: Yes.

COMMISSIONER: And this exclusion zone was still there?

MS DARGAN: Yes. That's what I saw when I arrived. Did you want to know how I
35 came to be there? Is that -

COMMISSIONER: If you -

MS DARGAN: Yep. So I received a phone call from my operations manager Mark
40 Houston, and somebody had heard that this is occurring, and when things are of media interest like that, they like to get inspectors there to find out what's happening. So that's how I came to be there. At the time he called, I was just coming over the motorway, so I was very close.

MR SMITH: And when you got to site - I should ask first, were you with any other
45 inspectors on that occasion?

MS DARGAN: No, I was by myself.

5 **MR SMITH:** And when you got to site, having observed the things that you observed, did you speak with anyone?

10 **MS DARGAN:** Yep. At that stage, I'm interested in finding out that the controls are going to remain in place, what's going to happen and why it happened. So I'm interested in looking at the commissioning documents for the crane. I'm interested in looking at maintenance records to see in there was any failure to maintain that may have resulted in that incident. So I've gone upstairs with the Hutchies staff to get those documents.

15 **MR SMITH:** All right. Did anyone else attend site while you were there?

MS DARGAN: Whilst I was there, the CFMEU turned up.

MR SMITH: And do you recall who turned up from the CFMEU?

20 **MS DARGAN:** No.

MR SMITH: Do you recall how many people from the CFMEU turned up?

25 **MS DARGAN:** There was at least two. There could've been three.

MR SMITH: And at the time that those officials turned up, what happened from then?

30 **MS DARGAN:** They - we were sitting at a - one of those plastic fold-out tables that they have on site, and they came and sat down and started asking questions. So they started asking, you know, what's gone on, what are you going to do, why is this happening kind of questions. And I was like, "I'm just in the middle of obtaining these documents. They were just going to get them. Can you hold your questions for a sec?" And they wouldn't. They were talking over me. The Hutchies guy I think was
35 sort of torn between who he should be answering and - yeah, so it was sort of a - it wasn't - yeah, it wasn't going smoothly.

40 **MR SMITH:** All right. And what was your reaction to the involvement of those two officials?

45 **MS DARGAN:** I was anxious that they - they were there, and then when I sort of said, you know, can - I think I actually said to the builder, "Well, can we just go over here and get the documents?" And the union made comments like, "Are you telling us to leave?" Or something like that. And I said, "No." And he goes, "What is your name?" And when he said that, my body automatically knew that he was going to hop on the phone to make a phone call, so my body just froze. I just - yeah, it was - yeah, I reacted to - to that.

MR SMITH: All right. And what was the nature of your outward reaction?

MS DARGAN: I walked away and around the corner and became upset. I phoned
5 John Barber to see if he was local. I said - to say, "Can you come to site with me and
give me a hand here?" And he was out the back of Ipswich doing some mentoring
with some new inspectors then. So I pulled myself together and I went back to the
table, and I said, "Look, I'm going to need those documents, but I'm going to leave
10 site now. Is it okay if you email them through to me?" Because at that point, I'd
established that the crane technician was on his way from the Gold Coast to - to deal
with what had malfunctioned at that time. I was satisfied that no-one was at risk,
because the exclusion zone was still in place and nobody was going to be in the zone
if it did fail, which would be the worst case scenario. So everything was - was in line.
So I got them to send the documents to me and I left site.

15

MR SMITH: So at that time, did you consider any person was exposed to a risk?

MS DARGAN: No.

20 **MR SMITH:** All right. And then, subsequently, having left site, did you hear
anything more about that particular incident?

MS DARGAN: Yes, I heard that another inspector had been sent to site.

25 **MR SMITH:** Did you hear anything about what the other inspector found?

MS DARGAN: The other inspector felt that it had been dealt with adequately. By
the time he had got there, I think a professional traffic control company had taken
over from the initial Hutchies site to close off the road. But other than that, it was - it
30 was all in order. There was nothing more than I'd seen when I was there.

MR SMITH: And do you recall who that inspector was?

MS DARGAN: Peter Stevens.
35

MR SMITH: Did you subsequently have any contact with anyone from the
management team about that particular job?

MS DARGAN: Yes, I did.
40

MR SMITH: And who was that?

MS DARGAN: Mark Houston.

45 **MR SMITH:** Can I ask, Mr Operator, that paragraph 80 be blown up on screen.
Now, what was it that Mr Houston said to you?

MS DARGAN: That there was an investigation being undertaken into what had happened on site and that he would be taking a formal statement from me.

MR SMITH: And do you recall what the allegations in the investigation were?

5

MS DARGAN: Yep, that I had left site abruptly and I had left site with risk present.

MR SMITH: All right. Just dealing with that first allegation, do you know what -

10 **COMMISSIONER:** Sorry, the second one was what? You'd left -

MS DARGAN: Site abruptly.

COMMISSIONER: Yes?

15

MS DARGAN: And I'd left site with risk still being present.

MR SMITH: Now, Ms Dargan, do you know what it means to leave site abruptly?

20 **MS DARGAN:** I assume it's leave site quickly.

MR SMITH: Was that ever, during the investigation process, explained to you?

MS DARGAN: No.

25

MR SMITH: Do you, to this day, understand what that allegation was?

MS DARGAN: Not really, no.

30 **MR SMITH:** And then you said the other allegation was that you left site with an uncontrolled hazard.

MS DARGAN: Correct, yes.

35 **MR SMITH:** And did you understand the nature of what that allegation was?

MS DARGAN: Yes, I understood what they were saying.

40 **MR SMITH:** Right. Now, could I ask you, in respect of that allegation about the uncontrolled hazard, was that allegation ever substantiated?

MS DARGAN: No.

MR SMITH: Was the allegation about having left site abruptly substantiated?

45

MS DARGAN: Yes.

COMMISSIONER: I don't quite understand what that means. If there's no uncontrolled hazard requiring you to be there, what is the gravamen of the charge that you left site abruptly? What does that mean?

5 **MS DARGAN:** That's what I couldn't understand, and that Peter Stevens had been there the same day after me and confirmed my belief. That's two inspectors that said there was no risk. I couldn't understand why I was subject to an internal investigation over it.

10 **COMMISSIONER:** But even what the charge is:

"Inspector Dargan left site abruptly for no apparent reason."

What's the - what is the nature of the charge, as you understood it?

15

MS DARGAN: I didn't really understand.

MR SMITH: Commissioner, can I -

20 **COMMISSIONER:** Do you need a break?

MS DARGAN: No, no, I'm good. I'm good.

MR SMITH: Mr Operator, can I ask that exhibit DD-2 be brought up, page 37.

25

COMMISSIONER: I suppose when Mr Houston comes to give evidence, he can be asked what he meant by this charge.

MR SMITH: Sorry, Commissioner.

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COMMISSIONER: I'm just saying, this witness doesn't understand what it means.

MR SMITH: Quite.

35 **COMMISSIONER:** And it's something that Mr Houston might be able to assist with.

40 **MR SMITH:** Quite, Commissioner. Can I ask that the heading Internal Assessment Findings be blown up and the paragraphs under it, down to the one above the heading Element 2. Now, Ms Dargan, you've annexed a letter from Mr Houston about this matter to your statement; is that right?

MS DARGAN: Correct.

45 **MR SMITH:** And can I just ask you to have a look at this paragraph. And let me know when you've had a chance to read that.

MS DARGAN: Yes.

MR SMITH: Having looked at that now, are you any the wiser about what the allegation was or what the finding against you was?

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MS DARGAN: No.

MR SMITH: That can be taken down, thank you. Did you ever get any more explanation than what was in that letter about what the finding against you was?

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MS DARGAN: Yeah, on that bottom of the letter it said it would be dealt with by Andrew Harris, who was the executive director, and I phoned him up to say what action's going to be taken, and he said, "Well, it looks like the more serious of the allegations, which was the leaving without risk, wasn't substantiated, so that's all that matters."

15

MR SMITH: Just finally -

COMMISSIONER: Just before you go to that, can you just go to the bottom of page 36. There are 10 dot points at the bottom of 36. Eight at the bottom of 36 and two, making 10, on the top of 37. Can you see - this is the material that Mr Hutchinson - sorry, Mr Hutchinson - Mr Houston said that he referred to as the evidence that was considered. It seems like six interviews: two with two CFMEU officials, one with a representative of Hutchinson Builders, sorry, two with representatives of Hutchinson Builders, and two with two inspectors, including you. Then there's this reference to "Email from the complainant", which seems to refer to the first sentence in the letter:

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"I refer to a complaint to the Office of Industrial Relations received on 12 April 2022."

30

That's not attached, I can see. Who did the email come from?

MS DARGAN: I'm not aware.

35

COMMISSIONER: I beg your pardon?

MS DARGAN: I don't know who that came from.

40

COMMISSIONER: Right. Do we have a copy of that, Mr Smith?

MR SMITH: We do, Commissioner.

COMMISSIONER: Can you tell me who it came from?

45

MR SMITH: I wouldn't want to misstate it, so I couldn't tell you off the top of my head, but we do have the document. But as Ms Dargan hadn't seen it, I didn't want to attempt to draw it to light just yet.

5 **COMMISSIONER:** Does it come from the union?

MR SMITH: That's my recollection.

10 **COMMISSIONER:** And then if you look at the top of the next page, "Information contained on WHSQ internal databases", what do you understand that to mean?

MS DARGAN: That's the CISr system we use.

15 **COMMISSIONER:** That's what you talked about before lunch, that database.

MS DARGAN: Correct.

20 **COMMISSIONER:** Yeah. Well, we have to have the complaint, don't we, Mr Smith, to understand what the charge was?

MR SMITH: We will ultimately need that, yes, Commissioner. That is anticipated to be the subject of later evidence.

25 **COMMISSIONER:** Thank you.

MR SMITH: Thank you, Mr Operator. That can be brought down now. Now, Ms Dargan, all of these problems that you've spoken about during your evidence, are they still issues within Workplace Health and Safety Queensland?

