



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

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

**PUBLIC HEARING  
BRISBANE MAGISTRATES COURT**

**WEDNESDAY, 28 APRIL 2026  
AT 10.00 AM**

**DAY 22**

**APPEARANCES**

**Mr S. Wood AM KC, Commissioner  
Mr E. Gisonda SC, Senior Counsel Assisting  
Mr Daniel Caruana, Counsel Assisting  
Mr D. O'Brien KC, Counsel for the Cross River Rail Delivery Authority  
Mr D. de Jersey KC, Counsel for the State of Queensland  
Ms M. Brooks, Counsel for the State of Queensland  
Mr C. O'Grady, Ms F. Fox and Ms A. Hughes, Counsel for the CFMEU  
Administration  
Ms J. Ford Counsel for CPB Contractors Pty Ltd  
Mr Vince Sanfilippo, Witness.**

**<THE HEARING RESUMED AT 9.59 AM**

**COMMISSIONER:** Take appearances. Mr Gisonda, you appear with Mr Caruana as counsel assisting?

5

**MR GISONDA:** Yes, Commissioner.

**COMMISSIONER:** And Mr Ford, you appear as counsel for CPB Contractors?

10 **MR FORD:** Yes, and for Mr Sanfilippo.

**COMMISSIONER:** And for who else, sorry?

**MR FORD:** Mr Vincenzo Sanfilippo.

15

**COMMISSIONER:** Thank you. Mr O'Brien, you appear as counsel for Cross River Rail Delivery Authority?

**MR O'BRIEN:** Yes, I do, Commissioner.

20

**COMMISSIONER:** Mr O'Grady, who do you appear for this morning?

**MR O'GRADY:** I asked the same question. I continue to appear for the administrator, who at this point in time remains Mr Irving.

25

**COMMISSIONER:** And you appear with Ms Hughes?

**MR O'GRADY:** Yes.

30 **COMMISSIONER:** And Mr de Jersey, you appear with Ms Brooks for the State of Queensland?

**MR DE JERSEY:** I do, Commissioner.

35 **COMMISSIONER:** And Ms Connolly, you appear as counsel for the CEPU, ETU Queensland and the PGEU Queensland?

**MS CONNOLLY:** Yes, I do.

40 **COMMISSIONER:** Thank you. Mr Gisonda.

**MR GISONDA:** Thank you, Commissioner. Can I say something from the outset about the news yesterday that Mr Irving KC has tendered his resignation and, at least in the immediate term, Mr Crosby will be taking on that position of administrator until a permanent replacement is appointed. Commissioner, the statement that was reported upon in the press yesterday was to the effect that the administration of the CFMEU was now entering a rebuilding phase and that that rebuilding phase requires

45

a different approach and that Mr Irving had said in his letter to the Fair Work Commission that the best person to take over was an experienced union professional who could drive the necessary cultural change.

5 Commissioner, the business of investigating past wrongdoing in this state is, in my  
submission, nowhere near complete. What happened, where did it happen, who was  
involved and why did it happen needs to be laid out in the open, and what also needs  
to be interrogated is the actions that helped facilitate or encourage any misconduct or  
10 wrongdoing. It is a mistake, in my submission, to think that proper rebuilding can  
occur without the full understanding that only a Commission of Inquiry can deliver.  
We hope that Mr Irving's replacement - Mr Crosby in the immediate term and either  
Mr Crosby or someone else in the longer term - understands the importance of the  
work of this Commission and demonstrates a cooperative approach to the  
Commission where appropriate, of course protecting the legitimate interests of the  
15 union's members as and where appropriate.

Now, this week, Commissioner, we'll return to the - for the most part - to the Cross  
River Rail project. I'll explain that qualification in a moment.

20 **COMMISSIONER:** Do you want to say anything in response to what Mr Gisonda  
has just said, Mr O'Grady? I'm not asking you to; just giving you that opportunity.

**MR O'GRADY:** No, Commissioner.

25 **MR GISONDA:** To recap, in the first week of hearings that dealt with the Cross  
River Rail project, we heard from two witnesses: Mr Newton, who was the CEO of  
the Cross River Rail - who is the CEO of the Cross River Rail Delivery Authority,  
and Mr Don Johnson from the CIMIC Group. From Mr Newton, we heard evidence  
of a sustained campaign from the CFMEU that was aggressive, it was disruptive, it  
30 was misleading, and it was designed to cause reputational and other harm to the  
project and key personnel working on the project. It was the behaviour, in my  
submission, of a union that did not see itself as an essential part of a collaborative  
effort working towards the delivery of the biggest infrastructure project in the state  
but saw itself as a power player exercising its political, industrial and physical  
35 muscle in furtherance of its various objectives.

And then we heard from Mr Don Johnson, who gave evidence about the negotiations  
in the lead-up to work commencing on the project, in particular the negotiations that  
surrounded the industrial instruments, and then the attempted interference and  
40 infiltration of the union at all levels of the decision-making process. Mr Johnson  
then gave evidence about the safety reset and the demands of the union that were  
made as part of that reset, and those demands were essentially acceded to by the  
union - sorry, by CPB. A significant aspect of those demands was the direct hiring  
of health and safety representatives by CPB, and that particular aspect will feature  
45 much more significantly in this week's hearings.

**COMMISSIONER:** I think you said, and Mr Johnson agreed that - you'll forgive me if I don't get the words exactly right - that some of whom had dangerous criminal records. I think that's what you said, and I think Mr Johnson agreed with it.

5 **MR GISONDA:** Yes. I'll dig out the precise exchange for you, Commissioner. I  
said a moment ago that we'll look at, for the most part, the Cross River Rail project  
this week. I say "for the most part" because of our first witness, who I'll be calling  
this morning, which is Mr Vince Sanfilippo. He is a man of significance - and  
10 substance, if I may say - in the construction industry in this state. He's able, by dint  
of his position, to give you evidence, Commissioner, not only about the experience  
of CPB on the Cross River Rail project but also the experience of CPB as the rollout  
of what came to be described as BPIC gathered force in this state and took root in  
nearly all aspects of the industry in the state. It is convenient and helpful, in my  
15 submission, to look at that experience in tandem with what was occurring on the  
Cross River Rail project. And so to that end, Commissioner, I call the first witness  
for today: Mr Vince Sanfilippo.

**COMMISSIONER:** Is Mr Sanfilippo in the hearing room? There he is. Would  
20 you come forward to the witness box, please, Mr Sanfilippo.

<VINCENZO SALVATORE THOMAS SANFILIPPO, SWORN

<EXAMINATION BY MR GISONDA

25 **COMMISSIONER:** Please take a seat, Mr Sanfilippo. Mr Gisonda.

**MR GISONDA:** Thank you, Commissioner. Mr Sanfilippo, could you please give  
the Commissioner your full name.

30 **MR SANFILIPPO:** Vincenzo Salvatore Thomas Sanfilippo.

**MR GISONDA:** And what is your current occupation, please?

35 **MR SANFILIPPO:** I'm a civil engineer by trade, and I'm the general manager for  
CPB Contractors for Queensland and Papua New Guinea.

**MR GISONDA:** And pursuant to a notice that was served upon you by the  
Commissioner, did you swear a statement on 10 March 2026?

40 **MR SANFILIPPO:** Yes.

**MR GISONDA:** And that statement is 18 pages long?

45 **MR SANFILIPPO:** Correct.

**MR GISONDA:** And it is accompanied by a bundle of documents that is 284 pages  
long?

**MR SANFILIPPO:** Yes.

**MR GISONDA:** Is that statement true and correct?

5

**MR SANFILIPPO:** Yes, it is.

**MR GISONDA:** Commissioner, just at paragraph 80 of that statement, there's a reference to annexure VS-4, pages 6 to 7. That should read pages 7 to 8. But otherwise, with that correction, Commissioner, I tender that statement and bundle of documents.

10

**COMMISSIONER:** Are there any objections?

**MR O'GRADY:** No, Commissioner.

15

**MR DE JERSEY:** No.

**COMMISSIONER:** The first witness statement of Vincenzo Salvatore Thomas Sanfilippo dated 10 March 2026, 18 pages, 172 paragraphs, as amended at paragraph 80 by senior counsel assisting this morning, together with 22 annexures, shall be VSTS-1?

20

**MR GISONDA:** Yes, Commissioner.

25

**<EXHIBIT VSTS-1 FIRST WITNESS STATEMENT OF VINCENZO SALVATORE THOMAS SANFILIPPO DATED 10/3/2026, 18 PAGES, 172 PARAGRAPHS, AS AMENDED AT PARAGRAPH 80 BY SENIOR COUNSEL ASSISTING THIS MORNING, TOGETHER WITH 22 ANNEXURES**

30

**MR GISONDA:** Mr Sanfilippo, you then swore, again pursuant to a notice served upon you by the Commissioner, a second statement on 20 April 2026; is that correct?

**MR SANFILIPPO:** That's correct.

35

**MR GISONDA:** And that statement is 14 pages long, and accompanying that statement is a bundle of documents that is 1,160 pages long; is that correct?

**MR SANFILIPPO:** That's correct.

40

**MR GISONDA:** And if I can just direct your attention to paragraph 14 of the statement, which is at page 2, do you have a correction to make to that paragraph?

**MR SANFILIPPO:** Yes. The first four words, "on 18 October '19", should be deleted.

45

**COMMISSIONER:** Sorry, which paragraph was that, Mr Gisonda?

**MR GISONDA:** 14, page 2.

5 **MR SANFILIPPO:** It's intended just to say that we confirmed our desire to participate in the tender.

**COMMISSIONER:** What should I do to this?

10 **MR GISONDA:** Delete the first four words.

**COMMISSIONER:** Right. "On 18 October 2019"?

15 **MR GISONDA:** Yes. And we'll come to when we think that might have occurred, Mr Sanfilippo, when we go through this statement. That statement is otherwise true and correct, is it?

**MR SANFILIPPO:** That's correct.

20 **MR GISONDA:** Commissioner, I tender that second statement and bundle of documents.

**COMMISSIONER:** Any objections? No?

25 **MR DE JERSEY:** No.

**COMMISSIONER:** Second witness statement of Vincenzo Salvatore Thomas Sanfilippo made 20 April 2016, 14 pages, 157 paragraphs, as amended at paragraph 14 by the witness this morning, together with 21 annexures -

30

**MR GISONDA:** There will be 51 annexures, Commissioner.

**COMMISSIONER:** Sorry, 51?

35 **MR GISONDA:** 51.

**COMMISSIONER:** Sorry. I missed. There's another - thank you. Together with - I've only got annexures up to VS-72. Does it go further than that?

40 **MR GISONDA:** There's a VS-73.

**COMMISSIONER:** There's a VS-73. I count that as being 50 annexures, or is it -

**MR GISONDA:** 51.

45

**COMMISSIONER:** 51. Right. Together with 51 annexures labelled VS-23 to VS-73 will be VSTS-2.

**<EXHIBIT VSTS-2 SECOND WITNESS STATEMENT OF VINCENZO SALVATORE THOMAS SANFILIPPO MADE 20/4/2016, 14 PAGES, 157 PARAGRAPHS, AS AMENDED AT PARAGRAPH 14 BY WITNESS THIS MORNING, TOGETHER WITH 51 ANNEXURES LABELLED VS-23 TO VS-73**

5  
10 **MR GISONDA:** Thank you, Commissioner. Mr Sanfilippo, we'll start with your first statement, and therefore matters that relate to the Cross River Rail authority - sorry, the Cross River Rail project, but before doing that, if we can just look a bit about your background and your history. You said earlier that you are a civil engineer by trade; is that right?

15 **MR SANFILIPPO:** Yes, that's right. I studied locally at Queensland University of Technology.

**MR GISONDA:** And at page 1, paragraph 5 of your statement, you set out your recent professional history.

20 **MR SANFILIPPO:** Yes, that's correct. I've been doing my role since June 2017. Prior to that, I was with CPB Contractors as a project director. Prior to that, I was still within the group. I was an operations manager for Theiss, but the Theiss Construction -

25 **COMMISSIONER:** Could you just move a bit closer to the microphone, Mr Sanfilippo? I'm just having a bit of trouble hearing you.

**MR SANFILIPPO:** Yes, sure. That's okay. Is that better?

30 **COMMISSIONER:** A little bit better, thank you.

**MR SANFILIPPO:** Theiss Construction merged with Leighton Construction and formed CPB, so I was still within the group. And prior to that and most of my formative time I spent with Abigroup Contractors. Yeah, so I've been in the industry  
35 for 28-odd years now.

**MR GISONDA:** And just explain a little bit to the Commissioner what your current role, which you've held since June 2017, involves.

40 **MR SANFILIPPO:** Yes. So as general manager I'm responsible and I guess accountable for all the operations that we undertake in Queensland, so work winning, project delivery, staff, all aspects of the business.

**MR GISONDA:** And if we can then look briefly at CPB.  
45

**MR SANFILIPPO:** Yes.

**MR GISONDA:** CPB does both civil and general construction projects; is that right?

5 **MR SANFILIPPO:** Correct. So we do - we do a lot of civil infrastructure works. We also do building works. We also do resource works and, you know, infrastructure in the mines and work in the oil and gas industry as well.

10 **MR GISONDA:** Are there many other companies in Queensland that performs those two distinct types of construction works?

15 **MR SANFILIPPO:** Not a lot, in my opinion. Typically, the industry tends to split between civil and building. Ourselves and probably John Holland straddle the divide, and I can't really comment how deep other companies are into the oil and gas or resourcing areas.

20 **COMMISSIONER:** I just missed your evidence on that. You say CPB and John Holland straddle the divide between general and building.

25 **MR SANFILIPPO:** Civil and building, yeah.

**COMMISSIONER:** And you said something about oil and gas?

30 **MR SANFILIPPO:** I can't really comment on how deep oil and gas is. We don't typically compete with the same companies. There tend to be, I guess, smaller companies we compete with that aren't active in the building or the heavy civil space.

35 **MR GISONDA:** At paragraph 11 of your statement, which is still on page 1 and going over onto page 2, you say that over the last 10 or so years, CPB has not had a close working relationship with the CFMEU in Queensland and that this was due to a business decision taken not to renew what was then the Leighton Contractors  
40 statewide enterprise agreement. You say that the CFMEU then made demands for a civil agreement with CPB which CPB was not prepared to accept. Do you remember when, roughly, those demands were being made by the CFMEU?

45 **MR SANFILIPPO:** So our last agreement with the CFMEU in building I think was around 2009. We renegotiated, I think, for our 2012 agreement. I believe our teams had actually concluded the negotiations, and after they were concluded, we were asked to do a similar agreement by the CFMEU for civil. Our team at the time said no - this was prior to me being in this role - so we did not ever see that building agreement submitted through, because we'd signed it and I believe given it to the CFMEU; it was never submitted through Fair Work for approval. Our teams I guess worked consistently with the CFMEU in building during those times, but by the time it came around to 2016, our business didn't lean in to do another agreement.

**MR GISONDA:** And why did it make that decision not to have a new building enterprise agreement with the CFMEU?

**MR SANFILIPPO:** The decisions were taken by people prior to me in the role, but I believed that they were concerned with what they were signing up for at the time. So we decided to maintain our building presence but not sign up to the CFMEU pattern at that time.

5

**MR GISONDA:** And at paragraph 16 on page 2 of your statement - or perhaps first we'll look at paragraph 14. You say that CPB's primary union stakeholder in Queensland was, and it remains, the Australian Workers' Union; is that right?

10 **MR SANFILIPPO:** That's primarily due to our, I guess, high portion of our work being in the civil industry, yes.

**COMMISSIONER:** I just don't quite understand what you mean, Mr Sanfilippo. You said the people prior to you made a decision -

15

**MR SANFILIPPO:** Correct.

**COMMISSIONER:** - in 2016 because they were concerned about what they were signing up to in terms of a CFMEU pattern agreement.

20

**MR SANFILIPPO:** Well, correct. I think our business was seeing it as a - as a questionable decision to just sign up to the pattern.

**COMMISSIONER:** And why was that?

25

**MR SANFILIPPO:** I think there was - the current management at the time viewed that it was a difficult path forward.

**COMMISSIONER:** And why was it difficult?

30

**MR SANFILIPPO:** Oh, I think we'd observed the Queensland Children's Hospital strikes and some of those behaviours that we probably have seen over more recent years starting to come out in the operation of the CFMEU.

35 **MR GISONDA:** And then at paragraph 16 of your statement on page 2, you say that the relationship with the CFMEU has become particularly challenging since the beginning of the Cross River Rail project; is that correct?

40 **MR SANFILIPPO:** Yes. As my statement goes on, Cross River Rail was a very significant and sizable project. The CFMEU were very interested in it. We had quite a long negotiation period, but we didn't come to an agreement on the project, and we've had some difficult times since then.

**MR GISONDA:** And so let's look first -

45

**COMMISSIONER:** Mr Gisonda, when you go to a paragraph, it comes up on the operator's screen, but it doesn't appear to be coming up on the screen for the public

for some reason. I don't know why. I can see it over the operator's shoulder, but - there we go.

5 **MR GISONDA:** There you go. You're able to see that, Mr Sanfilippo, on your screen?

**MR SANFILIPPO:** Yeah, I've got my hard copy here.

10 **MR GISONDA:** Oh, you've got your statement there. Yep. So we'll look first at the negotiations that occurred in relation to the industrial instruments. And this was covered by Mr Johnson in his evidence, but we'll just touch on a few matters -

**MR SANFILIPPO:** Sure.

15 **MR GISONDA:** - because you were involved in many of the meetings yourself. And just to recap, the Pulse joint venture was responsible by and large for the TSD package of works, and the Unity Alliance was responsible for the RIS package of works; is that right?

20 **MR SANFILIPPO:** Pulse were the consortium contracted to the Delivery Authority, and we were the D&C joint venture as the CBGU joint venture, correct, and Unity, correct.

25 **MR GISONDA:** And at page 3, paragraph 25, you say that the announcement that Pulse and Unity were the preferred proponents was made on 3 April 2019.

**MR SANFILIPPO:** Correct.

30 **MR GISONDA:** And at paragraph 26, you say that the negotiations that then occurred were with the AWU on the one hand and what's called the Building Trades Group on the other and that - over the page at page 4 - the Building Trades Group aggressively maintained a position that there should be an enterprise agreement in the form that had been agreed to on the Queens Wharf project and that there should be a single enterprise agreement for the whole project.

35 **MR SANFILIPPO:** That's correct.

40 **MR GISONDA:** And we'll go into this in a little bit more detail in a moment, but you say at paragraph 28 that if CPB had agreed to some of the claims that were being pushed by the Building Trades Group, it would have had significant cost and productivity impacts on the project.

**MR SANFILIPPO:** That's correct.

45 **MR GISONDA:** Is it fair to say - and this is dealt with at paragraph 29 of your statement - that Mr Jade Ingham was or appeared to be the lead negotiator on behalf of the Building Trades Group?

**MR SANFILIPPO:** Absolutely.

5 **MR GISONDA:** And how would you describe his - at a general level, his conduct and attitude in those meetings?

**MR SANFILIPPO:** Bullish. Fairly aggressive. You know, raised voices. Would walk out when the meeting did not go the way of the BTG. Yep.

10 **MR GISONDA:** Over the page at paragraph 36 on page 5, you've been able to calculate that there were at least 26 meetings in relation to negotiations for an enterprise agreement, and you then say at paragraph 38 that you attended a majority of those meetings. Is that right?

15 **MR SANFILIPPO:** That's correct.

