



**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 - CAIRNS**

**THURSDAY, 14 MAY 2026  
AT 9.45 AM**

**DAY 27**

**APPEARANCES**

**Mr S. Wood AM KC, Commissioner  
Mr D. Ternovski with Mr A. Thomas and Ms M. Stone, Counsel Assisting  
Mr D. de Jersey KC with Ms M. Brooks, Counsel for the State of Queensland  
Mr C. O'Grady with Ms F. Fox and Ms A. Hughes, Counsel for the CFMEU  
Administration  
Mr Paul Smith, Witness**

**<THE HEARING RESUMED AT 9.44 AM**

**COMMISSIONER:** We'll deal with appearances. Mr Ternovski, you continue to appear with Mr Thomas?

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**MR TERNOVSKI:** I do.

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

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**MR DE JERSEY:** Yes, Commissioner.

**COMMISSIONER:** And Mr O'Grady, you continue to appear with Ms Fox, and I think Ms Hughes joined yesterday?

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

**COMMISSIONER:** And there's no appearance today for the CEPU, ETUQ or PGEUQ. Mr Ternovski.

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**MR TERNOVSKI:** Just before I continue with Mr Smith, I might hand over to Mr de Jersey to finalise the tender of that document yesterday.

**COMMISSIONER:** Very well.

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**MR DE JERSEY:** Commissioner, it was the email of Ms Wise of 13 May yesterday. And I think I handed up a copy of it, but I have additional ones if required.

**COMMISSIONER:** No, I've got a copy of it. Thank you.

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**MR DE JERSEY:** And I think Mr O'Grady was still going to indicate whether there was an objection, and he's shaking his head, so I take that as a "no". No objection.

**COMMISSIONER:** Very well. So what are we up to?

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**MR DE JERSEY:** It was to be number 4.

**COMMISSIONER:** Sorry, what's it -

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**MR DE JERSEY:** I forget the letters, but exhibit number 4 in the - sorry.

**COMMISSIONER:** KADR-4. Is that right?

**MR DE JERSEY:** KADR-4.

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**COMMISSIONER:** So email Sarina Wise to Jared Abbott 13 May 2026 will be KADR-4.

<EXHIBIT KADR-4 EMAIL SARINA WISE TO JARED ABBOTT 13/5/2026

**COMMISSIONER:** Thank you. Mr Ternovski.

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**MR TERNOVSKI:** Mr Smith, just before we move on to the next topic, I would just like to clarify something you said yesterday, because it may have been mis-transcribed or you may have misspoken, but in any event it seems to be ungrammatical. Could the witness please be shown page 2480 of the transcript of yesterday's hearing. If we could zoom in on line 20 down. You will see, Mr Smith, this was the part of your evidence where you spoke about disruption on sites during enterprise bargaining.

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**MR SMITH:** Yes.

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**MR TERNOVSKI:** And then I asked you:

"After that period of disruption, in your experience did the principal contractor enter into a CFMEU enterprise agreement?"

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"Over time they did."

"Did that have any effect on the level of calls?"

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"It did for that particular site."

And then I interrupted you:

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"Just pausing there, when you say it did for that particular site, what happened once an agreement was made?"

And you said:

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"Well, we never seemed to get the volume of calls, though there was all of a sudden safety an issue."

**MR SMITH:** Well, what I meant was all of a sudden, safety was not an issue. Yeah. Yep.

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**MR TERNOVSKI:** Thank you. If I could now move to the compliance monitoring and enforcement policy, the CMEP. Mr Smith, can you describe for the Commission what the effect of the CMEP was on the discretion of inspectors to issue or not issue notices?

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**MR SMITH:** The effect of the CMEP was that the inspector did not have a discretion in relation to when they may issue a compliance notice. And that was, I suppose, twofold in relation to improvement notices and prohibition notices, which

fell under the Work Health and Safety Act, but also it had an impact under - in relation to infringement notices, which were - they were legislated under the SPER legislation, the State Penalty Enforcement. And both pieces of legislation spoke about - particularly in the Work Health and Safety Act, it spoke about the inspector "may", and under the SPER Act, it spoke about not inspector but authorised officer "may" issue an infringement. But that discretion was taken away by the CMEP, which, my view, was not appropriate. The policy can't override legislation.

10 **MR TERNOVSKI:** Was it taken away for all contraventions or only some of them?

**MR SMITH:** It was taken away in relation to - with infringements, it was taken away in relation to priority - priority infringement areas.

15 **MR TERNOVSKI:** As far as your understanding is concerned, with the discretion being removed did the inspectors still need to be satisfied with the statutory criteria?

**MR SMITH:** Yes, inspectors still needed to form a reasonable belief before they could issue an improvement notice, a prohibition notice or an infringement notice.

20 **MR TERNOVSKI:** In your view, based on your experience as an inspector and an operations manager and then regional director, was it a good idea to remove the discretion of inspectors?

25 **MR SMITH:** No, it wasn't, because what it did is it had a one-size-fits-all approach, which really made it difficult when we're actually engaging at a particular site, where there could be nuance in around how we actually would achieve a safety outcome, and that really took our ability to actually resolve ongoing safety issues and lead to better safety outcomes and at times hopefully move that PCBU beyond compliance, which was a principle of the National Compliance Enforcement Framework as well, you know. Legislation set a minimum standard, but we always would be - we would  
30 always engage about moving beyond that as well.

**MR TERNOVSKI:** You referred to certain infringements for which discretion was removed.

35 **MR SMITH:** Yep.

**MR TERNOVSKI:** And therefore an infringement notice had to be issued.

40 **MR SMITH:** Mmm-hmm.

**MR TERNOVSKI:** In your view - again, based on your experience - was the list of these priority infringements well chosen?

45 **MR SMITH:** No, they weren't.

**MR TERNOVSKI:** Why not?

**MR SMITH:** They were very - I suppose the difficulty with that is to get an infringement schedule approved by the State Penalty Enforcement Registry, you need to actually lodge applications. So there was these - a number of infringements  
5 that were there. They were very administrative in nature. So what happened, they actually just highlighted a number of those - I think there was about - there might have been about - I think there could've been about 50-odd priority infringements or - the policy will point to that, but it identified a number that were prioritised infringements, and we had no discretion. So if we went to site, those had to be  
10 infringed. For example, one of them was - and they were largely administrative. One of them was in relation to a hazardous chemicals register. The other one was in relation to maintaining toilets on site, the cleanliness of toilets. They were two examples that we would regularly get made aware of by the union in relation to this as a non-compliance occurring on site. Subsequently, that would generally incur an  
15 infringement if we went there and we formed a reasonable belief around those offences that may have been committed.

**MR TERNOVSKI:** You referred to some of these priority infringements being administrative. What do you mean by administrative?  
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**MR SMITH:** Well, administrative in that - not maintaining your hazardous chemicals register. You know, not -

**MR TERNOVSKI:** Paperwork?  
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**MR SMITH:** Sorry?

**MR TERNOVSKI:** Paperwork, for example?

**MR SMITH:** Yes. In relation to safe work method statements, you know. Things like that. My suggestion was, well, righto, why don't we put something in place that actually promotes a change of practice around high-risk activity like working at height, like mobile plant, those things that would be really - change the culture that an inspector could actually take immediate action at a work site to change poor  
35 safety behaviour. But they never, ever came about. I mean, they came about indirectly in that if someone didn't have their high-risk work activity mentioned in a work method statement, we could then infringe. So it was indirect approach. But they never, ever took the opportunity to actually put some additional infringements in there, remove the administrative ones and put the high-risk matters in place that  
40 would really change culture in a workplace.

**MR TERNOVSKI:** You referred to fall from heights. Were any of the priority infringements concerned not with the paperwork but with the actual hazards associated with falls from heights?  
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**MR SMITH:** No. No, they weren't, and the only ones that really had some - a little bit of relevance was around high-risk work licensing and things like that, and some around asbestos removal plans in that respect.

5 **MR TERNOVSKI:** In your view, were the contraventions of priority infringements in the CMEP, were they - did they concern themselves with urgent safety issues?

**MR SMITH:** Definitely not, and the main ones that we were drawn to to take action against in relation to cleanliness of toilets in relation to hazardous chemical registers, they weren't, you know.  
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**MR TERNOVSKI:** After the CMEP was introduced, did the CFMEU, as far as you know, ever refer to it in interacting with inspectors?

15 **MR SMITH:** All the time. The CMEP was used as a lever for the inspectors to issue notices.

**MR TERNOVSKI:** Can you elaborate on that? How was it used?

20 **MR SMITH:** They continually would raise that with inspectors on site, that you're not following the CMEP. I would get that put to me from Helen Burgess, from Marc Dennett. It was continual approach that was applied around why we didn't issue notices. And in other words, we decided not to issue a notice: "Well, you haven't got discretion. You need to issue a notice, because the CMEP says it does."  
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**MR TERNOVSKI:** And what was the consequence of not complying with the CMEP?

**MR SMITH:** Well, the consequences of not complying with the CMEP was continual pushback and threat that inspectors may be performance-managed.  
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**MR TERNOVSKI:** Threats and pushback by whom?

**MR SMITH:** Well, pushback from the executive director, down to me. And even I was pressured to, you know, make sure that my inspectors were following the CMEP to an extent that I was criticised - it wasn't long after the CMEP was introduced, and Master Builders brought this to the attention of the department in a friendly sort of a way, saying, "Well, you know, even your inspectors in Mackay are not in favour of a CMEP. They apologised that they had to issue these infringements, because they didn't have any option, they didn't have any discretion and they had to - had to issue this penalty infringement notice. So I was criticised because my inspectors were apologetic that they weren't supporting the policy of the CMEP, the policy of the government of the day. I pushed back on that and said well, you know, have you ever really regulated in a small regional town or anything like that? It's just like a police officer giving your infringement. If they do that friendly and in a nice sort of a way, you receive it much better. You know, it's just being well behaved. That's my view.  
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**MR TERNOVSKI:** You said you were criticised. Criticised by whom?

**MR SMITH:** Criticised by Marc Dennett.

5 **MR TERNOVSKI:** And what you've just described, was that a conversation you had with Mr Dennett?

**MR SMITH:** It was - I was criticised in relation to a leadership meeting we were having with the other regional directors, of which Helen Burgess was present at.

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**MR TERNOVSKI:** Paragraphs 36 and 37 of your statement, you produce some statistics about the number of notices issued in your region, and you say there was a dramatic increase in the number of notices. Based on your experience, what was the reason for that - this is - I withdraw that. Going back, you refer to an increase in the number of notices as between financial years 2017-18 and financial years 2018-19?

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**MR SMITH:** Yep.

**MR TERNOVSKI:** In your view, what was the reason for that increase?

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**MR SMITH:** Well, the reason for that increase was simply the CMEP, the compliance and enforcement monitoring policy.

**MR TERNOVSKI:** In your - based on what you had observed, did that dramatic increase in the number of notices lead to any reduction in the rate of accidents?

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**MR SMITH:** No, it didn't, and it still hasn't, and we operated in that vein for, you know, seven-odd years, seven to eight years, and we didn't see a reduction, an equal reduction in relation - or any reduction, really, in relation to the fatalities or the injury rate. And that was really - that was expected from my point of view, that the - understanding the safety philosophy regulation has been well founded since the Robens review and the principles in relation to prescriptiveness of legislation, that hardline compliance: it just does not work. It needs to be a mixture of education and enforcement to achieve safety outcomes, and it's really regrettable we lost that eight years where we took that hardline compliance approach and we never actually saw a reduction in fatalities or injuries. It's really a discredit to the workers of Queensland in relation to what has come out of that.

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**MR TERNOVSKI:** In your statement, you refer to becoming aware about how the number of notices was being used by other government agencies.

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**MR SMITH:** Yeah.

**MR TERNOVSKI:** Can you describe that, please.

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**MR SMITH:** Yeah. There was the - around that time, the government brought in a procurement arrangement whereby, as part of their decision-making and the

pre-qualification approval process for government projects exceeding \$100 million, they would consider their compliance history. So that was part of the work of the compliance strategy unit that Helen Burgess was in charge of, and they would collect that information, and they would pass that on to the likes of Energy and Public  
5 Works, who were just - and to QBCC, and information then was collated and then it assisted any decision-making around project procurement.

**MR TERNOVSKI:** Could the witness please be shown attachment PS-2 on page 43? If we could just zoom in at the header part. Thank you. So this appears to be  
10 an email to you. There's no "from" line on this. I think it's on the previous page. Could we show the bottom of the previous page?

**MR SMITH:** Yep, that - yeah.

**MR TERNOVSKI:** Yes. So it's an email from Helen Burgess to you. Could we blow up the second, third, fourth - everything after the first full paragraph on page 43, starting with "All government agencies". Mr Smith, is this the process that you were just describing?

**MR SMITH:** Yes.

**MR TERNOVSKI:** Do you have any views about this process?

**MR SMITH:** Well, the - well, I think it's - it's - it's appropriate that you would  
25 consider compliance history for anyone engaging in any major government project. I think that is appropriate. But I think in the context of the CMEP and the hardline compliance approach and being directed to different sites, the strategy behind this was that the more compliance notices that we could issue to a particular principal contractor, it would disadvantage them in relation to any ongoing government  
30 procurement work. That was my only concern, that it was being weaponised. I think the general concept of having awareness around the appropriateness and the safety history of a construction company performing major government work is very appropriate, but I really think that this information was being misused for other purposes.

**MR TERNOVSKI:** You say it was misused. Perhaps you could describe how it was miss used or, put differently, how did this information-sharing arrangement interact with CMEP and the CFMEU?

**MR SMITH:** The way it interacted with the CMEP was that if we were - if we went to site and we saw a non-compliance, we had no discretion but to issue a compliance notice or an infringement notice. Prior to the CMEP, the inspector had discretion. Now, the inspector could decide, because of the minor nature of the work or some agreed outcome with the principal contractor, not to issue a notice and would achieve  
45 a safety outcome. But that discretion was taken away. And in this particular email chain, this was to do with immediate compliance directions, which was to counter the fact that previously we would call them verbal directions or agreed outcomes.

They then put in this immediate compliance action. So it was a compliance action that an inspector took that may not be issuing a notice, but it would be recorded on CISR. So that would then be provided up as part of their compliance history. So that would then be reflective.

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So, prior to that, any agreed outcomes weren't being captured if a notice wasn't being issued. So there was a strong dislike for agreed outcomes or not issuing notices, simply because it couldn't be used as part of the principal contractor's compliance history.

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**MR TERNOVSKI:** In your view, did this information-sharing arrangement assist the CFMEU?

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**MR SMITH:** I believe - I believe it did. I believe it sat - after a while, you could see the strategy of the CFMEU. It was about getting us to go to construction sites for a particular reason. That particular reason generally was that they didn't have a current enterprise bargaining arrangement in place, or they may have an arrangement in place with the AWU or whatever. They may be subcontractors on that site that they had issue with for a range of reasons. So if you go to a construction site, it's quite dynamic. So you can nearly guarantee if you go to construction sites you'll find some issues, generally minor, there may be some significant ones, but generally of minor nature, that we traditionally may not have written a notice out. It could be around housekeeping. We would just give verbal advice for them to - or testing and tagging, you know, a lead may be out by a day or something of that nature. So the PC, the PCBU, would remedy that contravention.

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But we were pushed through the CMEP, pushed through the actions of the CFMEU in getting us to go to these sites, unrelenting, raising issues around their reasonable suspicion around things that are occurring on site, so we went there, which subsequently resulted in us generally issuing notices. So the more they got us to go to a site, more notices would be generated. And might I add, those sites were - they were taking us away from our planned proactive compliance where we wanted to look at a range of construction sites, not only ones that the CFMEU decided they had issues with.

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**MR TERNOVSKI:** And did you have resources to do that?

**MR SMITH:** No, we didn't.

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**MR TERNOVSKI:** Why not?

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**MR SMITH:** I mean, resources are quite scarce within government. I mean, especially in the north region, where it's generally based on - generally, the resourcing number is based on, you know, an inspector per 10,000 workers. So there's more inspectors, understandably, in Brisbane, less inspectors up this way, even though we've got to deal with the vagaries and, you know, the tyranny of distance. So we had to really - we really, in this region, had to really manage our

resources quite prudently to be able to effectively manage safety across all industry sectors.

5 **COMMISSIONER:** And how did the CMEP assist in this CFMEU strategy?

**MR SMITH:** Well, the CMEP assisted by the fact that it encouraged us - well, it mandated - it didn't encourage us, it mandated us to issue compliance notices and enforcement notices by virtue of an infringement notice.

10 **COMMISSIONER:** Were you involved in the creation of the CMEP?

15 **MR SMITH:** No, I wasn't. I was - we were given the outcome of the CMEP to provide feedback, and I was a vocal opponent to it, and even to the extent that I found out that it had been given sign-off from the Work Health and Safety Board, and I knew one of the board members, Mick Crowe, who was an industry representative from Mackay, and I rang Mick and I said, "Mick, I can't believe you guys gave this the tick of approval. These are the issues with it." And he had a read, and he said, "Paul, they pulled the wool over our eyes with this. They presented it quite differently." And he said, "I'll have a chat to John Crittall," who was on the board. So they raised those concerns. They went back to the board. But Mick said, "Listen, it appears to be too late. It has gone through."

25 So from the very start, I could see the problems with this. It moved from where we wanted to be under, you know, a harmonised legislation based on the Robens principles, you know, of consistency, consultation, risk management and cooperation that occurred between industry, unions and the regulator. We moved away from that to a very prescriptive, hardline approach. And what concerned me more was that policy was in conflict with legislation, which my view, and why I stringently opposed it and I was happy for me to be disciplined on it, I was prepared to push on that because I felt I was on a strong platform to say this policy is not - it's not legitimate. It hasn't got a legal basis, because it conflicts with legislation.

30 **COMMISSIONER:** When you say, "We were given a copy of this for feedback," who's the "we" and who gave it to you?

35 **MR SMITH:** That would have come through the chain of command. Marc Dennett. It would have been sent for consultation. Well, I wouldn't even call it consultation. It was just, "Provide feedback on the draft CMEP." So if memory serves me correctly, it was approved in around about the December - round end of 2018, and so it would have been prior to that we had some opportunity to provide feedback.

**COMMISSIONER:** Do you know who the author of it was?

40 **MR SMITH:** I think there was a working group that was put in place by Office of Industrial Relations. They consulted with the unions, industry and other stakeholders. But I don't know, Commissioner, I don't know who the exact author of it was. It would have been Office of Industrial Relations more broadly, and that would have

been signed off by the DDG at the time, who would have been Simon Blackwood. And subsequently I had discussions with Simon about the CMEP and the influence from the - from the CFMEU, and Simon said that there was a lot of pressure to go hardline compliance that flowed from the best practice review that occurred. That  
5 was signed off in 2015 - 2017, sorry.

**MR TERNOVSKI:** This is the Lyons review?

**MR SMITH:** This is the Tim Lyons review, yep.  
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**MR TERNOVSKI:** Go on, sorry. I interrupted you.

**MR SMITH:** So what that done, that put in play a number of things, and one of those was also - not only have a hardline compliance approach, was actually to split  
15 the Workplace Health and Safety into engagement, compliance and investigations and centralise those - those functions, which, prior to that, that was all managed by the regional director.

**MR TERNOVSKI:** Mr Smith, you refer to your conversation with a member of the  
20 Work Health and Safety board. I think you said his name was Mick something. I didn't catch the last name.

**MR SMITH:** Mick Crowe. Yeah.

**MR TERNOVSKI:** Mr Smith, if I could now move to a different topic, which is a  
25 description of specific incidents which you've chosen to illustrate some of the broader pattern. If we could start with the incident you describe, a complaint about Ms Farrington's work wear.

**MR SMITH:** Mmm.  
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**MR TERNOVSKI:** Can you tell the Commission about that.

**MR SMITH:** Yeah. That was very soon after Shannon had commenced as an  
35 operations manager, and I'd received a call - prior to that, we knew they were - I received a call from Ms Burgess in relation to the CFMEU had told her that Shannon had turned up on site in her stilettos, you know. And I'm thinking, "Well, gee, that's very dramatic." I just couldn't imagine that happening. So I remember - I thought, oh well - I was really intending to treat it with the contempt it deserved, you know, that  
40 I wouldn't even raise it with Shannon. But I thought I'll raise it with - I'll let Shannon know that this is what they're like. They play the person, not the ball, so you know, you might as well learn straight away what you're up against, so be careful.

So I had that conversation with Shannon, and the reality was that she was just  
45 wearing her dress shoes. They went to the front office. That wasn't part of the construction site. She just thought it was an opportunity to attend with the inspector and to meet the key stakeholders, including the unions and the PC. So she did it with

the best intentions. She had no intention of going on to the construction site where you needed to have steel-capped boots. So out of that conversation I just said to Shannon, "Listen, this is what they're like. Just be careful. Be on guard." And, you know, I just - as I said, I just treated it as a bit of a nonsense complaint, really.

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**MR TERNOVSKI:** Do you know why Ms Farrington was wearing dress shoes and not steel-capped boots?

10 **MR SMITH:** She hadn't - would have been at that stage, Shannon wouldn't have been issued or she was in the process of being issued her work boots, you know, and -

**MR TERNOVSKI:** And why is that?

15 **MR SMITH:** Well, Shannon would have just recently started with us. That's my understanding of it. So we would have been in the process of doing that. And when anyone new starts with us, they need to go through training, and it's not as if they're going to send them to site straight away, and an operations manager can - doesn't necessarily have to attend site, although they do. But there was no requirement for  
20 Shannon to have work wear straight away. But we were in the process of arranging that.

**MR TERNOVSKI:** If we could move to the next incident you describe, which is an incident on the CPAC site on 4 April 2018. We've heard direct evidence about this  
25 incident, I don't need you to go into detail but could you just briefly describe what we were talking about, just have the context.

**MR SMITH:** Yeah. So I become aware of this matter that occurred where there was - there was inappropriate - or there was intimidation of an inspector, Mr  
30 Cummins, and that was directed towards Rob Duckworth and John Dalamaras. And shortly after that - and it went through a process in relation to statewide investigations investigating those matters against Mr Cummins. The matter subsequently went to court, and on appeal it was overturned. So that's a brief outline of what occurred. But shortly after the incident, there was a couple of derogatory  
35 Facebook posts that were brought to my attention, you know. So I pushed that up to Marc Dennett, and basically, the issue was that Helen Burgess had liked a post from a CFMEU official.

40 **MR TERNOVSKI:** What do you mean by "liked"?