30 **MS DARGAN:** There's been substantial changes, and a lot - most of the issues have resolved, yes.

MR SMITH: And when did those issues commence resolving?

35 **MS DARGAN:** Around about - well, really about the time of the Liberal Government coming into power.

MR SMITH: All right. And is Ms Burgess still in her role?

40 **MS DARGAN:** No, she's not.

MR SMITH: Was there any impact on those issues you've described when Ms Burgess ceased her role?

45 **MS DARGAN:** Yes. Once she was removed from the role, the construction inspectorates went back to the regional - under the regional directors, under the - rather than being under construction, compliance, field services. So - and the

regional managers didn't have the same attitude towards the CFMEU as what Helen Burgess did.

5 **MR SMITH:** Is there any of those issues that you've described that live on?

MS DARGAN: Not in relation to, like, the CFMEU. They've got a new person. My team told them they've met him on site and he's very - very polite and very professional. So that part of - of the issue doesn't seem to exist as much any more.

10 **MR SMITH:** Just excuse me for one moment. Commissioner, the question you asked me before about who the complainant was, would you like an answer to that now?

15 **COMMISSIONER:** If you're able to give it accurately, yes, please.

MR SMITH: I am. So the complainant was Royce Kupsch.

20 **COMMISSIONER:** And is there any explanation of what the charge, "leaving the site abruptly for no apparent reason", is based on?

MR SMITH: If I could just have a moment, Commissioner, to read the document.

COMMISSIONER: You can tell me tomorrow morning. That's fine.

25 **MR SMITH:** All right. We'll do that. Just finally from me, and the Commissioner might have some more questions, is there anything from your perspective that you think could be done to prevent this sort of thing from occurring again?

30 **MS DARGAN:** Greater - I believe that the - I'd prefer that - it feels as though the structure of the organisation was such that the control was in a very narrow line. Like we've done now, there's regional directors, so each construction team have different operational managers, they have different regional directors, so the responsibility is disseminated across a number of people, rather than having a direct line having control over that single body of work.

35 **MR SMITH:** So having that one person in control of the entire body is something that, can it be taken, that you wouldn't repeat?

40 **MS DARGAN:** Other business units might be able to do it, but in something like construction, where these influences are present, I don't think a direct line was a particularly good idea.

45 **MR SMITH:** Commissioner, I didn't have any further questions for Ms Dargan. Is there anything that you wanted to raise with her?

COMMISSIONER: Ms Dargan, can you just - can we just have paragraph 83 brought up. When Mr Wheelahan opened this case study yesterday, Ms Dargan - you

might have been out of the courtroom - he said that Ms Burgess was the director of construction, compliance and field services from 23 April 2018 to 22 July 2024. You say in late 2023 she was removed. Is one of those dates wrong or you don't know? Have I somehow misstated something?

5

MS DARGAN: No, there was just a little bit of a shuffle. So in late 2023 was when the construction inspectors went back to reporting to their regional director, and it was in - and Ms Burgess was removed from the direction of construction, compliance and field services and put back as director of construction strategy unit, which is what she was doing prior to taking on the director of CCFS.

10

COMMISSIONER: What does the body construction strategy do?

MS DARGAN: They were - just as same as you've got like a hazard chemical unit to advise inspectors on hazard chemical areas, they were a unit that would provide - like, if we were to do a campaign on concrete pumps, they would provide audit tools and all that advice to support that - that campaign. So they were a specialist area that focused on construction issues.

15

COMMISSIONER: Do you know why the construction inspectors, the reporting lines for construction inspectors, were changed in late 2023 and/or why Ms Burgess was removed from her role as director of construction, compliance and field services in mid-2024?

20

MS DARGAN: I believe at that stage, enough evidence had - had come to light that there was no other choice than to - to move her from that role.

25

COMMISSIONER: Is Ms Burgess still employed by WHSQ?

MS DARGAN: Not to my knowledge, no.

30

COMMISSIONER: Do you know why, in 2018 - you had only been a construction inspector for three years at that stage - this administrative change to create a director of construction, compliance and field services was implemented?

35

MS DARGAN: I thought it was because it was - because construction is so specific and it has so many regulations that relate to it, it made sense to have everyone reporting to the one director, so all construction-type information and tasks could be in the one - one stream. That's what I understood it to be, but there may have been other reasons.

40

COMMISSIONER: Do you know why Ms Burgess was appointed as the director of this newly created construction, compliance and field services in 2018?

MS DARGAN: I have no knowledge on that.

45

COMMISSIONER: Does anything arise from that, Mr Smith?

MR SMITH: No, Commissioner. That's the evidence-in-chief.

5 **COMMISSIONER:** Have any applications been made to cross-examine Ms Dargan?

MR SMITH: Mr O'Grady has made a generalised application. He might want to tell you about that, Commissioner.

10 **COMMISSIONER:** Have you had discussions with him about what should be done?

MR SMITH: I have not yet.

15 **MR O'GRADY:** If I can assist, Commissioner.

COMMISSIONER: Yes, thank you, Mr O'Grady. Just before you do, you don't want to cross-examine, Mr de Jersey?

20 **MR DE JERSEY:** No, I don't.

MR O'GRADY: In the light of the witness's evidence, I don't need to cross-examine her.

25 **COMMISSIONER:** Thank you, Mr O'Grady. Mr O'Brien was there at some stage, but he's gone, but I don't imagine he wants to cross-examine.

MR SMITH: There's no application, Commissioner. I've not heard anything.

30 **COMMISSIONER:** Thank you very much for your evidence, Ms Dargan. I know you say it's not as stressful coming here to give evidence as it was performing your role, but nevertheless it is stressful, and we appreciate you coming, even though it was by summons, to give your evidence in such a direct manner.

35 **MS DARGAN:** Thank you.

<THE WITNESS WAS RELEASED

40 **COMMISSIONER:** Who's next, Mr Smith?

MR SMITH: Commissioner, I call Noel Selwyn Hayes.

COMMISSIONER: Is Mr Hayes in the body of court?

45 **MR SMITH:** Yes, he is. He's on his way, and Mr Hayes will take an oath.

COMMISSIONER: Please come forward to the witness box, Mr Hayes.

<NOEL SELWYN HAYES, SWORN

<EXAMINATION BY MR SMITH

5

COMMISSIONER: Thank you, Mr Hayes. Please take a seat. Have you got a glass of water?

MR HAYES: Yes, I do.

10

COMMISSIONER: And do you have a statement in front of you or will the statement come up on the screen?

MR HAYES: Yes, I've got that.

15

COMMISSIONER: It's there? Mr Smith will ask you some questions, Mr Hayes, and I'll hand over to him.

20

MR SMITH: Thank you, Commissioner. Mr Hayes, can you state your full name, please.

MR HAYES: Yes, Noel Selwyn Hayes.

25

MR SMITH: And do you reside at an address known to the Commission?

MR HAYES: Yes, I do.

MR SMITH: And can you tell the Commissioner what your occupation is?

30

MR HAYES: Retired.

MR SMITH: Mr Hayes, are you appearing here in accordance with a notice issued by the Commission requiring your attendance?

35

MR HAYES: Yes.

MR SMITH: And did you swear a statement on 3 March 2026 for use in this matter?

40

MR HAYES: Yes, I did.

MR SMITH: Proceeding, I should say. You did?

MR HAYES: Yes, I did, yes.

45

MR SMITH: And have you had an opportunity to read that statement recently?

MR HAYES: Yes, I have.

MR SMITH: And is there anything in that statement that you wish to change or
resile from?

5

MR HAYES: No, there's nothing.

MR SMITH: Commissioner, I tender the statement of Noel Selwyn Hayes of 3
March 2026.

10

COMMISSIONER: Are there any objections to the tender of Mr Hayes' statement?
No? The witness statement sworn 3 March 2026, nine pages, 80 paragraphs with
three annexures, NH-1 to N-3, will be exhibit NSH-1.

15

**<EXHIBIT NSH-1 STATEMENT OF NOEL SELWYN HAYES SWORN
3/03/2026, NINE PAGES, 80 PARAGRAPHS WITH THREE ANNEXURES,
NH-1 TO N-3.**

20

MR SMITH: Thank you, Commissioner. Now, Mr Hayes, do you have a
background working in the construction industry?

MR HAYES: Yes, I have.

25

MR SMITH: And how did you start work in the construction industry?

MR HAYES: I started as a bricklaying apprentice in 1969.

MR SMITH: And how long - did you obtain a trade qualification?

30

MR HAYES: Yes, I did.

MR SMITH: And was that qualification as a bricklayer?

35

MR HAYES: Yes, it was.

MR SMITH: And how long did you work as a bricklayer?

MR HAYES: 36 years.

40

MR SMITH: Can you tell the Commissioner what capacities you've worked in a
bricklayer as?

MR HAYES: I've worked an employee, an employer, a subcontractor and a
contractor.

45

MR SMITH: Do you have any other building-related qualifications?

MR HAYES: Yes, I have. I have a builder's ticket.

MR SMITH: Have you at times during your career been a member of a trade union?

5 **MR HAYES:** Yes, I have.

MR SMITH: Have you ever been a member of the CFMEU?

10 **MR HAYES:** Yes, I have.

MR SMITH: And were you employed as an inspector at one time?

MR HAYES: Yes, I was.

15 **MR SMITH:** Were you a member of the union then?

MR HAYES: Yes, I was a member of the Together Union.

20 **MR SMITH:** Do you have any qualifications in occupational health and safety?

COMMISSIONER: When you say you were a member of the Together Union, I just missed what you said about "I was a member of -"

25 **MR HAYES:** I was a member of the Together Union. Yes, worked for the department.

MR SMITH: Mr Hayes, do you have any qualifications in occupational health and safety?

30 **MR HAYES:** Yes, I have a diploma in occupational health and safety.

MR SMITH: Do you recall when you obtained that?

35 **MR HAYES:** Yes, 2003.

MR SMITH: And what were you doing for work when you obtained that qualification?

40 **MR HAYES:** I was a bricklayer at the time.

