

Tabbed by Mr Travis O'Brien,
Senior Industrial Officer, CFMEU,
at Finance and Administration Committee
hearing, 5 March 2014.



FAIR WORK
COMMISSION

TRANSCRIPT OF PROCEEDINGS

Fair Work Act 2009 1048450-2

COMMISSIONER BOOTH

C2013/5072

s.418 - Application for an order that industrial action by employees or employers stop etc.

Lend Lease Project Management & Construction (Australia) Pty Ltd
and
Construction, Forestry, Mining and Energy Union; Communications, Electrical,
Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of
Australia
(C2013/5072)
Lend Lease Project Management & Construction/CFMEU Joint Development
Agreement Mark 8 2012-16

(ODN AG2012/10902)
[AE896830 Print PR529050]]

Brisbane

4.15PM, WEDNESDAY, 10 JULY 2013

PN1

THE COMMISSIONER: Good afternoon, parties. If I could have appearances, please?

PN2

MR D CAMERON: Yes, Commissioner. Cameron, initial D, for Queensland Masters Builders Association, appearing today on behalf of Lend Lease. Commissioner, it appears I have a cast of thousands with me. At the Bar table, I have MARTIN BELFORD, from Queensland Master Builders. I have WAYNE SMITH. Mr Smith is from (indistinct) Consultancy. He works for the plumbing industry. The Commissioner may be familiar with. I have MICK TULLY from Lend Lease. And in the room I do have JASON O'DWYER from Queensland Electrical Contractors something, Commissioner.

PN3

Also in the room I do have a number of witnesses who have provided statements to the Commission. They include: David Burns, Annelise Cannon, and about five others, Commissioner.

PN4

THE COMMISSIONER: All right.

PN5

MR CAMERON: So all the statements that have been provided, I do have witnesses in the room - - -

PN6

THE COMMISSIONER: Yes, yes.

PN7

MR CAMERON: So they need to be excused at some point.

PN8

THE COMMISSIONER: Yes, it may well be - it may well be, Mr Cameron, we'll deal with that in a moment. On behalf of the union - from the union's side, Mr O'Brien?

PN9

MR T O'BRIEN: Commissioner, my name is O'Brien, initial T. I appear on behalf of the Construction, Forestry, Mining and Energy Union. And with me is MS WRIGHT, initial K.

PN10

THE COMMISSIONER: Thank you.

PN11

MS M DELAWARE: If the Commission pleases, my name is Melissa Delaware, I appear for the Communications, Electrical, Electronic, Energy, Information, Postage, Plumbing and Allied Services Union of Australia.

PN12

THE COMMISSIONER: Thank you. And on the phone, Ms Inglis:

PN13

MS K INGLIS: Thank you, Commissioner. Kerry Inglis, from the Communications, Electrical, Electronic, Energy, Information, Postage, Plumbing and Allied Services Union from the Electrical Division. And also with me is MR CHRIS LYNCH, who is one of our organisers.

PN14

THE COMMISSIONER: Right. Thank you, Ms Inglis. Mr Cameron, look I may just inquire from Mr O'Brien about this requirements around cross-examination of the witnesses and just making sure his got all the witness statements as well. The

PN15

MR O'BRIEN: No, Commissioner, I don't. I've been served with a copy of statements from a Ms Cannon and also from a Mr Burns, but they are the only statements that I have been provided with today. Could I just foreshadow as well, Commissioner, that we would be asking that anybody who is proposing to give evidence tonight be removed from the room until such time as they've completed their evidence.

PN16

THE COMMISSIONER: All right. It's not an unreasonable request and certainly one that's appropriate. But more importantly I think we need to ensure that the respondents in this matter have copies of the statements, Mr Cameron?

PN17

MR CAMERON: Yes, Commissioner. As the Commissioner will be aware, they have been served on the office this afternoon - - -

PN18

THE COMMISSIONER: Yes.

PN19

MR CAMERON: - - - just shortly before the hearing. Those statement (indistinct) the other statement - there were three statements that I am passing across, were to the ETU and Plumbers Unions. And, of course, Commissioner, we could encourage the Commission to excuse the witnesses as I indicated up front.

PN20

THE COMMISSIONER: Yes, of course, Mr Cameron.

PN21

MR O'BRIEN: Can I just for the record, Commissioner, that the email that I received from the representative from the applicant indicated that the two statements I had were the entirety of the material that they intended on rely on tonight and I proceeded on that basis. I would ask for a short adjournment to allow me to consider the statements of Mr Veivers, Mr O'Rourke, and Mr Brockwell, I think it's a matter for the respondent on whether they affect us or not.

PN22

THE COMMISSIONER: Can I, firstly, just check with you, firstly, Ms Delaware, there seems to - by my way of thinking to be - and I'll just check with Mr Cameron now - six statements that's been lodged in this matter and I'll go through those. Is that correct: Mr Burns, Ms Cannon, Mr Brockwell, Mr Mellor, Mr O'Rourke, and Mr Veivers?

PN23

MR CAMERON: That's correct, Commissioner.

PN24

THE COMMISSIONER: Thank you. I just want to make sure everybody has got those statements?

PN25

MS DELAWARE: Commissioner, I do have those statements, but I only have them because they were sent to me, I certainly have had the opportunity of reading them.

PN26

THE COMMISSIONER: No. And, finally, Ms Inglis?

PN27

MS INGLIS: Commissioner, we have three statements. We have one from Mr Veivers, one from Mr Burns, and one from Ms Cannon.

PN28

THE COMMISSIONER: So you're missing Mr Brockwell, Mr Mellor, and Mr O'Rourke?

PN29

MS INGLIS: That is correct.

PN30

THE COMMISSIONER: All right. I'll ask my associate, Angie, to electronically send those to you. So have you got everything, Mr O'Brien? It sounds like you might be missing one?

PN31

MR O'BRIEN: It appears I do now.

PN32

THE COMMISSIONER: You do now?

PN33

MR O'BRIEN: Commissioner, yes.

PN34

THE COMMISSIONER: Right. Okay. Look, certainly, I'll grant an adjournment in terms of reading that material. I propose to adjourn the matter for 10 minutes. This went on last night as well - I'm sorry, they're renovating downstairs.

PN35

MR O'BRIEN: If there's noisy construction work, Commissioner, I'll see what I can do.

PN36

THE COMMISSIONER: 10 minutes.

PN37

MR O'BRIEN: I might ask for 20 minutes, Commissioner. There's four statements here and I'll need to take some instructions.

PN38

MR CAMERON: They are brief statements - - -

PN39

THE COMMISSIONER: They are brief statements. I'll give you 15 minutes, Mr O'Brien.

PN40

MR O'BRIEN: Commissioner, there is one short administrative matter that I might raise now in case it's required. It will give the applicant an opportunity to resolve it. I haven't been served with a copy of a notice of representative commencing to act, as yet. I trust that one has been filed.

PN41

THE COMMISSIONER: Look. Mr Cameron?

PN42

MR CAMERON: Commissioner, I understand one has not been filed, but I have the applicant with me and I'm sure he can attend he can attest that I'm here to represent him, and I seek the assistance of the Commission in waiving that requirement.

PN43

THE COMMISSIONER: I waive that requirement, Mr O'Brien. I understand the applicant is with you. I'm also aware, Mr O'Brien - I'm also aware that this is a very - matter that's been called on very urgently and in those circumstances I think it's appropriate that leave be given to - for representation.

PN44

MR O'BRIEN: Well, there's two things that I would say, Commissioner. I do have some submissions regarding the granting of leave of representation, if they're not required - - -

PN45

THE COMMISSIONER: I will hear you, I will hear you, Mr O'Brien then.

PN46

MR O'BRIEN: The second point that I would make, Commissioner, before I move onto those submissions is that what you have before you is an application that has been signed by a party that is not yet known to this matter. So under the terms of the Act we do not have an application before us. Again, I raise that prior to the adjournment so that the applicant has an opportunity to remedy that.

PN47

Now, regarding the granting of leave for the applicant to be represented: I have two cases to hand up, Commissioner. The first is a decision of Justice Flick from the Federal Court, *Worrell v Walton*. I do note that the matter has been misnamed, it is now known as *Worrell v Walton*.

PN48

If I can take you to - initially the paragraph 22 of that decision. His Honour goes through the requirements before the granting of permission - it provides that where there was an absence of any complexity for the purposes of section 596(2)(a) nor any self evident reason why the respondent in that matter could fairly represent itself, and nor any apparent considerations regarding the fairness between the parties that leave should not be granted.

PN49

Now, more importantly, to my mind, Commissioner, at paragraphs 24 and 25, his Honour goes on to what I would say is a statement of the intent of the legislators regarding section 596 of the Act, and also provide some commentary around what I would say is a misapplication of those provisions and the intent of the legislators.

PN50

I might give you a moment to read those paragraphs for yourself, Commissioner, rather than attempting to take you to them.

PN51

THE COMMISSIONER: I appreciate your thoughtfulness, Mr O'Brien, but I am familiar with this case. So please continue.

PN52

MR O'BRIEN: In that case, I'll move on. The second decision is that of *Asaparte v Serco Sedexo, Defence Services*. Commissioner, you'll see at paragraph 9, Commissioner Cambridge notes that;

PN53

The provisions in the Fair Work Act provide for a more stringent test before the granting of permission should properly be made.

PN54

And further at paragraph 14, the Commissioner provides that: although there is a significant volume of material that the matters before him were - are questions which routinely require determination and as such that does not satisfy the test in 596.

PN55

MR CAMERON: Commissioner, if I could interrupt for a moment? Master Builders has not received a dollar for this service and I'm not a paid agent or a paid lawyer.

PN56

THE COMMISSIONER: I was going to raise that with Mr - - -

PN57

MR CAMERON: Not a dollar.

PN58

THE COMMISSIONER: The question of as of right with - Mr Cameron is a representative of Master Builders, is that correct, Mr Cameron?

PN59

MR CAMERON: Mr Cameron is a legally qualified industrial advocate employed full time by Masters Builders, has been employed by Master Builders for more than nine and a half years. He's admitted to the Queensland Supreme Court and the High Court of Australia. He has a current practising certificate, which is restricted to in-house work by Master Builders and Master Builders, and is mostly used in relation to its insurance business.

PN60

I do not have a practising certificate for my industrial work, nor am I required to have one, and this is legislation represents that an industrial organisation, one which I must say 130 year standing in this Commission, has a right to be heard and represent its members, whether its employee is a paid agent - not paid agent, an industrial lawyer or not. If it pleases the Commission.

PN61

THE COMMISSIONER: Thank you.

PN62

MR O'BRIEN: Commissioner, on the submissions of Mr Cameron, he is a lawyer, he holds a practising certificate, and thus leave is required under section 596 of the Act, and we must consider whether or not the circumstances of this case meet the requirements as set out.

PN63

MR CAMERON: Commissioner, leave is not required under section 596 - - -

PN64

THE COMMISSIONER: Can we just let Mr O'Brien finish, please, and then I'll hear from Mr Cameron.

PN65

MR O'BRIEN: Thank you, Commissioner. Leave would not be required if Mr Cameron was an officer or employee of the applicant. But he's not, he's an employee of Master Builders and as such he is a lawyer and a grant of leave is required under section 596 of the Act. In those circumstances we must turn our mind to the requirements in 596(2). Leave can only be granted if you are satisfied that it would enable the matter to be dealt with more efficiently, taking into account the complexity of the matter.

PN66

Well, I would submit, you can't be satisfied of that. There are no legal complexities before us. I daresay that an applicant with the resources of Lend Lease, one of the largest construction companies in the country, is more than capable of dealing with a very legally simple matter such as an application under section 418. I know from personal experience that this applicant has some familiarity with these particular provisions.

PN67

We come to 596(2)(b).

PN68

It would be unfair not to allow the person to be person to be represented because the person is unable to represent himself, herself, or itself effectively.

PN69

Again, we are talking about an extremely well resourced applicant. We are talking about industrial matters that are very well traversed, there is no legal nuance to these provisions, and they are well known to this applicant.

PN70

The final provision being:

PN71

It would be unfair not to allow the person to be represented, taking into account, fairness between the person and other persons in the same manner.

PN72

Again, we are not talking about a small organisation. We are talking about one of the largest constructions corporations in the country. To suggest that they are not able to provide a dedicated human resources professional or, indeed, in-house counsel who would not grant of permission. To suggest that they're not - they cannot provide a person is, clearly, wrong.

PN73

We are talking about an exceedingly well resourced company that maintains a large dedicated human resources staff, and we are talking about a matter that is legally simple. On the material that I've been provided with, there's not a great deal of material to go through - this is not a matter that requires a grant of leave. I would submit that the

obligation - that the onus sit with the applicant to demonstrate that one of the three requirements has been met.

PN74

And further, I would submit, that it would be exceedingly difficult for them to do so because none of those requirements are met in this matter, and the grant of leave should not be made.

PN75

THE COMMISSIONER: Just before you sit down, Mr O'Brien, would you like to make some submissions in relation to 596(4)?

PN76

MR O'BRIEN: Yes, I would. Mr Cameron is not an employee of the applicant nor is he an officer of the applicant. Or (b) - all I can say to that, Commissioner, is that as yet we don't have a notice of representative commencing to act.

PN77

THE COMMISSIONER: They are your submissions, Mr O'Brien?

PN78

MR O'BRIEN: They are. Mr Cameron?

PN79

MR CAMERON: Commissioner, (b) - 596(4)(b)(a) clearly indicates that you can be an employee of an industrial organisation and that permission is not required, but we have enjoyed the circus.

PN80

THE COMMISSIONER: Mr Cameron, it's my hearing and will be making a decision accordingly, but I would appreciate that comments like that are not repeated thank you.

PN81

MR CAMERON: Yes, Commissioner.

PN82

MR O'BRIEN: Commissioner, I would ask that if Mr Cameron wants to make those comments they be recorded in the transcript.

PN83

THE COMMISSIONER: You've heard me on that matter. Thank you, I will make my decision in the adjournment and - in relation to that matter. 15 minutes, and the matter will be back on.

PN84

MR O'BRIEN: Thank you.

<SHORT ADJOURNMENT [4.32PM]

<RESUMED [4.53PM]

PN85

THE COMMISSIONER: I turn first to the question of representation. Clause 596 of the Fair Work Act provides a person may be represented by a lawyer or paid agent where the Fair Work Commission grants permission, however, section 596(4) provides that a person is taken not to be represented by a lawyer or a paid agent if that person is a bargaining representative of an employee or an officer of an industrial organisation.

PN86

Mr Cameron has indicated he is an employee of the Masters Builders Association and a lawyer. As an employee of the industrial organisation, who is legally qualified, he is able to represent a member of his organisation without having permission from the Fair Work Commission.

PN87

I would add, that as I foreshadowed earlier in these proceedings, should leave have been required to be granted, particularly, given the urgency of these proceedings, it would seem to me that section 596(2)(c) may well apply and that fairness between the parties with - as between the advocates - with, at least, Mr O'Brien being legally qualified, would point towards the granting of leave in any event.

PN88

However, that is not necessary to grant leave for the reasons I have just given. Thank you.

PN89

UNIDENTIFIED SPEAKER: (indistinct) I'd like (indistinct) if I may (indistinct) Mr Carlisle, initial K to replace me (indistinct)

PN90

THE COMMISSIONER: Thank you. Can I suggest, Mr Cameron, that we make a start? Firstly, have I got - as we indicated before - witnesses are no longer in the hearing room.

PN91

MR CAMERON: No. We'll ask the witnesses to excuse themselves, themselves.

PN92

Commissioner, before you this afternoon is an application to stop industrial action. The application is in relation to the remedies and relates to an oral health project. The oral health project is a significant project for Queensland Health and the applicant alleges that approximately 185 workers - some of those being members of each of the unions being represented here today, absented themselves from site.

PN93

To assist the Commission, we have provided six affidavits to that behaviour, and those six affidavit support the requirements of the Fair Work Act that the employees left site and that there was no imminent risk to their workplace health and safety, and that the company had provided a safe site.

PN94

Commissioner, I would like to call - with your permission, I'd like to call my first witness. My first witness is from the company, Lend Lease, and is Annelise Cannon, if it pleases the Commission.

PN95

THE COMMISSIONER: Thank you.

PN96

THE ASSOCIATE: Please state your full name and address?

PN97

MS CANNON: My name is Annelise Cannon, (address supplied)

<ANNELISE CANNON, SWORN [4.57PM]

<EXAMINATION-IN-CHIEF BY MR CAMERON [4.58PM]

PN98

MR CAMERON: Commissioner, the witness has provided a statement to the Commission. If I hand up a copy of that statement to the witness and to the Commission and have it marked exhibit 1, if it please the Commission.

PN99

Witness, would you mind reviewing that statement and just take a moment to view the statement and view the attachment, and confirm that that is your statement, please?---I confirm this is my statement.

PN100

Would you like to make any additions or changes to that statement?---No.

PN101

Commissioner, no further questions for this witness.

PN102

THE COMMISSIONER: Thank you. I'd like - that should be marked as A1.

EXHIBIT #A1 WITNESS STATEMENT OF ANNELISE CANNON

<CROSS-EXAMINATION BY MR O'BRIEN [4.59PM]

PN103

MR O'BRIEN: Ms Cannon, the statement that's just been tendered up under your hand: are these all your hands?---Yes, they are.

PN104

Can you tell me how you came to make this statement?---I take notes daily if there's a meeting on site regarding industrial relations, and these are basically a written up copy of those, which I've typed, and that's been put into this format today.

PN105

So you typed this statement yourself?---Yes.

PN106

Thank you. Now, there was an incident last week involving a spillage of raw sewage on this site, wasn't there?---There was some toilets that were blocked up and those overflowed so there was some water and some urine, I think, that was on the floor, which was about five square metres on level 3.

