

CORRUPTION AND CRIME COMMISSION
OF WESTERN AUSTRALIA

COMMISSIONER JOHN MCKECHNIE AO KC

TRANSCRIPT OF PROCEEDINGS

AT PERTH ON MONDAY, 18 MARCH 2024, AT 9.57 AM

COUNSEL:

MS K. NELSON (COUNSEL ASSISTING)

MR C. PORTER (WITNESS)

WITNESS: CHRISTOPHER JAMES FIELD

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

2
3 Mr Field, because it's been some time since your last
4 appearance, I'll just take the precaution of having you
5 re-sworn if you don't mind.

6
7 **THE WITNESS:** Thank you, Commissioner.

8
9 **THE ASSOCIATE:** Mr Field, please stand. Take the bible
10 and card in your right hand and read the oath out loud.

11
12 **CHRISTOPHER JAMES FIELD SWORN AT 09.58 AM:**

13
14 **THE ASSOCIATE:** Thank you. Please be seated.

15
16 **THE COMMISSIONER:** Yes, Ms Nelson.

17
18 **NELSON, MS:** Thank you, Commissioner.

19
20 Could I have the Parliamentary Commissioner Act 0101^,
21 thank you, Madam Associate, at page 16.

22
23 0101^

24
25 **NELSON, MS:** Now, we're looking at section 6(7). And on
26 the last occasion, Mr Field, I was asking you about your
27 last appointment by the governor and particularly the
28 reference in the schedule to your entitlement to leave of
29 absence and travelling and other allowances. And I was
30 doing that because - just reminding you of the section of
31 the Act that says the Commissioner and Deputy Commissioner
32 are entitled to such leave of absence and such travelling
33 and other allowances as the Governor determines. Do you
34 recall that line of questioning?---I - I do, counsel.
35 Thank you.

36
37 And do you recall that you said in relation to your last
38 appointment letter which - perhaps if I get that on the
39 screen it'll be easier. 0470^.

40
41 0470^

42
43 **NELSON, MS:** So this is the period of your appointment
44 from 2022 until 2027, Mr Field. If we go to page 3,
45 thank you, and paragraph 3 on the screen:

46
47 A period of leave referred to in clause 2 may be
48 taken with the approval of the minister.

49

1 Do you recall on the last occasion you told the
2 Commissioner that you didn't believe that clause was
3 actually correctly inserted into the schedule?---Yes,
4 Commissioner - sorry. Yes, counsel, I do remember that.
5 That's - my apologies, Commissioner. Yes, counsel.

6
7 Is that still your position?---Yes, counsel.

8
9 And you also told the Commissioner on 13 February at
10 page 11 just for the transcript:

11
12 It has not been the case in my entire term as
13 Ombudsman that I have ever been required to seek
14 approval to take leave from the minister, and at the
15 time of being renewed, no person in government
16 indicated to me any change to that position
17 whatsoever.

18
19 Is that still your recollection at the time that you were
20 appointed again in 2022? No one pointed out to you
21 paragraph 3 on the screen?---That is my recollection.

22
23 And I believe you also told the Commissioner that you had
24 gone back through your records of previous terms of
25 appointment and were not aware of that particular
26 requirement having appeared in any previous terms. Do you
27 recall giving that evidence?---Ah, that it hadn't occurred
28 in previous iterations, um, that was my recollection.

29
30 Sorry, that was your - - -?---I'm sorry. That was my
31 recollection.

32
33 That's your recollection of having said that before?---I
34 might just - because - just to be absolutely precise, I
35 might ask you just to repeat the question if I may,
36 counsel.

37
38 Do you recall telling the Commissioner on the last occasion
39 which was actually on 13 February at page 10 of the
40 transcript that you had gone back through your records
41 after seeing the appointment term that's on the screen now,
42 and to the best of your recollection, the records that this
43 may be the first time that was included, meaning the 2022
44 requirement to seek the approval of the minister to take
45 leave was the first time it had appeared in any appointment
46 letters?---To the best of my recollection, that is what I
47 do recollect saying in the previous hearing.

48
49 Since the previous hearing, have you gone back to look

1 through the records again as to your appointment?---Ah,
2 yes.

3
4 Over - you have?---I apologise for interrupting. Yes, I
5 have, counsel.

6
7 And do you still hold the same view that 2022 appointment
8 letter was the first time you were required to seek
9 approval from the minister to take leave?---My
10 recollection, counsel, ah, from viewing those records is
11 that there was no such requirement in the first two of the,
12 ah, attachments regarding leave.

13
14 So that was from 2007 to 2012 is the first one?---Correct.

15
16 And then from 2012 to 2017?---Correct.

17
18 Did it appear in the 2017 to 2022 appointment?---What I
19 recollect from that appointment was that there was an email
20 sent to me saying that the terms had been updated, ah, but
21 updated in such ways it didn't include, ah, those, ah -
22 that terminology. Ah, and that's an email that I did
23 receive on or about that time, and I couldn't find an email
24 from myself, ah, ah, indicating anything to the contrary
25 about those terms.

26
27 You've spoken about an email accompanying the appointment
28 determination. Did you look at the actual determination
29 from 2017 to 2022 at any time recently or at the time you
30 were appointed?---'17 - I don't recollect it being sent to
31 me. I recollect what was sent to me was that, ah, that was
32 a reference to, ah, the terms and appointments are in
33 effect the same but they have had an updated, ah, language,
34 um, and, ah - no, I don't recollect seeing, ah, those, ah,
35 ah, subsequently when they were actually gazetted.

36
37 Could I have 0469^, thank you.

38
39 0469^

40
41 **NELSON, MS:** So I take it from that answer, Mr Field, your
42 evidence is that you don't recall ever seeing the 2017
43 appointment determination for yourself?---Um, no, I don't
44 have a recollection of seeing - seeing that. I recollect
45 seeing a reference to it, but I don't recollect seeing the
46 actual, ah, terms themselves.

47
48 If we could have 0469^. It's the covering letter from
49 19 January 2017. Do you recall seeing that letter? We'll
50 just scroll down to see who it's from. Thank you?---I

1 don't have an immediate recollection but I have no doubt it
2 was - no - no doubt - no reason to doubt that it was sent
3 to me.

4

5 And page 2, thank you. So the appointment says that the
6 governor is to appoint you, and particularly if we look at
7 (b), you're entitled to such leave of absence as is set out
8 in the attached schedule. And if we could go to the
9 schedule on page 3, we can see there at paragraph 3:

10

11 A period of leave referred to in clause 2 may be
12 taken with the approval of the minister.

13

14 Can you see that, Mr Field?---Yes, I can.

15

16 So do you accept now that from 2017 to 2022, you had the
17 same requirement to seek the approval of the minister to
18 take leave as you did from your latest appointment in
19 2022?---No, I absolutely don't.

20

21 What is it you don't accept, Mr Field?---Well, leaving
22 aside whether that - the proper interpretation of that is
23 permissive or not by the use of the word 'may' - I'll just
24 leave that aside for a moment. Um, when I was first
25 appointed in 2007, there were no such terms in my 2007
26 appointment. When I was reappointed in 2012, there were no
27 such terms in my 2012 appointment. I received an email
28 from an officer in the Public Sector Commission saying,
29 'We're appointing you on terms that have been updated,' but
30 no suggestion that those terms had changed to include that
31 particular terminology.

32

33 But having received that email or letter, surely you would
34 have looked at the actual document to see what the updated
35 terms were?---No, because it wasn't the import I thought of
36 that particular email. They were talking about using more
37 modern language is my recollection of that email. There
38 wasn't anything in that email that suggested to me they
39 were making a material and substantive change to, um - to
40 whom I would receive - seek permission to undertake leave.
41 Nothing in the - in that email gave me that impression at
42 all. Um, if it had, I would have checked. Um, and then
43 between receiving that email and of course what was
44 gazetted, you are quite - quite correct. What was gazetted
45 - I was to take leave from, um, ah, ah - it may - well,
46 permissive aside, it has those terminologies it has there,
47 and then that was carried forward.

48

49 So when it was gazetted, did it come to your notice that
50 you had the requirement to seek the approval of the

1 minister?---I don't recollect the gazette being sent to me.
2 Counsel, like what I can say is those terms of employment
3 that were clear in 2007, that were clear in 2012, that I
4 took as being clear in 2017 were changed in my view
5 unilaterally without any consent from me. That's what they
6 appeared as when they were gazetted. And may I say this, a
7 grave matter because the Ombudsman as an independent
8 officer of the parliament does not seek approval from the
9 premier to undertake leave.

10

11 Mr Field, do I take it from that response that you did not
12 familiarise yourself with your terms of appointment in
13 2017?---Well, I did in 2007. I did in 2012.

14

15 Mr Field, can you please answer the question? Do I take it
16 from your previous answer that you did not familiarise
17 yourself with the contents of your appointment in 2017?---
18 And I apologise. I was trying to answer the question.

19

20 **THE COMMISSIONER:** Well, just answer it?---Yeah. That -
21 that wasn't effective, Commissioner. The answer is no, I
22 don't accept that.

23

24 Why not?---Well, because I had - - -

25

26 I thought that was just your evidence that you didn't read
27 it?---Oh, no. And that - that is why I was giving that
28 answer that was inappropriate, Commissioner, to the
29 question. What I was trying to say is that, um, ah,
30 because of the terms and conditions of 2007 and the terms
31 of conditions of 2012 and the email that I received in
32 2017, nothing made me think - nothing made me think that
33 they had changed the terms and conditions.

34

35 So you didn't read them, which was counsel's question?---
36 Well, they weren't sent to me, but I didn't read them. I
37 didn't go back to the Government Gazette and read them.
38 Correct, Commissioner.

39

40 **NELSON, MS:** And did you read the terms and conditions of
41 your appointment in 2022?---Ah, no. I had no reason to
42 think they had changed. The answer is no.

43

44 **THE COMMISSIONER:** Well, they hadn't changed?---Well, they
45 had changed profoundly from 2007 to 2012 and 2017.

46

47 The difficulty, Mr Field, that I have - and I mention this
48 more for Mr Porter, who I'm not saying should make
49 submissions - but one of the issues which would be helpful
50 is whether or not you read them, that were the terms on

1 which you were appointed which included approval of the
2 minister, and you have told us you never sought approval of
3 the minister for leave?---My - my position, Commissioner,
4 is it would be completely in contradiction with the Venice
5 Principles, completely in contradiction with the UN
6 resolution on the Ombudsman and mediator institutions - - -
7

8 Well, let me just stop you there. I am a West Australian
9 Commissioner. I must apply West Australian law. The
10 Venice Principles are not part of West Australian law. And
11 unless and until a court declares that one or more of those
12 clauses are void, I am bound to give them proper effect.
13 In other words, I am bound to treat them as lawful unless a
14 court tells me otherwise, because I am not a court?---
15 Commissioner, it goes to the way that - you used
16 international principles in determining whether this
17 hearing ought to be a public hearing. They're very, very
18 clear on your website that you've used international
19 principles.
20

21 I did?---Yes. And I've used those to interpret my
22 legislation, I cannot see the difference.
23

24 Well, all I'm telling you, for submission from Mr Porter
25 later, is that I profoundly don't accept what you say in
26 relation to the interpretation, and that I am bound to
27 apply that schedule as a matter of law, unless a court
28 tells me it is void, but I'll leave that for such
29 submissions, if he wishes, from Mr Porter. Yes, Ms Nelson?
30

31 **NELSON, MS:** Thank you, Commissioner. Mr Field, the very
32 first document I showed you this morning was the
33 Parliamentary Commissioner Act, which said that you as
34 Commissioner were entitled to such leave of absence and
35 such travelling and other allowances as the Governor
36 determines. You suggested that that section of the Act is
37 contrary to the Venice Principles?---No, sorry, can you
38 just repeat that section again for me so I can just - - -
39

40 The section said that as Commissioner, you are entitled to
41 such leave of absence and such travelling and other
42 allowances as the Governor determines?---Oh, absolutely
43 not, that is utterly inconsistent with the Venice
44 Principles.
45

46 And this document on the screen is the Governor's
47 determination on the question of leave of absence, isn't
48 it? Is that section n3?---It is.
49

50 Thank you?---Yes.

1
2 Could we have 0468^, thank you.

3
4 0468^

5
6 **NELSON, MS:** Now, this is your determination of
7 appointment from 2012 to 2017, page 2, thank you. Again,
8 it's subsection (b), the Governor may determine that you
9 are entitled to a leave of absence and travel and other
10 allowances as set out in the attached schedule. If we
11 could go to the schedule at page 3. Under three,
12 travelling allowances, you're entitled to the same
13 travelling allowances calculated in the same manner and
14 subject to the same terms and conditions as a chief
15 executive officer. Now, casting your mind back to 2012,
16 what were those terms and conditions for you to travel?
17 ---Ah, well I was given no separate travel allowances that
18 I - that I recollect in relation to - in relation to terms
19 and conditions 3.

20
21 And what about the terms and conditions of those travelling
22 allowances, what were they at the time?---I - I don't
23 recollect being given any separate document about that, or
24 any separate indication about that, counsel.

25
26 Well, did you make inquiries?---Um, the only import I took
27 from that, um, was, ah, that they were the same as a chief
28 executive officer in terms of the usage of business class
29 travel, and I think that's the only thing I recollect
30 taking from it.

31
32 But you didn't make any inquiries as to whether that was
33 the correct interpretation?---I don't think I made any - I
34 don't recollect making any further inquiries at the time
35 about that, no.

36
37 And then paragraph 2, leave of absence. You're entitled to
38 periods of annual recreation leave, long service leave,
39 personal leave, calculated in the same manner and subject
40 to the same terms and conditions as a permanent officer,
41 which has the meaning as in the Public Sector Management
42 Act at the time. So, what were those terms and conditions,
43 did you need to seek approval particularly?---Sorry, just -
44 oh, this is item 2?

45
46 Yes, under leave of absence?---Ah, I took that as you were
47 entitled to the, ah, four weeks' annual leave, long service
48 leave as appropriately calculated, personal leave, which
49 includes sick leave, but otherwise, um, you would be
50 entitled to as if you were a permanent public servant.

1
2 But in terms of the conditions of those types of leave, did
3 you inquire as to whether a permanent officer needed to
4 seek approval prior to taking those periods of leave?---No,
5 well that's not what that section means though, no.
6
7 My question, Mr Field, is did you make any inquiries as to
8 whether that is what the section meant?---I didn't, because
9 it's patently clear that that's not what the section means.
10
11 Patently clear to you?---Well, patently clear to - yes, to
12 me and to many, I suspect.
13
14 Do you recall whether you consulted the Public Sector
15 Management Act?---No, I didn't. It wasn't necessary. It's
16 very clear what that section means, and I didn't need to.
17
18 When you say it was very clear, is it just convenient,
19 Mr Field, that you would apply the definition that suited
20 you at the time?---Haven't done that in 30 years, counsel.
21 Haven't done anything of the sort in 30 years.
22
23 What do you mean, what haven't you done?---Done things to
24 suit myself, or interpretations that would be of a benefit
25 to me or suit myself.
26
27 Thank you, that can be taken down. On the last occasion,
28 we were examining the trajectory of the OECD project, the
29 negotiation phase prior to you signing the agreement with
30 the OECD for the OECD project, and we got up to, I think,
31 it was around about 14 June 2023, and I suggested to you
32 that the OECD were taken by surprise by being informed by
33 Ms Fisher of the OWA office that the grant agreement was to
34 have the IOI removed and the OWA put on there as a
35 signatory. Do you recall that line of questioning?---Ah,
36 yes, I think I do.
37
38 And you disagreed with me that the OECD were taken by
39 surprise?---With these officer-level conversations, yes, I
40 don't believe at the senior level they were taken by
41 surprise at all.
42
43 So, when you say the senior level, who are you referring
44 to?---Ah, I don't - well certainly at my level, and the
45 levels of discussion that I had had, I felt it was very,
46 very clear what the OECD project was, and that is very much
47 reflected in what the project is as of today.
48
49 So, in June 2023, who were you having discussions with at
50 the OECD at a senior level?---Well, I was delegating those

1 discussions to staff to have, but obviously I was having
2 discussions with my staff about those delegations.

3
4 So, in June 2023, you personally were not having any
5 discussions with anyone at the OECD?---Ah, no, they were
6 being delegated to staff.

7
8 So, any discussions that were being held with the OECD
9 about the project were by email or Teams meetings between
10 your staff and OECD staff member?---Correct.

11
12 At any stage during 2023, did you have discussions
13 personally with anyone at a senior level in the OECD about
14 the project?---Um, I only had two discussions. One was
15 with the Secretary-General of the OECD, and then a second
16 was a video conference, ah, some time after that. Not long
17 after that, ah, held from Perth.

18
19 So, the discussion with the Secretary-General of the OECD,
20 is that the discussion in June 2022?---Correct.

21
22 Was there any subsequent discussion between you and
23 Mr Cormann about the OECD project?---No.
24 And then the other meeting, you're referring to a meeting
25 in June 2022 via Teams?---That would be - I'm sure that is
26 the one you're referring to, would be the one I'm talking
27 about.

28
29 Did you participate in any Teams meetings in 2023 with the
30 OECD?---I don't have a recollection of doing so. At that
31 stage, it would have been delegated to staff.

32
33 So, in 2023, you can say that you didn't have any
34 conversations directly with anyone from the OECD about the
35 OECD project, you personally?---No.

36
37 Could I have 0153^.

38
39 0153^

40
41 **NELSON, MS:** I showed you this document previously, it's
42 an email from Ms Poole to Ms Fisher, who is within the
43 Office of the President and Ombudsman of the OWA, isn't
44 she?---Was, correct, yes.

45
46 Yes, on 11 June at 8.19 pm. Just point 3 in Ms Poole's
47 email:

48
49 In the model agreement, please add your name as a
50 contact point and signatory. At the point of

1 signing, the Ombudsman will send you an email
2 delegating his authority to you to enter into this
3 contract.
4

5 Did you instruct Ms Poole to ask Ms Fisher to do that?---I
6 think it would be unlikely if I hadn't done that.
7

8 So that's a yes?---I don't have a - well, only because I
9 don't have a specific recollection of having that exact
10 conversation, but I would take it for the import of that
11 email that the answer would be yes.
12

13 In a previous answer you said that you had delegated staff
14 to discuss this negotiation with the OECD?---Yes, correct.
15

16 When you say delegated, do you mean there was a written
17 delegation in existence?---Um, well it's a - it would be -
18 it was calling staff in, giving them instructions, emails,
19 telephone conversations, ah, those sorts of matters. In
20 terms of delegations, um, there are - some officers were
21 signed to undertake work on this, and some officers who had
22 formal delegations under the delegations register.
23

24 Did you do a written delegation to any particular OWA
25 officer to undertake anything to do with the OECD project?
26 ---No, and there was absolutely no need to.
27

28 So, there's no written delegation in existence, there's no
29 written record of you delegating any power or function to
30 an OWA officer in relation to this project?---There's just
31 not a single law in Western Australia that says there
32 should be.
33

34 I'm just asking you, Mr Field, is there in existence?---Oh,
35 well the answer is no.
36

37 No.
38

39 **THE COMMISSIONER:** Well, there is section 11 of the
40 Parliamentary Commissioner's Act?---Yes, but that's all
41 covered under the delegations register. So sorry, I should
42 make it clear - there are various delegations contained
43 under the delegations register. So, Commissioner, I
44 misspoke or answered poorly. What I should say in answer
45 to you, counsel, of course there was delegations under the
46 delegations register.
47

48 **NELSON, MS:** And are those delegations in relation to the
49 OECD project specifically?---Yes.
50

1 And have you provided a copy of those delegations to the
2 Commissioner or to the Commission, sorry?---Ah, yes. They
3 were - yes, they were part of - yes.

4

5 **THE COMMISSIONER:** So, do I understand your evidence, that
6 there are written delegations for the OECD matter?---Um,
7 Yes, there are, Commissioner, but they won't appear in the
8 delegations register, as this is a delegation for the OECD
9 matter.

10

11 I'm sorry, I just - I misunderstood, I thought you just
12 said they were in the delegations register, which has been
13 supplied to the Commission?---So the delegations register,
14 correct, has been supplied to the Commission.

15

16 Yes, and does it contain these?---And it will contain the
17 delegations, um, for about whom has certain powers, and one
18 of those powers, for example, will be to enter into a
19 contract with the OECD. But it won't say that level of
20 granularity or specificity in the delegations register, and
21 by law it does not need to.

22

23 **NELSON, MS:** So, will it say generally that a particular
24 officer has the power to enter into a contract?---Correct,
25 so that is completely correct. The Procurement Rules,
26 counsel, make very clear that you must have a register of
27 delegations. No ambiguity about that, and they can be
28 incorporated into the agency's general delegations
29 register, and that is exactly what we have done. And one
30 of those delegations will be, in our case at a certain
31 level, a person can enter into a contract, a procurement
32 contract.

33

34 Are you able to recall where that appears in the
35 delegations register?---I think it's under the procurement
36 section of the register, I don't have it in front of me.

37

38 Well, perhaps if I give you a hardcopy of 0550^, which is
39 the delegations arrangements that you have provided to the
40 Commission.

41

42 0550^

43

44 **NELSON, MS:** Madam Associate, I don't think you have -
45 I'll give you my copy, I don't think you have another
46 copy?---Sorry counsel, that document number was - - -

47

48 Is 0550^.

49

50 **THE ASSOCIATE:** Would you like it on the screen as well?

1
2 **NELSON, MS:** Yes, thank you?---Thank you so much. Ah, so
3 it's at page 5 of - page 5 of 10.

4
5 We'll go to page 5, thank you. Is that the correct page?
6 ---And - no, it's not. I've got 5 of 10, so it heads up
7 'function procurement', that's the one. Ah, so you'll see
8 there who has the authority to approve exemptions for
9 minimum requirements, and also who has authority in
10 relation to purchasing of goods and services and ongoing
11 service contracts, and a key to abbreviations in relation
12 to those, ah, titles.

13
14 So, just on the exemption point, that's the top of the
15 screen. So, a contract of this category, the OECD project,
16 would fit into 50,000 and above, correct?---It absolutely
17 would.

18
19 So, the CFO can recommend an exemption from the minimum
20 requirements?---Correct.

21 And then you must approve it?---Correct.

22
23 Did you document any approval process or any recommendation
24 from the CFO in relation to an exemption from the OECD
25 project?---Ah, my recollection is the CFO wasn't actually
26 employed in our organisation at that stage.

27
28 At what stage are you talking about?---At the stage where
29 it was initially considered that the OECD was an exempt
30 provider.

31
32 I imagine the OWA had a CFO, whether it was the one that
33 you have now?---It was the Deputy Ombudsman, correct. No,
34 and I don't recollect that being the case. Certainly the
35 approval for the exemption was provided by me, and is
36 contained in the procurement memo.

37
38 Which is a document that was created after you entered into
39 the contract?---Well, it was being developed iteratively
40 over a number of months, but it's absolutely true that the
41 actual finalisation of it was after that time, that's
42 right.

43
44 Who was the CFO before Ms Nowbakht became the CFO of OWA?
45 ---I'd have to check whether that was still our deputy or
46 at that stage the assistant Ombudsman, my deputy held that
47 role for some time. Um, and it may have been during that
48 period the assistant Ombudsman, ah, or it may have
49 continued to be the deputy, I'd have to check that.

1 When did Mr Alan Shaw leave the OWA?---Oh, I don't have a
2 precise time for his leaving.

3

4 Ms Nowbakht commenced employment on 23 February 2023, do
5 you recall that, Mr Field?---Not precisely, but I've got no
6 reason to doubt that timeline.

7

8 Did you consult with her from the time she was employed
9 about the exemption requirement for this particular
10 project?---I don't have a recollection of consulting with
11 her about it, but of course, there was no lawful reason why
12 I had to do so.

13

14 **THE COMMISSIONER:** She was the CFO?---There's nothing in
15 the Procurement Act or the Procurement Rules.

16

17 No, nothing in the Procurement Act, just as a matter of
18 common governance, I would have thought you'd involve the
19 CFO in something that was going to be 200,000-odd. Are you
20 saying you didn't?---Well the answer is no, it wasn't
21 lawful for me to have to do so.

22 I'm not talking about lawful, I'm just talking about
23 governance of an organisation and not telling your CFO that
24 there's a potential liability coming up?---Well, I don't
25 accept that interpretation of good governance,
26 Commissioner. We're talking about very, very, very small
27 organisations where the CFO is at around a level 7, so not
28 Departments of Communities and Education.

