



## **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 5 – FRIDAY, 27 NOVEMBER 2009  
(DURATION: 1 HR 20 MINS )**

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#### **LEGEND**

**Presiding Officer – Robert NEEDHAM, Chairperson, CMC**

**Counsel Assisting – Russell PEARCE, Director, Misconduct Investigations**

30 **Hearing Room Orderly – Alicia VIEIRA**

**Witness – Judith SPENCE**

**Legal Representatives – D. K. BODDICE**

THE HEARING RECONVENED AT 2.30 PM

THE PRESIDING OFFICER: Yes, Mr PEARCE.

MR PEARCE: Mr Chairman, by arrangement, Ms SPENCE is back to give some further evidence, so I formally call her.

THE PRESIDING OFFICER: Mr BODDICE.

10 MR BODDICE: I'm back as well by arrangement.

THE PRESIDING OFFICER: Yes, thank you.

I think the -- since it's been five days since Ms SPENCE was here, perhaps it's best to be resworn.

MR PEARCE: Thank you.

I will just get you to take the oath again.

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JUDITH CAROLINE SPENCE ON OATH, EXAMINED:

MR PEARCE: Thank you for making yourself available again, Ms SPENCE. The reason for inviting you back is really to offer you the opportunity to reply to some of the matters that have fallen out in the evidence through the week that were not issues at the time we spoke to you on Monday. Just in that regard to set the scene for you, the Commission's primary concerns in this hearing are, firstly, the suggestions of impropriety in respect of the awarding of the grant to the QRU but also the wider issue, that is, whether public servants have been influenced in their advice to you, and not just with respect to the QRU grant but by their involvement in the major facilities program 2009. So, they are the two issues.

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I don't know whether you had the opportunity to hear what I said in my opening remarks on Monday but in the course of opening the hearing I quoted from the Fitzgerald report and I would like you to comment on this. In the Fitzgerald report in respect of the role of the bureaucracy it was said that its role is to provide independent, impartial expert advice on departmental issues. Would you care to comment on that?

40 THE WITNESS: I would agree with that.

MR PEARCE: Would you agree it is an advantage to a minister, especially when you are administering a sporting grant-type program, to be able to put your hand on your heart and say you've approved grants based on the independent and impartial advice of the department?

THE WITNESS: I would agree with that.

MR PEARCE: Is that what you in fact -- in fact, it is what you have said about the QRU grant, isn't it?

THE WITNESS: I did, yes.

MR PEARCE: And it is what you would say about the major facilities program of 2009?

THE WITNESS: I would.

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MR PEARCE: Do you recall on Monday I asked you some questions about the major facilities program for 2009?

THE WITNESS: Yes.

MR PEARCE: Your role in that program was of course limited, was it not, because of the intervention of the general election in March?

THE WITNESS: That's right.

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MR PEARCE: So the program had only reached the stage where you had sent out invitations to certain organisations to make application?

THE WITNESS: That's right.

MR PEARCE: Is that correct? That was to be stage 2?

THE WITNESS: Yes.

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MR PEARCE: So your role was limited to stage 1, which involved the assessment by the department of expressions of interest that may have been made by various organisations.

THE WITNESS: Yes.

MR PEARCE: Although you didn't see the program through to finalisation, your involvement in stage 1 was nonetheless very important because you determined who could make application for grants.

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THE WITNESS: No, I wouldn't accept that.

MR PEARCE: Didn't you decide which organisations based upon their expressions of interest would be issued with an invitation to make an application?

THE WITNESS: No, I don't accept that. I think when you asked me questions about this issue on Monday I was struggling to remember the occasion because when we had the, when we had a conversation in camera it wasn't an issue that was brought up and, you know, I hadn't prepared myself on Monday for that line of questioning about

the majors. I thought that we were all here to talk about the Queensland Rugby Union grant.

10 However, since we've had that conversation on Monday I have seen clearly in my diary that I did have a meeting with Craig MATHESON in January, and I do recall that meeting, where we discussed the whole issue of the expression of interest, and he came to my office asking my opinion about a list that he brought to me. I obviously offered some opinions and he said in evidence clearly this week that I commented on issues such as a table tennis club, a boating ramp. Quite honestly, I can't remember those comments. I read Craig MATHESON's evidence this week, and, you know, I accept that I probably made comments like that. But I can't remember the detail of that conversation that we had in January about this matter.

20 Could I also make one more point. When I first became the sports minister, one of the first things, I suspect in the first two weeks that I was the minister, is that the department came to me, it was either Mr MATHESON or the Director-General, with a similar table that the government had allocated \$10 million for new tennis centres around Queensland. A new minister was brought this table by either the Director-General or Craig MATHESON and asked my opinion about what the department was prepared to recommend to me. And they presented me with a schedule of where they thought the tennis centres should go and how much should be allocated to each centre. And my comment at the time, because they were asking my opinion, I looked at the list and said isn't there anything west of the Great Divide that is deserving of attention for a tennis centre. They went away and had a look and came back to me and said, "Actually, Mount Isa has an application but it wasn't one that we recommended but we could recommend it." And I said, well, I think we should be recommending something west of the Great Divide. This was, this was a process that they came to me, in the first couple of weeks that I was a minister, it was a process that they came to me with the majors and I assumed that it's a process that they had used on many occasions before I became the minister.

30 MR PEARCE: I don't think there's any argument at all, Ms SPENCE, that as the minister you have the prerogative to make decisions as to the awarding of government grants. The issue that the Commission is focusing on, however, is the role played by the public servants by way of advice to you in that regard and probably, just as importantly, what records are kept in that regard. Because, as I said to you, and you agreed a few moments ago, one of the advantages you look for is the ability to put your hand on your heart and say, "I acted on the department's advice".

40 THE WITNESS: I don't think you always act on the department's advice. Sometimes --

MR PEARCE: Where you don't act on the department's advice you need to explain what you've done.

THE WITNESS: Yeah, I think the department's advice isn't always the right one and I think in the case of the tennis centres I think they were wrong not to consider a tennis centre west of the Great Divide. I think that my contribution there was a useful

one and now Mount Isa has a new tennis centre. It was opened this year. There has been no criticism that Mount Isa services a south-west -- the north-west of Queensland and I think in that case the department's advice was erring.

MR PEARCE: And you've explained why you made your decision.

THE WITNESS: Exactly.

10 MR PEARCE: Would you agree with me that programs such as the major facilities program, where you are making grants of large sums of money, are easy targets for claims of political bias, pork-barrelling?

THE WITNESS: I would agree. I think any decision is an easy claim for that.

MR PEARCE: Particularly when you are handing out large sums of money.

THE WITNESS: Absolutely.

20 MR PEARCE: It's one of the reasons why, I suggest to you, it's important that there is a clear divide between the work the public servants do and the decision you as minister ultimately make.

THE WITNESS: I suggest to you that if the department comes to me and asks my opinion at an early stage in the process, which they did with the majors and they did with the tennis centres, that I am going to give an opinion. Whether the department acts on that opinion is up to them.

MR PEARCE: Well, I think that's where the system --

30 THE WITNESS: That's really the issue.

MR PEARCE: I think that's where the system may have fallen down here. As I said to you, that's why you are back this afternoon to give you the opportunity to reply to the things that have been said.

Can I ask Ms SPENCE to have a look at Exhibit 23, please. That's the major facilities program guidelines. While that's coming, I think you said the other day that prior to you becoming minister it had been some time since there had been a major facilities program conducted.

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THE WITNESS: That's right.

MR PEARCE: In the lead-up to this one the department had recommended some changes to the way in which applications were sought.

THE WITNESS: Yes.

