



**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, 29 APRIL 2026
AT 10.00 AM**

DAY 23

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 9.58 AM

COMMISSIONER: Deal with appearances. Mr Gisonda, you continue as senior counsel assisting with Mr Caruana?

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MR GISONDA: Yes, Commissioner.

COMMISSIONER: And Mr Ford, you appear for CPB Contractors Pty Ltd and Mr Sanfilippo?

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MR FORD: Yes, Commissioner, and Mr O'Brien and Mr Large, when we ultimately get to them as well.

COMMISSIONER: I'll just make a note of that. Thank you. Mr O'Grady, you appear -

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MR O'GRADY: With both Ms Hughes and Ms Fox, who aren't in the court at the moment, and I'll explain the reason for that once appearances are taken.

COMMISSIONER: Thank you very much. Mr de Jersey, you appear with Ms Brooks for the State of Queensland?

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MR DE JERSEY: I do, Commissioner.

COMMISSIONER: And Ms Connolly, you continue to appear as counsel for the CEPU, ETU Queensland and PGEU Queensland.

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MS CONNOLLY: Yes, Commissioner.

COMMISSIONER: Very well. Mr O'Grady, you want to make an application?

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MR O'GRADY: Yes. Can I indicate where we've gotten to between counsel, although I unfortunately haven't had a chance to explain this to Mr Ford.

COMMISSIONER: Yes.

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MR O'GRADY: But what we are proposing is that in respect of the report -

COMMISSIONER: In respect of what, sorry?

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MR O'GRADY: The report (indistinct - off mic) what lines of cross-examination we can pursue going to methodology that will not involve the disclosure of the contents of that report, and then, and as we understand it, Mr Gisonda is going to be - this first session is going to be taken up with further examination-in-chief, so we should be in a position to cross-examine some time today when we're reached, the idea being, Commissioner, that we don't require you to make a ruling. We don't have a delay of the hearing, and we can progress things. The only slight

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hiccup in respect of that is we've been provided with an unredacted version of part of the report but not the entirety of the report, and so we'd probably seek, if we could, to have at least electronically an unredacted version of the entirety of the report so, for example, we can draw a comparison between the methodology applied to some of the other clauses that were mentioned yesterday, for example, COVID, and the methodology that was applied to the BPIC and the CFMEU.

COMMISSIONER: Very well. I'm not demanding this, but I did look closely at this report this morning, and I might be assisted in any ruling that I make if I'm given a copy of whatever you get on an unredacted basis, but if I'm not given it, I think I can deal with whatever applications are made. But it might be helpful for me in terms of any ruling.

MR O'GRADY: Yes. Yes. I certainly have no objection to that course.

MR FORD: Commissioner, I will just indicate I will need to take instructions on that. Presently, my client maintains its objection to the cross-examination on the basis that it won't assist the Commission, given - plainly the report's an opinion, and a lay one at that, but I can expound upon those points in due course once I've taken instructions and when we get to the application itself.

COMMISSIONER: I can understand you objecting to the cross-examination, and you will be free to do that, but what do you say about this first step of at least an unredacted version - and I'm not speaking about myself - an unredacted version of at least part of this report being provided to counsel for the administrator?

MR FORD: I understand it's already occurred, Commissioner, so I'm not sure I can -

COMMISSIONER: Not much you can do about it.

MR FORD: There's not much I can do about it. As to the contents of the report, no, I don't cavil with it being reviewed by counsel for the purpose that Mr O'Grady has described.

COMMISSIONER: Well, we have occasionally had slips where documents have been provided to counsel and we've had to get them back if there's an objection. So if you want to consider your position and you really do have an objection, I'm sure multiple copies haven't been made and they haven't gone far wide. So if you do really have an objection, I'm happy to hear from you in due course. I didn't think you'd have an objection to that course, but I could understand you having an objection to the -

MR FORD: The cross-examination.

COMMISSIONER: - the cross-examination, and I'll hear in due course about that.

MR FORD: Yes.

COMMISSIONER: Mr O'Brien, you've just missed a little bit of the exchange -

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MR D. O'BRIEN: Sorry, I had a printing issue as happens on a morning. Commissioner, I had the opportunity to have a fruitful discussion with Mr O'Grady this morning. We have no difficulty with it being provided to counsel at this point. I'm seeking further instructions in relation to what happens after that, but certainly at this stage we've got no difficulty with what Mr O'Grady proposes.

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COMMISSIONER: And you're in the same position, Mr de Jersey?

MR DE JERSEY: I am, Commissioner, and I too spoke with Mr O'Grady this morning, and it's a practical solution to the problems. No issue with that.

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COMMISSIONER: Very well. And Mr Gisonda, I take it you've got no objection to that course?

MR GISONDA: No, and I think this is my fault. I must have misunderstood Mr O'Grady's request. But we will get him a copy of the full report, rather than just the sections that were in Mr Sanfilippo's statement.

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COMMISSIONER: A full, unredacted report?

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MR GISONDA: Yes.

COMMISSIONER: Are you content with that, Mr O'Grady?

MR O'GRADY: Yes, I am, and I'm grateful to my learned friend.

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COMMISSIONER: Thank you. Mr Gisonda, where are we? We're still dealing with Mr Sanfilippo?

MR GISONDA: Yes, let me explain. We'll continue with the examination of Mr Sanfilippo first up this morning. Even if I don't take all the way until the morning break, we could probably go first to Mr O'Brien's cross-examination.

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MR D. O'BRIEN: Yes. More than happy with that, Commissioner.

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MR GISONDA: In which case, we won't hold things up, and then that will give Mr O'Grady more time and then the break to deal with his (indistinct) material.

COMMISSIONER: I have to deal with the objection to the cross-examination as well, so -

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MR GISONDA: Yes. And then after Mr Sanfilippo is done, the next witness will be Mr Michael O'Brien and then Mr Andrew Large, and that will see out the day.

5 **COMMISSIONER:** Thank you.

MR GISONDA: So I call Mr Sanfilippo.

10 **COMMISSIONER:** Mr Sanfilippo, can you return to the witness box. You remain under the oath that you swore yesterday.

<VINCENZO SALVATORE THOMAS SANFILIPPO, ON FORMER OATH

15 **<EXAMINATION BY MR GISONDA**

MR GISONDA: Thank you. Mr Sanfilippo, yesterday, at the end of the last session yesterday, we looked at, first of all, the minimum conditions and the contractual and tender requirements that surrounded the minimum conditions with respect to the Cairns Convention Centre, and then we saw how the minimum conditions, essentially the same regime but now described as BPIC, best practice industry conditions, were inserted into the Southern Queensland Correctional Centre project. Do you remember that?

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

MR GISONDA: And both those projects were procured by the Department of Public Works, first Department of Housing and Public Works, and then it became Department of Energy and Public Works.

30 **MR SANFILIPPO:** Yes.

MR GISONDA: Can I then turn to the next project that CPB was involved in, in the tender phase, and that's the Cooroy to Curra project. And in your statement, page 3, paragraph 35, you describe what that project is. And in effect, it is one segment of the upgrade to the Bruce Highway. Is that right?

40 **MR SANFILIPPO:** Correct. It's the last section of what was called the Cooroy to Curra scheme, which I think was about 64 kilometres. It had been being since around 2019. Section D was effectively the bypass of the township of Gympie. That was broken into two sections. There was a section D1, and then this project we're talking about is section D2, which is the northernmost section of that bypass, approximately 18 kilometres long.

45 **MR GISONDA:** And CPB has extensive experience in the construction of roads; is that correct?

MR SANFILIPPO: Yes, we'd previously - I think it was around 2016, 2017 - finished Cooroy to Curra section C. So yes, we're experienced in road building and experienced in that particular scheme.

5 **COMMISSIONER:** In that particular what, sorry?

MR SANFILIPPO: That particular road scheme in the area.

10 **MR GISONDA:** Now, unlike the previous two projects, this project was procured by the Department of Transport and Main Roads; is that right?

MR SANFILIPPO: That's correct.

15 **MR GISONDA:** And at page 4, paragraph 39, you describe an open - or you refer to an open tender process that was run by the department. Could you explain to the Commissioner what an open tender process is?

20 **MR SANFILIPPO:** Yep. I think in this process it was a shortlisting process. I believe there were four or five tenderers shortlisted to tender. When we price, the information becomes public via the website. I can't remember exactly whether it was the price or the apparent order in price - they'd sometimes do a two-way - but we knew we were in the prime position there for that job based on our tender, albeit there is some non-price criteria, but typically Main Roads would only do perhaps, you know, a lower percentage than 50 per cent. It'd be like 20 per cent.
25 So we -

COMMISSIONER: Lower by 20 per cent?

30 **MR SANFILIPPO:** From memory, it would've been maybe 20 per cent non-price, those type of percentages.

COMMISSIONER: 20 per cent non-price.

35 **MR SANFILIPPO:** Yes.

COMMISSIONER: I thought you said your bid was 20 per cent lower.

MR SANFILIPPO: No, no, no.

40 **COMMISSIONER:** You wouldn't know how much lower it was?

MR SANFILIPPO: No.

45 **COMMISSIONER:** You wouldn't be told by the other bidders who were bidding.

MR SANFILIPPO: That's right.

MR GISONDA: But what you did know was that your tender price was the lowest of all the (indistinct).

5 **MR SANFILIPPO:** Correct. We were in the prime position, yep.

MR GISONDA: And remembering that CPB had completed section C as well.

MR SANFILIPPO: Yes.

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MR GISONDA: Yes. And that tender was submitted in September of 2020, and you then describe at paragraph 40 that there was a period of limited activity on the tender, and that was due in part to the fact that there was a state election in October 2020 and the government had entered into caretaker mode.

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MR SANFILIPPO: Correct. That was normal process.

MR GISONDA: On 17 November, CPB received a request for clarification number 11 from the department, and clarification number 11 related to your proposed approach to industrial relations on the project. And if we go to page 546 of your bundle, that's the request for clarification. And question 1 of this request asked to you provide details of the industrial arrangements for your proposed subcontractors and major suppliers. Do you see that?

25 **MR SANFILIPPO:** Yes.

MR GISONDA: And then question 3 was asking you to detail how the engagement of these subcontractors and suppliers will align with the Queensland Government's best practice principles for industrial relations, and question 4 was asking you what you saw as the IR risks for the project and how they will be managed, and then question 6 asked you the approach to the application of RDOs on the project. Were you concerned when you saw this as to where this line of questioning might be headed?

35 **MR SANFILIPPO:** We did think it was a little unusual for Main Roads. Typically in that era we would have to supply what's called a workplace relations management plan with our tender. I think that's part of complying with the code or one of the Acts in place at the time, and normally that would be assessed and it would be approved and the project would proceed. So we weren't used to seeing questions of this nature come back from Main Roads.

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MR GISONDA: In your experience, how often do you see the CFMEU being involved in road projects in the State of Queensland?

45 **MR SANFILIPPO:** Not often. I think if I look at, you know, major projects, the Cooroy to Curra schemes, I think they were typically done with non-union or AWU agreements. I think Centenary Highway has an AWU agreement. Coomera

Connector has an AWU agreement. So, you know, some of the projects around Townsville have either been non-union or AWU. So, yeah, to answer your question succinctly, I haven't seen too much CFMEU agreement on Main Roads work historically.

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COMMISSIONER: Just dealing with that historical question, historically, did the Department of Main Roads build the roads themselves rather than having an outside contractor like you do them?

10 **MR SANFILIPPO:** Main Roads have a delivery arm called Road Tech.

COMMISSIONER: Road Tech?

15 **MR SANFILIPPO:** Road Tech. Typically, Commissioner, they do more regional maintenance work to keep the network up to speed. Earlier days in my career, like in the nineties, we would compete in open tenders for Main Roads works against Road Tech, but I think in the early 2000s that dropped away. So, yeah, a long time ago they would have their own delivery arm, but now it's more of a service - in my understanding, more of a service of maintenance in the
20 regional areas.

COMMISSIONER: And you might not know the answer to that. Is that because the road projects have become much bigger and more expensive and the capacity of the Department of Main Roads to do it themselves isn't there? Or you -
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MR SANFILIPPO: I can't comment accurately on that. I'd probably hazard a guess that they have to keep a baseline of capacity in regional areas where maybe private industry doesn't have the continuity of work to keep up with the maintenance schedule, so that's the solution they've come up with. But that's only
30 a guess.

COMMISSIONER: Thank you.

35 **MR GISONDA:** And at page 549 of your bundle, you then receive request for clarification number 12, and question number 1 - well, both questions pertain again to industrial relations, and question number 1 in particular was a requirement for you to provide a list of potential IR risks that you had identified for the project and mitigation measures. And, again, is it your evidence that this line of inquiry from Main Roads, Transport and Main Roads, was a shift from
40 what you had seen in the past?

MR SANFILIPPO: Yes, it was, and our previous response said we did not see any foreseeable IR risks, so we were surprised to see that question come up again.

45 **MR GISONDA:** Back to your statement at paragraph 50 on page 4, you describe a phone call that you received from Ms Amanda Yeates, and she was a deputy director-general of the department at the time; is that right?

MR SANFILIPPO: Correct.

5 **MR GISONDA:** And she said in the phone call that the State had concerns regarding CPB's approach to industrial relations, and that the State had somewhat negative views about the industrial relations outcomes on the Cross River Rail project.

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

COMMISSIONER: Do I take it that the election is - I just don't recall -

MR GISONDA: 31 October.

15 **COMMISSIONER:** Sorry?

MR GISONDA: 31 October.

20 **COMMISSIONER:** I see.

MR GISONDA: Was that a surprise to you, to learn that the State had concerns or negative views about the IR outcomes on the Cross River Rail project?

25 **MR SANFILIPPO:** Not really.

MR GISONDA: You had been the subject - or when I say "you", CPB and the project had been the subject of a sustained campaign during 2020 from the CFMEU?

30 **MR SANFILIPPO:** Correct.

35 **MR GISONDA:** And she then said to you, over the page, at page 5, that the government was bringing best practice industry conditions into Transport projects and that this project, section D2 of the Cooroy to Curra project, was one of three projects that had been tendered prior to the election that was now required to align with BPIC. That's what she said, is it?

MR SANFILIPPO: Or make best endeavours, yes.

40 **MR GISONDA:** And what was your reaction to that information?

45 **MR SANFILIPPO:** Excuse me. I said to Ms Yeates that I've seen this come through some of the building tenders we'd been working on, namely, Cairns and Gatton Prison, and there's probably going to be a request for us to ensure that everyone on the project is paid at a certain rate, and our view was that that would be a request that we would view as illegal and we can't - can't abide by that. And I

suggested that she should get some legal advice on that, and that was my initial comments.

5 **MR GISONDA:** You also say at paragraph 51 that you remember a subsequent conversation with Ms Yeates where the discussion - there was a discussion about the implications of this approach under the code of conduct and the law more generally. Do you remember that conversation?

10 **MR SANFILIPPO:** Yes. I think she confirmed that, you know, they'd had some legal advice and kind of agreed with what I put forward there. Yes.

15 **MR GISONDA:** And back to this phone call that you have received from Ms Yeates on 17 December, you asked her for some visibility on the conditions that would be introduced; is that right?

MR SANFILIPPO: That's correct.

MR GISONDA: And I imagine you -

20 **COMMISSIONER:** Sorry, just to understand you, are you saying that Ms Yeates came back to you and said that you were right that what she was requesting was unlawful?

25 **MR SANFILIPPO:** She wasn't requesting that. I advised from my experience that the BPIC and minimum conditions from the tenders requiring us to do that was - was, in our view, you know, illegal. So she wasn't suggesting I do that; I was saying, "This is what I've seen in the previous tenders. If that's the request, that's a problem for us and it will be illegal." And subsequent conversations - it might have been early in the new year - she said yes, she took some advice and,
30 "Yes, understand we can't ask you that."

COMMISSIONER: Oh, okay. No problem. I see.

35 **MR SANFILIPPO:** Yes.

MR GISONDA: And I imagine that you were expecting that the conditions that were going to come back to you were similar if not the same as the conditions that you saw, first minimum conditions in Cairns and then BPIC at Gatton Prison. Is that what you were expecting?

40 **MR SANFILIPPO:** I was hopeful it would be something different, but I was probably expecting that it was that.

45 **MR GISONDA:** At page 552 of your bundle, you received from Ms Yeates, in the afternoon of 17 December, an email where she says, following the earlier discussion that day, the information that you had requested was attached, and she says that it was being given to you in good faith for the purposes of the current

procurement process but it was, at that point, strictly confidential. Do you remember getting that document from her on the 17th?

5 **MR SANFILIPPO:** Correct. Yep. If we were to be making best endeavours to comply with the new policy or the BPIC, we needed to see what it was going to be.

10 **MR GISONDA:** And that document which she attached to her email is then at page 554 of the bundle. And what this document says - in about the middle of the page, there's a reference to the best practice principles and there's four bullet points there, and those are the usual best practice principles that we've seen now in relation to a number of projects, including Cross River Rail. Then under that fourth bullet point it says:

15 "KPMG has been engaged to conduct a thorough analysis of civil construction industry enterprise agreements."

20 And that while few union agreements were identified, a representative sample of agreements had been assessed. Did you know at this point that Mr Scott Gartrell had gone across to KPMG?

MR SANFILIPPO: No, I had not.

25 **MR GISONDA:** It then refers to the analysis assessing a cross-section of employment conditions that provide a benchmark to identify minimum employment conditions, which are set out in this document. And then it says this:

30 "The analysis also included standard Department of Transport and Main Roads contract conditions."

So just stopping there. Presumably, those were conditions that you were well familiar with, given your previous work on DTMR projects, including section C of this -

35 **MR SANFILIPPO:** Yes, Main Roads have a standard suite of conditions of contract which are very rigid and known in the industry, yep.

40 **MR GISONDA:** And so the analysis is by reference to various union agreements, the standard terms and conditions of DTMR, and then it says:

"...and the minimum standards document developed by the CFMEU."

Do you remember reading that reference at the time?

45 **MR SANFILIPPO:** I do.

MR GISONDA: And what did you think when you read that reference?

MR SANFILIPPO: Not surprised, and I guess when we looked through the document, it was basically similar to the minimum conditions in BPIC we'd seen previously. So I'd seen that approach carry over, but yeah, to see it in bold print that the CFMEU were drafting the minimum conditions was certainly interesting. And disappointing.

MR GISONDA: Well, it couldn't have been a surprise that the minimum standards document had been developed by the CFMEU, because we saw yesterday that those documents were almost entirely a lift of the CFMEU's enterprise agreements.

MR SANFILIPPO: That's correct.

MR GISONDA: But you were surprised and you said also disappointed that that was now being carried over into DTMR projects?

MR SANFILIPPO: That's right.

COMMISSIONER: I just don't understand the process, Mr Gisonda. Our system's based on the proposition that the minimum employment conditions are in federal awards, and there's a federal industrial tribunal which is tasked with the requirement or duty to make sure that they are updated and kept modern, and sitting on top of them are enterprise-specific enterprise bargaining agreements. I don't understand how you can analyse a whole range of different enterprise bargaining agreements to identify minimum employment conditions. Why are you not just looking at the underlying award? I don't understand this process.

MR GISONDA: It appears that - well, if we look at the bottom of the page here, there's, in colour coding, feedback, amendments and comments marked in various colours coming from each of the unions. It's obvious that what's going on here is a desire to ensure that each of the unions there referenced are prepared to give their tick of approval to the terms and conditions that will be imposed upon contractors who tender for projects in the State of Queensland.

COMMISSIONER: Why is a firm of accountants doing this? Sorry, that's a bit unfair. KPMG are much more than accountants these days, but I didn't appreciate they had expertise in this field.

MR GISONDA: No. But as I say, there's - certainly Mr Gartrell, who we know was the author of the email that was sent across yesterday - the author of the letter that was emailed across to Mr Sanfilippo which we looked at yesterday, he comes in late in the negotiation piece. It's clear that his advice or approach is to adopt the Queens Wharf terms and conditions. He, I think - you can confirm whether this is the case, Mr Sanfilippo, but he departed the negotiations on Cross River Rail shortly after financial close. Is that - he was only there for about a month or so?

MR SANFILIPPO: Yes. He didn't see - he wasn't there at the end, even though he was invited in the transcripts of meeting invites some weeks before I concluded the process of negotiation. I remember in one phone call one evening, I think there was some frustration that we weren't moving, and the next day, when we had the meeting, it was announced that he was on leave, and never returned.

MR GISONDA: Yes. And so the sequence is some point after that he goes across to KPMG, and then we see KPMG turning up here conducting this - what they describe as an analysis of a few union agreements, the DTMR standard terms and conditions and the minimum standards document developed by the CFMEU. And just out of interest, we see there again at the bottom of this page that there's feedback, amendments and comments from five unions. Well, first I'll ask you about CPB's position. Do you know whether CPB was asked for any feedback in the development of this document?

MR SANFILIPPO: I don't believe we were, and I think it's probably worth discussing with the industry bodies like Mr Long and Mr Chapman. I believe when the official BPIC document was released, even though it was dated 2020, it did come after this document, some weeks after. I think industry did reach out and want to have some discussions regarding it and give some feedback, and -

COMMISSIONER: What did you describe as coming out a few weeks after this document?

MR SANFILIPPO: The official version of Transport BPIC. So this is the draft version, and then there's the official one, which is also dated 20 December 2020, but it came after this. I'm not sure when it was exactly uploaded and published, but the official version was released to the market a short time afterwards. And that's when the industry bodies, whether asked or not, gave plenty of feedback.

MR GISONDA: But in this development phase, when KPMG is conducting its analysis and presumably KPMG is inviting feedback from the five unions, you're not aware of any consultation between industry between this document or the lead-up to this document being prepared and the final version being published to the market.

MR SANFILIPPO: I'm not aware of any. It certainly didn't happen with CPB.

MR GISONDA: And just very quickly, if we go to page 555, you'll see there an example of amendments in blue, and amendments in blue are, according to the previous page, amendments being inserted by the CFMEU. And just very quickly, at page 561, clause 7, that's a direct lift of clause 9 from the John Holland greenfields agreement on the Gatton Prison, Commissioner. Clause 10 at page 563 is a direct lift of clause 16 from the Gatton Prison greenfields agreement that we looked at yesterday. Clause 11 is a lift of clause 19 from the greenfields agreement, and so on, Commissioner, and I'll ensure that at some point a table is prepared for you that sets all that out. But it appears what the CFMEU's approach

at least is, was to take this document, identify key provisions in its pattern agreement that were not in it, and seek to have it inserted into this draft BPIC document for Transport projects.

5 And then at page 651 of your bundle, Mr Sanfilippo, these are the - as you say, dated December 2020 - the BPIC for Transport Civil Construction Projects document that was released to the market. Is that correct?

10 **MR SANFILIPPO:** I think so. It's just in the other folder, if you can just bear with me.

MR GISONDA: Sure. Page 651 when you're ready.

15 **MR SANFILIPPO:** Yes, that's correct.

MR GISONDA: And, again, Commissioner, we'll do up a table for you that shows which of the terms and conditions in this draft document found their way into the document that was published for the market.

20 **COMMISSIONER:** It seems a very strange process, given the Department of Main Roads would have been building roads for a long time. There would have been state awards or federal awards that covered this work for a very long time that I imagine haven't changed very much, apart from being modernised over time. I don't quite understand why -

25 **MR GISONDA:** That's also perhaps a question we can ask Mr Sanfilippo now. You've heard the Commissioner expressing surprise at the process here. Do you have any commentary to make about this process?

30 **MR SANFILIPPO:** Well, considering it started with DEPW or DHPW in building, the conditions then jumped to transport. We did see, through BPIC, as it grew, it grew tendrils into - there was an addendum to rail. It went into water, and then there was a renewables and energy. So my assumption that I make on that is it's not one single department; it's more of a governmental push regarding the

35 policy rather than the department trying to jump on board with it.

COMMISSIONER: But I don't understand what - maybe this is answered a little bit by the evidence we had a couple of weeks ago from that meeting of the departmental heads a bit later on that Mr McKay referred to, but I just don't

40 understand why this department didn't push back and say -

MR SANFILIPPO: I think they did, Commissioner. I think, from our experience, Transport did push back quite a bit. We didn't see the terms and conditions of their BPIC drafted into contractual terms as much as we did in, you

45 know, some of the building projects. So from my perspective, I think Main Roads did do a fairly decent job at pushing back on some of that. Obviously they had to work with what the government direction was, and you'll probably see as we go

through the Cooroy to Curra one, we navigated a way and worked with Main Roads to find a way where we could meet the intent of the government policy without compromising any legal matters and still deliver the project. So I found Main Roads to be pragmatic in trying to implement that. That was our experience,
5 anyway.

MR GISONDA: And that appears to be a key difference, at least with respect to this project and the experience you had with the two previous tenders we looked at yesterday. With those tenders, there are about four different ways that stopped
10 you getting out of essentially warranting that you would sign up to the EBA pattern.

MR SANFILIPPO: That's right. And just to highlight that point, like, when I had those follow-up discussions with Ms Yeates, you know, we basically - she
15 listened to me about expressing my concerns about the legality of doing certain things, and I agreed to try to find a way to navigate this and still deliver the project, so -

MR GISONDA: And at page 5 of your statement, paragraph 57, you say that
20 throughout January and February of '21, there was considerable dialogue between yourselves and the department about the proposed application of BPIC to the project, and that this led to a request for clarification number 18, which can be found at page 725 of your bundle. And just to cut through this material here, the point of request for clarification number 18 and the response was to say - to ask
25 you what the effect would be of extending out the tender period. And is it your understanding that the reason why the tender period was being extended out was because of this backwards and forwards and negotiations about the applicability of BPIC to the project?

MR SANFILIPPO: Yes. Yes. Our, I think, tender validity period was expiring,
30 so - and the reason for that was this with a complex matter we were trying to resolve a way forward on, and it cost us time in the process and our tender would be invalid, so we had to confirm to extend our validity. Obviously we had a team there ready to go, so there were some cost implications to that. So this part of it is
35 just agreeing to extend the validity.

MR GISONDA: And at page 731 of your bundle, this is part of your response to that request for clarification number 18. You say, now in express terms, that you
40 have undertaken a thorough and considered review of the draft BPIC and you've identified relevant legal barriers. And you say in the third paragraph that while subsequent conversations have indicated this may not be DTMR's expectation, you advise for clarity that any attempt to achieve that outcome would contravene the Fair Work Act, the BCIP Act and the code of conduct.

