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TRANSCRIPT OF PROCEEDINGS

THE HON MICHAEL F ADAMS KC, COMMISSIONER

THE ACT INTEGRITY COMMISSION – OPERATION KINGFISHER

PUBLIC HEARING

DAY 4

THURSDAY, 7 SEPTEMBER 2023 AT 10.08 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

COMMISSIONER: Yes. Yes, Mr Pararajasingham.

5 MR PARARAJASINGHAM: Thank you, Commissioner.

COMMISSIONER: By the end of this I will be able to pronounce your name properly, I hope. As a courtesy, it's appropriate I should.

10 MR PARARAJASINGHAM: Thank you, Commissioner. And you will find as a happy coincidence it is said as it is spelt.

COMMISSIONER: Yes indeed.

15 MR PARARAJASINGHAM: Mr Green, you'll recall yesterday I was kind of stepping you through a chronology.

MR GREEN: Yes.

20 MR PARARAJASINGHAM: Yes. Just before I continue on that process, can I just ask you about this. This is - so this is something you said to the Commission on your private examination on 16 May 2023. This is at transcript 1564. Transcript 1564 on 16 May 2023. If you can cast your eye - just before we do that, the context here is you were being asked by the Commissioner about things you said to the Auditor-General. Do you understand
25 that?

MR GREEN: Yes.

30 MR PARARAJASINGHAM: And if you cast your eye down to line 38, you'll see this question was asked by the Commissioner:

However, you understood when you affirmed you undertook to tell the truth, the whole truth and nothing but the truth, didn't you?

35 And you answer:

I don't think I understood that as well as I should have, and I apologise for that. I think I could have told them more. I think I was very much in the mindset of answering their questions directly.

40

My question is this: where you say you don't think you understood that as well as you should have, do you stand by that evidence as you sit there now?

45 COMMISSIONER: Sorry, that's a somewhat ambiguous question. Do you mean that does he -

MR PARARAJASINGHAM: I will rephrase that.

COMMISSIONER: You understand my point.

5 MR PARARAJASINGHAM: Yes. Is it still the position, as you sit there now, that you don't think you understood the affirmation to tell the truth, the whole truth and nothing but the truth as well as you could have. Is that still your position.

COMMISSIONER: At the time you were interviewed by the Auditor-General.

10 MR PARARAJASINGHAM: Auditor-General.

MR GREEN: So reading what I said there, so I don't think I understood that as well as I should have, and I apologise for that. I totally agree with that statement. I don't think that I understood it as well as I could. I was focusing on telling them the truth and narrative of
15 the best possible description of how the process was taken out, and I don't - yes, and I was focusing on answering their questions directly, as it says later on in there. So I was just trying to answer their questions and give them an answer to their questions they went, as opposed to expanding on my answers and telling them all about all the matters that were relevant at the time and telling them the whole truth as it is. So I think as I understand it,
20 I - yes, sorry, and - so to me, I think I stand by that statement, which is I don't think I understood as well as I could have. I should have reflected more upon words of the affirmation about the whole truth. And again, I apologise for that.

MR PARARAJASINGHAM: And if you could just cast your eye over to, please, to page
25 1565, if that can be brought up. And you see at line 3, this appears - so this is a question by the Commissioner:

However, are you saying to me that you did not understand that you had a duty of complete candour to the Auditor-General?

30 And your response is:

*I think that's fair, Commissioner. I - the previous times I had given information to the Auditor-General, it had been a general interview. I hadn't done it under oath or
35 affirmation before. I don't think I fully understood my duties to tell them everything that I knew, and I focused on just answering their questions.*

Is there any part of that answer that, as you sit there now, you wish to amend?

40 MR GREEN: No.

MR PARARAJASINGHAM: Thank you. So returning then to - that can be taken down. Returning then to this chronology, can I take you now to the second compulsory examination before the Commission. That was on 14 February 2023. Now, once again you
45 took an affirmation, Mr Green. That's the case?

MR GREEN: Yes.

MR PARARAJASINGHAM: And you were - take it from me that you were questioned more broadly about the project by counsel assisting. And if you could just direct your attention, please, to transcript page 1361 on 14 February 2023. And if you just cast your eye down to the last line on that page, the Commissioner asks you - sorry, the context here is there's a - you are being questioned about the weighting of the qualitative assessment, right, just to give you some background. And then the Commissioner asks you at the last line there:

5

10 *Yes, and I want to be more specific about that. Do you recall -*

And then we go over to the next page:

15

Do you recall Mr Ceramidas making a complaint to you about this weighting or about the way in which the criteria was designed?

Your response is:

20

No, Commissioner, I don't recall any conversations or any - sorry, any, yes, conversations with Mr Ceramidas about Campbell during my time, my first time in Education.

Then counsel assisting says:

25

Your first time in Education?

You say "yes." And then counsel assisting says,

But I think in that short period.

30

Answer:

That's that window.

Can you just remind me, what is the timeframe on that window?

35

MR GREEN: Trying to get my years straight. That was the six -

MR PARARAJASINGHAM: Can I ask you to speak up a little bit, Mr Green. I'm sorry.

40

MR GREEN: That was the six weeks or so that I was first acting as EGM in Business Services in late 2019 as opposed to 2020.

45

MR PARARAJASINGHAM: Okay. Thank you. And then if you turn over to page 1381, please, of the same examination. And you will see here from line 30, the following appears. Counsel assisting asks you:

Now, on 24 February 2020, you attended a meeting with Mr Ceramidas and others potentially (not transcribable), which was a regular update. Do you recall this meeting?

Answer:

5

Was this a MINSET meeting on a Monday morning? MINSET meeting?

Answer:

10 *Yes, I don't recall that particular meeting.*

The Commissioner says:

Well, you would have attended a number of them.

15

Answer:

I would have recorded, every week, basically, yeah.

20 It goes on, counsel assisting:

Now, was it your practice to make a note of what was discussed at those meetings?

Answer:

25

No. There was an agenda prepared for those MINSET meetings and papers prepared for the MINSET meetings.

Then questions put:

30

This one was particularly tense, we're told. And so the Tender Evaluation -

Going over the page:

35 *Team has not yet provided a recommendation to you. But as you have given evidence to the Commission, you understand where it was going, the direction in which it was leaning?*

Answer:

40

Yeah.

Then finally:

45 *Doing the very best you can in a MINSET meeting around this time, can you recall the topic of Campbell being raised?*

Answer:

No.

COMMISSIONER: Sorry, that part hasn't come on to the screen.

5

MR PARARAJASINGHAM: I'm sorry.

COMMISSIONER: And you are reading it very quickly, so I don't think it's - I think you need to give Mr Green an opportunity to absorb –

10

MR PARARAJASINGHAM: Certainly, sir.

COMMISSIONER: - the material that you are putting to him.

15

MR PARARAJASINGHAM: Yes, yes.

COMMISSIONER: So you are coming now - just would you read the highlighted part?

MR GREEN: Yes, I've read it, Commissioner.

20

COMMISSIONER: Right, yes. Now. So that finishes:

Doing the very best you can, in the MINSET meeting around this time, can you recall the topic of Campbell being raised?

25

And your answer is no. What does MINSET stand for by the way?

MR GREEN: Minister Senior Executive Team or something like that.

30

COMMISSIONER: Right.

MR PARARAJASINGHAM: Mr Green, can I ask you this. Do you recall a recurring topic of discussion at these MINSET meetings at around about this time to be the implementation of the Secure Local Jobs Code? Do you remember that as a topic?

35

MR GREEN: No, I don't think so. Some of the other pieces that were going at the time was the insourcing of cleaners and maybe that was in there. But I don't recall a recurring topic about Secure Local Jobs.

40

COMMISSIONER: Mr Green, you are coughing, I notice. Do you feel well enough to continue?

MR GREEN: I will get there, Commissioner. Sorry.

45

COMMISSIONER: All right. Well, just take your time, and if you are feeling that you are not sufficiently able to focus - because this does require focus - would you just let me know?

MR GREEN: Yes.

5 COMMISSIONER: I think the effect of his answer was he doesn't remember that as a particular topic of discussion. Is that correct?

MR GREEN: Yes, Commissioner. But there were also other matters going on, like insourcing of cleaners that have Secure Local Jobs kind of conversations and there was probably also a regular item about where the capital works projects are up on to and things like that. So Secure Local Jobs might have been talked about on a semiregular basis, but I doubt it was an agenda item because it's not really in the minister's portfolio.

MR PARARAJASINGHAM: I understand.

15 COMMISSIONER: So were you attending these meetings - were you then Registrar of the Secure Local Jobs registry? I just want to know really in what capacity did you attend these meetings?

MR GREEN: I was attending these meetings as a member of the senior executive team in education.

COMMISSIONER: In education.

MR GREEN: Because I was acting EGM. But I quite possibly was in that statutory role at the same time as well.

COMMISSIONER: That's right, there was a time when there was overlap.

MR GREEN: Yes, Commissioner.

COMMISSIONER: Right. Yes, all right, thank you.

MR GREEN: Sorry, Commissioner, and just again, during that overlap, while I might have been the Registrar from a statutory point of view, I was not carrying out the functions of a Registrar because there was someone acting in that position.

COMMISSIONER: Just remind us, who was that?

MR GREEN: Mr Robertson, I think.

COMMISSIONER: Right.

MR PARARAJASINGHAM: Mr Green, I appreciate you have no - as I've just taken you to, or certainly as at 14 February 2023, you didn't recall this 24 February 2020 MINSET meeting. But can I just see if this prompts your memory. Do you have a recollection of Mr Ceramidas raising clause 10(1)(d) of the Code at this meeting or any MINSET meetings around this time?

MR GREEN: I'm reading ahead in the transcript on the screen, and I think the Commissioner points out to me that there might have been discussions at that meeting, and I have said to the Commissioner at that point that I don't recall it, but it may have been that, and if a general conversation was raised about Secure Local Jobs, I could have talked very generally back about Secure Local Jobs, having spent time in that role for the past 12 months. But I do not - but to answer your specific question, I don't recall Mr Ceramidas mentioning 10.1.D, was it? Whatever. 10 point whatever.

10 MR PARARAJASINGHAM: Yes. And do you recall whether Mr Ceramidas raised the issue of the consideration of labour relations plans in any tender evaluation? Does that kind of language resonate?

MR GREEN: I know that kind of language. I'm used to hearing that kind of language. Again, I don't recall. As I have testified before, I don't recall any particular conversations around Secure Local Jobs.

SPEAKER: Sorry to interrupt, can I just indicate, Commissioner, there has been a problem with the streaming and so if we could just have a short adjournment. I apologise. We will see what the issue is. 10 minutes.

COMMISSIONER: Very well. All right. We will take a 10-minute break.

<ADJOURNED 10.22 AM

<RESUMED 10.35 AM

MR PARARAJASINGHAM: Mr Green, I was just trying to test your memory, sorry, as to this meeting on 24 February 2020, and perhaps I've taken things as far as I can. But let me just ask you this: do you recall at this meeting whether - do you recall whether Mr Ceramidas at this meeting was critical that the Education Directorate had not established a process to comply with clause 10 of the Code? Now, I'm not asking whether in fact that was the case, but just do you have a memory of this sort of criticism being levelled at the Directorate by Mr Ceramidas?

MR GREEN: No, counsel. I think, look, from the transcript, I have very - I don't have very strong memories of anything much in that meeting.

COMMISSIONER: Well, perhaps do you recall at any time Mr Ceramidas raising that issue?

MR GREEN: No, I don't recall that, Commissioner.

MR PARARAJASINGHAM: So as you sit there now, you can't discount that at some point in time he raised this issue with you?

MR GREEN: Correct. I - I can kind of - I can't recall him raising it, but I can kind of anticipate if I - if it had been raised, my response would have been it will be a matter for the Secure Local Jobs Code Registrar anyway. So possibly it was - if it was raised, I would have given a fairly quick response.

5

MR PARARAJASINGHAM: And so by that, do you mean it is the type of matter that, as you recollect, may have been raised?

MR GREEN: No, I don't have any recollection of it being raised. But, sorry, was just plotting the answer to the question. If the question had have been asked what my response would have been, but then as I said I don't have a strong - a recollection either way of that conversation occurring.

MR PARARAJASINGHAM: I understand. Thank you. Now, can I just - so we are still at the February - 14 February 2023, can I just draw your attention to the transcript at page 1388, please. Now, the context here is you are giving evidence about an alleged conversation with Ms Cross, just to contextualise it for you. And if you can just cast your eye down, please, to line 13. And counsel assisting asks you this:

20 *And what does she say?*

She says, "I've just had a meeting with the Minister." Yes, I - you know, "I was summonsed down to the office to have a meeting" and she was told at that meeting that the - that the - that the office - the Minister - I'm not sure what the word she used.

25

And then counsel assisting asks you:

Well, no. That's important. Do you think she used the word "minister" or the word "office"?

30

And you say:

I think she used the word "office" and - and she may have used the word "Josh". That's who I think the conversation was with.

35

You heard me read that out to you just now.

MR GREEN: Yes.

MR PARARAJASINGHAM: We will step through this, but confined to your answer, you accept that there was some uncertainty as to whether the word "minister" or "office" had been said?

MR GREEN: Yes.

45

MR PARARAJASINGHAM: And you also accept that confined to that answer, you speculate about whether the word "Josh" was used. Do you accept that?

MR GREEN: Yes.

5 MR PARARAJASINGHAM: Now, if we proceed down the page at line 22, counsel assisting says:

No, that's okay, so "Josh has told me".

10 And you say yes. And then:

Words to that effect?

And you say:

15 *Yes, words to that effect, is that Manteena's not to get the job.*

And then it goes on. It's suggested to you that:

20 *Now, that's a pretty serious thing, isn't it?*

You say yes. The question is:

Your mind must have known at the time that it was a serious thing to hear.

25 Answer:

Yes.

30 And then we'll skip over the next part, but then the Commissioner asks you this question:

So hold on, I think there are bits and pieces. I think it will be good to get the conversation so far as we can as a whole. So you go in.

35 *Yes.*

The Commissioner says:

No doubt there are some pleasantries.

40 And you say:

Mmm.

45 And then the Commissioner says this:

And then she says, "I've just been to the minister's office, I've just had a conversation with Josh" or something like that.

And you say:

Yes.

5

Do you see that?

MR GREEN: Yes.

10 MR PARARAJASINGHAM: Just taking a step back, Mr Green, at this point in time this is your second private examination; correct?

MR GREEN: Yes.

15 MR PARARAJASINGHAM: And we know that the Auditor-General had made critical findings as to your conduct. You accepted that yesterday; correct?

MR GREEN: Yes.

20 MR PARARAJASINGHAM: And you find yourself before the ACT Integrity Commission for a second time; correct?

MR GREEN: Yes.

25 MR PARARAJASINGHAM: Now, as at this time, that is 14 February 2023, I gather that, in your mind, it was really no certainty into how this process, that is, being called before ACT Integrity Commission, would end, right? You had no real certainty as to how this whole process would end. Do you accept that?

30 MR GREEN: I accept that.

MR PARARAJASINGHAM: And no one had given you a guarantee of an outcome one way or another. Is that right?

35 MR GREEN: I don't think there are any guarantees of an outcome, are there? Yes.

MR PARARAJASINGHAM: So your answer to my question is - is yes. No one had given any guarantees one way or another?

40 MR GREEN: Yes.

MR PARARAJASINGHAM: Yes. And it must have occurred to you that one possible outcome, perhaps out of many, was a referral by the Commission to the DPP to consider whether any charges arise from your conduct. Did that occur to you as a possibility?

45

COMMISSIONER: By "conduct" -

MR PARARAJASINGHAM: I will rephrase that. From - based on things that you had said, right, did you think that there was some possibility that the Commission - that you might be referred at some point to the DPP for them to consider whether any charges should be laid?

5

MR GREEN: Yes, I don't use know - use - use that sort of word, but yes, I think the Commissioner and I had a conversation in my first private examination around - yes, my conduct.

10 MR PARARAJASINGHAM: And coming back now to 14 February 2023 -

COMMISSIONER: I think, again - I think I just need to speak to counsel. Would you please leave the room? Would you please take Mr Green out?

15 **<THE WITNESS WITHDREW AT 10.43 AM**

COMMISSIONER: I'm relying on memory now because it's been a little time since I have read his evidence.

20 MR PARARAJASINGHAM: Yes.

COMMISSIONER: But I think there was an early warning that a failure to tell the truth could have serious consequences and I may well have implied criminal consequences.

25 MR PARARAJASINGHAM: Yes. My question is broader than that.

COMMISSIONER: I know, and that's why I asked about conduct.

MR PARARAJASINGHAM: Yes.

30

COMMISSIONER: Whether you meant because he admitted, as it were, being in breach of his obligations to the Auditor-General because that also may -

MR PARARAJASINGHAM: Yes.

35

COMMISSIONER: - trigger consequences.

MR PARARAJASINGHAM: Yes.

40 COMMISSIONER: Or his conduct in relation to the procurement.

MR PARARAJASINGHAM: I intended to - what I was trying to capture was both.

45 COMMISSIONER: Well, if I may say so, I think unless it harms the point that you wish to make, I think it would be better if you -

MR PARARAJASINGHAM: I can break it up, yes. That's fine.

COMMISSIONER: Or said that it covers both.

MR PARARAJASINGHAM: Yes, I will deal with it.

5

COMMISSIONER: So that he's in a position to understand what you mean.

MR PARARAJASINGHAM: That's fine, I will do that.

10 COMMISSIONER: Yes, all right. Bring Mr Green back. Sorry, there is one other thing. I just thought I should point out, taking him through that questioning in relation to Mr Ceramidas and the way that it came in, as it were, at the end, then it appears - I haven't read the intervening questions, but it appears to then have been adopted by counsel assisting. And then I think by me when I say Ceramidas or someone or something. I can't remember -

15

MR PARARAJASINGHAM: A conversation with Josh or something like that.

COMMISSIONER: Or something like that. I must say, I don't have a distinct recollection, not surprisingly, of that particular part of his evidence.

20

MR PARARAJASINGHAM: Yes.

COMMISSIONER: But, you don't capture the sense of it simply by the words. You haven't taken him up on it any more than leaving the language as it is, I understand that, but I'm pointing out that it was video'd, and if a point ultimately needed to be made or you wish to make a point, I think you will need to look at the video to see the way in which the evidence is given. But, of course, I leave that entirely to you.

25

MR PARARAJASINGHAM: I understand what you are saying.

30

COMMISSIONER: Yes.

<THE WITNESS RETURNS AT 10.46 AM

35

MR PARARAJASINGHAM: Mr Green, let me just - I just want to clarify a question response a moment ago. You accepted at around the time of 14 February 2023, you - it was in your mind there was a possibility of a referral to the DPP. Right. Do you remember agreeing with that proposition a moment ago?

40

MR GREEN: Yes.

MR PARARAJASINGHAM: And by that I mean that the referral may have - may relate to not just the things that you did in the course of the procurement process, but also things that you said both to the Auditor-General and perhaps before the Commission. So it was - it was those combined matters that in your mind raised the possibility of a referral to the DPP. Do you accept that?

45

MR GREEN: Yes.

5 MR PARARAJASINGHAM: Thank you. Now, just returning to the questioning - just returning to page 1388. So is it right to say that as you were being asked these questions by counsel assisting and the Commissioner, you must have understood that the Commission regarded this conversation with Ms Cross as very important. That's fair, isn't it?

10 MR GREEN: Yes. They were asking about it.

MR PARARAJASINGHAM: Sorry, I missed that last -

15 MR GREEN: Sorry, I think the Commission regards all these conversations as important and they asked questions and they asked follow up questions. So yes, to your point, I suppose it reflects their interest in finding out the details of that conversation.

20 MR PARARAJASINGHAM: Yes. Thank you. And then if we just go over the page, please, to 1389. And you will see the following appears. Sorry, the Commissioner asks you:

Yes, "He told me", now could you just please try and recapitulate:

25 And you say:

Okay. So the elements - so the elements of the conversation I remember is that she - she passed on she had been told that the minister's office, Josh, didn't want Manteena to get it because of concerns about Secure Local Jobs and labour relations. So I - I think instantly knew that was a union sort of conversation back in - sorry, that that was the sort of concerns raised by the union. I then gave her a quick update as to where it's up to, which is -

And then I think the Commission asks you:

35 *Where did this point about Manteena were grubs? Is that in that early part or later?*

Answer:

40 *So yes, sorry. I - I - that was my shorthand. I apologise, Commissioner. So we will go through the conversation as I remember it. So going to the office she passed on - she's had a conversation with Josh and that - and that he didn't want Manteena to get it for Secure Local Jobs reasons, you know.*

45 And then the conversation continues. And then if you cast your eye down - and by all means read everything in between, but if you just cast your eye down to line 37. I think the Commissioner put this is to you:

Right. So at this point then, she is relaying to you that Josh has said Manteena shouldn't get it.

And you answer yes. You heard me read that out to you now?

5

MR GREEN: Yes, I did hear that.

MR PARARAJASINGHAM: Do you accept that in the space of a page of transcript you've gone from expressing someone's certainty about the use of the word "office", and "Josh" to expressing no uncertainty about those matters. Do you accept that, that that exercise I've just taken you to shows that?

10

MR GREEN: Yes.