MR PEARCE: Did the department -- the document I've given to you -- are you

familiar with that as the guidelines for the 2009 program?

THE WITNESS: Well, I wouldn't have seen this for over a year, I should imagine.

MR PEARCE: What I want to know is if you had any role or your office had any role in defining the guidelines or devising the guidelines.

THE WITNESS: Look, I can't recall.

10 MR PEARCE: You see, if you go in to page 4, under the heading "What is the major facilities program?", there is there a series of dot point statements.

THE WITNESS: Mhmm.

MR PEARCE: Purporting to be what the program focuses on, what projects the program focuses on; do you see that?

THE WITNESS: Yes.

20 MR PEARCE: Did you have any role, do you recall, in identifying those priority areas?

THE WITNESS: I can't recall. I suspect not. I don't know.

MR PEARCE: Are you satisfied, looking at those priority areas today, that they were the issues that you turned your mind to when you were given the ultimate advice or the ultimate spreadsheet by the department?

30 THE WITNESS: I expect there are a lot of issues and I'm sure these are quite all encompassing issues that I would have turned my mind to.

MR PEARCE: If we go over the page, do you see the program dates are there listed? Now, they obviously blew out at some stage, did they? Because you were, according to the evidence you have just given, I think in January you were meeting with Mr MATHESON and the expressions of interest process was still being conducted, whereas according to these dates here, stage 2 ought to have been commenced on 1 December 2008. So clearly these dates weren't met.

40 THE WITNESS: I think that's a question you really need to put to the public servants.

MR PEARCE: All right. You don't know? Okay. You see, under the heading on that page "Application Process" there's a two-stage process identified, stage 1 expression of interest and it's there said, "Stage 1 requires applicants to only provide information requested in the expression of interest form", and that was the shortened form, wasn't it, to just get some quick idea of what the project might be about?

THE WITNESS: I expect so.

MR PEARCE: And then stage 2, "Application for Funding". Those invited to apply for stage 2 applications need to attach ..." et cetera. And an explanation is given. And towards the bottom, the last two paragraphs, "lodging your expression of interest, "Eligible organisations are asked to complete the expression of interest et cetera by 31 October", and then there is this paragraph, "Expressions of interest will be shortlisted according to how well they meet the program's priorities and assessment criteria." Was that assessment undertaken by the department?

THE WITNESS: It would have been.

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MR PEARCE: As opposed to your office or a combination of both.

THE WITNESS: As far as I'm aware, the only time I was involved in this is when Mr MATHESON came to me in January and asked my opinion.

MR PEARCE: Okay. And then if we just quickly look over the page, in the paragraph under the heading "Application for Funding", the very last sentence, "Application for funding forms will only be made available to shortlisted applicants"; do you agree that that's what it says there?

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THE WITNESS: Would you like to read it out? I don't even know where you are reading from.

MR PEARCE: Page 6.

THE WITNESS: Yes.

MR PEARCE: The page commences with the heading "Stage 2 application for funding".

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THE WITNESS: Yes.

MR PEARCE: The last sentence in that paragraph, "Application for funding forms will only be made available to shortlisted applicants."

THE WITNESS: Ah, yes.

MR PEARCE: Well, is that what -- that's what is written there; is that what happened? Application for funding forms are only made available to shortlisted applicants?

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THE WITNESS: I actually don't know. Because I suspect that after that January meeting where we had a broad discussion about what I thought about a list I wouldn't know what happened after that.

MR PEARCE: That brings me back to the question I asked you a little while ago to the effect that if you weren't invited to submit an application, well, you need not bother because you weren't going to be considered.

THE WITNESS: What's your question?

MR PEARCE: I will pose it this way: Stage 1 was complete, I suggest to you, when you signed off on the shortlisted applicants who were then to be invited to submit an application?

THE WITNESS: Did I actually sign off on those?

10 MR PEARCE: I'll show you that Exhibit this a moment. Yes, you did. That was the effect of your approval, wasn't it?

THE WITNESS: I would like to see that Exhibit because, I mean, I don't have a copy of it.

MR PEARCE: I will show you now. Exhibit 30, it's in two parts.

THE WITNESS: Right.

20 MR PEARCE: Firstly, there's a cover sheet and an attached ministerial submission.

THE WITNESS: Mhmm.

MR PEARCE: And the cover sheet, at least, appears to be your signature, does it not?

THE WITNESS: Yes, it is.

30 MR PEARCE: And you have approved the three recommendations, the first of which is that you approve the schedule provided in attachment 1 recommending 44 expressions of interest to proceed to the application stage for the major facilities program.

THE WITNESS: Correct.

MR PEARCE: And then there's a schedule -- it itself is in several parts. And they include those matters that are recommended to move to stage 2?

THE WITNESS: Mhmm.

40 MR PEARCE: Those matters that are not recommended?

THE WITNESS: Mhmm.

MR PEARCE: And the third schedule, those matters that were deemed ineligible?

THE WITNESS: Mhmm.

MR PEARCE: Do you accept my proposition, then, that it was only those matters that



you recommended or that you approved to proceed to stage 2 that would have received an invitation?

THE WITNESS: I do.

MR PEARCE: Indeed, attachment 2 to the cover sheet was a draft letter that was to be sent to successful applicant organisations, and attachment 3 was the draft letter to be sent to unsuccessful applicant organisations.

10 THE WITNESS: I don't seem to have those letters.

MR PEARCE: No, the letters aren't there. I'm just referring to the cover sheet. It identifies those attachments.

THE WITNESS: Sure.

MR PEARCE: What you were given, I suggest to you, is the ministerial schedule which is in three parts, the ministerial submission, and clearly draft letters.

20 THE WITNESS: Sure.

MR PEARCE: For your approval. That document indicates that it was -- that is the cover sheet indicates that it had the support of the Deputy Director-General and the Director-General as well as the Executive Director; do you accept that?

THE WITNESS: Yes.

30 MR PEARCE: And you would have, I imagine, acted upon the recommendations that were made to you on the basis that those recommendations were impartial and independent?

THE WITNESS: Yes.

MR PEARCE: Had it been suggested to you by either the Executive Director, the Director-General or the Deputy Director-General that the recommendations that were being put to you had been influenced by either you or Mr TUTT, would you have accepted those recommendations?

40 THE WITNESS: Well, that was never put to me. I don't think that suggestion was -- no, it definitely was never put to me.

MR PEARCE: Had it been suggested to you that what was being put up to you in the schedule, the 44 matters, had been influenced by your request, your intimation, your advice, words to that effect, would you have nonetheless acted upon and approved the recommendation?

THE WITNESS: Clearly I had a discussion about these with Mr MATHESON late in January when he came to me and asked my opinion about these matters.

MR PEARCE: All right.

THE WITNESS: So we've established that. I don't know as a result of that discussion, you know, what took place in this schedule, quite frankly. But I did sign off on the final schedule.

MR PEARCE: I think your evidence is -- and this is your opportunity to comment -- that when confronted with that schedule and that ministerial submission you have acted upon it as if it is the independent and impartial advice of the department?

THE WITNESS: I have, yes.

MR PEARCE: Because that's what on its face it suggests it is.

THE WITNESS: It does.

MR PEARCE: Now, I asked you some questions on Monday about the matter involving the Warrigal Road State School.

THE WITNESS: Yes.

MR PEARCE: And I suggested to you that there was some information suggesting Simon TUTT had instructed Craig MATHESON to place that matter in the recommended category of applicants. You said at the time that you didn't believe that that would have occurred. Is that still your belief?

THE WITNESS: I do.

