

CRIME AND
MISCONDUCT
COMMISSION



QUEENSLAND

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 4 - THURSDAY 26 NOVEMBER 2009
(DURATION: 3 HRS 9 MINS)**

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with any order made by the presiding officer concerning publication of
these proceedings.**

LEGEND

Presiding Officer – Robert NEEDHAM, Chairperson, CMC

Counsel Assisting – Russell PEARCE, Director, Misconduct Investigations

30 **Hearing Room Orderly – Alicia VIEIRA**

Witness – Simon TUTT

Legal Representatives – Mr DEVLIN (G & L Lawyers)

THE HEARING RECONVENED AT 10.17 AM

MR PEARCE: Mr Chairman, I have spoken with Mr DEVLIN and indicated to him I would be happy for him to take Mr TUTT through the initial stages of the examination, and he has indicated to me that he would be happy to accept that offer, so I call Simon TUTT.

SIMON TUTT, CALLED:

10 MR PEARCE: Mr TUTT, we are going to have to get you to take either an oath or an affirmation.

SIMON TUTT ON OATH, EXAMINED:

MR PEARCE: I am going to get Mr DEVLIN to ask questions of you first.

MR DEVLIN: Can you tell your full name for the record, please.

THE WITNESS: Simon Joseph TUTT.

20 MR DEVLIN: Do you have any formal qualifications?

THE WITNESS: Yes, bachelor of arts and bachelor of laws.

MR DEVLIN: When did you start working in ministerial offices, Mr TUTT?

THE WITNESS: I started working for Minister Judy SPENCE in 2004, February 2004.

30 MR DEVLIN: How old are you now?

THE WITNESS: 32.

MR DEVLIN: Now, Mr Chairman, Mr TUTT would like to avail himself of a claim of privilege at this point. I will be getting straight into the meat of it.

THE PRESIDING OFFICER: Is he claiming it with respect to every question that he's asked?

40 MR DEVLIN: He has been advised that the Commission often makes a blanket claim of privilege available. I thought that was the practice.

THE PRESIDING OFFICER: It's not my normal practice to make a totally blanket claim.

MR DEVLIN: Well, I haven't advised him as to that. I'm not aware of that normal practice so I'll probably need to advise him.

THE PRESIDING OFFICER: Mr TUTT studied law, obviously, so he knows what

it's all about. I would prefer that you proceed and when it gets to the stage that he feels he would like to claim privilege, he can raise it at that stage.

If you have any concern at any stage, Mr TUTT, and you want to confer with Mr DEVLIN just say so and we will adjourn.

THE WITNESS: Okay.

10 MR DEVLIN: I would like an adjournment now, Mr Chairman. I would like to explain that more fully to him. I have given him completely the wrong idea.

THE PRESIDING OFFICER: Yes, certainly.

THE HEARING ADJOURNED AT 10.20 AM

THE HEARING RESUMED AT 10.26 AM

20 MR DEVLIN: I am going to start with the events leading up to the granting of the major facilities grant to the Queensland Rugby Union. Do you understand the topic I'm going to?

THE WITNESS: I do.

MR DEVLIN: In relation to that topic do you wish to claim privilege?

THE WITNESS: I do.

30 THE PRESIDING OFFICER: All right. You've heard what I've said to other witnesses in this case and you've been advised by Mr DEVLIN; you know the effect of the claim of privilege?

THE WITNESS: Yes, Mr Chairman.

THE PRESIDING OFFICER: All right. I now direct you to answer questions in relation to that topic as asked of you by any of the counsel.

MR DEVLIN: In relation to the granting of funds to the QRU, do you recall a meeting at Parliament House on 12 February 2008?

40 THE WITNESS: I do recall a meeting at Parliament House on 12 February 2008.

MR DEVLIN: Tell us what you recall about it, please.

THE WITNESS: Well, I recall the attendees at that meeting to be the former chair of the QRU, Peter LEWIS, Ken FREER, the former CEO, the acting Deputy Director-General, Craig MATHESON, Minister Judy SPENCE, who was the Minister for Sport at the time, Police, Corrective Services and Sport -- and myself.

MR DEVLIN: Very well. And what took place?

10 THE WITNESS: What took place was that just prior to that meeting in fact the former federal government, being the Howard government, had made a commitment to the QRU, and I think to the ARU as a whole, to fund a \$25 million redevelopment of Ballymore. The Rudd government in early 2008 had withdrawn or revoked that commitment, I suppose, and Mr LEWIS and Mr FREER approached the state government for two purposes, firstly, to outline their proposal as had been accepted by the former federal government; and to outline that they were seeking to try and have that proposal reinstated, if you will, by the federal government, and to see if there was any assistance that the state government could provide.

MR DEVLIN: What other discussion took place at that meeting?

20 THE WITNESS: Well, certainly there were -- the program was outlined to us, the \$25 million redevelopment. Stages of that redevelopment were outlined as well, and that, basically, the entire project, I suppose as it was, conceptualised at the time was outlined to the state government.

MR DEVLIN: Do you recall whether the minister -- Minister SPENCE gave any kind of response one way or the other?

THE WITNESS: I mean, I do. I think it's fair to say that everybody in that meeting was very enthusiastic about the whole project. It was a \$25 million redevelopment of Ballymore which I certainly thought -- and I know Minister SPENCE was enthusiastic about the prospects for turning Ballymore into a centre of excellence, I suppose, not just for rugby but for a lot of sports as community sporting centre.

30 MR DEVLIN: Do you recall whether it was discussed as to whether the state government itself could support the redevelopment to any extent? Was that a topic of conversation on that occasion or not?

THE WITNESS: It's feasible it was. It certainly was put upon us. The QRU didn't come to the state government just to explain a wonderful proposal. They certainly came there with a view that perhaps there could be some support at some stage from the state government.

40 MR DEVLIN: Do you recall whether Minister SPENCE gave any response to that kind of approach?

THE WITNESS: She was enthusiastic with it. She was very enthusiastic that if this was a proposal that was, was achieving aims that the state government wanted; she was very enthusiastic.

MR DEVLIN: So, what happened after that, then, in relation to the QRU's proposal?

THE WITNESS: Well, as far as I knew the QRU set about seeking a meeting with the federal minister and I next understood and I suppose I understood that perhaps the department -- because Mr MATHESON was at that meeting -- would also have held meetings in the interim with the QRU.

MR DEVLIN: Did you have any direct knowledge as to what did and didn't happen or is that just what you supposed would happen?

10 THE WITNESS: That's what I supposed would happen. I mean, that is generally what would happen from these meetings where departmental staff are certainly in meetings with the minister and that's just what I supposed would happen.

MR DEVLIN: I'm going to be following the CMC chronology.

THE WITNESS: Mhmm.

MR DEVLIN: There has been some evidence about a meeting that you had with Ken FREER at the Caxton Hotel in May of 2008. Do you understand that to have a connection to the same topic as that of the grant to the QRU, that topic?

20

THE WITNESS: Yeah, but I would claim privilege on that too.

THE PRESIDING OFFICER: You've been granted privilege on all questions in relation to this grant of \$4.2 million that went to the QRU.

THE WITNESS: Certainly.

THE PRESIDING OFFICER: I'd assume you would also claim -- and I would extend that privilege -- to questions in relation to the \$200,000 going to the University of Queensland Rugby Academy.

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THE WITNESS: Certainly.

THE PRESIDING OFFICER: Any questions with regard to that you don't have to claim it again. That is there.

THE WITNESS: With regard to that meeting I recall it was the -- I think it was mid-May that I was an attendee at the QRU Reds after function. In fact, I wasn't an invitee of the Reds at that function.

40

MR DEVLIN: It was a home game at Lang Park, was it?

THE WITNESS: It was. It was a home game at Suncorp Stadium. It was -- I could say I think the Reds were playing the Canterbury Crusaders that night and I -- a friend of mine who was the judicial officer for the Reds to handle appeals and citings and that kind of thing that happen after the match invited me to the post match function.

MR DEVLIN: Did you speak to Mr Ken FREER there?

THE WITNESS: I did. Mr FREER said to me, "How's it going," and I asked him how he was going in his dealings with the federal government to have his grant reinstated. He said it wasn't going very well. He asked if there was anything that the state government could do. I said to him that -- I said, perhaps, you know, put together something that you would like to see, give me a call and perhaps a meeting can be arranged.

10 MR DEVLIN: Was there any discussion in that context of sums of money that the QRU might expect from a grant?

THE WITNESS: I don't recall any discussions in that -- at the Caxton Hotel. It would have been very unusual for me for a start to discuss anything in an environment like that that would have been remotely professional. However, I don't recall any discussions of sums of money in that meeting.

MR DEVLIN: You agree, though that you had that sort of conversation with him at Caxton Hotel?

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THE WITNESS: I do, I do. Mr FREER certainly expressed exasperation that the federal government were not keen to reinvoke the grant.

MR DEVLIN: Is that the extent of your recollection at this point about that meeting?

THE WITNESS: Yes. He -- as I say, expressed an interest that he wanted to open discussions further with the state government on whether there was any assistance that could be garnered for Ballymore.

30

MR DEVLIN: We have heard that there was a meeting on 3 June 2008.

THE WITNESS: Yes. That occurred in the ministerial office, in the State Law Building. Mr FREER had attended that meeting. He brought with him a folio of documents to talk through at that meeting.

MR DEVLIN: Could the witness have a look at Exhibit 8, please. And Exhibit -- have you seen this document?

40 THE WITNESS: I have. That was the cover sheet to this -- this one-page document was the cover sheet to a folio of documents that Ken FREER presented to me in that meeting.

MR DEVLIN: At the top you will see that it has "Meeting Notes, Tuesday 3rd June 2008". Have a look at Exhibit 9, then. Is that the folio of documents to which you refer?

THE WITNESS: Yes, it is, Mr DEVLIN.

MR DEVLIN: Were they presented to you on 3 June?

THE WITNESS: Yes, they were. They were presented to me on 3 June at that meeting.

MR DEVLIN: What discussion took place? There was just yourself and Mr FREER present?

10 THE WITNESS: Yeah, it was. I mean, Mr FREER didn't go into any great depth about the appendices but he certainly spoke to his -- to the cover sheet. And just basically outlined various items from the cover sheet.

MR DEVLIN: There is some discussion there listed for Souths. Did that take place?

THE WITNESS: That did, yes. He spoke about Souths. He spoke about the sport and recreation funding which is just above that. He certainly did speak about those items.

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MR DEVLIN: Up at the top it says "Our business model is not viable".

THE WITNESS: Yeah, Mr FREER mentioned that but he said that under his stewardship he thinks the QRU was going to become bigger and better. He said he had put in place some mechanisms that he felt would make the QRU a productive entity.

30 MR DEVLIN: There is a sheet of financials there headed "Comparison Net Commercial Income 3 June 2008". Did Mr FREER address that specifically with you?

THE WITNESS: No, he did not. He didn't take me through the financials that was attached to this document.

MR DEVLIN: There is a "Strategic Plan 2008" as the next document. Did he address that with you?

40 THE WITNESS: I don't recall him addressing the strategic plan. He may have very well spoken to it but he certainly didn't refer me to that document in the attachments.

MR DEVLIN: There is a plan after that showing a swimming pool and reference to a gymnasium at the western end of the main oval.

THE WITNESS: Yeah, well, that is a further iteration of what Mr FREER had spoken to the minister and Mr MATHESON and myself about, that he and Peter LEWIS spoke about in February about their plans for Ballymore.

MR DEVLIN: Did he address that in the 3 June meeting?

THE WITNESS: Yes he did. He did speak about the redevelopment of Ballymore and that certainly was on the radar for the QRU.

MR DEVLIN: There seems to be a sheet in relation to Sport and Recreation Queensland funding QRU.

10 THE WITNESS: Yes. There are many grants that the QRU receives each year from the government. They receive a lot of -- as you can see there, the list of various assistance grants that the QRU receives. They and various, I suppose, rugby related entities receive many hundreds of thousands of dollars in grants from the Government each year. He certainly spoke about how -- that he wanted to seek further assistance on how he could best apply for grants from the government.

MR DEVLIN: Do you recall Mr FREER saying to you anything to the effect that the QRU wished to apply any grant to its recurrent funding or to deal with its depreciation allowances each year?

20 THE WITNESS: No, I don't recall that ever being mentioned.

MR DEVLIN: Specifically at this meeting or earlier at the Caxton Hotel?

THE WITNESS: I don't recall it specifically being mentioned at this meeting or at the Caxton Hotel.

MR DEVLIN: At that time, that is, 3 June 2008, did you have a day-to-day working familiarity with the major facilities fund?

30 THE WITNESS: No, I didn't. When Minister SPENCE took over responsibility for the sport portfolio there were no majors rounds, from memory, that she had presided over at that point of time. In fact, I had no knowledge of how the major facilities rounds worked.

MR DEVLIN: As at 3 June 2008, if funding for the QRU was a possibility did you have any thought in your mind as to where that funding might come from, specifically what fund it might come from?

40 THE WITNESS: No, I didn't. I didn't -- I didn't know where the sport department would decide they would allocate funds, if they had decided to do that, to the QRU.

MR DEVLIN: Perhaps now that might go back, those exhibits. I want to ask you now about an email dated 19 June 2008 from MATHESON to you, which attached possible future commitments for the department. Can I just get an Exhibit No. for that -- Exhibit 26. Have you any specific recollection of events between the meeting between you and FREER in the ministerial office on 3 June and 19 June? Are there any other events in between?

THE WITNESS: Well, I certainly know that prior to 3 June it was discussed with the sport department, leading up to budget announcements, if there were any possible future commitments or announcements that would be possible. It's not unusual for a ministerial office to ask departments if there are possible announcements, possible future commitments, that could be put forward, and if they could suggest them to government as well as ministerial officers informing departments of approaches that had been made to them as well from various organisations.

10 MR DEVLIN: Now, Mr MATHESON sends to you a list of possible future commitments which includes under the heading "Queensland Rugby Union \$4 million over three years to progress the redevelopment at Ballymore". It also addresses the Queensland Cricket Association in more detail, AFL Queensland, et cetera. What role did you play in the compilation of that list?

THE WITNESS: I certainly had input into this. But not just me, our entire office in terms of policy advisers would have suggestions that they would have put forward, and we asked the department to come up with some ideas as well. In fact, they were the main drivers of the ideas on this list.

20

MR DEVLIN: How did the item "Queensland Rugby Union \$4 million over three years" get added to that list? What do you know about it, please?

THE WITNESS: Yeah, certainly. The QRU, as I've stated, had approached government and Mr MATHESON was aware of that and I assumed other government officers in the sport department were aware of that. That was certainly viewed as a potential future announcement for the government.

30 MR DEVLIN: What do you say to Mr MATHESON's evidence yesterday that the item about the Queensland Rugby Union came on to the list at your suggestion?

THE WITNESS: It's feasible that was the case. However, Mr MATHESON was well aware of the Queensland Rugby Union's desire to have a future commitment from the government.

MR DEVLIN: He was at the February 2008 meeting?

THE WITNESS: He was.

40 MR DEVLIN: Where did the figure \$4 million come from?

THE WITNESS: It was -- it very well could have been a figure that was mentioned at the 12 February meeting as being a figure which may have assisted the QRU to get their first phase of their major redevelopment under way.

MR DEVLIN: Was such a figure mentioned to Mr FREER at the Caxton Hotel or in the 3 June meeting?

THE WITNESS: No, it was not.

MR DEVLIN: Did you supply the figure of \$4 million for the Queensland Rugby Union item?

THE WITNESS: It's -- it's feasible that I did.

MR DEVLIN: Where would you have got it from?

10 THE WITNESS: I would have had it from the impressions left with me and from the meeting of 12 February 2008.

MR DEVLIN: Yesterday a -- an email was put to Mr MATHESON concerning an item about the AFL proposals.

THE WITNESS: Mm.

MR DEVLIN: Did you have much hands-on contact with that?

20 THE WITNESS: I certainly know that Mr Griffiths from the AFL had a meeting in the minister's office and I think the minister was there as well. And he outlined his views for AFL.

MR DEVLIN: That was an email at Exhibit 32, if the witness could see that. There seemed to have been a meeting between Richard GRIFFITHS of the AFL and Mr MATHESON and then there seems to have been a suggestion that Mr GRIFFITHS should meet directly with the minister. Do you recall being any part of a meeting of that kind?

30 THE WITNESS: I do. I recall, recall Mr GRIFFITHS outlining his visions for AFL in the ministerial office.

MR DEVLIN: There seems to be mention in Exhibit 32 of a development cost at approximately \$6 million; do you see that?

THE WITNESS: I do see that.

40 MR DEVLIN: Do you remember whether at the meeting with Mr GRIFFITHS there were also public servants, or was that simply at ministerial level that the meeting you attended took place?

THE WITNESS: It's possible that there were public servants there. I know Mr GRIFFITHS may have said to me that Mr MATHESON referred him to the ministerial office. But it's certainly possible that public servants were at that meeting.

MR DEVLIN: Do you know how a proposal for \$6 million became in this possible future commitments a proposal for \$2.5 million over two years? Did you play some

role in that?

THE WITNESS: No, I did not. That would have been a construct of the sport department.

MR DEVLIN: Similarly with the Queensland Cricket Association, \$4 million over three years. Did you have some role in formulating that figure?