**MR GISONDA:** And one such meeting took place on 8 May, and so if we can go to your first bundle at page 5 - this is exhibit number 2 - and that's an email from Mr Johnson to other people within the CIMIC organisation. Is that right? Mr  
20 Santamaria and Mr Nolan?

**MR SANFILIPPO:** That's correct.

**MR GISONDA:** And he provides a very brief update, and he confirms that you are  
25 an attendee of this meeting, among others.

**MR SANFILIPPO:** Correct.

**MR GISONDA:** And they - being the Building Trades Group - said that they  
30 wanted all - if we go to the key points, which is about halfway down the page, key points, the Building Trades Group wanted to be included in the tunnel, that is to say, they wanted any enterprise agreement to which they were a party to cover works in the tunnel; is that right?

35 **MR SANFILIPPO:** Correct.

**MR GISONDA:** They wanted to exclude the AWU from station boxes?

40 **MR SANFILIPPO:** Yes.

**MR GISONDA:** And they wanted all subbies to earn the same rates re the project agreement being pushed. Can you just explain to the Commissioner what that meant?

45 **MR SANFILIPPO:** Basically, every subcontractor, every worker on the job had the same rate that was agreed with the head agreement.

**MR GISONDA:** And do you know why, at point 4, the unions say they do not want bargaining notices sent?

5 **MR SANFILIPPO:** I don't know. My view is that they wanted to stall the process as long as they could. That puts us in risk of brownfields. By us issuing bargaining notices, I believe under the legislation, we start a timer of six months - I believe it's six months - and if we can't conclude negotiations, we can get a direction on an outcome from Fair Work. So my assumption is that was the hesitation of us starting it formally, so they could continue to perhaps drag out the process and put more  
10 pressure on us.

**MR GISONDA:** And just explain to the Commissioner what you meant in terms of a brownfields risk.

15 **MR SANFILIPPO:** We - the clock was ticking, so to speak. We had to start the job in time. We had some design work to do, but ultimately we had to start the job at a set point in time to maintain the program and schedule. If we started the job without a greenfield agreement in place, there is risk there that a worker on the job could be a member of the union, trigger brownfield negotiations, and then we don't  
20 have a timeframe of when that can conclude. We lived through that through 2024 at the subsequent expiration of these agreements.

**COMMISSIONER:** We heard some evidence from Mr Hadgkiss, Mr Sanfilippo, and also it was an element of what the Productivity Commission reported on, that  
25 BPIC mandated these so-called jump-up rates on a project, and that was the type of thing that the ABCC, and the state version of it when it was in existence, was strongly against. You might be coming to this at some point, Mr Gisonda, so tell me to wait. But do you have any view about this particular demand at point 3 in terms of its impact upon the efficacy of building these large projects?

30 **MR SANFILIPPO:** Well, for us at the time it was difficult because the code was still in place.

**COMMISSIONER:** I see. Yes.

35 **MR SANFILIPPO:** So it was fundamentally prohibited for us to do that.

**COMMISSIONER:** I didn't think about that. Of course.

40 **MR SANFILIPPO:** Yeah.

**MR GISONDA:** But we'll come a bit later, Mr Sanfilippo, to a period of time where, of course, the code is abolished, as is the ABCC. But we'll come to that shortly. Just finally in this email, it says that:

45 "Vince has briefed Matthew Martyn-Jones from the Delivery Authority, who is the conduit to Trad's offices."

How were you informed - do you recall how you were informed that Mr Martyn-Jones was the conduit to the Deputy Premier?

5 **MR SANFILIPPO:** I can't recall that, but certainly Mr Martyn-Jones was, I guess, active in the negotiations and engaging with me at those early stages, just wanting updates, which is understandable.

10 **MR GISONDA:** Back to your statement at page 7. At paragraph 54, you say that CPB has extensive experience in tunnelling projects throughout Australia. And based on that experience, do you say that it's unusual to have a single enterprise agreement for an entire project that includes tunnelling works?

15 **MR SANFILIPPO:** Yes. Our - our footprint around the country of tunnelling is quite large. We're one of the biggest civil tunnelers in the country, and most of our projects have all been done with a specific agreement for tunnelling.

20 **MR GISONDA:** And then at paragraph 55, this is a sample list, not an exhaustive list, of tunnelling works throughout the country where there was a separate agreement for tunnelling works on the one hand and civil and surface works on the other. Do you see that at paragraph 55?

**MR SANFILIPPO:** Yes.

25 **MR GISONDA:** And do you recall whether that list was taken from the submissions that were made by either CPB or the AWU when it came time to approve the two enterprise agreements for Cross River Rail? Or do you not recall that?

30 **MR SANFILIPPO:** Sorry, I don't recall that.

35 **MR GISONDA:** The next meeting that you give evidence about is on 16 May, and this is at page 6 of your bundle. Now, this is you giving the update, and you set out what their position is. And would it be fair to describe their position as consistent from what it was earlier in May, and indeed it remained consistent throughout negotiations: an all-in project agreement to cover all workers on the project, including subcontractors, as per the Queens Wharf agreement.

40 **MR SANFILIPPO:** Absolutely. It was consistent the whole way through.

**MR GISONDA:** And they didn't deviate from that view at all?

**MR SANFILIPPO:** No.

45 **COMMISSIONER:** When you gave some evidence that your predecessors were concerned about signing up to a pattern agreement, did you understand that to mean

the Queens Wharf agreement or was there some pattern agreement before the Queens Wharf agreement?

5 **MR SANFILIPPO:** Queens Wharf agreement is slightly different to the pattern agreement.

**COMMISSIONER:** Slightly?

10 **MR SANFILIPPO:** Slightly, yes, but they're very similar documents.

**MR GISONDA:** And you give some evidence that the RTBU turned up at the meeting, and back at your statement at page 8, paragraphs 60 and 61, you say that it's your suspicion at least that the RTBU were there as a bargaining chip at the behest of the BTG. Is that what your assumption was or your suspicion was?

15 **MR SANFILIPPO:** Yes. They were not included in our bargaining notices. Their coverage on construction was - we were scratching our head why they were there. We believed they were invited by the BTG. They didn't seem active or overly interested in participating when they were there, and a lot of the discussion was  
20 around whether they should be there. And I think in Mr Johnson's evidence there was some discussion there regarding a request to - you know, they can be taken out if we give some ground there. So that's kind of where I formed that view of that they were a bit of a bargaining chip put on the table to get something out of us by the  
25 BTG.

**COMMISSIONER:** They can be taken out if what, sorry?

**MR SANFILIPPO:** They can be removed from the process.

30 **MR GISONDA:** In other words, the BTG were able to say, "We can encourage or ensure that the RTBU doesn't turn up any more, but in exchange you need to give us X or Y."

35 **MR SANFILIPPO:** Something, yeah.

**MR GISONDA:** And continuing at page 8 of your statement, at paragraph 69, you say that the position of CPB was that what the Building Trades Group were asking for, in particular an insistence that all the terms and conditions would apply to all  
40 workers on the project including subcontractors, potentially was a contravention of the code of conduct and the relevant legislation, the Building and Construction Industry Act.

**MR SANFILIPPO:** That's correct.

45 **MR GISONDA:** And you regarded that at page - you talk about this at paragraph 70 of your statement as a significant non-negotiable for CPB because the overwhelming

majority of your infrastructure projects have some level of federal government funding. Is that right?

5 **MR SANFILIPPO:** Correct. Apart from cutting across, I think, the Fair Work Act at the time, the majority of our work comes from the Federal Government, so it would have put us at risk of not being able to continue having the Federal Government as a client, Federal Government funded work as a - yes.

10 **MR GISONDA:** And at paragraph 71, you give some evidence about a discussion you recall having with Mr Ingham. Are you able to just tell the Commissioner what you recall about that conversation?

15 **MR SANFILIPPO:** Yes. It was in one of the - one of the scheduled negotiation meetings. Mr Ingham was pushing back on our position regarding the code and the legality of having a jump-up that would cover everyone. He asked for our legal advice on that. He said he had legal advice suggesting that it was lawful. We didn't want to entertain getting into whose legal opinion was correct. Ultimately, it was our risk we were taking, so we chose to rely on our legal advice and not the CFMEU's. And the matter pretty much stopped there.

20 **MR GISONDA:** And then you say at paragraph 72 that over the course of the negotiations, your perception was that the CFMEU was looking to have some level of input or control over which subcontractors were engaged on the project. Is that right?

25 **MR SANFILIPPO:** Correct. Correct.

30 **COMMISSIONER:** Was that common in your experience throughout the country? Not only - I understand the union in all its branches pushes for these pattern agreements to apply to all subcontractors, but to have some, in your words, level of input or control over which subcontractors were engaged, is that common throughout Australia or just in -

35 **MR SANFILIPPO:** I can't comment throughout Australia, but certainly in Queensland in the civil space it's not common.

**COMMISSIONER:** Not?

40 **MR SANFILIPPO:** Not common in the civil space. In building, yes, it's been probably a push from CFMEU to have some influence in the building industry over recent years.

**COMMISSIONER:** Right.

45 **MR GISONDA:** Back to the bundle at page 7, this is you giving a further update, this time in relation to a meeting that took place on 27 May 2019, and their opening position, which you describe there at the first bullet point, again, that's consistent

with their position all along. You say that was an uncompromising position throughout the entirety of the negotiations. And that last sub bullet point is that Queens Wharf rates and conditions are not good enough. Did you understand that to be just a further re-emphasis by them that they were not going to tolerate any subtraction or deviation away from the Queens Wharf agreement as a base level?

**MR SANFILIPPO:** Yeah, correct. I think the context in which it was said is it needs to be improved upon. I think it was a bit of an ambit call from the BTG there just to perhaps get us off balance. They didn't really continue with that line of demand through the rest of the negotiation. It was just a bit of a comment there that we noted and I guess digested, but it never really came up as a theme that they were looking to improve on Queens Wharf.

**MR GISONDA:** And if we just go back to page 6 of the bundle. If you see the fourth arrow point, it says:

"We discussed the cost implications."

Do you see that?

**MR SANFILIPPO:** Yes. Yes.

**MR GISONDA:**

"We discussed the cost implications of subcontractors being adjusted to match a project agreement such as Queens Wharf."

Was that you saying that if you were to accede to their demand to have an agreement at the level and at the rates of Queens Wharf, there would be significant cost implications for CPB?

**MR SANFILIPPO:** Correct. We were negotiating for our workers we were going to employ on the job. Subcontractors, we would select the best-suited contractors to deliver the job, and they would come with their own instruments. That was our intent.

**MR GISONDA:** And then you say their view - and confirm whether you mean there the BTG or Mr Ingham specifically:

"Their view is that we should have known to tender that way.

Do you remember them making that point?

**MR SANFILIPPO:** Yes, and it was pretty much as simple as that: "You should have known." I'm not sure how or why we should have known that, but that was his view.

**MR GISONDA:** But to be clear, Mr Ingham's view is that "you tendered for this project, you should have known that the Queens Wharf pattern agreement was there in the market and that we would insist upon all subcontractors meeting that with that agreement"?

5

**MR SANFILIPPO:** Correct. And we had lots of back and forth on the suitability of Queens Wharf, one being a high-rise project in the building industry and one being a tunnelling project that works 24/7 being materially different.

10 **MR GISONDA:** Can I then take you to page 11 of your bundle, and this is an email from you where you invite the recipients of that email, essentially representatives of each of the unions -

**MR SANFILIPPO:** Yes.

15

**MR GISONDA:** - to a meeting on the Monday, which would be 24 June. And then at page 12, you had attached to your meeting invite the offer of key terms within - being made by CPB in the negotiations. Is that what page 12 is?

20 **MR SANFILIPPO:** Correct. It's a summarised term sheet.

**MR GISONDA:** And would that be only for surface works, however?

25 **MR SANFILIPPO:** Yes. You can see up the top there, it's civil, mechanical, electrical. We call it the CME. So I think by this time we had conceded that rather than a three-agreement strategy, we conceded to two, where we'd have a tunnelling agreement and a CME agreement, and this was for the CME.

30 **MR GISONDA:** And at a level of generality, would you agree, looking at RDOs, for example, which is about a third of the way down that summary sheet on page 12 -

**MR SANFILIPPO:** Yes.

35 **MR GISONDA:** - 26 RDOs with six fixed. Is it fair to say that, again, as I say, at a general level, you were far closer to your preparedness to accept some of the Queens Wharf terms and conditions, at least for the surface works?

40 **MR SANFILIPPO:** We started to incorporate, as the journey went on, some elements of the Queens Wharf, but I think with the RDOs there, six fixed is a notable one, where 20 weren't fixed. So it gave us the flexibility - and that was our position we were putting forward. We wanted the flexibility to continue work to meet the program. So that was one of many sticking points where we had differences of opinions with the Queens Wharf agreement. I think their counter-point on that was 26 RDOs as per the CFMEU calendar, full stop.

45

**MR GISONDA:** And then if you go to page 20 of the bundle -

**COMMISSIONER:** Just staying with that for a moment, Mr Gisonda. How do I read that heading? Is that - do I read as the tunnelling works agreement or is that the surface?

5 **MR SANFILIPPO:** No. This is the surface: civil, mechanical, electrical. That was our term for it, and I think it got named surface works as well when it went in. So it is that same agreement, Commissioner.

**COMMISSIONER:** I see. It's not tunnelling.

10

**MR SANFILIPPO:** It's not tunnelling.

**COMMISSIONER:** And not building stations, or it is building stations?

15 **MR SANFILIPPO:** Well, it is the agreement that covers that type of works.

**COMMISSIONER:** Right.

20 **MR SANFILIPPO:** But ultimately for the first several years of the job there wasn't much station work. It was more civil works and then the mechanical and electrical elements of it as well.

**COMMISSIONER:** Of course. Yes.

25 **MR GISONDA:** So the Commissioner is one step ahead of me, Mr Sanfilippo, but at page 20 of your bundle, you had then attached a proposed civil, mechanical and electrical agreement to your email, and at paragraph 2.3 of this agreement you set out the offered scope and application of this agreement. And you see there that it is expressly comprising surface, civil and structural works, among others, and  
30 expressly excludes at 2.4 all works covered by what is described as a tunnel and shaft greenfield agreement.

**MR SANFILIPPO:** Yes.

35 **MR GISONDA:** And that was a key sticking point for the BTG, wasn't it, that whatever was agreed to had to include, for them, works in the tunnels?

**MR SANFILIPPO:** Correct.

40 **MR GISONDA:** At page 11 of your statement, back at your statement, paragraph 92, that meeting, which followed you providing those documents, you describe as a particularly heated discussion, and the BTG aggressively voiced their rejection of your position. Do you remember that meeting?

45 **MR SANFILIPPO:** Yes.

**MR GISONDA:** And this is now a week before the end of the financial year. How would you describe - we'll go into more of the detail in a moment, but a general level, how would you describe the mood of the negotiations? What degree of pressure CPB was under at this particular point in time?

5

**MR SANFILIPPO:** At this particular point in time, I think we were aware financial close was targeted for 30 June. I think Mr Johnson touched on it. There was, you know, expectations we'd make some commitments to best practice principles and our delivery, and so all of that was kind of aligning. But at this point in time, I think basically it got heated because of the reaction to our tabling our agreement, which wasn't Queens Wharf. So what was happening here from the CFMEU in the negotiation - or, sorry, the BTG, I should say - was a fierce rejection that we'd come out and said, "That's our position." There'd been a lot of talk about it and a lot of high-level principle and concept talk, but we'd now gone to print and said, "Here's our term sheet. Here's our agreement." And the reaction was what it was.

10  
15

**MR GISONDA:** And at paragraph 93, you say later that day Mr Martyn-Jones advised you that the Delivery Authority intended to host a meeting with all parties.

20 **MR SANFILIPPO:** That's correct.

**MR GISONDA:** And that meeting took place on 25 June at the Delivery Authority's office. You say that at paragraph 94?

25 **MR SANFILIPPO:** That's correct.

**MR GISONDA:** And at that meeting, Mr Martyn-Jones suggested a standing consultative committee; is that right?

30 **MR SANFILIPPO:** Yes.

**MR GISONDA:** And what did you understand that standing consultative committee would - what would it do?

35 **MR SANFILIPPO:** It was only really touched upon at that meeting, but I think more meat was put on the bones in the coming days, and ultimately it was a body where unions and ourselves would meet to talk about subcontractors coming onto the job.

40 **MR GISONDA:** We'll come to those terms, express terms, in a moment.

**MR SANFILIPPO:** Yep.

45 **MR GISONDA:** At the conclusion of that meeting, you then say at paragraph 95 it was suggested by the Delivery Authority that they would host enterprise bargaining meetings going forward. And that was proposed, was it, in the meeting itself?

**MR SANFILIPPO:** Correct.

**MR GISONDA:** And was it Mr Martyn-Jones who said that's what would happen?

5 **MR SANFILIPPO:** Correct.

**MR GISONDA:** And what did you observe about - let's just focus on Mr Ingham, his reaction to that?

10 **MR SANFILIPPO:** Of - I can't remember Mr Ingham, but basically the BTG all agreed very quickly, and we reluctantly did as well.

**MR GISONDA:** Sorry, you said you reluctantly did as well?

15 **MR SANFILIPPO:** Yes.

**MR GISONDA:** And what was the reason for any reluctance?

20 **MR SANFILIPPO:** Oh, well, it was, I guess, an unusual concept. Normally when we're doing negotiations, we will run our negotiation.

**MR GISONDA:** So the bit that's unusual is the idea that someone from the Delivery Authority would host - their words - these meetings going forward?

25 **MR SANFILIPPO:** Correct.

**COMMISSIONER:** I don't understand why the Delivery Authority would do that. What was explained to you about their reason for doing it?

30 **MR SANFILIPPO:** Oh, I can't remember exact specifics, but I - I think the tension - there was a view that the negotiation wasn't going that well, and they thought maybe neutral ground might assist. It was along those lines.

35 **COMMISSIONER:** And just going back to the meeting the previous day, on 24 June, you said all of that was aligning - I think you said in relation to the best practice principles as well, but I might have missed your evidence. What did you mean that all of that was aligning?

40 **MR SANFILIPPO:** Sorry, which part, Commissioner?

**COMMISSIONER:** The 24 June meeting, which was very aggressive.

45 **MR SANFILIPPO:** Oh, correct. So we'd tabled our agreement and then behaviour has changed. You know, the BTG were not happy, and then there was a reset meeting on this, the 25th, and then from there on it was now hosted at the Delivery Authority's office.

**COMMISSIONER:** But what was aligning on 24 June?

**MR SANFILIPPO:** Oh, I think that was in relation to Mr Gisonda's question regarding the pressure and aligning with the June 30 date for financial close for us.

5

**COMMISSIONER:** All right. And there was anything else that was happening that was aligning to bring this pressure?

**MR SANFILIPPO:** Not at that point, but in the days to come, yes.

10

**MR GISONDA:** On 26 June - this is at paragraph 96 of your statement - you say that you and Mr Johnson attended a further meeting with the unions, and now, including the Delivery Authority, because they are the hosts and it's occurring at their premise. Is that right, these meetings?

15

**MR SANFILIPPO:** Yes.

**MR GISONDA:** And you say that at that meeting - this is paragraph 97 - Mr Martyn-Jones introduced you and those at the meeting to Mr Gartrell; is that right?

20

**MR SANFILIPPO:** Yes.

**MR GISONDA:** And had you come across or met Mr Gartrell before?

25

**MR SANFILIPPO:** Never.

**MR GISONDA:** And what did you know about his background in this space, if any?

30

**MR SANFILIPPO:** I was aware he had time with Lendlease, and that's only, I guess, when I met him, afterwards we did a bit of Google researching. He had time with Lendlease prior.

