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TRANSCRIPT OF PROCEEDINGS

THE HON MICHAEL F ADAMS KC, COMMISSIONER

THE ACT INTEGRITY COMMISSION – OPERATION KINGFISHER

PUBLIC HEARING

DAY 1

THURSDAY, 10 AUGUST 2023 AT 10.20 AM

MR CALLEN O'NEILL, Counsel Assisting
MR M HASSALL, Counsel for the witness John Green

COMMISSIONER: This is a public hearing into the procurement for the refurbishment of Campbell Primary School. The witnesses who will be called are all relevant witnesses to the processes that were followed, resulting in the ultimate tender. Shortly Mr O'Neill as counsel assisting will outline the background and the likely course of hearing. All the witnesses have been represented or are being represented by counsel and leave has been given for those counsel to attend and participate in the hearing. Not every relevant witness is being called in public hearing, only the salient witnesses who are principally involved one way or another in the relevant decision making and what led to the relevant decision making.

It is vitally important to understand that merely because a person has been called as a witness does not suggest in any way that it is - that they will be or potentially are the subject of adverse criticism or finding. It may be that witnesses will disagree about very important matters, and those disagreements will need ultimately to be resolved, they can be resolved by the Commission in its report following the consideration of submissions by the parties.

But merely because it is possible at a later point that some adverse criticisms will be made, I wish to emphasise that it would be most unfair simply, because persons are called to give evidence at an inquiry such as this, to think that they are therefore going to be the subject of criticism, or their characters or reputations are therefore at risk. If any risk occurs, it will occur at the end of the proceedings after considering all relevant evidence and hearing all submissions for the relevant parties on those issues. Only then will it be fair to make criticism of them. So I wish to emphasise merely being a witness is not reasonable cause for drawing any adverse conclusions about them or their activities.

At the present time, only two days are available for hearings - for public hearings, and it is expected that the first witness to whom, for privacy reasons, I have given the pseudonym Mr Green, and I have made a suppression order directed to the media that he not be identified. His evidence is likely to take up the two days that we have presently available. Other dates which will be published on the website - the Commission's website for future hearings are listed for the first week or so of September, and it may be that further hearings will be necessary perhaps in October. Part of the reason for the delay is there are many counsel involved, and arranging for everyone to be fairly represented requires calendar adjustments.

I think, Mr O'Neill, that's all that needs to be said at present.

MR O'NEILL: Thank you, Commissioner.

COMMISSIONER: Thank you.

MR O'NEILL: Commissioner, as you have just pointed out, this is a public hearing of the ACT Integrity Commission. It is the first public hearing of this Commission. It is the most recent investigative process by this Commission in this matter, following an initial referral to it in March 2021. The investigation later became known as Operation Kingfisher. The public hearing will explore whether public officials in the ACT Education Directorate, also known as the EDU, failed to exercise their official functions honestly and/or impartially when making recommendations and decisions regarding capital works procurement for the Campbell Primary School Modernisation Project, which I will call the Project, between 2019 and 2020. Its particular focus will be upon the actions and decisions of public servants in awarding the project to a multinational construction company, Lendlease Proprietary Limited, in circumstances where its bid appeared inferior in both cost and otherwise to a local contractor Manteena Commercial Pty Ltd. I will return to a more detailed explanation of these issues shortly.

It is important that I outline the Commission's jurisdiction from the outset. On 26 February 2018, the ACT Government committed to establishing an independent integrity commission that would be broadly structured on those operating in similar sized jurisdictions around the country. It did so by the passing of the Integrity Commission Act 2018, the Act, which was notified on 11 December 2018 and came into effect on 1 July 2019. The Act confirms upon this Commission jurisdiction to investigate conduct that is alleged to be corrupt conduct. The Commission itself is a standing independent integrity body established to investigate corruption in public administration, and to strengthen public confidence in government integrity in the ACT. Pursuant to section 23 of the Act, the role of the Commission is:

*To investigate conduct that is alleged to be corrupt;
refer suspected incidents of criminality or wrongdoing to appropriate authorities for investigation and action;
prevent corruption, including by researching corrupt practices, mitigating the risks of corruption, to publish information about investigations conducted by the Commission, including any lessons that have been learned;
to provide education programs about the operation of this Act and the Commission, including providing advice, training and education services to the Legislative Assembly and the public sector, people who are required to report corrupt conduct under the Act and the community about the detrimental effects of corruption on public administration and ways in which to assist in preventing corrupt conduct; and
to foster public confidence in the Legislative Assembly and the public sector.*

Corrupt conduct is defined in section 9 of the Act and relevantly is:

Conduct that could constitute a criminal offence or constitute a serious disciplinary offence, or constitute reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of a public official.

The conduct must also be one of any of the following:

Conduct by a public official that constitutes the exercise of the public official's function as a public official in a way that is not honest or is not impartial;
conduct by a public official or former public official that constitutes a breach of public trust or constitutes the misuse of information or material acquired by the official in the course of performing their official functions, whether or not that misuse is for the benefit of the official or another person;
conduct that adversely affects either directly or indirectly the honest or impartial exercise of functions by a public official or public sector entity;
conduct that adversely affects, either directly or indirectly, the exercise of official functions by a public official function or public sector entity and would constitute, if proved, an offence under the provisions of the Criminal Code;
conduct that includes any of the following - collusive tendering, forward in relation to applications for licences, permits or other authorities under legislation, dishonestly obtaining or assisting in obtaining or dishonestly benefitting from payment or application of public funds for private advantage of the disposition of public assets, defrauding the public revenue, fraudulently obtaining or retaining employment a public official; or
conduct engaged in by persons in relation to conduct mentioned above that would constitute an offence under the Criminal Code on the basis of the primary conduct is an offence, whether or not the primary conduct is, in fact, an offence.

Those definitions are extensive. However, as distinct from other integrity commissions in other jurisdictions, in this Commission, and in particular in its reporting function, it is focused upon serious corrupt conduct and systemic corrupt conduct. Section 10 of the Act defines serious corrupt conduct as conduct that is likely to threaten public confidence in the integrity of government or public administration. And section 11 defines systemic corrupt conduct as instances of corrupt conduct that reveal a pattern of corrupt conduct in one or more public sector entities.

For the purposes of the Act, a public official is a person who has public official functions for the Territory, or is acting in a public official capacity for the Territory, and relevantly includes a person who is a public servant or any other person who is an employee of a public sector entity. A public sector entity is defined to include an ACT public service entity which is further defined as including the Public Service. The ACT Education Directorate is an ACT public services of service entity. The EDU is specifically identified both as an entity and as the entity responsible for government and non-government schools, and schools education, with the responsible minister being the Minister for Education and Youth Affairs, as set out in the administrative arrangements 2022, dated 30 March 2022.

Those arrangements were made by the Chief Minister under the Australian Capital Territories Self-Government Act 1988 and the Public Sector Management Act 1984. It follows that those employed in the EDU are public officials, being either public servants or employees of the EDU. The responsible minister at all relevant times was Ms Yvette Berry. She is also a public official, having public official functions for the Territory and acting in the public official capacity for the Territory. So too at all relevant times was her chief of staff, Mr Joshua Ceramidas.

Pursuant to section 140 of the Act, the Commission may hold an examination in relation to an investigation. Pursuant to section 143 of the Act, such an examination may be held in public or in private. In deciding whether to hold an examination in public or private, the Act requires the Commission must consider whether (a) it is in the public interest to do so, and (b) a public examination can be held without unreasonably infringing a person's human rights.

Section 143(3) of the Act provides that in deciding whether it is in the public interest to hold a public examination, the Commission may also consider the following:

- Whether the corrupt conduct is related to an individual and was an isolated incident or was systemic in nature;*
- (b) whether the benefit of exposing to the public and making it aware of corrupt conduct;*
- and*
- (c) the seriousness of the matter being investigated.*

The Act is drafted in such a way so there is neither a presumption for nor against public examination. That was a deliberate choice by the legislature here to ensure a fair balance between the competing considerations in favour of public and private examinations. In order to understand why this investigation is now being held in public, and what I anticipate it will consider, it is necessary to consider the background to the investigation. However, those assisting the Commission do not wish to open this public hearing enamoured with or resolved upon any particular view.

Pausing here, the role of counsel and solicitors assisting the Commission in this regard is distinct from our role in other types of court proceedings that follow a more conventional adversarial setting. While we sit in what resembles a court or a tribunal, it is a special type of forum that is not directed towards binary outcomes which the public may ordinarily understand, such as guilty or not guilty. I am briefed by the Commission but I'm a member of the independent bar both here in the ACT and in New South Wales. I'm assisted by Mr Whitfield, a principal lawyer of the Commission. I'm not a prosecutor. I'm not an investigator. I'm briefed solely to assist you, Commissioner, during this inquisitorial process.

I'm to do so as independent counsel. My role requires calling witnesses, adducing evidence, liaising with the parties and, if necessary, assisting the Commission with matters of law. I'm required to make submissions as to what I consider is established by the evidence. That is the limit of my remit. I do not make findings, nor do I report to the legislature. That remit belongs to you, Commissioner, and you alone as an independent officer of the Legislative Assembly and the person appointed as Commissioner pursuant to section 25 of the Act. I should also add for the benefit of those who are not familiar with this process, it is not the Commission's role to attribute blame to any person, or to make any finding of guilt. The statutory remit is focused upon the objects of the Act, which is principally focused upon corrupt conduct.

This notification of the alleged corrupt conduct, the Commission's investigators commenced their investigations in what had become known as Operation Kingfisher. Their

5 powers of investigation are set out in Part 3.5 of the Act, and include powers of entry,
seizure and search. Here, in exercising those powers, the Commission's investigators led
by principal investigator Ms Elizabeth Ashton have obtained significant amounts of
material, including data from mobile devices and computer services. That information was
then collated and assembled for the purposes of exploring with witnesses, in private, their
evidence. Persons involved in private examination processes are required to attend the
Commission under strict confidentiality orders, to preserve the integrity of the
investigation. This process is also one of prudence and fairness that ensures the necessary
safeguard to the right of a fair trial and the preservation of reputation from what could be
10 irreparable reputational damage.

Following those hearings, you, Commissioner, then decided it was in the public interest to
hold a public hearing. To understand why that is so, it is necessary to explore the substance
of the investigation in more detail. What follows is what - is my present understanding
15 from the evidence of the process by which the tender was awarded. Unless noted, it is
largely uncontroversial.

As at 2019, procurement activities by the government in the Act were governed by the
Government Procurement ACT Act 2021. Section 22A of the Act provided that a Territory
20 entity must pursue value for money in undertaking any procurement activity; value for
money means the best available procurement outcome. In pursuing value for money, the
entity must have regard to the following - probity and ethical behaviour, management of
risk, open and effective competition, optimising whole of life cost, and anything else
prescribed by regulation. The applicable regulation was the Government Procurement
25 Regulation 2007.

In or about June 2019, the EDU with the assistance of Major Projects Canberra, otherwise
known as MPC, commenced a procurement process for the design and construction of the
project. The project included the replacement and refurbishment of learning communities
30 at the Campbell School following demolition in 2018. It was to be construction of new
learning communities for 450 students, including associated amenities, and the
refurbishment of the school hall. The estimated value of the project was 18.2 million,
excluding GST. It was a significant project, particularly for the local community in
Campbell.

35 On 27 June 2019, a procurement plan minute addressed to the executive group manager
business surfaces EDU and signed by him set out the methodology, value, timing, scope
and consultation arrangements for the project. The minute envisaged a two-stage
procurement process. First, an open request for expression of interest, and second, a
40 request for tender process. The request for expression of interest or REOI anticipated
responses from pre-qualified design and construct contractors, or consortia, to be
shortlisted to tender for the project under a DNC contract, with up to three of those entities
proceeding to requests for tender or RFT.

45 RFT tenderers will be required to submit a lump sum with tender design solution and could
propose departures from the Territory's output and reference tender documentation which
would be considered in the context of benefits to the Territory and the local community.

Tenders were to be evaluated to identify a preferred tenderer. Evaluation methodology was expressly addressed at Attachment B to the minute, which set out the tender evaluation plan. This in turn laid out a valuation criteria, weightings and the requirement for a local industry participation plan. After requests for expressions of interest, two suppliers were selected to be the subject of an RFT. Those two suppliers were Manteena and Lendlease.

Lendlease is a multinational construction company headquartered in Barangaroo in Sydney. It is probably fair to say it is reasonably well-known and reputable. Manteena is a much smaller entity, headquartered in Fyshwick here in the Territory. Is perhaps known more in Canberra than around the country and is also reputable. I do not presently anticipate there will be any criticism of either entity during the course of this process. The RFTs were issued on 30 October 2019, and closed on or about 19 December 2019. The tenders were to be assessed by a Tender Evaluation Team otherwise known as a TET. The TET consisted originally of the following people: Ms Kelly Young from MPC, and she was the chairperson; Mr Phil Moreton from the EDU, and he was a member; Mr Chris Jacobi, also of the EDU as an member; and an observer, Mr John Hawkins from the MPC. Mr Hawkins was not required to make any recommendations.

The TET's task was to evaluate tenders in accordance with the previously endorsed procurement plan minute that included applicable procurement guidelines and evaluative criteria. The minutes stated that these individuals had been selected to constitute the TET because they posed expertise, incapacity to evaluate the skills, risk, and cost of goods and services presented to the tender submissions and had the ability to recommend a suitable contractor to the delegate. The chair of the TET, Ms Kelly Young, was an architect who had worked for some years in private practice before working for the ACT public service. At MPC, she was a project manager. Her role as a project manager entailed her working in the procurement space, running requests for expressions of interest and a request for tender, getting contracts into contract, and running projects during the design and the construction phases. That is, Ms Young was involved in projects from inception to completion. She had the added advantage of having just finished participating in the procurement process for the Margaret Hendry School.

Phillip Morton was an assistant director of the EDU. In early 2020, he reported to Pal Patec and later he reported to Dylan Blom. Pal Patec also reported to Dylan Blom in early 2020. Mr Morton was directed to be a member of the TET for the project by the relevant executive branch manager and delegate for the project, Mr Green. Mr Jacobi, the third TET member was a project officer for major projects in the EDU. Prior to this, Mr Jacobi had been employed as an architect in the private sector for over eight years; his tertiary qualifications included a Master of Architecture.

The TET prepared a draft tender evaluation report known as a TER, which was undated. It has been received by the Commission. In that draft TER, the TET noted that both tenders exceeded the allocation budget for the project. The draft TER assessed and scored both tenders, awarding the Manteena tender a total score of 79 out of 100 and a low-risk rating, while awarding the Lendlease tender a total score of just 52 and a medium risk rating. Relevantly, the Manteena tender was costed at approximately 8.5 per cent cheaper than the Lendlease tender.

The draft TER made the following recommendation:

5 *The Tender Evaluation Team recommends that Manteena Commercial be nominated as the preferred tenderer, and that the TET be authorised to enter into contract negotiations on the following basis: that Manteena Commercial identify areas of descoping and cost savings in conjunction with the TET to bring the project within target cost of the design and construction component of the project.*

10 Despite this initial view, by the time the TET finalised its TER, the above recommendation had changed significantly. The evidence before the Commission presently suggests that this was at the direction of Mr John Green, whose identity has been protected by your order, then in the role of acting executive group manager of the EDU. Mr Green's motivation for doing so is a matter for exploration before this Commission. Regardless, the
15 direct was that the TET recommend a procurement process known as Best and Final Offer. It will come as no surprise, Commissioner, that I intend to call Mr Green and I intend to call him first. Mr Green will be the first witness from whom you will receive public evidence.

20 The members of the TET were dissatisfied with Mr Green's direction. Nevertheless, they decided to assess whether the BAFO process was one that would be available to them to recommend by seeking probity advice from the ACT Government Solicitor, the GSO. A brief was sent to the GSO on or about 5 March 2020. The GSO returned its advice on or about 12 March 2020. That advice, which will be before the Commission, and which was
25 heavily caveated, advised that the BAFO process was available. Despite the GSO advice, members of the TET maintain their view that the appropriate recommendation was for the project to be awarded to Manteena with descoping, that is, negotiation to reduce the scope of works and save cost, with this to occur during the contract negotiation.

30 Evidence before the Commission indicates that such an approach was entirely conventional. Nevertheless, Mr Green maintained his position and direction. On or about 18 March 2020, the TET provided its TER, despite the assessment scoring of the two tenders remaining the same, which also had the consequence of the risk rating remaining the same. The TER made the following recommendation:

35 *The tender evaluation team recommends that a best and final offer be requested of both tenderers based on the items listed in attachment K, inclusive of potential scope removal, and further cost savings identified by the tenderer, to bring the project within target cost for the design and construction of the project, and thus giving the highest potential to*
40 *achieve best value for money for the Territory.*

At or about the same time, rumours were circulating within the EDU that the Minister for Education, Ms Berry, the member for Ginninderra and a Labor candidate, may have been approached by the unions and asked why Manteena was getting all the jobs. The rumour
45 was that this was why Mr Green was pushing for a BAFO where Manteena should be the obvious preferred tenderer. That rumour, among others, has and will continue to be a subject of investigation. I expect that the evidence before the Commission will be that the

ACT branch of the Construction Forestry Maritime Mining and Energy Union did hold a negative view of Manteena. This was conveyed to the minister and/or her chief of staff at various times whilst the procurement process was underway.

5 To this end, I intend to call both Mr Jason O'Mara, the then secretary of the ACT branch of
the CFMEU, and Mr Zachary Smith, the then assistant secretary of the ACT branch of the
CFMEU. By letter dated 17 March 2020, the CFMEU invited Manteena to commence
bargaining for an enterprise agreement with its employees, with the CFMEU to act as
representative. Manteena later declined that request. The evidence before the Commission
10 will likely indicate that Mr Green was known to the CFMEU. Mr Green had held a role as
Secure Local Jobs Code Registrar, implementing the Local Jobs Code. For reasons that
will become clear, the union was unhappy decisions made by Mr Green in that role.

The Secure Local Jobs Code had been implemented in the ACT in about January 2019,
15 pursuant to section 22M of the Procurement Act. Its implementation following some
controversy about the status and operation of the previous industrial procurement
supervision mechanism in the ACT, and a memorandum of understanding on procurement
of works and services, otherwise known as the MOU. How the two regimes operated side
by side was also a matter of some confusion. The Code was relatively newly implemented
20 at this time, having commenced on 15 January 2019, pursuant to section 22M. It operated
by requiring any entity wishing to win Territory-funded work to hold a Secure Local Jobs
certificate. Eligibility for a certificate turned on the entity possessing a current report from
an approved auditor stating that the entity meets the requirements mentioned in the code
and compliance with any requirements prescribed by regulation. It was the Secure Local
25 Jobs Registrar who was responsible for granting Secure Local Jobs certificates to
applicants. The Registrar had the discretion to do so if satisfied that the applicant was not
prohibited from applying for a certificate under section 22T of the Procurement Act, and if
the applicant met the requirements mentioned in the Code.

30 Holding a certificate brought with it extensive obligations. In summary, those obligations
revolved around compliance with workplace safety and industrial relations regulations.
The position of Secure Local Jobs Registrar was established by section 22V of the
Procurement Act. The Registrar's functions under section 22W of that Act were to promote
an understanding and acceptance of and compliance with the Code, to undertake research
35 and development educational and other programs for the purpose of enabling holders of
Secure Local Job certificates to comply with the Code, to advise the minister on any matter
relevant to the operation of the Code, to provide secretariat support to the council, and any
other functions given to the Registrar under the Act - sorry, under the Act and any other
Territory law.

40 The Registrar was also responsible for dealing with the complaints in respect of entities
holding a Secure Local Jobs Code certificate who had failed to comply with the Code. The
Registrar was broadly required either to take action in relation to noncompliance or decline
to take action where satisfied that the complaint lacked substance, was frivolous, vexatious
45 or not made in good faith or otherwise been adequately dealt with.