MR PEARCE: I also suggested to you on the basis of an audit report, an internal audit report that had been given to the Commission, that there were some other matters that had found their way into various schedules -- and I quote, "at the request of the former minister" and you said to me you had no recollection of that happening; do you remember that evidence?

THE WITNESS: I do.

MR PEARCE: I'll show you those matters in a moment, but they involved something with the Macgregor State High School, an application involving Mount Gravatt Australian Football Club, the Cooe Bay Progress Association, the Morningside Australian Football Club and the Gold Coast Table Tennis Association. Do you remember -- I think I asked you about the Morningside AFL matter and you said you couldn't recall it and we didn't go through the others. May the witness be shown Exhibit 7, together with Exhibit 31. Before we go through Exhibit 7, do you have any knowledge of an application made by Macgregor State High School?

THE WITNESS: Not particularly. I mean, what do you mean "knowledge of"?

MR PEARCE: Well, independent of the documents that are before you.

THE WITNESS: Had I ever seen it?

MR PEARCE: Or did you have any knowledge that Macgregor State High School were going to make an application for funding.

10 THE WITNESS: Just about every sporting organisation in my electorate, when they make an application for funding, comes to my office for a letter of recommendation, and that's a pretty normal process and they would go to any Member of Parliament's office and ask for a letter of support for their recommendation. I'm sure in this case they would have come to my office but when I was a sports minister my staff at the electorate office were told to tell the organisations that I couldn't provide a letter of support seeing that I was the minister who would finally be making the decision. So I would assume that they, like every other organisation, would have come to my electorate office with that request.

MR PEARCE: I can well imagine that that would be the case.

20 THE PRESIDING OFFICER: Mr PEARCE, I don't know that it's really necessary that we go through what all these various ones were, because we all agree that the Minister was the person who had the final discretion as to whether to approve any of these organisations or not. It's more the process that I think we're concerned with.

MR PEARCE: Very well. I will circumvent that.

THE PRESIDING OFFICER: Can I put it this way to you? The evidence we have is that there was this Exhibit 23, these guidelines --

30 THE WITNESS: Yes.

THE PRESIDING OFFICER: -- which were formulated, I would imagine by the public servants, as to how this program was going to be run. I would be correct in that assumption?

THE WITNESS: Yes.

THE PRESIDING OFFICER: That would normally be put together by the public servants?

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THE WITNESS: Of course, yes.

THE PRESIDING OFFICER: Would I be also correct in my assumption that it would be run past you generally for approval before it was sent out?

THE WITNESS: Of course, yes.

THE PRESIDING OFFICER: It goes out with a message from you on the second

page of it.

THE WITNESS: Yes.

THE PRESIDING OFFICER: When the expressions of interest come in what would happen is that, according to what is set out in this is the criteria against which they would be assessed, that assessment process would be done by the public service?

THE WITNESS: Yes.

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THE PRESIDING OFFICER: And they would put them into these schedules we have seen with those they are recommending, those they are not recommending and then we've heard of another category where they are ineligible, for some reason they weren't eligible at all to apply. What happens then is that the public servants formulate that and that goes to you and you, as we've seen, there is that formal submission to you which you approve?

THE WITNESS: Yes.

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THE PRESIDING OFFICER: Or you could have changed at that stage if you wanted to.

THE WITNESS: Yes.

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THE PRESIDING OFFICER: Their recommendation. But, see, the evidence shows that there was interpolated into that process another step. You mightn't even have perhaps realised it was happening, I don't know. But before they finalised that final recommendation to you that you signed off on they in fact went to you with their in effect completed assessment process and consulted you on it, got your comments and then they altered -- the evidence is that they altered their assessments according to what you said so that if you said, well, I think this particular one, the -- the Gold Coast Tennis Association is one -- this one, a small organisation like that, whatever, you express your reasons why I think they should be given the opportunity to apply as well. The public servants went away and took that out of their not recommended schedule and put it in their recommended schedule. Do you follow what I'm saying?

THE WITNESS: I am.

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THE PRESIDING OFFICER: That's the effect of the evidence that we have had.

THE WITNESS: Yes.

MR PEARCE: They took your views as gospel, in other words.

THE PRESIDING OFFICER: Which is understandable. But the way it happened in that process is that the final recommendation that came to you as being the departmental recommendation in fact did not represent their independent assessment, but it reflected their assessment as altered by what you have indicated to them. They

changed their assessment --

THE WITNESS: I accept that.

THE PRESIDING OFFICER: They changed their assessment from “not recommended” to “recommended” based upon what you said.

10 THE WITNESS: Clearly that is what occurred. But, you know, I would suggest to you that this, this was a new process, it was merely an expression of interest stage, it wasn't the final funding. And, you know, maybe the new process which the department devised -- I didn't devise it, they came to me with a suggestion. Perhaps, it's not a very good process.

THE PRESIDING OFFICER: But do you see that's --

20 THE WITNESS: Clearly, the organisations are not really required to provide very much assessment in this first stage before someone in the department is making a very important, as you say, a very important decision about whether they can go further. This was a new process and maybe it wasn't a very good one in hindsight.

THE PRESIDING OFFICER: Ms SPENCE, I don't think we need to spend a lot of time on it because I think we are basically all agreed -- do I understand you to be agreeing that looking at it this way, this was the way the department was putting it forward, that really it wasn't a good process.

THE WITNESS: I think in hindsight as has been revealed this week it clearly was not a very good process.

30 THE PRESIDING OFFICER: And what the Commission, of course, is interested in is looking at the future at what recommendations we should make.

THE WITNESS: Sure. I think the motivation behind this new process was a sound one and that's why I accepted that -- a lot of these sporting organisations spend an enormous -- you know, they hire people to put in their applications, spend an enormous amount of money and then may not be successful. I actually think --

THE PRESIDING OFFICER: No problem with any of that.

40 THE WITNESS: I actually think that we should be having -- and we have sport and recreation officers -- probably working with these organisations on the ground giving them that, you know, verbal advice and going through with them --

THE PRESIDING OFFICER: Can I ask.

THE WITNESS: So that we get better applications from them. When you see these applications -- and I have discussed this with the Director-General in the past, where you have got good sport and recreation officers in a region you get a lot of applicants from sporting organisations because they have been working with them. Where you

have sport and recreation officers clearly who are not working very hard, you don't get many applications from that region. So, a lot of it is dependent on how hard-working our officers are out there in Queensland.

THE PRESIDING OFFICER: That all is undoubtedly correct but, really, that's not what we are interested in here. What I'm interested in here is the process.

THE WITNESS: Sure.

10 THE PRESIDING OFFICER: A process whereby a department takes its -- does its job that it's supposed to and reaches its independent and impartial assessment and formulates what its recommendation to the minister will be, and then runs that recommendation past the minister and changes it in accordance with what the minister says, changes the recommendation and takes that as the formal one to the minister, what it means is that if that is done we will never have a situation where a recommendation goes to the minister that isn't already in accordance with what the minister wants to approve. Do you see how that process would not be an appropriate way to conduct public administration?

20 THE WITNESS: I would expect that when I said to the department, is there any applicant west of the Great Divide that is deserving of a new tennis centre, and they have gone away and looked at every applicant and come back to me and said no, minister, there is no-one, there is no-one capable of delivering a new tennis centre, that that would have been the end of the story.

THE PRESIDING OFFICER: With respect, Ms SPENCE, you are not answering my question. I'm not looking at the merits of any particular case here, I'm looking at the process. Okay? Could we take it away from any particular process.