10 THE WITNESS: I don't believe I did. But I certainly know that there was -- that the minister was enthusiastic about assisting cricket. I know Mr SUTHERLAND from the Australian Cricket Association together with the Queensland Cricket Board had visited the minister as well to put forward a case.

MR DEVLIN: Why are these possible future commitments documents created at all? What purpose are they meant to serve?

20 THE WITNESS: Well, basically that -- government, of course, is always looking for opportunities to make announcements. Certainly, with the sport department, it is about funding sport and recreation opportunities in Queensland. And it's -- it gives government an understanding of what the sport department is thinking to make announcements for future, I suppose, promotion of sport and recreation from the government's point of view.

MR DEVLIN: Exhibit 27 seems to be a further version of that document, dated 4 July 2008?

THE WITNESS: Yes.

30 MR DEVLIN: We see that the rugby union input has been expanded and the Queensland Rugby League item has been added. So, firstly, what do you recall about the expansion of the Queensland Rugby Union --

THE WITNESS: Yes. A couple of days earlier --

MR DEVLIN: -- item?

40 THE WITNESS: -- Mr MATHESON and I attended a meeting at the QRU where Mr FREER outlined exactly what his vision for Ballymore would be. He also outlined that he would like to see as a joint sporting facility and accommodate other sports. Mr MATHESON gave me a call -- and the -- this document then flowed on from that meeting.

MR DEVLIN: We will come to all that shortly. While we are on it, though, the Queensland Rugby League item, how did that get added, do you recall?

THE WITNESS: I recall -- I think it was somebody in the ministerial office, whether it was myself or it could have been the minister or one of the other advisers, made mention that in terms of future commitments and announcements, it

would be good to have something for rugby league. Now, I am not sure if that came from the ministerial office or even from the department, but it was certainly canvassed that it would be good to also see if the department had to basically think up an announcement for rugby league in what shape would that take.

MR DEVLIN: All right. Now, moving on to another date, then, if you just have in mind there that there's the possible future commitments document for 19 June 2008.

10 THE WITNESS: Mm.

MR DEVLIN: I think Mr FREER gave evidence that you had a meeting with him on 24 June 2008. Did you have a meeting with him on 24 June 2008?

THE WITNESS: No, I did not.

MR DEVLIN: Did you have contact with FREER on 24 June 2008 or about that time?

20 THE WITNESS: Yes, I did. In fact, Mr FREER gave me a telephone call on 24 June and asked me if there was any update or progress from -- that I could provide him from the meeting we had I think earlier that month.

MR DEVLIN: Yes?

30 THE WITNESS: And I actually said to him, I apologised because I had not done anything with the documents he had given me on 3 June. It was actually a very busy time for government at the time. We had the budget, we were preparing for estimates and I had not done anything with the documents that were provided to me by Mr FREER. I apologised to him for that. I said that what I would do is forward those documents to the appropriate departmental officer and we would convene a meeting, perhaps in a week's time, once the departmental officer had read the documents.

MR DEVLIN: Would you have a look at Exhibit 9 again please. Perhaps you could hand back the other documents for the moment. You have previously identified these as a bundle of documents given to you by FREER on 3 June 2008.

40 THE WITNESS: Yes.

MR DEVLIN: You say you hung on to them between 3 and 24 June when FREER rang you?

THE WITNESS: Yes, I did. In fact, they sat in my office.

MR DEVLIN: Does the cover sheet of Exhibit 9, the email communication allow you to tell us what occurred to the documents?

THE WITNESS: Yes, certainly. After my telephone conversation with Mr FREER on the 24th, I gave these documents to the departmental liaison officer Ms Naomi ENCHONG in our office and I know that as well, because that attachment, the file number there “.pdf” actually refers to the photocopier in our ministerial office. When you have a hard copy document you can put it through the photocopier to basically to turn it into an electronic document in our office. Ms ENCHONG then forwarded it on to Craig MATHESON and I notice Marina ROBBINS who, I believe was his personal assistant, to look at the documents and to consider them.

10 MR DEVLIN: Did you have conversations with Mr MATHESON about these documents once they were sent to him?

THE WITNESS: It's very likely I did. That would have been in the context of attending a meeting a week later at Ballymore to address any of the matters that Mr FREER might want to raise in relation to those documents and that a week's time at Ballymore was when a meeting was organised.

MR DEVLIN: On 24 June, the day before you sent these documents on to MATHESON, did you have a meeting with FREER at which you told him that
20 there would be a grant of about \$4.2 million?

THE WITNESS: No, I didn't have a meeting with Mr FREER and I did not say that to him.

MR DEVLIN: In the telephone call of that date did you tell him that?

THE WITNESS: No, I did not.

MR DEVLIN: In the telephone call of that date did you tell him that \$200,000
30 would be going to the University of Queensland out of that grant to the QRU?

THE WITNESS: No, I did not tell him that and I deny I said that.

MR DEVLIN: Did you have any conversation, though, about the University of Queensland Rugby Academy with FREER at any time?

THE WITNESS: No, I did not.

MR DEVLIN: Did you, however, meet with Mr ANNING?
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THE WITNESS: Yes, I did. I remember it would have been the week, I think of about 7 July, and Mr ANNING met up with me primarily to ask me how he could go about seeking funding for the UQ Rugby Academy.

MR DEVLIN: Where did you meet him?

THE WITNESS: I met him at a coffee shop at New Farm.

MR DEVLIN: At that time were you an active member on the University of Queensland Rugby Club board?

THE WITNESS: I was certainly on the committee but I wouldn't have called myself an active member, no. In fact, I rarely made it to committee meetings and I hadn't really played an active role at the UQ Rugby Club for quite a few years.

MR DEVLIN: Had you attended some meetings over the time?

10 THE WITNESS: Yes, I certainly attended some meetings over the time. It was, it was good to occasionally do something that was not within the usual 14-hour days that you were doing in a ministerial office to attend it. But I didn't attend very many meetings at all.

MR DEVLIN: Were you an active participant in the affairs of the University of Queensland Rugby Academy?

20 THE WITNESS: I have never had any involvement with the University of Queensland Rugby Academy. I only even had a vague understanding of the association with the UQ Rugby Club. I certainly know that I never had any role in nominating, I suppose, any representatives to the UQ Rugby Academy. But I knew there was some association.

MR DEVLIN: When you were talking to Mr ANNING, just tell us how all that came about. Did you contact him or did he contact you?

30 THE WITNESS: Well, I don't believe I contacted him. It wouldn't have been routine for me to give Mr ANNING a call for coffee. I know Mr ANNING through rugby circles, and I wouldn't have had any need to call Mr ANNING for coffee. So, he -- he and I met for coffee.

MR DEVLIN: What was the conversation, to the best of your recollection?

THE WITNESS: To the best of my recollection Mr ANNING said to me that his organisation, the UQ Rugby Academy was pursuing avenues, I suppose, to attract funding and he wanted to know what was the best way to be able to be considered to apply for funding from government.

40 MR DEVLIN: Was that approach that you got from a lot of people, over time?

THE WITNESS: A lot of people, whether it was at a community cabinet, whether it was at any function we -- I attended with the minister, without the minister. Pretty much in the sport portfolio the only time people came through the ministerial door or in fact even approached you to talk to you was to ask for funding.

MR DEVLIN: What advice did you give Mr ANNING?

THE WITNESS: I gave Mr ANNING the same advice I would give to any sporting

group, that I -- as far as I knew there were two ways to apply for fundings a sporting group. You can either apply directly to government or to approach a peak body. In this case it was the QRU, but you could just approach a peak body.

MR DEVLIN: So, did you play any further role in assisting Mr ANNING to do that?

THE WITNESS: No, I did not.

10 MR DEVLIN: Did you, for instance, suggest that Mr ANNING approach Mr FREER directly?

THE WITNESS: I certainly suggested that approaching the QRU, if he wished to seek funding, was a possibility.

MR DEVLIN: What do you say to Mr FREER's evidence that you suggested he contact ANNING?

20 THE WITNESS: Well, I don't agree with that. I, I never suggested to Mr FREER to approach Mr ANNING.

MR DEVLIN: Can you have a look now, please, at Exhibit 11. Sorry, I've got the wrong one. I ask you to have a look at Exhibit 10. Sorry, I had the wrong one. Do you see there that's an email from Ken FREER to Craig MATHESON --

THE WITNESS: Yes, I can see that.

30 MR DEVLIN: -- with some attachments? How did this come about, please, did you have any knowledge of this?

THE WITNESS: I didn't have any knowledge of the specific email but how it would have come about is the meeting the previous day at the QRU was one that Mr MATHESON, Mr FREER and I were a part of. In that meeting, Mr FREER ran through his documents again and basically asked Mr MATHESON for his professional opinion, I suppose, on how the QRU could best go about applying for funding from the state government.

40 MR DEVLIN: What did Mr MATHESON say about all of that? What was the advice he gave, do you recall?

THE WITNESS: Yeah, I do recall at the meeting that Mr MATHESON at the meeting mentioned that there certainly was a possibility that there could be some funding for the QRU.

MR DEVLIN: Did he suggest how the QRU would go about doing that?

THE WITNESS: Yes. There was a discussion about, firstly, what the QRU would like to see funded and Mr MATHESON gave his professional views on what could

and couldn't be funded in terms of what would be seen as priorities for the government.

MR DEVLIN: Do you recall Mr MATHESON mentioning that, for instance, this was for infrastructure projects?

THE WITNESS: Yes, that would be fair to say, that that was certainly my understanding as well, that government was more inclined to fund infrastructure projects.

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MR DEVLIN: Do you recall him making reference to things like quantity surveyors' information and so on?

THE WITNESS: I don't recall him making reference specifically to that.

MR DEVLIN: You say he didn't or you just don't know one way or the other?

THE WITNESS: I don't recall one way or the other.

20 MR DEVLIN: Where did that meeting take place?

THE WITNESS: That meeting took place in the CEO's office at the QRU.

MR DEVLIN: Very well. I think Mr MATHESON gave evidence that in the car on the way over you indicated to him that, using the word "we", we would like to fund the QRU on this one, words to that effect.

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THE WITNESS: Well, I was always very enthusiastic about supporting sporting groups. I know certainly the minister was as well and this was one of many groups that I think would be fair to say that it would be -- it would be good support the QRU. I think that's a very fair statement to make.

MR DEVLIN: So you don't doubt that you said words to that effect to MATHESON?

THE WITNESS: I don't doubt it at all. I said it about a great many sports and I don't doubt that I would have said something similar to that in the car.

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MR DEVLIN: The meeting then occurred on 2 July, did it?

THE WITNESS: Yes, it did.

MR DEVLIN: It's suggested that at about that time you said to FREER that it was all looking good for the grant.

THE WITNESS: Oh, no, I wouldn't have said that. I don't recall saying that. In fact, I wouldn't have given an indication one way or the other for a grant until after the grant had been approved by the minister to any sporting group.

MR DEVLIN: Did you make a comment to Mr FREER about the application for the grant needing to concern itself with bricks and mortar?

THE WITNESS: I don't believe I would have used the term "bricks and mortar", but it's certainly feasible that I would have said that the government -- and it was in line with Mr MATHESON's professional advice -- the government looked upon sporting infrastructure for organisations as a priority, I suppose.

10 MR DEVLIN: Could you have mentioned that phrase at some earlier time to FREER in any discussion?

THE WITNESS: It's feasible, but it's not a phrase that I would use.

MR DEVLIN: Okay. Could the witness see Exhibits 27 and 28, please. Just while those documents are being obtained, in the 2 July meeting with Mr FREER, Mr MATHESON and yourself, was there any discussion during that meeting that you recall about the QRU using any future funding for operational expenses and the like?

20

THE WITNESS: No, there wasn't.

MR DEVLIN: Why did you involve Mr MATHESON in the meeting with FREER at all?

THE WITNESS: Well, because he is the departmental officer who has the professional experience to, to basically advise in these matters. I had only been, basically, in this portfolio, that being the sport portfolio, for just over six months, eight months at that point in time and certainly these sorts of funding rounds were not something that I had intimate knowledge of.

30

MR DEVLIN: Have a look at Exhibit 27. You've already seen this before, had it shown to you before. Craig MATHESON sent to you at 1 pm on 4 July the possible future commitments document.

THE WITNESS: Mm.

MR DEVLIN: Which referred to \$4 million over three years for the QRU.

40 THE WITNESS: Mm.

MR DEVLIN: Go to Exhibit 28, please. At 1.24 pm he sent you a document that said \$4.2 million.

THE WITNESS: Yes, certainly.

MR DEVLIN: What are the circumstances, as you recall them, as to the change?

THE WITNESS: Yeah, Mr MATHESON called me to talk about the documents he'd received the previous day from the QRU, and he called me to basically say that he thought the documents were, were, you know, very good preliminary documents. I asked him how that would fit with the future proposals and announcements and I asked him if he could send me an updated future proposals and announcements list. And that's when he sent me that first email, which was the updated future announcements list which, as it says, included the further information about Ballymore, which I assume and I now know that he received the previous day from Mr FREER, and included the new enhancement for rugby league that Mr MATHESON had mentioned to me in the conversation on the telephone.

THE PRESIDING OFFICER: Mr DEVLIN, it's a pity Mr MATHESON wasn't given the opportunity to comment on that.

MR DEVLIN: On what, sorry?

THE PRESIDING OFFICER: On what your client has just said.

MR DEVLIN: In relation to what exactly?

THE PRESIDING OFFICER: What your client just said, as to how that change came from the \$4 million to the \$4.2 in those two documents. Mr MATHESON gave a different version to that.

MR DEVLIN: Well, I didn't think he had got to the \$4.2 million yet. He's talking about the \$4 million --

THE PRESIDING OFFICER: I'm sorry, you asked, your question was the 4 and then to the next document, which is Exhibit 28, the difference between those two documents?

MR DEVLIN: I better clarify that.

THE PRESIDING OFFICER: I think you'd better, yes.

MR DEVLIN: How did the change come about between the \$4 million and the \$4.2 million on the two documents?

THE WITNESS: Yeah, certainly. That was the first phone call with how the first document that I was referring to came about. So Mr MATHESON sent me the first document after our discussion that he had updated with the Ballymore proposal and the Queensland Rugby League. After I received that document I had a look at how that had structured -- that he had put in in terms of the body of the document the funding. And I asked him that --

MR DEVLIN: Did you see him face to face? What did you do?

THE WITNESS: No, it was on the telephone.

MR DEVLIN: What did you say to him?

THE WITNESS: After I had received the first document, I said to Mr MATHESON that -- do the documents you've received -- are they compatible for \$4 million to the QRU? He said he thought they were and I said is there a need to -- is there a need for any more? And he said that he was not sure. I said perhaps we need to make provision for a little more. If the documents aren't, aren't fulsome, and include allowance for things like contingency. Mr MATHESON said to me he thought that was a good idea and that it would be structured accordingly.

MR DEVLIN: Mr MATHESON, I think gave evidence yesterday about you suggesting, I think, that the minister would want to make an announcement about a grant in excess of \$4 million or over \$4 million; do you recall that? Do you recall anything like that occurring in the exchange?

THE WITNESS: Well, I don't recall that specifically. However, in the context of what we were talking about when I asked did the QRU documents justify \$4 million, Mr MATHESON said the preliminary documents he received did and I, I recall saying, well, does that mean they may need more, bearing in mind this was part of a larger phase 1 of a \$25 million project. He said, that's quite possible. And I said, well, maybe we need to allow for a little bit more to allow --

MR DEVLIN: You mentioned that about contingencies?

THE WITNESS: Yes.

MR DEVLIN: Do you flatly disagree with Mr MATHESON's recollection as he put it yesterday that he recalled you saying something about the minister wanting to announce something in excess of \$4 million?

THE WITNESS: No. It's feasible that I said that, because as you can understand, politically, it's very, it's certainly nice to be able to say that more than \$4 million -- certainly has a good, in terms of public announcement, ring about it.

THE PRESIDING OFFICER: Again, Mr DEVLIN it's a pity that wasn't put to Mr MATHESON yesterday in the detail that we've heard it here. I do appreciate that the Commission doesn't reach findings of fact on any of these things but there are other matters that we have to consider. It would have been handy to hear from Mr MATHESON on that, yet I'm reluctant to have to call him back.

MR DEVLIN: I suppose I have to take judgments too as to whether I can substantially disagree with something Mr MATHESON says about how things came about. So that if he can't contradict Mr MATHESON about the minister wanting to make an announcement of in excess \$4 million, I can't put to the witness that it didn't happen.

THE PRESIDING OFFICER: Yes, except that we've had a lot of detail here about

contingency in this conversation, whereas in Mr MATHESON's evidence the first issue of contingency is the changes he makes to the submission a number of days, the following week after that conversation.

MR DEVLIN: I'm sorry, but I understood Mr MATHESON's evidence to be along the lines that contingencies was part of his thinking.

THE PRESIDING OFFICER: The following week.

10 MR DEVLIN: At this time.

THE PRESIDING OFFICER: Nothing that contingencies was first raised by this gentleman which is what he's now saying. Anyway, it's done, what's done is done and we'll move on. It's just unfortunate that it's been done that way.

MR DEVLIN: Well, I understood the witness's evidence to be relating to this period of time.