MR SANFILIPPO: That's correct.
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MR GISONDA: And that had been your advice and position all along, from the early days of Cross River Rail project, hadn't it?

MR SANFILIPPO: Correct.

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MR GISONDA: And then you say another key challenge is the conditions - this is the middle of the page - is the conditions contained within the BPIC that reflect those found within the building industry, specifically on projects delivered within the Brisbane CBD, and that - and you say that, presumably, because it's very clear that BPIC is a child of what began as the Queens Wharf EBA?

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MR SANFILIPPO: Yes.

MR GISONDA: And you say such conditions do not align with historical or current agreements typically used by road contracting companies or most notably the expectations of the regional subcontracting market. Are you able to give the Commissioner any further detail about that point there?

15

MR SANFILIPPO: Oh, well, I guess our experience working in regional Queensland, going up to small businesses or subcontractors suggesting that they need to pay certain rates, apart from being illegal and crossing across lots of regulation, it's a business decision that they don't want to do, because we come in, we do a project and then we leave. They have an ongoing business they need to run. It throws their business into a bit of chaos, so they typically don't want to do it.

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MR GISONDA: And after you work through all of this, your proposed solution was to have a project-specific agreement - this is now over the page at page 732 - a project-specific agreement that, bullet point number 1, achieves general alignment with the intent of Transport BPIC pay outcomes. And that would be applying the wage rates set out in BPIC with civil industry allowances.

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MR SANFILIPPO: Yes.

MR GISONDA: And then it would be consistent - otherwise consistent with civil industry's terms and conditions and would be used to engage CPB Contractors' direct employees only. And is it the case that the Department of Transport and Main Roads accepted this solution?

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MR SANFILIPPO: Yes. We suggested that the only way we can use best endeavours to align was to try and meet your expectations in the policy regarding wage rates, but we wanted to apply more pragmatic, flexible terms, typically used in the road-building industry, in our agreement. That's why we made the point there regarding civil industry terms and conditions. We were very clear on the third bullet point that it would only be used for our direct employees. So the agreement we would do would be our direct employees; it would not be forced onto subcontractors, and by doing that we'd be code compliant and lawful. So that

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was our approach to using best endeavours to lean into the government's intent here to the limit of our ability to do so within the law.

5 **MR GISONDA:** Was that more or less the approach that you had taken on Cross River Rail in the end?

MR SANFILIPPO: Simplistically put, yes.

10 **MR GISONDA:** Yes.

MR SANFILIPPO: So we wanted to get our agreement for our workers and engage the market on the terms in which they would meet us at, and the agreement we were negotiating was for our employees only, not for the wider project. So yes.

15 **MR GISONDA:** And can you just then explain at the bottom of the page, 732, Impacts to Tender Price, where you say that you've undertaken a substantial internal review:

20 "And that while we recognise this is not an outcome we can achieve due to the reasons outlined above, we propose a provisional sum of \$23 million for BPIC is included in the schedule of rates contract to provide sufficient financial coverage to deal with the yet-to-be-confirmed cost impacts."

25 Can you just explain what that's saying there to the Commissioner?

MR SANFILIPPO: So the solution there was we looked - we looked at the wage rates. We looked at what we tendered the project on. We looked at augmenting some of our self-performed labour. And that would have a cost impact on the project. At this point, we hadn't been awarded the job, nor had we engaged with any union regarding what agreement we would likely land on, so we did a bit of analysis and we thought it would cost 12 to 14 million. That was our best guess. So we suggested a buffer there of a provisional sum of up to \$23 million be included in the contract, and then in an open, transparent way, once we would agree the terms and conditions of an agreement, we would be able to accurately calculate and only pay up to - up to the value of the cost that was incurred with the extra terms and conditions.

40 **COMMISSIONER:** And is this the tender that you put a bid in for 225 million?

MR SANFILIPPO: 255.

COMMISSIONER: 255.

45 **MR SANFILIPPO:** Yes.

COMMISSIONER: So it's roughly 10 per cent.

MR SANFILIPPO: Roughly, yeah, correct. I think in total, and it may be later in my evidence, including the validity period extension, which is another about 11 million, it's about a 13 per cent increase.

5

COMMISSIONER: And it's limited to 13 per cent because you could maintain - you could control the cost blow-out because you could, under your deal, make sure that you could hire subcontractors at the going market rate rather than the BPIC rate?

10

MR SANFILIPPO: Correct, and we had terms and conditions that meant we could have productive control of the project as well.

MR GISONDA: And so I take it, then, that if we can call this the conservative BPIC approach, Transport BPIC approach, if, by contrast, you had to perform this project in accordance with the entirety of the BPIC conditions - in other words, if they were forced upon you in the way the Department of Housing and Public Works sought to impose it on you in the Cairns Convention Centre, if you were doing that analysis, presumably it would be much more than \$23 million?

20

MR SANFILIPPO: Significantly higher, correct.

COMMISSIONER: How much higher, do you think?

MR SANFILIPPO: Oh, it's hard for me to guess. So, you know, labour component on a project like that is probably in the order of 20 to 25 per cent. So you can do that maths. Subcontracting is probably similar: 30 per cent. The hidden danger there is if we try to - try to push it on the market, do we get the subcontractors? Does that impact our productivity? It then gets into the nebulous discussion of delays and impacts and all of those type of things. So by doing what we did, we maintained control of our own workforce and we had access to a fairly robust subcontracting market at the time who lent into the job, and we had a very good project.

30

MR GISONDA: But that was an analysis you didn't have to do for this project?

MR SANFILIPPO: We didn't do that, no, correct. We only did it for the proportion of labour, which we augmented and did the calculation, and that's where we came up to 12 to 14 million, and we suggested a provisional sum of 23 to cover it.

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MR GISONDA: And so then if we go to page 740 of the bundle, this is the letter of acceptance that was issued to you from the department. And we see there, in the middle of the page, the original contract amount of 255, the validity period extension cost of 11 million, and then the provisional sum of 23 million gets you the total contract sum. And that - the extension of the period, that was due, in part,

45

was it, because of the negotiations and discussions you needed to have and analysis you needed to do -

5 **MR SANFILIPPO:** Not in part; pretty much solely because of it.

MR GISONDA: Solely.

10 **COMMISSIONER:** Just say that again. Sorry, I missed that. The 23 million is because of what you might call the impact of the modified or dampened-down BPIC.

MR SANFILIPPO: Correct.

15 **COMMISSIONER:** What's the 11 million?

MR SANFILIPPO: The 11 million is we were meant to have started, been awarded the job in 2020. I don't think we got awarded the job until 17 March, so there was a couple of months' worth of time where we had a team sitting.

20 **COMMISSIONER:** I see.

25 **MR SANFILIPPO:** But it also extended the job. Normally when we start a job we have a launch period. We're going to be doing that through the wet season. So now we, actually at the tail end of the job, copped an extra wet season. So it had some impacts there.

30 **MR GISONDA:** And you say almost entirely the reason you were sitting there - you could have started the job two or three months earlier, but you couldn't because of what you needed to do in terms of ensuring that full-throttle BPIC was not applied to this project?

MR SANFILIPPO: There was no other technical discussions holding it up. This was the last - last matter.

35 **MR GISONDA:** And then you say you quickly then negotiated with the AWU for an enterprise agreement for this project?

40 **MR SANFILIPPO:** Yes. So we engaged with the AWU, primarily because they had the majority coverage on the job and terms and conditions which were common in roadworks. I wouldn't say it was quick. Mr Baker, who was Ms Schinnerl's predecessor, probably took us five or six weeks to get the agreement, which was longer than I'd anticipated, but we landed on that - the agreement for Cooroy to Curra.

45 **MR GISONDA:** Yes. So perhaps speed is all relative here. At page 743 of your bundle, that is the enterprise agreement that you reached, and the - it was finally

approved on 10 June by the Commission, having been signed on 12 May. So as you say, about a six-week period.

MR SANFILIPPO: Yep.

5

MR GISONDA: And the CFMEU, then the CFMMEU, objected to the approval of the enterprise agreement; is that right?

MR SANFILIPPO: Yes, I believe so, yep.

10

MR GISONDA: But ultimately it was approved, and you say at paragraph 68 of your statement that it was the first enterprise agreement for a Transport project that had been negotiated within the BPIC regime?

MR SANFILIPPO: Correct. I think there were three or four projects at the time that were in the same situation, where they'd been tendered prior to - prior to the election and the caretaker mode. I think that was our job. There was Centenary Highway, Gold Coast Light Rail Stage 3 and Bruce Highway six-laning, which is between here and the Gold Coast. So we were one of four jobs in the same situation. Just by looking at it, we were the first one to put out an agreement.

20

MR GISONDA: And you say that it was your perception or observation that this agreement, which we've just looked at, became somewhat of a template by other contractors to use in navigating these pressures from the department and BPIC?

25

MR SANFILIPPO: Yes. I saw - I saw or observed through what was approved through - or ratified through Fair Work, agreements for similar road jobs that looked fairly similar.

MR GISONDA: And you say at paragraph 69 that there was a meeting that was convened by DTMR, the director-general at the time, Mr Neil Scales -

30

MR SANFILIPPO: Yes.

MR GISONDA: - asking you to attend a meeting with multiple unions to discuss the agreement.

35

MR SANFILIPPO: Yes.

MR GISONDA: Just so we're clear of the sequence, the agreement is reached on 12 May 2021. It is at some point shortly thereafter uploaded to the Fair Work Commission website and made publicly available.

40

MR SANFILIPPO: That's correct.

45

MR GISONDA: And once that occurs, Mr Scales says that he needs you to - needs CPB to attend a meeting with the department and the various unions; is that right?

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

MR GISONDA: And did he tell you or did you have any understanding as to who had requested this meeting? I know Mr Scales was the one convening it, but was it at his request or someone else's?

10

MR SANFILIPPO: I'm - I'm not sure. My dialogue there was with Ms Yeates, so she just advised me that there was going to be a meeting and it was with the heads of the unions, and I didn't have to be too insightful to work out what was going to happen there. The CFMEU were somewhat upset that we had done an agreement that was not like the draft BPIC we'd received.

15

COMMISSIONER: But why do you go to such a meeting? You've got an application in before the Fair Work Commission. You've made your agreement. The Commission's either going to approve it or not. The CFMEU can apply to oppose it. They did. They didn't succeed. Why should you go to this meeting with the Department of Main Roads? You've got no -

20

MR SANFILIPPO: They're our client, Commissioner. If they asked us to attend a meeting, we'll go.

25

COMMISSIONER: They're going to pay you \$300 million.

MR SANFILIPPO: That's - happy to hop in a room and support and defend what we've done.

30

MR GISONDA: And then at paragraph 71 you describe that meeting, and you say that it mostly involved representatives of the CFMEU. Just tell us who do you recall being there from the CFMEU?

35

MR SANFILIPPO: Mr Ingham and Mr Ravbar.

MR GISONDA: And they challenged you and criticised you for what had happened on this Cooroy to Curra project and the enterprise agreement that was now - had been uploaded to the Fair Work Commission website?

40

MR SANFILIPPO: Yes. Not the project per se, more just that they hadn't been engaged.

MR GISONDA: So their criticism was directed to the fact that this had all happened essentially without their involvement?

45

MR SANFILIPPO: Yes.

MR GISONDA: You don't recall the other unions saying much during that meeting?

5 **MR SANFILIPPO:** No. Mr Ong expressed the same concern, why - why they hadn't been involved. I explained to Mr Ong that there was very little electrical work in the job. We inquired about ITS or intelligent traffic systems, which have a lot of electrical work. I said there was none of that. It was only about \$2 million worth of electrical work. He then shrugged his shoulders and said, "Why am I
10 here?" and then didn't say another thing, so - Mr Baker from the AWU was quite vocal defending the agreement. The other parties did not say much at all.

MR GISONDA: Do you remember what he said in defence of the agreement?

15 **MR SANFILIPPO:** Oh, not specifically, but in general defended it.

MR GISONDA: And you say that while Mr Scales was there, the other DTMR representatives, Ms Yeates and Ms Hawkswood, attended via video link?

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

MR GISONDA: And it was your view that this was likely to be a hostile and uncomfortable meeting?

25 **MR SANFILIPPO:** Yes.

MR GISONDA: And then over the page at page 7, subparagraph (a), you say that Mr Ravbar arrived late to the meeting and he was the second-last attendee to arrive, with Mr Scales last to arrive, because he was held up at a previous meeting.
30 And what then happened when Mr Ravbar arrived?

MR SANFILIPPO: He - he expressed that he'd been walking around talking to different DGs, suggested they were overpaid and lazy.

35 **MR GISONDA:** And in particular, you've got there in your statement there, lazy c-words he referred to them as?

MR SANFILIPPO: Yes. It was a distasteful and highly unwarranted remark, I
40 thought.

MR GISONDA: And then at some point, this is now subparagraph (b), you say that Mr Baker asked Mr Scales his thought on the enterprise agreement and Mr Scales responded by advising that he thought it was a good agreement.

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

MR GISONDA: And then what was the reaction of Mr Ravbar to that?

MR SANFILIPPO: As I've said in the statement there, he said something along the lines of, "Choose your words very carefully."

5 **MR GISONDA:** And he said that to Mr Scales?

MR SANFILIPPO: Correct.

10 **MR GISONDA:** And you say it was delivered in a somewhat threatening tone, that remark?

MR SANFILIPPO: Yes. There was quite a bit of spice on it.

15 **COMMISSIONER:** What did you take from that?

MR SANFILIPPO: Oh, it's hard to draw conclusions, Commissioner. Obviously, Mr Ravbar felt very comfortable in his position there to make such a statement. That's probably all I can conclude from that.

20 **MR GISONDA:** And then just to round out this topic, at paragraph 74 of your statement, at the end of the project, the contract administrator prepared its typical report, and within that report, it was noted that you were able to deliver the project on time and within budget and with no outstanding claims of practical completion, and the administrator says that he and his staff would have no hesitation working
25 with CPB on future projects. Do I take it that there were any - well, let me ask you: were there any industrial relations issues on the project?

30 **MR SANFILIPPO:** None. None whatsoever. We had a handful of visits from the CFMEU, a handful of visits from the AWU. We had a very engaged workforce. We had a very - very successful job.

35 **MR GISONDA:** Then you talk in your statement, going on to the next topic from paragraph 75 onwards, that you were - the Department of Energy and Public Works, in September '22, announced that it had introduced a new policy, and that policy would require contractors such as yourselves to be pre-qualified by the department before it was allowed to tender for head contractor work on applicable - what was described as Queensland Government BPP building projects. Do you remember that development in late 2022?

40 **MR SANFILIPPO:** Yes.

MR GISONDA: And on 5 December 2022, you submitted - that is, CPB submitted its application for pre-qualification?

45 **MR SANFILIPPO:** Correct.

MR GISONDA: And it really had no choice, did it? Those were the sorts of projects that CPB would wish to tender on in the future?

MR SANFILIPPO: Correct.

5

MR GISONDA: And there was a public website through which you could make an application for pre-qualification, and that website informed the public who had applied and what the status was of their application? Is that right?

10 **MR SANFILIPPO:** Correct. As people were ratified or achieved their certification, the contracting - the subcontractor or head contractors would be published on the website in a list. So you could see who was pre-qualified.

15 **MR GISONDA:** And you say that from January and February, there were some minor interactions between yourselves and a compliance registrar by the name of Lyn Mayberry, and you had started to notice, I suggest, based on your statement, by March, that your application wasn't being dealt with as expeditiously as perhaps some other contractors were?

20 **MR SANFILIPPO:** Yes. So the dealings we had with Ms Mayberry were - certainly seemed very above board, just asking us for more information. And then the backwards and forward in correspondence dropped off, and there was a pause. And I think one of our - one of our staff reached out a couple of
25 times to Ms Mayberry because we felt it wasn't moving and we had seen others get their pre-qualification.

MR GISONDA: And so at your statement at paragraph 86 on page 8 you refer to the fact that CPB sent an email to Ms Mayberry requesting an update on the
30 application, and you were somewhat anxious to finalise the process because you had two tender submissions or deadlines on two tender submissions looming, and we'll come to those two projects in a moment. And then at paragraph 88, you give evidence that on 29 March you had to send another email referencing the fact that the online platform suggested a turnaround of six to eight weeks. You had put in
35 your application -

MR SANFILIPPO: 5 December.

40 **MR GISONDA:** - on 5 December and it was now the end of March and you still hadn't heard anything. And you noted that other contractors who had submitted their applications around the same times had their applications registered within a matter of weeks.

MR SANFILIPPO: That's correct.

45 **MR GISONDA:** And things changed, you said, on 31 March 2023, paragraph 92 of your statement, when you say you received correspondence from Mr Logan Timms, who was then the executive director of strategy at the department, and you

say that he requested access to unredacted minutes of CPB's board minutes. And that request is at page 856 of your bundle. And you say in your statement at paragraph 94 that that was a request for information that was similar to a request that Ms Helen Burgess had made on CPB in May 2020 in relation to the Cross River Rail project?

MR SANFILIPPO: Correct.

MR GISONDA: And you've included a copy of that request from Ms Burgess at page 861 of your bundle.

MR SANFILIPPO: That's right.

MR GISONDA: So at that point, in relation to safety on the Cross River Rail project, Ms Burgess had asked you for unredacted copies of minutes of board meetings and various related documents, and you had had to navigate that request at the time in 2020?

MR SANFILIPPO: Correct.

MR GISONDA: And now, three years later almost, Mr Timms was coming along and asking you for very much similar information?

MR SANFILIPPO: That's correct.

MR GISONDA: And he was saying he wanted that information in the context of considering whether you should receive pre-qualification by the department?

MR SANFILIPPO: That's correct.

MR GISONDA: And one of the things he referred to in his request of you was he said there had been a fatality on a CPB site, and the only fatality that you were aware of at the time was an incident that had involved an unlicensed driver losing control of his stolen car.

MR SANFILIPPO: Correct. At a project in North Queensland, a stolen vehicle careered through our site and collided with one of our traffic controllers. That matter was a criminal matter. It wasn't a workplace health and safety matter. So I corrected him on the point there.

MR GISONDA: And what did you think about this request that was now coming from Mr Timms referencing various safety matters, including, for example, that fatality, and then asking you for information that had been asked of you previously by Ms Burgess in relation to Cross River Rail?

MR SANFILIPPO: Look, our - our first - or my first thoughts or our team were dealing with was when you looked at the letter that Mr Timms had written, he's

basically detailing the Cross River Rail - what I would say is a manufactured safety record there, with lots and lots of impingements from Workplace Health and Safety. So that record was coming back to bite us now. So the letter is quite explicit detailing all of - all of the infringements he's talking about, and when we
5 looked at our records, most of the infringement notices we get from Workplace Health and Safety - in fact, almost all - were on TSD. The rest of our business doesn't rack up that type of volume.

10 **COMMISSIONER:** Say that last bit again.

MR SANFILIPPO: The rest of our business was not frequently copping infringements. So the record he was referencing was almost solely Cross River Rail's record.

15 **MR GISONDA:** Just if we look at the application that you had to fill out to apply for pre-qualification, which begins at page 808 of your bundle, skipping ahead to page 818, you had to agree at the bottom, toward the bottom of the page, that in relation to best practice industry conditions you would do certain things. And what is then set out is specific requirements for dispute settlement, specific
20 requirements for contracts of employment. It then goes on: job security, indirect employment arrangements. Over the page, at page 820, specific requirements in relation to union delegates and employee representative rights, including that you will recognise the right of union delegates to be paid to assist and represent employees. And the last two bullet points of that heading: the right to take
25 reasonable leave to work with the union and the right to have reasonable time off to participate in the operation of the union. So there was some specificity in the terms and conditions that you were saying that you had to agree that you would recognise before you could get pre-qualification?

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

MR GISONDA: And at page 869 of the bundle, and really starting at page 868 but going into page 869, this is a response that you've written to Mr Timms setting out your approach and your record on safety. And I suggest that what you're
35 doing here is you're trying to assure him that CPB takes safety seriously -

MR SANFILIPPO: Correct.

40 **MR GISONDA:** - and that it had a strong record when it came to safety, and you refer in particular at the bottom of page 869 to the federal audit that you gave evidence about yesterday.

45 **MR SANFILIPPO:** Yes. I'm just trying to - yes, regarding - I think we talk about that we have accreditation there in that letter. I think in a subsequent letter I advise Mr Timms that we've, you know, recently on Cross River Rail, which is a project of note with respect to these matters, had achieved a zero non-conformance result. I'm not sure if it's in this letter or the next one.

MR GISONDA: Yes, I think you're quite right. Here at page 869 you're talking about the accreditation, and then in a subsequent letter at page 879 you do mention the result of zero non-conformances following the audit.

5

MR SANFILIPPO: Yep.

MR GISONDA: And what did you make at page 875 of the bundle? This is the response of Mr Timms to your letter where you set out the approach to safety and the record, where he then references the names of directors of CPB and makes specific reference to their obligations under the legislation. What did you make of that correspondence from Mr Timms?

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MR SANFILIPPO: Oh, look, we - we took it as a mechanism to put pressure on us as a business.

15

COMMISSIONER: Why do you say that?

MR SANFILIPPO: Well, calling out in written form the directors and talking about their obligations under the Act, you know, obviously it's a significant - significant piece of correspondence. We had to deal with it as a company. It gets attention. That's how I took it anyway.

20

COMMISSIONER: We're now into month 5, I think, since you've put your application in. Put it in on 5 December 2022, and the first letter says sorry for the delay of four months - January, February, March, three months. The first one that we went to that Mr Gisonda went to from Mr Logan Timms, and we're up to a month later, 27 April. What did you think of this process that Mr Timms was engaging in?

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MR SANFILIPPO: It was a real problem for us. We were struggling to work out how to navigate it. You know, handing over six or seven years of unredacted board minutes didn't seem like an appropriate solution. Previously, when we'd dealt with that - and we'll get to that in the subsequent submissions - we ended up giving a little bit of information over, which resolved the Workplace Health and Safety matter previously. So we kept on pushing our case there that -

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COMMISSIONER: Perhaps I'll let you get to the end of the chronology, then I'll ask my question again.

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MR SANFILIPPO: Sure.

MR GISONDA: I'm not sure that you're right, Mr Sanfilippo, when you say you gave a little bit of information, because at page 885 of the bundle, when Mr Timms has said to you for a second time that your information and your position is not satisfactory - and in fact he says at page 883, he says in the middle of that page or the middle of the text of that page:

45

5 "At this stage, and based on a preliminary review of the supporting information received from you, we have identified considerable gaps in the information that we would anticipate being provided to support a successful pre-qualification application."

That's essentially saying to you that at this point in time you would not be pre-qualified.

10 **MR SANFILIPPO:** Correct.

15 **MR GISONDA:** And so then where I was, at page 885, you provide - you write another letter on 10 May and provide further information, and that information is more than 200 pages of material. It starts at page 885 and goes all the way to page 1092. You were really trying to give Mr Timms as much information as you felt was appropriate in the circumstances to demonstrate your approach to safety, that you take safety seriously and how the business manages safety.

20 **MR SANFILIPPO:** Well, the strategy we took with this letter was that - you're correct. Significant volume of information was what we sent the Department of Workplace Health and Safety back in 2020 to satisfy that request. We also, I think, brought in, from my memory, Crown Law into that response, and that satisfied that issue. So we figured if there's a -

25 **COMMISSIONER:** Sorry, what did you say then? Crown Law did what?

MR SANFILIPPO: In our original submission -

30 **MR GISONDA:** In 2020 to -

MR SANFILIPPO: - in 2020, we cc'd Crown Law into that submission as well. And that issue was resolved, so we were still - we had the request to provide unredacted minutes. So this information pack we had sent resolved that matter. So that's why we thought it might be applicable, because the request was pretty much identical, to package that information up and send it through. And we gave, I think, some verbiage in the letter regarding that to say, "This satisfied the issue previously."

40 **MR GISONDA:** So just so you're clear, Commissioner, in mid-2020 Ms Helen Burgess made a very similar request, at least with respect to board minutes and documents of the like, of CPB. CPB responded to that request under cover of a letter, which is at page 895 of the bundle, and you will see there that that's dated 19 June 2020, and it's copied in to Crown counsel or the assistant Crown Solicitor, and it explains various matters and why it is providing the information that it is providing. That volume of material goes all the way to page 1092 of this bundle.

COMMISSIONER: So 200 pages or so?

MR GISONDA: Over 200 pages. What Mr Sanfilippo was saying is that, in his letter to Mr Timms at page 885, he's saying, "We've really been asked for this sort of material before."

5

COMMISSIONER: Three years ago.

MR GISONDA: Three years ago. "We gave it to Ms Burgess. We copied in at the time assistant Crown Solicitor. That satisfied all of them at the time, and now here you are, three years later, asking for it again. Here it is." And at page 1093 of the bundle, Mr Timms writes back to you, and the third-last paragraph of this page, he says:

15 "After considering all the information submitted by CPB in support of its application for pre-qualification, including that lengthy bundle we just looked at, it is considered that you have failed to adequately address these matters and therefore we are unable at this time to pre-qualify CPB to work on Queensland Government BPP building projects."

20 **COMMISSIONER:** What's the position, Mr de Jersey, in relation to Mr Timms? Is he still a member of the Queensland public service, do you know?

MR DE JERSEY: He still is, Commissioner, yes.

25 **COMMISSIONER:** Do you want to just consider, Mr Gisonda, I know there's a process in place whereby you can communicate through Mr Moy that you don't wish Crown Law to act for any individual person and consider your position in relation to that?

30 **MR GISONDA:** I'll consider that position, Commissioner. And very briefly, Mr Sanfilippo, the consequence of that rejection of pre-qualification was that you had - whilst this was happening, you had submitted a tender for the Townsville University Hospital upgrade?

35 **MR SANFILIPPO:** Yes.

MR GISONDA: And you had submitted that tender on 29 March 2023?

40 **MR SANFILIPPO:** Correct.

MR GISONDA: And you considered that CPB was in a prime position to deliver that project, because, first of all, CPB had delivered the original hospital?

