



WORD FOR WORD AUSTRALIA

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

TRANSCRIPT OF PROCEEDINGS

THE HON MICHAEL F ADAMS KC, COMMISSIONER

THE ACT INTEGRITY COMMISSION – OPERATION KINGFISHER

PUBLIC HEARING

DAY 5

FRIDAY, 8 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

5 MR PARARAJASINGHAM: Commissioner, can I just raise one matter. It's something that I flagged with counsel assisting. It's a pocket of evidence that I understand is to be raised with this witness.

COMMISSIONER: I'm sorry, it's what?

10 MR PARARAJASINGHAM: It's a pocket of evidence that I understand is to be taken up with this witness.

COMMISSIONER: Yes.

15 MR PARARAJASINGHAM: Could I just - I have an objection to it. Can - Commissioner, are you prepared to hear that in the absence of the witness? Is that -

COMMISSIONER: If you apply for that. You think that's a better course. I'm afraid you're sitting down prematurely.

20 MINISTER BERRY: That's perfectly okay.

MR PARARAJASINGHAM: I think the public stream should be turned off as well, Commissioner, if you are content with that.

25 COMMISSIONER: Beg your pardon.

MR PARARAJASINGHAM: I think the public stream should be turned off.

30 (livestream paused)

(livestream resumed)

COMMISSIONER: Do you prefer to give your evidence on affirmation or on oath?

35 <YVETTE BERRY, AFFIRMED

MR O'NEILL: Ms Berry, could you please provide the Commission your full name.

40 MINISTER BERRY: Yvette Simone Berry.

MR O'NEILL: What is your occupation?

MINISTER BERRY: I'm the Deputy Chief Minister, and the minister of various portfolios. Do you want me to go through them all?

MR O'NEILL: Please.

MINISTER BERRY: Minister for Education and Early Childhood Development, Minister for Sport and Recreation, Minister for the Prevention of Domestic and Family Violence, and Minister for Women, and Minister For Housing and Suburban Land Agency.

5

MR O'NEILL: And that's here in the Territory?

MINISTER BERRY: Yes.

10 MR O'NEILL: And you are a member of the Labor Party?

MINISTER BERRY: Yes.

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

15

MINISTER BERRY: Yes.

MR O'NEILL: In 2019, did you hold the same ministries or were they slightly different?

20 MINISTER BERRY: I have picked up the Prevention of Sexual Assault and Violence.

MR O'NEILL: And you are a member for what -

MINISTER BERRY: Ginninderra.

25

MR O'NEILL: What is your - before you became the member for Ginninderra, do you remember when that was? When you became the member for Ginninderra.

MINISTER BERRY: 2012.

30

MR O'NEILL: Before that, what was your option?

MINISTER BERRY: I worked for the United Workers Union.

35 MR O'NEILL: Are you still a member of that union?

MINISTER BERRY: Yes.

MR O'NEILL: Are you a member of the CFMEU?

40

MINISTER BERRY: No.

MR O'NEILL: Have you ever been a member of the CFMEU?

45 MINISTER BERRY: No. I am a member of the CPSU as well.

MR O'NEILL: I see. Any other unions?

MINISTER BERRY: No.

MR O'NEILL: Now, do you know a person by the name of Joshua Ceramidas?

5

MINISTER BERRY: Yes, I do.

MR O'NEILL: And how do you know him?

10 MINISTER BERRY: He was my chief of staff.

MR O'NEILL: And before he was your chief of staff, was he an advisor?

MINISTER BERRY: He was an advisor.

15

MR O'NEILL: What area was he your advisor?

MINISTER BERRY: Education and Early Childhood Education.

20 MR O'NEILL: When did he stop being your chief of staff?

MINISTER BERRY: January 2021, I think I've got that date right.

COMMISSIONER: Do you want to check? Can you?

25

MR O'NEILL: It sounds right. It sounds right.

MINISTER BERRY: Okay.

30 MR O'NEILL: Now, that role, that is, the chief of staff -

COMMISSIONER: Just before, how did you know him?

MINISTER BERRY: I knew him through the Labor Party.

35

COMMISSIONER: Can you be a little more -

MINISTER BERRY: He's a member of the Labor Party. He had been a candidate in the ACT election in 2016, yes. That's pretty much it.

40

COMMISSIONER: Right.

MR O'NEILL: Did he -

45 COMMISSIONER: That's common, isn't it, for staffers, advisors or other staff, they are essentially seen as personal staff to assist the minister. Is that -

MINISTER BERRY: Common that they are members of the Labor Party, or that you -

COMMISSIONER: Sorry?

5 MINISTER BERRY: Sorry, that I've met them or that they have been met through -

COMMISSIONER: No, we will deal with it step by step.

MINISTER BERRY: Okay.

10

COMMISSIONER: But first of all I think those appointments are personal appointments. That is, the minister decides who is to have the job.

MINISTER BERRY: Well, at the end of the day, but there is an interview process, and an ad goes out and people apply.

15

COMMISSIONER: Certainly.

MINISTER BERRY: Yes.

20

COMMISSIONER: But at the end of the day, it's the minister's prerogative to determine who should hold that position?

MINISTER BERRY: Yes, absolutely. Yes.

25

COMMISSIONER: And it's frequently the case, whether it's in the government or opposition, that staffers will be members of the same political party as the minister?

MINISTER BERRY: Yes.

30

COMMISSIONER: And so Mr Ceramidas coming on as your staff was not exceptional. Probably most people would have guessed that he would have shared the same party loyalties as the minister.

35

MINISTER BERRY: Yes.

COMMISSIONER: Well, you don't want a conflict or a division.

MINISTER BERRY: No.

40

COMMISSIONER: It's essentially cooperative, and minister's task is of course executive in a sense, but it's also political in another sense.

MINISTER BERRY: Yes.

45

MR O'NEILL: So was there a formal interview with Mr Ceramidas before he commenced with you?

MINISTER BERRY: As chief of staff?

MR O'NEILL: Firstly as advisor.

5

MINISTER BERRY: Advisor. I believe so.

MR O'NEILL: Can you recall it or is that -

10

MINISTER BERRY: It would be likely that that would have occurred, yes.

MR O'NEILL: And then what about when he become -

MINISTER BERRY: Definitely. I remember that one.

15

MR O'NEILL: Right. And what are the qualities that you are looking for in a chief of staff?

MINISTER BERRY: Me personally?

20

MR O'NEILL: Yes, you.

MINISTER BERRY: Loyalty. The ability to work in an environment that's ever changing. To be able to work across a number of different areas. Share my values.

25

MR O'NEILL: The chief of staff role, what is it that you require from your chief of staff, firstly at a high level and then on a day-to-day level.

MINISTER BERRY: Well, that they can work across, as I've described, and that they can work across all of the different areas that they would be required to, and that includes the political space. They can engage with stakeholders, with the public service, with other officers within the government, with the opposition if necessary, other members of the Parliament, and that they are across - across their work and across my briefs.

30

MR O'NEILL: When they are undertaking that task, that is any chief of staff, is it that they are a representative of both you as well as the executive function you perform? Is that fair? That is, they are your representative when they are undertaking their interactions in the community. And then, how do you know what it is that they are doing on a day-to-day basis? Is there a process of communication between you?

35

MINISTER BERRY: It's not necessarily a formal process or a debrief every day, but I would generally know along the way if there were any hot issues that arise, anything that I might need respond to in public. That mostly happened, I guess, in an informal way, and through our team meetings, and during briefings as well with the public service.

40

45

MR O'NEILL: Can you give us a little insight into, for example, how closely they work - that is, the chief of staff works with you?

MINISTER BERRY: Pretty closely. Like we are pretty much available to each other 24/7.

MR O'NEILL: And when you say 24/7, that's not an exaggeration; it is literally around the clock.

5

MINISTER BERRY: Yes.

MR O'NEILL: And what about even the proximity between where they are seated and where you were seated?

10

MINISTER BERRY: Well, their office is adjacent to my office and - but I would say that we are not always in the office together because I would be often out if I'm not in the Assembly during sitting periods or whatever, and he might be moving around the building or visiting with stakeholders or the public service. So - but we are very close together.

15

COMMISSIONER: COVID of course brought some complication with that kind of communication. Did you still go - during the lockdown, you wouldn't have gone into the office, I take it or -

20

MINISTER BERRY: At that point, only Mr Ceramidas and myself. All of the rest of my staff were working from home and - because we would have to go and do media and it just wasn't working as well for us to be continuously working from home. So we were often working together in the office.

25

COMMISSIONER: Right.

MINISTER BERRY: Not often, that's probably - it was COVID, so when we needed to.

30

COMMISSIONER: Sure. This might not be a sensible question - tell me if it can't be answered - would it be - would it work out at three days a week or one day a week or - what it would - obviously from week to week, it would vary depending on the workload.

35

MINISTER BERRY: Yes.

COMMISSIONER: But by and large -

MINISTER BERRY: Probably two to three days a week from memory.

40

MR O'NEILL: Would there be an expectation upon you that your chief of staff could work independently from you having to task them with every single thing they are doing throughout the day?

45

MINISTER BERRY: Yes.

MR O'NEILL: And to that extent, are they recognised by you as someone who is senior enough to make calls on what needs to be done at each moment throughout any process?

MINISTER BERRY: Generally speaking, yes.

5 MR O'NEILL: And do you rely on their judgment in order to feed information back to you as to what is relevant for you to know?

MINISTER BERRY: Yes.

10 MR O'NEILL: It's not possible, is it, I mean, in the real world for you to be across every single thing that's happening across all of your portfolios all at once. That's fair, isn't it?

MINISTER BERRY: Yes.

15 MR O'NEILL: I don't think anyone expects you to do so, but as you say, when -

MINISTER BERRY: Exception for the opposition perhaps.

20 MR O'NEILL: Of course that's probably fair. Whether that's fair of them is another point. But it is relevantly, though, the only way you could possibly do your job is to ensure that you rely upon that person to do theirs.

MINISTER BERRY: Yes.

25 MR O'NEILL: Can I move to a slightly separate topic now. I want to talk to you about the relationship between the CFMEU and your office.

MINISTER BERRY: Yes.

30 MR O'NEILL: The CFMEU is an important union in the ACT; fair?

MINISTER BERRY: I think all of the unions are important, but the CFMEU are one of the larger ones.

35 MR O'NEILL: I see. And they have a relationship - do you feel that they have a relationship with you where if they need to advocate to you as a stakeholder they can do so?

MINISTER BERRY: To me personally, yes.

40 MR O'NEILL: Yes.

MINISTER BERRY: Yes.

45 MR O'NEILL: Do you know a person by the name of Jason O'Mara?

MINISTER BERRY: Yes.

MR O'NEILL: How do you know him?

MINISTER BERRY: Jason was the former secretary of the CFMEU.

5 MR O'NEILL: Did you only know him in that capacity or had you -

MINISTER BERRY: Yes. Sorry, apart from being a member - no, sorry, just hearing his evidence yesterday, apart from him being - well, he would come occasionally to Labor Party meetings. Yes.

10

MR O'NEILL: Thank you. And the relationship - you heard his evidence yesterday, I assume. He appeared - and someone will jump up and tell me if I'm wrong on this reflection, but he appeared to indicate that the relationship for the professional relationship between him and your office was a good one. Is that a fair reflection?

15

MINISTER BERRY: Yes, I would say so.

MR O'NEILL: He also indicated that - I think, was the gist of his evidence, and again someone will jump up if I'm wrong about this, but he felt that if there was something he could - he needed to say, he could get an audience with you within a reasonable period of time to do so.

20

MINISTER BERRY: Yes. Yes.

25 COMMISSIONER: I suppose, his major point of contact would have been Mr - your chief of staff?

MINISTER BERRY: Yes.

30 MR O'NEILL: Do you know someone by the name of Zachary Smith?

MINISTER BERRY: Yes.

MR O'NEILL: How do you know him?

35

MINISTER BERRY: He is also - he is currently the National Secretary of the CFMMEU and a member of the Labor Party.

MR O'NEILL: Had you known him - is that the only way you knew him? Is that the only capacity in which you knew him?

40

MINISTER BERRY: Yes, yes.

MR O'NEILL: He seems to be, from what the Commission - the evidence the Commission has received so far, to be the conduit between Mr Ceramidas and your office. Is that a fair reflection, if - to your understanding?

45

MINISTER BERRY: To the CFMEU?

MR O'NEILL: Yes.

5 MINISTER BERRY: Yes.

MR O'NEILL: Now, the CFMEU is a funder of the Labor Party?

MINISTER BERRY: Yes.

10

MR O'NEILL: The CFMEU, does its remit, to the best that you understand it, does it sit within any of your portfolios? That is, directly within -

MINISTER BERRY: No.

15

MR O'NEILL: Because you don't have a portfolio - an industrial relations portfolio, do you?

MINISTER BERRY: No.

20

MR O'NEILL: Other when you are in your capacity as the deputy chief or when you are acting chief.

MINISTER BERRY: Yes.

25

MR O'NEILL: The one way in which it could, though -

MINISTER BERRY: Sorry, I would say - sorry, the only other time that I would be having any kind of, like, working relationship or there would be something within my portfolios was within the direct employment of contractors. So that is one of the areas that they have an interest across the whole of government and it's the government's policy to insource. So that would be one area.

30

MR O'NEILL: I see.

35

COMMISSIONER: But that's construction procurement?

MINISTER BERRY: Well, no, it's the direct employment - so, for example, ACT public school cleaners are directly employed by the government now.

40

COMMISSIONER: I see.

MINISTER BERRY: So they used to be contracted, but it's the government's policy to insource contracted employees when we can and where we can, and that would be something that they would be interested in in areas that -

45

COMMISSIONER: Their union covers.

MINISTER BERRY: Yes.

MR O'NEILL: Is a fair label for that "service procurement", or is that putting that -

5

MINISTER BERRY: Service -

MR O'NEILL: The procurement of services.

10 MINISTER BERRY: Yes, more like, yes.

MR O'NEILL: Another time when it possibly comes within your portfolio, though, or portfolios, is when there is a capital works -

15 MINISTER BERRY: Yes.

MR O'NEILL: - undertaking within those portfolios. Is that fair?

MINISTER BERRY: Yes.

20

MR O'NEILL: But that's as and when those capital works projects arise?

MINISTER BERRY: They are one of the stakeholders.

25 MR O'NEILL: Yes.

MINISTER BERRY: Yes.

MR O'NEILL: Now, turning to that topic, that is, government procurement, there are a number of stakeholders that have interest in capital works procurement?

30

MINISTER BERRY: Yes.

MR O'NEILL: They range across from the industry participants themselves, that is, the contractors?

35

MINISTER BERRY: Yes.

MR O'NEILL: Through to their representatives such as their bodies, that is, the industry bodies, funders, or independent private funders if that is the model that is being chosen.

40

MINISTER BERRY: Yes.

MR O'NEILL: And then the relevant employees or workers.

45

MINISTER BERRY: Yes.

MR O'NEILL: And their representatives, that is, the unions to which those persons either belong or don't.

MINISTER BERRY: Yes.

5

MR O'NEILL: That is a broad range of persons who have an interest and those interests do not necessarily always align. Is that fair?

MINISTER BERRY: That's correct.

10

MR O'NEILL: And that's the point that the purpose of ensuring that there are strict government procurement guidelines so that there is a - there are rules for how those undertakings are to be undertaken.

15 MINISTER BERRY: Yes.

MR O'NEILL: The potential for conflict in those types of projects, particularly where there are large sums of money involved, that is significant?

20 MINISTER BERRY: Yes.

MR O'NEILL: And is it common or uncommon for persons, no matter where they are from, to seek to advocate their position to the minister's office in order to seek some kind of resolution of that conflict?

25

MINISTER BERRY: Yes.

MR O'NEILL: In that circumstance, and I'm talking generally at the moment before we get into the granular, at that type of level, the procurement guidelines, in effect, protect you, don't they, because they say these are the rules and you must follow them. Is that fair?

30

MINISTER BERRY: Yes.

MR O'NEILL: And that's the reason - or the policy reason for strong probity processes. Do you agree with that?

35

MINISTER BERRY: Yes.

MR O'NEILL: Now, turning to the granular, in October 2019, the Campbell Modernisation Project had commenced, or there was the commencement of that project. Do you remember that time?

40

MINISTER BERRY: Yes, generally.

45 MR O'NEILL: Now, I accept - is it the case that Campbell is just one of many of the procurement projects that were being managed by your Directorate, that is, the Directorate that sits under your ministry at that time?

MINISTER BERRY: Yes, yes. Yes. However, it was unique in its own redevelopment because of the issues that that school had experienced with their former building being demolished and then replaced. So in that respect, it was a little bit more unique to everything else -

5

MR O'NEILL: And if you care to explain that, or if you can, can you -

MINISTER BERRY: Sure. So that school had a building that was being managed because it had - managed by the Education Directorate because it had asbestos in it. And so it got to a point where it couldn't be managed safely anymore, and the decision was made then to demolish the building and build a new building.

10

MR O'NEILL: Was the Campbell School within your electorate?

15

MINISTER BERRY: No.

MR O'NEILL: So the principal interest, other than as a concerned citizen of the Territory, was because it fell within the Education Directorate, which was directly within your ministry?

20

MINISTER BERRY: That's right.

MR O'NEILL: The process ultimately first went out to an expression of interest and then narrowed down to two preferred tenderers. Did you know at the time who those two preferred tenderers were? I know you know now, but back then were you aware of who they were?

25

MINISTER BERRY: I think I was. I can't quite recall the timeframe of when I became aware.

30

MR O'NEILL: How do you - doing the very best you can -

MINISTER BERRY: Yes.

35

MR O'NEILL: And I appreciate this is some time ago and also there were some significant events that occurred shortly after this time, but doing the very best you can, how was it that you became aware of those two tenderers?

40

MINISTER BERRY: I can't remember how I was - how I was made aware. It could have been during a briefing. It could have been after they were publicly known on the - by the Directorate and by everyone else. I could have been told by anyone, really, in my office or within the Directorate.

45

MR O'NEILL: Can you just give us a snapshot - this is pre-COVID, but a snapshot of how busy your day-to-day interactions are in respect of how many briefings you were getting and what -

MINISTER BERRY: Well, every single one of my portfolios I have a briefing at most days of the week. And then there will be other internal meetings in the office. There will also be media events and also maybe meetings with stakeholders across a variety of areas.
5 Ministerial, you know, Federal ministerial meetings where we have to go interstate or here. And when the Assembly is sitting, of course, committee hearings. It's quite a busy time.

MR O'NEILL: And on top of home life and all the other things.

10 MINISTER BERRY: Yes.

COMMISSIONER: At about this time, that is, towards the end of 2019, how often would you have briefing meetings with the Education Directorate? Weekly? Bi-weekly?

15 MINISTER BERRY: So each portfolio that I have responsibility for, I will have one meeting a week. But leading into COVID, education was obviously an area where we -

COMMISSIONER: Because it wasn't only the teachers, that is, not only the public servants, but direct impact on the community because you had to deal with the pupils as well.
20

MINISTER BERRY: Yes.

