



CRIME AND MISCONDUCT COMMISSION

TRANSCRIPT OF PUBLIC INVESTIGATIVE HEARING

10 **CONDUCTED AT LEVEL 2, NORTH TOWER, 515 ST PAULS TERRACE,
FORTITUDE VALLEY AT LEVEL 2, NORTH TOWER, 515 ST PAULS
TERRACE, FORTITUDE VALLEY WITH RESPECT TO**

File No: MI-09-1057

HEARING NO: 08/2009

**DAY 3 - WEDNESDAY 25 NOVEMBER 2009
(DURATION: 55 MINS)**

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LEGEND

Presiding Officer – Robert NEEDHAM, Chairperson, CMC

Counsel Assisting – Russell PEARCE, Director, Misconduct Investigations

30 **Hearing Room Orderly – Alicia VIEIRA**

Witness – Michael KINNANE

Legal Representatives – Mr FARR, instructed by Adam GUEST (Guest Lawyers)

THE PRESIDING OFFICER: You are for Mr KINNANE, Mr FARR?

MR FARR: Yes, Mr Chairman.

MR PEARCE: Mr KINNANE, we have to get you to take either an oath or an affirmation before you commence your evidence.

MR MICHAEL KINNANE ON OATH, EXAMINED:

10 MR PEARCE: Can I get you to state your full name, please.

THE WITNESS: Michael John KINNANE.

MR PEARCE: You are the associate Director-General of the Department of Infrastructure and Planning?

THE WITNESS: I am.

20 MR PEARCE: In 2008 you were the Director-General of the then Department of Local Government, Sport and Recreation?

THE WITNESS: That's correct.

MR PEARCE: And that department is now part of the Department of Communities; is that correct?

30 THE WITNESS: The sport and recreation part of it is. The local government part of the department is with the Department of Infrastructure and Planning. So the two departments were split up.

MR PEARCE: Very well. May we just wait for the camera to be removed. Mr KINNANE, could you briefly outline for us, please, your experience in the public sector.

40 THE WITNESS: My experience is quite extensive. I have held senior executive positions in the Queensland public sector for no less than 19 years and 10 years of that was as Director-General, firstly of the Department of Emergency Services from 1998 to the end of 2005 and then the Department of Local Government, Planning, Sport and Recreation from January 2006, and then with the Premier's change in September 2007 the Department of Local Government, Sport and Recreation, up until March this year with MOG changes occurring.

MR PEARCE: Prior to your association with the Queensland public sector you also served with the Australian public service?

THE WITNESS: I did. I worked in the Department of Industrial Relations and prior to that worked in a number of international organisations including the International Labour Organisation of the United Nations.

MR PEARCE: How long have you worked in the public sector?

THE WITNESS: If you add in the Commonwealth sphere, that was about 11 years, so about 25 years.

MR PEARCE: In mid-2008 -- we're looking at about June and July of 2008 -- we have heard evidence that you were absent on leave; is that correct?

10 THE WITNESS: That's correct. I was on sick leave between 2 and 11 July 2008. I had spent some time in the hospital and recuperated at home.

MR PEARCE: Prior to that you had been absent overseas; is that correct?

THE WITNESS: No, that was after that. The overseas trip was around September last year till November.

MR PEARCE: In any event, in mid-2008, and again we are looking at June/July, is it the case that Mr Craig MATHESON was acting Deputy Director-General of your department?
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THE WITNESS: That's correct.

MR PEARCE: While you were absent on leave between 2 and 11 July was it the case that Mr MATHESON was briefing you on an ad hoc basis concerning matters affecting the department?

THE WITNESS: On occasions, and certainly Mr MATHESON would visit me at home after the stint in hospital and brief me in very general terms of current events.
30 But Craig was the acting Director-General at the time.

MR PEARCE: You are aware that in the same period Ms Tracy O'BRYAN and Ms Di FARMER were job sharing in Craig's substantive position of Executive Director of Sport and Recreation?

THE WITNESS: I am.

MR PEARCE: And you would be aware that Mr Ben KLAASSEN was then the Director of Program and Industry Development.
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THE WITNESS: I was.

MR PEARCE: Are you able to offer an opinion as to the character of those various people, that is Craig MATHESON, Tracy O'BRYAN, Di FARMER and Ben KLAASSEN.

THE WITNESS: I would be delighted to for the Commission. I have had the pleasure of being a Director-General of a very committed set of staff. All of the

names that you've just mentioned were very hard-working dedicated public servants, honest as the day is long and people with whom I had complete confidence.

MR PEARCE: Do you know Mr Simon TUTT?

THE WITNESS: I do.

MR PEARCE: How long have you known Mr TUTT?

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THE WITNESS: Only directly since Minister SPENCE took over the roles of Minister for Sport in approximately September '07.

MR PEARCE: Has that been the extent of your association with Mr TUTT?

THE WITNESS: Yes, it has.

MR PEARCE: And can you clarify or expand for us on what contact you would have had with him during that period.

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THE WITNESS: During the period in 2008?

MR PEARCE: Yes.

THE WITNESS: I have no recollection of any direct meetings with him during that time. I would have met him on a number of occasions but I don't have any dates or anything like that. We used to meet most Friday mornings to deal with a number of senior issues across the agency. But that was the extent of the involvement.

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MR PEARCE: We've heard some evidence that it was -- well, you endeavoured to meet with him on a Friday morning over coffee.

THE WITNESS: That's correct, that's correct.

MR PEARCE: Where would you do that?

THE WITNESS: At Hudsons on George Street. And my endeavour there was to try to ensure a good working relationship between the minister's office and the department to iron out any problems.