45 **MR SANFILIPPO:** Correct.

MR GISONDA: CPB had recently undertaken the Mater Private - the Townsville campus of the Mater Private Hospital upgrade, so a similar type of project in Townsville?

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

MR GISONDA: You could provide - this is according to your submission - for the tender a local Townsville team?

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

MR GISONDA: And the nature of the post-tender discussions indicated, in your experience, that you were very well placed to win that job. Is that a fair statement?

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MR SANFILIPPO: That's correct. Like, unlike the tenders I talked about yesterday in my evidence, the Gatton Prison and Cairns Convention Centre, where we didn't actually have any feedback, that was more of a commentary on the process. This tender, we had lots of feedback afterwards. We had lots of engagement. We locked down all the technical matters. We even near the very end were asked to update our program with a revised project award date for some weeks in advance. So based on my experience, when a client is doing that much interaction with you, you can feel hopeful that it's going to lead to some success.

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25 **MR GISONDA:** And Queensland Health, you say, this was a project being procured by Queensland Health. They - and what's more accurately described as the Health Capital Division of Queensland Health?

30 **MR SANFILIPPO:** Correct, it was a Health Capital Division project, but the procurement was run through DEPW.

MR GISONDA: And the Health Capital Division of Queensland Health was encouraging you to sort out the pre-qualification issue that you were having with Mr Timms?

35

MR SANFILIPPO: Correct. At the latter end of when we were in the lead-up to that letter being issued by Mr Timms, we'd pretty much resolved all the technical, program and commercial issues with Health, and the feedback I was getting was, "You need to resolve the BPIC pre-qual issue," and primarily because under the conditions of contract and tendering, you had to have it as a condition precedent to being awarded the project, from the Health side.

40

MR GISONDA: So you received that letter from Mr Timms saying that you had failed to pre-qualify, and as a consequence, three days later, you lost the Townsville University Hospital job?

45

MR SANFILIPPO: That's correct.

MR GISONDA: And you then after that, two days or one or two days after that, you had a meeting with WHSQ, which you describe at page 11 of your statement. So, sorry, just to be clear, you get the letter from Mr Timms on 22 May. On 23
5 May, you attend a meeting - this is at paragraph 126 of your statement at page 11 - you attend a meeting with Ms Burgess from WHSQ?

MR SANFILIPPO: Correct. So -

10 **MR GISONDA:** And that's because Mr Timms had said that you should speak to Ms Burgess about this issue?

MR SANFILIPPO: Correct. I think in the - in the rejection letter, he left the door open to have a discussion regarding why. And I think - I took him up on
15 that. I called him, and he suggested having a meeting with Ms Burgess to resolve the safety matters. And that's why I tried to organise it as quickly as I could, on the 23rd.

20 **MR GISONDA:** And the upshot of that meeting - and then you have a second meeting on 25 May. And to be clear, 25 May is when you lost the Townsville University Hospital project.

MR SANFILIPPO: Correct.

25 **MR GISONDA:** The upshot is that - this is at paragraph 128 of your statement - that you would provide a quarterly report from the board relating to safety, minutes from the quarterly board meeting as they related to safety, and a couple of other matters there at subparagraphs (c) and (d), and that you would provide this information at quarterly meetings with Ms Burgess and Mr Timms?
30

MR SANFILIPPO: Correct. In the meeting of the 23rd, I said to Ms Burgess, "We need to resolve this. You know, giving unredacted, you know, minutes of board meetings going back several years is a problem." She then promptly suggested, "Well, why don't we do it on a looking-forward basis? Why don't you
35 look at whether you can review your information and keep it segmented so you can just provide that information to us?" I think Mr Graeme Silvester was at the meeting. He's our general manager for safety and attends those meetings and talks to that. She advised that it was something they had done with other contractors in similar circumstances. I wasn't - we didn't inquire as to who or why. So we
40 committed to take that away. We took that away and looked at that. Mr Silvester believed we could do that. We got the internal approval to do that, so we restructured how we'd provide that information on a moving-forward basis and committed to do that.

45 **MR GISONDA:** And that was - as a result of that agreement, you received your certificate of pre-qualification on 7 June. You were notified on 6 June that you'd now been pre-qualified, and you received your certificate on 7 June. Is that right?

MR SANFILIPPO: Yes.

MR GISONDA: It's really eight business days later.

5

MR SANFILIPPO: Correct.

MR GISONDA: And what -

10 **MR SANFILIPPO:** There was a couple of meetings. So we had the follow-up
meeting, presented what some of that draft information might look like to Ms
Burgess. I think Mr Masci and I, who's one of our directors, sat down with Mr
Timms and said, "We've pretty much agreed this, so this is a letter you will receive
proposing this." And then, yeah, subsequently, a couple of days later, business
15 days later, we were approved.

MR GISONDA: And you say that you then only really had I think a couple of
those quarterly meetings with Ms Burgess and Mr Timms, and they appeared to
have lost interest in the process and you couldn't organise any further meetings
20 after that.

MR SANFILIPPO: So it was a condition of us undertaking building works, so
we took it quite seriously, so every quarter we would try and book those meetings.
Often they would be cancelled or can't make it. So I think we only had - I can
25 remember the first two meetings. The first one was in our head office. I
suggested the second one we should go to Cross River Rail, and we had it at
Albert Street and I took them for a tour so they could see - see the project. And
I'm not sure whether we had one other maybe after that, but there was - it was hard
to book the meetings. They'd always get cancelled on the day before. And then
30 ultimately it fizzled out and BPIC was cancelled and - and it died.

MR GISONDA: Is there any - it seems like this was a pretty - maybe you'll tell
me this is wrong: this was not a simple solution or a simple request. But is there
any reason why this couldn't have all been sorted out in January or February of
35 2023?

MR SANFILIPPO: No reason from our end, no. It was a very simple solution to
the situation.

40 **COMMISSIONER:** What did you think about these requests that were being
made by Mr Timms? Had you seen anything like that before, apart from Ms
Burgess?

MR SANFILIPPO: Never.

45

COMMISSIONER: What did you think was going on?

MR SANFILIPPO: I thought the safety record from TSD was being used against us to withhold our pre-qualification to do building works in Queensland.

COMMISSIONER: Did you have any ideas as to who was behind this?

5

MR SANFILIPPO: I didn't, Commissioner, but they were conclusions we were making from what was playing out across those - across this process. The simplicity of the solution - yes, we scratched the head. The simplicity of the solution compared to the journey we went through to get to that point just beggars belief.

10

MR GISONDA: And at the same time you also had a tender on foot for the Bundaberg Hospital; is that correct?

15

MR SANFILIPPO: That's correct.

MR GISONDA: And once you got pre-qualified - so you had submitted that tender on 13 April, and that too was subject to you receiving pre-qualification. And you received pre-qualification on 7 June, as we just saw, and on 12 June you confirmed to Queensland Health that you now had pre-qualification. So that was the day after.

20

MR SANFILIPPO: Yeah, correct. So I think we received from Health a letter saying - basically saying, "We've heard you've been pre-qualified. There are some conditions. Can you confirm in writing to us that you will uphold those conditions and be willing to have them incorporated into the contract?" And I promptly did, and then subsequently we were awarded the project.

25

MR GISONDA: And in fact, you were awarded the project on 15 June, which was two days after you'd written to confirm that you'd been pre-qualified?

30

MR SANFILIPPO: Correct.

MR GISONDA: And you've prepared a graph at page 1140 of your statement or 1140 of the bundle. And you're the engineer, Mr Sanfilippo, so maybe you'll explain what you're trying to demonstrate in this graph, but do you want to just take through the Commissioner what this is showing?

35

MR SANFILIPPO: Yeah. So, you know, when the dust had settled through this whole exercise, trying to make sense of it, I asked our team to timeline it and show me the -

40

COMMISSIONER: I wonder whether we could go to this after the break, Mr Gisonda. I wouldn't mind having a look at this and might have some questions about it.

45

MR GISONDA: This is my last question, so we can have the break now. I'll have - we'll discuss this document, and then it will be over to my friends.

COMMISSIONER: Very well. We'll adjourn till quarter to 12.

5

<THE HEARING ADJOURNED AT 11.31 AM

<THE HEARING RESUMED AT 11.44 AM

10 **COMMISSIONER:** Yes, Mr Gisonda.

MR GISONDA: Thank you. If we could turn to page - yes, it's on the screen. And, Mr Sanfilippo, I had asked you before the break to just explain to the Commissioner what's being represented in this graph.

15

MR SANFILIPPO: Yes. So to try and just kind of recollect our thoughts on this, after it all happened I asked our team to timeline it to understand the three concurrent timelines. So the top line is the BPIC pre-qualification process, the orange line, and the bottom two are the tender processes. So if I run through the
20 BPIC pre-qualification line, you can see the first dotted line there is when we submitted the BPIC pre-qual on 5 December. And it rolls through the process. I think you can see a black cross in the process there. That's when we saw the noticeable change. There was some delay in the interactions and then the noticeable change with Mr Timms' correspondence coming through. And then
25 there's the backwards and forwards all the way up to the point where there's the purple diamond, which is the point at which we failed to achieve pre-qualification. You can see then along that timeline, similarly, there is a green diamond. That's when we achieved it after those meetings with Ms Burgess and confirming that we would amend what we would provide to her: Rather than historical or redacted,
30 just the future-looking reports.

So that's that timeline. I think if you can go down to Townsville Hospital, you can see the tender period in blue. We had the EOI period to get shortlisted in purple, then we have the tender period in blue. And then post-tender, we have the yellow
35 period, which I've called the active period, where we had lots of engagement to really lock down the commercial, the program and the technical. It then went a bit quieter, noticeably quieter I think I've called it, in that grey period, until the impact of the missing - missing the pre-qual. You can see the purple diamond from above is transposed down by the dotted line, and you can see then some days later and
40 the next orange - orange diamond that then we subsequently miss it directly after. And it's the same process we followed for Bundaberg, where you can see the orange line - the purple line transposed down to when we failed to get BPIC pre-qual, and then the green one, and then, some days after, we were awarded the project. So it just maps out the three timelines on one page.

45

COMMISSIONER: It took six months to come up with an easy solution. In that six months, you missed out on the Townsville Hospital. And the easy solution

that was implemented was one that Mr Timms and Ms Burgess thereafter didn't seem interested in.

MR SANFILIPPO: Correct.

5

MR GISONDA: So those are my questions for Mr Sanfilippo. You had asked a question in the first session of Mr de Jersey about representation of Mr Timms. So I will allow him to answer that if he's able to, and then I think probably Mr O'Brien should go first with his cross-examination.

10

COMMISSIONER: It's really up to you to make the request, isn't it, rather than Mr de Jersey?

MR GISONDA: Well, no, the question you asked was whether the Crown represented Mr Timms.

15

COMMISSIONER: Oh, I see. Sorry.

MR DE JERSEY: It doesn't, is the answer. Crown Law does not represent Mr Timms. Dentons do, Dentons Solicitors.

20

COMMISSIONER: I see. Thank you. Thank you, Mr O'Brien. Sorry, just before that, you've made a written application to cross-examine. There's no objection, I take it?

25

MR D. O'BRIEN: Yes, I understood that was the position.

COMMISSIONER: It's all - very well.

30 **<CROSS-EXAMINATION BY MR O'BRIEN**

MR D. O'BRIEN: Yes, thank you, Commissioner. Mr Sanfilippo, I appear for the Cross River Rail Authority. I just want to ask you some questions about the role of the authority in the bargaining process in relation to the Cross River Rail project and the contract. If we look at your statement - do you have a copy of your statement there?

35

MR SANFILIPPO: The first one?

40 **MR D. O'BRIEN:** Yes.

MR SANFILIPPO: Yes.

MR D. O'BRIEN: If you go to page 5, I take it from your statement, if we go back to 2019 - this was at the stage when the Cross River Rail project was out to tender - you were in the same position that you are now, which is the general manager of Queensland and PNG for CPB.

45

MR SANFILIPPO: Correct.

5 **MR D. O'BRIEN:** And I take it from that description as general manager that you were heavily involved in the tendering and negotiation process of the contract for Cross River Rail?

10 **MR SANFILIPPO:** Not so much on TSD. So because we were tendering Unity as well, we had a probity request to split the business vertically. So myself, I was on the Unity or RIS side, and then Mr Johnson was on the TSD side regarding the finalisation of the contract.

15 **MR D. O'BRIEN:** Okay. And we see from your statement you had some involvement with (indistinct).

MR SANFILIPPO: I had some involvement, particularly in the IR. Absolutely, yes.

20 **MR D. O'BRIEN:** Yes. Now, can I ask you to go to page 32 of your statement. This, I should say, is under the heading -

MR SANFILIPPO: Sorry, page 32?

25 **MR D. O'BRIEN:** Page 4, or perhaps if we could start at page 3. You will see this is under the heading of an overview of negotiations with the unions for an enterprise agreement, and obviously this relates particularly to Cross River Rail. We can see that from the heading on page 2, Cross River Rail Project. And you - under the heading on page 3, where you talk about the negotiations with the unions for an enterprise agreement, you talk about some history and involvement
30 between the CPB and the unions. Can I direct your attention to the bottom of the page on page 4, paragraph 32.

MR SANFILIPPO: Yes.

35 **MR D. O'BRIEN:** And at that paragraph you say:

40 "Separate to the above, the State and the Cross River Rail Delivery Authority also sought to be involved in the bargaining process for the CRR project in a way that was unusual in my experience."

MR SANFILIPPO: Correct.

45 **MR D. O'BRIEN:** Now, can I suggest to you that what was unusual with the Cross River Rail project, as compared to other situations or other projects that you'd encountered in your experience, was that the State Government had made it clear to the construction authority, that is, the Cross River Rail Authority, that any enterprise bargaining with the unions had to be undertaken by the winning

consortiums in accordance with the best practice principles, which by that time had been incorporated into the Queensland Procurement Policy.

5 **MR SANFILIPPO:** I was aware that we had an obligation under best practice principles, yes. Sorry, I don't understand your question.

10 **MR D. O'BRIEN:** Sorry. Could I suggest to you what was unusual - you say that it was unusual for the Cross River Rail Development Authority to be involved in these negotiations.

MR SANFILIPPO: Yes.

15 **MR D. O'BRIEN:** What I'm suggesting to you is that what was unusual about this project is that you were aware that the State Government had given a direction to Cross River Rail to ensure that this project and the contract incorporate compliance with the best practice principles. You were aware of that, weren't you?

20 **MR SANFILIPPO:** Yes, I'm aware we had the obligation under the best practice principles, absolutely.

25 **MR D. O'BRIEN:** And you were aware also, weren't you, that that instruction was effectively incorporated into the request for proposal documents by way of an amendment in August 2018?

MR SANFILIPPO: Yes.

30 **MR D. O'BRIEN:** Yes. And can I take you to that document. Commissioner, could I ask the operator to call up exhibit CRR-1, which was the large tender bundle that Mr Gisonda tendered. And if we go to page 1844. 1845, sorry. Yes, we go to 1845.

OPERATOR: Sorry.

35 **MR D. O'BRIEN:** That's all right. Actually, perhaps we should start at 1844, Mr Operator. Commissioner, would it be appropriate if we adjourn? I'm not sure how long Mr Operator requires, but -

40 **COMMISSIONER:** I'm told - we might adjourn for five minutes till 12 o'clock.

<THE HEARING ADJOURNED AT 11.55 AM

<THE HEARING RESUMED AT 11.59 AM

45 **COMMISSIONER:** I'm sorry about that, Mr O'Brien.

MR D. O'BRIEN: Not at all. I understand. No problem.

COMMISSIONER: One of the problems of not having a permanent home is you have to bump in and bump out every week and little problems occur. We're pretty good at fixing them. We haven't had too much glitches.

5

MR D. O'BRIEN: It's been fixed almost straight away.

COMMISSIONER: Great.

10 **MR D. O'BRIEN:** Now, if you look at the screen in front of you, Mr Sanfilippo, at page 1844 of CRR-1, this was a request for a proposal which was issued by the authority in relation obviously to the TSD contract.

MR SANFILIPPO: Yes.

15

MR D. O'BRIEN: But you are aware there is a similar one in relation to the RIS -

MR SANFILIPPO: Correct.

20

MR D. O'BRIEN: - in relation to the Unity Alliance. If we look about halfway down the page on page 1844, we can see that the details of the addendum, which is in relation to the request for proposals, speaks about or advises of the reviewing of the implementation of the Queensland Procurement Policy 2018. Do you see that?

25

MR SANFILIPPO: Yes.

30 **MR D. O'BRIEN:** And then if we go to the next page, 1845, at the bottom of the page, if we look at the top - sorry, firstly, if we look at the top of the page, we can see -

MR SANFILIPPO: BPP.

35 **MR D. O'BRIEN:** - R2.15.6 Queensland Procurement Policy 2018 Best Practice Principles. You see that?

MR SANFILIPPO: Yes.

40 **MR D. O'BRIEN:** And if we go down to the bottom of the page, we see in relation to subparagraph (c), best practice industrial relations, what was said had to be included in an amendment to the request for proposals was to provide information to evidence a demonstrated history of and commitment to best practice industrial relations. And we can see, particularly in relation to A
45 subparagraph, that required to deliver best practice industrial relations. We can see that at the end of that subparagraph. Do you see that?

MR SANFILIPPO: Yes.

5 **MR D. O'BRIEN:** And it's right, isn't it, that both in relation to the TSD proposal or tender and the RIS proposal, that a response was forthcoming in terms of the proposed contract that Pulse consortium were prepared to sign up to.

MR SANFILIPPO: Yes.

10 **MR D. O'BRIEN:** And could I take you to those clauses. Can we go back, Mr Operator, to page 943. In fact, if we go back to 942 firstly, Mr Operator, we can see a heading Local Content Training and Procurement Requirements.

MR SANFILIPPO: Yes.

15 **MR D. O'BRIEN:** And you will see this was part of the TSD project agreement, and again I take it that, even though we don't have the provisions for the RIS contract, similar provisions were put into the RIS contract.

20 **MR SANFILIPPO:** Yes. Yep.

MR D. O'BRIEN: And can we go to page 943 now, Mr Operator. You can see Best Practice Principles. It's in the heading of 62.3. Do you see that? And can we see that there's reference to the best practice principles meaning - this is in subparagraph (a) - the best practice principles set out in the Queensland
25 Procurement Policy 2018, and in subparagraph (b), the Project Co - obviously, the Pulse consortium and then Unity consortium in relation to the RIS contract - was acknowledging the State values a commitment to the best practice principles. Do you see that?

30 **MR SANFILIPPO:** Yes.

MR D. O'BRIEN: Then if we go over to the next page, you will see in subparagraph (2) that the relevant Project Co was to undertake:

35 "...to actively ensure compliance with the Best Practice Principles and, during the D&C Phase, to fulfil the commitments made in Project Co's proposal (as set out in exhibit 4) in respect of the best practice principles."

40 Do you see that?

MR SANFILIPPO: Yes.

45 **MR D. O'BRIEN:** And could I then take you to exhibit 4, which is on the next page. 945 is the heading, but then if we go over to the relevant part of exhibit 4, which is at page 954, Mr Operator. In this appendix, which the relevant Project Co has indicated it was undertaking to actively ensure compliance with, we can see in 5.1 under the heading - or, firstly, Best Practice Industrial Relations, 5.1, we

can see Working Environment, and the provision speaks about maintaining relationships with the relevant unions, as well as delivering value for money for the State. Do you see that?

5 **MR SANFILIPPO:** Yes.

MR D. O'BRIEN: And then if we go over to subparagraph (d) on the next page at 955, we can see that one of the obligations that's put forward or suggested obligations is in order to achieve the best practice work environment for the T&S works, Project Co will secure industrial instruments for its employees that provide for terms and conditions that are market competitive. Do you see that?

MR SANFILIPPO: Yes.

15 **MR D. O'BRIEN:** And then also there's provisions about subcontractors and well-equipped managers, et cetera, et cetera. Could I then direct your attention particularly to 5.2, the D&C phase, and particularly (b), that:

20 "Project Co will (and since its announcement as preferred proponent) use all best endeavours to reach code-compliant greenfield agreements in accordance with best practice principles with all relevant unions as soon as practicable."

Do you see that?

25

MR SANFILIPPO: Yes.

MR D. O'BRIEN: And you understood as a result of that provision that not only was the Project Co, the relevant consortium, was saying we will comply with this during the term of the contract, in fact, the Project Co was actually saying, "From the moment we're announced as the procurement - sorry, the preferred proponent, that we will engage in the way that is prescribed by this clause."

35 **MR SANFILIPPO:** Yes, absolutely.

MR D. O'BRIEN: And can I suggest to you that you knew at this time, in light of these provisions that were put forward by the preferred proponent, the two consortiums, which CPB were involved in, you knew that part of the authority's role was to ensure that these kind of promises were being complied with by the preferred proponents.

40

MR SANFILIPPO: Well, we had a very clear set of obligations there.

MR D. O'BRIEN: Yes.

45

MR SANFILIPPO: And I would agree that it would be the Delivery Authority's role to make sure we're fulfilling our obligations.

MR D. O'BRIEN: That's right. And, relevantly, they had an obligation to ensure that while you were the preferred proponent, they were making sure that you would try to reach a code-compliant greenfield agreement in accordance with best practice principles.

MR SANFILIPPO: Yep.

MR D. O'BRIEN: Now, just bear with me. And particularly, you were aware at the time that the language that was employed that you had to comply with was best endeavours. It wasn't -

MR SANFILIPPO: Correct.

MR D. O'BRIEN: It wasn't unconditional.

MR SANFILIPPO: No, it was best endeavours. Correct.

MR D. O'BRIEN: It was just best endeavours. That's what you had to do. So could I suggest that as a result of these provisions you knew that part of what the Cross River Rail Delivery Authority had to do in terms of finalising the contract and getting to financial close was to ensure, firstly, that the relevant consortium, Pulse or Unity, was complying with the best practice principles when it was negotiating. Do you accept that?

MR SANFILIPPO: Yes.

MR D. O'BRIEN: And, secondly, that Pulse consortium or Unity consortium was using all best endeavours, to pick up the language of this clause, to reach a code-compliant greenfield agreement in accordance with the best practice principles.

MR SANFILIPPO: Correct.

MR D. O'BRIEN: Now, can I suggest to you that part of the way in which the development authority could be so satisfied that you were discharging these obligations of best endeavours was to attend initially as an observer of the bargaining process, and then later as a facilitator of the bargaining process between the unions and CPB or Pulse?

MR SANFILIPPO: It could be a way, yes. So, initially, my dealings with Matthew Martyn-Jones was what I would say would be fairly typical for that type of project.

MR D. O'BRIEN: Yes.

MR SANFILIPPO: You know, wanting to know where we were up to, keeping him abreast of all the developments, how did that meeting ago, fulfilling, you know, the in-flow of information.

5 **MR D. O'BRIEN:** Yes.

MR SANFILIPPO: I think around that 21 June time we discussed yesterday, when I tabled our agreement, or our proposed agreement to the BTG, that's when the world changed for us, and then it entered into a different phase, and that's
10 when, yes, I think Matthew Martyn-Jones thought he'd facilitate by hosting the meetings, but then definitely with the state observer coming in, it was a little bit unusual, for sure. I wasn't used to having a state observer who was active in the negotiation in our negotiations for enterprise bargaining agreements.

15 **MR D. O'BRIEN:** Well, I think you agreed with me at the start this was an unusual circumstance. The contract had not in fact been signed. You had not signed the contract with the development authority?

MR SANFILIPPO: Correct.

20 **MR D. O'BRIEN:** So this is at a stage, isn't it, where we're coming up to 30 June.

MR SANFILIPPO: Yes.

25 **MR D. O'BRIEN:** You knew that for these contracts to be - to reach financial close, to be actually entered into by 30 June, one of the critical things that had to happen is that it had to get CBRC approval.

30 **MR SANFILIPPO:** Absolutely.

MR D. O'BRIEN: And that was -

MR SANFILIPPO: And one of those elements feeding into that was the view of
35 how - how well we had filled that best endeavour to meet best practice principles.

MR D. O'BRIEN: That's right, and - but the dynamics here was this was not a situation where you've signed the contract with the client and then you're
40 negotiating the union agreements.

MR SANFILIPPO: That's correct.

MR D. O'BRIEN: This is a situation where you did not actually have the
45 contract.

MR SANFILIPPO: No, no, absolutely not.

MR D. O'BRIEN: And you knew that it was not up to the development authority to finally give the instruction to enter this contract.

MR SANFILIPPO: Correct.

5

MR D. O'BRIEN: And so one of the things that the consortium was doing at the time, the two consortiums, was trying to ensure that there would be CBRC approval, that the State Government would be sufficiently satisfied.

10 **MR SANFILIPPO:** Correct.

MR D. O'BRIEN: Yes. And one of the things that had to occur in the mind - you knew, in the mind of the State Government, they needed to be satisfied that you had in fact engaged in best endeavours.

15

MR SANFILIPPO: Made best endeavours, yes.

MR D. O'BRIEN: That's right. Now, can we go back to your statement. Can we go to paragraph 33. And you mention two key personnel.

20

MR SANFILIPPO: Correct.

MR D. O'BRIEN: Mr Martyn-Jones and Mr Gartrell.

25 **MR SANFILIPPO:** Yes.

MR D. O'BRIEN: Do you see that? And firstly in paragraph 24, and I think we just picked up something that you probably just gave some evidence about, at the start you thought he was generally trying to assist the process in an impartial way?

30

MR SANFILIPPO: I thought he was trying to facilitate, for sure, and help in an impartial way. You know, I was in 26-odd meetings. I was - it was very different to the input from Mr Gartrell, for sure. So I thought he was quite impartial. That was my take on him.

35

MR D. O'BRIEN: And when we speak of Mr Gartrell, it's apparent from later on in your statement that he only comes in on 26 June. That's the first time he attends a meeting.

40 **MR SANFILIPPO:** Correct. Correct.

MR D. O'BRIEN: And you speak in your statement that there was real pressure coming up to 30 June to try and get a deal done in terms of the enterprise agreement.

45

MR SANFILIPPO: Correct.

MR D. O'BRIEN: And can I suggest to you that one of the things Mr Gartrell was doing, which may well have been different at an earlier point of time with Mr Martyn-Jones, in this critical period is that he was indicating or communicating to you what the State Government expected in terms of what they would require for the contract to be getting approval under CBRC.