MR SMITH: And what was it that caused you to obtain that qualification?

45 **MR HAYES:** I wanted a better - better knowledge about the legislation and how it worked, and I thought it might have helped me get my position as an inspector for the department.

MR SMITH: And did you ultimately become an inspector for the department.

MR HAYES: Yes, I did.

MR SMITH: And can you recall when that happened?

5

MR HAYES: That was 2004.

MR SMITH: And in becoming an inspector, what was the process for obtaining that position?

10

MR HAYES: Just go for an interview with a lot of other people, and, yes.

MR SMITH: And what was the position that you started in with the inspectorate?

15

MR HAYES: Senior inspector.

COMMISSIONER: Can I just ask you a question, Mr Hayes. We just heard from Ms Dargan, and she gave some evidence about her experiences as an inspector. Her background seemed to be, and no criticism of her, largely an academic one before becoming an inspector. Yours was largely one of someone who's experienced in the industry.

20

MR HAYES: Yes.

25

COMMISSIONER: In terms of the inspectorate, what was the ratio of people who had what you might call an industry background to those who had an academic background?

30

MR HAYES: I think originally it was just on merit you would get the job. Then I think there was a big push from the union back when I did - got mine and they wanted construction-based people, and I think 20-odd inspectors came through with me, 24. And after that, I think they sort of went back to the old sort of way of just on merit.

35

COMMISSIONER: But at the time you were recruited in 2004, there was a big push to get people with industry experience?

MR HAYES: Yes, there was, yes.

40

COMMISSIONER: And you say the union wanted this. Which union was that?

MR HAYES: Yeah, CFMEU pushed for that, yeah.

MR SMITH: Thank you, Commissioner. And in 2013, did you get a promotion?

45

MR HAYES: Yes, I did.

MR SMITH: And what role were you promoted to?

MR HAYES: Principal inspector of operations.

5 **MR SMITH:** And as a principal inspector of operations, what was the nature of your duties?

MR HAYES: It was an allocating role, allocate the work to other inspectors.

10 **MR SMITH:** And when you say allocating, can you describe what allocating is?

MR HAYES: Yes. The complaints would come into our call centre, which was called AAA, and that would be sent out to the regions, to the allocator like myself, in different regions. I'd prioritise the jobs and allocate it to a suitable inspector.

15

MR SMITH: All right. I'm just going to break a few things out of that. Firstly, when you said you'd prioritise the jobs, how would you prioritise the jobs?

20 **MR HAYES:** Prioritise on risk, mainly, the urgency of it. Maybe we had accidents come in as well, so you'd have to sort of prioritise them. Yeah, so matter of urgency and risk, yes.

25 **MR SMITH:** And when you said you would allocate them to the inspectors, how many inspectors were you allocating to?

MR HAYES: I had about five working for me at that time, just working as a group, yeah.

30 **MR SMITH:** And would you consider anything about those inspectors when you were determining who to allocate a job to?

MR HAYES: Sorry, can you repeat that?

35 **MR SMITH:** When you were choosing which inspectors to allocate a job to, would there be anything about particular inspectors that might make you allocate them a job?

40 **MR HAYES:** I'd make sure the inspector was competent for it. Some of the inspectors were - had experience in plant or scaffold or something like that, and that would be my preference, if there was a scaffold job, then send one to that. And also it worked on how busy the inspectors were, because they were busy all the time and I'd have to sort of work around their workloads.

45 **MR SMITH:** Yes. So were there any, beyond the factors you've mentioned, were there any other factors you would consider in determining who to allocate as an inspector.

MR HAYES: Just the availability of the inspectors and the actual experience of the inspector for particular jobs, like a major accident or something like that I'd be looking for experience.

5 **MR SMITH:** Yes. So is it fair to say that that allocation process was a weighing exercise by you?

MR HAYES: Yes, yes, it was.

10 **MR SMITH:** And at that stage, you mentioned complaints coming through, I think you call it AAA?

MR HAYES: Yes, AAA we call it.

15 **COMMISSIONER:** Sorry, just missed that. So complaints coming through?

MR HAYES: Our call centre was called AAA, where all the complaints would come to.

20 **MR SMITH:** And would complaints at that point come to you from anywhere else?

MR HAYES: After 2018 it did, yes.

25 **MR SMITH:** All right. I will come to that, but did that happen back in 2013?

MR HAYES: 2013, they would come through the AAA. Do you want me to explain the AAA process?

30 **MR SMITH:** If you can.

MR HAYES: Yeah. The call centre would - they would get the complaints and accidents through, and they would triage the accidents and complaints. They would write off some, they would write letters to others, maybe deal with a phone call. The ones they couldn't deal with there, they would send them out to the regions, and that was my job, and Mount Gravatt South, that was my job to sort of get it, and then I'd prioritise and send the complaint out to an inspector.

40 **COMMISSIONER:** So just in terms of the regions, there's sort of, you had almost two decades as an inspector, always working in construction?

MR HAYES: Yes, it was all in construction.

45 **COMMISSIONER:** For the first decade, in the noughties, how many regions were there?

MR HAYES: Ipswich, Toowoomba, Northside and there's Wide Bay. And Cairns, I think, too. There's another one in Cairns.

COMMISSIONER: As well as Brisbane as a region?

5 **MR HAYES:** Brisbane North, Brisbane South, and I had Brisbane South from Mount Gravatt. South of the river.

COMMISSIONER: And what about the Gold Coast?

10 **MR HAYES:** Yeah. There were other branches. There was Logan, Gold Coast as well, so we had boundaries we worked to - within.

COMMISSIONER: Did those regions change over the two decades or so?

15 **MR HAYES:** Yes, they did, yeah. They varied.

COMMISSIONER: Can you explain how they changed?

20 **MR HAYES:** Well, one - one example would be the Logan office, where it was terminated and they moved into the Mount Gravatt office. Gold Coast expanded more into the Logan area. I think northside stayed much the same, and Wide Bay and Toowoomba and Ipswich, they were much the same.

25 **COMMISSIONER:** I just missed which region you worked in. Was it Brisbane North or Brisbane South?

MR HAYES: Brisbane South. Mount Gravatt and Brisbane South.

30 **COMMISSIONER:** And in terms of the number of inspectors who worked - well, just step back a bit. When you first came to be employed by WHSQ, were the inspectors divided into inspectors who did construction and inspectors who did other work?

35 **MR HAYES:** Yes, there was industrial inspectors and there were construction inspectors.

COMMISSIONER: Sorry, I cut you off.

MR HAYES: There's specialist fields as well as hygiene and that sort of thing, yeah.

40 **COMMISSIONER:** And was that division between construction inspectors, industrial inspectors and other specialist fields maintained for the whole two decades that you were employed as an inspector?

45 **MR HAYES:** Yes, they did, yes.

COMMISSIONER: And when you first started, how many construction inspectors were there within WHSQ, just roughly?

MR HAYES: Maybe - maybe 50, yeah. Maintained about the same all the way through, I think.

5 **COMMISSIONER:** It was about 50 the whole way through?

MR HAYES: Yeah, I think so. About 50 or 60, yeah, I don't know exactly.

10 **COMMISSIONER:** I think there was some evidence from someone, it might have been in the opening, it might be from a witness, that at the point at which Ms Burgess became the director of construction, compliance and field services, there were around 40 construction inspectors reporting through to her. You think it's a bit more than that?

15 **MR HAYES:** I could be wrong, yeah. I always thought it was around 50, that figure. I could be wrong.

20 **COMMISSIONER:** But when - the questions Mr Smith was asking you were about a decade after a started, in 2013, when you were a principal inspector and you allocated work, you only had five inspectors that you allocated work to?

MR HAYES: Yes, five out at Mount Gravatt, yeah. It varied up down a bit, you know. Some would leave and some would move away and they'd replace you.

25 **COMMISSIONER:** And the other 50 inspectors had their work allocated to them by other allocators in the other regions. Is that right?

MR HAYES: Yes, that's correct.

30 **COMMISSIONER:** And did that - well, I'll - Mr Smith might come to this.

MR SMITH: Thank you, Commissioner. I think a moment ago you had started to give an answer about the triage process and what AAA does in that process. Could you just describe that, please, for the Commissioner?

35 **MR HAYES:** Yeah, the triage process. Like I said, the complaints and accidents would come into the AAA centre. They'd triage it and write off some. They'd send letters or phone calls or stuff like that.³ and what they couldn't write off or deal with, they'd send out to the regions, and so if it was southside, it would come to me, and
40 northside, it would go to another allocator.

MR SMITH: And the types of matters that they couldn't write off, what were those sorts of matters?

45 **MR HAYES:** They couldn't write off? Mainly incidents on sites, and it would be things like fall from heights and issues on construction sites, more in the high-risk area.

MR SMITH: And when you got a AAA matter, was that something you were required ultimately to allocate an inspector to?

5 **MR HAYES:** Yes, yes.

MR SMITH: All right. Now, those inspectors that you're allocating work to, apart from allocating work, did you have any other responsibilities or oversight over them?

10 **MR HAYES:** For myself?

MR SMITH: Yes.

15 **MR HAYES:** Yes, I still did some proactive work and a bit of reactive work as well.

MR SMITH: Sorry, I'm asking you a slightly different question. In addition to allocating work, did you, for example, provide them with supervision?

20 **MR HAYES:** Sorry, I don't -

MR SMITH: Sorry. I'll try again. In addition to allocating those inspectors work, did you do other tasks in relation to those inspectors?

25 **MR HAYES:** A mentor role, I suppose, with a lot of the new inspectors that came in, yeah, mentoring role, and we used to have discussions about the legislation. That was something we talked about a lot. We'd come in and we'd talk about the job and what they did on the job, what notices they wrote, and we'd go through the legislation and make sure it's all sort of - fitted together.

30 **MR SMITH:** So would you review their work?

35 **MR HAYES:** Yes, I would, yes, yes. You mean as far as closing out, you mean? Yeah. Yeah, I used to close out their work as well, so that was a process, they'd go and do the job, complete the job, they'd hand it back to me, and I would go through it and make sure that all the areas of the complaint were completed. If there was any notices written, I'd look at that and - yeah.