In his role as the Secure Local Jobs Code Registrar, Mr Green was required to liaise with members of the Secure Local Jobs Code advisory council, which included a CFMEU representative, Mr Smith. It is anticipated that evidence before the Commission will further indicate that Mr Smith had a line of communication with Mr Joshua Ceramidas, Ms Berry's chief of staff. That of itself is unremarkable. However, what was communicated by whom to whom and when is relevant to the investigation and the veracity of the rumours I referred to earlier. If available, and whilst he is not presently intended to be called, it may well be that evidence is sought from Mr Ceramidas, but there will be evidence from Ms Berry.

The TET provided its report on 8 March 2020. However, reasons also the subject of investigation, the TER was not accepted by the relevant delegate, instead a second TET or Tender Evaluation Team was assembled on 27 March 2020. The second evaluation team consisted of the following people: Sally Wright from MPC, who was the chairperson; Dylan Blom to whom I referred to earlier from the EDU as a member; and Pal Patel from the EDU to whom I referred to as a member. The second TET was immediately tasked to undertake the same task as the first TET. Its tender evaluation report was provided on 6 April 2020. It provided its report in just 10 days, a task that had taken the previous Tender Evaluation Team some three months.

By this date, the ACT, having endured the bushfires of Christmas 2019, was then starting to navigate the as yet unknown impacts of the COVID-19 pandemic. On 26 March 2020, the Director General of the MPC, Duncan Edghill, emailed his counterpart at the EDU, Ms Katy Haire, requesting that a preferred tenderer for the project be identified with contract negotiations to take place to bring the contract within budget, that is, the position that it originally had been recommended in draft by the original Tender Evaluation Team.

Major Projects' motivation was simple: get projects started in the ACT to support the local economy. Despite positive overtures from both Mr Green and Ms Haire in response to Mr Edghill's request it was not to be the case. I nevertheless instead to call Mr Edghill to explain Major Projects' position. By its tender evaluation report dated 6 April 2020, the second TET arrived as an assessment evaluation where Manteena was now only fractionally ahead of Lendlease with expected total weighted scores out of 100 of 69.1 to 68.4. Lendlease's tender risk rate happening now also been reassessed as low.

The second tender evaluation report maintained the adopting the best and final offer process. Shortly after a BAFO process was commenced, the following BAFO tends were received: Manteena with a total tender price of 15.1 million excluding GST, and Lendlease with a total tender price of approximately 15.9 million, excluding GST. The Lendlease BAFO submission did not comply with the target budget. The total assessment scores were, again out of 100, Manteena, 76.1 and Lendlease, 67.4. In its BAFO tender evaluation report dated 5 June 2020, the second TET recommended that the ACT enter into a contract for phase one of the design of the project with Manteena.

Despite that recommendation, on 22 June 2020 Mr Green provided Ms Haire with a memorandum which recommended that phase one of the project be entered into with Lendlease. On or about 25 June 2020, Ms Haire approved that recommendation, and the

project was awarded to Lendlease. The circumstances leading to that decision and the preparation of the memorandum are also the subject of investigation. I intend to call Ms Haire.

5 The events surrounding the award of the project to Lendlease raised suspicion in respect of whether officials exercised their functions honestly or impartially in making recommendations and decisions. The key witnesses are those who performed decision-making processes or had potential to influence them. They are, in no particular order, Mr Green, Ms Haire, Ms Berry, and Mr Ceramidas. All of the above persons were
10 public officials for the purposes of the Act. They were all well aware of their obligations as public officials and in particular in relation to procurement, including their obligations of probity and ethical behaviour, such as those, for example, contained in the ACT Government Procurement Circular PC21, Probity and Ethical Behaviour, and the ACT Public Service Code of Ethics and the Public Sector Management Act 1994.

15 A subsequent investigation was conducted by the ACT Auditor-General which resulted in the publication of a report which heavily criticised the probity of the procurement process. The report is in a bundle of material that I intend to seek to tender shortly. That report, though seriously critical of the process, which was undertaken, did not describe in detail
20 how the impugned decisions were made nor the roles of all of the significant persons in the process. The Commission has obtained evidence that could reasonably support a conclusion that particular individuals actively participated in the process to bring about an outcome, despite that which legitimate procedures proposed and have sought to conceal that conduct.

25 There are a number of matters relevant to the public interest in this inquiry that are uncontroversial. The project included the significant expenditure of public funds. The project was of significant importance to the local Campbell community, and there is a significant public interest in the exposure of and prevention of corrupt conduct. Unless the
30 evidence leads elsewhere, I intend that the public examination will be confined to both a set period of time, being 2019 to 2020, and a singular relevant project. To that extent, it involves in essence two critical moments: namely, that the decision to proceed to BAFO, and the decision by Ms Haire to award the project contract to Lendlease on Mr Green's recommendation. Ultimately, the Manteena bid, if accepted, had the potential to save
35 public funds in the amount of \$897,366, and may have represented a significantly better value for money solution for the project. In addition to public funds, there is also the potential that the Manteena bid represented a lost opportunity for improved performance and product for the project which was seemingly awarded for a purpose other than being value for money. That is in no way to denigrate the performance of the job by Lendlease.
40 However, it is at least presently clear that Manteena's bid ought to have been preferred.

45 These matters are serious. So too is the potential for findings that is the interference in and the abuse of government procurement processes to achieve outcomes that do not represent the best value for money for the community. The public and the people of Campbell place their trust in those who make procurement decisions on their behalf to do so fairly, impartially and in their interest. On the present evidence, that trust appears to have been fractured. The central issue in this investigation concerns whether the system for dealing

with the significant procurements in the Territory and which apply to the project had been undermined by inappropriate conduct at either a political or bureaucratic level or both. If this occurred, it has the substantial significance for the integrity of the - sorry, it has substantial significance for the integrity of the system itself, although here we are
5 examining a single procurement. Further, the conduct, the focus of examination, was not confined to an Act or event nor a single individual but involved communications between the delegate and the relevant tender evaluation teams, between the minister's office and the EDU, and the devising of a way at a high level to bring about an outcome.

10 For the purposes of making its findings, the Commission will need to assess the credibility of witnesses and the evidence they give. It must assess that evidence on a civil burden, that is, what is more probable than not, noting just how serious the above matters are, to arrive at findings of fact. Anyone giving their evidence should bear in mind that a person who
15 knowingly gives false or misleading evidence to this Commission, whether in private or in public, is liable to prosecution for an offence punishable by a fine or imprisonment or both. Persons of interest have been given leave to be legally represented, as is their right. Those representatives may apply in accordance with the Act to cross-examine other witnesses, noting of course the Commission's guidelines for doing so which are available on the Commission's website, and that for the most part the principal role of examining and
20 cross-examining witnesses belongs to me.

The witnesses are entitled to watch the evidence of each other, and may feel free to attend the Commission for that purpose. They will all be required to provide their evidence in person. In circumstances where this investigation has been ongoing for some time, and the
25 Commission has already obtained a wealth of material by collecting documents and interviewing witnesses, if a person gives false or misleading evidence it is a good chance the Commission will already be possessed of information that demonstrates that to be so.

Commissioner, I now intend to call Mr Green. Would it be a convenient time to do so after
30 a short adjournment?

COMMISSIONER: Yes, we will adjourn for a short time.

<THE HEARING ADJOURNED AT 11.01 AM

35

<THE HEARING RESUMED AT 11.34 AM

COMMISSIONER: Yes. Swear the witness, please. I'm sorry, I should ask you do you
40 wish to be sworn or affirmed?

MR GREEN: Affirmed, Commissioner.

<JOHN GREEN, AFFIRMED

45 MR O'NEILL: Thank you, Commissioner. Can I just indicate for you, there are two hearing books to which witnesses will be taken. Volume 1 of the hearing book is intended to be tendered or made available shortly, and can I just explain to you what it contains in it.

It contains firstly a copy of the AG Report, secondly, requests for expressions of interests in relation to this project. It contains the report for the first tender evaluation report, the second tender evaluation report and the best and final offer evaluation report. It has a memorandum from Mr Green, who will give evidence shortly, to Ms Haire. It contains the MOU which I addressed to you in my opening. It also has the explanatory statement for the government procurement Secure Local Jobs Amendment Bill contained within it. It has evidence that was given before the Auditor-General from Mr Green, Ms Haire and Ms Cross. And that is intended to be the first volume. The second volume contains other information which will become apparent as the investigation continues.

<EXAMINATION BY MR O'NEILL

MR O'NEILL: Now, sir, before you is a piece of paper, do you see it?

MR GREEN: Yes.

MR O'NEILL: And on it is contained some details. Firstly under the subheading name, is that your name?

MR GREEN: Yes.

MR O'NEILL: Under the heading address, is that your address?

MR GREEN: Almost, counsel.

MR O'NEILL: What's your address?

MR GREEN: It's spelt incorrectly.

MR O'NEILL: Good. We will have that fixed. That was probably my error. And then underneath the subheading telephone, is that your telephone number?

MR GREEN: Yes.

MR O'NEILL: Thank you. Commissioner, that piece of paper should be provided to you so that you have proper identification that this is the correct witness.

COMMISSIONER: Thank you.

MR O'NEILL: Can you start by providing some biographical details as to your curriculum vitae, that is, firstly where you completed your tertiary education, and then move through to your role in the EDU?

MR GREEN: Yes. So, counsel, I completed a Bachelor of Engineering at Sydney University in 1993. I then worked for some years in local government. I then worked in the private construction sector and joined ACT Government in, I think, 2011. Sorry, I can't remember exactly that time, but around 2011.

MR O'NEILL: Do you recall what role you started in 2011 with the ACT --

MR GREEN: I started - sorry -

5

MR PARARAJASINGHAM: Sorry. (indistinct) hearing. I wonder whether (indistinct) speak up a little bit.

MR O'NEILL: Yes, I can speak up. Yes. That is an unusual request for me, I must say, Commissioner, but I'm happy to do so. Can you assist us then, Mr Green, with the first role you had with the Territory?

MR GREEN: I cannot remember the title. Essentially, I was a team manager in Shared Services Procurement or it's - whatever title it was at the time; it moved titles quite regularly. And I worked in that role for some years before becoming a director, as they were called, a SES band 1 role in that organisation later in possibly 2013. I then continued to work within that same organisation. So it changed names from Shared Services Procurement to Procurement Capital Works or Infrastructure Finance and Capital Works at various times. And then in November 2018, I was appointed as the Secure Local Jobs Code Registrar and moved from that procurement capital works kind of organisation to work within CMTEDs, so Chief Minister, Treasury and Economic Development Directorate, which is central government, ACT.

MR O'NEILL: Right. Now, the circumstances in which you were appointed as the Registrar, can you assist the Commission in respect of how that came about?

MR GREEN: I believe I replied to an expression of interest to take up a role as the Registrar for a temporary period, which I think was sort of end of 2018 through to midway through 2019. That - I was encouraged to apply for that role because I had been involved with some of the drafting of Secure Local Jobs in 2018.

MR O'NEILL: How had you become involved in some of the drafting?

MR GREEN: The Infrastructure Finance and Capital Works - the organisation I worked for at the time was involved with procurement and I was asked to become involved because I understood the way the construction intersection of the industry worked and could provide examples of where procurement and the Secure Local Jobs needed to work together and how that could work from a practical sense.

MR O'NEILL: In that role, had you come across the memorandum of understanding in respect of procurement?

MR GREEN: Yes, both versions of it. I had been involved with some conversations at the time the second version of that was signed and attended some meetings on that second version of the MOU.

45

MR O'NEILL: And was there a view expressed to you as to a need for that memorandum to be otherwise changed by the application of a Code, or how did that come about?

5 MR GREEN: So my understanding is that Secure Local Jobs, which was a government initiative, was designed to replace the MOU because the MOU, yes, it was to add more weight to the MOU.

MR O'NEILL: When you say "weight", what was the specific problem?

10 MR GREEN: The MOU was basically an agreement between unions and the ACT Government and had no particular standing in any procurement processes.

MR O'NEILL: When you say standing, you mean it wasn't --

15 MR GREEN: None. It only put in some practices that were part of procurement practice in, if you like, in the ACT. It didn't have any links into the legislation or requirements.

MR O'NEILL: How did the Code change that?

20 MR GREEN: The Code provided a number of steps in the procurement process that were mandated. They were part of the Act and needed to be followed. It also - so it put some mandatory steps in. It added some other mechanisms like Code certificates and a certification regime for which contractors and people wishing to provide goods and services - sorry, services to the Act Government had to prove their industrial relations
25 practices were compliant with the Code.

MR O'NEILL: What was your role then as Registrar on a day-to-day basis once you were appointed in that position?

30 COMMISSIONER: Just before you do, so although it was called the Secure Local Jobs Code, and it did involve ultimately in the procurement process a weighting in respect of local employment, it was not limited at all just to that issue; that's right, isn't it? The Code required in order to get a certificate compliance with what might be called industrial relations integrity.

35 MR GREEN: Yes, Commissioner. The Code was largely focused on industrial relations issues rather than local industry participation kind of issues, and it was carefully drafted to work around and not conflict with the Commonwealth Fair Work Act. So it was explicitly stated in the Code that nothing in the code contravened the Fair Work Act. So it was really
40 focused on those industrial relations issues.

MR O'NEILL: Thank you, Commissioner. My question was the day-to-day conduct of the Registrar.

45 MR GREEN: Okay. So the Registrar had roles under the Secure Local Jobs sections of the Procurement Act in issuing of certificates and investigating matters and dealing with complaints; there is a whole section in there. The day-to-day role of it was - first and

largest piece was educating industry around Secure Local Jobs obligations and helping industry meet and understand what was expected of them by the Code and the other - or the Code is the key document there. The Registrar had a role of signing - issuing Code certificates, so Secure Local Jobs Code certificates. In that role, an independent approved auditor would look at the company and confirm based on a report template developed with Secure Local Jobs that that company was paying their workers and meeting a whole bunch of industrial relations obligations across the way there. That report would come in and ultimately on the basis of that report, I would issue certificates to companies, giving them a Secure Local Jobs Code certificate.

COMMISSIONER: So you didn't yourself do the auditing; that was done independently. You received the reports and then if they were satisfactory, you could issue a certificate?

MR GREEN: Yes, Commissioner.

MR O'NEILL: And the education piece in that, that is the speaking with industry, how is that done in a practical sense?

MR GREEN: It was done in a few different formats. So there would be broad educational pieces arranged by the government, my staff and other parts of the government where I would go and talk to the industry about specific matters like Secure Local Jobs, the needs certificate, and how the process flowed through. Then there were more targeted engagements. I recall having a number of sessions at the Master Builders Association into their members and giving - educating them about how a labour relations training workplace equity plan should be addressed and sort of issues that we were seeing in those. I remember engaging with the auditors and talking with the auditors around what we were seeing from their audit reports and, you know, giving the auditors feedback as to what issues we thought they were covering well and which issues they needed to talk on more and also have a conversation with the auditors about what to do if they found issues during the course of their audits. And specifically I would talk to companies about specific questions they may have with they contacted the email or the phone, and walk them through issues that they might need help with in addressing, as well as working within government to talk to the people within various procurement and directorates around how they should set up their processes to address secure jobs compliance.

MR O'NEILL: The relevant industry persons, that is the companies, had you been aware of those before you had become the Registrar in your other roles in procurement, etcetera?

MR GREEN: So, from my time in procurement, I was aware of companies where their industrial relations record had been questioned by industry stakeholders or unions. I was aware of other companies that had performance issues with - with the undertaking of capital works projects or work health and safety matters. So I had a good broad industry knowledge as well as specific knowledge about certain contractors who I worked with over my years.

MR O'NEILL: Did that specific knowledge traverse an understanding of a company known as Lendlease?

MR GREEN: No. I don't think I had ever had Lendlease doing any construction work for me. I knew of them by general reputation.

5 MR O'NEILL: And as at the time when you were the Secure Local Jobs Registrar, did that specific knowledge traverse any knowledge of Manteena Commercial Pty Ltd?

MR GREEN: Yes, it did.

10 MR O'NEILL: And what was that knowledge that you possessed of that company?

MR GREEN: So I had had Manteena do - undertake projects for me in my capital works
roles. So I knew how they operated as a company. I knew what their safety record was
like, and I knew that the CFMEU regularly had concerns about how they went about their
15 industrial relations practices.

MR O'NEILL: And how did you know about any regular engagement by the CFMEU?

MR GREEN: With Manteena, counsel?
20

MR O'NEILL: Yes.

MR GREEN: I didn't have specific knowledge. It was an ad hoc conversation piece at
times. I think I met Manteena more regularly than I met the CFMEU across those years.
25

MR O'NEILL: And when you say, "those years", you mean the years when you were in the
role or the years prior to coming to the --

MR GREEN: The years prior to coming to the role.
30

MR O'NEILL: So then when you became the Registrar, can you explain to the
Commission what the role of something called the "advisory council" was.

MR GREEN: Okay, the Secure Local Jobs section of the Act, or regulation, set up a
35 ministerial advisory council that was made up of six members. Those members were
appointed by the minister. I think the mix of the members was to be three members
possibly nominated by the industrial stakeholders. I can't remember the exact words,
Commissioner, sorry. But certainly three union members and then three other members
representing interests of employers and employees who had an interest in those matters.
40 The Registrar was essentially an ex officio member and would arrange the meetings. The
meetings were held regularly. I think monthly was the frequency I can remember. They
were generally held in the meeting room downstairs in Nara, if that is of any consequence.
We poked that room out, we had that meeting on a regular basis, and we gave the
advisory council updates as to what the number of certificates were, the number of
45 investigations that were underway there, the - we would discuss issues around Secure
Local Jobs documents. So complaints handling procedures - investigation handling
procedures, sorry, and any other guidance material we were developing at the time, and get

their feedback on matters. At times the minister sent a representative along to at least a couple of those meetings, but they weren't a regular attendee.

5 MR O'NEILL: And what was your role then in that ex officio capacity? What was your role in the meetings themselves?

MR GREEN: Generally producing the documents and redrafting documents based on their feedback, giving them the updates about the statistics, ensuring the meeting was run, and then reporting issues raised at the meeting back to the minister when she didn't have a representative there.

MR O'NEILL: Do you recall who the unions were that were represented?

15 MR GREEN: I think they were individuals rather than actually union reps, but the three representatives were Zac Smith from essentially Unions ACT, Lyndal - sorry, I have forgotten Lyndal's surname, from United Voice, and Mr Smith from the CFMEU.

MR O'NEILL: So you have said Zac Smith twice. Just clarifying that answer.

20 MR GREEN: Sorry, Alex Smith and Zac Smith.

MR O'NEILL: Thank you. So Alex Smith, and if I understand the import of your answer, Unions ACT.

25 MR GREEN: Yes.

MR O'NEILL: Zac Smith from the CFMEU, and Lyndal forgotten last name from United Voice.

30 MR GREEN: Yes.

MR O'NEILL: Okay.

35 MR GREEN: Lyndal Ryan. Sorry, it's come to me.

MR O'NEILL: Thank you. Now, do you remember how those meetings were chaired and who chaired them?

40 MR GREEN: Meredith Whitten who was a member of the committee was the chair of the meetings. So Meredith chaired them, and I prepared the papers.

MR O'NEILL: And do you recall any specific mention at any of those meetings about firstly Lendlease?

45 MR GREEN: No.

MR O'NEILL: Or Manteena?

MR GREEN: No. I - it was unusual to talk at those meetings about particular companies. I don't recall that happening, not in the formal sense of the meeting. There might have been some conversation, but generally companies weren't discussed at those meetings. It was
5 designed to be more strategic than day to day.

MR LEE: Commissioner, sorry, but it's very difficult to hear Mr Green's answers.

COMMISSIONER: Perhaps you might try and speak up. I don't think - that is for
10 recording. I don't think we have loudspeakers. So you just need to try and speak up.

MR GREEN: Yes, Commissioner.

COMMISSIONER: So perhaps you could say what were the kind of issues which would
15 be on the agenda?