30 THE WITNESS: Sure.

THE PRESIDING OFFICER: Any particular case and look at the process. That if we have a process whereby the public servants do their job, assessment in accordance with the principle that is set down as to how the program will be assessed, and formulate their recommendation, run that past the minister informally, find out what the minister wants, change their recommendation and take that changed recommendation to the minister, we will always, if that occurs in every case, we will always have cases where what the minister finally gets is what the minister wants.

40 THE WITNESS: But, I would expect that when the public servants come and have that discussion with the minister, if the minister is asking or requesting or suggesting anything that is unreasonable, that that should be put to the minister and that should not come back as a recommendation.

MR PEARCE: That might be the solution.

THE PRESIDING OFFICER: You are misunderstanding the point. There is no suggestion anything the minister would say would be unreasonable.

THE WITNESS: But there might be.

10 THE PRESIDING OFFICER: There might be and if there was I would imagine the public servants would raise that. But what it means is, what I suggest should happen is this, if I can approach it a different way. The public servants should do their assessment in accordance with particular principles that were set down for that program, whatever it is. They should reach their independent, impartial assessment, they should then place that before the minister and then the minister might say -- let's now go to an example, your tennis one. You would get their recommendations which everything is east of the Divide you, you could then write on it, "I approve these but I want the department to look at whether there is any matter that should be recommended to me with respect to a tennis centre west of the Divide. They would then take that, they would go away, they would do their inquiries, they would come back with another one saying, we've looked at that and we've found this one, it fits within the principles or whatever, and we now put this up to you and you would say, "I approve this one." Okay?

20 THE WITNESS: I think that's fair.

THE PRESIDING OFFICER: That would then be the process. It would be there and it would be transparent and it would be clear that you are exercising your independent right as the minister to say no, I want something more. I want something looked at west of the Divide. But it would be there in the process.

THE WITNESS: I think that's very reasonable.

THE PRESIDING OFFICER: Yes.

30 THE WITNESS: A reasonable suggestion.

THE PRESIDING OFFICER: If we had that then it's totally apparent.

THE WITNESS: Yes.

40 THE PRESIDING OFFICER: Than if we had another situation where they recommended to you that this particular project should be approved and this other one should not be approved and if that came to you and you said, "No, I disagree, I think both of these should be approved", you could then record your decision accordingly and it would be there.

THE WITNESS: I agree with you..

THE PRESIDING OFFICER: And you might want to write on it your reasons why you disagree with them and it would be there.

THE WITNESS: Sure. Yes.

THE PRESIDING OFFICER: And then if you were queried about it would be a matter where you would say, "I disagreed with their recommendation".

THE WITNESS: Sure. No, I accept that.

THE PRESIDING OFFICER: So we wouldn't have this false story as it coming as being the department's recommendation when in fact it hasn't been, it's been your decision to do it. Nothing wrong with your decision but it should be recorded as your decision not the department's.

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THE WITNESS: Except in this situation I do not believe when Mr MATHESON brought these to me that I was giving him a directive to make these changes. Clearly he believed that.

THE PRESIDING OFFICER: Clearly he believed that and that's apparent from what he said. So what I'm interested in is the system whereby it should be made apparent that public servants shouldn't do that where they can think they are being directed to do something?

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THE WITNESS: Yeah, I think there is a tendency for some public servants, not all, but some public servants to try to second-guess ministers to try to deliver up something that the minister wants without really due regard to process.

THE PRESIDING OFFICER: Indeed we've heard that here. We heard it in effect from Mr MATHESON that if the minister wants it, they have to do it. Which of course might not always be right.

THE WITNESS: And I don't think every public servant has that attitude. I think many public servants will certainly have the debate with you and say "no".

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THE PRESIDING OFFICER: All right.

MR PEARCE: The additional problem is that Mr MATHESON's misunderstanding perpetuates itself when he goes back to his underlings and gives them the direction to make changes and describes them as changes that you're instructing be made.

THE WITNESS: I think that's been made pretty clear in the evidence this week, but it was certainly something that was obviously endemic in the sports department. I do not believe it's endemic across the public service and I can give you many examples of the Corrections Department or the Police Department having that debate, saying "no" and, you know, that was fair enough. They certainly didn't take directions from my ministerial advisors.

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MR PEARCE: It puts you in the invidious position here though that in respect of a grants program you are not able to say that you acted just on the advice or the independent advice of your department; do you appreciate the problem?

THE WITNESS: I think -- I certainly appreciate the problem obviously that has



emerged with the sports department this week and I'm very sorry that none of those public servants came to me at any stage and expressed a concern.

MR PEARCE: I will just move on now. If you look at Exhibit 7, that's the large spreadsheet in front of you. That's the one with ticks and crosses on it down the right-hand side.

THE WITNESS: Yes.

10 MR PEARCE: You will see towards the centre of each page there is a column headed "State Electorate". What I suggest to you and you can check it if you wish, is that in the case of each category of the schedule the applications are listed in alphabetical order according to the state electorate in which they fall. What do you say to this proposition? That that would indicate that a principal concern for the department was the electorate in which the application pertained as opposed to the merits of the application. Do you accept or reject that?

20 THE WITNESS: It's not a system that I put into place. It was something that I inherited. I did not ask the department to put these categories together with the state electorate. In my experience, and I've been a minister for probably six or seven departments, some departments do this and some don't. I've never asked a department to do it. I suspect that the reason they do it is because -- it's probably from their point of view an easy one because from time to time they are asked to collate information about regions, areas or electorates around the state. You know, did you ask -- I don't know why they do it but some departments do it and some don't.

MR PEARCE: Is it of any benefit to you as minister when you are considering matters like this to know which electorate the matter pertains to?

30 THE WITNESS: It's not anything I've ever been comfortable with when I've seen it quite honestly. Most departments I think I have worked with haven't done it but sport may not be the only department that does that. I have seen it, I think, in other departments. It's actually something that has never made me that comfortable.

40 MR PEARCE: I'm not suggesting to you that it influenced your decision making because, as I said to you on Monday, there are decisions that you have made both ways in terms of approving matters and not approving matters where they involve Coalition electorates and Labor electorates so it doesn't appear on the face of the document to have influenced you, but what I want to know is, firstly, do you acknowledge that that's the way these matters are listed?

THE WITNESS: Yes.

MR PEARCE: And do you acknowledge that that tends to indicate that the public servants have acted according to the electorate?

THE WITNESS: I don't think you should jump to that conclusion, I really don't. I think that there are -- you really need to ask the public service this more than me

because they have put this list together, not me. But I think that there may be reasons why they include this because from time to time they are asked by Premiers under short notice to collate information on an electorate basis.

MR PEARCE: Can the witness be shown Exhibit 24. What I'm about to show you is an earlier iteration of this spreadsheet. This one is dated 21 January, so it's a few days earlier. Do you see on this document that the column identifying, by alphabetical order, the electorate is in fact the very first column on the page?

10 THE WITNESS: Yes.

MR PEARCE: What we have heard by way of evidence about the handwriting on these documents is that the handwriting belongs to Mr KLAASSEN and it records the instructions that he was being given by Mr MATHESON upon return from meetings with you and your office, okay?

THE PRESIDING OFFICER: Is that right? I think this was before the meeting with Minister SPENCE.

20 MR PEARCE: You may be right.

THE PRESIDING OFFICER: Yes.

MR PEARCE: This I won't --

THE PRESIDING OFFICER: This is 21 January. I thought this was the very first one.

MR PEARCE: I won't suggest it's come from your office. Do you see at the top of the page there is a handwritten note "new electorates".

30

THE WITNESS: Yes.

MR PEARCE: And then the word "electorate", and it seems to have been boxed with a line going to the centre of the page.

THE WITNESS: (Witness nodded).