29

30 We're talking about your departments?---Well, it makes a
31 difference whether your CFO is a C4.

32

33 Well, we're talking about your department, and as I
34 understand, you considered that you had no lawful or other
35 reason to talk to the CFO about the OECD matter?---CFO is
36 an outstanding officer, what I can say is that I was
37 confident, um, that, ah, I had followed in its exactitude,
38 the Financial Management Act, the Procurement Act, and the
39 Procurement Rules, had procured an outstanding project for
40 this state, and I didn't think it needed further
41 consultation.

42

43 **NELSON, MS:** Your own delegations register says that you
44 should get a recommendation from the CFO, or suggests it,
45 doesn't it, Mr Field?---Not at all.

46

47 It says 'CFO' under the column recommend on the page in
48 front of you, doesn't it, Mr Field?---There's nothing about
49 a register that says recommend that means therefore you

1 have to have that recommendation put into place. I mean
2 - - -

3
4 **THE COMMISSIONER:** Oh, for heaven's sake?---Well, it
5 doesn't.

6
7 It's your Procurement Rules. Just because it doesn't say
8 it - it does say?---But Commissioner, that's just not
9 correct. The way that the vast majority of - the way that
10 the vast majority of procurements work is they're
11 relatively small - small-ish amounts of money. They might
12 start with an idea from say, the Deputy Ombudsman, they get
13 put down to a level 3 or 4 in the organisation, work is
14 done on them, they work their way up the list up until say,
15 a level 7, the CFO, excellent officer. Who then will make
16 - form views about it, push that further up the line to
17 say, a level 9, or a C1, and then back up to the Deputy
18 Ombudsman to sign off. Now, that's a very typical way a
19 procurement is done. But there's nothing that precludes
20 the OM - nothing that precludes the Ombudsman - and this
21 happens all the time - happens all the time, where I might
22 say, 'I think this is something that we should procure,'
23 and that necessarily goes back down to the CFO for a
24 recommendation. There's nothing untoward about that at
25 all, it's set up for a generalised purpose, it's not set up
26 for every single purpose that ever comes across the desk, I
27 just don't accept that at all.

28
29 So that's your answer?---That is my answer.

30
31 **NELSON, MS:** Mr Field, this was not a usual procurement
32 activity, was it?---Well, it wasn't procuring photocopy
33 paper, in that sense it wasn't a usual procurement
34 activity.

35
36 Well, it was a procurement between a state entity, the OWA,
37 and a foreign entity, the OECD?---I don't accept that makes
38 it unusual at all.

39
40 You don't accept that?---No more than it would be procuring
41 it from say, the University of South Australia, if that's
42 what we did.

43
44 The payment was to be made in a foreign currency, did that
45 make it unusual?---I'm sorry, there's plenty of examples in
46 Western Australia where agencies - - -

47
48 Mr Field, I'm talking about from your agency's point of
49 view?---No, it did not. No, it did not, any more than it
50 did from - from procuring it from New Zealand, as so often

1 happens, from the UK, which happens regularly in this
2 state.

3

4 Does the OWA procure from New Zealand and the UK
5 regularly?--Well, state agencies in the state do.

6

7 **THE COMMISSIONER:** No.

8

9 **NELSON, MS:** I'm talking about the OWA, Mr Field.

10

11 **THE COMMISSIONER:** Just listen. I think we'll do better
12 if you listen carefully to counsel's question and confine
13 your answer to that question. I've already indicated that
14 Mr Porter will have the opportunity of clarifying at the
15 end, entirely a matter for him, any other matters. So, I
16 think we'll move faster, listen to counsel's question and
17 confine your answer to that question?--And Commissioner,
18 you point to me correctly, no is the answer. Well, yes is
19 the answer, I never got the question because I spoke too
20 long.

21

22 **NELSON, MS:** Was it usual for the OWA to procure from a -
23 in a foreign currency?--It would not have been usual for
24 us.

25 Sorry?--It would have not been usual for us.

26

27 Not usual?--Yes.

28

29 Was it usual for a procurement by the OWA to require that
30 the OWA make a payment in full upfront before receiving the
31 service or good, was that usual?--That I'd have to check
32 whether that's usual or not, I just could not honestly
33 answer that question.

34

35 Was it usual for the OWA in procuring any good or service
36 to be procuring it for also another body or entity?--Ah,
37 well I don't accept that we were.

38

39 **THE COMMISSIONER:** No, that's a second question. The
40 question was, if you repeat the question - - -

41

42 **NELSON, MS:** Was it usual for the OWA to procure a good or
43 service for another - or on behalf of another body or
44 entity?--Well that one, Commissioner, I'm really trying
45 hard, but I can't see how I could answer. If I say no, it
46 surely begs the question I was. The answer was I'm saying
47 I didn't.

48

49 You didn't procure something on behalf of another entity,
50 and I'm referring to the IOI?--No, and the answer is no.

1
2 Did you procure it for the benefit of the IOI?---No.
3
4 Do you agree that the IOI were to receive the scanned
5 report that was to be the output of the exercise?
6 ---Correct.
7
8 Do you agree that that is a benefit for the IOI to receive
9 that?---Not for paying 50,000 euro, correct.
10
11 **THE COMMISSIONER:** Sorry, that is not answering the
12 question?---All right.
13
14 Whether they were paying or not is not the question, it may
15 be the subject of another question, or Mr Porter's response
16 if he wishes to make it. But it's not answering the
17 question?---Ah, no. They - sorry, I'll answer the question
18 again.
19
20 **NELSON, MS:** Was the IOI receiving a benefit in receiving
21 the scanned report which was the outcome or the output of
22 the project with the OECD?---The answer to that is, without
23 providing the other information, no.
24
25 They were not receiving a benefit?---No.
26 And I take it you say they were not receiving a benefit
27 because they were paying 50,000 euro, is that - - -?
28 ---Well, what I'm saying is they would only receive the
29 benefit when they did pay that to extend the project to be
30 able to achieve it, correct.
31
32 So, I take it from that answer that you were intending not
33 to provide the report to the IOI until they paid the OWA
34 50,000 euro?---No, we would have paid the report on the
35 basis that the money would have been paid.
36
37 **THE COMMISSIONER:** Well, that's not answering the question
38 that was asked.
39
40 **NELSON, MS:** So, you would have provided the report to the
41 IOI on the understanding that they would at some point
42 provide the 50,000 euro to the OWA?---Yes.
43
44 And in fact the OWA were paying about 60 per cent of the
45 cost of the total project, weren't they?---I'd have to
46 check the percentage, but I don't want to disagree with you
47 unnecessarily.
48
49 But the OWA were paying more than the IOI?---Yes.
50

1 The OWA were paying around 75,000 euro, or thereabouts?
2 --- Ah, yes.
3
4 The IOI were paying €50,000?---Yes.
5
6 But the contract terms that you signed put the full
7 obligation for payment on the OWA, didn't it, Mr Field?---
8 Yes.
9
10 On the paper the IOI had no obligation to pay any money to
11 anyone?---No, I wouldn't agree with that.
12
13 We'll come back to that. Perhaps if we could just finish
14 with this delegation schedule. So the 'Purchase of good
15 and services and ongoing service contracts', what's on the
16 screen is for contracts up to 49,999. So that is not
17 applicable to this particular project procurement, was it,
18 Mr Field?---I'm so sorry, counsel, could you just repeat
19 that?
20
21 On the screen, we've dealt with the exemption at the top
22 row, then the next row is 'Purchase of good and services
23 and ongoing service contracts'?---Yes.
24
25 And then it says, 'Total value including extensions and
26 variations up to 49,999,' and then it deals with
27 delegations for those types of contracts. Correct?---
28 Correct.
29
30 So that row is not applicable to the procurement of the
31 OECD project, is it?---Correct, yes. Sorry, counsel,
32 correct.
33
34 We could go to the next page, thank you. The 'Total value
35 including extensions and variations 50,000 and above', is
36 that the applicable delegation for the OECD project
37 procurement, Mr Field?---Correct.
38
39 So under that delegation on the screen does Ms Poole,
40 Ms Fisher, Mr Heritage have a written delegation to enter
41 into that procurement?---No.
42
43 Is there anywhere else in this delegation register that
44 would give them a delegation to enter into that particular
45 procurement?---No.
46
47 Thank you. That can be taken down. So when you are
48 referring in answers to the Commission to your officers
49 having a delegation, are you really saying they were acting
50 under your direction?---Correct.

1
2 If we could go back to 0153^, thank you.

3
4 0153^

5
6 **NELSON, MS:** Page 1, and at paragraph 3 where Ms Poole is
7 telling Ms Fisher that it is the intention for her to be
8 given a delegation to enter into the contract, being the
9 OECD contract. Was it your intention as at 11 June last
10 year to delegate Ms Fisher the ability to enter into a
11 contract on behalf to the OWA with the OECD?---No, it was
12 always my intention, counsel, that I would be the signatory
13 to the agreement.

14
15 So are you saying that Ms Poole was not acting under your
16 direction when she sent this email to Ms Fisher?---Oh, no,
17 Ms Poole's an exceptional officer. I must have simply
18 misinformed her about that email.

19
20 So you're saying she was acting under your direction and
21 you told her that but you were wrong, or are you saying she
22 was not acting under your direction?---Ah, I don't have a
23 recollection of that particular conversation, um, and at
24 that particular time, but if there's any fault there, it's
25 my fault.

26
27 Under the delegation register and, in fact, as the
28 accountable authority you are the only one that can enter
29 into a contract of this size?---Not just that - sorry, yes,
30 correct, and only ever my intention to do so.

31
32 As a result of Ms Fisher receiving this email from
33 Ms Poole, she then emails the OECD and informs them to add
34 North America to the survey proposal, and she asks them to
35 change the signatories and the contact points on the
36 agreement from the IOI to the OWA. Do you accept that?---I
37 - I've not seen the email, but I accept it if you say it is
38 the case.

39
40 I can show you the email, 0154^, page 8.

41
42 0154^

43
44 **NELSON, MS:** Sorry, if we go to the bottom of page 5. Is
45 it possible to have all of that email on the screen? The
46 email of 30 June at 1.17 pm. So you can see the first
47 question that the OECD had asked was:

48
49 We need to clarify the donor. Our understanding is
50 that the bank account where the money will come from

1 is the IOI, not the Ombudsman of Western Australia.

2

3 And Ms Fisher on 30 June at 2023 says:

4

5 I can confirm the donor is the Ombudsman of Western
6 Australia and the Ombudsman of Western Australia is
7 the entity to whom the invoice and financial report
8 will be sent.

9

10 And then in paragraph 2 the OECD had asked:

11

12 Confirmation that the person that signs the agreement
13 has authority to sign on behalf of the organisation,
14 making their contribution.

15

16 And the reply sent is:

17

18 The West Australia Ombudsman will be the signatory to
19 the agreement.

20

21 And then under 3:

22

23 We understand the Ombudsman of Western Australia is
24 the current president of the IOI since 2021 and his
25 office acts as the secretariat of the IOI, but please
26 provide clarification as to whether the IOI is a
27 separate legal entity that's able to grant funding
28 and whether Chris Field or yourself may sign on its
29 behalf.

30

31 And the reply is:

32

33 The Western Australian Ombudsman is a separate legal
34 entity, the funder, and the Ombudsman will sign the
35 agreement.

36

37 Do you accept, Mr Field, that it is not until the OECD
38 receives this email that they become aware that the OWA is
39 to be the sole signatory on the agreement?---Ah, well, I
40 certainly agree that that's exactly what that email says.
41 In terms of any earlier emails, I would have to check
42 myself.

43

44 I can show you the previous iteration of the agreement?---
45 I'm not doubting you, counsel, I just have a - I don't have
46 a photo recollection of the earlier - - -

47

48 If we could have 0153^.

49

50 0153^

1
2 **NELSON, MS:** At the bottom of page 2 going onto the top of
3 page 3. It's on 4 June, so the beginning of that month
4 about three weeks earlier than that email that we've just
5 looked at. The OECD sends a version of (2) the grant
6 agreement to be signed by the two institutions. And then
7 we go to the actual annex which is page 4. If we keep
8 going through, thank you.

9
10 **THE ASSOCIATE:** At reading speed?
11

12 **NELSON, MS:** Maybe just the previous page. Nope. Okay.
13 Page 4 to 6.
14

15 **THE COMMISSIONER:** You don't want Mr Field to read this,
16 do you? Because if you do, it will have to be much slower.
17

18 **NELSON, MS:** No. No, I don't. Thank you, Commissioner.
19 Just trying to find the copy of the grant agreement that
20 was sent through at that stage.
21

22 So I can find it later, Mr Field. Do you accept it was a
23 grant agreement between the IOI and the OWA?---Sorry,
24 counsel. At what date are we - - -
25

26 **THE COMMISSIONER:** I think we might - unless you've just
27 found it.
28

29 **NELSON, MS:** No, I haven't. Thank you, Commissioner.
30

31 **THE COMMISSIONER:** Mr Porter correctly asked what date.
32 We'll start a bit early. We'll take 20 minutes.
33

34 Mr Porter, nothing I should ever say to you implies that I
35 expect you to do it. It's a matter entirely for you. But
36 Mr Field has talked from time to time about the Venice
37 Principles, which appear to me to be a council of Europe
38 body that published them. It would be helpful in due
39 course that a matter for you to know whether the Venice
40 Principles are part of the domestic law of Australia and to
41 what extent they can be taken into account. And the second
42 question, what particular principle is it that affects his
43 independence if a minister is required to approve his leave
44 or a minister is required to approve his overseas travel.
45

46 And we'll adjourn for 20 minutes.
47

48 (Short adjournment)
49

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

1
2 **NELSON, MS:** Thank you, Commissioner.

3
4 Madam Associate, 0153^ bottom of page 2 going over into
5 page 3.

6
7 0153^

8
9 **NELSON, MS:** So this is the email of 4 June 2023 from the
10 OECD to Ms Fisher of the OWA. And they have attached the
11 amended proposal and the new draft budget and secondly the
12 grant agreement to be signed by the two institutions. So
13 if we go to page 7, this is the grant agreement that was
14 attached. And you can see it's between the IOI and the
15 OECD, isn't it, Mr Field?---Correct, counsel.

16
17 At the time that Ms Fisher received this, you were in
18 Slovenia with Ms Poole. Do you recall discussing this
19 issue with Ms Poole and receiving this grant agreement?---I
20 don't have a photo recollection. It's absolutely possible
21 we could have.

22
23 It was sent to Ms Poole on 7 June. Now, if we look through
24 this document over to the next page, we can see the contact
25 has a space for someone from the IOI and then two people
26 from the OECD, Ms Cantera and Mr Bellatoni. And if we go
27 to the next page, it goes further into the terms of the
28 agreement, then the following page, and there's a space for
29 the signatories between the IOI and the OECD. There's no
30 space for the OWA to sign this version of the grant
31 agreement, is there, Mr Field?---No. No, counsel.

32
33 And in fact, the OWA is not mentioned anywhere in this
34 version of the grant agreement, is it, Mr Field?---Ah, I
35 can't recollect seeing all of it but I will absolutely take
36 your word for that, counsel.

37
38 So as at 4 June, do you accept that the OECD thought the
39 two designated project partners were the IOI and the OECD?--
40 --Ah, no. No. I - I do absolutely accept though that at
41 that relatively junior officer level as iterative
42 discussions were occurring that that is clearly what was
43 intended.

44
45 Well, the officer who sent Ms Fisher this is one of the
46 same - the same people who's going to be a signatory on
47 behalf of the OECD to this grant agreement, Mr Field,
48 Ms Emma Cantera. If we could go back two pages,
49 thank you?---I don't think that's correct, counsel.

1 Sorry, perhaps the contact person. So, I'll take that
2 back. So, Ms Cantera was to be the contact person for the
3 OECD, along with Mr Bellatoni for the project?---Correct,
4 correct.

5
6 So, in your estimation, she had - was incorrect, and other
7 people at the OECD knew the correct position was that the
8 OWA was to be the designated project partner, is that what
9 you're saying?---No, I don't think - I couldn't honestly
10 give that, ah, ah, ah, evidence to - to the Commission.
11 The only honest evidence I can give you is that a project
12 that had spanned back now over some considerable time
13 before this part of it was iterative in its development, it
14 continued to develop on. Um, and at the appropriate time
15 you will see that I indicated that it was a contract
16 between the OWA and the OECD and I was the signatory for
17 it.

18
19 But you only did that because the IOI refused to sign it,
20 correct?---Oh, no, absolutely not. There was a discussion
21 with the IOI as to who ultimately, um, ought to be a
22 signatory for the agreement, whether it would be the IOI,
23 OECD and OWA, or OWA and OECD. I always had a view - my
24 personal view was that it was best for the OWA and the OECD
25 to sign the contract because we were the principal funder
26 and I felt the contract was between us. But as I say - - -

27
28 Did you tell anyone that view prior to mid-June 2023?---Oh,
29 I would have discussed it, but I don't have a photo
30 recollection of who I would have discussed it with. And if
31 I discussed it, it almost exclusively only would have been
32 with my chief of staff.

33
34 Well, Ms Poole has been up to this stage quite instrumental
35 in dealing with the OECD about the budget and the
36 proposal?---Correct.

37
38 Hasn't she?---Correct, yes. She was assigned for me - by
39 me to do so.

40
41 I suggest to you that you did not discuss changing the
42 signatories to this agreement until mid-June 2023 - discuss
43 with anyone?---Well, that's just not correct, counsel. I
44 was having those discussions about this being a project
45 between the IOI and the OECD before I even met Mathias
46 Cormann.

47
48 I'm just talking about the actual grant agreement and who
49 was to be the designated project partners for the actual
50 agreement?---No.

1
2 I suggest to you, you did not have discussions with anyone
3 prior to mid-June 2023 about the OWA being the sole
4 designated partner with the OECD?---Oh, counsel, I think I
5 - I can say to you, um, that what is absolutely clear is
6 that pre-dating the time that I met with the OECD - indeed,
7 going back to the time when I first saw the project that
8 was undertaken by the European Ombudsman, I felt the
9 Ombudsman should do a project with the OECD. It goes back
10 years ago.

11
12 But I suggest you never told anyone that you had that
13 thought?---I would have discussed it with my chief of
14 staff, and I possibly would have discussed it with other
15 staff members. I sent an email to - to people about it. I
16 certainly - I certainly - look, that is the truth. That is
17 my truth - well, that is my evidence to you. Now, in
18 relation to did I then go through into, ah, what I call
19 officer-level details about how actually that would all be
20 transposed into and reduced into writing to a contract,
21 that was iterative over a period of several, several,
22 several months. And - and the result of which is what you
23 have before you between the IOI and the OECD with me being
24 the signatory. That reflected my view.

25
26 I don't dispute that is the final version of the grant
27 agreement that you signed. What I'm suggesting to you,
28 Mr Field, that that was not determined until at least
29 mid-June 2023, and then communicated to the IOI and OECD on
30 30 June 2023?---Counsel, it's just not the way
31 organisations work.

32
33 **THE COMMISSIONER:** No, no, we don't need a lecture on how
34 organisations work. A suggestion's been made to you, you
35 can agree with it or disagree with it?---I disagree with it
36 profoundly.

37
38 Can you point to any document that shows that the OWA was
39 always intended to be the contracting person prior to
40 mid-June?---I can only point to those documents,
41 Commissioner, of my knowledge of the - of the report done
42 by the European Ombudsman and, ah, the reason why I went to
43 meet with Mathias Cormann in the first place. That's the
44 reason I went to meet with him. That's the reason I also
45 briefed - - -

46
47 There's no document pre-report of that meeting?---
48 Commissioner, I haven't answered your question correctly.
49 The answer is no.

1 No, you haven't?---The answer is no.

2

3 Thank you.

4

5 **NELSON, MS:** Could I have 0304^ at the bottom of page 3,
6 going into page 4 to commence, thank you.

7

8 0304^

9

10 **NELSON, MS:** Perhaps if we could start at the bottom of
11 the email chain, thank you. So this is an email of 22 June
12 2023 from Ms Poole to Mr Mauerer who is part of the IOI
13 general secretariat in Austria. You're nodding your head?--
14 --Correct.

15

16 I'll let you read that. So, clearly a request from your
17 chief of staff to the IOI secretariat to be a signatory on
18 the grant agreement?---Correct.

19

20 And Ms Poole was acting under your direction when she sent
21 this email to Mr Mauerer?---I don't recollect the
22 conversation we had about, um, that but, ah, I can't
23 imagine that, um - - -

24

25 So my question was, was she acting under your direction
26 when she sent this email?---Well, I don't - I don't have a
27 recollection of that, counsel, but I can only imagine she
28 would have been.

29

30 Are you suggesting it's possible she was acting without
31 your knowledge in sending this email?---Oh, no, not without
32 knowledge. Um, I just don't have the specific recollection
33 of that specific delegation. Was she acting with knowledge
34 generally about the project? Absolutely she was.

35

36 You're talking about delegations again, and I think we
37 established prior to the break that there are no written
38 delegations in relation to this project, didn't we?---Ah,
39 yes, we agreed that there didn't need to be, yeah.

40

41 So we agreed prior to the break that the officers of the
42 OWA would act under your direction?---Correct.

43

44 You would tell them what to do and they would do it?---Ah,
45 correct.

46

47 So we could just scroll up, thank you. And that is an
48 example of Ms Poole doing exactly that, I would suggest?---
49 Um, there's not one aspect of which is news to me. But as
50 I said, I don't have a photo recollection of that

1 particular delegation, but I accept what you're saying,
2 counsel.

3

4 So Mr Maurer replies on 23 June. And if we go to the last
5 paragraph he suggests that the OWA should be the expressly
6 designated project partner, not the IOI. Correct?---
7 Correct.

8

9 Then if we go up Ms Poole then sends you that email chain
10 and a suggested response to the OECD which makes it crystal
11 clear that the sole designated signatory or donor is to be
12 the OWA?---Correct.

13

14 Do you recall receiving this email from Ms Poole on
15 29 June?---I don't have a photo recollection of receiving
16 it, but it's - I have no reason to doubt that I did.

17

18 I'm looking at the second paragraph:

19

20 I'm not sure we should foist this upon the OECD.
21 Would you be content for us to go back to the OECD,
22 explain the funding arrangements and Michael's
23 suggestion, and ask how they'd like to characterise
24 the contract?

25

26 Can you see that sentence there, Mr Field?---Ah, yes.

27

28 Do you agree that Ms Poole is indicating that the OECD
29 might find this change surprising because it is a new
30 change to the grant agreement?---No. My recollection about
31 that particular aspect was that that wasn't necessary to
32 do; that there was nothing being foisted upon them, nothing
33 that would be a surprise.

34

35 I'm suggesting that Ms Poole thinks that it might be
36 somewhat of a surprise to the OECD?---You're going to have
37 to ask Ms Poole that question, counsel.

38

39 If we can go up, thank you. Stop, thank you. You then
40 draft the email response that's to go back to Michael
41 Maurer, the IOI, correct?---Ah, yes.

42

43 Thank you so much for your email. I am in complete
44 agreement with your view that it would make the most
45 sense for the Ombudsman of Western Australia to be
46 the expressly designated project partner, and I will
47 go back with that amendment to the OECD.

48

49 Aren't you suggesting in that response that this is a new
50 development in the contract negotiations?---Not at all.

1
2 Do you agree that prior to 30 June 2023 that the OECD were
3 operating on the understanding that the designated project
4 partner with them was the IOI alone?---No, I don't.

5
6 **THE COMMISSIONER:** Well, hang on. About five minutes ago
7 you seemed to give me a contrary answer. Up until
8 14 June?---Oh, I'm talking about it at an officer level.
9 I'm not sure what the view at the officer level was, but
10 what I can say is at the level of my understanding, um, ah,
11 that there was no such understanding, um, of that being the
12 case. Um, and certainly the words I've used there in
13 relation to Michelle Nara were, ah, very much about just
14 being diplomatic and giving someone comfort to the email
15 they sent to me. That was - that was just - that's just
16 a - - -

17
18 The words diplomatic and giving someone comfort are not an
19 excuse to lie - and I'm not suggesting you have lied, but
20 they're not an excuse to lie, are they, or to be other than
21 fully frank?---Well, um Commissioner - - -

22
23 If you're saying that that email is not accurate, say so.
24 Otherwise I'll accept it as an accurate reflection of the
25 thinking at the time?---Well, certainly not a lie,
26 Commissioner. What it is is attempting to express views to
27 the secretary general of the IOI's chief of staff - chief
28 of cabinet in a way that I consider to be diplomatic.
29 That's what I was trying to do.

30
31 Well, there's nothing wrong with being diplomatic and
32 everything right with it. There's everything wrong with
33 being misleading?---Well, I certainly wasn't - - -

34
35 Is this misleading?---I certainly wasn't trying to do that
36 under any circumstances. And I - and I agree with you.
37 Misleading diplomacy is still just a lie.