MR PARARAJASINGHAM: Thank you. Now, you're then examined - there's a third compulsory examination on 15 May of 2023. Nothing relevant for present purposes arises in that. You're not questioned about - as I read it the conversation with Mr Ceramidas. Then you have day 2 of this third compulsory examination on 16 May 2023. That's correct?

20

MR GREEN: I think so, if you have got the transcripts in front of you. I can't remember the dates.

MR PARARAJASINGHAM: Yes. So take it from me -

25

MR GREEN: I accept that, counsel, yes.

MR PARARAJASINGHAM: - that you are brought back for day 2. And if I could just draw your attention to what appears at 1525 of that transcript. That's 16 May 2023, page 1525. If you could just cast your eye to - bear with me - line 4 - 5. You see you were being asked about a meeting in early June between you and Ms Haire. Do you see that?

30

MR GREEN: Yes.

MR PARARAJASINGHAM: And then if you just cast your eye down to line 10, you are asked this:

35

And then what does she say?

Your answer:

40

So the way I remember the conversation was I just basically said the BAFO's in. Manteena is still in the lead. The first advice I got back from Katy was that "that's not what the minister wants." And then I think we had a bit of a conversation around the BAFO.

45

And you see it goes on there. And then again, by all means, read the rest of it. But at line 21, counsel assisting asks you this:

Now, you are adamant that she communicated to you that that's not what the minister want, that is, she used the words "minister" rather than minister's office or something.

5 Your response is:

No, sorry, I can't say that with certainty. So the MO might be a better description, is how she probably would have described it. Because that was how generally it was spoken of, the minister's office, "the MO".

10

You heard me read that to you.

MR GREEN: Yes.

15 MR PARARAJASINGHAM: Now, you accept there that you initially volunteer that the message is sourced from the minister; correct?

MR GREEN: Yes.

20 MR PARARAJASINGHAM: And then you express doubt about whether the word "minister" was used; correct?

MR GREEN: Yes.

25 MR PARARAJASINGHAM: And then you speculate as to what was said, given your use of "would have." Do you accept that?

MR GREEN: Yes.

30 MR PARARAJASINGHAM: Then if we just turn over, please, to transcript 1527, and if you could just kindly cast your eye down to line 38. So the context here appears to be - just bear with me. Can you assist me, Mr Green? What's the context here? It's clearly a conversation, but - this looks to be a questioning about the conversation with Ms Haire. But if you just turn your eye to line 38, this question is asked of you by the Commissioner:

35

And in fact, it's your evidence, isn't it -

COMMISSIONER: I think it's asked by Mr O'Neill.

40 MR PARARAJASINGHAM: I apologise. It's counsel assisting. I'm sorry. Counsel assisting asks you this:

And in fact, it's your evidence, isn't it, that she told you that Manteena was not to be awarded the tender. Sorry, I withdraw that. She told you that the MO was of the view that Manteena was not to be awarded the tender.

45

And then you say this in response:

5 *Yes, I'm not - sorry - I'm not 100 per cent confident that she mentioned Manteena back at me. But the way the conversation would have gone would have been from me, Manteena has won the BAFO. The minister's office wouldn't like or doesn't want that or something. So -*

And you go over the page:

10 *Maybe she didn't mention.*

And then the Commissioner asks you a question. Just coming back to what I've just asked you about, you accept there that your use of "would have" suggests that as at 16 May 2023, you had no recollection of this conversation? Do you accept that?

15 COMMISSIONER: Sorry, no recollection.

MR GREEN: No, I don't accept that.

20 MR PARARAJASINGHAM: You - I will start that again. Do you accept that there was some uncertainty in your mind as to what was said in this conversation?

MR GREEN: Yes.

25 MR PARARAJASINGHAM: Thank you. And do you also accept that the minister's - just assume this, right, the minister's office expressing a view that it would not like Manteena to win the contract is different to the minister's office providing a direction about the outcome of the procurement process. Do you accept that?

30 MR GREEN: Yes, there's a different in the way that can be - yes. Minister's office -

COMMISSIONER: The way that can be what?

MR GREEN: The way that can be interpreted, acted - acted upon.

35 MR PARARAJASINGHAM: Because the former is the expression of a view, right. Do you accept that? Right. Sorry, in the kind of dichotomy that I have given you, right, the expressing of a view is different, can I suggest, to a direction that a particular outcome should be obtained. Do you accept that?

40 MR GREEN: Yes.

MR PARARAJASINGHAM: Thank you. That can be taken down. On 31 July 2023, the Commission - you will be aware, released reasons for the decision to hold a public examination. You -

45 MR GREEN: I accept that.

MR PARARAJASINGHAM: Were you aware of that at the time, that -

MR GREEN: Yes, I don't know the dates and all that, but I remember there was -

5 MR PARARAJASINGHAM: No. I don't expect you to remember the precise date but -

MR GREEN: There is reasons.

10 MR PARARAJASINGHAM: And it would have - if you didn't read it, it would have been brought to your attention that in those reasons for decision, the Commission observed that your evidence in private examination was "competent and compelling " and "of considerable importance."

MR GREEN: Yes.

15

MR PARARAJASINGHAM: Was that brought to your attention at or around 13 July 2023?

MR GREEN: I can remember reading those lines.

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MR PARARAJASINGHAM: You can remember reading it yourself, right. So it would have been crystal clear, can I suggest, that before the public hearings - before the public hearing had commenced, you would have understood that the Commission had formed a favourable view of your evidence from the private examination. Do you accept that?

25

MR GREEN: Yes.

30 MR PARARAJASINGHAM: And I'm just asking this question about what was in your mind. You must have understood that there was an expectation that you would say similar things in the public examination as you had said in the private examinations.

COMMISSIONER: What does that go to, really?

35 MR PARARAJASINGHAM: I can answer that, but I would like to do it in the absence of the witness.

COMMISSIONER: Yes, very well. Would you mind -

40 **<THE WITNESS WITHDREW AT 10.58 AM**

MR PARARAJASINGHAM: Commissioner, as I hope is evident from my questioning, we say that there has been this sort of evolution in the account of Mr Green. It starts such as it does on 5 May in the first private examination, and over time we say that there are these important sort of changes and they prompted by various things, we say. Now, the importance of this witness leading into the public examinations, understanding that this Commission had formed - I'm not being critical - had formed a view about his evidence, in my submission informs what he does and what he's done in this public examination, which,

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as I will demonstrate, in a moment, is further lock in on this account and not only did that, but we will be saying ultimately, embroider all kinds of detail that he was unable to do when this was first raised. So the question really just goes to his motivations in part to proceed that way.

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COMMISSIONER: Well, yes, I will permit the course of cross-examination.

MR PARARAJASINGHAM: It's really just one or two questions.

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COMMISSIONER: I will simply point, as you're aware, in dealing with recollections there is a great deal of understanding and experience in the environment, both judicial and forensic.

MR PARARAJASINGHAM: And I rely on that, yes.

15

COMMISSIONER: Which enables a more realistic assessment of reliability and credibility than is likely to have been had by the ordinary lay person.

MR PARARAJASINGHAM: Yes.

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COMMISSIONER: I'm using my language carefully for obvious reasons.

MR PARARAJASINGHAM: Yes.

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COMMISSIONER: But this is a matter upon which I think you are entitled to explore and in due course will make submissions which I will need to deal with.

MR PARARAJASINGHAM: Yes.

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COMMISSIONER: Yes, you can bring Mr Green back.

<THE WITNESS RETURNS AT 11.01 AM

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MR PARARAJASINGHAM: Mr Green, let me ask that question again. So you will recall I was really just exploring with you your state of mind following the publication of the reasons for decision to hold a public examination, in particular matters raised by the Commissioner in that report. And I think you agreed with me that you understood the Commission had formed a favourable view of your evidence from the private examinations. You agreed with that. Yes?

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MR GREEN: Yes.

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MR PARARAJASINGHAM: And my question then is this: You must have understood that there was an expectation, or at least it was anticipated that you would say similar things in the public examination as you had said in the private examinations. Do you accept that?

MR GREEN: Yes.

MR PARARAJASINGHAM: Now, the public examination commenced 10 August 2023, and you give evidence on that day. If I could just take you to transcript - so this is in the public examination transcript 60. So page 60, line 20. And I think it will be brought up. You don't have - okay. Sorry, so this is just from the public examination. And you were asked, this is at page 60 - you were asked about a conversation with Ms Cross, and you say this. This is at line 20:

10 *I will try to put -*

Sorry, perhaps can the witness be given a copy at least? I think in fairness he should -

COMMISSIONER: I think we should be able to manage that.

15

MR PARARAJASINGHAM: This is from the public transcript on 10 August.

COMMISSIONER: I should point out to you also in fairness, that of course the Commission had a great deal more evidence than merely that of Mr Green.

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MR PARARAJASINGHAM: I have no doubt. Yes. I'm going to go to one extract on the 10th at page 60 and another extract on the 11th at page 107. I just got it from the website, if that's - I mean, it doesn't bother me if you give -

25 COMMISSIONER: Thank you, Mr Hassall.

MR PARARAJASINGHAM: So you should have there page 60. Do you see that, Mr Green, at the bottom?

30 MR GREEN: Yes.

MR PARARAJASINGHAM: Right. And just kind of -

MR GREEN: Line 20ish?

35

MR PARARAJASINGHAM: Yes, just scanning your eyes just above that, you will see you are being asked about a conversation with Mr Cross. Do you see that?

MR GREEN: Yes.

40

MR PARARAJASINGHAM: And then I simply want to draw this to your attention at line 20 you say this:

45 *I will try to put this from her side of things. "I have been summonsed down to the minister's office to talk about Campbell. Josh says Manteena is not to get it. There is problems with the Secure Local Jobs and industrial relations performance."*

And then it goes on. Do you see that?

MR GREEN: Yes.

5 MR PARARAJASINGHAM: And if you just keep reading down to, say, line 36. Again, that's up on the screen, I see. Perhaps you can retrieve your - you will see at line 36, you say:

10 *It's being evaluated. I can't recall any more specifics than that, but the next step in the evaluation will be there will be a report prepared and it will - it will, you know, come up for a decision. Then so, Rebecca then I think restated that, you know, the Min's office has a view on it and, again, you know, Manteena is not to get the job.*

15 And then it goes on. Mr Green, you accept you provide an account of the conversation with Ms Cross in which you do not express any equivocation about whether the word "minister" or "minister's office" was used. Do you accept that?

MR GREEN: Yes.

20 MR PARARAJASINGHAM: You express no uncertainty about any reference to "Josh". Do you accept that?

MR GREEN: Yes.

25 MR PARARAJASINGHAM: And you are also able to provide direct quotes, it appears. Do you accept that?

MR GREEN: Yes.

30 MR PARARAJASINGHAM: Now, we go over to the second day of the public hearing, and this is the first occasion in the public hearings in which you were asked about any conversation with Mr Ceramidas. Can I ask that page 107 of the public examination transcript come up. That's day 2. We will just wait for that to come up on the screen, Mr Green. Yes, thank you. You will see that on the screen, Mr Green. As I said, this is the
35 first occasion you were asked about any conversations with Mr Ceramidas. If you can kindly cast your eye down to line 27, page 107. This appears, Mr Green:

40 *Joshua Ceramidas, yes. At some point before the text exchange, I had it between 7.30 and 6.46, but my recollection with Josh, it was during daylight hours, not at that time of night. And we had had a conversation, and Josh in that conversation had given his support to transferring money within capital works budgets to add more dollars into the Campbell upgrade project.*

Counsel assisting:

45 *Now, can we deal with that conversation in detail, please.*

You say yes. Counsel assisting:

Where do you recall that it happened?

5 Answer:

Via mobile phone. I recall I was in 220 Northbourne Avenue. I wasn't on level 5. I think I was down on level 1, which is where Infrastructure Capital Works and Finance sat at the time. And I received a call from Joshua Ceramidas.

10

Question:

He called you?

15 Answer:

He called me.

Question:

20

And how did the conversation proceed?

Answer:

25

Normal pleasantries along the way. Then - trying go to his voice- "I want to talk to you about Campbell, has Katy spoken to you yet?" And I said, "yes, Katy has spoken to me." "What did she say?" I repeated that Min's office doesn't want Manteena or "you don't want Manteena to get the job because of industrial relations issues and Secure Local Jobs pieces and that's the outcome we are going to - we need to achieve." Then I think he asked, "Is there any other issues that I need to be aware of, any other pieces I need to be aware of in the process?" I said, "Yes, we have a budget issue. Everything is over budget. We, you know, either way we need more cash. We don't want to have another Margaret Hendry". And Josh gave his support to, you know, finding more money if needed and, if need be, going asking Treasury for more money to complete the project, and sorry, his comment was, "Let's not make it another project where the government chases the cheapest bidder."

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35

You heard me read that to you, Mr Green?

MR GREEN: Yes.

40

MR PARARAJASINGHAM: Do you accept that now - by now, I mean 11 August 2023 - you are able to pinpoint the time of this call with Mr Ceramidas?

45

MR GREEN: Yes. Because we were talking about a text exchange before that, and clearly from the context of the text exchange, that conversation happened before that. So that's why it was in that 7.30 to 6.46 or whatever that time range was.

MR PARARAJASINGHAM: Yes, thank you. So that's your explanation for why you were able to pinpoint that time of the call. Is that what you've just done?

MR GREEN: Yes.

5

MR PARARAJASINGHAM: Okay. You now, can I suggest, recall the precise location of the call; correct?

MR GREEN: Yes.

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MR PARARAJASINGHAM: You now are able to provide direct quotes from this call?

MR HASSALL: I object to the insertion of the word "now" into these questions. The witness hadn't been taken to previous testimony about this.

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COMMISSIONER: I don't think you are implying as distinct from on an earlier occasion, are you?

MR PARARAJASINGHAM: No.

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COMMISSIONER: What you are saying is, as it happens at that moment of being asked the questions, you were able to recall the conversations.

MR HASSALL: I withdraw the objection.

25

MR PARARAJASINGHAM: No, no.

COMMISSIONER: Or are you comparing it to earlier evidence?

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MR PARARAJASINGHAM: That's what I'm -

COMMISSIONER: I must say, I don't recall the earlier evidence to which you took him.

MR PARARAJASINGHAM: I've taken him to all of it and -

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COMMISSIONER: But perhaps I have overlooked it. I'm sorry if I'm not concentrating sufficiently. But I don't recall that you - you certainly took him in detail to his conversation with Ms Cross about -

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MR PARARAJASINGHAM: Yes.

COMMISSIONER: - the minister's office, but that now is a third-hand conversation, obviously.

45

MR PARARAJASINGHAM: Yes, yes.

COMMISSIONER: But I don't recall you taking him to any earlier account about his conversation with Mr Ceramidas directly.

5 MR PARARAJASINGHAM: No, with respect, I absolutely did. It's the first thing I did in - when I questioned him on the first examination, the first private examination, Commissioner, that was yesterday. So -

MR O'NEILL: 1445, you are looking for? 15 May, 1445.

10 MR PARARAJASINGHAM: No, much earlier. Went from 5 May. I mean, I would prefer to do this in the absence of the witness but we -

COMMISSIONER: We can do this in the absence of the witness if you prefer.

15 MR PARARAJASINGHAM: Yes, let's do that, please.

COMMISSIONER: Yes, would you just - it's simply, Mr Green, so you are not embarrassed by some suggestion that you made some adjustment.

20 <THE WITNESS WITHDREW AT 11.14 AM

COMMISSIONER: Sorry, you say you asked him yesterday, do you?

25 MR PARARAJASINGHAM: Yes, at the beginning. So on 5 May, 2022, Commissioner, if I asked him about what appears at page 158 of that transcript. Your Honour will - Commissioner, you will recall this is when - so he was asked by counsel assisting, so this is page 158 of 5 May 2022 private examination, he was asked this:

30 *And can you, to the best of your recollection, can you tell us what he told you.*

This is in relation to Mr Ceramidas:

To the best of my recollection, it was tail end.

35 Commissioner, you recall this:

It was along the lines - essentially - assumed -

40 Does that -

COMMISSIONER: And that -

45 MR PARARAJASINGHAM: Okay, sorry, it will be in yesterday's transcript. It wasn't up when we looked at 9, but it's now up. We have checked online. Apparently it's - they have got it, but we don't have it.

COMMISSIONER: No, I will accept your assurance.

MR O'NEILL: It was. I can say I have reviewed the transcript, and this was addressed.

COMMISSIONER: Right.

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MR O'NEILL: I mean, I know the answer to the problem, but I will wait until my learned friend is finished.

MR HASSALL: I withdraw the objection.

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MR PARARAJASINGHAM: So I am putting, Commissioner, that he's saying -

COMMISSIONER: That he's changed his evidence.

15

MR PARARAJASINGHAM: Yes, and he's saying things now that he didn't say a year earlier.

COMMISSIONER: Very well. Well, it speaks for itself, of course. You are perfectly entitled to cross-examine him about it. Yes, bring Mr Green back, please.

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<THE WITNESS RETURNS AT 11.16 AM

MR PARARAJASINGHAM: Mr Green - just bear with me, sir. I've lost my spot. So I have just taken you through that account that you gave on 11 August 2023, Mr Green. And let me be clear what I'm suggesting to you. And you will recall that I asked you some questions about this conversation. When you were asked about it on 5 May 2022, in your first private examination - you will recall I did that yesterday?

25

MR GREEN: No, I actually don't.

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MR PARARAJASINGHAM: Really?

MR GREEN: No, sorry.

35

MR PARARAJASINGHAM: Okay, perhaps we can put up - perhaps we can put up my questions from yesterday. Yes, just to assist you, Mr Green, we are going to put up my questioning on what you said about this conversation on 5 May 2022 at your first private examination. So yes, if we can start at page 302 of yesterday's transcript. So, Mr Green, just have a look at the screen there and - okay, so just casting your eye down there, you see I'm taking you to what you said. This is at your first examination. And then at about line 27, you see I've taken you to what appears, which was:

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Can you recall the name?

45

Answer:

Joshua Ceramidas.

Just pausing there, you accept, confined to that answer, you used the word "I think" which reflects some uncertainty or recollection as of 5 May 2022. Do you accept that?

5 You said:

Yes. The "I think" says that but I went through it.

Is this kind of ringing a bell, Mr Green?

10

MR GREEN: Yes.

MR PARARAJASINGHAM: And I asked:

15 *And then picking up from line 27 at the same page, you were asked this question: "And you can to the best of your recollection, can you tell us what he told you?"*

Answer - just go over the page, please:

20 *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 that the Director-General had passed the message on to me or briefed me about what needed to be accomplished.*

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It goes on:

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?

30

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.

I read that to you, and it goes on. And I say:

35

You accept that confined to this answer, you do not purport to quote Mr Ceramidas?

Answer:

40 *No, it's my recollection of my understanding of the conversation.*

And I say:

45 *Yes, and as at 5 May 2022, you were unable to recall the precise words by Mr Ceramidas; correct?*

You say:

I don't think I was asked for the precise words there and I didn't volunteer any precise words.

5 Then:

Right. So is your answer yes to my question? I will ask it again: as at 5 May you were unable to recall the precise words used by Mr Ceramidas.

10 *I want asked for -*

I think it should be wasn't -

15 *wasn't 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.*

I say:

20 *Well, the question you were asked is this, "can you, to the best of your recollection, can you tell us what he told you." Now you must have understood that to be questioning, seeking the content of a conversation; correct?*

You say:

25 *He hasn't asked me and the question to - can I recall the exact words. And the Commissioner, as I have learnt, when he wants me to go to the exact words or points in the system -*

Next page, Commissioner intervenes. And says, question:

30

"What he told you" surely can only mean what he said. Do you find that difficult to accept?

And I intervene for some reason. And then:

35 *Would you give it to another interpretation.*

And then you say:

40 *Commissioner, can I raise a matter.*

Sorry, that's -

MR O'NEILL: Mr Hassall.

45 COMMISSIONER: I think we tried to extricate ourselves from the pool of overspeaking and you started another line of questioning.

MR PARARAJASINGHAM: Yes, so if we just go on to the next page, 305, there's just one further reference that I think is relevant. Line 2:

5 *Yes, the question was, "Can you to the best of your recollection can you tell us what he told you."*

This is at line 14:

10 *What did you understand of that question as being expected of you?*

Answer:

15 *I was being asked about the content of the conversation and I think I answered about - my answer reflects what I remembered about the content of the conversation as opposed to the exact words.*

Then I took you over to page - transcript page 159, and this is asked from line 13:

20 *Did you feel that Mr Ceramidas was giving you a direction or was he expressing a general preference?*

Your answer:

25 *I felt that he was checking in that I understood what he told Katy.*

Answer - question, rather:

Did he say it in as many words?

30 Then you say:

It was a "has Katy told you" that kind of conversation.

It goes on, if we can go over the next page.

35

MR GREEN: So - so -

40 MR PARARAJASINGHAM: There is just one further reference I think you - before I come back to it, and I think it's a different point, but I come back to something else I think. So if we can go over to page 306, please. Just read that to yourself. I will draw your attention to -

MR GREEN: Yes, I've read it.