MR SANFILIPPO: I'm not sure if I can agree to that. On the 27th, Mr Gartrell's letter, which cut across our statement, our bargaining strategy, was presented to us. So I can suggest that Mr Martyn-Jones was certainly that, but I don't think Mr Gartrell was just trying to advise us of what the government was wanting to see from us prior to June 30. And subsequently the behaviour afterwards suggested that too.

MR D. O'BRIEN: I'll come to that letter in due course, Mr Sanfilippo.

MR SANFILIPPO: Yes.

MR D. O'BRIEN: But can I suggest to you that what in fact was occurring - and Mr Gartrell, I accept, might've been more explicit about what the State Government were indicating, but that draft letter that you refer to, and then the letter that ultimately was sent -

MR SANFILIPPO: Correct. Mr Johnson's response.

MR D. O'BRIEN: Mr Johnson's letter, yes. Both of those letters ultimately had the same purpose, didn't they?

MR SANFILIPPO: Correct, to demonstrate our approach to fulfilling the obligation of best endeavours to meet best practice principles. I agree with that.

MR D. O'BRIEN: And you had no difficulty at all at the suggestion by Mr Gartrell to - or the suggestion in these meetings - I will come back to who was there in due course - you had no difficulty with the notion that was being put forward by the authority of, "You should put communication to the State Government, putting your best foot forward."

MR SANFILIPPO: No, we had no problems with that. Prior to that, we'd already given a proposed letter. So yes, we did not have a problem with that. We saw that as a usual, for the term, way of us demonstrating a letter. Yes, that wasn't a problem.

MR D. O'BRIEN: And what you have a difficulty with was that draft letter had some suggestions about what should be put forward to give comfort to the State Government. You disagreed with those suggestions?

MR SANFILIPPO: Correct.

MR D. O'BRIEN: But ultimately, as we can see from the correspondence, you rejected those suggestions?

MR SANFILIPPO: We did.

5

MR D. O'BRIEN: They were put forward as suggestions -

MR SANFILIPPO: Correct.

10 **MR D. O'BRIEN:** - to assist - and you understood it was being put forward to assist for the consortiums to provide comfort to the State Government, but ultimately you made the decision not to adopt them.

MR SANFILIPPO: We did. Correct.

15

MR D. O'BRIEN: Now - and can I suggest to you when you speak about pressure, leading up to 30 June, you speak in the statement about pressure being put on by the State Government -

20 **MR SANFILIPPO:** Correct. Yes.

MR D. O'BRIEN: - to try and get to at least an in-principle enterprise agreement prior to 30 June. But can I suggest there was also - there was pressure on Pulse's side and the consortium sides. They also wanted it finalised by 30 June.

25

MR SANFILIPPO: Yes, there was pressure, for sure. Yep. We were all working towards the target of June 30.

30 **MR D. O'BRIEN:** And I can take you to - I will take you to it in due course, but indeed the final letter that you sent, I think on 27 June, actually made that point. The consortium was saying to the government, "We need financial close as well because we have financial backing which is dependent on" -

35 **MR SANFILIPPO:** Correct. Everything was geared around financial close June 30.

COMMISSIONER: Is that because you had to book the revenues in that financial year?

40 **MR SANFILIPPO:** I think it was tied up with pushing the button and triggering the finance and all of those type of matters. So yes, not as simple as just executing a contract.

COMMISSIONER: It was really about financing, not the -

45

MR SANFILIPPO: It's financial close, yes.

MR D. O'BRIEN: And again, I think it's apparent from your statement, but you'd agree with me also that during these negotiations, and particularly this critical period up to 30 June, the way in which communications were occurring, there was a distinction being made by the representatives of the authority as to what the State were communicating -

MR SANFILIPPO: Yes, there was.

MR D. O'BRIEN: - and the authority.

MR SANFILIPPO: Yes, there was.

MR D. O'BRIEN: They were two different -

MR SANFILIPPO: Correct. It was pretty clear.

MR D. O'BRIEN: Playing two different roles.

MR SANFILIPPO: Yes. And I was less involved in the closure of the contractual one. So just for the background there, Mr Johnson in the letter and all of that type of letter, the drafting was more done by Mr Large and Mr Johnson.

MR D. O'BRIEN: Right.

MR SANFILIPPO: But yes, I'm aware that in those discussions it was to placate the State versus the Delivery Authority.

MR D. O'BRIEN: And in relation to these negotiations going on during this time, it was foremost in the mind of the consortiums that they needed to demonstrate best endeavours -

MR SANFILIPPO: Yes.

MR D. O'BRIEN: - to the State. Firstly to the development authority, who would then communicate to the State.

MR SANFILIPPO: A conduit to the State, correct.

MR D. O'BRIEN: And you'd agree with me that there was no better way for the development authority to actually get a handle as to whether you were engaging best endeavours than by actually being in the room and facilitating the negotiations.

MR SANFILIPPO: Yes, I'd agree to that. You would get a ringside view, I guess, of what was happening so you could be informed.

MR D. O'BRIEN: And it worked, didn't it? Because ultimately the authority, as you say in your statement, accepted that you had engaged in best endeavours.

5 **MR SANFILIPPO:** Yes, well, the letter we put forward did not hold up financial close.

MR D. O'BRIEN: But you knew - you say in your statement that, in fact, if you go to paragraph 115 -

10 **MR SANFILIPPO:** Sorry, which paragraph?

MR D. O'BRIEN: Paragraph 115.

15 **MR SANFILIPPO:** Of my bundle or -

MR D. O'BRIEN: Sorry, of your statement. Page 13.

MR SANFILIPPO: Yes, sorry.

20 **COMMISSIONER:** It's on the screen.

MR SANFILIPPO: Yes.

25 **MR D. O'BRIEN:** The authority were in fact communicating. If you look at the end of paragraph 115, this is in relation to the draft letter, and then you send -

MR SANFILIPPO: That was the final letter we sent and that was the response, yes.

30 **MR D. O'BRIEN:** Yes. And you say - correctly, can I suggest - that "the Delivery Authority advised that they were satisfied with our approach and would take it to the State".

35 **MR SANFILIPPO:** They were, and they took it to the State, and subsequently, a day or two later, the financial close happened.

MR D. O'BRIEN: Now, can I then go to paragraph 96 on page 11.

40 **MR SANFILIPPO:** Yes.

MR D. O'BRIEN: Now, we can see from these paragraphs that you start talking about a meeting on 26 June 2019.

45 **MR SANFILIPPO:** Yes.

MR D. O'BRIEN: And it's at this meeting that Mr Gartrell, for the first time, appears -

MR SANFILIPPO: Yes, that's right.

5 **MR D. O'BRIEN:** - in the - in the negotiations and facilitations. And you then discuss some of the matters that were -

MR SANFILIPPO: With the subcontractor committee.

10 **MR D. O'BRIEN:** - the subject of discussion in that meeting. And then if we go over to 102, you speak about following the meeting Mr Butler sent an email to Mr Johnson, copying yourself and others.

MR SANFILIPPO: Yes.

15 **MR D. O'BRIEN:** And then attached a report back on facilitation process.

MR SANFILIPPO: Yes.

20 **MR D. O'BRIEN:** Do you see that? Can I take you, then, to that report, at page 77. Page 77 of the exhibits, Mr Operator. Now, you were obviously at this meeting?

MR SANFILIPPO: Yes.

25 **MR D. O'BRIEN:** And you received this email afterwards?

MR SANFILIPPO: Yes.

30 **MR D. O'BRIEN:** And I take it that you accept that was an accurate summary of what occurred at that meeting?

MR SANFILIPPO: Summary, yes.

35 **MR D. O'BRIEN:** And can I just take you through a few parts. Firstly, if we go to Summary, there's a summary of discussions. Mr Martyn-Jones provided a document he drafted to capture the status of the negotiations.

MR SANFILIPPO: Yes.

40 **MR D. O'BRIEN:** Mr Martyn-Jones intends to provide this document for the government today outlining progress. And then there's reference to a document that he'd prepared, that is, Mr Martyn-Jones, which is attached to report back on facilitation process. Do you see that?

45 **MR SANFILIPPO:** Yes.

MR D. O'BRIEN: And then if we go to the next paragraph, we can see the key points that were agreed in principle. That's the opening words of the next paragraph.

5 **MR SANFILIPPO:** Yes.

MR D. O'BRIEN: And then we can see under the heading there's a number of key points.

10 **MR SANFILIPPO:** Correct.

MR D. O'BRIEN: Can I take you to the second dot point where it records what Mr Martyn-Jones said, that the government had provided clear direction for the development authority to assess progress:

15

"We have a narrow window. We need to report back today that we are on the right path."

Do you see that?

20

MR SANFILIPPO: Yes.

MR D. O'BRIEN: So I suggest that, again, because of that, you knew at the time that the development authority was under an express direction to assess whether the consortiums were, in fact, complying with their best endeavours obligation.

25

MR SANFILIPPO: Yep, that's fair.

MR D. O'BRIEN: And it's also apparent, you'd agree, from what's recorded here and what occurred in the meeting that what was being communicated by Mr Martyn-Jones on behalf of the authority was what the State had communicated to it about its expectations.

30

MR SANFILIPPO: Yes.

35

MR D. O'BRIEN: Now, we can see from the bottom of that page - and you're probably familiar with this email; it's attached to your statement. But what we then see at the bottom of the page is effectively the offer that's put forward by the unions. There's a number of dot points.

40

MR SANFILIPPO: Yes.

MR D. O'BRIEN: And then if we go over to the following page, we can see there was a meeting break, this is about quarter down the page, an hour. Post-break we then see a table, and that's effectively the offer from the consortium coming back.

45

MR SANFILIPPO: I think that initial offer would've been ours and this was our revised offer.

MR D. O'BRIEN: Revised offer, yes. So there was initial offer -

5

MR SANFILIPPO: There was both our offers, and then starting to give ground on some matters there.

MR D. O'BRIEN: Okay. And can I suggest that what this records is what normally happens in a negotiation process.

10

MR SANFILIPPO: Correct.

MR D. O'BRIEN: There's to and fro. And as is apparent from the heading on the next page, the report back, this to-ing and fro-ing was being facilitated by the representatives of the authority.

15

MR SANFILIPPO: Correct. It was in that meeting. Well, yes, they were hosting the meeting, and we were engaging in bargaining at that meeting.

20

MR D. O'BRIEN: And Mr Martyn-Jones was trying to push the parties to an agreement.

MR SANFILIPPO: Yep, that's a fair summary.

25

MR D. O'BRIEN: Which is what a facilitator does.

MR SANFILIPPO: Correct. That's why I make the comment in my statement: generally he was impartial and trying to help us.

30

MR D. O'BRIEN: Yes. And if we go to paragraph 105 of your statement, you refer to a letter that then is put forward by the development authority. It's a letter by Mr Johnson.

35

MR SANFILIPPO: Yes.

MR D. O'BRIEN: Can I take to you that letter. It's at page 104 of the exhibits. Sorry, 84 of the exhibits.

40

MR SANFILIPPO: 82, was that?

MR D. O'BRIEN: Sorry, it starts at 84, yes, of the exhibits. It's the email from -

MR SANFILIPPO: Yes.

45

MR D. O'BRIEN: - Don Johnson. And we can then see on the next page, page 85, the -

MR SANFILIPPO: The actual letter.

5 **MR D. O'BRIEN:** The actual letter. And if we can just go to that letter, I take it you had some involvement or were aware of the contents of this letter when it was being prepared?

10 **MR SANFILIPPO:** Don was more drafting, but I was aware of the edits going through, yes.

MR D. O'BRIEN: Yes. And we can see from the first words of the letter, the re, that what was - this was being directed to was this best endeavours obligation.

15 **MR SANFILIPPO:** Correct. This was us trying to demonstrate our best endeavours efforts.

MR D. O'BRIEN: And we can see that you're reporting on the progress of the negotiations, and if we go down to the paragraph starting Bargaining Processes -

20 **MR SANFILIPPO:** Yes.

MR D. O'BRIEN: Bargaining Progress - we see in the second line, with the facilitation of the development authority, we believe (2) which is reference to one of the points above, has been able to progress in a positive manner by the parties agreeing in principle to the concept of Cross River Rail standing consultative committee. Do you see that?

MR SANFILIPPO: Yes.

30 **MR D. O'BRIEN:** And the letter goes on to mention some other matters. That statement, in this letter, is reflective of the true fact. Firstly, the authority was facilitating these discussions, and secondly, that was a positive -

35 **MR SANFILIPPO:** That meeting was a positive meeting.

MR D. O'BRIEN: That was a positive meeting in terms of the results that were occurring.

40 **MR SANFILIPPO:** Well -

MR D. O'BRIEN: Positive in terms of reaching an agreement.

MR SANFILIPPO: The gaps were starting to close.

45 **MR D. O'BRIEN:** Yes, that's right.

MR SANFILIPPO: It was us giving all the ground, but yes.

MR D. O'BRIEN: Now, can we then go back to your statement at paragraph 107.

5 **MR SANFILIPPO:** Yes.

MR D. O'BRIEN: And here, you talk about a meeting with - you say it's with Mr Johnson, yourself, Mr Newton and Mr Martyn-Jones.

10 **MR SANFILIPPO:** Correct.

MR D. O'BRIEN: And this is a meeting where the draft letter's provided, which we've already discussed.

15 **MR SANFILIPPO:** Correct.

MR D. O'BRIEN: And you ascertained that it was a letter drafted by Mr Gartrell.

20 **MR SANFILIPPO:** Correct, afterwards, yes.

MR D. O'BRIEN: Afterwards. Now, we discussed firstly the meeting of 26 June. That was a meeting where Mr Martyn-Jones and Mr Gartrell -

25 **MR SANFILIPPO:** Were introduced.

MR D. O'BRIEN: - were the attendants. Mr Newton wasn't.

30 **MR SANFILIPPO:** Mr Newton never attended one negotiation meeting, nor should he in his role.

MR D. O'BRIEN: And consistent with that evidence, Mr Sanfilippo, can I suggest that you're mistaken when you say that it was Mr Newton at this 27 June meeting. In fact, it was Mr Gartrell, the person who drafted the letter?

35 **MR SANFILIPPO:** No, I remember it distinctly. So - if I may. The meeting was in the foyer of 123 Albert Street. In the old offices of the Delivery Authority, as you go into the reception room, into the reception there's a boardroom on the right. The boardroom could be divided into two. The one closer to Gilhooleys
40 was most of where the facilitated negotiation was happening. This was in the other room. I distinctly remember it. Mr Newton and I sat on the glass side of the table, as in the outside of the building. Mr Johnson and I and Mr Newton and Mr Martyn sat on the reception side.

45 **MR D. O'BRIEN:** Now, you speak of on 27 June -

MR SANFILIPPO: The 27th meeting only. It was a 20-minute meeting, yes.

MR D. O'BRIEN: And it was one meeting on that day.

MR SANFILIPPO: That's it.

5

MR D. O'BRIEN: Yes. Can I suggest to you that you're wrong about that, that in fact there were two meetings on that day.

MR SANFILIPPO: There were two meetings. I think Mr Johnson went to one earlier in the meeting - earlier in the day.

10

MR D. O'BRIEN: Well, can I suggest that -

MR SANFILIPPO: The meeting I went to was only that one meeting.

15

MR D. O'BRIEN: Well, can I suggest to you that there were two meetings on that day and you went to both meetings.

MR SANFILIPPO: I did not go to both meetings. Because I remember Mr Johnson calling me - I was in my office in Fortitude Valley - saying, "We've got to have this meeting. Can you come in?"

20

MR D. O'BRIEN: Well, we don't have any notes from this meeting from you, do we?

25

MR SANFILIPPO: No.

MR D. O'BRIEN: And this meeting was about seven years ago.

MR SANFILIPPO: Yes.

30

MR D. O'BRIEN: Can I suggest to that in fact you're mistaken, that you attended two meetings on that day with Mr Johnson and at both meetings the people that were attending from the authority were Mr Martyn-Jones and Mr Gartrell.

35

MR SANFILIPPO: I think Mr Martyn-Jones and Mr Gartrell attended the meeting in the morning, earlier in the morning, with Mr Johnson. I did not attend that meeting. And the meeting I attended was this one, with Mr Newton and Mr Martyn-Jones.

40

MR D. O'BRIEN: Now, can I then take you to paragraph 108.

MR SANFILIPPO: Yes.

MR D. O'BRIEN: You talk there about:

45

"At this meeting of 27 June, we were advised that the commitments we gave in the 26 June letter were not enough for the Queensland State Government."

5 Do you see that?

MR SANFILIPPO: Yes.

MR D. O'BRIEN: And again, can I suggest to you that's consistent with -
10

MR SANFILIPPO: The State's requirements, yes.

MR D. O'BRIEN: And that the authority were communicating what the State's position was -
15

MR SANFILIPPO: Correct.

MR D. O'BRIEN: - in terms of getting CBRC approval.

20 **MR SANFILIPPO:** Absolutely, yes.

MR D. O'BRIEN: Yes. Now, following that letter, there was a further letter that was prepared by Mr Johnson that you speak about at page - sorry, firstly, I should take you to that draft letter at 87, which in fact we spoke about before. I think at
25 87 is the email, and then on the following page is the draft letter.

MR SANFILIPPO: Yes.

MR D. O'BRIEN: Do you see that?
30

MR SANFILIPPO: Yep.

MR D. O'BRIEN: And if we look at the last - obviously there's these points that are put forward, but we can see at the last paragraph what's being suggested is that
35 you tell the State Government, or the authority for the purpose of communicating to the State government, you believe progress has been made this week, together with the undertakings in the 26 June letter, and that they are an indication of our best endeavours to resolve outstanding issues. That's what this draft letter was about, trying to convince the State Government that you would engage -
40

MR SANFILIPPO: Well, either letter - this letter or the one we ended up submitting - were to meet that purpose.

MR D. O'BRIEN: Yes. Now - and as we touched on before, you were told by
45 the authority - this is at paragraph 115 - in the last line, you were told, as a result of the proposed correspondence that ended up being sent, was that the authority were satisfied.

MR SANFILIPPO: Yes.

MR D. O'BRIEN: Effectively.

5

MR SANFILIPPO: I think Don reflected that, I think it might've been an email, that he'd passed on his updated letter. The Delivery Authority seemed happy with that and they would take that away to the State. So that's how I make that opinion. And I think the letter in question, we only added a little bit onto it, a third

10 paragraph, talking about we would consider code-compliant, "consider" being the operative word, code-compliant practices of Queens Wharf. We had one minor addition to one paragraph, and that was the substantive change to the second version of that letter.

15 **MR D. O'BRIEN:** There were some further points made. Can I take you to that letter. And we touched on this before. If we go to page 190.

MR SANFILIPPO: 190, yes. Yep.

20 **MR D. O'BRIEN:** We're in furious agreement it largely repeats what's said in the earlier letter.

MR SANFILIPPO: Yes, absolutely. Yep.

25 **MR D. O'BRIEN:** But just to go back to the point that we discussed before, if we go to page 191, the third-last paragraph, commencing "failure to achieve financial close". Just read that to yourself.

MR SANFILIPPO: Yes, I've read that.

30

MR D. O'BRIEN: And so it's reflective of, I think what you've said earlier, that yes, there was financial pressure on your side, or there was pressure on your side, the consortium side, to try and get this done by 30 June.

35 **MR SANFILIPPO:** Yes, we'd geared the machine to close on June 30, yes.

MR D. O'BRIEN: And what was being communicated to the State is that if they want to get the deal with the consortium, they needed to hurry up and get the deal done as well.

40

MR SANFILIPPO: I think we were just expressing the situation there, and I think we go on to say, you know, may not be capable of being solved in the next few weeks with the industrial relations. We also talk about the risk of it. Whether that's us putting pressure on, I'm not sure about that.

45

MR D. O'BRIEN: Now, can I then take you to the meeting on 28 June, if we go back to page 13 of your statement.

MR SANFILIPPO: 13, yes.

5 **MR D. O'BRIEN:** And we can see from paragraph 117 that Mr Johnson, as well as you, were in attendance.

MR SANFILIPPO: Yes.

10 **MR D. O'BRIEN:** And there was Mr Martyn-Jones and Mr Gartrell as well.

MR SANFILIPPO: Yes.

15 **MR D. O'BRIEN:** And we see at paragraph 119, Mr Gartrell advised in the meeting that he was getting calls from Deputy Premier Jackie Trad asking if the parties could get a deal over the line.

MR SANFILIPPO: Yes.

20 **MR D. O'BRIEN:** And you knew that effectively what Mr Gartrell was indicating was the State Government had this desire to have an enterprise agreement, or least an in-principle agreement, in place prior to CBRC approval on 30 June. That's what they wanted, and that's what is communicated.

25 **MR SANFILIPPO:** If not that, progress on that - to that path, yes.

30 **MR D. O'BRIEN:** Yes. Now, at 120, you talk about the intense pressure. I've perhaps covered this already, but it is fair to say there was pressure on both sides. Pulse had pressure internally to get this deal done. Pulse was also getting pressure from the State Government to try and get an in-principle agreement, or something close to it, prior to the CBRC approval.

35 **MR SANFILIPPO:** Possibly. The pressure I talk about in my statement is I guess the pressure I was feeling about negotiating and getting results to demonstrate that we were moving forward with the agreement. I - I accept there's probably some pressure there to meet the date for June 30, because executing financial close on a large PPP project doesn't happen overnight and it's quite a big exercise. So yes, there was time pressure as well.

40 **MR D. O'BRIEN:** Yes. Can we then go to paragraph 121. You talk about some of Mr Gartrell's involvement in this meeting, and in the fourth line you say:

45 "I did not feel like Mr Gartrell was impartial during the negotiations because he never seemed to acknowledge where CPB was coming from negotiations."

Do you see that?

MR SANFILIPPO: Yes.

MR D. O'BRIEN: And in essence, you felt Mr Gartrell was trying to persuade Pulse to make concessions to the BTG?

5

MR SANFILIPPO: Or the D&C contractor, yes, who we were. Yes. Well, through the whole journey, I don't think Mr Gartrell ever sided with us in some of our propositions being put forward. It was always a question of why aren't we conceding?

10

MR D. O'BRIEN: Well, he was having discussions with you as well as with the unions?

MR SANFILIPPO: Yes, I believe so.

15

MR D. O'BRIEN: And you were not in the room when they were having discussions (indistinct).

MR SANFILIPPO: No.

20

MR D. O'BRIEN: So you don't know what he was doing in that room.

MR SANFILIPPO: Well, in the back - in the back room or what happened between meetings, no, I do not know.

25

MR D. O'BRIEN: No. (Indistinct) your impression was that he was conceding too readily to the points that the unions were putting forward. Is that -

MR SANFILIPPO: Well, he wasn't conceding at all, because he wasn't - he wasn't one of the parties in the negotiation. It was more of a question in the discussions that I was having with him, it was always in the favour of the BTG position rather than ours.

30

MR D. O'BRIEN: Sorry. He was conceding more readily -

35

MR SANFILIPPO: Than we were willing to.

MR D. O'BRIEN: Yes. You - you've been in mediations and -

40

MR SANFILIPPO: But not necessarily conceding; encouraging us to concede.

MR D. O'BRIEN: Yes. And you've been in facilitations and mediations before, I'm sure.

45

MR SANFILIPPO: Yes. Yes.

MR D. O'BRIEN: You understand part of the role of a mediator or facilitator is to press both sides.

MR SANFILIPPO: Yes, and - yes.

5

MR D. O'BRIEN: And try to get one side to understand the point of view of the other.

MR SANFILIPPO: Yes.

10

MR D. O'BRIEN: And sometimes what's required is for the facilitator or mediator to push both sides to try and get a deal done.

MR SANFILIPPO: I - yes, I would accept that.

15

MR D. O'BRIEN: But the effect of it, your evidence, you thought he was pressing you more than others.

MR SANFILIPPO: One side more than the others.

20

MR D. O'BRIEN: That was just your impression.

MR SANFILIPPO: Yes, that's correct.

25

MR D. O'BRIEN: Now, if we then in your statement - I won't go through the rest of your statement, but it's fair to say that the history that then developed is there was no agreement?

30

MR SANFILIPPO: Correct. I think once financial close happened, we continued to negotiate. We saw a pattern where we continued to concede ground.

MR D. O'BRIEN: Yes.

35

MR SANFILIPPO: And we were heading to a path of landing at Queens Wharf should we have kept on going.

MR D. O'BRIEN: Yes.

40

MR SANFILIPPO: That's when - I think would have been either late July or early August we started to press our points more directly, not so much through Mr Gartrell but through the BTG. We asked them for documented positions against ours. We wanted it from writing from the BTG what their position was against ours, and we could never get that. We could never get that in writing, and that's the point where we decided we have to close this down because we're just getting stalled out. That's what we did on 28 August.

45

MR D. O'BRIEN: And then ultimately you did do an enterprise agreement with the AWU?

MR SANFILIPPO: Correct.

5

MR D. O'BRIEN: But never with the CFMEU?

MR SANFILIPPO: Yes, correct. We did a civil - a tunnelling agreement with the AWU.

10

MR D. O'BRIEN: Yes.

MR SANFILIPPO: And we picked up the civil part of the CME agreement we were negotiating or failed to execute with the BTG and the AWU and did the civil component with the AWU at the same time.

15

MR D. O'BRIEN: Yes.

MR SANFILIPPO: Post the 28th of August.

20

MR D. O'BRIEN: Thank you, Mr Sanfilippo. Nothing further.

COMMISSIONER: Thank you, Mr O'Brien. Is there anything that arises, Mr Gisonda? Mr O'Grady, you've got an application to cross-examine Mr Sanfilippo. Do I have it in writing?

25

MR O'GRADY: I've actually got two applications.

COMMISSIONER: Two applications. Do I have them?

30

MR O'GRADY: I've got a hard copy of the most recent one. The first one was filed on 16 April in response to Mr Sanfilippo's -

COMMISSIONER: Do you have spare copies that I could -

35

MR O'GRADY: I certainly have a spare copy of the one that we filed yesterday, but I don't have a hard copy, I'm afraid, of the -

COMMISSIONER: Apparently I've got them. Apparently I've got both of them. So I've got one of 27 April, 12 paragraphs.