40 **MR SMITH:** And if there was something that wasn't done that you thought should have been, would you have a discussion with the inspectors about that?

MR HAYES: Yes, generally, yes.

45 **MR SMITH:** And does that include if there were notices that weren't issued that you thought on the basis of that material perhaps should have been?

MR HAYES: We'd have a discussion about it, but I never directed, or anything like that, people to write notices. That's up to the individual inspector.

MR SMITH: All right. So it was a discussion about why they'd made decisions?

MR HAYES: Yeah, yeah, could be, yeah.

5

MR SMITH: Yes. Okay. And you mentioned that on top of that workload, I think, a moment ago that you also conducted site inspections.

MR HAYES: Yes, yes.

10

MR SMITH: Was that - did you enjoy conducting site inspections?

MR HAYES: Yes, I did.

15

MR SMITH: And why was that?

MR HAYES: I think I like engaging people out in the industry, and trying to deal with the issues they've got. There's a lot of people out there struggling with the legislation, struggling with their work, finance and that sort of thing, and I thought I could do something. That's one of the reasons why I joined the department.

20

MR SMITH: And you were an inspector a long time. What was it that kept you as an inspector?

25

MR HAYES: I think I enjoyed the role. Like I said, I enjoyed engaging with people and helping people, I suppose.

MR SMITH: And from your perspective as an inspector, what was it that you were trying to achieve?

30

MR HAYES: When I worked in the industry - I worked there for 36 years. I saw a lot of silly stuff, a lot of accidents I thought could be prevented. Whenever I had the opportunity I used to get on safety committees on the larger jobs to get a better understanding of the legislation and what happens on the site. And I think - I think by joining the department I thought I might have made a small difference to industry, in some sort of way.

35

MR SMITH: Can I ask, Mr Operator, that paragraphs 9 and 10 of Mr Hayes' statement be blown up on the screen, please. Now, Mr Hayes, did you get a promotion to the role of acting lead inspector?

40

MR HAYES: Yes, I did.

MR SMITH: And do you recall when that was?

45

MR HAYES: Yes, 2017.

MR SMITH: And do you recall who was responsible for that promotion?

MR HAYES: That was our first director of construction, that is, Daryl Brooker.

5 **MR SMITH:** And when you were promoted, were you in a permanent role or an acting role?

MR HAYES: No, it was an acting role.

10 **COMMISSIONER:** When you say the first director of construction, what do you mean by that?

MR HAYES: We didn't have a director of construction prior to that. It used to be operational managers would handle it, and we never had an individual person who controlled the construction.

COMMISSIONER: And were there operational managers in each region?

20 **MR HAYES:** Yes, yes, there were.

COMMISSIONER: And are they the people that you reported to as the principal inspector in your region and other principal inspectors in the other regions reported to?

25 **MR HAYES:** Yes, earlier days, there was an operational manager per office, and he would look after the industrial team as well as the construction team. Then in 2017 I think they introduced Mr Brooker as a first director of construction.

30 **COMMISSIONER:** For all regions?

MR HAYES: For all the construction, yeah.

COMMISSIONER: Sorry, for all the construction inspectors in all the regions?

35 **MR HAYES:** Yes. Yes.

COMMISSIONER: And that point, what happened to the operations managers who were in each region?

40 **MR HAYES:** They sort of took a step back, and they were directly under the director, and they'd take directions from the director of construction.

COMMISSIONER: And where was the director of construction based?

45 **MR HAYES:** I think maybe - I think Daryl Brooker was over the northside of town, over at Lutwyche at that time. I think Ms Burgess was there at the same time.

COMMISSIONER: So even someone in Cairns, an operations manager in Cairns, would take direction from the new director of construction in Brisbane?

5 **MR HAYES:** Yes. But in the Cairns office, they probably only had the - only one operational manager which would handle the whole office, all the inspectors. They were a smaller office and didn't get the workload that we got down here.

10 **COMMISSIONER:** Was there any explanation given to you about why there needed to be this new position of director of construction created?

MR HAYES: No, it come as a surprise to us.

COMMISSIONER: Why were you surprised?

15 **MR HAYES:** Well, we were coping quite well the way things were going, and I didn't see the need for the change.

20 **COMMISSIONER:** Are you aware of why Mr Daryl Brooker was appointed to that job as director of construction?

MR HAYES: No. No. That was another surprise for me, yes.

COMMISSIONER: Why were you surprised about that?

25 **MR HAYES:** I don't think he had any construction experience. I thought he was an industrial inspector.

COMMISSIONER: He was a what, sorry?

30 **MR HAYES:** Industrial inspector.

35 **COMMISSIONER:** Strikes me as a very strange appointment to make, someone - if there's a been division, at least for the whole period that you were employed, between industrial inspectors, construction inspectors and other specialised inspectors. Was any explanation given to you about why an industrial inspector had become the director of construction?

40 **MR HAYES:** No. It was a question we asked, I suppose, at the time, and a lot of - a lot of changes happened around '17/'18 in the department. A lot of changes.

COMMISSIONER: I'm sure Mr Smith will ask you about those.

45 **MR SMITH:** Just on the evidence that you were just giving to the Commissioner, that construction unit that you had a director for that you were talking about, from when it was implemented to when you retired, were there any changes to that structure that you can recall?

MR HAYES: From 2017 or all the way through, you mean?

MR SMITH: No, from when that structure commenced. I think you just said it was 2017.

5

MR HAYES: Yeah. There was drastic changes.

MR SMITH: There were who, sorry?

10 **MR HAYES:** Drastic changes.

MR SMITH: To the structure?

MR HAYES: To the structure, yes.

15

MR SMITH: So what changes occurred to that structure after 2017?

20 **MR HAYES:** Prior to, say, 2017, we used to have a lot of interaction with the CFMEU, and we had that prior to it, but the complaints used to generally come from - say, 90 per cent of the complaints, would come from builders about the right-of-entry issues. They'd want us down to deal with a right of entry. We used to go down and deal with it how we normally dealt with it.

25 From 2017, more 2018, they were the ones that were making the complaints about suspected contraventions, and it was like an overload. It just sort of hit us all at once. It was continuous, and it never stopped coming in, and the attitude of the department and the government of the time changed dramatically, as far as how they allocated inspectors, how they treated inspectors, how inspectors had to do the more bidding for the CFMEU, and how we had to write more notices, a hell of a lot more notices.

30

MR SMITH: And do you have a view about what -

35 **COMMISSIONER:** Can I just follow up that - I just missed your evidence there. You said prior to 2017, 90 per cent of complaints were by builders complaining about right-of-entry?

40 **MR HAYES:** That's an estimate. Probably a large quantity were just builders would complain, "We've got the CFMEU down on site here. They're not doing this or they're doing this." And we'd have to go down and deal with it, and we used to be able to deal with that a lot easier. And then after 2017/18, everything changed. We - we had to - our management changed. The whole structure changed and how we had to deal with the union.

45 **COMMISSIONER:** Was there any change in the nature of the complaints that were being made?

MR HAYES: The complaints were made more from the CFMEU. So we never used to get - used to get occasionally from the CFMEU, but it seemed to be 90 per cent of the other way to the CFMEU, a large component.

5 **COMMISSIONER:** And what in your opinion caused that change from 90 per cent of complaints prior to 2017/18 being by the builders about right of entry to 90 per cent of the complaints being by the CFMEU?

10 **MR HAYES:** I believe there's the - the - it's hard to explain, but the CEMP came in around that time, around 2018 I think they came in.

COMMISSIONER: You will just have to explain what that is, sorry.

15 **MR HAYES:** Yeah, the compliance enforcement and monitoring policy, where it mandated that we had to write notices rather than use our own initiative to write notices. That came in around about the same time as that. I couldn't give you a date on that. But that changed the way we - the inspectors did their work, drastically. It took the - took the - took out how we used to deal with people. We were forced to write the notices under that policy, where before we had a bit of discretion with how we - how we wrote notices and how we dealt with people.

20 **COMMISSIONER:** Were there any other causes that you can recall apart from the introduction of this policy around that time that precipitated this change, this flip from 90 per cent complaints by builders to 90 per cent complaints by the CFMEU?

25 **MR HAYES:** Well, it all seemed to change around the implementation of Ms Burgess. That's when it started.

30 **COMMISSIONER:** And these 90 per cent of complaints by the CFMEU, were they like the builders' complaints about right of entry, or were they about right of entry (indistinct)?

35 **MR HAYES:** They were generic suspected contraventions, and they were the same - just about the same complaint each time. Fall from heights. Housekeeping issues. Access/egress. Haz subs. And that's all we would get, would be a brief outline and those type of things where normally a complaint would come in and you would get more of a story about what the complaint is about, where it happened, what happened, what location, this sort of thing. That's how it changed, but -

40 **MR SMITH:** You mentioned in your evidence a moment ago where the complaints would come from. Did the total number of complaints from before - that is, right-of-entry disputes - did the total number of complaints change from prior to 2017 compared to afterwards?

45 **MR HAYES:** As far as right of entry?

MR SMITH: Yes.

MR HAYES: It probably - it probably got a bit worse, I suppose. It's hard to tell. It's - a lot of builders were reluctant to complain in the end to the government, because they - they thought we were pretty inactive in what we did, as far as the
5 right-of-entry stuff. The inspectors lost a lot of power, a lot of power in what we could do as far as right of entry and dealing with issues like that.

MR SMITH: So when you say the inspectors lost a lot of power about what you could do, what do you mean by that?
10

MR HAYES: We were virtually told how to deal with the CFMEU rather than allow us to deal with the CFMEU how we did in the past.

MR SMITH: And who told you that?
15

MR HAYES: That mainly come from our director, construction.

MR SMITH: And is that Ms Burgess?

MR HAYES: Yes, it is.
20

MR SMITH: And what sorts of limitations were placed on you?