20 THE PRESIDING OFFICER: Well, I think you misunderstood.

MR DEVLIN: So, that's my understanding of the evidence I'm afraid, and I have to make judgments in a shifting situation as to whether there's something that I have to put or should put in a circumstance where those judgments have to be made. I'm sorry, but that's a judgment I made at that time.

So, what happened after 4 July then after that exchange between you and Mr MATHESON?

30 THE WITNESS: I had no further contact with the matter.

MR DEVLIN: Before we go further on that.

THE WITNESS: Yes.

MR DEVLIN: Could you go to Exhibit 28, please.

THE WITNESS: Yes.

40 MR DEVLIN: The sixth document in is a sort of a chart of planned payments.

THE WITNESS: Mm.

MR DEVLIN: Who prepares that?

THE WITNESS: The department of sport.

MR DEVLIN: Did you suggest an increase over the \$4 million in order to accommodate the University of Queensland Rugby Academy some sort of grant

that was to go to them?

THE WITNESS: I categorically deny that.

MR DEVLIN: So what role next did you play in this matter, then?

10 THE WITNESS: I called Mr MATHESON on 8 July. I remember that date, actually, because there was, there was quite a lot going on that week. It was the week that, you may recall that there was the Dennis FERGUSON situation at Carbrook and there was -- which was take up an inordinate amount of time, and there was certainly the other, whatever the major police issues of the day were. And I remember just giving Mr MATHESON a call to say, following on from last week how was the progress going, in his opinion, on the QRU applying for funds.

MR DEVLIN: Yes.

20 THE WITNESS: And Mr MATHESON said to me that he was still waiting on some documents from the QRU. And I said to him, well, if it's possible it would be good if this could be an announcement for this week, for Friday.

MR DEVLIN: Where did the announcement at the Reds Ball come from? I assume that's what you are talking about.

THE WITNESS: Yes, I am. It's not unusual, as you may expect, for governments wanting to have announcements at major functions, or at least when grants are approved, to be able to tie them in to opportunities to announce them where the maximum, shall I say, exposure for government can be attained.

30 MR DEVLIN: So, where did it come from? Where did the idea come from?

THE WITNESS: It could very well have been my suggestion that it would be good to announce it at this particular upcoming function. But those milestones or opportunities to make announcements, if you will, can come from both ministerial staff and from departmental staff as well, that when -- certainly in terms of having appropriate announcement opportunities for grants is certainly a consideration at some point when grants are either being considered or approved.

40 MR DEVLIN: What was the exchange on 8 July? What did that lead to in terms of your exchange with Mr MATHESON?

THE WITNESS: I just asked Mr MATHESON where it was at. He said -- I recall him saying, I think he was still waiting on documents from the QRU. I said well, it would be good if there was something that could be announced at the end of the week.

MR DEVLIN: Did you know he was waiting on a letter from the QRU which was the actual application for the grant?

THE WITNESS: No, I was not. In fact, I have seen the exhibits and -- when I've been here this week -- and I had -- did not know he was waiting on an application from the QRU.

MR DEVLIN: Is that what he was referring to, do you know?

THE WITNESS: Possibly. He said he was waiting for further information from the QRU.

10 MR DEVLIN: So what, if anything, did you do after that, 8 July?

THE WITNESS: I asked him if it was feasible that this could be an announcement for the end of the week. He said he thought it was a possibility that could be assessed for the minister. And that was from my recollection my involvement up to that point.

MR DEVLIN: I'm going to go on to a different topic and that's in relation to your dealings with Ms FARMER. Do you wish to claim privilege in relation to those matters?

20

THE WITNESS: I do.

THE PRESIDING OFFICER: Yes, that's in relation to the funding agreement?

THE WITNESS: Yes.

THE PRESIDING OFFICER: That's noted, then. The same situation applies.

30 MR DEVLIN: Ms FARMER says -- we might get ahead of ourselves there. I will just backtrack a little bit. The ball itself, did you attend that?

THE WITNESS: I did, yes.

MR DEVLIN: Did the minister make the announcement?

THE WITNESS: Yes, she did. I do recall her mentioning it in her speech. It was not uncommon for a minister for functions that she attended to have basically an allocated time in the proceedings where she spoke and she made that announcement.

40

MR DEVLIN: There's an email in the early hours of 12 July from you to Mark SYMONS?

THE WITNESS: Yes.

MR DEVLIN: It's Exhibit 4. If the witness could see that, please. Who is Mark SYMONS again just to remind ourselves?

THE WITNESS: Mark was the senior media adviser in the office of the minister.

MR DEVLIN: This is headed "This is the brief she referred to last night. I did not know she was going to do it".

10 THE WITNESS: Yeah, well, Mark and I -- that's correct. Mark and I had a discussion in the afternoon of -- of course, I was aware she was going to make the announcement. I was -- what I meant by that was I did not know she was going to do it that way. What I meant by that, which I'm sure Mr SYMONS would have understood -- I had a conversation with Mr SYMONS the afternoon of the ball and I expressed some concerns to Mr SYMONS along the lines that if it was part of the minister's speech and we didn't have a media strategy or a media release ready, that there may be journalists who would pick up on the minister's announcement and -- whether or not that would have been a good thing.

MR DEVLIN: Right.

20 THE WITNESS: And the reason for that is I had -- I had spoken -- I recall having spoken to the minister about the speech but there was no media strategy or media release, which was generally, if you had a media strategy or media release around an issue that is when you would inform other branches of government such as the Premier's office. And there could have been an issue with other media picking up on -- media picking up on the announcement, and it being something which might have caught other branches of government off guard.

MR DEVLIN: Right.

30 THE WITNESS: So, I -- the minister didn't think it was, it was necessarily an issue because the rule was that if you had a media strategy or a media release the informal way that you would inform the Premier's office but of course being the sport minister pretty much every speech she gave had some sort of announcement in it. So I just informed Mr SYMONS that this was the possibility, that it may be picked up by media and if it did that the Premier's office would become aware. And if it was in the media their first call would be to Mr SYMONS to say: Why weren't we made aware of this if it was in the media? After I left the ball I actually went back to work for a few hours and that's indicated by the time of the email as well. As I said, it was a very big week that week and it was not unusual for me to work late in the night in the office and I forwarded the email on -- forwarded the salient details of the announcement to Mr SYMONS so that he would have had a
40 full copy of the announcement if there was, effectively, a knock on the door from the Premier's office saying why -- why was this announcement made without informing us?

MR DEVLIN: You do appear to have edited out the paragraph "Urgency" about the announcement at the Reds Ball on 11 July. Why did you edit that out?

THE WITNESS: It was a cut and paste from the document that Mr MATHESON had sent me, I think on the Friday afternoon. And Mr SYMONS was well aware the

announcement was going to occur the following -- that evening and I was giving Mr SYMONS information which would have been useful for him in handling any questions from the Premier's office.

MR DEVLIN: How did you mean the phrase, "I did not know she was going to do it". Why did you put that there?

THE WITNESS: Well, I put that there to reiterate that I did not know she was going to do it this way.

10

MR DEVLIN: What do you mean "this way"? In what way?

THE WITNESS: In that it was not necessary to inform the Premier's office without a media strategy or a media release around the announcement.

MR DEVLIN: So you didn't know she was not going to advise the Premier's office or hadn't advise the Premier's?

20

THE WITNESS: Well, I didn't -- I would have thought that it could have happened. But, you know, it was deemed that it was -- she didn't think it was necessary, so I just took it as that.

MR DEVLIN: It will no doubt be asked. The heading says, "I didn't know she was going to do".

THE WITNESS: Yes.

MR DEVLIN: And the announcement at the Reds Ball bit was taken out.

30

THE WITNESS: Yes, I didn't expect she would have a view on the matter.

MR DEVLIN: What do you mean by that?

THE WITNESS: She thought it was not necessary and I just went with that.

MR DEVLIN: Exhibit 6 in the proceedings -- there is a reference to "Prem's not reading page 110". Exhibit 5, sorry.

40

THE WITNESS: My recollection was that I sent that email on the evening of the Saturday, the following day. The story ran a couple of paragraphs on about page 110 of the sports section. And I basically informed the minister that -- because, as I say, the minister didn't think it would necessarily even get a run in the paper. I informed the minister that it did get a run and I had spoken to Mr SYMONS before that actually and he hadn't heard anything from the Premier's office and I said it was obviously lucky that they don't read page 110 of sport, and I hadn't heard a word from anyone at all. I put forward a possibility that if there was any concern about the announcement being made that the local member and the Premier could actually have a photo with the minister at Ballymore for the paper as a proposed

process, I suppose, to assuage any concern.

MR DEVLIN: Now, I think we now come to that topic about your dealings later with Ms FARMER.

THE WITNESS: Yes.

MR DEVLIN: How did you get involved in any -- you've claimed privilege in relation to it. How did you get involved in dealing with Ms FARMER?

10

THE WITNESS: Yes, my recollection is that Mr FREER called me on 30 July ostensibly to talk to me about the media announcement at Ballymore the following day. We had scheduled a 20-minute media announcement between the chair of the QRU, Peter LEWIS, and the minister, and it was on 31 July, which was the day the grant was approved by Governor in Council. So Mr FREER called me ostensibly to talk about the media announcement the following day. He also said to me that he hadn't heard anything from anyone in the department in relation to the grant. And I apologised to him for that. I said I would contact somebody in the department about the grant. Mr FREER said he wasn't familiar with the funding agreements and said, you know, do I get the money up front or how does it happen, do I get it in instalments? I said look, I'm not aware. He expressed a desire to receive it up front. I said I would pass on his views to the department and left it at that. From that phone call then I called Ms FARMER and, firstly, said that, you know, it was a bit unusual that the announcement was made three weeks ago, no-one from the department had contacted the QRU yet, and as per, I think the letter that the department had actually drafted and that the minister had signed, it was understandable that an organisation, particularly with a media announcement the following day, might have expected some contact from the department in relation to that. I put Mr FREER's view to Ms FARMER that he expressed a desire to get the funds up front. I actually didn't have a view. And I said can she just sort it out.

20

30

MR DEVLIN: Well, she says you acted in an intimidatory way and that it was a command to her to change the funding agreement to up front payments. What do you say to that?

THE WITNESS: Well, I'd never had any experience with a funding agreement. And I've never had any involvement in a funding agreement. So, I would not have expressed an opinion. I certainly would have passed on Mr FREER's opinion about what he may have expected. But I did not have an opinion because I did not know how funding agreements worked. I actually was trying to instigate contact between Ms FARMER or the department shall I say, and the QRU.

40

MR DEVLIN: Had you involved FARMER and KLAASSEN in the process at some point?

THE WITNESS: Yes, well, that was the phone call I made to them to have them talk to FREER about the funding agreement. I remember I initially --

MR DEVLIN: Well, there was a meeting, you see, between FARMER, KLAASSEN, FREER and I think Simon TAYLOR on 1 August. And it is suggested in KLAASSEN's evidence that the phone call you are talking about was on 1 August.

THE WITNESS: Yes, well, I -- my recollection is that I called on 30 July to ask them to meet with the QRU.

MR DEVLIN: Right.

10

THE WITNESS: And, and that that -- that's my recollection of it. And the reason I actually spoke to Ms FARMER, I initially called for Mr MATHESON, but I believe he wasn't available and so I spoke to Ms FARMER about the matter.

MR DEVLIN: She suggests that you were intimidatory in your approach. What do you say about that?

20

THE WITNESS: Well, I mean, I -- I've been here this week and listened to the statements made by the witnesses. And I, I now understand they might have perceived me to be, to be like that. I certainly had no intention to come across as intimidating. Just to contextualise it. I was the senior policy adviser to a minister who had certainly two of the highest pressure portfolios in government, being Police and Corrective Services. And three of the highest profile portfolios. And the way I conducted myself was, was, was something I thought appropriate. I didn't consider that I was being intimidating. It certainly wasn't raised with me. And I now know that Ms FARMER might have perceived it to be that way but I had no view on how the funding was allocated but I certainly had a view on perhaps having departmental staff resolve the issue.

30

MR DEVLIN: The effect of the evidence seems to be or something that's to be made of it is that you pushed your view onto the public servants about how the funding arrangement was to be made.

THE WITNESS: Well, I didn't know how the funding agreements worked to start with. And in any event I would have expected as part of funding agreements, which as I say I asked them to make contact with FREER and explain, would have had various compliance and acquittal clauses built into them.

40

MR DEVLIN: You say that you've never had your conduct called into question. Have you had situations with Ms FARMER, though, where she did complain to you about the manner in which you were approaching her?

THE WITNESS: I have no doubt she may have raised it with me. No particular moment comes to mind. I've heard what Ms FARMER had to say this week and I have no doubt that if she had felt that I was short or abrupt that I would have apologised to her for that. It certainly was nothing in my opinion to do with the issue in particular that I may have been discussing with her. It was more to do with the -- with, I suppose, the workload and the nature of my interaction with public

servants in the, in the interests of expediency. I certainly never received any complaints from anybody in the Police Service or from the Corrective Services department. And I don't actually recall any specific examples where I, I was even rude, to use Ms FARMER's words to her. But if she did feel I was short and abrupt I would have apologised. I certainly can understand that she may have perceived me that way and I'm disappointed that she did and I am sorry that she did.

10 MR DEVLIN: We have been talking about your discussion in the context of a major funding arrangement. If I can just ask you generally about dealings with public servants. Again, it's a slightly different topic so you may want to claim privilege about those dealings generally with public servants.

THE WITNESS: Yes, I would like to.

THE PRESIDING OFFICER: Yes, all right. Same conditions apply.

MR DEVLIN: Do you recall Mr KINNANE taking you to task about your conduct?

20 THE WITNESS: I don't recall Mr KINNANE ever raising my conduct with me. I met with him on a regular basis, probably three out of four Fridays of a month, face to face for about an hour. And I don't recall him ever raising my conduct with me.

MR DEVLIN: Did the minister raise those matters with you?

THE WITNESS: I don't recall her ever raising anything with me about it, either.

30 MR DEVLIN: Do you see how -- well, I'll put it to you this way. You heard Mr KINNANE yesterday talk about you interfering in the department at the lower levels of the department and not going through the Director-General.

THE WITNESS: Well, it was accepted practice that ministerial advisers, and I think Mr KINNANE mentioned that as well, could deal with the Director-General, the Deputy Director-General and the two job share Executive Directors. I certainly did that. I think, once again to contextualise it, the Director-General and even the acting Deputy Director-General were responsible for two government departments, Local Government and Sport and Recreation. The first, Sport and Recreation specific public servant, was the Executive Director's position. So, I, I don't necessarily believe that I was interfering in lower levels of the department but it was accepted practice, that Mr KINNANE approved of as well, to deal with the
40 Director-General the acting Deputy Director-General and the executive directors. And I know the minister would have done that as well on occasion. In fact, she would have attended meetings with external organisations that included one of those three levels of the public service of that department.

MR DEVLIN: Anyway, did Mr KINNANE ever speak to you about your interfering in the lower levels of the public service?

THE WITNESS: I don't believe he did. I met with him every Friday and I thought,

I thought he and I had a very good working relationship where we could have a free flow of ideas, discuss the week that was, the week that was coming up, and there was ample opportunity to discuss things like that with me at our Friday morning meetings, and I don't, I don't believe it was ever raised.

MR DEVLIN: Has anybody accused you from within the public service of bullying conduct or intimidating conduct?

10 THE WITNESS: No, no-one, no-one has ever accused me of that. In fact, since those suggestions were made by the, by Ms FARMER, I've asked other public servants who I had dealt with what they thought and they said they never had felt intimidated by me.

MR DEVLIN: Can we go to a different topic now. And that's in relation to your recollections about Warrigal Road going on to a "recommended" list from a "non-recommended" list; do you wish to claim privilege about that?

THE WITNESS: Yes.

20 THE PRESIDING OFFICER: Any questions about the major facilities program.

THE WITNESS: Thank you.

MR DEVLIN: What do you know about, specifically, the Warrigal Road project?

30 THE WITNESS: Yeah, I remember the minister mentioning to me that Warrigal Road was a school in her electorate. I think someone had mentioned to her about either putting in an application or going to put in an application. So I simply gave Mr MATHESON a call and asked him what the -- had Warrigal Road put in an application and what the status was of it?

MR DEVLIN: Who was that to?

THE WITNESS: To Mr MATHESON.

MR DEVLIN: Yes.

40 THE WITNESS: And then Mr MATHESON returned my call and he said it was actually a very poor application and I conveyed that to the minister and I then asked Mr MATHESON if it was possible for departmental staff, as they have all these sort of sport field officers I suppose, for want of a better term, from my understanding, to work with the school to see if they could do a better -- to help them with their application to be something that may be considered by the department.

MR DEVLIN: Well, you heard his evidence yesterday, that the suggestion from you was that it just be put on the list.

THE WITNESS: Well, I, I would not have wished for the guidelines in that regard to be in some way circumvented for an application. And I think Mr MATHESON said it was for the expressions of interest stage. If it was a poor application there would have been no point in getting an expressions of interests stage because if it progressed to an application stage it would not have received funding.

MR DEVLIN: Are there other projects on that list that came up in the audit that you have specific knowledge about?

10 THE WITNESS: Yes. I recall Mr MATHESON in January asking if the minister wanted to make some suggestions or give her opinions and views on the lists that he had -- his department had compiled, on major sports facilities.

