



Final Report of the Royal Commission into the Building and Construction Industry

Hearings – New South Wales Part 2

Volume Fourteen

Royal Commissioner, The Honourable Terence Rhoderic Hudson Cole RFD QC

February 2003

Final Report of the Royal Commission into the Building and Construction Industry – Volume Titles

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Abbreviations

General

Australian Business Number	ABN
Asbestos Removal Contractors' Association	ARCA
Australian Competition and Consumer Commission	ACCC
Australian Construction Industry Redundancy Trust	ACIRT
Australian Council of Trade Unions	ACTU
Australian Industrial Relations Commission	AIRC
Australian Industry Group	AIG
Australian Securities and Investments Commission	ASIC
Australian Taxation Office	ATO
Australian Workplace Agreement	AWA
Australian Workers' Union	AWU
Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union (referred to as the Australian Manufacturing Workers Union)	AMWU
Building Industry Specialist Contractors Organisation NSW	BISCO NSW
Building Workers Industrial Union	BWIU
Central Business District	CBD
Civil Contractors Federation	CCF
Civil Contractors Federation of New South Wales	CCFNSW
Code of Practice for the Construction Industry	Code of Practice
Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia	CEPU
Construction & Building Unions Superannuation Fund	Cbus
Construction Accreditation Services Pty Ltd	CAS

Construction, Forestry, Mining and Energy Union	CFMEU
Construction, Forestry, Mining and Energy Union Fighting Fund (formerly known as the Mark Allen Fighting Fund)	Fighting Fund
Coverforce Top-Up Accident Scheme	CTAS
Crane Industry Association of New South Wales	CIANSW
Electrical Trades Union of Australia, New South Wales Branch	ETU NSW
Enterprise Bargaining Agreement	EBA
Masonry Contractors Association of New South Wales	MCA
Master Builders' Association of Newcastle	Newcastle MBA
Master Builders' Association of New South Wales	MBANSW
National Building and Construction Industry Award	NBCIA
National Electrical and Communications Association	NECA
National Institute of Dramatic Arts	NIDA
New South Wales	NSW
New South Wales Environment Protection Authority	EPA NSW
New South Wales Industrial Relations Commission	NSWIRC
Occupational Health & Safety	OH&S
Office of the Employment Advocate	OEA
Prescribed Payments Scheme	PPS
Roads and Traffic Authority of NSW	RTA
Synthetic Mineral Fibre	SMF
Transport Workers Union	TWU
WorkCover Authority of New South Wales	WorkCover NSW

Contractors

3-D Scaffolding Pty Ltd	3-D Scaffolding
Abigroup Contractors Pty Ltd	Abigroup
Ace Contractors Pty Ltd	Ace Contractors
Access Australia Rigging and Scaffolding Pty Ltd	Access Australia Rigging and Scaffolding
AD & CL Malby Bricklaying Pty Ltd	AD & CL Malby
Adecco Pty Ltd	Adecco
Affective Services Pty Ltd	Affective Services

A J Bignell Pty Ltd	A J Bignell
Alkene Asbestos Removal Pty Ltd	Alkene
Arch System Fabrication Pty Ltd	Arch System Fabrication
Arrow International Pty Ltd	Arrow International
Austral Interior Linings Pty Ltd	Austral
Australand Holdings Ltd	Australand
Australian Colour Enterprises Pty Ltd	ACE
A W Edwards Pty Ltd	A W Edwards
Banks Hoarding Pty Ltd	Banks Hoarding
Barclay Mowlem Construction Ltd	Barclay Mowlem
Baulderstone Hornibrook Pty Ltd	Baulderstone
Bayside Pty Ltd	Bayside
Becton Construction Group Pty Ltd	Becton Construction Group
Becton Corporation Pty Ltd	Becton
Bell Scaffolding Pty Ltd	Bell Scaffolding
Belmadar Constructions Pty Ltd	Belmadar
Betaform Constructions Pty Ltd	Betaform
Bitz Excavations Pty Ltd	Bitz Excavations
Blue Circle Southern Cement Pty Ltd	Blue Circle
Bona Builders Pty Ltd	Bona Builders
Boral Ltd	Boral
Boral Formwork and Scaffolding Pty Ltd	Boral Formwork and Scaffolding
Brolik Pty Ltd, trading as Botany Cranes and Forklift Services	Botany Cranes
Bovis Lend Lease Pty Ltd	Bovis
Brambles Pty Ltd	Brambles
Bricon Constructions Pty Ltd	Bricon Constructions
Brighton Ceilings Pty Ltd	Brighton Ceilings
Buildcorp (Australia) Pty Ltd	Buildcorp
Buildcorp NSW Pty Ltd	Buildcorp NSW
Capital B Bricklaying Pty Ltd	Capital B

Catering Equipment Services Pty Ltd	Catering Equipment Services
Christies People Pty Ltd	Christies People
Civil Management Group Pty Ltd	Civil Management Group
Clarevale Enterprises Pty Ltd	Clarevale Enterprises
Coastwide Civil Pty Ltd	Coastwide Civil
Collex Pty Ltd	Collex
Comet Training Pty Ltd	Comet
Con & Sons Pty Ltd	Con & Sons
Concrete Constructions Pty Ltd	Concrete Constructions
Consolidated Constructions Pty Ltd	Consolidated Constructions
Constructive Scaffolding Pty Ltd	Constructive Scaffolding
Corpcom Constructions Pty Ltd	Corpcom
Crestway Constructions Pty Ltd	Crestway Constructions
Cretecon Pty Ltd	Cretecon
Crown International Holdings Pty Ltd	Crown
Daracon Engineering Pty Ltd	Daracon Engineering
Deemah Marble & Granite Pty Ltd	Deemah Marble & Granite
De Martin & Gasparini Pty Ltd	De Martin & Gasparini
Denrith Pty Ltd	Denrith
Denrith Pty Ltd, trading as Divall's Earthmoving and Bulk Haulage	Divall's
Dyldam Developments Pty Ltd	Dyldam Developments
Dynamic Steel Pty Ltd	Dynamic Steel
Easyform Constructions Pty Ltd	Easyform Constructions
Edwards Constructions (NSW) Pty Ltd	Edwards Construction
E M Miller Building Co Pty Ltd	E M Miller Building
Endeavour Scaffolding Pty Ltd	Endeavour Scaffolding
Everwilling Cranes Pty Ltd	Everwilling Cranes
Everwilling Cranes & Platforms Pty Ltd	Everwilling Cranes & Platforms
FIFA Group Pty Ltd	FIFA Group
Fineline Painting Pty Ltd	Fineline
Fire Control Services Pty Ltd	Fire Control Services

Fixton Marble & Granite Pty Ltd	Fixton Marble & Granite
Fletcher Constructions Australia Ltd	Fletcher Constructions
Focus Property Services Pty Ltd	Focus Property
Foxrun Building Services Pty Ltd	Foxrun
FX Illusions Pty Ltd	FX Illusions
Ganderton Earthmoving Pty Ltd	Ganderton Earthmoving
Gemvale Pty Ltd	Gemvale
Gillespie's Cranes Nominees Pty Ltd	Gillespies
Glenmore Park Pty Ltd	Glenmore Park
Glenziel Pty Ltd	Glenziel
Grant Constructions Pty Ltd	Grant Constructions
Griffiths Landscape Management Pty Ltd	Griffiths Landscape Management
Grindley Constructions Pty Ltd	Grindley Constructions
Grocon Pty Ltd	Grocon
Grocon (NSW) Pty Ltd	Grocon NSW
Guardian Pty Ltd	Guardian
GWH Building Pty Ltd	GWH Building
Hackett Laboratory Services Pty Ltd	Hackett Laboratory
HC Formwork Pty Ltd	HC Formwork
Hi-Lo Cleaning and Maintenance Pty Ltd	Hi-Lo
Hurricane Earthworks and Demolition Pty Ltd	Hurricane Earthworks and Demolition
HVG Enterprises Pty Ltd	HVG Enterprises
Ingleside Bricklaying	Ingleside
Jedda Steel Pty Ltd	Jedda Steel
Jedda Steel Pty Ltd, trading as Uniframe	Uniframe
Jeffkins Pty Ltd	Jeffkins
Jim Godfrey Earthmoving Pty Ltd	Jim Godfrey Earthmoving
Jim Morrissey Bricklaying Pty Ltd	Jim Morrissey Bricklaying
J J B Group Pty Ltd	JJB
J K Williams Contracting Pty Ltd	J K Williams Contracting
Karimbla Construction Services Pty Ltd	Karimbla Constructions Services

Kell & Rigby Pty Ltd	Kell & Rigby
Kilpatrick Green (United KG) Pty Ltd	Kilpatrick Green
Klesteel Pty Ltd, trading as Bassett Demolitions	Bassett Demolitions
Lagiru Pty Ltd	Lagiru
Lahey Constructions Pty Ltd	Lahey Constructions
Laser Excavations and Hire Pty Ltd	Laser Excavations
Laser Excavations 2000 Pty Ltd	Laser Excavations 2000
Lazer (Australia) Pty Ltd	Lazer
Leighton Contractors Pty Ltd	Leightons
Lineform Scaffolding and Rigging Pty Ltd	Lineform Scaffolding and Rigging
Lineform Pty Ltd	Lineform
Lockrey Holdings Pty Ltd	Lockrey Holdings
Mainbrace Constructions Pty Ltd	Mainbrace Constructions
Mainland Civil Pty Ltd	Mainland Civil
Manu Enterprises Pty Ltd	Manu
Matthews Contracting Pty Ltd (now Matthews Plant Hire Pty Ltd)	Matthews Contracting
M C Harrold Pty Ltd	M C Harrold
McNamara Constructions Pty Ltd	McNamaras
Meribal Interiors NSW Pty Ltd	Meribal Interiors NSW
Meriton Apartments Pty Ltd	Meriton Apartments
Metal Gutter Fascia Services Pty Ltd, trading as Advanced Roofing	Advanced Roofing
Mirvac Constructions Pty Ltd	Mirvac Constructions
MRT Corporation Pty Ltd	MRT Corporation
Multiplex Constructions Pty Ltd	Multiplex
Multiplex Constructions (NSW) Pty Ltd	Multiplex NSW
Nace Civil Engineering Pty Ltd	Nace Civil Engineering
National Engineering Pty Ltd	National Engineering
Neale Jones Civil Contracting Pty Ltd	Neale Jones Civil Contracting
Network Project Developments Pty Ltd	Network Project Developments
Nevada Contractors Pty Ltd	Nevada Contractors

Newcastle Scafflink Pty Ltd	Newcastle Scafflink
New Era Balustrading Pty Ltd	New Era Balustrading
NSW Painting Services Pty Ltd	NSW Painting Services
Online Labour Hire Pty Ltd	Online Labour
Onshore Block and Bricklaying Pty Ltd	Onshore Block and Bricklaying
P & C Galea Pty Ltd, trading as Express Concrete Pumping	Express Concrete
PanelCraft Coolrooms (NSW) Pty Ltd	PanelCraft
Paynter Dixon Constructions (Aust) Pty Limited	Paynter and Dixon
PDH Partitions Pty Ltd	PDH
Penders Hire Pty Ltd	Penders Hire
Preston Steel Pty Ltd, trading as Uniframes	Uniframes
Prime Constructions Pty Ltd	Prime Constructions
Proactive Consultants Pty Ltd	Proactive Consultants
Quality Rigging Services Pty Ltd	Quality Rigging
Quasar Constructions NSW Pty Ltd	Quasar Constructions
Raffia Contracting Pty Ltd, trading as Raffia Rigging and Scaffolding	Raffia
Rapid Wall NSW Pty Ltd	Rapid Wall NSW
Recom International Pty Ltd	Recom
Rescrete Industries Pty Ltd	Rescrete
Rhino Steel Pty Ltd	Rhino Steel
Rhino Steel Pty Ltd, trading as Uniframes	Uniframes
Richard Crookes Pty Ltd	Richard Crookes
Right Group Pty Ltd	Right Group
Rocom International Pty Ltd	Rocom International
Roitram Pty Ltd	Roitram
Rorke Development Agency Pty Ltd	Rorke
Ross Mitchell & Associates Pty Ltd	Mitchell & Associates
Royal Tiles Contractors Pty Ltd	Royal Tiles Contractors
S & B Industries Pty Ltd	S & B Industries
S & B Industries (NSW) Pty Ltd	S & B Industries (NSW)

S & C Installations Pty Ltd	S & C Installations
Saba Bros Tiling Pty Ltd	Saba Bros Tiling
Sacon Constructions Pty Ltd	Sacon Constructions
Safeway Electrical Pty Ltd	Safeway Electrical
Salmon & Son Pty Ltd	Salmon & Son
Salmon Earth Moving Services Pty Ltd	Salmon Earth Moving
Saxona Pty Ltd, trading as Campbelltown Coolrooms	Campbelltown Coolrooms
Seasont Pty Ltd	Seasont
Sebastian Builders and Developers Pty Ltd	Sebastian Builders
Shane Robinson Cranes Pty Ltd	Shane Robinson Cranes
Southern Cross Constructions (NSW) Pty Ltd	Southern Cross Constructions
St Hilliers Constructions Pty Ltd	St Hilliers Constructions
Stonetech (Holdings) Pty Ltd	Stonetech
Stratti Ocean and Earthworks Pty Ltd	Stratti Ocean and Earthworks
Stuart Pty Ltd	Stuart
T & R Management Services Pty Ltd, trading as Tube and Rigging Services	Tube and Rigging Services
Tabak Cement Rendering Pty Ltd	Tabak Cement Rendering
Tae Sung Pty Ltd	Tae Sung
Tenkate Group Pty Ltd	Tenkate
Thiess Pty Ltd	Thiess
Time Cost Quality Pty Ltd	Time Cost Quality
Traditional Golf Links Construction	Traditional Golf Links
Transfield Pty Ltd	Transfield
Waco Kwikform Pty Ltd	Waco Kwikform
Waller Constructions Pty Ltd	Waller Constructions
Wallis Commercial Interiors Pty Ltd	Wallis
Walsos Pty Ltd	Walsos
Walter Construction Group Pty Ltd	Walters
Waracon Pty Ltd	Waracon
Westfield Design and Construction Pty Ltd	Westfield

Whyco Cranes Services Pty Ltd	Whyco
Wideform Construction Pty Ltd	Wideform
Wilson Mobile Cranes Pty Ltd	W M Cranes
Workforce One Pty Ltd	Workforce One
Wormald's Fire Systems Pty Ltd	Wormald's Fire Systems
Worrigeer Gardens Estate Pty Ltd	Worrigeer Gardens
W Stronach Pty Ltd	W Stronach
Yorkshire Masonry Pty Ltd	Yorkshire Masonry
Zadro Constructions Pty Ltd	Zadro Constructions
Zlatar Partitions Pty Ltd	Zlatar Partitions

10 Labour Hire

Introduction

- 1 Many builders and subcontractors retain a core workforce and top up their workforce as required from labour hire agencies.¹ These workers are often engaged for the duration of individual projects or parts of a project.²
- 2 Many contractors engage supplementary labour from a labour hire agency rather than employing workers on a short term basis, because it shields them from the risk of unfair dismissal claims.³ Builders and subcontractors also use labour hire firms because the building industry awards do not provide for part-time employment for building trade workers and labourers.⁴ The building industry awards also limit the employment of casual labour to less than five days and restrict the types of employment which may be offered by builders and subcontractors.⁵
- 3 Historically unions have not supported the concept of labour hire because labour hire increases the proportion of casual labour in the building and construction industry which in turn creates worker insecurity.⁶ Mr John Robertson, Secretary of the Labor Council of New South Wales, said labour hire firms affect the freedom of employees to join a union because labour hire companies typically discriminate against union members.⁷ Although some labour hire companies operate in accordance with industrial relations legislation, others operate in an unethical manner and seek to undercut award rates and conditions.⁸ The Construction, Forestry, Mining and Energy Union (CFMEU) has endeavoured to limit the number of supplementary labour hire companies which have union-endorsed Enterprise Bargaining Agreements (EBAs) in the building and construction industry in New South Wales.⁹
- 4 Mr Stephen McCarney, Secretary of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia, Plumbing Division, New South Wales Branch, said in addition to lack of security and freedom of association, labour hire employees are often not provided with proper training or site induction. McCarney said labour hire companies do not develop the skills of their labour force nor do they engage apprentices. McCarney said the proliferation of labour hire companies undermines the skill base and safety standards in the plumbing industry. He said labour hire employees may not get the benefit of proper recreation leave and may be prejudiced in receiving a range of other entitlements.¹⁰

- 5 During June 2000 the New South Wales Government established a labour hire task force.¹¹ As a result, recommendations were made for a licensing regime in order to balance economic efficiency of labour hire with responsibilities for occupational health and safety.¹²

Adecco-Gemvale

- 6 Mr Warren Baker is an organiser for the Australian Workers' Union (AWU), Greater New South Wales Branch.¹³ Before commencing with the AWU, Baker was employed by Adecco Pty Ltd (Adecco) and Rorke Development Agency Pty Ltd (Rorke), two labour hire firms.¹⁴ Baker was an organiser for the CFMEU for 17 years before commencing with the labour hire firms.¹⁵
- 7 Baker commenced employment with Adecco in 1998.¹⁶ In about 1997 or 1998 Adecco took over Gemvale Pty Ltd (Gemvale), a labour hire company with a specific focus on the building industry.¹⁷ Gemvale was retained as a separate arm to supply labour to the building and construction industry.¹⁸ Gemvale was managed by Mr Tony Bleasdale, a former organiser for the Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch, whom Baker essentially replaced.¹⁹
- 8 Gemvale was a prominent labour hire firm primarily engaged in top end commercial building and construction work.²⁰ Gemvale had made an EBA with the CFMEU which enabled it to work freely in the top end commercial market.²¹ Baker said that unless a labour hire company has an EBA with the CFMEU its work opportunities in the commercial sector are restricted.²² Baker gave evidence that builders do not generally engage labour hire companies without union-endorsed EBAs for fear of industrial action.²³
- 9 When Baker commenced with Gemvale, he found that about 10–15 per cent of the employees were taxed as Prescribed Payments Scheme (PPS) subcontractors.²⁴ Baker terminated the PPS subcontractors because their use was contrary to the terms of Gemvale's EBA.²⁵ Gemvale had not experienced any difficulty with the CFMEU in relation to its use of PPS subcontractors while Bleasdale managed Gemvale.²⁶
- 10 When Baker commenced with Gemvale he also discovered Gemvale employed illegal immigrants and foreign workers without the appropriate visas.²⁷ Most of these workers started in mid to late 1998.²⁸ Baker identified about 60 such employees, who were primarily English and Irish backpackers.²⁹ Baker also found that many of these foreign workers were being significantly underpaid.³⁰
- 11 Baker asked each of these employees to provide appropriate visa documentation.³¹ Employees who could not provide this documentation were terminated.³² The CFMEU had not raised the issue of illegal or foreign workers with Gemvale while Bleasdale managed the company.³³
- 12 Baker also found Gemvale had been significantly underpaying wages and that there was about \$200 000 outstanding to workers.³⁴ The CFMEU had not previously raised the issue of underpayments with Gemvale while Bleasdale managed the company, but raised the issue with Baker shortly after he started with the company.³⁵ The wage claim was settled for about \$150 000, paid directly to the CFMEU.³⁶ The CFMEU was responsible for allocating the money

to underpaid workers.³⁷ After the workers were paid out, about \$62 000 remained with the CFMEU because the CFMEU could not locate the relevant workers.³⁸

- 13 Around late January 2000 Mr Mark Hartig, Group Manager of Human Resources of the Adecco Group of Companies, offered to make \$25 000 donations to each of Comet Training Pty Ltd (Comet), MEND Pty Ltd and the Building Workers Assistance Centre.³⁹ These donations were made from the \$62 000 remaining with the CFMEU together with an additional sum of \$13 000 contributed by Adecco.⁴⁰ Mr Brian Seidler, a director of Comet Training Pty Ltd, was concerned about the size of the donations and on 21 February 2000 telephoned Hartig to assure himself there was no coercion involved in the making of the donations.⁴¹ Hartig told Seidler the \$75 000 was the amount left over from the wage claim against Adecco and that the CFMEU would be providing the cheques for the donations.⁴² Seidler still had concerns about the donations. Hartig sought to allay these fears in the conversation and told Seidler the donations were completely voluntary.⁴³ Seidler asked Hartig to confirm his assurances in writing and Hartig did so by letter dated 22 February 2000.⁴⁴
- 14 Baker claimed that after he commenced with Gemvale, the company received a high level of attention from the CFMEU.⁴⁵ Gemvale workers started to be black listed on major sites.⁴⁶ Gemvale workers were told that they were not welcome and were restricted from entry to projects.⁴⁷
- 15 The attention from the CFMEU was a result of the dissatisfaction of Mr Andrew Ferguson, Branch Secretary of the Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch, with Gemvale having employed Baker and Mr John Henderson, another former organiser for the Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch, without first consulting him. In addition, Baker had a personality conflict with Mr Brian Fitzpatrick, an organiser for the Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.⁴⁸ Baker said that on a number of occasions Fitzpatrick told him that as long as Baker was involved with Gemvale, the company would continue to experience problems.⁴⁹
- 16 As a result, at least in part, of the CFMEU attention, Gemvale experienced a downturn in business. At its peak, Gemvale deployed between 200 and 280 men on building and construction sites. When Baker left the company in early 2000, it deployed between 70 and 90.⁵⁰ As a result of this downturn and other problems, Baker left Gemvale. Gemvale eventually went out of business in about late 2000.⁵¹
- 17 Gemvale's experience as a labour hire company in New South Wales is indicative of the difficulties faced by labour hire companies when the CFMEU has an entrenched policy position that labour hire increases the proportion of casual labour in the building and construction industry which in turn creates worker insecurity.

Rorke Development Agency Pty Ltd

- 18 After leaving Gemvale, Baker was employed by Rorke, a small labour hire firm with about 40 employees on its books.⁵² Rorke places staff predominantly within the building industry.⁵³

- 19 Rorke did not have an EBA with the CFMEU and this restricted the company's ability to deploy workers on major building sites.⁵⁴ As a result, Rorke had little or no success placing workers on Central Business District (CBD) sites and placed workers predominantly on North Shore sites.⁵⁵
- 20 Baker gave evidence that on 28 April 2000 Fitzpatrick telephoned Mr Donald Stout, the New South Wales Manager of Rorke Development Agency Pty Ltd.⁵⁶ Baker was in the same office and overheard the telephone conversation.⁵⁷ Baker said Fitzpatrick told Stout that as long as Rorke employed Baker it was going to have problems with the CFMEU, that Baker was 'poison' and had been sacked from Gemvale for being continually in breach of the award; an allegation which was false.⁵⁸ Baker said Stout told Fitzpatrick he would take these things into account but ultimately make the decision on Baker's employment himself.⁵⁹
- 21 Baker said he later confronted Fitzpatrick about this conversation.⁶⁰ Baker said Fitzpatrick did not deny making the comments but told Baker that 'all was fair in love and war' and that Baker used to give Fitzpatrick 'stick' in the union so it was fair and reasonable to give some back.⁶¹
- 22 On 2 May 2000 at about 5 pm, Mr Michael Wicks of Mainbrace Constructions Pty Ltd (Mainbrace Constructions) telephoned Baker and told him Rorke was no longer welcome on Mainbrace Constructions' projects.⁶² Wicks said he had received a telephone call from Fitzpatrick and was told Rorke was no longer welcome in the industry because it did not have an EBA and was not paying the going rates.⁶³ Wicks said it was not worth fighting the union and Mainbrace Constructions would possibly engage Rorke in a month or so when things settled down.⁶⁴
- 23 On 4 May 2000 Mr Sam Mansfield, Construction Manager, for Rapid Wall NSW Pty Ltd (Rapid Wall NSW), telephoned Mr Andrew Clive, a consultant for Rorke Development Agency Pty Ltd.⁶⁵ Clive made a diary note of the conversation.⁶⁶ Mansfield told Clive the builder on 'The Entrance' site had imposed a black ban on Rorke because he heard the company had not made an EBA with the CFMEU.⁶⁷ Mansfield told Clive there was a tight deadline on the job and Rapid Wall NSW could not afford any problems from the CFMEU.⁶⁸ Mansfield told Clive that Rorke could continue on other Rapid Wall NSW jobs.⁶⁹

Christies People Pty Ltd

- 24 Mrs Anne Hill is the Managing Director of Christies People Pty Ltd (Christies People).⁷⁰ Christies People provides labour hire for the building and civil construction industries.⁷¹ About 70 per cent of Christies People's casual work force is placed with contractors on sites within a 30 kilometre radius of the Sydney CBD.⁷² Before the Olympics, about 80 per cent of Christies People's employees were engaged on civil construction sites.⁷³ After the Olympics, about 50 per cent were engaged on civil construction and the remaining 50 per cent on building construction sites.⁷⁴
- 25 On 21 March 2000 Christies People made two EBAs with the CFMEU: a 'Civil' EBA; and a 'Building' EBA.⁷⁵ According to Hill, Fitzpatrick refused to sign these EBAs. Instead, he put them in his desk drawer and said 'they are as good as signed'.⁷⁶ According to Hill, Fitzpatrick said that he would keep them there and if the company proved itself in the industry, the EBAs would be certified.⁷⁷ Christies People proceeded to use the Civil EBA when hiring labour out to civil

construction companies, and the Building EBA when hiring people out to building companies.⁷⁸

- 26 For almost two years, Christies People had no problems with the CFMEU.⁷⁹ In evidence is a CFMEU flyer dated April 2000 stating that Christies People had a current EBA with the CFMEU.⁸⁰ The flyer states that subcontractors must comply with their EBAs in relation to the issue of body hire and 'can only use a body hire company that has an agreement with the union'.⁸¹ The authenticity of an aspect of that flyer is in issue.
- 27 In October 2001 Mainland Civil Pty Ltd (Mainland Civil) engaged Christies People on the Multiplex Constructions (NSW) Pty Ltd (Multiplex NSW) site at 90 Carillion Avenue, Newtown.⁸² The employees were paid under the rates in the Civil EBA because Mainland Civil was a civil contractor.⁸³
- 28 Mr Daniel Murphy, an organiser for the Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch, visited the site and said that the employees were working for Multiplex NSW on a building site and therefore should be paid the rates in the Building EBA.⁸⁴ Murphy told Mr Michael Clark, Sales Executive for Christies People Pty Ltd, that the employees would be 'put in the shed' if they were not paid as he prescribed.⁸⁵ On 21 March 2002 Murphy told Christies People that it had 24 hours to pay building rates, plus a productivity allowance of \$3.50 an hour for each employee.⁸⁶ If it did not, industrial action was open to the union and the employees.⁸⁷
- 29 On that day, Mr Jose Maria (Mario) Barrios, the Multiplex Constructions (NSW) Pty Ltd union delegate for the Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch, told Christies People that its employees were on strike at the Multiplex NSW site at Wharf 9 and 10, King Street, Sydney.⁸⁸ Barrios gave evidence that two of Christies People's employees had complained to him about being paid the wrong rates.⁸⁹ Christies People made a decision to meet the CFMEU's demands for industrial peace and productivity on both the Newtown and the Wharf 9 and 10 sites.⁹⁰
- 30 As a result of these incidents, Hill wrote two letters to Ferguson complaining about the way Christies People was being treated.⁹¹ The outcome of this correspondence, and a telephone conversation between Hill and Ferguson on 25 March 2002, was a meeting on 27 March 2002.⁹² Hill and Clark attended the meeting at the CFMEU's Lidcombe office. Also in attendance were Ferguson, Mr Brian Parker, Branch Assistant Secretary of the Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch, Murphy, Ms Helena Fay, an employee of the Construction, Forestry, Mining and Energy Union, Mr Les Tobler, an organiser for the Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch, Barrios, and Mr Craig Long, Executive Director of the New South Wales Branch of the Civil Contractors Federation.⁹³
- 31 At the meeting, Ferguson told Hill that the CFMEU would not be making a 'Building' EBA with Christies People.⁹⁴ Ferguson said that he was endeavouring to regulate the industry and there was no way that Christies People would be a player in the building industry.⁹⁵ He said the CFMEU had agreements with some organisations to work in some sectors of the industry, and

agreements with other organisations to work in other sectors of the industry, and the CFMEU had not agreed that Christies People could work in the building industry.⁹⁶

- 32 Ferguson also told Hill that Christies People only had a 'Civil' EBA and was to get off all building sites immediately.⁹⁷ Hill protested that about 50 per cent of Christies People's workforce was employed in the building industry and asked whether Christies People was supposed to put these employees off work.⁹⁸ Ferguson said 'yes' and told Murphy that if the workers were put off by Christies People, he would try to help them get jobs with other builders and companies.⁹⁹ Long tried to negotiate with Ferguson, but Ferguson left the meeting.¹⁰⁰
- 33 Barrios said he remembered Hill saying she would have to sack all of her workers and Ferguson responding that he would help them to get employment with other builders if he could.¹⁰¹ Barrios gave evidence that during the entire meeting he was attempting to work out the payslips for a couple of employees of Christies People who had complained that they were being paid inappropriately and therefore he was unable to remember precisely the conversation that took place between Ferguson, Hill and Long.¹⁰²
- 34 Parker said he was at the meeting periodically over three to four minutes and did not concentrate on what was said. He remembered Ferguson still being present when the meeting ended.¹⁰³
- 35 At the conclusion of the meeting, a wage audit was organised for Christies People to be conducted by Construction Accreditation Services Pty Ltd (CAS).¹⁰⁴ Although Hill asked the representative from CAS to sign a confidentiality agreement in relation to Christies People's client list, CAS refused to do so and the audit went ahead with a verbal assurance from the audit officer, Mr Angelo Russo, a shareholder and director of Construction Accreditation Services Pty Ltd, that it would keep the clients' names confidential.¹⁰⁵ The CAS audit cost Christies People \$550.¹⁰⁶
- 36 Hill received a copy of the report from the CFMEU and not CAS.¹⁰⁷ Hill gave evidence she felt she had no choice but to submit to the CAS audit when instructed to do so by the CFMEU.¹⁰⁸
- 37 The evidence in relation to Christies People is a graphic illustration of the sustained campaign by the CFMEU, and in particular Ferguson, to regulate the labour hire industry. His statement says: 'I did state that the union was endeavouring to regulate the labour hire industry'.¹⁰⁹ I accept that he also said that there was no way that Christies People would be a player in the industry. The evidence of Hill and Long is consistent and credible whereas Ferguson's denials are not fully corroborated by other CFMEU officials present at the meeting on 27 March 2002. Parker was not present for the majority of the meeting. Barrios and Tobler did not recall Ferguson saying the words attributed to him. The fact that Christies People was not permitted to work in the building industry but 'permitted' by the CFMEU to work in civil construction, in accordance with the terms of the CFMEU-endorsed 'Civil' EBA, corroborates Hill's and Long's version of what was said at the meeting. I reject Ferguson's evidence where it conflicts with that of Hill.

38 This case study illustrates:

- (a) non-compliance with award conditions;
- (b) the requirement upon labour hire companies to have a union-endorsed EBA to work on major projects;
- (c) the determination by a union to regulate the labour hire industry;
- (d) the power of a union, and its capacity to control segments of the industry; and
- (e) the acquiescence of building contractors in a union's requirement that they use only labour hire companies with union-endorsed EBAs.

Persons involved

Name	Position/Title
Baker, Warren Michael	Organiser, Australian Workers' Union, Greater New South Wales Branch. Former employee of Adecco Pty Ltd and Rorke Development Agency Pty Ltd.
Barrios, Jose Maria (Mario)	Delegate, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch; Employed as a construction worker by Multiplex Constructions (NSW) Pty Ltd.
Bleasdale, Tony	Former Manager, Gemvale Pty Ltd; Former Organiser, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.
Clark, Michael	Sales Executive, Christies People Pty Ltd.
Clive, Andrew	Consultant, Rorke Development Agency Pty Ltd.
Fay, Helena	Employee, Construction, Forestry, Mining and Energy Union.
Ferguson, Andrew	Branch Secretary, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.
Fitzpatrick, Brian	Organiser, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.
Hartig, Mark	Group Manager of Human Resources, Adecco Group of Companies.

Henderson, John	Former employee, Gemvale Pty Ltd; Former Organiser, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.
Hill, Anne	Managing Director, Christies People Pty Ltd.
Long, Craig	Executive Director, Civil Contractors Federation, New South Wales Branch.
Mansfield, Sam	Construction Manager, Rapid Wall NSW Pty Ltd.
McCarney, Stephen	Secretary, Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union, Plumbing Division, New South Wales Branch.
Murphy, Daniel	Organiser, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.
Parker, Brian	Branch Assistant Secretary, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.
Robertson, John	Secretary, Labor Council of New South Wales.
Russo, Angelo	Director and shareholder, Construction Accreditation Services Pty Ltd.
Seidler, Brian	Executive Director, Master Builders' Association of New South Wales Pty Ltd; Director, Comet Training Pty Ltd.
Stout, Donald	NSW Manager, Rorke Development Agency Pty Ltd.
Tobler, Les	Organiser, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.
Wicks, Michael	Employee, Mainbrace Constructions Pty Ltd.

Notes to Labour Hire

- 1 Seidler Statement, exhibit 568, paragraphs 422–423, document 001.0007.0419.0001.
- 2 Seidler Statement, exhibit 568, paragraph 423, document 001.0007.0419.0001.
- 3 Seidler Statement, exhibit 568, paragraph 425, document 001.0007.0419.0001.
- 4 Seidler Statement, exhibit 568, paragraph 426, document 001.0007.0419.0001.
- 5 Seidler Statement, exhibit 568, paragraph 426, document 001.0007.0419.0001.
- 6 Robertson, T7674/33–7675/25; Tender Bundle – CFMEU NSW Correspondence, exhibit 564, document 089.0036.0378.0036.
- 7 Robertson Statement, exhibit 574, paragraphs 16–17, document 018.0797.0991.0154; Robertson, T7674/33–44.
- 8 Robertson Statement, exhibit 574, paragraph 16, document 018.0797.0991.0154; Sutton, T9082/15–37.
- 9 Seidler Statement, exhibit 568, paragraph 432, document 001.0007.0419.0001; Sutton, T9082/15–30; cf Ferguson Statement, exhibit 763, paragraph 68, document 081.0043.0635.0019.
- 10 McCarney Statement, exhibit 700, paragraphs 31–34, document 045.0698.0435.0001.
- 11 Seidler Statement, exhibit 568, paragraph 434, document 001.0007.0419.0001; Seidler Statement, exhibit 568, annexure BS-46, document 002.0467.0323.0450; Seidler Statement, exhibit 568, annexure BS-47, document 002.0467.0323.0453.
- 12 Seidler Statement, exhibit 568, annexure BS-47, document 002.0467.0323.0453.
- 13 Baker Statutory Declaration, exhibit 717, paragraph 1, document 049.0138.0338.0012.
- 14 Baker Statutory Declaration, exhibit 717, paragraphs 1–2, document 049.0138.0338.0012.
- 15 Baker Statutory Declaration, exhibit 717, paragraph 3, document 049.0138.0338.0012.
- 16 Baker Statutory Declaration, exhibit 717, paragraph 4, document 049.0138.0338.0012.
- 17 Baker Statutory Declaration, exhibit 717, paragraph 5, document 049.0138.0338.0012.
- 18 Baker Statutory Declaration, exhibit 717, paragraph 15, document 049.0138.0338.0012.
- 19 Baker Statutory Declaration, exhibit 717, paragraph 6, document 049.0138.0338.0012.
- 20 Baker Statutory Declaration, exhibit 717, paragraph 8, document 049.0138.0338.0012.
- 21 Baker Statutory Declaration, exhibit 717, paragraph 8, document 049.0138.0338.0012.
- 22 Baker Statutory Declaration, exhibit 717, paragraph 11, document 049.0138.0338.0012; cf Ferguson Statement, exhibit 763, paragraph 338, document 081.0043.0635.0019.
- 23 Baker Statutory Declaration, exhibit 717, paragraph 10, document 049.0138.0338.0012; cf Ferguson Statement, exhibit 763, paragraph 338, document 081.0043.0635.0019.
- 24 Baker Statutory Declaration, exhibit 717, paragraph 18, document 049.0138.0338.0012; Baker, T9164/11–19.
- 25 Baker Statutory Declaration, exhibit 717, paragraph 18, document 049.0138.0338.0012.
- 26 Baker Statutory Declaration, exhibit 717, paragraph 19, document 049.0138.0338.0012; cf Ferguson Statement, exhibit 763, paragraph 340, document 081.0043.0635.0019, who said 'I do have a recollection of the CFMEU at some stage being aware that Gemvale was operating contract workers contrary to their [EBA] and the union addressing this problem with Gemvale'.
- 27 Baker Statutory Declaration, exhibit 717, paragraph 27, document 049.0138.0338.0012.
- 28 Baker, T9163/41–43.
- 29 Baker Statutory Declaration, exhibit 717, paragraph 27, document 049.0138.0338.0012; Baker, T9164/7–9.
- 30 Baker Statutory Declaration, exhibit 717, paragraphs 9 and 27, document 049.0138.0338.0012.
- 31 Baker, T9163/6–9164/5.

- ³² Baker Statutory Declaration, exhibit 717, paragraph 27, document 049.0138.0338.0012; Baker, T9163/41–9164/5.
- ³³ Baker Statutory Declaration, exhibit 717, paragraph 27, document 049.0138.0338.0012.
- ³⁴ Baker Statutory Declaration, exhibit 717, paragraph 20, document 049.0138.0338.0012; Baker, T9163/6–10; cf Ferguson, T7664/40–42.
- ³⁵ Baker Statutory Declaration, exhibit 717, paragraph 20, document 049.0138.0338.0012; cf Ferguson Statement, exhibit 768, paragraph 340, document 081.0043.0635.0019.
- ³⁶ Seidler, T7493/21–7496/33.
- ³⁷ Baker Statutory Declaration, exhibit 717, paragraph 25, document 049.0138.0338.0012.
- ³⁸ Ferguson, T7665/4–5; cf Seidler T7493/21–7496/33: Seidler said there was \$75 000 remaining.
- ³⁹ Seidler, T7493/21–38.
- ⁴⁰ Ferguson, T7665/1–35.
- ⁴¹ Seidler, T7494/10–37.
- ⁴² Seidler, T7494/10–7495/19.
- ⁴³ Seidler, T7494/10–37.
- ⁴⁴ Seidler, T7494/18–20.
- ⁴⁵ Baker Statutory Declaration, exhibit 717, paragraphs 21–24, document 049.0138.0338.0012.
- ⁴⁶ Baker Statutory Declaration, exhibit 717, paragraph 21, document 049.0138.0338.0012.
- ⁴⁷ Baker Statutory Declaration, exhibit 717, paragraph 21, document 049.0138.0338.0012; Baker, T9164/21–30.
- ⁴⁸ Baker Statutory Declaration, exhibit 717, paragraph 22, document 049.0138.0338.0012; Baker, T9164/43–9165/15, 31–42; Ferguson Statement, exhibit 763, paragraph 347, document 081.0043.0635.0019; Tender Bundle of Documents re: Adecco-Gemvale Pty Ltd, exhibit 719, document 091.0835.0574.0168.
- ⁴⁹ Baker Statutory Declaration, exhibit 717, paragraph 22, document 049.0138.0338.0012; Baker, T9165/17–25.
- ⁵⁰ Baker Statutory Declaration, exhibit 717, paragraph 21, document 049.0138.0338.0012.
- ⁵¹ Baker Statutory Declaration, exhibit 717, paragraph 21, document 049.0138.0338.0012.
- ⁵² Baker Statutory Declaration, exhibit 717, paragraphs 28, 31, document 049.0138.0338.0012.
- ⁵³ Baker Statutory Declaration, exhibit 717, paragraph 28, document 049.0138.0338.0012.
- ⁵⁴ Baker Statutory Declaration, exhibit 717, paragraph 31, document 049.0138.0338.0012; Baker Statutory Declaration, exhibit 717, annexure WMB-1, document 049.0138.0338.0029.
- ⁵⁵ Baker Statutory Declaration, exhibit 717, paragraph 31, document 049.0138.0338.0012; Baker Statutory Declaration, exhibit 717, annexure WMB-1, document 049.0138.0338.0029.
- ⁵⁶ Baker Statutory Declaration, exhibit 717, paragraph 35, document 049.0138.0338.0012; Baker, T9170/45–9171/10; Baker Statutory Declaration, exhibit 717, annexure WMB-3, document 049.0138.0338.0033. As previously noted, Fitzpatrick did not give evidence due to illness. This account is taken from the evidence of Baker.
- ⁵⁷ Baker Statutory Declaration, exhibit 717, paragraph 35, document 049.0138.0338.0012; Baker, T9171/3-10; Baker Statutory Declaration, exhibit 717, annexure WMB-3, document 049.0138.0338.0033.
- ⁵⁸ Baker Statutory Declaration, exhibit 717, paragraph 35, document 049.0138.0338.0012; Baker, T9171/18–31; Baker Statutory Declaration, exhibit 717, annexure WMB-3, document 049.0138.0338.0033.
- ⁵⁹ Baker Statutory Declaration, exhibit 717, paragraph 35, document 049.0138.0338.0012; Baker Statutory Declaration, exhibit 717, annexure WMB-3, document 049.0138.0338.0033.
- ⁶⁰ Baker Statutory Declaration, exhibit 717, paragraph 36, document 049.0138.0338.0012.

- ⁶¹ Baker Statutory Declaration, exhibit 717, paragraph 36, document 049.0138.0338.0012.
- ⁶² Baker Statutory Declaration, exhibit 717, paragraph 32, document 049.0138.0338.0012; Baker, T9170/16–20; Baker Statutory Declaration, exhibit 717, annexure WMB-1, document 049.0138.0338.0029.
- ⁶³ Baker Statutory Declaration, exhibit 717, paragraph 32, document 049.0138.0338.0012; Baker, T9170/22-28; Baker Statutory Declaration, exhibit 717, annexure WMB-1, document 049.0138.0338.0029.
- ⁶⁴ Baker Statutory Declaration, exhibit 717, paragraph 32, document 049.0138.0338.0012; Baker Statutory Declaration, exhibit 717, annexure WMB-1, document 049.0138.0338.0029.
- ⁶⁵ Baker Statutory Declaration, exhibit 717, paragraph 33, document 049.0138.0338.0012.
- ⁶⁶ Baker Statutory Declaration, exhibit 717, paragraph 33, document 049.0138.0338.0012; Baker Statutory Declaration 2, exhibit 717, annexure WMB-2, document 049.0138.0338.0031.
- ⁶⁷ Baker Statutory Declaration, exhibit 717, paragraph 33, document 049.0138.0338.0012; Baker Statutory Declaration, exhibit 717, annexure WMB-2, document 049.0138.0338.0031.
- ⁶⁸ Baker Statutory Declaration, exhibit 717, paragraph 33, document 049.0138.0338.0012; Baker Statutory Declaration, exhibit 717, annexure WMB-2, document 049.0138.0338.0031.
- ⁶⁹ Baker Statutory Declaration, exhibit 717, paragraph 33, document 049.0138.0338.0012; Baker Statutory Declaration, exhibit 717, annexure WMB-2, document 049.0138.0338.0031.
- ⁷⁰ Hill Statutory Declaration, exhibit 600, paragraph 1, document 078.0521.0191.0060; Hill, T8091/15–22.
- ⁷¹ Hill Statutory Declaration, exhibit 600, paragraph 1, document 078.0521.0191.0060.
- ⁷² Hill Statutory Declaration, exhibit 600, paragraph 11, document 078.0521.0191.0060; Hill, T8091/43–8092/1.
- ⁷³ Hill Statutory Declaration, exhibit 600, paragraph 13, document 078.0521.0191.0060; Hill, T8092/3–14.
- ⁷⁴ Hill Statutory Declaration, exhibit 600, paragraph 13, document 078.0521.0191.0060; Hill, T8092/3–14.
- ⁷⁵ Hill Statutory Declaration, exhibit 600, paragraph 16, document 078.0521.0191.0060; Hill, T8092/16–18; Hill Statutory Declaration, exhibit 600, annexure AKLH-3, document 078.0521.0191.0081; Hill Statutory Declaration, exhibit 600, annexure AKLH-4, document 078.0521.0191.0104.
- ⁷⁶ Hill Statutory Declaration, exhibit 600, paragraphs 16–17, document 078.0521.0191.0060; Hill, T8092/22–26; T8093/25–28.
- ⁷⁷ Hill Statutory Declaration, exhibit 600, paragraphs 16–17, document 078.0521.0191.0060; Hill, T8092/22–26; T8093/25–28.
- ⁷⁸ Hill Statutory Declaration, exhibit 600, paragraph 17, document 078.0521.0191.0060; Hill, T8093/7–13.
- ⁷⁹ Hill Statutory Declaration, exhibit 600, paragraph 18, document 078.0521.0191.0060.
- ⁸⁰ Hill Statutory Declaration, exhibit 600, paragraph 18, document 078.0521.0191.0060. Ferguson alleged that, among other things, ‘Peter McClelland [Branch President, Construction and General Division, New South Wales Divisional Branch] gave Ms Anne Hill a copy of this draft leaflet inappropriately. ...McClellands [sic] draft leaflet...says the union has an EBA with Christies (civil). ...The leaflet produced by Ms Anne Hill is different from the one found in the union file. It is probable that Christies whited out the word civil and added the phone number 9552 3987 to promote her business...’: Ferguson Statement, exhibit 763, paragraph 192, document 081.0043.0635.0019; Hill Statutory Declaration, exhibit 600, annexure AKLH-5, document 078.0521.0191.0126.
- ⁸¹ Hill, T8094/1–4; Hill Statutory Declaration, exhibit 600, annexure AKLH-5, document 078.0521.0191.0126.
- ⁸² Hill Statutory Declaration, exhibit 600, paragraph 20, document 078.0521.0191.0060.
- ⁸³ Hill Statutory Declaration, exhibit 600, paragraph 20, document 078.0521.0191.0060; Hill, T8095/14–22.
- ⁸⁴ Hill Statutory Declaration, exhibit 600, paragraph 21, document 078.0521.0191.0060; Hill Statutory Declaration, exhibit 600, annexure AKLH-9, document 078.0521.0191.0135; Hill Statutory Declaration, exhibit 600, annexure AKLH-11, document 078.0521.0191.0142; Hill, T8095/20–22; Murphy Statement, exhibit 756, paragraph 26, document 035.0114.0330.0067; Murphy, T9973/43–9974/3.

- ⁸⁵ Hill Statutory Declaration, exhibit 600, paragraph 21, document 078.0521.0191.0060; cf Murphy, T9974/12–35.
- ⁸⁶ Hill Statutory Declaration, exhibit 600, paragraph 23, document 078.0521.0191.0060; Hill Statutory Declaration, exhibit 600, annexure AKLH-6, document 078.0521.0191.0128; Hill Statutory Declaration, exhibit 600, annexure AKLH-8, document 078.0521.0191.0133; Hill, T8096/39-43; cf Murphy, T9976/2–31. Murphy gave evidence that he said that Christies People had to pay their employees at building rates at the earliest opportunity.
- ⁸⁷ Murphy, T9977/3–4.
- ⁸⁸ Hill Statutory Declaration, exhibit 600, paragraph 23, document 078.0521.0191.0060; Hill, T8096/44–8097/2; cf Barrios Statement, exhibit 813, paragraph 39, document 035.0114.0330.0087. The evidence from Multiplex NSW was that it was not aware of there ever being a strike on Wharves 9 and 10: Stagg Statutory Declaration, exhibit 768, annexure A, document 084.0984.0556.0016.
- ⁸⁹ Barrios Statement, exhibit 813, paragraph 25, document 035.0114.0330.0087.
- ⁹⁰ Hill Statutory Declaration, exhibit 600, paragraph 24, document 078.0521.0191.0060; Hill, T8097/22–30; cf Murphy Statement, exhibit 756, paragraph 27, document 035.0114.0330.0067.
- ⁹¹ Hill Statutory Declaration, exhibit 600, paragraph 25, document 078.0521.0191.0060; Hill, T8097/39–45; T8098/10–25; Hill Statutory Declaration, exhibit 600, annexure AKLH-9, document 078.0521.0191.0135; Hill Statutory Declaration, exhibit 600, annexure AKLH-10, document 078.0521.0191.0138; Hill Statutory Declaration, exhibit 600, annexure AKLH-11, document 078.0521.0191.0142.
- ⁹² Hill Statutory Declaration, exhibit 600, paragraphs 26–27, document 078.0521.0191.0060; Ferguson, Statement, exhibit 763, paragraph 194, document 081.0043.0635.0019.
- ⁹³ Hill Statutory Declaration, exhibit 600, paragraph 26, document 078.0521.0191.0060; Long Statutory Declaration, exhibit 569, paragraph 51, document 049.0373.0665.0169; Tobler, T9661/40–9662/19.
- ⁹⁴ Hill Statutory Declaration, exhibit 600, paragraph 28, document 078.0521.0191.0060; Hill, T8099/35–37; Long Statutory Declaration, exhibit 569, paragraph 52, document 049.0373.0665.0169; Long, T7526/41–43; cf Murphy, T9977/19–21; cf Ferguson Statement, exhibit 763, paragraph 93, document 081.0043.0635.0019. Ferguson asserted that Christies People never had a building EBA and that Fitzpatrick would not have been authorised to make a building EBA with Christies People. Hill’s evidence is supported by documentation and should be preferred to Ferguson’s evidence.
- ⁹⁵ Hill Statutory Declaration, exhibit 600, paragraph 28, document 078.0521.0191.0060; Hill, T8099/42–43; Long Statutory Declaration, exhibit 569, paragraph 52, document 049.0373.0665.0169; Long, T7526/45–7527/20; T9786/26–33; Hill, T10135/15–19; T10137/40–42; Murphy, T9980/1–4: Murphy said Ferguson may have said this; cf Tobler Statement, exhibit 736, paragraph 6, document 011.0899.0747.0002; Tobler, T9662/21–40: Tobler recalled Ferguson saying he was regulating the industry but not that Christies People had to stop work immediately; Ferguson Statement, exhibit 763, paragraph 195, document 081.0043.0635.0019. Ferguson denied saying this; cf Ferguson Statement, exhibit 763, paragraph 93, document 081.0043.0635.0019.
- ⁹⁶ Hill Statutory Declaration, exhibit 600, paragraph 28, document 078.0521.0191.0060; Long, T9787/15–21; T9786/26–33; T9786/43–45; cf Ferguson Statement, exhibit 763, paragraph 195, document 081.0043.0635.0019. Ferguson denied saying this.
- ⁹⁷ Hill Statutory Declaration, exhibit 600, paragraph 28, document 078.0521.0191.0060; Hill, T8099/44; T10135/25–26; T10137/44–10138/1, 32–37; T7257/41–44; Long, T9786/26–41; Tobler, 9663/12–13; cf Murphy Statement, exhibit 756, paragraph 25, document 035.0114.0330.0067; Murphy, T9979/1–10; Ferguson Statement, exhibit 763, paragraph 195, document 081.0043.0635.0019. Ferguson denied saying this.
- ⁹⁸ Hill Statutory Declaration, exhibit 600, paragraph 28, document 078.0521.0191.0060; Hill, T8100/15–19; T10135/26–29; Long, T7528/1–3; cf Tobler Statement, exhibit 735, paragraph 6, document 011.0899.0747.0002; Murphy, T9979/22–25; Ferguson Statement, exhibit 763, paragraph 195, document 081.0043.0635.0019. Ferguson denied saying this.

- ⁹⁹ Hill Statutory Declaration, exhibit 600, paragraph 28, document 078.0521.0191.0060; Hill, T8100/21–24; T10135/29–31; T10139/9–10; Ferguson Statement, exhibit 763, paragraph 195, document 081.0043.0635.0019 cf Murphy, T9979/27–30.
- ¹⁰⁰ Hill Statutory Declaration, exhibit 600, paragraph 29, document 078.0521.0191.0060; Hill, T8100/31–8101/3, 15–26; T10135/33–37; Long, T7528/40–7528/11; T9786/41–9787/1; cf Ferguson Statement, exhibit 763, paragraphs 196, 200, 203, document 081.0043.0635.0019. Ferguson said he told Hill from the outset that he could not stay for long and that he was only there to deal with underpayment of wages and not with EBAs.
- ¹⁰¹ Barrios, T8058/21–32.
- ¹⁰² Barrios, T8057/3–8059/7.
- ¹⁰³ Parker Statement, exhibit 793, paragraphs 3–5, document 035.0114.0330.0062; Parker, T12967/23–12968/14. Parker said he was only in attendance for four or five minutes in total at the beginning and end of the meeting.
- ¹⁰⁴ Hill Statutory Declaration, exhibit 600, paragraph 32, document 078.0521.0191.0060; Hill Statutory Declaration, exhibit 600, annexure AKLH-13, document 078.0521.0191.0146; Hill, T8101/33–36; T8102/30–34.
- ¹⁰⁵ Hill Statutory Declaration, exhibit 600, paragraphs 32-34, document 078.0521.0191.0060; Hill, T8104/2–21; T10140/20–34; Hill Statutory Declaration, exhibit 600, annexure AKLH-14, document 078.0521.0191.0151.
- ¹⁰⁶ Hill Statutory Declaration, exhibit 600, annexure AKLH-13, document 078.0521.0191.0147.
- ¹⁰⁷ Hill Statutory Declaration, exhibit 600, paragraph 35, document 078.0521.0191.0060; Hill, T10144/8.
- ¹⁰⁸ Hill, T8104/25–29.
- ¹⁰⁹ Ferguson Statement, exhibit 763, paragraph 93, document 081.0043.0635.0019.

11 Newcastle and the Hunter Region

Overview

- 1 Mr Peter Harris is an organiser for the Construction, Forestry, Mining and Energy Union (CFMEU), Construction and General Division, New South Wales Divisional Branch, and has worked with that union since 1989.¹ He has worked from the Newcastle office of the union since December 1999.²
- 2 There were, at the time of hearings in June 2002, a number of large private infrastructure projects in and around the Newcastle area, including the \$450 million Port Waratah Coal Service Expansion project, the \$300 million Redbank Power Station project and the \$850 million BHP Billiton Mt Arthur Mine Development.³ Each of those projects was governed by a 'certified state award' negotiated between the Newcastle Trades Hall Council, the appropriate unions and the Australian Industry Group.⁴
- 3 There was at the time of hearings around \$300 million worth of commercial building development proposed for the Newcastle area over the following 18 months to two years, much of it centred around the Honeysuckle precinct of Newcastle.⁵ The largest project at that time was undertaken by the Becton Corporation Pty Ltd (Becton), a Melbourne-based builder and developer.⁶ Becton approached the Newcastle office of the CFMEU in November 2000 providing it with a letter of introduction from Mr Martin Kingham, Divisional Branch Secretary of the Construction, Forestry, Mining and Energy Union, Construction and General Division, Victorian Building Unions Divisional Branch, and Mr Bill Kelty, a former Secretary of the Australian Council of Trade Unions.⁷ Becton instructed the Newcastle Master Builders' Association (Newcastle MBA) to negotiate with the CFMEU on its behalf in relation to an Enterprise Bargaining Agreement (EBA) substantially in the form of the Newcastle CFMEU's draft regional EBA.⁸ Such an agreement has since been entered into and certified.⁹
- 4 Until 1994 there was a Newcastle matrix of site allowances in place that was registered with the New South Wales Industrial Relations Commission (NSWIRC).¹⁰ That matrix has expired, and there have been unsuccessful negotiations between the CFMEU and the Newcastle MBA for its reinstatement or replacement.¹¹ In the absence of a matrix, site allowance claims are regularly made on larger sites in the Newcastle area on a job by job basis.¹²

- 5 Relations between the Newcastle office of the CFMEU and the Newcastle MBA are, to say the least, strained.¹³ Harris said that he has found it impossible to engage in constructive negotiations with the Newcastle MBA, and that he believes that organisation does not negotiate in good faith, deliberately protracts negotiations, and is motivated by an extremist ideology.¹⁴ Harris admitted that the CFMEU or some of its members have placed stickers on building sites in and around Newcastle asserting that the Newcastle MBA is un-Australian.¹⁵
- 6 Harris said that in his experience, occupational health and safety standards in the Newcastle area are well below those on building and construction sites in and around Sydney.¹⁶ He gave the example of a young painter apprentice who died last year in Cessnock after walking a mobile scaffold under live power lines.¹⁷ The apprentice was employed by Programmed Maintenance Pty Ltd.¹⁸ He had received no training in occupational health and safety.¹⁹ He had been working with two trained tradesmen who were supervising him²⁰. They walked an eight metre scaffold into a 33 000 volt overhead power line.²¹ The WorkCover Authority of New South Wales investigated the incident.²² Harris told the Commission he believed the employer was being prosecuted.²³

Jeffkins Pty Ltd

- 7 Jeffkins Pty Ltd (Jeffkins) was the major fit-out contractor engaged on a large commercial residential development being undertaken by Thiess Pty Ltd at Shoal Bay, some 70 kilometres from Newcastle.²⁴
- 8 On 8 December 2001 Harris attended a meeting of Jeffkins' employees at the Hexham Bowling Club, at which the employees provided him with a copy of a non-union EBA being proposed by Jeffkins.²⁵ Harris told the employees that agreeing to the proposed EBA would take the employees out of the state industrial relations system and into the federal system, and that he thought the proposed EBA contained terms and conditions which were inferior to those they then enjoyed.²⁶ The employees elected a negotiating committee.²⁷ Harris provided a copy of the CFMEU's regional EBA to the employees as a basis for negotiations.²⁸
- 9 When the company's proposed non-union EBA was put to a vote, it was rejected by the employees.²⁹ The company then produced a second draft.³⁰ A number of employees expressed grave concerns to Harris about the content of the second draft EBA, and told him that they felt they were being coerced by Jeffkins and the Newcastle MBA into accepting it.³¹
- 10 The CFMEU made an application to the Industrial Registrar pursuant to s291A(1)(a) of the *Workplace Relations Act 1996 (C'wth)* and on 20 February 2002 obtained a certificate under that provision.³²
- 11 The following day, at 7 am, and before it had been served with a copy of the certificate granted on the previous day, Jeffkins conducted a ballot of its workers at three different sites in relation to the second EBA.³³ Harris told the Commission that many of the people who took part in the ballot were not persons whose employment conditions were affected by the proposed agreement.³⁴
- 12 The CFMEU and the Australian Manufacturing Workers Union sought to intervene in the application for certification of the EBA made by the Newcastle MBA on behalf of Jeffkins.³⁵

They wished to argue that the agreement did not pass the no-disadvantage test, and to question alleged irregularities in the voting process.³⁶ Jeffkins discontinued proceedings on the day of certification.³⁷

- 13 On 14 May 2002 the Newcastle MBA applied to the AIRC on behalf of a company, Lazer (Australia) Pty Ltd (Lazer), to certify an EBA made pursuant to s170LK of the *Workplace Relations Act 1996 (C'wth)*; that is, a non-union EBA. Mr Robert Jeffkins, a director of Jeffkins Pty Ltd, was also associated with Lazer.³⁸ Lazer's EBA was identical to the non-union EBA which Jeffkins had applied to certify.³⁹ There were four employee signatories to the agreement: Mr Rod Hawthorn, Mr A T Dunn, Mr Craig Smolens and Mr Chris Davidson.⁴⁰ The agreement was duly certified by Commissioner Harrison.⁴¹
- 14 On 22 June 2002 Harris was contacted by employees of Jeffkins who had been told that their employment was being terminated effective 25 June 2002.⁴² On 24 June 2002 the CFMEU notified a dispute to the NSWIRC in respect of the terminations.⁴³ On 25 June 2002 the NSWIRC heard an application for interlocutory relief.⁴⁴ Jeffkins told the NSWIRC that subsequent to the certification of Lazer's EBA, Lazer changed its name to Jeffkins Group Pty Ltd.⁴⁵ Jeffkins said that that company would employ all employees of Jeffkins who had been terminated.⁴⁶
- 15 In short, Harris' evidence was to the effect that the certification of Lazer's EBA and the subsequent restructure of the corporate group was a ruse to force Jeffkins' employees to be subject to a non-union EBA.⁴⁷
- 16 Harris told the Commission that this matter has been referred to the President of the AIRC, the Office of the Employment Advocate and the Commonwealth Director of Public Prosecutions.⁴⁸ There is no evidence before the Commission as to the results of those referrals. In circumstances where this matter is already in the hands of those authorities, there was no further investigation of the matter by this Commission.

Persons involved

Name	Position/Title
Davidson, Chris	Signatory to Lazer (Australia) Pty Ltd, certified agreement.
Dunn, A T	Signatory to Lazer (Australia) Pty Ltd, certified agreement.
Hawthorn, Rod	Signatory to Lazer (Australia) Pty Ltd, certified agreement.
Harris, Peter	Organiser, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.
Jeffkins, Robert John	Director, Jeffkins Pty Ltd.
Kelty, Bill	Former Secretary, Australian Council of Trade Unions.
Kingham, Martin Leonard	Divisional Branch Secretary, Construction, Forestry, Mining and Energy Union, Construction and General Division, Victorian Building Unions Divisional Branch.
Smolens, Craig	Signatory to Lazer (Australia) Pty Ltd, certified agreement.

Notes to Newcastle and the Hunter Region

- 1 Harris Statement, exhibit 795, paragraph 1, document 089.0420.0986.0067.
- 2 Harris Statement, exhibit 795, paragraph 1, document 089.0420.0986.0067.
- 3 Harris Statement, exhibit 795, paragraph 29, document 089.0420.0986.0067.
- 4 Harris Statement, exhibit 795, paragraph 29, document 089.0420.0986.0067.
- 5 Harris Statement, exhibit 795, paragraph 35, document 089.0420.0986.0067.
- 6 Harris Statement, exhibit 795, paragraph 36, document 089.0420.0986.0067.
- 7 Harris Statement, exhibit 795, paragraph 36, document 089.0420.0986.0067.
- 8 Harris Statement, exhibit 795, paragraphs 36–37, document 089.0420.0986.0067.
- 9 Harris Statement, exhibit 795, paragraph 37, document 089.0420.0986.0067.
- 10 Harris Statement, exhibit 795, paragraph 40, document 089.0420.0986.0067.
- 11 Harris Statement, exhibit 795, paragraph 40, document 089.0420.0986.0067.
- 12 Harris Statement, exhibit 795, paragraph 40, document 089.0420.0986.0067.
- 13 Harris Statement, exhibit 795, paragraph 37, document 089.0420.0986.0067.
- 14 Harris Statement, exhibit 795, paragraph 37, document 089.0420.0986.0067.
- 15 Harris Statement, exhibit 795, paragraph 93, document 089.0420.0986.0067.
- 16 Harris Statement, exhibit 795, paragraph 32, document 089.0420.0986.0067.
- 17 Harris Statement, exhibit 795, paragraph 49, document 089.0420.0986.0067.
- 18 Harris, T12690/37–39.
- 19 Harris, T12690/41–42.
- 20 Harris, T12690/42–43.
- 21 Harris, T12691/1–7.
- 22 Harris, T12691/26–30.
- 23 Harris, T12691/26–30.
- 24 Harris Statement, exhibit 795, paragraphs 63–64, document 089.0420.0986.0067.
- 25 Harris Statement, exhibit 795, paragraph 72, document 089.0420.0986.0067.
- 26 Harris Statement, exhibit 795, paragraph 72, document 089.0420.0986.0067.
- 27 Harris Statement, exhibit 795, paragraph 73, document 089.0420.0986.0067.
- 28 Harris Statement, exhibit 795, paragraph 73, document 089.0420.0986.0067.
- 29 Harris Statement, exhibit 795, paragraph 75, document 089.0420.0986.0067.
- 30 Harris Statement, exhibit 795, paragraph 76, document 089.0420.0986.0067.
- 31 Harris Statement, exhibit 795, paragraph 76, document 089.0420.0986.0067.
- 32 Harris Statement, exhibit 795, paragraph 78, document 089.0420.0986.0067.
- 33 Harris Statement, exhibit 795, paragraph 79, document 089.0420.0986.0067;
Dagg Statutory Declaration, exhibit 1718, paragraphs 19–22, document 056.0421.0752.0017.
- 34 Harris Statement, exhibit 795, paragraph 79, document 089.0420.0986.0067.
- 35 Harris Statement, exhibit 795, paragraph 80, document 089.0420.0986.0067.
- 36 Harris Statement, exhibit 795, paragraph 80, document 089.0420.0986.0067.
- 37 Harris Statement, exhibit 795, paragraph 82, document 089.0420.0986.0067.
- 38 Harris Statement, exhibit 795, paragraph 83, document 089.0420.0986.0067.
- 39 Harris Statement, exhibit 795, paragraph 84, document 089.0420.0986.0067.
- 40 Harris Statement, exhibit 795, paragraph 83, document 089.0420.0986.0067.

- ⁴¹ Harris Statement, exhibit 795, paragraph 83, document 089.0420.0986.0067.
- ⁴² Harris Statement, exhibit 795, paragraph 84, document 089.0420.0986.0067.
- ⁴³ Harris Statement, exhibit 795, paragraph 84, document 089.0420.0986.0067.
- ⁴⁴ Harris Statement, exhibit 795, paragraph 84, document 089.0420.0986.0067.
- ⁴⁵ Harris Statement, exhibit 795, paragraph 85, document 089.0420.0986.0067.
- ⁴⁶ Harris Statement, exhibit 795, paragraph 85, document 089.0420.0986.0067;
Harris Statement, exhibit 795, annexure PH8, document 089.0420.0986.0270.
- ⁴⁷ Harris Statement, exhibit 795, paragraph 87, document 089.0420.0986.0067.
- ⁴⁸ Harris Statement, exhibit 795, paragraph 89, document 089.0420.0986.0067.

12 Other Sectors

Ace Contractors Pty Ltd

- 1 Mr Francesco Peronace is the General Manager of Ace Contractors Pty Ltd (Ace Contractors).¹ Ace Contractors is one of the largest tiling companies in Sydney.² All of its employees are Construction, Forestry, Mining and Energy Union (CFMEU) members. Peronace said his understanding was that full union membership was an unspoken requirement on the big building sites.³
- 2 Ace Contractors has had three or four CFMEU-endorsed Enterprise Bargaining Agreements (EBAs).⁴ When the company negotiated its first EBA, payments into the Construction & Building Unions Superannuation Fund (Cbus), Australian Construction Industry Redundancy Trust (ACIRT) and Coverforce Top-Up Accident Scheme (CTAS) were non-negotiable.⁵ The CFMEU also required the inclusion of a productivity allowance and travel allowance.⁶ Peronace said that the productivity allowance was essentially a wage increase and did not lead to increased productivity.⁷
- 3 Although CFMEU organisers have never told Peronace that Ace Contractors cannot employ non-union members, the company is very wary about employing non-union workers.⁸ Ace Contractors was, at the time of hearing in July 2002, working on the Jacksons Landing site. There was a site allowance in place for Jacksons Landing of \$2 an hour for each worker.⁹ The company became aware from the Bovis Lend Lease Pty Ltd (Bovis) tender documents that the site agreement was in place, so it was factored into the pricing of the job.¹⁰
- 4 Under its current EBA, Ace Contractors does not regard itself as being competitive with the tilers who do not have EBAs.¹¹ The company's advantage is its quality of work and the fact that it can gain access to cheaper tiles due to the importing side of the business.¹² The current EBA adds around 10 per cent to the company's costs.¹³
- 5 This case study illustrates:
 - (a) the understanding of participants in the industry that full union membership is a requirement on major sites in Sydney;
 - (b) the cost impact of union-endorsed EBAs, here assessed at 10 per cent;
 - (c) the non-negotiability of many aspects of pattern EBAs; and
 - (d) the imposition of a so-called 'productivity allowance' without any increase in productivity.

Arch System Fabrication Pty Ltd

Introduction

- 6 Ms Judith Chidgey is the Administrator of Arch System Fabrication Pty Ltd (Arch System Fabrication).¹⁴ Arch System Fabrication manufactures and installs aluminium glass windows, doors and roof lights.¹⁵ The company manufactures the product and engages subcontractors to install the product on sites.¹⁶
- 7 Chidgey said some builders on commercial sites request that subcontractors have EBAs.¹⁷ On sites affected by this requirement, Arch System Fabrication engages S & C Installations Pty Ltd (S & C Installations).¹⁸ S & C Installations has a CFMEU-endorsed EBA and CFMEU members on staff.¹⁹
- 8 Arch System Fabrication employs six factory workers, three office staff and four family members.²⁰ The company does not have an EBA, and its staff are not members of the CFMEU.²¹
- 9 This case study illustrates the requirement on some sites, imposed by head contractors, that subcontractors working on site have a union-endorsed EBA.

Norwest Business Park site

- 10 Grant Constructions Pty Ltd (Grant Constructions) engaged Arch System Fabrication on the Norwest Business Park project.²²
- 11 In early 2001 Mr Adnan Wehbe, a truck driver employed by Arch System Fabrication Pty Ltd, told Chidgey that Mr Michael Dalzell, an organiser for the Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch, asked him if he was a member of the CFMEU and if the company had an EBA.²³ Wehbe replied in the negative to both questions.²⁴
- 12 Dalzell then telephoned Chidgey and said he wanted all of Arch System Fabrication's employees to join the CFMEU and to make an EBA with the CFMEU.²⁵ The employees declined to join.²⁶ Dalzell told Chidgey that employees should not come to union sites without CFMEU membership or an EBA.²⁷ Chidgey told Dalzell that CFMEU membership was not compulsory.²⁸ Dalzell said that if the company could not afford an EBA then it should stay in the domestic market.²⁹
- 13 Afterwards Chidgey contacted Ms Julie Siciliano from the Office of the Employment Advocate.³⁰ Later Chidgey and Siciliano called Dalzell on a speaker phone. Dalzell would not admit to what he had said previously.³¹ The company completed the work on site.³²
- 14 This case study illustrates:
 - (a) a union organiser seeking to impose a requirement that a contractor have a union-endorsed EBA to work in the commercial sector; and
 - (b) a union organiser endeavouring to restrict work on commercial sites to union members.

Century Estate Project

- 15 Grant Constructions engaged Arch System Fabrication in April 2002 on the Century Estate project in Norwest.³³
- 16 On about 11 May 2002 the CFMEU closed the Century Estate site for a week, apparently because of dirty water coolers and toilets.³⁴ On 16 May 2002 Arch System Fabrication returned to the site to recommence work. Dalzell told Chidgey's son, Craig Chidgey, Director, Arch System Fabrication Pty Ltd, that the company needed an EBA by 23 May 2002.³⁵
- 17 Chidgey contacted Siciliano who told her that the company should continue work and not contact Dalzell.³⁶
- 18 On 17 May 2002 EBA documents arrived from the CFMEU³⁷ and Craig Chidgey was told that work could recommence on 20 May 2002.³⁸
- 19 Work recommenced on 18 May 2002.³⁹

New Era Balustrading Pty Ltd

- 20 Mr Andrew Torny is the Managing Director of New Era Balustrading Pty Ltd (New Era Balustrading), a company engaged in the manufacture and supply of aluminium, stainless steel, glass and brass balustrades.⁴⁰ New Era Balustrading manufactures its product in its factory and engages subcontractors to perform the installation on site.⁴¹ Before 1997 New Era Balustrading used to perform about 65 per cent of its work in the commercial market but this has now dropped to about 20 per cent.⁴²
- 21 In 1996 Mr John Prentice, an organiser for the Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch, approached Torny about making an EBA with the CFMEU.⁴³ In about six meetings over the next six months, an EBA was negotiated using the CFMEU pattern EBA as a base.⁴⁴
- 22 Prentice told Torny that the CFMEU would not sign the EBA unless New Era Balustrading had full union membership and non-financial members paid back dues.⁴⁵ Torny told Prentice he thought that was illegal but Prentice replied it was 'accepted in the industry'.⁴⁶ Torny asked Prentice to put these matters in writing. Prentice declined.⁴⁷ Torny was not prepared to force his employees to become union members and New Era Balustrading did not make an EBA with the CFMEU.⁴⁸
- 23 In May 1996 New Era Balustrading tendered to Baulderstone Hornibrook Pty Ltd (Baulderstone) for works at the Australian Geological Survey Organisation building in Canberra.⁴⁹ Mr Greg Oddo, the Contracts Manager for Baulderstone Hornibrook Pty Ltd, told Torny that he 'had to speak with Mr Les Lancer of the CFMEU' before the tender would be accepted.⁵⁰ Mr Les Lancer, an organiser for the Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch, of whom Oddo had spoken to Torny, told Torny that if New Era Balustrading wanted to work on the site it had to ensure that:
 - all employees were CFMEU members;
 - all employees were locals with relevant experience;

- it complied with the rules of the site; and
 - it operated under the Baulderstone EBA; and made the correct contributions to ACIRT, Cbus and CTAS.⁵¹
- 24 Tornya agreed to Lancer's terms, which cost New Era Balustrading an additional \$14 000, a cost absorbed by the company.⁵²
- 25 Prentice said that he believed Tornya operated phoenix companies, but gave no credible evidence in support of his allegation.⁵³ Tornya explained that New Era Balustrading had gone through a number of name changes over time, to reflect the nature of the products manufactured by the company from time to time.⁵⁴ Tornya also gave evidence that although two companies with which he had an involvement had been placed under external administration for a time, neither company was wound up, and neither owed any entitlements to its employees or any moneys to the Australian Taxation Office.⁵⁵ The material provided to me does not support Prentice's allegations.
- 26 This case study illustrates:
- (a) a union organiser requiring an employer to have full union membership of its employees before a union-endorsed EBA would be signed; and
 - (b) a head contractor requiring union approval before accepting a subcontractor. Such approval could be obtained only by meeting certain conditions at increased cost to the subcontractor.

E M Miller Building Co Pty Ltd

EBA issues

- 27 Mr Desmond Sydes is the Manager, and Mr Paul Sydes is the Managing Director, of E M Miller Building Co Pty Ltd (E M Miller Building).⁵⁶ E M Miller Building constructs hoardings on multi-storey buildings or demolition sites.⁵⁷
- 28 Most of E M Miller Building's employees are non-financial members of the CFMEU.⁵⁸ E M Miller Building has in the past paid union dues on behalf of its workers but in 2002 it took steps for the first time to recoup those costs from its employees.⁵⁹ E M Miller Building paid its employees' union dues on a Multiplex Constructions (NSW) Pty Ltd (Multiplex NSW) site at Shell Harbour and a site at Dee Why after Mr Darryn Tinmouth, an organiser for the Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch, asked it to.⁶⁰
- 29 In May 2000 E M Miller Building engaged Banks Hoarding Pty Ltd (Banks Hoarding) as a subcontractor on a Dee Why site.⁶¹ A representative of Banks Hoarding told Desmond Sydes that Tinmouth said he wanted to ensure Banks Hoarding and E M Miller Building had EBAs.⁶² As neither Banks Hoarding nor E M Miller Building had EBAs at the time, they each signed a 'memorandum of understanding' with the CFMEU that was largely in the same terms as a CFMEU pattern agreement.⁶³ Tinmouth denied he discussed an EBA or a memorandum of understanding with either company, but said he asked them whether they paid according to an EBA or award.⁶⁴

- 30 E M Miller Building commenced EBA negotiations with Mr Martin Wyer, an organiser for the Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch, in about early 2002 while it was working on the Multiplex NSW building site at Elizabeth Bay.⁶⁵ Wyer asked Desmond Sydes if he could address E M Miller Building's employees on the site.⁶⁶ Wyer told Desmond Sydes that an officer of the company who had authority to sign cheques for union fees should also be at the meeting.⁶⁷ Desmond Sydes agreed Wyer could address the workers for the sake of industrial harmony but the workers did not seem interested in what Wyer had to say.⁶⁸ The meeting was conducted during normal working hours for about 30 minutes and E M Miller Building's employees were paid for that time.⁶⁹
- 31 E M Miller Building agreed to make a back payment of union fees on behalf of its employees for the previous 12 months, amounting to between \$1000 and \$1500.⁷⁰
- 32 E M Miller Building consulted its employees about entering into a union-endorsed EBA.⁷¹ Desmond Sydes said that if E M Miller Building did not make a union-endorsed EBA, it would have difficulty working on major building sites because major builders insist on an EBA.⁷²
- 33 In the EBA negotiations, Cbus, ACIRT, CTAS and productivity allowances were not negotiable as far as Wyer was concerned.⁷³ Wyer agreed to negotiate on site allowances and hours of work.⁷⁴
- 34 Before entering into an EBA, E M Miller Building paid its employees based on the *National Building and Construction Industry Award 1990*.⁷⁵ E M Miller Building had negotiated wage rates with its employees that were higher than ordinary time in lieu of the payment of overtime.⁷⁶ The union EBA rates proposed by Wyer were calculated on an ordinary time, time and one-half and double time basis, based on a five day week and weekends.⁷⁷
- 35 E M Miller Building has been operating under the terms of the proposed EBA since 1 March 2002 even though the EBA has not been certified by the AIRC.⁷⁸
- 36 As a result of entering into an EBA, E M Miller Building has had to change its practices in relation to working hours.⁷⁹ The company's employees were not happy with the change in its practices because they had concerns that E M Miller Building would reduce their hours of work.⁸⁰
- 37 The effect of making an EBA has been to add about 15 to 20 per cent, or between \$11 000 and \$15 000, to E M Miller Building's monthly wage bill.⁸¹ Wyer told Desmond Sydes to pass the extra cost on to builders.⁸²
- 38 This case study illustrates:
- (a) the recognition by a subcontractor that, on major building sites, head contractors require subcontractors to have union-endorsed EBAs; and
 - (b) the additional costs, without increased productivity, resulting from entering into a union-endorsed EBA, assessed here at between 15 and 20 per cent.

Donations

- 39 In about May 2000 Desmond Sydes said Tinmouth asked him for E M Miller Building to make a donation of \$500 for boxing tickets for a union charity.⁸³ Desmond Sydes refused to make the donation.⁸⁴ Tinmouth denied even knowing who Desmond Sydes was or ever asking him or E M Miller Building about donating \$500 or any other amount to buy boxing tickets for a union charity.⁸⁵

Safety issues

- 40 The hoarding sector is subject to the Code of Practice for Overhead Protective Structures.⁸⁶ Hoardings are required to comply with a stability code to ensure they remain stable in certain wind conditions.⁸⁷ All processes of erecting a hoarding are required to be professionally supervised by a qualified engineer.⁸⁸
- 41 In early February 2002 E M Miller Building erected hoardings on a Barclay Mowlem Construction Ltd (Barclay Mowlem) 'Top of the Town' project fronting Victoria Street and Darlinghurst Road, Kings Cross.⁸⁹ The hoardings were certified by an engineer, Mr J C Been of J C Been and Associates. A copy of Been's certificate was given to the CFMEU.⁹⁰ Even though the engineer had issued a certificate in relation to the hoardings, the union required that a bumper rail and counterweights be fixed to the hoardings.⁹¹ The code is not clear in relation to the fixing of bumper rails to hoardings.⁹²
- 42 WorkCover Authority of New South Wales (WorkCover NSW) inspectors who attended the site agreed with the union's view that bumper rails should be fixed to the hoarding.⁹³ E M Miller Building complied with WorkCover NSW's direction.⁹⁴
- 43 About two weeks after that incident, the CFMEU argued that, in addition, counter-weights should be connected to the hoardings. WorkCover NSW attended. There is a debate which I need not resolve regarding whether WorkCover NSW agreed with the union's contentions.⁹⁵ E M Miller Building said it would only connect counterweights if Barclay Mowlem paid for the work to be done, at a cost of \$2400.⁹⁶
- 44 On 11 February 2002 Desmond Sydes received an Improvement Notice from WorkCover NSW.⁹⁷ On 12 February 2002 Paul Sydes telephoned Mr Corrado (Rick) Rech, State Co-ordinator, Asbestos and Demolition, WorkCover Authority of New South Wales to discuss the matter. Paul Sydes argued that WorkCover NSW had made a mistake in issuing the Improvement Notice.⁹⁸ After some discussion, Rech conceded the notice had been issued on a false premise, namely that the hoarding was a timber hoarding, rather than a modular overhead protective structure.⁹⁹ Rech did not withdraw the Improvement Notice, however, arguing that the Code of Practice applied equally to both types of hoardings.¹⁰⁰
- 45 Paul Sydes gave evidence that Rech said to him: 'I get a number of these sorts of problems across my desk. When it comes down to an argument in the industry between union complaints and builders, it's just easier to throw it back on to the builder and let him deal with it. That solves the problem and I get it off my desk. I don't need to be in that situation. It's easier to take the path of least resistance'.¹⁰¹ Rech categorically denied making the statement attributed to him.¹⁰² I find it unnecessary to resolve this issue.

46 This case study illustrates:

- (a) the role a union plays in safety issues; and
- (b) the need to have an independent arbiter to resolve safety disputes which cannot be resolved on site by management and the safety committee.

Lockrey Holdings Pty Ltd

Introduction

- 47 Mr Peter Rogers is the Sole Director and shareholder of Lockrey Holdings Pty Ltd (Lockrey Holdings).¹⁰³ Lockrey Holdings builds, dismantles and delivers hoardings to construction sites around Sydney.¹⁰⁴ Lockrey Holdings conducts its business in and around the Sydney central business district (CBD) and all suburbs, and is a member of the Master Builders' Association of New South Wales (MBANSW).¹⁰⁵
- 48 Rogers said he had been under pressure to sign an EBA for more than two years.¹⁰⁶ He is reconciled to the fact that the company may have to accede to the union's demands for a union-endorsed EBA, but only if it is flexible and suits the working environment and industry.¹⁰⁷ Rogers has recently met with Wyer and variations to the union's standard agreement have been discussed.¹⁰⁸ As of 1 July 2002 EBA negotiations were still continuing.¹⁰⁹

Enacon Car Park site

- 49 In December 2000 pressure was applied to Lockrey Holdings in relation to the Enacon car park site in the Sydney CBD.¹¹⁰ The head contractor was Leighton Contractors Pty Ltd (Leightons). Mr John Joseph (Joe) McGahan, an organiser for the Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch, asked Rogers to attend a meeting at the union's site office, with himself and Mr Stephen Keenan, and Mr Lincoln Fryer, both organisers of the Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.¹¹¹ Rogers felt obliged to attend the meeting otherwise he risked having his work stopped by the union.¹¹² After Rogers refused their demands to sign a union-endorsed EBA, McGahan told him that it would be industrial suicide if he did not make an EBA.¹¹³
- 50 McGahan said that the CFMEU had an EBA with Leightons and that everyone who worked for the head contractor had to have an EBA, otherwise there would be no start on the site.¹¹⁴ He told Rogers to make an EBA and to actively promote the idea of his workers joining the union.¹¹⁵ Rogers again refused to sign the EBA.¹¹⁶ The union officials then called Mr Angelo Mavris, Leighton Contractors Pty Ltd's Project Manager, into the meeting and claimed Rogers had failed to pay proper workers' compensation insurance.¹¹⁷ McGahan gave evidence that the union officials attended the site in response to an allegation that illegal immigrants were being employed on the site, an allegation which was reported to the Department of Immigration, but in respect of which no action was taken.¹¹⁸
- 51 After leaving the meeting, his employees told Rogers that it had been said that the union would black-ban the company's hoardings, and put the word around to all union delegates to cause chaos, and target Lockrey Holdings on every site.¹¹⁹ His employees also told Rogers that it

was said that the CFMEU would ring every site where Lockrey Holdings had hoardings and tell them that the hoardings were not to be used until the issue was sorted out.¹²⁰ However, there were no repercussions.¹²¹

- 52 Mavis came to visit Rogers the day after this meeting.¹²² Mavis said that if there was to be industrial peace, Lockrey Holdings needed to sort out an EBA with the CFMEU so that the site had no more problems.¹²³ Mavis told Rogers that the CFMEU had shut the Enacon car park site down because of something trivial like a leaking site toilet, and said, 'we know damn well it's you who have caused the problem'.¹²⁴
- 53 Leightons has not given Lockrey Holdings any work since the Enacon car park site was finalised.¹²⁵

EBA negotiations

- 54 Rogers has been putting off CFMEU organisers by telling them that he is considering entering into an EBA.¹²⁶ This is true in as much as Rogers had started negotiations for an EBA some time ago with Mr Tony Pappa, an organiser for the Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.¹²⁷ On 11 April 2002 Mr Andrew Ferguson, Branch Secretary of the Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch, telephoned Rogers, telling him that he needed to put in place an EBA and start negotiations with Wyer.¹²⁸ When Rogers told him that he was not happy dealing with Wyer and that he had started negotiations with Pappa, Ferguson said that people did not get to pick the organiser they dealt with.¹²⁹ Rogers replied that he did not want to deal with Wyer, and Ferguson said, 'so we have a dispute then'.¹³⁰ On the morning of 12 April 2002 the CFMEU delivered to Rogers by courier a notice initiating a bargaining period pursuant to s170MR of the *Workplace Relations Act 1996 (C'wth)*, and associated documents.¹³¹

Other matters

- 55 McGahan told Rogers that if Lockrey Holdings put an EBA in place with the union, the CFMEU would promote the company in the industry and to major builders.¹³²
- 56 Rogers said his experience was that unions have used safety issues on site as an excuse to cause industrial trouble.¹³³ He said in the hoarding sector, union organisers will pick on aspects of an engineer-certified hoarding that they consider to be unsafe.¹³⁴ He said the CFMEU takes it upon itself to declare a certified holding structurally unsafe, but is unqualified to make such judgments.¹³⁵
- 57 Rogers said the costs to Lockrey Holdings of making a union-endorsed EBA would be very high,¹³⁶ because of the nature of the hoardings sector.¹³⁷ Employees of Lockrey Holdings work 40 hours a week ordinary time and up to 60 to 75 hours a week in total.¹³⁸ A 36 hour week, if introduced, would have a huge effect on Lockrey Holdings' business.¹³⁹ A large percentage of the company's work is overtime and every hour over and above 40 hours adds to overtime.¹⁴⁰ The additional cost of a 36 hour week would have to be passed on to the client.¹⁴¹ This is because Lockrey Holdings' employees do most of their work outside normal business hours.¹⁴² The hours the employees work are dictated by council permits and arrangements,

traffic flow permits and Road Traffic Authority requirements which stipulate that they can only carry out certain jobs at certain times in certain places.¹⁴³ Normal hours of work include Saturday 6 pm to midnight.¹⁴⁴ Site allowances and productivity allowances, in addition to overtime rates, would be particularly difficult for the company, and Rogers would most likely have to terminate staff.¹⁴⁵ Lockrey Holdings' current workplace arrangements are geared to the nature of the business and are relevant to the company and its employees' needs.¹⁴⁶

58 This case study illustrates:

- (a) the pressure imposed on a subcontractor by union organisers and an official to sign a union-endorsed EBA;
- (b) a union seeking to have a subcontractor enter into a union endorsed EBA without any request from or contact with the employees of the subcontractor, whether union members or not; and
- (c) the need for there to be flexibility in workplace agreements to meet the requirements of particular sectors of the industry.