MR GREEN: Stats were always a fairly important one to start with, just to understand the number of companies that had got a certificate and the number of investigations. They were always keen to know how the investigations were going against the complaints that
20 had been raised. There was a fair bit of conversation around the investigation guidelines and how that should go about. That was at the start of the process. Then as the year went on, there started to it be a lot of conversation around bringing the community services sector into Secure Local Jobs, because that was a change to the breadth of the scheme later in 2019. So that was a key item. And then later in the year, the conversation - a large part
25 of the conversation was around where the - where the Code couldn't be implemented against the Fair Work Act. Sorry, I have explained that really poorly. There was a conversation going around. We - we in this case, the unions - the unions thinking that the representation, the bargaining reps were being gamed by contractors and their view on how that should be controlled by the Code, and then a fair bit of conversation around the
30 conflict, if we - if we tried to do what was being asked, we would find ourselves in conflict with the Fair Work Act and then a lot of conversation around how that could play out.

COMMISSIONER: In part, this was because industrial relations was a subject matter for certification that quite - where borders were of that task was necessarily unclear because of
35 the interaction of the Code with the Commonwealth legislation.

MR GREEN: Yes, Commissioner. That was a hard area and, as I said, my training is engineering not legal, and that was an area that was difficult to navigate.

40 COMMISSIONER: Well, you didn't want to become the labour relations tribunal.

MR GREEN: No, Commissioner, absolutely correct. Sorry, Commissioner and counsel, the other area that was talked about a bits with zombie industrial agreements. I remember that also being a fairly topical point at one time there. Some of the enterprise agreements that had been signed some time in the past and were still - had never been replaced and
45 then how - how to deal with that. So I remember some fruitful conversations around that and essentially the approach that we worked out and then discussed with the auditors was

that if a company had a zombie industrial agreement, they would also check against what the current award conditions were. I remember that being a fairly topical conversation for a number of months as well.

5 MR O'NEILL: Do you remember any identities any companies being associated with zombie collective agreements?

MR GREEN: No, sorry, counsel.

10 MR O'NEILL: Now, in relation to this procurement, that is the one for the Campbell Primary School Modernisation Project, I will just call it the Project, the procurement plan minute was signed on 10 July 2019. Would you have had any involvement with that document?

15 MR GREEN: No, I was not at Education at that time.

MR O'NEILL: Okay. So you were still the Secure Local Jobs Registrar, and it sat well away from education?

20 MR GREEN: I was in the CMTED Directorate, central directorate.

MR O'NEILL: And so how long did you sit as the secure local Registrar before you came across to Education?

25 MR GREEN: I was the statutory Registrar from November 2018. I held that statutory appointment for some length of time, even when I was in Education as an executive in the role of executive branch manager, Secure Local Jobs, which was my government part of that. I started in that role effectively in late 2018 while dual-roleing in capital works. I was in that role through to - I took an acting opportunity in Education in September/October
30 2019, then I returned to CMTED where I acted - I was back in my substantive executive role until mid-January 2020 when I moved to Education and took up a acting role as the executive branch manager of ICW. But I still held the statutory appointment for some length of time after that, but I wasn't acting as the Registrar. I had delegated my --

35 MR O'NEILL: Just explain how that happened. Like, how does that occur?

MR GREEN: There's - there's a split between a statutory function and an executive appointment. And so while I had a statutory appointment as Secure Local Jobs Registrar and reported to the minister, I had an executive role within the ACT Government, and I
40 report within an executive chain for that. It's similar to other roles to other ACT government, there are statutory appointments, so the Construction Occupations Registrar, for instance, and we work as executives within the government, but we hold a statutory role outside of that.

45 MR O'NEILL: So when you came over in the short period, we will call it the first short period with the -

MR GREEN: Yes.

MR O'NEILL: With the Directorate.

5 MR GREEN: In 2019?

MR O'NEILL: Who did you report to at that point in time?

MR GREEN: When I came into Education?

10 MR O'NEILL: Yes.

MR GREEN: In Education, I reported to the acting Director-General at the time, who was Meg Brighton.

15 MR O'NEILL: Who was whom, sorry?

MR GREEN: Meg Brighton.

20 MR O'NEILL: During that period of time, had you had any visibility in respect of the Campbell project?

MR GREEN: During that period of time, the tender evaluation report for the EOI process came to me, and I signed that off as the acting executive group manager of business services at the time.

25 MR O'NEILL: And what does that process involve, that is, the signing off of an expression of interest document?

30 MR GREEN: So there was an evaluation report prepared by the Tender Evaluation Team, and that came to me with an executive brief asking for my agreement to that report and asking me to make a decision - it was essentially at the back of the tender evaluation report, and I made that decision.

35 COMMISSIONER: So you were the decision maker. You didn't have to refer it to anyone else?

MR GREEN: I was the decision maker. I had the delegated authority, one of acting in the role of acting executive group manager, I had delegations from the Director-General to make certain decisions.

40 COMMISSIONER: And this was one of them?

MR GREEN: That was one of them.

45 MR O'NEILL: What was that delegation with specific attention to the way in which it allowed you to make that decision?

MR GREEN: I think, as I understand you correctly, counsel, the delegation, I had a delegation under the Procurement Act to make decisions on behalf of the Director-General who is the ultimate decision maker for projects - capital works projects to limit of budget, and I had some other delegations under the Act to allow some single select bits and pieces. But again, the relevant one in this case was delegation to make a procurement decision to limit a budget.

MR O'NEILL: And do you recall the budget limit?

MR GREEN: The limit of budget is limit of whatever funds the government has allocated to that case. A EOI is a no dollar procurement, so it doesn't actually really matter what the value of it was.

MR O'NEILL: Right. So in respect of at least this process it wouldn't matter how big --

MR GREEN: Yes.

MR O'NEILL: -- the relevant procurement work was being undertaken, you had the delegation to at least move it into the next stage of evaluation?

MR GREEN: Yes.

COMMISSIONER: Can I just ask this in relation to the delegation, was it to you personally or was it to the position that you held?

MR GREEN: The delegations are to the position, Commissioner, and I had an executive contract that says I was that position.

COMMISSIONER: Right.

MR O'NEILL: In undertaking that function, what did you at that point understand the Campbell project to be?

MR GREEN: I understood it to be a medium value school upgrade project, I think \$90 million is my sort of number, but I can't actually recall that accurately. The decision that I was being asked to make was to reduce a EOI list of, I think, six respondents to a shortlist of two, who would then be asked to tender on that project via a two-stage GC21 contract to undertake the upgrade of the school, which meant removing the remaining class blocks and building new learning communities in their place. I had previously had some involvement with a previous project at Campbell, so I did understand the site.

MR O'NEILL: And what was that previous involvement?

MR GREEN: We had demolished one of the teaching blocks that was full of asbestos as a project following on from the Mr Fluffy demolition program.

MR O'NEILL: And that demolition had not yet been rebuilt, in effect?

MR GREEN: This was the rebuild of that demolition - or rebuild of the teaching facilities at Campbell, a lot of which we had previously demolished.

5

MR O'NEILL: Did you know what was happening at the school in the relevant period between demolition and this project?

MR GREEN: Not really.

10

MR O'NEILL: Now, returning then to the council, that is the advisory council at Secure Local Jobs Code, you said that one of the members was Zachary Smith. Had you had previous interactions with Mr Smith prior to him being a member on the advisory code?

15

MR GREEN: Yes.

MR O'NEILL: Council, rather?

MR GREEN: Yes.

20

MR O'NEILL: And when were they?

MR GREEN: I had met with Mr Smith in his CFMEU roles over years before as part of the normal industry stakeholder engagement activities that take place in procurement and capital works or capital works in general, and I don't know how many times that I met him on either specific issues or general conversations or at meetings that we had attended with the union or meetings about WorkSafe matters at various times. I'm pretty sure I met him at one of the Getting Home Safely meetings as well. So I met Mr Smith a number of times over the years.

25

MR O'NEILL: The Commission is interested in the level of the relationship between persons and the level of communication. Is that relationship one, for example, where you had each other's mobile phone numbers, that is, whilst you were the Registrar?

30

MR GREEN: Yes.

MR O'NEILL: And is it one where you would meet both formally, that is in a formal setting such as the advisory council, and also informally?

35

MR GREEN: Yes.

COMMISSIONER: Do you mean by informally socially?

MR O'NEILL: Yes.

40

MR GREEN: I wouldn't meet socially with Mr Smith. I would meet in a - in a work capacity with Mr Smith in possibly a more social environment like, I don't know, outside on the street or at another site or something else.

5 MR O'NEILL: And did Mr Smith ever --

COMMISSIONER: But for work purposes of one kind or another?

MR GREEN: Yes, Commissioner, for work purposes.

10

MR O'NEILL: Had Mr Smith ever expressed any views to you as to his views of various contractors in the Territory?

MR GREEN: Yes.

15

MR O'NEILL: Now, we are focusing in on two of them. Firstly, Lendlease, had he ever expressed a view in respect of that entity?

20

MR GREEN: I - look, I don't recall. I don't - I didn't - I don't make note of it. It could have been. I don't recall any specific examples of that entity.

MR O'NEILL: And what about Manteena?

25

MR GREEN: Again, similar. I don't recall. It could have been some general comments somewhere, but I do not recall any specific reports, discussions around Lendlease or Manteena until --

COMMISSIONER: Well, there was later correspondence; we will come to that in due course.

30

MR GREEN: Yes.

MR O'NEILL: What was his level of involvement on the advisory council from your observation?

35

MR GREEN: He was fairly heavily invested in it, would express his view in the meetings and make known his position on the matters.

40

MR O'NEILL: And generally speaking, what was his position in respect of the way in which you as Registrar should perform your role?

MR GREEN: He thought we needed to be stronger and kick more contractors out, and yes, be more active and taking a more sort of Fair Work role.

45

MR O'NEILL: And what was your --

COMMISSIONER: Sorry, when you say kicking --

MR GREEN: Sorry, not - investigating --

COMMISSIONER: Not certifying them.

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MR GREEN: Not certifying contractors and investigating and taking their certificates off them on the basis of complaints received or raised.

MR O'NEILL: Was he fairly forward in expressing those views to you?

10

MR GREEN: Yes.

MR O'NEILL: What did you do with that kind of information?

15

MR GREEN: I would talk about it with my minister. I would talk about it with my public service boss who was the chair of the committee and discuss approaches there.

MR O'NEILL: Now, just to clarify, who was your minister? It's not the same as in the Directorate?

20

MR GREEN: Early on, it was Minister Stephen-Smith, and then later it changed to - I think Minister Ramsay for a couple of weeks and then Minister Orr.

25

COMMISSIONER: Leaving aside the particular issues that might provoke an exchange, are those exchanges really did raise quite important questions of policy about the role of the Code and the role of the Registrar, much more widely than just the particular issue that started the discussion off?

30

MR GREEN: I think that's a fair summation, Commissioner. I think the - the view from the unions at various times was that Secure Local Jobs didn't go far enough and they wanted it to go further, and they were passing on that conversation. There was a ministerial advisory council, so they were making sure that that view was understood.

35

MR O'NEILL: When you say "further", did he explain to you what it was that he and the union were looking for in relation to how further --

40

MR GREEN: So one of the really topical matters at the end of 2019 was around who should be the bargaining representatives in a bargaining situation. My understanding is the Fair Work Act set out a process by which companies could appoint bargaining representatives, and the union's view was that that process was being gamed by certain contractors, possibly with advice from other industrial stakeholders about how that could work, and their view was that the Secure Local Jobs Code should contain requirements that made it a Secure Local Jobs Code complied entity be required to discuss bargaining representatives with the union before they entered bargaining negotiations.

45

MR O'NEILL: Did the topic ever move into the way in which the Secure Local Jobs Code interacted with procurement?

MR GREEN: Yes, I'm sure it did. So I mean, Secure Local Jobs interact with procurement in a number of different ways, and there was some conversations around should Secure Local Jobs' team do all of the assessments about Secure Local Jobs or should it be left to the Directorates in their own Tender Evaluation Teams. That was certainly a topic of conversation. I think the view could be described as - I think my view was that I don't have the staff to do that, and to which I think the comment came back from at least one of the union reps is, well, tell me how many staff you need, and we will tell the minister - kind of approach. So that - I don't - well, we didn't get a budget increase to do it, so - but that budget cycles were always interesting in the ACT Government to work with timing, when that was been done was just after a budget, so it wouldn't have been a prompt submission. So that was certainly discussed. There was - yes, certainly the - that we should do all the assessments, and yes, they were the - I think the main pieces.

MR O'NEILL: And what about in relation to the way in which the memorandum of understanding either still applied or didn't, or had been superseded? Was that ever a topic that was addressed in the advisory council?

MR GREEN: I don't recall it being addressed in the advisory council. I think - I'm not - sorry, not with any degree of substance. I think if I was aware, the MOU was still there. The MOU in my time with Secure Local Jobs I don't think was ever formally cancelled, if that's the word between the parties, or agreed that it didn't exist anymore between the two parties. It just kind of - it fell by the wayside. The substantive positions of it was picked up in the - in Secure Local Jobs and some of the other practice matters like when a tender comes in the unions are advised, we are just now a matter of practice within the procurement processes within the ACT Government.

MR O'NEILL: And so do we understand that answer to mean that the conventions that had been established under the memorandum of understanding in respect of notifying Unions ACT of procurement tenders that just continued as a matter of course without anyone turning their mind, at least to your knowledge, of how that was to happen.

MR GREEN: Correct. That was just BAU by that stage.

MR O'NEILL: Now, the auditors --

COMMISSIONER: Just to translate, you mean business as usual.

MR GREEN: Sorry, Commissioner, business as usual.

COMMISSIONER: Yes.

MR O'NEILL: Now, the auditors, they were independent, you said. How did you become - how would one become an auditor for the purposes of the Code?

MR GREEN: So late in 2018, we put out a - I will call it an expression of interest - approach to the market in some form or another inviting suitably qualified people

to register as auditors under Secure Local Jobs. Now, previously there had been a scheme called the industrial relations and employment obligation scheme, so IRE, which was sort of a precursor set up under the MOU to Secure Local Jobs. So the auditors on the IRE list were part of the target audience for that auditor EOI. We also picked up some other
5 auditors and lawyers from other parts of ACT location, who were interested in being Secure Local Jobs auditors. They were given a form to fill in that asked them to verify their credentials as to what auditing they had done, what their experience was. That was assessed by my team, and I think I made the decision about which of those people could become auditors. That was a function of the Registrar to do that.

10 COMMISSIONER: So you established a panel.

MR GREEN: So we established a panel. That panel was publicly advised on the Secure Local Jobs website and companies were told that they could choose their own auditor off
15 that panel. They were approved. And that company did their audit and prepared the report for the Registrar to consider for the issuing of a Secure Local Jobs Code certificate.

MR O'NEILL: Now, do you recall whether you had ever considered an audit that had been prepared for Lendlease in your role as the Registrar?

20 MR GREEN: I must have, because I issued them a certificate. So they had an audit done. It would have been assessed - or it was assessed by my staff, and I ultimately issued them a certificate.

25 MR O'NEILL: Right. I'm just going to bring up a document for you. It's in volume 1.

COMMISSIONER: While that's happening, perhaps the most - correct me if I am wrong about this, but perhaps the most significant interaction between procurements on the one hand and the Code on the other is that a company that was making a bid had to produce a
30 current certificate of compliance with the Code. Is that correct understanding?

MR GREEN: That's correct, Commissioner. I'd add a few bits extra. The company - the Territory wasn't allowed to consider a bid that - from a company that didn't have a certificate.

35 HIS HONOUR: Right.

MR GREEN: So it wasn't as much about they had to produce the certificate, but the Territory wasn't allowed to consider a bid from a company that didn't have the certificate.

40 COMMISSIONER: In short - well, they wouldn't tender or couldn't tender effectively without that certificate.

MR GREEN: They couldn't successfully tender. They could put the tender in, there was
45 nothing to stop them putting it, in but the --

COMMISSIONER: It was a necessary condition of any tender approval that they have a current certificate?

5 MR GREEN: For works within the scope of Secure Local Jobs. So all construction projects, in that sense.

MR O'NEILL: Right.

10 MR GREEN: And that was - sorry, there was a bottom dollar threshold as well. So - sorry, there wasn't a bottom dollar threshold for construction. Construction of all companies had to have the certificate.

15 MR O'NEILL: So then if you wanted to stop a company, at least within that framework, from getting a tender you had to - they had to lose their certification.

MR GREEN: Yes, Commissioner. The - the way for a company not to be able to get any ACT Government construction work was to not have a certificate.

20 COMMISSIONER: Right.

MR GREEN: If they didn't have a certificate, they couldn't get work.

25 MR O'NEILL: And what was the mechanism by which someone's certificate could be taken away from them?

30 MR GREEN: So the - one of the Secure Local Jobs documents set up a sanctions scheme. So essentially it was a points system like a driver's licence. If you collected enough points, you could have your certificate revoked. If you already had a certificate, there was a different mechanism for not getting a certificate in the first place. But once you had a certificate, essentially it was like a driver's licence. You had points, and if you collected enough points the certificate could be revoked or suspended or - yes.

35 MR O'NEILL: Now, the previous questions I asked you about the certificates were related to Lendlease. This one is not. What is before the Commission now at 1.278 of the first bundle, which is before you now?

MR GREEN: Yes.

40 MR O'NEILL: What is it?

MR GREEN: That's a Secure Local Job Code certificate.

MR O'NEILL: Right. And this is something that you yourself issued?

45 MR GREEN: John Green did?

MR O'NEILL: Yes.

MR GREEN: Yes.

5 MR O'NEILL: Yes. And underneath the black box is presumably your signature. Do you recall that.

MR GREEN: Yes.

10 MR O'NEILL: And the relevant person - it says on it "approved". Do you see that by that person.

MR GREEN: Yes.

15 MR O'NEILL: What does that mean?

MR GREEN: So that's the name of the auditor and the auditor's registration number. So this one was done by Vince Ball and his registration number as an auditor was 18.

20 MR O'NEILL: And this is effectively what a certificate looks like as at 2018?

MR GREEN: Yes. This is what one of the early ones, certificate number - whatever. Number 8. So this is a really early certificate. And issued for a 12 month - sorry, two-year period. December 19, December 2018 to 19 December 2020. So that was the --

25 COMMISSIONER: Does it follow from that that you have to seek a renewal of the certificate every two years?

MR GREEN: Yes.

30 COMMISSIONER: And does that mean in effect you have to be audited every two years?

MR GREEN: Yes. And, Commissioner, that duration would also vary depending upon what was known of the company. So, for instance, Manteena was a known company with a history that the contract - that the auditor could look at. Whereas a newly set up company
35 was given a shorter term, and because we would see some new companies coming on board that we hadn't seen before, and some of them were brand new companies, so the auditor was asked about the - how long the company had been trading and a company that hadn't been trading for as long or had some other concerns would get a shorter term certificate and then therefore have to be re-audited again more frequently.

40 MR O'NEILL: Now, had Mr Smith spoken to you about at any time about the - about this company, that is, Manteena Commercial?

45 MR GREEN: At the time of this certificate?

MR O'NEILL: Yes.

MR GREEN: I don't recall any specific conversations. He might have mentioned Manteena in other conversation around other general construction updates, sort of territory.

5 MR O'NEILL: Right. And so when you say he might have in respect of other matters, can you assist the Commission as to when that may have occurred firstly?

MR GREEN: Okay. So we would meet with the unions at various times in our capital works functions, to meet with the unions at various times there, and other times we would get feedback from the unions about particular contractors. He may have mentioned
10 Manteena at some point beforehand. I don't - but I wouldn't have received a complaint, say, under Secure Local Jobs by this stage. This was really early in the process.

MR O'NEILL: Right. So when you were talking about discussing it with him, my question was when. Do you know when that might have occurred?

15 MR GREEN: No, sorry, counsel.

MR O'NEILL: Now, doing as best you can, can you recall about - can you recall any other complaints or issues that Mr Smith had raised with you during your time as the Secure
20 Local Jobs Registrar?

MR GREEN: I recall a number of companies that were raised by the CFMEU and I'm not sure if it was Mr Smith at all those occasions, but I could walk you through those
25 companies.

MR O'NEILL: So who else could it have been, firstly, other than Mr Smith?