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THE PRESIDING OFFICER: Mr KINNANE, can we just get the geographic situation of where the department was and where the minister's office was.

THE WITNESS: The minister's office was in the State Law Building and the department's office, Mr NEEDHAM, was in Mineral House in George Street. So we used to meet halfway.

MR PEARCE: Are you able to comment upon how Mr TUTT performed his role as

the senior policy adviser in terms of his relationship with your department?

10 THE WITNESS: Well, look, there's no question that Mr TUTT is a highly intelligent human being, very active, very hard-working, very committed to his minister. The fundamental issue that I had with Simon TUTT was that I believed he interfered too much with the affairs of the department. He was a very intimidating person to officers of the department and he would bully, in my view, officers of the agency. And certainly would show his exasperation at times and lose his temper to members of the department. And I think that was a fundamental challenge that we all faced in the agency at that time.

MR PEARCE: There are a couple of issues that arise there. Firstly, can I ask whether you -- I should ask you this: Was it the case that Mr TUTT would sometimes approach departmental officers directly, that is, not through you?

THE WITNESS: Um, mostly. That was mostly the case.

MR PEARCE: Did you consider that appropriate?

20 THE WITNESS: No, not at all.

MR PEARCE: What did you do about that?

THE WITNESS: I raised it with him on several occasions. I said to him that I had no trouble with him checking purely operational issues, of matters of detail and minutia with officers of the department particularly the executive directors of sport and recreation or Mr MATHESON but with any policy decisions to be made and any policy directives they must come through me, and I made that very clear to him.

30 MR PEARCE: On just one occasion?

THE WITNESS: No, on a number of occasions. I didn't record them unfortunately in my diary but on a number of occasions.

MR PEARCE: Did his practice change?

THE WITNESS: Not markedly.

40 MR PEARCE: I just take you back to the other comments you made about -- you use the expression "bullying". Did you have evidence that first-hand? Or were you made aware of it?

THE WITNESS: I was made aware of it more than experiencing it. Whenever I was in a meeting which was attended by Mr TUTT he would have a relatively stable demeanour and I found that he did not lose his temper or show exasperation when I was in his company. But certainly I had those experiences reported back to me by senior officials of the department.

MR PEARCE: Were complaints made to you by your officers about Simon TUTT's conduct?

THE WITNESS: Yes.

MR PEARCE: What complaints were made.

10 THE WITNESS: That he intimidated and was very forceful in his instructions to officers of the agency. There was one occasion when one of the senior executives of the agency was treated in a very direct way by Mr TUTT. I offered to take up the matter with Mr TUTT but she declined that invitation and said she would handle it in different ways.

MR PEARCE: Is that person Dianne FARMER?

THE WITNESS: Yes, it is.

MR PEARCE: Did you take any action by way of alerting the minister to your concerns about Mr TUTT's conduct and behaviour?

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THE WITNESS: Only in general terms in the early period of the ministry.

MR PEARCE: How did you do that?

30 THE WITNESS: I encouraged the minister and in the company of Simon TUTT, to have strong working relationships with the department. I'm a great believer in the department and the minister's office working in partnership. While realising that there is a separation of powers, our role is to provide frank and fearless advice to the government of the day. But I think I was very concerned, as were officers of the department, to ensure that we had the best working relationship between the minister's office and the agency.

MR PEARCE: Did you ever bring to the minister's attention that you were concerned about Mr TUTT's practice in going directly to officers in your department?

THE WITNESS: Nothing that I can recall.

MR PEARCE: Why did you not do that?

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THE WITNESS: I didn't think it would be very fruitful.

MR PEARCE: Why not?

THE WITNESS: Because the relationship between the minister and the minister's senior policy adviser was extremely close and I had no optimism that any action would be taken.

MR PEARCE: Likewise did you raise with the minister your concerns about Mr TUTT behaving in a bullying fashion?

THE WITNESS: Not directly.

MR PEARCE: Indirectly.

THE WITNESS: No.

10 MR PEARCE: Again, would that be for the same reason?

THE WITNESS: Indeed.

MR PEARCE: Did you at any time give guidance to your officers about how they should handle Mr TUTT's approaches to them?

20 THE WITNESS: Absolutely. I sent messages out to staff quite regularly that they did not work for Mr TUTT, they worked for me. I made it clear to staff that if they had particular problems that they wanted me to take up with the minister or with Simon TUTT himself that they should do that. So I sent the message out, I gave feedback but often it was after the occasion that issues were raised with me.

MR PEARCE: The next question was how did you facilitate those messages, was that by email?

THE WITNESS: No, personally, on a one-to-one basis and in meetings.

30 MR PEARCE: Did you also indicate to staff your views about the need to facilitate a smooth relationship between the department and the minister's office?

THE WITNESS: Yes. Within the bounds, of course, of appropriate public administration. There are times in this job when one has to say no to a minister or minister's staff and there are some times when you need to get instructions from the minister in writing. That didn't happen to me but I always encouraged the strongest possible working relationship between the minister's office and the department.

40 MR PEARCE: I think you might have touched on this earlier but can you indicate for us what contact you had with Simon TUTT regarding your concerns about his behaviour?

THE WITNESS: I would speak to him on the phone. It only happened on a small number of occasions, however, because the concern of the staff concerned was to let the issue go, that it wasn't worth a war between the department and the minister's office. There was a great deal of concern about the pressure cooker atmosphere between the minister's office and the department.

MR PEARCE: You have mentioned Di FARMER by name, did you ever receive

complaints from Craig MATHESON about Simon TUTT?

