



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

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

**PUBLIC HEARING
FEDERAL CIRCUIT AND FAMILY COURT**

**THURSDAY, 12 MARCH 2026
AT 10.00 AM**

DAY 12

APPEARANCES

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

<THE HEARING COMMENCED AT 10.00 AM

COMMISSIONER: The appearances remain the same as yesterday?

5 **MR WHEELAHAN:** Yes, Commissioner.

COMMISSIONER: Mr Wheelahan, we are interposing the doctor, and Mr Hayes, I see, is in the back of the courtroom.

10 **MR WHEELAHAN:** Commissioner, overnight, the State of Queensland received a communication that Mr Cappelletti can give evidence in person with appropriate supports in place. I don't know what the latter part of that sentence means, but you can put that aside for one moment. Dr Ansell has been informed -

15 **COMMISSIONER:** Who did that communication come from?

MR WHEELAHAN: Counsel to the direct lawyer's email address that's been set aside for communications to the Commission.

20 **COMMISSIONER:** Is that you, Mr -

MR DE JERSEY: It came from me, Commissioner, and I can explain what appropriate safeguards mean if that assists the Commission. I spoke with Mr Cappelletti and at some length yesterday afternoon, and Mr Cappelletti informed me that in particular Mr Smith, who is sitting to the left of Mr Wheelahan, and he had previously had some differences and that Mr Cappelletti found in particular Mr Smith's demeanour to be very helpful and warm and soothing, and he found one of the supports that would assist him in preparing to give evidence under the stressful situation of reliving the events which he has previously lived would be to have a session with Mr Smith in advance.

Very kindly, Mr Gardner has informed us this morning for the State that that can be arranged and that's to be facilitated at half past 3 this afternoon. But I was the author of the email, and I'm happy to tender a copy if that's -

35 **COMMISSIONER:** If you want to and Mr Wheelahan want to, I don't have any objection to it. I don't think I need it, but if you want to.

40 **MR DE JERSEY:** I think I will, actually.

COMMISSIONER: Yes.

MR WHEELAHAN: Before - can I review that email to see if there's any objection to the tender.

45 **COMMISSIONER:** You may. I don't know what the objection would be, but -

MR WHEELAHAN: Well, I need - and I haven't read it in full.

COMMISSIONER: I understand.

5 **MR WHEELAHAN:** Whilst that's being looked for, I should just put on the record that the calming, soothing nature of my learned junior is not in counterpart any denigration of my style, because I have not met Mr Cappelletti ever, or have I spoken to him.

10 **MR DE JERSEY:** I didn't raise it in that way, Commissioner. What I was seeking to identify is that the experience of giving evidence regarding Mr Cappelletti's experiences as an employee itself will cause him to relive those experiences, and so to prepare him to give that evidence without causing him further harm or to worsen his condition was something that I was - and Crown Law was very intent on doing,
15 and that's the process which has been gone through in order to facilitate this Commission's work.

COMMISSIONER: I understand.

20 **MR WHEELAHAN:** Look, perhaps we can deal with the letter over the break, because it appears there are not copies floating around at this time.

COMMISSIONER: Is that a convenient course, Mr de Jersey?

25 **MR DE JERSEY:** Yes, thank you.

COMMISSIONER: So do I take it that Dr Ansell is now no longer required for cross-examination?

30 **MR WHEELAHAN:** Correct.

COMMISSIONER: And do I take it from what Mr de Jersey has just said that Mr Cappelletti, after the soothing treatment of Mr Smith, will not be available for cross-examination today - sorry, for examination-in-chief today?

35 **MR WHEELAHAN:** Correct. Mr Smith will be on his feet today for most of the day, so he won't have time to give that treatment.

COMMISSIONER: Right. So what do you propose to do with Mr Cappelletti?

40 **MR WHEELAHAN:** I will deal with that. There are a few matters I want to deal with arising from -

COMMISSIONER: Sorry, I should let you speak rather than interrupting all the
45 time.

MR WHEELAHAN: Yes, what I was going to say is that the Commission's schedule has been interrupted by these issues arising from the failure of Mr Cappelletti to attend pursuant to a lawful notice issued under the Commissions of Inquiry Act. What we will do is serve a new -

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COMMISSIONER: I thought you adjourned the summons.

MR WHEELAHAN: We did, but that was because prior to that, as I stated, we were sympathetic to the correspondence from solicitors for the Crown.

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MR DE JERSEY: I'm sorry, Commissioner. I need to tender another document, because a suggestion was made that Mr Cappelletti did not appear in response to a notice from the Commission. That's not true, and I tender an email from the Commission sent on 9 March, Monday, at half past 12 - I'm sorry, it's daylight saving time; I think it's 1.30 - which I have copies of.

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COMMISSIONER: Do you want to just look at that?

MR DE JERSEY: The email reads:

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"Mr Cappelletti is now excused from compliance with this notice."

So he did not, not attend in compliance with a notice that was issued by the Commission at all.

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COMMISSIONER: That was my understanding.

MR WHEELAHAN: Yes. Look, for the record, corrected, object to saying it is not true. Let me put it in more context. I don't want to have to tender the whole series of emails leading up to that withdrawal. What was clear is -

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COMMISSIONER: You are free to do what you -

MR WHEELAHAN: I will put on the record it was withdrawn because there was communications from the solicitors that instruct Mr de Jersey raising this issue that he wasn't able to attend. And, in fact, Commissioner, you read out the very letter, I think it was 6 March, from the solicitors, advocating why Mr Cappelletti could not attend. And this email is 9 March.

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COMMISSIONER: I think I did more than read it out. It didn't go into evidence, that letter, 6 March?

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MR WHEELAHAN: I think it should now. I didn't think it necessary. I talked about tendering it. I thought all these matters were resolved, but now that Mr de Jersey -

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COMMISSIONER: Don't worry about (indistinct) each other. Just tell me what you want to do.

MR WHEELAHAN: Well, I will proceed. I will proceed.

5 **COMMISSIONER:** What do you want to tender? Mr de Jersey wants to tender an email, and you want to tender the email that comes immediately before.

MR WHEELAHAN: Yes. The email I referred to yesterday. What date is it?

10 **COMMISSIONER:** I've got one of 6 March 2026 from Ms Freemantle.

MR WHEELAHAN: Yes if that's the one you read from.

15 **COMMISSIONER:** And that attaches an email from David Cappelletti dated Tuesday, 3 March 2026, 11.44 am, sent to Mr Joel Sleep, and I think I referred to Mr Sleep as the person, the solicitor from Crown Law who witnessed either the swearing or the affirmation of Mr Cappelletti's witness statement.

MR WHEELAHAN: Yes.

20 **COMMISSIONER:** So is that what you wish to tender?

MR WHEELAHAN: Yes. Does that include the - sorry I don't have that in front of me - the email chain -

25 **COMMISSIONER:** My document has email of - sorry, letter, 6 March 2026 from Ms Freemantle to me attaching email from Mr Cappelletti of 3 March '26 to Mr Sleep, which itself attached - sorry, which letter also attaches a medical certificate of 5 March 2026, which I think has already gone into evidence.

30 **MR WHEELAHAN:** CA-3 has been tendered already.

COMMISSIONER: The certificate has?

35 **MR DE JERSEY:** The certificate has. I can't get you the number of that, but I'm sure that has been. The email I think has been as well.

COMMISSIONER: Which email of 3 March.

40 **MR DE JERSEY:** The certificate CA-2, the email of 6 March is CA-3.

COMMISSIONER: CA-3, I thought it had gone into evidence.

45 **MR DE JERSEY:** There was a letter as well, and, Commissioner, you very helpfully did not read out parts of that letter, for reasons which you are aware of.

COMMISSIONER: You just have to tell me about the email which is CA-3. I've got a letter of 6 March, but you say it's an email of 6 March.

MR DE JERSEY: The first email in the chain is from Mr Geraghty, and then the second email in the chain is from Mr - it doesn't say. It commences:

5 "Dear Jack, please note our responses below regarding a statement of Mr Hayes."

COMMISSIONER: Yes, I recall that one.

MR DE JERSEY: And the relevant material is over the page.

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COMMISSIONER: So the letter of Ms Freemantle of 6 March 2026 is not in evidence.

MR DE JERSEY: Correct, Commissioner.

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COMMISSIONER: And the email of Tuesday, 3 March, from Mr Cappelletti to Mr Sleep is not in evidence.

MR DE JERSEY: That's so.

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COMMISSIONER: And do you want to tender those two documents, Mr Wheelahan?

MR WHEELAHAN: Very grateful for my learned friend's assistance. Yes.

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COMMISSIONER: As one or two?

MR WHEELAHAN: One is fine.

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COMMISSIONER: So letter 6 March 2026 from Helen Freemantle to Stuart Wood KC Commissioner CFMEU Commission of Inquiry enclosing two other documents, email David Cappelletti to Joel Sleep, Tuesday, 3 March 2026 at 11.44 am and medical certificate, 5 March 2026, to whom it may concern from Dr Sonia Ansell, will be CA-4, is that right?

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MR WHEELAHAN: Yes.

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<EXHIBIT CA4 LETTER 6 MARCH 2026 FROM HELEN FREEMANTLE TO STUART WOOD KC COMMISSIONER CFMEU COMMISSION OF INQUIRY ENCLOSING EMAIL DAVID CAPPELLETTI TO JOEL SLEEP, TUESDAY, 3 MARCH 2026 AT 11.44 AM AND MEDICAL CERTIFICATE, 5 MARCH 2026, TO WHOM IT MAY CONCERN FROM DR SONIA ANSELL

COMMISSIONER: Now, you wanted to tender something as well.

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MR DE JERSEY: Yes, Commissioner. I tender an email from counsel assisting to Ms Bennett from Ashurst, Ms Smith from Ashurst, Ms Helen Freemantle from

Crown Law and Mr Joel Sleep, copied Mr Christopher Gardner, Lauren Trickey, Jack Kerin, and the legal email address, and it reads:

5 "Dear Ms Bennett, Ms Smith, Ms Freemantle and Mr Sleep. On 4 March 2026 the Commissioner issued notice 26167, a notice to attend and give evidence addressed to Mr David Cappelletti. Mr Cappelletti is now excused from compliance with this notice. Yours faithfully."

10 **MR WHEELAHAN:** For the record, it's important, counsel assisting you should continue Genevieve Feely, because I don't want it being misunderstood by those listening to the broadcast that it's me.

COMMISSIONER: That what is you, sorry?

15 **MR WHEELAHAN:** That it was me that sent that email.

COMMISSIONER: Right. Okay. Well, I'm sure the email will speak for itself, and it will go up on the webpage as one of the exhibits.

20 **MR WHEELAHAN:** Correct, and I'm just amplifying that because it was omitted.

COMMISSIONER: So is there any other objection to - I don't have to copy of that, Mr de Jersey. Is there any other objection to the tender of the email that Mr de Jersey just described? No? All right. Is that CA-5?

25 **MR WHEELAHAN:** Yes, Commissioner.

COMMISSIONER: It's not CA-5, is it? It's really - how will I describe you, Mr de Jersey? Do I call that DJ-1?

30 **MR DE JERSEY:** Yes, Commissioner, thank you.

35 **EXHIBIT DJ-1 EMAIL FROM COUNSEL ASSISTING TO MS BENNETT FROM ASHURST, MS SMITH FROM ASHURST, MS HELEN FREEMANTLE FROM CROWN LAW AND MR JOEL SLEEP, COPIED MR CHRISTOPHER GARDNER, LAUREN TRICKEY, JACK KERIN, AND THE LEGAL EMAIL ADDRESS**

40 **COMMISSIONER:** All right. Was there any other -

MR DE JERSEY: I mentioned, Commissioner, another email chain, the one that I sent to counsel assisting, who are next to me, Mr Smith and Mr Wheelahan yesterday afternoon at half past 5, and a response from Mr Jack Kerin on behalf of the Commission at 6.04 pm. I don't have a written copy of that, but I'm having one brought her. But I can read it out or not.

COMMISSIONER: Deal with it after the morning break, if you want.

MR DE JERSEY: Thank you.

5 **COMMISSIONER:** I'm not preventing you from reading out if you want to, if it's important to you.

MR DE JERSEY: Well, it does complete the picture. I will, if it pleases the Commission. I wrote:

10 "Dear Patrick and Alastair. As mentioned this afternoon, correspondence was sent to Crown Law on Monday afternoon at half past 1 by counsel assisting notifying that Mr Cappelletti is now excused from compliance with this notice. In the
15 circumstances, the necessity for evidence to be interrogated regarding Mr Cappelletti's health information was a matter that was new to me when it was announced in the hearing on 10 March. I have spoken with Mr Cappelletti this
20 afternoon. I spoke in particular with him about means available to manage his condition, such as alertness to the possibility of additional breaks during the day if the process becomes too much for him. Mr Cappelletti let me know following my discussion with him this afternoon in particular that he finds Alastair's manner to be
25 particularly calming and soothing and that a preparation session with Alastair would be welcomed if it can be arranged. In these circumstances Mr Cappelletti has informed me this afternoon that he can give evidence in person with appropriate supports in place. Could you please let me know when Mr Cappelletti is expected to be called and confirm as soon as possible that you have let Dr Ansell know that she is no longer required."

But then Mr Kerin emailed me about half an hour later:

30 "Thank you for your email. We can accommodate Mr Cappelletti with a preparation session with Mr Smith on Friday, 13 March 2026. This is with a view to him giving evidence on Tuesday, 17 March '26. However, Mr Smith is unavailable on Tuesday, and therefore Mr Wheelahan KC will take Mr Cappelletti's evidence. On the
35 assumption that Mr Cappelletti will be in a position to give his evidence next Tuesday, 17 March, Dr Ansell will no longer be required and we will let her know of this as the next step. Kind regards."

COMMISSIONER: All right. Well, you will attend to that. And do you want to be heard at that point after the break as to the tender of that email chain,
40 Mr Wheelahan?

MR WHEELAHAN: No. No objection.

COMMISSIONER: All right. Well you can just tender that after the break.

45 **MR DE JERSEY:** Thank you, Commissioner.

COMMISSIONER: And when you tender it, it will be DJ-2, unless something else comes up in the meantime. So that takes us back to Mr Cappelletti not being available today because of Mr Smith's availability and the necessity for Mr Smith to proof him. So what are we going to do with Mr Cappelletti?

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MR WHEELAHAN: The view expressed in that email of calling him on Tuesday will not occur.

COMMISSIONER: Why is that?

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MR WHEELAHAN: Because next week's hearing blocks, we have - the Commission has already scheduled witnesses with respect to a case study being led by Mr Gisonda of Senior Counsel.

15 **COMMISSIONER:** What is that case study?

MR WHEELAHAN: Cross River Rail. I've made inquiries whether he can be interposed, but I'm informed that the answer is no.

20 **COMMISSIONER:** So Mr Cappelletti is off till, what -

MR WHEELAHAN: We haven't had time to - I don't know is the answer.

COMMISSIONER: So at some point, but not next Tuesday.

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MR WHEELAHAN: At some point. Not next Tuesday. Not next week.

COMMISSIONER: Well, that sounds like in answer to the question I asked about 10 minutes ago, there will be a need to serve a new notice on Mr Cappelletti when the date that he is required to give attendance is determined.

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MR WHEELAHAN: Correct, which, Commissioner, is where I was at with my morning submission. We will serve a new notice at the appropriate time requiring Mr Cappelletti's attendance to give evidence in person. We'll advise the State of Queensland as to when he will be called, having regard to the existing commitments of the Commission, and as I've noted, it can't be done next week because the Commission has already scheduled other witnesses for that hearing week.

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COMMISSIONER: Maybe you will speak to Mr Gisonda and see if he can be snuck in at the end of Wednesday or Thursday, something like that.

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MR WHEELAHAN: Yes, Commissioner, I will speak to Mr Gisonda. I just want to make a few remarks about this issue, which has been problematic for the Commission. Apart from the rescheduling of his attendance, Mr Cappelletti's, that is, before this Commission, the State's position with respect to advocating for Mr Cappelletti to not give evidence in person this week as was originally planned -

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COMMISSIONER: Why do you say the State's position was advocating for Mr Cappelletti to not give evidence?

5 **MR WHEELAHAN:** It's in the letter that you read out from the solicitors advocating, which was prior to, as I said, the Commission treating it with some sympathy.

COMMISSIONER: The letter of 6 March.

10 **MR WHEELAHAN:** Correct.

COMMISSIONER: Which is CA-4.

15 **MR WHEELAHAN:** Correct.

COMMISSIONER: Right.

MR WHEELAHAN: Now -

20 **COMMISSIONER:** It actually goes a bit further than that, though, doesn't it, because - this isn't in correspondence anywhere, but not only whatever you make of that letter occurred at some point subsequent to that, someone from the Crown Solicitor's office, Crown Law, however you describe it, instructed Mr de Jersey and Ms Brooks to make an application on behalf of Mr Cappelletti - I shouldn't say on
25 behalf of; that's not correct - made an application on behalf of the State to have Mr Cappelletti excused, at least on a temporary basis.

MR WHEELAHAN: Yes. Yes, Commissioner, that is correct. Beyond the mere, as I've characterised a long letter, form of advocacy, you are correct.
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COMMISSIONER: I think those were the two issues I raised with Mr de Jersey yesterday.

MR WHEELAHAN: You did. You did. Now, I've reflected on those issues that you
35 raised, and let me put it this way. And I need to give an analogy to then put to you, Commissioner, what I propose to do if this happens again through the State. Let's say, for example, there's a large corporate bank and through its board it determined to investigate complaints of widespread sexual harassment or a culture of bullying and harassment in one of its significant business units. In so doing, it engages lawyers to
40 undertake an investigation in order to shine a light on the matter and ensure that all relevant persons came forward so a full and proper investigation could be carried out and, of course, a report then provided to the board so that responsive and remedial action could be considered by the board.

45 It would be an extraordinary position, in my submission, if those very lawyers so instructed and engaged to assist the bank, were then to shepherd relevant persons not to give evidence or participate in such investigations in circumstances where their

expression instructions from the board are to undertake those investigations into widespread bullying and harassment.

5 **COMMISSIONER:** I understand the analogy, but what do you want me to - what do you want to do about it all? I mean, this has occurred. It has been resolved. No one from the Crown Solicitor's office has been cross-examined. We could be wrong about what our interpretation of the instructions given to the Crown Solicitor's office were. They could be acting completely conformally with those instructions.
10 Mr de Jersey says the instructions - just ask him to confirm. My note of yesterday was - I might have got this wrong.

MR DE JERSEY: You asked me three questions, and I answered affirmatively to each of them. The thrust was is your client instructed to assist this Commission? And it is. I can put it plainly on the record that if I discerned a hint, a hint of any
15 opposition to this Commission's working done thoroughly, I would return my brief. It's as simple as that.

COMMISSIONER: I don't think anybody -

20 **MR DE JERSEY:** There is no suggestion and there can be no suggestion that the Crown Solicitor is doing anything other than complying with the Crown Solicitor's instructions. It's as simple as that.

COMMISSIONER: Well, I think that's a separate question. I don't think there is any
25 suggestion that you or Mr Wilson or Ms Brooks are not acting conformally with instructions. I think the suggestion Mr Wheelahan was raising is whether there has been some glitch whereby the instructions from the Crown have somehow not been fully complied with by the Crown Solicitor. And what I'm saying to Mr Wheelahan is that may be the case, it may not be the case, but Ms Freemantle hasn't given the
30 opportunity to say anything about it. This issue has been resolved. I mean, what are we - the doctor hasn't been called. Hasn't been cross-examined. No questions were asked about the doctor about what she was told by people from the offices of the Crown Solicitor. I mean, do I make of all of this?

35 **MR DE JERSEY:** All of that is true, and one would have thought if these sorts of allegations were to be made against solicitors that notice would have been given of them. But the first notice I had, as was revealed by my email, was during the hearing on Tuesday. And so if there was to be a suggestion put that a solicitor is not properly performing her duty as a solicitor, then there should have been notice of that and
40 there wasn't. I dealt with these issues as best I could with no notice.

COMMISSIONER: There's no criticism of - I don't know in relation to whom you are answering, Mr de Jersey. You are answering in relation to the State, in relation to yourself, or in relation to the Crown Solicitor?
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MR DE JERSEY: All of them.

COMMISSIONER: All of them?

MR DE JERSEY: Yes.

5 **COMMISSIONER:** Well, each of them has separate interests.

MR DE JERSEY: They do.

10 **COMMISSIONER:** And the point of the exploration of these issues yesterday was to attempt to understand, to try and get to the bottom of, the question of whether the Crown Solicitor, in doing what the Crown Solicitor did, in two ways, both of which have not been fully explored, was consistent with the instructions that one would expect. I'm not in a position, Mr Wheelahan is not in a position to know what those instructions are. What I'm saying to Mr Wheelahan is if you want to take this any
15 further, and I can't see the point of taking it any further, but if you want to take this any further, then those - conformally with what you have just put to me, Mr de Jersey, then those solicitors have got to have the opportunity to be heard about what it is that they understood their instructions to be.

20 Now, in that circumstance, I assume the Crown would not claim privilege, because the Crown would want to know whether its instructions are being carried out fully. It would want to know whether the instructions it has given have been fully understood by those who act on its behalf. But the question I'm asking Mr Wheelahan is, this issue has now been resolved, at least insofar as Mr Cappelletti has suggested, so in
25 circumstances where the officers of the Crown Solicitor haven't been given an opportunity to be heard, unless Mr Wheelahan wants to get up now and say, "I now want to call the doctor, I want to call Ms Freemantle, I want to explore this issue," I don't know exactly how far we can take it.

30 **MR DE JERSEY:** Until after the documents have been tendered and before you heard the address that we heard, I thought the issue had been dealt with. But apparently not. I don't understand what Mr Wheelahan wishes to achieve.

35 **COMMISSIONER:** I think he started off by saying, "I want to explain" - he started off - and he can speak for himself, but I think he started off by saying what he proposes to do in the future. That's what I heard him to say.

40 **MR DE JERSEY:** In the future I can repeat that the instructions Crown Law have and the instructions that counsel instructed by Crown Law have are and will continue to be complied with to the letter.

COMMISSIONER: Well, perhaps we should hear what he proposes to do and then deal with that.

45 **MR WHEELAHAN:** I think it important, firstly, I'm making absolutely no criticism of counsel at the bar table. As counsel, we act on instructions. And, Commissioner, you have correctly identified they've acted on instructions from a solicitor within

Crown Law, which you yourself raised yesterday. It was difficult for you to understand why those instructions would be given when this Commission has been set up by the State and the overriding instructions, as counsel has said, is that they are here to assist the Commission. And you were troubled in trying to understand
5 how it was assisting the Commission by - I'll use the soft term - advocating on behalf of Mr Cappelletti. So there is no criticism whatsoever of counsel. I understand how counsel must operate on their instructions.

10 What I want to do in future, which is right, if this occurs again and there's a notice or summons to attend and give evidence pursuant to section 51A of the Commissions of Inquiry Act, I consider that as counsel assisting I would be obliged to take two steps, and this is to follow Mr de Jersey and ensure procedural fairness: firstly, I think I'm obliged to inform the Attorney with respect to any issues that I form a view about as to the assistance being provided to this Commission by the lawyers instructed;
15 secondly, to cross-examine the lawyer who purports to give any said instructions. And, of course, as Mr de Jersey said, there would be notice of those matters, and he would have the opportunity.

COMMISSIONER: I think you've got it around the wrong way, haven't you? You
20 have to do the second part first. That is, you would have to - if you took some view that you were concerned about the level of support the State was giving this Commission of Inquiry, then you would have to do what you've done here but go further. You would have to tender all the correspondence. You would have to call the people in relation to whom you anticipate the problem. You might have to give them
25 written notice.

It might be enough to do it less formally, but then they might have an opportunity to ask for an adjournment and ask for time and all those sorts of things. But written
30 notice makes it more clear what you are - what your concern is, and at that point you would have to make some decision as to whether you wanted to cross-examine those people. At that point, there would have to be some decision made about whether those solicitors would take the privilege, which is not a privilege they have but a privilege the Crown has, and that might take some time.