MR HAYES: We were sort of - it become an urgency, like a priority. The union
25 complaints become a priority over any other complaints, accidents or anything like that. When I was in the allocating role, I would get direct phone calls from Ms Burgess where she would bypass the AAA centre, telling me to get an inspector out there straightaway, urgently, and it was always an urgent thing we had to push them out there, and then even sometimes she would bypass me and went straight to an
30 inspector get him out there.

MR SMITH: And would that happen on non-CFMEU-related jobs?

MR HAYES: No.
35

MR SMITH: And when you got directions to get inspectors out as a priority, is that something that you felt you had to comply with?

MR HAYES: Comply with? Yes, we were forced to do that, yes. I wasn't happy
40 about it.

MR SMITH: And was that process consistent with the triage policy that you've described already to the Commissioner?

MR HAYES: No, no, it changed completely, yeah.
45

MR SMITH: Was there any other pressure to get inspectors onto site quickly once they'd been dispatched?

5 **MR HAYES:** Once you'd been dispatched, there was a constant, constant phone calls, where are you, how long are you going to be? The union are waiting. What's holding you up? It was - it was just constant like that.

10 **MR SMITH:** And was there any pressure or direction about how the CFMEU was to be dealt with while you were on site?

MR HAYES: We were virtually told if the CFMEU wanted the notice, we were virtually told to write the notice.

15 **MR SMITH:** Now, when you say virtually told, what do you mean by that?

MR HAYES: Well, you would go to a complaint and you would deal with some issues, and generally the union, the CFMEU, would want you to write a prohibition or an infringement. They weren't too much worried about improvement notices, mainly prohibition, but they'd try to push you to write the prohibition notice. And if
20 you refused, you would see the same sort of pattern every time. They would pull the phone out of their pocket, walk away, they'd ring someone, and you'd expect a phone call within two or three minutes from either Ms Burgess or one of the the operational managers saying the union aren't happy with what you're doing there that you haven't written this notice. And that occurred all the time (indistinct).

25 **MR SMITH:** And when you received those phone calls, was there ever any inquiry made about whether you should a notice should be issued?

30 **MR HAYES:** No, never.

MR SMITH: Was there ever any direction issued to you to issue a notice?

MR HAYES: There had been directions to issue notices, yes.

35 **MR SMITH:** And how common was that?

MR HAYES: I can't speak for all the other inspectors, but I know some had - had directions to write notices. I had a couple.

40 **MR SMITH:** And as far as other inspectors go, how would you find out that they'd had directions?

MR HAYES: Just conversations back in the office and talking to other inspectors. It was sort of common within the inspectorate.

45 **COMMISSIONER:** When you say you had a couple, what were those couple of directions? Can you recall?

MR HAYES: Yes. I was forced into a prohibition notice on a crane, a tower crane, and another one was an improvement notice on amenities.

5 **COMMISSIONER:** You said before that the union would press you to - I think you said often press you to issue a prohibition notice. Over your long experience as an inspector, what is your opinion as to the reason the union was pressing you often to issue a prohibition notice?

10 **MR HAYES:** My belief is to slow the - slow the progress of the job down or grind it to a halt.

COMMISSIONER: And why would the union want to do that?

15 **MR HAYES:** It can be a cost factor to the builder. It can - liquidated damages can apply if the job's not done on time. Any delays on a job is cost-effective.

COMMISSIONER: And why would the union want to slow the project down or increase cost or enhance the risk of liquidated damages in relation to the projects that
20 you were called out to where it had made a complaint?

MR HAYES: I'm not quite sure of the actual notice, but it's an intimidating process which they were very good at, and I think it was the longer their job progresses, I think more they can get in fees and that type of thing. Like, I couldn't tell you the
25 exact motive, but that's my feeling with it all.

COMMISSIONER: And the issue of an improvement notice doesn't have the same effect?

30 **MR HAYES:** No, it doesn't, no, no. Not like a prohibition notice, and the infringement notice is a - a monetary thing, yes.

COMMISSIONER: And you say this happened - occurred all the time. It was - it was constant that you were directed to go to sites to deal with these issues?
35

MR HAYES: Yes. It was constant, and where there's - where the union wanted a prohibition notice, there would be a direct push from the department to follow what the union wants us to do, and there'd be action taken against us back at the office if we didn't do it.
40

COMMISSIONER: A direct push from whom?

MR HAYES: Mainly the operational managers, Mark Houston and Chris Mutton.

45 **COMMISSIONER:** And action taken - sorry, I cut you off.

MR HAYES: Sorry, yeah, and Ms Burgess. Yeah.

COMMISSIONER: And action taken against you back at the office by whom?

MR HAYES: It'd mainly be left up to the operational managers.

5

COMMISSIONER: You gave some evidence that the directions that you got from Ms Burgess were always urgent and that it bypassed the AAA process and sometimes she even bypassed you and went to the inspectors directly.

10 **MR HAYES:** Yes.

COMMISSIONER: What opinion did you reach as to why Ms Burgess was directing you in this manner, that is, bypassing the call centre and telling you it was always urgent?

15

MR HAYES: It was difficult, because it sort of - it happened as soon as she - look, I was on cordial terms with Ms Burgess. I'd known her for some time. The minute she got the job as director of construction, everything just changed. And I just think - I felt that she was favouring the union for some reason. I didn't know why that was that she favoured the union and did whatever the union wanted. You know, it could possibly - possibly a push from the - from the government. I don't know. But it certainly was entrenched in the department. The tiered management from Grace Grace down were sort of active with it.

20

25 **COMMISSIONER:** You say you don't know why she acted in this way. Did you have any suspicions?

MR HAYES: I thought she might be connected with the CFMEU somehow. I couldn't confirm that.

30

COMMISSIONER: And you say you knew her previously. What role did she perform previously?

MR HAYES: She was in the strategy unit.

35

COMMISSIONER: And how did you know her?

MR HAYES: Well, the strategy unit used to do a lot of things. They used to do audits and all that, but also they engaged a lot with industry. And if we had any particular issues, I had - I had a thing with closing of footpaths on a lot of construction sites, and I - I went to them and I took a series of photographs of near accidents and all that sort of thing, and I took them to the strategy group to see if they could talk to industry and do something like that. Help me out.

40

45 **COMMISSIONER:** Did you have any view that she was an appropriate or inappropriate person to become the director of construction after Mr Brooker?

MR HAYES: I was very surprised when she got the role as director.

COMMISSIONER: Why is that?

5 **MR HAYES:** I just didn't think she was the right type of person for that role. She was a very emotional sort of person. I don't think she had the construction knowledge.

10 **COMMISSIONER:** But I think you just said that she worked in the construction strategy unit.

MR HAYES: Strategy unit, yeah.

15 **COMMISSIONER:** And why didn't she have construction knowledge?

MR HAYES: Construction strategy unit is a bit different. They engage with clients and that sort of thing and industry groups. Don't actually do the physical inspectorate work out on construction sites. They don't write notices or -

20 **COMMISSIONER:** And how long had she been employed in the strategy unit prior to becoming director of construction?

MR HAYES: I don't know. I'm unsure of that.

25 **COMMISSIONER:** And did you have any insight or understanding as to why Ms Burgess was chosen to be the director of construction under Mr Brooker?

MR HAYES: It came as a surprise to a lot of people.

30 **MR SMITH:** Thank you, Commissioner. Now, you mentioned prohibition notices in one of your answers to the Commissioner as being something that was desirable to the CFMEU or which they sought. Can you just explain what the effect of a prohibition notice is when it's issued?

35 **MR HAYES:** A prohibition notice is - is issued by an inspector where there's imminent and immediate risk of harm to a person or persons as a result of a hazard at the workplace. Now, when you issue a prohibition notice, that can stop a scaffold, it can stop a piece of plant, it can stop a job, it can stop a concrete pour. So there's a huge, huge cost and a lot of things you've got to weigh up when you issue a
40 prohibition notice, because it grinds a job to a halt and can cost a lot of money. For example, if you stop a concrete pour for some reason, for safety reason, it has to be imminent risk. If you stop the pour, that can be, you know, a heap of money, you know, a lot of money. They may have to rip the floor up or something like that, you know, so you've got to be really careful what you do with it, you know.

45 **MR SMITH:** So when you say careful, how would you be careful about deciding whether or not -

MR HAYES: You would have to make sure there's imminent or immediate risk. That's the only way you could write that notice.

5 **MR SMITH:** And would you need to gather evidence for that?

MR HAYES: Yes, you would.

10 **MR SMITH:** How would you go about doing that?

MR HAYES: Photographic evidence. Notebook notes. You can seize documentation. Work method statements.

15 **MR SMITH:** And what degree of certainty would you have before you issued a prohibition notice?

MR HAYES: I'd have to be 100 per cent sure.

20 **MR SMITH:** And if you were satisfied that a prohibition notice was warranted, would you issue one?

MR HAYES: If I had to, yes.

25 **MR SMITH:** Yes. Now, I'm just going to ask you a couple of questions about some things that the Commissioner asked you about a little bit earlier. The first one -

30 **COMMISSIONER:** I want to just pick up that answer about prohibition notices. If a prohibition notice was issued at the direction of the CFMEU, how, in your experience, was it removed? How did work start again?

MR HAYES: How would you remove -

COMMISSIONER: How was it removed in practice?

35 **MR HAYES:** It's lifted once the - once the risk is remedied. That's how it works. Yeah, it remains on there till that happens.

40 **MR SMITH:** Now, if I can ask you a couple of questions about some things that came up when the Commissioner was asking you some questions. The first one of those is, there was some discussion about the operations manager in the Cairns office.

MR HAYES: Yeah.

45 **MR SMITH:** Do you know who the operation manager in the Cairns office would report to, as their supervisor?

MR HAYES: Being a small office, they would probably report to the executive director, Marc Dennett, I would say.

MR SMITH: All right.

5

MR HAYES: Yeah. For construction issues, they would engage with Ms Burgess.

MR SMITH: All right. So it would depend on the nature of the issue that they were dealing with.

10

MR HAYES: Yes, yes.