Jedda Steel Pty Ltd trading as 'Uniframes'

59 Mr James Cameron is the General Manager of Jedda Steel Pty Ltd (Jedda Steel), Rhino Steel Pty Ltd (Rhino Steel) and Preston Steel Pty Ltd, each of which trades under the business name Uniframes.¹⁴⁷ He is a qualified builder with 15 years experience in the building industry.¹⁴⁸ Uniframes manufactures and provides steel frames and trusses to the building industry, working mainly in the commercial building sector on schools and hospitals in the outer suburbs of Sydney.¹⁴⁹

60 Mr Scott Brawley was a construction worker employed by Jedda Steel Pty Ltd for less than 12 months.¹⁵⁰ Brawley was employed as the leading hand in late February 2001. Brawley was unhappy with his wages, alleging that Cameron had told him his wages would be increased to \$25 an hour from \$15 an hour after his training period finished.¹⁵¹ In March or April 2001 Jedda Steel introduced a performance bonus scheme, which allowed some employees, including Brawley, to earn a bonus of \$80 a week.¹⁵²

61 Some months after he began with Jedda Steel, Brawley was demoted from the leading hand position after an accident in a company vehicle and alleged deficiencies with his work performance, so missing out on the weekly bonus.¹⁵³ He was also asked to pay a \$2000 insurance excess after the accident in the company vehicle.¹⁵⁴ About the same time Brawley asked to take some leave as he was getting married.¹⁵⁵ Brawley did not fill in any leave forms and therefore it was unclear whether he wanted to take unpaid leave or paid leave.¹⁵⁶ As he had been employed for less than 12 months there was no obligation on the company to pay him for his leave, although it was prepared to do so upon request.¹⁵⁷

62 Brawley complained to the CFMEU about these matters and Mr Brian Fitzpatrick, organiser for the Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch, became involved on his behalf on 28 September 2001.¹⁵⁸

63 From about 1 October 2001 CFMEU organisers started visiting sites on which Jedda Steel was working.¹⁵⁹

- 64 Cameron said that on or about 5 October 2001 Fitzpatrick telephoned him a number of times.¹⁶⁰ Cameron said Fitzpatrick told him he had to pay \$1500 in outstanding bonuses for Brawley.¹⁶¹ Cameron refused this demand.¹⁶² Cameron stated Fitzpatrick said that he would speak with Uniframes' principal contractors, Zadro Constructions Pty Ltd (Zadro Constructions) and Time Cost Quality Pty Ltd (Time Cost Quality).¹⁶³
- 65 On the same day Fitzpatrick called Mr Michael Vickers, a director of Zadro Constructions Pty Ltd,¹⁶⁴ and told him that Rhino Steel was having a wage problem with one of its workers on the site.¹⁶⁵ Vickers said Fitzpatrick told him that the employee was involved in a motor vehicle accident and some allowances and holiday pay had not been paid by Rhino Steel.¹⁶⁶ Vickers told Fitzpatrick that he would look into the matter.¹⁶⁷
- 66 That afternoon Cameron told Vickers his version of the events in relation to Brawley.¹⁶⁸ Cameron proposed to Vickers and Mr Brett Madison of Time Cost Quality Pty Ltd that the three companies split the \$1500 payment demanded by Fitzpatrick, each of them paying \$500.¹⁶⁹ This was agreed to by all parties and Cameron called Fitzpatrick to notify him of the arrangement.¹⁷⁰
- 67 Between 5 October and 9 October 2001 Cameron said he received several telephone calls from Fitzpatrick demanding the \$1500 for Brawley.¹⁷¹ Each time Cameron put him off.¹⁷² On 10 October 2001 Cameron said Fitzpatrick telephoned him and told him his patience was running out, and that the wages claim for Brawley had gone up to around the \$3000 mark.¹⁷³ Cameron said that during the course of this discussion he became aware that Fitzpatrick wanted the payment to be made to the CFMEU directly and that Brawley would get the money, less whatever he owed to the union.¹⁷⁴
- 68 On 15 October 2001 Dalzell attempted to stop work at a primary school site at Riverstone where Uniframes was working.¹⁷⁵ The next day Mr Malcolm French, an organiser for the Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch, stopped work on another site in Windsor Road, Box Hill where Uniframes was working, on the grounds that there were insufficient amenities and alleged safety breaches.¹⁷⁶ On 17 October 2001 Cameron said Fitzpatrick telephoned him and demanded that he pay his workers for time lost during the dispute at Box Hill.¹⁷⁷ Cameron said he refused to pay these moneys, telling Fitzpatrick that it was illegal for him to do so.¹⁷⁸
- 69 On 16 October 2001 French and another CFMEU organiser came onto a day care centre site at Windsor Road, Box Hill where Jedda Steel was working, and told the workers the job was unsafe and they must stop work.¹⁷⁹ French also said that workers' compensation and superannuation had not been paid correctly.¹⁸⁰ The employees all obeyed the union organisers' directive to stop work and sit in the sheds. Mr Des Henderson, the Project Supervisor for Jedda Steel Pty Ltd, telephoned Cameron to tell him French was on the site, as did the builder, Mr Lino Morelli of Melad Enterprises Pty Ltd.¹⁸¹ Cameron spoke to French on the phone while he was on site and told him his claims were bogus.¹⁸² Henderson then told the union officials that their claims were 'crap' and said they could not touch him and he would keep working.¹⁸³ French gave Henderson a piece of paper identifying alleged safety issues, which he ripped up.¹⁸⁴ Cameron telephoned the Windsor police as he thought the incident might become violent.¹⁸⁵ The police attended but took no action.¹⁸⁶ Brawley and another

employee were stopped from working for two days on the site and were not paid for their time, but Henderson continued to work on these days.¹⁸⁷ Brawley and the other employee received official warnings for stopping work after being requested not to by Cameron.¹⁸⁸

- 70 Soon after this Brawley resigned.¹⁸⁹ Brawley received no extra money as a result of his complaint to the CFMEU.¹⁹⁰ During one of Brawley's many phone calls to the CFMEU, French asked Brawley whether there were any big sites Jedda Steel was working on that the CFMEU could close down.¹⁹¹ Brawley said he did not know of any.¹⁹²

Conclusions

- 71 On the basis of the evidence given by Cameron, Brawley, Vickers, French and Dalzell, there was a campaign of disruption to Jedda Steel by the CFMEU because of a relatively minor dispute, worth on the union's own figures around \$1500. The campaign involved an allegation of deficiencies in amenities and safety which would not otherwise have been raised. Rather than having recourse to law to resolve a simple dispute concerning an alleged underpayment of entitlements, the organisers opted to threaten and take industrial action and thereby cause the maximum possible harm to the employer. The coincidence of timing, and the concerted action on many sites, makes such a finding inevitable.
- 72 This case study illustrates:
- (a) the failure by a union to adhere to dispute resolution mechanisms, opting instead for industrial action and threat of industrial action to seek to force an employer to pay disputed moneys; and
 - (b) the tactic of union organisers of raising safety issues as a method of seeking to pressure a subcontractor into making such a payment.

PanelCraft Coolrooms (NSW) Pty Ltd

- 73 Mr Andrew Russell is the Managing Director of PanelCraft Coolrooms (NSW) Pty Ltd (PanelCraft), a company that manufactures and constructs coolrooms for domestic and commercial sites in New South Wales.¹⁹³ PanelCraft has seven employees employed under award conditions. PanelCraft has never had an EBA with its employees.¹⁹⁴
- 74 In July 2000 Wallis Commercial Interiors (Wallis) engaged PanelCraft on a Westfield Design and Construction Pty Ltd (Westfield) Shopping Centre site. Before commencing work PanelCraft submitted paperwork to Westfield in accordance with Westfield's requirements. The paperwork needed to be corrected, after which PanelCraft employees were inducted onto the site.¹⁹⁵ A short time after work commenced, Dalzell telephoned Russell and asked that PanelCraft make an EBA with the CFMEU. PanelCraft continued to work on the Westfield Burwood site for approximately two weeks without any further problems.¹⁹⁶
- 75 KMS Refrigeration Pty Ltd engaged PanelCraft on the Establishment Hotel site.¹⁹⁷ In August 2000 Dalzell told Russell that PanelCraft's paperwork was not in order.¹⁹⁸ Dalzell asked for ACIRT and CTAS receipts for PanelCraft.¹⁹⁹ It was Russell's understanding from this discussion with Dalzell that he should make superannuation contributions for employees to Cbus instead of AMP.²⁰⁰

- 76 In the absence of some agreement to the contrary, PanelCraft was under no obligation to make contributions to ACIRT, CTAS or Cbus. There is no award requirement to make redundancy contributions to ACIRT or top-up insurance payments to CTAS. The choice of superannuation funds is a matter for individual employees.
- 77 At a meeting on 15 August 2000 Dalzell explained to Russell the benefits of an EBA with the CFMEU.²⁰¹ Russell told Dalzell he would need to check with his employees. The employees' view was that they did not want to change their superannuation nor did they want to make an EBA with the CFMEU.²⁰²
- 78 On 18 August 2000 Dalzell visited the PanelCraft offices.²⁰³ Dalzell said that all employees needed to make contributions to Cbus and become members of the union.²⁰⁴ Dalzell told Russell he should sack all of his current employees and Dalzell would find the company employees who would agree to his conditions.²⁰⁵ Dalzell told him that if PanelCraft did not make an EBA with the CFMEU, the CFMEU would monitor the company's work, follow it around and cause problems when the company was close to completing a job on site,²⁰⁶ so that the builder would be able to claim liquidated damages against PanelCraft.²⁰⁷
- 79 On 17 November 2000 PanelCraft commenced work for Catering Equipment Services Pty Ltd (Catering Equipment Services) at the Roseland Shopping Complex site.²⁰⁸ Dalzell visited the site and stopped PanelCraft from starting work.²⁰⁹ Dalzell said the company's paperwork was not in order.²¹⁰ After forwarding the paperwork to Mr David Reeds of Catering Equipment Services Pty Ltd, PanelCraft was allowed to install the coolroom the following day.²¹¹
- 80 About a week later Dalzell visited the Roseland Shopping Centre site and told Mr Tony Zavaglia of Catering Equipment Services Pty Ltd that he would shut the site down with pickets and that Zavaglia should replace the company with Thermal Insulations.²¹² Russell subcontracted the remaining work to another company in order to avoid a dispute.²¹³

Westfield Design and Construction Pty Ltd sites

- 81 PanelCraft has done work on a number of Westfield sites without any problems arising from the fact that it does not have an EBA.²¹⁴ All shopfitters are required to submit paperwork in accordance with a Westfield checklist and to undertake an induction course prior to obtaining access to a Westfield shopping centre construction site.²¹⁵
- 82 The paperwork required by Westfield includes advice of any employment agreement so that Westfield may become aware of potential issues before they arise and to enable it to program work and to be in a position to manage any industrial issues.²¹⁶
- 83 The paperwork is usually made available to the site delegate.²¹⁷
- 84 Westfield is particularly concerned to ensure safe work practices on its sites.²¹⁸ Occupational health and safety (OH&S) issues arise most often at the times when shopfitters go onto the site, usually four to six weeks before the opening, where on any given day 60 to 70 different shopfitters may be working, employing up to 300 workers.²¹⁹ Westfield manages this crucial stage of the development by using a 'Shopfitter Pre Start Checklist'.²²⁰

- 85 Mr Talal Tabikh was the tenancy co-ordinator of Westfield Design and Construction Pty Ltd on the Westfield Hornsby site.²²¹ His role was to facilitate the process whereby shopfitters were inducted onto the site and ensure that each tenancy was fitted out on schedule.²²²
- 86 In April 2001 the Hornsby Project Manager for Westfield Design and Construction Pty Ltd, Mr Gary Dilly, told Tabikh that Wallis and its usual subcontractor PanelCraft were expected to undertake works on the site.²²³ Dilly told Tabikh that Wallis and PanelCraft had caused safety problems at other Westfield sites and had missed scheduled openings. Dilly instructed Tabikh to make sure the Wallis and PanelCraft paperwork was in order as he was not going to take any chances with them and did not want the opening delayed.²²⁴
- 87 On 23 April 2001 Wallis engaged PanelCraft on the Westfield Hornsby site.²²⁵
- 88 On 23 April 2001 Russell telephoned Tabikh. Russell asked Tabikh if he could send Tabikh his paperwork.²²⁶ Russell faxed a selection of documents to Tabikh as requested.²²⁷ Tabikh forwarded the paperwork to Mr Bill Docherty, the site delegate employed by Westfield Design and Construction Pty Ltd, for his review.²²⁸ Tabikh did not forward the paperwork to Dalzell but he did speak to him and advised him that various shopfitters, PanelCraft included, were going onto the site.²²⁹
- 89 In a telephone conversation on 23 April 2001 between Russell and Dalzell, Russell asked Dalzell if he had any personal issue with Russell that was causing PanelCraft to be delayed from working on the Westfield site. Dalzell said that the only issue he had was that PanelCraft had not signed an EBA.²³⁰
- 90 Tabikh telephoned Russell and told him he thought the paperwork was in order but he would have to get his 'friends' to approve the paperwork.²³¹ By 'friends' Tabikh said he was referring to Westfield tenancy co-ordinators who were assisting him at that stage and Westfield OH&S facilitators who were reviewing the safety management plans or work method statements which were required as part of the checklist.²³² Dilly told Tabikh that PanelCraft's paperwork was to be very carefully scrutinised. Tabikh forwarded the safety paperwork, including the work method statement, to Mr Don Carroll, Occupational Health and Safety Officer for Westfield Design and Construction Pty Ltd.²³³ Russell asked Tabikh to provide written confirmation indicating PanelCraft's paperwork was in order but Tabikh did not act upon that request.²³⁴
- 91 Within half an hour of Russell's conversation with Tabikh, Dalzell telephoned Russell and told Russell PanelCraft had to make an EBA with the CFMEU.²³⁵ Dalzell also said two employees of the company were not members of the CFMEU and they needed to be signed up before PanelCraft could start work.²³⁶ Russell told Dalzell that union membership was a personal issue but asked for a copy of an EBA.²³⁷
- 92 By 26 April 2001 PanelCraft had not been allowed to commence work.²³⁸ Westfield considered that PanelCraft's paperwork was not in order.²³⁹
- 93 By 26 April 2001 Russell was aware that Tabikh was having discussions with Wallis.²⁴⁰ Russell raised the matter with Mr Alan Sumner at Westfield Design and Construction Pty Ltd's head office but the discussion was unproductive.²⁴¹
- 94 By 26 April 2001 an EBA had not arrived, in spite of a number of requests by Russell to Dalzell.²⁴²

- 95 On Friday 27 April 2001 Dilly sent a memo to Wallis outlining Westfield's safety concerns with Wallis' use of PanelCraft as a subcontractor, and advised Wallis that Westfield's audit procedures would closely be applied to PanelCraft.²⁴³ Wallis responded on 27 April 2001 saying he had questioned Russell and that Russell had questioned his employees, who denied the safety problem. Wallis also referred to his discussion with Tabikh about PanelCraft and safety issues.²⁴⁴
- 96 On Monday 30 April 2001 Russell telephoned Tabikh. Tabikh did not book PanelCraft's employees in for a site induction so they could start work.²⁴⁵ Tabikh said he would fax a copy of the EBA which Dalzell had emailed him but he failed to do so.²⁴⁶
- 97 Russell continued to negotiate with Wallis and Tabikh to resolve the issues. Russell submitted further copies of his insurance coverage as a result of a request by Tabikh, because the insurances expired at the end of April 2001.²⁴⁷
- 98 After a number of further requests, Tabikh finally agreed to book PanelCraft's employees in for a site induction on 4 May 2001, but the company was not able to start work until 7 May 2001.²⁴⁸
- 99 At the time of the induction on 4 May 2001 PanelCraft had not provided an amended work method statement and Tabikh also advised Russell that his workers' compensation tariff codes might not have been correct.²⁴⁹
- 100 On Saturday 5 May 2001 Tabikh faxed Wallis, with a copy to Russell, advising them that the OH&S plan submissions required prior to the commencement of work by PanelCraft (also discussed with Russell on 4 May 2001) were still outstanding.²⁵⁰
- 101 On 7 May 2001 PanelCraft's amended work method statement or safety submissions were provided to Westfield. PanelCraft employees thereupon commenced work, finishing on 10 May 2001.²⁵¹
- 102 Since encountering these problems, PanelCraft has tried to avoid working on larger sites in order to avoid further conflicts with the CFMEU.²⁵²

Conclusions

- 103 Dalzell's conduct was calculated to coerce PanelCraft into entering into a CFMEU-endorsed EBA and into making all of its employees join the union. Dalzell instigated a campaign of harassment of PanelCraft involving false allegations to head contractors and generally threatening and intimidating behaviour.
- 104 Tabikh's evidence established that Westfield administered a shopfitter checklist,²⁵³ part of which required the shopfitter to advise Westfield of any employment agreement.²⁵⁴ Tabikh accepted that Russell told him, in answer to the question on the checklist, that PanelCraft did not have an EBA.²⁵⁵ Tabikh stated Westfield's purpose in asking that question was to be able to assess the risk of possible disruptions to its projects.²⁵⁶ A subcontractor without an EBA could be subjected to protected industrial action which could cause disruption to Westfield's workplace.²⁵⁷ In spite of Westfield's imposition of a written requirement advising of any employment agreement, Tabikh's evidence was that if PanelCraft did not have an EBA, that was its choice.²⁵⁸

105 Tabikh gave no satisfactory account of whether he spoke to organiser Dalzell or delegate Docherty about PanelCraft's not having an EBA. Tabikh indicated that he first learned that there was an issue between the union and PanelCraft about that question '[w]hen Dalzell would have called, I suppose'.²⁵⁹ It is likely that Tabikh did speak with Dalzell about PanelCraft not having an EBA. I am satisfied that Tabikh spoke to Dalzell about that question after speaking earlier in the day by telephone to Russell, shortly before Anzac Day 2001.²⁶⁰ In spite of Tabikh's denials,²⁶¹ I am satisfied on the evidence before me, that the real reason for PanelCraft being delayed access to the Hornsby site was its lack of an EBA with the union.

106 This case study illustrates:

- (a) pressure applied by a union organiser to a subcontractor to enter into a union-endorsed EBA, even though the subcontractor's employees did not wish to;
- (b) the assumption by a union that it was entitled in its own interest of membership and influence, to seek to have a subcontractor enter into a union-endorsed EBA, irrespective of and in disregard of the wishes of non-union employees who would be covered by the EBA;
- (c) the endeavour by a union to intrude, uninvited, into the employer/employee relationship;
- (d) the tactic of a union organiser in raising compliance issues as a method of placing pressure upon a subcontractor to comply with its wishes;
- (e) the endeavour by a union organiser to have a head contractor replace a subcontractor because the subcontractor did not have a union-endorsed EBA;
- (f) a head contractor forwarding to a union site delegate papers addressing compliance issues for checking, rather than reaching its own decision on their adequacy;
- (g) the demand by a union organiser that all employees become members of the union before commencing work on a Westfield site;
- (h) the close communication between a head contractor's employee and a union organiser regarding the initial engagement of a subcontractor on site; and
- (i) the manner and extent to which a major head contractor surrendered a management function, namely satisfaction regarding compliance issues, to a union delegate.

Saxona Pty Ltd trading as Campbelltown Coolrooms

107 Mr Garry Campbell is a director of Saxona Pty Ltd, trading as Campbelltown Coolrooms (Campbelltown Coolrooms).²⁶² Campbelltown Coolrooms constructs and installs commercial coolrooms on building sites.²⁶³ Campbelltown Coolrooms usually works in conjunction with Channon Refrigeration, Kingsgrove.²⁶⁴ Campbelltown Coolrooms constructs the panel work and Channon Refrigeration completes the refrigeration and electrical work.²⁶⁵

108 In late October 1997 Channon Refrigeration engaged Campbelltown Coolrooms on the Royal North Shore Hospital site.²⁶⁶ Mr Gary Hunt was the site foreman for the builder.²⁶⁷ About three quarters of the way through the project Mr Sid Wales, an organiser for the Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales

Divisional Branch, telephoned Campbell about making an EBA with the CFMEU.²⁶⁸ Hunt told Campbell that the Royal North Shore Hospital site would close and he would have a lot of problems unless Campbelltown Coolrooms made an EBA with the CFMEU.²⁶⁹ This was confirmed by Wales in a subsequent conversation. Hunt said that without an EBA there would be no further work on that site or the Merchant Court Hotel site.²⁷⁰ Hunt also told Campbell that Campbelltown Coolrooms could not proceed on the project until it made an EBA with the CFMEU.²⁷¹

- 109 In October 1998 Wales and another union representative came to the Campbelltown Coolrooms factory and conducted a wage book audit.²⁷² Wales identified a number of discrepancies and told Campbell that if Campbelltown Coolrooms back paid about \$1200 and wages were raised to industry level he would look the other way so far as the non-existence of an EBA with the CFMEU was concerned.²⁷³ Wales produced a coolrooms pattern EBA which he told Campbell was not negotiable.²⁷⁴ He told Campbell to sign the EBA.²⁷⁵ Campbell told Wales if he made the EBA the company would go broke within 12 months.²⁷⁶ Wales left after Campbell agreed to make the back payments and increase Campbelltown Coolrooms' wage rates and allowances.²⁷⁷
- 110 When Channon Refrigeration discovered that Campbelltown Coolrooms did not have an EBA, it organised Redback, an alternative contractor, to complete the works on the Royal North Shore Hospital site.²⁷⁸ Campbelltown Coolrooms engaged Redback, incurring additional costs as a result.²⁷⁹ Redback had made an EBA with the CFMEU.²⁸⁰
- 111 In October 1998 Channon Refrigeration engaged Campbelltown Coolrooms at the Merchant Court Hotel site in the Sydney CBD.²⁸¹ The project started in April 1999 and was completed in July 1999.²⁸² Multiplex NSW was the builder.²⁸³ Campbelltown Coolrooms allocated four employees for this job.²⁸⁴ When they arrived on site, they attended a site induction conducted by Mr Jose Penaro, the site delegate for Multiplex Constructions (NSW) Pty Ltd.²⁸⁵ Campbelltown Coolrooms' employees were told that they could not commence on site because Campbelltown Coolrooms had not made an EBA.²⁸⁶
- 112 Campbelltown Coolrooms tried unsuccessfully to find a way to complete the work without making an EBA with the CFMEU.²⁸⁷ Campbell tried to have the employees attend the site as Channon Refrigeration employees but Channon Refrigeration's EBA with the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union (AMWU) did not allow its staff to erect coolrooms.²⁸⁸ Channon Refrigeration could not complete the work itself because it was banned from site because of a wage dispute. Campbell tried to find another subcontractor but could not find one to quote at a similar price.²⁸⁹
- 113 About this time the CFMEU organised a number of meetings with Campbelltown Coolrooms' employees about making an EBA.²⁹⁰ The union representatives were Mr Terry Kesby and Mr Mark Cunningham, both organisers of the Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.²⁹¹ The employees told Kesby and Cunningham they were happy with their current work conditions and pay structure.²⁹² The union representatives said that was unfortunate because the union required EBAs 'across the board'.²⁹³ The union representatives identified non-financial members of the CFMEU and asked them to bring their dues up to date.²⁹⁴ An employee of Saxona Pty Ltd,

trading as Campbelltown Coolrooms, Mr Mick Organ, had outstanding dues of \$2000 but this sum was reduced to \$750 after negotiation.²⁹⁵

- 114 On one occasion Kesby and Cunningham visited the Campbelltown Coolrooms factory and parked their car in the driveway blocking access.²⁹⁶ They were angered by the possibility that Campbelltown Coolrooms was going to switch its employees to the AMWU.²⁹⁷ They said swapping unions would not get Campbelltown Coolrooms onto sites.²⁹⁸ Their attitude changed when they discovered no change of union was planned.²⁹⁹ Kesby told Campbell if he signed an EBA there would be no problems: Campbelltown Coolrooms could get onto any site and the CFMEU would make it difficult for any of its competitors who did not have EBAs.³⁰⁰
- 115 After receiving a draft EBA from Kesby, on or about 13 March 1999, Campbelltown Coolrooms made a commercial decision to commence negotiations for an EBA. The primary motivation for the company was the urgent need to commence on the Merchant Court Hotel site.³⁰¹ Campbell told Kesby he had heard of companies that had made non-union EBAs.³⁰² Kesby told Campbell that companies without union-endorsed EBAs were going to have problems on sites.³⁰³ On 23 April 1999 Campbell Coolrooms signed its proposed EBA with the CFMEU.³⁰⁴
- 116 Making an EBA with the CFMEU resulted in additional costs for Campbelltown Coolrooms.³⁰⁵ These increased costs included a contribution to ACIRT, increased contributions to Cbus,³⁰⁶ increased wages and a 'productivity' allowance.³⁰⁷ The EBA has resulted in an increase of labour charges from about \$25 an hour to about \$40 an hour.³⁰⁸ Campbelltown Coolrooms has lost projects because of the increased costs.³⁰⁹ The increased labour costs and loss of work have resulted in a reduction in profit for the company.³¹⁰
- 117 As part of the EBA negotiations, the CFMEU required all employees to be union members and also asked for back payment of union dues for non-financial members.³¹¹ Campbelltown Coolrooms made these payments and deducted the money from its employees' wages.³¹² Campbelltown Coolrooms was also required to pay a \$100 'EBA negotiation fee' and to purchase a CFMEU flag for \$50.³¹³
- 118 Once Campbelltown Coolrooms had negotiated its EBA, it was allowed back onto the Merchant Court Hotel site on 28 April 1999. The negotiation process took between four and six weeks and no work was done by the company on the site during that period.³¹⁴

Conclusions

- 119 The evidence concerning Campbelltown Coolrooms' problems on the Merchant Court Hotel site amounts to a multi-pronged campaign by the CFMEU to pressure the company into entering into a CFMEU-endorsed EBA.
- 120 This case study illustrates:
- (a) the continued pressure applied by a head contractor and a union organiser upon a subcontractor to enter into a union-endorsed EBA in order to work;
 - (b) the substitution by a head contractor of a subcontractor who had a union-endorsed EBA for one who did not, part way through a project;

- (c) a major head contractor placing a union site delegate in a position where he could determine who could commence on a site;
- (d) a major head contractor, by its employee who was also a site delegate, refusing to allow employees of a subcontractor to commence on site because the subcontractor did not have a union-endorsed EBA;
- (e) a union requirement that all subcontractors on a site have a union-endorsed EBA; and
- (f) a subcontractor, in order to be able to continue to work in the commercial sector, giving in to the pressure of the union to enter into a union-endorsed EBA.

Persons involved

Name	Position/Title
Been, J	Engineer, J C Been and Associates.
Brawley, Scott	Former Leading hand, construction worker, Jedda Steel Pty Ltd.
Cameron, James Robert	General Manager, Jedda Steel Pty Ltd, Rhino Steel Pty Ltd, Preston Steel Pty Ltd, trading as Uniframes.
Campbell, Garry Raymond	Director, Saxona Pty Ltd, trading as Campbelltown Coolrooms.
Carroll, Don	Occupational Health and Safety Officer, Westfield Design and Construction Pty Ltd.
Chidgey, Craig	Director, Arch System Fabrication Pty Ltd.
Chidgey, Judith Mary	Administrator, Arch System Fabrication Pty Ltd.
Cunningham, Mark Paul	Organiser, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.
Dalzell, Michael	Organiser, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.
Dilly, Gary	Project Manager, Westfield Design and Construction Pty Ltd, Westfield Hornsby Site.
Docherty, Bill	Site Delegate, Westfield Design and Construction Pty Ltd.
Ferguson, Andrew	Branch Secretary, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.
Fitzpatrick, Brian	Organiser, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.

French, Malcolm George	Organiser, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.
Fryer, Lincoln Gary	Organiser, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.
Henderson, Des	Project Supervisor, Jedda Steel Pty Ltd.
Hunt, Gary	Site Foreman, Saxona Pty Ltd, trading as Campbelltown Coolrooms, Royal North Shore Hospital Site.
Keenan, Stephen Haua	Organiser, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.
Kesby, Terry	Organiser, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.
Lancer, Les	Organiser, Construction, Forestry, Mining and Energy Union, Construction and General Division, Australian Capital Territory Divisional Branch.
Madison, Brett	Time Cost Quality Pty Ltd.
Mavis, Angelo	Project Manager, Leighton Contractors Pty Ltd.
McGahan, John Joseph	Organiser, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.
Morelli, Lino	Melad Enterprises Pty Ltd.
Oddo, Greg	Contracts Manager, Boulderstone Hornibrook Pty Ltd.
Organ, Mick	Employee, Saxona Pty Ltd, trading as Campbelltown Coolrooms.
Pappa, Tony	Organiser, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.
Penaro, Jose	Site Delegate, Multiplex Constructions (NSW) Pty Ltd.
Peronace, Francesco	General Manager, Ace Contractors Pty Ltd.
Prentice, John Wade	Organiser, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.
Rech, Corrado (Rick)	State Co-ordinator, Asbestos and Demolition, WorkCover Authority of New South Wales.

Reeds, David	Catering Equipment Services Pty Ltd.
Rogers, Peter	Director and shareholder, Lockrey Holdings Pty Ltd.
Russell, Andrew Robert	Managing Director, PanelCraft Coolrooms (NSW) Pty Ltd.
Siciliano, Julie	Office of the Employment Advocate.
Sumner, Alan	Westfield Design and Construction Pty Ltd.
Sydes, Desmond Victor	Manager, E M Miller Building Co Pty Ltd.
Sydes, Paul Joseph	Managing Director, E M Miller Building Co Pty Ltd.
Tabikh, Talal	Tenancy Co-ordinator, Westfield Design and Construction Pty Ltd, Westfield Hornsby Site.
Tinmouth, Darryn	Organiser, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.
Tornya, Andrew George	Managing Director, New Era Balustrading Pty Ltd.
Vickers, Michael Anthony	Director, Zadro Constructions Pty Ltd.
Wales, Sid John	Organiser, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.
Wehbe, Adnan	Truck driver, Arch System Fabrication Pty Ltd.
Wyer, Martin	Organiser, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.
Zavaglia, Tony	Catering Equipment Services Pty Ltd.

Notes to Other Sectors

- 1 Peronace Statutory Declaration, exhibit 696, paragraph 1, document 046.0572.0129.0037; T9014/29–34.
- 2 Peronace Statutory Declaration, exhibit 696, paragraph 6, document 046.0572.0129.0037.
- 3 Peronace Statutory Declaration, exhibit 696, paragraph 7, document 046.0572.0129.0037.
- 4 Peronace Statutory Declaration, exhibit 696, paragraph 9, document 046.0572.0129.0037.
- 5 Peronace Statutory Declaration, exhibit 696, paragraph 10, document 046.0572.0129.0037.
- 6 Peronace Statutory Declaration, exhibit 696, paragraph 10, document 046.0572.0129.0037.
- 7 Peronace Statutory Declaration, exhibit 696, paragraph 10, document 046.0572.0129.0037.
- 8 Peronace Statutory Declaration, exhibit 696, paragraph 7, document 046.0572.0129.0037.
- 9 Peronace Statutory Declaration, exhibit 696, paragraph 11, document 046.0572.0129.0037.
- 10 Peronace Statutory Declaration, exhibit 696, paragraph 11, document 046.0572.0129.0037.
- 11 Peronace Statutory Declaration, exhibit 696, paragraph 12, document 046.0572.0129.0037.
- 12 Peronace Statutory Declaration, exhibit 696, paragraph 12, document 046.0572.0129.0037.
- 13 Peronace Statutory Declaration, exhibit 696, paragraph 12, document 046.0572.0129.0037.
- 14 Chidgey Statutory Declaration, exhibit 601, paragraph 1, document 040.0978.0962.0001.
- 15 Chidgey Statutory Declaration, exhibit 601, paragraph 2, document 040.0978.0962.0001.
- 16 Chidgey Statutory Declaration, exhibit 601, paragraph 3, document 040.0978.0962.0001.
- 17 Chidgey Statutory Declaration, exhibit 601, paragraph 3, document 040.0978.0962.0001.
- 18 Chidgey Statutory Declaration, exhibit 601, paragraph 3, document 040.0978.0962.0001; Chidgey, T8108/43–44.
- 19 Chidgey Statutory Declaration, exhibit 601, paragraph 3, document 040.0978.0962.0001; Chidgey, T8109/4–6.
- 20 Chidgey Statutory Declaration, exhibit 601, paragraph 4, document 040.0978.0962.0001; Chidgey, T8110/13, 20–21, 43–44.
- 21 Chidgey Statutory Declaration, exhibit 601, paragraph 4, document 040.0978.0962.0001.
- 22 Chidgey Statutory Declaration, exhibit 601, paragraph 6, document 040.0978.0962.0001.
- 23 Chidgey Statutory Declaration, exhibit 601, paragraph 6, document 040.0978.0962.0001; Chidgey, T8105/45–8106/8; Dalzell, T10394/25–26.
- 24 Chidgey Statutory Declaration, exhibit 601, paragraph 6, document 040.0978.0962.0001.
- 25 Chidgey Statutory Declaration, exhibit 601, paragraph 7, document 040.0978.0962.0001; Chidgey, T8106/23; cf Dalzell, T10394/40–10395/8. Dalzell said he offered to show Chidgey an EBA but did not raise the question of union membership. This account is implausible having regard to the fact that Dalzell had admitted just having a conversation about both issues with one of the company's employees: Dalzell, T10394/25–29. Dalzell also admitted sending union membership forms to the company together with the proposed EBA: Dalzell, T10396/24–27.
- 26 Chidgey Statutory Declaration, exhibit 601, paragraph 9, document 040.0978.0962.0001; Chidgey, T8106/23–25.
- 27 Chidgey Statutory Declaration, exhibit 601, paragraph 10, document 040.0978.0962.0001; Chidgey, T8106/35–8107/11; cf Dalzell Statement, exhibit 786, paragraph 9, document 007.0402.0105.002: Dalzell's evidence is implausible, having regard to Chidgey's evidence as to the remainder of this conversation. I do not accept that Dalzell used the words he claimed in paragraph 11 of his statement, but the substance, namely 'stay out of the commercial industry', is not materially different to the words Chidgey said, and I accept, were used. Paragraph 16 of Chidgey's Statutory Declaration makes plain that Dalzell was insisting on Arch System Fabrication having an EBA: Chidgey Statutory Declaration, exhibit 601, paragraph 16, document 040.0978.0962.0001.

- ²⁸ Chidgey Statutory Declaration, exhibit 601, paragraph 10, document 040.0978.0962.0001; Chidgey, T8106/40–41; See also, Dalzell Statement, exhibit 786, paragraphs 10–11, 32, document 007.0402.0105.002.
- ²⁹ Chidgey Statutory Declaration, exhibit 601, paragraph 10, document 040.0978.0962.0001; Chidgey, T8107/16–23; cf Dalzell Statement, exhibit 786, paragraph 11, document 007.0402.0105.002
- ³⁰ Chidgey Statutory Declaration, exhibit 601, paragraph 12, document 040.0978.0962.0001; Chidgey, T8107/24–27, 29–32.
- ³¹ Chidgey Statutory Declaration, exhibit 601, paragraph 12, document 040.0978.0962.0001.
- ³² Chidgey Statutory Declaration, exhibit 601, paragraph 12, document 040.0978.0962.0001.
- ³³ Chidgey Statutory Declaration, exhibit 601, paragraph 15, document 040.0978.0962.0001.
- ³⁴ Chidgey Statutory Declaration, exhibit 601, paragraph 16, document 040.0978.0962.0001; Chidgey, T8108/18–19.
- ³⁵ Chidgey Statutory Declaration, exhibit 601, paragraph 16, document 040.0978.0962.0001; Dalzell Statement, exhibit 786, paragraph 16, document 007.0402.0105.002.
- ³⁶ Chidgey Statutory Declaration, exhibit 601, paragraph 17, document 040.0978.0962.0001.
- ³⁷ Chidgey Statutory Declaration, exhibit 601, paragraph 18, document 040.0978.0962.0001.
- ³⁸ Chidgey Statutory Declaration, exhibit 601, paragraph 19, document 040.0978.0962.0001; Chidgey, T8109/8, 10–17.
- ³⁹ Chidgey Statutory Declaration, exhibit 601, paragraph 19, document 040.0978.0962.0001; Chidgey, T8109/19–20.
- ⁴⁰ Torna Statutory Declaration, exhibit 699, paragraphs 1–2, document 046.0572.0129.0032.
- ⁴¹ Torna Statutory Declaration, exhibit 699, paragraph 3, document 046.0572.0129.0032.
- ⁴² Torna Statutory Declaration, exhibit 699, paragraph 3, document 046.0572.0129.0032; Torna, T9025/34–39.
- ⁴³ Torna Statutory Declaration, exhibit 699, paragraph 5, document 046.0572.0129.0032; Torna, T9025/41–43; T9908/17–37; Prentice Statement, exhibit 760, paragraph 3, document 035.0114.0330.0017.
- ⁴⁴ Torna Statutory Declaration, exhibit 699, paragraph 5, document 046.0572.0129.0032; Torna, T9025/45–9026/2; Prentice, T10021/19–21.
- ⁴⁵ Torna Statutory Declaration, exhibit 699, paragraph 6, document 046.0572.0129.0032; Torna, T9026/4–22; T9908/17–19; T9909/11–15; cf Prentice Statement, exhibit 760, paragraph 4, document 035.0114.0330.0017; Prentice, T10022/14–34. There is no difference in substance between Torna's account and Prentice's account of the position in relation to union membership, and to the extent that there is a difference, Torna's account is to be preferred. Prentice's evidence in relation to the negotiations is somewhat vague. Further, having regard to Prentice's admission that he expected full union membership, it is more likely than not that he made a demand of the kind alleged by Torna.
- ⁴⁶ Torna Statutory Declaration, exhibit 699, paragraph 6, document 046.0572.0129.0032; Torna, T9026/4–22; T9908/17–37; cf Prentice Statement, exhibit 760, paragraph 4, document 035.0114.0330.0017.
- ⁴⁷ Torna Statutory Declaration, exhibit 699, paragraph 6, document 046.0572.0129.0032; Torna, T9026/7–18; cf Prentice, T10023/14–24.
- ⁴⁸ Torna Statutory Declaration, exhibit 699, paragraph 6, document 046.0572.0129.0032; Torna, T9026/4–22; T9908/17–37.
- ⁴⁹ Torna Statutory Declaration, exhibit 699, paragraph 9, document 046.0572.0129.0032; Torna, T9910/3–14.

- ⁵⁰ Torny Statutory Declaration, exhibit 699, paragraph 10, document 046.0572.0129.0032; Torny, T9027/6–10; Oswin Statutory Declaration, exhibit 1300, paragraph 7, document 018.0686.0526.0002: Oswin conceded that subcontractors were asked to speak with the ACT CFMEU, but said that EBAs were not required by Baulderstone.
- ⁵¹ Torny Statutory Declaration, exhibit 699, paragraph 11, document 046.0572.0129.0032; Torny, T9027/12–30.
- ⁵² Torny Statutory Declaration, exhibit 699, paragraph 15, document 046.0572.0129.0032; Torny, T9027/32–39.
- ⁵³ Prentice Statement, exhibit 760, paragraphs 5–10, document 035.0114.0330.0017; Prentice, T10024–10030.
- ⁵⁴ Torny, T9919/19–37.
- ⁵⁵ Torny, T9919/44–9920/21.
- ⁵⁶ D Sydes Statutory Declaration, exhibit 599, paragraph 1, document 049.0373.0665.0087; D Sydes, T8073/9–12; P Sydes Statutory Declaration, exhibit 641, paragraph 1, document 078.0521.0191.0221.
- ⁵⁷ D Sydes Statutory Declaration, exhibit 599, paragraph 2, document 049.0373.0665.0087; P Sydes Statutory Declaration, exhibit 641, paragraph 2, document 078.0521.0191.0221.
- ⁵⁸ D Sydes Statutory Declaration, exhibit 599, paragraph 8, document 049.0373.0665.0087; D Sydes, T8076/39–45.
- ⁵⁹ D Sydes, T8077/1–9.
- ⁶⁰ D Sydes, T8077/13–33.
- ⁶¹ D Sydes Statutory Declaration, exhibit 599, paragraph 25, document 049.0373.0665.0087.
- ⁶² D Sydes Statutory Declaration, exhibit 599, paragraph 25, document 049.0373.0665.0037.
- ⁶³ D Sydes Statutory Declaration, exhibit 599, paragraph 25, document 049.0373.0665.0087.
- ⁶⁴ Tinmouth Statement, exhibit 811, paragraph 35, document 035.0114.0330.0050.
- ⁶⁵ D Sydes Statutory Declaration, exhibit 599, paragraph 8, document 049.0373.0665.0087; D Sydes, T8074/36–37.
- ⁶⁶ D Sydes Statutory Declaration, exhibit 599, paragraph 8, document 049.0373.0665.0087.
- ⁶⁷ D Sydes Statutory Declaration, exhibit 599, paragraph 9, document 049.0373.0665.0087; D Sydes, T8077/41–44; Wyer Statement, exhibit 783, paragraphs 5, 14, document 026.0037.0485.0018.
- ⁶⁸ D Sydes Statutory Declaration, exhibit 599, paragraph 8, document 049.0373.0665.0087.
- ⁶⁹ D Sydes, T8079/22–26.
- ⁷⁰ D Sydes, T8079/3–7; Wyer Statement, exhibit 783, paragraph 7, document 026.0037.0485.0018. The Commission has not heard from any employees of E M Miller Building as to whether they were made to join the CFMEU against their wishes.
- ⁷¹ D Sydes, T8081/29–32.
- ⁷² D Sydes Statutory Declaration, exhibit 599, paragraphs 15, 17, 19, document 049.0373.0665.0087.
- ⁷³ D Sydes Statutory Declaration, exhibit 599, paragraph 18, document 049.0373.0665.0087; D Sydes, T8082/5–17; Wyer, T10375/33–40, 24–27: Wyer claimed he made negotiations hard and difficult; he denied those matters were non-negotiable.
- ⁷⁴ D Sydes, T8082/21–30; Wyer, T10375/42–45.
- ⁷⁵ D Sydes Statutory Declaration, exhibit 599, paragraph 13, document 049.0373.0665.0087; cf Wyer Statement, exhibit 783, paragraph 8, document 026.0037.0485.0018.
- ⁷⁶ D Sydes Statutory Declaration, exhibit 599, paragraph 13, document 049.0373.0665.0087.
- ⁷⁷ D Sydes Statutory Declaration, exhibit 599, paragraph 14, document 049.0373.0665.0087; D Sydes, T8081/11–19.

- ⁷⁸ D Sydes Statutory Declaration, exhibit 599, paragraph 20, document 049.0373.0665.0087.
- ⁷⁹ D Sydes, T8081/21–22.
- ⁸⁰ D Sydes Statutory Declaration, exhibit 599, paragraph 14, document 049.0373.0665.0087; D Sydes, T8081/24–26.
- ⁸¹ D Sydes Statutory Declaration, exhibit 599, paragraph 20, document 049.0373.0665.0087; D Sydes, T8083/1–5.
- ⁸² D Sydes Statutory Declaration, exhibit 599, paragraph 21, document 049.0373.0665.0087; D Sydes, T8083/17–18.
- ⁸³ D Sydes Statutory Declaration, exhibit 599, paragraph 26, document 049.0373.0665.0087; D Sydes, T8085/22–23.
- ⁸⁴ D Sydes Statutory Declaration, exhibit 599, paragraph 26, document 049.0373.0665.0087; D Sydes, T8085/29–30.
- ⁸⁵ Tinmouth Statement, exhibit 811, paragraph 36, document 035.0114.0330.0050.
- ⁸⁶ D Sydes Statutory Declaration, exhibit 599, paragraph 28, document 049.0373.0665.0087; D Sydes Statutory Declaration, exhibit 599, annexure DVS-2, document 049.0373.0665.0155.
- ⁸⁷ D Sydes Statutory Declaration, exhibit 599, paragraph 29, document 049.0373.0665.0087.
- ⁸⁸ D Sydes Statutory Declaration, exhibit 599, paragraph 29, document 049.0373.0665.0087; Rogers Statutory Declaration, exhibit 628, paragraph 29, document 019.0349.0656.0229.
- ⁸⁹ D Sydes Statutory Declaration, exhibit 599, paragraph 30, document 049.0373.0665.0087.
- ⁹⁰ D Sydes Statutory Declaration, exhibit 599, paragraph 30, document 049.0373.0665.0087.
- ⁹¹ D Sydes Statutory Declaration, exhibit 599, paragraph 30, document 049.0373.0665.0087; Keenan Statement, exhibit 794, paragraph 12, document 026.0037.0485.0113; Keenan, T12676/35–12679/21.
- ⁹² D Sydes Statutory Declaration, exhibit 599, paragraph 30, document 049.0373.0665.0087.
- ⁹³ D Sydes Statutory Declaration, exhibit 599, paragraph 34, document 049.0373.0665.0087; Keenan Statement, exhibit 794, paragraph 14, document 026.0037.0485.0113.
- ⁹⁴ D Sydes Statutory Declaration, exhibit 599, paragraph 32, document 049.0373.0665.0087.
- ⁹⁵ D Sydes Statutory Declaration, exhibit 599, paragraphs 33–34, document 049.0373.0665.0087; Keenan Statement, exhibit 794, paragraph 14, document 026.0037.0485.0113; cf Connolly Statutory Declaration, exhibit 725, paragraphs 44, 50, document 095.0407.0078.0002.
- ⁹⁶ D Sydes Statutory Declaration, exhibit 599, paragraph 34, document 049.0373.0665.0087; D Sydes, T8086/21–31.
- ⁹⁷ P Sydes Statutory Declaration, exhibit 641, paragraph 7, document 078.0521.0191.0221; D Sydes Statutory Declaration, exhibit 599, document 049.0373.0665.0087.
- ⁹⁸ P Sydes Statutory Declaration, exhibit 641, paragraph 9, document 078.0521.0191.0221; P Sydes, T8539/20–30.
- ⁹⁹ Rech Statutory Declaration, exhibit 818, paragraph 6, document 041.0982.0087.0002.
- ¹⁰⁰ Rech Statutory Declaration, exhibit 818, paragraph 6, document 041.0982.0087.0002; P Sydes, T8539/28–30; Rech, T12755/2–12756/17.
- ¹⁰¹ P Sydes Statutory Declaration, exhibit 641, paragraph 10, document 078.0521.0191.0221; P Sydes, T8539/3–6.
- ¹⁰² Rech Statutory Declaration, exhibit 818, paragraph 7, document 041.0982.0087.0002; Rech, T12756/19–12757/2.
- ¹⁰³ Rogers Statutory Declaration, exhibit 628, paragraph 1, document 019.0349.0656.0229; Rogers, T8472/30–37.
- ¹⁰⁴ Rogers Statutory Declaration, exhibit 628, paragraph 3, document 019.0349.0656.0229.
- ¹⁰⁵ Rogers Statutory Declaration, exhibit 628, paragraph 4, document 019.0349.0656.0229.

- ¹⁰⁶ Rogers Statutory Declaration, exhibit 628, paragraph 10, document 019.0349.0656.0229.
- ¹⁰⁷ Rogers Statutory Declaration, exhibit 628, paragraph 28, document 019.0349.0656.0229.
- ¹⁰⁸ Rogers, T9536/1–13; Wyer Statement, exhibit 783, paragraph 3, document 026.0037.0485.0018.
- ¹⁰⁹ Rogers, T9536/13.
- ¹¹⁰ Rogers Statutory Declaration, exhibit 628, paragraph 12, document 019.0349.0656.0229; Rogers, T9527/38–42.
- ¹¹¹ Rogers Statutory Declaration, exhibit 628, paragraph 12, document 019.0349.0656.0229; McGahan, T10307/29–45; Keenan Statement, exhibit 794, paragraph 3, document 026.0037.0485.0113; Keenan, T12673/35–45.
- ¹¹² Rogers Statutory Declaration, exhibit 628, paragraph 12, document 019.0349.0656.0229.
- ¹¹³ Rogers Statutory Declaration, exhibit 628, paragraph 13, document 019.0349.0656.0229; cf McGahan Statement, exhibit 780, paragraphs 8–12, document 006.0738.0458.0002; McGahan, T10312/30–46; McGahan, T10314/24–30; Keenan Statement, exhibit 794, paragraph 7, document 026.0037.0485.0113.
- ¹¹⁴ Rogers Statutory Declaration, exhibit 628, paragraph 13, document 019.0349.0656.0229; cf McGahan Statement, exhibit 780, paragraphs 8–13, document 006.0738.0458.0002; McGahan, T10312/42–10314/20; Keenan Statement, exhibit 794, paragraph 7, document 026.0037.0485.0113.
- ¹¹⁵ Rogers Statutory Declaration, exhibit 628, paragraph 13, document 019.0349.0656.0229; cf McGahan Statement, exhibit 780, paragraphs 8–13, document 006.0738.0458.0002; McGahan, T10312/42–10314/20; Keenan Statement, exhibit 794, paragraph 7, document 026.0037.0485.0113.
- ¹¹⁶ Rogers Statutory Declaration, exhibit 628, paragraph 13, document 019.0349.0656.0229; cf McGahan Statement, exhibit 780, paragraphs 8–13, document 006.0738.0458.0002; McGahan, T10312/42–10314/20; Keenan Statement, exhibit 794, paragraph 7, document 026.0037.0485.0113.
- ¹¹⁷ Rogers Statutory Declaration, exhibit 628, paragraph 14, document 019.0349.0656.0229; cf McGahan, T10318/32–10319/ 9.
- ¹¹⁸ McGahan, T10309/6–10310/28.
- ¹¹⁹ Rogers, T9533/22–27; Rogers Statutory Declaration, exhibit 628, paragraphs 15–16, document 019.0349.0656.0229; cf McGahan Statement, exhibit 780, paragraphs 15–16, document 006.0738.0458.0002; Keenan Statement, exhibit 794, paragraph 8, document 026.0037.0485.0113.
- ¹²⁰ Rogers, T9533/22–27; Rogers Statutory Declaration, exhibit 628, paragraphs 15–16, document 019.0349.0656.0229; cf McGahan Statement, exhibit 780, paragraphs 15–16, document 006.0738.0458.0002; Keenan Statement, exhibit 794, paragraph 8, document 026.0037.0485.0113.
- ¹²¹ Rogers, T9534/3–5.
- ¹²² Rogers Statutory Declaration, exhibit 628, paragraph 18, document 019.0349.0656.0229.
- ¹²³ Rogers Statutory Declaration, exhibit 628, paragraph 18, document 019.0349.0656.0229.
- ¹²⁴ Rogers Statutory Declaration, exhibit 628, paragraph 18, document 019.0349.0656.0229.
- ¹²⁵ Rogers Statutory Declaration, exhibit 628, paragraph 20, document 019.0349.0656.0229.
- ¹²⁶ Rogers Statutory Declaration, exhibit 628, paragraph 11, document 019.0349.0656.0229.
- ¹²⁷ Rogers Statutory Declaration, exhibit 628, paragraph 35, document 019.0349.0656.0229.
- ¹²⁸ Rogers Statutory Declaration, exhibit 628, paragraph 35, document 019.0349.0656.0229.
- ¹²⁹ Rogers Statutory Declaration, exhibit 628, paragraph 35, document 019.0349.0656.0229; Rogers, T8473/25–26.
- ¹³⁰ Rogers Statutory Declaration, exhibit 628, paragraph 35, document 019.0349.0656.0229.
- ¹³¹ Rogers Statutory Declaration, exhibit 628, paragraph 38, document 019.0349.0656.0229; Rogers Statutory Declaration, exhibit 628, annexure PSR-5, document 019.0349.0656.0291.

- 132 Rogers Statutory Declaration, exhibit 628, paragraph 25, document 019.0349.0656.0229 cf McGahan Statement, exhibit 780, paragraph 18, document 006.0738.0458.0002; cf Ferguson Statement, exhibit 763, paragraph 210, document 081.0043.0635.0019.
- 133 Rogers Statutory Declaration, exhibit 628, paragraph 29, document 019.0349.0656.0229.
- 134 Rogers Statutory Declaration, exhibit 628, paragraph 29, document 019.0349.0656.0229.
- 135 Rogers Statutory Declaration, exhibit 628, paragraph 29, document 019.0349.0656.0229.
- 136 Rogers Statutory Declaration, exhibit 628, paragraph 33, document 019.0349.0656.0229.
- 137 Rogers, T8474/10–14.
- 138 Rogers Statutory Declaration, exhibit 628, paragraph 31, document 019.0349.0656.0229.
- 139 Rogers Statutory Declaration, exhibit 628, paragraph 32, document 019.0349.0656.0229.
- 140 Rogers Statutory Declaration, exhibit 628, paragraph 32, document 019.0349.0656.0229.
- 141 Rogers Statutory Declaration, exhibit 628, paragraph 32, document 019.0349.0656.0229.
- 142 Rogers Statutory Declaration, exhibit 628, paragraph 33, document 019.0349.0656.0229.
- 143 Rogers Statutory Declaration, exhibit 628, paragraph 33, document 019.0349.0656.0229.
- 144 Rogers Statutory Declaration, exhibit 628, paragraph 33, document 019.0349.0656.0229.
- 145 Rogers Statutory Declaration, exhibit 628, paragraph 33, document 019.0349.0656.0229.
- 146 Rogers Statutory Declaration, exhibit 628, paragraph 34, document 019.0349.0656.0229.
- 147 Cameron, Statutory Declaration, exhibit 622, paragraph 2, document 068.0254.0598.0001.
- 148 Cameron, Statutory Declaration, exhibit 622, paragraph 1, document 068.0254.0598.0001.
- 149 Cameron, Statutory Declaration, exhibit 622, paragraph 3, document 068.0254.0598.0001.
- 150 Cameron, Statutory Declaration, exhibit 622, paragraph 8, document 068.0254.0598.0001; Brawley Statutory Declaration, exhibit 627, paragraph 4, document 049.0138.0338.0001.
- 151 Brawley Statutory Declaration, exhibit 627, paragraphs 5–6, document 049.0138.0338.0001.
- 152 Brawley Statutory Declaration, exhibit 627, paragraph 7, document 049.0138.0338.0001.
- 153 Cameron, Statutory Declaration, exhibit 622, paragraph 9, document 068.0254.0598.0001; Cameron Statutory Declaration, exhibit 622, annexure JRC-1, document 069.0927.0203.0001; cf Brawley Statutory Declaration, exhibit 627, paragraph 10, document 049.0138.0338.0001; Brawley, T8469/31–38.
- 154 Brawley Statutory Declaration, exhibit 627, paragraph 8, document 049.0138.0338.0001; Brawley Statutory Declaration, exhibit 627, annexure SSB-1, document 049.0138.0338.0009.
- 155 Cameron Statutory Declaration, exhibit 622, paragraph 9, document 069.0927.0203.0001; Brawley Statutory Declaration, exhibit 627, paragraph 13, document 049.0138.0338.0001.
- 156 Cameron Statutory Declaration, exhibit 622, paragraph 9, document 069.0927.0203.0001; Brawley Statutory Declaration, exhibit 627, paragraph 13, document 049.0138.0338.0001; Brawley Statutory Declaration, exhibit 627, annexure SSB-2, document 049.0138.0338.0011.
- 157 Cameron Statutory Declaration, exhibit 622, paragraph 11, document 069.0927.0203.0001; Brawley Statutory Declaration, exhibit 627, paragraph 13, document 049.0138.0338.0001.
- 158 Cameron Statutory Declaration, exhibit 622, paragraph 12, document 069.0927.0203.0001; Brawley Statutory Declaration, exhibit 627, paragraph 13, document 049.0138.0338.0001. Fitzpatrick did not give evidence to the Commission due to ill health.
- 159 Brawley Statutory Declaration, exhibit 627, paragraph 14, document 049.0138.0338.0001.
- 160 Cameron Statutory Declaration, exhibit 622, paragraph 12, document 068.0254.0598.0001.
- 161 Cameron Statutory Declaration, exhibit 622, paragraph 12, document 068.0254.0598.0001; Cameron Statutory Declaration, exhibit 622, annexure JRC-2, document 069.0927.0203.0002.
- 162 Cameron Statutory Declaration, exhibit 622, paragraph 12, document 068.0254.0598.0001.
- 163 Cameron Statutory Declaration, exhibit 622, paragraph 12, document 068.0254.0598.0001.

- ¹⁶⁴ Vickers Statutory Declaration, exhibit 621, paragraph 1, document 024.0905.0729.0001.
- ¹⁶⁵ Vickers Statutory Declaration, exhibit 621, paragraph 3, document 024.0905.0729.0001.
- ¹⁶⁶ Vickers Statutory Declaration, exhibit 621, paragraph 4, document 024.0905.0729.0001.
- ¹⁶⁷ Vickers Statutory Declaration, exhibit 621, paragraph 4, document 024.0905.0729.0001.
- ¹⁶⁸ Cameron Statutory Declaration, exhibit 622, paragraph 13, document 068.0254.0598.0001; Vickers Statutory Declaration, exhibit 621, paragraph 5, document 024.0905.0729.0001.
- ¹⁶⁹ Cameron Statutory Declaration, exhibit 622, paragraph 13, document 068.0254.0598.0001; Vickers Statutory Declaration, exhibit 621, paragraph 7, document 024.0905.0729.0001.
- ¹⁷⁰ Cameron Statutory Declaration, exhibit 622, paragraph 13, document 068.0254.0598.0001.
- ¹⁷¹ Cameron Statutory Declaration, exhibit 622, paragraph 14, document 068.0254.0598.0001; Cameron Statutory Declaration, exhibit 622, annexure JRC-3, document 069.0927.0203.0003; Cameron Statutory Declaration, exhibit 622, annexure JRC-6, document 069.0927.0203.0008.
- ¹⁷² Cameron, Statutory Declaration, exhibit 622, paragraph 14, document 068.0254.0598.0001; Cameron Statutory Declaration, exhibit 622, annexure JRC-3, document 069.0927.0203.0003.
- ¹⁷³ Cameron, Statutory Declaration, exhibit 622, paragraph 17, document 068.0254.0598.0001.
- ¹⁷⁴ Cameron, Statutory Declaration, exhibit 622, paragraph 17, document 068.0254.0598.0001.
- ¹⁷⁵ Cameron, Statutory Declaration, exhibit 622, paragraph 19, document 068.0254.0598.0001; Cameron Statutory Declaration, exhibit 622, annexure JRC-5, document 069.0927.0203.0006; Brawley Statutory Declaration, exhibit 627, paragraph 16, document 049.0138.0338.0001.
- ¹⁷⁶ Cameron, Statutory Declaration, exhibit 622, paragraph 20, document 068.0254.0598.0001.
- ¹⁷⁷ Cameron, Statutory Declaration, exhibit 622, paragraph 23, document 068.0254.0598.0001; Cameron Statutory Declaration, exhibit 622, annexure JRC-4, document 069.0927.0203.0005.
- ¹⁷⁸ Cameron Statutory Declaration, exhibit 622, paragraph 23, document 068.0254.0598.0001; Cameron Statutory Declaration, exhibit 622, annexure JRC-4, document 069.0927.0203.0005.
- ¹⁷⁹ Cameron Statutory Declaration, exhibit 622, paragraph 20, document 068.0254.0598.0001; Cameron, T9957/5-43; cf Brawley Statutory Declaration, exhibit 627, paragraph 14, document 049.0138.0338.0001; French Statement, exhibit 800, paragraphs 10, 12, document 075.0286.0622.0034; French, T12666/1-27.
- ¹⁸⁰ Brawley Statutory Declaration, exhibit 627, paragraphs 14-15, document 049.0138.0338.0001; cf French Statement, exhibit 800, paragraph 10, document 075.0286.0622.0034.
- ¹⁸¹ Cameron Statutory Declaration, exhibit 622, paragraph 22, document 068.0254.0598.0001.
- ¹⁸² Cameron Statutory Declaration, exhibit 622, paragraph 22, document 068.0254.0598.0001; cf French Statement, exhibit 800, paragraphs 10, 15, document 075.0286.0622.0034.
- ¹⁸³ Brawley Statutory Declaration, exhibit 627, paragraph 14, document 049.0138.0338.0001; cf French Statement, exhibit 800, paragraph 10, document 075.0286.0622.0034.
- ¹⁸⁴ Brawley Statutory Declaration, exhibit 627, paragraph 15, document 049.0138.0338.0001.
- ¹⁸⁵ Cameron Statutory Declaration, exhibit 622, paragraph 22, document 068.0254.0598.0001; cf French Statement, exhibit 800, paragraph 15, document 075.0286.0622.0034.
- ¹⁸⁶ Cameron Statutory Declaration, exhibit 622, paragraph 22, document 068.0254.0598.0001; French Statement, exhibit 800, paragraph 15, document 075.0286.0622.0034; French, T12669/32-12670/4.
- ¹⁸⁷ Brawley Statutory Declaration, exhibit 627, paragraph 15, document 049.0138.0338.0001; French, T12670/9-39. French denied stopping work on site.
- ¹⁸⁸ Cameron Statutory Declaration, exhibit 622, paragraph 22, document 068.0254.0598.0001.
- ¹⁸⁹ Cameron Statutory Declaration, exhibit 622, paragraph 25, document 068.0254.0598.0001.
- ¹⁹⁰ Brawley Statutory Declaration, exhibit 627, paragraph 17, document 049.0138.0338.0001.

- ¹⁹¹ Brawley Statutory Declaration, exhibit 627, paragraph 17, document 049.0138.0338.0001; Brawley, T8469/43–8470/10; cf French Statement, exhibit 800, paragraph 12, document 075.0286.0622.0034; French, T12668/22–41. French agreed he asked about other Jedda Steel sites but said he did not do so to find sites to close down.
- ¹⁹² Brawley Statutory Declaration, exhibit 627, paragraph 17, document 049.0138.0338.0001; Brawley, T8469/43–8470/5; French, T12668/22–41.
- ¹⁹³ Russell Statutory Declaration, exhibit 713, paragraph 1, document 025.0307.0019.0001.
- ¹⁹⁴ Russell Statutory Declaration, exhibit 713, paragraphs 1–2, document 025.0307.0019.0001.
- ¹⁹⁵ Russell Statutory Declaration, exhibit 713, paragraphs 3–4, document 025.0307.0019.0001.
- ¹⁹⁶ Russell Statutory Declaration, exhibit 713, paragraph 4, document 025.0307.0019.0001; Russell, T10326/16–17; Russell, T10327/19–21.
- ¹⁹⁷ Russell Statutory Declaration, exhibit 713, paragraph 5, document 025.0307.0019.0001.
- ¹⁹⁸ Russell Statutory Declaration, exhibit 713, paragraph 5, document 025.0307.0019.0001.
- ¹⁹⁹ Russell Statutory Declaration, exhibit 713, paragraph 5, document 025.0307.0019.0001.
- ²⁰⁰ Russell Statutory Declaration, exhibit 713, paragraph 5, document 025.0307.0019.0001; Russell, T10329/34–45; Dalzell Statement, exhibit 787, paragraph 3, document 006.0706.0261.0003.
- ²⁰¹ Russell Statutory Declaration, exhibit 713, paragraph 6, document 025.0307.0019.0001.
- ²⁰² Russell Statutory Declaration, exhibit 713, paragraphs 6–7, document 025.0307.0019.0001; Russell, T10329/34–43.
- ²⁰³ Russell Statutory Declaration, exhibit 713, paragraph 8, document 025.0307.0019.0001; Russell, T10328/5–14; Dalzell Statement, exhibit 787, paragraph 5, document 006.0706.0261.0003.
- ²⁰⁴ Russell Statutory Declaration, exhibit 713, paragraph 8, document 025.0307.0019.0001; Russell, T10328/16–26.
- ²⁰⁵ Russell Statutory Declaration, exhibit 713, paragraph 8, document 025.0307.0019.0001; Russell, T10328/16–26.
- ²⁰⁶ Russell Statutory Declaration, exhibit 713, paragraph 8, document 025.0307.0019.0001; Russell, T10330/32–10331/30.
- ²⁰⁷ Russell Statutory Declaration, exhibit 713, paragraph 8, document 025.0307.0019.0001. This account was disputed by Dalzell, who said in essence that all he did was to form a view, apparently without having spoken to the company’s four workers, that two highly paid employees might be bullying two more junior employees into not wanting an EBA: Dalzell Statement, exhibit 787, paragraph 5, document 006.0706.0261.0003; Dalzell, T10400/33–10401/32. Dalzell’s account is not supported by any evidence and difficult to reconcile with the undisputed evidence of the relationship between Dalzell and the company, and is rejected.
- ²⁰⁸ Russell Statutory Declaration, exhibit 713, paragraph 11, document 025.0307.0019.0001.
- ²⁰⁹ Russell Statutory Declaration, exhibit 713, paragraph 11, document 025.0307.0019.0001.
- ²¹⁰ Russell Statutory Declaration, exhibit 713, paragraph 11, document 025.0307.0019.0001.
- ²¹¹ Russell Statutory Declaration, exhibit 713, paragraph 11, document 025.0307.0019.0001.
- ²¹² Russell Statutory Declaration, exhibit 713, paragraph 12, document 025.0307.0019.0001; cf Dalzell Statement, exhibit 787, paragraph 9, document 006.0706.0261.0003. Dalzell denied threatening to shut down and picket the site because of PanelCraft, but admitted having various conversations with many people about the alleged inappropriate use of pyramid subcontractors on the site. Dalzell did not deny threatening to shut the site down or picket because of his concerns with subcontractors generally, including PanelCraft. Dalzell said he did not recall any conversation about Thermal Insulations. Russell’s account of what occurred is consistent with the undisputed evidence of the relationship between Dalzell and the company and is accepted.
- ²¹³ Russell Statutory Declaration, exhibit 713, paragraph 12, document 025.0307.0019.0001.

- 214 Tabikh Statutory Declaration, exhibit 1571, paragraph 34, document 022.0255.0752.0001.
- 215 Russell Statutory Declaration, exhibit 713, paragraph 15, document 025.0307.0019.0001; Tabikh Statutory Declaration, exhibit 1571, paragraph 4, document 022.0255.0752.0001; Tabikh, T14871/31–35.
- 216 Tabikh Statutory Declaration, exhibit 1571, paragraph 6, document 022.0255.0752.0001.
- 217 Tabikh Statutory Declaration, exhibit 1571, paragraph 8, document 022.0255.0752.0001; Sulsters Statement, exhibit 1216, paragraph 117, document 013.0982.0992.0002.
- 218 Sulsters Statement, exhibit 1216, paragraphs 82, 84, document 013.0982.0992.0002.
- 219 Sulsters Statement, exhibit 1216, paragraphs 88–89, document 013.0982.0992.0002.
- 220 Tabikh Statutory Declaration, exhibit 1571, paragraph 10, document 022.0255.0752.0001.
- 221 Tabikh Statutory Declaration, exhibit 1571, paragraph 1, document 022.0255.0752.0001.
- 222 Tabikh Statutory Declaration, exhibit 1571, paragraph 2, document 022.0255.0752.0001.
- 223 Tabikh Statutory Declaration, exhibit 1571, paragraphs 11–12, document 022.0255.0752.0001.
- 224 Tabikh Statutory Declaration, exhibit 1571, paragraph 12, document 022.0255.0752.0001.
- 225 Russell Statutory Declaration, exhibit 713, paragraph 15, document 025.0307.0019.0001.
- 226 Tabikh Statutory Declaration, exhibit 1571, paragraph 13, document 022.0255.0752.0001.
- 227 Russell Statutory Declaration, exhibit 713, paragraph 15–16, document 025.0307.0019.0001.
- 228 Tabikh Statutory Declaration, exhibit 1571, paragraphs 9, 14, document 022.0255.0752.0001.
- 229 Tabikh Statutory Declaration, exhibit 1571, paragraph 15, document 022.0255.0752.0001.
- 230 Russell Statutory Declaration, exhibit 713, paragraph 19, document 025.0307.0019.0001.
- 231 Russell Statutory Declaration, exhibit 713, paragraph 17, document 025.0307.0019.0001.
- 232 Tabikh, T14857/31–40.
- 233 Tabikh Statutory Declaration, exhibit 1571, paragraph 14, document 022.0255.0752.0001.
- 234 Tabikh, T14864/24–27.
- 235 Russell Statutory Declaration, exhibit 713, paragraph 17, document 025.0307.0019.0001.
- 236 Russell Statutory Declaration, exhibit 713, paragraph 17, document 025.0307.0019.0001; Russell, T10332/25–34; cf Dalzell Statement, exhibit 786, paragraph 11, document 007.0402.0105.0002. Dalzell said that he would not have said such a thing, but otherwise did not deny Russell's evidence in relation to this conversation. On balance, it is more likely than not that Dalzell made the statement attributed to him, having regard to Russell's undisputed evidence that he told Dalzell in the same conversation that union membership was a matter of personal choice: Russell Statutory Declaration, exhibit 713, paragraph 18, document 025.0307.0019.0001.
- 237 Russell Statutory Declaration, exhibit 713, paragraph 18, document 025.0307.0019.0001.
- 238 Russell Statutory Declaration, exhibit 713, paragraph 20, document 025.0307.0019.0001.
- 239 Tabikh Statutory Declaration, exhibit 1571, paragraphs 20–21, document 022.0255.0752.0001.
- 240 Russell Statutory Declaration, exhibit 713, paragraph 20, document 025.0307.0019.0001.
- 241 Russell Statutory Declaration, exhibit 713, paragraphs 20–21, document 025.0307.0019.0001.
- 242 Russell Statutory Declaration, exhibit 713, paragraph 20, document 025.0307.0019.0001.
- 243 Russell Statutory Declaration, exhibit 713, annexure AAR2, document 045.0690.0894.0232.
- 244 Russell Statutory Declaration, exhibit 713, paragraph 22, document 025.0307.0019.0001; Russell Statutory Declaration, exhibit 713, annexure AAR3, document 045.0690.0894.0229; Tabikh Statutory Declaration, exhibit 1571, paragraph 26, document 022.0255.0752.0001.
- 245 Russell Statutory Declaration, exhibit 713, paragraph 22, document 025.0307.0019.0001.
- 246 Russell Statutory Declaration, exhibit 713, paragraph 22, document 025.0307.0019.0001.

- ²⁴⁷ Russell Statutory Declaration, exhibit 713, paragraph 25, document 025.0307.0019.0001; Tabikh Statutory Declaration, exhibit 1571, paragraph 30, document 022.0255.0752.0001; Tabikh, T14868/25–26.
- ²⁴⁸ Russell Statutory Declaration, exhibit 713, paragraphs 24–25, document 025.0307.0019.0001.
- ²⁴⁹ Tabikh, T14868/25–45, Tabikh Statutory Declaration, exhibit 1571, paragraph 32, document 022.0255.0752.0001.
- ²⁵⁰ Facsimile from Tabikh to Wallis 5 May 2001, exhibit 1573, document 045.0690.0894.0227; Tabikh, T14873/6–27.
- ²⁵¹ Russell Statutory Declaration, exhibit 713, paragraph 25, document 025.0307.0019.0001: Russell said his amended work method statement was forwarded on or before 4 May 2001 but this is incorrect: see facsimile from Tabikh to Wallis 5 May 2001 exhibit 1573, document 045.0690.0894.0227; Tabikh, T14873/29–31.
- ²⁵² Russell Statutory Declaration, exhibit 713, paragraph 26, document 025.0307.0019.0001.
- ²⁵³ Tabikh Statutory Declaration, exhibit 1571, annexure TT-1, document 045.0690.0894.0048.
- ²⁵⁴ Tabikh, T14860/41–14861/1.
- ²⁵⁵ Tabikh, T14874/33–38.
- ²⁵⁶ Tabikh, T14875/4–12.
- ²⁵⁷ Tabikh, T14875/35–39.
- ²⁵⁸ Tabikh, T14875/30–32.
- ²⁵⁹ Tabikh, T14859/7–12.
- ²⁶⁰ At Tabikh, T14857–14858, Tabikh conceded he spoke to both Russell and Dalzell that day.
- ²⁶¹ Tabikh, T14874/17–31.
- ²⁶² Campbell Statutory Declaration, exhibit 697, paragraph 1, document 095.0421.0436.0134.
- ²⁶³ Campbell Statutory Declaration, exhibit 697, paragraph 2, document 095.0421.0436.0134.
- ²⁶⁴ Campbell Statutory Declaration, exhibit 697, paragraph 3, document 095.0421.0436.0134.
- ²⁶⁵ Campbell Statutory Declaration, exhibit 697, paragraph 3, document 095.0421.0436.0134.
- ²⁶⁶ Campbell Statutory Declaration, exhibit 697, paragraph 9, document 095.0421.0436.0134; Campbell, T9510/17–35.
- ²⁶⁷ Campbell Statutory Declaration, exhibit 697, paragraph 9, document 095.0421.0436.0134.
- ²⁶⁸ Campbell Statutory Declaration, exhibit 697, paragraph 11, document 095.0421.0436.0134.
- ²⁶⁹ Campbell, T9016/34–43.
- ²⁷⁰ Campbell, T9017/8–10.
- ²⁷¹ Campbell, T9016/33–45.
- ²⁷² Campbell Statutory Declaration, exhibit 697, paragraph 14, document 095.0421.0436.0134; Campbell, T9017/30–45.
- ²⁷³ Campbell Statutory Declaration, exhibit 697, paragraph 12, document 095.0421.0436.0134; Campbell, T9017/30–45; Wales Statement, exhibit 814, paragraph 16, document 075.0286.0622.0044; cf Wales Statement, exhibit 814, paragraph 17, document 075.0286.0622.0044.
- ²⁷⁴ Campbell Statutory Declaration, exhibit 697, paragraph 15, document 095.0421.0436.0134.
- ²⁷⁵ Campbell Statutory Declaration, exhibit 697, paragraph 15, document 095.0421.0436.0134.
- ²⁷⁶ Campbell Statutory Declaration, exhibit 697, paragraph 15, document 095.0421.0436.0134.
- ²⁷⁷ Campbell Statutory Declaration, exhibit 697, paragraph 15, document 095.0421.0436.0134.
- ²⁷⁸ Campbell Statutory Declaration, exhibit 697, paragraph 16, document 095.0421.0436.0134; Campbell, T9018/11–37.
- ²⁷⁹ Campbell Statutory Declaration, exhibit 697, paragraph 17, document 095.0421.0436.0134.

- 280 Campbell Statutory Declaration, exhibit 697, paragraph 16, document 095.0421.0436.0134; Campbell, T9018/11–37.
- 281 Campbell Statutory Declaration, exhibit 697, paragraph 23, document 095.0421.0436.0134.
- 282 Campbell, T9510/44–45.
- 283 Campbell Statutory Declaration, exhibit 697, paragraph 24, document 095.0421.0436.0134.
- 284 Campbell Statutory Declaration, exhibit 697, paragraph 25, document 095.0421.0436.0134.
- 285 Campbell Statutory Declaration, exhibit 697, paragraph 25, document 095.0421.0436.0134; Kesby, T9846/3.
- 286 Campbell Statutory Declaration, exhibit 697, paragraph 25, document 095.0421.0436.0134.
- 287 Campbell Statutory Declaration, exhibit 697, paragraphs 26–28, document 095.0421.0436.0134.
- 288 Campbell Statutory Declaration, exhibit 697, paragraph 26, document 095.0421.0436.0134; Campbell, T9513/6–9516/19.
- 289 Campbell Statutory Declaration, exhibit 697, paragraph 28, document 095.0421.0436.0134.
- 290 Campbell Statutory Declaration, exhibit 697, paragraphs 29–30, document 095.0421.0436.0134; Kesby, T9845/26–44.
- 291 Campbell Statutory Declaration, exhibit 697, paragraphs 29–32, document 095.0421.0436.0134; Kesby, T9845/26–44.
- 292 Campbell Statutory Declaration, exhibit 697, paragraph 29, document 095.0421.0436.0134.
- 293 Campbell Statutory Declaration, exhibit 697, paragraph 29, document 095.0421.0436.0134.
- 294 Campbell Statutory Declaration, exhibit 697, paragraph 31, document 095.0421.0436.0134.
- 295 Campbell Statutory Declaration, exhibit 697, paragraph 31, document 095.0421.0436.0134.
- 296 Campbell Statutory Declaration, exhibit 697, paragraph 33, document 095.0421.0436.0134; Campbell, T9511/26–37; Kesby, T9850/3–7.
- 297 Campbell Statutory Declaration, exhibit 697, paragraph 33, document 095.0421.0436.0134; Campbell, T9511/26–37; Kesby Statement, exhibit 745, paragraph 7, document 030.0237.0231.0002; cf Kesby, T9850/15–9851/21.
- 298 Campbell, T9511/26–37; cf Kesby, T9850/15–9851/21.
- 299 Campbell Statutory Declaration, exhibit 697, paragraph 34, document 095.0421.0436.0134; Campbell, T9516/33–40; Campbell, T9513/1–15.
- 300 Campbell, T9514/3–7; Kesby, T9847/35–45; cf Kesby, T9848/2–11.
- 301 Campbell, T9019/22–24; T9512/22–30; T9516/4–10; T9518/19–23.
- 302 Campbell Statutory Declaration, exhibit 697, paragraph 36, document 095.0421.0436.0134; cf Kesby Statement, exhibit 745, paragraphs 12–13, document 030.0237.0231.0002.
- 303 Campbell Statutory Declaration, exhibit 697, paragraph 36, document 095.0421.0436.0134; Campbell, T9518/10–14; cf Kesby Statement, exhibit 745, paragraphs 12–13, document 030.0237.0231.0002.
- 304 Campbell Statutory Declaration, exhibit 697, paragraph 46, document 095.0421.0436.0134; CFMEU/Campbelltown Cool Room EBA signed by Campbell on 23 April 1999, exhibit 746, document 070.0088.0721.0001; cf Cunningham Statement, exhibit 790, paragraph 4, document 014.0352.0756.0036; Kesby Statement, exhibit 745, paragraph 18, document 030.0237.0231.0002; Kesby said the EBA was signed on 25 May 1999.
- 305 Campbell Statutory Declaration, exhibit 697, paragraphs 50–55, document 095.0421.0436.0134.
- 306 Campbell Statutory Declaration, exhibit 697, paragraphs 41, 42, 53, 54, document 095.0421.0436.0134; cf Kesby Statement, exhibit 745, paragraph 24, document 030.0237.0231.0002.

- ³⁰⁷ Campbell Statutory Declaration, exhibit 697, paragraphs 41, 42, 53, 54, document 095.0421.0436.0134; Kesby, T9856/37–45: Kesby said the terms of the EBA were negotiable because he was prepared to remove the clause referring to making contributions to the Drug and Alcohol Foundation with the balance of the EBA being agreed to by the employer. The evidence does not support a conclusion that the terms of the EBA were negotiable as the clause that he was prepared to delete was inconsequential.
- ³⁰⁸ Campbell Statutory Declaration, exhibit 697, paragraph 55, document 095.0421.0436.0134.
- ³⁰⁹ Campbell Statutory Declaration, exhibit 697, paragraph 55, document 095.0421.0436.0134.
- ³¹⁰ Campbell Statutory Declaration, exhibit 697, paragraph 55, document 095.0421.0436.0134.
- ³¹¹ Campbell Statutory Declaration, exhibit 697, paragraphs 49–50, document 095.0421.0436.0134; Campbell, T9020/7–11; Kesby Statement, exhibit 745, paragraphs 19–20, document 030.0237.0231.0002: Kesby gave evidence most employees were already union members and that Campbell and the employees agreed to back pay union dues.
- ³¹² Campbell Statutory Declaration, exhibit 697, paragraph 50, document 095.0421.0436.0134; Campbell, T9521/19–20.
- ³¹³ Campbell Statutory Declaration, exhibit 697, paragraph 52, document 095.0421.0436.0134; Campbell, T9019/26–36; Campbell, T9521/35–9522/4; cf Kesby Statement, exhibit 745, paragraphs 23, document 030.0237.0231.0002; Kesby, T9856/28–9858/4: Kesby gave evidence that Cunningham requested the \$250 for the CFMEU.
- ³¹⁴ Campbell Statutory Declaration, exhibit 697, paragraph 57, document 095.0421.0436.0134; cf Kesby Statement, exhibit 745, paragraph 26, document 030.0237.0231.0002; Kesby, T9853/19–9855/21.

13 Particular Issues

Workplace deaths and injuries

Introduction

- 1 On 6 June 2002 the Construction, Forestry, Mining and Energy Union (CFMEU) arranged a rally or demonstration held outside the premises in which the Sydney hearings were being held, attended by, it was said, 100 injured workers and safety delegates. Also present were Mrs Robyn McGoldrick and Mr Patrick Portlock. I made the following statement:

I must say that I welcome the opportunity to speak directly to those who have suffered workplace-related injuries and their families and to the building unions and their occupational health and safety delegates.

I hope that you have all been accurately informed about the way in which this Commission is going to address those matters of occupational health and safety, and what I propose to do is to read to you what I said on 6 May, just to make sure that what you have been told is entirely accurate.¹

- 2 I then read out what I had said on 6 May 2002.² I then made the following comments:

I hope that those who are here have previously been told that I said all that.

The message that I want to give is a simple one. I can do nothing about the past. I can try to do something about the future. I am trying to determine how this industry can be made more safe. That is what the workers want, it's what the unions want, it's what the employers want, it's what the governments want, and it's what I want.

There is little point in looking at the past, otherwise than to learn from it. But where in the past there has been either a death or an injury that is universally the subject of reports, there is an inquiry which considers reports. If necessary, there is an inquest, there are prosecutions, there are damages claims, and all of the material relating to the past is recorded, written down, and available to this Commission. I have indicated in what I previously said there is a statistical compendium which sets out much of this material.

I believe that I understand the trauma and the consequences that flow from workplace accidents. It may not be known generally that, when I was appointed to the Supreme Court, I was appointed as a common law judge, and I sat, for some months, hearing

industrial accident cases. Later in my career, the Supreme Court had special sittings, for some months, on a number of occasions, and I sat in those month after month.

Most of what I heard were industrial accident cases. As a judge, I heard from injured workers time and time and time again. I heard from their widows, I heard from their families. I saw the injuries they suffered and I saw the trauma which was inflicted by those injuries. I know of the pain and the consequences of these things.

In the Court of Appeal, I sat on innumerable appeals in relation to damages claims for workplace injuries. I read the medical reports. I do believe I understand the trauma which people suffer in consequence of these. That may not have been understood. But if it is thought that the very significant experience I have had of listening to injured workers and their families will be improved by my hearing from a few more, I'm happy to do that; and if those people are here today, as apparently they are, then I will set aside time at 2 o'clock this afternoon and we will hear from them. But I want it to be firmly understood that it is a focus of this Commission to try and improve workplace health and safety.

Any suggestion, as I have seen in some documents published, that this Commission is not regarding seriously the aspect of occupational health and safety in the building and construction industry is without foundation and quite wrong.³

- 3 I then invited two persons to give evidence of their personal experience of workplace accidents in the building and construction industry in New South Wales.

Mrs Robyn McGoldrick

- 4 Mrs Robyn McGoldrick's son, Dean McGoldrick (McGoldrick), came to Sydney from Tamworth looking for work in early 2000. He had no formal training apart from on the job experience at a truss factory in Tamworth.⁴ He found work on a building site in George Street, Sydney, working for Metal Gutter Fascia Services Pty Ltd trading as Advanced Roofing (Advanced Roofing).⁵ McGoldrick was working on a roof with three other men. He was carrying a roofing sheet across a roof when he fell and suffered serious head injuries. He had removed his safety harness because of obstructions and there was no scaffold around the roof. McGoldrick was rushed to hospital but died in the operating theatre.⁶ The WorkCover Authority of New South Wales (WorkCover NSW) found Advanced Roofing had failed to provide and maintain safe systems or provide adequate instructions, training or supervision, and that Mr John Peter Poleviak, a company director, had failed to use all due diligence to prevent the accident from occurring.⁷ Prosecutions were recommended.⁸ There was no inquest.⁹ Mrs McGoldrick said she had asked the employer before the accident whether her son would have a harness and was told that he would.¹⁰ She said that, after the accident, the employer told her that he had instructed the foreman to put a rope around the roof, a precaution which could not have prevented the accident.¹¹ The employer also told Mrs McGoldrick that he had been fined \$2000 as a result of a safety breach not long before the accident, but under a different company name.¹²

Mr Patrick Portlock

- 5 Mr Patrick Portlock is a crane driver who has worked in the building and construction industry for more than 35 years. In January 2001 he was involved in an accident on the M5 project near Kiama.¹³ His leg was amputated below the knee. Portlock expressed strong concerns about occupational health and safety in the building and construction industry. He believes supervisors and foremen often do not have sufficient experience in the areas they are responsible for.¹⁴ He does not believe current workplace safety procedures, such as safety committees and toolbox meetings, are adequate. Portlock suggested there ought to be better supervision of qualified people, more training before people are certified, and better communication between workers and management with regard to occupational health and safety.¹⁵ Portlock is also concerned about long hours of work affecting safety in the workplace.¹⁶

Security of payments issues

Introduction

- 6 In my statement made on 6 May 2002 I indicated that the issue of security of payment for subcontractors was another matter of vital importance to the building and construction industry.¹⁷ I indicated the Commission was reviewing the valuable work done in this area by various State Governments, and would seek to draw together that material, with a view to advancing for consideration a common structure which exhibits best practice. The Commission issued Discussion Paper Twelve, 'Security of Payments in the Building and Construction Industry', and sought responses.
- 7 In addition to these matters, on 19 June 2002 I heard evidence from two subcontractors concerning security of payment issues.