COMMISSIONER: So that made it a much bigger problem.
25

MINISTER BERRY: So at that point in time, we were meeting pretty much daily over the phone or via Teams when COVID really kind of started.

COMMISSIONER: Right. Before that, though -
30

MINISTER BERRY: Before that, it will be once a week.

COMMISSIONER: Right. And present at those meetings would be, I assume, the Director-General or Acting Director-General.
35

MINISTER BERRY: Yes.

COMMISSIONER: And how many staffers?

40 MINISTER BERRY: Usually around three - four - back then - because it was the Early Childhood portfolio as well combined, probably about six or seven people including the Director-General and then myself, my -

COMMISSIONER: And your chief of staff, I assume?
45

MINISTER BERRY: And my chief of staff, my education advisor and myself and often my communications and media.

COMMISSIONER: Right.

MINISTER BERRY: So from my office, there would be about four people.

5

COMMISSIONER: Right. Were these meetings decision making or essentially only for exchange of information?

MINISTER BERRY: Generally an exchange of information. It could be that there was something that needed a decision made or more advice or more work. But usually they were - they are information sharing.

10

COMMISSIONER: Right.

MR O'NEILL: Are those meetings called a MINSET meeting? Is that -

15

MINISTER BERRY: Yes.

MR O'NEILL: Do you know what that stands for?

20

MINISTER BERRY: You know, I should know.

MR O'NEILL: I don't mean to embarrass anybody. It's just -

MINISTER BERRY: Well, it's too late now.

25

MR O'NEILL: Okay. But we know they are called MINSET meetings, and they are relatively regular.

MINISTER BERRY: Yes.

30

MR O'NEILL: Now, you said that you did know who the two tenderers were. Who were they?

MINISTER BERRY: Manteena and Lendlease.

35

MR O'NEILL: Now, dealing with both of them, I'm going to deal with Lendlease first, if I may. Did you know who Lendlease was?

MINISTER BERRY: Yes.

40

MR O'NEILL: What was your knowledge of Lendlease?

MINISTER BERRY: They are a large national company, construction company.

45

MR O'NEILL: And was that the extent of your knowledge?

MINISTER BERRY: Yes.

MR O'NEILL: Did you know anyone who worked there?

5 MINISTER BERRY: No, no.

MR O'NEILL: Or within?

MINISTER BERRY: No.

10

MR O'NEILL: Now, Manteena, did you know who they were?

MINISTER BERRY: Yes.

15 MR O'NEILL: And what was your - the extent of your knowledge about that entity?

MINISTER BERRY: That they are a local organisation. I do know some of the - I had met at least one person who works with Manteena as one of the directors, I think through my women's portfolio, really, and their association with the national association of women in construction.

20

MR O'NEILL: Do you remember who that person was?

MINISTER BERRY: Peta - whose last name I should have remembered this before I came in today because I forgot it last time too. But Peta.

25

MR O'NEILL: Peta. All right.

COMMISSIONER: Were you aware - sorry, I will ask the question another way. Had Manteena, to your knowledge at this time, done other work for the Education Directorate of other school construction projects?

30

MINISTER BERRY: I couldn't tell you.

35 COMMISSIONER: You didn't know one way or the other.

MINISTER BERRY: No.

COMMISSIONER: So when you saw the name, it didn't occur to you whether they had or not done any previous work for the Education Directorate. Is that correct?

40

MINISTER BERRY: No. No. Yes.

COMMISSIONER: Right.

45

MR O'NEILL: Now, did you have any understanding of any IR issues with respect to Lendlease?

MINISTER BERRY: No.

5 MR O'NEILL: Did you have any understanding of any IR issues, that is, industrial relations issues with respect to Manteena?

MINISTER BERRY: I knew that the CFMEU were unhappy with Manteena.

10 MR O'NEILL: And that was as at the end of 2019, you think you knew that?

MINISTER BERRY: I think so.

MR O'NEILL: How do - did that knowledge, do you think, come to you?

15 MINISTER BERRY: I can't remember how I knew it. I could have read it somewhere or somebody could have told me. I don't recall. But I just knew that there was that unhappiness.

20 MR O'NEILL: Now, is it something that the union had expressed to you directly, do you think?

MINISTER BERRY: I can't remember them saying that to me, but it's possible.

25 MR O'NEILL: Is it something that Mr Ceramidas might have told you?

MINISTER BERRY: Possibly. Again, I can't remember specifically where I heard that that was the case.

30 MR O'NEILL: Is it something that the Directorate might have fed back to you?

MINISTER BERRY: I doubt it.

35 MR O'NEILL: Now, when I refer to someone called Mr Green, do you know who I'm referring to?

MINISTER BERRY: Yes.

MR O'NEILL: Do you know - did you know that person as at 2019? At the end of 2019?

40 MINISTER BERRY: I knew him when he came across and worked into the Education Directorate. Previously, I don't - I don't believe I knew him.

45 MR O'NEILL: You don't believe you knew him when he was the Secure Local Jobs Code Registrar?

MINISTER BERRY: No. Sorry, when I say I didn't know him, I didn't have interactions with him.

MR O'NEILL: I accept that. You would have met -

MINISTER BERRY: Possible.

5

MR O'NEILL: - many, many, many people at many, many different times across many years. I accept all of that.

MINISTER BERRY: Yes.

10

MR O'NEILL: It's more about when I say "knowledge", specific knowledge of him. And when you did come to have specific knowledge of him, what was the extent of that knowledge, if any?

15 MINISTER BERRY: In the Education Directorate?

MR O'NEILL: Yes.

20 MINISTER BERRY: So he was responsible for the school - the school builds, basically, and he would come to the ministerial briefings.

MR O'NEILL: Other than on those occasions, would it have been - would he have been, in his role, someone that you would have spoken to?

25 MINISTER BERRY: Sorry -

MR O'NEILL: Would he have been - when he was acting in that role, whenever he was in the Directorate, is that someone that you would speak to?

30 MINISTER BERRY: Not directly.

MR O'NEILL: Is it your practice to speak to public servants in the relevant Directorates without having their heads of Directorate -

35 MINISTER BERRY: Not - I wouldn't just pick up the phone and ring individuals, but there might be other times that I would be talking with them during briefings on different areas within my portfolios.

MR O'NEILL: All right.

40

MINISTER BERRY: Yes.

MR O'NEILL: I understand. But it's not something, for example, where you pick up the phone and give someone an indication of anything. That just doesn't happen.

45

MINISTER BERRY: No, no.

COMMISSIONER: I take it, though, if it happened that you needed some particular information that would come from one of the relevant public servants, you would expect, say, Mr Ceramidas to pick up the phone and make the inquiry for you?

5 MINISTER BERRY: It would likely be one of the advisors in my office.

COMMISSIONER: Or the advisor, right.

MINISTER BERRY: Yes.

10

COMMISSIONER: But there is that link for information gathering, for example?

MINISTER BERRY: Sure.

15

COMMISSIONER: The Director-General has general executive responsibility, but obviously may not have a detailed knowledge of everything that's going on, so you go to the person who's likely to be the source of useful information.

MINISTER BERRY: That's right, yes.

20

MR O'NEILL: Now, I'm going to take you to a document. It's not a document of yours; it's at 2.0196. And the Commission received some evidence about this yesterday. This is a WhatsApp message between Mr Ceramidas and Mr Smith from the CFMEU. The green bubbles are Mr Smith, and the grey bubbles are Mr Ceramidas. The date of this message is 25 10 September 2019. And you see there that at the top, Mr Smith says to Mr Ceramidas:

I have some issues to discuss with your Directorate.

30

We received evidence yesterday that's the Education Directorate that's being referred to, and that it has a whole bunch of building works coming up. Now, firstly, as at September 2019, does that accord with your recollection of - that there was a number of building projects coming up for the Directorate?

MINISTER BERRY: Yes.

35

MR O'NEILL: You see there, there's a name, there's before - we will come back to Campbell, but there is Franklin.

MINISTER BERRY: Yes.

40

MR O'NEILL: Do you know what that project was?

MINISTER BERRY: Franklin was an expansion of their school.

45

MR O'NEILL: And Campbell is obviously -

MINISTER BERRY: Campbell was the - yes, the building demolition and replacement.

MR O'NEILL: And there was some replacing - plus you are replacing some roofs. Do you see that?

5 MINISTER BERRY: Yes.

MR O'NEILL: In your recollection, just noting this is someone else's message, do you remember there being a project about roof replacement?

10 MINISTER BERRY: There is an ongoing roof replacement program within our schools. Yes.

MR O'NEILL: Is that also related to asbestos removal? Is that -

15 MINISTER BERRY: No, it's just old buildings that need new roofs.

MR O'NEILL: I see.

MINISTER BERRY: Yes.

20

MR O'NEILL: And then you will see that Mr Ceramidas speaks of Molonglo.

MINISTER BERRY: Yes.

25 MR O'NEILL: And that "it's OK." Do you know what they are talking about there? What Molonglo means?

MINISTER BERRY: It's the new school that was built in Molonglo. Evelyn Scott.

30 MR O'NEILL: The Evelyn Scott School which is in Molonglo Valley.

COMMISSIONER: Can I go back a step. There was a process by which government construction procurement was notified to potential interested parties, including unions -

35 MINISTER BERRY: Yes. Sorry.

COMMISSIONER: That had been instigated under what has been called an MOU.

MINISTER BERRY: Yes.

40

COMMISSIONER: You're aware of that?

MINISTER BERRY: Yes.

45 COMMISSIONER: What was the point of letting, say, unions know about upcoming tenders?

MINISTER BERRY: It was so - it was a while ago, but it was supposed to be that unions could then advise the government of any issues with regards to any of those procurements - construction and any other procurement that the government might have been doing. Health and safety issues, industrial issues, those kinds of things.

5

COMMISSIONER: Right. Part of the difficulty, though, with government dealing with complaints or reports, however one characterised them, is of course that if - it's one thing to have an objective description of particular issues and quite another from an active party who will inevitably have an axe to grind of one kind or another. Do you agree? Assessing, in other words, the actual information or content of such a report, their health and safety record is not very good, for example, is difficult without doing some checking. Because there is a WHS structure in the Territory that is supposed to consider complaints about safety and conduct regular inspections and impose requirements on companies. So that kind of complaint can be verified.

15

MINISTER BERRY: Yes. I think it's probably further than just work health and safety. It might be issues around pay, organise - you know, different contractors might not be paying correctly or underpaying. They might not be paying super. They might not have registered to the long service leave.

20

COMMISSIONER: All those things are - all those things no doubt are possible, and from time to time there's no question that those things occur.

MINISTER BERRY: Yes.

25

COMMISSIONER: The difficulty is in any particular case to ascertain the fact as distinct from getting the allegation -

MINISTER BERRY: Yes.

30

COMMISSIONER: - and very often how an enterprise agreement is to be interpreted, what the relationship is between employees and outside contractors. Those are fraught industrial relations issues that are continuously on the plate one way or another. Do you agree?

35

MINISTER BERRY: Yes, that's - yes.

COMMISSIONER: So in the nature of things, it's very - it strikes me at least - tell me if this is a mistaken view - that it's very difficult to delve into the actuality of such complaints except that one is, as it were, being warned that there may be a problem with industrial disputation, whatever the rights and wrongs are.

40

MINISTER BERRY: Yes.

COMMISSIONER: Do you - so how - when the government - I'm talking before Secure Local Jobs, that set up a different structure, but under the MOU, how did the government - because it would have affected not only Education, but any

45

procurement - department that was doing procurement work. How did the government deal with complaints - union complaints about particular contractors?

5 MINISTER BERRY: I don't think it's dissimilar to how it was under the MOU to how it is now where unions will, you know, get in contact with the industrial relations minister usually to talk about those kinds of issues. So I don't think that side of things necessarily changed. It's just that now what's changed is that there's a more formal process which requires both unions, employee representatives and employers to have a more transparent approach to managing these kinds of things.

10 COMMISSIONER: Right. But can we just go back to the MOU problem.

15 MINISTER BERRY: So, can I - I perhaps assist? Is it - the question you are asking me, did the government depend on the advice from these professional expert organisations, unions and not - and not investigate whether their allegations were correct or not?

COMMISSIONER: Well, that's the first question.

20 MINISTER BERRY: Yes. I don't know, because I was only early on in - early in the government and I was backbencher back then. So it wasn't really out of my - out of my area. But that was one of the reasons why, from my memory, that the MOU - that the move and the work that the union has done to advocate for a change to that process, because the MOU was really just ink on paper; it wasn't really a document that was working to understand the industrial circumstances, I guess.

25 COMMISSIONER: I think you heard Mr Smith giving evidence about that.

MINISTER BERRY: But it has - so - you know, I worked for a union before.

30 COMMISSIONER: No, I'm not suggesting that's the source of your present evidence.

MINISTER BERRY: No. In fact, sadly, I -

35 COMMISSIONER: What I mean is, he made the same point.

40 MINISTER BERRY: And he's right, because when I worked for United Workers Union, and this doesn't really - isn't really relevant, but I was around when the MOU was being negotiated. Not that I really had a direct role in that. I wasn't an - a voted official, you know, like Zach and Jason, Mr Smith and Mr O'Mara, but I was aware of it, and everybody was aware that it wasn't working in the way that unions would have liked. But also it couldn't just be a one-sided thing. We had to, you know, bring the employers on so there was some transparency around it.

45 COMMISSIONER: Right. The additional aspect is it's one thing if you have an industrial dispute, say, about whether an enterprise agreement was being appropriately complied with by an employer, say, that kind of dispute. And you would bring that to government. What struck me as pointed was the government could probably not do anything, even if there

was a feeling within government, and even if it was a legitimate view that, say, the enterprise agreement was not being complied with. The tool, the leverage that the government had was its contracting status. That's what gave - when government said - say to a construction employer, "We won't award any contracts to you until you correct your behaviour", shall we say.

MINISTER BERRY: Well, I -

COMMISSIONER: I'm not saying that - I'm simply using that as an example of the added feature that the MOU gave to the management of disputes, that feature being that it fed the information from the unions into the contracting process. Now, what happened after that is another matter. There's the Procurement Act and there are a whole lot of other processes, but that gave a - some role for government to do something about whatever it was, do something about the alleged misbehaviour of the employers.

MINISTER BERRY: I can't - I really can't agree with -

COMMISSIONER: Right.

MINISTER BERRY: - the premise of what you are getting to there, because I wasn't involved, and I don't know how the MOU was implemented from within government.

COMMISSIONER: No, I understand. I'm sorry, I should have made it clear, I'm really talking from the point of view in principle, because the MOU provided that the unions were to get information about who was tendering for government contracts.

MINISTER BERRY: That was -

COMMISSIONER: Now, that was not a matter of satisfying general curiosity about the nature of business in the - in the Territory because the unions - and I understand the unions want to know how much construction work is going on because their members are involved in that industry. They want to know the scale of the - of the work that's available. But that wouldn't involve knowing who were the tenderers. So there must have been some reason for identifying the tenderers. As I see it, the only reason I can think of is that it enables particular complaints to be made to government, one way or another, about particular contractors, and the only point of that would be if those complaints were somehow taken into account in government exercising its contracting power.

MINISTER BERRY: Well under the MOU, Commissioner, that, I think, is the issue that unions will raise, that it didn't work. It didn't work in the way that they were hoping it would work.

COMMISSIONER: Right.

MINISTER BERRY: Right. And so that's why now we have this new procurement process, which, again, I'm not an expert on by any means, but the idea of that is that there is more transparency for unions to be able to see what's going on and bring to the attention

of government potential issues. And then it's up to the government to investigate those, go through the process through procurement - through the Secure Local Jobs Code. But previously, and previously under the MOU, that - it wasn't working in the way that the unions would have preferred it and they advocated quite strongly for the government to change the process.

5

COMMISSIONER: In short, to give some teeth to the intent, what they saw at least as the intent of the MOU.

10 MINISTER BERRY: I think they wanted their roles legitimised more than anything.

COMMISSIONER: Right. That created the difficulty for government in that of course you couldn't get the - give the unions a right of veto over who the government was going to contract with.

15

MINISTER BERRY: No.

COMMISSIONER: If you give them the ability to provide input on particular contractors, then as you point out it's necessary that you allow input from the other side.

20

MINISTER BERRY: Yes.

COMMISSIONER: So that you could make some fair policy decisions. And - sorry, do you agree with - I thought I'm actually restating what you just told me.

25

MINISTER BERRY: Well, no, not in the way that I said it. But -

COMMISSIONER: No, quite. But that's why I'm asking your response. If you hadn't - if I have misunderstood you, then we need to get it clear.

30

MINISTER BERRY: Again, I'm not an expert with how it starts within the Secure Local Jobs Code and how the various employer organisations and unions come together and work through these things. That's my understanding of where it helps as well, those conversations. It might - I might be wrong, but that's where some of those issues can be raised. The groups - the reference group or whatever it's called.

35

COMMISSIONER: Well, there is an advisory -

MINISTER BERRY: Advisory group, yes.

40

COMMISSIONER: But they don't make -

MINISTER BERRY: No, they -

45 COMMISSIONER: They don't descend into particular projects or particular contractors.

MINISTER BERRY: No, no.

COMMISSIONER: And you yourself - and I accept there's no reason why you should - that you yourself have no detailed understanding of how the Code operates.

5 MINISTER BERRY: In general terms, of course I do, but not the detail.

COMMISSIONER: Yes. Perhaps that's a convenient time to -

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

10

COMMISSIONER: Mr O'Neill. We will resume at 11.30 - 11.35.

<ADJOURNED 11.19 AM

15 **<RESUMED 11.43 AM**

COMMISSIONER: Yes, Mr O'Neill.

MR O'NEILL: Thank you, Commissioner. Ms Berry, before there was an excursion into
20 the operation of the Code, I had up a text message between Mr Ceramidas and
Mr Smith - or WhatsApp message, rather. I will just bring that up now. 2.0196. And take it
from me that the date of this text message is 10 September 2019. And I think you have
accepted that it - those various projects were projects that were on foot at that time; agree?

25 MINISTER BERRY: Yes.

MR O'NEILL: And you see at the very top though, that Mr Smith says:

I have some issues to discuss with your Directorate.

30

MINISTER BERRY: Yes.

MR O'NEILL: Did Mr Ceramidas communicate to you at about this time - that's
35 September 2019 - whether the union had any issues to discuss within the Education
Directorate?

MINISTER BERRY: I can't remember.

MR O'NEILL: What about did Mr Ceramidas discuss with you whether the CFMEU had
40 any issues with respect to Campbell?

MINISTER BERRY: It's very possible that he did, yes.

MR O'NEILL: And the difference between the two answers is - when you said, "I can't
45 remember" but "it's very possible", is that because there is something to your mind that
was an issue in relation to Campbell?

MINISTER BERRY: So if we just go back to the first question -

MR O'NEILL: Yes.

