

CORRUPTION AND CRIME COMMISSION

OF WESTERN AUSTRALIA

COMMISSIONER JOHN MCKECHNIE AO KC

TRANSCRIPT OF PROCEEDINGS

AT PERTH ON THURSDAY, 15 FEBRUARY 2024, AT 9.44 AM

PARTIAL TRANSCRIPT

COUNSEL ASSISTING:

MS KIRSTEN NELSON

COUNSEL ASSISTING THE WITNESS:

MR CHRISTIAN PORTER

COUNSEL ASSISTING A PERSON OF INTEREST:

MS CHONG

WITNESS:

CHRISTOPHER JAMES FIELD PSM

1 **THE COMMISSIONER:** Please be seated.

2
3 **CHRISTOPHER JAMES FIELD RECALLED ON FORMER OATH AT 9.44 AM:**

4
5 **NELSON, MS:** Mr Field, yesterday we were looking at the
6 origin of the OECD project agreement, which I believe you
7 signed in August 2023, is that correct?---Ah, I don't have
8 the exact date in front of me, but I think it would be
9 around that time.

10
11 So, we were looking at email correspondence in early
12 January 2023, and I had showed you an email in which the
13 OECD appeared to believe that the project was a
14 collaboration between the IOI and the OECD, do you recall
15 that email? I can show it to you again?---Oh, thank you,
16 thank you.

17
18 0360^ at page 3.

19
20 0360^

21
22 **NELSON, MS:** I'm looking particularly at the first
23 paragraph of the 6 January 10.17 pm email from the OECD to
24 Mr Heritage of your office:

25
26 Dear Kyle, it is a pleasure to reconnect, and our
27 sincere apologies in the delay in our response since
28 our last discussion on how the OECD and the
29 International Ombudsman Institute could jointly
30 collaborate.

31
32 Do you agree, Mr Field, that as at 6 January, it would
33 appear that the OECD thinks this is a project with two
34 participants, the OECD and the IOI?---No, I don't, um,
35 think that's the case, counsel.

36
37 Well, I don't think I'll say anything more about that. And
38 the IOI around the same time, about six days later, if we
39 could have 0133^, bottom of page 1, top of page 2.

40
41 0133^

42
43 **NELSON, MS:** This is an email of 12 January at 7.33 pm
44 from Hannah Suntinger, you're nodding your head?---Yes.

45
46 Is she one of the employees of the Austrian Ombudsman that
47 acts as the general secretariat for the IOI?---Yes, she's
48 an outstanding young leader at the IOI secretariat, and she
49 is the executive director of the secretariat in Vienna.

50
51 And she sends through an email from the Secretary-General

1 of the IOI, correct?---This one I'll have to read please,
2 counsel.

3

4 If we could have the whole of the email of 12 January,
5 which goes over onto the next page, thank you, Madam
6 Associate. If it's possible to have the whole of the email
7 on the screen. Thank you?---Thank you, counsel.

8

9 Would you agree that as at 12 January 2023, it would appear
10 that the IOI thought this was a collaboration between
11 themselves and the OECD only?---No.

12

13 You don't agree that that's what appears to be the plain
14 reading of the very first sentence:

15

16 Thank you very much for proposing this interesting
17 and cooperative project between the IOI and the OECD.

18

19 ?---No, counsel. As I said yesterday, but only in direct
20 answer to your question, it was always, ah, intended that
21 this was a tripartite project between the OECD - - -

22

23 **THE COMMISSIONER:** Sorry, would you keep your voice up?

24 ---Oh, I'm so sorry.

25

26 And when you say it was always intended, by whom?---Oh, by
27 myself, it was always intended that this be a tripartite
28 project between, ah, the OECD, ah, the Office of the
29 Ombudsman of Western Australia and the IOI. This email is
30 reflecting the correspondence, and it is indeed referencing
31 previous correspondence I think that we looked at
32 yesterday, where of course the focus of that email is on
33 the IOI's contribution. So, it is by necessity responding
34 to, um, ah, sorry, is logically and sensibly responding to
35 the way that the IOI would contribute. It is
36 unquestionably the case that the IOI was a project partner,
37 was a contributor, and would be involved in the OECD
38 project, but nothing about that email excludes the fact
39 that the Western Australian Ombudsman's office was indeed
40 the principal project partner of the project. This was an
41 email from the IOI talking about the IOI, there would have
42 been no reason for the IOI to be talking about the role of
43 the Western Australian Ombudsman in this email.

44

45 There would have been every reason if it was a tripartite
46 arrangement. It would have read, 'Thank you very much for
47 proposing this interesting and cooperative project between
48 the IOI, Western Australian Ombudsman and the OECD. That's
49 the way he would have written it, I would have thought?---I
50 just don't agree, Commissioner.

51

1 Very well?---Sorry, I should say, very respectfully.

2

3 You can be respectful or disrespectful, Mr Field, it
4 doesn't matter. You're entitled to disagree, I'm merely
5 putting forward my preliminary view of the plain wording of
6 the letter.

7

8 **NELSON, MS:** I understand your evidence, Mr Field, is that
9 in your head as at 12 January 2023 it was to be a
10 tripartite cooperation?---Yes.

11

12 But you had not communicated that to either the OECD or the
13 IOI at that stage, had you?---Certainly it was, from my
14 recollection - although it wasn't at the, ah,
15 videoconference meetings, that the understanding of the
16 project was, ah, that the OECD was going to be undertaking
17 a project, which would be in collaboration with the Office
18 of the Ombudsman Western Australia, and the International
19 Ombudsman Institute. Ah, the Office of the Ombudsman
20 Western Australia component would receive a funding
21 component if it - if it was approved - it'd have to be
22 approved, if it was approved by the Cabinet of Western
23 Australia. Ah, of course the project couldn't have gone
24 ahead if it wasn't. And that the IOI would also be a
25 contributing partner to the project, and of course, their
26 component couldn't go ahead, unless there it was approved
27 by the board of the IOI and funded by the board of the IOI.
28 So that was certainly my understanding at that stage and at
29 all relevant stages, um, and, ah, the only point of
30 difference I - I - not a point of difference, the only
31 matter I can add to explaining this is the correspondence
32 was always written for audience. This is talking about the
33 IOI's role. There was no need to be talking about the
34 OWA's role in this correspondence.

35

36 If I could show you the email that you had sent earlier,
37 which is on 9 January at the bottom of the screen going
38 over onto the top of the screen. And you saw this
39 yesterday. So, this is the email that the
40 Secretary-General was responding to, and you had clearly
41 told her in the first sentence that it was a cooperative
42 project between two parties. Is that what the first
43 sentence says, Mr Field?---No.

44

45 Okay. I can see further on that you have agreed that the
46 OWA will provide in-kind resource and a financial
47 contribution. Is that, at that stage, the extent of what
48 the OWA's contribution to the project was to be?---No,
49 absolutely not, counsel. The first sentence of that email,
50 ah, is an email that is written from me to the
51 Secretary-General of the IOI referring to the matters to

1 which the Secretary-General would be concerned about, and
2 that is what is the IOI contribution. If the OWA had been
3 contributing \$10m or \$10, perhaps apart from some scale and
4 scope efficiency of the project, I can't - it was - I had
5 no reason to think she would have any interest. I was
6 interested in informing her about what the IOI contribution
7 would be, and that is the focus of that email, and it is
8 exactly why it is written like that.

9
10 What I clearly want to suggest to you is as at 12 January
11 2023, this was to be a project between the IOI and the
12 OECD, but that was to be funded in part and silently by the
13 OWA?---Ah, I just - well, without in any way wishing to
14 sound intemperate, I simply want to say that I reject that
15 completely.

16
17 Do you accept that as at 12 January, it was to be funded in
18 part by the OWA for a two-member cooperative project? If I
19 take out the silently bit, it was to be partly funded by
20 the OWA, partly funded by the IOI, but it was to be an IOI
21 and OECD front-facing project?---Um, no, absolutely that is
22 not the case.

23
24 Does your office, the OWA, as a state agency under the
25 Procurement Act, have the ability to enter into a
26 cooperative agreement with a non-state agency to procure a
27 service?---Ah, yes, absolutely it does.

28
29 You do?---Yes.

30
31 You have an ability as the OWA to partner with another non-
32 state agency, such as the IOI, to procure services, is that
33 what you're saying?---No, the Office of the Ombudsman
34 Western Australia, obviously it's all said as in my view,
35 unquestionably has the capacity to procure services, um,
36 from the OECD.

37
38 **THE COMMISSIONER:** That wasn't the question?---Then I
39 might have to have the question asked again.

40
41 **NELSON, MS:** I will first of all ask a couple of
42 introductory questions. Do you agree that the Procurement
43 Act is the sole power for your office to procure goods and
44 services?---No, not the sole. The Parliamentary
45 Commissioner Act and the Procurement Act.

46
47 The Parliamentary Commissioner Act has a power for you to
48 employ people to provide services to the office itself,
49 correct?---Yes.

50
51 But apart from that, you don't have a general procurement

1 power under that Act, you actually obtain that power from
2 the Procurement Act itself?---No, I don't accept that as
3 correct, I don't accept that interpretation of that section
4 of the Parliamentary Commissioner Act as correct. Um, I
5 would say that, ah, the Parliamentary Commissioner Act and
6 the Procurement Act provide the power for the Office of the
7 Ombudsman Western Australia to procure services. Goods and
8 services. I mean, so long as they were otherwise lawfully
9 able to be procured under the Procurement Act and the
10 Parliamentary Commissioner Act.

11

12 Do you agree that the Office of Ombudsman of WA is a state
13 agency as defined under the Procurement Act?---I do.

14

15 And in fact, your office as a parliamentary commissioner,
16 has been expressly stated to be a state agency under the
17 Procurement Regulations, hasn't it?---Yes, counsel, yes.

18

19 You said in evidence before the Commission, I think it was
20 the first day, that you were familiar with the Procurement
21 Act and Rules?---I am.

22

23 And so you'd be familiar with section 10, that says that a
24 state agency that does not otherwise have a power to
25 procure goods, services or works, is authorised by this
26 subsection to procure it under and subject to this Act in
27 connection with the performance of its functions?---I'm
28 sorry, I don't - not said to be in any way churlish, whilst
29 I'm familiar with it, I think it would be fair if I could
30 have that in front of me when I was responding to your
31 question.

32

33 **THE COMMISSIONER:** Would you accept that among other
34 things - and I understand your argument in relation to the
35 Parliamentary Commissioner Act - do you accept that you are
36 required to follow the Procurement Act in procuring?
37 ---Unquestionably, Commissioner.

38

39 Thank you, so whether or not - and I wouldn't know the
40 terms of the Procurement Act myself - but will you accept
41 when counsel reads a section that that is what the section
42 says?---If it says that the Office of the Ombudsman should
43 follow the Procurement Act.

44

45 No, no, I was just saying, just to try and hurry things
46 along?---Oh, sorry, yes.

47

48 If counsel puts to you a section of the Act, would you
49 accept that she is accurately putting it?---Oh, of course,
50 Commissioner.

51 That might speed things along.

1
2 **NELSON, MS:** Thank you, Commissioner.
3
4 **THE COMMISSIONER:** But also, if there comes a debate about
5 things, well, we'll make sure that you get the Act?---And
6 Commissioner, I wasn't in any way suggesting that it was
7 being inaccurately quoted, I just wanted to see it.
8
9 **NELSON, MS:** Do you agree, Mr Field, that you do not have
10 a power to enter into a cooperative arrangement with
11 another non-state agency to procure goods or services for
12 another entity?---Ah, I would have to refresh my memory
13 about the Procurement Act in relation - - -
14
15 Well, if I apply it to this situation, what I'm suggesting
16 to you, that the Procurement Act does not allow the OWA to
17 procure on behalf of the IOI?
18
19 **PORTER, MR:** Well, I think it needs to be put to Mr Field
20 what provisions of the Act establish that.
21
22 **THE COMMISSIONER:** Yes, I think you're right. Well, I
23 know you're right, and I would accept that.
24
25 **PORTER, MR:** 0456^ at page 14.
26
27 0456^
28
29 **NELSON, MS:** So this is section 10(2):
30
31 A state agency that does not otherwise have power to
32 procure goods, services or works is authorised by
33 this subsection to procure those goods, services or
34 works under and subject to this Act in connection
35 with the performance of its functions.
36
37 What I'm suggesting to you, Mr Field, is that that section
38 when read in connection with the Parliamentary Commissioner
39 Act is to be interpreted as saying that you get your power
40 to procure goods, services or works from the Procurement
41 Act apart from employing people who work at the OWA?---It -
42 given to me and without the chance to reflect upon this and
43 consider, I'm - I simply cannot give a - as I must, a
44 exclusively honest and frank answer to this Commission.
45 What I can say is I can agree with the Commissioner that
46 the Procurement Act applies to the Office of the Ombudsman,
47 and I accept that. As to the operation of this provision,
48 that is something I would have to consider.
49
50 I'll show you section 27, page 26, thank you. And so we
51 can see also subsection 3. Have you ever considered

1 section 27, Mr Field?---Ah, I don't have a photo
2 recollection of considering section 27. That was - that
3 would be something I would have to give further
4 consideration to.

5
6 The first subsection:

7
8 State agencies may enter into cooperative
9 arrangements with other State agencies under which
10 goods, services or works are procured by one of them
11 on behalf of the others.

12
13 Neither the IOI or the OECD are state agencies under this
14 Act, are they, Mr Field?---(No audible response.)

15
16 Is the IOI a Western Australian state agency?---I'm so
17 sorry, counsel, I'm reading the - the section. Ah, so I
18 would have to look at the definition sections of the Act to
19 be able to give an honest and faithful answer to that. I
20 do repeat again, um, that I - I fully agree with the
21 Commissioner's comment that the Office of the Ombudsman
22 Western Australia is lawfully bound by the Financial
23 Management Act, the Procurement Act, the Procurement Rules,
24 and the Parliamentary Commissioner Act insofar as it
25 relates to procurement.

26
27 Did you make any inquiries in January 2023 or at any time
28 during 2023 whether there had been a declaration that the
29 IOI was an authorised body under the Procurement Act?---I
30 have no recollection of that.

31
32 You didn't make that inquiry?---I don't have a recollection
33 of doing so.

34
35 Did you make that inquiry in relation to the OECD?---I
36 don't have a recollection of doing so, and I have no
37 recollection of having a need to do so.

38
39 And you did not make any inquiry as to whether the IOI was
40 a state agency for the purposes of the Procurement Act at
41 any stage in 2023?---No, I have no recollection of doing
42 so, nor any need to do so.

43
44 **THE COMMISSIONER:** Nor any what?---Of - nor that I
45 perceived any need to do so to be in compliance with the
46 Procurement Act.

47
48 **NELSON, MS:** We'll go back to 0133^, page 3.

49
50 0133^

1 **THE WITNESS:** Although I will say - and I'm sorry,
2 Commissioner, I should not make - my comment must be very
3 short. I was mindful of my responsibilities under the
4 Procurement Act.

5
6 **THE COMMISSIONER:** Well, we're now exploring how mindful
7 you were?---Thank you, Commissioner.

8
9 **NELSON, MS:** In terms of being mindful, Mr Field, did you
10 make any contemporaneous note in early January 2023 that
11 had any relationship to procurement planning between the
12 OWA and the IOI and OECD?---Ah, I don't have any
13 recollection of - of that.

14
15 If we could have just the email blurb at the top, thank
16 you, Madam Associate, so we can see who it's from. So this
17 is 9 January. This was the email that you sent to the
18 secretary general that caused her to respond, thanking you
19 very much for proposing the interesting cooperative
20 agreement between the IOI and OECD. And if we could just
21 scroll down so we can see the body of the email again.
22 Before we got diverted to the Procurement Act I was drawing
23 your attention to the first sentence and suggesting to you
24 that it was a cooperative project between two entities, IOI
25 and OECD, but it was to be partly funded by OWA funds?
26 ---No, I - I - counsel, and I say this obviously, um - my
27 preambles are offensive. I just - I don't want to sound
28 intemperate, I just want to be very, very clear to say I
29 very firmly reject that proposition. And as the reason -
30 this was an email sent to the secretary general of the IOI,
31 ah, to give her a preparedness for an understanding that I
32 would be coming to the board meeting, ah, of - the next
33 world board meeting of the IOI which was in May with a
34 proposition that the IOI make a financial contribution to
35 that OECD project and become a partner in that project.
36 That is why that email is focussed on the IOI and is not
37 focussed on the OWA, because there was a separate process
38 where I was focussed on the OWA and the OECD and that was,
39 ah, the process of going to the Cabinet Government of
40 Western Australia to seek their funding, um - seek funding
41 approval from them and their imprimatur for me to undertake
42 this OECD project. That is exactly why that email is
43 written in those terms. It was not necessary for me, from
44 my perspective, to be talking about, um, that. I was
45 trying to focus the secretary general's attention - I mean
46 that very respectfully to the secretary general. Many,
47 many, many things coming across her desk. She was also the
48 Ombudsman of Austria in addition to being secretary
49 general. And I was trying to focus her to say, 'Look,
50 there is a project. I want to let you know as a courtesy
51 in advance.' And that was as a precursor and a

1 developmental email to the proposition that I would be
2 putting to the May world board meeting for world board
3 directors to vote, because of course if they - if they had
4 not voted to support the proposal it would - - -

5
6 **THE COMMISSIONER:** Mr Field, we seem to be straying from
7 the letter?---Oh.

8
9 You've given your explanation as to what was in your mind
10 and what you were thinking?---Oh, then I should stop.

11
12 Yes, because I can read the letter and I can interpret it?
13 ---Okay, I should stop.

14
15 Yes?---I apologise, Commissioner.

16
17 **NELSON, MS:** And was it your intention to tell the world
18 board that this was actually a triparted cooperative
19 agreement that was being proposed?---Ah, my focus on the
20 world board was for, ah, their contribution to the project.

21
22 So you weren't going to tell them that it was also an OWA
23 project?---Oh, certainly it would have been part of the
24 discussions that I would have proposed to ultimately have
25 with the directors. And, um, it was transparent, um, and
26 continued to be transparent that the OWA was a partner in
27 that project.

28
29 Now, at paragraph 2, number 2:

30
31 My office will provide both in-kind resource to the
32 project and a financial contribution.

33
34 Did you consider as at 9 January that you needed to
35 undertake a procurement process?---Oh, the procurement
36 process for this project started substantially before this
37 email.

38
39 I'm talking about a procurement process within the OWA?---
40 Yes, it started substantially before.

41
42 And what steps had you taken then to secure the OWA funds
43 that would be needed to provide the financial contribution
44 - - -

45
46 **THE COMMISSIONER:** As at 9 January 2023?

47
48 **NELSON, MS:** - - - as at 9 January, thank you,
49 Commissioner?---Ah, well, all the preparation work to make
50 a submission to, ah, the - what was called SBP, the
51 streamline budget process, that is a - an appropriation

1 from the Cabinet government to this project.
2
3 What preparation had you done for that as at 9 January
4 2023?---Oh, of that exact date I don't have a recollection.
5 But the actual procurement process, counsel, to answer the
6 question you'd asked has started, um, some considerable
7 time before that. Because of course you have to establish
8 need and value before you even consider the idea of asking
9 for money.
10
11 And where would we find a written record of the need and
12 value for this project for the OWA?---Ah, there is a very
13 elaborate, um, detailed procurement memo.
14
15 And that procurement memo is from the second half of 2023.
16 Is that the one you're referring to, Mr Field?---Correct.
17
18 What about prior to 9 January 2023? Where would we find a
19 document that outlines the need for the OWA to enter into
20 this project?---Well - well, there isn't. That is the
21 procurement memo.
22
23 **THE COMMISSIONER:** Sorry?
24
25 **NELSON, MS:** There isn't one?---That's the procurement
26 memo.
27
28 **THE COMMISSIONER:** I'm sorry, because you keep dropping
29 your voice I have difficulty?---I'm sorry, Commissioner.
30
31 You have agreed with counsel that there is a procurement
32 memo in the second half of 2023?---Yes.
33
34 Counsel is asking you, as I understand it - and she does it
35 much better than I do - as at this date was there a memo?
36 ---Ah, no. And under the Procurement Act there did not
37 need to be.
38
39 You believe that under the Procurement Act you didn't need
40 one, is that what you said?---Well - - -
41
42 I'm not entering into debate, I just want to know what you
43 said?---Oh, so there is a - there is a procurement memo,
44 and as an attachment to that procurement memo it contains a
45 range of contemporaneous emails.
46
47 Yes, but is that the procurement memo of June - - -?---Yes
48 it is. Yes, it is.
49
50 - - - or post-June 2023?---Yes.
51

1 Right?---Oh, sorry, Commissioner. To answer your question
2 exactly, that procurement memo as is required under the
3 Procurement Act - my interpretation - is a reduction into
4 writing of all aspects of the procurement plus, as an
5 attachment, all of the contemporaneous emails along the way
6 of the procurement.

7
8 **NELSON, MS:** A few answers ago you indicated that the
9 project needed to be approved, I think you said, by the
10 Cabinet of WA?---Yes.

11
12 Had you ever sought approval from Cabinet to do a
13 procurement in any other respect in the whole time you'd
14 been Ombudsman?---Ah, no. Oh, sorry, not to my
15 recollection. That was something I would have to - I
16 should not say no. I would have to check that. Not to my
17 recollection.

18
19 My understanding of your evidence from day one was that you
20 valued the independence of your office such that you did
21 not need to seek approval from any minister or any part of
22 executive government?---Mm.

23
24 Is that correct?---Correct.

25
26 So why was it for this particular procurement you decided
27 you did need to seek approval?---Well, I'm independent but
28 I - I need - money needs to be provided, and that
29 appropriation is provided by ultimately the Parliament, um,
30 through the government of the day.

31
32 So you didn't need to seek approval for the particular
33 merits or terms of the project?---No.

34
35 But you just needed to seek approval to get some funds?
36 ---Well, the - the Office of the Ombudsman is utterly
37 independent but it doesn't have money of its own
38 separately; that is appropriated from the Parliament and
39 from - from the government of the day.

40
41 I just want to understand where the approval would end.
42 The approval you're seeking, is it not - it's an approval
43 just to obtain some finances, not approval for the actual
44 project merits that you are proposing to enter into?---Oh,
45 um, I would consider that approval as it was given for the
46 money as an approval for the project from the Cabinet. I
47 would consider it their knowledge, their imprimatur, and
48 their approval for the project. Whether I needed that
49 approval is a separate question as an independent officer.
50 Did I think when I received that money that they were doing
51 these things, (1), giving me the money having full

1 knowledge of the project, giving that project its
2 imprimatur and its approval? Yes, I thought all of those
3 things when I received it. Um, and in fact I have not a
4 photo recollection at all, but I do remember saying to my
5 staff, um, 'That is excellent because the government has
6 not only funded the project, but they - they know about the
7 project, they approve the project, and they have given it
8 its imprimatur.'

9
10 So what information did you give government about the
11 project at the time that you were looking for their
12 approval for the funds?---Um, the information that was
13 contained in the streamline budget process submission. Oh,
14 sorry, and additionally, of course, discussions that would
15 have been had with a range of officers which we did canvas
16 yesterday along the way. So, for example, with the - the
17 Premier's chief of staff.

18
19 So you had a discussion with the Premier's chief of staff
20 about this particular project - - -?---I did.

21
22 - - - between the IOI and the OECD and the OWA?---I did.

23
24 When did you have that discussion?---I don't have a photo
25 recollection of the time, but it's something I could find
26 for the Commission.