MR DEVLIN: Were you present for that while that expression of views was given?

THE WITNESS: I was. I was present. And the minister, Mr MATHESON asked for her views and suggestions and the minister gave them. But, as I also heard Mr MATHESON say yesterday, there were -- that people were elevated who were not recommended and that kind of thing. I didn't get the impression from that
20 meeting there was any suggestion that the minister was trying to in some way elevate or reduce an organisation's chances to -- according to appropriate guidelines. I certainly know that she gave her suggestions and views and I think the two examples Mr MATHESON made yesterday would have certainly concurred with what I knew of the former minister's views.

MR DEVLIN: Very well. I don't think I have any other questions of Mr TUTT at this stage.

THE PRESIDING OFFICER: Thank you, Mr DEVLIN. Yes, Mr PEARCE?
30

MR PEARCE: Are you proposing to have a morning break, Mr Chairman, or are we going straight through?

THE PRESIDING OFFICER: Yes, all right.

MR PEARCE: 10 minutes.

THE PRESIDING OFFICER: Let me know when you are ready.

40 THE HEARING ADJOURNED AT 11.40 AM.

THE HEARING RESUMED AT 11.58.

THE PRESIDING OFFICER: I am informed that in fact there was mention of a contingency sum in the conversation as given by Mr MATHESON, so I was wrong in that extent and to that extent I apologise to you. However, there was the, the more and important and relevant issue is where the \$200,000 first originated, whether it was from Mr MATHESON or this witness. There is a difference

between them which wasn't clarified.

MR DEVLIN: I was going through that --

THE PRESIDING OFFICER: I'm happy to leave it at that but I just wanted to put it on the record that I was wrong in what I said specifically.

10 MR DEVLIN: And I would ask you, Chairman, to look at the transcript of this witness's evidence so far about the other matter. Because I believe he started by saying, I said to him do you think it's enough? In other words, the initiation did come, in the witness's own evidence, from him, from the witness. It may be a distinction without a difference.

THE PRESIDING OFFICER: It's still somewhat -- anyway, I won't take that one any further. I just wanted to clarify on the record; if I've said something wrong I should correct it. Yes, Mr PEARCE.

20 MR PEARCE: Mr TUTT, you were present for the meeting in February 2008 when the representatives of the QRU came to speak to the minister?

THE WITNESS: Yes, I was.

MR PEARCE: And you heard what they told the minister about the then difficulties faced by the QRU?

THE WITNESS: In the sense that they had a \$25 million redevelopment of the QRU that the previous federal government had promised them and that had been revoked.

30 MR PEARCE: Did they tell you that they had in fact already expended some money towards the redevelopment?

THE WITNESS: I don't recall if that was discussed. It's feasible that that was discussed.

MR PEARCE: All right. Did you get the impression from what the minister was being told that the QRU was somewhat pushed financially?

40 THE WITNESS: No, I didn't. They had said that they had this grand vision for the QRU and for Ballymore, that the federal government was on board with, and they were presenting that grand vision to the state government as well, and that was what was discussed.

MR PEARCE: Certainly by the time you were given the bundle of documents that you later gave to Naomi ENCHONG to send off to Mr MATHESON, you would have been aware that the financial position of the QRU was not all that flash.

THE WITNESS: What I was aware of was that Mr FREER explained to me in the

meeting of, I think it was 3 June, that the QRU was actually -- he said, had been restructured and he was restructuring and that he said he would -- that he had some good plans going forward.

MR PEARCE: So you paid little heed, did you, to the financial materials that accompanied the brief that he gave you on that day?

10 THE WITNESS: It's not unusual for, for me, I suppose as a ministerial adviser to not go into great detail from documents that are given to me in meetings. And I don't -- I didn't go into any great detail to assess documents that were given to me in detail at that meeting.

MR PEARCE: Whether or not you went to any trouble to read those documents and take on board what they said at that time, you know today, don't you, that the financial state of the QRU as at mid-2008 was not all that flash?

THE WITNESS: From having been here all week and listening to the statements made, I'm aware that that was certainly, certainly a view.

20 MR PEARCE: You know that now?

THE WITNESS: Yes.

MR PEARCE: Whether or not you knew of it then, you know it today.

THE WITNESS: I know of it today.

30 MR PEARCE: Given what you know today can you offer to me one logical reason why the QRU would give away \$200,000?

THE WITNESS: In what sense?

MR PEARCE: In the sense that we've been exploring this week, the \$200,000 that's found its way from the QRU to the University of Queensland Rugby Academy? Can you offer me one logical reason why the QRU would give away \$200,000?

THE WITNESS: I deny having anything to do with that, with that situation.

40 MR PEARCE: That's not my question, Mr TUTT. Can you offer to me a logical reason why the organisation faced with the financial predicament it was in at the time would give away \$200,000?

THE WITNESS: I wasn't aware of the financial predicament at the time.

MR PEARCE: That's not my question, Mr TUTT.

MR CARMODY: Mr Chairman, I'm sorry to interrupt Mr PEARCE. It's a fair

enough question but it's a toughy, too. He is really asking him to speculate. It's a submission that can be made. Why should Mr TUTT be expected to explain why some other agency did something. He's denied being an initiator or motivator. It's one of those questions, you don't ask people why something happened if they said they weren't involved in it happening. It's not very fair, that's all. It's a fair question but --

THE PRESIDING OFFICER: It is a fair question but it is a case that this person --

10 MR PEARCE: I have asked the question a few times now and not got a responsive answer so I will move on.

MR DEVLIN: If it was a fair question to start with then a lack of response might be something of relevance but if it's a question that calls upon speculating on other people's motives then it won't have any evidentiary value one way or the other.

20 THE PRESIDING OFFICER: Mr DEVLIN, it's obviously the sort of thing that Mr PEARCE might be considering making some submissions about at a later stage so perhaps it could be a fair matter for your client, if he desires, to have the opportunity to make a comment on it. That was the basis on which I agreed that it was a fair question. If your client chooses not to, then that's fine. I imagine you will make submissions on it if you feel it necessary.

MR DEVLIN: It really is a matter for submission, Mr Chairman.

THE PRESIDING OFFICER: Yes, but when Counsel Assisting wants to give this witness the opportunity, fine. If the witness doesn't want to take it up, that's equally okay.

30 MR PEARCE: It would be, would it not, an extraordinarily poor business decision, given what we know now, for the QRU to have given away \$200,000 in August of 2008?

THE WITNESS: Well, I was not aware of the QRU's business decisions at the time.

MR PEARCE: I'm asking you a question based on your knowledge of the things you've learnt this week. Do you want to comment on that or not?

40 THE WITNESS: Well, I'm not going to speculate on the business decisions of the QRU.

MR PEARCE: You told us of the circumstances in which you prepared the email for Mr SYMONS at eight minutes after 1 o'clock in the morning on Saturday, 12 July. And as I understand your evidence, in respect of the comment at the top of the email, "This is the brief she referred to last night. I didn't know she was going to do it", you were intending to convey that you didn't know she was going to do it that way?

THE WITNESS: Yes.

MR PEARCE: Do you recall giving that evidence?

THE WITNESS: I do.

MR PEARCE: What do you mean by “that way”?

10 THE WITNESS: I meant making an announcement that could attract some media interest without having a view that it was necessary to inform the Premier’s office.

MR PEARCE: Why, then, if that’s all you wanted to convey to Mr SYMONS, did you find it necessary to cut and paste from the ministerial submission?

THE WITNESS: Because I wanted to make sure Mr SYMONS had a copy of the document, if it did make the paper and the Premier’s office called him to ask what it was about.

20 MR PEARCE: You told us that you took out or excised from the ministerial submission matters that were not salient; is that your explanation?

THE WITNESS: Yes. I sent to Mr SYMONS the information that he would have needed to respond to any query from the Premier’s office.

MR PEARCE: The only portion of the document that you deemed to be not salient was paragraph 2, is that correct?

30 THE WITNESS: From having a cursory glance it appears so.

MR PEARCE: Would you like to take some time and read through the document because I’m suggesting to you it’s the only portion of the document that’s been excised? We can wait for you to read it if you want.

THE WITNESS: No, that’s all right. I’m happy to take your suggestion.

MR PEARCE: Why did you deem the reference to the Reds Ball not to be salient?

40 THE WITNESS: Mr SYMONS knew the minister was announcing it at the Reds Ball.

MR PEARCE: So did you.

THE WITNESS: Indeed. And I spoke to Mr SYMONS that afternoon prior to the Reds Ball about it, so he was already aware of that information and I, I said that -- it was 1 o’clock in the morning, Mr PEARCE when I forwarded that email on at the end of a very long week and I forwarded that on.

MR PEARCE: Whose decision was it not to inform Premier's?

THE WITNESS: No decision per se was made, but the standard informal practice was that if there was a media strategy or media release around an announcement, the Premier's office would be informed. And --

MR PEARCE: I'm sorry, I didn't mean to interrupt you. Keep going.

10 THE WITNESS: That's all right. And in this circumstance that was not the case. I remember raising it with the minister and I said there wasn't -- should we inform Premier's and she said, was there a media strategy or media release, and I said there was not and she said she didn't think it was necessary.

MR PEARCE: So the minister didn't think it was necessary to inform Premier's. When did she say that to you?

THE WITNESS: That was on the Friday prior to the Reds Ball.

20 MR PEARCE: Was it ever envisaged that she was not going to make that announcement that evening, that is, that Friday? Was it ever envisaged at any time on the Friday that she was not going to make that announcement that night.

THE WITNESS: Not to my knowledge.

MR PEARCE: In fact everything had been geared around the minister making the announcement that night, had it not?

30 THE WITNESS: That was certainly an opportunity that had -- that we proposed as a possible announcement for the, for funding for the QRU.

MR PEARCE: It imposed a degree of urgency on the entire process, did it not?

THE WITNESS: Well, announcement opportunities come and go and this was another -- simply an opportunity to announce the funding.

MR PEARCE: Would you agree with me that on its face what you've done by way of preparation of the email to Mr SYMONS could be seen as an attempt by you to disguise your knowledge of the minister's intention to announce the grant?

40 THE WITNESS: On its face -- no, I don't, purely because I had spoken to Mr SYMONS in advance of sending that email, in fact on the Friday. Mr SYMONS was well aware what was happening that night.

MR PEARCE: On its face does that document not read as if you are distancing yourself from the minister's announcement of the grant?

THE WITNESS: To contextualise it, I was fully aware of the minister's announcement.

MR PEARCE: I want you to comment on this proposition: That at face value your email to Mr SYMONS disguises your involvement in the matter?

THE WITNESS: Well, I don't agree. Mr SYMONS knew of my involvement in the matter because I had spoken to him prior to the announcement.

10 MR PEARCE: And I suggest to you that, as you've prepared the document, you have falsified it in a way by deleting paragraph 2 so as to give effect to your intent to disguise your involvement.

THE WITNESS: I don't agree with that.

THE PRESIDING OFFICER: Mr PEARCE, can I perhaps correct one thing that you've put to the witness. It appears to me, having a quick look through the document, that paragraph 18 has also been deleted from this email.

MR PEARCE: I am sorry, Mr Chairman, I'll have a look.

20 THE PRESIDING OFFICER: Which refers to Executive Council approval being required for this grant.

MR PEARCE: Perhaps we should have taken time to read the document. Why did you excise paragraph 18?

THE WITNESS: I don't recall why I would have excised paragraph 18. As I said, I forwarded to Mr SYMONS the salient information that would enable him to answer any questions he received from the Premier's office.

30 THE PRESIDING OFFICER: It's always a little bit of a dicey issue isn't it, as to whether an announcement can be made prior to the formal Executive Council approval?

THE WITNESS: Well, I certainly would, would suggest -- I'd accept that proposition, Mr Chairman.

THE PRESIDING OFFICER: Okay.

MR PEARCE: What --

40

THE PRESIDING OFFICER: Sorry, you go on. I won't interrupt.

MR PEARCE: What you put in to the email to Mr SYMONS was a cut and paste of what's before this hearing as Exhibit 2. Do you accept that?

THE WITNESS: Of the ministerial submission?

MR PEARCE: The ministerial submission that's found its way here as Exhibit 2.

THE WITNESS: Yes.

MR PEARCE: You must have known or perhaps I will come at it this way. Do you recall that you were given a copy of what is now Exhibit 2 as an attachment to an email that Mr MATHESON sent to you on that Friday?

THE WITNESS: I accept that.

10 MR PEARCE: It went to you as a word document and I assume it's from that word document that you cut and pasted into the email; is that correct?

THE WITNESS: It's feasible, yes.

MR PEARCE: And you wanted, you say, Mr SYMONS to know something of the body of the submission.

THE WITNESS: Mm, yes.

20 MR PEARCE: Did you read the body of the submission yourself?

THE WITNESS: Yes, I did.

MR PEARCE: When?

THE WITNESS: I read the body of the submission prior to the minister signing it.

MR PEARCE: And you knew, I suggest from your discussions with
30 Mr MATHESON, that the department was concerned that it did not have sufficient information to properly assess the application; that's correct, isn't it?

THE WITNESS: Yeah, on 4 July Mr MATHESON said to me that he, he needed more information.

MR PEARCE: And there's reference in the body of what is now Exhibit 2 to lack of detail about contingency fees and such things?

THE WITNESS: Yes.

40 MR PEARCE: Well, you would have known when you read Exhibit 2 -- what's now Exhibit 2 -- that the matter had probably not been properly assessed, would you not?

THE WITNESS: Well, I certainly assumed the departmental officers had properly assessed the document.

MR PEARCE: You told Mr MATHESON as late as 8 July, I suggest, to get a move on.

THE WITNESS: On 8 July I asked him what the progress of the, the QRU application was. He said, he said that it was progressing slowly. And I said, "Well, is it a possibility to be done for Friday?" He said it was. And I said well, can we get a move on to have it done for Friday.

MR PEARCE: He told you, I suggest, that they were still waiting for information from the QRU?

10 THE WITNESS: It's possible that he said that to me.

MR PEARCE: It's also possible he told you that the information received thus far was insufficient.

THE WITNESS: Yes, well he had already said that to me on the 4th.

MR PEARCE: Well, it's possible he said to you again on the 8th, isn't it?

20 THE WITNESS: Yes. It's possible.

MR PEARCE: You are not arguing with that?

THE WITNESS: It's possible he raised that with me.

MR PEARCE: And its logical, it's obvious I suggest from reading what is now Exhibit 2, that the author was struggling with some issues, lack of information.

THE WITNESS: In which particular part?

30 MR PEARCE: Lack of financial information.

THE WITNESS: Which part are you referring to?

MR PEARCE: We will take you to it if you like. The fact that the cost estimate for these three priority areas does not include any contingency budget; you knew about that?

THE WITNESS: It's in the brief.

40 MR PEARCE: He discussed it with you, you say, some weeks earlier the fact that there was no contingency --

THE WITNESS: One week earlier.

MR PEARCE: And again on the 8th, and then you've seen the document on the Friday.

THE WITNESS: Yes.

MR PEARCE: Did you have any concern about that?

THE WITNESS: I certainly relied on the departmental staff to adequately assess the documents.

MR PEARCE: Did you tell the minister that there may be some problem with the supporting information?

10 THE WITNESS: No, I did not.

MR PEARCE: You have heard the evidence this week of Mr MATHESON and Mr KLAASSEN, haven't you?

THE WITNESS: Yes, I have I.

MR PEARCE: It seems they were very much concerned with the lack of information they had to progress the assessment.

20 THE WITNESS: I have heard the evidence this week.

MR PEARCE: Do you accept what they say about that?

THE WITNESS: I accept it.

MR PEARCE: Did Mr MATHESON tell you that on 8 July?

THE WITNESS: He said he was still waiting for information from the QRU.

30 MR PEARCE: No, that's not my question. You have heard the evidence those two gentlemen have given to us this week about their level of concern at the lack of information they had to assess the matter.

THE WITNESS: Mm.

MR PEARCE: Did Mr MATHESON relay his concern to you on 8 July?

THE WITNESS: I don't recall him saying to me on 8 July that he had concerns with information coming from the QRU.

40

MR PEARCE: When you had your coffee with Mr Eric ANNING at the bistro in Brisbane, was the figure of \$200,000 mentioned?

THE WITNESS: I don't recall him mentioning any figure to me for what he was seeking.

MR PEARCE: You have heard Mr ANNING give evidence this week that he was looking for \$200,000; do you recall him saying that?

THE WITNESS: I do.

MR PEARCE: You don't recall him mentioning it to you?

THE WITNESS: No, I don't.

MR PEARCE: In terms of the two emails that were sent within 24 minutes of each other where we go from a figure of \$4 million for the QRU to a figure of \$4.2 million for the QRU, where do you say that \$0.2 million came from; who raised it?
10

THE WITNESS: When the first email was sent to me by Mr MATHESON, he called me in advance of that to discuss with me documentation he had received the previous day from the QRU. When he sent me -- when he called me in advance he said, "I've received documents yesterday from the QRU relating to our meeting the previous day and it looks like it could support a grant of \$4 million." As I said, I asked him, as I've explained earlier -- I've asked him, "Is that enough for what they're wanting?" He said he didn't know from the material. I said well, perhaps they'll need a bit more. And we then discussed the issue of contingency.
20

MR PEARCE: Mr MATHESON gave evidence yesterday that you suggested the figure of \$4.2 million; do you accept his evidence or do you reject it?