MR GREEN: There was an industrial officer, industrial lawyer, Tim Fisher, I think, and then there was another assistant deputy secretary organiser type whose name escapes me.
30 So there was at least three contact points from the CFMEU. So companies that they raised concerns about were Manteena, a couple of civil contractors. I recall Cord Civil being in there. There was a painting company, whose name I can't remember that popped up a few times. There was Canberra Contractors, who they, I think, lodged a complaint about. There may have been more; they were the standouts.

35 MR O'NEILL: So in or about October 2019, you then transferred into your position as the executive group manager, business services at the EDU?

MR GREEN: I had a - I think a five- or six-week temporary role in Education while the
40 incumbent went on some leave.

MR O'NEILL: And during that period, what was it that you were tasked to do in respect of this project, if anything?

45 MR GREEN: The project, as I said, I saw the paperwork come through for the EOI project - sorry, the EOI evaluation. And I made that decision as to shortlist the two

tenderers there. I don't recall any other particular involvement with the project during that time I was in Education.

5 MR O'NEILL: Now, you gave some answers earlier about the way in which you were interacting with the union. If you could be shown document number 2.0199, and just in respect of that document, starting firstly at actually page 200, at or about halfway down the page. If you could just take out for me from the words "Hi Tom" and just make them bigger. Thank you. So, this is an email from Darren Smith. Firstly, who was he?

10 MR GREEN: So Darren Smith was filling in as the Secure Local Jobs Code Registrar while I was in Education.

MR O'NEILL: Yes. The date of this email is 17 October 2019. It's from Mr Smith to Mr Fisher. You see there that he is talking to Mr Fisher who - Mr Fisher has a CFMEU address. Is he - does that accord with your recollection of the person?

MR GREEN: Yes, that was the legal officer I was thinking of from the CFMEU.

MR O'NEILL: You see there it says:

20 *Hi Tom, please find attached my response to the CFMEU letter dated 19 September 2019. As discussed the intention is to meet and discuss this further.*

25 Then, if that could be taken down, and then return to 199 at the bottom of the page. You'll see "Dear Darren", if that could be extracted and made bigger for Mr Green, please. Do you see there there's a response from Mr Fisher? He lists his title as the Legal Industrial Officer. That according with your understanding who he was?

MR GREEN: Correct.

30 MR O'NEILL: He says:

Thank you for your letter.

35 It's the same date, that is 17 October. And then above that email, if we can just take that down and then go to the email above, do you see there's a response from you:

40 *Hi Tom, please find further attached the response regarding the other subclauses of clause 15 of the Code.*

Do you see that?

MR GREEN: Yes.

45 MR O'NEILL: What was this issue, to the best of your knowledge? I will take you to the letter shortly, but what was this issue about? Can you remember or would you like me to put the actual letter to you?

MR GREEN: My - my recollection it's to do with that industrial bargaining kind of conversation that was going there.

5 MR O'NEILL: If the witness could be shown 2.0201. You'll see here, you were providing a further response as the email trail indicates. And then at about midpoint on the page, if we could draw this out, in relation to some of those sections you outline several general scenarios. That paragraph, thank you. Do you see that?

10 MR GREEN: Yes.

MR O'NEILL: Does that assist your memory in relation to what you - what specifically was in issue here?

15 MR GREEN: No. This just tells me the 22Q says the mechanism for making complaints.

MR O'NEILL: What about the next paragraph, if that could be drawn out.

20 MR GREEN: So the next paragraph makes it look like it's the Fair Work Commonwealth, again. Fair Work Act.

MR O'NEILL: And so is this - is a fair description of this that you are outlining your role is distinct from some kind of Fair Work Arbiter?

25 MR GREEN: Yes.

COMMISSIONER: Jurisdiction.

30 MR O'NEILL: Yes. And then do you see in the next paragraph you provide some information about the term "employee organisation." Does that assist your memory in respect of what this issue was?

35 MR GREEN: I think this is, again, the issue that I thought it was, which is around who can be the bargaining reps and how bargaining reps are appointed. And that conversation that was going on around - can the Secure Local Jobs be made to define who the bargaining reps were, in a way that's above the Fair Work Act.

40 COMMISSIONER: So the Fair Work Act made provision in relation to bargaining representatives. Is that right?

MR GREEN: Yes.

COMMISSIONER: And your view was this was a matter covered by the Fair Work Act.

45 MR GREEN: Yes.

COMMISSIONER: There were specific exclusions, but anyway there had to be because they were subject to the Commonwealth jurisdiction here. And you were trying to explain that this was not within your jurisdiction to consider.

5 MR GREEN: Yes, Commissioner. To me, this looks like a letter that the lawyers from the GSO wrote on my behalf to say that it's not my problem, it's Fair Work Act problem.

COMMISSIONER: No, but as it happened, as I apprehend from you, that was also your view. You understood that - what this was about, and you agreed with it.

10

MR GREEN: The Code - yes, Commissioner, I do agree. The Code has - the Secure Local Jobs Code has a narrow band it could work within, and it couldn't go into the Fair Work - Commonwealth Fair Work Act areas. That was always part of the design.

15 COMMISSIONER: So this was the tension. The CFMEU wanted you to go into this area, and you had legal advice from the GSO it was not appropriate, which was also your view as the Registrar of the Code.

MR GREEN: Yes.

20

COMMISSIONER: So there was where there was a difference of --

MR GREEN: Opinion.

25 COMMISSIONER: Opinion, yes.

MR HASSELL: Commissioner, I appear for Mr Green. My learned friend, counsel assisting, has initially took Mr Green to an email exchange on 17 October 2019. I understand this response and the attached letter was sent on 6 November 2019. It may not matter but I'm a bit unclear as to whether it was sent when he was still doing the acting role in the Education Directorate, or after he returned.

30

COMMISSIONER: That can be clarified, thank you.

35 MR O'NEILL: Certainly. The original email was sent on 17 October 2019 and Mr Green, you were not at that stage the - sitting in your role at the Directorate; true?

MR GREEN: When Mr Darren Smith responded?

40 MR O'NEILL: Sorry, I withdraw that. You were not at that stage sitting as the Registrar.

MR GREEN: When Mr Darren Smith responded, I was in Education.

45 MR O'NEILL: That's right. And then you returned back to being the Registrar substantively as at the date of the letter that I just took you to, being 6 November 2019.

MR GREEN: It looks that way, counsel, based on the email signature blocks that I saw going out. I was using my Secure Local Jobs Registrar.

5 MR O'NEILL: Now, whether there are other conversations going along around to you in that role from the CFMEU or any of its representatives in addition to this formal writing that was coming to you?

MR GREEN: Yes. Would be my - yes.

10 MR O'NEILL: Do you recall them?

MR GREEN: I don't recall them. I know that Mr Fisher would often ring and explain it to me in his way and I would often tell him to send a letter, because I'm not good at following subclauses whatever on a conversation call on a mobile while he's rattling off something that he's very educated at, and I was less aware of.

15 MR O'NEILL: Now, at 2.0203, you will see when it comes up in a moment. And if you could just take out the part that says "Dear Registrar" for me and zoom that. Thank you. You'll see here that Mr Fisher sent an email to Secure Local Jobs Code, but addressed it to "Dear Registrar" and this is at 27 November 2019. That was still you at that time?

MR GREEN: Yes.

25 MR O'NEILL: And attached to that was the letter that appears at 205. I will bring that up for you shortly.

MR GREEN: Okay. I note the other email addresses in that as well.

30 MR O'NEILL: Yes. And so this is a letter from the CFMEU to you in your capacity as the Registrar. It talks about - firstly, if the second paragraph can be drawn out.

COMMISSIONER: Well, just before you do that, I notice this was copied to Ms Orr who was Minister for Employment and Workplace Safety and the Minister for Government Services and Procurement.

35 MR GREEN: Yes, Commissioner. That's why I drew your attention on the past email - email addresses it went to.

40 COMMISSIONER: Right.

MR O'NEILL: What's the significance of that to your mind, if any?

MR GREEN: So, they are communicating directly to the minister's office, CCing the minister's office into the correspondence they are having with the Registrar at the time.

45 MR O'NEILL: Is that - was that the minister responsible for this --

MR GREEN: Yes. So Secure Local Jobs is part of the Government Procurement Act, and the office of Minister Orr, Minister for Government Services and Procurement, that would have been an Act under her jurisdiction - portfolio.

5 MR O'NEILL: Now, in their response, they firstly indicate that you hadn't been drawn out to give anything comment on hypothetical and general scenarios on the operation of clause 15. I took you to that just previously. But then they say, in the second substantive paragraph, if we could just have that zoomed up, starting "Since", you say they had received two decisions in relation to two entities - it is unnecessary to identify who they are - that shine further light on the interpretation of the clause. And then in the next, if I could just bring that forward, you will see that they are drawing attention to the role that the CFMEU was playing in relation to bargaining and the various allegations they made about things that had been happening in the bargaining process. Do you see that?

10 MR GREEN: Yes.

MR O'NEILL: Do you recall firstly this issue as it emerged and as it was now being pressed upon you in your role as the Registrar?

15 MR GREEN: Yes, I do recall this issue.

MR O'NEILL: And what do you recall in a nutshell was the issue?

20 MR GREEN: So the issue that I was being - my attention was being drawn to is the - is the union had been the bargaining representative, and I think both of those two organisations mentioned previously had had union enterprise agreements in the past. But the companies with advice from a template policy distributed by the MBA went about changing bargaining representatives to the effect that the CFMEU was no longer the bargaining representative during the enterprise agreement process.

25 MR O'NEILL: And then if the witness can be taken to the following page, and the paragraph that starts with "It is our strongly held view." Now, fairly strong words being used in this paragraph; agreed?

30 MR GREEN: Yes.

MR O'NEILL: Were there other strong sentiments being expressed to you outside of the formal writing that you were receiving?

35 MR GREEN: Yes.

MR O'NEILL: Who were they from?

40 MR GREEN: Well, Mr Fisher was there, and I was getting strong sentiment in the ministerial advisory committees from Mr Smith.

45 COMMISSIONER: Raising this issue?

MR GREEN: Raising this issue. I think this was the issue about industrial representation.

COMMISSIONER: Well, one would be naive not to think this was obviously important.

5

MR GREEN: Yes.

COMMISSIONER: In terms of the union, if it was not going to be involved in a bargaining - being able to bargain in this context, it would limit their role in the industrial area.

10

MR GREEN: Yes, indeed. And I was having conversations within - within the public service, with my colleagues at Government Solicitor's office, and getting their advice on this as well as having conversations with my minister because she was obviously aware of the issue because - so this letter went to the minister's office as well.

15

COMMISSIONER: Well it raised very important questions of policy.

MR GREEN: Yes.

20

MR O'NEILL: In the next paragraph you will see it says.

We urgently seek -

25

And I'm just going to have it drawn up for you while I read the part of it:

...a meeting between the Registrar -

etcetera. Do you see that?

30

MR GREEN: And the persons who the Registrar is receiving legal advice on this matter from. Yes, indeed.

MR O'NEILL: Yes. The Registrar, and bring your lawyers. Fair?

35

MR GREEN: Yes, that's what it says.

MR O'NEILL: So did that meeting occur?

40

MR GREEN: I don't think so. I don't recall. Certainly it wasn't a meeting where we ever brought the government solicitors along to have a meeting with the CFMEU lawyers.

MR O'NEILL: Right. And do you recall whether this, issue during your time as the Registrar, was resolved?

45

MR GREEN: No, it wasn't.

MR O'NEILL: It wasn't. Now, when did you leave your role, remind us again?

MR GREEN: In the middle of January 2020 during the smoke season.

5 MR O'NEILL: Yes. So setting the scene now, in the middle of 2020, the Territory's covered in smoke from the bushfires.

MR GREEN: Yes.

10 MR O'NEILL: There is not yet any rumours of an infection coming out of elsewhere in the world. But the Territory is in sort of a state of emergency almost. Fair?

MR GREEN: Yes.

15 MR O'NEILL: And you then transfer into your role at the EDU.

MR GREEN: Yes.

MR O'NEILL: Do you recall what one of your first jobs was when you first hit the ground?
20

MR GREEN: Dealing with smoke in schools. Dealing with the hailstorm that hit, I think, a week in as well. Getting schools - trying to get schools ready for the start of term 1 that year. I recall a meeting with the Asthma Foundation and various others within the education in one of those first weeks and smoke was a really big issue, and getting
25 everything done for day one, term one.

MR O'NEILL: Now, if I could take you to a document 2.0209. And just at the top firstly, the first email at the top. Just zoom that out for you. It's an email from a person --

30 COMMISSIONER: Just before you get to that, Mr O'Neill.

MR O'NEILL: Certainly.

COMMISSIONER: There were verbal interactions, oral interactions, between you and
35 Mr Fisher and I think Mr Smith concerning this question of bargaining representative. Is that right?

MR GREEN: Yes, Commissioner.

40 COMMISSIONER: I gather from the correspondence this was an important issue from the union's point of view. Indeed in a sense, it was important to you because it was a fundamental part of your task as Registrar to know what your work involved and what it didn't involve, so this was not a trivial matter.

45 MR GREEN: No. This - this was probably the biggest issue - sorry, the most time-consuming issue in my Secure Local Jobs Registrar role after returning from Education in October.

COMMISSIONER: Attempting a new full term, there was negotiation between you and the representative of the CFMEU. You were, as Registrar, the first one they sought to move on this subject if they could.

5

MR GREEN: Yes, Commissioner.

COMMISSIONER: Did it - did the exchanges become unprofessional in the sense of personal attacks, insults, or threats?

10

MR GREEN: There were definitely times when there were personal insults being directed at myself. And I don't ever think it ever got to threats. I think it was definitely the personal insult territory. It certainly weighed on me at the time, and it was definitely a strong consideration when I decided to apply for the role in education, because I enjoyed my time in education, so when the role in Education came up for January, I thought I had done enough time in Secure Local Jobs and didn't want to spend any more time there, and the role with Education going sideways to become a EPM at Education, I thought was a good opportunity that would be a much better long-term option than staying in Secure Local Jobs and dealing with this next round of stuff. I think I thought my time in Secure Local Jobs, I had done what I needed to do, and I think the next part of that needed to move to a much more legal industrial relations professional rather than myself.

15

20

COMMISSIONER: Nevertheless, I think for present purposes I need to explore a little what your exchanges involved. For example, were there comments made about whether you should continue in the job of Registrar or whether actions or that submissions would be made to the minister about your removal or your suitability for employment?

25

MR GREEN: I don't recall any statements that - that "I will tell the minister you should be removed" style of thing.

30

COMMISSIONER: Yes.

MR GREEN: There was certainly a statement that stuck in my mind, that you know, "My 4-year-old daughter would do a better job than you." That was repeated in a meeting. I remember my staff and I discussing that after the event. And --

35

COMMISSIONER: So if we could just - tell me if this is an unfair characterisation, but there were - they attacked your competence on the basis that you weren't agreeing with them, but they never - there was never any suggestion so far as you knew of any recriminations in terms of jobs or employment or anything of that kind.

40

MR GREEN: I think that's --

COMMISSIONER: Is that fairly put?

45

MR GREEN: I think that's fairly put.

COMMISSIONER: All right. Yes, thank you, Mr O'Neill.

MR O'NEILL: Thank you, Commissioner. So the document that I'm taking you to now is an email from Mr Matthews. Now, firstly, who is Mr Matthews?

5

MR GREEN: He's - he - at the time was the substantive executive group manager of business services. So he was the person I filled in for while he was away on leave.

MR GREEN: Right.

10

COMMISSIONER: Mr O'Neill, it occurs to me it's a quarter to 2. We are moving to a new subject.

MR O'NEILL: Quarter to 1.

15

COMMISSIONER: Quarter to 1, I beg your pardon. We are moving to a new subject, and I wonder whether that might be a convenient time for the luncheon adjournment.

MR O'NEILL: I'm in your hands, Commissioner.

20

COMMISSIONER: Very well. Then we will adjourn until 1.45.

<THE HEARING ADJOURNED AT 12.46 PM

25

<THE HEARING RESUMED AT 1.49 PM

COMMISSIONER: Just two matters of housekeeping. First of all, the transcript of counsel's opening is expected to be available after we adjourn this afternoon. It should be placed on the website shortly after 4 o'clock. Is that right, Mr Stafford?

30

MR WHITFIELD: It should be sooner than that.

COMMISSIONER: Sooner? Well, it might be sooner. So we get it - we have it transcribed. As soon as we can arrange for it to be placed on the website, it will be - so that will be available. Second, the transcript of today's evidence will be expected to be available from 10 o'clock tomorrow morning, earlier if we can do it, but by 10 o'clock at all events. Thank you.

35

MR O'NEILL: Thank you, Commissioner. Now, Mr Green, I was about to take you to a document at 2.0209. It will be brought up for you. And the question I asked just before we adjourned was who is Mr Matthews?

40

MR GREEN: So Mr Matthews is the substantive - sorry, at that time, Mr Matthews was the substantive EGM, executive group manager, of the business services directorate within education. He was the gentleman whose holiday I filled in for in - earlier in 2019.

45

MR O'NEILL: Now, you see there at the top of this email, it's on a Sunday. That's 12 January 2020 at 5 o'clock or 5.12, rather. Working on a Sunday, the public service isn't known for that, but what was the relevant urgency that was motivating this kind of response from these people?

5

MR GREEN: I cannot recall any particular urgency on this matter. I think on about 12 January, I might have been getting ready to turn up at Education on the following Monday. I'm not sure of the - exactly when I started, but I recall around that time was when I started the Education role. So I think David was probably just reminding himself of things that we needed to discuss as I came into the role in Education.

10

MR O'NEILL: And he says:

Need a brief discussion on the below.

15

And then he's cut you into a - copied in an email that we will come to shortly. But what was your understanding when you received this email of what you're being tasked with here?

20

MR GREEN: I would - again, I don't have any recollection of this email, but these were clearly the three major procurements underway in Education - in the Infrastructure Capital Works, in the role I was coming into, so I think he was probably just making me aware of these were matters that I needed to put some attention to when I arrived in Education.

25

MR O'NEILL: All right. Now, if you could take your eye below. So now you will see there's an email 5 November 2019 at 3.22. It's from a Mr Player to Mr Matthews and copies various other persons. And it's subject titled Shortlisted Tenderers Campbell Primary School, Franklin Early Childhood School and Throsby Primary School; you can see that?

30

MR GREEN: Yes.

MR O'NEILL: And below is listed some matters. The one of interest of course to this inquiry is the Campbell Primary School. Do you see that?

35

MR GREEN: Yes.

MR O'NEILL: Now, can you recall if, prior to receiving this email, you had had any awareness about the shortlisting of the two entities for the Campbell Primary School that you see there?

40

MR GREEN: Yes, because I signed the tender - sorry, the RFT - sorry, the EOI evaluation plan during my time in Education in October the year before. So I was aware of Campbell and, I think, one of the other ones because I had signed the documents for them.

45

MR O'NEILL: Were you aware that these two entities had been shortlisted as tenderers?

MR GREEN: Yes, because I did the shortlisting.

MR O'NEILL: And were you aware generally of who they - who these companies were?

5 MR GREEN: Yes.

MR O'NEILL: What was your awareness?

MR GREEN: Of the two on Campbell?

10

MR O'NEILL: Yes, please.

MR GREEN: I was aware of Manteena from having had them undertake projects for me in the past, and I was aware of Lendlease, in terms of they had done previous projects for the ACT Government and they were a known tier 1 contractor in the construction industry.

15

MR O'NEILL: Now, do you recall the briefing - or, sorry, I withdraw that. Was there a brief discussion with - between you and Mr Matthews at or about the time of the original email? That's the 12 January email.

20

MR GREEN: I can't recall, but I expect there would have been. It would have been part of the welcome to Education, I need you to look at these things, kind of incoming briefing.

MR O'NEILL: Now, what is your understanding of once a shortlisting has been undertaken, how that's communicated to the unions if at all?

25

MR GREEN: I don't know that the shortlisting is - is communicated to the unions. The - the shortlisting is communicated to the respondents. So the successful ones are told they are successful, the unsuccessfuls are told they are unsuccessful. And then when the tender is released, that's a public document that goes up on the Tenders ACT website, as it was at that time there. So - and that reveals on that Tenders ACT listing who the tenderers are and who can respond. So it becomes public information again when the tender is released.