5 MINISTER BERRY: On this particular message, I don't remember all of these construction works being raised with me by Josh as like the union wants to talk with me about these things. It's possible that he - I just can't remember all of these issues being something that the CFMEU wanted to discuss. I don't remember. Campbell - with regards to Campbell, what was the date of this one again?

10

MR O'NEILL: This is September, so 10 September 2019.

MINISTER BERRY: It's possible that he talked about Manteena and Lendlease.

15 MR O'NEILL: Yes. I think your answer today was it's very possible, and that's why I then pressed you on the question was just because it seemed to be that there was a distinction, at least in the way that you answered the questions, that one was of a higher possibility, if it's on a spectrum. Do you understand?

20 MINISTER BERRY: Right. It's - look, it's possible because I think that was around the time that we knew that Manteena and Lendlease were - towards the end, right?

MR O'NEILL: It's slightly earlier than that.

25 MINISTER BERRY: Slightly earlier.

MR O'NEILL: Slightly earlier. This is when there were still six or so.

MINISTER BERRY: Okay, well then, probably not. It would have been after we knew.

30

MR O'NEILL: All right. Well, we will come to that then shortly. Then if I can take you to 2.0197. Now, I just want to orientate you in time as to these text messages. This is 27 October 2019. There was a MINSET meeting that was to occur the next day. That was on 28 October 2019, where the announcement was to be made about the budget that would be allowed for the Campbell Modernisation Project. So it had been in the pipeline, but it was now going to be announced. And this is a set of text messages between you and Mr Ceramidas. Do you see that?

35

MINISTER BERRY: Yes.

40

MR O'NEILL: And you were asking for Zach's number. That's Mr Smith. And it's provided. And then the next message over on the next page, 2.0198. Now, whilst it says, "to and to", accept into me that the green messages come from Mr Ceramidas. So that's not a message from you; that's a message from Mr Ceramidas to you. It's just the way in which they have been downloaded into the software. He said, "Mel rang Jason." Do you know who Mel is there?

45

MINISTER BERRY: That could be the Mel - she might have been the secretary of the Labor Party at the time.

MR O'NEILL:

5

Sounds like she wants to do it and they're going to support that.

Does that make any sense to you now?

10 MINISTER BERRY: Not at all.

MR O'NEILL: Do you now - having then received Mr Smith's -

15 MINISTER BERRY: Sorry, just trying to think. I wonder if - I wonder if she was the secretary at the time. She might not have been and had decided she would be and has communicated that.

MR O'NEILL: Right. The secretary of what?

20 MINISTER BERRY: The ACT Labor Party. That could be - that could be what that is.

MR O'NEILL: Right. And so therefore is there - reflecting upon that, is there any connection between the request for Mr Smith's number and that text message? There may not be.

25

MINISTER BERRY: Could - could have been.

MR O'NEILL: I see. Not one relevant to this Commission, though, for the purposes of -

30 MINISTER BERRY: I don't - no, this one. No, gosh no. No.

MR O'NEILL: The Campbell project. Do you remember then speaking to Mr Smith in relation to the Campbell project?

35 MINISTER BERRY: No.

MR O'NEIL: On of 6 February, there was a sod turning at Molonglo. Do you remember that?

40 MINISTER BERRY: Yes.

MR O'NEILL: I'm just going to take you to a document to help you. It's at page 2.217. It's from your Facebook page. And there it is, you communicating about the commencement of the construction of the school at Molonglo Valley. Do you see that?

45

MINISTER BERRY: Yes.

MR O'NEILL: Now, if we just take the photograph and extract that for me, please. The person that is obscured, that's Mr Green. Do you remember him being there?

MINISTER BERRY: Yes.

5

MR O'NEILL: Did you speak to Mr Green at the sod turning, to the best of your recollection?

MINISTER BERRY: Only to say I'm here, this is great.

10

COMMISSIONER: Just pleasantries.

MINISTER BERRY: Yes.

15 MR O'NEILL: Now, we understand that Mr O'Mara was there briefly. Do you remember speaking to him at the sod turning?

MINISTER BERRY: Not other than to say g'day or say hello.

20 MR O'NEILL: What about Mr Smith?

MINISTER BERRY: The same.

MR O'NEILL: And Mr Ceramidas was there?

25

MINISTER BERRY: I don't remember if he was there, but it's possible he was there.

MR O'NEILL: Right. There was one matter that you were particularly interested in at that sod turning, was there not?

30

MINISTER BERRY: Yes.

MR O'NEILL: What was that?

35 MINISTER BERRY: The female excavator driver.

MR O'NEILL: And so other than that memory, that is the memory about you being impressed about the female excavator, do you have any other recollections of any other discussions that you had whilst at the sod turning?

40

MINISTER BERRY: No. And I did - I mean, no, just with that - I chatted to the delegate that was there, whose name I can't remember now, and, you know, all of the - all of the people that were there. There was the Molonglo Community Council, the P & C, Major Projects team, Director-General, some of the team from the construction company who - I can't remember which construction company it was, and Chris Steel - Minister Chris Steel.

45

MR O'NEILL: When you said the Director-General, who was that?

MINISTER BERRY: Katy Haire. I think that's Katy, is it?

MR O'NEILL: Who are you pointing to?

5

MINISTER BERRY: Standing next to me. Maybe it's not Katy. It looks like Katy.

MR O'NEILL: Just when you say next to you, is that the one where the -

10 MINISTER BERRY: Yes, that's right.

MR O'NEILL: Okay. All right. Do you remember what you said to Ms Haire when you were there?

15 MINISTER BERRY: No, just - you know, we do these sod turns and they are really exciting and they are the start of the project, and everybody gets to come together and, you know, chat with each other about the project, really. But nothing -

COMMISSIONER: No business is done.

20

MINISTER BERRY: No business. It's just a nice event to bring people together.

MR O'NEILL: And were you - did you overhear any discussions between any other people that were there about in particular any meetings that needed to be had between the CFMEU and the Directorate?

25

MINISTER BERRY: No.

COMMISSIONER: Ms Haire had not been, I think, in the job all that long.

30

MINISTER BERRY: That could - that could be true. I think this might have been -

COMMISSIONER: She might only have been acting at this point. I don't have a firm grasp of my chronology, but you can recall, Mr O'Neill?

35

MR O'NEILL: She was -

COMMISSIONER: She was the Director-General. But she had come from interstate?

40

MINISTER BERRY: Yes. Victoria. Yes.

COMMISSIONER: Did you, as minister, play any role in her appointment?

MINISTER BERRY: No. So those appointments are made by the head of the public service.

45

COMMISSIONER: Right.

5 MINISTER BERRY: We are advised about them, and we get to - because she was my - would be my Director-General in education, we would be able to have a conversation before she's appointed. But - well, officially appointed. That's it, really. But we don't really have a veto over who gets the job.

COMMISSIONER: So you would have a brief informal conversation with her.

10 MINISTER BERRY: Yes.

COMMISSIONER: A sort of -

MINISTER BERRY: Getting to know you, yes.

15 COMMISSIONER: Where she got to introduce himself.

MINISTER BERRY: Yes.

20 COMMISSIONER: But that was not a vetting process or any -

MINISTER BERRY: No.

25 COMMISSIONER: - responsibility process as to, for example, her qualifications for the job or anything of that kind.

MINISTER BERRY: No.

COMMISSIONER: That was for the head of service.

30 MINISTER BERRY: Yes.

COMMISSIONER: And I take it, it follows, you didn't know her personally before this?

35 MINISTER BERRY: No. Sorry, one other thing which is not really relevant, but I think at that meeting, that sod turn, Mr Green was wearing a high-viz shirt and I asked if I could get one.

MR O'NEILL: Because of the colour of it?

40 MINISTER BERRY: Yes. And so he did get me one. It's slightly more flattering than the orange and the yellow.

45 MR O'NEILL: The vest. All right. When you spoke with Ms Haire - sorry, do you recall any conversations with Ms Haire at or about this time about Campbell?

MINISTER BERRY: No, not specifically. But it's possible. Only because - well, it's another project, you know, and it was, as I said, a little bit unique.

MR O'NEILL: Okay. I'm going to turn to a different topic. I want to take you to a text message. It's not between you or anybody else, between your chief of staff and a person known as Mr Ferguson. Do you know who he is?

5

MINISTER BERRY: Yes.

MR O'NEILL: Who is he?

10 MINISTER BERRY: He's currently the chief of staff of Minister Steel. He did work in my office for a while.

MR O'NEILL: As at 24 February 2020, do you know what role he was playing within government - that is, Mr Ferguson?

15

MINISTER BERRY: Sorry, what was the date again?

MR O'NEILL: This is 24 February 2020.

20 MINISTER BERRY: He would have been with Minister Orr - I think Minister Orr.

MR O'NEILL: Who was then the -

MINISTER BERRY: Industrial Relations.

25

MR O'NEILL: Among other ministries was Industrial Relations.

MINISTER BERRY: Yes. One of her portfolios, yes.

30 MR O'NEILL: All right. It's at 2.0304, and in this message, the green bubble is a message from Mr Ceramidas to Mr Ferguson.

MINISTER BERRY: Yes.

35 MR O'NEILL: And he's making a disparaging remark about Mr Green. Do you see that?

MINISTER BERRY: Yes.

MR O'NEILL: And then, if I take you across to the next page.

40

COMMISSIONER: Just before that, do you recall any conversation with Mr Ceramidas in which he expressed a view about Mr Green of any kind, either positive or negative?

45 MINISTER BERRY: I think probably around a just general frustration - sorry, no, this was after he was working in the Education Directorate more so. Yes. Just a frustration around him - his - his work.

COMMISSIONER: In the Education Directorate or as Registrar of the -

5 MINISTER BERRY: More so in the Education Directorate because he was working directly to me. It's possible he could have done this back then - could have said something about him back then.

COMMISSIONER: Right.

10 MINISTER BERRY: I couldn't - I couldn't say yes or no. It's possible.

COMMISSIONER: Right.

15 MR O'NEILL: And then if I can take to you the next page, 2.0305, you see here there's a discussion Mr Ferguson is asking Mr Ceramidas what happened. And then "I told you", etcetera. And then to the next page, 2.0306, at the top of the page, Mr Ceramidas says:

Cunt doesn't know who he's talking to.

20 Do you see that?

MINISTER BERRY: Yes.

MR O'NEILL: Now, Mr Ceramidas at that point was your chief of staff?

25 MINISTER BERRY: Yes.

MR O'NEILL: Now, there's probably an element of bravado in this -

30 MINISTER BERRY: Yes.

MR O'NEILL: We accept that. And this is a private conversation.

MINISTER BERRY: Yes.

35 MR O'NEILL: So this is not a conversation that was ever meant to be seen by anybody. So casting no aspersions about that. My question, though, is that was it something - did you know that it was a view of Mr Ceramidas', or did he ever talk to you about the fact that he was someone important that needed to be respected within the Directorate?

40 MINISTER BERRY: I don't know what - based on these text messages, it - as you say definitely - I think we have described it as a bit of locker room chatter, not appropriate.

COMMISSIONER: No, but leaving aside the language, the central -

45 MINISTER BERRY: Look, it sounds like just from reading this text that that's what he is suggesting.

MR O'NEILL: Was it something that you knew - something that you had any idea was a view that he held, that he had some kind of -

COMMISSIONER: Special status.

5

MR O'NEILL: Special status or power?

MINISTER BERRY: No. And that's not normally - that wouldn't normally be how Josh would - Mr Ceramidas would - he wouldn't do that. Like, it's - he doesn't walk around - he didn't walk around, you know, saying "I'm the man", you know.

10

MR O'NEILL: To the extent that you observed it.

MINISTER BERRY: Yes.

15

COMMISSIONER: Except to close friends, though.

MINISTER BERRY: Sure.

COMMISSIONER: In which case he may be more likely to be candid. That's all - look, he did have an important job, no doubt about it. This, however, suggests that he took umbrage at not having his position sufficiently respected. And for all we know, had legitimate grounds for complaint. So I don't want to put too much on it.

20

MINISTER BERRY: No.

25

COMMISSIONER: Nevertheless it's a strongly-worded expression of irritation.

MINISTER BERRY: Yes.

30

COMMISSIONER: Yes, go on.

MR O'NEILL: And then across to the next page, 2.0307, you see at the top, Mr Ceramidas says:

35

Yeah, if he fucks up again he's going to be good mates with me squiggle.

And then it's corrected to "Mr Squiggle" in the one after.

MINISTER BERRY: Yes.

40

MR O'NEILL: I don't think anyone understands what that means.

MINISTER BERRY: No.

45

MR O'NEILL: But the sentiment appears to be that there will be some consequence for Mr Green if he continues to make an error, whether that - a perceived error or otherwise; fair?

5 MINISTER BERRY: Yes.

MR O'NEILL: And had Mr Ceramidas expressed a view to you that there ought be consequences for Mr Green or - I mean, could there even be consequences?

10 MINISTER BERRY: No.

MR O'NEILL: What could someone in the position of Mr Ceramidas do as a consequence of the position if there was a public servant that needed some kind of correction?

15 MINISTER BERRY: Personally, nothing. If there was an issue with a public servant, you would raise it with the Director-General and go from there, and then, you know, escalate it appropriately.

20 MR O'NEILL: Were you aware of whether Mr Ceramidas had, by virtue of his seniority within your office, exerted his power or position of power in an implied way to imply there was some consequence even if there was not?

MINISTER BERRY: I don't believe so, not anything that I've witnessed.

25 MR O'NEILL: If that was something that you had witnessed - this is a hypothetical question - what would you have done about it?

MINISTER BERRY: Well, it's a hypothetical question.

30 MR O'NEILL: Certainly. Would that - would you consider that kind of conduct serious?

MINISTER BERRY: The kind - sorry -

35 MR O'NEILL: The exertion of power.

MINISTER BERRY: I would have brought to the attention of - of my team.

40 MR O'NEILL: So it would have at least some kind of - I'm using the word "disciplinary", but some kind of recourse by you in relation to correction of that kind of behaviour. Is that fair?

MINISTER BERRY: Yes. Although, I should say - look, it doesn't really matter. It's just that I don't - I don't actually employ the staff; they are employed by the chief minister's office.

45 MR O'NEILL: I understand.

MINISTER BERRY: Really, at the end of the day, it's not my decision technically, but I would not want - I - my staff I think understand that that's not the kind of behaviour that we would want - that I would want or accept in my office, and nor should any employer, politician or anybody in a leadership position.

5

MR O'NEILL: So for the purposes of the record, Commissioner, I'm not going to take the witness to any further text messages in that exchange, but it does continue to 2.0309. Now, the next set of text messages I want to take you to commences at 2.0310. Again, between the two - the same two individuals, and take it from me that the green bubbles are

10 Mr Ceramidas -

MINISTER BERRY: Yes.

15 MR O'NEILL: Do you see your name is mentioned in the first one about playing intermediary? And then being shitty at some person. I'm not so interested in those text messages, but as a matter of context, I just think if you could just take your eye through those two and let me know when you've read them both.

MINISTER BERRY: Yes.

20

MR O'NEILL: And then at 2.0311, I will just get to you read those to yourself. And again, they are not relevant to this.

MINISTER BERRY: Yes.

25

MR O'NEILL: And again, 2.0312. Just read those to yourself. And then when you have finished those, just let me know.

MINISTER BERRY: Yes.

30

MR O'NEILL: And then 2.0313. Do you see after -

MINISTER BERRY: Yes.

35 MR O'NEILL: The middle text message.

MINISTER BERRY: Yes.

40 MR O'NEILL: They are talking there about - as you can tell from the context I just took you through, they are talking about Mr Ferguson communicating to Mr Smith about - no, they are talking about Mr Ferguson talking to Mr Smith about what Mr Ceramidas did, and that is about him "chewing that cunt", Mr Green, out. Do you see that?

MINISTER BERRY: Yes.

45

MR O'NEILL: The date of those text messages again, 24 September 2020. Did Mr Ceramidas communicate to you at any stage that he had reprimanded or in any way spoken to Mr Green on that date?

5 MINISTER BERRY: No.

MR O'NEILL: In particular, did he tell you whether he had spoken to him in a way that communicated a very forceful message, which I think is what's being conveyed -

10 MINISTER BERRY: Yes.

MR O'NEILL: - there.

MINISTER BERRY: No, he did not.

15

MR O'NEILL: Right. Is that -

MINISTER BERRY: I don't think he did, no.

20 MR O'NEILL: Would that have been information that you would have expected him to tell you about, or without the context it's impossible to know?

MINISTER BERRY: It's - I don't - I don't think he would have told me about any interaction with public services - servants across the - across a day. And it wouldn't have been in this - like, this is not the way that he would have described it to me, if he had spoken to me, obviously. But no, I was not particularly aware that there was a significant issue with this - with Mr Green.

MR O'NEILL: The text messages continue across the page, 2.0314, and then to 2.0315. At the bottom of the page on 2.0315, there's a text message, and again they are talking about Mr Ferguson talking to Mr Smith and conveying a message that:

30

If you get the chance, tell him I gave -

35 It says "have" but I think it's meant to be "gave"-

MINISTER BERRY: Yes.

MR O'NEILL: But:

40

gave Mr Green a whole load of shit.

Do you see that?

45 MINISTER BERRY: Yes.

MR O'NEILL: And again, same question, did - was that - was the import of that message communicated to you?

MINISTER BERRY: No.

5

MR O'NEILL: And then the last of the series is at 2.0316 at the top of the page.

COMMISSIONER: Does it follow from that that you were not aware of any substantial issue between Mr Ceramidas and Mr Green in relation to Mr Green's work?

10

MINISTER BERRY: No, I think there was - when Mr Green came to my - sorry, when Mr Green came to my Directorate, there were - well, you know, it was at a time of high tension and so there was a little bit of frustration with - when things couldn't occur. But not in the way where I felt that, you know, that it needed to be addressed in a -

15

COMMISSIONER: Just leaving aside the colourful language -

MINISTER BERRY: Yes.

20 COMMISSIONER: The substance of this seems to be, Mr Green was either doing something that Mr Ceramidas didn't want him to do, or was not doing something that - at a level of - that concerns something that was important and at a level of disagreement or dissatisfaction that was strong. And what - reading that into these messages, did - can you recall Mr Ceramidas bringing to your attention any issue that he had that was being so
25 badly dealt with as to justify this kind of strong language?

MINISTER BERRY: No.

COMMISSIONER: Leaving aside, as I say, the epithets.

30

MINISTER BERRY: Look, I think that's just Mr Ceramidas and Mr Ferguson who have known each other for a while, just, you know, you know, texting inappropriately to each other.

35 COMMISSIONER: No, no, I - sorry -

MINISTER BERRY: But I know what you are saying - I know what you're -

40 COMMISSIONER: Sorry, you shouldn't assume - I don't think you should assume this was inappropriate. They have used epithets which in polite company are not used, but the thrust of it is -

MINISTER BERRY: Yes.

45 COMMISSIONER: "He's doing something really badly and it's making me angry, and I have told him or conveyed that message to him." That's - now, that's not of itself improper at all.