**MR SMITH:** The emoji of the thumbs up. And, my view, that was inappropriate and undermining - undermining Work Health and Safety people, our staff, our  
inspectorate. And I also saw it as her showing support to the union, who was actually  
45 at loggerheads with us and saying derogatory comments about us, where she should not have been engaging in anything of that nature. She should have been about supporting the inspectorate, not engaging in that commentary. Totally inappropriate for a public servant to do that. So I subsequently raised that with Marc Dennett, and

his response was, "Well, she really only liked - she only really liked a like of a post," so to speak, you know. She was - so - so she liked a like of a derogatory comment about the inspectors. So the subsequent action was that she was asked to take herself off Facebook, and I thought, well, that's quite a smart move, to take yourself off  
5 Facebook and not engage in any commentary in a personal nature that relates to your professional capacity of a director.

**MR TERNOVSKI:** Was any disciplinary action taken against Ms Burgess?

10 **MR SMITH:** No. No, not that I'm aware of. The general - the general response is anything I generally raised about Helen was - not outrightly dismissed, but not actioned.

**COMMISSIONER:** By Mr Dennett or -

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**MR SMITH:** Dennett, that's correct.

**COMMISSIONER:** By Ms Neilsen as well?

20 **MR SMITH:** No, no, it was - it was generally Helen's - it was mainly after Julie Neilsen had left that Helen started moving into those roles and become more prominent in handling of the CFMEU hotline, I suppose you could say, of complaints through - and then my interactions with her. You know, the throwaway line was "She who must be obeyed" was quite a common refrain, you know.

25

**MR TERNOVSKI:** Who was that referring to?

**MR SMITH:** Helen Burgess.

30 **COMMISSIONER:** Did Mr Harris take over from Mr Dennett?

**MR SMITH:** He did, yeah.

**COMMISSIONER:** And did you have the same problems with him?

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**MR SMITH:** No, not at all. Andrew shared my concerns about Helen. Andrew was not liked by the CFMEU, because prior to being with Work Health and Safety Queensland, he was part of the Australian Building Commission - Construction Commission - ABCC. So the union would not engage with Andrew or any of - or  
40 subsequently. So, naturally, there wasn't any support for Helen Burgess in her - the way she was conducting herself in giving preferential treatment to the union. Andrew pushed back on that, and he gave me support in doing that.

**MR TERNOVSKI:** Mr Smith, you referred to an email chain between Ms  
45 Farrington, Mr Dennett and yourself.

**MR SMITH:** Yep.

**MR TERNOVSKI:** In the aftermath of Mr Cummins' initial conviction.

**MR SMITH:** Mmm-hmm.

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**MR TERNOVSKI:** If we could go to that document now, which is attachment PS-3, and if we could start with the email header at the bottom of page 50. So that's an email from Ms Farrington to Mr Stathooles. What was Mr Stathooles' role at the time?

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**MR SMITH:** Andrew was the operations manager for Rockhampton.

**MR TERNOVSKI:** So he reported to you?

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**MR SMITH:** To me, yeah, yeah.

**MR TERNOVSKI:** Now, we can see the date of that email is 25 March 2020.

**MR SMITH:** Mmm-hmm.

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**MR TERNOVSKI:** Yesterday, I tendered into evidence the conviction decision for Mr Cummins, the original conviction, which was dated 17 March 2020.

**MR SMITH:** Yep.

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**MR TERNOVSKI:** So this makes it about a week -

**MR SMITH:** Yep.

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**MR TERNOVSKI:** - or more than a week after his conviction.

**MR SMITH:** Yep.

**MR TERNOVSKI:** Does that accord with your recollection of the timeline?

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**MR SMITH:** Yeah, it does, yeah.

**MR TERNOVSKI:** If we can now go to page 51 and have a look at Ms Farrington's email. Just blow that up. I'll let you read that, Mr Smith.

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**MR SMITH:** You'd like me to read it?

**MR TERNOVSKI:** Read it to yourself.

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**MR SMITH:** Right.

**MR TERNOVSKI:** I'm sorry.

**MR SMITH:** Yep.

5 **MR TERNOVSKI:** Mr Smith, at the time this email was sent, are you aware of any concerns by the inspectors about interacting with Mr Cummins?

**MR SMITH:** Yes, I was. Yep.

10 **MR TERNOVSKI:** And what were those concerns?

**MR SMITH:** Those concerns were about his volatility. As you can see in that sentence, it said that Rolly was fine this morning. He could well be, but the next time you go and have an interaction to him, he could be quite aggressive. So you really didn't know how you would find this guy. But he was very unpredictable, and  
15 someone that we were quite aware of, and careful in dealing with. And in saying "careful in dealing with", I mean, Rob Duckworth - Rob was quite affected, and so was John Dalamaras, in relation to the interactions that occurred on site, that were subject to that court matter. So we were quite aware of how we needed to manage the psychological stress to the inspectors in relation to dealing with Rolly Cummins,  
20 particularly with both John and Rob in relation to any further interactions.

**MR TERNOVSKI:** This is Rob Duckworth?

**MR SMITH:** Rob Duckworth. And more broadly than that, I was continually saying  
25 through the conduct of this court matter to Marc Dennett that "Marc, we need to do something in relation to how we deal with the CFMEU and how they respond to us. We need an agreed set of protocols." And Shannon's kind of speaking to that, because we did a lot at the local level through Mick Robinson in trying to - because he was the - he was the north area coordinator for the CFMEU, trying to change  
30 behaviours and just see if we could work a little bit better together. To a degree, that was successful at times, but it really never changed Mr Cummins' behaviour. I eventually kept pushing that up. I got some feedback from Marc Dennett that said that, yep, the CFMEU are aware of his behaviour. They're going to put him through some anger management training, or words to that effect. And he was taken away  
35 from Cairns for a brief period of time, but then he came back and, look, he could be better behaved, but that just depended on how he was at the time. He was very unpredictable.

40 So nothing really changed. So we still had issues with him. So we tried to deal with that in a very appropriate way. We had to try and also attend site, deal with the issues raised, but also I was aware that we had to also protect the psychological wellbeing of our staff. And as you'd appreciate, we had limited amount of staff, so you were generally sending the same people through to deal with these matters, and it wasn't  
45 until around 2020 when I had another inspector that was recruited that I utilised him more to deal with the - with Mr Cummins, because he was quite effective in dealing with that confrontational-type behaviour. So that - that was successful to a large degree.

**MR TERNOVSKI:** Who was that inspector?

5 **MR SMITH:** That inspector was Rob McDonald. Rob came from a military background, so he was very no nonsense. He followed the legislation and he made them follow the legislation, which they didn't like. I got complaints about Rob, similarly like I got with Shannon, when she started. The complaints were that he would not necessarily engage in any banter, that he was straight down the line. He applied the legislation. And I said, "Well, isn't that what we want in an inspector?"  
10 So you could never win with them. They'd always - they'd always have some critique of someone, you know.

**MR TERNOVSKI:** Who was "they" who was critiquing?

15 **MR SMITH:** I mean the CFMEU. And this would come back through Marc Dennett to me, you know. And a lot of times I didn't pass that on to the inspector, because I that was inappropriate, but, you know, I just turned that around and said I was very appreciative of the way they're conducting their work, it's good to see, and gave them support that way.

20

**MR TERNOVSKI:** Now, at the time that Ms Farrington sent that email, the one that's on the screen right now -

**MR SMITH:** Yep.

25

**MR TERNOVSKI:** - was Mr Dennett aware of the difficulties that your inspectors were having interacting with Mr Cummins?

**MR SMITH:** All the time.

30

**MR TERNOVSKI:** If we could go to the previous page and look at the next email in the chain, which is an email dated 25 March at 8.07 am.

**COMMISSIONER:** What do you mean by "all the time"?

35

**MR SMITH:** Well, any time we had interaction with him, the potential was - and most times it didn't end well, so - so he had that - that high volatility that was displayed by his - his actions.

40

**COMMISSIONER:** But the question was whether Mr Dennett was aware of this.

**MR SMITH:** Oh yes, he - well, I mean, all the time and any time I spoke to Marc in relation to operational matters that may have been concerning Rolly Cummins or interactions we had on the site, and my fortnightly touchpoints with him in relation  
45 to when he would have a check-in meeting with me in relation to the region and that I would inevitably bring that up, it never went away because I was just continually getting these issues up in Cairns in relation to Rolly Cummins.

**COMMISSIONER:** So how many times would you have mentioned this to Mr Dennett by this stage, March 2020?

5 **MR SMITH:** 2020? Oh, I would have mentioned - oh, basically lost count, but it would have been on a regular - it would have been 20 times. I mean, that's without exaggeration, because -

10 **MR TERNOVSKI:** And was Mr Dennett aware of Mr Cummins' conviction at that time?

15 **MR SMITH:** He was, yeah. And all due respects to Mr Dennett, he raised these with - concerns with Rolly Cummins in relation to something that could be done in relation to - to Mr Cummins, so - and that's what come back to me, was that they were going to put him through some anger management, they were going to manage him that way, and - yeah.

**MR TERNOVSKI:** This is them putting - the CFMEU.

20 **MR SMITH:** The CFMEU, yeah. So they did - they did realise and Marc did say to me, "Look, they know what he's like." So they certainly knew the issues with him. So it wasn't as if they weren't aware.

25 **MR TERNOVSKI:** If we could now look at that email, 25 March at 8.07. So is that you forwarding Ms Farrington's email to Mr Dennett?

**MR SMITH:** Yeah, yep.

30 **MR TERNOVSKI:** If we can now look at Mr Dennett's response and just blow that up, immediately above it. You see there Mr Dennett is saying:

"While I understand where Shannon is coming from, I think her language in her email below is inappropriate - there is a clear bias."

35 In your view, does that email from Ms Farrington that I've just got you to read to yourself show bias?

**MR SMITH:** No, it doesn't.

40 **MR TERNOVSKI:** Why not?

**MR SMITH:** Well, what it's doing is it's stating the fact, you know, that we need to do something, we need to look after our inspectorate, we need to have a pathway forward in now we're going to deal with this particular permit holder.

45

**MR TERNOVSKI:** Mr Dennett also says in this email:

"I am concerned that Shannon is fuelling the issues..."

In your view, was Ms Farrington fuelling the issues?

5 **MR SMITH:** No, she wasn't, and that was the general refrain and general response,  
that Shannon was fuelling these issues, or other operations managers that I would  
have would be fuelling these issues because they were pushing back. I was fuelling  
these issues. That was the general pushback. As I said before, it was about total  
10 tolerated, and it was pushed back in a form of performance management, as you can  
see. You can see, you know, there's speak about behaviour and appropriateness and  
all that. So it's - it's a pushback to say to us, "You need to comply with this  
significant stakeholder," and tolerance outside of that of what we would do was not  
accepted. So the region was always challenged in how we dealt with the CFMEU.

15 **MR TERNOVSKI:** Mr Dennett also says in that email:

"Even her recent comments to the DDG about accepting their behaviour was in my  
view was inappropriate."

20 Do you know what comments Mr Dennett is referring there to?

**MR SMITH:** In relation to - we went down to a meeting in Brisbane in March of  
that year, where the operations managers and regional directors went, and Mr Allen,  
25 being the DDG at the time, spoke to us. Shannon raised a concern she had in relation  
to our - you know, our favoured treatment of the CFMEU and basically said that the  
organisation needs to look after the - you know, the inspectors' wellbeing. So that  
was viewed as being, you know, inappropriate. I didn't think it was. I didn't think it  
was, because I was -

30 **COMMISSIONER:** Sorry, what's inappropriate? I don't follow.

**MR SMITH:** The inappropriateness of the comments that were made to the - to  
Craig Allen, the deputy director-general, in relation to the conduct of the CFMEU.

35 **COMMISSIONER:** But what's inappropriate about that?

**MR SMITH:** Well, Marc Dennett said it was inappropriate to raise that at an open  
forum like that, to put the DDG on the spot to say that to him.

40 **COMMISSIONER:** To say you should be doing something about the inappropriate  
behaviour of the CFMEU was -

**MR SMITH:** Yeah, that's right. That was considered inappropriate. And that's the  
45 irony of it all, Commissioner. That was seen as inappropriate, but the way they  
conducted themselves on site and bullied inspectors, that wasn't considered

inappropriate. But a comment like that which was justified was seen as inappropriate. So that's what we were continually up against.

5 **COMMISSIONER:** Is Mr Dennett still a member of the Queensland Public Service, Mr de Jersey, do you know?

**MR DE JERSEY:** I would have to take instructions about that, Commissioner, but I'll be able to get those quickly.

10 **COMMISSIONER:** If he is still a member of the Queensland Public Service, Mr Ternovski, you might want to have a conversation with Mr de Jersey about whether Crown Law should act for him. They may not act for him. He might not be a member of the public service.

15 **MR DE JERSEY:** I can confirm he's not represented by Crown Law. Or counsel, of course.

**COMMISSIONER:** Thank you.

20 **MR TERNOVSKI:** In your statement at paragraph 53, you say that this conversation that you've just described for the Commission occurred in Brisbane on 25 March 2020.

**MR SMITH:** Mmm.

25 **MR TERNOVSKI:** If we could go back to Ms Farrington's email, that seems to be of the same date. Is that an error, Mr Smith? Did the meeting occur earlier that morning -

30 **MR SMITH:** I understood the meeting occurred earlier, and I think subsequently I might have sent you a diary note of that. It occurred in and around that time. There wasn't much - there wasn't much difference. I thought it may not have been on that date. Could well have been, but it was in the month of March. I thought there may have been a week that may have separated that, but I could be - I could be wrong.

35 **MR TERNOVSKI:** Mr Cummins' conviction was - assuming that was 17 March, it must have been in that period.

40 **MR SMITH:** It was in that period, yeah, yeah. Sorry, the conviction date, the meeting we had in Brisbane and this email were all relatively in that month of March at that time.

45 **MR TERNOVSKI:** Ms Farrington gave evidence about a conversation she had with Mr Allen where he said that he - words to the effect he also copped abuse from CFMEU officials like Mr Ravbar, and her evidence was that she responded with something to the effect of, "The standard you accept is the standard you set," or "The standard you walk past is the standard you set." Does that ring any bells?

**MR SMITH:** It does, and we used to hear that regularly from executives, that there was bad behaviour displayed by the CFMEU. And particularly when I say the CFMEU, it would be meetings they would have down in Campbell Street at Bowen Hills in their office there, and it was generally referred back to the behaviour of Michael Ravbar, and I mean, a number of executive directors and deputy directors-general would refer to Michael Ravbar as a psychopath, you know. He was just really bad behaved. So, you know, they just used to try to say, I suppose, to justify that, you know, they cop the abuse too. But that was - that was no comfort for the inspector - the inspectors on site, and if they were copping that abuse, they should have said, "Well, we're not going to engage with you guys. That's it." You know.

You know, we don't cop that abuse now from the CFMEU under administration. They're very well behaved. They're good to engage with. So that's not occurring now. So it just shows to me that it was a lack of leadership from the CFMEU, how they engaged in that bad behaviour. That was their tactic. That was their business plan. You know, they operated like the Italian Mafia and the Russian Mafia. They had a real confrontational approach. And we accepted that within OIR, which is very, very disappointing. Our leadership accepted that bad behaviour. Now, there was one thing about the CFMEU misbehaving, but there was another thing about us accepting that behaviour and the lack of support for the inspector, and that is very disappointing, and I'm very annoyed about it. And even till this day, there has not been an apology from OIR leadership to recognise that, which is - which is disappointing.

**COMMISSIONER:** When you say "we" and "us", you don't include yourself in that?

**MR SMITH:** No, I don't. No, I don't. But I expect - when I say executive leadership, that's from executive directors up to the DDG. I would have expected the DDG, the deputy director-general - and I've approached a number of them. I said, "This would really show good leadership if you would actually put an apology in on behalf of what inspectors have gone through for the last nine years or so in relation to the conduct of the CFMEU." Because we were - leadership was missing in action. We were spineless when it came to dealing with the CFMEU, and it saddens me to say that, because this organisation is a great organisation, and we have - we hold a lot of responsibility in achieving work health and safety. We've got a lot of responsibility for the workers of Queensland, and yet we didn't operate appropriately.

**MR TERNOVSKI:** Mr Smith, if we can now move to a different incident, you describe -

**COMMISSIONER:** Could I just go back to the email on page 50. Actually, go to Ms Farrington's email on 51. I just want to make sure I understand the context of this. The context is a week earlier, Mr Cummins had been found guilty of an offence of intimidating an inspector. There's a request from Ms Farrington to put boundaries

on the way the CFMEU contact this organisation, your organisation. You'd spoken to Mr Dennett prior to this at least 20 times about the behaviour of -

**MR SMITH:** Yep.

5

**COMMISSIONER:** - Mr Cummins. And Ms Farrington says:

"I would hope our organisation would regroup and give some direction to Cairns re Rolly."

10

What do we do with the person that Mr Dennett knew had been troublesome and had just been convicted a week earlier. And Mr Dennett's response is to say, "Her language is inappropriate. There's a clear bias." Did he ever explain to you what the bias was?

15

**MR SMITH:** No, and I - and I - I mean, I honestly think he was also referring back to the verbal conversation that Shannon had with the DDG in that public forum. That's my sense of it.

20

**COMMISSIONER:** But that conversation was where - that's the one that Mr Ternovski has just taken you to, which is at paragraph 53, I think, of your statement. And she said, "Why do we accept their bad behaviour? Why don't we do something about it?"

25

**MR SMITH:** Yep. And look, that was generally the conversation that was always had, and that was the conversation that Shannon had with me. Shannon would prosecute that when she was speaking to executive leadership, and I would also. But -

30

**COMMISSIONER:** But we've just had an independent tribunal, a magistrate -

**MR SMITH:** Yep.

35

**COMMISSIONER:** - find him guilty. I don't -

**MR SMITH:** Yeah. And, look, what - what did happen at that stage, while he was under - while that decision was handed down, he was - he was removed from - he was - he was subsequently, for a period, I think you'll find between the period of when we actually - the court hearing was undertaken, the decision was made and then the matter was under appeal, he was - his activity was subdued in relation to - I believe he was taken away from Cairns for a period of time.

40

**COMMISSIONER:** By whom?

45

**MR SMITH:** By his organisation.

**COMMISSIONER:** And then if we just go back to paragraph 50, there's another part of this email I don't understand, where Mr Dennett says - not paragraph 50, page 50, sorry:

5 "As with all other unions..."

At the end of the email:

"...the contact is being made through the manager."

10

What does that mean?

**MR SMITH:** Yeah. What that means is the contact through the manager is available for all other unions. So Shannon's saying, well, you know, we've got specialised preferential arrangements for the CFMEU, and Marc's response is, "Well, those arrangements are in play for all other unions as well through to the local manager," which they were, but as I said previously, there wasn't a lot of activity from the other unions. There was a little bit of activity from the ETU, the Plumbers Union, that would come through to the local manager, but really it was predominantly the CFMEU. So that was the - that was the triaging arrangements, so they would - that was that preferential treatment I was talking about that. They'd either ring - they could ring the regional director or the operations manager, but predominantly it would come through Helen Burgess to us in relation to any matters that we had to respond to.

25

**COMMISSIONER:** And it's just untrue. All other unions' contact is being made through the manager. I thought you said yesterday that in almost every instance, every other union and other stakeholder went through the AAA triage?

**MR SMITH:** Well, they generally did, but what Marc's referring to there is there's opportunity for them to contact the local operations manager if they so want to, to discuss issues or bring issues to our attention. But, you know, the opportunity was there to do that - for them to do that, but generally, they would contact the - the assessment Services. And the point I'm trying to make is, generally, you know, they were very well behaved, the Australian Workers' Union, the Transport Workers' Union, the Metal Workers' Union, you know. We did not have any problems with that. The ETU to a certain extent. They could - you know, they could give us a little bit of tension at times, but they were never as bad as the - as the CFMEU. They were - you know, they were reasonably well behaved, or at times they could have been better behaved, but generally we didn't have issues with them. They were accepting of our decision. They would not escalate matters through to the minister's office like the CFMEU would, you know.

**MR TERNOVSKI:** Mr Smith, if we can now move to another incident you describe which is the incident at the Sun Metals site. What was the Sun Metals site?

45

**MR SMITH:** The Sun Metals site is a major hazard facility site that is in Townsville, to the south of Townsville.

**MR TERNOVSKI:** Sorry.

5

**MR SMITH:** Sorry.

**MR TERNOVSKI:** Who operates the facility?

10 **MR SMITH:** Sun Metals operate it.

**MR TERNOVSKI:** And what work was being done there?

15 **MR SMITH:** At that particular time, there was construction of the plant, so it was an expansion of the plant. It was an existing plant that had been there for a number of years, and they were actually - Watpac were performing work as the principal contractor on behalf of Sun Metals and building - building an expansion to their existing plant.

20 **MR TERNOVSKI:** How was access to the site controlled?

**MR SMITH:** Access to the site was controlled through security that the Sun Metals had in place. So, like, you'd turn up at a security gate and they would let you in. You had to state your reason why you were in. It was a form of a boom-gate arrangement.  
25 And that was - that was a requirement of major hazard facilities because of the dangerous nature of what was there. So that was the arrangement for access.

**MR TERNOVSKI:** Sorry, what was the arrangement?

30 **MR SMITH:** The arrangement for access was that you had to - you couldn't get through without going through security. So you couldn't just turn up unannounced.

**MR TERNOVSKI:** Who did you have to notify?

35 **MR SMITH:** We'd have to notify - well, we could either turn up at the security and we would say we're here for a particular matter, could we meet with so-and-so, or we could ring ahead, because as you'd appreciate, we were out there regularly in relation to dealing with incidents, or proactive visits, so we had a relationship with the - with Sun Metals in relation to advising that we were coming through, and they'd expedite  
40 our entry as opposed to having to just deal with it when we turned up on site, so -

**MR TERNOVSKI:** Was it any part of the arrangement to notify the principal contractor?

45 **MR SMITH:** The CMEP didn't allow us to do - announce our visits. So they should be unannounced visits. So there was - we never - we never would - well, we may announce our visit if we wanted to meet with someone on site to discuss a particular

issue, but to be checking on compliance, we would never - we would generally never announce our visitation to that site, to get a true capture of what was occurring, you know, on site.

5 **MR TERNOVSKI:** Now, you describe a phone call you received from Ms Burgess in relation to an attendance by your inspectors at the site. Now, for that attendance, who was notified in advance?

10 **MR SMITH:** Well, the allegation is that we - we - we notified Watpac in advance of our attendance.

**MR TERNOVSKI:** Before we get to the allegation, who was actually notified, as far as you know?

15 **MR SMITH:** Of this matter?

**MR TERNOVSKI:** Of the impending attendance of inspectors.

20 **MR SMITH:** Oh, sorry. We - we notified Sun Metals that - and we were doing this regularly in relation to attending that site so that we could get accelerated access through the - the front part of the organisation - sorry, through the front part of Sun Metals so that we could then attend the construction site in an unannounced manner.