27
28 Was it prior to January 2023?---I'm sorry, I don't have a
29 photo recollection. I - I - what I do recollect is I was -
30 I had this recollection I was in, um, the chief of staff's
31 office and, ah, I just have particular recollection because
32 I commenced the story, ah, with, 'I hope you don't' - - -

33
34 **THE COMMISSIONER:** Well, you have a recollection, I accept
35 that. When?---I don't - - -

36
37 You don't have a recollection of when?---I don't recollect
38 the date and I would have to check that, Commissioner. I'm
39 so sorry.

40
41 All right.

42
43 **NELSON, MS:** Do you recall if it was in 2022 or 2023?
44 ---Ah, it would have been either '22 or '23 is my
45 recollection.

46
47 And would that have been in one of your three-monthly
48 face-to-face meetings with Daniel Pastorelli, the chief of
49 staff of the Premier?---It - I can say for certainty it was
50 in one of those meetings.

51

1 Could I have Document 0442^.

2

3 0442^

4

5 **NELSON, MS:** And this is the agenda for a meeting between
6 yourself and Mr Pastorelli on 15 December 2022. You can
7 see your EA has sent you the attachment on 15 December
8 2022?---Yes.

9

10 And if we go to the next page, thank you, the OECD project
11 is not listed on there as an item for discussion, is it,
12 Mr Field?---No, but that - that's just one meeting agenda.
13 I would have to go back and look at all of my meeting
14 agendas.

15

16 I'll show you the next one which is 30 May 2023, 0428^.

17

18 0428^

19

20 **NELSON, MS:** We'll go to the second page, thank you.
21 There's no mention of the OECD is there, Mr Field?---Ah,
22 no. Not every single item discussed in those meetings was
23 necessarily included on those items as a discussion.

24

25 **THE COMMISSIONER:** Were minutes kept of the meetings?
26 ---Ah, I didn't keep minutes of meetings, no. I do have a
27 profound aide-memoire of the discussion, I just don't know
28 what date it was, ah, because that discussion was - I said
29 to Mr Pastorelli, 'I hope you don't mind that I'm
30 consulting with the opposition.' And that was a reference
31 to the fact that Mathias Cormann was well known to be a
32 member of a certain grouping and a member of the, um, very
33 senior, I think, finance minister in the former government,
34 Federal Government. And he said to me, 'No, those waters
35 are well under the bridge, he's one of our friends now.'
36 Now, that was - and I have a photo recollection of that
37 discussion. I can say to you as a matter of certainty
38 Daniel Pastorelli was informed of the OECD project, and we
39 specifically discussed Mathias Cormann as part of that
40 project.

41

42 Well, you can say that it's a matter of certainty, and I
43 might well accept your evidence under oath, but can you
44 point to any document that shows that?---Um, I would have
45 to go back through all of my records as to whether it was
46 referenced there. But there were matters - and this is not
47 just with the chief of staff, but with others that might
48 have been, for example, matters that were raised that
49 morning.

50

51 But this would have been an important matter to raise?

1 ---And it was raised.

2

3 Well, so you say, but it would have been, I would have
4 thought, an important matter. Important enough to go on
5 the list items for discussion, and manifestly isn't there.
6 But I understand your evidence is that nevertheless it was
7 raised?---Well, obviously it bears no improvement by
8 repetition.

9

10 There isn't, so, counsel?---I am on oath and I swear to
11 that fact.

12

13 **NELSON, MS:** I'll just show you for completeness the
14 agenda from 15 August 2023, a meeting with Mr Pastorelli,
15 0425^.

16

17 0425^

18

19 **NELSON, MS:** And if we could go to the next page, thank
20 you?---I'm sorry, I just can't read that last bit, could we
21 go back?

22

23 **THE COMMISSIONER:** Yes, go back and - - -

24

25 **NELSON, MS:** (Indistinct.)

26

27 **THE COMMISSIONER:** I should say generally, because this
28 bounces around, if anybody has the trouble, just yell?
29 ---Thank you.

30

31 **NELSON, MS:** Next page, thank you. And the next page,
32 thank you. Do you agree that the OECD is not listed as an
33 item for discussion on the meeting on 15 August?---Yes, and
34 as I have said, not every single item for discussion would
35 have necessarily always been on - as indeed sometimes, very
36 specifically, highly-sensitive matters - I'm not suggesting
37 that was the OECD matter necessarily, but highly-sensitive
38 matters would have not been listed on those - - -

39

40 **THE COMMISSIONER:** Well, they may not be listed, but you
41 would agree this was not a highly-sensitive matter?
42 ---Agreed, Commissioner, so I think it's redundant for me
43 to even say it, and I apologise. What I will simply repeat
44 is this, I'm on oath, I'm aware of the severe penalties for
45 perjury, and I discussed with Daniel Pastorelli, as he then
46 was the chief of staff to Premier McGowan, Mathis Cormann.
47 I have an exact recollection of the conversation and his
48 response, and the OECD project.

49

50 **NELSON, MS:** Could the discussion about the OECD project
51 with Mr Pastorelli have occurred in October 2023?---That I

1 don't have a recollection about. What I don't recollect is
2 the timing of that discussion.

3
4 0473^, bottom of page 1, thank you.

5
6 0473^

7
8 **NELSON, MS:** This is an email from yourself to
9 Mr Pastorelli on Sunday, 15 October 2023 at 7.38 pm. I'll
10 just give you a chance to read that?---No, I'm actually
11 well aware of that particular email, counsel. I appreciate
12 you giving me that opportunity.

13
14 **THE COMMISSIONER:** But Mr Porter may not be, so we'll take
15 it slowly.

16
17 **PORTER, MR:** Thank you, Commissioner?---I apologise,
18 Commissioner.

19
20 **THE COMMISSIONER:** Just indicate, Mr Porter, when you want
21 it to move on.

22
23 **PORTER, MR:** Thank you?---No, I can say to you very
24 clearly the discussion - - -

25
26 **THE COMMISSIONER:** Just wait, please Mr Field,
27 because - - -?---Oh, sorry.

28
29 Because it's an important memo, and I want your counsel to
30 see it?---I'm so sorry, Commissioner.

31
32 **PORTER, MR:** Sorry, counsel, could we just - - -

33
34 **THE COMMISSIONER:** Go back again, yes.

35
36 **PORTER, MR:** The bottom of the preceding page as well,
37 thank you. Thank you.

38
39 **NELSON, MS:** It appears to me on a plain reading of this
40 email that you're telling Mr Pastorelli about the OECD
41 project for the first time, Mr Field?---Oh, no, that is
42 absolutely incorrect.

43
44 If we just go up to see Mr Pastorelli's response. He asks
45 you for the details and the background of the project,
46 correct?---No, that's - I think the actual question you
47 asked me was this the time - was this the time that I first
48 told Mr Pastorelli of the OECD project, and the answer to
49 that is categorically no, I told Mr Pastorelli about this
50 project many - or well, some considerable time before this
51 email. Um, this email for Mr Pastorelli was when

1 Mr Pastorelli had called me and told me that the Premier
2 considered my position as President of the International
3 Ombudsman Institute untenable, um, and that he would want
4 to be briefed on any matters that had to do with the IOI
5 which were considered outstanding. I sent him that email,
6 and that is his response. That was the reason for that
7 email, because he contacted me, I must say, in an
8 outrageous way, and said that my position was untenable.

9
10 We won't go into that, Mr Field?---Well, it's context for
11 why this email was sent.

12
13 If Mr Pastorelli knew about the OECD project in sufficient
14 detail to brief the Premier, he wouldn't have asked you for
15 the details in the background, would he?---I think he would
16 have asked for substantial details of it so he could then
17 deal with the issue.

18
19 If we could just go to the top then of the screen to see
20 that you have forwarded the email to Ms Poole?---Yes.

21
22 Later that evening:

23
24 This is the resolution of this matter for my
25 purposes. If you've not already, please speak to
26 Morgan for me. I'll need the full transfer of money
27 to Paris.

28
29 By that do you mean to the OECD?---Yes, I actually
30 took - - -

31
32 **THE COMMISSIONER:** Yes is a sufficient answer?---Yes, yes.

33
34 **NELSON, MS:** So, by 19 October, you had entered into the
35 agreement and had received an invoice from the OECD?---Yes,
36 counsel.

37
38 But you had not yet paid that?---No, counsel.

39
40 You then say:

41
42 The only people who will know will be me, you, Morgan
43 and the CFO. The document will be password-
44 protected, as will be the folder.

45
46 ?---Correct, counsel.

47
48 Why are you keeping this confidential?---Ah, because at
49 that stage I had been informed that there was a staff
50 member who was unlawfully providing information to, ah,
51 media outlets in relation to material held by the Office of

1 the Ombudsman, and it was my view that I had a duty, um, to
2 ensure that there was no further unlawful provision of
3 information from the office, so I took steps to ensure the
4 security, as I must, under the provisions of the
5 Parliamentary Commissioner Act, to keep those documents
6 confidential.

7
8 **THE COMMISSIONER:** Why was it necessary to keep this
9 document confidential?---Well I have an obligation under
10 the Parliamentary Commissioner Act to keep - - -

11
12 All documents confidential, all. Are all documents
13 password-protected?---What I will - sorry, Commissioner,
14 this was after I had been told that a staff member was
15 providing unlawfully information, um - - -

16
17 No, I appreciate all of that?---Yes.

18
19 Maybe I'll just leave it counsel, she does a better job
20 than me anyway.

21
22 **NELSON, MS:** Mr Field, what was the document that will be
23 password-protected that you're referring to?---Ah, that was
24 the procurement memo.

25
26 And you say in the next sentence:

27
28 I will send through the procurement document once
29 completed.

30
31 ?---Correct.

32
33 So as at 19 October 7.20 pm, the procurement memo was not
34 complete, is that the situation?---Ah, correct. The
35 procurement memo drafting had started very, very many
36 months ago, but it was still in the process of being
37 settled by me.

38
39 So, that was the document that you wanted to keep
40 confidential to Ms Poole, Morgan and the CFO?---Oh, I
41 didn't in any way desire to keep it confidential from any
42 staff member, let alone the Auditor-General.

43
44 Mr Field, it says there that you're going to put a password
45 on it to protect it and lock it down to yourself, Ms Poole,
46 Morgan and the CFO, doesn't it?---Yes, counsel, because I
47 didn't know which staff in the office was taking the
48 document - scouring through any document, um, in my office,
49 taking it and sending it to a journalist.

50
51 And the Commissioner was asking you why was it this

1 particular document that was - that you didn't want to go
2 to a journalist?---It wasn't, there were other documents
3 that we password-protected. And indeed, ultimately fully
4 locked-down folders of the office in relation to that, so
5 it wasn't just this document. It was a very serious
6 matter, the unlawful provision of documents from my office,
7 and I had to take action to try to prevent that.

8
9 What other documents were password-protected under your
10 direction?---Ah, I don't think there was necessarily
11 password protections, what I asked my IT team to do was to
12 see if we could move to have folders where access could be
13 restricted to those folders to officers who I believed
14 weren't the source of, um, that unlawful provision of
15 information.

16
17 If you could take that off the screen, we'll go back to
18 January 2023, and I was asking you what steps you'd taken
19 to secure any funding from OWA for the purposes of the OECD
20 project. Is that what it was called during the office - in
21 your team, the OECD project? How did you refer to it?
22 ---Yes, I think as a shorthand, counsel, it would have been
23 called the OECD project, correct.

24
25 What steps were you taking in early January to secure
26 funding for the OWA's financial contribution?---As I say, I
27 don't have a specific recollection of the timing of events.
28 What I do know is we were preparing, ah, two forms of
29 funding. One was funding that was proposed for
30 presentation in May 2023 to the world board meeting of the
31 International Ombudsman's Institute, and the second was in
32 relation to the SBP funding from, ah, ah, from a Cabinet
33 covenant.

34
35 So, you were seeking funding from within the OWA to take
36 the proposal for the OECD project to the world board in
37 May?---Yes, correct.

38
39 And you were seeking funding for OWA's financial
40 contribution to the ultimate project delivery?---Correct.
41 The specific timing, I don't have a recollection.

42
43 And in terms of in-kind resource, what were you thinking of
44 in January 2023 when you offered that to Ms Schwarz?---Ah,
45 the in-kind resource would have been, ah, I had in mind was
46 potentially some, ah, translation services and also, ah,
47 assistance provided by staff of the office of the Ombudsman
48 and President.

49
50 What other type of assistance other than translation
51 services?---Oh, I hadn't imagined it would be particularly

1 significant, ah, because principally I saw it as a contract
2 for services, a procurement project, we were procuring
3 services. Ah, but of course there will be levels of
4 contract management, and, ah, obviously ensuring that
5 deadlines are being met. So in that sense, a project
6 management role, um, but also, you know, potentially some
7 forms of research assistance, something like that. It was
8 intended to be a fairly minor contribution of in-kind
9 services.

10
11 And the translation services, were you proposing that OWA
12 staff did translations of survey results, or some other
13 kind of written material?---Potentially. I didn't see that
14 as a very significant impost of time or cost, and indeed I
15 actually thought that the IOI was actually better placed to
16 do that, because they have extremely capable multilingual
17 staff.

18
19 So then the in-kind resources you saw mostly to be around
20 the contract for services - the contract management,
21 project management?---They were - I considered them to be
22 minor - minor contributions of in-kind service, correct.

23
24 And who at this time was going to be the contract manager
25 then within the OWA?---I'd also considered the most
26 appropriate person to either be myself or Rebecca Poole as
27 the two most senior officers. And ultimately decided it
28 was, um, going to be me. Although contract management
29 would also include a team, and I would have included my CFO
30 and one other staff member in that process as well.

31
32 And had you included your CFO at this stage?---Ah, to my
33 recollection no, I don't think so at that stage, and she
34 was a very, um, ah, new staff - she's an exceptional staff
35 member, but she was very new at that stage.

36
37 When did you first include her?---Oh, it would have been
38 later in the process. As I say, she was very new to the
39 office.

40
41 At what part of the process did you include her for the
42 first time?---Oh, that - I don't have a recollection of the
43 exact timing of that.

44
45 Could it have been well after you had signed the agreement?
46 ---Oh, it could have been, it could have been. She was a
47 new staff member to the office and had no history or
48 background of the project.

49
50 **THE COMMISSIONER:** But she was a CFO?---Correct, but
51 ultimately, um, ah, didn't have the knowledge or history or

1 background. Of course, it's no criticism of her, but
2 didn't have the knowledge or history or background of the
3 project.

4
5 **NELSON, MS:** But she had the knowledge and history and
6 background of the finances of the OWA though, didn't she?
7 ---Yes. Keep in mind the CFO was reporting to staff who of
8 course did have information about the project, and they
9 themselves had roles in relation to financial management.

10
11 That's Morgan Marsh you're referring to?---Yes, and prior
12 to that, my deputy Ombudsman as well.

13
14 When did you include Morgan Marsh in discussions about the
15 OECD project?---I don't have an exact recollection, it
16 would have been in 2023, as my best recollection.

17
18 Could it have been after you had signed the agreement as
19 well, Mr Field?---Oh, it certainly could have been.

20
21 Ms Nowbakht, the CFO, started in February 2023 at the OWA,
22 you're nodding your head?---Oh, I don't have that exact
23 date, but I accept that that would be the case if you were
24 indicating that to me, counsel, and it sounds familiar as a
25 date to me.

26
27 Would she have not needed information about this potential
28 project for the purposes of internal budgeting?---Ah, yes,
29 but the information was provided, um, um, ah, and that was
30 the information that was - would flow out of - well of
31 course there was no information for internal budgeting
32 unless the Cabinet approved the funding. So, after the
33 Cabinet approved the funding, yes, of course she would
34 have.

35 **THE COMMISSIONER:** So, after Cabinet approved funding, she
36 would have been aware of that?---Well, she would have
37 needed to be aware for budget preparation.

38
39 And she would need to include that in budgets and things of
40 that nature?---Yes, she would have.

41
42 **NELSON, MS:** What discussions did you have in the office,
43 and with whom, about putting together the streamlined
44 budget process?---Oh, I don't have a recollection of - of,
45 ah, conversations with staff. There would have been
46 conversations with staff which would have been a
47 combination of sitting in my office having those
48 conversations, and emails. But I - I couldn't speak to an
49 exact memory of days or exact conversations.

50
51 Well, who did you instruct to put the streamlined budget

1 process documentation together?---Ah, I - I think my
2 recollection might have been that might have been my deputy
3 ombudsman, I'd - I'd have to refresh my memory.
4
5 Could I have 0402^?
6
7 0402^
8
9 **NELSON, MS:** Have you read that, Mr Field?---Yes, I have,
10 thank you.
11
12 That is an email from your then-deputy ombudsman, Mary
13 White, to yourself, 13 January 2023?---Correct, so - yes,
14 correct.
15
16 If we could go to the next page we can see the cover letter
17 to the then-Treasurer?---Yes.
18
19 And the tracked changes are Ms White's changes, which she's
20 sending through to you for approval?---Yes.
21
22 And you can see that unlike other agencies, there's no area
23 on this form for the responsible minister for the agency to
24 endorse the letter to the Treasurer?---That is correct,
25 counsel.
26
27 So, it goes solely under your hand?---That is correct,
28 counsel.
29
30 Without first going to a minister for approval?---That is
31 correct, counsel.
32
33 And if we go to the next page, page 3. Have you had a
34 chance to read that, Mr Field?---I have, thank you counsel.
35 Do you agree that this is a template document that all
36 agencies use when they're putting in an application for a
37 streamlined budget allocation?---I cannot say whether - I'm
38 just not familiar - I've not worked in another agency,
39 apart from the Economic Regulation Authority, um, and
40 that's over 17 years ago, but I can say that that is a
41 document that we have used.
42
43 Would you agree that the streamlined budget process for all
44 agencies is - the purpose of it is for more certain
45 financial management in state rather than as a procurement
46 exercise for a particular project or financial
47 expenditure?---I - I can't say what's in the mind of the
48 State government in relation to why they undertake the
49 streamlined budget process, and that is a matter of policy
50 not for the Ombudsman. Um, as to the second proposition,
51 do I see it as part of a - absolutely not, no. This is an

1 absolutely appropriate mechanism for which you could seek
2 monies for a procurement.

3
4 So the streamlined budget process, in your evidence, is an
5 appropriate mechanism for you to get approval for a
6 particular procurement exercise?---Ah, well, it is - is it
7 an appropriate process for me to seek money for a service
8 to which I - to which the Ombudsman was going to procure?
9 Absolutely, yes.

10
11 But they're different things, aren't they, Mr Field. This
12 is a process for the agency to get some finances?---Yes.

13
14 It's not a process for the agency to get approval to
15 undertake a particular procurement exercise, is it?---Ah, I
16 think the best way to answer that question is to say an
17 agency, including the OWA - I should only speak for the OWA
18 - procures services under the Parliamentary Commissioner
19 Act 1971, the Procurement Act and the Procurement Rules.
20 It can then use, as an utterly appropriate mechanism, to
21 fund such a procurement, the streamlined budget process.
22 Did the streamlined budget process, in also providing that
23 funding to me, provide knowledge to the Cabinet, government
24 of this state and understanding of the, ah, OECD project,
25 and in my view its imprimatur, yes, it did all of those
26 things.

27
28 I'm just putting to you clearly, just for the last time,
29 that the streamlined budget process is about obtaining some
30 finances for the OWA, not about getting approval for a
31 particular procurement exercise? It's an incentive scheme
32 for the agency not to go back and ask for more money from
33 government, isn't it, Mr Field?---Ah, so, that is correct.
34 The scheme itself, as I understand it - and as I say, it's
35 a matter for government as to what their motivation is for
36 that process, but as I understand it, it is a process that
37 incentivises you to, ah, to seek a certain amount of money,
38 it's a percentage of appropriation, so that you don't then
39 go back and seek further monies unless it's a new project.

40
41 Thank you, if we could go to the next page, we can see what
42 your deputy ombudsman sent you. Have you read that,
43 Mr Field?---I have, thank you counsel.

44
45 So, the deputy ombudsman is proposing on 13 January that
46 you seek incentive funding of \$203,000 to get some
47 temporary FTE to undertake the new functions that
48 Parliament has given the OWA?---Correct.

49
50 And that is all that she is putting to you in this
51 document?---Correct.

1
2 There's nothing about the OECD project?---No, this was my
3 deputy ombudsman's draft of her view of what we might apply
4 for in the SBP, which she provided to me.

5
6 All right, do I take it that you had not had any
7 discussions with her prior to receiving this about funding
8 for an OECD project?---Ah, I may have, and she - I may or
9 may not have, I don't have a recollection, but certainly
10 those were the matters that she chose to put into that as a
11 draft to present to me.

12
13 So, you say that you might have told her that you want to
14 get funding under this process for the OECD project, and
15 she might have disregarded that and put to you this
16 separate funding for the functions under the Act?---No, I'm
17 so sorry, my exceptional deputy ombudsman - and we have
18 obviously a relationship of 17 years together, may have
19 formed the view that she wanted to also provide me
20 alternative matters for me to consider, and that would be a
21 very proper thing for her to have done.

22
23 Could I have 0404^?

24
25 0404^

26
27 **NELSON, MS:** I'll just give you a minute to read that?
28 ---I'm not sure if it goes down a bit further. Oh, thank
29 you, thank you counsel.

30
31 If we go to page 4, we can see the tracked change version
32 that you have sent through?---Correct.

33
34 Can we have the whole of page 4 on the page? Thank you.
35 Do you recall those being your words, your tracked
36 changes?---Whether I wrote them personally, I'm not sure,
37 or they're matters that I discussed with my deputy or
38 someone else. I can't have a specific recollection about
39 that.

40
41 Well, if we go back to page 1 at the top, you've sent the
42 email to the deputy and said at one, 'I have attached a
43 track change version'?---Oh, in - sorry, I hadn't read - in
44 that case - that would be the case. And they certainly
45 look like words I have written - I would have written.

46
47 Thanks. We could go back to page 4, and we'll just see the
48 top of page 5. So the extend of the information that
49 you're proposing to give to Cabinet is a reference in the
50 first line to a finite project and travel costs in 2023?
51 ---Yes.

1
2 And then further down, about halfway down, the sentence
3 that starts:

4
5 The presidency has already resulted in well-advanced
6 negotiations for a major OECD project in the Asian
7 region.

8
9 ?---Yes.

10
11 There's no other information about the project, is there?
12 ---Ah, no. Well, there's not allowed to be because
13 the - - -

14
15 **THE COMMISSIONER:** The answer's no?---Oh, sorry. No.

16
17 **NELSON, MS:** And you didn't send Cabinet any additional
18 documents with this, did you?---Ah, well, it's not part of
19 the SBP process to do that.

20
21 **THE COMMISSIONER:** Sorry, did you or did you not?---Oh,
22 sorry, no. No, Commissioner, I did not.

23
24 **NELSON, MS:** And it's not part of the SBP process to do
25 that because it's not a merits-based review process of
26 particular projects undertaken by agencies?---That's not my
27 understanding at all. That's you - you're saying that.

28
29 Well, if it was, Mr Field, you would need to give them more
30 information about what the project was surely?---That's
31 certainly not my understanding. It's because they receive
32 so many and they would have tens of thousands of pages of
33 material to read. That's my understanding.

34
35 **THE COMMISSIONER:** Isn't that why it isn't a merits-based
36 review? They get one page. You can hardly review that
37 10,000 times?---But I think it's a merits-based review of
38 appropriating that amount of money for that project.

39
40 Well, it's a merits-based review then on the one page you
41 have provided?---Ah, correct, Commissioner.

42
43 **NELSON, MS:** I note the time, Commissioner. I'll just
44 finish the streamline budget process.

45
46 **THE COMMISSIONER:** In your hands.