**** ANNALISE CANNON XXN MR O'BRIEN

PN107

So the spill was just water and urine, is that correct?---That's my understanding. I didn't actually witness it myself.

PN108

I see. Now, can you tell the company Compliance By Design is?---They are a company - I didn't organise them myself, my site manager did, but they are a company that works for (indistinct) that we got to attend site yesterday - sorry, on Monday afternoon, to give a certificate which is attached to you, on the area.

PN109

Do you have a copy of that report with you?---Yes, I do.

PN110

Can I take you to page 2 of that report, please? It's at part 1, Clean Up Information. Who is the Darren Hughes that's referred to there?---Darren Hughes is an employee of Lend Lease.

PN111

And where it talks about the magnitude of the spill?---Mm.

PN112

What do you say about that, was it a large spill, a medium sized spill?---Are you referring to a particular paragraph?

PN113

It's the first line of part 1. It reads, "Mr Darren Hughes informed me that once the spill had occurred and the magnitude of the spill was realised"?---I can't speak for what Darren said, because I didn't actually - I wasn't present when this conversation was had. I, myself, had inspected the area though and I've actually - the area is probably about five to 10 square metres on the site. So that's my description of the magnitude of the area on level 3.

PN114

I see. Now, do you know who actually cleaned up the spill?---Darren Hughes cleaned it up, that's the information that I've provided from my site manager.

PN115

Do you know if Mr Hughes has any relevant competency or experience in cleaning up hazardous spills?---I can't give you that information off - my knowledge at the moment.

**** ANNALISE CANNON XXN MR O'BRIEN

PN116

What is Mr Hughes's role for Lend Lease?---Mr Hughes is a construction worker for Lend Lease - or direct labour.

PN117

I see. So he's a labourer. Do you know of any qualifications he holds?---I would have to look it up. I don't have it on me - several qualifications: (indistinct) driving, traffic controlling, I'd have to look at his certificates.

PN118

Do you know what technique he used to clean up the spill?---I only have the information I've provided here, and the work from my site manager, so I'd suggest that maybe Dave Burgess is the better person to provide that information.

PN119

Okay. Do you have any health and safety representatives on this site?---Yes, we do.

PN120

And who are they?---We have an OH&S coordinator on site. His name is Michael Finch, and obviously we have Dave Burgess, our site manager, who has overall - takes the responsibility for site - and there's members on the safety committee on the site as well.

PN121

And the members of the safety committee, are they elected, health and safety representatives?---Yes, they are.

PN122

Have they received the requisite training as health and safety representatives?---If they have requested the training, then they have been provided it as required. So the majority

of them have requested the training and they've been provided that training within the three months.

PN123

So can I take you to - just bear with me for a moment, Commissioner. I'm going to ask you some questions about Lend Lease's obligations under the Work Health and Safety Act in regards to health and safety representatives. Is that something that falls within your capacity in your employment with Lend Lease?---Yes.

**** ANNALISE CANNON XXN MR O'BRIEN

PN124

What's your understanding of Lend Lease's obligation to provide training to an elected health and safety representative?---We've what respect?

PN125

What's your understanding of your obligation of Lend Lease to provide training?
---To subcontractors or to Lend Lease's representatives?

PN126

Well, to Lend Lease's representatives initially. What's your understanding of your obligations?---If we have an elective member on the safety committee and they request to be trained, then they would be provided that training.

PN127

Okay. Now, are you aware whether or not that training has occurred with health and safety representatives employed by Lend Lease?---They would be trained, yes.

PN128

Okay. What's your understanding of Lend Lease's obligations in regards to health and safety representatives who are employed by sub contractors?---I (indistinct) if they required the actual training, like I said before, within three months they need to be provided that - - -

PN129

I see. Is it within your knowledge as to whether or not any of the health and safety reps employed by contractors have been trained?---Yes. Some of them have been trained.

PN130

I see. And these people are on the safety committee?---Yes.

PN131

So these people were on the safety committee that has met late last week and this week as referred to in your statement?---Yes.

PN132

I see. No further questions, Commissioner.

**** ANNALISE CANNON XXN MR O'BRIEN
PN133

THE COMMISSIONER: Thank you. Mr Cameron?

PN134

MR CAMERON: In reply, Commissioner.

<RE-EXAMINATION BY MR CAMERON [5.06PM]

PN135

MR CAMERON: You're clarifying that everyone who requested training was provided training?---Correct.

PN136

Were the workers instructed to go back to work?---The workers - - -

PN137

MR O'BRIEN: Commissioner, that's not a matter arising out under cross.

PN138

MR CAMERON: Yes.

PN139

MR O'BRIEN: This is re-examination and my friend should limit himself to matters arising under cross-examination.

PN140

MR CAMERON: Yes. Thank you. I withdraw the comment.

PN141

No further questions.

PN142

THE COMMISSIONER: Thank you. Thanks, Ms Cannon, you can stay in the room if you so choose.

<THE WITNESS WITHDREW [5.07PM]

PN143

MR CAMERON: Sorry, I did have one question - can I recall the witness before we continue - - -

PN144

THE COMMISSIONER: Ms Cannon, Mr Cameron does have a further question for you. So if you can - you're still under oath - and - - -

<ANNELISE CANNON, RECALLED [5.07PM]

PN145

MS INGLIS: Commissioner, it's Kerry Inglis. I would also like to ask a couple of questions.

PN146

THE COMMISSIONER: Sorry, Ms Inglis.

PN147

MS INGLIS: Thank you.

<RE-EXAMINATION BY MR CAMERON [5.07PM]

PN148

MR CAMERON: Witness, could you review the statement once more, please? And could you please articulate for the Commission the process that you went through to develop that statement today with Master Builders and its staff?---So, essentially, I've got notes that I take on all meetings, and I took a note from the meeting we had yesterday on site with members of the union, namely, the CFMEU was on site yesterday, Tony Kong, and then today Robbie Gould, who I know as well, but I have notes from that meeting which I typed up yesterday, and I sent to our operations manager, Mick Tully. This morning we had a similar meeting. There was some additional union representatives from the BLF, Kevin Griffin, and also a member from the ETU, and I have minimal notes on that. I drafted up a statement this morning with the Masters Builders on the events from today, and that is what's formed this statement, which I've signed off.

PN149

Thank you. And just for clarity: how many hours did you spend with Master Builders today in drafting that statement?---Probably - I think it was about one hour in total.

PN150

And you're happy with the statement?---I am happy with the statement.

PN151

No further questions.

PN152

THE COMMISSIONER: Thank you. Ms Inglis?

**** ANNALISE CANNON XXN MS INGLIS

PN153

MS INGLIS: Thank you, Commissioner.

<CROSS-EXAMINATION BY MS INGLIS [5.09PM]

PN154

MS INGLIS: Ms Cannon, just a couple of questions. In the clean up report that is appended to your statement - - - ?---Mm.

PN155

The report makes reference to a Compliance by Design representative visiting you the site and you've provided an employee for the clean up. Now, you're indicated in a previous question that employee was a construction employee, is that correct?---Darren is an employee that works directly for Lend Lease, yes.

PN156

Okay. Now, the inspection of the site was a visual inspection, wasn't it?---Look, you'd have to - let me just double check - my understanding it was a visual inspection. As I said before the area in question is in level 3, and the area was a bunted off area that wasn't opened up, probably five to six square metres of the entire site. The site goes from level 1 to level 7. So it was an isolated area which we got Compliance by Design to come in and inspect this area. So in the context of the site it was a small area that we got someone in to inspect.

PN157

And it also indicates that the area was cleaned and decontaminated. Do you know what process used to decontaminate?---Look, there was some disinfectant used - I can't tell you the exact product, I'm not aware of that but the area was disinfected by Darren, the five square metre area. But that was still - the area was still blocked off and inaccessible until the inspection was done. We didn't actually open the area up and it's still not open because, basically, we haven't had workers on site since yesterday.

PN158

Were you the person who gave the instruction to Compliance by Design to undertake the work?---No, that would be my site manager, David Burns.

**** ANNALISE CANNON XXN MS INGLIS

PN159

Now, in - if I could refer you to the second page of your statement - - - ?---Mm.

PN160

- - - at paragraph 11. You've indicated that a number of plumbers on site and continued to work?---That is correct.

PN161

It's correct, isn't it, that a number of electricians also remained on site?---I am not aware of how many electricians remained on site. My understanding is that none of them were working and that they did leave site today.

PN162

Okay. Do you know under what circumstances they left the site today?---My understanding is that they left the site because of intimidation.

PN163

Were you aware that some of them remained on site until they were sent home by their employer?---I was not aware of it.

PN164

No more questions. Thank you.

PN165

THE COMMISSIONER: Thank you. Mr Cameron, do you have any questions in re-examination?

<RE-EXAMINATION BY MR CAMERON [5.12PM]

PN166

MR CAMERON: Just clarifying, you were not there during the inspection process of the area?---That is correct.

PN167

And you are aware that people did continue to work on site through levels 1 to 4 today? ---That's correct. I went and looked at the area again myself today, which is still closed off. The guys were working in other areas.

PN168

And the area in question is on level?---Level 3.

**** ANNALISE CANNON RXN MR CAMERON

PN169

Level 3?---Level 3.

PN170

And you referred to that as five to 10 square metres?---Yes.

PN171

Approximately how many square metre is level 3?---4500.

PN172

So it is a minor percentage area of - - - ?---Correct.

PN173

Thank you.

PN174

THE COMMISSIONER: Ms Delaware?

PN175

MS DELAWARE: Thank you, Commissioner.

<CROSS-EXAMINATION BY MS DELAWARE [5.12PM]

PN176

MS DELAWARE: Just one question for you, Ms Cannon. I note that you say in your statement, that Wednesday 10 July that you observed a number of plumbers remaining on site. I just wanted to ask you, were you aware if a number of plumbers also remained on site on Tuesday?---Yes, I am aware of that.

PN177

It doesn't say in your statement, but I was just confirming, thank you?---No, it doesn't but, that is correct, yes.

PN178

THE COMMISSIONER: Thank you. Anything in re-examination?

PN179

MR CAMERON: No further questions.

PN180

THE COMMISSIONER: Thank you. That does conclude your evidence, Ms Cannon, you're welcome to stay in the room.

**** ANNALISE CANNON XXN MS DELAWARE

<THE WITNESS WITHDREW [5.13PM]

PN181

MR CAMERON: With the Commission's permission, we'd like to call the second witness, David Burns. If it please the Commission.

PN182

THE ASSOCIATE: Please state your full name and address?

PN183

MR BURNS: David John Burns (address supplied)

<DAVID JOHN BURNS, SWORN [5.14PM]

<EXAMINATION-IN-CHIEF BY MR CAMERON [5.14PM]

PN184

MR CAMERON: If it pleases the Commission, could I hand up a copy of Mr Burns's statement to Mr Burns and have it tabled exhibit 2, please? Mr Burns, could you take a moment, please, to review that statement and ensure that it is your statement and that it is correct?---Yes, it's my statement, and it is correct.

PN185

Mr Burns, do you wish to make any alterations or additions to your statement?
---No.

PN186

Mr Burns, may I ask how long did you spend today drafting that statement?
---Approximately an hour.

PN187

Did you receive some assistance from Master Builders in drafting that statement?
---Yes.

PN188

Thank you, Mr Burns.

PN189

THE COMMISSIONER: I mark that as A2.

EXHIBIT #A2 WITNESS STATEMENT OF DAVID JOHN BURNS

PN190

THE COMMISSIONER: Mr O'Brien?

<CROSS-EXAMINATION BY MR O'BRIEN [5.15PM]

PN191

MR O'BRIEN: Mr Burns, the statement that has just been tendered under your hands - these are all your own words, are they?---Yes, they are, yes.

PN192

Did you type this yourself?---No, no, I didn't.

PN193

It was typed for you by somebody else?---Yes.

**** DAVID JOHN BURNS XXN MR O'BRIEN

PN194

And who was that?---Master Builders.

PN195

Okay. Now, could I ask who is Mr Hughes that's referred to in the attachment to your statement?---Mr Hughes?

PN196

Mr Darren Hughes? It's referred to at page 2 of 4 in the report that's annexed to your statement?---Page 2, number 4.

PN197

Page 2 or 4, paragraph 1, "Mr Darren Hughes informed me that once the spill had occurred" - who is Mr Hughes?---Mr Hughes, yes, I've got it here - in the Client Information section.

PN198

Yes?---Mr Darren Hughes is one of our CWs.

PN199

Okay. What role does he perform for Lend Lease?---He does a number of roles. He does some general site cleaning, he does some traffic control and he also cleans the toilets and sheds that roll with one of our other CWs.

PN200

Okay. Do you know if he has any relevant competencies in experience in cleaning spills of this kind?---He's told me in his own words he's had experience before.

PN201

Are you aware of any training of competency he has?---I'm aware of training and competency he has, yes.

PN202

In regards to cleaning up spills of this kind?---Apart from his general inductions.

PN203

So it's your evidence that in general inductions workers are trained in how to clean to spills up - - - ?---In terms of his competency, nothing more than his verbal - what he told me.

**** DAVID JOHN BURNS XXN MR O'BRIEN

PN204

I see. Now, are you aware of what particular technique Mr Hughes used in cleaning up this spill?---Yes, I am.

PN205

What was that?---His technique was that he followed the plumbers after they'd wet-vacced the area up, and he'd used an industrial grade disinfectant which we use on the

toilet on other areas, and he cleaned it up with a mop and a bucket following the liquid being wet-vacced up off the floor.

PN206

What was the disinfectant that he used?---What was it?

PN207

Yes?---I believe it's named in the report here.

PN208

Would you take me to that, please?---It's a little bit dark, but it's on one of those pictures there. This photocopy doesn't really show it but it's a washroom cleaner, a toilet bowl.

PN209

I see. Are you - - - ?---The actual picture of the label doesn't quite come out.

PN210

No. Are you aware of the contents of that cleaner?---Yes.

PN211

What is it?---It's a toilet disinfectant.

PN212

Yes. My question is, what is in it? What are the chemicals in it?---Well, there is an attached MSDS, I couldn't rattle them off off the top of my head, but there is a MSDS sheet that I had read in relation to the product.

PN213

An MSDS sheet?---Yes.

PN214

What's that?---Material Safety Data Sheet.

**** DAVID JOHN BURNS XXN MR O'BRIEN

PN215

And what did say about this particular product?---As I just mentioned, I couldn't remember every single word, but I have read it.

PN216

Yes?---And it is a safe chemical to use and it does do the required job.

PN217

Is it a chemical that is specifically designed for cleaning up large spills of raw sewage?--
-It's specifically used for cleaning up liquid or affluent around the toilet or in the bathroom.

PN218

Is it designed for cleaning up large spills?---Large spills of water?

PN219

Raw sewage?---Water and urine, yes.

PN220

So the spill that occurred last week, you say it was only water and urine, is that right?---
That's correct.

PN221

How did the spill occur?---There was a toilet blockage down the basement and the stack of the pipes go from level 5 to level 1.

PN222

Yes?---The stack had blocked up on level 2 of the area, which is our car park area, and the liquid had backed up to level 3 and flowed out of one of the inspection openings on the screw cap and liquid had come out of that and spilled onto the floor.

PN223

I see. Was there a further spill that occurred whilst this was being fixed?---No.

PN224

Can you talk me through the process that was undertaken in fixing this problem?

---Yes. So when the - one of our foremen or the CWs were - reported that there was a toilet blockage and a spill, the foreman went to the areas on 3, 4 and 5, they cleared the people from 5 and 4, but level 3 had some liquid on the floor so they clear any from the area, they barricaded the areas off, they put signage up to show that the toilets - the use of toilets were blocked and to use the toilets, to go to another location - that's either on level 1 below, or level 4 above. They then proceeded down to the plumbers who were detecting the location of the leak.

**** DAVID JOHN BURNS XXN MR O'BRIEN

The found it on level 2. The - I believe they had to cut the junction pipe that joined the stack into the main line in the basement, and place a soft hose over that pipe into a waste bin, which was a green bin, two metre bin.

PN225

Yes?---They then had to rod from the clear out above to push the blockage down through into the bin. They did that. They cleared the blockage. They then had to rejoin the pipes and reconnect it all, and then dispose and pump any of the liquid or waste that was in the bin back into the sewage, and then remove the bin from site.

PN226

Yes?---Which they did with a forklift outside until Greenbins came and removed it from site.

PN227

So Greenbins is the company that provides your waste removal and clean up service, is it?---No, the company that did the blockage was JRK, our plumbers on site. Greenbins are the people that supply our rubbish bins, and the guys used a - one of those bins that was in the vicinity close by.

PN228

My question was whether Greenbins also provide clean up services on the site, Mr Burns. Are you aware whether or not the company, Greenbins, also provide cleaning services?---I had to make a phone call to inquire as to whether they did site clean ups, and I did that.

PN229

What was their response?---They have a subsidiary company that was with them that do that. We also do risk assessments.

PN230

Yes?---And following our meeting on Friday they were the phone calls that I made. I asked them to come out.

PN231

So the company, Compliance by Design, they're the subsidiary of Greenbins, are they?--
-Yes.

**** DAVID JOHN BURNS XXN MR O'BRIEN

PN232

I see. Now, this meeting that you had on Friday with the safety committee. What did you agree to at that meeting?---I agreed to undertake a third party to come and do a risk assessment to determine whether or not we needed to re-clean the area.

PN233

Has there been any conjecture about what you agreed at that meeting?---Yes.

PN234

What was that?---What they've said was - I had an agreement with a third party to come and do the risk assessment. I agreed to go the next level and actually re-clean it.

PN235

And who had that view?---The union and some of the members of the safety committee. But they didn't reiterate that until this morning's meeting.

PN236

I see. So you've had a meeting with the safety committee on Friday?---Yes.