MINISTER BERRY: Yes.

5 COMMISSIONER: But - so leaving that kind of question aside, because, well, it might be depending on what it's about, but what I'm asking is, are you aware of any conflict or dispute between Mr Ceramidas and Mr Green, or the department, that could lead to expressions of this kind?

10 MINISTER BERRY: Only the general frustration with Mr Green and the way that he would communicate about work we were trying to get him to do, which included the soap situation which we have talked about. But I think there was just a little bit of that playing out in the office.

15 COMMISSIONER: Right.

MINISTER BERRY: And not necessarily just with Mr Ceramidas.

COMMISSIONER: Not in relation to anything in particular.

20 MINISTER BERRY: No. Not that I can recall.

COMMISSIONER: Right.

25 MINISTER BERRY: Besides the soap.

MR O'NEILL: And the soap - just I will give you an opportunity to explain that because there's a public feed, so the public won't know what you are talking about.

30 MINISTER BERRY: Sure.

MR O'NEILL: Would you just care to explain what you mean by the soap issue?

35 MINISTER BERRY: There - during COVID, we had told all the schools that we would just provide the soap and we would source a bulk amount of soap for the schools in their - in the children's toilets and bathrooms. And we were - the Directorate were having some difficulty sourcing it, and - but not telling us - I felt, and we felt, that they weren't - it wasn't being described to us what the issues were. There was just a lot of, you know, excuses, and that could be - could have been a fair enough excuse. I just wanted to know what we were going to do to overcome that issue, and that wasn't being communicated to us very well, I didn't think, either.

40 COMMISSIONER: So that's a possible issue that may well have led to these expressions. That's what you are saying?

45 MINISTER BERRY: It could have -

MR O'NEILL: I'm not sure.

5 MINISTER BERRY: I don't think so. I'm just saying - I'm trying to give an example of the frustrations that we had. And because Mr Green was specifically responsible for sourcing the soap, so it's the liquid soap, you know. And we just thought we could source it from somewhere, maybe the hospitals had bulk supplies or somewhere like that and we just needed people to think a little bit outside the box during that time. And that wasn't being relayed to us.

10 MR O'NEILL: I mean, this was a strange time, though.

MINISTER BERRY: It was.

15 MR O'NEILL: That people were turning to soap and all sorts of strange things and supermarkets were running out of all sorts of products, so that -

MINISTER BERRY: And I would say, you know, there was quite a fair bit of tension. There was a lot of pressure on everyone. So perhaps now I wouldn't be so concerned, but at the time it was important.

20 MR O'NEILL: At or about the time of these text messages within the Directorate in respect of Campbell, it had become clear in relation to the first Tender Evaluation Team that a - the preferred tenderer, based on scoring was Manteena. Was that something you knew about as at late February 2020?

25 MINISTER BERRY: No. I don't believe I did.

MR O'NEILL: Right. Is that, to your mind, unusual, though, that wouldn't necessarily be a message that would be passed up to your office. Is that fair?

30 MINISTER BERRY: No. Well, not to me.

COMMISSIONER: It might have been conveyed in a MINSET meeting though, if you were asking for updates.

35 MINISTER BERRY: It's possible, but it's unusual because I - for example, if you are in Canberra, currently we've gone - the government has gone out for tender for the management of our public pools. That's currently being negotiated. I don't know who the tender is. And I haven't been informed.

40 COMMISSIONER: Right.

MINISTER BERRY: So I'm just giving an example of, you know, that's a procurement project not too dissimilar, it's just that it's a management project not a construction project.

45 COMMISSIONER: No, I understand. But at this time, there was a lot of pressure on government to clarify what construction could go ahead as soon as possible.

MINISTER BERRY: Yes.

5 COMMISSIONER: Because people were worried because of the COVID implications whether they were going to get work, companies were worried about paying their employees, and so there was a lot of pressure on government to get matters which were close to the situation where they could be contracted to get on with those contracts and give people some assurance of work.

10 MINISTER BERRY: Yes.

15 COMMISSIONER: So that kind of urgency suggests to me that - that's what I'm asking you about, that as the minister with at least some construction progress - some construction procurements en route, as it were, that you would have been informed about how they were going and when you might get an outcome. Although I accept that you might well not have been told about the minutiae of who was winning or who was losing. But for example, something like, yes, the team has completed its evaluation and hopefully will be in a position to make a decision soon, some kind of general information of that kind.

20 MINISTER BERRY: Yes, yes. Absolutely, of course. Timeframes, when it's expected to be completed. Negotiations are occurring, yes.

COMMISSIONER: Right. But you wouldn't expect to be told who was winning or losing.

25 MINISTER BERRY: No.

COMMISSIONER: And do I correctly understand, to you it was immaterial. What you wanted to have was someone won to start the work. That was, from your point of view, or from the government's point of view, the urgent -

30 MINISTER BERRY: Yes.

COMMISSIONER: - feature. Is that right?

35 MINISTER BERRY: Yes, when does the -

COMMISSIONER: When do they turn the shovel.

MINISTER BERRY: When do they turn the shovel, yes.

40 MR O'NEILL: You see this text message that's up on the screen, they are talking about contracts are being negotiated. And:

I'm going to have lunch with Zach this week.

45 Again, this is February. This can't be contracts being negotiated for Campbell for obvious reason. Do you know what they are talking about there?

MINISTER BERRY: No.

MR O'NEILL: They - did Mr Ceramidas inform you of any information he received from Mr Smith at that lunch they had, to the best of your recollection?

5

MINISTER BERRY: I - I don't remember.

MR O'NEILL: Now, I think earlier in your evidence, you provided evidence that you knew that was an issue between the CFMEU and Manteena.

10

MINISTER BERRY: Yes.

MR O'NEILL: Do you know when it was that you were possessed of that information?

15

MINISTER BERRY: No.

MR O'NEILL: Do you think it would have been as at - by the time COVID hit that you knew that?

20

MINISTER BERRY: Yes.

MR O'NEILL: I know they are very unrelated events; I'm just trying to pin down your awareness.

25

MINISTER BERRY: Look, I think I knew before that. But it was just, you know, a general chatter.

MR O'NEILL: It was a fairly historical issue. Is that fair?

30

MINISTER BERRY: That was my understanding.

MR O'NEILL: Okay. I'm going to take you to a different set of text messages. They start at 2.0330. Again, the same two participants, and this is a text message from Mr Ceramidas to Mr Ferguson. And he's floating a concept here about whether Mr Green - that is, in his role at - he's now at the Education Directorate, as we know, because this is the day after the previous text messages I just sent you:

35

Should be conflicted out if he issued a firm their Secure Local Jobs Certificate.

40

Do you see that?

MINISTER BERRY: Yes.

MR O'NEILL: Now, we know that Mr Green had issued both - had issued at least the Manteena certificate to Manteena.

45

MINISTER BERRY: Yes.

MR O'NEILL: Is this an issue that Mr Ceramidas had raised with you about whether a public servant, in this case Mr Green, could be conflicted out due to the role that they had held previously as the Registrar?

5

MINISTER BERRY: I don't remember being told about this. However, this looks like more of an advice text from Mr Ferguson who was working in the space.

MR O'NEILL: It's from Mr Ceramidas. So -

10

MINISTER BERRY: Yes, to David - to Mr Ferguson.

MR O'NEILL: That's right.

15

MINISTER BERRY: Who was working in the industrial relations minister and had carriage of this - of the Secure Local Jobs Code.

MR O'NEILL: I understand.

20

MINISTER BERRY: Right. Okay.

MR O'NEILL: Sorry, we were at cross purposes, I now understand why you are correcting me, and I accept that. So relevantly, though, did Mr Ceramidas speak to you about this -

25

MINISTER BERRY: I don't remember.

MR O'NEILL: - thought that he'd had about potentially conflicting Mr Green out of being involved?

30

MINISTER BERRY: I don't remember. I don't remember.

COMMISSIONER: See, the problem is here, this looks like an idle inquiry, but in the particular context, there was a procurement underway in relation to Campbell school, the - Manteena was a contractor, part of the process was to require a certificate.

35

MINISTER BERRY: Yes.

MR O'NEILL: And Mr Green was the delegate deciding the matter, and the CFMEU regarded - had a dispute about whether those certificates should be just binary or whether the extent to which you were actually undertaking appropriate industrial conduct should be a more significant factor in the granting of procurements. Now, all that relating to - so you've got the SLJ, the Secure Local Jobs circuit, you've got Mr Green who was at the same time the relevant Registrar, but also now the delegate for this particular contract, and you've got Manteena and - with whom the CFMEU has a dispute and their dispute centres around the - what they said was inadequate attention given by Mr Green as Registrar to the industrial conduct of companies such as Manteena. And it strikes - in that context, it's difficult to see how it's appropriate that whether by commentary or any other involvement,

40

45

Mr Ceramidas should be involved. It was the department over which you were the minister, it was a current contract. That level of detail to attract the attention of the minister's staffer strikes me as odd. Am I making myself clear?

5 MINISTER BERRY: I think you are - I think what you are doing is trying to join some dots here with all of these text messages and in the context of what was happening at the time. I get it.

COMMISSIONER: Certainly. And I agree, there's often more than one way to join dots.
10 And we haven't attempted to join those dots with Mr Ceramidas. He's not available to give evidence at present. But - and it's not - I'm not suggesting that you should attempt to connect those dots. But on the hypothesis that I have outlined, that is, he was involved at a detail, a granular way with particularly managing Mr Green out of determining the procurement outcome, because this is what about - conflicting him out of the decision.
15 Accepting that as hypothesis, would you think that that was a surprising involvement from your chief of staff, if it occurred? I'm only asking hypothetically. Was that part of his role, to get involved in the weeds of such an agreement - such a procurement?

MR PARARAJASINGHAM: Commissioner, can I just raise - you keep saying
20 "involvement".

COMMISSIONER: Well, I'm trying to use a general term.

MR PARARAJASINGHAM: Are you referring to the sending of this - Commissioner, you
25 keep using the word "involvement". Just so it's clear, are you referring to the fact that Mr Ceramidas sent this message. Is that the involvement that you are referring to? Or are you referring to something else?

COMMISSIONER: No, that he was -
30

MR PARARAJASINGHAM: I think we need some precision around the question,
Commissioner.

COMMISSIONER: Well, it's impossible to be precise, but to the extent that I can be
35 precise is this: he is having a discussion with the - an exchange with the chief of staff of the industrial relations minister. At this time, Mr Green is the delegate for Manteena. The only possible conflict is the conflict between his certificate and the certificate which needs to be considered as part of the evaluation team's consideration of the procurement. So he is involving himself in the sense of discussing what is appropriate for Mr Green or for
40 outsiders who are aware of this situation to do. That's the way I read that text. But it doesn't matter whether I read it - I'm not finally making some final view about it, it's an open reading of what is being conveyed by this text. I only - and I mean involvement in the sense that he considers he has something to - material, either to say or to do, or to advise, about this particular exercise of the Campbell procurement.

45 MR PARARAJASINGHAM: Well, I say to that, Commissioner, is that the witness' evidence is that she understood this to be a request for advice.

COMMISSIONER: Well -

MR PARARAJASINGHAM: Advice.

5

COMMISSIONER: No, no. That's fair enough. And I have hypothesised a particular situation which, I entirely agree, is - at this point suggestive rather than -

MR PARARAJASINGHAM: I understand that's what you are doing, yes. I just wanted to -

10

COMMISSIONER: Rather than anything else.

MR PARARAJASINGHAM: Thank you.

15

COMMISSIONER: But on the basis of that suggestion is a reasonable hypothesis, accepting that the minister was unaware of these exchanges. When I'm asking is, essentially, does she regard that Mr Ceramidas' involvement to in that extent, whatever it might be, at this level of detail with this particular procurement to have been part of his ordinary functions as her chief of staff.

20

MR PARARAJASINGHAM: I understand what you are -

COMMISSIONER: And I think it's a fair question. Are you saying -

25

MR PARARAJASINGHAM: I was seeking clarification around "involvement". You've done that.

COMMISSIONER: Have I done that?

30

MR PARARAJASINGHAM: All right.

COMMISSIONER: Does that assist?

35

MINISTER BERRY: It's given me a moment to think about it, yes, I think it is actually - taking away your hypothesis, right, Mr Ceramidas has identified something, because he's been aware of Mr Green's role previously, and he's identified a potential conflict.

40

COMMISSIONER: Issue, right.

45

MINISTER BERRY: Right. And so he's raising that with the appropriate official - office, which is the industrial relations to get that advice. I would expect - and it's not that they would know - that all my advisors know this intricate detail in all of their work. I would also expect that if the public service felt that they might have been conflicted that they would have identified that as well, you know. But having Mr Ceramidas having had an eye on that, it may not have been understood by the public service, and yes, I'm - Mr Ceramidas has identified something here and getting some advice on it where

there could be a conflict. I would expect that. But your hypothesis is separate to this. You have a different perspective outside of what I'm -

5 COMMISSIONER: What I propose is a different perspective.

MINISTER BERRY: Yes, that's right. And you have asked me do I think that, on this particular text, do I think that my chief of staff should be across this kind of detail. It's helpful if they are, if they are aware that there could be a conflict, and to raise that.

10 COMMISSIONER: Very well.

MINISTER BERRY: That happens in Canberra; it's a regular thing.

COMMISSIONER: Right. Okay.

15

MINISTER BERRY: It's a small - a small town, big city. But those conflicts or perceived conflicts are a regular -

20 COMMISSIONER: Certainly. The only added factor here is in the context of a particular contract then being procured.

MINISTER BERRY: Yes.

25 MR O'NEILL: Here, it can only be, though, relevantly for procurements that require Secure Local Jobs Code certification. Is that fair?

MINISTER BERRY: Sorry, can you ask me again?

30 MR O'NEILL: Sorry. Here, this issue can only be relevant to procurements that require Secure Local Jobs Code certification.

MINISTER BERRY: Yes.

35 MR O'NEILL: So it's not a general conflict in respect of everything that Mr Green is doing within the Directorate; it has to be directed towards capital works procurement?

MINISTER BERRY: Based on this question, yes.

40 MR O'NEILL: And at that time, that's 24 February - sorry, 25 February 2020.

MINISTER BERRY: Yes.

45 MR O'NEILL: It's really only a handful, there's two or three capital works procurements going on within the Directorate - that is, the Education Directorate - that could potentially be relevant.

MINISTER BERRY: Yes.

MR O'NEILL: To the issue of conflict.

MINISTER BERRY: Yes.

5

MR O'NEILL: Did Mr Ceramidas speak to you about this issue in respect of those relevant procurements?

MINISTER BERRY: No, I don't believe so.

10

MR O'NEILL: Campbell was obviously one of those procurements and so, encompassed in your last answer, does that also mean that in respect of Campbell itself there was no discussion to that effect?

15

MINISTER BERRY: I don't - I don't remember there being a discussion.

MR O'NEILL: And when you say you don't remember, is it possible it did occur or you would have remembered it if it had or -

20

MINISTER BERRY: It's possible I will forget where I've parked my car this morning, you know.

MR O'NEILL: I have great sympathy with that for you. Okay. For the benefit of the record, those text messages continue to 2.0333, but I'm not going to take the witness to them. Can I also just bring up briefly - I gave you a fact that was that Mr Green had issued the certificate. I'm just going to show you the certificate so that people can see it. And at the bottom of the page, accept from me that the bit that's covered up is Mr Green's signature, and then we have put Mr Green's name over the top of his actual name. Okay.

25

30

COMMISSIONER: That's Lendlease, though, not Manteena.

MR O'NEILL: Sorry. There is an equivalent one for Manteena as well.

COMMISSIONER: Right. I don't think -

35

MR O'NEILL: Just so they make a public record, Commissioner, that's why this process is being undertaken. May I take you to another series of text messages. 2.0365. Again, between the two participants, same participants. And this time - and, again, Mr Ceramidas' texts appear in the green bubble. Here is a concept - now, Mr Smith's evidence was yesterday that this hadn't been discussed with him, this concept. But the possibility of requiring a Unions ACT reference for all big tenders. This would be a fairly significant shift in the way in which procurement would be undertaken within the ACT. The date of this text message is the day after the last. So that is 26 February 2020. Is this something that Mr Ceramidas had spoken to you about?

40

45

MINISTER BERRY: No.

MR O'NEILL: It's not particularly within the remit of your ministry, is it, to be concerned about the way in which unions have involvement in big tendering, is it?

MINISTER BERRY: No.

5

MR O'NEILL: Other than to the extent that it - there are various big procurements within your ministries. It's really an IR issue. Is that fair?

MINISTER BERRY: Yes.

10

MR O'NEILL: Now, do you know whether Mr Ceramidas had his own political aspirations?

MINISTER BERRY: He did at one point - one time, and he was a candidate previously.

15

MR O'NEILL: And did you know - have any insight into the level of his involvement with the CFMEU?

MINISTER BERRY: I think he had a reasonably positive relationship with the CFMEU.

20

MR O'NEILL: Is that an important thing to have in the ACT if you have political aspirations, to have a good working relationship at least with the CFMEU?

MINISTER BERRY: Well -

25

MR O'NEILL: On your side of politics?

MINISTER BERRY: Well, sure. Well, they are - the CFMEU are, the CPSU, the United Workers Union, and I will forget some and they be upset with me, are all members of the Labor Party, so an important part of that - of politics in the ACT. And so, yes, it is important to have a good relationship with those unions, although Mr Ceramidas is a CPSU member, I think he still is a CPSU member and is, you know, he's an advocate for unions, all unions. And -

30

MR O'NEILL: And here, in fact, the text message refers to unions ACT. What's that body?

35

MINISTER BERRY: Unions ACT is the peak union body in the ACT.

MR O'NEILL: I see. And to the best of your understanding, the CFMEU is part of that peak body?

40

MINISTER BERRY: Yes.

MR O'NEILL: The conversation between them extends across a couple of pages. So I'm just going to take you quickly - I'm not going to read them out, but just have you read them, so you understand the context. So 2.3066. Just let me know when you've read that.

45

MINISTER BERRY: Yes.

MR O'NEILL: 2.0367, it's the next page.

5 MINISTER BERRY: Yes.

MR O'NEILL: 2.0368. And you see that in the green bubble, Mr Ceramidas is becoming a little bit more specific about what it is that the concept is. And it really is just conceptual. They are having a conceptual discussion, I think is a fair description of it.

10

MINISTER BERRY: Yes. Yes.

MR O'NEILL: And then 2.0369.

15 MINISTER BERRY: Yes.

MR O'NEILL: And then at the top of the page at 2.0370, draw out the green bubble in the top. You will see it says:

20 *But in the meantime, I think I will asking -*

So "I will ask" -

Education to just fucking do it themselves and write it on to the criteria.

25

Do you see that?

MINISTER BERRY: Yes.

30 MR O'NEILL: Now, we understand that the criteria is related to the procurement criteria. Did Mr Ceramidas discuss with you that he was going to request Education, that is, the Education Directorate, to do something different with the way in which its procurement would be undertaken?

