



WORD FOR WORD AUSTRALIA

ABN 14 610 850 809
E: enquiries@wordforword.au
W: www.wordforword.au

TRANSCRIPT OF PROCEEDINGS

THE HON MICHAEL F ADAMS KC, COMMISSIONER

THE ACT INTEGRITY COMMISSION – OPERATION KINGFISHER

PUBLIC HEARING

DAY 3

WEDNESDAY, 6 SEPTEMBER 2023 AT 10.11 AM

MR CALLAN O’NEILL, Counsel Assisting
MR M HASSALL, Counsel for the witness John Green
MR K LEE, Counsel for Minister Yvette Berry
MS K MORGAN SC, Counsel for Katy Haire
MR McAULIFFE, Counsel for Jason O’Mara
MR DOWLING SC, Counsel for Zachary Smith
MR S PARARAJASINGHAM, Counsel for Joshua Ceramidas
MS A CAINS, Counsel for Rebecca Cross

<COMMENCED AT 10.11 AM

5 COMMISSIONER: Yes, Mr O'Neill. I don't think it's necessary to re-affirm the witness.

MR O'NEILL: So be it, Commissioner. Would you like me to commence
the - recommence the examination?

10 COMMISSIONER: Yes, please.

<EXAMINATION CONTINUING BY MR O'NEILL

15 MR O'NEILL: Mr Green, on the previous day you gave evidence here, you were asked a
question, being in relation to your sharing of information about the political environment
to your team. And that is I can tell you this was the question:

Mr Green, why don't you tell the team, let's leave the earlier question. No I won't.

20 COMMISSIONER: You might have to speak up, Mr O'Neill, I think it is probably difficult
in the back of the room to hear you.

MR O'NEILL: Can I be heard back there?

25 COMMISSIONER: Someone else looked doubtful.

MR O'NEILL: Right. Take the conversation that occurred after Mrs Cross' intimation to
you that the minister's office knew, why did you tell the team that and why did you give
them that information, and you said:

30 *Commissioner, I have asked myself this question a number of times. I was sharing with my
team the political environment in which we were operating. In hindsight, I regret - deeply
regret doing that.*

Do you remember that answer?

35 MR GREEN: Yes, counsel.

MR O'NEILL: I just wanted to ask you why it is that you deeply regretted doing that.

40 MR GREEN: I think - I think it is information that would probably have been best kept at
my level, rather than sharing it with the team. I know habitually I share lots of things with
my teams to let them understand the environment that I'm operating in. In hindsight, I
think that was the wrong course of action to take at the time, and I should have kept that
particular piece of information to myself and not shared that and not potentially coloured
45 their views on where that process was heading or what the - what the consideration should
have been in that process.

MR O'NEILL: Yes. So in answer to my question as to why, is it because it had a potential to colour the view? Is that the long and short of the answer?

5 MR GREEN: That's probably the - yes, that's probably the reason behind it. It had the potential to colour the view. It was something that I could have not shared with the team and just leave them to their task of getting on and evaluating tenders and it's something that they possibly - or probably didn't really need to know.

10 MR O'NEILL: In -

COMMISSIONER: Well, the fact is it wasn't material, was it, to their task?

MR GREEN: No, it wasn't, Commissioner.

15 MR O'NEILL: And the problem with it, too, I would like to suggest, and please reject this contention if it's incorrect, is that it brings into play a factor that's not one that is canvassed in the assessment task that they are required to undertake under the procurement minute; correct?

20 MR GREEN: That's a fair suggestion.

MR O'NEILL: All right. Now, I want to orientate you in time from where we left off. And that is, that where we left off on the last occasion is that a - Ms Haire has - and you have had a conversation about the way in which the team has returned its decision - sorry, its recommendation. And you are now off to draft a briefing note or a recommendation that supports the decision maker, that is, Ms Haire, within overturning or overriding the recommendation being provided by the Tender Evaluation Team. Do you understand where we are in the chronology?

30 MR GREEN: Yes, I understand where we are, yes. I disagree with a bit of the language, but -

MR O'NEILL: Well, in fact, take me up on that, because the language is difficult, isn't it, because "override" is not technically what is happening. Do you agree?

35 MR GREEN: Correct. She made an alternative decision, would be another way of describing that.

40 MR O'NEILL: And she's entitled to do so.

MR GREEN: I thought so under the Tender Evaluation Plan, yes. She's entitled to make an alternative decision. Sorry, not accept -

45 COMMISSIONER: Not mean by entitled, doesn't it? She has the power to do so, but whether it's rightly exercised in the way she did is another question.

MR GREEN: The could versus should, Commissioner, I think is what you're saying. You could do something or should do something.

5 COMMISSIONER: I'm probably saying a little bit more. It is ultimately a matter of fact and degree. But all I'm saying is that when one talks of entitlement in this sphere, one just has to be careful. You are lawfully entitled to make decisions which are legally reasonable and appropriate. So, for example, to take an extreme case, it would not have been lawful to make a decision based upon the fact that you didn't like the table manners of the Manteena general manager. I use an absurd, but in other words, there are limits to the entitlement.
10 What they are varies in each particular case and usually the test is one of legal reasonableness.

MR GREEN: I take your point, Commissioner. I think we are talking in the same -

15 COMMISSIONER: I just don't want, as it were, the audience to understand that I accept the view that she had an unqualified entitlement to make the decision. She had the legal authority to make the decision by virtue of her office, but that decision was constrained by well-known administrative legal considerations. Quite apart from inherent wisdom, as I say, and said reasonable people can reasonably differ about many matters, including
20 evaluation, no doubt, of value for money. But -

MS MORGAN: Commissioner, could I just interrupt for a moment. As I understand it, it may not be quite accurate what, Commissioner, you are describing in terms of the procurement process and how it intersects with administrative law. I won't get into it now,
25 and it may not matter, but I wouldn't want it suggested that, Commissioner, you are actually setting out what anyone is entitled to seek review of in a procurement decision, which is the language, Commissioner, you are using with your interaction with Mr Green.

30 COMMISSIONER: No, I must say, I don't - unless you can point me in some direction, I'm not -

MS MORGAN: I'm happy to take that on notice, Commissioner. My instructions are that the procurement decisions are not subject to judicial review, but I will take that on notice from my own personal position and I can come back to you on that. But I would like it
35 noted, as I understand the position at the moment, Commissioner, what you are describing is not an accurate description of the law in the ACT.

COMMISSIONER: Very well. It's a matter for later debate, of course.

40 MS MORGAN: Thank you, Commissioner.

COMMISSIONER: But are you suggesting, or do you expect to submit - if you don't want to answer this question, I quite understand why.

45 MS MORGAN: No, I'm not suggesting -

COMMISSIONER: That she had an unqualified entitlement to make a decision that seemed to her to be justified.

5 MS MORGAN: Commissioner, I'm not suggesting anything. I was just concerned that the language you were proposing to this witness and to the audience did not accurately reflect the law of the ACT. That's all I was trying to make clear, that, Commissioner, you interrupted the interchange to ensure that people watching didn't want to assume that the word "entitled", as used by Mr Green, had a larger meaning than what he was using it for. I just wanted to point out to you, Commissioner, that your characterisation may not be
10 accurate in the ACT. And I'm happy to come back to you on that with the details, but it's not about what I'm submitting for my client in several weeks' time. It's the description, Commissioner, you have used in relation to this process.

15 COMMISSIONER: Well, I would be more than happy to be educated on the matter if you feel that you can make a useful contribution to it. But until that, I think my view stands. But of course, I will reconsider it should you bring other matters to my attention.

MS MORGAN: Certainly, Commissioner.

20 COMMISSIONER: Very well.

MR O'NEILL: So in terms of specific timing, Mr Green, the evaluation team had handed down its recommendation on 9 June 2020. And then you have had a conversation, which we have dealt with in evidence previously, with Ms Haire shortly thereafter. What did you
25 then do after the conversation with Ms Haire?

MR GREEN: So I set about writing a briefing note to be - to the Director-General to be a cover note, if you like, on the Tender Evaluation Report going to her for her to make her decision as the decision maker on that process. So I can't remember the specifics, but
30 basically, you know, started drafting my way through a briefing note, looking at the Tender Evaluation Report, looking at the Tender Evaluation Plan and - sorry, the evaluation plan as had been endorsed by the government procurement board and looking at what was in those documents and looking for a pathway to provide alternative recommendation.

35 MR O'NEILL: Do you know when you started that process?

MR GREEN: Not with any degree of specificity.

40 MR O'NEILL: Do you know how long it took you?

MR GREEN: I recall it taking a number of days and a few different versions. I actually recall sitting in a back office in Hedley Beare at one point while the rest of the place was in lockdown, working on that brief. I kind of remember finishing it sort of sitting in that office there. So, sorry, I can't tell you how long it took to brief. I don't know the date, or,
45 sorry, cannot recall the date upon which it went up to the document management process to the Director-General either.

MR O'NEILL: Now, had you envisaged that you would need to engage with the various supporting materials that had been attached to the recommendation, for example, the worksheets?

5 MR GREEN: I don't recall looking at the worksheets. I certainly remember reading the Tender Evaluation Report. I think I used some extracts of that. I looked at the scores and the risk ratings contained within that cover on the report. If not, I don't recall going and looking into the worksheet details. I think I relied upon the content in the report.

10 MR O'NEILL: Okay. And does it accord with your recollection that you had finalised that document by around about 22 June 2020, that being, say, about two weeks after?

MR GREEN: It sounds reasonable. It was a priority, so I think I, you know, was under the pressing tasks to get done.

15

MR O'NEILL: Your diary - I'm not going to bring it up - but your diary records that you've put into your calendar on 22 June 2020 a reminder to "write Campbell brief."

MR GREEN: Yes.

20

MR O'NEILL: That seems to be very close to when it was actually published. Would that -

MR GREEN: That sounds right, counsel. One of my work habits is to book time when I need to finalise something, and I probably booked a couple of hours to sit down and finalise the brief and I was probably working on it for some days before.

25

MR O'NEILL: Yes. I mean, that reminder to yourself was sent to yourself at 9.25 on the 22nd and it blocked out an hour from 3.30 to 4.30.

30 MR GREEN: Yes.

MR O'NEILL: And so that's probably the likely time at which you finished it, not the whole time in which you spent drafting it?

35 MR GREEN: And it was the time I finished, and it was probably the time I remember sitting in that office in the back of Hedley Beare, sitting down and doing it.

40 MR O'NEILL: Yes. All right. Now, I'm going to take to you the note. It's at the public brief at 1.462. Now, firstly, this document is entitled at the top right-hand corner, on the version - sorry, I withdraw that. This document is entitled Subject Campbell Primary School, Best And Final Offer. I will just pause while it comes back up. Best And Final Offer, Tender Evaluation Report on the subject line. Do you see that?

MR GREEN: Yes.

45

MR O'NEILL: And then the critical date being listed as 29 June 2020.

MR GREEN: Yes, a week later.

MR O'NEILL: Yes. And the way in which it's drafted is - and then if you can just call out the part under the Recommendation section for me and take those away. There are a series
5 of recommendations that can be made. And there's effectively a - in bold to the right of the relevant recommendation, a decision to be made. Do you see that?

MR GREEN: Yes.

10 MR O'NEILL: And that decision is to be made by the decision maker, in this case, Ms Haire.

MR GREEN: Yes.

15 MR O'NEILL: So the first one was indicative of whether Ms Haire had noted the information or not. And there's an option there that says, "Please discuss." Is this some kind of form that had been used previously?

MR GREEN: So the briefing notes are written on a template. This document - surprisingly,
20 there's no logo at the top, for instance. So normally you would see them with the logo, so - but maybe that's just how it's been retrieved. But there's some guidance as to how to write briefing notes. And typically, you know, it's a briefing note, so the recipient of it needs to be able to make a decision. So there's the standard options are "agreed", "not agreed", "please discuss". Or in the case of you want them to note something, "noted."
25 Please discuss", which gives the decision maker the opportunity to circle the appropriate one. I'm not sure there's an area where there is some circles on it and a signature. And that's how the decision maker indicates their - what they want to do. So often briefing notes would - you know, briefing notes are often noted. Sometimes they have got a "please discuss" if the contents is not clear or not agreed or something. The "please discuss" is the
30 note that often comes back.

MR O'NEILL:

35 *In recommendation to agree to phase one of the Campbell Primary School Modernisation Project with Lendlease Pty Limited for \$499,080, exclusive of GST.*

And that is obviously the important recommendation that you want Ms Haire to either adopt - sorry, agree, not agree or please discuss?

40 MR GREEN: Yes.

MR O'NEILL: And I understand - if I understand the answer that you just gave, if those options are a form option, in effect or something.

45 MR GREEN: Yes.

MR O'NEILL: And then a third recommendation about intellectual property payments being made in accordance with the tender documents. That is listed as "noted". Is that because it follows the agreement - to your mind, that followed that agreement in two if that agreement had been made?

5

MR GREEN: Yes, as well as reminding the Director-General that under the existing terms of the tender process we have been going down there, there will be intellectual property payments as well. Because I think it is also mentioned in the brief somewhere, so it was - seemed appropriate to remind the Director-General if she wasn't aware or inform her if she wasn't aware that there would be those intellectual property payments made.

10

MR O'NEILL: Had you had discussions with her in relation to intellectual property payments prior to the formalisation of this note?

15

MR GREEN: I don't recall any specific discussions that may have been mentioned in passing but it probably would have - sorry, I don't recall mentioning or discussing with her in any degree of detail. So she probably wouldn't have known that they operated or a standard part, so I thought it appropriate to mention it there.

20

MR O'NEILL: If the part in the box at the bottom of the page entitled Executive Feedback could be drawn out, please. Now, see this box, it says:

Approved - noting the reasons identified in 12 to 15.

25

We will come to those in a moment. But was this something that you had included in the draft of the document that you sent to Ms Haire?

30

MR GREEN: No, the draft that I sent up or the document I sent up in TRIM, the document management system, would not have had any comments in that. It would have been a blank box to be filled in.

MR O'NEILL: All right. So -

35

MR GREEN: It's unusual to see them typed as well. Normally they are kind of handwritten on a note, but people handle documents in different ways.

40

MR O'NEILL: Okay. Now, if we go to the next page, please. So from paragraphs 1 through to 7, which is over the page, there you've set out a precis of the process to date as at the date of the briefing note. Do you see that?

40

MR GREEN: Yes, it's definitely a precis. It doesn't contain all the details.

45

MR O'NEILL: Yes. I mean, for example, one of the things it doesn't contain is the standing up of the second Tender Evaluation Team and what had happened with the first Tender Evaluation Team. Do you accept that?

MR GREEN: Yes.

MR O'NEILL: Was there a reason why that background had been excluded?

MR GREEN: Not specifically. It's just a precis of the steps along the way.

5

COMMISSIONER: Yes, but counsel assisting's point is not all the steps. Some steps were omitted, and he's asking was there a reason for that.

MR GREEN: I don't recall making a conscious decision to omit it. I think I was trying to explain a long process with a degree of brevity in a brief. So I don't - yes, I don't recall making a conscious decision to not include it. I'm just thinking I've got a background of seven points and a page and a half which is more you try to have for a background anyway, so -

MR O'NEILL: Was there a deliberate decision not to include the decision that the first Tender Evaluation Team had arrived at because the scores were so disparate that it would not support the ultimate recommendation that was going to be made by this briefing note?

MR GREEN: Again, I don't think I made a conscious decision to exclude that. I think I was trying to do a brief summary of a long and complex project - process.

MR O'NEILL: Would it not have been relevant, though, for Ms Haire to know in this note that there had been a process whereby there had been a disparate score that had been reviewed and brought closer together before BAFO had been entered into?

25

MR GREEN: I don't think so. I don't - I'm not, in this brief, asking her to revisit a previous decision. So that decision had been taken. So that was a past process, if you like, if that sense there. So this is about the - this is a background saying we are at this point as opposed to explaining all of the steps that we've got to get to this point.

30

COMMISSIONER: But, Mr Green, the final point of this briefing note was to recommend a decision which departed from the ultimate recommendation of the Tender Evaluation Team. Isn't that correct?

MR GREEN: Yes, Commissioner.

COMMISSIONER: And do you not think it was relevant to say that the scores - those scores, that is the final scores, had been, to a significant degree, a reflection in terms at least of the substantial preferential outcome for Manteena had been - the recommendation, the initial recommendation of an entirely independent separate process. In other words, the reality was, leaving aside the technical position, the reality was she was being asked to reject a recommendation which had been in substance made by two separate evaluation teams whose scores, though not identical, reflected the same degree of significant variation. So, considered in that way, that might have been material, don't you think? It's one thing to say, well, you've got one isolated outcome, but - on the one hand, and on the other two outcomes from two separate teams. Now, you would be entitled to put in the mix

45

the middle decision which had them much closer, but even so, taking into account what you are recommending she should do, do you not think that was a material factor?

5 MR GREEN: So, Commissioner, I take your point and if the Director-General had not been aware of it at that time, I think that would be absolutely something that would be good to have in the background. But given that the Director-General and I had already spoken about the process along the way there, the outcome of the first evaluation report, or team, was something she was aware of and so I didn't think it was material to repeat it in this brief because it - she knew it, if that makes sense. So I absolutely agree with your first point. If she was coming to this cold, the degree of background required would have been more than what was required by this brief. But this brief was, if you like, a summation of a process that she had been kept updated around. So by its nature, I think I probably kept the background fairly brief as opposed to explaining all of the various pieces that we had discussed over the period beforehand.

15 MR O'NEILL: Does the briefing note, though, also perform a different role, and that is that it's documenting in a transparent way why it is that a recommendation is going to be overturned for the sake of anybody else whose looking at what occurred in the decision-making process?

20 MR GREEN: It does, but it's not a complete record of the whole process. So it is - it's a briefing note. It's not a - it's not a, if you like, report. You know, a briefing note by its nature is supposed to be brief and readable. If there had have been - you know, going back to one of your previous points, if there was the need for more information, that's why you had that "please discuss" box at the start to explain those things there. So it was - you know, that's a background and a briefing note. It's not an attempt to document the entire process of that procurement to date.

25 MR O'NEILL: Isn't it going to be the document, though, that Ms Haire is specifically going to rely on in arriving at a decision? She needs this information from you to arrive at a decision.

30 MR GREEN: Yes. This is - this is the briefing note that, you know, she used to make her decision.

35 MR O'NEILL: But you know that at the time of drafting it?

MR GREEN: Yes.

40 MR O'NEILL: And so therefore, doesn't it need to have clearly all of the integers which are relevant to that decision-making process?

45 MR GREEN: I think I sat down the - put out the matter that are relevant at the time there. So again, it's a briefing note of the outcome of the BAFO, and it's a briefing note. There is more details in the report, there is more details in the history, and there is more opportunity to ask questions as part of the briefing note process.

MR O'NEILL: If you go then to paragraph 8, you will see that you discuss:

The evaluation of the BAFO responses had been completed by the Tender Evaluation Team. A full summary is attached at attachment 1.

5

MR GREEN: Yes.

MR O'NEILL: Which is the report itself and its relevant attachments. Do you see that?

10 MR GREEN: Yes.

MR O'NEILL: Relevantly, it started, that is, the documents started at the BAFO point. It didn't go back into history of previous recommendations.

15 MR GREEN: Yes, counsel.

MR O'NEILL: And was that a deliberate decision made by you to start really the analysis at that point?

20 MR GREEN: I suppose at that point the decision that the Director-General was wanting to make was about the BAFO. So the other decisions along the way having been made by me in my capacity as the delegate, so I was briefing her about the decision that she needed to make in this process. So, again, sorry, just to repeat my previous point, you know, this is about a process that we have been - had conversations around over some months. So I
25 thought that she had a degree of knowledge around it and, you know, she had the opportunity to ask for more information if she desired it.

MR O'NEILL: Then in paragraphs 9 and 10, you summarise the recommendations made by the Tender Evaluation Team on the BAFO evaluation. Do you see that?

30

MR GREEN: In paragraph 9, yes.

MR O'NEILL: Those - neither of those two paragraphs refers to the fact that the Lendlease tender had come in over budget. Fair?

35

MR GREEN: No, but that's not the intent of either of those paragraphs, counsel. The first paragraph is saying essentially the TET found that Manteena's BAFO was the highest score. And the second paragraph, number 10, talks about the evaluation plan, which a different thing than the Tender Evaluation Report.

40

MR O'NEILL: In paragraph 11, if I call that out, it's expressed in the first person that you considered that the other tenderer, Lendlease, offers the best value for money despite a lower score in the TET's evaluation. Do you see that?

45 MR GREEN: Yes.

MR O'NEILL: And you say that view is informed by the two main factors described below.

MR GREEN: Yes.

5

MR O'NEILL: I call out the first one, which is at paragraph 12:

Lendlease outscored Manteena in the three evaluative criteria that were not reassessed as part of the BAFO.

10

Do you see that?

MR GREEN: Yes.

15

MR O'NEILL: Now, doesn't that mean that, relevantly, how they were scored by the Tender Evaluation Teams previously to the BAFO evaluation was relevant for the decision maker to know?

20

MR GREEN: Yes, noting that that's the scores from the second evaluation team not the first evaluation team.

MR O'NEILL: I accept that.

25

MR GREEN: And it's described in the report that - how they got those scores.

MR O'NEILL: Is it described in the BAFO evaluation report as to how they got to those scores?

30

MR GREEN: I think it's described in the BAFO evaluation report that they got those scores from the first round of assessment. So I'm not sure, I haven't - as I said, I don't think I looked in the worksheets.

35

MR O'NEILL: No. And it hasn't been reassessed or re-evaluated as part of the BAFO evaluation.

MR GREEN: I think it says that in the evaluation report, doesn't it, that they didn't reassess it as part of the BAFO.

40

MR O'NEILL: It does. But relevantly, the criteria, past performance, skills resources and the Secure Local Jobs Code, they were the least weighted of the six criteria.

MR GREEN: Yes.

45

MR O'NEILL: They were weighted one for one.

MR GREEN: I think we discussed that at the last date.

MR O'NEILL: And you then say that:

They are reliable long-term indicators of a company's ability to deliver quality projects and government initiatives such as Secure Local Jobs.

5

Do you see that?

MR GREEN: Yes.

10 MR O'NEILL: Is that a view that you honestly held at the time that you drafted this minute?

15 MR GREEN: Yes. So my view of this, and this is sort of summarising something that I think, is that Lendlease are a better contractor than Manteena. And these are the three of their reliable long-term indicators that reflect a contractor's performance over the longer term.

MR O'NEILL: That's not how the weighting works, though, is it?

20 MR GREEN: No. The weighting gives them a 30 per cent weighting, I think, as you said, out of the total score of 100.

25 MR O'NEILL: And indeed it isn't spelt out here that the differences between those three criterias were quite minimal on the assessment, is it?

MR GREEN: No.

30 MR O'NEILL: Then in relation to the second part, we will call out paragraph 13. It goes across the page, unfortunately. So Manteena outsourced Lendlease in the other three evaluative criteria that related to the design solutions submitted as part of the tender process. Is that correct?