35 And at that point when that process has finished, including the process of any re-examination, you would have to make some decision about whether you would make any recommendation to the Attorney and whether you would send the transcript and all the documents to the Attorney, and it might be that before doing
40 that you would have to send it to the persons affected and get their views on what you propose to do before you sent it off to the Attorney. There would be a few steps you would have to take.

MR WHEELAHAN: I accept all of that, Commissioner. I've just put it in bullet
45 point, two of the significant steps. You are correct, and that's the course I will follow,

COMMISSIONER: Your concern as you expressed then - you used the word Shepherd - that you are concerned that witnesses were being shepherded towards not

giving evidence rather than being shepherded towards giving evidence. That's what you said.

MR WHEELAHAN: Yes.

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COMMISSIONER: And that's a legitimate concern, it seems to me, and it would be wrong of you not to deal with that concern if you felt that you weren't getting the full support from the State which you thought had been promised to you. But you've got to do it in a fair way. Is there anything wrong with the process that Mr Wheelahan has just outlined for the future, Mr de Jersey? And you don't have to answer now; you can take instructions and come back.

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MR DE JERSEY: I can't think of any issue with it other than to note that obviously it wasn't followed in this instance.

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COMMISSIONER: How so?

MR DE JERSEY: It obviously wasn't followed in this instance, and in future it should be.

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COMMISSIONER: Which part?

MR DE JERSEY: The process Mr Wheelahan just outlined.

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COMMISSIONER: Which part wasn't followed?

MR DE JERSEY: The notice part.

COMMISSIONER: But there was notice, wasn't there, at least orally?

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MR DE JERSEY: On Tuesday in the hearing.

COMMISSIONER: Does that matter in circumstances where the persons affected are not required for cross-examination?

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MR DE JERSEY: It does, because one of the matters that was raised was the potential solution to the issue, which is for an independent solicitor to be engaged in order to address any health issues that are raised by a witness, that is, the stress of giving evidence that might cause them to decompensate. But if these things are raised in advance, then steps can be taken to address legitimate concerns that are raised by counsel assisting. They can be done by the State. For example, engaging an alternate solicitor. I might note that after you raised that with me, Crown Law then did take steps to identify independent solicitors who could take over carriage.

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COMMISSIONER: Where is the problem? I mean, the reason you give people notice and you say things in writing is so that they can protect their position. Where's the fire?

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MR DE JERSEY: My submission is that if concerns are raised in advance, they can be addressed in advance, and then hearing time won't be wasted with arguments like this.

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COMMISSIONER: Sure. It's better not to have hearing time wasted, but I'm just dealing with the question of fairness. I don't see - sometimes you give people lots of notice. Sometimes you give them no notice. It just depends on the circumstances and where one finds themselves. But the overriding obligation is to treat them fairly and to not make any findings adverse to their interests without giving them the proper opportunity to be heard.

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MR DE JERSEY: But the seriousness - sorry, I interrupted you. But the seriousness of the allegations would, in my submission, be a matter that's relevant to how much notice is given. So the more serious the allegation, the more notice should be given as a matter of fairness.

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COMMISSIONER: No, it's about how much time you have to respond, not how much notice you've got. So it's got nothing to do with it. As long as you are given appropriate time to respond, you can give them one second's notice.

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MR DE JERSEY: I had no notice except for the announcement of it in the hearing on Tuesday is the issue here.

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COMMISSIONER: But things - sorry, I cut you off again.

MR DE JERSEY: No, I had finished.

COMMISSIONER: Things develop. Questions arise. Counsel assisting says something. Questions come from the Commission. Counsel assisting deals with it as best they can and explains the situation. Now, at any point where this happens where someone's interests are going to be affected, people are free to ask for an adjournment to ask for time to make sure that they've got a position to protect their position. But you're not required to give people seven days' notice in writing of things that you might think of at the moment in the hearing. Just grind - everything would grind to a halt. Just not the way it works.

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MR DE JERSEY: The matter that was raised, I'd submit, is not something that one would happen upon during the course of a hearing. It's something that one in private reflection might consider is a matter that has some substance and that ought to be raised, and in that circumstance it's a matter that ought to be raised in advance, clearly. If it's only a day or two, but not during a hearing.

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COMMISSIONER: But this matter arose because there were four witnesses who were planned to give evidence. In Mr Wheelahan's opening this week, in Mr Wheelahan's opening, he indicated there was an issue with one of the witnesses, Mr Cappelletti. He then developed what that issue was. I asked some questions about

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that and I posited some questions from the bench in relation to the timing - sorry, in relation to the programming as to why this witness apparently had been - sorry, why you had been instructed by the Crown Solicitor to make an application on behalf of the State that this witness be excused from giving evidence. That question arose
5 because of the opening that Mr Wheelahan made, which indicated that the program for the witnesses was going to be disrupted.

You hadn't put anything in writing. You hadn't said - and this is no criticism of you - but you hadn't put an application in writing saying the State intends to make an
10 application on behalf of Mr Cappelletti, because these things happen sort of quickly, and you have to be able to deal with them orally in the hearing. And I asked you, I said, do you make - are you making an application? And you said yes. On behalf of whom? The State.

15 And at that point I asked a question about I don't understand how it is that the State can be - sorry, that you could be instructed on behalf of the State to make an application in relation to Mr Cappelletti not giving evidence. That's how it happened. Now, what do you want to do? Do you want to adjourn and then go away and then me to explain what my concerns were in writing? It just wouldn't work.

20 **MR DE JERSEY:** I understand what you're putting to me, Commissioner. The circumstances were that as at lunchtime on Monday this issue seemed to have been resolved at least for this week, at least for this week.

25 **COMMISSIONER:** Lunchtime Monday seems a long time ago. Just remind me what lunchtime Monday was.

MR DE JERSEY: Exhibit DJ-1, the email from the Commissioner saying Mr Cappelletti is now excused from compliance with this notice.

30 **COMMISSIONER:** Yes, and then Mr Wheelahan explained to me why Mr Cappelletti wasn't appearing.

MR DE JERSEY: I understand.

35 **COMMISSIONER:** And then I asked -

MR DE JERSEY: That's a separate issue.

40 **COMMISSIONER:** I can go over it again.

MR DE JERSEY: I understand that's a separate issue, that is, the appropriateness or otherwise of the Crown Solicitor then being instructed to pursue the application.

45 **COMMISSIONER:** I forgot something. What happened was Mr Wheelahan then said Mr Cappelletti has been excused but what he was going to propose to do was call the doctor. And I, in my own mind, I was trying to work out why the doctor was

being called. Was the doctor being called because Mr Wheelahan was making an application or because you were making an application? And it turned out that you were making an application. And your application was based, and I asked you this - when I say "you" I mean the State's application to excuse Mr Cappelletti was
5 based on, you said at that stage, two pieces of evidence: a letter of 6 March, which is now exhibit CA-4 and the medical certificate CA-2.

And at that point I inquired of you as to how it came to be that the State was making this application and how that was consistent with the instructions that I assumed had
10 been given to the State solicitor. That's how it happened. Because it happens in real time. Mr Cappelletti is due to give evidence. He doesn't give evidence. Mr Wheelahan as counsel assisting then decides to do something else, which is test whether or not the basis for Mr Cappelletti not giving evidence is made out. You confirm that you're making an application, that there is a reasonable excuse for
15 Mr Cappelletti not to give evidence.

I can't see what other process we could have engaged in, in the circumstances, other than ignore what was - plainly seemed to be a problem. I could have.

20 **MR DE JERSEY:** In my submission, the other process that could have been followed was if there's a concern regarding the appropriateness of the application being made by the party who made it, that is the Crown Solicitor, that could have been raised in a piece of correspondence in advance which would have then
25 facilitated the Crown Solicitor engaging a separate solicitor so as to remove there being any issue about it at all, and the issue would never have been one that was raised this week.

COMMISSIONER: I don't follow how that would apply, because that issue came up in the running. You see, what had happened was that the - this is what you told
30 me on Monday. The Crown Solicitor had instructed you on behalf of the State to make an application that a witness be excused from giving evidence.

MR DE JERSEY: The application was sent to the Commission last week is the problem. So from that point on - that is, it was actually submitted in writing and that
35 then resulted in exhibit DJ-1, which was the apparent ruling on the application. Anyway.

COMMISSIONER: You will have to show me that correspondence.

40 **MR DE JERSEY:** An email was sent to the Commission applying for Mr Cappelletti's appearance to be excused temporarily based on the evidence, and that then it seems was what prompted exhibit DJ-1 to be sent excusing him temporarily.

45 **COMMISSIONER:** All right. Do you want to show me that?

MR DE JERSEY: I will.

COMMISSIONER: Do you want to do it after the break?

5 **MR DE JERSEY:** I will. But the submission I make simply is that if there's
a concern to be raised about an aspect of how the Crown Solicitor is conducting the
matter on behalf of the Crown, of course it should be put, it will be obviously
considered very carefully and properly, as it should be, and responded to, as I am
seeking to do. But if those matters are raised in correspondence, then they will be
10 addressed as soon as letters arrive. But if they're raised during the hearing, it's more
difficult to respond.

COMMISSIONER: Well, you have got an advantage of being able to test what the
reasons are and test them by reference to the facts of the case. If you do it by
15 correspondence, there can be obfuscation. People's means can be elided. In open
court, everyone sees what is going. We are having this discussion, and
Mr Wheelahan has indicated what his concerns are. You've indicated what your
position is. He has decided not to take the matter any further in relation to his
concerns. I mean, after hearing what you said, he might want to change his position
on that.

20 This is the benefit of an oral hearing in public where the public can see and can make
a decision based on the argument as to what is actually going on. In circumstances
where no findings are made, where people have got the opportunity to deal with any
concerns that are raised about them, I can't think of a better way to do it.

25 **MR DE JERSEY:** Thank you, Commissioner. I've made my submissions.

COMMISSIONER: But you've got the opportunity to put that document that you
want to, I think there are two, that you want to deal with after the break.

30 **MR DE JERSEY:** My email, and then the application for Mr Cappelletti to be
temporarily excused that was emailed last week. I think it was from Ashurst.

COMMISSIONER: Why don't you deal with that after the break.

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

COMMISSIONER: Is that convenient?

40 **MR DE JERSEY:** Yes, it is. Thank you.

COMMISSIONER: Mr Wheelahan.

45 **MR WHEELAHAN:** My learned junior will resume.

COMMISSIONER: Mr Hayes, will you come back into the witness box.

<NOEL SELWYN HAYES, ON FORMER OATH

COMMISSIONER: Mr Hayes, you swore an oath. You still remain under that oath, and Mr Smith will ask you some further questions.

5

MR HAYES: Okay.

MR SMITH: Mr Hayes, do you recall yesterday afternoon when you were giving evidence that I was taking you through the email that you sent to Mr Allen?

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MR HAYES: Yes.

MR SMITH: Mr Operator, could you please bring up exhibit NH-1 to Mr Hayes' statement, page 11, and the last seven lines of that document, please. If you could blow those up. Mr Hayes, could I just ask you to read that to yourself and let me know when you've done that.

15

MR HAYES: Yes.

MR SMITH: Can you just explain what issues you were raising in that part of the email, please?

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MR HAYES: I'm raising the issue about the bullying and intimidation. We've got stakeholders there who are accusing us as working directly for the union. There's a amount of notices issued to the stakeholder we didn't agree with.

25

MR SMITH: So in the first sentence of that passage when you refer to "the phone calls continue", what were you talking about there?

MR HAYES: Phone calls continuing, we were going to site, there would be constant calls about where are we, how long is it going to take.

30

MR SMITH: And those were the phone calls from whom?

MR HAYES: At first it was from Ms Burgess, and it ended up being from the operation managers.

35

MR SMITH: And what sorts of jobs were you receiving those phone calls on?

MR HAYES: Union complaints.

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MR SMITH: And is that - are those the sorts of things you gave evidence about yesterday?

MR HAYES: Yes.

45

MR SMITH: All right. And then in the second sentence you talk about the harassment and bullying that continues from management after site visits.

MR HAYES: Yes.

5

MR SMITH: What were you referring to when you raised that in your email?

MR HAYES: It didn't finish there. When you'd go back to the office, it would continue, the bullying. They would call you in or the operation manager would probably call you in so that - and ask you about why you didn't write the notices that the union wanted you to write. You'd have to explain yourself.

10

MR SMITH: And the nature of those conversations with the operational managers, how did they commence those conversations?

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MR HAYES: Mainly that the union have complained you wouldn't write the notices that they wanted you to write, and they'd sort of ask you why you didn't write them.

MR SMITH: Was the, were the operation managers interested in your views about that?

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MR HAYES: Not at all.

MR SMITH: This allegation then in the last sentence where you say:

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"I've been accused by builders of working directly for this stakeholder."

Who is the stakeholder you are referring to?

MR HAYES: The stakeholder is the CFMEU.

30

MR SMITH: And what were the allegations that builders would make?

MR HAYES: We used to have a fairly good rapport or most of the inspectors had a fairly good rapport with the builders out there, because we used to try and work with them, and things changed after '18 where we were used as a tool to beat the builders, I suppose, financially, and they didn't communicate as well as they used to because of that and they believed that we're siding with the CFMEU.

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MR SMITH: Was it important to have a good relationship with builders?

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MR HAYES: Yes.

MR SMITH: And why was that important?

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MR HAYES: A good relationship. We - we've got the tools to hit hard if we need to. This is a requirement if these are infringement notices, prohibition notices. But you

always start at the very bottom. You go in there and try and work with people. Not all people are on the same understanding or the same level about the legislation, so we worked with them as best we could to get them in a position where it's easier for them. And we used to try that approach first, or the majority of inspectors did.

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MR SMITH: What result would you get if you worked with people?

MR HAYES: You would get more compliance, a lot more compliance, that they are ready to work with you on health and safety issues.

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MR SMITH: Would you have issues raised with you by people who you had a good relationship with?

MR HAYES: Yes. Yes.

15

MR SMITH: And would that occur if you didn't have a good relationship with them?

MR HAYES: No, it wouldn't have, no.

20

MR SMITH: Do you recall the nature of any of the accusations that were made to you?

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MR HAYES: Not word for word, no, I don't recall. It's a while ago I come across that.

MR SMITH: Can you give a general -

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MR HAYES: General would be that they wouldn't sort of confide in us as much because of our alliance with the union. That was their belief. This is not all builders; this is mainly a lot of bigger builders.

MR SMITH: Do you recall the context in which those accusations would be made?

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MR HAYES: It'd be like, not so much an accusation, but they believed that we were not so much supporting them or trying to help them, and more about the heavy-handedness that the union wanted to deal to the builders.

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MR SMITH: Mr Operator, can you now go to page 13 of that document and just blow up the last paragraph. I'll just ask you to read that paragraph -

MR HAYES: All right.

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MR SMITH: - Mr Hayes.

MR HAYES: Yes.

MR SMITH: When you asked in that paragraph that Mr Allen investigate your concerns, what was it that you were asking for to happen?

5 **MR HAYES:** Well, most of the content of the letter, I wanted to investigate the health of the inspectors for a start, the absenteeism, because to me that's an indicator that you've got problems with morale, if you have large absenteeism. We wanted them to do something about the intimidation from the unions and how the department works more for the union than for the inspectorate.

10 **MR SMITH:** When you say the department working more for the union, what do you mean by that?

15 **MR HAYES:** Well, they seemed to go out of their way to oblige the union where that wasn't the case before.

MR SMITH: And in your view, is that an inspector's role?

MR HAYES: To -

20 **MR SMITH:** Oblige the union.

MR HAYES: No, we can work with stakeholders, certainly work with the stakeholders and they are a stakeholder, but we don't give them any priority at all.

25 **MR SMITH:** And is it important as an inspector to work with stake holders?

MR HAYES: Yes, it is, yes.

30 **MR SMITH:** And who would you consider to be stakeholders that an inspector should be working with?

MR HAYES: A stakeholder is anybody who has an interest in the health and safety. You know, the union would be a stakeholder. CFMEU would be a stakeholder.

35 **MR SMITH:** And who else were stakeholders?

MR HAYES: Some builders. The Master Builders Association. The Building Services Authority would be a stakeholder.

40 **MR SMITH:** And what about duty holders?

MR HAYES: Duty holders, well, everybody has got a duty under the Act in the workplace, yes.

45 **MR SMITH:** Are they stakeholders?

MR HAYES: Yeah, I'd say they would be stakeholders, yeah, (indistinct).

MR SMITH: Now, ultimately what were you hoping to achieve by sending this letter?

5 **MR HAYES:** Change. Change from what was happening. To redirect the way we were going back to where we were. I worked under the Bligh and the Beattie government as well, and we never had this type of interactions with unions. It only happened under the Palaszczuk government. We used to have to still interact with the unions, go to right-of-entry issues, but it wasn't a big deal. I used to - my regional
10 manager would send me down or get me to send someone down to interact with the union on right of entry. And the only thing I had to do when they come back is a dot point to the regional director about how we rectify the problem, and that all changed after '18.

15 **MR SMITH:** Why wasn't it a big deal back in those earlier years? What was different?

MR HAYES: The union didn't have the control that they had over the department and over the inspectorate like they had from '18 onwards.

20 **MR SMITH:** Did anything about - leaving aside the department, did anything about the union's behaviour change over the years towards inspectors?

MR HAYES: I would say yes. I mean, unions do the same thing. They have been
25 doing the same thing for years and years as far as their interaction onsite, but towards the inspectors, yes, it changed in '18. I remember one occasion, I can't recall who it was, said that "we're your boss now".

MR SMITH: And when you say you can't recall who it was, do you recall what role
30 that person had?

MR HAYES: Actually I think it was Blake Hynes, CFMEU organiser said that.

COMMISSIONER: Who did you say then, sorry?

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MR HAYES: Blake Hynes. He was an organiser.

COMMISSIONER: H-y-n-e-s?

40 **MR HAYES:** Yes, I think it is spelt that way, yes.

MR SMITH: What impact did that have on you?

MR HAYES: The whole lot was a terrible experience, not just for myself but the
45 whole inspectorate in construction. It's the loss of support, I suppose, from the department. We completely lost the support. There was nowhere to go, and that letter is an example of, like I said yesterday, a cry for help, and that's the top fellow in

Workplace Health and Safety, and if he didn't acknowledge us, we had a problem where were we going to go to? I did go to the CCC, but that's another story, yeah.

5 **MR SMITH:** Now, just in relation to that issue, you've already given evidence you didn't get a response to that email.

COMMISSIONER: This is the email of Mr Allen.

10 **MR SMITH:** That's the email to Mr Allen, my apologies. Where did that leave you, not getting a response?

MR HAYES: Desperation, I suppose. I knew I had gone as far as I could go, and it left us helpless. We knew there was no one else we could sort of turn to.

15 **MR SMITH:** Was sending that email an easy decision for you?

MR HAYES: No, it was a big decision. Huge.

20 **MR SMITH:** And why do you say it was a big decision?

MR HAYES: The ramifications of it, I suppose, whether they sort of retaliated. And at that stage I sent it, like I say, in desperation. I didn't have a lot of hope things would change because of what we had experienced.

25 **COMMISSIONER:** But was it really big decision? You're going to retire in the next couple of years. I mean, it might be a big decision for someone starting their career, but someone at the end of their career, was it still a big decision?

30 **MR HAYES:** I think I took it to heart for my colleagues, I suppose. I had a way out of this. I knew I had a way out of this through retirement. I probably went a year prematurely, but I had concerns and Mr Cappelletti is an example of health problems we've got through this, and this hearing is only bringing up a lot of hurtful stuff, you know.

35 **COMMISSIONER:** Bringing it up for who?

MR HAYES: It was a big thing to do, but it had to be done. Someone had to make that stand and contact them. He did offer me - he offered us an opportunity to - his door was open to do that, and I was very disappointed nothing happened.

40 **MR SMITH:** Did you feel a responsibility to other inspectors in raising those issues?

MR HAYES: I certainly did, yes.

45 **MR SMITH:** And what was it about the circumstances that caused you to feel that responsibility?

5 **MR HAYES:** Mainly their health, their decline in health. I could see the absenteeism. You know, the people, inspectors would tell me they felt sick prior to going to work. They weren't dealing with it well at all, and it affected their family life and everything. It was a big deal. It wasn't just a little bit of bullying; it was continual and ongoing bullying over a long period of time. It was relentless.

MR SMITH: Did that sort of thing ever occur to your knowledge prior to 2018?

10 **MR HAYES:** No, it was a great workplace before that.

MR SMITH: When you say it was a great workplace, what was great about it at that time?

15 **MR HAYES:** It was just a relaxing environment. It was easy to do your job. You could sort of run your own race, if you like. As long as you kept your numbers up, there was no one breathing over your shoulder or anything like that. We did a lot of proactive work. We got through a lot of work, did a lot of reactive work, did a lot of investigations, but we did what we were supposed to do.

20 **MR SMITH:** Can you explain what proactive work is?

MR HAYES: Proactive work is going to find your own work. You'd leave in the morning, you might work out, "I might go and visit a construction site. No one has
25 been there for a while," and you go on your own initiative.

MR SMITH: On your own what, sorry?

MR HAYES: On your own initiative. It wouldn't be allocated to you as a job.
30

MR SMITH: And what was reactive work?

MR HAYES: Reactive work was complaints, investigations, accidents, ministerials, things like that, yeah.
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MR SMITH: And after 2018, how much time did you have for proactive work?

MR HAYES: We still did a bit of it, but nowhere near as much. The union complaints consumed us.
40

MR SMITH: And how many union complaints were you receiving?

MR HAYES: You could get up to three a day at one office. It wasn't uncommon to get three.
45

COMMISSIONER: Union complaint means a CFMEU complaint?

MR HAYES: Yes, CFMEU. Directly from the CFMEU. CFMEU are the complainant.

5 **MR SMITH:** And when you say at one office, which office are you referring to?

MR HAYES: My office at Mount Gravatt South.

MR SMITH: How many inspectors did that office have?

10 **MR HAYES:** It varied from time to time. Probably around six.

MR SMITH: Would CFMEU complaints - how long would they take to resolve?

15 **MR HAYES:** All day, yeah.

MR SMITH: How long would you be onsite typically with other matters?

20 **MR HAYES:** The union would try and keep you there as long as they possibly could. They would try and get you to go around while they're identifying issues and all that, and it was always a conflict and, you know, it was hard, yeah.

MR SMITH: What were the conflicts about?

25 **MR HAYES:** About what they wanted done. It was all about - they wanted us to write a lot of notices to slow the process down, slow the job down. That was virtually what it was all about.

MR SMITH: Were there particular types of notices they wanted you to write?

30 **MR HAYES:** Prohibition and infringement, mainly; weren't too worried about improvement.

35 **MR SMITH:** Do you have an understanding about why they might not have been worried about improvement notices?

MR HAYES: They had the ability to slow the job down and the cost factor.

COMMISSIONER: What had the ability to slow the job down?

40 **MR HAYES:** Prohibition notices and infringement notices.

MR SMITH: And did improvement notices not have that capacity?

45 **MR HAYES:** Not really, no. It was just something - an improvement notice is different; it's something that's got to be fixed in a certain amount of time. It's low, low-rating sort of stuff. It's like housekeeping issues or documentation, something like that.

MR SMITH: And when the union wanted you to write a notice, how was that communicated to you?

5 **MR HAYES:** Verbally. You've got to write a notice on this. You are going to have to put a prohibition on this. You need to issue a infringement notice. That type of attitude.

10 **MR SMITH:** Were there occasions when you issued notices that you had been requested to issue by CFMEU officials?

MR HAYES: No, but I know other inspectors had.

15 **MR SMITH:** Did you ever agree with the issues that CFMEU inspectors were raising?

MR HAYES: CFMEU?

20 **MR SMITH:** Sorry, CFMEU officials were raising?