38
39 **NELSON, MS:** Mr Field, you are agreeing with Ms Maurer -
40 Mr Maurer that the IOI be taken off the grant agreement
41 altogether in favour of the OWA?---Correct.

42
43 And you are agreeing with him on 30 June that that should
44 occur?---Correct.

45
46 Prior to that, the - the grant agreement had been drafted
47 as the IOI alone being the designated partner?---At officer
48 level, it had been, yes.

1 Well, the version of the agreement that was in existence -
2 the last version 6 June had the IOI as the designated
3 project partner?---Yes. The - the - the iteration of the
4 contract at officer level at that stage had that.

5
6 Well, prior to agreeing with Mr Maurer's proposition,
7 Ms Poole acting on your behalf I'd suggest tried to get the
8 IOI to be a co-signatory on the grant agreement with the
9 OWA?---Wasn't trying - it wasn't trying to do anything,
10 counsel. It was, ah, ensuring, um, that we had, ah, gone
11 to the IOI and determined, ah, whether they had a view
12 about that matter, um, and that is exactly what I'm writing
13 back when I'm saying, 'I'm in complete agreement with your
14 view' to be diplomatically saying, 'Yes, that's good
15 because then that's the correct decision'. Um, ah, and it
16 was certainly my view that the IOI um, ah, was, ah - was
17 not an appropriate signatory to the agreement and it should
18 have been the Ombudsman and the OECD.

19
20 I suggest you had not communicated that to anyone and
21 principally not to the OECD prior to 30 June?---Well, I
22 wasn't dealing with the OECD at that stage, ah, ah, at a
23 level of the signatory or, um, the signing, um - - -

24
25 But Ms Poole your chief of staff was and her team member
26 Ms Fisher was?---No, she wasn't. No. She - she wasn't
27 dealing at that level at all. She was dealing at an
28 officer level, um, ah, and - and this document was being
29 iteratively developed at an - at a - I mean, there's much
30 betwixt between the - the - the officer level contract and
31 what comes through to the CEO, and that's just a part of
32 that process. That would be the case in every organisation
33 in the world.

34
35 Ms Poole didn't do anything, Mr Field, unless you told her
36 to do it in relation to this project, did she?---Mm,
37 Ms Poole was an exceptional officer who did things by
38 delegation. You are correct. Or is an exceptional
39 officer.

40
41 Is that - what is the answer to my question though?---
42 Sorry. That was a yes.

43
44 The next iteration of the grant agreement from the OECD of
45 18 August 2023, and that's 0154^ page 20.

46
47 0154^
48

1 **NELSON, MS:** So we can see that the agreement now has two
2 designated project partners, the OWA and the OECD?---
3 Correct.
4
5 And the OWA is referenced throughout the agreement as the
6 donor, correct?---Correct.
7
8 And if we scroll down we can see the other change that has
9 been made, and that is to the contact person. So it's now
10 not Nathalie Fisher but Rebecca Poole?---Correct.
11
12 And was that change made at your direction?---I don't have
13 a recollection. Nathalie also left the organisation to
14 join another organisation that may possibly be
15 coincidental. I don't have that recollection, counsel.
16
17 If we could scroll through, thank you, to page 23. So
18 there's a change there to the date of the end of the
19 agreement, the date of its termination, 31 March '25. Can
20 you see that at the top - - -?---Yes - - -
21
22 - - - of the page?--- - - - I do.
23
24 And then the only other amendment is to page 23. If we
25 could scroll through to the next page which is page 4 of
26 the actual agreement. Can see there's now a space for you
27 to sign the agreement?---Correct.
28
29 As Ombudsman of the OWA?---Correct.
30
31 And then the annex to the agreement is in fact the project
32 proposal. If we could go through to the next page which is
33 page 24. We can see the first page of that and there's
34 been a change to add in the Ombudsman of Western
35 Australia?---Correct.
36
37 And if we could go through to the next page, thank you.
38 And there's been a change as to who the survey will be
39 submitted to by the OECD, removing the IOI and putting in
40 donor, which is the OWA?---Correct.
41
42 Who then has an obligation to distribute it amongst the
43 members of the IOI?---Correct.
44
45 And that I suggest is the benefit that the IOI will receive
46 from the OWA entering into this grant agreement. Do you
47 accept that, Mr Field?---That we will distribute the report
48 amongst member of the IOI?
49
50 Yes?---Ah - - -

1
2 The IOI is no longer a signatory to the agreement?---Yes.
3
4 It has no obligations under the agreement between the OECD
5 and the OWA?---Correct.
6
7 But yet the project proposal which is the annexure to the
8 agreement says that the donor, the OWA, will distribute it
9 to the members of the IOI?---Correct.
10
11 The survey?---Yes, correct, oh, sorry, and they already had
12 - correct.
13
14 And then further underneath:
15
16 The scanned report in English will be roughly 50-100
17 pages, and will include the update to the 2018
18 report.
19
20 That you have referred to?---Correct.
21
22 And then there's an analysis of OIs, meaning Ombudsman
23 Institutions' role in the protection of civic space and
24 reinforcing democracy?---Yes.
25
26 So, that's a generic Ombudsman's Institution, correct, not
27 any particular one in any particular country?---Ah,
28 correct.
29
30 And it talks about the mandates of OIs or Ombudsman
31 Institutions changed in recent years, so that's one of the
32 things that the scanned report will address, correct?
33 ---Yes.
34
35 And that is also a generic Ombudsman's Institution. You're
36 nodding your head?---Yes, yes.
37
38 There's no reference to the survey or the scanned report
39 identifying or focusing on any particular Ombudsman's
40 Institute in any particular country?---Ah, no, in the
41 scanned report, um, ah, it - well sorry, the only answer to
42 your question is no.
43
44 And then the next dot point, there is an obligation on the
45 donor - so an obligation on the OWA, to provide in-kind
46 support in relation to disseminating the report?---Correct.
47
48 And it gives examples of what that might look like. So,
49 printing, translating into other languages, agreed?
50 ---Correct, agreed.

1
2 So, in the agreement, that obligation is on the OWA?
3 ---Agreed.
4
5 But the OECD will need to give the OWA a non-exclusive
6 right to translate and publish the translation of the
7 publication, because the OECD will be keeping the
8 intellectual property of the scanned report?---Agreed.
9
10 Then at the next dot point, the case study on an
11 Ombudsman's Institutions' role in protecting your rights in
12 the digital age, there's no reference to any particular
13 institution as being focused upon by the scanned report?
14 ---Ah, agreed.
15
16 And then there's a policy dialogue event to disseminate the
17 results of the survey and the updated report, which is to
18 be organized by the donor, so that obligation is on the
19 OWA?---Agreed.
20
21 In the context of its annual meeting?---Ah, correct, yes,
22 correct.
23
24 And is that phrasing in fact a legacy phrase from when the
25 IOI was the designated project partner in the previous
26 draft of the agreement?---Ah, no, it was intended that, ah,
27 the optimum time to, ah, undertake that particular activity
28 was around the holding of the annual meeting to which you
29 refer, to which of course our office would be in
30 attendance.
31
32 So, the IOI annual meeting?---Correct.
33
34 And I'm suggesting to you, if you read the document as it
35 is on the screen, so the donor in the context of 'its',
36 meaning the donor's, annual meeting, it's nonsensical,
37 isn't it, because the OWA doesn't have an annual meeting?
38 ---The OWA does have an annual meeting, and that annual
39 meeting, insofar as it's a member of the International
40 Ombudsman Institute, is that annual meeting held somewhere
41 around the world, particularly during the time that the IOI
42 is holder of the role of presidency.
43
44 **THE COMMISSIONER:** Sorry, how does the OWA have an annual
45 meeting?---Well, it's in the context of the fact that the
46 - - -
47 No, no, you've just said that the OWA has an annual
48 meeting?---Yes.
49

1 What is the annual meeting?---It was - well, my - well,
2 none. I can say none.

3

4 Well, you just said yes?---Well, I was saying yes in the
5 context of the fact that whilst the OWA was holding the
6 role of the President of the IOI, that annual meeting would
7 be the annual meeting of the IOI.

8

9 Sorry, look, it's entirely me, Mr Field, I'm sure it's not
10 you. But counsel just asked you - suggested to you that it
11 is a nonsense to say the OWA has an annual meeting. What
12 it was meaning that the IOI has an annual meeting. Now,
13 you said the OWA does have an annual meeting, so tell me,
14 because I'm confused, what the annual meeting is?---It's
15 entirely me and not you, Commissioner. The answer to your
16 question is - I don't agree with the nonsense part, but the
17 answer to the question is, um, the IOI has an annual
18 meeting, and the OWA insofar as it was the holder of the
19 elected president of the IOI, it would attend that annual
20 meeting.

21

22 Yes, so it's not the OWA's annual meeting at all?---No, I
23 didn't mean to mislead by saying that at all, it was on the
24 basis that we would be attending that annual meeting.

25

26 All right.

27

28 **NELSON, MS:** Thank you, Commissioner. And what I did omit
29 to also say was that the last part of that last dot point,
30 there's a capacity building activity to improve open
31 government literacy, and the International Ombudsman
32 Institute's role in country's open government agenda, to be
33 organised online, also by the donor, or the OWA, you're
34 nodding your head?---Yes, correct.

35

36 And then the last obligation on the OWA is to provide
37 interpretation during these events, meaning the capacity
38 building activities and the policy dialogue event, if
39 needed?---Yes, correct.

40

41 Thank you, if we could just scroll down. And that is the
42 final proposed budget?---Correct.

43

44 This is the version that you signed seven days later on
45 25 August 2023?---I'm going to take your word for that,
46 counsel.

47

48 You don't need to take my word, I'll take you to it?---All
49 right.

50

1 **PORTER, MR:** Sorry counsel, what date is this tracked
2 changes document?
3
4 **NELSON, MS:** That is 18 August 2023. So, it's under an
5 email 0154^ at page 10.
6
7 0154^
8
9 ?---While that's being found, Commissioner, can I have just
10 the indulgence of one minute.
11
12 Sure?---Thank you so much.
13
14 We'll just have a break for five minutes.
15
16 (Short adjournment)
17
18 **THE COMMISSIONER:** Please be seated?---Thank you,
19 Commissioner.
20
21 Whenever you're ready, Ms Nelson.
22
23 **NELSON, MS:** Thank you, Commissioner. Could I have 0304^?
24 I just neglected to ask you something about that email
25 exchange?---Yes.
26
27 0304^
28
29 **NELSON, MS:** So, the document we were just looking at was
30 from 18 August, but prior to that, I was asking you about
31 instructions from yourself to tell the IOI and the OECD
32 that the OWA would be the sole designated project partner
33 on the agreement?---Yes.
34
35 We'll just go down to the bottom of page 1 going over into
36 page 2 again?---Yes.
37
38 So, you have instructed Ms Poole to send the two emails, I
39 only asked you about the first draft, which was to
40 Mr Maurer at the IOI?---Mm.
41
42 But you have also drafted a response to Emma, and that is
43 Ms Cantera at the OECD, isn't it?---Ah, yes, correct.
44
45 And your draft response says:
46
47 Dear Emma, thank you so much for your email. Having
48 consulted both with the IOI president and the IOI
49 Secretary-General, I can now confirm my answers to
50 your questions in red below. Otherwise, we're simply

1 delighted that this project will now commence and
2 look forward to working with you.

3
4 And then if we scroll down, and that is in fact the
5 response to say that the donor is now the Ombudsman of
6 Western Australia. And the Ombudsman of Western Australia
7 is the sole signatory?---Yes.

8
9 Thank you. That can be taken down. Now, I was going to
10 show you the final version of the agreement, signed by
11 yourself. 0107^.

12
13 0107^

14
15 **NELSON, MS:** And Madam Associate, you have some hardcopies
16 of that document, I believe, for the witness, thank you.
17 And the Commissioner. 0107^, thank you. If we go to page
18 4, we can see your signature?---Yes.

19
20 On 25 August 2023. Now, prior to signing the agreement, if
21 we go back to page 1, did you read it?---Yes.

22
23 Did you seek any advice, legal or otherwise, on the terms
24 in the agreement?---No, I did not.

25
26 Did you make any inquiries as to whether the Director of
27 Public Governance at the OECD had the imprimatur of the
28 OECD to sign this agreement?---No, I did not.

29
30 If we look at the object which is paragraph 1, it says the
31 donor, meaning the OWA, has agreed to finance the work
32 which the OECD will carry out on the project, and the name
33 is the name of the project proposal, which is annexure 1.
34 It goes on to say:

35
36 As part of its programme of work and budget for the
37 Public Governance Committee for 2023-24.

38
39 Did you know whether this project proposal was already a -
40 a project of work that the OECD were going to undertake
41 prior to you discussing it with them? Was it something
42 that was on their project of works regardless of whether we
43 were the donor?---No, that wasn't my understanding from my,
44 ah, meetings with my meeting with the OECD. It certainly
45 was my understanding we had that raft of projects that that
46 division was working on, and more broadly, they were
47 working on, including that division. But this specific
48 project was not one that I was aware that they were
49 otherwise working on.

50

1 So, it wasn't your understanding that the OECD were going
2 to undertake this work regardless in their 2023-24
3 programme of work?---No, that was not my understanding.

4
5 And then paragraph 2, contribution. So the first sentence
6 is:

7
8 The obligation of the OWA to provide an amount of
9 129,960 euros.

10
11 You're nodding, Mr Field?---Yes, sorry, sorry counsel.

12
13 And that is the entire cost of this project?---Correct.

14
15 In the second sentence, the contribution is to be paid in
16 full upon signature of this agreement, so it's immediate
17 payment after receiving the invoice from the OECD,
18 correct?---Correct.

19
20 Is that usual in procurements projects of this size in the
21 OWA, to pay upfront, in effect?---Ah, that will vary. Some
22 will be upfront, some will be over, ah, over terms. Um, I
23 didn't see there being anything particularly unusual about
24 that.

25
26 **THE COMMISSIONER:** What, paying the money upfront before
27 anything is done?---The judgment I would have brought to it
28 at the time, Commissioner, is that I was dealing with an
29 organisation with a reputation or capital such that it
30 would be utterly astonishing if they were either non-
31 existent after I signed it, insolvent, didn't exist
32 anymore, or that didn't actually - didn't actually fulfill
33 the terms of the agreement. It would not have occurred to
34 me that that could have occurred with the OECD. I mean, if
35 you were dealing with Joe's Handyman Service - Handyperson
36 Service, maybe that might have occurred - that would have
37 occurred to me, but it didn't occur to me on this occasion.

38
39 **NELSON, MS:** Did it occur to you on 25 August when you
40 signed it to discuss those payment terms with the chief
41 financial officer of the OWA or anyone within the finance
42 team?---No, but they would have been, and were, informed
43 about the payments that needed to be made.

44
45 **THE COMMISSIONER:** When?---I don't have a recollection,
46 um, ah - - -

47
48 Because I thought earlier you told me that the CFO was not
49 engaged until very much later when the invoice came?

50 ---Well, that's true. So what I'm - - -

1
2 Well, if that's true, that answers counsel's question?
3 ---Good. I certainly wasn't trying to mislead, I was
4 trying to say yes, I did discuss - or there was
5 discussions, with the need to pay the contract. But,
6 after.

7
8 Those discussions occurred in December?---After, yes.

9
10 Whereas counsel's question was here, and the answer was no,
11 you did not discuss it?---Well, in that case I apologise
12 Commissioner, no is the answer to that.

13
14 **NELSON, MS:** In fact, the CFO was not aware of this
15 project until sometime in October 2023?---I don't have a
16 photo recollection, but I recollect it was certainly
17 sometime later, and that could well be correct.

18
19 And in fact, the first time that she's - or the agreement
20 itself was on 7 November 2023. You're shaking your head
21 Mr Field, do you disagree with that?---No, I don't. I have
22 - as I say, there was absolutely no need for her to see it,
23 but I completely agree with you.

24
25 There was no need for her to see the agreement, yet it
26 committed the OWA to pay an amount of nearly 130,000
27 euros?---Well, as an officer of the Parliament, I have an
28 obligation to follow the law, and I followed the law, and
29 that doesn't include having that discussion with the CFO.

30
31 So, in your mind it wasn't a necessary discussion for you
32 to tell the CFO that she was shortly to receive an invoice
33 that would require immediately payment, in euros, to an
34 overseas entity in a sum of over 200,000 AUD?---It's not a
35 question of what's in my mind, counsel, um, it's what's in
36 the mind of the - the, ah, body to which - and to
37 exclusively I serve in this state, and that is the
38 Parliament of Western Australia, and it's not in the mind
39 of the Financial Management Act, nor the Procurement Act,
40 nor the Procurement Rules, that any of those things have to
41 be done. So, it's not a question of poor governance not to
42 follow the law.

43
44 **THE COMMISSIONER:** It's nothing to do with following the
45 law, everybody expects you to follow the law?---Well, I
46 did.

47
48 By not telling the CFO about this until 8 November?---I
49 didn't have a discussion with a level 7 employee in my
50 office about when financial, ah, when invoices have to be

1 paid, despite that employee being an outstanding employee,
2 um, can I say, um, there is nothing in any law in this
3 state that requires it.

4

5 **NELSON, MS:** The invoice could not be paid without the CFO
6 knowing, could it, Mr Field?--Well, it goes to our finance
7 department and they would pay the invoice accordingly.

8

9 The CFO leads the finance department, does she not?--No,
10 the finance department is lead by, um, ah, well, for most
11 of my time in my office, led on a day to day basis by my
12 Deputy Ombudsman, and now, um, through, ah, an assistant
13 Ombudsman. So, none of this is to suggest the CFO is not
14 an outstanding person, who she is, and an outstanding
15 employee, which she is. But it misunderstands, um, that
16 that CFO is given any role under the Procurement Act, or
17 the Procurement Rules, of which she is not.

18

19 Did you tell anyone in the finance area of the OWA that
20 they were to expect an invoice?--At the appropriate time,
21 they were told that there would be an invoice coming,
22 correct.

23

24 And that was not until late October at the earliest,
25 correct?--When the invoice was due, correct. Nothing
26 untoward about it at all. And not the only procurement
27 that is done exclusively by me that isn't discussed with
28 the CFO. I'm doing another one at the moment as we speak.

29

30 And what one is that?--Um, in relation to procuring
31 matters for, um, our new chattel trust jurisdiction and
32 procuring counsel for that.

33

34 And have you discussed that procurement with your CFO?
35 ---There would have been, ah, some discussion about it
36 potentially. But almost all of that discussion would have
37 been with myself and the lawyer who was procuring the -
38 procuring the advice. And I suspect the only reason I've
39 discussed it with the CFO is because, ah, once again, the
40 CFO is now well-established in our organisation as a CFO.

41

42 Well - - -?---I can't stress enough, counsel, it's not in
43 the Act, it's not in the Rules, there is not a single
44 reason to do it. You cannot perform bad governance by
45 following the law.

46

47 I think we'll move on. So, the contract also provides that
48 should there be an amount of 2000 euros that is unspent,
49 that that is to be retained by the OECD?---Correct.

50

1 And as we discussed earlier, for the intellectual property,
2 it says:

3
4 The results of the work in whatever form shall remain
5 the sole property of the OECD.
6

7 ?---Correct.
8

9 On a plain reading of this agreement, there was no
10 undertaking by the OECD as to the form of the results of
11 the work, is that what that clause suggests?---I think
12 there was a very clear understanding about what the - no, I
13 don't accept that. I think it was a very clear
14 understanding, this contract in its totality and its
15 collateral documents were very clear as to what was to be
16 produced, not leaving aside of course the annex to the
17 contract.
18

19 And what was to be produced is the results of the work
20 undertaken by the OECD?---Yes, we were contracting that
21 service from the OECD, that's correct.
22

23 And despite the OWA contracting that service, the outcome
24 was to remain the sole property of the OECD?---I wasn't,
25 um, concerned about - - -
26

27 Is that what that clause says, Mr Field?---Yes, sorry, I
28 should - my apologies, Commissioner, the answer to that is,
29 ah, yes, that's what that clause says.
30

31 And does that clause also suggest that the OWA can't direct
32 the OECD as to how the results of the work are to be
33 communicated?---Well, yes, I wouldn't have wanted to.
34

35 There's no provision for the OWA to direct how the OECD
36 will carry out the project?---I would have made it a non -
37 no, there's no way I would have wanted that term in the
38 contract.
39

40 So, the OECD had free artistic rein as to how they
41 undertook the project?---Well no, they had intellectual
42 integrity about how they undertook the project, exactly the
43 same as if you were contracting with the university, you
44 wouldn't want to direct them how to do it.
45

46 We'll go to page 3, thank you. Page 2 still had Ms Poole
47 as the contact person?---Yes.
48

49 On that point, did you have any knowledge at the time you
50 signed this as to whether Ms Poole had any experience or

1 training in contract management of this size?---Well, it's
2 a moot point, because I intended to be both the signatory
3 and the contractor.

4

5 **THE COMMISSIONER:** It's not a moot point, it's a question,
6 could you answer it?---Well, ah, the answer is no. Well,
7 sorry, in relation to this, I'd have to check what
8 contracts she had managed before, I'm not sure.

9

10 **NELSON, MS:** So, I take it in August last year, you would
11 have been unaware of what contracts she had also managed up
12 to that point?---Mm, well as I say, it wouldn't have
13 occurred to me, because I hadn't intended for her to be the
14 contract manager.

15

16 But yet you put her as the contact person on the agreement,
17 what was the point of that?---Well, the same reason Mathias
18 Cormann is not there as a signatory, because I don't expect
19 him to necessarily be on that contract. What I expected is
20 inquiries in the first place about the contract would be
21 directed to her, and then she would direct them to me.

22

23 Had Ms Poole undertaken any training from the Department of
24 Finance on procurement rules or the Act at this point?
25 ---Oh, I couldn't say, I'm not sure.

26

27 Had she undertaken any mandatory training from the
28 Department of Finance on the Procurement Act rules?--- Had
29 I?

30

31 Yes, as at August 2023?---Ah, well, I - mandatory training.
32 I'd been - I'd been in training, if you like, for 17 years
33 as the CEO of an organisation.

34

35 **THE COMMISSIONER:** No, no, that's experience?---Oh, well,
36 fair enough.

37

38 The question is related - - -?---Yes, no. The answer's - -
39 -

40

41 - - - to mandatory training?---The answer's - the answer's
42 no.

43

44 See, it just does move a bit faster, as I say?---It does.
45 It does, Commissioner. It does.

46

47 Mr Porter will have every opportunity to clarify?---It
48 does. And, Commissioner, my sincere apologies.

49

1 **NELSON, MS:** And if we could go - thank you, we're already
2 on the next page. So, page 3 under the 'Conduct and
3 Ethics' under B there's a requirement that conflicts of
4 interest in relation to the execution of the agreement are
5 to be avoided?---Yes, correct.
6
7 Did you do anything in relation to satisfying that
8 subclause 9B?---Oh, only to the extent to which I satisfied
9 myself there was no conflict of interest.
10
11 Even though that you were holding the presidency of the IOI
12 as well as signing this agreement on behalf of the OWA?---
13 Oh, correct. But that was profoundly, in my view, not a
14 conflict of interest.
15
16 **THE COMMISSIONER:** Sorry, profoundly what?---Not, in my
17 view, a conflict of interest.
18
19 Why not? I mean, this is a contract which, amongst other
20 things, will give a benefit to the IOI. You've agreed with
21 that. How could you not have been in a conflict?---Because
22 the law is really clear that it isn't a conflict.
23
24 Your law may be clear that it isn't a conflict, but how can
25 it not be? You're president of an organisation which is
26 receiving a benefit from another organisation for which you
27 have entered into a contract. How can that not be a
28 conflict?---Commissioner, it's - it's the parliament that
29 determines what are conflicts, and through its subsidiary
30 legislation. And it is absolutely clear from my
31 perspective, um, that under all relevant laws and
32 legislation in this state, um, that does not constitute a
33 conflict of interest.
34
35 This is a contract that has nothing to do with parliament.
36 It's a contractual point, and you say you have no contract
37 - that is, no conflict. That is your answer, I have heard
38 your answer?---And, Commissioner, if you'll - if I could
39 indulge only to one sentence, it's not a contract; it is a
40 - it is a component part of a procurement process. And the
41 procurement rules - - -
42
43 I'm sure counsel will come to that and explore it in due
44 course?---Okay. All right. In that case I - in that case
45 I won't - - -
46
47 Do not worry that it will ignored?---I will not, yes.
48 Okay. Thank you.
49

1 **NELSON, MS:** Mr Field, you are contracting as the
2 Ombudsman of Western Australia to pay a certain amount of
3 money for the OECD to undertake some work as defined in the
4 annexure. That's what this document is about, correct?---
5 Yes.
6
7 And that is a contract, isn't it?---Oh, sorry, I'm not
8 doubting for a moment it's a contract.
9
10 **THE COMMISSIONER:** I thought you just did?---No, I was
11 trying to say it's a contract in the context of a
12 procurement process, and therefore the Procurement Act and
13 Procurement Rules apply, as does the relevant Australian
14 Standard - Accounting Standard.
15
16 **NELSON, MS:** But the contract is the outcome of the
17 procurement process, correct?---Ah, it's the penultimate
18 outcome. The outcome of the procurement process is - is,
19 ah, any revisions to the contract, contract management, and
20 then contract completion.
21
22 I see. The process of procuring doesn't start with the
23 contract being executed?---No, it does not, correct.
24
25 Because there must be a period of time where the need is
26 identified?---Correct.
27
28 Then the party that will provide the need is identified?---
29 Correct.
30
31 There's negotiations as to price?---Correct.
32
33 And then you enter into the contract?---Correct.
34
35 And then it goes on. Going back to the joint interests you
36 held at the time you signed this - - -?---Yes.
37
38 - - - I want to suggest to you that you had two coexisting
39 interests. At the time you signed this you were president
40 of the IOI so you had an obligation to advance the IOI and
41 its member's interests as president, correct?---Correct.
42
43 And at the same time you were the Ombudsman of Western
44 Australia?---Correct.
45
46 And in that role you had an obligation to ensure the OWA
47 performed its statutory purposes for the benefit of Western
48 Australia?---Correct.
49

1 So those two coexisting interests - you agree they're
2 coexisting as at 25 August 2023?---Correct.

3
4 I want to suggest to you at the time you signed this they
5 were conflicting interests?---I just profoundly disagree.