35 MINISTER BERRY: I don't remember him mentioning this to me; however, he wouldn't be able to ask them to do that.

MR O'NEILL: No, it would be outside his remit by some margin.

40 MINISTER BERRY: Yes.

COMMISSIONER: Well, when you say "able", I think you mean he had no such authority.

MINISTER BERRY: Yes.

45

COMMISSIONER: Whether he would take it on himself is another question.

MINISTER BERRY: Yes. Well, that's your -

5 COMMISSIONER: Well, it is another question. People do not always act within their authority. All I'm saying, when you say "able", you are not taking about him having some particular difficulty, aside from the authority one, in attempting to convey that view.

MINISTER BERRY: He - it wouldn't be able to happen without me or the rest of the government knowing -

10 COMMISSIONER: No, no. Achievement is another thing. But -

MINISTER BERRY: I think he's just talking himself up a bit. You know, like, not - that's not even the right way to describe it. It's just -

15 COMMISSIONER: Look, the notion - I understand what you are saying.

MINISTER BERRY: Yes.

20 COMMISSIONER: The notion that he would actually negotiate with the Directorate behind your back to suggest the change of criteria of this kind is preposterous.

MINISTER BERRY: He wouldn't do that.

25 COMMISSIONER: No. But he might claim that he could.

MINISTER BERRY: I think it's just him and David spitballing some ideas. Mr Ferguson.

COMMISSIONER: Right, okay.

30 MINISTER BERRY: That's what these texts look like to me. And I'm not wanting to defend Mr Ferguson or Mr Ceramidas, and that's up to their representatives, but Mr Ceramidas was very interested in industrial relations.

35 COMMISSIONER: There's nothing wrong with discussing even crazy ideas with friends and acquaintances.

MINISTER BERRY: All the time.

40 COMMISSIONER: It's a perfectly legitimate thing to do. So I'm not being critical of him, but I was really just taking up your saying that he wasn't able to do that and pointing out that -

MINISTER BERRY: He wouldn't do that, yes.

45 COMMISSIONER: Hopefully. Yes.

MR O'NEILL: The - if you just take that off for the - so take it back down so that Ms Berry can read the other text messages. So it then continues across, just read those to yourself and let me know.

5 MINISTER BERRY: Yes.

MR O'NEILL: 2.0371. And here -

MINISTER BERRY: Yes.

10

MR O'NEILL: Draw out the top text message for me. Mr Ceramidas says:

Man, we are not out of the woods yet but I think John Green, Mr Green, might soon be proven to have fucked with the wrong Min.

15

Being minister. Was this discussed with you, that there was going to be some way in which Mr Green was going to be moved or moved around or something was going to happen to Mr Green -

20 MINISTER BERRY: No.

MR O'NEILL: Being directed from you?

MINISTER BERRY: No.

25

MR O'NEILL: Now, this is a text message which says that it's going to be you that's going to take some kind of action. It wasn't discussed with you?

MINISTER BERRY: No.

30

MR O'NEILL: It wasn't something that you took up with Ms Haire, for example?

MINISTER BERRY: No.

35 MR O'NEILL: Would it be something that you would have taken up with Ms Haire's acting, who was Ms Cross at the time?

MINISTER BERRY: Either of them, yes.

40 MR O'NEILL: Just not an issue that was raised with you at all. Do you have any hypothesis for why it is that it may have been - might Mr Green might soon be proven to have "fucked with the wrong minister"?

MINISTER BERRY: Only - no.

45

MR O'NEILL: And why Mr Ceramidas might have formed that view?

MINISTER BERRY: No. Only what we've talked about previously.

5 COMMISSIONER: The troubling - or perhaps "troubling" overstates it, but one feature is this does not appear to be simply an off-hand remark made on an odd occasion. There's a theme - a stream of consciousness. There's a common theme which is taken up more than once. It's not just the off-hand remark that you might make when you are putting your beer glass down on the bar. Do you see what I mean?

10 MINISTER BERRY: Yes. Yes, there's a few -

COMMISSIONER: One can make too much of that, I entirely agree, but nevertheless it's more than merely the idle casual remark.

15 MINISTER BERRY: A few text messages.

COMMISSIONER: Well, indeed, but over a period.

MINISTER BERRY: Sure.

20 MR O'NEILL: And to be fair, over a period of two or three days. For the benefit of the record, those text messages continue on to 2.0372. I'm going to take you to a different topic now. Just excuse me for one moment. On 25 March 2020, Mr Green had a discussion with Ms Haire about the tender at Campbell. And the context of that discussion was the way in which a tenderer could be selected and moved on so the project could continue
25 quickly and actually get underway. Ms Haire had a discussion with Mr Ceramidas. Now, is that issue, that is, the - as at March, the - a way in which you could get the project at Campbell moving, was that something that you and Mr Ceramidas had spoken about at that time?

30 MINISTER BERRY: I - I believe that it was - it would have been because - not the detail, but just because the government was really focused on infrastructure and getting projects out the door.

35 MR O'NEILL: The budget - both tenderers had returned -

MINISTER BERRY: There was only a few that we had in Education compared to what was happening across government.

40 MR O'NEILL: Yes. So both tenderers had returned tenders that were over budget. And so that presented a problem for the Directorate in terms of approving either of them. Is that ringing a bell as to what the issue was at the time and how - and whether that had been addressed with you about that being an issue?

45 MINISTER BERRY: I don't recall, but that's not unusual for contracts to come in over budget.

MR O'NEILL: And even in the tender stage?

MINISTER BERRY: Yes.

5 MR O'NEILL: What about the concept of hollow logs? Is that something you are aware of, or moving money from one project to another if there's excess money?

10 MINISTER BERRY: I haven't really heard that term previously. But it's - it - it's possible, and it does happen across other portfolios if there's, you know, some funds available to make sure the profile can be met in some way.

15 MR O'NEILL: At or about this time, Mr Green tells the Commission that he had a conversation with Mr Ceramidas. He says the conversation occurred - actually, it might be that I will get it up so that you can read it rather than me dictate it to you. It's at page 107 of the public transcript. And it starts at line 19. Just let me know when you've got to the bottom of the page. Had you finished that page or is it -

MINISTER BERRY: No.

20 MR O'NEILL: Sorry. I don't know what's happened. There seems to be a technical issue. Good. We are back. Just let me know when you get to the bottom of the page.

MINISTER BERRY: It's just not come up for me yet.

25 MR O'NEILL: You haven't got one.

MINISTER BERRY: I can read it from up there if you like. Here we go. Yes.

MR O'NEILL: And then I will just take you across to the next page.

30 MINISTER BERRY: All the way to the bottom?

MR O'NEILL: Well, you can stop at about line 30.

35 MINISTER BERRY: Okay.

MR O'NEILL: Have you got there?

MINISTER BERRY: Yes.

40 MR O'NEILL: Okay. So you see there that that evidence relates to a conversation that Mr Green says that he had with Mr Ceramidas.

MINISTER BERRY: Mmm.

45 MR O'NEILL: The conversation there relates to the question of Manteena not getting the job because of industrial relations issues and Secure Local Jobs pieces, and that's the outcome that was to be achieved. Do you see that?

MINISTER BERRY: Yes.

5 MR O'NEILL: Now, was - taking each piece of it at a time, was there a view - sorry, was it your view, your personal view, that Manteena should not get the job at Campbell?

MINISTER BERRY: No.

10 MR O'NEILL: Did you ever hold that view?

MINISTER BERRY: No.

MR O'NEILL: Have you ever held that view?

15 MINISTER BERRY: No.

MR O'NEILL: Was it something that you even had any vision about, that is, the two tenderers and who should be preferred over the other? Was it something that was even occupies your mind at any time?

20 MINISTER BERRY: No.

MR O'NEILL: And that's despite the fact that you did know that the CFMEU had issues with Manteena. Fair? It didn't cross your mind that there should be a preference between one or other tender on the basis of that information that you held?

MINISTER BERRY: No. At that time, however, I knew that there was, as part of the procurement for contracts, an opportunity for a delegate to make a decision that wasn't the same that was the decision or the advice that was provided by the TET. I was aware that that could happen. I was not told or briefed or advised that there was anything wrong with that.

COMMISSIONER: It would depend entirely on the reasons, wouldn't it?

35 MINISTER BERRY: Sure.

COMMISSIONER: There could be bad reasons for good reasons. For good reasons, it's acceptable. For bad reasons, it's not. Is that fair enough?

40 MINISTER BERRY: Yes, I'm just -

COMMISSIONER: It's not really rocket science.

MINISTER BERRY: Yes. So I guess that I'm just putting into context the amount of knowledge I have, or my feelings, I guess, on Manteena and Lendlease.

MR O'NEILL: How did you become aware of the issue that a decision maker within the Directorate could make a decision other than the one that had been recommended to it by the evaluation team?

5 MINISTER BERRY: I don't - I don't remember how I knew that. I just knew that that was something that could happen. And then after that was - and I didn't - I wasn't told that there were any issues around that, that there was anything wrong with a delegate doing that. It was only after the Auditor-General's report came out that the - he - that they identified a number of issues which the government responded to.

10

MR O'NEILL: Had you communicated -

COMMISSIONER: Did you hold the view - you said that the delegate could depart from the recommendation made by the team. I understand you to say that.

15

MINISTER BERRY: That's my understanding.

COMMISSIONER: Right. Did you have the view that the government was entitled to make a decision that was not in accordance with the recommendation? Or perhaps that assumes something. Did - were you of the view that the government ultimately had the power to make a decision on such a procurement as this?

20

MINISTER BERRY: I didn't know how it worked operationally. Like, that's a little bit more detailed than I was across until -

25

COMMISSIONER: But you had no view about that one way or the other.

MINISTER BERRY: No.

30

COMMISSIONER: All right.

MINISTER BERRY: I just knew that -

COMMISSIONER: What you did know is that the delegate could depart from the recommendation for appropriate reasons.

35

MINISTER BERRY: Well, yes.

COMMISSIONER: Is that right?

40

MINISTER BERRY: I just didn't get into the operational detail of all of that.

COMMISSIONER: All right.

45

MINISTER BERRY: That's all pretty much I knew.

COMMISSIONER: So just to be clear about it, it was, so far as you were aware, it was nevertheless a decision for the delegate and not for you as the minister.

MINISTER BERRY: Yes.

5

COMMISSIONER: Right.

MR O'NEILL: Do you remember who imparted that information to you?

10 MINISTER BERRY: No.

MR O'NEILL: Could it have been Mr Ceramidas?

15 MINISTER BERRY: Yes. It could have been. It could have been - it could have been through a briefing. I can't remember.

MR O'NEILL: Is it a topic that you discussed with Ms Haire?

20 MINISTER BERRY: I don't remember, but it's possible.

MR O'NEILL: It's possible.

MINISTER BERRY: It's possible.

25 MR O'NEILL: Now, the reasoning here is because of industrial relations issues. Does that cohere with your understanding of the issues that the union had with Manteena?

30 MINISTER BERRY: I wasn't aware of what the issues were with the union and Manteena in particular detail; I just knew that there were some issues.

MR O'NEILL: Were you aware of whether Manteena did have, as a matter of fact, industrial relations issues?

35 MINISTER BERRY: I do now.

MR O'NEILL: Not then.

40 MINISTER BERRY: Not then. I don't - I don't recall what particular issues. For some reason in my mind, I thought it was something - some health and safety issue, but I - I'm not sure exactly what - which - like, which ones it was.

MR O'NEILL: And what about the Secure Local Jobs, was it - was it in your - did you have any awareness of whether Manteena had some issue with Secure Local Jobs Code?

45 MINISTER BERRY: That Manteena had an issue?

MR O'NEILL: Yes.

MINISTER BERRY: With the Secure Local Jobs Code?

MR O'NEILL: Yes.

5

MINISTER BERRY: I wouldn't be surprised if they had an issue with it. Because -

MR O'NEILL: Were you aware of that, though?

10

MINISTER BERRY: No.

COMMISSIONER: Because -

15

MINISTER BERRY: Well, because they are a developer. And there's - I think that there are some developers who probably don't like the Secure Local Jobs Code.

COMMISSIONER: Right. But you didn't -

20

MINISTER BERRY: No.

COMMISSIONER: - have any particular knowledge about Manteena's -

MINISTER BERRY: No. No, I don't have a list of people on my wall. I just don't -

25

COMMISSIONER: But it wouldn't surprise you as a class whether developers might have an issue with the Code.

MINISTER BERRY: Yes.

30

COMMISSIONER: Right.

MINISTER BERRY: Yes.

35

MR O'NEILL: You see that further down that they purportedly discuss a budget issue. Do you see that?

MINISTER BERRY: Yes.

40

MR O'NEILL: And then they don't - this piece of evidence:

We don't want to have another Margaret Hendry.

Do you see that?

45

MINISTER BERRY: Yes.

MR O'NEILL: Do you know what that could be a reference to?

MINISTER BERRY: So I don't - didn't realise that there were any issues with Margaret Hendry School, and there's some detail that's been coming out during these hearings around projects being adjusted to fit within inside a budget if the budget that's provided - a
5 contractor comes in with an amount that's more than that. So that's a level of detail that I haven't often been aware of, and I certainly wasn't with Margaret Hendry. I have become more aware of it now and I'm - made adjustments in my office and will make further adjustments in my office around how we are provided with that level of information, because in my view, if there is an issue with a budget or a contract coming in that's over
10 the budget that we have provided, and it means that there's going to be a project that is less than what I was expecting, I would want to know about that and find out if there was either more money available within the Directorate or that I needed to go back to the Treasurer and get more funding for it, or try to get more funding, I should say. It's not that easy.

15 MR O'NEILL: Thank you. And then you see at line 26:

Let's not make it another project where the government chases the cheapest bidder.

MINISTER BERRY: Yes.

20

MR O'NEILL: Had that been a view that you were aware of, that there was some sentiment that the government was chasing - that the government chased the cheapest bidder?

MINISTER BERRY: Not so much in this context, but I recall these kinds of - not in these
25 words, but in contracting for cleaning, for example. It - to directly employ the cleaners at the schools, it costs a little bit more money, but it means that those workers - we know they are going to get paid. We know that they are going to be treated well because they are now employees of the government, whereas previously we had some challenges with the contractor and - but that's cheaper to have it contracted out.

30

MR O'NEILL: Did you know that it was a view of the union, that is, the CFMEU, that it believed that the government was chasing the cheapest bidder in relation to capital works procurement?

35 MINISTER BERRY: I know that now.

MR O'NEILL: Did you know that at the time?

MINISTER BERRY: I don't think so.

40

MR O'NEILL: Mr O'Mara never expressed that sentiment to you?

MINISTER BERRY: Look, he might. Not to me personally, but it might have been a, you know, a view of the CFMEU that was broadly known by most people, I would say.

45

MR O'NEILL: Okay. Were you aware of when a decision was made that the person who would ultimately make this decision would be the Director-General, that is, the decision in

relation to Campbell would be the Director-General and not the delegate beneath that person?

MINISTER BERRY: No.

5

MR O'NEILL: You were never aware that that decision had been made within the Directorate?

MINISTER BERRY: Not that I can remember directly of the point in time.

10

MR O'NEILL: Well, therefore, I think, this is self-evident; it wasn't something that - or was - you were consulted on about -

MINISTER BERRY: I don't remember being consulted about it.

15

MR O'NEILL: Now, I'm going to take you forward in time to 25 June 2020. That can be taken down. As at this date, that's been 25 June 2020, the tenderers had been sent off to a process known as best and final offer. Were you aware of that at any time, or the granularity of how the tenders were to be chosen?

20

MINISTER BERRY: No, not particularly.

MR O'NEILL: It's obviously getting a little long in the tail for this project to find a tenderer.

25

MINISTER BERRY: Yes.

MR O'NEILL: When I think it's fair that your office wanted something - or you wanted something done many months earlier.

30

MINISTER BERRY: Yes.

MR O'NEILL: And Major Projects had wanted something done earlier. A briefing note was prepared by Mr Green, and it had gone to Ms Haire for her consideration, and the briefing note stated that the recommendation of the Tender Evaluation Team should not be adopted and that Lendlease should be the contracting party with the government. That recommendation was sitting with Ms Haire on 25 June 2020, and she communicated with Mr Ceramidas of that fact via text message. That text message is at 2.1883. Now, is there a reason why, to your mind, your chief of staff is being told by the Director-General about the recommendation for Campbell? There's no - there's nothing in this text message that indicates who is going to get this project or what, so I just want to be fair to you. It's just saying that there is a recommendation.

40

MINISTER BERRY: I don't think that that would be unusual.

45

MR O'NEILL: Do you see that Mr Ceramidas responds:

I need to come back in caretaker.

MINISTER BERRY: Yes.

5 MR O'NEILL: What's that a reference to?

MINISTER BERRY: Caretaker is - it means the period before an election. But this is in June, so I don't know, maybe it's - I don't know what it means.

10 MR O'NEILL: Evidently on the next page, 2.1884, it appears Ms Haire had no idea either.

MINISTER BERRY: Yes.

15 MR O'NEILL: And so is there any further light you can shed on why it was that the two of them were communicating about this matter to this extent?

MINISTER BERRY: No.

20 MR O'NEILL: Had you been told at this stage that - sorry, shortly after the decision was made to proceed with Lendlease despite it not being the recommendation from the Tender Evaluation Team, were you informed of that decision at the time - at or about the time?

MINISTER BERRY: That Lendlease had the contract?

25 MR O'NEILL: Yes.

MINISTER BERRY: Yes.

30 MR O'NEILL: And of the process by which it had been the selected contractor?

MINISTER BERRY: Not the detail, but definitely that there had been that delegate process.

35 MR O'NEILL: Right. And when you say the delegate process, that the Director-General had exercised discretion to refuse the recommendation of the tender.

MINISTER BERRY: Yes, I don't remember that particular detail.

40 MR O'NEILL: Right.

MINISTER BERRY: Yes.

45 COMMISSIONER: So what are you saying is, you believe you were told that Lendlease had the contract, but you weren't told that this was not in accordance with the recommendation of the team, you believe. Is that the point of distinction you make?

MINISTER BERRY: I don't remember, yes. I don't remember. I don't remember being told a lot of detail about that. It's possible to, sorry, make the context work, to put it into context, but I just don't remember.

5 MR O'NEILL: Had you issued a direction that Manteena was not to get the Campbell Modernisation Project tender?

MINISTER BERRY: No.

10 MR O'NEILL: Had you indicated to anybody within your office that that was a view that you held?

MINISTER BERRY: No.

15 MR O'NEILL: Are you aware of whether - sorry, I withdraw that. No, I think that's it. One moment, Commissioner. Sorry. I've been reminded of something, and this is completely my fault. I'm going to take you well out of chronology. I've got to go back to -

MINISTER BERRY: None of it makes sense to me anyway, so -

20

MR O'NEILL: We understand there was a meeting between you, Ms Cross and Mr Ceramidas in or about late February, early March 2020.

MINISTER BERRY: Yes.