MR HAYES: Sometimes. Sometimes they had valid, valid reasons for it, and we'd write a notice. If they identified there's a problem there, we wouldn't shy away from that. We would write the notice. But a lot of the stuff was just silly stuff that didn't require a notice. And, you know, like I said yesterday, if you're going to write
25 a prohibition notice, it's got imminent or immediate risk. There's no two ways about it.

MR SMITH: When you talk about silly stuff, what are you referring to?

30 **MR HAYES:** They wanted covered walkways so their workers wouldn't get wet in the rain, which has got nothing to do with the legislation. It talks about clear safe access. That means you can't expect the workers to walk through puddles and slippery surfaces, but there's no requirement for covered walkways.

35 **MR SMITH:** Is there any imminent or immediate risk to health and safety from getting wet?

MR HAYES: No.

40 **MR SMITH:** Now, how would the discussions go or would there be discussions if you didn't issue a notice, with the union officials?

MR HAYES: It starts, and it's just - just rolls on from there, yeah. It's continual.

45 **MR SMITH:** How would those discussions go?

MR HAYES: You mean between the union and inspector?

MR SMITH: Yes.

5 **MR HAYES:** They got a bit louder and louder as you told them you weren't going to write the notice. You'd try and explain to them "I can't write that notice" and the reasons why you wouldn't write that notice, but they didn't really particularly want to hear it.

10 **MR SMITH:** How long would those conversations typically continue, can you say?

MR HAYES: Virtually until you walked away or you got a phone call from one of the operational managers.

15 **MR SMITH:** And how did those conversations make you feel?

MR HAYES: It took your sort of power away in a sense. You felt a bit sort of - I suppose not protected, not defended, by the department.

20 **MR SMITH:** Did the officials have any power to issue notices of their own?

MR HAYES: No. A representative on a site can. He can issue a notice.

25 **COMMISSIONER:** So what was the point - I can perhaps read the legislation, but you are an expert, Mr Hayes. What was the point of the statute giving union officials who had a permit access to a site if they couldn't issue a notice?

30 **MR HAYES:** I suppose there's a right - workers have got a right to have access to their unions. So unions can come on to site on a 117 under the Act for a suspected contravention. They can come under other sections to view documentation related to a suspected contravention.

COMMISSIONER: But what they can't do is issue notices. That's what -

35 **MR HAYES:** They can't issue notices, no. They can't stop work either. They can advise workers of a dangerous situation, but they can't stop work.

MR SMITH: Now, during the course of this period 2018 to 2021, did you attend sites or request for assistance from other unions?

40 **MR HAYES:** No. No.

MR SMITH: Were there other unions present in any of the interactions that you had with the CFMEU?

45 **MR HAYES:** Yes, there was.

MR SMITH: Which unions were they?

MR HAYES: The ETU and the Plumbers Union.

MR SMITH: And can you describe your interactions with those unions?

5

MR HAYES: I describe them as a little bit easier to deal with than the CFMEU, but sort of the later stages they were sort of going out with the CFMEU. So there'd be a group of them, probably ETU, a couple of plumbing union fellows and the CFMEU.

10

MR SMITH: And during those interactions, how did the behaviour of the other unions compare to that of the CFMEU officials?

MR HAYES: Not real good. It wasn't - not very respectful, no.

15

COMMISSIONER: I didn't follow that answer, sorry. What were you saying then, Mr Hayes?

MR HAYES: The behaviour is not very respectful.

20

COMMISSIONER: Behaviour of whom, sorry?

MR HAYES: The CFMEU and then the Plumbers Union and ETU. But I think if you're going to pick one as probably the worst would be the CFMEU.

25

MR SMITH: Did you receive any pressure from anyone in the department about issues raised by the ETU?

MR HAYES: I can't recall. Mainly CFMEU, but there may have been. I just can't recall one at the moment.

30

MR SMITH: How often was it that you were attending sites on a CFMEU complaint between that period 2018 and 2021?

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MR HAYES: It was almost a daily basis. It was very - not very often you would avoid it.

MR SMITH: Were there occasions when the interactions weren't negative?

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MR HAYES: I can't recall one. Earlier before, prior to 2018, it was a bit more cordial but after that it wasn't.

MR SMITH: And what was the difference in those earlier interactions?

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MR HAYES: I think you could communicate better with the organisers. You could have a lighter conversation with them. And I think that sort of disappeared from '18 onwards.

MR SMITH: We've dealt with prohibition notices. Can I just ask you to explain your understanding of when an improvement notice can be written?

5 **MR HAYES:** An inspector would issue an improvement notice to rectify a contravention in a certain period of time, by a certain date.

MR SMITH: When you say a contravention, what's that a contravention of?

10 **MR HAYES:** Low-level stuff. It might be housekeeping, it might be documentation, get some documentation, maybe to have someone come on site to inspect, say formwork or something like that. Lower-level stuff without any imminent or immediate risk.

15 **MR SMITH:** And I think you've explained the sort of notice you would issue where there's imminent and immediate risk. What sort of notice would that be?

MR HAYES: That would be a prohibition notice.

20 **MR SMITH:** And then can you explain how, to your understanding, infringement notices worked?

25 **MR HAYES:** Infringement notices is like an on-the-spot fine. They're not necessarily for high-risk things, though they can be. The exposure of asbestos dust or silica dust, you will get - there is an infringement for that. But it's mainly for documentation, like work procedures like a safe work method statement, not having one of them or not following it, not having a chemical register on site. And they were administrative controls, those ones.

30 **MR SMITH:** And would you issue any other notices when you issued an infringement notice?

MR HAYES: Yes, you'd give a improvement notice.

35 **MR SMITH:** Were there other enforcement powers, if I can use that terminology? Do you understand what I mean by enforcement powers?

MR HAYES: Yeah.

40 **MR SMITH:** What is an enforcement power?

MR HAYES: So like a prosecution or something, yeah (indistinct) yeah.

45 **MR SMITH:** Would you issue other notices - sorry, in addition to those notices, were there other types of notices you would regularly issue?

MR HAYES: Yes. Not regularly. Non-disturbance notice, a notice of requirement. There were electrical notices; we're empowered under the Electrical Act as well. So there'd be improvement and prohibition notices in electrical.

5 **MR SMITH:** In addition to those notices, were there other things that you would do on site to try and improve safety if a notice wasn't required?

MR HAYES: Verbal directions.

10 **MR SMITH:** What sort of things would you issue a verbal direction for?

MR HAYES: A verbal direction is something that has to be rectified while the inspector is on site. An example might be you might have a barrel load of rubbish in a walkway, so you would say to the (indistinct) can you have that removed, please,
15 and they would remove it, so that would be rectified.

MR SMITH: And if a matter wasn't rectified, would you do something else?

MR HAYES: You would issue a improvement notice if - the contravention has got
20 to be occurring and the inspector believes that it will continue. So if you had that view, then you would write an improvement notice.

MR SMITH: All right. Now, I just wanted to pick up briefly on something that you mentioned in your evidence a little bit earlier today. You gave some evidence to the effect that prior to 2018 when you finished a union job, you would just have to give
25 a dot point response. Was there a change to the process after that period?

MR HAYES: Yes. It became a -

30 **COMMISSIONER:** I didn't remember that evidence. Can you just explain what your evidence was on that point.

MR HAYES: Sorry?

35 **COMMISSIONER:** I didn't remember the evidence that Mr Smith said you had given about the dot points. What was your evidence?

MR HAYES: Yeah, the dot points. Prior to 2018 we still had to attend union complaints mainly from the builder, right-of-entry, we would go down, we would
40 deal with that issue, and the regional director would expect me as the principal inspector of operations to give him dot points on how we issued the -

COMMISSIONER: The regional director.

45 **MR HAYES:** The regional director, yes. They don't have the regional director any more; that has been replaced with that new structure. He was in control of a region. It

might be - when I was there it was Gold Coast, Logan and Mount Gravatt. That's the whole region.

5 **COMMISSIONER:** Would those dot points be kept on the relevant computer system once you had given them to the regional director?

10 **MR HAYES:** They wouldn't be. It would be just a very basic dot point: we attended site, what we did, what date and what actions we took. He just wanted to see that it was resolved.

COMMISSIONER: Sorry, Mr Smith.

MR SMITH: Thank you, Commissioner. Did that process later change?

15 **MR HAYES:** Yes, it did.

MR SMITH: What were you required to do after the change?

20 **MR HAYES:** We had to complete a union interaction report. It was a complete report.

MR SMITH: And can you describe what was in a union report?

25 **MR HAYES:** Yes, it was the activity you did on site. What notice did you write? Did you address all the union's issues? Were there any other union issues brought up while on site? Similar to that.

MR SMITH: And who did you provide that to?

30 **MR HAYES:** I think it went to Ms Burgess, from memory, yeah.

MR SMITH: Do you recall specifically when those reports were introduced?

35 **MR HAYES:** I think it would have been '17, '18, around that time. I'm not quite sure, yeah.

MR SMITH: Do you know whether those reports would still be, or whether they would be stored on the department's systems?

40 **MR HAYES:** They should be, yeah.

COMMISSIONER: Are there any of them in evidence, Mr Smith?

45 **MR SMITH:** Not in evidence, no, Commissioner.

COMMISSIONER: Have you requested by notice any of these reports?

MR SMITH: We have some of them, Commissioner.

COMMISSIONER: How many?

5 **MR SMITH:** I couldn't tell you the number.

COMMISSIONER: Are you able to tell me after the break?

10 **MR SMITH:** Probably not, Commissioner.

COMMISSIONER: Are you able to tell me after lunch?

MR SMITH: Possibly.

15 **COMMISSIONER:** You might have to do a bit better than possibly.

MR SMITH: All right. Commissioner, is that a suitable time?

20 **COMMISSIONER:** I wonder if I could just take five minutes just to ask - unless you are going to deal with this after the break - the basis as to this witness's knowledge of the introduction of these reports, who introduced them, why they were introduced, et cetera. Is that something you are going to deal with?

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

COMMISSIONER: We will resume at 11.30.

<THE HEARING ADJOURNED AT 11.16 AM

30 **<THE HEARING RESUMED AT 11.30 AM**

COMMISSIONER: Mr de Jersey, did you want to tender some other correspondence?

35 **MR DE JERSEY:** Commissioner, I have my email and the response from Mr Kerin to it. I don't yet have the other email.

COMMISSIONER: Do you want to do it together after lunch?

40 **MR DE JERSEY:** It is probably more efficient if I do.

COMMISSIONER: Very well. Mr Smith.

45 **MR SMITH:** Thank you, Commissioner. Mr Hayes, before the break, do you recall giving some evidence about the construction union interaction reports?

MR HAYES: Yes.

MR SMITH: Do you recall how you were notified that those reports were coming in?

5 **MR HAYES:** You would complete one of them when you returned back to the office after you had done the job, and you would have to just fill the form out.

MR SMITH: Yes, but do you recall how the process was introduced?

10 **MR HAYES:** No, I don't think so. No, I don't recall how that happened.

COMMISSIONER: And you do recall when it happened. I think you said 2017, '18.

15 **MR HAYES:** Yeah, around '17, '18, around that period. I can't be exactly sure about that.

COMMISSIONER: Using your best guess, who do you think would have been responsible for the introduction of this new process of union interaction?

20 **MR HAYES:** I think that would have come from the executive director, who was -I can't think of his name at the moment - Marc Dennett, I think it would have come from there. He was in control of it.

25 **MR SMITH:** And those reports, where did you send them?

MR HAYES: I seem to remember I sent them to Ms Burgess, I think. I can't be 100 per cent sure about that.

30 **MR SMITH:** Were you ever asked about the contents of those reports?

MR HAYES: I think so. On occasions I would have been, yeah.

MR SMITH: Do you recall who would have asked you about them?

35 **MR HAYES:** Probably operational management maybe. Yeah.

MR SMITH: Do you have any specific recollections?

40 **MR HAYES:** No, I don't actually. No.

MR SMITH: Now, I asked you some questions earlier about how the union would interact with you when you didn't write a notice. If you continued to refuse to write a notice, what would happen then?

45 **MR HAYES:** As far as the department, you mean?

MR SMITH: Well, what would be the next thing that would happen if you were on site and hadn't written a notice?

5 **MR HAYES:** On site, if the union were insisting us to write a notice and we refused, it'd be pretty standard the union bloke would grab his phone out of his pocket. He would turn away, have a conversation. And you knew that two, three minutes later you would be getting a phone call from either Ms Burgess or one of the operational managers.

10 **MR SMITH:** And did you ever hear the contents of those phone calls?

MR HAYES: No, I don't think so.

15 **MR SMITH:** And what was the nature of the conversations when you received a phone call?

MR HAYES: It was virtually the union aren't happy with what you're doing, why aren't you writing the notice that the union are requesting.

20 **MR SMITH:** Did you have a view about who made those phone calls?

MR HAYES: Oh, yeah. We knew where it was coming from.

25 **MR SMITH:** And where was that?

MR HAYES: It was coming directly from the union.

30 **MR SMITH:** What was the nature - can you tell me what information the operations -

COMMISSIONER: Why do you say that, that it was coming directly from the union?

35 **MR HAYES:** Because there was the conversation, the conversations would start from the operational managers, "The union aren't happy with your response. Why aren't you writing a notice?" So you knew where it come from.

40 **COMMISSIONER:** And you said it came from one of the operational managers. How many of the operational managers, and can you identify them by name, were in the habit of making these sort of calls to you?

45 **MR HAYES:** There'd be Chris Mutton, Mark Houston mainly. So if I'm in the Coast region, it would be Chris Mutton, and if I was in Brisbane South it would be Mark Houston.

COMMISSIONER: And did you say at the end of that, mainly? Chris Mutton and Mark Houston mainly?

MR HAYES: Yes, it was.

COMMISSIONER: What do you mean by "mainly"?

5

MR HAYES: I didn't get that sort of issue from Nick Drapes or Andrew McKenna, who were my previous operational managers.

COMMISSIONER: Andrew who, sorry?

10

MR HAYES: Andrew McKenna.

MR SMITH: Would you get calls from anyone else apart from the operational managers having had that scenario that you've just described occur?

15

MR HAYES: Yeah, early in the piece it was - a lot was from Ms Burgess.

MR SMITH: Now -

COMMISSIONER: When you say early in the piece, what do you mean by that?

MR HAYES: Probably earlier in the -early '18 she used to do a lot of the conversations herself, ring you directly, and then that seemed to peter off a bit and she used to let the operational managers do that type of work. I believe the instruction would come from her to the operational manager to deal with it.

25

COMMISSIONER: Why do you believe that?

MR HAYES: Just the type of conversation we'd have and her involvement - the involvement I knew she had with that type of thing and her insistence on appeasing the union. I believed it would have come from her.

30

COMMISSIONER: What do you mean her insistence upon - did you say appeasing the union?

35

MR HAYES: Yes, appeasing the union. It was quite obvious that she wanted us to do what the union wanted us to do.

COMMISSIONER: Why do you say it was obvious?

40

MR HAYES: Just with conversations and the push and the bullying and intimidation would come from all that type of thing, and the notices, "Why aren't you writing these notices?" And she was in control of the construction unit. Yeah, I can't pinpoint - I can't pinpoint an actual connection with that, with the union, but I was aware of that. Yeah. So were all the other inspectors.

45

MR SMITH: When those calls were made, were you given an opportunity to explain your position?

5 **MR HAYES:** Hardly ever, no.

MR SMITH: Would you attempt to do so?

10 **MR HAYES:** Yes. You try and explain that you can't write that notice for whatever reason.

MR SMITH: And what sort of response would you get to that?

15 **MR HAYES:** It'd be just you need to write the notice. It's as simple as that, yeah. You weren't allowed to have your opinion on it or your side of the story.

MR SMITH: When you say you need to write the notice, was that a direction?

20 **MR HAYES:** You would take it as a direction. Whether the word "I direct you to write the notice" occurred all the time, but you would take it as a direction.

MR SMITH: And what did you feel the position was that was being put to you about the notices?

25 **MR HAYES:** I don't believe we should be writing unlawful notices. It is simple as that.

MR SMITH: Would there be any reason for a principal contractor or a person conducting a business or undertaking -

30 **COMMISSIONER:** When you say that was your position, did you communicate that position?

35 **MR HAYES:** Yes, I did, yeah, in conversations with both the ROMs and even Ms Burgess. "It's not a valid notice. It's not a lawful notice. You can't direct me to write an unlawful notice." That type of conversation could go on, yes.

COMMISSIONER: How often would that occur?

40 **MR HAYES:** Sorry?

COMMISSIONER: How often would that occur - I think you said the OPs and Ms Burgess.

45 **MR HAYES:** Pretty well all the time, because it was continual. They wanted us to write notices that weren't required, weren't valid and weren't lawful. And that conversation, it happened a lot of the time, yeah. A lot of the time.

COMMISSIONER: What response did you get back, did you say, from the ops?

MR HAYES: No, from the operational managers and Ms Burgess. Yes.

5 **COMMISSIONER:** What response did you -

MR HAYES: They were just persistent that you needed to write the notices. That was part of the bullying and the intimidation.

10 **COMMISSIONER:** What do you mean by that?

MR HAYES: The constant harassment to write a notice for - to appease the union. It was like a - it was just ongoing, it was relentless. They just wouldn't let up on you until you broke or wrote a notice or whatever, yeah.

15

COMMISSIONER: When you say until you broke or wrote the notice, what do you mean by until you broke?

20

MR HAYES: Well, you would give in to their demands or you might take some sick leave to get away from it, have a break, which a lot of inspectors did.

25

MR SMITH: Was there any reason that you know of that a principal contractor or a person conducting a business or undertaking would have made those calls and raised those issues with the operations managers?

MR HAYES: No, there wouldn't be any reason. It wouldn't be in their best interests.

30

MR SMITH: Now, after those conversations, if you refused to write the notice would there be any further conversations?

MR HAYES: Yes, like I said, it'd be continual conversation about it. They were fairly relentless with it until you actually wrote the notice or, like I said to the Commissioner, a lot of inspectors would take leave or sickies because of the relentless nature of the intimidation and bullying.

35

MR SMITH: Would that continue after the phone calls?

40

MR HAYES: Yes, sometimes it would continue back in the office. A lot of the times it did.

MR SMITH: And what would happen then?

45

MR HAYES: You would be called into the operational manager's office and more sort of "you need to write this notice" type of thing, yeah, trying to convince you to write the notice.

MR SMITH: Was there any reason the operational managers couldn't have written the notices if they believed that there was a proper basis?

5 **MR HAYES:** No. They've got inspector powers; they can do that. They would have to gain the evidence themselves.

COMMISSIONER: How could you gain the evidence if you weren't on site?

10 **MR HAYES:** That's right, yeah, they'd have to attend site.

MR SMITH: Now, in your evidence yesterday, you mentioned something called the compliance monitoring enforcement procedure.

15 **MR HAYES:** Yes.

MR SMITH: Do you recall when that was introduced?

MR HAYES: Around 2018 I think that was introduced, yes.

20 **MR SMITH:** And did that have any effect on the way that you worked?

MR HAYES: A huge amount of effect, yeah.

25 **MR SMITH:** And what was the effect of the compliance monitoring and enforcement procedure?

MR HAYES: It took our discretion away on how we issued notices, who we issued them to and for what reasons.

30 **MR SMITH:** And in what way did it remove your discretion?

35 **MR HAYES:** Prior to the policy, you had the flexibility to be able to - so if it was an infringement notice - I'll give an example. If you've got a small company - and most of the fines were \$3600, a lot of money for a small company. It could affect the way they run their business. So you could have conversations with them prior to '18 about trying to get them up to speed. They may not be quite up to speed; there may not be any intent in not complying, but they may not have a grasp of the legislation properly. So you could explain that to them and work with them and work with them over a period of time to get to where they needed to be. When the policy came in, we never had that discretion; we had to write a fine regardless. You couldn't have that conversation.

40 **MR SMITH:** Did that have an impact on the way in which you had to engage with duty holders?

45 **MR HAYES:** It certainly did, yes. Yeah.

MR SMITH: And what were the priority infringements?

COMMISSIONER: What was the impact that it had?

5 **MR HAYES:** The impact was they sort of turned away from us. The industry turned away from the inspectorate to a certain extent. They weren't as cordial. It's more business-like where - there was a change in industry how they treated the inspectors. I wouldn't say treated - how they responded to the inspectors.

10 **COMMISSIONER:** You say there was a change. What was the position beforehand?

MR HAYES: More cordial. It was more cordial before. We had the flexibility to have that conversation.

15 **COMMISSIONER:** And what did the change - how was that cordiality changed?

MR HAYES: It changed because of the - we had no option about writing infringement notices. That's where it changed.

20 **COMMISSIONER:** And was that the only impact, or were there other impacts in terms of the way in which the inspectors were treated as a result of the introduction of this procedure?

25 **MR HAYES:** Like I said previously, they believed we were on the side of the CFMEU. They said - we had comments about "you're on their side", this sort of thing. And then they would sort of close up where normally they would have been more open with us. That all disappeared.

30 **COMMISSIONER:** When you say it all disappeared, about what time did it all disappear?

MR HAYES: I would say from late '18 onwards, yeah. It was a gradual type thing, but it occurred. You could feel it.

35 **COMMISSIONER:** I asked you some questions about the union interaction reports that were introduced in 2017, '18, and asked you even though you couldn't remember who you thought was responsible for introducing those reports, you said Marc Dennett. Do you know who was responsible for introducing the compliance monitoring and enforcement procedure?

40 **MR HAYES:** I believe that came from the best practice review and the - I think the unions had a big push on that to get that through. It was more about a harder line coming down on principal contractors, PCBUs, and I think that's when the manslaughter legislation was pushed through as well.

45

COMMISSIONER: Are you going to take up the question of the way in which the policy came to be in existence, Mr Smith - the procedure, I should say?

5 **MR SMITH:** I will, Commissioner. When you refer to the best practice review, what was that?

10 **MR HAYES:** It was a review about - I'm not real au fait with the best practice review; I just know it come through from that, from the result of that. I think that was a look into - I think that was initiated because of the deaths in industry. I believe Dreamworld and the tilt panel accident over the other side of town, I think that had a big part in the review.

15 **COMMISSIONER:** What did you say? Tilt panel accident over the other side of town?

MR HAYES: Sorry?

COMMISSIONER: Did you say tilt panel accident?

20 **MR HAYES:** Yeah, I believe that was one of the factors where workers were killed.

MR SMITH: Do you recall where that incident occurred?

25 **MR HAYES:** I think it was Nundah or somewhere around Nundah. I'm not quite sure.

MR SMITH: During the course of the best practice review, were you ever consulted about any of the matters that that review was considering?

30 **MR HAYES:** No. No.

MR SMITH: Do you know whether any other inspectors were consulted about that?

35 **MR HAYES:** I wouldn't imagine so, no.

COMMISSIONER: You would or would not?

MR HAYES: I wouldn't, no, I wouldn't imagine, no.

40 **MR SMITH:** When you say that you think the CMEP was an outcome of the best practice review, what's your basis for that understanding?

45 **MR HAYES:** Just knowledge I've learned through the department, I suppose. I didn't get involved too much in policy - policy-making or anything like that, so I just - we would be informed about these changes and how it changed our work process.

MR SMITH: And you mentioned - and these aren't your exact words but you mentioned CFMEU influence on that -

MR HAYES: Yes.

5

MR SMITH: - review. Why do you say there was CFMEU influence?

MR HAYES: I just believe some CFMEU officials were involved with it. That's the information I had. I can't - can't confirm or deny that, but that's how I believe it.

10

MR SMITH: Where did that information come from?

MR HAYES: Probably - probably the news, newspaper, or through the department.

15

MR SMITH: Can you recall now where the information came from?

MR HAYES: No, I can't really, no. No, it was just like a common knowledge type of thing, like - yeah.

20

MR SMITH: Now, in respect to the use of the CMEP, did you receive any training in that, do you recall?

MR HAYES: I don't believe so. I don't believe - I can't recall at all, no.

25

MR SMITH: Was the CMEP ever raised with you on sites?

MR HAYES: Yeah, I think the actual fines attached to it, I think the infringement schedule changed. I saw that posted on one construction site, the infringement schedule, in the lunchroom of the workers. I don't remember anybody actually raising the issue of it with me.