6
7 I'll give you my reason: because at the time you signed
8 this you were committing the OWA to pay the entire project
9 amount of money?---Yes.

10
11 Yet you knew at the time you signed this that the IOI and
12 its members were going to receive the outcome; the Scan
13 Report, the capacity-building exercises - you're nodding
14 your head?---Mm-hm.

15
16 And the policy dialogue event. Can you see the conflict as
17 at 25 August?---No. Um, I'll leave for - for, as the
18 Commissioner said, counsel to go through, um, the
19 Australian Accounting Standards, the related party
20 transactions, all of which are part of law in this state
21 that patently make these matters not conflicts of interest.
22 But - - -

23
24 You were transferring resources of the OWA to another
25 entity that was going to undertake work for the benefit of
26 a second entity of which you were leading?---Sharing -
27 sharing key management personnel is not a conflict of
28 interest in this state. Now, that's just the law. Now, in
29 relation to my intention, um - and obviously counsel will
30 have an opportunity to present those materials to me at the
31 appropriate time - so that's just not correct, counsel.
32 The sharing of KMP do not constitute a conflict of
33 interest.

34
35 Sharing of, sorry, the KMP?---Ah, key management personnel.
36 But in relation to - in relation to these issues, far from
37 seeing it as a conflict of interest, I saw it as a
38 confluence of interest. I saw it as a coexisting interest
39 to benefit to Western Australians. That's the way I always
40 saw the process. I saw it as a process where I had
41 originally met with Mathias Cormann to pursue a, um - a
42 project to which I had evinced interest a long time before
43 that, as the records that I produced to the Commission
44 show.

45
46 I suggest they don't show that, Mr Field, but I think we'll
47 get to that later?---All right. Well - - -

48
49 I'm not agreeing with your assessment?---All right. Well
50 then, I'll say that's what - it was in my mind. And I'd

1 intended that this project would be of substantial benefit
2 to Western Australians, and that I thought, um, insofar as
3 it may have a benefit for other ombudsmen, that was utterly
4 consistent with the role that we were playing both in our,
5 ah, Southeast Asian region, um, and our major trading
6 partners. Um, and as discussed with a raft of senior
7 government personnel in the state of which I've also
8 produced evidence to you, um, throughout the period of the
9 OECD process and - - -

10
11 **THE COMMISSIONER:** I think we're straying from the answer
12 to the question which you have answered?---I think we
13 probably are.

14
15 In your opinion, there was no conflict, it was
16 complementary. I understand your evidence?---Thank you.
17 Thank you, Commissioner. I had to drag too far, and I
18 thank you for picking me up.

19
20 **NELSON, MS:** If we could continue on to clause 10, the
21 confidentiality clause which says the agreement is not to
22 be made publicly available without the prior written
23 agreement of both parties except to respective orders. Did
24 that confidentiality obligation cause you any concern?
25 ---No. No, it did not.

26
27 Did you consider whether it was compatible with the - any -
28 any obligations that the OWA was subject to such as freedom
29 of information or - - -?---Well, we're not.

30
31 You're not - - -?---We're profoundly not - - -

32
33 Have you considered that?--- - - - subject to freedom of
34 information. We're exempt.

35
36 And what about in terms of the rest of the OWA employees?
37 Did you consider that was agreement that should be made
38 available to them to - to look at and be aware of?---But -
39 but nothing - nothing that my employees - anything that
40 comes to my employees' attention as part of their
41 employment can be discussed with anyone outside of my
42 agency - well, unless of course they're making - - -

43
44 So they'd seek - - -?--- - - - complaints to the CCC, in
45 which case they can.

46
47 So you didn't see this clause as preventing you from
48 telling anyone in the OWA about the existence of the
49 agreement?---Of course not. Absolutely not.

1 Do - - -?---But of course that is only on the basis - I'm
2 so sorry to interrupt, counsel. That's only on the basis
3 of course that they themselves would hold that information
4 confidential.
5
6 Of course. Which they are required to when they - - -?---
7 Yep.
8
9 - - - swear the oath when they become employees?---Correct.
10 Correct, counsel. Correct.
11
12 Did you consider that this confidentiality clause prevented
13 you from telling anyone in the rest of the executive arm of
14 government about the existence of this agreement?---No, I
15 did not.
16
17 Did you consider it constrained you in relation to
18 reporting to Parliament in your annual report or - - -?---
19 No.
20
21 - - - any other type of report to come?---No. My view is -
22 is - is - is you can't contract out of that profound, um,
23 and legislative requirement that I report to Parliament.
24
25 If we could track down to the termination clause which is
26 number 12. So it talks about in the event of a material
27 breach of the agreement by the OECD the - the outcome of
28 that. Did you have any understanding at the time of what a
29 material breach might look like?---Um, I think it goes back
30 to the Commissioner's previous question, counsel. Um, I
31 will say - ah, and I accept, Commissioner, there may be a
32 (indistinct) but I did - I didn't anticipate that, um, the
33 OECD - knowing the nature of the OECD that I would have
34 anticipated that being an issue.
35
36 **THE COMMISSIONER:** Nobody ever does?---And - and - and,
37 Commissioner, I accept that.
38
39 That's why you - - -?---You have the clause.
40
41 - - - put in dispute resolution clauses?---I accept that.
42 I accept that. As I say, I did turn my mind to this
43 particular contract and the particular people with whom we
44 were contracting and felt I was less concerned about it.
45 But I accept your point, Commissioner, completely.
46
47 **NELSON, MS:** Did you - - -
48
49 **THE COMMISSIONER:** It's just that I have sat as a judge in
50 too many contracts - - -?---Yes.

1
2 - - - that everybody went - - -?---Yes.
3
4 - - - into with the best of intentions and then - - -?---I
5 agree.
6
7 - - - things fall apart?---I agree. I agree, Commissioner.
8
9 **NELSON, MS:** Mr Field, because the - you were contracting
10 as the OWA with a - a non-government entity, did you
11 consider whether there was any taxable supply under the
12 goods and services tax rules that would apply or indeed
13 whether in France there were any evaluated tax or any tax
14 implications for you entering into this agreement?---No, I
15 didn't give that matter consideration. I assumed that both
16 - both matters were not so applicable and so I didn't give
17 that matter consideration.
18
19 So are you saying that you did consider it at the time and
20 assume they were not applicable or it - - -?---I'm sorry.
21
22 - - - didn't even enter into your head?---No, I'm sorry. I
23 should - sorry. I need to be absolutely clear with you,
24 Commissioner. It might be a better answer, um, but it
25 wouldn't be the truthful answer. Um, I - it did not occur
26 to me at the time that that was an issue. The only reason
27 it wouldn't have occurred to me at the time is because of
28 the nature of, ah, tax and GST applicabilities to
29 government agencies.
30
31 Well, of course the OECD is not a government entity?---Oh,
32 it's wholly owned by government in effect though - its
33 board of ministers from government. So I - I - I don't
34 know its exact corporate structure, um, but to call it a -
35 a - I - I'd have to think about that further.
36
37 It's not a government entity within - - -?---No, no.
38
39 - - - Australia?---It's not a government entity, you're
40 right, in the sense that it's not, ah - it's not government
41 and it's not the government entity. As I understand it,
42 it's wholly owned by the shareholders which are government
43 and its board of management and ministers of those
44 governments - finance ministers, I think.
45
46 I'm not suggesting that there is or isn't any tax
47 implications. I'm just wondering whether it was something
48 that you've inquired into at the time?---No. I didn't make
49 an active inquiry.
50

1 If we go to the next page, thank you, which is the
2 signature page. Now, how did this agreement - how
3 compatible was it with the usual general conditions of
4 contract that a government agency such as the OWA is
5 subject to when they procure goods and services?---Yeah.
6 So I did turn my mind to that, um, and there is a
7 requirement for - under the procurement rules which are
8 made as a supporting instrument to the procurement act to
9 have a certain level of contract, um, and I considered the
10 contract was an analogue of the relevant terms and
11 conditions that were otherwise in the simple form of
12 contract that would be applicable to this particular
13 instrument. So I did turn my mind to that and I was - - -

14
15 And - - -?--- - - - satisfied about that.

16
17 So you turned your mind to that as at 25 August?---I would
18 - well - and I - well, when I - when I saw the contract is
19 when I turned my mind to it.

20
21 Okay?---I don't know if that was on 25 August. It might
22 have been the 23rd, the 24th.

23
24 Well, in any event, before you signed it?---Correct.

25
26 **THE COMMISSIONER:** When did you first see a draft of this
27 contract?---On oath, I couldn't answer that, Commissioner.
28 I could go back and check my records.

29
30 Well, I assume you saw a draft of it before you signed it?--
31 --Yes, Commissioner.

32
33 And more than a day before?---That would have been my
34 recollection. I would have to check that.

35
36 Very well.

37
38 **NELSON, MS:** If I could go to the next page which is the
39 annexe to the project proposal. I presume at the time you
40 signed it or shortly before signing the agreement, you read
41 the annexe as well?---Yes. Correct, counsel.

42
43 And it reflected what you understood the project was to
44 be?---In its broad-brush, I was very comfortable with it.

45
46 **THE COMMISSIONER:** Well, what do you mean broad-brush?

47 ---Oh, at - - -

48
49 This is the agreement that both parties are signing up to?--
50 --Yes. And it wasn't meant to be some sort of cute comment

1 I was making, Commissioner. I was trying to say yes, I was
2 absolutely comfortable with it. I ultimately knew that
3 there would be further, ah - some details as there are
4 often with these matters that would have to be worked
5 through over the coming months. But in terms of trying to
6 capture what was intended, yes, it was - it was correct.

7
8 Sorry. You signed this agreement. You pay the money
9 before any work was done. I would thought the obligation
10 of the OECD is to fulfil the project proposal, not
11 something else but that?---You are absolutely correct,
12 Commissioner. Now, I only mean in terms of, ah, where for
13 example they might have been using an example. I had a
14 very, um - forming an idea that I would like to see that
15 example involve First Nations Peoples, and so that was
16 something that was developing at the time. I didn't feel
17 the need to put all that detail in cos I knew that would be
18 detail that would be discussed during that tea period - - -

19
20 Well, you didn't know, you hoped?---Correct.

21
22 Because the OECD could say, "Well, thanks for the money.
23 We've got our objectives. We've got our outputs. That's
24 what we'll deliver?---Commissioner, that's possible. I
25 would have thought it would have been exceptionally
26 unlikely. And if that had been happening, Jimmy would have
27 taken my call. I would have called Mathias Cormann and
28 discussed it with him.

29
30 **NELSON, MS:** If you - at the time you signed this,
31 Mr Field, you wanted there to be a particular emphasis on
32 anything to do with Western Australia, it was - you could
33 have had that put into the actual project proposal, no?---I
34 could have. I wasn't at the time - I remember we discussed
35 it and, ah, I wanted that to be about a further, um, ah,
36 discussion with the OECD both in terms of video conference
37 and otherwise. Um, ah, I knew the secretary-general's
38 profound commitment to this stage. I was, um, very, very,
39 ah, committed to particular examples, and I was committed
40 in particular, um, to - - -

41
42 **THE COMMISSIONER:** No, I think we're straying from the
43 question?---Oh, sorry. The answer is - - -

44
45 **NELSON, MS:** If you're particularly committed to
46 particular examples, you could have had them put into the
47 project proposal and in particular into the outputs?---Yes.
48 No, it's an excellent question, counsel, because you - I -
49 - -

1 **THE COMMISSIONER:** What's the answer?---I can see why
2 you're now asking that question. No, I wasn't convinced at
3 the time that putting in a level of specificity about
4 something which I was not yet certain what that specificity
5 was - was it actually counterproductive at the time? I
6 wanted to keep it more at the - at this level so the
7 granularity would be built in over the next couple of
8 months. And I was confident - completely confident that
9 there would be no pushback from all the relevant
10 stakeholders to do that.

11
12 You don't know that; you hope that. But I'm a simple
13 person, I just look at the agreement and what was promised
14 to be delivered, and there is nothing there about Western
15 Australia?---That's true. But I had 17 years,
16 Commissioner, of never having a project ever having gone
17 wrong, and I had confidence about it. It's not meant to be
18 arrogant.

19
20 No, and I'm very pleased for you. But projects go wrong.
21 But more particularly, as a matter of simple contract,
22 nothing about Western Australia is in this contract?---From
23 day one this - - -

24
25 No, no. Is anything about Western Australia - - -?---Okay.
26 Commissioner, I agree.

27
28 - - - in this contract?---Commissioner, I agree.

29
30 Thank you. It was a long way around to get to the answer
31 to your question?---Yes, and it's my - and my fault,
32 Commissioner, and I apologise.

33
34 **NELSON, MS:** And I think you said that you weren't yet in
35 your mind certain of a level of specificity or certainty as
36 to what you wanted to be the focus?---Yeah, and I didn't
37 want to lock the agreement into those matters prematurely.

38
39 So you hadn't communicated that level of certainty or those
40 thoughts to anyone as at August 2023?---Within the OWA,
41 yes, but out into the OECD, not specifically, no.

42
43 So who had you talked to about that within the OWA?---Oh, I
44 would have had some conversations with, ah, my chief of
45 staff, potentially others. I don't have a photo
46 recollection of that. We certainly were discussing those
47 matters as they were developing up during this process.

48

1 We could just scroll down, thank you?---But, you know, I
2 take full responsibility for it not being here, none of my
3 staff.

4
5 The objective listed there is the project will produce the
6 standalone Scan Report on the basis of the survey that goes
7 to all IOI members?---Yes.

8
9 And that will feature an update to the 2018 report - - -?
10 ---Correct.

11
12 - - - which was, in fact, an OECD report?---Yes, correct.

13
14 And taking into account new areas such as the role that
15 generic ombudsman institutions play in open government,
16 protection of traditional rights in the exercise of civic
17 space?---Yes.

18
19 So the objective is for the Scan Report to be reflective of
20 ombudsman institutions and how they operate around the
21 world at the time that the report's done?---Correct.

22
23 We can go over to the next page. We went through the
24 outputs in some detail prior to the last break on the basis
25 of the previous iteration of the proposal of 18 August. On
26 my reading of the outputs as they're listed here, there's
27 no change to those. I'll just give you a minute to look at
28 those?---Yeah, counsel, I - I do know that I'd taken some
29 of them out prior to the iteration of this version but, um,
30 I - I - that's all I can say.

31
32 You'd taken some outputs out?---Oh, sorry, I thought we
33 were talking about the costs. I'm so sorry, counsel.

34
35 I'm looking at what's up on the screen, so that's page 6?
36 ---Oh, I'm so sorry. Yeah, I was looking at this.

37
38 So I'd suggest to you that what is on the screen is exactly
39 the same as the document that we went through previously
40 which was the 18 August iteration?---And that would largely
41 be correct because that was absolutely consistent with what
42 I'd intended.

43
44 So, for example, the last dot point, the donor being the
45 OWA still has to organise the policy dialogue event to
46 disseminate the results of the survey at its annual
47 meeting?---Yes, yeah.

48

1 And I'd suggest that that's a legacy from when the donor
2 was actually the IOI in the first iteration of the grant
3 agreement?---Ah, in fact - - -

4
5 **THE COMMISSIONER:** I think we've been through that - - -?
6 ---Yeah.

7
8 **NELSON, MS:** Okay. Thank you.

9
10 **THE COMMISSIONER:** - - - ad nauseam?---Yes.

11
12 **NELSON, MS:** So on the basis of this proposal would you
13 agree that the benefit to the OWA from receiving the
14 results of the Scan Report would be the same benefit that
15 any other ombudsman institution would receive in any other
16 jurisdiction?---(No audible reply.)

17
18 They'd receive the same report?---No. No, I wouldn't agree
19 with that. I want to keep - I want to give a short answer,
20 but I - I - Commissioner, you'll stop me immediately. I -
21 from the commencement of this project going back to when I
22 became aware of the European project, it was always my idea
23 - - -

24
25 **THE COMMISSIONER:** Well, stop about your idea because the
26 question - - -?---Okay. In that case I'll just say no.

27
28 - - - is just about this agreement?---I'll say no.

29
30 Not what was in your mind which you will no doubt explain
31 later?---Okay.

32
33 But it's just about this agreement?---In which case, no.

34
35 **NELSON, MS:** You don't agree with that proposition?---No,
36 well, it's not correct from my perspective.

37
38 I think the Commissioner asked you the question as to
39 whether there was any mention of WA that was - sorry, I
40 could ask it this way: I suggest to you that there's no
41 benefit to the OWA that the report outcomes provide that is
42 not the same benefit that would be given to any other
43 ombudsman institution receiving this report?---No. Sorry,
44 counsel, it sounds like I'm being churlish or arrogant.

45
46 **THE COMMISSIONER:** And don't forget the question is
47 limited to this agreement?---Yes, agreed.

48

1 Not anything else?---Absolutely. And on this agreement and
2 on the four corners of this agreement, the answer to that
3 is profoundly no in my view.

4
5 **NELSON, MS:** The OWA would receive the same report that
6 the New Zealand Ombudsman would receive or that the
7 Canadian Ombudsman would receive at the end of the day?
8 ---The outcome report - the output report? Yes, they
9 would.

10
11 Thank you, that can be taken down, Madam Associate. You
12 provided the Commission with a copy of the 2018 OECD
13 project paper, and that's 0561^, thank you.

14
15 0561^

16
17 **NELSON, MS:** So the front page is an email between
18 yourself and your executive assistant at the time?
19 ---Correct.

20
21 So that's in October 2018?---Yes.

22
23 And if we go to page 4 it attaches the actual OECD working
24 paper that is the 2018 report?---Correct.

25
26 Did you receive this report for the first time in October
27 2018?---Ah, I'm not sure that's the first time that I
28 received it. That's the first record that I could find in
29 my records where I had sought to obtain a copy of it. Of
30 course, I knew about it extensively before that time, but
31 in terms of the final report, that may well be the first
32 time I saw it. It's the only record I could find.

33
34 **PORTER, MR:** Sorry counsel, what was the email date there
35 please?

36
37 **NELSON, MS:** It was 17 October 2018.

38
39 **PORTER, MR:** Thank you.

40
41 **NELSON, MS:** And you knew about it because of your
42 membership of the IOI?---Oh, no, much more than that. We
43 had been a contributor to the report itself.

44
45 By 'we', you mean the OWA?---Correct.

46
47 If we go to page 42, 43 - - -

48
49 **THE COMMISSIONER:** You don't expect Mr Field to read this,
50 do you?

1
2 **NELSON, MS:** No, I don't, just the heading.

3
4 **THE COMMISSIONER:** Because if you do, we need to keep it
5 so he can.

6
7 **NELSON, MS:** Yes. So, this table goes the length of this
8 page and over to the next page. If we just scroll quickly
9 through, thank you. And if we go back to the top of the
10 table. So, the annexure says that it is a table of all
11 those Ombudsman institutions that participated in the
12 survey that led to the report?---Correct.

13
14 And is that your highlighting of the Ombudsman of Western
15 Australia?---My highlighting? No, I don't recollect
16 highlighting any document. Now, please counsel, I might be
17 wrong, I think this was something that the OECD sent us
18 where they had highlighted it, but I might be wrong about
19 that.

20
21 I see, right. So, the Ombudsman of Western Australia is
22 just one of a great number of Ombudsman institutions that
23 participated in the survey?---Oh, yes, that's correct, yes.
24 The survey was sent to all IOI members, and a number of
25 them responded, correct, counsel.

26
27 If we could go to page 6, thank you. The second last
28 paragraph, the small one that starts:

29
30 Recognising this opportunity and building upon the
31 work of the OECD public governance committee, and of
32 the European Ombudsman in this area, the two
33 institutions undertook a data collection on which
34 they developed the present analysis of the role of
35 Ombudsman's institutions in open government.

36
37 So, would you agree that this report is essentially a data
38 collection that was analysed to identify best practice in
39 Ombudsman institutions around the world?---Ah, in the
40 particular topic of the area, that's my recollection.
41 Well, yes, my recollection is it was a project of the
42 European Ombudsman where she had contracted the OECD to
43 undertake this work in relation to exactly the issues that
44 are being discussed there.

45
46 And do you recall reading it in October 2018?---I
47 definitely read the report, and whether it's 2018 - as I
48 say, I did - - -

1 **THE COMMISSIONER:** I think it would be a stretch to
2 remember that, but you recall reading it?---Yes. Well,
3 Commissioner, what I can say is in good faith I tried to
4 find any evidence that I had sent any emails about it, and
5 the one I could find was the one I found.

6
7 **NELSON, MS:** And if you could go to page 11, there's
8 another highlight where the Ombudsman of Western Australia
9 has commented favourably about having whistleblower
10 protection?---Yes, I remember we were in the report on a
11 number of occasions.

12
13 And I think at a later page, 16, it's another reference to
14 - favourably to the OWA about how they have particular -
15 well, how you have particular stakeholder engagement
16 practices in place?---Yes, that was particularly Aboriginal
17 Western Australians, as I recollect it, correct. Outreach.

18
19 And then further down that page, there's another favourable
20 reference to the OWA having - if we could just scroll down,
21 thank you. Having training sessions on accountable and
22 ethical decision-making?---Well, they're slightly kind to
23 us, I think they were actually being done by the Public
24 Sector Commissioner, but we participated.

25
26 So, the report itself is - doesn't concentrate on one
27 particular geographical region, does it?---Although I do
28 recollect, counsel, that there was a particular focus on
29 Europe, that was my recollection of the report.

30
31 Well, the list of countries that I took you to, perhaps if
32 we go back to page - it was 44. It includes countries in
33 South America and in middle Asia.

34
35 **THE COMMISSIONER:** Africa?---No, I don't think there's any
36 doubt about that. No, I could be wrong. My recollection
37 was - remember this was a report of the European Ombudsman,
38 and what they were looking is can we get examples of
39 practice from all around the world, and how that might
40 translate best into European context, I thought that's what
41 that report was specifically doing. I could be wrong, but
42 that was my recollection.

43
44 **NELSON, MS:** Well, it was important that you understood
45 it, given that this was, you say, the genesis of your idea
46 to do the current OECD project?---And indeed, very much the
47 genesis was that because I thought it was more a
48 particularly European-focused report, um, that there would
49 be enormous benefit in a report that focused on our region
50 of the world.

1
2 Well, perhaps we go back to page 6. And just scroll down
3 to that big - yes, the big paragraph at the bottom of the
4 screen, starting 'highlighting common trends and
5 challenges':

6
7 As well as multitude of innovative practices from all
8 over the world. This report is the first of its
9 kind, as it documents the role of Ombudsman's
10 institutions to the heard of the global open
11 government agenda, and provides concrete policy
12 recommendations.