47
48 **NELSON, MS:** And it will be probably another five minutes,
49 thank you.

50
51 And do you recall that it was sent to the Department of

1 Treasury and they said there had to be any reference to
2 salaries and wages being removed?---Yes. In fact, even
3 without being shown I have a memory of that.

4
5 And that was because the terms of the process for 2023
6 streamline budget, it excluded any funding for salaries and
7 wages?---Correct.

8
9 So the final version that was sent to Treasury for the
10 Cabinet's approval is 0156^.

11
12 0156^

13
14 **NELSON, MS:** That's your signature on 1 February 2023?
15 ---Correct.

16
17 And again, I note that there's no ministerial endorsement?
18 ---Correct.

19
20 Next page, thank you?---Oh, thank you, counsel.

21
22 You've read that, Mr Field?---I'm sorry. I apologise,
23 counsel. Yes, I have read that, thank you.

24
25 And it's largely the words that you had track changed to
26 your deputy ombudsman in the document we saw earlier?
27 ---That is correct, counsel.

28
29 There's an additional reference to your fixed term of
30 appointment as President expiring in May 2024?---Correct,
31 counsel.

32
33 The same sentence starting:

34
35 The presidency has already resulted in well-advanced
36 negotiations for a major OECD project in the Asian
37 region -

38
39 - still appears?---It does, counsel.

40
41 Why did you limit the reference to the Asian region for the
42 project?---Oh, that was a very clear, ah, decision. The
43 funding that I sought, ah, for the - that would be
44 contributed by the Office of the Western Australian
45 Ombudsman, which of course is taxpayers' money, ah, was for
46 the benefit of, um, Western Australian citizens and our
47 major trading partners in the, ah, near Asian region. And
48 ultimately my view was that the funding provided by the
49 IOI, just to complete that answer, was for regions beyond
50 that.

51

1 But you knew that at the time that you'd signed this on
2 1 February that there'd be other regions encompassed by the
3 project?---Yes, but I wasn't seeking funding for that.
4
5 But isn't that an important aspect to put into this
6 document? Why did you limit it to one region?---Oh, it -
7 as again, um, very much on oath, um, it simply didn't occur
8 to me to do that because I wasn't seeking funding for that
9 component; I was going to seek that from the board of the
10 IOI.
11
12 So the IOI's ultimate contribution was to be directed
13 towards all the other regions that the survey was to
14 encompass?---Ah, Africa, North America, Europe, other
15 regions. That's exactly correct.
16
17 And in your mind at this time as at 1 February the funding
18 from the OWA was to be just for the Asian region portion of
19 the survey project?---Ah, Perth, Western Australia, and our
20 near Asian - - -
21
22 **THE COMMISSIONER:** Sorry, where does it say Perth, Western
23 Australia?---I'm sorry, I was - it doesn't. I - and
24 I - - -
25
26 **PORTER, MR:** I think the question was 'in your mind'.
27
28 **NELSON, MS:** Yes, in your mind at - - -
29
30 **THE COMMISSIONER:** In your mind.
31
32 **NELSON, MS:** - - - that time, Mr Field.
33
34 **THE COMMISSIONER:** I'll accept it if that was the
35 question?---I apologise, Commissioner. Yeah, that was what
36 was in my mind, that it was effectively taken as read. It
37 was obviously for Perth and Australia, that was what was in
38 my mind.
39
40 **NELSON, MS:** And could we have 0406^.
41
42 0406^
43
44 **NELSON, MS:** So this is an email from yourself to
45 Ms Poole. It's earlier than 1 February, so January 16.
46 Are you saying in that email to Ms Poole that the special -
47 sorry, the streamline budget process allocation would be
48 put towards that new director position that was going to be
49 created for Natalie Fisher in part?---(No audible
50 response.)
51

1 You're nodding your head?---Ah, I'm actually just - I have
2 no recollection of this email, but I am reading it and it's
3 very short. And I have read it, thank you.

4
5 Do you recollect now that that was what was in your mind,
6 how you were going to spend the funds?---Yes, so there -
7 yes. And this is very indicative as you will see from the
8 track changes and various other things you have seen that
9 there was - I won't make any comment about projects
10 generally, but there was an iterative development over a
11 period of some time about the optimal way to deliver that
12 project that was at that time I considered it might be done
13 by staff. Ultimately I decided that that was the - that
14 was not the optimal way to deliver the project.

15
16 But the majority of the funding - well, a good proportion
17 of it, perhaps not the majority - was to be for travel?
18 ---Yes. And that of course did not - none of that
19 eventuated. And that is the iterative development of - of
20 any project, including this project.

21
22 And by travel are you referring in that email to
23 international travel by yourself and Ms Poole?---Oh, it
24 certainly would not have been by me and Ms Poole, no.

25
26 Sorry, you're not referring to international travel?
27 ---Well, it would not have been by - international travel
28 by myself and Ms Poole, it would have been by research
29 staff if the international travel occurred, that would -
30 that would be the reference in there. Not by myself, um,
31 absolutely not. That would be by the researchers and those
32 doing questionnaires and fieldwork. Ah, so it certainly
33 would not have been by myself and Ms Poole, I can be
34 unambiguously clear about that.

35
36 So were you proposing that your researchers would travel
37 internationally as well as yourself and Ms Poole?---Well,
38 no, we wouldn't have been travelling for the OECD project
39 to undertake the OECD project at all.

40
41 Perhaps if I just ask you - I'm a bit confused. As at
42 January 16th when you said in this email, '\$75,000 for
43 travel,' what travel were you referring to?---That would
44 have been travel for the researchers. If - if that project
45 had been undertaken, which I decided later - I decided was
46 not an optimal way to undertake the project - um, if it had
47 been undertaken with a contribution - a significant
48 contribution from OWA staff, that would have been for their
49 travel, um, to locations to undertake questionnaires, face-
50 to-face interviews and do other things. I can say to you
51 very clearly that that was not travel for myself or any

1 member of the Office of the Western Australian Ombudsman
2 who wasn't undertaking the OECD project. It would
3 certainly would not have been for me or Ms Poole.

4
5 This email was sent to Ms Poole after an initial streamline
6 budget process was submitted to Treasury which had
7 reference to salaries, and they asked you to take that out.
8 I just want to show you the version that preceded this
9 email, and that is 0405^, page 5.

10
11 0405^

12
13 **THE WITNESS:** Um, thank you.

14
15 **NELSON, MS:** Are you saying, Mr Field, that in the first
16 line of the description of expenditure:

17
18 A finite level 4 FTE position as well as finite
19 project and travel costs in 23/24 rising from the
20 Ombudsman's election as President of the
21 International Ombudsman Institute.

22
23 ?---Mm.

24
25 Are you saying that the travel costs referred to there are
26 travel costs only associated with the OECD project?---Ah,
27 in that iteration, that version, that is what that is
28 referring to. Ah, the iteration that is - sorry, the
29 submission that was made and approved was funding for an -
30 well, in my mind, funding for an OECD project, ah, the
31 sister state, and my travel as President.

32
33 Any travel that you took internationally as President?
34 ---Yes, in that SBP that was, ah, provided to Parliament -
35 sorry, to Cabinet, correct.

36
37 That's a convenient time, thank you, Commissioner.

38
39 **THE COMMISSIONER:** Just before we break, we could have
40 0154^. No, obviously the wrong one. What is the exhibit
41 which is the final streamline budget process? Maybe 0156^?

42
43 **NELSON, MS:** It is 0156^.

44
45 **THE COMMISSIONER:** I can't read my own writing.

46
47 **THE ASSOCIATE:** 0156^?

48
49 **THE COMMISSIONER:** Five-six.

50
51 0156^

1
2 **THE COMMISSIONER:** And the second part. Mr Field, you
3 have said many times this morning that you received Cabinet
4 approval. When you say that, do you say that that is
5 because this streamline budget process submission was
6 approved?---Ah, I would - so precise with you,
7 Commissioner, to answer your question exactly, I, ah, was
8 of the view that the SBP process did these things: it, (1),
9 approved the funding for the OECD project, and it also was
10 the knowledge imprimatur and approval from the Cabinet
11 government or at least the sub-committee of Cabinet, um,
12 for me to undertake that project.

13
14 And you formed that view because of what you have put in
15 that document description of expenditure?---Ah, I'm sorry,
16 I shouldn't be umming and ahing. Yes, Commissioner.

17
18 Thank you. I just need to clarify in my own mind. And
19 finally, Cabinet or the Cabinet sub-committee had no other
20 document before it than Exhibit 0156^?---Ah, and that - I
21 cannot speak to what they had before them, but that would
22 be my understanding, Commissioner.

23
24 Thank you. We'll break for 20 minutes.

25
26 (Short adjournment)

27
28 **THE COMMISSIONER:** Please be seated.

29
30 **THE WITNESS:** Counsel - outrageously rude of me to
31 interrupt you, and I apologise - - -

32
33 **THE COMMISSIONER:** Sorry, I didn't hear you, but - - -?
34 ---Oh, I - I said, outrageously rude - - -

35
36 Yes?--- - - - ah, to interrupt counsel. There was - ah,
37 Commissioner, I'll accept your no immediately. There was a
38 question you asked just as we left, and, ah, there was one
39 matter I wish to add in clarification.

40
41 Please feel free?---Thank you, Commissioner. Um, you were
42 asking about, ah, was that the - you may have actually
43 asked, 'Was that the only document', but it was the
44 information in relation to the OECD approval for Cabinet.
45 What I should have added, Commissioner, in my view, and I
46 thought of this only when I left the room, um, was it was
47 both, ah, that information containing the SBP submission,
48 ah, and the information that I had provided to, ah, both
49 the Premier's chief of staff, the Public Sector
50 Commissioner, the Director-General of the Department of
51 Premier and Cabinet, and the Director-General of JTSI as

1 well.

2

3 When did you provide it to them?---Those materials I would
4 have to actually - I - I - I do have meeting agendas that
5 actually refer to the OECD and I will make sure they're
6 provided to you, Commissioner.

7

8 Thank you.

9

10 Ms Nelson.

11

12 **NELSON, MS:** Thank you, Commissioner.

13

14 **THE WITNESS:** Thank you, Commissioner.

15

16 **NELSON, MS:** Mr Field, I showed you the meeting agenda
17 with Mr Pastorelli on 15 December 2022 already which had
18 no - - -

19

20 **THE COMMISSIONER:** December?

21

22 **NELSON, MS:** Of 2022, yes. So prior to the budget
23 submission, and you recall that had no reference to the
24 OECD. Are you suggesting there was another meeting other
25 than the quarterly meeting with Mr Pastorelli?---So there
26 were quarterly meetings where the OECD was raised with, ah,
27 ah, people who weren't Daniel Pastorelli, and in relation
28 to, ah, Daniel Pastorelli, ah, I did raise it with him in a
29 quarterly meeting. Did I have an agenda? One thing that
30 had occurred to me, and this was in the break, and it is
31 only in answer to your question, um, that the documents you
32 presented me, quite properly, are ones that were given to
33 me by my EA. They are not necessarily the settled agenda,
34 um, so I would then myself also overwrite matters, and I
35 will need to go back through my records to determine
36 whether there is any agenda, um, ah, a contemporaneous
37 email or even a handwritten note, because I was regularly
38 in the practice, even on the car way - my car - the car way
39 down to Dumas House to write notes on those agendas, and I
40 will, um, ah, undertake, um, to this Commission, um, to see
41 if I can find any such material.

42

43 Thank you. Did you write directly to the Premier or any
44 other minister about the OECD project?---No. I did not.

45

46 Did you write to him to inform him that you were
47 considering such a project at any stage in 2022?---No. I
48 only spoke to his chief of staff. I did not write to the
49 Premier.

50

51 You entered into the agreement on 25 August 2023, and the

1 office received an invoice from the OECD dated 12 September
2 2023, 0198^.

3
4 0198^

5
6 **NELSON, MS:** This invoice accompanied the signed version
7 by the OECD?---I don't have a recollection of seeing that
8 letter, but I absolutely accept, err, its validity, um,
9 counsel.

10
11 Do you have a recollection of Ms Poole telling you that she
12 had received it?---I have a - certainly have a - well, err,
13 not the date or the exact time, but I know - ah, well, I'm
14 - I - to the best of my recollection Ms Poole told me, um,
15 that, ah, ah, an invoice had been received. I am sure she
16 did that. Ah, ah, and it would have been at around that
17 time.

18
19 It makes reference in the first line to a 'voluntary
20 contribution'. Is that the financial contribution that the
21 invoice refers to?---I don't know what that's referring to
22 actually, um, counsel. I genuinely don't.

23
24 **THE COMMISSIONER:**

25
26 Thank you for your offer of a voluntary contribution.
27

28 ?---I - I can only assume, um, that what they're intending
29 to say - I mean they certainly knew - um, well, the - it's
30 an invoice that we were paying them. I otherwise can't -
31 I'm not sure what that's referring to. It - it certainly
32 wasn't voluntary. We were paying them and they'd invoiced
33 us.

34
35 **NELSON, MS:** And then they attach the signed agreement
36 'together with our invoice', and page 2 has the invoice,
37 thank you, Madam Associate. If we could have the whole of
38 the document on the page - on the screen, sorry?---Thank
39 you, counsel.

40
41 Do you recall seeing the invoice?---Not the exact time, but
42 I - I have seen that invoice, correct, counsel.

43
44 **THE COMMISSIONER:** It's in Euros?---It is.

45
46 **NELSON, MS:** Given today's exchange rate of about \$1.65 or
47 so, that would be about 218,000, something like that?
48 ---I'm absolutely going to take your word for that,
49 counsel.

50
51 That's the - - -

1
2 **THE COMMISSIONER:** Well, it varies probably hour by hour?
3 ---Yes. Almost minute by minute, I think, counsel,
4 but - - -

5
6 But somewhere between - can we agree it's somewhere between
7 210 and 220,000?---It - it - it - ah, Commissioner,
8 absolutely.
9

10 **NELSON, MS:** What contingencies or discussions were made
11 about the fact that this was to be paid in a foreign
12 currency? What discussions did you have within the office
13 about how this was to occur?---I don't recollect any
14 particular conversations. I know we had to, ah, make the
15 payment, and whether we were going to pay that in
16 Australian dollars or seek to convert that to Euro - I -
17 look, I actually don't have a recollection. I think there
18 may have been some conversation about it though.
19

20 Between whom?---I don't recollect. I - whether it - I
21 mean, I suspect I would have been informed about it. I
22 presume it would have been between the finance team in the
23 organisation.
24

25 As at 12 September 2023, did the finance team know about
26 the agreement having been signed and that the office was to
27 be invoiced?---I don't have a specific recollection of that
28 sort of contract management detail or the financing or
29 invoicing, um, information. I mean, most of that was being
30 - this is absolutely in no way an arrogant statement,
31 that's obviously done at different levels within the
32 organisation.
33

34 I want to suggest to you, Mr Field, that the CFO had no
35 awareness of the project or the fact that an invoice was to
36 come in this amount as at 12 September 2023?---That's
37 possible. It is - it - absolutely no, um, concept of, um,
38 not being transparent about this project or the CFO's
39 knowledge. Um, ah, the knowledge was for those who had
40 been with the organisation for some time and had been
41 involved with it.
42

43 So it's possible that the CFO of the Ombudsman of Western
44 Australia did not know that the office was to pay an amount
45 of €129,960 within 30 days?---Well, the - thank you. I'm
46 sorry to speak so quickly, counsel. The CFO reports to,
47 ah, ah, an assistant ombudsman, that assistant ombudsman
48 reports to me, and I would have expected certainly, and it
49 was my understanding, um, that those reporting to me had
50 full knowledge of these matters.
51

1 The assistant ombudsman being Ms Marsh?---At that stage it
2 would have been Ms Marsh.

3

4 And she reports directly to you?---At that stage she was
5 directly reporting to me.

6

7 Is it possible that at 12 September she also did not know
8 that this invoice to be paid within 30 days was going to
9 come into the office to be paid within 30 days?---It's -
10 it's - it's possible. There may not have simply been a,
11 ah, ah, a communication. That - that can occur in offices.
12 That - I - I did not have that - I don't have a
13 recollection of having that communication with Ms Marsh.

14

15 Well, it would be your communication, given you were to be
16 the contract manager. You would be responsible for telling
17 Ms Marsh, correct?---Oh, it - it - no. This is - this
18 would be about the payment of an invoice. Ah, invoices for
19 payment don't come to my desk to direct out to other
20 people.

21

22 **THE COMMISSIONER:** But you told me you were the contract
23 manager?---Well - it - well, that's for the execution of
24 the contract once it's commenced, so the deliverables under
25 the contract, ah, ah, are they - are they producing the
26 things to which we've contracted for them to do, are they
27 meeting their timeframes to the quality required. Invoice
28 payments are not by me. They are done by the finance team
29 - which is no criticism - - -

30

31 Sorry, do I understand your evidence to be that a contract
32 manager has no interest in or knowledge of invoices in
33 relation to that contract?---Oh, my - my - my interest
34 would be, um, that if it's a correctly produced invoice,
35 that it's paid. That would be my interest in it.

36

37 So you would need to be aware that it was a correctly
38 produced invoice?---Correct. It - I - I would want to know
39 that was a correct invoice and it had been paid by the
40 appropriate date.

41

42 **NELSON, MS:** As contract manager, would you accept that
43 ordinarily you would tell the finance department that they
44 were to expect an invoice of this size for immediate
45 payment, in effect?---I don't think I've ever had a
46 conversation in 17 years with my finance team for any
47 amount of contract, ah, about that. The invoice would come
48 in. If there were any queries about the invoice they would
49 be escalated up to me as a concern.

50

51 My point is, Mr Field, that they did not know the invoice

1 was even to come in in the first place, did they, in
2 mid-September 2023?---Well, I - I can't speak to what - I
3 can't speak to that. I - I don't know that.

4
5 Well, you had not told them, had you? Either Ms Nowbakht
6 or Ms Marsh?---Counsel, it is - there's no sense in which I
7 was, ah, ah, not being transparent or not - - -

8
9 **THE COMMISSIONER:** It's not a question of being
10 transparent. Counsel put to you, you have not told them?
11 ---I don't have a recollection of discussing with them an
12 invoice is coming in. My expectation would be an invoice
13 would come in, if there was any concerns or irregularities,
14 or concerns about the payment, it would be escalated
15 through me through the normal circumstances in the office
16 as with any single invoice that comes into the office. And
17 there are invoices that come to the office that would be
18 smaller than that and larger than that.

19
20 **NELSON, MS:** Had you received anything from the OECD at
21 the time that this invoice landed in Ms Poole's inbox?
22 ---I - - -

23
24 Had they performed any part of the agreement?---I don't
25 have any recollection of whether that was the case or not.

26
27 So this was to be an upfront payment of the entire cost of
28 the project prior to receiving any part of the service?---I
29 think that is - ah, is my recollection - were the terms and
30 conditions of the OECD contract.

31
32 Did you get any advice on the terms and conditions of the
33 agreement that you signed prior to signing it?---No. I
34 read them and I felt, ah, they were terms and conditions
35 that complied with, ah, the relevant legislation where
36 appropriate to enter into.

37
38 So you didn't seek any legal advice about the terms of the
39 agreement?---I didn't see any - any need to do so, because
40 they - there was nothing within them which I, ah, felt was,
41 um, requiring of legal advice. If I - if I - if I thought
42 so I certainly would have sought that advice.

43
44 You didn't seek any advice from the finance team about the
45 procurement exercise and how you were complying with the
46 Act or not complying with the Act?---Oh, I was - - -

47
48 Prior to signing it?---I was, ah, very familiar after
49 17 years with procurement in the public service. I was
50 very familiar - - -

51

1 Is that a no, Mr Field, you did not seek any advice prior
2 to signing the agreement?---No. I - well, it - sorry - - -

3
4 From the finance team?---Sorry, counsel. No, I - no, I
5 felt - no, I did not think it was required to do so.

6
7 Could I have 0391^.

8
9 0391^

10
11 **NELSON, MS:** This is the 2023/24 internal budget paper
12 that Ms Nowbakht, the CFO, prepared for your approval that
13 we were looking at on the first day in relation to travel.
14 So if we could just go to page 2. Do you recall seeing
15 this document on Tuesday, Mr Field?---So when you refer to
16 Tuesday, you mean - - -

17
18 Tuesday this week?---Oh, this week. Sorry.

19
20 If we go to page 3. We were discussing the FTE in the
21 Ombudsman office?---Oh, yes. I do recollect this document,
22 thank you, counsel.

23
24 And then if we go to page 4, to the expenditure
25 projections, and on Tuesday I was asking you about the
26 salary, which is on this page, and then we talked about the
27 other expenditure which is on page 6, 'General
28 Expenditure'?---I - I have a - have a strong recollection
29 now of this document and that discussion.

30
31 Thank you. And I suggested to you that the line item for
32 the Ombudsman office of general expenditure, of \$225,240
33 was projected expenditure on travel internationally. Do
34 you recall that?---I do recall that.

35
36 Now, if we could go to 0392^.

37
38 0392^

39
40 **NELSON, MS:** Start at page 2, thank you. So the first
41 email in the chain is Friday September 22nd from Morgan
42 Marsh to Ms Sharp, your executive assistant, but addressed
43 to you, attaching the memo regarding the internal budget
44 allocation that we just looked at?---Thank you, counsel,
45 I've read that.

46
47 So this is after the invoice has been received from the
48 OECD, correct? Because that invoice was dated September
49 the 12th?---In that case, correct.

50
51 And it's forwarded on to you for your consideration by

1 Ms Sharp, and then we can see your response at the top of
2 this page. Thank you?---Thank you.

3

4 I want to draw your attention to (4):

5

6 The only material amount of expenditure not included,
7 as it would not have been known to Leyla at what
8 point the OECD wish to invoice, is for the OECD
9 project, otherwise funded from SBP.

10

11 ?---Yes.

12

13 So are you telling Ms Marsh that the OECD project does not
14 appear in the internal budget allocation papers that you've
15 been given to review?---I can't say that. I think what I
16 can, ah, say is that I was ensuring that in preparing a
17 budget, that there would be an amount of expenditure, which
18 was the OECD amount of expenditure, and that would need to
19 be included in the budget.

20

21 Yes, and you're telling Morgan that it hasn't been
22 included:

23

24 The only material amount of expenditure not included
25 [...] is for the OECD project.

26

27 ?---I'm sorry. I should read it more - I will slow down
28 and read it more carefully.

29

30 Please take the time you need to read the documents,
31 Mr Field?---Yes. I would have read the materials, ah,
32 given to me by, ah, Ms Marsh. I, ah, must have read them
33 and, ah, formed the view that it didn't include, ah, an
34 amount of money for the OECD which ought to be included in
35 the forward budget, um, and was asking for her, um, for
36 that to be provided.

37

38 That was a material omission, correct?---I'm sorry, I don't
39 understand the question.

40

41 That was a material omission by the CFO from the internal
42 budget? A €127,000 invoice would need to be
43 reflected - - -

44

45 **THE COMMISSIONER:** 129,000 - it's 210 to \$220,000 not
46 included?---I'm - I'm - I'm sorry, I'm not sure - the - the
47 - the CFO was providing, um, what would have been at that
48 stage, um, ah, a - and particularly at that stage of the
49 year, um, ah, ah, ah, an update about, ah, the budget of
50 the office. It wasn't for the purposes of, um, ah, our
51 financial statements, it wasn't for the purpose of, ah,

1 audited statements, it wasn't for the purposes of anything
2 other than to say, 'Here's how I understand the budget',
3 and what I've done is said, 'Here's an additional thing
4 that you need to add into it'. That sort of thing would
5 happen all of the time.