40

MR PEARCE: May the witness now be shown Exhibit 25, which is an iteration of the document that falls between this one and Exhibit 7. Do you see on Exhibit 25, which we're told was created on -- as at 22nd January '09, that that column that was at the extreme left-hand end has now been moved to where the line appears on the previous Exhibit; the document has been altered. If you look at the earlier document, there are a series of crosses above certain columns and in Exhibit 25 the columns corresponding to those crosses have been deleted. You are nodding.

THE WITNESS: Yeah.

MR PEARCE: You see that?

Yes, I had some other matters but I don't wish to take the witness there. Thank you. That's all I have of Ms SPENCE. Thank you again.

MR BODDICE: I had some questions but I'm happy to go after everybody else has asked questions.

THE PRESIDING OFFICER: I'm quite happy with that. Anybody else. Mr CARMODY?

10

MR CARMODY: Ms SPENCE, I act for the Queensland Rugby Union. I want to ask you a couple of questions and I want to focus on two areas, if you like, the first one, the transparency of the process and the second one on the public servant's duty of candour to you. What Mr MATHESON has said --

THE PRESIDING OFFICER: Mr CARMODY, your right of cross-examination is not at large. Is there any reason why your client should be permitted to cross-examine about areas that appear to have nothing to do with the Queensland Rugby Union?

20

MR CARMODY: They have to do with the Queensland Rugby Union to an extent that it has been embroiled in this process, its name has been dragged through the media as a recipient of funds it was not entitled to and it's all because Mr MATHESON didn't do his job. I'm entitled to cross-examine on that and in fact, I'd go so far ultimately to say he's complicit in what has happened here because he didn't do his job.

THE PRESIDING OFFICER: Just hang on. Let me understand that. Are you saying you are not asking questions at all about the issues that Ms SPENCE is being questioned about today?

30

MR CARMODY: No, that doesn't concern me. What concerns me is the --

THE PRESIDING OFFICER: So you are going back to the other issue, the QRU issue?

MR CARMODY: Yes. Because she didn't have an opportunity to --

THE PRESIDING OFFICER: That's okay. Proceed, and we will see how we go with that.

40

MR CARMODY: And I'm going to ask you about those areas in the context of Exhibit 2. Could the witness have Exhibit 2, please.

THE PRESIDING OFFICER: Yes.

MR CARMODY: That's the submission, so-called, by the department to the minister. Just to put it in context, this document was prepared by Mr MATHESON. It's a submission to you. It makes recommendations to you about the QRU application, all

right? If I can just step you back and bring you into the picture a bit. What Mr MATHESON says is before he created this document he had Mr KLAASSEN do an original submission, and he gave him an hour to do it and Mr KLAASSEN produced something, which is Exhibit 22. Mr MATHESON then went about creating Exhibit 2, which is -- has a lot more detail and suchlike. Mr MATHESON also said that when he created Exhibit 2 he believed that you, because of what Mr TUTT had said, he says, that you had already decided to approve and announce this grant at the Reds Ball on 11 July; that's what he says he thought. Now, your evidence was that -- I think -- that you hadn't made any decision about the QRU grant and you had given no  
10 authority to Mr TUTT to suggest that you had.

THE WITNESS: That's correct.

MR CARMODY: Bearing all those things in mind, I'm going to ask you to comment on a few things, if you don't mind.

What was your expectation of a public servant in Mr MATHESON's position with the belief he had, or says he had, with respect to giving you his frank advice about the quality and worthiness of the Queensland Rugby Union application? And could I give  
20 you this additional information? He says at the time of doing Exhibit 2 he didn't have enough information to actually form an opinion independently of what Mr TUTT had told him. What would you expect him to do in those circumstances as a good, loyal, trustworthy public servant?

THE WITNESS: I would certainly expect him to come to me or go to his Director-General -- I think he was acting Director-General at the time, so he was the Director-General. I would expect him to come to me with those concerns. In his submission he says that he has been, since earlier this year the department has been consulting with the QRU, that would lead me to expect that they had done some work  
30 and that they were aware of the financial position, et cetera, the ability of the QRU to deliver this project.

MR CARMODY: Did he tell you any differently?

THE WITNESS: No, he did not.

MR CARMODY: Did you rely on his Exhibit 2 in making your decision to approve this grant?

40 THE WITNESS: I did.

MR CARMODY: In the circumstances where he says your ministerial Chief of Staff had virtually told him to prepare a document approving what you had already decided to give, what would you expect of a public servant who was the Director-General of your department?

THE WITNESS: I would expect him to come to me as the minister and express concern if they were being asked to do anything by a ministerial staffer that they were

uncomfortable with.

MR CARMODY: What position did it put you him not telling you what he says Mr TUTT had done? By not telling you what he says Mr TUTT had done and directed him to do, what position did that put you in as a minister approving this grant?

THE WITNESS: Well, clearly from the evidence that we have heard this week a number of people should have come to me with concerns if they had been asked to develop up a grant that they were uncomfortable with and no-one did.

10

MR CARMODY: One of the questions that was asked during the course of the proceeding was, well, how realistic or how practical or how tenable is it for a minister of the Crown to actually have the courage of their conviction and own a decision that was contrary to departmental advice. I think the suggestion was that that's not very realistic at all. What do you say about that?

THE WITNESS: I can give you a couple of examples, if you like. Not in the sports department. No, I can give you one in the sports department. Early when I became the sports minister the Director-General, Mr KINNANE, came to me and he wanted to -- he had a proposal to double the budget for Aboriginal sports officers out there in Aboriginal communities. He felt that we could afford it within the existing budget and he wanted to double it. I opposed him. I said, you know, I had been the Aboriginal minister for six years. I visited every Aboriginal community in Queensland on more than one occasion and Torres Strait islander community. I have never seen a sports officer yet we have been funding them. I had been to many Aboriginal communities and I nominated two, Doomadgee and Aurukun where multi-million dollar sports facilities were in ruin and we were funding a sports officer in that community so the whole concept of funding more sports officers when we clearly had no supervision over the existing ones was something I rejected. And, in fact, we looked at the issue and I made a decision that we would move those sports officers to under the umbrella of the PCYC which was an organisation that could supervise them satisfactorily. Is that the kind of example you wanted?

20

30

MR CARMODY: Yeah. Was there anything wrong, anything preventing Mr MATHESON from writing a memo to a minister, "had discussions with Mr TUTT; led to believe you want to announce approval of a QRU grant of \$4 million at the forthcoming ball. Haven't really got enough information to recommend one way or the other about that, but, ah, well, he says you want it so why don't we go and do it. In fact, why don't we give them another \$200,000 on top of what they have already asked for." Would there be anything wrong with him doing that for you?

40

THE WITNESS: No, he could have given me a briefing note to that effect.

MR CARMODY: But instead, what he does is he goes right out of his way, I suggest to you, to dress this document, Exhibit 2 up, to make it look like a true submission coming from the department, that's analysed it and looked at its pros and cons and then recommended despite some risks identified there, recommended it to you for approval. Having heard what you've heard and read about the evidence of

Mr MATHESON, would you say that he misled you by Exhibit 2?

THE WITNESS: Um, look, I don't -- I think that what is clearly missing from this submission and which I wasn't aware of until the evidence has come out this week is the financial position of the QRU at the time.

MR CARMODY: You would have liked to have known that?

10 THE WITNESS: I think that would have been an important part of the decision making. And you know, they have, Mr MATHESON or one of the public servants this week have, sort of, stressed that they put something in the submission about risks but they certainly --

MR CARMODY: Paragraph 14.

THE WITNESS: Paragraph 14. But that wasn't mentioned and I think that what they have put in here is as risks are really very minor matters.