MR GREEN: Yes, I think so. Sorry, to the best of my recollection that's correct, counsel.

35 MR O'NEILL: If you need it, the report itself -

MR GREEN: We discussed at the last meeting. I'm pretty sure. My recollection is that they outsourced them.

40 COMMISSIONER: By a very considerable margin.

MR GREEN: Yes.

45 COMMISSIONER: And with comments critical of the Lendlease design.

MR GREEN: And, though, I think, Commissioner, you and I discussed difference in floor area and views of the Campbell School Principal as well. So -

COMMISSIONER: Well, that wasn't the only - well, we will -

MR GREEN: Yes.

5

COMMISSIONER: The report speaks for itself, so we will leave that there, then.

MR O'NEILL: Now, just to help you, WC3, that's the third criteria, which is one of these three evaluation criteria that are caught by this program - by this paragraph - the first one is "program project completed in period". Is it correct to say that that criteria related to the design solution?

10

MR GREEN: Yes.

15 MR O'NEILL: Why?

MR GREEN: The way you design a building reflects your staging proposals, how you go about building it, and your program. So you base a program on the design of the building you put together.

20

MR O'NEILL: The fourth criteria, which is caught as part of the three evaluation criteria you are referring to in this paragraph, was design solution, understanding of project. That clearly is something that is for the readers - sorry, that is a part of design solution. Do you agree with me?

25

MR GREEN: Yes.

MR O'NEILL: And then the third criteria, which was WC5, was financial offer.

30 MR GREEN: Yes.

MR O'NEILL: Now, is it fair to say that financial offer relates to the design solutions submitted?

35

MR GREEN: Yes. The biggest determinant in the cost of a building is the size of the building you put together and the materials and technical elements of the building itself.

MR O'NEILL: Yes. Now, here in your paragraph, you don't make express reference to the fact that Lendlease's tender was in excess of budget.

40

MR GREEN: I - the budget, I think you mean, is the target price.

MR O'NEILL: That's right.

45 MR GREEN: Yes. I don't make a mention of that, no.

MR O'NEILL: Should that not have been a part of the disclosure that's made in this analysis?

MR GREEN: No. I think it kind of gets addressed in the final sentence.

5

MR O'NEILL: Right. You then go on to talk about, under the procurement model, how the directorate assigns intellectual property. Do you see that?

MR GREEN: Yes.

10

MR O'NEILL: Can you explain to us what you are talking about there?

MR GREEN: So under the intellectual property agreement, the tenderers are paid an amount of money to assign their intellectual property to the Territory at the end of the tender phase, so that if there's any good ideas or design elements or attributes of the design that came from the tender process, the Territory owns those and can use them along the way. It's - it's almost a form of, if you like, encouraging contractors - sorry, tenderers to put a lot more design effort in as part of their bids, given they are given a relatively diagrammatic tender design to work from, and it encourages them to do that, knowing that they will get payment for the design work they've done, and the Territory gets the benefit of that design work at the end of the process.

15

20

MR O'NEILL: Here, though, that would have the relevant effect, would it not, of allowing Lendlease to take elements of the Manteena design which was one of the criteria that Lendlease was not so strong in when compared to Manteena. Agree?

25

MR GREEN: Yes, in practice. Because this is not the first time that that intellectual property agreement has been used. In practice, there's elements of an unsuccessful tenderer's bid that get incorporated into a successful tenderer's ultimate build product.

30

MR O'NEILL: And so, relevantly, the reason that you included it here, and feel free to disagree with me if you disagree with the comment, is the reason you included it here is to say, well, you don't need to worry about the deficiencies in design so much because we can take the parts of Manteena's design which are better and give them to Lendlease - and get Lendlease to utilise them if it's awarded the bid.

35

MR GREEN: Absolutely. So that's normal practice in these, where you take on the elements of the - sorry, the worthy elements of the unsuccessful tenderer's bid and get them incorporated into the successful tenderer's ultimate built design.

40

MR O'NEILL: Yes. Although, it is particularly relevant here, isn't it, because the only differences where Lendlease are deficient, you are saying, in relation to the first paragraph, is design.

45

MR GREEN: Yes.

MR O'NEILL: And so we can fix the deficiency by taking Manteena's and giving it to Lendlease.

5 MR GREEN: Or taking elements of Manteena's and giving it to Lendlease. It's not necessarily the whole thing but elements of it that improve Lendlease's design.

MR O'NEILL: If we could call out paragraph 14. You then arrive at a conclusion:

10 *In my consideration, the stronger proven track record of Lendlease over Manteena outweighs the weaker design solution.*

Do you see that?

15 MR GREEN: Yes.

MR O'NEILL: Now, there is no mention in the previous two paragraphs, expressly, of proven track record. Do you accept that?

20 MR GREEN: No. I think proven track record is those long-term factors that were mentioned in paragraph 12. I didn't think I expressed that particularly well, but that's what I meant.

25 MR O'NEILL: Well, isn't only one of those criteria, that is past performance, relevant to track record?

MR GREEN: No, skills and experience and Secure Local Jobs both have elements of that. So skills and experience of the staff are about your track record of the staff to deliver jobs as well and -

30 COMMISSIONER: But they are all part of other criteria specified for evaluation by the team, are they not?

35 MR GREEN: They are all - so in WC2, skills and resources, it will talk about the company's management systems. It will talk about their resources they bring to the job, the skills along the way there. So that's very much about the company's people and the company's processes, and that's all the things that are developed over long-term construction industry experience in doing so.

40 COMMISSIONER: So are you saying that the criteria did not address the issue of track record?

45 MR GREEN: No, I think - I think in between WC1, past performance, WC2, skills and experience, and WC6, Secure Local Job, those first two in particular talk around track record of constructing projects and Secure Local Jobs, WC6, talks about their track record of industrial relations.

COMMISSIONER: Right. So those criteria are already taken into account in the team's evaluation.

MR GREEN: Yes.

5

MR O'NEILL: And you disagreed with that evaluation?

MR GREEN: No, I didn't. I talk about the - the - you know, that's the breaking into two factors. So, you know, the stronger proven track record is essentially talking about the elements in paragraph 12 and then design and cost proposal is in - sorry, the weaker design submission is the elements talked about in paragraph 13. That's how I constructed it in my head, so, counsel, yes.

10

MR O'NEILL: If you could just go to page 1.470. I'm just going to take you up on this point for a moment.

15

MR GREEN: Yes.

MR O'NEILL: And draw out the table about two thirds of the way down. You see here, these were the scores that the BAFO Tender Evaluation Team had arrived at. And the ones in grey are the criteria that - or in shading, rather, are the criteria that had not been reassessed.

20

MR GREEN: Yes.

25

MR O'NEILL: And they are the ones that you say you are relying upon as - in support of the proven track record?

MR GREEN: Yes.

30

MR O'NEILL: In relation to past performance, there was a one-point difference between them.

MR GREEN: Yes.

35

MR O'NEILL: And you have not reviewed the worksheets, so you don't know the analysis for why that's arrived at, as at the date you're drafting - of the briefing note.

MR GREEN: Yes.

40

MR O'NEILL: Did you agree then that there was only one point difference between the two tenderers in respect of that matter?

MR GREEN: Yes, I did. I don't know I put it in those terms myself. I looked at these score and, you know, that seemed to reflect my - my view on their track records.

45

MR O'NEILL: Then you will see "skills and resources", and you will see there's only a one-point difference between them there as well.

MR GREEN: Yes.

5

MR O'NEILL: Did that accurately reflect your understanding of the difference between the two tenderers?

MR GREEN: Yes.

10

MR O'NEILL: And then you will see in category 6, which is the Secure Local Jobs category, there is only a .8 difference between them.

MR GREEN: Yes.

15

MR O'NEILL: So there's a 2.8-point difference -

MR GREEN: Yes.

20

MR O'NEILL: - between the two tenderers on what you are calling the track record criteria. If you do that same analysis with respect to the ones that have been scored by the Tender Evaluation Team, that is criteria 3, there's a .5-mark difference between them. Do you see that? I'm not talking about the weighting; I'm just talking -

25

MR GREEN: Yes. Yes, the raw score.

MR O'NEILL: The raw score. You see on "clear understanding of project", there is a 1.5 marked difference.

30

MR GREEN: Yes.

MR O'NEILL: So now we are at two.

MR GREEN: Yes.

35

MR O'NEILL: And then in "financial offer", there's a three-point difference between them.

MR GREEN: Yes.

40

MR O'NEILL: On that criteria alone.

MR GREEN: Which reflects the pricing, the budget conversation process.

45

MR O'NEILL: But even on a raw score basis, there was five points difference between them on the BAFO criteria as against the 2.5 - the 2.8 per cent - 2.8-point difference -

MR GREEN: Yes.

MR O'NEILL: - on the proven track record criteria. So even on a raw score basis, the proven track record was outweighed by the design factors. Do you accept that?

5 MR GREEN: That it was a greater difference in score, yes.

MR O'NEILL: Yes. And that's on a raw -

MR GREEN: On a raw score basis, yes.

10

MR O'NEILL: Isn't that, even at its very basic, a safer way in which to conduct the analysis who should be the preferred tenderer?

MR GREEN: That's one way of doing it. The other way to look at that also is to look at the - leaving aside the difference in WC3 about the program, the clear understanding of the project and financial offer are both things that are dealt with in phase 2 of the contract when the design can be amended, and the price can be amended in the - into the stage 2 offer under a two stage GC21 contract. So the fixed longer term ones, which are 1, 2 and 6, are the ones that are said and the other ones in white there are the ones that are actually redesigned, readjusted and redealt with in stage 2 of the contract, which is the element about you can - on the previous paragraph - sorry, we have moved away from it - where you can adjust things as you enter into the second stage of the contract, or sorry, before you enter the second stage of the contract.

25 MR O'NEILL: Is that true in respect of financial offer?

MR GREEN: Yes. They get a second stage offer. At the end of stage 1, the contractor makes an offer, final works offer under stage 2, and it's up for the government to accept it and the contractor defend why it's proved away from their previous offer that came in at the time of tender.

30

MR O'NEILL: Now, in relation to Secure Local Jobs, that criteria could only have come in since the introduction of the Secure Local Jobs Code; agree?

35 MR GREEN: Yes, the criteria could, yes.

MR O'NEILL: So was there any difference in the proven track record between the contractors at that stage?

MR GREEN: Yes, because the proven track record goes back to other industrial relations matters that are considered in Secure Local Jobs. So it's the history of their disputes as well. So again, I don't know the details. I can't remember looking at the - the detail weightings there but the more Secure Local Jobs was a relatively new certification process that the evidence supporting the Secure Local Jobs applications actually goes back some degree of time before the creation of Secure Local Jobs.

45

COMMISSIONER: So is this the outcome then, on the assumption that the analysis is accepted, it is to - as, I think, the Auditor-General says, is to reorder the relative priorities of the criteria and consider factors which, if they were important, needed to be in those criteria but were not ultimately evaluated by the team.

5

MR GREEN: I don't think so, Commissioner. I would describe it in a different way. I think what that paragraph and what I'm saying in that is if you reweight all the criteria and you decide that WC1, WC2 and WC6 are more important than the other criteria, you get to a different outcome. And I think that's - I think that's what the Auditor-General said in the Auditor-General report as well, is the effect of that paragraph, he is actually saying forget about the weightings that are there, if you say that WC6 is worth 70 per cent of the evaluation total, for instance, or 50 per cent or whatever, if you change the weightings, you would get a different outcome. You consider the longer-term weightings -

10

COMMISSIONER: Well, of course if you change all the numbers you're going to get a different outcome. It rather goes without argument. But the - I'm not sure that you are saying much different to what I suggest to you in the question. But there are from a policy area, a policy perspective, fundamental problems with reweighting criteria which are part of a public process, aren't there?

15
20

MR GREEN: Agreed, Commissioner.

COMMISSIONER: Aside from anyone else, aside from anything else, the parties are entitled to an assumption about - or entitled to rely on the weightings for the purpose of preparation of their bids, are they not?

25

MR GREEN: They would do that. I'm not sure if we reveal weightings all the time in tenders but, again, it's fair to say that the parties would - the tenderers, regular tenderers would understand the relative weightings that the ACT Government gives to things.

30

COMMISSIONER: Well, I certainly have to concede I haven't seen anything like every procurement. But I understood that putting the criteria with their points and weightings in the request for tender was common practice.

35

MR GREEN: Agreed, Commissioner, it is definitely common practice. And typically, there would be a criteria that talks about safety for instance, and well-known in the construction industry that safety is worth 30 per cent of the assessment.

40

COMMISSIONER: Yes. Well, if there were issues about safety that were relevant in this particular procurement, you would have expected the matter to have been raised.

MR GREEN: I think they were dealt with with that sort of weighting in the EOI phase of the process. I can't remember.

45

COMMISSIONER: All right. And there was - there were no - in the evaluation team's commentary, there was no suggestion that safety was an issue with either of these companies.

MR GREEN: I think both companies have safety accreditations along the way. They have all had histories of incidents and will deal with things in different ways. But again, that was the consideration at the EOI phase, I think.

5

COMMISSIONER: Well, it is not surprising, of course because in the nature of things, a construction company is likely to have some accidents at the site. The real question is, whether they are avoidable or whether they are due to incompetence or managerial shortcomings of various kinds. That's so, is it not?

10

MR GREEN: It is, Commissioner.

COMMISSIONER: And the mere fact of an accident doesn't tell you much about whether there is an adequate and appropriate approach to safety, does it?

15

MR GREEN: It's two-fold. If their injury rate gets too high it reflects the fact they are not dealing with it. But again, the fact that it is just an accident isn't of itself -

20

COMMISSIONER: No, quite. If you have a dozen accidents in a year, that's one thing, if you have one in a year, that's another thing.

MR GREEN: And if you have a dozen of the same thing, it clearly reflects the fact your system aren't -

25

COMMISSIONER: Well, plainly, but what that means is if you are going to take safety into account, some form of drilling into the nature of the problem is required, otherwise you cannot make a rational assessment of its significance.

30

MR GREEN: Agreed, Commissioner. And it's typically done within this sort of criteria. I would expect that skills and resource has an element of looking at how their safety systems, which is part of the company's resources, work in practice. And past performance would also have that sort of element in that, you know, is there a history of accidents in their past jobs.

35

COMMISSIONER: Does it not follow that safety was not a relevant differentiating factor in this procurement evaluation?

MR GREEN: So I would say that safety would make up part of the -

40

COMMISSIONER: No, sorry, in the results. Sorry, you have to take it into account. What I mean is, in preferring one tenderer over the other, safety was not an issue.

MR GREEN: Part of the consideration but not the determining factor. Is that - that's how I would describe that. It's in the considerations, but it's not the issue that drives a -

45

COMMISSIONER: Not only that, perhaps I have misunderstood, but I did not see any commentary in the evaluation team that suggested the safety record of either company was problematic.

5 MR GREEN: I haven't looked at the detailed comments. I didn't see anything in the Tender Evaluation Report in when we went through it.

COMMISSIONER: Which suggested that. Is that correct?

10 MR GREEN: Yes.

COMMISSIONER: So in the result - although you have to look at safety, in the result of this procurement, so far as the evaluation team was concerned, it was not an issue.

15 MR GREEN: No. Correct.

HIS HONOUR: But it had to be evaluated, but it was not a differentiating issue. Perhaps that's a more precise way of putting it.

20 MR GREEN: Yes, that's a good way of putting it.

COMMISSIONER: Thank you.

25 MR O'NEILL: If we can just return to page 1.465. I think we are at page - now at paragraph 15. Can you just draw that out. This was the point I think you were just making previously, that is, whilst the Tender Evaluation Team arrives at one conclusion, the opportunity to refine, design and cost before proceeding with phase 2 can be mitigated.

30 MR GREEN: Yes.

MR O'NEILL: That's not something that is considered by the procurement process, though, is it, expressly?

35 MR GREEN: Sorry, I don't quite get - it is definitely considered as part of the procurement process. It's possibly not considered at this stage, because this is about an award to go to stage 1. And then once you are in the stage 1 the contract has a mechanism by which you go into stage 2.

40 MR O'NEILL: That's precisely what I was trying to drive at, and that is that at this point of the process, what happens after is not something that's expressly considered by the criteria.

45 MR GREEN: I don't - yes, look, I don't fully agree with that statement. And that's one of the hard pieces of this particular style of contract. The evaluation is done on the contractors if it was stage 1 and stage 2 both together, which is why the assessment is of prices around the \$15 million mark, but the way the contract is actually structured is the contract is awarded on stage 1, which is that \$500,000 element there. They are assessed together, but

there is the opportunity, once you're in the contract, to - to change the stage 2 offer before you actually enter into stage 2.

COMMISSIONER: So accept -

5

MR O'NEILL: But it's not as if - sorry.

COMMISSIONER: If you have already reached stage 1, and of course stage 2 - some of the elements of stage 2 no doubt can be negotiated.

10

MR GREEN: Yes.

COMMISSIONER: Or are negotiated. The contractor is in a far more - is in a far stronger position because it's most unlikely that you would want to change contractor at the completion of stage 1, isn't it? So the actual opportunity for significant change that, say, affects margins for the contractor is significantly reduced. It's not open slather.

15

MR GREEN: It's - it's definitely not open slather. So the way - the way the contract seeks to work is that you accept stage 1, and for simplification, let's just say stage 1 is \$500,000, and then the stage 2 amount is defined as, say, \$14.5 million, that gives them a nice \$15 million. The contractor can only vary from their existing stage 2 offer with the agreement of the - of the principle, so the Territory. But that allows them refinement of the design. And provided that those moves away from that final offer can be agreed by both parties, it moves. So it's not - stage 2 is not - isn't normally not the same amount as it was actually tendered at stage 2. There is adjustments to that based upon design refinements and design changes long the way. But, again, they have to be agreed, and there is a trigger to say the territory doesn't have to accept the stage 2 offer and then the contract term terminates at the end of stage 1. And, again, I think the intellectual property of the stage 1 design, that also goes back to the Territory at that point as well and essentially the Territory has paid, let's say, the \$500,000 for a contractor to develop a design that could actually be retendered by the Territory as a design-only contract to enable stage 2 to be built in accordance with the designs that were developed as stage 1.

25

30

COMMISSIONER: Well, in fact it's paid more than \$500,000, because it's paid \$500,000 plus what it's paid for the intellectual property. I think in this case 70,000.

35

MR GREEN: Yes, but that was to do with the BAFO. So normally the contractor wouldn't be paid an intellectual property fee because it is part of their stage 1.

40

COMMISSIONER: No, no. I'm talking about the cost to the Territory. The cost to the Territory refers to the unsuccessful copyright.

MR GREEN: For the unsuccessful building?

45

COMMISSIONER: Yes.

MR GREEN: So normally - so I'll make an example. So \$500,000 for a stage 1 fee for the successful contractor. \$75,000, say, of the intellectual property fee for the unsuccessful contractor. Yes.

5 MR O'NEILL: So then the common sense point, though, is, and this is what I think the Commissioner was driving at is, were if you were awarded phase 1 you are always going to be driving at phase 2. Do you agree?

MR GREEN: Not guaranteed.

10 MR O'NEILL: Not guaranteed?

MR GREEN: Not guaranteed.

15 MR O'NEILL: Otherwise it's a cancellation of the project.

MR GREEN: No, it's a cancellation of phase - it's not a cancellation of phase 2; it is not an award to phase 2. And then there is that design work that's been done as phase 2 that enables the Territory to pick someone up and run with it. Now, yes there's definitely time
20 implications.

MR O'NEILL: And cost implications? It's going to be more expensive for another contractor to come in halfway, well, after phase 1 to pick up phase 2; agree?

25 MR GREEN: Potentially, or there could be a leaner, keener contractor who can build the job cheaper than the price that the previous contractor was supposing to build it for.

MR O'NEILL: The nuance of all of this isn't explained in this note, though, is it?

30 MR GREEN: No. No. This is something - you know, let's say, an experienced professional in this space, it still takes a while to get your head around how these contracts - this contract works.

MR O'NEILL: And it's not what the procurement plan minute had set out was to be the
35 criteria by which these were to be assessed?

MR GREEN: Sorry, the conversation is about the contract. So the contract, if you like, was set out in the procurement plan minute, that form of contract without necessarily explanation. But then to your other point there, the evaluation report and the criteria is, this
40 is what the conversation - sorry, this is what this brief is looking at, is those evaluation criteria and the relative weightings between them.

MR O'NEILL: Paragraph 16 was a recommendation to proceed to enter a phase 1 contract with Lendlease:
45

As their proposal offers the best value for money, having regard to all of the factor including the published evaluation criteria, the requirements of the Government

Procurement Act, including Secure Local Jobs and the contracting methodology for the project.

Do you see that?

5

MR GREEN: Yes.

MR O'NEILL: Now, I'm taking you to one of those. "Best value for money", those words are -

10

MR GREEN: They are in the Act.

MR O'NEILL: They are in the Act, yes. And what is your understanding of what is the definition of value for money?

15

MR GREEN: It's not defined in the Act. It talks about - value for money includes a whole bunch of relevant factors and best outcome for the Territory, not necessarily the lowest price, and other things like that.

20

MR O'NEILL: Did you know that value for money required regard to probity and ethical behaviour?

MR GREEN: Yes. Yes.

25

MR O'NEILL: Management of risk.

MR GREEN: Yes.

MR O'NEILL: Open and effective competition.

30

MR GREEN:

MR O'NEILL: Optimising whole of life costs.

35

MR GREEN: Yes.

MR O'NEILL: And anything else prescribed, and that it means the best available procurement outcome.

40

MR GREEN: Yes.

MR O'NEILL: So here, was it your view, honestly held, that the best available procurement outcome was Lendlease to be preferred over Manteena?

45

MR GREEN: No.

MR O'NEILL: Here, the published evaluation criteria, it was not true, was it, that Lendlease had succeeded in beating Manteena in the published evaluation criteria?

5 MR GREEN: Okay. I'm going to describe it slightly differently. So they hadn't succeeded in being the highest scored against the public evaluation criteria.

MR O'NEILL: Yes. So if one takes the one relevant factor that you are referring to in paragraph 16, being the published evaluation criteria.

10 MR GREEN: Yes.

MR O'NEILL: Lendlease ought not to have been the preferred tenderer on that basis; agree?

15 MR GREEN: Yes, they weren't the highest score.

MR O'NEILL: And you knew that at the time you drafted the note.

20 MR GREEN: Absolutely.

MR O'NEILL: Then the requirements of the Government Procurement Act, which is really best value for money, you agree with me?

25 MR GREEN: Yes, on Secure Local Jobs.

MR O'NEILL: I think we have just agreed that if, on that relevant criteria, Lendlease should not have been preferred.

30 MR GREEN: Yes.

MR O'NEILL: And you knew that at the time of drafting the minute.

MR GREEN: Yes.

35 MR O'NEILL: And then in relation to Secure Local Jobs and the contracting methodology, there was some room for debate about those factors, because we know that firstly in Secure Local Jobs as a criteria, Lendlease had been preferred by 0.8, and the contracting methodology is the subject of the answers you have given previously. Do you accept that?
40 The question then is, noting that Manteena - sorry, that Lendlease did not represent the value for money, why did you draft the minute?