13
14 So, I'd suggest to you in fact that the report, the purpose
15 was to have a global approach, not a euro-centric
16 approach?---Well, as I say, I'd have to go back and refresh
17 my memory entirely of the report. Um, the European
18 Ombudsman is funded through the European nations, I would
19 have thought that, ah, and the European Parliament. I would
20 have thought that it was a focus on Europe, but
21 understandably looking at examples of best practice all
22 around the world to inform that. But as the Commissioner
23 has said, counsel, it's absolutely correct that you may
24 well do a report like this, and it will have benefit for
25 Ombudsmen beyond those ones you anticipate. It might not
26 just be for Ombudsmen in Europe, it may benefit for other
27 Ombudsman as well when they look at - - -

28
29 Well Mr Field, it doesn't say that this is just for
30 Ombudsmen in Europe, or even that they just looked at
31 Ombudsmen in Europe, does it?---It was done by the European
32 Ombudsman, counsel. I'm not quite sure the European
33 Ombudsman was doing a report that was specifically meant to
34 be - - -

35
36 **THE COMMISSIONER:** It may have been done by the Ombudsman,
37 but what Ombudsman is putting to you?---I'd have to go back
38 and read it then.

39
40 Well, I suppose that the report speaks for itself one way
41 or another.

42
43 **NELSON, MS:** Thank you Commissioner?---Well, just - that's
44 the foreword, I think we'd have to read the whole report to
45 gather whether that's the case or not.

46
47 **THE COMMISSIONER:** I think that was the point I just
48 made?---Oh, Commissioner, I agree with you entirely.

1 **NELSON, MS:** The end of that sentence does say that the
2 report provides concrete policy recommendations?---Yes.
3
4 What did you do with the report at the time you received it
5 to assess any implications for the OWA at that time?---Oh,
6 with any of these sorts of reports, um - - -
7
8 Well, what did you do in relation to this one, Mr Field, to
9 identify key - - -?---I don't have a photo recollection of
10 what I did with this report.
11
12 You don't know?---I can only speak to my general approach,
13 and it's the same with any, ah, CCC reports, Auditor-
14 General reports, reports like this. I definitely would
15 have dealt with reports like this. You look at it, and you
16 think if there's anything you should be doing in relation
17 to your own practice. I definitely would have done that
18 with this report.
19
20 Do you recall if you made any policy changes or any
21 practice changes within the OWA as a result of this
22 report?---I don't necessarily recollect making any
23 particular changes.
24
25 And you don't recall whether you sent it to anyone in
26 particular in your office at the time?---I don't have a
27 particular recollection. It would have been discussed, but
28 I don't have a particular recollection of sending it to
29 anyone. It may have been potentially discussed at our
30 corporate executive, I can't remember.
31 Mr Heritage has told the Commission that he first became
32 aware of the 2018 report in January 2023, do you accept
33 that?---That wouldn't surprise me at all.
34
35 Ms Poole has also told the Commission that she has no
36 recollection of discussing the 2018 report with you, do you
37 accept that?---Ah, I thought we had discussed it, but I'm
38 absolutely happy to defer to her memory of it. But as I
39 say, when I say discussed it, it would have been very much
40 in passing. It was the same reason why I was asking my
41 executive assistant for a copy of it, because I wanted to
42 see it and wanted to have a look at it.
43
44 Is it possible, Mr Field, that when you tell the Commission
45 that at the time of reading this report in 2018 that you
46 conceived the idea of the OWA procuring the OECD to do the
47 same thing, is it possible that you didn't tell anyone at
48 that time?---I thought I had had a discussion at the time
49 about it, but look, as I say, it's six years ago-ish, I
50 don't have a specific recollection of doing that. I do

1 know that when I saw the report, I thought it was a report
2 that would be an outstanding one for us to do as an
3 organisation. I absolutely remember having that -
4 remembering that at the time.

5
6 Because you told the Commissioner on the last occasion,
7 which is 14 February transcript at page 92, that:

8
9 From the very first day that I considered, when I
10 read the European Ombudsman project, I saw it as a
11 project between an Ombudsman's office and the OECD
12 that could be leveraged off to other IOI members, and
13 I've taken that as read throughout this entire
14 process that it would always be the Ombudsman Western
15 Australia and the OECD.

16
17 ?---Yes, and that was my view from the first time I read
18 it.

19
20 And I'm suggesting to you that is it possible that whilst
21 you might have had that thought yourself, you never
22 communicated that to anyone in your office at the time you
23 first read it?---As I say I don't - I don't have a
24 recollection of the level to which or to whom I
25 communicated it. But it's absolutely possible, remembering
26 at the time there wouldn't have been any specific funding
27 for that project. Um, I wouldn't have necessarily had any
28 particular reason to think, 'Gee, that's a great project,
29 that'll be something really good for me to do, really good
30 for us to do as an organisation,' that I necessarily would
31 have thought it would be happening at any time shortly or
32 anytime at all, potentially. I mean, there's been lots of
33 those ideas over the past 17 years where an idea is had,
34 but it doesn't necessarily come to fruition for a whole
35 raft of different reasons.

36
37 But Mr Field, this is of particular importance, because
38 you've said to the Commissioner that reading this report
39 was the germ of the idea for the procurement of the OECD
40 project that we were just looking at?---And that is a 100
41 per cent true statement.

42
43 In fact, on 14 February in your examination, transcript at
44 page 74 you said:

45
46 I first came upon a report, which is a report
47 produced by the European Ombudsman done in
48 conjunction with the OECD. I read that report and
49 contemporaneous to reading that report, I formed the
50 view that it would be an outstanding piece of work to

1 undertake in Western Australia for the benefit of
2 Western Australian citizens, the Parliament, the
3 public.
4

5 ?---A hundred per cent correct.
6

7 And what I want to clearly suggest to you is that you did
8 not tell anyone about that idea, you did not start a
9 procurement process at that time?---No, I absolutely did
10 not start a procurement process at that time, that's
11 completely correct. Um, and I've had 30, 40, 50, 60, 70,
12 80 ideas over the last 17 years that have not come to
13 fruition for one reason or another, and lots and lots that
14 have.
15

16 So, if you didn't start the procurement process at that
17 time, when do you say that you started it?---Oh, from my
18 perspective, that procurement process commenced at or about
19 the time that I, um, met with Mathias Cormann.
20

21 **THE COMMISSIONER:** That might be a convenient time to
22 break.
23

24 **NELSON, MS:** Thank you, Commissioner.
25

26 **THE COMMISSIONER:** Two o'clock.
27

28 (THE WITNESS WITHDREW)
29

30 (LUNCHEON ADJOURNMENT)
31
32

33 **CHRISTOPHER JAMES FIELD RECALLED ON FORMER OATH AT 02.00**
34 **PM:**
35

36 **THE ASSOCIATE:** All rise.
37

38 **THE COMMISSIONER:** Please be seated.
39

40 **NELSON, MS:** Could I have document 0107^ which is the
41 agreement that you signed, Mr Field.
42

43 0107^
44

45 **NELSON, MS:** And if we could go back to page 6. So the
46 outcome of - the output, sorry, of the project proposal
47 that was contemplated by this agreement is on the top of
48 the page. And I was asking you way before the break
49 whether the OWA was to receive the same benefit or the same
50 output from this project as any other ombudsman institute

1 who would receive the report and be part of the
2 capacity-building events based on the plain words on this
3 page, and you said profoundly no, you disagreed with that.
4 Can you please tell me why you say WA would get an extra
5 benefit on top of what other ombudsman institutes would get
6 from the output?---Yes, counsel. For I think three
7 reasons, all as briefly as possible, Commissioner. Number
8 one, it was an agreement between the OWA and the OECD. Ah,
9 so what did Western Australia particularly - what was the
10 relationship particularly or more significance to Western
11 Australia? Well, it was a contract between the Western
12 Australian Ombudsman and the OECD. That's number one.

13
14 So the contract is one benefit?---Well, the fact that it's
15 a contract with a Western Australian entity.

16
17 Right?---Number two, ah, that, ah, the funder was the
18 Western Australian Ombudsman and I certainly expected to be
19 able to exercise the sort of leverage and direction that a
20 funder would be able to achieve in relation to any
21 contract. Um, that would be standard contractual practice
22 that the funder would have an expectation regarding, ah,
23 the execution of the contract. And then third, um, ah,
24 both consistent with my views dating back to 2017, '18, ah,
25 and all the way through that there would be aspects of this
26 contract that would be specific to, ah, Western Australia.
27 And not just Western Australia, counsel, but to finish
28 that, um, are with the broad Asia-Pacific region in which
29 the Ombudsman - Western Australian Ombudsman operated.

30
31 Thank you?---Thank you, Commissioner. Thank you for that
32 indulgence.

33
34 I don't necessarily accept them. I'll wait until I hear
35 all the evidence. But those are the three benefits you
36 have indicated over and above that which every other
37 Ombudsman would achieve?---Correct. Ah, I was thanking for
38 the indulgence for the long answer, Commissioner.
39 Thank you.

40
41 **NELSON, MS:** Thank you, Commissioner. Now, could we have
42 1098?

43
44 1098^

45
46 So on 12 September Ms Poole received by email a letter from
47 the OECD attaching the invoice for the full project
48 proposal amount?---Yes.

49

1 So the letter is on the screen dated 12 September 2023
2 requesting payment in the next 30 days and attaching the
3 signed agreement from the OECD. So from this point, there
4 was a contractual obligation on the OWA to pay the amount,
5 correct?---I think the - well, sorry. Ah, yes.
6
7 And if we could go to the next page, we'll see the invoice
8 that came with this letter. And the payment was to be made
9 to a JP Morgan account in Germany?---Yes.
10
11 Now, Ms Poole said that she made this invoice known to you
12 at the time. Do you recall that?---Yes, that's my
13 recollection.
14
15 Had you had any discussions with anyone at the OECD about
16 the, ah, bank that they were requiring payment to?---No, I
17 don't recollect having that discussion.
18
19 What then - what steps were then taken within the OWA in
20 relation to payment of this invoice?---Ah, I don't
21 recollect a particular conversation. What would have then
22 occurred - what should have occurred or what would normally
23 have occurred is - would have been provided to the, ah,
24 finance team for payment.
25
26 Did you provide it to the finance team for payment?---Oh,
27 it wouldn't have been me personally. It would have been,
28 um, giving instructions in relation to that being done.
29
30 Who did you give those instructions to?---Ah, if I had
31 given those instructions at the time, um, they would have
32 been given to, ah, ah, Ms Poole, I think.
33
34 You don't have a record - - -
35
36 **THE COMMISSIONER:** Sorry, your voice is just dropping a
37 bit?---I'm sorry, Commissioner.
38
39 That's all right. Just keep it up?---Sorry. That would
40 have been to Ms Poole, but I don't have a photo
41 recollection of having that conversation with her.
42
43 **NELSON, MS:** Do you have a recollection of having a
44 conversation with her around about 12 September about the
45 OECD project in any respect?---Ah, no. Not a particular
46 conversation, no.
47
48 Ms Poole has told the Commission that she had a telephone
49 conversation with you after 12 September but before
50 14 September about her drafting a procurement memo?---Ah,

1 the drafting of the procurement memo conversation was some
2 time before that, um, but it, ah - it may well have been
3 that on 12 September there was a further conversation about
4 a procurement memo.

5
6 When do you say the first mention to Ms Poole about
7 drafting a procurement memo occurred?--Oh, my recollection
8 was, um, several months before that, uh, where there was an
9 initial discussion around - of course, there'll need to be
10 a - all of these procurement steps that are undertaken have
11 to be reduced into writing under the procurement rules and
12 - and form part of, ah, our auditable accounts including in
13 relation to procurement.

14
15 So several months. You're talking three or four or five?--
16 -It could have been as early as the time that we met with
17 Mathias Cormann back then, um, but - - -

18
19 **THE COMMISSIONER:** Well, there's nothing to procure then?--
20 --Oh, no. That was part of the procurement process where
21 you met Mathias Cormann.

22
23 What?--Well, those very initial discussions are all part
24 of the procurement rules, um - yeah. I'm sorry. In my
25 view, Commissioner, um, the - - -

26
27 **NELSON, MS:** Mr Field, if we could just limit your
28 evidence about this to the procurement memo - drafting the
29 procurement memo?---Yes.

30
31 When did you first give Ms Poole an instruction about
32 that?---I don't have the specific recollection about that.
33 There would have been conversations as early as when we met
34 Mathias Cormann at some point, of course. The various
35 steps that we undertake have to be reduced to writing. And
36 there would have been a - there would have been
37 conversations early in 2023 where there were conversations
38 about "We need to reduce into writing the various steps
39 that have been taken in relation to procurement". I mean,
40 the - the - the procurement process starts when you have an
41 idea. Technically, it started back in 2008.

42
43 Mr Field, Ms Poole has told the Commission that the first
44 ever mention of a procurement memo was when you rang her
45 about 24 hours before 14 September and said, "We need to do
46 a procurement memo". That was the first time that you ever
47 mentioned it to her?---Ah, well, I - I think that wouldn't
48 be my recollection of it. My recollection is that, ah, ah,
49 we would have been having a discussion, ah, from, ah,
50 throughout the period about the fact that the various

1 procurement steps needed to be reduced into writing, um, as
2 it is the case with all procurements, and I do - - -

3
4 **THE COMMISSIONER:** Can you put a date on when this was?---
5 No, I can't. I - I'd have to go back and look at my
6 record, which I certainly could do, Commissioner, as to
7 when that - if there was any email records about that. Um,
8 but, ah - but in terms of the actual production of a
9 procurement memo, that was certainly delegated to Ms Poole
10 and she certainly did work on it. There's no question
11 about that. Um, ah, as to the first time I discussed it
12 with her, it certainly wouldn't have been as early as 2008.
13 Um, it could have been as - as early as when we - when we
14 were meeting with Mathias Cormann. But can I say that
15 would have been in passing conversation. At some
16 point - - -

17
18 Just wait - - -?--- - - - we'll have to do that.

19
20 - - - because I think you've strayed from the answer?---Oh,
21 I'm sorry. The answer is I don't have a specific
22 recollection of when but I - I certainly could check my
23 records to see if I have any further contemporaneous
24 records.

25
26 Because you understand what counsel has put to you in
27 relation to Ms Poole's testimony?---Yes, I do.

28
29 And you disagree with her recollection?---It's not my, um -
30 I - well, it's not my recollection of the conversations we
31 had.

32
33 **NELSON, MS:** So to be clear, Mr Field, I asked you
34 specifically about the procurement memo and whether you had
35 conversations with her prior to 12 September. She had said
36 you did not, but I take it you disagree with that?---I - I
37 have recollections of having it earlier than 12 September.

38
39 And Ms Poole has also told the Commission that she didn't
40 have any conversations about any type of procurement
41 activity in relation to this project with you until the
42 invoice was received on 12 September or within 24 hours or
43 so after that. So it never occurred to her that there
44 needed to be a procurement activity, and she never
45 discussed it with you until September?---Well, it was
46 always a procurement activity. I don't think that's
47 possible. I mean, you cannot do it without it being a
48 procurement activity.

49
50 But that's not what I'm asking you, Mr Field?---Okay, yeah.

1
2 I'm suggesting to you that you did not have a conversation
3 with Ms Poole about her undertaking any type of procurement
4 activity prior to 12 September 2023?---No, that's not my
5 recollection.

6
7 And I'm also suggesting to you that the first occasion you
8 had a conversation with her about drafting a procurement
9 memo was after 12 September 2023 but before 14 September
10 2023?---No, I thought it was - I thought it was earlier in
11 2023 when we commenced that conversation. So not a
12 conversation about, 'Is this a procurement?' but a
13 conversation about, ah, putting the relevant documents,
14 reducing it into writing. I thought that was earlier in
15 2023. That's to the best of my recollection. I thought it
16 was earlier in 2023.

17
18 I'll show you a series of emails, and these are emails
19 between yourself and Ms Poole on September 14 2023 in
20 relation to the procurement memo and drafting it at that
21 stage. I take it your evidence is still that the
22 procurement memo drafting process commenced several months
23 before September, is that what you're saying?---No, no, I'm
24 not saying that at all. I'm saying I don't have a
25 recollection of when I actually had those conversations
26 with her. But I'd have to go back and check my records
27 about that.

28
29 What records would they be?---Oh, emails, any other record
30 I might have about that.

31
32 Was that not part of the production notice that the
33 Commission asked you to produce records in relation to
34 procurement?---And I - to the best of my ability, I would
35 have provided those.

36
37 Could I have 0516^.

38
39 0516^

40
41 **NELSON, MS:** So Ms Poole says there was a telephone
42 conversation between you and her prior to you sending this
43 email, and the telephone conversation was that she needed
44 to do a procurement memo, which you followed up with this
45 email. Do you recall sending this email?---Ah, I would
46 absolutely accept it's an email from me.

47
48 So you don't recall sending it?---Well, I'm reading it.
49 Sorry, counsel. Yes, correct.

1 You do recall sending it?---Yes.

2

3 So what was the catalyst for you to send this email to
4 Ms Poole?---It would have been an aide-memoire for her in
5 conversations about the preparation of the memo.

6

7 And having seen this email now, can you tell the Commission
8 why the memo needed to be done by Ms Poole at this time?---
9 Because a memo had to be done in relation - - -

10

11 Why did it have to be done, Mr Field?---Well, because all
12 procurements need a procurement memo that's in compliance
13 with the Procurement Act and Procurement Rules.

14

15 So why did it need to be done on 14 September 2023?---Well,
16 ah, that would have been the time when she and I were
17 having the conversation about it being done. As I say,
18 were there any earlier discussions between us about, um,
19 that procurement memo? I have a very - I don't have a
20 clear recollection. I do have a belief that there were
21 conflict - there were discussions about a procurement memo
22 and the need for a procurement memo to be done some months
23 to even several months earlier than that. Whether there's
24 any email record - and hence the reason why it wouldn't
25 necessarily be in the production documents. Um, but
26 remember there was hundreds and hundreds and hundreds and
27 hundreds of phone calls occurring over any given, um, ah,
28 couple of weeks, um, about things to be done. And I must
29 say, I thought - I really did - do think that the OECD
30 project and procurement was part of that. But this was
31 certainly saying, 'We're at the time it has to be done, and
32 we need to put it together.'

33

34 So why did a memo have to be done? You'd already signed
35 the contract. Why did you want Ms Poole to do it now?---
36 Well, procurement processes are ultimately reduced into
37 writing under the, um - - -

38

39 I understand that, Mr Field, but why now? Why September
40 14?---Well, as I say, I - my recollection was it was being
41 discussed considerably earlier than that. Um, and, ah -
42 and this would have been a point where I said, 'Look, it -
43 we just - can't just leave this thing not to be done. It
44 has to get done.'

45

46 **THE COMMISSIONER:** But you'd already signed the contract.
47 It just seems to me cart and horse. You'd signed the
48 contract in August?---Well, no, but all the procurement
49 steps that had to be taken under the Act had been taken,
50 um, and under the rules had been taken. Um, there was

1 discussions all along the way about it being reduced into a
2 memo. Um, and ultimately the contract is one part of that
3 procurement. It's not the only part; it's one part of that
4 procurement. Um, and reducing it into writing was the
5 lawful and appropriate thing to do. So I understand the
6 point, Commissioner, about cart and horse, but I don't
7 think it is.

8
9 **NELSON, MS:** So I have heard your response, Mr Field, but
10 I just want to be clear that there is no email evidence or
11 record that the Commission has found of any draft
12 procurement memo or any instruction to anyone to draft a
13 procurement memo before 14 September, and Ms Poole has said
14 that the first occasion on which you mentioned it to her
15 was after she received the 12 September invoice and before
16 she received this email that's on the screen?---And I don't
17 think that's - I don't think that's correct. Um, but - - -

18
19 I see?---Yeah.

20
21 Was anyone else instructed by you to draft a procurement
22 memo before 14 September?---No, it would have only been
23 Ms Poole that I spoke to.

24
25 The first draft that the Commission has seen is dated
26 18 September?---Yes.

27
28 Do you have any recollection of receiving a draft earlier
29 than 18 September?---No.

30
31 Do you recall receiving a draft on 18 September?---I don't
32 have a recollection of the 18 September date, but I, um - I
33 don't doubt that's the case.

34
35 On 18 September you and Ms Poole flew out to Italy?---Yes.

36
37 Do you recall receiving a draft prior to you leaving for
38 Italy?---Ah, I don't have a recollection of that.

39
40 Why did you ask Ms Poole to draft the procurement memo?---
41 Ah, because she was the staff member in the Office of the
42 president and Ombudsman.

43
44 And because she'd had a significant involvement in the
45 negotiations?---Oh, yes, she had - sorry, two reasons. (1)
46 she - there was no staff member to delegate it to - to whom
47 I could delegate, so that - Rebecca was one - the only one.
48 And second of all, because she had an understanding of the
49 contract.

50

1 At the first line it says:
2
3 Dear Becky, when you brief Morgan tomorrow re OECD -
4
5 Is that Morgan Marsh?---Correct.
6
7 Do you recall telling Becky to brief Morgan Marsh re OECD?--
8 --They were having a meeting, as I recollected, about -
9 about it, and I was - these were the matters I was saying
10 would be germane to brief Morgan about.
11
12 What was the meeting to be in relation to?---Oh, that was a
13 meeting between Morgan and Bec, but I presume it was about
14 at least the OECD. It could have been about other things.
15
16 But what about the OECD? What particularly about it?---Oh,
17 well, I - I - I don't have a recollection of that.
18
19 Could it have been the fact that the invoice required
20 payment within 30 days?---It may have been - the invoice
21 may have been a catalyst for it.
22
23 Would Morgan be someone who would be able to cause that to
24 be done?---Yes.
25
26 And why is that? What was her role?---Ah, she was the
27 assistant ombudsman of operations, and within her role she
28 was managing all the finance area.
29
30 Including the CFO?---Correct.
31
32 So you've asked, ah, Ms Poole to tell Morgan specific
33 things that are labelled 1 to 9?---Correct.
34
35 And they're all matters related to a procurement process?--
36 -Correct.
37
38 Had you consulted anything in particular when you drafted
39 this email?---Don't have any recollection of consulting
40 anything in particular. Um, I do know that that were -
41 they were matters which Ms Poole and I have discussed
42 before and I have to say I think going back over some
43 considerable period of time well before the dates you're
44 talking about.
45
46 Could they have been matters that you just discussed on the
47 telephone with her when you asked her to do the procurement
48 memo?---No. I mean well before that. Sorry. As my chief
49 of staff, this is absolutely no criticism of Ms Poole at
50 all but, um, as my chief of staff, we would be speaking

1 multiple times a week. Um, that would be on the phone.
2 Um, I don't have an aide-memoire - sorry, I don't have a
3 reduction of writing of the notes of those meetings and I
4 don't think she would necessarily either. Um, and it's my
5 recollection that in early-ish 2023 and onwards there was
6 discussion about the fact that this was a - was
7 self-evidently a procurement and it was a procurement that
8 would have to be reduced into writing in accordance with
9 the Procurement Act and the procurement rules. That's my -
10 that's my recollection.

11
12 But there's no record that reflects that, is there?---Look,
13 then instead of sending 8,000 emails in 2023, I would have
14 sent 800,000. I mean, that would be an email about every
15 single thing I ever discussed with anyone.

16
17 Point 2, it says that:

18
19 Rather and very obviously that the OECD is a
20 bona fide sole source supplier to undertake a project
21 that expands to Asia.

22
23 ?---Yes.

24
25 A previous OECD project that was applicable to
26 Europe.

27
28 ?---Yes.

29
30 Now, that's a misrepresentation of the project proposal
31 that we were looking at in 0107, isn't it?---Sorry, what
32 was that?

33
34 It's a misrepresentation - - ?---No, no. Sorry. The
35 point - which number, sorry, counsel?

36
37 Number 2?---Oh, number 2. Yeah. No, that's not a - that's
38 exactly what I thought the project was and what I thought
39 it was when I first met Mathias Cormann.

40
41 Well, the project proposal is a - a survey that the OECD
42 will submit to the donor, who will in turn distribute it
43 amongst members of the IOI, notably in Africa, Asia,
44 Australasia and Pacific and North America. So to
45 characterise it as expanding just to Asia is a
46 misrepresentation, I'd suggest?---No, absolutely not it's
47 not. Um, rather and very obviously that the OECD is a
48 bona fide sole source supplier is something I thought when
49 I first met Mathias Cormann in Paris. To undertake a
50 project that expands to Asia and previous (indistinct) is

1 exactly what I thought the project was. It was a project
2 for Western Australia but also a benefit to our near Asian
3 trading partners - major trading partners in Asia. And the
4 applicability, um, to Europe, um, was of course vis-à-vis
5 the expansion of the project, so it was originally
6 applicable to Europe funded by the European Ombudsman. We
7 were going to - - -

8
9 We've had evidence on that which I suggested to you was not
10 actually what the - the 2018 project was about?---Well, I
11 think you're wrong about what the 2018 - - -

12
13 Okay.

14
15 **THE COMMISSIONER:** Well, I will decide what it's about in
16 due course.