**MR GISONDA:** So you knew nothing about him in advance of the meeting, and after the meeting you'd learnt that he had spent time at Lendlease?

35

**MR SANFILIPPO:** Correct. And I think KPMG in and around that time as well.

**MR GISONDA:** And he was introduced in that meeting as a government observer, and just to be clear, this is the first time he had appeared in any meetings?

40

**MR SANFILIPPO:** Yes, yes, the very first interaction.

**MR GISONDA:** And at that meeting, Mr Ingham was there as well, was he?

45

**MR SANFILIPPO:** Correct. All - all relevant unions, the whole BTG and the AWU were there.

**MR GISONDA:** And what do you recall your observation being about the first interaction between Mr Gartrell and Mr Ingham at that meeting?

5 **MR SANFILIPPO:** Mr Gartrell walked across the room, gave a very warm greeting to Mr Ingham, and they had some chat which kind of suggested to me that they knew each other, or at least they'd worked together or had some level of familiarity that was evident to me.

10 **COMMISSIONER:** I don't quite understand why this is happening, Mr Sanfilippo. As I understood it, the Delivery Authority was set up to be independent of government, and the Delivery Authority then contracts with you or an entity that -

**MR SANFILIPPO:** Correct.

15

**COMMISSIONER:** - your company was involved in. They agree to pay you some money. You build the project, and one of the risks that you take on is the industrial relations risk. If you manage that well, you make money. If you manage it badly, you lose money.

20

**MR SANFILIPPO:** Yes.

**COMMISSIONER:** I don't understand why the Delivery Authority or even the government are involved at this level where the contractual risk is all -

25

**MR SANFILIPPO:** Correct.

**COMMISSIONER:** - with you.

30 **MR SANFILIPPO:** Correct. We were similarly scratching our head with it as well, but we also knew we had to negotiate and get an agreement. So we did attend the meetings that were hosted at the office.

35 **COMMISSIONER:** Was anything explained to you about why a government representative - sorry, a government observer was present?

**MR SANFILIPPO:** No. I think the only - the only real comment was I think explained along the lines of, you know, to help - to help with the negotiations. Because they weren't going so well.

40

**MR GISONDA:** At paragraph 100, you say that the Delivery Authority - so that would be either Mr Martyn-Jones or Mr Gartrell, would it - had at this point tabled the terms of reference for the standing consultative committee; is that right?

45 **MR SANFILIPPO:** Yes. I can't remember where it - one of them, yes.

**MR GISONDA:** And the terms of that you set out there at paragraph 100 was to ostensibly facilitate the exchange of information between the unions on one hand, yourselves on the other, in relation to, among other things, information about subcontractors and their ability to meet pre-qualification criteria. What did  
5 you - those are some vague words there. What did you understand this process to be directed towards?

**MR SANFILIPPO:** We took this as a - a way of, I guess, the unions or the BTG understanding the subcontractors that are coming to the job. With that information,  
10 they could probably influence their agreements.

**COMMISSIONER:** Sorry, I didn't understand your answer. Say it again?

**MR SANFILIPPO:** So the consultative committee or SCC tended to be geared  
15 around us having regular meetings with the BTG, talking about subcontractors potentially coming to the job, and our forward-looking work, which we took to be an early insight, an opportunity for unions to engage with those companies and perhaps - or perhaps influence us to pick one way or the other, or attempt to. It was an unusual - unusual process proposed.

**COMMISSIONER:** So they wanted to - this group wanted to organise further  
20 meetings where this group or a subset of this group would suggest who the subcontractors should be. Is that -

**MR SANFILIPPO:** This - this was proposed as a committee that would run  
25 through the life of the project, not for the negotiation. It was something to commit to for the life of the job.

**COMMISSIONER:** I see. And who was it suggested should be on this committee  
30 to suggest subcontractors to?

**MR SANFILIPPO:** Pardon?

**COMMISSIONER:** Who was it suggested at this meeting should be on this  
35 committee which would suggest who should be engaged as subcontractors on the project?

**MR SANFILIPPO:** I think there were union representatives, project  
40 representatives, and I think in my evidence there's also a suggestion of an independent chair to run the meeting.

**MR GISONDA:** So at page 80 of the bundle, this was the first iteration of the terms  
45 of reference, so-called, for this SCC; is that right? Do you have page 80 of your bundle in front of you? And the middle of the page, under Membership, it has:

"It will consist of one representative from the Delivery Authority who will act as chair and then equal representation drawn from the unions with recognised coverage,

as might be demonstrated by them being a signatory to a project enterprise agreement and CPB."

5 That's consistent with your understanding as to how it was proposed this would operate?

**MR SANFILIPPO:** Yes, that's the initial proposal.

10 **COMMISSIONER:** And who suggested this?

**MR SANFILIPPO:** It came from the Delivery Authority or Mr Gartrell.

**COMMISSIONER:** Or Mr Gartrell?

15 **MR SANFILIPPO:** Yes. I can't remember who.

**COMMISSIONER:** Had you ever seen anything like this before?

20 **MR SANFILIPPO:** No, I have not.

**COMMISSIONER:** Since?

**MR SANFILIPPO:** No, I have not.

25 **MR GISONDA:** Then while we're still on the bundle at page 84, there's a letter there to Mr Graeme Newton, the CEO of the Delivery Authority, about providing an update, if we can call it that, about how the discussions are progressing, that is, the enterprise agreement negotiation discussions are progressing and how that might be viewed as consistent with your best practice principle obligations. Is that correct?  
30

**MR SANFILIPPO:** Yes. Mr Johnson, I think, drafted that letter just to, I guess, give some visibility of our belief and our commitment -

35 **COMMISSIONER:** You will have to speak up a bit, Mr Sanfilippo.

**MR SANFILIPPO:** Sorry. Mr Johnson drafted that letter, and I think sent it through to Mr Newton or the Delivery Authority, detailing our efforts to date to meet our obligations under BPP.

40 **MR GISONDA:** And then you describe in your evidence at page 13 of your statement, beginning at paragraph 117, that the delivery of that letter then triggered a meeting that took place - sorry, that's the wrong reference. At page 12 of your statement, from paragraph 107 onwards, the delivery of that letter triggered a meeting that you recall taking place at the offices of the Delivery Authority  
45 with - well, perhaps I'll let you tell the Commissioner. Who do you recall was at that meeting?

**MR SANFILIPPO:** Myself and Mr Johnson with Mr Martyn-Jones and Mr Newton.

5 **MR GISONDA:** And what were you told at that meeting, or what do you recall taking place at that meeting?

10 **MR SANFILIPPO:** Look, it was a relatively brief meeting. We were told our letter, the one we just looked at, was not meeting, I think, government's expectations, and they had a suggested alternate for us to consider. Mr Martyn-Jones then proceeded to, I guess, offer me a USB thumb drive, to have a look at that. Mr Johnson and I were working off our iPads which didn't have connective USB type-A ports, so we asked for it to be emailed. Mr Newton and Mr Martyn-Jones left the room and then shortly returned after they'd emailed us the documents.

15 **MR GISONDA:** And if we go to page 87 of your bundle, is that the email that you received?

**MR SANFILIPPO:** Yes.

20 **MR GISONDA:** You yourself and Mr Johnson received, and it's from Mr Martyn-Jones, from his private Hotmail account?

**MR SANFILIPPO:** That's correct.

25 **MR GISONDA:** And was anything said about why it was being delivered to you from a Hotmail account?

30 **MR SANFILIPPO:** No. We didn't - we didn't have - when they entered the room, we basically committed to reviewing that, and we had looked at it in the room. We committed to take it on board and we left the room. We didn't have a long discussion there and then about that.

35 **MR GISONDA:** And what did you say to Mr Johnson or what did he say to you about what had just happened?

**MR SANFILIPPO:** Well, we looked at the letter, and it was concerning. And, you know, the fact that it came on a Hotmail account also raised our interest, and I think I said something along the lines of, "This doesn't feel right."

40 **MR GISONDA:** And if you go to page 88, that is the letter that was accompanying the email; is that right?

**MR SANFILIPPO:** That's correct.

45 **MR GISONDA:** And just so we understand what this letter is, it was essentially a substitute for the letter or a proposed substitute for the letter that Mr Johnson had

sent on 26 June. In other words, this is a better letter or a letter that the government would find more acceptable. Is that your understanding?

5 **MR SANFILIPPO:** That's my understanding.

**MR GISONDA:** And if you look at the first bullet point, there is a commitment that you will draw relevant clauses for the agreement from the Queens Wharf enterprise agreement; is that right?

10 **MR SANFILIPPO:** Correct. There's also a statement there that we believe the labour market we'll draw from will largely come from building trades as well.

**MR GISONDA:** And were those the matters that concerned you about this letter?

15 **MR SANFILIPPO:** Primarily. They were the main ones. It references the standing committee as well. But ultimately, you know, we received a draft letter for us to, you know, take on board, which basically aligned to the BTG's negotiation strategy.

20 **MR GISONDA:** And so through this letter, you would - was the fear that you would then be locked in to some sort of commitment to the Queens Wharf enterprise agreement with the project?

**MR SANFILIPPO:** Correct. Correct.

25 **MR GISONDA:** And also locked into this, as embryonic as it was, this notion of a procurement standing committee?

**MR SANFILIPPO:** Correct. It was us committing to it.

30 **MR GISONDA:** And the issuing of what was just styled as a subcontractor briefing pack?

**MR SANFILIPPO:** Correct.

35 **MR GISONDA:** And that subcontractor briefing pack was also attached to the email, was it? That's at page 89 of the bundle.

**MR SANFILIPPO:** That's correct.

40 **MR GISONDA:** And this is from ProBuild, its briefing pack to shopfitters on the Queens Wharf project. Was there any explanation given to you as to how Mr Martyn-Jones had obtained a copy of ProBuild's shopfitter information kit from the Queens Wharf project?

45 **MR SANFILIPPO:** No, but we did not have deep discussions about it. We concluded the meeting, took it away, considered what we would do. I guess we did look at the letter more so than the Queens Wharf information. We did note when we

looked at the letter - we had received the Word, the native Word file, and when you look at the file information, the author of that letter was Scott Gartrell or Mr Gartrell.

**COMMISSIONER:** Just say that last bit again?

5

**MR SANFILIPPO:** The author of the letter was Mr Gartrell, according -

**COMMISSIONER:** Sorry, which letter are you talking about there?

10 **MR GISONDA:** The letter at page 88.

**COMMISSIONER:** How can you tell?

15 **MR SANFILIPPO:** If you go into the file options in Word - we had the native Word file -

**COMMISSIONER:** Oh, I see.

20 **MR SANFILIPPO:** - that was provided to us, not a PDF, and you can see who the author is.

**COMMISSIONER:** So this is, what, this is Monday the 24th through to Friday the 28th, and the end of financial year is on the Sunday, and you've met every day for - is there an aggressive meeting on the Monday, then you're at the Delivery Authority Tuesday?

25

**MR SANFILIPPO:** I think it was aggressive the end of the week before, and then we had that run of meetings through the week, yes.

30 **COMMISSIONER:** And you're now at the, what is it, the Thursday?

**MR SANFILIPPO:** 27th, yes.

35 **COMMISSIONER:** And you've been given this via a Hotmail account, a letter that you could tell had been written by Mr Gartrell with a ProBuild shopfitter agreement for the Queens Wharf project?

**MR SANFILIPPO:** That's correct.

40 **COMMISSIONER:** And these - this meeting took place - is it 123 Albert Street? Is that the Delivery Authority's -

**MR SANFILIPPO:** That's correct. Yes. That's correct.

45 **MR GISONDA:** And you might not be able to answer this, but to your understanding, was that shopfitter briefing pack a document that was readily available in the market?

**MR SANFILIPPO:** To be honest, we didn't look to understand that.

5 **MR GISONDA:** Commissioner, there is a tender bundle for the purposes of this week's hearings. It's styled Bundle 3. Do you have that, Commissioner?

**COMMISSIONER:** I don't think so. I don't think I do.

10 **MR GISONDA:** We're handing a copy up to you, Commissioner.

**COMMISSIONER:** Thank you. I've got it now.

15 **MR GISONDA:** There's only four documents in this bundle, Commissioner. Let me tell you briefly what they are. At page 3 of the bundle is the Cairns Convention Centre greenfield agreement. At page 121 is the Southern Queensland Correctional Precinct greenfield agreement. And then for convenience - it's already in evidence, but we'll have it here handy - at page 239 is the Queens Wharf project agreement with Multiplex. So three enterprise agreements comprise this bundle. And then the fourth document and last document is at page 2 of the bundle, and, Mr Sanfilippo, is this what you were describing, the properties of that Word document, the letter that  
20 we've just looked at?

**MR SANFILIPPO:** Yes, correct.

25 **MR GISONDA:** And looking on the bottom right-hand corner, your reference there in your evidence before was a reference to the fact that Scott Gartrell appears in the properties as the author of that document?

30 **MR SANFILIPPO:** Correct.

**COMMISSIONER:** What do you want to do with the bundle, Mr Gisonda?

35 **MR GISONDA:** I tender the bundle. Again, just to confirm, the bundle has four documents: three enterprise agreements in it, which I've just taken you to, Commissioner, and on page 2, the fourth document, being the properties of that letter.

**COMMISSIONER:** Is there any objection?

40 **MR DE JERSEY:** No.

**MR O'GRADY:** No objection, Commissioner. We haven't been provided with a copy of the bundle, so I seek that that be done in due course.

45 **COMMISSIONER:** Maybe we'll deal with the tender after the break so you can have a look at it and make sure -

**MR O'GRADY:** I'm happy to accept Mr Gisonda's description of what's in it, and on that basis we don't object. But we would like a copy in due course.

5 **COMMISSIONER:** We'll let you have a look at it and then - I'm sure you won't object afterwards, but let's have a look (indistinct).

**MR O'GRADY:** Thank you, Commissioner.

10 **COMMISSIONER:** We'll just deal with that after the break, Mr Gisonda. Is that all right?

**MR GISONDA:** That's fine, Commissioner.

15 **COMMISSIONER:** Can you tell me - Mr Newton, I think, answered this question, and I can't remember his answer, I'm sorry, Mr Sanfilippo, about Mr Gartrell's background. Do you know anything about it?

20 **MR SANFILIPPO:** Only that he spent a fair bit of time at Lendlease, and I think at KPMG, but I haven't done a lot of research into it.

**COMMISSIONER:** You have -

**MR SANFILIPPO:** Not done a lot of research into it.

25 **MR GISONDA:** At page 13 of your statement, you then, at paragraph 117, give evidence about a meeting that then took place on 28 June. This is a broader meeting now, with the BTG on one side, yourselves on the other side, and the Delivery Authority as the host. Is that right?

30 **MR SANFILIPPO:** Correct.

35 **MR GISONDA:** And in addition to Mr Martyn-Jones, Mr Gartrell is now attending these meetings, at least at this point, and you say at paragraph 119 that Mr Gartrell advised the meeting that he was getting calls from the Deputy Premier asking if the parties could get a deal over the line. You still remember that happening in the meeting?

**MR SANFILIPPO:** Yes.

40 **MR GISONDA:** And then you say at paragraph 120 there was a feeling of intense pressure being faced by CPB at this time. Just describe again to the Commissioner why you were feeling intense pressure at this point in time now, being 28 June, which I understand is the last business day before the end of the financial year.

45 **MR SANFILIPPO:** Well, correct. So financial close was due 30 June. It was only the 21st where we had tabled our agreement, and things dramatically changed. There was a reset meeting. Meetings were then to be held with the Delivery Authority. A

government observer was added in. The consultative committee was proposed. A commitment letter was drafted by the government observer that aligned with the BTG's approach. It was all put forward - all of that happened in about 10 days, so there was a lot of pressure coming on us in the lead-up to financial close.

5

**COMMISSIONER:** I don't understand why the finalisation of these agreements had any impact on financial close. What was the relevance of -

10 **MR SANFILIPPO:** My take from it would be that there'd be pressure on us to appease the government so we could get financial close.

**COMMISSIONER:** But it wasn't a condition precedent, was it?

15 **MR SANFILIPPO:** No. No.

**MR GISONDA:** Well, what was a condition precedent, I think, Commissioner, was a suitable demonstration of adherence to best practice principles, and as we understood from the evidence of Mr Johnson at least, this appeared to be the way that best practice principles was developing and being given content to by the government at that time.

20

**COMMISSIONER:** Thank you.

25 **MR GISONDA:** And just to continue on with that theme, Mr Sanfilippo, at - just going back to page 77 of the bundle to your statement, this is an email report given of the meeting that took place on 26 June. So that's the day before you got the letter from Mr Gartrell. You were at this meeting, it says, as an attendee on behalf of CPB?

30 **MR SANFILIPPO:** Yes.

**MR GISONDA:** Do you see Key Points in the middle of the page?

35 **MR SANFILIPPO:** Yes.

**MR GISONDA:** And then the first bullet point is MMJ - that's Mr Martyn-Jones - who provides an overview of topics to discuss. And then do you see the second bullet point where it says that he said to the meeting that:

40 "The government has provided clear direction for the Delivery Authority to assess progress. We have a narrow window. We need to report back today that we are on the right path."

45 And do you remember that sort of message being communicated to you in this meeting?

**MR SANFILIPPO:** Look, not explicitly, but Chris was there with every meeting with me, and yes, he took pretty good notes, so I've got no doubt that that happened.

5 **MR GISONDA:** And it was on the back of that message that we then have the subsequent meeting the following day where you're handed the - what we might call the Hotmail letter.

**MR SANFILIPPO:** Yes.

10 **MR GISONDA:** I'm now going to go to a different topic, Commissioner. Is that a convenient time for the morning break?

**COMMISSIONER:** Yes. Very well. We'll adjourn until 25 minutes to 12.

15 **<THE HEARING ADJOURNED AT 11.20 AM**

**<THE HEARING RESUMED AT 11.34 AM**

20 **COMMISSIONER:** Mr Gisonda.

**MR GISONDA:** Thank you, Commissioner. Mr Sanfilippo, I now want to just -

25 **MR O'GRADY:** You were going to deal with the tendering of bundles, Commissioner.

**COMMISSIONER:** Yes. Thank you, Mr O'Grady.

**MR O'GRADY:** So I've looked at those documents, and we have no objection.

30 **COMMISSIONER:** Thank you. What are we going to mark this exhibit as, Mr Gisonda?

**MR GISONDA:** Exhibit CRR - actually, no. We'll mark it as VSTS-3.

35 **COMMISSIONER:** Bundle of four documents over 349 pages, comprising three enterprise agreements and one page data of authorship of document identified by the witness, will be exhibit VSTS-3.

40 **<EXHIBIT VSTS-3 BUNDLE OF FOUR DOCUMENTS OVER 349 PAGES  
COMPRISING THREE ENTERPRISE AGREEMENTS AND ONE PAGE  
DATA OF AUTHORSHIP OF DOCUMENT IDENTIFIED BY THE  
WITNESS**

45 **MR GISONDA:** Thank you, Commissioner, and I'm grateful to my friend. The next topic I want to explore with you very briefly, Mr Sanfilippo, is the safety reset that occurred in late July of 2023. And you recall, do you, that in late '23, late July

of 2023, there was a serious accident on the site when a worker fell from height on a scaffold?

**MR SANFILIPPO:** Yes.

5

**MR GISONDA:** And are you aware that once that happened, there was action taken on the site by the unions which essentially resulted in access to the sites being blocked by the union?

10 **MR SANFILIPPO:** That's correct. Gates locked. People standing at the gates, yes. Access blocked.