MR SMITH: Can I just go back to a question I asked you a little while ago about the organisational unit of construction, compliance and field services, and I think you gave evidence to the effect that that commenced somewhere around 2017?

15

MR HAYES: Yes, around about there, yeah.

MR SMITH: And did that unit itself, as a business unit of the department or of Workplace Health and Safety Queensland, did that unit continue - or how long did that unit continue for, to your knowledge?

20

MR HAYES: Till I retired in 2021.

MR SMITH: All right. So that unit remained in place for the rest of your career?

25

MR HAYES: Yes.

MR SMITH: All right. Now, could I ask you, then, in relation to the urgency that you spoke about in your evidence a little bit earlier to get to the CFMEU-related complaints or right-of-entry complaints, was there any contact made with you whilst you were - after one of those jobs had been allocated to you?

30

MR HAYES: Yes.

35

MR SMITH: And what was the nature of that contact?

MR HAYES: There'd be phone calls while you're in transit.

MR SMITH: And who would you receive those phone calls from?

40

MR HAYES: It started in the early, early piece, that Ms Burgess would ring. Then the operational managers took over from there.

MR SMITH: And who were the particular operations managers that you would receive those phone calls from?

45

MR HAYES: Mainly Chris Mutton and Mark Houston.

MR SMITH: And do you recall what was said in those phone calls?

5 **MR HAYES:** Do I recall? Yes.

MR SMITH: And what was said?

10 **MR HAYES:** It was just where are you? How long are you going to be? The union are on site. When are you going to get there? That type of thing. It was the same type of stuff every time we got a job.

15 **COMMISSIONER:** I don't understand why you're receiving calls from Mr Chris Mutton, because the evidence so far has been he was the operations manager in Brisbane South or maybe even Gold Coast but you were based in Brisbane North.

20 **MR HAYES:** Yes, it fluctuated a bit. Chris sort of - I had other operational managers as well, Nick Drapes, and I had Andrew McKenna as well at that period of time, but when I left, Mark Houston and Chris Mutton were the operational managers and like you said there's one on the Gold Coast and one on the Brisbane South with Mark Houston.

25 **COMMISSIONER:** Sorry, Brisbane South. I said you were Brisbane North. You were Brisbane South.

30 **MR HAYES:** Yeah, yeah, but we had to help the Gold Coast out at one stage there for months and months and months because they had a shortage down there. So I - I would work under Chris Mutton as the operational manager while I was doing Gold Coast work.

COMMISSIONER: So I got the question wrong. Why are you getting instruction from Mr Houston, because he was Brisbane North?

35 **MR HAYES:** Brisbane South.

COMMISSIONER: He was Brisbane South, was he?

MR HAYES: Brisbane South.

40 **COMMISSIONER:** I thought the witness we just had was -

45 **MR HAYES:** They moved round quite a bit. Mark might have been there at one stage, or even after I left he might have went there; I don't know. Because they moved around a bit, and I had quite a few of them in my time.

COMMISSIONER: I see.

MR SMITH: Now, just in relation to those calls that you'd receive whilst you were on the way to the job, did they have an effect on you?

MR HAYES: Yes, very much so.

5

MR SMITH: And what was the nature of that effect?

MR HAYES: Well, it would start in the morning when you woke up. You'd wake up and you would think am I going to get these calls today? Am I going to get a union job straight off? It was a nervous type of feeling. And I've heard even some inspectors say that they felt physically sick in the morning thinking about it. And it wasn't so much - it wasn't so much the pressure we used to get from the CFMEU, although there was a lot of pressure there from them. I think coming from the department, it was a lot worse. They were people who were supposed to look after us. They were our employers. They had a job to look after us, and they didn't do it. They let us down.

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15

MR SMITH: And as a public servant, is there a requirement that you follow directions from your employer?

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MR HAYES: Yes, yes.

MR SMITH: Did that have any impact on the pressure that you felt from your employer as compared to the union?

25

MR HAYES: Well, as long as it's a lawful - lawful direction. That's the difference, and a lot of it wasn't lawful. So it's - that was the conflict we had, and I had quite a few conflicts like that, because I - I refused to take unlawful directions. That was the hard part. And that's when you'd really get hammered.

30

COMMISSIONER: Why do you say a lot of it wasn't lawful?

MR HAYES: Well, a lot of the notices they tried to force you to issue weren't lawful directions.

35

MR SMITH: Commissioner, I was about to move on to a fresh topic.

COMMISSIONER: I think we can keep going for a little while, Mr Smith. I think we've got - are we still - Mr de Jersey, is there any update on what we're doing? Sorry, could I just interrupt for a moment, Mr Hayes.

40

MR DE JERSEY: Nothing presently, Commissioner. However, I am organising a telephone call between me, Mr Cappelletti and separately between me and Dr Ansell after we adjourn today, so hopefully I'll have something more after that.

45

COMMISSIONER: Well, I think we should work on the basis that we're hearing from the doctor and finishing this witness and dealing with Mr Watts, isn't it, tomorrow?

5 **MR DE JERSEY:** Yes, that's right.

COMMISSIONER: So perhaps we should continue on with this witness for a little while. If you need to go, Mr de Jersey, and make those calls, you only have to ask to be excused. I understand.

10

MR DE JERSEY: Thank you very much. I won't at present because I don't have the time, but thank you for the accommodation.

15

MR SMITH: Thank you, Commissioner. Now, Mr Hayes, before we got into the discussion that we were just having, you were giving some evidence about the acting lead inspector role that you were appointed to.

MR HAYES: Yes.

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MR SMITH: And you'd given some evidence that was an acting role. But did an opportunity come up for you to apply for a permanent role?

MR HAYES: Yes, it did.

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MR SMITH: If I can just ask the operator, could you please bring up paragraphs 9 and 10 of Mr Hayes' statement. Do you recall, Mr Hayes, when the opportunity for the permanent role came up?

MR HAYES: Yes, I do.

30

MR SMITH: And did you apply for that role?

MR HAYES: Yes, I did.

35

MR SMITH: And did you get an interview for that role?

MR HAYES: Yes, I did.

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MR SMITH: And do you recall who was on the interview panel?

MR HAYES: Yes, Ms Burgess was the chair of the panel. I just can't remember - I think there was two others on the panel.

45

MR SMITH: And did you ultimately succeed in getting that role?

MR HAYES: No, I didn't.

MR SMITH: Were you surprised by the fact that you hadn't succeeded?

MR HAYES: Yeah, a little surprised. I - I thought the first director saw I was fit for the role and he put me in that position. Yeah, I was quite surprised.

5

MR SMITH: Had you received any criticism or complaint about how you were conducting that role while you were acting in it?

MR HAYES: No. No.

10

MR SMITH: Did you, having failed to secure the role, attempt to find out why?

MR HAYES: Yes, I - I rang Ms Burgess.

15

MR SMITH: And what did Ms Burgess tell you?

MR HAYES: She actually said to me that I'm too much of a stickler for the regulations and that I've got to get on board with the views of the government and the department of the day.

20

MR SMITH: And when she said that to you, what was your reaction?

MR HAYES: I was a bit dumbfounded. I wasn't quite - at first I wasn't quite sure what she meant, then I had a realisation of what she meant by it, and, yeah, I - I expected to get the role. Yeah.

25

MR SMITH: And what did you take Ms Burgess to have meant by - what was it she said?

30

MR HAYES: She didn't - well, she never liked the way that I allocated the work because of that - because I used to prioritise the work, and she used to always push me to sort of prioritise the union jobs, and I was - I was removed from that role because of that, I think. Nothing was ever said. She said it was a structural change and removed me from my - yeah, the role that I had.

35

MR SMITH: So were there occasions where you didn't allocate work in a way that Ms Burgess had instructed you to?

MR HAYES: Yes. Yeah.

40

MR SMITH: Did you develop an understanding or do you now have an understanding or belief about what Ms Burgess meant when she said you were too much of a stickler for the regulations?

45

MR HAYES: Yeah, I think she means I - I stick to the rules a bit too much and the legislation, follow the legislation how it's meant to be followed. That's the way I took it.

MR SMITH: And what about what it meant to move with the government and the department of the day?

5 **MR HAYES:** To me, that meant that the government's stance has changed and the department moves with the government, and how they've changed the way they're going to operate.

10 **MR SMITH:** And what did you think, if anything, after that conversation about your prospects of promotion in the future?

MR HAYES: Not good at all, no.

15 **MR SMITH:** Did you ever apply for another promotion?

MR HAYES: Yes, I did.

MR SMITH: And what role did you apply to be promoted to?

20 **MR HAYES:** I was encouraged to go for the operational manager role by my operational manager, Nick Drapes. Yes, and I was unsuccessful with that too.

25 **MR SMITH:** And did Mr Drapes express an opinion to you about why you should go for it, why he encouraged you to do so?

MR HAYES: He said that I'm almost doing the job now or I am doing the job as it is now. Why not go for it?

30 **MR SMITH:** On that occasion, did you make any inquiries about why you were unsuccessful?

MR HAYES: No, no, I didn't.

35 **MR SMITH:** Did you get an interview for that role?

MR HAYES: Yes, I did.

MR SMITH: Do you recall who was on the selection panel in that interview?

40 **MR HAYES:** Yeah, Ms Burgess chaired that as well.

MR SMITH: Did you think it was worthwhile making any further inquiries to Ms Burgess on that occasion?

45 **MR HAYES:** No. No, I didn't.

MR SMITH: When you failed to secure the lead inspector role, did you then - or what role did you then end up in?

5 **MR HAYES:** I think I stayed in the operational - the allocator role for a little while, then I was removed from that role for operational reasons, and then I went back to a general principal inspector.

10 **MR SMITH:** When you say you were removed from the role for operational reasons, do you know what the operational reasons were?

MR HAYES: They told me there's a different operational structure, and that's why I was removed from the role. That's what Ms Burgess told me.

15 **MR SMITH:** All right. So what role did you return to at that point?

MR HAYES: Inspector role, principal inspector.

COMMISSIONER: When you say "they" told me, who is the they?