MR GREEN: Because this minute was drafted to give effect to the - I don't want to say direction - to give effect to the outcome that I have been told to achieve.

45 MR O'NEILL: Now, you must have known - sorry, I withdraw that.

COMMISSIONER: So what you sought to do, as I understand you then, was to marshal the arguments such as they were which could be used to bring about that outcome.

MR GREEN: Yes, Commissioner.

5

COMMISSIONER: Although they - the conclusion did not represent your own view about the appropriate outcome.

MR GREEN: Yes, Commissioner.

10

MR O'NEILL: In doing so, at the time, did you consider whether you were acting appropriately in your role?

MR GREEN: I think I was conscious I was trying to achieve an outcome that the Director-General had told me that we needed to achieve. And given this time was in the middle of COVID, many of the things we were doing at that time were doing what we were told to do, achieve an outcome, and to go from there. So in my mind this is not the decision I would have made but this is - this is the decision that I was told needed to be made so I was providing a brief to enable that decision to be made.

15

MR O'NEILL: Well, you're under obligations, though, as a public official to act appropriately in accordance with the relevant legislation including the Procurement Act. Do you accept that?

20

MR GREEN: Yes.

MR O'NEILL: You were a senior official at the time, you were a senior public servant at the time.

25

MR GREEN: Yes.

MR O'NEILL: And you knew that this was something that you didn't honestly hold to be a position; agree?

30

MR GREEN: Sorry, was a position?

MR O'NEILL: Sorry, you didn't honestly hold this conclusion that you were drafting in the minute.

35

MR GREEN: So I will pull it apart in a different way. I held the view that Lendlease was the better contractor. I thought the better - sorry, I thought Lendlease was the better contractor. That's my honestly held view. Then this brief was around making a recommendation to allow the Director-General to appoint Lendlease to the process - sorry, to the tender. My view was that Manteena had submitted a better tender, but this brief is around putting a document to enable the Director-General to make a decision.

40

MR O'NEILL: But it's more than that, isn't it, because you had an honestly held view that the Lendlease tender did not represent best value for money for the Territory.

5 MR GREEN: No, I would have - yes, sorry, I will start that again. Left to my own devices, I would have given it to Manteena.

MR O'NEILL: Because it represented the best value for money for the Territory; agree?

10 MR GREEN: Yes. Because it came out as the highest scored in the process, so I would have followed the process and gone that way.

MR O'NEILL: Is there a reason why you can't accept from me the position that Manteena represented best value for money for the project?

15 MR GREEN: Yes, sorry, I have that problem with that definition of best value for money at all times there. It's to do with the best outcomes and management of risk, parts of the definition there. So I can say that on the objective measure that, you know, on the scores, Manteena represented the best value for money for the Territory.

20 MR O'NEILL: And that's what the procurement -

COMMISSIONER: Part of the other question here, though, is the integrity of government processes, isn't it? That's a very important policy consideration.

25 MR GREEN: Yes, Commissioner.

30 COMMISSIONER: And in substance, such matters as procurement must be determined after a full examination and analysis of the relevant factors which are disclosed to the parties and to the public to enable transparency in a highly contested area. Does that fairly put the position?

MR GREEN: Particularly where there is a public tender process involved, Commissioner.

35 COMMISSIONER: Right.

MR GREEN: Less in other parts.

40 COMMISSIONER: Quite. The fact that it's a public tender process is a representation by government, is it not, that the process will be transparent, and it will be controlled by the rules which are in the public domain and which the parties and the public are aware of.

MR GREEN: Yes, Commissioner.

45 COMMISSIONER: If - so that a decision that is made before that process and in spite of that process is completed, necessarily, does it not, undermine that important public policy consideration?

MR GREEN: Yes, Commissioner. I could see how it would.

5 COMMISSIONER: In this case, as I understand it, you were given a reason, as I understand your evidence - given a reason by the Director-General for the decision which she intended to make. Or told you she intended to make; that's right?

MR GREEN: Yes.

10 COMMISSIONER: And the reason was not a matter which was disclosed in any. Way in the public process that attached itself to procurements of this kind. That's correct, is it not?

MR GREEN: Yes, I think so, Commissioner.

15 MR O'NEILL: In that reason, is the true honest reason why this minute needs to be prepared, that is, because you understood that the unions had a problem with Manteena?

MR GREEN: Yes, counsel.

20 MR O'NEILL: That is not something which reflects the honest or impartial reason for why this decision - this recommendation was made. Do you agree?

MR GREEN: Sorry, can you -

25 MR HASSALL: I don't understand the question, I'm sorry.

MR O'NEILL: The relevant test is whether the witness understands it.

COMMISSIONER: Well, perhaps you might rephrase it.

30 MR O'NEILL: I will. The reason that's not contained within the note, I think you accepted from the Commissioner, is that it was because the unions had a problem with Manteena. That is what you understood the real reason why it was not to be the preferred tenderer.

35 MR GREEN: Yes, counsel.

MR O'NEILL: And that's not disclosed in your note.

40 MR GREEN: No, it's not. It's not mentioned. Other than - sorry, counsel - other than noting Secure Local Jobs a few more times than probably was really necessary.

MR O'NEILL: That being so, if you were being - if one was being transparent, it should have been disclosed in the note.

45 MR GREEN: Yes, if one was being transparent about all the things, there's lots more that could have been said in that note.

COMMISSIONER: Well, let's not plenty of prevaricate, Mr Green. The principle - a reason was identified to you, that reason as requiring a particular outcome. That reason was not in your -

5 MR GREEN: Briefing note.

COMMISSIONER: - briefing note.

MR GREEN: No, counsel. Sorry, no, Commissioner, it wasn't.

10 COMMISSIONER: And to that extent, therefore, the briefing note disguised the basis for the outcome which you understood was going to come about.

MR GREEN: Yes, Commissioner.

15 MR O'NEILL: And it provided separate analysis to support that recommendation, including a conclusion about best value for money which was not something you honestly held.

20 MR GREEN: Agreed.

MR O'NEILL: Paragraph 17 talks about the target construction, and I think this was the paragraph you said was the last paragraph of your analysis; it's not. But this was where you disclosed that there was above the target construction. Do you see that?

25 MR GREEN: Yes.

MR O'NEILL: The note doesn't say by how much.

30 MR GREEN: No.

MR O'NEILL: Was that not something relevant for the decision maker to know?

35 MR GREEN: It is in the Tender Evaluation Report. It's a detail - I think the important sentence in that one is that it can be managed within the overall budget allocation of 18.8, and this goes to the point you and I - sorry, we discussed briefly earlier about the target construction as opposed to the budget. It was affordable within the budget; it was more than we wanted to spend.

40 MR O'NEILL: Paragraph 21, if you will just draw that out. Why was it that paragraph 21 was thought necessary to be included?

MR GREEN: As I said before, I mentioned Secure Local Jobs a number of times. I'm alluding to the real reason behind it but not actually highlighting it.

45 MR O'NEILL: When you say, "the real reason", what do you mean?

MR GREEN: The unions' expressed preference that Manteena not get the job.

MR O'NEILL: And how are you doing that in this paragraph?

5 MR GREEN: I'm talking about Secure Local Jobs. The government is prioritising its spending to companies that maintain its high ethical and labour standards in their ongoing operations.

10 COMMISSIONER: Did you mean to imply that Manteena did not have the high ethical and labour standards that were necessary?

MR GREEN: That was the dialogue - complaint, if you like, coming via the minister's office. I - it's a pretty bland statement from a standard Secure Local Jobs information sheet. You know, it's not - it's a vanilla sentence.

15 COMMISSIONER: So, I'm sorry, so are you saying this is a statement of general principle?

MR GREEN: Yes.

20 COMMISSIONER: And it's not intended to reflecting on either Manteena or Lendlease?

MR GREEN: No, it's a statement of general principle, Commissioner.

25 MR O'NEILL: Now, prior to you handing this over to Ms Haire, had you paused to consider your own ethical obligations in relation to providing a minute such as this which didn't contain your honestly held views?

30 MR GREEN: I don't really remember pausing too much. It's not unusual, though, to send briefing notes up the executive chain which don't reflect your own views. Often a briefing note will go up, you will be told to pursue a view - sorry, a -

MR O'NEILL: I understand that, but I'm talking about this briefing note. I don't mind about towing party lines.

35 MR GREEN: Yes.

MR O'NEILL: This briefing note.

40 MR GREEN: I think by this stage, I was totally over it and I was writing a brief to get it off my plate because I was sick of Campbell.

MR O'NEILL: What about now?

45 MR GREEN: I probably would have gone a lot more detail and forced a more robust conversation around it, and been a lot more transparent in all of the various factors that were going on.

MR O'NEILL: Would you still have drafted this note now, knowing -

MR GREEN: No.

5

MR O'NEILL: What did you do with the note after you had completed it?

MR GREEN: Probably gave it to my support officer to lodge in TRIM, which - I think TRIM was the document system and it would have gone up via the clearance channels to the Director-General.

10

MR O'NEILL: Do you recall having any discussions with the Director-General about the report?

MR GREEN: I - I don't recall. So I - sorry - yes, I don't recall having a discussion with her. I remember having a discussion with her when the evaluation plan - sorry, when the evaluation report had been through. Then I drafted the brief, and I might have let someone in her office know that the brief was there. But I don't recall having a conversation with her at the time about this brief other than submitting it to her for endorsement approval or whatever, consideration.

20

MR O'NEILL: So the brief was submitted on or about 22 June 2020 and Ms Haire arrived at her decision on or about 25 June 2020. You don't recall a conversation in those three days or so?

25

MR GREEN: No, I don't recall a conversation in those three days.

MR O'NEILL: All right. Now -

MR GREEN: Can I just - sorry, can I just say - let me rephrase that. I don't - yes, I don't think we had a conversation in those days. It's not that I don't recall whether or not there was one, I just - I don't think we had one.

30

MR O'NEILL: Right. So it's stronger that than you can't recall; it is actually you have a positive - at least a feeling that it didn't happen.

35

MR GREEN: Correct.

MR O'NEILL: Now, if we can go back to 1.462. In the box at the bottom, that's the executive feedback box, this - I think your evidence was earlier that this looks like it's been added by somebody. Now, accept from me that it appears on the version that's signed by the Director-General, along with some strike-outs of some various bits of "agree, not disagree", so that -

40

MR GREEN: Where she annotated the -

45

MR O'NEILL: Annotates the document, yes. Was the discussion - was there any discussion after the decision had been made about how design risks and issues were being managed as set out in the brief and the TET report?

5 MR GREEN: Not immediately after. That to me is a more long-term as, "We enter the contract, please let me know how it's being managed and how the design comes about". And that - to me that statement is not about - tell me - tell me how you are going to do it; it's a keep me informed as the project progresses kind of statement. So I don't have any specific recollections, but I would - I expect that we spoke about Campbell after this at
10 various times just about how the project was progressing and how designs were going.

COMMISSIONER: Whose responsibility was it then to negotiate the contract and actually get the matter moving on the ground? I take it that was not your responsibility?

15 MR GREEN: It falls back to Major Projects Canberra.

COMMISSIONER: Right.

MR GREEN: There will be a document around somewhere where I think I have told them
20 to go head and get a contract in accordance with the brief signed off by the Director-General, and then they would have started the process of contacting -

COMMISSIONER: So your active involvement ceases, although you probably keep an eye on what's happening. Is that - does that fairly describe -
25

MR GREEN: Yes.

COMMISSIONER: - your role?

30 MR GREEN: Yes.

COMMISSIONER: Right.

MR O'NEILL: And then if - next to "critical reason", there is some words in the same
35 document, if those could be drawn out, at the top of the page above the word "recommendations". Do you see that?

MR GREEN: Yes.

40 MR O'NEILL: They are your words:

To meet market expectations of a tender outcome.

MR GREEN: Yes.

45 MR O'NEILL: What do they mean? We have gone through the reasoning of actually what's contained in -

MR GREEN: So again, a template document. If you are going to have a critical date you need to provide a reason why it's critical. That's totally vanilla marketing, saying we need to get on with it, essentially.

5

MR O'NEILL: All right. So it - the critical reason relates -

COMMISSIONER: Try to be quick and we will try to do it.

10 MR GREEN: That's - you need to fill in the box.

MR O'NEILL: Commissioner, I'm about to turn to a new topic.

COMMISSIONER: Yes, very well. We will take a short adjournment.

15

<ADJOURNED AT 11.32 AM

<RESUMED AT 12.02 PM

20

MR O'NEILL: Thank you, Commissioner. Now, before I move on, Mr Green, I just wanted to summarise the note. And that is, is it fair to say that all arguments that you could think of, that supported the position not to accept the recommendation.

25

MR GREEN: All - yes. Sorry, counsel, Commissioner. So I think I placed in the note, although reasons that I could think of to support the recommendation without saying because the union said so.

30 MR O'NEILL: Yes. You did not -

COMMISSIONER: Not to support the recommendation.

MR GREEN: Sorry - yes.

35

COMMISSIONER: To support refusing to accept the recommendation.

MR GREEN: Of the Tender Evaluation Team.

40

COMMISSIONER: Yes.

MR GREEN: Yes.

MR O'NEILL: Yes, that's right. So you put everything in there that you could think of.

45

MR GREEN: Yes.

MR O'NEILL: You don't, in the note, set out any countervailing arguments about that. That was a deliberate decision as well?

MR GREEN: Yes. Yes.

5

MR O'NEILL: And so the reader of the note looks at it and says, well, there are all these positions that support the reasoning or the conclusion that note gets to, but there is no countervailing argument against it.

10 MR HASSALL: That question calls for Mr Green to speculate about what the reader of the note -

COMMISSIONER: Yes. It's a comment, really. I think we understand what Mr Green's position is. He said -

15

MR GREEN: Can I make one comment? I did point out that the Tender Evaluation Team had recommended Manteena.

MR O'NEILL: You did, and also - over budget.

20

MR GREEN: Yes.

MR O'NEILL: Apart from those two qualifiers.

25 MR GREEN: So I didn't put out no countervailing argument; I did say the recommendation of the Tender Evaluation Team was that, and they were - yes.

MR O'NEILL: But you certainly didn't descend into the detail about matters of design or matters of that nature.

30

MR GREEN: Yes, counsel.

MR O'NEILL: Can I just show you as a matter of completeness and fairness as well the actual complete ******(audio dropped). Does this more accurately affect your recommendation of - sorry, your recollection of how this note looked?

35

MR GREEN: Yes, counsel. This is kind of what I expected to see, that's been edited. It's got a signature on it and the - the "noted, agreed" and "noted" are the supported -

40 MR O'NEILL: Yes. And at the top, it's got the ACT Government logo, it's got Executive Brief written in the heading, and it's got red strike-out for the position of the Director-General.

MR GREEN: Yes.

45

MR O'NEILL: Where she has annotated the document.

MR GREEN: Yes.

5 MR O'NEILL: And executed it, dated on 25 June 2020. Now, in relation to what happens after the note is executed, does that end your substantive involvement in the day-to-day management of the process?

10 MR GREEN: There's a couple more steps, I think. There was - the translation of this brief signed by the Director-General into instructions to Major Projects Canberra to go about executing a contract, and then there was some other involvement.

COMMISSIONER: I think the position is in, by comparison in the private area, the Education Directorate is the client and the - and Major Projects is the operator or project manager. Does that fairly describe the relationship or is it too simple?

15 MR GREEN: It's a pretty good explanation, Commissioner. I would add that the project manager in that example, so Major Projects Canberra, has some authorities to act on behalf of the Territory as a whole as under the contract.

20 COMMISSIONER: Right. Right.

MR O'NEILL: Now, if I could take you to a document, 2.1892. Now, I appreciate this email is not sent to you; you will see it's from Mr Bauer to Ms Young. Do you see that?

25 MR GREEN: Yes.

MR O'NEILL: And Mr Bauer refers to an attempt to contact you on the Wednesday, that being 24 June 2020, after a conversation that was had. He didn't manage to speak to you, but you had sent a text that he was going to ask a question of the DG. Do you see that.

30 MR GREEN: Yes.

MR O'NEILL: Does that spark a recollection of any interactions you had with Mr Bauer?

35 MR GREEN: It doesn't. But I - looking at that, I would think that maybe Mr Bauer rang me, I didn't reply to his - I didn't ring him back, but I texted him saying presuming you want to know where the tender is up to or something like that, and I said - and that.

MR O'NEILL: And relevantly Mr Bauer is the representative of Manteena?

40 MR GREEN: He's the general manager of Manteena, yes.

MR O'NEILL: If I can then show you a document, 2.1893. And if I could just draw out the green bubble at the top. Do you see here is a text sent from you to Ms Power where you indicate to her that Mr Bauer had rung and you've told him the news. Do you see that?

45 MR GREEN: Yes.

MR O'NEILL: Was that news about Campbell?

MR GREEN: Yes, it would be. I don't know any other conversations I would be having with them about news.

5

MR O'NEILL: Do you recall the conversation you had with Mr Bauer on 26 June 2020?

MR GREEN: Not in any detail.

10 MR O'NEILL: Do you recall any reaction Mr Bauer may have had to the news that you told him?

MR GREEN: Probably disappointment that he didn't get the job and wanting debriefs and all the usual sort of steps.

15

MR O'NEILL: And there's a process of debrief that occurs after the procurement process -

MR GREEN: Yes.

20 MR O'NEILL: - with any tenderer that is dissatisfied with the result?

MR GREEN: Should be with any tenderer who has being unsuccessful or even successful, they get a debrief or can have a debrief.

25 MR O'NEILL: Okay. In the text message below - sorry, before I move on, what was the purpose of telling Ms Power about this?

MR GREEN: Keeping her informed as to where it's up to.

30 MR O'NEILL: Why does she need to know?

MR GREEN: She's the Major Projects person who will be dealing with the contract matters and ultimately the delivery of the project.

35 MR O'NEILL: And would she be the person who would ordinarily tasked with debrief?

MR GREEN: No, but she's my colleague and peer in that organisation.

40 MR O'NEILL: Just on that topic, who is ordinarily tasked - sorry, I withdraw that. In relation to this project, who should have been tasked with the debrief process?

MR GREEN: It's typically run by the Tender Evaluation Team and arranged by the chair.

MR O'NEILL: And the chair is someone from Major Projects?

45

MR GREEN: Normally, yes. Ms Wright, I think in this instance.

MR O'NEILL: Now, if you go to the next text message, it says:

How did that go?

5 And then across the page, and this is at 2.1894, you will see the green bubble at the top.

MR GREEN: Yes.

MR O'NEILL:

10

As calmly as Mark normally is.

MR GREEN: Yes.

15 MR O'NEILL:

He will ask for a debrief.

Does that assist your recollection as to Mr Bauer's -

20

MR GREEN: He was probably expressing his disappointment in his normal style.

MR O'NEILL: And without -

25

COMMISSIONER: Robust.

MR GREEN: No, probably not robust; he's excitable, let's say. We will go from there.

COMMISSIONER: All right. Well, emphatic.

30

MR GREEN: Yes, emphatic. A good word.

MR O'NEILL: As all barristers know, there is nothing wrong with being emphatic. So then the bubble below it, where it says:

35

I did say I will be part of that.

So there was a second text message you sent. It will just come up shortly. So there's a text message in between those two. A green one about a third of the way - half the way down the page on 218.

40

MR GREEN: Yes, I can see it on the screen.

MR O'NEILL: Yes. You said:

45

I did say I will be part of that.

Do you see that?

MR GREEN: Yes.

5 MR O'NEILL: Why did you think to add that second text message?

MR GREEN: I think Ms Power and I had probably already had a conversation around of how the debriefing process would work for this project, given that the Tender Evaluation Team's recommendation hadn't been accepted by the decision maker. And I think we were
10 already in a conversation around how that debriefing process might be different on this particular tender than the standard one.

MR O'NEILL: Why did it have to be different on this tender?

15 MR GREEN: Because the Tender Evaluation Team recommendation wasn't supported by the decision maker.

MR O'NEILL: And it would be somewhat difficult, would it not, to send a Tender Evaluation Team in for a debrief in circumstances where it had not recommended the very
20 decision that had been made.

MR GREEN: Yes, yes.

MR O'NEILL: You will see then that underneath that text message was one sent shortly
25 thereafter to you by Ms Power saying:

As the leader, I hope!

MR GREEN: Yes. I see that.
30

MR O'NEILL: And does that accord with what you were just saying before, that is, that it was going to have to be led by at least you or someone different, given the Tender Evaluation Team had arrived at a -

35 MR GREEN: I think I said I will be part of it, and she was asking me to be the leader of it, so obviously we are still having a conversation.

MR O'NEILL: On the next page, this is 2.1895, you responded - just pause for it to come
40 up:

It depends if I sign the document Kelly sent through. The TT runs the debrief and I will have no role.

What are you talking about there?
45

MR GREEN: So, at the tail end - the last couple of pages of a Tender Evaluation Report, there's a pro-forma content that sets out what happens after a decision is made, and

the - the standard text, I think, says words to the effect of, that the decision maker authorises the chair of the evaluation team to run a debrief. So I was just pointing out that if that document is signed I have no role in. It's the chair of the Tender Evaluation Team that does it.

5

MR O'NEILL: I see. So this is really about who's leading the discussion.

MR GREEN: It's about the documentation of the process from here onwards.

10 MR O'NEILL: Right. She then responds, if we can draw out the next text message:

The last version I saw read very differently.

Did you understand what she was talking about?

15

MR GREEN: She might have seen a different version than the version I was sent by Kelly in the previous text.

MR O'NEILL: Then if we can just draw out the last text.

20

Nice try but if I don't tick the 4th box, they still have to do it.

Do you see that?

25

MR GREEN: Yes.

MR O'NEILL: That's what you were talking to the Commissioner about.

MR GREEN: Yes, the pro-forma texts and what they have to tick and all that sort of stuff.

30

MR O'NEILL: If we go across the next page, I'm not going to draw out all of these, but at 2.1896 there's a discussion between you and Ms Power about this permission and how it's to be granted. Do you accept that?

35

MR GREEN: Yes.

MR O'NEILL: And your solution in the middle bubble is that you've got form for writing your own outcomes -

40

MR GREEN: Yes.

MR O'NEILL: - on others' recommendations. Do you see that.

MR GREEN: Yes.

45

MR O'NEILL: Was that a joke?

MR GREEN: Yes.

MR O'NEILL: And it was a joke in reference to the fact that this is precisely what had occurred in respect of Campbell.

5

MR GREEN: Correct.

MR O'NEILL: If you go then to the - if I can take you to the next document, 2.1897, you will see that this is an email, and it goes -

10

MR GREEN: Note the time there, counsel, that that email exchange was happening at 8 o'clock at night and 5 o'clock in the morning. Non-very public service hours.

MR O'NEILL: Well, as we now know, at this period of time everyone was working very difficult - very hard in the Territory. And I accept the criticism. So at 2.1897, you will see that there is emails between you and Ms Ruediger.

15

MR GREEN: Yes.

20 MR O'NEILL: Who is Ms Ruediger?

MR GREEN: She was my support officer.