6
7 **NELSON, MS:** The invoice had been received by the office
8 at this stage?---Yes.

9
10 The invoice was for approximately \$210,000 Australian, yes?
11 ---Yes.

12
13 It was to be paid within 30 days on the terms of the
14 invoice, Mr Field?---Yes.

15
16 So it was a significant omission from the 23/24 internal
17 budget paper?---I - I just don't accept that's the case.
18 It's something like half of one per cent of the entire
19 budget of the Office of the Western Australian Ombudsman.

20
21 You refer yourself to it being material?---Well, in - - -

22
23 'A material amount of expenditure'?---Ah, material in the
24 sense it was not a rounding error like five or 10 dollars.
25 Um, that was the only referencing material that was meant
26 to be in there. It's - well, what I was trying to say, it
27 is an amount of money that ought to be included in the
28 budget. I was certainly not trying to say it was material
29 in the sense it was 10 per cent or 15 per cent of our
30 budget for that year.

31
32 **THE COMMISSIONER:** It's \$210,000 worth of taxpayers'
33 money - - -?---Oh, and - - -

34
35 - - - which you had committed on behalf of the state?
36 ---Yes.

37
38 And it would appear from this that your CFO knew nothing
39 about it until the invoice popped up. Is that a fair
40 summary?---Um, I'm - well, yes, in relation to the CFO.
41 The CEO knew about it, the deputy knew about it, the Senior
42 Assistant Ombudsman Operations knew about it, um, the Head
43 of Senior Assistant Ombudsman, Head of Office of the
44 Ombudsman and President knew about it. Um, it was
45 something like half of one per cent of the budget of the
46 Office of the Ombudsman. Um, and I - - -

47
48 You keep saying that and trying to minimise it. The other
49 way of looking at it is it's \$210,000 of taxpayers' money?
50 ---Ah, well, Commissioner, this is obviously just my view.

1 Which you described as material?---Material in the sense,
2 Commissioner, that it - it should be included in a budget
3 that was being prepared which is an iterative rolling
4 budget, um, only for management - internal management
5 purposes, yeah.

6
7 I understand that entirely?---Yeah.

8
9 Carry on, counsel?---I - and - and, Commissioner, just to
10 finish, the material was also said in the context of this
11 will still be well within current parameters that project
12 modest under-expenditures. So it was trying to say
13 material in the sense that it's something that should be
14 included. It's certainly still within current parameters
15 of the budget. I should say - - -

16
17 Well, just stop. You're saying modest under-spend. You've
18 said that the money was allowed for in the streamline
19 budget approval. That was \$203,000?---Yes.

20
21 This is more than that. So where's the under-spend?---Ah,
22 well, prior to giving that answer and because this is a
23 public hearing, Commissioner, and you have indicated, um, a
24 view about taxpayers' money, I must say - I hope you'll
25 allow me to say that I consider \$200,000 to be a very large
26 amount of money in relation to the taxpayers of this state.
27 Um, and no-one - I'm sure other - perhaps people do or
28 equally, but no-one I believe takes more seriously, um,
29 spending taxpayers' money than I do and minimising it. And
30 I agree with you, for taxpayers of this state it is a very
31 significant amount of money.

32
33 And the question was where is the under-spend?---Now, I
34 will have to read that again to make sure I give you the
35 full proper answer.

36
37 Please do.

38
39 **NELSON, MS:** Could we have Document 0110^?---Oh, I haven't
40 read - I - I'm still reading that.

41
42 **THE COMMISSIONER:** That's all right. Read that and then
43 answer my question where the under-spend is?---That's what
44 I want to do.

45
46 **NELSON, MS:** Sorry, Commissioner.

47
48 **THE COMMISSIONER:** Or maybe we'll file that question if
49 counsel wants to ask it in due course. Counsel may please
50 proceed, Ms Nelson?---Oh, it - I - I sound like I'm - I'm
51 arguing with you, Commissioner. I am prepared to - to

1 assist with an answer if that was - thank you.

2

3 Well, if you are - - -?---Um, thank you, Commissioner. Um,
4 so just again now reading that, um, material is used in
5 exclamation marks there - or single quotation marks, ah,
6 because I felt it was an amount of money - ah, for ordinary
7 Western Australians it's an extraordinary amount of money,
8 ah, that would need to be included in our internal
9 budgeting. Um, I also absolutely took the view in - what I
10 was trying to convey there, ah, is, um, Leyla Nowbakht, the
11 CFO, wouldn't have known at what time the invoice came in.
12 And now that does remind me as I am reading this that I
13 actually wasn't aware or necessarily not aware whether
14 Leyla as the CFO knew about the OECD. I didn't have a
15 direct reporting relationship; she would be reporting to
16 the Assistant Ombudsman. I actually understood she did
17 know about the invoice because the Assistant Ombudsman knew
18 about the invoice. But I make no criticism of my Assistant
19 Ombudsman in that regard. Um, but that is my recollection.
20 And, um, for the OECD project, um, what I am simply trying
21 to say there is it won't - even if you include the OECD
22 project, that \$200,000, it won't mean that the overall
23 budget for the year would be over-expended. And that -
24 that - I may have conveyed it inelegantly, Commissioner,
25 but that's what I was trying to convey.

26

27 All right. Well, I don't consider that you've answered the
28 question, but I've asked twice. But we will move on?---I
29 apologise, I was trying. I apologise.

30

31 **NELSON, MS:** Do you recall telling Ms Marsh that Leyla was
32 to come to you directly if she had any financial issues to
33 discuss in the office?---Ah, no. Um, I indicated that I
34 considered the role of the CFO was, ah, as a officer that
35 if they ever viewed there was any form of financial
36 irregularity, something that was unlawful, irregular,
37 inappropriate, that not only should they, um, come to me
38 directly, but they must feel empowered to come to me
39 directly including if they thought I was doing such a
40 thing. So I - I specifically met with the CFO to say, 'If
41 you ever think I'm doing something wrong, you must come and
42 tell me, or if any other staff member is doing anything
43 wrong.' So irregularities was what I was referring to.

44

45 But that presumes that the CFO knows about what you're
46 doing, doesn't it, Mr Field?---Ah, yes. The CFO's - the
47 person who the CFO was reporting to is - my understanding
48 is, um - and through to me there was an understanding of
49 the OECD project.

50

51 Could I have 0109^.

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0109^

NELSON, MS: And start the email chain at the bottom of page 4. So this is an email from October 20 2023 from yourself to Ms Marsh, copying in Rebecca Poole. Do you recall sending this email?---I certainly don't have a recollection of this particular email but I absolutely accept it's an email that I have sent.

It refers to an attachment that you call a procurement memo for the OECD project?---Yes.

Why are you sending it to Ms Marsh?---Would I be able to see the entire - - -

But this is the first email in the chain?---Oh, it just might be helpful for context to see the chain if the Commissioner would allow.

THE COMMISSIONER: Well, I'm sure if counsel wants to she'll take you through the rest of the chain. But this is the initiating - - -?---Oh, I'm so sorry.

- - - email of the chain?---I'm - I'm so sorry. I didn't realise that, but I should have seen - - -

So the question remains?---I should have seen that from where the screen was. Thank you, counsel, I have read that.

NELSON, MS: I'll show you 0158^.

0158^

THE WITNESS: I have read it now, thank you.

NELSON, MS: I'll come back to this email and we'll go through the chain. I just want to show you a document which I think is the procurement memo that you had attached?---Right.

0114^, thank you.

0114^

NELSON, MS: Does that document look familiar?---Yes, I have a recollection of that document, correct.

So just slowly scroll through it. We'll go through this in detail, I just want you to see the extent of the document

1 that you've sent to Ms Marsh - - -?---Of course.

2

3 - - - before we go back to the email chain.

4

5 **THE COMMISSIONER:** So you don't want the witness to read
6 it in detail at this point?

7

8 **NELSON, MS:** Well, actually I think Madam Associate's got
9 some copies there. 0114^? It might be easier?---I do have
10 a recollection of this document too, Commissioner.

11

12 **THE COMMISSIONER:** That's all right. It will all be
13 easier in paper anyway.

14

15 **NELSON, MS:** It's an eight-page document, isn't it,
16 Mr Field?---Ah, it is.

17

18 Who drafted this document?---Ah, that was drafted by
19 Rebecca Poole - Ms Poole.

20

21 And did you settle the draft?---Ah, yes, this document came
22 to me and then I settled and, ah, worked on it, finalised
23 the, um - the draft.

24

25 Before you sent it to Ms Marsh?---Ah, no, I think I sent it
26 to Ms Marsh at that stage is my recollection, um, to get
27 advice from her I think from - advice from her and the CFO,
28 um, as to, um, their views and to get their assistance and
29 views, feedback, and expertise in relation to procurement.

30

31 Just looking at the front page, you can see it's dated
32 20 October 2023. Did you direct Ms Poole to draft the
33 memo?---Yes, at some stage I would have, and I don't
34 recollect - recollect what time that would have been. I
35 would have said to Ms Poole of course every procurement
36 needs a reduced to writing form of procurement, and that
37 might be, ah - it sometimes is a one-sentence email, um, it
38 can be yellow tick box - - -

39

40 If we could just - - -?---Oh, okay.

41

42 - - - limit your evidence to this particular procurement
43 activity?---Oh, I'm sorry. Um, so I - I'm very sorry,
44 counsel. The answer I think - what I should have said to
45 you is yes, counsel.

46

47 And did you direct Ms Poole after receiving the invoice
48 from the OECD dated 12 September 2023?---I don't have any
49 particular recollection about that. I do recollect this
50 was an iterative, ah, process. Of course the procurement
51 itself starting many years ago, um, and ultimately, as is

1 every document in our office, an iterative process of
2 development through a range of staff.
3
4 And iterative after 20 October 2023 in that it was changed
5 or changed form after 20 October 2023?---I can't be sure
6 about the dates, but my recollection is that I sent it to
7 both Morgan Marsh, Leyla Nowbakht - both excellent officers
8 - and said to them, ah, 'Could you please provide me your
9 feedback, um, about this document because I want it to be,
10 um, perfectly compliant with, ah, all laws in Western
11 Australia.'
12
13 Just for fairness I'll show you 0473^, page 1.
14
15 0473^
16
17 **NELSON, MS:** You'll recall I showed you this document - -
18 -?---Yes, I do.
19
20 - - - earlier this morning?---Yes, I do.
21
22 And do you agree that the top email from yourself to
23 Ms Poole the day before this procurement memo that we were
24 just looking at, where it says:
25
26 I will send through the procurement document once
27 completed.
28
29 Does that indicate that the document has yet to be
30 completed on 19 October, that you were working on it at
31 that time that you sent the email to her?---My
32 recollection, ah, counsel, was work on the document that
33 you have shown me here dated 20 October 2023 had been
34 undertaken over actually several months.
35
36 Several months?---I - I - that's my recollection.
37
38 So we would find drafts from several months prior to
39 October 19 in the system?---I can't be precise about the
40 dates, um, of that.
41
42 **THE COMMISSIONER:** Don't be precise about the dates.
43 Listen carefully to counsel's question and please respond
44 to it?---Okay.
45
46 **NELSON, MS:** In the computer system at the OWA would we
47 find drafts of this document dated 20 October 2023 - the
48 procurement memo that's on the desk in front of you - that
49 go back many months or any drafts?---Okay. So to be
50 precise in the answer, I don't know over what timeframe
51 that would go back. My understanding is Ms Poole was very

1 appropriately, um - I say very appropriately tasked to, ah,
2 put together a procurement memo, and she did so. As to
3 what number draft that is or how long beforehand she'd been
4 working on it, how many iterations beforehand - one, none
5 or many -I cannot say.

6
7 But, Mr Field, you just said many months?---Well, I'm
8 assuming it had been over some time but I - that may be
9 incorrect.

10
11 We could have 0199^.

12
13 0199^

14
15 **NELSON, MS:** Is this a draft of the memo from 18 September
16 2023?---I - that's what I would assume that would be,
17 correct.

18
19 We'll just scroll slowly through that, faster than reading
20 pace though, thank you. Perhaps if we just stop there.
21 There's a comment there from Ms Poole, isn't there, on the
22 right side?---Correct.

23
24 And keep scrolling, thank you. Do you recall working on
25 the document from 18 September 2023 with Ms Poole?---Ah, I
26 don't have a recollection to what extent I was working on
27 the document but, ah, I think it would be very likely that
28 Ms Poole and I were having discussions about, ah, the
29 document as we would have been having of course discussions
30 about innumerable things, um, and, ah - and that would have
31 included the OECD procurement memo.

32
33 Is it possible that a procurement memo in any form was not
34 commenced being drafted until after the invoice had been
35 received from the OECD on 12 September?---I just don't have
36 any recollection of when the actual - when the delegation
37 was to create the memo and when the memo was actually
38 started. I mean, I certainly would want to search my
39 records to see if I could find it. But, um, I don't have a
40 recollection of when it was first, um, delegated and when
41 the first iteration of the memo was created.

42
43 By 'delegated' do you mean you directing Ms Poole to draft
44 a memo?---Ah, I would have asked for a memo to be prepared,
45 that's right.

46
47 We could go back to 0109^ which is the email chain which
48 starts with that email at the last page between yourself
49 and Ms Marsh.

50
51 0109^

1
2 **NELSON, MS:** You've asked Ms Marsh to keep the document
3 password protected and confidentially retained, and then
4 you say, 'I'll call you about it shortly.' Do you remember
5 calling Ms Marsh?---Ah, I don't, no. But I - I would have
6 to make an assumption I may have from this. I don't have a
7 - a recollection of that conversation.
8
9 On 20 October you were in Bahrain. Does that assist you
10 with your recollection?---Ah, as to speaking to Ms Marsh?
11
12 Yes?---No, no, it doesn't. I'm not suggesting I didn't, I
13 just don't have a recollection.
14
15 We could scroll up, thank you. I'll give you a minute to
16 read Ms Marsh's response. Ms Marsh says, second sentence:
17
18 I understood from our previous conversations that you
19 did not intend to progress with this project using
20 Ombudsman WA funds, however appreciate that this has
21 now changed.
22
23 Do you recall at some point telling Ms Marsh that the
24 project was not going to utilise OWA funds?---No. I must
25 say - and this is not - when I say this, not in any way a
26 criticism of Ms Marsh. I actually recollect reading that
27 email, um, and to this day I'm still not sure what that
28 reference actually was, um, because it was always the case
29 that it was using Ombudsman WA funds. The only thing I can
30 - I thought of at the time - I didn't feel there was a need
31 to clarify it - is whether she might have been making a
32 reference to whether they were funds that would otherwise
33 be from our consolidated appropriations or from the SBP.
34 And that's the only, ah, thing I thought she may have been
35 referring to when she said that to me. But I have to say
36 even to this day I'm not quite sure exactly what that
37 reference was.
38
39 But at all times you had the intention to use WA funds?
40 ---Um, from the very first day that I read the European
41 Ombudsman project, which goes back several years.
42
43 And we could then scroll up to see your response. Possible
44 to get that response of October 23 on the page - on the
45 screen, sorry?
46
47 **THE COMMISSIONER:** Well, the answer's probably yes, but
48 nobody can read it.
49
50 **NELSON, MS:** Okay. All right. We'll start with page 3,
51 thank you?---Oh. Thank you.

1
2 And just as a matter of fairness, I suggest to you that the
3 correspondence with the Premier's chief of staff was that
4 email that I showed you earlier in which he asked for the
5 details?---That is correct.

6
7 And then we'll continue up, thank you. Perhaps we go to
8 the top of page 2 because this is a long email. So two
9 days later Ms Marsh emails you again?---Yes.

10
11 You recall receiving this email?---Ah, not specifically,
12 but I absolutely accept that's an email I received, thank
13 you.

14
15 And the red font is actually your response to her?---Yes,
16 I'd be - I'd be - I would be very confident of that because
17 it's a very typical system I would use to respond to
18 emails.

19
20 Have you read that page?---Oh, no. I - I will read it.
21 Commissioner, can I make - ask one, um - obviously
22 accompanied by a staff, um, I'm - I'm just getting a little
23 older. I just need to go to the toilet for one second.

24
25 **THE COMMISSIONER:** Very well. We'll have a short
26 adjournment?---I apologise, Commissioner.

27
28 (Short adjournment)

29
30 **THE COMMISSIONER:** Please be seated?---Thank you for the
31 indulgence, Commissioner. I apologise for the
32 inconvenience.

33
34 **NELSON, MS:** 0109^, page 2.

35
36 0109^

37
38 **NELSON, MS:** And you were reading through what was on the
39 screen, Mr Field?---Thank you, and I will now return to
40 that, counsel. Thank you, I've read that page. Thank you.
41 And thank you.

42
43 If we could go back to page 2, thank you. You say:

44
45 The Procurement Rules were definitely applied at each
46 stage of the process.

47
48 So by that, are you saying that the Procurement Rules were
49 applied at the time that you had scoped out the process,
50 came to the view that there was a justifiable reason to
51 enter into it, then also during the contract negotiations?

1 ---Yeah - I - counsel, I mean from the day that I read the
2 European Ombudsman report and from every moment then
3 onwards.

4

5 And have you had a chance to recollect when you first read
6 the European Ombudsman's report?---Look, I - I - I - I, ah,
7 don't have a recollection. I know it was brought to my
8 attention, and what I, ah, will need to do is refresh my
9 memory so I can provide that material to the Commission.

10

11 And you remember yesterday I showed you an email in which
12 the OECD brought it to your attention?---Yes.

13

14 In the last half of 2022?---Yes.

15

16 And you said yesterday that you thought that you had seen
17 it prior to the OECD bringing it to your attention. Is
18 that still your evidence?---Absolutely.

19

20 So that was not the first time that you had seen it?---Oh,
21 no. Certainly not, is my recollection.

22

23 Going back to the screen here, when you say:

24

25 And the combination of the file note and attachments.

26

27 By 'file note', do you mean the procurement memo that you
28 had sent Ms Morgan on 23 October or do you mean another
29 file note?---That is correct. Um, counsel, and in - as I
30 say, I do not wish to guess - I - I thought the European
31 Ombudsman report might have been back as far as 2018, but I
32 will, for the Commission, definitely, um, go back over
33 that, um, and in relation to the answer to that question,
34 um, the answer is yes.

35

36 So you think you might have read the European Ombudsman's
37 report in 2018 and formed the view, at that time, that it
38 should be a procurement activity for the Ombudsman of WA?
39 ---Yes. Yep. I - and I cannot say when I read the report.
40 I will go - I know I read it contemporaneous to its
41 release, and I will need to find out that information to
42 provide it to you. Um, but from that day I read it, I was
43 of the view that the Western Australian Ombudsman should
44 undertake, ah, a project, ah, of the nature of that
45 project, or something very similar to it in Western
46 Australia.

47

48 Did you communicate that view to anyone or did you document
49 it writing at that time?---I don't recollect document it in
50 writing. Ah, I think the only other person I may have
51 mentioned that to would be my, ah, chief of staff.

1
2 Ms Poole?---Correct.
3
4 If you go back to what's on the screen now, I'm asking you,
5 putting the European Ombudsman report to one side, you
6 refer to:
7
8 A combination of the file note and attachments
9 evidences this.
10
11 Are you referring to the procurement memo that you had
12 earlier sent to Ms Marsh, that's on the table in front of
13 you?---Ah - - -
14
15 0114^?---I can only imagine that is what I was - am
16 referring to in that, ah, reference.
17
18 What do you mean when you say you'd 'like to go a step
19 further and personally certify that at each stage of the
20 procurement' they were met? Are you referring to signing
21 something or?---Correct.
22
23 At the time you sent this email, you had not done that?
24 ---My understanding of the Procurement Rules is that the
25 authorised officer must sign certain aspects of
26 procurement. What I was proposing to do was that at each
27 iterative stage of the decision-making process that I would
28 personally append my signature and my certification that it
29 was my view, um, that it had met the Procurement Act and
30 the Procurement Rules, and I was doing that as a matter of
31 what I considered to be practice beyond and above the
32 Procurement Act and the Procurement Rules, um, but both as
33 an integrity agency, because it was an amount of money that
34 was material, um, ah, I felt that was an appropriate thing
35 to do.
36
37 But at this time, October 25, you had not yet done that?
38 ---No, the procurement memo beyond that file - so that, at
39 that stage, was an iterative draft of a procurement
40 memo - - -
41
42 **THE COMMISSIONER:** I think the answer was no?---Oh, it's -
43 no. I'm sorry. No. No, Commissioner. No.
44
45 It was 23, not 25.
46
47 **NELSON, MS:** Oh, thank you, Commissioner. Yes.
48
49 **THE WITNESS:** Commissioner, no. Sorry, counsel. No.
50
51 **NELSON, MS:** And you indicate that, if we could just

1 scroll up, thank you, so we can see the bottom of the page;
2 the bottom of page 2. Thank you. You're proposing to
3 include anything that's in writing and conversations
4 reduced to writing as attachments to the file note?
5 ---Correct.

6
7 And then you are going to put those attachments to the
8 procurement memo?---Correct.

9
10 And do I take it that those attachments will include a
11 request to the OECD for them to be able to deliver on a
12 proposal?---It would have included an attachment - - -

13
14 I'm just reading what you've written here?---Oh, I'm sorry.

15
16 Are you telling Ms Marsh that she can expect to see a
17 request to the OECD for them to be able to deliver on this
18 proposal?---Yes. I think I'm referring there to the, ah,
19 contract with the OECD.

20
21 And a request to the OECD for quotation, Ms Marsh can
22 expect to see some kind of documentation in relation to
23 that?---Yes, correct.

24
25 When was that request to the OECD to quote made?---I don't
26 have a recollection. I do know, um, that, ah, there was an
27 exchange - I - well, in - in - um, so the timing, I'm not
28 certain, but I do know that there was both, as I recollect
29 it, video conferences or - one or perhaps more, ah, and
30 emails between the OECD and, ah - and our office, ah,
31 regarding, ah, um, ah, a request for pricing for the OECD
32 and contract, ah, scope term and price negotiation,
33 including the fact that at one point I was briefed upon
34 that properly and indicated my views about a need for
35 reduction in pricing.

36
37 If we could scroll up to see the top of page 3:

38
39 Contracts in OECD standard form contract, but it
40 meets and exceeds the requirements of the simple
41 project template.

42
43 And your evidence before the morning tea break was that you
44 didn't receive any legal advice or any other advice on the
45 terms of that contract, is that correct?---I didn't think
46 there was a need to.

47
48 **THE COMMISSIONER:** The answer is either yes or no?---No.

49
50 **NELSON, MS:** And Ms Marsh refers to the exemption
51 register, which is one of the requirements that we saw in

1 the financial management manual for the OWA, isn't it?
2 ---I'm sorry, let me just - is that the next - - -

3
4 Yes:

5
6 Based on the total value of the contract (over
7 \$50,000) it will need to be recorded on TendersWA and
8 the full value, including the IOI contribution, will
9 need to be recorded.

10
11 ?---Correct.

12
13 When an exemption is approved the exemption register
14 will need to be completed.

15
16 ?---Correct.

17
18 Has the exemption register been completed?---Ah, I can't
19 say whether it's been completed as of today.

20
21 Did you approve any type of exemption for this contract?
22 ---Yes, I did.

23
24 What type of exemption?---Ah, the exemption was that it,
25 ah, did not need to go to a second form of - a second
26 quotation or an additional provider.

27
28 So what's called the sole supplier exemption, is that what
29 you're referring to or - - -?---I don't think it is
30 actually referred to as the sole supplier. And this is not
31 me being pedantic, um, because I used to refer to it as the
32 sole supplier, but I don't think that's the way it's
33 referred to. Under the Procurement Rules, um, it's, ah,
34 you can seek an exemption only on certain circumstances,
35 um, for - not to request a second, third, or additional
36 quotation for the service.