30

MR SMITH: You mentioned the infringement schedule. Can you just explain what that is.

35

MR HAYES: It's a schedule which has fines attached for certain contraventions. And it was compulsory; it made - the CMEP made it compulsory for us to write the fines.

40

MR SMITH: Did anyone raise, or was there a term by which those infringements were referred to that you can recall?

MR HAYES: A term?

45

MR SMITH: Yes, a collective term for all of them?

MR HAYES: Not that I can think of, no.

MR SMITH: Were you ever asked to, by third parties, that is, people outside of the inspectorate, to write infringement notices consistent with that schedule?

5 **MR HAYES:** Not outside the party, no.

COMMISSIONER: Not outside -

MR HAYES: Not outside the department, sorry, yeah.

10 **MR SMITH:** Would anyone raise matters as requiring infringement notices when you were on site?

MR HAYES: I suppose it came up in conversation from time to time, yeah.

15 **MR SMITH:** Can I ask - unless you had any more questions about that, Commissioner?

COMMISSIONER: No, thank you.

20 **MR SMITH:** Can I ask, Mr Operator, that you bring up paragraphs 34 and 35 of Mr Hayes' statement. Blow those up, please.

COMMISSIONER: Sorry, just before you do, I seem to recall in the reading of some of the statements that some other witness is going to talk about this procedure.
25 Am I right about that?

MR SMITH: That's correct, Commissioner.

COMMISSIONER: Is that Mr Cappelletti or is it someone else?
30

MR SMITH: That's Mr Watts this afternoon. Mr Hayes, do you recall attending the Gateway abutment on 14 June 2018?

MR HAYES: Yes, I do.
35

MR SMITH: And why were you called to attend there?

MR HAYES: There was a union right of entry under an 81(3).

40 **MR SMITH:** Did you attend that site with anyone else?

MR HAYES: Yes, Inspector Bentzen.

MR SMITH: Do you recall your journey to the site?
45

MR HAYES: Sorry?

MR SMITH: Do you recall your journey to the site?

MR HAYES: Yes, I do.

5 **MR SMITH:** Did anything happen on that journey?

MR HAYES: Yes, I had at least two phone calls from Ms Burgess.

10 **MR SMITH:** Do you recall what Ms Burgess called you about?

MR HAYES: It was about how long are you going to be, the union are waiting, and she finished with saying, "Whatever you do, don't get them arrested."

15 **MR SMITH:** Do you have any understanding about what she was referring to when she said don't get them arrested?

MR HAYES: I assume it would be the trespass.

20 **MR SMITH:** Can you explain to the Commissioner what section 81 (3) is that you're referring to?

MR HAYES: 81(3) is if it's issue resolution, a work group or a worker or representative can ask for someone to give them assistance in resolving an unresolved issue.

25 **MR SMITH:** When you say a work group, can you just explain what a work group is?

30 **MR HAYES:** It could be a health and safety committee group. It could be a group of workers working for the one company. You have individuals can do it, a rep can do it.

MR SMITH: And who would a work group or a worker typically have a unresolved issue with?

35 **MR HAYES:** Usually the PCBU or the principal contractor.

MR SMITH: And what does 81(3) allow someone to do?

40 **MR HAYES:** It allows them to bring someone with the expertise in what the dispute is about onto site to help them resolve the issue.

MR SMITH: And who brings the person with expertise on?

45 **MR HAYES:** The person who is the party to it, which would be the work group or the person.

MR SMITH: To your knowledge - and if you don't know the answer to this, then let me know - if someone lawfully attended site under section 81(3), would they be trespassing?

5 **MR HAYES:** No, not if they went lawfully, no.

MR SMITH: So do you know why - and again if you don't, please say - Ms Burgess asked you not to get them arrested?

10 **MR HAYES:** Not really, no. No, I probably couldn't answer that. She would be thinking of trespass, so, yeah, I don't think, I don't know what went on in her head at the time.

15 **COMMISSIONER:** Can I just ask, what power do you have to get people, union officials or others, who are illegitimately on a site that you're inspecting as part of the exercise of your statutory powers, to get them arrested?

20 **MR HAYES:** None, really. We are only there to assist. We can't even give them direction - if we deem them not legal to go on site, we can't even say that "you can't go on site", and we can't even tell the builder that "you've got to let them onsite under an 81(3)". It's different to when permit holders are involved.

COMMISSIONER: What's the difference?

25 **MR HAYES:** The difference is under 117 a permit holder can enter a site under a suspected contravention.

30 **COMMISSIONER:** And under 81(3) you don't have any power to direct the builder or the union official or anyone else to do anything?

MR HAYES: No. No, we haven't, not under the Act. We are just there to advise and explain the legislation to them and assist. Yeah.

35 **MR SMITH:** I'm just speaking generally now, and I'll come back to this incident in a moment, but when you did give advice, would principal contractors or persons conducting a business or undertaking typically follow it?

MR HAYES: Yeah, generally.

40 **MR SMITH:** What about CFMEU officials?

MR HAYES: Not so much, no.

45 **COMMISSIONER:** When you say not so much, are you being a little bit coy or is it a fair characterisation?

MR HAYES: Probably a little bit coy, I suppose. Generally they didn't really listen to what we had to say.

5 **COMMISSIONER:** One of the people that was in your statement referred to at paragraph 34 at this incident is Mr Blake Hynes. Perhaps we just bring 34 up. That was - he was the person I think you said earlier said - my note is, "Get used to it, I'm your boss," words to that effect.

10 **MR HAYES:** Yes. Yeah.

COMMISSIONER: Did that conversation happen at this incident at the Gateway abutment -

15 **MR HAYES:** No.

COMMISSIONER: No.

20 **MR HAYES:** I don't believe I spoke to Blake Hynes that day; I just recall him being there. My main conversation was with Jade Ingham.

MR SMITH: Can you just describe to the Commissioner what happened when you arrived at the site?

25 **MR HAYES:** We arrived at the site, and there was probably three or four union organisers onsite, and more turned up later in the day, but Jade Ingham was the spokesman. I didn't interact with any other of the other union delegates, union organisers. And there was a conflict: the builder didn't want them to come onsite or their management didn't want them to let the union to come onsite.

30 **MR SMITH:** Did you speak with the management of the site?

MR HAYES: Yes, I did, yes.

MR SMITH: Do you remember who the contractor was?

35

MR HAYES: Yes, CPB.

MR SMITH: Do you remember now who you spoke with from CPB?

40 **MR HAYES:** I can't recall, no.

MR SMITH: And in addition to Mr Ingham and Mr Hynes, do you recall who any of the other officials were?

45 **MR HAYES:** Not really. Kurt Pauls could have been another one there, but I can't be 100 per cent sure.

MR SMITH: And having attended the site and spoken to people, do you recall what the nature of those conversations was?

MR HAYES: With my conversation?

5

MR SMITH: Your conversations with either CPB or Mr Ingham.

MR HAYES: My conversation was mainly going through a series of questions to both parties, mainly the union, about their entry. They wanted to enter under 81(3). There was a series of questions that I had to ask them about to see - for their eligibility to go onsite. With the answers that I received from Mr Ingham, I believed they were eligible to enter the site or he was eligible to enter the site.

10

MR SMITH: Do you remember now why you formed that belief?

15

MR HAYES: Just by the series of questions that I asked and the answers that he actually gave me.

MR SMITH: Do you remember the factual basis or do you just remember that you had the conversation?

20

MR HAYES: The factual basis why they're there?

MR SMITH: Why they were allowed to enter?

25

MR HAYES: Yes, you have to ask a series of questions: are they here to assist. They don't give you a lot of information. They won't tell you who called them in. They refuse to do that.

COMMISSIONER: Who is they won't tell?

30

MR HAYES: Sorry?

COMMISSIONER: Who is the they won't tell?

35

MR HAYES: The union, yeah, they will never tell you who the complainant is on site that's brought them in. You can ask that question, but you won't get it, and we were told by the department not to push it, not to inquire into that. When I say that, that's in the later stages from '18 onwards that we were told not to push that issue.

40

COMMISSIONER: Were you told why you shouldn't push that issue?

MR HAYES: No, we were never given a reason. Just not to ask or not to push the issue.

45

COMMISSIONER: Did it make any sense to you?

MR HAYES: It made no sense whatsoever, because if you got a issue of resolution, you want to know who the other party is who will bring any issue up so we can go and engage and deal with it. I didn't do a lot of 81(3). I think probably that's the only one I actually even went to, yeah, but a lot of other inspectors did them.

5

COMMISSIONER: Was there a reason you weren't given a lot of 81(3)?

MR HAYES: No, I don't think so. I consider myself lucky, because they were difficult, very difficult.

10

MR SMITH: Can you be satisfied that there is an issue that needs resolution if you don't know who the parties to the issue are?

MR HAYES: It's hard to - it's very hard to make that determination. They can be generic, the answers you get from the union can be generic, like the fall from heights. Whereabouts? All over the place. Access and egress problems, whereabouts? All over the place. That's the sort of reply you would get.

15

MR SMITH: What does the power under section 81(3) allow the person entering to do upon entry?

20

MR HAYES: He can only assist in resolving the issue by having discussions and he can - he can inspect systems of work or plant that's related to that issue.

MR SMITH: Is that if it's necessary to do so to resolve the issue?

25

MR HAYES: I'd say so, yes, it would be.

MR SMITH: And is it limited to the particular issue that's been raised?

30

MR HAYES: Yes, or generally, yes.

COMMISSIONER: Who are you talking about here? A union official or an inspector?

35

MR HAYES: The issues being raised, yeah. Generally just that issue we have to deal with. They usually say it's a fall from heights or access, egress, whatever it is, yeah. And it's generally contained within that; that's the issue you have to deal with.

COMMISSIONER: That's the issue the inspectors have to deal with?

40

MR HAYES: Yes. Yes.

MR SMITH: Mr Operator, can you take that down, please. Thank you. Now, just in - so you've given some evidence that ultimately you were satisfied that Mr Ingham was allowed to enter under section 81(3)?

45

MR HAYES: Yes, I was - yes, I suppose - you use the word satisfied; I was never really quite satisfied.

5 **MR SMITH:** When you say you were never really quite satisfied, what was it about that instance that you weren't satisfied about?

10 **MR HAYES:** Probably because the issue has got to be an unresolved issue, for a start, before you bring in someone to assist, and I don't believe it was virtually an unresolved issue because the PC are generally not aware of it.

MR SMITH: Do you know how there can be an unresolved issue between the parties if the principal contractor is not aware of it?

15 **MR HAYES:** No, it can't be. Yeah.

MR SMITH: Having had your conversation with Mr Ingham, did you have then further conversations with CPB?

20 **MR HAYES:** Yes, I asked the PCB, I told him my decision - my decision, the answers I received and what my views were, and they said, "No, we still don't want them to come in," so I didn't push it.

COMMISSIONER: Do you recall who it was that you spoke to from CPB?

25 **MR HAYES:** No, I don't. It would have been a supervisor or someone in that capacity. I don't know.

30 **COMMISSIONER:** Presumably pursuant to this change in 2017, '18, for the production of union interaction reports, all because of the need to close out any file, is there some record you think that would be kept by WHSQ either dealing with your record and your colleague Jarod Bentzen's record of this interaction or Mr Azcune's?

35 **MR HAYES:** I believe there would be. I believe we may have to have provided the contact person on site. I'm not 100 per cent sure.

COMMISSIONER: Might have need to provided, sorry?

MR HAYES: The contact person we had on site.

40 **COMMISSIONER:** And that's the same person, you think, as the supervisor?

MR HAYES: Yeah, it could be. I'm not 100 per cent sure about that, but I believe that might have been one of the criteria, yeah. Not 100 per cent sure about it.

45 **COMMISSIONER:** Are there any other documents that you would have to fill in apart from the union interaction report? And when I say "you", an inspector who was sent out to one of these so-called complaints would have to fill in to finalise that

complaint apart from a union interaction report and something that's been described in evidence as a close-out report?

5 **MR HAYES:** Well, there would be an entry into our electronic system. It's called CIS. That's been taken down in the last 12 months, I heard. But we used to have to put the whole process in there, and you'd put what notices you wrote, what your activities were, who the builder was, what date and time and all that sort of stuff. So there'd be an entry for sure, and the interaction report would be filed with
10 photographs, with notices, under that report.

COMMISSIONER: And is there another report from the operations manager at the end to close out the complaint? Or just those two reports?

15 **MR HAYES:** There was the allocator's job. That was my job.

COMMISSIONER: The allocator?

20 **MR HAYES:** Yeah, I would close out. That could be the operation manager at some stage when we had the shift around with allocators, but that's generally the job you would do. You would go through the CIS system. You would go through their notebook notes, you'd go through their notices and conclude that it's - the job has been addressed properly, and then you would close it out.

25 **COMMISSIONER:** And is the report you do by way of close-out, as the allocator or occasionally the operations manager?

MR HAYES: Not when I was in the role. I think later on there was a bit of a - like a pro forma type thing you had to fill out, but not in my time, I don't think.

30 **MR SMITH:** Thank you, Commissioner. And just on the questions that the Commissioner is asking in relation to documents, was there any record that you would keep whilst you were impacting with people on site?

35 **MR HAYES:** Well, I'd have notes, yeah.

MR SMITH: And where would your notes be?

MR HAYES: With the department.

40 **MR SMITH:** Sorry, where would your notes be kept, I should have asked you?

MR HAYES: In a notebook, sorry. Yeah.

45 **MR SMITH:** Now, you said a few moments ago, I think, that CPB refused to allow Mr Ingham to attend and the other officials to enter site after your discussion. Do you recall what occurred then, after that?

MR HAYES: What happened after that, sorry?

MR SMITH: Yes.

5 **MR HAYES:** Yeah, we decided Mr Bentzen and I would do a site visit, site inspection.

MR SMITH: Did you get any telephone calls?

10 **MR HAYES:** Yes, I got some - I got telephone call from Ms Burgess, I think two telephone calls.

MR SMITH: And do you recall the content of those telephone calls?

15 **MR HAYES:** Yes. It was about pressure to get the union on site, and I explained that the builder wouldn't allow them to come on, and then Ms Burgess said to me Mr Dennett said to use my inspector's powers to take the union on.

20 **MR SMITH:** What inspector's powers did you understand Mr Dennett to be referring to?

MR HAYES: That would be under 166, inspector's powers to bring a person on site to assist the inspector.

25 **MR SMITH:** Just before I come to that, did you ever have a conversation with Mr Dennett about whether or not he said that?

MR HAYES: No.

30 **MR SMITH:** Did you accept what Ms Burgess had told you at the time?

MR HAYES: Yeah, I refused to do it. I wouldn't - I wouldn't bring the union on under my powers.

35 **MR SMITH:** Sorry, did you accept what Ms Burgess had told you about what Mr Dennett said as being what he had, in fact, said?

MR HAYES: Yes. Yes, I did accept that, yes.

40 **MR SMITH:** Can you explain to the Commissioner what the power under section 166 of the Work Health and Safety Act is?

45 **MR HAYES:** Yeah, it allows me to take someone on site to assist me to resolve an issue or whatever. But I've done that within the department before; I've taken someone on site for hygiene issues. I have had a mechanical engineer come with me to look at cranes, accidents, that type of thing. But they're not under 166. They were internal. I've never had the - never had to bring anybody on a 166.

MR SMITH: Did you consider that you needed any assistance from Mr Ingham?

MR HAYES: No.

5

MR SMITH: Were you aware of any particular knowledge or skills Mr Ingham had that could have assisted you in your role?

MR HAYES: No, there was no -

10

MR SMITH: Did you ultimately bring Mr Ingham onto site?

MR HAYES: No, I didn't.

15

MR SMITH: What were your reasons for not doing so?

MR HAYES: I didn't believe that I could trust them to do the right thing if I brought them in under my powers, because I'm responsible for them when they're on site, and their actions.

20

MR SMITH: What was the reason you didn't believe that you could trust them?

MR HAYES: I think just past experience with the organisers. They didn't know how to behave themselves and they'd do things that weren't right. Wander off, you know, and do things.

25

MR SMITH: All right. So after determining that you wouldn't bring the officials onto the site, what did you then do?

30

MR HAYES: Inspector Bentzen and I went and inspected the site. We found a couple of issues. I think we gave verbal directions about a couple of things. We didn't write any notices, didn't find any major issues.

MR SMITH: And at that point what were you then going to do?

35

MR HAYES: We were going to leave the site. We had completed what we were going to do, but, yeah.

MR SMITH: And what happened after that?

40

MR HAYES: We - we saw Inspector Azcune enter the site with all the organisers, and they were wandering around the site.

MR SMITH: Do you know what the basis of that entry was?

45

MR HAYES: No, I wasn't aware of it, and no one told me it was going to occur, and there was no reason for it.

MR SMITH: Did you ever speak to Mr Azcune about that event?

MR HAYES: No, I didn't.

5

MR SMITH: Was it typical to have a further inspector sent to a site like that?

MR HAYES: No. It was unusual.

10 **COMMISSIONER:** Why didn't you speak to Mr Azcune? I thought he was in your region, but I could be wrong about that.

MR HAYES: Yeah.

15 **COMMISSIONER:** Was he in your region?

MR HAYES: No, he was out of the Logan office.

COMMISSIONER: Right.

20

MR HAYES: I wasn't that cordial with Mr Azcune. He did a lot of stuff that I didn't agree with.

25 **COMMISSIONER:** When you say you weren't very cordial with him, what do you mean?

MR HAYES: I just wasn't really on friendly terms with him, because a lot of the stuff he did, I didn't think he should have done.

30 **COMMISSIONER:** You say you didn't agree with it, he shouldn't have done. What do you mean by that?

35 **MR HAYES:** He would write notices. He was more inclined to write notices on behalf of the union. He worked very closely with Ms Burgess. You could almost say he was a right-hand man to Ms Burgess for dealing with union matters, and he would do favourable things for Ms Burgess and as far as union.

40 **COMMISSIONER:** How can he be the right-hand man if he is two levels below? He is an inspector. How could he be the right-hand man?

45 **MR HAYES:** Well, she used to request him to go to complaints, union complaints, and deal with the issue, and he would deal with it favourably. And that's, yeah, something that was sort of common knowledge in the department with the inspectorate. And this was one of them coming onto the site where I was and then escorting the union through without consulting with me, without any discussions at all. It's just something you just don't do.

5 If I put myself in the same predicament, I would go straight to him and have a conversation and say, "I've been directed to come out here and do what I've got to do," and have that conversation. It wouldn't be just barge on without anything. It's just not the right thing to do. It didn't please us, and it didn't please Inspector Bentzen at the time either. He still mentions how angry he was about that.

COMMISSIONER: Sorry, were you angry about it?

10 **MR HAYES:** Yeah, I was fairly angry about it, yeah.

COMMISSIONER: So given you and Mr Bentzen were both angry about it, why didn't you take it up with Mr Azcune?

15 **MR HAYES:** I just don't think it was worth the argument. You know, I didn't want to have confrontations over that sort of stuff. It wouldn't have done me any favours at all. It would have got back probably to Ms Burgess, and I would have got some sort of retaliation, I would imagine. It wasn't a comfortable situation, so I avoided it. And there was nothing to gain from me by doing it. It was done. I didn't do it.

20 **COMMISSIONER:** So what approach did you take to Mr Azcune thereafter?

MR HAYES: Much the same. Avoidance. Yeah. He'd walk in the room, I would say hello. I would always be that sort of cordial, but I never strike up a friendly conversation with him like I would with other inspectors.

25 **COMMISSIONER:** Is Mr Azcune still employed by WHSQ?

MR HAYES: I believe he's retired. Just recently, yeah.

30 **MR SMITH:** Mr Operator, can I please have paragraphs 42 and 43 of Mr Hayes' statement blown up. Mr Hayes, do you recall attending a site at Browning Street, West End in September 2018?

35 **MR HAYES:** Yes, I do.

MR SMITH: Can you tell the Commissioner about, firstly, that site?

40 **MR HAYES:** Yes, it was a construction site. It was a long, thin construction site. At the rear of it -

COMMISSIONER: Sorry, just before you move off that. The contractor that was operating the Gateway abutment project - sorry, was constructing the Gateway abutment works was CPB.

45 **MR HAYES:** Yes. Yes.

COMMISSIONER: Was there anything in particular about CPB, from your knowledge, that made it a target of this behaviour?

5 **MR HAYES:** No. It was just - I don't think so. I think they were involved with Cross River Rail. I don't know that's the connection.

COMMISSIONER: That was exactly the reason I asked the question, because Cross River Rail will be next week.

10 **MR HAYES:** Yeah, and the Toowoomba Range was another job with a lot of issues on, yeah. So that's the connection, I suppose, yeah.

COMMISSIONER: You don't know of any other reason?

15 **MR HAYES:** No, I don't think so. They seemed to cop a lot of attention from the CFMEU, but there is other contractors that did as well, copped a fair bit of attention, but I think Cross River Rail copped more. They had more attention from the CFMEU than probably others.

20 **COMMISSIONER:** You say there were other contractors that copped attention from the CFMEU. Who were they?

25 **MR HAYES:** There's quite a few. There's the Construction Group. There would be Hutchinson Construction. There would be ADCO, probably another one. There was numerous ones. The bigger sites, you know it wouldn't be the smaller ones, it would be the bigger sites.

30 **COMMISSIONER:** This project that Mr Smith is taking you to, is one of the Construction Group, the one he is just directing you to.

MR HAYES: The one he brought up now, yeah, the Construction Group.

35 **MR SMITH:** Thank you, Commissioner. So that project at 33 Browning Street, West End, can you just describe that?

40 **MR HAYES:** Yes. A skinny block. Deep. Had an excavation for a car park towards the rear. The front was very restricted with the room. They had a couple of sheds on there. They had a shed to put their plans in and documentation. Another shed on site for first aid, which had hot and cold running water. Refrigeration. It had a jug to heat your water. First aid. There was two toilets.

MR SMITH: And why did you attend that site?

45 **MR HAYES:** I think that was a proactive - proactive visit.

MR SMITH: And do you recall who you attended that site with?

MR HAYES: Yeah, Inspector Cappelletti.

MR SMITH: Did you raise any issues with Construction Group while you were on the site?

5

MR HAYES: Yes, I did. I was quite happy with the sheds they had there, but they had no seating area for the construction workers, no sheltered area.

MR SMITH: What was your concern about that?

10

MR HAYES: I just believe that the construction workers should have somewhere suitable for their breaks, somewhere shady, somewhere hygienic and clean away from the construction area.

COMMISSIONER: Why do you need that if you are doing what looks like a apartment project or something like that in West End where there's plenty of places to go and have your break nearby? Why do you need that?

MR HAYES: There is a requirement.

20

COMMISSIONER: I understand on the Gateway abutment project but this is a small project, presumably.

MR HAYES: Yeah. There is a requirement in the regulation over 15 workers where they have to have these amenities on site.

25

COMMISSIONER: I see.

MR HAYES: Yeah. And I just believe - I was in the industry for 36 years, and I used to sit on two bricks to have my smoko, and I believe that the workers deserve better, better than that, so I appealed to the builder to erect something.

30

MR SMITH: And how many workers were on site? Do you recall?

MR HAYES: Roughly around five at that stage.

35

MR SMITH: And what did you specifically ask the Construction Group to do?

MR HAYES: I didn't really ask them to - I had a conversation about erecting a shelter for the workers, which they agreed. I asked them if they could have a roofed area, hygienic, clean, with enough tables and chairs to seat the five workers on site, and they agreed.

40

MR SMITH: And do you visit that site again subsequently?

45

MR HAYES: Yes, I did.

MR SMITH: And had they done what you had suggested?

5 **MR HAYES:** Yes, they did better than what I - they put a timber floor, raised timber floor. The seating was good. They had an awning over the top for shade. It was away from the work area; it was up the top away from the excavation. So it was very suitable.

MR SMITH: And subsequent to that, did anyone raise that issue with you?