MR O'NEILL: And you see here that there's - if you go to the bottom, so it starts - the email chain starts at 2.1898. If you could have both of them up together. You will see the chain about contract approvals.

25

MR GREEN: Yes.

30 MR O'NEILL: What's this chain about?

MR GREEN: So this is the - I'm assuming the first email from Ms Young to Mr Blom was the first document they sent across with the contract authorisation pro-forma template that I was talking about in that text exchange. And then - so it's gone to Education and then it's been sent by Mr Blom to the Director-General's -no, to one of my inboxes. So EDBSD was like my office email address. And then Ms Ruediger sent it up, and then I have noticed what she's done and said can we get that paper back because that text in that pro-forma isn't the correct one for the Director-General to sign.

35

40 MR O'NEILL: And is that related to the very issue that was the subject of the text messages between you and Ms Power, that is -

MR GREEN: Yes. Sorry, I think so. Without seeing that document I would assume that's what that's all about. The Director-General needs to sign the right document to do the contract authorisation piece.

45

MR O'NEILL: And to allow you to do the debrief.

MR GREEN: Yes.

5 MR O'NEILL: You see at 2.1900 - sorry, I withdraw that. The document that was attached, so the one that was going back and forth, is at 2.1902. And at 2.1903, you will see that the authorisations that are provided, firstly, the Tender Evaluation Team recommendation, there's a mark next to "not approved." Do you see that?

10 MR GREEN: Yes.

MR O'NEILL: That was correct, wasn't it, that their recommendation had not been approved?

15 MR GREEN: Yes.

MR O'NEILL: And then a series of steps for the Tender Evaluation Team. And is the relevant point that you were making the one at 4, that is, that the debrief to the unsuccessful will be undertaken by the delegate or acting EGMBS.

20 MR GREEN: Yes.

MR O'NEILL: And that's you, isn't it?

25 MR GREEN: Yes, I think I made the point - yes, I was the acting executive group manager, so I made the point that if I didn't tick 4, then - then the chair of the Tender Evaluation Team was having to do the debrief.

MR O'NEILL: Now, if I can take you to page 2.1931. Now, this is a meeting request for Manteena debrief. Do you see that?

30 MR GREEN: Yes.

MR O'NEILL: Now, just ignore the name at the top of the page there, that's Ms Ashton who is the investigator. It just prints out that way.

35 MR GREEN: Yes.

MR O'NEILL: You will see that's a meeting request that was sent by - it says at the bottom Ms Young. So it says "Kelly", but it looks like it's actually being organised by you.

40 MR GREEN: Yes.

MR O'NEILL: Your name appears as organiser.

45 MR GREEN: Yes.

MR O'NEILL: With the Americanisation. For 28 July 2020 at 11.30 am over Teams.

MR GREEN: Yes.

MR O'NEILL: Do you recall that debrief?

5

MR GREEN: I don't have any recollections of it. We've spoken about it in the past and you've confirmed to me that I was there. I don't have any specific recollections of that debrief.

10 MR O'NEILL: Okay. So you don't know who was there or what was discussed at that debrief.

MR GREEN: I'm looking at - I can see who the invitees are, so I will presume they are there.

15

MR O'NEILL: Page 2.1934 - sorry, 2.9135, you see there that Mr Bauer is writing to you attaching a letter of that date.

MR GREEN: Yes.

20

MR O'NEILL: A letter appears on the next page, if we can take Mr Green to that, please. And there, Mr Bauer firstly thank you for providing the tender debrief. You can see that. And then requests further information from the Director-General to better understand the tender decision.

25

MR GREEN: Yes.

MR O'NEILL: This letter, was that a surprise when you received it?

30 MR GREEN: I don't think so. So it talks about we've had a debrief on the 28th. We've given them the - a conversation around some scores, by the look of it, and they have worked out that they had the preferred design and construct solution, but we gave it to someone else on the basis of long-term factors, and he's seeking a debrief with the decision maker. So I would think, knowing Mr Bauer for a few years, that he would have mentioned
35 that in the meeting. So it doesn't sound like I was surprised by it coming in.

MR O'NEILL: It says that - and this is at the bottom of the first - or the second paragraph:

40 *It is important to Manteena if we are to continue to tender and deliver projects for the Territory that we understand exactly what the long-term factors are.*

MR GREEN: Yes.

MR O'NEILL:

45

How the assessment of these is being carried out and based on what evidence.

Do you see that?

MR GREEN: Yes.

5 MR O'NEILL: Do you recall previously having told him what the long-term factors were?

MR GREEN: It must have been mentioned in the debrief meeting for him to use that language back. So -

10 MR O'NEILL: But you don't have a recollection of having told him about that?

MR GREEN: I don't have a recollection.

COMMISSIONER: It implies that it was left at a high degree of generality.

15

MR GREEN: Yes, Commissioner, I agree. But I think it sounds like -

COMMISSIONER: But you don't recall yourself.

20 MR GREEN: I don't recall exactly what was discussed in that debrief meeting of the 28th. But reconstructing what I can see in this letter, we have talked about the various elements of Manteena's bid and we have mentioned long-term factors as being the reason it was given to Lendlease.

25 MR O'NEILL: And then you see in the next paragraph, it says that he understood that the contract was yet to be awarded.

MR GREEN: Yes.

30 MR O'NEILL: Was that true, as at the date of - this is 6 August 2020. Was that your understanding?

MR GREEN: Yes. So just thinking through that though. So generally someone is told they are successful and then there is a period which documents are drawn up and matters are resolved and all that sort of stuff there. So sometimes the actual signed award date is after the decision has been made.

35

MR O'NEILL: And then he asks for an opportunity to address the concerns to whether they could deliver the Campbell school project. So he's saying can we address these concerns prior to you executing the contract. Would that have been something that could have been entertained or was the decision made?

40

MR GREEN: The decision is made. I mean, potentially, those - when you talk to the successful contractor they could have put a roadblock in the way, so their tender is not necessarily - sorry, Manteena's tender was not necessarily rejected, it was still alive until the contract is actually awarded, and the debriefs are often on the basis when is someone is preferred versus their contract actually being signed.

45

MR O'NEILL: Do you know what happened after you received this letter?

MR GREEN: I can't recall. I think there was another email following up.

5

MR O'NEILL: Right. Just pause there then. At 2.1939, another email from Mr Bauer.

MR GREEN: Yes.

10 MR O'NEILL: Asking or following up on the email. Do you see that?

MR GREEN: Yes.

MR O'NEILL: Does that assist your recollection?

15

MR GREEN: Yes. So obviously I haven't replied back or responded back to Mr Bauer between the 6th and the 28th. So he's following me up.

20 MR O'NEILL: And then at 2.1941, do you see there that Ms Haire emails you, saying that "we've" - that's probably the Directorate - had received a phone call from an unsuccessful tenderer. Do you remember receiving this email?

MR GREEN: Yes.

25 MR O'NEILL: Do you know what - to your mind, do you know what she was referring to when she said, "the unsuccessful tenderer"?

MR GREEN: I assumed that Manteena had rung the Director-General's try to organise a meeting because I hadn't done it.

30

MR O'NEILL: Is it fair to say despite on 6 August -

MR GREEN: I wasn't in any rush.

35 MR O'NEILL: As of 14 September, there has still not been this debrief.

MR GREEN: Correct.

40 MR O'NEILL: If you go to 2.1942, you see at the bottom of the page, you asked Ms Haire to clarify whether that was Manteena about the Campbell tenderer, and you would say that they would get a debrief after the contract had been signed.

MR GREEN: Yes.

45 MR O'NEILL: Do you see that?

MR GREEN: Yes.

MR O'NEILL: And then you say the contract had only been signed on the Thursday. This was the Monday. So that was four days before.

5 MR GREEN: Yes.

MR O'NEILL: And then above that is an email from Ms McKinnon to you.

MR GREEN: Yes.

10

MR O'NEILL: Who is Ms McKinnon, while we are waiting for that to be drawn up?

MR GREEN: So, at that point I think I had reverted back to an EBM role and Ms McKinnon was the new acting EGM.

15

MR O'NEILL: She says they could wait to be disappointed.

Could you let me know when we have called. If they haven't called today, you or your team should call them tomorrow.

20

Do you see that?

MR GREEN: Yes.

25 MR O'NEILL: And then the email above, I will just draw the final email out, you advise Ms McKinnon that you've called Mark - that meant Mr Bauer; agree?

MR GREEN: Yes.

30 MR O'NEILL: And that you will set up a face-to-face coffee with him later in the week.

MR GREEN: Yes.

MR O'NEILL: And is that ultimately what occurred?

35

MR GREEN: Yes. Mr Blom and myself had a face-to-face meeting, spoke to Mr Bauer and Mr Mitten from Manteena, and, yes, had a conversation.

MR O'NEILL: Firstly, where did that conversation take place?

40

MR GREEN: A coffee shop in Kingston. We were all avoiding the office.

MR O'NEILL: And was that on 18 September 2020?

45 MR GREEN: It sounds like a reasonable date based on these dates of these ones.

MR O'NEILL: And the café in Kingston was the Bitter Sweet café?

MR GREEN: Yes, I think so. Not chosen for that ironic reason of that name, okay, sorry. It's a very good coffee shop in Kingston.

5 MR O'NEILL: Now, to best of your recollection, who attended from Manteena?

MR GREEN: Mr Bauer and Mr Mitten.

MR O'NEILL: And from -

10 MR GREEN: Mr Blom and myself.

MR O'NEILL: And so it was just the four of you.

15 MR GREEN: Yes.

MR O'NEILL: You sat down and had pleasantries, no doubt?

20 MR GREEN: Yes.

MR O'NEILL: And then how did the substantive conversation start?

25 MR GREEN: I - sorry, I don't have a recollection of how it started. I know we had a conversation around long-term factors. It moved into why does the union hate you so much, and what's changed. There's a few topics of the conversation around there.

MR O'NEILL: So let's just drill into the first bit then. Why does the union hate me so much. Was it Manteena -

30 MR GREEN: You so much.

MR O'NEILL: You so much. Who raised that?

35 MR GREEN: I don't know who raised it. It was pretty obviously going to be the topic of the conversation there somewhere.

MR O'NEILL: Why do you say that?

40 MR GREEN: Because I think they had already heard that they didn't get the job because there was union influence in the decision making, and so it was a kind of frank - attempt to have a frank conversation.

MR O'NEILL: Did you try and disabuse them of that position, that is, that it had union involvement?

45 MR GREEN: I don't - I don't think I actively sought to disabuse them of that view.

COMMISSIONER: Well, to the best of your recollection, what did you say?

5 MR GREEN: I don't have strong recollection, Commissioner. I might have couched it in lines of industrial stakeholders like we normally do, and trying to understand why there's such a - a view on - on Manteena at the moment around their industrial relations performance. Sorry, I don't have a strong recollection of the conversation.

10 MR O'NEILL: Did they tell you, that is, either Mr Bauer, Mr Mitten tell you where they had been told that it was union involvement - there was some union involvement?

MR GREEN: No. I don't recall them telling me that.

MR O'NEILL: Had that been something that you had discussed with them previously?

15 MR GREEN: In that first meeting we were talking about long-term factors, so using euphemistic language.

20 MR O'NEILL: All right. So that was one of the first topics. And what did you say how that could be addressed, if anything?

MR GREEN: Probably along the lines of, you know, make peace with the union. You know, general advice, not anything more than that. Having background from previous roles, I kind of know that at times, you know, Manteena and the union didn't see eye to eye. I might have asked if there was anything specific happened recently, but I - I can't recall an answer to that.

25 COMMISSIONER: Was the name of a union mentioned?

30 MR GREEN: Quite probably, Commissioner. The CFMEU is the only union that really makes any sense in that conversation, so expect it was.

MR O'NEILL: What else was discussed?

35 MR GREEN: Could they win future work with the government.

MR O'NEILL: Pausing there. That's a legitimate concern isn't it, in circumstances where -

MR GREEN: Yes.

40 MR O'NEILL: - they win a tender and yet for other reasons they are not the preferred tenderer. Agree?

MR GREEN: Yes. It's an absolutely legitimate concern.

45 MR O'NEILL: What's your answer to that? What was your answer to that when they raised that?

MR GREEN: I don't recall specifics. I certainly pointed out that I had used Manteena in the past and would expect to use Manteena in the future ,different tendering mechanisms, something, there's the PM panel which doesn't require public tenders. There are plenty of other processes that are, if you like, less - less of a open large public tender. Probably also encouraged them to work with Directorates as well, because every Directorate has contractors they do and don't use and -

10 COMMISSIONER: Well, did you tell them that the unions had not been involved in the decision?

MR GREEN: I don't know, Commissioner. I - I expect that they took my conversation to read that the unions had been involved in the decision. So I don't know if I told them that they weren't, and I don't know that - and I certainly I don't think I would have put a conversation piece around trying to deny that they were. So I think it was just a part of the conversation.

15 COMMISSIONER: In substance, you left them with the understanding, if you hadn't said so directly, that indeed the unions had prevented their success.

20 MR GREEN: Yes, I think that's fair, Commissioner.

MR O'NEILL: Did you tell them that the assessment of Manteena's industrial relations standing with the CFMEU would have resulted in more risk, more work and more management for the ED, which would be at a cost for the Directorate?

25 MR GREEN: Yes. It sounds like something I would say, yes.

MR O'NEILL: You conveyed to them that the Lendlease bid was going to cost more than Manteena but ultimately the numbers could move around?

30 MR GREEN: Yes.

MR O'NEILL: Did you talk to them at all about their Secure Local Jobs position?

35 MR GREEN: I expect that I did. Just based on the rest of that conversation, that would be a logical part of the conversation.

MR O'NEILL: Did they express to you that they were a local business and that should have been a relevant concern?

40 MR GREEN: Yes.

MR O'NEILL: What was the way in which that conversation - that part of the conversation, to the best of your recollection, took place?

45 MR GREEN: Pretty much our standard line, they are a local business, they employ local people. Something like Lendlease is an out-of-towner and shouldn't be considered local

under the Secure Local Jobs code. It's a long-standing conversation piece from, let's say, local businesses - sorry, local Canberra-only construction companies versus the out-of-towners. But the position Secure Local Jobs takes on that is about setting up local offices and supporting local employment, and it doesn't matter that you are a, say,
5 multi-national construction company. As long as you have a Canberra office and you employ Canberra people, you fit within the local of the Secure Local Jobs Code.

MR O'NEILL: And also local subcontracts, I assume.

10 MR GREEN: Yes.

MR O'NEILL: So did they raise any problems with you as to how they perceived the process had been undertaken?

15 MR GREEN: I expect - sorry, they obviously thought they should have won based on the scores. I don't know - I can't remember anything more detailed than that.

MR O'NEILL: Did they complain to you about why even pick them on the shortlist if it's not going to be that they can't award -

20

MR GREEN: Yes. Yes, I remember them saying that. So I think they said, you know, why did you put us on the shortlist, why did you put us to the bidding costs and that sort of way there. And I think I replied something along the lines of yeah, these - the issues came out at tender time as opposed to that. So I don't think there was a preconceived Manteena couldn't get it at the time of the EOI.

25

MR O'NEILL: Was that true?

MR GREEN: I think so.

30

MR O'NEILL: As at the time of the EOI.

MR GREEN: As at the time of the EOI, yes.

35 MR O'NEILL: But then as of - by the time of the BAFO, was it still true?

MR GREEN: No, no. Sorry. Let me rephrase that question. So at the time of the EOI, I don't think there had been concerns raised with Education - with the Directorate, if you like, around the Manteena's performance. But that was the EOI which was in, I think,
40 September, October of the preceding year or possibly earlier. So - but that's the EOI process, not the - not the first tender or the BAFO.

40

MR O'NEILL: So, the way you recall it is they were talking about being shortlisted, so therefore the answer is directed at that point in time.

45

MR GREEN: The EOI, yes. Because the shortlisting - the process - the EOI process to get to a shortlisting involves less cost for the business to develop their proposal, whereas the cost of a tender is more costly to the business.

5 MR O'NEILL: Their complaint insofar as it related to periods later in the process, though, has some validity. Do you accept that?

MR GREEN: Yes.

10 MR O'NEILL: Did you explain to them what had happened during the process, how there had been a change of the way in which there had been a recommendation that had switched to BAFO and then for -

15 MR GREEN: I don't recall doing that, but they were a participant in the process, so they had probably seen the various steps. You know, the first tender, the BAFO, and -

MR O'NEILL: Had they seen the reports, though?

20 MR GREEN: No, they wouldn't have seen the reports. But, you know, they - you know, would have been talking to - you know, they talk to people and they kind of know where the steps in the process are up to. So -

25 MR O'NEILL: Had they - did they know - did they express to you that they knew that there had been a recommendation made but that that had been overturned at Directorate - Director-General level?

30 MR GREEN: I think they probably did, because that seems to be like - sorry, that - an earlier debrief talked about the scoring and then the long-term factors and considered it. So it would be logical that they had worked that out if - if they hadn't been told by someone else.

MR O'NEILL: Were they provided a copy of the briefing note?

35 MR GREEN: No, I don't think so.

40 MR O'NEILL: Did you inform them that the result had been - sorry, I withdraw that. Did you inform them that you had been informed - sorry, I withdraw that as well. Did you inform them that the message had come from the minister's office that Manteena was not to be the preferred tenderer because they had an issue with the unions?

45 MR GREEN: I don't know. I'm not sure if I said where the message came from. As I said earlier, there was an understanding in the meeting that the message came from the unions, so I'm not sure if I - if I said where it is. They clearly knew that the Director-General had made the decision. That's obvious from the letter that they wrote. So I'm not sure it was discussed how it got - that message got through there.

MR O'NEILL: So you are not sure whether -

MR GREEN: Did or didn't.

MR O'NEILL: - you had discussed that.

5

MR GREEN: Yes, I'm not sure.

MR O'NEILL: Did Manteena express to you that they would have liked a right of reply at any point in time when decisions were about to be made?

10

MR GREEN: I cannot recall it, but that would be - seem to be part of the similar conversation. So I - they -

MR O'NEILL: Did the discussion at any point touch upon the concept of best value for money?

15

MR GREEN: Probably when talking around we scored higher, we should have got it. I would say that they would use that as an argument to say they had best value for money.

MR O'NEILL: Were any follow-up points or anything - was there anything to be done following the meeting as between you and Mr Bauer or anybody else?

20

MR GREEN: I don't recall any specific actions coming out of the meeting. I think we were having a conversation and, you know, yeah, I don't - I don't recall actions coming out of it.

25

COMMISSIONER: In a conventional debrief, would it have been more formal? That is, would notes have been made of the matters discussed and a record kept of the circumstances of the debrief?

MR GREEN: No.

30

COMMISSIONER: It strikes me as very informal, that's all. I'm just asking, is that conventionally the case or just happened in this one?

MR GREEN: So, this isn't - this is, Commissioner, going back to that first Teams debrief would have been the debrief, if that makes sense. And typically there's not a lot of notes taken on those because typically it's the Tender Evaluation Team just basically reading out their commentary around that. And not - and sticking to their script without a formal set of written minutes or anything issued there. This one in the coffee shop was a much more informal conversation around the tender as opposed to the debrief, if you like, on the tender itself.

35

40

COMMISSIONER: Just correct me if I am wrong, but I take it was triggered by their desire to speak to the Director-General directly?

45

MR GREEN: Yes. Yes, Commissioner.

COMMISSIONER: Right.

MR O'NEILL: Now, if I could take you to document 2.1954 and also the preceding document 2.1953. If they could both be brought up next to each other. Now, starting at 2.1954, at the bottom of the page - well, it says:

5

Thank you, John. Are you able to touch base with Katy after the meeting and let her know how it went.

10 That was on the 14th. And then that was chased up by Ms Flaherty again, if you go to - on 23 September. So the bottom of page 2.1953, and the top of page 2.194. And then in the middle of the page, 2.1953, on 23 September at 10.35, you tell Ms Flaherty that you had met with Mark and Rod from Manteena last Friday:

15 *They are still a bit cranky because they feel they've been unsuccessful because someone doesn't like them. I've suggested again they find out why they are unpopular.*

MR GREEN: Yes.

20 MR O'NEILL: What does that mean?

MR GREEN: The first issue, someone doesn't like them, the first comment, someone doesn't like them, someone is obviously the union, and suggesting why they are unpopular again is finding out, you know, why the union doesn't like them.

25 MR O'NEILL: So this is an email that was indirectly referencing this union issue.

MR GREEN: Yes.

30 MR O'NEILL: And who is Ms Flaherty?

MR GREEN: The executive assistant to the Director-General.

35 MR O'NEILL: And you had no concerns expressing that sentiment in writing to Ms Flaherty?

MR GREEN: No. She will pass it on to Katy.

40 MR O'NEILL: On the following - so on 29 September 2020, this is at 2.1957, a letter was sent declining the requests for tender for the Campbell Primary School Modernisation Project to Manteena. Do you see that? When it comes up.

MR GREEN: Yes.

45 MR O'NEILL: And that letter of declinature, is that a normal process?

MR GREEN: That's a normal process, yes.

MR O'NEILL: And is it that that letter can only be sent when?

MR GREEN: When the successful tenderer has signed the contract. The second paragraph refers, which is:

5

Territories entered contract with Lendlease.

So it happens after the successful person signed the contract, in case the other unsuccessful tenderer needs to be brought back in, if that makes sense, you know, reactivated, whatever.

10

MR O'NEILL: I understand. Now, I want to then take you further into the chronology to more recent events. At 2.1998, an email was sent from Paula, who - at the Education Directorate FOI team, an email, rather, to you that there was a freedom of information request for Campbell and Throsby.

15

MR GREEN: Yes.

MR O'NEILL: Do you recall receiving that email?

20

MR GREEN: Yes. I can see it on the screen.

MR O'NEILL: What do you do once you receive that email?

25

MR GREEN: I don't do anything directly. So that's just a heads-up email. Then the freedom - the FOI process kicks in and is run by Paula and they go about collecting documents.

MR O'NEILL: And do you - are you required to do anything in respect of assembling those documents or is it just for your information?

30

MR GREEN: So, various members of staff do the document hunting.

MR O'NEILL: Do you remember reading the letter attached to the email that Paula had sent to you? That is, the letter from the solicitors.

35

MR GREEN: I don't remember it. It doesn't mean I didn't read it.

MR O'NEILL: Right. I will just take to you to the start of it. It starts at 2.2000. It's from a solicitor's firm, Meyer Vandenberg. Do you see that?

40

MR GREEN: Yes.

MR O'NEILL: Saying they act for Manteena Commercial Proprietary Limited.

MR GREEN: Yes.

45

MR O'NEILL: Does that assist your memory as to whether you had seen this letter or not?

MR GREEN: It doesn't, but this is an FOI letter.

MR O'NEILL: An FOI, sorry?

5 MR GREEN: This is an FOI request. So this is kind of requesting documents relating to.

MR O'NEILL: At 2.2002, at paragraph 9:

10 *Manteena submits that on balance the disclosure would not be contrary to public interest given that among other things -*

And then it sets out a matter of - well, some things. Do you see that?

MR GREEN: Yes.