Mr Sam D'Amico

- 8 Mr Sam D'Amico is an electrician who owns and runs Safeway Electrical Pty Ltd (Safeway Electrical), a small electrical subcontracting company based in Kiama on the New South Wales south coast.¹⁸ The company has been trading for 22 years.¹⁹ D'Amico said that, over time, he has noticed higher levels of uncertainty in the building and construction industry, with progress payments rarely being met by head contractors, who use subcontractors as a form of quasi-credit.²⁰
- 9 In May 2000 Safeway Electrical successfully tendered for work on a Corpcom Constructions Pty Ltd (Corpcom) site at Warwick Farm.²¹ Corpcom consistently failed to pay all of Safeway Electrical's invoices in full or on time.²² In the course of the project, the amount owing on Safeway Electrical's invoices grew to \$149 751.²³
- 10 As the amount owing by Corpcom grew, Safeway Electrical continued to work, with a view to maintaining goodwill in the hope of eventually being paid.²⁴ At the same time, Safeway Electrical had to continue paying its workers, suppliers and subcontractors.²⁵ Mr Alexander Walton, Managing Director of Corpcom Constructions Pty Ltd, regularly promised payment and that the money was there, provided Safeway Electrical worked hard and finished the job.²⁶

- 11 On 21 May 2001 Safeway Electrical agreed to reduce the contract price by \$10 000 in return for a promise of fortnightly payments in future. Those payments never eventuated.²⁷
- 12 D'Amico was forced to organise redraws on the family home of \$25 000 in August 2001 and \$75 000 in March 2002 to finance Safeway Electrical's cashflow. Eventually, in February 2002, Safeway Electrical terminated its contract with Corpcom, and is still owed about \$149 000.²⁸
- 13 Corpcom owes amounts to other subcontractors on the same site.²⁹
- 14 Safeway Electrical has had to put off a worker because of the lack of cash-flow and outstanding payment claims.³⁰
- 15 D'Amico said he had been advised that, because of 'technical deficiencies', the New South Wales security of payments legislation will not assist Safeway Electrical in recovering moneys owing to it. He said there was an urgent need for greater regulation and government control to protect small subcontractors.³¹

Gordon Henderson

- 16 Mr Gordon Henderson is the Sole Director of Everwilling Cranes Pty Ltd (Everwilling Cranes), a company incorporated in about 1997.³² The company has an annual turnover of about \$6–7 million, and employs about 25 people with ten working cranes.³³
- 17 In 1999 Everwilling Cranes was engaged by Bona Builders Pty Ltd (Bona Builders) on a development in Maroubra. Bona Builders went into liquidation about 90 per cent of the way through the project, owing Everwilling Cranes approximately \$100 000–\$150 000. Other subcontractors were also owed substantial sums.³⁴ Henderson said that immediately after Bona went into liquidation, representatives of the developer selected the trades they needed to complete the job and offered payment to them, while denying liability to all other subcontractors.³⁵
- 18 Henderson contacted the CFMEU with the reluctant agreement of other subcontractors. A CFMEU organiser attended the site and threatened to put a ban on the site. Henderson said that after a series of meetings, all subcontractors were paid 75 per cent of the monies owing to them, and 100 per cent of all completion work.³⁶
- 19 Henderson gave similar evidence in relation to a development in Cabarita.³⁷
- 20 Henderson said he has found the law to be of little or no assistance in seeking recovery of moneys owing to his company, although he gave no evidence of any attempts to use the legal system in either of the specific examples he relied upon.³⁸ The substance of his evidence was that he has found the imposition of bans by the CFMEU to be the most effective way of recovering moneys owing to his company.³⁹

WorkCover

- 21 Mr Corrado (Rick) Rech is the State Co-ordinator, Asbestos and Demolition with the WorkCover Authority of New South Wales.⁴⁰ He is in charge of the Response Arm of the Construction Team of WorkCover NSW inspectors.⁴¹

- 22 There are 45 inspectors in the Construction Team in the Sydney metropolitan area.⁴² Those inspectors work in three arms: an investigation arm, an intervention arm and a response arm.⁴³
- 23 WorkCover NSW receives between about 2000 and 2500 complaints each year concerning the building and construction industry.⁴⁴ Those complaints are dealt with by the response arm, which comprises 12 inspectors.⁴⁵ Rech told the Commission that WorkCover NSW's resources are such that it does not have the luxury of doing unannounced compliance spot checks on building and construction sites.⁴⁶ Rech said that most complaints received by WorkCover NSW are from members of the general public, with perhaps 5 per cent coming from union sources.⁴⁷
- 24 Rech told the Commission that he was not aware of any statutory licence for the issue of Building Trades Group of Unions Safety Rectification Notices by union organisers.⁴⁸ He said that when WorkCover NSW receives copies of such notices, it enters the nature of the complaint onto its system, with most complaints being followed up by a phone call or site visit.⁴⁹ WorkCover NSW inspectors will typically ring the union official and the company concerned to see if the issues raised in the notice have been resolved.⁵⁰

Persons involved

Name	Position/Title
D'Amico, Sam	Owner, Safeway Electrical Pty Ltd.
Henderson, Gordon	Director, Everwilling Cranes Pty Ltd.
McGoldrick, Dean (deceased)	Trainee Roofer.
McGoldrick, Robyn	Mother of Dean McGoldrick (deceased).
Poleviak, John Peter	Director, Metal Gutter Fascia Services Pty Ltd, trading as Advanced Roofing.
Portlock, Patrick	Crane Driver.
Rech, Corrado (Rick)	State Co-ordinator, Asbestos and Demolition, WorkCover Authority of New South Wales.
Walton, Alexander	Managing Director, Corpcom Constructions Pty Ltd.

Notes to Particular Issues

- 1 Commissioner, T7754/45-7755/1-8.
- 2 Commissioner, T6334/17-T6335/42.
- 3 Commissioner, T7760/24-7761/22.
- 4 McGoldrick, T7845/39-7846/26.
- 5 Tender Bundle of Documents re: Death of D. McGoldrick, exhibit 597, document 001.0228.0760.0001 at 0002.
- 6 McGoldrick, T7847/5-23, Tender Bundle of Documents re: Death of D. McGoldrick, exhibit 597, document 001.0228.0760.0001 at 0003.
- 7 Tender Bundle of Documents re: Death of D. McGoldrick, exhibit 597, document 001.0228.0760.0012-0013.
- 8 Tender Bundle of Documents re: Death of D. McGoldrick, exhibit 597, document 001.0228.0760.0001 at 0010.
- 9 McGoldrick, T7847/40-44.
- 10 McGoldrick, T7848/6-7.
- 11 McGoldrick, T7848/8-10.
- 12 McGoldrick, T7848/10-13.
- 13 Portlock, T7849/10-26.
- 14 Portlock, T7849/11-44.
- 15 Portlock, T7850/5-7851/21.
- 16 Portlock, T7852/31-7853/13.
- 17 Commissioner, T6335/44-6336/17.
- 18 D'Amico Statement, exhibit 653, paragraphs 1, 8, document 069.0273.0669.0001.
- 19 D'Amico Statement, exhibit 653, paragraph 2, document 069.0273.0669.0001.
- 20 D'Amico Statement, exhibit 653, paragraph 2, document 069.0273.0669.0001.
- 21 D'Amico Statement, exhibit 653, paragraphs 3, 5, document 069.0273.0669.0001.
- 22 D'Amico Statement, exhibit 653, paragraph 6, document 069.0273.0669.0001.
- 23 D'Amico Statement, exhibit 653, paragraph 8, document 069.0273.0669.0001.
- 24 D'Amico Statement, exhibit 653, paragraph 8, document 069.0273.0669.0001.
- 25 D'Amico Statement, exhibit 653, paragraph 9, document 069.0273.0669.0001.
- 26 D'Amico Statement, exhibit 653, paragraph 10, document 069.0273.0669.0001.
- 27 D'Amico Statement, exhibit 653, paragraph 11, document 069.0273.0669.0001.
- 28 D'Amico Statement, exhibit 653, paragraph 12, document 069.0273.0669.0001.
- 29 D'Amico Statement, exhibit 653, paragraph 14, document 069.0273.0669.0001.
- 30 D'Amico Statement, exhibit 653, paragraph 12, document 069.0273.0669.0001.
- 31 D'Amico Statement, exhibit 653, paragraph 18, document 069.0273.0669.0001.
- 32 Henderson Statement, exhibit 640A, paragraphs 1, 8, document 074.0870.0564.0001.
- 33 Henderson Statement, exhibit 640A, paragraph 8, document 074.0870.0564.0001.
- 34 Henderson Statement, exhibit 640A, paragraph 10, document 074.0870.0564.0001.
- 35 Henderson Statement, exhibit 640A, paragraph 11, document 074.0870.0564.0001.
- 36 Henderson Statement, exhibit 640A, paragraph 12, document 074.0870.0564.0001.
- 37 Henderson Statement, exhibit 640A, paragraphs 13-16, document 074.0870.0564.0001.

- ³⁸ Henderson Statement, exhibit 640A, paragraph 19, document 074.0870.0564.0001.
- ³⁹ Henderson, T8642–8644.
- ⁴⁰ Rech Statutory Declaration, exhibit 818, paragraph 2, document 041.0982.0087.0002.
- ⁴¹ Rech Statutory Declaration, exhibit 818, paragraph 2, document 041.0982.0087.0002.
- ⁴² Rech, T12747/34–37.
- ⁴³ Rech, T12748/5–8.
- ⁴⁴ Rech, T12748/1–3.
- ⁴⁵ Rech, T12748/8–9, T12748/21–24.
- ⁴⁶ Rech, T12749/13–15.
- ⁴⁷ Rech, T12749/37–39.
- ⁴⁸ Rech, T12750/21–22.
- ⁴⁹ Rech, T12751/12–26.
- ⁵⁰ Rech, T12751/24–33.

14 Payments – Angel Place

Overview

- 1 In late 1997 Leighton Contractors Pty Ltd (Leightons) was engaged to build a new recital hall and a 35 storey office tower on the corner of Angel Place and Pitt Street, Sydney.¹ AMP was the client. The project manager and consultant was Bovis Lend Lease Pty Ltd (Bovis). The project was worth about \$200 million. Building began in 1997 and concluded in 2001.²
- 2 The Site Supervisor for Leighton Contractors Pty Ltd was Mr Joe Valdezate and the Project Manager was Mr Gerald Lewis.³ The elected Construction, Forestry, Mining and Energy Union site delegate was Mr Martin Warner, an employee of Leighton Contractors Pty Ltd.⁴ Warner was also a member of the Committee of Management from 1993 until August 2000 and a trustee of the Construction, Forestry, Mining and Energy Union (CFMEU), Construction and General Division, New South Wales Divisional Branch.⁵ Mr Craig Bates was the Branch Assistant Secretary of the Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch and was friendly with Warner.⁶ Bates had authority over CFMEU organisers on Angel Place and visited it from time to time.⁷ If another organiser tried to inspect the site, Warner would telephone Bates, who would call the organiser and tell him to leave the site.⁸ Bates parked his car at the site almost every day.⁹ Bates also had the sole responsibility in New South Wales for signing Enterprise Bargaining Agreements (EBAs) on behalf of the CFMEU at this time.¹⁰
- 3 From late 1998 Bates and Warner approached various subcontractors on the Angel Place site and asked them to make payments in return for industrial harmony and further work.¹¹ Warner would suggest that the subcontractors make out a cheque to one of two companies operated by Mr Rees Ginns, Director, Proactive Consultants Pty Ltd (Proactive Consultants) and former Director, Access Australia Rigging and Scaffolding Pty Ltd (Access Australia Rigging and Scaffolding). The subcontractor would receive an invoice, which would lend a semblance of legitimacy to the payments.¹²
- 4 When Warner received cheques from subcontractors, he handed them to Ginns, who banked them.¹³ Ginns later withdrew the moneys in cash and paid them back, less ten per cent, to Warner or Bates.¹⁴ For Ginns' part in the scheme, he received a ten per cent commission on the cheques banked and cashed.¹⁵ The arrangement between Ginns on the one hand and Bates and Warner on the other was that Ginns would prepare on his computer a quotation and invoice that contained a description that bore some relation to a job on which the subcontractor was working. That description was, however, entirely fictitious.¹⁶

Proactive Consultants Pty Ltd and Access Australia Rigging & Scaffolding Pty Ltd

- 5 Ginns is a scaffolder by trade.¹⁷ He has been in the scaffolding industry for approximately 14 years.¹⁸ Ginns' first scaffolding position was with Rocom International Pty Ltd (Rocom International), whose Managing Director was Mr Robin Knight.¹⁹ He obtained this job through Mr Ron Stowers, Company Director of Lineform Pty Ltd (Lineform) and a scaffolder, a long standing friend.²⁰ In 1993 Ginns became a director of a newly incorporated company, Access Australia Rigging and Scaffolding, a company with which Knight was also involved. This company provided labour hire to Rocom International, but was also used to launder cash by the generation of false invoices for labour or hire of equipment.²¹ Access Australia Rigging and Scaffolding ceased trading in 1997 after problems with the Australian Taxation Office.²²
- 6 In July 1998 Ginns formed Proactive Consultants.²³ Although Ginns intended to use this company to subcontract labour to Rocom International, its main business was the generation of false documentation, namely quotations and invoices.²⁴
- 7 In 1999 Ginns, Stowers and another partner, Mr Tony Vartianen, set up MRT Corporation Pty Ltd (MRT Corporation).²⁵ Stowers withdrew from the company before it started trading.²⁶
- 8 Ginns met Warner when Warner was the Leighton Contractors Pty Ltd's union site delegate at the Star City Casino site.²⁷ Ginns worked for Rocom International at the time.²⁸ Ginns first met Bates when Ginns worked for Rocom, but Warner later reintroduced them.²⁹
- 9 In early 1999 Warner approached Ginns at the Angel Place site. He asked him whether he knew of someone who could assist him by cashing 'donations' that he was receiving from some subcontracting companies.³⁰ About a week later, Ginns met with Warner again in the Angel Place union site office.³¹ Bates was present at this meeting.³² Warner again asked Ginns if he knew anyone who could assist by cashing cheques.³³ Ginns told them he could help them out; the cheques would need to be made payable to one of his companies, Access Australia Rigging and Scaffolding or Proactive Consultants.³⁴ Ginns said a false quotation and invoice could be generated for the transaction.³⁵ At some point Bates said, 'Well in return you know, we will make sure that we'll put in a favourable word to the head contractors and no union organisers will come on your sites.'³⁶ Bates, Warner and Ginns struck an agreement that Ginns would get ten per cent of the amount of the cheque.³⁷ The balance would be paid in cash to Warner or Bates.³⁸
- 10 About March 1999 Bates handed Ginns a cheque for less than \$10 000.³⁹ Ginns could not remember the name of the subcontractor who had provided the cheque.⁴⁰ The cheque amounts progressively increased.⁴¹ Ginns deposited cheques from the following subcontractors: Hi-Lo Cleaning and Maintenance Pty Ltd (Hi-Lo), Australia Colour Enterprises Pty Ltd (ACE), Bricon Constructions Pty Ltd (Bricon Constructions), Brighton Ceilings Pty Ltd (Brighton Ceilings), Tabak Cement Rendering Pty Ltd (Tabak Cement Rendering), Lineform Scaffolding and Rigging and Deemah Marble & Granite Pty Ltd (Deemah Marble & Granite).⁴²
- 11 Save for Mr Peter Falkowski, All Projects Manager of Australia Colour Enterprises Pty Ltd and Stowers, Ginns never met or had contact with anyone from any of those subcontractors.⁴³

- 12 Ginns' bank account was at the Mona Vale branch of the Colonial Bank, but he also used the Crows Nest branch of the bank.⁴⁴ Each time Warner or Bates had a cheque to cash they would arrange for Ginns to meet one or both of them to collect it.⁴⁵ Ginns would ask them how they would like the quotation filled out: what site and what type of quote.⁴⁶ Bates and Warner told Ginns they would ask the subcontractor what job they were on so as to cover their paperwork.⁴⁷
- 13 Ginns' initial impression from Bates and Warner was that he would be asked to cash cheques only occasionally but, as things developed, the scheme 'mushroomed'.⁴⁸ Bates and Warner began to give Ginns more and more cheques.⁴⁹
- 14 When Ginns knew the bank had cleared a cheque, he would contact Bates or Warner and say he was going to the bank to collect the cash.⁵⁰ When Ginns called Bates or Warner, he would be told where to take the cash.⁵¹ Ginns would collect the cash, less ten per cent, and deliver it to Bates or Warner.⁵² On one occasion, Bates waited for Ginns at the Crows Nest branch of the bank.⁵³ Warner also met Ginns at the bank on several occasions.⁵⁴ On another occasion Warner picked up Ginns and drove him to the bank at Crows Nest, dropped him off, picked him up after the cash withdrawal had been made, and then dropped him off.⁵⁵
- 15 On one occasion when Ginns gave cash to Warner, at the union site office at Angel Place, Warner put the cash in a side drawer in his office desk.⁵⁶ Ginns observed that the drawer contained a large amount of cash.⁵⁷ Ginns often saw Bates and Warner put a roll of cash into their socks or jackets.⁵⁸
- 16 One particular cheque stuck in Ginns' mind, namely a cheque from Brighton Ceilings for around \$44 000.⁵⁹ Bates handed Ginns this cheque and other Brighton Ceilings' cheques.⁶⁰ One other cheque was for \$19 000.⁶¹ No invoices were generated for Brighton Ceilings or for Lineform.⁶²
- 17 On one occasion after one of these cheques was cleared and Ginns had made a cash cheque withdrawal, he met Bates and gave him the cash.⁶³ Bates told Ginns not to tell Warner about that transaction.⁶⁴
- 18 On one occasion in May 2000 Ginns made out a cheque to Warner from Proactive Consultants' bank account.⁶⁵ Ginns said he could not recall what this was for.⁶⁶
- 19 The total amount of money passing through the bank accounts of Access Australia Rigging and Scaffolding and Proactive Consultants that was distributed to Bates and Warner between March 1999 and June 2000 was approximately \$460 000.⁶⁷
- 20 Ginns knew from the outset that what he was doing was illegal and had no intention of keeping any evidence of the sham.⁶⁸ He deliberately kept no records of bank statements, cheque butts or copies of quotations.⁶⁹ Neither Bates nor Warner ever threatened Ginns, but there were occasions when Warner and Bates told him that if anyone 'screwed with them, he would be sorted out'.⁷⁰
- 21 On Monday 15 April 2002 Warner telephoned Stowers.⁷¹ Warner asked Stowers if he had seen the *Sydney Morning Herald* that day, as there was an article on Proactive Consultants and Rees Ginns in connection with Angel Place and the Royal Commission.⁷² They agreed to meet to discuss the issue.⁷³ Stowers telephoned Ginns and told him that Warner wanted to meet

and discuss the article with them.⁷⁴ Stowers and Ginns attended the meeting with Warner at Cronulla on 24 April 2002.⁷⁵ They discussed various matters including the generation of the false invoices by Proactive Consultants.⁷⁶ Warner told them that the fact that the invoices were not legitimate could not be proven.⁷⁷ Warner told them that despite all the deals done through Proactive Consultants, he only made about \$100 000; he was struggling financially.⁷⁸ Warner said that Bates made the real money.⁷⁹ Warner told Ginns and Stowers that if everyone stood firm and said nothing, everything should be alright; people should not be 'dobbers'.⁸⁰ After the meeting, Stowers and Ginns went back to Warner's shop with him and while Warner was dealing with a customer, the telephone rang.⁸¹ Stowers answered the phone; the caller was Bates, who suggested that they should all meet.⁸² After the call, Stowers told Ginns and Warner about it. No meeting with Bates took place.⁸³

- 22 Warner left the employment of Leightons in August 2000.⁸⁴ Bates was the Branch Assistant Secretary until September 2000.⁸⁵ In each case, allegations of corruption had been raised.⁸⁶
- 23 Ginns obtained an EBA from Bates for MRT Corporation in March 1999.⁸⁷ The EBA cost the company \$5000 in cash.⁸⁸ Bates asked for the cash, which Ginns borrowed from Stowers.⁸⁹ Ginns, who paid the cash to Bates, did not receive a receipt.⁹⁰ MRT Corporation then paid a fee of \$350 to register the EBA with the Industrial Relations Commission.⁹¹
- 24 Bates assisted MRT Corporation in securing the scaffolding contract for the Birkenhead Point project.⁹² Ginns paid Bates the sum of \$15 000 in cash for his assistance.⁹³ He paid the money to Bates in Warner's office at Angel Place.⁹⁴ Bates had assisted by telling him what the budget was for the job and so to tender accordingly.⁹⁵ Ginns borrowed the money to pay Bates from Stowers.⁹⁶ Ginns regarded this as extortion but did not tell anyone about it.⁹⁷
- 25 Bates and Warner also put pressure on Ginns, his partner Vartianen and their company for payments for other jobs, saying they wanted cash up front.⁹⁸ For example, Bates and Warner demanded money from MRT Corporation after it tendered on a job for Boulderstone Hornibrook Pty Ltd (Boulderstone) at the Republic Apartments site in Surry Hills.⁹⁹ When the tender was submitted, Boulderstone told Ginns that MRT Corporation was \$50 000 over budget.¹⁰⁰ Ginns told Warner that they may not get the job, and Warner said 'if you give us \$15 000 or \$25 000 now, we can get you over the line'.¹⁰¹ Vartianen was angry about this and said if the payment was made to Warner there was no guarantee that Warner could get MRT Corporation the job.¹⁰²
- 26 Warner contacted Ginns and suggested he tender for the Hoyts Cinema project for Multiplex Constructions (NSW) Pty Ltd (Multiplex NSW).¹⁰³ Ginns submitted the tender and won the job.¹⁰⁴ Warner then told Ginns that Mr Ian MacKay, safety officer for Grocon (NSW) Pty Ltd (Grocon NSW), wanted \$5000 for getting Ginns the job.¹⁰⁵ MacKay denied he sought any money from any person with regard to contract tenders.¹⁰⁶ MRT Corporation did not pay any money to MacKay.¹⁰⁷

Lineform Pty Ltd

- 27 Stowers is a director of Lineform, which erects and dismantles scaffolding.¹⁰⁸ Most of Lineform's work is in the commercial area in the Sydney CBD.¹⁰⁹ The company employs 36 scaffolders and casuals, and a total of 41 or 42 workers.¹¹⁰ The company also employs

riggers.¹¹¹ All of Lineform's employees are members of the CFMEU.¹¹² Stowers pays the union fees up front for his employees and later deducts them fortnightly from their pay, in order to keep peace with the union.¹¹³

- 28 In November 1998 Lineform made an EBA with the CFMEU.¹¹⁴ The company made the EBA through Bates and Warner.¹¹⁵
- 29 In November 1999 Stowers negotiated another EBA with the CFMEU.¹¹⁶ Again this was done through Bates and Warner.¹¹⁷ When Stowers was negotiating this EBA, Bates told him that it would cost \$15 000, but for friends, \$7000.¹¹⁸ Bates said this to Stowers in the presence of Warner.¹¹⁹ Stowers assumed (incorrectly as it turned out) this money was going to the union.¹²⁰ In the following weeks, Warner telephoned Stowers and asked when the money would be paid.¹²¹
- 30 On 6 December 1999 Stowers made a payment by company cheque to Proactive Consultants for \$16 550.¹²² On 17 December 1999 Stowers made out a second cheque to Proactive Consultants for \$25 200.¹²³ Stowers received cash back from Proactive Consultants and gave Bates and Warner \$7000, handing it to them in a coffee shop near Angel Place.¹²⁴ Stowers and Ginns had known one another for some time.¹²⁵ Unlike the transactions involving other subcontractors, Ginns did not take his ten per cent 'cut' from Stowers' payments.¹²⁶
- 31 On 22 December 1999 the Australian Industrial Relations Commission certified the EBA.¹²⁷
- 32 While negotiating the EBA, the union requested Lineform to undergo a wages audit.¹²⁸ Ms Rosemary Saridakis from Construction Accreditation Services Pty Ltd (CAS) conducted the audit.¹²⁹ The union requested these audits on a regular basis.¹³⁰ In the end, Stowers decided to have CAS carry out wage audits at least once every quarter to keep the union off his back.¹³¹ The company paid around \$800 for each audit.¹³²
- 33 About August 2000 Lineform employed a casual employee, Saleh Salum, to whom Stowers paid cash.¹³³ Salum had worked for the company for three to four days at a time over a period of a few weeks.¹³⁴ One day he walked into a ladder and required two stitches in his head.¹³⁵ This incident was not reported to the WorkCover Authority of NSW.¹³⁶ Salum had some time off work, and when he rang up for more work, Stowers told him that there was none available.¹³⁷ Salum then approached the union.¹³⁸
- 34 As a result, the CFMEU asked Stowers to attend a meeting at its Wentworth Street office.¹³⁹ At the meeting were Mr Andrew Ferguson, Branch Secretary of the Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch, Mr John McGahan, organiser for the Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch, and other persons from the CFMEU's legal and wage claims departments.¹⁴⁰ Stowers admitted that he had been paying cash to his subcontractors who had their own Australian Business Numbers (ABNs).¹⁴¹ The upshot of the meeting was that the CFMEU said it was necessary that an audit be conducted on Lineform.¹⁴² Further, Stowers had to pay the employee six months' wages and the claim had to be paid within 24 hours.¹⁴³ Ferguson did not enlighten Stowers as to why the wage claim was calculated as six months' wages.¹⁴⁴ He also had to pay the employee six months' Australian Construction Industry Redundancy Trust (ACIRT), six months' Construction &

Building Unions Superannuation Fund (Cbus) and six months' Coverforce Top-Up Accident Scheme (CTAS) contributions, because Stowers was paying the employee cash.¹⁴⁵ In total the episode cost the company \$28 000, and no audit took place.¹⁴⁶ Stowers considered the amounts payable to be a penalty.¹⁴⁷ McGahan said he considered that it was the legitimate settlement of a wage claim through negotiation.¹⁴⁸

- 35 During the second part of this meeting, Ferguson asked Stowers if he would donate some labour for a festival the Aboriginal Land Council was staging during the Olympics.¹⁴⁹ Ferguson told Stowers to build a stage for the Aboriginal Land Council at Redfern Oval.¹⁵⁰ Stowers agreed to build the stage on the understanding that he could put Lineform promotional material on the stage.¹⁵¹ Stowers felt he had no option to refuse.¹⁵² Building the stage cost the company approximately \$18 000.¹⁵³ Stowers thought that had he refused it would not have helped his cause in securing work.¹⁵⁴ In the end, the CFMEU told Lineform that it could not put its promotional material on the stage.¹⁵⁵
- 36 Lineform had failed to pay its workers before the Easter weekend in 2002.¹⁵⁶ The wages had been deducted from Lineform's account on the Wednesday before Easter, but due to a bank error, the wages had not been deposited into some of the workers' accounts.¹⁵⁷ Around 20 workers were affected.¹⁵⁸ Easter Tuesday was a Rostered Day Off but Stowers found out about the issue on Tuesday morning, when he received a call from the office saying that the workers were enquiring about their pay.¹⁵⁹ Stowers sorted the matter out and the bank transfer went through on the Wednesday morning.¹⁶⁰
- 37 The next day, McGahan and Mr Vince Lezzo, the General Foreman on the ABC site on which some of Lineform's employees were working, each telephoned Stowers separately and told him to come to the site.¹⁶¹ Lezzo told him that McGahan and David Glass, another organiser for the Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch, were on the site and that his workers were sitting in the sheds.¹⁶² Stowers arrived on site and his workers were in the sheds. Both McGahan and Glass denied putting the workers in the sheds and gave evidence that they were already there when they arrived.¹⁶³ McGahan and Glass said they had received a complaint that the workers' Easter wages had not been paid on time.¹⁶⁴ Stowers told them the situation had been rectified and that he could prove the late wages were the result of a bank error.¹⁶⁵ McGahan and Glass did not seem interested in what Stowers had to say.¹⁶⁶ They did not make any enquiries in relation to the bank error.¹⁶⁷ McGahan said that the wages had been paid late and therefore Lineform had to pay time and a half or double time.¹⁶⁸ Glass read a section of the award to Stowers.¹⁶⁹
- 38 McGahan and Glass calculated that Lineform owed its employees \$24 000, due to the late payment, despite the fact that the late payment was due to an event outside Lineform's control.¹⁷⁰ At the time of the hearings Lineform had only paid half of this amount to the 20 workers who were affected, because it could not afford to pay the entire amount and because the employees did not want Lineform to pay the full amount.¹⁷¹
- 39 When the Angel Place project began, 3D Scaffolding Pty Ltd (3D Scaffolding) was on the job doing minor works.¹⁷² However, the head contractor, Leightons, told Stowers that Lineform

would replace 3D Scaffolding.¹⁷³ Lewis told Stowers to tender for the job.¹⁷⁴ Lineform tendered and won the job.¹⁷⁵

- 40 When Lineform was negotiating its 1999–2002 EBA in 1999 Warner approached Stowers.¹⁷⁶ He asked Stowers for donations to be paid to him regularly.¹⁷⁷ Warner said it was to keep the peace and to keep organisers off Stowers' back.¹⁷⁸
- 41 Between late 1999 and early 2000 Stowers handed cash payments of about \$4000 to Warner each week.¹⁷⁹ On each occasion, Stowers made out a cheque to Proactive Consultants.¹⁸⁰ After the cheque was cleared, Ginns withdrew the amount in cash and handed it to Stowers.¹⁸¹ Stowers paid cash to some of his workers.¹⁸² Stowers paid the remainder to Warner, which was usually around \$4000.¹⁸³ If in one week he did not have the cash to pay Warner, Warner doubled the amount the following week.¹⁸⁴ These payments took place in the delegate's office at Angel Place.¹⁸⁵ Stowers made cash payments for around two-thirds of the time during which he was working at Angel Place.¹⁸⁶
- 42 Stowers sometimes accompanied Ginns when Ginns went to the Colonial Bank at Crows Nest to deposit the cheques.¹⁸⁷ After Stowers handed the cash to Warner in the Angel Place site office, Warner would put the cash in a locked drawer in his desk.¹⁸⁸ There was always quite a substantial amount of cash in the drawer every time Warner opened it in Stowers' presence.¹⁸⁹ Stowers believed that company delegates could influence the management of a company in such a way that they could say which subcontractor could be hired or which was not wanted on site.¹⁹⁰
- 43 Sometimes Stowers did not have any cash to pay Warner.¹⁹¹ On one occasion, Stowers did not have enough money to pay his workers for the week.¹⁹² Warner lent him \$10 000 in cash to cover his wages and Stowers paid him back the money the following week.¹⁹³ About three months later, Stowers again asked Warner if he could lend him \$10 000.¹⁹⁴ Instead, Warner suggested he purchase Stowers' Jeep Cherokee.¹⁹⁵ The car was worth about \$25 000, but Warner paid Stowers \$12 000 in cash for it, in three instalments of \$4000.¹⁹⁶
- 44 There were other loans made by Warner to Stowers.¹⁹⁷ On 29 May 2000 Ginns wrote out a cheque from Proactive Consultants' bank account to Warner for \$20 000, apparently to pay back one of these loans.¹⁹⁸ Warner said that until this time he had not heard of Proactive Consultants,¹⁹⁹ but having regard to the material as a whole, I reject this evidence. Warner said that he obtained the cash for the loans to Stowers from the sale of a motorbike, and hid the cash in his house.²⁰⁰ However, having regard to the body of evidence as to how Warner obtained the cash, I reject Warner's explanation.
- 45 Before the Angel Place project was completed, Warner left the employment of Leightons.²⁰¹ Allegations of corruption had been made against Warner by both the CFMEU and his employer.
- 46 In the latter half of 2000 Bates was a candidate for the office of Branch Secretary of the Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.²⁰² Stowers met with Bates at a restaurant in Martin Place where Bates asked Stowers for a donation to his fighting fund.²⁰³ Stowers gave him a company cheque in the sum of \$4000.²⁰⁴

Hi-Lo Cleaning and Maintenance Pty Ltd

- 47 Mr Edwin Wallace is a director of Hi-Lo Cleaning and Maintenance Pty Ltd (Hi-Lo).²⁰⁵ Hi-Lo was engaged as a cleaning contractor on Angel Place.²⁰⁶ About February 1999 Warner called Wallace and told him that in the coming days, a person would be speaking to him and for his own wellbeing he should do what the caller asked him to do. He said, 'This person will be making demands on you to pay money.'²⁰⁷ Warner also said that if Wallace did not pay, his company would not work in the Sydney CBD again.²⁰⁸ Warner also said that Wallace would receive a written invoice for the amount paid.²⁰⁹
- 48 A day or so later, Warner asked Wallace into his site office at Angel Place. Bates was there and he suggested the three of them go and have a coffee.²¹⁰ They went to a nearby coffee shop. Bates said that for Wallace's own wellbeing and to stay in business, he wanted \$35 000 from him.²¹¹ For that, said Bates, Wallace would be looked after.²¹² Wallace told them he did not have that type of money.²¹³ Bates then said to make it \$10 000. Wallace replied, 'What about half?'²¹⁴ Bates told him to get \$6000 then and there.²¹⁵ As Wallace did not have his cheque book with him, he said he would get the money to him later.²¹⁶
- 49 A few days later, Warner telephoned Wallace saying that he had better pay up and someone would contact him.²¹⁷ Warner told Wallace to make the cheque out to Access Australia Rigging and Scaffolding.²¹⁸ Warner then arranged to meet Wallace at a coffee shop.²¹⁹ The meeting occurred as arranged with both Warner and Bates present.²²⁰ Wallace placed the envelope containing the cheque on the table in front of Bates, who placed a folder on top of the envelope.²²¹ Wallace later received an invoice for this payment, after reminding Warner about it.²²²
- 50 After Wallace made the payment, he had a conversation with Warner who told him that the payment was for his own wellbeing.²²³ Warner also said it was in his interests to pay it; otherwise the union would 'bash' the company.²²⁴ Wallace felt that Warner was giving him some friendly advice and that the money was going to pay off the union.²²⁵
- 51 A few days later, Wallace received a telephone call from a man with a Maori accent, who he believed was MacKay, the union delegate for Grocon NSW. MacKay denied making any such phone call.²²⁶ Wallace had met MacKay five or six times on a couple of Grocon NSW sites Hi-Lo had worked on.²²⁷ The caller told him to make a payment of \$6000 to Access Australia Rigging and Scaffolding.²²⁸ Wallace attended the same coffee shop as before, meeting Warner and MacKay there.²²⁹ He left the envelope containing the cheque on the table and left.²³⁰
- 52 In the weeks that followed, Wallace made a further six payments.²³¹ These he paid by cheque to Proactive Consultants, the first couple having been made out to Access Australia Rigging and Scaffolding.²³² The cheques were deposited between 4 March 1999 and 26 May 1999.²³³
- 53 Wallace handed all the cheques to Warner or Bates.²³⁴ At least twice MacKay was present.²³⁵ The drop-offs all occurred in the same coffee shop, Warner's site office or a coffee shop at Wynyard Station.²³⁶
- 54 On one occasion in May 1999, Warner came to Wallace's home to pick up a cheque for \$8000.²³⁷ Warner arrived around 7.30 am in his Ford Sedan with MacKay.²³⁸ Warner told Wallace not to tell Bates that he had picked up the cheque.²³⁹ He said, 'You haven't seen me if

asked.²⁴⁰ Around the time that Wallace paid the final cheque to Warner, Warner told him, 'This will fix up your EBA.'²⁴¹ Although Hi-Lo was in the midst of negotiating an EBA, EBAs had not been mentioned before.²⁴²

- 55 Between 4 March 1999 and 24 May 1999, Wallace said he paid a total of \$54 764 to Bates, Warner and MacKay.²⁴³ The payments placed a huge strain on Hi-Lo's finances.²⁴⁴ Wallace said he did not at any stage believe the money was for Warner, Bates or MacKay, but rather, to pay off the union.²⁴⁵ Wallace feared that if he did not make the payments he would not get any further cleaning contracts and his existing contracts would be disrupted.²⁴⁶

Deemah Marble & Granite Pty Ltd

- 56 Mr Raymond Bechara was a manager of Deemah Marble & Granite Pty Ltd until it was placed into administration in 2000.²⁴⁷ This company was a supplier and fitter of marble, granite and other stones in buildings and building façades.²⁴⁸ Most of its work came from Multiplex NSW, Baulderstone, Grocon NSW and Leightons.²⁴⁹ Deemah Marble & Granite was the largest company of its type in Sydney.²⁵⁰ Bechara had a ten per cent financial stake in the company and had been a director until he sold the company to an American consortium.²⁵¹
- 57 In 1999 Deemah Marble & Granite employed approximately 100 workers over ten building sites in the Sydney area.²⁵² During this time the company had about \$60 to \$70 million worth of projects in progress.²⁵³ One of these was the Angel Place project.²⁵⁴ The value of this project to Deemah Marble & Granite was over \$6 million.²⁵⁵ Its contract was to supply and fix sandstone to the façade and supply and lay marble and ceramics in the building.²⁵⁶ The job extended over an 18 month to two year period.²⁵⁷
- 58 After Deemah Marble & Granite had been awarded the job but before work began, Warner approached Bechara.²⁵⁸ Bechara had previously met Warner at the Star City Casino site.²⁵⁹ Warner told him that to make life easier on the job, they needed to make a deal.²⁶⁰ Warner added that if Deemah Marble & Granite paid a certain amount of money, the union would leave the company alone and it would have industrial harmony.²⁶¹ Warner also told Bechara that Bates was a friend of his at the union head office and could create problems for Deemah Marble & Granite.²⁶² Bechara said that he could not make this decision and would have to get permission from the owners of the company.²⁶³ Warner told him he wanted to be paid in cash.²⁶⁴ Bechara told him that would not be possible; some sort of documentation would be required.²⁶⁵ Warner said he could provide an invoice to cover the payment.²⁶⁶ This conversation took place in Warner's site office at Angel Place.²⁶⁷
- 59 After discussing the issue with a director of Deemah Marble & Granite, Mr Oren Brenton, on behalf of the American owners, Bechara agreed to make the payment.²⁶⁸ The company paid \$22 000 to Warner in two cheques of \$11 000 each.²⁶⁹ The cheques were made out to Proactive Consultants from whom the company received no goods or services.²⁷⁰ Deemah Marble & Granite's accountant prepared and signed the cheques.²⁷¹ The payments occurred between 1 April 1999 and 17 September 1999.²⁷² The company received invoices to cover these amounts.²⁷³
- 60 Deemah Marble & Granite made the payments to ensure there was industrial peace on the Angel Place site.²⁷⁴

Australia Colour Enterprises Pty Ltd

- 61 Mr Chester Soltysik is the Managing Director of Australia Colour Enterprises Pty Ltd (ACE), a company which performed painting and repair work, specialising in lead stripping and window restoration to heritage buildings.²⁷⁵
- 62 In 1998 and 1999 ACE secured the painting contract for the Angel Place site.²⁷⁶ While undertaking the painting job, Leightons also asked ACE to do the restoration work to the façade.²⁷⁷ The value of each job to ACE was \$400 000 and \$1.1 to \$1.2 million respectively.²⁷⁸
- 63 On the Angel Place project, Australia Colour Enterprises Pty Ltd's management team comprised Mr Chris Kraszewski, the Project Manager, Mr Peter Falkowski, the All Projects Manager, and Mr Tom Borczyk, the Works Supervisor.²⁷⁹
- 64 Falkowski met Ginns on the Angel Place site.²⁸⁰ About March 1999 Falkowski contacted Ginns and wanted to know if he would cash cheques for him, as he had to pay off some people in the union.²⁸¹ Falkowski told Ginns that Warner had told him to ring Ginns.²⁸² Ginns went to Falkowski's office at Bondi Junction and picked up the first cheque.²⁸³ He banked it and returned 90 per cent of the moneys to him in cash.²⁸⁴ Soltysik gave evidence that he was unaware the invoices were not genuine and that he had no involvement in the cheque-cashing scheme.²⁸⁵
- 65 ACE made three payments of about \$22 000 each between 29 March 1999 and 28 June 1999, totalling \$66 380.²⁸⁶ Two of the invoices appear to bear the initials of Tom Borczyk.²⁸⁷
- 66 Two further cheques to Proactive Consultants were drawn on ACE's account in June 2000, one cheque for \$28 750 and one for \$11 520.²⁸⁸ These were deposited into Proactive Consultants' account on 16 June 2000.²⁸⁹
- 67 A quotation and invoice from Proactive Consultants for \$40 000, dated 22 March 1999 and 28 April 1999 respectively, were issued to ACE.²⁹⁰ However, ACE has no record of having made such a payment to Proactive Consultants.²⁹¹
- 68 So far as Soltysik was aware, ACE never experienced any industrial problems on the Angel Place project.²⁹²

Brighton Ceilings Pty Ltd

- 69 Mr Fahrudin Susic is the Sole Director of Brighton Ceilings Pty Ltd, one of the largest gyprocking companies in Sydney.²⁹³
- 70 Brighton Ceilings has an annual turnover of around \$20 million and employs 210 staff.²⁹⁴ All of its clients are major builders such as Multiplex NSW, Grocon NSW, Mirvac Constructions Pty Ltd, Boulderstone and Thiess Pty Ltd (Thiess).²⁹⁵ Brighton Ceilings negotiated an EBA with the CFMEU in late 1996, but has not signed any further EBA with the union.²⁹⁶
- 71 Brighton Ceilings has made various payments to the CFMEU including: a payment for advertising in the CFMEU magazine; \$500 to the Picnic Fund; \$3000 for a table at the South Sydney League's Club dinner; and a \$2000 donation for injured workers.²⁹⁷ Brighton Ceilings has made other payments to the union over the years.²⁹⁸

- 72 Since signing its union-endorsed EBA, Brighton Ceilings has had, and continues to have, many problems with the CFMEU.²⁹⁹ The company has always paid its workers under the Prescribed Payments System (PPS), a scheme to which the union is opposed.³⁰⁰ Union organisers frequently come onto its job sites and put the workers in the sheds.³⁰¹ Sometimes the company has had around 160 workers in the sheds at one time.³⁰² The company had so many problems with the union in 2000 that Sasic was worried the company would go under.³⁰³ Sasic organised two meetings with all his workers and the CFMEU, the first of which was addressed by Bates, Mr Brian Redfern and Mr David Kelly, both organisers for the Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.³⁰⁴ Mr Peter Zaboyak and Mr Brian Parker, both Branch Assistant Secretaries of the Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch, and Mr Joseph Brcic, an organiser for the Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch, addressed the second meeting.³⁰⁵ The workers were happy to be paid on PPS.³⁰⁶ However, after further problems Sasic told the workers he had to put them on wages as he was losing jobs due to union interference.³⁰⁷ All of Brighton Ceilings' workers at the time of the hearings were paid wages.³⁰⁸
- 73 About April 2000 Bates visited Sasic at his office.³⁰⁹ Bates told Sasic that he was running for the position of Union State (Branch) Secretary.³¹⁰ He said that if he won the election, he was going to give workers the choice about whether they wanted to work on PPS or wages.³¹¹ This occurred about the time of the first meeting between the company's workers and the CFMEU, so was an attractive proposition for Sasic.³¹² Bates told Sasic he had an election fund and asked for a donation.³¹³ Sasic could not recall how the amount was agreed, but he gave Bates a cheque made out to Proactive Consultants for \$44 000.³¹⁴ Bates told him to write the cheque out to Proactive Consultants.³¹⁵ At the time, Bates asked him if he wanted a receipt, which he declined.³¹⁶ Sasic has never had anything to do with Proactive Consultants – the name was given to him by Bates.³¹⁷
- 74 In May 2000 Sasic made out a further cheque to Proactive Consultants for \$19 000 and gave it to Bates.³¹⁸ Sasic believed that this was also for the election fund.³¹⁹
- 75 The two cheques were deposited in Proactive Consultants' account on 11 April 2000 and 18 May 2000 respectively.³²⁰

NSW Painting Services Pty Ltd

- 76 Mr Denis Matesic is the Sole Director of NSW Painting Services Pty Ltd (NSW Painting Services) which conducts a commercial painting business in the Illawarra, the Highlands and the Sydney metropolitan areas.³²¹ The company employs around 15 to 20 employees.³²²
- 77 In January 1999 Mr Bulent (Glen) Tabak, director of Tabak Cement Rendering Pty Ltd, introduced Matesic to Warner at a coffee shop in George Street, Sydney.³²³ Matesic was looking to make an EBA with the CFMEU to improve his company's prospects of picking up work in Sydney. NSW Painting Services had tendered for works at the City Villa Apartments project in George Street, a project which Hansen Yuncken Pty Ltd managed.³²⁴ Warner told

Matesic it would be advantageous to get an EBA – it would be better for his employees and it would help in getting work in the Sydney area.³²⁵

- 78 A couple of weeks later, Matesic met again with Warner.³²⁶ Present were Glen Tabak and Ken Tugrul from City Bricklaying.³²⁷ Warner handed each of them a blank EBA.³²⁸ Matesic signed the EBA for NSW Painting Services, and later Bates signed it for the union.³²⁹
- 79 In early November 1999 a man with an Australian accent phoned Matesic.³³⁰ The caller did not identify himself.³³¹ He told Matesic that he was from Proactive Consultants and if Matesic wanted a trouble-free workplace, he would make sure that Matesic got it.³³² The caller said words to the effect of, 'If a payment is made there will be no more trouble from the union.'³³³ Matesic asked the caller how much money, to which the caller replied, '\$5600'.³³⁴ The caller told Matesic that he would receive an invoice from Proactive Consultants once the payment had been made.³³⁵ The caller told him where to send the cheque.³³⁶ Matesic could not recall the address.³³⁷
- 80 On 12 November 1999 Matesic sent a cheque for \$5600 to Proactive Consultants.³³⁸ Matesic could not recall receiving an invoice for this amount.³³⁹ The cheque was deposited into Proactive Consultants' account on 17 November 1999.³⁴⁰
- 81 On 29 June 2000 Mr Peter McClelland, Branch President of the Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch, phoned Matesic and asked him to attend a meeting at the Sydney office of the CFMEU on 6 July 2000.³⁴¹ McClelland said the meeting was to discuss alleged cash payments to Matesic's employees.³⁴² Matesic later contacted the Sydney CFMEU office to say he could not attend the meeting.³⁴³
- 82 About that time Glen Tabak told Matesic the CFMEU was investigating an allegation that Tabak, Tugrul and Matesic had paid money to Warner.³⁴⁴
- 83 In the first week of July 2000 Matesic met Warner near the Windang Bridge, Lake Illawarra.³⁴⁵ Warner asked Matesic if he could provide him with a statement in writing about the issues raised by the CFMEU.³⁴⁶ He told Warner he had no problems in providing him with a statement.³⁴⁷ Matesic wrote out a statement addressed to Ferguson, saying NSW Painting Services had paid no money to Martin Warner.³⁴⁸

Tabak Cement Rendering Pty Ltd

- 84 Mr Bulent (Glen) Tabak is a director of Tabak Cement Rendering Pty Ltd (Tabak Cement Rendering).³⁴⁹ He formed the business in 1987.³⁵⁰ In 1993 his brother, Hayrani (Ron) Tabak, joined the business as a director.³⁵¹ The company's business is cement rendering, solid plastering, architectural coating, waterproofing, patching and crack injection.³⁵² The company operates in the central Illawarra, the highlands and the Sydney metropolitan areas.³⁵³ It employs around 20 workers.³⁵⁴
- 85 Soon after signing an EBA with the CFMEU in 1999, Glen Tabak began to experience difficulties in dealings with Kelly who stopped two of his jobs because of Tabak Cement Rendering allegedly not paying the right rates of pay under its EBA, and with Mr Martin Wyer, an organiser for the Construction, Forestry, Mining and Energy Union, Construction and

General Division, New South Wales Divisional Branch, who stopped another job.³⁵⁵ These difficulties continued into 2000.

- 86 Glen Tabak contacted Warner for a favour.³⁵⁶ Wyer had previously told Glen Tabak on a site at Fox Studios that Tabak Cement Rendering had a problem with Bates. Tabak Cement Rendering's employees had been told to sit in the shed until the problem with Bates was sorted out.³⁵⁷ Tabak, who had previously met Warner while working on Leightons' sites,³⁵⁸ had heard that Warner was a close friend of Bates. Tabak asked Warner if he could talk to Bates on his behalf and see what problem the union had with Tabak Cement Rendering.³⁵⁹ Warner said he would talk to Bates.³⁶⁰ Warner telephoned Bates, who told him that Kelly had a vendetta against Tabak Cement Rendering and that the situation needed to be sorted out.³⁶¹ Warner called Tabak back, saying he had spoken to Bates. After this, the situation settled down for some months.³⁶²
- 87 In 1998 Tabak Cement Rendering won a tender to perform work on the Peninsula Apartments, Balmain, an Abigroup Contractors Pty Ltd (Abigroup) project.³⁶³ In early 1999 while working on the project, Tabak Cement Rendering was experiencing problems with the CFMEU, progress payments from the head contractor were late, and industrial disputes were occurring on other sites.³⁶⁴ As a result, it was having trouble meeting its financial commitments.³⁶⁵
- 88 Glen Tabak sought the help of Zaboyak.³⁶⁶ A couple of days later, Tabak called Zaboyak to see if he had any news for him.³⁶⁷ According to Tabak, Zaboyak said that Abigroup would pay Tabak Cement Rendering any money owing. Zaboyak says Tabak told him the matter was resolved.³⁶⁸ Glen Tabak offered to make a payment of \$1000 to the Westmead Children's Hospital.³⁶⁹ Later a woman from the CFMEU's office asked if he could donate the money to the Mark Allen Fund.³⁷⁰ On 9 August 1999 Tabak made the payment.³⁷¹
- 89 In early January 1999 Glen Tabak received a phone call from an anonymous man who spoke with an Australian accent.³⁷² The caller made it clear he was aware of Tabak's union and financial problems.³⁷³ The caller said to Tabak if \$15 000 in cash was paid, the disputes and the problems would go away.³⁷⁴ Glen Tabak told the caller he could not afford to pay anything after paying wages and suppliers.³⁷⁵
- 90 Mr Hayrani (Ron) Tabak also received a phone call from an anonymous male person with an Australian accent at about the same time.³⁷⁶ The caller said that he knew Tabak Cement Rendering was having union problems and he could help.³⁷⁷ The caller reiterated the request for \$15 000 in cash.³⁷⁸
- 91 A couple of days later the man phoned a third time and told Glen Tabak that if he did not have that kind of money in cash, he could pay by cheque if an extra \$1500 was provided.³⁷⁹ The man told Glen Tabak he would receive a quotation and invoice in the mail to cover the paperwork.³⁸⁰ He also said that any payments by cheque were to be sent to the address on the quotation.³⁸¹
- 92 Glen Tabak asked the caller how he could know that the problems would go away.³⁸² The caller said to him, 'Tomorrow morning, your workforce will be allowed to go back to work.'³⁸³ As foretold, the following day, Tabak Cement Rendering's workforce was allowed back to work.³⁸⁴

- 93 Glen Tabak received a quotation for \$16 500 from Proactive Consultants dated 14 January 1999, signed by Ginns.³⁸⁵ Glen Tabak decided he would pay the amount demanded. He also received an invoice on Proactive Consultants' letterhead dated 16 January 1999 which, omitting formal parts, read: 'Supply and erect ten mobile scaffolds for rendering and painting. As per quotation Q101. The price includes all cartage, erection, dismantle and six weeks hire.' The price was \$16 500.³⁸⁶
- 94 On 23 March 1999 Tabak Cement Rendering made its first payment of \$5500 to Proactive Consultants.³⁸⁷ Glen Tabak made payable to Proactive Consultants a further two cheques in the amounts of \$5000 and \$6000, forwarding them to the same address on 29 March and 20 April 1999 respectively.³⁸⁸ Proactive Consultants had provided no goods or services whatsoever to Tabak Cement Rendering.³⁸⁹ These cheques were deposited into Proactive Consultants' account on 30 March 1999 and 21 April 1999 respectively.³⁹⁰
- 95 After the payments were made, Tabak Cement Rendering had no further problems on the Abigroup site at Balmain.³⁹¹ Abigroup paid all the outstanding progress payments.³⁹² Glen Tabak has not been asked or approached to make any further payments.³⁹³
- 96 On 28 June 2000 Zaboyak telephoned Glen Tabak asking him to attend a meeting at the CFMEU's office in Wollongong.³⁹⁴ On 30 June 2000 Tabak attended the meeting with Zaboyak and McClelland.³⁹⁵ They told him that they were investigating allegations of corruption against Bates and Warner.³⁹⁶ Zaboyak asked Tabak if he had paid any moneys to Bates or Warner for an EBA, which he denied.³⁹⁷ They asked him to make a statement saying that he had made payments of money to Warner for an EBA.³⁹⁸ Tabak said Zaboyak told him that if he did not make the statement or give them information, he would call all the big builders in Sydney and tell them not to give Tabak Cement Rendering any work.³⁹⁹ Zaboyak denied this. Warner became aware of this meeting and told Tabak that there were allegations going around about Warner.⁴⁰⁰ Warner asked Tabak if he would provide a statement saying that he had not paid Warner any moneys.⁴⁰¹ Tabak agreed to do so, writing a handwritten letter to Ferguson.⁴⁰² Tugrul, Matesic and Tabak met Warner on 2 July 2002 at the Windang Bridge at Lake Illawarra and provided him with their statements.⁴⁰³

Bricon Constructions Pty Ltd

- 97 Mr Alexander Bishop is the Construction Manager of Bricon Constructions Pty Ltd (Bricon Constructions), a company that began in 1994.⁴⁰⁴ Bricon Constructions operates from Crows Nest and employs 50 workers.⁴⁰⁵ Bishop's wife, Mrs Leanne Bishop, is the Director, secretary and office manager of the company.⁴⁰⁶
- 98 Bricon Constructions specialises in concrete masonry and clay masonry construction on commercial projects in the Sydney CBD and beyond, mainly working for the principal contractors.⁴⁰⁷
- 99 From 1998 to 1999 Bricon Constructions was engaged on the Angel Place project.⁴⁰⁸ Because the job was a major project for the company, the Bishops set up an office for administration and for the workers on site.⁴⁰⁹ As a consequence, Alexander Bishop got to know Warner very well.⁴¹⁰

- 100 In conversations with Warner, Warner told Alexander Bishop that he had a friend who could deposit cheques and later receive cash for the amount of the cheque less a fee of ten per cent of the value of the cheque.⁴¹¹ A quotation and an invoice would be received for accounting purposes in respect of the transaction.⁴¹² Warner did not name his friend.⁴¹³
- 101 Following a discussion of the matter between Alexander and Leanne Bishop, the Bishops took up the offer with Warner, handing him five cheques of between \$5000 and \$15 000 over a period of around eight months.⁴¹⁴ The cheques were made payable to Access Australia Rigging and Scaffolding and Proactive Consultants. Three cheques were deposited in March and April of 1999 and two in November 1999.⁴¹⁵ The total amount cashed in the year 1999 through Access Australia Rigging and Scaffolding and Proactive Consultants was approximately \$46 210.⁴¹⁶ On all occasions, documentation in the form of quotations and receipts were received for the amounts of the cheques.⁴¹⁷
- 102 Bricon Constructions received neither goods nor services for payment of these sums.⁴¹⁸ There was a ten per cent 'transaction fee' charged on the invoiced sums.⁴¹⁹ Warner returned 90 per cent of the cheque amount to Alexander Bishop.⁴²⁰ The Bishops did not give the moneys to Warner or Bates.⁴²¹ The reason that they participated in the cheque-cashing scheme was financial gain through minimisation of taxation.⁴²²

Commercial Crime Agency investigation

- 103 On 27 July 2000 Ferguson lodged a complaint with the New South Wales Police Commercial Crime Agency in Sydney.⁴²³ The complaint was that Warner had demanded substantial amounts of money from subcontractors on the Angel Place project to assist them in finalising EBAs with the CFMEU and to obtain contracts for work and ensure they had a smooth run on such projects.⁴²⁴
- 104 The Commercial Crime Agency subsequently received a report from Mr Robert Bush, Industrial Relations Manager for Leighton Contractors Pty Ltd, supporting Ferguson's allegations.⁴²⁵ Mr David Taig, a police officer with the Commercial Crime Agency, was assigned to assess the complaint.⁴²⁶ On 28 November 2000 Taig received a bundle of papers from an anonymous author.⁴²⁷ On 7 December 2000 Ferguson participated in an interview with Taig, Detective Inspector Colin Dyson and Senior Sergeant David Shepherd at the Commercial Crime Agency, and at this time admitted to being the author of the papers.⁴²⁸ During the interview, Ferguson spoke at length about the allegations, naming various persons who could possibly assist the police in their investigations. He told the police that his investigation into the matter had uncovered the involvement of Bates.⁴²⁹ He produced an 'anonymous file' of which he was, it turned out, the author: the allegations in that file were based on hearsay.⁴³⁰
- 105 Subsequently, a number of the persons nominated by Ferguson were interviewed by police officers from the Commercial Crime Agency. No admissible information was obtained.⁴³¹ In August 2001 the investigation was finalised. The outcome was that the investigation was unable to verify the allegations and no one was charged.⁴³²

Analysis of evidence

- 106 Bates has denied receiving any payments from Access Australia Rigging and Scaffolding or Proactive Consultants.⁴³³ For the following reasons, I reject his denials:
- (a) Bates made a total of 58 telephone calls to Ginns' mobile phone over a period of 10 months spanning 1999 and 2000, and Ginns telephoned Bates' mobile phone 42 times over a similar period.⁴³⁴ This is at odds with Bates' evidence that he could not recall, but 'probably' telephoned Ginns from time to time on his mobile in 1999 and 2000.⁴³⁵ Bates gave no credible explanation of why he had so many conversations with Ginns at this time. Moreover, there seems to be some correlation between telephone activity and cheque deposits and cash withdrawals.⁴³⁶
 - (b) Bates made constant cash deposits of round sums into his bank account at the time the cheque-cashing scheme was being conducted.⁴³⁷ Once he ceased to be Branch Assistant Secretary of the CFMEU in September 2000, so too did his pattern of cash deposits.⁴³⁸
 - (c) Over the period in question, Bates engaged in a pattern of conspicuous consumption of luxury items such as properties, cars, motorbikes and holidays incapable of being supported on a remuneration package of about \$75 000.⁴³⁹ He did receive a payment from the union of \$34 624.48 when he resigned, but this was after the cheque-cashing scheme had ended.⁴⁴⁰
 - (d) The inculpatory evidence of Ginns is to be preferred as he incriminated himself for no apparent gain. His evidence is corroborated by Stowers and Wallace.
 - (e) The weight of the evidence given by each of the subcontractors about their payments to Bates and Warner via Access Australia Rigging and Scaffolding and Proactive Consultants tells against Bates.
- 107 Warner denied receiving any cash payments from Access Australia Rigging and Scaffolding or Proactive Consultants.⁴⁴¹ For the following reasons I reject his denials:
- (a) Ginns and Stowers each deposed that at Cronulla on 24 April 2002, about four months before each gave evidence before the Commission, Warner admitted that he received about \$100 000 of the proceeds and that Bates received the lion's share.⁴⁴²
 - (b) Warner's counsel failed to cross-examine Ginns in relation to this admission. His counsel did, however, cross-examine Stowers about it.⁴⁴³
 - (c) Warner's annual salary of \$80 000–\$100 000 would not have supported his lifestyle, details of which were put before me.⁴⁴⁴
 - (d) The body of evidence against their own interests given by Ginns, Stowers and the Bishops tells against Warner's evidence.
 - (e) The weight of the evidence given by each of the subcontractors about their payments to Bates and Warner via Access Australia Rigging and Scaffolding and Proactive Consultants tells against Warner.

Conclusions

- 108 The evidence establishes a cheque-cashing scheme which was based upon a process devised by Bates and Warner. The execution of that process illustrates the scope for abuse of power by a union site delegate and by a union branch assistant secretary working in concert. The opportunity to exercise the abuse of power was afforded by a promise held out to a subcontractor by the union site delegate or union branch assistant secretary or both:
- (a) to obtain from the union industrial peace for the subcontractor;
 - (b) to obtain a union-endorsed EBA for the subcontractor;
 - (c) to assist the subcontractor in the winning of work; or
 - (d) to avoid being targeted by the union (or builders) so as to be passed over for consideration for winning work.
- 109 A number of subcontractors who agreed to make the payments that Bates and Warner solicited did so on the understanding that Bates or Warner, or both, represented the union. Those who made payments regarded the union as the principal that stood behind Bates and Warner or both. Bates and Warner held themselves out to be representing the union. For example, Warner told Wallace that the union would 'bash the company' if he did not pay.⁴⁴⁵ Warner also told Wallace that his final cheque would 'fix up [his] EBA'.⁴⁴⁶ Warner told Bechara that if he paid up, 'the union would leave Deemah alone and Deemah would have industrial harmony'.⁴⁴⁷ The anonymous callers left their targets in no doubt that they represented the union, even proving to Glen Tabak that they could get his workers back to work when he was having union troubles.⁴⁴⁸
- 110 The evidence of Ginns and the subcontractors discloses a process whose principal architects and beneficiaries were Bates and Warner, aided and abetted by Ginns. Bates and Warner traded on the authority of the union as guarantor of industrial harmony and dispenser of favour.
- 111 As the subject matter of this case study was referred to police officers of the Commercial Crime Agency who found no admissible evidence sufficient to justify charges, it is not appropriate that I make any comment in relation to unlawfulness.
- 112 The Angel Place case study illustrates:
- (a) the ease with which improper transactions and practices may be hidden in this industry; and
 - (b) the power of union officers and delegates which flows from their actual and perceived capacity to cause industrial unrest with consequential economic loss, particularly to subcontractors.

Persons involved

Name	Position/Title
Bates, Craig Rodney	Former Branch Assistant Secretary, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.
Bechara, Raymond Youseff	Former Manager, Deemah Marble & Granite Pty Ltd.
Bishop, Alexander Adrian	Construction Manager, Bricon Constructions Pty Ltd.
Bishop, Leanne Margaret	Director, Secretary and Office Manager, Bricon Constructions Pty Ltd.
Borczyk, Tom	Works Supervisor, Australian Colour Enterprises, Pty Ltd.
Brcic, Joseph	Organiser, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.
Brenton, Oren	Director, Deemah Marble & Granite Pty Ltd.
Bush, Robert	Industrial Relations Manager for Leighton Contractors Pty Ltd
Dyson, Colin	Detective Inspector, New South Wales Police.
Falkowski, Peter	All Projects Manager, Australian Colour Enterprise Pty Ltd.
Ferguson, Andrew James	Branch Secretary, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.
Ginns, Rees Isaac	Director, Proactive Consultants Pty Ltd; Former Director, Access Australia Rigging and Scaffolding Pty Ltd.
Glass, David	Organiser, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.
Kelly, David John	Organiser, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.
Knight, Robin	Former Managing Director, Rocom International Pty Ltd.
Kraszewski, Chris	Project Manager, Australian Colour Enterprises Pty Ltd.
Lewis, Gerald	Project Manager, Leighton Contractors Pty Ltd on the Angel Place site.
Lezzo, Vince	General Foreman, ABC site.

MackKay, Ian William	Safety Officer, Grocon (NSW) Pty Ltd, between mid-August 1994 and August 2000.
Matesic, Denis	Director, NSW Painting Services Pty Ltd.
McClelland, Peter	Branch President, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.
McGahan, John Joseph (Joe)	Organiser, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.
Parker, Brian	Branch Assistant Secretary, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.
Redfern, Brian Trevor	Organiser, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.
Salum, Saleh	Former Casual Employee, Lineform Pty Ltd.
Saridakis, Rosemary	Construction Accreditation Services Pty Ltd.
Shepherd, David	Senior Sergeant, New South Wales Police.
Soltysik, Chester	Managing Director, Australian Colour Enterprises Pty Ltd.
Sisic, Fahrudin	Director, Brighton Ceilings Pty Ltd.
Stowers, Ron Moni	Company Director, Lineform Pty Ltd.
Tabak, Bulent (Glen)	Director, Tabak Cement Rendering Pty Ltd.
Tabak, Hayrani (Ron)	Director, Tabak Cement Rendering Pty Ltd.
Taig, David Ian	Police Officer, New South Wales Police, Commercial Crime Agency.
Tugrul, Ken	City Bricklaying.
Wallace, Edwin George	Director, Hi-Lo Cleaning and Maintenance Pty Ltd.
Warner, Martin John	Former Employee, Leighton Contractors Pty Ltd; Former union site delegate, Construction, Forestry, Mining and Energy Union, on the Angel Place site.
Wyer, Martin	Organiser, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.
Valdezate, Joe	Site Supervisor, Leighton Contractors Pty Ltd, on the Angel Place site.

Vartianen, Tony	Director, MRT Corporation Pty Ltd.
Zaboyak, Peter	Branch Assistant Secretary, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.

Annexure A

(Derived from Exhibit 1250 and Annexures to the Statutory Declaration of Rees Ginns)

Date of Deposit	Recipient Company*	Deposit	Drawer/Subcontractor
4/3/1999	A	\$6 000.00	Hi-Lo Cleaning & Maintenance Pty Ltd
8/3/1999	A	\$6 000.00	Hi-Lo Cleaning & Maintenance Pty Ltd
30/3/1999	P	\$22 150.00	Australia Colour Enterprises Pty Ltd
30/3/1999	P	\$6 000.00	Hi-Lo Cleaning & Maintenance Pty Ltd
30/3/1999	P	\$5 000.00	Tabak Cement Rendering Pty Ltd
20/4/1999	P	\$10 000.00	Hi-Lo Cleaning & Maintenance Pty Ltd
20/4/1999	P	\$10 000.00	Hi-Lo Cleaning & Maintenance Pty Ltd
21/4/1999	P	\$6 000.00	Tabak Cement Rendering Pty Ltd
3/5/1999	P	\$8 000.00	Hi-Lo Cleaning & Maintenance Pty Ltd
11/5/1999	P	\$22 150.00	Australia Colour Enterprises Pty Ltd
17/5/1999	P	\$4 764.00	Hi-Lo Cleaning & Maintenance Pty Ltd
26/5/1999	P	\$8 000.00	Hi-Lo Cleaning & Maintenance Pty Ltd
28/6/1999	P	\$11 000.00	Deemah Marble & Granite Pty Ltd
29/6/1999	P	\$22 080.00	Australia Colour Enterprises Pty Ltd
17/11/1999	P	\$5 600.00	NSW Painting Services Pty Ltd
23/11/1999	P	\$11 000.00	Deemah Marble & Granite Pty Ltd
21/12/1999	P	\$16 500.00	Nassmen Pty Ltd
4/2/2000	P	\$20 000.00	Homebrook Pty Ltd
11/4/2000	P	\$44 000.00	Brighton Ceilings Pty Ltd
18/5/2000	P	\$19 000.00	Brighton Ceilings Pty Ltd
16/6/2000	P	\$11 520.00	Australian Colour Enterprises Pty Ltd
16/6/2000	P	\$28 750.00	Australian Colour Enterprises Pty Ltd
Sub-total		\$303 514.00	
less 10% to Ginns		\$30 351.00	
		\$273 163.00	
Plus estimated		**\$188 000.00	Lineform Pty Ltd
TOTAL		\$461 163.00	

* A = Access Australia Scaffolding & Rigging Pty Ltd

* P = Proactive Consultants Pty Ltd

** As to which, see Annexure B.

Annexure B

(Derived from Exhibit 1250 and the Statutory Declarations of Messrs Ginns and Stowers)

Estimate of Moneys Paid by Stowers to Bates and Warner

Cheques cashed through Access Australia Rigging & Scaffolding Pty Ltd's Account

Date of Cheque	Cheque No.	Amount	Reference	Date of Deposit	Reference
16/11/98	913735	\$3 200.00	039.0252.0322.0002	16/11/98	049.0220.0948.0148
23/11/98	913744	\$4 000.00	039.0252.0322.0004	23/11/98	049.0220.0948.0149
16/12/98	913752	\$8 000.00	039.0252.0322.0012	16/12/98	049.0220.0948.0151
29/12/98	913780	\$1 800.00	039.0252.0322.0016	29/12/99	049.0220.0948.0152
28/1/99	812898	\$5 200.00	039.0252.0322.0023	28/1/99	049.0220.0948.0154
26/2/99	812944	\$4 200.00	039.0252.0322.0031	26/2/99	049.0220.0948.0131
4/3/99	812955	\$4 000.00	039.0252.0322.0032	*4/3/99	049.0220.0948.0130
4/3/99	812958	\$2 750.00	039.0252.0322.0033	*4/3/99	049.0220.0948.0130
11/3/99	812972	\$5 000.00	039.0252.0322.0036	11/3/99	049.0220.0948.0130
Sub-total		\$38 200.00			

* These cheques were deposited with other deposits creating a total amount

Cheques cashed through Proactive Consultants Pty Ltd's Account

Date of Cheque	Cheque No.	Amount	Reference	Date of Deposit	Reference
7/4/99	812996	\$10 540.00	039.0252.0322.0041	7/4/99	049.0220.0948.0014
7/5/99	510003	\$8 000.00	039.0252.0322.0157	26/5/99	049.0220.0948.0018
2/7/99	510068	\$10 600.00	039.0252.0322.0159	5/7/99	049.0220.0948.0023
2/7/99	510071	\$3 500.00	039.0252.0322.0160		
23/7/99	510097	\$15 200.00	039.0252.0322.0162	26/7/99	049.0220.0948.0024
27/7/99	510199	\$500.00	039.0252.0322.0154		
2/8/99	510282	\$10 300.00	039.0252.0322.0165	3/8/99	049.0220.0948.0025
2/8/99	510365	\$15 000.00	039.0252.0322.0164		
23/8/99		\$16 000.00		16/8/99	049.0220.0948.0025
2/9/99		\$15 000.00	039.0252.0322.0167	6/9/99	049.0220.0948.0027
6/9/99	510368	\$10 400.00	039.0252.0322.0168	7/9/99	049.0220.0948.0027
16/9/99	510370	\$10 250.00	039.0252.0322.0169	16/9/99	049.0220.0948.0027
21/9/99	510376	\$2 400.00	039.0252.0322.0170		
22/9/99	510378	\$10 250.00	039.0252.0322.0171		
5/10/99	510387	\$20 000.00	039.0252.0322.0174	6/10/99	049.0220.0948.0029
8/10/99	510389	\$10 200.00	039.0252.0322.0176	8/10/99	049.0220.0948.0029

Date of Cheque	Cheque No.	Amount	Reference	Date of Deposit	Reference
21/10/99	510395	\$13 000.00	039.0252.0322.0177	21/10/99	049.0220.0948.0030
4/11/99	510408	\$13 885.00	039.0252.0322.0178	5/11/99	049.0220.0948.0031
10/11/99	510416	\$10 300.00	039.0252.0322.0179	10/11/99	049.0220.0948.0031
23/11/99		\$15 000.00		23/11/99	049.0220.0948.0032
6/12/99	510422	\$16 550.00	039.0252.0322.0180	6/12/99	049.0220.0948.0033
9/12/99	510557	\$14 422.25	039.0252.0322.0182	9/12/99	049.0220.0948.0033
17/12/99	510574	\$25 200.00	039.0252.0322.0183	20/12/99	049.0220.0948.0034
10/1/00	510992	\$19 740.00	039.0252.0322.0199		
11/1/00	511000	\$15 300.00	039.0252.0322.0200		
29/1/00	511004	\$20 345.00	039.0252.0322.0201	31/1/00	049.0220.0948.0035
18/2/00	510908	\$7 000.00	039.0252.0322.0194	18/2/00	049.0220.0948.0036
25/2/00	510914	\$12 450.00	039.0252.0322.0196	28/2/00	049.0220.0948.0037
29/5/00	511074	\$20 000.00	039.0252.0322.0202	29/5/00	049.0220.0948.0009
Sub-total		\$371 332.25			
Total		\$409 532.25			

Estimated payments from Stowers to Bates and Warner

Estimated period of payments:

5 July 1999 – 29 May 2000 = 47 weeks

Stowers estimated he paid around \$4000 per week: 47 x 4000 = \$188 000

(Stowers Statutory Declaration, exhibit 1249, paragraph 46, document 098.0169.0819.0001)

Annexure C

(Derived from Exhibits 1277 and 1278)

Bates – Bank Accounts

Illawarra Credit Union – Craig Rodney Bates and Karen Elizabeth Bates

3 months ending	Money In	Money Out	Barcode
11/10/1999	\$12 363.23	\$607.62	002.0669.0506.0021–0022
1/1/2000	\$10 219.33	\$23 015.61	002.0669.0506.00223–0024
1/4/2000	\$4 100.13	\$10 167.57	002.0669.0506.0025
Total	\$26 672.69	\$33 790.80	

National Australia Bank – Craig Rodney Bates and Karen Elizabeth Bates

Month ending	Money In	Money Out	Barcode
5/3/1998	\$14 150.00	\$3 515.23	011.0494.0586.0110
3/4/1998	\$2 700.00	\$1 633.15	011.0494.0586.0112
5/5/1998	\$4 920.20	\$5 631.78	011.0494.0586.0114
5/6/1998	\$4 168.95	\$6 287.75	011.0494.0586.0116
3/7/1998	\$4 846.30	\$2 923.27	011.0494.0586.0118
5/8/1998	\$11 001.60	\$3 964.57	011.0494.0586.0120
4/9/1998	\$4 770.00	\$9 014.64	011.0494.0586.0122
5/10/1998	\$2 865.00	\$13 440.87	011.0494.0586.0124
5/11/1998	\$3 260.00	\$5 087.57	011.0494.0586.0126
4/12/1998	\$1 500.00	\$1 776.39	011.0494.0586.0128
5/1/1999	\$3 450.00	\$4 952.44	011.0494.0586.0130
5/2/1999	\$1 800.00	\$5 074.01	011.0494.0586.0132
5/3/1999	\$1 500.00	\$1 545.00	011.0494.0586.0134
1/4/1999	\$1 900.00	\$1 590.64	011.0494.0586.0136
5/5/1999	\$1 900.00	\$1 626.54	011.0494.0586.0138
4/6/1999	\$3 300.00	\$1 626.68	011.0494.0586.0140
5/7/1999	\$1 000.00	\$1 674.20	011.0494.0586.0142
5/8/1999	\$8 500.00	\$2 278.14	011.0494.0586.0144
3/9/1999	\$2 800.00	\$2 717.46	011.0494.0586.0146
5/10/1999	\$5 880.00	\$6 817.59	011.0494.0586.0148
5/11/1999	\$2 600.00	\$7 762.10	011.0494.0586.0153
3/12/1999	\$8 872.50	\$2 012.85	011.0494.0586.0155
5/1/2000	\$3 960.72	\$1 788.07	011.0494.0586.0157
4/2/2000	\$2 900.00	\$2 373.29	011.0494.0586.0160

Month ending	Money In	Money Out	Barcode
3/3/2000	\$6 560.77	\$2 215.17	011.0494.0586.0163
5/4/2000	\$5 640.00	\$2 232.37	011.0494.0586.0166
5/5/2000	\$5 244.00	\$2 441.12	011.0494.0586.0169
5/6/2000	\$6 257.80	\$16 131.53	011.0494.0586.0171
5/7/2000	\$10 400.00	\$12 237.27	011.0494.0586.0173
4/8/2000	\$8 476.87	\$9 421.05	011.0494.0586.0174
5/9/2000	\$4 000.00	\$5 267.07	011.0494.0586.0177
5/10/2000	\$7 500.00	\$7 897.54	011.0494.0586.0178
3/11/2000	\$38 059.63	\$18 291.32	011.0494.0586.0182
5/12/2000	\$0.00	\$7 000.27	011.0494.0586.0184
5/1/2001	\$753.16	\$14 753.72	011.0494.0586.0186-0187
5/2/2001	\$86 967.68	\$78 062.11	011.0494.0586.0192
5/3/2001	\$9 233.89	\$4 473.30	011.0494.0586.0196
5/4/2001	\$0.00	\$17 643.60	011.0494.0586.0200-0201
4/5/2001	\$87 270.53	\$17 770.01	011.0494.0586.0204-0205
5/6/2001	\$0.00	\$25 809.87	011.0494.0586.0208-0209
5/7/2001	\$74.00	\$19 945.36	011.0494.0586.0212-0213
Total	\$380 983.60	\$358 706.91	

Both Accounts – Cash deposits only

Month ending	NAB		Illawarra	
	Cash In	Barcode	Cash In	Barcode
5/11/1998	\$3 260.00	011.0494.0586.0126		
4/12/1998	\$1 500.00	011.0494.0586.0128		
5/1/1999	*\$3 450.00	011.0494.0586.0130		
5/2/1999	\$1 800.00	011.0494.0586.0132		
5/3/1999	\$1 500.00	011.0494.0586.0134		
1/4/1999	\$1 900.00	011.0494.0586.0136		
5/5/1999	\$1 900.00	011.0494.0586.0138		
4/6/1999	\$3 300.00	011.0494.0586.0140		
5/7/1999	\$1 000.00	011.0494.0586.0142	A/c opened	
5/8/1999	*\$8 400.00	011.0494.0586.0144	\$3 400.00	002.0669.0506.0021-0022
3/9/1999	\$2 800.00	011.0494.0586.0146	\$1 700.00	002.0669.0506.0022
5/10/1999	\$5 900.00	011.0494.0586.0148	\$3 000.00	002.0669.0506.0022
5/11/1999	*\$2 600.00	011.0494.0586.0153	\$5 000.00	002.0669.0506.0023
3/12/1999	*\$4 242.00	011.0494.0586.0155	\$2 000.00	002.0669.0506.0023-0024

Month ending	NAB		Illawarra	
	Cash In	Barcode	Cash In	Barcode
5/1/2000	*\$3 960.00	011.0494.0586.0157	\$4 500.00	002.0669.0506.0024-0025
4/2/2000	\$2 900.00	011.0494.0586.0160	\$1 600.00	002.0669.0506.0025
3/3/2000	*\$6 560.00	011.0494.0586.0163	A/c closed	
5/4/2000	*\$5 640.00	011.0494.0586.0166		
5/5/2000	\$3 100.00	011.0494.0586.0169		
5/6/2000	*\$6 257.00	011.0494.0586.0171		
5/7/2000	\$10 400.00	011.0494.0586.0173		
4/8/2000	*\$8 476.00	011.0494.0586.0174		
5/9/2000	\$4 000.00	011.0494.0586.0177		
5/10/2000	\$7 500.00	011.0494.0586.0178		
3/11/2000	*\$10 485.00	011.0494.0586.0182		
5/12/2000	\$0.00	011.0494.0586.0184		
5/1/2001	\$753.00	011.0494.0586.0186 -0187		
5/2/2001	\$45.00	011.0494.0586.0192		
5/3/2001	\$563.00	011.0494.0586.0196		
5/4/2001	\$0.00	011.0494.0586.0200 -0201		
4/5/2001	\$0.00	011.0494.0586.0204 -0205		
5/6/2001	\$0.00	011.0494.0586.0208 -0209		
Total	\$114 191.00		\$21 200.00	

* This amount is not all cash; a small part of it is a cheque deposit.

Notes to Payments – Angel Place

- ¹ Warner Statutory Declaration, exhibit 1165, paragraph 12, document 050.0010.0844.0001; Green, T13207/3–7.
- ² Warner Statutory Declaration, exhibit 1165, paragraph 12, document 050.0010.0844.0001; Green, T13207/3–7.
- ³ Docherty Statutory Declaration, exhibit 651, paragraph 9, document 078.0521.0191.0001; Warner Statutory Declaration, exhibit 1240, paragraph 14, document 100.0664.0454.0003. Although various persons have said that Mr Valdezate was the site manager, Counsel Assisting have received a letter from Leightons' solicitors saying that he was actually the site supervisor. They do not specify who the site manager was.
- ⁴ Warner Statutory Declaration, exhibit 1165, paragraphs 12, 22, document 050.0010.0844.0001: Warner said that 'even though I was an employee of Leightons, all my time was spent on dealing with union and safety issues'.
- ⁵ Warner Statutory Declaration, exhibit 1165, paragraphs 49–50, 52, document 050.0010.0844.0001.
- ⁶ Bates Statutory Declaration, exhibit 1162, paragraph 1, document 060.0358.0442.0001; Warner, T13570/40–13571/8.
- ⁷ Heath, T12397/38–41; Bates, T13450/35–37.
- ⁸ Heath, T12397/38–41.
- ⁹ Bates, T13450/39–42.
- ¹⁰ Bates, T13454/32–13455/22; Ferguson, T7597/1–12.
- ¹¹ See, for example, Stowers Statutory Declaration, exhibit 1249, paragraph 44, document 098.0169.0819.0001; Wallace Statutory Declaration, exhibit 1252, paragraph 2, document 086.0771.0516.0001; cf Warner Statutory Declaration, exhibit 1234, paragraph 48, document 020.0672.0837.0001; Warner, T13559/29–34.
- ¹² See, for example, Wallace Statutory Declaration, exhibit 1252, paragraph 2, document 086.0771.0516.0001; cf Warner Statutory Declaration, exhibit 1234, paragraph 48, document 020.0672.0837.0001; Warner, T13559/39–40.
- ¹³ Ginns Statutory Declaration, exhibit 1245, paragraphs 16, 21, document 042.0888.0005.0027; cf Bates, T13450/44–13451/15; Warner Statutory Declaration, exhibit 1234, paragraphs 8, 12, document 020.0672.0837.0001; Warner, T13556/39–13557/26.
- ¹⁴ Ginns Statutory Declaration, exhibit 1245, paragraph 24, document 042.0888.0005.0027; cf Bates, T13452/1–4, T13453/30–31; Warner Statutory Declaration, exhibit 1234, paragraph 14, document 020.0672.0837.0001; Warner, T13552/40–44, T13557/24–26.
- ¹⁵ Ginns Statutory Declaration, exhibit 1245, paragraph 16, document 042.0888.0005.0027; cf Bates, T13451/2–3; Warner Statutory Declaration, exhibit 1234, paragraph 8, document 020.0672.0837.0001; Warner, T13557/8–9.
- ¹⁶ Ginns Statutory Declaration, exhibit 1245, paragraph 22, document 042.0888.0005.0027; cf Warner Statutory Declaration, exhibit 1234, paragraph 13, document 020.0672.0837.0001; Bates, T13453/33–34.
- ¹⁷ Ginns Statutory Declaration, exhibit 1245, paragraph 1, document 042.0888.0005.0027.
- ¹⁸ Ginns Statutory Declaration, exhibit 1245, paragraph 1, document 042.0888.0005.0027.
- ¹⁹ Ginns Statutory Declaration, exhibit 1245, paragraph 1, document 042.0888.0005.0027.
- ²⁰ Ginns Statutory Declaration, exhibit 1245, paragraph 1, document 042.0888.0005.0027.
- ²¹ Ginns Statutory Declaration, exhibit 1245, paragraphs 4–5, document 042.0888.0005.0027; Ginns, T13216/26–13217/9, T13222/27–13224/26.
- ²² Ginns Statutory Declaration, exhibit 1245, paragraph 6, document 042.0888.0005.0027.
- ²³ Ginns Statutory Declaration, exhibit 1245, paragraph 8, document 042.0888.0005.0027.

- ²⁴ Ginns Statutory Declaration, exhibit 1245, paragraph 8, document 042.0888.0005.0027.
- ²⁵ Ginns Statutory Declaration, exhibit 1245, paragraph 9, document 042.0888.0005.0027; Stowers Statutory Declaration, exhibit 1249, paragraph 5, document 098.0169.0819.0001.
- ²⁶ Ginns Statutory Declaration, exhibit 1245, paragraph 9, document 042.0888.0005.0027; Stowers Statutory Declaration, exhibit 1249, paragraph 5, document 098.0169.0819.0001.
- ²⁷ Ginns Statutory Declaration, exhibit 1245, paragraph 13, document 042.0888.0005.0027; cf Warner Statutory Declaration, exhibit 1234, paragraph 6, document 020.0672.0837.0001; Warner, T13551/22–25. Warner said he met Ginns earlier than this, on a Leightons' site at the University of Technology, Sydney some time between 1992 and 1994.
- ²⁸ Ginns Statutory Declaration, exhibit 1245, paragraph 13, document 042.0888.0005.0027.
- ²⁹ Ginns Statutory Declaration, exhibit 1245, paragraph 14, document 042.0888.0005.0027; Bates, T13450/24–33.
- ³⁰ Ginns Statutory Declaration, exhibit 1245, paragraphs 15, 18, document 042.0888.0005.0027; cf Warner Statutory Declaration, exhibit 1234, paragraph 7, document 020.0672.0837.0001; Warner, T13556/35–45: Although Ginns believed he had this conversation with Warner when Angel Place first began, this would seem to be incorrect as the cheque cashing scheme commenced in March 1999, which Ginns said was a week after his initial conversation with Warner. Ginns did not work on the Angel Place site, so it is likely he is confused as to when the project began. From documentary evidence, it is clear this conversation occurred in early 1999: see for example, Ginns Statutory Declaration, exhibit 1245, annexure RIG-24, document 085.0706.0491.0008.
- ³¹ Ginns Statutory Declaration, exhibit 1245, paragraph 16, document 042.0888.0005.0027; cf Warner Statutory Declaration, exhibit 1234, paragraph 8, document 020.0672.0837.0001; Warner, T13557/2–3.
- ³² Ginns Statutory Declaration, exhibit 1245, paragraph 16, document 042.0888.0005.0027; cf Warner Statutory Declaration, exhibit 1234, paragraph 8, document 020.0672.0837.0001.
- ³³ Ginns Statutory Declaration, exhibit 1245, paragraph 16, document 042.0888.0005.0027; cf Warner Statutory Declaration, exhibit 1234, paragraph 8, document 020.0672.0837.0001; Bates, T13450/44–45; Warner, T13557/5–6.
- ³⁴ Ginns Statutory Declaration, exhibit 1245, paragraph 16, document 042.0888.0005.0027; cf Warner Statutory Declaration, exhibit 1234, paragraph 8, document 020.0672.0837.0001; Bates, T13451/5–6; Warner, T13557/11–13.
- ³⁵ Ginns Statutory Declaration, exhibit 1245, paragraph 16, document 042.0888.0005.0027; cf Bates, T13451/8–10; Warner Statutory Declaration, exhibit 1234, paragraph 8, document 020.0672.0837.0001; Warner, T13557/15–16.
- ³⁶ Ginns Statutory Declaration, exhibit 1245, paragraph 16, document 042.0888.0005.0027; cf Bates, T13451/12–15; Warner Statutory Declaration, exhibit 1234, paragraph 8, document 020.0672.0837.0001; Warner, T13557/18–22.
- ³⁷ Ginns Statutory Declaration, exhibit 1245, paragraph 17, document 042.0888.0005.0027; cf Bates, T13451/2–3, T13451/17–20; Warner Statutory Declaration, exhibit 1234, paragraph 9, document 020.0672.0837.0001; Warner, T13557/8–9.
- ³⁸ Ginns Statutory Declaration, exhibit 1245, paragraph 24, document 042.0888.0005.0027.
- ³⁹ Ginns Statutory Declaration, exhibit 1245, paragraph 18, document 042.0888.0005.0027; cf Bates, T13451/22–23; Warner Statutory Declaration, exhibit 1234, paragraph 10, document 020.0672.0837.0001.
- ⁴⁰ Ginns Statutory Declaration, exhibit 1245, paragraph 18, document 042.0888.0005.0027, Ginns Statutory Declaration, exhibit 1245, annexure RIG-24, document 085.0706.0491.0008; cf Warner Statutory Declaration, exhibit 1234, paragraph 10, document 020.0672.0837.0001.
- ⁴¹ Ginns Statutory Declaration, exhibit 1245, paragraph 18, document 042.0888.0005.0027; cf Warner Statutory Declaration, exhibit 1234, paragraph 10, document 020.0672.0837.0001.