40

MR O'GRADY: Yes.

COMMISSIONER: Is there another one?

45

MR O'GRADY: There should be one of 16 March.

COMMISSIONER: I don't seem to have one of 16 - I've got Mr O'Brien's. I've only got yours of 27 April here.

MR O'GRADY: I apologise.

5

COMMISSIONER: No, it's not your fault. Do you have a copy of the 16 March one?

MR O'GRADY: I don't have a hard copy, but it only goes to eight paragraphs, and it might be easier, Commissioner, if I just go to the topics that we say they cover.

COMMISSIONER: Very well.

MR O'GRADY: The core topics that they cover when read in combination are the process of bargaining; the role of the CFMEU regarding safety, including heat issues; the role of the CFMEU in seeking to improve conditions for its members; and the report that was discussed yesterday, which is VS-22, including the reasons for that report, the methodology adopted in that report, the conclusions reached about profitability and, lastly, the timing of the incidents described in appendix 6, which is the short and obvious point, Commissioner, that given that the report was completed in August 2024, it pre-dated the appointment of the administrator. And so all those incidents that you were taken to at some length by my learned friend Mr Gisonda yesterday, they are all incidents not associated with the administration.

25

COMMISSIONER: Reasons, methodology - what was the third one before timing?

MR O'GRADY: Conclusions about productivity.

COMMISSIONER: Well, I take it that there's no issue about the process of bargaining, no issue about the role of the CFMEU in looking after safety and no issue about the role of the CFMEU in looking after the conditions of members. I don't imagine - I take it from Mr Gisonda's consent there's no issue from him on those three topics and no issue from anyone else?

35

MR DE JERSEY: No, Commissioner.

COMMISSIONER: So the only issue is really this last issue of VS-22, which is Mr Sanfilippo's report of August 2024, and you want to interrogate the reasons, the methodology, the conclusions re productivity and timing. And that's the objection you have, Mr Ford, is that right, to that?

MR FORD: Yes.

45

COMMISSIONER: Did you want to explain your objections to that cross-examination on those four bases to this - well, I shouldn't call it the report - the redacted extract of the report?

5 **MR FORD:** Yes. Commissioner, before I turn to the PG-4 considerations,
important to note what the report is. And as, Commissioner, you've observed
during yesterday's proceedings, it's a document prepared by the general manager
of CPB to engage in commercial discussions, ostensibly, and as Mr Sanfilippo
described it yesterday, it was an exercise to identify issues he was facing and seek
10 to quantify them.

COMMISSIONER: I think he said that in response to a question from me, that I
said in effect you've got an incentive to exaggerate, and he sort of flipped the
answer and said, "That's why I did such a thorough job, because I knew it would
15 be challenged," in effect.

MR FORD: Yes. And so although it's quite a lengthy document, it is in essence
an opinion from Mr Sanfilippo. Now, it's informed by various information that's
traversed in the unredacted parts of the document, and that was available from the
20 project, and it contains his analysis of that data. So, you know, it might be cogent,
it might be informed, but it's not an expert report; it's in essence an opinion from a
layperson.

COMMISSIONER: No, I understand that. I just want to understand what your
objection is. Mr O'Grady says there's four topics that he wishes to cross-examine
on, on this - my version - a redacted extract of Mr Sanfilippo's report. Is your
objection to each of the four topics or objection to him cross-examining using
some full version of the report, either in a redacted or unredacted form, or a full
version of the report in an unredacted form?
25

30

MR FORD: It's an objection to - well, on the original application, the
cross-examination with the redacted report on the four topics.

COMMISSIONER: On the topics.
35

MR FORD: Yes. Now, if that expands to an application to examine him more
broadly on the unredacted report, I maintain the objection, but I'll deal with the
initial objection.

40 **COMMISSIONER:** Well, why shouldn't Mr O'Grady be entitled to
cross-examine on this report to identify where the deficiencies are? I mean, it's a
report that seems to - its focus is that for a year, post-July 2023, there are \$351
million of so-called IR impacts. There's 10 pages of supporting reasoning that
give rise to that, some of which is redacted. Then the witness goes back in time
45 and says, "I'll just take a figure of 10 per cent to come to a figure of 229 million
for the period prior to that." And that's - that's all - the reasoning is there.

MR FORD: Yes.

5 **COMMISSIONER:** And then for the future he makes an estimate and says, "100 to 400 million, I'll claim 250," and we get to - I think the figure is 580 all up, something like that. I might not have got that right that he picked a figure of 250 in the middle. You can tell me if I'm wrong when we get to the cross-examination.

10 **MR FORD:** Yes.

COMMISSIONER: But the essence of it, it all hinges on this 351 million for the year post July 2023. There's at least 10 pages of material justifying it. Why shouldn't Mr O'Grady be able to challenge that?

15 **MR FORD:** Well, my ultimate submission is this, Commissioner: as I apprehend from Mr O'Grady's application and following the proceedings to date, my learned friend for the administrator doesn't cavil with the underlying behaviour of the union at the time, or any of the data, as I understand it. Really, this is seeking to cross-examine the number, effectively, or the methodology to reach the number.
20 But, Commissioner, the touchstone in PG-4 is whether that's of assistance - whether the cross-examination is of assistance to the Commission.

COMMISSIONER: Well -

25 **MR FORD:** Commissioner, you'd well appreciate that is a lay opinion, developed from the data that was available. Whether that - if the cross-examination changes that number from 580 million to less or more, ultimately to suggest that there wasn't some financial impact by what was going on on the Cross River Rail and because of the - you know, it's a composite analysis that aligns with the BPIC
30 introduction as well, and Mr Sanfilippo has not tried to pass the two to try and split that number. Really, that's not of much assistance to the Commission, because there is other corroborative evidence that we touched on yesterday from the government and the Delivery Authority that there were in fact financial impacts, and I fail to see how it really assists -

35

COMMISSIONER: Sorry, what's that evidence from the Delivery Authority that there were other financial impacts?

40 **MR FORD:** We were talking - heard evidence yesterday about the billion-dollar allowance made.

45 **COMMISSIONER:** Yes, but that was Mr Newton's evidence about the budgetary processes that were entered into in '23/'24, and underlying that evidence is the assumption that the Treasury acts appropriately on some basis - fair assumption - to update what Mr Newton called adjustments, I called a blow-out, in the anticipated cost. Now, we don't have any of that data from the Treasury. We have Mr Newton's evidence saying it fell into three buckets: COVID,

hyper-escalation and, quote, the things we are talking about here today, the IR issues.

MR FORD: Yes.

5

COMMISSIONER: That's as far as it goes. Now, this report goes further.

MR FORD: Yes.

10 **COMMISSIONER:** This report, for a slightly different period of time,
obviously, because, one, I don't know when the budget was put together for
'23/'24. Presumably some time before June '24. But this is a report as at August
'24 that deals with a very similar period of time, apart from the same month, and
attempts to quantify the IR impact. It seems to be the best data that we currently
15 have.

MR FORD: And that may be so, Commissioner. If, Commissioner, your answer
to my objection is, well, this is of assistance to you to analyse the underlying
rationale, although I can't press the objection much further, simply I would say
20 that ultimately, given this is an opinion, and the Commissioner will give that due
weight, it's not much assistance to know whether that \$580-million figure gets
pushed around much if the underlying analysis is subject to cross-examination.

COMMISSIONER: Well, I think it is of assistance in this respect: that these
25 sort of calculations to try and identify the impact of one variable on the unit cost
of labour or the productivity of labour are very difficult to undertake, because
they're multi-variable analyses.

MR FORD: Certainly.

30

COMMISSIONER: And here you've got something that's fairly unique, which is
the same project, over two periods of time, so a project where presumably the
same level of capital is employed, presumably the workforce, apart from these 14
delegates, is the same, where the management team's the same except for the fact
35 that Mr Sanfilippo was asked not to attend a few meetings, but basically the
management team is the same. Weather is not an impact, because it's largely an
underground construction site, and Mr Sanfilippo might tell me I'm wrong about
that. But in terms of trying to do the analysis that you can do, this is about as good
as you're going to get in terms of isolating one variable, that is, the conduct of
40 BPIC and the CFMEU. It might be completely wrong, but it's a very hard analysis
to do.

MR FORD: Certainly. And as an exercise in regression analysis, Commissioner,
you're dead right. It probably is the best we can get in the circumstances. I'm
45 simply observing that given that it's a lay opinion, a significant analysis of the
underlying factors, I submit, doesn't really assist the Commission. But that's as far
as I can take it.

COMMISSIONER: Well, this witness has had experience for 30 years. It's a lay opinion, but it's got a great deal of heft behind it, unless Mr O'Grady cross-examines to the effect that it's wrong in a certain regard.

5

MR FORD: Yes.

COMMISSIONER: But I can't - that's really up to him to do that.

10 **MR FORD:** Certainly.

COMMISSIONER: What do you want to say about the cross-examination on the full report, which I don't have, either on a redacted or an unredacted basis?

15 **MR FORD:** On that point, I would simply say this, Commissioner: as I understand it, it's presently shared on a counsel-only basis between the parties. On the basis that the cross-examination won't reveal the unredacted parts, perhaps some general direction from the Commission that the unredacted report is to remain only on a counsel-and-counsel basis and the redactions shouldn't be
20 revealed by the cross-examination, given that's effectively given to my learned friend Mr O'Grady as a means of assisting him in the cross-examination of what is otherwise the publicly available but redacted and shortened version of the document.

25 **COMMISSIONER:** I'm at a little bit of a disadvantage in terms of ruling on that, because I just don't know what's there. So assume I'm against you on your broader objection.

MR FORD: Yes.

30

COMMISSIONER: Is it possible to talk over lunch with Mr O'Grady about this issue of not disclosing the redacted - sorry, the redacted parts of the full report when he cross-examines?

35 **MR O'GRADY:** If it assists, Commissioner, I was intending to cross-examine, making some reference to other parts of the report, including parts that are redacted but not going into any of the detail. So there will be nothing that - there will be no detail in either the parts of the report we weren't given and/or in respect of parts of the report that were redacted that I was intending to ask the witness
40 about. And I was intending to premise my questions to him on the basis that I don't want you to go into the detail, but you'd agree with me X, or not, as the case may be. But I would also in due course be submitting to the Commission that the Commission would be advantaged by having a full copy of the unredacted report.

45 **COMMISSIONER:** All right. Does that satisfy you, Mr Ford, that we've just heard from Mr O'Grady?

MR FORD: Certainly as to the first part of that answer. As to the application that the Commission would benefit from the fully unredacted report coming before it, ultimately the redactions are not made by my clients, and I suspect -

5 **COMMISSIONER:** Who are they made by?

MR FORD: - other parties have more to say about that, Commissioner.

10 **COMMISSIONER:** So I'll listen to what Mr Gisonda and Mr O'Brien and Mr de Jersey say about that.

MR FORD: Yes.

15 **COMMISSIONER:** All right. Well, I think that resolves your objection, doesn't it, for the time being.

MR FORD: Yes. Yes.

20 **COMMISSIONER:** If there's anything - if you want to object during the running of the cross-examination that Mr O'Grady has gone too far in terms of referring to the redacted parts of the report, you're free to do so.

MR FORD: Yes. Thank you, Commissioner.

25 **MR O'GRADY:** I note the time, Commissioner.

COMMISSIONER: We'll adjourn till 2 pm.

30 <THE HEARING ADJOURNED AT 12.59 PM

<THE HEARING RESUMED AT 1.59 PM

35 **COMMISSIONER:** Mr O'Grady.

<CROSS-EXAMINATION BY MR O'GRADY

40 **MR O'GRADY:** Thank you, Commissioner. Mr Sanfilippo - Mr Irving KC, who is the current administrator of the CFMEU. Can I ask you some general questions at the outset. I take it you're familiar with the enterprise bargaining system we have in Australia?

MR SANFILIPPO: Yes.

45 **MR O'GRADY:** Yes. And you understand that there's no requirement for employees or a union to enter into a greenfields agreement?

MR SANFILIPPO: Yes.

MR O'GRADY: And whilst an employer might prefer that to be the option, unions can't be compelled to engage in that?

5

MR SANFILIPPO: Correct.

MR O'GRADY: And you also understand that in respect of all agreements, including greenfields agreements, that subject to the good-faith bargaining requirements, there's no requirement for an employer or a union to make concessions in bargaining?

10

MR SANFILIPPO: Correct.

MR O'GRADY: People are entitled to have a strategy and they're entitled to hold to that strategy, aren't they?

15

MR SANFILIPPO: Correct.

MR O'GRADY: Yeah. All right. And if an agreement - a greenfields agreement is not reached, then you understand that it's open for employees and/or unions to seek to take protected industrial action in order to achieve an agreement, what you described yesterday as a brownfields agreement?

20

MR SANFILIPPO: Yes.

25

MR O'GRADY: Yes. Thank you. Now, as I understood your evidence yesterday, in 2016, there was a conscious decision not to enter into an agreement with the CFMEU?

30

MR SANFILIPPO: Well, we did not sign another agreement, yes.

MR O'GRADY: Yeah. And as I understood your evidence, it was because at that point in time you anticipated that the type of projects your company would be working on would not necessarily require you to engage with the CFMEU?

35

MR SANFILIPPO: I didn't make that decision, because I wasn't in charge at the time. But yes, our business was - yes.

MR O'GRADY: I understand. And that decision would've been made in the knowledge that, absent an agreement, it would be open to an existing agreement, it would be open to the CFMEU to seek to negotiate a brownfields agreement, to use your language?

40

MR SANFILIPPO: For - for which - I was talking about general pattern agreements then. Are you talking about a specific project?

45

MR O'GRADY: Yes, but - well, to the extent to which your company employed people who were entitled to be members of the CFMEU -

MR SANFILIPPO: Yes.

5

MR O'GRADY: - it would be open for the CFMEU to seek to reach a, to use your language, a brownfields agreement?

MR SANFILIPPO: I believe so, yes.

10

MR O'GRADY: And in pursuing such an agreement, it would be open for the CFMEU to seek to take protected action in order to put pressure on your company to make such an agreement?

MR SANFILIPPO: Yes.

MR O'GRADY: And there's nothing unlawful or improper in doing that, is there?

MR SANFILIPPO: No.

MR O'GRADY: No. And indeed, you understand that the entire enterprise bargaining system is premised on the fact that, absent there being a greenfields agreement or another agreement in place, it is open for the parties to seek to negotiate a fresh agreement and in so doing put pressure on each other to make concessions through taking, among other things, protected industrial action?

25

MR SANFILIPPO: Yes.

MR O'GRADY: Now, the Cross River Rail project was always going to involve work performed by people who were eligible to be members of the CFMEU, wasn't it?

MR SANFILIPPO: There's a building component to it, yes, so I would expect there would be the possibility for members to be involved in the job, correct.

35

MR O'GRADY: Yes. Well, there's no doubt about it in respect to the building component.

MR SANFILIPPO: Yes.

40

MR O'GRADY: And I put it to you that even in respect of the tunnelling component, there could, depending upon the techniques being used, be capacity for people who are eligible to be members of the CFMEU to be involved in that part of the work also.

45

MR SANFILIPPO: I don't believe so. Well, I guess my comment there is I haven't seen too many CFMEU agreements in tunnelling. It was not our experience.

5 **MR O'GRADY:** Understand. But putting to one side your experience -

MR SANFILIPPO: Yes.

10 **MR O'GRADY:** - you understand that in respect of tunnelling work, there's often somebody who has to perform plastering work?

MR SANFILIPPO: No, that would be building works. In the tunnelling, I look at - I would consider that the excavation of the tunnel and the concrete lining of the tunnel.

15 **MR O'GRADY:** All right. Well, to the extent to which there has been to be plastering undertaken as part of the tunnelling work, you understand that the CFMEU has coverage in respect of plasterers, don't they?

20 **MR SANFILIPPO:** I'm not sure of the exact coverage.

MR O'GRADY: All right.

25 **MR SANFILIPPO:** But suggests - it perhaps would be, if that's the - as you say it is.

MR O'GRADY: Yeah, I understand. And sometimes as part of the tunnelling work there would be a need to perform painting?

30 **MR SANFILIPPO:** No. Normally when we tunnel, it's concrete finish.

MR O'GRADY: All right. Well, again, to the extent to which there needed to be any painting performed that again is something that the CFMEU has coverage over it, doesn't it?

35 **MR SANFILIPPO:** We didn't do any painting. It's a shotcrete finish.

MR O'GRADY: I understand.

40 **MR SANFILIPPO:** Or it's a TBM segment-lined tunnel.

COMMISSIONER: What was that last bit, sorry?

45 **MR SANFILIPPO:** So the tunnelling per se is either a - it's a concrete finish, Commissioner. We don't go and paint the inside of the tunnel.

COMMISSIONER: But you said something - you said -

MR SANFILIPPO: A shotcrete finish. So shotcrete. So in a driven tunnel, not a TBM tunnel, we will shotcrete around the sides and then do an internal skin of formed concrete.

5

MR O'GRADY: Depending upon the construction method used, there might also be formwork involved in the tunnelling work.

MR SANFILIPPO: Yes.

10

MR O'GRADY: Yes. And formwork is commonly performed by carpenters?

MR SANFILIPPO: By formworkers.

15

MR O'GRADY: Yes, including carpenters.

MR SANFILIPPO: I believe that's where there's a difference between coverage, and I'm not an industrial relations expert, but I believe coverage of formworkers is AWU and coverage of carpenters is CFMEU. Is that the point you're making?

20

MR O'GRADY: Well, the point I'm making is to the extent to which it's capable of categorising these employees as carpenters, you accept -

MR SANFILIPPO: They're formworkers. I think you'll find in our tunnelling agreements they're called formworkers.

25

MR O'GRADY: Okay. You accept that there is a dispute, at least in respect of that issue, as between what is asserted by the CFMEU and what is asserted by the AWU?

30

MR SANFILIPPO: That's between the unions, yes.

MR O'GRADY: I understand. And are you aware of the fact that recently there was an agreement reached between the CFMEU and the AWU to sort out these disputes over coverage?

35

MR SANFILIPPO: I hear there's discussions going on that the administrator is involved in with the AWU regarding coverage, but I'm not aware of the details. I believe that's at a national level that that's being undertaken, but I'm not privy to any of that or have any visibility of those discussions.

40

MR O'GRADY: I understand, and I'm not trying to be unfair to you. I'm just trying to give you an opportunity to respond if you -

45

MR SANFILIPPO: I'm aware that's being discussed at the moment.

MR O'GRADY: Yes. All right. Thank you. In a large tunnelling project, you would also expect to find steel-fixers, wouldn't you?

MR SANFILIPPO: Yes.

5

MR O'GRADY: And you'd also expect to find scaffolders, to enable work at height or in confined spaces?

MR SANFILIPPO: When you look at the tunnel, TBM, no. TBM is a fully contained machine.

10

MR O'GRADY: Yes.

MR SANFILIPPO: And when we did the lining of the driven section, we did not have scaffolders because we had a rolling mechanical form that did all that.

15

MR O'GRADY: But you would have had steel-fixers?

MR SANFILIPPO: We had steel-fixers, yes.

20

MR O'GRADY: And you would have had crane operators?

MR SANFILIPPO: No.

MR O'GRADY: All right.

25

MR SANFILIPPO: Not underground in the tunnel.

MR O'GRADY: I understand. All right. And depending on the method, you might have drilling machine operators?

30

MR SANFILIPPO: With tunnelling equipment, yes.

COMMISSIONER: So what's the difference between the TBM, the tunnel boring machine, and tunnelling equivalent?

35

MR SANFILIPPO: So the tunnel boring machine is a 100-odd metre long machine that drills with a cutter head and then as it goes it replaces the void with segmental units that lock it out and protect the ground that way. In a driven tunnel or a mine tunnel, you excavate either by drill and blast or by rote headers to excavate separate forward. You pin and then shotcrete and then you form up concrete and you edge forward that way. So they're two different approaches to tunnelling, Commissioner.

40

COMMISSIONER: I see.

45

MR O'GRADY: But in respect of each of those categories - steel-fixers, scaffolders, crane drivers, riggers and drilling machine operators - the CFMEU rules provide for coverage, don't they?

5 **MR SANFILIPPO:** I'm not sure of the exact break-up of that with regarding union coverages in those roles. Typically unions like contractors to stay out of those discussions in who has what coverage.

MR O'GRADY: I understand.

10

COMMISSIONER: Did you ask the witness about riggers, Mr O'Grady? I didn't recall you asking that question.

15 **MR O'GRADY:** Sorry, he indicated there was no cranes, so I withdraw that part of the question. He indicated there was no cranes, and therefore there wouldn't have been any riggers. Now, in negotiations, you had a strategy where you wanted to have three agreements, as I understand your statement?

MR SANFILIPPO: Correct, originally.

20

MR O'GRADY: That was your original position.

MR SANFILIPPO: Correct.

25 **MR O'GRADY:** And against that, the BTG had a strategy where they wanted one main agreement and one minor agreement.

MR SANFILIPPO: Originally it was one, but yes, I think they conceded to two, yes.

30

MR O'GRADY: I understand. All right. And to the extent that the CFMEU had coverage of some of the tunnelling work in some of the categories that I've taken you to, there's nothing illegitimate in the CFMEU wanting to be party to the agreement - an agreement that encompassed tunnelling, is there?

35

MR SANFILIPPO: We didn't believe they had coverage of those classifications.

MR O'GRADY: I understand.

40 **MR SANFILIPPO:** We saw that as a risk. If we had done a CFMEU agreement for tunnelling, it would have been contested in Fair Work by the AWU and we would be left in a situation with no agreement to progress the job.

45 **MR O'GRADY:** I understand. So you didn't want to let them be part of the agreement for tunnelling because you saw it as a risk?

MR SANFILIPPO: We were very specific upfront. We said, "We are negotiating for the CME agreement, not the tunnelling," and primarily that was because we understood the request would be similar to the CFMEU pattern with RDOs that are fixed and restrictive productivity clauses, which is a problem for
5 when we undertake tunnelling work.

MR O'GRADY: I understand.

MR SANFILIPPO: When we undertake tunnelling work, we have to progress
10 the job at 24 hours a day progress, primarily for program, but primarily for support of the ground as well. So the CFMEU's typical conditions don't support that type of work, in my opinion.

MR O'GRADY: And I understand that's your position.
15

MR SANFILIPPO: Correct.

MR O'GRADY: And I'm - and that's a perfectly legitimate position for CPB to
20 be taking. But you'd also accept -

COMMISSIONER: Could I just ask you about the tunnel boring machine? Can
you operate the tunnel boring machine 24/7?

MR SANFILIPPO: Yes, it typically does, yes.
25

COMMISSIONER: And how much capital is involved in the deployment of one
of these machines?

MR SANFILIPPO: It's 30 to 50-odd million to purchase one.
30

COMMISSIONER: And how many did you have working on the site?

MR SANFILIPPO: We had two. That's an estimate, a rough estimate,
35 Commissioner. They're large, expensive pieces of equipment.

COMMISSIONER: Sorry, Mr O'Grady.

MR O'GRADY: That's fine, Commissioner. I understand that's your position,
40 and I understand why you held it. But you also understood that the CFMEU and the BTG more generally, they had a different position?

MR SANFILIPPO: Absolutely they had a different opinion.

MR O'GRADY: And as I think you agreed with me earlier, it's perfectly normal
45 and indeed expected in bargaining that there will be one position taken by the employer and another position taken by the unions.

MR SANFILIPPO: Agree.

MR O'GRADY: Yes. And there's nothing unlawful or improper in that in any way, shape or form.

5

MR SANFILIPPO: Not at all.

MR O'GRADY: And there's nothing improper or unlawful in the employer having a strategy as to how they're going to negotiate with a view to making some concessions and ultimately reaching an agreement and on the other hand the union having a different strategy where they're seeking, unsurprisingly, the employer to make more concessions.

10

MR SANFILIPPO: Yes, that's bargaining.

15

MR O'GRADY: That's bargaining.

MR SANFILIPPO: Yep.

MR O'GRADY: All right. Now, coming back to the types of agreements, the agreements that you refer to as brownfields agreements, they're the traditional type of agreement where an agreement is put to employees and they get a chance to vote it up, and if they vote it up, then it can be taken to the Commission to be certified.

25

MR SANFILIPPO: I believe so. Existing employees, yes.

MR O'GRADY: Existing employees. And when you refer to brownfield risk, what you're referring to was the fact that when you're negotiating such an agreement, the unions or the employees might decide to seek to take protected industrial action in order to put pressure on the employer to make concessions in whatever agreement is then to be taken to the Commission.

30

MR SANFILIPPO: Yes.

35

MR O'GRADY: And again, there's nothing unlawful or improper about that. That is how the bargaining system works.

MR SANFILIPPO: That's the system, yes.

40

MR O'GRADY: Yes. And the brownfield risk that you described, I put it to you, was a direct result of the decision made not to enter into an agreement with the CFMEU prior to the commencement of the Cross River Rail project.

MR SANFILIPPO: Sorry, could you repeat that?

45

MR O'GRADY: The brownfield risk that you described yesterday was a direct result of either your company's decision or your decision not to enter into an agreement with the CFMEU prior to the commencement of the Cross River Rail project.

5

MR SANFILIPPO: Well, correct. The brownfield risk eventuates if we have to start the work without having a greenfield agreement in place, in our view.

MR O'GRADY: I understand. But as I think you agreed with me earlier, there's no requirement for a union to agree to a greenfields agreement?

10

MR SANFILIPPO: No. No, absolutely not.

MR O'GRADY: And there's no requirement for a union to make the concessions that the employer might want them to make in order to get a greenfields agreement up?

15

MR SANFILIPPO: 100 per cent agreed.

MR O'GRADY: Okay. Thank you. Now, in respect of jump-up clauses, you said that you had advice that the code meant that you couldn't put them into an enterprise agreement.

20

MR SANFILIPPO: No, I said the code was a piece of legislation, I think there was the Fair Work Act and the BCIIA Act as well. There were three pieces of regulation there.

25

MR O'GRADY: All right. But you had a discussion with Mr Ingham regarding those limitations?

30

MR SANFILIPPO: In one of the negotiation meetings, yes.

MR O'GRADY: And Mr Ingham indicated that he had contrary advice.