THE WITNESS: I don't recall specifically expressing the figure of \$4.2 million. I know we had discussions about the documentation he had received not being fulsome, and I said, "Well, is 4 million adequate for that?" He said he didn't know and I said, "Well, perhaps that figure needs to be more to allow for contingencies." And then 5 per cent was the amount that was added and that was reflected in the funding agreement as well.
30

MR PEARCE: On top of all of this we have Mr FREER telling us that you told him that \$200,000 would be added to the grant monies to the QRU but it was to go to an entity at the Queensland University Rugby Club.

THE WITNESS: I heard Mr FREER say that.

MR PEARCE: You reject -- don't accept that evidence?

THE WITNESS: I categorically deny that. In fact, I heard Mr FREER's evidence and he said -- I didn't even know at the time Mr FREER is saying I said that to him that the UQ Rugby Academy even wanted money.
40

THE PRESIDING OFFICER: Mr TUTT, you've seen other submissions going through for grant monies, I presume.

THE WITNESS: Yes, I have.

THE PRESIDING OFFICER: Are the others of the calibre of this one as to how the

amount that is granted is calibrated? Here we've got an application for funding for three things that total up to \$4 million but one of them is knocked back which takes it back \$0.9 of a million so immediately it should come back to \$3.1 million. But there is this suggestion well, perhaps they haven't got a contingency fund in it or we don't really know because all we have are one-line figures, so perhaps there's no contingency fund there and perhaps one of them might be underestimated so we'll round it up to the \$4.2 we first thought of? Is that the way that these things are normally done in the department?

10 THE WITNESS: I, I wouldn't necessarily say that, Mr Chairman, but I know that in relation to this one, when figures were being discussed on 4 July it was certainly prior to, to any, I suppose, formal assessment of the, of the application the following week.

THE PRESIDING OFFICER: You saw it then on the 8th -- sorry, the 11th you said you read the submission?

THE WITNESS: Yes.

20 THE PRESIDING OFFICER: Were you surprised at the way that it managed to get to the \$4.2 million that you had been speaking about with Mr MATHESON?

THE WITNESS: Well, I thought it was interesting but I also had expected that the department had performed due process in terms of assessing the application and the materials before it.

30 THE PRESIDING OFFICER: But you never queried it in any way or suggested to the minister that perhaps you, as her adviser, would suggest that this one needs to be looked at carefully to make sure that the department has got the material that they obviously didn't have a few days previously and has performed due diligence on it?

THE WITNESS: Well, I had confidence in the department to, to undertake due process in that assessment.

40 THE PRESIDING OFFICER: It never occurred to you that the sort of pressure you were putting on them of "just get on with it" and, you know, "the minister wants to make this announcement on Friday" that that might lead the department to cut corners and not do due diligence.

THE WITNESS: I wouldn't expect that of the department. I certainly know that from the evidence and the statements I've heard this week there was that perception, but I never thought that I would be -- that the department, departmental staff, would perceive it to be that way. There was never any suggestion that I would want to circumvent or would want departmental staff to circumvent due process. I certainly didn't -- as I heard evidence from one person, there was never any suggestion I would want this application assessed in one hour.

THE PRESIDING OFFICER: No, I don't think anyone has suggested that you said one hour. I don't think anyone put that on you. But do you accept that what has happened in this case is that the assessment of this application was not properly carried out? On what you know now, do you accept that?

THE WITNESS: On what I know now it certainly appears that the assessment from the department was not appropriately done.

10 THE PRESIDING OFFICER: And on what you know now do you accept that an inappropriate change was made to the standard funding agreement insofar as allowing for a payment of \$1.4 million up front? On what you know now.

THE WITNESS: On what I know now, I, I see that to be the case. However, there would still be -- I still would have expected the checks and balances to apply. Having never had any experience with the department, departmental funding agreements. And even having had a look at that funding agreement as well, subsequently this week, I see there are various compliance milestones and, sort of, monthly reporting that would very easily have identified where monies were being spent.

20 THE PRESIDING OFFICER: Yes, but we do know that of course unfortunately nothing has happened with this redevelopment as of now. Over 12 months later.

MR CARMODY: I'm sorry, Mr Chairman. Sorry, I wouldn't like the premise to remain unchallenged. What we do know is that they have lodged a development application, it's in Council and there is nothing we can do about it until Council does something, so that's what has happened.

30 THE PRESIDING OFFICER: Thank you.

I'm interested in the future interests of these sorts of things not occurring again, Mr TUTT. Are you able to give us any guidance as to how we could ensure that these, what you would put as being unfortunate misunderstandings that seem to have ensued in this case, that you don't intend to give directions but public servants take them as directions; how can we ensure that young, eager, perhaps without meaning to be, slightly overbearing ministerial advisers don't cause public servants to make these errors, see things the way that they are not intended; how do you think we can avoid this happening in the future?

40 THE WITNESS: Well, in terms of making suggestions at this stage I could have a think about that. However, I think, I think it's incumbent upon people, whether it's ministerial staff or public servants to, I suppose, understand that due process for these sorts of things prevail. I know the point you are making, Mr Chairman, is that there may be a perception that people are applying undue pressure, to use your term. How do we overcome that happening? Well, I think public servants, particularly senior public servants, in my opinion would have had extensive experience to be able to not, shall I say, feel that they are being pressured by ministerial staff to, to perform something that they themselves may not think

accords with due process.

THE PRESIDING OFFICER: It's what I said yesterday, they need to be empowered to say "no".

THE WITNESS: Exactly right. And I think on that point --

THE PRESIDING OFFICER: How do we do that?

10 THE WITNESS: On that point, I certainly have the impression that until obviously
hearing the statements this week that both public servants involved in this matter,
in terms of Mr MATHESON and Ms FARMER, were comfortable to say "no" to
me on a regular basis. In fact, I remember some examples where that happened. So,
I think how do you empower public servants to have the ability to say "no" to
ministerial requests, as I would say it, but as it appears to have been perceived as
ministerial directions, I think there needs to be some sort of reporting mechanism
for that, that if people perceived ministerial requests, particularly considering the
executive director level is effectively third highest in the chain of command for that
20 department, that there could be some reporting mechanism, if they felt they were
being issued with an instruction, that there could be some direct reporting
mechanism to the Director-General, might be a possible suggestion to the question
you've posed.

THE PRESIDING OFFICER: And who would he then report it to?

THE WITNESS: He could either report that directly to the minister responsible.
And if, as I heard the evidence yesterday from the former Director-General, that he
felt that was not a possibility for him, it could perhaps be raised with the
Director-General of the Premier's Department to be further, further considered.
30

THE PRESIDING OFFICER: Am I correct in assuming that you would have seen
the Reds Ball as the ideal time for this announcement to be made, that it would
have been unfortunate for you --

THE WITNESS: Mm.

THE PRESIDING OFFICER: -- and it's your proper role, of course, as an adviser
to the minister, it's a political role, it would have been unfortunate if it had been
approved, say, a month later and you had missed out on the opportunity for her to
40 make the announcement at the ball.

THE WITNESS: I think announcement opportunities come and go. That was
certainly one that we identified as a possible announcement. But I can think of
items that have been approved in advance and have been held for announcements
further down the track or announcements that -- it would have been good to
announce certain things. I mean, one that springs to mind was one in the Police
Service, actually, to do with the rollout of their computer system, QPRIME which
-- The people working on that, I think were the Deputy Commissioner, Ian

STEWART, and his offsider at the time was a gentleman by the name of Len POTTS. I remember we worked very closely with them to get them to have various announcements for the rollout of QPRIME for the police computer system. Now, because of the nature of it being a computer system, some of the dates that we wanted to make announcements and various walk-throughs facilities came and went. But, of course, you always identify a forward schedule where possible announcements can be made but if those announcements dates don't make, or announcement topics, don't make the announcement dates for whatever reason then there's always another opportunity to announce something. And that's --

10

THE PRESIDING OFFICER: Yes, you could wait till the next year's Reds Ball. Yes, Mr PEARCE.

MR PEARCE: Can I ask you some questions about this issue of timing of announcements, in the context of what took place here. You were party to the briefing with the minister in February?

THE WITNESS: Yes.

20 MR PEARCE: That's correct? You would agree that the next relevant event was your conversation with Mr FREER at the Caxton Hotel?

THE WITNESS: Yes.

MR PEARCE: That occurred in mid-May?

THE WITNESS: Yes.

30 MR PEARCE: And your evidence is that contrary to what Mr FREER has had to say about it, which was that you told him that you'd been discussing the matter with the minister and you were prepared to give or looking to give \$3 million over three years, that you simply said to him words to the effect, "How's it going? If you want some help, give me a call".

THE WITNESS: Not quite. He, he certainly -- we had a conversation. And he explained things weren't going well with the federal government and I said, well, that if he -- if he wished to, to, to talk further he could put together some documents and come and see me.

40 MR PEARCE: So far as you were concerned what had occurred between the February meeting and your conversation in mid-May was not much at all?

THE WITNESS: Well, I was not aware of what had occurred. I heard Ms FARMER say that she had met with the QRU in that time in her evidence this week, but I certainly was not aware of any --

MR PEARCE: That's right. And that's why you said to him "give me a call"?

THE WITNESS: That's right. He said things weren't going well. He said things weren't going well. Could he meet with the state government and I said, of course, give me a call.

MR PEARCE: Did he give you a call?

THE WITNESS: He did. I would say that to anybody.

MR PEARCE: Did he give you a call?

10

THE WITNESS: Yes, and a meeting was organised for early June.

MR PEARCE: A couple of weeks later?

THE WITNESS: Yes.

MR PEARCE: Was there then some urgency attached to the matter, was there? Or were you prepared to simply sit back and let the QRU come to you?

20 THE WITNESS: He gave me a call and we had a meeting on 3 June. Yeah, I was very comfortable to let the QRU come to me on the matter.

MR PEARCE: Had you elevated the urgency that was attaching to this matter?

THE WITNESS: In what sense?

MR PEARCE: Well, as I understand it, you were overseas for the last 10 days in May. That's correct, isn't it?

30 THE WITNESS: Yes.

MR PEARCE: You got back to Australia on 31 May?

THE WITNESS: Yes.

MR PEARCE: And that was I think a Saturday. You met with him on 3 June, the Tuesday?

THE WITNESS: Yes.

40

MR PEARCE: Had the matter been elevated in your diary? You have told us you were very busy at this period.

THE WITNESS: No, I wouldn't suggest it was elevated in my diary.

MR PEARCE: So in the few weeks from your conversation in mid-May, you travel overseas, return to Australia, and your meeting on 3 June arrangements had been put in place, had they, for the meeting on 3 June?

THE WITNESS: Yes.

MR PEARCE: And out of the meeting on 3 June, somehow or other, the list that Mr MATHESON prepared on 19 June showed a figure of \$4 million in potential funding for the QRU?

THE WITNESS: I wouldn't say it was out of the meeting on 3 June but, yes, the list on 19 June did.

10

MR PEARCE: Can you tell me where that figure came from, \$4 million?

THE WITNESS: As I seem to recall, it was feasible it was actually mentioned in the meeting at 12 February as being --

MR PEARCE: No-one else has said that Mr TUTT. You have heard everyone else give evidence about the meeting on 12 February. Is it your recollection that \$4 million was mentioned at the February meeting?

20

THE WITNESS: I'm certainly saying that it was feasible that's mentioned.

MR PEARCE: Well, anything's feasible. Do you recall it being mentioned?

THE WITNESS: I -- it may have been mentioned.

MR PEARCE: We know it may have been mentioned. That wasn't my question. Do you recall it being mentioned?

30

THE WITNESS: I don't specifically recall it being mentioned.

MR PEARCE: So your evidence accords with the evidence everything else has given about that meeting. No-one has any recollection of \$4 million or any figure being mentioned?

THE WITNESS: But it was possible it was mentioned at that meeting.

MR PEARCE: Do you know where the figure of \$4 million came from?

40

THE WITNESS: I think it came from the meeting.

MR PEARCE: Mr MATHESON says it came from you; do you accept Mr MATHESON's evidence or not?

THE WITNESS: I accept that when we were talking about that document I had said that it was my recollection that figure had been mentioned before, yes. I accept that the figure had been mentioned before.

MR PEARCE: That's not the question that I asked you. What I said to you was:

Mr MATHESON says it came from you. Do you accept Mr MATHESON's account?

THE WITNESS: I accept Mr MATHESON said that and I was going on to say where that I thought the figure had come from.

MR PEARCE: Mr MATHESON said --

10 THE PRESIDING OFFICER: Mr TUTT, please, you are a lawyer, you know the difference.

THE WITNESS: Okay.

THE PRESIDING OFFICER: You were asked: do you accept what Mr MATHESON said, not that he said it.

THE WITNESS: I do accept what Mr MATHESON said, Mr Chairman.

20 MR PEARCE: Where did you get the figure from?

THE WITNESS: I recall it could have been mentioned -- it's feasible it was mentioned on 12 February.

MR PEARCE: You've just told me seconds ago that you didn't recall it being mentioned at the February meeting. Do you now recall that it was mentioned at the February meeting?

THE WITNESS: No, but I think it's feasible it was mentioned.

30 MR PEARCE: We know it's feasible because anything is feasible. Do you recall it being mentioned at the February meeting?

THE WITNESS: I don't specifically recall it being mentioned.

MR PEARCE: I will take you back now to the issue of the \$200,000 and I want to take you through the series of issues or items of evidence. Do you accept that \$200,000 was the figure that was in Mr ANNING's mind as potential funding for the academy?

40 THE WITNESS: I heard him give his evidence.

MR PEARCE: Do you agree that's what he says?

THE WITNESS: Yes.

MR PEARCE: He had \$200,000 in mind when he had coffee with you; that's correct, isn't it?

THE WITNESS: I heard him give his evidence, yes.

MR PEARCE: Okay. Exhibits 27 and 28, that's the exchange or your emails from Mr MATHESON to you at 1 pm, 1.24 pm, point to an increase of 0.2 in the potential funding for QRU; do you agree with that?

THE WITNESS: I do.

10 MR PEARCE: Do you agree that Mr MATHESON's evidence was that that 0.2 million, the additional 0.2 million was a figure that you mentioned?

THE WITNESS: Well, as I've said before, the discussion as I recall was around the documents the QRU --

MR PEARCE: I'm not interested in your recollection for the moment. Do you agree that was what Mr MATHESON said to us yesterday?

THE WITNESS: Yes, I agree that's what Mr MATHESON said.

20 MR PEARCE: Do you also acknowledge that Mr FREER has given evidence that you told him QRU would be given an additional \$200,000 to go to the university, either academy or club.

THE WITNESS: I agree with Mr FREER's evidence but I categorically deny having said that to him.

MR PEARCE: He's lying about that, isn't he?

THE WITNESS: Yes.

30

MR PEARCE: Might the witness be shown Exhibit 18. I'll just put it on the screen, it might be just as convenient. What I'm showing to you is a portion of Exhibit 18. It's an email from Mr EISENTRAGER, who is the financial officer at QRU, to Mr ANNING and others and it says in part, "Ken FREER has asked me to contact you to arrange payment for the UQ Academy Scholarships Program. My understanding is that the QRU will pay you \$200,000 from the funds received from the state government."; do you see that?

THE WITNESS: I do.

40

MR PEARCE: Mr FREER had obviously given that instruction to his underling, had he not?

THE WITNESS: It appears that way.

MR PEARCE: So if your evidence is correct, Mr FREER has lied to his financial officer as early as September 2008?

THE PRESIDING OFFICER: I don't know that that follows.

THE WITNESS: Yeah, I don't understand that. What do you mean?

MR PEARCE: Do you accept that that email indicates that Mr EISENTRAGER was acting on the assumption that the \$200,000 to go to the scholarships program was coming out of the funds to be received from the state government; do you accept that?

10 THE WITNESS: I accept that.

MR PEARCE: All right. Do you accept that the \$200,000 was in fact paid by the QRU to the University of Queensland Rugby Academy?

THE WITNESS: Yeah, I accept that.

MR PEARCE: And do you accept that that became possible because there was an up front payment of \$1.4 million to the QRU?

20 THE WITNESS: I accept that to be the case.

MR PEARCE: How do you explain all of those circumstances? They are just unfortunate coincidences, are they?

MR CARMODY: Mr Chairman, sorry to interrupt, but just in fairness to the witness it's not the only way it was possible to pay \$200,000 to UQ if we had a mind to. You need to know the state of our accounts, it could have come from some other --

30 THE PRESIDING OFFICER: Well, we have some idea of the state of the accounts.

MR PEARCE: We have evidence, with respect, Mr Chairman --

THE PRESIDING OFFICER: We have been told by your client, Mr FREER, that there was a line of credit and that they were in debit and that the \$1.4 million went into that.

MR CARMODY: Yes, they were in debit --

40 THE PRESIDING OFFICER: That's a reasonable inference, isn't it?

MR CARMODY: No, no, no. It depends on the answer you want. You need know how much was left in the line of credit.

THE PRESIDING OFFICER: It's not the answer I want. That's the answer your client gave.

MR CARMODY: No, he did give that but still you are missing a link. He says, we

had a line of credit. We were in debit, you have to be to have a line of credit. What you need to know for that question to be valid is how much was left in the line of credit, available to them. And the question also premised --

THE PRESIDING OFFICER: So your client would have gone further in debt to pay money to the --

MR CARMODY: No.