45 MR PARARAJASINGHAM: Yes. Go over to the next page, please. Sorry, there's just one - okay. Next page, please. The following page, please. Okay, here we go, line 24, I say:

5 *Yes, fine. You assumed if we just go to page 161, please and it's transcript 161 line 38. Counsel assisting then asks this question: "Just a follow-up question, if I may, Commissioner. The conversation with the chief of staff, when does that occur? Can you place that at all?"*

Answer:

10 *No, sorry, look in that scale of emails, yes, I'm not sure. After Katy returned from leave.*

And the Commissioner asked you:

Would it have been after the BAFO or before, do you think?

15 *Look, sorry, question, I don't know, okay.*

MR PARARAJASINGHAM: Go over the next page:

Was it a one-off conversation?

20 Sorry, if we go over to the next page, please.

COMMISSIONER: And then I mean no personal criticism, but I think with relief we reached the end of the day.

25 MR PARARAJASINGHAM: It was a - just bear with me, okay. So, sorry, I don't know if we have covered this. So I certainly asked you this yesterday. Perhaps I skipped over it, in - when it came up on the screen:

30 *You were asked this on 5 May 2022, it's at transcript 159, by counsel assisting then. So she says to you: "Did you feel that Mr Ceramidas was giving you a direction or was he expressing a general preference?" "I felt that he was checking in that I understood what he told Katy." "Did he say that in many words? Was it a 'has Katy told you kind of conversation?' It was a - I don't know, yeah.*

35 And then draw your attention to this:

Counsel assisting asks you, "What did he say exactly?" And your response, "Sorry, I cannot remember, but my - my recollection" -

40 And it was - yes, sorry, so the reference is at 305 - we must have skipped over it - of yesterday's transcript where I took to you what counsel assisting on 5 May asked you, which is:

45 *What did he say exactly?*

And your response was:

Sorry, I cannot remember.

And then you go on to say:

5

But my - my recollection, and then it was literally a couple of lines at the end of a longer conversation, and I think it was very much, it was definitely a check in as opposed to [John] you need to do this -

10 (live stream paused)

MR PARARAJASINGHAM: Does that sufficiently refresh your memory, Mr Green, as to this line of questioning yesterday?

15 MR GREEN: Yes.

MR PARARAJASINGHAM: I'll come back to the question that I was asking you now. So what I was doing, so we can bring back up, please, transcript 107 from 11 August 2023. I'm nearly done here, Mr Green. So just back from where we were, so now let me put it to you, in this exchange here you are able to now recall the precise location of the call. Do you accept that?

MR GREEN: I was never asked the precise location of the call in the first series of interviews on whatever date that I can recall. But yes, can I recall the precise location of the call on - in this line 35.

MR PARARAJASINGHAM: Sorry, are you saying that when you were questioned on 5 May, you had in your mind the location of the call, but you just didn't volunteer that?

30 COMMISSIONER: No, what he said was, he was not asked where it occurred.

MR PARARAJASINGHAM: Yes, I understand that.

COMMISSIONER: And that is perfectly clear from the passage which you have read.

35

MR PARARAJASINGHAM: I'm testing that, Commissioner, with respect. Because it seems like an odd response, if I can put that. So let me ask you this: Are you saying that as at 5 May 2022, in your mind, you knew where the conversation occurred, but because you weren't asked the question, you didn't reveal that information.

40

MR GREEN: Yes.

MR HASSALL: I object to that question. I don't think this can be of any assistance to the Commission.

45

COMMISSIONER: There's a great deal at stake for Mr Ceramidas. I will allow it.

MR HASSALL: May it please.

COMMISSIONER: You are being asked, I think, whether you deliberately held that information because you weren't asked. Is that the thrust of your question?

5

MR PARARAJASINGHAM: Yes, that's the question.

MR GREEN: I didn't think it was relevant to the questions I was asked at the time there, and I don't know if I would have remembered it there. But again, that's my recollection now of where that conversation happened. And if I had have been asked that question on whatever date that was in May 2022, I may have recalled that at the time. I don't - I don't recall whether it was in my mind at the time or not to do that, but I - looking at the transcript I wasn't asked and there was no question that would lead me to say where did you have that conversation. It was how was that conversation and what's your recollections of it. So -

15

MR PARARAJASINGHAM: And do you accept that now for the first time, you are able to provide direct quotes from this call?

MR GREEN: So I'm not sure they're direct quotes. I'm trying to put it in his voice as it says there. So I'm recalling the conversation. I'm putting it how I remember it. I - you know, that's -

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COMMISSIONER: No, but that's not the question. The question is this: it seems earlier you were asked for his words, and you were unable to give his words. Then you were asked for his words, and you were able to give his words. That's really the point counsel has made, and I think he is going to ask you how did that development occur. Is that the thrust of your questioning?

25

MR PARARAJASINGHAM: Well, firstly, do you accept that, that here for the first time you are able to recall the words used?

30

MR GREEN: I - yes, I have attempted to put the conversation into voice and words, yes.

MR PARARAJASINGHAM: Yes. And that was something you were unable to do on 5 May 2022. Do you accept that?

35

MR GREEN: Yes.

MR PARARAJASINGHAM: Right. And so how is it, with the passage of time, your memory as to what was said in this conversation has improved, Mr Green?

40

MR GREEN: Because you sit down and you think about the key elements of it, having given testimony, you trawl my memories, or I trawled my memories, and I've tried to recall back to these things. And sometimes on more deep reflection, you can recall more of it and go back and do that and spend time thinking about the important conversations with a

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degree more time than is given when you're - it is first raised with you in questioning in the Commission.

5 MR PARARAJASINGHAM: I'm going to suggest two things to you. Firstly, as we have already established in the questioning in the last half a day, you have - you were given ample opportunity to turn your mind to not just the various events that occurred, but the important conversations that took place. You were given that opportunity; correct?

10 MR GREEN: Yes.

MR PARARAJASINGHAM: From before speaking to the Auditor-General; correct?

MR GREEN: Yes.

15 MR PARARAJASINGHAM: All the way through your examination - your private examinations; correct?

MR GREEN: Yes.

20 MR PARARAJASINGHAM: And indeed right up to the point of this public hearing; correct?

MR GREEN: Yes.

25 MR PARARAJASINGHAM: You gave evidence yesterday that you had access to notes, to - you know, you made - you had reference to documents, things of that nature. So it's right to say, isn't it, that you have accepted this?

MR GREEN: Yes.

30 MR PARARAJASINGHAM: The second proposition I put to you is this, Mr Green: You are giving evidence about an unusual occurrence, are you not?

MR GREEN: Yes.

35 MR PARARAJASINGHAM: If this version that you've given on 11 August 2023 at transcript 107 to 108 is to be believed, a staff member, or rather a chief of staff, has given you a direction about the outcome a project; correct? That's the effect of this, isn't it?

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

MR PARARAJASINGHAM: What do you think the effect of this is then?

MR GREEN: Sorry, I've now lost - are you talking about this conversation?

45 MR PARARAJASINGHAM: Sorry, I'm talking about the -

MR GREEN: So, as I've said there, he's passing on like a check in. He's asking me did Katy speak to me. As I said, it was different from when, say, Mr Ceramidas would ring up and say "this school need as a new air conditioner. Get one in there", kind of thing. That's what I would regard as a direction. This was very much a check-in style conversation.

5

MR PARARAJASINGHAM: So are you saying that you did not understand this conversation with Mr Green - sorry, with Mr Ceramidas, to be Mr Ceramidas giving you a direction about the outcome of this project?

10 MR GREEN: I understood it as Mr Ceramidas ringing me to confirm that Katy had passed on the view that he had given her.

MR PARARAJASINGHAM: Right. But on your account, this is the minister, or someone on behalf of the minister, interfering in a decision, is it not, on your account?

15

MR GREEN: Yes.

MR PARARAJASINGHAM: Right. Now, that's not something that happens on a regular basis, is it, Mr Green?

20

MR GREEN: No.

MR PARARAJASINGHAM: Right. So can I suggest to you that it's the type of interaction that one wouldn't forget. Do you accept that?

25

MR GREEN: Yes.

MR PARARAJASINGHAM: And can I suggest to - and also, you accept that the hesitation and uncertainty that you expressed about the terms of this conversation on 5 May 2022 have dissipated. Do you accept that?

30

MR GREEN: Yes.

MR PARARAJASINGHAM: And you also said on 5 May 2022 that this conversation was a couple of lines at the end of another conversation confined to what appears at 107 to 108; you appear to have abandoned that position. Do you accept that?

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MR GREEN: No, I still think there was another conversation beforehand. I can't remember what it was, but I think it was more about soap or hand sanitizer or whatever it was, and it was at the end of that. But it was - there was - it wasn't a long conversation all up. So it might have been more than a couple of lines, but it was - it was the tail end of another conversation.

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MR PARARAJASINGHAM: But that's - but you accept that's not what is set out in your account at 107 to 108. Do you accept that?

45

MR GREEN: So I haven't talked about the piece at the start there. I've talked about the - the relevant section to this project, which is the Campbell modernisation tender piece.

5 MR PARARAJASINGHAM: So is your answer yes, that appears at 107 to 108, you don't give evidence about - to the effect that this conversation was at the tail end of another conversation.

MR GREEN: No, I don't in this - confined to this, whatever.

10 MR PARARAJASINGHAM: And can I just suggest, Mr Green, that the true position is that you have no - you have no recollection - you have no firm recollection of this conversation with Mr Ceramidas. Do you accept that?

MR GREEN: No.

15 MR PARARAJASINGHAM: Can I suggest that you have constructed the conversation.

MR GREEN: No. Sorry, I don't agree.

20 MR PARARAJASINGHAM: And -

COMMISSIONER: Are you putting it to him that this conversation or its substance -

25 MR PARARAJASINGHAM: Substance. That's what I'm coming to, yes. So to be clear, what I'm suggesting to you is you have constructed a conversation in which Mr Ceramidas said anything to the effect that Manteena should - withdraw that. Let me start again. I will just put it plainly. At no point did Mr Ceramidas firstly give you a direction as to the outcome of the procurement process. Do you accept that?

30 MR GREEN: Yes, I accept that. He didn't give me a direction.

MR PARARAJASINGHAM: And can I suggest that - I will just - just one moment. Commissioner, that's the cross-examination.

35 COMMISSIONER: Sorry, did you want to say anything? I'm sorry, you seem to be ready to get to your feet.

MS MORGAN: No, no, no.

40 COMMISSIONER: All right. Sorry, I misunderstood.

MS MORGAN: Only to - sorry, Commissioner - only to say that yesterday we left it as - and I hope -

45 COMMISSIONER: You were going to get instructions.

MS MORGAN: Yes, and I have passed that on to counsel assisting.

COMMISSIONER: All right. Well, I don't think we need to say anything else.

MS MORGAN: Thank you, Commissioner.

5

COMMISSIONER: I understand. Right.

MR O'NEILL: Commissioner, I note the time. The next witness that I intend to call is Mr Smith.

10

COMMISSIONER: All right. So -

MR O'NEILL: In respect of this witness, I - it's my submission, respectfully, that he not be excused at the moment - not be released but he be excused, and those issues have been canvassed, I think, as to the way in which he can view what's happening or not.

15

COMMISSIONER: I realise it's an imposition. You've come - given evidence quite often now, Mr Green. But as you will have appreciated from the many proceedings the last few days, it is an unfolding matter, and I'm afraid there will be other matters upon which it will be necessary to obtain your evidence. So I can't release you at present, but we will liaise with your legal advisors as to when and how, in fairness to you, that can be arranged. Yes, very well, I will take the - what is the time?

20

MR O'NEILL: It's about 20 to -

25

COMMISSIONER: So I will take a 20-minute adjournment.

<THE WITNESS STANDS DOWN

30

<ADJOURNED 11.43 AM

<RESUMED 12.11 PM

COMMISSIONER: Mr Smith, do you prefer to be affirmed or give your evidence on oath?

35

MR SMITH: I will give my evidence on oath.

COMMISSIONER: Very well.

40

<ZACHARY ALAN SMITH, SWORN

COMMISSIONER: Perhaps for the record, your counsel can indicate his presence. I will confirm leave.

45

MR DOWLING: Mr Dowling. Instructed by -

COMMISSIONER: Thank you, Mr Dowling.

<EXAMINATION BY MR O'NEILL

MR O'NEILL: Thank you, Commissioner. Mr Smith can, you provide your full name?

5

MR SMITH: Zachary Alan Smith.

MR O'NEILL: What is your occupation?

10 MR SMITH: I'm an official of the Construction, Forestry, Mining and Energy Union.

MR O'NEILL: And you are a resident of the ACT?

MR SMITH: Yes.

15

MR O'NEILL: Can you just help the Commission with a brief precis or a brief summary of your biographical details which led to you being in the current role that you are in?

MR SMITH: Yes. I currently hold two roles with the union. I'm the national secretary of the construction and general division of the union, a position I've held since 3 April this year. In addition to that, I am also the ACT branch secretary of that division of the union, a position that I've held substantively since February of 2022, but I was acting in that role from August of the preceding year. Prior to that, I was the branch assistant secretary of the ACT branch of the construction and general division from about June 2018. Prior to that, I have worked for the CFMEU both for the construction and general division and, previous to that, the forestry and furnishing products division as it was known then since 2007.

25

MR O'NEILL: Do you have any formal qualifications, that is, tertiary education?

30 MR SMITH: I studied undergraduate law, didn't complete the degree. I also have a Certificate IV in Industrial Relations.

MR O'NEILL: When you say, "the union", what union is that?

35 MR SMITH: It is the same union. I have worked for different divisions, but it is the Construction, Forestry - still at this point, sorry, still the Construction, Forestry, Maritime, Mining and Energy Union at that point.

MR O'NEILL: And that's its name here in the ACT and outside of the ACT?

40

MR SMITH: Yes, that's right. It's a federally registered entity under the Fair Work Act.

MR O'NEILL: Now, when I use the words Secure Local Jobs Registrar, do you know what that is?

45

MR SMITH: I do.

MR O'NEILL: And what is your understanding of what the role of the Secure Local Jobs Registrar is?

5 MR SMITH: The job of Secure Local Jobs Code Registrar is to administer the Secure Jobs Code here in the ACT. It's a statutory appointment made by the Territory's Minister for Industrial Relations. That role is to not only educate industry participants about the Code but also to receive complaints and issue sanctions in respect of breaches of the Code.

10 MR O'NEILL: And can you provide some background with how it was that the Secure Local Jobs Code came about and relevantly the union's involvement in that process?

15 MR SMITH: Yes. As - as you're aware, Mr O'Neill, there was a MOU in place prior to the establishment of the Code. Our union and others advocated for the establishment of a procurement code which would codify the sort of behaviour that government expects from people who wished to tender and perform government works. We were specifically concerned that we needed a formal legislative structure to codify that sort of behaviour. And so we advocated with government - to government, I should say, that a code should be established, and that code would set out the expectations in respect of behaviour of building industry participants, in respect of contractors in our world that wish to tender for government work.

20 MR O'NEILL: And at a high level, what is it that were the concerns - the principal concerns of the union about the operation of the MOU which was the reason why there was advocacy for the Code?

25 MR SMITH: Sure. Well, it was my experience that it was difficult for public servants to engage with the MOU, that it wasn't a sufficient legal basis for public servants to make decisions on procurements. It facilitated information sharing and it facilitated process where unions could share concerns with government about contractors. But it didn't carry the weight - sufficient weight that, you know, I believe that government officials could make decisions based on that information in every circumstance.

30 MR O'NEILL: The Code was implemented in about 2019. Is that correct?

35 MR SMITH: That's correct.

MR O'NEILL: And then there was a body set up which was called the Advisory Council. Is that correct to your understanding? And you were a member of that council?

40 MR SMITH: That's correct.

MR O'NEILL: And what was, firstly, your understanding of the operation of the council?

45 MR SMITH: The council is to oversee or supervise the administration of the scheme. The council doesn't involve itself in specific complaints or investigations. And in fact, there isn't any information shared in respect of any investigations and complaints. So the sort of things that the council is looking at is how are we educating industry about the obligations

of the Code, how many entries have registered to be Code compliant - and an important part of the Code is that entities register as Code compliant and undergo an audit to prove that they are paying their workers the entitlements that they should be paying them and doing other things. And we also have a broad level overview of the number of complaints and the type of complaints that are being received and in broad terms of sort of actions that the Registrar is administering in response to those complaints.

MR O'NEILL: Did the advisory council deal with the specifics of any of those individual complaints?

MR SMITH: No.

MR O'NEILL: To the best of your recollection?

MR SMITH: No.

MR O'NEILL: And so who were members, to the best of your recollection, of the advisory council?

MR SMITH: Well, I was an initial member of the council and I'm still a member to this day. There were three members that were appointed on behalf of workers. They were myself, Lyndal Ryan, and initially it was Alex White. He subsequently left the ACT, and his position has been replaced twice now. And then there were three other appointees made by the minister. My best recollection is that the initial three was Michael Schaefer, who was the CEO of the Canberra Business Chamber, a contractor or an employer in the cleaning sector, and Meredith Whitten.

MR O'NEILL: And who was Meredith Whitten?

MR SMITH: I don't know her formal title now; she's public service. But I believe she chaired the ACT Government's procurement board at the time.

MR O'NEILL: And was the Registrar part of the council?

MR SMITH: They were.

MR O'NEILL: It was.

MR SMITH: As an ex officio member at that point.

MR O'NEILL: Yes. So is it your understanding that the Registrar was involved in any meetings that the council had at any time?

MR SMITH: That's right.

MR O'NEILL: And how often did you - do you recall that the council met to discuss any of these issues?

MR SMITH: The council would, on average, meet once a quarter. Meetings may be called on an ad hoc basis, though. For instance, the - there was a review of the Secure Local Jobs Code a couple of years ago and the council met more frequently as that review was being undertaken so as to facilitate the review process. But as a general rule of thumb, it would meet quarterly.

MR O'NEILL: Now, there was a member - sorry, the Commission has received evidence that the Registrar relevantly at or about the commencement - initial stages was a person identified as Mr Green. Do you know who I'm talking about when I say Mr Green?

MR SMITH: I do, Mr O'Neill.

MR O'NEILL: And do you have any interactions with Mr Green during the process of being on the advisory council?

MR SMITH: I do.

MR O'NEILL: What was your impression of him?

MR SMITH: He was diligent enough public servant, but I was critical of his performance as the Secure Local Jobs Code Registrar.

MR O'NEILL: And what was your critique, or what was the basis for your criticism, rather, of Mr Green's performance in that role?

MR SMITH: I had formed a view that he didn't sufficiently understand industrial relations or sufficiently understand industrial principles such that there were certain circumstances where the union was making complaints about the conduct of contractors, and he was failing to make a decision or otherwise dismissing the complaint when it was evident to us there had been clear breaches of the Code. And I think it's fair to say that we formed an opinion that he wasn't suited to this role and was, to be blunt about it, out of his depth.

MR O'NEILL: Now, your answer uses the collective, that is the collective pronoun "we." Who else was it that this was being communicated within the union, I assume by you?

MR SMITH: Sure. So the reason I use the collective "we" there, I don't make these complaints in my capacity as an advisory council member. The union would bring complaints to the Registrar. And there would be a number of people internally within the union that we would discuss complaint making with.

MR O'NEILL: And you said that the complaints were in relation to industrial - sorry, the complaint was about the Registrar's understanding of industrial relations matters. What specifically industrial matters were they in terms of at a more granular level?

MR SMITH: Well, the most prominent issue that we dealt with in this context during that period would have been the application of clause 15 of the Code. And there was some

5 difference of opinion there, where we had contractors that were blatantly breaching the obligations of clause 15, and the response that we got from Mr Green on a number of occasions was he would not act and didn't think he could act, and we asked on a number of occasions to give us the legal basis on which he was making that decision to not act. He didn't do so. He believed that there was some conflict with the Federal IR legislation, which wasn't the case because that issue had been tested before the Secure Local Jobs Code was promulgated. And the union had also received advice from council to say that these sort of obligations weren't in conflict with Federal IR legislation. So what it belied to us was a lack of understanding on the basis of which the Code is made and its interaction with the Federal IR legislation.

10 MR O'NEILL: When you say Federal IR legislation, you mean the Fair Work Act and any of the relevant instruments enacted underneath that piece of legislation. Is that fair?

15 MR SMITH: That's correct.

MR O'NEILL: And obviously then there was Federal legislation to that effect, there was also legislation in respect of work health and safety.

20 MR SMITH: Sorry, can you just repeat that statement?

MR O'NEILL: Yes. So there's federal legislation in respect of IR.

25 MR SMITH: Mmm.

MR O'NEILL: There's State-based legislation in respect of work health and safety.

MR SMITH: Yes, that's right.

30 MR O'NEILL: So those two pieces of legislation are operating in in relation to the way in which workers are legislated or the relationship in a way.

MR SMITH: Mmm.

35 MR O'NEILL: And then there is this - the Code which is a separate part around procurement specifically. Is that fair?

MR SMITH: That's correct.

40 MR O'NEILL: And, sorry, I think I interrupted your answer. You were talking about clause 15 of the Code. I'm going to try and get that up in a moment. And so were there specific contractors or persons with - for whom this issue had been identified by the union?

45 MR SMITH: That's right. We had made a number of complaints in respect of certain contractors that had, you know, acted contrary - contrary, sorry, I should say, to the clause 15, and the decision of the regulator under Mr Green was not to act and we still hold the

position it was incorrect and would also note that subsequent Registrars have acted to enforce the operation of clause 15 in any event.