10 **MR HAYES:** About - well, the issue was raised about the union weren't satisfied with that. They maintained that it was a not suitable structure for an inner city project.

MR SMITH: And who raised that with you?

15

MR HAYES: Ms Burgess.

MR SMITH: And when you say the union, which union are you talking about?

20 **MR WATTS:** The CFMEU.

MR SMITH: Do you recall what Ms Burgess told you?

25 **MR HAYES:** She said she was contacted by the union and they weren't satisfied with the sheltered area, that it's not consistent with an inner city project.

MR SMITH: And how did you respond to Ms Burgess?

30 **MR HAYES:** I responded by saying there's nothing in the legislation which discriminates between any particular construction site. The regulations are very clear on what you must provide, what the builder must provide.

MR SMITH: And did she have a response to that?

35 **MR HAYES:** She said I had to write an improvement notice based on what the union had brought up.

MR SMITH: Did you take any steps - or did you agree to write the improvement notice?

40

MR HAYES: No, I said I won't be writing the notice. It's not valid.

MR SMITH: Did you take any steps after that?

45 **MR HAYES:** When I got back to the office, I contacted the policy department. Our policy department is there, they give us advice and interpretation on legislation and

codes of practice. And I'm not sure how I got it back, whether it was in a phone call or a letter, but they agreed with my determination.

5 **COMMISSIONER:** Did you say that Ms Burgess directed you to write an improvement notice or an infringement notice?

MR HAYES: Improvement notice.

10 **MR SMITH:** Do you recall who you contacted in the policy department?

MR HAYES: Sorry?

MR SMITH: Do you recall who you contacted?

15 **MR HAYES:** Yes, Adam Low. He was head of the policy department.

MR SMITH: You said you don't recall the method of the response, but do you recall who it was in the department responded to you?

20 **MR HAYES:** Adam Low was the one who gave me the advice.

MR SMITH: And do you know whether that advice was shared with Ms Burgess?

25 **MR HAYES:** Yes, it was.

MR SMITH: And what was Ms Burgess' reaction to that?

30 **MR HAYES:** She was angry at me. She said, "You went behind my back to go to the policy to get the outcome that you were looking for."

MR SMITH: Were you looking for a particular outcome?

MR HAYES: No, I wasn't, no.

35 **MR SMITH:** What were you looking to achieve?

MR HAYES: Provide some shelter for some workers.

40 **MR SMITH:** Did you have a conversation with anyone other than Ms Burgess about this issue, do you recall?

45 **MR HAYES:** Yes, I think it might have been a day or so after, as I attended the Cross River Rail project. It was in infant stages then; it was just coming out of the ground. My then operational manager Andrew McKenna was on site, and he asked me if I was going to write the notice, that he was getting a lot of pressure from Ms Burgess.

MR SMITH: And when he asked you that, did you understand what notice he was referring to?

MR HAYES: Yes, I did.

5

MR SMITH: And what was your response to Mr McKenna?

MR HAYES: I told him I won't be writing the improvement notice because it's not valid.

10

MR SMITH: Did Mr McKenna try to convince you otherwise?

MR HAYES: No, he didn't push it.

15

MR SMITH: Now, you might have said this before, but what was Mr McKenna's role?

MR HAYES: He was an operational manager.

20

MR SMITH: Did he continue to be an operational manager after that?

MR HAYES: No, he didn't.

25

MR SMITH: And how long after that did he cease being a operational manager?

MR HAYES: I can't recall. It was probably - probably just weeks, I think, yeah.

MR SMITH: Do you know why Mr McKenna ceased in that role?

30

MR HAYES: Yeah, I take a bit of responsibility for it. I think he was - he was disciplined over not pushing me to write that notice. I think probably Ms Burgess said that he had to do what she asks.

MR SMITH: And how do you know that?

35

MR HAYES: I had the conversation with Mr McKenna myself in the office, Mount Gravatt office.

40

MR SMITH: And apart from Ms Burgess, did he tell you anything anyone else had said to him?

45

MR HAYES: He told me - he was visibly upset one day and I questioned him about it, and he said that Marc Dennett had said to him, "You can stay in that role if you follow Ms Burgess' lead or follow her directions, and if you don't, you will be going back to your other role." And he chose to go back to his other role.

MR SMITH: Do you have any insight into what effect that had on Mr McKenna?

MR HAYES: It had a hell of an impact on him, yeah. It really shook him up. It threw him, yeah.

5 **MR SMITH:** After that interaction, did you have any further interaction with anyone about -

COMMISSIONER: When you say a hell of an impact, what do you mean it really shook him up?

10

MR HAYES: It just affected his wellbeing, I think. He wasn't the same person after that. He was a very dedicated inspector, very experienced inspector. And he took his job very seriously. And something like that, he was - when he got the operational manager, because he won it over me when I went for the role, he won over me and I thought you couldn't get a better man for the role. He was trying to really focus on getting the group together and making a good, a good - good look inspectorate type thing, you know, and this was taken away from him over something like a notice, and I always felt a bit of responsibility for that.

20 **COMMISSIONER:** How long had he been an inspector?

MR HAYES: He must have been there 30 years. He used to be a troubleshooter for the regional director. He was a very knowledgeable man, and he used to take on all the hard jobs, and he used to deal with them for the regional - yeah, regional director. He was a very intelligent man.

25

COMMISSIONER: Do you know of any policy or any procedure or any method by which someone with that level of experience can be demoted?

30 **MR HAYES:** No, I don't. I told him he should have - fight it, because I said, "They just can't take that position away from you. It was your position; you won that position." And he said, "I haven't got the fight." He just didn't want to fight the battle.

COMMISSIONER: What's happened to him now?

35

MR HAYES: He's retired, I believe. He went to my going away party. He just wasn't the same man that I knew, yeah.

MR SMITH: Now, was this issue raised with you again subsequently?

40

MR HAYES: Yes, it was, yeah, by Ms Burgess.

MR SMITH: And how did that come up?

45 **MR HAYES:** She rang me and said there's been a policy change, that the policy had changed to the view of what the union wanted originally.

MR SMITH: Was that the full amenities you referred to earlier?

MR HAYES: Yes, there was a shed, actual shed they wanted.

5 **MR SMITH:** Did Ms Burgess say anything to you about what you should do?

MR HAYES: Yes, she pushed me for the notice, still pushed, yeah.

10 **MR SMITH:** And did you issue the notice at that point?

MR HAYES: Eventually I relented under the pressure, constant pressure, and the new advice from the policy people, and I still didn't believe it was actually right, but I issued the notice and I told the builder to appeal the notice straightaway.

15 **MR SMITH:** Can you just explain what the appeal process is?

MR HAYES: The appeal process is you don't think the notice is valid or just, then you've got a process where you can send in for an appeal, have the notice reviewed.

20 **MR SMITH:** And why did you tell the builder to appeal the notice?

MR HAYES: Because I knew it wasn't right, yeah. The regulation states that you can have - even over 15 people, that you can have a sheltered area or a shed. So they were compliant. Even though they only had five people on site, they were still
25 compliant anyhow if it was 15.

MR SMITH: Have you ever identified anything in the WHS Act or the regulations that deals with the amenities specifically on inner city construction projects?

30 **MR HAYES:** Yes, 5A in the regulation deals with amenities.

MR SMITH: Does that provide different amenities or is that the section were you talking about just before?

35 **MR HAYES:** Yes, 5A is about all amenities, yeah.

MR SMITH: And does it provide a different - anywhere within it, a different requirement for inner city construction.

40 **MR HAYES:** No, it's pretty straightforward.

MR SMITH: Now, you said - sorry. I won't put to you what you said. I'll just ask you. What was the reason that you didn't believe the notice should have been issued? Despite the fact that you did.
45

MR HAYES: It wasn't valid. What they had done on the site was compliant with the regulation. So it was pretty straightforward.

MR SMITH: Commissioner, do you have any more questions about that particular -

COMMISSIONER: Do you know whether the builder did, in fact, appeal?

5

MR HAYES: Sorry.

COMMISSIONER: Do you know whether the builder, which I think you identified as the Construction Group -

10

MR HAYES: Yeah.

COMMISSIONER: - did, in fact, appeal?

15 **MR HAYES:** No, they didn't, not to my knowledge. I would have known about that if they did.

COMMISSIONER: And you identified this group, the Construction Group, as being one of the contractors, you might have said builders, I can't remember which, that there were a lot of CFMEU complaints about?

20

MR HAYES: Yes. Yeah, one of them, yes.

COMMISSIONER: Why was that?

25

MR HAYES: Why do I believe they kept coming on site? My belief is what their intent was all the builders were slowing down, slow the project down so it goes into overtime. It becomes a cost factor. It goes into liquidation damages. That was their intent, I think, yes.

30

COMMISSIONER: But what was the union - as far as you know, you might not know - trying to slow down the projects of the Construction Group for?

MR HAYES: For what reason?

35

COMMISSIONER: Yeah.

MR HAYES: I could have a guess. It was pressure - it was intimidating pressure to - a lot of the reason is to impress their - and give a reason why workers should have a union. I think a lot of it is about EBA, the builders wouldn't sign EBAs or that type of thing. They wouldn't have EBA-aligned subcontractors working for them. Those sorts of reasons, they were.

40

COMMISSIONER: But you say that you went to the policy department to get this advice and yesterday you gave some evidence that Ms Burgess came from, I think you called the strategy side.

45

MR HAYES: Yeah, she came from the strategy unit, yes.

COMMISSIONER: The strategy unit. Are they the same thing or different things?

5 **MR HAYES:** No, they're different.

MR SMITH: Can you just explain the difference to me?

10 **MR HAYES:** The policy department gives the inspectors a determination on the legislation. You can ask about the code of practice, and they will seek that out and they'll come back to you with an answer on that. The Construction Group which she worked in, that strategy unit, that was more about engaging with contractors, workers, builders, builders (indistinct) authority, about health and safety matters and yeah, that type of thing.

15 **COMMISSIONER:** So if it's the point of the policy department to give inspectors advice, how is that going behind Ms Burgess' back to seek that advice from the policy department?

20 **MR HAYES:** I don't believe it is. Maybe I didn't follow up protocol. We really should put that through the operational managers, any queries, but I felt a bit of a urgency to get that done quick, and under the circumstances I didn't have a lot of faith in going to an operational manager. So I rang, I contacted them direct.

25 **COMMISSIONER:** Thank you, Mr Smith.

MR SMITH: Thank you, Commissioner. Mr Operator, could you please blow up paragraphs 54 and 55 of Mr Hayes' statement. Mr Hayes, did you again attend that site on 20 March 2019?

30 **MR HAYES:** Yes, I did.

MR SMITH: And who did you attend with on that occasion?

35 **MR HAYES:** Inspector Cappelletti.

MR SMITH: And what was the reason that you attended that site on that occasion?

40 **MR HAYES:** There was a union complaint about a certificate on a tower crane on site. The tower crane has a 10-year certificate, and there was discrepancies in the document.

MR SMITH: What you say "discrepancies" what do you mean by "discrepancies"?

45 **MR HAYES:** The tower crane was inspected in 2012 by a competent engineer, that makes it valid to go up to 2022. But for some reason the engineer put a condition on the document and wanted a recheck or re-inspection in 2017.

MR SMITH: All right. What did you do to inspect or investigate that issue while you were on site on that first occasion?

5 **MR HAYES:** We were observing the crane at first and we saw the documentation, the complaint, and that's exactly what the case was. I can't remember all the details about the tower crane document.

10 **MR SMITH:** During that inspection did you identify anything that would require the issue of a notice?

MR HAYES: No, not at all.

15 **MR SMITH:** All right. Did anyone contact you while you were on site?

MR HAYES: Yes, I was contacted by Mark Houston, the operational manager.

MR SMITH: And what did Mr Houston say to you?

20 **MR HAYES:** I had two phone calls. The first one was in relation to what notice are we going to write. I believe there was a push for a prohibition notice on the crane - well, I know there was - a push to put a prohibition on the crane. And when we said we're not putting a notice on the crane, he contacted me the second time and
25 said, "Ms Burgess wants you to stand down from site and not return until future notice."

MR SMITH: Now, I'll come back to that in a second, but can I just ask you, do you recall whether - who raised the complaint that caused you to attend site?

30 **MR HAYES:** Yeah, Blake Hynes.

MR SMITH: And is that the same Mr Hynes you referred to earlier?

35 **MR HAYES:** Yes, CFMEU, yes.

MR SMITH: Yes. Now, did Mr Houston tell you why you were asked to leave the site?

40 **MR HAYES:** No.

MR SMITH: To your knowledge, did the direction come from Mr Houston directly?

45 **MR HAYES:** It came from - it came from Ms Burgess direct through Mr Houston, yeah. We asked why we had been stood down and he wouldn't give us a reason, and we knew it was because we didn't write the prohibition notice.

MR SMITH: All right. And had that sort of thing happened to you before?

MR HAYES: Not really, only that previous one we had with the improvement notice, but not for a prohibition notice.

5 **MR SMITH:** And was there any subsequent occasions when you were directed to leave site in a similar way?

MR HAYES: No, never.

10 **MR SMITH:** All right. When you say you know that the reason was because you didn't issue a prohibition notice, that is the reason you were directed to leave site, how did you come by that knowledge, do you recall?

MR HAYES: Just by the tone of the conversation, and being removed from site.
15 That's the only reason why it would have been; we weren't issuing the notice that they wanted us to issue.

MR SMITH: Did you comply with that direction to leave site?

20 **MR HAYES:** No, I didn't - yes, I did, sorry, leaving site, yes we did.

MR SMITH: And did you conduct any further investigations of your own that day?

MR HAYES: Yes, I did. When I went back to the office, I rang the engineer who
25 did the original test on the crane. He was in, I believe in South Australia at that time that I had the conversation with him.

MR SMITH: And when you say the "original test on the crane", what do you mean
30 by that?

MR HAYES: The test that was done at 2012.

MR SMITH: Is that the 10-year inspection that you were referring to earlier?

35 **MR HAYES:** It's the 10-year inspection, sorry, yeah.

MR SMITH: What, if anything, did he tell you about that?

MR HAYES: When I questioned him about the condition of the crane, I can
40 remember, not word for word, but something to the effect of "In hindsight I really shouldn't have put those conditions on."

MR SMITH: And did you have a further - or did you have any further conversation
45 with the engineer about those issues?

MR HAYES: No that - no, I didn't.

MR SMITH: At that time did you consider that the issue of any sort of notice was necessary?

5 **MR HAYES:** No, there was no imminent or immediate risk. It's administrative control.

MR SMITH: Did you have any conversation -

10 **COMMISSIONER:** What does that mean, "administrative control"?

MR HAYES: Administrative control, you have a control hierarchy; when you want to put a control in place you have a control hierarchy. So if you want to eliminate the risk, the top of the tree would be elimination of that risk, elimination of the hazard. Then you go down to substitute, can you substitute that risk for something else, something less hazardous. Then you go to engineering which is a work system or work process. That's number 3. Then you come down and do, PPE is the fourth one and the last one on the list is administrative control. Now, administrative controls are usually a document process: it can be signage, it can be bollards with a taped area, through an area that's designated safe area, but mainly through administrative controls and this is what I maintain the document is, administrative control.

MR SMITH: Did you then, having spoken to the engineer, have any conversations with anyone else later that day?

25 **MR HAYES:** Yes, Ms Burgess rang me.

MR SMITH: And what occurred during that conversation?

30 **MR HAYES:** She said, "I want you to conduct a record of interview with the owner of the crane, Falcon Cranes. I want you to put all the questions down, send them to me for approval and I want you to write a prohibition notice."

MR SMITH: Was it usual to be required to give a director a list of questions before you conducted a record of interview?

35 **MR HAYES:** Never.

MR SMITH: Did you, at the time that she requested you write a prohibition notice, did you write one.

40 **MR HAYES:** No, I didn't. I was still of the same belief and I told her that it's not imminent risk.

MR SMITH: Did you comply with the direction to provide a list of questions?

45 **MR HAYES:** Yes, I did.

MR SMITH: And did you subsequently attend site again?

MR HAYES: The next day, next morning, we attended site where I interviewed the crane driver.

5

MR SMITH: And what did you speak with the crane driver about?

MR HAYES: I spoke to him about his pre-start, the maintenance on the machine, if there's any faults with the machine. If there is any faults on the machine, who rectifies it? What sort of response does he get from his management about the rectification, how quick they fix the process? And all the answers to that were good answers, exactly what I wanted to hear.

10

MR SMITH: And did you ask the crane driver about his experience at all?

15

MR HAYES: Yes, I did.

MR SMITH: And what did he tell about that?

MR HAYES: He had five years experience I believe in France on a similar machine, and I think he worked on this machine in Australia for two years.

20

MR SMITH: Did you have any reason to doubt what it was that he was telling you?

25

MR HAYES: No.

MR SMITH: Did you yourself identify any risk, factual risk, or actual risk from the crane?

30

MR HAYES: No. We watched it operate. There were no visible problems at all.

MR SMITH: Did anyone else turn up while you were onsite?

35

MR HAYES: Yes. Blake Hynes turned up; when we up on the second floor observing the crane, he turned up.

MR SMITH: And do you recall anything about your interaction with Mr Hynes?

40

MR HAYES: Yes, he came to me very angry, I can't remember his exact conversation. But Mr Cappelletti informed him that he had to sign in, or had he signed in. And he said no, he hasn't signed in. He said, "You need to go and sign in." He refused to do it at first and they had a bit of a debate and after a while he went off angrily downstairs and signed in.

45

MR SMITH: When you say "signed in", what are you referring to there?

MR HAYES: It's a requirement, a health and safety requirement. The builder asks for people to sign in for safety reasons.

5 **MR SMITH:** Did you, or can you recall, any further conversation with Mr Hynes on that occasion?

MR HAYES: No, I don't think so. I can't recall, yeah.

10 **MR SMITH:** All right. What did you do after you had interviewed the crane operator?

15 **MR HAYES:** We went back to the office. We did the record of interview and we seized all his maintenance records. We viewed all his maintenance records which were in order. After that, I received another phone call from Ms Burgess and she was asking me about the prohibition notice. And then she told me that she had a conversation with Mr Stuart, Stuart Davis, sorry, is the mechanical engineer in the department, an expert on cranes. And she said that he thought we should put a prohibition notice on the crane, based on the information on the 10-year certificate.

20 **COMMISSIONER:** Who said that to you?

MR HAYES: Ms Burgess said it to me.

25 **COMMISSIONER:** Because of what?

MR HAYES: She spoke to Stuart Davis, who is a mechanical engineer, he is an expert on cranes within the department; and his advice was we should put a prohibition on the crane, based on the certificate.

30 **MR SMITH:** Did you ever independently verify that with Mr Davie.

MR HAYES: No, I took it on face value.

35 **MR SMITH:** Now, just going back to the evidence you gave about the record of interview, who was the person that you spoke with?

MR HAYES: Sorry?

40 **MR SMITH:** Who was the person that you interviewed in the record of interview?

MR HAYES: Was it Alex Macklin? I'm not quite sure.

MR SMITH: Do you remember what his role was?

45 **MR HAYES:** He was the owner of the company.

MR SMITH: Which company?

MR HAYES: Falcon Cranes.

5 **MR SMITH:** And you said that you - I think the words you used were seized all of his records.

MR HAYES: Seized his maintenance records.

10 **MR SMITH:** When you say his maintenance records, whose records were they?

MR HAYES: Records for that crane, yeah.

MR SMITH: Did you interrogate those records.

15 **MR HAYES:** We went over them, we actually went over them during the record of interview.

MR SMITH: And did you find anything in those records that caused you concern?

20 **MR HAYES:** No there was nothing there.

MR SMITH: Did you find anything in those records that suggested there was an imminent or immediate risk?

25 **MR HAYES:** No, nothing at all.

MR SMITH: And was - I think - was it after that had you the conversation with Ms Burgess that you just gave some evidence about?

30 **MR HAYES:** Yes.

MR SMITH: Now, after that conversation, did you immediately issue the notice?

35 **MR HAYES:** She - I refused to issue the notice because I didn't think there was an imminent risk, administrative control, and she said to me, "I'm going to send you over a draft copy of a prohibition notice, and you need to issue the notice," and I did issue the notice, but I would have had to put that into the CIS, so I would have had to copy and paste that across to actually get my prohibition number, note number, and my imprint of my signature would have to be on there. So I would have had to copy
40 and paste it across and, yes, and it was issued.

MR SMITH: And did you deliver that notice to someone?

45 **MR HAYES:** No, it went electronically, but I had a conversation with, I believe, Derek Woodhouse, who is the safety manager and I told him to immediately appeal the notice.

MR SMITH: And why did you tell him to appeal the notice?

MR HAYES: Because it was invalid. It was wrong.

5 **MR SMITH:** So is it the case that when you issued the notice, that the notice you issued wasn't in your own words?

MR HAYES: Yes. None of it was my words. My signature was on it.

10 **MR SMITH:** Yes.

MR HAYES: Yeah.

15 **MR SMITH:** Did you have a reasonable belief?

MR HAYES: No, never.

MR SMITH: So can you explain to the Commissioner why you issued the notice?

20 **MR HAYES:** The continual harassment. This went on for quite a few days. It was just relentless, and then when I heard the advice from Mr Davies, I still wasn't convinced, but on - going on that and the relentless harassment, I decided to issue it, but I made sure I told them to appeal it.

25 **MR SMITH:** Did you at any time identify any imminent or immediate exposure to a hazard?

MR HAYES: No, never.

30 **MR SMITH:** Can you recall now whether the words of the notice identified that?

MR HAYES: No, I didn't actually identify anything wrong with the crane at all.

35 **MR SMITH:** Just one more question. I'm conscious of the time.

COMMISSIONER: Finish off this topic if you want, Mr Smith.

40 **MR SMITH:** Yes, it's only a couple of questions to go, Commissioner. After you'd issued the notice, do you know whether it was complied with?

MR HAYES: The following day, which I believe was the 22nd, they had an independent competent engineer. He did an inspection test of the crane and he found it fit and safe to go back into use. So I lifted the notice.

45 **MR SMITH:** So to your knowledge, were there any issues or problems with the crane at all that were identified by the inspection by the engineers?

MR HAYES: Not at any time, no.

MR SMITH: Is now a convenient time, Commissioner?

5 **COMMISSIONER:** I'll just ask a couple of questions.

MR SMITH: Yes.

10 **COMMISSIONER:** This was the second time in six months you had been to this site. The first time was about the amenities during the excavation, and this was at a time which a tower crane had been installed. Was it, in fact, operating?

MR HAYES: Yes, it was.

15 **COMMISSIONER:** And how big was the project at that stage? How many floors had been built?

20 **MR HAYES:** I believe we were standing on the second level when I was taking photographs of it.

COMMISSIONER: And do you recall how many floors the project was supposed to be?

25 **MR HAYES:** I think it might have been a 10-storey, something like that, a unit development.

COMMISSIONER: And the prohibition notice that you issued is attached to your statement at - can you just turn up page 26 please, Mr Operator. I think you say, "This was not my wording." This is in paragraph 65. It doesn't identify the crane posed an imminent or immediate risk to anyone despite that being a requirement to issue a notice. Just have a look at the details of serious risk where it says the site location 33 Browning Street, West End, and then just blow up the next 10 lines or so, please.

35 That does seem to say that you believed that there was a serious risk. I'm not saying you did believe it, but it does seem to say the notice you issued states that you believed that an activity is occurring at workplace and involves a serious risk of health and safety emanating from immediate or exposure to a hazard.

40 **MR HAYES:** Yes.

COMMISSIONER: Is that consistent with paragraph 65 of your witness statement?

45 **MR HAYES:** Yes, it is the same, yeah. But at no time I believe there was an imminent or immediate risk with this, and like I say, this wasn't my wording, and there's an attached document as well.

COMMISSIONER: I'm missing some - what's the word I'm missing? Is it immediate or imminent exposure to a hazard is not imminent or immediate risk. Is that -

5 **MR HAYES:** Yes, that's correct.

COMMISSIONER: Is that the distinction you are making?