25 **MR TERNOVSKI:** Going back to the phone call you received from Ms Burgess, can you describe that phone call?

30 **MR SMITH:** Look, I got a phone call, I recall being in Rockhampton at the time, and she rang and accused me of - made the allegation, sorry, that the inspectors had announced their visit prior to turning up at the Watpac construction site that was at Sun Metals.

**MR TERNOVSKI:** And what did you say to her?

35 **MR SMITH:** I said, "Helen, that wouldn't have occurred," and she said, "Yes, it did. The permit holder, Grant Harradine, said it did occur," and I said, "Well, Helen, my understanding that it wouldn't," and I made some - you know, inquiry around that. And then the conversation was that, "Yes, it did. You weren't following the CMEP." And she subsequently got - I said, "Helen, don't tell me I'm not following the CMEP and don't ring me and tell me what my inspectors are or aren't doing." I said, "I've had absolutely enough of that." And she said well, you just speak to me like my inspectors speak to her. So she was saying I speak to her like her inspectors speak to her, making the accusation that I'm speaking disrespectfully to her. She got angry and she hung up the phone.

45 So it was - sorry. It was a couple of days later that I received a call from Marc Dennett, which surprised me, because generally within 15 minutes of an altercation with Helen Burgess and myself, I'd receive a call from Marc Dennett. So anyway,

Marc rings me this day. There was a little bit of banter; normally he gets straight to the point. And he said, "I heard you and Helen had a bit of a disagreement." I said, "Yeah, it was a good one, this one." And he said she rang him straight after and she was screaming and yelling at him, and he said to her, "Helen, if you can't speak to me properly, we're not going to speak at all," and he just hung up on her, he said. And then she rang back and explained to him what had happened.

And he said to me, "Paul, from what she's explaining to me, you did everything right. You know, you were in compliance with the CMEP." He had some knowledge of how - how major hazard facilities operate, and I went into that further and reiterated that with him. He had no issue with what I'd done, and that was the end of the matter.

**MR TERNOVSKI:** Going back to your phone call with Ms Burgess, was Ms Burgess, in effect, preferring Mr Harradine's version of events to your version?

**MR SMITH:** She was, and look, that would happen all the time. She would disbelieve anything that I would say or anything that my inspectors would say. She'd always make the accusation that we weren't following the CMEP. You know, it wasn't something that I tightly held my inspectors to, because I saw the issues in the CMEP, but she'd always - that was her first point of call: "You're not following the CMEP and you're going to get yourself in trouble. I'm going to take this issue up with Marc Dennett." So that was her general refrain when she spoke to me.

**MR TERNOVSKI:** If we could now move to a different incident, which is the Townsville tower crane evacuation plan incident. Can you tell the Commission about that?

**MR SMITH:** Yeah, look, we'd received a complaint from Helen Burgess in relation to this. This was a Hutchinson site at JCU. And so I got a call from Helen Burgess, and it was in relation to a tower crane and emergency response in relation to the tower crane, and so I subsequently sent John Finn, who was acting operations manager at the time to go and attend that site and to look at the issues that were being raised. So John went to site. From memory, it was kind of late in the afternoon, so John went to site and made some cursory inquiry, had a conversation with the PCBU on site. There was an agreement where they wouldn't operate the tower crane until they had done certain things. So the issue was around practising the emergency response and engaging with emergency services to - if we had to get an emergent extraction of the operator from the crane. So John got an agreement whereby the PCBU said, "Listen, we won't operate the tower crane until we can confirm contact with the local emergency response, QFES."

So that was all agreed to. The first initial argument was, well, righto, well, John got an agreement so he's issued a verbal prohibition, so you should issue - he needs to issue a prohibition notice. I said well, it wasn't prohibiting the activity; there was an agreed outcome where they agreed to not perform any work until they actually could verify that QFES could actually perform the rescue. So subsequently there was discussion had. The PCBU had come back to John and said, "Listen, the" - had

spoken to QFES in Townsville and they'd agreed to, that they could, so that was all put in play. What hadn't occurred was the fact that Hutchinson Builders hadn't practised their emergency response plan in light of the fact that QFES could then provide that - that emergency response.

5

If you look at some of the correspondence that came back, Helen was going on around about this seven-minute timeframe, and it was all so prescriptive to me I just couldn't make any sense of it. It was around the PCBU actually having an emergency response in place, which they did. They hadn't practised that. So subsequently, after some further discussion with them, John Finn issued an improvement notice. We didn't issue a prohibition notice; we issued an improvement notice. But subsequently in that - that to and fro, if you look at the actual dates, it took a couple of dates before we issued the improvement notice. There was a comment made when John was leaving site, I think it was the first day, that you better tell your boss - meaning me - that he wants to start doing his job - meaning I instruct them to issue notices - or otherwise I might find myself in trouble, you know. So that was the comments that was made by Mr Harradine, allegedly, to John Finn.

20

**MR TERNOVSKI:** How do you know that?

**MR SMITH:** John told me.

25

**MR TERNOVSKI:** I'm about to move onto another topic, so this may be a convenient time, Commissioner.

**COMMISSIONER:** Who was the tower crane operator at this site?

30

**MR SMITH:** Hutchinson's Builders were operating, they were the PC at the site, Commissioner. I'm not sure who - they would have had - whoever the tower crane operator, there would have been more than one and they would have been operating under a high-risk work licence, so -

35

**COMMISSIONER:** I think either you or Mr Dalamaras said that one of the issues with Century Cranes was that the JCU site - this might not have been that site.

**MR SMITH:** No, this was Townsville.

40

**COMMISSIONER:** Oh, it was Townsville. Of course. Sorry. We're in Townsville. I beg your pardon.

**MR SMITH:** Yep.

45

**COMMISSIONER:** And were you aware of what the issue - whether there was any industrial issue on site?

**MR SMITH:** No, I wasn't aware. It might have - it may have - the timeframe may suggest that it was prior to any enterprise bargaining arrangements being reached

between Hutchinson's Builders and the CFMEU, but I'm not aware of that. I just - we just had this issue that was raised, and we dealt with it. I subsequently reported this up to Marc Dennett, that this was inappropriate, and he said he'd raised it with Royce Kupsch, who had mentioned that with the permit holder. I didn't hear anything more about that, what the outcome was.

**COMMISSIONER:** I don't quite understand why any other disciplinary action wasn't taken against Mr Harradine. That seems to be a fairly significant threat: "Tell your director Paul Smith he wants to start doing his job or he'll find himself in trouble."

**MR SMITH:** Yeah, I mean, that generally was the refrain. I was hearing those sorts of things before in a - you know, that there was these little comments being made about me.

**COMMISSIONER:** This one was reported by you, that you'd heard.

**MR SMITH:** Yeah. I'd had enough of it by that stage. That's why I just -

**COMMISSIONER:** And can you explain why nothing was done about it?

**MR SMITH:** I - I don't know. Look, my expectations, Commissioner, was nothing would be done about it, because -

**COMMISSIONER:** Why was that?

**MR SMITH:** Well, because as far as - you could never be critical of the CFMEU. Whatever they did, whatever they said, they could just do. They were above the law; they could do whatever they liked. So unfortunately that was the environment that we had to operate in.

**MR TERNOVSKI:** Commissioner, might I request a slightly shorter morning adjournment to make sure - I'd like to make sure I finish Mr Smith, and we'll have enough time for cross-examination before lunchtime.

**COMMISSIONER:** You're free to request.

**MR TERNOVSKI:** Well, I do request, Commissioner.

**COMMISSIONER:** Until when?

**MR TERNOVSKI:** Perhaps 15 or 20 minutes instead of 30 minutes.

**COMMISSIONER:** All right. Well, let's come back at 20 past.

**<THE HEARING ADJOURNED AT 11.01 AM**

**<THE HEARING RESUMED AT 11.19 AM**

**COMMISSIONER:** Mr Ternovski.

5 **MR TERNOVSKI:** Mr Smith, if I can now take you to the meeting you described between the CFMEU and WHSQ on 6 August 2020. First, if we could blow up paragraph 79 of your witness statement, Mr Smith. So here you list the attendees of this meeting. I see you're not listed there.

10 **MR SMITH:** I'm listed - no, I'm not listed there, simply because I made the file note, so I didn't -

**MR TERNOVSKI:** But you did attend it?

15 **MR SMITH:** I did attend it. I attended by Teams meeting, yes.

**MR TERNOVSKI:** In that list, Ms Farrington is not there.

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

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**MR TERNOVSKI:** Why is that?

**MR SMITH:** Because they didn't want her to attend, nor did they want any of my other operations managers to attend, and from discussion with Marc Dennett, they didn't want me to attend either, but he said, you know, "You've got to have someone from North and Central Queensland. I would suggest Paul attends."

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**MR TERNOVSKI:** Who is they?

30 **MR SMITH:** The CFMEU.

**MR TERNOVSKI:** And how were you aware that they didn't want your operations managers to attend?

35 **MR SMITH:** Marc Dennett told me.

**MR TERNOVSKI:** Can you tell the Commission about the conversation that occurred during this meeting about the ABCC?

40 **MR SMITH:** Yeah. There was a conversation around the ABCC, Australian Building Construction Commission, and Michael Ravbar initiated that conversation, from my recollection, and he said words to the effect that he did not want the Workplace Health and Safety Queensland cooperating with the ABCC.

45 **MR TERNOVSKI:** And what was the response?

**MR SMITH:** The response and the undertaking given by Marc Dennett is that we would only respond to them if we were compelled to, if they gave us a statutory direction to comply with them, to assist them in relation to any requirement to provide information.

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**MR TERNOVSKI:** You refer to a subsequent conversation you had with Mr Dennett about this meeting. Can you tell the Commission about that?

**MR SMITH:** I had a follow-up conversation with Marc and said - I actually said that I was not comfortable with that, and, you know, I just couldn't see what we achieved by doing that, and also the fact that they didn't want my operations managers there, and I thought that was inappropriate. Other operations managers attend from the other regions, but mine weren't allowed to attend, and that was simply because of the adversarial nature and the pushback that we gave to the CFMEU. Commentary around why they didn't really like us, and it was mentioned at the meeting as well, but Marc even said to me they regard me and my operations managers as pro-industry; we're too aligned with industry. Which I disagreed. We were aligned with no one.

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20 **MR TERNOVSKI:** What was the response from Mr Dennett?

**MR SMITH:** Mr Dennett was that - basically, really, "That's their view." He didn't necessarily support it. But that's where we're at. And later that day, he sent an email thanking people for - for the attendance and things of that nature. What I did - what I did say to Mr Dennett also, I said, "You know, I really - you know, why aren't we meeting with the Australian Workers' Union? The Australian Metal Workers' Union? Why don't we have these preferred arrangements with our other key industry stakeholders? Why does this have to be with the CFMEU?" And his response was, you know, they are a significant stakeholder. They actually have a - a legislative right in relation to their right-of-entry requirements and all that, and I could accept that, and so did other unions. I mean, certainly the industry associations didn't, but other unions did. But we weren't meeting like that with - with other unions. It was particularly around the CFMEU. And at this meeting, you know, really, it was absolutely demeaning. You had Ravbar just pontificating about what he expected from us as a regulator. And it was just absolutely kowtowing to a - you know, an organisation that was doing the wrong thing. I honestly couldn't believe it. But really, that was the state of play for 10 years.

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40 **MR TERNOVSKI:** If we could now move to the last -

**COMMISSIONER:** Could I just pick up that point. I don't quite understand why the OIR would not voluntarily provide information the ABCC wanted in relation to right-of-entry disputes, as you set out in paragraph 87, assuming they have the power to do so, which it seems they did.

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**MR SMITH:** Yep.

**COMMISSIONER:** Given that the very information that you might possess might assist in showing that the purported rights of entry were not being lawfully approached.

5 **MR SMITH:** I totally agree with you, Commissioner, and I said to Marc Dennett, I said, "I've got delegation under section 271, so if I see fit, I will be providing that information to the ABCC."

**COMMISSIONER:** You said that in the meeting or -

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**MR SMITH:** No, I said that to him after, you know.

**COMMISSIONER:** I don't understand why he would say that to the CFMEU in that meeting.

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**MR SMITH:** I - I agree. I couldn't believe it, and that's why I made a particular note of taking a note of these - what occurred at that meeting. It was highly irregular, I thought, and it was - it just wasn't appropriate to have an organisation like the CFMEU that had so many matters before the Federal Court. They had so many - we had so many issues with them. They were mistreating our inspectors, and yet here is an opportunity that we would assist another regulator to do something about that, and we're saying to the person - the people perpetrating these crimes, for want of a better word - well, they were; they were offences under the federal legislation as well as our legislation - that we would wouldn't cooperate with the federal regulator. It was unbelievable that that was the stance of Workplace Health and Safety Queensland.

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But that generally was - that was the environment we were working in. We just did - we did everything that the CFMEU wanted. Michael Ravbar called the tunes and we danced to his tune, and really the sad thing about it, as I keep saying, is we weren't captured at the inspector level. All of the operations managers level, all of the regional directors level, we were captured at the very top.

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**MR TERNOVSKI:** Mr Smith, if we could now move to the last of the time periods you describe, which is the period after Ms Burgess was moved from the role of director of CCFS. Did that lead to any reduction in the pressure from Brisbane?

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**MR SMITH:** It did. It did in relation to we - she wasn't sending those calls through, and she really did not have an inspectorate, I suppose, at her disposal that she was - that she could direct her work sites, although in - in relation to North and Central Queensland, because we were independent of that, we didn't - we didn't notice that change. But we noticed that instead of the complaints coming through to her, they were directed through to either the executive directors and then - or deputy director-general, who would take calls from the CFMEU, and they were passed then on to the region for action. And then there was other arrangements put in place a bit later where the regional directors were asked to take the calls from the - from the permit holder or -

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**MR TERNOVSKI:** Just to follow the evolution of this notification system -

**MR SMITH:** Yes.

5 **MR TERNOVSKI:** - you talk in your witness statement about a triaging system developed by the then deputy director-general Ms Bancroft in early 2023.

**MR SMITH:** Yep.

10 **MR TERNOVSKI:** That was about the same time as when Ms Burgess moved from her role; is that right?

**MR SMITH:** Ms Burgess moved from her role a little bit after that, so in 2023, but when we were actually putting together this - this triaging arrangement, Kym  
15 Bancroft done a fair bit of work with that, and consulting with directors and regional directors and assessment services around how that actually would look. So there was - there was an evolution of getting that in place, and then after that, you saw that Helen Burgess was moved from having inspectors directly under her control to just being into a strategy role in relation to Construction Strategy Unit.

20 **MR TERNOVSKI:** Would it be fair to characterise Ms Bancroft's triage proposal in summary as requiring the CFMEU to go through a AAA -

**MR SMITH:** That's exactly what it was. And it was what the regional directors had  
25 been asking - the inspectorate had been asking for for a long, long time. So it was well received, what Kym Bancroft did. It was never - it was never initiated, simply because it didn't have the support of the minister's office at the end of the day, unfortunately.

30 **MR TERNOVSKI:** If the witness could be shown attachment PS-12 at page 97 to start with.

**COMMISSIONER:** How do you know that, Mr Smith?

35 **MR SMITH:** That it wasn't accepted by -

**COMMISSIONER:** Yes, by the minister's office.

**MR SMITH:** Well, I'd had conversations with Kym Bancroft in relation to it, and  
40 she told me that.

**MR TERNOVSKI:** If we could just blow up that email a little bit more. This is an email from Ms Bancroft to Natasha Carstens and to you:

45 "Please see slightly modified letter to CFMMEU."

If we can go to the next page, if you could just blow up that. Thank you. Mr Smith, if you could just read that to yourself.

**MR SMITH:** Yep. Yep.

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**MR TERNOVSKI:** What Ms Bancroft seemed to be saying is that the CFMEU refused to comply with the triage process and was calling her direct. Is that -

**MR SMITH:** Yep. That's what happened. She notified them in the letter that she was putting in place there's a temporary triaging process with the intention of having a permanent triaging process in relation to the 1300 number and such forth. She subsequently received communications from Kurt Pauls that said that the CFMEU will not be adhering to this modifying process, and she said - went on further to say that since her advice to them on 12 January of '23, that multiple CFMEU organisers had directly contacted her, and they were bombarding her. There was a definite operation in place to try to overwhelm the deputy director-general by - by bombarding them with complaints about risks on construction sites. So you could just imagine, that would be very overwhelming, but that was a concerted effort, and that was deliberately done to put her under pressure.

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**MR TERNOVSKI:** Mr McKay gave evidence of something that sounds similar, which is that when you tried to put in place a triage system and refused to put Ms Burgess back, the CFMEU called him directly to notify of complaints.

**MR SMITH:** Yeah, no, that did happen. I had a couple of times where Peter rang me to deal with a certain permit holder directly because he'd been getting, you know, phone calls from him and he didn't have time to deal with it, so - which I subsequently dealt with.

**MR TERNOVSKI:** Looking at this letter, it looks like, unlike Mr McKay, Ms Bancroft did not want to comply with that process, the process of being called directly.

**MR SMITH:** That's right. Well, it just wasn't workable, and it wasn't an effective way to run an organisation. I mean, deputy director-generals have got much more important things to do than to be a call centre operator in our triaging service, haven't they, really? You know, they should be doing more strategic work for the organisation, and it wasn't appropriate. And the couple of times that I had taken a call from Peter and then spoken to the permit holder, I said to them, you know, they were saying it's taken a long - why are you calling me? I've spoken to the - I've rung the DDG. I expect him to call me. I said well, why would you expect that? Who do you think that you need to have a call from the DDG? I said this is a matter that should be going through our call centre. So, you know, I said that's the way it should happen, and they - they didn't like that response. They - they preferred preferential treatment.

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**MR TERNOVSKI:** Mr Smith, it appears that this letter is a draft that's attached to that email. Is that right?

**MR SMITH:** Yes. Yeah. Yep.

**MR TERNOVSKI:** Was that ever sent?

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**MR SMITH:** No, it was never sent, but I believe that there was communication given of an engagement with the CFMEU and the construction unions that this was the intention of sending this, because Kym did tell me that she had a number of meetings with the CFMEU and had basically said to her, "Listen, if you engage - if you implement this, we will oppose it and it won't happen."

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**MR TERNOVSKI:** Do you know why this letter wasn't sent?

**MR SMITH:** I would assume that - that there would have been, before - I could just imagine, before any of this correspondence would have been sent to a significant stakeholder like CFMEU, that the minister's office would be informed that this communication would be going out, and I only suspect that the minister's office suggested or said that it shouldn't be sent.

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**MR TERNOVSKI:** But you don't know that?

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**MR SMITH:** All I know is from Kym Bancroft that she didn't have the support of the minister's office to actually initiate the triaging process. So I'm drawing a conclusion, if she didn't have support, she wouldn't have sent this letter to say that she was initiating this process.

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**MR TERNOVSKI:** Following this failed attempt at triage, you describe a new, different system that was put in place whereby CFMEU would directly ring regional directors.

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**MR SMITH:** Yep.

**MR TERNOVSKI:** In your view, was that an appropriate system?

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**MR SMITH:** No, it wasn't.

**MR TERNOVSKI:** Why not?

**MR SMITH:** Well, it wasn't appropriate because we could not always take their calls. We had - we had other work we were doing. So we had a - we had a - part of the - a unit set up in the organisation that would take in a triaging - a 1300 number that would take in calls and where people would ring in relation to health and safety injuries or complaints. Similar to like if you ring triple O. The police have an arrangement in place. You don't have them ringing the local officer in charge or superintendent of police or whatever. It's dealt through their - their triaging process.

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**MR TERNOVSKI:** You refer to a meeting on 25 July 2024, where triage was discussed.

**MR SMITH:** Yes.

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**MR TERNOVSKI:** If the witness could be shown PS-14 on page 107. Mr Smith, is that your file note of this meeting?

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

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**MR TERNOVSKI:** Can you just walk the Commission through what happened?

**MR SMITH:** Yes. On a quarterly basis, the CFS directors meet with our executive directors, our executive director, and that currently at the time - and still is now - is Sarina Wise. And so there's an agenda that's set out and all that, and part of that meeting at the start of that meeting, I suppose, because there was the elephant in the room, and Sarina knew my position on this, Sarina addressed the 1300 number triaging, and advised that this would not be happening at this point, as the DDG and the minister's office were still considering this.

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I voiced my disapproval. You know, I'd become quite annoyed, actually, that - I said, "Well, you know, this was developed back in, you know, early 2023, and yet here we are, and we're still not doing anything about it. So here we are, you know, 18 months down the track, and we still haven't implemented a triaging process." And I said, "It's just not acceptable." And I actually said, "Well, if you're not prepared to do this, we'll go our own in North and Central Queensland in that I'll just refuse to take any calls, and the advice back to anyone that is ringing - and it will be on my message service - will be that you need to ring the 1300 number."

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**MR TERNOVSKI:** In your view, did the minister's office need to be involved in the decision whether to implement the triage system?

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**MR SMITH:** My view is the minister did not. It was an operational decision, and it was an operational decision that really Sarina as executive director should be allowed to make, really, with the endorsement of the deputy director-general as the regulator. There was no need to involve the minister's office; it was clearly an operational decision.

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**MR TERNOVSKI:** In your statement, you refer to a subsequent conversation you had with Ms Wise about this. Can you tell the Commission about that?

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**MR SMITH:** Yes. Yep. I subsequently had a conversation with Sarina after that meeting and made my point around why I was quite fervent in my requests to have this in play and my intended stance in relation to my approach with this, and basically I'd had enough, and Sarina said, "Well, you know, just give us a couple of weeks. I'm sure we'll get this across the line." She was worried that if NCQ went on their own, it may sabotage or may somehow affect the implementation of this

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process across the whole of Queensland. And also, at the same time, we were having a review undertaken by Greg Quinn. And I'd had a number of conversations with him in relation to my views on things, including the regulatory capture and all those things, and our triaging. Sarina knew that, and she said, "Paul, if you could reach out to him and encourage him to put the suggestion for the 1300 number in his recommendations, it would be much appreciated." Which I did that afternoon, and he said he would, you know.

10 **MR TERNOVSKI:** In your statement, you refer to another conversation you had with Ms Wise shortly before the 2024 election about the triage system. Can you describe that conversation?

15 **MR SMITH:** Yeah. So I suppose - so this was July, this meeting I just spoke about. So this was the week leading up to the state - the state election, so that was in October - I think it was 20 October or somewhere around that time - of 2024. I happened to be speaking to Sarina about a couple of things, and always on the agenda was the triaging and where that's at. And I said to Sarina, you know, "Where's this at, Sarina? They've been put into administration back in August, and subsequently, you know, here we are in October and we still haven't implemented the triaging. Why wouldn't we do that?" And she said, "Listen, Paul, I raised that with" - the DDG at the time, the acting DDG, which is Donna Heelan, and Donna said, "Well, Sarina, let's just wait to see the outcome of the election."