MR O'NEILL: Right.

5

COMMISSIONER: The - as I understand it, but correct me if I am wrong, Mr Green asserted that he did not believe that the - as Registrar, he had the jurisdiction to make the kind of orders that you were seeking - the union was seeking. It was a jurisdictional point.

10 MR SMITH: Yes.

COMMISSIONER: He did not enter into the merits of the case being made, that is, whether in fact there was a breach, but said the question of breach was not within his remit. Is that fairly put, as you understood it?

15

MR SMITH: That - that is fairly put, Commissioner. One thing I would add is that at that point in time, we asked for the legal advice on which he made that decision and that was never forthcoming. So, you know, at -

20 COMMISSIONER: But he did assert that he had legal advice, I think in correspondence.

MR SMITH: He did assert that he had legal advice, but with the upmost respect, our position was then and is still now that that was incorrect, and that these matters had, in fact, been tested already and that there was not a conflict between the Federal and Territory laws in this respect.

25

COMMISSIONER: But the union nevertheless took no legal action in relation to his decisions?

30 MR SMITH: We didn't have standing to take legal actions. So as the Code stood at the time, once the decision of the Registrar was made, the only party that had standing to bring a review of that decision in ACAT was the certificate holder that was affected by the decision. So the union, whilst being able to bring the complaint at that point in time didn't have standing to bring a review of that decision to ACAT. So we had to rely on direct advocacy to -

35

COMMISSIONER: As a course of -

MR SMITH: To the Registrar, and I think, as we discussed previously, to the minister.

40

MR O'NEILL: And was that issue, that is the problem - the issue that you had identified with the way in which the Registrar was performing his role, was that elevated any other way, say, other than legally by the union?

45 MR SMITH: No, we - we had a series of meetings with Mr Green, and then we did write to the minister responsible for the Act. My recollection of the sequence of events here,

though, is Mr Green tendered his resignation as Secure Local Jobs Code Registrar before any meeting with the minister occurred though.

SPEAKER: Can I just have him clarify which minister.

5

MR O'NEILL: Sorry, just give me a breath. When you say minister, do you recall who the minister was for the administration of the Secure Local Jobs Code?

MR SMITH: Sorry about that. I should have been clearer. In all my answers to date when I refer to the minister, it is the Minister for Industrial Relations as the minister responsible for the Secure Local Jobs Code, which at that time was minister Suzanne Orr.

10

MR O'NEILL: Thank you. That will stop people jumping in behind me.

MR SMITH: Sorry, Mr O'Neill, I should - at the establishment of the Code the responsible minister was Minister Rachel Stephen-Smith, and by the point - sort of by the end of Mr Green's tenure, the minister was then Minister Orr.

15

MR O'NEILL: Thank you, Mr Smith. Thank you. Now, the letter - some part of the correspondence, if I can just take you there to close out this topic, if 2.0199 could be shown, along with all the pages up to 2.020 - 2.0202, and all the pages in between. Maybe if you scroll through them. So just pausing there, you see - you can see that there's a chain of emails. They commence on 2.0200 where Mr Smith - do you know who that person -

20

MR SMITH: I do know Mr Smith.

25

MR O'NEILL: Then acting as the Secure Local Jobs Code Registrar. Moving through, further emails, and then the top email attached is a further response from the - from Mr Green. And then if we track through to the next two pages, this is a letter from Mr Green to the union. Mr Fischer, who is he?

30

MR SMITH: He's a solicitor employed by the union.

MR O'NEILL: And that that is the response - one of the responses that you were referring to, isn't it, about clause 15 of the Secure Local Jobs Code?

35

MR SMITH: That's correct.

MR O'NEILL: Subsequent to that, the union responded, 2.025. This is on 27 November 2019. And you are familiar with this being the response?

40

MR SMITH: That's correct.

MR O'NEILL: And obviously copied to the relevant minister, Minister Orr, CC'd to the email - to the letter response from the union. And that accords with what - the evidence you have just provided. Do you agree?

45

MR SMITH: That's correct.

MR O'NEILL: Now, can you just help the Commission with the process by which the union would be informed of tenders and tenderers for procurement projects within the ACT as at August 2019 and onwards?

MR SMITH: Yes. So the process at that point, Mr O'Neill, was the ACT Government would cause for an email to be sent to Unions ACT which would be simply a - I'm not too sure how to describe the document. I know you've seen versions of it before, but it was a very simple document which identified the contract and the respondent contractors, and maybe an ABN number to identify them. And we would receive one of those documents - it's just a one-page document - for each tender where responses had been received. That would go to Unions ACT and then Unions ACT would distribute that to its affiliates, of which the CFMEU is one.

MR O'NEILL: Is - I'm going to show you a document, 2.0001. Does this look to be the style of document that you are talking about receiving from - well, this is obviously from ACT, but it has been sent to tenders mailing group, which is then forwarding on the Tenders ACT email. Is that what are you talking about?

MR SMITH: That's correct. And you will see there that Unions ACT is one of the recipients.

MR O'NEILL: Yes. If the page can then just be taken to 2.0003, this is a notification of tender submissions. This kind of document was the one - is this the kind of document that's attached to the email that we just saw previously?

MR SMITH: That's correct.

MR O'NEILL: And this one is in relation to the Campbell Primary School Modernisation Project, which is the subject of this inquiry. You see there that there's a number of suppliers who are identified. Did you have any familiarity with those suppliers as at the date that this tender submission was made?

MR SMITH: I had. I have familiarity with all but one of those - of those contractors.

MR O'NEILL: Which is the one this you didn't have familiarity with at that time?

MR SMITH: Zauner Construction Proprietary Limited. Our branch hadn't dealt with that company prior.

MR O'NEILL: Now, if I can take you to 2.0189, you see here, at the top of the page, it's a - you - I think forwarded on the notification of the delivery response received by the ACT Unions to Mr Hamilton, Mr Fischer, and you have CC'd Mr O'Mara. Do you see that?

MR SMITH: I see that.

MR O'NEILL: Who was Mr O'Mara at that time?

MR SMITH: Mr O'Mara was the branch secretary of the ACT branch of the union.

5

MR O'NEILL: Is it correct to say that he's your boss in a sense in respect of union matters. Is that fair?

MR SMITH: That's correct.

10

MR O'NEILL: And then Mr Hamilton?

MR SMITH: Mr Hamilton was an industrial officer with the branch. He was also a solicitor, but he worked in-house for the branch.

15

MR O'NEILL: And Mr Fischer is the in-house solicitor?

MR SMITH: He's another in-house solicitor.

20

MR O'NEILL: There you say:

Need to respond. I will discuss when I'm free.

Do you see that?

25

MR SMITH: I see that.

MR O'NEILL: Do you remember what you needed to respond to? Why it was that you felt there was the need to respond?

30

MR SMITH: I don't remember sending this email exactly, but we would respond to these tender submissions from time to time with concerns about contractors.

COMMISSIONER: Respond to whom?

35

MR SMITH: It would be - if we can go back to that previous document, there's a responsible agency or contract manager that's nominated on that document, and so there's - in these tender submissions, you will see there it's nominated as the Education Directorate.

40

COMMISSIONER: And what kind of response would be made?

MR SMITH: Well, this process was established under the MOU. So the MOU would invite unions to make submissions. And I haven't got the exact words of the MOU in my head, but it was to basically aerate concerns with their industrial relations, their treatment of workers, their ethical behaviour, WHS concerns. So this process was still operating under that MOU mechanism and not under any SLJC process.

45

5 COMMISSIONER: As a practical matter, though, how would a Directorate - let's assume that a contractor disputed the claims of the union - said there are no safety issues or we are complying with obligations and so on, it's an area which invites a fair bit of dispute. Do you agree?

MR SMITH: I agree.

10 COMMISSIONER: How would the Education Directorate resolve such disputes?

MR SMITH: Well, I think, Commissioner, what you - what -

15 COMMISSIONER: Well that's perhaps - perhaps I should be more precise. What was your expectation about how the disputes would be resolved?

MR SMITH: Our expectation would be that the matters that we are raising would be considered when the Directorate is making their tender assessments. A percentage of the assessment matrix was allocated towards industrial matters and safety and those sort of considerations. Admittedly, it wasn't generally a lot, but there was a percentage that was allocated towards - in the tender assessment process to consideration of such matters, and we would think - or we would expect that if we are giving evidence or information regarding those matters that that would form part of that tender assessment. But like I said -

25 COMMISSIONER: But would you have expected, as part of that process, that your complaints would have been passed on to the contractor to enable the contractor to respond to them?

MR SMITH: It's hard for me to answer that, Commissioner.

30 COMMISSIONER: I'm only talking about your expectations. I'm not asking about whether there was actually a process in place. But was it your expectation that in this particular case the Education Directorate would say, "Oh yes, the CFMEU has these problems with - shall we be candid about this - Manteena."

35 MR SMITH: Yes.

40 COMMISSIONER: And the response would or would not be - did you anticipate - to let Manteena know that and seek a response from Manteena to enable an evaluation of the significance of the complaints?

45 MR SMITH: I would expect that something would have been put to a contractor if we had raised concerns with them. Whether it's the exact word-for-word complaint or rather they get asked questions -

COMMISSIONER: Would you agree that a fair process would require that to be - that at least to be done? You can't take just one side of a dispute, can you? As a given. Do you agree or -

5 MR SMITH: No, I - I think that's a fair statement, Commissioner. It's a fair statement.

COMMISSIONER: And of course, part of the problem is resolving these disputes or attempts to resolve these disputes have been going on for a very long time and no ideal method of doing so has yet been developed.

10

MR SMITH: If I may, Commissioner, just going back to an answer I gave Mr O'Neill at the start, this is the sort of thing - what you are talking to now is the sort of thing that I was describing when I said the MOU didn't provide a good legal basis to deal with complaints, which is why myself personally and our union advocated for the establishment of a legislative instrument in the form of the Code where disputes could be - disputes could be received, they could be handled by an independent regulator, who as part of that investigation, here is the alternative, you know, version or gets the alternative version. This is the sort of thing that we sought, or that we were advocating to correct with the establishment of the Code.

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20

COMMISSIONER: Well, this particular procurement occurred, what, a year after the Code was in being or some time after it had been in being. Nevertheless, the union approached the Directorate - I understand you say under the then existing arrangements - but what I'm hearing you now say is that this should have been a matter for the - to be determined pursuant to the Code. Is that correct or -

25

MR SMITH: The union will avail itself of whatever processes we have at hand. If we have an issue that we want to raise, we will avail ourselves of whatever process.

30 COMMISSIONER: No, I entirely understand that. My question is not really aimed at that, as what was your expectation of what the process would be, is really my question.

MR SMITH: Expectation in this case?

35 COMMISSIONER: Yes.

MR SMITH: Expectation is the sort of matters that would be raised would be considered when they are doing the tender assessment.

40 MR O'NEILL: Within the Directorate?

MR SMITH: Within the Directorate.

45 MR O'NEILL: Now, your email is on 9 September 2019. At or about this time, was the union engaged in a program whereby it was starting to notify relevant entities within the ACT on a bulk sense about Secure Local Jobs compliance and other related IR issues?

MR SMITH: I believe you are right, Mr O'Neill, I just can't be certain of the timing.

MR O'NEILL: Right. Was that something that the program - so there was a program whereby the union did, effectively, a bulk notification. Is that fair?

5

MR SMITH: That's fair.

MR O'NEILL: Was that something that was raised at the advisory council as well, that we are going to be actively ensuring that across the Territory that the partners that are engaged in procurement have got notification about this?

10

MR SMITH: I don't remember raising it at the council.

MR O'NEILL: Okay.

15

COMMISSIONER: Can I just clarify, you weren't - were you on the council as a union representative or as a representative of the CFMEU? Do you understand the distinction?

MR SMITH: I do. I wasn't there as a representative of the CFMEU.

20

COMMISSIONER: It was because the make-up of the board required union representation and you were one of those representatives or you were the union representative?

MR SMITH: I think the language of the Act requires the minister to appoint three persons who represent the interests of workers or employees in the Territory.

25

COMMISSIONER: Right.

MR SMITH: It's not an allocated position for the CFMEU or any union. The minister has to appoint three persons who represent the interests of -

30

COMMISSIONER: So you were appointed in your personal capacity. I don't want to make too much of this, but you were in your personal capacity, and as it happened you held an office with the CFMEU. Does that set out the position?

35

MR SMITH: That's correct, Commissioner. If I was to resign from that position today there is no right that that position would go to another CFMEU official.

COMMISSIONER: Right.

40

MR SMITH: Yes.

MR O'NEILL: Now, can I take you to a document 2.0196. Now, looking at that document, you know what that is, don't you?

45

MR SMITH: I do.

MR O'NEILL: And what is it?

MR SMITH: It's a message between me and Josh Ceramidas.

5 MR O'NEILL: Who did you understand Mr Ceramidas was at this time?

MR SMITH: He was chief of staff to Minister Berry.

MR O'NEILL: Right. And at the top, it says:

10 *Have some issues to discuss within your Directorate.*

Do you know what that message was relating to?

15 MR SMITH: I don't remember sending this message, so I can't say for certain what issues are.

MR O'NEILL: Right. Okay.

20 COMMISSIONER: Do your best.

MR O'NEILL: Do your best. You can read the whole -

25 COMMISSIONER: Can you give us any - I mean, don't speculate, of course, but can you give us what you think is likely to be -

MR SMITH: Well, Commissioner - and admittedly, there is an air of speculation here, as I read the message and I've read it before, obviously.

30 COMMISSIONER: Yes.

MR SMITH: There are a number of issues that I can identify that were, you know -

COMMISSIONER: Alive.

35 MR SMITH: Occupying the union's attention at the time.

COMMISSIONER: Right.

40 MR SMITH: So I can identify those, but that is - there is an element of expectation there.

MR O'NEILL: Is one of those issues Campbell? The Campbell procurement project?

45 MR SMITH: Not specifically. One of the issues is, we were aware that there was a lot of capital works coming up in the Education Directorate. Hence that comment:

Would be good to get ahead of the curve.

MR O'NEILL: That's what you meant by:

You've got a whole bunch of building works coming up.

5

Meaning the Education Directorate has got a lot of buildings coming up.

MR SMITH: That's right.

10 MR O'NEILL: And you were speaking to Mr Ceramidas as a way to get your message into the Education Directorate; is that fair?

MR SMITH: Not necessarily. In this context, it would be to get information back from the Education Directorate about when is this work going to be procured, how big is the work,
15 when would construction likely commence and so on.

MR O'NEILL: Now, take it from me that the date of these text messages is 10 September 2019 from the extraction. So that's only one day after you've been notified of the relevant tenderers. Does that assist you, knowing that chronology, does that assist with your
20 recollection?

MR SMITH: It doesn't assist me in identifying the issues. And, you know, I'm aware of the timing. My best suggestion, again, not looking to speculate, is that the arrival of the Campbell tender submission prompted me to look more broadly at - or prompted me to
25 raise broader matters with the Education Directorate.

MR O'NEILL: Now, were you speaking with Mr Ceramidas regularly at this point in time?

MR SMITH: Yes, we spoke semi-regularly at this point in time.

30

MR O'NEILL: And how did you undertake those discussions?

MR SMITH: Look, it's hard for me to say, Mr O'Neill. There wasn't a standard form. More likely than not, we could just call each other or - yeah, it's hard for me to say that there was
35 a standard form of communication.

MR O'NEILL: And what about -

COMMISSIONER: Did you have communications with Mr Ceramidas that were outside
40 the Education Directorate area?

MR SMITH: Yes, I did, Commissioner.

COMMISSIONER: And broadly speaking, what did they encompass?

45

MR SMITH: Look, we - we would talk about matters - we both were active in the Labor Party. We would have matters about - discussions about matters within the party. We, from

time to time, discussed some matters which I would describe as quite personal matters which I would prefer not to -

COMMISSIONER: No, no, I'm not -

5

MR SMITH: - ventilate on camera.

COMMISSIONER: Yes.

10 MR SMITH: But yes, we would discuss things.

COMMISSIONER: So you had a relationship that went outside the mere - his job in the minister's office. That of course was a - he was a staffer, classically staffers are political appointments, and he was active in the party as you were, and so you came across each other in the party context and you had interactions in the party-political context. Does that fairly put it?

15

MR SMITH: That's all fair to say, Commissioner.

20 COMMISSIONER: Would you describe yourself as a friend or an acquaintance or simply people active in the same spheres?

MR SMITH: Yes, I described myself previously as an acquaintance. I think at different points, though, in our relationship we have probably been more closer than acquaintance. You know, and, you know, but I wouldn't say that we are - we are close friends by any measure.

25

COMMISSIONER: All right. Now, yes. All right. Thank you. Yes, Mr O'Neill.

30 MR O'NEILL: And so do you remember having any discussions with Ceramidas at or about this time - Mr Ceramidas, my apologies, with him at this time about specifically Campbell?

MR SMITH: I recall that we had a discussion after this message about the overall capital works program of the Education Directorate, of which obviously Campbell formed part of.

35

MR O'NEILL: In the context of those discussions, were any of the tenderers discussed?

MR SMITH: I don't remember discussing tenderers for Campbell with Mr Ceramidas.

40

MR O'NEILL: And is that question confined to that period of time or ever?

MR SMITH: I don't recall at any point discussing tenderers.

45 MR O'NEILL: Now, on 23 January 2020, and this is document 2.0212, you were sent an email from Mr O'Mara with - sorry, I withdraw that. I've got the date wrong. On 28 January 2020, you were sent an email from Mr O'Mara which forwarded on an email from

the ACT Tenders which attached notification of tender submissions responses from Lendlease and Manteena. So if we just scroll to the next page, and the next one. Do you see that?

5 MR SMITH: I see that.

MR O'NEILL: And then if you go back to - if I take you back to the first part, Mr O'Mara says:

10 *Shaw tendering gov work.*

Do you see that?

MR SMITH: I see that.

15

MR O'NEILL: What's that about?

MR SMITH: Shaw is the name of another builder that operates in the ACT.

20 MR O'NEILL: It's not - it's neither Lendlease nor Manteena.

MR SMITH: No, it's a completely separate company.

25 MR O'NEILL: Right. Now, returning to those two entities, did you in your capacity as a member of the union have any involvement with Lendlease Building Pty Ltd?

MR SMITH: Yes.

MR O'NEILL: And what was that?

30

MR SMITH: Well, they are one of Australia's largest construction companies, so deal with - and they have a number of jobs operating in Canberra and deal with them on a pretty regular basis.

35 MR O'NEILL: And in the ACT, Lendlease pays its workers in accordance with the Lendlease Building CFMEU New South Wales Australian Capital Territory, Victoria and Tasmania Agreement 2016. That's fair?

MR SMITH: It's not 2016 anymore. I think that's the -

40

MR O'NEILL: The old one.

MR SMITH: The old one. There's a new agreement now. They pay in accordance with the union negotiated enterprise agreement.

45

MR O'NEILL: And that union that they have negotiated with is the CFMEU as it was then.

MR SMITH: That's correct.

MR O'NEILL: And the CFMMEU as it was now.

5 MR SMITH: Yes.

MR O'NEILL: What about Manteena Commercial Pty Ltd? Same question, have you had any involvement with it?

10 MR SMITH: Yes, I have. Is your question what do they pay their workers?

MR O'NEILL: No, what was your involvement with them firstly?

15 MR SMITH: Well, you know, like any building contractor in the ACT, we visit their sites from time to time to attend to industrial safety issues. They had a - what you describe as a fairly hostile approach to the union and union activities on their site. But yes, we interacted with Manteena like we would any other builder in the ACT.

20 MR O'NEILL: That hostile relationship between Manteena and the union, how long had that extended for, to the best of your recollection?

25 MR SMITH: Well, you know, I moved to Canberra in 2013 at the start of 2013. I was working for the union previously, but I moved to Canberra in 2013, and from that point it had been like that. So at least in my experience of working as a union official in the ACT, that was how the relationship sort of proceeded.

COMMISSIONER: They were not alone in that, though?

30 MR SMITH: No, not by - not by any measure, Commissioner. It's a pretty robust industry and it's not to say that Manteena was the only builder that, you know, had issues with the union or vice versa.

35 MR O'NEILL: Now, one of the other projects that was mentioned in the WhatsApp exchange between you and Mr Ceramidas was one at Molonglo Valley. Did you have any familiarity with that?

MR SMITH: I do have familiarity with that.

40 MR O'NEILL: On 6 February 2020, there was a sod turning at the Molonglo Valley site. Do you remember that?

MR SMITH: I do remember that.

45 MR O'NEILL: And you attended that?

MR SMITH: I did attend that.

MR O'NEILL: And Mr O'Mara attended also?

MR SMITH: I don't recall Mr O'Mara being there.

5 MR O'NEILL: Okay. What about Mr Green?

MR SMITH: I - I don't recall Mr Green being there, but I understand that he was there. But I just don't have any recollection of being there.

10 MR O'NEILL: Do you recall any conversations you had with Mr Green at that -

MR SMITH: No, like I said, I don't even - I don't remember him being there, let alone talking - talk to him at that event.

15 MR O'NEILL: What about Mr Ceramidas?

MR SMITH: I don't recall Mr Ceramidas being there either.