- ⁴² Ginns Statutory Declaration, exhibit 1245, paragraphs 20, 37, document 042.0888.0005.0027; Ginns Statutory Declaration, exhibit 1245, annexure RIG-1, document 003.0831.0991.0001; annexure RIG-2, document 041.0800.0520.0119; annexure RIG-3, document 042.0888.0005.0051; annexure RIG-4, document 042.0888.0005.0053; annexure RIG-5, document 041.0800.0520.0118; annexure RIG-6, document 042.0888.0005.0056; annexure RIG-7, document 003.0831.0991.0003; annexure RIG-8, document 003.0831.0991.0002; annexure RIG-9, document 042.0888.0005.0060; annexure RIG-10, document 042.0888.0005.0062; annexure RIG-11, document 042.0888.0005.0064; annexure RIG-12, document 042.0888.0005.0066; annexure RIG-13, document 042.0888.0005.0068; annexure RIG-14, document 042.0888.0005.0070; annexure RIG-15, document 042.0888.0005.0072; annexure RIG-16, document 042.0888.0005.0074; annexure RIG-17, document 042.0888.0005.0076; annexure RIG-18, document 042.0888.0005.0078; annexure RIG-19, document 042.0888.0005.0080; annexure RIG-20 document 042.0888.0005.0082; annexure RIG-21, document 041.0800.0520.0121; annexure RIG-22, document 041.0800.0520.0120; annexure RIG-23, document 041.0800.0520.0122.
- ⁴³ Ginns Statutory Declaration, exhibit 1245, paragraph 20, document 042.0888.0005.0027 as amended by oral evidence Ginns, T13211/7-16.
- ⁴⁴ Ginns Statutory Declaration, exhibit 1245, paragraph 21, document 042.0888.0005.0027; cf Warner Statutory Declaration, exhibit 1234, paragraph 12, document 020.0672.0837.0001.
- ⁴⁵ Ginns Statutory Declaration, exhibit 1245, paragraph 22, document 042.0888.0005.0027; Tender Bundle of Documents re: Rees Ginns and Moni Stowers Volume 2, exhibit 1251, document 040.0620.0840.0024; cf Bates, T13452/1-16, T13453/30-31: Bates agreed he telephoned Ginns occasionally in 1999 and 2000, but said he never asked him to cash a cheque; cf Warner Statutory Declaration, exhibit 1234, paragraph 13, document 020.0672.0837.0001; Warner, T13552/40-44, T13557/24-26.
- ⁴⁶ Ginns Statutory Declaration, exhibit 1245, paragraph 22, document 042.0888.0005.0027; cf Warner Statutory Declaration, exhibit 1234, paragraph 13, document 020.0672.0837.0001; Bates, T13453/33-34.
- ⁴⁷ Ginns Statutory Declaration, exhibit 1245, paragraph 22, document 042.0888.0005.0027; cf Warner Statutory Declaration, exhibit 1234, paragraph 13, document 020.0672.0837.0001; Bates, T13453/36-38; Warner, T13557/28-30.
- ⁴⁸ Ginns Statutory Declaration, exhibit 1245, paragraph 23, document 042.0888.0005.0027; cf Warner Statutory Declaration, exhibit 1234, paragraph 14, document 020.0672.0837.0001.
- ⁴⁹ Ginns Statutory Declaration, exhibit 1245, paragraph 23, document 042.0888.0005.0027; cf Warner Statutory Declaration, exhibit 1234, paragraph 14, document 020.0672.0837.0001.
- ⁵⁰ Ginns Statutory Declaration, exhibit 1245, paragraph 24, document 042.0888.0005.0027; Tender Bundle of Documents re: Rees Ginns and Moni Stowers Volume 2, exhibit 1251, document 040.0620.0840.0001-0023; cf Warner Statutory Declaration, exhibit 1234, paragraph 14, document 020.0672.0837.0001; Bates, T13453/40-42; Warner, T13557/32-33.
- ⁵¹ Ginns Statutory Declaration, exhibit 1245, paragraph 24, document 042.0888.0005.0027; cf Bates, T13453/44-45; Warner Statutory Declaration, exhibit 1234, paragraph 14, document 020.0672.0837.0001; Warner, T13557/35.
- ⁵² Ginns Statutory Declaration, exhibit 1245, paragraph 24, document 042.0888.0005.0027; cf Bates, T13477/37-42: Bates denied receiving any moneys from Ginns; Warner Statutory Declaration, exhibit 1234, paragraph 14, document 020.0672.0837.0001.
- ⁵³ Ginns Statutory Declaration, exhibit 1245, paragraph 25, document 042.0888.0005.0027; cf Bates, T13454/1-9; Warner Statutory Declaration, exhibit 1234, paragraph 14, document 020.0672.0837.0001.
- ⁵⁴ Ginns Statutory Declaration, exhibit 1245, paragraph 25, document 042.0888.0005.0027; cf Warner Statutory Declaration, exhibit 1234, paragraph 14, document 020.0672.0837.0001.
- ⁵⁵ Ginns Statutory Declaration, exhibit 1245, paragraph 26, document 042.0888.0005.0027; cf Warner Statutory Declaration, exhibit 1234, paragraph 14, document 020.0672.0837.0001; Warner, T13557/37-41.

- ⁵⁶ Ginns Statutory Declaration, exhibit 1245, paragraph 28, document 042.0888.0005.0027; cf Warner Statutory Declaration, exhibit 1234, paragraph 15, document 020.0672.0837.0001; Warner, T13557/43–13558/3.
- ⁵⁷ Ginns Statutory Declaration, exhibit 1245, paragraph 28, document 042.0888.0005.0027; cf Warner Statutory Declaration, exhibit 1234, paragraph 15, document 020.0672.0837.0001; Warner, T13558/5–9.
- ⁵⁸ Ginns Statutory Declaration, exhibit 1245, paragraph 29, document 042.0888.0005.0027; cf Bates, T13454/20–30; Warner Statutory Declaration, exhibit 1234, paragraph 15; Warner, T13558/13–15.
- ⁵⁹ Ginns Statutory Declaration, exhibit 1245, annexure RIG-26, document 049.0220.0948.0006; cf Ginns Statutory Declaration, exhibit 1245, paragraph 33, document 042.0888.0005.0027: Ginns thought this cheque was for \$70 000 but the largest cheque for Brighton Ceilings was \$44 000.
- ⁶⁰ Ginns Statutory Declaration, exhibit 1245, paragraph 33, document 042.0888.0005.0027; Ginns Statutory Declaration, exhibit 1245, annexure RIG-26, document 049.0220.0948.0006 at 0006–0007.
- ⁶¹ Ginns Statutory Declaration, exhibit 1245, paragraph 33, document 042.0888.0005.0027; Ginns Statutory Declaration, exhibit 1245, annexure RIG-26, document 049.0220.0948.0008.
- ⁶² Ginns Statutory Declaration, exhibit 1245, paragraph 38, document 042.0888.0005.0027; see also Warner Statutory Declaration, exhibit 1234, paragraph 18, document 020.0672.0837.0001.
- ⁶³ Ginns Statutory Declaration, exhibit 1245, paragraph 33, document 042.0888.0005.0027.
- ⁶⁴ Ginns Statutory Declaration, exhibit 1245, paragraph 33, document 042.0888.0005.0027.
- ⁶⁵ Angel Place Tender Bundle, exhibit 1246, document 034.0006.0991.0015; Ginns, T13212/30–32.
- ⁶⁶ Ginns, T13247/26–28.
- ⁶⁷ Ginns Statutory Declaration, exhibit 1245, paragraphs 16–24, document 042.0888.0005.0027; Ginns Statutory Declaration, exhibit 1245, annexure RIG-24, document 085.0706.0491.0008–0114; annexure RIG-25, document 049.0220.0948.0042–0154; annexure RIG-26, document 049.0220.0948.0006–0040; Stowers Statutory Declaration, exhibit 1249, paragraph 46, document 098.0169.0819.0001; see annexures A and B to this case study for a summary of documentary evidence.
- ⁶⁸ Ginns Statutory Declaration, exhibit 1245, paragraph 36, document 042.0888.0005.0027.
- ⁶⁹ Ginns Statutory Declaration, exhibit 1245, paragraph 36, document 042.0888.0005.0027.
- ⁷⁰ Ginns Statutory Declaration, exhibit 1245, paragraph 39, document 042.0888.0005.0027; cf Warner Statutory Declaration, exhibit 1234, paragraph 19, document 020.0672.0837.0001.
- ⁷¹ Stowers Statutory Declaration, exhibit 1249, paragraph 57, document 098.0169.0819.0001; see also Warner, T13548/6–7.
- ⁷² Stowers Statutory Declaration, exhibit 1249, paragraph 57, document 098.0169.0819.0001; Stowers Statutory Declaration, exhibit 1248, annexure RMS-3, document 042.0888.0005.0019 at 0019–0020.
- ⁷³ Stowers Statutory Declaration, exhibit 1249, paragraph 57, document 098.0169.0819.0001; Stowers, T13270/45–13271/1–3; cf Warner, T13548/20–21.
- ⁷⁴ Ginns Statutory Declaration, exhibit 1245, paragraph 72, document 042.0888.0005.0027.
- ⁷⁵ Warner, T13548/23–34; Ginns Statutory Declaration, exhibit 1245, paragraph 73, document 042.0888.0005.0027.
- ⁷⁶ Ginns Statutory Declaration, exhibit 1245, paragraph 73, document 042.0888.0005.0027; Stowers Statutory Declaration, exhibit 1249, paragraph 58, document 098.0169.0819.0001; cf Warner Statutory Declaration, exhibit 1234, paragraph 31, document 042.0888.0005.0027; Warner, T13550/4–5.
- ⁷⁷ Ginns Statutory Declaration, exhibit 1245, paragraph 73, document 042.0888.0005.0027; Stowers Statutory Declaration, exhibit 1249, paragraph 58, document 098.0169.0819.0001; cf Warner Statutory Declaration, exhibit 1234, paragraph 31, document 020.0672.0837.0001; Warner, T13550/7–9.

- ⁷⁸ Stowers Statutory Declaration, exhibit 1249, paragraph 58, document 098.0169.0819.0001; Ginns Statutory Declaration, exhibit 1245, paragraph 73, document 042.0888.0005.0027; Warner, T13552/32–33; cf Warner, T13549/21–22. Warner admitted saying he was struggling financially, but denied receiving any cash payments or saying Bates received the real money. Counsel for Warner failed to cross-examine Ginns (but did cross-examine Stowers) about the conversation at Cronulla.
- ⁷⁹ Ginns Statutory Declaration, exhibit 1245, paragraph 73, document 042.0888.0005.0027; cf Warner, T13549/24–26. See also Bates, T13491/23–38: Bates' evidence was that he didn't make any money at all from Ginns and Stowers.
- ⁸⁰ Stowers Statutory Declaration, exhibit 1249, paragraph 58, document 098.0169.0819.0001 (note that the document contains two paragraphs entitled '58' – this reference is to the second).
- ⁸¹ Stowers Statutory Declaration, exhibit 1249, paragraph 58, document 098.0169.0819.0001 (note that the document contains two paragraphs entitled '58' – this reference is to the second).
- ⁸² Stowers Statutory Declaration, exhibit 1249, paragraph 58, document 098.0169.0819.0001 (note that the document contains two paragraphs entitled '58' – this reference is to the second); Bates, T13491/8–11; cf Warner Statutory Declaration, exhibit 1234, paragraph 74, document 020.0672.0837.0001. Warner denied that Stowers and Ginns came back to his shop. However, Bates' evidence was that he did ring Warner's shop and that Stowers did answer the phone.
- ⁸³ Stowers Statutory Declaration, exhibit 1249, paragraph 58, document 098.0169.0819.0001 (note that the document contains two paragraphs entitled '58' – this reference is to the second).
- ⁸⁴ Warner Statutory Declaration, exhibit 1165, paragraph 1, document 050.0010.0844.0001.
- ⁸⁵ Bates Statutory Declaration, exhibit 1162, paragraph 1, document 060.0358.0442.0001.
- ⁸⁶ Ferguson Statutory Declaration, exhibit 1453, paragraph 3, document 042.0280.0296.0004.
- ⁸⁷ Ginns Statutory Declaration, exhibit 1245, paragraph 55, document 042.0888.0005.0027; cf Warner Statutory Declaration, exhibit 1234, paragraph 28, document 020.0672.0837.0001.
- ⁸⁸ Ginns Statutory Declaration, exhibit 1245, paragraph 55, document 042.0888.0005.0027; cf Warner Statutory Declaration, exhibit 1234, paragraph 28, document 020.0672.0837.0001.
- ⁸⁹ Ginns Statutory Declaration, exhibit 1245, paragraph 55, document 042.0888.0005.0027; Ginns, T13229/20–21; Stowers Statutory Declaration, exhibit 1248, paragraph 6, document 042.0888.0005.0013. Stowers said the money he lent to Ginns came out of one of the two cheques he cashed through Proactive Consultants in December 1999: Stowers Statutory Declaration, exhibit 1248, annexure RMS-4, document 039.0252.0322.0180, 039.0252.0322.0183; cf Warner Statutory Declaration, exhibit 1234, paragraph 28, document 020.0672.0837.0001.
- ⁹⁰ Ginns Statutory Declaration, exhibit 1245, paragraph 55, document 042.0888.0005.0027; cf Warner Statutory Declaration, exhibit 1234, paragraph 28, document 020.0672.0837.0001.
- ⁹¹ Ginns Statutory Declaration, exhibit 1245, paragraph 55, document 042.0888.0005.0027; cf Warner Statutory Declaration exhibit 1234, paragraph 28, document 020.0672.0837.0001.
- ⁹² Ginns Statutory Declaration, exhibit 1245, paragraph 58, document 042.0888.0005.0027.
- ⁹³ Ginns Statutory Declaration, exhibit 1245, paragraph 58, document 042.0888.0005.0027; Ginns, T13229/12–13.
- ⁹⁴ Ginns Statutory Declaration, exhibit 1245, paragraph 58, document 042.0888.0005.0027.
- ⁹⁵ Ginns Statutory Declaration, exhibit 1245, paragraph 58, document 042.0888.0005.0027.
- ⁹⁶ Ginns Statutory Declaration, exhibit 1245, paragraph 58, document 042.0888.0005.0027.
- ⁹⁷ Ginns, T13240/30–3241/1.
- ⁹⁸ Ginns Statutory Declaration, exhibit 1245, paragraph 59, document 042.0888.0005.0027; cf Warner Statutory Declaration, exhibit 1234, paragraph 30, document 020.0672.0837.0001.
- ⁹⁹ Ginns Statutory Declaration, exhibit 1245, paragraph 59, document 042.0888.0005.0027; cf Warner Statutory Declaration, exhibit 1234, paragraph 30, document 020.0672.0837.0001.

- ¹⁰⁰ Ginns Statutory Declaration, exhibit 1245, paragraph 59, document 042.0888.0005.0027.
- ¹⁰¹ Ginns Statutory Declaration, exhibit 1245, paragraph 59, document 042.0888.0005.0027; cf Warner Statutory Declaration, exhibit 1234, paragraph 30, document 020.0672.0837.0001.
- ¹⁰² Ginns Statutory Declaration, exhibit 1245, paragraph 59, document 042.0888.0005.0027.
- ¹⁰³ Ginns Statutory Declaration, exhibit 1245, paragraph 56, document 042.0888.0005.0027; cf Warner Statutory Declaration, exhibit 1234, paragraph 29, document 020.0672.0837.0001.
- ¹⁰⁴ Ginns Statutory Declaration, exhibit 1245, paragraph 56, document 042.0888.0005.0027; cf Warner Statutory Declaration, exhibit 1234, paragraph 29, document 020.0672.0837.0001.
- ¹⁰⁵ Ginns Statutory Declaration, exhibit 1245, paragraph 56, document 042.0888.0005.0027; cf MacKay Statutory Declaration, exhibit 1267, paragraph 8, document 096.0326.0281.0002; Warner Statutory Declaration, exhibit 1234, paragraph 29, document 020.0672.0837.0004.
- ¹⁰⁶ MacKay Statutory Declaration, exhibit 1267, paragraph 8, document 096.0326.0281.0002.
- ¹⁰⁷ Ginns Statutory Declaration, exhibit 1245, paragraph 56, document 042.0888.0005.0027.
- ¹⁰⁸ Stowers Statutory Declaration, exhibit 1249, paragraph 6, document 098.0169.0819.0001.
- ¹⁰⁹ Stowers Statutory Declaration, exhibit 1249, paragraph 6, document 098.0169.0819.0001.
- ¹¹⁰ Stowers Statutory Declaration, exhibit 1249, paragraph 9, document 098.0169.0819.0001.
- ¹¹¹ Stowers Statutory Declaration, exhibit 1249, paragraph 6, document 098.0169.0819.0001.
- ¹¹² Stowers Statutory Declaration, exhibit 1249, paragraph 16, document 098.0169.0819.0001.
- ¹¹³ Stowers Statutory Declaration, exhibit 1249, paragraph 16, document 098.0169.0819.0001.
- ¹¹⁴ Stowers Statutory Declaration, exhibit 1249, paragraph 10, document 098.0169.0819.0001; Bates, T13455/24–26.
- ¹¹⁵ Stowers Statutory Declaration, exhibit 1249, paragraph 10, document 098.0169.0819.0001; Bates, T13455/28–29; Warner, T13558/23–28.
- ¹¹⁶ Stowers Statutory Declaration, exhibit 1249, paragraph 11, document 098.0169.0819.0001; Stowers Statutory Declaration, exhibit 1249, annexure RMS-1, document 097.0564.0719.0001; Bates, T13456/28–38.
- ¹¹⁷ Stowers Statutory Declaration, exhibit 1249, paragraph 11, document 098.0169.0819.0001; Bates, T13456/40–43; cf Warner Statutory Declaration, exhibit 1234, paragraph 64, document 020.0672.0837.0001. Warner said he did not ‘negotiate’ the EBA as he had no power to do so.
- ¹¹⁸ Stowers Statutory Declaration, exhibit 1249, paragraph 12, document 098.0169.0819.0001; cf Bates, T13456/45–13457/6; Warner Statutory Declaration, exhibit 1234, paragraph 64, document 020.0672.0837.0001.
- ¹¹⁹ Stowers Statutory Declaration, exhibit 1249, paragraph 12, document 098.0169.0819.0001; cf Bates, T13457/5–6; Warner Statutory Declaration, exhibit 1234, paragraph 64, document 020.0672.0837.0001; Warner, T13558/33–35.
- ¹²⁰ Stowers, T13262/16–22, T13266/17–22.
- ¹²¹ Stowers Statutory Declaration, exhibit 1249, paragraph 12, document 098.0169.0819.0001; cf Warner Statutory Declaration, exhibit 1234, paragraph 64, document 020.0672.0837.0001; Warner, T13558/37–38.
- ¹²² Stowers Statutory Declaration, exhibit 1248, paragraph 2, document 042.0888.0005.0013; Stowers Statutory Declaration, exhibit 1248, annexure RMS-1, document 039.0252.0322.0180.
- ¹²³ Stowers Statutory Declaration, exhibit 1248, paragraph 2, document 042.0888.0005.0013; Stowers Statutory Declaration, exhibit 1248, annexure RMS-1, document 039.0252.0322.0181.
- ¹²⁴ Stowers Statutory Declaration, exhibit 1248, paragraph 2, document 042.0888.0005.0013; Stowers Statutory Declaration, exhibit 1249, paragraph 12, document 098.0169.0819.0001; Stowers, T13262/16–22, T13266/21–28; cf Bates, T13457/19–21; Warner Statutory Declaration, exhibit 1234, paragraph 64, document 020.0672.0837.0001; Warner, T13558/42–45.

- ¹²⁵ Stowers Statutory Declaration, exhibit 1249, paragraphs 2–5, document 098.0169.0819.0001.
- ¹²⁶ Stowers, T13251/13–19.
- ¹²⁷ Stowers Statutory Declaration, exhibit 1249, paragraph 14, document 098.0169.0819.0001; Stowers Statutory Declaration, exhibit 1249, annexure RMS-2, document 097.0564.0719.0023.
- ¹²⁸ Stowers Statutory Declaration, exhibit 1249, paragraph 13, document 098.0169.0819.0001.
- ¹²⁹ Stowers Statutory Declaration, exhibit 1249, paragraph 13, document 098.0169.0819.0001.
- ¹³⁰ Stowers Statutory Declaration, exhibit 1249, paragraph 17, document 098.0169.0819.0001.
- ¹³¹ Stowers Statutory Declaration, exhibit 1249, paragraph 17, document 098.0169.0819.0001.
- ¹³² Stowers Statutory Declaration, exhibit 1249, paragraph 18, document 098.0169.0819.0001.
- ¹³³ Stowers Statutory Declaration, exhibit 1249, paragraph 20, document 098.0169.0819.0005; McGahan Statement, exhibit 1288, paragraph 2, document 067.0647.0936.0040.
- ¹³⁴ Stowers, T13254/1–15; cf McGahan Statement, exhibit 1288, paragraph 2, document 067.0647.0936.0040. McGahan said the worker told him he had been employed for six months.
- ¹³⁵ Stowers Statutory Declaration, exhibit 1249, paragraph 20, document 098.0169.0819.0001.
- ¹³⁶ McGahan Statement, exhibit 1288, paragraph 2, document 067.0647.0936.0040.
- ¹³⁷ Stowers Statutory Declaration, exhibit 1249, paragraph 20, document 098.0169.0819.0001.
- ¹³⁸ Stowers Statutory Declaration, exhibit 1249, paragraph 20, document 098.0169.0819.0001; McGahan Statement, exhibit 1288, paragraph 2, document 067.0647.0936.0040.
- ¹³⁹ Stowers Statutory Declaration, exhibit 1249, paragraph 21, document 098.0169.0819.0001; McGahan Statement, exhibit 1288, paragraph 3, document 067.0647.0936.0040; Bates, T13511/43–13512/1. Bates was asked to ensure Stowers attended at this meeting.
- ¹⁴⁰ Stowers Statutory Declaration, exhibit 1249, paragraph 21, document 098.0169.0819.0005; McGahan Statement, exhibit 1288, paragraph 3, document 067.0647.0936.0040; Ferguson Statement, exhibit 1453, paragraphs 19, 63, document 042.0280.0296.0004.
- ¹⁴¹ Stowers, T13254/42–13255/5, T13255/29–32, T13266/34–37; McGahan Statement, exhibit 1288, paragraph 3, document 067.0647.0936.0040.
- ¹⁴² Stowers Statutory Declaration, exhibit 1249, paragraph 22, document 098.0169.0819.0001.
- ¹⁴³ Stowers Statutory Declaration, exhibit 1249, paragraph 22, document 098.0169.0819.0001; McGahan Statement, exhibit 1288, paragraph 4, document 067.0647.0936.0040.
- ¹⁴⁴ Stowers Statutory Declaration, exhibit 1249, paragraph 22, document 098.0169.0819.0001.
- ¹⁴⁵ Stowers Statutory Declaration, exhibit 1249, paragraph 22, document 098.0169.0819.0001; McGahan Statement, exhibit 1288, paragraph 4, document 067.0647.0936.0040.
- ¹⁴⁶ Stowers Statutory Declaration, exhibit 1249, paragraph 22, document 098.0169.0819.0001.
- ¹⁴⁷ Stowers, T13257/7–11.
- ¹⁴⁸ McGahan Statement, exhibit 1288, paragraph 4, document 067.0647.0936.0040.
- ¹⁴⁹ Stowers Statutory Declaration, exhibit 1249, paragraph 23, document 098.0169.0819.0001; Stowers, T13256/40–13257/1; McGahan Statement, exhibit 1288, paragraph 7, document 067.0647.0936.0040.
- ¹⁵⁰ Stowers Statutory Declaration, exhibit 1249, paragraph 24, document 098.0169.0819.0001; cf McGahan Statement, exhibit 1288, paragraph 7, document 067.0647.0936.0040. McGahan said it was a request by Ferguson, not a demand.
- ¹⁵¹ Stowers, T13257/18–29; McGahan Statement, exhibit 1288, paragraph 7, document 067.0647.0936.0040.
- ¹⁵² Stowers Statutory Declaration, exhibit 1249, paragraph 24, document 098.0169.0819.0001; cf McGahan Statement, exhibit 1288, paragraph 7, document 067.0647.0936.0040.
- ¹⁵³ Stowers Statutory Declaration, exhibit 1249, paragraph 26, document 098.0169.0819.0001.
- ¹⁵⁴ Stowers Statutory Declaration, exhibit 1249, paragraph 26, document 098.0169.0819.0001.

- ¹⁵⁵ Stowers, T13257/24–26, T13273/17–27.
- ¹⁵⁶ Stowers Statutory Declaration, exhibit 1249, paragraphs 35–36, document 098.0169.0819.0001.
- ¹⁵⁷ Stowers Statutory Declaration, exhibit 1249, paragraphs 35–36, document 098.0169.0819.0001.
- ¹⁵⁸ Stowers Statutory Declaration, exhibit 1249, paragraphs 35, 41, document 098.0169.0819.0001.
- ¹⁵⁹ Stowers Statutory Declaration, exhibit 1249, paragraph 37, document 098.0169.0819.0001; Stowers, T13260/23–25.
- ¹⁶⁰ Stowers, T13260/27.
- ¹⁶¹ Stowers Statutory Declaration, exhibit 1249, paragraph 38, document 098.0169.0819.0001; Stowers, T13259/17–20; McGahan, T13608/36–38.
- ¹⁶² Stowers Statutory Declaration, exhibit 1249, paragraph 38, document 098.0169.0819.0001; Stowers, T13259/19–27; McGahan, T13607/33–38; Glass, T13615/34–42.
- ¹⁶³ McGahan Statement, exhibit 1288, paragraph 8, document 067.0647.0936.0040; McGahan, T13607/44–13608/5, Glass Statement, exhibit 1290, paragraph 6, document 067.0647.0936.0036; Glass, T13615/42–13616/3.
- ¹⁶⁴ Stowers Statutory Declaration, exhibit 1249, paragraph 40, document 098.0169.0819.0001; McGahan Statement, exhibit 1288, paragraph 8, document 067.0647.0936.0040; Glass Statement, exhibit 1290, paragraph 2, document 067.0647.0936.0036; Stowers, T13259/29–30; McGahan, T13607/40–41; Glass, T13615/34–39.
- ¹⁶⁵ Stowers Statutory Declaration, exhibit 1249, paragraph 40, document 098.0169.0819.0001; McGahan, T13608/40–42; cf Glass, T13616/20–24.
- ¹⁶⁶ Stowers Statutory Declaration, exhibit 1249, paragraph 40, document 098.0169.0819.0001; see also, for example, McGahan, T13608/44–13609/3; Glass, T13616/29–32.
- ¹⁶⁷ Glass, T13608/32–34, T13616/29–32; McGahan, T13609/30–32. Although McGahan said it was his job to investigate the matter, he went on to say it was not his responsibility to investigate whether there was, in fact, a bank error.
- ¹⁶⁸ Stowers Statutory Declaration, exhibit 1249, paragraph 40, document 098.0169.0819.0001; McGahan, T13609/34–37.
- ¹⁶⁹ Stowers Statutory Declaration, exhibit 1249, paragraph 40, document 098.0169.0819.0001; McGahan Statement, exhibit 1288, paragraph 9, document 067.0647.0936.0040; Glass Statement, exhibit 1290, paragraph 4, document 067.0647.0936.0036; Stowers, T13259/32–36; McGahan, T13609/44–45; Glass, T13616/34–36.
- ¹⁷⁰ Stowers Statutory Declaration, exhibit 1249, paragraph 41, document 098.0169.0819.0001; Glass Statement, exhibit 1290, paragraph 4, document 067.0647.0936.0036; McGahan, T13609/39–42, T13610/9–13; Glass, T13616/38–13617/5. Glass and McGahan both said that, at the time, they did not know for sure that the situation was beyond Stowers' control.
- ¹⁷¹ Stowers Statutory Declaration, exhibit 1249, paragraph 41, document 098.0169.0819.0001; Stowers, T13260/29–13261/1.
- ¹⁷² Stowers Statutory Declaration, exhibit 1249, paragraph 42, document 098.0169.0819.0001.
- ¹⁷³ Stowers Statutory Declaration, exhibit 1249, paragraph 42, document 098.0169.0819.0001.
- ¹⁷⁴ Stowers Statutory Declaration, exhibit 1249, paragraph 43, document 098.0169.0819.0001.
- ¹⁷⁵ Stowers Statutory Declaration, exhibit 1249, paragraph 43, document 098.0169.0819.0001.
- ¹⁷⁶ Stowers Statutory Declaration, exhibit 1249, paragraph 44, document 098.0169.0819.0001.
- ¹⁷⁷ Stowers Statutory Declaration, exhibit 1249, paragraph 44, document 098.0169.0819.0001; cf Warner Statutory Declaration, exhibit 1234, paragraph 65, document 020.0672.0837.0001; Warner, T13559/5–11.
- ¹⁷⁸ Stowers Statutory Declaration, exhibit 1249, paragraph 44, document 098.0169.0819.0001; cf Warner Statutory Declaration, exhibit 1234, paragraph 65, document 020.0672.0837.0004; Warner, T13559/13.

- 179 Stowers Statutory Declaration, exhibit 1249, paragraph 46, document 098.0169.0819.0001; cf Warner Statutory Declaration, exhibit 1234, paragraph 65, document 020.0672.0837.0001; Warner, T13559/15–21.
- 180 Stowers Statutory Declaration, exhibit 1249, paragraph 46, document 098.0169.0819.0001; Stowers Statutory Declaration, exhibit 1248, annexure RMS-2, document 039.0252.0322.0154–0202.
- 181 Stowers Statutory Declaration, exhibit 1249, paragraph 46, document 098.0169.0819.0001.
- 182 Stowers Statutory Declaration, exhibit 1249, paragraph 46, document 098.0169.0819.0001.
- 183 Stowers Statutory Declaration, exhibit 1249, paragraph 46, document 098.0169.0819.0001; cf Warner Statutory Declaration, exhibit 1234, paragraph 65, document 020.0672.0837.0004.
- 184 Stowers Statutory Declaration, exhibit 1249, paragraph 46, document 098.0169.0819.0001; cf Warner Statutory Declaration, exhibit 1234, paragraph 65, document 020.0672.0837.0004; Warner, T13559/15–24.
- 185 Stowers Statutory Declaration, exhibit 1249, paragraphs 46, 50, document 098.0169.0819.0001; cf Warner Statutory Declaration, exhibit 1234, paragraphs 65, 68, document 020.0672.0837.0004.
- 186 Stowers Statutory Declaration, exhibit 1249, paragraph 46, document 098.0169.0819.0001; cf Warner Statutory Declaration, exhibit 1234, paragraph 65, document 020.0672.0837.0004.
- 187 Stowers Statutory Declaration, exhibit 1249, paragraph 47, document 098.0169.0819.0001.
- 188 Stowers Statutory Declaration, exhibit 1249, paragraph 50, document 098.0169.0819.0001; cf Warner Statutory Declaration, exhibit 1234, paragraph 68, document 020.0672.0837.0004.
- 189 Stowers Statutory Declaration, exhibit 1249, paragraph 50, document 098.0169.0819.0001; cf Warner Statutory Declaration, exhibit 1234, paragraph 68, document 020.0672.0837.0004.
- 190 Stowers Statutory Declaration, exhibit 1249, paragraphs 49, 52, document 098.0169.0819.0001; cf Warner Statutory Declaration, exhibit 1234, paragraphs 67, 70, document 020.0672.0837.0004.
- 191 Stowers Statutory Declaration, exhibit 1249, paragraph 46, document 098.0169.0819.0001.
- 192 Stowers Statutory Declaration, exhibit 1248, paragraph 7, document 042.0888.0005.0013.
- 193 Stowers Statutory Declaration, exhibit 1248, paragraph 7, document 042.0888.0005.0013; cf Warner Statutory Declaration, exhibit 1234, paragraph 79, document 020.0672.0837.0001. Warner said he did lend Stowers some money, but the total amount was \$20 000 which was repaid to him via a cheque from Proactive Consultants.
- 194 Stowers Statutory Declaration, exhibit 1248, paragraph 8, document 042.0888.0005.0013.
- 195 Stowers Statutory Declaration, exhibit 1248, paragraph 8, document 042.0888.0005.0013; Warner Statutory Declaration, exhibit 1234, paragraph 80, document 020.0672.0837.0001.
- 196 Stowers Statutory Declaration, exhibit 1248, paragraph 8, document 042.0888.0005.0013; Stowers, T13251/44–13252/36; cf Warner Statutory Declaration, exhibit 1234, paragraph 80, document 020.0672.0837.0001; Warner Statutory Declaration, exhibit 1234, annexure MW-8, document 020.0672.0837.0022. Warner said he paid \$28 607.96 for the vehicle, but Stowers said the receipt which was issued for this amount was to conceal from his office staff the fact that he had sold the car at such a low price.
- 197 Stowers, T13271/16–29.
- 198 Angel Place Tender Bundle, exhibit 1246, document 034.0006.0991.0015; Stowers, T13271/16–29; Ginns, T13247/23–28; Warner, T13553/12–41.
- 199 Warner, T13554/4–10.
- 200 Warner, T13554/12–13555/36: This evidence was unconvincing: Warner could not remember where in the house he hid the \$30 000 received from the sale of the motorbike. There was a substantial period of time between the receipt of the cash and the loan to Stowers.
- 201 Stowers Statutory Declaration, exhibit 1249, paragraph 52, document 098.0169.0819.0001; Warner Statutory Declaration, exhibit 1165, paragraph 12, document 050.0010.0844.0001.
- 202 Stowers Statutory Declaration, exhibit 1249, paragraph 53, document 098.0169.0819.0001.

- ²⁰³ Stowers Statutory Declaration, exhibit 1249, paragraph 53, document 098.0169.0819.
- ²⁰⁴ Stowers Statutory Declaration, exhibit 1249, paragraph 53, document 098.0169.0819; Stowers, T13262/4–11, T13266/13–15; Bates, T13499/37–39.
- ²⁰⁵ Wallace Statutory Declaration, exhibit 1271, paragraph 1, document 098.0027.0256.0200.
- ²⁰⁶ Wallace Statutory Declaration, exhibit 1252, paragraph 2, document 086.0771.0516.0001.
- ²⁰⁷ Wallace Statutory Declaration, exhibit 1252, paragraph 2, document 086.0771.0516.0001; cf Warner Statutory Declaration, exhibit 1234, paragraph 48, document 020.0672.0837.0001; Warner, T13559/26–34.
- ²⁰⁸ Wallace Statutory Declaration, exhibit 1252, paragraph 2, document 086.0771.0516.0001; cf Warner Statutory Declaration, exhibit 1234, paragraph 48, document 086.0771.0516.0001; Warner, T13559/36–37.
- ²⁰⁹ Wallace Statutory Declaration, exhibit 1252, paragraph 2, document 086.0771.0516.0001; cf Warner Statutory Declaration, exhibit 1234, paragraph 48, document 020.0672.0837.0001; Warner, T13559/39–40.
- ²¹⁰ Wallace Statutory Declaration, exhibit 1252, paragraph 3, document 086.0771.0516.0001; see also Warner, T13559/42–13560/2.
- ²¹¹ Wallace Statutory Declaration, exhibit 1252, paragraph 4, document 086.0771.0516.0001; cf Bates, T13458/7–10; Warner Statutory Declaration, exhibit 1234, paragraph 48, document 020.0672.0837.0001; Warner, T13560/4–5.
- ²¹² Wallace Statutory Declaration, exhibit 1252, paragraph 4, document 086.0771.0516.0001; cf Bates, T13458/12–14; Warner Statutory Declaration, exhibit 1234, paragraph 48, document 020.0672.0837.0001; Warner, T13560/7.
- ²¹³ Wallace Statutory Declaration, exhibit 1252, paragraph 4, document 086.0771.0516.0001; cf Bates, T13458/16–17; Warner Statutory Declaration, exhibit 1234, paragraph 48, document 020.0672.0837.0001; Warner, T13560/9.
- ²¹⁴ Wallace Statutory Declaration, exhibit 1252, paragraph 4, document 086.0771.0516.0001; cf Bates, T13458/19–21; Warner Statutory Declaration, exhibit 1234, paragraph 48, document 020.0672.0837.0001; Warner, T13560/11–13.
- ²¹⁵ Wallace Statutory Declaration, exhibit 1252, paragraph 4, document 086.0771.0516.0001; cf Bates, T13458/24; Warner Statutory Declaration, exhibit 1234, paragraph 48, document 020.0672.0837.0001; Warner, T13560/15–19.
- ²¹⁶ Wallace Statutory Declaration, exhibit 1252, paragraph 5, document 086.0771.0516.0001; cf Bates, T13458/26; Warner Statutory Declaration, exhibit 1234, paragraph 48, document 020.0672.0837.0001.
- ²¹⁷ Wallace Statutory Declaration, exhibit 1252, paragraph 5, document 086.0771.0516.0001; cf Warner Statutory Declaration, exhibit 1234, paragraph 48, document 020.0672.0837.0001; Warner, T13560/21–22.
- ²¹⁸ Wallace Statutory Declaration, exhibit 1252, paragraph 5, document 086.0771.0516.0001; cf Warner Statutory Declaration, exhibit 1234, paragraph 48, document 020.0672.0837.0001.
- ²¹⁹ Wallace Statutory Declaration, exhibit 1252, paragraph 5, document 086.0771.0516.0001; cf Warner Statutory Declaration, exhibit 1234, paragraph 48, document 020.0672.0837.0001; Warner, T13560/24–27.
- ²²⁰ Wallace Statutory Declaration, exhibit 1252, paragraph 6, document 086.0771.0516.0001; cf Warner Statutory Declaration, exhibit 1234, paragraph 49, document 020.0672.0837.0001; Warner, T13560/29–30.
- ²²¹ Wallace Statutory Declaration, exhibit 1252, paragraph 6, document 086.0771.0516.0001; Wallace Statutory Declaration, exhibit 1252, annexure EGW-21, document 086.0771.0516.0012; Wallace, T13279/27; cf Bates, T13459/18–24; Warner Statutory Declaration, exhibit 1234, paragraph 49, document 020.0672.0837.0001; Warner, T13560/32–34.
- ²²² Wallace Statutory Declaration, exhibit 1252, paragraph 7, document 086.0771.0516.0001; Wallace Statutory Declaration, exhibit 1252, annexure EGW-19, document 003.0831.0991.0003; Ginns Statutory Declaration, exhibit 1245, annexure RIG-1, document 003.0831.0991.0001; annexure RIG-7, document 003.0831.0991.0003; annexure RIG-8, document 003.0831.0991.0002; annexure RIG-9, document 042.0888.0005.0060; annexure RIG-16, document 042.0888.0005.0074; cf Warner Statutory Declaration, exhibit 1234, paragraph 50, document 020.0672.0837.0001; Warner, T13560/36.

- 223 Wallace Statutory Declaration, exhibit 1252, paragraph 8, document 086.0771.0516.0001; cf Warner Statutory Declaration, exhibit 1234, paragraph 50, document 020.0672.0837.0001; Warner, T13560/38.
- 224 Wallace Statutory Declaration, exhibit 1252, paragraph 8, document 086.0771.0516.0001; cf Warner Statutory Declaration, exhibit 1234, paragraph 50, document 020.0672.0837.0001.
- 225 Wallace, T13280/11–19, T13284/8–11, T13281/44–13282/1.
- 226 Wallace Statutory Declaration, exhibit 1252, paragraph 9, document 086.0771.0516.0001; cf MacKay Statutory Declaration, exhibit 1267, paragraph 2.2, document 096.0326.0281.0004; MacKay, T13356/10–14.
- 227 Wallace, T13276/40–13277/8.
- 228 Wallace Statutory Declaration, exhibit 1252, paragraph 9, document 086.0771.0516.0001.
- 229 Wallace Statutory Declaration, exhibit 1252, paragraph 9, document 086.0771.0516.0001; MacKay, T13356/16–18; cf MacKay Statutory Declaration, exhibit 1267, paragraph 2.1, document 096.0326.0281.0004: MacKay said he did meet Wallace for coffee but it was not at the coffee shop that Wallace described; Warner Statutory Declaration, exhibit 1234, paragraph 51, document 020.0672.0837.0001: Warner denied seeing any envelope.
- 230 Wallace Statutory Declaration, exhibit 1252, paragraph 9, document 086.0771.0516.0001; cf MacKay Statutory Declaration, exhibit 1267, paragraph 2.3, document 096.0326.0281.0004; MacKay, T13356/20–22; Warner Statutory Declaration, exhibit 1234, paragraph 51, document 020.0672.0831.0001.
- 231 Wallace Statutory Declaration, exhibit 1252, paragraph 10, document 086.0771.0516.0001; Wallace Statutory Declaration, exhibit 1252, annexure EGW-21, document 085.0706.0491.0014–0017; annexure EGW-22, document 018.0861.0167.0040–0048.
- 232 Wallace Statutory Declaration, exhibit 1252, paragraph 11, document 086.0771.0516.0001.
- 233 Ginns Statutory Declaration, exhibit 1245, annexure RIG-24, document 085.0706.0491.0008, 0011–0012, 0014, 0016–0017.
- 234 Wallace Statutory Declaration, exhibit 1252, paragraph 12, document 086.0771.0516.00012; cf Bates, T13460/8–10, 19–32; Warner Statutory Declaration, exhibit 1234, paragraph 52, document 020.0672.0837.0001; Warner, T13560/40–43, T13561/3–5.
- 235 Wallace Statutory Declaration, exhibit 1252, paragraph 12, document 086.0771.0516.0001; cf MacKay Statutory Declaration, exhibit 1267, paragraph 3.1, document 096.0326.0281.0004; Warner Statutory Declaration, exhibit 1234, paragraph 51, document 020.0672.0837.0001.
- 236 Wallace Statutory Declaration, exhibit 1252, paragraph 9, document 086.0771.0516.0001; cf Bates, T13460/34–38; Warner Statutory Declaration, exhibit 1234, paragraph 51, document 020.0672.0837.0001.
- 237 Wallace Statutory Declaration, exhibit 1252, paragraph 13, document 086.0771.0516.0001; Wallace Statutory Declaration, exhibit 1252, annexure EGW-21, document 085.0706.0491.0017; cf Warner Statutory Declaration, exhibit 1234, paragraph 53, document 020.0672.0837.0001; Warner, T13561/14–30.
- 238 Wallace Statutory Declaration, exhibit 1252, paragraph 13, document 086.0771.0516.0001; MacKay Statutory Declaration, exhibit 1267, paragraph 4.1, document 096.0326.0281.0004; MacKay, T13356/27–34; cf Warner Statutory Declaration, exhibit 1234, paragraph 53, document 020.0672.0837.0001. Warner said that he did not think he had ever gone to Wallace's house with MacKay but MacKay said that he had.
- 239 Wallace Statutory Declaration, exhibit 1252, paragraph 13, document 086.0771.0516.0001; cf Warner Statutory Declaration, exhibit 1234, paragraph 53, document 020.0672.0837.0001.
- 240 Wallace Statutory Declaration, exhibit 1252, paragraph 13, document 086.0771.0516.0001; cf Warner Statutory Declaration, exhibit 1234, paragraph 53, document 020.0672.0837.0001; Warner, T13561/38–43.
- 241 Wallace Statutory Declaration, exhibit 1252, paragraph 14, document 086.0771.0516.0001; cf Warner Statutory Declaration, exhibit 1234, paragraph 54, document 020.0672.0837.0001; Warner, T13561/45–13562/2.
- 242 Wallace, T13284/21–41.

- ²⁴³ Wallace Statutory Declaration, exhibit 1252, paragraphs 15–16, document 086.0771.0516.0001; Wallace Statutory Declaration, exhibit 1252, annexure EGW-22, document 018.0861.0167.0042–0048; cf MacKay Statutory Declaration, exhibit 1267, paragraph 5.1, document 096.0326.0281.0004; MacKay, T13358/7–16, T13362/9–12; Bates, T13461/20–28; Warner Statutory Declaration, exhibit 1234, paragraph 55, document 020.0672.0837.0001; Warner, T13562/4–8.
- ²⁴⁴ Wallace Statutory Declaration, exhibit 1252, paragraph 16, document 086.0771.0516.0001.
- ²⁴⁵ Wallace, T13284/8–11.
- ²⁴⁶ Wallace, T13282/45–13283/6, T13286/3–5.
- ²⁴⁷ Bechara Statutory Declaration, exhibit 1255, paragraph 1, document 032.0638.0209.0001; Warner Statutory Declaration, exhibit 1949, paragraph 18, document 024.0505.0753.0005. The company went into external administration before the end of the Angel Place project.
- ²⁴⁸ Bechara Statutory Declaration, exhibit 1255, paragraph 2, document 032.0638.0209.0001.
- ²⁴⁹ Bechara Statutory Declaration, exhibit 1255, paragraph 2, document 032.0638.0209.0001.
- ²⁵⁰ Bechara Statutory Declaration, exhibit 1255, paragraph 1, document 032.0638.0209.0001.
- ²⁵¹ Bechara Statutory Declaration, exhibit 1255, paragraph 1, document 032.0638.0209.0001; Bechara, T13291/16–23, T13292/8–11.
- ²⁵² Bechara Statutory Declaration, exhibit 1255, paragraph 5, document 032.0638.0209.0001.
- ²⁵³ Bechara Statutory Declaration, exhibit 1255, paragraph 5, document 032.0638.0209.0001.
- ²⁵⁴ Bechara Statutory Declaration, exhibit 1255, paragraph 5, document 032.0638.0209.0001.
- ²⁵⁵ Bechara Statutory Declaration, exhibit 1255, paragraph 5, document 032.0638.0209.0001.
- ²⁵⁶ Bechara Statutory Declaration, exhibit 1255, paragraph 5, document 032.0638.0209.0001.
- ²⁵⁷ Bechara Statutory Declaration, exhibit 1255, paragraph 5, document 032.0638.0209.0001.
- ²⁵⁸ Bechara Statutory Declaration, exhibit 1255, paragraph 6, document 032.0638.0209.0001.
- ²⁵⁹ Bechara Statutory Declaration, exhibit 1255, paragraph 6, document 032.0638.0209.0001.
- ²⁶⁰ Bechara Statutory Declaration, exhibit 1255, paragraph 6, document 032.0638.0209.0001; cf Warner Statutory Declaration, exhibit 1949, paragraph 3, document 024.0505.0753.0005; Warner, T13564/38–40.
- ²⁶¹ Bechara Statutory Declaration, exhibit 1255, paragraph 6, document 032.0638.0209.0001; cf Warner Statutory Declaration, exhibit 1949, paragraph 3, document 024.0505.0753.0005; Warner, T13564/42–45.
- ²⁶² Bechara Statutory Declaration, exhibit 1255, paragraph 6, document 032.0638.0209.0001; cf Warner Statutory Declaration, exhibit 1949, paragraph 3, document 024.0505.0753.0005; Warner, T13565/2–10.
- ²⁶³ Bechara Statutory Declaration, exhibit 1255, paragraphs 1, 6, document 032.0638.0209.0001; cf Warner Statutory Declaration, exhibit 1949, paragraph 3, document 024.0505.0753.0005; Warner, T13565/12–14.
- ²⁶⁴ Bechara Statutory Declaration, exhibit 1255, paragraph 6, document 032.0638.0209.0001; cf Warner Statutory Declaration, exhibit 1949, paragraph 3, document 024.0505.0753.0005; Warner, T13565/16–17.
- ²⁶⁵ Bechara Statutory Declaration, exhibit 1255, paragraph 6, document 032.0638.0209.0001; cf Warner Statutory Declaration, exhibit 1949, paragraph 3, document 024.0505.0753.0005.
- ²⁶⁶ Bechara Statutory Declaration, exhibit 1255, paragraph 6, document 032.0638.0209.0001; cf Warner Statutory Declaration, exhibit 1949, paragraph 3, document 024.0505.0753.0005; Warner, T13565/19–20.
- ²⁶⁷ Bechara Statutory Declaration, exhibit 1255, paragraph 6, document 032.0638.0209.0001; cf Warner Statutory Declaration, exhibit 1949, paragraph 3, document 024.0505.0753.0005.
- ²⁶⁸ Bechara Statutory Declaration, exhibit 1255, paragraph 7, document 032.0638.0209.0001; Bechara, T13293/20–24.
- ²⁶⁹ Bechara Statutory Declaration, exhibit 1255, paragraph 7, document 032.0638.0209.0001; cf Warner Statutory Declaration, exhibit 1949, paragraph 4, document 024.0505.0753.0005; Warner, T13565/44–45.
- ²⁷⁰ Bechara Statutory Declaration, exhibit 1255, paragraph 7, document 032.0638.0209.0001; Ginns, T13247/10–11.

- 271 Bechara Statutory Declaration, exhibit 1255, paragraph 7, document 032.0638.0209.0001.
- 272 Bechara Statutory Declaration, exhibit 1255, paragraph 8, document 032.0638.0209.0001; Bechara Statutory Declaration, exhibit 1255, annexure RYB-1, document 050.0499.0755.0003; annexure RYB-2, document 050.0499.0755.0011; annexure RYB-3, document 050.0499.0755.0012; annexure RYB-4, document 032.0638.0209.0009.
- 273 Bechara Statutory Declaration, exhibit 1255, annexure RYB-1, document 050.0499.0755.0003; annexure RYB-2, document 050.0499.0755.0011; annexure RYB-3, document 050.0499.0755.0012; annexure RYB-4, document 032.0638.0209.000.
- 274 Bechara Statutory Declaration, exhibit 1255, paragraph 8, document 032.0638.0209.0001; cf Warner Statutory Declaration, exhibit 1949, paragraph 5, document 024.0505.0753.0005. Warner denied any payments were made.
- 275 Soltysik Statutory Declaration, exhibit 1256, paragraphs 1–2, document 019.0563.0598.0001.
- 276 Soltysik Statutory Declaration, exhibit 1256, paragraph 5, document 019.0563.0598.0001.
- 277 Soltysik Statutory Declaration, exhibit 1256, paragraph 6, document 019.0563.0598.0001.
- 278 Soltysik Statutory Declaration, exhibit 1256, paragraph 6, document 019.0563.0598.0001.
- 279 Soltysik Statutory Declaration, exhibit 1256, paragraph 7, document 019.0563.0598.0001.
- 280 Ginns Statutory Declaration, exhibit 1245, paragraph 41, document 042.0888.0005.0027.
- 281 Ginns Statutory Declaration, exhibit 1245, paragraph 41, document 042.0888.0005.0027; Ginns, T13226/13–26.
- 282 Ginns, T13226/13–14.
- 283 Ginns Statutory Declaration, exhibit 1245, paragraph 41, document 042.0888.0005.0027.
- 284 Ginns Statutory Declaration, exhibit 1245, paragraph 43, document 042.0888.0005.0027.
- 285 Soltysik Statutory Declaration, exhibit 1256, paragraph 9, document 019.0563.0598.0001.
- 286 Soltysik Statutory Declaration, exhibit 1256, paragraph 9, document 019.0563.0598.0001; Soltysik Statutory Declaration, exhibit 1256, annexure CS-3, document 019.0563.0598.0008; annexure CS-4, document 036.0035.0565.0008; annexure CS-5, document 019.0563.0598.0011; annexure CS-6, document 019.0563.0598.0013; annexure CS-7, document 036.0035.0565.0010.
- 287 Soltysik Statutory Declaration, exhibit 1256, paragraph 10, document 019.0563.0598.0001; Soltysik Statutory Declaration, exhibit 1256, annexure CS-4, document 036.0035.0565.0008; annexure CS-7, document 036.0035.0565.0010.
- 288 Soltysik Statutory Declaration, exhibit 1256, paragraph 13, document 019.0563.0598.0001; Soltysik Statutory Declaration, exhibit 1256, annexure CS-10, document 019.0563.0598.0020; annexure CS-11, document 019.0563.0598.0022.
- 289 Ginns Statutory Declaration, exhibit 1245, annexure RIG-24, document 085.0706.0491.0113–0114.
- 290 Soltysik Statutory Declaration, exhibit 1256, paragraph 12, document 019.0563.0598.0001; Soltysik Statutory Declaration, exhibit 1256, annexure CS-8, document 019.0563.0598.0016; annexure CS-9, document 019.0563.0598.0018.
- 291 Soltysik Statutory Declaration, exhibit 1256, paragraph 12, document 019.0563.0598.0001.
- 292 Soltysik Statutory Declaration, exhibit 1256, paragraph 14, document 019.0563.0598.0001.
- 293 Sistic Statutory Declaration, exhibit 1258, paragraph 1, document 019.0787.0539.0001.
- 294 Sistic Statutory Declaration, exhibit 1258, paragraph 1, document 019.0787.0539.0001.
- 295 Sistic Statutory Declaration, exhibit 1258, paragraph 1, document 019.0787.0539.0001.
- 296 Sistic Statutory Declaration, exhibit 1258, paragraph 2, document 019.0787.0539.0001.
- 297 Sistic Statutory Declaration, exhibit 1258, paragraph 4, document 019.0787.0539.0001.
- 298 Sistic Statutory Declaration, exhibit 1258, paragraph 4, document 019.0787.0539.0001.

- ²⁹⁹ Sasic Statutory Declaration, exhibit 1258, paragraph 3, document 019.0787.0539.0001; Sasic, T13303/20–38, T13304/41–13305/3.
- ³⁰⁰ Sasic Statutory Declaration, exhibit 1258, paragraph 1, document 019.0787.0539.0001; Sasic, T13303/20–38; Kelly Statement, exhibit 1286, paragraph 2, document 067.0647.0936.0010.
- ³⁰¹ Sasic Statutory Declaration, exhibit 1258, paragraph 1, document 019.0787.0539.0001; Sasic, T13303/20–38.
- ³⁰² Sasic Statutory Declaration, exhibit 1258, paragraph 1, document 019.0787.0539.0001; Sasic, T13303/24–26.
- ³⁰³ Sasic Statutory Declaration, exhibit 1258, paragraph 1, document 019.0787.0539.0001.
- ³⁰⁴ Sasic Statutory Declaration, exhibit 1258, paragraph 5, document 019.0787.0539.0001; Kelly Statement, exhibit 1286, paragraph 2, document 067.6047.0936.0010.
- ³⁰⁵ Sasic Statutory Declaration, exhibit 1258, paragraph 5, document 019.0787.0539.0001.
- ³⁰⁶ Sasic Statutory Declaration, exhibit 1258, paragraph 3, document 019.0787.0539.0001; Sasic, T13303/32–38.
- ³⁰⁷ Sasic Statutory Declaration, exhibit 1258, paragraph 8, document 019.0787.0539.0001; Sasic, T13304/19–22.
- ³⁰⁸ Sasic Statutory Declaration, exhibit 1258, paragraph 8, document 019.0787.0539.0001.
- ³⁰⁹ Sasic Statutory Declaration, exhibit 1258, paragraph 6, document 019.0787.0539.0001; Bates, T13464/18–19.
- ³¹⁰ Sasic Statutory Declaration, exhibit 1258, paragraph 6, document 019.0787.0539.0001; Bates, T13464/35–38.
- ³¹¹ Sasic Statutory Declaration, exhibit 1258, paragraph 6, document 019.0787.0539.0001; Sasic, T13303/28–29; Bates, T13465/3–21.
- ³¹² Sasic Statutory Declaration, exhibit 1258, paragraph 5, document 019.0787.0539.0001; Sasic, T13303/19–38.
- ³¹³ Sasic Statutory Declaration, exhibit 1258, paragraph 6, document 019.0787.0539.0001; cf Bates, T13465/23–27. Bates agreed he asked Sasic for a donation but said that he thought that it was later in the year.
- ³¹⁴ Sasic Statutory Declaration, exhibit 1258, paragraph 6, document 019.0787.0539.0001; Sasic Statutory Declaration, exhibit 1258, annexure FS-2, document 089.0997.0229.0001–0002; annexure FS-3, document 085.0706.0491.0103; cf Bates, T13466/18–25, T13498/41–42.
- ³¹⁵ Sasic Statutory Declaration, exhibit 1258, paragraph 6, document 019.0787.0539.0001; Sasic, T13304/24–26, T13306/41–42; cf Bates, T13466/27–34. Bates said the amounts given to him by Sasic as donations to his election fund were in cash.
- ³¹⁶ Sasic Statutory Declaration, exhibit 1258, paragraph 6, document 019.0787.0539.0001; Sasic, T13304/37–39.
- ³¹⁷ Sasic Statutory Declaration, exhibit 1258, paragraph 6, document 019.0787.0539.0001; Sasic, T13306/44–45.
- ³¹⁸ Sasic Statutory Declaration, exhibit 1258, paragraph 7, document 019.0787.0539.0001; Sasic Statutory Declaration, exhibit 1258, annexure FS-4, document 089.0997.0229.0004; annexure FS-5, document 085.0706.0491.0109; cf Bates, T13466/27–34. Bates said the amounts given to him by Sasic as donations to his election fund were in cash.
- ³¹⁹ Sasic Statutory Declaration, exhibit 1258, paragraph 7, document 019.0787.0539.0001.
- ³²⁰ Ginns Statutory Declaration, exhibit 1245, annexure RIG-24, document 085.0706.0491.0103–0104, 0109–0110.
- ³²¹ Matesic Statutory Declaration, exhibit 1259, paragraphs 1–2, document 065.0635.0296.0146.
- ³²² Matesic Statutory Declaration, exhibit 1259, paragraph 1, document 065.0635.0296.0146.

- 323 Matesic Statutory Declaration, exhibit 1259, paragraph 4, document 065.0635.0296.0146; cf Warner, T13568/39–42. Warner said he did not recall meeting Matesic in a coffee shop. He thought he first met him at Tabak's offices in Wollongong.
- 324 Matesic Statutory Declaration, exhibit 1259, paragraph 4, document 065.0635.0296.0146.
- 325 Matesic Statutory Declaration, exhibit 1259, paragraph 4, document 065.0635.0296.0146; Warner, T13569/8–10.
- 326 Matesic Statutory Declaration, exhibit 1259, paragraph 5, document 065.0635.0296.0146; cf Warner, T13569/12–18. Warner said he could not recall this second meeting, but agreed he handed Matesic a blank, standard EBA.
- 327 Matesic Statutory Declaration, exhibit 1259, paragraph 5, document 065.0635.0296.0146.
- 328 Matesic Statutory Declaration, exhibit 1259, paragraph 5, document 065.0635.0296.0146; Warner, T13569/14–18.
- 329 Matesic Statutory Declaration, exhibit 1259, paragraph 5, document 065.0635.0296.0146.
- 330 Matesic Statutory Declaration, exhibit 1259, paragraph 7, document 065.0635.0296.0146.
- 331 Matesic Statutory Declaration, exhibit 1259, paragraph 7, document 065.0635.0296.0146.
- 332 Matesic Statutory Declaration, exhibit 1259, paragraph 7, document 065.0635.0296.0146.
- 333 Matesic Statutory Declaration, exhibit 1259, paragraph 7, document 065.0635.0296.0146.
- 334 Matesic Statutory Declaration, exhibit 1259, paragraph 7, document 065.0635.0296.0146.
- 335 Matesic Statutory Declaration, exhibit 1259, paragraph 7, document 065.0635.0296.0146.
- 336 Matesic Statutory Declaration, exhibit 1259, paragraph 7, document 065.0635.0296.0146.
- 337 Matesic Statutory Declaration, exhibit 1259, paragraph 7, document 065.0635.0296.0146.
- 338 Matesic Statutory Declaration, exhibit 1259, paragraph 8, document 065.0635.0296.0146; Matesic Statutory Declaration, exhibit 1259, annexure DM-3, document 057.0911.0654.0001; annexure DM-4, document 057.0911.0654.0002.
- 339 Matesic Statutory Declaration, exhibit 1259, paragraph 8, document 065.0635.0296.0146.
- 340 Ginns Statutory Declaration, exhibit 1245, annexure RIG-24, document 085.0706.0491.0068–0069.
- 341 Matesic Statutory Declaration, exhibit 1259, paragraph 10, document 065.0635.0296.0146.
- 342 Matesic Statutory Declaration, exhibit 1259, paragraph 10, document 065.0635.0296.0146.
- 343 Matesic Statutory Declaration, exhibit 1259, paragraph 10, document 065.0635.0296.0146.
- 344 Matesic Statutory Declaration, exhibit 1259, paragraph 11, document 065.0635.0296.0146.
- 345 Matesic Statutory Declaration, exhibit 1259, paragraph 12, document 065.0635.0296.0146.
- 346 Matesic Statutory Declaration, exhibit 1259, paragraph 12, document 065.0635.0296.0146.
- 347 Matesic Statutory Declaration, exhibit 1259, paragraph 12, document 065.0635.0296.0146.
- 348 Matesic Statutory Declaration, exhibit 1259, paragraph 12, document 065.0635.0296.0146; Matesic Statutory Declaration, exhibit 1259, annexure DM-5, document 053.0315.0083.0006.
- 349 B Tabak Statutory Declaration, exhibit 1260, paragraph 1, document 065.0635.0296.0025.
- 350 B Tabak Statutory Declaration, exhibit 1260, paragraph 1, document 065.0635.0296.00251.
- 351 B Tabak Statutory Declaration, exhibit 1260, paragraph 2, document 065.0635.0296.0025; H Tabak Statutory Declaration, exhibit 1262, paragraph 1, document 065.0635.0296.0018.
- 352 B Tabak Statutory Declaration, exhibit 1260, paragraph 3, document 065.0635.0296.0025; H Tabak Statutory Declaration, exhibit 1262, paragraph 2, document 065.0635.0296.0018.
- 353 B Tabak Statutory Declaration, exhibit 1260, paragraph 3, document 065.0635.0296.0025; H Tabak Statutory Declaration, exhibit 1262, paragraph 2, document 065.0635.0296.0025.
- 354 B Tabak Statutory Declaration, exhibit 1260, paragraph 2, document 065.0635.0296.0025.

- ³⁵⁵ B Tabak Statutory Declaration, exhibit 1260, paragraphs 6–21, document 065.0635.0296.0025; B Tabak, T13322/35–13323/6, T13325/36–39; see also Warner, T13568/18–23; cf Kelly Statement, exhibit 1286, paragraphs 5–21, document 067.0647.0936.0010; Kelly, T13581/27–13589/9. Kelly agreed he could have visited the various sites referred to and agreed he warned at least one employer off Tabak Cement Rendering, but denied he was hounding the company. His statement is inconsistent with his oral testimony.
- ³⁵⁶ B Tabak Statutory Declaration, exhibit 1260, paragraph 22, document 065.0635.0296.0025; cf Warner Statutory Declaration, exhibit 1234, paragraph 38, document 020.0672.0837.0001.
- ³⁵⁷ B Tabak Statutory Declaration, exhibit 1260, paragraph 21, document 065.0635.0296.0025; cf Bates, T13473/45–13474/14. Bates said he did not have a problem with Tabak; rather, he empathised with his position.
- ³⁵⁸ B Tabak Statutory Declaration, exhibit 1260, paragraph 22, document 065.0635.0296.0025; Warner, T13567/33–36.
- ³⁵⁹ B Tabak Statutory Declaration, exhibit 1260, paragraph 22, document 065.0635.0296.0025; cf Warner Statutory Declaration, exhibit 1234, paragraph 38, document 020.0672.0837.0001; Warner, T13567/38–40. Warner said he could not recall the conversation.
- ³⁶⁰ B Tabak Statutory Declaration, exhibit 1260, paragraph 22, document 065.0635.0296.0025; cf Warner Statutory Declaration, exhibit 1234, paragraph 38, document 020.0672.0837.0001; Warner, T13567/42.
- ³⁶¹ Bates, T13474/16–32; cf Warner Statutory Declaration, exhibit 1234, paragraph 38, document 020.0672.0837.0001. Warner said he could not recall calling Bates.
- ³⁶² B Tabak Statutory Declaration, exhibit 1260, paragraph 23, document 065.0635.0296.0025; cf Warner Statutory Declaration, exhibit 1234, paragraph 38, document 020.0672.0837.0001; Warner, T13567/44–45. Warner said he could not recall calling Tabak about this.
- ³⁶³ B Tabak Statutory Declaration, exhibit 1260, paragraph 28, document 065.0635.0296.0025.
- ³⁶⁴ B Tabak Statutory Declaration, exhibit 1260, paragraph 30, document 065.0635.0296.0025.
- ³⁶⁵ B Tabak Statutory Declaration, exhibit 1260, paragraph 30, document 065.0635.0296.0025.
- ³⁶⁶ B Tabak Statutory Declaration, exhibit 1260, paragraph 31, document 065.0635.0296.0025; Zaboyak Statement, exhibit 1269, paragraph 2, document 088.0760.0203.0009.
- ³⁶⁷ B Tabak Statutory Declaration, exhibit 1260, paragraph 31, document 065.0635.0296.0025; Zaboyak Statement, exhibit 1269, paragraph 2, document 088.0760.0203.0009.
- ³⁶⁸ B Tabak Statutory Declaration, exhibit 1260, paragraph 31, document 065.0635.0296.0025; cf Zaboyak Statement, exhibit 1269, paragraph 2, document 088.0760.0203.0009. Zaboyak said Tabak told him that he had sorted out the problem with Abigroup himself.
- ³⁶⁹ B Tabak Statutory Declaration, exhibit 1261, paragraph 1, document 062.0716.0062.0001; B Tabak, T13327/20–28; Zaboyak Statement, exhibit 1269, paragraph 2, document 088.0760.0203.0009.
- ³⁷⁰ B Tabak Statutory Declaration, exhibit 1261, paragraph 1, document 062.0716.0062.0001; B Tabak, T13327/32–43.
- ³⁷¹ B Tabak Statutory Declaration, exhibit 1260, paragraph 31, document 065.0635.0296.0025.
- ³⁷² B Tabak Statutory Declaration, exhibit 1260, paragraph 32, document 065.0635.0296.0025; B Tabak, T13330/3–4.
- ³⁷³ B Tabak Statutory Declaration, exhibit 1260, paragraph 32, document 065.0635.0296.0025.
- ³⁷⁴ B Tabak Statutory Declaration, exhibit 1260, paragraph 32, document 065.0635.0296.0025.
- ³⁷⁵ B Tabak Statutory Declaration, exhibit 1260, paragraph 32, document 065.0635.0296.0025.
- ³⁷⁶ H Tabak Statutory Declaration, exhibit 1262, paragraph 6, document 065.0635.0296.0018.
- ³⁷⁷ H Tabak Statutory Declaration, exhibit 1262, paragraph 6, document 065.0635.0296.0018.
- ³⁷⁸ H Tabak Statutory Declaration, exhibit 1262, paragraph 6, document 065.0635.0296.0018.
- ³⁷⁹ B Tabak Statutory Declaration, exhibit 1260, paragraph 33, document 065.0635.0296.0025.

- 380 B Tabak Statutory Declaration, exhibit 1260, paragraph 33, document 065.0635.0296.0025.
- 381 B Tabak Statutory Declaration, exhibit 1260, paragraph 33, document 065.0635.0296.0025.
- 382 B Tabak, T13337/22–23.
- 383 B Tabak, T13337/23–24.
- 384 B Tabak, T13337/23–25.
- 385 B Tabak Statutory Declaration, exhibit 1260, paragraph 33, document 065.0635.0296.0025; B Tabak Statutory Declaration, exhibit 1260, annexure BT-14, document 065.0635.0296.0130; Ginns Statutory Declaration, exhibit 1245, paragraph 37, document 042.0888.0005.0027; Ginns Statutory Declaration, exhibit 1245, annexure RIG-3, document 042.0888.0005.0051.
- 386 B Tabak Statutory Declaration, exhibit 1260, annexure BT-15, document 065.0635.0296.0132; Ginns Statutory Declaration, exhibit 1245, annexure RIG-4, document 042.0888.0005.0053.
- 387 B Tabak Statutory Declaration, exhibit 1260, paragraph 34, document 065.0635.0296.0025; B Tabak Statutory Declaration, exhibit 1260, annexure BT-16, document 065.0635.0296.0134.
- 388 B Tabak Statutory Declaration, exhibit 1260, paragraph 34, document 065.0635.0296.0025; B Tabak Statutory Declaration, exhibit 1260, annexure BT-16, document 065.0635.0296.0135–0136; annexure BT-17, document 065.0635.0296.0138 at 0139–0140.
- 389 Ginns, T13247/10–11.
- 390 Ginns Statutory Declaration, exhibit 1245, annexure RIG-24, document 085.0706.0491.0008 and 0013.
- 391 B Tabak Statutory Declaration, exhibit 1260, paragraph 35, document 065.0635.0296.0025.
- 392 B Tabak Statutory Declaration, exhibit 1260, paragraph 35, document 065.0635.0296.0025.
- 393 B Tabak Statutory Declaration, exhibit 1260, paragraph 35, document 065.0635.0296.0025.
- 394 Warner Statutory Declaration, exhibit 1234, annexure MW-4, document 020.0672.0837.0016; Zaboyak, T13377/3–13.
- 395 B Tabak Statutory Declaration, exhibit 1260, paragraph 39, document 065.0635.0296.0025; B Tabak, T13334/14–20; Zaboyak, T13377/15–21. In his Statutory Declaration, Tabak did not mention Peter McClelland was present. However, Tabak said that Mr Ken Tugrul was present.
- 396 Zaboyak, T13377/31–36, T13378/8–11.
- 397 Zaboyak, T13377/38–43.
- 398 Warner Statutory Declaration, exhibit 1234, annexure MW-4, document 020.0672.0837.0016.
- 399 Warner Statutory Declaration, exhibit 1234, annexure MW-4, document 020.0672.0837.0016; B Tabak, T13331/38–45, T13332/42–43; cf Zaboyak, T13379/10–12.
- 400 B Tabak Statutory Declaration, exhibit 1260, paragraph 40, document 065.0635.0296.0025.
- 401 B Tabak Statutory Declaration, exhibit 1260, paragraph 40, document 065.0635.0296.0025.
- 402 B Tabak Statutory Declaration, exhibit 1260, paragraph 40, document 065.0635.0296.0025; Warner Statutory Declaration, exhibit 1234, annexure MW-4, document 020.0672.0837.0016.
- 403 B Tabak Statutory Declaration, exhibit 1260, paragraph 40, document 065.0635.0296.002540.
- 404 A Bishop Statutory Declaration, exhibit 1264, paragraph 1, document 065.0635.0296.0001.
- 405 A Bishop Statutory Declaration, exhibit 1264, paragraph 1, document 065.0635.0296.0001; L Bishop Statutory Declaration, exhibit 1265, paragraph 1, document 065.0635.0296.0021.
- 406 A Bishop Statutory Declaration, exhibit 1264, paragraph 1, document 065.0635.0296.0001; L Bishop Statutory Declaration, exhibit 1265, paragraph 1, document 065.0635.0296.0021.
- 407 A Bishop Statutory Declaration, exhibit 1264, paragraph 2, document 065.0635.0296.0001.
- 408 A Bishop Statutory Declaration, exhibit 1264, paragraph 8, document 065.0635.0296.0001; L Bishop, Statutory Declaration, paragraph 4.

- ⁴⁰⁹ A Bishop Statutory Declaration, exhibit 1264, paragraph 9, document 065.0635.0296.0001; L Bishop Statutory Declaration, exhibit 1265, paragraph 4, document 065.0635.0296.0021.
- ⁴¹⁰ A Bishop Statutory Declaration, exhibit 1264, paragraph 10, document 065.0635.0296.0001; L Bishop Statutory Declaration, exhibit 1265, paragraph 4, document 065.0635.0296.0021.
- ⁴¹¹ A Bishop Statutory Declaration, exhibit 1264, paragraph 10, document 065.0635.0296.0001; L Bishop Statutory Declaration, exhibit 1265, paragraph 5, document 065.0635.0296.0021; cf Warner Statutory Declaration, exhibit 1234, paragraph 33, document 020.0672.0837.0001; Warner, T13566/34–36, T13567/6–11.
- ⁴¹² A Bishop Statutory Declaration, exhibit 1264, paragraph 10, document 065.0635.0296.0001; L Bishop Statutory Declaration, exhibit 1265, paragraph 5, document 065.0635.0296.0021; cf Warner Statutory Declaration, exhibit 1234, paragraph 33, document 020.0672.0837.0001; Warner, T13566/38–39.
- ⁴¹³ A Bishop Statutory Declaration, exhibit 1264, paragraph 10, document 065.0635.0296.0001; cf Warner Statutory Declaration, exhibit 1234, paragraph 33, document 020.0672.0837.0001.
- ⁴¹⁴ A Bishop Statutory Declaration, exhibit 1264, paragraph 11, document 065.0635.0296.0001; L Bishop Statutory Declaration, exhibit 1265, paragraph 9, document 065.0635.0296.0021; cf Warner Statutory Declaration, exhibit 1234, paragraph 34, document 020.0672.0837.0001; Warner, T13567/6–11.
- ⁴¹⁵ Ginns Statutory Declaration, exhibit 1245, annexure RIG-25, document 049.0220.0948.0130; annexure RIG-24, document 085.0706.0491.0009, 0064–0065, 0068–0069.
- ⁴¹⁶ A Bishop Statutory Declaration, exhibit 1264, paragraph 12, document 065.0635.0296.0001; Ginns Statutory Declaration, exhibit 1245, annexure RIG-24, document 085.0706.0491.0009, 0065, 0069; A Bishop Statutory Declaration, exhibit 1264, annexure AAB-2, document 065.0635.0296.0013, 0119; annexure AAB-3, document 041.0800.0520.0118; annexure AAB-4, document 041.0800.0520.0121; annexure AAB-5, document 041.0800.0520.0120; annexure AAB-6, document 041.0800.0520.0122; L Bishop Statutory Declaration, exhibit 1265, paragraph 6, document 065.0635.0296.0021; L Bishop Statutory Declaration, exhibit 1265, annexure LMB-1, document 041.0800.0520.0084; annexure LMB-2, document 041.0800.0520.0083.
- ⁴¹⁷ A Bishop Statutory Declaration, exhibit 1264, paragraph 12, document 065.0635.0296.0001; A Bishop Statutory Declaration, exhibit 1264, annexure AAB-2, document 065.0635.0296.0013, 0119; annexure AAB-3, document 041.0800.0520.0118; annexure AAB-4, document 041.0800.0520.0121; annexure AAB-5, document 041.0800.0520.0120; annexure AAB-6, document 041.0800.0520.0122; L Bishop Statutory Declaration, exhibit 1265, paragraph 6, document 065.0635.0296.0021; L Bishop Statutory Declaration, exhibit 1265, annexure LMB-1, document 041.0800.0520.0084; annexure LMB-2, document 041.0800.0520.0083.
- ⁴¹⁸ A Bishop Statutory Declaration, exhibit 1264, paragraph 13, document 065.0635.0296.0001; L Bishop Statutory Declaration, exhibit 1265, paragraph 6, document 065.0635.0296.0021.
- ⁴¹⁹ A Bishop Statutory Declaration, exhibit 1264, paragraph 10, document 065.0635.0296.0001; L Bishop Statutory Declaration, exhibit 1265, paragraph 5, document 065.0635.0296.0021.
- ⁴²⁰ A Bishop, T13347/31–34; cf Warner Statutory Declaration, exhibit 1234, paragraph 35, document 020.0672.0837.0001; Warner, T13567/6–11.
- ⁴²¹ A Bishop, T13347/24–25.
- ⁴²² A Bishop, T13345/28–30.
- ⁴²³ Taig Statutory Declaration, exhibit 1166, paragraph 1, document 095.0935.0321.0001; Taig Statutory Declaration, exhibit 1166, annexure DIT-1, document 071.0778.0772.0001.
- ⁴²⁴ Taig Statutory Declaration, exhibit 1166, paragraph 1, document 095.0935.0321.0001; Taig Statutory Declaration, exhibit 1166, annexure DIT-1, document 071.0778.0772.0001 at 0006.
- ⁴²⁵ Taig Statutory Declaration, exhibit 1166, paragraph 2, document 095.0935.0321.0001.
- ⁴²⁶ Taig Statutory Declaration, exhibit 1166, paragraph 3, document 095.0935.0321.0001.
- ⁴²⁷ Taig Statutory Declaration, exhibit 1166, paragraph 4, document 095.0935.0321.0001.

- 428 Taig Statutory Declaration, exhibit 1166, paragraphs 5–6, document 095.0935.0321.0001; Taig Statutory Declaration, exhibit 1166, annexure DIT-1, document 071.0778.0772.0001.
- 429 See for example, Taig Statutory Declaration, exhibit 1166, annexure DIT-1, document 071.0778.0772.0001 at 0014–0015, 0034, 0042–0051.
- 430 Taig Statutory Declaration, exhibit 1166, paragraph 6, document 095.0935.0321.0001.
- 431 Taig Statutory Declaration, exhibit 1166, paragraph 7, document 095.0935.0321.0001.
- 432 Taig Statutory Declaration, exhibit 1166, paragraph 8, document 095.0935.0321.0001.
- 433 Bates, T13477/37–39.
- 434 Schedule of Mobile Telephone Calls between Bates and Ginns, exhibit 1279; Rees Ginns and Moni Stowers Tender Bundle Volume 1, exhibit 1251, document 040.0620.0840.0001–0055; 001.0881.0192.0001–001.0881.0192.0009.
- 435 Bates, T13452/13–16.
- 436 Telephone number shown to R Ginns, exhibit 1247; Rees Ginns and Moni Stowers Tender Bundle Volume 2, exhibit 1251, document 034.0006.0991.0001–0089; 040.0620.0840.0001–0055; 001.0881.0192.0001–0009; Bates, T13478/17–13483/37. Phone calls between Ginns and Bates on the mobile phone numbers provided to the Commission during hearings began on 9 July 1999. Around half of all the subcontractors’ cheques had been deposited by this stage. After this (noting that not all the cash withdrawal records are available), there does seem to be a correlation between calls and cheque deposits/cash withdrawals. For example, on 19 November 1999, Ginns withdrew a total of \$19 906 (six withdrawals); that morning, he had received two phone calls from Bates.
- 437 Craig Bates Tender Bundle Volume 2, exhibit 1278, document 002.0669.0506.0009–0039.
- 438 Craig Bates Tender Bundle Volume 1, exhibit 1277, document 001.0494.0588.0066–0235; Craig Bates Tender Bundle Volume 2, exhibit 1278, document 002.0669.0506.0009–0039; see Annexure C to this case study for a summary of the documentary evidence.
- 439 Bates, T13473/5–16; Craig Bates Tender Bundle Volume 1, exhibit 1277, document 011.0494.0586.0058–0358; Craig Bates Tender Bundle Volume 2, exhibit 1278, document 085.0720.0695.0025–0118; Rees Ginns and Moni Stowers Tender Bundle Volume 2, exhibit 1251, document 100.0433.0681.0110–0190; 093.0223.0508.0001–0003; 094.0230.0301.0001, 0003–0000007; 072.0551.0719.0003–0024.
- 440 Ferguson Statement, exhibit 1453, paragraphs 32–33, document 042.0280.0296.0004.
- 441 Warner, T13545/1–16, T13559/5–13562/8.
- 442 Stowers Statutory Declaration, exhibit 1249, paragraph 58, document 098.0169.0819.0001; Ginns Statutory Declaration, exhibit 1245, paragraph 73, document 042.0888.0005.0045; see also Warner, T13552/32–33; cf Warner, T13549/21–26; Bates, T13491/23–38.
- 443 Stowers, T13270/23–13272/1.
- 444 Warner Statutory Declaration, exhibit 1165, paragraph 7, document 050.0010.0844.0001; Rees Ginns and Moni Stowers Tender Bundle Volume 1, exhibit 1251, document 100.0433.0681.0012–0109; 041.0268.0394.0002–0007; 032.0343.0646.0002–0005; 032.0343.0646.0015–0017; 072.0551.0719.0012–0016, 0020–0024.
- 445 Wallace Statutory Declaration, exhibit 1252, paragraph 8, document 086.0771.0516.0001; cf Warner Statutory Declaration, exhibit 1234, paragraph 50, document 020.0672.0837.0001.
- 446 Wallace Statutory Declaration, exhibit 1252, paragraph 14, document 086.0771.0516.0001; cf Warner Statutory Declaration, exhibit 1234, paragraph 54, document 020.0672.0837.0001; Warner, T13561/45–13562/2.
- 447 Bechara Statutory Declaration, exhibit 1255, paragraph 6, document 032.0638.0209.0001; cf Warner Statutory Declaration, exhibit 1949, paragraph 3, document 024.0505.0753.0005; Warner, T13564/42–45.
- 448 B Tabak, T13337/19–27.

15 Plastering and Partitioning

Austral Interior Linings Pty Ltd

IGA Supermarket project

- 1 Mr Glen Touhill is the Director of Austral Interior Linings Pty Ltd (Austral), a plastering and partitioning service company engaged in the building and construction industry.¹ Austral generally undertakes work in the western suburbs of Sydney.²
- 2 In about July 2000 Austral was finalising work at Silverwater on an IGA supermarket project.³ The head contractor was a member of the St Hilliers Group.⁴ Two organisers from the Construction, Forestry, Mining and Energy Union (CFMEU) visited the site, one being Mr Douglas Heath, then an organiser for the Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.⁵ The organisers went to the office of the builder and raised a series of issues concerning the site, in particular, whether subcontractors working on the site had Enterprise Bargaining Agreements (EBAs) in the form approved by the CFMEU.⁶ The organisers called a meeting of all the men on the site, as a result of which half a day's work was lost. The disruption cost Austral approximately \$1500.⁷ Touhill paid his employees for the down time as he wanted to prevent any sort of backlash in the future by employees or by the CFMEU.⁸
- 3 Having regard to s187AA(1) of the *Workplace Relations Act 1996 (C'wth)*, and the finding that Austral Interior Linings Pty Ltd paid its employees for the period of industrial action on the IGA Supermarket site, on the material before me, I am satisfied that Austral Interior Linings Pty Ltd engaged in unlawful conduct.
- 4 Having regard to s285C(2) of the *Workplace Relations Act 1996 (C'wth)* and the finding that Douglas Heath, at the relevant time in his capacity as an organiser for the Construction, Forestry, Mining and Energy Union, held discussions with employees other than during meal time and other breaks, on the material before me I am satisfied that Douglas Heath engaged in unlawful conduct.
- 5 This case study illustrates:
 - (a) payments of strike pay by employers;
 - (b) the taking and organising of unprotected industrial action by a union organiser, in the form of calling a meeting during work hours; and
 - (c) disregard of provisions of the *Workplace Relations Act 1996 (C'wth)* by a union organiser.

Norwest Homemaker Centre Project

- 6 In about August 2000 Austral had obtained a contract to work on the Norwest Homemaker Centre at Bella Vista for the builder Prime Constructions Pty Ltd (Prime Constructions).⁹ Shortly after work began on the site, a number of union organisers visited the site, including Heath.¹⁰ The union organisers told the builder and the foreman that the site was a 'union site' and that each subcontractor on the site needed an EBA to work there.¹¹ The organisers inspected the records of various subcontractors, demanding that each employee be signed up to the Construction & Building Unions Superannuation Fund (Cbus), Australian Construction Industry Redundancy Trust (ACIRT) and Coverforce Top-Up Accident Scheme (CTAS).¹² Conflict between the CFMEU and the contractor and subcontractors on site resulted in the site being shut down for approximately eight days, causing Austral losses of about \$25 000.¹³
- 7 Touhill paid his employees for the first 24 hours of the strike and then relocated them to another project for the duration of the strike.¹⁴
- 8 When Austral went back on the Norwest Homemaker Centre site, CFMEU organisers and Mr Dennis Buckland, Site Manager for Prime Constructions Pty Ltd, on the Norwest Homemaker Centre, were unable to identify any problems in the books of Austral.¹⁵ The organisers pressured Touhill to start making payments on behalf of his staff to ACIRT and CTAS, which he did.¹⁶ Two or three days later, Touhill was asked to attend a meeting at the CFMEU's offices at Lidcombe, where he met with Mr Brian Redfern and Mr Brian Fitzpatrick, organisers for the Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.¹⁷ Touhill said Fitzpatrick asked him why he did not have an EBA and Touhill replied that he did not want an EBA, and particularly a union EBA.¹⁸ Touhill said Fitzpatrick told him that if he wanted to do the big jobs he would have to pay the big money, and told him that Austral must have an EBA by the end of the year or it would not get any further work in Sydney.¹⁹ On Touhill's estimation, a CFMEU-endorsed EBA would add extra costs of approximately \$300 a week for each employee.²⁰
- 9 Austral's experiences on the Norwest Homemaker Centre project evidence a campaign by the CFMEU to force that company to enter into a CFMEU-endorsed EBA. The evidence shows that even if a subcontractor refuses to enter into a CFMEU-endorsed EBA, the CFMEU will exercise its industrial power to ensure that key elements of the EBA are met by the subcontractor. In this case this meant that Austral was required to pay ACIRT and CTAS for its employees even though there was no legal requirement to do so.
- 10 Having regard to s187AA(1) of the *Workplace Relations Act 1996 (C'wth)* and the findings that Austral Interior Linings Pty Ltd paid its employees for the first 24 hours of the strike on the Norwest Homemaker Centre project, on the material before me, I am satisfied that Austral Interior Linings Pty Ltd engaged in unlawful conduct.
- 11 This case study illustrates:
 - (a) the existence of 'union sites';
 - (b) the taking of unprotected industrial action to endeavour to force a subcontractor to enter into a union-endorsed EBA; and
 - (c) the requirement sought to be imposed by a union organiser that a subcontractor has a union-endorsed EBA if it wanted to be involved in major projects.

Herbert Street, Artarmon Project

- 12 Around 15 January 2001 Austral was working on some factory units in Herbert Street, Artarmon, for St Hilliers Group.²¹ Shortly after work began on the site, Mr Darryn Tinmouth, an organiser for the Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch, visited the site and demanded to look at the books of each of the subcontractors, leading to disruption on the site and the loss of two days' work.²² The entire site was shut down for one day, but on the second day, only Austral employees were not allowed to work.²³ Tinmouth alleged a series of safety issues and told Mr Ron Lucas, foreman for St Hilliers Group, that Austral would have to have an EBA with the CFMEU if it wanted to continue to work on the site.²⁴ Austral lost approximately \$8000 as a result of the shut down.²⁵ Touhill paid his employees their full wages for these two days.²⁶ He told the Commission that the culture of the industry was such that not paying one's employees strike pay would create more problems than it was worth.²⁷ I am not able to determine whether this stoppage flowed from safety issues.