20 **MR HAYES:** Ms Burgess told me.

COMMISSIONER: And she told you there was a different operational structure. Was there in fact a different - sorry.

25 **MR HAYES:** Yeah, she said there's a structural change and that's why - yeah.

COMMISSIONER: Was there in fact a structural change?

30 **MR HAYES:** Well, I couldn't see it, but for a while, the operational managers were doing some allocating, but that changed very quickly. Went back to other individuals doing it. So, yeah.

35 **COMMISSIONER:** So prior to this so-called structural change, was the same position insofar as allocation was concerned, pertaining in 2017 as it was in 2013, that is, each region had a principal inspector who did the allocation in each region?

40 **MR HAYES:** Yeah. It changed to the operational manager for a while, and then it sort of - it - it went to a lot of different people. It shifted around a bit, the way they sort of set it up. It wasn't real successful.

COMMISSIONER: It shifted around after 2017?

MR HAYES: Yeah. Yeah.

45 **COMMISSIONER:** In each region?

MR HAYES: Yes. We had an allocator for a couple of regions. That worked for a while. There was some - there were some changes. They kept changing the structure sort of thing. I was even put back in the role for a while, but it lasted five days and I was taken out of it again.

5

COMMISSIONER: Was it explained to you why you were taken out of that role after five days?

MR HAYES: The operational manager Mark Houston put me back in the role. He said, "I want you back in that role." And I went into it, and he rang me, I think it was about five days later, and said, "Ms Burgess wants you out of the role."

10

COMMISSIONER: And this is -

MR HAYES: No reason.

15

COMMISSIONER: And this is some time after you had applied for and were unsuccessful for the position of permanent lead inspector?

MR HAYES: Yeah, I can't remember the dates. It would have been after that, because I stayed in the allocator role for a little while, I can't remember how long, then I was taken out of it, and this was on the 15th of - I believe it was on the -

20

COMMISSIONER: Your statement says 15 April 2020.

25

MR HAYES: Yeah, asked me to start doing the allocating. 15 April I was put into it, and I was taken back out of it on 22 April.

COMMISSIONER: Going back in time to 2017 when you were told you're too much of a stickler for the regulations, you've got to be able to move with the government and the department at the time. You said you were dumbfounded. Did you actually say anything to Ms Burgess on that call, despite being dumbfounded?

30

MR HAYES: Just that I thought I was suitable for the role, that the previous - previous director thought I was suitable for the role and I couldn't work out why I wasn't, and - yeah, and that's the reply I got.

35

COMMISSIONER: And after you got that reply, did you say anything further to -

MR HAYES: I don't think so. I think that was the end of the conversation around about there.

40

COMMISSIONER: So on my account, that makes, during those three periods, four roles that you either failed to get or in relation to which duties were removed from you. You didn't get the lead inspector role, then your allocating duties were removed from you. You were asked to apply for the operations manager by Mr Drapes and

45

you didn't get that, and you lasted five days in mid-2020 under Mr Houston's direction as an allocator?

MR HAYES: Yeah, that's correct, yes.

5

COMMISSIONER: And apart from the explanations you've given just now and in your witness statement, were any other explanations given to you in relation to any of those four incidents?

10 **MR HAYES:** I was told I wasn't to mentor the new inspectors, and I queried that as well.

COMMISSIONER: And you what as well, sorry?

15 **MR HAYES:** I was told by Ms Burgess that I wasn't to mentor the new inspectors.

COMMISSIONER: You were not to mentor?

20 **MR HAYES:** Yes. I was told I wasn't to mentor, and I - I said, "Well, that's part of my role as a principal inspector, to mentor." I can't think exactly how that conversation went, but, yeah, I was quite unhappy about that. And she actually told the new inspectors not to come to me for any advice.

25 **COMMISSIONER:** You must have been the most experienced inspector in terms of industry knowledge in the whole WHSQ?

MR HAYES: I don't think she liked my interpretation of the legislation. My interpretation is how the legislation should be, and she wasn't happy with that.

30 **COMMISSIONER:** Apart from that conversation where you were told not to mentor new inspectors, were there any other conversations you had in relation to any of these other four changes during that period, 2017 to 2020, that you have just given evidence about?

35 **MR HAYES:** Not that I recall. I realised that I was doomed for any promotions, really, I think, after the lead inspector application. Like, I mean, during the interview, she never gave me eye contact. She never asked me any questions. And the same, I think, when I went for the - for the regional operational manager job as well. There was no contact. There was no visual. I thought, well, you know, I'm wasting my time
40 here. I was nearing retirement anyhow. It just become too hard. I didn't want to fight the battle, and I knew I was going around '21/'22, so yeah.

COMMISSIONER: And did that behaviour of Ms Burgess towards you in that period hasten your decision to retire or have any effect on your decision to retire?

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MR HAYES: Yes, it did. It got to the stage where I couldn't deal with it any longer. I probably would have went another year. I really liked that job. I loved that job. Up

till 2017, yeah, 2017, it was a great job. It really was. And we had - we had a lot of autonomy with that sort of job. We could do what we thought we needed. We could do proactive work where we wanted to, and everything changed and we were just micromanaged from 2017. We couldn't do anything. So the whole job changed for me. I was a lucky one. I had an out. I had retirement to look forward to. But a lot of the other poor inspectors had to stay there and cop it, you know. And that's - I was very unhappy about that.

10 **COMMISSIONER:** You were very unhappy about it?

MR HAYES: Yes. Yeah, very much so.

COMMISSIONER: And what did you do, if anything, about your unhappiness?

15 **MR HAYES:** I went to everybody. I eventually wrote to Craig Allen, the deputy director-general, and he never even acknowledged. I wrote a long letter about my feelings and what it's doing to the inspectorate, how it's affecting people's mental health, how people are leaving in droves, the absenteeism. I mentioned all that sort of stuff. He never bothered acknowledging me.

20 **COMMISSIONER:** Who's Craig Allen, sorry?

MR HAYES: He was the deputy Director-general and I went to him as a last resort. It was probably a cry for help, if you like, on behalf of the inspectorate, because he'd come to the office one day and he said "I'm here to help, help you out whenever you want. My door's always open." So I took advantage of that, and I drafted a letter and sent it off to him, and he never acknowledged it. I was very disappointed with that, because it had a lot of stuff in there that was happening and stuff they could have worked on or could have made better.

30 **COMMISSIONER:** That might be intruding too far into Mr Smith's examination, so I might just allow him to continue on.

35 **MR SMITH:** Well, while we're on the topic of Mr Allen's letter, can I ask - the letter to Mr Allen, I should say - can I ask, Mr Operator, that you blow up paragraph 32 of Mr Hayes' statement. Mr Hayes, you've already given some evidence to the Commissioner about this. Was that letter or that - when you wrote to Mr Allen, was that 22 April 2020?

40 **MR HAYES:** Yes, it was.

MR SMITH: And I think you already gave some evidence about the response that you got and some evidence about what was contained in the letter. But perhaps if we could go to exhibit NH-1, Mr Operator, to Mr Hayes' statement.

45 **COMMISSIONER:** While you're going to that, there's been some evidence that Mr Marc Dennett was the executive director of WHSQ, I think at this time, around

2020 - I could be wrong about that and that Ms Burgess reported to him. Did Mr Dennett himself report to Mr Allen as the deputy director-general?

MR HAYES: Yes, he would have.

5

COMMISSIONER: And what was Mr Allen the deputy director-general of?

MR HAYES: I think it was Workplace Health and Safety, because the Office of Industrial Relations was an overarching body and he was in charge of the Workplace Health and Safety part of it.

10

MR SMITH: Mr Hayes, if you can just look at that document on your screen, is that the email that you're referring to?

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MR HAYES: Yes, it is.

MR SMITH: Mr Operator, could I ask that you blow up in the first paragraph from the fourth line down to the sixth line down. Now, Mr Hayes, can you see, on the fourth line, a sentence beginning "We have endured"?

20

MR HAYES: Yes.

MR SMITH: I just ask you to read that sentence to yourself.

25

MR HAYES: Yes.

MR SMITH: Now, when you say in that sentence "repeated unwarranted intimidation and bullying", what is it you're referring to?

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MR HAYES: It's all the - the issues I've talked about here today: the constant harassment over notices, the constant harassment over doing what the CFMEU wanted us to do. The - the - all of the bullying going to the job, the hurry up and get there and do this. They never took into consideration our - our opinion at all, with these - these jobs. They never - when they said to us, "Why didn't you write the notice that the CFMEU wanted you to write?" it was never, "Can you explain why you didn't write that notice?" or any of that. They never took our opinion at all.

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MR SMITH: Can I ask, was there any reason why those pressuring you to write the notice couldn't have gone and written a notice themselves?

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MR HAYES: None whatsoever. They've all got inspector powers.

MR SMITH: And just in relation to issuing a notice, what does your state of mind need to be before you issue a notice?

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MR HAYES: You have to get the evidence first. Depending on the notice - like I said before, the prohibition notice, that's a serious notice to write. It stops an activity.

It stops a job. It costs people money. It costs livelihoods. You know, it's very important that you get it right, and you've got to work within the legislation when you write that notice.

5 **MR SMITH:** Yes. And if you're to write a notice, do you feel a sense of responsibility in relation to that?

MR HAYES: Certainly do, very much so.

10 **MR SMITH:** Now, just returning, then, to your email. Mr Operator, could you just blow that same passage up again, please. When you refer to - so you talk to "bullying from management in this department". Who is management in the department?

MR HAYES: I'm mainly talking about the executive director downwards.

15

MR SMITH: Who was the executive director at the time?

MR HAYES: Marc Dennett.

20 **MR SMITH:** And then who was the next level down from Mr Dennett?

MR HAYES: Ms Burgess.

MR SMITH: Then who was the next level down?

25

MR HAYES: Then you have the operational managers.

MR SMITH: Were there particular operational managers you had in mind when you wrote this email?

30

MR HAYES: Yes, Mark Houston and Chris Mutton.