37
38 **THE COMMISSIONER:** And you would have recorded that?
39 ---It's recorded in the procurement memo, correct.

40
41 I just want to be clear. It's recorded in the procurement
42 memo of 20 October 2023. Is it recorded at the time you
43 considered and decided on the exemption?---I don't know if
44 I made a contemporaneous note at the time. Um, this is not
45 the procurement memo though. There is a procurement memo,
46 this is an earlier iteration of it. There is a procurement
47 memo and it is recorded in that procurement memo.

48
49 Yes, I know. But the procurement memo you've just referred
50 to post dates this, does it not?---(No audible response.)

51

1 Post dates 20 October?---Oh, it does, correct.

2

3 **NELSON, MS:** You entered into the contract in August 2023?
4 ---Yes.

5

6 Would you agree that you can't enter into a contract
7 without an exemption already being in place?---The
8 exemption was in place.

9

10 And would you agree that at the time an exemption is
11 considered by yourself as an accountable authority and
12 granted, it should be reduced to writing?---And it was.

13

14 But you're saying that's not until a time after this email,
15 sometime after October 25?---Well, as I say, the - - -

16

17 **THE COMMISSIONER:** Sorry, you keep advancing there,
18 Ms Nelson. Twenty-three.

19

20 **NELSON, MS:** Twenty-three?---The - the procurement memo
21 was iterative in its development. Um, I can say in its
22 final form it was reduced into writing - those matters were
23 reduced into writing, correct. But at - - -

24

25 **THE COMMISSIONER:** But it's after the - the bird has
26 flown. You've signed the contract in August, and it's not
27 until October that you're putting together a procurement
28 memo. Surely it's cart before horse?---Well, um,
29 Commissioner, I - I don't agree. I, as the accountable
30 authority, turned my mind exactly and precisely to the
31 requirements of the Procurement Act and the Procurement
32 Rules, formed the view that, ah, it was appropriate both in
33 relation to those matters you're referring to and at the
34 appropriate time as is required under the Procurement Act
35 and Procurement Rules.

36

37 But the only evidence that you turned your mind is in
38 October '23, isn't it? Because so far you've been unable
39 to point to counsel any document which is contemporaneous
40 with any decision in relation to procurement?---Um, and -
41 and I have never been sarcastic in my life and,
42 Commissioner, this is not any attempt to be so, but I'd be
43 both perjuring myself today and in that document I signed
44 if that was the case, because I certified those matters in
45 that procurement memo.

46

47 Well, that's one of the issues.

48

49 **NELSON, MS:** Mr Field, you seem to hold a view that you
50 can enter into a procurement process retrospectively?---I
51 absolutely don't hold that view.

1
2 You can document a procurement process retrospectively, is
3 that your evidence?---No, not at all. I've not said that
4 at any stage.
5
6 Is that your belief?---Absolutely not.
7
8 Would you agree then that the only rational inference from
9 the Procurement Act and the Procurement Rules as a whole is
10 that a procurement process must be entered into and
11 documented before the contract is signed?---And it - no, I
12 absolutely don't accept that's what the Procurement Act
13 says or the Procurement Rules. Um, and - and they don't
14 say that. And, um, what I would say is that also when the
15 procurement memo was finalised there was an attachment, an
16 entire A4 folder of contemporaneous emails, um, which are
17 the contemporaneous emails regarding contract negotiation,
18 contract pricing and contract scope. So it was a
19 combination of contemporaneous emails and reduction in
20 writing to - to contemporaneous decision making. Um, I -
21 so I - as I say, I don't wish to in any way make this sound
22 querulent, but I - I completely disagree with what you're
23 saying, counsel.
24
25 The exemption register, you don't know if it's been
26 completed for this contract?---Ah, as - sitting here at the
27 moment, um, I don't - I could not answer that on oath, no.
28
29 Is that not something that you thought was important for
30 you to follow up on given that Ms Marsh has brought it to
31 your attention back in October?---Ah, it is an
32 administrative matter but it is important, and I will have
33 to make sure that it is in the exemption register.
34
35 Because as you say in the next answer, you are the contract
36 manager?---Yes.
37
38 Did you turn your mind to any conflicts of interest that
39 might have arisen from entering into this agreement with
40 the OECD?---I absolutely did.
41
42 You did?---Yes.
43
44 When did you do that?---I did that, ah, well, in fact I
45 think as you are and ought to do so throughout the entire
46 process.
47
48 And did you document that consideration and the management
49 of those conflicts?---Ah, yes, and it's in the procurement
50 memo.
51

1 Well, did you identify any conflicts?---I identified no
2 conflict whatsoever.
3
4 No conflict whatsoever. The fact that you were President
5 of the organisation that was going to have the benefit of
6 the contract that you were giving funds to in your capacity
7 as the Commissioner for Parliamentary Administrative
8 Investigations, did that not raise the potential for
9 conflict, or indeed an actual conflict?---I - I - I'm, ah -
10 I'm finding that question difficult to understand.
11
12 Okay. I'll break it down?---Yeah.
13
14 Was the IOI to get a benefit from entering into the
15 agreement with the OECD?---Yes, to which they - for which
16 they were paying.
17
18 And the IOI were to get a benefit from the final product
19 produced by the OECD?---Correct.
20
21 You are President of the IOI?---Yes.
22
23 And you had some involvement in convincing the world board
24 of the IOI to agree to commit funds to this project?---Yes.
25
26 And on your evidence the Office of the Ombudsman of WA were
27 to get a benefit - - -?---Yes.
28
29 - - - from the OECD completing the project?---Yes.
30
31 Did you not see the potential for conflict in that you,
32 being the one person, were occupying both role as President
33 of the IOI?---I - I - unless I'm missing something,
34 counsel, all I can say is I cannot possibly conceive of how
35 that is a conflict of interest. I had nothing to gain, ah,
36 personally, um, in any shape or form from this service
37 being undertaken. I mean, in - in that sense, my salary
38 paid by the taxpayer is a conflict of interest.
39
40 **THE COMMISSIONER:** Do I take it from that answer that you
41 would only recognise a conflict if you personally were to
42 gain something?---Ah, it - I - I cannot understand the
43 conflict of interest. I do not wish to be intemperate, but
44 I think the conflict of interest suggestion is impossible
45 to understand.
46
47 **NELSON, MS:** Is the agreement on the contract register at
48 the OWA?---Oh, sorry, what is that?
49
50 Is the executed agreement on the contract register for the
51 OWA?---It should be, and if it isn't - I don't - can't say

1 to my best - there are sometimes lags in - administrative
2 lags in making sure that things are in there. If it - - -

3

4 **THE COMMISSIONER:** This would be a lag of months?---Ah,
5 and it is - there's been - it is possible. Um, as I say,
6 we ultimately only have a relatively small staff. But I
7 will - I can't say. But if it isn't, I will ensure it is.
8 There is no intention for it not to be.

9

10 **NELSON, MS:** But you haven't made those inquiries to date,
11 Mr Field?---Ah, no, I have not.

12

13 Could I have 0149^.

14

15 0149^

16

17 **NELSON, MS:** It's an email back in January 2023?---Yes.

18

19 I'll give you a minute to read that?---Thank you.

20

21 Now, you're telling the European Ombudsman who was
22 involved, as you've said, in the 2018 report - - -?---Yes.

23

24 - - - of the intention of the IOI to undertake further work
25 with the OECD?---Correct.

26

27 Do you agree you do not tell her that the OWA is having any
28 part of this cooperation?---But, counsel, that is for
29 exactly the reasons as my previous answers. That is in the
30 context of that last sentence:

31

32 Before I take this to the board of the IOI for their
33 consideration, I wanted to ensure you were
34 comfortable with the project.

35

36 So it is - it is drawing the attention, ah, of the European
37 Ombudsman to what I was proposing would be the IOI
38 contribution. As I say - - -

39

40 So you weren't deliberately not telling her that the OWA
41 were going to have some input financially and in kind?
42 ---Well, ah, on oath I can say to you absolutely not.

43

44 And in fact the final agreement was between the Ombudsman
45 of WA and the OECD, wasn't it, Mr Field?---Ah, as it was
46 intended to be.

47

48 It was always intended to be an agreement signed between
49 the OWA and the OECD?---Um, so, ah, counsel - so as I think
50 I've answered that question, um, what - there was
51 discussion as I recollected - I don't know what time - as

1 to whether, um, the best form of the contract would be, um,
2 that it would be all three parties being signature to it,
3 the OWA, the OECD, the IOI, OECD. And we settled on, um,
4 the fact that it was the OWA and OECD, and that was in
5 large part, as I recollect, because we were the principal
6 project, um, partner, um, and the project would be
7 principally directed towards the funding we were providing.

8
9 Mr Field, wasn't it the case that up until 30 June or very
10 shortly before 30 June the various iterations of the grant
11 agreement between the OECD and the donor mentioned the IOI
12 as being the donor?---Yes, I think the OECD thought they
13 were going to be doing the grant agreement with the
14 IOI - - -

15
16 That's right, they did?--- - - - for the contract purposes,
17 that's right.

18
19 Up until mid-June?---I think that was the understanding of
20 the OECD.

21
22 We can take that down, thank you. Did you have a meeting
23 with Mr Heritage and Morgan Marsh on 6 November 2023 about
24 the OECD project?---Oh, I - I can't recollect that, um,
25 date or particular meeting.

26
27 I'll show you a file note from Mr Heritage?---That would be
28 helpful, thank you.

29
30 Zero one - sorry?---Oh, sorry. That will be helpful, thank
31 you.

32
33 0164^.

34
35 0164^

36
37 **THE WITNESS:** Yes.

38
39 **NELSON, MS:** Do you recall that meeting?---Ah, I actually
40 do not.

41
42 At the time was Ms Poole on extended leave?---Yes.

43
44 And there's a reference there in the file note to
45 'Retrospective Documentation for Procurement (OECD)'
46 ---Correct.

47
48 'Ombudsman will sign declaration about sole source via
49 exemption.' You're nodding your head?---Ah, yes.

50
51 As at 6 November you haven't signed any declaration?---Ah,

1 I - as I said, so I don't recollect this particular
2 meeting, um, but that's absolutely possible that I haven't
3 signed the declaration in the procurement memo at that
4 stage.

5
6 Was it the same day that Ms Leyla Nowbakht the CFO had
7 received a letter from the Treasurer about the OECD
8 invoice?---Oh, I don't have a recollection. I do - sorry,
9 I can say the Treasurer did send a letter, um, to
10 Ms Nowbakht; I don't recollect the exact date. It could be
11 the same date or thereabouts.

12
13 And what was the import of that letter? What did it
14 effectively say?---Oh, it was a long letter, um, and it
15 said - it said many things, as I recollect it.

16
17 What was the effect of the letter?---Oh, I think it had
18 many effects potentially. I think the principal effect as
19 I recollect it, um, was that it was indicated not to pay
20 the invoice.

21
22 Being the invoice of 12 September 2023 from the OECD?
23 ---Correct.

24
25 Did you call this meeting after Ms Nowbakht had received
26 that letter from the Treasurer?---That I don't recollect.

27
28 And your email to Daniel Pastorelli, again is that a
29 reference to the email we've already seen this morning?
30 ---Ah, correct.

31
32 I'll show you the letter 0160^.

33
34 0160^

35
36 **NELSON, MS:** I'll just give you a minute to read that,
37 Mr Field?---I am familiar with the letter.

38
39 Madam Associate, do you have copies of that letter?

40
41 **THE ASSOCIATE:** No, I don't, counsel.

42
43 **NELSON, MS:** We could just keep scrolling, thank you.

44
45 **THE COMMISSIONER:** Well, it's an important letter and
46 there may be others that are or are not copied. And it's
47 10 to 1 so it might be better if we break now and resume at
48 10 to 2, and then copies of letters can be provided.

49
50 **NELSON, MS:** Thank you.

51

1 **THE COMMISSIONER:** So we'll do that.

2

3 **CHRISTOPHER JAMES FIELD RECALLED ON FORMER OATH AT 01.55**
4 **PM:**

5

6 **THE ASSOCIATE:** All rise.

7

8 **THE COMMISSIONER:** Please be seated.

9

10 **NELSON, MS:** Mr Field, I was showing you 0160^ which was a
11 letter from the Treasurer dated 6 November 2023.

12

13 0160^

14

15 **NELSON, MS:** And at the bottom of the page there's a
16 heading 'Section 79 Direction'?---Yes.

17

18 And under that the Treasurer asks the CFO or directs the
19 CFO to:

20

21 Provide me with a written explanation of the basis upon
22 which it is asserted that the Ombudsman had authority to
23 enter the agreement -

24

25 - being the OECD agreement -

26

27 - or has authority to pay the contribution of €129.960 to
28 the OECD.

29

30 And then the Treasurer also asks for documents that
31 evidence that, and over the page - the top of the next
32 page, 'A written explanation'?---Correct.

33

34 Was that direction complied with, do you know?---Ah, yes,
35 it was.

36

37 And did you assist the CFO to prepare a response?---I did.

38

39 How did you assist her? What did you do?---Ah, my
40 recollection is there were, ah, meetings. I'm not sure how
41 many meetings. Um, I think there would have been telephone
42 calls, emails, and of course I would have been personally
43 involved - well, I say of course I was involved also in the
44 settling of the letter.

45

46 Could one of those meetings have been the meeting on
47 6 November with Ms Marsh and Kyle Heritage that I was
48 showing you the file note in relation to prior to the lunch
49 adjournment?---I - I don't recollect that being part of
50 that process. Um, but I'm not saying it wasn't, I just
51 don't recollect it being so.

1
2 So do you recall how often you were in the office around
3 November 2023?---Ah, no, I don't recollect.
4
5 The Commission has been able to obtain your swipe access to
6 Albert Facey House. I'll bring up a document that is a
7 compilation of those records, 0418^.
8
9 0418^
10
11 **NELSON, MS:** And you can see it actually starts on
12 1 January 2023 and it goes through the calendar year and up
13 until 1 February 2024 on page 15. So we can see just from
14 this page that there were no days between 1 January and
15 28 January 2023 that you were present in the office,
16 physically in the office?---Ah, I'm not sure whether that's
17 correct. It would depend on whether the swipe cards were
18 correct because sometimes they're lost and you get a - a
19 new swipe card, so that would have to be confirmed. Um,
20 but leaving that aside, um, I'm happy to say that there's a
21 record before me, yes.
22
23 How often did you lose your swipe card in 2023?---Oh, I - I
24 have no recollection. I - I have lost them from time to
25 time. I don't recollect.
26
27 This card holder transaction analysis indicates that you
28 were in the office on 36 days during the 2023 calendar
29 year?---Ah, I'm happy to accept that's possible.
30
31 Sorry?---Sorry, I don't know what to say, counsel. I'm - I
32 - - -
33
34 **THE COMMISSIONER:** Well, would you agree or disagree with
35 what counsel has put?---I don't have a recollection of the
36 exact days I was in the office.
37
38 Weren't being asked for exact dates?---Okay.
39
40 Counsel said that the swipe card analysis - - -?---Yes.
41
42 - - - which may or may not be right - - -?---Yeah.
43
44 - - - indicates 36 occasions I think during 2023 - is that
45 right, counsel?
46
47 **NELSON, MS:** That's correct, Commissioner.
48
49 **THE COMMISSIONER:** Now, what is your response to that?---I
50 wouldn't think that would be correct.
51

1 And why not?

2

3 **NELSON, MS:** You wouldn't? Sorry, I - - -

4

5 **THE COMMISSIONER:** You wouldn't think it would be correct.
6 And why not?---Ah, I would have thought it would be more
7 days that I was physically in the office in that.

8

9 **NELSON, MS:** If we could just show the next page, thank
10 you. So you're in part of 9 February and part of
11 13 February. And then on 26 February you travelled to
12 Morocco?---Yes.

13

14 We could go to page 3?---Yeah.

15

16 Returning on 4 March 2023?---Yes.

17

18 And then a week later you travelled to Pakistan?---Yes.

19

20 Does that accord with your memory of your travel - - -?---
21 Ah, yes.

22

23 - - - in March?---Yes.

24

25 And you were in Pakistan until 17 March?---yes.

26

27 And then we go to page 4, you're in the office on 30 March
28 2023, then on 6 April, 18 and 19 April. And then we go to
29 page 6, you're in the office two days in May. And then you
30 travel to Slovenia and the UK on 2 June - - -?---Yes.

31

32 - - - until 16 June?---Yes.

33

34 Does that accord with your memory?---Yes.

35

36 And then page 7 you're in the office on four days in the
37 balance of June 2023?---Yes. I - I don't accept your
38 terminology of being 'in an office'. Was I physically
39 present at my desk at Albert Facey House? Um, no, that may
40 not be the case.

41

42 Were you physically at your desk in the first week of July
43 on one day?---Oh, without checking these I'm going to
44 accept that.

45

46 Yes. And then you travelled to Thailand on 8 July 2023?---
47 Correct.

48

49 Returning on 13 July?---Correct.

50

51 Then we go to page 8. You were not physically in the

1 office for the balance of July. You travelled to Taiwan on
2 22 July to 28 July?---Correct.
3
4 Then you had some personal leave in August 2023?---Correct.
5
6 And then page 9, you were in the office for five days for
7 the balance of August 2023?---Correct.
8
9 And physically in the office on 5 September and
10 8 September?---Correct.
11
12 Then the next page, thank you. You're physically in the
13 office 11, 12, and 13 September, and then you travelled to
14 Italy?---Ah, correct.
15
16 And we could go to the next page. You're physically in the
17 office two days in October before travelling to Bahrain on
18 17 October?---Correct.
19
20 And you took annual leave to travel to Bahrain, is that
21 correct?---Correct.
22
23 And then on 24 and 25 October you were physically in the
24 office. Page 12, you were in the office on 30 October, and
25 then on 6 November 2023 which would accord with the file
26 note of Mr Heritage that we've looked at - - -?---Ah,
27 correct.
28
29 - - - referring to the retrospective procurement. Then
30 again on 9 November. You took some personal leave in
31 November at page 13. You're physically in the office for
32 three days for the balance of November into December?---
33 Correct.
34
35 So three days in that month. And at page 14 after
36 Christmas you're in the office on two occasions, then in
37 early January on two occasions. And on page 15 a further
38 two occasions for the balance of January 2024?---Yes.
39
40 So the response to the Treasurer of 13 November 2023, you
41 say you gave instructions to Ms Nowbakht in some way.
42 Would that be by email or telephone?---Ah, I don't
43 recollect, but it would have been in some form.
44
45 Did you see the letter before it was finalised?---Yes, I
46 did.
47
48 The letter is signed by Ms Nowbakht. We go to page 4 -
49 sorry, 0157^ is the response letter.
50
51 0157^

1
2 **NELSON, MS:** Madam Associate, do you have any copies of
3 0157^ for the witness? So it's a letter dated 13 November
4 2023. And if we could go to page 4, it's signed by Leyla
5 Nowbakht, Director of Finance and Governance. Was she
6 effectively the Chief Financial Officer?---Correct.
7
8 Page 2, thank you. Now, in terms of the written
9 explanation of the basis upon which you had authority to
10 enter into the agreement, the letter details that you're an
11 accountable authority. Then Ms Nowbakht says halfway down
12 the page on the screen:
13
14 The Ombudsman has informed me that he entered into the
15 agreement on the following basis.
16
17 Then there are three separate paragraphs. The first one:
18
19 The specific funds for the purpose of entering into the
20 agreement had been appropriated to the Office of the
21 Parliamentary Commissioner by the Expenditure Review
22 Committee of Cabinet.
23
24 Is that a reference to the streamline budget process that
25 we were looking at earlier this morning?---Correct.
26
27 It's not referring to any other document in addition to
28 that?---Ah, no.
29
30 There was no other communication with Cabinet other than
31 the streamline budget process certification
32 (indistinct)?---That is what that is referring to.
33
34 Then the second paragraph:
35
36 The specific allocation of funding described above was
37 provided in accordance with the Procurement Rules,
38 Procurement Direction, et cetera.
39
40 And then three, Ms Nowbakht says that:
41
42 Briefings were provided to the chief of staff to the then
43 Premier and the Treasurer regarding a meeting between the
44 Ombudsman and the Secretary General of the OECD, and then
45 the OECD project over approximately 12-month period.
46
47 ?---Correct.
48
49 Those briefings, Mr Field, are they the quarterly meetings
50 with Mr Pastorelli that we've seen in those agenda?---
51 Correct.

1
2 Right. No additional meetings other than those?---Ah, no,
3 the only meeting - well, to the best of my recollection,
4 the only time I met with Mr Pastorelli would have been
5 during those meetings.
6
7 And noting that those agenda items that we can find
8 evidence for that I showed you this morning did not
9 reference OECD, correct?---Ah, the answer to that has to be
10 yes.
11
12 And you say despite them not referencing the OECD that you
13 have a recollection of talking to Mr Pastorelli about the
14 OECD project?---Oh, well, I don't say - I don't agree with
15 the first part of the premise, counsel, with respect. I
16 haven't had the opportunity to, ah, go through my records
17 to see if I have an agenda that was settled by me that says
18 that, and I will do that. Um, and in relation to - in any
19 event, do I have a recollection - a specific - a photo
20 recollection of the conversation with Mr Pastorelli about
21 the OECD project? Yes, I do.
22
23 Prior to informing Ms Nowbakht that you wanted paragraph 3
24 in the letter did you go back and look at your own records
25 to satisfy yourself that you did have the briefings as
26 described in three?---(No audible response.)
27
28 Did you do any independent investigation at the time this
29 letter was settled to verify that that was correct?---Well,
30 I wouldn't have needed to because I knew those things had
31 occurred and I had memories of them.
32
33 You didn't go back and look for any records or documents of
34 any kind to assist you in your recollection?---Well, I - I
35 searched back through my memory, um, and I had a photo
36 recollection of my conversations with Mr Pastorelli.
37
38 And do you have a photo recollection now of what those
39 conversations were about specifically? What did you tell
40 him about the OECD project?---Ah, I told him about the, ah,
41 project, um, in that, um, I would - well, my recollection
42 of what I spoke to him about, it certainly wouldn't have
43 been in detail. I may have mentioned questionnaires. It
44 would have been in the detail of what I saw is the benefit
45 of the project, um, for Western Australia and our close
46 Asian-Pacific region neighbours. That would have been the
47 context of the briefing to him.
48
49 Did you tell him that there was an agreement that had been
50 entered into in relation to producing the project outputs
51 or that there was going to be an agreement?---No, I would -

1 I would be, um, perjuring myself to say I did, because I
2 don't have a recollection of saying that. I may have, but
3 I'm not prepared to say I did.

4
5 So the briefing to the best of your recollection was
6 limited to talking generally about the - can you tell me
7 what it was generally you were talking to Mr Pastorelli
8 about?---About the OECD project?

9
10 Yes?---Um, so there was an - an entrée discussion which I
11 won't - obviously that's not germane, um, I think. And
12 then I would have - my recollection is I spoke to him
13 about, ah, the value that I perceived that project would
14 have, and consistent with other projects that I was
15 pursuing such as the MOU with Styria that I thought were of
16 value to the state. And I thought this one was
17 particularly valuable because it had, um, a value for our
18 close Asian-Pacific neighbours particularly in relation to
19 good governance, and particularly because good governance
20 flows to the absence of sovereign risk, the, ah - the
21 creation of investment certainty, and that was a very
22 positive thing for Western Australia.