25

MR O'NEILL: Do you recall that meeting?

MINISTER BERRY: No.

30 MR O'NEILL: At that meeting - so at that stage, Ms Cross was performing the - was acting in the role that Ms Haire held at that period of time. And we understand that it was communicated to Ms Cross that the CFMEU were unhappy with one of the tenderers. Do you remember that?

35 MINISTER BERRY: No, I don't remember.

MR O'NEILL: Do you remember whether a view was expressed about the CFMEU wanting to send a message?

40 MINISTER BERRY: No.

MR O'NEILL: Do you remember during that meeting whether there was a view expressed that the preference for the - that there was a preference of contractor, that is -

45 MINISTER BERRY: No. It might have been at that meeting that I - I don't remember the meeting, but if there was a conversation about the contract, it could have been then that - that I was known - knew about the delegate role.

MR O'NEILL: Sorry, when you say the delegate -

MINISTER BERRY: The delegate being able to - the delegate being -

5

MR O'NEILL: I see. Why do you think it's at that meeting that -

MINISTER BERRY: I don't know if it was at that meeting. I can't even remember the meeting. But I'm trying to sort of figure out how - when did I know about that or who told me. It could have been then.

10

COMMISSIONER: And that strikes you as a possible opportunity to have been given that information.

15

MINISTER BERRY: Well, I can't remember the meeting.

COMMISSIONER: No, quite.

MINISTER BERRY: But I'm just sort of thinking if there was the Director-General or Acting Director-General, myself and Mr Ceramidas at a meeting, and again I can't confirm or deny. I just can't remember. I'm just suggesting that that might have been -

20

COMMISSIONER: An occasion.

25

MINISTER BERRY: - an occasion where that could have happened.

COMMISSIONER: Right.

MR O'NEILL: This concept of the CFMEU being unhappy with Manteena, though, that was something that you knew at that time?

30

MINISTER BERRY: Yes, yes.

MR O'NEILL: It's a way in which, during your evidence today, you have expressed - that's how you have understood it, this were unhappy. You have used that word.

35

MINISTER BERRY: Yes.

MR O'NEILL: Is it possible that it was you who suggested - who made this observation that the CFMEU was unhappy with Manteena in the context of that discussion?

40

MINISTER BERRY: I think that was general knowledge.

MR O'NEILL: Right.

45

MINISTER BERRY: I don't - I don't believe I would have needed to or felt the need that I needed to say that specifically.

MR O'NEILL: Is it possible you did say it, though, and that you just expressed a general view?

5 MINISTER BERRY: I cannot remember.

MR O'NEILL: Is it possible that you expressed it stronger than that, in that there was a preference that Manteena not get this project because of -

10 MINISTER BERRY: No.

MR O'NEILL: - of the union's unhappiness with it.

15 MINISTER BERRY: I would - I doubt that I would have said specifically those words that Manteena should not get the contract.

MR O'NEILL: Thank you, Commissioner.

20 COMMISSIONER: How strong is that doubt?

MINISTER BERRY: Pardon?

25 COMMISSIONER: How strong is that doubt? Are you asserting that is something you would not have said?

30 MINISTER BERRY: I just don't think it's something I would say, "Manteena should not get the contract". I - it's not - I don't generally give direction in that kind of way. But I would have general - it could have been the case that this was a general understanding that the CFMEU were up happy with Manteena.

COMMISSIONER: Right.

35 MR O'NEILL: I have finished the examination. I just would pause for a moment to see whether there's going to be any application, and then I note the time, so it would be that Ms Berry would have to wait, but I want to try and let her go -

40 COMMISSIONER: If she can go without, yes, waiting a long time. Are there any applications to cross-examine this witness? No. Do you wish to ask your client any questions?

MR LEE: No, Commissioner, we don't.

45 COMMISSIONER: Very well. All right. You are free to go. I'm afraid I can't release you at this point. I think it's unlikely you will be recalled, but I can see possible circumstances which you might because evidence is still unfolding. So thank you very much for your cooperation and - but it certainly won't be before September and - before the end of the

month, and I expect even later, should it occur. But we will talk to your lawyers as soon as we are in a position to be more precise.

MINISTER BERRY: Thank you.

5

COMMISSIONER: Thank you. Very well. I will adjourn until 2 o'clock.

<ADJOURNED 1.12 PM

10 **<RESUMED 2.04 PM**

COMMISSIONER: Yes.

MR O'NEILL: I call Ms Cross.

15

COMMISSIONER: Thank you. Ms Cross, do you wish to be sworn or affirmed?

MS CROSS: Affirmed, thank you.

20

COMMISSIONER: Yes.

<REBECCA CROSS, AFFIRMED

25

COMMISSIONER: Thank you. Just a moment. Perhaps Ms Cross's counsel might, for the record, announce their names.

MS CAINS: Cains, C-a-i-n-s, Athena.

30

COMMISSIONER: Thank you. And you appear with?

MS CAINS: With Sarid Milne, M-i-l-n-e.

COMMISSIONER: Yes, Mr O'Neill.

35

MR O'NEILL: Thank you, Commissioner. Ms Cross, can you please provide the Commission your full name?

MS CROSS: Rebecca Mary Cross.

40

MR O'NEILL: What is your occupation?

MS CROSS: I'm a public servant, currently Director-General, ACT Health.

45

MR O'NEILL: And as at the start of 2020, that is, in January 2020, what role were you performing?

MS CROSS: I was the Director-General, Community Services Directorate.

MR O'NEILL: Then I want to show you a document. If you just pull the first document up. Do you recognise this document?

5

MS CROSS: Yes, I believe that's the documentation for temporarily moving into the Director-General position in the Education Directorate.

MR O'NEILL: Who is Ms Leigh?

10

MS CROSS: She's the head of service.

MR O'NEILL: It is dated 20 February 2020. Does that accord with at or about the time you were offered the short-term employment.

15

MS CROSS: Yes, for the period 25 February to 12 March.

MR O'NEILL: All right. I will just take you to the next document. What is this document?

20

MS CROSS: That's just the standard template that we complete when an SES officer moves to a position.

MR O'NEILL: All right. There's five pages of it. If I can just take you to the next page of it. It contains your details there and your AGS number. The next page. Sorry, go back. It says there that the term of the contract was 25 February 2020 to 12 March 2020; does that accord with the recollection of how long that appointment was made?

25

MS CROSS: Yes, I think I was in the position for around three weeks.

30

MR O'NEILL: And then if you can continue on in the document please, next page. Next page. Next page. Is that the full document as you recall receiving it at the time?

MS CROSS: That looks consistent with those forms, yes.

35

MR O'NEILL: Right. I will just take to you one further document, just to complete the set. Do you see here there's a signature at the bottom of the page on the left-hand side carrying the date of 24 February 2020. Do you see that?

MS CROSS: Yes.

40

MR O'NEILL: That date was a Monday. Does that accord with the date that you signed the change to statutory employment terms?

MS CROSS: I expect it does, yes.

45

MR O'NEILL: Now, the Commission understands as at that date, Ms Haire, who was the person you were replacing - is that fair?

MS CROSS: Yes.

MR O'NEILL: Was already on leave. Does that accord about your recollection.

5

MS CROSS: I don't specifically recall. I know that Katy was on leave. I assumed she I was in the position whilst she was on leave.

COMMISSIONER: Had you ever worked in the Education Directorate before?

10

MS CROSS: No, I hadn't, Commissioner.

COMMISSIONER: So aside from the fact that this was the public service, so there's a great deal of commonality between your work and this, you had no experience with the actual work as such of the Directorate?

15

MS CROSS: I had, in the Commonwealth, worked for quite a long period of time in the education and training portfolio, so I was familiar with education. But I hadn't worked in that Directorate in the ACT government.

20

COMMISSIONER: Right. In that particular Directorate.

MS CROSS: No.

25

COMMISSIONER: Right.

MR O'NEILL: Were you familiar with the procurement processes?

30

MS CROSS: Yes, I was familiar with procurement in my time in the Commonwealth and in ACT Government, but generally it was service procurement.

MR O'NEILL: And when you say - I'm not too concerned with the Commonwealth procurement models, but the Territory procurement model, when do you think the first time you had exposure to that was?

35

MS CROSS: I commenced in the Community Services Directorate in around November 2018, and in that role we did a range of procure many, including some capital in Housing ACT but also services like for the child protection services and those sorts of things.

40

MR O'NEILL: Were you aware of, say, the procurement guidelines for capital works procurement as at about that time?

MS CROSS: I was broadly aware with it. I don't think I had a reason to actually specifically look them up and go through them, but the broad principles of procurement definitely.

45

MR O'NEILL: And what about at the time that you accepted your change to statutory employment? Had you become more familiar with those procurement processes by that stage?

5 MS CROSS: So I had been in the ACT government for over a year, so I think I would have been more familiar with the ACT government processes. In the capital area, I can't recall signing off any major capital as part of Housing ACT. I suspect that was done by the head of Housing ACT.

10 MR O'NEILL: Okay. Were you aware of the concept of where a delegate was not required to accept a recommendation from a Tender Evaluation Team?

MS CROSS: I think that's pretty standard. You always get a recommendation and then you exercise your own judgment. It happens with grants, it happens with procurement, it happens with recruitment processes.

MR O'NEILL: Had you seen it happen prior to your acceptance of the change to statutory employment terms?

20 MS CROSS: I still haven't seen it happen with a capital project. The - my best recollection is I saw it happen in a recruitment process.

MR O'NEILL: I see. So you -

25 COMMISSIONER: But of course, circumstances impose their own limits on the decision-making process. In the capital procurement process, there's a highly complicated assessment of various published criteria by people who are expert in or have some relevant expertise and experience in the field, and that would - as one might expect, if one were going to depart from a recommendation there would have to be some very sound reasoning that would justify such a decision.

MS CROSS: I agree, Commissioner. We have similar arrangements for grants and services, and I have, on occasion, rejected a recommendation on a grant.

35 COMMISSIONER: Right.

MS CROSS: Because I looked at -

COMMISSIONER: And you've articulated the reasons for doing so, obviously.

40 MS CROSS: Absolutely.

COMMISSIONER: And they have to deal - I should think those reasons have to deal with the particular recommendation, the perhaps weakness in analysis or new facts that come about that need to be brought into account which were not before the team. But there are a whole lot of - there are a range of factors, but they need to be clearly identified - identified and, do you agree, cast against or weighed against the analysis of the team.

MS CROSS: Yes, Commissioner. So if I was -

5 COMMISSIONER: Can I just - sorry. I know I've cut you off, but I will give you an opportunity. So that one way or another, the extent depending on naturally on the detail of the case, but one way or another, there has to be an analysis that deals with the pros and cons.

10 MS CROSS: Absolutely. So there also has to be transparency. So if I was rejecting a recommendation I would make it very clear the basis on which I was rejecting it.

COMMISSIONER: Right. Right.

15 MR O'NEILL: How would you do that?

COMMISSIONER: Can I just ask -

MR O'NEILL: Sorry.

20 COMMISSIONER: Maybe as a matter of principle, there are two possible approaches to looking at decisions. Sometimes decisions are, in the nature of things, matters of judgment where there are no bright lines, and ultimately therefore questions of judgment. A decision maker can take two, possibly more, but two approaches occur to me as I sit here now. The first is to say reasonable people can reasonably differ, I have a different judgment and
25 therefore, even though the judgment that I'm considering is reasonable, I prefer my own. That's one approach. Another approach is to say, I would only override that decision if, in my judgment, it was wrong or had overlooked some relevant fact or wrongly balanced relevant criteria. In other words, it's driven by perception of shortcomings in the primary decision, if I can call it - do you understand the distinction I'm making here?

30 MS CROSS: Yes, I do, Commissioner, and I think on the occasions when I have not accepted a recommendation it has been the latter. So I have been able to point to, for example, the guidelines for a program and point where the recommendation didn't actually -

35 COMMISSIONER: Deal with it.

MS CROSS: Meet the requirements of the guidelines.

40 COMMISSIONER: Yes. I'm not saying there is an absolute rule; it's obviously a rule of governance and integrity and depends on the circumstances. But by -

MS CROSS: I think you need a good basis and you need to document that so it's transparent.

45 COMMISSIONER: It has to be a good basis transparently arrived at.

MS CROSS: Yes, and documented.

COMMISSIONER: Well, and documented. Quite. Yes. Yes, thank you. And - when, sorry, I'm about to go on leave so my faculties are not as sharp as they perhaps ought to be.

5 But - now just be a bit patient with me and I will come back to this point. It's escaped. It will return. Thank you, Mr O'Neill.

MR O'NEILL: Thank you, Commissioner. And how would you document -

10 COMMISSIONER: Sorry, I now have my - I now have my question. And that is, the - my supposition is, I suppose I would say my expectations as a lay person would be that you would not change the recommendation - well, no you're not changing, you would not decline to follow a recommendation because of some matter not properly relevant to the issue to be decided. In other words, some ulterior reason not articulated in the process. Do
15 you see what I mean?

MS CROSS: No, I see what you mean, and I agree with you, Commissioner.

MR O'NEILL: And in a practical sense, how would you document that? Would it be -

20

MS CROSS: So normally you would have been sent a brief and I would send it back with my query, potentially circle "please discuss" so that you can actually have a conversation about exactly what you're concerned about. I might go back and say I can't see how this is consistent with section 3 of the guidelines. I might say I can't see how this fits the
25 objectives of the program, but I would document that and generally send it back to get further advice before I made a decision.

MR O'NEILL: Are you familiar with the concept of best value for money?

30 MS CROSS: I am now.

MR O'NEILL: Would you have been as at February 2020?

35 MS CROSS: I think when I was asked by the Auditor-General, which was the sort of closest proximity, I said I could vaguely recall it being discussed while I was in the Education department, but I wouldn't say I was familiar with it.

MR O'NEILL: Okay. And how did it come about that you were to be asked to change your statutory employment for the three weeks? Do you recall that?

40

MS CROSS: So when a Director-General takes leave, the standard practice is for the head of service to ask if any of the other substantive Directors-General would like the opportunity to do a different job. I think on this occasion no one put their hand up and so I was asked whether I would be willing to do it, perhaps because I had a background in
45 education from the Commonwealth.

MR O'NEILL: Right. And I assume when you were asked it's a polite ask but it's one of those asks that we all know we get from time to time, which is please do it and, if you don't, we are going to give it to you anyway?

5 MS CROSS: I think if I had had a very strong reason not to I could have declined, but generally if someone asks me to something and I can I'm happy to help out.

MR O'NEILL: Commissioner, those documents that you've just seen are not part of the hearing book at the moment. I may - if I may, can I tender those? Exhibit 3.

10 COMMISSIONER: Yes, is there a privacy issue concerning them, because I don't - I'm not sure that they are directly relevant. Do you have a problem with them being part of the public record?

15 MS CAINS: If I may, Commissioner, I might provide counsel assisting with a redacted version to remove names.

MR O'NEILL: I'm grateful.

20 COMMISSIONER: All right.

MR O'NEILL: Thank you, Commissioner. Now, prior to the acceptance of the statutory change of employment terms, do you recall that there was a meeting between - sorry, I should start with the preliminary question. Do you know who Ms Katy Haire is?

25 MS CROSS: Yes, I do.

MR O'NEILL: How do you know her?

30 MS CROSS: Currently, she's a colleague. I had actually met Katy before she joined the ACT public service on a very brief trip from Harvard where I was a Commonwealth representative, and she was a representative from the Victorian Government.

35 COMMISSIONER: So you had no professional relationship before you took on this appointment?

MS CROSS: Well, she had joined the ACT Government and when she did I had - because I knew her from Harvard and we had friends in common, had sort of welcomed her to the service, but no professional relationship.

40 MR O'NEILL: And - okay. And just in a practical sense, when she joined, can you just assist the Commission with where you're seated and where she is seated and those kind of practical matters so we know how closely or not?

45 MS CROSS: So I was in the Community Services Directorate, which is one of the Human Services Directorate. The other three are Education, Health and Justice and Community Service. So there are meetings where the four of us would get together because there's

overlap between our portfolios. And we would all meet as part of the strategic board, which involves all of the Directors-General. And we have a regular daily meeting just a very short one every morning. So we had, you know, pretty regular contact but in those sorts of short meetings or formal meetings.

5

MR O'NEILL: And were you working in the same building?

MS CROSS: No.

10 MR O'NEILL: So those meetings, this is pre-COVID, so were those meetings where people had to leave their offices and attend together wherever it would be?

MS CROSS: Other than the daily meeting, which was done by a phone call which had video attached to it, I can't remember what it was called but it was pre-WebEx, pre-Teams.
15 But yes, that was online. Others would have been face to face.

MR O'NEILL: Now, did you - did the two Directorates, that is your Directorate and Ms Haire's Directorate share a minister?

20 MS CROSS: Yes, one of my ministers in CDS was - I think I had five ministers and Minister Berry was one of them.

MR O'NEILL: Okay. At 2.0290, there's an entry - just the name at the top of this and the person organising it is not correct. That's my investigator Ms Ashton. That's a function of
25 how it's printed out from our system. But the rest of it is a meeting that says it's a catch-up between Katy and Rebecca at Katy's office on 14 February 2020, Valentine's Day, at 3.30. Do you remember that meeting?

MS CROSS: No, I don't, sorry.

30

MR O'NEILL: All right. It's a Friday afternoon, does that help you?

MS CROSS: No.

35 MR O'NEILL: Okay. So you can't enlighten us as to whether that actually occurred or what was said?

MS CROSS: I suspect it was - if I had to speculate, I would say it was probably a handover so that Katy could let me know what was happening in the Directorate before I started
40 there. But I am guessing.

MR O'NEILL: Right. I will just take you to another document. I'm just taking you to the next document, which is 2.0291. Again, Ms Ashton is not the organiser of this conference, but it says Katy and Rebecca, handover/lunch at Temporada over near London Circuit.
45 This was at 1.30 to 3 o'clock, lunchtime. Do you remember having this meeting?

MS CROSS: Not specifically, no.

MR O'NEILL: You don't remember attending that restaurant for that purpose?

5 MS CROSS: That restaurant was very close to my office, so that was often where I would go for coffee or a catch-up. If the only time you have in your diary was sort of over lunch, you would often do those sorts of meetings.

MR O'NEILL: And so therefore can't enlighten us as to that handover lunch?

10 MS CROSS: No, it just would have been a standard handover, I imagine, before I started in the job.

COMMISSIONER: Well, you can't - I quite understand why you don't recall these dates, but the fact is you would have had a handover meeting with her at some stage.

15

MS CROSS: I either would have had a handover meeting or there would have been a folder prepared for when I started in the job. It can happen either way. But a handover meeting is often more useful.

20 COMMISSIONER: So as you sit there, you are saying a handover took place, but whether it was in documentary or whether it was a personal meeting, you can't now recall. Is that what you're saying?

MS CROSS: I can't recall but this invite would have -

25

COMMISSIONER: Suggests the face-to-face meeting.

MS CROSS: Suggests a face-to-face. Yes, for sure.