**MR GISONDA:** And are you aware that there was a meeting that took place towards the very end of July 2023 between, on the one hand, representatives of the joint venture and, on the other hand, representatives of the unions?

15

**MR SANFILIPPO:** Yes, I'm aware of that.

**MR GISONDA:** And were you present at that meeting?

20

**MR SANFILIPPO:** No, I was not.

**UNIDENTIFIED SPEAKER:** We seem to have lost audio in the room. Sorry. Nick, can we get audio in the room, please?

25

**COMMISSIONER:** Have to try and test the mic, Mr Gisonda.

**MR GISONDA:** Thank you, Commissioner. So just to repeat that last question, there was a meeting that took place in late July of '23 between, on the one hand, representatives of the joint venture management and, on the other hand, representatives of the union - unions - and I asked you whether you were present at that meeting?

30

**MR SANFILIPPO:** No, I was not.

35

**MR GISONDA:** And given your position with CPB, is there any reason in particular why you were not at that meeting?

**MR SANFILIPPO:** Look, we didn't want to aggravate the situation any further. I think when there were calls made, Mr Ingham suggested to Mr Johnson that they wouldn't meet unless I was fired. I think it was a bit of an ambit claim, but we decided not to agitate an already very tense situation, so I did not attend those meetings.

40

45 **COMMISSIONER:** But you were the project manager, weren't you?

**MR SANFILIPPO:** Sorry?

**COMMISSIONER:** You were the project manager.

**MR SANFILIPPO:** General manager.

5

**COMMISSIONER:** General manager, sorry.

**MR SANFILIPPO:** Yes. Both project managers attended the meeting.

10 **MR GISONDA:** So that's not something that we've seen in the list of demands that were presented to CPB, what you've just described as you being fired, but you don't recall that being taken any further or indeed taken seriously?

15 **MR SANFILIPPO:** I don't think it was a serious request. I think it was just a comment made, and we didn't want to agitate the situation any further.

20 **MR GISONDA:** And had you had - maybe I'll come back to that. Okay. And one of the things that was demanded in that meeting was that a number of health and safety reps be employed directly by CPB on the project. Did you hear about that demand being made?

**MR SANFILIPPO:** Yes, very aware of that.

25 **MR GISONDA:** And you're aware that that demand was accepted by CPB?

**MR SANFILIPPO:** Yes.

30 **MR GISONDA:** And as a result, 14 men and women were directly employed by CPB who then went on to become HSRs. You're aware of that?

**MR SANFILIPPO:** I can't remember the exact - I don't know the exact number, but yes. Yes, I'm aware of all that.

35 **MR GISONDA:** And do you have any insight as to why CPB accepted that particular demand?

40 **MR SANFILIPPO:** We didn't have too many options, in my opinion. We had - the gates were locked. We had violence at some of the gates and threatening behaviour. We had an obligation to deliver the job. We had the state and the Delivery Authority, you know, rightfully wanting us to get the job going. We didn't have many friends in the industry there to help us. We'd called Workplace Health and Safety and Queensland Police. The ABCC were abolished by then, so we couldn't go to the ABCC. So my view is we didn't have too many other options other than to navigate a path and negotiate a way to reopen the job, and that's what we did.  
45

**MR GISONDA:** So the ABCC is abolished by this time. You mentioned Queensland Police. Had there been calls to Queensland Police as you understood it at this time?

5 **MR SANFILIPPO:** I believe the project team had reached out.

**MR GISONDA:** And the perception was that really there was no assistance that could be obtained from any external authority at this point in time to help get the job back on track?

10

**MR SANFILIPPO:** Well, there weren't many other people we could call. The ABCC were gone, so -

**COMMISSIONER:** The what from the ABCC were gone?

15

**MR SANFILIPPO:** The ABCC were no longer in existence.

**MR GISONDA:** Can I then fast forward to August of 2024, and by this stage the CFMEU had carried out industrial action on the site for many months; is that right?

20

**MR SANFILIPPO:** Yes, I believe late - late April/early May it started.

**MR GISONDA:** And that was in furtherance of their demand for new enterprise agreements to be agreed on the - in relation to the project; is that right?

25

**MR SANFILIPPO:** That's correct.

**MR GISONDA:** The existing greenfields agreements with the AWU had expired in October 2023; is that right?

30

**MR SANFILIPPO:** That's right.

**MR GISONDA:** And just to be clear about where we are in August of 2024, certainly at the beginning of August the CFMEU was not yet in administration; is that right?

35

**MR SANFILIPPO:** That's correct.

**MR GISONDA:** And you still did not have agreement on either proposed EBA, whether that be for the RIS package of works or the TSD package of works?

40

**MR SANFILIPPO:** That's correct.

**MR GISONDA:** And one final thing that was relevant at this point in time is that BPIC was still in force as government policy, State Government policy?

45

**MR SANFILIPPO:** Yes, that's right.

**MR GISONDA:** You say in your statement at page 17, paragraph 167 - and just as a lead-up to that, in paragraph 166, you say that the TSD package bore the brunt of the CFMEU's industrial campaign on the project; is that right?

5

**MR SANFILIPPO:** That's right. It's - ultimately RIS did not get too much attention. It was all focused around TSD.

**MR GISONDA:** And you say then at paragraph 167 that in 2024, engagement commenced with the Delivery Authority regarding the financial stress that TSD was under and that a significant portion of the stress was attributable to the impacts of the CFMEU?

10

**MR SANFILIPPO:** That's correct.

15

**MR GISONDA:** And as part of that engagement, you had significant involvement, had you, in preparing a report that set out the impacts on the project of a range of factors, CFMEU activity being one of them?

20

**MR SANFILIPPO:** That's correct.

**MR GISONDA:** And so, to be clear, the Cross River Rail project, in particular the TSD part of the project, was experiencing financial stress because of a range of factors, you engaged with the Delivery Authority and prepared a report to explain those factors and those impacts, and some of that report is now attached to your statement. Is that - my understanding correct?

25

**MR SANFILIPPO:** That's correct.

**MR GISONDA:** And as I said, one such factor which you identified in the report was the impact that the CFMEU had and its activities had had on the project.

30

**MR SANFILIPPO:** Yes.

**MR GISONDA:** At page 258 of your bundle, you'll see the heading BPICs and the State Procurement Framework for Government Projects. Do you see that? Have you got that there, Mr Sanfilippo?

35

**MR SANFILIPPO:** Yes, I do.

40

**MR GISONDA:** Page 258?

**MR SANFILIPPO:** Yep.

**MR GISONDA:** And is it a fair description to say that throughout this report you consider that the CFMEU's activities cannot properly be divorced from the existence of BPIC at the time?

45

**MR SANFILIPPO:** As BPP evolved into BPIC, or BPIC was added, we certainly saw over time a more bullish CFMEU.

5 **MR GISONDA:** On this page at 258 - and we're going to come to the evolution of  
BPP into BPIC when we come to your second statement, but you say at paragraph 5  
there - sorry, paragraph 4 - that there was a risk embedded in BPICs that from your  
perspective was impossible to avoid or to control effectively. And just so the  
Commissioner is clear and understands, the D&C subcontractor is, for all intents and  
10 purposes, CPB?

**COMMISSIONER:** Does that mean design and construct?

15 **MR SANFILIPPO:** Correct. Correct.

**MR GISONDA:** At paragraph 5 it says ultimately the impacts of BPICs are difficult  
to identify comprehensively, but they can be loosely divided into general impacts  
and specific impacts. And paragraph 6 is the general impacts, and they include (a)  
substantial increases in labour costs across the construction industry in South East  
20 Queensland, (b) reductions in productivity, (c) increases in subcontractor costs as a  
result of a depleted pool of subcontractors who are willing to tender for work on a  
BPIC project and a consequential reduction in competition across the subcontracting  
market more broadly, and then (d) those subcontractors that remain willing to work  
on projects associated with BPICs, invariably with close union affiliation, tender  
25 with elevated margins. Is there anything else that you would want to say to the  
Commissioner about the general impacts of BPIC on the subcontractor market?

**MR SANFILIPPO:** It had a profound impact, I think, on the industry. I think when  
you have certain portions of the subcontracting or contracting market elevating at  
30 those rates, other subcontractors have to compete to withhold their labour. So we  
saw the growth in labour rates across the industry.

**MR GISONDA:** In relation to the specific issues - this is now paragraph 7 at page  
259 - we'll come to the specific instances of the impact that BPIC had on some  
35 projects as we turn to your second statement, but at the bottom of page 259, at  
subparagraph (2), you say there that - or the report says - and to be clear, you had  
substantial involvement in the preparation of this report?

40 **MR SANFILIPPO:** That's correct.

**MR GISONDA:** At the end there, page 259:

"The introduction of minimum conditions..."

45 And again, we'll come to that shortly when we look at your second statement:

"...for government infrastructure in the state has provided the CFMEU with an unprecedented platform from which to increase its activity on projects, including the TSD side of the project."

5 And you say:

"The purpose of this activity appears to be to influence the market to adopt CFMEU-style agreements and/or BPICs, which are one and the same, and result in entire projects being operated according to their desired conditions."

10

And was that what you were seeing in the bargaining that was taking place in 2024 on Cross River Rail, that essentially what the CFMEU were agitating for was a BPIC-style agreement on the Cross River Rail?

15 **MR SANFILIPPO:** It's probably not what I mean there. I'm talking more generally about the industry there. So it was the proliferation of BPIC and their influence across different sectors of the industry. So - and we'll talk about that perhaps later in my second statement. With respect to the 2024 negotiations, it wasn't necessarily regarding around BPIC or the pattern. It was linked to the pattern more so than  
20 BPIC, and certain specific elements of it. Traffic control was one which was a particularly hot point.

**MR GISONDA:** Okay. We'll come to that in a moment. But is it fair to say, then, that as regards this last paragraph on 259, what you're observing there is a general emboldening of the union across all aspects of the industry?  
25

**MR SANFILIPPO:** Correct.

**MR GISONDA:** Then over the page at 260, at paragraph 3, it says that:  
30

"One way in which the CFMEU has sought to implement this agenda is by triggering purported safety concerns on the Cross River Rail TSD project through its engagement of and perceived influence over individuals within WHSQ."

35 And just looking at that word "perceived", you didn't have any proof that the CFMEU had influence over any particular individual at WHSQ?

**MR SANFILIPPO:** No, not at the time. There was lots of noise in the industry regarding that, but no, we didn't have any specific proof to that.  
40

**COMMISSIONER:** By saying - sorry.

**MR GISONDA:** Sorry, Commissioner.

45 **COMMISSIONER:** When you say "noise in the industry", what do you mean by that?

**MR SANFILIPPO:** Oh, there was noise regarding Ms Burgess in the industry and how that was being operated within the Workplace Health and Safety and connections to the CFMEU. There was noise in the industry. I think at that time, some of that started to become public in the media.

5

**MR GISONDA:** And your observation, based on what you'd seen on the Cross River Rail project, was that the apparent objective was to manufacture an adverse safety record for the project, which was then used to discredit CPB and the project?

10 **MR SANFILIPPO:** Correct. Correct.

**MR GISONDA:** And over at page 261 -

15 **COMMISSIONER:** Could I just ask a question about the graph, Mr Gisonda, or are you going to come to that later?

**MR GISONDA:** Well, I'm going to now take Mr Sanfilippo to the graph on 261.

20 **COMMISSIONER:** Very well. I'll just let you - you go ahead.

**MR GISONDA:** What that graph does - and, tomorrow, Mr Sanfilippo, whether you're still with us or not giving evidence, we're going to - well, I'm going to seek to tender for the Commissioner at least the right of entries that we have been able to collect and also the WHSQ notices that were served in relation to the project. But where you were at August 2024, you have prepared in this graph, have you, the number of union right of entries and the time at which they occurred, and that's the grey - the grey shading, and then the - I know it says that the red or the orange is the total number of union right of entries and the grey is the total number of WHSQ notices. The top graph, sorry, the graph at the top of the page. Is that correct, or is it the wrong way around? If you look in about August of 2020, see there were more than 60 of something. Was that more than 60 union right of entries or more than 60 WHSQ notices? Or do you not recall now?

35 **MR SANFILIPPO:** Not recall. That may be - if it is incorrect, it may just be an annotation and correction. But what it's showing is the correlation between what happened on site and us racking up notices. So there's a strong correlation between when the CFMEU are out on site and when we would attract notices.

40 **MR GISONDA:** And you say there at paragraph 5 on 261 that it reflects your experience that - CPB's experience, which is that CFMEU representatives entered site, called WHSQ inspectors to site, and then often a notice ended up being issued against the subcontractor by WHSQ.

45 **MR SANFILIPPO:** Correct. And sometimes they were there for six, seven hours, walking around the site.

**COMMISSIONER:** Say that again?

**MR SANFILIPPO:** Sometimes they were there for six or seven hours walking around the sites.

5 **MR GISONDA:** That is, someone from WHSQ together with someone from the union?

**MR SANFILIPPO:** Correct.

10 **COMMISSIONER:** If you look at the previous page, Mr Gisonda, which you've probably done - it's at page 37 of the report, 260 of the bundle - it seems that what you're saying is right, that if the graphs on page 37 are right, if they're accurate, then the ones on page 38 - page 261 of the bundle - are the wrong way round. That's conversely the other way.

15

**MR GISONDA:** Yes.

**MR SANFILIPPO:** I think the first graph is correct, because you can see the period in 23 to 24 where the right of entries dropped away. That's because the HSRs were there. So it suggests that they're the correct annotations.

20

**MR GISONDA:** And back to page 261 of the bundle, at paragraph 6, you say that a counter-argument might be that CFMEU representatives attend site and they detect legitimate safety issues that are otherwise going undetected, and so what you're recognising there is that it might just simply be that the union's coming on site, it's finding legitimate safety concerns, bringing them to the authority's attention, they're issuing you a notice, but you then go on to say that if you look at what was happening on the project with respect to the TRIFR - and this is the -

25

30 **MR SANFILIPPO:** Total recordable injury frequency rate.

**MR GISONDA:** At the bottom of the page now, there's another graph. The total recordable injury frequency rate on the Cross River Rail project is the hard orange line at the bottom of that graph, and that can be compared to the industry average, which is the dotted orange line in the graph; is that correct?

35

**MR SANFILIPPO:** That's correct.

**MR GISONDA:** And regardless of the, at times, significant spikes in union and WHSQ activity on site, the TRIFR remains fairly constant throughout the life of the project and at all times below the industry average?

40

**MR SANFILIPPO:** That's correct.

45 **MR GISONDA:** And if you go back to - just focusing on this graph - you will see there, in about August or thereabouts of 2020, a significant spike in activity, particularly from WHSQ?

**COMMISSIONER:** What period of time, Mr Gisonda?

5 **MR GISONDA:** It looks at about August to September of 2020. You see the massive spike there. And that was at a time when there was particular - a particular media campaign, if you like, from the union in relation to the project and its safety record?

10 **MR SANFILIPPO:** That's right.

**MR GISONDA:** And over at page 262, at paragraph 8, you say further that in September 2020, as a result of the, if we can call it, publicity surrounding those notices, the Federal Safety Commissioner conducted a two-day intensive audit on the project?

15 **MR SANFILIPPO:** That's correct.

**MR GISONDA:** That's what happened? And at the conclusion of that audit, the Federal Safety Commissioner found - and this is at the end of this paragraph - found decisively that there were zero non-conformances to be recorded.

**MR SANFILIPPO:** That's correct.

25 **COMMISSIONER:** Just going back to the graph on page 260, that just after for one month or - yes, it looks like one month, you had 65 WHSQ notices issued by the Authority, and the Federal Safety Commissioner found there were zero non-conformances?

30 **MR SANFILIPPO:** Correct.

**COMMISSIONER:** And just so I understand your evidence about the other graph, if we go to 2023, mid '23, that's the total number of - sorry, go back to 260.

35 **MR SANFILIPPO:** The top graph?

**COMMISSIONER:** The top graph, yeah. From the middle of '23 through to the start of '24, there's almost zero - sorry, middle of '24 - there's almost zero union right of entries, and do I understand your evidence five minutes ago was that's because there were 14 -

40 **MR SANFILIPPO:** HSRs on the project.

**COMMISSIONER:** - HSRs on the site?

45 **MR SANFILIPPO:** That's right, yes.

**MR GISONDA:** And we'll hear evidence from other witnesses tomorrow and Thursday about that exact point, but was there anything else that you wanted to say, Mr Sanfilippo, about this period, from the safety reset onwards, where there appears to be no union right of entries?

5

**MR SANFILIPPO:** No.

**MR GISONDA:** Then, back at page 262, you then turn to the escalation of the impacts of BPICs and union activity, and this is now you're trying to come up with some way to measure the impact on productivity?

10

**MR SANFILIPPO:** Correct.

**MR GISONDA:** That's what you're trying to do? And you say there at paragraph 2 that there's a 26 per cent impact on available productive time on the project since July 2023 and that this escalation occurred after the CFMEU illegally locked the project gates across all precincts, and that the D&C subcontractor, after failed attempts to obtain support from Queensland Police and WHSQ, agreed to employ a number of health and safety representatives -

15

20

**MR SANFILIPPO:** Yes.

**MR GISONDA:** - in an attempt to allow the gates to be unlocked and works to recommence.

25

**MR SANFILIPPO:** Correct.

**MR GISONDA:** And you've got, from this point, a few measures. The first is the productive days summary on page 263. But is it your evidence - and it seems to be suggesting this, at paragraph 6 on page 263 - that the true productivity impact is best measured by looking at the reinforcement works and concrete pours that occurred on the project. Is that -

30

35

**MR SANFILIPPO:** Yes, there's a couple of things there. So that availability time - so we looked at analysing from 23 to 24, that period, when the HSRs were on, versus the year before. We noted - and that period covered all of the protected actions and strikes. So we had a loss of productivity time.

**COMMISSIONER:** Which year are you talking about?

40

**MR SANFILIPPO:** This is the first graph. So the right-hand side of that graph is the second year and the left-hand side is the first year, and so we noted that there was a 26 per cent drop in available working time, covering all the strikes and the behaviour that's cost us time at individual sites. But that's probably not the way we analysed it. We looked at what the outcome was and what the productivity achieved was, and to do that we looked at outputs of work, and we took a cross-section of different types of outputs of work and looked at it from the year before to that most

45

recent year, so '23/'24 versus '22/'23, and that's how we looked at what the true impact of the productivity was. So there's a sample of concrete and reo at Boggo Road. There's tunnel fit-out cable containment, which is across the whole project, and there's concrete works at Albert Street.

5

**MR GISONDA:** So if we go to page 264, that first graph at the top of the page, that's measuring cubic metres of concrete per month at Boggo Road. And that shows that, leading up to the middle of 2023, there is 1121 cubic metres a month.

10 **MR SANFILIPPO:** Yes.

**MR GISONDA:** And then after July of 2023, it's 631 cubic metres per month, or 47 per cent of what it had been.

15 **MR SANFILIPPO:** I think it might be 531, but yes, 47 per cent.

**MR GISONDA:** 531, yes.

20 **MR SANFILIPPO:** A delta of 47 per cent.

**COMMISSIONER:** We've spoken to other - heard from other witnesses who use available working time as a proxy for productivity on the basis that each day is all the same as each other.

25 **MR SANFILIPPO:** Yes.

**COMMISSIONER:** If you did that, then the fall in productivity would be 26 per cent, based on your first graph, because of the drop in available working time.

30 **MR SANFILIPPO:** My only -

**COMMISSIONER:** Why is the - sorry.

35 **MR SANFILIPPO:** My only comment to that would be available working time is different. If you're constantly stopping and starting the project, you have productivity impacts as well, even though the gates are open.