20 MR O'NEILL: Okay. I want to drill now into more specifically the way in which the union took - approached Manteena and how it was going to deal with Manteena. You understand that topic, where I'm going?

MR SMITH: I understand.

25 MR O'NEILL: So, broadly, can you provide an initial indication as to how it was that the union was going to - in respect of Manteena, press its position about any industrial relations issues that it had?

30 MR SMITH: So, when you say "press", do you mean in general terms or press it specifically in the context of ACT government processes?

MR O'NEILL: ACT government processes.

35 MR SMITH: Okay. Well, we - our plan, or such as I recall it, is that we would write to the ACT Government outlining our concerns based on our history with Manteena, and identify why we thought there was concerns with the government awarding work and why those things should be taken into consideration when they make tender assessments.

40 MR O'NEILL: And to the best of your recollection, was that done?

MR SMITH: I can't say for certain whether that letter was sent. There is a draft letter there, which I thought had been sent.

45 MR O'NEILL: I will take you to that, just so that you can see it. It's at 2.1613. You will see here, this is an email from Mr Fischer to you. And then if we can go to the next page. Is this the draft letter that you were talking about?

MR SMITH: Just now?

MR SMITH: It is, Mr O'Neill.

5 MR O'NEILL: So you see there that it talks about a notice that you have received about - on 17 March 2020 in respect of Throsby.

MR SMITH: That's correct.

10 MR O'NEILL: And then the next paragraph deals with the way in which Manteena is bound by the Code.

MR SMITH: That's correct.

15 MR O'NEILL: And then a letter that was sent on 11 September 2019.

MR SMITH: That's correct.

MR O'NEILL: And on 17 March 2020, an attempt by the union to commence bargaining.

20

MR SMITH: Yes. I see that.

MR O'NEILL: Can you just fill in the Commission about the process of which - what is meant by commencing bargaining?

25

MR SMITH: Quite simply, we wrote to Manteena, along with other contractors. It wasn't actually just Manteena that was the recipient of that correspondence, asking them to start bargaining with us for an enterprise agreement that would regulate the pay and conditions of their workers.

30

MR O'NEILL: If I can show you page 2.1553. Is that the letter that the union sent to Manteena that you are talking about?

MR SMITH: Yes.

35

MR O'NEILL: And whilst it's signed by Mr O'Mara, if you take your eye down to the penultimate paragraph, you're listed as the person who is to be relevantly contacted if there are any questions?

40

MR SMITH: I see that.

MR O'NEILL: Did Manteena contact you with any questions about what was being proposed here?

45

MR SMITH: I don't remember them calling me. They wrote in response, but I don't remember any calls.

MR O'NEILL: And the response letter is at 2.1568, I think. Is that the response you remember receiving?

MR SMITH: That is the response I remember receiving.

5

MR O'NEILL: And your description of it is, it is fairly stark, I think you said.

MR SMITH: I think we used the word abrupt.

10 MR O'NEILL: Abrupt, sorry, I withdraw that. Thank you.

MR SMITH: It's the same outcome, I suspect.

MR O'NEILL: Yes.

15

COMMISSIONER: This was - this issue which focused on the status, I think, of the CFMEU as a eligible bargaining representative lay at the centre of the dispute with the Registrar, Mr Green. Is that right.

20 MR SMITH: Slightly different. Are you talking about the clause 15 issue that I raised before, Commissioner? The issue with clause 15 was employers or their agents delegitimising or coercing or encouraging workers, to revoke the bargaining status of bargaining representatives, which was a tactic that the MBA and other companies had utilised to basically, you know, in our view, unethically but possibly also unlawfully
25 exclude the union from bargaining. So it's not - whilst it's in the same area as bargaining representative, and the status of bargaining representatives, there's a connection in the sort of theme. It's not specifically a breach in our view of clause 15.

30 COMMISSIONER: I'm sorry, but I rather think your answer is a roundabout way of saying yes. That is, the status of the - who was or who should be the eligible bargaining representative was at the centre of the controversy with Mr Green, was it not? The union maintaining that it was the eligible bargaining representative, or that Manteena should permit it to take such steps as might be necessary in relation to communications with the workers to enable that position to be brought about.

35

MR SMITH: At a high level, Commissioner, even though the circumstances in this situation are different to the circumstances of some of the complaints that we brought previously under clause 15, I think you are right in saying that at that high level, the recognition of bargaining representatives, and specifically the recognition of the union as
40 the legitimate bargaining representative -

COMMISSIONER: Was the key point of difference between the union and Manteena.

MR SMITH: Yes.

45

COMMISSIONER: And the Registrar declined to adjudicate.

MR SMITH: In this situation, I don't think -

COMMISSIONER: Well, I don't think he was ever asked to.

5 MR SMITH: I don't think he was ever asked to. Yeah, correct.

COMMISSIONER: But more broadly, when the matter was raised in early 2021, declined to adjudicate when the matter was brought to its attention by the union.

10 MR SMITH: And that's correct, Commissioner. And like I said, we believe that the Registrar had every legal basis.

COMMISSIONER: Quite.

15 MR SMITH: And not just a legal basis but an obligation to act.

COMMISSIONER: That was the union's view, he had a contradictory view. Which was right was never resolved.

20 MR SMITH: No, he resigned before - from that role before -

COMMISSIONER: Any determination was ultimately - it remains in the air, as it were. Assertion by the CFMEU, denial by Mr Green, and then he left the field, as it were.

25 MR SMITH: And then subsequent Registrars came in and you know, made decisions on the basis of, you know - made decisions.

COMMISSIONER: Made other decisions.

30 MR SMITH: Made other decision, yes.

COMMISSIONER: Right. I think that might be a convenient time then, Mr O'Neill?

MR O'NEILL: Thank you.

35

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40 MR O'NEILL: Thank you, Commissioner. Now, if I could just take you back to the draft letter that we had up previously.

COMMISSIONER: What was the page, Mr O'Neill?

45 MR O'NEILL: 2.1614.

COMMISSIONER: Thank you.

MR O'NEILL: Now, you see at the penultimate paragraph:

We believe that Manteena's consistent failure -

5

Do you see that?

MR SMITH: I see that.

10 MR O'NEILL: And there, the letter expresses the view that:

To ensure that the Education Directorate maintains a choice of tenders for this significant project -

15 That being Throsby:

We seek that you raise the issue of Secure Local Jobs Code compliance with Manteena directly. Should they remain unwilling to engage on those matters or on SLJC matters, we will have no option but to refer the matter to the CLJC compliance unit.

20

Do you see that?

MR SMITH: I see that.

25 MR O'NEILL: So it was at least anticipated at this point in time that the approach the union was going to take was to elevate this issue to the minister's office?

MR SMITH: No, I wouldn't say that. It doesn't mention the minister.

30 MR O'NEILL: I see. Sorry, I withdraw that. To the Directorate.

MR SMITH: Well, this letter would have been to the Directorate, yes. The SLJC compliance unit sits outside of the Education Directorate, though.

35 MR O'NEILL: Right. So it gives the Directorate a chance to respond.

MR SMITH: And then -

MR O'NEILL: And then elevate it to the compliance unit.

40

MR SMITH: That's correct.

MR O'NEILL: Who in the Directorate would have been the recipient of this letter?

45 MR SMITH: I don't know. I don't know.

MR O'NEILL: And never landed on who that was going to be?

MR SMITH: I don't think so.

5 MR O'NEILL: There's a subsequent email - I will just take you to it now - at 2.1741, on 7 April 2020, where Mr Fischer looks like he's chasing you up in relation to the letter.

MR SMITH: I see that.

10 MR O'NEILL: Do you know why there hadn't been any action on the letter between 2 February 2020 and 7 April 2020?

MR SMITH: I don't.

15 MR O'NEILL: Do you recall what happened after this, if anything in respect of the letter?

MR SMITH: I thought that either myself or Mr O'Mara had given Mr Fischer the approval to send the letter. However, it appears that the letter wasn't sent.

20 MR O'NEILL: And what's the basis of your evidence that it wasn't sent?

MR SMITH: I have a recollection of conversations in the office about correspondence being sent or needing to be sent. So as clearly as I can remember it, I thought there was a direction to send the letter.

25 MR O'NEILL: Now, correct me if I am wrong, but the CFMEU is a union that takes its responsibility for its members very seriously.

MR SMITH: That's correct.

30 MR O'NEILL: And this was a serious matter for the members of the CFMEU; agree?

MR SMITH: I agree.

35 MR O'NEILL: And this was unlikely to be something that the CFMEU would simply let slip or drop in the context of the broader picture of what's happening in the ACT with the Secure Local Jobs Code. Do you agree with that?

40 MR SMITH: Yeah, I would agree. I would agree that, you know, we took these issues seriously.

COMMISSIONER: Well, this concerned, as the draft itself said, the question of bargaining representation for staff in relation to negotiations to develop enterprise agreements, right?

45 MR SMITH: Yes.

COMMISSIONER: That is one of the central policy and activity areas for the union.

MR SMITH: That's right.

COMMISSIONER: In fact, it's vital for the union to retain its - and develop its relevance to workers in relation to enterprise agreement negotiations.

5

MR SMITH: That's right.

COMMISSIONER: And this issue was not only with Manteena, but I think you said that Manteena had adopted an approach which had been endorsed, encouraged, initiated, whatever the word one chooses, but in connection with the employers organisation, building - builders in the Territory. So that was part of the campaign as you saw it.

10

MR SMITH: Absolutely, Commissioner. It was the MBA and they were running a concerted campaign to, I would argue, deceive, but to many encourage or coerce workers into signing out the union as a lawful bargaining representative.

15

COMMISSIONER: Right. However characterised, and I can assure you I'm not going to attempt to do so in this investigation, but however characterised, the point was Manteena had adopted an approach which was followed by or endorsed by the Master Builders Association, and whilst not every builder in the Territory was either a member or necessarily adopted the policy, a very significant number did.

20

MR SMITH: That's right, Commissioner.

COMMISSIONER: So if I put it in ordinary language, it was on for young and old, really, wasn't it? This was a line in the sand from the union's point of view. If you lost this argument, let's not put it in terms of Manteena, but lost the argument of which Manteena's response to you was a part, that could have significant effects in relation to the interests of the union; correct?

25

MR SMITH: I agree. Can I just clarify just one point.

30

COMMISSIONER: Certainly.

MR SMITH: I agree with what you said, Commissioner. Clause 15 in the status of bargaining representatives was critical to the union, hence why we took the step of alerting the minister to the dispute we had with the Registrar. Manteena might have been the only builder that I can think of, there may have been others, but there was a number of other contractors and subcontracts in the industry that were taking that approach and they are assisted or pushed in that direction by the MBA. Now, there's a lot of people in our industry, a lot of employers in the industry who aren't members of the MBA, but nonetheless there was a, you know, a significant cohort of employers that had taken that step.

35

40

COMMISSIONER: Right. And it would not have been - perhaps for general reasons, but being a little narrower in focus, it was plainly in the union's interest to win this dispute.

45

MR SMITH: That's right, Commissioner.

COMMISSIONER: Now, the union has a number of potential ways of influencing circumstances available to it. Correct?

5

MR SMITH: Yes.

COMMISSIONER: I'm not suggesting unlawful ways. But a number of lawful ways of doing it from withdrawal of labour, to political campaigns, to trying to reach out to workers outside the work environment. So there are a range of activities available to the union. Agreed?

10

MR SMITH: I agree.

COMMISSIONER: Now, looked at in its starkest terms, if a company such as Manteena were to lose a tender on the basis that its industrial relations policy was disputed by the CFMEU, that would give a powerful inducement for other companies to accept the CFMEU line, would it not?

20

MR SMITH: It would.

COMMISSIONER: And did it follow then that one of the courses available to the union was to - using clause 15 or its equivalent, using it to undermine Manteena's tender as a warning not only to Manteena but to contracting builders who might be minded to take the same line.

25

MR SMITH: In part, yes, Commissioner. I'll just clarify what I mean by that.

COMMISSIONER: Yes.

30

MR SMITH: In the case of Manteena and that letter we were just shown, we refer to other issues than just the operation of clause 15. So I think there in that letter there's a reference there to the right of induction.

35

MR O'NEILL: Would you like it up?

MR SMITH: Yes, that would be good, actually, if we can. Can I just get the correspondence itself?

40

MR O'NEILL: The next page on.

MR SMITH: So, you know, the reference is clause 15 and it references clause 14 there. So just, you know, the point still stands; it's just that there's a - there was a multiple of issues there.

45

COMMISSIONER: For the lay person, could you just briefly set out what you understand clause 14 and clause 15 to be directed to?

MR SMITH: So clause 15, as we've discussed before, is the due recognition of bargaining representatives such as the union in the course of making of enterprise agreements and not engaging in behaviour or conduct that delegitimises or removes the status of those bargaining representatives. So -

COMMISSIONER: Once they have been appointed.

MR SMITH: Yes. But, Commissioner, at law the union is the bargaining status for any of its members unless expressly written out. And that was the - that was the issue that we were experiencing in that part of that campaign. And there was a prohibition against encouraging or advising workers to sign the union out as a bargaining representative. Clause 15 is also a little bit more broad than just talking about prohibitions on conduct; it also talks about actually making arrangements to negotiate enterprise agreements with a bargaining representative. So when it comes to Manteena, we would also argue that there was an obligation for them to sit down in good faith and negotiate with the union regarding the terms of enterprise agreement. That's not to say what the outcome of those negotiations would be, but rather to say that negotiations should occur and the bargaining process runs its course. On the second part of your question, I don't think it -

COMMISSIONER: Sorry, you were going to the induction point.

MR SMITH: Sorry. Clause 14. There is an obligation on employers to make known to new starters at induction that they are eligible to join the CFMEU in the case of Manteena, and that, you know, that they can join the union free of discrimination as part of -

COMMISSIONER: If they wish.

MR SMITH: If they wish, as part of Manteena's obligations under the Code, as a Code-certified entity. Just on the second part of your question, it is true to say - I mean, we say that in this letter that we think their failure to adhere to the Code should be reason for the government not to use them. I don't think it ever crossed my mind - I don't remember it ever crossing my mind that this would be a warning shot or a precedent to the industry, but rather we say in this letter that we would appreciate or we would be seeking that the Directorate actually puts these issues to Manteena, because our view was that it is better for them to comply with those obligations and have a better relationship with the union and its workers than simply just saying, you know - at the first instance, knocking them off.

COMMISSIONER: Yes, I understand. But in the real world, to be unable to obtain a contract because you were in dispute with a union is - has commercial consequences, doesn't it?

MR SMITH: It does, Commissioner.

COMMISSIONER: And plainly, the union's interest is in demonstrating that it has got this kind of leverage available to it. I mean, it's not a high school debate. This is a serious dispute about serious economic and commercial issues where parties have differing

interests, sometimes possibly contradictory interests, and where one course advantages one side and disadvantages the other. The -

5 MR SMITH: What was important to me, Commissioner, was that companies knew if they weren't going to follow the Code -

COMMISSIONER: You would try to stop them getting government contracts.

10 MR SMITH: But more importantly, that the government wouldn't engage with people who -

COMMISSIONER: No, quite.

15 MR SMITH: - regularly and systemically breached the Code as well. It was not so much that they knew we would be watching but that this Code meant something. I think we said in my previous answers we campaigned for this Code and it is something I personally was involved quite heavily, and what we didn't want to see have happen is that the Code become a toothless tiger, that it's a document, you know, that has no enforceability and carries no weight.

20 COMMISSIONER: Right. Applying that proposition in the present context, however, did it not follow that demonstrating that adopting a position such as Manteena had would have real world consequences and that where the government, in fact, adopted the policy or, in a particular case, made a decision for which the union contended, would be in the union's
25 interest. Not only had a threat, you had a real world example of where the threat was effective. Now, would you agree with me that that would have strengthened the case of the union in bargaining with contractors about these issues?

30 MR SMITH: I think your proposition is fair, Commissioner. We were critical of Mr Green for lack of enforcement of the Code in circumstances where we thought he should enforce it. And part of that reason was because it undermined the Code. And so it stands to be true for the other side we were seeking for greater enforcement and better enforcement of the Code.

35 COMMISSIONER: And if a company such as Manteena failed to obtain a contract because of a failure in that area, following the missions from the CFMEU, that would strengthen the CFMEU's influence in relation to these sorts of disputes. You are able to say to a company - let's be real, you are able to say to a company, you saw what happened to Manteena, do you want it to happen to you, so comply. Isn't that right?

40 MR SMITH: Yes, but compliance with the Code, though, Commissioner, doesn't mean acquiescence of all the CFMEU's demands.

45 COMMISSIONER: That's perfectly true, but had we not established the compliance with the Code was the subject of disputation, that is, how far it went. The union was contending for a particular interpretation of the Code and those provisions. That was the subject of disagreement by the Registrar, as it happened, and, it appears, by Manteena and perhaps

the MBA and other contractors. So yours was not - the position that you were maintaining was not based or limited entirely by black and white. The words were susceptible to interpretation. The union had its own particular interpretation, and I'm not saying that it's wrong, understand, I'm not going to enter into that area or not, but the real world is that your interpretation was, as it were, backed by a threat: unless you accept our interpretation as right, we will make sure you don't get government contracts. Now, that's what the picture, do you agree, that's what the picture looks like. I'm not saying you actually undertook that; I'm saying that was the context which gave particular point to any suggestion by the CFMEU that Manteena was not complying with its obligations under the Code.

MR SMITH: I accept the picture. It didn't happen in practice, though.

COMMISSIONER: Right. Well, that's an issue we need to - and you will be asked about it.

MR SMITH: Yes.

COMMISSIONER: But what I'm trying to do is - you start off with what is in the interests of the relevant parties as a way of judging or assisting to judge whether certain actions did or didn't occur. Of course, merely because something happens to be in someone's interest does not mean that particular actions did occur. It doesn't follow. What it is part of, the circumstantial context in which one is examining the varying pieces of evidence that feed into that calculation. Do you - am I being clear? I don't want to confuse -

MR SMITH: I think I do understand. It was clearly in the union's interest to have strong enforcement of the Code.

COMMISSIONER: Right.

MR SMITH: That - that I don't think is controversial that we would say that. I think -

COMMISSIONER: No, it's exactly what you were fighting for.

MR SMITH: Exactly what I was fighting for, and what, you know, myself personally and the union had been fighting for.

COMMISSIONER: Right.

MR O'NEILL: I mean, one reason that you receive the relevant tenderers, that is, notification of relevant tenderers is so that there is that very input into the process. Do you agree?

MR SMITH: That's correct.

MR O'NEILL: And so it's uncontroversial, isn't it, that the union's position in respect of those tenderers is then somehow needs to be communicated relevantly within, as you said, in this case, the education Directorate.

MR SMITH: That's correct.

5 MR O'NEILL: Now, you were asked on 7 April by Mr Fischer whether - that was the reminder email that I took you to just before - and you say that the letter was never sent. That's based upon, what, a more recent review of correspondence, is it?

10 MR SMITH: Well, we have reviewed a number of times. I mean, in the first instance, in response to a notice to produce from this Commission and subsequently, you know, we've done other searches, and we can't find a record of it being sent. And we - you know, I believe that had it been sent, we would have found a record of it being sent, yes.

15 MR O'NEILL: Now, were you present at a meeting on 8 April 2020 with Mr Bauer from the - with Mr Bauer? It happened at about 8 o'clock and it was on a building site.

MR SMITH: I can't be certain of the date. I - around that time I did attend a worksite meeting with Mr Bauer and others.

20 MR O'NEILL: It's known as a section 50A consultation.

MR SMITH: I know the meeting you are talking about. I don't - I can't say it was 8 April, though. I think - I think I might have that meeting placed at a different date.

25 MR O'NEILL: Right. And Mr O'Mara was at that meeting as well?

MR SMITH: That's correct.

30 MR O'NEILL: Well, we might ask him about it. He's in the back of the room so I might ask him about it. Do you have an independent recollection of that meeting?

MR SMITH: I do.

35 MR O'NEILL: Well, in respect of these questions, perhaps it's prudent if Mr O'Mara just steps out. Sorry. Now, you can recall what the content of the meeting was?

40 MR SMITH: So, section 50A is a reference to section 50A of the Work Health and Safety Act, the ACT Act. There is a requirement at the commencement of the job to notify relevant unions, of which the CFMEU was one, that a job is commencing, and to enter into discussions regarding the establishment of a Work Health and Safety committee and a HSR for that project. And there are certain timeframes that the respective parties need to meet. And as part of that process, what generally happens is that there is a meeting to elect the HSR and Work Health and Safety committee, because under the Act, those people need to be elected by the workers in the work group. And so Manteena had organised this process in compliance with their legislative obligations under the WHS Act.

45 MR O'NEILL: Now, do you remember what the actual specifics of what was discussed at that meeting in respect of Throsby?

MR SMITH: I don't remember a specific discussion about Throsby.

5 MR O'NEILL: Okay. Do you remember Jason - sorry, I withdraw that. Do you remember Mr O'Mara indicating to Manteena anything about the result in respect of Throsby and it could have been different?

MR SMITH: No, I don't.

10 MR O'NEILL: And do you recall whether there was any discussion at that meeting about the way in which Manteena had approached the very issues that were addressed in that letter, noting that that is section 14 and section 15?

15 MR SMITH: There wasn't a discussion about that letter we just brought to, but there was a discussion about the correspondence you showed me before the break.