10 THE PRESIDING OFFICER: That's what you are suggesting, how much was left in the line of credit.

MR CARMODY: No, I am not. This witness is being asked on the basis that the only funds we had available to us to pay UQ \$200,000 was the up front payment, and I'm just saying that's not necessarily so.

MR PEARCE: With respect, I don't think that was my question at all. I said the money was paid out of the \$1.4 million.

20 MR CARMODY: Fair enough. That I don't have any objection to, that's where it came from.

MR PEARCE: You have now had a minute or so to think of your answer. I've suggested to you that these are a series of unfortunate coincidences. Is that how you explain them?

30 THE WITNESS: I can certainly see how it looks and what you're putting to me, Mr PEARCE, but there are checks and balances involved in all funding agreements that would certainly detect any monies that are spent contrary to a funding agreement.

MR PEARCE: Except the checks and balances in this case broke down because you instructed Di FARMER to change the funding agreement; do you accept that?

THE WITNESS: I don't accept that. I know now she said she perceived it as an instruction but I had no authority to give her instruction.

40 MR PEARCE: Let me ask you this: Is Dianne FARMER lying when she says that, or is she mistaken about it?

THE WITNESS: No, I --

THE PRESIDING OFFICER: Mr PEARCE, I don't likeness witnesses being asked whether someone else is lying. That's a difficult thing to put to a witness.

MR PEARCE: She's mistaken when she says that you instructed her to fix it?

THE WITNESS: Well, I certainly said to her, could she just sort it out in the

context of meeting with Mr FREER. I put his view that he wished to receive the funds up front and could she just sort that out. I did not have a view on how the funding was paid.

MR PEARCE: Do you agree with Mr MATHESON's assertion that you were putting the pressure on to get the ministerial submission prepared so that it could be approved by the Reds Ball?

THE WITNESS: I certainly asked if that was a possibility.

10

MR PEARCE: You've heard the evidence about what he then did to his underlings, didn't you?

THE WITNESS: I've heard the evidence.

MR PEARCE: Well, what he said and did to his underlings, was that consistent with the message that you'd conveyed to him?

20

THE WITNESS: Not at all. I never would have expected any person to assess this document in one hour. I would not have expected due process and proper assessment to be followed.

MR PEARCE: Mr MATHESON then must have understood what you wanted to be achieved; is that the case?

THE WITNESS: I would certainly have liked to have had something to announce for the Reds Ball but not at the expense of due process.

30

MR PEARCE: We know now what he did do about it, don't we, because everyone has given evidence about it?

THE WITNESS: Yes.

MR PEARCE: Very unsavoury, would you accept that?

THE WITNESS: Well, it certainly does not appear that one hour would be a suitable amount of time to assess documents.

40

MR PEARCE: And on the information then available no amount of time would have been suitable; do you accept that?

THE WITNESS: Well, I accept that more information would have been needed.

MR PEARCE: And you say that you can't recall Mr KINNANE ever speaking to you about concerns he had at the way you dealt with his officers.

THE WITNESS: I can't recall him raising it with me.

MR PEARCE: You are saying it didn't happen?

THE WITNESS: No, I just said I can't recall him ever raising it with me.

MR PEARCE: That would be the sort of thing that would stick in your mind.

THE WITNESS: Absolutely, if somebody had raised with me that my conduct was not appropriate it's something that would stick in your mind very firmly.

10 MR PEARCE: Not just somebody, a Director-General.

THE WITNESS: Absolutely.

MR PEARCE: You are saying that it didn't happen?

THE WITNESS: I can't recall him mentioning it because if he had mentioned it would stick in my mind.

20 MR PEARCE: Therefore, it didn't happen. That's your evidence, isn't it?

THE WITNESS: Well, I can't recall it, Mr PEARCE.

MR PEARCE: A lot of people making mistakes here or misinterpreting things you've said. Would you care to comment on that proposition? For your evidence to be truthful --

THE WITNESS: Yes.

30 MR PEARCE: -- there are a lot of people who have given evidence here this week who are either mistaken, have misunderstood you or telling falsehoods; do you accept that proposition?

THE WITNESS: I accept that people certainly might have perceived that I was giving them a direction, but I, I was not giving them a direction. I had no authority to give these public servants a direction --

MR PEARCE: Well -- sorry, I didn't mean to interrupt.

40 THE WITNESS: I had no authority to give them a direction. I know now that perceived that to be an instruction. However, that was never my intent.

MR PEARCE: With the exception of Mr FREER, who we will move to one side for the moment, can you think of any reason that would motivate Mr MATHESON, Di FARMER or Michael KINNANE to say things about you that aren't true?

THE PRESIDING OFFICER: Or that they didn't believe to be true.

MR PEARCE: That they don't believe to be true?

THE WITNESS: Sorry, in terms of?

MR PEARCE: They have come here, each of them, and said very negative things about you, haven't they?

THE WITNESS: I've, I have heard -- yes.

10 MR PEARCE: Mr MATHESON has said things that reflect very poorly upon you, hasn't he?

THE WITNESS: I, I didn't recall Mr MATHESON --

MR PEARCE: Well, Mr MATHESON is mistaken or has misinterpreted things that you have said to him, would you accept that?

MR DEVLIN: Perhaps a specific statement by Mr MATHESON might assist the witness to answer.

20 MR PEARCE: It's very hard to be specific I'm afraid, Mr Chairman.

MR DEVLIN: Well, I'm asking for the questioner to be specific. It will assist the witness in responding to individual statements by Mr MATHESON --

THE PRESIDING OFFICER: That's fair enough.

30 MR PEARCE: I will endeavour to be. I'll go through them all. You've heard the evidence about what Mr MATHESON said to his staff on 8 July regarding the preparation of the ministerial submission, haven't you?

THE WITNESS: I have.

MR PEARCE: You have heard that, from him, that what he said to his staff reflected what he understood you told to him?

THE WITNESS: Yes.

40 MR PEARCE: And if he is correct, if the account Mr MATHESON gave to us is accurate, that reflects poorly on you, doesn't it?

THE WITNESS: Well, I certainly accept that I said to Mr MATHESON that it would be good to, to have an announcement. But there was never any suggestion I would want due process bypassed for that announcement.

MR PEARCE: Mr TUTT, that wasn't the question. If what Mr MATHESON has told us about the message that he claims he got from you and conveyed to his staff, if that's correct that reflects poorly on you, doesn't it?

THE WITNESS: If that's correct.

MR PEARCE: It reflects poorly on you.

THE WITNESS: If it was correct.

MR PEARCE: Can you think of any reason why he might say that to us if he didn't believe that to be the case? Has he got it in for you? Has he got some other motive to come here and tell us falsehoods? This is your opportunity to tell us.

10

THE WITNESS: Yeah, well, I would never have wanted --

MR PEARCE: That's not the question, Mr TUTT.

THE WITNESS: I know that's not the question but I'm just saying that I would never have wanted him to perceive requests from me as an instruction.

MR PEARCE: You heard what Mr MATHESON told us about the events in late January of 2009 concerning the major facilities program?

20

THE WITNESS: Yes.

MR PEARCE: Where he claims he was instructed by you with respect to the Warrigal Road project to put it into a particular schedule; you heard him give that evidence?

THE WITNESS: I heard him say that.

30

MR PEARCE: Now, if that is correct and true that reflects poorly on you, doesn't it?

THE WITNESS: I would not have asked him to put it on to a schedule to bypass due process.

MR PEARCE: If his evidence in that regard is true it reflects poorly on you?

THE WITNESS: Yes.

40

MR PEARCE: Right. Do you think -- can you think of any reason why he might come along here and tell us, give us that account unless he believed it to be true?

THE WITNESS: I don't know why the due process would not have been followed.

MR PEARCE: One reason why the due process might not have been followed is because you instructed that that occur.

THE WITNESS: No, I disagree with that. I understand you're saying that my comments may have been perceived as an instruction, but I never had any intention

to have my suggestion or comments perceived as an instruction.

MR PEARCE: Were you present at any meetings in that period in January 2009 or early February 2009 when the minister indicated she wanted some changes made to the schedules?

THE WITNESS: I was present at the meeting where Mr MATHESON asked the minister for her views and opinions on the schedules.

10 MR PEARCE: And she gave them.

THE WITNESS: Yes.

MR PEARCE: And did that involve telling Mr MATHESON which matters she would have liked recommended in the first schedule or liked included, I should say, in the first schedule.

THE WITNESS: No, my recollection is that the minister gave an opinion on the items listed.

20

MR PEARCE: If Mr MATHESON then went away and for his own reasons --

THE PRESIDING OFFICER: Just before you go to that, Mr MATHESON said that the minister and you had those schedules at that meeting; is that correct?

THE WITNESS: That was correct, yes.

THE PRESIDING OFFICER: He had sent them to you, I think he said, the day before.

30

THE WITNESS: That's possible.

THE PRESIDING OFFICER: Okay. So you were going through these schedules and looking at them and the minister commenting on them?

THE WITNESS: Yes.

MR PEARCE: And your evidence is that if he then went away and elevated matters in the list of priorities he did that for his own reasons?

40

THE WITNESS: Well, if it was not in accordance with due process that is not something that I would have wanted to happen and I'm certainly sure it's not something the minister would have wanted to happen, either.

THE PRESIDING OFFICER: What was the point then of having that meeting with Mr MATHESON at that stage if everyone is so concerned about due process occurring? What was the point of the meeting?

THE WITNESS: He was showing the, the spreadsheet, I think for the documents that had come in for the major facilities grant and what the department's suggested recommendations were and asked for the minister's views and what her suggestions were on the documents and on the items that were listed.

THE PRESIDING OFFICER: But why at that stage, to your understanding, were the minister's comments relevant?

10 THE WITNESS: Well, I'm not sure, but Mr MATHESON often, often asked us and the minister as well, of course, for her views on these, these documents.

THE PRESIDING OFFICER: See, what we know was happening was that the department was finalising the schedules prior to formally putting the submission up to the minister to get her formal approval of which ones should go further to stage 2 of the process; that's correct, isn't it?

THE WITNESS: Yes.

20 THE PRESIDING OFFICER: So, before the department finalises its recommendations to the minister they consult with the minister and get her comments. Now, what is the relevance of the minister's comments at that stage before they've finalised their formal assessment, due diligence, to use your term, process?

THE WITNESS: Well, I would agree. I don't necessarily know if there is relevance to have the minister's input at that point in the process.

30 THE PRESIDING OFFICER: Did you ever as the minister's senior policy adviser advise her that, minister, it's best for you not to make comments at this stage but to leave the department to formulate its own independent appraisal of the applications and to make its recommendation to you and then you can accept or reject any part of the departmental recommendations at that stage? Rather than meeting beforehand and be seen possibly as affecting what would otherwise have been an independent recommendation from the department.

THE WITNESS: Well, the department was seeking the minister's views on the document.

40 THE PRESIDING OFFICER: Yes, but did you ever say to her: you shouldn't give your views at this stage because it might affect the department's independent recommendation.

THE WITNESS: I had never been involved in a major facilities --

THE PRESIDING OFFICER: No, but you would have been involved all the time. You had been since 2004 a ministerial adviser. You know the process, that the department should formulate -- go throughout assessment, whatever is needed for the particular submission, do the due diligence, as you call it, make the

recommendation to the minister and then the minister can either accept in full or amend or reject the recommendation. You are aware that's the way it should occur?

THE WITNESS: Certainly.

THE PRESIDING OFFICER: Did it not ever occur to you that it might not be the proper thing to do to have the minister expressing her views to the department so as to perhaps alter their recommendations before they come to her in the form of a formal ministerial submission?

10

THE WITNESS: It didn't occur to me at that time.

THE PRESIDING OFFICER: Does it in hindsight occur to you?

THE WITNESS: In hindsight and now I -- I see what the process was -- it, it does. And also because with the validity of the process, if items are in expressions of interest, there is little point in not progressing through to the application round where they would be scrutinised. So, organisations in expressions of interest phase wouldn't necessarily get past the second hurdle anyhow.

20

THE PRESIDING OFFICER: Yes, I'm not concerned about that. I'm concerned here about the general proposition of recommendations coming to ministers as to whether they are fully independent recommendations or whether they are tailored according to what the minister indicates he or she wants.

THE WITNESS: Yes, well, I think that whilst ministers can indicate what they would perhaps like in terms of general announcements, if there is a process in place, that process should be followed.

30 THE PRESIDING OFFICER: Yes. All right. Thank you.

MR PEARCE: There would be nothing -- absolutely nothing -- wrong with the minister in the exercise of her discretion awarding a grant to a particular organisation whether or not the department recommended it?

THE WITNESS: No, absolutely.

40 MR PEARCE: But what's occurred here, what we now know and you concede occurred, is that the minister is unable now to hand on heart say she has acted purely upon the advice given to her by the department. Do you accept that?

THE WITNESS: Knowing now what I know about the process.

MR PEARCE: That's the case, isn't it?

THE WITNESS: Yes.

MR PEARCE: So the process that was followed has not only exposed you to the

sort of accusations that have been made, that is, that you interfered in the process but it's also exposed the minister to the same accusations; do you accept that?

THE WITNESS: Well, there is certainly no intent to interfere with the process.

MR PEARCE: Right. Well, I'm not going to push the issue. Who called the meeting when the penultimate schedule was produced to you?

10 THE WITNESS: I don't recall --I would assume if the schedules are given to us from the department, the departmental officers.

MR PEARCE: The departmental officers would have called the meeting; is that the case?

THE WITNESS: I assume so.

MR PEARCE: I've asked you for your comment about what might have motivated Mr MATHESON, if anything at all, to come here and say things about you. You heard Dianne FARMER give her evidence the other day?

20

THE WITNESS: I did.

MR PEARCE: Suggesting that you had been very direct in telling her to fix it, or just do it, I think the words were, just do it, in terms of the funding agreement, you heard her say that?

THE WITNESS: I did.

30 MR PEARCE: Words to the ilk "just do it", which she says she took as an instruction to effect the change to the funding agreement?

THE WITNESS: I heard her say that.

MR PEARCE: You don't agree with her account of what took place?

THE WITNESS: My recollection was that I spoke to her on 30 July prior to meeting with Mr FREER.

40 MR PEARCE: You told her to sort it out.

THE WITNESS: I did. I said, could you sort it out. Mr FREER has expressed a view to receive the funds up front. I don't know how this process works.

MR PEARCE: So Dianne FARMER is mistaken, is she?

THE WITNESS: I'm not saying she is mistaken but what she was perceiving from me as an instruction was never my intention. I didn't even know how funding agreements worked.

MR PEARCE: Was it an animated conversation?

THE WITNESS: Well, certainly, I may have expressed my embarrassment when Mr FREER contacted me to say no-one from the department had called him and I may have said to Ms FARMER that -- I said I was sorry, it was a bit embarrassing when Mr FREER had called me to say no-one from the department had called him. Could you please call Mr FREER. He has expressed a desire to get the funds up front. I don't know how that works but can you just sort it out.

10

THE PRESIDING OFFICER: Both Mr KLAASSEN and Ms FARMER say that conversation occurred after they had met with Mr FREER and taken him through the standard form of funding agreement.

THE WITNESS: I heard Mr KLAASSEN say that. But I thought Ms FARMER didn't.

THE PRESIDING OFFICER: Ms FARMER says exactly the same. She wasn't able to put the date on it but she says they had that meeting and took through the pro forma and then there was the call from you.

20

THE WITNESS: My recollection was that I spoke to them prior to the meeting.

MR PEARCE: Do you recall Di FARMER attempting to explain to you what -- or why an up front payment was not appropriate, why it shouldn't be done?

THE WITNESS: I don't recall her trying to explain that to me at all.

MR PEARCE: Her evidence is that she tried to explain it to you a number of times.

30

THE WITNESS: I heard her say that she said to me that it was not normally done. But I had no interest in how the process was done as long as she could just sort it out in terms of dealing with Mr FREER.

MR PEARCE: Mr KLAASSEN's account of the conversation supports Ms FARMER's evidence. Did you or did you not get told by Di FARMER on a number of occasions why it was not appropriate to give an up front payment?

THE WITNESS: I don't believe she used the words "inappropriate". She may have said to me that it was not normally done. But I had no interest in how a funding agreement was structured and, in fact, I assumed there would be various compliance mechanisms and checks and balances built into that.

40

MR PEARCE: Can you think of any reason at all why Dianne FARMER would come here and give us an account such as the one she gave if she did not believe it to be true?

THE WITNESS: I am sure she believes it to be true and perceived that I was giving

her an instruction but it was never my intent to give her an instruction. I didn't have any authority to give her an instruction.

MR PEARCE: She is either mistaken or she has misunderstood?

10 THE WITNESS: I certainly would say that she perceived it to be an instruction which was never my intent. But I didn't even have any authority and if she had perceived it to be an instruction, I would have expected her -- and I had a fairly good working relationship with Ms FARMER, if she felt I was giving her an instruction, I would have expected her to either elevate it through her chain of command, perhaps send me an email or simply turn around and say, you know, you can't give me an instruction.

MR PEARCE: Is your answer to my question that you can't think of any reason why she would come here and give an account that she did not believe to be true?