15

MR O'NEILL: Relevantly, these matters - and there's one across on the other page that says:

Reveal that the information was incorrect, unfairly subjective or irrelevant.

20

These are pretty serious potential allegations being levelled in relation to both those tenders. Do you agree?

MR GREEN: Yes.

25

MR O'NEILL: Had you seen this or -

MR GREEN: I don't know I read this far in it, if I've read it all. It looks like under 17 of the Act is the reason they are requesting information.

30

MR O'NEILL: Were you aware, though, that at, or about these time, that these kind of allegations were starting to arise, that is, that there were some potential allegation to be raised about the probity or propriety of this decision?

35 MR GREEN: Yes, the FOI from, you know, Meyer Vandenberg on behalf of Manteena say there is scrutiny or requests happening on it.

MR O'NEILL: What was happening then after the recent of the FOI? Was there anything happening in respect of the way in which the Directorate needed to respond to those allegations rather than the request for documents?

40

MR GREEN: I don't recall any specific changes. I think it was just - I think it was just treated as an FOI, is how my recollection of it went.

45 MR O'NEILL: So was there any - for example, any meetings took place to review what had occurred or how the decision had been arrived at?

MR GREEN: Not that I recall.

MR O'NEILL: And there was no discussions along those lines?

5 MR GREEN: No.

MR O'NEILL: Spark Helmore were engaged to provide a probity report. Did you have any involvement in that process?

10 MR GREEN: I don't recall any direct involvement. I think I provided documents as part of the FOI report.

MR O'NEILL: All right. You attended an interview at the Auditor-General.

15 MR GREEN: Yes.

MR O'NEILL: Do you remember that?

MR GREEN: Yes.

20

MR O'NEILL: Do you recall when that took place?

MR GREEN: Not exactly. It will be in 2021 at some time.

25 MR O'NEILL: If I could take you to 2.2081.

MR GREEN: Sorry, I am recalling a document. Sorry, can I go back a step before that question?

30 MR O'NEILL: Yes, certainly.

MR GREEN: So at this time, I remember actually then I had a meeting with, I think, the Deputy Director-General. I'm not sure how it happened.

35 MR O'NEILL: When you say at this time, that's at the time of the FOI -

MR GREEN: Sorry, about the time of the FOI request. The FOI request. So the FOI request came in. Let me remember this one. At some - somehow, I was asked to give my - my version of events about what happened through the Campbell process. Okay.

40

COMMISSIONER: Asked by whom?

MR GREEN: I think I was asked by Ms McKinnon who was my boss, who was passing on a request that had come to her from either the Director-General, the Deputy

45

Director-General.

COMMISSIONER: Let's just get the - so her position was - what position does she -

MR GREEN: So she was the acting executive group manager.

COMMISSIONER: Right. And the Deputy Director-General was -

5

MR GREEN: David Matthews. He was Acting Deputy Director-General and the Director-General was Katy Haire.

COMMISSIONER: Right. Right.

10

MR GREEN: So somewhere in there, and there was a request for me to set out the process that had happened at Campbell. And I produced a one-page document, I remember that, and then sent it back via I think Ms McKinnon back to - I think it went to David Matthews.

15 COMMISSIONER: By email?

MR GREEN: By email, possibly, yes.

COMMISSIONER: Or how else?

20

MR GREEN: Yes, it wasn't a printed document. I remember we were in - located in Belconnen office by that stage. So it was emails and that sort of stuff there.

COMMISSIONER: Right.

25

MR GREEN: And then that - that went back, I think, to the Deputy Director-General, and then some time after that, I remember sitting down with the Deputy Director-General and he was reviewing that document with me and looking at the pieces that - sorry, that one-page summary, if you like, of the steps involved with - with Campbell. And he suggested some changes, which were, I think, pretty minor, I think. And then we just made an updated version of that document there. And that was me setting out, if you like, a clean chronology of events for what happened at Campbell.

30

MR O'NEILL: Did that chronology, though, didn't contain any of the -

35

MR GREEN: Contentious stuff?

MR O'NEILL: Yes.

40

MR GREEN: No. It was very clean. It was very corporate - corporate line kind of chronology.

COMMISSIONER: And, sorry, who was the ultimate recipient of that document?

45

MR O'NEILL: Well, I prepared it and passed it on. They didn't really have a - it wasn't like a brief or anything. It was just like a series of points down a page.

COMMISSIONER: Quite. But someone needed that information or wanted it.

MR GREEN: Well, it went back to the Deputy Director-General.

5 COMMISSIONER: Right.

MR GREEN: I'm not sure where it went after that.

COMMISSIONER: Okay.

10

MR GREEN: I'm not sure what purpose it was used for - sorry, not purpose. I'm not sure who received it after that.

COMMISSIONER: Right.

15

MR O'NEILL: I note the time, Commissioner. This is the last topic. It's only going to take 15 minutes or so, but there's really no rush to do that. I'm in your hands. After that, I anticipate there will be applications for cross-examination and then -

20

COMMISSIONER: Perhaps you could just look at procedure for the rest of the afternoon. There is one application I know for leave to cross-examine.

MR PARARAJASINGHAM: Yes, Commissioner, that's on behalf of Mr Ceramidas.

25

COMMISSIONER: Do you have any idea of how long you think you will be? I'm not going to nail your foot to the ground, of course, but if you can just give us some indication. Because we've got Mr Smith waiting and we've told him not before 2.

MR PARARAJASINGHAM: Yes.

30

COMMISSIONER: Is that right? Mr Smith, isn't it? So -

MR DOWLING: Commissioner, can I just be heard on that. I've had a discussion with counsel assisting and I think the position we are proceeding on is not before Thursday for Mr Smith. But -

35

COMMISSIONER: I beg your pardon. Is it Mr O'Mara?

MR McAULIFFE: I understand Mr O'Mara is Thursday as well. But if -

40

COMMISSIONER: Well, things have moved faster than my awareness. But - so it's not intended to call - the arrangement is that Mr Smith and Mr O'Mara, well, hopefully we can call them twice. We can - sorry, we can dispose of them in the one day. Is that the present plan? So we don't - well, you will have - you think you will be how long?

45

MR O'NEILL: I don't think - is that -

COMMISSIONER: No, no.

MR PARARAJASINGHAM: You are addressing me. Commissioner, I think at least half an hour, perhaps longer.

5 COMMISSIONER: All right. Will there be any other applications?

MS MORGAN: I think, Commissioner, I will be making a formal reapplication after Mr Pararajasingham.

10 COMMISSIONER: Right.

MS MORGAN: But as I anticipate, that will follow the course that's been adopted to date and given the application we have made elsewhere, and so I hadn't estimated time at this point if -

15 COMMISSIONER: Well, I should just place on the record, I think, that I would be minded to grant leave but subject to your client providing a statement of the positive evidence which ** (audio muted). Proceedings have already been taken in the Supreme Court in relation to that matter. And I take it you maintain your position that that condition is
20 unreasonable and you do not propose to comply with it.

MS MORGAN: Commissioner, it's the first time you have given me that condition. That hasn't ever been communicated to us. So -

25 COMMISSIONER: I must say, you surprise me.

MS MORGAN: I understand you have communicated that in relation to Mr Ceramidas but not in relation to Ms Haire. But I can take that as a direction now and can get instructions over lunch in relation to that. It doesn't address the second topic.

30 COMMISSIONER: No, no, I understand. That's a different matter. But -

MS MORGAN: Yes. So -

35 COMMISSIONER: But I thought there were at least two emails that went to your instructing solicitors.

MS MORGAN: I have only ever seen one and it certainly didn't ask for a statement from us, Commissioner, but I can follow that up over lunch. We can search for that again. But
40 just so you understand, Commissioner, it would have been in the exhibit that you received last week, but there's no email in there that, Commissioner, you put a condition on that cross-examination application that I provide a statement. I note that of course, Commissioner, my -

45 COMMISSIONER: I'm not sure that I put it in terms of more than "provide information." I don't think I stated a form. But my recollection is that I required an indication of the positive case, if any, that Ms Haire proposes to make.

MS MORGAN: I can see now having - you have said that, Commissioner, how you intended that email to read. That was not the understanding we took away from the email. But I will get instructions about that over lunch. More importantly, could I just note,
5 Commissioner, of course, Ms Haire has been examined on three occasions by the Auditor-General and twice by this Commission and, Commissioner, you are well aware of her position in relation to this chronology. So query what would be assisted in terms of having her provide yet another version -

10 COMMISSIONER: I make this general observation, and I intend it to be understood generally: It is not unknown for witnesses to change their evidence or aspects of their evidence and it is wise not to make assumptions about such matters. I will just leave it there.

15 MS MORGAN: I actually don't understand that comment, I'm afraid, Commissioner. But perhaps we can re-agitate it after -

COMMISSIONER: I think it's - I just propose to - you said I know what her position is. I know what she has said. That may or may not be what she now proposes to say, and one
20 cannot assume safely that what has been said is the same as what will be said. I should have thought those were obvious propositions.

MS MORGAN: So, Commissioner -

25 COMMISSIONER: Especially in the context of an investigation.

MS MORGAN: So I just wanted to make this clear. So Ms Haire has given evidence on oath.

30 COMMISSIONER: Yes.

MS MORGAN: On three occasions.

35 COMMISSIONER: Quite.

MS MORGAN: And what, Commissioner, you want to know is if she maintains what she has said previously. Is that right?

40 COMMISSIONER: Not entirely.

MS MORGAN: But is it sufficient that what she said already would give her leave to cross-examine. I guess that's the issue. But you are saying no, it's what she now signs up to may give you sufficient to make that decision.

45 COMMISSIONER: Well, what I've said is I require her to state whether she has a positive case on the issues about which, directly or indirectly, she seeks leave to cross-examine Mr Green and, if so, what that case is.

MS MORGAN: Well, perhaps if I would have leave this afternoon to address you more directly on that without Mr Green here.

5 COMMISSIONER: Certainly.

MS MORGAN: That might be sufficient for your purposes. But I will also get instructions over the luncheon adjournment.

10 COMMISSIONER: Thank you. Yes, we will adjourn.

MR HASSALL: Commissioner, just before you do that, I learned today that Mr Ceramidas' legal representatives are seeking to represent - sorry, to cross-examine Mr Green.

15 COMMISSIONER: Yes.

MR HASSALL: Could I just seek clarification on the basis - of the basis on which that is proposed that that would occur? My understanding is that Mr Ceramidas is not available to be examined in the Commission. So you have power to grant legal representation to any
20 witness who is being examined and you obviously have power to grant - issue directions about how public examination ** (audio muted) it is also going to be subject to cross-examination or whether this is just a free hit for someone who -

COMMISSIONER: I think part of the difficulty here is this is not an adversarial
25 proceeding. And for reasons which I do not propose to go into, I have decided that it is appropriate that those representing Mr Ceramidas should have the opportunity to cross-examine Mr Green. It is true that it is not at present intended to call Mr Ceramidas in public hearing. Does that answer your question?

30 MR HASSALL: Well, I will try and read between the lines over the lunch break.

COMMISSIONER: Well, I'm not intending that -

MR HASSALL: I'm not sure why -
35

COMMISSIONER: - there should be a matter between the lines. I'm trying to be clear as to the process of reasoning.

MR HASSALL: Perhaps I could ask this. On what basis is - have you granted leave for
40 Mr Ceramidas to be represented in these proceedings at all?

COMMISSIONER: Because I consider cross-examination by his counsel along the lines which his counsel has proposed would assist me in this investigation.

45 MR HASSALL: Yes, yes.

COMMISSIONER: And I don't think I need any other justification - I mean -

MR HASSALL: I'm just seeking clarification rather than -

5 COMMISSIONER: I'm prepared to hear whether that is an adequate or inadequate basis, but at present it seems to me that's the essential criterion.

10 MR HASSALL: I am merely asking the question at this stage, Commissioner, and I simply note that we haven't been privy to either what the proposed cross-examination is or your ruling on it.

COMMISSIONER: Quite. Well, that's not surprising, though, Mr Hassall in the circumstances, I think. Yes, very well. Sorry.

15 MR LEE: Commissioner, I'm sorry to keep interrupting the lunch break.

COMMISSIONER: No, that's all right.

20 MR LEE: We just want to put on record on behalf of Ms Berry that we have made an application with respect to cross-examination of Mr Green. But leave has not been granted at this stage, but we are allowed to revisit the issue after Ms Berry completes her evidence.

COMMISSIONER: Quite.

25 MR LEE: Thank you.

COMMISSIONER: Yes. I will adjourn.

<ADJOURNED AT 1.12 PM

30 <**RESUMED AT 2.14 PM**

COMMISSIONER: Yes, Mr O'Neill.

35 MR O'NEILL: Thank you, Commissioner. So the next topic that I need to address with you, Mr Green, is the Auditor-General.

COMMISSIONER: You do need to speak up, Mr O'Neill.

40 MR O'NEILL: The Auditor-General interview. Now, it occurred on or about 24 June 2021. There's some text messages that you will find at 2.2081 where you indicate to Ms Attridge. Who is she?

45 MR GREEN: She is another executive in Education. Executive branch manager, possibly strategic planning or something similar.

MR O'NEILL: And you have obviously gone to the Canberran institution, Mooseheads, to debrief.

MR GREEN: Yes, counsel.

5 MR O'NEILL: She asks you whether it went well. And you say on the next page, 2.2082, that you were happy with how it went. Do you see that?

MR GREEN: Yes.

10 MR O'NEILL: Now, you were asked questions there by a Mr Stanton and a Mr Bowden. Do you remember?

MR GREEN: Yes.

15 MR O'NEILL: It was conducted at 5 Constitution Avenue in Canberra. And the first thing that happened during the interview was that you were read how the audit was being conducted and asked whether you understood all the formal parts. And then you took a affirmation where you solemnly and sincerely declared and affirmed that the evidence that you would give would be the truth, the whole truth and nothing but the truth. Do you remember that?

20

MR GREEN: Yes, counsel.

25 MR O'NEILL: Now, you were then asked a series of questions, and the ones that I want to draw your attention to are about the way in which the decision was arrived at ultimately, and your involvement in the preparation of the minute.

COMMISSIONER: The briefing note, you mean.

30 MR O'NEILL: The briefing note, sorry.

MR GREEN: Yes.

35 MR O'NEILL: Excuse me for one moment. You were asked to talk those interviewers through the implication that Lendlease was the better tenderer. And in doing so, you maintained a line that the long-term factors were in support of Lendlease's tender over that of Manteena. Do you recall that?

MR GREEN: Yes, counsel.

40 MR O'NEILL: You didn't explain to those interviewers, though, that you had been given a direction by Ms Haire that Manteena was not to win the bid, did you?

MR GREEN: I did not.

45 MR O'NEILL: That is part of - sorry, is that part of the whole truth?

MR GREEN: It is, counsel.

MR O'NEILL: And so you should have provided that information to them as part of your giving of the whole truth of the information.

5 MR GREEN: I should have, counsel.

MR O'NEILL: Why did you not do that?

10 MR GREEN: At that stage, counsel, I was essentially presenting the corporate line to present the Education Directorate in the best possible way, and following the kind of clean version of events, as I had set out in that earlier set of points around how the process was followed - was conducted, sorry.

MR O'NEILL: Sorry. Have you finished?

15

MR GREEN: Yes.

MR O'NEILL: Was that a deliberate decision that you made?

20 MR GREEN: I think it was. I'm not sure if I was - yes, I think I was - yes, I think I went into that to give the clean version. So yes.

25 MR O'NEILL: How - sorry, I withdraw that. Do you now accept that you ought to have told the Auditor-General that you had been directed by Ms Haire that Manteena was not to be awarded the bid?

30 MR GREEN: I accept that, counsel. I should have told the Auditor-General the whole truth of all the matters as I knew them at the time, as opposed to a version that sought to present the Directorate in the best possible light.

30

MR O'NEILL: Is it the case, though, that in fact it's the countervailing position that's true, in that at the time you were interviewed by the Auditor-General, you gave them the whole truth and that it's only now, after further investigation, that you have constructed this concept of being directed to provide a different outcome - to provide an outcome?

35

MR GREEN: No, I reject that assertion, counsel. I think the evidence that you've put to me and the - the documented trail and the other conversations we've spoken through in my testimony today show that those - that the direction, the Manteena direction, if you like, was always there and I didn't present the whole truth to the Auditor-General.

40

MR O'NEILL: Isn't it the case -

COMMISSIONER: You see, don't you, how it lays you open to that allegation?

45 MR GREEN: Yes, Commissioner.

MR O'NEILL: Isn't it the case that you have in fact constructed this to conceal your own level of involvement in this process?

5 MR GREEN: No, counsel. I have been open and frank with the Commission through my private and public hearings about my involvement and the - my recollections of all the various steps in the way and I sincerely regret not having told the whole truth to the Auditor-General.

10 MR O'NEILL: Why do you regret that?

MR GREEN: I think this matter should have been daylighted - sorry, known earlier. And I regret my part in not getting it out sooner. And it's a decision that I have reflected upon many times since then and, yes, regret.

15 MR O'NEILL: During that interview, you were asked - sorry, you answered that you had spoken to your Director-General before actually sending the brief note to her about what that briefing note contained. Do you remember that answer that you provided?

20 MR GREEN: No, but you've got it in front of you, counsel.

MR O'NEILL: That was the time, was it not, during that interview, when you could have disclosed to the interviewers that you, during that conversation or one of those conversations, that Ms Haire had directed you.

25 MR GREEN: Yes, counsel.

MR O'NEILL: You didn't do so at that time?

30 MR GREEN: No.

MR O'NEILL: Why?

35 MR GREEN: I don't know. I - I can't recall all my thought processes at the time. I - I - yes, I - sorry, I do not recall the - why I made that statement or - other than the reasons I set out before in terms of presenting it in the best light, so -

40 MR O'NEILL: The issue of union involvement in the decision-making process was not something that was expressly identified by you to the interviewers during the interview. Do you recall that?

MR GREEN: I recall that, yes.

MR O'NEILL: Why not?

45 MR GREEN: Again, I feel that I was following the corporate line that the decision was made for the longer-term reasons as set out in the brief rather than revealing all of the factors in the decision-making process.

MR O'NEILL: You were given an opportunity to address issues such as probity and the integrity of the process. Do you recall those answers towards the end of the interview?

5 MR GREEN: I don't recall all of the answers, but I recall being given the opportunity to discuss those matters.

MR O'NEILL: And during that - those answers, you didn't inform the interviewers from the Auditor-General's office that you had any concerns with the probity of the process.
10 Why?

MR GREEN: Again, I was following and answering based upon my understanding of the corporate line and I could have revealed - sorry, could have told the Auditor-General's officers more.

15 MR O'NEILL: Do you accept now that you should have told them that you had concerns?

MR GREEN: Yes, counsel.

20 MR O'NEILL: What were those concerns?

MR GREEN: I should have told them that I had been directed to achieve an outcome, that the process wasn't independent, it had been foreshadowed, and in fact some parts of the process had been undertaken which would give an opportunity to one tenderer over
25 another.

MR O'NEILL: And they were views you held at the time you were interviewed, weren't they?

30 MR GREEN: Yes.

MR O'NEILL: When was the earliest time you actually held those views, in fact?

35 MR GREEN: From early 2020.

MR O'NEILL: Had those times - at any time, you could have made a disclosure to others to let them know that that had occurred; correct?

40 MR GREEN: Yes.

MR O'NEILL: You chose not to do so?

MR GREEN: I don't know I chose, but I didn't do so.

45 MR O'NEILL: These processes are put in place to ensure that decisions made on behalf of people of the Territory are properly conducted in accordance with relevant processes; agree?

MR GREEN: Yes.

MR O'NEILL: And yet this is an example of where it had not occurred.

5

MR GREEN: Yes.

MR O'NEILL: Agree?

10 MR GREEN: Yes.

MR O'NEILL: Do you have anything to say about that?

15 MR GREEN: I - in hindsight could have - should have spoken out earlier. I should have potentially had a first conversation with our SERBIRR in the process, when receiving the first instruction about what the outcome needed to be.

MR O'NEILL: And what about the -

20 COMMISSIONER: Who was the server? For the transcript, s-e-r-b-i-r-r.

MR GREEN: The director of - sorry, executive branch manager of corporation services is the SERBIRR. I can picture the lady, I'm sorry, I'm struggling to remember her name.

25 MR O'NEILL: That was her position.

MR GREEN: The executive branch manager of corporate services was her position.

COMMISSIONER: Right.

30

MR GREEN: And her role was also SERBIRR.

COMMISSIONER: Perhaps because not everyone is familiar with public service term, could you expand the anagram? Or if you can't -

35

MR GREEN: Senior - senior executive - sorry, I can't - I don't know the full acronym.

COMMISSIONER: Don't worry about it.

40 MR O'NEILL: There is an inconsistency then between what you told the Auditor-General's interviewers and what you told the Commission today. Do you accept that?

MR GREEN: Yes.

45 MR O'NEILL: Well, why should the Commission believe you now in circumstances where you had previously, on oath, not expressed the whole truth?

COMMISSIONER: I don't think that's a material question. It's a matter for me to decide whether he should be believed or not, and the evidence speaks for itself one way or another.

5 MR O'NEILL: As you please, Commissioner.

COMMISSIONER: I don't think it's ever useful to ask a witness why they think they should or shouldn't be believed.

10 MR O'NEILL: As you please. In relation then to your involvement, your specific involvement in the preparation of the briefing note, is there anything further you wish to add about your involvement in that matter?

15 MR GREEN: Nothing specific, counsel, other than - I think as I expressed before, if I had the similar situation again, I think I would take a very different approach to it, and go about it in a very different way and not prepare such a briefing note.

MR O'NEILL: At 2.2097, you receive - sorry, you sent a text message - it will come up shortly - to Ms Attridge. I just want to see that - the last bit:

20 *Did you see The Canberra Times?*

Was that a reference to the reporting about the release of the Auditor-General's report in the Canberra Times?

25 MR GREEN: I think so, given the date of that email.

MR O'NEILL: Yes, Christmas Eve 2021. And then Ms Attridge replied:

30 *I haven't read it as yet. It's a subscriber only. Have to wait for work sends the daily news clip. How is it?*

And then on the next page, 2.2098:

35 *A bit worse than Riot Act.*

It will come up shortly. What did that mean?

40 MR GREEN: Riot Act is another news site. So I suppose I'm comparing the articles.

COMMISSIONER: You - you got an opportunity to revise your transcript, did you not?

MR GREEN: Yes, Commissioner.

45 COMMISSIONER: And you did make some changes.

MR GREEN: Yes, some editorial changes. I didn't change the intent, if that makes sense. There was a few minor changes.

5 COMMISSIONER: Nevertheless, that was an opportunity for you to reflect on the evidence that you had given to the Auditor-General.

MR GREEN: Yes.

10 COMMISSIONER: On its truthfulness and its candour.

MR GREEN: And I didn't take the opportunity to change my evidence to any great extent.

15 COMMISSIONER: Do you see the point that I'm making, though? The point that I'm making is, I can understand why in the course of a running interrogation, one does get carried along by one's starting position and then one feels bound by it and one simply continues. That's one thing. But here, where you had an opportunity to reflect and consider, that would have given you a more objective context, in which to evaluate what you'd told the Auditor-General. And so the criticism about your candour becomes somewhat more sharp. Do you understand?