St Marys Aldi Supermarket Project

- 13 About September 2001 Austral tendered for the construction of an Aldi Supermarket in St Marys for Southern Cross Constructions (NSW) Pty Ltd (Southern Cross).²⁸ Austral won this tender, worth around \$60 000, and received a letter of intent from Southern Cross.²⁹ The letter was in a standard form, and specified that the subcontractor had to have a union-endorsed EBA and to provide evidence of such before commencing on site.³⁰
- 14 Redfern contacted Mr Lewis Yazbek, the Managing Director of Southern Cross Constructions (NSW) Pty Ltd, and asked him to provide a list of subcontractors for the site.³¹ Yazbek told him the subcontractors were the same as on a previous job, but did not mention Austral (who had not worked on the previous job).³²
- 15 On about 26 September 2001 before work was due to begin on the site, Redfern went to Austral's premises in Preston, and suggested to Touhill that Austral could not go on that site as 'it was his [Redfern's] job'.³³ Redfern pointed at Touhill, which took him by surprise.³⁴ This incident was witnessed by a local councillor from the Liverpool area, Mr Steven Dobell-Brown, who said to Touhill that he thought Touhill had just been threatened.³⁵
- 16 Two days later, on the Friday before the job was to start, Touhill received a telephone call from Yazbek who informed him that Austral's contract had been cancelled as Aldi Supermarket had nominated another subcontractor to do the plastering and partitioning work on all Aldi Supermarket sites.³⁶ Touhill asked Yazbek whether the contract was being cancelled because of pressure from the CFMEU, which Yazbek denied.³⁷

EBA

- 17 At the time of the hearings Austral had recently negotiated an EBA with its employees, which has been certified by the Australian Industrial Relations Commission.³⁸ The CFMEU is not a party.

PDH Partitions Pty Ltd

- 18 Mr Peter Hutchinson is the Managing Director of PDH Partitions Pty Ltd (PDH), a company engaged in interior plastering fit-outs.³⁹ PDH primarily engages its workforce from a pool of about 20 subcontractors and only employs three fulltime employees, including Hutchinson.⁴⁰
- 19 Southern Cross engaged PDH on the Pelican Quays project in Concord.⁴¹ The project began in August 1997 and was completed around April 1998.⁴² About November 1997 Mr Bieng Tang, an organiser for the Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch, approached Mr Brian Rowan, Project Manager for PDH Partitions Pty Ltd.⁴³ Tang told Rowan he wanted all the workers to join the CFMEU, and for PDH to make an EBA and contributions to Cbus and ACIRT.⁴⁴ PDH had about 18 workers on site employed by 12 subcontractors.⁴⁵ PDH resisted making an EBA with the union however the subcontractors' workers were made to join the CFMEU.⁴⁶
- 20 In January 1998 Fitzpatrick sent a facsimile to Mr Walter Galizia, an employee of Southern Cross Constructions Pty Ltd, requesting it ensure PDH complied with union requirements and to provide proof of compliance.⁴⁷ These requirements included contributions to Cbus, no workers to be working under the 'illegal PPS system' (a reference to the taxation Prescribed Payments System) and contributions to be made to CTAS and to ACIRT for all workers on site.⁴⁸ Southern Cross told PDH that progress payments would be withheld until the company complied with the union demands and provided proof of compliance.⁴⁹
- 21 Faced with the prospect of not receiving progress payments, PDH made contributions to the specified funds for workers on site and paid the union membership for workers who were not already members of the union. The total cost of compliance was about \$14 000. Southern Cross refused to accept this amount as a variation.⁵⁰
- 22 The above recounts the evidence of Hutchinson. Fitzpatrick did not give evidence due to illness. Tang has returned permanently to Korea, and also did not give evidence. I make no findings adverse to them. However, PDH complied with the CFMEU's written demand for contributions to be made by PDH to Cbus, ACIRT and CTAS under threat of progress payments being withheld by Southern Cross and this, in the absence of any investigation to determine whether PDH was complying with its obligations under the award, constitutes pressure being applied by Southern Cross for the apparent purpose of appeasing the CFMEU.
- 23 This case study illustrates:
- (a) a union requiring head contractors to require its subcontractors to act in a particular way, and the head contractor acceding;
 - (b) a head contractor threatening to withhold progress payments to a subcontractor unless it acts in a manner required by a union; and
 - (c) the dominance and power, as a matter of fact, of a union in the industry.

Persons involved

Name	Position/ Title
Buckland, Dennis	Site Manager, Prime Constructions Pty Ltd, Norwest Homemaker Centre site.
Dobell-Brown, Steven	Local councillor from the Liverpool area.
Fitzpatrick, Brian	Organiser, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.
Galizia, Walter	Employee, Southern Cross Constructions Pty Ltd.
Heath, Douglas Charles	Former Organiser, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.
Hutchinson, Peter Donald	Managing Director, PDH Partitions Pty Ltd.
Lucas, Ron	Foreman, St Hilliers Group.
Redfern, Brian Trevor	Organiser, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.
Rowan, Brian	Project Manager, PDH Partitions Pty Ltd.
Tang, Bieng	Organiser, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.
Tinmouth, Darryn	Organiser, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.
Touhill, Glen	Director, Austral Interior Linings Pty Ltd.
Yazbek, Lewis	Managing Director, Southern Cross Constructions (NSW) Pty Ltd.

Notes to Plastering and Partitioning

- ¹ Touhill Statutory Declaration, exhibit 614, paragraph 1, document 086.0771.0516.0165; Touhill, T8341/9–15.
- ² Touhill Statutory Declaration, exhibit 614, paragraph 1, document 086.0771.0516.0165.
- ³ Touhill Statutory Declaration, exhibit 614, paragraph 2, document 086.0771.0516.0165; Touhill, T8341/36–38.
- ⁴ Touhill Statutory Declaration, exhibit 614, paragraph 2, document 086.0771.0516.0165; Touhill, T8341/36–38.
- ⁵ Touhill Statutory Declaration, exhibit 614, paragraph 2, document 086.0771.0516.0165; Touhill, T8342/1–19; Heath, T12409/16–17.
- ⁶ Touhill Statutory Declaration, exhibit 614, paragraph 2, document 086.0771.0516.0165; Touhill, T8342/27–37; Heath, T12409/25–28.
- ⁷ Touhill Statutory Declaration, exhibit 614, paragraph 2, document 086.0771.0516.0165; Touhill, T8343/9–33; Heath, T12409/30–44.
- ⁸ Touhill, T8343/37–40.
- ⁹ Touhill Statutory Declaration, exhibit 614, paragraph 3, document 086.0771.0516.0165; Touhill, T8343/45; Christopher Statutory Declaration, exhibit 615, paragraph 25, document 064.0630.0170.0001; Christopher, T8368/38–42.
- ¹⁰ Touhill Statutory Declaration, exhibit 614, paragraph 3, document 086.0771.0516.0165; Touhill, T8344/3–19; Christopher Statutory Declaration, exhibit 615, paragraph 26, document 064.0630.0170.0001; Christopher, T8369/4–7; Christopher Statutory Declaration, exhibit 615, annexure PCC-14, document 064.0630.0170.0178.
- ¹¹ Touhill Statutory Declaration, exhibit 614, paragraph 3, document 086.0771.0516.0165; Touhill, T8344/27–38; Christopher Statutory Declaration, exhibit 615, paragraph 33, document 064.0630.0170.0001.
- ¹² Touhill Statutory Declaration, exhibit 614, paragraph 3, document 086.0771.0516.0165.
- ¹³ Touhill Statutory Declaration, exhibit 614, paragraph 3, document 086.0771.0516.0165; Christopher Statutory Declaration, exhibit 615, paragraph 31, document 064.0630.0170.0001; Christopher Statutory Declaration, exhibit 615, annexure PCC-14, document 064.0630.0170.0178 at 0180.
- ¹⁴ Touhill, T8351/22–30.
- ¹⁵ Touhill Statutory Declaration, exhibit 614, paragraph 5, document 086.0771.0516.0165; Touhill, T8346/1–6; Christopher Statutory Declaration, exhibit 615, paragraph 34, document 064.0630.0170.0001.
- ¹⁶ Touhill Statutory Declaration, exhibit 614, paragraph 5, document 086.0771.0516.0165; Touhill, T8346/22–34.
- ¹⁷ Touhill Statutory Declaration, exhibit 614, paragraph 6, document 086.0771.0516.0165; Touhill, T8346/36, 14; cf Redfern Statement, exhibit 741, paragraph 3, document 097.0593.0868.0003.
- ¹⁸ Touhill, T8347/16–20.
- ¹⁹ Touhill Statutory Declaration, exhibit 614, paragraph 6, document 086.0771.0516.0165; Touhill, T8347/14–34. Fitzpatrick did not make a statement to the Commission or give oral evidence due to illness. Redfern was present at the meeting and did not deny Touhill's account.
- ²⁰ Touhill Statutory Declaration, exhibit 614, paragraph 7, document 086.0771.0516.0165; Touhill, T8348/20–31.
- ²¹ Touhill Statutory Declaration, exhibit 614, paragraph 12, document 086.0771.0516.0165; Touhill, T8350/4–5.
- ²² Touhill Statutory Declaration, exhibit 614, paragraph 12, document 086.0771.0516.0165; Touhill, T8350/11–26; T9757/40–42; cf Tinmouth Statement, exhibit 811, paragraph 9, document 035.0114.0330.0550.

- 23 Touhill Statutory Declaration, exhibit 614, paragraph 12, document 086.0771.0516.0165; Touhill, T8350/22–26.
- 24 Touhill Statutory Declaration, exhibit 614, paragraph 12, document 086.0771.0516.0165; Touhill, T8350/28–32; T9757/25–29; cf Tinmouth Statement, exhibit 811, paragraph 22, document 035.0114.0330.0550.
- 25 Touhill Statutory Declaration, exhibit 614, paragraph 12, document 086.0771.0516.0165.
- 26 Touhill, T8351/13–17.
- 27 Touhill, T8351/13–17.
- 28 Touhill Statutory Declaration, exhibit 614, paragraph 14, document 086.0771.0516.0165; Touhill, T8352/12–13.
- 29 Touhill Statutory Declaration, exhibit 614, paragraph 14, document 086.0771.0516.0165; Touhill Statutory Declaration, exhibit 614, annexure GT-1, document 086.0771.0516.0172; Yazbek, T9191/9–25.
- 30 Yazbek, T9191/35–44.
- 31 Yazbek, T9192/36–43; cf Redfern, T9839/29–37; Redfern Statement exhibit 741, paragraph 22, document 097.0593.0868.0003.
- 32 Yazbek, T9194/2–8; cf Redfern, T9839/29–37; Redfern Statement exhibit 741, paragraph 22, document 097.0593.0868.0003.
- 33 Touhill, T9756/11–12, 21–23; Touhill Statutory Declaration, exhibit 614, paragraph 14, document 086.0771.0516.0165; Touhill, T8351/36–8352/10; Redfern, T9837/21–22; cf Redfern, T9837/24–27; 9840/1–4; Redfern Statement, exhibit 741, paragraphs 11–12, document 097.0593.0868.0003.
- 34 Touhill Statutory Declaration, exhibit 614, paragraph 14, document 086.0771.0516.0165; Touhill, T8352/43–8353/1; T9756/30–31; cf Redfern Statement exhibit 741, paragraph 12, document 097.0593.0868.0003.
- 35 Touhill Statutory Declaration, exhibit 614, paragraph 14, document 086.0771.0516.0165; Touhill, T8353/3–12; T9756/40–41.
- 36 Touhill Statutory Declaration, exhibit 614, paragraph 15, document 086.0771.0516.0165; Touhill, T8354/38–8355/3; cf Yazbek, T9194/17–40.
- 37 Touhill Statutory Declaration, exhibit 614, paragraph 15, document 086.0771.0516.0165; Touhill, T8355/5–9, 17–18; Yazbek, T9194/42–9195/1; Touhill, T9757/10–11.
- 38 Touhill Statutory Declaration, exhibit 614, paragraph 11, document 086.0771.0516.0165; Touhill, T8349/5–25.
- 39 Hutchinson Statutory Declaration, exhibit 698, paragraphs 1–2, document 019.0349.0656.0297.
- 40 Hutchinson Statutory Declaration, exhibit 698, paragraphs 1 & 3, document 019.0349.0656.0297.
- 41 Hutchinson Statutory Declaration, exhibit 698, paragraph 6, document 019.0349.0656.0297.
- 42 Hutchinson Statutory Declaration, exhibit 698, paragraph 6, document 019.0349.0656.0297.
- 43 Hutchinson Statutory Declaration, exhibit 698, paragraph 8, document 019.0349.0656.0297.
- 44 Hutchinson Statutory Declaration, exhibit 698, paragraph 8, document 019.0349.0656.0297.
- 45 Hutchinson Statutory Declaration, exhibit 698, paragraph 8, document 019.0349.0656.0297.
- 46 Hutchinson Statutory Declaration, exhibit 698, paragraph 8, document 019.0349.0656.0297; Hutchinson, T9022/1–25.
- 47 Hutchinson Statutory Declaration, exhibit 698, paragraph 11, document 019.0349.0656.0297.
- 48 Hutchinson Statutory Declaration, exhibit 698, paragraph 12, document 019.0349.0656.0297; Hutchinson Statutory Declaration, exhibit 698, annexure PDH2, document 019.0349.0656.0305.
- 49 Hutchinson Statutory Declaration, exhibit 698, paragraph 13, document 019.0349.0656.0297; Hutchinson Statutory Declaration, exhibit 698, annexure PDH3, document 019.0349.0656.0308.
- 50 Hutchinson Statutory Declaration, exhibit 698, paragraph 16, document 019.0349.0656.0297; Hutchinson Statutory Declaration, exhibit 698, annexure PDH4, document 019.0349.0656.0310; Hutchinson Statutory Declaration, exhibit 698, annexure PDH5, document 019.0349.0656.0312.

16 Scaffolding

Endeavour Scaffolding Pty Ltd

- 1 Mr Gary Hooker was a director of Endeavour Scaffolding Pty Ltd (Endeavour Scaffolding) until November 2001.¹ Endeavour Scaffolding was incorporated in 1992 and was operated as a labour hire company.² 'Waco' and 'Boral', among others, are clients of Endeavour Scaffolding.³
- 2 In August 1998 the Construction, Forestry, Mining and Energy Union (CFMEU) induced a three to four week strike for a 40 per cent increase in wages in the scaffolding industry.⁴ During this time, at the instigation of the Master Builders' Association of New South Wales (MBANSW), scaffolding companies agreed to form a scaffolders' association to respond to the CFMEU's demands.⁵ The Scaffolders' Association is affiliated with the MBANSW.⁶ The initial members of the Scaffolders' Association were: Bayside Pty Ltd (Bayside), Endeavour Scaffolding, Raffia Pty Ltd, Express Pty Ltd, Impact Pty Ltd, Constructor Scaffolding Pty Ltd, 3-D Scaffolding Pty Ltd (3-D Scaffolding), and Rocom Pty Ltd.⁷ Mr John Wilson of Bayside Pty Ltd negotiated on behalf of the Scaffolders' Association with Mr Craig Bates, then Branch Assistant Secretary of the Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.⁸
- 3 Wilson was the inaugural President of the Scaffolders' Association and resigned in late 2000 when his company's scaffolding division became insolvent.⁹ Hooker was appointed President in early 2000 and resigned in 2001. Mr Tony Mouritz from Bell Scaffolding Pty Ltd (Bell Scaffolding) has been Acting President since that time.¹⁰ Mr Geoffrey Thomas, Senior Industrial Officer of the Master Builders Association of New South Wales, is the Secretary of the Scaffolders' Association.¹¹
- 4 During 1998 CFMEU strike action saw major builders threatening scaffolding companies with liquidated damages.¹² Endeavour Scaffolding was threatened with liquidated damages by Mr John Rayner, Project Manager, Boulderstone Hornibrook Pty Ltd (Boulderstone), on the Birkenhead Point site.¹³
- 5 Endeavour Scaffolding's current union-endorsed Enterprise Bargaining Agreement (EBA) has increased costs for each scaffolder from about \$34 an hour to about \$54 an hour.¹⁴ In consequence its charge out rates needed to be in excess of \$64 an hour but the market rate was less than \$53 an hour.¹⁵ That resulted in what Hooker described as 'cheating the system'. Examples of such cheating were:

Under declaring wages for workers compensation

The use of shelf companies to avoid payroll tax

Pyramid subcontracting

Employing people on their ABN number. This allows you to avoid all the EBA entitlements such as superannuation and redundancy payments

Cash in hand payments; and

*Criminal activities which have been well publicised.*¹⁶

6 Hooker claimed that:

*A significant number of building companies are guilty of blatantly screwing sub-contractors with the full knowledge that commitments cannot possibly be met by the contract prices they are demanding. Hire companies are also grossly negligent in their abuse of sub contract labour. For eg. [sic] Holding back final payments nearing the end of a project and negotiating a settlement figure, considerably less than what is owed, knowing the contractor is desperate for money, offering the contract on their next project as an enticement to discount, and failing to deliver, failing to pay for extra to contract work even though they have no hesitation in signing for it, which should guarantee payment.*¹⁷

7 Hooker regarded the establishment of a task force as 'essential'.¹⁸

8 After Endeavour Scaffolding signed its first EBA, Bates wanted all of Endeavour Scaffolding's employees to join the CFMEU.¹⁹ CFMEU representatives directly approached Endeavour Scaffolding's employees for membership and successfully unionised the entire staff.²⁰

9 This case study illustrates:

- (a) the problems and difficulties facing subcontractors; and
- (b) revenue and cost avoidance measures adopted.

Raffia Contracting Pty Ltd

10 Mr Russell Mohi is the sole director and shareholder of Raffia Contracting Pty Ltd, trading as Raffia Rigging and Scaffolding (Raffia), a scaffolding company in the business of hiring out scaffolding equipment in the building and construction industry.²¹

11 Raffia has a union-endorsed EBA, certified by the AIRC on 29 May 2000 with a nominal expiry date of 1 January 2003.²²

12 Mohi negotiated Raffia's EBA with Bates over a period of a few months.²³ Mohi claimed he was unable to extract any concessions from Bates during the EBA negotiations because of Bates' inflexible attitude.²⁴ Raffia consulted its employees about the EBA by setting up a consultative committee, which ultimately decided to adopt the union-endorsed EBA.²⁵

13 During the period of negotiations, scaffolders in New South Wales were taking industrial action.²⁶ Mohi said it was common during this period for scaffolders who were working to be

stopped by CFMEU organisers for 'supposed' safety reasons which, according to Mohi, did not warrant a site stoppage.²⁷

- 14 In early 2000 a two week strike occurred in the scaffolding sector of the industry.²⁸
- 15 In February 2000 Bates stopped Raffia's workers from working on a Bovis site at Macquarie Street, Sydney, for a supposed safety breach.²⁹
- 16 At that time Raffia had tendered for work on Baulderstone's Balmain Shores site.³⁰ Mohi gave evidence of a conversation with Bates, in which Bates said words to the effect: 'You know what you have got to do, you know what it's about. You don't need to worry about the Baulderstone job, and in return, we'll leave you alone on the Lend Lease job.'³¹ Mohi said he asked Bates what he meant and if Raffia withdrew its tender for that site, whether the safety issues would go away. Bates replied, 'You know what it's about.'³² Bates denied these allegations.³³
- 17 Not long after this conversation Raffia withdrew its tender for the Baulderstone Balmain Shores site.³⁴
- 18 It is more likely than not that Bates made the statements attributed to him by Mohi. The making of the statements is consistent with Raffia's decision to withdraw its tender for the Balmain Shores project. Despite the generality of Bates' statements, they had a potent effect.
- 19 This case study illustrates:
 - (a) the use by a union official of safety as a bargaining or pressure tool to seek to achieve its industrial ends; and
 - (b) the manner in which the influence and pressure of a union is accepted by participants in the industry.

T & R Management Services Pty Ltd

- 20 Mr Victor Drollett is the Managing Director of T & R Management Services Pty Ltd which trades as Tube and Rigging Services (Tube and Rigging Services).³⁵ Tube and Rigging Services provides scaffolding and labour on commercial building projects.³⁶
- 21 Tube and Rigging Services employs 14 staff under an EBA with the CFMEU.³⁷ Tube and Rigging Services negotiated its EBA through the Scaffolders' Association.³⁸ The Scaffolders' Association negotiated a sector pattern EBA with the CFMEU and individual members of the Scaffolders' Association then made an EBA in that form.³⁹
- 22 Tube and Rigging Services makes contributions to Australian Construction Industry Redundancy Trust (ACIRT) and Coverforce Top-Up Accident Scheme (CTAS) because CFMEU representatives have told Drollett that these contributions are compulsory.⁴⁰ When Tube and Rigging Services made its first EBA, the labour costs of a scaffolder increased from about \$30 to about \$40 an hour.⁴¹ Initially, Tube and Rigging Services lost work because of these increased rates.⁴² Drollett gave evidence that most scaffolders have now made EBAs and a 'level playing field' is beginning to emerge.⁴³
- 23 In November or December 2000 Waracon Pty Ltd (Waracon) engaged Tube and Rigging Services on a job in Hornsby.⁴⁴ Waracon was subsequently replaced by Barclay Mowlem.⁴⁵ In

January 2001 two CFMEU representatives stopped the site and made a claim for a \$1.50 site allowance.⁴⁶ Tube and Rigging Services paid the site allowance and charged the site allowance to the builder as a variation.⁴⁷

- 24 In late 2000 a CFMEU representative told Drollett he had to ensure Tube and Rigging Services' employees were union members if Tube and Rigging Services wanted to continue to work.⁴⁸ Drollett told his employees they had to join the union.⁴⁹ Drollett convinced his employees to join the union by telling them everyone would be out of a job if they did not join.⁵⁰ Tube and Rigging Services pays its employees' union subscriptions when they fall due and recovers the amount from their wages.⁵¹ All Tube and Rigging Services' employees at the time of the hearings were union members.⁵² There is no evidence before the Commission as to whether any employees were made to join the CFMEU against their will.
- 25 In July 2001 a CFMEU representative told Drollett to contact Ms Rosemary Saridakis of Construction Accreditation Services Pty Ltd (CAS) to arrange an audit.⁵³ Tube and Rigging Services complied with the request for the audit for fear of commercial repercussions if it failed to comply with union demands.⁵⁴ The audit cost \$550 and only minor issues were raised.⁵⁵
- 26 This case study illustrates:
 - (a) the existence of sector pattern bargaining;
 - (b) the increase in cost, without any increase in productivity, which accompanies a pattern EBA; and
 - (c) the recognition by an employer that, to survive in the sector of the industry, it was necessary to adhere to a union requirement of union membership.

3-D Scaffolding Pty Ltd

- 27 Mr James Docherty is a director and shareholder of 3-D Scaffolding Pty Ltd.⁵⁶ 3-D Scaffolding carries out commercial and industrial scaffolding work in the Sydney CBD and the Penrith area.⁵⁷
- 28 In 1997 3-D Scaffolding tendered for and was awarded scaffolding work worth about \$30 000 by Leighton Contractors Pty Ltd (Leightons), on the Angel Place project.⁵⁸
- 29 Shortly into the Angel Place project, Docherty said Mr Martin Warner, a former delegate of the Construction, Forestry, Mining and Energy Union on the Angel Place site and employee of Leighton Contractors Pty Ltd, and a man named 'Danny'⁵⁹ approached Docherty and 'put the hard word' on him.⁶⁰ Docherty understood them to be asking for money.⁶¹ They used words to the effect, 'We got you the job, look after us', on about three to five occasions over a period of two weeks.⁶²
- 30 After these conversations, Docherty received a telephone call from Mr Joe Valdez, the Site Manager for Leighton Contractors Pty Ltd.⁶³ Valdez told Docherty to remove all 3-D Scaffolding's equipment from the Angel Place site by the following Saturday.⁶⁴ Valdez told Docherty that 3-D Scaffolding was not professional enough, not big enough, could not handle the job and that Leightons had previously had accidents with its scaffolding and did not want

its equipment on site anymore.⁶⁵ 3-D Scaffolding removed its equipment from the site as requested.⁶⁶

- 31 Docherty gave evidence that he raised the approaches made by Warner and Danny and about being removed from the site with Bates of the CFMEU.⁶⁷ Docherty said Bates told him that he had talked to the delegate on site, and 3-D Scaffolding was being removed because of a safety issue.⁶⁸
- 32 Bates denied having any such conversation with Docherty.⁶⁹
- 33 Warner denied asking Docherty for money, or implying that he wanted money from Docherty.⁷⁰
- 34 I am not satisfied that Warner or the man named Danny attempted to extort money from Docherty, or that Leightons improperly terminated 3-D Scaffolding's contract on the Angel Place site.
- 35 On 21 October 1998 3-D Scaffolding and its employees signed an EBA.⁷¹ The EBA was a variation on the agreement that other scaffolding companies had signed.⁷² The EBA had not been certified by the AIRC and the CFMEU refused to sign it.⁷³
- 36 In April 1999 3-D Scaffolding entered into EBA negotiations with the CFMEU.⁷⁴ Before entering into negotiations, Docherty made a list of items he wanted to negotiate.⁷⁵ Despite the submission of Mr Andrew Ferguson, Branch Secretary of the Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch, that 'past and existing differences can be resolved' and his confidence that an EBA could be reached with the CFMEU, at the time of Docherty's giving evidence in July 2002, no agreement had been reached.
- 37 Docherty gave evidence that not having a union-endorsed EBA has reduced 3-D Scaffolding's ability to win work because some head contractors will not allow 3-D Scaffolding on site without a union-endorsed EBA.⁷⁶
- 38 In January 1999 3-D Scaffolding was engaged on a scaffolding project for Paynter Dixon Constructions (Aust) Pty Ltd (Paynter and Dixon) at the Blacktown Workers' Club.⁷⁷ Mr Thomas Mitchell, organiser for the Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch, arrived at that site and told 3-D Scaffolding's employees to sit in the site shed and told the Paynter and Dixon employees on site, 'You can't use them'.⁷⁸ It appears that Mitchell did this because the company did not have a union-endorsed EBA.⁷⁹
- 39 Shortly thereafter, Docherty attended a meeting with Paynter and Dixon's senior managers who told him they had given his contract to Action Skyline Scaffolding.⁸⁰ Docherty told Paynter and Dixon that if he had to leave the site, Paynter and Dixon would have to pay out his contract in the sum of \$263 000.⁸¹ Paynter and Dixon reconsidered, and 3-D Scaffolding continued to work on site and completed the contract.⁸² The evidence suggests Paynter and Dixon were initially intimidated by Mitchell's conduct into cancelling 3-D Scaffolding's contract, although in the result no loss was suffered.
- 40 In about January 1999 the CFMEU required that every subcontractor on the Blacktown Workers' Club site submit to a time and wage inspection.⁸³ On 21 January 1999 3-D

Scaffolding had its books and records audited by CAS.⁸⁴ CAS produced a report paid for by Paynter and Dixon.⁸⁵

- 41 At the time of the hearings 3-D Scaffolding was undergoing negotiations with Mr Brian Parker, Branch Assistant Secretary of the Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch, to make an EBA, because it had come to the conclusion that it could not work successfully in the industry without one.⁸⁶ Parker told 3-D Scaffolding, in the course of negotiations, that it should undergo a further CAS audit.⁸⁷ That audit took place on 8 February 2002.⁸⁸ CAS made adverse findings about 3-D Scaffolding's records.⁸⁹ CAS's adverse findings were substantially based on discrepancies between allowances 3-D Scaffolding paid its employees under the award and those allowances which would have to be paid if 3-D Scaffolding was a party to a union-endorsed EBA.⁹⁰ 3-D Scaffolding paid CAS more than \$700 to conduct the audit.⁹¹
- 42 Docherty gave evidence that at various times Mitchell and Bates have told him words to the effect, 'You do what we tell you, or we'll hunt you down'.⁹² Docherty also gave evidence that Mitchell told him he would ring WorkCover and have WorkCover inspectors 'get him' on safety issues.⁹³ Docherty said the attitude of Mitchell and Bates was that they would 'come and get' 3-D Scaffolding on site, 'make life hard' for the company, and 'get' builders and WorkCover onto the company.⁹⁴
- 43 This case study illustrates:
 - (a) the requirement of major builders and a union that scaffolders have a union-endorsed EBA;
 - (b) the difficulty of working on major projects without a union-endorsed EBA;
 - (c) the attempts by a union organiser to stop the use of a scaffolding subcontractor without a union-endorsed EBA;
 - (d) the power afforded to a union when the head contractor requires a subcontractor to have a union-endorsed EBA; and
 - (e) the willingness of a union organiser to use safety issues to achieve industrial ends.

Constructor Scaffolding Pty Ltd

- 44 Mr Kevin Matthews is the Director of Constructive Scaffolding Pty Ltd (Constructor Scaffolding), which operates a scaffolding business in the Sydney metropolitan area.⁹⁵ About 70 per cent of Constructor Scaffolding's work is commercial and about 30 per cent is domestic.⁹⁶
- 45 About October 1995 Constructor Scaffolding decided to make an EBA with the CFMEU, because it believed most builders required subcontractors to have an EBA to be considered for tender.⁹⁷ Matthews believed that companies with EBAs were less likely to have problems on site, and that it was judicious for the company to make an EBA with the union.⁹⁸
- 46 In early 1998 Matthews received a draft pattern EBA from the CFMEU for the scaffolding industry.⁹⁹ This EBA was signed on behalf of Constructor Scaffolding and certified without change.¹⁰⁰ On 26 June 2001 Constructor Scaffolding entered into another EBA with the

CFMEU, as the previous one had expired.¹⁰¹ This EBA was similar to the previous EBA, except for increased rates.¹⁰²

- 47 In early February 2001 a representative from the CFMEU told Matthews that Constructor Scaffolding would have to be audited by Ms Rosemary Saridakis of Construction Accreditation Services Pty Ltd.¹⁰³ Matthews was advised that the CFMEU would not sign an EBA unless the audit was conducted.¹⁰⁴ The audit cost \$715.¹⁰⁵ The CAS report identified that Constructor Scaffolding had underpaid about \$800 in wages, due to discrepancies in shift allowances and minimum hours worked.¹⁰⁶ Constructor Scaffolding paid these amounts to the affected employees over the next four weeks.¹⁰⁷
- 48 Constructor Scaffolding's EBA with the CFMEU has imposed a significant financial cost upon the company.¹⁰⁸ Rates of pay under the EBA have increased considerably since June 1998.¹⁰⁹ Constructor Scaffolding has found it difficult to pass these costs on to clients and still remain competitive.¹¹⁰
- 49 Constructor Scaffolding pays union dues for its employees, and then deducts the money from wages, on request by the union and in consultation with the employees.
- 50 This case study illustrates:
 - (a) the recognition in the scaffolding sector that a union EBA is required to obtain work in the sector;
 - (b) the requirement of a union that subcontractors agree to have a book audit before it will sign an EBA;
 - (c) the existence of discrepancies in payments to workers by employers;
 - (d) the control a union has in and over the scaffolding sector; and
 - (e) the additional cost, without any increase in productivity, of a union-endorsed EBA.

Newcastle Scafflink Pty Ltd

- 51 Mr Adam Jordan is the Managing Director of Newcastle Scafflink Pty Ltd (Newcastle Scafflink), a scaffolding company operating in the Newcastle region.¹¹¹ Newcastle Scafflink employs 20 workers.¹¹² Newcastle Scafflink has never had an EBA but is currently in the process of negotiating an EBA with its employees.¹¹³ The Newcastle Master Builders' Association (Newcastle MBA) is assisting Newcastle Scafflink to make a non-union-endorsed EBA, and although the EBA has not been put to formal vote, employees of the company have agreed to the terms of the proposed EBA.¹¹⁴
- 52 In December 2001, Mr Peter Harris, an organiser for the Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch, gave a draft scaffolding pattern EBA to Mr Glen Carroll of Newcastle Scafflink Pty Ltd.¹¹⁵ Harris returned in late February or early March 2002 and told Jordan the EBA Newcastle Scafflink was negotiating through the Newcastle MBA was 'illegal' and that the CFMEU was taking a plastering company 'to court' over it in Sydney.¹¹⁶ Harris told Jordan to make a pattern EBA with the CFMEU instead.¹¹⁷

- 53 In about March 2002 Harris arranged a meeting with Jordan and Mr Tim Sutcliffe, Newcastle Scafflink Pty Ltd's financial advisor.¹¹⁸ Jordan and Sutcliffe told Harris they would consider the CFMEU's EBA.¹¹⁹ Jordan subsequently decided against making a union-endorsed EBA because he believed the increased costs in that EBA would drive Newcastle Scafflink out of the domestic market.¹²⁰
- 54 In early 2002 Newcastle Scafflink successfully tendered to provide scaffolding on the Crowne Plaza project for Becton Construction Group Pty Ltd (Becton Construction Group).¹²¹ During the tender process, Becton Construction Group told Jordan that Newcastle Scafflink would need an EBA to work on the Crowne Plaza project.¹²²
- 55 In early April 2002 Mr Robert Cochrane, an organiser for the Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch, based in Newcastle, telephoned Jordan and told him that Mr John Porter, a former employee of Newcastle Scafflink Pty Ltd, had lodged a wage claim against Newcastle Scafflink.¹²³ Newcastle Scafflink had employed Porter on a casual basis in 2000.¹²⁴ Porter had worked about 40 days over a period of about 12 weeks.¹²⁵ Porter was employed on a casual basis because his wife was ill.¹²⁶ The Newcastle MBA examined the pay records and was satisfied Porter had been correctly paid.¹²⁷ Jordan provided Cochrane with a wage claim summary, which Cochrane said was inadequate to assess the claim.¹²⁸ Cochrane referred the matter to the Industrial Relations Commission and Jordan agreed to have the matter determined in that forum.¹²⁹
- 56 On 7 May 2002 Mr Joe Delataris, the Becton Construction Group Safety Officer on the Crowne Plaza project, telephoned Jordan.¹³⁰ Delataris told Jordan that Cochrane had telephoned him about the wage claim.¹³¹ Later that day Cochrane told Jordan the site would be shut in seven days if Newcastle Scafflink did not pay Porter.¹³² On 8 May 2002 Becton Construction Group received a letter from the CFMEU, warning of a potential liability for the wage claim under s127 of the *Industrial Relations Act 1996 (NSW)*.¹³³ Delataris faxed this letter to Jordan.¹³⁴
- 57 On 10 May 2002 Mr Stephen McCarney, Branch Secretary of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union, Plumbing Division, New South Wales Branch, conducted a safety walk on the Crowne Plaza site and identified some defects with Newcastle Scafflink's scaffolding.¹³⁵ Among other problems, McCarney identified incomplete scaffolding, plasterers and roofers using the perimeter scaffold with no safety harnesses, planking that did not comply with the Code of Practice, an absence of edge protection, and excessive gaps between external walls and planking.¹³⁶
- 58 On 14 May 2002 McCarney returned to the site to review the rectification work. Harris also attended. They identified further serious safety issues, posing an immediate risk of injury to workers.¹³⁷ At about 4.20 pm that day, Harris received a phone call from Jordan, who was extremely irate. Jordan said words to the effect, 'I'll have six scaffolders there tomorrow morning. I am going to bash the fucking living shit out of you, so watch yourself.'¹³⁸
- 59 Harris attended the site the following morning and conducted a mass meeting of the workers. Jordan arrived on the site, approached him in a menacing manner and alleged that the safety issues had only been raised because of the outstanding wage claim involving Porter.¹³⁹ Harris denied any knowledge of the Porter wage claim.¹⁴⁰

- 60 On 7 June 2002 WorkCover Authority of New South Wales (WorkCover NSW) issued prohibition notices concerning occupational health and safety issues on site, including scaffolding defects.¹⁴¹ Harris and McCarney were justified in raising safety issues concerning Newcastle Scafflink's scaffolding. The prohibition notices issued by WorkCover NSW make it clear that there was a substantial and immediate risk of injury to workers on the site. I reject Jordan's evidence that Harris told him there was nothing wrong with the scaffolding, other than that the job required two materials hoists.¹⁴²
- 61 The evidence concerning the Porter wage claim suggests an industrial dispute that got out of hand. There was no justification for the threat by Cochrane to cause the whole of the Becton Construction Group Crowne Plaza site to shut down over a dispute which, according to Cochrane himself, was worth no more than \$3029.23, in circumstances where the parties were involved in active settlement negotiations.
- 62 This case study illustrates:
- (a) threats by a union organiser to cause a stoppage of work if a wage claim was not paid, even though the matter had been referred to the Industrial Relations Commission;
 - (b) the employer's failure to adequately attend to safety matters; and
 - (c) the making of threats by an employer to an organiser.

Boral Ltd and Boral Formwork and Scaffolding Pty Ltd

- 63 Mr Warren Davison is a Divisional General Manager with Boral Ltd (Boral).¹⁴³ Boral has a plant at Revesby, New South Wales¹⁴⁴ and a yard in Wollongong.¹⁴⁵ Boral's subsidiary, Boral Formwork and Scaffolding Pty Ltd, known as Boral Building Services Pty Ltd until 1999, (Boral Formwork and Scaffolding) is a major supplier of scaffolding, formwork, standard scaffolding and mechanical access.¹⁴⁶
- 64 About 26 August 1999 Boral Formwork and Scaffolding decided to offer voluntary redundancy packages to all seven of its employee scaffolders. On 31 August 1999 Boral Formwork and Scaffolding called a meeting to inform the scaffolders of its decision. They were invited to apply for the voluntary redundancy package by Monday 6 September 1999.¹⁴⁷ Boral Formwork and Scaffolding did not receive any expressions of interest.¹⁴⁸
- 65 On 7 September 1999 Boral Formwork and Scaffolding called a further meeting extending the deadline for the package to 10 September 1999.¹⁴⁹ No expressions of interest were received by the extended deadline.¹⁵⁰
- 66 On 14 September 1999 Boral Formwork and Scaffolding called a further meeting with the scaffolders to inform them that their employment would be terminated. Each scaffolder was provided with a written notice explaining Boral Formwork and Scaffolding's decision to make them redundant.¹⁵¹ The scaffolders received their redundancy payments the same day.¹⁵²
- 67 The scaffolders refused to accept Boral Formwork and Scaffolding's decision. Boral Formwork and Scaffolding's yard employees commenced industrial action in support of the scaffolders by withdrawing their labour indefinitely.¹⁵³ The scaffold and yard employees of Boral Formwork and Scaffolding were members of the CFMEU.¹⁵⁴

- 68 On 16 September 1999 Boral Formwork and Scaffolding received a demand from the CFMEU that the scaffolders be reinstated. At the same time Boral Formwork and Scaffolding was informed by the CFMEU that Boral Formwork and Scaffolding's yard employees were continuing their strike until the scaffolders were reinstated.¹⁵⁵
- 69 On the same day, Boral Formwork and Scaffolding filed written notice of its intention to bring an action in tort against the CFMEU under s166A of the *Workplace Relations Act 1996 (C'wth)* with the Australian Industrial Relations Commission (AIRC).¹⁵⁶
- 70 On 17 September 1999 Boral Formwork and Scaffolding successfully applied for relief under s127 of the *Workplace Relations Act 1996 (C'wth)*, obtaining an order that the industrial action against the company cease.¹⁵⁷ Boral Formwork and Scaffolding immediately distributed a copy of the s127 order to all employees engaged at the Boral Formwork and Scaffolding plant as well as the CFMEU.¹⁵⁸
- 71 Despite the order issued by the AIRC, the industrial action continued and widened to include Boral Formwork and Scaffolding's Wollongong depot.¹⁵⁹ On 23 September 1999 Boral Formwork and Scaffolding pressed for an order under s166A.¹⁶⁰
- 72 In the course of the proceeding in relation to the s166A application the AIRC urged the parties to reach a settlement on the matter.¹⁶¹
- 73 At about this time, the CFMEU, the yard employees and the scaffolders ceased pressing for the reinstatement of the scaffolders and began to focus on the content of the retrenchment package to be offered to the scaffolders.¹⁶²
- 74 The CFMEU argued that the scaffolders should receive payments equivalent to those made to the scaffolders who had been retrenched earlier that year by Boral's Victorian Division. There was considerable debate surrounding whether the redundancy package offered to the New South Wales' scaffolders was adequate.¹⁶³
- 75 On 27 September 1999 a meeting was held to discuss settlement of the dispute. Mr Branko Alexander (Alex) Bukarica, then the Assistant National Secretary, Construction, Forestry, Mining and Energy Union, Construction and General Division, attended on behalf of the CFMEU. Mr Phillip Jobe, General Manager for the Boral Group, attended on behalf of Boral Formwork and Scaffolding.¹⁶⁴ After negotiations and concessions by Boral Formwork and Scaffolding on a number of claims, Jobe and Bukarica agreed that the matter could be fully settled if Boral Formwork and Scaffolding paid an additional \$15 000.¹⁶⁵ Jobe took the view that Boral Formwork and Scaffolding would pay that amount to the union, and leave it to the union to sort out how it might be apportioned among the individual scaffolders.¹⁶⁶
- 76 On 27 September 1999 on Boral Building Services Pty Ltd letterhead Mr Adrian Bubb, Operations Manager of Boral Building Services Ltd [sic], wrote to Bukarica to confirm the agreement reached at the meeting that day.¹⁶⁷ He wrote that letter based on information given to him by Jobe.¹⁶⁸ The letter contained no reference to the agreement to pay \$15 000. Jobe said this was because Boral Formwork and Scaffolding was concerned about creating a precedent, and nervous that a reference to the additional sum would give rise to further claims from the scaffolders.¹⁶⁹

- 77 On 30 September 1999 the CFMEU sent an invoice to Boral Building Services for \$15 000 for 'CFMEU Picnic Sponsorship for 1999'.¹⁷⁰ On 14 October 1999 Boral Formwork and Scaffolding arranged for a cheque for \$15 000 to be sent to the CFMEU.¹⁷¹ Jobe and Bukarica both said there had been no discussion of picnic sponsorship during the negotiations on 27 September 1999.¹⁷²
- 78 Industrial action ceased with all employees returning to work on 27 September 1999, that is ten days after Boral Formwork and Scaffolding had obtained an order under s127 of the *Workplace Relations Act 1996 (C'wth)* that all industrial action against the company cease.¹⁷³ Boral Formwork and Scaffolding was not successful in obtaining a certificate under s166A enabling it to bring an action in tort before cessation of industrial action.
- 79 I am satisfied on the evidence before me that Boral Formwork and Scaffolding Pty Ltd, then known as Boral Building Services Pty Ltd, made a payment of \$15 000 to the CFMEU as part of the settlement of a dispute involving seven scaffolders. The scaffolders apparently received no benefit from the payment of the \$15 000. Boral Formwork and Scaffolding set out to conceal the payment of the \$15 000, by writing a letter which purported to set out the basis of the settlement which had been reached, but which omitted any reference at all to the payment. On Jobe's admission, that letter was misleading in a material sense.
- 80 Bukarica's insistence that he knew nothing about the payment of the \$15 000 must be rejected. His evidence on this point is difficult to reconcile with the documentary evidence, which establishes that the CFMEU sent an invoice for \$15 000 to Boral Building Services Pty Ltd on 30 September 1999, and with Jobe's admission. I reject the explanation advanced in submissions by Bukarica that the payment of \$15 000 may have been the result of an opportunistic approach by Bates in a situation where an agreement for the retrenchment and payment of the scaffolders had already been made.
- 81 This case study illustrates:
- (a) the disregard by a union and a contractor's employees of the orders of the AIRC;
 - (b) the difficulties created by s166A of the *Workplace Relations Act 1996 (C'wth)* in preventing a company affected by an illegal strike suing to recover damage suffered;
 - (c) the resolution of a dispute regarding employee entitlements by payment of a lump sum to a union fund unrelated to those employees; and
 - (d) the willingness of a head contractor and a union to seek to disguise the payment as a union picnic sponsorship.

Persons involved

Name	Position/Title
Bates, Craig	Former Branch Assistant Secretary, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.
Bubb, Adrian	Operations Manager, Boral Formwork and Scaffolding Pty Ltd, and Boral Building Services Pty Ltd.
Bukarica, Branko Alexander (Alex)	Assistant National Secretary, Construction, Forestry, Mining and Energy Union, Construction and General Division, between 1997 and 2001.
Carroll, Glen	Newcastle Scafflink Pty Ltd.
Cochrane, Robert	Organiser, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch, based in Newcastle.
Davison, Warren	Divisional General Manager, Boral Ltd.
Delataris, Joe	Safety Officer, Becton Construction Group Pty Ltd, Crowne Plaza Project.
Docherty, James	Director and shareholder, 3-D Scaffolding Pty Ltd.
Drollett, Victor	Managing Director, T & R Management Services Pty Ltd, trading as Tube and Rigging Services.
Ferguson, Andrew	Branch Secretary, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.
Harris, Peter	Organiser, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.
Hooker, Gary	Former Director, Endeavour Scaffolding Pty Ltd.
Jobe, Phillip	General Manager, Boral Group.
Jordan, Adam	Managing Director, Newcastle Scafflink Pty Ltd.
Matthews, Kevin	Director, Constructor Scaffolding Pty Ltd.
McCarney, Stephen	Branch Secretary, Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union, Plumbing Division, New South Wales Branch.
Mitchell, Thomas	Organiser, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.

Mohi, Russell	Director and shareholder, Raffia Contracting Pty Ltd, trading as Raffia Rigging and Scaffolding.
Mouritz, Tony	Bell Scaffolding Pty Ltd; Acting President, Scaffolders' Association since late 2000.
Parker, Brian	Branch Assistant Secretary, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.
Porter, John	Former casual employee, Newcastle Scafflink Pty Ltd.
Rayner, John	Project Manager, Boulderstone Hornibrook Pty Ltd.
Saridakis, Rosemary	Construction Accreditation Services Pty Ltd.
Sutcliffe, Tim	Financial Advisor to Newcastle Scafflink Pty Ltd.
Thomas, Geoffrey	Secretary, Scaffolders' Association; Industrial Officer, Master Builders Association of New South Wales.
Warner, Martin	Former Delegate, Construction, Forestry, Mining and Energy Union for Leighton Contractors Pty Ltd.
Wilson, John	Inaugural President, Scaffolders' Association; Associated with Bayside Pty Ltd.
Valdez, Joe	Site Manager, Leighton Contractors Pty Ltd.

Notes to Scaffolding

- ¹ Hooker Statutory Declaration, exhibit 660, paragraph 1, document 084.0768.0220.0001; Hooker, T8683/14–15.
- ² Hooker Statutory Declaration, exhibit 660, paragraphs 1, 3, document 084.0768.0220.0001.
- ³ Hooker Statutory Declaration, exhibit 660, paragraph 3, document 084.0768.0220.0001.
- ⁴ Hooker Statutory Declaration, exhibit 660, paragraph 7, document 084.0768.0220.0001.
- ⁵ Hooker Statutory Declaration, exhibit 660, paragraph 1, document 084.0768.0220.0001.
- ⁶ Hooker Statutory Declaration, exhibit 660, paragraph 9, document 084.0768.0220.0001.
- ⁷ Hooker Statutory Declaration, exhibit 660, paragraph 8, document 084.0768.0220.0001.
- ⁸ Hooker Statutory Declaration, exhibit 660, paragraph 7, document 084.0768.0220.0001.
- ⁹ Hooker Statutory Declaration, exhibit 660, paragraph 9, document 084.0768.0220.0001.
- ¹⁰ Hooker Statutory Declaration, exhibit 660, paragraph 9, document 084.0768.0220.0001.
- ¹¹ Hooker Statutory Declaration, exhibit 660, paragraph 9, document 084.0768.0220.0001.
- ¹² Hooker Statutory Declaration, exhibit 660, paragraph 11, document 084.0768.0220.0001.
- ¹³ Hooker Statutory Declaration, exhibit 660, paragraph 11, document 084.0768.0220.0001; Rayner Statutory Declaration, exhibit 1893, paragraphs 6–11, document 040.0113.0969.0009; Rayner admitted telling Endeavour Scaffolding that they would be exposed to liquidated damages but said it was in the context of contract management and not in support of the CFMEU.
- ¹⁴ Hooker Statutory Declaration, exhibit 660, paragraph 13, document 084.0768.0220.0001.
- ¹⁵ Hooker Statutory Declaration, exhibit 660, paragraph 14, document 084.0768.0220.0001.
- ¹⁶ Hooker Statutory Declaration, exhibit 660, paragraph 17, document 084.0768.0220.0001.
- ¹⁷ Hooker Statutory Declaration, exhibit 660, paragraph 17, document 084.0768.0220.0001.
- ¹⁸ Hooker Statutory Declaration, exhibit 660, paragraph 18, document 084.0768.0220.0001.
- ¹⁹ Hooker Statutory Declaration, exhibit 660, paragraph 13, document 084.0768.0220.0001.
- ²⁰ Hooker Statutory Declaration, exhibit 660, paragraph 13, document 084.0768.0220.0001; Hooker Statutory Declaration exhibit 660, annexure GJH-1, document 084.0768.0220.0010.
- ²¹ Mohi Statutory Declaration, exhibit 661, paragraphs 1–2, document 100.0472.0448.0001; Mohi, T8685/7–15.
- ²² Mohi Statutory Declaration, exhibit 661, paragraph 7, document 100.0472.0448.0001; Mohi, T8685/37–40; Mohi Statutory Declaration, exhibit 661, annexure RM-1, document 100.0472.0448.0012.
- ²³ Mohi Statutory Declaration, exhibit 661, paragraphs 10, 18, document 100.0472.0448.0001; Mohi, T8686/1.
- ²⁴ Mohi Statutory Declaration, exhibit 661, paragraph 18, document 100.0472.0448.0001; Mohi, T8686/3–9.
- ²⁵ Mohi, T8686/14–40; Mohi Statutory Declaration, exhibit 661, annexure RM-1, document 100.0472.0448.0039.
- ²⁶ Mohi Statutory Declaration, exhibit 661, paragraph 11, document 100.0472.0448.0001.
- ²⁷ Mohi Statutory Declaration, exhibit 661, paragraphs 12 and 13, document 100.0472.0448.0001; Mohi, T8687/22–32.
- ²⁸ Mohi Statutory Declaration, exhibit 661, paragraph 14, document 100.0472.0448.0001; Mohi, T8688/69.
- ²⁹ Mohi Statutory Declaration, exhibit 661, paragraph 25, document 100.0472.0448.0001; Mohi, T8688/23–29.
- ³⁰ Mohi Statutory Declaration, exhibit 661, paragraph 26, document 100.0472.0448.0001.
- ³¹ Mohi Statutory Declaration, exhibit 661, paragraph 27, document 100.0472.0448.0001; Mohi, T10058/36–10059/1; Mohi, T10060/22–23; Mohi, T10061/8–9.

- ³² Mohi Statutory Declaration, exhibit 661, paragraph 27, document 100.0472.0448.0001; Mohi, 8688/43–45; Mohi, T8689/1–5.
- ³³ Bates Statutory Declaration, exhibit 817, paragraphs 3–5, document 083.0526.0571.0002.
- ³⁴ Mohi Statutory Declaration, exhibit 661, paragraph 27, document 100.0472.0448.0001; Mohi, T8689/1–14, T10059/6/41.
- ³⁵ Drollett Statutory Declaration, exhibit 656, paragraph 1, document 076.0570.0759.0001.
- ³⁶ Drollett Statutory Declaration, exhibit 656, paragraph 2, document 076.0570.0759.0001.
- ³⁷ Drollett Statutory Declaration, exhibit 656, paragraph 3, document 076.0570.0759.0001.
- ³⁸ Drollett Statutory Declaration, exhibit 656, paragraph 4, document 076.0570.0759.0001; Drollett, T8670/38–45.
- ³⁹ Drollett Statutory Declaration, exhibit 656, paragraph 4, document 076.0570.0759.0001; Drollett, T8670/38–45.
- ⁴⁰ Drollett Statutory Declaration, exhibit 656, paragraph 5, document 076.0570.0759.0001.
- ⁴¹ Drollett Statutory Declaration, exhibit 656, paragraph 6, document 076.0570.0759.0001; Drollett, T8670/23–26.
- ⁴² Drollett Statutory Declaration, exhibit 656, paragraph 6, document 076.0570.0759.0001; Drollett, T8670/28–36.
- ⁴³ Drollett Statutory Declaration, exhibit 656, paragraph 6, document 076.0570.0759.0001; Drollett, T8670/28–36.
- ⁴⁴ Drollett Statutory Declaration, exhibit 656, paragraph 9, document 076.0570.0759.0001.
- ⁴⁵ Drollett Statutory Declaration, exhibit 656, paragraph 9, document 076.0570.0759.0001.
- ⁴⁶ Drollett Statutory Declaration, exhibit 656, paragraph 9, document 076.0570.0759.0001.
- ⁴⁷ Drollett Statutory Declaration, exhibit 656, paragraph 9, document 076.0570.0759.0001.
- ⁴⁸ Drollett, T8671/36–38.
- ⁴⁹ Drollett, T8671/42–45.
- ⁵⁰ Drollett, T8672/10–14.
- ⁵¹ Drollett Statutory Declaration, exhibit 656, paragraph 10, document 076.0570.0759.0001; Drollett, T8672/3–4.
- ⁵² Drollett Statutory Declaration, exhibit 656, paragraph 10, document 076.0570.0759.0001.
- ⁵³ Drollett Statutory Declaration, exhibit 656, paragraph 7, document 076.0570.0759.0001.
- ⁵⁴ Drollett, T8671/1–35.
- ⁵⁵ Drollett Statutory Declaration, exhibit 656, paragraph 8, document 076.0570.0759.0001; Drollett Statutory Declaration, exhibit 656, annexure VD-2, document 076.0570.0759.0084.
- ⁵⁶ Docherty Statutory Declaration, exhibit 651, paragraph 1, document 078.0521.0191.0001; Docherty, T8619/10–14.
- ⁵⁷ Docherty Statutory Declaration, exhibit 651, paragraph 4, document 078.0521.0191.0001.
- ⁵⁸ Docherty Statutory Declaration, exhibit 651, paragraph 6, document 078.0521.0191.0001; Docherty, T8620/31–37.
- ⁵⁹ Docherty said the man's name is Danny Green: Docherty Statutory Declaration, exhibit 651, paragraph 7, document 078.0521.0191.0001. Warner said he was unaware of any such person, but that a Mr Danny Pilarinos was the Site Delegate on the Angel Place project at that time: Warner Statutory Declaration, exhibit 1240, paragraph 12, document 100.0664.0454.0003.
- ⁶⁰ Docherty, T9950/17–18; Docherty Statutory Declaration, exhibit 651, paragraph 7, document 078.0521.0191.0001; Docherty, T8621/11–19, 37–38.

- ⁶¹ Docherty Statutory Declaration, exhibit 651, paragraph 7, document 078.0521.0191.0001; Docherty, T8621/11–45.
- ⁶² Docherty Statutory Declaration, exhibit 651, paragraph 7, document 078.0521.0191.0001; Docherty, T8621/25–28; Docherty, T9950/32–33; Docherty, T9951/22–39.
- ⁶³ Docherty Statutory Declaration, exhibit 651, paragraph 9, document 078.0521.0191.0001.
- ⁶⁴ Docherty Statutory Declaration, exhibit 651, paragraph 9, document 078.0521.0191.0001; Docherty, T8622/4–5.
- ⁶⁵ Docherty Statutory Declaration, exhibit 651, paragraph 9, document 078.0521.0191.0001; Docherty, T8622/18–23.
- ⁶⁶ Docherty Statutory Declaration, exhibit 651, paragraph 10, document 078.0521.0191.0001; T8622/31–32.
- ⁶⁷ Docherty, T9946/19–40; T9947/5–37; T9949/36–39.
- ⁶⁸ Docherty, T9947/35 –9948/8.
- ⁶⁹ Bates Statutory Declaration, exhibit 817, paragraph 7, document 083.0526.0571.0002.
- ⁷⁰ Warner Statutory Declaration, exhibit 1240, paragraphs 11, 15, document 100.0664.0454.0003.
- ⁷¹ Docherty Statutory Declaration, exhibit 651, paragraph 18, document 078.0521.0191.0001; Docherty Statutory Declaration, exhibit 651, annexure JD-2, document 078.0521.0191.0015; Docherty, T8626/9–19.
- ⁷² Docherty Statutory Declaration, exhibit 651, paragraph 17, document 078.0521.0191.0001; Docherty, T8626/30–37.
- ⁷³ Docherty Statutory Declaration, exhibit 651, paragraph 18, document 078.0521.0191.0001; Docherty, T8627/1–2.
- ⁷⁴ Docherty Statutory Declaration, exhibit 651, paragraph 16, document 078.0521.0191.0001; Docherty, T8625/38–40.
- ⁷⁵ Docherty Statutory Declaration, exhibit 651, paragraph 16, document 078.0521.0191.0001; Docherty Statutory Declaration, exhibit 651, annexure JD-1, document 078.0521.0191.0012.
- ⁷⁶ Docherty, T8627/20–34.
- ⁷⁷ Docherty Statutory Declaration, exhibit 651, paragraph 31, document 078.0521.0191.0001; Docherty Statutory Declaration, exhibit 651, annexure JD-4, document 078.0521.0191.0040; Docherty, T8632/45–8633/3.
- ⁷⁸ Docherty Statutory Declaration, exhibit 651, paragraph 31, document 078.0521.0191.0001; Docherty, T8633/2–5, 16–23.
- ⁷⁹ Docherty, T8633/18–20.
- ⁸⁰ Docherty Statutory Declaration, exhibit 651, paragraphs 32–33, document 078.0521.0191.0001; Docherty, T8633/25–35.
- ⁸¹ Docherty Statutory Declaration, exhibit 651, paragraph 32, document 078.0521.0191.0001; Docherty, T8633/37–41.
- ⁸² Docherty Statutory Declaration, exhibit 651, paragraph 33, document 078.0521.0191.0001; Docherty, T8633/43–44; Docherty, T8634/1.
- ⁸³ Docherty Statutory Declaration, exhibit 651, paragraph 34, document 078.0521.0191.0001; Docherty, T8634/4.
- ⁸⁴ Docherty Statutory Declaration, exhibit 651, paragraph 34, document 078.0521.0191.0001.
- ⁸⁵ Docherty Statutory Declaration, exhibit 651, paragraph 34, document 078.0521.0191.0001; Docherty Statutory Declaration, exhibit 651, annexure JD-5, document 078.0521.0191.0052; Docherty, T8634/5–11.
- ⁸⁶ Docherty Statutory Declaration, exhibit 651, paragraph 38, document 078.0521.0191.0001; Docherty, T8634/36–39.

- ⁸⁷ Docherty Statutory Declaration, exhibit 651, paragraph 38, document 078.0521.0191.0001; cf Parker Statement, exhibit 792, paragraph 60, document 089.0420.0986.0023: Parker denied that a CAS audit was a precondition to obtaining an EBA, but conceded he 'suggested' that Docherty get CAS to audit his records in the course of discussing an EBA. Parker's explanation as to why he suggested a CAS audit is, in the circumstances, implausible.
- ⁸⁸ Docherty Statutory Declaration, exhibit 651, paragraph 38, document 078.0521.0191.0001; Docherty Statutory Declaration, exhibit 651, document 078.0521.0191.0055; Docherty, T8635/1-6.
- ⁸⁹ Docherty Statutory Declaration, exhibit 651, paragraph 39, document 078.0521.0191.0001; Docherty, T8635/25-27.
- ⁹⁰ Docherty Statutory Declaration, exhibit 651, paragraph 39, document 078.0521.0191.0001; Docherty, T8635/ 27-45.
- ⁹¹ Docherty, T8635/22-23.
- ⁹² Docherty Statutory Declaration, exhibit 651, paragraph 40, document 078.0521.0191.0001; Docherty, T8637/4-8.
- ⁹³ Docherty Statutory Declaration, exhibit 651, paragraph 41, document 078.0521.0191.0001; Docherty, T8637/13-17.
- ⁹⁴ Docherty, T8637/6-8.
- ⁹⁵ Matthews Statutory Declaration, exhibit 658, paragraphs 1-3, document 076.0570.0759.0116; Matthews, T8676/7-13.
- ⁹⁶ Matthews Statutory Declaration, exhibit 658, paragraph 3, document 076.0570.0759.0116.
- ⁹⁷ Matthews Statutory Declaration, exhibit 658, paragraph 5, document 076.0570.0759.0116.
- ⁹⁸ Matthews Statutory Declaration, exhibit 658, paragraph 5, document 076.0570.0759.0116.
- ⁹⁹ Matthews Statutory Declaration, exhibit 658, paragraph 6, document 076.0570.0759.0116.
- ¹⁰⁰ Matthews Statutory Declaration, exhibit 658, paragraph 6, document 076.0570.0759.0116.
- ¹⁰¹ Matthews Statutory Declaration, exhibit 658, paragraph 7, document 076.0570.0759.0116.
- ¹⁰² Matthews Statutory Declaration, exhibit 658, paragraph 7, document 076.0570.0759.0116.
- ¹⁰³ Matthews Statutory Declaration, exhibit 658, paragraph 8, document 076.0570,0759.0116.
- ¹⁰⁴ Matthews Statutory Declaration, exhibit 658, paragraph 8, document 076.0570,0759.0116.
- ¹⁰⁵ Matthews Statutory Declaration, exhibit 658, paragraph 8, document 076.0570,0759.0116.
- ¹⁰⁶ Matthews Statutory Declaration, exhibit 658, paragraph 9, document 076.0570.0759.0116.
- ¹⁰⁷ Matthews Statutory Declaration, exhibit 658, paragraph 9, document 076.0570.0759.0116; Matthews Statutory Declaration annexure KM-2, exhibit 658, document 076.0570.0759.0153.
- ¹⁰⁸ Matthews Statutory Declaration, exhibit 658, paragraph 10, document 076.0570.0759.0116.
- ¹⁰⁹ Matthews Statutory Declaration, exhibit 658, paragraph 10, document 076.0570.0759.0116.
- ¹¹⁰ Matthews Statutory Declaration, exhibit 658, paragraph 10, document 076.0570.0759.0116.
- ¹¹¹ Jordan Statutory Declaration, exhibit 655, paragraph 1, document 076.0570.0759.0163.
- ¹¹² Jordan Statutory Declaration, exhibit 655, paragraph 2, document 076.0570.0759.0163.
- ¹¹³ Jordan Statutory Declaration, exhibit 655, paragraph 3, document 076.0570.0759.0163.
- ¹¹⁴ Jordan Statutory Declaration, exhibit 655, paragraph 3, document 076.0570.0759.0163.
- ¹¹⁵ Jordan Statutory Declaration, exhibit 655, paragraph 4, document 076.0570.0759.0163.
- ¹¹⁶ Jordan Statutory Declaration, exhibit 655, paragraph 5, document 076.0570.0759.0163; Jordan, T8662/10-29; Harris, T12693/37-12694/29; cf Harris Statement, exhibit 795, paragraphs 5-6, document 089.0420.0986.0067.
- ¹¹⁷ Jordan Statutory Declaration, exhibit 655, paragraph 5, document 076.0570.0759.0163; Jordan, T8662/34-45; cf Harris Statement, exhibit 795, paragraphs 5-6, document 089.0420.0986.0067.

- 118 Jordan Statutory Declaration, exhibit 655, paragraph 6, document 076.0570.0759.0163.
- 119 Jordan Statutory Declaration, exhibit 655, paragraph 6, document 076.0570.0759.0163.
- 120 Jordan Statutory Declaration, exhibit 655, paragraph 7, document 076.0570.0759.0163; Jordan, T8663/1–6.
- 121 Jordan Statutory Declaration, exhibit 655, paragraph 8, document 076.0570.0759.0163; Fuller Statutory Declaration, exhibit 526, paragraph 24, document 035.0005.0973.0001; T7683/38–45, T7684/1–11.
- 122 Jordan Statutory Declaration, exhibit 655, paragraph 10, document 076.0570.0759.0163; Harris conceded that most of the major subcontractors on the site had union endorsed EBAs: Harris, T12694/41–44.
- 123 Jordan Statutory Declaration, exhibit 655, paragraph 14, document 076.0570.0759.0163; Cochrane Statement, exhibit 754, paragraphs 5, 9, document 020.0938.0573.0029.
- 124 Jordan Statutory Declaration, exhibit 655, paragraph 12, document 076.0570.0759.0163.
- 125 Jordan Statutory Declaration, exhibit 655, paragraph 12, document 076.0570.0759.0163.
- 126 Jordan Statutory Declaration, exhibit 655, paragraph 12, document 076.0570.0759.0163.
- 127 Jordan Statutory Declaration, exhibit 655, paragraph 16, document 076.0570.0759.0163.
- 128 Cochrane Statement, exhibit 754, paragraph 9, document 020.0938.0573.0029.
- 129 Jordan, T8665/26–31.
- 130 Jordan Statutory Declaration, exhibit 655, paragraph 18, document 076.0570.0759.0163.
- 131 Jordan Statutory Declaration, exhibit 655, paragraph 18, document 076.0570.0759.0163; See also Cochrane Statement, exhibit 754, paragraph 13–14, document 020.0938.0573.0029.
- 132 Jordan Statutory Declaration, exhibit 655, paragraph 18, document 076.0570.0759.0163; Jordan, T8665/40–8666/18.
- 133 Jordan Statutory Declaration, exhibit 655, paragraph 19, document 076.0570.0759.0163; Jordan Statutory Declaration, exhibit 655, annexure ALJ-8, document 076.0570.0759.0182.
- 134 Jordan Statutory Declaration, exhibit 655, paragraph 19, document 076.0570.0759.0163.
- 135 Harris Statement, exhibit 795, paragraph 12, document 089.0420.0986.0067.
- 136 Harris Statement, exhibit 795, paragraph 12, document 089.0420.0986.0067.
- 137 Harris Statement, exhibit 795, paragraph 14, document 089.0420.0986.0067.
- 138 Harris Statement, exhibit 795, paragraph 15, document 089.0420.0986.0067; cf Jordan, T9905/37–9906/21. Jordan’s evidence was unconvincing and is rejected.
- 139 Harris Statement, exhibit 795, paragraph 17, document 089.0420.0986.0067.
- 140 Harris Statement, exhibit 795, paragraph 17, document 089.0420.0986.0067; Jordan, T9907/10–34.
- 141 Harris Statement, exhibit 795, paragraph 18, document 089.0420.0986.0067; Harris Statement, exhibit 795, annexure PH1, document 089.0420.0986.0116.
- 142 Jordan, T8667/26–36; T9906/30–39.
- 143 Davison Statutory Declaration, exhibit 1215, paragraph 1, document 072.0012.0791.0001.
- 144 Davison Statutory Declaration, exhibit 1215, paragraph 8, document 072.0012.0791.0001.
- 145 Davison Statutory Declaration, exhibit 1215, paragraph 25, document 072.0012.0791.0001.
- 146 Davison Statutory Declaration, exhibit 1215, paragraphs 2, 5, document 072.0012.0791.0001.
- 147 Davison Statutory Declaration, exhibit 1215, paragraph 12, document 072.0012.0791.0001.
- 148 Davison Statutory Declaration, exhibit 1215, paragraph 13, document 072.0012.0791.0001.
- 149 Davison Statutory Declaration, exhibit 1215, paragraph 14, document 072.0012.0791.0001.
- 150 Davison Statutory Declaration, exhibit 1215, paragraph 16, document 072.0012.0791.0001.
- 151 Davison Statutory Declaration, exhibit 1215, paragraph 17, document 072.0012.0791.0001.
- 152 Davison Statutory Declaration, exhibit 1215, paragraph 31, document 072.0012.0791.0001.

- ¹⁵³ Davison Statutory Declaration, exhibit 1215, paragraph 18, document 072.0012.0791.0001.
- ¹⁵⁴ Davison Statutory Declaration, exhibit 1215, paragraph 19, document 072.0012.0791.0001.
- ¹⁵⁵ Davison Statutory Declaration, exhibit 1215, paragraph 20, document 072.0012.0791.0001.
- ¹⁵⁶ Davison Statutory Declaration, exhibit 1215, paragraph 21, document 072.0012.0791.0001.
- ¹⁵⁷ Davison Statutory Declaration, exhibit 1215, paragraphs 23–24, document 072.0012.0791.0001.
- ¹⁵⁸ Davison Statutory Declaration, exhibit 1215, paragraph 24, document 072.0012.0791.0001.
- ¹⁵⁹ Davison Statutory Declaration, exhibit 1215, paragraph 29, document 072.0012.0791.0001.
- ¹⁶⁰ Davison Statutory Declaration, exhibit 1215, paragraph 26, document 072.0012.0791.0001.
- ¹⁶¹ Davison Statutory Declaration, exhibit 1215, paragraph 27, document 072.0012.0791.0001.
- ¹⁶² Davison Statutory Declaration, exhibit 1215, paragraph 28, document 072.0012.0791.0001.
- ¹⁶³ Davison Statutory Declaration, exhibit 1215, paragraph 29, document 072.0012.0791.0001; Bukarica Statement, exhibit 1294, paragraphs 4–13, document 073.0471.0534.0002; Bukarica, T13666/13–36; Jobe, T14844/7–12845/34.
- ¹⁶⁴ Jobe, T13198/40–42; Jobe, T13200/38–43; Bukarica, T13665/45–13666/7.
- ¹⁶⁵ Jobe, T13198/45 –T13199/3; T13203/21–25; T14845/38–42; T14846/20–26; cf Bukarica Statement, exhibit 1294, paragraphs 2, 14, document 073.0471.0534.0002; Bukarica, T13668/18–23; Bukarica, T13669/4–9. Bukarica’s evidence on this point is rejected, having regard to the fact that on 30 September 1999 – three days later – the CFMEU sent an invoice for \$15 000 to Boral. This is entirely consistent with an agreement having been reached on 27 September 1999 that Boral would pay \$15 000 to the CFMEU as alleged by Jobe.
- ¹⁶⁶ Jobe, T13199/5–15; Jobe, T13201/14–18; Jobe, T13202/1–4.
- ¹⁶⁷ Davison Statutory Declaration, exhibit 1215, annexure A, document 072.0012.0791.0008.
- ¹⁶⁸ Jobe, T13200/24–25.
- ¹⁶⁹ Jobe, T13200/24–36.
- ¹⁷⁰ Davison Statutory Declaration, exhibit 1215, annexure C, document 072.0012.0791.0011.
- ¹⁷¹ Jobe, T13201/24–32; Davison Statutory Declaration, exhibit 1215, annexure B, document 072.0012.0791.0010.
- ¹⁷² Jobe, T13201/37–44; Bukarica Statement, exhibit 1294, paragraphs 3, 14, document 073.0471.0534.0002; Bukarica Statement, exhibit 1295, paragraph 2, document 010.0156.0337.0001.
- ¹⁷³ Davison Statutory Declaration, exhibit 1215, paragraph 33, document 072.0012.0791.0001.

17 Union Matters

General matters

Introduction

- 1 In August 2002 at the second Sydney sittings of the Commission, evidence was led from three former organisers or officials of the Construction, Forestry, Mining and Energy Union (CFMEU) in relation to, among other things, the broad strategies adopted by the CFMEU in New South Wales in furtherance of its industrial aims. The three witnesses were:
 - (a) Mr Craig Bates, a former Branch Assistant Secretary of the Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch, and former National Vice President, Construction, Forestry, Mining and Energy Union, Construction and General Division;
 - (b) Mr Martin Warner, formerly a trustee and member of the Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch and site delegate employed by Leighton Contractors Pty Ltd (Leightons); and
 - (c) Mr Douglas Heath, a former organiser for the Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.
- 2 For reasons outlined later in this section, Bates' and Warner's evidence is to be treated with caution. Very serious allegations of corruption have been levelled against both men. A number of those allegations have been made good. However, that does not mean that all of their evidence is to be rejected.
- 3 The evidence of an overview nature of Bates and Warner concerning strategies of the CFMEU is accepted. Their evidence makes explicit what was implicit in much of the evidence adduced at the Sydney hearings from head contractors, subcontractors, representatives of employer organisations and current CFMEU officials and organisers. While it is important to recognise the possibility that Bates and Warner may have a motivation for giving false testimony to the Commission, the evidence set out in this part is both credible and instructive. Furthermore, in a number of important respects, Bates' and Warner's evidence finds support in corroborative materials, including documents in evidence before the Commission.
- 4 Bates' and Warner's evidence is also consistent with the evidence given by Heath, against whom no allegations of dishonesty or corruption have been made.

Craig Bates

- 5 In 1986 Bates commenced work in the building and construction industry as a builder's labourer and scaffolder's rigger with Kell & Rigby Pty Ltd (Kell & Rigby).¹ Bates was a member of the Building Workers Industrial Union (BWIU) and was elected union site delegate on most Kell & Rigby sites.²
- 6 In November 1988 Bates commenced work as an organiser with the BWIU.³ He was schooled as an organiser by Mr Andrew Ferguson, Branch Secretary of the Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch and Mr John Sutton, Assistant National Secretary of the Construction, Forestry, Mining and Energy Union and Divisional Secretary of the Construction, Forestry, Mining and Energy Union, Construction and General Division.⁴ At that time, the primary role of an organiser was to increase union membership.⁵ The measure of an organiser's success was the number of new members enrolled.⁶ This culture still prevailed when Bates left the CFMEU in 2000.⁷ In 1990 Bates was appointed as a co-ordinator of organisers and delegate to the National Conference.⁸ In 1992 Bates was elected industrial co-ordinator of the BWIU.⁹
- 7 Following the amalgamation of the BWIU into the CFMEU in 1994, Bates was elected joint Branch Assistant Secretary of the Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch and appointed National Vice President of the Construction, Forestry, Mining and Energy Union, Construction and General Division.¹⁰
- 8 As Branch Assistant Secretary, Bates acted under Ferguson's direction and control but was responsible for all union activities except high level administrative and financial matters handled by Ferguson directly.¹¹ Bates was responsible for the supervision and discipline of CFMEU organisers and delegates, and dealt with complaints against union officials by employers.¹² Bates was also responsible for industrial relations matters including the development and introduction of pattern Enterprise Bargaining Agreements (EBAs), increasing union membership in the industry and industrial campaigns against particular employers.¹³ Bates was responsible for the building industry picnic.¹⁴ Bates resigned from the CFMEU in September 2000.¹⁵

Enterprise bargaining

- 9 Between 1992 and 1995 the CFMEU suffered a downturn.¹⁶ Before 1992 the BWIU, a predecessor of the CFMEU, had over 64 000 members and 350 site delegates.¹⁷ In 1994, following the Gyles Royal Commission into Productivity in the Building and Construction Industry in New South Wales, 1992, an industry recession and the effects of the New South Wales Building Industry Task Force, the BWIU had about 15 000 members and fewer than 100 site delegates.¹⁸ From 1992 to 1995 the BWIU-CFMEU was losing about \$2 million each year which ate into the \$16 million of cash reserves it held in 1992.¹⁹
- 10 Bates was responsible for systematically implementing EBAs into the building and construction industry in NSW for the CFMEU from 1992.²⁰ In the early stages, Bates found that employers were not keen to make EBAs.²¹ In consultation with Ferguson, Bates approached the major contractors.²² The major contractors were at a vulnerable point.²³ Following the demise of

collusive tendering practices, major contractors' profit margins dropped from about 20 per cent to about 5 per cent.²⁴ The major contractors wanted to avoid industrial disruption on sites which would activate liquidated damages clauses in their contracts.²⁵

- 11 Under threat of industrial action but in return for co-operation in reducing industrial disputation, the CFMEU sought the co-operation of major contractors in implementing pattern EBAs.²⁶ The CFMEU sought a policy of 'no EBA no start', and Bates and other CFMEU officials asked major contractors to put pressure on their subcontractors to make pattern EBAs with the CFMEU in order to commence work on the sites of those major contractors.²⁷ Bates' evidence in this respect is confirmed by a letter from the Managing Director of Multiplex Constructions Pty Ltd (Multiplex) to Sutton dated 15 September 1999 which stated:

*We confirm your verbal advice to the writer that Multiplex must agree to ensure that all sub-contractors (employed at the [Maryborough Project – Queensland]), have union certified EBA's or industrial action will occur at Multiplex projects, nationally.*²⁸

- 12 Sutton accepted he must have made such a demand.²⁹
- 13 At the same time, Ferguson determined that the major contractors would be permitted to make their own EBAs which did not conform to the pattern EBA intended for subcontractors.³⁰ The CFMEU executive considered there to be no benefit for the CFMEU to have major contractors making a pattern EBA as they did not employ many direct employees.³¹ Ferguson said the reason was that major contractors usually had superior conditions.³²
- 14 Heath, who was an organiser for the Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch, between 1998 and 2000, gave evidence of the attempt to introduce a 'no EBA no start' policy. He said the policy was not absolute. For example, 'one man bands' and partnerships were allowed on jobs without EBAs. However, he gave evidence that the leadership and organisers expected that companies involved in major jobs would have a union-endorsed EBA.³³ Ferguson said it had never been a policy of the CFMEU to force EBAs on builders.³⁴ He said that although it is a CFMEU objective that every company on a building site has an EBA, it is not a CFMEU expectation or requirement.³⁵ The evidence before me does not support Ferguson's view.
- 15 At a logistical level, pattern bargaining was crucial to the CFMEU's ability to negotiate uniform statewide above-award conditions.³⁶ The CFMEU simply did not have the resources to negotiate enterprise agreements with the multitude of contractors across all sectors in the building and construction industry.³⁷ The pattern EBAs have a common expiry date and common conditions determined by national and state branches of the CFMEU, which are generally non-negotiable.³⁸
- 16 On many occasions, the union signed EBAs that were never put to a valid majority of the workers covered by them.³⁹ Heath said Bates was signing EBAs without the rank and file ever having seen them and without an organiser ever having consulted the rank and file.⁴⁰ This was a matter of which Heath complained at organisers' meetings in the presence of Ferguson.⁴¹ Ferguson, generally, would not answer the complaint.⁴² Ferguson agreed he heard complaints about Bates signing EBAs without rank and file involvement and said on one occasion he instructed Bates to consult with the rank and file.⁴³

- 17 In many cases, the CFMEU required an audit by Construction Accreditation Services Pty Ltd (CAS) to be conducted before it would make an EBA with a contractor.⁴⁴
- 18 Between 1996 and September 2000 Bates was responsible for signing a majority of the EBAs made by the CFMEU.⁴⁵ An EBA department was established within the CFMEU to cope with the volume of work involved.⁴⁶ Following Bates' departure, Ferguson took over responsibility for signing EBAs.⁴⁷ Ferguson said that this was because Bates was signing EBAs illegally and was taking money from employers in return for signing EBAs.⁴⁸ Bates denied this.⁴⁹
- 19 Pattern bargaining was used to stem the financial decline of the CFMEU in the early 1990s. Pattern bargaining was used to increase membership by the imposition of a requirement that contractors had to ensure all employees were union members before the CFMEU would make an EBA with that contractor.⁵⁰ In addition, Ferguson introduced a negotiation and certification fee for contractors making an EBA with the CFMEU to provide an additional source of income and ensure the CFMEU did not have to bear the costs of the negotiation and registration of EBAs.⁵¹
- 20 On occasions when a contractor urgently required an EBA, Ferguson would take the opportunity to make additional requests on the contractor before signing.⁵² These requests were in effect thinly veiled demands and included contributions to the picnic fund, the Mark Allen fund or the purchase of union T-shirts or port.⁵³
- 21 Between 1994 and 2000 Ferguson tried to regulate industries such as labour hire, asbestos removal, cleaning and security through enterprise bargaining by forming 'cartels' of companies with CFMEU endorsement.⁵⁴ The idea was that in each sector, the CFMEU would only make EBAs with particular companies which would in turn make donations to the CFMEU in order to pay for the salary of an organiser who would police the industry with the union black-listing other companies in the sector.⁵⁵ Ferguson, Bates and other union officials approached companies for donations with mixed success.⁵⁶ In each case, the proposed cartel arrangement collapsed.⁵⁷

Site delegates

- 22 In September 1984 Warner commenced work as a builder's labourer with Leighton Contractors Pty Ltd.⁵⁸ Between September 1984 and August 2000 Warner was a member of the BLF, the BWIU and finally the CFMEU.⁵⁹ In 1992 Warner was appointed First Aid Officer, and was later elected site delegate on the Optus Refurbishment project at Rosebery.⁶⁰
- 23 After being elected site delegate, Warner attended industrial relations courses for site delegates conducted by the CFMEU and paid for by Leightons.⁶¹ Warner was later elected site delegate on other Leightons' sites including the UTS project, the Star City Casino project and the Angel Place project.⁶² After being elected site delegate, Warner's salary increased substantially. From 1992 Warner was on a salary package of between \$80 000 and \$100 000.⁶³
- 24 Site delegates are, at least in theory, elected by rank and file members on the particular project at a mass meeting on that project.⁶⁴ A site delegate acts as the link between workers, employers and the union.⁶⁵ A site delegate, particularly on large sites, performs little labour but concentrates on site delegate duties.⁶⁶

- 25 Site delegates collect union subscriptions when they become due.⁶⁷ Warner collected union subscriptions from employers on behalf of their workers or from workers directly.⁶⁸ Site delegates are entitled to a 5 per cent commission on all union dues collected.⁶⁹
- 26 Site delegates are also responsible for ensuring subcontractors on site are paying correct wages and are up to date with contributions for employees to Construction & Building Unions Superannuation Fund (Cbus), Australian Construction Industry Redundancy Trust (ACIRT) and Coverforce Top-Up Accident Scheme (CTAS).⁷⁰ Where discrepancies were found, Warner, as site delegate, would raise the issue with Leightons' management.⁷¹
- 27 As a site delegate, Warner ensured that, as far as possible, all workers on site were financial members of the CFMEU.⁷² On major projects, site delegates are provided with a computer and an online connection to the CFMEU membership and wage claims databases.⁷³ Warner would contact Cbus, ACIRT and CTAS for lists of employees of particular contractors and compare these lists with CFMEU databases in order to identify subcontractors without a fully unionised workforce.⁷⁴ Warner would then approach the employer for union membership and payment of outstanding union dues.⁷⁵ If this approach was unsuccessful, Warner would then approach workers individually.⁷⁶
- 28 After 1996, as site delegate, Warner required subcontractors to have CFMEU-endorsed EBAs to work on Leightons' sites where he was site delegate.⁷⁷ This practice was replicated on other commercial projects in the Sydney CBD and became prevalent on large commercial sites outside the Sydney CBD.⁷⁸ A list of subcontractors with EBAs or who were in the process of negotiating EBAs was regularly provided to site delegates by the EBA department or at CFMEU Committee of Management meetings.⁷⁹ Effective site delegates such as Warner and Mr Jose (Mario) Barrios, a site delegate for Multiplex Constructions (NSW) Pty Ltd, would seek to ensure that an overwhelming majority of subcontractors on their sites had an EBA with the CFMEU and 100 per cent union membership.⁸⁰

Organisers

- 29 Between October 1998 and April 2000 Heath was employed as an unelected organiser by the Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.⁸¹ As an organiser, Heath often visited sites in order to check on safety, ensure membership of the CFMEU, negotiate EBAs and ensure workers were being paid correct wages and entitlements.⁸²
- 30 Heath could not recall ever giving notice or being asked to give notice before visiting sites.⁸³ When he arrived at a site he would not seek permission from the employer to visit or to address the men.⁸⁴
- 31 Heath said that, in his experience, builders failed to take their safety obligations seriously.⁸⁵
- 32 Heath said cash payments were a problem across the board in the building and construction industry. He said a lot of companies paid cash to their workers in lieu of their proper wages.⁸⁶ It was quite common for workers to receive a wage rate for 38 hours of work and thereafter to be paid in cash.⁸⁷

- 33 The leadership of the union, namely Ferguson, Bates and Mr Peter McClelland, Branch President of the Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch, made it clear to organisers that they were to 'make sure that all the blokes were in the union', get enterprise agreements where they could and make sure workers were paid their entitlements.⁸⁸ The leadership told the organisers to do their best to ensure that every company had a union-endorsed EBA.⁸⁹ Heath had little difficulty seeing to it that men joined the union.⁹⁰
- 34 Bates said that between 1994 and 2000, Cbus co-ordinators would forward a list of employers allegedly in arrears for superannuation contributions to him as Branch Assistant Secretary each month.⁹¹ Bates said he would identify employers in arrears and instruct organisers to collect those arrears, invariably threatening industrial action if demands were not immediately met.⁹² Mr Robert McWhinney and Mr Nicholas Fodor, employee co-ordinators for Construction & Building Unions Superannuation Fund in New South Wales, disputed this evidence. McWhinney conceded, however, that until about a few months after October 1997, he forwarded lists of employers who were more than 30 days in arrears with superannuation contributions to Ferguson upon request.⁹³ Fodor denied ever forwarding such lists.⁹⁴ Both McWhinney and Fodor conceded that, until about November 2001, they provided detailed information to union officials and delegates upon request.⁹⁵ McWhinney and Fodor ceased providing detailed information as a result of amendments to the *Privacy Act 1988 (C'wth)*.⁹⁶
- 35 According to Bates, the Cbus list was also crosschecked against the union membership list in order to identify how many workers an employer employed and which of those workers were financial members of the CFMEU.⁹⁷ When a company was negotiating an EBA with the CFMEU, the list would be used by an organiser to ensure that the company paid for union membership for all its employees before the CFMEU would sign the EBA.⁹⁸ Ferguson denied this.
- 36 Ferguson, Bates and McClelland asked the organisers to solicit donations for the annual union picnic.⁹⁹ Although Heath did not ask very often,¹⁰⁰ he could not recall ever being refused.¹⁰¹
- 37 Heath could not ever recall going through a dispute resolution procedure prescribed by an EBA when a dispute arose.¹⁰² Ferguson said such procedures were frequently used.¹⁰³ There was much material placed before me indicating disregard of such procedures. Contrary to the material elsewhere, Heath's view was that no extra claims provisions in respect of EBA entitlements were honoured.¹⁰⁴
- 38 Between 1994 and 2000 complaints about organisers were generally made in writing to Ferguson who delegated the responsibility of investigating complaints to Bates or industrial co-ordinators.¹⁰⁵ Generally speaking, the CFMEU executive including Bates ignored most complaints about the excessive behaviour of organisers where that behaviour was in accordance with a CFMEU policy.¹⁰⁶ On the occasions that Bates conducted investigations and claims were found to be substantiated, Ferguson often rejected recommendations to initiate disciplinary proceedings against organisers.¹⁰⁷ Ferguson denied this.
- 39 Heath was the subject of complaints and Ferguson gave evidence that he counselled Heath on his behaviour.¹⁰⁸ One particular complaint was made by Mr Brian Seidler, Executive Director of the Master Builders Association of New South Wales in a letter of complaint dated 7 April 1999

to Ferguson.¹⁰⁹ Heath gave evidence that neither Ferguson nor Bates met with him about the matter. Far from counselling Heath, Bates wrote 'Congratulations on doing your job, CB' on a copy of the letter and gave it to Heath.¹¹⁰ Ferguson never made any specific allegations of improper conduct to Heath, just general comments.¹¹¹

Imposition of fines and penalties

- 40 About March 2000 the CFMEU identified what it claimed was the employment of illegal immigrant labour from South Korea by tiling companies based in Sydney.¹¹² These revelations followed the death of Mr Soo Lee Chul who was identified as an illegal immigrant from South Korea who had worked as a ceramic tiler in Sydney for two labour hire companies, Fixton Marble & Granite Pty Ltd (Fixton Marble & Granite) and Tae Sung Pty Ltd (Tae Sung).¹¹³ Chul had been engaged to work over a period of 1½ years for four tiling companies, Royal Tiles Contractors Pty Ltd (Royal Tiles Contractors), Deemah Marble & Granite Pty Limited (Deemah Marble & Granite), Stonetech (Holdings) Pty Ltd (Stonetech) and Saba Bros Tiling Pty Ltd (Saba Bros Tiling). It was alleged by the CFMEU that these companies had not paid Cbus, ACIRT, long service leave or CTAS on behalf of Chul.¹¹⁴ The CFMEU claimed that Fixton Marble & Granite and Tae Sung had paid Chul and other workers less than 50 per cent of the union rates and had failed to pay workers' compensation and payroll tax.¹¹⁵
- 41 Ferguson lodged complaints and requests for investigation with the Commonwealth Department of Immigration and Multicultural and Indigenous Affairs.¹¹⁶ Ferguson said 'I wrote a letter to WorkCover and the Immigration Department and nothing's been done'.¹¹⁷
- 42 At this time Ferguson decided to take matters into his own hands to rectify what he perceived as clear exploitation of illegal immigrant labour by 'unscrupulous bosses' who were breaking the law.¹¹⁸ Ferguson declared that 'Bosses ripping off the system will be hit hard with all workers' back pay recovered. The end result will be many of these shonky operators will be put out of business'.¹¹⁹ He stated that the CFMEU would be fining employers breaking the law with money given to charity to fight poverty in third world countries.¹²⁰ He said, 'these fines will help a little and teach unscrupulous bosses a lesson'.¹²¹
- 43 On 7 March 2000 Ferguson prepared a memorandum for circulation to head contractors on projects in Sydney stating that the CFMEU had identified 'major immigration scams' and requesting those companies to engage in an employer awareness education campaign amongst subcontractors on their sites.¹²² He warned that the CFMEU would be involved in 'action to ensure compliance with the law' and that penalties would 'be imposed and stoppages commenced where the union finds any such workers engaged being underpaid'.¹²³ Ferguson made this statement despite Clause 13 of the Code of Conduct and Behaviour of the CFMEU (BWIU Division) New South Wales Divisional Branch which provides that 'No arbitrary fines or monetary penalties are to be imposed on any builder or subcontractor under any circumstance'.¹²⁴
- 44 Between 1 March 2000 and 6 March 2000 Royal Tiles Contractors, Deemah Marble & Granite, Stonetech and Saba Bros Tiling each paid \$25 000 to the CFMEU on the premise the moneys would be paid to Chul's widow.¹²⁵ These payments were described as 'donations' to Chul's widow.¹²⁶ However, these payments followed the CFMEU's imposing work bans on sites

involving these tiling companies 'until all related matters have been resolved'.¹²⁷ In the case of Saba Bros Tiling, an agreement was reached with the CFMEU that the payment of \$25 000 was payment 'to the Union...in full and final settlement of all claims by current and former employees of Fixton Marble and Granite for which the company is, or may be liable'.¹²⁸

- 45 Consistent with the CFMEU's stated intention of imposing penalties on employers it suspected were involved in the employment of illegal immigrant labour, in August 2000 the CFMEU extracted a payment of \$25 000 from a tiling company, Right Group Pty Ltd (Right Group). Right Group was the subject of allegations of having employed illegal immigrant labour and being involved in tax evasion. The \$25 000, which the CFMEU described as a donation, was paid to the Korean Federation of Construction Trade Unions.¹²⁹
- 46 On 5 April 2001 the CFMEU was in dispute with another tiling company, FIFA Group Pty Ltd (FIFA Group). It alleged that that company was involved in the use of illegal immigrant labour and 'cash in hand' payments.¹³⁰ A wage claim in the amount of \$45 000 was settled between the CFMEU and FIFA Group in respect of outstanding wages and entitlements of employees or former employees of RBI Development Consultants Pty Ltd.¹³¹ On 13 June 2001 FIFA Group signed a memorandum of agreement with the CFMEU agreeing that it would ensure that only labour engaged directly by the company would be permitted to perform tiling work on any sites.¹³² The agreement provided that if there was a breach of this agreement, FIFA Group would 'pay a penalty of \$10 000 to the Westmead Children's Hospital' for 'each unlawful tiler found on site'.¹³³ Ferguson signed the memorandum on behalf of the CFMEU.¹³⁴ He also said that, although the document referred to a 'penalty', in truth it was not a penalty because the company 'offered' to pay a donation to a charity if it was caught again.¹³⁵ I reject that evidence as being both inherently improbable, and contrary to the document signed.
- 47 The evidence disclosed the use of industrial pressure by Ferguson and the CFMEU aimed at combating illegal conduct involving illegal immigrant labour in the building and construction industry. The threat of industrial action against contractors as a means of extracting monetary penalties or fines, whatever the perceived moral justification, is an abandonment of the rule of law. Allegations of illegal conduct are appropriately made and tested in courts of law. Trade unions have no lawful basis whatsoever for imposing monetary fines or penalties on contractors.