PN237

You've come out of it with an understanding that you've agreed to a third party to undertake a risk assessment?---Correct.

PN238

And various union officials and members of that safety committee believe you agreed to something else?---Correct.

PN239

I see. Mr Burns, would you agree with me that on hearing that story it's quite likely that you would accept that you've just got that wrong? There are a number of people who say you said something else at that meeting. Do you agree with me that it appears you've just got that wrong?---I would agree that there could be some misinterpretation been made, yes.

PN240

I see?---Do I believe that the - the mistake has been made? No.

PN241

Now, the safety committee meeting on Friday, there was specific companies mentioned, weren't there?---There was a company called JJ Richards. They mentioned that Tony Colman of the CFMEU officials had told me that he's used in the past.

**** DAVID JOHN BURNS XXN MR O'BRIEN

PN242

Yes. What services did JJ Richards provide?---None.

PN243

What services do the company provide, Mr Burns?---What company?

PN244

JJ Richards?---As far as I know they pick up Sulo bins from the street and they also do cardboard recycling and other services, I'm not too sure.

PN245

They're a cleaning company, aren't they, Mr Burns?---If you call picking Sulo bins and rubbish from the street, yes.

PN246

The don't provide risk assessments, do they, Mr Burns?---I don't know.

PN247

I put it to you they don't, Mr Burns, that the only service they provide is cleaning. Would you agree with that?

PN248

MR CAMERON: Commissioner, I ask that he - - -

PN249

MR O'BRIEN: You're not sure?---I wouldn't agree with you because - as I said to you, I don't know what JJ Richards do apart from I've seen their truck drive up the street and pick up Sulo bins.

PN250

I see. Now, do you have any health and safety representatives on this site?---Do we?

PN251

Yes?---Yes.

PN252

Who are they?---We have subcontractor safety reps. We have our own safety representation.

PN253

So by your own, you mean, Lend Lease?---Correct. And subcontractors.

**** DAVID JOHN BURNS XXN MR O'BRIEN

PN254

Who are the Lend Lease health and safety representatives?---Michael Finch.

PN255

What's Michael's role?---He's our safety manager on site.

PN256

I see. Who else?---That's probably it.

PN257

So - - - ?---(indistinct) first aids.

PN258

My question is about health and safety representatives, Mr Burns?---Yes.

PN259

So you say that Michael Finch, the safety manager, is the only elected health and safety representative for Lend Lease on this job?---How many do you need?

PN260

I'm asking the questions, Mr Burns. Is that your evidence that Mr Finch is the only health and safety representative that Lend Lease have on this site?
---Depending on qualifications.

PN261

Mr Burns, do you know what a health and safety representative is?---I think I do.

PN262

What do you think a health and safety representative is?---It's a person that takes in consideration of people on site in relation to health and safety.

PN263

Mr Burns, what's your role with Lend Lease?---Site manager.

PN264

You're the site manager?---Mm.

PN265

What's the total value of this project?---I've been 30 days so I wouldn't be exactly sure. I think it's probably in the vicinity of 100 to 150 million.

PN266

150 million, you're the number 1 officer for Lend Lease on this project: are you familiar with Work Health and Safety Act, Mr Burns?---I'm reasonably familiar with it.
(indistinct)

**** DAVID JOHN BURNS XXN MR O'BRIEN

PN267

Are you familiar with the position of health and safety representative as created by the Work Health and Safety Act?---Meaning exactly?

PN268

Well, that's my question to you, Mr Burns. Do you know what it is?---I just said to you I've read the Health and Safety Act. Your question was?

PN269

What is your understanding of the position of health and safety representative, as created by the Work Health and Safety Act?---To take responsibility for the health and safety of the workers on site.

PN270

You don't know, do you, Mr Burns? Mr Burns, you are the number 1 officer for Lend Lease on a \$150 million project and you don't know, do you? Is that good enough?

PN271

MR CAMERON: Excuse me, Commissioner. It's been asked and answered several times. Can we move on please?

PN272

MR O'BRIEN: I'm asking the witness if he thinks that that's good enough, Commissioner.

PN273

MR CAMERON: Commissioner, that's an opinion. He doesn't need to express his opinion. He's not an expert on Workplace Health and Safety, nor does he purport to be one. He's not entitled to produce an expert opinion.

PN274

THE COMMISSIONER: Thanks, Mr O'Brien, I think I understand this witness's understanding of the Work Health and Safety provisions. If you've got a particular question you need to ask about this particular issue then I'd urge you to do so.

PN275

MR O'BRIEN: Certainly. Mr Burns, was Mr Finch elected by Lend Lease workers as a health and safety representative?---As I said, I've only been there 30 days. My understanding would be, yes, he was.

**** DAVID JOHN BURNS XXN MR O'BRIEN

PN276

Now, do Lend Lease - the project managed by you, maintain a list of health and safety representatives, visible by all workers, on this project?---They would do.

PN277

Do they or do they not?---Yes, they do.

PN278

They do. Have you seen that list?---Not in the last 30 days I haven't, no.

PN279

In 30 days you haven't seen it?---No.

PN280

I see. Now, has Mr Finch been trained as required by the Work Health and Safety Act?--
-Yes, he has.

PN281

You can categorically say under oath he has been trained as required by the Work Health and Safety Act. That's your evidence, is it?---We've had many discussions in relation to Mr Finch's qualifications.

PN282

I see. So you've just given sworn evidence that he was trained in accordance with the Act. What does the Act require regarding that training, Mr Burns?---I can't take a person's word for the fact that he's been trained under the Act. He's told me that, I can take his word for that, I'm sure.

PN283

I see. So that's as far as the inquiries went?---Yes.

PN284

Thank you. Now, Mr Burns, the meeting that you had yesterday morning with the safety committee. Were there workers who did not perform their usual duties on this site yesterday?---Were workers that didn't perform their usual duties on the site yesterday? You mean, did workers leave site?

PN285

Yes. If you like?---Yes.

**** DAVID JOHN BURNS XXN MR O'BRIEN

PN286

I see. Thank you for that?---Now, you had a meeting with the safety committee this morning?---Yes.

PN287

I see. And workers again left site, did they?---Mm.

PN288

Just as they did yesterday?---Yes.

PN289

So the safety committee has met and then workers left the site?---Correct.

PN290

I see. Were you at that meeting?---No.

PN291

I see?---I was at a meeting with the safety committee and union after the union and the safety committee had met with the masses.

PN292

I see. I have no further questions, Commissioner. Commissioner, perhaps, we have some cross-examination from the other respondents.

PN293

THE COMMISSIONER: I'm sorry - Mr Cameron. Ms Delaware?

PN294

MS DELAWARE: Thank you, Commissioner.

<CROSS-EXAMINATION BY MR DELAWARE [5.32PM]

PN295

MR DELAWARE: Mr Burns, I just have the one question for you. In your statement I note that you say that today some plumbers remained on site. You don't make any comment about whether any plumbers remained on site yesterday. I'd just like to understand more - - - ?---There were some apprentices, from my understanding that remained on site.

PN296

Yesterday?---Yes.

**** DAVID JOHN BURNS XXN MS DELAWARE

PN297

Thank you. No further questions.

PN298

THE COMMISSIONER: Thanks, Ms Delaware. Ms Inglis?

PN299

MS INGLIS: Thank you, Commissioner.

<CROSS-EXAMINATION BY MS INGLISS [5.33PM]

PN300

MS INGLISS: Mr Burns, just a few questions?---Yes.

PN301

You said that - in the report that's attached to your statement, there's reference to - sorry, I withdraw that. I think in answer to a question put to you previously you indicated that the spill was predominantly water and urine, is that correct?
---Correct.

PN302

Okay. Now, do you know whether the liquid spills contained any other material?
---No.

PN303

You don't know or it didn't?---I don't know if they contained any other material. There was no solid waste was the report from a number of people that I got. There was no visible coloration of water, I guess, you could say, but there was some odour and smell to the liquid.

PN304

So you're not able then, are you, to rule out the possibility that the liquid could have contained, for example, hepatitis - one of the various forms of hepatitis?---I couldn't say that, no.

PN305

And, similarly, E.coli or any other pathogens and things that are often associated with sewage?---I would - hence the reason why I agreed to the third party - for them to come to site and do a risk assessment. Left it to the professionals.

**** DAVID JOHN BURNS XXN MS INGLIS

PN306

So Mr Burns, you're not qualified in industrial hygiene, yourself, are you?---No, I'm not.

PN307

Okay. So, effectively, you're only assuming that the material was simply water and urine, that's basically what it comes down to?---Just relying on what other people had told me and their inspections of the site. I was in a safety meeting at the time that it happened, and by the time we got out of the safety meeting to go and do an inspection on site, the whole area was already cleaned up.

PN308

Okay. And you weren't present for that, were you?---I was in a safety meeting, so I wasn't there whilst they were cleaning it up.

PN309

Okay. Now - - - ?---I got information back from our CWs and the plumbers.

PN310

On the second page of your statement at paragraph 14 - - - ?---Yes.

PN311

- - - you've indicated that a number of plumbers remained on the site and continued and work. That's correct, isn't it?---Yes, it is.

PN312

And it's correct, isn't it also, that a number of electricians also remained on the site?---I think some mechanical electricians had remained on site?---Yes, that's correct, yes.

PN313

Okay. Thank you, Mr Burns, no further questions?---Thank you.

PN314

THE COMMISSIONER: Mr Cameron?

PN315

MR O'BRIEN: Thank you, Commissioner. I think we still have one respondent.

PN316

MS DELAWARE: (indistinct)

**** DAVID JOHN BURNS XXN MS INGLIS

PN317

MR O'BRIEN: Sorry, my apologies. My apologies.

PN318

MR CAMERON: Thank you, Commissioner.

<RE-EXAMINATION BY MR CAMERON [5.36PM]

PN319

MR CAMERON: Mr Burns, I have a few questions for you in reply. You have referred to Darren Hughes, who was involved in the clean up process?---Correct.

PN320

And in your evidence you also referred to the plumbers being involved in the clean up process?---Correct.

PN321

So the plumbers used the wet-vac, is that your evidence?---Yes.

PN322

Okay. And the plumbers - when you were talking plumbers, you were talking trade qualified plumbers?---Yes, correct.

PN323

So they've done a four year apprenticeship?---Yes.

PN324

So being a plumber, that would be a licensed plumber?---Correct.

PN325

With the Plumbers and Drainers Licensing Board?---Yes.

PN326

So licensed in Queensland to work with raw sewage, would that be correct?
---That's correct.

PN327

And it would be fair to say that the plumbers did the heavy lifting and the cleaning up with the wet-vac, would that be fair to say?---Yes, our guy was a secondary cleaner, if you like, but there was a wet area on the floor and he followed behind, as I said before, with the mop and bucket and a disinfectant.

**** DAVID JOHN BURNS RXN MR CAMERON

PN328

Okay. You referred to the disinfectant and you said that there was an MSDS?
---Yes.

PN329

Is that available on site?---Yes, it is.

PN330

And all your MSDSs are kept in one location?---Correct.

PN331

Sir, we spent some time in relation to the spill, could you please clarify for the Court when the spill occurred?---I was told about it at approximately 12 o'clock on Thursday, so the spill occurred - was my understanding - about 9.30 to 10 o'clock, sometime between then. At 10.30 we have a safety meeting where the safety reps themselves take them - or safety manager and myself attend, which I chair.

PN332

And there's been some discussion in relation to the type of that spill but could we please clarify the size of that spill, please?---It was approximately, if you could imagine three temporary toilet cubicles - so that the area was approximately five metres by five metres.

PN333

And the size of level 3?---Five metres by five metres.

PN334

No, no, the size of level 3?---The total floor area?

PN335

Yes?---Would be approximately 3500 square metres.

PN336

Okay. And how many levels in the building, sir?---It goes from level 1 to level 7 with a level 8 roof.

PN337

And the spill was on level 3?---The spill was on level 3. In a rear corridor, which there are alternative corridors and passageways accessible.

**** DAVID JOHN BURNS RXN MR CAMERON

PN338

In the evidence led and cross-examined there was some discussion about Thursday and you mentioned Friday - sorry - Friday, you mentioned Thursday today. Could you - and my colleagues have indicated that some of the employees left site on Tuesday and Wednesday. Could you please clarify what days did they work on site?---They worked all day Thursday, of course, and they worked Friday, they worked Saturday, and they worked Monday.

PN339

And some of the employees kept working Tuesday?---Some employees kept working Tuesday and some - - -

PN340

- - - employees kept working today?---Correct.

PN341

Approximately how many employees do you have on sight?---185.

PN342

And approximately how many kept working today?---I guess there was, probably 10, 12.

PN343

So the other 170 left site due to a five by five metre spill. Is that your evidence today?---Yes.

PN344

On level 3?---Yes.

PN345

Which would represent less than 1 per cent of that floor area?---Much less.

PN346

It was referred today that you attended some safety committee meetings on Tuesday and Wednesday, and that these meetings were also attended by union officials, is that correct?---Yes.

PN347

Did union officials normally attend safety committee meetings?---No.

**** DAVID JOHN BURNS RXN MR CAMERON
PN348

Okay. Were you told that it was a safety committee meeting?---No.

PN349

Some evidence has been led in relation to fluid that was on the ground in relation to the spill and you mentioned that it was clear. You've had some - how old are you?---51.

PN350

You've had some experience with urine in your life?---I guess about 51 years of it.

PN351

Okay. And when you say it was clear you meant that you couldn't see any brown or black substance in the water, is that what you're saying?---Correct.

PN352

No further questions, Commissioner.

PN353

THE COMMISSIONER: I've just got one questions for you, Mr Burns, and if anything arises out of it - to both the advocates, you're welcome to further examine Mr Burns. I just wanted to know, what's the current status of the spilled area? Is it still blocked off? What is - - - ?---It's still barricaded off.

PN354

It's still barricaded off?---It's still as it was on the - - -

PN355

What is the proposal for - if the employees are directed to go back to work, what happens to that area tomorrow?---So we've had a company come in and re-clean it today, and I'll have the report from that clean, based on the cleaning company, on my computer tonight. The action plan was that whilst the plumbers were on site today and yesterday, the three temporary cubicles that were - where the blockage occurred, they'd been disconnected and removed and the new more permanent toilet - temporary toilets around the corner, which are all tiled and so forth and have cisterns and bathrooms in them, are now complete and open and signed up. So the proposal was to convene the safety committee tomorrow morning, show them the report of the clean up area, discuss with them the proposed - and toolbox - go back to their own individual sub contractors - toolbox all their workers in relation to the new location of the toilet, and if they agree and accept the fact that the - that a report has been accepted by the committee and been cleaned, then we would then open that area up for work. So if they didn't accept it and they have more queries, we will leave it barricaded off and discuss it further.

**** DAVID JOHN BURNS RXN MR CAMERON
PN356

Thank you. I might just ask the advocates if anything arises out of those answers that they wanted clarified.

PN357

MR O'BRIEN: No, Commissioner.

PN358

MR CAMERON: Actually, yes, Commissioner.

PN359

MS INGLIS: No, Commissioner.

PN360

THE COMMISSIONER: Sorry, Ms Inglis?

PN361

MS INGLIS: No, Commissioner.

PN362

THE COMMISSIONER: And Ms Delaware?

PN363

MS DELAWARE: No, Commissioner.

PN364

THE COMMISSIONER: Thank you. Mr Cameron?

PN365

MR CAMERON: Thank you.

<FURTHER RE-EXAMINATION BY MR CAMERON [5.43PM]

PN366

MR CAMERON: So when you say you'd barricade that area off, you mean that the workers - your intention would be that the workers would go to work in the other areas?
---Correct.

PN367

On the other - - - ?---99.8 per cent of the job.

PN368

Thank you.

**** DAVID JOHN BURNS FRXN MR CAMERON
PN369

THE COMMISSIONER: Thank you, Mr Burns, I think that concludes your evidence?---
Thank you.

PN370

You can stay in the room if you so choose.

<THE WITNESS WITHDREW [5.44PM]

PN371

MR CAMERON: If it pleases the Commission, I'd like to call another witness, Mr Brockwell. He's from (indistinct)

PN372

THE ASSOCIATE: Would you please state your full name and address?

PN373

MR BROCKWELL: Michael Dennis Brockwell.

<MICHAEL DENNIS BROCKWELL, SWORN [5.45PM]

<EXAMINATION-IN-CHIEF BY MR CAMERON [5.45PM]

PN374

MR CAMERON: If it pleases the Commission, could we hand up a copy of Mr Brockwell's statement, please. Could we mark that exhibit 3, I think it is.

PN375

THE COMMISSIONER: Thank you.

PN376

MR CAMERON: Mr Brockwell, could you take a moment to review that statement, please, to ensure that it is your statement? Just check the second page for me as well?---
Yes, that's my statement.

PN377

Are there any alterations or changes you'd like to make to that statement, sir?
---No, I don't believe so.

PN378

Did you receive some assistance in creating that statement today?---I - yes, I did.

PN379

And who provided that assistance to you?---That would be Wayne, Mr Smith.

PN380

And how long did you spend developing that statement today, sir?---It would have been a good 45 minutes.

PN381

No further questions.

PN382

THE COMMISSIONER: Thank you. I'll mark that A3.

**EXHIBIT #A3 WITNESS STATEMENT OF
MICHAEL DENNIS BROCKWELL**

PN383

THE COMMISSIONER: I call on the representatives of the respondent.

<CROSS-EXAMINATION BY MR O'BRIEN [5.47PM]

PN384

MR O'BRIEN: Mr Brockwell, are you familiar with the term, health and safety representative?---Yes, I am.

**** MICHAEL DENNIS BROCKWELL XXN MR O'BRIEN

PN385

What's your understanding of that term?---Health and safety representatives of our company?

PN386

Yes?---It is someone that represents our company in matters to do with health and safety.