10 **MR HAYES:** Yes, there was never that, yeah. I never made a determination like that at all. Like I said before, this was an administrative control. It wasn't - there was no damage to the crane. There was no oil leaks or broken jib or a noisy drum or anything that would have given me a hint there was something wrong with the crane, that there's going to be a risk of something happening. It was just a document.

15 **COMMISSIONER:** What does this phrase "immediate or imminent exposure to a hazard" mean?

MR HAYES: To a hazard?

20 **COMMISSIONER:** I'm just reading the second line.

MR HAYES: It should be imminent or immediate exposure to the risk of a person or persons as a result of a hazard. That's what it should be saying. These weren't my words, and the attached document is not my words either.

25 **COMMISSIONER:** Sorry, what's the attached document?

MR HAYES: There was an attached document with this which talks about the certificate, and it should be on the back, on the back page.

30 **COMMISSIONER:** The back page.

MR HAYES: The back page of the appeal process, I think it is.

35 **COMMISSIONER:** Can the witness be shown page 29.

MR HAYES: Yeah, that's it.

40 **COMMISSIONER:** Is that what you mean?

MR HAYES: Yeah, that's what I mean.

COMMISSIONER: What are you saying about that, sorry?

45 **MR HAYES:** That's not my content. I didn't write any of that.

COMMISSIONER: Right. So who wrote that?

MR HAYES: I don't know. It came from Ms Burgess. I don't know who the author is. I don't know.

5 **COMMISSIONER:** You don't know?

MR HAYES: I had my suspicions, but I don't know for sure.

COMMISSIONER: What are your suspicions?

10

MR HAYES: I think Ms Burgess made it, did it, yes. I think she did it, but I can't confirm that.

15 **COMMISSIONER:** But when you put the document, you read it if you don't have the benefit of having you to explain it, it looks like it's you that's expressing that belief.

MR HAYES: That was the intent, I think, yes.

20 **COMMISSIONER:** Mr Smith might have asked you this question, but do you know whether the owner of Constructions Pty Ltd, Constructions Group, challenged this notice.

25 **MR HAYES:** I don't believe they did, because I would have known about it. I had a good rapport with that company, and I think they would have felt it was a reflection on me that - if they did it appeal it. And I think that's the reason why they didn't do it.

COMMISSIONER: So how do you get the crane operating again and get the rest of the apartment building built with this notice in place if you don't challenge it?

30

MR HAYES: Well, they never actually stopped the operation of the crane, because it only went through as a verbal. I believe I held off sending that notice for a couple of days, I can't confirm how long, but there would have been a verbal stoppage of the crane in my conversations. That's how it would have stopped temporarily, which would have been probably the next day it would have been, the day the engineer come out and said it was safe and fit for use.

COMMISSIONER: I see. So it was only stopped for two days.

40 **MR HAYES:** I don't think it stopped on the 21st, I don't think I would have contacted them then. Maybe in the afternoon of the 21st, by memory, the 22nd until it was reinspected. Up to that I would say it would be - only because of the verbal, but I don't believe I sent the notice off for a couple of days. And I don't know what I was thinking with that. I can imagine what I was thinking.

45

COMMISSIONER: You could imagine?

MR HAYES: Yeah, I was pretty angry about this. This is really one that sort of broke the camel's back type of thing, this type of thing to actually - couldn't get me to write a notice, so they put words into my mouth sort of thing and made me do it. It's -

5 **COMMISSIONER:** Who is "they"?

MR HAYES: Well, Ms Burgess. She was the instigator of it.

10 **COMMISSIONER:** And what did you do about the fact that you were angry about it?

MR HAYES: Nothing really. All I can do is tell the builder to appeal the notice and get the right justice on it, you know, like, I mean, it's not a valid notice. I didn't, I told them that I didn't - none of the content was mine.

15 **COMMISSIONER:** You told them what, sorry?

MR HAYES: None of the content was mine, and that's the only thing I could sort of do. Yeah.

20 **COMMISSIONER:** What did the builders say to you?

MR HAYES: I can't recall. They were pretty upset with the whole thing, because they went through that earlier with the awning as well, the covered area.

25 **COMMISSIONER:** With the awning, during the excavation six months earlier?

MR HAYES: Yeah, with that. And they were harassed pretty regularly by the CFMEU. I tried to work with Construction Group. They are a good company. They took their safety seriously. I tried to work with them as best I could. I had a good rapport with the manager, especially the safety manager. He's the one I would have been dealing with mainly, I would say, on this.

35 **COMMISSIONER:** Do you know what his name was?

MR HAYES: Yeah, Derek Woodhouse.

COMMISSIONER: And you said you had a good rapport with Mr Woodhouse?

40 **MR HAYES:** Yes, I did.

COMMISSIONER: What was his reaction to this, can you recall?

45 **MR HAYES:** They just sort of copped it. They just sort of - I'd had conversations with them earlier about, or particularly with Derek Woodhouse, about what was going on with the department, how we sort of - sort of, our hand was forced into what he we had to do. It wasn't off our back, sort of thing. I think I had conversations

with that, with him like I did with other people, you know. We weren't supposed to talk outside the department but I did that because I don't think what was going on was right.

5 **COMMISSIONER:** Anything arising from that, Mr Smith?

MR SMITH: Just one question, Commissioner. The Commissioner was asking you about the appearance of imminent or immediate risk in the statement. Now, the Commissioner took you to some words earlier but - sorry not the statement, my
10 apologies, the notice. Did the notice in your recollection actually describe what the imminent or immediate risk was?

MR HAYES: No, it doesn't. It doesn't say there's any structural damage or anything wrong with the crane or, like I said before, there was no oil leaks, there was no
15 broken parts, there was no malfunction at all. So it doesn't actually say that.

MR SMITH: That was the only question I had, Commissioner.

MR HAYES: Yeah, if I put that note together I would have said that - I would have described what I'd observed with the crane to give me the view that it had imminent
20 or immediate risk.

MR SMITH: Was that what you were talking about in your statement when you said you hadn't identified - the notice didn't identify any imminent or immediate risk?
25

MR HAYES: Yes, yes.

COMMISSIONER: Mr Smith, if you need to prepare to meet with Mr Cappelletti, then I'm sure - I perhaps shouldn't speak for Mr Wheelahan - I'm sure it would be
30 feasible for Mr Wheelahan to take Mr Watts this afternoon.

MR SMITH: Yes, Commissioner.

COMMISSIONER: I will let you talk to Mr Wheelahan about that once you have finished with Mr Hayes.
35

MR SMITH: Yes, Commissioner.

COMMISSIONER: We will adjourn until 2 pm.
40

<THE HEARING ADJOURNED AT 12.57 PM

<THE HEARING RESUMED AT 2.00 PM

45 **COMMISSIONER:** Mr Smith.

MR SMITH: Yes, Commissioner. I think there were some documents Mr de Jersey was going to tender. Is now an appropriate time for that?

COMMISSIONER: Yes, of course. I forgot about that.

5

MR DE JERSEY: I have the email chain of which I am the author of one of the emails that was dated 11 March yesterday at 5.30 or thereabouts, and there's a response at about 6 o'clock from the Commission. I think that's exhibit DJ-2.

10 **COMMISSIONER:** Sorry, the only exhibit I've marked for you is DJ-1, isn't it?

MR DE JERSEY: That's so.

COMMISSIONER: This is going to be DJ-2. I beg your pardon, sorry, yes.

15

MR DE JERSEY: And when I hand up proposed exhibit DJ-2, I'll hand up another document. It has some post-it notes which I will explain in a minute. The second document -

20 **COMMISSIONER:** This email, 11 March 2026 from legal@cfmeuinquiry.qld.gov.au to you and to others will be DJ-2.

**<EXHIBIT DJ-2 EMAIL 11 MARCH 2026 FROM
LEGAL@CFMEUINQUIRY.QLD.GOV.AU TO MR DE JERSEY AND
OTHERS**

25

MR DE JERSEY: And the second document is an email chain, and that's the one that I introduced before lunch, the last week emails, if I can term it that way, that introduce Mr Cappelletti's medical condition.

30

COMMISSIONER: Yes, all of those things have formed part of the evidence so far?

MR DE JERSEY: They have, except that in order for that email chain to be complete with its attachments, unless you prefer to take the attachments off, I thought it probably better for the document to be united so that it makes better sense. But they could certainly be taken off. If the documents are taken off, that solves a problem which I will come to in a minute. And that's when you see the post-it notes, you will also find adjacent on the post-it notes red notations. What they line up with is material in the attachments which are already the subject of non-publication orders. So if the tender is of the email together with the attachments, then there would need to be a similar order made in relation to the attachments in the form as being attached to the email chain. A simpler solution might simply be to take them off. So there are two courses that could be taken.

45

COMMISSIONER: Right, but I think the email of 6 March 2026 from Joel Sleep to Christopher Gardner copied to Helen Freemantle, Erin Smith, Meredith Bennett,

Douglas Wilson and David de Jersey (indistinct) CFMEU inquiry that attaches - do you want that in, that email?

MR DE JERSEY: Yes, I tender that now.

5

COMMISSIONER: Yes. All right. And it attaches a letter of 6 March, which has already gone in as CA-4, and CA-4 itself includes the email from David Cappelletti to Joel Sleep of 3 March '26 and also the medical certificate of 5 March 2026, both of which are also separate exhibits, I believe.

10

MR DE JERSEY: They are.

COMMISSIONER: All right. So what's the point of this covering email of 6 March? I'm sorry, it's a chain, isn't it?

15

MR DE JERSEY: It's a chain.

COMMISSIONER: It's a chain from 4 March 2026 from Meredith Bennett, Ashurst, to Christopher Gardner, copied to Joel Sleep, Helen Freemantle, Erin Smith, legal CFMEU inquiry, and then Mr Gardner's response of 4 March 2026 at 3.31 pm and then Mr Sleep's response to Mr Gardner attaching what has become CA-4. Is that right?

20

MR DE JERSEY: That's right.

25

COMMISSIONER: And what's the point of it?

MR DE JERSEY: The point of it is that in the middle of last week there was to be, I think it's termed in the email, an informal meeting at the commission premises with Mr Cappelletti.

30

COMMISSIONER: Right.

MR DE JERSEY: The emails show he could not attend that interview because he had an appointment with Dr Ansell. That interview was then not - it didn't proceed, and you will see an email from Mr Gardner which identifies what is obvious, that if he had an appointment with his doctor he couldn't be at the Commission. And then on the Friday at about half past 1, the application itself for the temporary adjournment of his evidence was made by Ashurst.

40

COMMISSIONER: Where was that, sorry?

MR DE JERSEY: It's the last email in the chain. I'm sorry, you have the only copy.

45

COMMISSIONER: I don't believe it's here, in this chain, anyway, that you just handed me.

MR DE JERSEY: It should be on the front page.

COMMISSIONER: The front page?

5 **MR DE JERSEY:** It's the last email chronologically in the chain.

COMMISSIONER: So the one of 4 March?

10 **MR DE JERSEY:** It should be 6 March, Friday last week.

COMMISSIONER: I don't think I've got that one. It's not what you just handed to me. Do you want me to hand it back to you to check?

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

COMMISSIONER: I could be missing something.

MR DE JERSEY: Yes. It's the email from Mr Joel Sleep:

20 "Good afternoon, Mr Gardner. Further to the below, please find attached letter in response to notice 26167."

25 And that letter in turn is the one that makes the application, and the letter is - I'll leave it open. But the email to which I was directing your attention, Commissioner, is on the front page of the bundle, and then the letter itself is - I'll open the bundle at the letter.

30 **COMMISSIONER:** That just refers to - that's how the letter of 6 March, which we've seen before, got in.

MR DE JERSEY: That's true, and then on -

COMMISSIONER: It doesn't make an application itself.

35 **MR DE JERSEY:** On the second page it does.

COMMISSIONER: Which one?

40 **MR DE JERSEY:** Of the letter itself.

COMMISSIONER: It's the letter of 6 March?

MR DE JERSEY: That's the one.

45 **COMMISSIONER:** Where is the application?

MR DE JERSEY: Second page, I think it's the last paragraph.

COMMISSIONER: Before I do that, why don't I just - you want this email chain in? Is that correct?

5 **MR DE JERSEY:** Yes, Commissioner.

10 **COMMISSIONER:** And apart from the medical opinion, the other attachments to this email of 6 March have been received in an unredacted form. That is, CA-2, which is the medical certificate has been unredacted. But CA-4, which includes the email from Mr Cappelletti of 3 March 2026 to Mr Sleep, is not redacted. So why should I redact? I might be jumping ahead. Are you applying to redact parts of this new tender?

15 **MR DE JERSEY:** Only the parts that have been marked with the post-it note in the red. So only those lines that are actually next to the red marks. And I understand that to be necessary because that's consistent with the non-publication order that you've already made in relation to those pages when they were separately tendered. So in other words -

20 **COMMISSIONER:** I didn't - sorry, I cut you off.

MR DE JERSEY: In other words, I'm not seeking to apply for anything new that is already not the subject of an order to be redacted.

25 **COMMISSIONER:** I didn't understand that that order applied to these, the tender of CA-4 and CA-2, except insofar as Mr Cappelletti's address was concerned. Do you want to - is it best that you give this to Mr Wheelahan and have some discussions with him and see what you can agree in terms of any redactions.

30 **MR DE JERSEY:** Yes, I will do that. I'm not seeking for anything new, only for the effect of the orders that you have already made not to be defeated by anything I'm seeking to tender now.

35 **COMMISSIONER:** That's the bit I don't understand. I'm obviously missing something.

MR DE JERSEY: And the application itself, it's the final paragraph of letter of 6 March. And it says:

40 "In the above circumstances, we respectfully request that you give due consideration to adjourn the evidence to be led by Mr Cappelletti to a later date."

COMMISSIONER: And that is taken to be an application under section 5 by the State to adjourn the evidence of Mr Cappelletti?

45 **MR DE JERSEY:** Yes, Commissioner.

5 **COMMISSIONER:** All right. And I think the reason that you wanted to draw attention to this was that you said that if there's any concerns about this letter, albeit it doesn't make clear that there's an application by the State under section 5, that those concerns should have been dealt with by writing rather than in open hearing. Is that the submission?

MR DE JERSEY: You said it more eloquently than I did, Commissioner, yes.

10 **COMMISSIONER:** All right. I think for the reasons we talked about before the morning adjournment, I'm against you on that point. Anything else you want to say on that?

MR DE JERSEY: Nothing further to submit.

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

MR DE JERSEY: Nothing further to submit.

20 **COMMISSIONER:** I will hand this back to you, and if you could deal with Mr Wheelahan in relation to any redactions, which will then, I think, require some alteration if an agreement is reached to the receipt of CA-4 in the form that I have it at least, which is unredacted.

25 **MR DE JERSEY:** Thank you, Commissioner.

COMMISSIONER: Mr Smith.

30 **MR SMITH:** Thank you, Commissioner. Mr Operator, could you please blow up paragraphs 67 and 68 of Mr Hayes' statement.

COMMISSIONER: I thought I asked you before lunch, Mr Smith, to -

MR SMITH: Sorry.

35 **COMMISSIONER:** About the union - I haven't got the transcript, but I asked you about the union interaction reports and asked whether the Commission had them, and I don't have a record of your response. I think you said some or something to that effect.

40 **MR SMITH:** You did, Commissioner, and I made some enquiries over the luncheon adjournment. We have approximately 80 of them which were provided in response to notice 2516. That's not the full suite. And that's not a criticism of the response. They were responsive to the criteria in that notice. So if we want to obtain the remainder, which we might well do, a further notice will be required to be issued.

45 **COMMISSIONER:** Well, I think there are two things that are going on. One is some sort of macroanalysis of all the documents to identify the pattern or I think

Ms Dargan referred to it as the agenda that she perceived that the CFMEU had in targeting, I think were her words, certain builders. But the other aspect is these witnesses, Mr Hayes and Ms Dargan, Mr Hayes more than Ms Dargan, presumably have filled in these union interaction reports and, indeed, the whole file in relation to each of the union interaction reports in relation to the incidents they describe would be relevant to their evidence.

And I asked you a question a couple of days ago about whether you had the - asked for the records on the system and I think the answer was, "Not yet," but you have got some parts of those records, it seems, the union interaction reports. How many of those 80 relate to incidents that are in Mr Hayes' report?

MR SMITH: None of them.

COMMISSIONER: Statement.

MR SMITH: None of them, Commissioner, I don't believe.

COMMISSIONER: Right. Did you fill in union interaction reports in relation to each of the one two, three, four, five incidents that you've referred to in your witness statement, Mr Hayes?

MR HAYES: Yes, I believe I would have, yes.

COMMISSIONER: Sorry, what's your answer in relation to that, Mr Smith? You don't have or you don't believe you have?

MR SMITH: I don't believe we have them, Commissioner.

COMMISSIONER: All right. Thank you.

MR SMITH: Thank you, Commissioner. Mr Operator, if you could now bring up and blow up paragraphs 67 and 68 of Mr Hayes' statement. Mr Hayes, do you recall on or about 12 March 2020 attending the Cross River Rail project at Boggo Road?

MR HAYES: Yes, I do.

MR SMITH: And do you recall what caused you to attend that project?

MR HAYES: It was a union complaint.

MR SMITH: And do you recall what the complaint was about?

MR HAYES: No, I don't.

MR SMITH: Can you explain to the Commissioner what happened when you attended that site?

MR HAYES: I did a site visit. I can't remember whether we wrote notices or not. I - we were walking around the site, and the union identified a pile driver with a faulty pin.

5

MR SMITH: And when you say faulty pin, what do you mean by that?

MR HAYES: There was a pin there that was two bolts welded together replacing a normal pin.

10

MR SMITH: And did you identify an issue with that?

MR HAYES: Yes, I did. It didn't meet the manufacture specifications.

15

MR SMITH: Did that cause you some health and safety concern?

MR HAYES: No. It was an improvement notice was required to meet manufacturer specifications.

20

MR SMITH: Did you issue an improvement notice?

MR HAYES: Yes, I did.

MR SMITH: Did that improvement notice specify what was to occur?

25

MR HAYES: Yes.

MR SMITH: And what did it say?

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MR HAYES: It said that the pin had to be replaced with the manufacturer's specification pin.

MR SMITH: Was there any time for compliance for that to occur?

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MR HAYES: Yes.

MR SMITH: And what was that?

MR HAYES: The next day.

40

MR SMITH: Do you recall whether you issued any other notices on that occasion?

MR HAYES: No.

45

MR SMITH: Was the issue of that improvement notice raised with you subsequently by someone?

MR HAYES: Yes, it was.

MR SMITH: And who was it raised by?

5 **MR HAYES:** The regional operational manager, Mark Houston.

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

10 **MR HAYES:** Yes. He said - when I went back to the office to write the notice, Mr Houston called me in the office and said the union wanted a prohibition notice on the pile driver.

MR SMITH: Do you know where Mr Houston got that information?

15 **MR HAYES:** Yes, from the CFMEU. He said to me the CFMEU wanted it, wanted the prohibition notice put on there.

MR SMITH: How did you respond to Mr Houston?

20 **MR HAYES:** I said there's no imminent risk; it's not a load-bearing part. It's just not manufacturer specification.

MR SMITH: Did Mr Houston ask you to do anything else?

25 **MR HAYES:** Yes, he did, he wanted me to - he said the union said either a prohibition notice or an improvement notice with the same day date. And I said to him there is policies that you can't write a notice to be complied with on the same day, and also the Act says that you've got to allow a reasonable amount of time for people to respond.

30

MR SMITH: Did Mr Houston respond to that?

MR HAYES: Yes, he did. He tried to force me to write the notice.

35 **MR SMITH:** Did you write the notice on that occasion?

MR HAYES: I wrote the notice for the next day.

MR SMITH: And did you hear any further about that issue?

40

MR HAYES: No, he didn't come back to me at all on that. Yeah.

MR SMITH: Right. Did the union -

45 **COMMISSIONER:** Why did you write the notice?

MR HAYES: It was an improvement notice to have the pin replaced with one that meets manufacturer specifications.

5 **COMMISSIONER:** But I thought you shouldn't write an improvement notice which required the improvement to be made the same day.

MR HAYES: Yes, on the same day you must give them a reasonable amount of time to obtain the pin or to fix the rectification.

10 **COMMISSIONER:** I think you said that despite that you did write the notice.

MR HAYES: I wrote the notice for the next day.

15 **COMMISSIONER:** Next day. Sorry.

MR HAYES: Yes, Mr Houston wanted me to write it for that day, to comply with that day, and I wrote it complying with the next day.

20 **COMMISSIONER:** I don't understand why someone would ask for it to be done the same day?

MR HAYES: Well, I'm guessing, if the union were pushing that if they don't comply with it by the said date on the notice, there's a \$1500 fine. I think they were pushing for that.

25 **COMMISSIONER:** And when you say you thought the union had spoken to Mr Houston, were there any officials of the union present when you attended the Cross River Rail project at Boggo Road around 12 March?

30 **MR HAYES:** Yes, they accompanied me around the site, the union.

COMMISSIONER: Do you know who it was from the union?

35 **MR HAYES:** No, I can't recall. I've racked my brain, but I can't think who it was.

MR SMITH: Was there any pressure placed on you while you were on site to issue the notice?

40 **MR HAYES:** No, I don't believe on site. I can't recall getting a phone call, because when I come back to the office, I think it was, I was called into the office.

MR SMITH: Did anyone from the CFMEU ask you to issue the notice while you were on site?

45 **MR HAYES:** Yes, the CFMEU wanted me to. They wanted a prohibition notice on site.

MR SMITH: Can I ask, Mr Operator, that paragraphs 73 and 74 of Mr Hayes' statement be blown up. Mr Hayes, do you recall -

5 **COMMISSIONER:** Just go back to Cross River Rail for a moment. You said there were issues with CPB at Cross River Rail, yet the only issue that you refer to in your witness statement involving CPB at Cross River Rail was this one.

MR HAYES: Yes.

10 **COMMISSIONER:** Why is that?

MR HAYES: This one was the pin on the pile driver.

15 **COMMISSIONER:** I thought you said before lunch there were lots of issues with CPB.

MR HAYES: We had a complaint from the CFMEU, and I can't recall what there were, and I can't recall whether I wrote notices about any other issue but that, and I just remember the interaction with the CFMEU over this particular piece of plant.

20 **COMMISSIONER:** Did I misunderstand your evidence when I characterised it as the CFMEU having lots of issues with CPB at Cross River Rail?

MR HAYES: Yes.

25 **COMMISSIONER:** I mischaracterised it.

MR HAYES: No, sorry, you haven't, no.

30 **COMMISSIONER:** So why do you say they had lots of issues with CPB at Cross River Rail, the union?

MR HAYES: Like I stated before, there was a big push against CPB. There was always union interaction with all these sites. What it was for, I'm guessing EBA things. I think the operators or the subcontractors on there weren't to the liking of the CFMEU. I think they're the reasons they used to push so hard, and then the intimidatory tactics are bullying and getting the inspectors to write prohibition notices and infringement notices to cause a slowdown or a stoppage of work and a monetary issue.

40 **COMMISSIONER:** Is there something in the records we're missing? Because there's only one example of this in your evidence. Should counsel assisting speak to other inspectors? Should they look at the records? There's only one example of these lots of issues in relation to CPB at Cross River Rail in your witness statement. I'm just wondering if there's anything that has been missed.

MR HAYES: There's probably some I never mentioned. I went to CPB, Cross River Rail, many times with the union issues. When I made this statement, I only made a statement about certain - certain incidents I recalled, but I mean, this is over a long period of time till 2021. I did a lot of union complaints, and I just couldn't list them all. We would be here all day.

COMMISSIONER: You couldn't list them all because, what, you didn't have the records in front of you to check? Your memory?

MR HAYES: Yes, a lot of this is on memory to try and recall, and these are the ones that I thought stood out in my mind, the ones where I was forced to write notices, and they're the ones I sort of homed in on, if you like.

COMMISSIONER: How many notices or visits do you think you would have had during this period, 2018 to the time you retired in October 2021?