MR O'NEILL: Yes. And what was the content of that discussion, to the best of your recollection?

20 MR SMITH: To the best of my recollection, I can't remember who raised the decision but the discussion in that correspondence came up because we had only sent it a month earlier. And Mr Bauer, to my memory, said words to the effect - and I can't remember specific words, but indicated that Manteena may be prepared to reconsider their position on bargaining with the union, but gave no definitive answer and said something along if
25 things change that he would be in touch with the union, but indicated at least that he might be prepared to progress discussions regarding an enterprise agreement.

MR O'NEILL: Okay. Was it mentioned during that meeting that Manteena had come to the attention of the union because of the significant amount of work that it was tendering for in the ACT?
30

MR SMITH: I don't remember someone making that comment.

MR O'NEILL: All right. Do you recall attending a meeting with Mr Ceramidas on the following day? That is, on the - sorry, I withdraw that. It's not the following day, but
35 attending a meeting on 15 April 2020 with Mr Ceramidas?

MR SMITH: No.

MR O'NEILL: Are you aware of whether Mr O'Mara told you that he had attended a meeting on that day?
40

MR SMITH: No. And, sorry, just to be clear, 15 April is when I believe I attended the Surge Centre meeting, the 50A meeting that you referred to.

45 MR O'NEILL: The 50A meeting that you referred -

MR SMITH: The 50A meeting that you referred to before.

MR O'NEILL: And why do you think it's that day?

5 MR SMITH: I think when - I think I found a calendar invite maybe in my electronic diary that has me attending that - on that day. However, I would need to just check -

MR O'NEILL: Your counsel will no doubt show me that diary entry, if that's something that relevantly is -

10 MR SMITH: I'm saying just to be clear, Mr O'Neill, I believe it is. I just probably need to double-check that. But I had it in my head that was - that meeting was 15 April.

MR O'NEILL: Right. Okay. And that's the section 50A meeting?

15 MR SMITH: Section 50A meeting.

MR O'NEILL: Right. But you don't remember attending a meeting with Mr Ceramidas on the 15th?

20 MR SMITH: No, I don't remember attending a meeting, no.

MR O'NEILL: What about in or in this period of time?

25 MR SMITH: I can't recall a meeting with Josh in and around this time, no.

MR O'NEILL: And what about one with Minister Berry?

MR SMITH: I don't recall any meeting with Minister Berry around this time.

30 MR O'NEILL: Okay. On 6 May, and this is at 2.1780, Mr O'Mara sent an email to you and Mr Fischer saying, "see below", which was again another one of these tender notifications. This one again was in relation to a process known as best and final offer. And he says:

35 *Need to discuss tomorrow ASAP. This tender needs a response. If this is our notification for the school we have been discussing for weeks, is a problem with process.*

Do you see that?

40 MR SMITH: I see that.

MR O'NEILL: Did you understand what Mr O'Mara was talking about in that email?

MR SMITH: I don't remember when I - I don't remember reading it at the time. I - so at the risk of speculating slightly, I have a view about what he means by that email now.

45 MR O'NEILL: Certainly. What is the view in respect of, in particular, "problem with process"?

MR SMITH: He's talking about the internal union process, that there is draft correspondence that had been sitting in abeyance inside the union that we hadn't sent yet and is basically asking Tom and myself, have we sent the letter, and if not, why not.

5

COMMISSIONER: So it was the union process which he's referring?

MR SMITH: That's right, yes.

10 COMMISSIONER: You think.

MR SMITH: I strongly interpret this as being - well, my view of this is he's talking about the internal process. Because he says this tender needs a response. He's referring to the lack of a response, which as we just discussed, had been a letter in draft format.

15

COMMISSIONER: Which appears not to have been sent.

MR SMITH: Yes.

20 MR O'NEILL: The letter, though, refers to Throsby and this was a tender response in respect of Campbell.

MR SMITH: Yes, but in fairness, he does say:

25 *Is this the notification for the school we have been discussing.*

So he's not saying, you know, he's saying is this the same one as that of the letter had been sent.

30 MR O'NEILL: Do you recall what was done in respect of this email and what Mr O'Mara was indicating here?

MR SMITH: Well, like I say, Mr O'Neill, I thought that the instruction was given to send the letter, but, you know, the fact that the letter hasn't been sent, you know, I can't give a more satisfactory reason for why it wasn't sent than that.

35

MR O'NEILL: Was there any other communications made in respect of Manteena to the Directorate other than the intended draft letter? Was there any other approach made to the Directorate about this matter?

40

MR SMITH: The only - the only other communication that I can recall is a meeting earlier in that year that I attended with Mr Green and another official of the Education Directorate.

45 MR O'NEILL: And when was that?

MR SMITH: I have it somewhere around 19 or 20 February. I think maybe the 19th.

MR O'NEILL: Of what year?

MR SMITH: Of 2020. So this year we are talking about.

5

MR O'NEILL: So earlier than this - in the chronology.

MR SMITH: That's correct.

10 MR O'NEILL: And what do you recall of that meeting?

MR SMITH: A number of things. Just taking it in sequence. I recall Mr Green calling me, obviously we were known to each other because he had just - had just recently finished as the Secure Local Jobs Code Registrar - and said, "I would like to have a meeting with you and" - I think he said "you and Jason" with my boss, he called him. "I would like for you to talk, you know, for us to have a discussion about issues in the industry and issues with contracts", and it would be good for him to understand what those issues are and understand what the unions perspective on those issues. This meeting was held in the boardroom at the CFMEU's offices in Dickson. It was attended by myself and Jason. And Mr Green and the other official's name is Dave Matthews who he described to me as being his boss.

15

20

MR O'NEILL: Yes.

25 MR SMITH: And we discussed a number of projects and quite a lot of contractors. At that meeting, Mr Green or Mr Matthews, I can't remember who, provided us a copy of that tender submission document that you showed me previously, which had six contractors on it.

30 MR O'NEILL: Yes.

MR SMITH: And asked me to provide the union's position or the union's views on each of those contractors, and then asked more broader questions about issues in the industry that we are seeing, safety, industrial and otherwise. They talked about their upcoming scope of works and when those things might be, you know, likely to be constructed or commenced. It was a very broad ranging conversation. Manteena, though, was discussed. Obviously they were one of those six contractors, but it was only a couple of minutes' worth of conversation.

35

40 MR O'NEILL: What was said in respect of Manteena?

MR SMITH: A number of things. I went through and Mr O'Mara went through our concerns.

45 MR O'NEILL: What were the concerns with Manteena?

MR SMITH: Well, the ones that I remember us raising - and bearing in mind it's three years ago, I can't give you word for word, but it was in the vein of they have a hostile relationship to the union, and as a result they do things which we think fall foul of the Code, especially around recognising the union in inductions and recognising the union for the purposes of collective bargaining. Because of their position they take towards the union, they fall foul of the relevant provisions of the Code. Mr Green sort of made an off-the-cuff comment about, you know, him knowing some of the directors or at least one of the directors of Manteena personally and joked about maybe raising it next time they have a barbecue or something together, which was, you know, a bit of a strange comment that sort of stuck out to me. But other than that, there wasn't much more of a response from the Education Directorate officials.

MR O'NEILL: Did either you or Mr O'Mara talk about Manteena in disparaging terms, ie, using any epithet that -

MR SMITH: I don't remember using any epithet. Obviously we talked unfavourably about their conduct, but I don't think that's what you are driving at, though, is it? No.

MR O'NEILL: No, no. Okay. All right. So - sorry, Commissioner.

COMMISSIONER: I just want to join some dots here. Looking at the objective facts, first of all as we have already discussed, the importance of the industrial dispute between Manteena and other companies and the union, firstly. Secondly, the ability of the union to campaign variously, including with government, about issues such as that. Thirdly, to raise the question that I think is well known and not controversial, that the CFMEU was a substantial funder of ALP - of the Canberra party. Is that right?

MR SMITH: That's correct, Commissioner.

COMMISSIONER: And was either through its officials or as an organisation or both, closely involved in party issues of various kinds. Correct?

MR SMITH: We are affiliated to the party.

COMMISSIONER: No, quite. And you took a substantial interest in party affairs.

MR SMITH: That's fair to say, yes.

COMMISSIONER: Mr Ceramidas was also a member of the party. As it happens you knew him, but I assume - I don't even recall whether we asked Mr O'Mara this question, we might have - that he - Mr Ceramidas would have been known to him as well and probably other union officials and also to officials of other unions because of his party interests and political interests. Is that fair to say?

MR SMITH: That's fair to say.

5 COMMISSIONER: Now, he would have understood - do you believe he would have understood that this particular issue, that is, concerning union representation in enterprise bargaining and allied matters, was of concern with the CFMEU? Just because of whom he was talking to and the kind of things that he did and knew. Would that be your expectation?

MR SMITH: No, not necessarily.

10 COMMISSIONER: I'm not - "necessarily" is a very strong word. What about the likelihoods?

15 MR SMITH: I think it's unlikely, and I just say he was not working for the Minister for Industrial Relations. So the Minister for Industrial Relations has the carriage of the operations of Secure Local Jobs Code. So when we talk about the broader issues with clause 15, for instance, that didn't fall within the remit of the Minister for Education.

COMMISSIONER: Sure, but the rubber hit the road when you were talking about actual procurements and the Education Department did a lot of procuring in the ACT.

20 MR SMITH: That's right.

COMMISSIONER: And he was in the minister's office.

25 MR SMITH: That's correct.

COMMISSIONER: And one way or another, was not the issue to which we have considered, brought to the attention either of the minister or the minister's office?

30 MR SMITH: I do not recall at any point bringing to the attention of the minister - it's being now, just to be clear, Minister Berry.

COMMISSIONER: No, this is an opportunity for you to be clear about these things.

35 MR SMITH: Yes, no, just to be very clear about this, I recall no instance where I brought to the attention of Minister Berry or anyone in her office issues with clause 15, or 14 for that matter, or a discussion about Manteena.

COMMISSIONER: Do you include Mr Ceramidas in that?

40 MR SMITH: I do include Mr Ceramidas in that. As I sit here, I can't recall any discussion that would have involved Ms Berry or any - any staff member of her office, including Mr Ceramidas.

45 COMMISSIONER: All right. Let's explore this possibility. Are you aware whether Mr Ceramidas had political aspirations?

MR SMITH: Well, he ran for Parliament in 2016.

COMMISSIONER: That's not a bad test.

MR SMITH: So yes is the answer. Yes, I would say, yes.

5

COMMISSIONER: And would it be fair to say that the support of the CFMEU, variously possible, would have helped him?

MR SMITH: Would have helped, yes.

10

MR O'NEILL: And you spoke with Mr Ceramidas on many occasions throughout the period January through to, say, April 2020. Do you agree?

MR SMITH: Yes, we would have spoken semi-regularly.

15

MR O'NEILL: Yes. And does that mean that because of the quantity of those conversations, it's a bit difficult to recall the content of them. Is that fair?

MR SMITH: That's fair. I can't recall every conversation that I've had with - with Josh.

20

MR O'NEILL: Like, for example, do you recall a conversation with him where he was talking about the concept of whether it was possible to require unions to provide - Unions ACT to provide a reference for all big tenderers when they tendered? Do you remember this kind of concept being discussed?

25

MR SMITH: I haven't heard this suggestion being made.

MR O'NEILL: Right. Is that you haven't heard it or you can't recall it?

30

MR SMITH: I can't remember Mr Ceramidas or anyone raising that concept with me.

MR O'NEILL: Right.

MR SMITH: It's - yeah, I can't remember anyone ever raising that suggestion with me. Yes.

35

MR O'NEILL: All right. And -

COMMISSIONER: I'm sorry, I just want to just go back to the topic that I was questioning you on. Accepting the importance of this issue for the union, wouldn't a conversation with Mr Ceramidas bring the attention of the Education Minister under whose ultimate control the procurement - education procurement operates, to bring to his attention the interests of the union? Wouldn't he be an obvious point of communication?

40

45

MR SMITH: No, because the minister has no role in the procurement process.

COMMISSIONER: Well, the minister may have a role in relation to the rules governing a procurement process.

5 MR SMITH: Those rules aren't in Ms Berry's, or Minister Berry's authority. The rules around procurement are set by the Treasurer and by the Minister for Industrial Relations in respect of the Secure Local Jobs Code. So the rules of procurement are set. I mean, they are set by legislation, but in terms of the responsible ministers it's not the minister for education, it's the Treasurer and the - which is also the chief minister in the ACT, and the Minister for Industrial Relations.

10 COMMISSIONER: Did you make a conscious decision not to discuss this matter with Ceramidas?

15 MR SMITH: I can't say that it was a conscious decision. I just - the conversation as I recall it hasn't come up with him.

COMMISSIONER: Yes, thank you.

20 MR O'NEILL: Unless you have any further questions, Commissioner, I think that's all I have for this witness.

COMMISSIONER: Very well.

25 MR O'NEILL: I note that there was a call on a document about a diary entry. It hasn't been provided to us under any of the summonses for a reason which I understand is because it didn't fall within the scope of the summons, is what is - I'm told. I have indicated to my learned friend that if it is that he thinks it's important that it should be part of the evidence before you, that I'm happy to tender it. I've seen the document and I think, in fairness to this witness, it probably should form part of the evidence, but it's entirely a matter for his

30 counsel.

COMMISSIONER: Yes, thank you. Well, you take that on board and see what you can do to help. Yes, thank you. Is there any cross-examination of this witness? No. Thank you. Yes. Thank you, Mr Smith.

35 MR O'NEILL: Just so that arrangements can be made to change the room, could I request a very quick adjournment, Commissioner?

40 COMMISSIONER: Yes, very well.

<ADJOURNED 2.50 PM

<RESUMED 2.57 PM

45 MR O'NEILL: Before we call Mr O'Mara, we neglected to deal with the summons that is binding upon Mr Smith, whether you wish to release him from that summons or just excuse him, Commissioner.

COMMISSIONER: No, I think I excuse him at present. I don't think he can be released.

<THE WITNESS STANDS DOWN

5

MR O'NEILL: May it please. I call Jason Lawrence O'Mara.

COMMISSIONER: Do you wish do give evidence under oath or by affirmation,
Mr O'Mara?

10

MR O'MARA: Oath.

<JASON LAWRENCE O'MARA, SWORN

15

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

<EXAMINATION BY MR O'NEILL

20

MR O'NEILL: Thank you, Commissioner. Mr O'Mara, what is your full name?

MR O'MARA: Jason Lawrence O'Mara.

MR O'NEILL: What's your current occupation?

25

MR O'MARA: I'm a manager at the Tradesmen's Union Club in Canberra.

MR O'NEILL: And as at 2019 and early 2020, what was your role?

MR O'MARA: I was the secretary of the ACT branch of the CFMEU.

30

MR O'NEILL: How long had you held that position?

MR O'MARA: From February 2 '18, I believe.

35

COMMISSIONER: Sorry, I didn't hear.

MR O'MARA: February 2, '18.

40

MR O'NEILL: And prior to that, can you just give us a brief precis of the relevant roles
you held within the union?

MR O'MARA: Assistant secretary of the branch from 2010 until 2018. I was an organiser
of the branch from 2007 to 2010. Before that, I was - worked on sites and I was branch
president from around 2004.

45

MR O'NEILL: And the Commission understands you have a background in Workplace
Health and Safety. Is that correct?

MR O'MARA: That's correct.

5 MR O'NEILL: And you have worked as a compliance - a safety compliance officer in construction basically for most of your career. Is that fair?

MR O'MARA: Yes.

10 MR O'NEILL: Now, in relation to - and I appreciate this is some time ago - but in relation to the way in which tenders were notified to the union in 2019, that was via a process through Unions ACT. Do you remember that?

MR O'MARA: That's correct, yes.

15 MR O'NEILL: And was it you or someone else who was monitoring that communication to look at who - who were the preferred tenderers or tenderers for various procurement jobs?

20 MR O'MARA: It was generally done by the assistant secretary and the branch lawyers, but I would - I was privy to the emails so I would look at them as well and occasionally - or a lot of times I would see a contractor that I thought we needed to make contact before - had an issue with and I would send on a correspondence to the relevant people to say have a look at this or can you deal with this or something like that.

25 COMMISSIONER: What when you say, "relevant people", you mean within the union?

MR O'MARA: Within the union. So it would be the assistant secretary or the lawyers who were dealing with their matters.

30 MR O'NEILL: Can I show you an example of that at 2.0189. You say here at the bottom of the page there's an introductory email from tenderers are ACT. That's then - somehow works its way to you. And then you say.

Need to respond. I will discuss when I'm free.

35 And you send that email to Mr Hamilton and Mr Fisher, and you - sorry, Mr Smith is sending that to you. I withdraw those questions. Mr Smith is sending that to you. Is this the kind of email that is how the process is notified?

40 MR O'MARA: Yes, yes, internally that's how it would go.

MR O'NEILL: And do you know why it was that Mr Smith was sending this particular tender response to you?

45 MR O'MARA: Not particularly, no. I'm only CC'd in, so he's notified me but he's talking to the other guys about an issue that I didn't - I don't know if I was privy to the issue at that time or not.

MR O'NEILL: I will just take you to the actual notification of tender submissions that was attached, and that's at 2.0191.

5 MR O'MARA: Mmm.

MR O'NEILL: You see there. Now, does that help you in respect of your memory about this particular tender?

10 MR O'MARA: I can see who the tenderers now and I understand who we were talking about, but at the time it was a common sort of email that gets sent around the office.

MR O'NEILL: Looking at this tender notification, can you recall what would be - can you recall whether there was any actual specific discussion between you and Mr Smith about this particular tender?
15

MR O'MARA: No, I can't recall. But I can see a few contractors that were potentially - you know, would be an issue for us on the list.

20 MR O'NEILL: Who are they?

MR O'MARA: Zauner, Project Coordination, Built, Manteena.

MR O'NEILL: Why specifically would Manteena cause an issue?
25

MR O'MARA: They didn't currently have an agreement with us. We didn't think their safety record was up to scratch. And a number of reasons, yes.

MR O'NEILL: And so when you -
30

COMMISSIONER: Well, let's be more careful about it. Safety reasons. What were the other reasons?

MR O'MARA: I said they didn't - they didn't have any -
35

COMMISSIONER: Yes, they didn't have an agreement.

MR O'MARA: Didn't have an agreement with us, and you know over the last few - the few previous years, they had a number of work safety improvement notices put on them by the regulator. We had visited their sites - when I say "we", our organisers had visited their sites and, you know, used their powers under the Work Health and Safety Act and found numerous instances of safety issues on their projects.
40

MR O'NEILL: Had you specifically yourself visited a Manteena site and seen safety issues, noting that that's an issue - something that which you had relevant expertise.
45

MR O'MARA: I don't know if I had or I hadn't in the - over the years I had, but the last time I wouldn't be sure. It wasn't generally the secretary's job to -

5 MR O'NEILL: No, I appreciate that is probably a little bit of a lower down issue for what the secretary is dealing with, particularly at this time.

MR O'MARA: I don't know if safety was ever not - you know, too unimportant for anyone in our organisation. So -

10 MR O'NEILL: No, I accept that. That's fair.

MR O'MARA: It should be dealt with, I certainly would have dealt with it, but I just can't recall when I - you know, the last time I would have went on to a Manteena site. They hadn't done a lot of work in their commercial construction sector, you know, in anything
15 big. It was all small sort of jobs, you know, they'd done in the last few years, I believe.

MR O'NEILL: Now, had Mr Smith told you that he had received a WhatsApp message from Mr Ceramidas - sorry, I withdraw that - that he had sent a WhatsApp message to Mr Ceramidas in relation to issues to discuss within that Education Directorate at or about
20 the time of this tender?

MR O'MARA: I - I don't recall anything about a text message being sent.

25 MR O'NEILL: Did he tell you that he had been in contact with Mr Ceramidas about these issues?

MR O'MARA: I'm not sure.

30 MR O'NEILL: Had you had any contact with - sorry, I will start this question again. When I say "Mr Green", do you know who I'm referring to, given that's a pseudonym?

MR O'MARA: Yes.

MR O'NEILL: And that person was the relevant Secure Local Jobs Registrar at the commencement of the Secure Local Jobs Code - at or about the commencement of the
35 Secure Local Jobs Code.

MR O'MARA: Yes.

40 MR O'NEILL: And had you had any contact with that person when he was acting in that capacity, that is, as the Registrar?

MR O'MARA: I had a meeting with him - I'm not sure - I'm not sure if I actually had a meeting with him when he was the Registrar or after. I did have a meeting, I think he might have been either acting at the Education Directorate by that stage or not, but, yes, it
45 was - it was - either a crossover or around about that time, yes.

MR O'NEILL: I will come to the - to that meeting. I think I understand what you are referring to. But I will come to that meeting shortly. Now, do you recall attending a sod turning for Molonglo Valley in or about February 2020?

5 MR O'MARA: I believe so, I think I know the one you are talking about. But we did used to attend.

MR O'NEILL: Many.

10 MR O'MARA: Many, yes.

MR O'NEILL: And do you recall whether Mr Green was also in attendance at that -

MR O'MARA: Yes, I believe so.

15

MR O'NEILL: And did you speak to Mr Green on that occasion?

MR O'MARA: Yes, I think we organised the meeting that I was just alluding to.