PN387

Does your company have a health and safety representative on this project?---Yes, they do.

PN388

And who is that?---It should be Shane Cassidy.

PN389

Is Mr Cassidy an elected health and safety representative?---Yes, he is.

PN390

Has Mr Cassidy been trained?---Yes, he has.

PN391

Is Mr Cassidy a member of the safety committee?---Yes, he is.

PN392

Okay. I have no further questions, Commissioner.

PN393

THE COMMISSIONER: Thank you. Ms Delaware?

PN394

MS DELAWARE: Thank you, Commissioner.

<CROSS-EXAMINATION BY MS DELAWARE [5.48PM]

PN395

MS DELAWARE: Mr Brockwell, if I can just take you to your statement?
---Yes.

PN396

At number 6, under the Tuesday, 9 July, you state that, "Our employees took the advice of Robbie (indistinct) who indicated that they weren't to remain at work." Can you tell me what that advice was? Your statement doesn't clarify that?

**** MICHAEL DENNIS BROCKWELL XXN MR DELAWARE

---Now, just getting in context of where we are in the day. Robbie advised our employees that the union had taken a stance of safety on site, so he did advise initially that we were to sit out and - but he did then say that anybody that attended the meeting actively acted in the vote. I think that was the initial disagreement that our boys went to the meeting to listen to what was being stated. They didn't initially have any intention of being part of the meeting as far as voting and anything goes, but they really didn't understand. So that was - the only thing that they disputed was the fact that once they attended the vote they had to abide by it and leave site. Which they did.

PN397

So it's not your evidence that Robbie made a recommendation that they should leave the site?---His only recommendation was to - if they attended the vote then his recommendation was, yes, they should leave the site.

PN398

Okay. Thank you. If I can take you to the last page of your statement on the Wednesday, paragraph number 7?---Mm.

PN399

It states that, "Under fear and intimidation from other union members your employees left work to comply with the large meeting's decision to leave the site for the day." Did your employees elect to remain on site on the Tuesday?---Did they elect to remain on

site? No, once they - once it was made clear to them that they attended that vote, then they accepted that and left site.

PN400

So your employees left site on Tuesday - - - ?---On the Tuesday.

PN401

- - - as well?---Yes. Except for the apprentices. They were given office duties.

PN402

Okay. So they didn't leave site on the Tuesday for fear of intimidation?---No. The statement wasn't on the Tuesday, it was made on the Wednesday.

PN403

No further questions, thank you.

**** MICHAEL DENNIS BROCKWELL XXN MR DELAWARE
PN404

THE COMMISSIONER: Thank you, Ms Delaware. Ms Inglis?

PN405

MS INGLIS: No questions, thank you, Commissioner.

PN406

THE COMMISSIONER: Thank you. That - any re-examination, Mr Cameron?

PN407

MR CAMERON: No thanks, Commissioner.

PN408

THE COMMISSIONER: Mr Brockwell that concludes your evidence. You may stay in the room if you choose?---Okay.

<THE WITNESS WITHDREW [5.51PM]

PN409

MR CAMERON: Commissioner, if it pleases the Commission, we'd call Mr O'Rourke as a witness, please.

PN410

THE ASSOCIATE: Please state your full name and address?

PN411

MR O'ROURKE: Michael O'Rourke (address supplied)

<MICHAEL O'ROURKE, SWORN [5.52PM]
<EXAMINATION-IN-CHIEF BY MR CAMERON [5.52PM]

PN412

MR CAMERON: If it pleases the Commission, could we pass up a copy of Mr O'Rourke's statement, please, and have that marked for an exhibit? Exhibit 4, I believe, Commissioner.

PN413

THE COMMISSIONER: A4.

EXHIBIT #A4 WITNESS STATEMENT OF MICHAEL O'ROURKE

PN414

MR CAMERON: Mr O'Rourke, you have before you your statement. Could you take a moment to review that statement to ensure that it is yours, please? And any changes or alterations you'd like to make?---No.

PN415

Did you have some assistance in producing that statement today?---No.

PN416

Did you receive any typing up assistance in relation to doing up that statement?
---Only that it was typed for me, yes. It was my input.

PN417

And who assisted you in that process?---Mr Smith.

PN418

Mr Smith. All right.

PN419

No further questions, Commissioner.

PN420

MR O'BRIEN: Thank you, Commissioner.

<CROSS-EXAMINATION BY MR O'BRIEN [5.54PM]

PN421

MR O'BRIEN: Mr O'Rourke, I take you to paragraph 9 of your statement?
---Mm.

**** MICHAEL O'ROURKE XXN MR O'BRIEN
PN422

This is paragraph 9 in reference to 9 July?---Yes.

PN423

You say you left the site to attend to another matter. What was the other matter?
---I had to submit our weekly time sheets for our employees back at the office.

PN424

I see. So what time was that?---That was probably about 8 o'clock - - -

PN425

I see?--- - - - that I got back to the office.

PN426

What time do those time sheets have to be submitted by?---Before 8 o'clock.

PN427

Before 8 o'clock?---Yes.

PN428

I see. And what did you do for the rest of the day?---I went about my daily work back at the office.

PN429

Did you go back to this site?---No.

PN430

I see. So workers have left the site at this point?---No.

PN431

You'd gone back to the office?---I went to back to the office and our workers were still on site.

PN432

I see. So at some point on Tuesday, the 9th, your workers left the site?---Yes.

PN433

Did you then go to the site to investigate?---No.

PN434

I see. Now, Mr O'Rourke, are you familiar with the term health and safety representative?---Yes.

**** MICHAEL O'ROURKE XXN MR O'BRIEN
PN435

What's your understanding of the term?---We have an employee full time on site that is obviously health and safety, and he's actually the representative for the site.

PN436

I see. What's his name?---At the moment, his name is Dean Hanson.

PN437

Has Mr Hanson been trained?---He's actually booked into be trained, yes.

PN438

I see?---He does have a round of redundancies and the last person he was made redundant was our actual HSR, but we did have another person on site but - who was trained in HSR, Kane Dawson, and he was also (indistinct)

PN439

I see. So Mr Hanson a member of the safety committee?---Yes.

PN440

What about the other gentleman you mentioned who had been trained as a health and safety rep?---Kane has only been on that site for probably about a week and a half.

PN441

I see?---So he's - yes.

PN442

Is he a member of the safety committee?---On that site?

PN443

Yes?---No.

PN444

I see. Now, can you take me through any differences between what occurred yesterday morning and what occurred this morning on the site? Would you agree with me that both yesterday morning and this morning, the safety committee met to discuss what was happening on the site?---I know the safety committee met yesterday, but as far as I can see when I turned up to site this morning, I was unaware about the safety committee meeting.

**** MICHAEL O'ROURKE XXN MR O'BRIEN

PN445

I see. I see. What time did you get to the site this morning?---Just before 7 o'clock.

PN446

I see. And you don't know what happened on site before then?---I was filled in from our site employees - because they were actually waiting in our lunch shed, I was filled in on the morning's proceedings.

PN447

Okay. So what time did you get to the site this morning?---Just before 7.

PN448

I see?---About 7ish.

PN449

Okay. No further questions, Commissioner.

PN450

THE COMMISSIONER: Thank you. Ms Delaware?

PN451

MS DELAWARE: Thank you, Commissioner.

<CROSS-EXAMINATION BY MS DELAWARE [5.57PM]

PN452

MS DELAWARE: Mr O'Rourke, if I can just take you to the statement, paragraph 7, on the first page?---Mm.

PN453

You say that your employees disputed the advice of Robbie Gould and indicated that they wanted to remain at work. Can you elaborate on that advice that you say Robbie provided?---They had a secondary meeting to the main meeting. It was out of the front of the project in the park. I didn't attend that meeting because I was - obviously, I was the project meeting so I didn't go into that meeting, I'm not a member of the union. After the meeting we - our employees came out of the site shed and Robbie came across to our employees and said, "Because you actually attended the meeting personally in the park outside the site shed and you've volunteered or you've voted to go out on strike." And they said, "No, we were there - we were only at that meeting because we were told to be at that meeting because it was a safety issue. We didn't know what the meeting was about." And they said that they didn't actually vote to go out on strike.

**** MICHAEL O'ROURKE XXN MS DELAWARE

PN454

So you're saying - so just to clarify - so you're saying the advice you're referring to in paragraph 7 was that Robbie said to your employees that they voted to go on strike?---Yes.

PN455

That's the advice given that Robbie - - - ?---No, Robbie indicated that our men had already taken part of the initial meeting and in that initial meeting - because they were at that meeting that they taken the vote to go on strike because that meeting voted to go on strike. But our men didn't actually vote.

PN456

Sure. But that's the advice you're referring to of Robbie?---Yes.

PN457

That they - he - that they voted to go on strike?---Yes.

PN458

Which it is agreed with?---And they actually dispute it in front of me to Robbie.

PN459

Sure. In the last paragraph of your statement, paragraph 7 on page 2?---Mm.

PN460

You say that all of the site employees were leaving the site?---Mm.

PN461

Are you aware of any other employees remaining on site today?---Not our employees, no.

PN462

Are you aware of any other site employees remaining on site?---No.

PN463

So it's your understanding the site was completely closed today?---No. I only was looking after our employees. I didn't get involved with other subcontractors as to their status or their men on site, so I received a phone call at 8.20 from our site foreman and said, "The site's gone out on strike."

PN464

So it's your evidence that you're not aware whether other employees remained or didn't remain on site?---Correct.

**** MICHAEL O'ROURKE XXN MS DELAWARE

PN465

Okay. No further questions, thank you.

PN466

THE COMMISSIONER: Ms Inglis?

PN467

MS INGLIS: I have no questions, thank you. Commissioner.

PN468

MR CAMERON: No re-examination, thank you.

PN469

THE COMMISSIONER: Mr O'Rourke, that concludes your evidence. You can stay in the room if you wish.

<THE WITNESS WITHDREW [6.01PM]

PN470

MR CAMERON: With the Commission's permission, Commissioner, we'd like to call Martin Mellor?

PN471

THE ASSOCIATE: Please state your full name and address?

PN472

MR MELLOR: Mark Paul Mellor (address supplied)

<MARK PAUL MELLOR, SWORN [6.02PM]

<EXAMINATION-IN-CHIEF BY MR CAMERON [6.02PM]

PN473

MR CAMERON: Commissioner, if it pleases the Commission, we'd like to hand up a copy of the witness's statement, please, and that marked as exhibit 5.

PN474

Mr Mellor would you - is it pronounced Mellor?---Mellor.

PN475

Mr Mellor, would you mind taking a moment to review that statement before you to ensure that it's yours?---Yes, it's mine.

PN476

Mr Mellor, would you mind taking a moment to see if there's any additions or alterations that you'd like to make?---No, I'm happy with that.

PN477

Mr Mellor, did you receive some assistance today in drafting that statement?
---No.

PN478

Did you receive some assistance in typing the statement?---Yes, I did.

PN479

Was that assistance provided by Mr Smith?---Yes, Mr Smith.

PN480

And you're happy with the statement?---Yes, I'm happy with the statement.

PN481

How long did you take the draft the statement, Mr Mellor?---Approximately 30 minutes.

PN482

No further questions, Commissioner.

PN483

THE COMMISSIONER: Thank you. I'll mark that as A5.

EXHIBIT #A5 WITNESS STATEMENT OF MARK PAUL MELLOR

PN484

**** MARK PAUL MELLOR XN MR CAMERON

THE COMMISSIONER: Thank you.

<CROSS-EXAMINATION BY MR O'BRIEN [6.03PM]

PN485

MR O'BRIEN: Mr Mellor, are you familiar with the term health and safety representative?---Yes.

PN486

What's your understanding of the term?---It's a representative that's elected by the guys on the floor that looks after the health and safety of the members on site - workers on site.

PN487

Does your company have a health and safety representative?---Yes.

PN488

And who is that?---Aaron O'Neill.

PN489

Has Mr O'Neill been trained?---Yes.

PN490

I see. So he was elected by the employees?---Yes.

PN491

Now, Mr Mellor, would you agree with me that what occurred yesterday morning was, essentially, the same as what occurred this morning in that following a meeting of the safety committee the workers have left site. Is it true to say that for both yesterday and today?---My workers didn't leave site yesterday.

PN492

I see. So your workers stayed on site yesterday?---Yes.

PN493

But they left today?---Yes.

PN494

Was that following a meeting of the safety committee?---Today or yesterday? Today?

PN495

Today?---They left the site after a meeting with - all members on site down in the car park.

**** MARK PAUL MELLOR XXN MR O'BRIEN

PN496

Was Mr O'Neill at that meeting?---Yes.

PN497

I see. Thank you.

PN498

I've got no further questions, Commissioner.

PN499

THE COMMISSIONER: Thank you.

PN500

MS DELAWARE: No questions.

PN501

THE COMMISSIONER: Thanks, Ms Delaware. Ms Inglis?

PN502

MS INGLIS: No, thank you, Commissioner.

PN503

THE COMMISSIONER: Thank you. Mr Cameron?

PN504

MR CAMERON: Yes, just one question, Commissioner.

<RE-EXAMINATION BY MR CAMERON [6.05PM]

PN505

MR CAMERON: Mr Mellor, so yesterday was not the same as today in that your employees kept working yesterday, is that correct?---Yes.

PN506

Did they work the day before?---Yes.

PN507

And the Saturday?---Yes.

PN508

And the Friday?---Yes.

PN509

And the Thursday?---Yes.

**** MARK PAUL MELLOR RXN MR CAMERON

PN510

No further questions.

PN511

THE COMMISSIONER: Thank you, Mr Mellor. You may leave the witness box and stay in the hearing room if so choose.

<THE WITNESS WITHDREW [6.05PM]

PN512

MR CAMERON: Commissioner, with your consent, we'd like to call the final witness, Mr Kevin Veivers. If it pleases the Commission.

PN513

THE ASSOCIATE: Would you please state your full name and address?

PN514

MR VEIVERS: Kevin Neil Veivers (address supplied)

<KEVIN NEIL VEIVERS, SWORN [6.07PM]

<EXAMINATION-IN-CHIEF BY MR CAMERON [6.07PM]

PN515

MR CAMERON: If it pleases the Commission, we have a copy of Mr Veivers's statement and have that marked as exhibit 6.

PN516

It's pronounced Veivers, is it?---Yes, correct.

PN517

Would you mind taking a moment to review that application, please, to make sure that it is yours. Any alterations or additions that you might like to make?---No.

PN518

Did you receive some assistance in typing up or writing that statement today, sir?
---I didn't type it personally but they're my words.

PN519

And who did you receive that assistance from?---From the Electrical Contractors Association.

PN520

And so how long did you take to write up the statement?---Approximately half an hour, 45 minutes.

PN521

No further questions, Commissioner.

<CROSS-EXAMINATION BY MR O'BRIEN [6.09PM]

PN522

MR O'BRIEN: Mr Veivers, can I take you to paragraph 9 of your statement. You say there was a BLF organiser on the site this morning, is that right?---Yes, there were four organisers there.

PN523

I see. Were they together, were they?---When I noticed them there, they were all together in the centre of - basically, the circle of workers. I'm not sure whether they came together or how they got there.

**** KEVIN NEIL VEIVERS XXN MR O'BRIEN

PN524

So when the workers were meeting, the four organisers were in the middle of the circle?
---Yes.

PN525

I see. Do you recognise the BLF organiser?---No, I don't.

PN526

Have you seen him before?---No, I don't, I'm not familiar with the - I was only familiar with the electrical gentleman, Mark Bateman.

PN527

Mr Bateman. You're sure Mr Bateman was there this morning?---Yes, yes.

PN528

Without a doubt?---Without a doubt.

PN529

Was he wearing any clothing that identified him as an ETU organiser?---Yellow vest on with ETU across the back, and I think it might have had organiser on the bottom of it.

PN530

I see. What about the BLF organiser?---He had BLF, if I remember correctly, on his clothing. I wasn't familiar with the person himself, no.

PN531

Was he a big person, small person?---Big person.

PN532

How tall would you say he was?---BLF guy is around about my height, I suppose.

PN533

And what's about?---About six foot.

PN534

Hard to miss, would you say?---I suppose he would be, yes.

PN535

Okay. Thank?---Dressed in the appropriate clothing.

PN536

I see. Now, are you familiar with the term health and safety representative?

**** KEVIN NEIL VEIVERS XXN MR O'BRIEN

---Yes.

PN537

What's your understanding of the term?---They're a health and safety representative. Every company and our company would have one of those on the safety committee, and we have various other health and safety people positions throughout the organisation.

PN538

So do you have a health and safety representative on this job, Oral Health?---Yes.

PN539

And who is that?---Jack McCoughan.

PN540

Is he elected by your workers on that job?---Yes.

PN541

Is he trained?---Yes.

PN542

Is Mr McCoughan a member of the safety committee?---Yes.

PN543

I see. No further questions, Commissioner.

PN544

THE COMMISSIONER: Thanks.

PN545

MS DELAWARE: No questions.

PN546

THE COMMISSIONER: Ms Inglis?

PN547

MS INGLIS: Yes, thank you, Commissioner. A few questions.

<CROSS-EXAMINATION BY MS INGLIS [6.11PM]

PN548

MS INGLIS: Mr Veivers, in paragraph 6 of your statement, you said that you spoke to Allied Technologies employees and instructed them about work to be undertaken. What actual instructions did you give them?---After discussions with Dave Burns from Lend Lease early in the morning, the instruction was they were - the workers on level 5 and down would proceed to their work places and carry on. Levels 6 and 7, the workers on those levels would assist with the de-watering of those two levels and would not commence work until directed to do so from Lend Lease.

**** KEVIN NEIL VEIVERS XXN MS INGLIS

PN549

So you personally gave that - you had that discussion personally with those employees?
---Yes, definitely.