20 MR GREEN: Yes, Commissioner.

COMMISSIONER: And do you agree that was an opportunity, but it was one which you did not take?

25 MR GREEN: I agree, Commissioner. It's one I didn't take.

COMMISSIONER: Yes.

30 MR O'NEILL: Returning then to the text messages. You will see that it says:

Katy is named. Some other bland comment from Manteena.

35 Katy was Ms Haire?

MR GREEN: Yes.

40 MR O'NEILL: Why was it important that you identified that to Ms Attridge at that time in that text message?

MR GREEN: I think I was more noting that Katy was named, and I'm not named.

MR O'NEILL: You see that at the bottom, there's a text message you can read for yourself.

45 COMMISSIONER: Perhaps there's a reference not to the report but to the Canberra Times.

MR GREEN: Yes.

COMMISSIONER: Right.

MR O'NEILL: There's a text message in between and then there is this one:

5

It's frustrating the report doesn't apportion much more responsibility on the decision making on the personnel or the personal, at the top of the decision-making tree.

Do you see that?

10

MR GREEN: Yes.

MR O'NEILL: And then you respond at 2.2099:

15

That's my point if I get taken to task.

What is your point?

MR GREEN: Is that the Auditor-General's report reads like I made the decision when the Director-General made the decision.

20

MR O'NEILL: And there you say:

I only made a recommendation.

25

Do you see that?

MR GREEN: Yes.

30

MR O'NEILL:

The DG made the decision.

Which is the point you have just expressed to me.

35

MR GREEN: Yes.

MR O'NEILL: But it doesn't say in this text message anywhere that you had been directed to make that recommendation, does it?

40

MR GREEN: No, it doesn't in this exchange of text messages.

MR O'NEILL: Had you told Ms Attridge that?

45

MR GREEN: Yes.

COMMISSIONER: Sorry, had you told her -

MR GREEN: That I had been directed to make the decision and Ms Attridge knew the - knew about the involvement of the minister's office in this procurement process.

5 MR O'NEILL: When did you tell her that?

MR GREEN: I don't recall exactly. That wasn't - it wasn't at that time; it was much earlier.

COMMISSIONER: It was before the Auditor-General and -

10

MR GREEN: Yes.

COMMISSIONER: Right.

15 MR GREEN: Yes.

MR O'NEILL: Was it prior to the recommendation itself being made?

MR GREEN: Probably not. She was in a different role at that point, so -

20

COMMISSIONER: What was it that made such a disclosure appropriate to your mind? I mean, what was her job in relation to you that it made that exchange occur?

MR GREEN: Ms Attridge was a friend and a colleague. And she was also connected to the political side of the - of the process as well.

25

COMMISSIONER: In what way?

MR GREEN: Her husband, I think was a former chief of staff, or sorry, is a former chief of staff to one of the ministers, and Ms Attridge has been - knows the political staffers involved in this - in this matter.

30

COMMISSIONER: And what position did she hold at the time?

35 MR GREEN: She was an executive in Education, executive branch manager in Education.

COMMISSIONER: Sorry, manager in -

MR GREEN: She was an executive branch manager.

40

COMMISSIONER: Executive branch manager. Right.

MR GREEN: The same level as I was.

45 MR O'NEILL: Excuse me for one moment, Commissioner. Sorry, I have taken you out of chronology. It's my fault entirely and I just wanted to go back to something two days before those text messages. It's at 2.2092. This is actually much earlier. This is on 4

November 2021. I apologise for taking you out of chronology. Do you see here, this is a text message between you and Ms Daly, D-a-l-y.

MR GREEN: Yes.

5

MR O'NEILL: And you are talking about the Auditor-General's report landing with the EDU on Monday.

MR GREEN: Yes.

10

MR O'NEILL: You have a meeting with the deputy AG. Who was that?

MR GREEN: Mr Stanton, I think.

15

MR O'NEILL: And you expect to get negative comments. Do you see that?

MR GREEN: Yes.

MR O'NEILL: What led to you have that expectation?

20

MR GREEN: So I think I've been given a heads up by DM, who is David Matthews, along the way, and he offered to come with me as support and I think I had gathered from that that he felt that I needed support and he had already seen the comments along the way.

25

MR O'NEILL: So the fact of Mr Matthews offering to help -

MR GREEN: Yes.

MR O'NEILL: And then Ms Daly responds:

30

Because it's your fault.

That was probably being facetious. Do you agree?

35

MR GREEN: Yes.

MR O'NEILL: And then across, you say:

Just doing what the DG told me to do.

40

MR GREEN: Yes, I can see that, yes.

MR O'NEILL: What did you mean by that?

45

MR GREEN: The - writing the brief, getting the process of giving the job to Lendlease.

MR O'NEILL: And so when you say:

Just doing what the DG told me to do.

That's a specific reference to Ms Haire's direction to you?

5

MR GREEN: Yes.

MR O'NEILL:

10 *DM is being supportive and offering advice. And I'm sure he's expecting that he'll have to answer questions about what the EGM BSD did.*

Who is the EGM BSD?

15 MR GREEN: So DM was David Matthews, who was the substantive EGM whom I was acting for at the time. So when I - when he returned to that role, he became EGM BSD again, and the Auditor-General's report is written with that title in it quite a lot.

MR O'NEILL: Right. But relevantly at the time you were acting in that role, that is, at the
20 time of the recommendation.

MR GREEN: Yes, I was acting in that role. That was the name of the role.

MR O'NEILL: Then now, at 2.2094, this is on 22 December 2021, and again I apologise
25 for taking you out of chronology. You write to Ms Attridge:

The report is shit. I feel devastated about it but made many comments to AG and got nowhere. I hope this stays out of the paper until after Christmas.

30 Do you see that?

MR GREEN: Yes.

MR O'NEILL: What was shit about the report?

35

MR GREEN: Well, it was scathing of the process, scathing of my role in it, and yes.

MR O'NEILL: Was it a reflection upon the actual reasoning of the report or the fact that it
40 was bad for you?

MR GREEN: Bad for me.

MR O'NEILL: Ms Attridge says:

45 *I know, I'm sorry. In a good way it's good they got it out the way now, the media, etcetera, everyone is out of town.*

And then there was something she wanted to disclose to you but didn't want to put it in writing so was proposing to use the other - another message service known as Signal. Are you aware of what Signal is?

5 MR GREEN: Yes.

MR O'NEILL: And did you have it at the time?

MR GREEN: Yes, I did. It was commonly used in Education.

10

MR O'NEILL: And what's the difference or distinction between an SMS and a Signal?

MR GREEN: Signal can be set up with an auto erase function so that messages will expire and disappear after a certain amount of time.

15

MR O'NEILL: And did she send you a message via Signal?

MR GREEN: Yes.

20 MR O'NEILL: And what did it say?

MR GREEN: I can't remember. I think the first one was are you on Signal and that sort of stuff there. But then the intent of the message - again, it's not there anymore so I can't see it - was essentially that people know what really happened, that the - hang tough and people will look after me.

25

MR O'NEILL: Right. And when she was referring to "people", who did you understand that she was referring to?

30 MR GREEN: I understood to mean her political contacts.

MR O'NEILL: Right. And they knew what happened. What did you understand that to mean?

35 MR GREEN: Well, I think they knew that there was some degree of involvement from the - the staffers in the process.

MR O'NEILL: The staffers?

40 MR GREEN: In the minister's office.

MR O'NEILL: Yes. Right.

COMMISSIONER: Yes.

45

MR O'NEILL: I have no further questions for this witness at the time. I understand there's some applications.

COMMISSIONER: Yes. Thank you, Mr O'Neill.

5 MR PARARAJASINGHAM: Commissioner, I make an application to cross-examine Mr Green on the confined basis identified in our written applications.

COMMISSIONER: Yes. Thank you, Mr Pararajasingham. You have provided the Commission with a list of transcript references for your cross-examination.

10 MR PARARAJASINGHAM: Yes, Commissioner.

COMMISSIONER: I think I will have that exhibited so it is on the record.

MR PARARAJASINGHAM: Yes.

15

COMMISSIONER: And to the extent that it's necessary, and I have to confess that I'm uncertain as to this.

MR PARARAJASINGHAM: Yes.

20

COMMISSIONER: But to the extent it's necessary, I give you leave to refer to the evidence to which you wish to - on which you wish to rely. Now, I think you also provided a statement of Mr Ceramidas' - I might try to use a neutral - position - it is his case.

25 MR PARARAJASINGHAM: Yes.

COMMISSIONER: I think that should be entered into evidence unless you have an objection to that.

30 MR PARARAJASINGHAM: There is no objection to that.

COMMISSIONER: And it is part of the evidence and will be circulated in due course.

MR PARARAJASINGHAM: Yes.

35

COMMISSIONER: Yes, very well. Can we have some exhibit numbers for the record? Are you in a position to let me have that or not at the moment?

MR O'NEILL: They are the first exhibits other than the hearing books - we have their own.

40

COMMISSIONER: All right. So the application - so the transcript references will be exhibit 1, and the statement of Mr Ceramidas' case will be exhibit 2.

<EXHIBIT 1 TRANSCRIPT REFERENCES

45

<STATEMENT OF MR CERIMIDAS' CASE

MR PARARAJASINGHAM: Thank you.

COMMISSIONER: Yes.

5 MR HASSALL: I apologise, I don't want to interrupt. May I have a copy of the statement of Mr Ceramidas' position.

COMMISSIONER: Not at this -

10 MR HASSALL: So that I can follow the cross-examination?

COMMISSIONER: What do you say?

15 MR PARARAJASINGHAM: If it assists, I think that, Commissioner, as you're aware, my cross-examination is confined to a particular issue. It, in my submission, would not be necessary for any other party to have Mr Ceramidas' position at this stage. It's not going to really illuminate what I propose to do.

COMMISSIONER: Yes, I think that's right. I don't think it would advance matters.

20

MR HASSALL: May it please.

COMMISSIONER: At this point. Yes. Thank you.

25 **<EXAMINATION BY MR PARARAJASINGHAM**

MR PARARAJASINGHAM: Commissioner. Mr Green, my name is Pararajasingham. I appear for Mr Ceramidas. Sir, what I want to do is just chart you through a bit of a chronology. I'm going to start with some matters raised by the Auditor-General. I
30 appreciate you've just been questioned on some of those and I'm coming at it from a slightly different perspective. I don't propose to repeat things that have been put to you. Just so we are clear, on 11 June 2021, you received your notice to attend a compulsory examination by the Auditor-General; correct?

35 MR GREEN: I'm - it sounds like the correct date. I don't have -

MR PARARAJASINGHAM: Would you accept it from me that that was the date?

MR GREEN: Yes.

40

MR PARARAJASINGHAM: And can I ask, had you in any other context spoken to the Auditor-General about other projects, for example?

MR GREEN: I've spoken to the Auditor-General in previous Auditor-General reports. Is
45 that the terminology?

MR PARARAJASINGHAM: Yes.

MR GREEN: Yes, I had.

5 MR PARARAJASINGHAM: And had you attended a compulsory examination such as this?

MR GREEN: No.

10 COMMISSIONER: I think they are called interviews, actually.

MR PARARAJASINGHAM: I'm probably -

15 COMMISSIONER: It doesn't matter. My recollection is they are called interviews, but you are quite right, they are compulsory, and they are either sworn or affirmed.

MR PARARAJASINGHAM: Yes. Now, you understood on receipt of the notice that the purpose was to examine the circumstances surrounding the - I will call it the project. You will understand what I'm talking about?

20 MR GREEN: Yes.

MR PARARAJASINGHAM: And it's the case that on receipt of that notice, you did not resolve to deliberately mislead the Auditor-General; correct?

25 MR GREEN: Correct.

MR PARARAJASINGHAM: And am I right in assuming that you undertook some level of preparation in advance of your examination by the Auditor-General?

30 MR GREEN: Yes.

MR PARARAJASINGHAM: And you likely refreshed your memory off relevant events from documents. Is that right?

35 MR GREEN: I recall looking at the - the notes, or the note, if you like, that I had prepared about those points along the way there. I was just -

MR PARARAJASINGHAM: Is that the briefing note or is that something else?

40 MR GREEN: No, it's the - the - if you like, the summary of the steps in the way of - of Campbell procurement that I had prepared.

COMMISSIONER: The FOIs.

45 MR GREEN: At the time of the FOI. Thank you, Commissioner.

MR PARARAJASINGHAM: Is the date of that February 2021? Does that sound about right?

MR GREEN: It sounds about right, yes.

5

MR PARARAJASINGHAM: Thank you. Okay. So you did that. What else did you do to refresh your memory of relevant events?

MR GREEN: I might have looked over the briefing note. I didn't research in too much detail. I remember we - I will say we - the group of people who were being interviewed by the Auditor-General got some advice from our internal auditor around general kind of interview processes with the Auditor-General.

MR PARARAJASINGHAM: And you also must have actually kind of turned your mind to the series of events that occurred during the course of the project. Do you accept that?

MR GREEN: I think I went back and looked at that set of notes to prepare at the time of the FOI and refreshed my memory on what was set out in that document.

MR PARARAJASINGHAM: And on 24 June 2021, you attend for that examination; correct?

MR GREEN: Yes.

MR PARARAJASINGHAM: And you were advised early on in that process, can I suggest, that the giving of false or misleading information during the examination was a serious offence. Do you recall that being brought to your attention?

MR GREEN: I recall a long legal script and I'm sure that was in that.

30

MR PARARAJASINGHAM: Well, slightly more than a long legal script, Mr Green, isn't it? If I can assist you. That's fine.

COMMISSIONER: Sorry, you mean a very long one? What do you mean slightly more -

35

MR GREEN: I remember the Auditor - the Auditor-General's officers reading the script from along the way there, and sitting there and probably not paying a great deal of attention, being naturally apprehensive about being interviewed by the Auditor-General.

COMMISSIONER: But you understood you had a legal obligation to tell the truth and if you lied there could well be legal consequences. You understood that.

MR GREEN: Yes, Commissioner. Yes.

MR PARARAJASINGHAM: You are not diminishing the process by referring to it as a script, are you?

45

MR GREEN: No, counsel, that's not the point I'm making. It's -

5 MR PARARAJASINGHAM: Thank you. So just to assist you, this was part of what was put to you. This is page 3 of the Auditor-General transcript. I will just read it to you. So it's put to you by Mr Stanton:

I also draw to your attention that giving false or misleading information during the examination is a serious offence under Part III.4 of the Criminal Code.

10 You heard me read that to you just now?

MR GREEN: Yes.

MR PARARAJASINGHAM: Do you recall something to that effect?

15 MR GREEN: Yes.

MR PARARAJASINGHAM: Thank you. Now, that is ultimately what you did in that interview, isn't it, Mr Green?

20 MR GREEN: As I said to the Commission, I could have told more of the whole truth, yes.

MR PARARAJASINGHAM: If I could just get an answer to my question. That is ultimately what you did in that interview. You gave misleading information; correct?

25 MR GREEN: On reflection, I did.

COMMISSIONER: Well, it wasn't only misleading; it went to the very heart of the transaction and its integrity. Isn't that right?

30 MR GREEN: Yes, Commissioner.

MR PARARAJASINGHAM: . And can I just ask you this, just take a - if I can just take a sidestep. On 24 June 2021, were you aware that Mr Ceramidas was working in the ACT Justice and Community Safety Directorate?

35 COMMISSIONER: At that time?

MR PARARAJASINGHAM: At that time, so as at 24 June 2021.

40 COMMISSIONER: He was working -

MR PARARAJASINGHAM: He was working in the ACT Justice and Community Safety Directorate. Did you have an awareness of that as at 24 June 2021?

45

MR GREEN: I will say yes, because I had run across Mr Ceramidas at various times in the office and London Circuit. So yes. I'm not sure about the exact date, but I know where he - yes. Given the sequence of time, yes.

5 MR PARARAJASINGHAM: But as at 24 June 2021, that was a different Directorate to the one that you were attached to; correct?

MR GREEN: Yes.

10 MR PARARAJASINGHAM: But do you say that you were both located in the same building?

MR GREEN: We were on the same level of the same building, yes. When I saw him in the office, he was on the same level as I was.

15 MR PARARAJASINGHAM: Is it right to say that as at June - as at 24 June 2021, you had no professional deals with Mr Ceramidas?

MR GREEN: Correct.

20 MR PARARAJASINGHAM: Is it right to say you had no personal dealings with Mr Ceramidas as at that date?

25 MR GREEN: Correct. Other than occasionally seeing him in the office but no personal interactions outside of running into each other in the office.

MR PARARAJASINGHAM: Is it also right to say that as at 24 June 2021, you would not have regarded him as a friend of yours, would you?

30 MR GREEN: No.

MR PARARAJASINGHAM: Coming back to this examination on that date of 24 June 2021, you proceed to provide an account of relevant events; correct?

35 MR GREEN: To the Auditor-General?

MR PARARAJASINGHAM: To the Auditor-General, yes. And sorry if this question has already been asked, but can I just confirm that following this examination, you were given an opportunity to review and amend a draft version of the transcript.

40 MR GREEN: As the Commissioner said, yes.

MR PARARAJASINGHAM: Yes. And is it also the case that you were given a draft copy of the Auditor-General's report ultimately?

45 MR GREEN: Yes.

MR PARARAJASINGHAM: And it's also right that you were given an opportunity to raise other matters orally with the Auditor-General should they have occurred to you following your examination. Do you remember that offer being made to you?

5 MR GREEN: Yes.

MR PARARAJASINGHAM: Let me assist you. So this is at page 53 of the Auditor-General transcript. And - so, actually, end of page 52. So we are right at the end here of the questioning. Mr Stanton said:

10

Do you have any questions of us.

You say:

15

Not at the moment.

Mr Stanton says:

20

All right, and if you do, just come back to us. Happy to answer it as best we can.

Does that refresh your memory as to something along those lines being said to you?

25

MR GREEN: Going back to your question, counsel, I think that offer is to me to ask any questions of them. But certainly I felt that if I - I could have raised something with them.

MR PARARAJASINGHAM: Sorry, I don't quite understand that. But do you accept that that offer included you raising any additional matters with them should they arise?

30

MR GREEN: That offer to me sounded like an offer to ask them questions about the process.

COMMISSIONER: I think Mr Green has accepted your fundamental thesis, namely that he was able to raise matters if he -

35

MR PARARAJASINGHAM: Yes. Yes.

COMMISSIONER: - felt he wished to.

40

MR PARARAJASINGHAM: And it's right to say, isn't it, that the Auditor-General in this process with you, they were impeccably fair with you, weren't they. Do you accept that?

MR GREEN: Yes, I think I said that to them as well, is that, you know, I respected the opportunities they had given me to raise comments because I gave them a fairly detailed submission back later.

45

MR PARARAJASINGHAM: Thank you. And just looking a bit more closely at this transcript, so I'm just going to direct your attention to - what I'm interested in is at the top

of page 34 which I will read to you. But in fairness to you, I will just give you a bit of context just leading up to it. So you say this - and you will gather where it is once I read it:

So that's a conversation. Okay.

5

So this is you:

I haven't really read these ever. That reflects my view that Kelly's view that Manteena -

10 COMMISSIONER: Would you mind reading that somewhat slower.

MR PARARAJASINGHAM: Sorry. I thought maybe it would come up on the screen. It's page 33 of the Auditor-General transcript.

15 COMMISSIONER: I'm not sure that we have everything in our system.

MR PARARAJASINGHAM: No, and I think there's a problem with this particular document. I apologise; I will read it slowly. So you say:

20 *So that's a conversation. Okay. I haven't really read these ever. Yes. So that reflects, in my view, Kelly's view that Manteena would be obviously preferred tender because at that point of the job she just wanted us to engage Manteena to which I wasn't keen. The conversation that I know I had with my crew was very much around "I'm not happy with the idea of going and having a conversation with our political masters, the minister and*
25 *co, around getting extra money for a job for Manteena knowing that the union hates Manteena." So that's absolutely where I know I had a conversation with my crew. And this is passing on my experience from Secure Local Jobs and knowing the views of the various contractors from the union and knowing that that wasn't going to be a popular*
30 *conversation anywhere near a minister. And that's what I would have said along those lines. So I don't know the exact words that I said, but if the conversation was something along the lines of "no way I'm going near the minister. No way the minister will be happy with Manteena getting that and a certain hand of extra money." Probably said something along those lines.*

35 Mr Stanton says:

Yeah, okay.

And then you say this:

40

But I've never asked the minister for her views on who should get the procurement and never got the views of the minister about who should get the procurement.

You heard me read that to you just now?

45

MR GREEN: Yes.

MR PARARAJASINGHAM: I will ask you a question in a moment, but I just want to draw your attention to a couple of other references. This is at page 45 of the same document. Mr Stanton asks you this:

5 *It is - let me ask it again. All right. So are you satisfied with the probity and the integrity of the process?*

You respond:

10 *Yes, and from my knowledge of the Government Procurement Act, I believe was done in accordance with the Government Procurement Act and the processes in there. The broader part of the question that "am I satisfied with the outcome of the process", eventually would be my response to the way the procurement process was set up there. But the mechanics of it, if that makes sense, I'm satisfied that it followed the various requirements on us in lots*
15 *of ways, the Act, the reg, the Codes, the agreements, the MOUs and that sort of stuff that all sit within the government procurement process. And so for the probity of it, I don't think that any information should have stayed within government were sent outside of government.*

20 And your answer goes on. And then there is just two more extracts I want to draw your attention to. At page 47, Mr Stanton says this:

All right. So the process was okay from your perspective. The probity and the integrity of the process was okay.

25 You say "yeah". Then Mr Stanton says this:

So was there any influence on the process? Undue influence on the process, on you or on participants in the process?

30 And your response is:

Yep. No, I don't think so. One of the things that you haven't asked me that - I would suspect you haven't got there yet, but maybe, is around union views on things there. So, I mean, one of the elements of our procurement process is that unions are told who the tenderers are on every tender, and so, you know, I kind of know that the union knew exactly who the tenderers were. In fact, the unions mentioned to me in one of my meetings with the union that they knew exactly who the tenderers were and it's, like, well, they told me they don't like Manteena. That's not news.

40 And then finally, Mr Green, can I just draw your attention to extract at page 50. And at this point, Mr Bowden is asking you questions. And he asks you this:

45 *And going through what the - what your inclinations were at the time, did you have any other discussions in terms of seeking advice at that stage, whether further up the chain or other colleagues or anything like that?*

And you say,

I don't recall having conversations up the chain around the path forward. I know I spoke to my colleagues, so Rebecca Power would be my equivalent level in ICW, Infrastructure Capital Works, and she probably by then would have been part of those conversations as well. Because we are trying to chat out "what to do" sort of conversations. So I would say she was there but having a typical conversation with the Director-General around BAFO versus tenders, versus whatever. I don't recall - I don't recall having.