CFMEU's handling of wage claim receipts

Introduction

- 48 The Wage Claims Department is a department within the Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch, which processes wage claims on behalf of workers in the building and construction industry in New South Wales.¹³⁶
- 49 On 17 June 2002 in answer to a Notice to Produce Documents, the CFMEU delivered up to the Royal Commission its records pertaining to payments by employers to it pursuant to wage claims, and its records pertaining to payments made to workers from wages recovered by it, from 1 January 1996. Those records revealed that between 6 April 1996 and 27 May 2002, a

period of approximately six years, the CFMEU processed a total of 1455 wage claims on behalf of its members,¹³⁷ received from builders and subcontractors in respect of those 1455 wage claims a total of \$10 072 811.71 (\$10 million)¹³⁸ and issued 4334 cheques to its members pursuant to these wage claims, constituting a total payment to workers of \$5 881 170.07.¹³⁹

- 50 So far as these records are concerned, of the \$10m paid to the CFMEU by builders and subcontractors pursuant to wage claims, \$4 191 641.64 (\$4.2m) appeared to have been retained by the CFMEU and not paid out to its members or refunded to the employers who paid the moneys.¹⁴⁰
- 51 On 24 July 2002 Sutton wrote to the Commission submitting materials relating to underpayment of workers' entitlements in the building and construction industry.¹⁴¹ Enclosed was a letter dated 17 December 2001 from Ms Kerry McWhinney, Senior Claims Officer with the Wage Claims Department of the Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch, to Mr Stephen Smith, Industrial Officer of the Construction, Forestry, Mining and Energy Union's National Office, which provided a summary of claims successfully resolved by the CFMEU, Construction and General Division, New South Wales Branch.¹⁴² The letter stated that from 1 January 1999 to 14 December 2001, the aforementioned Branch processed 1797 wage claims, involving 4605 workers, recovering \$11 629 172.28.¹⁴³
- 52 A report from the CFMEU in response to a letter from the Commission seeking clarification of issues identified in the financial records pertaining to the Wage Claims Department,¹⁴⁴ failed to address the discrepancy between these two sets of figures. In a second report provided by the CFMEU, dated 4 October 2002,¹⁴⁵ the CFMEU claimed that for the period 6 April 1996 to 27 May 2002, it had processed 4185 wage claims and received approximately \$8 425 922.52.¹⁴⁶ Further, the CFMEU claimed it had issued 5407 cheques to its members pursuant to these wage claims totalling approximately \$8 232 095.41.¹⁴⁷
- 53 Financial analysts assisting the Commission have examined all of the records produced by the CFMEU in relation to the Wage Claims Department and are unable to reconcile the conflicting data in those records and accordingly have not been able to ascertain the true financial position of the Wage Claims Department of the CFMEU. While the CFMEU has produced income and expenditure statements which support the amounts claimed as having been receipted through the Wage Claims Department and the Wage Claims Contra,¹⁴⁸ deposit amounts into the respective bank accounts are not readily traceable as no transaction identifier is listed on the bank statement. All debits to the bank account are identified with a cheque butt number only and this information is of little meaning unless accompanied by a reconciliation of the entries to supporting documentation including the wage claim forms, corresponding general ledger account listing and cheque butts. General ledger reports are incomplete as only the General Ledger Contra-Wage entries were provided for the period in question and even then entries were not readily identifiable, in particular, entries relating to claims paid to members and claims transferred to the Wage Claims Department account. The CFMEU has not provided detailed reconciliations of the Wage Claims Department account nor records relating to wage claim data for 1996.¹⁴⁹

- 54 Despite the incomplete nature of the CFMEU's wage claims' accounting records, the records provided indicated that the CFMEU retains a substantial amount of money from wage claims. These moneys are retained in the form of outstanding union dues, donations to the CFMEU's Fighting Fund or simply amounts retained in the CFMEU's general account.

Deductions of union dues

- 55 In 18 example wage claims examined there were five cases where a total of 15 cheques were not presented totalling \$10 006.77. In ten of the 18 example wage claims, the CFMEU deducted an amount for union dues from each of the workers' wage entitlements. While the CFMEU has an entitlement to deduct outstanding union dues, a close examination of the amounts deducted for union dues indicates excessive deductions. Union dues for construction workers in Sydney who are members of the CFMEU are between \$340 and \$360 per annum.¹⁵⁰ Section 264A of the *Workplace Relations Act 1996 (C'wth)* provides that union dues cease to be recoverable after a period of 12 months.¹⁵¹
- 56 By way of example, in a wage claim against Multiform Construction, initiated on 25 February 1997, an amount of \$1000 was deducted for union dues out of an employee's wages entitlement of \$1949.10.¹⁵² In a wage claim against Big Smile Cleaning, initiated on 8 October 1999, an amount of \$4200 was deducted as union dues from wage claims for four employees totalling \$5000.¹⁵³
- 57 The CFMEU also collects union dues from moneys owed to workers where those workers do not present their cheques for payment. This is not an uncommon occurrence due to the itinerant nature of the workforce in this industry and the inability of the CFMEU to locate the worker.¹⁵⁴ After a period of 12 months the CFMEU classifies the cheque as having gone stale and records it as 'uncollected claims'. The cheque is cancelled and the CFMEU then issues new cheques for the same amounts made payable to the CFMEU which is recorded as payment for union dues.¹⁵⁵
- 58 For example, in the wage claim against Zenith Building for \$59 907.54, initiated on 28 May 1999, which related to 57 workers, \$29 704.68 was paid directly to the workers. Six workers did not present cheques totalling \$3399.22.¹⁵⁶ This fact became known to the CFMEU in January 2001 and those cheques were cancelled and a new cheque dated 11 January 2001 for \$3399.22 was drawn in favour of the CFMEU and itemised as outstanding union dues for those six workers.¹⁵⁷
- 59 In another example, in the wage claim against Big Smile Cleaning for \$42 927.90, initiated on 8 October 1999, which related to 22 workers, \$35 466.42 was paid directly to the workers.¹⁵⁸ There was \$5061.48 relating to six workers who did not present their cheques.¹⁵⁹ This fact became known to the CFMEU in January 2001 and those cheques were cancelled and a new cheque for \$4200 was drawn in favour of the CFMEU and itemised as outstanding union dues for four of those workers.¹⁶⁰
- 60 It follows that, if members do not cash their cheques, or cannot be located, with the passage of time and the nominal rendering of accounts for union dues, such funds initially recovered as wage claims due to the workers, pass to the union as union dues.

Donations to the CFMEU Fighting Fund

61 The CFMEU deducts from wage claims an amount which is recorded as a donation to the CFMEU Fighting Fund (formerly known as the Mark Allen Fighting Fund) from individual workers. The CFMEU's Wage Claims Course Manual¹⁶¹ encourages union officials to actively pursue donations to the Fighting Fund and to seek that members sign 'Reclaimer Forms' to show consent to the donations.¹⁶² The CFMEU has not provided those forms to those assisting the Commission. In a sample of 18 wage claims, 15 showed donations to the CFMEU Fighting Fund. On 14 of the calculation sheets for those 15 donations, there is no signature authorising such donations. It follows that there have been deductions to workers' wages entitlements as donations to the CFMEU Fighting Fund when there was no express consent by the workers.¹⁶³

Conclusion

62 This matter should be referred to the Federal Industrial Registrar to investigate the accounts of the Wage Claims Department of the Construction, Forestry, Mining and Energy Union pursuant to s280A of the *Workplace Relations Act 1996 (C'wth)*.

63 The deduction by the CFMEU from moneys received pursuant to wage claims of:

- (a) past unpaid union dues;
- (b) uncollected or banked cheques ultimately transferred with the passage of time to the CFMEU as union dues; and
- (c) unauthorised deductions to the CFMEU Fighting Fund;

appears to provide to the CFMEU a considerable source of revenue.

Construction Accreditation Services Pty Ltd

64 Construction Accreditation Services Pty Ltd (CAS) was incorporated on 27 February 1997.¹⁶⁴ The concept for CAS was to provide a service to the building industry in the form of company audits and that the CFMEU would have access to that service.¹⁶⁵

65 The CFMEU has always considered that CAS forms an important part of its compliance campaign in the industry as the union does not have the resources or the skills to do all of the audits.¹⁶⁶ The CFMEU has stated that in order for audits to be conducted union dues should not have to be increased to audit the industry and that 'shonky bosses' should pay for the audits.¹⁶⁷

66 CAS professes to be independent. In my view, it has seriously compromised its independence. An independent auditor, acting as it purports to do for contractors, would not submit a status report on its audit to the CFMEU's Committee of Management.¹⁶⁸ Nor would it occupy the office of the CFMEU as it did until 1999.¹⁶⁹ Nor would an independent auditor acting for a contractor ask his supposed client to sign a form 'requesting' an audit which form requires the client to indicate an answer to the following question:

- (a) *The union requires a copy of the outcome of this inspection. Do you object?*
YES/NO¹⁷⁰

- 67 When CAS is to conduct an audit of a contractor's books, the contractor is required to complete a 'Request for a Payroll Inspection' form.¹⁷¹ Mr Angelo Russo, the Director of Construction Accreditation Services Pty Ltd, and a shareholder,¹⁷² stated that most of the work in the building and construction industry comes through 'recommendations' from the CFMEU or head contractors.¹⁷³ In truth most, if not all, audits conducted by CAS in the building and construction industry are conducted because the CFMEU insists on CAS conducting audits. Costs of the audit are borne by the contractor.¹⁷⁴ The 'Request for a Payroll Inspection' form conveys the impression that the contractor desires the audit and that it has a private arrangement with CAS. Nothing could be further from the truth.
- 68 Many subcontractors gave evidence to the Commission that they were required to undergo CAS audits in order to obtain EBAs or otherwise resolve industrial problems with the CFMEU.¹⁷⁵ The 'Request for Payroll Inspection' form refers to the name of the person requesting the inspection and stipulates that the CFMEU requires a copy of the outcome of the inspection.¹⁷⁶ In nearly all cases the subsequent Employer Inspection Report refers to the name of an official of the CFMEU as the person requesting the inspection.¹⁷⁷
- 69 The evidence discloses that Ms Rosemary Russo (nee Saridakis), a shareholder in Construction Accreditation Services Pty Ltd, who is married to Angelo Russo,¹⁷⁸ liaises with CFMEU officials during the payroll inspection process.¹⁷⁹ Many of the so-called requests for the audit come directly from the CFMEU.¹⁸⁰ A copy or copies of the Employer Inspection Report are invariably provided to the CFMEU as a matter of course.¹⁸¹
- 70 In many cases a CAS audit is a pre-requisite for a company obtaining an EBA.¹⁸² A 'Request for Payroll Inspection' form is incorporated into the CFMEU's EBA Kit which is issued to CFMEU officials as part of negotiations for a CFMEU-endorsed EBA.
- 71 If there is a dispute between the company and CAS over the service provided and the costs of the audit, the CFMEU will involve itself in recovering the fee; even engaging in industrial action to pressure the company to pay its fee to CAS. In one case a CFMEU organiser and an honorary town steward for the CFMEU would not permit a contractor's workers to go back to work until the CAS fee in excess of \$1000, as opposed to the standard fee at that time of \$350, was paid to CAS.¹⁸³ In another case, the CFMEU paid CAS fee for a subcontractor out of moneys recovered under a wage claim.¹⁸⁴
- 72 On a proper understanding of the material CAS acts as an agent for the CFMEU in conducting audits of contractors in the building and construction industry. The claim by Angelo Russo and Ferguson that CAS is absolutely independent of the CFMEU is undermined by the material before the Commission.
- 73 Section 285B of the *Workplace Relations Act 1996 (C'wth)* provides, in certain circumstances, a right of entry to authorised officers or employees of an industrial organisation, to conduct wage book inspections. Section 298 of the *Industrial Relations Act 1996 (NSW)* makes similar provision. In New South Wales those provisions are being circumvented by the CFMEU by requiring contractors, and particularly subcontractors to submit to an inspection by an auditor closely associated with the CFMEU, and at the contractor's cost. This requirement is imposed in circumstances where the contractor needs a union-endorsed EBA to enable it to work on

major projects, particularly in the CBD. The requirement of such an EBA is imposed both by major head contractors and the CFMEU.

- 74 It is a considerable intrusion into the affairs of a business to allow a third party inspection of that business' records. The legislature has granted that right to certain officials authorised by the AIRC to ensure that workers' wages and entitlements are properly paid. The legislature has, through the issue pursuant to section 285A of the *Workplace Relations Act 1996 (C'wth)* of permits by an Industrial Registrar to persons entitled to conduct such inspections, ensured that the Registrars can exercise control over such persons to whom such authority is granted. There is no such control over an auditor closely associated with the CFMEU.

Persons involved

Name	Position/Title
Barrios, Jose Maria (Mario)	Delegate and Trustee, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch; Employed as a site delegate by Multiplex Constructions (NSW) Pty Ltd.
Bates, Craig Rodney	Former Branch Assistant Secretary, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch; Former National Vice President, Construction, Forestry, Mining and Energy Union, Construction and General Division.
Chul, Soo Lee	Ceramic tiler, employed by Fixton Marble & Granite Pty and Tae Sung Pty Ltd.
Ferguson, Andrew James	Branch Secretary, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.
Fodor, Nicholas John	Employee Co-ordinator, Construction & Building Unions Superannuation Fund.
Heath, Douglas Charles	Former Organiser, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.
McClelland, Peter	Branch President, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.
McWhinney, Kerryn	Senior Claims Officer, Wage Claims Department, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.

McWhinney, Robert	Employee Co-ordinator, Construction & Building Unions Superannuation Fund.
Russo, Angelo	Director, Construction Accreditation Services Pty Ltd.
Russo, Rosemary (nee Saridakis)	Construction Accreditation Services Pty Ltd.
Seidler, Brian	Executive Director, Master Builders Association of New South Wales.
Smith, Stephen	Industrial Officer, Construction, Forestry, Mining and Energy Union, National Office.
Sutton, John	Assistant National Secretary, Construction, Forestry, Mining and Energy Union; Divisional Secretary, Construction, Forestry, Mining and Energy Union, Construction and General Division.
Warner, Martin John	Former Trustee and Member, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch; Former Site Delegate, employed by Leighton Contractors Pty Ltd.

Notes to Union Matters

- 1 Bates Statutory Declaration, exhibit 1162, paragraph 2, document 060.0358.0442.0001.
- 2 Bates Statutory Declaration, exhibit 1162, paragraph 2, document 060.0358.0442.0001.
- 3 Bates Statutory Declaration, exhibit 1162, paragraph 3, document 060.0358.0442.0001.
- 4 Bates Statutory Declaration, exhibit 1162, paragraph 4, document 060.0358.0442.0001.
- 5 Bates Statutory Declaration, exhibit 1162, paragraph 5, document 060.0358.0442.0001.
- 6 Bates Statutory Declaration, exhibit 1162, paragraph 5, document 060.0358.0442.0001; Ferguson Statement, exhibit 1189, paragraph 3, document 091.0848.0628.0044: Ferguson said that while recruitment was an important part of organising, there were also other equally important attributes to an effective union organiser.
- 7 Bates Statutory Declaration, exhibit 1162, paragraph 5, document 060.0358.0442.0001.
- 8 Bates Statutory Declaration, exhibit 1162, paragraph 6, document 060.0358.0442.0001.
- 9 Bates Statutory Declaration, exhibit 1162, paragraph 6, document 060.0358.0442.0001.
- 10 Bates Statutory Declaration, exhibit 1162, paragraph 6, document 060.0358.0442.0001.
- 11 Bates Statutory Declaration, exhibit 1162, paragraph 9, document 060.0358.0442.0001; cf Ferguson Statement, exhibit 1189, paragraphs 4-5, document 091.0848.0628.0044. Ferguson denied Bates had responsibility for all industrial matters and said his primary responsibility was enterprise bargaining agreements subject to allocation of additional responsibilities by the Committee of Management.
- 12 Bates Statutory Declaration, exhibit 1162, paragraph 7, document 060.0358.0442.0001.
- 13 Bates Statutory Declaration, exhibit 1162, paragraphs 7-8, document 060.0358.0442.0001; Ferguson Statement, exhibit 1189, paragraph 7, document 091.0848.0628.0044.
- 14 Bates Statutory Declaration, exhibit 1162, paragraph 7, document 060.0358.0442.0001.
- 15 Bates Statutory Declaration, exhibit 1162, paragraph 5, document 060.0358.0442.0001.
- 16 Bates Statutory Declaration, exhibit 1162, paragraph 13, document 060.0358.0442.0001.
- 17 Bates Statutory Declaration, exhibit 1162, paragraph 10, document 060.0358.0442.0001; cf Ferguson Statement, exhibit 1189, paragraph 6, document 091.0848.0628.0044. Ferguson said the figure of 64,000 was greatly exaggerated.
- 18 Bates Statutory Declaration, exhibit 1162, paragraph 10, document 060.0358.0442.0001.
- 19 Bates Statutory Declaration, exhibit 1162, paragraph 12, document 060.0358.0442.0001.
- 20 Bates Statutory Declaration, exhibit 1162, paragraph 14, document 060.0358.0442.0001.
- 21 Bates Statutory Declaration, exhibit 1162, paragraph 14, document 060.0358.0442.0001.
- 22 Bates Statutory Declaration, exhibit 1162, paragraph 15, document 060.0358.0442.0001.
- 23 Bates Statutory Declaration, exhibit 1162, paragraph 15, document 060.0358.0442.0001.
- 24 Bates Statutory Declaration, exhibit 1162, paragraph 15, document 060.0358.0442.0001.
- 25 Bates Statutory Declaration, exhibit 1162, paragraph 15, document 060.0358.0442.0001.
- 26 Bates Statutory Declaration, exhibit 1162, paragraphs 16, 24, document 060.0358.0442.0001; cf Ferguson Statement, exhibit 1189, paragraph 9, document 091.0848.0628.0044.
- 27 Bates Statutory Declaration, exhibit 1162, paragraph 16, document 060.0358.0442.0001.
- 28 Bundle of documents put to J. Sutton during examination, exhibit 702, document 022.0236.0375.0001.
- 29 Sutton, T9063/23-35.
- 30 Bates Statutory Declaration, exhibit 1162, paragraph 15, document 060.0358.0442.0001.
- 31 Bates Statutory Declaration, exhibit 1162, paragraph 15, document 060.0358.0442.0001.
- 32 Ferguson Statement, exhibit 1189, paragraph 8, document 091.0848.0628.0044.
- 33 Heath, T12413/32-44, T12414/7-9.

- ³⁴ Ferguson Statement, exhibit 1292, paragraph 14, document 045.0877.0577.0003.
- ³⁵ Ferguson Statement, exhibit 1292, paragraph 222, document 045.0877.0577.0003.
- ³⁶ Bates Statutory Declaration, exhibit 1162, paragraph 26, document 060.0358.0442.0001.
- ³⁷ Bates Statutory Declaration, exhibit 1162, paragraph 26, document 060.0358.0442.0001.
- ³⁸ Bates Statutory Declaration, exhibit 1162, paragraphs 27, 29, document 060.0358.0442.0001.
- ³⁹ Heath, T12403/27-30; see *Workplace Relations Act 1996 (C'wth)* s170LJ(2) which provides: 'The agreement must be approved by a valid majority of the persons employed at the time whose employment will be subject to the agreement'.
- ⁴⁰ Heath, T12403/32-34.
- ⁴¹ Heath, T12403/36-40.
- ⁴² Heath, T12403/43-44.
- ⁴³ Ferguson Statement, exhibit 1185, paragraph 13, document 091.0848.0628.0011; Ferguson Statement, exhibit 1189, paragraph 14, document 091.0848.0628.0044.
- ⁴⁴ Heath, T12412/3-5; cf Bates Statutory Declaration, exhibit 1162, paragraph 29, document 060.0358.0442.0001; Ferguson Statement, exhibit 1185, paragraph 12, document 091.0848.0628.0011. Heath said a CAS audit was a requirement for all EBAs while Bates said it was usually a requirement. Ferguson denied a CAS audit was a requirement for an EBA. Numerous contractors gave evidence a CAS audit was a requirement for a CFMEU EBA. I accept the evidence of Bates in this respect in preference to that of Ferguson.
- ⁴⁵ Bates Statutory Declaration, exhibit 1162, paragraph 28, document 060.0358.0442.0001.
- ⁴⁶ Bates Statutory Declaration, exhibit 1162, paragraph 28, document 060.0358.0442.0001.
- ⁴⁷ Heath, T12404/8-10; Ferguson Statement, exhibit 1189, paragraph 15, document 091.0848.0628.0044.
- ⁴⁸ Heath, T12404/12-15.
- ⁴⁹ See for example, Bates, T13456/28-13457/21.
- ⁵⁰ Bates Statutory Declaration, exhibit 1162, paragraph 23, document 060.0358.0442.0001.
- ⁵¹ Bates Statutory Declaration, exhibit 1162, paragraphs 31, 33, document 060.0358.0442.0001; Ferguson Statement, exhibit 1189, paragraph 18, document 091.0848.0628.0044. Ferguson agreed the EBA fee was introduced but said it was a decision of the CFMEU Executive.
- ⁵² Bates Statutory Declaration, exhibit 1162, paragraphs 34-35, document 060.0358.0442.0001; cf Ferguson Statement, exhibit 1189, paragraphs 19-20, 22, document 091.0848.0628.0044.
- ⁵³ Bates Statutory Declaration, exhibit 1162, paragraphs 34-35, document 060.0358.0442.0001; cf Ferguson Statement, exhibit 1189, paragraphs 19-20, 22, document 091.0848.0628.0044.
- ⁵⁴ Bates Statutory Declaration, exhibit 1162, paragraphs 75-76, 83, 85-86, 89-91, document 060.0358.0442.0001; Bates, T13525/3-4, T13525/38-13533/33.
- ⁵⁵ Bates Statutory Declaration, exhibit 1162, paragraphs 75-94, document 060.0358.0442.0001; Bates, T13525/3-4, T13525/38-13533/33; cf Ferguson Statement, exhibit 1186, paragraphs 4, 27, document 091.0848.0628.0016; Ferguson Statement, exhibit 1189, paragraphs 47-48, 52, document 091.0848.0628.0044; Ferguson Statement, exhibit 1453, paragraphs 67-70, document 042.0280.0296.0004. Ferguson acknowledged he had a role in the development of policy in the labour hire industry but denied that he attempted to regulate the labour hire, asbestos removal, cleaning or security sectors. Ferguson said the idea for cartels was Bates' and that this idea was quashed by McClelland and himself. McClelland said he had no recollection of any discussions on cartels: McClelland Statement, exhibit 1452, paragraph 2, document 042.0280.0296.0003. There was evidence placed before me consistent with that of Bates regarding regulation of labour hire and the asbestos sector.
- ⁵⁶ Bates Statutory Declaration, exhibit 1162, paragraphs 78-80, 84, 88, 91-94, document 060.0358.0442.0001; Bates, T13525/3-4, T13525/38-13533/33.

- ⁵⁷ Bates Statutory Declaration, exhibit 1162, paragraphs 81-82, 84, 88, 94, document 060.0358.0442.0001; Bates, T13525/3-4, T13525/38-13533/33.
- ⁵⁸ Warner Statutory Declaration, exhibit 1165, paragraphs 1, 5, document 050.0010.0844.0001.
- ⁵⁹ Warner Statutory Declaration, exhibit 1165, paragraph 4, document 050.0010.0844.0001.
- ⁶⁰ Warner Statutory Declaration, exhibit 1165, paragraphs 2-3, document 050.0010.0844.0001.
- ⁶¹ Warner Statutory Declaration, exhibit 1165, paragraph 5, document 050.0010.0844.0001.
- ⁶² Warner Statutory Declaration, exhibit 1165, paragraph 3, document 050.0010.0844.0001.
- ⁶³ Warner Statutory Declaration, exhibit 1165, paragraphs 6-7, document 050.0010.0844.0001.
- ⁶⁴ Warner Statutory Declaration, exhibit 1165, paragraphs 19-22, document 050.0010.0844.0001.
- ⁶⁵ Warner Statutory Declaration, exhibit 1165, paragraph 22, document 050.0010.0844.0001.
- ⁶⁶ Warner Statutory Declaration, exhibit 1165, paragraphs 10-12, document 050.0010.0844.0001; Barrios gave similar evidence. See Head Contractors Case Study.
- ⁶⁷ Warner Statutory Declaration, exhibit 1165, paragraphs 23-25, document 050.0010.0844.0001.
- ⁶⁸ Warner Statutory Declaration, exhibit 1165, paragraphs 23-25, document 050.0010.0844.0001.
- ⁶⁹ Warner Statutory Declaration, exhibit 1165, paragraph 25, document 050.0010.0844.0001; cf T Mitchell Statement, exhibit 810, paragraph 7, document 010.0799.0671.0004.
- ⁷⁰ Warner Statutory Declaration, exhibit 1165, paragraph 38, document 050.0010.0844.0001.
- ⁷¹ Warner Statutory Declaration, exhibit 1165, paragraphs 40-41, document 050.0010.0844.0001.
- ⁷² Warner Statutory Declaration, exhibit 1165, paragraph 26, document 050.0010.0844.0001; Warner Statutory Declaration, exhibit 1165, annexure MJW-1, document 038.0509.0917.0002.
- ⁷³ Warner Statutory Declaration, exhibit 1165, paragraph 27, document 050.0010.0844.0001; Bates Statutory Declaration, exhibit 1162, paragraph 107 document 060.0358.0442.0001; Barrios gave evidence he had a similar computer provided to him. See Head Contractors case study.
- ⁷⁴ Warner Statutory Declaration, exhibit 1165, paragraphs 28-30, document 050.0010.0844.0001; Bates Statutory Declaration, exhibit 1162, paragraphs 101-102, 104; Barrios gave evidence he also contacted these organisations for information. See Head Contractors case study. In relation to the circumstances in which Cbus employees provided information to unions and delegates, including names of employees, see: McWhinney Statement, exhibit 1304, document 069.0520.0289.0010, Fodor Statement, exhibit 1303, document 069.0520.0289.0003.
- ⁷⁵ Warner Statutory Declaration, exhibit 1165, paragraph 30, document 050.0010.0844.0001; Bates Statutory Declaration, exhibit 1162, paragraphs 101-102, 104, 107, document 060.0358.0442.0001 cf Barrios gave evidence his method was to identify non-members from induction registration forms. See Head Contractors case study.
- ⁷⁶ Warner Statutory Declaration, exhibit 1165, paragraph 32, document 050.0010.0844.0001.
- ⁷⁷ Warner Statutory Declaration, exhibit 1165, paragraph 33, document 050.0010.0844.0001. Warner said he was consulted about suitable subcontractors: paragraph 34. He said his first consideration was whether the subcontractor had a union-endorsed EBA: paragraph 35; cf Warner Statutory Declaration, exhibit 1240, paragraph 14, document 100.0664.0454.0003, where Warner denied being able to influence the choice of subcontractors. The latter allegation is inherently unbelievable and is rejected.
- ⁷⁸ Warner Statutory Declaration, exhibit 1165, paragraph 33, document 050.0010.0844.0001; cf Barrios said he encouraged subcontractors to make a union-endorsed EBA as it was part of his job but denied Stadium Australia was a no EBA, no start site. See Head Contractors case study.
- ⁷⁹ Warner Statutory Declaration, exhibit 1165, paragraphs 36-37, document 050.0010.0844.0001; Warner Statutory Declaration, exhibit 1165, annexure MJW-4, document 085.0779.0051.0058.
- ⁸⁰ Bates Statutory Declaration, exhibit 1162, paragraph 103, document 060.0358.0442.0001; Bates, T13534/32-T13535/18. On 29 August 2002 Leighton Contractors produced to the Commission records showing that it uses a number of subcontractors without EBAs on its sites.

- 81 Heath, T12381/23-28.
- 82 Heath, T12383/17-41.
- 83 Heath, T12411/9-14.
- 84 Heath, T12411/21-22.
- 85 Heath, T12384/33-34.
- 86 Heath, T12400/23-28.
- 87 Heath, T12400/30-32.
- 88 Heath, T12383/37-12384/4.
- 89 Heath, T12414/2-8.
- 90 Heath, T12384/6-7.
- 91 Bates Statutory Declaration, exhibit 1162, paragraphs 95, 101, document 060.0358.0442.0001.
- 92 Bates Statutory Declaration, exhibit 1162, paragraphs 98, 101; cf Ferguson Statement, exhibit 1189, paragraphs 54, 56, document 091.0848.0628.0044; Ferguson Statement, exhibit 1453, paragraph 73, document 042.0280.0296.0004: Ferguson said the Cbus arrears list did not include names of individuals.
- 93 McWhinney Statement, exhibit 1304, paragraphs 12, 22, document 069.0520.0289.0010.
- 94 Fodor Statement, exhibit 1303, paragraph 8, document 069.0520.0289.0003.
- 95 McWhinney Statement, exhibit 1304, paragraphs 28-31, document 069.0520.0289.0010; Fodor Statement, exhibit 1303, paragraphs 17-22, document 069.0520.0289.0003.
- 96 McWhinney Statement, exhibit 1304, paragraph 36, document 069.0520.0289.0010; Fodor Statement, exhibit 1303, paragraphs 33-35, document 069.0520.0289.0003.
- 97 Bates Statutory Declaration, exhibit 1162, paragraphs 101-102, 104, 107, document 060.0358.0442.0001; Bates, T13534/20-25; cf Ferguson Statement, exhibit 1189, paragraphs 54 and 59, document 091.0848.0628.0044. Ferguson denied the list was used to check union membership and said the list was only used to monitor employer superannuation obligations.
- 98 Bates Statutory Declaration, exhibit 1162, paragraph 103, document 060.0358.0442.0001; cf Ferguson Statement, exhibit 1189, paragraphs 54, 56, 59, document 091.0848.0628.0011.
- 99 Heath, T12389/22-23.
- 100 Heath, T12389/16-17.
- 101 Heath, T12389/20.
- 102 Heath, T12414/22-28.
- 103 Ferguson Statement, exhibit 763, paragraph 46, document 081.0043.0636.0019.
- 104 Heath, T12414/30-34.
- 105 Bates Statutory Declaration, exhibit 1162, paragraph 74, document 060.0358.0442.0001; Bates, T13520/26-30.
- 106 Bates Statutory Declaration, exhibit 1162, paragraph 64, document 060.0358.0442.0001; Bates, T13522/36-T13523/42; cf Ferguson Statement, exhibit 1189, paragraph 40, document 091.0848.0628.0044.
- 107 Bates Statutory Declaration, exhibit 1162, paragraph 74, document 060.0358.0442.0001; Bates, T13520/32-T13521/7; cf Ferguson Statement, exhibit 1189, paragraph 45, document 091.0848.0628.0044.
- 108 Ferguson, T7618/3-9.
- 109 Tender Bundle – MBA NSW Correspondence, exhibit 567, document 056.0214.0353.0020.
- 110 Exhibit 1161; 092.0448.0470.0001; Heath, T12391/11-13; confirmed by Bates, T13525/31-36); cf Ferguson Statement, exhibit 1185, paragraph 7, document 091.0848.0628.0011 in which he denied ever

seeing the Bates' annotation on the letter of 7 April 1999 but said it was discussed in 'a general counselling session' on Heath's behaviour.

- 111 Heath, T12392/10-11.
- 112 Tender Bundle re: payment made to the widow of a Korean Building Worker, exhibit 1552, document 016.0067.0942.0013.
- 113 Tender Bundle re: payment made to the widow of a Korean Building Worker, exhibit 1552, document 016.0067.0942.0003.
- 114 Tender Bundle re: payment made to the widow of a Korean Building Worker, exhibit 1552, document 016.0067.0942.0003.
- 115 Bundle of Documents re: Immigration Scam, exhibit 1206, document 008.0903.0489.0007.
- 116 Ferguson, T12797/15-19.
- 117 Ferguson, T12803/26-27. Complaints were also lodged on 21 August 2000 with the WorkCover Authority of NSW and the Australian Taxation Office: see Bundle of Documents re: James Bae and Deemah, provided by A. Ferguson, exhibit 1190, document 022.0980.0566.0001.
- 118 Tender Bundle re: payment made to the widow of a Korean Building Worker, exhibit 1206, 008.0903.0489.0007.
- 119 Tender Bundle re: payment made to the widow of a Korean Building Worker, exhibit 1206, 008.0903.0489.0007.
- 120 Tender Bundle re: payment made to the widow of a Korean Building Worker, exhibit 1206, 008.0903.0489.0007.
- 121 Tender Bundle re: payment made to the widow of a Korean Building Worker, exhibit 1206, 008.0903.0489.0007.
- 122 Tender Bundle – CFMEU NSW Correspondence, exhibit 564, document 008.0903.0489.0009.
- 123 Tender Bundle – CFMEU NSW Correspondence, exhibit 564, document 008.0903.0489.0009.
- 124 Tender Bundle – CFMEU NSW Correspondence, exhibit 564, document 089.0036.0378.0088 at 0089; Ferguson stated that there was no breach of Clause 13 of the Code of Conduct as the CFMEU would not impose penalties which were arbitrary and that penalties were not imposed but rather were the 'product of negotiation; an employer accepting that they have done the wrong thing and making appropriate compensation': see Ferguson, T7645/20-32.
- 125 Tender Bundle re: payment made to the widow of a Korean Building Worker, exhibit 1552, document 016.0067.0942.0003, 016.0067.0942.0005, 016.0067.0942.0007, 016.0067.0942.0009, 016.0067.0942.0014. The \$100 000 received from these four tiling companies was eventually distributed as follows: \$70 000 to Chul's widow; \$10 000 to pay for Chul's funeral; \$6666.65 to the Korean Resource Centre; \$6666.70 to the Korean Federation of Construction Trade Unions; \$6666.65 to the CFMEU: see Tender Bundle re: payment made to the widow of a Korean Building Worker, exhibit 1552, 016.0067.0942.0023. Ferguson claimed that the widow paid the moneys to the CFMEU because Chul was not in the union and she was happy for the 'ex gratia help': see Bundle of Documents re: Immigration Scam, exhibit 1206, document 038.0313.0868.0428.
- 126 Tender Bundle re: payment made to widow of a Korean Building Worker, exhibit 1552, document 016.0067.0942.0003.
- 127 Bundle of Documents re: Immigration Scam, exhibit 1206, document 008.0903.0489.0007.
- 128 Tender Bundle re: payment made to the widow of a Korean Building Worker, exhibit 1552, document 016.0067.0942.0010.
- 129 Ferguson, T12800/35-12801/6.
- 130 Bundle of FIFA Group Documents, exhibit 1567, document 098.0619.0455.0102.
- 131 Bundle of FIFA Group Documents, exhibit 1567, document 098.0619.0455.0088.
- 132 Bundle of FIFA Group Documents, exhibit 1567, document 026.0592.0151.0001.

- ¹³³ Bundle of FIFA Group Documents, exhibit 1567, document 026.0592.0151.0001.
- ¹³⁴ Bundle of FIFA Group Documents, exhibit 1567, document 026.0592.0151.0001.
- ¹³⁵ Ferguson, T14924/15-14925/23.
- ¹³⁶ Ferguson, T13407/14-21; Letter from Counsel Assisting re: Wage Claims, exhibit 1579, document 065.0026.0356.0001.
- ¹³⁷ Tender Bundle of Documents re: CFMEU Wage Claims, exhibit 1271, document 015.0447.0341.0001–0020.
- ¹³⁸ Tender Bundle of Documents re: CFMEU Wage Claims, exhibit 1271, document 015.0447.0341.0001–0020. This figure was confirmed in the CFMEU Response to wage claims. CFMEU response to evidence concerning wage claims, exhibit 1713, document 064.0461.0443.0001 at 0003.
- ¹³⁹ Tender Bundle of Documents re: CFMEU Wage Claims, exhibit 1271, document 015.0447.0341.0021–0055.
- ¹⁴⁰ Tender Bundle of Documents re: CFMEU Wage Claims, exhibit 1271, document 015.0447.0341.0001-0055 – calculated by adding the figures listed at 015.0447.0341.0001–0020 and deducting the total of figures listed at 015.0447.0341.0021–0055.
- ¹⁴¹ Correspondence relating to working arrangements, tax evasion, phoenix companies and underpayment of workers' compensation premiums and workers' entitlements, document 086.0672.0038.0078.
- ¹⁴² Correspondence relating to working arrangements, tax evasion, phoenix companies and underpayment of workers' compensation premiums and workers' entitlements, document 086.0672.0038.0089.
- ¹⁴³ Correspondence relating to working arrangements, tax evasion, phoenix companies and underpayment of workers' compensation premiums and workers' entitlements, document 086.0672.0038.0089. In a submission on behalf of the CFMEU it was claimed that these figures include all claims processed by the CFMEU and include all direct payments from employers to members and not just those paid through the CFMEU's wage claims account. However, no material has been provided which would assist me in reconciling this claim with figures produced from other material provided by the CFMEU.
- ¹⁴⁴ Document headed 'The Wage Claims Department', exhibit 1579, document 065.0026.0356.0001.
- ¹⁴⁵ CFMEU response to evidence concerning wage claims, exhibit 1713, document 064.0461.0443.0001.
- ¹⁴⁶ CFMEU response to evidence concerning wage claims, exhibit 1713, document 064.0461.0443.0001 at 0002-0003. This figure was approximate one because the CFMEU has been unable to ascertain the amount of moneys transferred from the Wage Claims Contra Account to the Wage Claims Trust Account from its 1996 General Ledger.
- ¹⁴⁷ CFMEU response to evidence concerning wage claims, exhibit 1713, document 064.0461.0443.0001 at 0007. This figure was an approximate one as the CFMEU claimed it was unable to identify cheques drawn against the Contra Wage Claims General Account in 1996. Further, the figure of \$8 232 095.41 represents the total of moneys applicable to 5407 cheques which it issued to its members and does not reflect how much of that total was retained by the CFMEU for union dues, donations or unrepresented cheques.
- ¹⁴⁸ Report received from CFMEU 4 October 2002, exhibit 1713, document 064.0461.0043.0010
- ¹⁴⁹ In a submission on behalf of the CFMEU it was claimed that all records sought by the Royal Commission had been provided and that other records had not been provided due to the oppressive nature of the Notice to Produce which sought access to such records. The Notice to Produce (No. 675) to the CFMEU required the production of: Clause 12: 'All receipts, or other records evidencing payment of any moneys by employers, including any deposits or bonds paid by employers, into an account or accounts held by or on behalf of the Wage Claims Department of the CFMEU (NSW) since 1 January 1996'; Clause 13: 'All cheque butts or other records evidencing payments by the CFMEU (NSW) to union members or other workers, including their names and addresses, relating to wages recovered by the CFMEU (NSW) on behalf of those members or workers since 1 January 1996'; and Clause 17: 'All internal financial management reports, including reports which summarise or analyse financial transactions on all accounts held by, or on behalf of, the CFMEU (NSW) since 1 January 1996'. In addition, on 29 August 2002, Ferguson offered to provide

assistance to the Commission in explaining the financial arrangements within the CFMEU for the processing of wage claims by the Wage Claims Department (T13412/40-13413/13). In furtherance of this offer, in a letter from the Commission to Ferguson, dated 2 September 2002, he was requested to provide documents which refuted or clarified figures raised by Counsel Assisting before the Commission on 29 August 2002. I reject the explanation that some documents were not produced because they did not fall within the terms of the Notice to Produce or were not supplied due to its alleged oppressive nature. In the CFMEU's submission, it was claimed that no response or complaint was received from the Commission as to any alleged inadequacy in production in response to the Notice to Produce. However, on 19 July 2002, the Commission wrote to the CFMEU's solicitors, Taylor & Scott Lawyers, stating that despite the production of 55 boxes of material to the Commission on 17 June 2002, an examination of those documents disclosed that the CFMEU had not wholly complied with the Notice to Produce, and specific reference was made to records pertaining to the Wage Claims Department.

¹⁵⁰ Ferguson, T13417/9-12.

¹⁵¹ Ferguson, T13418/10-11; Ferguson Statement, exhibit 1189, paragraph 72, document 091.0848.0628.0044: Ferguson stated that whilst union dues were not recoverable back further than 12 months, dues could be collected if the worker consented. Ferguson stated that union dues are not deducted from wage claim moneys to cover future union dues. In a submission on behalf of the CFMEU, it was claimed that all deductions from workers' wage entitlements for union dues were authorised by members. However, no signed reclaimer forms were provided to the Commission. It is correct to say that some members signed authorities in the form of collection sheets. However, an examination of the collection sheets in the 18 example wage claims at exhibit 1271 shows that of the 31 instances where moneys were deducted for outstanding union dues, 28 of the entries in the collection sheets do not have corresponding signatures from the workers purporting to have authorised the deductions for unions dues; See CFMEU Wage Claims – Representative Wage Claims Summary, exhibit 1270, document 081.0585.0941.0001 at 0017; Tender Bundle of Documents re: CFMEU Wage Claims, exhibit 1271, document 015.0447.0341.0096-0097.

¹⁵² CFMEU Wage Claims – Representative Wage Claims Summary, exhibit 1270, document 081.0585.0941.0001 at 0017; Tender Bundle of Documents re: CFMEU Wage Claims, exhibit 1271, document 015.0447.0341.0096-0097. In a submission on behalf of the CFMEU, it was claimed that the worker in this instance authorised the deduction. However, no document was provided evidencing such authorisation. Nor is there is a signature against the deduction on the collection sheet.

¹⁵³ CFMEU Wage Claims – Representative Wage Claims Summary, exhibit 1270, document 081.0585.0941.0001 at 0003; Tender Bundle of Documents re: CFMEU Wage Claims, exhibit 1271, document 015.0447.0341.0033-0043.

¹⁵⁴ Letter from Counsel Assisting re: Wage Claims, exhibit 1579, document 065.0026.0356.0001 at 0005.

¹⁵⁵ Letter from Counsel Assisting re: Wage Claims, exhibit 1579, document 065.0026.0356.0001 at 0005-0006: The CFMEU claimed that moneys that are not collected by workers are held in 'trust' pending collection by the worker. The moneys are recorded against the worker's membership record and, with the worker's consent, union dues are deducted every six months as they become due and payable.

¹⁵⁶ Tender Bundle of Documents re: CFMEU Wage Claims, exhibit 1271, document 015.0447.0341.0002-0007.

¹⁵⁷ Tender Bundle of Documents re: CFMEU Wage Claims, exhibit 1271, document 015.0447.0341.0010.

¹⁵⁸ Tender Bundle of Documents re: CFMEU Wage Claims, exhibit 1271, document 015.0447.0341.0033-36.

¹⁵⁹ Tender Bundle of Documents re: CFMEU Wage Claims, exhibit 1271, document 015.0447.0341.0037.

¹⁶⁰ Tender Bundle of Documents re: CFMEU Wage Claims, exhibit 1271, document 015.0447.0341.0039-0043.

¹⁶¹ Tender Bundle of Documents re: CFMEU Wage Claims, exhibit 1271, document 016.0298.0141.0001.

¹⁶² Tender Bundle of Documents re: CFMEU Wage Claims, exhibit 1271, document 016.0298.0141.0001 at 0046.

- ¹⁶³ In a submission on behalf of the CFMEU, it was claimed that all deductions from workers' wage entitlements for donations were authorised by members. However, no signed reclaimer forms were provided to the Commission. It is correct to say that some members signed authorities in the form of collection sheets. However, an examination of the collection sheets in the 18 example wage claims at exhibit 1271 shows that of the 15 donations made by the CFMEU Fighting Fund or the Mark Allen Fund, 14 of the entries in the collection sheets do not have corresponding signatures from the workers purported to have authorised the donations: See CFMEU Wage Claims – Representative Wage Claims Summary, exhibit 1270, document 081.0585.0941.0001 at 0017; Tender Bundle of Documents re: CFMEU Wage Claims, exhibit 1271, document 015.0447.0341.0096–0097.
- ¹⁶⁴ Bundle of Documents re: Construction Accreditation Services Pty Ltd, exhibit 1563, document 011.0779.0165.0054.
- ¹⁶⁵ Ferguson, T14911/12-17.
- ¹⁶⁶ Bundle of Documents re: Construction Accreditation Services Pty Ltd, exhibit 1563, document 023.0511.0373.0002.
- ¹⁶⁷ Bundle of Documents re: Construction Accreditation Services Pty Ltd, exhibit 1563, document 023.0511.0373.0002; Ferguson, T14912/36-14913/3.
- ¹⁶⁸ Bundle of Documents re: Construction Accreditation Services Pty Ltd, exhibit 1563, document 023.0511.0373.0001.
- ¹⁶⁹ Bundle of Documents re: Construction Accreditation Services Pty Ltd, exhibit 1563, document 058.0296.0488.0085–0109: CAS rented office space at the CFMEU's head office in Kent Street, Sydney for a period of approximately 2_ years until at least 31 December 1999.
- ¹⁷⁰ Bundle of CAS Employer Inspection Reports, exhibit 1568, document 058.0296.0488.0002-0083.
- ¹⁷¹ Bundle of Documents re: Construction Accreditation Services Pty Ltd, exhibit 1563, document 049.0148.0253.0007.
- ¹⁷² Russo, T15584/34-35.
- ¹⁷³ Russo, T15588/33-36.
- ¹⁷⁴ Bundle of Documents re: Construction Accreditation Services Pty Ltd, exhibit 1563, document 049.0148.0253.0007.
- ¹⁷⁵ See for example, Jim Morrissey Bricklaying, 3-D Scaffolding, Focus Property Services, Christies People, Lineform, Walsos, Betaform Constructions and Construction Scaffolding.
- ¹⁷⁶ Bundle of Documents re: Construction Accreditation Services Pty Ltd, exhibit 1563, document 049.0148.0253.0007; Russo, T15591/39-40 – Russo stated that the word 'union' was a reference to the CFMEU.
- ¹⁷⁷ Exhibit 1568, document 058.0296.0488.0001–0083.
- ¹⁷⁸ Russo, T15584/34-42.
- ¹⁷⁹ Bundle of Documents re: Construction Accreditation Services Pty Ltd, exhibit 1563, document 001.0777.0686.0034, 0001.0777.0686.0064.
- ¹⁸⁰ Bundle of Documents re: Construction Accreditation Services Pty Ltd, exhibit 1563, document 058.0296.0488.0114, 058.0296.0488.0116, 001.0777.0686.0064.
- ¹⁸¹ Bundle of CAS Employer Inspection Reports, exhibit 1568, document 058.0296.0488.0002-0083.
- ¹⁸² See for example, Jim Morrissey Bricklaying; 3-D Scaffolding; Focus Property Services; Christies People; Lineform; Walsos; and Construction Scaffolding.
- ¹⁸³ Sanna Statutory Declaration, exhibit 692, paragraphs 11-12, document 086.0771.0516.0070; cf Wyer Statement, exhibit 783, paragraph 20, document 026.0037.0485.0018.
- ¹⁸⁴ Tender Bundle of Documents re: CFMEU Wage Claims, exhibit 1271, document 015.0447.0341.0061. Ferguson, T13421/10-34: Ferguson speculated that the payment for CAS's contribution was to assist with calculations on this wage claim.

18 Wollongong and the Illawarra

Introduction

- 1 Mr David Kelly is an organiser for the Construction, Forestry, Mining and Energy Union (CFMEU), Construction and General Division, New South Wales Divisional Branch, a position he has held for about seven years.¹ Kelly is a non-elected organiser with responsibility for the Wollongong and South Coast area.² Mr Michael Lane, an organiser for the Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch, assists Kelly in the Wollongong area and Mr Peter Primmer, an organiser for the Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch, assists on the South Coast.³ Mr Brian Fox, an organiser for the Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch, also worked in the area, performing a specialist role with bricklayers and certain sectors of BHP.⁴
- 2 Kelly received no formal training when he was appointed an organiser, but received continual on-the-job training.⁵ He attended building sites immediately upon being appointed an organiser.⁶ He reports to Mr Peter Zaboyak, Branch Assistant Secretary of the Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch, and Mr Andrew Ferguson, Branch Secretary of the Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.⁷
- 3 Kelly gave evidence that he has three primary tasks as an organiser for the CFMEU:
 - (a) to canvass for union membership;⁸
 - (b) to persuade contractors to sign union-endorsed EBAs;⁹ and
 - (c) to ensure safe work sites.¹⁰
- 4 Kelly said he was aware of the CFMEU's 'Code of Conduct and Behaviour for Officers of the CFMEU (Construction and General Division) New South Wales Branch'.¹¹
- 5 The CFMEU has received correspondence from the Master Builders Association of New South Wales (MBANSW) detailing allegations of misconduct by Kelly.¹² Among other matters, it has been alleged that:

- (a) Kelly spoke to Mr Brian Seidler, Executive Director of the New South Wales Master Builders Association about a director of C Lite Aluminium Windows Pty Ltd and said that he would:
- (i) 'put her head on a stick';
 - (ii) 'put a pelt on a belt';
 - (iii) 'put her cock on the block. We don't know whether she is a bloke';
 - (iv) 'put the knees in deep'; and
 - (v) 'we'll have to dance on her grandparents' graves kicking the bones around'.¹³
- Kelly admitted making the statement in sub-paragraph (ii) to Seidler,¹⁴ but denied making the statements attributed to him in sub-paragraphs (i), (iii), (iv) and (v).¹⁵ However, Kelly conceded that at the time of the conversation he was a bit drunk,¹⁶ and characterised the conversation as being 'humorous'.¹⁷
- (b) During a visit to a public school project in Nowra, Kelly, on observing a 'card holder' of a labour hire company, identified as Trojan, in the site office, said 'I will sprinkle asbestos around the site if I catch you using Trojan labour'.¹⁸ Kelly conceded that he may have used such words 'in humour'.¹⁹
- (c) Kelly had said to a MBANSW member that: 'If the company does not sign this agreement the union will give you a thrashing'.²⁰ Kelly admitted saying this, but denied that it was a threat.²¹
- (d) On another occasion, Kelly admitted saying to Mr Craig Long, Executive Director of the New South Wales Branch of the Civil Contractors Federation (NSWCCF): 'I am in my tank, heading down the South Coast, and I am going to crush any employer who gets in my way'.²²

Affective Services Pty Ltd

- 6 Mr Gene Stewart is the Managing Director of Affective Services Pty Ltd (Affective Services).²³ Affective Services performs civil construction and demolition work in the Wollongong area.²⁴ Affective Services employs 22 workers based on rates in an Enterprise Bargaining Agreement (EBA) that Affective Services is currently negotiating with the CFMEU.²⁵
- 7 Affective Services was first approached about making an EBA with the CFMEU in late 1998 or early 1999.²⁶ Kelly and Zaboyak gave Stewart a copy of a CFMEU pattern EBA.²⁷ This pattern EBA was structured on Sydney rates and conditions and would have cost Affective Services about \$460 000 each year in increased labour costs.²⁸ Subsequently, an Illawarra region EBA was developed with lower rates.²⁹
- 8 About May or June 2001 there was an influx of work in Wollongong with Sydney-based head contractors.³⁰ Some of these builders, including Kell and Rigby Pty Ltd, told Stewart that an EBA was necessary to win their jobs.³¹ These builders would check to see if subcontractors had union-endorsed EBAs before engaging them.³² Until Affective Services made a

commitment to the CFMEU to make an EBA in July 2001, Affective Services did not win tenders with these builders.³³

- 9 Affective Services has been in negotiations over its EBA since July 2001.³⁴ In mid-February 2002 Primmer asked Affective Services to start paying at EBA rates and to backdate those payments for its employees to July 2001.³⁵ Stewart told Primmer that Affective Services could not afford to back pay to July 2001 but agreed to make back payments to 7 January 2002.³⁶ Affective Services has not yet finalised its EBA with CFMEU.³⁷
- 10 Since making payments in accordance with the unfinalised EBA, Affective Services has incurred increased costs.³⁸ These costs consist of contributions to Australian Construction Industry Redundancy Trust (ACIRT) and Coverforce Top-Up Accident Scheme (CTAS); an increase in wages for some staff; additional clothing allowance costs; and additional travel allowance payments.³⁹ This has resulted in an increase in labour costs of 13 per cent, or about \$70 000 a year.⁴⁰ Affective Services is not able to pass these costs on to clients for fear it will become uncompetitive.⁴¹ These additional costs come out of profit.⁴²
- 11 Before agreeing to make an EBA with the CFMEU, Affective Services had about 40 per cent union membership.⁴³ The company is now fully unionised.⁴⁴ In, November 2001 Primmer held a three hour meeting with Affective Services employees about the EBA.⁴⁵ Primmer told the workers that the union wanted people covered by the EBA to be union members. He said they could bargain over the EBA but that it would have nothing to do with him.⁴⁶ After that meeting a large number of employees joined the union and since then all of Affective Services' employees have become members of the CFMEU.⁴⁷

Conclusions

- 12 This case study illustrates:
 - (a) the additional costs of pattern EBAs with no increase in productivity. The increase in labour costs was 13 per cent;
 - (b) the practice of Sydney-based head contractors of requiring subcontractors to have a union-endorsed EBA; and
 - (c) the increase in union membership following the signing of a union-endorsed EBA.

A J Bignell Pty Ltd

Introduction

- 13 Mr Mark Bignell is the Managing Director of A J Bignell Pty Ltd (A J Bignell), a company engaged in commercial construction, renovation work, industrial construction, maintenance work and government projects.⁴⁸
- 14 A J Bignell employs seven full-time workers and operates predominantly in the south coast region of NSW.⁴⁹

Wage Book Inspection

- 15 In November 1996 Kelly asked A J Bignell to undergo a time and wage book inspection.⁵⁰ Bignell arranged for the inspection to take place.⁵¹
- 16 At the inspection Kelly asked Bignell for the names and addresses of all A J Bignell's employees and subcontractors but Bignell refused.⁵² At the end of the meeting Kelly told Bignell that he would be taking A J Bignell to the Australian Industrial Relations Commission (AIRC) and reporting it to the Australian Taxation Office (ATO) because A J Bignell was paying its employees under the Prescribed Payment Scheme (PPS) tax system, that being an indicator of subcontracting.⁵³ Bignell denied making PPS payments and Kelly replied: 'I am going to do a number on you'.⁵⁴ Kelly's statement constituted a threat of industrial strife for A J Bignell and was designed to intimidate Bignell into providing information to which Kelly was not entitled.

Shoalhaven Water Operations Depot Project

- 17 On 23 April 2001 A J Bignell was working on the Shoalhaven City Council Water Operations Depot when Primmer arrived on the site.⁵⁵ Mr Dave Everson, an electrician working on that site, telephoned Bignell and told him that Primmer was 'tearing strips' off A J Bignell Pty Ltd's site foreman, Mr Russell Lymbery, and the conversation they were having was turning nasty and becoming 'heavy'.⁵⁶
- 18 Bignell immediately telephoned Lymbery who told him that Primmer wanted to know whether A J Bignell's employees were members of the CFMEU.⁵⁷ Lymbery told Primmer that A J Bignell's employees were not interested in being members of the union and asked Primmer to don a hard hat, safety vest and sign a visitors' book.⁵⁸ Primmer became very angry, refused to wear a hard hat and a safety vest and sign the visitors' book, and was thereby in breach of the site's occupational health and safety plan.⁵⁹
- 19 Bignell spoke to Primmer on the telephone and Primmer told him he was unhappy about Lymbery's comments about union membership. Primmer said:

*That is not a good way to start the job, but if that is the way you want to play it, that is OK by me. I am not here to drum up membership' and 'Mark, do you realise that this is a local government job and therefore I do have authority. I can get you under the Code of Practice and I can close down the job now on occupational health and safety issues if I wanted to.*⁶⁰

- 20 I reject Primmer's denial that his motivation for involvement on this site was enlisting members for the CFMEU.
- 21 Primmer asked Bignell for a list of the subcontractors that he intended to use on the site.⁶¹ When Bignell named Mr Ian Ganderton, the Director of Ganderton Earthmoving Pty Ltd (Ganderton Earthmoving), Primmer became angry and said: 'Do you realise these guys have to work 60–70 hours a week in order to achieve normal wages, because he pays them under an AWA? I know for a fact that he is ripping these guys off. I have a copy of his documents, we will see how you go, we will get him thrown off the job'.⁶² After Bignell defended Ganderton, Primmer gave him the names of two bricklayers he wanted Bignell to use on site.⁶³

- 22 Primmer then asked Bignell which concrete subcontractor he had engaged, and Bignell gave Primmer a name designed to throw him off the scent.⁶⁴ Later that day, when Primmer realised Bignell had tricked him, he telephoned Bignell and said he knew Mr Doug Foley, a concrete subcontractor, was engaged on the job.⁶⁵ Primmer told Bignell that Foley 'has got problems with his paperwork and he pays all of his boys under ABNs'.⁶⁶ When Bignell replied that was not true, Primmer said: 'You will not use him. I gave you the name of a concreter to use. His name is Ivan'.⁶⁷ Bignell replied: 'No-one tells me who to use. Local work means I use local people'. Primmer demanded that Bignell not use the concreter and said that he would speak to the Shoalhaven City Council about the matter.⁶⁸
- 23 On 3 May 2001 Primmer telephoned Bignell.⁶⁹ They again discussed the concreting subcontractor.⁷⁰ Primmer said: 'If you use Foley, I am going to get Council to get rid of him'.⁷¹
- 24 Shortly after Bignell's telephone conversation with Primmer, Mr Carl Beddoe, the acting Shoalhaven Water Manager, telephoned Bignell and told him Primmer had alleged that A J Bignell was in breach of the Code of Practice for the Construction Industry (Code of Practice) and that A J Bignell's subcontractors were wrongly paying their employees under ABNs.⁷² Bignell told Beddoe that Primmer's allegations were false.⁷³
- 25 On 8 May 2001 Primmer telephoned Bignell and told him that Foley was in breach of the award, that he would get Foley off the site and that he had the right to stop the job by blocking concrete supply at the site gate.⁷⁴ Neither of Primmer's threats to Bignell eventuated.⁷⁵

Husksisson – Vincentia Sewerage Treatment Project

- 26 About the same time that A J Bignell was working on the Shoalhaven Water Operations Depot it had tendered for work on the Husksisson – Vincentia sewerage treatment augmentation works.⁷⁶ The head contractor for that site was Kilpatrick Green (United KG) Pty Ltd (Kilpatrick Green),⁷⁷ Primmer told Bignell that he would make sure that A J Bignell did not get the Kilpatrick Green job, and said A J Bignell traded illegally like a cowboy.⁷⁸
- 27 Bignell reported his conversation with Primmer to Mr Grant Sutton, Project Manager for Kilpatrick Green (United KG) Pty Ltd and warned him that Primmer might contact him to tell him that A J Bignell was not a suitable contractor for his site.⁷⁹ Sutton told Bignell that provided A J Bignell was doing the right thing, paying its employees under the award and operating in accordance with all relevant legislation, he would have no problem with A J Bignell winning the job.⁸⁰
- 28 On 9 July 2001 A J Bignell engaged Mr Malby of AD & CL Malby Bricklaying Pty Ltd (AD & CL Malby) to start work on the Husksisson – Vincentia Sewerage treatment augmentation works site.⁸¹ Primmer had previously accused Malby of paying his workers under ABNs, an accusation which Malby denied.⁸² Bignell telephoned Sutton and told him that Primmer had made allegations against Malby which were false.⁸³
- 29 On 23 July 2001 Primmer inspected the time and wages books of A J Bignell and AD & CL Malby at the office of Bignell's accountant, Mr Mark Crowther, in response to a request issued on 13 July 2001.⁸⁴ Crowther took notes.⁸⁵ Primmer inspected AD & CL Malby's books first and said he found some relatively minor and easily rectified discrepancies in the way the books were filled out.⁸⁶ During the meeting, Primmer generally behaved in a disrespectful,

intimidating, belittling and offensive manner towards the spouse of Malby, Mrs Cathy Malby, causing her to break down.⁸⁷

- 30 Bignell refused to produce A J Bignell's records relating to group tax, long service leave and superannuation because he did not think Primmer was entitled to inspect them.⁸⁸ When the meeting concluded, Primmer told Bignell that if he was going to use the handwritten notes made by Crowther, 'We will get you so badly and do such a big number on you that your head will spin out'.⁸⁹ After Primmer had settled down and was about to leave, Bignell shook his hand, held onto his hand and pulled it down to the area of his scrotum so that his face was about eight inches from him and said, 'if you ever threaten me again with any kind of outburst like that and/or anybody else that [I] know in this area, I'll get those notes and I won't put them in the paper, I'll put them on the bloody TV. Don't ever threaten me again'.⁹⁰
- 31 On 1 August 2001 Primmer wrote to Mr Kevin Williams of the New South Wales Department of Public Works and Services alleging various breaches by A J Bignell and AD & CL Malby of industrial relations legislation.⁹¹
- 32 On 10 August 2001 and 20 December 2001 Kilpatrick Green received notices from the CFMEU, purportedly pursuant to s127 of the *Industrial Relations Act 1996 (NSW)*, in respect of moneys allegedly owing by A J Bignell to its employees.⁹²

Conclusions

- 33 Primmer's conduct in relation to the Huskisson – Vincentia sewerage treatment augmentation project is instructive. Having unsuccessfully attempted to prevent A J Bignell from getting work on this site, he resorted to making unsubstantiated allegations against AD & CL Malby for non-compliance with its legal obligations. When this tactic failed, Primmer engaged in a time and wages records inspection for both A J Bignell and AD & CL Malby. I have no doubt that this inspection was a tactic used to put pressure on A J Bignell rather than to investigate a suspicion that the company was in breach of an industrial instrument. This conclusion is supported by the threats and intimidation displayed towards Mrs Malby during the course of the inspection. Primmer improperly used the statutory power of inspection, namely for the purpose of imposing pressure on A J Bignell. Primmer's campaign to force A J Bignell to comply with his demands was followed by an attempt to involve the client, the New South Wales Department of Public Works and Services, by making allegations against AJ Bignell and AD & CL Malby. This was followed by an attempt to involve the head contractor, Kilpatrick Green, through a claim under s127 of the *Industrial Relations Act 1996 (NSW)*.
- 34 This case study illustrates:
 - (a) threats of industrial disruption or other adverse activity by a union organiser in support of industrial objectives;
 - (b) disregard by a union organiser of standard safety provisions and right of entry requirements;
 - (c) the use of threats by a union organiser to invoke occupational health and safety issues in pursuit of industrial objectives; here the recruitment of members;

- (d) the use of threats by a union organiser to prevent a subcontractor working on a site because the subcontractor engaged employees by AWAs;
- (e) the assumption by a union organiser that he could direct contractors as to which subcontractors were to be used on a project, and demands made in pursuit of that assumption;
- (f) the threat by a union organiser to disrupt supply to a site;
- (g) the threat by a union organiser that he would make sure a contractor would not get a job for which it was tendering; and
- (h) the methods used by union organisers in attempting to force subcontractors to have union endorsed EBAs.

Bitz Excavations Pty Ltd

EBA Arrangements

- 35 Mr Peter Bitz is a director of Bitz Excavations Pty Ltd (Bitz Excavations), which is an earthmoving, excavation and plant hire company that operates in the Illawarra region of New South Wales.⁹³
- 36 On 4 April 1996 Kelly inspected all of Bitz Excavations' time, wage and related records from 1990 to March 1996.⁹⁴
- 37 On 7 May 1996 Bitz attended a meeting with Kelly and Zaboyak in relation to the dismissal of a Bitz Excavations employee and an alleged breach of his award entitlements.⁹⁵ At the meeting Zaboyak and Kelly pressured Bitz about which of his employees were members of the CFMEU and whether the company had an EBA with its employees.⁹⁶
- 38 Zaboyak said he was going to 'stamp his authority' in Wollongong.⁹⁷ Bitz told Zaboyak that Bitz Excavations pays its staff correctly and would not be making an EBA.⁹⁸
- 39 Bitz gave evidence that since that time, Bitz Excavations has experienced problems with the CFMEU.⁹⁹ The company's books have frequently been inspected, and CFMEU officials have given the company a 'hard time' about rostered days off and flexible working days.¹⁰⁰ On numerous occasions, Zaboyak has told Bitz that Bitz Excavations was not on the CFMEU preferred list.¹⁰¹

Illawarra Retirement Trust Project

- 40 On 30 July 1996 due to a decline in work, Bitz retrenched Mr Stan Waugh, a Bitz Excavations Pty Ltd employee.¹⁰² On 20 August 1996 the CFMEU faxed a request to inspect the time, wage and related records of Bitz Excavations for the period January 1996 to 20 August 1996 after a complaint concerning non-payment of meal allowance, crib allowance and redundancy payments.¹⁰³
- 41 On 4 September 1996 Mr Paul Montagner, an organiser for the Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch, arrived at the Illawarra Retirement Trust site at Woonona, where Bitz Excavations was working,

and told the Project Manager for Bitz Excavations Pty Ltd, Illawarra Retirement Trust site, Mr Paul Stephenson, that the CFMEU was currently in dispute with Bitz Excavations over a CFMEU request three weeks earlier to inspect wages records and that the Illawarra Retirement Trust should remove Bitz from the site.¹⁰⁴ Montagner then carried out a safety inspection of the site and telephoned the WorkCover Authority of New South Wales (WorkCover NSW) to request its attendance on site.¹⁰⁵

- 42 WorkCover NSW visited the site that day, viewed the site conditions, and confirmed that the Illawarra Retirement Trust was carrying out its responsibilities satisfactorily.¹⁰⁶ The WorkCover NSW inspector said that he was annoyed that the CFMEU had requested his attendance at the site.¹⁰⁷ Zaboyak later telephoned Stephenson and told him that the Illawarra Retirement Trust could expect the CFMEU to pursue the matter further unless Bitz Excavations was removed from the site.¹⁰⁸ Since this incident, Bitz Excavations has not received any further work from the Illawarra Retirement Trust.¹⁰⁹
- 43 There was no legal basis for a CFMEU organiser to seek the removal of Bitz Excavations from the Illawarra Retirement Trust site.

HMAS Albatross Project

- 44 In August 1999 Primmer telephoned Mr John Mensinga, Site Manager for Bitz Excavations Pty Ltd, and asked whether Bitz Excavations had an EBA for the HMAS Albatross site at Nowra.¹¹⁰ Mensinga told Primmer that the company did not have an EBA. Primmer said all people working in the Shoalhaven district had to work under a Shoalhaven District Agreement.¹¹¹ That statement was entirely false.
- 45 Primmer then told the foreman of Dynamic Steel Pty Ltd, that he was going to stop the job and black-ban the site because Bitz Excavations owed one of its ex-employees \$26 000.¹¹² Bitz denied this allegation and there has been no credible evidence before the Commission in support of it.¹¹³ Bitz Excavations did not proceed to stage two of the job because of the pressure put on Dynamic Steel by the CFMEU.¹¹⁴ Bitz estimated the loss of the contract cost the company about \$60 000.¹¹⁵
- 46 There is little doubt that by Primmer's asserting a requirement that all subcontractors in the district had to work under a district agreement and his subsequent threat to stop the job and black-ban the site, he intended to coerce Bitz Excavations to agree to make an EBA.

Stocklands Project

- 47 In November 1999 a company called 'Stocklands' engaged Bitz Excavations on a project.¹¹⁶ Mr Scott McCourt of Stocklands told Mr Mark Mewburn, Project Manager for Bitz Excavations Pty Ltd, that Primmer told him that Bitz Excavations owed one of its workers \$26 000, but that the CFMEU would settle for \$6000.¹¹⁷ Bitz Excavations asked Mr Hollis Vale, Director of Employment Relations, Civil Contractors Federation, New South Wales Branch, to contact McCourt on behalf of the company to advise him the allegation was false and that Bitz Excavations did not owe money to this employee.¹¹⁸ On 16 December 1999 Bitz Excavations' solicitors wrote to the CFMEU in relation to Primmer's remarks and demanded Primmer and Zaboyak desist from making further defamatory statements.¹¹⁹ No evidence has been put before me indicating that either Primmer or Zaboyak responded to the letter.

Oaks Flat Interchange Project

- 48 On 24 October 2000 Primmer telephoned Mr Steven Schopp, the Site Engineer on the Roads and Traffic Authority of NSW (RTA) New Oaks Flat Interchange site, and told him not to engage Bitz Excavations.¹²⁰ At the time, Primmer had made a wage claim of \$11 000 on behalf of a former employee.¹²¹ The claim was grossly exaggerated.¹²² The NSWCCF calculated that Bitz Excavations had underpaid the employee \$157.40.¹²³
- 49 On 25 October 2000 Bitz Excavations was scheduled to start work on the Oaks Flat Interchange site. When Mr Russell Gibson, the Bitz Excavations Pty Ltd operator, arrived on site, Primmer told him that he would not allow Bitz Excavations to start work as the company had breached the Code of Practice and did not have a certificate of currency for its workers' compensation.¹²⁴ The certificate of currency for workers' compensation was immediately faxed to the RTA.¹²⁵ Vale telephoned Mr Bob Webb, Head of Engineering for the Roads and Traffic Authority of NSW, and told him that Bitz Excavations had not breached the Code of Practice.¹²⁶
- 50 On 26 October 2000 Bitz Excavations was again stopped from working on the site by Webb.¹²⁷ Webb told Mensinga that he was being pressured by the union to stop the company from working.¹²⁸
- 51 On 27 October 2000 Bitz Excavations provided its wages books to Ms Lisa Young and Mr Tim Clancy of the Roads and Traffic Authority of NSW.¹²⁹ After reviewing the wages records, the RTA said that it was satisfied that Bitz Excavations had not breached the Code of Practice.¹³⁰ Soon after this Vale rang Webb and asked if Bitz Excavations would be allowed to work on the site on Monday 30 October 2000.¹³¹ Webb would not commit himself and said he was worried about the union.¹³²
- 52 On Monday 30 October 2000 the RTA telephoned Mensinga and told him that the RTA no longer required Bitz Excavations' plant.¹³³ By a letter dated 9 November 2000 the RTA asserted that the reason the company's services were no longer required was the completion of the particular rock excavation work for which the company's plant had been hired.¹³⁴
- 53 On 4 June 2001 Bitz Excavations' solicitors sent a letter to Ferguson of the CFMEU.¹³⁵ Ferguson was asked to direct Primmer and any other members of the union to refrain from making incorrect and misleading statements about Bitz Excavations.¹³⁶ There has been no reply to this letter and it has not resulted in a reduced level of harassment.¹³⁷ As a result of action by Primmer, Kelly and Zaboyak, Bitz Excavations' work has slowed down considerably and its work from the RTA has 'dried up'.¹³⁸
- 54 I accept the submission that this matter is but a small part of the overall campaign by Primmer and the CFMEU to blacklist Bitz Excavations until it had signed a CFMEU-endorsed EBA.

Conclusions

- 55 This case study illustrates:
- (a) the methods used by union organisers in attempting to force subcontractors to enter into union-endorsed EBAs;

- (b) the keeping by a union of a preferred subcontractors list;
- (c) the use by union organisers of legal rights, such as book inspections, for a purpose for which those rights were not conferred, namely, to pressure a subcontractor to enter into a union-endorsed EBA;
- (d) the raising of false occupational health and safety issues by a union organiser in the pursuit of industrial ends, namely the obtaining of a union-endorsed EBA;
- (e) the demand by a union that an agreement with the union was necessary to work in the Shoalhaven district;
- (f) the threat by a union organiser to impose black bans in support of unspecified and disputed wage claims;
- (g) the making by a union organiser of groundless wage claims, and supporting such false claims with threats of black bans;
- (h) the use of threats to head contractors and clients by a union organiser of black banning projects if particular subcontractors were engaged on a project;
- (i) the making by a union organiser of false claims of breaches by a subcontractor of Codes of Practice in pursuit of industrial ends, namely to force the subcontractor to enter into a union-endorsed EBA;
- (j) the acceptance by a head contractor, without investigation, of false accusations of breach of a Code of Practice by a union organiser, and the prevention of work in consequence.
- (k) the effect of a union's influence on owners and head contractors; and
- (l) the concerted, increasing pressure applied by a variety of means by a union's organisers to endeavour to force a subcontractor to enter into a union-endorsed EBA. It is to be noted that this action and conduct was taken by a union, not at the request of employees of the subcontractor, but by the union as part of a campaign to stamp its authority on the industry in the Illawarra region.

Civil Management Group Pty Ltd

- 56 Mr Daniel Josef is a director of Civil Management Group Pty Ltd (Civil Management Group), a civil engineering company.¹³⁹ Civil Management Group either tenders and performs a package of civil works on projects or hires plant at an hourly rate.¹⁴⁰
- 57 In about early 2001 Traditional Golf Links Construction (Traditional Golf Links) subcontracted Civil Management Group to supply plant at an hourly rate for the earth excavation on the Traditional Golf Links project at Shellharbour.¹⁴¹ The head contractor on the project was Australand Pty Ltd (Australand).¹⁴² Australand acquired the original head contractor, Walker Constructions, in about 1999. The value of works for Civil Management Group was about \$500 000.¹⁴³ Civil Management Group started work on the site in November 2001.¹⁴⁴
- 58 At about the same time BMD Constructions (NSW) Pty Ltd, the Head Contractor, engaged Civil Management Group to perform a major earth excavation package for a creek diversion on the

Shadforth Wetlands project.¹⁴⁵ The value of the works for Civil Management Group was about \$250 000.¹⁴⁶

- 59 Worrigeer Gardens Estate Pty Ltd (Worrigeer Gardens) also engaged Civil Management Group in about early 2001 to perform the bulk excavation, roads and drainage works for a 247 block residential development at Worrigeer, South Nowra.¹⁴⁷
- 60 Civil Management Group engaged Laser Excavations and Hire Pty Ltd (Laser Excavations) to provide labour hire on some of these projects.¹⁴⁸ Laser Excavations engaged between 10 and 15 workers, some as direct employees and others as subcontractors.¹⁴⁹ The subcontractors comprised individuals with ABNs¹⁵⁰ and companies.¹⁵¹ The subcontractors were paid a flat rate that included loadings for annual leave, superannuation contributions, redundancy contributions and accident insurance contributions.¹⁵²
- 61 Around November 2001, before starting work on site, Mr Andrew Glen, Construction Manager, Traditional Golf Links Construction,¹⁵³ advised Josef that there was a \$1 site allowance applicable to the site.¹⁵⁴
- 62 There was a project agreement implemented by Walker Constructions which had been executed by all relevant parties on 11 November 1998.¹⁵⁵ The project agreement was to be renewed at the beginning of 2000 and a revised document was negotiated with and signed by the CFMEU, but not signed by a number of other unions or Walker Constructions.¹⁵⁶ At the time of negotiating the second project agreement, the CFMEU black-banned the site for two days because Australand delayed signing the project agreement.¹⁵⁷ Only employees of 'Chad Anthony Constructions', who were union members, stopped work during that period.¹⁵⁸
- 63 Traditional Golf Links was aware of the existence of the project agreement when it tendered for the contract in early 2001.¹⁵⁹ Traditional Golf Links usually provided a copy of the project agreement to its subcontractors but failed to provide a copy to Civil Management Group.¹⁶⁰ Traditional Golf Links was contractually required to provide a copy of the project agreement to all subcontractors.¹⁶¹
- 64 On 2 November 2001 Primmer visited the Traditional Golf Links site at 6.30 am and spoke with Mr Darren Brown, a plant operator with Lazer Excavations 2000 Pty Ltd (Lazer Excavations 2000).¹⁶² Primmer asked Brown if he was a union member and Brown replied 'yes' even though he was not a member of the union.¹⁶³ Primmer also asked Brown about Civil Management Group and who in the company to contact about an EBA.¹⁶⁴ Brown pointed out the telephone number on the plant and Primmer left.¹⁶⁵
- 65 Brown gave evidence that he was a labourer with Lazer Excavations 2000, engaged on an hourly basis.¹⁶⁶ He has no formal qualifications or any training.¹⁶⁷ Until about April 2002 he was paid a flat rate of \$22 an hour.¹⁶⁸ He did not receive annual leave, and had no superannuation, redundancy or accident insurance contributions paid on his behalf.¹⁶⁹ Lazer Excavations 2000 required Brown to have an ABN and to account to the ATO for GST at his own expense.¹⁷⁰ Since about April 2002 Brown has received \$19.36 an hour plus superannuation, redundancy and accident insurance contributions.¹⁷¹ Brown works exclusively for Lazer Excavations 2000.¹⁷² It is unclear whether Brown and other workers engaged as subcontractors were, as a matter of mixed fact and law, employees.

- 66 On 2 November 2001 Mr Mick Hanrahan, Civil Management Group Pty Ltd's Site Manager on the Shadforth Wetlands site, telephoned Josef and told Josef that Primmer had visited the site.¹⁷³ Primmer asked the foreman on site who in the company to contact about an EBA.¹⁷⁴ Primmer told the foreman he would like the Civil Management Group plant operators to join the CFMEU.¹⁷⁵ None of the plant operators were members of the CFMEU.¹⁷⁶ Some of the plant operators were subcontractors with ABNs.¹⁷⁷ These subcontractors do not work exclusively for Civil Management Group.¹⁷⁸
- 67 Later that day Josef telephoned Primmer to talk about what had happened.¹⁷⁹ Primmer asked Josef about Civil Management Group and whether it had a CFMEU-endorsed EBA.¹⁸⁰ Josef told Primmer that Civil Management Group had been trying to negotiate an EBA with the CFMEU since July 2001 through the NSWCCF.¹⁸¹ Primmer told Josef he would like all employees to join the CFMEU.¹⁸² Josef said he was not concerned whether employees were members of the CFMEU and it was their decision whether or not to join.¹⁸³ Primmer told Josef that if Josef did not ensure all employees joined the CFMEU, he would contact Australand and have Civil Management Group kicked off Traditional Golf Links' site, the Shadforth Wetlands site and any other sites it worked on.¹⁸⁴ Josef told Primmer that if Primmer tried to have Civil Management Group kicked off sites and restricted its trade, he would personally sue Primmer.¹⁸⁵
- 68 On 10 November 2001 Civil Management Group employees arrived at the Shadforth Wetlands site and found its plant damaged.¹⁸⁶ Windows were smashed and two-way radios and battery cut-off keys removed from the plant.¹⁸⁷ The damage was reported to the police.¹⁸⁸ The damage to the plant was reparable but required replacement parts which took two days to arrive causing a two day delay to work.¹⁸⁹ The damage suggested the person or persons who caused the damage had a good knowledge of the plant.¹⁹⁰
- 69 On 12 November 2001 Josef and Mr Christian Becerra, Business Development Manager of Civil Management Group Pty Ltd, visited the Shadforth Wetlands site and spoke to Mr Tim Halbert, site foreman of BMD Constructions (NSW) Pty Ltd.¹⁹¹ Halbert told Josef and Becerra that Primmer had visited the site every day over the last three or four days and demanded all Civil Management Group employees join the CFMEU.¹⁹² Halbert said that Primmer also asked him to engage another local civil contractor, Stefanuti's, in place of Civil Management Group but Halbert refused.¹⁹³ Primmer's demands were part of an overall campaign to have Civil Management Group's employees join the CFMEU. The request to Halbert to have Stefanuti's replace Civil Management Group was designed to have BMD Constructions pressure Civil Management Group into acceding to Primmer's demands.
- 70 On 8 April 2002 at about 8.28 am Primmer visited the Worrigeer Gardens Estate site.¹⁹⁴ Primmer introduced himself as a union organiser to Mr Russell Larkham, Civil Management Group Pty Ltd's site foreman.¹⁹⁵ Primmer produced his business card and union identification card.¹⁹⁶ The union identification card identified Primmer as a union organiser authorised to visit sites and speak with current and prospective union members.¹⁹⁷
- 71 Larkham asked Mr Michael Callaghan, Civil Management Group's Leading Hand, if there were any union members on site. Callaghan told Larkham there were none.¹⁹⁸ Larkham told Primmer that as there were no union members on site, Primmer had no business on site.¹⁹⁹

Primmer told Larkham he wanted to look around the site and inspect the machinery.²⁰⁰ Larkham asked what authority Primmer had to conduct an inspection and Primmer again produced his union identification card.²⁰¹ The union identification card noted that a union official is not entitled on a site where there are no union members on site or where the site has less than 20 workers.²⁰² There were no union members on site and there were less than 20 workers on the site.²⁰³

- 72 Larkham refused Primmer entry to the site and asked him to leave.²⁰⁴ Larkham told Primmer that if Primmer went near any of the machinery or stopped any of the men working he would call the police.²⁰⁵ Larkham again told Primmer to leave the site.²⁰⁶ Primmer asked Larkham if the workers on site had ABNs or whether they were paid wages.²⁰⁷ Larkham told Primmer that, as far as he was aware, the workers were on ABNs.²⁰⁸ Primmer told Larkham he would ensure the ATO and WorkCover NSW visited the site.²⁰⁹
- 73 Larkham asked Primmer to leave three more times and threatened to call the police.²¹⁰ Each time Primmer was asked to leave, he started ranting.²¹¹ He asked Larkham if Larkham was preventing him from performing a safety inspection.²¹² Primmer also told Larkham he was going to shut the site down²¹³ and shut down other sites where the company was working.²¹⁴ Primmer finally left the site at about 9.04 am when Larkham told Primmer the police had actually been called.²¹⁵
- 74 On his way out Primmer again told Larkham he would have the ATO and WorkCover NSW attend the site.²¹⁶ Primmer asked Larkham what other sites Civil Management Group was working on and said he would close all other Civil Management Group jobs down.²¹⁷ Primmer told Larkham to 'get your boss down here and tell him to bring his cheque book.'²¹⁸ You'll lose your job over this; I'll see that you'll lose your job'.²¹⁹
- 75 Primmer's attempts to gain entry to this site are consistent with his regarding himself as being 'at large' on a site irrespective of the relevant industrial and safety legislation. When his entry was restricted on the Worrigea Gardens Estate site Primmer resorted to threats to get the site foreman sacked and the ATO and WorkCover NSW involved.
- 76 As a result of the visit, Josef told Larkham to contact WorkCover NSW to arrange for an inspection.²²⁰ Larkham contacted Mr Roy Milligan, Inspector, of WorkCover Authority of New South Wales, who seemed disinclined to visit the site.²²¹ Primmer said he contacted WorkCover NSW and identified a myriad of safety issues but did not know if WorkCover NSW visited the site.²²²
- 77 On Tuesday 10 April 2002 Primmer visited the Traditional Golf Links site and spoke to Glen.²²³ Primmer told Glen that he wanted Civil Management Group off site immediately because the company had given him problems on another site and he wanted the company off 'his site'.²²⁴ Glen did not answer Primmer.²²⁵ Primmer asked to look at the paperwork in the office and was left with Mr Sean Cooper of Traditional Golf Links Construction, in the site office.²²⁶ The reason for Primmer's seeking the removal of Civil Management Group was not because there was a genuine industrial issue to be dealt with but rather because the company had refused to allow him onto a site the day before. It mattered not to Primmer that Civil Management Group was lawfully entitled to refuse his entry to the site.