PN550

Okay. Now, was there work available for all of them?---On the site, yes.

PN551

How many employees worked that?---From a head a count I did there this morning, 36.

PN552

There were 36 Allied Technology employees?---Yes.

PN553

And so you - you said - which levels did you say they could work on?---Levels 5 down - so from the basement up to level 5, basically, to fit out floors.

PN554

So what time was that conversation?---This was the pre the union meeting so, I'm guessing, it was around the - just after the 6 o'clock mark. I'm not quite sure. It was just after the 6 o'clock mark anyway.

PN555

Okay. So around about 6 o'clock you had discussions with them about commencing work on level 5 and some other areas, yes?---Yes, levels 5 and down.

PN556

Okay. Now, at paragraph 12 of your statement, you make reference to a conversation with Mr Burns at about 6.45 - - - ?---Mm.

PN557

- - - about discussing possibilities of return to work, correct?---Mm.

PN558

Okay. Now, what - in that discussion, what possibilities did you discuss?---I went up to the Lend Lease office and we discussed areas that we could get into if we could get into, dependent on what decision came from back from the safety committee walk.

**** KEVIN NEIL VEIVERS XXN MS INGLIS

PN559

So at that stage you didn't really didn't know what you could offer, is that the - is that what you're saying?---At that stage the whole thing was up in the air.

PN560

So when you spoke to the group of Allied Technology employees?---That was earlier, yes.

PN561

That was about 6. And you asked the group if there were any questions - - - ?
---Yes.

PN562

- - - as per paragraph 7 of your statement?---Yes.

PN563

You said employees raised questions of the implications about returning to work. What do you mean by that?---We have had on a previous site bullying in the past from other trades where we having - the company lost one or two employees who had decided to have a career change or a site change, and that - it worries the employees that if they're seen that if they put their hand up they could be targeted. There is a - we have probably 40 per cent of our workforce is young apprentices from first through to fourth year.

PN564

40 per cent?---40 per cent.

PN565

Okay. Now, you said, in your next paragraph, that they should record their concerns in their personal diaries?---Yes.

PN566

Is that the only further discussion you had on that matter?---From memory, yes. Most of them I could mention, you know, they could type it on the iPads or whatever but, yes, certainly record their concerns at the time.

PN567

Now, it's correct, isn't it, that some of Allied Technologies employees remained on the site, didn't they?---They all remained on site in the lunch room for a period - I'm not sure how long. I was not there at the time so I can't confirm how long they were there.

**** KEVIN NEIL VEIVERS XXN MS INGLIS

PN568

How many employees did you see there were?---36.

PN569

36. Now, you have indicated that there was work available for them to do on the site, didn't you, earlier?---Yes.

PN570

If that were the case why did you later send some of the employees home?---I didn't send anybody home.

PN571

Mr Veivers, our understanding is that the Allied Technology employees, a number of them elected to remain on the site?---Yes.

PN572

Now, are - you'd agree with that?---Yes.

PN573

And two of them, it's correct, isn't it, were relocated to an alternative site?---I attempted to find work for - I'd be guessing but eight to 10, but on short notice on a wet day it was only possible to find work for two.

PN574

Okay. And the rest of those eight, or 10, or whatever were sent home, weren't they?---The remainder left to go home.

PN575

And they were - did so on the instruction of their - of their supervisor, did they not?---They were told the site was open. They were not told to go home, there's just no work there. They couldn't - when I say couldn't - the site is open if you want to go to work. We certainly did not direct them to go home.

PN576

Is it not correct that there was no work available elsewhere on the site because of wet weather?---Most of the site from level 5 down was totally dry all day.

PN577

So did you provide them with alternative work on those levels?---We couldn't.

**** KEVIN NEIL VEIVERS XXN MS INGLIS

PN578

Why could you not provide them with alternative work on those levels?---From my understanding the safety committee - we haven't - I personally have not seen any feedback from the safety committee, but my understanding was that we could not - the safety committee wouldn't let work happen. I have not seen any documentation along those lines.

PN579

You've indicated that two employees were relocated to another site, that's correct, isn't it?---Yes.

PN580

So why did - why did you look for other work for them on those other sites?---They requested - I know the financial situation of two of them, and they came to me requesting if it was possible to find somewhere for them. I rang around several of my other managers and managed to find work for two.

PN581

Okay. And there were others who had indicated that they were prepared to remain. That's correct, isn't it? That they weren't given any additional - or alternative work?--- There was none, I didn't have any.

PN582

Okay. Now, paragraph 10, you've indicated that the message from all of the union organisers, the consistent message, in fact, was that Lend Lease did not uphold their side of the agreements and you talked about cleaning the contaminated area, et cetera. Now, were you present at that meeting with the union organisers?---I was present at the meeting - the initial meeting in the basement, yes.

PN583

Were you present when the organisers indicated that consistent message?---The - yes, I was, yes.

PN584

What time was that?---That would be just after the - after I spoke to my men just after 6, when we - when I directed them back to work - the level 6, 5 - level 5 down scenario, the assembly took place then, so we're probably talking 6.15 to 6.30 - I'm just sort of chucking some numbers at that one, but it was definitely after that.

**** KEVIN NEIL VEIVERS XXN MS INGLIS

PN585

It was definitely after 6.30?---I mean, it was definitely after I spoke to the men about going back to work - because we were walking off back to work and then the union organisers and all the other trades, and the assembly happened.

PN586

Mr Veivers, are you certain that were at that meeting and had that discussion with the union organisers?---No, I didn't - no, I didn't have any discussion - I didn't have the discussion with the organisers, no. I was at the meeting, I was one of the people listening to the union organisers definitely.

PN587

Mr Veivers, can I put to you that you weren't at that meeting?---I 36 witnesses that would say I was there with them. I wasn't there for the meeting later on. I was up top with - in the Lend Lease offices. I couldn't have been avoided being there at the meeting, it just happened.

PN588

Now, previously, you indicated that the questions raised by your employees - the concerns that they expressed, in paragraph 6 of your statement - 6 and 7 of your statement - that employees had concerns about, as you put it, raising their hand? ---Mm.

PN589

As the person in charge of the business you are undertaking, what protections did Allied offer for those employees who may have held such concerns?---I offered to my employees if they had any concerns there were to raise it with their next superior on site. I named the two foremen, Ian Morse, and the senior foreman, John Woodvine, and then I said, "We have a project manager, Keith Suthers, we have myself on site, and if you're not happy or if you're not comfortable with talking to us, you have our state manager, Gerry Phelan, who everybody knows," and we also have the programmed HR department which I also mentioned to them, which they had their contact number of the HR department on their payslips every week.

**** KEVIN NEIL VEIVERS XXN MS INGLIS
PN590

Okay. I have no further questions, thank you.

PN591

THE COMMISSIONER: Thank you, Ms Inglis. Mr Cameron?

<RE-EXAMINATION BY MR CAMERON [6.24PM]

PN592

MR CAMERON: So just recapping on that evidence, you didn't instruct anyone to go home?---Not at all.

PN593

And you were aware that the workers felt intimidated?---Yes.

PN594

Do the workers normally feel intimidated when there's a workplace health and safety meeting or committee meeting?---Not from workplace health and safety meeting, no.

PN595

MR O'BRIEN: Commissioner, the witness is in no position to give this evidence.

PN596

THE COMMISSIONER: Mr Cameron, I think it's, perhaps, a little bit too far. I - I wondered - - -

PN597

MR CAMERON: I'm just trying to identify the root of the intimidation. There has been some discussion about that in the examination-in-chief.

PN598

THE COMMISSIONER: Look, I'm not very comfortable with the work comfortable with the word "intimidation". I'm not sure that was actually used by either Ms Inglis.

PN599

MR CAMERON: "Failure to put up your hand," Commissioner.

PN600

THE COMMISSIONER: Yes, I think we might - yes, can we go back to that point. Right.

**** KEVIN NEIL VEIVERS RXN MS CAMERON

PN601

MR CAMERON: Sir, are you aware that the employees are normally reluctant or have the failure to put up their hands at just a normal safety committee?

PN602

MR O'BRIEN: Commissioner, again, the witness is in no position to give evidence about the state of mind of other people.

PN603

MR CAMERON: I'm asking about the behaviour on site, whether he's experienced it in the past. That's what - - -

PN604

MR O'BRIEN: Commissioner, my friend should address his comments to the Bench.

PN605

THE COMMISSIONER: (indistinct)

PN606

MR CAMERON: Sir, do you know why the employees were unable to put up their hand?

PN607

MR O'BRIEN: Commissioner, this is the third time now. This witness is being asked to give evidence about the state of mind of other people. If my friend wants to lead evidence on that point he should call them to give that evidence.

PN608

MR CAMERON: What my intention was, were you told why people were - - -

PN609

MR O'BRIEN: That would be hearsay evidence and I would still object, Commissioner.

PN610

THE COMMISSIONER: Mr Veivers, could you describe, perhaps, why happened at other meetings, other health and safety meetings in answer to that question. That may assist?--I don't attend the on site health and safety meetings. I'm a member of the

company health and safety committee and we meet off site, but I can't give you, honestly, what happened in the health and safety meetings on site.

**** KEVIN NEIL VEIVERS RXN MR CAMERON
PN611

Thank you. You can't take it any further, Mr Cameron.

PN612

MR CAMERON: Just one question. It's in relation to the health and safety committee meeting. Do normally all your workers attend the health and safety committee meetings? --- We have a toolbox - a pre start every morning where health and safety is a part of that activity, and we have a weekly toolbox talk where, again, health and safety is a part of that talk.

PN613

But the site safety committee meetings, do all your employees normally attend that?---
No, not at all.

PN614

Thank you, Commissioner. No further questions.

PN615

THE COMMISSIONER: Thank you. Well, that concludes the applicant's evidence, as I understand it.

PN616

MR CAMERON: Yes, Commissioner.

PN617

THE COMMISSIONER: Mr - - -

PN618

MR CAMERON: I'm sorry, Commissioner, we can have a break for 10 minutes, please?

PN619

THE COMMISSIONER: We certainly can. I might actually ask Mr O'Brien what he's planning to do when we come back from that break in terms of evidence.

PN620

MR O'BRIEN: We won't be calling any evidence, Commissioner.

PN621

THE COMMISSIONER: So I assume when we come back I'll be hearing submissions from both of you?

**** KEVIN NEIL VEIVERS RXN MR CAMERON
PN622

MR O'BRIEN: I don't know if the other respondents intend on calling evidence, but we certainly don't. In the absence of evidence called by the other respondents, I'd imagine we'd go straight to closing.

PN623

THE COMMISSIONER: I apologise to Ms Delaware and Ms Inglis, it's been late. Ms Delaware, are you going to be calling any evidence?

PN624

MS DELAWARE: No, I don't.

PN625

THE COMMISSIONER: Ms Inglis?

PN626

MS INGLIS: No, Commissioner.

PN627

THE COMMISSIONER: Thank you. Thank you, Mr O'Brien for pointing that out. So final submissions after a break. Can we make it 10 minutes exactly?

<THE WITNESS WITHDREW [6.28PM]
<SHORT ADJOURNMENT [6.28PM]
<RESUMED [6.40PM]

PN628

THE COMMISSIONER: Mr Cameron?

PN629

MR CAMERON: Commissioner, we have heard evidence tonight in relation to the employer's application to stop industrial action on this project. That evidence has included six affidavits, which I think is quite significant. A lot of that evidence was uncontested, we would argue, so the fact that the union attended the site; the fact that their members had meetings; and the fact that they left the site; a lot of that evidence in those six affidavits was uncontested.

PN630

We would to clarify for the Commission that we are talking about \$105 million project that engages approximately 185 men, which obviously support, probably more than 185 families who need to earn a living and we strongly encourage the Commission to assist them in returning to work.

We have heard evidence tonight and cross-examination in relation to the health and safety committees. I think it's fair to say that those committees normally consist of

management and representatives of the workplace. Those committees do not normally involve 185 participants. Do those committees do nor normally involve organisers from various unions. We believe there is a significant difference between the Workplace Health and Safety Committee and a site meeting, all right, which involves third parties. So we don't see any connection between those two.

PN631

The same as a - we think the evidence is very clear in that it articulates that we're talking about less than 1 per cent on one floor of the seven floor building and that, clearly, there was massive other areas exceeding 9000 square metres that was available for work to continue, particularly, in level 5 and below and that a number of employees were instructed to work in those areas at various stages through the seven days that we are talking about.

PN632

That's right, Commissioner, we are talking about seven days. The spill happened and was cleaned up on Thursday last week. So the site worked Thursday, Friday, and Saturday, and Monday before the union attended the site - the BLF.

PN633

We identify that there are obligations and entitlements under the Workplace Health and Safety Act Queensland. We also note that the Act is currently up for amendment to remove many of these items. We also identify that the - we've had a number of affidavits here today claiming that many of the men wanted to continue to work and that the area involved, as I said, was very minor.

PN634

Commissioner, we do seek an order from the Commission for three months to stop any further industrial action. I'll just read my notes for a second, Commissioner.

PN635

Commissioner, we also argue that some of these mass meetings could be (indistinct) described as a union meeting as opposed to a work - a safety committee meeting in that the union were clearly at the centre of the meeting and by their own evidence led here today, conducted the meeting.

PN636

Commissioner, we also add that Lend Lease clearly has a detailed system for Workplace Health and Safety on the project, it has an extensive commitment to Workplace Health and Safety, and has gone to, some would say, extraordinary extents to get independent third party to come in and inspect the clean up.

PN637

At all times during the seven days the area affected, being between 5 and 10 square metres on one floor of the building has been barricaded off, and no work has been undertaken in that area. There was heavy cleaning in relation to this area. Work was done by the wet-vac, which was done by licensed plumbers who are, clearly, licensed to work with live sewer under the Plumbers and Drainers Licensing Act in Queensland.

PN638

We understand that the area has been inspected by a third party with inspection in full provided who, after interviewing the people who cleaned it up was happy with the result in inspecting the chemicals that were provided. We also note that the area has been further cleaned today, is my understanding.

PN639

Commissioner, we seek a return to work order and a stop industrial action order from the Commission. This is in the interests of the company, and in the interests of a significant project in Queensland and in the interests of over 185 workers. If it pleases the Commission.

PN640

MR O'BRIEN: Thank you, Commissioner. I do have a substantial amount of material to go through tonight, so can I apologise in advance if I take some time. If I can start by going through the six affidavits as tendered by the applicant and I'll do this in two parts, Commissioner: the first I wish to draw your attention to some objectionable evidence that's been tendered; and the second I'll direct your attention to what I say are the relevant parts of the evidence.

PN641

If I can statement with the statement of Ms Cannon - sorry, I beg your pardon - no - I will start with the statement of Ms Cannon, Commissioner. If I can take you to paragraph 5 on page 2 - this is paragraph 5 as it relates to Wednesday, the 10th, as opposed to paragraph 5 as it relates to Tuesday, the 9th.

PN642

I would submit that the only conclusion you can draw from that evidence is that Mr Burns had formed a view there was no imminent risk in that area, and I think, Commissioner, it won't be controversial when I say that under cross-examination it became abundantly clear that Mr Burns is in no way qualified to make such a determination.

PN643

If I can move to the statement of Mr O'Rourke: paragraphs 4 and then over the page when we're dealing with Wednesday, 10th, paragraphs 3, 4 and 5. All of that evidence is unsourced hearsay and, in my submission, should be entirely disregarded.

PN644

MR CAMERON: Sorry, can you repeat what sections you said, sorry?

PN645

MR O'BRIEN: Paragraph 4.

PN646

MR CAMERON: Of Mr Burns?

PN647

MR O'BRIEN: This is Mr O'Rourke's statement. Paragraph 4, as it relates to Tuesday, the 9th; and paragraphs 3, 4, and 5, as they relate to Wednesday, the 10th are all unsourced hearsay and should be disregarded in their entirety.

PN648

THE COMMISSIONER: Sorry, Mr O'Brien - I'll just stop you there - but on the second page, which ones do you assert are hearsay?

PN649

MR O'BRIEN: Paragraphs 3, 4 and 5.

PN650

THE COMMISSIONER: Thank you.

PN651

MR O'BRIEN: Moving onto the statement of Mr Brockwell: paragraph 6 on the first page; paragraphs - - -

PN652

MR CAMERON: Sorry, could you just pause for a moment, please? Mr Brockwell, we're moving onto?

PN653

MR O'BRIEN: Mr Brockwell.

PN654

MR CAMERON: Yes.

PN655

THE COMMISSIONER: Sorry to - just bear with me. They seem to have got a bit out of order. Thank you.

PN656

MR O'BRIEN: Commissioner, we're dealing with the statement of Mr Brockwell: paragraph 6 on the first page as it relates to Tuesday, 9 July; on the second page, paragraphs 4, 5 and 7, as they relate to Wednesday, 10 July. Now, I note that the copy that I had of this statement is noted at the foot of page 1 of 3 and page 2 of 3, but I only have two pages.

PN657

If we move onto the statement of Mr Mellor, on the second page, paragraphs 6 and paragraphs 9, again, are unsourced hearsay and should be disregarded in their entirety.

PN658

MR CAMERON: Paragraphs 6 and 9?

PN659

MR O'BRIEN: Paragraphs 6 and 9 on the second page.

PN660

MR CAMERON: On the second page.

PN661

MR O'BRIEN: And finally, the statement of Mr Burns.

PN662

MR CAMERON: Sorry - - -

PN663

MR O'BRIEN: Sorry, I'll move on, Commissioner - - -

PN664

MR CAMERON: Sorry, which one is paragraph 9, "I observed" - - -

PN665

MR O'BRIEN: Well, Commissioner, if my friend has comments to make about the objections I raise, perhaps, he could save them for his reply.