35

MR SANFILIPPO: Yes, he did.

MR O'GRADY: And Mr Ingham wanted to engage with you about your advice and his advice to see how you could work through that issue.

40

MR SANFILIPPO: That's correct.

MR O'GRADY: And you decided not to engage with Mr Ingham.

MR SANFILIPPO: That's correct.

45

MR O'GRADY: Because in your view it was your risk and therefore you weren't going to engage.

MR SANFILIPPO: Correct. It was our risk. Correct.

5 **MR O'GRADY:** I understand. You would agree with me that absent a jump-up clause -

MR SANFILIPPO: Sorry, can I clarify that point?

10 **MR O'GRADY:** Of course.

MR SANFILIPPO: It was our risk because if consequences came from that they sat squarely on ourselves. So we would take our own legal advice on what to do in that situation.

15 **MR O'GRADY:** But I think you've agreed with me that Mr Ingham was prepared to talk through that issue with you?

MR SANFILIPPO: Yes. He offered to exchange legal advice.

20 **MR O'GRADY:** Yes. Yes. But you decided you didn't want to go down that path.

MR SANFILIPPO: Correct.

25 **MR O'GRADY:** I understand. You'd agree with me that absent a jump-up clause, you could have two individuals, both members of the CFMEU, performing substantially the same work but on very different terms and conditions?

30 **MR SANFILIPPO:** Potentially.

MR O'GRADY: And you'd accept that that is something that the CFMEU, as a representative of both workers, is entitled to be concerned about?

35 **MR SANFILIPPO:** Yes.

MR O'GRADY: Now, you made a comment yesterday that when Mr Ingham said they wanted rates better than what were those in the Queens Wharf agreement, you saw that as a bit of an ambit claim; do you recall giving that evidence?

40 **MR SANFILIPPO:** Yes.

MR O'GRADY: You'd agree with me that it's not uncommon for both employers and for unions to make ambit claims in the course of bargaining?

45

MR SANFILIPPO: It's not our approach. But I make that comment because never once was it mentioned again, so there was no follow-through on that claim from Mr Ingham.

5 **MR O'GRADY:** I understand. But as part of the negotiation, parties will often put things on the table that they're not seriously pursuing in order to try and extract concessions in respect of other issues.

MR SANFILIPPO: That can be a strategy that people employ.

10

MR O'GRADY: Yes. Thank you. Now, I think the effect of your evidence - but correct me if I'm wrong - prior to these negotiations with the BTG Group commencing, you were aware of the pattern agreement, the CFMEU pattern agreement?

15

MR SANFILIPPO: Yes.

MR O'GRADY: And indeed you've been aware of a CFMEU pattern agreement for many years?

20

MR SANFILIPPO: Yes.

MR O'GRADY: And indeed, prior to your engagement in your current role, those who held the role before you were aware of the fact that the CFMEU sought to have agreements made according to a particular pattern?

25

MR SANFILIPPO: Yes.

MR O'GRADY: And it was no surprise, I put it to you, that the BTG Group were seeking an agreement that was similar to the pattern agreement?

30

MR SANFILIPPO: No surprise.

MR O'GRADY: Indeed, it would've been surprising if they weren't?

35

MR SANFILIPPO: Probably.

MR O'GRADY: And that was something that you could have anticipated prior to putting in your bid for the project?

40

MR SANFILIPPO: Yes.

MR O'GRADY: Thank you. Now, you gave evidence yesterday recording a meeting that occurred on 24 June 2019, and that was where you put forward, in effect, your comprehensive proposal, as I understood your evidence.

45

MR SANFILIPPO: Yes.

MR O'GRADY: And you were taking, I put it to you, a reasonably hard line in these negotiations?

5 **MR SANFILIPPO:** No. We were - we were articulating our position and our intent.

MR O'GRADY: Yeah. And I'm not being critical of you, but you knew that certainly what you were putting on the table was significantly different to what
10 would have been required if you had entered into something like the pattern agreement?

MR SANFILIPPO: It was different to the pattern agreement, yes. One point I'll make on that: the CME agreement we were putting forward we were not
15 intending to put on any building trades directly. We were intending to subcontract those works out. So the bargaining process we were covering was for our employees only, and that remained a sticking point with the CFMEU. So when we're talking about those types of trades, we were not negotiating there on the building trades, because it was our intention to subcontract those out. That's what
20 made the jump-up such an important thing for Mr Ingham.

MR O'GRADY: Yes, I understand. But you knew that the position of the BTG Group was they wanted to have an agreement that would require -

25 **MR SANFILIPPO:** Everyone on Queens Wharf rates across the whole project.

MR O'GRADY: Yes. Yes.

MR SANFILIPPO: Yes.
30

MR O'GRADY: And you'd agree with me that there's nothing improper in a union or a group of unions seeking to obtain good terms and conditions for their members?

35 **MR SANFILIPPO:** Absolutely not.

MR O'GRADY: That's their job, isn't it?

MR SANFILIPPO: That is what they are there to do.
40

MR O'GRADY: Now, you gave some evidence about Mr Gartrell apparently knowing Mr Ingham.

MR SANFILIPPO: I gave some evidence saying that when they greeted each other, that it was obvious to me they seemed familiar with each other. Perhaps
45 they'd worked together or had some level of connection prior.

MR O'GRADY: And Mr Gartrell, as I understood your evidence, had been with Multiplex?

MR SANFILIPPO: No.

5

MR O'GRADY: Oh, sorry.

MR SANFILIPPO: I was asked a question yesterday of am I aware of his background. I was only briefly aware that he's had some time at Lendlease -

10

MR O'GRADY: Sorry, Lendlease, I apologise.

MR SANFILIPPO: - and time at KPMG. So that was that comment I made.

15 **MR O'GRADY:** But to the extent that he'd been at Lendlease, I put it to you it wouldn't be that surprising he'd come into contact with somebody like Mr Ingham.

MR SANFILIPPO: Probably plausible.

20 **MR O'GRADY:** Yeah, thank you. Now, you also gave some evidence yesterday regarding the safety reset.

MR SANFILIPPO: Yes.

25 **MR O'GRADY:** You'd accept that, as a matter of fundamental principle, people should not be killed or seriously injured at work?

MR SANFILIPPO: Correct.

30 **MR O'GRADY:** And you'd also accept that part of CPB's responsibility was to put in place systems that, so far as were reasonably practicable, would ensure that employees were not killed or seriously injured whilst at work?

MR SANFILIPPO: Correct.

35

MR O'GRADY: And the incident that gave rise to the safety reset was a reflection of the fact that, try as you might have, those systems that were put in place did not actually prevent somebody from being seriously injured at work?

40 **MR SANFILIPPO:** There was a very serious incident, yes. It was fully investigated by Workplace Health and Safety.

MR O'GRADY: Yes.

45 **MR SANFILIPPO:** Yes.

MR O'GRADY: Yes. And you would accept that from the CFMEU's position or point of view, safety is a fundamental part of their core business?

5 **MR SANFILIPPO:** Any union, yes.

MR O'GRADY: Yes. And certainly something they were entitled to be extremely concerned about?

10 **MR SANFILIPPO:** Yes.

MR O'GRADY: Yes.

15 **MR SANFILIPPO:** The only question I would have, I would say, is the manner in which we saw that interest, with locking the gates and stopping the production for all of the workforce and all the subcontractors involved. The application of that right was somewhat extreme, in my opinion.

20 **MR O'GRADY:** I understand. And please, when I'm asking you questions on this topic, I'm not seeking to justify perhaps some of the ways in which things were done, but rather, focusing on the legitimacy of a concern by the CFMEU to ensure that people are safe at work. And as I understand your evidence, you agree with that.

25 **MR SANFILIPPO:** I do.

MR O'GRADY: And again, putting to one side how things were done, you'd accept that one mechanism that might be open to try and address a perceived problem with safety would be to put in place HSRs on the site?

30 **MR SANFILIPPO:** We already had HSRs on the site.

35 **MR O'GRADY:** Yeah. But in circumstances where you had a very - a serious incident, the union might say, "Well, whatever you're doing at the moment isn't good enough. We want to augment what's happening by putting in place additional HSRs." Now, you might not agree that that's the appropriate or the best thing to do, but it's a legitimate thing for the union to be trying to pursue.

MR SANFILIPPO: The CFMEU directly asked for that of us.

40 **MR O'GRADY:** Yes, and ultimately you agreed to that.

MR SANFILIPPO: Yes, we did.

45 **MR O'GRADY:** Yeah. All right. Now, you also gave evidence yesterday that BPIC had led to an increase in wages?

MR SANFILIPPO: Yes.

MR O'GRADY: And again, you'd agree with me that seeking better wages for their members is core union business?

5 **MR SANFILIPPO:** Yes.

MR O'GRADY: And certainly something that the CFMEU was perfectly entitled to try and pursue?

10 **MR SANFILIPPO:** Yes.

MR O'GRADY: Thank you. Now, could I turn to this report that's at the end of your statement. This is exhibit VS-22. It commences at page 250 of the bundle in respect of the first statement, Commissioner.

15

COMMISSIONER: Mine commences at 254. Am I missing something?

MR O'GRADY: I might have done the sums wrong, Commissioner. But as long as you've got exhibit VS-22.

20

COMMISSIONER: Yes.

MR O'GRADY: Now, at paragraph 168 of your statement, you say you had substantial involvement in the development of the report?

25

MR SANFILIPPO: Yes.

MR O'GRADY: And you were involved because you, as general manager of CPB, were a member of the joint venture?

30

MR SANFILIPPO: Yes.

MR O'GRADY: And the report was prepared with the assistance of other employees of the joint venture?

35

MR SANFILIPPO: Yes, a handful of people from the team mainly providing me, like, the case studies and some of the data from the project.

MR O'GRADY: Yeah. And as your counsel said this morning, it's a report that in effect contains your opinion in respect of the matters it deals with?

40

MR SANFILIPPO: Yes. It's our attempt to quantify and our opinion on what the quantification was.

45 **MR O'GRADY:** But it doesn't purport to be an external assessment?

MR SANFILIPPO: No, it's an internal one.

MR O'GRADY: Yeah. And it doesn't purport to be an expert assessment in the traditional sense of an expert -

5 **MR SANFILIPPO:** No. No, it does not. It was a report provided to the Delivery Authority to articulate, in our opinion, what we'd experienced and the quantification of those matters.

10 **MR O'GRADY:** I understand. And the full title of the report is a Report on the Impacts of COVID-19, Hyper-Escalation, Broader Market Forces and the CFMEU.

MR SANFILIPPO: Correct.

15 **MR O'GRADY:** And I put it to you that the reason why the title is ordered in that way is that when you look at the factors that had led to the excess costs, if I can use that language, far and away the largest factors were COVID-19 and hyper-escalation.

20 **MR SANFILIPPO:** I can't remember the exact details of the report, but they were large contributors as well.

MR O'GRADY: Well, indeed, and I don't want to go into the details of the report because of the debate that you've heard this morning, but I'll put to you, and
25 people can tell me if they were -

MR SANFILIPPO: There were large elements of similar magnitude, yes.

MR O'GRADY: Well, I put it to you it's more than similar magnitude, that the
30 costs associated with COVID-19 and hyper-extension -

MR SANFILIPPO: Hyper-escalation.

MR O'GRADY: Hyper-escalation, I apologise - were multiples of the costs
35 associated with CFMEU and BPIC.

MR SANFILIPPO: They were not multiples. Bear in mind this report comes after an earlier reset we'd done with the job, which touched on some of the earlier components of COVID as well. So those elements were somewhat less.
40

MR O'GRADY: All right. Well, I'll - it may be a matter for submission.

MR SANFILIPPO: But they were significant components as well.

45 **MR O'GRADY:** All right. Now, the purpose of the report was to justify additional funds being paid to the joint venture, wasn't it?

MR SANFILIPPO: It was to articulate some of the impacts we were experiencing in delivering the job.

MR O'GRADY: Yes.

5

MR SANFILIPPO: We had been entering into commercial discussions with the Delivery Authority about those matters, and we thought we needed to demonstrate that in a factual report style. So that's what the report is.

10 **MR O'GRADY:** Yes. But the reason why you're doing that is you ultimately want more money, don't you?

MR SANFILIPPO: Correct. We're under distress.

15 **MR O'GRADY:** Yes. I understand. Thank you. And the joint venture had a commercial interest in attributing the cost overrun to causes which did not bear on your work?

MR SANFILIPPO: Sorry, can you repeat that?

20

MR O'GRADY: I'll repeat that.

MR SANFILIPPO: Yes.

25 **MR O'GRADY:** There was a commercial interest in attributing the cost overruns to other factors as opposed to the way in which you were managing the contract?

MR SANFILIPPO: There was a commercial interest in resolving the matters that caused us distress on the project.

30

MR O'GRADY: Yes. Now, yesterday, you took us to some figures, and these are in the unredacted parts of the report. If the witness could be taken to page 267, and if we could blow up paragraph 15.

35 **COMMISSIONER:** Did you say redacted or unredacted?

MR O'GRADY: This is - I'm working off - it is not redacted.

COMMISSIONER: Which page, sorry?

40

MR O'GRADY: Sorry, it should be page 267, page 44. Yes. Thank you.

COMMISSIONER: I see.

45 **MR O'GRADY:** Now, that is the estimate of the costs overrun attributable to BPIC and associated union activity as at the date of this report?

MR SANFILIPPO: Correct.

MR O'GRADY: That's some \$580 million?

5 **MR SANFILIPPO:** Correct.

MR O'GRADY: And without getting into the detail of the methodology, that figure was arrived at by assessing the asserted loss of productivity that appears at page 265 at paragraph 7.4, subparagraph 7.

10

MR SANFILIPPO: Yes, the 55 per cent productivity. Is that what you're referring to?

MR O'GRADY: Yes.

15

MR SANFILIPPO: That's for one portion. That was from the year just prior to the date of the report.

MR O'GRADY: Yes.

20

MR SANFILIPPO: July to July, correct.

MR O'GRADY: Yes. And that was the largest portion, I put it to you -

25 **MR SANFILIPPO:** It was, yes.

MR O'GRADY: - of the 580 -

MR SANFILIPPO: Correct.

30

MR O'GRADY: - that was said to be something like 351.

MR SANFILIPPO: My version that I've printed out prior is the redacted one, not the full version. But yes, it was 300 and something for that year and a couple of hundred both totalling to 580, the two components.

35

MR O'GRADY: This also is unredacted. It appears at page 268, Commissioner, and it's the table that appears under subparagraph 4.

40 **MR SANFILIPPO:** Sorry, 268 or 258?

MR O'GRADY: No, 268.

MR SANFILIPPO: Yes, that's correct. They're the two numbers.

45

MR O'GRADY: Yes. And so we get the 580, at least in part, by reference to the 55 per cent reduction in productivity?

MR SANFILIPPO: Correct.

5 **MR O'GRADY:** And we get the 55 per cent reduction in productivity by reference to the four examples that you set out in the tables that appear at page 264 and onto 265.

10 **MR SANFILIPPO:** Yes, as indicative examples, indicative examples of what we experienced through that year where we had the protected action that went for, I think it was - I think it's reported in media of 120-odd days of lost time. So through that period we were having significant impacts to our productivity across the whole job. So we took a snapshot of a handful of metrics, and I think in the report it details that we looked at metrics that straddled consistent, productive work for a 24-month period. So we could accurately measure the impact in the
15 the most recent year to the impact - to the non-impacted time previously and look at the productivity. So we took a snapshot of different work elements across the project.

20 **MR O'GRADY:** Yeah. But you'd agree with me it doesn't purport to being a comprehensive assessment of the impact of - on productivity. Rather, it takes four examples and says it looks like there's a bit of a trend.

MR SANFILIPPO: It apportions -

25 **MR O'GRADY:** What does that trend add up to? It adds up to 55 per cent. You take the 55 per cent. You apply that to some other figures -

COMMISSIONER: It doesn't add up to it. It averages.

30 **MR O'GRADY:** Yeah, averages to 55.

MR SANFILIPPO: It averages. Averages. Correct.

35 **MR O'GRADY:** I apologise - in respect of those four examples?

MR SANFILIPPO: Correct.

40 **MR O'GRADY:** And then you apply the 55 per cent to some other things that I don't need to go into.

MR SANFILIPPO: Yes, correct.

MR O'GRADY: And that gets you to 380 or whatever it is.

45 **MR SANFILIPPO:** And what we were observing across the job, that was fairly consistent. That didn't feel wrong.

MR O'GRADY: No, no, I understand.

MR SANFILIPPO: Yes.

5 **MR O'GRADY:** And you'd agree with me that the period where there is this asserted lack of productivity was a period when there was negotiations going on for, to use your language, a brownfields agreement?

10 **MR SANFILIPPO:** It was in protected action, yes. It was the rollover of the previous agreements that had expired, correct.

MR O'GRADY: Yes. And you I think accepted earlier that there's nothing improper about a union seeking to take protected industrial action in support of negotiating a new agreement?

15 **MR SANFILIPPO:** I agree with the statement that there's nothing wrong with the right to take protected action. I think what we experienced was very different to what we would normally expect protected action looks like.

20 **MR O'GRADY:** Yes.

MR SANFILIPPO: By that, I mean we were negotiating for our direct workforce there. We saw, you know, gates locked, strikes, and all subcontractors who were not covered by the protected action turned away from the project and encouraged not to turn up. We had to seek court injunctions to address that behaviour, which we were successful on, even though it still remained. So protected action absolutely is a right. What we experienced was not lawful, in my opinion.

30 **MR O'GRADY:** Well, you understand that there's a currently a dispute going on about these things at the moment?

MR SANFILIPPO: It's currently a legal matter between us, yes.

35 **MR O'GRADY:** Yes, that's right. And -

COMMISSIONER: Between who, sorry?

40 **MR O'GRADY:** CPB and the CFMEU. And in that dispute, there's assertions being made that the action wasn't protected on behalf of CPB, or some of it?

MR SANFILIPPO: I haven't read the detail of it, but it may be in there. I can't comment accurately on it, yes.

45 **MR O'GRADY:** I understand. But do you understand that the CFMEU denies that the action wasn't protected?

MR SANFILIPPO: It would - yeah, they may well do. I'm not sure of the exact details. I'm trying to resolve that matter rather than dig down into it.

MR O'GRADY: I understand.

5

COMMISSIONER: Could you just tell me what that action is, Mr O'Grady?

MR O'GRADY: There's a proceedings in the Federal Court, and I can get some details for you in due course, Commissioner.

10

COMMISSIONER: Thank you.

MR O'GRADY: But you'd agree with me that to the extent that the action was protected - and I'm not asking you to commit to anything, but just on that assumption, because I don't want to prejudice any proceedings anywhere else, but on that assumption, to the extent that the action was protected, then it was something that the CFMEU were perfectly entitled to pursue?

15

20

MR SANFILIPPO: They had rights under the system, yes, for the workers that were covered by the agreement.

MR O'GRADY: Yes. I understand. And you'd agree with me to that to the extent that the action was protected, it would necessarily have an impact on productivity?

25

MR SANFILIPPO: Yes.

MR O'GRADY: If people take a six-day strike that is protected action, then it flows that that's going to have an impact on productivity?

30

MR SANFILIPPO: Yes.

MR O'GRADY: Yeah. And you'd agree with me that the period of time where your four tables describe the reduction in productivity that averages out at 55 per cent included the time when there was this action which the CFMEU maintains was protected industrial action?

35

MR SANFILIPPO: Correct.

MR O'GRADY: Yeah. Now, could I ask you to go back to page 268, which is the table. In respect of potential future losses, there's a very broad spread that's being adopted. You would accept that?

40

MR SANFILIPPO: Yes, absolutely. We - we were - I think I said yesterday, it was at the peak of the campaign. I think it was the darkest days, I said. It was a bit theatrical yesterday. But we did not know when this action would stop, when the rolling strikes would stop.

45

MR O'GRADY: Yes, I understand.

5 **MR SANFILIPPO:** And it was having an ongoing impact to our ability to deliver the job, and obviously there was financial impacts to that. So, you know, we did not know whether we'd be able to resolve it in a matter of weeks or a matter of 12 months. So that's why the range it what it is.

10 **MR O'GRADY:** I'm not being critical. But we do know now that an agreement was reached in December of 2024.

15 **MR SANFILIPPO:** Correct. So strike action continued through till I think around late September, so we were still impacted severely through that period. And then we went to the vote early September, lost. We went to the vote late September, lost. I think there were a few things that changed in our third attempt. I think the change of government and the repeal of BPIC helped, probably sent a message to our workforce, and in December we had a resounding yes, December 15.

20 **MR O'GRADY:** Yes.

MR SANFILIPPO: What that did was it created the environment for our workers and, more importantly, our subcontractors to feel, I guess, safe on the job, safe that they could come to work and actually have a productive day.

25 **MR O'GRADY:** Yes.

30 **MR SANFILIPPO:** And that's the key point. Because through the striking period, it was very difficult for our subcontractors and our employees to turn up and then with no notice, certain parts of the site would be shut down with rolling strikes. So subcontractors were getting fairly heavily impacted. So when that agreement was struck, we saw confidence returned into our ability to deliver the job from the market, and subcontractors progressively ramped up. And I think I made the point yesterday, it was probably by end of quarter 1 we were back up fully firing.

35 **MR O'GRADY:** I understand. And to the extent that the \$400-million figure was premised on the possibility that you might not reach an agreement for another 12 months, the fact that you reached an agreement in December would suggest that the future loss, as at the date of this report, actually turns out to be at the lower end rather than the up error end of the scale?

40 **MR SANFILIPPO:** Not correct. So the point I'm making there, it's not attributable to when be a agreement is struck; it's when productivity returns to the project.

45 **MR O'GRADY:** Yes.

MR SANFILIPPO: Which happened more like March. So it would probably suggest it is more likely at the higher end, by that maths.

5 **MR O'GRADY:** Well, your evidence a moment ago was those figures were -

MR SANFILIPPO: Estimates.

MR O'GRADY: - assessed on the basis it might take 12 months.

10

MR SANFILIPPO: Correct.

MR O'GRADY: So 12 months from August is August.

15 **MR SANFILIPPO:** Correct. And March is well and truly more than just the lower end. It's midpoint onwards.

MR O'GRADY: Well, it's not at the higher end.

20 **MR SANFILIPPO:** We agree it's not the lower end too.

MR O'GRADY: Okay. The Commissioner will make of that evidence what he will. All right. And you understand that the administrator was appointed in August of 2024?

25

MR SANFILIPPO: Yes.

MR O'GRADY: But you also understand that Mr Ravbar brought a challenge to the validity of that appointment in the High Court?

30

MR SANFILIPPO: Yes.

MR O'GRADY: And that that wasn't resolved until June 2025?

35 **MR SANFILIPPO:** Correct.

MR O'GRADY: And that - and Mr Irving has given evidence that pending that resolution, it was difficult to effect cultural change within the CFMEU because people didn't know whether the administration would be put to one side and Mr Ravbar and Mr Ingham would come back.

40

MR SANFILIPPO: Absolutely. It hung like a cloud over the industry.

45 **MR O'GRADY:** Yes. Thank you. Now, could I take you back to the report and some of your evidence yesterday. If we could go to page 261. At paragraph 6 of that page, you put, if you like, a counterfactual, namely, that there were legitimate

safety issues that were being addressed by the right of entries, which is what I'm interested in. Is that a fair summary of what you say?

5 **MR SANFILIPPO:** Sorry, I don't understand your question.

MR O'GRADY: At paragraph 6 on that page -

MR SANFILIPPO: Yes.

10 **MR O'GRADY:** - you put, in effect, a counterfactual, according to your major thesis. You suggest, well, an explanation for this number of right of entries and attendances by Work Health Safety might be that there might be legitimate issues that need to be addressed?

15 **MR SANFILIPPO:** Correct. I think we accounted for that in there. Yes.

MR O'GRADY: And your counter to that scenario is the table that you set out at the foot of page 261?

20 **MR SANFILIPPO:** Yes. That - that demonstrates that the safety record of the project, as measured by total recordable incident frequency rates, was relatively stable and consistently good.

25 **MR O'GRADY:** All right. You'd agree with me that the basis for issuing a right of entry and the total - sorry, total recordable injury frequency rate are different things?

MR SANFILIPPO: Yes, correct.

30 **MR O'GRADY:** Yes. Because where you're dealing with the TRIFR, what you're talking about are actual injuries.

MR SANFILIPPO: Correct.

35 **MR O'GRADY:** Where somebody is actually hurt and it is recorded.

MR SANFILIPPO: That's correct.

40 **MR O'GRADY:** And what you're dealing with a right of entry is you're dealing with potential injuries.

MR SANFILIPPO: The right of entry is the access for the unit to come on site. You're talking about actual notices, I believe?

45 **MR O'GRADY:** Yes.

MR SANFILIPPO: Yes, correct.

MR O'GRADY: You're talking about potential injuries where there is a perceived risk.

5 **MR SANFILIPPO:** Correct.

MR O'GRADY: And I put it to you that it's perfectly possible to have a scenario where you have somebody coming on and validly exercising a right of entry in respect of health and safety matters, even though there is not an actual injury occurring?
10

MR SANFILIPPO: Yes.

MR O'GRADY: And indeed, one of the reasons for coming on site, exercising a right of entry in respect of a potential risk, is to avoid there actually being a recordable injury?
15

MR SANFILIPPO: Correct.

20 **MR O'GRADY:** Thank you.

MR SANFILIPPO: To that point, if I may add, you're right in questioning that the safety data in TRIFR is actual injuries and the notices may be preventative. The Office of Federal Safety Commissioner audit, two-day audit, suggested no non-conformances, and when I look at the record of TSD through that period, the notices we received, they were not notices we were receiving on other projects that were not TSD at the same time from Workplace Health and Safety. That's why I feel quite comfortable in the assertion there -
25

30 **MR O'GRADY:** I understand.

MR SANFILIPPO: - that the correlation between the CFMEU on site calling Workplace Health and Safety and trumping up the notices we received was evident and correct.
35

MR O'GRADY: All right. Well, could I just deal with that first limb for the moment. Could the witness please be shown paragraph 8 of page 262. Now, that deals with your audit by the Federal Safety Commissioner?

40 **MR SANFILIPPO:** Yes.

MR O'GRADY: But that's something that occurred way back in 2020, isn't it?