**COMMISSIONER:** And sorry, say again?

40 **MR SANFILIPPO:** You - the stopping and starting nature of the rolling strikes and the buggery factor that we had on site also holds up momentum and productivity on the job, rather than just the availability.

45 **COMMISSIONER:** And what is causing the drop in productivity far beyond 26 per cent, in the order of 50 per cent?

**MR SANFILIPPO:** Well, there were rolling strikes through some of that period. So there was - I think from late April through to September, there was rolling strikes there where we lost massive productivity. It was all out for a while across all sites, and then it would be different strikes. Then there was a range of campaigns. So  
5 there was - I think it was detailed further in the report - just reasons to take sites out. Sometimes it was, you know, crib rooms not being suitable or cleaned. There was, you know, certainly campaigns around, you know, hot weather and PPE, encouraging people to wear short sleeves and short - short sleeves and short pants, against our safety rules. So there was a range of factors that also slowed down  
10 productivity across different jobs as well.

**MR GISONDA:** The second graph at page 264, that's a calculation of reinforcement at Boggo Road per month; is that right?

15 **MR SANFILIPPO:** Yes.

**MR GISONDA:** And it was 572. The T stands for -

20 **MR SANFILIPPO:** Tonnes.

**MR GISONDA:** Tonnes. 572 tonnes per month before the middle of 2023, and then it dropped to 161 per month thereafter. That's a delta of 411 tonnes a month or 72 per cent.

25 **MR SANFILIPPO:** Boggo Road was where the incident happened, and we did have some fairly severe impacts there.

**MR GISONDA:** And over the page at 265, a similar story with tunnel fit-out cable containment. It goes from 3729 per month to 2231 per month, and that's a delta of  
30 1498 metres a month; is that right?

**MR SANFILIPPO:** Correct.

35 **MR GISONDA:** Or 40 per cent. And at paragraph 7 on page 265, you say that:

"The graphs all depict the same phenomenon, which has been perceptible across multiple sites and packages of work. As the graphs show, the impact to productivity from the escalation in the impact of BPICs and associated CFMEU activity in July 2023, as measured by time available and direct impacts, is in the order of 55 per  
40 cent."

**MR SANFILIPPO:** That's correct.

45 **MR GISONDA:** And so taking all that information there, collecting it and bringing it together the best you can, that's your best assessment, 55 per cent?

**MR SANFILIPPO:** Correct. But that is probably at the ground zero. So we did have all of that strike action happening, so we had very acute outcomes there on that project.

5 **MR GISONDA:** And that can be seen, if you go back to Boggo Road, the Boggo Road concrete graph at page 264, in the second half of 2023 - this is before the protected industrial action - it's far better than it is in 2024, when you have the height of the industrial campaign.

10 **MR SANFILIPPO:** That's correct.

**COMMISSIONER:** Say that last bit again. I just missed that.

15 **MR GISONDA:** So the industrial campaign, the protected action, takes place in 2024, and what these graphs show is that productivity is far worse in 2024 than it is in the second half of 2023. It's still a drop in the second half of 2023, but it's an even greater drop once you get into 2024.

20 **MR SANFILIPPO:** That's correct.

**COMMISSIONER:** This is probably an impossible task to try to do, but how do you - can you split out the impact on the productivity of the site in terms of BPIC and the CFMEU activity, whether it's the strike action, the conduct of the HSRs, the other campaigning?

25 **MR SANFILIPPO:** It's - it's all one on the project, so -

**COMMISSIONER:** Yes.

30 **MR GISONDA:** And I think you're going to hear some more about this issue, Commissioner, in the context of Mr O'Grady's cross-examination application, but just for present purposes, at the moment there is a claim for commercial-in-confidence about the precise figures that CPB were paid for the project and indeed what they were paid in the subsequent renegotiated deal with the  
35 government last year, Commissioner. But is it fair to say, looking at what's going on in the redacted section at the moment at page 266 and then going over into 267, is that you've taken the productivity percentage drop and applied that, in essence, to a contractual sum or part of a contractual sum, and that's how you've arrived at your conclusion, which is that the total impact of the union activity can be quantified at  
40 approximately 580 million?

**MR SANFILIPPO:** Not the contract sum. So what we did, we looked at that last year where we applied productivity impact of 55 per cent to the volume of work we did, and then for the years preceding, where we had the sustained safety campaign  
45 and the slowing down of the works due to that, I think we applied a 5 to 10 per cent impact on productivity for the preceding few years. The aggregate of those two calculations is the \$580 million.

**COMMISSIONER:** When Mr Newton came to give evidence, he said that in the 2023/'24 budget papers, there was an increase in the costs budgeted for this project of about a billion dollars. I think he said 930, 970. It went from around 7 to around 8 billion, just under 7 billion, to around 8 billion in the '23/'24 budget. That budget obviously - well, I don't know, but presumably it took into account some of what you've set out in this report. This report's August 2024?

**MR SANFILIPPO:** Correct.

**COMMISSIONER:** So a couple of months after the budget, presumably June 2024. How - and the three things Mr Newton said caused the blow-out of a billion in that financial year, and there's another couple of billion two financial years later. But he used the exact words you've used there: hyper-escalation, COVID and the industrial activity by the CFMEU.

**MR SANFILIPPO:** Correct. So this report covered all three. So the CFMEU was one factor of it, albeit a sizable one.

**COMMISSIONER:** Say that again?

**MR SANFILIPPO:** So this report covered all three of those factors.

**COMMISSIONER:** But you - what can you say, if anything, about the billion dollars or 930 million, whatever it was, the difference between that figure and your \$580-million figure? You might not be able to say anything.

**MR SANFILIPPO:** Well, the IR component of this we calculated as \$580 million at that point in time, and then there's also a future-looking component to it which we had to estimate in this report, which we quantified could be in a range of 100 to 400 million dollars, and we adopted a midpoint of that, which was 250. Now, at the time of writing the report we were probably in the darkest days. We had strikes everywhere. We had no productivity. The administration had not come into effect. I think there was talk about it. But, yeah, so we had to have a guess going forward on how much more it would go. So we took a view that it would be 250 in this report to factor something in, because we were not out of the woods yet. As to how much that is attributed to government budget setting, I can't really comment on that.

**COMMISSIONER:** Well, your 250 and that 580 gets to about 830.

**MR SANFILIPPO:** Correct.

**COMMISSIONER:** So it's about 100 mil out from the 930 in the budget. But presumably when the budget was being set this paper wasn't available.

**MR SANFILIPPO:** Wasn't available, but there were discussions regarding the impacts. It wasn't - yeah, there were some discussions leading up to it, for sure.

**COMMISSIONER:** And your evidence seems slightly different to Mr Newton's. Mr Newton said there were three things: the COVID, hyper-escalation and what I might call BPIC and the CFMEU activity. But you seem to be saying that BPICs and the union activity caused the escalation and hyper-escalation.

**MR SANFILIPPO:** No, I think the hyper-escalation and the escalation component were more - there were broader impacts at the time, but we do think localised as well. In addition, there was an increased escalation there on subcontractor pricing. So there was two factors at play here. I think you had the Ukraine war and some material impacts there, and you had the localised IR as well.

**COMMISSIONER:** I'm just reading what you said.

**MR SANFILIPPO:** Yes.

**COMMISSIONER:** "These phenomena". I thought "these phenomena" is a reference to what's said in the sentence above: the impact of BPICs and associated union activity.

**MR SANFILIPPO:** Correct, but this is in respect to the BPIC part and the BPIC and the union part of the report. The report also had other parts which detailed hyper-escalation.

**COMMISSIONER:** I see. I see.

**MR GISONDA:** Whether that be international events or -

**MR SANFILIPPO:** Correct.

**MR GISONDA:** This project was also occurring at a time of COVID as well.

**MR SANFILIPPO:** Correct. So there was COVID, and then we went through the hyper-escalation that followed and then we had -

**COMMISSIONER:** And you might come to this, Mr Gisonda, but then two years after this, in the budget for '25/'26, there's another 2 billion that Mr Newton described as - I think he called them adjustments. They were a blow-out, just as this is a billion-dollar blow-out. Those 2 billion, can you say anything about that \$2-billion adjustment in the '25/'26 financial year? Sorry, budgeted for in the '25/'26 budget.

**MR SANFILIPPO:** I can't say too much, other than I believe it was last year that we resolved all of these matters on the project with a commercial resolution.

**MR GISONDA:** I think, Commissioner, the way to look at it is as follows: in August 2024, Mr Sanfilippo had primary carriage of a report that was prepared in relation to the financial stress that some aspects of the project were experiencing. He

has attempted to identify the causes of those impacts, one of which was industrial relations on site. His best measure of quantifying that impact is, looking backwards, \$580 million. There is a forward-looking aspect which we'll come to in a moment. That report was - at a particular point in time - or some document that incorporates some of this report would have been given to the government. There's no evidence and there won't be any evidence that at any point any particular part of this report or the matters in it was accepted or agreed to by the state. What we do know, however, is that at some point in 2025 there was a commercial resolution of funding for the project. The details of that resolution remains commercial-in-confidence, but there has been more money dedicated to the project.

**COMMISSIONER:** Well, we know from Mr Newton's evidence that the 2017/2018 budget was 5.4 billion. Two years later that was increased to just under 7 because of the accounting change.

**MR GISONDA:** Yes.

**COMMISSIONER:** The private financing of one and a half billion gets us close to 7 billion. Then '23/'24, around this time, two months earlier, another billion, just under, and then two years later in the '25/'26 budget, another 2 billion.

**MR GISONDA:** Yes.

**COMMISSIONER:** And Mr Newton's evidence seemed to be that the '25/'26 2 billion was due to the causes that led to the billion dollars in 23/'24, that is, COVID, hyper-escalation and what I might loosely call industrial issues.

**MR GISONDA:** Yes.

**COMMISSIONER:** I think Mr Newton described it as something like "the things we're talking about today".

**MR GISONDA:** Yes. But sorry, just to clarify, there's no evidence, and there won't be evidence, about how much of that precisely was attributed to the CFMEU's activity, because it was all bundled up as a final resolution.

**COMMISSIONER:** Well, we've got something here, haven't we?

**MR GISONDA:** As I said, we've got Mr Sanfilippo's best attempt in quantifying it as at August 2024.

**COMMISSIONER:** Mmm.

**MR GISONDA:** Now, looking forward, at page 268, as you said, you were in the dark days of the campaign.

**MR SANFILIPPO:** Yes.

**MR GISONDA:** The union is not yet in administration. Neither EBA had been voted up by the workers. BPIC was still the policy of the State Government. Your best attempt at estimating what the potential future impact might be was between 100  
5 and 400 million dollars.

**MR SANFILIPPO:** Correct.

**MR GISONDA:** But as it turns out, shortly thereafter the workers did vote up both  
10 EBAs, the union was put in administration and BPIC was ultimately suspended. If you'd known those three things, your estimate would be different; is that true?

**MR SANFILIPPO:** Well, when you say "shortly", I don't think we had the agreement voted up until December.  
15

**MR GISONDA:** The - for the TSD? Yes.

**MR SANFILIPPO:** Yes. Yes. So we still had some months of impacts. We didn't see, I guess, productivity return to the job properly, and it took some time to build. It  
20 took some time for subcontractors to feel comfortable that they could put their workforce on the job and actually have a go and do productive work. By around the end of March we'd seen the site fully recover.

**COMMISSIONER:** End of March -  
25

**MR SANFILIPPO:** '25.

**MR GISONDA:** This is probably a convenient point just to get clear when those two agreements were voted up. So in your second statement you give evidence that  
30 there was an unsuccessful vote on 5 to 7 September -

**MR SANFILIPPO:** This is on TSD, so -

**MR GISONDA:** This is on TSD.  
35

**MR SANFILIPPO:** So we went with the RIS agreement first.

**MR GISONDA:** Yes.

**MR SANFILIPPO:** I guess we had high confidence that we would get that up, and we did, first time.

**MR GISONDA:** And that was in August of 2024?

**MR SANFILIPPO:** I believe so, yes. And then on 5 to 7 September we went on TSD, and it was voted down. On the 28th to the 30th, we went again, of September.  
45

And it was voted down again. And we - we went on 11 to 13 December for a third time, and it got a resounding yes. So it took us three times to get that vote up.

5 **MR GISONDA:** But again, as at early August 2024, you didn't know what the future looked like in that respect?

**MR SANFILIPPO:** No, we did not know.

10 **MR GISONDA:** You then, at page 269 onwards, go through some what you described as industrial relations case studies. And this is an attempt to identify some of the things that the union was doing on site. It's not all of the things. Is that correct? It's just a select sample of -

15 **MR SANFILIPPO:** Correct. I asked the project to detail some of the impacts they were having, and they - they provided case studies of impacts to me.

**MR GISONDA:** And one case study is at page 269. This is the Albert Street Station slip form.

20 **MR SANFILIPPO:** Yes.

25 **MR GISONDA:** You say that the Albert Street station is on the overall critical path for the TSD project. And then at paragraph 2, you say that as explained below, the CFMEU had focused particular attention on disrupting the Albert Street Station's slip form work. And the suspicion was that the objectives are twofold: first, to inflict maximum damage to your program, because Albert Street's on the critical path, and secondly, to impact the work of Rocktown specifically, given it is not aligned with the union. Rocktown was a specialist reinforced concrete subcontractor?

30 **MR SANFILIPPO:** Correct.

35 **MR GISONDA:** And then you look at the timeline of events, and the first one at paragraph 3(a) was that on 21 April 2023, a large crowd of people in plain clothes blocked - who were stationed outside lot 1 - blocked the access of concrete trucks to the site. The concrete pour had commenced prior to the crowd arriving. And you say:

40 "The crowd was asked to move on several times as it was obstructing entry to the site, and the crowd refused."

And you say:

45 "The police were in attendance but did not intervene because, as they explained, they had to meet the crowd halfway."

And then at the end of this subparagraph (a), you say:

"The ultimate consequence was a significant delay of 12 days to the critical path."

**MR SANFILIPPO:** Yes. So if you go to page 271, the top photo.

5 **MR GISONDA:** Yes.

**MR SANFILIPPO:** So that's just a snapshot of the concrete pour. So we had half poured - a half-poured layer. Basically we had to go back in there for risk of a cold joint, take the slip form off, clean it all up, and reset it and go again. So it was  
10 purposeful to stop it mid-pour to create maximum havoc.

**MR GISONDA:** Yep. And at page 270, those are photos that were taken on 21 April 2023?

15 **MR SANFILIPPO:** That's correct.

**MR GISONDA:** I don't suspect that you're able to identify anyone -

**MR SANFILIPPO:** No.  
20

**MR GISONDA:** - who's in that line?

**MR SANFILIPPO:** No.

25 **MR GISONDA:** Can I, Commissioner, play for you again part 2 of exhibit ROS-4, please?

**COMMISSIONER:** I can't remember what ROS-4 was, but - okay, sorry. Yes, thank you.  
30

**MR GISONDA:** Can we play that, please?

(Video played).

35 **MR GISONDA:** Commissioner, that was the video that you saw last week of Mr Eben Cox. Can I now play video 4, please. And there will be a bit at the start where there's no audio, but audio will kick in shortly, Commissioner.

(Video played).  
40

**COMMISSIONER:** Where are we?

**MR GISONDA:** This is Albert Street.

45 **COMMISSIONER:** This is police bodycam.

**MR GISONDA:** And if we could play, please, video number 5. Again, audio will kick in shortly, Commissioner.

(Video played).

5

**MR GISONDA:** I tender those two videos, Commissioner.

**COMMISSIONER:** Is there any objection?

10 **MR FORD:** No.

**COMMISSIONER:** How do you want me to describe those two videos which you've referred to as video 4 and video 5?

15 **MR GISONDA:** Video 4 is the body-worn camera footage of Albert Street protest, 21 April 2023.

**COMMISSIONER:** At 8 am? Approx 8 am? The other one is the same date.

20 **MR GISONDA:** Yep.

**COMMISSIONER:** 7.56. And the second one, I think, was 8.22.

**MR GISONDA:** Yes.

25

**COMMISSIONER:** And what exhibit number are we up to?

**MR GISONDA:** 4 and 5.

30 **COMMISSIONER:** Body-worn camera Street of Albert Street protest 21 April 2023 at approximately 7.56 will be exhibit VSTS-4.

**<EXHIBIT VSTS-4 BODY-WORN CAMERA STREET OF ALBERT STREET PROTEST 21/4/2023 AT APPROXIMATELY 7.56 AM**

35

**COMMISSIONER:** Body-worn camera footage of Albert Street protest, 21 April 2023 at approximately 8.22 am will be VSTS-5.

**<EXHIBIT VSTS-5 BODY-WORN CAMERA FOOTAGE OF ALBERT STREET PROTEST 21/4/2023 AT APPROXIMATELY 8.22 AM**

40

**MR GISONDA:** So back to your report -

45 **COMMISSIONER:** Could I just ask you something about that, Mr Gisonda, before you ask the witness. I was trying to take notes of what was being said. I picked up about half of it. What are you going to do about the transcription of the - what was said?

**MR GISONDA:** We will endeavour to prepare a transcript of what was said, and we'll circulate that to the parties. And if there's no objection, that can go in as perhaps a further exhibit accompanying the videos.

5

**COMMISSIONER:** Very well.

**MR GISONDA:** But you weren't aware, Mr Sanfilippo, that a CFMEU organiser, Mr Eben Cox, was one of the persons who was in that protest?

10

**MR SANFILIPPO:** No, we didn't - we didn't know or couldn't identify any of the individuals, though we had a strong suspicion it was CFMEU-affiliated.

**MR GISONDA:** And that's because, as we saw in the video, a lot of them were wearing glasses, hats and masks and obscuring their identity?

15

**MR SANFILIPPO:** Correct.

**MR GISONDA:** And it wasn't at least a public demonstration of a CFMEU protest or action; in fact, it was, as we saw, described to the police as a climate-change-related protest against, among other things, laying down concrete in cities?

20

**MR SANFILIPPO:** Correct, but he also referenced CPB there in another discussion there as well.

25

**MR GISONDA:** Yes. I think the words were something along the lines of, "We want to make CPB understand."

30

**MR SANFILIPPO:** That's right.

**COMMISSIONER:** He also said in my note, "We want answers about what CPB is doing in there."

35

**MR GISONDA:** Yes. And the second part of the video seems to be some pushback from the police, attending police officers, because those protesters had been asked to move for safety reasons as opposed to being asked to move because a truck was coming in or out of the gate. That footage was taken of a gate where trucks go in and out; is that right?

40

**MR SANFILIPPO:** Correct. Yep.

**COMMISSIONER:** I think one of the managers with some sort of accent - perhaps Irish, I couldn't pick it up - said, "They have 60 deliveries in an eight-hour period at that site."

45

**MR SANFILIPPO:** That's right. That's where we fed the Albert Street site, so it was a busy gate.

5 **MR GISONDA:** And the consequence of that activity that day was, as you report here, a delay of 12 days to the critical path?

10 **MR SANFILIPPO:** Correct. We had to strip the slip form off, clean out the cold-joint concrete and re-go again. And that is in a period of prior to the July '23 as well. That's in the relatively higher productivity period of the job.

**MR GISONDA:** And then, to similar effect, at paragraph (b) - this is a month later, still on page 269 of the bundle -

15 **COMMISSIONER:** Could I just stay at 21 April 2023 for a moment, Mr Gisonda. Is your evidence the police who we saw on those two videos did not intervene because, as they explained, quote, they had to meet the crowd halfway?

**MR SANFILIPPO:** I heard him say that, yes. I'm not sure what he means by that.

20 **COMMISSIONER:** Sorry?