20 MR O'NEILL: Yes. And what did you say to him whilst at the sod turning?

MR O'MARA: I said it will be good to catch up. I don't know. I just said it would be good to catch up. Specifics, you know what I mean, I'm hoping we are not talking about exact terms here, but, you know, we were only there for a couple of minutes. They turned the sod and I seen him and said can we catch up. He said, yes. We arranged a time and that was about the conversation at that stage, I think. It wasn't a lot to it at the sod turning.

25

MR O'NEILL: Did you speak to Mr Ceramidas while you were at the sod turning?

30 MR O'MARA: I'm not sure if I did - I'm not sure if I did or I didn't. There's a number of people there, I'm sure I would have acknowledged he was there. I knew who he was and, you know, had known him, spoke to him over time. So I'm sure I would have, you know, said how are you going.

35 MR O'NEILL: And what about Minister Berry?

MR O'MARA: I would have certainly said hello to Minister Berry as well. Yes.

40 MR O'NEILL: And you say, "certainly would have". Why is it that you are so certain?

MR O'MARA: You know, we were there at the invitation of the government. I had known the minister over a number of years, so not only through, you know, not personally, but, yeah, I'm - I'm very confident that I would have at least acknowledged and said how are you doing.

45

MR O'NEILL: Yes. I mean, it's no secret that there's a good relationship between the CFMEU and Minister Berry's office. That's fair, isn't it?

MR O'MARA: Yes.

5 MR O'NEILL: And it's no secret that the CFMEU is a supporter of the ACT Labor Party.
Fair?

MR O'MARA: No secret, yes. Fair.

10 MR O'NEILL: Was the secure - sorry, I withdraw that. Was the Campbell Modernisation
Project something that you discussed with Mr Green at the sod turning?

MR O'MARA: I - I'm not sure. I don't recall our conversation being overly long, so - but,
yes, the details I'm not sure of.

15 MR O'NEILL: Is it possible that whilst you were at the sod turning, you had a conversation
to the effect of let's have a chat around education projects?

MR O'MARA: Yes. That's possible.

20 MR O'NEILL: And is it possible that you were going to discuss tenderers who were on
other procurement projects within the Education Directorate?

MR O'MARA: I - yes, I assume so.

25 MR O'NEILL: Is it possible that you identified who the tenders that you had known were
on the Campbell project, that being Manteena and Lendlease at that period of time?

MR O'MARA: I'm unsure at this stage.

30 MR O'NEILL: Okay. When you say you are unsure, what does that mean? You just have
no recollection?

35 MR O'MARA: My recollection of the conversation was that we would set up a meeting
and we would have a discussion. I don't think we had much of a chat there. There's a time
and a place for everything, you know what I mean. So we arranged a meeting, and I had
the conversation at a later date.

40 MR O'NEILL: All right. Well, let's go to that meeting because it's obviously a bit better - is
that meeting better in your recollection than the sod turning?

MR O'MARA: The meeting was one of 100 meetings ever week. So I will do my best but,
you know, it wasn't a standout meeting for me. That's for sure.

45 MR O'NEILL: Okay. Do you recall where it was?

MR O'MARA: At the CFMEU office.

MR O'NEILL: And do you recall what date it was on.

MR O'MARA: No, I think I have seen some correspondence where it was in February some time, 2.20, was it maybe?

5

MR O'NEILL: How does 19 February 2020 sound?

MR O'MARA: Could quite well be.

10

MR O'NEILL: I think you said it was at your office, was it?

MR O'MARA: Yes. I - yes. I believe that meeting was in the office. I think I met him there. I did - anyway, yes, yes I agree.

15

MR O'NEILL: Who do you recall attended that meeting?

MR O'MARA: I thought it was just me and Mr Green, but I did hear today that there was another meeting on that day when Mr Matthews come off. I thought I met Mr Matthews at a later date, but yeah, so I'm a little unsure about -

20

MR O'NEILL: It could well be that there is more than one meeting.

MR O'MARA: I thought it was - I thought it was numerous meetings, but yes.

25

MR O'NEILL: Mr Green has indicated to the Commission that it was just you and him on the 19th.

MR O'MARA: That's what I thought, yes.

30

MR O'NEILL: And do you recall how the meeting went?

MR O'MARA: Yes, we had a conversation, you know, so when we have a meeting, they will be outside the foyer. We have a secure door to get through to get in, so I would go out, meet who I was meeting with, we would go into the boardroom generally or maybe in my office, but on this day I believe it was the boardroom and sat down and, you know, I tried to have a discussion about, you know, things I didn't believe were going right and how I thought the Secure Local Jobs should be enforced. You know, amongst others. As I think Mr Green said, some pleasantries at the start. I don't disagree with a lot of the stuff he said in the conversation. I think he was probably a little bit more brave in his evidence than he was in the meeting, but apart from that I don't really dispute anything he said.

40

MR O'NEILL: Right. Okay. So you were here - you have - you were -

MR O'MARA: I've seen and read what he said.

45

MR O'NEILL: I see. And you generally accept that the topics that he raised were raised.

MR O'MARA: Yes.

MR O'NEILL: Okay. Well, let's just deal with them quickly, if we may. Firstly, he says that it was raised - the topic was raised about how government procurement should work and that you expressed a view about the fact that the government doesn't take Secure Local Jobs seriously enough. Do you accept that?

MR O'MARA: Yes. It was probably quite a strong view.

MR O'NEILL: Yes. I mean, but the CFMEU's remit is to represent its workers and therefore - and it is a union known for taking a strong position.

MR O'MARA: I would have taken a strong position on that, and -

COMMISSIONER: And I suppose given the context for the Secure Local Jobs, which was that it was part of the - or supposed to be part of the procurement process, is what you meant that procurements did not seem to adequately address Secure Local Jobs issues. Is that the substance of it?

MR O'MARA: Yes. The enforcement of the Secure Local Jobs Code was - under Mr Green was terrible, and I don't think it got any better in the rest of my time at the CFMEU.

COMMISSIONER: By "enforcement", ultimately, I suppose, the sanction in the hands of government was that if you didn't adequately comply, you just wouldn't get a contract.

MR O'MARA: So I think one of the issues here is that it seems like people think that once you had a certificate and you had applied for a certificate, that you -

COMMISSIONER: That was enough.

MR O'MARA: That that was enough. But it was a living, breathing document. You had to comply with all the conditions in the Code throughout your process. By applying for a certificate and accepting the certificate, once you had got it you were then bound by the terms and conditions of it, or by the instrument and - but Mr Green, who was the Registrar, and was supposed to be the one who made people comply with the - with the Code, took an extremely weak and lacklustre approach to it. So that - and that was our concern with Mr Green and with the enforcement or implementation of the Code.

COMMISSIONER: I understand that. And I'm just trying to give - is that all you mean when you made the comment that government wasn't taking seriously enough? I had thought - that's why I put to you the question I did, that that was a reference to what was in the government's hands. Namely, its ability to give contract contracts or not. One of the requirements which was satisfying the Secure Local Jobs Code.

MR O'MARA: Yes.

COMMISSIONER: And that the government wasn't adequately declining to with construction companies who didn't comply with Secure Local Jobs. In other words, the knock-on affects which may have been expected if you didn't comply weren't happening.

5 MR O'MARA: Yes, that's correct. That's correct. Yes. And that fell at the hands of the Registrar, because it was his job to - to do that. His or her, but I think it's always been him.

COMMISSIONER: It may be the job of the Registrar, but ultimately he's only in charge of the register. Procurements are managed by the particular Directorates who are entering into
10 the contracts. That's -

MR O'MARA: Yes. So different - I guess different issues, though, is one - is the information that was fed to procurement from the Registrar -

15 COMMISSIONER: Correct.

MR O'MARA: - was after them doing their - potentially doing their job.

COMMISSIONER: Certainly.
20

MR O'MARA: And if they had done their job, there would have been potential sanctions on certain companies. But there was no sanctions on anyone at that stage. And there was no - there was very little enforcement or will to enforce the Code. There was a difference of opinion around what the section 14 or clause 14 and 15 were. We had - we had went out
25 and got one much Australia's most preeminent legal QCs to give us advice, and they were quite clear that our opinion was right and that we couldn't get the Registrar to give us any opinion, whether it be from the government's solicitors or whatever. But we were extremely confident that it - that what we were saying was right and that the Code was being misadministered.

30 COMMISSIONER: Did you raise that matter with government then?

MR O'MARA: Yes.

35 COMMISSIONER: And in what way?

MR O'MARA: Well, we were - whether it was I think the - Minister Orr was the IR Minister for a long time. I'm sure we raised it there. We had sent letters to different people. We would CC Minister Orr into different correspondences. There was no secret anywhere,
40 you know how we felt. We felt that, you know, it was - you know, it was a government policy. It was more than government policy; it was legislation at the time. You know, we felt very strongly that, you know, people should have been - you know, people wanted that - you know, wanted to jump in and get a Code certificate, the obligation on you after you had done that was to comply with what the Code told you to do. And it wasn't
45 happening. Yes.

MR O'NEILL: Did you make that view known, just while we were on that topic, to anyone within the relevant - anyone within the Education Directorate?

5 MR O'MARA: I'm - look, I'm sure we tried to but I couldn't give you - the thing - the whole pretence to my meeting with Mr Green in February, that February that year, was that he was the - you know, whatever relevant position in Education Directorate, and so, you know, that was an attempt to try and - even though we got it - we fought gravely wrong in the Secure Local Jobs, he had another role and we were certainly concerned that he mightn't have had it - you know that, he mightn't have been going to get it right there
10 either.

MR O'NEILL: And again, just taking that answer, the concern that he wasn't going to get it right in relation to his new role, how does that concern - how did you action that concern that you had, if at all?
15

MR O'MARA: How did we action it?

MR O'NEILL: Yes.

20 MR O'MARA: Well, I had a meeting with him that day and tried to again explain what we - how we thought the Code should be administered and how, you know, what the government's procurement policy was and what our take on it was and we hope that he would, you know, listen and maybe understand and go off with a, you know.

25 MR O'NEILL: I get the sense that you don't think that that's actually what happened when you had the conversation with him though, that he did get it.

MR O'MARA: No, and I think when you listen to his evidence, where he talks about stock answers and, you know, this and that, he just - yeah, no, I didn't think he was getting it at all.
30

MR O'NEILL: Was that a view you held at the time after the meeting?

MR O'MARA: Still a view I hold now.
35

MR O'NEILL: And so what did you do - noting that, that you had that view, what did you do other than - now you've had the meeting with Mr Green, what's the next step?

40 MR O'MARA: Well, we were - you know, there's a - on record a number of correspondences. We tried sending to different - different people. You know. So, you know, we tried to - we tried to give examples, different examples to - to government or to the Registrar or to whoever to prove our point and what we were saying.

45 COMMISSIONER: You had this meeting with Mr Green, the upshot was unsatisfactory from your point of view, you weren't satisfied that -

MR O'MARA: Yes.

COMMISSIONER: - he was prepared to accept your point of view. So Mr Green had a boss, the Director-General. Did you take any communications with the Director-General?

5 MR O'MARA: No, I didn't.

COMMISSIONER: Why?

MR O'MARA: I'm not sure. I -

10

COMMISSIONER: It was important enough for you to talk to Mr Green, and Mr Green doesn't give you an adequate response, why would you hold your hand there and say, oh well, so much for that. Do you see what I mean? It doesn't strike me as, how should you put it, a thoroughgoing approach.

15

MR O'MARA: Well, this was an issue that had been ongoing since the year before.

COMMISSIONER: That's my point.

20

MR O'MARA: And it went on to be - you know, in a perfect world, you will be able to fix these issues, in, you know, in a meeting in a second. So I'm sure there is ongoing attempts to rectify the issues.

COMMISSIONER: Well, did you go to the minister?

25

MR O'MARA: I - I'm not sure about the timeframes but, you know, there was numerous correspondences that we tried to go to the minister. We used to meet with people at different times. Minister Smith was - so in our roles, Minister Smith done a lot of the political liaisons. I lived outside of New South Wales - I was in New South Wales, I wasn't a member of the ACT Labor Party since about 2014. And, you know, the assistant secretary's role was the role to look after, you know, industrial relations, enterprise bargaining and things like that. So a lot of that remit was Mr Smith and our lawyers.

30

COMMISSIONER: Right.

35

MR O'MARA: Yes.

MR O'NEILL: Now, just returning to the meeting, sorry, that was an important excursion, but just returning then to the meeting, was the matter that - sorry, I will put it positively to you. Did you say that one of the problems with government was that it was taking the cheapest price?

40

MR O'MARA: We had been saying that since 2012. Yes.

45

MR O'NEILL: Just took the cheapest price and it didn't look at the issues that were relevant - particularly relevant to your members.

MR O'MARA: Yes, it had been a major ongoing problem. There was I think a study of in about 2013 or '14 that was done, there were some newspapers articles about it if you would like to see our colleagues at The Canberra Times, but I think 33 out of the 34 jobs had gone to the lowest tenderer and it had given the Territory some really poor outcomes, you know. Some poor - poor standards of workmanship, you know what I mean, and poor safety outcomes, and, you know, poor dollar value outcomes. So, you know, it was not uncommon for us to complain about the lowest price being done, because it didn't always - well, more often than not, it didn't equate to the best outcome for the Territory, was our opinion.

MR O'NEILL: Now, did you say that Manteena shouldn't get the job - that is, the Campbell job?

MR O'MARA: No, I don't believe so. I - you know, I have been a union - I had been a union official for a long time, and I was very happy to tell people, you know, whether a contractor was good or bad. But, you know, that was Mr Green's job to - or the Directorate's job to work out who they actually used.

MR O'NEILL: Sorry, I interrupted you. I apologise for that. Did you say that Manteena didn't do the right thing by its workers?

MR O'MARA: Well, the whole - when we discussed, and if we are talking about - and I'm now, you know, you are asking me to talk about a conversation that was three or four years ago that I'm telling you that I didn't think it was such a big deal at the time, so, you know, I could really only suppose what we said.

MR O'NEILL: I'm not being critical.

MR O'MARA: I'm not disagreeing with a lot of what - you know, what we said, but I'm doubtful that I actually said they shouldn't get the job. But I'm sure I was critical of their performance.

MR O'NEILL: I see. So the distinction you are drawing is that you probably said something about the company's performance, but it didn't go as far as to say you shouldn't -

MR O'MARA: I don't believe so. It's not a common, you know, thing. But, again -

MR O'NEILL: What about a reflection upon the other tenderer, that is Lendlease, that it was a better contractor?

MR O'MARA: Well, you know, I think their record, if you put the two of them side by side, you know, the records stand by themselves. But again, I - I - I can't sit here and tell you I don't remember a lot about the conversation and then pick the good parts out. So I'm unsure of everything that was said.

MR O'NEILL: Did you explain - well, do you recall explaining during that meeting that the union's problem with Manteena was that it wasn't - one of the union's problems with Manteena was it wasn't entering into the enterprise bargaining agreement with it?

5 MR O'MARA: Sorry, again, I could -

MR O'NEILL: You can't recall?

MR O'MARA: Why, I -

10

COMMISSIONER: It probable, is it not, given the point of the meeting was let's have a discussion about how things are going and what the problems are. That was how things were going and one of the problems. Isn't that -

15 MR O'MARA: Yes.

COMMISSIONER: - a fair call?

MR O'MARA: I'm sure if I had spoken about Manteena, I would have illuminated the
20 problems we thought they had.

MR O'NEILL: Right. Do you remember whether you, during that meeting - whether there was any outcomes that had been agreed or that - anything else or a follow-up or anything else that was going to happen after that?

25

MR O'MARA: No, sorry, I don't.

MR O'NEILL: Now, I think you were here during the first part of Mr Smith's evidence where he went through in a bit of detail about the issue that had arisen with Manteena
30 about its compliance.

MR O'MARA: Yes.

MR O'NEILL: With 14 and 15. Was there anything when you heard that evidence which
35 you wanted to add to or clarify after - in respect of your position?

MR O'MARA: I just say that I don't think that, you know, Manteena - you know, they had three or four construction workers, so, you know, an enterprise agreement with them, while, you know, we would have liked to have had one, wasn't really going to make a
40 major industrial, you know, blip for us. I mean, they were a - they were a two-bit company who had a couple employees. So, yeah, my point is that, you know, my point is that, you know, I think the Commissioner thinks they were a big deal company, they really weren't. And whether they had an agreement with us, although we would like to, because it galled us that they paid their workers a whole heap less and didn't provide industry standard
45 conditions to the small number of workers they had, you know, the fact that they didn't have an agreement wasn't really a major concern, for me anyway. Sorry, if I could just add, they'd - we had been dealing with them - when I had been an official in 2007, I hadn't had

one in the whole team from 2007 to 2019 or '20, whatever we are talking about, so you know, I don't want us to overegg the fact that they were massively important to what we were doing.

5 MR O'NEILL: Except to say, though, that they were participating in an attempt - they were a tenderer in procurement jobs in the ACT of significant value. Agree?

MR O'MARA: Yes, I - the Code put certain positive obligations on anyone who held a certificate, and my personal feeling was that if they wanted to - you know, if they are
10 happy to put their hand into the pot of government money to do government work, they should have complied with the spirit of the required government legislation. And they weren't.

MR O'NEILL: And do you recall whether you specifically made that position known to
15 anyone, firstly either in the minister's office - that is, the Education Minister's office? Do you recall whether you made that position known?

MR O'MARA: I - probably not me personally. As I said, I didn't deal with a lot of the political stuff. That was more in Mr Smith's remit.

20 MR O'NEILL: And then within the Directorate itself.

MR O'MARA: The only one I spoke to in the Directorate was Mr Green. We had over the years, and I remember when my predecessor was the secretary, we went in and had
25 different meetings with different Directorates, it was the Education Directorate, I couldn't tell you who, it was probably a number of years beforehand. But, yes, it wasn't unusual to talk to different people in the different Directorates when we thought their procurement wasn't heading in the right direction.

MR O'NEILL: There were a series of questions put to Mr Smith about this draft letter that
30 was to go to the Education Directorate. I think you were still in the room when those questions were asked.

MR O'MARA: Yes.

35 MR O'NEILL: That draft letter, had you become aware of the existence of that letter at the time?

MR O'MARA: I'm not sure if I was, but I can maybe add some light on to why Tom
40 Fischer didn't send it. And the policy at the time was that either Zac - the assistant secretary or the secretary had to sign off on any correspondence that came out of the office. And so if neither of us gave Tom the go ahead to sign that letter, it wouldn't have gone. So I'm not sure why it didn't go, but, you know, the fact that he couldn't - that neither of us had managed to get the sign off, manage to get the sign off would be why he didn't send it.

45 MR O'NEILL: And - but do you specifically recall seeing a draft of that letter at the time or being involved in that issue?

MR O'MARA: I - I've seen the draft since, but - so I am aware of the letter we are talking about. But I'm not sure whether I understood, you know, when it was constructed or not. But again, you know, both Mr Smith and myself had the ability to sign off on correspondence which went out of the office. You know, that letter was, you know, going to be signed and addressed by him. So, you know, it would be unusual for me to tick off on a letter that was going to be sent on behalf of someone else or vice versa.

MR O'NEILL: That letter indicates, though, that at least from the union's perspective, the issue was significant enough, that is, the way in which code 14 - section 14 and section 15 of the Code was being implemented, that it was going to be elevated to someone within the Education Directorate formally in writing. Agree?

MR O'MARA: Yes, yes. 100 per cent.

MR O'NEILL: So that issue was significant enough for at least that step.

MR O'MARA: Yes.

MR O'NEILL: Now, do you recall meeting with Mr Bauer from Manteena on 8 April 2020?

MR O'MARA: So we went - so I think what we are eluding to is that there was a section 50A consultation meeting which Manteena, funnily enough, had to be dragged kicking and screaming to, because they didn't want to comply with that part of the legislation either, but after some intervention we got them to actually consult with their workers around safety on the project. And yeah, we had the consultation meeting on a - at or around that time. It was just after the start of the - of COVID, if I recall right. You know, it was on a COVID -

MR O'NEILL: That's the mandatory consultation that's required under the Work Health and Safety Act 2011 ACT?

MR O'MARA: Yes, yes.

MR O'NEILL: Now, doing the best - very best you can, can you recall firstly where that meeting took place?

MR O'MARA: Yes, it was at the Surge Centre at Woden Hospital.

MR O'NEILL: Right. And that was a project that Manteena were involved in at that time?

MR O'MARA: Yes.

MR O'NEILL: Who attended that meeting?

MR O'MARA: So the workforce - the workers who were on the site, the trades and Manteena's management.

MR O'NEILL: And did you address the workforce at that point? Is that something where you address a workforce?

5 MR O'MARA: Well, the - yes, management outlined their - their plans for, you know, how safety will be run onsite and how consultation will go throughout the project, and then we have some input into it, yes. So their management and us have a conversation, we have an ability to talk to the workers by ourselves at the time if we feel it is appropriate, yes.

10 MR O'NEILL: Right. And do you recall speaking with management on that day?

MR O'MARA: Some short pleasantries on the way in. The meeting was done. Didn't really have a lot to hang around and talk to them about. But I did throw a bit of a few cheap shots at him on the way out the door.