- 78 When Primmer finished with the books, he asked Glen to call the truck drivers to come in so that he could speak with them. Glen told him if he wanted to speak with the truck drivers he could walk across the site to them.²²⁷ A few moments later Primmer approached Glen and Cooper in his car and told them to shut the trucks down.²²⁸ Glen told Primmer that he wanted to know what was wrong and would shut the trucks down only if he found there was a problem.²²⁹ Primmer told Glen to shut the trucks down then or he would call WorkCover NSW.²³⁰ Primmer did not say what issue warranted WorkCover NSW's attention and there did not appear to be any safety issues on the site.²³¹ Glen ordered the trucks shut down and they were shut down for a couple of hours.²³²
- 79 On the same day Primmer telephoned Mr Glen Colquhoun, Australand Pty Ltd's Shell Cove Development Manager.²³³ Primmer told Colquhoun he was concerned Civil Management Group was not complying with the project agreement in respect of workers' compensation insurance and award payments.²³⁴ Primmer asked for Civil Management Group to be stood down.²³⁵ Colquhoun told Primmer he would review the matter, but not take any action at the time.²³⁶ Colquhoun emailed Mr Owen Hester, Managing Director of Traditional Golf Links Construction, asking him to attend to the matter.²³⁷
- 80 On 11 April 2002 Primmer telephoned Colquhoun and asked why Civil Management Group had not been stood down.²³⁸ Colquhoun told Primmer he had organised a meeting that morning and would not stand down Civil Management Group until a breach had been verified and the company given time to fix it.²³⁹ Primmer told Colquhoun that if Civil Management Group was not stood down there would be repercussions.²⁴⁰ He said he would call in Zaboyak who was more difficult to deal with, take the matter to Colquhoun's boss at Australand, and call in the Shellharbour Council.²⁴¹ There was no credible evidence that Civil Management Group had not been complying with its obligations in respect of workers' compensation insurance and award payments. Primmer's threats to call in Zaboyak, that there would be 'repercussions' for Australand, and that he would call in the client, constituted part of a campaign by Primmer to force Civil Management Group to comply with his demands for union membership.
- 81 On 11 April 2002 a meeting was called at the Traditional Golf Links site.²⁴² The meeting was attended by Josef and Becerra, Glen of Traditional Golf Links and Colquhoun of Australand.²⁴³ At the meeting Glen and Colquhoun told Josef and Becerra that Australand had made a project agreement with the CFMEU.²⁴⁴ Colquhoun asked Josef and Becerra if Civil Management Group was complying with that agreement.²⁴⁵ Josef told Colquhoun that he had not seen the project agreement before and could not comment until he read the project agreement.²⁴⁶ Colquhoun gave Josef a copy of the project agreement.²⁴⁷ Glen told Josef and Becerra that the project agreement was a requirement and compliance was necessary if Civil Management Group wanted to remain on the project.²⁴⁸
- 82 In order to comply with the project agreement Civil Management Group engaged all subcontractors as employees and made contributions to Construction & Building Unions Superannuation Fund (Cbus), ACIRT and CTAS.²⁴⁹ This cost Civil Management Group an additional \$2 or \$3 an hour for each employee.²⁵⁰
- 83 On 15 April 2002 Primmer called a meeting at the CFMEU office at Wollongong.²⁵¹ Primmer and Zaboyak of the CFMEU, Glen of Traditional Golf Links, Colquhoun of Australand and Mr

John McAndrew of the Shellharbour Council attended.²⁵² The purpose of the meeting was to discuss the presence of Civil Management Group on the site.²⁵³ McAndrew asked Colquhoun if he could attend the meeting because the CFMEU had contacted Mr Brian Weir, the General Manager of the Shellharbour Council.²⁵⁴

- 84 Primmer and Zaboyak asked why Civil Management Group had not been stood down.²⁵⁵ They said Laser Excavations did not have enough workers' compensation cover for the number of workers it had and that Traditional Golf Links and Australand could be liable if something went wrong.²⁵⁶ Primmer and Zaboyak said they did not want Civil Management Group's plant to move until the company was properly compliant.²⁵⁷ Colquhoun said he would look into it and ensure Civil Management Group was complying, he would require the company to show compliance by a certain date, but until then the plant would keep moving.²⁵⁸
- 85 On 15 April 2002 Glen telephoned Josef from outside the meeting and discussed what had happened.²⁵⁹ Glen ordered Civil Management Group to stop its plant at the Traditional Golf Links site.²⁶⁰ Glen told Josef there were anomalies but would not tell Josef what they were.²⁶¹
- 86 On 16 April 2002 at about 7.50 am Mr Bill Finn, Civil Management Group Pty Ltd's industrial relations consultant, Josef and Becerra met with Glen, Cooper and 'Mark' of Traditional Golf Links.²⁶² Josef gave Glen paperwork to prove compliance with the project agreement on the Traditional Golf Links site.²⁶³ Glen said he was still unhappy with the paperwork and until he had word from Australand, Civil Management Group would not be allowed to continue work.²⁶⁴ Glen's refusal to allow Civil Management Group to return to work in the face of paperwork proving the company's compliance with the project agreement was not because Glen had a genuine concern about compliance or the need for approval from management at Australand.
- 87 Josef and Becerra then went to Australand's office where Colquhoun inspected the paperwork, said he was satisfied and that Civil Management Group could resume work.²⁶⁵ Glen was still reluctant to let Civil Management Group continue work until he had confirmation from the Managing Director of Traditional Golf Links.²⁶⁶ Glen asked for a written undertaking from Civil Management Group that all the paperwork was in place.²⁶⁷ Civil Management Group faxed an undertaking to Traditional Golf Links on 17 April 2002.²⁶⁸ Because of the dispute, Civil Management Group could not work on site for two days.²⁶⁹
- 88 On 17 April 2002 Cooper telephoned Josef and told him Primmer visited the Traditional Golf Links site at 8.45 am, inspected the paperwork Civil Management Group had forwarded to Traditional Golf Links and found no anomalies.²⁷⁰ Cooper told Josef that Primmer told him to stop Civil Management Group's plant because its workers were not members of the CFMEU.²⁷¹ At about 11 am Primmer told the workers on site that he was stopping the site at 2 pm for a safety inspection.²⁷² Primmer did not identify any safety issues and in the event did not stop the site at 2 pm.²⁷³ I am satisfied that the sole reason why Civil Management Group was being targeted by Primmer and the CFMEU was because its employees were not members of the CFMEU.
- 89 Around this time, Finn spoke to Primmer about the company's relationship with Primmer.²⁷⁴ Primmer said the problems he had were that: Larkham had asked him to leave the Worrigeer site; Josef had attempted to record a telephone conversation Primmer had with him; Civil Management Group had contacted the Royal Commission; Civil Management Group was

working in the area; Civil Management Group had contacted the Office of Employment Advocate (OEA); and Civil Management Group had called the CCFNSW.²⁷⁵

Conclusions

90 This case study illustrates:

- (a) threats by a union organiser that unless a subcontractor ensured all of its employees became members of the union, the union would prejudice its working on sites;
- (b) abuse by a union organiser of rights of entry;
- (c) the raising by a union organiser of a right to conduct a safety inspection when in truth his object in seeking entry was to seek to persuade non-union members to join the union;
- (d) disregard of relevant industrial laws by a union organiser;
- (e) the making of threats by a union organiser to involve WorkCover NSW, the ATO, to close down sites and to have a worker sacked, because a contractor refused the organiser a right of entry to a site the organiser had no right to enter;
- (f) the acquiescence by a contractor in a demand by a union organiser to cease work by shutting down trucks, when:
 - (i) there was no basis for the making of such demand; and
 - (ii) the organiser had no right to make such demand;
- (g) the making of threats by a union organiser to a head contractor that unless the organiser's demand to shut down a subcontractor was complied with, the organiser would:
 - (i) call in another union official;
 - (ii) involve the local council; and
 - (iii) involve the client of the head contractor;
- (h) the additional cost of complying with a project agreement made between the proprietor and a union, with no additional productivity. The additional cost was \$2 to \$3 an hour for each employee;
- (i) the continuous and unrelenting nature of the campaign by a union organiser to seek to force a subcontractor to have its employees join the union; and
- (j) the disruption to work and productivity, and the cost to head contractor, subcontractor and employees (when work stoppages occur) of such a campaign, all related to the union's desire to increase its membership and extend its influence.

Coastwide Civil Pty Ltd

91 Mr Gary William Rogers is the Managing Director of Coastwide Civil Pty Ltd (Coastwide Civil), a civil engineering company specialising in major excavation and road works.²⁷⁶

- 92 In 1996 Kelly told Rogers on a number of occasions that all major builders were making EBAs with the CFMEU and that Coastwide Civil would require an EBA to continue doing business with major builders.²⁷⁷ Coastwide Civil consulted Buildcorp Pty Ltd and AW Edwards Pty Ltd which indicated that they were under pressure from the union to engage companies with union-endorsed EBAs.²⁷⁸ Coastwide Civil decided to make a CFMEU-endorsed EBA.²⁷⁹ The EBA resulted in higher costs including a productivity allowance which, in truth, did not deliver any productivity improvements.²⁸⁰
- 93 In 1999 Coastwide Civil's EBA expired and Zaboyak told Rogers that Coastwide Civil would not get any work unless it made a new CFMEU-endorsed EBA.²⁸¹ It appears Coastwide Civil did not make an EBA at that time.
- 94 In January 2000 Coastwide Civil tendered for and was awarded a contract for work on the mouth of Lake Illawarra for the Lake Illawarra Authority.²⁸² Primmer arrived on the site and told Rogers he had a right of entry and wanted to look at Coastwide Civil's work safety.²⁸³ Primmer did not conduct a site inspection but instead raised issues about industrial matters such as workplace agreements and wages.²⁸⁴ The real purpose of Primmer's visit was to discuss the making of an EBA, not safety issues.
- 95 A few weeks later Mr Tony McCabe, an Engineer of the New South Wales Department of Public Works and Services, telephoned Rogers and told him Primmer said Coastwide Civil did not have the appropriate level of workers' compensation insurance, superannuation or wages and that Primmer had asked McCabe to remove Coastwide Civil from the site.²⁸⁵ Rogers had previously provided McCabe with all necessary details regarding Coastwide Civil's workers' compensation insurance, superannuation and public liability insurance.²⁸⁶ Primmer had made similar allegations about Coastwide Civil to the Department of Land and Conservation, Kilpatrick Green, Walter Construction Group Ltd (Walters), Project Co-ordination and Nace Civil Engineering Pty Ltd (Nace Civil Engineering).²⁸⁷ From that evidence it is plain that Primmer was doing everything in his power to warn off contractors from completing or entering into contracts with Coastwide Civil.
- 96 In 2001 Coastwide Civil engaged the services of the CCFNSW to negotiate a new EBA on its behalf.²⁸⁸ On 24 January 2001 the NSWCCF forwarded a draft EBA to Primmer.²⁸⁹ Primmer told Rogers the EBA would proceed, that it would be signed and that he would take it to Sydney.²⁹⁰ The NSWCCF later advised Rogers that Primmer was not prepared to sign the EBA.²⁹¹
- 97 Coastwide Civil was subcontracted to Nace Civil Engineering on the HMAS Albatross site.²⁹² On 2 November 2001 Primmer telephoned Rogers and told him Coastwide Civil would not be allowed on the HMAS Albatross site unless a CFMEU-endorsed EBA was signed and there was 100 per cent union membership.²⁹³ Primmer told Rogers if he signed a CFMEU-endorsed EBA, he could assure Coastwide Civil of work with Lend Lease and other major builders.²⁹⁴
- 98 Primmer also telephoned Mr Tom Hughes, Coastwide Civil Pty Ltd's Office Manager, and told him all Coastwide Civil's employees should be members of the union to get on the HMAS Albatross site.²⁹⁵ Coastwide Civil joined its employees to the CFMEU and was allowed on site.²⁹⁶ Primmer telephoned Hughes on 19, 23 and 25 October 2001 and told him he would

send a draft of the CFMEU-endorsed EBA and that he wanted Coastwide Civil to sign that EBA forthwith.²⁹⁷

- 99 The statements by Primmer that a subcontractor's employees had to be members of the union before they could work on the HMAS Albatross site is consistent with other evidence before the Commission in relation to a union membership requirement on that site.²⁹⁸
- 100 In late February 2002 Primmer provided Coastwide Civil with a draft CFMEU-endorsed EBA.²⁹⁹ No EBA has yet been signed.³⁰⁰
- 101 An analysis of the two EBAs discloses they were substantially the same save that the draft EBA from the CCFNSW proposed a \$25 weekly redundancy contribution compared with the CFMEU's proposed \$30 weekly contribution; the CCFNSW's draft EBA had no provision for a productivity allowance whereas the CFMEU's draft EBA proposed a \$1 an hour productivity allowance.³⁰¹
- 102 In mid-2002 Coastwide Civil submitted a tender to Walters for work on the Dendrovian mine site in Wollongong.³⁰² In early June 2002 Mr Peter Kyle Liedtcke, an engineer for Walter Construction Group Ltd, told Rogers not to proceed with its tender because the union was going to give him problems.³⁰³ Rogers told Liedtcke that what he was proposing was illegal and the union problems must have come from Primmer.³⁰⁴ Liedtcke replied: 'Yes, don't bother tendering'.³⁰⁵ Rogers told Liedtcke he could not ignore the matter and would have to review it.³⁰⁶ Half an hour later, Liedtcke telephoned Rogers and told him to proceed with the tender.³⁰⁷
- 103 On 19 June 2002 Rogers telephoned Liedtcke and enquired about the progress of the tender.³⁰⁸ Liedtcke told Rogers that Walters would be engaging someone else and could not engage Coastwide Civil.³⁰⁹
- 104 Walters has offered no evidence as to why it chose not to engage Coastwide Civil.

Conclusions

- 105 This case study illustrates:
 - (a) the succumbing of a major head contractor to pressure from a union only to engage subcontractors with union-endorsed EBAs;
 - (b) the effect of this upon a subcontractor, resulting in its agreeing to enter into a union-endorsed EBA to obtain work on major projects;
 - (c) the resulting increase in costs with no productivity increases;
 - (d) the use by a union organiser of safety as a means of gaining entry to a site while the real purpose was industrial matters, being workplace agreements and wages;
 - (e) the requirement of a union organiser that before a union-endorsed EBA would be signed by the union, there must be 100 per cent union membership of the contractor's employees; and
 - (f) the influence of the union in that it was able to persuade a head contractor not to permit a subcontractor to tender because of threats the union would cause industrial problems if the subcontractor was on site. The position was only reversed after the subcontractor

pressed its right to tender and indicated that the head contractor's proposed action may have been illegal.

Denrith Pty Ltd trading as Divall's Earthmoving and Bulk Haulage

EBA Arrangements

- 106 Messrs Andrew Divall and Michael Divall are directors of Denrith Pty Ltd which trades as Divall's Earthmoving and Bulk Haulage (Divall's).³¹⁰ Mr Tony Kent is Divall's Transport Allocation Manager.³¹¹
- 107 Divall's employs 45 employees under an EBA made under s170LK of the *Workplace Relations Act 1996 (C'wth)*, which has been certified by the AIRC.³¹²
- 108 In early 2001 Primmer met with Andrew Divall and told him Divall's should make an EBA with the CFMEU. At that time he also raised with Andrew Divall the making of contributions to Cbus, ACIRT and CTAS.³¹³ Andrew Divall told Primmer he would take those matters on board.³¹⁴
- 109 On another occasion Primmer visited the office of Divall's.³¹⁵ Kent and Mr John Divall, the owner of Denrith Pty Ltd, trading as Divall's Earthmoving and Bulk Haulage, were in the office at the time.³¹⁶ Primmer had a heated exchange with Kent.³¹⁷ Primmer asked to see the company's wage books and Kent refused.³¹⁸ Eventually Kent physically led Primmer out of the office.³¹⁹
- 110 Later that afternoon Primmer telephoned Andrew Divall and said he was out to get Divall's.³²⁰ Primmer told Andrew Divall he wanted Divall's to make an EBA with the CFMEU.³²¹ Andrew Divall replied that the workers were happy with the current EBA.³²²

Goulburn Correctional Centre Project

- 111 At about the same time Divall's negotiated a contract to carry out civil excavation work for Waller Constructions Pty Ltd (Waller Constructions) at the Goulburn Correctional Centre.³²³ A week before work was due to start, Primmer rang Mr Ben Balding, Project Manager for Waller Constructions Pty Ltd, and said he wanted Divall's to be stood down until it proved compliance in respect of work method statements, certificates of currency and superannuation.³²⁴ Waller Constructions resisted Primmer's demands and Divall's was engaged on the job and completed the work.³²⁵

Blue Circle Southern Cement Ltd

- 112 About October 2001 Divall's submitted a tender for the hire of a loader to Blue Circle Southern Cement Ltd (Blue Circle).³²⁶ In late October, Mr Dirk Van Vuuren, Production Supervisor, Blue Circle Southern Cement Ltd telephoned Andrew Divall and told him he was going to accept a quotation from Clearys, another contractor. Van Vuuren told Andrew Divall that Primmer had said Divall's did not have a union-endorsed EBA.³²⁷ Primmer told Van Vuuren he did not want to see any Divall's trucks on site.³²⁸ Van Vuuren told Andrew Divall it was too big a risk for Blue Circle to engage Divall's.³²⁹

HMAS Albatross Project

113 About December 2001 Andrew Divall visited the HMAS Albatross site at Nowra to quote on the civil work for Nace Civil Engineering.³³⁰ Mr David Webb, Nace Civil Engineering Pty Ltd's Project Manager, told Andrew Divall it was a very tight union site.³³¹ Andrew Divall told Webb that Divall's would comply with the CFMEU's conditions including payment of contributions to Cbus, ACIRT and CTAS.³³² Divall's quotation of 11 December 2001 was accepted on 12 December 2001, but about a week later Webb called Andrew Divall and withdrew the contract.³³³ Webb had previously told Andrew Divall that Primmer had been visiting the HMAS Albatross site.³³⁴

Mittagong Project

114 About July 2001 Andrew Divall approached Mr Kel Helmers Site Superintendent (Senior Foreman), of Abigroup Contractors Pty Ltd (Abigroup) at its site office on the Goulburn Sewerage Treatment Works site.³³⁵ Andrew Divall said Helmers asked him if the company had problems with the union.³³⁶ Helmers advised Andrew Divall that Primmer had been on site and had told Helmers he did not want to see Divall's on the site.³³⁷ Helmers said he told Andrew Divall about his conversation with Primmer and Lane, but said he only sparingly engaged Divall's on the site because the company had higher price rates.³³⁸

115 In October 2001 Divall's tendered to Abigroup for work on the Mittagong project.³³⁹ Andrew Divall said he telephoned Helmers around December 2001 and Helmers told Divall he would have to sort out the problem with the union and Primmer.³⁴⁰ Helmers agreed he spoke to Andrew Divall around this time about work but said the reason Abigroup did not engage Divall's was because Abigroup pursued a different methodology and completed this work itself.³⁴¹

116 Andrew Divall gave evidence that Divall's has suffered significant loss over a 12 month period because of Primmer's interference.³⁴²

Conclusions

117 This case study illustrates:

- (a) requests by a union organiser of head contractors that a subcontractor be stood down and work cease until the union was satisfied regarding work method statements, certificates of currency for workers' compensation and superannuation;
- (b) the influence of a union when its organiser can dissuade a head contractor from engaging a subcontractor because the subcontractor did not have a union-endorsed EBA, and the consequential prospect of industrial action; and
- (c) the endeavours by a union organiser to interfere in and influence the selection by head contractors of subcontractors, and their effectiveness.

Fineline Painting Pty Ltd

Shoalhaven Hospital Project

- 118 Mr Norman Fletcher Mogg is the Director of Fineline Painting Pty Ltd (Fineline) and Online Labour Hire Pty Ltd (Online Labour) whose work is predominantly carried out in the commercial building sector in the Shoalhaven region of NSW.³⁴³
- 119 In early 1998 Fineline tendered for and was awarded a contract for painting works at the Shoalhaven Hospital.³⁴⁴ Before being awarded the contract Kelly telephoned Mogg and told him that before Fineline started work on the Shoalhaven Hospital he was going to look at Fineline's wage books.³⁴⁵
- 120 Kelly attended Mogg's office and inspected Fineline's wage records and told Mogg that Fineline kept good records but it was breaking the law by paying its staff as casuals and a penalty of \$200 000 could be imposed on Fineline under the *National Building and Construction Industry Award* (NBCIA).³⁴⁶ That assertion was false. Kelly told Mogg that if Fineline stopped paying staff as casuals and engaged them as full-time employees, he would overlook the breach.³⁴⁷
- 121 Kelly then told Mogg that if all his employees were to join the CFMEU, he would not report Fineline's casual labour payments.³⁴⁸ Kelly also said Fineline had to make contributions to Cbus and ACIRT.³⁴⁹ Kelly told Mogg that if he did not do as he was told, Kelly would ensure McNamara Constructions Pty Ltd (McNamara's), the Head Contractor on the Shoalhaven Hospital site, would not engage Fineline.³⁵⁰ Fineline was in fact in breach of the award in some respects and rectified the breaches.³⁵¹ As a result of Kelly's approach to Mogg, Fineline engaged all its workers as full-time employees and made employee superannuation contributions to Cbus.³⁵²
- 122 After Fineline's staff joined the CFMEU, Fineline received a notification from McNamara's that it was successful in its tender and Fineline completed its contract without incident.³⁵³

Milton Water Treatment Works Project

- 123 In late 1998 Belmadar Constructions Pty Ltd (Belmadar) engaged Fineline at the Milton Water Treatment Works site.³⁵⁴ Around that time Kelly visited the site and demanded to know why Fineline's employees were not members of the CFMEU.³⁵⁵ Mogg told Kelly that he was not interested in joining his employees to the CFMEU.³⁵⁶ Kelly told Mogg that he was going to carry out a wage book inspection, find a breach and cause problems for Fineline.³⁵⁷ Kelly's statement that he would find a breach and cause problems for Fineline even before a wage book inspection took place evidences a preparedness by Kelly to abuse his authority under s285B of the *Workplace Relations Act 1996 (C'wth)* and s298 of the *Industrial Relations Act 1996 (NSW)*. Kelly's threats were made for the purpose of coercing Fineline to ensure its employees became members of the CFMEU.
- 124 Belmadar's Project Manager told Mogg that Fineline had industrial problems with the CFMEU and he did not want Fineline's problems to become Belmadar's problems.³⁵⁸ He told Mogg to fix those problems.³⁵⁹ Kelly told Mogg he would make it difficult for Fineline to complete its contract at the Milton Water Treatment Works by causing industrial disruption.³⁶⁰ Fineline's

experience with Belmadar is another example of a head contractor's responsiveness to pressure from the CFMEU to avoid industrial disharmony on its sites.

- 125 Because Finline was liable for liquidated damages if it did not finish its work on time, Mogg addressed his employees about the matter and as a result two or three employees joined the CFMEU.³⁶¹ Once those employees joined the CFMEU, Finline was able to complete its contract without any further interference from the CFMEU.³⁶²

Centrelink Project

- 126 In 1999 Finline tendered to J J B Group Pty Ltd (JJB) for work on the Centrelink Project at Wollongong.³⁶³ Two weeks later Kelly telephoned Mogg and said he dictated to JJB who it could employ as subcontractors.³⁶⁴ Kelly told Mogg that he had been to see JJB telling them who they were allowed to employ and who they could not as subcontractors. Kelly also told Mogg that Finline's employees' union memberships had lapsed and that if the memberships were not renewed, Finline would not get the Centrelink contract.³⁶⁵
- 127 Mogg initially resisted Kelly's demands but buckled after constant threats from Kelly that he would stop all the jobs where Finline was working.³⁶⁶ Mogg met with his staff who decided to rejoin the CFMEU. The employees paid their own subscriptions.³⁶⁷

Harvey Norman Project

- 128 In 2001 Finline was carrying out work at the Harvey Norman site in South Nowra when Primmer visited the site.³⁶⁸ A Finline employee was standing on top of a 4-foot pair of steps.³⁶⁹ Primmer told the Finline employees that they were engaging in unsafe and illegal work practices and that they had to stop their work and sit in the shed.³⁷⁰ Primmer told Mogg that he was going to stop Finline from working on that site because its employees were not members of the CFMEU and that if Finline employees did not join the CFMEU he would stop all work on site.³⁷¹
- 129 Primmer had a meeting with Mogg and Finline's employees who indicated they would join the CFMEU or renew their CFMEU memberships.³⁷² In the event, none of Finline's employees joined the CFMEU.³⁷³

Conclusions

- 130 This case study illustrates:
- (a) threats by a union organiser to induce a subcontractor to join its employees as members of the union. Such threats were:
 - (i) to ensure a head contractor did not engage a subcontractor; and
 - (ii) to carry out a wage inspection, find a breach and 'cause problems' for the subcontractor;
 - (b) the extent to which pattern bargaining arrangements are sought to be achieved by a union organiser under duress;

- (c) the absence of involvement by employees in the process of bargaining sought to be established by a union organiser;
- (d) underpayment by employers of workers' entitlements;
- (e) the unwillingness of a major contractor to engage subcontractors which do not have an amicable relationship with a union. This results in the union being able to apply significant commercial pressure to subcontractors;
- (f) the acquiescence of major contractors in a union's demands;
- (g) the assertion by a union organiser of an entitlement to control the selection of subcontractors;
- (h) the effectiveness of union's pressure upon a subcontractor and its employees to have them join the union under threat that the subcontractor would not be awarded a subcontract and thus the employees would lose work;
- (i) the disregard by a union organiser of the wishes of employees;
- (j) the raising of false safety issues by a union organiser to put pressure on a subcontractor and its employees for the employees to join the union; and
- (k) the continuous application of pressure by a union organiser to achieve the union's industrial ends, and increased membership. It illustrates the extent to which there is no true freedom of association, and the bargaining process has been removed from the parties who should be primarily involved, namely the employer and its employees. Employees joined the union under threat that if they did not do so their employer would lose contracts and be prevented from working, and thus their livelihood would be placed in jeopardy.

Online Labour Hire Pty Ltd

HMAS Albatross Project

- 131 In 2001 David Webb telephoned Mogg and told him that he wanted to engage Online Labour on the HMAS Albatross site but that Primmer regularly visited the site and had told him not to engage Online Labour.³⁷⁴ Nace Civil Engineering had previously engaged Online Labour.³⁷⁵ Primmer said he was a regular visitor to the site and 'did tell them to make sure that they used "legit" subcontractors'.³⁷⁶
- 132 David Webb told Mogg that if Nace Civil Engineering used Online Labour, Primmer would stop all work on site.³⁷⁷ Mr Guy White, Site Delegate on the HMAS Albatross site for the Construction, Forestry, Mining and Energy Union, told Mogg that the site was a 'no ticket no start' site and to 'get your people on site they have to join the union'.³⁷⁸ Online Labour and Finline again agreed to join some of their employees to the CFMEU and Online Labour started to receive work at the Albatross site.³⁷⁹

Vincentia Leisure Centre Project

133 In March 2001 Online Labour supplied Edwards Constructions (NSW) Pty Ltd (Edwards Constructions) with a labourer named Mr Dennis Little on the Vincentia Leisure Centre project.³⁸⁰ Primmer told Mogg the Vincentia Leisure Centre site was a union site and if Little did not join the CFMEU he would cause Edwards Constructions trouble by stopping all of its current works at both the Port Kembla Golf Club and the Vincentia Leisure Centre.³⁸¹ Little told Mogg that he had no interest in joining the CFMEU.³⁸² On 14 June 2001 Primmer telephoned Mogg and told him if Little did not join the CFMEU, he would make sure that Little would not get work at any other site.³⁸³

Conclusions

134 This case study illustrates:

- (a) the assumption by a union organiser of the right to determine which subcontractors are to be used on a project; and
- (b) the existence of 'union sites' where trouble was to be expected if non-union members were employed on site.

Foxrun Building Services Pty Ltd

12 July 1996 Meeting

135 Mr Adrian Turnbull is a director of Foxrun Building Services Pty Ltd (Foxrun), a builder which operates in and around Nowra.³⁸⁴ Foxrun specialises in the construction of architecturally designed residences and commercial building complexes.³⁸⁵ Foxrun employs its staff under the NBCIA.³⁸⁶

136 On 12 July 1996 a meeting was held at Foxrun's office attended by Kelly of the CFMEU and Turnbull, Mr Craig Whitehouse, Office Manager, Foxrun Building Services Pty Ltd and Ms Susan Waugh, Financial Controller, Foxrun Building Services Pty Ltd.³⁸⁷ Kelly introduced himself as the new CFMEU organiser for the greater Nowra area.³⁸⁸ Kelly said the Nowra area had got away with too much for too long and he intended to 'turn the Nowra area red' and 'go through the place'.³⁸⁹ Kelly said he was going to start by pitching a tent on the Foxrun site to camp out there.³⁹⁰

137 Kelly then asked Turnbull for a list of every individual employee and subcontractor that Foxrun intended to engage on the Masonic Village project, particularly bricklayers and painters.³⁹¹ Kelly wanted to know their job activities, their names and addresses and what type of cars they drove.³⁹² Turnbull told Kelly that he was not entitled to such a list of names and Turnbull was not at liberty to divulge that information.³⁹³ Kelly told Campbell that under s88(b) of a certain Act, Turnbull was obliged to give that information to Kelly.³⁹⁴ Turnbull said that he would check the section, but Kelly said it may not be the right section.³⁹⁵ Although Kelly said he would get back to Turnbull about the right section, he did not.³⁹⁶

138 Kelly then asked Turnbull who the company was using to supply its frames and trusses.³⁹⁷ Kelly said that he hoped it was not Ace Building Components, as the proprietor had threatened

to drive his forklift into Kelly's car.³⁹⁸ Kelly went on to discuss various other subcontractors.³⁹⁹ Kelly said that he was going to shut down a subcontractor called 'Hanlon's Windows'.⁴⁰⁰ The meeting ended with Kelly indicating he would be back and that he expected Turnbull to provide him with the list of names he had asked for.⁴⁰¹

139 This initial approach by Kelly to Foxrun is a further example of the tactics to which Kelly was prepared to resort to in order to have contractors comply with his demands. Considering that this was an initial discussion where there was no basis for Kelly to suspect that Foxrun had not been complying with its legal obligations, the tactic was a form of intimidation designed to frighten Foxrun into agreeing to his demands. This initial process of intimidation by Kelly involved two facets:

- (a) he let it be known to Foxrun that the CFMEU had an agenda as to who could and who could not work in the Wollongong and Illawarra regions and that industrial disruption would follow if that agenda was not followed by the company; and
- (b) he demanded access to records to which he was not entitled.

Berry Masonic Village Project

140 In March 1996 Foxrun was awarded the contract for the Berry Masonic Village project.⁴⁰² In mid-August 1996 Foxrun engaged Ray Pepper and Partners as the bricklayers for the project.⁴⁰³ Turnbull checked their records before appointing them.⁴⁰⁴ Shortly after this Mr Ray Pepper, the Principal Partner of Ray Pepper and Partners, told Turnbull that Kelly was constantly telephoning him and demanding to inspect the partnership's time and wage records.⁴⁰⁵

141 Pepper told Turnbull that he had no employee wage records because he did not have an employer – employee relationship with his other partners.⁴⁰⁶ Pepper also told Turnbull that Kelly did not believe he had a partnership structure and insisted that Pepper and his partners become employees of the partnership.⁴⁰⁷ Kelly then began telephoning Turnbull about Pepper and his partners.⁴⁰⁸ A meeting was held on 23 August 1996 between Kelly, Pepper and Turnbull.⁴⁰⁹ Kelly told the meeting that he was going to the Industrial Relations Commission about the partnership issue.⁴¹⁰ Kelly did not pursue the matter.⁴¹¹

Berry Village Boutique Motel Project

142 In June 1999 Foxrun was awarded the contract for the Berry Village Boutique Motel project.⁴¹²

143 In mid-1999 Primmer visited the site with two WorkCover NSW inspectors who told Turnbull that Primmer had complained to them that Turnbull had refused to let Primmer inspect the site.⁴¹³ Turnbull told the WorkCover NSW inspectors that this was false and he had witnesses for all union visits to the site.⁴¹⁴ The WorkCover NSW inspectors conducted an inspection of the site and asked Turnbull to correct two minor matters.⁴¹⁵ Foxrun had no further contact with the CFMEU.⁴¹⁶

Conclusions

144 This case study illustrates:

- (a) the aggressive methods that a union organiser applied in seeking to exert influence in the industry, and achieve the union's industrial objectives. The application of such pressure was not at the request of any employees, but rather an endeavour by the union to control a geographical area within the industry. It disregarded the rights of contractors and their employees to conduct their business and employment relationship on such basis as they see fit within the law;
- (b) the assumption by a union organiser of an entitlement to subcontractor and employee details of a personal nature, not with the authority of such persons, but rather so as to enable the union, as a third party, to progress its interests; and
- (c) the manner and extent that a union organiser seeks to intrude, uninvited, into the affairs of subcontractors and their employees.

Ganderton Earthmoving Pty Ltd

EBA Arrangements

- 145 Mr Ian Ganderton is the Sole Director of Ganderton Earthmoving Pty Ltd. Ganderton Earthmoving engages in civil works on housing sub-divisions and road contract work for local government and private contractors in the Shoalhaven area.⁴¹⁷
- 146 Ganderton Earthmoving has 18 full-time employees.⁴¹⁸ Until November 2001 Ganderton Earthmoving operated under an AWA but has since negotiated an EBA directly with its employees pursuant to s170LK of the *Workplace Relations Act 1996 (C'wth)*.⁴¹⁹ This EBA was certified by the AIRC on 3 May 2002.⁴²⁰
- 147 In about 1994 Kelly arrived in the Shoalhaven region and visited Ganderton Earthmoving's office.⁴²¹ Kelly told Ganderton and his employees that if the employees did not join the union, he would send Ganderton Earthmoving bankrupt and ensure that the company did not get any work.⁴²² In April 1996 Kelly carried out a time and wage book inspection on Ganderton Earthmoving.⁴²³
- 148 In early 2000 Primmer arrived in the Shoalhaven area.⁴²⁴ Since coming to the region Primmer has spoken to Ganderton and his employees and objected to the way the company is run.⁴²⁵ Primmer has also made adverse comments about Ganderton Earthmoving to its clients.⁴²⁶

HMAS Albatross Project

- 149 In about 2000 Ganderton Earthmoving was engaged on Stage Two of the HMAS Albatross project.⁴²⁷ On 5 December 2000 Ganderton Earthmoving's employees attended a safety induction on the HMAS Albatross site at which Primmer was present.⁴²⁸ Primmer spoke to the employees, some of whom were truck drivers, about the benefits of belonging to the union.⁴²⁹ Primmer told the employees, 'I'm not interested in truck drivers, I just want to speak to the operators'.⁴³⁰
- 150 Mr Bishop, a site engineer with Bovis Lend Lease Pty Ltd (Bovis), told Ganderton that his price for work on that site had to be about 10–15 per cent better than a company that was unionised because of the industrial risk it would pose to Bovis.⁴³¹ Bishop told Ganderton that when head

contractors conduct their post-tender interview, they take into consideration all industrial relations information, weigh it up in a risk analysis, and the benefit of a lower price has to outweigh the company's predetermined assessment of the industrial relations risk.⁴³²

- 151 In August 2001 White, the site delegate, told workers on the HMAS Albatross site they had to become union members to be able to continue on that site.⁴³³ In December 2001 Mr Gareth Otley, a back hoe owner-operator, arrived on the site, unloaded his back hoe machine and was told by White to join the union.⁴³⁴ Otley did not want to become a union member, loaded his machine back onto his truck and left the site.⁴³⁵
- 152 On 14 August 2000 Ganderton wrote a letter of complaint to Primmer about his behaviour towards Ganderton Earthmoving and copied that letter to Ferguson and Mr Greg Barlow, a project manager of Bovis.⁴³⁶
- 153 In August 2000 Barlow requested that Ganderton attend a meeting on the HMAS Albatross site with himself, Primmer and Lane.⁴³⁷ Primmer and Lane told Ganderton that, if he wanted to work on the HMAS Albatross site, he had to have an EBA because that was the way that the industry was going and that when the Liberal Federal Government lost office there would be no such thing as an AWA.⁴³⁸
- 154 On 21 August 2000 Ferguson faxed a handwritten response to Ganderton's letter to the effect that he had requested Mr Peter McClelland, Branch President of the Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch, to investigate the matter.⁴³⁹
- 155 On 18 August 2000 Zaboyak wrote to Ganderton Earthmoving advising that he had investigated Ganderton Earthmoving's complaints and concluded Primmer had not behaved or conducted himself in an inappropriate manner.⁴⁴⁰
- 156 Lane stated that he had heard allegations that White had been telling subcontractors that unless they had union-endorsed EBAs, they could not work on this site.⁴⁴¹ Lane said he had addressed that issue with White.⁴⁴²

Shoalhaven Area Health Project

- 157 In June 2001 Ganderton Earthmoving was engaged on the Shoalhaven Area Health project.⁴⁴³ The Project Manager was 'Incoll RGA'.⁴⁴⁴
- 158 After Ganderton Earthmoving started work on the site Primmer arrived, saw that Ganderton Earthmoving was working at the site and spoke to Mr John Diamond, the Project Manager.⁴⁴⁵ Diamond told Ganderton that Primmer told him not to give Ganderton Earthmoving any more work and that he did not want Ganderton Earthmoving working on the site.⁴⁴⁶

Conclusions

- 159 This case study illustrates:
 - (a) the use of threats by a union organiser to seek to achieve industrial objectives;

- (b) the fact that major contractors accept the reality that a union is likely to engage in industrial action if non-unionised subcontractors are engaged. The price factor for such risk of industrial action was assessed as at least 10–15 per cent of the subcontract price;
- (c) the arrangement between a major head contractor and a union that to work on a major site, a subcontractor must have a union-endorsed EBA;
- (d) the extent to which a union organiser seeks to control and regulate the engagement of subcontractors such that only subcontractors who agree to the union's requirements in pattern EBAs are engaged;
- (e) the interference by a union organiser in the contractual relationship between a head contractor and a subcontractor; and
- (f) the responsiveness of a head contractor to the requirements of a union organiser regarding employment of a subcontractor.

Jim Godfrey Earthmoving Pty Ltd

Bowral Central Library Project

- 160 Ms Narelle Lucas is the Office Manager of Jim Godfrey Earthmoving Pty Ltd (Jim Godfrey Earthmoving), a company that engages in civil excavation, earthmoving and plant hire.⁴⁴⁷ Jim Godfrey Earthmoving employs 13 staff under award.⁴⁴⁸
- 161 In late 1997 Jim Godfrey Earthmoving tendered for and won the contract for excavation and preparation work at the Bowral Central Library site.⁴⁴⁹ The builder on the site was Buildcorp NSW Pty Ltd (Buildcorp NSW).⁴⁵⁰
- 162 On 10 January 1998 Kelly visited the Jim Godfrey Earthmoving office to conduct a time and wage book inspection after having issued a notice for inspection on 7 January 1998.⁴⁵¹ Mr Greg Barton of the Master Builders' Association of New South Wales represented Jim Godfrey Earthmoving.⁴⁵² Godfrey attended the meeting and had a conversation with Kelly which became heated.⁴⁵³ Kelly was going through the pay records and said he found a lot of underpayments and that he had concerns about all-in payments because of the way the wage books were recorded.⁴⁵⁴
- 163 Kelly said the employees were being underpaid and Jim Godfrey Earthmoving was not paying allowances.⁴⁵⁵ Kelly said he did not like the company's all-in pay structure; and that he wanted another pay structure to create an 'even playing field'.⁴⁵⁶ Kelly also said the company's workers' compensation certificate was inadequate.⁴⁵⁷ As Kelly was leaving, he said Jim Godfrey Earthmoving would not work on the Bowral Library site again but if Jim Godfrey Earthmoving's employees all joined the union all the problems would go away.⁴⁵⁸ The MBANSW was able to resolve the dispute by conducting an independent audit of time and wages.⁴⁵⁹ The audit did not disclose any breaches of awards or conditions.⁴⁶⁰ Kelly had suggested to Jim Godfrey Earthmoving, in a letter dated 10 February 1998, that the MBANSW assist Godfrey in attending to making good several award breaches which Kelly alleged in that letter.⁴⁶¹

- 164 Kelly's statement that if all employees of Jim Godfrey Earthmoving joined the CFMEU then all of its problems would go away identified the primary reason for Kelly to conduct the time and wage records inspection.

Garrawarra Aged Care Centre Project

- 165 In April and May 1999 Jim Godfrey Earthmoving successfully tendered for bulk excavation works on the Garrawarra Aged Care Centre site.⁴⁶² The builder on the project was Richard Crookes Constructions Pty Ltd (Richard Crookes) and Jim Godfrey Earthmoving commenced on site in late April 1999.⁴⁶³
- 166 On 19 May 1999 a meeting was held at the Garrawarra Aged Care Centre site in response to a request for a time and wage book inspection made by Kelly on 11 May 1999.⁴⁶⁴ Jim Godfrey Earthmoving was represented by Godfrey, Mr Geoffrey Thomas, Industrial Officer, Master Builders' Association of New South Wales Pty Ltd, and Lucas.⁴⁶⁵ The CFMEU was represented by Mr Sid Wales, a former organiser for the Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch, and Kelly.⁴⁶⁶ Kelly examined the workers compensation certificate but did not examine any other time or wage documents.⁴⁶⁷ Kelly said that the company should make a union-endorsed EBA in order to achieve a level playing field.⁴⁶⁸ Kelly and Wales gave Lucas a copy of an EBA and told Lucas if Jim Godfrey Earthmoving signed that EBA its problems would disappear and be resolved.⁴⁶⁹ Godfrey said he would not make an EBA on the spot but promised to look at the document.⁴⁷⁰ Kelly said Jim Godfrey Earthmoving did not let him check the books.⁴⁷¹
- 167 On 20 May 1999 Mr Jamie Crookes, Project Manager for Richard Crookes, on the Garrawarra Aged Care Centre site, telephoned Lucas about disputes between Jim Godfrey Earthmoving and the CFMEU.⁴⁷² Jamie Crookes sent a copy of a facsimile he had received on 19 May 1999 containing allegations that Jim Godfrey Earthmoving was not adhering to the award and would not allow the union to inspect its books.⁴⁷³ The letter alleged that Jim Godfrey Earthmoving had breached the award a year ago and that the union feared breaches were continuing and that Richard Crookes could be liable for these underpayments pursuant to section 127 of the *Industrial Relations Act 1996 (NSW)*.⁴⁷⁴
- 168 Jim Godfrey Earthmoving provided Jamie Crookes with an interim independent wage audit conducted by Mr Peter Slattery, Manager, of Industrial Relations, Master Builders Association of New South Wales to allay his fears.⁴⁷⁵ A final audit report was forwarded to Jamie Crookes on 28 June 1999.⁴⁷⁶ Certificates of currency for public liability, workers compensation and superannuation were also forwarded to Jamie Crookes on 8 September 1999.⁴⁷⁷
- 169 Jim Godfrey Earthmoving continued to receive correspondence from the CFMEU including a Notice to Initiate Bargaining Period dated 25 May 1999, a Notice of Industrial Action on 9 June 1999 and a further request to inspect time and wage records on 3 September 1999.⁴⁷⁸
- 170 On 27 October 1999 seven CFMEU officials in three cars blocked entry to the Garrawarra Aged Care Centre site.⁴⁷⁹ A site foreman from Richard Crookes telephoned Lucas and told her the CFMEU had sent all employees home for that day and told them not to return for the next couple of days.⁴⁸⁰ Lucas telephoned Jamie Crookes who confirmed what had happened and told her he was terminating the subcontract.⁴⁸¹ Lucas later telephoned Mr Richard Crookes,

Principal of Richard Crookes Constructions Pty Ltd, who said he did not have a problem with Jim Godfrey Earthmoving but the CFMEU was 'clawing' Richard Crookes to death.⁴⁸² Crookes said to Lucas that Jim Godfrey Earthmoving would not be terminated.⁴⁸³

- 171 A further meeting was held on 1 November 1999 at the Wollongong CFMEU office but the matter could not be resolved.⁴⁸⁴ On 8 November 1999 Jim Godfrey Earthmoving received a letter from Jamie Crookes dated 4 November 1999 suspending the company's subcontract.⁴⁸⁵ On that day Mr Trevor Blanche of Richard Crookes telephoned Godfrey and asked if Jim Godfrey Earthmoving might still be in a position to accede to CFMEU demands in a way it found acceptable.⁴⁸⁶
- 172 In the following months, Jim Godfrey Earthmoving tried unsuccessfully to make an EBA through the MBANSW. On 10 March 2000 Richard Crookes advised Jim Godfrey Earthmoving by fax that the remaining work had been let to another contractor.⁴⁸⁷

Mittagong Sewerage Scheme Site

- 173 In July 2000 Jim Godfrey Earthmoving was engaged to lease plant and labour as required on an hourly rate on the Mittagong Sewerage Scheme site.⁴⁸⁸ The builder on the site was Transfield Pty Ltd (Transfield).
- 174 In mid-October 2000 Mr John Illot of Transfield Pty Ltd conducted an audit of Jim Godfrey Earthmoving's books in response to an allegation made by Primmer that Jim Godfrey Earthmoving was in breach of award provisions.⁴⁸⁹ After Transfield carried out the audit it said it was happy with the records of Jim Godfrey Earthmoving.⁴⁹⁰
- 175 From 27 December 2000 Jim Godfrey Earthmoving began making contributions to Cbus, ACIRT and CTAS and paid an additional \$1 an hour productivity allowance in order to appease the CFMEU.⁴⁹¹ Jim Godfrey Earthmoving stopped making contributions to these funds when the Mittagong Sewerage Scheme project concluded.⁴⁹² Jim Godfrey Earthmoving was not able to pass these additional costs on to Transfield because it had already negotiated daily rates.⁴⁹³ Contribution to these funds was a commercial decision to ensure industrial harmony.⁴⁹⁴
- 176 While Jim Godfrey Earthmoving was working on the Mittagong Sewerage Scheme site Primmer harassed its employees into joining the CFMEU.⁴⁹⁵ Mr Sam Parker and Mr Grant Buckley, employees of Jim Godfrey Earthmoving Pty Ltd, were singled out at meetings to the extent that they felt they had to join the union in order to remain on site and ensure Jim Godfrey Earthmoving would remain on site.⁴⁹⁶ Jim Godfrey Earthmoving paid the union dues which were later deducted from the employees' wages.⁴⁹⁷

Conclusions

- 177 This case study illustrates:
- (a) the preparedness of a union organiser to raise alleged breaches of wage and conditions to put pressure on an employer to have its employees join the union;
 - (b) the preparedness of a union organiser to use wage book inspection rights to put pressure on a subcontractor to enter into a union-endorsed EBA;

- (c) the preparedness of a union's organisers to block access to sites to put pressure on a head contractor to terminate a subcontractor; and to put pressure on a subcontractor to enter into a union-endorsed EBA;
- (d) the bowing of a head contractor to a union's industrial pressure;
- (e) the loss of work by a subcontractor due to industrial activity against it by a union's organisers and officials because it would not enter into a union-endorsed EBA;
- (f) the making of payments by a subcontractor, including a 'productivity allowance' without any corresponding productivity increase, in order to obtain industrial harmony, and be able to continue working on site; and
- (g) employees joining a union in order that their employer could remain working on site.

Neale Jones Civil Contracting Pty Ltd

Union membership

- 178 Mr Peter Jones is a director of Neale Jones Civil Contracting Pty Ltd (Neale Jones Civil Contracting).⁴⁹⁸ Neale Jones Civil Contracting employs 15 workers.⁴⁹⁹
- 179 In December 1995 Kelly visited Neale Jones Civil Contracting's office and told Jones he had received complaints that workers were not being paid correctly.⁵⁰⁰ Kelly conducted a wages and time records inspection, and said he found discrepancies and called a meeting of employees.⁵⁰¹ He said Neale Jones Civil Contracting owed its men over \$100 000 and he could send the company broke at a moment's notice if he wanted to by taking the company to the Industrial Relations Commission.⁵⁰² On 13 December 1995 Kelly wrote to Neale Jones Civil Contracting listing the problems he had identified on the inspection.⁵⁰³
- 180 Kelly said to the employees of Neale Jones Civil Contracting that unless the employees joined the CFMEU he would take the matter to the Industrial Relations Commission, he could send the company broke and they would all lose their jobs.⁵⁰⁴ Neale Jones Civil Contracting's employees reluctantly joined the CFMEU.⁵⁰⁵ Subsequently three union delegates were also elected.⁵⁰⁶ Since then a number of Neale Jones Civil Contracting's employees have progressively resigned from the CFMEU.⁵⁰⁷ After the employees joined the union, nothing more was done regarding the alleged moneys owed to workers in excess of \$100 000. Kelly said this was because the workers were worried the company would fail if their moneys were pursued. I am not able to determine the true liability for such claims or the quantum of any such liability.

Bay and Basin Leisure Centre and Callala Bay School Projects

- 181 In July 2000 Edwards Constructions engaged Neale Jones Civil Contracting to conduct excavation work at the Bay and Basin Leisure Centre site and the Callala Bay School site.⁵⁰⁸ Primmer approached Jones and told him he had unfairly dismissed an employee and that there was a wage claim against Neale Jones Civil Contracting.⁵⁰⁹
- 182 Primmer said he was going to approach Edwards Constructions about the Code of Practice and stop every job Neale Jones Civil Contracting won.⁵¹⁰ Primmer stopped work on the Bay

and Basin Leisure Centre site supposedly because of an alleged breach of the Code of Practice.⁵¹¹

183 On 20 July 2000 Mr Kim McDonald, Manager of Edwards Constructions (NSW) Pty Ltd, telephoned Jones and told him to stop work on the Bay and Basin Leisure Centre site and the Callala Bay School site.⁵¹² McDonald told Jones he had been contacted by Primmer who threatened to stop work on all Edwards Constructions sites unless Neale Jones Civil Contracting was removed from the sites.⁵¹³ Neale Jones Civil Contracting left those sites for a few days at a cost of about \$5000.⁵¹⁴

Yallah TAFE Project

184 In August 2000 M C Harrold Pty Ltd (M C Harrold) engaged Neale Jones Civil Contracting to conduct civil construction work at the Yallah TAFE project in Yallah.⁵¹⁵ During the project, Mr Con Harrold, the Managing Director of M C Harrold Pty Ltd, approached Jones on site and told him Neale Jones Civil Contracting could no longer be engaged.⁵¹⁶ The CFMEU had sent a letter to M C Harold alleging Neale Jones Civil Contracting was underpaying its employees.⁵¹⁷ This was despite a prior request by the company's solicitors for details of any alleged breach, which request went unanswered, and a prior inspection of wage slips conducted by Lane of the CFMEU on 28 July 2000.⁵¹⁸ Following an exchange of correspondence and conciliation in the Industrial Relations Commission, Neale Jones Civil Contracting was able to continue work on the site.⁵¹⁹

Vincentia Treatment Plant Project

185 In early 2001 Primmer sent Jones a copy of a CFMEU-endorsed EBA and asked Neale Jones Civil Contracting to consider making one.⁵²⁰ Jones reviewed the agreement and found it was not feasible because it would increase labour costs by about \$3 an hour for each employee.⁵²¹ Primmer telephoned Jones in March 2001 and when Jones told him he was not interested, Primmer threatened to contact Sutton.⁵²² Kilpatrick Green had engaged Neale Jones Civil Contracting on the Vincentia Treatment Plant project.⁵²³ Sutton told Jones that Primmer had threatened to stop work at the Vincentia Treatment Plant project because of Neale Jones Civil Contracting.⁵²⁴ Neale Jones Civil Contracting continued work on that site.⁵²⁵

Conclusions

186 This case study illustrates:

- (a) the making by a union organiser of allegations of non-compliance with awards with the object of obtaining a union-endorsed EBA and enrolling members;
- (b) the decision by employees not to press any of the alleged claims for fear of losing their employment if their employer went into liquidation;
- (c) disregard by a union organiser of dispute resolution provisions in the award in favour of industrial action;
- (d) threats by a union organiser to stop all of a subcontractor's jobs unless the subcontractor complied with all the union's demands;

- (e) threats by a union organiser to a head contractors that he would stop all the head contractor's jobs unless the head contractor removed a subcontractor from a particular job, and the effectiveness of such threat;
- (f) the making by a union organiser of unspecified allegations of non-payment of entitlements, failure when requested to detail the allegations even after a wages book inspection, yet thereafter maintaining the allegation and communicating the alleged non-payment to a head contractor in an endeavour to pressure the head contractor to remove the subcontractor from the site;
- (g) the making of threats by a union organiser to a head contractor that the union would shut the head contractor's site unless it removed a subcontractor from the site, in circumstances where the subcontractor had refused to enter a union-endorsed EBA; and
- (h) the taking of action by a union's organisers, not at the request of employees, but in its own interest.

Network Project Developments Pty Ltd

- 187 Mr Raymond Redgrave, Director, Millray Developments Pty Ltd, was a director of Network Project Developments Pty Ltd (Network Project Developments), a builder that constructed the Terralong Terrace Apartments in Kiama.⁵²⁶
- 188 On 29 May 1998 Network Project Developments engaged Acton Bricklaying as the bricklaying subcontractor on the site.⁵²⁷ On 12 June 1998 Kelly visited the site and told Redgrave he wanted to speak to all the bricklayers and other contractors on site.⁵²⁸ Redgrave introduced Kelly to Floris, the owner of Acton Bricklaying, and Kelly and Floris had a meeting with him for 15 to 20 minutes.⁵²⁹ After the meeting, Floris told Redgrave that Kelly was threatening 'all sorts of things, and making all my blokes join the union'.⁵³⁰ Kelly also asked to go through Acton Bricklaying's books.⁵³¹
- 189 On 29 May 1998 Redgrave approached Kelly and asked him to leave the site.⁵³² Kelly refused and told Redgrave that he would leave the site when he was good and ready as: 'This is a union site'.⁵³³ Kelly told Redgrave he wanted a meeting of all the workers on site and that employees on the site had to join the union or Kelly would ensure that there would be no deliveries made to the site.⁵³⁴ Redgrave told Kelly if he did not leave the site he would throw him off.⁵³⁵
- 190 A few days later Kelly returned to the site and held a meeting with about 25 bricklayers, labourers, carpenters and form workers for about an hour.⁵³⁶ After the meeting some of the workers told Redgrave that Kelly wanted them to join the CFMEU and told them if they refused he would black-ban the job and the apartments would not be built.⁵³⁷ Kelly also told the workers that they had to take the next day off work.⁵³⁸ When Kelly was leaving the site he told Redgrave: 'If I find one single solitary person on this site tomorrow, I will black-ban the site. I'll be back, make sure there is none of your guys here tomorrow'.⁵³⁹
- 191 The following day, two labourers came to the site to see if Kelly had come onto the site and sat at the front of the site but did not perform any work.⁵⁴⁰ Kelly arrived at about 10.20 am, did not

enter the site and left as Redgrave approached him.⁵⁴¹ On 25 June 1998 Floris told Redgrave he had joined all of his employees with the CFMEU and a site delegate had been appointed.⁵⁴²

192 On 4 August 1998 Floris told Redgrave he was a nervous wreck, was not coping very well and could no longer keep working on the site.⁵⁴³ Floris left the site with his labourers.⁵⁴⁴ Floris told Redgrave he was compelled to leave the site because he was concerned for his physical and emotional health and because of the union demands on his finances.⁵⁴⁵ Redgrave replaced Acton Bricklaying with Coastline Bricklaying.⁵⁴⁶

193 About that time Mr Chris Calderbank-Park, Director, of East Coast Bricklaying Commercial Pty Ltd approached Redgrave and told him Kelly had told him that the bricklaying job was Calderbank-Park's because Calderbank-Park had a unionised team of bricklayers.⁵⁴⁷ Redgrave told Calderbank-Park that Coastline Bricklaying was doing the bricklaying.⁵⁴⁸

Conclusions

194 This case study illustrates the methodology adopted by a union organiser without any request from any employee, of:

- (a) arriving on site and demanding to speak with employees and contractors on site;
- (b) requiring all employees to join the union;
- (c) refusing to leave the site when requested to do so;
- (d) declaring the site a 'union site';
- (e) threatening to stop all deliveries to the site unless his requests were met;
- (f) threatening to black ban the site unless all workers on site joined the union;
- (g) closing the site;
- (h) effectively forcing the employer to join all its employees into the union in order to be able to resume work; and
- (i) applying such pressure to the subcontractor that it left the site.

Roitram Pty Ltd

195 Mr Donald Bruce Harris was a director of Roitram Pty Ltd (Roitram), a company in the business of demolition, road works and bulk excavations for the civil construction industry.⁵⁴⁹

196 In July 1999 Roitram tendered for and was awarded a contract with the RTA for the excavation of earth and rock at the Oak Flats interchange on the south coast of NSW.⁵⁵⁰

197 During January 2000 Primmer visited the Oak Flats site and 'suggested' that every person on that site had to join the CFMEU or industrial action would ensue.⁵⁵¹ Primmer told Harris that if all workers on site did not join the CFMEU, he would make Roitram suffer and cause trouble for the RTA.⁵⁵² Primmer said there would be industrial action which would stop work on site progressing.⁵⁵³ Primmer held a meeting with all of Roitram's employees at the end of which all employees had joined the CFMEU.⁵⁵⁴ To avoid further interference by Primmer, Harris also joined.⁵⁵⁵

- 198 In late January 2000 Primmer told Harris that Roitram had to sign a CFMEU EBA or he would ensure Roitram did not work in the Illawarra region and particularly on government projects.⁵⁵⁶ At that time Roitram was experiencing cash flow problems and making a CFMEU-endorsed EBA would have cost it an additional \$2000 a week which the company could not afford.⁵⁵⁷ Primmer told Harris that if he did not sign the CFMEU EBA there would be no more work for his company.⁵⁵⁸
- 199 While working on the Oak Flats site, Roitram fell behind in its Cbus contributions.⁵⁵⁹ Primmer closed the site and did not allow work to recommence until Roitram had brought the Cbus payments up to date.⁵⁶⁰
- 200 This case study illustrates:
- (a) the making of threats by a union organiser that unless all workers on a site joined the union there would be industrial action;
 - (b) the making of threats by a union organiser that unless a subcontractor signed a union-endorsed EBA, he would ensure the company would not work in the Illawarra region; and
 - (c) the intrusion, uninvited, of the union through its organiser into the relationship between an employer and its employees.

Sebastian Builders and Developers Pty Ltd

- 201 Mr Francois Sebastian is the Managing Director and Mr Radenko Maletic is a Construction Supervisor of Sebastian Builders and Developers Pty Ltd (Sebastian Builders).⁵⁶¹ Sebastian Builders were the builders on a site in Smith Street Wollongong and engaged Wideform Construction Pty Ltd (Wideform Construction), Waco Kwikform Pty Ltd (Waco Kwikform) and Onshore Block and Bricklaying Pty Ltd (Onshore Block and Bricklaying) as subcontractors on that site.⁵⁶²
- 202 On 17 August 2001 Primmer and Lane visited the Smith Street site and spoke to Maletic.⁵⁶³ Primmer asked Maletic why he was using 'Emanuel' as the excavator rather than 'Cleary Brothers', noting that Cleary Brothers had a union-endorsed EBA.⁵⁶⁴ Maletic told Primmer that Cleary Brothers would take twice as long and cost twice as much and Sebastian Builders had been using Emanuel for a number of years.⁵⁶⁵ Primmer said that by using Emanuel, the company was making things tough for itself.⁵⁶⁶ Primmer also objected to the concrete subcontractor, 'Baines Concrete'.⁵⁶⁷
- 203 On 14 November 2001 Primmer, Kelly and Lane of the CFMEU visited the Smith Street site and told Maletic that they had a safety concern.⁵⁶⁸ There were significant safety issues on site which were the subject of WorkCover NSW improvement notices issued between 15 November 2001 and January 2002. Kelly issued union safety rectification notices on this day. Maletic telephoned Sebastian who arrived on site and they had a meeting with the union representatives for most of that day.⁵⁶⁹ Although a variety of issues were discussed, the focus of the CFMEU representatives' demands was for Sebastian Builders and its subcontractors to make EBAs with the CFMEU.⁵⁷⁰ Sebastian was forthright in telling the union representatives he was not interested in making an EBA with the CFMEU.⁵⁷¹ Kelly later faxed Sebastian Builders an EBA.⁵⁷²

- 204 On 16 November 2001 Primmer visited the Smith Street site and told Maletic there were going to be problems on the site because the bricklaying subcontractor's employees or workers were not in the union, the company did not have an EBA, and the company had inadequate workers' compensation cover.⁵⁷³
- 205 On 26 November 2001 Lane, Primmer and Kelly visited the site and spoke to Sebastian and Maletic about Sebastian Builders making an EBA.⁵⁷⁴ Sebastian again told Primmer he was not interested in making an EBA and as Primmer was leaving, Primmer said that he could slow Sebastian Builders down in other ways.⁵⁷⁵
- 206 On 19 December 2001 Kelly and Lane visited the Smith Street, Wollongong site and conducted a safety inspection.⁵⁷⁶ Kelly told Maletic the materials hoist may need to be bolted to the concrete slab and issued Sebastian Builders with three safety rectification notices.⁵⁷⁷ When writing the safety rectification notices, Kelly told Maletic he had a problem with Sebastian Builders and in his eyes, the job was unsafe.⁵⁷⁸
- 207 Sebastian Builders had previously invited WorkCover NSW to inspect the site. Between the months of November 2001 and January 2002, WorkCover NSW had issued Sebastian Builders with 14 Improvement Notices, all of which Sebastian Builders attended to.⁵⁷⁹ There was no correspondence between the safety rectification notices issued by Kelly and the Improvement Notices issued by WorkCover NSW.⁵⁸⁰
- 208 After the site safety inspection, Kelly entered the lunch shed and started talking to the bricklayers about safety issues.⁵⁸¹ Kelly then approached Mr Jeff Lee, a director of Onshore Block and Bricklaying Pty Ltd, who was in the site shed at the time and asked him to set up a meeting to talk about union membership and the making of an EBA.⁵⁸² Lee and Kelly had an argument.⁵⁸³ Maletic told Lee to get his bricklayers together and ask them about union membership.⁵⁸⁴ The bricklayers then proceeded to walk out of the shed led by Kelly.⁵⁸⁵ While Kelly may have entered the site for a safety walk, he thereafter proceeded to address industrial issues, namely a union-endorsed EBA and union membership.
- 209 Outside the site shed Lee and Kelly had an argument and Lee grabbed Kelly by the throat.⁵⁸⁶ Maletic went over and tried to defuse the situation and walked away with Kelly. Kelly asked Lee for an apology and left the site at about 9.52 am.⁵⁸⁷ Lee was charged with assault, but no conviction was recorded.⁵⁸⁸ Maletic counselled Lee to ensure such an incident would not happen again.⁵⁸⁹ Lee continued to work on site that day.⁵⁹⁰ Before he left, Kelly said Lee asked him to address his workers about industrial issues.⁵⁹¹ Kelly then had a brief discussion with the workers about the benefits of union membership.⁵⁹²
- 210 Later that morning at about 11 am, Zaboyak arrived at the site and spoke to Sebastian and Maletic.⁵⁹³ Kelly had telephoned Zaboyak and told him that he had been assaulted on site by Lee.⁵⁹⁴ Zaboyak was irate and told Sebastian and Maletic that Kelly had been belted.⁵⁹⁵ Sebastian told Zaboyak to calm down and said Lee had not hit Kelly but had grabbed him around the throat.⁵⁹⁶
- 211 Zaboyak called the police and Sebastian told him that the police were his friends.⁵⁹⁷ Zaboyak told Sebastian and Maletic to expect industrial action, and that he was going to shut down and picket the site.⁵⁹⁸ During the conversation, Lane, Kelly and another union representative

arrived.⁵⁹⁹ The police arrived and took a number of statements.⁶⁰⁰ The threatened picket line did not eventuate.⁶⁰¹

- 212 Kelly told Wideform Construction workers to pack up and go home and they packed up but stayed in the lunch shed.⁶⁰² Zaboyak telephoned Wideform Construction and Waco Kwikform and told them there had been an assault on a union representative on site and to withdraw their workers from the site.⁶⁰³ WorkCover NSW arrived on site and conducted a safety inspection with Kelly and Maletic and issued Improvement Notices.⁶⁰⁴
- 213 On 20 December 2001 Mr Bruce Elliott, Managing Director of Baines Concrete, telephoned Maletic and told him Primmer had said Sebastian Builders' site was black-banned.⁶⁰⁵
- 214 On 8 January 2002 Mr Nick Paiva, the Managing Director of Wideform Construction Pty Ltd, told Maletic that Kelly had told him that Wideform Construction was to stay away from Sebastian Builders' sites because a picket line was to be enforced on 14 January 2002.⁶⁰⁶
- 215 The OEA investigated these matters and subsequently made an application to the NSW District Court for an interim injunction preventing the CFMEU from taking unlawful industrial action at the site.⁶⁰⁷ The CFMEU gave undertakings that it would not picket the site or take any industrial action to coerce Sebastian Builders or any of its subcontractors to make a union-endorsed EBA.⁶⁰⁸
- 216 As a result of the disruptions at the Smith Street site, Sebastian Builders lost approximately five days in production at a cost of approximately \$10 000.⁶⁰⁹

Conclusions

- 217 This case study illustrates:
- (a) the assumption by a union's organisers of an entitlement to question a head contractor regarding its selection of subcontractors;
 - (b) the objection by a union's organisers to the use of a subcontractor solely on the ground that the subcontractor did not have a union-endorsed EBA;
 - (c) the failure of employers to maintain proper safety standards in the workplace;
 - (d) assault on a building site; and
 - (e) the effectiveness of an independent body with appropriate power in preventing the imposition of pickets and industrial action.

General Conclusion

- 218 The great number of complaints from a large number of independent and unrelated people regarding the conduct, attitude, and pressure applied by both Kelly and Primmer illustrates that those CFMEU organisers embarked on a consistent and widespread campaign throughout the Illawarra region aimed at forcing employers to enter into union-endorsed EBAs and employees to join the CFMEU. The number and similarity of complaints makes their denials of the conduct alleged not believable. This conduct was not the result of requests from employees to either act in the way they did, or seek to arrange union-endorsed EBAs. It was a campaign mounted

by the union for its own purposes. It was not the act of a body acting as the agent for employees: rather it was an endeavour to thrust a third party into the relationship between employer and employee.

Persons involved

Name	Position/Title
Balding, Ben	Project Manager, Waller Constructions Pty Ltd.
Barlow, Greg	Project Manager, Bovis Lend Lease Pty Ltd.
Barton, Greg	Master Builders Association of New South Wales.
Becerra, Christian Jorge	Business Development Manager, Civil Management Group Pty Ltd.
Beddoe, Carl	Acting Water Manager, Shoalhaven City Council Operations Depot.
Bignell, Mark Alexander	Managing Director, A J Bignell Pty Ltd.
Bishop, (given name/s not known)	Site engineer, Bovis Lend Lease Pty Ltd.
Bitz, Peter John	Director, Bitz Excavations Pty Ltd.
Blanche, Trevor	Richard Crookes Constructions Pty Ltd.
Brown, Darren Harmer	Plant Operator, Lazer Excavations 2000 Pty Ltd.
Buckley, Grant	Employee, Jim Godfrey Earthmoving Pty Ltd.
Calderbank-Park, Chris	East Coast Bricklaying Commercial Pty Ltd.
Callaghan, Michael	Leading Hand, Civil Management Group Pty Ltd.
Clancy, Tim	Roads and Traffic Authority of NSW.
Colquhoun, Glen Allan	Development Manager at Shell Cove, Australand Holdings Ltd.
Cooper, Sean	Traditional Golf Links Constructions Pty Ltd.
Crookes, Jamie	Project Manager, Richard Crookes Pty Ltd.
Crookes, Richard	Principal, Richard Crookes Pty Ltd.
Crowther, Mark	Accountant for Mark Bignell.
Diamond, John	Project Manager, Incoll CGA, Shoalhaven Area Health project.
Divall, Andrew George	Director, Denrith Pty Ltd, trading as Divall's Earthmoving and Bulk Haulage.
Divall, John	Owner, Denrith Pty Ltd, trading as Divall's Earthmoving and Bulk Haulage.
Divall, Michael	Director, Denrith Pty Ltd, trading as Divall's Earthmoving and Bulk Haulage.
Elliot, Bruce	Managing Director, Baines Concrete.
Everson, Dave	Electrician at Shoalhaven City Council Water Operations Depot site.

Ferguson, Andrew James	Branch Secretary, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.
Finn, Bill	Industrial Relations Consultant for Civil Management Group Pty Ltd.
Floris (full name not provided)	Owner, Acton Bricklaying.
Foley, Doug	Concrete subcontractor.
Fox, Brian	Organiser, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.
Ganderton, Ian John	Director, Ganderton Earthmoving Pty Ltd.
Gibson, Russell	Operator, Bitz Excavations Pty Ltd.
Glen, Andrew	Construction Manager, Traditional Golf Links Construction.
Halbert, Tim	Site Foreman, BMD Constructions (NSW) Pty Ltd.
Hanrahan, Mick	Site Manager, Civil Management Group Pty Ltd.
Harris, Donald Bruce	Director, Roitram Pty Ltd.
Harrold, Con	Managing Director, M C Harrold Pty Ltd.
Helmerts, Kel	Site Superintendent (Senior Foreman), Abigroup Contractors Pty Ltd.
Hester, Owen	Managing Director, Traditional Golf Links Constructions.
Hughes, Tom	Office Manager, Coastwide Civil Pty Ltd.
Illot, John	Transfield Pty Ltd.
Jones, Peter Neale	Director, Neale Jones Civil Contracting Pty Ltd.
Josef, Daniel	Director, Civil Management Group Pty Ltd.
Kelly, David John	Organiser, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.
Kent, Tony Albury	Transport Allocation Manager, Denrith Pty Ltd, trading as Divall's Earthmoving and Bulk Haulage.
Lane, Michael Richard	Organiser, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.
Larkham, Russell James	Site Foreman, Civil Management Group Pty Ltd.
Lee, Jeff	Director, Onshore Block and Bricklaying Pty Ltd.

Liedtcke, Peter Kyle	Engineer, Walter Construction Group Ltd.
Little, Dennis	Labourer supplied by Online Labour Hire Pty Ltd.
Long, Craig Neil	Executive Director, Civil Contractors Federation, New South Wales Branch.
Lucas, Narelle Marie	Office Manager, Jim Godfrey Earthmoving Pty Ltd.
Lymbery, Russell	Site Foreman, A J Bignell Pty Ltd.
Malby (first name unknown)	AD & CL Malby Bricklaying Pty Ltd.
Malby, Cathy (wife of the above)	AD & CL Malby Bricklaying Pty Ltd.
Maletic, Radenko	Construction Supervisor, Sebastian Builders and Developers Pty Ltd.
Mark (surname unknown)	Traditional Golf Links Construction.
McAndrew, John	Shellharbour Council.
McCabe, Tony	Engineer, New South Wales Department of Public Works and Services.
McClelland, Peter	Branch President, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.
McCourt, Scott	Stocklands.
McDonald, Kim	Manager, Edwards Constructions (NSW) Pty Ltd.
Mensinga, John	Site Manager, Bitz Excavations Pty Ltd.
Mewburn, Mark	Project Manager, Bitz Excavations Pty Ltd.
Milligan, Roy	Inspector, WorkCover Authority of New South Wales.
Mogg, Norman Fletcher	Director, Finline Painting Pty Ltd and Online Labour Hire Pty Ltd.
Montagner, Paul	Organiser, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.
Otley, Gareth	Back hoe owner-operator.
Paiva, Nick	Managing Director, Wideform Construction Pty Ltd.
Parker, Sam	Employee, Jim Godfrey Earthmoving Pty Ltd.
Pepper, Ray	Principal Partner, Ray Pepper and Partners.
Primmer, Peter Robert	Organiser, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.

Redgrave, Raymond Donald	Director, Millray Developments Pty Ltd; former Director, Network Project Developments Pty Ltd.
Rogers, Gary William	Managing Director, Coastwide Civil Pty Ltd.
Schopp, Steven	Site Engineer, Roads and Traffic Authority, of NSW, Oaks Flat Interchange.
Sebastian, Francois Philipe	Managing Director, Sebastian Builders and Developers Pty Ltd.
Seidler, Brian	Executive Director, Master Builders Association of New South Wales Pty Ltd.
Slattery, Peter	Manager of Industrial Relations, Master Builders Association of New South Wales Pty Ltd.
Stephenson, Paul	Project Manager, Bitz Excavations Pty Ltd, Illawarra Retirement Trust site.
Stewart, Gene Eric	Managing Director, Affective Services Pty Ltd.
Sutton, Grant	Project Manager, Kilpatrick Green (United KG) Pty Ltd.
Thomas, Geoffrey Charles	Industrial Officer, Master Builders Association of New South Wales Pty Ltd.
Turnbull, Adrian John	Director, Foxrun Building Services Pty Ltd.
Vale, Hollis	Director of Employment Relations, Civil Contractors Federation, New South Wales Branch.
Van Vuuren, Dirk Christian	Production Supervisor, Blue Circle Southern Cement Ltd.
Wales, Sid John	Former Organiser, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.
Waugh, Stan	Former Employee, Bitz Excavations Pty Ltd.
Waugh, Susan	Financial Controller, Foxrun Building Services Pty Ltd.
Webb, Bob	Head Engineer, Roads and Traffic Authority of NSW.
Webb, Daniel	Project Manager, Nace Civil Engineering Pty Ltd
Weir, Brian	General Manager, Shellharbour Council.
White, Guy	Construction, Forestry, Mining and Energy Union Site Delegate, Bovis Lend Lease Pty Ltd, HMAS Albatross site.
Whitehouse, Craig	Office Manager, Foxrun Building Services Pty Ltd.
Williams, Kevin	New South Wales Department of Public Works and Services.
Young, Lisa	Roads and Traffic Authority of NSW.

Zaboyak, Peter Boden

Branch Assistant Secretary, Construction, Forestry, Mining and Energy Union, Construction and General Division, New South Wales Divisional Branch.

Notes to Wollongong and the Illawarra

- 1 Kelly, T9238/13–16, T9241/9.
- 2 Kelly, T9241/11–12.
- 3 Kelly, T9245/31–32.
- 4 Kelly, T9245/33–34.
- 5 Kelly, T9241/18–20; T9242/7–9.
- 6 Kelly, T9242/22–25.
- 7 Kelly, T9243/35–40.
- 8 Kelly, T9247/17–25.
- 9 Kelly, T9247/34–36.
- 10 Kelly, T9247/38–39.
- 11 Tender Bundle – CFMEU NSW Correspondence, exhibit 564, document 008.0903.0489.0010 at 0011; Kelly, T9249/42–44.
- 12 Tender Bundle of Document put to D. Kelly in examination, exhibit 723, document 031.0762.0920.0002 at 0003, 031.0762.0920.0006 at 0007, 031.0762.0920.0008, 031.0762.0920.0009 at 0010–0012; Kelly, T9250/41–43; Tender Bundle – MBA NSW Correspondence, exhibit 567, document 056.0214.0353.0035 and 096.0443.0822.0001.
- 13 Tender Bundle of Documents put to D. Kelly in examination, exhibit 723, document 031.0762.0920.0002 at 0003.
- 14 Kelly, T9251/35–38.
- 15 Kelly, T9252/30–39, T9253/1–2.
- 16 Kelly, T9251/22–23.
- 17 Kelly, T9253/4–5, 15–19.
- 18 Tender Bundle of Documents put to D. Kelly in examination, exhibit 723, document 031.0762.0920.0002 at 0003.
- 19 Kelly, T9253/44, T9254/9–12.
- 20 Tender Bundle – MBA NSW Correspondence, exhibit 567, document 056.0214.0353.0035.
- 21 Kelly, T9271/26–31.
- 22 Kelly, T9278/1–4.
- 23 Stewart Statutory Declaration, exhibit 663, paragraph 1, document 046.0766.0953.0001; Long Statutory Declaration, exhibit 569, paragraph 48, document 049.0373.0665.0169; Long, T7551/45.
- 24 Stewart Statutory Declaration, exhibit 663, paragraph 1, document 046.0766.0953.0001.
- 25 Stewart Statutory Declaration, exhibit 663, paragraphs 2–3, document 046.0766.0953.0001.
- 26 Stewart Statutory Declaration, exhibit 663, paragraph 8, document 046.0766.0953.0001.
- 27 Stewart Statutory Declaration, exhibit 663, paragraph 8, document 046.0766.0953.0001.
- 28 Stewart Statutory Declaration, exhibit 663, paragraph 9, document 046.0766.0953.0001.
- 29 Stewart Statutory Declaration, exhibit 663, paragraphs 10–11, document 046.0766.0953.0001.
- 30 Stewart Statutory Declaration, exhibit 663, paragraph 12, document 046.0766.0953.0001.
- 31 Stewart Statutory Declaration, exhibit 663, paragraph 12, document 046.0766.0953.0001.
- 32 Stewart Statutory Declaration, exhibit 663, paragraph 12, document 046.0766.0953.0001.
- 33 Stewart Statutory Declaration, exhibit 663, paragraph 12, document 046.0766.0953.0001.
- 34 Stewart Statutory Declaration, exhibit 663, paragraph 16, document 046.0766.0953.0001.
- 35 Stewart Statutory Declaration, exhibit 663, paragraph 14, document 046.0766.0953.0001.

- 36 Stewart Statutory Declaration, exhibit 663, paragraph 14, document 046.0766.0953.0001.
- 37 Stewart Statutory Declaration, exhibit 663, paragraph 2, document 046.0766.0953.0001.
- 38 Stewart Statutory Declaration, exhibit 663, paragraphs 5–6, document 046.0766.0953.0001.
- 39 Stewart Statutory Declaration, exhibit 663, paragraph 6, document 046.0766.0953.0001.
- 40 Stewart Statutory Declaration, exhibit 663, paragraph 6, document 046.0766.0953.0001.
- 41 Stewart Statutory Declaration, exhibit 663, paragraph 6, document 046.0766.0953.0001.
- 42 Stewart Statutory Declaration, exhibit 663, paragraph 6, document 046.0766.0953.0001.
- 43 Stewart Statutory Declaration, exhibit 663, paragraph 17, document 046.0766.0953.0001.
- 44 Stewart Statutory Declaration, exhibit 663, paragraph 17, document 046.0766.0953.0001.
- 45 Stewart Statutory Declaration, exhibit 663, paragraph 17, document 046.0766.0953.0001.
- 46 Primmer Statement, exhibit 724, paragraph 42, document 004.0322.0273.0001; Stewart Statutory Declaration, exhibit 663, paragraph 17, document 046.0766.0953.0001.
- 47 Stewart Statutory Declaration, exhibit 663, paragraph 17, document 046.0766.0953.0001.
- 48 Bignell Statutory Declaration, exhibit 662, paragraphs 1, 4, document 046.0766.0953.0052.
- 49 Bignell Statutory Declaration, exhibit 662, paragraphs 5, 7, document 046.0766.0953.0052.
- 50 Bignell Statutory Declaration, exhibit 662, paragraph 9, document 046.0766.0953.0052.
- 51 Bignell Statutory Declaration, exhibit 662, paragraph 9, document 046.0766.0953.0052.
- 52 Bignell Statutory Declaration, exhibit 662, paragraphs 11–12, document 046.0766.0953.0052.
- 53 Bignell Statutory Declaration, exhibit 662, paragraph 13, document 046.0766.0953.0052.
- 54 Bignell Statutory Declaration, exhibit 662, paragraph 13, document 046.0766.0953.0052; Bignell, T9692/23-45; cf Kelly Statement, exhibit 722, paragraph 96, document 003.0264.0113.0003. I reject the evidence of Kelly who I found to be unreliable, evasive and flippant.
- 55 Bignell Statutory Declaration, exhibit 662, paragraph 24, document 046.0766.0953.0052; Primmer Statement, exhibit 724, paragraph 43, document 004.0322.0273.0001.
- 56 Bignell Statutory Declaration, exhibit 662, paragraph 24, document 046.0766.0953.0052.
- 57 Bignell Statutory Declaration, exhibit 662, paragraph 25, document 046.0766.0953.0052; cf Primmer Statement, exhibit 724, paragraph 44, document 004.0322.0273.0001. There is considerable conflict between the evidence of Bignell and Primmer. I accept Bignell's evidence which is supported by detailed notes of events and conversations.
- 58 Bignell Statutory Declaration, exhibit 662, paragraph 25, document 046.0766.0953.0052; Bignell, T9686/34-9687/9; cf Primmer Statement, exhibit 724, paragraph 44, document 004.0322.0273.0001; Primmer, T9327/14–9328/6.
- 59 Bignell Statutory Declaration, exhibit 662, paragraph 25, document 046.0766.0953.0052; Bignell Statutory Declaration, exhibit 662, annexure MAB-2, document 046.0766.0953.0067; cf Primmer Statement, exhibit 724, paragraph 44, document 004.0322.0273.0001; Primmer, T9327/14–9328/6.
- 60 Bignell Statutory Declaration, exhibit 662, paragraph 26, document 046.0766.0953.0052; Bignell, T9688/11–14; cf Primmer Statement, exhibit 724, paragraph 45, document 004.0322.0273.0001; Primmer, T9328/26–9329/24.
- 61 Bignell Statutory Declaration, exhibit 662, paragraph 27, document 046.0766.0953.0052.
- 62 Bignell Statutory Declaration, exhibit 662, paragraph 28, document 046.0766.0953.0052; Bignell T9687/13–24, T9688/20–9689/5; cf Primmer Statement, exhibit 662, paragraph 47, document 004.0322.0273.0001; Primmer, T9329/26–9330/31.
- 63 Bignell Statutory Declaration, exhibit 662, paragraph 30, document 046.0766.0953.0052; cf Primmer, T9329/26–9330/31.
- 64 Bignell Statutory Declaration, exhibit 662, paragraph 31, document 046.0766.0953.0052.

- 65 Bignell Statutory Declaration, exhibit 662, paragraph 33, document 046.0766.0953.0052.
- 66 Bignell Statutory Declaration, exhibit 662, paragraph 33, document 046.0766.0953.0052.
- 67 Bignell Statutory Declaration, exhibit 662, paragraph 35, document 046.0766.0953.0052.
- 68 Bignell Statutory Declaration, exhibit 662, paragraph 36, document 046.0766.0953.0052.
- 69 Bignell Statutory Declaration, exhibit 662, paragraph 38, document 046.0766.0953.0052.
- 70 Bignell Statutory Declaration, exhibit 662, paragraph 38, document 046.0766.0953.0052.
- 71 Bignell Statutory Declaration, exhibit 662, paragraph 38, document 046.0766.0953.0052.
- 72 Bignell Statutory Declaration, exhibit 662, paragraph 40, document 046.0766.0953.0052.
- 73 Bignell Statutory Declaration, exhibit 662, paragraph 40, document 046.0766.0953.0052.
- 74 Bignell Statutory Declaration, exhibit 662, paragraph 42, document 046.0766.0953.0052.
- 75 Bignell Statutory Declaration, exhibit 662, paragraph 48, document 046.0766.0953.0052; Bignell Statutory Declaration, exhibit 662, annexure MAB-4, document 046.0766.0953.0076.
- 76 Bignell Statutory Declaration, exhibit 662, paragraph 50, document 046.0766.0953.0052.
- 77 Bignell Statutory Declaration, exhibit 662, paragraph 50, document 046.0766.0953.0052.
- 78 Bignell Statutory Declaration, exhibit 662, paragraph 51, document 046.0766.0953.0052; Mogg Statutory Declaration, exhibit 668, paragraph 48, document 038.0048.0096.0206.
- 79 Bignell Statutory Declaration, exhibit 662, paragraph 52, document 046.0766.0953.0052.
- 80 Bignell Statutory Declaration, exhibit 662, paragraph 52, document 046.0766.0953.0052.
- 81 Bignell Statutory Declaration, exhibit 662, paragraph 55, document 046.0766.0953.0052.
- 82 Bignell, Statutory Declaration, exhibit 662, paragraphs 56–57, document 046.0766.0953.0052; Bignell Statutory Declaration, exhibit 662, annexure MAB-5, document 046.0766.0953.0080.
- 83 Bignell Statutory Declaration, exhibit 662, paragraph 57, document 046.0766.0953.0052.
- 84 Bignell Statutory Declaration, exhibit 662, paragraphs 58–60, document 046.0766.0953.0052; Bignell Statutory Declaration, exhibit 662, annexure MAB-6, document 046.0766.0953.0083.
- 85 Bignell Statutory Declaration, exhibit 662, paragraph 60, document 046.0766.0953.0052; Bignell Statutory Declaration, exhibit 662, annexure MAB-8, document 046.0766.0953.0089–0091.
- 86 Bignell Statutory Declaration, exhibit 662, paragraph 61, document 046.0766.0953.0052; Bignell Statutory Declaration, exhibit 662, annexure MAB-8, document 046.0766.0953.0089–0091.
- 87 Bignell Statutory Declaration, exhibit 662, paragraph 61, document 046.0766.0953.0052.
- 88 Bignell Statutory Declaration, exhibit 662, paragraph 63, document 046.0766.0953.0052; cf Primmer Statement, exhibit 724, paragraph 64, document 004.0322.0273.0001.
- 89 Bignell Statutory Declaration, exhibit 662, paragraph 64, document 046.0766.0953.0052.
- 90 Bignell Statutory Declaration, exhibit 662, paragraph 66, document 046.0766.0953; Primmer Statement, exhibit 724, paragraph 66, document 004.0322.0273.0001.
- 91 Bignell Statutory Declaration, exhibit 662, paragraph 67, document 046.0766.0953.0052; Bignell Statutory Declaration, exhibit 662, annexure MAB-9, document 046.0766.0953.0093.
- 92 Bignell Statutory Declaration, exhibit 662, paragraphs 70–72, document 046.0766.0953.0052; Bignell Statutory Declaration, exhibit 662, annexure MAB-12, document 046.0766.0953.0104.
- 93 Bitz Statutory Declaration, exhibit 666, paragraphs 1–2, document 020.0522.0148.0001; Bitz, T8711/28–33.
- 94 Bitz Statutory Declaration, exhibit 666, paragraph 8, document 020.0522.0148.0001; Bitz Statutory Declaration, exhibit 666, annexure PJB-1, document 063.0726.0254.0368.
- 95 Bitz Statutory Declaration, exhibit 666, paragraph 9, document 020.0522.0148.0001.
- 96 Bitz Statutory Declaration, exhibit 666, paragraph 9, document 020.0522.0148.0001; Zaboyak Statement (no 1), exhibit 788, paragraphs 1, 5, document 036.0804.0388.0010; cf Zaboyak T10404/13–19.