THE WITNESS: Mr TUTT would speak to Craig MATHESON on a very regular basis. And sometimes, multiple times during any one-day period, and Craig MATHESON would come back to me and say that he has had a difficult experience with Simon TUTT, or whatever the case may be.

10 MR PEARCE: In the period that you were off ill you would be aware now there was an episode in which a \$4.2 million grant was approved by the minister in favour of the Queensland Rugby Union.

THE WITNESS: Mm.

MR PEARCE: When did you become aware of that?

20 THE WITNESS: I have a vague memory of it before as I understand it the brief went through, not through me but went through the department to the minister's office that there was a QRU function coming up in the near future and the minister was keen on making an announcement at that particular function. So I was only aware in the most general terms.

MR PEARCE: Who made you aware of the matter; do you recall?

THE WITNESS: I think it was Mr MATHESON.

MR PEARCE: Do you recall the circumstances?

30 THE WITNESS: It could have been when he visited my home when I was on sick leave, but I don't have a precise memory of that.

MR PEARCE: May Mr KINNANE be shown Exhibit 2. What I'm about to show you is what's been described as the ministerial submission that went to the minister in respect of this matter. The Exhibit is comprised of the five-page submission document and a single page cover sheet.

THE WITNESS: Yes.

MR PEARCE: Do you recall seeing that document before?

40 THE WITNESS: No, I don't.

THE PRESIDING OFFICER: It's --

THE WITNESS: And my signature is not on the document.

MR PEARCE: Sorry, Mr Chairman.

THE PRESIDING OFFICER: It does actually include the annexure which is

Exhibit 1.

MR PEARCE: Yes, I thought it may have done. There is also an additional document there as well, I think.

THE WITNESS: Right.

MR PEARCE: Have you seen any of those documents before?

10 THE WITNESS: No, I don't recall them at all.

MR PEARCE: That's all I have of Mr KINNANE.

THE PRESIDING OFFICER: Mr KINNANE, the situation we have heard here -- we have heard evidence so far and we haven't heard all the evidence yet, we have to bear that in mind. We have heard evidence so far suggesting that Mr TUTT directed Mr MATHESON that the minister wanted to approve a grant of \$4.2 million to the Queensland Rugby Union and Mr MATHESON then considered that what he had to do was to produce that submission that you've just been shown,
20 which recommended the approval of such an amount of money so that it could facilitate what he understood the minister wanted, that is, to be able to approve that grant. Is that the way you personally would see the role of the public service, to give a submission that enables the minister to do what the minister desires to do?

THE WITNESS: Well, the most important thing, Mr NEEDHAM, is that any actions of the department need to be in conformity with the guidelines to the funding programs. So that is the threshold test. If, for example, an instruction was given to departmental officers to in any way contradict the guidelines of the funding programs then we would not be able to fulfil that requirement.
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THE PRESIDING OFFICER: The problem perhaps with this one is that this was coming out of the major facilities program.

THE WITNESS: Yes.

THE PRESIDING OFFICER: Which at that stage was under formulation. The guidelines for that program in fact went out I think, correct me if I'm wrong, in August -- a number of, you know, six to eight weeks later.

40 THE WITNESS: Mhmm.

THE PRESIDING OFFICER: But presumably were under formulation at around about this time. So it's an out of round grant that was being considered. But would there be standard sort of things that are looked at in any funding grant of a figure of \$4 million, \$4.2 million?

THE WITNESS: I think the questioning is leading to the point that this is a substantial grant, there is no question about that. We would at least -- I would

expect officers to have had a very rigorous look at the guidelines, as existing, even though they were under review, and to make certain that the assessment of the grant application was aboveboard. And there was a very thorough -- my staff administered a very thorough knowledge of the funding guidelines.

THE PRESIDING OFFICER: The evidence we've received is in fact this matter was not assessed in the normal way.

THE WITNESS: Ahh.

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THE PRESIDING OFFICER: This matter, though in effect led to understand that the minister wanted to approve this so they had to produce a submission recommendation approval. Mr MATHESON indicated to Mr TUTT that they didn't have sufficient information upon which to properly assess the matter. But his evidence is that he was directed to continue and do it. So this matter did not receive proper assessment. That submission was drafted which went to the minister and which recommended that the minister approve grant funding of \$4.2 million.

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THE WITNESS: I'm afraid I can't help the Commission very much because I wasn't involved with the decision making process at the time and I have no knowledge of it.

THE PRESIDING OFFICER: Does that accord with the way the department normally operated?

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THE WITNESS: Well, the department would normally operate within the realms, as I mentioned, of the funding guidelines. If there was a request by the minister's office it had to be checked with the guidelines and the principles underpinning those funding programs.

THE PRESIDING OFFICER: So when that didn't occur in this case you would say that was not the way business should have occurred in the department?

THE WITNESS: No, I agree.

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THE PRESIDING OFFICER: Should a public servant give to the minister a recommendation that the public servant believes is the appropriate recommendation to make or does the public servant give to the minister a recommendation that the public servant understands the minister wants to receive?

THE WITNESS: No, I don't believe it's the latter. I believe it's the former.

THE PRESIDING OFFICER: All right. See, we've had other evidence that later, then, in time through to the beginning stages of this year when the major facilities program was under way it was done in a staged process.

THE WITNESS: That's right.

THE PRESIDING OFFICER: Expressions of interest were invited.

THE WITNESS: Mhmm.

THE PRESIDING OFFICER: They were assessed against the guidelines, as set out and published and then a recommendation went to the minister as to which ones of those be recommended to be invited to actually then submit a full application.