25 **COMMISSIONER:** And what did you think of that?

**MR SMITH:** Well, that reinforced to me that it really was political influence in relation to this, and what I've previously said, I said, "Well, what's it got to do with the minister's office? This is clearly an operational decision. There should be independence." If a DDG, who can make a range of decisions in relation to the Work Health and Safety Act, as the delegate, surely they can make a decision in relation to triaging arrangements.

**MR TERNOVSKI:** Was the triaging arrangement ultimately put into place?

35 **MR SMITH:** It was put into place, but that didn't happen till, you know, about the 9th, around about 9 November 2024. And even prior to that, we had - we had a whole-of-OIR meeting, which included the regional directors, the operations managers, the executive directors and the director-general, who called the - deputy director-general, who called the meeting, Donna Heelan, and Donna spoke about that, to basically say to us that, at this point - so that was September - at this point that the triaging wouldn't be in place; that she'd had a discussion with the CFMEU administrator, and she said to him, "What are your thoughts on implementing" - or words to this effect - "implementing the triaging process, the 1300 number?" He said, "Well, that's your decision. As the regulator, that's your decision."

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I thought, well, that's an appropriate response. It is the regulator's decision. And the mindset around that was that, well, we'd provided this level of service to them. She

was reluctant to actually withdraw that level of service and push them through the 1300 triaging number.

5 **MR TERNOVSKI:** You said the system was ultimately approved on 9 November 2024.

**MR SMITH:** Yes.

10 **MR TERNOVSKI:** That's after the election, is it?

**MR SMITH:** It is, yep. Yep.

15 **COMMISSIONER:** Just going back to the July conversation that you've got a note of, which is at page 107 of the annexures, there's two references, one in the meeting and one after the meeting, where Ms Wise advised she had not recommended this as it will cause problems and may undermine what she's trying to implement with deputy director-general Donna Heelan and the minister's office.

20 **MR SMITH:** Yep.

**COMMISSIONER:** Did she explain in the meeting what she was trying to implement and how this triaging proposal would cause problems?

25 **MR SMITH:** Yep. Sarina did. It was after she put some context around that. Because I was quite annoyed, and it was, you know, I suppose you could say it was a little bit heated, so I thought I'd, you know, meet with Sarina after. And Sarina says, "Listen, Paul, I'm on your side 100 per cent, but I'm getting a lot of pushback. A lot of pushback." And she said, "I don't really want you to get yourself into trouble," and I mean, she probably - what she was saying is, you know, not following directions of what the DDG wants, and I could be performance-managed, and over the years I had had emails and there'd been conversations to say, "Well, you know, Paul, you hold a position as regional director. You need to support the policy of the day. You need to engage with an influential stakeholder." I said, "I haven't got a problem engaging with a stakeholder, union, industry, whatever. It's not about engaging. This is about giving preferential treatment." Yeah, so Sarina explained that and put context around it, and that's when, you know, she said, "Well, listen, if we can work together on this, we may be more successful." So that's what I gave her that undertaking.

40 **COMMISSIONER:** Did she say who from the DDG or - sorry, who apart from the DDG but within the minister's office was pushing back?

**MR SMITH:** No, she didn't.

45 **MR TERNOVSKI:** Can I take you, Mr Smith, to the meeting with Minister Grace on 24 January 2023. Firstly, why was that meeting called?

**MR SMITH:** That meeting was called, I understand, for a number of reasons. One of them was to brief the minister on a complaint they had received in relation to our attendance or our lack of attendance at a site at South Rock State School at Yarrabilba, south of Logan. So that was the initial reason. I think there could have  
5 been other reasons. Kym Bancroft, she was the DDG. I was down acting as executive director, relieving Andrew Harris. Kym said, "Could you come along and speak about this matter?" So I'm sure it was a number of reasons why we went there, but I was asked to come along and if I could speak to this matter on her behalf, which I - which I did.

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**MR TERNOVSKI:** So you were there because you were acting ED at the time?

**MR SMITH:** Yeah, acting executive director.

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**MR TERNOVSKI:** And who else was at this meeting?

**MR SMITH:** So there was Kym Bancroft as the deputy director-general. There was the director-general, Michael De'Ath from Education, because they were under Education at the time. There was myself, there was Minister Grace, and there was,  
20 you know, three or four people from her staff that was there.

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**MR TERNOVSKI:** Do you remember who they were?

**MR SMITH:** I can't recall who they were.

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**MR TERNOVSKI:** Can you describe for the Commission the conversation that you've had with Minister Grace?

**MR SMITH:** The conversation I had with Minister Grace was in relation to the  
30 incident. So I explained what we knew of the incident, the fact that we had sent an inspector after the incident to determine what had - what had occurred, and satisfy ourselves that the PCBU were doing everything that they needed to do. There was a conversation. The minister said, "Well, you know, the union thought that you should have at least sent an engineer to site to deal with those things." I said, "Well, there  
35 was no need for that, simply because the inspector could deal with that." We had high-risk licensing arrangement in place that would deal with the matters that were occurring on site or needed to occur.

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I also went into detail - I took it as an opportunity to raise my concern about the  
40 CFMEU want us to do a lot of things. They want us to respond to toilet complaints like we should be responding to fatalities, and I said, "That's just unable to happen." I said, "There may be opportunity to do that with the resourcing numbers in the south-east, but I certainly can't do it in North and Central Queensland, and I don't do it, and they don't like me for it," meaning the CFMEU don't like me. The minister  
45 responded. She said, "Paul, I hope you don't do it, and they don't like me either." So that was her response.

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**MR TERNOVSKI:** You also refer to an exchange you had with Mr Burgess. Can you tell the Commission about that exchange?

5 **MR SMITH:** Yes. There was a - there was an exchange that occurred, and it wasn't directly with me and the minister, it was an exchange that occurred between the director-general, Michael De'Ath, and the minister in relation to two matters that had been referred back from the CCC concerning Helen Burgess. So my understanding, it was referred back for the Office of Industrial Relations to deal with. There was no further discussion in relation to what that entailed. But the comment from the  
10 minister was, "I just feel - I feel really disappointed in what's happening. Helen's just trying to do her job. There's just a band of inspectors that are continually complaining, and it's very unfair." So there was that conversation. And I'm sitting there thinking, "My God, what have they been telling this minister about the conduct of Helen Burgess?" You know, I honestly couldn't believe it.

15 It was then that the DDG said, "Oh, listen, yeah, we have a few issues with Helen and we're dealing with that in relation to HR matters," and so - and then he said, "Listen, we received another complaint. Ethical standards has referred that across to the CCC, and they've accepted that complaint," and, look, I - I knew from that  
20 that - that was my complaint, because I was well aware of that, that going across. But there was no discussion had around that.

**MR TERNOVSKI:** You describe in your statement a conversation you had about this meeting subsequently with Ms Bancroft. Can you tell the Commission about that  
25 conversation?

**MR SMITH:** Yes. Subsequently, I had a meeting with - I wouldn't say it was a meeting; it was a conversation with Kym. It was over the phone. And she said, "Paul, I just wanted to let you know that, you know, that meeting we went to" - she said, "I  
30 was criticised for taking you along. The director-general said I lacked judgment in bringing you along to that meeting." I took that as the fact that I had a matter with the CCC in relation to Ms Burgess, but - and the CFMEU, but I thought, well, you know, leave that aside. You can - you should be able to still operate as an acting executive director whether you've brought a complaint against anyone, and it shouldn't  
35 influence whether you're at a meeting or not at a meeting in relation to your role and your acting position.

**MR TERNOVSKI:** Mr Smith, you referred to a complaint - a complaint you made to the ethical standards of OIR, which was then referred to CCC.  
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**MR SMITH:** Yep.

**MR TERNOVSKI:** And you said in your statement you were interviewed by ethical standards?  
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**MR SMITH:** Yes, I was. Yep.

**MR TERNOVSKI:** And then interviewed by the CCC?

**MR SMITH:** Yep.

5 **MR TERNOVSKI:** And then you received an outcomes letter from CCC referring the matter back to OIR?

**MR SMITH:** Yes. Yep.

10 **MR TERNOVSKI:** For disciplinary action?

**MR SMITH:** Yes.

15 **MR TERNOVSKI:** Was any action taken against Ms Burgess at that time?

**MR SMITH:** Not that I'm aware of.

20 **COMMISSIONER:** This is a complaint that you made in around September 2022 to Ethical Standards?

**MR SMITH:** Yes, yep.

25 **COMMISSIONER:** Why did it take you so long, given your evidence over today and yesterday, to make a complaint about Ms Burgess?

30 **MR SMITH:** Well, I suppose it was a - doing as much as I could reasonably do from my position, and I reasonably was protecting my staff reasonably well, you know, because they weren't under direct control of Ms Burgess. But I was continually hearing from good people that I knew in Brisbane around the mistreatment they were receiving. I just got to a point - and, you know, and some further interaction with her in relation to - I felt that she was, you know, providing information that she shouldn't be providing to - to the CFMEU. I was - you know, I was getting a real sense that that was occurring. It was really getting out of hand. She was getting - appeared to be getting more emboldened as she went on. So I just thought enough's enough, you know. So Marc Dennett left, and I wrote to Andrew Harris and identified all these concerns, and Andrew subsequently referred that on to the - to Ethical Standards, and I partook in an interview around November 2022. 2022, yes, yeah.

40 **MR TERNOVSKI:** Mr Smith, Ms Burgess is no longer in a position to control inspectors?

**MR SMITH:** Mmm-hmm.

45 **MR TERNOVSKI:** Mr Dennett is not an executive director -

**MR SMITH:** Yep.

**MR TERNOVSKI:** - in charge any more. There's a triage system been put in place. Do you have any residual concerns?

5 **MR SMITH:** Yes, I do. And, look, I had - even after I made my complaint to Ethical Standards, I was interviewed by the CCC in, you know, around August of 2023. And following that, in 2024, when there was changes made in relation to Ms Burgess being taken away from that construction compliance area where she didn't have inspectors under her direct control and she was put into the Construction Strategy Unit and she had a couple of inspectors that reported to her doing major project  
10 work. My concern was that - and I raised this with the CCC some time after I made my initial complaint. I contacted them to see how my complaint was going.

And they said, "Oh, Paul, we understand that these arrangements have been put in place in relation to Ms Burgess." And I said, "That's right. She's not triaging these  
15 matters. They're coming through to us. She has no - she hasn't got a contingent of inspectors, other than a couple of inspectors that are doing project work." But I said, "My concern, and I said I've raised this with acting executive director Stacey Ozolins at the time, is that she is still privy to information in relation to what is occurring on major construction sites, the ones that have to report up - be reported up through the  
20 government procurement process. And generally we had a focus on anything that was a billion dollars or more, or of significance. They could be major hospital rebuilds across the state, anything to do with solar farms or wind farms. Her unit actually would engage in conversations with clients that were intending to perform these works, and they were going to engage a principal contractor. They would do  
25 pre-qualification assessments.

So they were privy to a lot of information that I felt, knowing her history, that she could be passing this on to the CFMEU. So I said - my argument was that she should be moved totally out of a position of any influence that she has control over  
30 documentation or information that's coming through in relation to the construction sector. I was also hearing from inspectors in the south-east that different principal contractors had raised concerns in relation to Ms Burgess' relationship with the CFMEU, and we were worried about information that may be passed on to them in relation to their compliance history and things like that, or about their intended works  
35 that were going to be carried out. So there was a - there was that concern that it was occurring. So I said to the CCC that, you know, "Yeah, she has been moved out of having construction inspectors under her direct control, but she's still in an influential position." And they said, "Oh well, what the Office of Industrial Relations has told us is that she's not in any role that she could influence or be party to any information  
40 or knowledge or anything about construction activities that are occurring." I said, "Well, that's not correct."

So subsequently from that, and some months later, she was removed from the - from that role as well. It took a period of time, and she really - during that time, because  
45 we were doing the major project work, she was very difficult to deal with in giving us information around major projects that were occurring. But say by the end of - I think around the end of 2024, she was removed from - from that as well, and I

believe that at some point around that time, her - she was suspended on full pay or something of that nature. That's my awareness. So she was taking - she was taken out of the - she was not operating in any of those positions at that point by the end of about 2005, you know.

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**COMMISSIONER:** What role does she - is she engaged in at the moment?

**MR SMITH:** I - I don't know, Commissioner. I understood - from my understanding, she was stood down on full pay, and that's all I've - all I've heard.

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**COMMISSIONER:** One of the - sorry, not one of the complaints: the complaint that you made September '22 to Mr Harris gets sent to Ethical Standards by Mr Harris. They interview you in November 2022. In '23 they send that complaint, originally made to Mr Harris, now with Ethical Standards, to the CCC. CCC interview you on 8 August 2023.

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**MR SMITH:** Yep.

**COMMISSIONER:** And you get an outcomes letter in relation to that complaint that you made in September '22 in April 2025.

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**MR SMITH:** Yep.

**COMMISSIONER:** Two and a half years later. And you say the contents of the letter confused you. Why was that?

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**MR SMITH:** I wasn't confused by the contents of the letter; I was confused by the conversation that I had with Ethical Standards.

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**COMMISSIONER:** Just explain that.

**MR SMITH:** Well, about the time I received the letter, I received a call from the director of Ethical Standards, Gavin Gleason, and Gavin said - because I was in generally regular contact with him in relation to matters in relation to my complaint. And he said, "Listen, we've received correspondence from the CCC, and there was nothing to see in relation - there'd be no findings in relation to your complaint." And I said -

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**COMMISSIONER:** No findings in relation to your complaint?

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**MR SMITH:** I said, "Gavin, what are you talking about? I have an outcomes letter in front of me." And he said, "Well, you must be misinterpreting it." And I got quite annoyed. I won't explain the words that I used. But anyway, I subsequently sent it to him, and he then called me back and says - he said that Donna Heelan would give me a call in relation to it.

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**COMMISSIONER:** Right.

**MR SMITH:** Which did occur, and there was some correspondence that I sent on to Donna Heelan, and I think that's - I wouldn't mind referring to that correspondence, because it's - it's quite - it lays out my - articulates my concerns.

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**COMMISSIONER:** Yes, PS-20, which is page -

**MR TERNOVSKI:** 121.

10 **COMMISSIONER:** 121.

**MR TERNOVSKI:** If we pull up the bottom of that page, the original message. Is this the correspondence with Ms Heelan that you're referring to, Mr Smith?

15 **MR SMITH:** Yep, yep. Yep, that's it.

**MR TERNOVSKI:** And then Ms Heelan's response is on the top of page 121. Is there something you wanted to add to what you said about this correspondence?

20 **MR SMITH:** Yeah, there is. Look, Commissioner, you know how you asked me if I knew anything what had happened to Helen Burgess. Well, the reason why they never really could tell me is they said, you know, it's confidential and all that. So we never - I've never really received any information around that. But leave aside Helen Burgess, and I mean, I'd like to make the point with Helen Burgess, her conduct  
25 happened under the plain sight of executive leadership, and they allowed it to happen for a number of years. It continued on for a number of years.

**COMMISSIONER:** Who allowed it to happen?

30 **MR SMITH:** Well, executive directors and deputy directors.

**COMMISSIONER:** Who are they? Which ones? Mr Dennett?

35 **MR SMITH:** Mr Dennett, and, I mean, once we moved into - from Andrew Harris on, they tried to do things about it.

**COMMISSIONER:** So Mr Dennett at the executive director level?

40 **MR SMITH:** Yeah, and Craig Allen was the director-general - deputy director-general at the time. So after Simon Blackwood left in December of 2018, I saw a significant change, and I - we really suffered our worst under the deputy director of Craig Allen, Marc Dennett and as Helen Burgess as the director of the Construction Strategy Unit. So that's - and so after Craig Allen, Kym Bancroft came in. Raised my concerns with Kym, and Kym gave it her 110 per cent effort to try and  
45 rectify those problems. She commissioned the QUT Discovery report. She tried to put in the triaging arrangements. She tried to move Helen out of that role. So that

was her approach. Kym only was with us for about eight months. Her tenure was terminated.

**COMMISSIONER:** By whom?

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**MR SMITH:** Well, I believe - well, must have been terminated by the minister. I mean, they're under contract. So - and I had subsequent conversations with Kym, and, you know, she's probably reluctant for me to say this, but she - she did tell me that the DDG had told her, "Kym, we've got to let you unions go. The unions, they've lost confidence in you."

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**MR TERNOVSKI:** You said DDG. Wasn't she the DDG?

**MR SMITH:** Sorry, the DG, Michael De'Ath. So told Kym that this was the reason for letting her go. And, look, I don't know what "letting her go" means, but Kym finished with us. So I think it was April 2023 at some point towards - I knew it was around Anzac Day, because I think it was the Friday before that weekend -

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**COMMISSIONER:** You're saying she said she was told that she was being let go because - what were your words?

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**MR SMITH:** The unions had lost confidence - the construction unions had lost confidence in her. So - yeah, so I - so we were told - so I think that happened on a Friday. We were told on the Monday that Kym was no longer DDG. There was a nice little thing that she's gone on to bigger and better things, you know. That normal - but it was interesting, a couple of days later Kym gave me a call and she said, "Paul, can you let your people know that I didn't leave them in the lurch? I didn't leave voluntarily. I wanted to stay and finish the job, but it was beyond my control," and I said I'd pass that on, which we all knew that was the situation, which was unfortunate that that occurred. So, subsequently, after Kym left, we then - Peter McKay came in for a period and as deputy director-general, and so we then - and so did Megan Barry, and currently Megan is our current DDG.

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30

But going back to this letter that I - the email that I'd sent to Donna Heelan, my concern was that, you know, Helen was - what Helen did was wrong, but however, it happened under the direct broad daylight of senior management. What I'm more concerned about is, really, what are we doing now, moving forward, where we won't have a repeat of what happened? Like, this email was sent in 2025. There'd been a change of government. I was confident that the CFMEU would not improperly influence us. But there could be another stakeholder that come along and did the same thing. My consistent refrain to every deputy director-general was that we need to be an independent and fair regulator, and that was not happening. So I put the same thing to Donna. Donna came back and she said, "Paul, I agree with you."

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**COMMISSIONER:** Donna Heelan?

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**MR SMITH:** Donna Heelan. We had a good conversation. She said what she wanted to do was put in an ethics and integrity committee that would operate with the executive directors, and that would help manage this situation if it was to reoccur. Honestly, I don't - while I was reasonably satisfied that that's better than nothing, I  
5 just couldn't see how that was going to stop what had happened. I mean, we were captured at that level. So how could a committee made up of those people have any bearing and stop that from occurring? So - but Donna then goes on to say those things will be implemented immediately, but look, nothing's happened. So nothing has changed, other than a change of government and we've had a triaging process put  
10 in place, which is good. There's been some rewrite of the CMEP, which is good, but it needs to go a lot further. So there's a lot of work to be done. But where the problem lay, where we were captured, we're still there, we're ripe for the taking. We still are. Nothing has changed.

15 And I think what - when I reflect on what the issue is, there needs to be true independence as a regulator. We are too diversified. As a safety regulator, we not only look after work health and safety, we also look after industrial relations and workers' compensation regulator. We need - and the - our director-generals really - our deputy director-generals, sorry, who represent the regulator - they're the  
20 delegate under the Act - they really need to be experienced in safety regulation, you know. They need to have experience in relation to safety, as well as experience within industry. A bit like you look at the police force. You look at the Commissioner of Police. He's come up through the ranks. He's got - he or she has competency in relation to the operation of that - that police - to policing. They're well  
25 trained. But I think that's where it went wrong. The unions would create doubt, through the lack of knowledge of the deputy director-general, they really couldn't work it all out.

30 So they were easily led. They were nice people, they were well-qualified people, and they've had a lot of public service experience. But what we really need to do is to have someone in that deputy director role that has specific safety experience, and they can actually - and that we can be an independent safety regulator and not diversified with IR and with the workers' compensation regulator. And to an extent, I suppose, leading up to 2016, pre the best practice review by Tim Lyons, we  
35 were - we were quite a specialised unit. We were called the Division of Workplace Health and Safety. People that were employed by us were well qualified. We were under the direction for a number of years of Simon Blackwood. Simon had a very strong industrial relations background. But since then, somewhat we have really diluted that and that expertise hasn't - the only expertise we had in relation to safety  
40 qualification and experience was when we had Kym Bancroft. She came from that professional background in relation to safety.

**COMMISSIONER:** She lasted eight months?

45 **MR SMITH:** Yeah, that's right. So she really understood the issues we had. She understood safety. She understood where the inspectors were coming from. And she was really a breath of fresh air for that short period of time. But I see we haven't

really - my concern is I don't think we've really fully learnt from what we've been through, and certainly an apology should be given from the organisation in relation to how the inspectors have been - were treated over this period. Really, we - the organisation deserted the inspectors, and that was sad to see.

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**COMMISSIONER:** How did the inspectors and people like you, the directors who were trying to push back, cope?

10 **MR SMITH:** Well, I think we just had to cope. We supported each other. It was - it was difficult times, you know, and people are still suffering from that, and what makes it - what makes it worse is that no one's come out, other than the - the Deputy Premier, who's come out and given an apology in relation to what we went through, which was good to see, but there's been no senior leadership that's come out and said, "Guys, we understand what you went through. It's regrettable. We apologise. This is what we're intending to do. How are we going to stop this from happening again? This is what we're going to do." And I really think the organisation needs a really good, thorough look at and to work out how we operate, how effective we are, because we really have an important role to play, and we've got such a lot of responsibility on us to regulate safety in Queensland.

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**MR TERNOVSKI:** Mr Smith, you refer to your view that the deputy director-general needs to be appropriately qualified, if can put that in summary.

**MR SMITH:** Yes.

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**MR TERNOVSKI:** Do you have any suggestions or recommendations in terms of systems and structures to prevent recapture?

30 **MR SMITH:** Well, I think if we can have more of a stand-alone sort of an agency. I mean, you look at the police force, the Commissioner of Police has some form of distance between them and the minister's office. You know, it is - it is appropriate that departments and agencies actually carry out the policies of the government in power at the time, but there shouldn't be overly inappropriate interference from government, especially that's generated from influential stakeholders that are trying to actually drive an agenda to suit their business model.

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**MR TERNOVSKI:** Mr Smith, you said that you were confident that CFMEU wouldn't recapture WHSQ. Why is that?