10 Now, you accept, and I've only read out certain extract, but you will accept that in your interview with the Auditor-General, you make no mention of any conversation with Mr Ceramidas in which Mr Ceramidas gives you a direct to the effect that Manteena should not get the contract and that Lendlease should. Do you accept that?

15 MR GREEN: I - I accept that I didn't say to the Auditor-General's officers that any - about any conversations with Mr Ceramidas.

MR PARARAJASINGHAM: . And indeed Mr Ceramidas is not mentioned by you in this interview, is he? Do you accept that?

20 MR GREEN: No. No, I don't think he is.

MR PARARAJASINGHAM: Sorry, do you accept that?

25 MR GREEN: Yes, I accept that, yes.

MR PARARAJASINGHAM: And in fact, when asked, you disavow the existence of any external influence on your decision-making process, don't you?

30 MR GREEN: No. I am not - I don't agree with that statement. I think you have read me a bunch of extracts from various parts of that transcript and the section that you went to at the end with Mr Bowden I think is a very specific question about a specific time, whereas the sections that you read me earlier were different. So I don't draw the same conclusion.

35 MR PARARAJASINGHAM: Okay. Let me just - in fairness to you I'm - I have in mind in particular the extract at page 47 where Mr Stanton says to you - this is right at the end, right. There's - it's a 53-page transcript. This is at page 47. So you've been asked all these questions, you have said what you've said. And Mr Stanton said:

40 *So was there any influence on the process, undue influence on the process on you or on participants in the process?*

Pausing there, you accept, that question is not confined in any way, is it?

45 MR GREEN: No, that one isn't, no.

MR PARARAJASINGHAM: No. And your response, to remind you, is:

Yep. No, I don't think so. One of the things you haven't asked me that - I would suspect you haven't got there yet, but maybe is around union views on things.

5 And on you go. So let me ask the question again. It's the case that when asked, you disavow the existence of any external influence on your decision-making process. Do you accept that?

MR GREEN: Based on that, yes.

10

MR PARARAJASINGHAM: Now, you must accept - and you have in another context from my learned friend, this was your opportunity to tell the Auditor-General about the existence of such a conversation with Mr Ceramidas. Do you accept that?

15 MR GREEN: Yes.

MR PARARAJASINGHAM: And do you also accept that there was nothing preventing you from telling the Auditor-General about any such conversation with Mr Ceramidas if such a conversation had in fact occurred. Do you accept that?

20

MR GREEN: I accept that I could have told the Auditor-General a fuller version of the truth, and instead of which I stuck to the points that I had made up earlier along the corporate line.

25 MR PARARAJASINGHAM: Thank you for that. But I'm going to insist on questions - answers to my questions. And let me put it again. There was nothing preventing you in this examination from telling the Auditor-General about the fact of any such conversation with Mr Ceramidas if such a conversation in fact occurred. You accept that? There was nothing preventing you. There was no impediment to you giving that evidence.

30

MR GREEN: There was no impediment for me to tell the Auditor-General about a conversation with Mr Ceramidas, yes.

35 MR PARARAJASINGHAM: And you gave some evidence a little bit earlier to the effect that - you said something about a company line or corporate line, and elsewhere in your private examinations, you have made mention of sort of taking a hit for the Directorate. Do you remember giving evidence to that effect? I can take you to it if I have to, but -

40 MR GREEN: Yes, I accept that.

MR PARARAJASINGHAM: Right. Now, whatever one may make of that explanation, that has no application to any conversation with Mr Ceramidas, does it?

45 MR GREEN: Sorry, I don't get that.

MR PARARAJASINGHAM: Well, let me spell it out. He was never part of the relevant Directorate, was he?

MR GREEN: No.

5 MR PARARAJASINGHAM: Neither at around the time that the project was on foot; correct?

MR GREEN: No, I don't think he had been part of the Education Directorate, ever. Yes.

10 MR PARARAJASINGHAM: Okay, ever. So including now. And you agreed a moment ago that he was someone, while you saw him from time to time, he was not in your sort of professional or social circle. You accept that.

MR GREEN: Correct.

15 MR PARARAJASINGHAM: Right. And can I suggest to you, Mr Green, that the reason you didn't raise the fact of any such conversation with Mr Ceramidas in which you say Mr Ceramidas gave you a direction is because no such conversation occurred. Do you accept that?

20 MR GREEN: No.

MR PARARAJASINGHAM: And am I right in assuming that in amongst this note that you prepared and whatever else you had recourse to in your preparation for this examination, there's no note anywhere to the effect of this conversation occurring; correct?

25 MR GREEN: No written note. Correct.

MR PARARAJASINGHAM: Sorry, is there some other kind of note?

30 MR GREEN: I would think that there'd be a record of the phone conversation, like in terms of phone-to-phone record, to say that a phone call existed at the time that I placed it in the chronolog.

35 MR PARARAJASINGHAM: That might establish that a call was made but I'm talking about the terms of the conversation.

COMMISSIONER: That's precisely the point the witness is making. It wouldn't recall the content of the call; the best it would be would be a record of a conversation.

40 MR PARARAJASINGHAM: With respect, Commissioner, I don't accept that's what fell from the witness. My question was about the absence of any note and his response was about the call record. Now, that's -

45 COMMISSIONER: I'm sorry, and then I understood him to go on to say, that would only tell me that a conversation occurred but not its content.

MR PARARAJASINGHAM: I didn't - if he said that, then I withdraw it, but I didn't hear that.

COMMISSIONER: Sorry, is that -

5

MR GREEN: So, Commissioner, I think you have got - I did not make a written note of that call, but my phone log would show that a call was between Mr Ceramidas and myself at or about the time of that. And at that stage, a call between Mr Ceramidas and myself was unusual enough for me to remember it. We weren't regular - in regular phone contact at that time.

10

MR PARARAJASINGHAM: Sorry, just - you say - it was unusual - an unusual occurrence, but it doesn't even rate a mention in your examination of the Auditor-General.

15

MR HASSALL: This -

MR PARARAJASINGHAM: Is this an objection?

20

MR HASSALL: Yes, it's an objection. The questioner has, as in that first couple of answers to his questions, had this witness agree that he did not give truthful evidence in the examination. He's now being cross-examined about what he has admitted was not the entire truth as though it was the truth. So there's an inherent inconsistency in what's going on here and it's not fair to the witness.

25

COMMISSIONER: I think it's a fair cross-examination. However, Mr Pararajasingham, it's a matter for you, but I thought that you wished to make the point with the witness that if his aim was to protect the department, this did not require him to protect Mr Ceramidas. You started that -

30

MR PARARAJASINGHAM: Yes, and we have gone on a little excursion, Commissioner.

COMMISSIONER: Yes, quite. I'm trying to be helpful, if you wish to return to that point.

35

MR PARARAJASINGHAM: No, that was always my intention, Commissioner, yes. Thank you. Let's do that.

COMMISSIONER: I'm not cutting you off from this excursion, by the way, if it is useful to you.

40

MR PARARAJASINGHAM: We had our fun. Thank you. So, Mr Green, coming back to where you started a couple of minutes ago, you accept that the explanation that you have offered to date as to why you did not refer to any direction from Ms Haire or Ms Cross, right, such as it is, has zero application to your failure to refer to a conversation with Mr Ceramidas in which a direction was given. Do you accept that?

45

MR GREEN: No, I don't accept that. I would regard the minister's office by extension that - part of the corporate entity of Education. Where there is the Directorate, which is a

public service entity, the minister's office is, in my view, an extension of the same thing. The minister's office makes decisions and Education does it. This it's - they are in my description of "corporate", they are the same thing.

5 MR PARARAJASINGHAM: We have to step through this. Can the witness be shown - so this is - well, I want to take you to something that you said in your private examination on 16 May 2023.

10 COMMISSIONER: It's always preferable if possible to show a witness a transcript if we have it, of course.

MR PARARAJASINGHAM: I understood that that is in train, if that's -

15 COMMISSIONER: Right.

MR PARARAJASINGHAM: So if we could just turn up page 1565, please. Sorry, transcript page 1565 of Mr Green's private examination on 16 May 2023. The pages I'm referring to are on the bottom right-hand side of the page.

20 MR O'NEILL: Is this Mr Green's private examination?

MR PARARAJASINGHAM: This is Mr Green's private examination.

25 MR O'NEILL: Does it say Mr Green on it?

COMMISSIONER: Have we got it? We don't have it, it seems.

MR O'NEILL: Does it say Mr Green on it?

30 MR PARARAJASINGHAM: It doesn't - well -

COMMISSIONER: If we have a spare page -

35 MR HASSALL: I can provide him with -

COMMISSIONER: Thank you. I'm grateful. Thank you, Mr Hassell.

40 MR PARARAJASINGHAM: So just to give you some context here, Mr Green, this is towards the end of your private examination on 16 May 2023. And if we look at line 23 onward, this is what appears. So these are questions asked of you by the Commissioner.

MR GREEN: Yes.

45 MR PARARAJASINGHAM:

Didn't you think that you had a duty when you knew what the topic was that the Auditor-General was inquiring into to assist the Auditor-General with arriving at the facts as distinct from protecting the Education department?

5 And then your response is this:

I think I went into that with the mindset to answer questions to protect the Education department because that's been the approach that - that I and others have - sorry, I in particular - have always used with the Auditor-General. In previous approaches and being
10 *part of organisational conversation about how to approach the Auditor-General was to protect the reputation of the Directorate. I accept that was wrong, but I think that's the - that's the culture within the public services I've been involved with, is to answer Auditor-General questions to present the best possible light on the Directorate that's being or both.*

15 You heard me read that to you just now.

MR GREEN: Yes.

20 MR PARARAJASINGHAM: And do you accept that Mr Ceramidas was not part of the Education department, was he?

MR GREEN: No. But I don't accept the premise that I'm talking about the Education department in its narrowest possible definition of the part of the ACT Public Service. It's
25 the Directorate, I think it's a very general piece. In fact, the department is a word the Commissioner used, and I think I've just talked about Education department because I'm mirroring the language from the Commissioner.

MR PARARAJASINGHAM: Sorry, is -
30

MR GREEN: I think - I think you are taking a fairly narrow construction of "department" to mean just the public service in that case.

MR PARARAJASINGHAM: Sorry, I'm just referring to words that came out of your
35 mouth on 16 May 2023, right. You're the one who refers to "Education department". You refer to -

MR GREEN: Well, I'm responding to the Commissioner.

40 COMMISSIONER: Well, to be fair, it was the question, that started, I think, as I recall your reading it.

MR PARARAJASINGHAM: Yes, yes.

45 COMMISSIONER: It was my question that used that description.

MR PARARAJASINGHAM: Yes, protecting the Education Department. But I will ask this question: do you say that when you speak here about protecting the reputation of the Directorate, you include Mr Ceramidas in that?

5 MR GREEN: Yes. And the minister's office is essentially an extension of the department. It's our political piece in that way. So in answering any of those sort of questions, I think the piece that I would go into would always talk about the - our ministerial bosses, advisors, you know, that sort of stuff. It's all part of the same entity.

10 MR PARARAJASINGHAM: Yes.

MR GREEN: I'm sorry, it's all part of the same mindset, if that makes sense. Not so much in the legal entity.

15 MR PARARAJASINGHAM: So for the record the minister's office is included - when you say Directorate, you are including the minister's office.

MR GREEN: In some contexts and not other contexts. This is - I think you are doing a very narrow construction -

20

MR PARARAJASINGHAM: Don't worry about what I'm doing; just answer my questions.

MR GREEN: Sorry, what was your question?

25 MR PARARAJASINGHAM: Sorry, in this answer here, are you telling us that your intended meaning of Directorate included the minister's office.

MR GREEN: Department, yes.

30 MR PARARAJASINGHAM: So you have got it there in front of you, right. You first say:

I think I went into that with the mindset to answer questions to protect the Education Department.

35 Let's start with that.

MR GREEN: Yes.

MR PARARAJASINGHAM: So do you say that included the minister's office?

40

MR GREEN: Yes.

MR PARARAJASINGHAM: And then if we go on, you say it was to protect the reputation of the Directorate. Do you seriously say that that included the minister's office?

45

COMMISSIONER: No, no, I won't allow adverbs of that kind. He's giving evidence on oath -

MR PARARAJASINGHAM: I will - yes. I will take that on notice.

COMMISSIONER: You are entitled to put another way of saying it, but -

5

MR PARARAJASINGHAM: Yes. But to you say that in your use of "Directorate" there, you include the minister's office - you intended to include the minister's office.

MR GREEN: Yes. I mean, all the participants in that process.

10

MR PARARAJASINGHAM: But that's not what you are saying there, you accept that. You don't say there, "all the participants in that process."

MR GREEN: No, I don't. But I - again, I am answering a question from the Commissioner and framing that language. We haven't asked then in this piece of the examination a conversation about who do I mean by that. So, you know, if we had have asked that at that time, there would have been probably a conversation about who did I mean to include within that piece there. So yes, in response to your question, yes, that's an encompassing organisation.

15

20

MR PARARAJASINGHAM: I understand your position. Now, we know that the Auditor-General released the report on 22 December 2021. Will you accept that from me?

MR GREEN: Yes.

25

MR PARARAJASINGHAM: Now, in the time between your examination and the publication of the report - I think we have seen a text message to this effect - it's right to say you had a concern for your personal and professional reputation arising from the contents of the report?

30

MR GREEN: Yes.

MR PARARAJASINGHAM: And, in fact, you expected to receive adverse comment in that report, didn't you?

35

MR GREEN: Yes.

COMMISSIONER: Can I just clarify an issue. You tell me if this cuts across what you want to ask, but just as a matter of timing, there are two - first of all, you finish your interviewing with the Auditor-General. You are given a transcript to revise, and I think we have established that you got a proposed draft report because you were an interested party. Is that right?

40

MR GREEN: Yes, correct.

45

COMMISSIONER: Now, in relation to when you had that concern about your own particular reputation, did it occur after you had been interviewed or after you saw your evidence or after you saw the draft report? When - is that -

5 MR GREEN: At the time -

MR PARARAJASINGHAM: I'll -

MR GREEN: At the time -

10 COMMISSIONER: When did it develop?

MR GREEN: At the time of the draft report, Commissioner.

15 COMMISSIONER: At the time that you saw the draft report.

MR GREEN: Yes.

MR PARARAJASINGHAM: Right. Thank you. So that was when you first had a concern
20 for your - sorry, that is when you first expected to receive adverse comment on reading the draft report?

MR GREEN: No. I wouldn't say that. I expected there'd be some adverse comment
25 throughout the entire audit, okay. I think my concerns were heightened at the time of the audit report - draft audit report.

MR PARARAJASINGHAM: When you say adverse comments, adverse comments about your conduct; you have got a concern about that.

30 MR GREEN: I think my concern before was the sort of more global concerns, having seen - the Auditor-General generally talks around the organisation and then makes comments - lighter comments, if you like, regarding individuals but from when the draft report came out it was sparsely specific as a person - as an officer.

35 COMMISSIONER: Was it harsher than you were expecting?

MR GREEN: Yes.

MR PARARAJASINGHAM: And it is also right to say, isn't it, that this was a much-
40 anticipated report between the Education Directorate generally? Is that a fair comment?

MR GREEN: I think every Auditor-General's report is anticipated and has an organisational response.

45 MR PARARAJASINGHAM: Across all Directorates?

COMMISSIONER: I think it is probably common knowledge, it is rarely good news.

MR PARARAJASINGHAM: And while you are not named in the report, you are identified by your title; correct?

5 MR GREEN: Correct.

MR PARARAJASINGHAM: And the title used is acting executive group manager business services division, education Directorate; correct?

10 MR GREEN: Yes.

MR PARARAJASINGHAM: And you understood that it would have been apparent to anyone with a faint interest in this stuff that that was you.

15 MR GREEN: Yes.

COMMISSIONER: I'm not sure that faint interest is a is a precise term.

MR GREEN: Interest, Commissioner.

20

MR PARARAJASINGHAM: I think he said yes.

COMMISSIONER: Well, I'm just telling you what I think that answer is worth.

25 MR PARARAJASINGHAM: Well, fine.

COMMISSIONER: But certainly anyone who had knowledge of the Education Directorate would know it was you.

30 MR GREEN: Or the procurement in general.

COMMISSIONER: Or the procurement, yes.

35 MR PARARAJASINGHAM: Now, can I just ask you about - you just briefly about the contents of this report.

COMMISSIONER: Sorry, were you talking about the content of the Auditor-General's report?

40 MR PARARAJASINGHAM: The Auditor-General's report, yes, Commissioner. I'm just going to take you - I'm just going to direct your attention to it, to a couple of extracts, Mr Green. Can I first - and this is really sourced from the key findings section of the report. So - I'm in the Auditor-General report. I'm at page 3. And yes, it's in one of the bundles, 1.009. Perhaps we can - do you want to bring that up? So we've got there a page from the report, Mr Green. You see that?

45

MR GREEN: Yes.

MR PARARAJASINGHAM: And if I could just direct your attention and, look, we might use that bit of technology that they have got here. The paragraph that is to the left of the number 2.51, could that be pulled out? Yes. Thank you. There we go. So just looking at this, Mr Green, I won't read it out, it's there for everyone to read, but just the part I'm interested in is where it says:

Engaged in the procurement processes prior to the Tender Evaluation Team having the opportunity to conclude its evaluation of the tenders and make a recommendation. This is not consistent with probity, better practice or the Tender Evaluation Plan July 2019. And this allowed the delegate to influence the recommendation of the Tender Evaluation Team.

Do you see that?

MR GREEN: Yes.

MR PARARAJASINGHAM: Can I ask, in that paragraph, are you the delegate or is that a reference to someone else? It says, "the delegate for the procurement", and then has your title.

MR HASSALL: You are asking him his understanding?

MR PARARAJASINGHAM: I'm asking him his understanding. Sure.

MR GREEN: Just trying to place that along the other recommendations there. The delegate for the procurement would have been myself because I was always a delegate for the procurement. And I'm not sure where it sits and what it talks about, but it does read from one of the points below, it appears to be talking around the first evaluation plan - sorry, first evaluation of the initial tender, and so that's -

COMMISSIONER: So the original recommendation was changed.

MR GREEN: Yes, I think that's confirming that statement.

MR PARARAJASINGHAM: Yes, but just confirming that is a reference to you.

MR GREEN: Yes.

MR PARARAJASINGHAM: Yes. Thank you. If we can just turn up, please - bear with me - page 4. So that's 1.010. And if we could just extract the paragraph alongside the number 2.142. Right. And you see there, Mr Green, I'm not going to read all of that, but just the - the second sentence on it reads like this:

In making the alternative recommendation to the Director-General the acting executive group manager, business services division (Education Directorate) was seeking to overrule the professional advice of the Tender Evaluation Team. It was therefore incumbent on the acting executive group manager, business services division, (Education

Directorate) to adequately and appropriately document their rationale and reasoning. This did not occur.

Do you see that, Mr Green?

5

MR GREEN: I see that.

MR PARARAJASINGHAM: And then if we can just go down to 2.152, please, and just extract that. And you will see there, again, it's a reference to you and then from about the middle of the paragraph, it reads:

10

The February 2021 document acknowledged that Manteena outsourced Lendlease.

I will just pause there, sorry. The February 2021 document. That's the document you prepared. That's the -

15

MR GREEN: That's the FOI document if you like. That's -

MR PARARAJASINGHAM: The FOI document. Yes.

20

COMMISSIONER: Sorry, is that the FOI document?

MR GREEN: That's the document at the time of the FOI, Commissioner, where I talk about the documents set out in the process.

25

COMMISSIONER: That is not the briefing minute. That was later, wasn't it?

MR GREEN: No, the briefing minute was before.

COMMISSIONER: Sorry, it was before. Quite. Thank you.

30

MR PARARAJASINGHAM: Manteena outsourced Lendlease.

MR GREEN: Outsourced Lendlease.

35

MR PARARAJASINGHAM: What did I say? Sorry:

Outscored Lendlease on the criteria directly influenced by their design. But that Lendlease had closed the pricing gap - something appears in brackets - and didn't - a design and construct contract. Those design refinements could be continued with whichever company was in contract with the -

40

And if we could just go over to the next page, which we've done:

Territory in a detailed design phase. This is unfair. Such an assessment does not fairly value or reward the efforts of a tenderer and the merits of their tender.

45

Do you see that, Mr Green?

MR GREEN: Yes.

5 MR PARARAJASINGHAM: And then just finally, if we could pull out 2.166 on that same page. Do you see from about halfway through that paragraph:

10 *Subsequently in February 2021 and in June 2021, in an interview under oath or affirmation, the acting executive group manager, business services division, sought to provide a rationale as to why they believed the tenderer with the higher price and lower score against the weighted evaluation criteria offered overall value for money.*

It goes on. And then in the last sentence it says:

15 *Probity was not demonstrated in the procurement process.*

Do you see that?

MR GREEN: Yes.

20 MR PARARAJASINGHAM: Now, that can be taken down. So, it's right to say, isn't it, Mr Green, that this report was highly critical of you professionally. Do you accept that?

MR GREEN: Yes.

25 MR PARARAJASINGHAM: And would you accept that in large part, this report laid blame for the way things eventuated at your feet? Do you accept that?

MR GREEN: Laid blame for the procurement process at my feet, yes.

30 MR PARARAJASINGHAM: Yes, yes.

MR GREEN: Yes, I think that's -

35 MR PARARAJASINGHAM: So this report is published. Can I ask you this: after this report had been published, did you have any expectation that there would be a further investigation by anybody into the procurement process for this project?

MR GREEN: Yes.

40 MR PARARAJASINGHAM: And did you have in mind that it was the type of matter that could come to the attention of the ACT Integrity Commission?

45 MR GREEN: Yes. Because I had already had correspondence from the Integrity Commission by that time.

MR PARARAJASINGHAM: Okay. I didn't know that. When did you -

MR GREEN: Sorry, Commissioner, I assumed I was allowed to answer that.

5 COMMISSIONER: No, no. You have to answer the questions, I would have stopped you otherwise.

MR PARARAJASINGHAM: Can I ask -

10 COMMISSIONER: Certainly. We have the date of the summons. We can provide it to you. It might be quicker. Or do you know the date of the summons?

MR GREEN: Commissioner, from memory, it was before we went into COVID lockdown. I'm not sure the exact date, but it's June, July, August sometime.

15 COMMISSIONER: We will find it for you.

MR PARARAJASINGHAM: June, July, August of 2022?

20 MR GREEN: Yes, before the first draft of the Auditor-General's report came out.

MR PARARAJASINGHAM: Sorry, 2021.

MR GREEN: '21.

25 MR PARARAJASINGHAM: Sorry, just so we are clear, Mr Green, the report, the final published report, 22 December 2021, are you saying firstly that you had received a notice to attend the Integrity Commission for questioning before the publication?

30 MR GREEN: Yes.

MR PARARAJASINGHAM: You said yes?

MR GREEN: Yes.

35 MR PARARAJASINGHAM: And are you able to say how much in advance?

MR GREEN: Sorry, I just - I don't know the date of it. As I said, in that time.

40 MR PARARAJASINGHAM: Okay.

MR GREEN: It was before the first draft report.