MR SANFILIPPO: Correct. It's just around the peak time of right of entries and notices.
45

MR O'GRADY: But that was three years before the post July 2020 period of escalating CFMEU -

MR SANFILIPPO: Yes, correct, yes.

5

MR O'GRADY: Now, you took the Commission yesterday to appendix 6 of your report, or some of the examples, at appendix 6.

MR SANFILIPPO: Some of the case studies provided from the project, yes.

10

MR O'GRADY: Yes. And I take it - and one of those was in respect of the heat policy being pursued by the CFMEU?

MR SANFILIPPO: Yes.

15

MR O'GRADY: And you'd accept that heat in the Queensland environment is a legitimate health and safety issue?

MR SANFILIPPO: Yes.

20

MR O'GRADY: And that working in excessive heat in summer can result in fatalities?

MR SANFILIPPO: It's a hazard, yes, and can be hazardous, yes.

25

MR O'GRADY: Yes. And whilst not seeking to endorse how the CFMEU went about it, you would accept that that's something that the CFMEU is perfectly entitled to be very concerned about?

MR SANFILIPPO: Yes. Any safety matter. That includes it.

30

MR O'GRADY: And in respect of all the matters in appendix 6, they all of course pre-date the appointment of the administrator, don't they?

MR SANFILIPPO: Absolutely.

35

MR O'GRADY: Yes. I have no further questions, Commissioner.

COMMISSIONER: I wonder if I could ask you a question about this report, following on from Mr O'Grady's cross-examination, Mr Sanfilippo. Can you just bring up the chart at page 268.

40

MR SANFILIPPO: Yes.

COMMISSIONER: And I take it that that \$351-million figure which I asked Mr Ford about was based on your conclusion, which you were cross-examined on by

45

Mr O'Grady, that during the 12 months after July 2023, productivity across the site dropped by in the order of 55 per cent.

5 **MR SANFILIPPO:** Correct. And that's attributable, in our calculation, to that \$350 million.

COMMISSIONER: If you then go to the previous two pages, which perhaps they can be put up, 265 and 266, you'll see there's an attempt to apply that 55 per cent figure to some number which is not disclosed.

10 **MR SANFILIPPO:** Correct.

COMMISSIONER: And if you go to the next page, 267, we're missing paragraphs 2 through 14. There's some maths that are engaged in, and you take 55 per cent of some figure, and you get -

15 **MR SANFILIPPO:** Correct.

COMMISSIONER: - you get not the 580 million that you've got there in para 20 15, but you get 351.

MR SANFILIPPO: Correct. The 351 is that component.

25 **COMMISSIONER:** Yes.

MR SANFILIPPO: The 580 is -

COMMISSIONER: 580 is the -

30 **MR SANFILIPPO:** Is added on to that 351, is the 229, which is the time prior to July, which is -

COMMISSIONER: We'll go back that just to check that. Go back to 268. There's the 351 and the 229, which gives you the 580.

35 **MR SANFILIPPO:** Correct.

COMMISSIONER: And then go to the introduction to this report, which is - can you bring up paragraphs 12 and 16 and put them together at the introduction to this report. Sorry, it's (12) on page 255 and (16) on page 256. That's it. So if you look - I wonder if you can blow (12) and (16) up at all. So if you look in your summary, the specific impact of 580 million to date for impacts of the CFMEU campaign is based on the 55 per cent of something.

45 **MR SANFILIPPO:** Yes.

COMMISSIONER: Which gives you -

MR SANFILIPPO: 351.

5 **COMMISSIONER:** - 351, plus 229, which is an estimate going backwards
pre-July 2023. And if you have a look at (16)(b) and (c), you can see that that's
what you're saying, 16(b) is saying, because productivity fell across the site by 55
per cent in the 12 months after July '23, the 55 per cent of some number gives you
351, and then there's an estimate that comes to the - there was a 10 per cent impact
on productivity prior to July 2023.

10

MR SANFILIPPO: Correct.

COMMISSIONER: There's a lot of data and reasoning that supports the 55 per
cent figure. I can't see any that supports the 10 per cent.

15

MR SANFILIPPO: No. So that calculation was basically an approximation. So
we know we had sustained the safety campaign since the start of the job. So case
in point the videos we saw yesterday, where everyone's cheering as the concrete
pump leaves. All of that is in that period. All of those type of behaviours were
20 impacting us. It was really difficult to try and quantify that, so we took a
productivity factor for the work undertaken for those periods and we attributed 10
per cent to it.

COMMISSIONER: Now, I know these figures are redacted, but you just
25 do - you just take - just do the reverse maths, and you know that there's a figure of
around 700 million, a bit less, to get to 351 million. So I note we can use the
maths for the July '23 -

MR SANFILIPPO: Yes.

30

COMMISSIONER: - 12 months.

MR SANFILIPPO: Yes, yes.

35 **COMMISSIONER:** Is that figure confidential? Because anyone can add it up,
can work it out.

MR SANFILIPPO: I basically think it's - I'm trying to remember - it was either
40 the work we undertook that day or that year, in that period, or the work we
intended to do, and we applied the productivity factor to that. So it's for that year.
It's the relevant spend of that year.

COMMISSIONER: Sure. But I'm just - that's what I assume it is.

45 **MR SANFILIPPO:** Yes.

COMMISSIONER: I'm just wondering why it's been blanked out, because you can work out that figure or something close to it by just reverse engineering those numbers. 55 per cent of a figure gives 351. It's 680 million or something.

5 **MR SANFILIPPO:** Correct. Correct.

COMMISSIONER: Is that a commercially confidential figure? You don't think so?

10 **MR SANFILIPPO:** I don't believe so. We did not do that redacting, but we didn't - didn't object to it.

COMMISSIONER: All right. And then the figure for the 10 per cent must be in the order of -

15

MR SANFILIPPO: The similar for the years prior, the 2.2-odd billion.

COMMISSIONER: So that's 2.2 billion.

20 **MR SANFILIPPO:** Yeah, of the year spent previous on the job, yes.

COMMISSIONER: And so that's the amount. If this was unredacted, it would show there's some figure around 700 million. That was the work you would have achieved, according to your program, had productivity been at 100 per cent, not 55
25 per cent.

MR SANFILIPPO: Yes. Yep.

COMMISSIONER: And then going to the last figure, which is the potential
30 future, you were cross-examined on that.

MR SANFILIPPO: Yep.

COMMISSIONER: The number that you've set out in paragraph 12 - if you can
35 just bring that back - 12(d) is an allowance of 250 million for future impacts of the CFMEU campaign. You said in your answer to Mr O'Grady that the productivity didn't start kicking in until March, which is seven-twelfths of the way through.

MR SANFILIPPO: Well, progressively grew from -
40

COMMISSIONER: Progressively grew from -

MR SANFILIPPO: From late December through, yes.

45 **COMMISSIONER:** So is your estimate still accurate, given the questions Mr O'Grady asked you?

MR SANFILIPPO: Probably feels about right, around the midpoint of what we thought.

COMMISSIONER: Thank you. Is there anything that arises from that?

5

<RE-EXAMINATION BY MR GISONDA

MR GISONDA: Yes, just one thing, Commissioner, arising from the cross-examination of Mr O'Grady. If I can just take you to page 12 of your second statement, please, and you might recall that you were asked - I asked you some questions earlier today about the tender for the Townsville University Hospital expansion project. Do you remember those questions?

10

MR SANFILIPPO: Yes.

15

MR GISONDA: And that was the tender that you were unsuccessful on, despite the fact that, in your view, CPB was very well placed to undertake that work?

MR SANFILIPPO: Correct.

20

MR GISONDA: And we can infer that the reason why, perhaps the only reason why, you were not successful on that work is because you failed to achieve pre-qualification?

MR SANFILIPPO: That's how we felt, yep.

25

MR GISONDA: And you give some evidence that a few months later you had a meeting with Mr Ingham -

MR SANFILIPPO: That's correct.

30

MR GISONDA: - at the Bow & Arrow Cafe.

MR SANFILIPPO: Yes.

35

MR GISONDA: And the purpose of that meeting was to discuss Cross River Rail or works outside of Cross River Rail. So to discuss projects that you were doing outside of Cross River Rail.

MR SANFILIPPO: I wanted to, I guess, reconnect and, I guess, open up a dialogue for non-Cross River Rail works, because at that time, it was, yeah, quite - I wanted to kind of split the - split the thoughts of Mr Ingham regarding CPB in general rather than just Cross River Rail, so I wanted to engage in some dialogue there about talking about future building works.

40

MR GISONDA: And what's your evidence about how Mr Ingham started that conversation?

45

5 **MR SANFILIPPO:** He asked me how we went on Townsville Hospital. I said we lost, and he smiled and said something along the lines of, "Well, that's what you get when you don't work with the CFMEU." I didn't dwell on it. I didn't want to ventilate it there or then. We just moved on with the discussion. It was a brief discussion, and that was it.

10 **MR GISONDA:** Now, you don't know, presumably, whether he in fact had some hand to play in that decision or whether he was just taking advantage of it?

MR SANFILIPPO: I don't know.

15 **MR GISONDA:** But you were asked some questions by Mr O'Grady about what was common for a union to do and what was not common for a union to do -

MR SANFILIPPO: Yep.

20 **MR GISONDA:** - in the bargaining space and what was a normal feature of the EBA process and what was not a normal feature. If it turned out that he did have some influence on that decision-making process, would you regard that as a normal feature of the EBA process?

MR SANFILIPPO: No, I would not.

25 **MR GISONDA:** And would you regard that as something that it's common for a union to do in furtherance of its industrial objectives?

MR SANFILIPPO: No, I would not.

30 **MR GISONDA:** Nothing further, Commissioner.

COMMISSIONER: Thank you very much for your evidence, Mr Sanfilippo. You are excused.

35 **MR SANFILIPPO:** Thank you.

<THE WITNESS WAS RELEASED

40 **MR O'GRADY:** Just before Mr Gisonda gets to his feet, and I don't want to interfere with Mr Sanfilippo leaving, you asked for the reference to the Federal Court matter.

COMMISSIONER: Yes, thank you.

45 **MR O'GRADY:** It is QUD189 of 2024.

COMMISSIONER: Thank you. Who's the next witness, Mr Gisonda?

MR GISONDA: I call Michael O'Brien, Commissioner.

5 **COMMISSIONER:** Is Mr O'Brien in the hearing room? I think he is. Can you come to the witness box, Mr O'Brien, please. There's a hot seat in the witness box today. It's very productive.

<MICHAEL HUGH O'BRIEN, SWORN

10 **<EXAMINATION BY MR GISONDA**

COMMISSIONER: Thank you, Mr O'Brien. Please take a seat.

15 **MR GISONDA:** Mr O'Brien, are you able to tell the Commissioner your full name, please.

MR M. O'BRIEN: Michael Hugh O'Brien.

20 **MR GISONDA:** And your current occupation, please.

MR M. O'BRIEN: Senior employee relations adviser at the Brisbane Catholic Education.

25 **MR GISONDA:** And on 23 April 2026, you swore a six-page statement for this Commission; is that correct?

MR M. O'BRIEN: Correct.

30 **MR GISONDA:** And attached to that statement is a 46-page bundle of documents; is that correct?

MR M. O'BRIEN: Correct.

35 **MR GISONDA:** And that statement is true and correct, is it?

MR M. O'BRIEN: Correct.

MR GISONDA: I tender that statement and bundle, Commissioner.

40 **COMMISSIONER:** I'm not sure I have it. Maybe I do. I do. Thank you. Sorry. Is there any objection?

MR FORD: No, Commissioner.

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

COMMISSIONER: Witness statement of Michael O'Brien, 23 April 2026, 65 paragraphs, six pages, with nine annexures will be -

MR GISONDA: MOB-1.

5

<EXHIBIT MOB-1 WITNESS STATEMENT OF MICHAEL O'BRIEN, 23/4/2026, 65 PARAGRAPHS, SIX PAGES, WITH NINE ANNEXURES

MR GISONDA: Now, Mr O'Brien, you say at paragraph 4 of your statement that you have approximately 20 years of experience in the human resources and industrial relations space; is that correct?

10

MR M. O'BRIEN: That's correct.

MR GISONDA: And could you just tell the Commissioner briefly what are some of the roles that you've performed in that time?

15

MR M. O'BRIEN: I've got an extensive history in various human resources positions: about 10 years' experience in social and community services, four years' experience with the Chamber of Commerce and Industry Queensland as an industrial relations adviser, and more recently at Cross River Rail at an industrial relations adviser.

20

MR GISONDA: And the role that you had on Cross River Rail, or with CPB, that's the only job that you've had in the construction industry; is that right?

25

MR M. O'BRIEN: Correct.

MR GISONDA: And you started with CPB in February 2023; is that right?

30

MR M. O'BRIEN: Correct.

MR GISONDA: And you were there until July 2025.

35

MR O'BRIEN: Correct.

MR GISONDA: And given that experience that you've just taken the Commissioner through, have you had experience dealing with unions in roles other than the role you had with CPB?

40

MR M. O'BRIEN: Yes.

MR GISONDA: And which unions have they been?

45

MR M. O'BRIEN: The Together Union.

MR GISONDA: And how would you describe your dealings with the Together Union?

MR M. O'BRIEN: Cordial and professional.

5

MR GISONDA: And when you were with CPB, you were a senior IR adviser. That was your title?

MR M. O'BRIEN: Yep.

10

MR GISONDA: And you reported to a gentleman by the name of Terrence Prior.

MR M. O'BRIEN: Correct.

15

MR GISONDA: And he was the IR manager?

MR M. O'BRIEN: Correct.

20

MR GISONDA: And in your team when you were with CPB, there were four IR advisers in total; is that right?

MR M. O'BRIEN: Including myself, yes.

25

MR GISONDA: So including yourself, there was also Alicia Wood, Ben Loakes and Jessica Allam?

MR M. O'BRIEN: Correct.

30

MR GISONDA: And your responsibilities in that role related to the TSD package of work only; is that right?

MR M. O'BRIEN: No, we also supported tunnels as well.

35

MR GISONDA: Yes. Perhaps I'll be a bit more accurate. You had responsibilities for the following sites: the Gabba site?

MR M. O'BRIEN: Yes.

40

MR GISONDA: The Roma Street site?

MR M. O'BRIEN: Yes.

MR GISONDA: The Albert Street site?

45

MR M. O'BRIEN: Yes.

MR GISONDA: And the Boggo Road site?

MR M. O'BRIEN: Yes.

5 **MR GISONDA:** And what were your duties - and I think you set this out at paragraph 16 on page 2, to assist you, but just tell the Commissioner what your duties in that role included, please.

10 **MR M. O'BRIEN:** Managing right of entries. Internal workplace disputes and grievances, conducting investigations and preparing recommendations on those type of matters, and also managing organisational change such as redundancy processes.

15 **MR GISONDA:** And is it fair to say that your main interaction with the CFMEU and its personnel arose in the context of union officials seeking entry onto the site?

MR M. O'BRIEN: Majority of my - yes.

20 **MR GISONDA:** And so part of your role, then, was to assess whether the union official who was seeking entry onto site had complied with the relevant legislative requirements?

MR M. O'BRIEN: Correct.

25 **MR GISONDA:** And once you were satisfied that there had been compliance, is it the case that the official would need to sign in and receive a short induction? Is that the process?

MR M. O'BRIEN: Correct.

30 **MR GISONDA:** And the official was, according to CPB's processes, supposed to be escorted around site by a member of the IR team?

MR M. O'BRIEN: Yes, at all times, yep.

35 **MR GISONDA:** Was there anything else that needed to happen in order for a union official to enter site? So present compliant paperwork, sign in, receive a short induction, be escorted. Is there anything else?

40 **MR M. O'BRIEN:** Just make sure they have the correct paperwork and the permits as well.

MR GISONDA: Correct paperwork and permits.

45 **MR M. O'BRIEN:** Yep.

MR GISONDA: And at page 3, paragraph 19, you say that there were occasions when officials from the CFMEU were found on site without having complied with any of those requirements we just went through. Is that correct?

5 **MR M. O'BRIEN:** Correct.

MR GISONDA: And the way this happened was that someone inside the site must have let the official onto site; is that right?

10 **MR M. O'BRIEN:** Correct.

MR GISONDA: And who could those people be?

15 **MR M. O'BRIEN:** Usually it could be the traffic control or the person at the gate, or another - could be a HSR might let them on as well.

MR GISONDA: So three typical examples that come to your mind is traffic control, someone monitoring the gate, or an HSR or delegate who's already on the site?

20 **MR M. O'BRIEN:** Correct.

MR GISONDA: Now, tell me if you think this is a fair observation: the instances of officials suddenly appearing on site, if I can put it that way, became more common after the safety reset than before.

25 **MR M. O'BRIEN:** Appearing on site. I'd say it remained about the same.

MR GISONDA: Remained about the same. And you say that there were occasions when union officials were found wandering the site and they hadn't been properly signed in or followed the proper processes.

MR M. O'BRIEN: Mmm-hmm.

35 **MR GISONDA:** What would they be doing when they were found wandering the site?

MR M. O'BRIEN: Talking - the usual would be talking to workers, whether that be contractors or direct hire.

40 **MR GISONDA:** And would anyone be with them? I mean, obviously they were talking to someone, but did it appear that anyone was walking around with them?

MR M. O'BRIEN: That would vary occasion to occasion. Sometimes they would be found talking to other contractors or workers; sometimes they would be there with another HSR or a delegate.

MR GISONDA: And is it the case - you say at paragraph 20 that there were some instances where they would be found in the tunnelling area without wearing proper PPE?

5 **MR M. O'BRIEN:** Yes.

MR GISONDA: And you say in your evidence that there is one official who regularly entered the site and who stands out in your mind; is that correct?

10 **MR M. O'BRIEN:** Correct.

MR GISONDA: And who is that, or who was that official?

15 **MR M. O'BRIEN:** That's Dean Reilly.

MR GISONDA: Dean Reilly. And why does he stand out?

20 **MR M. O'BRIEN:** For a few reasons. One, the number of instances of accessing site was quite large. He did not have any permits under - or jurisdiction to get on because of the lack of permits. So, yeah, he was the official who accessed the site, prior to the fall that was referenced, the most.

MR GISONDA: And what was his behaviour like when he was on site?

25 **MR M. O'BRIEN:** It varied to who he was dealing with. If he was dealing with members, quite professional and friendly. If he was dealing with management, IR, I would say a Workplace Health and Safety - not representative but a direct hire Workplace Health and Safety person, I would say aggressive.

30 **MR GISONDA:** And did you have dealings with him yourself?

MR M. O'BRIEN: Yes, many a time.

35 **MR GISONDA:** And how was his approach to you?

MR M. O'BRIEN: I think - the words in there; I won't - but the usual remark if I had said, "Hello Dean," he would say, "Eff off."

40 **MR GISONDA:** Now, in July of 2023, you recall that there was an incident where a worker fell from height at the Boggo Road site?

MR M. O'BRIEN: Correct.

45 **MR GISONDA:** And that triggered what was called a safety reset. Do you remember that?

MR M. O'BRIEN: I do.

MR GISONDA: And you give evidence that the day after that fall or - it was either the day after the fall, maybe a couple of days after -

5 **MR M. O'BRIEN:** Yes, somewhere around there.

MR GISONDA: - you were at the Boggo Road yourself, the Boggo Road site yourself?

10 **MR M. O'BRIEN:** Correct.

MR GISONDA: And you were inside the site; is that right?

15 **MR M. O'BRIEN:** I was inside the site, yes.

MR GISONDA: And you say that there were about a hundred people outside the gate?

20 **MR M. O'BRIEN:** Yes.

MR GISONDA: And they had signs with your face on them?

MR M. O'BRIEN: Correct.

25 **MR GISONDA:** And they were chanting your name?

MR M. O'BRIEN: Correct.

30 **MR GISONDA:** Now, we saw an example in evidence yesterday of the union chanting and singing songs about another worker on the site. How - what emotion did you feel when you saw that carry-on and, in particular, the specific references to your name and your pictures out there?

35 **MR M. O'BRIEN:** Yeah, I will just correct that. I don't think they had my picture but my name.

MR GISONDA: Your name.

40 **MR M. O'BRIEN:** Just correct that.

MR GISONDA: And how did that make you feel?

45 **MR M. O'BRIEN:** Look, I was doing my job. I felt like - I would say it was aggressive. Did I feel scared or in fear at that point, at that instance? I'd say "no". But I did feel aggrieved, as in it was quite unfair, doing my job, and I suppose my number one feeling was that it was a targeted campaign at industrial relations on the project.

MR GISONDA: By that you mean a targeted campaign against your team -

MR M. O'BRIEN: I do.

5

MR GISONDA: - rather than any personal campaign against anyone in particular?

MR M. O'BRIEN: Correct, but there would be various different - you'd have to talk to the individuals, because I think there's varying different feelings about how individually treated. But as a whole, yes, a targeted campaign against the team.

10

MR GISONDA: So by that, do you mean that you feel there were some members of the IR team who were targeted more than others?

15

MR M. O'BRIEN: I do.

MR GISONDA: And how do you feel you rank in the pecking order, if I can put it that way? Were you high on the target or list lower?

20

MR M. O'BRIEN: I believe there were at least two more of the IR team that were targeted more than I was.

MR GISONDA: Yes.

25

COMMISSIONER: Who were they?

MR M. O'BRIEN: Ben Loakes and Alicia Wood.

COMMISSIONER: What was the second name, sorry?

30

MR M. O'BRIEN: Alicia Wood.

MR GISONDA: And Dean Reilly was one person who was in that crowd?

35

MR M. O'BRIEN: Yes, he was.

MR GISONDA: And he was demanding to be given entry onto the site?

40

MR M. O'BRIEN: He was.

MR GISONDA: And you refused him entry on the basis that he didn't have the proper documentation?

45

MR M. O'BRIEN: Correct.

MR GISONDA: And what did he do then?

MR M. O'BRIEN: They marched up and down the street a few times, and he would be yelling over the fence at me to let him on because he had a list of demands. And at some point, for quite a number of hours, he accessed the site through the main turnstiles of the Boggo site and handed me a list of demands. And he was filming myself as he was doing that.

MR GISONDA: Say that again, sorry, that last bit.

MR M. O'BRIEN: He was filming himself with the phone, or me, was pointing his phone at me. Whether he was filming himself or me, I couldn't be 100 per cent sure.

MR GISONDA: And those list of demands, what did you then do with that list?

MR M. O'BRIEN: Provided them to management.

MR GISONDA: And can you recall now what was in those demands?

MR M. O'BRIEN: I can't. All I can say is at the time I did write them down and send them off, but no, I honestly can't recall.

MR GISONDA: Now, we spoke a moment ago about a safety reset that took place on the project, and you knew, didn't you, that as part of that safety reset or the resolution of that safety reset, CPB had agreed to hire 14 workers directly who would then become HSRs on site?

MR M. O'BRIEN: I would - to be accurate, I would say I didn't even know today that it was 14.

MR GISONDA: Right.

MR M. O'BRIEN: But yes, I agree that I was aware that there was at least two engaged at each site for those four sites.

COMMISSIONER: So at least eight, in your evidence?

MR M. O'BRIEN: Yes.

MR GISONDA: So those four sites that we spoke about earlier that you were primarily responsible for, you understood that there were two - there were going to be two direct employees put on each of those sites to act as HSRs?

MR M. O'BRIEN: Yep.

MR GISONDA: And one of those workers was a man by the name of Richie Atutolu?

MR M. O'BRIEN: Correct.

5 **COMMISSIONER:** Was he the gentleman that was in the video that Ms Schinnerl showed last year of - I thought he was - he was in one of those videos along with Mr Savage.

10 **MR GISONDA:** Yeah, I think that's right, but let me confirm that for you overnight, Commissioner. He was already working on the project at the Gabba site prior to the safety reset; is that right?

MR M. O'BRIEN: He was working for one of the subcontractors.

15 **MR GISONDA:** Yes. And that subcontractor was Heinrich?

MR M. O'BRIEN: Yes, that's my understanding.

COMMISSIONER: The name, sorry?

20 **MR GISONDA:** Heinrich. H-e-i-n-r-i-c-h.

COMMISSIONER: This might not be a question for the witness but for you, Mr Gisonda, but why did he have to be employed by CPB if he was already working on the site for Heinrich?

25 **MR GISONDA:** Well, I think I know the answer, but do you have a view, Mr O'Brien?

30 **MR M. O'BRIEN:** Sorry, can you repeat that?

COMMISSIONER: If he was already working on the site for Heinrich, why was he demanded to be employed as one of the eight or 14 health and safety reps as part of the safety reset? Employed by CPB, that is.

35 **MR M. O'BRIEN:** I wasn't aware of the reason.

40 **MR GISONDA:** I think the answer is that subcontractors come and go and their role ends, whereas if you're with CPB, you're there till the end. Now, Operator, you should have what's described as a bundle number 4 for this case study, which was provided this morning, and if you could go to page 13 of that bundle, please. I've just taken here, Commissioner, for you an extract of the Watson report. Do you have that in front of you, Commissioner?

45 **COMMISSIONER:** Yes, I do.

MR GISONDA: And this was the incident about - it's entitled We Know You Have Two Young Sons, and he talks about an especially threatening incident at

the Gabba station on 20 June 2023, involving two AWU organisers who were on site. And it was meant to be a straightforward meeting, but they were disrupted by Mr Atutolu, who were bellowing - and another representative, who were bellowing abuse and chanting, "Australia's weakest union." And then the incident progresses where there was a crowd waiting for these two organisers, and Mr Watson then says that as that incident progressed, some particularly chilling threats were made of those AWU organisers, and you see at paragraph 157 over the page, Commissioner, those from the CFMEU who can be identified as involved in this incident include organisers Brodie Wood, Dean Reilly and Matt Clark and delegates Richie Atutolu and Steve Amies.

COMMISSIONER: I'm pretty sure there was video of this shown, because that person with the backpack in the photo was identified an ex-CFMEU official or delegate who was now working for someone else, I'm sure.

MR GISONDA: Sorry, did you say you think there is a video of it?

COMMISSIONER: Yes.

MR GISONDA: The video is of the aftermath, the CCTV near the Coles supermarket. So that still that you can see there is probably triggering that memory that you have of that CCTV footage. Now, you might not know the answer to this, Mr O'Brien, but Steve Amies, he was also a worker who was installed as an HSR as part of the safety reset?