**MR SANFILIPPO:** I'm not sure what he means by that, but yes, I heard the same. That's the first time I've seen that footage.

25 **COMMISSIONER:** Where did you get that information, that the police were in attendance but did not intervene because, as they explained, they had to meet the crowd halfway?

30 **MR SANFILIPPO:** This is from the site team. So I would assume - there was reference there that we had a body cam there. So maybe they took that - took that from the body cam footage that we would have taken from there.

**COMMISSIONER:** One of the things I picked up the police saying to - that looks like the manager, the chap that said -

35 **MR SANFILIPPO:** That's our site manager, yes.

40 **COMMISSIONER:** Site manager, "We have 60 deliveries over an eight-hour period." "Why are you being difficult about it?"

**MR SANFILIPPO:** Yeah, I was a bit surprised by that question. I didn't think the site manager did anything other than highlight the concern we had and the impacts it was having.

45 **COMMISSIONER:** What did you think of this when you were told that you've got a concrete pour on a, at that point, \$7 billion budgeted project being interrupted

halfway through by a group of unidentified mask-wearing climate-change protesters, and the police said they had to meet the crowd halfway?

5 **MR SANFILIPPO:** It's a hugely problematic example, but the type of behaviour from the CFMEU, I guess we had become accustomed to and were trying to deal with it on a day-to-day basis, every day. Disappointing that that was the response, and to see it in video footage doesn't make it any - any better. Yeah. Hugely disappointing.

10 **COMMISSIONER:** Did you try and raise it with the - up the chain of command with the police?

15 **MR SANFILIPPO:** I think the site team or the project team, not so much at that site, did raise it with QPS every time we were having these type of issues and calling them out, but we were not getting much traction.

20 **MR GISONDA:** Then at subparagraph (b) on page 269, there's another incident that's been reported to you of six CFMEU officials climbing over the turnstiles at Albert Street to enter the site, and then there were delegates simultaneously gathered outside the site and they led a protest nearby on Mary Street, lasting for approximately an hour and a half, which focused attention on the site manager, the industrial relations team and the subcontractor workers previously at Albert Street, and the result was another concrete pour was cancelled.

25 **MR SANFILIPPO:** Correct. There was a campaign, a specific campaign on Albert Street for those couple of weeks.

30 **MR GISONDA:** And then at subparagraph (c) there's another incident about two months later, on 14 July 2023, which prevents another concrete pour from happening, and there's a report there that several CFMEU delegates from Queens Wharf project arrived and stood outside the site gates, helping to prevent the concrete truck from entering the site. How do we or how did you know or how did the person reporting do you know that people from the CFMEU had come across from the Queens Wharf project?

35 **MR SANFILIPPO:** I'm not sure how they determined that.

**MR GISONDA:** Is that a convenient time, Commissioner?

40 **COMMISSIONER:** Well, why did you get police support on that day - you might not be able to answer this question - on 14 July, and not on the other days?

**MR SANFILIPPO:** I'm not sure, Commissioner.

45 **COMMISSIONER:** Yes. That's a convenient time. We'll adjourn till 2 pm.

**<THE HEARING ADJOURNED AT 12.49 PM**

**<THE HEARING RESUMED AT 2.01 PM**

**COMMISSIONER:** Mr Gisonda.

5

**MR GISONDA:** Thank you, Commissioner. Mr Sanfilippo, back at your bundle of documents attached to your first statement at page 269, we had looked at the incident on 21 April 2023, which is at subparagraph (a). And there is then an incident described at subparagraph (b) which took place on 24 May 2023, and it describes some things that are happening at the Albert Street turnstiles. And then about halfway into that paragraph, it talks about the officials leading a protest on Mary Street which lasted for approximately an hour and a half, which focused attention on the site manager, the industrial relations team and the workers previously at Albert Street, with the result that the concrete pour was cancelled. If I can now show you a video, which I believe is marked A, and if we can start that video at about 3:30.

10  
15

(Video played).

**MR GISONDA:** Can't seem to see it on the screen.

20

(Video played).

**MR GISONDA:** And then if I can show you the second video, which is marked B, commencing at about the 12-minute mark, please.

25

(Video played).

**MR GISONDA:** And then if we can just jump forward to the 14th minute of this clip.

30

(Video played).

**MR GISONDA:** Thank you. So those videos consisted of the protest that was occurring on Mary Street, and then we saw the concrete truck not be able to get onto the site, and as you say in your statement, the concrete pour was cancelled, which led to them cheering as the truck drove off, and then the final clip was them continuing on with their protest after that. And we heard in particular chants that included, "Here for the civil", "AWU grubs", and then a song and a chant that was directed to the site manager of the site. Commissioner, I tender those two videos. They are videos of protests on 24 May 2023 at - it's the Albert Street site again. It's about quarter past 9 am. That's the first one.

35  
40

**COMMISSIONER:** Video of protest at Albert Street - sorry, are there any objections? No. Video of protest at Albert Street 24 May 2023 at approximately 9.15 will be VSTS-6.

45

**<EXHIBIT VSTS-6 VIDEO OF PROTEST AT ALBERT STREET 24/5/2023  
AT APPROXIMATELY 9.15 AM**

5 **COMMISSIONER:** And video of protest at Albert Street 24 May 2023 at approximately 10.50 am - I've got 10.50. It's 10.40 up there. At approximately 10.40 am.

**MR GISONDA:** We jumped in about 10 minutes into it, so that starts at 10.40.

10 **COMMISSIONER:** Will be exhibit VSTS-7.

**<EXHIBIT VSTS-7 VIDEO OF PROTEST AT ALBERT STREET 24/5/2023  
AT APPROXIMATELY 10.40 AM**

15 **MR GISONDA:** Then at page 271 of the bundle, you talk next about a campaign against Multhana Property Services, which you described as an Indigenous-owned company that had been engaged to perform cleaning work on the Cross River Rail sites. Is that correct?

20 **MR SANFILIPPO:** That's correct.

**MR GISONDA:** And you say many of its employees are First Nations people or otherwise from difficult or low socioeconomic backgrounds. And then at paragraph 2, you explain that it pays its employees in accordance with the Cleaning Services  
25 Award, which is the typical approach taken in the cleaning industry. Then over the page at 272, it was reported to you, was it, that there was a campaign by the CFMEU against this company?

30 **MR SANFILIPPO:** Yes, that's right. The site made me aware that there was a campaign against Multhana. We've got a pretty long relationship with Multhana, a very good company, so I believe our site team supported him in getting some advice to resolve that matter and, I guess, defend its position.

35 **MR GISONDA:** And it says there at paragraph 4 at page 272 that it was your view that this campaign was due either to the CFMEU's desire to compel Multhana to pay its employees in accordance with an EBA, a union-sanctioned EBA, or to otherwise cause Multhana to be removed from the project. And then at paragraph 5, you set  
40 out some of the things that had been done as part of this campaign, which included barricading toilets and otherwise preventing cleaners from entering the site. That had been reported to you, had it?

**MR SANFILIPPO:** That's correct.

45 **MR GISONDA:** And can you just explain at subparagraph (d) on 273:

"They were repeatedly told not to undertake cleaning duties on site and to remain in office areas only, and so in an effort to ensure that construction works could

continue, arrangements were made at the Boggo Road site for port-a-loos to be lifted to the surface by tower cranes, and arrangements were made within the tunnel fit-out scope for toilets to be transported out of the tunnels to the surface."

5 Do you know why that had to be done?

**MR SANFILIPPO:** This is a case study from our site team. I can assume that they wanted to keep productivity going on the job, so they had to have the toilets cleaned. I think if there was no toilets being cleaned or the facilities weren't serviced, that  
10 would be reasons for the workforce to be encouraged to leave site. So I take that in this case study from the site team that they took alternate measures to ensure that some of their site's facilities were being cleaned to keep productivity going.

**MR GISONDA:** And at paragraph 6, the second sentence, you say that:  
15

"Eventually the CFMEU was encouraged through political avenues to cease its campaign against the company, having regard to its special status as an Indigenous company."

20 Do you know who it was that was called upon to try and intervene here and protect this company?

**MR SANFILIPPO:** I don't, other than Chris Butler, who was our shared service director, I believe had a discussion with Mr Kevin Mara from the Delivery  
25 Authority, regarding, you know, how - that Multhana were being unfairly picked on here and to, I guess, push that up the line to the government. I'm not sure where or to who.

**MR GISONDA:** Sure. And as part of this campaign, some of their employees lost earnings because they were unable to work due to these measures taken by the union,  
30 and you point out that they're already at a disadvantage and that this campaign was only making things worse for them.

**MR SANFILIPPO:** Some of their workforce, yes, yes.  
35

**MR GISONDA:** So on the one hand, taking, for example, the Queens Wharf project agreement, which, just for your reference, Commissioner, again is at page 239 of VSTS-3, at paragraph 10.3 at page 250, part of the EA that the union was insisting upon includes a - sorry, page 250 of VSTS-3. Do you have that? There we go. On  
40 the one hand, you see in their enterprise agreement, they insert a clause that requires a welcome to country ceremony to be arranged with traditional owners when a number of workers undertaking work on the project reach 50 as part of the employer's commitment to the principles of social, restorative justice and cultural affirmation. But then on the other hand, what was reported to you was a campaign  
45 against an Indigenous-owned company that, among other things, seeks to assist Indigenous workers.

**MR SANFILIPPO:** That's correct.

**MR GISONDA:** Then at page 273, you refer to a campaign against Altus Traffic, and is this correct: at paragraph 3, you say that as part of their campaign against  
5 Altus, it appeared to be one element of a broader strategy to have CPB include traffic controllers in a replacement Cross River Rail enterprise agreement, and in that context the CFMEU had been advocating for traffic controllers to have their weekly earnings increased from 2,200 a week to 5,500 a week.

10 **MR SANFILIPPO:** Correct. They were not included in our classifications, and in the 2024 negotiations they sought to have traffic controllers included in the classifications, which would have seen a pay increase in the order of that.

**MR GISONDA:** 3,300 a week?  
15

**MR SANFILIPPO:** Correct.

**COMMISSIONER:** So you're saying almost 300,000 a year for traffic controllers;  
20 52 times 5,500?

**MR SANFILIPPO:** In the order of that, Commissioner. It would have, again, brought them up to the equivalent pay of the rest of the workforce on the Queens Wharf agreement. That was the request.

25 **COMMISSIONER:** 286,000, on my maths, but someone's maths might be better.

**MR SANFILIPPO:** Yes.

**MR GISONDA:** And over the page at 274, at subparagraph (f), it was reported to  
30 you as part of this campaign that on 12 December 2023 there was a disagreement between two Altus workers on night shift. The next day, both workers were called to the Altus office. CFMEU organiser Dean Reilly attended the meeting without having been invited, and once at the meeting he proved so disruptive that Altus had to call the police to remove him from their office. Had you had any personal  
35 dealings with Dean Reilly on the Cross River Rail Delivery Authority project?

**MR SANFILIPPO:** No, I have not.

**COMMISSIONER:** Is Mr Reilly the person that Mr O'Grady said last week had  
40 been removed from the Queensland branch but employed by the New South Wales branch?

**MR GISONDA:** Yes. Then there's - you say some things about the tower crane  
45 companies and the campaign that was engaged upon by the CFMEU there, noting that most, if not all, tower crane companies that had been engaged on your project were CFMEU aligned; is that right?

**MR SANFILIPPO:** That's right.

**MR GISONDA:** And one of the things that happened was that those companies agreed to impose conditions whereby their employees had to obtain CFMEU approval to work RDOs, Saturdays prior to RDOs and weekends.

**MR SANFILIPPO:** That's correct.

**MR GISONDA:** At the bottom of page 274, you talk about the CFMEU heat policy campaign, and over at page 275 at paragraph 2, you note that the current - I will be more accurate - the greenfields enterprise agreement that you had with the AWU did not contain any blanket rule that said work must stop at a certain temperature, but rather there was a more flexible approach which required an active - active management during periods of heat and other forms of inclement weather. And I'm not sure if you saw the evidence of Mr Newton, but Queensland Workplace Safety has guidelines that says that it's not sufficient just to look at temperature or humidity; you've got to look at all the relevant factors.

**MR SANFILIPPO:** Correct.

20

**MR GISONDA:** And that's your understanding, is it?

**MR SANFILIPPO:** Correct. We - we don't have specific temperatures or humidities listed in industrial agreements. We treat it as a safety matter. We typically have a specific safety plan, and as conditions change and heat escalates, we have different measures we bring in place to manage the heat.

**MR GISONDA:** And then you say at subparagraph (iii) that the CFMEU heat policy did impose blanket rules, and the CFMEU had - and the CFMEU has promoted a similar approach to rainfall on site, and that these policies would have treated 84 per cent of the days in the summer of 2023/2024 as affected by heat or rain, leaving only 14 days out of three months. How were you able to calculate that?

**MR SANFILIPPO:** I believe the site team probably would have had a look at the records and made that calculation. I didn't personally make it.

**MR GISONDA:** Then at paragraph 5 you set out some of the matters that the CFMEU - or some of the things that the CFMEU engaged in as part of its heat policy campaign.

40

**MR SANFILIPPO:** Primarily it was around encouraging workforce to turn up in short sleeves and shorts, which is against our safety policies, which meant they were contravening our safety rules, so we couldn't do work. That campaign lasted through, you know, the periods listed there, through most of February, and then ultimately most of the workforce moved on and came back with full hi-vis long-sleeve, long shorts - long pants.

45

**COMMISSIONER:** Came back with what, sorry?

5 **MR SANFILIPPO:** Dropped the campaign to wear non-compliant PPE, Commissioner. So it went on through a period of February in 2024, and then by the end of it, it ran out of steam and everyone got on with the job.

10 **MR GISONDA:** Then at paragraph - sorry, page 276, you then refer to instances of targeted sabotage and vandalism, and these included the Damstra keyboards being damaged. Can you just explain to the Commissioner what the Damstra keypads do?

15 **MR SANFILIPPO:** It's a - it's a safety system we use regarding keeping people's safety credentials and training listed, and everyone, to get access to site, is given an individual code, and they log in via the keypads to get access to the site. It's also a way of keeping control - records of numbers of people on site.

20 **MR GISONDA:** So you can record the numbers of people on site; you can record that only those people with appropriate safety credentials are allowed on site?

25 **MR SANFILIPPO:** Or those who have been approved to be on site. Correct.

30 **MR GISONDA:** Approved to be on site. And also, does it have a drug and alcohol monitoring facility as well?

35 **MR SANFILIPPO:** Alcohol monitoring, yes.

40 **MR GISONDA:** And does the way that work is that random entrants have to do a breath test and they have to pass that in order to be allowed on the site?

45 **MR SANFILIPPO:** Correct.

**COMMISSIONER:** So there's no drug monitoring; it's just alcohol?

**MR SANFILIPPO:** Yes, drug monitoring is done separately from the Damstra system. So we'll do that via our random sampling. But at the gate we have the breathalyser set up as part of the machinery there. So it's all in one efficient kiosk.

**MR GISONDA:** So some of the vandalism that occurred included the Damstra keypads being damaged, CCTV cameras being sprayed over by masked men?

40 **MR SANFILIPPO:** Yes.

45 **MR GISONDA:** Keys to elevating work platforms being stolen. That's at subparagraph (e). Then at subparagraph (f), issues with toilets at Albert Street in particular, which included toilets being intentionally clogged, locks being removed off female toilets and concrete slurry being poured into the toilets. Is that -

**MR SANFILIPPO:** Correct. Yep.

**MR GISONDA:** And then just at subparagraph (h):

5 "The concrete pour at the Gabba site was interrupted after workers noticed that there was an issue with the pump. An investigation by a fitter found evidence of wire that was fouling the push and pull motion of rams. The fitter deemed this to be an instance of intentional sabotage or vandalism."

10 Just explain, do you know what the push and pull motion of rams is?

**MR SANFILIPPO:** I assume it to mean the hydraulic ram.

**COMMISSIONER:** Assume what, sorry?

15 **MR SANFILIPPO:** It to be a hydraulic ram.

**MR GISONDA:** And you've got some pictures there of evidence on page 277 of the damaged keypads and the masked men spraying the CCTV cameras. And then heading (g) at the bottom of that page, is Instances of Stoppages and Rallies, that is, public rallies and protests, and Mr Newton gave evidence about those as well. But you point out at page 278, at paragraph (e), that:

25 "Little is done before the protest occurs. Workers then leave the site to attend the protest or the rally."

And then at subparagraph (e):

30 "It's common for only about 10 per cent of direct hire workers to return to site afterwards."

**MR SANFILIPPO:** Correct. That's what the site was experiencing.

**MR GISONDA:** And with subcontractors, it's even lower?

35 **MR SANFILIPPO:** Yes.

**MR GISONDA:** So once the rally's on, you lose most of your workforce for the rest of the day?

40 **MR SANFILIPPO:** Yep.

**MR GISONDA:** And as we saw there, some of those rallies are at 9 in the morning. Could I then turn, Mr Sanfilippo, to your second statement.

45 **COMMISSIONER:** Could I just confirm, Mr Sanfilippo, that this August 2024 report that has been tendered, at least in part, is part of a broader report used by you

to justify a payment from the Delivery Authority in terms of some sort of variation or some other claim you make under the contract?

5 **MR SANFILIPPO:** It was a report to highlight some of the pressures the project was under and to engage in some commercial discussions regarding those, Commissioner.

10 **COMMISSIONER:** But your incentive, I take it - and I'm not saying you did this, but your incentive was to try to detail in as graphic way possible the problems that the union was causing, the union and BPIC was causing, because that would justify a larger payment from the Delivery Authority?

15 **MR SANFILIPPO:** Well, correct, to document the issues that we were facing and try and quantify them so it was tangible.

**MR GISONDA:** And what we just saw there, that was not intended to be an exhaustive catalogue of everything that happened on site?

20 **MR SANFILIPPO:** No, that's correct. That's just the feedback I've got from the team. I asked them to document some case studies as to what were the type of things going on on the project that caused us delays and disruption on the project.

25 **MR GISONDA:** The next topic I wanted to explore with you is addressed in your second statement, and it's the Cairns Convention Centre. And at page 1 of your statement, paragraph 6, you explain there what the project was, which was \$176 million in funding for the refurbishment of the existing Cairns Convention Centre. And at paragraph 7, you say that the Department of Housing and Public Works was responsible for procuring that project.

30 **MR SANFILIPPO:** Yes, that's correct for a number of government departments at the time and I believe continues. DHPW runs the procurement. So it does it for Corrections, for Health, for - I'm not sure what department the Convention Centre would come under. Perhaps stadiums. But yes, that's a function that DHPW does.

35 **MR GISONDA:** And in particular, it's the public works arm of that department that's the -

**MR SANFILIPPO:** I assume so. I'm not sure, to be honest.

40 **MR GISONDA:** You say in paragraph 8 that the procurement process was a select invitation tender. Could you explain to the Commissioner what a select invitation tender is?

45 **MR SANFILIPPO:** Yes. I believe they basically call a handful of contractors who they deem might be suitable to deliver the job and inquire whether they'd be interested to tender the project. So it's, as the name implied, an invited tender.

**MR GISONDA:** And we're now in September of 2019, and at paragraph 9, you say that CPB received an agenda for a pre-tender briefing that was scheduled for 11 September, and we'll go to that agenda in a moment, but by September 2019, your negotiations with the BTG on Cross River Rail had broken down?