23
24 Did you talk to him about the fact that there would be an
25 agreement to which the OWA would be a party?---Once again,
26 I would perjure myself to say that I did. I cannot
27 recollect doing so. Um, I - and can I say this: I don't
28 have a recollection of that level of specificity about the
29 - about the matter.

30
31 Did you tell him that the OWA had committed to contributing
32 €129,960?---I certainly would have mentioned to him that it
33 was a project, ah, where funding was going to be
34 appropriated. And I don't have a - a recollection - a
35 perfect recollection, but I suspect - I think I said to him
36 also that it would include, ah, a co-funded element from
37 the IOI.

38
39 Were you specific about the amount of funds that OWA - - -
40 ?---I'm not sure that I was specific with him about that.
41 And once again, I would mislead the Commission, and I
42 cannot do so, so I will not commit to saying that.

43
44 Were you specific about the fact that the IOI were also
45 obtaining a benefit from the agreement being performed by
46 the OECD?---I wouldn't have couched it as the IOI was
47 receiving a benefit, um, but I - I would have - my framing
48 of the conversation with the chief of staff would have been
49 it is a benefit to Western Australia.

50
51 Would you have been specific about the outputs that were

1 going to be produced?---Yes, and that would have been
2 around good governance, the reduction of sovereign risk,
3 um, ah, of digital sphere development which was a
4 significant matter to the government, ah, in relation to
5 civic space, digital space, digital engagement, and civic
6 engagement through the new digital spheres, correct.
7

8 But did you tell him that that was going to be in the form
9 of a report or a survey?---Indeed, it was my - it's my
10 recollection that I actually had a conversation with him
11 about, ah - about the European Ombudsman and that report.
12 And - and, well, I think what I said was, ah - and it would
13 have been the sort of thing I would say, um, 'Daniel, I've
14 got another good idea the way I get all my good ideas; I
15 stole it. And I stole this one from the European
16 Ombudsman.'
17

18 So you don't have a clear recollection of telling him any
19 specific outputs that were going to come to WA under the
20 agreement - - -?---Oh, no, I was very clear - - -
21

22 - - - in terms of hard documents or evidence of what you'd
23 spent your money on?---Oh, well, no. I - no, I wouldn't
24 agree with that characterisation. Um, I was very clear
25 about what I thought were the very specific outcomes, um,
26 for WA, and that is, um, that it would be beneficial for
27 Western Australia in terms of, um, ah, our relationships,
28 um, both our absence of sovereign risk, our good
29 governance, and the contribution of good governance in the
30 absence of sovereign risk in our close, ah, Asian trading
31 nation partners, particularly South Korea and Japan. So I
32 would have mentioned that.
33

34 In terms of measurable outcomes from the money that the OWA
35 was going to spend on this project - - -?---They are the
36 measurable outcomes.
37

38 Well, with respect, I don't think you can measure those,
39 Mr Field. Was it not that there was going to be a Scan
40 report? There was going to be a dissemination of a report,
41 a translation of a report? They were the more measurable,
42 immediate outcomes from the spending of the money,
43 correct?---I wouldn't accept that characterisation. The
44 report is, ah - is an output, but the outcomes were - you
45 wouldn't do the report unless it was intended to achieve
46 some form of result, and that form of result - and
47 particularly because it was with the OECD - was around
48 exactly the things that I'm talking about.
49

50 My difficulty, Mr Field, is if you can only say you told
51 Mr Pastorelli that he was going to get good governance and

1 an increase in the rule of law and those other ephemeral
2 statements, he's not going to be left with any concrete
3 idea of what the money is going to be used for, is he?---I
4 - I don't - this is not being pedantic. I certainly don't
5 accept that as an appropriate definition of the word
6 ephemera. Um, and the rule of law and those matters are
7 hardly ephemera.

8
9 I'm not saying they're not fabulous outcomes, I'm just
10 saying that they're not measurable in the short term from
11 spending €129,960?---I - I just don't think that's correct
12 and I don't agree with you.

13
14 The Treasurer was asking for a written explanation as to
15 what the euros attached to the agreement were to go
16 towards, how they were going to benefit OWA. That's what
17 you were trying to convince her of by responding to her
18 direction, correct?---Oh, I wasn't trying to convince the
19 Treasurer of anything.

20
21 **THE COMMISSIONER:** What?---I - I wasn't trying to convince
22 the Treasurer of that - of those matters, no.

23
24 **NELSON, MS:** Well, what did you see the purpose of this
25 letter then to be?---To respond to the Treasurer.

26
27 At the time that this letter was sent to the Treasurer was
28 it your intention to pay the invoice from the OECD?---
29 Absolutely.

30
31 Have you paid the invoice, Mr Field?---Not at this stage.

32
33 And why is that?---Ah, because I wanted to, ah, await the
34 results of - I think I need to be careful with what I'm
35 about to say given section 99, Commissioner.

36
37 **THE COMMISSIONER:** Well, the contract is now public?---
38 Okay.

39
40 The agreement is now public. We are live streaming, but
41 this agreement is front and centre of the inquiry, so I
42 think it would be permissible to answer the question?---
43 Thank you, Commissioner. Um, I - and consistent with the
44 rule of law, I was of the view, um, that this may be a
45 matter which the government referred to this Commission,
46 and on that basis - - -

47
48 Can I just stop you. So the government didn't refer this
49 to the Commission?---Oh, no, I - that was my - that was I
50 - - -

51

1 That was your view?---Yes. Sorry, I wasn't saying they
2 did.

3

4 Sorry, I see?---Oh, no. Sorry, sir, I wasn't suggesting
5 that at all.

6

7 We don't act on what the government wants?---Yeah. Oh,
8 well, goodness me, Commissioner, I wasn't suggesting that
9 at all. No, I was - I was thinking that might be, um, the
10 case. And if that was the case and it was to be a line of
11 inquiry by the Commission, I did not feel as though I
12 wanted to resolve this matter and pay this invoice until
13 the Commission had resolved its matters. And that was the
14 reason I have not paid the invoice. So it is actually out
15 of respect for this Commission.

16

17 **NELSON, MS:** One of the things that's troubling me by this
18 page of the letter, Mr Field, is that it states that you
19 have informed Ms Nowbakht that you entered into the
20 agreement on one, two, and three - three being on the basis
21 of briefings over approximately a 12-month period that we
22 do not have any - you do not have a clear recollection of
23 what was actually said and we don't have any independent
24 documentary evidence of those briefings. And I'm just
25 wondering how it is that you could tell the Treasurer on
26 13 November last year that you had provided briefings over
27 a 12-month period, and it's now 15 February and you're not
28 able to tell the Commission what those briefings were - - -
29 ?---But I - I just have.

30

31 - - - or where we can find evidence of them?---I just have.

32

33 **THE COMMISSIONER:** To your recollection?---Yes, to my
34 recollection, which is all that was as well.

35

36 And sometimes you're unable to recollect certain matters
37 about it?---Yeah.

38

39 And the agendas that you have did not list them, so there -
40 and you did not take minutes. So there is no independent
41 confirmation of what you've put in paragraph 3?---Um,
42 Commissioner, I think that is a perfectly fair summation.
43 I would - I would say this, sorry, then in response to your
44 question, counsel, that I had informed, ah, Ms Nowbakht -
45 and I take full responsibility for this letter, um, and
46 Ms Nowbakht should take none - um, that when it says those
47 briefings were provided to the chief of staff to the then
48 Premier and the Treasurer regarding a meeting between the
49 Ombudsman - that was my good faith, honest, and true belief
50 about what had happened.

51

1 **NELSON, MS:** And it was so important that it was one of
2 the bases on which you entered into the agreement. You've
3 given three separate bases for entering into the agreement,
4 and that's one of them. So it was of some importance in
5 your decision to commit the OWA to the agreement?---So the
6 Treasurer had asked, um, me what - and this is assuming
7 that I - I take this letter in good faith, which I don't
8 but - from the Treasurer. But, um - - -
9

10 **THE COMMISSIONER:** Sorry, what does that mean that you
11 take it in good faith but you don't?---Ah, my view was the
12 Treasurer was writing to me, um, because it was very well
13 known within government, um, that these matters - that the
14 OECD funding had been approved through the streamline
15 budget process, through my discussions with the chief of
16 staff, um, and through the authority of the - my clear
17 capacity under the Parliamentary Commissioner Act,
18 Procurement Act, and Procurement Rules to procure these
19 processes. Um, there had been a front-page story on the
20 front - on the newspaper, and my view is the Treasurer was
21 writing to me because she or others including in the Office
22 of the Premier had formed the view, um, that that decision
23 which they previously were fully aware and fully supported
24 had now become deeply politically unpopular, and they wrote
25 to me to seek to distance themselves quite outrageously,
26 um, from the decision that they had previously had full
27 knowledge and full approval. And I must say to you,
28 Commissioner, I was shocked - outrageously shocked to
29 receive for the first time in 17 years from in this letter
30 - not to respond to the letter - - -
31

32 Sorry, what are you reading from?---Oh, I'm just reading
33 from a note I made. It's an aide-memoire. I'm happy to
34 give it to you, Commissioner. Um, I was - I was asked to
35 provide to the Treasurer not a response, but a hard copy on
36 a USB sent to the Treasurer not as the Treasurer, but to
37 the Honourable Rita Saffioti MLA. Now, that's not happened
38 to me in 17 years.
39

40 Sorry, what's the difference?---Well, I think it's a pretty
41 substantial difference, not to be - - -
42

43 She's the Treasurer?---Well, within - - -
44

45 I mean, if I write to you as John McKechnie or as the
46 Commissioner, I'm the one person?---No, you're an MLA,
47 you're - or you're a minister, and - and you write to
48 ministers or you write to MLAs. I have never in 17 years
49 been asked to write to someone who's written to me as a
50 minister to then say, 'Put this in a envelope in a USB
51 copy, hand deliver it to Dumas House marked "private and

1 confidential" to an MLA' - not to the Treasurer - 'and do
2 not email it.'

3

4 All right. Well, that is - I just want to understand what
5 you meant, and I think I do when you said you thought this
6 letter was written in bad faith?---I wouldn't - I wouldn't
7 apportion bad faith to the Treasurer, I would simply say
8 that I did not believe this letter was a letter - I thought
9 this was - letter was a letter - bad faith was poor words I
10 wish to - I - I withdraw with your consent. What I would
11 say is this: I thought this was a political letter written
12 to me by the Treasurer to - to reverse a decision which had
13 hitherto been known and approved because it now became
14 politically unpopular. And what they didn't want to see
15 was another front-page Ben Harvey story that said, 'He's
16 got a big project with the OECD.' And that's what this
17 letter was trying to stop.

18

19 Carry on.

20

21 **NELSON, MS:** Mr Field, did you actually draft this letter
22 for Ms Nowbakht?---Ah, yeah, I had a significant
23 involvement in the drafting of the letter, correct.

24

25 We go to page 3, and I think I know what your answer is
26 going to be. I just want to point out under 1 the sentence
27 in the middle of the first big paragraph:

28

29 The reason why this funding request was made through the
30 2023/24 SBP -

31

32 - so streamline budget process -

33

34 - was so that specific approval for the agreement from the
35 ERC would be obtained.

36

37 I just want to put to you again that it's not the mechanism
38 to get specific approval to procure a particular project,
39 is it, Mr Field?---I - I don't agree. Um, the - the
40 process of providing it to the SBP is for - is for the
41 Cabinet sub-committee to appropriate an amount of money for
42 that project to occur, and that's exactly what they did and
43 in - exactly in those terms.

44

45 **THE COMMISSIONER:** But it's not. It's not. It says,
46 'Well-advanced negotiations,' and it says it just after
47 talking about trade and other bilateral and multilateral
48 interests?---So it was all three.

49

50 It doesn't tell whoever's reading it anything about this
51 project?---Well - - -

1
2 Which is why I suspect counsel is putting to you - and
3 you're free to object - that appropriation and procurement
4 are two different things?---Ah, so, Commissioner, the SBP
5 was attempting to do - well - well, it was my intention in
6 those SBP wording, um, to do those things. First of all,
7 ah, that it was a finite project and travel costs for my
8 role as president of the International Ombudsman Institute;
9 so the travel costs were one component of the SBP. Ah, the
10 second was costs associated with the sister state, but it's
11 an MOU by proper terminology, um, with - and it shouldn't
12 be Graz, that's of course the capital city - with Styria,
13 ah, and Western Australia. Um, and third, ah, a - a
14 well-advanced negotiation for a major OECD project. So
15 what this is saying to Cabinet is, 'Could you please give
16 us \$203,000 of which that will be apportioned to a major
17 OECD project and those other two components?'

18
19 I understand.

20
21 **NELSON, MS:** As at the time you signed the SBP, which was
22 1 February, you had not received a draft agreement from the
23 OECD, had you, Mr Field?---Ah, sorry, repeat that question.
24 Sorry, counsel.

25
26 I can take you to the documents, but I'm putting to you
27 that as at the date that you signed the streamline budget
28 process, being 1 February 2023 - - -?---Yes.

29
30 - - - you had not yet received any draft agreement from the
31 OECD?---No. Well, no, the - the OECD agreement, um,
32 counsel, was always premised on the fact that it needed to
33 be funded. One funding source was going to be, ah, the
34 appropriations in Western Australia, and the second was
35 going to be the - - -

36
37 Mr Field, as at 1 February had you received an agreement in
38 draft or any form from the OECD to consider?---I would have
39 to check my records for that, counsel.

40
41 Had you received a budget proposal from the OECD?---Once
42 again, I'd have to check my records for that, counsel.

43
44 Well, I will take you to the records, but I want to suggest
45 to you that you had received neither of those. You had
46 received a draft proposal only and, given that, you could
47 not characterise your interaction with the OECD as
48 well-advanced negotiations?---(No audible response.)

49
50 All right. Bottom of page 3, paragraph 4:
51

1 The agreement was only entered into by the accountable
2 authority following a procurement process in accordance
3 with the Procurement Rules.

4
5 ?---Yes, I - I do understand the question, and I don't
6 agree, counsel. I think at that stage those negotiations
7 were absolutely well advanced.

8
9 Would you still say they were well advanced if you accepted
10 that you had not received a budget or a draft agreement?---
11 Ah, absolutely. And there was certainly an understanding
12 broadly of the costings of the agreement, um, so I - I do
13 believe they were well advanced. In fact, that is very
14 clearly my evidence to you.

15
16 Where did you get an idea of the costings if you had not
17 yet received a budget?---Ah, I would have to go back and
18 check the records of the first time I received information
19 about, ah, a broad sense of the costing of the budget. Um,
20 but it was my understanding, um, that I expected the
21 project to be in the vicinity of somewhere between 100 to
22 200 thousand dollars.

23
24 100 to 200 hundred thousand?---Australian dollars I should
25 say, yeah.

26
27 I was just taking you to 4:

28
29 The agreement was only entered into by the accountable
30 authority following a procurement process in accordance
31 with the Procurement Rules.

32
33 And I just want to again suggest to you that whilst the
34 Procurement Act and the Procurement Rules do not give
35 timelines for a procurement process, it is understood that
36 a procurement process and the documentation of same would
37 happen before the contract is entered into and would not be
38 done retrospectively?---The - it wasn't done
39 retrospectively. And - and that's not what the Procurement
40 Rules say, counsel. The Procurement Rules - I think it's
41 B3 - indicate that, um, commensurate to the scope, nature
42 of the procurement of course - although it is a significant
43 amount of money for a Western Australia taxpayer, in terms
44 of overall procurement this would be considered a rounding
45 error in a budget. We're talking about Procurement Rules
46 that apply to procurements of hundreds and hundreds and
47 hundreds of billions potentially. Um, but B - I think it's
48 B3 of the Procurement Rules make very clear, um, that there
49 needs to be recording of the procurement that's
50 commensurate to the scope of the procurement. Ah, and a
51 40-page procurement memo with all relevant attachments was

1 well in excess - well in excess of what would normally be
2 expected to be the case for a procurement of this size is
3 my evidence to you. And that procurement process started
4 back in 2008, ah, and it was - had its final reduction to
5 its final version, um, sometime around that - this timing,
6 um, is my evidence.

7
8 Could go over to the next page, thank you, page 4. Now, it
9 says the requested documents relating to the agreement and
10 the payment of the moneys are attached to this letter. Can
11 I have 0158^.

12
13 0158^

14
15 **NELSON, MS:** And, Madam Associate, there are hard copies
16 of this document available. Is this a document that was
17 attached to the letter, Mr Field?--Ah, yes, it is part of
18 a - oh, well, sorry, yes, it is the document and of course
19 there is also the three attachments as well.

20
21 Who is the author of this document?--Ah, this document was
22 - had multiple authorship. Um, and this was the iterative
23 version of the memo that was developed over a period of
24 time that goes back to September and beforehand.

25
26 Is that the memo we looked at before lunch, 0114^ - - -?---
27 Yes, correct. Correct, counsel.

28
29 - - - to you from Ms Poole?---Correct, counsel.

30
31 And we looked at one dated 20 October, and then an earlier
32 draft of 18 September?---Correct. And I suspect there were
33 earlier drafts than that as well. In fact, I'm sure there
34 would have been.

35
36 Did she draft the document that's on the screen, or did you
37 draft this?---No, I take - I would take full responsibility
38 for this document - the settling of this document.

39
40 So you and you alone created this document?---Ah, this was
41 me settling the document as the CEO, correct.

42
43 **THE COMMISSIONER:** By settling it you take responsibility
44 for every word in it?---Every word. And - and I take
45 personal responsibility and no responsibility for any other
46 staff member. Mine and mine alone.

47
48 **NELSON, MS:** We could go to page 2 which is a contents
49 page?---Oh, and I - sorry, counsel.

50
51 I can see from the contents page that you are following the

1 Procurement Rules; first of all, the value for money which
2 is procurement rule A?---Correct.

3

4 And then the procurement rule B which is 2:

5

6 Acting ethically with integrity and accountability.

7

8 ?---Correct.

9

10 And also addressing conflicts of interest, keeping adequate
11 records. Did you actually consult the Procurement Rules
12 when you were considering what to put into this
13 document?---Ah, I would have consulted the Parliamentary
14 Commissioner Act, Financial Management Act, Procurement
15 Act. The - I would do that with any document I settled,
16 whatever the legislative frameworks were. Correct.

17

18 **THE COMMISSIONER:** And specifically did you consult the
19 Procurement Rules?---I would have, yes.

20

21 **NELSON, MS:** And you also consulted Ms Poole's memorandum
22 of 20 August 2023?---Ah, I would have, yes.

23

24 And did you in fact cut and paste a lot of the content of
25 that into this document?---I think that is my recollection,
26 correct.

27

28 We go to page 3 and the heading 'Achieved Value for Money'.
29 Page 4, in terms of your justification for whether there
30 was a bona fide need to buy the good or service - - -?---
31 Yes.

32

33 - - - you indicate that there was strong consideration
34 given to that?---Yes.

35

36 And then the rationale is set out below, I gather?---Yes.

37

38 So 1.1.1?---Correct.

39

40 And the balance of that page deals with the European
41 Ombudsman 2018 report?---Correct.

42

43 And then over into page 5 in October 2018 following the
44 release of that report you considered that the particular
45 project had exceptional value?---Correct.

46

47 And I just don't understand that last small paragraph:

48

49 Following the conclusion of the major IOI by-laws reform in
50 mid-2021 there was an opportunity to give - this project
51 could be considered.

1
2 Can you explain how - - -?---Oh, that - - -
3
4 - - - that articulates the value for money for the OWA?---
5 Sorry, that was simply to say that, ah - well, sorry, it -
6 it's to say I absolutely accept if it's - - -
7
8 **THE COMMISSIONER:** Just tell us what it says?---Okay.
9 Well, what I - I - I'm sorry to say it might be inelegant,
10 but what I was - what I was trying to say there was, um,
11 that there is obviously a very finite level of resource
12 within the Office of the Western Australian Ombudsman. We
13 had finished a major by-laws reform project that we worked
14 on, therefore there was the - the - some available resource
15 from mid-2021 where we could put further consideration into
16 developing this project from that time. It's an
17 opportunity/cost issue.
18
19 **NELSON, MS:** But why are you referring to the - I'm just
20 confused as to why you're referring to the IOI when you're
21 attempting to justify why the OWA has entered into this
22 contract?---Oh, no, it's - I'm sorry, um, I must have
23 explained it badly. We - we have a - a staff team and -
24 and including myself, and we - we work on a raft of issues.
25 One of the issues we worked on was the by-laws reform.
26 Because that project - - -
27
28 For the IOI?---Yes.
29
30 Yes?---And now there was time available that was otherwise
31 previously being spent on that project which could now be
32 spent on doing further work on this. It was simply the
33 opportunity cost of time.
34
35 I see?---Yeah.
36
37 So because your OWA staff had been diverted to drafting
38 - - -?---Correct.
39
40 - - - IOI by-laws - - -?---That's a - that's a better way
41 to explain it, counsel.
42
43 - - - you were only just getting around to - - -?---I - I
44 wish I'd said that, counsel. That's what I was trying to
45 say.
46
47 So the by-laws reform you say ended in mid-2021?---Correct.
48
49 So from mid-2021 there was then the opportunity to
50 prosecute this project for the OWA?---That is a perfect way
51 to describe it, counsel.

1
2 Then 1.1.2, what you specifically gave your consideration
3 to that Western Australia would benefit from a rigorous
4 report examining how Ombudsman WA could have a further
5 positive involvement in enhancing transparency, et cetera.
6 Did you provide a copy of the signed agreement to the
7 Treasurer as one of the documents that accompanied this
8 memorandum?---Ah, yeah. It was an attachment, I think.
9 Um, yes, correct, attachment 2.
10
11 I haven't yet shown the Commissioner the finalised
12 agreement, but I can tell you - and I'm sure you already
13 know - that it doesn't limit itself to Western Australia or
14 the Ombudsman WA. In fact, it is:
15
16 A survey that the OECD will submit to the donor who in turn
17 will distribute it amongst members of the International
18 Ombudsman Institute, notably in Asia, Africa, Australasia
19 and Pacific, and North America.
20
21 ?---Oh, and it wasn't intended to because of course there
22 was both the work that would be done - paid for by the
23 €50,000, and there's the work that would be done, ah, that
24 was specifically for Western Australia and - - -
25
26 Mr Field, it was all the one work, wasn't it? There were
27 going to be two contributors to the OECD, but they were
28 producing the one piece of work?---No. Um, there was the
29 one piece of work that had, um, a scope and purpose for
30 Australia and its region, and of course then an expansion
31 of that scope very properly and very helpfully to other
32 regions as well.
33
34 **THE COMMISSIONER:** What were you reading from, counsel?
35
36 **NELSON, MS:** Yes, sorry, Commissioner, 0107^.
37
38 **THE COMMISSIONER:** I don't want to throw you off, I just
39 wanted to know.
40
41 **NELSON, MS:** Yes. Thank you. Madam Associate, did I
42 happen to give you copies of that? I possibly didn't.
43 Well, I will get some copies.
44
45 **THE COMMISSIONER:** Just put it on the screen.
46
47 **NELSON, MS:** 0107^. In the meantime, we could get it up
48 on the screen.
49
50 0107^
51

1 **NELSON, MS:** I'll just take you to page 4 quickly and then
2 we'll go back to page 1. Is that your signature?---Ah,
3 yes, it is.
4
5 25 August 2023?---It is, counsel, thank you.
6
7 Thank you. And we'll go back to the first page. It says
8 it's an agreement between the OWA - otherwise known as the
9 donor - and the OECD?---Correct.
10
11 The object, paragraph 1, is that the OWA has agreed to
12 finance the work which the OECD will carry out on a project
13 named 'The Role of Ombudsman Institutions in Building a
14 Culture of Open Government for Stronger and More Resilient
15 Democracies,' as described in the first annexure which
16 we'll get to?---Yes.
17
18 Two:
19
20 The donor is to make a contribution in the amount of
21 €129,960.
22
23 ?---Yes.
24
25 The contribution is to be paid as soon as the agreement is
26 signed and the invoice is received.
27
28 ?---Yes.
29
30 And that's the invoice of 12 September we've looked at?---
31 Correct.
32
33 The OECD is to administer that contribution under its
34 rules, policies, and procedures.
35
36 And then if we just go down to the last little paragraph
37 above three:
38
39 To limit administration costs, should upon completion of
40 the work an amount of €2000 or less remain unspent, the
41 OECD can keep those funds.
42
43 They don't have to give them back to the OWA?---Correct.
44
45 And there's a report in paragraph 4:
46
47 The OECD is to retain the intellectual property of the
48 work.
49
50 And then over to page 2, the contact for the agreement is
51 to be Ms Poole of OWA and then two people's names from the

1 OECD?---Correct.

2

3 And we go to page 3, it's the duration of the agreement?---
4 Correct.

5

6 And there's an ethical statement, then a confidentiality
7 clause. So the agreement is not to be made publicly
8 available. Then there's an amendment clause, a termination
9 clause, and then lastly on page 3 a dispute resolution
10 clause which provides that any dispute is to be - - -?---We
11 may have already crossed one of those bridges, counsel, but
12 keep going.