17
18 **NELSON, MS:** Thank you.

19
20 Now, you mentioned that the OECD was a bona fide sole
21 source supplier and you considered that at the time that
22 you met Mathias Cormann in June - - -?---Yes.

23
24 - - - 2022. Did you reduce that to writing at that time?--
25 -Ah, no, I have no recollection of reducing that to writing
26 at the time.

27
28 **THE COMMISSIONER:** I thought you told me that - at an
29 earlier stage that your meeting with Mathias Cormann was
30 very high level?---Well, that's true.

31
32 It didn't descend to particulars of projects or anything
33 else. It's just high level?---It was a high level. We did
34 discuss the idea of projects that could be done. That's
35 certainly true. But not down to that granularity,
36 Commissioner.

37
38 And there were projects. There wasn't just this one?---
39 Yeah, that's right. A potential range of - - -

40
41 But very high level?---Correct. Projects that could be,
42 um, ones that would be advancing for mutual interests of,
43 um, the ombuds for Western Australia, also the IOI, other
44 ombudsmen, and the OECD in terms of good governance, with
45 my specific view being around the - - -

46
47 Just one - - -?--- - - - Asia-Pacific region.

48
49 - - - further thing so I can - - -?---Yes.

50

1 - - - completely understand. You would regard that
2 conversation with Mathias Cormann as part of the
3 procurement process?---Yes, because I consider the
4 procurement process to start with the idea, and that was
5 the germination of the idea.

6
7 So you would regard the procurement process starting with
8 an idea?---I think the answer is it has to be under the
9 Procurement Act and the rules.

10
11 Thank you for - - -?---It's an idea to procure something.

12
13 Thank you for clarifying your evidence?---Thank you,
14 Commissioner.

15
16 **NELSON, MS:** At this stage, September the 14th, Ms Marsh
17 didn't know about the OECD project grant agreement, did
18 she?---I couldn't answer that specifically but I think the
19 answer to that - I couldn't be absolutely certain but I
20 think the answer to that might be yes.

21
22 And that was one of the reasons that Ms Poole had to speak
23 to her?---Well, that I don't know, but that could well have
24 been a reason.

25
26 Well, you're - you're the one asking Ms Poole to brief
27 Morgan tomorrow?---Yes. I'm not sure what the brief - I'm
28 not quite sure what the discussion was about. She had
29 asked me, um, about that as I - well, I don't have a
30 recollection of that. I was giving her information to have
31 a meeting with Morgan. I presume - with Ms Marsh. I
32 presume that meeting was in part at least about the OECD.
33 Correct.

34
35 And at 7 and 8 you're telling Ms Poole what you see to be
36 the value for money proposition to the OWA from entering
37 into this agreement?---Correct.

38
39 And then at 9 you say:

40
41 You and I will be project supervisors.

42
43 ?---Correct.

44
45 And then if we go on to 0515, bottom of page 1. Thank you.

46
47 0515^

48
49 So the previous email was sent at 7.06 pm. You sent
50 another email the same evening at 7.32 giving more

1 clarification as to what you want Ms Poole to explain to
2 Morgan Marsh?---Correct.
3
4 And that's to do with the exemption?---Correct.
5
6 With a sole source supplier?---Correct.
7
8 And then if scroll up, at five minutes later at 7.38
9 Ms Poole replies. And then if we scroll up, at 7.40 you
10 tell her that you've read the procurement rules back to
11 front and front to back?---Yes.
12
13 Was that something you'd done recently or prior to sending
14 this email?---I was absolutely aware of the Procurement Act
15 and the procurement rules. In fact, very aware of them,
16 um, throughout my entire term as the Ombudsman. But
17 certainly for any procurement where I was involved - and
18 that included this one, but there's - for example, an
19 obvious example of a more recent one where I pull them all
20 - pull them all back out and go back over them again. But
21 yeah, I can assure you I was absolutely aware of the Act
22 and the rules all through my term of 17 years.
23
24 And you can see at the top of the page at 8.24 Ms Poole
25 says that she will familiarise herself before briefing
26 Morgan?---Correct.
27
28 And in fact she was having to familiarise herself with the
29 procurement rules because she wasn't otherwise familiar
30 with them at that time. Were you aware of that?---I don't
31 - well, sorry. I thought she was at a broad familiarity
32 with the procurement rules myself, I must say. Um, but,
33 um, ah, it's possible she wasn't as familiar I was, for
34 example.
35
36 Could I have 0517^.
37
38 0517^
39
40 **NELSON, MS:** So you shortly thereafter send her a
41 hyperlink to the Procurement Rules?---Mm, to assist her
42 with the task I delegated to her, correct.
43
44 Ms Poole has told the Commissioner that she had the rules
45 beside her while she drafted the procurement memo based on
46 the instructions you had given her and those points 1 to 9,
47 and she produced 0199^, thank you, if we could have that
48 up.
49
50 0199^

1
2 **NELSON, MS:** And, Madam Associate, I think there are hard
3 copies of this document for Mr Field and Mr Porter and the
4 Commissioner.
5
6 **THE COMMISSIONER:** I have it.
7
8 **NELSON, MS:** Thank you?---Thank you.
9
10 **THE COMMISSIONER:** I think Mr Porter probably has it as
11 well, but no harm in having it twice.
12
13 **PORTER, MR:** No, Commissioner, thank you.
14
15 **NELSON, MS:** Can you see on page 2 that there is a comment
16 box from RP which is Rebecca Poole - - -?---Yes.
17
18 - - - with some track changes which are her changes?---
19 Mm'hmm.
20
21 So this is a working document. Do you recall receiving
22 this working document?---I'm sure I did, sorry, counsel.
23
24 It looks familiar?---I'm sure I saw the working document.
25 This particular version of track changes - but I'm sure I
26 saw the working document.
27
28 When do you think you saw it?---Oh, that I couldn't be
29 precise about. I'm sure it was roughly contemporaneous to
30 the timing.
31
32 So between 18 and 25 September you were in Italy with
33 Ms Poole?---Mm'hmm.
34
35 Do you recall having a copy of this when you were in
36 Italy?---Oh, well, I always work while I was overseas.
37 There's no doubt that I - that I did see it overseas.
38
39 Do you also recall that in Italy that the OECD gave a
40 presentation to the IOI on the particular proposal?---I do.
41 I do.
42
43 And it was Emma Cantera?---I do.
44
45 Did you attend that presentation?---Ah, I don't think I
46 did. I think I was, ah, dealing with another matter at
47 that time germane to the conference. I might have been, I
48 don't have a photo recollection of that. There was a -
49 there was a period of time I was called out of the
50 conference to deal with another matter.

1
2 Can you recall when it was that you first received a draft
3 of the 18 September document?---No, I don't.
4
5 Perhaps on 17 October there's an email in which you have
6 asked Ms Poole to send you the OECD memo?---Yes, correct.
7
8 Would that have been the first occasion, do you think?---
9 Ah, it may well have been.
10
11 Did you have any conversations between 18 September and
12 17 October with Ms Poole about the drafting of the memo?---
13 My very broad recollection of this process - and it is no
14 way to criticise Ms Poole, in fact it should be a criticism
15 of me because I was delegating a task to a person who had
16 far too much work to do in the first place - is that, um,
17 the original discussions about this date to around early
18 2003, and there was a series of times that I asked Ms Poole
19 to undertake this work. My fault, she had too much other
20 work to do. Um, and this was also part of this process as
21 well because I think you'll find there's a number of emails
22 - there was also phone conversations - where I was chasing
23 up the production of these materials, chasing up my
24 delegation. And that is my recollection goes before
25 September 2003 - '23.
26
27 I do have a series of emails which I'll take you to now,
28 and also records of conversations, but they are all
29 post-date 18 September?---Oh, there was certainly those
30 occurring post-18 September '23 as well, correct.
31
32 Could I have 0485^.
33
34 0485^
35
36 **NELSON, MS:** So at 11.29 am you email Ms Poole:
37
38 Could you please send me the OECD memo.
39
40 ?---Yes.
41
42 I want to talk to you, Morgan, and Simone.
43
44 Is Simone in the finance team?---Correct.
45
46 Those are the only three people who know about this
47 matter, the password protected documents and folders
48 - - -
49
50 ?---Correct.

1
2 - - - so this matter has much less likelihood of
3 being on the front page.
4
5 ?---Correct. That was after the - correct.
6
7 After the media articles - - -?---Correct.
8
9 - - - in early October?---Correct, correct.
10
11 On October 17 you were actually in Bahrain. Do you recall
12 that, Mr Field?---I don't recollect the dates I was in
13 Bahrain, but I'll take it as - take it from you that that's
14 the case.
15
16 Why are you asking for the OECD memo at this stage?---
17 Because I would have wanted it settled and finalised.
18
19 And were you intending to settle it?---Well, um, no, I
20 wouldn't have been intending on settling it, um, but that
21 is one example. There are others, not just that one.
22
23 **THE COMMISSIONER:** Let's just stick to this one?---All
24 right. Where I'm chasing up the memo so it can be settled
25 and can be finalised.
26
27 **NELSON, MS:** Was that for the purpose of getting the
28 invoice paid?---No, it was for the purposes of getting the
29 memo done.
30
31 But was it necessary for the memo to be complete before the
32 finance team would pay the invoice to the OECD?---No, not
33 from my perspective. I would have expected the memo to be
34 done earlier, that is absolutely correct. Was I giving
35 instructions for it to be done earlier? I absolutely was.
36 Was it getting done? It was not.
37
38 **THE COMMISSIONER:** Well, it was done on 18 September?---
39 No, it absolutely was not, Commissioner. That is not a
40 memo that's sufficient for a procurement in any shape or
41 form. That - that is - that's no criticism of Ms Poole,
42 but that's not something which you can use as a procurement
43 memo. That was - that was a memorandum that was given to
44 me that was wholly inadequate as a procurement memo, no
45 criticism intended.
46
47 Just stop worrying about criticism because we have evidence
48 from witnesses?---All right.
49
50 But the document from 18 September says:

1
2 The purpose of this memorandum is to document the
3 decision to procure the organisation for goods and
4 services.
5

6 ?---Well, from my perspective as a CEO, I felt that
7 document was a wholly inadequate document to capture the
8 multi-year procurement process it had undertaken, and to
9 comply with the Procurement Act and the Procurement Rules
10 of this state. Hence - - -
11

12 And did you voice that Ms Poole?---Absolutely. And then
13 what I did is, ah, delegated it back to be done, and when
14 it wasn't - when she didn't have time to do it, I did it
15 myself. And how many times I've done that in 17 years,
16 I've lost count.
17

18 We will come to what you did in due course, I am sure.
19

20 **NELSON, MS:** Perhaps if we go back to 0199^, which is the
21 18 September 2023 procurement memo drafted by Ms Poole.
22

23 0199^
24

25 **NELSON, MS:** Can you recall now what parts of this
26 memorandum were wholly inadequate from your point of view?--
27 --I'm sorry, it's just it's - it's not in my - it wasn't,
28 in my view, a - - -
29

30 **THE COMMISSIONER:** The question is can you recall which
31 parts were wholly inadequate?---The entirety of it.
32

33 The entirety. So none of this would fall into any
34 subsequent procurement notice?---Oh, no. When I - the
35 entirety of it as read as an entirety. There were a whole
36 raft of aspects of this that were excellent in my view and
37 could be then put into what would be a file memo. In fact,
38 I think I might have - - -
39

40 **THE COMMISSIONER:** Sorry - - -?--- - - - emailed Ms Poole
41 about that.
42

43 Why did you just say none of it?---Well, because you
44 couldn't use that as a memo for the procurement. Um,
45 however, were there parts of this that you could then say,
46 "Yes, that could be put into what would be a memorandum
47 that read - sorry, Commissioner. I realise that sounded
48 completely contradictory. This - - -
49

1 Certainly did?---Yes. And I want to clarify that. This
2 memorandum here in my view would not have been a memorandum
3 appropriate in and of itself standalone under the
4 Procurement Act and the procurement rules. Were there
5 aspects of this memo that were utterly appropriate, very
6 helpful that you would put into such a standalone memo?
7 Yes, absolutely there was. And in fact I think I sent an
8 email along those lines.

9
10 **NELSON, MS:** Well, perhaps looking at the first page which
11 is on the screen, was there anything in the purpose
12 statement that you thought was inadequate or wrong or
13 otherwise should be removed?---No. I thought the purpose
14 was - was - that - that's - I would have wanted to see a
15 lot more in the purpose but I thought that was a - a - a -
16 it was not enough, um, in terms of the purpose, but it was
17 in and of itself not wrong.

18
19 And then the background on page 1?---I'd have to read it
20 all again, counsel, ah, to familiarise myself with it.
21 Um - - -

22
23 **THE COMMISSIONER:** I'll tell you what. I was going to
24 give a break, so why don't we have a 10-minute break during
25 which time you can read it - - -?---Oh, thank you,
26 Commissioner.

27
28 - - - for the full - - -?---Thank you.

29
30 That'll save us time.

31
32 (Short adjournment)

33
34 **THE COMMISSIONER:** Please be seated.

35
36 Mr Field, did you have an opportunity to read the
37 amendment?---I - Commissioner, thank you so much for that
38 indulgence.

39
40 **NELSON, MS:** Now, having read that document this
41 afternoon, Mr Field, was there anything in there that you
42 thought was incorrect?---No. And thank you again,
43 Commissioner, for the time - a chance to refresh my memory.
44 No. I do remember this document, um, and, ah, hopefully
45 it's still strictly within your answer to say in fact I
46 think I might have sent back an email something along the
47 lines of "That was an excellent start". So I have gone
48 back through, ah - and far from being incorrect, um, so
49 many of the aspects of this actually captured very
50 correctly, um, ah, that the projects - that the procurement

1 itself started in June '22 when I met with Mathias Cormann,
2 um, ah - - -

3

4 **THE COMMISSIONER:** Well, perhaps counsel if she wants will
5 take you through it?---Oh, take me through the document
6 instead. Sorry.

7

8 But the question was is there anything in the document
9 which is incorrect?---No. Nothing that was incorrect. Was
10 it sufficient for a procurement memo? In my view, no. But
11 was it incorrect? No.

12

13 **NELSON, MS:** If we look at page 2?---Yes.

14

15 Under "Project Scoping"?---Yes.

16

17 So the first paragraph talks about you meeting with
18 Mathias Cormann?---Correct.

19

20 And - well, that's the first sentence. And then the second
21 sentence on 15 May:

22

23 The Ombudsman and President had meetings with
24 her Excellency Gillian Bird, Australia's Ambassador
25 to France, and Mr Brendan Pearson, Australia's
26 Ambassador and Permanent Representative to the OECD
27 in Paris.

28

29 ?---Yes, correct.

30

31 There was no relevance to the OECD project from those
32 meetings, was there? There was no discussion in those
33 meetings about the OECD project?---There was discussions
34 about doing work with the OECD, um, but not about this
35 specific project, no.

36

37 And then the last sentence of that paragraph:

38

39 Prior to this on 11 June 2023 -

40

41 Is that a typo? Should it be 2022?---I suspect it should
42 be 2022.

43

44 - the Ombudsman met with Rebecca Brown, Director
45 General of the Western Australian Department of Jobs,
46 Tourism, Science and Innovation.

47

48 ?---Correct.

49

1 You didn't meet with Rebecca Brown in person, did you?---
2 No. There was a phone call.

3
4 And that - was that phone call prior to you meeting with
5 Mathias Cormann?---Correct.

6
7 And in that phone call you did not discuss with her any
8 project between the OWA and the OECD, did you?---Oh, no,
9 that's not correct. I called Rebecca to inform her that I
10 was meeting with Mathias Cormann, um, and that it would be
11 my hope and anticipation that project work would arise out
12 of it from the OECD. And one of the reasons I was calling
13 Rebecca was to gauge her comfort level as to whether she
14 would have concerns about that.

15
16 **THE COMMISSIONER:** She was in an airport at the time,
17 wasn't she? Vancouver or Seattle?---I have some
18 recollection it might have been Houston, but whichever way
19 you say, Commissioner, I think that might be right.

20
21 **NELSON, MS:** Ms Brown says that you told her that you were
22 meeting with Mathias Cormann but you didn't provide any
23 specific details about what the meeting was discussing.
24 Would that be a correct characterisation of the
25 conversation?---Ah, well, no. What I - what I discussed
26 with Ms Brown was, um, a intention - well, I called
27 Ms Brown specifically to say, "I have a meeting arranged
28 with Mathias Cormann". Um, I said to her, "Is there
29 anything that you don't want me to discuss, anything you do
30 want me to discuss?" I said to her that the purposes of
31 the meeting, ah, was to see if we could develop further
32 relationships with the OECD and any projects that might
33 arise out of it. That was what the discussion with
34 Ms Brown - if Ms Brown says, "We didn't specifically
35 discuss this specific project," that would be correct.

36
37 So why is it in this memorandum about a particular OECD
38 project? What is the relevance?---Well, ah, discussing
39 with the director general, um, of a department that has,
40 ah, that role of - in part, that role of dealing with
41 international organisations, um, struck me as being hugely
42 relevant that I would be both briefing her and debriefing
43 her when I returned to the trip. Um, that I was meeting
44 with the head of the OECD, ah, and also, ah, discussing the
45 possibility that there might be some form of Western
46 Australian project. Exactly the same reason I - - -

47
48 Well - - -?--- - - - briefed - I - - -

49

1 Ms Brown says that you didn't discuss any West Australian
2 project with her during that call and in fact at no time
3 since have you provided her with any information regarding
4 a contract involving the OECD?---No. The vast majority of
5 my conversations with Rebecca Brown - this conversation and
6 the debriefing conversation when I returned to
7 Western Australia have been in relation to an
8 MOU (indistinct). So it's been - - -

9
10 So it has - - -?--- - - - the vast bulk of the
11 conversations.

12
13 - - - no relevance whatsoever with the OECD project then,
14 does it? It had relevance to do with the MOU Wisteria?---
15 No, I wasn't calling her to discuss the MOU Wisteria. I
16 was calling her to discuss the fact I was having a meeting
17 with Mathias Cormann.

18
19 And that's the end of it? "I'm having a meeting with
20 Mathias Cormann, Rebecca". And she said, "Good," and
21 that's the end of it. Is that, Mr Field, all it was?---If
22 you want my photo recollection of what the conversation
23 was, ah, I can remember what room I was in when I had the
24 conversation. And I rang her up and I said, "I'm meeting
25 with Mathias Cormann," and I think she said something like,
26 "Oh, that's impressive". And then I said, um, ah, "Is
27 there anything you want me to say or don't want me to say?"
28 And she said, "I don't have view about anything you, um,
29 should say or - or certainly shouldn't say". Um, and I
30 said, "It's a broader concept I have of the OECD and
31 Ombudsman institutions having an alignment around, um, the
32 UN resolution on good governance, um, and that is a key
33 mandate of the OECD and a key mandate of Ombudsman
34 institutions, and it happens to be a benefit that
35 Mathias Cormann is Western Australian". I think that was
36 the conversation I had with her.

37
38 **THE COMMISSIONER:** Well, if that's the conversation that
39 you had, counsel's question that it's not relevant to this
40 remains?---I just don't accept it's not relevant. But it's
41 specifically - it's specifically the case that it didn't -
42 I can absolutely be unambiguously clear. If Ms Brown's
43 evidence is it didn't discuss this specific project, Ms
44 Brown would be right.

45
46 **NELSON, MS:** And in fact, she has never discussed this
47 specific project with you?---I don't recollect discussing
48 the OECD project with, um, Ms Brown. Or certainly put it
49 this way, if I did, it was very much, um, not the project

1 that I was specific - that was the main attention of my
2 discussions with her.

3

4 And since to date, you have never discussed with her the
5 OECD project?---Well that's not true, I discussed it with
6 her when I returned to - to Australia, as a debriefing,
7 meaning only after this meeting. I debriefed her on this
8 meeting.

9

10 Well, that would be contrary to what she's told the
11 Commission?---It's contrary to the fact that I actually met
12 with her at all and debriefed her?

13

14 About the OECD project, correct?---Well, she'd be incorrect
15 about the fact that I debriefed her about the OECD.

16

17 I see?---And I have a calendar record of meeting with Ms -
18 and what other reason would I have had to call her?

19

20 The next paragraph:

21

22 Arising out of this dialogue and the unique and
23 finite opportunity presented by the IOI presidency
24 being held by an Australian, the office identified an
25 opportunity to recreate the European Ombudsman's
26 project, but with a specific focus on Western
27 Australia's closest neighbours in Asia. The
28 geopolitical interests in the Australasian region,
29 and Africa, home to some of the world's most
30 vulnerable citizens.

31

32 Was there anything about that paragraph that caused you
33 concern when you read this memo, or causes you concern this
34 afternoon?---Sorry, just remind me, which a paragraph is
35 that?

36

37 The paragraph starting, 'Arising out of this dialogue,'
38 referring to those meetings that we've just been through.

39

40 **THE COMMISSIONER:** But you did ask a double-barrelled
41 question, I think you should make it a single-barrelled
42 question.

43

44 **NELSON, MS:** Arising - is there anything about that
45 paragraph that causes you concern this afternoon, having
46 reread it this afternoon?---Well, far from it, that's - it
47 might be that fortifies everything I've said this
48 afternoon. Profoundly fortifies it.

49

1 Well, the dialogue you're referring to are the meetings
2 with Mr Cormann, with Ms Bird, and Mr Pearson and Ms Brown,
3 correct, that's the dialogue that you're referring to?
4 ---Mm-hm.

5
6 And we've heard evidence that you didn't discuss the
7 specific project with Mr Cormann on 13 June 2022?---Oh,
8 sorry, that's grammatically in my view not correct, it's
9 arising out of this - sorry, that sounds pedantic and it's
10 not meant to be - and I might not even be correct about the
11 grammar. But the conjunctive there is important, arising
12 out of this dialogue, and the unique and finite opportunity
13 presented by the IOI presidency being held by an Australia,
14 the office identified - that's post-factual to - there's
15 dialogue, there's unique opportunity, and going forward,
16 that there's - we identified opportunities to recreate the
17 European Ombudsman project. And this is Rebecca Poole's
18 memo, not mine, I didn't write those words.

19
20 No, I'm asking you whether today you see anything that
21 causes you concern in that paragraph, and I gather the
22 answer is no?---No. The answer is not just no, that
23 profoundly reinforces everything I've been saying to you,
24 in my opinion.

25
26 Then if we jump down two paragraphs to the paragraph that
27 starts 'frist' - which should be:

28
29 First, the project would very importantly be
30 commissioned by Western Australia to focus on the
31 Asian and Australasian and Pacific and African
32 regions.

33
34 ?---Yes, profoundly consistent to what I've been saying.

35
36 North America is left out of that?---That was part of the
37 expansion project to which the 50,000 from the IOI was
38 providing, so for the purposes of Ombudsman Western
39 Australia, that is profoundly correct.

40
41 Also it's left out that the IOI is part of the project?
42 ---Well, for - for that sentence, that's correct, it was
43 the Ombudsman Western Australia commissioning the OECD to
44 do a project which would be focusing on the Asia and
45 Australasia and Pacific regions.

46
47 But as we saw this morning, that actually did not occur
48 until 30 June, when the IOI were taken off the draft grant
49 proposal and the OWA were substituted?---I think there's
50 something being made of that, counsel, that perhaps is - I

1 haven't been clear enough about in my evidence. Regardless
2 of whether the IOI was ultimately to or not a party to that
3 contract, it didn't take away from the gravamen of the
4 contract, which was ultimately that this was the Ombudsman
5 Western Australia identifying a project, which was to be
6 undertaken for the benefit of Western Australians, and to
7 be undertaken for the benefit of our near-Asian neighbours.
8 Yes, would there be benefit for other Ombudsmen? There was
9 no doubt there would be as well, they would be in part a
10 beneficiary to it. And insofar as they were, there was a
11 specific contribution made - being made by the IOI. That
12 was the only reason there was originally discussion about
13 the IOI even being a potential signatory. I think there's
14 been much made of that in a way that perhaps is about my
15 poor explanation.

16
17 Well, I was just relying on your own emails, Mr Field, in
18 which you told the IOI board that it was to be a project
19 commissioned by them, between them and the OECD. And back
20 in January 2023, you told the OECD that it was a project
21 between them and the IOI?---No, the IOI were not told that
22 it was a project between the IOI and the OECD, it was told
23 that it was a project involving all three of us. And, um,
24 the IOI was told it was a project that was involving the
25 OECD because the IOI were going to make a contribution to
26 that project.

27
28 Looking at the last paragraph on the page:

29
30 A project panel comprising the Ombudsman and the
31 President and Rebecca Poole (principal assistant
32 Ombudsman) was convened to assess the procurement.