THE WITNESS: I believe that was the process.

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THE PRESIDING OFFICER: That was the process. But the evidence again from several of your officers, including Mr MATHESON, discloses that what occurred is that assessment took place. During that assessment it's the evidence of Mr MATHESON that he was instructed by Mr TUTT out to include out of the "not recommended" and put into the "recommended" category one particular organisation, a school, and that even subsequent to that when the department finalised its list of recommendations, including that changed one, it was then discussed with the minister and Mr TUTT and changes to the departmental recommendations were made to accord with what they were told at that meeting.

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THE WITNESS: I'm afraid I'm not aware of that, Mr NEEDHAM.

THE PRESIDING OFFICER: So, again, the recommendation that went to the minister was in accord with what the minister had already said she wanted.

THE WITNESS: If that allegation is right, that sounds like the way it would be.

THE PRESIDING OFFICER: Does that accord with the way you understand it should occur?

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THE WITNESS: No.

THE PRESIDING OFFICER: What it does mean is that the minister can then say, "Every grant I approved was recommended to me for approval by the department".

THE WITNESS: Mm.

THE PRESIDING OFFICER: Whereas in fact some of those started out as recommendations for non-approved.

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THE WITNESS: Indeed. That seems to be the case.

THE PRESIDING OFFICER: How do we -- I appreciate your coming here and I appreciate your courage in coming here to give evidence today. I can understand that it can be difficult for you. We have a two-stage process here. We have to look at what, if anything, we have to do about any possible misconduct, official misconduct on the part of any public official, present or past, but the second stage we have to look at, as you understand, is any recommendations that we have to

make.

After we have finished hearing the evidence this week I will be inviting any interested departmental organisation to make submissions to the CMC, so that includes the Public Sector Union, the Institute of Public Administration, any of those bodies that might have submissions to make to us. I can even ask you about matters today or perhaps you might be prepared to put in a submission to us.

THE WITNESS: I would prefer the opportunity of making a submission.

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THE PRESIDING OFFICER: Okay. I'm happy to do it that way. Because I would be very appreciative of receiving your views. What I would be interested in is public servants can be overborne. I would be interested in ways in which public servants can be empowered to say "no".

THE WITNESS: Well, certainly -- I mean, I've had the experience as a Director-General for a long period of time where there have been some instances with different ministers I've had to say "no". I don't think that's an uncommon practice within the public sector at any level of government in any jurisdiction.
20 There are some stages, there are some times when it's not possible to actually implement an instruction by the minister or feedback from the minister and in those circumstances, given our separation of powers and the Public Sector Ethics Act and things that I hold very dear to my heart there is no choice but to say "no". So I think that public servants are empowered to say "no". It's whether they feel it's their comfort zone in saying "no" in a very tough environment.

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THE PRESIDING OFFICER: On the basis of the evidence that we've heard from -- ex-public servants -- sorry, some of them are still public servants but they were working under you at the time. On the basis of what we have heard from
30 them, some of your staff obviously didn't feel as if they could say "no".

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THE WITNESS: No, I agree.

THE PRESIDING OFFICER: On the basis of the evidence that they have given.

THE WITNESS: That's right.

THE PRESIDING OFFICER: It's not just a matter -- we know that in theory they can say "no". But what we have to have is a system whereby in reality they can say
40 "no".

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THE WITNESS: Indeed.

THE PRESIDING OFFICER: How we achieve that is something I'm yet to grapple with, as to how that can be done, but it's a very important thing to be put in place. The effect of the public hearings here will have some effect but that wears off over a period of time.

THE WITNESS: Indeed.

THE PRESIDING OFFICER: So in two years, three years, five years we must have it that public servants are able to say “no” when they need to.

THE WITNESS: Indeed.

THE PRESIDING OFFICER: I would be very pleased to read any submissions from you.

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THE WITNESS: Thank you.

THE PRESIDING OFFICER: Mr FARR.

MR FARR: I’m once again happy to allow any questioning and wait until the end.

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MR CARMODY: Not too many, thank you, Mr Chairman. Mr KINNANE, Tim CARMODY for the Queensland Rugby Union. As Mr NEEDHAM has just explained to you the evidence, it seems that Mr MATHESON at least was under the belief when he prepared the submission that he was just feeding back to the minister what she wanted to get, namely, a departmental approval of a grant she had already decided to give. See, that’s what he effectively said in his evidence. Now, he shouldn’t have done that, should he?

THE WITNESS: No.

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MR CARMODY: Now, he did -- Exhibit 2, you have not seen that. But I suggest -- others can agree or disagree -- I suggest he went out of his way to make it look like a true submission when in fact at the time he knew he was just doing the minister’s bidding because he used words like “submission”, “risk”.

THE PRESIDING OFFICER: He understood he was doing the minister’s bidding.

MR CARMODY: Yes, he understood. This leads me to my question. Scenario 1 is that what he understood was true, that is, the minister did or had already decided to approve and announce that grant. So, at best, that made Exhibit 2 a joke, agreed?

THE WITNESS: The Exhibit I’ve just seen?

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MR CARMODY: Yes, the submission.

THE WITNESS: Well, I’ve got to say to you that I have the utmost confidence in Mr MATHESON with his reliability, with his truthfulness and with his professionalism.

MR CARMODY: Strength of character?

THE WITNESS: An officer who was concerned about the working relationship

with the minister's office and the working relationship with Mr TUTT.

MR CARMODY: Mm?

THE WITNESS: But -- I think a strong person. And used to shield a number of his reports from flak received from elsewhere.