30

MR O'NEILL: Is that a document known as a request for tender?

35

MR GREEN: Yes, that's the request for tender document.

MR O'NEILL: Right.

40

COMMISSIONER: So when the request for tender goes up on the Procurement ACT website, it also identifies the tenderers to whom that RFT has gone? Is that what you're saying?

MR GREEN: Yes. My understanding is that the request for tender document is available to all who are registered on the website, but it identifies which companies' tenders will be accepted from.

45

COMMISSIONER: Which in this case would have been Manteena and Lendlease?

MR GREEN: Yes, Commissioner.

5

MR O'NEILL: Now, if you could just be shown the document at volume 1, page 163. This document says that it's the request for tender, and it's dated 30 October 2019 with a closing date of 19 December 2019. Do you see that?

10 MR GREEN: Yes, I can see that.

MR O'NEILL: And of course the email that Mr Matthews was drawing your attention to was 5 November 2019. So --

15 MR GREEN: Yes.

MR O'NEILL: A request for tender had obviously been received at that period of time.

MR GREEN: Sent out?

20

MR O'NEILL: Sorry, sent out, thank you for correcting me. And so do you recall as at the time that you commenced in the EDU where this process was at, that is, in January 2019 - 2020, rather?

25 MR GREEN: I can't recall the specifics. I don't think it closed on 19 December. I think it had been extended for some period, but I can't recall whether it had closed when I arrived to Education or not. If it hadn't closed, it was probably to shortly close.

MR O'NEILL: Now, if I could take you to a separate document.

30

COMMISSIONER: Just before that.

MR O'NEILL: Thank you.

35 COMMISSIONER: The RFT sets out the proposed process, does it not? It, for example, says there will be a tender evaluation team, that the tender will be the subject of recommendations having regard to particular specified criteria, and the weighting for those criteria is also set out. So tenderers know that they need to respond to particular aspects of the procurement and understand how those aspects relate to each other in terms of their
40 relative importance.

MR GREEN: Sorry, Commissioner, I can't recall the total specifics of this document, but definitely --

45 COMMISSIONER: No, I'm just talking generally. And this is the well-accepted process been going on for considerable period of time.

MR GREEN: Correct, Commissioner. It sets out the criteria that the tender will be assessed by and guides them to what those criteria are and those subcriteria within the criteria.

COMMISSIONER: With the weightings.

5

MR GREEN: And I think it includes the weightings as well. I may be incorrect on that weightings but I think it does.

COMMISSIONER: Right. And there is of course a get out of jail clause in the sense that
10 the Territory retains the right to refuse to accept any tender proposal.

MR GREEN: That would be a standard clause in the conditions of tendering.

COMMISSIONER: Which is - yes. And indeed, I think there are other denial of liability
15 clauses in accordance with GSO advice.

MR GREEN: It's a well --

COMMISSIONER: It's a well-trodden path.

20

MR GREEN: A well-trodden path, Commissioner, correct, with lots of clauses that allow the Territory to do lots of things.

COMMISSIONER: But nevertheless, would you agree that it would give rise in a tenderer
25 to an expectation that the process would be faithfully followed by persons appropriately qualified, and that even if for some reason a tender weren't accepted, it would be done fairly?

MR GREEN: Yes, Commissioner.

30

COMMISSIONER: Yes. Thank you.

MR O'NEILL: So the document at 2.0214, you see here that there's a notification of tender
35 submissions, and below it are two suppliers from which it says there are responses. And it's dated 23 January 2020 at 2 o'clock.

MR GREEN: Yes.

MR O'NEILL: What's this document telling us?

40

MR GREEN: So this is the notification of submissions. So this tells me that two tenders
were received from the two suppliers there. The closing date was in fact extended from 19
December to 23 January which is a - a normal kind of extension. If you don't close before
Christmas, you don't close until the end of January. And the tenders closed at 2 o'clock,
45 which is then closing time and it probably - yeah that's the tender notification that is then published and publicly revealed that we received two tenders.

MR O'NEILL: Right. The Directorate agency is notified as the Education Directorate. Do you recall being at that Directorate at the time these tender submissions closed?

5 MR GREEN: I was at that Directorate at the time that it closed. I think I started in Education on around - in mid-January.

MR O'NEILL: What is your involvement, if any, at this time during this process?

10 MR GREEN: None. This is - this is a system-generated notification. It will get published, I think, on the Tenders ACT website at that time. There will be a series of email notifications sent out with this information sent out to various email addresses, and then the next step after that is the tenders would be distributed to the centre evaluation team.

15 MR O'NEILL: Right. As at this stage, the tender evaluation team has already been stood up. Is that fair?

MR GREEN: Yes.

20 MR O'NEILL: Did you know the persons on that team?

MR GREEN: I did know the persons on that team. I knew who the names were and I think they were the same tender evaluation team as that had dealt with the EOI, but I could be wrong on that.

25 MR O'NEILL: Right.

COMMISSIONER: Who would have determined who they should be?

30 MR GREEN: The --

COMMISSIONER: Who was responsible for that?

35 MR GREEN: Commissioner, the procurement plan minute that counsel took me - mentioned before, I think, was in July 2019 would identify who the tender evaluation team was going to be. Now, that's subject to change afterwards, but that would have been the first document.

COMMISSIONER: But who would have decided on those selected?

40 MR GREEN: It's normally a negotiation between Education Directorate and Major Projects Canberra, and then it's agreed by the delegate on the procurement plan minute, which is the first document that sets out who the evaluation team will be.

45 COMMISSIONER: Right. So there's a negotiation as to the people. That would of course depend on availability and a whole lot of other things, what everyone has got on their desk as well and so on. So - and of course they would have to have relevant qualifications. So you've got an agreement and ultimately it's signed off on by the delegate. Is that right?

MR GREEN: Correct, Commissioner. There's practice on such things. So generally it would be a three-person tender evaluation team. Two would be from the Directorate and one would be from Major Projects Canberra, although sometimes they'd flip the other way.
5 There might be some observers if they felt they need to have more senior people, but it is normally the officers who are running the project on a day-to-day basis are the first default project - sorry, first default --

COMMISSIONER: Members of the team.

10 MR GREEN: Tender Evaluation Team, yes.

MR O'NEILL: At this time, that being January 2020, or late January 2020, did you have delegation in respect of advancing this process beyond the receipt or the review of the
15 tenders that had been received?

MR GREEN: I wasn't part of the Tender evaluation team and the value of the project would have put it outside my delegations as EBMICW - sorry, executive branch manager of infrastructure and capital works. My delegations in that respect were either 500,000 or 1
20 million, but not - but not a major capital works project of this size. So the delegations would have gone to - sorry, the first person would delegate authority to deal with it would have been the executive group manager.

MR O'NEILL: And who was that?

25 MR GREEN: David Matthews.

MR O'NEILL: Now, can I take you to the next document, which is at 2.0216. It's a slightly different topic, but here you will see an appointment that had been sent on 5 February 2020
30 for what appears to be the Molonglo school announcement and sod turning. Do you see that?

MR GREEN: Yes.

35 MR O'NEILL: It's sent to you amongst others. What was the Molonglo school announcement and sod turning?

MR GREEN: So the Molonglo School is now known as - is now officially called Evelyn Scott School; it is in Denman Prospect. The school announcement and sod turning event
40 was - well, the primary part was the sod turning to demonstrate that the school construction had started on that time. The contract would have been awarded some time ago. I think the announcement was we are underway with the school and, you know, as demonstrated by the sod turning, the shovels come out.

45 MR O'NEILL: To your mind, why are you invited to something like this?

MR GREEN: Because as ICW, we make sure the site is ready, is fit, and we make sure of the arrangements. So we liaise with our colleagues in Major Projects Canberra, we talk to the contractor to make sure that the site is safe, that there's a suitable spot set up, there's parking arrangements done, and all the - all the logistics of the sod turning event.

5

MR O'NEILL: You said ICW. For those playing along, what does that mean?

MR GREEN: Infrastructure Capital Works, the branch within Education.

10 MR O'NEILL: All right. Now, do you recall going to this sod turning?

MR GREEN: Yes, I do.

MR O'NEILL: Who do you recall was there when you attended?

15

MR GREEN: The project team as listed on this screen here, so Blom, Player, Mulligan. Julie Cooper is not project team. I don't recall if David Matthews was there. Certainly the Director-General was there. Sorry. I think the Director-General was there, and the ministers - minister attended with some of her staff, and a range of other stake holders. So the builder of course, staff from Major Projects Canberra and the CFMEU were there as well.

20

MR O'NEILL: All right. Now, we are going to drill down into those attendees with a little bit more specificity, so starting with who was the Director-General at this time.

25

MR GREEN: Katy Haire, I think at that point.

MR O'NEILL: And then who was the relevant minister that turned up?

30 MR GREEN: Yvette Berry.

MR O'NEILL: Who was there from her staff?

MR GREEN: I can't recall exactly. I think her media people were there. I don't recall if her advisors were there. I - no, I don't recall if her advisors were there, sorry.

35

MR O'NEILL: Who was the contractor for that job?

MR GREEN: It was Joss.

40

MR O'NEILL: And who from the union, that is - sorry, I will start again. When you said that there was the CFMEU had turned up, do you remember who?

MR GREEN: Zach Smith and Jason O'Mara, is my recollection.

45

MR O'NEILL: Okay. Now, if I could just take you to the next page, which is 2.0217. This is from the very reliable source of Facebook, but relevantly, there's a photograph, if I can

just have that brought up for you. Now, looking at that photograph, does that assist your memory as to whether anybody else was there that you have forgotten to tell the Commission to the best of your - anyone that you recognise.

5 MR GREEN: So it confirms to me that Katy Haire was there. There were people from Major Projects team. I can see Erica and Rebecca. Minister Chris Steel is on the right-hand side. There is Julie Cooper who was mentioned on the email is there. My project team, Ben Player, Dylan Blom is there, and various people from Joss. And I'm sorry, the lady from the P&C Association is standing behind the shovel.

10 MR O'NEILL: Right. Now, having refreshed your memory as to who was there, how long do you estimate that the whole event took? Or sorry, I withdraw that. How long were you at the whole event?

15 MR GREEN: Sorry, I recognise another person on here. Adrian Piani from Major Projects Canberra is on there as well.

MR O'NEILL: Yes.

20 MR GREEN: How long do I estimate? I think I was onsite for an hour. I recall running late to get there. I wasn't there as early as I would have liked in preparation for the meeting, but my team had it under control.

25 MR O'NEILL: And did you have any conversations with anyone from the union while you were there?

MR GREEN: Yes.

MR O'NEILL: What were they?

30

MR GREEN: Pardon?

MR O'NEILL: What were they?

35 MR GREEN: So I had a conversation with Jason O'Mara and Zachary Smith, and --

MR O'NEILL: When you say both of them, does that mean at the same time?

MR GREEN: Together, yes.

40

MR O'NEILL: Keep going. Sorry I interrupted you.

45 MR GREEN: The conversation was a bit about - so you are in Education, let's have a chat around Education projects. Joss has got this one. Who is on the other ones? And so we had a discussion about who is on the other ones.

MR O'NEILL: So just pausing there. Who - was it Jason or Zac who was telling you these - asking you these questions, or is that too difficult a question?

5 MR GREEN: It's - I don't recall, counsel. It's not a difficult question but I just can't recall which of the two of them.

MR O'NEILL: All right. What did you say?

10 MR GREEN: So we talked about the tenders were out, and they knew that the tenderers on Campbell were Lendlease and Manteena, and they knew the tenders on Throsby were, I think Icon and Manteena. But that was - Throsby was the other one that was out at the same time.

15 MR O'NEILL: It would have come as no surprise to you they were aware of the information because it was publicly known information at the time. Do you agree?

MR GREEN: I agree.

20 MR O'NEILL: What was - was anything else communicated to you about, in particular, the Campbell project?

25 MR GREEN: No, I don't recall anything particular being around that. There was a - a invitation from them to have a further meeting to discuss all sorts of - what was going on in the world of construction in Education, and I agreed to have a meeting. I recall having my diary there at the time, so we arranged a date and time while onsite at - at Evelyn Scott School, and we arranged that I would go and meet with Jason at a later date at their offices in Dickson.

30 MR O'NEILL: Now did you speak to anybody else while you were at the sod turning in relation to the topic of Campbell?

35 MR GREEN: I don't recall. I - could possibly have been a conversation with the project team. There's a - most of the project teams there are linked to that. I don't recall any particular conversations, though, about Campbell at that - at that meeting - at that sod turn event.

MR O'NEILL: When you spoke with Mr O'Mara and Mr Smith, did either of them give an indication about their views on either of the tenderers?

40 MR GREEN: Counsel, I don't recall. I find it - I think it's, though, probable that they mentioned at least their views on Manteena.

45 MR O'NEILL: Excuse me one moment. Now, you provide evidence to the Commission that you then attended the meeting later with the CFMEU. Is that fair?

MR GREEN: Yes.

MR O'NEILL: Do you recall when that occurred?

MR GREEN: I don't recall exactly, counsel. I - I think it was within a week or so of the sod turning. I can't recall the date.

5

MR O'NEILL: Your calendar indicates that there was a meeting on 19 February 2020. Does that assist?

MR GREEN: At CFMEU at Dickson? Is that --

10

MR O'NEILL: It just says CFMEU education catch-up, for 1 pm on 19 February.

MR GREEN: Sounds like that's the meeting.

15

MR O'NEILL: All right. And the meeting occurred?

MR GREEN: Yes.

MR O'NEILL: Where was it?

20

MR GREEN: At the CFMEU office in Dickson.

MR O'NEILL: And who attended?

25

MR GREEN: So it was myself and Jason O'Mara.

MR O'NEILL: Mr Smith was not present at that meeting?

MR GREEN: No.

30

MR O'NEILL: Was there anyone else present at the meeting other than the two of you?

MR GREEN: No.

35

MR O'NEILL: Did anyone - there wasn't anyone taking notes or anything?

MR GREEN: No.

MR O'NEILL: Did you take any notes while you were at that meeting?

40

MR GREEN: No.

MR O'NEILL: Now, to the best of your recollection, how did the meeting start?

45

MR GREEN: We met at the front counter at the CFMEU, walked down to the meeting room down the corridor. There was probably some pleasantries exchanged, and I can't

remember - I can't remember much but it came - I think then we moved to talking about Campbell.

5 MR O'NEILL: Right. So the - is that - so that the Commission understands this evidence correctly, was Campbell one of the first topics that was discussed at that meeting?

MR GREEN: I think it was probably a general preamble around how the ACT Government procurement should work and then -

10 MR O'NEILL: Right. We will just deal with that topic first, then.

MR GREEN: Yes.

15 MR O'NEILL: What was said in relation to how government procurement should work? I assume that's by Mr O'Mara.

MR GREEN: O'Mara, yes.

20 MR O'NEILL: You weren't expressing a view about how it should work?

MR GREEN: No, I wasn't. So the view - I think the view was that the government doesn't take Secure Local Jobs seriously enough, that we - the government continues to give jobs to contractors who don't do the right thing by their workers. We take the cheapest price, and we need - yes, that we are going about it the wrong way.

25 MR O'NEILL: And so the way in which that's being described is using the word "government", is that right?

MR GREEN: Yes.

30 MR O'NEILL: Which is the whole of government to the best of --

MR GREEN: Yes.

35 MR O'NEILL: What you understood that to mean.

MR GREEN: Correct.

40 MR O'NEILL: And then it moved to Campbell, you say.

MR GREEN: Yes.

45 MR O'NEILL: Right. Now, doing the very best you can, can you recollect what was said by Mr O'Mara to you first in respect of this matter?

MR GREEN: The best of my recollections, it was Manteena shouldn't get it, they don't do the right things by their workers, Lendlease are a better contractor, government's just going to take the lowest price again and workers are going to be worse off.

5 MR O'NEILL: Right. So taking them each in turn, they don't look after their workers. Fair?

MR GREEN: Yes. Sorry, what do you mean?

10 MR O'NEILL: Was that the first thing that was discussed or I've got the order wrong.
Sorry --

MR GREEN: That's my recollection.

15 MR O'NEILL: Yes. When that was said to you, did you have a reference point in respect of Manteena and its previous history at all?

MR GREEN: So I have a reference point based on Secure Local Jobs and the history of complaints about how Manteena engaged their workers under a non-union enterprise agreement.

20 COMMISSIONER: So complaints made by whom?

MR GREEN: So by the union.

25 MR O'NEILL: The union being this union.

MR GREEN: The CFMEU, yes.

30 MR O'NEILL: The CFMEU. And it had complained previously. Is that the same topic that I took you to earlier in the examination today or a separate topic?

MR GREEN: So I think it's the same topic. They have complained about Manteena in the past. I don't - sorry, I cannot recall whether they ever lodged a - a written complaint to Secure Local Jobs, but they certainly had a complaint or whinge about the - how Manteena treated their workers.

35 MR O'NEILL: All right.

40 COMMISSIONER: Well, what we have seen so far is the complaint that they wanted to make concerned bargaining representatives which were - lay at the centre of this or apparently lay at the centre of this dispute; correct?

MR GREEN: Yes, in a slightly different way, though, with Manteena. Their comments about Manteena is that Manteena just negotiate with the workers directly and there's no union involvement in Manteena as bargaining - or it wasn't the same as, say, the - the series of letters about changing bargaining representatives along the way. It was a more general

complaint that the - that they don't allow, or, sorry, don't - the union is not engaged as a bargaining representative on behalf of their workers.

5 COMMISSIONER: No, quite. But the - there was - if that were a breach of the appropriate industrial relations standards to which the Code referred, they could have made a complaint to you as Registrar or to the Registrar about that alleged noncompliance.

MR GREEN: Yes, Commissioner.

10 COMMISSIONER: Did they?

MR GREEN: I don't think they did. I do not recall a formal complaint about Manteena to the Secure Local Jobs Registrar.

15 COMMISSIONER: Now --

MR GREEN: Sorry, Commissioner, if I might explain that. Because what the conversation was about - sorry, what the - what the way Manteena went about their bargaining was is that they directly engage with their workers. They didn't - they didn't follow - they didn't
20 have the union there at one stage and not. I think they were never a union enterprise agreement company.

COMMISSIONER: Quite. Well, whatever the reason, the CFMEU was not part of the bargaining process.
25

MR GREEN: Not to my knowledge they weren't.

COMMISSIONER: In relation to the enterprise agreements; correct?

30 MR GREEN: Yes, correct.

COMMISSIONER: And this was a beef that the CFMEU had.

MR GREEN: Yes.
35

COMMISSIONER: As I understand the correspondence that we saw, had there been a complaint to you, this would have been seen as being outside the scope of the Code to remedy.

40 MR GREEN: Yes, if their complaint had have been that --

COMMISSIONER: Of that kind.

MR GREEN: Of that kind, yes.
45

COMMISSIONER: Because, although it may have been technically differently structured or crafted, it was the same kind of issue that those other companies had with the CFMEU.

MR GREEN: Yes. And as we saw in that certificate earlier, an auditor had been in and the auditor in question is an experienced auditor who has worked with lots of companies in past, and had been in and said that the company is paying their employees --

5

COMMISSIONER: Award rates or --

MR GREEN: Or enterprise agreement rates or whatever - whatever the agreed rates were.

10 COMMISSIONER: Yes. Right. So the auditor had not seen any breach of the relevant industrial relations. So it comes down to - it appears - I'm just trying to get the picture here, that this was a dispute, really, that the CFMEU had with Manteena that was not able to be resolved through the Secure Local Jobs Code mechanism.

15 MR GREEN: As the Secure Local Jobs Code stood at the time.

COMMISSIONER: Yes, as it then stood. Well, has it been materially changed, do you know?

20 MR GREEN: I don't know, sorry, I've lost currency with that.

COMMISSIONER: All right. I had a quick look, and I must tell you I didn't notice it, but we can look at that afterwards. So moving on from that then, the issue that was raised in this conversation was, as it were, and I don't mean this in any pejorative sense, this was, as
25 it were, direct action. In other words it was saying - what Mr O'Mara was saying, the government has got this wrong, they shouldn't be giving work to companies such as Manteena which has this particular industrial policy.