30 MR O'NEILL: All right. I'm just about to show you another document. If you just bear with me for one moment. Now, I'm sorry, I will come to that in a moment. If that can just be taken down. So do you remember anything from the handover that you received from Ms Haire to you about any issues that were within the Directorate that you needed to be aware of at that time?

35

MS CROSS: I'm sorry, I don't.

COMMISSIONER: Assuming that it was a face-to-face handover, do you think you would have taken notes about the matters she brought to your attention?

40

MS CROSS: I may have done, but it was over lunch in a restaurant, so I may not have.

COMMISSIONER: You may not have.

45 MS CROSS: Yes.

MR O'NEILL: Now, shortly after you assumed the helm of the Directorate, there was a meeting between you, Minister Berry, and her chief of staff, Mr Ceramidas. Do you remember that meeting?

5 MS CROSS: Yes, I do.

MR O'NEILL: Can you tell us what you remember from that meeting?

10 MS CROSS: So my recollection is it was a meeting about the Secure Local Jobs Code. I think that was relatively new as a government code or policy, and they wanted to make sure that I was aware of the Code, that I knew it was a priority for the government, and that I ensured that the Directorate was aware that was a priority and was making sure that Code was followed.

15 MR O'NEILL: Okay. So let's just drill into those matters if we may. Firstly, what was said to you about the Secure Local Jobs Code?

20 MS CROSS: So I think they possibly asked was I aware of the Secure Local Jobs Code, and I would have said yes, but not in great detail.

MR O'NEILL: And what was your awareness at the time of the code?

25 MS CROSS: I think in all of the Directorates we knew there was a Code, and I suspect in Housing ACT it may have come up. So I was aware of it. I don't think I had opened it, read it, had to apply it or anything like that.

MR O'NEILL: And what was your awareness of its operation?

30 MS CROSS: Just that it was part of the government's policy around procurement, and it related to the sorts of companies that they felt should be getting contracts.

MR O'NEILL: Did you have an understanding of how it did that?

35 MS CROSS: No.

MR O'NEILL: Or what its focus was specifically?

MS CROSS: No. I don't think so.

40 MR O'NEILL: What about - was there - did you have any awareness of the way in which it had an industrial relations function?

45 MS CROSS: Not - I don't think - I don't think I really had a strong understanding of what was in it at that point.

MR O'NEILL: And so returning then to the meeting, they have told you there was a code. Do you remember who it was?

MS CROSS: So my recollection is that the minister and her chief of staff were both there. I can't recall who said what. So if I'm replying and says "they", it could have been either one of them.

5

MR O'NEILL: It could have been either one, okay. And either one of them or both have said this is an important function. Is that right?

MS CROSS: It's an important government policy.

10

MR O'NEILL: Did they tell you why?

MS CROSS: I think because they, as a Labor Government, felt that this was an important way of getting the right companies winning contracts.

15

MR O'NEILL: Is that what they said or is that you speculating?

MS CROSS: That's - that's - I don't recall exactly what they said, but I think it was just clear that for this government it was a policy and because I was still relatively new to ACT Government, they wanted to make sure that I understood that.

20

MR O'NEILL: All right. Then what was the next topic that was discussed in relation to that?

25

MS CROSS: So my recollection is that they mentioned there were three or four companies that the unions felt weren't meeting the Code. I think they showed me a newspaper article, or we certainly talked about a newspaper article where a company or companies had been non-compliant with the Code. So I think they were - I think the discussion was the unions, you know, are concerned and not all companies have always been compliant. So, you know, this wasn't just a -

30

MR O'NEILL: Just pause there for me, if you may. Sorry to interrupt you, I will come back to your answer. When they said "the unions", was that a communication about a specific company?

35

MS CROSS: So I think they mentioned three or four companies and they may have named them. I don't recall. But they may well have named three or four companies. That's my recollection.

40

MR O'NEILL: Right. By reference to some article or a piece of paper that they showed you?

MS CROSS: There was definitely a media report and I think they showed me - that's my recollection, but it's a long time ago.

45

MR O'NEILL: When they mentioned the concept of unions were they more specific than that, or was it just in relation to what union?

MS CROSS: I don't think so. I don't think so. Was just - it was a general comment that the unions had concerns.

5 MR O'NEILL: All right. And then in dealing with those concerns, was there a discussion about what those concerns were?

MS CROSS: Only in the context of a newspaper report that, you know, from memory pointed to some things that a company or companies had not been compliant with. And
10 then I can't recall it, you know, if - before I read all of the documents I would have guessed it was something like not allowing unions access to a work site or something. But I don't think that's what it was, but it was just a general concern of something that was important to unions.

15 MR O'NEILL: Do you think they mentioned the name of a company Lendlease?

MS CROSS: So when I think back to the time in Education, Lendlease is the only name that I can remember. I don't know whether it was from the meeting with the minister or from subsequent discussions in the Directorate. But it's also the only company that I had
20 ever heard of out of all of the ones that were part of the process.

COMMISSIONER: It is the only one that rang a bell.

MS CROSS: It's the only one that rang a bell. And I don't know whether that came up with
25 the meeting minister or in subsequent discussions with the Directorate.

MR O'NEILL: What about the company Manteena, does it ring a bell?

MS CROSS: It does now, but until I sort of read the Auditor-General report it wasn't a
30 name that I recalled.

MR O'NEILL: Okay. And so by that evidence do you mean that it wasn't - until it's been put into your memory as a company that's involved in this process and the Auditor-General's process, you couldn't recall one way or another whether it was one of
35 the companies mentioned.

MS CROSS: That's right.

MR O'NEILL: Was it at any time - was any information given to you at that time about the
40 minister's office having a preference for any tenderer or any person not to receive work from the ACT Government?

MS CROSS: No, I don't believe that - I don't believe that happened.

45 MR O'NEILL: Was there any discussion during this - sorry, I withdraw that. Did the discussion canvass the topic of the Campbell Modernisation Project?

MS CROSS: I don't - I don't think it did. I think it was a more general discussion and there were three projects at various stages underway in the Directorate. And I think it was a general discussion about the Code and that there were projects underway and that we needed to make sure that the code was being properly applied. Not just a tick-a-box, but
5 make sure we were properly checking that companies met its requirements.

MR O'NEILL: And what did you understand then was what are you were being tasked with or being asked to do? What in a practical sense could you do?

10 MS CROSS: So when you are Director-General, there is lots of different things going on. And if you know something is a priority for the minister or the government, then that's something that you might get personally involved with. And I don't know whether you want to go to what I did when I went back to the Directorate, but basically I left the office with a sense that I needed to make sure that people were following the Code. Because it
15 was a priority, I wanted to look at some of the documentation and see for myself that we were actually doing that properly.

COMMISSIONER: You mean the procurement documentation?

20 MS CROSS: The procurement documentation. So there were the three projects underway. I wanted to get a better understanding of the Code and I wanted to make sure that we were properly applying it.

MR O'NEILL: And so who did - how did you do that? How did you effect that when you
25 went back?

MS CROSS: So when I went back, I had a conversation with Mr Green.

MR O'NEILL: Yes.
30

MS CROSS: And explained that it had been conveyed to me that this was a priority. I think he briefed me on the Code and told me how it worked, explained that there was - how the process worked, and I think there was, you needed to get a Secure Local Jobs Certificate and there was then an assessment of your labour relations, training and workplace equity
35 plan or something like that. And I asked if I could have a look at some of that documentation so I could actually see what that looked like and how it had been assessed.

COMMISSIONER: So what you would have seen would have been perhaps the - did you see the request for tender where the relevant criteria for making a recommendation was set
40 out with their weightings?

MS CROSS: So I think I saw the request for an expression of interest which was where you then shortlisted down to, in this case, two companies for the two projects that I looked
45 at.

COMMISSIONER: Right.

MS CROSS: And as part of that request for an expression of interest that's where you check they had a - a Secure Local Jobs Certificate, and that's where did you the assessment against the plan.

5 COMMISSIONER: Right. Well, you also had to do it at the later stage?

MS CROSS: Yes, but I don't - I don't think I was involved in that.

10 COMMISSIONER: No, you weren't involved that the point. So there was the request for expressions of interest. So what you saw was there was a criterion that related to - that concerned Secure Local Jobs Certificate.

MS CROSS: Yes.

15 COMMISSIONER: And there was criterion relating to the plan.

MS CROSS: The plan.

20 COMMISSIONER: To which you referred. So they were assigned points and a weighting.

MS CROSS: And I actually asked to see the documentation, so that I could see what a company would normally submit, how we assessed it. Just to familiarise myself with, well, what does the documentation actually look like and -

25 COMMISSIONER: Okay.

MS CROSS: How do we make that assessment.

30 COMMISSIONER: Can we just dive into that a little. Here, there are two kinds of documents. There is what the company provides you under those particular headings, and then there's the analysis of the team in relation to those particular criteria. Did you ask for both those bits of information, do you recall?

35 MS CROSS: I certainly - well, I certainly asked to see some documentation and I think I got quite a large pack of material. It certainly had the assessment that the teams had made, and I think it possibly had the applications as well, so that again if they had written something I could then look at the application. But I know it had the assessment. I think it had the full documentation. But I - it's a while ago.

40 COMMISSIONER: No, indeed. Yes, Mr O'Neill.

MR O'NEILL: And so Mr Green provided evidence to the Commission. Have you - do you know who I'm talking about when I -

45 MS CROSS: Yes, I do.

MR O'NEILL: And have you had a chance to review the transcripts, or did you view Mr Green's evidence?

MS CROSS: Yes.

5

MR O'NEILL: I'm just going to bring up relevantly his evidence on this topic. It starts at P60, day 1. So I will start at line 9. Do you see there:

Ms Cross, Rebecca Cross was standing as our director.

10

That's at the date you accepted your change in statutory employment.

MS CROSS: That's correct.

15

MR O'NEILL: You were his direct boss, in effect, whilst he was in his role. Is that fair?

MS CROSS: There was a deputy in the Directorate, but I don't think Mr Green reported through him. So I think that's correct.

20

MR O'NEILL: Has he had a conversation with you and - he can't recall whether it was arranged, or it was a corridor. Do you have a recollection of where the conversation took place?

25

MS CROSS: No. I mean, the two offices were quite close to each other, so I suspect we just went into an office and sat down. I don't know whether it would have been his or mine.

MR O'NEILL: He says that his recollection is that you had been summoned down to the minister's office to discuss Campbell. Do you see that? That's not your recollection of what the meeting was, was it?

30

MS CROSS: My recollection was it was a discussion of the Secure Local Jobs Code.

MR O'NEILL: What about being summonsed down. Are they words that - or summoned down. Are they words that you used to Mr Green, do you think?

35

MS CROSS: That's not language I would normally use. I think I had a meeting with the minister and her chief of staff.

40

MR O'NEILL: But in any event, your evidence is that you did inform Mr Green of that fact.

MS CROSS: That we had had a meeting, yes.

45

MR O'NEILL: Yes. He says that you communicated to him Josh - do you know who that is?

MS CROSS: Yes, I do.

MR O'NEILL: Mr Ceramidas.

MS CROSS: The chief of staff, yes.

5

MR O'NEILL: Says Manteena is not to get it. Do you recall saying that to Mr Green?

MS CROSS: I don't recall it, and I think if that had come up in the conversation, I would recall it.

10

MR O'NEILL: Right. And it says, there is problems with their Secure Local Jobs and industrial relations performance. Do you see that?

MS CROSS: Yes, I do.

15

MR O'NEILL: Now, I think your evidence earlier was that you can't recall the names of any of the companies that were discussed. But you do recall that the issue that was broached with you was the performance of entities with Secure Local Jobs. Do you see that?

20

MS CROSS: Yes. The unions believed that there were companies that were not complying with the Code.

MR O'NEILL: And so to the extent this is a recollection about that point, that is, that the unions had problems with Secure Local Job, does that accord with your recollection of what you may have - sorry, what you did tell Mr Green?

25

MS CROSS: That seems quite likely, yes.

MR O'NEILL: And if it was that one of the entities was Manteena, that was mentioned, do you think it was something that you might have, at that stage, handed over because those names were fresh in your mind at the time you were speaking with Mr Green?

30

MS CROSS: Despite having problems with my short-term memory, I think that's mainly post-COVID, so I suspect if companies were named in the meeting then I would probably have recalled those names.

35

COMMISSIONER: Can I just ask you, this - was this your first meeting with Mr Green, or had you met him before?

40

MS CROSS: I hadn't met him before I was in the Directorate. I hadn't met him before that. This is pretty early on, so I'm - if we had had a full executive meeting on my first day, I may have met him because the offices were close to each other. He may have popped his head in and said hello. But I just don't recall. Sorry, Commissioner.

45

COMMISSIONER: All right. You said that if you recall that you asked to see the documentation relating to the Secure Local Jobs and the other industrial matters planned.

Was this the conversation that you recall when you asked for that, or was it a subsequent conversation? Or had it been a preceding conversation?

MS CROSS: I think it was this conversation.

5

COMMISSIONER: This conversation. When you asked for that information.

MS CROSS: I asked him about the Code, and he explained how it operated, and then I had asked at the same time if I could see some of the documentation so that I could see for myself.

10

COMMISSIONER: You got it in a day or two, or whatever it was.

MS CROSS: Yes, that's correct.

15

MR O'NEILL: Mr Green's recollection of the conversation continues, that you - so this is line 27, that you asked for copies of the evaluation. That accords with your recollection?

MS CROSS: Yes, it does.

20

MR O'NEILL: And you then had a chat about what's the next step in the procurement process. That doesn't sound like it's out of place in the way in which this conversation was taking place?

25

MS CROSS: No, because I was interested in how the Code applied throughout the procurement.

MR O'NEILL: Yes. And so do you recall talking about the next step in the procurement process?

30

MS CROSS: No, I don't. Other than there may have been - I think I knew that the three projects were all at different stages. So we may have had a discussion that -

COMMISSIONER: Where they were at.

35

MS CROSS: Where they were at, yes.

MR O'NEILL: Now, I assume in your mind that you're not about to make any big decisions whilst it's kind of in a - you're holding a caretaker role in effect waiting for someone else to come back. Is that fair?

40

MS CROSS: That's fair.

MR O'NEILL: And so you just want to make sure that - well, you tell us, what is it that you are really wanting to make sure of whilst you are undertaking this role in this respect?

45

MS CROSS: So I think I have conveyed that the minister's office view the Secure Local Jobs Code as a priority and want to make sure that the Directorate is paying appropriate attention to that. And I then want to make sure that in the processes that they have undertaken that they have in fact properly applied that Code and that, you know, if the minister's office said, well, we want to see how it's been done, we would have documentation that would show it had been appropriately applied.

MR O'NEILL: Now, if I can then take your eye down to line 38, Mr Green says that after that matter, you then restated the Min's office has a view on it. What's your impression of that?

MS CROSS: I don't believe that's what I said. I don't recall that, and I don't believe the minister's office said that or that I would have conveyed that.

MR O'NEILL: Right.

MS CROSS: Can I - can I just add.

MR O'NEILL: Certainly.

MS CROSS: The reason I think I would recall it is, in my view, if the Minister's office had said something like that they would have been inappropriately trying to influence the outcome of a competitive tender, and if they had said that, I would have viewed it as inappropriate and I think I would have reported it to the head of service. I'm confident I would have reported it to the head of service, because it's not appropriate to issue a direction and try and influence a tender process. So I don't recall it, and I think if that had been said I would recall it.

COMMISSIONER: Can we just go back, though, to - there's always a difficulty with trying to recall precise terms of a conversation, even one that happened yesterday, quite apart from years ago. But - so in a sense, the logic of the conversation sometimes helps. Not always, but sometimes it does. Here, however, I think the message was - correct me if I am wrong - from the meeting with the minister, is that they were pointing out that the unions did have problems with or did have complaints about compliance of companies who might be tendering for government contracts with the level of their industrial obligations.

MS CROSS: I think they said that they didn't - the unions felt they weren't complaining with the Code.

COMMISSIONER: No, quite. But they were conveying the union view.

MS CROSS: Yes.

COMMISSIONER: And at the same time saying the government places a high priority in ensuring that companies are protocol complying with their industrial relations, or words to that effect.

MS CROSS: Yes.

5 COMMISSIONER: So that implied that to a greater or lesser extent, this was a live issue that the government was concerned with, and wanted to ensure that the procurement processes adequately took that particular consideration into account. Does that fairly put it?

10 MS CROSS: I think they wanted - yes, I think they wanted to be sure that a proper process was being followed.

COMMISSIONER: Right. Well, they didn't suggest to you that the complaints were invalid or improper or -

15 MS CROSS: No, as I said, I think they showed me a media article where company had in the past been non-compliant. So it wasn't - it wasn't sort of a fanciful idea that companies would not be compliant. Yes.

20 COMMISSIONER: No, quite. But I gather, and it may be just because of one's cast of mind and I wasn't in the - in the conversation, but I rather gathered that they were expressing a view that there was something in the complaints.

MS CROSS: They may have been. I think the message I got was that I needed to make sure we were properly assessing the Code.

25 COMMISSIONER: In a sense to back the problem aside because you deal with it appropriately anyway. Is that the -

30 MS CROSS: That's right. And then if, for example, a company won a tender, and the unions were unhappy, we could point to the fact that we had followed the process. We had complied with all of the requirements and that there was no basis for the unions to be complaining.

35 COMMISSIONER: For that complaint. You would then have a transparent explanation for why it happened.

MS CROSS: Absolutely, absolutely.

COMMISSIONER: And would respond appropriately.

40 MS CROSS: Yes.

COMMISSIONER: Right.

45 MR O'NEILL: Moving then on, you can see that -

COMMISSIONER: Well, before we move on, I'm sorry, part of the problem here is that - the distinction between words and messages. Sometimes government, political or

5 bureaucratic, is very careful about the language they choose in wishing to convey a message not exactly encompassed by the words chosen. Do you see the point I'm making? In other words, reading between the lines is a common expression which - approach, which applies to that kind of situation. And you need to say "yes" rather than nod because it's not recorded.

MS CROSS: Sorry. I was waiting for you to finish, Commissioner.

10 COMMISSIONER: No, no. Thank you. And as an outsider looking at the conversation as you relate it, an understanding that that itself is inevitably an edited version, because you are not, of course, pretending that you would recall ipsissima verba every word, so in a sense you yourself, as we all do are recollecting our retained impression of what we were told. So - sorry - no, no, please respond.

15 MS CROSS: I was going to say, yes, Commissioner, but I think what I took from the conversation was that we needed to follow the process properly and carefully. And I think if you -

20 COMMISSIONER: Sorry, what conversation?

MS CROSS: The conversation with the minister's office and the chief of staff that we needed to apply the Code, we needed to follow the process. And I think if you look at what happened subsequently, that's what I did when I went back to the Directorate. I had a look at how the process was being applied. So the message to me was we need to do this properly, we need to understand this is a priority for the government. And so I went back to make sure that the process was being properly followed and that we were viewing it as a priority to assess people properly against the Code.