THE WITNESS: Well, my answer was that I'm sure she believed it to be true but it was never my intention that she would perceive that as an instruction.

20 MR PEARCE: Then she's mistaken?

THE WITNESS: If she perceived it as an instruction, then that was never my intent.

MR PEARCE: Then she's mistaken?

30 THE WITNESS: Yes, certainly her perception was that it was an instruction and for the reason I have outlined I had no ability to give her an instruction and I would not have done that. I'm sure -- she was very comfortable to say "no" to me on a regular basis.

MR PEARCE: To the extent that Mr KLAASSEN in his account of overhearing the conversation between yourself and Di FARMER, to the extent that his evidence doesn't account with your recollection he's mistaken too, is he?

THE WITNESS: In what sense?

40 MR DEVLIN: Again, that's a general question. If there is something specific that Mr KLAASSEN went to perhaps we should go to that so that the witness can respond properly.

MR PEARCE: That can be a matter for addressing. Thank you.

Mr KINNANE, can you think of any reason why he would come along here and --

THE PRESIDING OFFICER: Sorry, before you go away from the changing of the funding agreement, it ties in with Mr FREER's evidence, who says also, even though he doesn't put dates on it, that he first saw a pro forma that had the term that

was put to him and he agreed with, an acquittal and reimbursement process, so in other words not an up front payment, and that he said to them, to Mr KLAASSEN at the time, I suppose that's something I'll have to take up with the minister's office. And he wasn't able to recall a specific phone call to you but he says that he must have -- he assumes he must have rung you about it. Did Mr FREER ring you and say that they're showing me a form that doesn't do what we need, namely, an up front payment of \$1.4 million, in effect, can you do something about it?

10 THE WITNESS: I don't recall Mr FREER calling me at all, after having seen a funding agreement. I certainly recall him calling me prior but not after.

THE PRESIDING OFFICER: See, all the other witnesses have this process that he'd seen the pro forma, this had come up as an issue about whether he could get it up front, he was told that the standard way was to do an acquittal and reimbursement process, he says he will have to contact the minister's office and then the other two witnesses, FARMER and KLAASSEN say there was the phone call from you. It just -- I think the point Mr PEARCE is making to you, it just seems dreadfully coincidental that all these things happened in that order if you weren't in fact in any way interposing yourself in this situation to get what
20 Mr FREER wanted.

THE WITNESS: I, I know what you are saying. However, I would not have wanted -- I had no interest in how the funding agreement was drawn up.

THE PRESIDING OFFICER: It might also be put that you did in that it enabled the \$200,000 to be paid to the rugby academy. These are the sorts of things that could be said.

30 THE WITNESS: I understand what you are saying but there would have been checks and balances.

THE PRESIDING OFFICER: There would have been but they were removed because instead of there being a check and balance, as approved by the minister, there was a change to the check and balance to make it a payment up front without any check and balance. That's exactly the point that we're concerned about here, Mr TUTT.

40 THE WITNESS: But there still would have been various clauses for acquittal and compliance milestones for the --

THE PRESIDING OFFICER: But there wasn't. That's exactly the point. The \$1.4 million was paid without any acquittal and reimbursement process. It was paid up front.

THE WITNESS: But I thought from the funding agreement there were still monthly acquittals that had to be lodged.

THE PRESIDING OFFICER: Of subsequent payments?

THE WITNESS: That had to be lodged and various compliance milestones that would have to be complied with.

10 THE PRESIDING OFFICER: But the money has already gone. The state government might be left -- and I'm not here meaning to impugn anything against the Queensland Rugby Union, but if they don't get their development approval and if this doesn't go ahead, the state government might be left with having to pursue civil action to get the money less any legitimate expenses on the costs of the development application.

MR CARMODY: That would leave them with nothing. No damages.

THE PRESIDING OFFICER: But this is all the point, that there could be an argument. That's exactly the point we are concerned about here.

THE WITNESS: I would not have wanted that to happen.

20 THE PRESIDING OFFICER: Well, but we go back to, you are diverting it away from what I put to you. Mr PEARCE is making the point to you about all the coincidences in this case from every other witness that tie in to lead to a possible inference that could be drawn that you in fact were in there manoeuvring and manipulating all these things to make sure that this payment was made up front at that time and then the \$200,000 going from it to the University of Queensland Rugby Academy. Now, those things will undoubtedly, very likely be submitted at some stage later. If you want to comment on those, this is your opportunity.

30 THE WITNESS: I categorically deny that I, to use your words, manipulated anything, to enable anything like that.

THE PRESIDING OFFICER: So all these other things are just coincidences that happened, that point, that mistakenly point to towards that as a possible inference.

THE WITNESS: I know what you're saying, and I can understand what you're saying, however, I would have had no desire to do that and it -- there would have been due process that would detect any such actions. I mean, it would be a --

THE PRESIDING OFFICER: Well, there should have been, but it didn't.

40 THE WITNESS: Well, it, it -- it's not something that I would have put together.

THE PRESIDING OFFICER: All right.

Yes, Mr PEARCE. It might be a convenient time.

MR PEARCE: Yes, thank you.

THE PRESIDING OFFICER: We will come back at 2 o'clock.

THE HEARING ADJOURNED AT 1.08 PM

THE HEARING RESUMED AT 1.59 PM

THE PRESIDING OFFICER: Yes, Mr PEARCE.

10 MR PEARCE: Mr TUTT, I just want to take you back to a matter we were discussing before lunch and that concerns the evidence Mr KLAASSEN gave about what he overheard of your conversation on the telephone to Ms FARMER. I just want to get your response to this. Mr KLAASSEN says that his recollection is that the conversation occurred on the afternoon of 1 August; what do you say about that?

THE WITNESS: I don't recollect having a conversation in the afternoon of the 1st. I recollect speaking with Ms FARMER on 30 July.

MR PEARCE: Is it possible you spoke to her again on 1 August?

20 THE WITNESS: It's possible but I don't recollect speaking to her on 1 August.

MR PEARCE: Do you recall having a conversation with her on the telephone at any point where you said words to the effect of "just do it"?

THE WITNESS: I recall talking to her on the 30th about the grant and I did say if you want to use -- words to the effect, I did say, can you just sort it out.

30 MR PEARCE: The effect of Ms FARMER's evidence is that you were giving her an instruction; do you accept that that's what she said, that's the way she perceives it?

THE WITNESS: I accept that's what she said.

MR PEARCE: But you deny that that's what you were intending to convey?

THE WITNESS: It was never my intent to give her an instruction.

MR PEARCE: Did you raise your voice while you were talking to her?

40 THE WITNESS: I don't believe I would have raised my voice. I, I don't believe I did.

MR PEARCE: Mr KLAASSEN said he could hear it was you on the other end of the line and we know it was you on the other end of the line, if he's talking about the same telephone call, don't we?

THE WITNESS: I certainly spoke to her on the 30th, yes.

MR PEARCE: He describes something of an animated discussion; would you agree that it was an animated discussion? Do you think that's a fair description?

THE WITNESS: I don't know that that's a fair description but I certainly was talking to her initially about no-one had been in contact with the QRU, as they had expressed to me, and I expressed to her that I apologised to them for that and --

MR PEARCE: Were you upset about that?

10 THE WITNESS: I wasn't angry.

MR PEARCE: Were you insistent?

THE WITNESS: I wasn't necessarily insistent. I was certainly putting my point across.

MR PEARCE: Mr KLAASSEN described it as an animated discussion based on the tone of the conversation from Ms FARMER's perspective and also the volume of your voice; do you remember him saying those things?

20

THE WITNESS: I do.

MR PEARCE: Would you care to comment on his description of the conversation?

THE WITNESS: Well, I certainly may have been very clear in terms of my voice in talking on the phone.

MR PEARCE: He also says that there were certainly discussions about how what was being proposed by you was not normal practice and that that was something that you were not wanting to listen to at that point in time. What do you say about that description?

30

THE WITNESS: I had no interest in how -- what was normal practice or otherwise in terms of how a grant was worked out. I, I think it's fair to say I had no interest in that. I didn't have a view on the matter and I had no interest in, in, in what was normal practice or otherwise. I didn't know what normal practice was and I, you know, understood that other departmental officers will make the ultimate determination on how the funding agreement was structured.

40 MR PEARCE: Do you concede that you were not wanting to listen to what was normal practice?

THE WITNESS: I wouldn't necessarily say that I would concede that, but I certainly didn't want to involve myself in what was normal practice or otherwise.

MR PEARCE: If that was Mr KLAASSEN's perception, it is a mistaken perception; is that what you're saying?

THE WITNESS: No, what I said was that if Ms FARMER said to me that's not normal practice, I would have said I don't have a view. Would you sort it out. I wasn't concerned with what normal practice was or otherwise. I didn't know what normal practice was. And I wasn't concerning myself with what normal practice was.

10 MR PEARCE: There is a difference between concerning yourself and not wanting to listen, isn't there? Mr KLAASSEN says, from what he heard, you were not wanting to listen and from what Ms FARMER says, she repeatedly tried to tell you these things.

THE WITNESS: I accept that I did not want to understand what normal or abnormal practice was because I didn't want to have any input into it and I think it's fair to say that I was just passing on the message that, could it just be sorted out.

20 MR PEARCE: Your evidence is that wherever anyone says something that is potentially negative of you it's either a mistaken perception or a dreadful coincidence; that's the case, isn't it?

THE WITNESS: Well, not necessarily. I'm just -- I was saying the thing about the perception was that I did not understand that Ms FARMER was perceiving it as an instruction.

MR PEARCE: So she is mistaken?

THE WITNESS: Certainly her perception was that I could give her an instruction -- then I had no authority to do that.

30 MR PEARCE: She certainly at no time conceded that you had authority to give her an instruction, did she?

THE WITNESS: I heard her say that in response to Mr CARMODY when she was giving her evidence, she did concede that.

MR PEARCE: I just want to ask you now about Mr KINNANE. You heard Mr KINNANE come in here yesterday and give his evidence?

40 THE WITNESS: Yes, I did.

MR PEARCE: He said that he had had occasion to speak to you about the manner in which you dealt with his staff. That was his evidence, wasn't it?

THE WITNESS: Yes, I heard him say that.

MR PEARCE: This morning you said you had no recollection of that.

THE WITNESS: No, I don't. If somebody had occasion to say that to me it would

be something that would stick in my mind.

MR PEARCE: That's precisely what you said and I think you also conceded that given it was coming from the Director-General it would be even further reason to recall it?

THE WITNESS: Yes.

10 MR PEARCE: Can you think of any reason why Mr Michael KINNANE would come into this place and take an oath and give evidence about a matter that he did not genuinely believe to be true?

THE WITNESS: No, I can think of no reason why. However, I also was trying to think of any occasions when Mr KINNANE may have had cause to raise that with me.

MR PEARCE: He's' mistaken too, is he?

20 THE WITNESS: I can't recall any occasion when Mr KINNANE, any specific occasions or in general, when Mr KINNANE would have raised that with me.

MR PEARCE: Thank you, Mr Chairman.

THE PRESIDING OFFICER: Could the witness be shown out of document 53 the minutes of the committee meeting of 30 June 2008. This is the committee minutes of the University of Queensland Rugby Football Club for 30 June 2008. Do you see that?

30 THE WITNESS: I do.

THE PRESIDING OFFICER: You are in attendance.

THE WITNESS: I see that I'm listed there.

THE PRESIDING OFFICER: If you go to page 2 you see the BSM report. What is BSM, if you can remember.

THE WITNESS: The business manager's report, I think. I don't know.

40 THE PRESIDING OFFICER: And you are offering to assist in finding a prize for the major auction. I'm just wanting to draw your attention to this. The next one is the alumni committee report, which you seem to give this report --

THE WITNESS: I -- it appears that way but I certainly didn't give the alumni committee report.

THE PRESIDING OFFICER: -- which in normal minutes would suggest you would be the chair of the subcommittee --

THE WITNESS: Yes, it appears that way but --

THE PRESIDING OFFICER: -- of alumni committee which would then report to the main committee.

THE WITNESS: It appears that way but I didn't give the report.

10 THE PRESIDING OFFICER: Why would it be in the minutes you gave that report, if you didn't?

THE WITNESS: I don't know. I didn't give that report.

THE PRESIDING OFFICER: I see. That's another coincidence, is it?

THE WITNESS: Not at all. I didn't, I didn't give that report to the (UI) -- there would be plenty of people who would say that I would not have given that report.

20 THE PRESIDING OFFICER: Having been referred to, I should make that an Exhibit, then. That will be Exhibit 33.

ADMITTED AND MARKED EXHIBIT 33

MR SHIELDS: Mr TUTT, I represent Mr KLAASSEN. I just have a handful of questions to do with your evidence concerning your recollection of the events surrounding this conversation with Ms FARMER; do you understand?

THE WITNESS: Yes.

30 MR SHIELDS: And the questions that have been asked of you in relation to the date of that conversation; do you understand?

THE WITNESS: Yes.

MR SHIELDS: Could the witness be provided with Exhibit 17, the executed agreement, Exhibit No. 29 which is the email from Mr MATHESON to yourself at 11.04 am on 11 July 2008. Could he have both of those, please. Now, we start with Exhibit No. 29. Do you recognise that document?

40 THE WITNESS: I do.

MR SHIELDS: And if you go to paragraph 18 of that document you have a paragraph that states, "Given the total recommended grant is \$4.2 million GST exclusive, approval of the Governor in Council will be required prior to the execution of any funding agreement." That's what it reads?

THE WITNESS: Yes.

MR SHIELDS: That was information that you possessed on 11 July 2008?

THE WITNESS: Yes.

MR SHIELDS: And that's very important, I would suggest, because the minister couldn't just authorise 4.2; that had to come from Governor in Council, is that correct?

THE WITNESS: Yes.

10

MR SHIELDS: And that's also reflected in the letter of offer which is the last document in Exhibit No. 29, which was handed to Mr FREER on the 11th, and it's the third bottom paragraph, "The offer of this grant is conditional on the QRU executing an appropriate funding agreement with the Department of Sport and Recreation and final approval of funding being provided by the Governor in Council; is that correct?"

THE WITNESS: Yes.

20

MR SHIELDS: In relation to the media conference held in relation to this, do you recall the minister having a separate media announcement after approval had been given by Governor in Council?

THE WITNESS: Yes, I do.

MR SHIELDS: And if the chronology is correct that's been provided by the Commission, the date of that is 31 -- 31 July 2008?

THE WITNESS: Yes.

30

MR SHIELDS: Does that sound right?

THE WITNESS: Correct, yes.

MR SHIELDS: Having regard to that date, 31 July 2008, that was when the minister made the public announcement, are you able to say whether or not that was the day that Governor in Council authorised the payment of the 4.2?

THE WITNESS: Yes, it was.

40

MR SHIELDS: Similarly, if you go back to 29, Exhibit No. 29, paragraph 18 -- you don't have to read it again if you don't want to, but it makes sense that the Queensland Rugby Union and Mr KLAASSEN on behalf of the state, they couldn't execute an agreement until post 31 July 2008, could they?

THE WITNESS: No.

MR SHIELDS: What I want to put to you is quite simply this: The meeting

between Mr KLAASSEN, my client, Ms FARMER, Mr FREER and Mr Simon TAYLOR of the Queensland Rugby Union, took place on 1 August. So, the day after Governor in Council approved the \$4.2 million?

THE WITNESS: Yes.

MR SHIELDS: Does that sound right to you now.

THE WITNESS: It certainly sounds like when they met.

10

MR SHIELDS: And what follows from that, I would suggest, is that it was after that meeting between these persons on 1 August 2008 that you spoke with Ms FARMER over the telephone.

THE WITNESS: No, I recall speaking to Ms FARMER prior to that meeting to that meeting to hold that meeting.

THE PRESIDING OFFICER: Why would you have been bringing up the issue of the 1.4 up front payment at that time?

20

THE WITNESS: I didn't discuss the actual figure. I mentioned -- I passed on the views that were expressed to me by Mr FREER.

THE PRESIDING OFFICER: Remind me again what it was Mr FREER said.

THE WITNESS: Mr FREER called me on the 30th and -- ostensibly about the media announcement the following day and he mentioned with regard to the funding agreement would he be hearing from someone in the department? How does it work? Does he get the money up front and subsequently acquit it? Or how does it work. I said, I don't know. He said my preference is to get it up front. At that stage I thought he was referring to the whole hot. I didn't know. I then passed that message on to Ms FARMER.

30

THE PRESIDING OFFICER: All right.

MR SHIELDS: If you could then have a look at number 17, Exhibit No. 17, which is the executed agreement.

THE WITNESS: Certainly.

40

MR SHIELDS: I am just taking you through these documents to lend some support, if you will, to what I formally put to you, that is that you are mistaken about the conversation you had with Ms FARMER, that it actually occurred on 1 August 2008. If you look at item 3 on page 16 of 24 -- I'm sorry, firstly, item 2, project details, it has the project commencement date as 31 July 2008; is that right?

THE WITNESS: Yes.

MR SHIELDS: Again, that would appear to be the same day as Governor in Council gives approval of the \$4.2 million?

THE WITNESS: Yes.

MR SHIELDS: And then down to item 3, where you have the payment schedule, payment 1 on execution of the project funding agreement, that's correct?

THE WITNESS: Yes.