15 MR O'NEILL: Right. Well, to the best of your recollection, what were the cheap shots?

MR O'MARA: I'm not sure. I said something about - I don't know - a bit more friendly, you might - it might be better for you or something.

20 MR O'NEILL: Yeah, if it was bit more - if they had been a bit more friendly - well, I will put it this way - if they would engage more, they might have got a different piece of paper on Throsby. Did you say that?

25 MR O'MARA: Possibly.

MR O'NEILL: What would have that have been in reference to?

30 MR O'MARA: I'm not sure. There was - a couple of projects going at some stage and they - they had recently missed one. I'm not sure if it was actually the Throsby project because I don't believe it had been given, if there was another one I'm not - yeah, but look, I was just trying to - you know.

35 COMMISSIONER: You were trying to stir the pot, obviously, but nevertheless, did you say words to that effect to Mr Bauer?

MR O'MARA: I believe so, yes.

40 MR O'NEILL: What about words to this effect, that is, Manteena's not taking us seriously and putting off - and you have put us off on consulting when we have made recent approaches.

45 MR O'MARA: I'm not sure about that. I think I said something about there was a \$100 million project they had just recently come out that they had tendered for. And I said, you know, that's the type of job that's certainly on our radar and we would be likely to talk to you a bit more going into the future. Words to - they are not my exact words but, you know, words to - that was the meaning of the conversation.

MR O'NEILL: And by that - and sorry, certainly by that stage the union - sorry, Manteena had, in effect, shut down this request for consultation, hadn't it?

5 MR O'MARA: They had responded to a request and said that they weren't doing anything at this stage, yes. Yes.

MR O'NEILL: And that was really what you were driving at, is to say, well, if that's going to be your attitude, it's going to get difficult for you; correct?

10 MR O'MARA: We certainly weren't friends, yes. I think to put it in context, it was probably also Mr Bauer had smart alecked me a number of years before. I have a long memory, and when I've got an opportunity I thought I would square - square the ledge where him, with a bit of - yeah.

15 MR O'NEILL: Robust industrial -

MR O'MARA: Professional. There was no - you know, I wasn't yelling or swearing; I was just reminding him that he cheap shotted me and I was giving him one back.

20 MR O'NEILL: And it's not an area where people are exactly always pleasant with each other. Exactly right. Industrial relations?

MR O'MARA: It will be quite - it will be more than unlikely that me and Mr Bauer ever sit down and, you know, share a cold beverage.

25 MR O'NEILL: Now, there was a catch-up, was there not, between at least you and Mr Ceramidas on or about 15 April. That's about a week after that.

MR O'MARA: Possibly. I'm not sure, yes.

30 MR O'NEILL: You don't have a recollection of that?

MR O'MARA: I know Mr Ceramidas, and I had met him on and off at, you know, different things over the years.

35 COMMISSIONER: For some years.

MR O'MARA: Yes, for some years. Yes, yes. But I was, certainly not, you know -

40 COMMISSIONER: In the party context or in the industrial context?

MR O'MARA: In the party context. Yes. You know, I had - he - he's a - a lot younger than me, so certainly wasn't - you know, I thought he was a nice young fella, but I didn't - you know, he wasn't in my circle of friends or, you know, people I hung around with outside of
45 a work context. But I did know him and had, you know, if I - if I seen him in the street I - I would certainly acknowledge him and say g'day.

MR O'NEILL: And do you recall a meeting at or about that date that was also attended by the minister? Minister Berry?

5 MR O'MARA: I'm not sure. Look, I had met with Minister Berry over the years lots of times. So, you know, dates -

COMMISSIONER: Is it difficult to isolate particular occasions.

10 MR O'MARA: Yes.

COMMISSIONER: Is that what you are saying?

MR O'MARA: Yes, yes.

15 COMMISSIONER: Can I take it therefore that she may well have been there, you just can't have any - you don't have any particular memory one way or another.

20 MR O'MARA: I don't have any particular memory. And I've - since I've changed roles, I don't have access to any of my diaries or calendar notes. So I couldn't - you know, I couldn't - yeah, I don't know at that stage who I was meeting with. Sorry, I will say that it was - that was right in the middle of the first COVID shutdown, so we were meeting with government and ministers and, you know, the bureaucrats flat out, you know, at that stage. Because, you know, people were worried about all sorts of things. So it was a - it was a pretty hectic time.

25 COMMISSIONER: But that very situation would make it more likely than not that, one way or another, there would have been a meeting with a substantial government contractor, Ceramidas, the minister, that would make sense in that context.

30 MR O'MARA: Yes, yes. Yes. I'm not saying we didn't; I'm just saying I don't recall anything that we - you know -

MR O'NEILL: Do you recall whether the issue of Secure Local Jobs Code and the way in which had been implemented was raised, or is that something -

35 MR O'MARA: I don't recall the meeting, so I don't know.

40 MR O'NEILL: And therefore you won't recall, I assume, whether the fairly recent meeting you'd had with Manteena was raised with them?

MR O'MARA: No, sorry, yes.

45 MR O'NEILL: And you won't recall whether Campbell was raised with them at that time either, I assume?

MR O'MARA: Yes, I - pretty, you know, I don't recall the meeting at all. I don't recall having the meeting, so -

MR O'NEILL: Did the union ever adopt a position in respect of who it believed should win the Campbell tender? Did that - is that something that the union ever formed a view on?

5 MR O'MARA: I don't think we sit down, and, you know, take a straw poll on who should get it, but if you - you know, for us, if there was a two-horse race, it was undoubtedly that, you know, you had a multi-national company who had - you know, heaps of resources and assets and treated their workers right, you know, compared to a local - you know, a small company who we thought didn't. So, yeah, if someone had said to me, at the time, you
10 know, who should get the job, it wouldn't have been a secret.

MR O'NEILL: And, indeed, the other company, that being Lendlease, it had entered into enterprise bargaining with the CFMEU, hadn't it?

15 MR O'MARA: Yes, they did.

MR O'NEILL: And it had made an agreement with it in respect of how its workers - how it was going to pay its construction workers?

20 MR O'MARA: Yes. They had a long history of, you know -

MR O'NEILL: Industrial negotiations.

25 MR O'MARA: Of industrial practices, yes. Not always, but, you know, in a two-horse race, they were a mile in front.

MR O'NEILL: And do you know whether outside of - I withdraw that. Do you know whether you, or can you recall whether you had made that position known to anyone, that whether it was a two-horse race -
30

MR O'MARA: No. If someone had asked me I would have told them, but I can't recall -

MR O'NEILL: Right, can't recall.

35 MR O'MARA: Any conversations of that matter.

MR O'NEILL: Who at the Master Builders Association were you in contact with in relation to any of these issues, if anyone?

40 MR O'MARA: None of them.

MR O'NEILL: There was no contact ten you and the MBA?

45 MR O'MARA: No. They - yeah, they were inconsequential to any of the things we were doing.

MR O'NEILL: At any time, had you become aware of - during COVID, a process whereby the industry side of construction was meeting with ministers and that the union wasn't involved in those conversations?

5 MR O'MARA: Yes.

MR O'NEILL: And what's your recollection of that issue?

10 MR O'MARA: I - I was disgusted that, you know, the employers were getting access to government about an issue that representative workers weren't. So I made that known and -

MR O'NEILL: Who did you make that known to?

15 MR O'MARA: I think I rang up Duncan Edghill from Major Work - what is it?

MR O'NEILL: Major Projects Canberra; does that ring a bell?

MR O'MARA: Yes.

20 MR O'NEILL: What did you say to him?

25 MR O'MARA: I said I think it is disgraceful that you are sitting there having meetings about the industry's progression without involving the industry's representatives. So we didn't want to meet with them with the Master Builders, so we got the rest of the unions together and we held our own meetings and got - we got updates as, you know, the employers were getting the updates.

30 MR O'NEILL: Was that a satisfactory resolution to that problem once it had been identified with him?

MR O'MARA: Yes. I didn't - I didn't think it should have had to be identified. I thought it was poor -

35 MR O'NEILL: I understand -

MR O'MARA: - that we had to go and ask, you know, for it to happen but it - once it started happening, it was satisfactory and we, you know, progressed along.

40 MR O'NEILL: All right. Just excuse me one moment, Mr O'Mara. One final topic. If it was that the CFMEU had a complaint back in - say 2020, late 2019 or 2020, about a contractor, what was the mechanism by which that complaint was raised at that period of time?

45 MR O'MARA: So in 2020, it should have - well one mechanism could have been through the Secure Local Jobs Code, you know, if I - look, are you talking to a complaint to the ACT Government?

MR O'NEILL: Yes.

MR O'MARA: Well, that would be the mechanism there, probably. Yeah, or other Federal bits of legislation that you could -

5 MR O'NEILL: So you could litigate, for example. That's another potential avenue?

MR O'MARA: Yes, yes, yes.

10 MR O'NEILL: And what about up until your involvement with the union - had that position changed? Had there become an easier - a different avenue by which you could -

MR O'MARA: I'm not sure. I don't - you know. If there was an avenue that we could - we thought would help progress our members' interests, we would look at.

15 MR O'NEILL: And I think your evidence earlier was that even to the end of your involvement, you didn't think that the Secure Local Jobs Code was being implemented the way - or the Registrars were implementing it the way that -

20 MR O'MARA: Not in the way it was written or intended to, yeah, by the government.

MR O'NEILL: And that was certainly something that you had made known to anyone who would listen?

25 MR O'MARA: Yes.

COMMISSIONER: Yes, thank you. I take it there's no application for cross-examination?

MR HASSALL: Commissioner, I have a - I have an application.

30 COMMISSIONER: Mr Hassall.

MR HASSALL: I have an application. I don't imagine the actual cross-examination, if permitted, would take more than 10 minutes. I'm happy to -

35 COMMISSIONER: No, if you are ready to proceed? I'll give you leave.

MR McAULIFFE: He may need to outline what the topic is, I think, Commissioner.

40 COMMISSIONER: I think it is reasonably obvious.

MR HASSALL: Well, I'm happy to outline it first if that would assist you, Commissioner. I'm conscious of your written -

45 COMMISSIONER: You have said 10 minutes and you promise not to waste my time. Let's just bat on.

MR McAULIFFE: I would be grateful just for an understanding of the general topic first.

COMMISSIONER: But I don't think it will be helpful to you, because the witness is the one who will answer the questions, not you. Yes, thank you, Mr Hassall.

5 MR McAULIFFE: Understood.

<EXAMINATION BY MR HASSALL

10 MR HASSALL: I just want to - conscious of the Commissioner's direction that we should squarely put to any witness.

COMMISSIONER: Yes, quite.

15 MR HASSALL: A version that our clients put, so that's what I'm doing if that assists. Can you see and hear me okay, Mr O'Mara, from here?

MR O'MARA: Yes.

20 MR HASSALL: Right. Just in relation to the meeting in February 2020 at the CFMEU Dickson office, I understood your evidence to be that you initiated that meeting with Mr Green during the sod turning at the Evelyn Scott School. Is that right?

MR O'MARA: I believe so, yes.

25 MR HASSALL: So when you say you "believe so", you agree that was the effect of your evidence -

MR O'MARA: So we called it before the Molonglo School, but if Evelyn Scott is the name of the school -

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MR HASSALL: I see. That's the only issue you have with that proposition?

MR O'MARA: I believe so, yes.

35 MR HASSALL: And at the meeting, you told counsel assisting you had a discussion about things you didn't think were working and how you thought the Secure Local Jobs Code should be enforced.

40 MR O'MARA: I believe I said I had a strong recollection - I didn't have a strong recollection of it, but if I was pushed, that that would have been things that we would have talked about and that is consistent with what Mr Green had said.

MR HASSALL: Yes.

45 MR O'MARA: So I wasn't - I didn't object to that being the version of events that we accepted.

MR HASSALL: And you also explained that one of the things that you didn't think was working in relation to the Secure Local Jobs Code was that if the Registrar had been doing their job, there would have been potential sanctions on various companies. Is that - do you hold that view?

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MR O'MARA: Yes.

MR HASSALL: And one of those companies I think it follows from what you said is Manteena, that there would be sanctions on?

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MR O'MARA: Possibly there could have been, yes.

MR HASSALL: And indeed, your view is that as a company that's - I think you used the words, putting their hand up to go government work or putting their hands in the pocket of the government to be paid to do government work, they accept various obligations? And your view was, is it, is that because they have been and continue to be unwilling to, as you see it, accept those obligations that in fact they should be found to be ineligible for government work? Is that right?

15

MR O'MARA: Well, the Code speaks for itself. The Code sets out the obligations, and if they are not, you know, fulfilling them obligations, you know - the reason the Code is in place is here is a set of rules, you get your certificate, you comply with the rules, and you get to do government work, right. The government's made a conscious decision to say that they want best practice in industrial relations, and if you're not following that, then the Registrar's job was to uphold the will of the government and the legislation. And I don't think they were - he was.

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MR HASSALL: And that's - that's your strongly viewed - strongly-held view now?

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MR O'MARA: Yes.

MR HASSALL: And it was -

MR O'MARA: Sorry, sorry, with regards to Mr Green or with regards - I haven't worked in the job for a couple of years, so -

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MR HASSALL: Sorry.

MR O'MARA: I'm not sure how it's happening now. But at the time -

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MR HASSALL: That was your strongly held view at the time?

MR O'MARA: Yes.

MR HASSALL: And so when you - as best you can recall, discussed things that you didn't think were working in relation to the current system and how you thought that the Secure Local Jobs should be enforced, one of the things you would have said in that context, or

45

could have said in that context is that you didn't think that - you thought that exactly what you have just said, that some companies should be found to be ineligible to do government work; correct?

5 MR O'MARA: Yes.

MR HASSALL: You were here, I think, when Mr Smith gave evidence and said that there's been a long-term - I think the word he used was "hostile" relationship from Manteena towards the CFMEU. Were you here when he said that?

10

MR O'MARA: Yes, I was.

MR HASSALL: Do you agree with that description?

15 MR O'MARA: Look, yes, they had no interest in working with - with the union to, you know, raise either the level of their safety standards or their workers' pay and conditions, as 90 per cent of companies in town do. So, yes, you call that hostile if you like. But -

MR HASSALL: I'm just asking whether you agree with his description.

20

MR O'MARA: I don't disagree. Yes.

MR HASSALL: Okay. So the purpose of the meeting, I think you said, was you said you told Mr Green it would be good to catch up and you agreed with the proposition that it was put to you by counsel assisting it was for the purposes of discussing jobs - upcoming jobs in the Education Directorate?

25

MR O'MARA: Yes.

30 MR HASSALL: One of those was the Campbell Primary School.

MR O'MARA: It could possibly have been.

MR HASSALL: Well, you know, as you sit there today, you know that that that was happening at that time?

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MR O'MARA: I know the job was happening at the time, so yes.

MR HASSALL: So it's logical that you would have discussed that.

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MR O'MARA: Logical, but as I said I didn't - I don't have a great recollection of everything that was said at the meeting, so it's - you know, it's hard to agree to a proposition that I'm - you know, it could very well have been said, but I'm -

45 MR HASSALL: Yes.

MR O'MARA: You know, don't put words in my mouth, please.

MR HASSALL: I wouldn't. Your own words were that you had read everything that Mr Green had said and you "don't really dispute anything he said" about what was said at that meeting. They are your words. Do you remember saying those earlier today?

5

MR O'MARA: Yes, and I also said that I think he put a bit of extra spice on some of it. And if we - I don't know if it makes much difference, I couldn't - I don't think it is worth wasting the Commission's time arguing about - you know, everything that was said because I think it's inconsequential. But, you know, I think he - yeah, just a little bit of spice on some of it. It makes it sound a bit better. But other than that, I'm not, you know, not here to argue the point. But, you know, word for word -

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MR HASSALL: Well, as I understand your evidence, you are saying that you have and had nothing to hide in terms of your views.

15

MR O'MARA: No.

MR HASSALL: And your view at the time was that Manteena shouldn't be eligible to do government work; correct?

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MR O'MARA: No, I believe that the Registrar in the Secure Local Jobs Code should have been taking our complaints seriously, and some of the complaints we were making was against Manteena. Now, it was for the Registrar to decide whether they should or shouldn't be able to do work, but I believe at a minimum there should have been a level of sanctions placed on them, yes.

25

MR HASSALL: Yes. And when you say the Registrar, you are talking - we are talking about the person who was in the room with you at the time, who had been the Registrar until very recently?

30

MR O'MARA: Yes.

MR HASSALL: Right. So you - can I suggest to you that you left him in no doubt about your view, which I think you have stated, to the effect that because Manteena was someone who didn't, as you saw it, comply with its obligations in getting a Secure Local Jobs certificate, you left him in no doubt that they shouldn't be eligible to get government work.

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MR O'MARA: I'm not sure if -

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COMMISSIONER: Isn't that what -

MR HASSALL: Do you deny that?

MR O'MARA: I don't deny that, just -

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COMMISSIONER: Just one moment. Is that what you mean by sanctions? I mean, this was - if I may say so, Mr O'Mara, and correct me if my - if I'm wrong, your conversations

usually don't proceed by wink, wink, nudge, nudge. You call a spade a spade and you say what your opinion actually is. Is that a fair characterisation of your general approach to conversations of the kind that you had with Mr Green?

5 MR O'MARA: Yes.

COMMISSIONER: And does it follow from that, that - well, let me put you what it seems to me to be likely, and then - I won't put words in your mouth of course; you tell me if that's legitimate or not. If your view in fact was they weren't doing it properly, the
10 Registrar wasn't acting properly, there wasn't any sanctions, and the appropriate thing was at the end of the day, they shouldn't get the jobs.

MR O'MARA: Yes.

15 COMMISSIONER: Now, that, I think, was your opinion, was it not?

MR O'MARA: Well, but our view was based on evidence, and - so -

COMMISSIONER: Well, no, I'm not suggesting - I'm not now questioning the
20 reasonableness of that opinion. What I'm trying to do is to get to what your opinion was, and to be transparent about it, if you had that opinion, it strikes me that you would be very likely to convey that opinion to Mr Green. That's really the logic of the questions.

MR O'MARA: Sorry, so maybe to save - wasting time, I'm not - I'm disagreeing with the
25 exact words Mr Green put, not the sentiment of the conversation. Yes.

COMMISSIONER: Right. But then I would like to come back to - my more specific
question is, at that time, did you think that Manteena should be regarded as ineligible. Until it satisfied what you regarded as the necessary requirements of Secure Local Jobs
30 Code, it shouldn't get a contract. Was that your personal opinion?

MR O'MARA: I was surprised that out of the initial six tenderers, that they made the final
two if the evaluation team had taken into consideration their previous safety record and their Secure Local Jobs record. I was surprised that they had even beat out the other four.
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COMMISSIONER: That's a more specific question than the one I'm asking you, which is a
general question. And that is, was it your personal opinion that they shouldn't get
government contracts because of their conduct?

40 MR O'MARA: Yes.

COMMISSIONER: And did you express that opinion to Mr Green?

MR O'MARA: Probably.

45 COMMISSIONER: Yes. Mr Hassall?

MR HASSALL: No, further questions.

COMMISSIONER: Thank you. Very well. I think that brings the examination to an end.

5 MR O'NEILL: Thank you.

COMMISSIONER: Mr O'Mara, the odds are we won't need you back, but I can't release you at this time against the possibility that something which I have not foreseen will require you to return. But we will talk to your lawyers of course. It is a long process, I understand.

MR DOWLING: Commissioner, if I might raise two things at the risk of being stoned by my fellow counsel here, and that is for those of us whose witnesses have given evidence as to how the future conduct of the proceedings might unfold, if it's at all possible, and I've raised this with counsel assisting, those of us whose witnesses have given evidence we might appear -

COMMISSIONER: Just one moment. I think we have completed the public hearing for today, except for one matter. Can I just put you to one side for a moment and - yes.

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MR O'NEILL: Thank you. Might the witness be excused from the witness box?

COMMISSIONER: Yes, you can be excused. Thank you, Mr O'Mara.

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<THE WITNESS STANDS DOWN

MR PARARAJASINGHAM: Commissioner, just to assist you, as you know Mr Ceramidas has prepared a statement in these proceedings which we understand will be made publicly available by you, Commissioner, in due course. Just in anticipation of that statement being released, can I confirm my client's position as to the alleged conversation the subject of Mr Green's evidence. In summary:

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1, during the relevant period, Mr Ceramidas had a number of conversations with Mr Green about a range of matters related to their government roles and responsibilities. All of these conversations were entirely proper.

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2, there was no occasion on which a conversation as alleged by Mr Green occurred.

3, Mr Ceramidas has no recollection of any such conversation taking place.

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And 4, Mr Ceramidas rejects Mr Green's allegation that there was any conversation during which Mr Ceramidas said anything that could be construed as a direction that a particular procurement outcome must be achieved.

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Commissioner, this will all be set out in Mr Ceramidas's statement, but I raise that matter to assist.

COMMISSIONER: Yes, thank you.

MR O'NEILL: Thank you, Commissioner.

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COMMISSIONER: Yes, I just want to say that the statement, the full statement of Mr Ceramidas will be placed on the website in the next day or two, and it will be - I allowed his counsel to summarise the position that, in his submission, is conveyed by that statement, but, of course -

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(Livestream paused)

<THE HEARING ADJOURNED AT 4.02 PM TO FRIDAY, 8 SEPTEMBER 2023 AT 10 AM