40 **MR SMITH:** Well, I'm confident insofar as we have the present government in play that they won't. But also, I've seen some positive change in relation to the CFMEU under administration. They've been really good to deal with. So I give them credit in how they've changed. And I actually - what I have noticed is even some of the permit holders that were under the old regime, under the Michael Ravbar regime, that may be still there, their conduct has changed. And so I think it's driven by leadership. I really think some of those permit holders were encouraged to behave disrespectfully towards the regulator, towards industry. So it's really driven, their behaviour, by

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good leadership that is currently under the administration. So I give them credit for that change.

5 **MR TERNOVSKI:** No further questions from me, Mr Smith.

**COMMISSIONER:** Is there any application to cross-examine Mr Smith?

**MR TERNOVSKI:** There is, and it's not opposed.

10 **COMMISSIONER:** Who's it by?

**MR TERNOVSKI:** By the administrator. But I'll pass over to Mr O'Grady.

15 **MR O'GRADY:** Yes, thank you, Commissioner. I would seek to cross-examine Mr Smith.

**COMMISSIONER:** I think you've made an application in writing. It's not opposed.

20 <**CROSS-EXAMINATION BY MR O'GRADY**

**MR O'GRADY:** Yes, thank you, Commissioner. Mr Smith, I'm acting for Mr Irving, the administrator, and I take it from your comments you just made that you would accept that under the administration there has been a noticeable change in respect of how CFMEU organisers are interacting with health and safety inspectors?

25 **MR SMITH:** Yep, that's correct.

**MR O'GRADY:** And a change for the positive?

30 **MR SMITH:** Yes, that's correct, yes.

**MR O'GRADY:** And I think you also gave evidence earlier today that when Mr Irving was asked about the triaging system and whether it was appropriate, he indicated that, well, really, that's a matter for you guys.

35 **MR SMITH:** Yep.

**MR O'GRADY:** And again, I take it you agree that that's the correct approach.

40 **MR SMITH:** Yep, totally.

**MR O'GRADY:** And when you said in your evidence about five minutes ago that, well, nothing has changed, other than the change in the State Government, you'd accept that another thing that's changed is the fact that, since the events you've described in your witness statement occurred, there has been the appointment of the administrator, the removal of Mr Ravbar and Mr Ingham?

**MR SMITH:** Yep.

**MR O'GRADY:** And you're also aware that Mr Cummins, who featured in your evidence, he's also been removed from the union?

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**MR SMITH:** Yep, that's correct.

**MR O'GRADY:** Yes. And in paragraph 16 of your statement, you talk about a time, a different time, where local organisers from the CFMEU and other unions would occasionally call you or come into the offers.

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**MR SMITH:** Yep.

**MR O'GRADY:** And I take it from the tone or tenor of that paragraph that at that point in time there was a better relationship between your offers and the CFMEU?

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**MR SMITH:** Yes, there was, yep.

**MR O'GRADY:** And are you aware of the fact that Mr Abbott, who currently runs the CFMEU in Queensland, has written to your authority seeking to introduce Mr Anderson as the CFMEU Queensland/Northern Territory health and safety officer?

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**MR SMITH:** Now, I'm not aware of that, but -

**MR O'GRADY:** But you would accept that that's a positive development?

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**MR SMITH:** Yes. Like, I'd really look forward to meeting Mr -

**MR O'GRADY:** Yes. And also Mr Abbott has written to Ms Wise, saying, "Look, we really should get together to see if we can improve relationships?"

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**MR SMITH:** Yep.

**MR O'GRADY:** And again, you'd see that that is a positive development.

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**MR SMITH:** Exactly.

**MR O'GRADY:** And indeed Ms Wise yesterday, I think it was wrote back, and said she'd like to do that and when she gets back she's going to do that.

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**MR SMITH:** Yep. No, that all makes good sense.

**MR O'GRADY:** Thank you. Now, you gave some evidence yesterday about the National Compliance and Enforcement Framework.

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**MR SMITH:** Yes.

**MR O'GRADY:** And one of the features of that framework was consistency?

**MR SMITH:** Yep.

5 **MR O'GRADY:** And you'd accept that, whether you're talking about nationally, or even within a state, consistency of approach is a very important feature of health and safety regulation?

**MR SMITH:** I agree.

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**MR O'GRADY:** Yes. All right. You also gave some evidence yesterday about the Lyons best practice review of Workplace Health and Safety. That was a review that was announced following on from the Eagle Farm construction deaths, and also the fatalities at Dreamworld, wasn't it?

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

**MR O'GRADY:** Could I ask you to have a look at these documents for me, please.

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**MR TERNOVSKI:** Mr Smith is about to be cross-examined on a document that hasn't been supplied to us in advance. I seek an opportunity to briefly review before that I decide whether to object to that course, in light of the practice guidance.

**COMMISSIONER:** How long do you need?

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**MR TERNOVSKI:** Two minutes.

**COMMISSIONER:** Happy to delay your cross-examination for two minutes, Mr O'Grady?

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**MR O'GRADY:** I'm happy to do that, Commissioner. These are documents that we obtained this morning.

**MR TERNOVSKI:** No objection, Commissioner.

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**MR O'GRADY:** Yes. Thank you, Commissioner. So one of the documents I've handed to you, Mr Smith, is an ABC report of the Eagle Farm construction deaths?

**MR SMITH:** Yes.

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**MR O'GRADY:** And you'd accept that that was a very serious and tragic incident?

**MR SMITH:** Yes, yes.

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**MR O'GRADY:** And then the other document is a press announcement by Minister Grace Grace, about announcing the review into workplace health and safety in Queensland?

**MR SMITH:** Yes.

5 **MR O'GRADY:** And it's apparent from that that the two things that prompted the review or immediate things that prompted the review was on the one hand the Eagle Farm deaths and also the tragic incident at Dreamworld.

**MR SMITH:** Yes.

10 **MR O'GRADY:** And you'd accept that a review was not inappropriate in circumstances where there had been tragedies of that kind?

**MR SMITH:** No, that's right.

15 **MR O'GRADY:** Yes. I'd seek to tender those documents, Commissioner.

**COMMISSIONER:** Is there any objection? No? I take it that the relevance of the press release is that it's proof of - subject to any other evidence - of the reasons for the review?

20 **MR O'GRADY:** Yes.

**COMMISSIONER:** So best practice review of Workplace Health and Safety Queensland, media release from the Honourable Grace Grace MP, 5 April 2017, will be PXS-2.

25 **<EXHIBIT PXS-2 BEST PRACTICE REVIEW OF WORKPLACE HEALTH AND SAFETY QUEENSLAND, MEDIA RELEASE FROM THE HONOURABLE GRACE GRACE MP, 5/4/2017**

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

**COMMISSIONER:** As to the media report from the ABC, Eagle Farm construction deaths, what's the relevance of this media report on 9 October of 2016?

35 **MR O'GRADY:** It's really there as part of background, Commissioner. It doesn't take things any further.

**COMMISSIONER:** Very well.

40 **MR O'GRADY:** But it's referred to, of course, in the press release of the minister.

**COMMISSIONER:** ABC report, Eagle Farm construction deaths, 9 October 2016 will be PSX-3.

45 **<EXHIBIT PSX-3 ABC REPORT, EAGLE FARM CONSTRUCTION DEATHS, 9/10/2016**

**MR O'GRADY:** Thank you, Commissioner. And Mr Smith, it's apparent from the media report that workers had walked off the job over safety concerns a day or so before the fatal accident?

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**MR SMITH:** Yep.

**MR O'GRADY:** And are you aware of the fact that in the coroner's decision into that incident, the coroner found that the work site had an egregious disregard for safety?

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**MR SMITH:** Yes, I understand that that was the finding, yep.

**MR O'GRADY:** And a focus of the best practice review was to look at the appropriateness of Workplace Health and Safety Queensland's compliance and enforcement policy?

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

**MR O'GRADY:** And the effectiveness of Workplace Health and Safety's compliance regime enforcement activities and dispute resolutions processes?

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

**MR O'GRADY:** And some key findings were that made was that whilst Workplace Health and Safety Queensland performs many of its functions well, there is a need for a significant rebalancing of organisational priorities to ensure that the expectations of Queenslanders about safety at work are met?

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

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**MR O'GRADY:** And there was a need to refocus operations on the core functions of Workplace Health and Safety Queensland as a labour inspectorate.

**MR SMITH:** I understand that was recommendations that came out of the report.

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**MR O'GRADY:** Yes. And in moving to increase its use of engagement, educative and capacity-building strategies, Workplace Health and Safety Queensland overshot and placed insufficient emphasis on hard compliance and enforcement.

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**MR SMITH:** That would be -

**MR O'GRADY:** That was one of the recommendations out of the Lyons report.

**MR SMITH:** Sorry, I just - you said we overshot and -

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**MR O'GRADY:** I'll read it again. In moving to increase its use of engagement, educative and capacity-building strategies, Workplace Health and Safety Queensland "overshot" and has placed insufficient emphasis on "hard" compliance and enforcement.

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**MR SMITH:** I don't necessarily agree with that comment.

**MR O'GRADY:** You may not agree with it, but that was one of the findings of the Lyons review, wasn't it?

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**MR SMITH:** That's - it was, yes.

**MR O'GRADY:** And you'd agree with me that there is a line between a focus on educative responses and enforcement responses?

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**MR SMITH:** Mmm.

**MR O'GRADY:** And that reasonable people of good faith can differ as to where that line should be drawn?

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**MR SMITH:** That's true, and it's important to get that balance right.

**MR O'GRADY:** Yes, yes. And I take it from your evidence yesterday that you are very much a proponent of the educative focus?

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**MR SMITH:** I - I would sit in the middle.

**MR O'GRADY:** Yes.

**MR SMITH:** I think that we need to be able to apply an approach that suits the situation.

**MR O'GRADY:** Yes.

**MR SMITH:** Suits the capacity and the willingness of the duty holder to comply. That's why I think a strong - taking discretion away from inspectors actually limits that.

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**MR O'GRADY:** But you'd agree that there are reasonable people who might have a different view as to where that line should be drawn and might want to put a focus on compliance.

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**MR SMITH:** There may well be, but I think a lot of modern legislation's built on the Robens principles.

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**MR O'GRADY:** Yes.

**MR SMITH:** And we moved - my view is we moved too far towards hard compliance. We really needed to correct that; we really need now to correct that.

5 **MR O'GRADY:** But a key element of the Robens principles, I put to you, is that the cost of non-compliance has to be a priority for a business in respect of addressing health and safety.

**MR SMITH:** It's how you achieve that.

10 **MR O'GRADY:** I understand that. But if it's a choice between making profit and prioritising safety, there has to be an enforcement regime that compels businesses to prioritise safety over profit.

15 **MR SMITH:** I don't necessarily think our approach was around that.

**MR O'GRADY:** Well, I'm not asking you. I'm just putting to you the proposition about the Robens principles. You accept that is a core tenet of what Robens reported in the early seventies.

20 **MR SMITH:** The Robens was about non-prescriptive, so more performance-based risk management that involved cooperation and coordination between employers and workers and with the involvement of the regulator having oversight.

25 **MR O'GRADY:** And coupled with that was a need to put in place an enforcement mechanism that if people did not prioritise safety, there would be sanctions that would compel them to do so.

**MR SMITH:** That's - that's right.

30 **MR O'GRADY:** Yes. All right. And you'd accept that just because somebody might take a different view to you as to the focus on enforcement as opposed to educative functions does not mean they're acting in bad faith.

35 **MR SMITH:** That depends on what they're trying to achieve. I mean, if it was in good faith, then I don't think they're acting improperly, but if there was an underlying ulterior motive, maybe they could be. I mean -

**MR O'GRADY:** But you're not suggesting that Mr Lyons - - -

40 **MR SMITH:** I'm not suggesting Mr Lyons at all, no.

**MR O'GRADY:** And Mr Lyons clearly said that there should have been a greater focus on enforcement rather than educative functions.

45 **MR SMITH:** Yeah, and I'm not disagreeing with that. What I'm saying is that we need to get that balance. It's quite a nuanced approach to get it right.

**MR O'GRADY:** But I think you've already accepted that people of good faith could have a different view about where that balance lies.

**MR SMITH:** They may, yes.

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**MR O'GRADY:** And you would accept that for an organisation like the CFMEU, their priority is the safety of their members?

**MR SMITH:** That's right, and I would - that's what you'd expect from a union, yeah.

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**MR O'GRADY:** And there's nothing improper about a union saying, "Well, we want these employers to prioritise safety and we want enforcement action taken when we don't think they're doing so."

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**MR SMITH:** That's right, and to appropriately engage with the regulator about their concerns. That's - that's the point I'd like to add to that.

**MR O'GRADY:** And you'd accept that ultimately where you draw the line is a policy decision for government?

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**MR SMITH:** Yes.

**MR O'GRADY:** And following the best practice review, government decided to change where the line was drawn.

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

**MR O'GRADY:** And once that line has been drawn by government, it's the responsibility, I put to you, of organisations like Workplace Health and Safety Queensland to comply with government policy.

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**MR SMITH:** That's right. But I also argue that the regulator needs to be independent and not unduly influenced.

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**MR O'GRADY:** I understand. And you'd agree with me that a difficulty that is inherent in discretion is it can impede or impact upon consistency?

**MR SMITH:** I agree, and what my suggestion was, that we need to have a much more evolved decision-making process that would support the inspectors in achieving consistency other than a mandated, hardline approach that wasn't very well evolved. So I take your point that we need - it's about consistency, but we need to have a guided decision-making process that supports inspectors in relation to achieving that consistent outcome.

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**MR O'GRADY:** You'd accept that inspectors aren't a law unto themselves?

**MR SMITH:** No, they shouldn't be a law unto themselves, the same as I would argue in relation to permit holders shouldn't be a law unto themselves.

5 **MR O'GRADY:** I understand. And you'd agree with me that the compliance monitoring and enforcement policy is a mechanism through which consistency might be achieved?

**MR SMITH:** That's true. It's what the consistency you get out of that.

10 **MR O'GRADY:** I understand. And you gave some evidence this morning about that policy and the focus on toilets and hazardous chemicals. You'd accept that the CMEP is not confined to toilets and hazardous chemicals?

15 **MR SMITH:** No, but they were the key items that were pushed up to us to act upon. That's the point.

**MR O'GRADY:** But when one looks at the policy and the schedule that's attached to it, there's a whole raft of matters.

20 **MR SMITH:** Yeah, yeah, but the point I'd like to make too is that they are very administrative in their nature.

25 **MR O'GRADY:** Well, perhaps if we could bring up - you haven't - you've attached part of the CMEP to your statement, but you haven't attached the schedule of matters that are to warrant notices, have you?

**MR SMITH:** In relation to the infringeable offences?

30 **MR O'GRADY:** Yes.

**MR SMITH:** No, I haven't, no.

**MR O'GRADY:** Why haven't you done that?

35 **MR SMITH:** No particular reason. There's a link in there that you can click on. I've got that.

40 **MR O'GRADY:** Mr Operator, could you please bring up DXC-1 of Mr Cappelletti's witness statement, and if we could go to page 23. Now, that's - as at December 2018, that's the compliance monitoring and enforcement policy.

**MR SMITH:** Yep.

45 **MR O'GRADY:** And that policy is still being used by Workplace Health and Safety Queensland?

**MR SMITH:** Yeah, we've had a rewrite this year.

**MR O'GRADY:** Yes, but it's still on the Workplace Health and Safety website?

**MR SMITH:** Yes, yes.

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**MR O'GRADY:** And if we could go to page 45. So this is part of the policy where various matters are listed?

**MR SMITH:** Yep.

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**MR O'GRADY:** And it includes air monitoring?

**MR SMITH:** Yep.

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**MR O'GRADY:** Risk assessments.

**MR SMITH:** In relation to air monitoring?

**MR O'GRADY:** Well, risk assessments generally. I don't -

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**MR SMITH:** No, there's not an infringement in relation to risk assessments generally.

**MR O'GRADY:** Sorry, just bear with me. All right.

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**MR SMITH:** It could be pertaining to confined spaces, and that's correct that there is.

**MR O'GRADY:** You understand there's an infringement for a failure to ensure that people performing high-risk work are not appropriately licensed?

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**MR SMITH:** Yes. Yeah.

**MR O'GRADY:** Fall protection features?

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**MR SMITH:** In relation to the work method statements?

**MR O'GRADY:** Yes.

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**MR SMITH:** Yes. But nothing indirectly relating to the high-risk activity, and that was my point, that I would have liked to have seen a couple of additional infringements in relation to high-risk activity instead of more administrative based that found their way through work method statements.

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**MR O'GRADY:** I understand. Asbestos management is also featured?

**MR SMITH:** Yeah. And you'll find we've done a review of some of those infringeable ones and we've taken out a lot of the administrative ones so they now exist in the new compliance and enforcement policy.

5 **MR O'GRADY:** Well, there might be obviously an ongoing need to review and update this mechanism, but you'd accept that, as a means of trying to promote consistency, this is a legitimate method of encouraging - encouraging consistency?

10 **MR SMITH:** It has encouraged consistency, but what I'd say, overly hardline compliance consistency. I just think we need to relook at the nuance in and around that.

15 **MR O'GRADY:** Yes. But as at the time that you describe in your statement, this was government policy?

**MR SMITH:** Yes.

**MR O'GRADY:** And accordingly, inspectors were required to comply with it?

20 **MR SMITH:** They were. The only thing I would say about this policy, it did conflict with the legislation in relation to "must issue an infringement and must issue a compliance notice", where the legislation just requires "may issue".

25 **MR O'GRADY:** Well, there are mechanisms for challenging notices that are issued by inspectors, aren't there?

**MR SMITH:** There are.

30 **MR O'GRADY:** And are you aware of any decision where an inspector who has issued a notice, in compliance with this policy, has had their decision overturned because they complied with this policy?

**MR SMITH:** That wasn't considered as part of the review process for notices.

35 **MR O'GRADY:** Yes. Thank you. Now, you gave evidence yesterday to the effect that because of your concerns about the way unions were speaking to and engaging with some of your inspectors, you put in place a system whereby you would delay attendance in the hope that delegates would leave.

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

**MR O'GRADY:** Indeed, you described it as the delay, delay, delay approach.

45 **MR SMITH:** That's it.

**MR O'GRADY:** And that was a system you put in place contrary to the wishes of Ms Burgess and Mr Dennett?

**MR SMITH:** Dennett.

5 **MR O'GRADY:** Yes. That's right, didn't it?

**MR SMITH:** That's correct, yes.

10 **MR O'GRADY:** And it was also a system that was likely to antagonise the CFMEU delegates who, having raised an issue, could not obtain any inspector to help them resolve them?

**MR SMITH:** Well, it may antagonise them, but I had to look after the welfare of my inspectors.

15 **MR O'GRADY:** I'm not doubting your bona fides. I'm simply putting the proposition that if you've got a CFMEU delegate at a site and nobody's turning up, and that's because of a deliberate system that you've put in place to defer attendance, then that's likely to cause some frustration and antagonise them?

20 **MR SMITH:** Well, so be it, but it was put in place to manage the psychological welfare of my inspectors.

25 **MR O'GRADY:** And I put it to you that it's hardly surprising that in response to that system, Ms Burgess and Mr Dennett became insistent about prompt attendance.

**MR SMITH:** Well, they may have, because they wanted to appease the CFMEU.

30 **MR O'GRADY:** Well, they're being confronted with a situation where they're being told that people aren't turning up, and so they're communicating to you and others, "Well, I want you to turn up and I want you to give me an ETA."

35 **MR SMITH:** But I'm not there for the bidding and the direction of the CFMEU. I don't provide that to any other workplace or any other union. No other union required that from us. It was up to our decision around when we would be there.

**MR O'GRADY:** Yes. And what I'm putting to you is that - well, are you familiar with Newton's third law of motion?

40 **MR SMITH:** Sorry?

**MR O'GRADY:** Are you familiar with Newton's third law of motion?

**MR SMITH:** You better explain that.

45 **MR O'GRADY:** Yes, I'm happy to. For every action there's an equal and opposite reaction.

**MR SMITH:** Yeah.

5 **MR O'GRADY:** And what I'm putting to you is that you thought the way in which the CFMEU delegates were acting inappropriately. You reacted by putting in place your delay, delay, delay system. Ms Burgess and Mr Dennett, they reacted by saying, "I want you to turn up on time and give me an ETA," and the CFMEU reacted by saying, "Where are people?"

10 **MR SMITH:** The proposition I had, if they wanted to behave themselves appropriately, I would be there when they're there, but if they didn't, we wouldn't be there, we would delay. That was the understanding and the position that I had. Now, I haven't got a problem if they were to ring me today under the administration and we would make all means to be there, but the way they were conducting themselves then was totally inappropriate.

15 **MR O'GRADY:** And what I'm putting to you is that a contributing factor to how some of them might have behaved may well have been the fact that there was a system that you'd put in place of delay, delay, delay.

20 **MR SMITH:** No, I don't accept that at all.

**MR O'GRADY:** Okay.

25 **MR SMITH:** Their behaviour was directed from their leadership, and what I've noticed now is the behaviour has changed.

**MR O'GRADY:** Now, you also gave evidence that in order to justify delay, you would tell Ms Burgess that you didn't have the resources to attend a site relying upon your greater familiarity with the local geography.

30 **MR SMITH:** Yes.

**MR O'GRADY:** So you were being dishonest, I put to you.

35 **MR SMITH:** No I wasn't being dishonest. I was looking after the interests of my inspectors.

**MR O'GRADY:** Yes.

40 **MR SMITH:** And I would have thought coming from a position of - the current position of the administrator, they would be supportive that you need to look after the psychological welfare of your inspectors. If we're getting the best way in relation to managing risk is to - to remove yourself from that risk, not expose yourself, that's hierarchy of control, and that's the position I took. I've got no apologies for that.

45

**MR O'GRADY:** What I'm putting to you, Mr Smith, is that you put in place a delay, delay, delay system because you, as you said a moment ago, were seeking to protect your inspectors. That's your evidence.

5 **MR SMITH:** Exactly. Exactly.

**MR O'GRADY:** But when you were asked about what was the reason for delay, you told Ms Burgess and Mr Dennett that you just didn't have the resources, and that wasn't the reason why you didn't send inspectors.

10

**MR SMITH:** Well, I did that for good reason, because they wouldn't have supported me.

**MR O'GRADY:** I understand. And what I'm putting to you -

15

**MR SMITH:** So I had to deal with what I had at the time.

**MR O'GRADY:** But what I'm putting to you is that you weren't honest with Ms Burgess and Mr Dennett when you told them the reason why you couldn't send inspectors was because of geographical constraints.

20

**MR SMITH:** I was being honest to my inspectors.

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

25

**MR SMITH:** I weren't being honest to people who I thought were doing the wrong thing and were doing the bidding of the CFMEU who at the time were operating like a racketeering organisation.