MR CARMODY: But, you see, in preparing a document dressed up to look like a submission which was really in fact a fait accompli, it had no practical benefit to anybody, did it?

THE WITNESS: I'm not aware of the issue myself. I have had no experience with it and I can't comment on that.

MR CARMODY: Let's put that to one side. That's on the basis that the minister did want him to tell her what she wanted to hear. But the other scenario which might be more concerning to you is that the minister didn't in fact, hadn't in fact decided to approve that grant but really did want the honest and frank advice from the department, right? And in getting Exhibit 2 on Mr MATHESON's evidence, she wasn't getting that.

THE WITNESS: Well, I think -- I think what goes to the heart of this -- my understanding of the issue, looking from the sidelines, in a retrospective sense, is that it depends upon the role that Mr TUTT played and what representations he did or didn't take to Mr MATHESON from the minister.

MR CARMODY: Let's not focus on Mr TUTT for a change. Let's focus on the departmental officers, their role and function, their honesty.

THE WITNESS: Absolutely.

MR CARMODY: Exhibit 2 if given to a minister who was undecided and looking for guidance from the department was at best misleading.

THE WITNESS: I can't say that. I can't say that it was misleading. I think it was a document -- it looks as if it was very thorough and very comprehensive but I can't say it was misleading.

MR CARMODY: If the witness who prepared it said that he wasn't comfortable in doing it, that he didn't have enough information to properly assess it or recommend it, but actually then went on to recommend it, it would be misleading because it would make the reader think that he was in support of it, wouldn't it?

THE WITNESS: It could be the case.

MR CARMODY: Would you comment on this? What that did, it robbed the minister of the opportunity to say, "Hey, I'm not satisfied with this. It looks like a well balanced submission to me, I'll approve it." Whereas if the truth had been that

Mr MATHESON had said, look, this has been rushed through, I've been given inadequate information, I'm not really comfortable with this, minister, but I understand that you want to approve it anyway, that's what he thought. If he told her the truth about it, it would have given her the opportunity to correct any misapprehension, wouldn't it?

THE WITNESS: I think the problem goes back to the fundamental tenet -- I'm sorry, you have mentioned that I shouldn't speak about Mr TUTT again.

10 MR CARMODY: I just want a bit of balance, that's all.

THE WITNESS: But the fundamental issue here from my point of view is the role that Mr TUTT played in instructing staff and the, rightly or wrongly, the environment in which departmental officers were working.

MR CARMODY: All right. Let's be fair. Mr TUTT might be capable -- he has been criticised in these proceedings. But let's have a look at Mr MATHESON's role here. He's the acting deputy director, your representative in your absence. What he says he did was just bent over and gave back the minister something he
20 thought she wanted to hear. Good little boy, pat on the head and completely contrary to your policies; is that the sort of bloke you want working in the public service?

MR FARR: I object to this question. It's argumentative. It might be a matter of submission and he can't answer it.

MR CARMODY: I withdraw. Withdrawn. But what would you say? What's your comment on that sort of conduct?

30 MR HUNTER: I object. Again.

MR CARMODY: Why?

MR HUNTER: It's completely argumentative. The Commission is not assisted by inviting this witness to comment on those propositions.

MR CARMODY: I don't know. I think it would be assisted.

40 THE PRESIDING OFFICER: Mr CARMODY, I'm not giving you a right to cross-examine at large. What I'm giving you in the right to cross-examine is to cross-examine matters that are in the interests of your client. I'm finding it very difficult to understand why you are embarking on this form of cross-examination.

MR CARMODY: Because, otherwise, if nobody asks these questions your recommendations, or your report, won't have the benefit of the answers.

THE PRESIDING OFFICER: Are you assuming that we're not -- I'm not totally cognisant of all the issues that you are raising?

MR CARMODY: I don't know. But I'm not going to take the risk. If you are not being helped I will stop. If you are not being helped that's fine. It's your call.

THE PRESIDING OFFICER: You are not Counsel Assisting.

MR CARMODY: I just didn't hear them come from him. That's all. That's all I have.

10 THE PRESIDING OFFICER: Yes, Mr DEVLIN.

MR DEVLIN: Mr KINNANE, I don't mean to be personal about this, but by the time you got to Friday, 11 July were you recovered enough to be looking forward to going back to work on Monday, 14 July?

THE WITNESS: My word I was.

MR DEVLIN: So there was nothing wrong with your memory on Friday 11 July when Mr MATHESON came to see you as a result of any medical condition you had?
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THE WITNESS: No, but I don't remember a particular visit specifically on 11 July.

MR DEVLIN: You see, if Mr MATHESON had said to you on 11 July, "I'm not comfortable with the brief in relation to the Queensland Rugby Union", you'd remember that?

THE WITNESS: I would. I would. I believe so. Particularly with the -- particularly the basis, Mr DEVLIN, of the allegations before the Commission. It's something
30 that I would recall.

MR DEVLIN: If Mr MATHESON said to you at your home, "The minister wants to announce this tonight at the Reds Ball and I'm not comfortable with the process that has occurred", would you remember such a thing?

THE WITNESS: I would. I have a vague memory of a QRU dinner, as I mentioned earlier, but nothing on the basis that you suggest.

MR DEVLIN: You would especially remember if Mr MATHESON outlined to you that but for the interference of Mr TUTT the matter wouldn't have been approved; you would remember a thing like that?
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THE WITNESS: I would.

MR DEVLIN: Because that would be another black mark for TUTT.

THE WITNESS: Indeed.

MR DEVLIN: No-one ever said to you that they were concerned that the method of paying of the grant to the QRU was changed to such an extent that it increased the risks to the department?