5

**MR SANFILIPPO:** Correct. On 28 August, I closed those discussions down, with notification to the BTG, and we then commenced negotiations with the AWU on the civil component of the CME agreement, just the civil only, or the surface, and we quickly negotiated a tunnelling agreement with the AWU and a civil agreement with the AWU in the coming weeks after that. So right about this time.

10

**COMMISSIONER:** And presumably the Building Trades Group knew you were doing this? Negotiating with the AWU?

15

**MR SANFILIPPO:** Well, we had collapsed - we had collapsed - we'd formally collapsed the negotiations on CME on the 28th and then started the C - or I guess the surface works negotiation with the AWU. Yes.

**COMMISSIONER:** So they knew about the negotiations with the AWU?

20

**MR SANFILIPPO:** They knew we were negotiating a tunnelling agreement concurrent with the CME, and then when we stopped the CME agreement, we then engaged with the AWU. I'm not sure whether they knew that or not.

25

**COMMISSIONER:** Not sure. Okay.

**MR SANFILIPPO:** They'd probably assume that.

30

**MR GISONDA:** At page 3 of your - or page 2 of your second bundle now, that's the - sorry, page 2 of the second bundle. That's the cover page for the agenda that you were provided. And then at page 4, you see the invitees that are listed, and about two-thirds down, the state secretaries or assistant secretaries of each of the BTG members were invited to this briefing. Is that what we see there?

35

**MR SANFILIPPO:** That's correct.

**MR GISONDA:** Was this an unusual set-up, where you're invited to a pre-tender briefing and union representatives are present?

40

**MR SANFILIPPO:** It was the first time I'd seen it.

45

**MR GISONDA:** And then over at page 5, we have agenda item number 2, Overview of Key Government Priorities, and the second item there is best practice principles, being a key government priority. And based on your experience with Cross River Rail, it wasn't surprising that best practice principles was a key government priority, I would suggest?

**MR SANFILIPPO:** No. It was a government policy at the time.

5 **MR GISONDA:** But what you knew at least that perhaps others might not have known, because they were not involved in the Cross River Rail negotiations, is that, at least for that project, and so it stood potentially for other projects, best practice principles was being interpreted by the government at least as resembling in some way, if not totally, the terms and conditions of the Queens Wharf enterprise agreement.

10 **MR SANFILIPPO:** Well, we learned through this process that that crystallised that, through what they call minimum conditions.

**MR GISONDA:** Sure. But as at this point, which is the -

15 **MR SANFILIPPO:** At the start.

**MR GISONDA:** - 6th of September -

20 **MR SANFILIPPO:** Yep.

**MR GISONDA:** - you only knew what you knew from the Cross River Rail negotiations.

25 **MR SANFILIPPO:** Yes. Yes.

**MR GISONDA:** And if we go to the PowerPoint that was presented at this briefing, at page 6, that's the cover page of the PowerPoint, and then at page 7, key stakeholders are listed, and you'll see other stakeholders include the local construction industry, industry associations, traditional landowners, the local council, Ports North and the Taipans sporting club. None of those stakeholders were present at this briefing? Do you -

35 **MR SANFILIPPO:** I'm not sure. I didn't - I didn't go to the meeting. But I believe, from feedback from the team at the time, a lot of the stakeholders did not turn up, because it was quite an exhaustive list on page 4, listing quite a lot of - for example, I don't think any of the union representatives, the state secretaries, turned up.

**MR GISONDA:** Okay.

40 **MR SANFILIPPO:** I think there may have been one union representative, might've been a local member, but it was an exhaustive invite list, but not everyone turned up.

45 **MR GISONDA:** And then at page 15 of the bundle, the tender evaluation consists of 50 per cent non-price weightings, of which 15 per cent of that was demonstrating adherence to best practice principles. And that was something that you had seen on Cross River Rail. And it was maybe not that precise weighting, but an adherence to best practice principles, as you understood it, was government policy at the time?

**MR SANFILIPPO:** Correct. I think there was an expectation that we made a commitment to best practice principles on Cross River Rail. I think now, with the passage of time, this was government policy, quite ingrained, and it's not uncommon to see non-price criteria in tenders. 15 per cent against it. Yes, it was listed there, so they were obviously putting a weighting against it to that magnitude.

**COMMISSIONER:** Did you say not common or not uncommon?

**MR SANFILIPPO:** Well, non-price and price criteria in tenders is fairly common.

**MR GISONDA:** Then it says at page 17 of the bundle that the tender submission is to include a project-specific industrial relations management plan and evidence of commitment to best practice industrial relations. So you had to produce an IR management plan for Cross River Rail; is that right?

**MR SANFILIPPO:** Correct. Correct. Under the code it was pretty common for any job that had federal funding. We had to tender a workplace relations management plan, but they also obviously linked in best practice here to that element as well.

**MR GISONDA:** And then that last bullet point is how best practice principles will be applied to subcontractors. Then at page 18 of - you will see there at page 18, changes to conditions of contract, the first bullet point says that the changes include inclusion of BPP requirements. And so we'll come to how that was communicated in a moment, but you say in your statement that - and this is the correction you made - that shortly after this meeting, which was 12 September, CPB confirmed that it would participate in the tender.

**MR SANFILIPPO:** Correct. I believe with a select invite you have to confirm that you would tender the job, and we did that after the meeting.

**MR GISONDA:** So sometime in September. Is that accurate enough?

**MR SANFILIPPO:** Yes. Yes.

**MR GISONDA:** And as a result of confirming your participation, you received a tender pack?

**MR SANFILIPPO:** Yes.

**MR GISONDA:** And you received a number of addendums to that tender pack, and this included, on 14 October, addendum number 7; is that right?

**MR SANFILIPPO:** Correct.

**MR GISONDA:** And staying with the bundle, at page 22, the tender pack included the tender form that would need to be executed by you as someone submitting a tender?

5 **MR SANFILIPPO:** Correct.

**MR GISONDA:** And over the page, at page 23, highlighted in yellow there under the various other warranties, it says that there is also a warranty to comply with Queensland procurement policy, ethical supplier threshold and best practice  
10 principles. And just pausing there for the moment, those are documents and matters that we saw as part of the Cross River Rail documentation, Commissioner. But then we have, after best practice principles, after the comma, "including the minimum conditions". Do you see that, Mr Sanfilippo?

15 **MR SANFILIPPO:** Yes.

**MR GISONDA:** And then it says:

20 "By its signature on this tender form, the tenderer warrants that if awarded a contract for this project, it will comply with the requirements of clause 41.7 of the conditions of contract and acknowledges that the warranty is given in addition to any of the terms of the conditions of contract."

25 And you are then provided, together with this tender form that now has this warranty in it, a copy of the revised conditions of contract; is that correct?

**MR SANFILIPPO:** That's correct.

30 **MR GISONDA:** And those conditions begin on page 24, and you'll see that the changes that had been made to the conditions of contract - and presumably right at the start, maybe around addendum 1 or even before that, you would have been given the conditions of contract?

35 **MR SANFILIPPO:** Correct, in the initial pack.

**MR GISONDA:** Yes. And what is now highlighted for you are the changes that have been made to the conditions. And if you go to page 30, we see at clause 2.1.42 a definition is inserted of minimum conditions at schedule 17. And then at page 33,  
40 clause 3.2:

"If the annexure indicates that best practice principles are applicable..."

And in this instance, it did:

45 "...and if the principle is not satisfied in its absolute discretion the managing contractor has implemented the arrangements set out in the managing contractor's

tender for the minimum conditions by the date specified, then the principal may by written notice terminate the contract."

Do you see that?

5

**MR SANFILIPPO:** Yes.

**MR GISONDA:** And so what that's saying is essentially: if you don't comply with the minimum conditions, then the State can terminate the contract.

10

**MR SANFILIPPO:** Absolutely.

**MR GISONDA:** And if you go then to page 54, at clause 21.2.3, again with best practice principles being applicable:

15

"The managing contractor..."

That would be you, if you were successful in the tender:

20

"...shall implement the following measures when preparing proposed subcontract construction documentation and entering into subcontracts."

And that includes to:

25

"Ensure evaluation of subcontractor tender responses against clear evaluation criteria and weightings, including specifying that the provision of terms and conditions of employment, including pay rates, for the subcontractor's personnel who will perform work under the contract which meet or exceed the minimum conditions is a mandatory requirement."

30

And did you read that to say that unless a subcontractor says that it will pay its workers at least the rates of pay in the minimum conditions, then that subcontractor could not be accepted -

35

**MR SANFILIPPO:** Correct.

**MR GISONDA:** - for work on the project?

40

**COMMISSIONER:** We're back in 2019 now, and the ABCC and the code wasn't abolished until soon after the election of the Albanese Government in May 2022. Why doesn't this condition contravene the code?

**MR GISONDA:** Well, that was precisely your advice, wasn't it?

45

**MR SANFILIPPO:** That was our interpretation, that it did.

**COMMISSIONER:** Right. Sorry.

**MR GISONDA:** And we'll come to that in a moment, how you -

**COMMISSIONER:** All right.

5

**MR GISONDA:** - articulated that. And then at (d), if that wasn't clear at subparagraph (d) at page 55, you would - that is, CPB if it was successful with the tender - would require subcontract tenderers to demonstrate as part of their tender how they proposed to provide terms and conditions of employment which meet or exceed the minimum conditions. And then they would also - if you read

10

subparagraph (g) on this page, the requirement is that:

"The managing contractor shall implement the following measures when preparing subcontract construction documentation and entering into subcontracts, provisions in that subcontract requiring the subcontractor to provide terms and conditions which meet or exceed the minimum conditions."

15

And so what that's requiring is that you would do to subcontractors what the State was doing to the managing contractor.

20

**MR SANFILIPPO:** That's correct.

**MR GISONDA:** And then subparagraph (h) on this page:

"The managing contractor must not let a subcontract without the prior written approval of the principal's representative."

25

Was that something you'd seen before in a design and construction D&C management contract?

30

**MR SANFILIPPO:** There's normally some obligation to - to seek approval. But obviously, in this here, it was added in under best practice principles as a specific addition here. So normally we do need to get approval to employ someone via a subcontract.

35

**COMMISSIONER:** Say that again?

**MR SANFILIPPO:** Normally there is a requirement to work with your client and advise them which subcontractors are coming on board. That's not uncommon, but -

40

**COMMISSIONER:** But - to advise them about which subcontractor you've hired, but to get the prior written approval?

**MR SANFILIPPO:** Correct. Correct. Well, in some managing contracts we do. We do.

45

**MR GISONDA:** Then very quickly at page 58, clause 21.2.18, you warrant that in procuring subcontracts, you will comply with the requirements at subparagraph (c) of the Queensland Procurement Policy and the best practice principles, including the minimum conditions.

5

**MR SANFILIPPO:** Yes.

**MR GISONDA:** And then 41.7 at page 77, this is the clause that is expressly referenced in the warranty in the tender form. Do you remember that?

10

**MR SANFILIPPO:** Yes.

**MR GISONDA:** And 41.7.3 now includes - and when read with the tender form - a warranty by the managing contractor that it acknowledges that the principle values a commitment to the best practice principles, which includes terms and conditions meeting or exceeding the minimum conditions, at subparagraph (a) for your workers, and at subparagraph (b) ensuring that it also applies to subcontractors and their workers.

15

20 **MR SANFILIPPO:** That's correct.

**MR GISONDA:** And then at subparagraph (c) you warrant that you acknowledge and you agree that your compliance with your obligations under this clause 41.7 and 21.23, which is the clause we just looked at, and the results of any audit under that clause in connection with best practice principles, including minimum conditions, may be taken into account in any future tender process or similar procurement process undertaken by the principal. So when read all together, you must comply with the minimum conditions. You must ensure your subcontractor complies with the minimum conditions. If you don't, the contract can be terminated, and if you don't, it will be taken or held against you, essentially, in future tender processes as well.

25

30

**MR SANFILIPPO:** That's how we read it.

**MR GISONDA:** And just finally, I note that page 111, clause 64.1 and 64.2 then compel the managing contractor to retain records in relation to its adherence to the minimum conditions. You were then, obviously, also provided with schedule 17, which is, as we remember from the definition, where the minimum conditions were to be found. And that can be found at page 119 of the bundle. So these are the minimum conditions, best practice principles minimum conditions. And if we just go to page 123, and I wonder whether it might be possible, Mr Operator, to have that on one side of the screen and on the other side of the screen, page 245 of the VSTS-3, which is the tender bundle. Yes.

35

40

45 And so do you see there, Mr Sanfilippo and Commissioner, on the right-hand side: Application of Agreement. It says subject to clause 3.2, the agreement covers - and then we've got Multiplex, the CFMEU, the CEPU, the AMWU and employees.

That's the Multiplex EBA. And then on the left-hand side, you have the application of the document - the application of document section of the minimum conditions and schedule 17 to the conditions of contract for the Cairns Convention Centre.

Then clause 4 of each: Parties Bound and Covered. You'll see that that's the same.

5 And, Commissioner, you'll be relieved to know I'm not going to go through it clause by clause, but the short point is that save for a couple of exceptions, the best practice principles minimum conditions document is close to identical to the Queens Wharf EBA.

10 Two exceptions that I've found are in the Multiplex agreement. There is at clause 9 on page 249 a provision about consultation for productivity. It's stating that the parties are committed to working together to promote productivity. That is not found in the best practice minimum conditions. And at clause 10 of the Multiplex agreement, Queens Wharf agreement, at page 250, clause 10.1 says, at page 250:

15 "The parties are committed to continuous improvement in the general building and construction industry and to the modernisation of the workplace. This project provides an opportunity to be a lighthouse for the continuing modernisation of the workplace."

20 That clause also is not in the best practice principles minimum conditions, but the rest of it is all there, or very close to all being there. Were you aware at this time, Mr Sanfilippo, that these minimum conditions were close to a direct lift of the CFMEU pattern as had been agreed at least on Queens Wharf?

25 **MR SANFILIPPO:** Yes, we were.

**MR GISONDA:** And do you agree with me that save for one or two clauses here or there, the document's close to identical to -

30 **MR SANFILIPPO:** We didn't do that level, but we looked at it and realised it was the CFMEU pattern agreement, which is basically what Queens Wharf is. So very similar.

35 **MR GISONDA:** And what is not clear to me, at page 237 now, back of the bundle to your second statement - so we can leave the split screen now and go to page 237 of - yes. I think in one of the later contracts we come to, there's - they deal with this by saying that there's nothing in the contract that requires you to actually have a signed-up agreement with any union. But it appears, at least in this early iteration,  
40 looking at the minimum conditions, page 237, that you were effectively being compelled to have an agreement signed up with the BTG, including the CFMEU?

**MR SANFILIPPO:** That's right.

45 **MR GISONDA:** And you - this was - you were given this addendum four days before the tender was due; is that right?

**MR SANFILIPPO:** That's right. We had to scramble.

5 **MR GISONDA:** And you hadn't been told before that that the - this document was coming, or this requirement was coming that would require you to sign up to the CFMEU pattern as agreed on the Queens Wharf?

10 **MR SANFILIPPO:** No, I don't recall. It was the mark-up to the contract that really kind of threw us at that point, plus with the minimum conditions there. There was talk about best practice principles through the journey, but seeing it four days out with a CFMEU-style agreement and a warranty that we would basically flow that through the whole project was certainly a surprise to us.

15 **MR GISONDA:** And to answer the Commissioner's question from earlier, you say in your statement that the concern that CPB had, among other things, was that you felt that these addendum 7 documents would result in CPB contravening the federal code and the Fair Work Act?

**MR SANFILIPPO:** Correct.

20 **MR GISONDA:** And you were concerned, presumably, that it would also have productivity and efficiency impacts on the project as well?

25 **MR SANFILIPPO:** To be honest, we didn't think that far ahead. We were four days out from the tender, and we were looking to how could we respond? Could we comply with it or could we not? And that's why we took legal advice and then responded the way in which we did.

30 **MR GISONDA:** So that response is at page 241 of your bundle. And at paragraph 3, you set out the experience that the team had had in building similar - or working on similar projects in the recent past, which included the Jupiters integrated atrium redevelopment; the APEC conference facility, which I believe was in Papua New Guinea -

35 **MR SANFILIPPO:** Correct.

**MR GISONDA:** - and the Convention and Exhibition Centre in Christchurch. So you certainly felt that, as far as experience goes, you were well placed to complete this project?

40 **MR SANFILIPPO:** Yes.

**MR GISONDA:** But then if we go to the highlighted paragraph, it says:

45 "Please note, however, we are unable to include addendum 7 in our offer. After seeking legal advice, the practical implementation of the Best Practice Principles Minimum Conditions will cause us to breach the federal code and the Fair Work Act."

And that was the advice that you'd received?

**MR SANFILIPPO:** That's right.

5

**MR GISONDA:** And then over at page 29, where that warranty - well, first of all, at page 242, under where the email and phone number details are put, you're required to "hereby tender in respect to the following items for the above project in accordance with the terms and conditions in the relevant documents". You have explicitly removed addendum 7?

10

**MR SANFILIPPO:** Correct.

**MR GISONDA:** And then at page 243, you have removed the warranty.

15

**MR SANFILIPPO:** Correct.

**MR GISONDA:** And the consequence of doing that was that there was no post-tender dialogue, no engagement, and you didn't get that job.

20

**MR SANFILIPPO:** I'm not sure whether it was a consequence of that, but we had no post-tender dialogue and we did not get the job.

**COMMISSIONER:** You talked earlier about hearing noise in the industry. Did you hear any noise in the industry about how Lendlease had managed to deal with this issue?

25

**MR SANFILIPPO:** No. I do think, at the time when that addenda came out, everyone was taken a little bit aback by it. I'm not sure how everyone tendered and then how they resolved that moving forward. I don't know.

30

**MR GISONDA:** Back at the - well, perhaps we'll go to page 248 of your tender bundle. This is the press release that was issued on 5 December to announce that Lendlease had been appointed as the managing contractor. And the sixth line or sixth paragraph says that the member for Cairns, Michael Healy, welcomed the news and said he would be keeping a close eye on the project to ensure maximum local benefit. And then he says:

35

"Lendlease has a team based in Cairns with a very strong record of delivering major government contracts, and our deal with them contractually requires them to engage local tradies on the opportunities to tender for Convention Centre works packages."

40

And then he said:

"I'd urge local tradies to make the most of this significant opportunity, because ticking the right boxes when tendering for this project will help when tendering for other government work."

45

Now, we know, don't we, based on the tender documentation that was provided, that subcontractors could only tender for work on this job if they agreed to sign up to the minimum conditions, or at least the minimum conditions. That's right, isn't it?

5

**MR SANFILIPPO:** One could interpret that statement that way, for sure.

**MR GISONDA:** Yes. And then -

10 **COMMISSIONER:** Assuming a compliant tender. It might have been a non-compliant tender, but you would assume it was a compliant tender that won that job.

**MR GISONDA:** For a subcontractor?

15

**COMMISSIONER:** For Lendlease, sorry.

20 **MR GISONDA:** Well, this is talking about local tradies who are ticking the right boxes when tendering for this project. That's a reference, in my submission, to the subcontractors.

**COMMISSIONER:** Oh, I see.

25 **MR GISONDA:** And what the message there is that if you tick the right boxes - and of course, there are many boxes, but one box is that you will comply with the minimum conditions, that that will only help when tendering for other government work. And we know, based on the tender documents, that doing the opposite will also be taken into account for future government works. Then there's a reference to the Minister for Housing and Public Works, Mick de Brenni, saying that the  
30 government - the Palaszczuk government was making it easier for businesses that do the right thing by their workers and their local communities when tendering for government work. He says:

35 "Lendlease Building Pty Ltd won the managing contractor appointment by demonstrating how they will deliver benefits to the Tropical North, including how they propose to engage with the local workforce."