30 **MR O'GRADY:** Thank you. You would agree with me that a CFMEU official who has been subject to this delay, delay system may well be frustrated by it?

**MR SMITH:** May well be.

35 **MR O'GRADY:** And that may impact upon how they interact with inspectors when an inspector ultimately does turn up?

**MR SMITH:** I don't think frustration could give the excuse to behave poorly.

40 **MR O'GRADY:** Thank you. And you agree with me that it's important that issues that are notified to Work Health and Safety are addressed?

**MR SMITH:** Yes, I -

45 **MR O'GRADY:** And the focus of Work Health and Safety is not to so much prevent injuries, but to address risk.

**MR SMITH:** That's not - that's not our focus. That's the focus of the PCBU. We are responsible for - in relation to administer the legislation, so the duty is held by the PCBU. We are there to monitor how they actually manage and control that risk.

5 **MR O'GRADY:** And the PCBU has to, under the legislation, reduce risk so far as is reasonably practical.

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

10 **MR O'GRADY:** And risk can take various forms, and severe injuries can occur even in respect of what might be seen to be housekeeping matters, whether it be electrical cords strewn across the ground, which might create a tripping hazard or might create an electrical risk. You'd accept that?

15 **MR SMITH:** I do.

**MR O'GRADY:** And the duty on the PCBU is to, so far as is reasonably practicable, reduce all risk.

20 **MR SMITH:** To manage risk, that's right, yep.

**MR O'GRADY:** Now, you said that the CFMEU was at war with the inspectors.

**MR SMITH:** Mmm.

25 **MR O'GRADY:** I put it to you that to the extent that there was tension between the inspectors and the CFMEU organisers, you can't exclude the possibility that that might have been contributed to by your delay, delay, delay system?

30 **MR SMITH:** I don't accept that at all. Their bad behaviour - I can't excuse their bad behaviour at all, and the reason we were delaying is because of their bad behaviour. It was affecting the inspectors. It was occupational violence that they were actually perpetrating, and that was the reality of it. There should be no excuse for their behaviour at all.

35 **MR O'GRADY:** And in respect of the issuing of notices, they thought that, consistent with government policy, notices should be issued, and the inspectors were reluctant to do so.

40 **MR SMITH:** The inspectors were never reluctant to do so. They were - they had to form a reasonable belief, and they would, if they formed a reasonable belief, to issue a notice.

45 **MR O'GRADY:** Given that the organisers' focus was on the safety of members, there's nothing inherently wrong with them wanting inspectors to be aggressive in addressing the risks they found on site?

**MR SMITH:** Aggressive is an inappropriate word to use, really. What do you mean by aggressive? Aggressive -

5 **MR O'GRADY:** Well, I mean focusing on hard enforcement.

**MR SMITH:** Focusing - focusing on enforcement. We - hard enforcement. We had to focus on compliance outcomes.

10 **MR O'GRADY:** But the Lyons review made it clear you were to focus on hard endorsement.

**MR SMITH:** Hard compliance. Enforcement is the issue - and that's what you guys wanted. You wanted us to issue infringement notices. You wanted us to put all these penalties in place. And I put to you, you look at the injury rate and fatality rate under  
15 this hard compliance regime, did we see a noticeable decrease in injuries and fatalities? No, we didn't. So something wasn't working.

20 **MR O'GRADY:** Well, government having conducted a review, you accept that, the Lyons review?

**MR SMITH:** Well, they did. It's the reality.

25 **MR O'GRADY:** So they had every reason for doing that because of the incidents at Eagle Farm and Dreamworld?

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

30 **MR O'GRADY:** And the effect of that review was that there should be a greater focus on hard enforcement.

**MR SMITH:** I'd just like to say there's been a number of double fatalities in the last 10 years that have occurred as well, and we haven't gone through a review.

35 **MR O'GRADY:** And there had been fatalities prior to that, hadn't there?

**MR SMITH:** That's right. So, I mean, it's more than a hardline compliance. It's getting that balance right, and that's the point I'm making.

40 **MR O'GRADY:** Yeah, and all I'm putting to you is that it's quite legitimate for a CFMEU organiser to take a different view about where that balance lies than for you and your noters?

45 **MR SMITH:** As long as they do that properly and they're respectful in how they conduct themselves, I have no problem with that.

**MR O'GRADY:** And you'd agree with me that improvement notices or prohibition notices are an important mechanism to encourage the PCBU to address risks on site?

**MR SMITH:** I totally agree with you on that.

5 **MR O'GRADY:** Now, you gave some evidence yesterday about a reduction of requests for inspectors to attend sites after an enterprise agreement had been made. Do you recall that evidence?

**MR SMITH:** Yeah, I - I made a general statement about that.

10 **MR O'GRADY:** Yes, yes. You would accept that the CFMEU has enterprise agreements which have extensive provisions dealing with safety?

**MR SMITH:** Yes.

15 **MR O'GRADY:** For example, the Cairns Convention Centre greenfields agreement has quite a long dispute resolution process for safety-related issues? Sorry, you need to answer for the purpose of the transcript.

20 **MR SMITH:** Yeah. I haven't seen that document. I'm not aware of that.

**MR O'GRADY:** All right. Well, it gives employee representatives, including the union, right to respect work systems and plant, etcetera?

25 **MR SMITH:** Righto.

**MR O'GRADY:** It requires consultation to resolve issues and meetings to resolve issues. And it's only if those issues aren't resolved that there's capacity for people to request a Work Health and Safety inspector to attend. You'd accept that, if there was such a mechanism in agreements like that, that may be an explanation for why there was a reduction in requests for inspectors to attend after a CFMEU EBA was made?

**MR SMITH:** It - it may well be.

35 **MR O'GRADY:** And, similarly, if a contractor was engaged that had a CFMEU agreement, there would be a - there are mechanisms in those agreements for the resolution of work health and safety matters?

**MR SMITH:** Yep, it could possibly be.

40 **MR O'GRADY:** And, again, that might be an explanation for why the CFMEU required fewer attendances for their preferred contractors, to use your language, than other contractors who they didn't prefer.

45 **MR SMITH:** There possibly could be.

**MR O'GRADY:** Thank you. Would you also accept - and I'm not making this allegation against any particular inspector - that a reason why an inspector may not issue a notice is the relationship they have with the builder?

5 **MR SMITH:** No, I don't accept that proposition at all.

**MR O'GRADY:** Well, yesterday, you attributed Ms Burgess' conduct to either ideological conviction or corruption, as I recall your evidence. Do you recall that?

10 **MR SMITH:** Yes.

**MR O'GRADY:** And would you accept that it's not unreasonable -

15 **COMMISSIONER:** I think the witness was more specific than that.

**MR O'GRADY:** I think he was. I apologise, Commissioner. The transcript wasn't available when I was preparing my cross-examination. Would you accept that it's not unreasonable for a CFMEU delegate who's been frustrated by your delay, delay, delay system, and who, when an inspector turns up, encounters a reluctance to use enforcement powers, for them to suspect that there might be something improper going on?

20 **MR SMITH:** Well, I don't think that's founded on anything, and the reason I say that is because, on a fortnightly basis, I sit down with the operations managers and we go through in detail all these complaints and actions that are taken that have - compliance actions that have come from - flowed from those complaint site attendance. So I've got oversight of that. So has the managers. So I didn't see any evidence of that at all.

25 **MR O'GRADY:** I'm not suggesting that these things happened as a matter of fact. I'm simply putting to you, that from the perception of a CFMEU organiser, if they're (a) at site, nobody's turning up because of the system you've put in place, somebody does turn up and they're reluctant to take enforcement action, they might suspect that something's going on.

30 **MR SMITH:** Well, I don't know why they would suspect that, and then would why that necessitate a behavioural outcome from them that wasn't appropriate.

35 **MR O'GRADY:** Now, you gave some evidence about Mr Dennett's getting into the minutiae, if you like, regarding issues.

40 **MR SMITH:** Mmm.

45 **MR O'GRADY:** He felt, on the material provided to him, that matters should have been handled differently. That's the effect of the conversations you were having with him.

**MR SMITH:** Sorry, I misunderstand -

5 **MR O'GRADY:** I'm happy to repeat it. When you were having these conversations with Mr Dennett, he felt, on the material he'd been provided, the information he'd been provided, that the inspectors should have done something differently on site.

**MR SMITH:** He did, but after speaking to me and asking for my reasons, he agreed with my approach.

10 **MR O'GRADY:** Yes. But there's nothing improper in him, in working through those issues with you, putting forward what he understood what was going on and what he understood was the technical requirements in those circumstances.

15 **MR SMITH:** There's not, but the point I made is, at that level, why would you be getting involved in every operational matter that was occurring?

**MR O'GRADY:** Just bear with me. You gave some evidence this morning regarding the Cummins matter and the court case. Do you recall that evidence?

20 **MR SMITH:** I do.

**MR O'GRADY:** Yes. And you understand that that matter was appealed?

25 **MR SMITH:** Yes, I do.

**MR O'GRADY:** And you understand that that appeal was successful?

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

30 **MR O'GRADY:** And do you understand that, as a result of that appeal being successful, the judge considered whether or not there should be a retrial?

**MR SMITH:** Sorry?

35 **MR O'GRADY:** That the judge considered whether there should be a retrial?

**MR SMITH:** Yes.

40 **MR O'GRADY:** And decided there shouldn't be a retrial.

**MR SMITH:** There wasn't, yeah, that's right.

**MR O'GRADY:** And, in reaching that conclusion, she described the conduct as being of a relatively minor nature in seriousness?

45

**MR SMITH:** Well, if that was her finding, that was her finding.

**MR O'GRADY:** Yes. And that the defects in the evidence at the original hearing as to intimidation will not sustain a conviction?

**MR SMITH:** Yeah.

5

**MR O'GRADY:** I have no further questions, Commissioner.

**COMMISSIONER:** Anything arising, Mr Ternovski?

10 **MR TERNOVSKI:** I will be brief, Commissioner.

**<RE-EXAMINATION BY MR TERNOVSKI**

15 **MR TERNOVSKI:** Mr Smith, you were asked a number of questions about your delay tactic and the impact that that's had on the behaviour of CFMEU officials and the behaviour of Ms Burgess and Mr Dennett.

**MR SMITH:** Mmm.

20 **MR TERNOVSKI:** If we start with the behaviour of the CFMEU officials, what came first - the bad behaviour of officials towards your inspectors, or the delay tactics?

25 **MR SMITH:** The bad behaviour came first. My delay tactics were put in place in relation to how I managed that impact on the inspectors.

**MR TERNOVSKI:** Did you observe any deterioration in the conduct of CFMEU officials after you introduced the delay tactic?

30 **MR SMITH:** I did. They actually knew that that was my stance, and that if they started to misbehave, that we wouldn't - we would tend not to turn up while they were there, so -

**MR TERNOVSKI:** But did they behave better or worse?

35

**MR SMITH:** They tended to behave better than - because they knew that I would not tolerate it. But we didn't see a noticeable change in behaviour until the CFMEU was put under administration.

40 **MR TERNOVSKI:** And going to the conduct of Ms Burgess and Mr Dennett now, you described phone calls from Ms Burgess seeking urgency in attendances in response to CFMEU complaints?

**MR SMITH:** Yes.

45

**MR TERNOVSKI:** The demands for urgency, did they start before or after your delay tactic?

**MR SMITH:** They were always in place, the demand of urgency. "When are you going to get there?" The ETA - estimated time of arrival - and all those things were common refrains. The expectation, we would drop everything and go. That's what  
5 was always expected.

**MR TERNOVSKI:** I think you said yesterday that the delay tactic was something you evolved over time, but can you tell the Commission approximately when you started doing that?  
10

**MR SMITH:** Well, what I meant by that, it evolved over time how the interactions got much more hostile. The Cairns Convention Centre incident, the matter that went before the court, that was quite concerning to me, and from that point on, we started to - so from '18 to '20, we kind of saw, you know, probably a slow escalation of  
15 matters that did - that did continue, but I tried to put all these measures in place gradually. We got more - we got better at managing them. You know, we understood their behaviours, so we could - we could correspond to that and deal with that. So we got better in how we dealt with them. But my - it wasn't as easy as just refusing to attend. I always had my eye on the issues that were raised and the need to go there to  
20 address these things, but we balanced that from the intel that we had on these sites, you know.

Through our proactive work program, we had been to a lot of these sites so we knew what processes that they had in place as well. So I managed that intel against the  
25 need that was coming from Helen Burgess in relation to the CFMEU complaint and the interaction that they may have when we go to site, and it depended on, you know, who the - who the permit holders were. We were particularly cautious when there may have been, you know, a number of - we may have had visiting CFMEU permit holders from Brisbane, and there may be a mixture of CFMEU, Plumbers Union and  
30 ETU. So say we're sending an inspector and there's five or six permit holders there, you've really got to be quite mindful around the impact that's going to have on an inspector or two inspectors. So we considered all those things in the risk context, and the organisation ultimately implemented a process around two-up, you know, sending two inspectors to better manage the occupational risk exposure that we  
35 may - we may encounter.

**MR TERNOVSKI:** It was put to you, Mr Smith, that it was possible that the reduction in CFMEU safety complaints directed at principal contractors after they entered into a CFMEU enterprise agreement was due to the provisions of those  
40 agreements. As I understood it, the disputes are resolved effectively internally, and you accepted that it's possible. How likely is it as an explanation?

**MR SMITH:** Well, it's hard to say, but just looking at the union's conduct and their business model, it's probably highly unlikely. Once they got those mechanisms in  
45 place, enterprise bargaining arrangements, they got what they wanted on that site. They had no need to complain about the PCBUs, so we never really heard too much from them from that point.

**MR TERNOVSKI:** No further questions.

5 **COMMISSIONER:** Mr Smith, thank you very much for your evidence over today and yesterday. You're excused.

**MR SMITH:** Thank you.

10 **<THE WITNESS WAS RELEASED**

**COMMISSIONER:** We'll adjourn until 2 pm. Oh, sorry, sorry.

**MR DE JERSEY:** So on the Marc Dennett employment situation.

15 **COMMISSIONER:** Thank you.

**MR DE JERSEY:** His employment with the OIR ceased on 28 January 2022. Crown Law understands that he subsequently worked for a period of time at WorkCover, but that that employment ended earlier this year.

20 **COMMISSIONER:** Thank you, Mr de Jersey. Sorry, before I adjourn, has anyone else - no? Thank you. We'll adjourn till 2 pm.

25 **<THE HEARING ADJOURNED AT 1.04 PM**

**<THE HEARING RESUMED AT 1.59 PM**

**COMMISSIONER:** We have a change in appearances. Ms Stone, you're appearing with Ms Feely as counsel assisting for these next witnesses?

30 **MS STONE:** Yes.

**COMMISSIONER:** No other changes? Ms Stone.

35 **MS STONE:** Commissioner, there is a bundle that has been prepared for an opening that I was proposing to give this afternoon. I understand that Mr O'Grady wishes to raise a matter with you with respect to that bundle, so I might allow him to do that before we progress with the opening.

40 **COMMISSIONER:** Okay. I've got something labelled tender bundle 1, Cairns Convention Centre, in front of me.

45 **MR O'GRADY:** It would appear that some of the documents in that bundle were obtained from some hard drives or USB sticks that were obtained from KordaMentha. You might recall there was a similar issue in one of Mr Gisonda's matters, where there were some rosters for attendance in the election, electoral booths.

**COMMISSIONER:** Is that the Rosenlund case study or something else?

5 **MR O'GRADY:** I think it might have been the Rosenlund case study. And the issue,  
Commissioner, is that these hard drives and/or USB sticks have a number of  
documents that are the CFMEU documents. We haven't had access to them, and  
some of them may be privileged or matters about which we would want to assert  
privilege. What I'm proposing, if it's convenient to the Commission, is we have no  
10 objection to Ms Stone referring to and putting on the screen the documents that are in  
the bundle before you, because in the short time we've had, there doesn't appear to be  
anything that's unduly sensitive. I've indicated to Ms Stone that we will go through  
that bundle more thoroughly overnight, and then if there's no problem, we won't  
object to it being tendered and if there are issues I'll raise them with Ms Stone. In the  
15 meantime, we'll continue to work with counsel assisting and the solicitors assisting  
the Commission to work through the issue of the hard drives and the USB sticks and  
how we can manage that, but we don't want to delay things unnecessarily today.

**COMMISSIONER:** So you don't have a problem with Ms Stone going to these  
20 documents in opening, but you want a chance to look at them and perhaps object to  
their tender tomorrow morning?

**MR O'GRADY:** Yes. And as I say, we're going to have to work through the  
remaining documents that are on these hard drives and USB sticks. Apparently  
there's some 335,000 documents on those, and obviously we need to work through  
25 that issue with counsel assisting and the solicitors assisting the Commission so that  
we can progress the matter.

**COMMISSIONER:** I'm just flicking through them now. They don't look  
30 problematic to me, but I've probably had as much as time as you've had.

**MR O'GRADY:** Well, can I say that's the view we've formed. But out of an  
abundance of caution, I've raised it with Ms Stone, and she has no objection to  
deferring the tender until tomorrow morning on the basis that she can proceed with  
her opening now, and we'll get back to her first thing in the morning and tell her  
35 whether there's any objection.

**COMMISSIONER:** All right.

40 **MR O'GRADY:** If the Commission pleases.

**COMMISSIONER:** Thank you, Mr O'Grady. Ms Stone.

**MS STONE:** Thank you, Commissioner. Just with respect to the opening bundle, I  
45 should note as well that it is only a handful of the documents that are in that bundle  
which have come from the source that Mr O'Grady has some concern about.  
Overnight, I will point out which of those documents have come from that source, so

the inquiry should be relatively confined and something that can be dealt with easily tomorrow morning.

5 **COMMISSIONER:** Looks like I've got about half a dozen yellow tags on mine. Those are the documents that have come from the KordaMentha material?

10 **MS STONE:** No, they're for your reference, as some of the documents we'll be going to in opening. There is a slight difficulty with some of the page numbers on your copy. That's why those tabs are there.

10 **COMMISSIONER:** All right. Thank you.

15 **MS STONE:** Thank you. Commissioner, to date this Commission has heard extensive evidence from union officials, the administrator of the CFMEU, Mr Watson KC, industry experts, tier 1 contractors and various government employees. It has heard limited evidence from non-tier 1 builders which has come by way of the Toombul Shopping Centre case study and the evidence of the Rosenlunds. By your terms of reference, Commissioner, you are charged with inquiring into the CFMEU and misconduct in the construction industry in Queensland. The construction  
20 industry is not limited to tier 1 builders, nor is Queensland limited to the south-east corner of this state.

25 Commissioner, you will recall the evidence of Ryan Rosenlund and Neile Rosenlund given a few weeks ago about the work the Rosenlund Group did undertaking demolition works at the Toombul Shopping Centre in Brisbane. In a vacuum, the Rosenlunds' experience might be seen as a one-off experience of a single contractor in Brisbane. However, their experience was not isolated, nor was it unique. Inquiries made by this Commission to date have revealed that the reach of the CFMEU's  
30 influence and misconduct has been geographically indiscriminate. It has leeches throughout this state from the south-east to the far north. The evidence of the Workplace Health and Safety inspectors that you've heard this week is an example of that. Consequently, the inquiry undertaken by this Commission must be similarly extensive, and the Commission must turn its attention to those outside the south-east of Queensland.

35 It was proposed that Ms Feely and I would call four witnesses tomorrow to discuss their experiences here in Cairns. Noting the time, we may have to see how far into that evidence we get. But in any event, the focus of today's opening and the evidence to be heard tomorrow is in respect of the Cairns Convention Centre. The witnesses  
40 that will be called tomorrow will speak to a pervasive culture of fear that permeated that construction site and which was effected and enforced by CFMEU delegates. Each of these witnesses are local business owners or otherwise an employee of a local business.

45 Like the Rosenlunds, those witnesses are not the employees or representatives of tier 1 contractors. The businesses they own or otherwise work are relatively small by way of comparison with those featured in other case studies opened before this

Commission. Likewise, the experience and evidence of these witnesses is relatively discrete. But that is not to say that their evidence is not important. It is important because the evidence of these witnesses is emblematic of the pervasiveness of the CFMEU, its systematic abuse of purported safety issues and the collateral damage to small businesses in the construction industry when the CFMEU elects to target tier 1 contractors and large projects.

These witnesses will give discrete evidence, but their evidence is only the beginning of what the Commission anticipates will be led regarding the experience of individuals on work sites controlled by the CFMEU. The second aspect as to why this evidence is important is because it reflects the experience of non-union-aligned subcontractors on government projects to which BPIC and its predecessors applied, and it is for the purpose of the BPIC case study that these witnesses are being called before the Commission.

The BPIC case study is one of the biggest and most significant case studies that you will be asked to consider. That is because the impacts of BPICs has been pervasive and profound. The development of what ultimately became BPIC was an iterative process which gradually embedded conditions consistent with the CFMEU pattern agreement into large government projects, both in the vertical construction and civil construction sectors. Those conditions flowed down not only through the contractor cane but also out into the private sector. This occurred because it became a requirement of BPIC to establish not only compliance with BPIC, or BPIC conditions, on government projects, but also in the remainder of the relevant contractor's business.

Through BPIC, the CFMEU was able to gain a foothold into construction sectors and projects in which they did not have coverage. The CFMEU was also provided an opportunity to take hold of businesses who would not have otherwise elected to enter an enterprise agreement with the CFMEU but for the requirement to comply with BPIC in order to gain significant government work. The BPIC case study is also one that is close to Far North Queensland. In saying that, it's important to understand how it was that BPIC evolved.

The evolution of BPIC will be the subject of extensive and close scrutiny in future hearing blocks. However, by way of very brief chronology, on 23 April 2018, Cabinet approved the best practice industrial relations requirements for all projects over \$100 million and declared projects. This resulted in the Queensland Procurement Policy being updated on 8 May 2018. The amendments to that policy relevantly stated:

"For major projects of \$100 million and above and declared projects, the value for money assessment must also include application of all of the following best practice principles: workplace health and safety systems and standards, commitment to apprentices and trainees, and best practice industrial relations."

There was a fourth principle which fell away over time and which is not presently relevant to the Commission.

5 On 17 May 2018, the Department of Housing and Public Works instructed Watpac to apply the best practice principles in its procurement of subcontractors on the North Queensland Stadium in Townsville. At this point, little guidance or information was provided as to what constituted best practice in respect of each of those best practice principles. By 16 August 2018, that guidance had been provided. It took the form of the provision of what was then called the sample agreement. The sample agreement  
10 was a draft enterprise agreement, and it reflected the terms of what was then the CFMEU pattern agreement. The direction to apply the best practice principles and what this meant for Watpac and the subcontractors it engaged on the North Queensland Stadium is a line of inquiry which will again be taken up in future hearings of the BPIC case study.