MR GREEN: That's how I understood it, Commissioner.

30

COMMISSIONER: Right. Because you were, as it were - I don't mean to be belittling, but you are a minion in the Education department. These matters were beyond your pay grade, really, weren't they?

35 MR GREEN: Yes, Commissioner. I was the - I followed the government process.

COMMISSIONER: You were just doing the job you had.

MR GREEN: Yes.

40

COMMISSIONER: Did Mr O'Mara suggest to you that he had or would take these things up with the minister, or did you understand that he had? This was a long-running issue, wasn't it?

45 MR GREEN: So, Commissioner, I took it to be another one of many conversations where the union expressed their views about a particular contract in a particular process and, as my role in government, regularly I would have these meetings and my - my role, the

expectation on me as a government official was that I listened to the - I gave the stakeholders an opportunity to express their views.

5 COMMISSIONER: Sure. And I'm not suggesting that they were not entitled to express their views. They had the interests of their members, they had interests as a union in this area, and no doubt they were entitled to express it whenever and wherever they thought it appropriate to do so. But the point is that this was not a kind of one-off unique situation. This was - this had - was reflecting an issue in the industry that involved the union and construction companies.

10 MR GREEN: Correct, Commissioner. It was one of many such meetings I had in my time in ACT government. You know, going along and hearing the views of one of the major stakeholders in the construction industry and giving them an opportunity to express their views.

15 COMMISSIONER: Right. Thank you.

MR O'NEILL: I think you have answered this question, but there was nothing unusual about this kind of meeting between you and your role and a relevant stakeholder.

20 MR GREEN: Correct, counsel.

COMMISSIONER: But what did - didn't Mr O'Mara ask you to do anything? What was the - what did he ask? Did he explain why he was saying this to you?

25 MR GREEN: Yes. So Mr O'Mara explained to me his views. I gave him - to the best of my recollection I gave him the stock-standard answer that there's a process, we will work through the process, we go through the criteria. We get a value for money outcome. Ultimately it's a decision and we award a contract. So again, equally I think stock conversation from his side and stock response from my side. And we have the conversation and move on.

COMMISSIONER: So he didn't ask you to do anything in particular.

35 MR GREEN: No.

COMMISSIONER: He just wanted to let you know what his view was. You responded with what the process was and shook hands and departed.

40 MR GREEN: Went on our ways.

COMMISSIONER: Right.

45 MR O'NEILL: Is that the long and short of it? Was there anything else discussed during that meeting?

MR GREEN: I don't recall anything else, counsel. That's my recollection, and my replay of the meeting is that he had his view, I went to - this is the way the process works through. This is how we get to an outcome at the end and that's where I think it went to. I don't recall anything further - sorry, anything of substance further.

5

MR O'NEILL: Possessed of that information, what did you do with it, if anything?

MR GREEN: Went back to my office and didn't do anything much with it. Possibly mentioned it to my Director-General in the corridor that I had a meeting, but that's about it.

10

MR O'NEILL: And when you say possibly mentioned it to the Director-General, can you be more specific?

MR GREEN: Look, I think I mentioned it to her in a corridor conversation. And I think "her" at this stage was Katy - sorry, Ms Haire, the Director-General at the time there. But, again, it - not a - it's not a significant meeting or event.

15

COMMISSIONER: It was informal.

20

MR GREEN: It was informal, yes.

MR O'NEILL: Can you recall precisely what was said?

MR GREEN: No.

25

MR HASSALL: Well, I object to that question. He said that he's not sure whether it was said at all.

COMMISSIONER: Quite, well he's just answered the question.

30

MR O'NEILL: I think the answer was no.

MR GREEN: I don't recall.

35

MR O'NEILL: You don't recall.

COMMISSIONER: Do you think, though, you would have told her that you would have just come from a meeting with O'Mara or with the CFMEU? Would you think you told her that much, or you don't even remember that?

40

MR GREEN: I don't remember that. I would maybe have told her that if I saw her as I was walking back into the office, but then otherwise would have just mentioned it in the conversational update that we --

45

COMMISSIONER: Right. Casually.

MR GREEN: Casually, yes.

COMMISSIONER: Right.

MR O'NEILL: At the date of that meeting, did you know where --

5

MR GREEN: Sorry, counsel. The --

MR O'NEILL: The 19th, sorry, thank you. As at the date of the meeting you were having with the union, which may or may not be around 19 February 2020 did you have any visibility as to what the Tender evaluation team was doing with respect to Campbell?

10

MR GREEN: I think I did, counsel. I think I would probably have some idea where they are up to on that point because tenders would have been in for some weeks, and I would normally hear - start hearing about what tenders are up to within a couple of weeks of starting as the evaluation assessment.

15

MR O'NEILL: Why? Why is it that you would hear about what is going on in the tender?

MR GREEN: It was normal practice in ACT Government to communicate what's happening with tender evaluations up the hierarchy of the organisation.

20

MR O'NEILL: Now, that's not to suggest, though, is it - and correct me if I am wrong - that you applied - providing any input into what's going on in the evaluation at that point in time?

25

MR GREEN: No. It would have been an update as to what the scoring is looking like, what the dollars are looking like. You know, we have got two tenders, what are the numbers.

MR O'NEILL: Did you discuss that information with Mr O'Mara?

30

MR GREEN: No.

MR O'NEILL: And your note says that the meeting was between you and Mr Smith, but you are adamant that it was Mr O'Mara. So that is your diary file has it listed between you and Mr Smith but --

35

MR GREEN: Yes, it was definitely Mr O'Mara. I might have thought I was going into a meeting with Mr Smith, but it was definitely Mr O'Mara.

MR O'NEILL: Okay. What was your awareness to the best of your recollection about where the tender evaluation team was with respect to Campbell at that time?

40

MR GREEN: I think, as I've just said, I would have been aware that they are evaluating tenders, that, you know, I would have had some idea who was cheaper, and I think it was Manteena, but not a great deal of detail.

45

MR O'NEILL: Were you across scoring, for example? Had they informed you about scores?

MR GREEN: I don't think so.

5

MR O'NEILL: Had they informed you about any recommendation that was likely to be made?

MR GREEN: I don't think so.

10

MR O'NEILL: Now, towards --

COMMISSIONER: What exactly was your role, though? I mean, this came across your desk, I understand, and it was - would ultimately go en route to the delegate, or what was your role in relation to it?

15

MR GREEN: I think at that time that I was just coming into the role of acting EGMESD again.

20

COMMISSIONER: Right.

MR GREEN: Because there's a - from some time in mid-February, I was again back in the EGM's role. So I'm not sure when the dates actually coincide. So I was in the hierarchy anyway from --

25

COMMISSIONER: The decision-making hierarchy?

MR GREEN: Yes, the decision-making hierarchy.

30

COMMISSIONER: Right, okay.

MR GREEN: So I'm - but I'm not sure which of that - of the hats I was wearing at that time.

35

COMMISSIONER: Right.

MR O'NEILL: And you can recall specifically the words that Mr O'Mara used to describe Manteena?

40

MR GREEN: Look, my shorthand has always been he called them grubs. And I'm not sure if he actually used those words, but he used probably a similar --

COMMISSIONER: He conveyed the notion.

45

MR GREEN: Yes, he conveyed that notion.

MR O'NEILL: Again, Mr O'Mara not someone backwards in coming forwards, to the best of your understanding?

MR GREEN: No, he normally left me with no doubt as to his point of view.

5

MR O'NEILL: Now, in relation to Campbell, you've had the meeting. What's your next involvement with that project?

MR HASSALL: Sorry, which meeting?

10

MR O'NEILL: The meeting with the union, obviously. So you have had the meeting with the union. What is the next part of your involvement in the project?

MR GREEN: Without having my diary ahead - in front of me, I would think my next involvement would probably be with the project team or the tender evaluation team as they start working through the evaluation and giving updates as to what the - how the evaluation is progressing. Sorry, what the issues are.

15

MR O'NEILL: And who are you conveying that information to, if anybody?

20

MR GREEN: Sorry, I --

MR O'NEILL: The information you are getting.

25

MR GREEN: Yes.

MR O'NEILL: Who are you providing it to.

MR GREEN: I doubt I'm providing it to anybody at that point, if I'm the EGM. I'm the decision - the delegate, in that sense there, so it's me being kept informed of where the process is going to. Unless I'm being asked for a specific update it's kind of just business as usual within the --

30

COMMISSIONER: Is that a formal meeting with everyone in the room or do you only speak to the Chair or how would that work?

35

MR GREEN: I can recall meetings that are arranged by major - the project team within Major Projects Canberra, and I can recall a meeting with Ms Young, Mr Hawkins, Ms Power, Mr Blom and myself. I certainly recall one of those meetings sitting around. And it's - it's an arranged meeting, but I would call it an informal meeting. It's not a minuted or a agenda-ed meeting in way.

40

COMMISSIONER: Yes. Thank you.

MR O'NEILL: Do you know who Mr Ceramidas is?

45

MR GREEN: Yes.

MR O'NEILL: What's your understanding of who he was at - towards the mid to end of February 2020?

5 MR GREEN: He was the chief of staff in Minister Berry's office.

MR O'NEILL: Did you have any interactions with him?

10 MR GREEN: I had interactions with Mr Ceramidas in my role as EGM when I would attend what we call MNSET meetings. So I think the acronym stands for minister and senior executive team and they generally happened on a Monday morning at the minister's office down at the Legislative Assembly, and they would have been the formal attractions. I had met Josh in my previous time in Education and I had worked with him on a couple of matters in that time, I think to do with home education. So I knew who he was, and I had
15 interactions with him as well as - sorry, by phone and other means as well as by the MNSET meetings that occurred on a regular basis.

MR O'NEILL: Based on those interactions, what was your perception of what he thought of you?
20

MR GREEN: I actually don't know. I think he knew me from coming across from Secure Local Jobs. I don't really have a view on it. I know that he was a friend of one of the advisors that was on Secure Local Jobs, and I think that advisor probably would have given Josh some feedback on my Secure Local Jobs time.
25

MR O'NEILL: Had you come into conflict with him?

MR GREEN: Not that I was aware of.

30 MR O'NEILL: Now, if you could be shown the document at 2.0334. And I ask the relevant part of that could just be extracted and brought up. This is an email from Mr Moreton to you, CCing Mr Blom on 26 February 2020.

MR GREEN: Yes.

35 MR O'NEILL: And Mr Moreton is providing you with the REOI reports for Franklin and Campbell.

MR GREEN: Yes.

40 MR O'NEILL: Why?

MR GREEN: I think - my timing may be incorrect, but I think I had had a conversation with our acting deputy - acting Director-General before this email. We were having a chat around Secure Local Jobs matters, in particular the recent construction tenders, and I was getting a copy of the EOI reports to look at how Secure Local Jobs had been evaluated in those.
45

MR O'NEILL: So who was that person - who was the acting Director-General?

MR GREEN: Rebecca Cross.

5

MR O'NEILL: You can explain to the Commission how it was in Ms Cross had asked you for that information?

MR GREEN: Okay. So possibly going back a step, Rebecca Cross was standing in as our
10 director - the Education Director-General because Ms Haire was away, and so she was my
direct boss because I was in the EGM's role. I had a conversation with Rebecca, I can't
recall - I don't think it was arranged, I think it was either a corridor conversation or I
walking past her office which was located next to mine in 220 Northbourne Avenue, and
15 she asked for a chat around Campbell and my recollection of the meeting is something like
this: she said that she had just - she had been summoned down to the minister's office to
discuss Campbell. I - I think she said - sorry.

MR O'NEILL: No, this is important so, take your time.

MR GREEN: I will try to put it from her side of things, "I have been summoned down to
20 the minister's office to talk about Campbell. Josh says Manteena is not to get it. There is
problems with their Secure Local Jobs and industrial relations performance", then we
ended up in a conversation and I recall I was explaining to her how Secure Local Jobs
worked, so we have certificates and, you know, it's mandatory that a company has a
25 certificate in order to lodge a tender in there. There is part of the process as well, their
Secure Local Jobs performance is evaluated, and it was evaluated in the EOI process. She
then - we talked about that a bit. She asked for copies of the evaluation which is why I've
then asked Mr Moreton for copies of the EOI reports for that. We then had a chat
about - she asked, you know, what's the next step in the procurement process, so I went
30 through and worked out - sorry, I explained to her what evaluation was, and where I
thought it was up to, that we have a process that we work through in the evaluation - tender
evaluation process, and I gave her an update and a bit of general on that.

MR O'NEILL: Well, when you say you gave her an update, what did you say?

35

MR GREEN: It's being evaluated. I can't recall any more specifics than that. But the next
step in the evaluation will be there will be a report prepared and it will - it will, you know,
come up for a decision. Then - so Rebecca then I think restated that, you know, the Min's
office has a view on it and, you know, again, Manteena is not to get the job. And then I
40 asked, well, what do we do? She said, "Continue on with the process. Follow the process.
Don't go outside that. Stick with the process". And so that's - I got the sense from that - and
just talking through that, with the timing, that she was there for I think three weeks
and - and that we wouldn't be making a decision in the time that she was there, and her
view was just follow the process.

45

COMMISSIONER: Just for people who don't know, what does REOI stand for?

MR GREEN: Request for expressions of interest. Like request for tender, RFT, REOI - actually responses for expression of interest.

MR O'NEILL: And Min's office?

5

MR GREEN: Minister's office was the generic term in Education for the minister's office. Generally the minister's office would imply "Josh" as opposed to "the minister said", which was something different. But the chief of staff spoke on behalf of the minister and unless the minister said something else.

10

MR O'NEILL: Did you have any reason to doubt that what you were being told was correct?

MR GREEN: No. Sorry, in what way?

15

MR O'NEILL: Sorry, from what Ms Cross was telling you as to whether that was correct or not, that she had been --

20

MR GREEN: No, I had no doubt that Rebecca was telling me that she had been down to the minister's office and what had been said to her.

MR O'NEILL: What was your reaction to receiving that information?

25

MR GREEN: That this is very unusual, and I've not seen minister's offices interfering in tender evaluation processes in the past.

MR O'NEILL: But you're adamant that the message was "Stick to the process"?

30

MR GREEN: "Stick to the process."

MR O'NEILL: And it was said in a meaningful way, that is, it wasn't said in some way as to align some other meaning.

35

MR GREEN: No, I don't think so. The message I got from Rebecca is, you know, there is - the minister's office has a view, there will be scrutiny on this, stick to the process.

MR O'NEILL: Now, once you received that information, what did you do with it?

40

MR GREEN: Well, the first piece on this was got the information Rebecca had asked for about the EOI reports and forwarded those on to her. So I started looking into it in more depth, making sure that we were going to be dotting our is and crossing our ts on this one. And then I had - probably had a meeting with the evaluation team or at least my team who were looking after this side of the evaluation.

45

MR O'NEILL: In that meeting who was present?

MR GREEN: I don't recall the specifics of the meetings and the dates. I just - I know that, as I said, I met with Mr Blom, Ms Power, Mr --

5 COMMISSIONER: I don't think they were on the team at this time. Who were on the team? Perhaps you might assist Mr --

MR O'NEILL: So the original team, Ms Young, Mr Morton and Mr Jacobi with Mr Hawkins observing. Is that the team you met with?

10 MR GREEN: I don't recall sitting down with those members as a team, as such, and doing that. I recall meeting with members of the team. So Mr Jacobi and Mr Morton were certainly Education employees sitting on level 1 and my ICW staff. So I would have talked to them.

15 MR O'NEILL: When you say "would have" --

MR GREEN: Did.

20 MR O'NEILL: Do you recall doing that?

MR GREEN: Yes, do recall that. Did talk to them. Yes, counsel.

MR O'NEILL: What did you say? Can you recall what you said?

25 MR GREEN: I recall passing on that the Min's office has a view who should said get the tender. I don't know how directly after the conversation with Rebecca - Ms Cross this is, counsel. So some time after that meeting with Rebecca Cross, I remember sitting there and I think Mr Blom was probably around there as well, probably Mr Player and Mr Patel as well who were also seniors in that team, and having a broad conversation around
30 what - what was going on in the - in the higher levels.

MR O'NEILL: All right.

35 COMMISSIONER: Well, so far what you've said is that - that there was interest from the minister's office. The - did you convey - do you recall one way or another, did you convey that the message was that Manteena was not to get this tender?

40 MR GREEN: Yes, I did convey that, that the Min's office had a view that Manteena wasn't to get the tender.

COMMISSIONER: Right.

45 MR O'NEILL: If you could be shown 2.0352, please. Now, this is an email from you to Ms Cross and Mr Matthews dated 26 February 2020. And at the top, it says that you give a broad description of what occurred. You then outline Franklin which is not relevant and then Campbell. But if the bottom part can be drawn out and that's the part which starts with "the attached", please. Do you see this rider that you've added to the email. (indistinct)

MR GREEN: Yes.

MR O'NEILL: Why did you include that in the email that you provided to those persons?

5

MR GREEN: Ms Cross's - the conversation I had with Ms Cross asked about how it was - how Secure Local Government jobs were assessed certificate. So this is putting some more detail around how Secure Local Jobs was assessed threshold. So it is not merely the code certificate threshold criteria as part of the EOI process, the respond responses are required to submit a labour relations training and workplace equity plan, which is an assessable criteria. So the - there's a - there's a tick box, if you like, at the start that said do they have a Code certificate, and that's the threshold criteria. And then in the more detailed analysis of the - sorry, then in the weighting criteria, their submitted labour related training or - is assessed. So what I was drawing out and drawing to her attention was that it was assessed by the tender evaluation team at that time and that there's comments in the attached evaluation report and that referee checks were made on the companies as part of that process, that the submissions that the tenderers put in were correct and matched what they had put in.

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MR O'NEILL: And of course that's in relation to the request - the request for information.

COMMISSIONER: Expressions of interest.

MR GREEN: Yes.

25

MR O'NEILL: Expressions of interest. Not by the process that was then being undertaken by the tender evaluation team.

30

MR GREEN: Correct, yes. This is the stuff that was the July/August submissions that I signed off on in November - sorry, October of the previous year.

MR O'NEILL: In response to that email, you had received an email at 2.0378 on the following day at 10.28 am, and it's going to be brought up for you. You see here that Ms Cross thanks you and says:

35

The assessment has noted things which will need to be reviewed or further evidence that was required. See extracts below. Can you confirm this has occurred, or what plans have - to follow up on these points?

40

Do you see that?

MR GREEN: Yes.

45

MR O'NEILL: And then in Campbell, it is information about tenderers that weren't the selected tenderers for request for tender?

MR GREEN: Yes.

MR O'NEILL: Do you recall why it is that you understood Ms Cross was asking you this?

5 MR GREEN: Because I had provided her the information, and so I was the conduit back and forwards on the - back to the staff who had assessed the tender evaluation - sorry, the EOIs.

10 COMMISSIONER: Well, that's clear - that's why you were the subject of the request. I think the question was more like these were not the successful - these were not being considered because they were not the successful tenderers. Do you know why she wanted that information about the unsuccessful - was that the point of your question, Mr O'Neill?

MR O'NEILL: It was.

15 COMMISSIONER: So did you know why she was asking for the unsuccessful tenderer details?

20 MR GREEN: No. I think it might have been the - the items that were - so this is an extract from the evaluation report. So maybe these were - in the most relevant criteria, these were the comments that required some other evidence of transitioning whereas the other companies may not have had similar commentary in the evaluation.

MR O'NEILL: Right. Now --

25 COMMISSIONER: However, what this does suggest is that she was analysing the process that had led to the selection of Manteena and Lendlease.

MR GREEN: Yes.

30 COMMISSIONER: After all, why would you be looking at unsuccessful candidates?

35 MR GREEN: So in my mind, she was looking at the process and having a look at it. From my understanding of her home Directorate, they weren't necessarily as construction-focused as, say, Education. So I'm not sure how much involvement she would have had with, say, construction tenders and workplace equity plans. So she was curious and looking into how it was done and what was assessed and what the matters were.