45 MR PARARAJASINGHAM: Thank you. Right. So, I - but you had received a notice, but am I right in understanding that the first time you were questioned was on 5 May 2022, or was there an earlier examination?

MR GREEN: 5 May sounds right if that's the transcript date.

COMMISSIONER: You have all the transcripts.

5 MR PARARAJASINGHAM: Yes. Yes. I'm just trying to understand - there seems to be a lag, Commissioner. So -

COMMISSIONER: All I'm pointing out, that as to that chronology, you have all the relevant information.

10 MR PARARAJASINGHAM: Yes. I -

COMMISSIONER: I have not kept back.

15 MR PARARAJASINGHAM: No, no, and I'm not suggesting that, and I'm not sure it's somewhere in among the material, but I didn't appreciate that the notice had been served before the report.

COMMISSIONER: Yes.

20 MR PARARAJASINGHAM: Right.

MR O'NEILL: I understand that the notice requiring this witness to attend the first time was served on 28 July 2021.

25 COMMISSIONER: Right.

MR O'NEILL: Sorry, the microphone was off, I will do it again. The first time it was served was on 28 July 2021.

30 MR PARARAJASINGHAM: Mr Green, so you've heard that. Are you able to offer an explanation as to why, despite the notice being served on 28 July 2021, you only attended on 5 May 2022?

35 COMMISSIONER: No, he can't. It was entirely due to the Commission's own processes. I mean, being careful as I must about the course of the investigation -

MR PARARAJASINGHAM: Yes, no, I will move on.

40 COMMISSIONER: You will appreciate that before private examinations are conducted, a great deal of documentary investigation and analysis takes place.

MR PARARAJASINGHAM: Yes.

45 COMMISSIONER: So there is inevitably a substantial delay.

MR PARARAJASINGHAM: Yes. Certainly. Mr Green, at any point prior to you attending for your first private examination by the Commission, did you resolve in your mind to lay blame elsewhere for what occurred with this procurement?

5 MR GREEN: No.

MR PARARAJASINGHAM: You were taken to a text exchange between yourself and - just bear with me.

10 MR GREEN: Ms Attridge?

MR PARARAJASINGHAM: Ms Attridge. Thank you for that. I don't know whether that can be brought up. That was the text exchange between Mr Green and Ms Attridge. It's the last one. It was - so it's the one about being taken to task.

15 MR O'NEILL: 2.209.

MR PARARAJASINGHAM: I thank my friend for that. But you recall you were asked some questions about this earlier this afternoon?

20 MR GREEN: Yes.

MR PARARAJASINGHAM: And where you say there - so you say:

25 *That's my point if I get taken to task.*

So what precedes that, is a comment by Ms Attridge that:

30 *It's frustrating that the AG report doesn't apportion more responsibility for the decision making on the person now at the top of the tree who actually made the decision.*

We don't need to bring it up. But do you recall that?

35 MR GREEN: Yes.

MR PARARAJASINGHAM: And your response is:

That's my point if I get taken to task.

40 Now, by being "taken to task", you are talking about in the event you are censured severely; correct?

MR GREEN: Yes. If I'm asked to, you know, explain what the findings of the - sorry, the Auditor-General's report is, yes.

45 MR PARARAJASINGHAM: Well, that's something different, can I suggest, Mr Green. Because you have used very specific language there:

That's my point if I get taken to task.

5 Dealing with the second part of that comment, doesn't that mean if in the event you are censured severely or reprimanded, isn't that what you mean by "taken to task"?

MR GREEN: So if I - where my head was in that one, I was under confidentiality, so I couldn't tell Ms Attridge that I had been summoned, if that's the word, to the integrity commission. So that's confidential. So I'm not allowed to talk about that. So I was
10 expecting that some internal process would happen around the Auditor-General's report, and I would be asked to please explain, and I was going to have that, yes, conversation at the time.

MR PARARAJASINGHAM: Right. Please explain your role in this mess, or something to
15 that effect.

MR GREEN: Yes.

MR PARARAJASINGHAM: And a mess that had been laid bare by the Auditor-General
20 in the report.

MR GREEN: Yes.

MR PARARAJASINGHAM: Right. And when you say, "that's my point", what you really
25 mean to say is that's your response in the event you get taken to task.

MR GREEN: Yes.

MR PARARAJASINGHAM: Right. And can I suggest what you are doing here is you are
30 articulating a particular approach that you intended to adopt in the event your conduct was placed under further scrutiny. Do you accept that?

MR GREEN: Yes.

MR PARARAJASINGHAM: And that approach was to shift blame upwards, wasn't it?
35

MR GREEN: No, I wouldn't say that. That approach was that the next time I was asked
about the - what had happened, I intended to tell the whole story and set out all of the steps
along the way as opposed to the - the less complete version that I had told the
40 Auditor-General.

MR PARARAJASINGHAM: As a matter of kind of objective fact, that is, in fact, what
you've done in this - before the Integrity Commission. You have shifted blame upwards,
haven't you?
45

MR HASSALL: I object to the question because it's ambiguous as to what that means. In particular, I know my friend is representing Mr Ceramidas, it's not clear to me whether he would necessarily fit within the description of upward, sideways, downwards, roundabout.

5 COMMISSIONER: Yes.

MR PARARAJASINGHAM: I can be clearer.

10 COMMISSIONER: The trouble - the trouble with using everyday language is that it's ambiguous. I'd be careful with - you understand my point?

MR PARARAJASINGHAM: Yes. Let me ask that in another way. In the -

15 COMMISSIONER: If I may say so, that's a submission rather than a question.

MR PARARAJASINGHAM: Certainly. Coming now to this first compulsory examination, right, on 5 May 2022, so from what you've told us, you were on notice about the fact of this examination for some time.

20 MR GREEN: The -

MR PARARAJASINGHAM: The first private examination that takes place on 5 May 2022, you were aware that that - it was going to occur for many months. Do you accept that?

25 MR GREEN: No. I was aware I had been summonsed. I think there was a date on the first summons that was going to be a certain date and then it got shifted and shifted and shifted. And then at some point I got told when it was going to be. So I knew - I knew I would be summonsed for a private examination. I didn't know when it would be.

30 MR PARARAJASINGHAM: Fair enough.

COMMISSIONER: No, but I think the point is that by that time, that is, by the time it had actually occurred, you had some months notice that -

35 MR GREEN: Yes.

MR PARARAJASINGHAM: That an examination was to occur.

40 MR GREEN: Yes.

MR PARARAJASINGHAM: Yes.

45 MR GREEN: Agree.

MR PARARAJASINGHAM: And again, you must have thought very carefully about the things that you would say to the commission at your examination?

MR GREEN: Yes.

5 MR PARARAJASINGHAM: You - did you again have access to material by way of preparing for your examination?

MR GREEN: Yes. I could have looked back through my notes and the Auditor-General's report and that sort of stuff, yes.

10 MR PARARAJASINGHAM: And then on 5 May, you attend. You take an affirmation; correct?

MR GREEN: Yes.

15 MR PARARAJASINGHAM: And initially you were asked this question. This is at transcript page 126 of the private examination of Mr Green on 5 May 2022. Page 126. I'm just going to read to you something that appears from line 23 - this is coming up. Okay, great. So if you just cast your eye to line 23, Mr Green, the Commissioner asks you this:

20 *And so you understood the Auditor-General wanted to know in brief what happened and why that happened; correct?*

You say:

25 *I thought they were much more focused on the process as opposed to why.*

Question:

30 *Yes, indeed but that's - a process is what happened and why that happened.*

Answer:

35 *Yes. That's the process, there was this decision. Why was that decision made and so on. Correct, correct.*

And the question:

40 *Was there any part of this process which on reflection you should have told them but didn't?*

Answer:

45 *Looking at their report, I think I should have made it clearer to them that I wasn't the ultimate decision maker.*

The Commissioner, says:

Oh, I actually think you said that four or five times. I don't think that would be a problem.

It goes on:

5

Not that I know of.

And then it is asked:

10

I don't think that would have been a problem, but I understand why you felt that was necessary. Anything else?

Not that I can - sorry, not that I can think of at the moment, Commissioner.

15

You heard me read that to you. And then if you go over the page, this is page 127, just the first few lines. At line 5, you were asked:

And you didn't try to disguise or hide any particular facets of the process?

20

Answer:

I don't think I tried to. There are bits of the process that I don't think they asked about and I kind of, I thought, volunteered some the pieces at the end that I thought they should have asked about at the end of the process.

25

Question:

Right. But as you sit there now do you feel that you disclosed so far as you were in a position to do so all the relevant material necessary to evaluate whether the process was conducted with probity.

30

Answer:

Yes.

35

Confined to that response, you offer no further information to the Commission about the process that occurred; correct?

MR GREEN: Not in the response to that question, no.

40

MR PARARAJASINGHAM: Yes. That's what I said. Confined to that response. And then you can take it from me that up to about page 139, 140, you give evidence about an alleged conversation with Ms Haire. I'm not going to ask you about that, but I'm just giving you that as background. And then we come to this. Transcript page 158, and from lines 17, the following appears. Well, actually we will go back to 10. Had is a question from - I think it's the Commissioner.

45

Looking back now, do you think you should have raised specifically the matter with the Director-General? You know, you could have said, look, you are from Victoria, maybe they do things differently down there, but you can't do it here.

5 Answer:

Looking back now I certainly would have raised it in a stronger more stronger way.

And the question is asked:

10

You said that she told you - sorry, the implication that I get from your evidence, correct me if I'm mistaken, you did not yourself have communications with the minister's office.

Your answer:

15

I did have a conversation with the minister's office. Some time into the process. And I think that conversation was the minister's office checking in that I understood that what Katy had been told to do.

20 *And who was the staff officer that you spoke to?*

Answer:

The minister's chief of staff.

25

Question:

Can you recall the name?

30 Answer:

Josh Ceramidas.

35 Just pausing there. You accept, confined to that answer, your use of the word "I think" reflects some degree of uncertainty in your recollection as of 5 May 2022. Do you accept that?

MR GREEN: Yes. In - the "I think" says that. But then I went through it.

40 MR PARARAJASINGHAM: And then picking up from line 27 at the same page, you were asked this question:

And can you, to the best of your recollection, can you tell us what he told you?

45 Answer:

5 *Best of my recollection, it was the tail end of another conversation that I had with the chief of staff, and it was along the lines of, "Has Katy told you about Campbell." You know, do I understand essentially just checking in that I had been essentially checking in the Director-General had passed the message on to me or briefed me about what needed to be accomplished.*

It goes on:

10 *Did the staff member actually say he was passing on the instructions of the minister or did you assume that was so in light of his position?*

He didn't, and I didn't assume it was the minister. I assumed it was actually him making the instructions to the Director-General.

15 You heard me read that to you just now?

MR GREEN: Yes.

20 MR PARARAJASINGHAM: You accept that confined to this answer, you do not purport to quote Mr Ceramidas; correct?

MR GREEN: No, it's my recollection of my understanding of the conversation.

25 MR PARARAJASINGHAM: Yes. And as at 5 May 2022, you were unable to recall the precise words used by Mr Ceramidas; correct?

MR GREEN: I don't think I was asked for the precise words there and I didn't volunteer any precise words.

30 MR PARARAJASINGHAM: Right. So is your answer "yes" to my question? I will ask it again. As at 5 May 2022, you were unable to recall the precise words used by Mr Ceramidas.

35 MR GREEN: I want asked for precise words and if I had have turned my mind to it at the time, I may have been able to recall the precise words.

MR PARARAJASINGHAM: Well, the question you were asked is this:

40 *And can you, to the best of your recollection, can you tell us what he told you?*

Now, you must have understood that to be a question seeking the content of a conversation. Correct?

45 MR GREEN: He hasn't asked me, and that question to "can I recall the exact words", and the Commissioner, as I've learnt, when he wants me to go the exact words or points in the system -

COMMISSIONER: No, no, no. Even if you learnt that - one moment. Even if you learnt that later, this is early in the stage. Let's not go there. A question, what he told you, surely can only mean what he said. Do you find that difficult to accept?

5 MR PARARAJASINGHAM: That's a question for -

COMMISSIONER: Would you give it another interpretation?

10 MR HASSALL: Commissioner, can I raise a matter perhaps in the absence of this witness as a matter of - to ensure the integrity of the evidence on this issue?

COMMISSIONER: Certainly. Would you mind just leaving the room so Mr Hassell can be frank. You will need to be left out - let out.

15 MR PARARAJASINGHAM: Cameras.

COMMISSIONER: Yes, turn the camera off. Sorry I had forgotten that. Yes.

(livestream paused)

20 Sorry I had forgotten that. Yes.

25 MR HASSALL: Commissioner, in my submission, the questioning - well, you stated just after we came back from lunch that this was not to be an adversarial process. I raised my concerns about Mr Ceramidas through legal representation in circumstances where he - we understand he's not to give evidence, being able to engage in a protracted process of this kind. It is in my submission becoming adversarial. This is becoming a sort of Browne v Dunn exercise. And it is now progressed to the point where, in my submission, unfair questions are being put to the witness.

30 COMMISSIONER: Why is the question unfair?

MR HASSALL: Well, he answered by saying that he wasn't asked to answer in direct speech, which is perfectly accurate, if one reads what is put there.

35 COMMISSIONER: Certainly.

40 MR HASSALL: And then it's being put to him again after he has given that answer that that is what he was asked. So, it's verging on bullying of the witness in my submission, Commissioner.

45 COMMISSIONER: I'm sorry, well, your submission has moved a little from the first point that you made. But I must say, perhaps it has - perhaps the question has developed somewhat. We have been interfered, we will have another go, I think. Bring the witness back in, would you?

<THE WITNESS RETURNS AT 3.46 PM

COMMISSIONER: Again, cameras off.

5 Perhaps I'll - if you don't mind, maybe I will put it this way - you resume if you wish, if what I say is unsatisfactory. You've been - a particular question has been put to you. Whereabouts is it?

MR PARARAJASINGHAM: Line 27, Commissioner. Line 27, page 159.

10 COMMISSIONER: Yes, the question was:

Can you, to the best of your recollection, can you tell us what he told you?

What did you understand by that question as being expected of you?

15

MR GREEN: I was being asked about the content of the conversation, and I think I answered about - my answer reflects what I remember of the content of the conversation as opposed to the exact words.

20 COMMISSIONER: Take it further if you wish, of course.

MR PARARAJASINGHAM: Now, can I take you over the page - so if I take you over the page to transcript page 159, and this is asked from line 13:

25 *Did you feel that Mr Ceramidas was giving you a direction or was he expressing a general preference?*

Your answer:

30 *I felt that he was checking in that I understood what he told Katy.*

Answer - question, rather:

Did he say it in that many words?

35

Answer:

Well, it was - it was a - it was a "has Katy told you" kind of conversation. It was - it was that - I don't, yeah.

40

Then you were asked this:

What did he say exactly?

45 Answer:

Sorry, I cannot remember.

Then it goes on:

5 *But my - my - my recollection, it was literally a couple of lines at the end of a long conversation, and I think it was very much - it was definitely like a check in as -*

(livestream paused)

10 *John you need to do this." Because, you know, "John you need to do this", be conversations I've had with Josh before, around other parts of - of my work. But not -*

And then there is an intervention:

15 *You mentioned at the very beginning.*

Can I just ask you about that extract, Mr Green. In what I've just taken you to, firstly you are drawing a distinction between a check-in conversation and a conversation in which you are given a direction. Firstly, do you accept that that's a distinction that you are drawing?

20 MR GREEN: Yes, I think I'm making that decision.

MR O'NEILL: And secondly, can I suggest that you are putting the conversation that you had with Mr Ceramidas, you are putting that into the former category. Do you accept that's what you are doing there?

25 MR GREEN: The category about checking conversation?

MR PARARAJASINGHAM: Checking conversation.

30 MR GREEN: Correct.

MR PARARAJASINGHAM: And then if we read you on, you give examples of this latter category. If we look at for example transcript 159, line 29, so the Commissioner asks:

35 *Sorry, other parts of your work?*

You say:

40 *So for instance, the minister's office was heavily involved with, say, things like business cases. So "John, we need to do, you know, this bit of infrastructure, this bit of something over here. We want to build a school over there " kind of stuff.*

The Commissioner says,

45 *So you need to do the business case. There seemed to be relevant matters, etcetera, etcetera.*

Answer:

Yes.

5 And then you say:

"This school needs a new air conditioner. Can you put it in the program" and things like that.

10 You heard me read that out to you?

MR GREEN: Yes.

MR PARARAJASINGHAM: And those are examples which fall into the former category, the distinction which you raised a couple of moments earlier; correct?

MR GREEN: Yes.

MR PARARAJASINGHAM: Now, reading on, this appears. This is at transcript 159 line 20 42. This is the Commissioner:

This, though, was this the first time you had come across any attempt by the minister's office to place a finger on the scales of a decision of this kind?

25 And your answer:

Yes, in this way. So normally if a minister would want a particular outcome in some form of process - I'm not saying even procurement, okay, so normally if a minister wanted an objective in the process, they would normally pass on to the next page -

30

Sorry I'm over the next page:

So for instance, you know, "We want local contractors to do this work" or something like that.

35

You heard me read that out to you?

MR GREEN: Yes.

40 MR PARARAJASINGHAM: Can I suggest to you, Mr Green, that the characterisation that was put to you by the Commissioner did not reflect the effect of your proceeding answers. Do you accept that?

MR GREEN: No.

45

MR PARARAJASINGHAM: Okay. And can I suggest what you've done -

MR HASSALL: Sorry, I'm actually not clear. I think I said no, because I think what you've asked me is the examples of Commissioners -

5 COMMISSIONER: Is the part that you read on page 159 or 160? Where you ask about the scales. Is that what are you talking about?

MR PARARAJASINGHAM: Sorry, 159, Commissioner, from line 42.

10 COMMISSIONER: Sorry, I wasn't reading it. Can you just turn it back, please.

MR PARARAJASINGHAM: So you say this, Commissioner:

15 *This, though, was this the first time you had come across any attempt by the minister's office to place a finger on the scales of a decision of this kind?*

COMMISSIONER: Right.

20 MR PARARAJASINGHAM: And my question - what I'm putting to you Mr Green, is that you had not given evidence to that effect. Do you accept that?

MR GREEN: So the previous parts of that conversation were around different types of conversation.

25 MR PARARAJASINGHAM: Yes.

MR GREEN: And this is a -

MR PARARAJASINGHAM: This is a different point.

30 MR GREEN: Yes. This is a different point.

MR PARARAJASINGHAM: And you embraced that suggest. You embraced that proposition; correct?

35 MR GREEN: So the proposition that this is the minister's office placing the fingers of the scales of the decision, as opposed to - previously, they would say something like, "we want an air conditioner in that school."

40 MR PARARAJASINGHAM: Yes. Can I ask you this, Mr Green. When you heard that question from the Commissioner, did you form the belief, rightly or wrongly, that the Commissioner had the view that what had occurred was an improper interference by the minister's office? I want you to think very carefully about this, Mr Green.

45 MR GREEN: Sorry, I'm just trying to pull out all the elements of what you just asked.

MR PARARAJASINGHAM: I will ask it again. On hearing that question, or that - on hearing that question, did you form the belief, rightly or wrongly, that the Commissioner

was of the view that what had occurred was an improper interference by the minister's office?

5 MR GREEN: I don't know what I took from that - sorry, I'm not trying to give a positive answer, so I read that - I took the inference from that that there's interference. I don't have a view either way on proper or improper. But I read from that question about interference in the process.

10 MR PARARAJASINGHAM: Right. But the analogy used a finger on the scales -

MR GREEN: Suggests.

MR PARARAJASINGHAM: What did that mean to you?

15 MR GREEN: So finger on the scales, tipping the scales one way or another. So it is definitely, to me, implies interference.

20 MR PARARAJASINGHAM: And you must have understood, rightly or wrongly, that that was a view held by the Commissioner at the time that that question was asked.

MR GREEN: I don't know if I understood it. I think I might have assumed it, but certainly -

25 MR PARARAJASINGHAM: Yes, fine. You assumed. If we just go to transcript page 161, please. And it's transcript 161, line 38. Counsel assisting then asked this question:

Just a few follow-up questions if I may, Commissioner. The conversation with the chief of staff, when did that occur? Can you place that as all?

30 Answer:

No, sorry. Look, in that scale of emails, yes, I'm not sure. After Katy returned from leave.

So the Commissioner asks you:

35 *Would it have been after the BAFO or before, do you think?*

Answer:

40 *Look, sorry.*

Question:

45 *You don't know, okay.*

No.

That's what you say, and then it continues. Counsel assisting then:

Was it a one-off conversation you had with him?

5 Answer:

About that issue? That was the only time that I recall Josh mentioning it.

Then if we can just skip down to line 10, the Commissioner says:

10

But in relation this matter, this particular matter, I mean the union.

And then you say:

15

Look, I think there may have been another conversation later about where this was all up to, but that was the conversation early on in the process when the evaluation - things were happening around, you know, the deal, I understand.

You heard me read that out to you, Mr Green?

20

MR GREEN: Yes.

MR PARARAJASINGHAM: And it's right to say, isn't it, that, confined to that response, you are unable to provide any evidence as to the specific timing of this alleged

25

MR GREEN: In those series of responses, yes.

MR PARARAJASINGHAM: Yes. Confined to what I've taken you to, yes. And your position seems to be that there was one - only one conversation with the possibility of another conversation. Do you accept that?

30

MR GREEN: Yes.

MR PARARAJASINGHAM: And then just finishing up on this examination, at transcript 162, line 30 - sorry, excuse me, line - bear with me - 162, line 21, the question was asked:

35

Did Josh Ceramidas mention the unions when he spoke to but those directions?

I don't think so, it was - as I said, my recollection of that conversation was about did Katie tell him what the outcome was to be.

40

Question:

45 *How was that conversation had?*

Answer:

Phone.

So it was just the two of you on a call?

5

Yes.

You didn't recall the conversation?

10

No.

You heard me read that out to you?

MR GREEN: Yes.

15

MR PARARAJASINGHAM: Yes. Commissioner, I'm going to move on to the next examination. I note it's 5 to 4.

COMMISSIONER: How long do you think?

20

MR PARARAJASINGHAM: Much longer than I had estimated.

COMMISSIONER: Well, in my experience, counsel can be persons of unquestioned and unquestionable integrity, who will nevertheless take your umbrella in the rain and never give you a reliable indication about how long they will be. But what's your best guess?

25

MR PARARAJASINGHAM: Commissioner, within 30 minutes - I mean that's what I said last time.

30

MR O'NEILL: He said 30 minutes an hour ago.

COMMISSIONER: Yes, that thought did occur to me.

MR PARARAJASINGHAM: I mean, could I -

35

COMMISSIONER: Yes, I think then we will bring it to an end now. But I have - I want to ask Ms Morgan about her position, so it might be a useful time. Would it be useful for you if Mr Green were not in the room when you make that submission?

40

MS MORGAN: Yes, thank you, Commissioner.

COMMISSIONER: All right. Turn off the camera, please.

(livestream paused)

45

**<THE HEARING ADJOURNED AT 4.51 PM TO THURSDAY, 7 SEPTEMBER 2023
AT 10 AM**