15 By 14 October 2019, the sample agreement had been replaced by what was then called the minimum conditions. The minimum conditions were introduced by way of an addendum to the tender pack provided to tenderers on the Cairns Convention Centre Expansion and Refurbishment Project. That occurred partway through the procurement process, and, Commissioner, you may recall Mr Sanfilippo of CPB  
20 gave some evidence about that tender process in the April hearing blocks. By early 2020, the minimum conditions had given way to the first document that -

25 **COMMISSIONER:** His evidence, as I recall, was the way they got around it was to try to negotiate out of the jump-up clause so they could not have as many direct employees themselves that were covered by the BPIC policy, not have the jump-up clause, and therefore they could still build efficiently and effectively.

30 **MS STONE:** I believe Mr Sanfilippo's evidence was a bit more extensive than just that matter, Commissioner, but you will recall -

**COMMISSIONER:** I hope so.

35 **MS STONE:** - that CPB was ultimately not successful in gaining the tender for that project, and Mr Sanfilippo gave some further evidence about his views for that and why that might have occurred.

40 **COMMISSIONER:** Maybe it was another project, but that was his way of dealing with it, as I recall.

45 **MS STONE:** I believe that is correct, Commissioner. Thank you. By early 2020, the minimum conditions that had applied on the Cairns Convention Centre project had given way to the first document styled as a BPIC or the best practice industry conditions, and that BPIC was applied to the Southern Queensland Correctional Centre Stage 2 Project, which involved the expansion of the Gatton Prison down in the Lockyer Valley. The application of BPIC to Gatton Prison will also be the subject of future hearing blocks. So too will the Commission be asked to examine,

and so too will I call evidence with respect to the various iterations of BPIC which followed the application to the Gatton Prison project, including the development of the transport BPICs by the Department of Transport and Main Roads.

5 What each iteration of this policy document had in common is that each of them - the  
sample agreement, the minimum conditions, the BPIC or the various iterations of  
BPIC - is that they reflected the terms and conditions demanded by the CFMEU by  
way of its pattern enterprise agreements, and those agreements also reflected  
10 demonstrably high wages that well exceeded what was then typical in the regions in  
which these documents were first introduced. The underlying theory for the BPIC  
case study is that BPICs arose out of the capture of the Queensland Government. The  
CFMEU achieved this capture by applying pressure to each group of stakeholders in  
the government procurement life cycle. That pressure was exerted downwards  
15 through the departments responsible for the procurement of government projects  
onto managing contractors of government projects and then onto the subcontractors  
engaged by those managing contractors.

Pressure was also exerted laterally, by way of influence, bullying, intimidation and  
threats made by the CFMEU to government, managing contractors and  
20 subcontractors. To the extent there was influence, bully, intimidation and threats, this  
is something that predominantly occurred either during the negotiations for a  
BPIC-compliant enterprise agreement or otherwise on the work site itself.

**COMMISSIONER:** I think Mr McKay, the deputy director-general of the Office of  
25 Industrial Relations, gave some evidence there was an attempt by the senior public  
servants in each department - gave some very limited evidence to this effect - in '22  
or '23, I can't remember which year, to sort of push back against the ministerial  
direction to do this, to expand BPIC to Transport and then to Water and Energy.

30 **MS STONE:** Yes, Commissioner, and it was certainly not the case that every  
member of Queensland Government was supportive of BPIC, and that is something  
that will be the subject of further evidence. The evidence that will be called  
tomorrow is relevant to the Cairns Convention Centre, and each witness that we seek  
to examine will give evidence that feeds in to the much broader BPIC case study that  
35 will progress over time before you.

BPIC case study raises seven broad questions. The first is to what extent were those  
responsible for government procurement policy and the procurement of government  
projects captured by the CFMEU? How did the CFMEU capture those  
40 representatives of government, and what methods did they use to exert control and  
influence over government? Why did the CFMEU capture those representatives of  
government, and how did this further the CFMEU's objectives? How did the  
CFMEU influence or exert pressure on those outside of government, being  
contractors in the construction industry and other unions with relevant coverage of  
45 workers? Why did the CFMEU seek to pressure contractors and other unions and  
how did this further the CFMEU's objectives? What impact, both short and long  
term, did the implementation of BPIC have on the construction industry in

Queensland? And what is the remedy to the conditions and worksite culture caused or facilitated by BPIC?

5 **COMMISSIONER:** I'm not sure if question 6 and 7, if my notes are right, mainly question 6. Are we really going to look at that the effect of BPIC? I thought that what is what the Productivity Commission was charged with doing, and until someone comes and challenges it we just take that as a given.

10 **MS STONE:** To an extent, Commissioner, that is correct and you are charged by your terms of reference not to duplicate the work that has already been done by the Queensland Productivity Commission, but there were several impacts of BPIC well beyond what was considered by the Queensland Productivity Commission, including in terms of site culture and things beyond issues such as productivity and pure cost.

15 **COMMISSIONER:** I see. I understand.

**MS STONE:** And to the extent that the evidence will go beyond what was covered in the QPC report, that will be relevant to your terms of reference and the matters you must consider.

20 **COMMISSIONER:** And question 7, what's the remedy? I thought that the lines of that debate had been fairly well set up by Mr Hadgkiss, Mr Jenkinson, Mr Long, and they really point the finger at the demise of the ABCC and the abolition of the federal code upon the election of the Albanese Government in May 2022 as being a  
25 problem - sorry, the abolition in 2013 and - 2013 at a state level, 2015 at a state level and 2022 at a federal level, and then BPIC sort of being, if you like, the anti-code, the anti-procurement code, does the reverse of what the - at least on their evidence, does the reverse of what BPIC tried to do.

30 **MS STONE:** Yes, Commissioner, that is correct. It is also important to note that there are a number of enterprise agreements still in place in Queensland that are reflective of the conditions of BPIC that will be up for expiry in 2027, so it will be necessary for there to be something that comes after those agreements and something that will ensure that further agreements with unions and contractors are productive  
35 and allow for safe work sites that are productive and do not encourage conduct which might otherwise be considered misconduct or detrimental to the construction industry.

40 **COMMISSIONER:** But I thought the witnesses - those three witnesses; there might have been others as well - said the solution to that seems to be, at least in their view, a state or federal code. There has been some talk in the press the last week or 10 days that the Federal Government is thinking of developing its own procurement code. So you don't have to answer this if you don't want to, but you say the questions are - the question - the seventh question you pose is what is the remedy? I thought we might  
45 be a bit further along in terms of answering that question than simply positing it, that there might be some remedies that have already been suggested in the evidence.

**MS STONE:** Yes, I would agree with that, Commissioner. It's not the case that I'm raising these questions to suggest that there has been no evidence led to date. Certainly with respect to that seventh question, there has been extensive evidence as to what might follow.

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**COMMISSIONER:** And the government's response to the Productivity Commission's recommendation that there be a state procurement code was to await our - the results of this inquiry. But from what you're saying, there's some need to move quickly on that front because of the fact that these enterprise agreements that embodied the BPIC conditions expire, did you say, in 2027?

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**MS STONE:** Many in 2027, yes, Commissioner.

**COMMISSIONER:** I think the Productivity Commission said mid-2027, but I could be wrong there.

15

**MS STONE:** Yes.

**COMMISSIONER:** Sorry, I interrupted you. Those are the seven questions.

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**MS STONE:** Those are the seven questions. And as I said a moment ago, the Commission has already heard some evidence at least about these questions. The first several questions raised by this case study will sound familiar. They are questions of government capture. They are the same questions raised by the -

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**COMMISSIONER:** That evidence is obviously incomplete. Mr Hadgkiss, I think you still want to cross-examine Mr Hadgkiss, don't you, Mr O'Grady? He's due to come back and - yeah. So the evidence is incomplete, but it's at least one possible - one possible remedy.

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**MS STONE:** One possible remedy, yes, Commissioner. Commissioner, the first several questions, as I said, will sound familiar in that they deal with the issue of government capture. That is something that the Commission has already heard some evidence about with respect to other case studies before this Commission, and again, I refer to the evidence that you've heard this week. These are inquiries that will be taken up in further hearing blocks, but I do want to say something about the evidence that has already come with respect to the BPIC case study, whether it's come under the guise of being in that case study or not.

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**MS STONE:** You have heard evidence from Stacey Schinnerl of the AWU, who gave evidence about the different coverage rules applicable to the AWU and the CFMEU, which was put simply by her as the difference between horizontal construction, being things like roads, rail, dams and civil construction projects, and workers performing works for local authorities being within the AWU's coverage and vertical construction being outside of that coverage. Ms Schinnerl also gave evidence about the significant role the CFMEU played in the development of the Transport BPIC, which was implemented by the Department of Transport and Main Roads, and that was a

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process in which the AWU did not participate because of their concerns that the Transport BPIC circumvented the bargaining process under the Fair Work Act.

5 Ms Schinnerl also gave evidence as to the effect of the introduction of the Transport BPIC, which was to artificially expand the coverage of the CFMEU into the civil construction sector where the CFMEU does not have majority coverage, and the forced integration of conditions suitable to the vertical construction industry or sector but which were inappropriate to the civil construction sector. And that is something that we will return to time and again in this case study, is the inappropriateness of  
10 some of the conditions applied through BPIC to the projects to which they were then applied.

We have also briefly discussed Mr Sanfilippo's evidence. He spoke about the experience of CPB Contractors in navigating the introduction of BPIC as a tier 1  
15 contractor. Mr Sanfilippo said that CPB Contractors watched what was playing out in North Queensland, where the first iteration of the best practice principles was introduced on the North Queensland Stadium and then the Cairns Convention Centre by way of the minimum conditions. Mr Sanfilippo gave evidence that one of the risks that concerned CPB Contractors was the elevated rates of pay changing the  
20 subcontractor market and affecting subcontracting companies' ability to maintain those rates of pay long term and on other non-government projects.

Mr Sanfilippo reflected that BPIC had profound impact on the industry through the elevation of those market rates for certain parts of the contracting and subcontracting  
25 market, which is some of the evidence that the Commission will hear tomorrow and which occurred on the Cairns Convention Centre project. And again, Mr Long of the civil contractors federation in February gave evidence about the development of BPIC and the forced implementation of these conditions, despite concerns from industry that there had only been sporadic consultation with industry throughout the  
30 various iterations of the sample agreement, the minimum conditions and then BPICs, and the concerns expressed that it would significantly increase the cost of construction in Queensland and reduce the number of projects the state could afford to construct.

35 Of the questions that I've posed to you this afternoon, Commissioner, the first three witnesses that Ms Feely and I propose to call tomorrow will each address the fourth and fifth questions that I posed, and those questions were, how did the CFMEU influence or exert pressure on contractors in the construction industry, and why did the CFMEU seek to exert that pressure on those contractors, and how did this further  
40 the CFMEU's objectives? The Cairns Convention Centre itself was a - is a significant building for the Cairns community and local businesses, and the expansion and refurbishment of that building was a significant project undertaken in Cairns. Mr Operator, if you would please display page 2 of the opening bundle.

45 **COMMISSIONER:** Isn't the answer - you can tell me I'm being a bit simplistic, but the answer to "Why did the CFMEU do this?" isn't about simply expanding their scope of influence, whether it be through membership or through the benefits that

imposing their terms and conditions through their own EBAs have? For example, Mr O'Grady gave an example in his cross-examination of Mr Smith, saying once an EBA is entered into, then there's a private arbitral mechanism for dealing with safety disputes under the EBA. Isn't just as simple as that? Maybe it's more complex, but -

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**MS STONE:** Well, Commissioner, simply put, it's in my submission a matter of control, about gaining a foothold in the industry and taking control of construction sites to enforce your own agenda. Now, there might be many reasons or issues that fall within that agenda, but simply put, yes, that is, in effect, why it seems the CFMEU might take those steps.

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Mr Operator, if we could have page 2, please. Thank you very much. Commissioner, this is a photo of the expanded and refurbished Convention Centre that's being displayed on the screen and is in page 2 of the bundle before you. You can see at the front of the building there's a curved section which was different-coloured panels, features, and I understand that to be the expanded part of the Convention Centre. Now, the expansion project was pitched by government as a \$176-million project which would invest in Cairns and the local community, creating 574 full-time jobs in upgrading and expanding the Convention Centre. The expansion would also, it was said, allow an unmet need or demand for national and international conventions to be fulfilled through the construction of new entry spaces, exhibitor booths, meeting rooms, plenary spaces and a rooftop banqueting area.

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Mr Operator, if we could go to page 3 of the bundle, please. Thank you. This is a floor plan of the expanded and refurbished Convention Centre, and you can see at the front the various plenary, terrace rooms, meeting rooms, the business centre. There's an auditorium in the middle of the building, and on the Hartley Street side of the building is the arena, which contains a basketball court and which is the home ground for the Cairns Taipans. The Cairns Taipans are a basketball team in the National Basketball League.

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In July 2017, draft concept drawings for this project were released and it was intended that the project would be completed by 2020. Instead, stage 1, being the design and early construction works for the project, did not commence until 3 December 2019, and the stage 2 construction and remaining designing works commenced in February 2021. The final separable portion of the project did not reach practical completion until around July 2023, which was approximately three years after the project's initial anticipated completion.

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Now, various reasons have been offered by Lendlease, the government and the media as to why those delays occurred, and it may very well have been a culmination of factors. However, the extent to which there was misconduct which resulted in or contributed to delays on the project is a relevant inquiry before this Commission. So too is the extent to which the implementation of the minimum conditions on this project, the extent to which that contributed to a culture or conduct on site which facilitated the weaponisation of safety issues and a culture of unproductivity.

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**COMMISSIONER:** It took three and a half years to build. You said it was - what did you say the cost was envisaged to be? A hundred and -

**MS STONE:** \$176 million.

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**COMMISSIONER:** And how much did it end up costing?

**MS STONE:** Now, Commissioner, that is something that I am unsure of. There is some suggestion in the material before the Commission by way of - that's been produced under notices. There will also be some suggestion in the evidence that you'll hear tomorrow that there were cost blow-outs to the project. That is something that seems to have not been quite articulated anywhere that can I see, but it stands to reason that a project that took six years ultimately from design to completion, rather than the three years it was intended to take, would have some element of cost blow-out on the project. And it may be that there are, again, a culmination of reasons for that, but again, to the extent that there was an additional cost to that project, that was caused by the implementation of the minimum conditions or misconduct on site or a culture of unproductivity. That again is something that will be relevant to the Commission and which will remain a line of inquiry before you.

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**COMMISSIONER:** There was - on the Cross River Rail project, there was blow-outs of about \$3 billion, just under 3 billion, in terms of the budgeted numbers, that is, not the final numbers or the actual cost but what the envisaged cost was in various financial years, I think financial year ending in 2020 and also '24. I think it was '24 and '26. Anyway, it doesn't matter. It was about \$3 billion, and there was about another 10 billion in additional works, putting some financing costs, etcetera. Of that 3 billion, Mr Sanfilippo said about 580 million - sorry, 830 million, because he put 250 million in for further cost blow-outs that anticipated - Mr O'Grady cross-examined him on that 250 million.

30

But all that was tied up in a dispute between the builder and the government, and we received in evidence a redacted version of that because of what was said to be commercially confidential aspects of that. So we've only seen part of that, say about 830 million out of about 3 billion in a cost blow-out, said to be referable to union activity. Is the reason you haven't been able to find out how much the blow-out was because of this commercially confidential nature of any discussions between the government and - who did you say the builder was? Lendlease?

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**MS STONE:** Lendlease was the managing contractor of the project, yes.

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**COMMISSIONER:** Is that the reason we don't have the numbers, or you just need to look into it further?

**MS STONE:** Commissioner, the reason we don't have those numbers is because it still remains a line of inquiry. We do have some outstanding matters that we are following up with respect to the Cairns Convention Centre, and so there will be

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evidence in future which will hopefully answer your questions, but I do not have that at the moment.

5 **COMMISSIONER:** It would be unlikely there wouldn't be some blow-out, because the building took place during COVID, so presumably there'd be some blow-out. It's just a question of how much it was and what was attributable to the union behaviour on site.

10 **MS STONE:** That's exactly correct, Commissioner. It should also be noted that the figure of \$176 million was what the project was announced to be in 2017, which pre-dates the implementation or the introduction of the minimum conditions. We know that the minimum conditions had the effect of inflating rates on the project. It follows that if that was then applied to the project, there were either cost cuts elsewhere in the project or there must have been at least a consequential increase in  
15 the cost of the project attributable to those labour costs.

**COMMISSIONER:** So that 176 million was a 2017 figure.

20 **MS STONE:** Yes.

**COMMISSIONER:** I see. All right.

25 **MS STONE:** And as you're aware, Commissioner, what we have done as a Commission is seek by way of notices a very large volume of material which has been provided to the Commission by way of documents and information given in sworn statements. The Commission has also separately been provided a large volume of material from voluntary sources and people who have come forward not under notice to provide that information. But it is through the provision of that material that we have collected that we have been able to identify what does appear to have been a  
30 substantial campaign by representatives of the CFMEU against Lendlease and select subcontractors working on the Cairns Convention Centre, or the Cairns Convention Centre Expansion and Refurbishment Project, and that campaign was comprised of the CFMEU raising safety issues on site.

35 And they did that persistently and frequently, resulting in lengthy disruptions to work on large parts of the project, or during substantial works in a staggered manner, which caused repeated disruptions and which prevented the efficient handling of safety concerns, to the extent there were legitimate safety concerns, and the efficient rectification of those issues. And the safety - many of the safety concerns that I've  
40 been able to identify appear to be minor in nature and which did not amount to any imminent risk to workers but which had a disproportionately high impact on the productivity on site, dealing with minor issues in a manner that wasn't proportionate to how they might otherwise have been dealt with by a productive work team.

45 **COMMISSIONER:** I thought some or maybe all of the witnesses we've just heard from this week, Mr De Ridder, Ms Farrington, Mr Dalamaras and Mr Smith, all said - well, at least one of them said that the Cairns Convention Centre was the target

for a CFMEU campaign. I might not have - I might not be entirely accurate about that, but that seemed to be the thrust of some of the evidence we've heard this week.

5 **MS STONE:** Yes, Commissioner, certainly it does not seem to have been any secret that there were difficulties on the Cairns Convention Centre project at the hands of CFMEU representatives raising safety concerns.

10 **COMMISSIONER:** And that those - the implication of the evidence was that those safety concerns were raised in aid of an industrial campaign.

**MS STONE:** That is the case, Commissioner.

15 **COMMISSIONER:** So there might be three things going on that caused the blow-out: COVID, the impact of BPIC and also whatever the effect of this campaign was.

20 **MS STONE:** Yes, Commissioner. With respect to that campaign, I have said that it was at the hands of CFMEU representatives or officials on site, but it seems to have been largely effected by one individual, or primarily by one individual, being the CFMEU delegate employed by Lendlease, whose name is Hayden Jones. And we have a photograph of Mr Jones, Commissioner, so that you might place him. Mr Operator, if you would please display page 14 of the bundle. Commissioner, this is Mr Jones, taken from a slideshow provided by the - well, produced by the CFMEU.

25 **COMMISSIONER:** What's the slideshow for?

30 **MS STONE:** Operator, if you would go to page 13, please. The slideshow was a slideshow produced for what was the 2020 Delegates Convention Awards, and you can see from the slide on the screen, Commissioner, that - this being the preceding slide, that Mr Jones was awarded the outstanding recruitment award, which is why his picture was then depicted on the slide following.

35 **COMMISSIONER:** There was some evidence in the Rosenlund case study and also in the Cross River Rail case study about the fact that these delegates were appointed rather than elected - appointed from the top down by the CFMEU rather than elected from the workforce up. Do you know which category Mr Hayden Jones fell into? Was he elected by the workforce or was he appointed by the CFMEU and imposed on the site?

40 **MS STONE:** That, too, remains a line of inquiry before this Commission, Commissioner. What I understand to be the case is that I have spoken to individuals on the site who say that Mr Jones was selected. Whether that was by way of vote or selection by others other than the workers on site, I do not know. But presumably, if it was by way of legitimate vote by workers, that is something that we would readily  
45 be able to produce records of at some point in future.

**COMMISSIONER:** So you say Mr Jones was the - is the main focus of this case study. What about Mr Rolly Cummins, who we've heard a lot about this week?

5 **MS STONE:** Mr Cummins features less significantly with respect to the Cairns Convention Centre. He features heavily with respect to other evidence that may be led with respect to the Far North of Queensland and particularly other construction sites in Cairns. But for present purposes, it's Mr Jones who is of immediate concern.

10 **COMMISSIONER:** Was Mr Jones a local Cairns person, or did he come up from Brisbane?

**MS STONE:** No, Commissioner. Mr Jones relocated from Brisbane in early 2020. He was employed by Lendlease for a period of two and a half years, over which he worked on the Cairns Convention Centre, and then Mr Jones immediately returned to  
15 Brisbane where he took up employment as an organiser with the CFMEU.

**COMMISSIONER:** Well, that tends to suggest he wasn't elected from the shop floor, doesn't it, if that's all the evidence you had? It sounds like he was selected by the CFMEU from Brisbane, appointed up here, and then when the job had finished,  
20 went back to become an organiser for the CFMEU. It might not be the case, but -

**MS STONE:** Well, it certainly is interesting that Mr Jones' only involvement in the Far North of Queensland seems to have been limited to his employment on the Cairns Convention Centre.  
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**COMMISSIONER:** As someone from Brisbane?

**MS STONE:** As someone from Brisbane. What we do know about Mr Jones is that it appears he's been a delegate of the CFMEU from at least 2017, again, starting in  
30 Brisbane. By 20 August 2019, and presumably earlier, it appears that Mr Jones was a member of the CFMEU Youth Crew. It's not necessary to take you to it, Commissioner, but in the bundle there is a Facebook post at page 7 which was posted by the CFMEU Construction and General Queensland/NT Facebook page, and that post refers to Mr Jones and another person, Blake Hines, as representing the Youth  
35 Crew in a radio segment for 4ZZZ.

**COMMISSIONER:** On 20 August 2019?

40 **MS STONE:** On 20 August 2019. And my understanding of the Youth Crew is exactly what it sounds like, is that it is a culmination of younger members of the CFMEU. So the suggestion is if - or the inference to be drawn would be if Mr Jones was a delegate from at least 2017, he would have joined the Youth Crew around that time or shortly thereafter.

45 **COMMISSIONER:** That's the group within the CFMEU that Mr - forgive me if I mispronounce his name, Mr Atutolu was said to have been heard at the barbershop

saying that he was the boss of or the leader of by one of the members of the officials of CPB - sorry, one of the safety or one of the IR managers of CPB.