MR HAYES: There would be dozens and dozens, yeah. We were called out virtually on a daily basis, union complaints, the different sites, not all the one site, but different sites. And a lot of those are ones I named earlier, the builders, that we went to as a common thing to go to the same builder, regularly.

MR SMITH: Did you attend the South/City/SQ construction project on or about 24 May 2021?

MR HAYES: Yes, I did.

MR SMITH: Do you recall who you attended that project with?

MR HAYES: Inspector Cash.

MR SMITH: What was your reason for attending that project, do you recall?

MR HAYES: It was a CFMEU complaint about suspected contraventions.

MR SMITH: And do you recall what happened when you attended on that day?

MR HAYES: Yeah. I believe we wrote probably three notices on different things. I can't recall what they were.

MR SMITH: And did you attend the site again the following day?

MR HAYES: I went back the next day to release the notices I wrote the previous day.

MR SMITH: When you say release the notices, can you explain what that means?

MR HAYES: Just to ensure they're complied with so I can lift the notice.

MR SMITH: Who did you attend the site with on the following day?

MR HAYES: Inspector McLennan.

5

MR SMITH: Were the CFMEU in attendance on that day?

MR HAYES: Yes, they were.

10 **MR SMITH:** Do you recall who was in attendance from the CFMEU?

MR HAYES: I recall; I just can't think their names. Yeah. Dean Mattas might have been one. I can't think of the other bloke's name. Yeah.

15 **MR SMITH:** And can you recall what it was that brought you to site that day?

MR HAYES: We were going back to release notices that day.

20 **MR SMITH:** All right. And were there any things you had to do to be able to access site?

MR HAYES: Yes. You sign in. You sign in, book to go in shows, and you put in there the date who you are, what company you work for, time in, time out.

25 **MR SMITH:** And was there any other process that you had to undertake?

MR HAYES: Yes, there was a COVID-tracing process, which was a tick and flick, I think it's five or six questions you had to answer.

30 **MR SMITH:** Can you firstly explain what the purpose is of the sign-in process?

MR HAYES: Sign-in process is under section 128 of the Act. It's a process where the principal contractor has full control of that site. He has got to know who is coming on to the site, who is on the site. He is in full control of what happens there.
35 So if you've got an incident or a bad accident or something like that, then he has got to know who is there and who has left the site.

MR SMITH: Why does he need to know that?

40 **MR HAYES:** Probably an example would be if you had a formwork collapse and people are trapped under it, the emergency services come, the first thing they're going to ask is who is trapped underneath there, who is missing.

MR SMITH: Were those sign-in processes difficult to comply with?

45

MR HAYES: Not at all.

MR SMITH: How long would it take?

MR HAYES: 30 seconds.

5 **MR SMITH:** Would you comply with those processes on sites that you attended?

MR HAYES: Always did.

10 **MR SMITH:** Can you explain what the COVID triage process is.

MR HAYES: Yeah, it was a series of questions. They asked questions like have you been exposed to COVID, have you had COVID in the last five days, have you recently returned from overseas, questions like that, quite simple, simple questions, you just tick the box.

15 **MR SMITH:** When you attended that day, was there anyone who hadn't followed that process?

MR HAYES: Yeah, CFMEU.

20 **MR SMITH:** How many CFMEU personnel were there?

MR HAYES: Two.

25 **MR SMITH:** Was that non-compliance raised with you?

MR HAYES: Yes, it was.

30 **MR SMITH:** You mentioned section 128 of the WHS Act in your evidence a minute ago. What's the effect of that?

MR HAYES: A permit can't enter the site under his powers unless he complies with any reasonable request from the PC about health and safety matters at the site, and that's one of them.

35 **MR SMITH:** And did you have a view about whether those processes were reasonable requests?

MR HAYES: Yeah, they're definitely reasonable, both of them.

40 **MR SMITH:** Did you express that view to anyone on site?

45 **MR HAYES:** Yes, I did. I called a meeting with the unions and the management of the building company. I sat down in the chair. I tried to explain the legislation. I went through 128. I went through COVID, COVID issues. And the union were just disruptive, wouldn't listen. They weren't that abusive, but they wouldn't listen. They ended up standing up and walking off into the site.

MR SMITH: How long did that conversation go for?

MR HAYES: Probably half an hour.

5

MR SMITH: In your view, were those officials entitled legally to go and walk into the site?

MR HAYES: No, no, they're not.

10

MR SMITH: Did you do anything or say anything about that?

MR HAYES: I told my manager.

15

MR SMITH: And do you recall what the response was?

MR HAYES: I don't think there was a response. I think it was more - more that I did things wrong than what the CFMEU did, which is pretty typical.

20

MR SMITH: Do you remember which manager you spoke with?

MR HAYES: Yeah, Chris Mutton.

25

MR SMITH: This sort of occasion that you are referring to, did that happen on other occasions? Refusal to sign in, for example?

MR HAYES: Nearly all the time.

30

MR SMITH: So there were occasions where it did happen where they would sign in?

MR HAYES: Yeah, no, I don't believe so. A couple of times I told them they're not going to come in unless they signed in, and they did do it.

35

MR SMITH: Were you ever told why the officials wouldn't sign in?

MR HAYES: I remember a conversation with one of the organisers, Luke Gibson, at one time. He said - I asked him about it, why don't you sign in, and he said, "We're told not to." And I assume that's the management from CFMEU told them not to.

40

MR SMITH: And what's the basis of that assumption?

MR HAYES: That -

45

MR SMITH: That assumption.

MR HAYES: That assumption.

MR SMITH: That is, why did you assume management had told Mr Gibson that?

MR HAYES: He told me that.

5

MR SMITH: He told you that?

MR HAYES: Yeah, he told me that.

10 **MR SMITH:** Was that - actually, I won't ask you that. Commissioner, did you have any more questions about that example?

COMMISSIONER: No, Mr Smith.

15 **MR SMITH:** I just want to ask you about one further topic, Mr Hayes, and that is in paragraph - we can just go to it, paragraph 32, if you could blow that up, please, Mr Operator. My apologies, paragraph 33. Now, Mr Hayes, you gave some evidence earlier about a complaint that you made to Mr Allen. Did you make any other complaints?

20

MR HAYES: Yes, I did. To the CCC I made a complaint.

MR SMITH: And do you recall when you made that complaint?

25 **MR HAYES:** I was retired, so maybe in '22, something like that, maybe.

MR SMITH: And when you - sorry, the document that founded the complaint or that was the complaint, were you the author of that document?

30 **MR HAYES:** No, I wasn't.

MR SMITH: Did you sign that document?

MR HAYES: Yes, I did.

35

MR SMITH: And why did you sign that document?

40 **MR HAYES:** It was a document very similar to the letter I wrote to Mr Allen. It was my concerns. The general - a lot of the inspectors got together and wanted to push for this, and the author of the letter wrote it for us on our behalf, and I heard about 14 or 15 inspectors signed it.

MR SMITH: When you say "inspectors", what teams did those inspectors come from?

45

MR HAYES: They were all over the place, northside, southside, Gold Coast.

MR SMITH: And what was the nature of the work that those inspectors had been doing while they were with the department?

MR HAYES: Same sort of thing as me. Inspectors, yeah.

5

MR SMITH: And out of the inspection teams, what inspection team were they in?

MR HAYES: What team were they in? Construction, yeah, construction team, yeah. All construction inspectors, yes.

10

MR SMITH: All construction inspectors.

MR HAYES: Yes.

15 **MR SMITH:** Now, is there a reason that it was you who lodged that complaint?

MR HAYES: Sorry?

MR SMITH: Is there a reason that it was you who lodged that complaint?

20

MR HAYES: Well, it's something I wanted to do, because we were getting no response from the department. So Craig Allen just ignored us and didn't respond at all, and I believed I was in a better position to do it was I was retired and less retaliation. If someone did it within the department, there would have been trouble.

25

MR SMITH: So, to your knowledge, were there concerns about retaliation.

MR HAYES: Always. Yes.

30 **MR SMITH:** And did others share those concerns with you?

MR HAYES: Yes, they did. Yes. Yeah.

35 **MR SMITH:** Can I now just ask you about the response that you received to that complaint from the CCC. What was your reaction when you received that response?

MR HAYES: Pretty flat. Pretty devastated. We'd been everywhere. We complained to management. We complained to the DDG. This was brought up with Grace Grace by Jarrod Bleijie in Parliament, you know, so the last resort, I thought, was CCC; at least they're going to conduct an investigation. And they said to us in the return mail that - not enough evidence. I think, all right, there may not have been that evidence there, but if they conducted the investigation, they would have got the evidence they needed, like we're doing here.

45 **MR SMITH:** Did you consider -

COMMISSIONER: What did you say then? If they - what an investigation?

MR HAYES: If they conducted an investigation into it.

MR SMITH: Were you prepared to speak with the CCC if they had contacted you?

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MR HAYES: Yes, my word.

MR SMITH: Do you know whether the other inspectors were prepared to speak with the CCC?

10

MR HAYES: They told me they would.

MR SMITH: And out of - was that each of them?

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MR HAYES: Sorry?

MR SMITH: Was that each of them?

MR HAYES: Urgent?

20

MR SMITH: Was that each of the inspectors that told you that?

MR HAYES: I suppose, I can't remember having that conversation with every one of them, but that was the general consensus, that we were all going to put our hands up for it.

25

MR SMITH: Did you consider at the time that you received the response from the CCC that there was any utility in providing additional information?

30

MR HAYES: No, they never asked for extra information, no.

COMMISSIONER: Well, it looks like they did in the body of the letter. Have a look at page 16.

35

MR SMITH: So, Mr Operator, if you could bring up annexure NH-2 at page 16. That's the statement of Mr Hayes, and the paragraph reference that the Commissioner is referring to is the second paragraph under the heading Other Matters, if you blow that up, please. I just ask you to read that, Mr Hayes.

40

MR HAYES: Yes, I read that, yes.

COMMISSIONER: I beg your pardon?

MR HAYES: Yes, I read that, they asked people to step forward, I gather from that, and give more evidence.

45

COMMISSIONER: So why didn't you write back to this letter of 25 August 2022 with what the CCC asked for, direct evidence of the conduct alleged?

5 **MR HAYES:** I think by that stage when this letter came back we were pretty broken. We went everywhere, right through the department, and we - everybody failed us all the way through it. Our last-ditch effort was sent to the CCC. I would have liked to have thought they would have tried to make an appointment with someone to have a discussion about it or contact us rather than just send that back, forcing us to give more information when that letter was pretty full. I don't know
10 how many pages it was, but it was a big letter outlining everything. I think there was a lot of information in there, and I think it should have been a duty of them to pursue an investigation at least or make contact with us and try and talk to us for further information. I think we just had enough by then.

15 **MR SMITH:** Commissioner, I didn't have any more questions I was proposing to ask Mr Hayes.

COMMISSIONER: I just had a couple, Mr Hayes. I just want to understand your evidence about the period from 2018 to when you retired in October 2021. About
20 four years; I assume about 800 working days. Did I understand your evidence to be that almost every day there was an issue with the CFMEU?

MR HAYES: Yes. I'd say that. Not every day I went to deal with CFMEU, but, you know, you would guarantee about every second day.

25 **COMMISSIONER:** Sorry, every -

MR HAYES: Yeah, at least every second day I would be personally going to one, but there would be a complaint come in from the CFMEU on a regular - on a daily
30 basis.

COMMISSIONER: On a daily basis.

MR HAYES: More than one.

35 **COMMISSIONER:** I think your evidence earlier was on some days two or three.

MR HAYES: Yeah, we could get up to three.

40 **COMMISSIONER:** So assuming you worked those 800 days, roughly, between 2018 and your time in October 2021, did you take holidays during that period?

MR HAYES: Yes, I would have, yeah.

45 **COMMISSIONER:** So let's - any long leave?

MR HAYES: Yeah, there was a few overseas trips. I had a bit of sick leave too; I used up all my sick leave as well. I wasn't unlike any other inspector who needed a break away from it, so I took a lot of sick leave.

5 **COMMISSIONER:** So let's say the 800 days become 600 days, and let's say you were called out every second day to deal with CFMEU issues, would that be a fair estimate for that period?

10 **MR HAYES:** I think it would be, yeah. Yeah. I was on a -at one stage I was put into a - taken out of the field, I think that was in 2021 before I retired, I was taken out of the field during the COVID period by Ms Burgess and -

COMMISSIONER: How long was that for?

15 **MR HAYES:** It would have been a good month, I suppose, yeah, taken out of the field, and I did sort of menial tasks.

COMMISSIONER: So let's reduce it even further from 300 times you dealt with the CFMEU to, say, 250. Is that accurate?

20 **MR HAYES:** I think that would be a fair call.

COMMISSIONER: When you came to make this witness statement - sorry, would there be records of those 250 interactions with the CFMEU?

25 **MR HAYES:** There should be. I would have filled out a interaction report of time I went. Sometimes if I went with an accompanying inspector he may have done the report. Yeah.

30 **COMMISSIONER:** All right. There would be a record either you from you or from the accompanying inspector.

MR HAYES: From the accompanying inspector, yes. Yes.

35 **COMMISSIONER:** In your witness statement I can only see one record attached, which is the prohibition notice, which is signed 21 March 2019 in relation to the Constructions Group prohibition of the crane in March 2019.

40 **MR HAYES:** Yes.

COMMISSIONER: When you came to make this statement, did you have any other records in front of you?

45 **MR HAYES:** Not of notices, no. No.

COMMISSIONER: Apart from that notice, did you have any records in front of you?

MR HAYES: I had some diary entries that I had at home. I had some - a couple of documents about procedures, procedural documents. One was the right-of-entry document; I had that at home. I produced that when I was required.

5

COMMISSIONER: What I'm trying to get at, what age were you when you retired?

MR HAYES: 69.

10 **COMMISSIONER:** So that makes you, what, 75 now?

MR HAYES: No, 74 this year.

COMMISSIONER: 74, I'm sorry. My maths is just out.

15

MR HAYES: 74 this year.

20 **COMMISSIONER:** I just wonder how it was you were able to make this statement without the records of those 250 interactions with the CFMEU stretching back a period from 2018 to 2021 - that is, five to eight years ago - without the records?

25 **MR HAYES:** I had some diary, diaries, to get the dates. I have a good recollection of a lot of those incidents, because they're burnt into me, a lot of that stuff. And the diaries gave me some - the dates, I went through, I've got diaries going back to 2016, or something like that, which I'd kept. And I chased the dates through there.

COMMISSIONER: Would you be assisted if you had the 250 records of the incidents that were you called out to in making your witness statement?

30 **MR HAYES:** I think - I think there was enough content in my statement, I think, with the dates, and the only thing I had a few, I couldn't - didn't know the name of a lot of the union fellows and -

COMMISSIONER: Would that be in the records?

35

40 **MR HAYES:** Not necessarily. I wasn't a very good note taker, put it that way. So I don't think you would find good notes. Probably an investigation, investigation stuff I did, I was a bit more detailed with my notes, more methodical with that, but just on general jobs, I didn't note a lot. I wasn't a good note taker. I didn't do it - I didn't do it as it occurred; I used to do it - I used to do the job and then I would go back and recollect and do some notes on that, dates and that. And the names, I might put some names in my diary at first, because I wasn't good on names, remembering names. So that's how I did it. So my notebook notes weren't good; I wasn't a good note taker. But that would assist, for sure, yes.

45

COMMISSIONER: Sorry?

MR HAYES: They would assist, yeah. But I thought I was - I thought I did pretty well with what I knew, sort of thing, you know.

COMMISSIONER: Mr Smith, anything that arises from that?

5

MR SMITH: Nothing that arises from that, Commissioner. There is one matter that I might deal with just while Mr Hayes is still under examination, and that is it came to my attention that the version of Mr Hayes' statement which was tendered contained the redactions which had been previously asked for by the Crown, and those are the redactions that Mr de Jersey informed us were no longer pressed. I understand that we have on the system now an unredacted copy of Mr Hayes' statement and -

10

COMMISSIONER: Or that annexure. Which one? You don't want to tender the whole statement again, do you?

15

MR SMITH: There was a redaction in the statement as well.

COMMISSIONER: Right.

20

MR SMITH: So I will need to tender the whole statement again.

COMMISSIONER: Do you want to just replace what was exhibit NSH-1 with the unredacted version of NSH-1?

25

MR SMITH: I'm content with that course, Commissioner.

COMMISSIONER: Is that a convenient course, Mr de Jersey?

30

MR DE JERSEY: Yes, it is, Commissioner.

COMMISSIONER: Very well, you have leave to do that. You can arrange that administratively with the solicitors assisting the inquiry.

35

MR SMITH: Thank you, Commissioner. That's the evidence-in-chief.

COMMISSIONER: Thank you, Mr Smith. You need to go off and see Mr Cappelletti and give him - and soothe him.

40

MR SMITH: I shall do my best, Commissioner.

COMMISSIONER: It's all one can ask. What's next, Mr Wheelahan?

MR WHEELAHAN: I'll take the wheel and call Mr Paul Jeffrey Watts.

45

COMMISSIONER: Sorry, I failed to - I overlooked you, Mr Hayes. Thank you very much for your evidence. I'm very grateful you came forward to this inquiry and have given this evidence, and you are now free to go. So thank you.

5 **MR HAYES:** Thank you.

<THE WITNESS WAS RELEASED

10 **MR WHEELAHAN:** I call Mr Paul Jeffrey Watts.

COMMISSIONER: Is Mr Watts in the body of the courtroom?

MR WHEELAHAN: He is.

15 **COMMISSIONER:** Mr Watts, just remain standing for a moment, if you could. There's no problem.

<PAUL JEFFREY WATTS, AFFIRMED

20 **COMMISSIONER:** Thank you very much, Mr Watts. Please take a seat. Mr Wheelahan will ask you some questions. Are you okay there? Have you got a glass of water?

25 **MR WATTS:** Yes. Thanks, Commissioner. No, I'm fine, thanks, Commissioner.

MR WHEELAHAN: You might need to move closer to that. If you state your full name so that the audio people can -

30 **MR WATTS:** Paul Jeffrey Watts.

MR WHEELAHAN: And you have given an address to the Commission?

MR WATTS: I have.

35 **MR WHEELAHAN:** And you have made and affirmed a written statement?

MR WATTS: I did provide a statement, yes.

40 **MR WHEELAHAN:** And can you go to the back page, because I can't read your handwriting of the date of that statement, when you affirmed it. Is it -

MR WATTS: 27/2/26.

45 **MR WHEELAHAN:** Right, 27 February 2026, and that statement that you affirmed is 67 paragraphs and four annexures.

MR WATTS: I'll just confirm that.

COMMISSIONER: I'm sorry what did you say, Mr Watts?

MR WATTS: 67 paragraphs. Yes, sir.

5

MR WHEELAHAN: And four annexures, correct?

MR WATTS: That's correct.

10 **MR WHEELAHAN:** And I'll take you to paragraph 64, and it's just to correct a typo that you will wish to make, no doubt.

MR WATTS: Yes, 2022.

15 **MR WHEELAHAN:** So the date there, I received a letter dated 13 April -

MR WATTS: 13 August.

MR WHEELAHAN: 13 August, sorry - it should be 2020 there.

20

MR WATTS: That's right.

MR WHEELAHAN: Now, I'll go to - you were a principal inspector.

25 **COMMISSIONER:** Do you want to tender the statement?

MR WHEELAHAN: Yes, I tender the statement.

30 **COMMISSIONER:** Are there any objections to the tender of the witness statement of Mr Watts dated 27 February 2026, as amended in the witness box by the witness at paragraph 64, which statement is seven pages, 67 paragraphs, four annexures. No objections? That will be exhibit PJW1. No, sorry, PW-1.

<EXHIBIT PW-1 STATEMENT OF MR WATTS DATED 27/02/2026

35

MR WHEELAHAN: Mr Watts, you left school in 1976, and if you can just give an overview of your work experience from that time.

40 **MR WATTS:** Well, after I left school I worked in a variety of activities, including construction where it was available. I worked in farming. I drove machinery, a variety of tasks, just to make ends meet.

45 **MR WHEELAHAN:** Mr Operator, can you bring up paragraphs 1 to 5 on the screen, please. You actually hold a number of formal qualifications. Can you tell the Commissioner what they are.

MR HAYES: Well, I do hold a number of formal qualifications: Diploma of Occupational Health and Safety. Diploma of Training and Assessment. Diploma of Frontline Management. Diploma of Business and Business Management. And a Diploma of Workplace Inspections.

5

MR WHEELAHAN: And in 1993 you had a job down at the wharves.

MR WATTS: It wasn't on the wharves. It was on the reclamation site which is basically creating the land that the wharves and all the infrastructure is built on in reclamation.

10

MR WHEELAHAN: What did your work there involve?

MR WATTS: I started as a labourer on the reclamation team. I worked there for about eight and a half years. I eventually worked my way into being a safety officer for the site.

15

MR WHEELAHAN: As safety officer, you've said in your statement that that's what motivated you to pursue a career.

20

MR WATTS: Yeah, that was the opportunity to pursue a career in health and safety. I'd been - my motivation would be over the years working on a lot of unsafe sites and being a first aider on a lot of sites and attending to people and even being injured myself.

25

MR WHEELAHAN: All right. 2001 you state in your statement at 4 you commenced work with BMD as a safety and environment coordinator.

MR HAYES: BMD Civil. Yeah, they were a good company to work for. I was their first safety and environment coordinator. I was charged with improving the safety compliance, the standards of like the general subdivisional teams in the South East Queensland area.

30

MR WHEELAHAN: And in 2003 you commenced with Workplace Health and Safety Queensland.

35

MR WATTS: Yes, I put in an application, never expecting to get an interview, let alone a job, and lo and behold, I got the interview and was offered a position as a senior inspector over at Lutwyche.

40

MR SMITH: The title seems to be -

MR WATTS: Once you get into the role, you will find out they have inspectors, and then a senior inspector was offered as an AO5-level position. I suppose it was a little bit more money to try and attract a few people from industry, given that, you know, the higher wages generally in industry as opposed to government.

45

COMMISSIONER: Mr Hayes gave some evidence yesterday, Mr Watts, that around this time - I think he said 2004, but October 2003 is around the same time - that there was a push by the Workplace Health and Safety Queensland at the instigation of the CFMEU to try to recruit a number of people from industry, from
5 the construction industry.

MR WATTS: That's correct.

COMMISSIONER: And Mr Hayes said - and my recollection might be right - that
10 about 20 - he could have said two dozen - inspectors were recruited. Were you one of that influx?

MR WATTS: From memory, that was 22 inspectors were recruited.

COMMISSIONER: 22?

MR WATTS: Yeah, from memory, yeah. And I was part of that intake with Noel, Dave Cappelletti, and others.

COMMISSIONER: What you do think of that policy of recruiting people like you
20 who are very experienced in the construction industry and industry more generally?

MR WATTS: Well, obviously if you create a workforce of inspectors who have that
25 industry experience, that industry background, they're more liable to identify any areas of problems. They can assess the risk better because they've got that hands-on experience.

MR WHEELAHAN: And indeed, after three or four years, you were promoted.

MR WATTS: Yeah, I put in for a role as principal inspector. So you go through
30 your AO5-1, 2, 3, 4, your four boxes, and when you reach the top of the box you've got to apply for a position in like an AO6 role to get a higher wage, and I was successful in that. Yeah, I think there was only about two principal prosecutors at Lutwyche at the time.

35

MR WHEELAHAN: And ultimately you retired in 2022?

MR WATTS: 2022, yes.

MR WHEELAHAN: Was there any particular reason for your retirement in 2022?
40

MR WATTS: Well there was just so much negativity in the division, call it the
45 division, in the department overall, the issues we were having with the union and with Ms Burgess, and it wasn't a very nice environment to work in, if you could understand where I'm coming from.

MR WHEELAHAN: Well, you were in the courtroom when Mr Hayes completed his evidence then, referring to the complaint to the Crime and Corruption Commission.

5 **MR WATTS:** Yes, that's correct.

MR WHEELAHAN: That document has now been tendered unredacted moments ago.