THE WITNESS: I definitely have no memory of that.

MR DEVLIN: You would remember that if somebody raised that with you?

THE WITNESS: I believe so.

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MR DEVLIN: And it's implicit from the way that you have given your evidence that you have an open door to your senior staff.

THE WITNESS: Absolutely.

MR DEVLIN: There is a high degree of mutual trust.

THE WITNESS: Absolutely.

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MR DEVLIN: Yet until the CMC got hold of this matter you heard nothing about any perceived irregularities from any of those closely held senior staff?

THE WITNESS: Nothing to my memory.

MR DEVLIN: If indeed they held such reservations. The fact that they didn't tell you of any of those reservations would surprise and shock you.

THE WITNESS: Would surprise me.

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MR DEVLIN: Would shock you?

THE WITNESS: Probably, yes.

MR DEVLIN: You would be disappointed --

THE WITNESS: I would be very disappointed.

MR DEVLIN: -- because they held reservations, they did not share with you.

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THE WITNESS: Yes, indeed.

MR DEVLIN: What was the purpose of your coffee mornings?

THE WITNESS: The coffee mornings were to try to engender a good working relationship between myself and Simon TUTT, between the department and the minister's office. The other importance of it from my point of view -- and I believe Mr TUTT as well, I believe he approached the Friday morning meetings in a very productive way; I thought they were mainly very worthwhile and done in an

amicable way -- was to deal with more strategic issues. Whereas he would be dealing with, for example, the Executive Director of Sport and Recreation on purely operational matters or mainly on operational matters.

MR DEVLIN: They were one-on-one meetings between you and him?

THE WITNESS: That's correct.

MR DEVLIN: How old are you?

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THE WITNESS: I'm 54.

MR DEVLIN: Do you know how old he is?

THE WITNESS: No.

MR DEVLIN: In his twenties?

THE WITNESS: No.

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MR DEVLIN: In his thirties?

THE WITNESS: Look, I don't know where you are going with this but I think it's completely irrelevant to me having meetings with him on a Friday.

MR DEVLIN: I'm just interested on the occasion you took on a one-on-one discussion to address with him directly, face to face, man to man, that he was a bully.

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THE WITNESS: Well, we had discussions.

MR DEVLIN: Over coffee?

THE WITNESS: Well, not so much over coffee but certainly on the telephone.

MR DEVLIN: That's what I'm interested in. Why not over coffee?

THE WITNESS: I think I made it very clear to him that if his behaviour continued the way it was then I would be taking further steps. But I believe that the times that I intervened when staff made me aware of issues, the issues had been sufficiently dealt with.

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MR DEVLIN: You say you spoke to him about his behaviour on the phone a small number of occasions.

THE WITNESS: That's right.

MR DEVLIN: Yet if we look anywhere for a file note.

THE WITNESS: No, I didn't take one.

MR DEVLIN: And yet it sounds like there was a steady trickle of complaints.

THE WITNESS: Well, there were a number of complaints from staff at different times.

10 MR DEVLIN: Was it sufficient for you that the staff said well, we've got a complaint but we don't want to take it any further. That was your job done, was it?

THE WITNESS: Look, I think on hindsight I should have taken it a bit further. I think I probably should have raised it with the minister. I was sufficiently concerned about misconduct.

MR DEVLIN: Indeed?

THE WITNESS: And on reflection I probably should have, and I regret that.

20 THE PRESIDING OFFICER: Mr DEVLIN, please don't come in with your comments while the witness is answering. It has the effect of stopping him.

MR DEVLIN: Thank you. Go on, sorry.

THE WITNESS: That's it.

MR DEVLIN: You feel in hindsight you should have raised these matters with the minister?

30 THE WITNESS: I believe so, yes.

MR DEVLIN: You feel in hindsight you as the Director-General should have got on the line with the minister to say, "I have an issue of repeated complaints made to me about your Chief of Staff"?

THE WITNESS: Well, the reason why I didn't do that, Mr DEVLIN, was I didn't believe it would be fruitful. I have made that very clear already to the hearing.

40 MR DEVLIN: Didn't even have a crack at it?

THE WITNESS: In the early days of the relationship, in the early days of working with the minister I talked about the importance of a working relationship, but I believed that it would not be any fruitful occasion for me to raise the matter with the minister.

MR DEVLIN: Didn't even attempt it --

THE WITNESS: No.

MR DEVLIN: -- because you thought you would be brushed off by the minister, is that it?

THE WITNESS: Well, I didn't use those words but I didn't think it would be fruitful for me to raise it with her.

MR DEVLIN: What about attempting to do it in order to perhaps curb the alleged behaviour for the future, to protect your staff.

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THE WITNESS: Certainly I attempted to do that when I raised the issue with Mr TUTT on the number of occasions I did.

MR DEVLIN: You said on a small number of occasions and you said over the phone.

THE WITNESS: Yep.

MR DEVLIN: But you never offered what the detail was.

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THE WITNESS: No, I never recorded the detail.

MR DEVLIN: Was it, "Listen, mate, I'm having a bit of trouble here between you and my staff. Can you please moderate your behaviour." Can we get any detail about how you tried to assist a younger officer with his bedside manner with your staff.

THE WITNESS: I don't know what the emphasis is on the younger officer, Mr DEVLIN. I don't know what relevance that has to it. But certainly I made it very clear to Simon TUTT on a number of occasions that I objected to his behaviour and that I -- it was unacceptable behaviour to me.

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MR DEVLIN: Can you tie it to any incident that you now recall?

THE WITNESS: Yes. Yes.