20 MR CARMODY: So if they knew about the past financial performance over the last four years of the QRU, that should have been brought to your attention.

THE WITNESS: You would assume that, given that they are paid to be sports officers, that they would understand the financial position of a major sporting body in Queensland. Sport was one small part of my portfolio responsibilities. Those people were paid to do that every day of the week.

30 MR CARMODY: I don't want to go beyond the limits, I'm probably already up there, Mr NEEDHAM, but one question you've asked yourself of others and I wondered if it was going to be asked of this witness is, rhetorically perhaps, how do you empower a public servant to say "no" to a minister or ministerial Chief of Staff. Could I ask that question?

THE PRESIDING OFFICER: Yes.

40 MR CARMODY: And perhaps suggest an answer. It seems, according to Mr MATHESON that he just simply couldn't say "no" to Mr TUTT. Even when he thought Mr TUTT was telling him to make a recommendation back to you that he didn't believe in but thought you wanted to get. Do you see that? What do you think he should have done in that position? He went and did Exhibit 2 up. That's what he did do. What should he have done?

THE WITNESS: I have had many Directors-General and I've never found that they have had a problem saying "no" to me as a minister. We will have vigorous debates and I'm very accessible and I'm very disappointed that Mr MATHESON, and he was the acting Director-General, didn't take that similar view because we rely on Directors-General to be strong and to give you the frank and fearless advice that we have been talking about this week. You can't expect, and I don't think you can empower every public servant to do that, but there is a chain of reporting and we

really do rely on those Directors-General to do that.

MR CARMODY: That's why they get paid so much money and --

THE WITNESS: A lot more than me.

MR CARMODY: Yeah. So short of a backbone transplant you just pick the right bloke for the right job and expect them to do it?

10 MR PEARCE: Or girl.

MR CARMODY: Or woman, of course.

THE WITNESS: I think you do need to have confidence in your Director-General.

THE PRESIDING OFFICER: Ms SPENCE, just arising out of those questions, you said the public servants you would have expected or Mr MATHESON in particular to have included the details that we know he was aware of, that's namely the fairly parlous financial situation of the Queensland Rugby Union?

20

THE WITNESS: Certainly.

THE PRESIDING OFFICER: Would you have expected your senior policy advisor if he had been aware of that same information to have advised you that it wasn't in the briefing note to you and that you should be aware of it?

THE WITNESS: If he'd picked it up I would expect him to.

THE PRESIDING OFFICER: All right.

30

THE WITNESS: I just would like to give you some context to this week that I don't think has come out this week. In this particular week when this submission was signed it was the week of Dennis Ferguson. We had done the ugly meeting down at Carbrook.

THE PRESIDING OFFICER: Mr TUTT has given us that.

40

THE WITNESS: Good. That wasn't the end of the week. The week was very much taken up with media, meetings with the Premier, meetings with other senior people about Dennis Ferguson. The Carbrook issue didn't finish it for us because we still had a problem. My senior policy advisor and I -- it was probably one of the toughest week of my whole 20-year political career dealing with the death threat, et cetera, that came my way that week, so if Mr TUTT didn't pick this up I can understand that.

THE PRESIDING OFFICER: Mr TUTT has told us that he was aware of it but he took Mr FREER's assurance that under his direction the QRU was going to move ahead and advance so that in effect the five years of losses didn't mean much because they were going to turn around in the future. That was Mr TUTT's evidence.

MR CARMODY: Mr, Chairman, I think what the witness was saying is he didn't pick it up not being in the submission, Exhibit 2; wasn't that the question?

THE PRESIDING OFFICER: I beg your pardon?

MR CARMODY: You put to the witness that you would have expected Mr TUTT to pick it up, that it wasn't in the submission.

10 THE PRESIDING OFFICER: No, I didn't. Please, I'm not used to having people object to my questions.

MR CARMODY: Does that mean --

THE PRESIDING OFFICER: What you are saying is wrong. I never put that to the witness. I put to the witness, would she have expected Mr TUTT to put it up. She gave an explanation --

20 MR CARMODY: I will withdraw.

THE PRESIDING OFFICER: Yes, she would have. She then said what a busy week it was. I commented to her to allow her to comment on it if need be, the fact that Mr TUTT said, yes, he was aware of the fact of this parlous financial state of the QRU but he considered it really nothing because Mr FREER had said how he was going to turn it around.

MR CARMODY: I stand corrected.

30 THE PRESIDING OFFICER: Yes?

MR LAWLER: You said that a senior public servant should come to you if they had a concern about a particular issue. But why would a senior public servant come to you about an instruction that has been delivered as being your instruction? Why would he come to you?

THE WITNESS: If they were uncomfortable with the instruction I would expect them to come to me.

40 MR LAWLER: To challenge your instruction?

THE WITNESS: Absolutely.

MR LAWLER: There was a gentleman called Brett HAYWARD. Are you aware of his position?

THE WITNESS: No.

MR LAWLER: He was an acting executive director, sport.



THE WITNESS: I do vaguely remember him, yes.

MR LAWLER: Was he sacked because he challenged a minister?

THE WITNESS: I have no idea.

10 MR LAWLER: I don't know anything about the Mount Isa tennis centre other than what you said today. You said that the Director-General, or the acting Director-General, came to you after you said you wanted to see if there was something west of the Divide, tennis centres. And they said that they had the Mount Isa tennis centre but it hadn't been recommended, is that right?

THE WITNESS: Something like, that yes.

MR LAWLER: You said you would like them to look into it; is that right?

THE WITNESS: Yes.

20 MR LAWLER: And they said they would go away and change it from not recommended to recommended. Is that correct?

THE WITNESS: They said they would look into it.

MR LAWLER: I thought you said earlier that they offered to go and change it to "recommended".

30 THE PRESIDING OFFICER: I think she said they would go away and have a look at it again to see if it could be recommended, which is a slightly different but important difference.

MR BODDICE: And it was little more than that, it was they would go away and look if there were any other projects west of the Divide not a particular project, to see which might satisfy the requirements.

MR LAWLER: Because if they had have said they would go away and recommend it you would have rebuked them for that impropriety, wouldn't you?

40 THE WITNESS: Pardon?

MR LAWLER: If they said they would change from "not recommended" to "recommended" just because you wanted it, you would have rebuked them for that?

THE WITNESS: No, of course not. I don't accept that at all.

MR LAWLER: You would have rebuked them or you wouldn't?

THE WITNESS: I would not have.

MR LAWLER: But you would have said that was an improper thing to do at your insistence, to change it from “not recommended” to “recommended” just because you wanted something west of the Divide?

10 THE WITNESS: I would have expected them to come back and tell me if there was nothing suitable west of the Great Divide that there was nothing suitable, that there was nothing we could fund because there was no worthy applicants. That’s what I would have expected. Instead they came back and said Mount Isa actually is something that has an application in or whatever and, you know, it got worked up, it’s now a very successful new tennis centre.

MR LAWLER: But initially it was not recommended and now it’s built?

THE WITNESS: That’s correct.

MR LAWLER: I have no other questions.

20 MR SHIELDS: I have a short number of questions in relation to Mr KLAASSEN, who is probably properly described as being the lowest level public servant in relation to this inquiry. Is he one of those persons that you referred to in the department that should have come to you?

THE WITNESS: No, I don’t think at his level -- he wouldn’t have my mobile phone number. He wouldn’t have direct access to me personally, no.

30 MR SHIELDS: Could the witness please see Exhibit number 22. I don’t know if you read anything of the transcript in relation to this. But if you accept that this was a draft submission prepared by my client on 8 July 2008 and sent to Mr MATHESON and it’s different in a number of respects than Exhibit number 2 that Mr CARMODY has taken you to. So I would like you to have a look at paragraph 2 under the heading “Urgency”, which reads, “The minister’s office requested advice on this matter as a priority”. You have never seen this document.