13

14 So is it your understanding that any dispute - we go over
15 to the next page - is to be arbitrated in Paris?---Correct.

16

17 Which is not very convenient for the OWA, I imagine?---Ah,
18 I wasn't imagining that in dealing with an imminent
19 Australian and Western Australia in Mathias Cormann that
20 there would be such disputes that would arise.

21

22 **THE COMMISSIONER:** Mr Field, you used to be a commercial
23 lawyer, didn't you?---Oh, that's - that's being very kind
24 to me.

25

26 Okay. We never imagine that we're going to have a dispute
27 with anybody, but that's why we put in dispute resolution
28 clauses in case we're wrong?---Oh, Commissioner - - -

29

30 So the question from counsel I think is legitimate. Why
31 did we agree that it would be in Paris seeing we're putting
32 up all the money?---I - I truly can't agree with that,
33 Commissioner. My - my view would be, um - well, leaving
34 aside presumably there would be capacity to do any of those
35 matters by video conference, um, it certainly wouldn't
36 require any travel costs. Um, if there'd been a dispute of
37 any substance about this matter, um, I would have called
38 the Secretary General of the OECD to resolve it. And I - I
39 would have been - first off, I wasn't imagining one, but I
40 take your point you don't imagine, and they could arise. I
41 could not imagine that it would not have been resolved
42 amicably and appropriately without any form of dispute
43 resolution or litigation required.

44

45 So that's why you agreed to have it done in Paris?---Well,
46 I - I didn't believe that - I didn't believe that that
47 clause would be a clause, um, that ever bore fruit, that -
48 that would ever come to fruition.

49

50 All right. Carry on, counsel.

51

1 **NELSON, MS:** Thank you, Commissioner. Then we've looked
2 at the next page, page 4, the signature log. And if we
3 could go to annexure 1 on page 5 which is actually the
4 project proposal. The first iteration of this proposal was
5 received at the OWA in January 2023 in largely the same
6 terms, but we can go through that later. So what's on the
7 screen gives a blurb about what the object really of the
8 - - -?---Yes.
9
10 - - - report is to be. You agree with that?---Correct.
11
12 And then if we scroll up, thank you, Madam Associate, we
13 just stop there. Just above 'Objectives', the paragraph:
14
15 The OECD, the Ombudsman of Western Australia, and the
16 International Ombudsman Institute's mandates offer several
17 synergies and opportunities for collaboration.
18
19 On reading that sentence, Mr Field, I would get the
20 impression that it is a tripartite agreement between three
21 separate entities?---Oh, counsel, I think my evidence - and
22 it's not intended to sound smart. My - my, um, evidence
23 has been that it is absolutely tripartite in the sent - in
24 the sense that, um, there was an agreement between the OECD
25 and the Ombudsman Western Australia, but there would be a
26 benefit for the International Ombudsman Institute, um, as
27 well. In that sense it was tripartite, correct.
28
29 Thank you. And then under the objectives:
30
31 The project will aim to produce a standalone Scan report.
32
33 So there's only going to be one report produced, Mr Field,
34 isn't there?---Correct.
35
36 Which is updating the 2018 report that you've discussed?---
37 Correct.
38
39 And then over the page there's some outputs that are
40 specifically articulated. We go to page 6, the first one
41 is a survey that the OECD will submit to the donor, being
42 us - - -?---Correct.
43
44 - - - OWA, who will in turn distribute it amongst the
45 members of the IOI - - -?---Correct.
46
47 - - - in four separate regions?---Correct.
48
49 Africa, Asia, Australasia and Pacific - or is that five
50 regions - and North America?---Correct.
51

1 And then the survey results will be used to produce a
2 standalone report as discussed - - -?---Correct.

3
4 - - - of 50 to 100 pages. And that will address the three
5 dot points, one being updating the 2018 report, and then a
6 general analysis of ombudsman's role in protecting civic
7 space and reinforcing democracy, advances in technology.
8 And then donor, being OWA:

9
10 Is to provide other in-kind support in disseminating the
11 report; printing, translating into other languages if
12 needed.

13
14 ?---Correct.

15
16 And to do that the OECD would have to give the OWA an
17 unexclusive right to translate and publish the translation
18 of the publications produced?---Correct.

19
20 But it would have to be under OECD style and standard
21 terms?---Er, correct.

22
23 Then it will also include a case study on ombudsman's
24 institution roles generally, rights in the digital age, and
25 then there'd be a policy dialogue event to disseminate the
26 results of the survey and the updated report?---Correct.

27
28 'We would be required to organise that' - - -?---Correct.

29
30 - - - 'in the context of its annual meeting.' Is that a
31 reference to the IOI's annual world board meeting?---
32 Correct. That would be a proposed - that was the thinking
33 about a potential launch. And that was obviously to
34 minimise costs because, um, there would be the capacity to
35 launch in such a way, ah, as relevant stakeholders would
36 already be in the one place.

37
38 So there's nothing in those stated outputs that is specific
39 to Western Australia?---Ah, well, it's all relevant to
40 Western Australia, and that was - - -

41
42 There is nothing specific referencing Western Australia in
43 the outputs?---Well, no, it doesn't say the words 'Western
44 Australia', I agree with you.

45
46 It doesn't even focus on Western Australia in terms of the
47 work that the OECD will do. The results are to be relevant
48 to most of the world, aren't they, Mr Field?---Ah, well,
49 certainly it was my view that the work that was being done
50 in Western Australia that was specific to Western Australia
51 would hopefully be relevant to other parts of the world,

1 correct.

2

3 What work was going to be done in Western Australia apart
4 from the printing and the translating into other languages
5 and the organising of the policy dialogue event?---Ah, also
6 a case study, um, which was a critical part. The case
7 study, um, that I had in - had indicated would be a case
8 study about the engagement of two - case study in two
9 parts: one a case study of civic engagement of, um, LGBTQI
10 - sorry, LGBTIQ+ community, um, and their engagement in
11 both the civic space and, um, access to justice in
12 governance. Ah, and the second was in relation to
13 Aboriginal Western Australians, possibly not the Whadjuk
14 Noongar people, but in regional Western Australia. And
15 they were case studies that I'd envisaged be undertaken as
16 part of the project.

17

18 **THE COMMISSIONER:** We're going to break briefly and then
19 counsel can go back to this. But isn't the case study one
20 of the outputs we're paying for?---Correct.

21

22 Thank you. We'll adjourn for 10 minutes.

23

24 **THE ASSOCIATE:** All rise.

25

26 (Short adjournment)

27

28 **THE ASSOCIATE:** All rise.

29

30

31 **THE COMMISSIONER:** Please be seated.

32

33 **NELSON, MS:** Thank you, Commissioner. We were looking at
34 the agreement document 0107^, page 6.

35

36 0107^

37

38 **NELSON, MS:** And we were focussing on the dot point that
39 says:

40

41 A case study on an ombudsman's institution's role in
42 protecting new rights in the digital age.

43

44 And I think you were saying, Mr Field, that that was a case
45 study that OWA were to do under this agreement?---Oh, no.
46 It's - I'm sorry if that - if I gave that impression. That
47 is utterly, unknowingly misleading. Ah, no, that would be
48 for the OECD to do. So we're contracting with them to
49 provide that service to us. What I wanted to do, um,
50 within the case study process - and this would have been a
51 matter of iterative development with the OECD as part of

1 the development of that project over what was a significant
2 period of time - um, was effectively two - you can call
3 them case studies, I think that was the terminology. One
4 case study, as I say, focussed on particularly young
5 members of the LGBTQI+ community - - -

6
7 **THE COMMISSIONER:** Well, it doesn't really matter what the
8 case study's on?---Oh.

9
10 I had understood before the adjournment that this was
11 something that the OWA was going to do?---Oh.

12
13 But do I understand now your answer to Ms Nelson, that was
14 not right, in fact it was part of the contract?---I can
15 also now understand, Commissioner, why you responded the
16 way you did when I said, um - - -

17
18 No, that's all right?---Yeah.

19
20 We've cleared it up?---Thank you. And I apologise for that
21 misunderstanding.

22
23 **NELSON, MS:** So my original question was that the outputs
24 as they're described in annexure 1 to the agreement are not
25 at all specific to Western Australia or to the OWA, are
26 they?---Ah, as I say, no, I wouldn't agree with that
27 characterisation. Um, I would characterise this as an OECD
28 project that was, um - well, I would - I would describe
29 this as the Ombudsman of Western Australia was contracting
30 with a service provider that is procuring the service, and
31 that service would be to provide a service that was of
32 significant value to Western Australia, significant value
33 to our near Asian neighbours, and would have an
34 importantly, um, value for a raft of other ombudsman and
35 nations globally.

36
37 But in procuring the OECD to do this project and produce
38 this output you had not directed them to turn their
39 attention to any particular communities in Western
40 Australia?---No, that was going to be part of an ongoing
41 discussion that was being had with the OECD.

42
43 Well, surely if you wanted that as a particular output from
44 this exercise you would have made sure that it was clearly
45 articulated so that they understood they had that
46 obligation?---I wasn't - you may think this is, um,
47 perhaps, ah, not as detailed as we would have liked it to
48 have been, but I wasn't concerned about particular
49 articulation of words. I was very confident having met,
50 um, the Secretary General of the OECD, having met the
51 senior representatives of the OECD that this iterative

1 project would be able to cover those matters. Um, it
2 wasn't my concern to reduce that contract into reams of
3 detail, ah, about every deliverable and every particular
4 item. And that would be iterative and that - and I had
5 zero concern that that would - personally, I'm saying. I
6 might be wrong that I had this faith, but I had zero
7 concern in good faith and honesty that that would be an
8 issue at any point of this project.

9
10 So your plan was having signed the agreement to then go
11 back to the OECD and say, 'Look, can you actually do some
12 extra work on West Australian Aboriginal communities or
13 West Australian LGBTQTI communities or - - -?---Oh, no, not
14 the - sorry, counsel.

15
16 Was that your intention?---No, not the way you're
17 describing it. I wouldn't describe it as doing extra work.
18 I would describe it as - as you do with collaborative
19 partners, as you do with service providers to you, um, you
20 develop that - that project further detail, um, over a
21 period of time. I had very strong confidence - now, as I
22 say, it might have been misplaced and I accept - I accept
23 what the Commissioner's said about dispute resolution
24 completely. But I had very strong confidence dealing with,
25 um, ah - with one of Australia's most imminent
26 representatives and a Western Australia - I had very strong
27 confidence dealing with the OECD and the very nature of the
28 OECD, um, that this would be a hugely good faith
29 collaborative process where we could develop it together
30 over a period of, ah - of several months in a way that
31 would deliver exactly what it ought to be delivering. This
32 was meant to be a very broad brush cut of the concept of
33 the project. And that is my - I might be stupid for that,
34 but that was my good faith honest view.

35
36 And I would suggest to you that it was to be a broad brush
37 cut of a project because it was to benefit all IOI members
38 across the world?---Um, it was - well, first of all, beyond
39 the €50,000 they were contributing, um, it was absolutely -
40 so I absolutely expected this project to deliver value to,
41 ah, the North American region, the Africa region, my
42 outstanding colleagues in those regions in Asia. Um, I
43 absolutely did. That was part of the €50,000 they were
44 contributing. But the second part of that answer, um, to
45 be also specific is this: yes, I'd absolutely hoped that in
46 undertaking a best-practice benchmark piece of work, um,
47 that it could have value, um, for other institutions. That
48 might be universities, it might be, um, ah, other
49 regulators, um, both in - both Western Australia,
50 Australia, and the world. So I thought a good piece of
51 work might have value, yes.

1
2 If you were new to this whole discussion and you just read
3 what was on the page, do you agree you would not come away
4 thinking Western Australia was going to get any benefit
5 above any other country in Africa or Asia or North
6 America?---Well, that's an utterly hypothetical question.
7 I'm not new to it and that's not my view.

8
9 **THE COMMISSIONER:** All right. Well, I'm the hypothetical
10 person so it's my reading of it, and my reading of it is
11 there's nothing about Western Australia?---Western
12 Australia is obviously part of the Australasia Pacific.

13
14 Well, obviously?---But what I would - what I would say is
15 this, Commissioner: I think - I think it raises some issue
16 of key person risk. Ah, if myself, Ms Poole, and other
17 staff weren't available in the office that risk could
18 arise, um, and further reduction into writing of further
19 steps might be appropriate as a key person risk within
20 terms of succession within an organisation. But it's - I
21 wasn't dealing with that hypothetical because I was the
22 Ombudsman, I knew what I wanted done. Um, I knew the
23 discussions we were having and the ongoing discussions we
24 were going to have.

25
26 **NELSON, MS:** Is the benefit to Western Australia the same
27 benefit that any other jurisdiction would obtain from
28 seeing the report?---No, I thought it was significant more
29 to Western Australia than to others, and that's
30 proportionate to the funding, counsel.

31
32 We move on to the last page, page 7, and that's a breakdown
33 of the overall cost of €129,960. You can see there some
34 dashes against some of the line items, for example, events
35 and conferences. Was it your understanding that the OWA
36 were to provide some in-kind resourcing for that particular
37 budget line item?---No. Um, well, this is my recollection.
38 My recollection is that during the - which of course is
39 part of the procurement process. During the period of
40 contract scope and contract cost negotiations, um, I had
41 asked for a number of items to be, ah, removed because I
42 felt they were expenses that didn't need to - this is no
43 criticism of the OECD - they didn't need to be there. So,
44 for example, if you look at events and conferences, my
45 understanding is that line item was there because there
46 would be a launch of this project at some point, and I felt
47 it was not a necessity to hold a new - an event at a cost
48 to the Western Australian taxpayer for that. It should be
49 done at some other event that was coincidental, that
50 otherwise was being held.

51

1 And that launch was now going to be at the IOI annual board
2 meeting?---Ah, that or another major event. It was my
3 intention - or so I should say to you, counsel, because
4 it's directly relevant to the answer, um, that I have been
5 in negotiations - obviously this is an open hearing but I
6 don't think it's inappropriate to say. I - I have been in
7 negotiations with, um, the relevant government department,
8 um, who are exceptionally keen for the world conference of
9 the IOI to be held in Perth, Western Australia. Ah, that
10 would be in 2028. And depending ultimately on the timing
11 of this particular project it was also my view that it
12 could be extremely propitious and, indeed, highly, um,
13 desirable if aspects of this project could be launched at -
14 at such an event as well.

15

16 The duration of the agreement was to be March 2025 - the
17 agreement that you signed. So the 2028 world conference
18 would be too late, would it not?---Oh, this was purely on
19 ultimately, ah, the - when we ultimately were able to
20 deliver the services. As you can see from the T plus
21 dates, um, there has already been change to those dates.
22 Um, and it was simply going to be a matter of timing.
23 Otherwise I'd intended it to be at the IOI world board
24 meeting, correct, exactly as you said, counsel.

25

26 And was your hope at the time that you were signing this
27 that it would be the world conference in The Hague?---I -
28 when I signed it - well, certainly in my mind I don't think
29 I had - I'd stand to be corrected, but I don't think I
30 believed there would be any - any chance that it would be
31 done by that - by that stage. What I did believe could be
32 done at The Hague was an update, I think, on - on the
33 progress of the project, correct.

34

35 The 'Start Missions' line item which is now just a dash,
36 was that a cost that was going to be subsumed by the
37 OWA?---Oh, no.

38

39 Originally it was €12,000?---Yeah. No, I'm sorry, I think
40 all of those - and I - I would stand to be corrected, but
41 my recollection is that each of those items were items of
42 cost to be charged by the OECD to us. And as part of the
43 contract negotiation stage and as - as the accountable
44 authority for the contract during the procurement process,
45 this was brought to me and I said, 'As CEO, no, no, no. Go
46 back to the OECD and say I'm not paying for that. I'm not
47 paying.' This is being colloquial, 'I'm not paying for
48 that. I'm not paying for that. I'm not paying for that.'

49

50 Could I have 0362^.

51

1 0362^

2

3 **NELSON, MS:** So this is an email of 2 February 2023 from
4 Ms Poole to yourself, and this attaches the first proposal
5 - sorry, the second iteration of the proposal but the first
6 budget that had been sent by the OECD. If we could scroll
7 down, thank you. Received by Mr Heritage on 1 February and
8 sent then to Ms Poole on 2 February?---Yes.

9

10 So after you had signed the streamline budget process and
11 submitted it?---Correct.

12

13 And we could keep scrolling down to see the attachment.
14 It's page 9, thank you. The track changes have been made
15 by the OECD, the red ones. Go over to the next page. Have
16 you read that, Mr Field?---Yes, I have. Thank you,
17 counsel.

18

19 And then we go to page 11. So the proposed budget sent
20 through, being the first one, is under the heading,
21 'International Ombudsman's Institute'. And I'd suggest
22 that was because at that time the OECD thought that was who
23 the donor - who the party to the agreement was to be?---I
24 think that is - as I recollect it, that is because I think
25 the OECD thought that the money would be, ah, coming from
26 both of course the Ombudsman Western Australia and the IOI,
27 but the actual provider of the money to them would be the
28 IOI.

29

30 And the cost there in euros of €167,015 translate on
31 today's exchange rate to A\$275,892.08?---I - I will accept
32 that, counsel.

33

34 Which of course is more than what the final budget was
35 going to be. But then if we go back to page 1, so this is
36 what the email between Ms Poole and yourself is responding
37 to?---Yes.

38

39 Do you recall having a discussion with Ms Poole about the
40 contents of this email?---Don't particularly recollect this
41 email, but I, um - absolutely it's an email between us,
42 correct.

43

44 And on my reading of the plain words on the page Ms Poole
45 would appear to hold the view that it's an agreement
46 between the OECD and the IOI; the OECD provides the service
47 and the IOI will pay for the service?---No. In fact, I do,
48 counsel - actually do recollect this now I have read it,
49 and thank you for giving me the opportunity to do so. Um,
50 it - yeah, in a way that I - I stress is inconceivably not
51 a - a criticism of Ms Poole, quite the contrary; um, she

1 was very sensibly I think saying to me, um, that - and I do
2 remember having - I don't have a photo recollection of the
3 exact time or exact words, but basically what she'd said to
4 me is, 'I thought we might be doing this work in house.'
5 So I'm not sure what the IOI reference was about. And I
6 said, 'Oh, no, that's not what I was proposing. We don't
7 have the resources to do it in house, nor do we have the
8 expertise, nor do we have the scale and scope efficiency,
9 nor do we have the history,' et cetera. There was various
10 reasons and that we would be, um, contracting this out or
11 procuring a service to provide it. That was my
12 recollection of the conversation.

13
14 So you think at this stage that Ms Poole thought this was
15 an IOI, OECD agreement, but you set her straight?---Well, I
16 - I would never speak about a professional woman as setting
17 her straight.

18
19 Well, you told her no, that she was wrong about that?---I
20 wouldn't have spoken to her in that tone either. What I
21 would have discussed with her as my colleague was, um, she
22 thought the budget was higher: 'That budget was not what I
23 was expecting. Um, they proposed that the OECD will do the
24 work and we will provide the funding.'

25
26 **THE COMMISSIONER:** 'We' the IOI?---Yes, but that - that
27 was not the IOI in terms of providing - - -

28
29 But that's what she says?---That - - -

30
31 You can work it all you like, but that's the words. She
32 may have a wrong impression, you may have put her right,
33 but those are the words?---I'm - yes, I - I - certainly
34 when you say 'work it all you like', Commissioner, I'm
35 certainly not attempting to dissemble or work it. Um, what
36 I would say is that, um, she was saying these things to me
37 as I recollect it, 'This budget's higher than I thought it
38 was going to be,' and I do recollect just discussing that.
39 She said a second thing to me, and a totally appropriate
40 thing for her to say and, indeed, we reduced the budget.

41
42 Look - - -?---Oh.

43
44 It's really quite simple?---Yeah.

45
46 The email, whatever it says - - -?---Yeah.

47
48 - - - speaks for itself. You had a conversation with her
49 and following that conversation, is it the case that she
50 now understood that it was the OWA that was going to be
51 providing?---Yes.

1
2 Thanks?---But I would never suggest any staff member of
3 mine was wrong in what they were saying to me. But what I
4 will say to, ah - and all responsibility is mine and mine
5 alone, but what I will say is in this case, this particular
6 employee put those matters to me, we had a discussion about
7 it, and what follows is what follows.
8
9 **NELSON, MS:** So, Mr Field, you thought it was higher than
10 what you had expected? You thought the proposal was
11 higher?---Yes, I thought the OECD budget was - and this is
12 not intended to criticise the OECD at all - I thought it
13 was higher than I would have wanted it to be.
14
15 What did you think it would be?---Ah, well, I'm - if you -
16 would you - counsel, would it be okay if we went back down
17 to the line items, to the lower part of the email?
18
19 **THE COMMISSIONER:** Yes, I think it's the last page, isn't
20 it?---I think it was the last page, Commissioner.
21
22 **NELSON, MS:** Page 11 perhaps.
23
24 **THE COMMISSIONER:** There we go?---Perfect, thank you.
25 Thank you so much. Um, I wasn't concerned about staff
26 costs was my recollection. I did want to ask questions
27 about the per person charge back; I wasn't sure what that
28 referred to. Um, I was concerned about the - I wanted
29 further explanation about the VC administrative charge,
30 operating expenditure. And I was concerned about at all -
31 and this is not to say that they were in - I'm suggesting
32 in any way that those costs were somehow inappropriate, but
33 I was just concerned about the costs of the staff missions
34 and events and conferences which I didn't think need to be
35 incurred to deliver the project.
36
37 **NELSON, MS:** So at this stage you'd already put in the
38 submission to Cabinet?---Correct.
39
40 And I had showed you an email from 16 January in which you
41 had said to Ms Poole:
42
43 If the 203 comes through we'll allocate it in this way;
44 half of Natalie's salary, 75,000 for travel, and 25,000
45 provisionally allocated to the OECD.
46
47 So if you thought that the OWA was provisionally going to
48 be allocating 25,000, how much did you think at that time
49 that you sent the email that the whole project would be
50 costed at?---I think I might have already given evidence
51 and - about that to the - to the Commission, um, during

1 these hearings. But I had in mind that I was procuring a
2 service for particular outcomes, and that I thought
3 somewhere in the vicinity - from my 17 years' experience,
4 somewhere in the vicinity of between about 100 to 200
5 thousand dollars Australian was the appropriate amount for
6 which I would - obviously for which I would, um, be
7 seeking, um, appropriations of that money. And of course,
8 um - and this is now going to sound like I'm hubris - what
9 I'm saying is that is - that is how it - that is how it
10 eventuated. Those estimates were very, very accurate.