MR M. O'BRIEN: Yes, he was on the Albert Street site.

MR GISONDA: He was on the Albert Street site. Now, back to this incident more generally. At page 4 of your statement, you give evidence about your involvement in the incident; is that correct?

MR M. O'BRIEN: That's correct.

MR GISONDA: And can you tell the Commissioner what you remember about that day?

MR M. O'BRIEN: Okay. So there was two AWU organisers -

MR GISONDA: Yes.

MR M. O'BRIEN: - who legitimately provided the correct paperwork for a 484, so a meeting with their members.

COMMISSIONER: Sorry, I just can't follow. You just need to speak up a little bit.

MR M. O'BRIEN: So there were two AWU organisers who provided the correct paperwork, so 484, and signed in, followed the induction process and conducted a meeting with their members in a meeting room. It's at the back of the main office there. I did notice some of the evidence that prior to before that, on that day, there
5 was no interruption to the meeting with their members. There was a prior incident to that time where they did attempt to have a meeting with their members. That was interrupted by shouting and yelling that they could not complete. However, on that day, they completed a meeting with their members, which I thought was unusual, because we were expecting trouble at that meeting, given what had
10 happened prior. And Richie, Richard Atutolu had his own office that was up behind those meeting rooms, who had full view of those meeting rooms, and he was nowhere to be seen. So I thought that was a bit strange.

So the meeting concluded and I was in the process of exiting those - the two AWU
15 organisers from site. As they were signing out on the kiosks, they didn't have access - or couldn't see from where they were standing - the front gates. I had gone out towards the front gates to see what was going on, and there was a crowd of at least 30 - 30 persons in black shirts with Youth Crew, mostly Youth Crew. There were some other hi-vis people - persons there, and they were, I would say,
20 furious, angry. It was the only time I would say that I was fearful on the project.

COMMISSIONER: Why were you fearful?

MR M. O'BRIEN: Their language. The ferocity that they were yelling that
25 language was unlike I had ever seen.

MR GISONDA: And these 30-odd or more gentlemen who were - I shouldn't say "gentlemen"; you said persons - who are dressed mostly in black, mostly with Youth Crew shirts on, did you recognise them as workers from the site or -
30

MR M. O'BRIEN: No, I couldn't tell. I could not recognise them as workers from the site. I do know later on when we checked footage that there were some contractors who did go out - off - and join the group. But they weren't the ones that worried me. It was the people in black shirts who I didn't know and who
35 were - yeah, the ferocity of them.

MR GISONDA: And what happened then with the AWU officials?

MR M. O'BRIEN: I immediately told them to stay where they were. I
40 immediately contacted the superintendent on site, Mark Weiss, so he could access the CCTV, so they could see where these persons were and what was going on. I contacted my manager Terry Prior to ask advice on what to do. The advice was to see if I could seek an alternative safe exit. In lieu of that, if we couldn't do that, keep them on site and keep them safe. So that's - that's what happened there, yep.
45 So what happened next was that there was - there's a - there's two alternative exits from that site, on the Gabba site. Both are delivery exits, and I - I received approval from Mark Weiss to access one of those exits, which is the Ipswich Road

side, so the exit directly opposite the Gabba stadium. And he was watching the cameras as we went towards that exit to see if there was any movement from the crowd, and there wasn't.

5 So we reached, with the two organisers, we reached that exit, and I looked up and
down the street and there was no-one there. So they exited. And they got, I
reckon, two or three metres before the crowd came tearing around the corner
running and screaming at them. I stayed right on the boundary of the fence, and I
10 said, "Come back. Come back inside." And they said, "No, no, no, we're okay,
mate. We'll be fine." And then the crowd - I reckon about 10 metres, 15 metres
away from the gate - caught up with them and were pushing them, yelling at them,
shoulder-charging them and moved as a crowd down towards the Coles.

15 **MR GISONDA:** Were you - is it fair to say that you were worried about their
safety?

MR M. O'BRIEN: I was worried about their safety, yes.

20 **COMMISSIONER:** Why was that?

MR M. O'BRIEN: Because of the ferocity. I hadn't seen CFMEU, prior to that
point, ever get physical, or anyone - sorry, anyone related to the CFMEU or
persons at the time I thought were linked to the CFMEU, sorry, get physical with
25 anyone. They were shoulder-charging them, pushing them, grabbing their
backpack and shoving them around. And not just that, the language they were
using and the ferocity they were using that language. It wasn't - you know, they
throw around terms and swear and yell, but this was on a different level.

30 **MR GISONDA:** Had these AWU officials done anything wrong, from your
observation?

MR M. O'BRIEN: No.

35 **MR GISONDA:** And you said that they had entered site fully complying with all
the requirements and procedures. Was that typical of AWU officials seeking entry
onto site?

40 **MR M. O'BRIEN:** Every - every - every engagement with AWU was
professional and appropriate that I've ever had with their members.

45 **MR GISONDA:** Now, you say that, as it happened, there was an occasion where
you overheard Mr Atutolu speaking on the phone - this is at paragraph 41 of your
statement - and you say that you could overheard him say - you overheard him say
on the phone that - well, he described himself as the head of the Youth Crew. Is
that what you heard?

MR M. O'BRIEN: Yeah, that was amended, so it wasn't on the phone. It was a very bizarre - bizarre incident. I actually, at that Coles in this particular instance - so at another time, I can't recall when the date was, I actually was getting my hair cut, sitting right next to Mr Atutolu, and he was telling the barber
5 all about his role within the Youth Crew and how he led the Youth Crew and was talking about his influence over the Youth Crew, yes. And if he had noticed me next to him, he would've said something or told me to get lost in no uncertain terms, but for some reason he was so caught up in the conversation he didn't realise I was sitting next to him.

10

MR GISONDA: And the effect of what you overheard him say to his barber was that he was in charge of the Youth Crew?

MR M. O'BRIEN: Yep.

15

MR GISONDA: And you said that if he had seen you, he would've told you to get lost in no uncertain terms. Why do you say that?

MR M. O'BRIEN: Because nearly every interaction I ever had with Richie was
20 either him giving me the finger or telling me to eff off.

MR GISONDA: And so does that mean that even if you just came across him on site, he would just say that to you or give you that gesture?

MR M. O'BRIEN: Correct. So there was periods where I would be based at, say, the Gabba site where he was working, and probably - I'd see him every day for three weeks. 75 per cent of the time he'd either tell me to eff off or give me the
25 finger. And my response was always, "Good morning, Richie," or, "Good afternoon, Richie," just to make sure I didn't show any reaction to it.

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COMMISSIONER: And this was at a point at which he'd been recommended by the union for direct employment by CPB as an HSR to deal with the safety issues on site?

MR M. O'BRIEN: Yes.

MR GISONDA: And what can you say, if anything, about your observations in relation to his involvement in pre-start meetings on site?

MR M. O'BRIEN: So my observations was that there were two different pre-start meetings each morning. So whether, you know, the times varied, whether they were 6.30 or 6 or something like that. There were two. There was the one that happened in the general area outside the cribs that were run by CPB direct hire supervisors, which I would attend with safety, and there would be some
40 CPB direct hire, mostly non-CFMEU members, and other contractors, plumbers and stuff like that. And there would be the large crib room right next to that, which held about 50, 75 employees. That would be a - so this is - I got told not to
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go into that crib room, because that was Richie's domain. He ran that induction. And I never witnessed another IR adviser enter that crib room in a pre-start. I don't - not necessarily because we were worried about our personal safety, but, you know, if we walked in there, we were worried they would - well, you know, 5 you walk off site and take everyone with them.

MR GISONDA: And was this a - were these pre-start meetings that Mr Atutolu were running separate to the - if I can call it CPB pre-starts - was that happening on a daily basis? 10

MR M. O'BRIEN: Daily basis, and not necessarily separate, because there would have been CPB direct hire in there that were members of the CFMEU, so it got sort of segregated that way.

COMMISSIONER: Segregated what way? I don't follow, sorry? What was in your start-up meetings and who was in - 15

MR M. O'BRIEN: So it would've been direct hire CPB workers that weren't CFMEU members. 20

COMMISSIONER: In your start-up meeting?

MR M. O'BRIEN: Correct.

COMMISSIONER: And in his start-up meeting? 25

MR M. O'BRIEN: Were CFMEU members, CPB direct hire and other CFMEU-affiliated subcontractors.

MR GISONDA: Is it the case that those people in Mr Atutolu's pre-start meeting were effectively refusing to be part of your pre-start meeting and would only attend a pre-start meeting if Mr Atutolu was running it? 30

MR M. O'BRIEN: I couldn't say. I couldn't say, because I never got near those pre-starts. 35

MR GISONDA: Did it strike you as strange that two separate pre-starts were occurring each morning on the site?

MR M. O'BRIEN: Yes. 40

COMMISSIONER: Had you ever seen that before?

MR O'BRIEN: I have not seen that on the other sites before. It would be common practice to say UDL, direct hire workers, to have their own pre-start, but with the CPB workers, they do get segregated by probably the area you work. You know, you might be CPB who are affiliated with - doing formwork and other 45

ones that are doing, you know, loading, forklifting. But segregated in that manner: yes, unusual.

5 **MR GISONDA:** This seems to be a segregation based on union affiliation.

MR M. O'BRIEN: That was my impression.

10 **MR GISONDA:** Was there an incident at one of these pre-starts where Mr Atutolu made some comment about you when he saw you near the pre-start?

MR M. O'BRIEN: Yes, that's accurate.

MR GISONDA: And can you tell the Commissioner what happened there?

15 **MR M. O'BRIEN:** I was warned by the - that day it was a bit of a bizarre incident where I was warned by the superintendent of the Gabba site at that time that if the CFMEU were to come on site, that I was to make myself scarce and not be near them, or at least be far enough away from them, not to be - not to give the impression that I was trying to get involved in anything they were doing, which I
20 found very bizarre. So I exited that discussion. I walked down the - the stairs from the main offices, which was one up, you know, up to level 1, this was the ground level, and I went out to the open area outside the crib where the pre-start would normally happen, and I just happened so that when I hit the bottom of those stairs I was standing right next to Mr Atutolu, who was talking to the workers at
25 that pre-start that he's not normally at.

And he turned around to me and said, "What the eff are you doing here?" And my response was, "Well, it's pre-start." And he said, "Hey, guys, this is the guy that killed that 17-year-old guy," and everyone at that pre-start started jeering,
30 yelling - I can't recall exactly what it was saying, but it was like, yeah, yeah, yeah, yelling at me. I didn't take it personally. I just believed that they were doing what they were told to do. And I said - I gave the thumbs up to Richie and said, "See you later," and walked up the stairs again and then waited for that pre-start to disperse before returning.

35 **MR GISONDA:** And do you know what the reference was to the 17-year-old?

40 **MR M. O'BRIEN:** There had been - this is my belief - my understanding, there had been a death just recently prior to that of a - a young male, not on a CPB site at all. He may have been there for legitimate purposes. He may - Richie Atutolu may have been there just talking to the workers about that. I'm not sure why he was there at the time. But I believe that's what it was - his words about me, that's what it was in reference to.

45 **MR GISONDA:** But that incident had nothing - actually had nothing to do with you?

MR M. O'BRIEN: Absolutely.

MR GISONDA: And then -

5 **MR M. O'BRIEN:** And I believe everyone there knew that, too.

MR GISONDA: Now, one of the other direct hires was a man by the name of Sean Korostovetz, that is, someone who was brought on as a direct hire following the safety reset. Do you remember Mr Korostovetz?

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MR M. O'BRIEN: Yes.

MR GISONDA: And there were allegations made about his conduct in 2024. Do you remember that?

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MR M. O'BRIEN: I do.

MR GISONDA: And you were tasked with investigating those allegations?

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MR M. O'BRIEN: I was.

MR GISONDA: And there was a discussion or debate occurring between and the nature of those allegations is set out at page 2 of the bundle to your statement. Do you have that in front of you?

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MR M. O'BRIEN: I've got it, yep.

MR GISONDA: And the allegation was that there had been a meeting on the Albert Street site between Workplace Health and Safety representatives and CFMEU organisers Dean Mattas, Corey Taylor and Mr Korostovetz?

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COMMISSIONER: (Indistinct).

MR GISONDA: Sorry, page 2 of the bundle to Mr O'Brien's statement. Yes, that's the statement and then there's a bundle of documents accompanying the statement. It's page 2 of that bundle. Yes. And so paragraph 1 is that there was a meeting involving WHSQ and CFMEU organisers, as well as Mr Korostovetz. Did you have any involvement in that meeting yourself?

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40 **MR M. O'BRIEN:** I was present.

MR GISONDA: You were present at that meeting with WHSQ?

MR M. O'BRIEN: I was.

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MR GISONDA: And there was a discussion or debate occurring between WHSQ and the CFMEU about dust masks; is that right?

MR M. O'BRIEN: Dust masks and dust signs.

MR GISONDA: Dusk masks and dusk - musk - dust signs?

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MR M. O'BRIEN: Yep.

MR GISONDA: And the allegation then was that Mr Korostovetz - this is at paragraph 4 - attempted to get the WHSQ inspector to visit an area known as B7?

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MR M. O'BRIEN: Yes, I directly witnessed that conversation.

MR GISONDA: And what was the B7 area?

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MR M. O'BRIEN: It was one of the levels down towards the platform where work was being undertaken.

MR GISONDA: And so Mr Korostovetz was trying to get the inspector to go into that area?

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MR M. O'BRIEN: Yep.

MR GISONDA: And what was the inspector saying to that?

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MR M. O'BRIEN: There was a female inspector. She said that she wanted to resolve because there were a number of different areas of contention across the site that they were talking about the dust masks and signs, not just B7, and that she wanted to resolve the other matters before returning to B7.

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MR GISONDA: And what happened then, once she said that to Mr Korostovetz?

MR M. O'BRIEN: He was then quite insistent that she do go down to B7, at which time once again she said no, that will be revisited. At that point, the CFMEU officials, all the supervisors present and all the other workers present - because there was Workplace Health and Safety, myself, supervisors; there would've been subcontractor supervisors - returned to the - one of the training rooms back up the top of the site to review paperwork, because part of the contention was that the correct training wasn't being undertaken.

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MR GISONDA: And then what was the allegation about what Mr Korostovetz did next?

MR M. O'BRIEN: The allegation was that Mr Korostovetz went down to B7, the area that he had been wanting Workplace Health and Safety to come down to, and flipped over signs, deliberately flipped over signs, a plant operating sign, a dust mask sign and another little sign that basically details what work's undertaken and a contact number for the, say, relevant supervisor to contact if you want to ask any

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questions. So, yes, so that was the allegation, that someone had witnessed him do that.

5 **MR GISONDA:** And you were then - as you said before, it was your responsibility then to conduct an investigation into those allegations?

MR M. O'BRIEN: Yes.

10 **MR GISONDA:** And in doing so, you speak to relevant witnesses; is that right?

MR M. O'BRIEN: That's right.

15 **MR GISONDA:** And you look at any relevant documents or videos that might be on hand?

MR M. O'BRIEN: Correct.

20 **MR GISONDA:** And on this occasion, you in fact did look at a video which was CCTV footage of Mr Korostovetz leaving the B7 area; is that right?

25 **MR M. O'BRIEN:** No, the video was him returning to the turnstiles. So there was two parts of that. So in the meeting with Workplace Health and Safety, say myself and the supervisors noticed he wasn't present. Didn't think anything of it at the time, not until we started getting reports during that meeting of those particular allegations. And the video footage shows or demonstrates that Mr Korostovetz returned a long, lengthy time on - off the site to the training room, a long time after that meeting had commenced.

30 **MR GISONDA:** And so what did that tend to show?

MR M. O'BRIEN: It showed that he wasn't present in that meeting and was on site during that meeting.

35 **MR GISONDA:** And this was a meeting to do with, primarily, safety, and he was at that time the union-nominated HSR -

MR M. O'BRIEN: Correct.

40 **MR GISONDA:** - for that site. And after you'd looked at the video and spoken to witnesses and all that sort of thing, you considered all the material and then made a recommendation?

MR M. O'BRIEN: Correct.

45 **MR GISONDA:** And the recommendation, first of all, was based on your finding that those allegations had been substantiated?

MR M. O'BRIEN: Correct.

5 **MR GISONDA:** And can I just take you to page 10 of your bundle. When you - towards the top of the page, when you asked him to respond to the allegations, he said to you the matter is before the court so he will not be making a comment so as not to incriminate himself?

10 **MR M. O'BRIEN:** Correct. I asked him a number of questions, and that was his response to every question.

MR GISONDA: And the proceedings that were before the court is that having been suspended pending this investigation, he'd brought a protected action claim in the Circuit Court?

15 **MR M. O'BRIEN:** He'd been suspended on pay. Yes, correct. And then put a general protections claim in.

MR GISONDA: And then do you see the next paragraph? It says:

20 "In terms of character, feedback is that the respondent [that is, Mr Korostovetz] is often aggressive and argumentative and confrontational when it comes to matters of interest to the CFMEU. He will at times swear at workers and staff, which has been described as intimidating. The respondent
25 also seems to have an influence over workers when it comes to matters of the CFMEU."

Where did that feedback come from, do you recall?

30 **MR M. O'BRIEN:** That comes from feedback from supervisors on the site. Specifically, you've got a number of senior supervisors on sites. Also, my direct witnessing of his behaviour towards supervisors. Now, I will say that Mr Korostovetz himself towards me is quite different again. It seems he was more of a - what do I say - smart aleck to me, rather than the aggressive - aggressive to me, but that he was quite different to other workers, depending on their role.

35 **MR GISONDA:** And your recommendation was that, due to the serious nature of the findings, that he should be terminated, his employment should be terminated?

40 **MR M. O'BRIEN:** Correct.

MR GISONDA: And why did you think his conduct justified termination?

45 **MR M. O'BRIEN:** Because there's a number of reasons. So you start with flipping over those signs actually posed a serious potential of risk, including death of workers had they entered those areas at the time if they didn't see those signs that had been flipped over, which amounted to serious misconduct. So a breach of our code of conduct.

MR GISONDA: You say in fact at page 12 of the bundle, when describing the breach, you say there that he specifically exposed workers to a risk to health and safety in the workplace.

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MR M. O'BRIEN: Correct. Through deliberate actions, yes.

MR GISONDA: Through deliberate actions. So in a word, if we can look at it in this way: you have here a nominated health and safety representative, handpicked by the union, put by the union on the site to act as a health and safety representative, deliberately engaging in unsafe behaviour?

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MR M. O'BRIEN: Correct.

COMMISSIONER: Why was he doing this?

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MR M. O'BRIEN: Because the argument of the CFMEU officials and himself at the time was that the - the dust mask signage for the particular type of work that was being undertaken in these enclosed areas was insufficient and the site should be shut down. CPB disagreed. Our Workplace Health and Safety persons disagreed, because it was a quite technical argument about the different type of dust masks that are required for different type of works in these confined - I wouldn't call them confined spaces, but spaces that are semi-enclosed.

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COMMISSIONER: It's all very well to say the dust mask signs were insufficient, but that - I don't understand the response of removing the signs, insufficient though they may have been, and having no signs at all. It doesn't make any sense to me.

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MR M. O'BRIEN: My understanding is that he wanted to provide evidence that the signage was insufficient for the areas that the workers were working in.

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COMMISSIONER: So he took them away?

MR M. O'BRIEN: I just go on the evidence I was provided. I don't know. I can't - I can't talk to motives.

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MR GISONDA: I think the inference is that he wanted Workplace Health and Safety to go down to B7. He then goes down to B7, turns the signs around, then wants to bring the inspector and down and say, "Look at the breach."

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MR M. O'BRIEN: Yes, correct, sorry. Yes.

COMMISSIONER: I see.

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MR GISONDA: And there's a better - I then want - so his employment was terminated as a result of that?

MR M. O'BRIEN: It was.

5 **MR GISONDA:** And then, just before you left your employment with CPB, you assisted in the investigation of allegations against Mark McKean.

MR M. O'BRIEN: I did.

10 **MR GISONDA:** And Mark McKean was another one of the direct employees who were put on after the safety reset to act as a HSR?

MR M. O'BRIEN: Correct.

15 **MR GISONDA:** And do you recall what site he was based at?

MR M. O'BRIEN: The Roma Street site.

20 **MR GISONDA:** He was at Roma Street. And if I can go to page 31 of your bundle. As part of your assistance of the investigation - and is it correct that a lady by the name of Lucy Harling had primary carriage of that investigation?

MR M. O'BRIEN: She did.

25 **MR GISONDA:** And what was her role?

MR M. O'BRIEN: My understanding was a HR adviser.

30 **MR GISONDA:** But as part of your assistance given to her, you interviewed Mr McKean?

MR M. O'BRIEN: I did.

35 **MR GISONDA:** And at page 31, you - well, beginning at page 32 onwards, you set out what happened in your interview with him, but then back at page 31, you were asked to assist Ms Harling with describing Mr McKean's personality and whether there's been past instances of inappropriate behaviour. Do you see that?

MR M. O'BRIEN: Yes, I do.

40 **MR GISONDA:** And this is very similar to what was said about Mr Korostovetz, but you say that - well, first you say that, in the interview itself, he didn't give you any reason to believe he was being untruthful?

45 **MR M. O'BRIEN:** That's correct.

MR GISONDA: But when it comes to instances of past inappropriate behaviour, you say that the feedback regarding his character suggests a history of aggressive,

argumentative and confrontational behaviour, particularly concerning matters related to the CFMEU, and that there have been past incidents where he has sworn at workers and staff and engaged in intimidating behaviour. And where did you get that feedback from?

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MR M. O'BRIEN: Once again, supervisors. Also, there had been previous complaints lodged against Mark, that had been found substantiated, to swearing at particularly workplace health and safety employees of that site.

10 **MR GISONDA:** So workplace health and safety employees of CPB on the Roma Street site -

MR M. O'BRIEN: Correct.

15 **MR GISONDA:** - had been sworn at by Mr McKean?

MR M. O'BRIEN: Correct.

20 **MR GISONDA:** And did you have any perm dealings with Mr McKean when you went down to the Roma Street site?

MR M. O'BRIEN: Often would deal with Mr McKean. Now, he's - once again, they all have their different personalities. I got on quite well with Mr McKean. He would treat me differently than, say, Workplace Health and Safety, and they sort of describe it as day-to-day dealings with an individual. He was quite nice to me. But if, for some reason, either a CFMEU official was on site or - I say like flicking the switch, the CFMEU part, or they were there for a reason, or targeting something, it would change. He wouldn't be quite as aggressive as other either HSRs, delegates or officials, but he would change and be quite, I'd say, dismissive. He wouldn't be aggressive towards me, no.

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MR GISONDA: And so the reports were that he could be inappropriate and aggressive, certainly to some of the safety employees of CPB?

35 **MR M. O'BRIEN:** Yes.

MR GISONDA: You didn't find that he acted that way towards you on day-to-day dealings?

40 **MR M. O'BRIEN:** No. In official meetings, if I was present, he was quite cordial.

MR GISONDA: But you did notice that, if and when he was there with a CFMEU official, he would - his behaviour would change?

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MR M. O'BRIEN: Yes.

MR GISONDA: And he would put on a bit of a performance -

MR M. O'BRIEN: Yep.

5 **MR GISONDA:** - for the officials; is that fair?

MR M. O'BRIEN: Correct.

MR GISONDA: And if we -

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MR M. O'BRIEN: And the reason I was interviewing him is because IR advisers, so the four of us, if there was a HSR, because they can be quite difficult to deal with, we'd be asked to interview on behalf of HR, because we've got that relationship; we're used to dealing with them.

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MR GISONDA: And at that bundle number 4, Commissioner, I just point out that at page 2 is the investigation report into Mr McKean. There is a version in Mr O'Brien's statement, but the version in this bundle is the final version, but accidentally a draft went in Mr O'Brien's version. But were you still with CPB, Mr O'Brien, when a decision was made to give Mr McKean a first written warning for that inappropriate language?

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MR M. O'BRIEN: Yes.

25 **MR GISONDA:** No further questions, Commissioner, and there's no application to cross-examine.

COMMISSIONER: No cross-examination? What do you want to do with this bundle?

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MR GISONDA: I'll leave dealing with that until the morning. There might be a further mistake with it, so I'll -

COMMISSIONER: Sorry?

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MR GISONDA: I'll deal with it in the morning, but Mr O'Brien can be excused.

COMMISSIONER: Thank you for your evidence, Mr O'Brien. You're excused.

40 **MR M. O'BRIEN:** Thank you.

<THE WITNESS WAS RELEASED

COMMISSIONER: Mr Ford?

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MR FORD: A matter of housekeeping. I don't want to interrupt Mr O'Brien. The document that Mr Sanfilippo - sorry, his redacted report, which is VS-22, an

unredacted copy of which has been shared amongst counsel - forgive me if I'm not familiar with the practice that has been adopted to date -

5 **COMMISSIONER:** Well, we're all learning as we go, Mr Ford, so -

MR FORD: I wonder if, Commissioner, you wouldn't make an order that that not be disclosed beyond counsel.

10 **COMMISSIONER:** Which document are you talking about? The 154-page full report in the unredacted form?

MR FORD: Yes, yes. There may also be an unredacted shortened version as well.

15 **COMMISSIONER:** I see.

MR FORD: So I think there's two unredacted versions that have now been shared just amongst counsel.

20 **COMMISSIONER:** I wouldn't normally make an order in relation to counsel, given the understandings as between counsel, but if it's pressed, perhaps we can deal with it tomorrow. There's no urgency.

25 **MR FORD:** There's no urgency, no.

COMMISSIONER: Then let's deal with it first thing tomorrow, and perhaps have a talk to Mr Gisonda and the other counsel about it.

30 **MR FORD:** Certainly.

MR GISONDA: Well, there's no problem with any other counsel having it, because they've already seen the document. It's really Mr O'Grady. So Mr O'Grady, I think, has two copies, and I'll discuss with Mr O'Grady how he wants to deal with that overnight.

35 **COMMISSIONER:** Very well. Anything else? We'll adjourn till 10 am tomorrow morning.

40 **<THE HEARING ADJOURNED AT 3.56 PM**