PN666

Now, turning back to the statement of Ms Cannon, Commissioner, paragraph 3 and 4 at the bottom of page 1 - these are the paragraphs they relate to Wednesday, 10 July. What you see there is the totality of the evidence against the CFMEU and its organiser, Mr Tony Kong.

PN667

Those two paragraphs represent the high water mark for the applicant when it comes to evidence against the CFMEU.

PN668

MR CAMERON: Sorry, which paragraphs again, sorry?

PN669

MR O'BRIEN: For the benefit of my friend, paragraphs 3 and 4 on the bottom of page 1, as they relate to Wednesday, 10 July.

PN670

MR CAMERON: Which affidavit?

PN671

MR O'BRIEN: This is the affidavit of Ms Cannon.

PN672

If I can turn to the report that is annexed to the affidavit of Ms Cannon. If I can take you to part 2, which is headed Clean Up Inspection, which is on page 2 of 4. You will note that the gentleman who has completed this report, who I don't believe has taken the time - I beg your pardon, this is Mr Milne who has prepared this report. He provides that by all account, Mr Milne, who has prepared this report can give no evidence about what process was actually undertaken. He has no direct knowledge of that and that becomes important as we move through the report. We can only assume that that conversation has happened with Mr Hughes. Mr Milne doesn't tell us that. Again, this is unsourced hearsay, but we'll move on.

PN673

On the third of four pages, you'll see just above the pictures the report provides:

PN674

Please note, that no samples were in any way taken during this inspection as it was requested that this inspection be visual only.

PN675

We can only assume that that request came from the applicant this evening. So what we have in producing this report as a Mr Milne, turning up at the site, speaking to the labourer, Mr Hughes, of whom there is no evidence of any specialised training or knowledge in this area, speaking to Mr Hughes, having a bit of a look, and then writing this report.

PN676

You will note, Commissioner - now, in the copy that I have, there are five photographs - I say photographs: there are four black boxes and one grey box. The grey box is on the top left hand row of the black boxes. It does appear that there is a photograph of a product. One can only assume that this the product used to clean the spill area. We don't know, but we'll assume that. The product is called Tile and Bowl Washroom Cleaner. That will become later in my submissions, Commissioner.

PN677

Now, on the final page of the report, there's a disclaimer. I don't normally trouble myself with these disclaimers, Commissioner, I know I should, on this particular occasion I did. Can I draw your attention to the second paragraph of the disclaimer which reads:

PN678

The information upon which the analysis in Compliance by Design Pty Ltd documents are based has been either partly or entirely sourced from other parties. The reliability of these sources cannot be absolutely proven and Compliance by Design Pty Ltd does not represent or warrant that the information is correct.

PN679

This is the basis of the claim by the applicant that there are no further health and safety concerns on this site. The disclaimer goes on. It provides in the final paragraph:

PN680

Before using the information or recommendations contained in Compliance by Design Pty Ltd documents in a particular situation, it is essential that, amongst other things, the following criteria be taken into account.

PN681

There are five dot points, Commissioner, I'll draw your attention to two of them, these being the first and second. The first provides:

PN682

Whether the particular technique proposed to be used is appropriate for the circumstances.

PN683

The report writer has no idea what technique was used. He's spoken to Mr Hughes, the labourer, who has no skills or qualifications in this regard.

PN684

The second dot point:

PN685

Whether the persons using it have the necessary competence and experience.

PN686

"Have the necessary competence and experience": well, Commissioner, we have evidence that a labourer, who at his job interview said he's cleaned up raw sewage spills before, that's the man whose version of events forms the basis of that report, and this report, of course, underpins the applicant's view that there are no further health and safety concerns on this site. But we'll move on.

PN687

So the statement of Mr O'Rourke - if I can take you to paragraph 6? This is paragraph 6 on page 1. Mr O'Rourke attests that some of our employees attend the meeting in the park, they were affected by the site meeting vote which voted to go out for the day. So on Tuesday, the 9th, workers have left because of the vote.

PN688

Moving onto the statement of Mr Brockwell. If I can take you to paragraph 4 as to related to Tuesday, the 9th. Mr Brockwell attests that:

PN689

At that point I was informed by various employees that the site had been closed because Lend Lease hasn't engaged the services of a professional cleaning company.

PN690

Now, Commissioner, we have heard evidence that the safety committee has been actively involved in the matters that bring us here this evening. And the fact that on Tuesday, the 9th, workers have left because of concerns over the standard of cleaning will become important.

PN691

Over the page to page 2 of 3 as it's noted, paragraph 3, as it relates to Wednesday, 10 July. Mr Brockwell attests that:

PN692

Those employees attending were told that a larger site meeting was to be held later in the morning to consider the outcomes of the safety committee meeting.

PN693

It seems clear that this morning the safety committee has met, a meeting of all workers was called to discuss the outcome of that.

PN694

We turn now to the statement of Mr Mellor. Sorry, Commissioner, we'll move on to the statement of Mr Veivers. If I can take you to the final paragraph, paragraph 13. Mr Veivers attests that he was informed by Mr John Woodvine, who is the site foreman, that the employees had made a decision to leave the site after a meeting held by the union. The employees have made a decision to leave the site.

PN695

Finally, Commissioner, we come to the evidence of Mr Burns. Mr Burns, the most senior officer of the applicant on a project that my friend tell us is with worth \$105 million and supports 185 workers. Mr Burns attests that at paragraph 6 - this is the first paragraph 6, not the second paragraph 6. He attests that:

PN696

Mr Gould, organiser from the CEPU -

PN697

along with Mr Kong, I should say -

PN698

and Mr Steve McDonald, the Lend Lease delegate, advised him that the workplace health and safety committee and their workforce had voted not to return to work for the remainder of the day.

PN699

So yesterday it was the safety committee that initiated the withdrawal of labour. Turning the page in the affidavit of Mr Burns, we come to paragraph 7. This is the second paragraph 7. Mr Burns attests:

PN700

At 7am before union organisers and 15 members of the workplace health and safety committee attended a meeting in the site office.

PN701

So it's the workplace health and safety committee that is meeting at 7am this morning and Mr Burns goes onto say that the workers were still on site at that point.

PN702

What we have here, Commissioner, is evidence of a spill of raw sewage, and the involvement by concerns of the workplace health and safety committee.

PN703

I have some material to hand up, Commissioner, and I will briefly take you to some more passages in that material. I have the Workplace Health and Safety Queensland First Aid Code of Practice 2004; and I have from the Workplace Health and Safety Queensland departmental website, a passage headed Infection Control. Can I hand those up, Commissioner.

PN704

THE COMMISSIONER: Thank you.

PN705

MR O'BRIEN: Starting with the Code of Practice, Commissioner, can I take you to page 16? It provides for management of blood or body substance spillage. It goes on to say:

PN706

Spills should be attended to as soon as possible. Protective gloves should be worn, absorbent materials such as paper towels should be used to absorb the bulk of the blood or body substance. These contaminated materials should then be disposed of in a leak proof sealed waste bag.

PN707

Well, we've heard evidence that the spill was not attended to as soon as possible. We have no evidence of any protective gear being worn, and we have evidence that spill during the repair of the blockage flowed into a bin that then taken off site. There's no evidence that it was disposed of in a leak proof sealed waste bag, which is contrary to the Code of Practice.

PN708

The second paragraph provides at the second sentence;

PN709

A suitable disinfectant is a freshly prepared 1 to 10 dilution of 5 per cent sodium hydrochloride -

PN710

which is household bleach I'm told -

PN711

in water.

PN712

It goes on over the page:

PN713

After cleaning the contaminated area and equipment, reusable gloves and other protective clothing should be removed and disinfected and should be washed after items have been disinfected and gloves have been removed.

PN714

There's no evidence that any of this was followed. On the question of the cleaner that was used. The evidence from Mr Burns was that it was on the MSDS register. Well, the MSDS register goes to safe storage and handling of chemicals. It does not deal with whether or not a particular cleaning fluid is suitable for cleaning a large spill of raw sewage.

PN715

Now, my friend will say that it was not a large spill. It was a small area. Well, in my world, Commissioner, a 5 by 5 metre area of raw sewage - that's a large problem for me, that's not a small problem, that's a large problem for me.

PN716

Now, if I could take you now to page 23 of the Code of Practice, part 2.9, Risk Management, sub part 3. It provides that:

PN717

As part of the risk management process employers should decide on appropriate first aid equipment, facilities services, including trained personnel.

PN718

Well, we've heard from Mr Burns that we did not have trained personnel dealing with this spill of raw sewage on this \$105 million project.

PN719

We now come to the Infection Control document. If I could take you to the first page - it provides that;

PN720

A risk of infection occurs if blood or body substances come into contact with broken skin, open wounds, eyes, nose, or mouth.

PN721

It goes onto provide:

PN722

Infectious diseases, which may be transmitted by blood and some body substances, including, hepatitis B, hepatitis C, HIV virus, which causes AIDS.

PN723

This is not a matter of personal comfort, Commissioner, this is a genuine health and safety concern.

PN724

Page 2 of 4, under the heading Blood or Body Substance Spillage. Again, it provides:

PN725

Spills should be attended to immediately.

PN726

Under the heading Cleaning the Area When Finished.

PN727

When finished, the area should be cleaned with warm water and detergent and then disinfected.

PN728

Again, we have no evidence that an appropriate disinfectant was used.

PN729

Now, on page 3 of 4 on the same document, the sixth paragraph down:

PN730

Disinfecting can active bacteria, viruses, and fungi but not necessarily bacterial spores.

PN731

Again, Commissioner, this is not a matter of personal comfort, this is not a matter of workers getting squeamish, these are serious health and safety concerns.

PN732

So the evidence that we've heard tonight was that a spill occurred some time last week. There was a meeting on 6 July. Mr Burns says he agreed that a third party would come and perform an inspection. Everybody else at that meeting says Mr Burns agrees that a third party would come and clean and disinfect the area.

Well, I know which version of events I believe in that situation, Commissioner. It's not that of Mr Burns.

PN733

Now, we have an area where raw sewage has been spilled. I've taken you through the risk that presents. We have evidence that an unskilled labourer was tasked with cleaning that up and his version of events to the report writer has formed the basis of the view by the applicant that there are no health and safety concerns.

I've taken you through what I say that report cannot be relied upon.

PN734

Now, on 9 July, there's evidence that the safety committee met and some workers left the site. Again, on the 10th, we have evidence that the safety committee met and, again, some workers chose to leave the site. In fact, Mr Veivers provides in his evidence under cross-examination, that it was a decision of the safety committee to walk off the job.

PN735

Commissioner, can I take you to section 85 of the Work Health and Safety Act? Before doing so can I remind you that we heard evidence tonight that Messrs Finch, Cassidy, Hanson, O'Neil, are all health and safety representatives. Mr Hanson has been booked in for training but has not yet had that training. There is another gentlemen, Mr McDoughan, who has had that training but has not been elected. What is clear is that we have members of this health and safety committee who are properly elected health and safety reps, and on the evidence of the applicant, they have had the appropriate training.

PN736

If we now turn to section 85 of the Work Health and Safety Act? It provides that, at subsection (1):

PN737

A health and safety representative may direct a worker, who is in a work group represented by the representative, to cease work if the representative has a reasonable concern that to carry out the work would expose the worker to a serious risk to the worker's health or safety emanating from an immediate or imminent exposure to a hazard.

PN738

We have a reasonable concern: well, Commissioner, I would submit that on the evidence where there's been a spill of raw sewage and the applicant has not been able to demonstrate that that has been adequately dealt with, yes, I think workers would have a reasonable concern.

PN739

Carry out the work would expose the worker to a serious risk to the worker's health or safety. We have possible infection with hepatitis B, hepatitis C, and HIV. I think we can say that's a serious risk to the workers health or safety.

PN740

The third component is emanating from an immediate or imminent exposure to a hazard. We have an area on site upon which there was a 5 by 5 metre spill of raw sewage and this applicant has not been able to demonstrate that it's been adequately dealt with. The health and safety committee has formed the view that work should cease until that occurs. They are entitled to do that. Once they have formed that view, they're entitled to direct workers to cease work. That is not industrial action. It cannot be industrial action. It is authorised by law.

PN741

Now, section 85 goes on to provide that the health and safety (indistinct)

PN742

THE COMMISSIONER: I've got no way of knowing - we might get Kerry back on the phone. Do you want to just adjourn for a moment, Mr O'Brien. Last night it went on quite a bit for a short amount of time, didn't it, Ange? Isn't that what happened? It might be over. I mean, can't hear anything.

PN743

MR O'BRIEN: I'm happy to persevere, Commissioner.

PN744

THE COMMISSIONER: If you can just stop when it's - because I can't hear a thing, I presume - you can't hear anything either?

PN745

MR CAMERON: No.

PN746

THE COMMISSIONER: Could we just - obviously, Ms Inglis has dropped out. So, Mr O'Brien, could you just kindly wait because Ms Inglis has dropped out. Sorry. We got to - to my understanding, authorised by law, section 85 - - -

PN747

MR O'BRIEN: Commissioner, my submission is that section 85(1) of the Work Health and Safety Act provides that what has occurred yesterday and today is not industrial action. Workers have stopped work because they have been directed to by properly elected and trained health and safety representatives.

PN748

Subsection (2) goes on to provide that there are certain prerequisites that must be met which include attempting to resolve the matter and consulting about the matter with the (indistinct). On the evidence of the applicant that vote occurred.

PN749

The requirements of section 85 have been met and the workers had lawfully ceased work because they've been directed to by what are, on the applicant's evidence, properly elected and trained health and safety representatives.

PN750

On that point, Commissioner, can I take you to the application itself? I'm looking at part 4 grounds, sub part (3). The application itself provides that on Tuesday, 10 July - I can only assume that that's a typographical error when we're talking about today being 10 July.

PN751

If you're with me on that point, Commissioner, you will note the glaring omission there. We've heard evidence from the applicant that there was a withdrawal of labour yesterday, 9 July. Not even the applicant themselves contends that that was industrial action. The only conclusion you can draw from that is that the applicant themselves accepts that what occurred yesterday was lawful. It's not alleged that yesterday's activities were industrial action.

PN752

I would submit what occurred yesterday, in terms of the procedures outlined in the Work Place and Safety Act, was exactly the same. The safety committee has come together, they've made a decision, and they've directed workers to cease work. If the applicant's doesn't believe that it was industrial action yesterday, they cannot, with any credit assert that what happened today was industrial action.

PN753

Now, if I turn to the provisions of the Fair Work Act that we proceed under tonight, Commissioner, they're well known to all of us, I'm sure. There are two primary jurisdictional facts that the applicant must demonstrate have occurred before you can make any order at all.

PN754

The first of which is that industrial action is happening. Well, it's currently quarter past 7, there's no work rostered to be performed at this time. There's no industrial action that is happening. You cannot be satisfied of that.

PN755

We'll move onto subsection (b):

PN756

Industrial action is threatened, impending, or probable.

PN757

There's no evidence of any threats made. The only evidence is that workers withdrew their labour today because of the direction of the safety committee. There's no threats about what will happen tomorrow. Is industrial impending? Well, if we take the ordinary meaning of the word being about to happen, if you're with me on the operations of the Work Health and Safety Act, no industrial action has occurred.

PN758

It can't be about to happen. If you're not with me on that submission, there's no evidence that anything is about to happen tomorrow. There's no evidence that would give you the appearance that workers will not be performing work tomorrow.

PN759

Is industrial action probable? Well, again, if you're with me on the Work Health and Safety Act, it just becomes a moot point. But is industrial action probably, meaning more likely than not - there's no evidence that there's been any indication that there will be the withdrawal of labour tomorrow, be it lawful or otherwise.

PN760

Now, we come to subsection (c). Is industrial action being organised? At its highest, at its very highest, the evidence on this point is that of Ms Cannon at paragraphs 3 and 4 on the first page - I should say, the second grouping of paragraphs 3 and 4 on the first page, as they relate to Wednesday, 10 July.

PN761

The evidence is that Mr Kong, the organiser for the CFMEU addressed the meeting to advise that they had a discussion - this is the discussion with the safety committee - and they weren't happy with what David Burns had committed to do on Friday regarding the clean up. Mr Kong has reported back that the safety committee has had a meeting and they, they, being the safety committee, were not happy.

PN762

Mr Kong demanded that the area be cleaned by a third party, not just inspected by a third party. I would submit, Commissioner, it's open to you to conclude that that was the commitment given by Mr Burns on Friday. I would also submit it is open for you to conclude that Mr Kong is doing no more than reporting back the outcome of the safety committee meeting. That's not organising anything. That's doing his job. He's an organiser.

PN763

There are concerns regarding health and safety on this site. I don't think that's disputed. His job is to be there and represent those workers. There's evidence that Mr Kong was at a meeting. Again, that's his job. No adverse inference can be drawn against an organiser because he's entered a site to meet with workers. That's as high as the evidence gets. Even if you're against me on my submissions regarding whether or not industrial action has occurred or is about to happen: I would submit that no order can properly be made

against the CFMEU nor any other union because quite simply the evidence just does not support that.

PN764

Now, if I could turn briefly to the submissions of my friend, Mr Cameron? Mr Cameron has observed that there six affidavits that were handed up and that that's quite significant. I would submit that the number of affidavits tendered by an applicant should not have any bearing in the deliberations this evening, be it a large number nor a small.

PN765

Mr Cameron submitted that union members had meetings. No, they didn't, the workers had meetings. I don't think Mr Cameron is asserting that every single person at that meeting was a member of the union. The evidence is that the workers met, not the members of the union met.

PN766

My friend, Mr Cameron, submits that this is a significant project worth \$105 million, supports 85 (sic) workers, and very curiously, more than 185 families. I'm not entirely sure what the inference is there but I'm sure that our members are upstanding members of the community and only support one family at a time.