11
12 It troubles me, Mr Field, that you told the Treasurer in
13 the letter that we have recently looked at that one of the
14 justifications for you entering into the agreement was that
15 you had told Cabinet - you had an approval from Cabinet
16 through the streamline budget process for this project
17 - - -?---Mm.

18
19 - - - yet at the time you put in that actual application
20 you didn't have any idea really what it was going to cost
21 because you hadn't received any costing from the OECD?---
22 That characterisation with respect, counsel, is just
23 completely incorrect.

24
25 I can tell you this is the first time that your office had
26 received a proposed budget, and you saw it for the first
27 time on 2 February. So is it correct then at the time you
28 put in the streamline budget process that you had not yet
29 seen a projected costing for the whole project?---No, I had
30 a very clear idea of what the costed project I thought
31 would be. Indeed, if it had been 10 times that cost, I
32 wouldn't have done the project. Um, I had a very clear
33 idea of what I thought the project - what the scope of the
34 project was, what the cost of the project should be. Um,
35 if it had been dramatically outside of that I wouldn't have
36 done the project. Um, so, ah - and the submission in
37 absolute good faith and honesty and integrity to the, um -
38 which I must sign - I sign as the authorised officer and
39 Ombudsman, um, to - to the SBP was absolutely done in good
40 faith with a clear understanding. I - I completely do not
41 accept that characterisation.

42
43 So it doesn't trouble you that you were seeking specific
44 approval for the agreement from the ERC for a particular
45 amount of money and yet you had no correspondence from the
46 OECD - the provider of the service - that quoted the
47 proposed cost? That doesn't worry you?---I was seeking, um
48 - no, it does not. Um, but it's - well, I say no, it does
49 not because I don't agree with the question. Um, I was
50 seeking again, ah, an - I wasn't seeking approval, um, I
51 was seeking an appropriation of the - the SBP doesn't

1 approve the Ombudsman's actions. The Ombudsman's actions
2 are independent at the end of the day.

3

4 Well, I'm just using your words from the letter to the
5 Treasurer of 13 November, 0157^ of page 3, which are the
6 words I took you to earlier.

7

8 0157^

9

10 **NELSON, MS:** You told the Treasurer:

11

12 The reason why this funding request was made through the
13 2023/24 SBP was so that specific approval for the agreement
14 from the ERC would be obtained.

15

16 ?---Oh, yes, approval for the funding, correct.

17

18 Okay?---Yeah. Not approval for the project, approval for
19 the funding.

20

21 Could I have 0150^, page 1.

22

23 0150^

24

25 **NELSON, MS:** This is your response to Ms Poole?---Yes.

26

27 So at this stage, being 3 February, you're hoping that the
28 IOI will contribute 80-odd thousand euros, and us 80-odd
29 thousand euros. Half and half?---Yes. And as I say, it's,
30 like all projects, an iterative development. At that stage
31 80-80, it became 50, um, and then more for OWA, and we
32 adjusted the, um, portions that would be obviously
33 referable to Western Australia. But that's correct.

34

35 Could I have 0151^.

36

37 0151^

38

39 **NELSON, MS:** At page 3, it's an email from 28 March 2023
40 from yourself to Ms Poole?---Yes.

41

42 If we could just scroll up so we can see it's the bottom
43 email, thank you, Madam Associate. Thank you. In this
44 email are you asking Ms Poole to arrange the papers to go
45 to the world board meeting to get approval for their
46 contribution to the OECD project?---Can I just read it and
47 then I'll give that answer?

48

49 Certainly?---Yes, that is exactly what I'm doing. Thank
50 you, counsel.

51

1 Mr Heritage has a go at drafting those at page 10, thank
2 you, and your track changes to that are in red. Maybe it's
3 not page 10. Six, sorry, Madam Associate. Do you recall
4 seeing this draft memorandum?---Ah, yes. Oh, well, I don't
5 have a photo recollection of the contents of it now, but I
6 certainly did - would have seen it, correct.

7
8 The second paragraph refers to the proposal for a
9 cooperative research project between the IOI and the OECD.
10 It doesn't mention the OWA, does it?---But again, as I've
11 explained, um, counsel, that is because I'm writing a paper
12 for the IOI.

13
14 So it doesn't mention the OWA, does it?---Well, I think the
15 only way I can answer that is no, and I've told you the
16 reasons why.

17
18 And then the next page, you have mentioned the OWA in the
19 third line when you say that:

20
21 We will contribute €77,000 euro as well as significant in-
22 kind resources to the project - - -

23
24 ?---Correct.

25
26 - - - with the proposal the IOI contribute the remaining
27 €50,000.

28
29 ?---Correct. And that would have been - well, I - I -
30 sorry, I'm not going to add something. It's only a
31 question, sorry.

32
33 And then we can go to the next page. Goes through more of
34 the background, and then over to the next page.

35 Mr Heritage has put in some comments about research that
36 he's done?---Ah, obviously.

37
38 And then we go to the next page. So the proposed budget is
39 the International Ombudsman Institute's budget, correct?---
40 No, that's the budget for the entire project. As
41 previously indicated, I think at that stage it was still
42 considered that the actual - where the bank account that
43 would deliver the money would be from the IOI. The OWA
44 would provide money, the IOI - IOI provide money for the
45 OECD. It was later decided, um, that the OWA would pay as
46 the - as the principal contributor would pay, and the IOI
47 would reimburse the OWA.

48
49 Sorry, can you just take me through that again. So there
50 was going to be a bank account that was in Austria, an IOI
51 bank account?---Ah, I - I - yes, their - their bank account

1 is definitely domiciled in Vienna, Austria.

2

3 And the funds to pay this project were going to be paid
4 from that bank account to the OECD?---That was the thinking
5 at that stage, correct.

6

7 And who had you discussed that thinking with?---Ah, I -
8 there are certainly email exchanges, I don't have them in
9 front of me. Um, and whether exactly contemporaneous to
10 that - but I know the secretary general and I - and I also
11 think, ah, Ms Manatta, the chief of cabinet, and Rebecca
12 Poole had conversations as well, and that was, ah, around
13 who would actually - I mean, this is an administrative
14 matter, who would actually pay the money.

15

16 Do you in your role as president have access to that bank
17 account or did you at that time?---Ah, I might be a
18 signatory to that bank account. Um, I - in fact, I'm - I'm
19 sure I'm a signatory to the bank account.

20

21 So in your mind were you thinking that the financial
22 commitment from the OWA will be paid into the IOI bank
23 account?---That was an initial discussion, correct. That
24 was one discussion. And a later discussion was that it
25 would be paid from the Office of the Western Australian
26 Ombudsman and we would seek reimbursement from the
27 International Ombudsman Institute for the €50,000.

28

29 But at one time the proposal was that the entire invoice
30 from the OECD would be paid from the IOI bank account?---
31 Yes, as a matter of administration with the invoice,
32 correct.

33

34 With the OWA having contributed some portion of the overall
35 costs of the project - - -?---Correct.

36

37 - - - first to the IOI by depositing money into their bank
38 account?---Er, I think that was probably what was had in
39 mind. It was an administrative invoicing issue.

40

41 So that was in effect to be a grant or a donation - a grant
42 of funds from the OWA to the IOI?---Absolutely under no
43 circumstances to be a grant or a donation. That's an
44 entirely separate regulated matter in - in Western
45 Australia. It is - there's no sense at any stage it was a
46 grant or a donation.

47

48 **THE COMMISSIONER:** Yet the agreement you've entered into
49 describes you as a donor?---Ah, they're template words I
50 think that the OECD use. Um, there's not one aspect, ah -
51 oh, grants and donation are certainly a part of Western

1 Australian law, there's no question. Um, I - there is not
2 at one stage did I ever consider, um, this to be a grant, a
3 grantee or donor, um, relationship.

4
5 But you signed a contract that says, 'Donor'?---The
6 construction of the contract was a contract for services
7 procured by my office.

8
9 You're described in the contract as 'donor', or the OWA is
10 described as donor?---I'm - I'm happy to accept that. I
11 understood donor arrangements to be where, for example, the
12 local government said, 'Here's a donation to build a
13 playground,' or a minister signed off on such a donation.
14 That's certainly not what I was doing. It was not a donor
15 arrangement.

16
17 **NELSON, MS:** At this time when you were settling the
18 memorandum to the IOI board of directors were you assuming
19 that the IOI would sign the grant agreement with the
20 OECD?---I don't know if that had been decided at that
21 stage.

22
23 Were you assuming that, Mr Field?---I - I don't have a
24 recollection about what my assumption was at that stage. I
25 would have taken that as an administrative matter. I - I
26 don't have a recollection of what - - -

27
28 Well, it's more than an administrative matter who signs a
29 contract, surely?---Ah, oh, yes, I accept that's true. Um,
30 what was concerning to me that there was - there was a
31 contract signed, um, and that contract was for the delivery
32 of services.

33
34 So it didn't worry you whether it was IOI or OWA who signed
35 the contract, as long as there was a contract signed?---Oh,
36 no, I think - sorry, I should - I think I've misspoken.
37 Um, it was my recollection and my view that it was to be
38 myself who signed the contract. The question of from where
39 the administrative purposes of the invoicing occurred was
40 of, I thought, a lesser and administrative concern.

41
42 I'll show you the IOI board decision minutes, 0183^.

43
44 0183^

45
46 **NELSON, MS:** So this is a document from the IOI. If we
47 could go to the second page, so you can see it's a summary
48 of a board of directors meeting in May 2023 of the IOI?---
49 Yes.

50
51 You're an attendee as president?---Correct.

1
2 And then we go to page 3. Down the bottom of the page,
3 third from the bottom of the screen, Ms Ella
4 Italiano-Schmidt from the Office of the West Australian
5 Ombudsman, Australia, was also present?---Correct.
6
7 And over the next page, page 4, Ms Poole from the Office of
8 West Australian Ombudsman was also present?---Correct.
9
10 And if we go to page 9 there's some discussion about the
11 permanent observer status in the UN that the IOI was keen
12 to achieve. And then we can go to page 12?---There are
13 matters in these minutes, I must say, which have some
14 diplomatic sensitivity, but I - I should flag that.
15
16 I'm just interested in the very top of the page above
17 'Cooperation MOUs'?---Well, we've - we've already shown one
18 of them. I don't think that was appropriate to show. But,
19 um, we'll obviously get to this one.
20
21 The board approved to undertake a cooperative research
22 project with the OECD.
23
24 ?---Yes.
25
26 It names the project:
27
28 The board further agreed to contribute a lump sum of
29 €50,000 to this project and to also include the North
30 American region as one of the regions of particular focus
31 of the report.
32
33 ?---Correct.
34
35 So the board has actually changed the specifications for
36 the project proposal by including North America?---Ah, yes.
37 Um, my outstanding friend and colleague, the regional
38 president of the North American region had indicated to me
39 he was very keen for North America to be included, um, as
40 part of the value that that project would derive, and that
41 would be part of the €50,000 contribution made by the IOI,
42 correct.
43
44 And on the plain reading of the words there:
45
46 The board approved to undertake a cooperative research
47 project with the OECD.
48
49 There is no reference to OWA also being a partner in that
50 agreement, correct?---Well, I can only say again what I've
51 said, although I must say, counsel, we did go over it very,

1 very quickly, but I thought it was very well articulated in
2 the memo that what OWA's contribution was has now been
3 taken off the screen. But there was a very strong
4 paragraph indicating all of those matters.

5
6 Well, it was always the case that the OWA was going to
7 provide some financial contribution?---Oh, and it was much
8 more - much more significant than that, counsel. You've
9 now taken it off the screen, but there was an entire
10 paragraph that spoke about the OWA's contribution that was
11 much more significant than the IOI's contribution. That
12 was very quickly moved off the screen, but that was there.

13
14 But I want to put to you clearly that the agreement at this
15 stage was between two entities, the IOI and the OECD. But
16 the OWA were going to be financing some of it, but they
17 were not going to be a party to the agreement?---No, that's
18 - that's not the case.

19
20 In fact, the OWA was not a party to the agreement until
21 very late in the piece at the end of June 2023?---The memo
22 - the memo yourself you produced to me doesn't support -
23 oh, well, sorry, in my view does not support that
24 characterisation. Um, and I reject that characterisation
25 as I have on each occasion you've made it, and I reject it
26 again.

27
28 Well, if I could put it more crassly, Mr Field, we were to
29 be a silent funder of someone else's agreement to procure a
30 service?---Well, I don't mean to put it crassly to you to
31 say that is fundamentally wrong.

32
33 You reject that?---Reject it utterly.

34
35 All right. The first grant agreement received from the
36 OECD is 0153^, page 2.

37
38 0153^

39
40 **NELSON, MS:** Bottom of page 2 going into page 3 more
41 specifically. So the OECD sends an email to Ms Fisher at
42 the OWA attaching the amended proposal and a grant
43 agreement to be signed by the two institutions. If we go
44 to page 7 we can then see the grant agreement. The OECD
45 has sent through a grant agreement between the IOI and the
46 OECD on 4 June?---Ah, yes, counsel, sorry. My apologies,
47 counsel, yes.

48
49 Would you agree that as at 4 June the OECD thought they
50 were entering into an agreement with the IOI, not the
51 OWA?---Counsel, I do think, um, that the OECD - and

1 remember, these - these discussions that have been
2 occurring at officer level, um - - -

3
4 Are you going to say the office has got it wrong,
5 Mr Field?---I'm absolutely not saying that. I'm saying,
6 um, in any organisation there are a raft of levels within
7 an organisation. There are discussions, and ultimately it
8 comes to a CEO to settle. Um, there were officer-level
9 conversations, and when it came to me to settle the
10 agreement the outcome is exactly as you saw it. The
11 agreement is between the Office of the Ombudsman of Western
12 Australia and the OECD.

13
14 Great. In fact, we go to the project proposal which is
15 page 4, near the bottom of the page, the last paragraph.
16 You see it starts off:

17
18 The OECD and the International Ombudsman Institute mandates
19 offer several synergies.

20
21 There's no reference there to the Ombudsman of WA, is
22 there?---I can only refer you to what was - what I have
23 said and that is this: um, the document as signed is the
24 evidence of my intention, and that is it was an agreement
25 between the - sorry, it was the Office of the West
26 Australian Ombudsman, ah, instead of doing the service in
27 house, doing itself - because we could have done it
28 ourselves subject to copyright permissions and other
29 matters - it was contracting a service, procuring a service
30 under the Procurement Act and Procurement Rules. The IOI
31 was a contributor to that project in funding, including to
32 extend it to the North American region. That is the start
33 and the end of this matter from my perspective. That's not
34 to say - you can ask me a million questions, but that is in
35 good faith what I'd intended from day one.

36
37 I could go to 0153^ which is this document, but page 1.
38 Down the bottom of the page there's an email from Ms Fisher
39 to Ms Poole in which she has forwarded on what you have
40 just seen on the screen and she says, 'The OECD wants some
41 extra information.' Go over the page:

42
43 They want the exact name of the donor being the other party
44 to the agreement, their address, and their internet site
45 link.

46
47 And the OECD have said, 'Please update what is there on the
48 screen.' Did Ms Poole discuss this with you?---I - well,
49 actually I - I don't have any recollection of seeing that
50 document. That's not to say I haven't, I just don't have a
51 recollection. I don't have a recollection of that

1 conversation.

2

3 So at this stage you were in Slovenia and the United
4 Kingdom with Ms Poole?---I'd have to see the dates again of
5 the document. I'm - I'm prepared to accept your - - -

6

7 7 June you were - - -?---I'm prepared to accept your word
8 for that, counsel.

9

10 Thank you. Could I have 0153^, page 3. Sorry, I've
11 already taken you to that. Yes, sorry, back to page 1.
12 The very top email, Ms Poole replies to Ms Fisher. I'll
13 give you a minute to read that?---Yes.

14

15 Do you recall having a conversation with Ms Poole about the
16 fact that the signatory is going to be Ms Fisher on behalf
17 of the OWA?---(No audible response.)

18

19 We can see point 3 in the model agreement:

20

21 Please add your name -

22

23 - meaning Ms Fisher -

24

25 - as the contact point and signatory. At the point of
26 signing the Ombudsman will send you an email delegating his
27 authority to you to enter into this contract.

28

29 ?---Oh, um, thank you so much. I've read that. I don't
30 have a recollection of that conversation. But I am not
31 suggesting it didn't occur, I just don't have a
32 recollection of that conversation. I - I should say of
33 course that reinforces the very points that I'm making,
34 that it was the Ombudsman entering into that contract and
35 that we were, um, the contact point. And - and all I was
36 doing there was delegating my authority. Ah, I was the
37 only person who's authorised to enter into that contract, I
38 was simply delegating my authority to do so. So that very
39 profoundly reinforces the points I've been making.

40

41 So Ms Fisher then replies to the OECD and says, 'Can you
42 please add in North America?' and then also says:

43

44 Can you change the exact name of the donor, the address,
45 and the internet site link to the Ombudsman of Western
46 Australia, level 2, Albert Facey House, et cetera.

47

48 ?---Correct. Can we see that, counsel?

49

50 Certainly. That is 0154^ at page 6.

51

1 0154^

2

3 **NELSON, MS:** Bottom of page 6 going into the top of page
4 7, I think. No, sorry, bottom of page 8 going into the top
5 of page 9?---Thank you, correct. Oh, sorry, yes, I've seen
6 that, thank you.

7

8 So on 12 June Ms Fisher is telling the OECD that you are
9 authorising a change in the donor from the IOI to the
10 Ombudsman Western Australia?---I - so the use of the word
11 'donor' is only because that was the word the OECD was
12 using. I would use it as one party to the contract.

13

14 Okay. So Ms Fisher is telling the OECD on the president's
15 direction, change - - -?---Correct. Or the Ombudsman's
16 direction, but correct.

17

18 Well, no, she says:

19

20 Please see below the approved content from the president
21 with a minor change in red and a change to the donor -

22

23 - or the party to the agreement -

24

25 - details from the IOI to the Ombudsman of Western
26 Australia.

27

28 ?---Yes. I thought there were some words in red also above
29 this that are indicating that, um, it is the Ombudsman who
30 is entering into this agreement, um, but - in the pages
31 that were above page 6, but correct. That's correct,
32 counsel.

33

34 And what was the OECD's reaction?---I don't have a
35 recollection. I think, ah - I know there was discussion,
36 as I say, with the OECD simply wanting to ensure that -
37 this is what I can recollect, um, that the OECD had some
38 discussions again at officer level and it was about
39 ensuring that the person who signed the contract actually
40 had the authority to sign the contract. That was my
41 recollection.

42

43 Well, I think it went beyond that. If we could go to page
44 - - -?---Oh, that's my recollection. I'm not - yeah.

45

46 - - - page 7. Bottom of page 7, it's an email of 14 June
47 2023. It goes over into page 8?---I certainly didn't
48 intend to mislead, that was my recollection.

49

50 It would appear to me, Mr Field, that as at 14 June 2023
51 the OECD were taken by surprise by a complete change in the

1 party to the agreement from one entity - being the IOI - to
2 another entity, the OWA. Do you agree with that?---I - I
3 don't take - well, two things I would say. First of all,
4 um, I think this perhaps is it's - of course we're in an
5 open hearing. I - I have met Ms Cantera who struck me as
6 being an extraordinarily bright and capable person. But
7 when you say the OECD was taken by surprise, you're talking
8 about one policy analyst in the OECD. I don't think that
9 would be right to say the OECD was taken by surprise. Um,
10 and I don't think Emma would necessarily be representing
11 herself as the OECD.

12
13 **THE COMMISSIONER:** She was the OECD person with the
14 carriage in the matter up to then?---I'm just trying to
15 make the point I think it might be that to characterise
16 that as the OECD being surprised I don't think would be
17 correct.

18
19 All right. Well, one member who had the carriage of the
20 matter seems to have been surprised?---Yeah, I - I'm sorry
21 and I - it possibly came across as pedantic. It wasn't
22 intended to be, Commissioner.

23
24 If you find a convenient point in the next five minutes,
25 Ms Nelson.

26
27 **NELSON, MS:** Yes, that is convenient. Thank you,
28 Commissioner. I've got a fair bit more to do, but - - -

29
30 **THE COMMISSIONER:** We're not going to finish it all in the
31 next five minutes?

32
33 **NELSON, MS:** No, definitely not, I'm afraid?---Oh, okay.

34
35 **THE COMMISSIONER:** In fact, it's obvious that this matter
36 has not concluded. It's no-one's fault. Many years'
37 experience has taught me never to trust lawyer's estimates
38 of time. So we'll need a further few days. Have
39 discussions ensued with Mr Porter?

40
41 **NELSON, MS:** They have, thank you, Commissioner. And I
42 believe it's March - I don't have the dates on me. 18 to
43 20 March if that's suitable, thank you.

44
45 **THE COMMISSIONER:** Is that correct, Mr Porter?

46
47 **PORTER, MR:** That is correct, Commissioner.

48
49 **THE COMMISSIONER:** Very well. So I'm sorry that your
50 ordeal is not yet over, Mr Field, but as you can see the
51 matter has gone over. I probably propose to simply keep

1 you under the present summons but move it to the 18th. Do
2 you have any interstate travel planned in the next -
3 between now and 18 March?---Ah, I have one - so first of
4 all, um, whilst you're incredibly graciously - sorry -
5 graciously offered to me, your apologies to me are not
6 required, but I thank you for offering them. Um, and
7 second of all, I have a trip, ah, booked to Tashkent,
8 Uzbekistan, um, which is between now and the hearing.

9

10 Very well. And how long will you be out of the
11 jurisdiction?---I will be out of the jurisdiction for - it
12 is three or four days.

13

14 I'm going to take a wild guess and say that you're highly
15 unlikely to be a flight risk, notwithstanding the fact that
16 you are going out of the country. And interstate?---Ah,
17 not at this stage.

18

19 Very well?---And I - I give you my absolute guarantee I
20 will be back here at that time.

21

22 Well, what I'll do, as I say - the other matter is the
23 section 99 notation, this being a public examination. Do
24 you have anything to say about that, Mr Porter?

25

26 **PORTER, MR:** Nothing, Your Honour.

27

28 **THE COMMISSIONER:** Very well.

29

30 **PORTER, MR:** The section 151 - sorry, 4H matter of
31 disclosure, my instructions from Mr Field are that his
32 preference would be - and I would make an application on
33 his behalf to allow disclosure for matters other or in
34 addition to the public examination simply to offer him an
35 opportunity to respond to the IOI who have queries and so
36 forth.

37

38 **THE COMMISSIONER:** That would seem to be fair. Any
39 comment, Ms Nelson?

40

41 **NELSON, MS:** No, no comment, thank you, Commissioner.

42

43 **THE COMMISSIONER:** Very well. I will make that order, it
44 can be reduced to writing in due course. And, Mr Field,
45 formally I will adjourn this hearing until 9.45 am on
46 18 March, and your summons remain operative until that
47 time?---I am indebted to you, Commissioner. Thank you.

48

49 Thank you all, and we will adjourn.

50

51 **THE ASSOCIATE:** All rise.

1
2
3
4
5
6
7

(THE WITNESS WITHDREW)

AT 4.11 PM THE MATTER WAS ADJOURNED UNTIL
MONDAY, 18 MARCH 2024

**Certificate Made Under Section 50A of the
*Evidence Act 1906***

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