THE WITNESS: No, I haven’t seen it before today.

40 MR SHIELDS: Would it be correct in saying that if you had seen that line or read that line you would have actually questioned who in your office had contacted the Department of Sport and Recreation?

THE WITNESS: Um, it’s possible but not necessary.

MR SHIELDS: Because people in your office like Mr TUTT act on your instructions or act on behalf of the office; would that be correct?

THE WITNESS: My office will get asked a number of times in a given day to deliver up information to the Premier’s office as a priority. I mean, that’s just the way politics works. Sometimes you need information in a hurry and often we needed information

in a hurry, you might need it 10 minutes before question time.

MR SHIELDS: In relation to Mr KLAASSEN can I just say this: He was, as I've described, the most junior of the officers. Are you aware that on 1 July 2008 the Public Service Act as it then was, 2008, came into being?

THE WITNESS: Yes.

10 MR SHIELDS: It commenced. It would have been an offence I would suggest for Mr KLAASSEN in his junior position to disregard a direction given to him by the acting Director-General, that is Mr MATHESON; that would be correct, wouldn't it?

THE WITNESS: Look, I'm not a judge of these public service matters. I don't think that's a minister's, you know, let the public service worry about the Public Service Act and how it's judged.

MR SHIELDS: All right. I won't ask any further questions.

20 THE PRESIDING OFFICER: Mr GUEST?

MR GUEST: No questions, thank you.

MR DEVLIN: I have a couple of general questions about bullying, intimidation and interference in the lower levels of the public service by ministerial staffers. Regardless of the Director-General, who has served you, you have been a minister since what year, 1998?

THE WITNESS: 1998.

30 MR DEVLIN: So you have had a number of Directors-General serve you?

THE WITNESS: That's correct.

MR DEVLIN: Of no doubt varying levels of true skill, ability and incisiveness, I imagine?

THE WITNESS: Yes, that would be true.

40 MR DEVLIN: If any Director-General received a trickle of complaints of bullying about one of your staffers, would you expect that some time the Director-General to raise it with you?

THE WITNESS: I would. And in fact it has occurred in the past, not in the last five years since I've been the Police and Corrections Minister but early on in my career and I don't want to embarrass the individual but a senior public servant, not a Director-General, came to me and said that one of my staff he felt had been overly enthusiastic, verging on bullying. He came to me personally and I counselled that staff member and we had a sit down meeting and resolved the issue. So it's not

unknown.

MR DEVLIN: If a Director-General had a trickle of complaints that a ministerial staffer of yours had acted in an intimidatory way towards public servants would you expect at some point the Director-General to raise it with you?

THE WITNESS: I'm absolutely certain that the Police Commissioner and the Director-General of Corrective Services would have done that.

10 MR DEVLIN: You make a distinction.

THE WITNESS: Well, you know, they clearly didn't do it. They worked with my staff for five years and they didn't do it and I haven't heard that from those officers or those departments.

MR DEVLIN: And did you hear it from Mr KINNANE?

THE WITNESS: No, I did not.

20 MR DEVLIN: A different question again: If there was a trickle of concern held by the Director-General that one of your ministerial staffers had interfered at the lower levels, not at the Director-General level or even Deputy Director-General level, you understand, a lower level of the public service generally would you expect to hear about it from your Director-General at some time?

THE WITNESS: I would expect to hear about it.

MR DEVLIN: And in each of those situations, what would you have done?

30 THE WITNESS: I would certainly have counselled that person and got to the bottom of what the behaviour was and what was occurring and how we could stop that and how serious it really was. Besides coming to me, the Director-General, if they didn't want to come to the minister concerned, could also go to the Director-General of Premiers, and I have heard that happen in the past if they had concerns about ministerial staffers.

MR DEVLIN: Excuse me, Mr Chairman. One other aspect of it. If any of the Director-Generals who served you simply elected not to raise those -- any one of those three forms of behaviour of one of your staffers with you on the basis that that  
40 Director-General wished to preserve the good relationship of the minister's office with the department, is that a sufficient justification from your point of view as a minister for the Director-General not raising it at all?

THE WITNESS: I don't think it is a justification. I don't think that raising an issue like that with a minister threatens the good working relationship. I think it actually enhances it by having a more honest relationship with the minister's office.

MR DEVLIN: In relation to your ministerial advisers, do you expect of them,

particularly in the sport area where there are applications for funding, unlike Corrective Services and Police where there are wholly different, perhaps sometimes earth shattering, issues like Mr Ferguson, but just looking at sport where we have grants and so on, do you expect of your ministerial advisers that they will have done a detailed assessment of any particular application in any particular situation for funding?

THE WITNESS: Oh, not at all, no, they don't necessarily have time for that.

10 MR DEVLIN: Thank you.

MR GUEST: Just a couple of questions arising out of Mr DEVLIN's questions --

THE PRESIDING OFFICER: Yes, Mr GUEST.

MR GUEST: Ms SPENCE, I act for Mr KINNANE, you have never acted as a Director-General, have you?

20 THE WITNESS: No.

MR GUEST: You have acted with a number different Director-Generals, haven't you?

THE WITNESS: That's right.

MR GUEST: How much complaints have you received from them about bullying et cetera over the years?

30 THE WITNESS: I think that one that I have mentioned is probably the only one I have received.

MR GUEST: If there was a perception that you had a relationship with a ministerial adviser that wouldn't allow for a full and frank discussion, that might be a reason for not approaching you, that it may affect that relationship working between the public service and the minister's office; don't you agree?

40 THE WITNESS: No, I don't agree. As a minister you have a close relationship with most of your staff. Yesterday I worked a 17-hour day. Your staff do that with you on a very constant basis. So, you know, you do have a close relationship with your staff. You work together under stressful situations at times. You know, Simon is not the only staff member that I had a close relationship with and have had over the years.

MR GUEST: But it could have been viewed that you did have a relationship, a close relationship with TUTT, yes?

THE WITNESS: It could be viewed that -- I think it could be viewed that I had a close relationship with most of my staff.

MR GUEST: And if Mr KINNANE had seen it as appropriate to deal directly with Mr TUTT about his behaviour rather than going to you that would be a perfectly acceptable way of addressing the issue?

THE WITNESS: Absolutely.

10 THE PRESIDING OFFICER: You said in answer to the question from Mr DEVLIN when he asked you about this concept of whether it would threaten the close working relationship to bring up with you a concern about one of your ministerial staff, you said no, that you wouldn't think it would threaten it, in fact it would enhance it. It appeared to me that you were answering that from the viewpoint of the working relationship with you.

THE WITNESS: That's true. I think that's fair.

20 THE PRESIDING OFFICER: I think out of fairness to Mr KINNANE, he might well have been referring to that it could have threatened the close working relationship that he told us he tried very much to develop with Mr TUTT, that if he had been going and complaining in effect, putting "complaints" about Mr TUTT to you, that it could have threatened the close working relationship that he'd worked hard to develop with Mr TUTT.

THE WITNESS: I think that's very fair and I can understand why he might think that.

MR PEARCE: I have nothing further, thank you.

MR BODDICE: I do have some questions.

30 THE PRESIDING OFFICER: Of course you do, Mr BODDICE. Mr PEARCE was too fast.

MR BODDICE: I must be sitting too quietly down the end here. Ms SPENCE, just on the last matter, if however, the Director-General has received complaints from lesser staff who are concerned about the ministerial adviser, would you expect the Director-General to take that up with you?