33
34 ?---Yes.

35
36 And the project panel considered and applied the
37 Procurement Rules at each stage of the scoping and
38 the negotiation of the project.

39
40 Is that a lie, Mr Field?---Where is that, sorry?

41
42 The bottom of the page:

43 A project panel comprising the Ombudsman and
44 President and Rebecca Poole was convened to assess
45 the procurement in accordance with the rules at each
46 stage of the scoping and negotiation of the project.

47
48 Is that incorrect?---A lie? Absolutely, profoundly not,
49 that was the exact process that we were going through and
50 putting together the procurement memo. You're - that could

1 only be a lie on the basis that I was doing that, um, at
2 each iterative stage of the conversation. But the
3 procurement memo, where this is being reduced to writing
4 and those matters were being considered, it's not a lie,
5 it's the truth.

6
7 **THE COMMISSIONER:** Was there a project panel convened?
8 ---Yes.

9
10 Where are the records of that?---The project panel was
11 Rebecca and I.

12
13 Where are the records is the question?---I don't know if
14 there's a separate record about that, and I don't know
15 anything under the Procurement Act or rules that says there
16 has to be.

17
18 Carry on.

19
20 **NELSON, MS:** What did that project panel do at the scoping
21 stage of the project? Looking at the top of page 3?---The
22 scoping stage of the project?

23
24 It says:

25
26 The project panel considered and applied the
27 Procurement Rules at each stage of the scoping and
28 negotiation of the project.

29
30 ?---I'm so - forgive me, exactly where is that again?

31
32 The top of page 3?---Oh, sorry, the top of page 3.

33
34 It's on the screen?---Oh, I'm sorry.

35
36 It's not in the document, Mr Field, I'm asking you what the
37 project panel did at the scoping stage of the project?---I
38 would have to go back and review over the document that I
39 settled.

40
41 Okay, well we will get to that then?---As to that answer -
42 and also to the answer that I gave to the Commissioner
43 before, because the project panel was conversations between
44 Rebecca and I. Project panel, as it's a proper noun, makes
45 it sound like some entity of some substance. Ultimately
46 what it was - and as I understand the Procurement Act and
47 the Procurement Rules, it was the two staff members,
48 effectively myself and Rebecca, who were involved in these
49 discussions. Now, that's my understanding of that. Was I
50 involved in every aspect of that at every stage? Yes I

1 was. I'd have to check what I actually ultimately settled
2 in relation to - to the draft itself. But were those
3 discussions occurring? Yes, of course they were. Was
4 there a separate thing called the project panel decided?
5 No, I don't necessarily think there were. They were
6 reduced to writing in the memo.

7
8 Well, it does have some formality, because it says the
9 project panel was convened?---Well, sorry. This is the
10 memo that was given to me - - -

11
12 I see, okay?---We'd have to look at actually - what
13 actually the procurement memo says, which is the thing that
14 I signed.

15
16 **THE COMMISSIONER:** Sorry, I don't quite understand that.
17 This memo, you've already agreed, was accurate but
18 incomplete?---Correct. So, I don't - when I say accurate,
19 there may have been aspects which when I looked at it - so
20 there's - - -

21
22 Well, I gave you the opportunity to read through it?---Yes.

23
24 Before you told that it was accurate but incomplete?---Mm.

25
26 Do you now wish to change some of that evidence?---Well,
27 no, Commissioner, I don't. What I want to say is that this
28 memo, from my recollection of both when I first received it
29 and having looked at it in that break is that it contained
30 substantial - a significant amount of substantially correct
31 information, ah, ah, including things that we haven't gone
32 through, like government, social, economic and
33 environmental priorities. Utterly consistent with the
34 evidence that I've given. But can I also say that, ah,
35 there may be some particular references in here, um, to
36 project panel. I'm not quite sure what the ultimate
37 referencing was in the final - in the final document. What
38 I can say is throughout, whether it's given the
39 nomenclature project panel or not, there were discussions
40 at the relevant stages about, um, ah, about what was being
41 done in relation to this procurement. Were they captured
42 in writing at the time? Commissioner, I don't think they
43 necessarily were. Were they reduced to writing, as they
44 must be under the Procurement Act and the Procurement
45 Rules? Yes, they were.

46
47 And where will we find those?---The procurement memo.

48
49 There seems to be a degree of secularity, but carry on.

50

1 **NELSON, MS:** Could we go to page 6, thank you. Looking at
2 the value for money assessment?---Yes.

3

4 So, it says:

5

6 The project panel has assessed that the contract
7 achieves value for money, having regard to the
8 government's social, economic and environmental
9 priorities.

10

11 ?---Yes.

12

13 Cost and other relevant non-cost factors.

14

15 Did you have a sense at the time as to what the government,
16 social, economic and environmental priorities were?---Yes,
17 I had a broad sense of those, particularly because they're
18 relevant to our financial reporting, ah, and including in
19 Estimates hearings, as to the sorts of matters that were
20 germane to social, economic and environmental priorities.
21 What I do remember at the time - I've actually written it
22 here, Commissioner, in the time that you gave me to look at
23 this, and that was - it didn't have enough detail or
24 explanation, so it was one of the things that was in the
25 contract which I - in this draft, which I thought was,
26 'Yes, that's good, but it needs a lot more detail, a lot
27 more explanation.'

28

29 While you're holding that hardcopy document, could we just
30 go back to 0516^, thank you, Madam Associate, on the
31 screen?

32

33 0516^

34

35 **NELSON, MS:** And if we could just hone into seven and
36 eight. So, this is the email that you sent to Ms Poole on
37 14 September?---Yes.

38

39 It appears to me that she has copied your drafted seven and
40 eight there, and put that in this memo as one and two on
41 page 6 as the government, social, economic and
42 environmental priorities, value for money assessment for
43 this project, would you agree with that?---Correct.

44

45 Almost word for word?---Mm-hm.

46

47 And then if we go to page 7 - sorry, page 7, back on 0199^.

48

49 0199^

50

1 **NELSON, MS:** So, Ms Poole has put in the words from the
2 streamlined budget process submission from the OWA back in
3 February of that year?---Correct.

4
5 As the basis for the funding?---Not just the basis for the
6 funding, the basis upon which this project could have ever
7 occurred, because if that hadn't have been funded, the
8 project never would have occurred.

9
10 Prior to the lodging of that application, you had already
11 indicated that the project was going to go ahead?---No, no,
12 I can - you can be - well, I can say to you without
13 ambiguity that if this project had not received, um,
14 approval from the board of the IOI for 50,000 euro, and it
15 had not approved the funding out of the SBP process, this
16 project would not have gone ahead. So, it's not just the
17 funding, it's the entire imprimatur for this project
18 occurring. If that hadn't happened, the project wouldn't
19 have happened, and that is my unambiguous, on oath
20 evidence, and it's the truth, and it always has been the
21 truth.

22
23 All right, I'm not going to go back over the discussion we
24 had last time, except just to make you aware that it is
25 still my view that the streamlined budget process is an
26 appropriation of funds, it's not an approval to procure a
27 particular project for a particular purpose?---Well, so the
28 Treasurer says, but I can say to you, counsel, that, ah, I
29 find it beggars belief, having done SBPs for 17 years
30 without any form of specificity like this, that if you
31 specify to the subcommittee of Cabinet that you are seeking
32 funding to do a project specifically with the OECD, for a
33 project in the Asian region, and then they give you that
34 money, then as I say, I've already made my point clear
35 about telling Mr Pastorelli about that, and then lo and
36 behold, two weeks later I get an email from the Treasurer,
37 and Mr Pastorelli's relationship with the Treasurer is well
38 known, saying, 'Oh, no, that couldn't be what any of that
39 means.'

40
41 **THE COMMISSIONER:** Well, I don't know it. What do you
42 mean by that?---Well, it's been well-documented.

43
44 Well, I have no idea what you're talking about?---Well, I'm
45 quite happy to say - - -
46 You've given testimony about it, so what you mean by the
47 relationship is well-known?---Well, it's been suggested
48 regularly in the newspaper, um, that is, he is her de facto
49 chief of staff, and that those two are together
50 exceptionally closely, and it seems to be passingly strange

1 that I sent an email to Daniel Pastorelli about these
2 matters, and then magically I receive a letter from the
3 Treasurer about all of these things telling me to stop
4 doing it, that's what I mean. And when I say it's well-
5 known, it's reported all of the time in the newspaper that
6 that's the case.

7
8 I must be very ignorant?---Well, I'm happy to get all the
9 clips and send them through to you.

10
11 The first I've heard of it. So, you believe that is behind
12 anything that the Treasurer has written to you?---Well,
13 it's not the first time the Treasurer has interacted with
14 my office in a way that is untoward, and might not be the
15 last. This was one of many times that that's happened.

16
17 Well, I can say, as I said before and as I said before, I
18 am not beholden to the government, or anybody else?---I'm
19 not suggesting you are, Commissioner, under any
20 circumstances.

21
22 We are conducting a misconduct investigation in relation to
23 your actions?---Well, in relation to that misconduct, I
24 don't think that Treasurer's letter, um, should be given
25 particular weight, but that's my - that's my view.

26
27 Well, I - - -?---That's not for me to say.

28
29 I have little doubt that counsel assisting will in due
30 course reach it. But that's a matter for her because I
31 tend to have a broad outline but listen to the evidence so
32 I can assess it.

33
34 **NELSON, MS:** Mr Field, just as a matter of fairness,
35 the Commission has heard from Mr Pastorelli, and he said
36 the first time he ever heard about any OECD project was on
37 10 October 2023 during a phone call with yourself and a
38 subsequent email that I think we looked at last time of
39 15 October and which you gave more detail?---Well - - -

40
41 Do you accept that?---Not only do I not accept it - I'm
42 sure he's got reasons to say that, um, but one might wonder
43 what those reasons are, including further reporting on the
44 weekend. But what I would simply say is that, um, that is
45 absolutely profoundly incorrect and utterly inconsistent
46 with the fact that I was briefing every single senior
47 person in the state about the OECD. So apparently,
48 Mr Pastorelli was magically the only one who didn't get
49 that briefing.

1 Well, Ms Brown has also said that she didn't get that
2 briefing?---No, I'm talking about the Public Sector
3 Commissioner, the Director General of the Department of
4 Premier and Cabinet. Ah, I'm talking about, um, all of
5 those. Mr Pastorelli was certainly briefed. He absolutely
6 was. And I have a recollection of the exact time in the
7 conversation I had that briefing with him. Um, so perhaps
8 the best could be said about Mr Pastorelli's evidence about
9 that is he's forgotten.

10
11 He told the Commission the first time that you discussed
12 the OECD project with him was during the phone call in
13 October 2023?---And I'm not suggesting anything, ah, in
14 terms of his misleading this Commission. It's entirely
15 none of my business to make such a view. I would simply
16 say this. He's wrong, and it's utterly inconsistent with
17 the briefings I had with the three people that I would
18 brief - the Director General of the Department of Premier
19 and Cabinet, the Public Sector Commissioner and the
20 premier's chief of staff. All three were briefed. All
21 three were briefed extensively. He was. It's - I'm sure
22 it's very convenient for him to deny it now but it's - it's
23 not true.

24
25 He said he didn't become aware of the signed contract
26 between OWA and the OECD until November 2023?---No. That
27 could be correct. We might not have got down to the
28 granularity of discussing of discussing the contract.
29 That's correct.

30
31 He says it's possible you may have generally mentioned the
32 fact that you met with the OECD in mid-2022 in passing, but
33 other than that, he didn't know that there was a project?--
34 -That's not correct. It's not true. What is correct is he
35 thought it was a political problem. That's why he wrote to
36 the treasurer to get rid of it.

37
38 **THE COMMISSIONER:** Sorry, I didn't quite hear that?---
39 Well, he thought it was a political problem and he wrote to
40 the treasurer to try and get rid of it, and that's why the
41 treasurer wrote to me is my view. But if he thought it was
42 a political problem only after it was on the front page of
43 the newspaper, not beforehand. So he had no reason to
44 worry about it until then. That's when he started worrying
45 about it. So that evidence doesn't surprise me.

46
47 **NELSON, MS:** And the Public Sector Commissioner has told
48 the Commission that on one occasion you mentioned that you
49 had been appointed as the President of the International
50 Ombudsman Institute and what an honour it was, and she

1 congratulated you on this, and that in relation to overseas
2 travel that you mentioned at some of your meetings with her
3 that you had just been somewhere or you were about to go
4 somewhere -

5
6 but we didn't have detailed discussions about this
7 other than points of interest of Mr Field. It was
8 clear to me Mr Field's travel related to his role as
9 President of the IOI, and I recall him mentioning
10 speeches. I recall him telling me he had met with
11 Mathias Cormann, Secretary General of the OECD as
12 part of his overseas trips. He said he was doing
13 some work with OECD researchers. As it seemed to
14 relate to IOI business and not relevant to my work,
15 we didn't discuss it in any detail.

16
17 Would that be true?---Ah, well, we're talking about one of
18 Australia's finest public servants. I can say that I think
19 that is largely a very good summary. I do think, um, that
20 we might have discussed the OECD in slightly greater detail
21 than that and it was actually on numerous occasions we did
22 discuss that, ah, remembering that the Public Sector
23 Commissioner himself met with the OECD based on the
24 contacts my office gave her arising out of those meetings.
25 I - - -

26
27 So that was back in October 2023. She was planning to meet
28 with OECD researchers and asked you who was the name of the
29 person that you had had a contact with?---Correct. So my
30 recollection of my conversations with the Public Sector
31 Commissioner, um, as I say, um, ah, of whom I have the
32 highest regard, is only that in relation to the OECD we did
33 discuss at some slightly greater detail about that OECD
34 project. And the detail we discussed was about the benefit
35 that it would bring in our, ah, region to our major Asian
36 trading partners, all but China because China wasn't
37 involved in the project, but to our key trading partners,
38 Japan, Taiwan, Korea, ah - not in that order. We would
39 have, ah - this - this project would have some significant
40 benefit and that would be leveraged back into Western
41 Australian benefit. So we discussed - we did discuss that
42 aspect of the OECD project.

43
44 Did you discuss with her that it was a project with two
45 designated project partners, the OWA and the OECD?---I
46 would have discussed it was a project that, um, I would
47 have seen coming definitely out of me being - - -

48
49 No. Did you discuss with her that there were two
50 designated project partners?---No. No, no, no.

1
2 So it's possible she could have had the impression that it
3 was an undertaking you were doing as the IOI president?---
4 No, I don't think so because the discussion was about the
5 fact that this was the Ombudsman of Western Australia
6 delivering these issues but arising from the fact this was
7 the sort of benefit we were getting out of me being the
8 president of the IOI. That's the way it would have been
9 framed. So there wouldn't have been any doubt about the
10 fact it was the Western Australian Ombudsman doing it, but
11 it also would have been that it wouldn't have happened if I
12 hadn't been the president of the IOI.

13
14 And Ms Roper who is the Director General of the Department
15 of Premier and - - -?---Yes.

16
17 - - - Cabinet has told the Commission that she recalls that
18 you discussed with her that you had met Mr Cormann. It was
19 some time in June 2022 she recalls. And she recalls that
20 you observed it was very generous of Mr Cormann to take the
21 meeting and that Mr Cormann was supportive of the work of
22 the IOI?---Well, I had another - once again, an
23 outstanding, um, senior leader in this state - a female
24 leader in this state. Can I say I, ah, had a few
25 conversations with the Director General about the OECD is
26 my recollection. Um, and again, that would have been at
27 that level, very similar to what I discussed with the
28 Public Sector Commissioner. Really, most of these meetings
29 were effectively traversing the same ground but for a
30 different audience.

31
32 Well, she recalls that you didn't detail any specific
33 project or collaboration between the IOI and the OECD?---
34 No, that wouldn't - that isn't - I mean, remember the -
35 these - these - the Director General might be having
36 hundreds and hundreds and hundreds and hundreds and
37 hundreds of meetings a year with people. I'm having one
38 about the things that I know about, so it might be that my
39 recollection might be better than hers.

40
41 I see?---Um, and that's not my recollection.

42
43 That can be taken down, thank you. Could we have 0473?

44
45 0473^

46
47 So October the 19th. You're still in Bahrain at this
48 point. You email Ms Poole. This is just the resolution of
49 this matter for my purposes. Are you referring to the

1 conversation with Mr Pastorelli that is underneath this?---
2 Yes.

3
4 And what do you mean resolution? What has been resolved
5 from your point of view?---Oh, well, at that stage, um,
6 there'd been no indication to me that that project, um,
7 from a government's perspective needed to be ceased. And
8 on that basis, um, it was indicating that, ah, it was, um,
9 fine for us to move forward. In other words, the
10 government hadn't indicated "Well, you'll have to give us
11 that money back that we gave in the SBP," and on that
12 basis, we're able to move forward with the project.

13
14 By which you mean pay the Paris as you say in the second
15 line?---Yes. So I do recollect that and I recollect at the
16 time that I after I emailed, ah, the premier's chief of
17 staff, um, that, ah, if I'd - if I'd received an email back
18 saying, ah, "Well, we intend to take that to ERC and
19 indicate - and ERC will take that money back off you," then
20 we would have not been able to pay that invoice and we
21 would have had to cancel the project.

22
23 And you say:

24
25 If you have not already, please speak to Morgan for
26 me.

27
28 The top line?---Yes. Yes.

29
30 Did Ms Poole have a conversation with you about whether she
31 would or would not speak to Morgan?---I just don't have a
32 recollection about that.

33
34 At any stage did Ms Poole say to you, "I'm not going to ask
35 Morgan to pay the invoice"?---I don't have a recollection
36 about that conversation. I know - I know that this was
37 post the, ah, ah - the time of the article in the
38 newspaper, and I think at that stage she was, um, concerned
39 about involvement in all IOI matters was my recollection.

40
41 She - - -?---So it's possible. It's possible.

42
43 **THE COMMISSIONER:** The article in the newspaper seemed to
44 be largely drawn from your annual report that had been
45 tabled in Parliament, was it not?---Ah, some of it was and
46 some from, um, ah, information that had been given to
47 journalists as well because those - those were - well, um,
48 some - some was given to a - a journalist. That
49 journalist's, ah, email was sent to - from the West
50 editorial. Mr Pastorelli - he sent that to me. Another

1 one was from another journalist, um, and that was - that
2 directly sent to me. That contained a raft of information,
3 um, including information that appeared to have been
4 provided by a staff member in my office. Um, and then as
5 you say, some of it, um, was from the annual report.

6

7 **NELSON, MS:** And you say at the end:

8

9 I will send through the procurement document once
10 completed.

11

12 ?---Yes.

13

14 Yes. So two days earlier - well, sorry. Three - no, two
15 days earlier you had asked for the copy of the OECD memo?--
16 -Correct.

17

18 So then the following day you ask Ms Poole to send it to
19 you again?---Yes.

20

21 0530.

22

23 0530^

24

25 And if we can just scroll down and see Ms Poole sends you
26 the 18 September - - -?---Correct.

27

28 - - - 2023 version. And go to page 2, you'll be able to
29 see her comment. And I can tell you that this version that
30 she has sent to you on 20 October is the same as 0199?---I
31 accept that.

32

33 Do you then work on that memo and change it?---Well, settle
34 it. Correct. So, um, as I said to you, um, I thought that
35 there - - -

36

37 **THE COMMISSIONER:** Well, the answer seems to be yes?---
38 Well, sorry, Commissioner.

39

40 You settled it?---Yes. Yes. Yes.

41

42 **NELSON, MS:** And could we have 0642?

43

44 0642^

45

46 So at 1.20 on that same day you send back:

47

48 Dear Becky,

49

50 The OECD doc was very good. I've made changes. I

1 went through it. Not tracked but no substantive
2 matters. There's no need for attachments, so I've
3 put all the relevant info in the memo. The doc is
4 password protected which I'll SMS you. This needs to
5 be sent to Morgan now for payment next week.
6

7 So at this stage, Mr Field, were you quite anxious for
8 payment to be made to the OECD under the invoice?---Well,
9 would be invoice payment. I thought that the payment had
10 to be made against the invoice. Correct. I'd had no
11 indication from government that they wished to withdraw
12 that money from us, and on - - -
13

14 Okay?--- - - - that basis, it was appropriate to pay.
15

16 If we could scroll down to the next page, thank you, and
17 see the attachment. So this is a memo that is dated
18 20 October 2023 and it's still from Rebecca Poole to
19 yourself?---Mm hmm.
20

21 But in fact this is a document that has been settled by
22 you, correct?---That I can't recollect.
23

24 Well, it's attached to the memo - sorry, to the email we
25 just looked at?---Oh, I'm sure it - - -
26

27 At - - -?---Yes, that would be the case then.
28

29 At 1.20?---Yep. No. Sure that would be the case.
30

31 And this version of the memo is then sent at 2.03 pm to
32 Morgan Marsh?---Correct.
33

34 And we can have it - 0643.
35

36 0543^
37

38 Attached is the procurement memo for the OECD
39 project. Essential it receives the required sign
40 offs from certifying officers.
41

42 What do you mean by that? What's a certifying officer?---
43 Oh, that wasn't - there's no technical term certifying
44 officers in the Procurement Act or rules. It was just
45 intended to make sure that those in the organisation -
46 particularly Morgan March as the assistant ombudsman - but
47 anyone else whom she wished to share it with - a CFO - that
48 they had gone through and were satisfied about the - that
49 that document was, ah, as a standalone document sufficient
50 and appropriate under the Act and the rules.

1
2 Well, a certifying officer if the officer who reviews -
3 reviews the procurement evidence prior to certifying the
4 invoice for payment. Is that your understanding?---Ah,
5 well, that's - that's how I was using it. Yes, that's
6 exactly right.
7
8 And who was going to be the certifying officer for this
9 particular project?---Well, the improvements were all going
10 to - the approvals were going to be me in relation to the
11 document itself. Um, what I - it's not talking about the
12 invoice payments. We're talking about the procurement memo
13 and the memo - I wanted to make sure - - -
14
15 Well, we're not talking about the procurement memo. I'm
16 talking about the line in your email where you say:
17
18 It is of course essential that it receives all
19 required sign offs from certifying officers.
20
21 ?---But that's exactly what I've just said. Attached in
22 the procurement memo for the OECD project. Procurement
23 memo. It is of course essential that it receives all
24 required sign offs from certifying officers exactly in
25 accordance with procurement rules. So we're sitting
26 through a document where I was if you like in that sense of
27 the matter of good governance and good practice saying to,
28 um, the assistant ombudsman, um, um, who had significant
29 experience in these issues "Is there anything that I've
30 missed that should be done better, um, ah, that can
31 improved in relation to this procurement documentation?" A
32 very typical thing for us to do.
33
34 Was the CFO going to be the certifying officer to sign off
35 that the invoice was paid?---This was not talking about the
36 invoices and I don't recollect about the actual signing of
37 the invoices - whether that would have been done in the
38 finance area by the CFO or indeed by the assistant
39 ombudsman. So that wasn't a - that wasn't part of that
40 conversation.
41
42 Well - - -?---It's just about the procurement memo.
43
44 As you would be aware as - good procurement practice is
45 before a certifying officer says to the organisation, 'Pay
46 an invoice,' they want to see the procurement evidence, do
47 you disagree with that?---Well, we have a raft of rules for
48 signing off on procurement. It would depend on whether
49 it's a five-dollar procurement or a \$5m procurement what

1 those rules would be. Um, would I have expected the CFO to
2 ultimately see the invoice?

3

4 **THE COMMISSIONER:** I don't think you're answering the
5 question?---Oh, okay, so sorry.

6

7 **NELSON, MS:** Is the purpose of a certifying officer to
8 review the procurement evidence before approving the
9 invoice for payment?---Ah, yes.

10

11 Who was going to be the certifying officer in this
12 instance?---I do not recollect at that stage having a
13 conversation about who the certifying officer was.

14

15 It would also be good procurement practice that the
16 certifying officer is not the person who actually procured
17 the goods or service, you'd want different people to order,
18 to settle the contract, and the person who signs off for
19 payment, would that be good practice?---Well it would
20 depend on the circumstances, it would depend on the amount,
21 it would depend on a whole raft of things where that was
22 the case.

23

24 If we could just see the attachment, please? It's called,
25 'A memo Western Australia Ombudsman and OECD project.' And
26 we can see that it is the memo that we just looked at,
27 20 October 2023. This is the same memo that I showed you on
28 the previous occasion, which was a standalone document,
29 0114^, so if the witness could be given copies of 0114^,
30 thank you.

31

32 0114^

33

34 **THE ASSOCIATE:** Would you like it on the screen?

35

36 **NELSON, MS:** Yes, thank you. So, 0114^ is the version of
37 the memorandum dated 20 October 2023 that you sent to
38 Morgan Marsh?---Yes.