40 COMMISSIONER: But in all events, this was in the report and she asked for some more detail.

MR GREEN: Yes.

COMMISSIONER: Right.

45 MR O'NEILL: Now, at the same time, that is, the time that there's this review going on about expressions of interest, do you recall having an understanding of where the tender evaluation team had arrived in respect of its evaluation?

MR GREEN: I think at the end of February, the - where it was up to was that - that the tenders were over budget and that was where the conversations were heading. You know, what are we going to do? We've got two tenders that were over budget by more than 10 per cent, and, you know, we have got a problem here. It's not going to be an easy tender, this one.

MR O'NEILL: What was your view as to what should be done at that point in time where two tenderers were over?

MR GREEN: So there's a few different parts to what you do when two tenderers are over. It's - there's a range of ways. So some of the regular ways have been to do what's called value management, which is industry code for take scope out and try to get their price down. There's other approaches. So best and final offer is another way of doing it, which is essentially go back to tenderer or tenderers and say, hey, the scope is still the same but give us your best price. Think hard about it, go and do it. Another approach could be reject the tender all up. Another approach could be can we find the extra 10 per cent more of budget that we need and just pull more funds in and go ahead with it anyway. So that's kind of the range of options that need to be discussed about how it goes.

MR O'NEILL: Do you recall whether you had formed a view as to what your preferred option would have been? At the end of February, this is.

MR GREEN: Look, I think it was a discussion. I think we had had - I think at some point in there, I can't remember the date, there is definitely a meeting where we - we, and I think this is the Blom, Power, Hawkins, Young meeting where we sat down and discussed the options and came up with some approaches and came out of that with a decision to look at a BAFO. I think the initial view of Hawkins and Young and the tender evaluation team through them was let's go a VM session, let's see what we can cut out of the job to get back into the budget.

COMMISSIONER: VM you mean value management.

MR GREEN: Value management, yes. And so there was a - yes.

COMMISSIONER: And that I suppose had two directions. First of all you might look at the bid and see where they have perhaps been - I don't mean this pejoratively, but extravagant about some aspects which exceeded what was really needed on the one hand.

MR GREEN: Yes.

COMMISSIONER: And you might look at the scope of work that you wanted and think, well, do we really need all this work? So that would be two areas to examine which might give some flexibility in - in cost.

MR GREEN: Correct, Commissioner. The - the - a way it's often described is, you know, landscaping, for instance. We build a new school and we do landscaping as part of the

5 project. And often the landscape professionals will tell you the first thing the builders do is cut all the landscaping out and just plant grass instead which doesn't give the sort of play spaces. So there is options. We take energy efficiency measures out of buildings, cost ourselves more money notice long-term but save capital cost upfront. There's a path by which value management's done, to cut scope - sorry, specification and scope out of projects.

COMMISSIONER: Right.

10 MR O'NEILL: Now, the Commission is in possession of a note from someone else at that meeting - that is, the meeting that occurred on or about 28 February 2020. I'm not going to put it to you directly, such as show it to you, but it says that you wanted to negotiate with both tenderers with a list of items for each that will be negotiated upon. Does that sound like that was your view?

15 MR HASSALL: I object to the question. I really don't want to interfere; I would just like the actual wording.

MR O'NEILL: That was the actual wording.

20 MR HASSALL: Okay. Thank you. Well, if it could be indicated in quotations, I won't need to get up.

MR O'NEILL: Okay. I will read it again. It has your initials, JG:

25 *Once dual negotiations with both tenderers with list of items for each that will be negotiated upon.*

Does that accord with your view at the time? That is at the end of February?

30 MR GREEN: That sounds like a poor summation of a BAFO, because you can't go and direct and negotiate with two tenderers.

MR O'NEILL: Why?

35 MR GREEN: Tender negotiations happen. You select someone as preferred and then you negotiate with them. That's kind of the process as such. You don't go and negotiate on matters. That's kind of enhancing two bids. Whereas a BAFO is give them both and invite them both to respond at a time. The negotiation is a - was not a done thing in ACT
40 Government procurement. You don't negotiate things. You negotiate with the preferred; you don't negotiate with two.

MR O'NEILL: And that's certainly not a value management process that you understood?

45 MR GREEN: No.

MR O'NEILL: Your view nevertheless was value management; correct?

MR GREEN: No, my view wasn't value management, that was - that was the view of the tender evaluation team to do a value management exercise.

5 MR O'NEILL: What was your view?

MR GREEN: I was probably more BAFO than --

MR O'NEILL: Do you remember communicating that to that meeting?

10

MR GREEN: I remember a meeting where we discussed the options and suggesting can we do BAFO, and then I think the outcome of the meeting was going off and get advice from GSO because this is all hypothetical, about in, you know - sorry, until we get GSO advice on which parts we can go down.

15

MR O'NEILL: If you could be shown the document at 2.0382. Now, this was an email sent by Ms Young. You are not copied to it. Yes. Do you see there it's sent to Ms Power and Mr Hawkins. It is in relation to the Campbell Primary School Modernisation. It says:

20

Following our meeting with John Green on Friday and his request to perform a dual negotiation. Please see attached. Summary of probity, advanced request to GSO and list of items to be included in the TET and send to tenders for negotiation of a best and final offer.

25

Looking at that information, and to the best of your recollection, does that accord with you saying it is actually best and final?

MR GREEN: I'm saying best and final offer. I think she has misunderstood what I have said because I have asked for a best and final offer at that point.

30

COMMISSIONER: Sure. But it's not an unreasonable description, is it? That is what you are saying to both of them is come back with your final number and part of that - one of the issues might be is, are you reconsidering your own scope? That is, is the best and final offer on the scope as it was originally, or because theoretically, I suppose, there would be nothing - where you are seeking a best and final offer, nothing to prevent you perhaps adjusting your scoping to see whether that would lead to a more acceptable outcome.

35

MR GREEN: Yes, Commissioner. Generally a BAFO, though, is trying to stick with the existing scope that you asked for and identifying areas where there's a --

40

COMMISSIONER: They can squeeze savings.

MR GREEN: They can squeeze - yes, indeed. It's different from, say, dual negotiation, because a negotiation is you go and negotiate about, say, a price or that. So a BAFO is making them bring an offer back to you.

45

COMMISSIONER: Sure. But this may - all I'm suggesting is this may simply be an awkward phrase for what is meant to be conveyed by a BAFO.

MR GREEN: I read the dot points as saying we are talking about a BAFO. So the --

5

MR O'NEILL: And had they expressed the view to you that their preference was to pick a tenderer and negotiate with that tenderer to value manage?

MR GREEN: As a VM, yes. I think they had done some work on what that looks like and opportunities to find some savings.

10

MR O'NEILL: Had they presented that to you?

MR GREEN: I don't think formally, but certainly it had been discussed.

15

MR O'NEILL: And what was your view in respect of that?

MR GREEN: I wasn't a fan.

20

MR O'NEILL: Right. Why?

MR GREEN: So the previous new school that the Education had done had ended up at a value management outcome, if you like, at the end there. And the school had serious savings carved out of it. I can't remember the exact detail, but it was a large series of value management reductions. And it had resulted in a school that was not - it had serious compromises. It had, you know, reduced learning outcomes, you know, external spaces were pretty poor. It had bad building outcomes. There was one site where they even tried to take out some of the double glazing and put single glazing windows back in. It would have ruined the efficiency of it. So the history of some of the VM outcomes were, we got a substandard product.

25

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MR O'NEILL: Had you been shown at this point a draft of the evaluation report?

MR GREEN: I don't recall. I recall knowing that Manteena were ahead of Lendlease on the scoring.

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COMMISSIONER: And it was a lower bid.

MR GREEN: And it was a lower cost, yes. A lower cost. Along those. So, I knew broadly where the - the outcomes of the evaluation were.

40

MR O'NEILL: Were you across the detail as to the disparity in the scoring?

MR GREEN: I don't think I was across the detail. I certainly hadn't read any evaluation commentary. I just knew there was a gap and that Manteena were a higher scored --

45

5 COMMISSIONER: Do you know - can you recall at this stage whether the report had actually been written, or was it at an intermediate stage where the - I think the chairperson usually would put it together. That would be the usual practice. But I just wonder whether it was not yet in that shape, and the discussion then would have been about content but not with the precision that you would expect in a written document.

MR GREEN: Reading this email suggests to me that the report is written, because it talks about "amend the TER". So tender evaluation report.

10 COMMISSIONER: Right.

MR GREEN: And a month after it closed, I think the report would be getting to --

COMMISSIONER: Final form.

15 MR GREEN: Yes, towards a final form.

MR O'NEILL: Were you involved at aisle in relation to the request for probity advice from the Government Solicitor?

20 MR GREEN: I don't think so. I - I kind of remember having conversations saying we need to get advice from GSO. I don't recall being actively involved in either the drafting of the request or even the seeing it when it came back. I may have been copied into an email, but I certainly get lots of emails and can't recall actively being involved in that drafting.

25 COMMISSIONER: Had you yourself conducted a BAFO before?

MR GREEN: Yes.

30 COMMISSIONER: Do you know whether Ms Young had or the staff had?

MR GREEN: I --

35 COMMISSIONER: If you don't know, I'm not --

MR GREEN: I don't know entirely, but they - certainly neither of these staff, Mr Hawkins or Ms Young, were involved in the last big BAFO that I did.

40 COMMISSIONER: Right.

MR O'NEILL: Were you involved in the decision-making process to obtain advice from the Government Solicitor's office?

45 MR GREEN: Yes, I think it was an outcome of that meeting.

MR O'NEILL: Why was it thought necessary to obtain that advice?

MR GREEN: To confirm with GSO that we could do it. So BAFOs - where you have used BAFO before were more of a services procurement rather than a straight construction procurement. So - and given this one had been through a early tender involvement stage, whether that was all appropriate to GSO being the probity advisor for the early tender - early contract involvement sort of phases.

MR O'NEILL: But wasn't it a process that was contractually enshrined in the tender documents to which the tenderers had agreed?

MR GREEN: I am not sure, and I don't think I was sure. I'm not being fully across that RFT document that went out there, so it's easier to get GSO advice as to whether that is an option on those conditions of tender and then how it should be done.

COMMISSIONER: Well, one of the issues is that it may be regarded as unfairly favouring the unsuccessful bidder in terms of price to enable them to rebid.

MR GREEN: Yes, you would need that - yes, Commissioner.

COMMISSIONER: So all I'm saying is it can raise probity issues. It's not an automatic "let's go ahead in this way."

MR GREEN: No, it's not an always - it's certainly not - not the normal way. So typically, a tender would be evaluated, there would be a winner, and you would order tender. It's not - you know, even value management is not a - is not the - is not a regular occurrence. Normally you get a tender and you have a tender process by which you can award a contract on. So all of these ones require a level of further advice.

MR O'NEILL: What was motivating you at the time to press for or suggest a BAFO?

MR GREEN: Okay. So where the point of where the tender was up to, with, you know, the first view of the outcome from the - from the tender evaluation team and the Major Projects Canberra was that we just award it to Manteena and do value management to get it down. So given what I had heard about Manteena and the minister's office, the views on Manteena, to me that was a politically risky outcome to start with. And, you know, there was no guarantees we were going to get a successful outcome at all. So a couple of thoughts in my head around that. So one is, having heard that the minister's office don't want Manteena to get it, our first response shouldn't be just to give it to them on a - on a platter with a whole series of unknowns hanging out the back on a - what have we got to do to cut the school apart to get down to it?

MR O'NEILL: Why not? If they are the successful tenderer, they were the successful tenderer.

MR GREEN: But they were over the budget. Both tenderers were significantly over the budget. In my view, neither tender could be accepted as it was. So why - why rush into that pain? So another part of it was let's explore the options under the process and keep the tenders in the air. There's no - there's no win to be had by just, you know, awarding a

tender straightaway. Let's explore how it goes and work out what's the best option that can come out of it, along that way.

5 COMMISSIONER: And it might be that on a BAFO, Lendlease might win and problem solved.

10 MR GREEN: Absolutely, Commissioner. That was certainly one of the considerations in my mind around that one. But also it would mean that we don't have to make a decision right now, whereas if we just pursued a path on Manteena and a VM, there would have to be this conversation around we have given it to Manteena, and we also have to cut I think 11 per cent out of the project in order to make it fit the budget. So it was time to explore the options rather than make a prompt decision on this.

15 COMMISSIONER: With - which might, amongst other things, aside from a value management being a potentially difficult effective undertaking, might have political risks which were unattractive.

MR GREEN: Yes, Commissioner.

20 COMMISSIONER: Yes, Mr O'Neill.

MR O'NEILL: So were you given any express direction about what was to be the outcome of this tender evaluation?

25 COMMISSIONER: By whom?

MR O'NEILL: By anybody.

30 MR GREEN: So I think that at this time I - counsel, you've got the dates, I'm not sure, in front of you. This was not long after my conversation with Ms Cross.

MR O'NEILL: That's right.

35 MR GREEN: And that was the - we will follow the process. This was following the process and pushing the decision a bit further down the train to see what would come along when Ms Haire returned.

40 MR O'NEILL: Now, were you involved at all in the process of selecting how it was that the BAFO was to reassess the certain categories under which the tenders were to be evaluated?

45 MR GREEN: No, I think that was part of the advice from the GSO about which categories could be reassessed and what documents to get back from the tenderers and what documents could do out to the tenderers. My recollection is that was in the GSO advice as to which matters could be, if you like, re-tendered or reassessed.

MR O'NEILL: Was your input sought in respect of that matter?

MR GREEN: I don't recall. I don't think so. I have no recollection of being asked around what could be reassessed.

5 MR O'NEILL: Do you recall any members of the tender evaluation team expressing any dissatisfaction to you about this process?

MR GREEN: Yes. Ms Young was fairly strong in her views, and I don't know how directly I got those or whether they were passed on by Ms Power, but the view from Ms Young
10 was that she had done a tender evaluation already. Her view was that Manteena had won it, and she didn't see the need to do anything else. Sorry, she didn't - yes, she thought she had done her job.

MR O'NEILL: Did she speak to you directly about that?

15

MR GREEN: I don't recall her speaking to me directly.

COMMISSIONER: Now, there was in fact a formal document which contained the recommendation and gave scores. Perhaps you might repeat them for - to assist our
20 recollection, Mr O'Neill.

MR O'NEILL: I don't think the witness was present during the opening.

25

COMMISSIONER: No, that's why we've said we will repeat it.

MR O'NEILL: Thank you.

MR GREEN: If it helps, Commissioner, are you talking about the first draft tender evaluation report?

30

COMMISSIONER: Yes, we are.

MR GREEN: Which I have seen before. So I know that there was a scoring - Manteena were significantly higher than Lendlease. I remember that document from previous
35 conversations.

COMMISSIONER: That's right. Indeed. And I think you saw - just correct me if I am wrong. You saw the document when it was in final form with a recommendation to go to value management. We have already spoken about this. But you actually saw the document
40 yourself, I think, did you not?

MR GREEN: Yes, I recall seeing the document in one of its final forms.

COMMISSIONER: And you directed that the recommendation should change to a BAFO.

45

MR GREEN: I don't know if I --

COMMISSIONER: All right. Perhaps, Mr O'Neill, I will leave that to you to take the witness to the documents when you're ready.

5 MR O'NEILL: Thank you. Are you okay, do you need a break? I appreciate that it's - this is a longer session. We will have another --

MR GREEN: Are we going until 4?

10 MR O'NEILL: We are going to go till 4.

MR GREEN: I can go to 4.

MR O'NEILL: If you need 10 minutes --

15 MR GREEN: I can go until 4.

COMMISSIONER: You need a break, Mr O'Neill?

20 MR GREEN: I'm going to keep the pressure on him, Commissioner, I will keep him working.

MR O'NEILL: I will come back to that. So were you a person who received the GSO advice when it - when it was returned?

25 MR GREEN: I - counsel, I don't know if I received it. I - I understood the GSO advice on the basis of a precis from Ms Power. I'm not sure if I was CC'd into an email with the advice attached, but certainly I - Ms Power, I think, passed on to me what it said and I think that's my understanding of what the - my understanding of the advice interpreted from her email, I think.

30 MR O'NEILL: Now, at page 2.0800 is an email you are not copied to, but it is 3 March 2020. Now, you see here that Ms Young is requesting of Ms Cross and Mr Hawkins, she can't send a revised evaluation report over to EDU. So this is all happening within Major Projects:

35 *until we get advice back from the GSO.*

Do you see that?

40 MR GREEN: Yes, counsel.

MR O'NEILL: She says she's redrafted the TER and highlighted the changes per attached. And then she says:

45 *Obviously Phil Morton wondering what is going on. He wants to be copied into what we send to the GSO. So far I've sent him the list of potential items to inform the tenderer is attachment J as ED need to confirm.*

Etcetera. Do you see that?

MR GREEN: Yes.

5

SPEAKER: I'm sorry, Mr O'Neill, I just wanted to clarify that that email was not from Rebecca Cross but from --

MR O'NEILL: If I said the wrong Rebecca, I apologise to both of them. It's obviously sent to Ms Power. Do you see there that - now, had Mr Morton expressed any concerns to you about he was being left out of what was going on within Major Projects?

MR GREEN: I don't recall Mr Morton expressing that to me. I would expect though that the Chair of the tender evaluation team, Ms Young, is keeping her tender evaluation team members informed of what's going on.

MR O'NEILL: And attached to that email is a document, and it's at 2.0810 that I want to take your attention to first. It is in highlighting under Recommendation. Can you just draw that out. Had you ever seen a version of this recommendation which included the words --

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MR GREEN: No. "Dual tender negotiation". That's - I go back to my previous statement, counsel, it seems to be that that's her interpretation or her shorthand for what a BAFO looks like. Again, this is:

25 *Dual tender negotiations is being entered into with both tenderers for a best and final offer.*

So it's weird. I would call that a best and final offer. So I'm not sure where that text comes from, because a BAFO is not a negotiation. It's not like a one-on-one negotiation; it's a - here is some - here is some criteria, here is some things to look at. Give us an offer back. And that's why it's a best and final offer.

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MR O'NEILL: Now, if you could next go to a document that starts at 2.0813 but I need to take you down to 2.0814. At the bottom of 2.0813 first. So the bottom part, which is the Young email. Do you see how it says it's the date of 3 March 2020 at 5.48 pm. "Hi Tracy", and then on the top of the next page. Can you see:

35

Can you please advise a suitable meeting time with you and myself and possibly Dylan Blom to discuss the status of the Education Directorate's infrastructure specification.

40

MR GREEN: Otherwise known as EDIS, yes.

MR O'NEILL: Is that a different topic to Campbell or are they related?

MR GREEN: EDIS is, as it says, the Education Directorate's infrastructure specifications. So it's the set of documents that define what we are looking for in terms of learning spaces as well as building technical standards, like you know, building fabric and materials,

45

performances and all the other matters that make up the - you know, how the building is made. So it's relevant to all of these tenders because all the contractors are asked to build a school in accordance with EDIS.

5 MR O'NEILL: Could it have any possible interaction with the Campbell project, though, at this point in time?

MR GREEN: It would, because, you know, the Campbell project, the tenderers would be required to build a school in accordance with EDIS as well as any other design
10 documentation that added to it. EDIS is like the base level specification.

COMMISSIONER: I think Mr O'Neill's question, though, is somewhat differently directed in that you already received the tenders so they must have already complied with EDIS, unless of course the tender evaluation team thought they hadn't complied. But we presume
15 that they had complied with EDIS, so in a sense that was - this is now past - we were beyond that stage.

MR GREEN: I agree, Commissioner.

20 COMMISSIONER: I think that's really Mr O'Neill was - is that right, Mr O'Neill?

MR O'NEILL: It is, thank you, Commissioner.

MR GREEN: To your question then, counsel, EDIS was included in tender docs, they were told to deal with EDIS. So I don't see the relevance of these emails to Campbell - sorry,
25 direct linkage of these emails.

MR O'NEILL: Now, you referred to in your evidence earlier a summation that you received or that you were given by Ms Young in relation to what the GSO advice
30 contained.