40 THE WITNESS: I would expect to. While I answered the question that I have only heard of one case of bullying in the past -- Directors-General have come to me with concern that, you know, over the years with more minor matters that staff maybe are talking to people lower down in the department without going through the Directors-General office or perhaps ringing an individual too frequently. But, you know, those Directors-General would come to me and we would sort those issues out of how my staff related to that department.

MR BODDICE: You were asked some questions about raising matters, being approached by the department, that is seeking your opinion in respect of things. I take it that when the department seeks your opinion you express that opinion also having regard to what you understand to be the government's priorities, for example, in any

particular year; is that the case?

THE WITNESS: That's true.

MR BODDICE: When you first gave evidence it was raised with you about -- there was a suggestion that schools were to be given priority?

THE WITNESS: That's correct.

10 MR BODDICE: Is that the type of thing, if you were asked your opinion, the fact that the government has decided that a certain area might be given priority will impact on the opinion that you then express to the department?

THE WITNESS: That's true.

MR BODDICE: If having given your opinion, the department went away and after considering the matter was of the view that a particular project still was not appropriate, would you expect the department to come back and give you that advice?

20 THE WITNESS: I would expect them to.

MR BODDICE: In your experience have you had departments that do just that?

THE WITNESS: I've had Directors-General say "no" to me if they didn't like an idea. Can I give you an example? It wouldn't be a funding example, though.

MR BODDICE: Yes.

THE WITNESS: The week that we are talking about --

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THE PRESIDING OFFICER: I don't know that it's necessarily needed.

THE WITNESS: Okay. You don't want me to?

THE PRESIDING OFFICER: You refer to these, you are saying it in a public forum, the press are out in another room listening to all of this. Sometimes it's not necessarily a good idea.

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THE WITNESS: Okay, but I do want to make the point, I'm happy to make the point that there are many times that Directors-General will say "no" for good reasons and you accept that.

MR BODDICE: You were also asked about Exhibit 7 which of course was the list of projects.

THE WITNESS: That's correct.

MR BODDICE: And the evidence has been that the department came to you with a

schedule seeking your opinion in respect of the proposed projects, and that you gave your opinion in respect of a number of projects that you considered should be given the opportunity to put in an expression of interest. And then the department provided the submission to you which you then signed off on. In the submission that was provided by the department, which is Exhibit 30, do you still have that in front of you?

THE WITNESS: No.

10 MR BODDICE: If you have a look at paragraph 8, the submission said, "Based on the department's assessment, 44 applications are recommended to proceed to the second stage." Having received that submission would you have expected that if the department did not agree with any of those 44 that they would have told you that?

THE WITNESS: I would expect that.

MR BODDICE: And that if any of those 44 did not fall within the department's assessment as being appropriate organisations to go to the next phase that the department would have told you that?

20

THE WITNESS: Yes.

MR BODDICE: In Exhibit 7, if you could just have a look at Exhibit 7, you were asked some questions about Macgregor High, Macgregor State High. Do you have Exhibit 7 there?

THE WITNESS: Yes, I do.

30 MR BODDICE: You will see it's on page 6 of 14. This is, of course, in the category 1 schedule that was provided to you. You will see that for Macgregor State High, whilst it's in category 1, it says this project is not recommended as a shortlisted applicant.

THE WITNESS: Yes, that's correct.

MR BODDICE: If the department had that view in respect of any of the others, would you have expected that to have been in the schedule, given that it was not recommended by the department?

THE WITNESS: No, I wouldn't.

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MR BODDICE: Why?

THE WITNESS: I don't really understand the question.

MR BODDICE: What I'm saying to you is if the department has put something into category 1, after seeking your opinion, if in fact the department didn't agree that it should be in category 1, as it appears with Macgregor --



THE WITNESS: Which is a recommended category? Yes.

MR BODDICE: Which is Macgregor.

THE WITNESS: I see what your point is.

MR BODDICE: That you would expect they would likewise say that in respect of any other organisations that that was their view?

10 THE WITNESS: Yes.

MR BODDICE: Ms SPENCE --

THE PRESIDING OFFICER: Mr BODDICE, that was a preliminary schedule after they finalised their final one. If you go to the Exhibit which was the final version, that is changed from "not recommended" to it is recommended.

MR BODDICE: I understand that but in the earlier phase 1 -- and this one, my understanding is Exhibit 7 is after the discussion with the minister, it still had --  
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THE PRESIDING OFFICER: No, it's before the discussion with the minister.

MR BODDICE: Oh, well, then I have misunderstood it.

THE PRESIDING OFFICER: The variance of the discussion with the minister is the tick or the cross at the side.

MR BODDICE: But the question still stands in terms of the final version, if the position was that the department, having conducted their assessment after obtaining your opinion, was of the view that it was not an appropriate project, would you expect the department to tell you that?  
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THE WITNESS: I would expect that.

MR BODDICE: Yes, thank you.

THE PRESIDING OFFICER: Still nothing, Mr PEARCE?

MR PEARCE: No, thank you.  
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THE PRESIDING OFFICER: Thank you, Ms SPENCE.

THE WITNESS: Thank you.

THE PRESIDING OFFICER: Thank you, Ms SPENCE for coming back, making the time to come back to us this afternoon. You are now excused.

THE WITNESS: Thank you.

THE PRESIDING OFFICER: Yes, Mr PEARCE?

MR PEARCE: All that remains is for us to settle a date upon which we can reconvene for submissions. I have suggested to representatives yesterday that Wednesday 16 December looks suitable subject to anyone not being available on that day. No-one has come back to me to indicate that they are not available so I would ask that we adjourn until 16 December for submissions.

- 10 Can I also ask you to remove the non-publication order that currently exists in respect of the testimony given during the closed hearing process so that, as necessary, we can give it to representatives for the affected parties. There is no need for the non-publication order.

THE PRESIDING OFFICER: I will comply with that request and remove the non-publication order that I had made, even though that has been varied slightly, subsequently, I will now remove it entirely. All right.

- 20 We will resume at 10 o'clock on the 16th. You will provide at least the day before to the other legal counsel, who might be wishing to appear to make submissions, Mr PEARCE, copies of your proposed submissions?

MR PEARCE: Yes.

THE PRESIDING OFFICER: If people are able to -- I realise you might not all be able to, but if you can provide copies of any written submissions you propose to put up at least by the afternoon before it might give me the opportunity to have a look at them. If it can't be done, c'est la vie, I will live with that. But I would appreciate if it could be done.

- 30 MR GUEST: With respect to Mr KINNANE, would it be satisfactory for just written submissions to be provided, or -- it would be more, with respect, a systemic issue?

THE PRESIDING OFFICER: I don't require anyone to appear. If someone just wants to provide written submissions that is fine. I would be quite happy with that.

MR PEARCE: I think the question went to the wider issue, that is, the research issue we were contemplating.

- 40 THE PRESIDING OFFICER: Yes, I have already said to Mr KINNANE, and that doesn't have to be by that date. What I am proposing to do is that we will release a public statement indicating that the Commission will invite submissions from any interested party on that wider issue of what recommendations should be made with respect to any changes that should be made to the way the administrative process works, et cetera. I will, in particular, be inviting any submissions from any organisation such as the Institute of Public Administration, perhaps the Public Sector Union, indeed Ministerial Services, if it's interested in providing a submission or indeed from any individual. But that won't be by that date. That can be at a later time.

I haven't thought about a date yet. That will go out in the public release that we make.

Is there anything else that anybody needs to raise? No.

All right, we will adjourn till 10 o'clock on Wednesday, the 16th December

THE HEARING ADJOURNED AT 3.50 PM.

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