5 **MS STONE:** That's so, Commissioner. And you'll also recall that Mr Watson KC has given some evidence about the Youth Crew, and in his report, Mr Watson describes one witness describing to him the Youth Crew as a wrecking crew or a hit squad. And the Commission will find that reference at paragraph 285 of Mr Watson's Brisbane or Queensland report, which is exhibit GW-4, already before this Commission. And as you're aware, Commissioner, clause 3(a)(x) of your terms of  
10 reference specifically charges you with inquiring into evidence of and allegations concerning the sub-branch of the CFMEU known as the Youth Crew, and specifically whether members of that entity were involved in misconduct and whether that entity should be wound up.

15 As I said a moment ago, Commissioner, Mr Jones relocated to Cairns in early 2020, where he took up employment with Lendlease from around July of 2020 and quickly became the delegate and health and safety representative on the Cairns Convention Centre by September of that same year.

20 **COMMISSIONER:** When did you say work started on the Convention Centre - sorry, the expansion of the Convention Centre?

**MS STONE:** The expansion of the Convention Centre - apologies, Commissioner. It's the refurbishment which was the first stage of the project, and early design works  
25 and early works commenced in December 2019. Other work commenced from May 2020, and Mr Jones was on site as the delegate and HSR by July 2020.

**COMMISSIONER:** I think it went through to mid-2023. Is that right? It was completed in mid '23?

30 **MS STONE:** Practical completion by July 2023, yes.

**COMMISSIONER:** Okay.

35 **MS STONE:** But in any event, by September of 2020, a matter of months after he commenced employment with Lendlease, Mr Jones had been stood down from his employment with Lendlease. Despite this, it appears that Mr Jones continued to attend the Cairns Convention Centre project work site under the guise of being the  
40 site delegate, where he was disruptive and engaged in the campaign against Lendlease that I've mentioned with respect to safety.

**COMMISSIONER:** It's hard to understand that. He was employed for four months and then stood down. He'd come up from Brisbane, employed for four months, stood  
45 down and then continued to attend the site?

**MS STONE:** Continued to attend the site under the guise of being the site delegate and HSR.

**COMMISSIONER:** What does stood down mean in that context? Because you have to be an employee of one of the entities that works on site, principal contractor or the contractor, to be a delegate.

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**MS STONE:** Yes, Commissioner. Mr Jones was stood down by Lendlease with pay in his employment with Lendlease. His employment was not terminated. It continued for some period of time after that. And the reason for that was that there was some investigation with respect to Mr Jones which will again be the subject of future hearing blocks. Despite direction -

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**COMMISSIONER:** Stood down with pay but still remained as the delegate and attending the site?

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**MS STONE:** That's correct, Commissioner. Now, around the same time that Mr Jones was stood down from his employment with Lendlease, or asked not to attend the site in the course of that, Mr Jones attended the CFMEU's 34th delegate convention. And Mr Operator, if you would please display page 87 of the bundle. Commissioner, you can see from the face of this document that it appears to be a record of the decisions made at the 34th delegates' convention in 2020.

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**COMMISSIONER:** If you looked at the T-shirt he was wearing or the polo shirt, it had the same - I don't know if it had 2020 on, but it had "organise, fight, CFMEU" on the left-hand side of the polo shirt of the photo you just put up.

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**MS STONE:** Yes, Commissioner. That is the case. I believe it's page 14 of the bundle, Mr Operator. There we go. And are we able to blow up the logo on Mr Jones' shirt at all?

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**COMMISSIONER:** It doesn't say 2020. It just says CFMEU.

**MS STONE:** It doesn't say 2020, but otherwise replicates the logo on the delegates' convention cover sheet. Now, Commissioner, it's not necessary for present purposes to go through this, but there is a list of the delegates to the delegates' convention which appears at pages 101 to 104 of the bundle. As I said, it's not necessary to go to that now, other than to note that Mr Jones was an attendee of the convention as a delegate to that convention. Mr Operator, if you would please display page 93 of the bundle. You can see here, Commissioner, this is part of that document that we've been speaking about, and you can see at item 67 there's a subject, Unionised Projects, and in the resolutions put forward by column, you can see Hayden Jones of Lendlease listed as the person from whom that resolution was put forward.

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**COMMISSIONER:** There's something wrong with the pages, aren't there, because if you look at pages 101 to 104, the list of all these delegates, there's roughly 50 names per page. Three and a half pages, say 175 delegates, yet Mr Irving, when he gave evidence, said when he took over in 2024, four years after this, there were over 400. I think 413 or 430. Maybe not every delegate went to the convention or maybe

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it grew a lot in those four years, but I thought there'd be more than 175-odd. Anyway, that's something for you to look at it.

5 **MS STONE:** No, Commissioner, perhaps I can assist. That list of delegates listed is by no means a comprehensive list of the delegates that we know to have been delegates in that sense of the CFMEU. This list is only a list of those who attended the delegates' convention as a delegate in the sense of being a convention delegate. There are a number of people who appear on that list of delegates to the convention who do not - who were not delegates of the CFMEU, as we would otherwise use that  
10 term with respect to a site delegate.

**COMMISSIONER:** I assumed the delegates' convention was a convention of the people who were shop stewards/delegates. Is it some other - it's got some other meaning, has it?  
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**MS STONE:** On its face, one would assume that would be the case, but it does appear that there are a number of other officials of the CFMEU who attend the delegates' convention, as well as a number of other individuals who are neither officials nor delegates but seem to have some affiliation with the CFMEU.  
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**COMMISSIONER:** There is a thing under the rules which is - I can't remember whether it's every year or twice a year, a convention - it might be called a conference, I can't remember which - where there are people who are delegates to the convention or conference, that is, people who have authority to make decisions for the union at a  
25 broad level, if you like, a plebiscite or some - not quite the right analysis. I just assumed this was not that sort of thing, because it would say delegates to state convention. Maybe it is. Maybe - maybe it is. You haven't had a chance to look at this document, Mr O'Grady, have you, so you can - can you tell me what it -

30 **MR O'GRADY:** By tomorrow morning.

**COMMISSIONER:** Yes. Very well. All right. So it might not be a meeting of the shop stewards; it might be some other meeting of various members and officials of the CFMEU. And the persons who go to that meeting are called delegates, but they're  
35 not to be confused with persons who are shop stewards or delegates, as in, those people who perform the role as the representative of workers at each work site.

**MS STONE:** That's correct, Commissioner.

40 **COMMISSIONER:** I see. All right. When we're talking about these delegate awards, at page 14, that Mr Jones got, for outstanding recruitment, we're really talking about a delegate in the sense of a shop steward?

**MS STONE:** Yes. That's correct, Commissioner.  
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**COMMISSIONER:** Okay. I understand. Sorry, I cut you off.

**MS STONE:** No, that is quite all right. You will see from this page on the screen before you, Commissioner, item 67, Unionised Projects was a resolution put forward by Mr Hayden Jones of Lendlease. And Mr Operator, if we could display page 133 of the bundle, and if we could blow up the last resolution on that page, please. You can see here, Commissioner, that this appears to be the corresponding resolution put forward by Mr Jones, which reads:

"Use national clout, eg, a company with projects in Sydney or Melbourne. All workers are 100 per cent unionised but same company in Brisbane does not have to be. Use national power to remedy this."

And you can see that it has been moved by council and again seconded by council and so carried. Now, it is worth pausing to note, Commissioner, that Lendlease, the managing contractor of the Cairns Convention Centre, does operate nationally, and it will be a line of inquiry in this case study, to the extent that further inquiries are made of Lendlease with respect to the Cairns Convention Centre, whether some level of pressure or influence was placed on Lendlease by way of threat or retribution on other projects outside of Cairns Convention Centre. It is also worth noting that it is around this time that Mr Jones is working on Cairns Convention Centre and attends this convention that he becomes a rather decorated CFMEU delegate and official. Mr Operator, if you would please display page -

**COMMISSIONER:** Just go back to that - the one above item 66, "no ticket, no start". If you look at the paragraph above there, that looks like a fairly obvious contravention of the freedom of association rules. Freedom of association rules suggest that people should be free to join whatever union they want, but this seems to be under the guise of "no ticket, no start", saying that all delegates are to strive to achieve a position that if you don't have the CFMEU ticket, you don't start on the job. I mean, this has been a problem in this industry, if you look at all the previous five various Commissions, Royal Commissions, Commissions of Inquiry, going all the way back to Winneke in the 80s. That's been regarded as a foundational problem, that people are not free to join the unions of their choice but are told if they don't have a ticket with the CFMEU they can't start the job. That motion, exactly what it means, we have to work out, but it seems to be suggesting that all delegates are to attempt to implement that policy. Anyway.

**MS STONE:** It certainly does seem that way, Commissioner, and that does tie into my next point. Mr Operator, if we could show page 22 of the bundle, please. This, Commissioner, is the running sheet for the CFMEU delegates' convention dinner on 17 September 2020. Mr Operator, if you could blow up that first row of the table on that page.

**COMMISSIONER:** So this is the same convention?

**MS STONE:** The same convention, Commissioner, that we've just been discussing the minutes or the record of decisions from, and you can see here that Mr Jones was

awarded that outstanding recruitment award, and one would have to assume that that relates to the recruitment of members to the union.

5 **COMMISSIONER:** And that was presented by Minister de Brenni.

**MS STONE:** It appears so, Commissioner.

**COMMISSIONER:** Where was this convention?

10 **MS STONE:** This convention occurred at the Hilton Hotel. I take that to be a reference to the Hilton in Brisbane, not the Hilton where we are sitting, but I don't want to mislead you with respect to that, so I will take that on notice and confirm, but it does appear to be the Hilton Brisbane.

15 **COMMISSIONER:** Is Mr Jones still - he got promoted, Ms Stone said, after this period of delegate to an organiser. Is he still an organiser within the - he's still employed?

20 **MR O'GRADY:** Yes. But he's not on organiser. He ceased being an organiser - just bear with me, Commissioner. No, we don't know - we don't know when he ceased being an organiser, my learned junior instructs me.

**COMMISSIONER:** But he is employed by the CFMEU in some position?

25 **MR O'GRADY:** By the CFMEU in the training department.

**COMMISSIONER:** Thank you.

30 **MS STONE:** Now, Commissioner, this was the first award that Mr Jones appears to have been awarded, at the 2020 delegates' convention, but at the 2022 CFMEU delegates' convention Mr Jones was honoured with two awards.

35 **COMMISSIONER:** Just stay with that. We don't know when he was stood down by Lendlease, but this could have been beforehand. It might have been afterwards. We don't know. He was stood down in September 2020?

40 **MS STONE:** That's correct, Commissioner. Mr Operator, if you'd please display page 24 of the bundle. Commissioner, again you can see that this is a running sheet for the CFMEU delegates' convention dinner in 2022, on 18 August. And you can see about halfway down that page, there's a reference to Mr Jones being awarded the Joe McDonald Award, no Ticket - No Start Award. If we could blow that up on the screen, please. And that, Commissioner, is precisely what we have been discussing a moment ago with respect to the resolutions in the 2020 convention, this approach to  
45 "no ticket, no start" being the phrase used to refer to arrangements where the union would dictate that only workers holding current union membership may carry out work on a particular site.

Further down the same page, you can see that Mr Jones was also awarded the delegate of the year away - there we go - which was presented by Mr Ravbar on behalf of Jo Crotty, who is a wife of the CFMEU official after which the delegate of the year award was named, who was an apology.

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**COMMISSIONER:** This is a delegate of the year award. Did he cease to be stood down by Lendlease at any time? Because he went back to Brisbane in 2022, didn't you say, as an organiser?

10 **MS STONE:** By July 2022. In July 2022, Mr Jones resigned from his employment with Lendlease and then returned to Brisbane, and this convention dinner occurred on 18 August 2020, the following month.

15 **COMMISSIONER:** And was he stood down for that whole period between September 2020 and - what is it - July 2022?

**MS STONE:** That is my understanding, Commissioner.

20 **COMMISSIONER:** Yet he remained a delegate on the Cairns Convention Centre site and was awarded the honour of being delegate of the year in 2022.

**MS STONE:** That is correct, Commissioner. And if I can take you to page 26 of the bundle, which I'll ask to be displayed on the screen, you can see here a post -

25 **COMMISSIONER:** Do you just above? Do you see there - best new delegate award, Eben Cox, who turned up in Mr - turned up in Mr Gisonda's case study of Cross River Rail, and he was the chap who pretended to be an environmentally concerned citizen, blocked access to Cross River Rail and was also the person who imposed - I've forgotten his name - the delegate on the Rosenlunds.

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**MS STONE:** Trent Broadhurst.

**COMMISSIONER:** Mr Broadhurst. That's right. Sorry, 26.

35 **MS STONE:** Page 26, please, Operator. Commissioner, this is a post, posted by Danger Sun Overhead on 1 September 2022, which depicts Mr Jones receiving his award at the convention a few weeks before this post was made, and you can see Mr Jones there holding the delegate of the year award plaque. You can also see, above  
40 the photos in the text, if we can highlight the second paragraph - if we could blow up the second paragraph, please - you can see that it's stated that the Rohan Crotty award, being the delegate of the year award, was awarded to Hayden Jones for his extraordinary efforts to support workers on the job at the Cairns Convention Centre. So it certainly seems that by August 2022, when Mr Jones was given this award,  
45 there was some view, at least on behalf of the CFMEU, that Mr Jones had done well in his capacity as a delegate on that site.

**COMMISSIONER:** He's been given an award in 2020 for outstanding recruitment, and then two years later the Joe McDonald award, no ticket, no start award, and delegate of the year award?

5 **MS STONE:** That's correct, Commissioner.

**COMMISSIONER:** And who's Joe McDonald? Shows my ignorance. That's terrible, I've forgotten the witness's name. I've had a mind blank.

10 **MS STONE:** I can tell you, Commissioner, that Mr McDonald was an official of the CFMEU in Western Australia who was the subject of various penalty orders sought and obtained by the Australian - the ABCC over a period from 2005 to 2015 - 2009 to 2015. And if it would assist, Commissioner, I can address you briefly on those matters in the morning. But I understand that there were no less than nine penalty  
15 orders.

**COMMISSIONER:** He's a Western Australian official. Sorry, I'm confusing him with Tom McDonald, who was the BWIU president in the 1980s. Joe McDonald is Western Australian, ex state secretary, was he?  
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**MS STONE:** I'm not sure that he - Mr McDonald was the assistant secretary of the national branch.

**COMMISSIONER:** The national branch?  
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**MS STONE:** The national branch.

**COMMISSIONER:** But a Western Australian?

30 **MS STONE:** Yes, that is my understanding, but I'll correct that in the morning if I am wrong.

**COMMISSIONER:** I'm sorry. I keep diverting you. Please go on.

35 **MS STONE:** That's quite all right, Commissioner. This has been a somewhat lengthy exposition of Mr Jones and his involvement on the Cairns Convention Centre, but it was a necessary one, because it is important in contextualising some of the evidence that you are going to hear tomorrow from those subcontractors and employees of local businesses who were on the Cairns Convention Centre and their  
40 experiences with Mr Jones, or a person that they identify as being the CFMEU delegate on site and which we understand to be Mr Jones. And the evidence that you will hear tomorrow will comprise some but certainly not all of the evidence that has been gathered by this Commission with respect to Mr Jones and his activities on that site.

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For completeness, Commissioner, I should also note that there will be evidence about a second delegate on the Cairns Convention Centre site. To some extent, it appears

that Mr Jones was assisted in his campaign by Mitchell Brown, the delegate on site for the Electrical Trades Union. Some evidence will be heard tomorrow regarding Mr Brown. However, Mr Brown's conduct on the Cairns Convention Centre and his breach of freedom of association provisions are already a matter of public record, having been heard and decided in proceedings brought by the ABCC in the Federal Circuit and Family Court of Australia, so I don't propose to dwell significantly on Mr Brown.

Commissioner, with respect to the evidence you'll hear tomorrow, there are four themes that are common across each witness's evidence. The first is a culture of fear and intimidation and threat of retribution created on work sites by delegates of the CFMEU. The second is the conduct of CFMEU delegates in campaigning to ensure that all workers on a work site are paid-up members of the CFMEU and all subcontractors on site are parties to CFMEU enterprise agreements. Third is the weaponisation of purported safety issues by the CFMEU delegate designed to create delay and frustration to projects, rather than to support the legitimate safety interests of workers. And the fourth is the display of CFMEU paraphernalia on work sites by way of CFMEU flags, stickers, posters and branded work gear.

We've already discussed this, Commissioner, but these themes all speak to one thing, and that is, in effect, the control of a work site and public demonstration of the control of a work site. It speaks to the complete disregard of the freedom of association provisions and the stripping of any semblance of control by the managing contractor on site, being Lendlease, or the client, which in this case was the State of Queensland and ultimately the taxpayer.

I'll speak briefly, Commissioner, about the evidence that you can expect to hear from our witnesses tomorrow. The first witness will be Rhys Carmady. Mr Carmady is the director and owner of Status Signs, which was contracted by Lendlease to provide all the signage works for the Convention Centre and, through a variation, to install window frosting on part of the building during the refurbishment works. Status Signs is a design, manufacturing and installation company started by Mr Carmady's parents in 1977. Status Signs has strong ties to the community and supports several local sporting teams, including the Cairns Taipans, who call the Convention Centre home. The company employs around 22 people, a third of which have been with the company for over 10 years, and of those 22 employees, four employees are currently apprentices, which Status Signs is putting through the Certificate III in Sign Manufacturing.

Although it is one of the largest sign companies north of Brisbane, Status Signs remained a locally owned family business, and it is the exactly the sort of local family business which should be supported. However, Mr Carmady will describe various interactions with representatives of the CFMEU on the Cairns Convention Centre which were unpleasant, threatening and which did little more than to cause delay, frustration and cost to both Status Signs and the project itself. Mr Carmady will give evidence about his first interaction with Mr Jones, during which he was grabbed, sworn at and threatened. A series of incidents involving the high spider lift

boom; the misuse of safety requirements and deliberate delay tactics perpetrated by Mr Jones and Mr Brown; Mr Jones pressuring his employees, the employees of Status Signs, to join the CFMEU; an incident during which Status Signs employees were sworn at - an employee was sworn at and threatened by Mr Brown while  
5 performing electrical work; and an additional site requirement to obtain a verification of competency certificate imposed by the CFMEU under the guise of being a safety requirement but which served no purpose other than to cause delay and additional cost to Status Signs.

10 The second witness we will call is Ryan Creighton. Mr Creighton is the former director of Global Hire & Services, an equipment hire provider which specialised in elevated work platforms or EWPs. As with status signs, Global Hire & Services, prior to its sale to another company, was a locally owned and operated business in Cairns. Global Hire & Services had a relatively small team of 20 employees across  
15 Cairns and Townsville, but over 500 pieces of machinery which were available for dry hire. Mr Creighton was not only the director and operator of Global Hire & Services, he's also a qualified trainer and assessor of the EWP operator training program in the high-risk work licence training course.

20 Mr Creighton will give evidence about the significance of the Cairns Convention Centre expansion and refurbishment project to the local community and to contractors in Cairns; the overt influence and presence of the CFMEU on the project, which culminated in Mr Creighton feeling intimidated and uneasy on the project work site; the mysterious and repeated disappearance of paperwork related to the  
25 safety of Global Hire & Services machines on the project, which resulted in Mr Creighton forming the view that someone had deliberately hidden the paperwork to sabotage Lendlease or particular contractors; the apparently differential treatment of contractors on the project, and particularly the treatment of Status Signs; stop-work directions given to our third witness, Mr Reid, by the delegate for the CFMEU on  
30 site, and the impact of the CFMEU's conduct on the operations and reputation of Global Hire & Services.

The third witness we will call will be Mr Jake Reid. Mr Reid was formerly employed as a site technician and later the service manager for Global Hire & Services. Mr Reid  
35 was a technician that worked on the Cairns Convention Centre and who was at any given time on the site once a day most days of the week, servicing the machines hired by Global Hire & Services to Lendlease or other subcontractors on site. And Mr Reid will share his experiences on that site, including two discrete incidents of clashes with delegates on the Cairns Convention Centre project site which caused  
40 disruption and delay. His evidence is an example of the small scale but constant disruption caused to productivity on site by the weaponisation of safety concerns. And again, like the Rosenlunds, it is a story that is not singular or unique, and something that will be opened further before this Commission in later evidence.

45 Commissioner, noting the time, that is all I wish to say with respect to these witnesses. If it is the case that we have time to call our fourth witness and that

becomes what we do, then Ms Feely or I will provide a short further opening as required.

**COMMISSIONER:** Who's the potential fourth witness?

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**MS STONE:** The fourth witness is a gentleman by the name of Rohan Patteson of the The Breakthrough Group. I think it would be quite unlikely that he would be called at this point, noting the time. And I believe that may have been communicated to Mr Patteson as well.

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**COMMISSIONER:** So we might take his evidence in some other way at some other time?

**MS STONE:** At a later time. That may be the case, Commissioner.

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**COMMISSIONER:** Do you want to make a start with one of your witnesses?

**MS STONE:** Commissioner, my preference would be not to, firstly for the reason that my first witness is not here, and that would make it difficult. But I'm also conscious of using the time efficiently. If we start at 9.45 in the morning as anticipated, I trust that we will get through the evidence as required.

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**COMMISSIONER:** Well, it might be hard to start with your first witness if your first witness isn't here. Is there anything else we can do this afternoon?

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**MS STONE:** Commissioner, I think this afternoon would be best dealt with addressing those matters that Mr O'Grady has raised this afternoon. We will deal with that, and otherwise my suggestion is that we resume in the morning.

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**COMMISSIONER:** Just on that, you've got an issue which I would hope can be resolved in relation to these particular documents that Ms Stone wants to tender, and we've gone through a few of them in the opening. In relation to the broader issue, I assume that's something you can discuss with Mr Gisonda and try and come to a resolution there.

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**MR O'GRADY:** Yes. We sent a letter, I think it was on 30 April, raising concerns about that issue. We received a response to that letter this afternoon.

**COMMISSIONER:** Right.

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**MR O'GRADY:** And we'll engage in further discussions to see how we address it. As you'd appreciate, Commissioner, 300-odd thousand documents of the CFMEU's - documents which we haven't seen. And so we're going to have to -

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**COMMISSIONER:** Would have seen them at some point, because they came from you to go to KordaMentha.

**MR O'GRADY:** Well, yes, but the legal team acting for the administrator hasn't seen.

**COMMISSIONER:** I understand.

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**MR O'GRADY:** We haven't had the opportunity to assert any claim for privilege in respect of them. But I'm sure we can work that out.

**COMMISSIONER:** I understand. All right. Nothing else for this afternoon? We'll  
10 adjourn to 9.45 tomorrow morning.

**<THE HEARING ADJOURNED AT 3.17 PM**