10 **MR WATTS:** Yep.

MR WHEELAHAN: You were in fact a signatory to that complaint.

15 **MR WATTS:** I was, yes.

MR WHEELAHAN: And is it reasonable to say that that lengthy submission encapsulates complaints that you agree with?

20 **MR WATTS:** Yes. Well, my main concern was the conduct of the union and the conduct of Helen Burgess and the way the inspectors were being treated, and that was the focus of my concern.

MR WHEELAHAN: And when you say the union, can the Commissioner take it that you mean, which union?

25 **MR WATTS:** CFMEU.

MR WHEELAHAN: All right.

30 **COMMISSIONER:** And what was your concern with Ms Burgess and with the CFMEU and with the way the inspectors were being treated?

35 **MR WATTS:** Well, in my opinion we were being treated like second-class citizens. We were being bullied and harassed, required to respond at a minute's notice, getting - basically, get out there. I didn't do many right-of-entry requests from the union, because I was told by another inspector that apparently I didn't understand the right-of-entry legislation well enough to get the union on site, and my response was I think maybe I understand it too well.

40 **MR WHEELAHAN:** Who told you that? Do you know who said that to you?

MR WATTS: Do I have to give his name?

45 **MR WHEELAHAN:** Yes, you do.

MR HAYES: John Carmosino.

MR WHEELAHAN: Okay. And in a similar vein, you were in court, were you, or in the Commission when Mr Hayes was asked about the number of occasions he would deal with CFMEU complaints in the last years of his employment?

5 **MR WATTS:** Look, I didn't get sent out on as many probably as Noel would have, from his recollection. But I did certainly get sent on a number of union complaints, and they could be anywhere, but they did seem to like focusing on companies like CPB, Tomkins and those sort of companies. Tomkins Builders, I think they're called. I think they're a privately owned company. They do some big jobs.

10

MR WHEELAHAN: So given your experience, are you able to give any opinion as to why the CFMEU seemed to focus on particular companies such as Tomkins?

15 **MR WATTS:** Well, I think that from what Noel indicated in his testimony as well, I think there was an EBA issue. I mean, CPB had an EBA with, I believe, the AWU on their Cross River Rail site. I don't know what - whether Tomkins had a EBA with AWU or anyone else. But I'm pretty sure they didn't have an EBA with the CFMEU.

20 **MR WHEELAHAN:** And so you agree with that as a likely reason for activity by the CFMEU?

MR WATTS: Yeah, that's right. I mean, I can recall one occasion where I took a sick day because we'd been - a number of inspectors, and I can't tell you who the other ones were, had been directed to go and hit a number of Tomkins jobs, and I took the Thursday off sick so I didn't have to go.

25

MR WHEELAHAN: When you say to get -

30 **MR HAYES:** To just hit the sites, you know, like, you would have a team of inspectors, you go to such and such, you go to such and such. It's quite easy to look the jobs up on the CISr system.

MR WHEELAHAN: Right. And your recollection is that they were all a number of -

35

MR WATTS: They were Tomkins jobs.

40 **MR WHEELAHAN:** Were they all targeted over a period of time or on the one day?

40

MR WATTS: On one day. I stayed home. I called in sick.

MR WHEELAHAN: One day. All right.

45 **COMMISSIONER:** Who directed on that one day the inspectors?

MR WATTS: Well, that was from the construction director, Helen Burgess.

COMMISSIONER: I don't remember reading about that in your witness statement.

5 **MR WATTS:** No that's not in my witness statement. That's just a - when we started talking about Tomkins.

COMMISSIONER: It's no criticism, but I just wondered whether or not it was -

10 **MR WATTS:** It's not in the statement, no.

MR WHEELAHAN: You also mentioned it would be on the CIS system.

MR WATTS: Compliance investigation system refresh. CISr.

15 **MR WHEELAHAN:** So no doubt there would be records of that.

MR WATTS: I've mentioned that to Mr Smith, the CISr system, during our conversations prior to this hearing.

20 **MR WHEELAHAN:** All right. Can I pull up, please, now that you've mentioned Ms Burgess, specifically paragraphs 52 to 54 on the screen, please, and blow them up. I'll give some background to this before I have you go through this, Mr Watts. It's not a memory test; you can either read it or paraphrase it. This relates to the CPB at Albert Street. It's a Cross River Rail site. Is that correct?

25 **MR WATTS:** That's correct, yes.

30 **MR WHEELAHAN:** That's correct. Now, next week there will be some detailed evidence about the Cross River Rail project, but for present purposes, can you take the Commissioner or even read to him paragraph 52 about what - firstly who is a Mr Murphy?

MR WATTS: Mr Murphy, that's Mark Murphy, who was an acting operations manager at the Brendale office.

35 **MR WHEELAHAN:** All right. If you can just read paragraph 52 out loud, please.

MR HAYES:

40 "Mr Murphy told me that Helen Burgess (Director, Construction Compliance and Field Services) had telephoned him, and that she had directed him to direct me to issue an infringement notice against CPB for failing to provide a sanitary bin. I explained to him that I could not lawfully issue an infringement where I could not form a reasonable belief of an offence."

45

MR WHEELAHAN: You are a very quick reader. Mr Murphy told me Helen Burgess telephoned him and she had directed him to direct you to issue a notice. And then at 53 you state here "I refused." Again.

5 **MR WATTS:** I refused to issue a infringement on the basis that I believed it would not be lawful and it would be contrary to both legislation and my obligations as an inspector.

MR WHEELAHAN: And in your statement, which you have affirmed, you state:
10 "Mr Murphy said he was simply passing on instructions."

MR WATTS: That's right. Yes.

15 **MR WHEELAHAN:** And then at 8.24 am you state in your statement -

COMMISSIONER: Just ask the witness - sorry.

MR WHEELAHAN: I'm about to say. You state in your statement as follows at
20 paragraph 54.

MR WATTS:

"At 8.24 on 17 June 2020 Mr Murphy called me again. He told me ..."
25

COMMISSIONER: Don't read it. Just remind yourself of what occurred and tell -

MR WATTS: Sorry.

30 **COMMISSIONER:** Tell us your recollection of what happened.

MR WATTS: Mark Murphy contacted me again after the initial conversation and said that Helen had been onto him about getting an infringement notice issued. I again had the conversation that I didn't believe it was right or lawful to issue an
35 infringement notice on that offence because the toilet, in my opinion, wasn't unhygienic, it wasn't unsanitary. It was all over the provision of a sanitary bin. And he indicated to me on the phone that he mentioned a name Beau. The only person I know or knew of in the union was Beau Seiffert. Apparently Beau had been talking to Helen Burgess and had convinced her that no sanitary bin in the female toilet
40 meant the toilet was unhygienic, which I couldn't justify in my mind.

And I had a conversation with another inspector about that and basically said if the toilet was unhygienic I would have issued the infringement notice without hesitation, but it wasn't. It had been cleaned at 10 o'clock that morning. This is the one we're
45 talking about, the female toilet at CPB up at Albert Street, and it had been cleaned at 10 o'clock that morning. I had photographed the toilets, both male and female, and I had photographed the cleaning register, which was up on the right-hand side of the

wall. I think it was 10 o'clock that morning it had been cleaned. So I couldn't see any justification in issuing an infringement notice on a unhygienic toilet that had been recently cleaned and appeared to me to be in good, hygienic condition.

5 **MR WHEELAHAN:** And did you then at the direction of your supervisor issue a infringement notice or did you stand your ground?

MR WATTS: No, I refused. I continued to refuse, because I couldn't justify it, first of all in law but really to my own conscience, I couldn't issue a fine that I didn't
10 believe was warranted. And I was told by Mr Murphy that if - Helen had informed him that if I didn't issue the notice, then I would be in breach of the CMEP and I would be potentially subjected to some disciplinary action. To this day I'm still unaware what that disciplinary action might have been, but it did worry me a lot at the time, to the point that I made some calls after I finished speaking to him, because
15 I'd been told this, and I called our Together Union representative, Remi Armstrong, I think her name was and left a message for her. I called Marc Dennett, who was Helen's boss. I left a message for him. And I called the office, and spoke to admin lady Christine Newington who - I asked her if there was a form in our system to make a complaint against a senior manager for bullying, which subsequently I was
20 given that form and I proceeded to make the complaint.

COMMISSIONER: Then what happened with that complaint?

25 **MR WATTS:** Sorry, sir?

COMMISSIONER: What happened with that complaint you made, the bullying complaint?

MR WATTS: Well, initially they got some advice from the legal unit which
30 confirmed that I had made the right decision regard the - I issue an improvement notice, not an infringement notice. I got a response letter from Marc Dennett, or signed by Marc Dennett, telling me the matter had been investigated and that basically there was no case to answer for Ms Burgess, and that I think his remedial action was that they were going to develop something to put on the system for, like,
35 a compliance note or something for the inspectors, a document that basically stipulates how to deal with certain matters should they arise.

40 **MR WHEELAHAN:** And your complaint insofar as - was it against Mr Murphy as well?

MR WATTS: No. No, Mr Murphy was just the - he is just the conduit. He was just the bearer of bad news, if you know what I mean.

45 **MR WHEELAHAN:** I do.

MR WATTS: Understand where I'm coming from.

MR WHEELAHAN: I do.

5 **MR WATTS:** He was the one that was directed to direct me, and bear in mind that they did have a lot of trouble at that time getting people to act in that role as an operations manager. I was even asked to act in the role as a operations manager and I refused.

MR WHEELAHAN: Why?

10 **MR WATTS:** Because you have to deal with Helen and the union stuff.

MR WHEELAHAN: Helen Burgess and the union?

15 **MR WATTS:** Helen Burgess and the union issues, yes.

MR WHEELAHAN: Go on.

20 **MR WATTS:** I was quite, you know, I was distressed enough about other matters with the work I had to do without having her on the phone to me.

MR WHEELAHAN: Why was it so distressing having to deal with Ms Burgess?

25 **MR WATTS:** Well, I'd say she was pretty aggressive and pretty persistent, and from what I saw, she'd had the potential to hold a grudge.

MR WHEELAHAN: And what was she persistent about?

MR WATTS: Well, it was supporting the unions, supporting CFMEU.

30 **COMMISSIONER:** You said she had the capacity to hold a grudge. Was that what you just said?

MR WATTS: Yes.

35 **COMMISSIONER:** Why do you say that?

40 **MR WATTS:** Well, it was - you might call it hearsay, but it was commonly spoken about amongst the inspectors that things weren't forgotten. I had subsequent correspondence with her and Marc Dennett about when she became aware of another toilet incident where I hadn't issued an infringement notice and I got the CMEP thrown at me again, and I responded in great detail, I think it was about a page of email, where I responded to Marc, both Marc and Helen Burgess stating why I hadn't issued an infringement notice. And it was just, yeah, those sorts of things occurred.

45 **MR WHEELAHAN:** You refer to the CMEP. That's the Compliance Monitoring and Enforcement Policy.

MR WATTS: That's right. Compliance Monitoring and Enforcement Policy, yes.

MR WHEELAHAN: And that was introduced December 2018, thereabouts?

5 **MR WATTS:** 2018, yes.

MR WHEELAHAN: And after its introduction, how would you say your authority to do your job as a statutory inspector changed?

10 **MR WATTS:** Well, your discretionary power was effectively, you know, removed, because there were - it was mandated to issue notices, and if you identified a non-compliance then you had to basically issue notices on the matter. And I turned into a basically a notice-writing machine. We were doing everything electronically, and I'd be home typing up notices, et cetera, in the afternoon and into the evening
15 and emailing those out. I always - actually, I always accompanied any notice that I issued in the email with a link to the CMEP. So there was - I had a little - call it a spiel of how the CMEP dictated what we did, and here's a copy of the CMEP if you want to have a look at it, why the notices are being issued.

20 **MR WHEELAHAN:** If I could have paragraph 30 on screen shown to you, to give you some direction about the evidence you are just giving. Colloquially referred to, you became some sort of machine.

25 **MR WATTS:** Yeah, well, you did issue a lot of notices at the time. It was the expectation was that you would issue a lot of notices.

MR WHEELAHAN: And you said that that took away your discretion that you exercised -

30 **MR WATTS:** Yeah. Look, I had -

MR WHEELAHAN: - for the last 15 years beforehand.

35 **MR WATTS:** I had conversations with Alastair prior to this meeting where we talked about the carrot and the stick, and the inspectors commonly used the carrot and the stick, you know? "Hey, look, I'm a good guy trying to help you, trying to improve your business. This is the carrot, this is how you need to deal with the carrot, and if you don't deal with the carrot, then we have to use the stick to get compliance." And I did a lot of what they called advisories in those years preceding
40 that. I don't think I did one advisory after the CMEP came in. I had on occasion gone out to meetings in my own time, you know, 7 o'clock at night, you know, after work when the guys from whatever company may have been finished up or they're having a toolbox talk after their work and I'd go out and talk to them, do a toolbox talk, give them some advice on legislation and those sorts of things. But it really became
45 compliance-based and it was all about issuing notices, et cetera.

MR WHEELAHAN: So if you look at - I'll have shown paragraph 35 of your statement - that seems to be in summary form of what you're now giving evidence to the Commissioner about.

5 **MR WATTS:** Yeah, well, I don't want the Commissioner thinking that I'm just reading from my statement.

MR WHEELAHAN: No, I'm not suggesting (crosstalk) to re-read it.

10 **MR WATTS:** I'm talking to him from the heart, and I want him to understand that everything (indistinct).

MR WHEELAHAN: And I'm encouraging you to keep talking by directing you to what you're talking about.

15

MR WATTS: Very good. Thank you.

MR WHEELAHAN: So proceed, please.

20 **MR WATTS:** Do you want me to read that aloud?

MR WHEELAHAN: No, I just want to keep you on track.

25 **MR WATTS:** It did change the nature of how we did things. I mean, you would still have to have your risk-based decision process, especially if you're going to issue a prohibition notice or whatever. But it had to be a pretty high-risk thing for me to issue a prohibition notice. So I took those things pretty seriously.

30 **MR WHEELAHAN:** All right. We will take that down completely. Let me ask you this. So with the prohibition notices, were you pressured by Helen Burgess to issue prohibition notices that you did not think were lawful?

MR WATTS: It was more the gentlemen onsite from the CFMEU. They'd try and get prohibition notices issued to, I suppose, disrupt the job.

35

MR WHEELAHAN: Right.

40 **MR WATTS:** To stop, stop the work, so a prohibition notice effectively stops the job, or stops that part of the job so you don't - you can't put a prohibition notice on the whole job. You could put a prohibition notice on a certain activity or a certain area. For example, if there was asbestos disturbed in that area, you could prohibit until controls are in place; or if there's unsafe plant, you could prohibit the use of that plant. But I can recall times when they'd asked on that same CPB site for - to prohibit the access basically because there was water underfoot, it had rained and there was
45 a couple of inches of water and it was, "People shouldn't be working in there" and I sort of went out into the water with me work boots on, and said, "Look, there's no slips and falls, it's not an issue." Yeah.

MR WHEELAHAN: Is that access to a part of the site from -

MR WATTS: Well, it was basically that -

5

MR WHEELAHAN: - or within the site?

MR WATTS: That area, that area of the CPB site at Albert Street.

10 **MR WHEELAHAN:** So if you had acceded to the CFMEU request and placed a prohibition notice, work would have ceased, because no one -

MR WATTS: Lawfully it would have, yes. But when I say "lawfully" under the notice it would have, but then CPB obviously would have had the right of appeal on
15 that notice. But then by the time the notice - the appeal goes through, you know, there's a lot of lost time involved.

MR WHEELAHAN: Are there matters that you wish to raise with the Commission now without me asking you any questions, given that did you sign a CCC complaint
20 saying you would be more than happy to talk to a body such as this. Now is your time.

MR WATTS: Well, look, I mean Commissioner, you've got a lot of power here, sir, and I'm only a humble ex-inspector. But all I'd suggest is that in future the mixture of
25 industrial relations and workplace health and safety under the Work Health and Safety Act should be, you know, eliminated basically, because if you look at history the laws for right of entry for unions were put into OH&S legislation by each Labor state under a federal Liberal party when I believe Mr Howard was in power some years ago, and there's some allegation that there was, you know - he was targeting
30 the unions. And, look, I've been a union member all my life.

COMMISSIONER: You have?

MR WATTS: I have, yes. And I've always believed in the unions and a fair go for
35 the workers. But the right of entry in this - in this case was just - it was just being abused, basically, in my opinion.

COMMISSIONER: Why do you say that?

40 **MR WATTS:** Well, the amount of right of entry requests from the CFMEU that went through. I mean, as I said, I was fortunate enough to be thought of as not having the skills to facilitate the union's right of entry, and I was quite happy with that situation. If there was a dispute, I didn't want to be involved in it. I just wanted to do the safety. That was - that was my passion and that's what I - all I wanted to do.
45 Unfortunately, we got dragged into other stuff.

MR WHEELAHAN: Unless there's anything further you wish to say, thank you for attending. Commissioner -

COMMISSIONER: Can I just ask the witness a couple of questions?

5

MR WHEELAHAN: You may.

COMMISSIONER: Mr Watts, you signed the complaint to the CCC which was delivered in August 2022 I believe, on 8 July 2022 which is just a few months before you retired.

10

MR WATTS: Mm-hm.

COMMISSIONER: Can the witness be shown exhibit - annexure NH-2 to Mr Hayes' statement which is a response from the CCC to Mr Hayes dated -

15

MR WHEELAHAN: It's not on the screen, Commissioner. Exhibit NSH1, operator, and within that it's annexure NH-2.

COMMISSIONER: At page 15. Mr Wheelahan asked you some questions about the complaint that you made and the basis upon which you made the complaint and agreed to be a signatory to the complaint. This letter is the response to Mr Hayes of 25 August 2022. I assume you received a similar letter?

20

MR WATTS: I honestly - I was asked about this previously and I can't recall getting any - getting anything back from them. I may have. I may be wrong, but I can't recall getting anything back from them.

25

COMMISSIONER: You were still employed at this stage.

30

MR WATTS: I was an inspector, yes.

COMMISSIONER: You didn't retire until a couple of months later. Do you remember any discussion around this time with the other inspectors about - that is the other inspectors who had signed the complaint - as to whether they'd received any response?

35

MR WATTS: I recall that you asked Noel Hayes about why he didn't communicate with them about that.

40

COMMISSIONER: Yes.

MR WATTS: I remember a bit of talk around the office about, you know, that the department said they were going to fix the problem basically and, you know, that we shouldn't really worry about it because it was all going to be sorted out. I'm not sure whether that was whether Kym Bancroft or maybe one of those was in the chair at the time, in the executive director, but she didn't stay long.

45

COMMISSIONER: Right.

5 **MR WATTS:** We had a few of them go. We had a few of them go through executive directors.

COMMISSIONER: The executive director is Mr -

10 **MR WATTS:** That was Marc Dennett was one of them.

COMMISSIONER: Marc Dennett, but there was someone before him, Ms Bancroft?

15 **MR WATTS:** Yeah, and I didn't know her very well. She might have been a deputy director-general. But, yeah, there was talk that these issues were going to be addressed and they weren't.

20 **COMMISSIONER:** Around the time of the response by the CCC to your complaint or some other stage?

MR WATTS: Yeah, in relation to - in relation the complaint, yes, that I signed.

COMMISSIONER: There was what, sorry?

25 **MR WATTS:** In relation to the complaint that I signed that, you know, the department was going to address, it was all going to be fixed up.

30 **COMMISSIONER:** You've seen this letter now and you heard the questions that were asked of Mr Hayes. Perhaps you can just have a look at the letter - I shouldn't say you've seen it because it may be you haven't seen it.

35 **MR WATTS:** My main concern generally was that, you know, the conduct of the department and the way the inspectors were being treated. I can't speak for any political favours, I don't know of any, anything to substantiate that.

COMMISSIONER: If you turn to the second page, this is what the CCC said:

40 "Due to the lack of particulars, the CCC is unable to properly assess these allegations."

This at least was in the letter to Mr Hayes. There may have been one sent to you, maybe not. Maybe it was sent and you didn't get it. Maybe it was sent to you and you don't remember. But assuming this communication was made to you:

45 "Due to the lack of particulars, the CCC is unable to properly assess these allegations. We therefore invite any persons with direct evidence of the conduct alleged, and in particular those signatories to the submission who are willing to

provide statements, to submit this information directly to the CCC for further consideration."

What do you say about that, if anything, as a response?

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MR WATTS: Well, you're certainly putting the acid on me there, Mr Commissioner. But, like I said, I'm not in - I wasn't in a position -

COMMISSIONER: You should have been here this morning.

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MR WATTS: I wasn't in a position at that time to be privy to any of those conversations. Nothing was mentioned to me about political favours or donations of money to the Labor Party or anything that might have raised any concerns of impropriety with regard to that. Certainly I know that I did speak to Craig Allen, or was it - he was one of the deputy directors, deputy director-general, I think it was him, that came from - came from the Northern Territory public service and started with the division - division, I call it the division. And I had a coffee with him one day at William Street, 1 William Street, the tower of power, and told him what was going on and how the CFMEU conducted themselves on site, et cetera, et cetera. And he said, "Well, what do you expect me to do?" And he said, "They ring us up and yell at us too."

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So if I could ring you up and yell at you, that would be - you would have a fair bit of, I would have a fair bit of clout, wouldn't I? So if the union CFMEU representatives could ring up and speak to a deputy director-general the way he inferred that they spoke to him, there's not much in the way of - or in a way of stopping them, is there? He said that to me. He said, "They ring me up and yell at me too, or they ring us up and yell at us," which is referring to senior management.

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COMMISSIONER: Sorry?

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MR WATTS: Referring to his, you know, senior management.

COMMISSIONER: Anything arising from that?

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MR WHEELAHAN: No, Commissioner.

COMMISSIONER: Is there any cross-examination, Mr de Jersey?

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MR DE JERSEY: No, Commissioner.

COMMISSIONER: Mr O'Grady?

MR O'GRADY: No, Commissioner.

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COMMISSIONER: Very well. Mr Watts, thank you very much for coming here and giving evidence, and you are excused.

MR WATTS: Beer o'clock. Thank you, Commissioner.

<THE WITNESS WAS RELEASED

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COMMISSIONER: When do you want to deal with the tender of that additional document that Mr de Jersey wants to put in, Mr Wheelahan?

10 **MR WHEELAHAN:** I'm content for my instructors to deal with that through his instructors, because I see he has one copy with tabs now. I understand they have been having communications anyway, have you? They have. My instructor is nodding to me. They can just be -

15 **COMMISSIONER:** I think it's important, obviously, that the record be as sanitised as possible.

MR WHEELAHAN: I have no objections whatsoever.

20 **COMMISSIONER:** Unsanitised.

MR WHEELAHAN: Unsanitised?

COMMISSIONER: Yes, unredacted.

25 **MR WHEELAHAN:** Yes.

COMMISSIONER: As possible.

30 **MR WHEELAHAN:** Yes. Yes, we're on the same page.

COMMISSIONER: All right.

35 **MR WHEELAHAN:** So to answer your question: It's easier if Mr de Jersey's instructors send that to my instructors and that we can reply in writing and sort it out, and then on Tuesday -

COMMISSIONER: All right. I don't want to interfere. Is that a convenient process, Mr de Jersey?

40 **MR DE JERSEY:** It is. The redactions I proposed were actually raised with me by Commission staff earlier, just before we started. That's all it was. It wasn't me asking for additional things.

45 **COMMISSIONER:** All right. I see.

MR DE JERSEY: It was to make it coherent with what you have already ordered. It's a clerical matter, and we can sort it out, as Mr Wheelahan proposed.

COMMISSIONER: Very well.

MR DE JERSEY: Thank you, Commissioner.

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COMMISSIONER: Anything from you, Mr O'Grady?

MR O'GRADY: No, nothing, Commissioner.

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COMMISSIONER: We will adjourn until 17 March.

**<THE HEARING ADJOURNED AT 3.29 PM, UNTIL TUESDAY, 17 MARCH
2026**