PN767

Now, the significance of this project or otherwise, as Mr Cameron would have you believe, is not borne out in the evidence that you've heard tonight. We've heard from the most senior official of the applicant, Mr Burns, is in charge of a \$105 million project supporting 185 workers. Does he know what a health and safety representative is? It's clear he doesn't, Commissioner. Has he seen a list of health and safety representatives on this job site as is required by the Act? He's been there 30 days and 30 nights, and has not seen such a list.

PN768

My friend, Mr Cameron submitted that the applicant has a detailed system of health and safety in place. No, they don't. The guy running this project doesn't know the first thing about the relevant Act. He's got no idea, Commissioner.

PN769

The operations of the Work Health and Safety Act, as it relates to health and safety representatives, is completely lost on the bloke this significant project and when he makes a declaration that's unprotected industrial action happening, he wouldn't know. He wouldn't know.

PN770

Now, my friend, Mr Cameron also submitted that the applicant had gone to extraordinary lengths to clean up. Here's what they did. They got a labourer, a labourer with no special skills or qualifications in this regard to disinfect the area with the disinfectant that is called - and if you'll bear with me for a moment, Commissioner, a disinfectant that is called Tile and Bowl Washroom Cleaner. This is not a cleaner that is

designed for cleaning spills of raw sewage. This is a cleaner that's designed for scrubbing toilet bowls.

PN771

They then, contrary to the promises made by Mr Burns - they get a third party to come in and have a bit of a look. No testing at the request of the applicant, no testing at the request of the applicant. The third party comes in, has a look, speaks to the labourer and signs it off. That's what Mr Cameron would have you believe is extraordinary lengths to clean up a significant spill of raw sewage.

PN772

I'd submit, Commissioner, that quite the contrary, it's just not good enough. It is clearly insufficient, and that's what you get, when a guy runs a project who doesn't understand the basic requirements of the Act.

PN773

Now, my friend, Mr Cameron, made the point that there were organisers at the safety committee meeting. Could I take you to section 68 subsection (2)(g) of the Act which provides that health and safety representatives at any time can request support and assistance of any person they choose. It's not uncommon, it's not unknown for members of a union to seek the assistance of their organiser. I think that's still legal. I think they're still allowed to do that, Commissioner.

PN774

No adverse inference can be drawn against a properly elected, properly trained health and safety representative who, quite properly, seeks the assistance of their organiser. Mr Cameron would have you believe otherwise. But, once again, organisers are allowed to do their job. They're allowed to do their job. And Mr Cameron makes the point that there's impending amendments to remove some of these provisions from the Act. I'm not entirely sure to make of that submission. I'm pretty sure that the Act, as I've referred you to tonight, was operating this morning.

PN775

Now, Mr Cameron, in his closing submissions, gave evidence from the Bar table that there was further cleaning undertaken at the site today. Well, Mr Cameron had an opportunity to produce that evidence and he chose not to, and he can't rely on it in his closing submissions.

PN776

Mr Cameron also submitted that there was a mass meeting. Well, when the safety committee needs to talk to all employees on the site about an important health and safety issue, I'd imagine that there would be a lot of people present. Again, no adverse inference can be drawn from that.

PN777

Mr Cameron also submitted that the union was clearly at the centre of the meeting. No they weren't. There's evidence from Mr Veivers that at one point he saw four organisers standing in the middle of the meeting. That's it. They were there. It's not clearly at the

centre of the meeting. Mr Cameron had an opportunity to direct you to evidence that supports his member's application against the CFMEU and he couldn't do it. And the reason for that, Commissioner, is because he hasn't got any. He hasn't got any.

PN778

Now, finally, Commissioner, can I say this: if you're with me on the operations of section 85 of the Work Health and Safety Act, it's clear there's been no industrial action at all on this project. There's been a lawful cessation of work at the direction of properly elected work health and safety representatives. That's not on my evidence, that's on the evidence of the applicant. There's been no industrial action at all and the jurisdictional facts don't exist to allow you to make any order at all tonight. If you're against me on that point I would say that there's no evidence of industrial evidence happening, there's no evidence of it being threatened, impending or probable and, again, the jurisdictional facts don't exist for you to make any order at all tonight.

PN779

You've heard me at length on the application as it stands against the CFMEU and the other unions. There's nothing at all to base an order against the unions other than being there on the site. My friend would have you adverse inferences because of that, but that's still allowed. They're allowed to be there.

PN780

Now, if you are minded to make an order tonight, the term of the order that is sought is far too long. It's completely inappropriate. We have a spill of raw sewage late last week. There's understandable concern around that. The matter is quite simple to deal with. The area just needs to be disinfected to the satisfaction of the health and safety reps, and the issue goes away. If you do plan to make an order tonight I would submit the order needs to be no more than one week.

PN781

Within one week this matter can be resolved and dealt with and everybody can get on with their life. But again, Commissioner, I would submit that for a number of reasons that there's no proper basis for the making of any order tonight and I would ask that the application be dismissed.

PN782

Unless I can be of further assistance, those are my submissions.

PN783

THE COMMISSIONER: Ms Delaware?

PN784

MS DELAWARE: Commissioner, I don't intend to rehash the submissions of Mr O'Brien except to say that I support the submission that he made. Further, I would just like to go to the conduct of the union that I represent briefly, in that our organiser, in fact, actually assisted the site in continuing to engage its employees by yesterday and today undertaking a safe inspection of the site and identifying various areas where

employees could work safely. So to say that the union that I represent had any involvement in organising any unlawful action yesterday or today (indistinct)

PN785

So I don't intend to say anything else except that I agree with Mr O'Brien that it's not possible under section 418 for you to make an order that a lawful action is happening, threatening, impending, or probable and, certainly not being organised, and certainly not being organised by my union.

PN786

However, if you do intend to make orders I would - I would suggest that you would not be able to find the orders - bind the CEPU to those orders. I have nothing further, thank you.

PN787

THE COMMISSIONER: Thank you, Ms Delaware. Ms Inglis?

MS INGLIS: Thank you, Commissioner. The CEPU supports the submissions advanced by the CFMEU and others. The evidence before the Fair Work Commission this evening, the six witnesses called by the applicant, we say fails to establish jurisdictional threshold before issuing an order pursuant to section 418 of the Act.

PN788

What occurred on the oral health unit site was in response to Lend Lease's failure to properly and promptly have the contaminated area professionally cleaned after a sewage leak. Mr Burns assured us that they now have had the site professionally cleaned. In relation to industrial action that is that the applicant alleges that is happening, there is no evidence of any industrial action happening, nor is there any evidence of industrial action threatened, impending or probable, or being organised.

PN789

The evidence before the Tribunal is that when toilets overflowed recently spreading a quantity of liquid, which Mr Burns and others believed to consist of merely water and urine, around an area of the site. Now, the applicant has been at pains to say that this still covered a relatively small area which was variously described by different witnesses as 5 by 5 metres, or 5 to 10 metre square. And as Mr O'Brien pointed out, in the context of raw sewage there would be a different view about whether that is, in fact, a small area.

PN790

Neither Mr Burns or any other witness was able to confirm decisively that the substance did not contain anything else, including hepatitis, E.coli, or any other pathogen associated with faecal matter. No testing had conducted by any person qualified or trained in establishing the fact of that claim. In fact, the applicant's own evidence indicated that a visual inspection was all that was required of the site. No test results were able to eliminate the potential for any disease carrying substances in the liquid that was split and inadequately cleaned up, instead a construction worked as sent to do what he could with the spill and ordinary household cleaning agent was used.

PN791

We support the CFMEU particularly in relation to the submissions about section 85 of the Work Health and Safety Act, and the serious risk to health and safety presented by the sewage spill.

PN792

The application seeks orders against the CEPU and its delegates, officers, employees, agents and members. Nothing in the evidence before the Tribunal shows that the CEPU or its delegates, or its officers, or employees, agents, or members were instrumental in causing any work to cease. The evidence does not suggest that the CEPU, its delegates, officers, employees, agents or members, organised abetted directed, counselled, procured, authorised, or encouraged members to engage in an industrial action. In our submission, there is no basis on which the Fair Work Commission can make an order as per the application.

PN793

In the event, Commissioner, that you find against the CEPU submissions, we say - we support the CFMEU in relation to the duration and form of the order and, furthermore, notwithstanding Mr Veivers's assertion that none of Allied Technology employees remained on site that is inconsistent with information received by the CEPU. And if an order were to issue without conceding, obviously, that one should - if an order were to issue we request that it should clearly exclude any employee who remained on site or who was sent home by their employer during the course of those events. May it please the Commission.

PN794

THE COMMISSIONER: Thank you, Ms Inglis. Reply, Mr Cameron?

PN795

MR CAMERON: Thank you, Commissioner. I'll try to be brief, Commissioner. In the closing submissions, the unions have referred to the spill again and the process used and the staff used to clean up the spill. Clearly, we need to reiterate here that the spill itself was cleaned up seven days ago. This spill was largely cleaned up by qualified and trained plumbers who are licensed to work with live sewer.

PN796

This is an every day event for them. They are skilled and qualified in doing this. 90 per cent of the spill, we argue, would have been cleared up by the pumps with the wet-vac, therefore, there was nothing left to test. What are you doing to test? The concrete? The spill related to less than 1 per cent of one floor on a seven floor building. This is a small area when taking in the context of a construction site exceeding over 9000 square metres. It must be taken in the context of the size of the site and the work available on many other floors.

PN797

The independent report wasn't simply a rubber stamp job. He came out. He interviewed the person who cleaned up the area. He looked at the chemicals that were used which

were a commercial product. They're not available on the shelf at Woolies. This isn't just from Woolies, it's a commercial product. He inspected the commercial product and asked what it was. He asked how the process that the worker undertake to clean up. He was clearly told that plumbers and wet-vacced it up and there was some mopping up needed with this commercial product.

PN798

The independent auditor was happy with that process. He was happy with the capacity and the confidence of the person who undertake that work to use that product to clean up that area. I see no recommendation in the report that further cleaning was required. Keeping in mind that this occurred seven days ago and that no work has been undertaken in that area, it has continued to be barricaded off, being less than 1 per cent of the construction site.

PN799

So we argue that the independent party assessed the competency of the person's involved to clean up the spill. We argue that the people involved in the spill clean up were licensed and trained, including the plumber, and now a labourer who had post assessed as being competent to clean up the spill.

PN800

As we said the company has got evidence that the area has been cleaned and has had an independent assessment of the area that has been cleaned. There has been no other evidence led. There is no affidavits by the union. There has been no witnesses put forward by the union. There has simply been evidence put forward by the company that was independently assessed.

PN801

My friends have referred to section 85 of the Work Health and Safety Act - I'm sorry, no section has been provided to the Commission, no section has been handed up. Are we to assume that the Queensland Health and Safety Act? Is it the New South Wales Health and Safety Act? They do have the same name due to the harmonised laws.

PN802

We are unclear in relation to which Act my learned friends are referring to and we do not have a copy of that Act available to us, which is a (indistinct) to procedural fairness.

PN803

Guides: our friends have provided us with a guide from the Workplace Health and Safety. These are purely guides. They are not enforceable at all. It's the same as the guide you get on many things in life. It's a guide. Okay. It's not law, it's not enforceable.

PN804

We would argue that many of the activities, if not all the activities by the company to segregate the area, to have it cleaned up by professional or licensed plumbers, to have it decontaminated by a commercial product and to have a third party come out and assess that process would be more than consistent with that guide. We have seen no evidence

here today from a workplace health and safety inspector who could have easily attended the site in the last seven days.

PN805

We have seen no evidence here today from an organiser who was actually there, or a member employee of the union who was actually there. No evidence to contradict the reasonable process that the company undertook.

PN806

The respondents continually referred to workplace health and safety committee meetings. This site has a long history of workplace health and safety committee meetings that spans back over 12 months. And for every other meeting that we're aware of there's minutes. Minutes are kept of these meetings. There's minutes for the Friday meeting. There have been minutes for many meetings before.

PN807

The groupings of persons that the respondents referred to have no minutes. There's no hidden undertaking. There's no evidence. We have seen no evidence of anyone who attended those meetings put forward by the union. We have seen no evidence from an organiser who attended these meetings to help or give advice. There's been no evidence to contradict the fact that these were actually meetings of the workplace health and safety committee. And there are no meetings of these minutes, which there are many dozens of other meetings, but there are minutes. So we're (indistinct) at these accord work health and safety committee meetings and normally the union doesn't attend.

PN808

Now, clearly, the Workplace Health and Safety Act allegedly has the capacity to invite other people to attend. There's been no evidence of any invitation. No text message, "Mate, can you come along?" Or no facts or communication or any mail from the workers on the site to invite the union to attend. No evidence of any phone calls, no organiser saying, "I received a phone call from a person on site", although they're not named, or from person or persons unnamed. No evidence of that has been led here today.

PN809

Again, my colleagues referred to section 85, which has not been tabled, has not been provided to the Commission and, certainly, has not - the applicant has not had the benefit of. There's been no evidence led by the respondent in relation to right of entry. So were they accessing the site under the Workplace Health and Safety Act allegedly? No evidence of that. No evidence whether they were there under the Workplace Relations Act.

PN810

MR O'BRIEN: Commissioner, I'm unclear how this is submissions in reply to the submission of the respondents.

PN811

MR CAMERON: I've only got one more point if you don't mind. Two sorry. My last two points is that the evidence led by the Bar table about Mr Burns, is that the site clearly

works days and nights, 30 days and 30 nights recently apparently. So we would argue that industrial action clearly is - undertaken at the moment in that Mr Burns is not there, and that the union keep referring to Mr Burns as the senior officer on the site, which he's not. He is the site manager as opposed to his boss, who is the construction manager for that project. He is 2IC, not the person in charge of the project is my understanding.

PN812

So that makes many of the submissions by my colleague (indistinct) irrelevant. No further questions, Commissioner.

PN813

THE COMMISSIONER: I intend to make my decision as soon as I can. I intend to make it tonight. I suggest that you leave your phone number with Angie if you're leaving the building, but it will take me at least - from experience - I usually say a time then it usually takes me a bit longer, so I don't want to unnecessarily keep you. If you have responsibilities and need to be hooked upon the phone and you're a key person in this process, I would see to the extent we can accommodate you we will try, but I will do it as quick as I can.

PN814

I think I will be half, three quarters of an hour, something like that.

PN815

MR CAMERON: Sorry, could I just say one more thing about Mr Burns, and that was he did give evidence in the box that there was clean up today, so we can review that evidence on transcript but he did give evidence in the witness box that there was clean up today, which is - has been confirmed by Mr Burns under oath. Thank you.

PN816

THE COMMISSIONER: Mr O'Brien, did you want to say anything about that?

PN817

MR O'BRIEN: It's not my recollection, Commissioner. Of course, I'll be bound by the transcript but it's not my recollection.

PN818

THE COMMISSIONER: All right. Thank you.

PN819

MR O'BRIEN: Can I just say on that, Commissioner, it doesn't change any of my submissions.

PN820

THE COMMISSIONER: Right. So, look, if you do, as I said - if you cannot attend, that you want to be on the phone in half, three-quarters of an hour, just let Angie know and we'll try and hook you in.

<SHORT ADJOURNMENT [7.47PM]

<RESUMED [9.43PM]

PN821

THE COMMISSIONER: This is an application for an order for industrial action by employees or employers stop. Lend Lease Project Management and Construction Pty Ltd, which I will refer to as Lend Lease or the company, made an application on 10 July 2013 for an order under section 418 of the Fair Work Act in respect of industrial action which it is said was occurring at the University of Queensland Oral Health Centre at Hurston, which I will refer to as the project.

PN822

I intend to issue an order today stopping industrial action. These are my reasons for doing so.

PN823

If it appears to Fair Work Commission that industrial action by one or more employees, that is not protected that is happening, threatened, or being organised, then the Fair Work Commission must make an order that the industrial action stop, not occur, or not be organised as the case must be for a certain period.

PN824

Under section 418(2) the order can be made on an application for a person who is affected whether directly or indirectly by industrial action. This applicant was made by Lend Lease, who is a national system employer, further, Lend Lease is the managing contractor on the project as well Lend Lease sub contractors whose employees are also national system employees.

PN825

Lend Lease is the person affected by the application, therefore, I find the application has been properly made by Lend Lease and as a person affected by directly and indirectly by industrial action. That is as the managing contractor who engages sub contractors, the order can and will apply to both Lend Lease employees and those employees of Lend Lease's sub contractors.

PN826

I turn now to the nature of industrial action. In this matter, a number of statements were sworn by the applicant. These were David Burns, Annelise Cannon, Michael Brockwell, Mark Mellor, Michael O'Rourke, Kevin Veivers and David Burns.

PN827

The background to this matter is there was a sewage leak of some five to 10 metres on the third floor of the project site. As a result employees raised a number of important safety issues.

PN828

Turning now to the evidence before the Tribunal, firstly from the applicant, in particular, I refer to the statement of Mr David Burn. On Tuesday, 9 July, approximately 185 workers left the project and proceeded to the park adjacent to the site at approximately 6.40am. At 7.15am, Tony Kong, an organiser from the CFMEU attended the site along with Robbie Gould an organiser from the CEPU, Steven McDonald, and the Lend Lease delegate.

PN829

David Burn deposes that he was advised that the work force had voted not to return to work for the remainder of the day due to a lack of consultation in relation to this temporary toilet break on level 3.

PN830

David Burns also observed Annelise Cannon confirming that there was no imminent risk and instructed the workers to return to work. He observed Ms Cannon advising that Compliance by Design, which was the company that was involved in inspecting the site, had inspected the area in question. Ms Cannon confirmed that the area would remain barricaded until that inspection report. Mr Burns deposes that the area remains still barricaded off.