30 COMMISSIONER: I understand that point. But that would have required - and perhaps the qualifying "but" is not appropriate. And that would have required, when you exercise your own judgment looking at the documents with which you were provided, satisfying yourself that the points allocated to those issues and the weighting that they were afforded in the evaluation appropriately reflected the emphasis on this matter which the government told you about.

35 MS CROSS: I didn't review the documents with the view of reviewing the scores. I just wanted to assure myself that the plans had been properly assessed, you know, that there was a certificate there, that they had a valid certificate, which of course they all did, and that in the assessment of those plans - and this is the same as if I'm looking at any grant or any other procurement, than what was written in the assessment, to a person reviewing it later -

COMMISSIONER: Made sense.

45 MS CROSS: Made sense. And on this occasion, there were a few things that had come up in the assessment that I queried. They weren't material, they weren't about the score recorded; it was just people had written things needed to be reviewed, or this should be

checked, and it didn't appear that that had happened. So as a process, an issue had been raised, if you are following the process properly you would then go and check it. Now, none of them seemed material, but if I had been asked was this best practice, I would have said no. Issues had come up and they weren't followed through.

5

COMMISSIONER: Sure. But there may be reasons. For example, this was seeking to make a shortlist and those matters may not have been determinative.

MS CROSS: Absolutely. And as I said, I don't think they were material, but it was really just saying did anything come up in that assessment that is problematic. My view was it hadn't but that there were some things which probably should have been followed up.

10

COMMISSIONER: Right. Right. So, I would just like to come back to the point that I was making, because I do have some difficulty with your saying that you didn't examine or consider - and correct me if I'm overstating your position - the actual scoring allocated - well, to be allocated, so the available score and then what was achieved, but let's just look at the available score. The available score is telling you, by comparison with the other relevant criteria, how much significance is given to these issues. So the possession of a certificate, I think, was given 10 points. It doesn't matter.

15

20

MS CROSS: Yes. You either have one or you don't.

COMMISSIONER: Quite. In a sense, it's binary. It seems odd that you would have a weighting for that because it is binary.

25

MS CROSS: That's correct.

COMMISSIONER: But perhaps strict logic does not underlie all the process. But the other one is capable of assessment, obviously, because it's a matter of fact and degree. But let's assume - I'm choosing an extreme example - that out of 100, two points was allocated to whether you had a certificate, and two points was allocated to whether - what their industrial plan was. I think most of us, including lay people, would say, that's a bit low for something that seems more important than four points out of 100. Do you see - in other words, I don't see how you could satisfy yourself that the government concern was appropriately responded to without considering the actual scoring and the weighting.

30

35

MS CROSS: So, Commissioner, this was not an area where I had any expertise.

COMMISSIONER: No, quite.

40

MS CROSS: And I did not want to go back and reassess every plan that had been submitted. So I was not looking at the score. I was looking at the documentation, did it all look as though we had gone through a proper process, not trying to second-guess what a score should be in an area that I had no expertise. And so the sorts of things which I was pulling out were where they said, you know, this company appears compliant, but we need to check or review something, and had we checked and reviewed it. I was not - I would not

45

reassess the assessments of the tender panel. I was just looking to see had they looked at the right things, had they completed the paperwork.

5 COMMISSIONER: Quite. I think we are at cross-purposes here.

MS CROSS: But I was not attempting to check the scoring. I was actually just looking to see - I wanted to understand how the process worked and make sure there was nothing in the assessment report that looked as though we hadn't followed a proper process.

10 COMMISSIONER: I think we might be at cross-purposes. I'm not talking about what score was achieved, because right at the outset there are a number of elements of a construction which involve design materials, building experience, you know, all the relevant things that you would think of - I think there are six or seven of them - two of which were Secure
15 Local Jobs certificate and the industrial plan. So at the outset, you've got a statement in effect, how important are these factors? And I think - was it 10 each, Mr O'Neill?

MR O'NEILL: Yes.

20 COMMISSIONER: So 20 points out of 100 were allocated to - now, I'm not an expert, whoever it was that specified those points, no doubt, had in mind how important they were. And if I may say so, I gather from what you're saying is you were not in a position to gainsay the setting of those scoring criteria at the outset.

25 MS CROSS: No, and we were partway through a process, so you couldn't have changed that weighting. That was the published weighting.

COMMISSIONER: Right. I suppose -

30 MS CROSS: That was the basis on which they had all been told they will be assessed. So I wasn't revisiting the weighting, I wasn't revisiting the score. I was just assuring myself that there was nothing odd in the assessment.

35 COMMISSIONER: So if something, as it were, leapt out of the paper, you would have then taken it further and asked and everything made sense to you and seemed to be appropriate whether you read the material.

MS CROSS: That's correct.

40 MR O'NEILL: Just then returning to the conversation between you and Mr Green, do you see he says:

Manteena is not to get the job.

45 And we have received your evidence in respect of that. And he asks - he says he asked you:

What do we do?

And you said:

5 *Continue on with the process, follow the process. Don't go outside that. Stick with the process.*

10 Now, we have heard you already in your evidence today talk about that - the process was important. And that that's something that you had heard from the minister's office about process. And is it likely that that's something you told him, "Stick with the process"?

15 MS CROSS: Not in that context that he's given. Certainly we had a conversation about how the process would need to be followed, so that we were making sure people complied with the Code, doing that assessment protocol properly, documenting it properly. So we had a conversation about process. But it was more in the context of the minister's office is interested in how we are applying the Code. Let's make sure that we are doing it properly and that the documentation and the process would stand up to scrutiny, would be transparent.

20 MR O'NEILL: Now, if I take you to a document 2.0378, this is an email from you to Mr Green and Mr Matthews where you are saying the assessment has noted things that would need to be reviewed or further evidence. Is this the request that you were referring to earlier in your evidence just now, that you had made these observations and you wanted to make sure that the process was being followed?

25 MS CROSS: That's correct.

MR O'NEILL: And to your mind, do you recall having a resolution to these matters or someone providing you with an appropriate resolution?

30 MS CROSS: So again, I - I think I had a conversation with Mr Green and we agreed that none of these were material, they weren't going to change the outcome. But that prospectively, I think I expressed a view that it would be better practice, or best practice, if when things like this came up in future, that we actually reviewed them and addressed them before we finalise the process.

35 COMMISSIONER: Or at least explain why you're not doing so.

40 MS CROSS: That's right. So here, if it says their response to item F, system of work needs review, then we should have asked for it to be reviewed before we finalised it. Or have indicated that it needs review, but this is not a matter which changes the rating or our assessment. It just - to me wasn't well documented. So again, in terms of process I thought this left us open to some criticism that we had raised some issues and then not followed through on them.

45 MR O'NEILL: At or about this time in relation to Campbell, the process was that they had received tenders from two tenderers. The Tender Evaluation Team's preliminary view was that Manteena should be the preferred tenderer.

COMMISSIONER: No, Mr O'Neill, I don't think it was a preliminary view; I think that was their final determination, but it was not the way in which the recommendation was expressed.

5

MR O'NEILL: That's fair, Commissioner. You have heard what's fallen between my correction by the Commissioner just now. And so noting that, were you aware of that position at this time?

10 MS CROSS: I don't believe I was. And in all of the procurements I'm normally involved with, you have no idea the outcome of a tender assessment until the end. So I don't think I would have even asked. This was about the expression of interest which had been completed some time earlier.

15 MR O'NEILL: Yes.

MS CROSS: I don't think I would have thought to even ask about the current process, because you don't generally discuss that.

20 MR O'NEILL: There was a - there was also a process by which Mr Green was informing the Tender Evaluation Team that they should go to a process known as best and final offer. Were you aware of, firstly, that process, whether that was something that was available under the procurement process during your time?

25 MS CROSS: So I think you have already asked me this. When I reviewed my evidence to the Auditor-General, which was the closest to this period of time, I think I indicated that I had a vague recollection of BAFO, but it was just a vague recollection. I think it was - it might have come up in a discussion, but I don't think it was in any detail.

30 MR O'NEILL: Were you aware that that's what was being impressed upon the Tender Evaluation Team that was the message that they were to try and achieve?

MS CROSS: No, and I - from my understanding of the chronology, I don't think at this point in time that had happened anyway.

35

MR O'NEILL: Do you recall that - sorry, do you recall whether - any idea that the Tender Evaluation Team was going to be seeking advice from the government solicitor's office in respect of the probity of such a process?

40 MS CROSS: I don't recall it, but it doesn't surprise me that, if you were doing something like that, you would seek legal advice.

MR O'NEILL: Is it something that would require Director-General involvement in order to get that advice or that could happen -

45

MS CROSS: I don't believe so, no.

COMMISSIONER: Sorry, just to be clear, you don't believe it required Director-General approval?

MS CROSS: No. I think we regularly get legal advice on any number of things.

5

COMMISSIONER: Right.

MS CROSS: Without the Director-General's approval.

10 MR O'NEILL: Now, I'm going to show you - sorry, for the purposes of the record, that document continues on to the next page, to 2.3079. Now, I'm going to show you a different document. Now, this is not your note. This is someone else's note, Ms Haire's note. At the top it's written:

15 *Rebecca handover*

And it's dated 12 March 2020. That accords with when you handed over or handed back to Ms Haire; agree?

20 MS CROSS: Yes.

MR O'NEILL: Now, again, it's not your note, so you don't have to accept anything in here, but do you have a recollection about that handover meeting?

25 MS CROSS: So my recollection was it was either meant to be face to face and we ended up having to do it over the phone or we had to change the time. Things were pretty - at this point, things were really heating up with COVID and there was a lot going on. So I have a - as I said a recollection either that we changed the venue, or we changed the time.

30 MR O'NEILL: And also that - do you recall whether Ms Haire had cut short her period of leave by some days because of -

MS CROSS: I don't - I don't recall that, and if you look at the days that I was in the position, it was through from the 25th to the 12th and so she may have come back a day earlier and this may have been a handover before she returned to work on the 13th.

35

MR O'NEILL: All right. If we can just go to the next page.

COMMISSIONER: Just for the record, could you tell - state the number of -

40 MR O'NEILL: It hasn't made the evidence - the book. I will tender it at the end of these questions.

COMMISSIONER: Right.

45 MR O'NEILL: So, you see there, that at the top it's talking about there's a bullet point:

Secure Local Jobs, intent of code, highest level.

Now, that accords with the message that you understood you had received from the minister when you had met with her. Agreed?

5 MS CROSS: Yes.

COMMISSIONER: So this is reflecting - of course, in a few words, what you conveyed to Ms Haire?

10 MS CROSS: That we had had a discussion - well, that we had - I am assuming I said I had had a discussion about Secure Local Jobs Code, and that, you know, the intent of the code was really important to the government and that they wanted to make sure that it was given.

15 COMMISSIONER: So this accords with your recollection of what you said to her?

MS CROSS: Yes, it does. Yes, it does.

20 MR O'NEILL: You will see there's a bullet point, "Capital projects" and below that:
Campbell - 2 - both unhappy.

Scratched out. Do you see that?

25 MS CROSS: Yes, I do.

MR O'NEILL: Now, do you recall talking about Campbell during the handover meeting?

30 MS CROSS: I don't specifically recall it, but I understand that it would have come up if it's in the note.

MR O'NEILL: Do you recall whether you had spoken about the number of tenderers that were - at that stage in the race for Campbell?

35 MS CROSS: So again, I think my recollection was there were three projects and they were all at different stages, and this would be me just letting Katy know where they were up to, I think.

40 MR O'NEILL: You see there, you see it's got "both unhappy", do you have any recollection of mentioning to Ms Haire whether anyone was unhappy?

MS CROSS: I don't. And I can't - like I have thought about this, and I can't offer any explanation.

45 MR O'NEILL: Now, during the - that handover, do you recall whether you conveyed the message to Ms Haire that any of the tender - that the unions were unhappy with any of the tenderers?

MS CROSS: I don't recall.

5 MR O'NEILL: What about even broadly - more broadly than that, that the unions - this issue of Secure Local Jobs was something that the unions were unhappy with at the time?

MS CROSS: So I expect I would have, because I would have relayed the conversation I had had with the minister and the chief of staff, and that was the - that's what it come up.

10 COMMISSIONER: That would be part of it.

MS CROSS: That was a part of it. That's correct.

15 MR O'NEILL: Now, do you recall at any time within the Directorate the rumour that the reason Manteena was not to be the preferred tenderer was because they had an issue - because the unions had an issue with them?

MS CROSS: I don't, no.

20 MR O'NEILL: You don't recall that at all?

MS CROSS: No.

25 MR O'NEILL: Even as a rumour?

MS CROSS: I don't recall hearing any rumours. It's possible that in my conversation with Mr Green, when we were talking about the three projects, he may - like, I gather he was aware of it. He may have mentioned it. But I don't recall any discussion about of a rumour and I don't specifically recall it coming up.

30 MR O'NEILL: Did you ever have a conversation with any members of the Tender Evaluation Team for Campbell?

35 MS CROSS: No. I don't believe I did.

MR O'NEILL: One moment, Commissioner. Thank you, Commissioner. I have no further questions for this witness.

40 COMMISSIONER: Ms Cains, do you have any questions that you would like to - first I might just ask, is there any applications for cross-examination? Yes, Mr Hassall.

MR HASSALL: Someone had to do it, Commissioner. What I propose is just five minutes, if that.

45 COMMISSIONER: Yes, I'll give you leave.

<CROSS-EXAMINATION BY MR HASSALL

MR HASSALL: You can see me, Ms Cross?

MS CROSS: Yes, I can.

5

MR HASSALL: Just briefly, you mentioned that you attended a meeting at the - was it at the minister's office with -

MS CROSS: Yes, that's my recollection.

10

MR HASSALL: With Mr Ceramidas. And I think you said that it was put to you that Mr Green had said that when you came back from that meeting, you made specific mention of Manteena. Do you recall him asking you about that? Counsel assisting just 15 minutes ago, roughly?

15

MS CROSS: He asked me a question along those lines, and I think I answered that -

MR HASSALL: Yes, I think you said something like, if the name of a company had been mentioned I would have remembered it.

20

MS CROSS: No, I didn't. I think I said that I was unlikely to have remembered it because these weren't - sorry, at the time - sorry, at the time I would have remembered it but now I don't, yes. Sorry.

25

MR HASSALL: All right. So - but you said earlier than that, that three or four company names were mentioned at the meeting.

MS CROSS: That's my recollection, and they may have been mentioned as a general observation or they may have been in the media article that I think we had discussed.

30

MR HASSALL: Yes. All right. You're unable to say the names of those companies that you think were mentioned today?

35

MS CROSS: As I said, the only companies' names that I remember are the two involved in Campbell because of reading the audit report and all of this documentation since.

MR HASSALL: So the only one you knew at the time -

40

MS CROSS: Was Lendlease.

MR HASSALL: Was Lendlease.

45

MS CROSS: And I don't know whether - I don't know whether Lendlease came up in the discussion with the minister's office; that's just the only company's name I can recall from my time in Education.

COMMISSIONER: So just to be clear, are you saying that one of the companies mentioned at that time may have been Manteena, but it meant nothing to you and you might not -

5 MS CROSS: That's correct.

COMMISSIONER: And that's why you didn't recall it possibly now?

MS CROSS: I don't recall it now. But I may have at the time.

10

COMMISSIONER: You may have at the time, right.

MR HASSALL: Thank you, Commissioner. You very frankly acknowledged that - when you were asked questions about what we were told was Ms Haire's handover note when she got back, that there are aspects you can't remember. That's your evidence?

15

MS CROSS: That's - yes, can I give you some context? Would that be helpful or not?

MR HASSALL: Sure. Go ahead.

20

MS CROSS: So when I left the Education Directorate, I think I had eight days back in the Community Services Directorate and then went offline, and at the end of March, became the Coordinator-General for COVID-19 Non-Health Response. And so it was an incredibly busy time. It was a new position, it was when COVID was - things were unravelling, I think is the best description, and so my recollection of a lot of this is not just that it's a long time ago, it's just there were very significant things which happened shortly afterwards.

25

MR HASSALL: Sure. One or two other things.

30 MS CROSS: One or two.

MR HASSALL: Can I suggest to you that it's - well, would you accept that it's possible that you mentioned the name Manteena in your discussion with Mr Green and you've just forgotten that now in the same way?

35

MS CROSS: I accept that that's possible. Yes.

MR HASSALL: Certainly I understand your evidence to be that you wouldn't have left him in any doubt that it was a political priority for the government that the Secure Local Jobs Code was being fully implemented?

40

MS CROSS: I would make a distinction between political and government. So I saw it as a government priority. I wasn't - I wasn't viewing anything political in terms - yes.

45 MR HASSALL: That's - I appreciate that distinction.

MS CROSS: Thank you.

MR HASSALL: And in the same way, if they had said to you, well, swimming pool fences are of critical significance, you would have gone back and made sure you dotted your i's and crossed your t's about swimming pool fences.

5

MS CROSS: I have. And I believe the Education Directorate does have some swimming pools.

MR HASSALL: Yes. Thank you.

10

COMMISSIONER: Thank you. Yes. Now, Ms Cains, do you want to ask any re-examination questions?

MS CAINS: No, thank you, Commissioner. I think we have covered that.

15

COMMISSIONER: Very well. Well, thank you. Again, as you have heard with other witnesses, I think it's most unlikely we will need to call you back, but it is unfolding. Indeed, I can say we are still looking at documents. We had an enormous tranche of responses. We are hoping we're almost there, but one can't guarantee it. But we will liaise with your lawyers and make some appropriate arrangement that is mutually convenient.

20

MS CROSS: Thank you, Commissioner.

<THE WITNESS STANDS DOWN

25

COMMISSIONER: Yes, very well. I haven't said this to other persons, but I have said it before. And I'm only saying this, not because of you in particular, but because this is the close of this tranche of evidence. But if any witness has suffered any issues, health - mental health issues as a result of these proceedings, they are entirely free to consult an appropriate expert to assist in - assist them with those issues. If there is a personal contact, that any witness would like to be able to share issues with, it's very likely that at this stage I would permit it, but I can't give open slather. You just - all you need to do, though, is to ask Ms Vogel and I will give it immediate consideration and almost certainly I would permit it. I just don't want people to go home and feel they can't talk about anything when they feel the need to do so. It's simply that I cannot give carte blanche in that area.

30

35

I hope those matters are clear and I rely on the legal representatives to ensure that that situation is made clear to their clients. We expect to resume on the 27th.

40

MR O'NEILL: 27 September.

COMMISSIONER: 27 September. Before that time, we will be providing additional evidence, and it will be subject to a written undertaking by the legal representatives that the material will be confidential and not disclosed to their clients until the Commission permits that to be done. If it is thought that one part or other needs to be disclosed so that counsel can do their job, then an application in writing can be made and I will consider whether that's an appropriate release. Until then, I'm adjourning.

45

<ADJOURNED 3.23 PM TO WEDNESDAY, 27 SEPTEMBER 2023 AT 10 AM