MR DEVLIN: Well, please.

THE WITNESS: The issue of the title of the department was something that was an issue. Whether the department would be called Local Government, Sport and Recreation or simply Sport and Recreation.

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MR DEVLIN: Yes.

THE WITNESS: That was an issue of disagreement between the minister's office and the department. Something that I had to take up.

MR DEVLIN: Yes.

THE WITNESS: It wasn't so much a case of bullying at that stage, though. It was mainly the case of the Di FARMER exercise when she expressed great distress to me about the experience she experienced with Mr TUTT.

MR DEVLIN: Can we just go back. You've now mentioned two matters and I want to pick through them because I want to really exhaust your independent recollection about what you took up with this man.

10 THE WITNESS: Mhmm.

MR DEVLIN: Number 1, something about the name of the department. Did that involve alleged bullying on the part of my client? Did it involve alleged intimidation on the part of my client? Or did it involve interference with your officers by my client?

THE WITNESS: Interference with the officers.

20 MR DEVLIN: In what way, please?

THE WITNESS: By instructing them that the department should be called the Department of Sport and Recreation, that the paraphernalia produced by the department should have that insignia on it only and not have anything else, which was against the administrative orders as signed off by the Governor in Council.

MR DEVLIN: That's pretty clear, did you raise that with him?

THE WITNESS: Yes, I did.

30 MR DEVLIN: Did you say, "Please cease and desist. It's not permitted under the policy guidelines."

THE WITNESS: I tried to. Absolutely I tried to and raised it on a couple of occasions.

MR DEVLIN: There are two occasions of a small number and it deals with the naming of the department and some intemperate attitude that Mr TUTT seemed to have about it. Let's go to the next one. Ms FARMER asked you to not take it any further.

40 THE WITNESS: That's correct.

MR DEVLIN: So you didn't take it any further?

THE WITNESS: No, I was sorry that that was the case but Di FARMER insisted that I not take it further because she wanted to take it up with him on a private basis. But she was quite distressed at the time.

MR DEVLIN: Did you come back to Ms FARMER and say, “Now, did you take it up him?”

THE WITNESS: Yes, I did.

MR DEVLIN: Are you satisfied with what occurred?

THE WITNESS: Yes, I did.

10 MR DEVLIN: So it looks like they kissed and made up in, in the public service sense.

THE WITNESS: At the time when I took it up with her again she had not taken the matter up with Simon TUTT at that stage.

MR DEVLIN: But you found out she did?

THE WITNESS: No, I didn't know.

20 MR DEVLIN: So, you never got any final feedback on whether they had reconciled their differences?

THE WITNESS: It was made clear to me by Di FARMER that she would endeavour to do that but I wasn't certain about whether or not it had been delivered or not.

MR DEVLIN: Ms FARMER, a very forthright officer?

THE WITNESS: Yes, I believe so.

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MR DEVLIN: And well capable of taking up her concerns about his behaviour with him.

THE WITNESS: Yes, indeed. I believe so.

MR DEVLIN: Right. Well, let's go to the next one of this small number. We have had two about the name of the department and we have had the one where Ms FARMER said, “I'll fight my own battles, thank you.” What's the next one that you took up with him?

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THE WITNESS: I don't have any recollection of it at this time.

MR DEVLIN: It was the case it wasn't just Mr TUTT having access to officers; the minister could also do that?

THE WITNESS: Yeah, I'm not aware of instances where the minister ever took that opportunity, though, Mr DEVLIN.

MR DEVLIN: All right, then, thank you.

THE WITNESS: I believe it was only the minister's staff.

MR DEVLIN: I may have asked you this question before. But you are clear on this. You have no recollection -- start this again. Let's just focus on your relationship with Mr MATHESON.

THE WITNESS: Mhmm.

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MR DEVLIN: It sounds like it is an excellent professional relationship.

THE WITNESS: I believe it was.

MR DEVLIN: You had him acting in your job in this critical period?

THE WITNESS: Yes.

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MR DEVLIN: And you would have trusted him with your life in terms of his discharge of his responsibilities?

THE WITNESS: Yes, I would.

MR DEVLIN: And yet he never said to you when he was at your home, "I would not have approved this but for Mr TUTT's interference"?

THE WITNESS: I have no recollection of that.

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MR DEVLIN: I have nothing further.

THE PRESIDING OFFICER: Mr FARR.

MR FARR: Just one matter, thank you.

MR HUNTER: I have a few questions.

THE PRESIDING OFFICER: Sorry, Mr HUNTER.

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MR HUNTER: The attitude or -- the principle is that ministerial staff were not supposed to give directions to departmental staff about how to do their job; is that correct?

THE WITNESS: That's correct.

MR HUNTER: But the reports you were getting from your staff -- I should say I act for Mr MATHESON -- the reports that you were getting from your staff were to the effect that he was attempting on occasions to tell staff how to go about the discharge of their departmental duties?

THE WITNESS: That's correct.

MR HUNTER: And on occasions those staff would tell you that not only was he doing that but the way in which he was doing it they found offensive?

THE WITNESS: Indeed. Particularly intimidatory.

10 MR HUNTER: You raised the issue of his bedside manner, as it's been called by Mr DEVLIN, on a number of occasions.

THE WITNESS: I did.

MR HUNTER: And apparently it made no difference?

THE WITNESS: No.

20 MR HUNTER: You continued to get the same sorts of reports from your staff about his behaviour.

THE WITNESS: Periodically. And the ongoing working relationship was one where Mr TUTT would work around me, not to me, apart from rare occasions.