40 Now, on one view, if their tender documentation was the same as yours, they didn't really have a choice as to how - short of not putting in a tender at all, it was very prescriptive as to how they would engage with the local workforce; is that right?

**MR SANFILIPPO:** Well, if it's the same contractual documents, yes.

45 **MR GISONDA:** And then he says:

"As part of delivering local benefits, they were also required to show and commit to how local mum-and-dad businesses and tradies will be engaged in work packages."

And then if we go to the VSTS-3 at page 3, this is, Commissioner, the Cairns Convention Centre project greenfields agreement. You'll see at paragraph 1 that it has been made by Lendlease Building. At paragraph 4, it covers each of the BTG members. And again, I don't need to take you through it, Commissioner, but it is the minimum conditions document terms and conditions almost word for word.

**COMMISSIONER:** You said you only had four days to deal with this amendment to the tender, and then you didn't have any discussions during that period or afterwards with - about your non-compliant tender with representatives of the Department of Housing and Public Works. Did you have discussions with them after that at any time about this process?

**MR SANFILIPPO:** No. The next time it came up was the next tender that we participated in. But no, we didn't have any - any dialogue, and fair to say, nor did we seek to, I guess. You know, we didn't reach out to do that. We probably should have at the time. But yeah, we didn't have any dialogue.

**COMMISSIONER:** And when was the next time there was a tender?

**MR SANFILIPPO:** It's probably the next couple of pages. It's Gatton Prison.

**COMMISSIONER:** And that was, what, June 2019? No, sorry, March 2020. At that point, did you say - oh, this is a different department. Did you say to anyone in government, "What are you doing here?"

**MR SANFILIPPO:** No, we didn't. We had more time to consider our approach, because we had the full tender period. So our approach there, which we'll probably get to, is we looked - we looked to work out how we could find a common ground there and work with the client but not contravene any of the legal regulations there. So we ended up on that job tendering a process, which they asked for, on how we might encourage subcontractors to partake in the job, but we never overstepped the mark of enforcing. And we were unsuccessful on that project as well.

**COMMISSIONER:** What did you think about the impact of imposing the Queens Wharf agreement upon a build in Far North Queensland?

**MR SANFILIPPO:** We thought it was a problematic approach. It would be hard - hard to - to bring to life. A lot of the subcontractors up there perhaps would not be interested in that, and we'd observed that in the past with the Townsville Stadium. So we thought it was going to be a - a challenge, for sure. But that being said, we never tendered on that basis, either, to do that.

**COMMISSIONER:** Are you going to deal with this at some point, Mr Gisonda, this issue?

**MR GISONDA:** Yes. So you've just reminded me of one point that I should draw to your attention. Go to page 131 of Mr Sanfilippo's bundle, his second statement - sorry, 131. Do you see there, Commissioner, clause 13. This is now the minimum conditions. The hot-weather guidelines. You see there it says for South East Queensland only.

**COMMISSIONER:** Mmm.

**MR GISONDA:** The Cairns Convention Centre greenfields agreement, in its hot-weather clause, which is at page 17 of VSTS-3, clause 13, begins by saying:

"The parties recognise the unique weather patterns of the Far North Queensland region."

And then there is a separate or different regime to dealing with hot weather as there is for the South East Queensland guidelines. So that is one - one potential problem of the Queens Wharf pattern agreement being applied without any deviation to a project in Far North Queensland, but they appear to have considered that when entering into the greenfields, because the minimum conditions only apply to South East Queensland.

**COMMISSIONER:** So apart from that one change, it's identical?

**MR GISONDA:** Yes.

**COMMISSIONER:** Relevantly. And you were saying that it wasn't practical or practicable to comply with the tender requirements for the Cairns Convention Centre because of the - you said something - sorry, I cut you off.

**MR SANFILIPPO:** We saw it as a risk. We saw it if we were to encourage subcontractors to sign up to a CFMEU-style pattern in North Queensland, they would view it as a detrimental decision for their business, because they're then locked into those higher rates, and when that project finishes, they would be potentially left with the higher rates. There obviously is a work-around there: they could do a project-specific agreement. But we observed from afar some of that playing out on the Townsville Stadium, where there was a reluctance to align with a South East Queensland BPIC approach. From afar; we weren't working on that job. So we saw the same risk up in Cairns as well: subcontractors buying in to align to that approach.

**COMMISSIONER:** And what difficulties would those subcontractors then face thereafter in Townsville or Cairns if they entered into those Queens Wharf pattern agreements?

**MR SANFILIPPO:** Well, if it was a long-term agreement that covered their whole operation, they would be probably less competitive than their peer companies and struggle to find work if it was based on competitive tendering in the wider market.

**COMMISSIONER:** And did any of the subcontractors in Townsville and Cairns tell you that?

5 **MR SANFILIPPO:** No. When we were tendering this, we don't engage. This is primarily at the very start. So we win the opportunity to join in the managing contractor with the government, and then we go and do the market testing there. So we never got to have any discussions with the market there. It was just our view.

10 **MR GISONDA:** Commissioner, I can deal with the next topic in about 20 minutes. Is that sufficient?

**COMMISSIONER:** Mmm.

15 **MR GISONDA:** I want to see if you agree with this conclusion about the Cairns Convention Centre process, on the back of what had happened with Cross River Rail, which is to say that it appears, at least from a distance, that the CFMEU has managed to achieve, on the Cairns Convention Centre, those things that it had failed to achieve on the Cross River Rail, including a single agreement on Queens Wharf terms and  
20 conditions and a framework agreement compelling compliance by all subcontractors on the project.

**MR SANFILIPPO:** Those outcomes, yes, you were written into the contract ultimately, one agreement that would be passed on to all workers that we were there  
25 to make sure happened.

**MR GISONDA:** The next project that CPB then tendered for was the Southern Queensland Correctional Centre, which has since been officially named the Lockyer Valley Corrections Centre, and this time it was a Queensland Corrective Services  
30 project?

**MR SANFILIPPO:** Correct.

**MR GISONDA:** But they again - or the contract is again procured by DEPW, so  
35 that is now the Department of Energy and Public Works?

**MR SANFILIPPO:** Correct.

**MR GISONDA:** So there'd been a -  
40

**MR SANFILIPPO:** Name change.

**MR GISONDA:** - machinery of government change, and housing had gone out and energy had come in.  
45

**MR SANFILIPPO:** Correct.

**MR GISONDA:** But it's still the public works arm of that department. And you say in your statement that on 11 March 2020 - so that's about three months after Lendlease won the Cairns Convention Centre - you receive from the department a tender pack for the correctional centre project, and the tender pack includes, again, a tender form, which is at page 259 of your bundle to your second statement.

**MR SANFILIPPO:** Yes.

**MR GISONDA:** And at page 259, halfway down the page, there's, as we saw previously, the warranty to comply with Queensland Procurement Policy ethical supplier threshold and best practice principles. And as you saw - it's fleshed out a bit more now, but again, you see that by putting the signature on the tender form, tenderers warrant that, subparagraph (c), the tenderer will comply with the requirements of clause 41.7 of the conditions of contract. Presumably, you noticed that at the time that the tender form was given to you.

**MR SANFILIPPO:** Yes.

**MR GISONDA:** And then at page 263, you have - these are conditions of tender. They begin on page 262, but at 263, a continuation of the conditions of tender. And now we see at subparagraph (c) the introduction of what's called best practice industry conditions, which are at schedule 18. So we see a change of the nomenclature from "minimum conditions" to "best practice industry conditions".

**MR SANFILIPPO:** That's correct. It's the first time I saw BPIC.

**MR GISONDA:** And at page 271 - these are still the conditions of tender - at paragraph 8(a):

"In lodging the tender, the tenderer warrants that..."

And then over the page, at (x), so we're now at page 272, (x):

"...it will fulfil all obligations offered in a tender, including without limitation a tenderer's non-price criteria and best practice industry conditions offers."

Do you see that?

**MR SANFILIPPO:** Yes. Yes.

**MR GISONDA:** And then at clause 9.2 on this page, at subparagraph (a):

"The principal shall evaluate conforming tenders in accordance with the tender evaluation criteria contained in schedule 2."

And we'll come to schedule 2 in a moment. And then at page 276 there are some conditions of tender that relate to the best practice industry conditions. And at subparagraph (b), 16(b), it says that:

5 "The Queensland Government considers that the adoption of best practice industrial relations includes tenderers engaging in modern and progressive industrial practices."

And then at subparagraph (d):

10 "The best practice industry conditions are a set of terms and conditions of employment that might ordinarily be expected to best achieve the government's aims."

15 Do you see that?

**MR SANFILIPPO:** Yes.

**MR GISONDA:** And then at subparagraph (f), this is what I was referring to earlier, which was, I think, almost an impossible feature of the Cairns Convention Centre documentation. I think they've tried to fix that here by saying at (f) that:

25 "Although the BPIC are set out in the form of an agreement, it is not mandatory that tenderers enter into an agreement or require subcontractors to enter into an agreement in that form in order to demonstrate that the terms and conditions are at least equivalent to BPIC."

30 So what that's saying - tell me if this is how you read it - that there's no express requirement that you must enter into an enterprise agreement with the members of the BTG, but what you do have to do is show that your workers and subcontractor workers are being employed pursuant to terms and conditions that are at least equivalent to those conditions that would be in such an EBA.

**MR SANFILIPPO:** That's correct.

35 **MR GISONDA:** And then at subparagraph -

**COMMISSIONER:** I take it from that, Mr Gisonda, that someone might have noticed the response on the Cairns Convention Centre from Mr Sanfilippo, and that response said, "Look, it contravenes the code and the Fair Work Act, and this is an attempt to at least deal with the contravention of the Fair Work Act. It doesn't, obviously, deal with the contravention of the code." Is that what's going on here?

45 **MR GISONDA:** I think there's two things going on. One is an attempt to try and alleviate to some extent the potential contravention of those instruments. And the second is to - it's almost an extraordinary proposition in the previous agreement to say that, "You must meet the minimum conditions," and the minimum conditions are

framed in the form of an agreement with four unions, and if you can't get the agreement of those four unions, then the State can terminate the agreement. It's almost an impossible bargain that a party is entering into. So I think that's what (f) is trying to manage in some way. But at subparagraph (i) on this page, it says:

5

"Any tender that does not comply with the requirements of this clause 16 will be considered an alternative tender."

And then at paragraph 9.1(c), which is back at 272:

10

"Without derogating from the above, the principal may in its absolute discretion decline to evaluate any tender that it has determined to be an alternative tender."

So it is a condition of tender that you must demonstrate how you will comply with BPIC. You don't have to have an agreement with the BTG, but you have to show how the terms and conditions of employment for workers on the site will, at a minimum, achieve BPIC.

15

**MR SANFILIPPO:** Yes.

20

**MR GISONDA:** And if you don't do that, you'll be an alternative tender, and if you're an alternative tender, in its absolute discretion, the State can refuse to accept the tender.

**MR SANFILIPPO:** That's correct.

25

**MR GISONDA:** And then at page 280 onwards, there's schedule 2, which we referred to earlier, which is the tender evaluation criteria. And at page 282, criterion 4 is the best practice principles. And we saw the last week that we were looking at Cross River Rail that best practice principles at the time of the Cross River Rail documentation was a very high-level concept where it was left to the contractor to demonstrate, through plans that it develops, how it would comply with best practice principles, whereas now, in the middle of this page, when looking at best practice principles, it says that compliance with, among other things, industrial relations best practice principles will be measured against the substantive obligations, entitlements, conditions and amounts contained in the BPIC.

30

35

And then going to the conditions of contract, which begin at page 290, we'll just quickly skim through these, but at page 300, you have the same clause 3.2 that you had in the Cairns Convention Centre conditions of contract, save that minimum conditions is now replaced with best practice industry conditions.

40

**MR SANFILIPPO:** Correct.

**MR GISONDA:** Clause 21.2.3, at page 321, the same thing - the same clause, save that minimum conditions is now described as best practice industry conditions. Clause 41.7.3 at page 345. That's that same warranty that again we saw in the tender

45

form, the reference to clause 41.7. It's the same warranty, save that minimum conditions is now called best practice industry conditions.

5 **COMMISSIONER:** Is the inference that we take from all this that someone within the government has learned from the CPB's failure to take the hint that best practice principles actually means the CFMEU pattern agreement, Queens Wharf, and to prevent that happening again, because that wasn't successful nine months earlier before this, because CPB entered into an agreement with the AWU that you actually make it explicit by reference to the so-called best practice industry conditions, and  
10 that way, you can't have the situation that happened on Cross River Rail, where you could comply with the principles per se but avoid the CFMEU pattern agreement?

15 **MR GISONDA:** That's one - that's one inference that arises, and looking at it from the other end of the telescope, you could say that - you will remember Mr Ravbar's claim when he participated in a rally outside the Cross River Rail Delivery Authority. He said, "Wind up the Delivery Authority. Bring it in-house to a government department." The inference might be that he felt that at least the BTG had sufficient control of the in-house function within the Department of Public Works, and if a contract was managed through or procurement was managed through  
20 Department of Public Works, what we see now was the framework agreement that he wanted to see implemented on Cross River Rail.

25 **COMMISSIONER:** But by the time - I think that protest wasn't until September 2021.

**MR GISONDA:** Yes. The capture, if I can use that word, of the Department of Public Works was already complete.

30 **COMMISSIONER:** Oh, I see. I see. Yes.

**MR GISONDA:** And the conditions of contract beginning at page 384 includes schedule - so schedule 6 at page 400. This is a warranty and indemnity that is to be given when accepting a subcontract tender, which includes that any subcontractor tenders will be evaluated pursuant to - or against BPIC. Schedule 16 at page 427 is a  
35 subcontractor deed poll, which again includes a warranty now by the subcontractor that it will demonstrate compliance with BPIC. And then schedule 18, beginning at page 431. And just going through those clauses thereafter, Commissioner, again, that's the Queens Wharf agreement conditions.

40 And to round out this topic, Mr Sanfilippo, at least with respect to this project, CPB maintained its existing position about its ability to comply with these requirements?

45 **MR SANFILIPPO:** Yes. We - we had to articulate the process we would go through regarding the tendering and the onboarding of subcontractors. We had a lot more time to deal with it, so we sought much more legal advice and with our legal advice drafted a process where we would engage with the market but certainly not mandate the follow-through of that. And we articulated that -

**COMMISSIONER:** Mandate the what, sorry?

5 **MR SANFILIPPO:** The pass-through of minimum - or BPIC. So we thought that was a step too far regarding our legal advice, so we articulated a process which would run, which probably puts it in alternative tender territory, and put our best foot forward.

10 **MR GISONDA:** And the consequence - well, sorry, I shouldn't say "consequence" - what then happened was that John Holland won that tender?

**MR SANFILIPPO:** We were unsuccessful, yes. I believe Hollands won it.

15 **MR GISONDA:** And, Commissioner, at page 121 of the VSTS-3, page 121, Southern Correctional Precinct Stage 2 Project Greenfields Agreement with John Holland, certified by Commissioner Cirkovic, and from page 124 onwards, it is, again, close to identical to the Queens Wharf agreement, including this time clause 13, the inclusion of the South East Queensland hot weather guidelines. And so again, Commissioner, assuming that the tender documentation that was given to  
20 other parties was the same as was given to CPB, one can say that the CFMEU has achieved now in the Southern Queensland Correctional Centre what it had failed to achieve on Cross River Rail: a framework agreement compelling compliance by all contractors on the project, a single agreement on Queens Wharf terms and conditions.

25 **COMMISSIONER:** And achieved that through the so-called purchasing policy of two government departments.

30 **MR GISONDA:** The department of - it's really the same department. Department of Public Works, originally Housing and Public Works, then it became Energy and Public Works. Tomorrow, Commissioner, I'll probably be one more session with Mr Sanfilippo, which then needs to be followed by cross-examination from Mr O'Brien if leave is granted, and cross-examination from Mr O'Grady if leave is granted. They're the only two applications I'm aware of. Then, depending on how we're going  
35 for time, probably Mr Caruana will then lead Mr Large. But in any event, Mr O'Brien, Michael O'Brien, has to give evidence tomorrow, so we'll just work out a way to ensure that occurs. The next five witnesses will be much shorter than Mr Sanfilippo.

40 **COMMISSIONER:** The next how many?

45 **MR GISONDA:** Five. And depending on how we go for time, at some point between probably Mr Large and Mr O'Brien - but as I say, we might need to interpose Mr O'Brien - I'll have just some brief remarks to say about the health and safety reps who were employed on site, that being the focus of the next topic that these witnesses will primarily be concerned with.

**COMMISSIONER:** And what's your attitude to the cross-examination by the Cross River Rail Delivery Authority and by the CFMEU administrator?

5 **MR GISONDA:** I don't have any resistance to Mr O'Brien's application. Mr O'Grady's application is potentially quite complicated, and it requires the careful consideration of both the Cross River Rail Delivery Authority, the State of Queensland and CPB as well. So probably all three.

10 **COMMISSIONER:** Because of those matters that you alluded to earlier?

**MR GISONDA:** Yes. What I think Mr - I mean, Mr O'Grady can speak for himself. What I think he wants to do is look at what's behind the redactions, look at the whole report and then have the ability to interrogate some of the conclusions that Mr Sanfilippo reached. As a matter of principle, that, of course, is perfectly  
15 acceptable, but there's just a commercial-in-confidence problem that we have to navigate.

**COMMISSIONER:** Do you want to say anything about that today, Mr O'Grady, or deal with it tomorrow?  
20

**MR O'GRADY:** Briefly, Commissioner. Yes, we say that at the moment we're at a material disadvantage given the redactions in the report, and in those circumstances, in the normal course, we should have access to an unredacted version. It may be sufficient for our purposes if the Commission takes into account the material  
25 disadvantage we're at, and also the fact that the Commission is at a material disadvantage in assessing, for example, the methodology that was adopted in that report, and gives it weight that reflects those disadvantages. But I perhaps prefer to deal with that in greater detail tomorrow. But that's basically the position.

30 **COMMISSIONER:** So you want to say, "Look, what my client did, this all pre-dates the appointment of the administrator"? At least the August '24.

**MR O'GRADY:** Yes, and that report predated the appointment of the administrator.

35 **COMMISSIONER:** But you want to say nevertheless, despite it being - and there's no criticism of this - despite it pre-dating the appointment of the administrator, that the impact of your client's activities wasn't as bad as this witness suggests it is in his report. Is that the gravamen of it?

40 **MR O'GRADY:** Well, we want to be able to test that, and at the moment we can't because we don't have access to the methodology.

**COMMISSIONER:** Yes. Well, will you arrange to talk to Mr O'Grady about that? But it's really you, Mr O'Brien, and you, Mr de Jersey, isn't it? You're the ones with  
45 the issue, because you want to keep material that you say is commercially confidential, commercially confidential.

**MR DE JERSEY:** Potentially, yes, Commissioner.

5 **MR O'BRIEN:** Yes, that's right, because the parts that have been redacted relate to matters that went to commercial negotiations between the consortium and Cross River Rail, and the concern from the Authority's perspective is that a full release of that information will have the potential - conscious of the project still continuing for some time - has the potential to prejudice any further negotiations about further matters in the future. That's the extent of it.

10 **COMMISSIONER:** Well, you'll have some discussions, Mr O'Grady, with Mr O'Brien and Mr de Jersey and see if you can come to an agreed position. If not, I'll just have to make a ruling tomorrow.

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

**COMMISSIONER:** We will adjourn till 10 am tomorrow.

**<THE HEARING ADJOURNED AT 3.46 PM**