10

MR SHIELDS: And then the anniversary payments, if I can call them those, are on 1 August 2009 and 1 August 2010; that's correct?

THE WITNESS: Yeah.

MR SHIELDS: How would those dates have been affixed?

THE WITNESS: Well, as I say, I didn't have any input into the funding agreement, Mr SHIELDS.

20

MR SHIELDS: You had no direct dealings with my client, Mr KLAASSEN, in relation to anything to do with Queensland Rugby Union, did you?

THE WITNESS: No, I did not.

30

MR SHIELDS: There have been some comments made concerning template documents that are forwarded up to the minister. In fact, if you look at Exhibit No. 29 on page 5, where it has content of submission approved by Ben KLAASSEN, Director Program and Industry Development on 8 July 2008, but then underneath it has the contact officer, are you able to comment as to whether or not that sentence of content of submission approved by Ben KLAASSEN Director Program and Industry Development on 8 July 2008, that was just a standard line in all of those documents that you saw?

THE WITNESS: I certainly recall that being a standard line.

40

MR SHIELDS: And that if you had any queries in relation to any of these ministerial submissions it was the contact officer as recorded on the bottom right of the page as being the person who you would take the matter up with.

THE WITNESS: Yeah, my understanding was the contact officer was primarily the person who would author, or at least would be the person you would take up the content of the submission with.

MR SHIELDS: There's no recognised -- let me rephrase this. Is there a process where all conversations had with departmental officers are recorded somehow?

THE WITNESS: No, I don't think -- I'm not aware of any.

MR SHIELDS: Similarly, in relation to conversations had between departmental officers and ministers, are there notes taken of those conversations?

THE WITNESS: Not as a rule. But parties within the meeting may take notes: But not as a rule.

MR SHIELDS: Yes, thank you, I've got nothing further.

10 THE PRESIDING OFFICER: Yes, Mr GUEST.

MR GUEST: My understanding of your evidence is that you have had one phone call from Di FARMER and that's the extent of it?

THE WITNESS: Yes.

MR GUEST: And that's on the 31st?

20 THE WITNESS: 30 July.

MR GUEST: 30 July, sorry. And you are aware there was a meeting on the 1st of the 8th?

THE WITNESS: It appears that way, yes.

MR GUEST: But you are aware, you arranged that meeting, is that --

THE WITNESS: I asked Ms FARMER to organise a meeting.

30 MR GUEST: So you are aware that a meeting was to take place and you are aware that Mr FREER was to go to that meeting?

THE WITNESS: Yes, I was aware there was a meeting to take place.

MR GUEST: Did you then have a conversation with Mr FREER after that meeting had been held or not?

40 THE WITNESS: I don't recall having a conversation with Mr FREER after that meeting.

MR GUEST: Is it that you don't recall, that you definitely didn't or you may have?

THE WITNESS: I think I would have recalled it if I had had that conversation with Mr FREER.

MR GUEST: You refute that you made a phone call -- you received a phone call from Di FARMER on that day, the 1st of the 8th?

THE WITNESS: That I received a phone call from Di FARMER?

MR GUEST: That you received one or that you made one to Di FARMER.

THE WITNESS: I don't recall making a phone call to Di FARMER about these matters. We could have spoken about other things but I don't recall talking about the Queensland Rugby Union.

10 MR GUEST: So you could have had a conversation with her on that day either you calling her or her calling you?.

THE WITNESS: We could have had a conversation.

MR GUEST: You say there were no discussions re that funding agreement on that day?

THE WITNESS: No, I don't believe there was.

20 MR GUEST: Nothing further, thank you.

MR LAWLER: Mr TUTT, where did the \$4 million figure first come from in your mind?

THE WITNESS: In my mind I thought it was a figure that may have been mentioned at the meeting on 12 February and that when I was talking with Mr MATHESON about funding proposals that was one of the suggestions that was put up from me to be part of that document.

30 MR LAWLER: Is it possible that the first time the figure came out was on the 2 July meeting?

THE WITNESS: The first time it came out?

MR LAWLER: Yes. Well, the first time you spoke to -- let me be clear. Did you tell Mr MATHESON on 2 July about the figure being a \$4 million figure?

THE WITNESS: No. In fact, Mr MATHESON as the document shows, on 19 June, I think the figure of \$4 million had been identified.

40 MR LAWLER: On 4 July when we had the emails about the revised announcements.

THE WITNESS: Mhmm.

MR LAWLER: Which are Exhibits 27 and 28, is it true that you said to Mr MATHESON the figure had to be \$4.2 million?

THE WITNESS: No, I didn't use those words. What happened was that Mr

MATHESON called me about the meeting that was on 2 June -- 2 of July, at which we discussed the possibility of a \$4 million announcement. Mr MATHESON said he had received materials from the QRU, preliminary materials, that could go some way to justify \$4 million. And I said, is that enough for what -- the first phase of what the QRU are wanting? He said, it could be but they are preliminary figures, perhaps we need to make it more. We discussed contingency. He thought it wasn't a bad idea. And if that was needed, if they needed more money and it was an issue of 5 per cent, which we talked about.

10 MR LAWLER: Okay, but who suggested 5 per cent?

THE WITNESS: I'm not sure if it was he or myself. I know he said it was me. It could possibly have been me talking about whether or not we needed to make the figure a little more.

MR LAWLER: Was there discussion about whether \$100,000 would be sufficient contingency or a half a million dollars, or did 200 magically come to mind?

20 THE WITNESS: No, there was discussion about whether we needed to make it a little more and what that would need to be, and we thought in light of it only being preliminary materials it would be 5 per cent.

MR LAWLER: Moving on, you say that you don't have the authority to direct senior public servants in the department.

THE WITNESS: Well, as I understand it, I don't.

MR LAWLER: Do you assume the authority of the minister on occasions to get things done?

30 THE WITNESS: No. What, I mean, what --

MR LAWLER: Do you say, "The minister wants it this way" or "The minister wants it done, get moving on this."

THE WITNESS: If it --

MR LAWLER: Things like that.

40 THE WITNESS: No, I certainly wouldn't be issuing instructions. I would say, look, the minister is very enthusiastic about this. It would be good to get an announcement. But certainly I know Judy SPENCE was very clear in invoking her name, it was not something that she fully supported.

MR LAWLER: Sorry, I don't understand the last bit.

THE WITNESS: In terms of if the minister wanted something done she would more often than not be the person who would see to getting it done herself.

MR LAWLER: But you had no problem using her authority, did you, to say you need to get moving on this, just get it done?

THE WITNESS: In terms of having a submission, I believe, I asked if that could be progressed.

10 MR LAWLER: But it wasn't in terms of -- they would have understood it is a direction, wouldn't they? It wasn't in terms of: I think it would be good if we could make an announcement at the Reds Ball in a casual tone. It was get moving on this, the minister wants it done.

THE WITNESS: No, I disagree with that. It certainly was -- as you are saying, I know Mr MATHESON was saying he perceived it as an instruction but I had absolutely -- certainly no intent to deliver it as an instruction. I said it would be good if we could announce this and -- on Friday. But having said that, there was no expectation on my behalf that there would not necessarily be due process to assess an application.

20 MR LAWLER: Moving on to the meeting in relation to the 2009 funding round, there was a meeting initially on 23 January with Mr MATHESON and you and the minister; is that correct?

THE WITNESS: That's possible.

MR LAWLER: Where these spreadsheets were presented in relation to the applicants; do you recall that?

30 THE WITNESS: That's possible. I recall there being a meeting.

MR LAWLER: And Mr MATHESON explained what these documents meant?

THE WITNESS: Yeah, he, he asked the minister's opinion, she was happy to give him her opinion.

MR LAWLER: This is an earlier meeting. There were two meetings, to be fair, there was one on 23 January and one later on 28 January, just after Australia Day; do you recall there being two meetings?

40 THE WITNESS: There possibly could have been. The first one is where the material was presented in a fairly bulky form, all of the applicants for the funding for 2009 were summarised in the document. It was explained to you and the minister and left with you and the minister; do you recall that?

THE WITNESS: It could have been.

MR LAWLER: So you don't recall it?

THE WITNESS: I don't specifically recall having documents left with me but it's likely they were.

MR LAWLER: More significantly, the next meeting when Mr MATHESON came back, do you recall that meeting on 28 January?

THE WITNESS: Yes, I do.

10 MR LAWLER: Can you explain in broad terms, firstly, what was said at that meeting.

THE WITNESS: Yeah, Mr MATHESON said he had these documents for the major facilities program and he was just interested in what the minister's views were.

MR LAWLER: Do you recall what the minister's views were in any particular matter?

20 THE WITNESS: Yeah, she gave Mr MATHESON her, her views as requested on what programs she liked and didn't like in the documents. Just her suggestions.

MR LAWLER: And it was only her giving these instructions, not you?

THE WITNESS: I recall being there but certainly I would defer to what directions the minister would give.

MR LAWLER: Now, do you remember any particular funding applicants?

30 THE WITNESS: Any particular ones?

MR LAWLER: Yes.

THE WITNESS: Other than the ones that have been mentioned here this week and ones that I looked at document to, to refresh my memory any ones that I had any particular interest in. Not particularly.

MR LAWLER: Did you have any particular interest in the Warrigal Road State School?

40 THE WITNESS: No, other than being asked to talk to Mr MATHESON. I think it was bit earlier in the piece than the 29 January meeting. It was a bit earlier than that, I talked to Mr MATHESON about the Warrigal Road State School. And I was informed that they, perhaps, may have put in an application, could he have a look at that application and give his views. He did. He gave his views that it was not a very good application and I remember talking to him after having relayed that information to the minister, if someone in the department could work with Warrigal Road State School so they could have a better application that would be worthy of being considered.

MR LAWLER: Did you direct Mr MATHESON to include that in the recommended applicants?

THE WITNESS: No, I didn't.

MR LAWLER: In relation to Macgregor State School, did you have a conversation with Mr MATHESON about that?

10 THE WITNESS: I don't recall having a conversation with Mr MATHESON about Macgregor State School but it's possible I did if it was in the context of talking about the Warrigal Road State School.

MR LAWLER: So your view of those meetings is, your recollection is, that the minister gave her advice to Mr MATHESON which applicants she would prefer and you didn't have any input in that?

20 THE WITNESS: She passed on her suggestions on the applicants. I, I was in the meeting but, you know, I would defer to the minister in terms of what her suggestions and opinions were.

MR LAWLER: Thank you, Mr Chairman.

THE PRESIDING OFFICER: Yes, Mr CARMODY.

MR CARMODY: Obviously, Mr TUTT and Mr FREER are at odds on certain things. But I don't see any forensic benefit to the Commission with Mr TUTT and I arguing the toss about them now. Mr PEARCE has put the contrary version. It's not a trial.

30 THE PRESIDING OFFICER: If you are saying that you need to put Mr FREER's case --

MR CARMODY: I don't think I need to do that.

THE PRESIDING OFFICER: It's been heard. It's been said by this witness. I will accept that you don't need to.

40 MR CARMODY: No adverse inference will be drawn by you or the media?

THE PRESIDING OFFICER: The only aspect of it is that there were, in my memory, quite a few parts of Mr TUTT's evidence where it differs from Mr FREER were not put to Mr FREER. Now, we are left with that. So be it.

MR CARMODY: Yes.

THE PRESIDING OFFICER: But I don't require you to formally go through and put what Mr FREER has said.

MR CARMODY: No. Thank you. These being inquisitorial proceedings, we should keep them that way as much as we can.

THE PRESIDING OFFICER: Mr BRAITHWAITE?

MR BRAITHWAITE: No.

THE PRESIDING OFFICER: Mr DEVLIN?

10

MR DEVLIN: I just have one matter. Mr TUTT, you mention on a couple of occasions what you believed were the checks and balances, I think is the way you put it, within the funding agreement. How did you put it, do you recall?

THE WITNESS: I said checks and balances. I mean, I --

MR DEVLIN: I just want you to take Exhibit 17, please.

THE WITNESS: Okay.

20

MR DEVLIN: Are there particular parts of the funding agreement that you have in mind when you say that?

THE WITNESS: Well, I've had a look at that it, obviously, this week and I noticed there are some clauses, namely obligations of the organisation and compliance and the like which, which would indicate that, you know, when a person signs off on a funding agreement that there are certain obligations which are spelled out, that there would be an expectation people may adhere to.

30 MR DEVLIN: So the obligations of the organisation is the bit that took your eye; is that right?

THE WITNESS: Well, when, when there are checks and balances for these things, it, the state -- the whether it was cash as was put to me up front or in terms of acquitting it as they provide monthly reports, there would be an appropriate way to monitor how funds are being spent.

MR DEVLIN: Was that an understanding you had back at the time of these events?

40 THE WITNESS: Well, yes, it was. I mean, think any person, whether they were in my position or departmentally would, would certainly assume if you gave an organisation funding, whether it was up front or in arrears, that that would be monitored.

MR DEVLIN: Thank you. I have nothing further.

MR PEARCE: I have nothing else, thank you, Mr Chairman.

THE PRESIDING OFFICER: Just a couple of very general matters, if I may, not on the particular facts of this case at all.

THE WITNESS: Certainly.

THE PRESIDING OFFICER: You became a ministerial adviser in 2004?

THE WITNESS: Mm.

10 THE PRESIDING OFFICER: Presumably you weren't a senior ministerial adviser --

THE WITNESS: No, I worked my way up, yes.

THE PRESIDING OFFICER: Okay. Did you attend any form of formal induction?

THE WITNESS: Yes. There's a code of conduct training, the usual, sort of, anti-discrimination training.

20 THE PRESIDING OFFICER: And that's conducted by Ministerial Services, is it?

THE WITNESS: Yes, it is.

THE PRESIDING OFFICER: So that was when -- what month did you commence in 2004?

THE WITNESS: That was February. But there is refresher training as well that's applicable, I think, every couple of years.

30 THE PRESIDING OFFICER: Every couple of years. Did you attend refresher training?

THE WITNESS: I did, Mr Chairman.

THE PRESIDING OFFICER: Every time it was available?

THE WITNESS: Yes, I attended as I was required to attend. In fact, there is a register to ensure that people are compliant with that.

40 THE PRESIDING OFFICER: There was the ministerial staff code of conduct.

THE WITNESS: Yes, yes.

THE PRESIDING OFFICER: A new one came in in 2005. Did you attend any extra training after that new code came in?

THE WITNESS: Yeah, I recall attending the code of conduct training.

THE PRESIDING OFFICER: The code of conduct doesn't deal, though, specifically with things like whether a ministerial adviser can direct departmental staff. Is that dealt with anywhere in the training?

THE WITNESS: Certainly as we understood it, you, you didn't direct departmental staff, and I, I understood that -- I have obviously become aware this week -- that it was perceived that when ministerial staff engage generally with departmental staff and specifically with me that it may have been perceived that they were directions when, in fact, I didn't understand that.

10

THE PRESIDING OFFICER: That wasn't what I was asking.

THE WITNESS: I understand what you are saying, but --

THE PRESIDING OFFICER: Was there ever anything in the training about ensuring that you didn't give that perception, even though it might be false, to public servants?

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THE WITNESS: Well, I can -- whether it was specifically in the training or just in general terms about the manner in which people conducted themselves, I certainly was under the impression that ministerial staff were not issuing instructions to departmental staff.

THE PRESIDING OFFICER: And about the need to ensure that you weren't being perceived as issuing instructions.

THE WITNESS: Well --

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THE PRESIDING OFFICER: When you make comments like, "The minister would like to do it on Friday", that could be perceived as an instruction.

THE WITNESS: Well, yeah, but I was saying -- I didn't necessarily say, "The minister would like to do it", I said it would be a good opportunity for the minister to --

THE PRESIDING OFFICER: I am just wanting -- I am going through the training. If you will answer the question we will finish this a lot faster.

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THE WITNESS: Certainly.

THE PRESIDING OFFICER: Was there ever any training about the need to ensure that you did not give the perception to public servants that you were issuing a direction either on your own bat or on behalf of the minister?

THE WITNESS: No, I was not aware of that.

THE PRESIDING OFFICER: All right. Any follow-up?

MR PEARCE: No, thank you.

MR DEVLIN: No, thank you.

THE PRESIDING OFFICER: Thank you, Mr TUTT.

10 MR PEARCE: Mr Chairman, it's proposed to have Ms SPENCE recalled to give some further evidence tomorrow. At this stage that has been tentatively arranged to commence at 2.30. We have not yet had confirmation back from Ms SPENCE's Legal Representative. So unless we hear otherwise --

THE PRESIDING OFFICER: Mr BRAITHWAITE?

MR BRAITHWAITE: I can confirm 2.30 is suitable to Ms SPENCE.

THE PRESIDING OFFICER: Thank you, Mr BRAITHWAITE.

MR PEARCE: If we adjourn now until 2.30 tomorrow afternoon.

20 THE PRESIDING OFFICER: Have we set a date if people are wanting submissions at a later time?

MR PEARCE: No, we haven't.

THE PRESIDING OFFICER: Can that be done --

MR PEARCE: We can confirm that tomorrow afternoon.

30 THE PRESIDING OFFICER: -- so that we can have that formalised tomorrow afternoon.

We will adjourn until 2.30 tomorrow afternoon.

THE HEARING ADJOURNED AT 2.41 PM

EXHIBITS

EXHIBIT 33

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