MR HUNTER: You've told us that you felt the relationship between Mr TUTT and the minister was a very close one.

THE WITNESS: Indeed, I believe that.

30 MR HUNTER: Did you feel that if you had gone to the minister about Mr TUTT that would have destroyed or badly damaged the working relationship that the department had with the minister?

THE WITNESS: Indeed.

MR HUNTER: So whilst you were aware then of a problem involving Mr TUTT, correct?

THE WITNESS: Yes.

40 MR HUNTER: You felt powerless to do anything about it?

THE WITNESS: Yes.

THE PRESIDING OFFICER: Mr HUNTER put to you that the ministerial staffer -- the protocol is that they shouldn't give directions to staff.

THE WITNESS: Mm.

THE PRESIDING OFFICER: In a practical sense does that really work? With things like a possible parliamentary question or something, that it might be thought the minister needs for parliament tomorrow, in those circumstances I think in reality it would happen, wouldn't it, that the ministerial staff would say, look, the minister needs this tomorrow. Can you please have it for her by 9 in the morning."

THE WITNESS: That's right. Absolutely. And that's a common occurrence, of course.

10 THE PRESIDING OFFICER: And no-one is going to complain too much about that --

THE WITNESS: No, no, that's right.

THE PRESIDING OFFICER: -- within bounds.

THE WITNESS: That's correct.

20 THE PRESIDING OFFICER: Is it in relation to matters of what advice should be given, what policy advice should be given, what advice should be given, say, about grants or anything of that nature --

THE WITNESS: That's right.

THE PRESIDING OFFICER: -- that there should be no direction.

THE WITNESS: More so that area.

30 THE PRESIDING OFFICER: Okay.

MR FARR: And I now have no questions. They've now been asked.

THE PRESIDING OFFICER: Thank you, Mr FARR.

MR CARMODY: Mr Chairman, there is just one matter. I'm not sure if it's been established, perhaps you might want to, that in fact Chief of Staff or ministerial advisers have no line authority over departmental officers.

40 THE WITNESS: That's correct. That's correct.

MR PEARCE: I have nothing further, thank you.

THE PRESIDING OFFICER: Yes, thank you, Mr KINNANE. Thank you for coming and giving evidence today and assisting. I look forward to receiving a submission from you about the recommendations that could be made.

THE WITNESS: Thank you, Mr NEEDHAM. Thank you.

THE PRESIDING OFFICER: All right. You can step down, thanks. Tomorrow?

MR PEARCE: The only witness on the list remaining is Mr TUTT. I have tentatively made some arrangements for the former minister to come back but I have not been advised yet as to her availability. I have suggested either tomorrow afternoon or Friday morning.

10 THE PRESIDING OFFICER: Okay. We will see how that goes. Can we look at some of the housekeeping things on into the future for submissions? There are the two aspects. I appreciate that a lot of people won't be interested in the second aspect that I'm particularly interested in but the first aspect of any possible misconduct.

MR PEARCE: As to proceedings that might or might not flow from the evidence we've heard this week, it was my intention to not make any submissions this week but to flag with the individual parties as I think necessary my views on the evidence, off line, and to seek to reconvene in about a fortnight's time or thereabouts when suitable to everyone to make my submissions at that point.

20 Obviously, there are issues concerning potential offenses or acts of official misconduct. I see no useful purpose would be served in flagging them at the moment. It will require me to undertake a careful read of the evidence. There are all sorts of evidentiary issues. So, rather than speak, if you like, off the cuff this week, I would like some time to consider that.

THE PRESIDING OFFICER: That accords with the way I would normally look to do these things.

30 MR PEARCE: And I will communicate with the parties as I think they might be affected by my views on the matter at that time.

THE PRESIDING OFFICER: So what we need to do is, if anyone thinks that they might be involved in submissions, check diaries so that tomorrow we are in a position to be able to set a date for submissions in accordance with what Mr PEARCE has said. We're looking at about two weeks hence. If that can be done so that people are in a position to confirm their availability or otherwise tomorrow.

40 MR PEARCE: We are looking at the 14th, 15th and 16th of December as suitable days. We couldn't imagine it would take more than one day. It's the Monday, Tuesday and Wednesday.

THE PRESIDING OFFICER: That's right in my diary. As you can see, my diary here gets controlled by other people.

MR DEVLIN: I'm assuming then that we might have at least a couple of days with some written submissions or some outline of submissions? It's not just what the bottom line is for Counsel Assisting, it's how he gets there. I would like some detailed understanding at least for a day or two before I have to get on my feet.

THE PRESIDING OFFICER: I don't know about a day or two. It would be nice if you had it at least the afternoon before. We don't want to get it in the morning and then have to adjourn to read it.

MR DEVLIN: I don't want to take any excitement out of the process, no, I suppose not.

10 THE PRESIDING OFFICER: You still like a bit of excitement in your life, Mr DEVLIN?

MR DEVLIN: I would also like a bit of procedural fairness as well, in terms of a bit of time to get the issues understood by me so I can assist you.

THE PRESIDING OFFICER: Well, Mr DEVLIN, I would have thought you would have been doing that in the last week or so since you've been engaged. I hope you wouldn't start that after you've received Counsel Assisting's submissions.

20 MR DEVLIN: I'm simply asking for a little bit more time than an hour or two, and I hope I will get it.

THE PRESIDING OFFICER: You will certainly get more time than an hour or two. I don't know about days. That will depend upon when they can be got to you.

MR DEVLIN: Thank you.

THE PRESIDING OFFICER: We will resume at 10 o'clock tomorrow.

THE HEARING ADJOURNED AT 4.15 PM

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