MR GREEN: By Ms Power possibly?

MR O'NEILL: Well, I will show you this piece of paper and you can tell me. 2.1437. Now,
35 it's a fairly lengthy email. It's not copied to you at this point in time. Does that assist your memory as to what you were being told?

MR GREEN: So this is like a summation of the legal advice. So I'm not in this email chain.

40 MR O'NEILL: You're not.

COMMISSIONER: But do you think - I think Mr O'Neill is asking you, is this the kind of information that you were given or not, or you can't remember?

45 MR GREEN: I don't recall this level of --

COMMISSIONER: Detail.

MR GREEN: -- detail, in there but it's clearly someone has gone through and looked at the items that is in the GSO advice and made comments on.

5 MR O'NEILL: All right. If the witness can be shown 2.1449. It's the top of it for the moment. Now, you're copied to this email. It's from Mr Moreton. It's on Friday 13 March 2020 at 9.11. And it's pretty simple what it says.

MR GREEN: Yes.

10 MR O'NEILL: You were the delegate at that point in time?

MR GREEN: I think the delegate there is referring to me.

15 MR O'NEILL: Yes. You are copied to the email?

MR GREEN: Yes.

MR O'NEILL: And:

20 *Please provide a draft list of comments for our review prior to sending to the tenderers.*

Do you see that?

25 MR GREEN: Yes.

MR O'NEILL: And you had advised, hadn't you, that the TET is to proceed with the BAFO. Do you see that?

30 MR GREEN: Yes.

MR O'NEILL: It's a direction from you.

MR GREEN: Yes.

35 MR O'NEILL: Is it your role to tell the tender evaluation team what it do it should do at this point in time in.

40 MR GREEN: So the - the conversation is what's the recommendation they are going to make to me, and essentially in this I've told them that I'm not going to accept a recommendation which is going to a VM with one contractor, that I want them to go down a BAFO path.

MR O'NEILL: Had you at this point in time seen a draft of the tender evaluation report?

45 MR GREEN: I cannot recall, sorry.

MR O'NEILL: At this time, had you seen - sorry, were you aware of the disparity in the scoring between the way in which the two tenderers had been assessed?

5 MR GREEN: I think I was aware by here of the significant gap between the scoring and I think I was - yes, I think I was aware of the significant gap between them. And I thought that the scoring on Lendlease seemed particularly harsh for a tier 1 contractor. But I wasn't - I don't think I had seen the details of the gap - sorry, I don't think I had seen the details of the evaluation that led to those scores being so widely apart.

10 MR O'NEILL: So you hadn't seen, for example, the work sheet that set the relevant data or detail that the team had evaluated in order to arrive at the score.

MR GREEN: No, I don't think I had seen that.

15 COMMISSIONER: In all events, as I understand it, that really didn't matter, because you were not going to go to a value-managed scheme. Both were over the money, and you wanted to kick this can down the road and hoped, I suppose, that the BAFO might come out with a different result, but at least you at this time didn't have to make a decision that was going to be controversial or potentially controversial. So in that sense, the points didn't
20 matter very much.

MR GREEN: I think that's a fair summation, Commissioner.

25 MR O'NEILL: Nor did the fact that Manteena had been, by virtue of its score, given a low-risk rating to the Territory but by virtue of its score Lendlease a medium risk rating to the Territory. That didn't matter to you either, did it?

30 MR GREEN: That was purely a function of the score they were given, and I think I didn't believe the scores that were so - you know, Lendlease seemed a lot lower than I would expect a Lendlease tender to be.

MR O'NEILL: Nor did the fact that the Manteena tender was cheaper by about 8.5 per cent.

35 MR GREEN: But both were over budget.

MR O'NEILL: So the answer to my question is it didn't matter to you. Is that fair?

40 MR GREEN: No, both were over budget. Neither were affordable.

MR O'NEILL: Now, the rest of this email, if we zoom out and have a look, at the bottom of it you will see an email from Ms Kelly - sorry, Ms Young, 12 March.

45 MR GREEN: The previous email you showed me.

MR O'NEILL: Yes.

MR GREEN: Yes.

MR O'NEILL: Did you recall reviewing - do you recall reviewing that email at the time you got the email from Mr Morton?

5

MR GREEN: No.

MR O'NEILL: And it wouldn't have mattered - sorry, I withdraw that. So when this was communicated - sorry, I withdraw that. At the time of this - of the top email, being 13 March 2020, had anyone expressed any dissatisfaction to you about the way in which this process was being handled?

10

MR GREEN: I - I have to think back. So I think there was - Ms Young had some views and I'm not sure if she expressed them directly to me or through Ms Power. Ms Power was - certainly had passed on that Ms Young was not happy in that sense there. That's the one I can remember. I'm not sure if any others had views, but Ms Young is the one that I can remember most having her comments passed on to me. I don't think she said it to me directly; I think it came via Ms Power.

15

MR O'NEILL: Had you expressed the basis for the reason you had made that direction to anybody?

20

MR GREEN: I think I - as I said, I think I had discussed with Ms Power, Mr Blom and some of - at least those two about the - essentially kicking the can down the road kind of response on such things.

25

MR O'NEILL: What about Mr Morton?

MR GREEN: I probably did. I certainly had a conversation with Mr Morton at some time and he was part of these conversations where I mentioned that the Min's office didn't want Manteena to get it.

30

MR O'NEILL: And was Ms Young part of those conversations?

MR GREEN: Ms Young I don't think was part of those conversations. She didn't - she wasn't based in the Education Office; she was based over at Major Projects Canberra office.

35

MR O'NEILL: Okay.

40

MR GREEN: But she may have had it - I know she's had it passed on to her by Mr Morton.

MR O'NEILL: Now, across the page, 2.1451. If the two bubbles could just be drawn up.

45

MR GREEN: Is Dad having a conversation again?

MR O'NEILL: Yes. So unfortunately no pseudonyms required on this. For your benefit as the witness the person identified as "Dad", is you by virtue of the way in which this is downloaded off various devices. You are not Ms Power's dad; is that fair?

5 MR GREEN: That's correct.

MR O'NEILL: All right. So, the first is a text message from Ms Power to you where she informs you that she's talking Campbell with David Grey and Kelly. Who is David Grey?

10 MR GREEN: David Grey is - at that time was a senior manager in Major Projects Canberra. Sorry, the level below director, so senior manager, so a senior officer. And he looked at - I think he looked after the contracts section and had lots of involvement with the standard documents.

15 MR O'NEILL: And you see that then you respond:

If it helps, I'm happy (as delegate) to decline to accept any tenders.

Do you see that?

20

MR GREEN: Yes.

MR O'NEILL: Why would that help?

25 MR GREEN: So they were - I'm assuming discussing the advice back from GSO to go - or how you go back doing a BAFO. So I've gone back to one of my other positions, which is I'm happy to decline all tenders and then allow the whole thing to be re-tendered, which is another way of getting offers back and starting a whole new tender process again.

30 MR O'NEILL: Had you seen the advice from the GSO at this point in time, that is, at 13 March 2020 at 12.26?

MR GREEN: I can't remember how this relates in time to that previous email. Sorry, counsel.

35

MR O'NEILL: It follows it by about three hours.

MR GREEN: Well, I don't think I had read that other email and digested the content of the bottom email.

40

MR O'NEILL: Okay. And so is that an answer that you hadn't yet seen or hadn't seen the GSO advice?

45 MR GREEN: I hadn't - I hadn't read the GSO advice in detail, or I don't think I had even read the comments from Kelly summarising what the GSO's advice said at that time.

MR O'NEILL: So, that answer means it doesn't matter what the GSO is going to say to you. That's what you were going to do if you were forced into a corner; correct?

MR GREEN: Sorry, I don't follow, counsel.

5

MR O'NEILL: Well, you haven't read the GSO advice and that's what they are talking about. That was your answer to me previously.

MR GREEN: So that's the blue box; they are talking about Campbell.

10

MR O'NEILL: Yes.

MR GREEN: So they are discussing something. Presumably the GSO advice.

15

MR O'NEILL: And you presume that's the GSO advice.

MR GREEN: Yes.

20

MR O'NEILL: And you say, if it helps, I'm happy as delegate to decline to accept any tenders. So it doesn't matter what they say, that's what you are going to do if you --

25

MR GREEN: No, that's another path out, counsel. So that's another path by which to have another process. So if GSO is saying we can't go to two, the option that I'm suggesting as - as I'm saying is still open there is I could decline to accept any tenders and we could then re-tender the whole process. So if GSO say you can't do a BAFO, an option that I put out there that I - I could as delegate decline all tenders and allow the whole thing to be tendered again.

30

MR O'NEILL: That would be a pretty drastic step?

MR GREEN: Yes.

MR O'NEILL: It would be an expensive step?

35

MR GREEN: It would, and it would upset the industry who really hate wasting their time tendering on things and having us decline to accept any tenders.

MR O'NEILL: On the next page, Ms Power says that:

40

Are you happy to make a choice on the TER between negotiations with one or BAFO from two?

Do you see that? Now, that's a square question about the two options that had been placed to you by NPC; fair?

45

MR GREEN: It hasn't yet --

COMMISSIONER: Sorry, didn't hear.

MR GREEN: So I don't know what email he is talking about. It's not on my screen yet.

5 MR O'NEILL: People will catch up to me now. I've been behind so now it's my turn. There we go.

MR GREEN: Okay.

10 MR O'NEILL: So Ms Power sends an SMS to you at 12.27. So it's right after the one that we have just seen.

Are you happy to --

15 COMMISSIONER: I just notice that the telephone numbers are on these and they - so I should make an order that there is to be no publication of those numbers. And when we put these exhibits up on the website, we will redact those numbers. They are not material, but they do intrude into privacy unnecessarily, I think.

20 MR O'NEILL: May it please the Commission.

COMMISSIONER: Sorry, we need to go --

25 MR O'NEILL: I will have a third go at it. All right. So, you will see there that the text message says, when it comes up, it will be redacted now, I think. This is what the process is, Commissioner, is that we are so technologically savvy here we can redact on the run.

COMMISSIONER: I'm a pencil on paper man myself, which has the benefit of speed.

30 MR GREEN: Black Texta. Counsel, I have read that email enough I could talk to it if you like.

MR O'NEILL: Text?

35 MR GREEN: Yes, the text, sorry.

MR O'NEILL: I mean, I am accurately recasting it as:

40 *Are you happy on TER between negotiations with one or BAFO with two?*

MR GREEN: And my response back to Ms Power is that makes it an option paper, or words to that effect.

MR O'NEILL: It's hardly a recommendation, more an options paper.

45 MR GREEN: And that's a continuation of a conversation that we had had about of which is the tender evaluation team is expected to make a recommendation not a series of if

this - if - not this one but how about this one instead. So it was a conversation that Rebecca and I - sorry, Ms Power and I had had at various times in the past on other matters whereas the delegate, the tender evaluation team needed to present a recommendation for a decision, not give a shopping list of which way would you like to go.

5

COMMISSIONER: Still, that's a little unfair, isn't it, and I suspect this is sent a little tongue-in-cheek.

MR GREEN: It was definitely tongue-in-cheek, Commissioner.

10

COMMISSIONER: Because you wanted them not even to make their recommendation. You wanted them to give you the recommendation which you had already told them to do. So it wasn't their recommendation either. Isn't that right? That what you told us?

15 MR GREEN: Yes. Essentially I was telling them to make me a recommendation.

COMMISSIONER: This is what I want.

MR GREEN: This is the recommendation I wanted.

20

MR O'NEILL: Yes. And if it's going to be negotiations with one, you are going to reject it. Fair?

MR GREEN: Yes.

25

MR O'NEILL: Now, the tender evaluation report that you received - and I will just take you to the relevant part of it, 2.1458. Just bring up the scoring box at table 2. So the scores in this report, and this is - just take it from me this is the one you received, still maintain that Manteena was scored 79, and it's in green because it's low risk, and Lendlease Building was still 2 and it was medium risk and, as you say, that's as a function of the scoring. That hadn't changed.

30

MR GREEN: I think - no, I don't think that changed the scoring at all.

35 MR O'NEILL: Yes. And then if I can take you to page 2.1459, and the box underneath the subheading Financial. The pricing, that has remained the same. That hadn't changed. Manteena was still under the Lendlease bid by whatever that amount is. Barristers can't do maths.

40 MR GREEN: \$1 million.

MR HASSALL: Speak for yourself.

45 MR O'NEILL: I can add up, I guess. So the - that hadn't changed either. And then if I can take you to 2.1460, and the subheading Recommendation - under the subheading Recommendation - it will come up shortly - do you see there that it now recommended that a best and final offer be requested to both tenderers. Do you see that?

MR GREEN: Yes.

MR O'NEILL: That's what you had directed it would say; agree?

5

MR GREEN: Yes.

MR O'NEILL: And you could accept this; agree?

10

MR GREEN: Yes.

MR O'NEILL: Now, curiously, this isn't the report that you accepted. Why?

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MR GREEN: This report came through, and then there was a change of the tender evaluation team after this report had come through, because Ms Young decided she didn't want to continue as the chair, and so then there was a new tender evaluation team stood up to assess - sorry, to continue the process.

20

MR O'NEILL: Do you know why Ms Young no longer wanted to be part of the tender evaluation team?

25

MR GREEN: As I said before, Ms Young's position, as had been repeated to me by Ms Power, was that she thought she had done her assessment and that Manteena should get the job and she didn't want to continue.

25

MR O'NEILL: She was in effect taking a stand.

MR GREEN: Yes.

30

MR O'NEILL: Were you involved in standing up the new tender evaluation team?

MR GREEN: I - I authorised it, if you like, as the delegate or who the new tender evaluation team was.

35

MR O'NEILL: But my question is more granular than that, and that is were you involved in selecting the relevant persons?

40

MR GREEN: I don't recall selecting the relevant persons. I think the suggestion came through from Ms Young or Ms Power, or possibly even Mr Blom about who the new team would be.

45

COMMISSIONER: But why would you have to change the whole team? I understand you might have to change the chair because she had, as it were, spat the dummy. But why would you need to change the other - or had they objected as well?

45

MR GREEN: I think Mr Moreton was - I think he may have objected, but I'm - that's again speculation on that one, I suppose. I can't recall it exactly. And then the conversation was,

well, if we are going to have one new do we need to have two new? Do we have a whole new team that's - that's fresh to the project.

COMMISSIONER: Right.

5

MR GREEN: So one out, all out might have been the - I can't recall specific conversations around the - who was going to be on the new team.

COMMISSIONER: As it happened, the whole team was replaced?

10

MR GREEN: Yes. I think two of the three were, you know, over at --

MR O'NEILL: That is, of the former team were over the process.

15

MR GREEN: Yes.

MR O'NEILL: Now, Mr Blom and Mr Patel, they were the persons selected for the new tender evaluation team from the EDU. Is that fair?

20

MR GREEN: I think so. I think it was Blom, Patel and Sally, let's say.

COMMISSIONER: Sorry, and who?

MR O'NEILL: Sally Wright?

25

MR GREEN: Sally Wright. Thank you, counsel.

MR O'NEILL: And Sally Wright. Now, Mr Blom, he was a director - he directly reported to you, didn't he?

30

MR GREEN: He directly reported to the EBMICW role.

MR O'NEILL: So the answer to my question is --

35

MR GREEN: He wasn't directly reporting to me at that time.

MR O'NEILL: Because you were acting --

MR GREEN: As EGM.

40

MR O'NEILL: I see. If you weren't in that acting role, for those of us that --

MR GREEN: He would directly have reported to me.

45

MR O'NEILL: And Mr Patel?

MR GREEN: Directly reported to Mr Blom.

MR O'NEILL: All right. So was it any coincidence that the people that were selected on to the second tender evaluation team were persons who, if you were in your normal substantive role, would report to you?

5

MR GREEN: I had to work out exactly what you said. They weren't selected on the basis they directly reported to me; they were selected on the basis that they were more senior officers.

10 MR O'NEILL: When you say more senior officer, more senior to whom?

MR GREEN: More senior than Mr Morton and Mr Jacobi. They were the head of Education's capital works team and the next most senior person in the capital works team. Whereas Mr Morton was relatively long-term but junior and Mr Jacobi was brand new to the team.

15

MR O'NEILL: Well, Mr Morton had been in the EDU for a very long time.

MR GREEN: Yes.

20

MR O'NEILL: And Mr Blom had only been in the EDU for a shorter period of time.

MR GREEN: Yes.

25 MR O'NEILL: About a year or so.

MR GREEN: Yes. I think Mr Blom only arrived at the end of 2019.

MR O'NEILL: Yes. And then Mr Patel was even less than that.

30

MR GREEN: Yes.

MR O'NEILL: So when you say senior, you mean in terms of their ranking within the public service.

35

MR GREEN: And experience in dealing with major capital works projects.

MR O'NEILL: Right. But certainly not in their terms of their time in the seat that they were currently occupying.

40

MR GREEN: Correct.

MR O'NEILL: Now, if we could take you to 2.1560, and again, the two text messages. Same formula as before. You will see:

45

Have you seen the new TER for Campbell?

And you say no. That's dated 20 March 2020. Over the page.

MR GREEN: I think there's some black lining happening.

5 MR O'NEILL: Yes. You will see it was sent over on Monday:

Apparently with John and he's unlikely to get it today.

And you say:

10

I know it's over here. I've seen it and noted that it is sensitive-in-confidence.

What that's a reference to?

15

MR GREEN: The digital limit marking, whatever they call it. At some time before the ACT Government had changed from calling things commercial-in-confidence and decided that things should be sensitive-commercial. And yet this document was still templated sensitive-in-confidence at the bottom.

20

MR O'NEILL: It's in the wrong template. You have noticed that?

MR GREEN: Yes.

25

MR O'NEILL: And I assume that your first text about "seen" was in an official sense, not just on the screen with Chris.

MR GREEN: Yes.

30

MR O'NEILL: What's the meaning of that?

MR GREEN: So "seen", when she sent it first time, I said I was thinking of "seen" as in sent to me for approval. And after she sent that first email, I've gone to have a look to see where it is, and I've looked over Chris's shoulder essentially and seen it on his screen and he said it's here and all that sort of stuff. So I've actually gone looking for the document at that time.

35

MR O'NEILL: And it certainly hasn't been sent to you yet as the delegate to make any decisions.

40

MR GREEN: No. No. And that was with John, and John in that case there was the acting EBM of ICW, and the way the briefing notes would work he would be the first one to get it, and someone would prepare a brief that would go under his name as acting EBM to me as acting EGM asking me to agree to the document.

45

MR O'NEILL: During this period of time, are you communicating with anybody above you in relation to this process that's nearing the point in which you can make a decision?

MR GREEN: I've lost track of exactly the timelines, but my next --

MR O'NEILL: 20 March.

5 MR GREEN: My next series of communications upward and above me were once Ms Haire returned from holidays, and I can't recall the date of it, so I can't place where this is in sequence to the other communication with my Director-General. But that would be, you know, where I would be talking to the Director-General on such things. In the time when --

10 MR O'NEILL: And - sorry, I interrupted you.

MR GREEN: Sorry, in the time when Ms Cross was acting as our Director-General, I don't recall having too many more interactions with her around what was happening on Campbell.

15 MR O'NEILL: I note the time. I'm about to move to a new topic. I won't finish it in five minutes.

20 COMMISSIONER: Yes, very well. Well, we will adjourn until 10 o'clock tomorrow morning. There was something else I wanted to add. I thought I had made it clear in the confidentiality notices with respect to confidential matters, I understand that witnesses who may be called in the public hearing might feel somewhat anxious or stressed, and I want the legal representatives to tell them, if they have not already done so, that if they feel the need for professional assistance of any kind in relation to that sort of problem, they should
25 feel entirely free to approach such a person and to obtain what help they need, and for that purpose they are entitled to be completely candid about the matters that are causing distress or anxiety. I had thought this should have been understood, but just in case it's not, I want to make it explicit at this point. Very well. We will adjourn.

30 **<THE HEARING ADJOURNED AT 3.53 PM TO FRIDAY, 11 AUGUST 2023 AT 10 AM**