39

40 At 2.03 pm on 20 October 2023?---Yes.

41

42 And this was the version that you had settled based on
43 Ms Poole's 18 September document?---Correct.

44

45 Now, you've got a hardcopy in front of you. I take it that
46 given that this was your settled document, that you're
47 familiar with it?---Ah, I don't recollect the document,
48 but, um, yes, I've got it in front of me.

49

1 Now, there were some changes you made to Ms Poole's version
2 of this memo. If we could just have 0114^, thank you, on
3 the screen. And 0199^.

4
5 **THE ASSOCIATE:** Both on the screen?

6
7 **NELSON, MS:** Yes, thank you.

8
9 0199^

10
11 **PORTER, MR:** Well, counsel, I'm lost.

12
13 **NELSON, MS:** Right?---So, 0114^ - - -

14
15 Is the version of the memorandum that Mr Field said that he
16 settled, and then sent to Ms Morgan at 2.03 pm on
17 20 October. And he settled this document changing 0199^,
18 which is the version of the memorandum from Ms Poole.

19
20 **PORTER, MR:** Thank you.

21
22 **NELSON, MS:** So, just looking at the very first page of
23 both documents, you can see that you've removed the logo
24 that says, 'International Ombudsman Institute'?---Ah, yes.

25
26 And obviously you've changed the date of the memo, so that
27 now it says 20 October 2023?---Mm-hm.

28
29 In 0199^, in the first line, you've removed the phrase 'to
30 document the decision', and you've said it is to procure.
31 So, Ms Poole says in the very first sentence:

32
33 The purpose of this memorandum is to document the
34 decision to procure the organisation for - - -

35
36 And you've said the purpose of this memorandum is to
37 procure the organisation for cooperation and development?
38 ---Yes, yes.

39
40 Then I suggest to you the rest of the page is the same,
41 except you've put in an additional heading under
42 background, you've added International Ombudsman
43 Institute?---Yes.

44
45 If we go over to page 2 - - -

46
47 **PORTER, MR:** Sorry counsel, there's also a change in the
48 first paragraph, final line. The Western Australian
49 Ombudsman and OECD project.

50

1 **NELSON, MS:** Thank you, yes. So, you've added in -
2 Ms Poole called it the Western Australia Ombudsman project,
3 and you've called it the Western Australia Ombudsman and
4 OECD project under purpose?---Correct.
5
6 Yes, thank you. And if we go over to page 2 of 0114^, you
7 appear to have accepted Ms Poole's tracked changes, do you
8 agree with that?---It's slightly more than accepted the
9 changes, but it's very close.
10
11 In fact - well, you've added in a heading at the top of
12 page 2, OECD project with the European Ombudsman?---Yes.
13
14 And you've added in previously - you've slightly changed
15 the first paragraph under that heading?---On - yes, no,
16 there's other changes, highlighted community trends and
17 changes, as well as a multitude of innovative practices
18 from all over the world, the European Ombudsman report -
19 but it's the European Ombudsman OECD report, it's the first
20 of its kind, so there are some other changes that aren't
21 showing in this way in track that aren't just accepting
22 track changes.
23
24 And if we - down the bottom of page 2 of 0114^, embedded in
25 the two paragraphs under the heading, project. And you've
26 also taken a significant - well, about three and a half
27 paragraphs out of the project scoping heading from
28 Ms Poole's?---Mm-hm.
29
30 Then page 3, at the top of page 3 of 0114^, you've still
31 got reference to the project panel, comprising the
32 Ombudsman, the President and Rebecca Poole, was convened
33 that we were discussing before?---Yes.
34
35 So that's identical. And then the procurement framework is
36 identical in both?---Yes.
37
38 As is page 4 of both. Do you agree with that?---Mm hmm.
39
40 Then page 5 you've put in a heading, "The Procurement
41 Method" and also referred to the report as "The European
42 Ombudsman and OECD report"?---Yes.
43
44 On the first line. And "the Western Australian Ombudsman
45 and OECD project" on the second line?---Yes.
46
47 And again, you've referred to that same name under
48 "Objectives" halfway down the page?---Mm hmm.
49

1 Then when we look at the outputs, you've removed the
2 reference to the scan report being roughly 50 to 100 pages.
3 You've just got "scan report in English will include"?---
4 Mm hmm.
5
6 The first dot point under scan report is the same, then in
7 the second dot point you have replaced OI's role with
8 Western Australian Ombudsman and other ombudsmen?---Mm hmm.
9
10 You agree with that?---Yes.
11
12 Why did you do that?---I'm sorry. This is that second
13 bullet point, isn't it? Second sub bullet point?
14
15 Yes. So Ms Poole had "Analysis of OI's role in the
16 Protection of Civic Space and in Reinforcing Democracy in
17 the" - and you've got "Analysis of the Role of the Western
18 Australian Ombudsman and other ombudsman in"?---Oh, because
19 I wanted to emphasise the fact that that was, um, a
20 particular aspect of the, ah - not just the case study but
21 what I would expect to see in the scan report, um - - -
22
23 But that didn't reflect what the proposal said the scan
24 report would include, did it?---But as I - as I say - - -
25
26 Mr Field, did that reflect what the proposal said the scan
27 report - - -?---No.
28
29 - - - would do?---No, it did not.
30
31 And then, ah, under the next dot point on 0199, Ms Poole
32 has started that whole paragraph:
33
34 The donor may provide other in-kind support -
35
36 Et cetera. Have you removed that entire dot point?---Yes.
37 I didn't think at that stage that it was necessary for us
38 to provide that in-kind support.
39
40 You didn't think it was necessary for the OWA to provide
41 that kind of support?---No.
42
43 But that was in the agreement that you had signed as one of
44 the obligations on the donor, was it not?---Well, I mean,
45 in so far as I didn't think it was going to involve any
46 material level of cost whatsoever, I didn't think it was
47 necessarily to involve.
48
49 Did you discuss - - -
50

1 **THE COMMISSIONER:** That might be your view, but answer
2 counsel's question?---The answer is no. I think the answer
3 is no.
4
5 **NELSON, MS:** Did you discuss - - -
6
7 **THE COMMISSIONER:** Let's not have any misunderstanding.
8 Can you ask that question again?---I guess it was meant to
9 be yes or no.
10
11 **NELSON, MS:** I've actually forgotten what the question
12 was. I - - -
13
14 **THE COMMISSIONER:** Well, we'll move on.
15
16 **NELSON, MS:** Why did you remove that particular dot point
17 that was in Ms Poole's output?---And - and - and, counsel,
18 you asked me whether it was in the agreement, and I should
19 have just said no, it wasn't.
20
21 It wasn't in the agreement?---No, no, no. It was in the
22 agreement, and you asked me was it in the agreement, and I
23 said no. So you're right. It was in the agreement and
24 then I removed it.
25
26 Right. And why did you remove it seeing that it was an
27 obligation on the OWA in the agreement?---Oh, because I
28 felt as I said all along except the nature of the
29 contracting, um, that the iterative development of the
30 project over its 12 or 18 months to two-year period would
31 include levels of flexibility, particularly given we of
32 course were the funder.
33
34 So you thought the contract had some flexibility to remove
35 some aspects?---I thought - thought the contract was a - a
36 reasonably high level synopsis, ah, of the understanding
37 between us and the, ah - the funder, um, had considerable,
38 ah, power, um, to make adjustments to the contract if they
39 were necessary to make.
40
41 When did you come to the conclusion that that - that
42 obligation should be removed? When you were drafting this
43 memo or prior to that?---Oh, is this the translation issue
44 in particular are you referring to?
45
46 No. I'm - you have removed the entire dot point?---Oh. So
47 the other in-kind support, um, ah - - -
48
49 Mr Field, I'm asking you when you came to the conclusion
50 that it should be removed?---Yeah, sorry. I was trying to

1 answer cos it was in component parts. But the, ah - it
2 would have been some time prior to settling this, um, but
3 perhaps it might have been some time after signing, ah, the
4 contract, as we refer to having discussions in the
5 organisation about what was involved. And I would have
6 said, "Well, we don't need to do the printing and
7 translating. That's not going to be something we'll need
8 to do".

9
10 So who did you have those discussions with?---Oh, they
11 would have been discussions with, um, ah - would have been
12 discussions with my chief of staff, um, and possibly only
13 my chief of staff. Possibly.

14
15 Well, presumably as at 18 September when she drafted this
16 she thought it was still a - a matter that needed to be put
17 in there because there was that obligation?---Oh, no.
18 Absolutely. And keeping in mind that she was drafting this
19 not just on my instructions but on a - a previous level of
20 knowledge about this OECD project. I mean, she had been
21 involved in the negotiations for the OECD project going
22 back well over 12 months. She was the one who'd been
23 meeting with the OECD and the OECD staff.

24
25 Well, she has put that obligation into her version of the
26 memo and you have removed it from yours - - -?---Yes.

27
28 - - - a month later?---That's - that's - - -

29
30 Did you have the discussions with her in that month since
31 she drafted the memo?---We were having ongoing - I can't -
32 I don't have a specific recollection of that. She had a
33 raft of discussions obviously - that's just factual - um,
34 with the OECD. They're all documented. Um - - -

35
36 So if someone had told the OECD that this was not going to
37 happen?---I don't know if that conversation had occurred
38 with the OECD at that stage. Um, it would have been a
39 conversation we would have definitely had, um, with them,
40 um, at - at an appropriate time. But this was - - -

41
42 So you might not have - - -?--- - - - very - - -

43
44 - - - had a - - -?---This was very much end of contract as
45 well, of course, remember. Translation and those services,
46 printing. These - these - these things might have - might
47 not have crystallised for two years.

48
49 The next dot point - Ms Poole's memo. "A Case Study on an
50 Ombudsman Institution's Role in Protecting Your Rights in

1 the Digital Age". You've changed that to add in "Western
2 Australian Ombudsman's Role in Protecting Your Rights in
3 the Digital Age"?---Yes. I didn't think there was a
4 specific enough emphasis on, ah, the one or two particular
5 things that I wanted to get, um, from the project into - it
6 wasn't just Western Australia. It was also going to be
7 other Australian Ombudsmen and, um - and our Asia-Pacific
8 partners. I have Thailand in mind and one or two others.
9 But I felt there needed to be something more specific about
10 that in these actual details.

11

12 Is that because you were trying to procure WA - you're
13 trying to get a - WA funds to pay the invoice, so you
14 wanted there to be a more - more of a nexus between WA and
15 the OECD - - -?---No.

16

17 - - - project?---No, not at all. Um, ah, not in the
18 slightest. I was, ah, from the very first day we started
19 discussing this, um, ah, having it as emphasis on, ah, ah,
20 ah, Ombudsman of Western Australia. All the conversations
21 I had with everyone who I spoke to was about the fact that
22 this was a project being done with a Western Australian in
23 so far as Mathias Cormann was a Western Australian, um,
24 that would be of benefit of Western Australia and its near
25 trading partners. That was the - that was the narrative of
26 the conversation I had with everyone.

27

28 But your - - -?---I just didn't think it was sufficiently
29 captured in here.

30

31 Well, in that case, you didn't - wouldn't have thought it
32 was sufficiently captured in the agreement that you
33 - - - signed, Mr Field?---I was - I was - I completely
34 understand why you're placing the emphasis you're placing
35 on the contract. I was never as concerned about what those
36 details were in that contract. I was always much more of
37 the view that it would, ah, develop iteratively along a
38 vision that we had, and if there were any problems at any
39 stage, I'd intended to call Mathias Cormann and tell him
40 what the problem was. I wasn't concerned about sort of
41 officer level details in the contract that had been put
42 together.

43

44 Well, it wasn't officer level, you had signed the contract
45 that said a certain thing that you're now trying to get the
46 invoice paid, and you're asserting to your CFO and to
47 Ms Marsh that the output is something different to what the
48 contract said it was?---The contract, in my view, was
49 absolutely sufficient to sign.

50

1 Well, why haven't you put what was in the contract into
2 this memorandum, Mr Field?---Well, first of all, the idea
3 that a contract would cover every single possible detail of
4 what might develop over a two-year project I don't think is
5 realistic. Second of all, I absolutely under no
6 circumstances ever thought that contract was of disbenefit
7 to this state in terms of not allowing us to do the things
8 that we wanted to do. It was a contract, in my view, within
9 its broad substance, absolutely achieved what it needed to
10 achieve to move this project forward. I was not concerned
11 in the way you - I can understand exactly the point you are
12 making, it was just not a concern in my mind at the time.

13
14 **THE COMMISSIONER:** Mr Field, before you became an
15 Ombudsman, I understand you were a commercial lawyer?
16 ---You're being exceptionally kind, but I did work in a law
17 firm for two years, correct.

18
19 With contracts?---Ah, correct.

20
21 So, a contract contains the four corners of the agreement,
22 would you agree with that?---Ah, correct.

23
24 So, where do all these other things come from?---Well, the
25 other thing I was taught in a commercial law firm - and all
26 my responsibility, Commissioner McKechnie, was to the
27 extent to which I didn't learn from my mentors
28 appropriately - was, ah, this is about relationships and
29 commerciality, and I was utterly convinced - at not one
30 moment was I not convinced that after being 17 years as
31 Ombudsman, never having something go awry, that I couldn't
32 call Mathias Cormann and fix anything that came up. I
33 didn't think anything was going to need to be fixed, but
34 certainly the thing I took out of being a commercial lawyer
35 was that it was about commerciality and relationships, and
36 that's what I was taking out of it.

37
38 Fair enough.

39
40 **NELSON, MS:** Well, to your own officers in the OWA, who
41 are going to be responsible for organising the payment of
42 the invoice, you were misrepresenting what the actual
43 contract was about, Mr Field?---I just - I've never
44 misrepresented something in my life, let alone contracts,
45 let alone to my own employees.

46 Were you trying to convey to them that it had more of a
47 Western Australian flavour than it actually did?
48 ---Absolutely, profoundly not. And I - I intended it to
49 have a Western Australian flavour - not just a Western
50 Australian flavour, but to be fundamental. The gravamen

1 was that it was a Western Australian concept from day one,
2 I just totally reject that concept, it just wasn't what I
3 was trying to do.

4
5 Well, if we could perhaps finish this document. So the
6 bottom of page 5 of 0199^ refers to a case study on an
7 Ombudsman's Insituttions role in protecting new rights in
8 the digital age. And you have added in the Western
9 Australia Ombudsman's role which we were just discussing.
10 Then over the page on page 6, but at the bottom of page 5
11 still of 0114^, which is your document - so Ms Poole at the
12 top of page 6 had put in the policy dialogue event to
13 disseminate the results of the survey and the updated
14 report, organised by the donor in the context of its annual
15 meeting. And you have removed from your version, 'will be
16 organised by the donor in the context of its annual
17 meeting', haven't you? You've just said the policy
18 dialogue event to disseminate the results of the survey and
19 the updated report?---Yes, I will - now, I'm a little bit
20 lost, sorry counsel.

21
22 So at the top of page 6 of Ms Poole's version?---Yes, ah,
23 yes.

24
25 She has copied from the actual annexure to the agreement
26 the output which states:

27
28 A policy dialogue event to disseminate the results of
29 the survey and the updated report will be organised
30 by the donor in the context of its annual meeting.

31
32 You have removed the phrase 'by the donor in the context of
33 its annual meeting'. At the bottom of your page 5?---Yes,
34 I actually have a specific recollection around discussing
35 that with staff at the time and saying, 'I simply don't
36 want to commit to the costings of, ah, doing that, because
37 a raft of the stakeholders won't necessarily be there, and
38 that may not be particularly with the capacity to launch
39 something online, may not - and indeed, that's exactly why
40 I put the - I haven't read that, I'm just remembering now,
41 why I put that in there about organised online. That is a
42 conversation that I had at the time.

43
44 At the time of drafting this actual memorandum, 0114^?
45 ---Yes, but - leaving - leaving aside I spent 17 years
46 working myself into the grave to represent the Parliament
47 and the citizens of this state, and have never done
48 anything such as you're accusing me of doing, um, I can
49 also say this. It is absolutely not the case that there
50 were recent inventions in this. What there were is

1 iterative development. I would see something and then I
2 would say, 'Well that's not the way we want to do it,
3 that's not going to be cost effective, that's not going to
4 be the most appropriate,' I'd have that conversation, and
5 then I'd say, 'It'll be much more efficient and effective
6 to do it online,' that's exactly what that says. And in
7 fact, that's the conversation I remember before I even
8 refreshed my memory by reading this.

9
10 And then again, at the top of page 6 in your document,
11 you've added in Western Australian Ombudsman?---Correct.

12
13 Instead of what was in Ms Poole's, which was OI's - so
14 Ombudsman's Institution's role. Have you done that to
15 create more of a nexus to WA?---It's not to create more of
16 a nexus, it's the fact of, um, I was given a, ah, a
17 document from an officer level. Now, in this case, a
18 senior officer level, officer, which I didn't think had
19 sufficiently captured the breadth and the depth of the
20 discussions that either she and I had had, or alternatively
21 had been had more generally about this project. And that's
22 the most untoward thing that happens in settling documents
23 all the time between the CEO and staff. They give you a
24 document, the Director-General, the CEO, and say that
25 you've missed this, this, this and this, that's not what we
26 were talking about, that's not what we discussed, we need
27 to capture this, and that's what's in there. It's not to
28 create something in hindsight.

29
30 Mr Field, Ms Poole had copied exactly what appeared in the
31 proposal annexed to the agreement that you had signed?
32 ---Yes.

33
34 As the outputs from you both entering into the OECD
35 project?---Yes.

36
37 Meaning the OWA and the OECD?---Yes.

38
39 You have changed them when you have settled 0114^ to put in
40 Western Australia Ombudsman in several place?---Yes, I
41 settled the document and made it more accurate to what
42 actually the project was, that's just an untoward thing to
43 do. I mean, I understand exactly why - what you're saying
44 I'm doing, but it absolutely, profoundly was never in my
45 mind to do that.

46 And underneath the heading 'Government, social, economic
47 and environmental priorities' on page 6 of both documents,
48 you have changed paragraphs 1 and 2?---Yes.

49
50 And you have in particular added in that it - under one, a

1 particular focus on engagement with Aboriginal Western
2 Australians, refugee communities and other diaspora
3 communities?---Now, yes. And - and I can say that was a
4 more recent invention, Commissioner, that was. That was
5 one where as the project was developing, I was thinking
6 about the fact that this project needed more as part of its
7 case study, more focus on Aboriginal Western Australians,
8 diaspora communities, all part of the emerging digital
9 sphere, and refugee communities. And my particular
10 thinking was that we could actually have a particular focus
11 on how vulnerable communities, as in Aboriginal Western
12 Australians, refugee communities and other diaspora
13 communities could use the digital sphere in terms of their
14 engagement with the Ombudsman's office. So, that was a
15 more recent - that was a more recent invention. It wasn't
16 to try to make this sound like it was for Western
17 Australia, that was more specificity about what the case
18 study was going to be.

19
20 And had you communicated that to the OECD?---No, I don't
21 think we had communicated that to the - I did - well, the
22 reason I didn't communicate it as I didn't - - -

23
24 **THE COMMISSIONER:** Have you now?---No. No. Sorry, no.

25
26 **NELSON, MS:** Had you communicated that to Ms Poole as at
27 20 October?---Well, we would have had a conversation about
28 that aspect of the project, that's completely correct.

29
30 When would you have had that conversation?---It would have
31 been on or about the time that we were doing this piece of
32 work, is my guess.

33
34 Well, you were in Bahrain at the time and Ms Poole was in
35 Perth?---Well, I think you can be rest assured that I was
36 working full-time when I was in Bahrain, both in Bahrain
37 and for work as well, as evidence that all these pieces of
38 paper show.

39
40 But she had sent you her version of the memo only about 40
41 minutes prior to you settling the version that we're
42 looking at now, and her version of the memo did not include
43 Aboriginal Western Australians, refugee communities and
44 other diaspora communities, did it?---No.

45
46 So, I'd suggest to you that you had not had that
47 conversation with Ms Poole as at 2.03 pm on 20 October?---I
48 don't want to suggest that's - that's unrealistic. So,
49 you're right, I'm in Bahrain, I am working for the Office
50 of the Ombudsman while I'm there on annual leave, and, um,

1 I, ah, was looking at this and I would give, ah, Ms Poole
2 and other staff in my organisation instructions. I would
3 get a document back, and as I'm going through and working
4 on it and settling it, I would have thought, 'Oh, that's
5 something I want to add as well.' There's just nothing to
6 that.

7

8 Right, it's something that you came up with while you were
9 settling this document?---Well, I come up with all sorts of
10 ideas while I'm settling documents, some good, some bad.

11

12 Do you agree with that?---I don't recollect whether it was
13 specifically when I was settling this, whether I left it
14 out of the first particular piece of instruction. What I
15 can say is this, it wasn't in my mind some weeks before
16 that. It was definitely a developing idea that I had about
17 how this was going to be of greater benefit to vulnerable
18 communities, I absolutely agree with that.

19

20 In response to the Commissioner's question a few questions
21 ago, you said as the project was developing. What had
22 happened in terms of the project commencing at this stage,
23 as at 20 October?---Well, we were still going through this
24 process.

25

26 So, to your knowledge the OECD hadn't started work on
27 anything to do with the project as at 20 October?---No,
28 though it came to my attention at a later stage they had in
29 fact started work on it, but that was not my understanding
30 of what they were doing at the time.

31

32 And I note the time, Commissioner, I'll just quickly finish
33 this document if I may.

34

35 **THE COMMISSIONER:** I was thinking if we could finish this
36 document that would be good.

37

38 **NELSON, MS:** Now, under the heading 'cost', you had added
39 in 'And OECD' to the Western Australian Ombudsman and OECD
40 project, in the first paragraph on two occasions?---Yes.

41

42 And Ms Poole referenced an attachment, attachment 2, which
43 you have removed?---Yes.

44

45 And then on page 7, you've added in a timeframe?---Yes.
46 Where did you get that from?---I think that was from the
47 OECD contract.

48

49 And then over the last page, page 8, under the heading
50 'project governance', and you've added into the statement

1 that the project panel will supervise the Western
2 Australian Ombudsman project?---Correct.

3
4 You've added in:

5
6 With a third member, the CFO, to join the panel.

7
8 ?---Mm-hm.

9
10 And was that just to be for the purpose of managing the
11 contract?---Exactly, so that was the project panel that
12 would supervise the contract upon commencement to delivery,
13 and at that stage, um, I'd met the CFO, outstanding
14 individual, and I thought it was very, very sensible to
15 bring her onboard, both as a learning opportunity, but also
16 as a third party not involved in the initial negotiations
17 to be part of that project panel.

18
19 And you've added in in the second line 'and OECD' to the
20 name of the project?---Yes.

21
22 And you've just changed slightly the two dot points about
23 the project being delivered on time and on budget?
24 ---Correct.

25
26 That completes the documents, thank you Commissioner.

27
28 **THE COMMISSIONER:** Very well. Mr Porter, is there one day
29 where you cannot make it before 11, or am I dreaming?

30
31 **PORTER, MR:** No Commissioner. So, I'd noted that change
32 in time which was set down for Wednesday, but I'm not - I
33 had nothing to do with how - - -

34
35 **THE COMMISSIONER:** Right, I'm not quite sure why it was
36 now. We'll tell you tomorrow. And we'll adjourn until
37 tomorrow morning, 9.45.

38
39 (THE WITNESS WITHDREW)

40
41 AT 4.18 PM THE MATTER WAS ADJOURNED UNTIL
42 TUESDAY, 19 MARCH 2024
43

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

The transcript of CHRISTOPHER FIELD heard on MONDAY, 18 MARCH 2024:

was made in good faith and, subject to any qualification referred to below, is correct, accurate and complete transcription of the contents of the recording;

was produced from recordings that were suitable for making an accurate and complete transcript except where otherwise stated in the body of the transcript. Any "indistinct" or "inaudible" or other notations indicating difficulty with the transcription contained within the transcript refers to those parts of the proceedings that could not be accurately transcribed due to speech clarity, recording quality or other factors impacting word intelligibility.

Certified on this 18th day of March 2024 by: Chris Millward,
Joelle Burgess & Hannah Wood

Full Name:

CHRISTOPHER JOHN MILLWARD

JOELLE BURGESS

HANNAH WOOD

Occupation: Transcribers and officers of the Commission under the Corruption, Crime and Misconduct Act 2003 ss 182, 3 who has taken an oath before the Commissioner.

Signature:

CHRISTOPHER JOHN MILLWARD

JOELLE BURGESS

HANNAH WOOD

Epiq Australia
Level 1, Kings New Office Tower
533 Hay Street
Perth WA 6000