PN831

As for Wednesday, 10 July, at 6 am today, he observed that union officials entered the site through the gate without providing right of notice entry or any notice of the meeting without attending site to confirm. He confirmed he received a right of entry notice from the CEPU on 10 July. He observed Tony Kong from the CFMEU, Robbie Gould from the - an organiser from the CEPU; Kevin Griffin of BLF; and Mark Bateman the NTU organiser. Were officials were taking, what he described, as a direct line to the basement.

PN832

The union conducted a meeting, he deposes, of approximately 185 workers in the basement today between 6 am and 6.45 am. At 7 am organisers and 15 members of of the work health and safety committee attended a meeting. Mr Burns deposes that Tony Kong said, "They've had a discussion, they weren't happy with the consultation on Friday."

PN833

He then gave Mr Kong a copy of the inspection report and he deposes that Tony Kong then demanded the area be cleaned by a third party, not just inspected by a third party.

PN834

Submissions from the CFMEU and CEPU in their various forms: No evidence was tendered by the respondents, however, comprehensive submissions were made by Mr O'Brien and other advocates also being Ms Delaware on behalf of the plumbers union, and Ms Inglis on behalf of the electrical division of the CEPU.

PN835

Referring to the work health and safety legislation in some detail, in particular, that Mr O'Brien's point would be that there would be no industrial action if the workers had

taken action as a result of section 85 of the Work Health and Safety Act. He referred to the three elements required to establish this provision.

PN836

These are in summary of the relevant parts: a reasonable concern. There was a serious risk to the work health and safety of an employee and there was an immediate and imminent exposure to a hazard. These simply cannot be made out on the facts of this matter. The facts are there was a hazardous spill. It gave rise to employees' reasonable concern. Indeed, the evidence was that it was cleaned up almost a week ago. However, in this matter, the submissions are that there remains a serious risk to work health and safety and that there is immediate and imminent exposure to hazard.

PN837

However, the uncontested evidence is that this area has been barricaded off from the beginning and that while safety procedures seem to me to be appropriate, they are clearly not agreed. That, is the proper task of the safety committee: that is, there may be some appropriate, relevant, and proportionate disagreement in the way the area is to be cleaned up. Something that would clearly, in my view, be squarely the task of the safety committee.

PN838

However, it is not the concern of an unprotected industrial action application. To take such action and to rely on that such action, all three of those elements must be satisfied and, in my view, it is only the first that is. Therefore, it is potentially industrial action.

PN839

Turning then to the question of industrial action: I must be satisfied that industrial action is, as I indicated before, happening or threatened, pending, probable, or has been organised.

PN840

Industrial action occurred on the Tuesday and Wednesday 9 and 10 July. It has not concluded. There is no indication either from the Bar table, evidence that the workers have an intention to return to work.

PN841

I conclude on the basis of the evidence before me that industrial action of approximately 180 workers began at first start yesterday and is continuing. As this is not protected industrial action, I have concluded that industrial action is happening.

PN842

Turning to whether industrial action is being organised: in *AMW v UGL Resources Pty Ltd*, Fair Work Commission is not empowered to make an order that industrial action not be organised unless it first makes a finding that industrial action is being organised.

PN843

I turn to the statement of Kevin Veivers. He deposes about the concerns of employees about the implications of returning to work. In his statement he noted that these discussions were his - he deposes that these discussions were interrupted by the CFMEU organiser, the BLF organiser, the CEPU organiser, and the ETU organiser. In the statement of David Burns, Mr Burns refers to these persons as Mr Tony Kong from the CFMEU; Robbie Gould from the CEPU; Kevin Griffin as an organiser for the BLF; and Mark Bateman, the organiser for the ETU.

PN844

Mr Veivers asserts that the consistent message from all union organisers was that Lend Lease did not uphold its side of the agreement regarding the cleaning up of the contaminated area from the cleaning contractor, JJ Richards, and that the return to work would depend on the safety committee walk and workers to say located in the basement until then.

PN845

Mr Tony Kong, from the CFMEU, who addressed the meeting, advised in a discussion that they were not happy with the consultation on Friday. These assertions were not disserved in cross-examination, that is, it seems to me some employees have expressed concern about the implications of returning to work. This gives support to a conclusion that some employees left the site did so because organisers lent encouragement or support to that industrial action.

PN846

I remain concerned about these assertions. However, the test for organising is precise and it requires me to find that industrial action is being organised. Given there have been separate submissions from two sections of both the CFMEU and the CEPU, I will address them separately.

PN847

The first is from the CFMEU Construction and General. In particular, Mr Tony Kong's involvement and statements about this issue of not being very happy with consultation, his specific request for the JJ Richards involvements leads me to a conclusion that when these issues were not resolved to his satisfaction he lent support and encouragement to take industrial action.

PN848

He addressed a large meeting and indicated that when the proposal was not accepted he was not happy. I have concluded then by his actions that as an organiser for the construction and general branch of the CFMEU, Mr Kong, lent encouragement to industrial action.

PN849

In relation to the BLF division of the CFMEU and the electrical division of the CEPU, it is not that I'm convinced that they were organising industrial action but on the evidence before the Tribunal I cannot conclude that they were.

PN850

I now turn to the question of the CEPU Plumbing Division, in particular, Mr Robbie Gould, as the plumber's organiser.

PN851

In a statement of Mr Michael Brockwell, he was the site manager employed by John R Keith Contracting Pty Ltd. His evidence was that a conversation was held with the organiser, that is Mr Gould, to clarify what actions his employers were now expected to take. His evidence was that his employees wanted to remain at work in compliance with that and there is an enterprise agreement.

PN852

Later, Mr Gould, of his own accord proceeded to perform a safety walk accompanied by a safety representative. At the conclusion of this meeting, Mr Gould declared the site opened and the employees should return to work. That evidence is for the Tuesday, 9 July.

PN853

Evidence for Wednesday, 10 July is that Mr Gould again participated in a meeting of the plumber unions. The purpose of the meeting was to decide if these members would attend a larger site meeting. Mr Brockwell's evidence is that under fear of intimidation from other union members employees elected to comply with the larger meetings, this is except for a couple of apprentices.

PN854

I'm required to decide whether industrial action is being organised by these actions if it can be so, if an organiser lent encouragement or support to that industrial action.

PN855

Arriving on site on both days is not enough on its own, particularly, when there was conclusion at least on the first day around returning to work. However, the evidence on Wednesday leads me to conclude that Mr Brockwell's evidence of a fear of intimidation, which although carefully questioned by Ms Delaware, Mr Brockwell did not resile from the main proposition that the employees have elected to leave the site on Wednesday for fear of intimidation. I have, therefore, concluded that the organiser lent his support for the industrial action at that time.

PN856

That concludes the issues around the main part of the order. I now turn to the stop period. The Fair Work Commission must make an order that industrial action stop for a specified period. The applicant seeks a period of three months and the respondent suggests that in the event the order is made that one week would be sufficient. As I've indicated I have some concerns of what is quite an important issue around safety can be appropriately addressed as a result of industrial action.

PN857

There was a lot of discussion this evening about the competence of work health and safety representatives and the contribution that well trained representatives can make to ensuring health and safety. It is, indeed, important. I would think a period of one month

would allow employer representatives to contribute to this health and safety issue. I intend to make the industrial action order stop for a period of one month.

PN858

I now turn to the parties bound just to clarify the issues that I've raised, and I note the parties bound will be the employees mentioned in the order and as for the organisations it will be the construction and general division of the CFMEU and the CEPU Plumbers Division as I understand those two divisions to be. The order will issue in terms of those reasons later this evening.

PN859

Are there any submissions in relation to distributing the order that I need to make this evening.

PN860

MR O'BRIEN: Yes, Commissioner, I have some submissions on that. I do have a copy of the draft order as provided by the applicant. There is a few things I would say, one, is it's proposed that there be an order that a message be posted on the home page of - - -

PN861

THE COMMISSIONER: Just - what page are you on, Mr O'Brien?

PN862

MR O'BRIEN: I'm at page - I'm at part 4 of the draft order.

PN863

THE COMMISSIONER: Part 4.

PN864

MR O'BRIEN: I don't think the pages are numbered on the copy that I have.

PN865

THE COMMISSIONER: Other Directions. Yes.

PN866

MR O'BRIEN: So I'm looking at 4.1.3.

PN867

THE COMMISSIONER: Yes.

PN868

MR O'BRIEN: It is a not simple process for the CFMEU to put a message up on the website.

PN869

THE COMMISSIONER: No.

PN870

MR O'BRIEN: I'm not entirely sure that it's necessary for us to go that length given our website is accessed by 16,000 members, and we're talking about 185 workers not all of whom are members of the CFMEU.

PN871

THE COMMISSIONER: All right.

PN872

MR O'BRIEN: I would submit that it's not appropriate for an order to be made to replace the message on our website.

PN873

THE COMMISSIONER: All right. Sorry - I want to hear from - are you on the phone, Ms Inglis? Ms Delaware is. I'll hear from you in a moment, Ms Delaware. I just - Mr O'Brien, have you got an alternative?

PN874

MR O'BRIEN: Well, I - in light of the order that's been made, I don't have any submissions to make regarding 4.1.1. I don't have anything to say - - -

PN875

THE COMMISSIONER: Just in relation to distribution really. You know, if the home page is too hard - it's late - have you got another way employees can get the message?

PN876

MR O'BRIEN: Well, in terms of service employees, Commissioner, I would say that's a matter for the applicant. We're more than happy to distribute this order to officials and employees of the union and I would say that our responsibility should go no further than that.

PN877

THE COMMISSIONER: All right. I'm not - I might hear from Mr Cameron on it. I think the home - I feel Mr O'Brien's concerns are reasonable in terms of logging onto the home page this evening, Mr Cameron. I mean, I think we've got to try something a bit more practical tonight.

PN878

MR CAMERON: We'd be happy for that to, you know, if it take 24 hours for them to get it up on their home page.

PN879

THE COMMISSIONER: I don't think they need to put it on their home page. It's to go to the people who it's relevant to go to. It's - I don't - it's on our website, it doesn't - I don't think it needs to be - go further than to the people who it applies to and on our website - -

-

PN880

MR CAMERON: (indistinct) obligation, Commissioner.

PN881

MR O'BRIEN: Commissioner, regarding 4.1.3.1 of the requirement that sets out of the terms order, it states that industrial action is cancelled. If we're going to be sending a message out to officials and employees of the union, I would submit that it's not necessary to set out the terms of the order in full.

PN882

THE COMMISSIONER: Look, I've got a standard order, what - can I get some undertakings from the Bar table tonight that, obviously, officials will be advised. I'm more than happy for a draft order to be sent to you first thing tomorrow. It is pretty late. And it won't be the first time that it needs to be amended to take into account, but I do need to get these issues sorted out in terms of the practicalities. But - so you're suggesting - my standard - I suppose this is not my standard order that I make, but I don't think it's quite as complicated as this.

PN883

So if you can give me an undertaking that you will let officials know about this before work tomorrow.

PN884

MR O'BRIEN: Before work tomorrow, Commissioner, I'm happy to undertake that I shall advise the relevant officials and - - -

PN885

THE COMMISSIONER: Yes.

PN886

MR O'BRIEN: And for the sake of failure for the record that would be the two assistant secretaries - - -

PN887

THE COMMISSIONER: Yes.

PN888

MR O'BRIEN: - - - the divisional branch secretary and the organiser named in the material this evening.

PN889

THE COMMISSIONER: Mr Cameron, what about employees?

PN890

MR CAMERON: Clearly, it's the site will distribute a copy of the order, but that does make it important that we have a copy of the order tonight preferably so it can be distributed to the workers on site in the morning.

PN891

THE COMMISSIONER: Okay.

PN892

MR CAMERON: I think I need to press the importance of that. Obviously, you know, the workers need to know that tonight has happened, and that there's been an order issued and these things are very tentative in the morning - first thing in the morning, the scuttle buck moves very quickly, so we do need that order for distribution in the morning, Commissioner.

PN893

THE COMMISSIONER: All right. I hear you, Mr Cameron.

PN894

MR CAMERON: It seems like a website maybe not important, the fact that the respondent may not be able to advise everybody that works for him, that's maybe as crucial, as long as he advises the relevant persons. But a copy of the order to hand out first thing in the morning is actually quite - - -

PN895

THE COMMISSIONER: Well, it's on transcript who he said he's going advise and I've accepted that that's appropriate in these circumstances.

PN896

Ms Delaware, do you have some particular practical challenges also?

PN897

MS DELAWARE: At this time of night, obviously, we do, but (indistinct) Mr O'Brien, I'm happy to have conversations with the secretary, if you put the assistance state secretary and our relevant organiser tonight, I can arrange for our organisers to be on site first thing in the morning to let workers know and, obviously, hand out any orders. But I suspect by the time the office is open and orders are sent to us that might be well and truly after the start time tomorrow anyway.

PN898

THE COMMISSIONER: We'll do it tonight. It's just there's workers at this place as well that - we have to keep going.

PN899

MS DELAWARE: So certainly our organiser can be on site tomorrow morning.

PN900

THE COMMISSIONER: Thanks, Ms Delaware.

PN901

MR CAMERON: Would it be of any further assistance to in relation to maybe a recommendation in relation to the ETU and the CFMEU normal position, proper, so that we have a - - -

PN902

THE COMMISSIONER: No.

PN903

MR CAMERON: If the Commission is intending to make orders in relation to some of the parties but not all, would it be proper to ask for a recommendation in relation to the other parties because of return to work.

PN904

THE COMMISSIONER: Any employee who is taking unprotected industrial action is ordered back to work. It's just the organising issues only apply as I indicated before.

PN905

MR CAMERON: Thank you, Commissioner.

PN906

THE COMMISSIONER: That's, I think, clear. Look, we will do that standard order and I will just ensure that distribution is - and thank you for your time. There's no need to stay. I'll just send it - I presume you've got phones that you can pick up orders on, or whatever. We should have that done within 15 minutes, Ange?

PN907

THE ASSOCIATE: Yes.

PN908

THE COMMISSIONER: So have we all got good quality email addresses we can get tonight.

PN909

MR CAMERON: Yes, Commissioner.

PN910

MS DELAWARE: Could I - I don't believe the Commission has been sending - sorry, it's Ms Delaware here - I don't believe the Commission has been sending information to my email address. If I could put that down.

PN911

THE ASSOCIATE: What's your email address?

PN912

MS DELAWARE: Melissa@plumbersunion.qld.com.au.

PN913

THE ASSOCIATE: Thank you.

PN914

THE COMMISSIONER: Thank you.

<ADJOURNED INDEFINITELY [10.08PM]

LIST OF WITNESSES, EXHIBITS AND MFIs

ANNELISE CANNON, SWORN [PN98](#)

EXAMINATION-IN-CHIEF BY MR CAMERON [PN98](#)

EXHIBIT #A1 WITNESS STATEMENT OF ANNELISE CANNON [PN103](#)

CROSS-EXAMINATION BY MR O'BRIEN [PN103](#)

RE-EXAMINATION BY MR CAMERON [PN135](#)

THE WITNESS WITHDREW [PN143](#)

ANNELISE CANNON, RECALLED [PN145](#)

RE-EXAMINATION BY MR CAMERON [PN148](#)

CROSS-EXAMINATION BY MS INGLIS [PN154](#)

RE-EXAMINATION BY MR CAMERON [PN166](#)

CROSS-EXAMINATION BY MS DELAWARE [PN176](#)

THE WITNESS WITHDREW [PN181](#)

DAVID JOHN BURNS, SWORN [PN184](#)

EXAMINATION-IN-CHIEF BY MR CAMERON [PN184](#)

EXHIBIT #A2 WITNESS STATEMENT OF DAVID JOHN BURNS [PN190](#)

CROSS-EXAMINATION BY MR O'BRIEN [PN191](#)

CROSS-EXAMINATION BY MR DELAWARE [PN295](#)

CROSS-EXAMINATION BY MS INGLISS [PN300](#)

RE-EXAMINATION BY MR CAMERON [PN319](#)

FURTHER RE-EXAMINATION BY MR CAMERON [PN366](#)

THE WITNESS WITHDREW [PN371](#)

MICHAEL DENNIS BROCKWELL, SWORN [PN374](#)

EXAMINATION-IN-CHIEF BY MR CAMERON [PN374](#)

**EXHIBIT #A3 WITNESS STATEMENT OF MICHAEL DENNIS BROCKWELL
[PN376](#)**

CROSS-EXAMINATION BY MR O'BRIEN [PN384](#)

CROSS-EXAMINATION BY MS DELAWARE [PN395](#)

THE WITNESS WITHDREW [PN409](#)

MICHAEL O'ROURKE, SWORN [PN412](#)

EXAMINATION-IN-CHIEF BY MR CAMERON [PN413](#)

EXHIBIT #A4 WITNESS STATEMENT OF MICHAEL O'ROURKE [PN414](#)

CROSS-EXAMINATION BY MR O'BRIEN [PN421](#)

CROSS-EXAMINATION BY MS DELAWARE [PN452](#)

THE WITNESS WITHDREW [PN470](#)

MARK PAUL MELLOR, SWORN [PN473](#)
EXAMINATION-IN-CHIEF BY MR CAMERON [PN473](#)
EXHIBIT #A5 WITNESS STATEMENT OF MARK PAUL MELLOR [PN484](#)
CROSS-EXAMINATION BY MR O'BRIEN [PN485](#)
RE-EXAMINATION BY MR CAMERON [PN505](#)
THE WITNESS WITHDREW [PN512](#)
KEVIN NEIL VEIVERS, SWORN [PN515](#)
EXAMINATION-IN-CHIEF BY MR CAMERON [PN515](#)
CROSS-EXAMINATION BY MR O'BRIEN [PN522](#)
CROSS-EXAMINATION BY MS INGLIS [PN548](#)
RE-EXAMINATION BY MR CAMERON [PN592](#)
THE WITNESS WITHDREW [PN628](#)