- ⁹⁷ Bitz Statutory Declaration, exhibit 666, paragraph 10, document 020.0522.0148.0001.
- ⁹⁸ Bitz Statutory Declaration, exhibit 666, paragraph 10, document 020.0522.0148.0001.
- ⁹⁹ Bitz Statutory Declaration, exhibit 666, paragraph 12, document 020.0522.0148.0001.
- ¹⁰⁰ Bitz Statutory Declaration, exhibit 666, paragraph 13, document 020.0522.0148.0001; Bitz T9681/19–42.
- ¹⁰¹ Bitz Statutory Declaration, exhibit 666, paragraph 13, document 020.0522.0148.0001; Bitz Statutory Declaration, exhibit 666, annexure PJB-2, document 063.0726.0254.0369; cf Zaboyak, T10404/37–38; Zaboyak, Statement (no 1), exhibit 788, paragraph 6, document 036.0804.0388.0010. Bitz's evidence is accepted. It accords with the contemporaneous file note made by Mensinga, Bitz Excavations' site manager.
- ¹⁰² Bitz Statutory Declaration, exhibit 666, paragraph 15, document 020.0522.0148.0001.
- ¹⁰³ Bitz Statutory Declaration, exhibit 666, paragraph 15, document 020.0522.0148.0001.
- ¹⁰⁴ Bitz Statutory Declaration, exhibit 666, paragraph 16, document 020.0522.0148.0001; Bitz Statutory Declaration, exhibit 666, annexure PJB-4, document 063.0726.0254.0373. Montagner did not give evidence before the Commission.
- ¹⁰⁵ Bitz Statutory Declaration, exhibit 666, paragraph 16, document 020.0522.0148.0001; Bitz Statutory Declaration, exhibit 666, annexure PJB-4, document 063.0726.0254.0373.
- ¹⁰⁶ Bitz Statutory Declaration, exhibit 666, paragraph 17, document 020.0522.0148.0001; Bitz Statutory Declaration, exhibit 666, annexure PJB-4, document 063.0726.0254.0373.
- ¹⁰⁷ Bitz Statutory Declaration, exhibit 666, paragraph 17, document 020.0522.0148.0001; Bitz Statutory Declaration, annexure PJB-4, document 063.0726.0254.0373.
- ¹⁰⁸ Bitz Statutory Declaration, exhibit 666, paragraph 17, document 020.0522.0148.0001; Bitz Statutory Declaration, exhibit 666, annexure PJB-4, document 063.0726.0254.0373; cf Zaboyak T10406/36–41; Zaboyak Statement (no 1), exhibit 788, paragraph 8, document 036.0804.0388.0010. Bitz's evidence is preferred because it accords with the contemporaneous file note made by Stephenson.
- ¹⁰⁹ Bitz Statutory Declaration, exhibit 666, paragraph 18, document 020.0522.0148.0001.
- ¹¹⁰ Bitz Statutory Declaration, exhibit 666, paragraph 23, document 020.0522.0148.0001.
- ¹¹¹ Bitz Statutory Declaration, exhibit 666, paragraph 23, document 020.0522.0148.0001; Bitz Statutory Declaration, exhibit 666, annexure PJB-6, document 063.0726.0254.0376.
- ¹¹² Bitz Statutory Declaration, exhibit 666, paragraph 24, document 020.0522.0148.0001; Bitz Statutory Declaration, exhibit 666, annexure PJB-7, document 063.0726.0254.0377.
- ¹¹³ Bitz Statutory Declaration, exhibit 666, annexure PJB-8, document 063.0726.0254.0378.
- ¹¹⁴ Bitz Statutory Declaration, exhibit 666, paragraph 25, document 020.0522.0148.0001.
- ¹¹⁵ Bitz Statutory Declaration, exhibit 666, paragraph 25, document 020.0522.0148.0001.
- ¹¹⁶ Bitz Statutory Declaration, exhibit 666, paragraph 26, document 020.0522.0148.0001.
- ¹¹⁷ Bitz Statutory Declaration, exhibit 666, paragraph 26, document 020.0522.0148.0001; Bitz Statutory Declaration, exhibit 666, annexure PJB-8, document 063.0726.0254.0378.
- ¹¹⁸ Bitz Statutory Declaration, exhibit 666, paragraph 27, document 020.0522.0148.0001; Bitz Statutory Declaration, exhibit 666, annexure PJB-8, document 063.0726.0254.0378.
- ¹¹⁹ Bitz Statutory Declaration, exhibit 666, paragraph 28, document 020.0522.0148.0001; Bitz Statutory Declaration, exhibit 666, annexure PJB-9, document 063.0726.0254.0380.
- ¹²⁰ Bitz Statutory Declaration, exhibit 666, paragraph 29, document 020.0522.0148.0001; Primmer Statement, exhibit 724, paragraph 69, document 004.0322.0273.0001. Bitz said the reason was an outstanding wage claim. Primmer said it was because of non-compliance with the Code of Practice. The documents tend to support Bitz's account; they show that a wage claim had been made by Primmer at about the time Primmer called Schopp.
- ¹²¹ Bitz Statutory Declaration, exhibit 666, paragraph 29, document 020.0522.0148.0001.

- ¹²² Bitz Statutory Declaration, exhibit 666, paragraph 29, document 020.0522.0148.0001; Bitz Statutory Declaration, exhibit 666, annexure PJB-10, document 050.0140.0864.0001.
- ¹²³ Bitz Statutory Declaration, exhibit 666, paragraph 29, document 020.0522.0148.0001; Bitz Statutory Declaration, exhibit 666, annexure PJB-10, document 050.0140.0864.0001.
- ¹²⁴ Bitz Statutory Declaration, exhibit 666, paragraph 30, document 020.0522.0148.0001; cf Primmer Statement, exhibit 724, paragraph 70, document 004.0322.0273.0001. Primmer denied speaking to Gibson but admitted talking to the RTA in similar terms.
- ¹²⁵ Bitz Statutory Declaration, exhibit 666, paragraph 30, document 020.0522.0148.0001.
- ¹²⁶ Bitz Statutory Declaration, exhibit 666, paragraph 31, document 020.0522.0148.0001.
- ¹²⁷ Bitz Statutory Declaration, exhibit 666, paragraph 32, document 020.0522.0148.0001.
- ¹²⁸ Bitz Statutory Declaration, exhibit 666, paragraph 32, document 020.0522.0148.0001.
- ¹²⁹ Bitz Statutory Declaration, exhibit 666, paragraph 33, document 020.0522.0148.0001.
- ¹³⁰ Bitz Statutory Declaration, exhibit 666, paragraph 33, document 020.0522.0148.0001; Bitz Statutory Declaration, exhibit 666, annexure PJB-11, document 063.0726.0254.0396. The inspection was limited and not a full audit.
- ¹³¹ Bitz Statutory Declaration, exhibit 666, paragraph 33, document 020.0522.0148.0001.
- ¹³² Bitz Statutory Declaration, exhibit 666, paragraph 33, document 020.0522.0148.0001.
- ¹³³ Bitz Statutory Declaration, exhibit 666, paragraph 34, document 020.0522.0148.0001; Bitz Statutory Declaration, exhibit 666, annexure PJB-11, document 063.0726.0254.0381.
- ¹³⁴ Bitz Statutory Declaration, exhibit 666, annexure PJB-11, document 063.0726.0254.0397.
- ¹³⁵ Bitz Statutory Declaration, exhibit 666, paragraph 38, document 020.0522.0148.0001; Bitz Statutory Declaration, exhibit 666, annexure PJB-13, document 063.0726.0254.0405.
- ¹³⁶ Bitz Statutory Declaration, exhibit 666, paragraph 38, document 020.0522.0148.0001.
- ¹³⁷ Bitz, T8713/38–8714/7.
- ¹³⁸ Bitz Statutory Declaration, exhibit 666, paragraph 37, document 020.0522.0148.0001; Bitz, T8714/5–16.
- ¹³⁹ Josef Statutory Declaration, exhibit 590, paragraph 1, document 038.0281.0863.0134; Josef, T7869/17.
- ¹⁴⁰ Josef Statutory Declaration, exhibit 590, paragraph 2, document 038.0281.0863.0134.
- ¹⁴¹ Josef Statutory Declaration, exhibit 590, paragraph 4, document 038.0281.0863.0134; Josef, T7869/40.
- ¹⁴² Josef, T7869/42.
- ¹⁴³ Josef Statutory Declaration, exhibit 590, paragraph 4, document 038.0281.0863.0134.
- ¹⁴⁴ Josef, T7870/17.
- ¹⁴⁵ Josef Statutory Declaration, exhibit 590, paragraph 5, document 038.0281.0863.0134.
- ¹⁴⁶ Josef Statutory Declaration, exhibit 590, paragraph 5, document 038.0281.0863.0134.
- ¹⁴⁷ Josef Statutory Declaration, exhibit 590, paragraphs 16–20, document 038.0281.0863.0134.
- ¹⁴⁸ Josef Statutory Declaration, exhibit 590, paragraph 19, document 038.0281.0863.0134.
- ¹⁴⁹ Josef Statutory Declaration, exhibit 590, paragraph 19, document 038.0281.0863.0134.
- ¹⁵⁰ Brown, T7916/30–7917/14.
- ¹⁵¹ Josef Statutory Declaration, exhibit 590, paragraph 19, document 038.0281.0863.0134.
- ¹⁵² Brown, T7913/33–45.
- ¹⁵³ Glen, T7881/13–14.
- ¹⁵⁴ Josef, T7870/19–20.
- ¹⁵⁵ Colquhoun Statutory Declaration, exhibit 594, paragraph 4, document 014.0040.0947.0001; Colquhoun, T7928/20–28.

- ¹⁵⁶ Colquhoun Statutory Declaration, exhibit 594, paragraph 4, document 014.0040.0947.0001; Colquhoun, T7929/9–7930/26; Glen, T7882/13–21.
- ¹⁵⁷ Colquhoun, T7932/5–23.
- ¹⁵⁸ Colquhoun, T7932/22–26.
- ¹⁵⁹ Glen, T7881/29–33.
- ¹⁶⁰ Josef, T7870/39–40; Glen, T7883/31–39.
- ¹⁶¹ Colquhoun, T7931/22–27.
- ¹⁶² Brown, T7914/20–7915/25; Josef Statutory Declaration, exhibit 590, paragraph 6, document 038.0281.0863.0134; Josef, T7870/42–7871/2.
- ¹⁶³ Brown, T7914/45–7915/9.
- ¹⁶⁴ Josef Statutory Declaration, exhibit 590, paragraph 6, document 038.0281.0863.0134; Josef, T7870/42–7871/2.
- ¹⁶⁵ Josef Statutory Declaration, exhibit 590, paragraph 7, document 038.0281.0863.0134; Josef, T7870/42–7871/2.
- ¹⁶⁶ Brown, T7912/17–36.
- ¹⁶⁷ Brown, T7912/41–43.
- ¹⁶⁸ Brown, T7913/36.
- ¹⁶⁹ Brown, T7913/38–45.
- ¹⁷⁰ Brown, T7916/30–7917/13.
- ¹⁷¹ Brown, T79132–27.
- ¹⁷² Brown, T7917/15–24.
- ¹⁷³ Josef Statutory Declaration, exhibit 590, paragraph 6, document 038.0281.0863.0134; Josef, T7870/42–7871/3.
- ¹⁷⁴ Primmer, T9322/10–9323/8; cf Josef Statutory Declaration, exhibit 590, paragraph 8, document 038.0281.0863.0134; Josef, T7871/5–14. Josef gave evidence Primmer spoke to the four plant operators on site and not the foreman.
- ¹⁷⁵ Primmer Statement, exhibit 724, paragraph 28, document 004.0322.0273.0001; Primmer, T9322/10–9323/8; cf Josef Statutory Declaration, exhibit 590, paragraph 9, document 038.0281.0863.0134; Josef T7871/5–14. Josef said he was told Primmer told the workers they had to join the CFMEU if they wanted to work in the Shellharbour area.
- ¹⁷⁶ Josef, T9640/19; cf Primmer Statement, exhibit 724, paragraph 24, document 004.0322.0273.0001.
- ¹⁷⁷ Josef, T9640/21–39.
- ¹⁷⁸ Josef, T9640/21–39.
- ¹⁷⁹ Josef Statutory Declaration, exhibit 590, paragraph 10, document 038.0281.0863.0134; Josef, T7871/16–27.
- ¹⁸⁰ Josef Statutory Declaration, exhibit 590, paragraph 10, document 038.0281.0863.0134; Josef, T7871/16–27; Becerra Statutory Declaration, exhibit 591, paragraph 7, document 090.0552.0110.0001.
- ¹⁸¹ Josef Statutory Declaration, exhibit 590, paragraph 11, document 038.0281.0863.0134; Josef, T7871/16–28; cf Primmer Statement, exhibit 724, paragraph 107, document 004.0322.0273.0001.
- ¹⁸² Josef Statutory Declaration, exhibit 590, paragraph 12, document 038.0281.0863.0134; Josef, T7872/10–13; Primmer Statement, exhibit 724, paragraph 25, document 004.0322.0273.0001; Primmer, T9323/10–30; cf Primmer Statement, exhibit 724, paragraph 107, document 004.0322.0273.0001.
- ¹⁸³ Josef Statutory Declaration, exhibit 590, paragraph 12, document 038.0281.0863.0134; Josef, T7872/10–19; Primmer, T9323/10–30; cf Primmer Statement, exhibit 724, paragraphs 25, 107, document 004.0322.0273.0001.

- ¹⁸⁴ Josef Statutory Declaration, exhibit 590, paragraph 12, document 038.0281.0863.0134; Josef, T7872/20–23; T9640/41; T9641/2; cf Primmer Statement, exhibit 724, paragraphs 25, 107, document 004.0322.0273.0001; Primmer, T9323/32–9324/13.
- ¹⁸⁵ Josef Statutory Declaration, exhibit 590, paragraph 12, document 038.0281.0863.0134; Josef, T7872/32–35; cf Primmer Statement, exhibit 724, paragraph 25, document 004.0322.0273.0001; Primmer, T9324/15–18.
- ¹⁸⁶ Josef Statutory Declaration, exhibit 590, paragraph 13, document 038.0281.0863.0134; Josef, T7872/40–7873/1; Becerra Statutory Declaration, exhibit 591, paragraph 13, document 090.0552.0110.0001.
- ¹⁸⁷ Josef Statutory Declaration, exhibit 590, paragraph 13, document 038.0281.0863.0134; Josef, T7872/40–7873/1.
- ¹⁸⁸ Josef, T7872/4–7873/1.
- ¹⁸⁹ Becerra Statutory Declaration, exhibit 591, paragraph 14, document 090.0552.0110.0001.
- ¹⁹⁰ Becerra Statutory Declaration, exhibit 591, paragraph 14, document 090.0552.0110.0001.
- ¹⁹¹ Josef Statutory Declaration, exhibit 590, paragraph 14, document 038.0281.0863.0134; Josef, T7873/3–26.
- ¹⁹² Josef Statutory Declaration, exhibit 590, paragraph 14, document 038.0281.0863.0134; Josef, T7873/3–26.
- ¹⁹³ Josef Statutory Declaration, exhibit 590, paragraphs 14–15, document 038.0281.0863.0134; Josef, T7873/3–26.
- ¹⁹⁴ Larkham Statutory Declaration, exhibit 593, paragraph 4, document 095.0421.0436.0270; Larkham Statutory Declaration, exhibit 593, annexure R JL-1, 095.0421.0436.0376; Larkham, T7919/13–41; Becerra Statutory Declaration, exhibit 591, paragraph 20, document 090.0552.0110.0001; Primmer, T9318/16–25.
- ¹⁹⁵ Larkham Statutory Declaration, exhibit 593, paragraph 1, document 095.0421.0436.0270; Larkham, T7919/11, 13–41.
- ¹⁹⁶ Larkham Statutory Declaration, exhibit 593, paragraph 4, document 095.0421.0436.0270; Larkham Statutory Declaration, exhibit 593, annexure R JL-1, document 095.0421.0436.0276; Larkham, T7920/1–13.
- ¹⁹⁷ Larkham Statutory Declaration, exhibit 593, paragraph 4, document 095.0421.0436.0270; Larkham Statutory Declaration, exhibit 593, annexure R JL-1, document 095.0421.0436.0376; Larkham, T7920/1–13.
- ¹⁹⁸ Larkham Statutory Declaration, exhibit 593, paragraph 4, document 095.0421.0436.0270; Larkham Statutory Declaration, exhibit 593, annexure R JL-1, document 095.0421.0436.0276; Larkham, T7920/14–40.
- ¹⁹⁹ Larkham Statutory Declaration, exhibit 593, paragraph 4, document 095.0421.0436.0270; Larkham Statutory Declaration, exhibit 593, annexure R JL-1, document 095.0421.0436.0276; Larkham, T7920/14–40.
- ²⁰⁰ Larkham Statutory Declaration, exhibit 593, paragraph 5, document 095.0421.0436.0270; Larkham Statutory Declaration, exhibit 593, annexure R JL-1, document 095.0421.0436.0276; Larkham, T7920/14–40.
- ²⁰¹ Larkham Statutory Declaration, exhibit 593, paragraph 4, document 095.0421.0436; Larkham Statutory Declaration, exhibit 593, annexure R JL-1, document 095.0421.0436.0276; Larkham, T7920/14–40.
- ²⁰² Larkham Statutory Declaration, exhibit 593 paragraph 5, document 095.0421.0436.0270; Larkham Statutory Declaration, exhibit 593, annexure R JL-1, document 095.0421.0436.0276; Larkham, T7920/14–40.
- ²⁰³ Larkham Statutory Declaration, exhibit 593, paragraph 5, document 095.0421.0436.0270; Larkham Statutory Declaration, exhibit 593, annexure R JL-1, document 095.0421.0436.0276; Larkham, T7920/14–40.

- ²⁰⁴ Larkham Statutory Declaration, exhibit 593, paragraph 5, document 095.0421.0436.0270; Larkham Statutory Declaration, exhibit 593, annexure RJL-1, document 095.0421.0436.0276; Larkham, T7920/14–40, T7924/39, T7925/4.
- ²⁰⁵ Larkham, T7920/14–28.
- ²⁰⁶ Larkham Statutory Declaration, exhibit 593, paragraphs 7–8, document 095.0421.0436.0270; Larkham Statutory Declaration, exhibit 593, annexure RJL-1, document 095.0421.0436.0276; Larkham, T7921/13–14.
- ²⁰⁷ Larkham Statutory Declaration, exhibit 593, paragraphs 7–8, document 095.0421.0436.0270; Larkham Statutory Declaration, exhibit 593, annexure RJL-1, document 095.0421.0436.0276; Larkham, T7922/13–33.
- ²⁰⁸ Larkham Statutory Declaration, exhibit 593, paragraph 9, document 095.0421.0436.0270; Larkham Statutory Declaration, annexure RJL-1, document 095.0421.0436.0376; Larkham, T7922/13–33.
- ²⁰⁹ Larkham Statutory Declaration, exhibit 593, paragraph 10, document 095.0421.0436.0270; Larkham Statutory Declaration, exhibit 593, annexure RJL-1, document 095.0421.0436.0276; Larkham, T7922/35–43, T9393/16–17; Primmer, T9318/31–37.
- ²¹⁰ Larkham Statutory Declaration, exhibit 593, paragraph 12, document 095.0421.0436.0270; Larkham Statutory Declaration, exhibit 593, annexure RJL-1, document 095.0421.0436.0276.
- ²¹¹ Larkham, T7921/27–28, T7923/3–25.
- ²¹² Larkham Statutory Declaration, exhibit 593, paragraphs 6–8, document 095.0421.0436.0270; Larkham Statutory Declaration, exhibit 593, annexure RJL-1, document 095.0421.0436.0276; Larkham, T7920/44–7921/7.
- ²¹³ Larkham, T7921/24–25, T9393/27–30; cf Primmer Statement, exhibit 724, paragraph 16, document 004.0322.0273.0001. Primmer was an unimpressive witness. His denial in this instance is implausible having regard to the undisputed facts. Furthermore, a contemporaneous note of his visit states: 'He also enquired at which other sites were we working saying that he would shut them down also': Larkham Statutory Declaration, exhibit 593, annexure RJL-1, document 095.0421.0436.0276. Having regard to his denial in other case studies of material supported by documentary material, I do not accept him as a truthful witness.
- ²¹⁴ Larkham Statutory Declaration, exhibit 593, annexure RJL-1, document 095.0421.0436.0276
- ²¹⁵ Larkham Statutory Declaration, exhibit 593, paragraph 14, document 095.0421.0436.0270; Larkham Statutory Declaration, exhibit 593, annexure RJL-1, document 095.0421.0436.0276; cf Primmer Statement, exhibit 724, paragraph 21, document 004.0322.0273.0001.
- ²¹⁶ Larkham, T7923/25–26; Primmer T9318/31–37.
- ²¹⁷ Larkham Statutory Declaration, exhibit 593, paragraph 15, document 095.0421.0436.0270; Larkham Statutory Declaration, exhibit 593, annexure RJL-1, document 095.0421.0436.0276; Larkham, T7923/27–36; Primmer, T9318/35–9319/32. Primmer gave evidence he asked Larkham what other sites Civil Management Group was working on out of curiosity; cf Primmer Statement, exhibit 724, paragraph 20, document 004.0322.0273.0001.
- ²¹⁸ Larkham Statutory Declaration, exhibit 593, paragraph 15, document 095.0421.0436.0270; Larkham Statutory Declaration, exhibit 593, annexure RJL-1, document 095.0421.0436.0276; cf Primmer Statement, exhibit 724, paragraph 20, document 004.0322.0273.0001; Primmer, T9319/34–9320/18. Primmer agreed he told Larkham to ask his boss to bring his chequebook but said it was to pay WorkCover fines.
- ²¹⁹ Larkham Statutory Declaration, exhibit 593, paragraph 15, document 095.0421.0436.0270; Larkham Statutory Declaration, exhibit 593, annexure RJL-1, document 095.0421.0436.0276; Larkham, T7923/37–7924/4; cf Primmer Statement, exhibit 724, paragraph 20, document 004.0322.0273.0001; Larkham T9320/20–9321/17.
- ²²⁰ Larkham, T7925/30–34.
- ²²¹ Larkham, T7925/30–34.

- ²²² Larkham, T9321/19–31.
- ²²³ Glen, T7884/10–11; Josef Statutory Declaration, exhibit 590, paragraph 23, document 038.0281.0863.0134.
- ²²⁴ Glen, T7884/20–27; Josef Statutory Declaration, exhibit 590, paragraph 23, document 038.0281.0863.0134; cf Primmer Statement, exhibit 724, paragraph 31, document 004.0322.0273.0001.
- ²²⁵ Glen, T7884/30–33; Josef Statutory Declaration, exhibit 590, paragraph 23, document 038.0281.0863.0134.
- ²²⁶ Glen, T7884/34–45.
- ²²⁷ Glen, T7885/1–11.
- ²²⁸ Glen, T7885/1–11.
- ²²⁹ Glen, T7885/13–25.
- ²³⁰ Glen, T7885/13–25.
- ²³¹ Glen, T7885/13–25.
- ²³² Glen, T7885/27–45.
- ²³³ Colquhoun Statutory Declaration, exhibit 594, paragraph 5, document 014.0040.0947.0001; Colquhoun, T7932/36–43.
- ²³⁴ Colquhoun Statutory Declaration, exhibit 594, paragraph 5, document 014.0040.0947.0001; Colquhoun, T7932/36–7933/4.
- ²³⁵ Colquhoun Statutory Declaration, exhibit 594, paragraph 5, document 014.0040.0947.0001; Colquhoun, T7932/36–43.
- ²³⁶ Colquhoun Statutory Declaration, exhibit 594, paragraph 5, document 014.0040.0947.0001; Colquhoun, T7932/36–43.
- ²³⁷ Colquhoun Statutory Declaration, exhibit 594, paragraph 6, document 014.0040.0947.0001; Colquhoun Statutory Declaration, exhibit 594, annexure GAC1, document 014.0040.0947.0005; Colquhoun, T7933/25–33.
- ²³⁸ Colquhoun Statutory Declaration, exhibit 594, paragraph 7, document 014.0040.0947.0001.
- ²³⁹ Colquhoun Statutory Declaration, exhibit 594, paragraph 7, document 014.0040.0947.0001.
- ²⁴⁰ Colquhoun Statutory Declaration, exhibit 594, paragraph 7, document 014.0040.0947.0001; Colquhoun, T7934/1–39.
- ²⁴¹ Colquhoun Statutory Declaration, exhibit 594, paragraph 7, document 014.0040.0947.0001; Colquhoun T7934/1–39.
- ²⁴² Josef Statutory Declaration, exhibit 590, paragraph 25, document 038.0281.0863.0134; Becerra Statutory Declaration, exhibit 591, paragraph 28, document 090.0552.0110.0001; Colquhoun Statutory Declaration, exhibit 594, paragraphs 8–9, document 014.0040.0947.0001.
- ²⁴³ Josef Statutory Declaration, exhibit 590, paragraph 25, document 038.0281.0863.0134; Josef, T7875/22–44; Becerra Statutory Declaration, exhibit 591, paragraph 28, document 090.0552.0110.0001; Glen, T7887/14–26.
- ²⁴⁴ Colquhoun, T7934/40–45; Josef Statutory Declaration, exhibit 590, paragraph 25, document 038.0281.0863.0134; Josef, T7875/22–44; Becerra Statutory Declaration, exhibit 591, paragraph 29, document 090.0552.0110.0001; Glen, T7887/28–32.
- ²⁴⁵ Josef Statutory Declaration, exhibit 590, paragraph 25, document 038.0281.0863.0134; Josef, T7875/22–44; Becerra Statutory Declaration, exhibit 591, paragraph 29, document 090.0552.0110.0001; Glen, T7887/28–32.
- ²⁴⁶ Josef Statutory Declaration, exhibit 590, paragraph 26, document 038.0281.0863.0134; Josef Statutory Declaration, exhibit 590, annexure DRJ-4, document 038.0281.0863.0150; Josef, T7875/22–44; Becerra

- Statutory Declaration, exhibit 591, paragraph 30, document 090.0552.0110.0001; Colquhoun, T7935/1–16.
- 247 Josef, T7875/29–30; Becerra Statutory Declaration, exhibit 591, paragraph 29, document 090.0552.0110.0001; Glen, T7887/28–32.
- 248 Glen, T7888/4–29.
- 249 Josef, T7876/1–17; Becerra Statutory Declaration, exhibit 591, paragraphs 33–35, document 090.0552.0110.0001; Glen, T7888/31–45; Brown, T7913/16–31.
- 250 Josef, T7876/1–17.
- 251 Josef Statutory Declaration, exhibit 590, paragraph 27, document 038.0281.0863.0134; Glen, T7889/11–7890/1; Colquhoun Statutory Declaration, exhibit 594, paragraph 14, document 014.0040.0947.0001; Colquhoun, T7937/31–3938/1.
- 252 Josef Statutory Declaration, exhibit 590, paragraph 27, document 038.0281.0863.0134; Glen, T7889/11; T7890/1; Colquhoun Statutory Declaration, exhibit 594, paragraph 14, document 014.0040.0947.0001; Colquhoun, T7937/31–3938/1.
- 253 Glen, T7890/10–11.
- 254 Colquhoun, T7937/40–3938/15.
- 255 Colquhoun Statutory Declaration, exhibit 594, paragraph 14, document 014.0040.0947.0001; Colquhoun, T7938/17–40.
- 256 Glen, T7890/27; T7891/12; Colquhoun Statutory Declaration, exhibit 594, paragraph 14, document 014.0040.0947.0001; Colquhoun, T7938/17–40.
- 257 Glen, T7890/35–38; Colquhoun, T7938/17–40.
- 258 Glen, T7890/35–7891/15.
- 259 Glen, T7892/14–7893/22.
- 260 Glen, T7891/17–26, T7892/14–7893/22; Josef Statutory Declaration, exhibit 590, paragraph 28, document 038.0281.0863.0134; Josef, T7876/17–22.
- 261 Josef Statutory Declaration, exhibit 590, paragraph 28, document 038.0281.0863.0134; Josef, T7876/17–22; cf Glen, T7892/14–7893/6. Glen said he had general discussions about the project agreement, insurance and pyramid subcontracting but did not deny Josef's evidence that Glen would not tell Josef the anomalies.
- 262 Josef Statutory Declaration, exhibit 590, paragraph 29, document 038.0281.0863.0134; Glen, T7893/24–34.
- 263 Josef, Statutory Declaration, exhibit 590, paragraph 30, document 038.0281.0863.0134; Josef Statutory Declaration, exhibit 590, annexure DRJ-5, document 038.0281.0863.0175–0198; Glen, T7893/24–34.
- 264 Josef Statutory Declaration, exhibit 590, paragraph 31, document 038.0281.0863.0134; Josef, T7876/33–43.
- 265 Josef Statutory Declaration, exhibit 590, paragraph 31, document 038.0281.0863.0134; Josef, T7876/33–43.
- 266 Josef Statutory Declaration, exhibit 590, paragraph 32, document 038.0281.0863.0134; Josef, T7876/33–43.
- 267 Josef Statutory Declaration, exhibit 590, paragraph 33, document 038.0281.0863.0134.
- 268 Josef Statutory Declaration, exhibit 590, paragraph 34, document 038.0281.0863.0134; Josef Statutory Declaration, exhibit 590, annexure DRJ-6, document 038.0281.0863.0200.
- 269 Josef, T7877/1.
- 270 Josef Statutory Declaration, exhibit 590, paragraph 35, document 038.0281.0863.0134; Josef, T7877/3–10; Becerra Statutory Declaration, exhibit 591, paragraph 39, document 090.0552.0110.0001.

- ²⁷¹ Josef Statutory Declaration, exhibit 590, paragraph 36, document 038.0281.0863.0134; Josef, T7877/13–18; Becerra Statutory Declaration, exhibit 591, paragraph 39, document 090.0552.0110.0001; Josef, T9641/6–31; cf Primmer Statement, exhibit 724, paragraph 31, document 004.0322.0273.0001. Primmer admitted suggesting workers be stood down but said they were to be stood down for legitimate reasons.
- ²⁷² Josef Statutory Declaration, exhibit 590, paragraph 38, document 038.0281.0863.0134; Josef, T7877/30–41.
- ²⁷³ Josef, T7877/30–41.
- ²⁷⁴ Becerra Statutory Declaration, exhibit 591, paragraph 31, document 090.0552.0110.0001.
- ²⁷⁵ Becerra Statutory Declaration, exhibit 591, paragraph 31, document 090.0552.0110.0001.
- ²⁷⁶ Rogers Statutory Declaration, exhibit 671, paragraphs 1–2, document 038.0048.0096.0082; Rogers, T8741/5–9.
- ²⁷⁷ Rogers Statutory Declaration, exhibit 671, paragraphs 4–5, document 038.0048.0096.0082.
- ²⁷⁸ Rogers Statutory Declaration, exhibit 671, paragraph 7, document 038.0048.0096.0082.
- ²⁷⁹ Rogers Statutory Declaration, exhibit 671, paragraphs 5–7, document 038.0048.0096.0082.
- ²⁸⁰ Rogers Statutory Declaration, exhibit 671, paragraphs 6, 8, document 038.0048.0096.0082.
- ²⁸¹ Rogers Statutory Declaration, exhibit 671, paragraph 10, document 038.0048.0096.0082; cf Zaboyak, Statement (no 1), exhibit 788, paragraph 13, document 036.0804.0388.0009.
- ²⁸² Rogers Statutory Declaration, exhibit 671, paragraph 13, document 038.0048.0096.0082.
- ²⁸³ Rogers Statutory Declaration, exhibit 671, paragraph 14, document 038.0048.0096.0082; Primmer Statement, exhibit 724, paragraph 96, document 004.0322.0273.0001.
- ²⁸⁴ Rogers Statutory Declaration, exhibit 671, paragraph 15, document 038.0048.0096.0082; Primmer Statement, exhibit 724, paragraph 97, document 004.0322.0273.0001.
- ²⁸⁵ Rogers Statutory Declaration, exhibit 671, paragraph 16, document 038.0048.0096.0082.
- ²⁸⁶ Rogers Statutory Declaration, exhibit 671, paragraph 17, document 038.0048.0096.0082.
- ²⁸⁷ Rogers Statutory Declaration, exhibit 671, paragraphs 18–19, document 038.0048.0096.0082.
- ²⁸⁸ Rogers Statutory Declaration, exhibit 671, paragraph 22, document 038.0048.0096.0082; Rogers, T8741/27–28.
- ²⁸⁹ Rogers Statutory Declaration, exhibit 671, paragraph 22, document 038.0048.0096.0082; Rogers Statutory Declaration, exhibit 671, annexure GWR-3, document 038.0048.0096.0133.
- ²⁹⁰ Rogers, T8741/39–42.
- ²⁹¹ Rogers, T8741/44–45.
- ²⁹² Rogers Statutory Declaration, exhibit 671, paragraph 25, document 038.0048.0096.0082.
- ²⁹³ Rogers Statutory Declaration, exhibit 671, paragraph 26, document 038.0048.0096.0082; Rogers, T9418/19–20; cf Primmer Statement, exhibit 724, paragraph 103, document 004.0322.0273.0001; Primmer, T9343/16, T9344/7.
- ²⁹⁴ Rogers Statutory Declaration, exhibit 671, paragraph 26, document 038.0048.0096.0082; cf Primmer Statement, exhibit 724, paragraph 103, document 004.0322.0273.0001; Primmer, T9344/22–9344/32.
- ²⁹⁵ Rogers Statutory Declaration, exhibit 671, paragraph 26, document 038.0048.0096.0082.
- ²⁹⁶ Rogers Statutory Declaration, exhibit 671, paragraphs 28–29, document 038.0048.0096.0082; Rogers, T8743/36–45, T9418/36–38; Primmer T9345/7–24.
- ²⁹⁷ Rogers Statutory Declaration, exhibit 671, paragraph 27, document 038.0048.0096.0082; Rogers Statutory Declaration, exhibit 671, annexure GWR-4, document 038.0048.0096.0153; Primmer T9345/29–9346/17.
- ²⁹⁸ See Head Contractors Case Study.
- ²⁹⁹ Rogers Statutory Declaration, exhibit 671, paragraph 22, document 038.0048.0096.0082; Rogers Statutory Declaration, exhibit 671, annexure GWR-1, document 038.0048.0096.0094; Rogers, T8742/6.

- 300 Rogers, T8743/1–2.
- 301 Rogers, T8742/14–25. The analysis was undertaken by Dr Collins, Counsel Assisting.
- 302 Rogers, T8743/33–34.
- 303 Rogers, T8743/7–8; Liedtke Statement, exhibit 1714, paragraph 5, document 056.0421.0752.0001.
- 304 Rogers, T8743/18–20; Liedtke Statement, exhibit 1714, paragraph 5, document 056.0421.0752.0001.
- 305 Rogers, T8743/20–21.
- 306 Rogers, T8743/21–23.
- 307 Rogers, T8743/22–23; Liedtke Statement, exhibit 1714, paragraph 7, document 056.0421.0752.0001.
- 308 Rogers, T8743/24.
- 309 Rogers, T8743/24–26.
- 310 Divall Statutory Declaration, exhibit 633, paragraph 1, document 086.0771.0516.0177.
- 311 Kent Statutory Declaration, exhibit 632, paragraph 3, document 067.0244.0798.0163.
- 312 Divall Statutory Declaration, exhibit 633, paragraphs 1, 3, document 086.0771.0516.0177; Divall Statutory Declaration, exhibit 633, annexure AGD1, document 086.0771.0516.0185.
- 313 Divall Statutory Declaration, exhibit 633, paragraph 35, document 086.0771.0516.0177.
- 314 Kent Statutory Declaration, exhibit 632, paragraph 35, document 067.0244.0798.0163.
- 315 Divall Statutory Declaration, exhibit 633, paragraph 32, document 086.0771.0516.0177; Kent, Statutory Declaration, exhibit 632, paragraph 4, document 067.0244.0798.0163; Primmer Statement, exhibit 724, paragraph 1, document 004.0322.0273.0001; Primmer, T9307/7–21.
- 316 Kent Statutory Declaration, exhibit 632, paragraphs 4–5, document 067.0244.0798.0163.
- 317 Divall Statutory Declaration, exhibit 633, paragraph 32, document 086.0771.0516.0177; Kent Statutory Declaration, exhibit 632, paragraphs 7–9, document 067.0244.0798.0163; Primmer Statement, exhibit 724, paragraph 1, document 004.0322.0273.0001.
- 318 Divall Statutory Declaration, exhibit 633, paragraphs 7–8, document 086.0771.0516.0177; Kent Statutory Declaration, exhibit 632, paragraphs 7, 8, 10, document 067.0244.0798.0163; Kent, T8505/33–35, 40-41; Primmer Statement, exhibit 724, paragraph 1, document 004.0322.0273.0001; cf Primmer, T9307/30–34, T9310/8–33.
- 319 Kent Statutory Declaration, exhibit 632, paragraphs 10–13, document 067.0244.0798.0163; Primmer Statement, exhibit 724, paragraph 1, document 004.0322.0273.0001; Primmer, T9309/11–16.
- 320 Divall Statutory Declaration, exhibit 633, paragraph 33, document 086.0771.0516.0177; cf Primmer Statement, exhibit 724, paragraph 9, document 004.0322.0273.0001.
- 321 Divall Statutory Declaration, exhibit 633, paragraphs 33–34, document 086.0771.0516.0177; Kent, T8508/4–8.
- 322 Divall Statutory Declaration, exhibit 633, paragraphs 33–34, document 086.0771.0516.0177; Divall, T8508/4–8.
- 323 Divall Statutory Declaration, exhibit 633, paragraph 4, document 086.0771.0516.0177.
- 324 Primmer Statement, exhibit 724, paragraph 4, document 004.0322.073.0001; cf Kent Statutory Declaration, exhibit 632, paragraph 8, document 067.0244.0798.0163; Divall, T9354/34–9355/8.
- 325 Divall Statutory Declaration, exhibit 633, paragraph 8, document 086.0771.0516.0177.
- 326 Divall Statutory Declaration, exhibit 633, paragraph 9, document 086.0771.0516.0177.
- 327 Divall Statutory Declaration, exhibit 633, paragraph 12, document 086.0771.0516.0177; Van Vuuren Statutory Declaration, exhibit 683, paragraph 37, document 095.0421.0436.0277; Primmer, T9315/24–27, T9316/32–37.
- 328 Divall Statutory Declaration, exhibit 633, paragraph 11, document 086.0771.0516.0177; Van Vuuren Statutory Declaration, exhibit 683, paragraph 32, document 095.0421.0436.0277.

- 329 Divall Statutory Declaration, exhibit 633, paragraph 12, document 086.0771.0516.0177; cf Van Vuuren Statutory Declaration, exhibit 683, paragraphs 35–36, document 095.0421.0436.0277. Van Vuuren said Cleary’s was the successful tenderer because it submitted the lowest price but he had earlier accepted that Blue Circle was intent on avoiding industrial action on site.
- 330 Divall Statutory Declaration, exhibit 633, paragraphs 13–15, document 086.0771.0516.0177.
- 331 Divall Statutory Declaration, exhibit 633, paragraph 15, document 086.0771.0516.0177.
- 332 Divall Statutory Declaration, exhibit 633, paragraph 15, document.086.0771.0516.0177.
- 333 Divall Statutory Declaration, exhibit 633, paragraphs 16–19, document 086.0771.0516.0177.
- 334 Divall Statutory Declaration, exhibit 633, paragraph 20, document 086.0771.0516.0177.
- 335 Divall Statutory Declaration, exhibit 633, paragraphs 21–22, document 086.0771.0516.0177.
- 336 Divall Statutory Declaration, exhibit 633, paragraph 23, document 086.0771.0516.0177.
- 337 Divall Statutory Declaration, exhibit 633, paragraph 23, document 086.0771.0516.0177.
- 338 Helmers Statutory Declaration, exhibit 1566, paragraphs 8–13, document 096.0396.0612.0001. Helmers did not give oral evidence before the Commission.
- 339 Divall Statutory Declaration, exhibit 633, paragraph 29, document 086.0771.0516.0177.
- 340 Divall Statutory Declaration, exhibit 633, paragraph 30, document 086.0771.0516.0177.
- 341 Helmers, Statutory Declaration, exhibit 1566, paragraphs 19–20, document 096.0396.0612.0001. Helmers did not give oral evidence before the Commission.
- 342 Divall Statutory Declaration, exhibit 633, paragraph 36, document 086.0771.0516.0177.
- 343 Mogg Statutory Declaration, exhibit 668, paragraphs 2, 3, 5, document 038.0048.0096.0206.
- 344 Mogg Statutory Declaration, exhibit 668, paragraph 9, document 038.0048.0096.0206; Mogg, T8723/14.
- 345 Mogg, T8723/21–23; Kelly Statement, exhibit 722, paragraph 74, document 003.0264.0113.0003; Kelly Statement, exhibit 722, annexure DK30, document 003.0264.0113.0172.
- 346 Mogg Statutory Declaration, exhibit 668, paragraph 11, document 038.0048.0096.0206; Mogg, T8723/24–32; Kelly Statement, exhibit 722, paragraph 76, document 003.0264.0113.0003.
- 347 Mogg Statutory Declaration, exhibit 668, paragraph 11, document 038.0048.0096.0206; cf Kelly Statement, exhibit 722, paragraph 76, document 003.0264.0113.0003.
- 348 Mogg, T8724/7–9; cf Kelly Statement, exhibit 722, paragraph 76, document 003.0264.0113.0003.
- 349 Mogg Statutory Declaration, exhibit 668, paragraph 11, document 038.0048.0096.0206; Mogg, T8724/7, T9698/25–9699/16; cf Kelly Statement, exhibit 722, paragraph 76, document 003.0264.0113.0003.
- 350 Mogg Statutory Declaration, exhibit 668, paragraph 12, document 038.0048.0096.0206; Mogg, T8724/25–29; cf Kelly Statement, exhibit 722, paragraph 78, document 003.0264.0113.0003.
- 351 Mogg, T9697/18, T9698/23.
- 352 Mogg Statutory Declaration, exhibit 668, paragraphs 5, 13, document 038.0048.0096.0206; Mogg, T8724/4–10; cf Kelly Statement, exhibit 722, paragraph 78, document 003.0264.0113.0003.
- 353 Mogg Statutory Declaration, exhibit 668, paragraphs 16–17, document 038.0048.0096.0206.
- 354 Mogg Statutory Declaration, exhibit 668, paragraph 18, document 038.0048.0096.0206; Mogg, T8724/37–42.
- 355 Mogg Statutory Declaration, exhibit 668, paragraph 18, document 038.0048.0096.0206; Mogg, T8724/44–45; T9700/21–27. The inference is that the employees on the Milton Treatment Works project were new employees or employees whose union memberships had lapsed.
- 356 Mogg Statutory Declaration, exhibit 668, paragraph 19, document 038.0048.0096.0206; Mogg, T8725/13–15.

- 357 Mogg Statutory Declaration, exhibit 668, paragraph 20, document 038.0048.0096.0206; Mogg, T8725/17–18; T9701/11–34. There is no inconsistency between Mogg's evidence and the fact that in August 1998 Kelly sought a wage book inspection.
- 358 Mogg Statutory Declaration, exhibit 668, paragraph 22, document 038.0048.0096.0206; Mogg, T8725/24–29.
- 359 Mogg Statutory Declaration, exhibit 668, paragraph 22, document 038.0048.0096.0206; Mogg, T8725/24–29.
- 360 Mogg Statutory Declaration, exhibit 668, paragraph 23, document 038.0048.0096.0206.
- 361 Mogg Statutory Declaration, exhibit 668, paragraphs 23–24, document 038.0048.0096.0206; Mogg, T8725/34–40, T9700/29, T9701/6.
- 362 Mogg Statutory Declaration, exhibit 668, paragraph 25, document 038.0048.0096.0206; Mogg, T8726/1–2.
- 363 Mogg Statutory Declaration, exhibit 668, paragraphs 26–27, document 038.0048.0096.0206; T8726/4–5.
- 364 Mogg Statutory Declaration, exhibit 668, paragraph 27, document 038.0048.0096.0206; Mogg, T8726/12–14.
- 365 Mogg Statutory Declaration, exhibit 668, paragraph 27, document 038.0048.0096.0206; Mogg, T8726/8–10.
- 366 Mogg Statutory Declaration, exhibit 668, paragraph 28, document 038.0048.0096.0206.
- 367 Mogg, T8726/28–29.
- 368 Mogg Statutory Declaration, exhibit 668, paragraphs 30, 33, document 038.0048.0096.0206; Mogg, T8727/1–13.
- 369 Mogg Statutory Declaration, exhibit 668, paragraph 33, document 038.0048.0096.0206; Mogg, T8727/17–20.
- 370 Mogg Statutory Declaration, exhibit 668, paragraph 34, document 038.0048.0096.0206; Mogg, T8727/22–31.
- 371 Mogg Statutory Declaration, exhibit 668, paragraph 35, document 038.0048.0096.0206; Mogg, T8727/38–40.
- 372 Mogg Statutory Declaration, exhibit 668, paragraphs 36–37, document 038.0048.0096.0206; Mogg, T8727/42–43, T8728/1–7.
- 373 Mogg Statutory Declaration, exhibit 668, paragraph 37, document 038.0048.0096.0206; Mogg, T8728/15–16.
- 374 Mogg Statutory Declaration, exhibit 668, paragraph 39, document 038.0048.0096.0206; Mogg, T9695/10–40.
- 375 Mogg Statutory Declaration, exhibit 668, paragraph 38, document 038.0048.0096.0206.
- 376 Primmer Statement, exhibit 724, paragraph 85, document 004.0322.0273.0001; Primmer, T9337/37, T9337/11.
- 377 Mogg Statutory Declaration, exhibit 668, paragraph 40, document 038.0048.0096.0206; Mogg, T9695/42–9696/8; cf Primmer Statement, exhibit 724, paragraph 86, document 004.0322.0273.0001; Primmer, T9337/12–19. Primmer said he would not and could not stop the site. I reject that evidence.
- 378 Mogg, T8729/1–9. White was not called.
- 379 Mogg Statutory Declaration, exhibit 668, paragraphs 42–43, document 038.0048.0096.0206; Mogg, T8729/20–30.
- 380 Mogg Statutory Declaration, exhibit 668, paragraph 44, document 038.0048.0096.0206.
- 381 Mogg Statutory Declaration, exhibit 668, paragraph 45, document 038.0048.0096.0206; Mogg, T9696/10–27, T9337/30–9338/31.

- 382 Mogg Statutory Declaration, exhibit 668, paragraph 46, document 038.0048.0096.0206; Mogg Statutory Declaration, exhibit 668, annexure NFM-1, document 038.0048.0096.0217.
- 383 Mogg Statutory Declaration, exhibit 668, paragraph 47, document 038.0048.0096.0206; cf Primmer Statement, exhibit 724, paragraph 89, document 004.0322.0273.0001; Primmer, T9338/33, T9339/5.
- 384 Turnbull Statutory Declaration, exhibit 691, paragraph 1, document 049.0138.0338.0069; Turnbull, T8975/13–20.
- 385 Turnbull Statutory Declaration, exhibit 691, paragraph 4, document 049.0138.0338.0069.
- 386 Turnbull, T8976/2–5.
- 387 Turnbull Statutory Declaration, exhibit 691, paragraph 9, document 049.0138.0338.0069; Turnbull, T8976/25–33; Turnbull Statutory Declaration, exhibit 691, annexure AJT-1, document 049.0138.0338.0099.
- 388 Turnbull Statutory Declaration, exhibit 691, paragraph 10, document 049.0138.0338.0069.
- 389 Turnbull Statutory Declaration, exhibit 691, paragraph 10, document 049.0138.0338.0069; Turnbull Statutory Declaration, exhibit 691, annexure AJT-1, document 049.0138.0338.0099; Turnbull, T8976/43, T8977/4.
- 390 Turnbull Statutory Declaration, exhibit 691, paragraph 10, document 049.0138.0338.0069; Turnbull Statutory Declaration, exhibit 691, annexure AJT-1, document 049.0138.0338.0099; Turnbull, T8977/9–20.
- 391 Turnbull Statutory Declaration, exhibit 691, paragraph 12, document 049.0138.0338.0069; Turnbull, T8977/38–43.
- 392 Turnbull Statutory Declaration, exhibit 691, paragraph 12, document 049.0138.0338.0069.
- 393 Turnbull Statutory Declaration, exhibit 691, paragraph 12, document 049.0138.0338.0069; Turnbull, T8978/1–6.
- 394 Turnbull Statutory Declaration, exhibit 691, paragraph 13, document 049.0138.0338.0069; Turnbull, T8978/8–16.
- 395 Turnbull Statutory Declaration, exhibit 691, paragraph 13, document 049.0138.0338.0069; Turnbull, T8978/13–16.
- 396 Turnbull Statutory Declaration, exhibit 691, paragraph 13, document 049.0138.0338.0069.
- 397 Turnbull Statutory Declaration, exhibit 691, paragraph 14, document 049.0138.0338.0069; Turnbull, T8978/28–34.
- 398 Turnbull Statutory Declaration, exhibit 691, paragraph 14, document 049.0138.0338.0069; Turnbull Statutory Declaration, exhibit 691, annexure AJT-1, document 049.0138.0338.0099.
- 399 Turnbull, T8978/35–8979/5; Turnbull Statutory Declaration, exhibit 691, annexure AJT-1, document 049.0138.0338.0099.
- 400 Turnbull Statutory Declaration, exhibit 691, paragraph 15, document 049.0138.0338.0069; Turnbull Statutory Declaration, exhibit 691, annexure AJT-1, document 049.0138.0338.0099; Turnbull, T8978/35, T8979/5.
- 401 Turnbull Statutory Declaration, exhibit 691, paragraph 15, document 049.0138.0338.0069.
- 402 Turnbull Statutory Declaration, exhibit 691, paragraph 7, document 049.0138.0338.0069.
- 403 Turnbull Statutory Declaration, exhibit 691, paragraph 16, document 049.0138.0338.0069.
- 404 Turnbull Statutory Declaration, exhibit 691, paragraph 16, document 049.0138.0338.0069.
- 405 Turnbull Statutory Declaration, exhibit 691, paragraph 17, document 049.0138.0338.0069.
- 406 Turnbull Statutory Declaration, exhibit 691, paragraph 17, document 049.0138.0338.0069.
- 407 Turnbull Statutory Declaration, exhibit 691, paragraph 17, document 049.0138.0338.0069.
- 408 Turnbull Statutory Declaration, exhibit 691, paragraph 17, document 049.0138.0338.0069; Turnbull Statutory Declaration, exhibit 691, annexure AJT-2, document 049.0138.0338.0102.
- 409 Turnbull Statutory Declaration, exhibit 691, paragraph 18, document 049.0138.0338.0069.

- 410 Turnbull Statutory Declaration, exhibit 691, paragraph 17, document 049.0138.0338.0069.
- 411 Turnbull Statutory Declaration, exhibit 691, paragraph 19, document 049.0138.0338.0069; Turnbull Statutory Declaration, exhibit 691, annexure AJT-2, document 049.0138.0338.0102.
- 412 Turnbull Statutory Declaration, exhibit 691, paragraph 62, document 049.0138.0338.0069.
- 413 Turnbull Statutory Declaration, exhibit 691, paragraph 68, document 049.0138.0338.0069; Turnbull, T8989/28–31.
- 414 Turnbull Statutory Declaration, exhibit 691, paragraph 69, document 049.0138.0338.0069.
- 415 Turnbull Statutory Declaration, exhibit 691, paragraph 70, document 049.0138.0338.0069.
- 416 Turnbull Statutory Declaration, exhibit 691, paragraph 70, document 049.0138.0338.0069.
- 417 Ganderton Statutory Declaration, exhibit 667, paragraphs 1–3, document 038.0048.0096.0258; Ganderton, T8715/10–15.
- 418 Ganderton Statutory Declaration, exhibit 667, paragraph 4, document 038.0048.0096.0258; Ganderton, T8715/38.
- 419 Ganderton Statutory Declaration, exhibit 667, paragraphs 7, 10–14, document 038.0048.0096.0258; Ganderton Statutory Declaration, exhibit 667, annexure IJG-1, document 038.0048.0096.0270; Ganderton Statutory Declaration, exhibit 667, annexure IJG-2, document 038.0048.0096.0288; Ganderton, T8715/40–44, T8716/1–4, T8717/8–40.
- 420 Ganderton Statutory Declaration, exhibit 667 paragraphs 7, 10–14, document 038.0048.0096.0258; Ganderton Statutory Declaration, exhibit 667, annexure IJG-1, document 038.0048.0096.0270; Ganderton Statutory Declaration, exhibit 667, annexure IJG-2, document 038.0048.0096.0288; Ganderton, T8715/40–44, T8716/1–4, T8717/8–40.
- 421 Ganderton Statutory Declaration, exhibit 667, paragraph 15, document 038.0048.0338.0258; Ganderton T8718/5–11.
- 422 Ganderton Statutory Declaration, exhibit 667, paragraph 15, document 038.0048.0096.0258.
- 423 Kelly Statement, exhibit 722, paragraph 102, document 003.0264.0113.0003.
- 424 Ganderton Statutory Declaration, exhibit 667, paragraph 16, document 038.0048.0096.0258.
- 425 Ganderton Statutory Declaration, exhibit 667, paragraph 16, document 038.0048.0096.0258; Ganderton, T8719/42–44.
- 426 Ganderton Statutory Declaration, exhibit 667, paragraph 16, document 038.0048.0096.0258; Ganderton, T8719/42–44.
- 427 Ganderton, Statutory Declaration, exhibit 667, paragraph 17, document 038.0048.0096.0258; Ganderton, T8717/27–28.
- 428 Ganderton Statutory Declaration, exhibit 667, paragraphs 18–19, document 038.0048.0096.0258.
- 429 Ganderton Statutory Declaration, exhibit 667, paragraph 20, document 038.0048.0096.0258.
- 430 Ganderton Statutory Declaration, exhibit 667, paragraph 20, document 038.0048.0096.0258.
- 431 Ganderton Statutory Declaration, exhibit 667, paragraph 21, document 038.0048.0096.0258; Ganderton, T8718/39–42: In a submission to the Commission, Bovis Lend Lease did not deny this incident but said it had been unable to locate Bishop who is no longer employed by the company. See also Walters Statutory Declaration, exhibit 1719, paragraph 8, document 056.0421.0752.0042.
- 432 Ganderton Statutory Declaration, exhibit 667, paragraph 21, document 038.0048.0096.0258; Ganderton, T8719/9–13.
- 433 Ganderton Statutory Declaration, exhibit 667, paragraph 25, document 038.0048.0096.0258. White was not called.
- 434 Ganderton Statutory Declaration, exhibit 667, paragraph 26, document 038.0048.0096.0258.
- 435 Ganderton Statutory Declaration, exhibit 667, paragraph 26, document 038.0048.0096.0258; cf Walters Statutory Declaration, exhibit 1719, paragraphs 14–15, document 056.0421.0752.0042: Walters had made

some investigation of the incident on Bovis Lend Lease's behalf, and believed that the reason Otley could not start on the site was a failure to complete necessary documentation. Walters also declared in paragraph 5 that he was aware of allegations that White was causing problems at the site over union membership issues.

- ⁴³⁶ Ganderton Statutory Declaration, exhibit 667, paragraphs 38–39, document 038.0048.0096.0259; Ganderton Statutory Declaration, exhibit 667, annexure IJG-6, document 038.0048.0096.0339; Ganderton, T8720/4–23.
- ⁴³⁷ Ganderton Statutory Declaration, exhibit 667, paragraph 23, document 038.0048.0096.0258.
- ⁴³⁸ Ganderton Statutory Declaration, exhibit 667, paragraph 23, document 038.0048.0096.0258; cf Lane Statement, exhibit 797 paragraphs 3–4, document 026.0037.0485.0013. Lane admitted a discussion of this nature took place but said that he encouraged Ganderton to consider an EBA for those reasons.
- ⁴³⁹ Ganderton Statutory Declaration, exhibit 667, paragraph 40, document 038.0048.0096.0258; Ganderton Statutory Declaration, exhibit 667, annexure IJG-7, document 038.0048.0096.0344; Ganderton, T8720/25–39.
- ⁴⁴⁰ Ganderton Statutory Declaration, exhibit 667, paragraph 41, document 038.0048.0096.0258; Ganderton Statutory Declaration, exhibit 667, annexure IJG-8, document 038.0048.0096.0348; Ganderton, T8721/5–12.
- ⁴⁴¹ Lane, T12663/6–8.
- ⁴⁴² Lane, T12663/7–8, 30–31. Lane said White denied the allegations
- ⁴⁴³ Ganderton Statutory Declaration, exhibit 667, paragraph 32, document 038.0048.0096.0258.
- ⁴⁴⁴ Ganderton Statutory Declaration, exhibit 667, paragraph 32, document 038.0048.0096.0258.
- ⁴⁴⁵ Ganderton Statutory Declaration, exhibit 667, paragraph 32, document 038.0048.0096.0258.
- ⁴⁴⁶ Ganderton Statutory Declaration, exhibit 667, paragraph 32, document 038.0048.0096.0258.
- ⁴⁴⁷ Lucas Statutory Declaration, exhibit 634, paragraphs 1–2, document 046.0766.0953.0108.
- ⁴⁴⁸ Lucas Statutory Declaration, exhibit 634, paragraphs 3–4, document 046.0766.0953.0108.
- ⁴⁴⁹ Lucas Statutory Declaration, exhibit 634, paragraphs 5–7, document 046.0766.0953.0108.
- ⁴⁵⁰ Lucas Statutory Declaration, exhibit 634, paragraph 5, document 046.0766.0953.0108.
- ⁴⁵¹ Lucas Statutory Declaration, exhibit 634, paragraphs 7–8, document 046.0766.0953.0108.
- ⁴⁵² Lucas Statutory Declaration, exhibit 634, paragraph 8, document 046.0766.0953.0108.
- ⁴⁵³ Lucas Statutory Declaration, exhibit 634, paragraph 10, document 046.0766.0953.0108.
- ⁴⁵⁴ Lucas Statutory Declaration, exhibit 634, paragraph 10, document 046.0766.0953.0108; Lucas, T9759/9–41; Kelly Statement, exhibit 722, paragraph 67, document 003.0264.0113.0003.
- ⁴⁵⁵ Lucas Statutory Declaration, exhibit 634, paragraph 10, document 046.0766.0953.0108.
- ⁴⁵⁶ Lucas Statutory Declaration, exhibit 634, paragraph 12, document 046.0766.0953.0108; Lucas, T9760/41–45.
- ⁴⁵⁷ Lucas Statutory Declaration, exhibit 634, paragraph 12, document 046.0766.0953.0108.
- ⁴⁵⁸ Lucas Statutory Declaration, exhibit 634, paragraph 13, document 046.0766.0953.0108; Lucas, T9760/33–36; cf Kelly Statement, exhibit 722, paragraph 69, document 003.0264.0113.0003.
- ⁴⁵⁹ Lucas Statutory Declaration, exhibit 634, paragraphs 14–19, document 046.0766.0953.0108; Lucas Statutory Declaration, exhibit 634, annexure NML5, document 046.0766.0953.0276; Lucas Statutory Declaration, exhibit 634, annexure NML6, document 046.0766.0953.0278; Lucas Statutory Declaration, exhibit 634, annexure NML7, document 046.0766.0953.0281; Lucas Statutory Declaration, exhibit 634, annexure NML8, document 046.0766.0953.0284.
- ⁴⁶⁰ Kelly Statutory Declaration, exhibit 722, annexure DK26 document 003.0264.0113.0166.
- ⁴⁶¹ Kelly Statutory Declaration, exhibit 722, annexure DK26, document 003.0264.0113.0166.
- ⁴⁶² Lucas Statutory Declaration, exhibit 634, paragraph 21, document 046.0766.0953.0108.

- 463 Lucas Statutory Declaration, exhibit 634, paragraph 21, document 046.0766.0953.0108.
- 464 Lucas Statutory Declaration, exhibit 634, paragraphs 24–26, document 046.0766.0953.0108; Lucas Statutory Declaration, exhibit 634, annexure NML10, document 018.0797.0991.0047.
- 465 Lucas Statutory Declaration, exhibit 634, paragraph 26, document 046.0766.0953.0108.
- 466 Lucas Statutory Declaration, exhibit 634, paragraph 26, document 046.0766.0953.0108; Kelly Statement, exhibit 722, paragraph 71, document 003.0264.0113.0003.
- 467 Lucas Statutory Declaration, exhibit 634, paragraph 26, document 046.0766.0953.0108; Lucas, T9761/14–45.
- 468 Lucas Statutory Declaration, exhibit 634, paragraph 28, document 046.0766.0953.0108; Kelly Statement, exhibit 722, paragraph 71, document 003.0264.0113.0003.
- 469 Lucas Statutory Declaration, exhibit 634, paragraph 26, document 046.0766.0953.0108; Lucas, T9762/ 3–11.
- 470 Lucas Statutory Declaration, exhibit 634, paragraph 29, document 046.0766.0953.0108.
- 471 Kelly Statement, exhibit 722, paragraph 71, document 003.0264.0113.0003; cf Lucas, T9762/16–34.
- 472 Lucas Statutory Declaration, exhibit 634, paragraph 31, document .046.0766.0953.0108.
- 473 Lucas Statutory Declaration, exhibit 634, paragraph 31, document 046.0766.0953.0108; Lucas Statutory Declaration, exhibit 634, annexure NML12, document 018.0797.0991.0062.
- 474 Lucas Statutory Declaration, exhibit 634, paragraph 31, document 046.0766.0953.0108; Lucas Statutory Declaration, exhibit 634, annexure NML12, document 018.0797.0991.0062.
- 475 Lucas Statutory Declaration, exhibit 634, paragraph 32, document 046.0766.0953.0108; Lucas Statutory Declaration, exhibit 634, annexure NML13, document 018.0797.0991.0068.
- 476 Lucas Statutory Declaration, exhibit 634, paragraph 35, document 046.0766.0953.0108; Lucas Statutory Declaration, exhibit 634, annexure NML16, document 018.0797.0991.0080.
- 477 Lucas Statutory Declaration, exhibit 634, paragraph 38, document 046.0766.0953.0108.
- 478 Lucas Statutory Declaration, exhibit 634, paragraphs 33, 34, 36–37, document 046.0766.0953.0108; Lucas Statutory Declaration, exhibit 634, annexure NML14, document 018.0797.0991.0073; Lucas Statutory Declaration, exhibit 634, annexure NML15, document 018.0797.0991.0077; Lucas Statutory Declaration, exhibit 634, annexure NML17, document 018.0797.0991.0086; Lucas Statutory Declaration, exhibit 634, annexure NML18, document 018.0797.0991.0088; Lucas Statutory Declaration, exhibit 634, annexure NML19, document 018.0797.0991.0095; Lucas Statutory Declaration, exhibit 634, annexure NML20, document 018.0797.0991.0097.
- 479 Lucas Statutory Declaration, exhibit 634, paragraph 41, document 046.0766.0953.0108.
- 480 Lucas Statutory Declaration, exhibit 634, paragraph 39, document 046.0766.0953.0108.
- 481 Lucas Statutory Declaration, exhibit 634, paragraph 40, document 046.0766.0953.0108; Lucas, T8509/34–41.
- 482 Lucas Statutory Declaration, exhibit 634, paragraph 41, document 046.0766.0953.0108.
- 483 Lucas Statutory Declaration, exhibit 634, paragraph 42, document 046.0766.0953.0108; Lucas Statutory Declaration, exhibit 634, annexure NML21, document 018.0797.0991.0104.
- 484 Lucas Statutory Declaration, exhibit 634, paragraphs 43–45, document 046.0766.0953.0108; Lucas Statutory Declaration, exhibit 634, annexure NML23, document 018.0797.0991.0110.
- 485 Lucas Statutory Declaration, exhibit 634, paragraph 54, document 046.0766.0953.0108; Lucas Statutory Declaration, exhibit 634, annexure NML26, document 018.0797.0991.0122.
- 486 Lucas Statutory Declaration, exhibit 634, paragraph 55, document 046.0766.0953.0108; Lucas Statutory Declaration, exhibit 634, annexure NML28, document 018.0797.0991.0139.
- 487 Lucas Statutory Declaration, exhibit 634, paragraphs 56–59, document 046.0766.0953.0108; Lucas Statutory Declaration, exhibit 634, annexure NML31, document 018.0797.0991.0148.

- 488 Lucas Statutory Declaration, exhibit 634, paragraph 61, document 046.0766.0953.0108.
- 489 Lucas Statutory Declaration, exhibit 634, paragraphs 62–63, document 046.0766.0953.0108.
- 490 Lucas Statutory Declaration, exhibit 634, paragraph 63, document 046.0766.0953.0108.
- 491 Lucas Statutory Declaration, exhibit 634, paragraph 65, document 046.0766.0953.0108.
- 492 Lucas Statutory Declaration, exhibit 634, paragraph 70, document 046.0766.0953.0108; Lucas, T8511/ 33–38.
- 493 Lucas Statutory Declaration, exhibit 634, paragraph 71, document 046.0766.0953.0108.
- 494 Lucas Statutory Declaration, exhibit 634, paragraph 71, document 046.0766.0953.0108.
- 495 Lucas Statutory Declaration, exhibit 634, paragraph 66, document 046.0766.0953.0108; cf Primmer Statement, exhibit 724, paragraph 84, document 004.0322.0273.0001.
- 496 Lucas Statutory Declaration, exhibit 634, paragraph 66, document 046.0766.0953.0108; Lucas, T8510/11–30; T9763/39–9764/18; cf Primmer Statement, exhibit 724, paragraph 84, document 004.0322.0273.0001; Primmer, T9335/33–9336/25.
- 497 Lucas Statutory Declaration, exhibit 634, paragraph 66, document 046.0766.0953.0108.
- 498 Jones Statutory Declaration, exhibit 631, paragraph 1, document 038.0048.0096.0156.
- 499 Jones Statutory Declaration, exhibit 631, paragraphs 2, 4, document 038.0048.0096.0156.
- 500 Jones Statutory Declaration, exhibit 631, paragraph 5, document 038.0048.0096.0156.
- 501 Jones Statutory Declaration, exhibit 631, paragraphs 5–6, document 038.0048.0096.0156; Kelly, T9289/16–17.
- 502 Jones Statutory Declaration, exhibit 631, paragraph 6, document 038.0048.0096.0156; Kelly, T9290/30–31, 40–41; cf Kelly Statement, exhibit 722, paragraph 28, document 003.0264.0113.0003; Kelly, T9291/ 2–8, T9289/39–41. Kelly gave evidence this figure was based on award calculations.
- 503 Kelly Statutory Declaration, exhibit 722, annexure DK11, document 003.0264.0113.0064.
- 504 Jones Statutory Declaration, exhibit 631, paragraph 6, document 038.0048.0096.0156; Kelly, T9291/18–21.
- 505 Jones Statutory Declaration, exhibit 631, paragraph 7, document 038.0048.0096.0156; Jones, T9392/10–43; Kelly, T9291/44–45; cf Kelly, T9292/6.
- 506 Kelly, T9291/45; Kelly Statement, exhibit 722, paragraph 28, document 003.0264.0113.0003.
- 507 Jones Statutory Declaration, exhibit 631, paragraph 7, document 038.0048.0096.0156; Kelly, T9292/15–19.
- 508 Jones Statutory Declaration, exhibit 631, paragraph 11, document 038.0048.0096.0156.
- 509 Jones Statutory Declaration, exhibit 631, paragraph 12, document 038.0048.0096.0156; Primmer, Statement, exhibit 724, paragraph 91, document 004.0322.0273.0001; Jones, T9399/20–25; Primmer T9340/ 6–36.
- 510 Jones Statutory Declaration, exhibit 631, paragraph 12, document 038.0048.0096.0156; cf Primmer Statement, exhibit 724, paragraph 91, document 004.0322.0273.0001; Primmer, T9340/38, T9341/13–9342/9. Primmer said he speaks to head contractors on a regular basis to advise them if subcontractors are 'legitimate' and complying with the law.
- 511 Jones, T9399/27–9400/8.
- 512 Jones Statutory Declaration, exhibit 631, paragraph 13, document 038.0048.0096.0156.
- 513 Jones Statutory Declaration, exhibit 631, paragraph 13, document 038.0048.0096.0156; Jones Statutory Declaration, exhibit 631, annexure PNJ1, document 038.0048.0096.0166.
- 514 Jones Statutory Declaration, exhibit 631, paragraph 13, document 038.0048.0096.0156.
- 515 Jones Statutory Declaration, exhibit 631, paragraph 15, document 038.0048.0096.0156.
- 516 Jones Statutory Declaration, exhibit 631, paragraph 16, document 038.0048.0096.0156.

- ⁵¹⁷ Jones Statutory Declaration, exhibit 631, paragraph 16, document 038.0048.0096.0156; Jones Statutory Declaration, exhibit 631, annexure PNJ2, document 038.0048.0096.0174.
- ⁵¹⁸ Jones Statutory Declaration, exhibit 631, paragraph 16, document 038.0048.0096.0156.
- ⁵¹⁹ Jones Statutory Declaration, exhibit 631, paragraph 18, document 038.0048.0096.0156; Jones Statutory Declaration, exhibit 631, annexure PNJ2, document 038.0048.0096.0174.
- ⁵²⁰ Jones Statutory Declaration, exhibit 631, paragraph 19, document 038.0048.0096.0156; Jones Statutory Declaration, exhibit 631, annexure PNJ3, document 038.0048.0096.0185.
- ⁵²¹ Jones Statutory Declaration, exhibit 631, paragraphs 19–20, document 038.0048.0096.0156.
- ⁵²² Jones Statutory Declaration, exhibit 631, paragraph 20, document 038.0048.0096.0156.
- ⁵²³ Jones Statutory Declaration, exhibit 631, paragraph 21, document 038.0048.0096.0156.
- ⁵²⁴ Jones Statutory Declaration, exhibit 631, paragraphs 20–21, document 038.0048.0096.0156.
- ⁵²⁵ Jones Statutory Declaration, exhibit 631, paragraph 21, document 038.0048.0096.0156.
- ⁵²⁶ Redgrave Statutory Declaration, exhibit 646, paragraph 7, document 049.0138.0338.0043; Redgrave, T8582/27–35.
- ⁵²⁷ Redgrave Statutory Declaration, exhibit 646, paragraph 10, document 049.0138.0338.0043; Redgrave, T8582/37–38.
- ⁵²⁸ Redgrave Statutory Declaration, exhibit 646, paragraph 11, document 049.0138.0338.0043; Redgrave, T8582/40–42.
- ⁵²⁹ Redgrave Statutory Declaration, exhibit 646, paragraph 11, document 049.0138.0338.0043; Redgrave, T8583/22–23.
- ⁵³⁰ Redgrave Statutory Declaration, exhibit 646, paragraph 11, document 049.0138.0338.0043; Redgrave, T8583/23–30.
- ⁵³¹ Redgrave Statutory Declaration, exhibit 646, paragraph 11, document 049.0138.0338.0043; Redgrave, T8583/23–30.
- ⁵³² Redgrave Statutory Declaration, exhibit 646, paragraph 12, document 049.0138.0338.0043; Redgrave, T8583/40–44; cf Kelly Statement, exhibit 722, paragraph 50, document 003.0264.0113.0003.
- ⁵³³ Redgrave Statutory Declaration, exhibit 646, paragraph 12, document 049.0138.0338.0043; Redgrave, T8584/4–7; cf Kelly Statement, exhibit 722, paragraph 50, document 003.0264.0113.0003.
- ⁵³⁴ Redgrave Statutory Declaration, exhibit 646, paragraph 12, document 049.0138.0338.0043; Redgrave, T8584/4–7; cf Kelly Statement, exhibit 722, paragraph 50, document 003.0264.0113.0003.
- ⁵³⁵ Redgrave Statutory Declaration, exhibit 646, paragraph 12, document 049.0138.0338.0043; Redgrave T8584/20–21.
- ⁵³⁶ Redgrave Statutory Declaration, exhibit 646, paragraph 13, document 049.0138.0338.0043; Redgrave, T8584/23–25.
- ⁵³⁷ Redgrave Statutory Declaration, exhibit 646, paragraph 13, document 049.0138.0338.0043; Redgrave, T8584/37–45, T9609/1–4, 19–22; cf Kelly Statement, exhibit 646, paragraph 51, document.003.0264.0113.0003.
- ⁵³⁸ Redgrave Statutory Declaration, exhibit 646, paragraph 13, document 049.0138.0338.0043; Redgrave Statutory Declaration, exhibit 646, annexure RDR-2, document 049.0138.0338.0053; Redgrave, T8585/1–2.
- ⁵³⁹ Redgrave Statutory Declaration, exhibit 646, paragraph 14, document 049.0138.0338.0043; Redgrave, T8585/7–9.
- ⁵⁴⁰ Redgrave Statutory Declaration, exhibit 646, paragraph 16, document 049.0138.0338.0043; Redgrave, T8585/15–17.
- ⁵⁴¹ Redgrave Statutory Declaration, exhibit 646, paragraph 16, document 049.0138.0338.0043.

- ⁵⁴² Redgrave Statutory Declaration, exhibit 646, paragraph 19, document 049.0138.0338.0043; Redgrave Statutory Declaration, exhibit 646, annexure RDR-3, document 049.0138.0338.0055; Redgrave, T8587/9–15.
- ⁵⁴³ Redgrave Statutory Declaration, exhibit 646, paragraph 22, document 049.0138.0338.0043; Redgrave, T8587/22–26.
- ⁵⁴⁴ Redgrave Statutory Declaration, exhibit 646, paragraph 22, document 049.0138.0338.0043; Redgrave, T8587/28.
- ⁵⁴⁵ Redgrave, T8587/30–44.
- ⁵⁴⁶ Redgrave Statutory Declaration, exhibit 646, paragraph 23, document 049.0138.0338.0043; Redgrave, T8588/3–6.
- ⁵⁴⁷ Redgrave Statutory Declaration, exhibit 646, paragraph 30, document 049.0138.0338.0043.
- ⁵⁴⁸ Redgrave Statutory Declaration, exhibit 646, paragraph 30, document 049.0138.0338.0043; Redgrave, T8588/17–29; cf Kelly Statement, exhibit 722, paragraph 60, document 003.0264.0113.0003.
- ⁵⁴⁹ Harris Statutory Declaration, exhibit 670, paragraphs 3, 5, document 067.0244.0798.0167.
- ⁵⁵⁰ Harris Statutory Declaration, exhibit 670, paragraph 5, document 067.0244.0798.0167.
- ⁵⁵¹ Harris Statutory Declaration, exhibit 670, paragraph 10, document 067.0244.0798.0167; Harris, T9396/1–7; T9394/18–22; cf Primmer Statement, exhibit 724, paragraph 36, document 004.0322.0273.0001; Primmer, T9324/42–9325/26.
- ⁵⁵² Harris Statutory Declaration, exhibit 670, paragraph 11, document 067.0244.0798.0167; cf Primmer Statement, exhibit 724, paragraph 37, document 004.0322.0273.0001; Primmer, T9324/42– 9325/26.
- ⁵⁵³ Harris Statutory Declaration, exhibit 670, paragraph 10, document 067.0244.0798.0167.
- ⁵⁵⁴ Harris Statutory Declaration, exhibit 670, paragraph 12, document 067.0244.0798.0167; cf Primmer Statement, exhibit 724, paragraph 37, document 004.0322.0273.0001; Primmer, T9325/28– 9326/39.
- ⁵⁵⁵ Harris Statutory Declaration, exhibit 670, paragraph 12, document 067.0244.0798.0167.
- ⁵⁵⁶ Harris Statutory Declaration, exhibit 670, paragraph 13, document 067.0244.0798.0167; cf Primmer Statement, exhibit 724, paragraph 38, document 004.0322.0273.0001
- ⁵⁵⁷ Harris Statutory Declaration, exhibit 670, paragraph 14, document 067.0244.0798.0167.
- ⁵⁵⁸ Harris Statutory Declaration, exhibit 670, paragraph 14, document 067.0244.0798.0167.
- ⁵⁵⁹ Harris Statutory Declaration, exhibit 670, paragraph 15, document 067.0244.0798.0167.
- ⁵⁶⁰ Harris Statutory Declaration, exhibit 670, paragraph 15, document 067.0244.0798.0167; Primmer Statement, exhibit 670, paragraph 38, document 004.0322.0273.0001.
- ⁵⁶¹ Sebastian, T8745/11–16; Maletic Statutory Declaration, exhibit 664, paragraph 1, document 060.0131.0430.0001.
- ⁵⁶² Sebastian, T8745/33–43; Maletic Statutory Declaration, exhibit 664, paragraph 1, document 060.0131.0430.0001; Sebastian Statement, exhibit 665, paragraphs 3–6, document 095.0957.0533.0037.
- ⁵⁶³ Maletic Statutory Declaration, exhibit 664, paragraph 7, document 060.0131.0430.0001; Sebastian, T8745/33–34.
- ⁵⁶⁴ Maletic Statutory Declaration, exhibit 664, paragraph 7, document 060.0131.0430.0001; Maletic Statutory Declaration, exhibit 664, annexure RM-1, document 076.0187.0139.0001.
- ⁵⁶⁵ Maletic Statutory Declaration, exhibit 664, paragraph 7, document 060.0131.0430.0001; Maletic, Statutory Declaration, exhibit 664, annexure RM-1, document 076.0187.0139.0001.
- ⁵⁶⁶ Maletic, Statutory Declaration, exhibit 664, paragraph 7, document 060.0131.0430.0001; Maletic Statutory Declaration, exhibit 664, annexure RM-1; document 076.0187.0139.0001,
- ⁵⁶⁷ Maletic Statutory Declaration, exhibit 664, paragraph 7, document 060.0131.0430.0001; Maletic Statutory Declaration, exhibit 664, annexure RM-1, document 076.0187.0139.0001.
- ⁵⁶⁸ Maletic Statutory Declaration, exhibit 664, paragraph 8, document 060.0131.0430.0001.

- 569 Maletic Statutory Declaration, exhibit 664, paragraph 9, document 060.0131.0430.0001; Sebastian, T8746/26-30; Sebastian Statement, exhibit 665, paragraphs 13–15, document 095.0957.0533.0037.
- 570 Maletic Statutory Declaration, exhibit 664, paragraph 9, document 060.0131.0430.0001; Sebastian, T8746/26–8747/18.
- 571 Maletic Statutory Declaration, exhibit 664, paragraphs 11–16, document 060.0131.0430.0001; Maletic Statutory Declaration, exhibit 664, annexure RM-2, document 076.0187.0139.0002; Sebastian, T8747/5.
- 572 Maletic Statutory Declaration, exhibit 664, paragraph 17, document 060.0131.0430.0001
- 573 Maletic Statutory Declaration, exhibit 664, paragraph 21, document 060.0131.0430.0001; Maletic Statutory Declaration, exhibit 664, annexure RM-5, document 076.0187.0139.0005.
- 574 Maletic Statutory Declaration, exhibit 664, paragraph 25, document 060.0131.0430.0001; Maletic Statutory Declaration, exhibit 664, annexure RM-6, document 076.0187.0139.0006.
- 575 Maletic Statutory Declaration, exhibit 664, paragraph 25, document 060.0131.0430.0001; Maletic Statutory Declaration, exhibit 664, annexure RM-6, document 076.0187.0139.0006.
- 576 Maletic Statutory Declaration, exhibit 664, paragraph 7, document 060.0131.0430.0001; Maletic, T8705/35-43; WorkCover Authority of NSW 2001, exhibit 665, Prohibition Notice, 19 December, document 095.0957.0533.0124.
- 577 Maletic Statutory Declaration, exhibit 664, paragraph 27, document 060.0131.0430.0001; Building Trades Group of Unions 2001, exhibit 665, Safety Rectification Notice, 14 November, document 095.0957.0533.0106; Maletic, T8702/1–8, T8707/35–45, T8708/1–5.
- 578 Maletic, T8702/33–35.
- 579 WorkCover Authority of NSW 2001, exhibit 665, Improvement Notice, 29 November, document 095.0957.0533.0109; Maletic, T8703/ 8–34.
- 580 Maletic, T8704/20–32.
- 581 Kelly Statement, exhibit 722, annexure DK42, document 003.0264.0113.0211; Maletic Statutory Declaration, exhibit 664, paragraph 28, document 060.0131.0430.0001.
- 582 Maletic Statutory Declaration, exhibit 664, paragraph 29, document 060.0131.0430.0001; Maletic, T9420/29–30.
- 583 Maletic Statutory Declaration, exhibit 664, paragraph 29, document 060.0131.0430.0001.
- 584 Maletic Statutory Declaration, exhibit 664, paragraph 29, document 060.0131.0430.0001.
- 585 Maletic Statutory Declaration, exhibit 664, paragraph 29, document 060.0131.0430.0001.
- 586 Kelly, T9302/18; Kelly Statement, exhibit 722, annexure DK42, document 003.0264.0113.0204; Maletic Statutory Declaration, exhibit 664, paragraphs 30–32, 35–36, document 060.0131.0430.0001; Maletic, T8706/1–44, T8707/1–31, T8709/2–17, T9420/44–45.
- 587 Maletic Statutory Declaration, exhibit 664, paragraphs 30-33, document 060.0131.0430.0001.
- 588 Maletic, T9421/2–11.
- 589 Maletic, T9421/20–23; T9422/1–5.
- 590 Maletic, T9421/30–35.
- 591 Kelly, T9301/44–45; Kelly Statement, exhibit 664, annexure DK42, document 003.0264.0113.0204.
- 592 Kelly, T9301/45, T9302/1; Kelly Statement, exhibit 722, annexure DK42, document 003.0264.0113.0204.
- 593 Sebastian, T8748/17–20; Sebastian Statement, exhibit 665, paragraphs 31–32, document 095.0957.0533.0037; Maletic Statutory Declaration, exhibit 664, paragraphs 34–35, document 060.0131.0430.0001; cf Zaboyak Statement (no 2), exhibit 789, paragraphs 5–13, document 012.0146.0778.0001: Zaboyak gave a different account of events. Zaboyak said Sebastian refused to acknowledge the assault had occurred and laughed about it. Sebastian admitted laughing at Zaboyak but not in that context. Zaboyak said there were police on site who refused to assist because they were friendly with Sebastian and that he had to call for other police officers to attend the site to take statements.

- ⁵⁹⁴ Zaboyak Statement (no 2), exhibit 789, paragraph 3, document 012.0146.0778.0001.
- ⁵⁹⁵ Maletic Statutory Declaration, exhibit 664, paragraphs 34–35, document 060.0131.0430.0001; Sebastian, T8748/21–23; Sebastian Statement, exhibit 665, paragraph 32, document 095.0957.0533.0037.
- ⁵⁹⁶ Sebastian, T8748/23–24; Maletic Statutory Declaration, exhibit 664, paragraphs 34–35, document 060.0131.0430.0001.
- ⁵⁹⁷ Zaboyak Statement (no 2), exhibit 789, paragraphs 10–12, document 012.0146.0778.0001; Sebastian, T8750/19–34.
- ⁵⁹⁸ Maletic Statutory Declaration, exhibit 664, paragraphs 34–35, document 060.0131.0430.0001; Sebastian, T8748/32–35; Sebastian Statement, exhibit 665, paragraph 34, document 095.0957.0533.0037.
- ⁵⁹⁹ Maletic Statutory Declaration, exhibit 664, paragraph 35, document 060.0131.0430.0001.
- ⁶⁰⁰ Sebastian, T8748/35–38; Sebastian Statement, exhibit 665, paragraph 33, document 095.0957.0533.0041; Maletic Statutory Declaration, exhibit 664, paragraphs 30–36, document 060.0131.0430.0001; Maletic, T8706/1–44, T8707/1–31, T8709/2–17, T9420/44–45, T9302/18; Kelly Statement, exhibit 772, annexure DK42, document 003.0264.0113.0204.
- ⁶⁰¹ Sebastian, T8748/40; Maletic Statutory Declaration, exhibit 664, paragraph 37, document 060.0131.0430.0001; Maletic, T8706/1–44, T8707/1–31, T8709/2–17, T9420/44–45.
- ⁶⁰² Maletic Statutory Declaration, exhibit 664, paragraph 37, document 060.0131.0430.0001; Maletic Statutory Declaration, exhibit 664, annexure RM7, document 076.0187.0139.0007.
- ⁶⁰³ Maletic Statutory Declaration, exhibit 664, paragraph 39, document 060.0131.0430.0001; Maletic Statutory Declaration, exhibit 664, annexure RM7, document 076.0187.0139.0007; Zaboyak Statement (no 2), exhibit 789, paragraphs 17–21, document 012.0146.0778.0001. The accounts of Maletic and Sebastian vary slightly although both agree calls were made to those subcontractors.
- ⁶⁰⁴ Maletic Statutory Declaration, exhibit 664, paragraph 38, document 060.0131.0430.0001; Maletic Statutory Declaration, exhibit 664, annexure RM7, document 076.0187.0139.0007.
- ⁶⁰⁵ Maletic Statutory Declaration, exhibit 664, paragraph 41, document 060.0131.0430.0001; Maletic Statutory Declaration, exhibit 664, annexure RM-8, document 076.0187.0139.0011.
- ⁶⁰⁶ Maletic Statutory Declaration, exhibit 664, paragraph 43, document 060.0131.0430.0001.
- ⁶⁰⁷ Maletic Statutory Declaration, exhibit 664, paragraph 54, document 060.0131.0430.0001; Maletic Statutory Declaration, exhibit 664, annexure RM-9, document 076.0187.0139.0012.
- ⁶⁰⁸ Maletic Statutory Declaration, exhibit 664, paragraph 54, document 060.0131.0430.0001; Maletic Statutory Declaration, exhibit 664, annexure RM9 document 076.0187.0139.0012.
- ⁶⁰⁹ Sebastian, T8748/42–45; Sebastian Statement, exhibit 665, paragraph 39, document 095.0957.0533.0037.