MR SMITH: Yes. You also mentioned detriments to the health and wellbeing of your employees. What sorts of detriments to health and wellbeing were you referring to?

35

MR HAYES: I'm looking at the mental health of a lot of inspectors, and the absenteeism and the sick leave they took, and the way they - they left the department. They left trying to transfer out of construction into other areas of Workplace Health and Safety. We lost so many inspectors, so much experience, through this period of time, which just couldn't be replaced.

40

MR SMITH: I'll ask you a couple of questions about that. Firstly, how common was it for people to be on sick leave?

45

MR HAYES: Very common, very common. I think I made a point in there about the absenteeism, as it was rife.

MR SMITH: Was that short or long term sick leave or somewhere in the middle or a mixture?

5 **MR HAYES:** Some were long term, and yeah, some were long term and
mainly - like, I mean, absenteeism to me is an indicator for management to see the
wellbeing of the unit they're managing, you know? If you've got a lot of absenteeism,
you've got some problems and you really need to look at it, and I sort of indicated
10 that about the structure of what's happening in the structure, there's something wrong
with it, you know.

MR SMITH: And does high absenteeism place a burden on remaining inspectors?

15 **MR HAYES:** Yeah, it affected everybody. It affected all the construction. Even
branched out into probably the industrial inspectors, because there was talk in the
office about the heavy-handedness of management and how it was happening to
construction inspectors only, and it flowed over to other people.

20 **COMMISSIONER:** How does that make sense? How could it flow over to the
industrial inspectors? How could it flow over to the industrial inspectors? They
weren't reporting to -

25 **MR HAYES:** They're in the same office. Just a divider between the industrial
inspectors and the construction inspectors. So they're aware of the conversations and
they get included in the conversations sometimes. Our - our union delegate was an
industrial inspector, Ms Brailey. She did a really good job for us. And she knew
about our - our issues, and she used to deal with the Together Union for us. So it had
a flow-over effect to other people.

30 **MR SMITH:** And do you remember how many inspectors you lost?

MR HAYES: I think last count was around 25.

35 **MR SMITH:** 25, and over what sort of period was that?

MR HAYES: That would be over a few years, I think. A couple of years, yeah.

COMMISSIONER: 25 out of 50 over -

40 **MR HAYES:** They were replaced. They put new inspectors on, kept replenished,
but we lost a lot of experience. And that wasn't all leaving; there's some premature
retirement. There was moving within Workplace Health and Safety into other areas.
There was going to external jobs. So there's a variety of reasons.

45 **COMMISSIONER:** But there was an exodus of about half the complement over
two years?

MR HAYES: Yeah, if it's around the 50 or 60, yeah, at that stage, yeah.

MR SMITH: And did that loss of experience place pressure on - sorry, did that loss of experience affect the ability of the inspectorate to do its role?

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MR HAYES: It does, very much so, yeah. It's the inexperience. I believe a lot of the inexperience caused some problems with the writing of the notices for the union. The inexperienced inspectors were - I don't like using the word intimidated, but they didn't have the knowledge and didn't have the experience to deal with the issues of the bullying, and bullying from the department and bullying from the union. Not something they were used to.

10

MR SMITH: And did you say the course of that was that they'd be more likely to write notices?

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MR HAYES: Yes, yes, they were.

MR SMITH: You've already given evidence that you resisted writing notices that you shouldn't have. Did your level of experience, do you think, assist you with that?

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MR HAYES: Yes, it did, yes, yes.

MR SMITH: Mr Operator, can I ask that you bring up the second paragraph -

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COMMISSIONER: Can you just go to the next sentence in that bit: "Since the inception of the construction management structure" - there. What are you talking about there? I think I understand what you're saying, but I just want to get your own evidence.

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MR HAYES: It's virtually what I'm trying to say since the director of construction came into play, that type of structure.

COMMISSIONER: So that is the creation of the role of - I think it's construction, compliance and field services and the appointment of Mr Daryl Brooker in around September 2017 as director of construction.

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MR HAYES: That's where it virtually started, yeah. But Mr Brooker wasn't there too long.

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MR DE JERSEY: May I step out briefly to speak to Mr Cappelletti now?

COMMISSIONER: Yes. We'll finish at 4, Mr Smith. But you can go, Mr De Jersey.

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MR DE JERSEY: Thank you. It's at 4. So thank you.

COMMISSIONER: Yes. Thank you.

5 **MR SMITH:** Thank you, Commissioner. Mr Operator, can I ask that you blow up the second paragraph and the first line, down to the eighth line. Now, Mr Hayes, I'll just ask you to read that passage to yourself, then I'll ask you some questions about it.

MR HAYES: Yes.

10 **MR SMITH:** Can I first ask what the Queensland survey was?

MR HAYES: The Queensland survey was a survey that come round to all the inspectors. It was a questionnaire about a lot of stuff, on how you were sort of - how you're working, your workloads, management issues, that type of thing. It's - yeah, and it wasn't very favourable.

15 **MR SMITH:** So is that a document that you saw the results of?

MR HAYES: Yes, yeah.

20 **MR SMITH:** Then can I ask you, a few lines down you say the elephant - you talk about the elephant in the room, and you say:

25 "The elephant is in the form of this way this department engages with a particular stakeholder ..."

Can you tell the Commissioner who that particular stakeholder is?

MR HAYES: That's the CFMEU.

30 **MR SMITH:** And then you see just beyond that the next line down, you give an example. Perhaps, Mr Operator, if we can just extend what's blown up another a couple of lines. You talk about "a phone call directly to our director from this stakeholder". What are you referring to in that passage?

35 **MR HAYES:**

"A phone call directly to our director from this stakeholder requiring assistance ..."

40 The stakeholder would be the CFMEU.

MR SMITH: And what was the nature of the phone calls that you were referring to in that passage?

45 **MR HAYES:** It'd be the complaints they made requiring assistance from an inspector, which was a daily occurrence.

MR SMITH: All right. And then about a line down from that, there's a comma, and then there's a capital T:

5 "The panic starts with the constant phone calls to the attending inspector."
Can you explain what that's referring to?

MR HAYES: Yeah, these are the phone calls I was speaking earlier about, where
10 when you're on the way to the union jobs, you would be constantly rung about,
"Where are you, what are you doing, how long are you going to be? The union are
waiting."

MR SMITH: And then can you see where the sentence begins - now on the screen,
15 it's the fourth line down:

 "The process of responding to one of these complaints is ..."

MR HAYES: Yes.

20 **MR SMITH:** I'll just ask to you read that to yourself, because I don't think I got you
to read down that far earlier.

MR HAYES: Yes.

25 **MR SMITH:** So why was there a process of contacting another inspector to
accompany you?

MR HAYES: Yes, yes.

30 **MR SMITH:** Sorry, but why was that the process for these complaints?

MR HAYES: We insisted on that, and we did that through the Together Union,
because it used to be one inspector would go to a union job, and then we - because of
35 all the issues we were encountering, we - we thought it would be better to have two
inspectors there to assist.

MR SMITH: And where you say "these complaints", what are the complaints that
you're referring to?

40 **MR HAYES:** Yeah, complaints, like the complaint from the - the complaint was
sent to for the union job, it would be, yes.

MR SMITH: Yes, all right.

45 **MR HAYES:** Yes.

MR SMITH: And if we could just blow up the next section of that paragraph.

COMMISSIONER: You want to pick this up tomorrow morning, Mr Smith?

MR SMITH: Yes, Commissioner.

5

COMMISSIONER: Mr Hayes, are you saying that you never received a written response from Mr Allen in the 18 months between sending this email on 22 April 2020 and your retirement in October 2021?

10 **MR HAYES:** No. No, never received one.

COMMISSIONER: Did you receive a written response from subordinates of Mr Allen at any stage during that 18 months?

15 **MR HAYES:** No.

COMMISSIONER: And by that I mean Mr Dennett and Ms Burgess?

20 **MR HAYES:** No, not in response to that letter, no.

COMMISSIONER: Did you receive any communication, including communications not in writing, from Mr Allen or any of his subordinates about this correspondence at any time in the 18 months after you sent it?

25 **MR HAYES:** No, none whatsoever.

COMMISSIONER: Did you follow it up?

30 **MR HAYES:** No, I didn't. I - I was sort of in despair, I suppose, at that stage. It's something I - I was hoping for. Like I say, it was a letter of help, I suppose, and when it didn't come through, with all the other stuff we had to deal with, I thought, you know, "I'm not going to get any help here."

35 **COMMISSIONER:** Do you know whether Mr Allen is still employed by the Queensland public service, Mr Smith?

MR HAYES: No, he's moved on.

40 **COMMISSIONER:** Sorry?

MR HAYES: He moved on.

COMMISSIONER: To where?

45 **MR HAYES:** I don't know where he went. He wasn't there long. Probably a couple of years, I suppose, yeah, and then he moved on.

COMMISSIONER: Somewhere else in the public service?

MR HAYES: I don't know. I don't know where he went to, no.

5 **COMMISSIONER:** Do you know the answer to that?

MR SMITH: I believe I do, Commissioner, but I wouldn't like to say it in case I'm in error.

10 **COMMISSIONER:** All right. Mr Hayes, we're going to adjourn for this afternoon. Are you able to come back tomorrow morning?

MR HAYES: Yes, I am.

15 **COMMISSIONER:** Thank you. There might be the need to interpose someone. We might be hearing from a doctor at 10 am. But someone will talk to you just before that to work out whether that's the case. So you might not be on until some time after 10 am.

20 **MR HAYES:** That's fine.

COMMISSIONER: Thank you for your consideration in that regard. Are there any other matters I have to deal with, Mr Wheelahan, Mr Smith?

25 **MR WHEELAHAN:** No, Commissioner.

COMMISSIONER: Ms Brooks, Mr O'Grady?

MS BROOKS: No, thank you.

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MR O'GRADY: No.

COMMISSIONER: Then we'll adjourn till 10 am tomorrow.

35 **<THE HEARING ADJOURNED AT 4.04 PM, UNTIL THURSDAY, 12 MARCH 2026 AT 10.00 AM**