

CBUS LEAK TO THE CFMEU

CHAPTER 8.3

OVERVIEW

1. This chapter of the submissions deals with the wrongful disclosure by Cbus of the private information of its members to Mr Brian Parker, the Secretary of the New South Wales Branch of the Construction and General Division of the CFMEU (**NSW Branch**) in July 2013, and the deliberate campaign of deceit which followed in order to conceal that wrongdoing, including the giving of perjured evidence to this Commission.
2. The Cbus employees involved in the matter are Ms Lisa Zanatta (senior coordinator) and Ms Maria Butera (Executive Manager). The principal CFMEU officer in question is Mr Parker.
3. By way of overview, the conclusions set out in these submissions are as follows:
 - (a) Cbus is a company over which the CFMEU exercises considerable influence. CFMEU officers are on the board of Cbus, and many Cbus employees once worked for the CFMEU. This has led to serious cultural problems within Cbus, under which the interests of the CFMEU are put before those of Cbus and its members;
 - (b) in mid-2013 the CFMEU was engaged in an aggressive national campaign against Lis-Con Concrete Constructions Pty Ltd and Lis-Con Services Pty Ltd (together, **Lis-Con**);
 - (c) as part of that campaign, Mr Parker wished to obtain the personal contact details of Lis-Con employees so that union staff could contact those employees and encourage them to harass Lis-Con over unpaid entitlements. He wanted action of this kind to be taken because of the

national campaign that was then underway, and his view that upsetting Lis-Con employees would have the maximum adverse effect on Lis-Con. In the ordinary course, arrears was a matter for Cbus to deal with through the usual debt recovery processes it had in place;

- (d) Mr Parker knew that Cbus held the personal contact details of the Lis-Con employees, and he sought to obtain those details with the assistance of two senior Cbus employees, Ms Zanatta and Ms Butera. He did so knowing that he was asking them to act improperly;
- (e) Ms Zanatta and Ms Butera complied with Mr Parker's request. They embarked upon a covert exercise to obtain the information and deliver it to Mr Parker, knowing that what they were doing was improper. The covert exercise involved, amongst other things, Ms Zanatta flying from Melbourne to Sydney on 29 July 2013 for the sole purpose of hand delivering the relevant documents to the CFMEU;
- (f) once Mr Parker had the information, he provided it to Mr Fitzpatrick, a CFMEU organiser, and instructed him to use that information as planned. This involved Mr Fitzpatrick ringing a number of Lis-Con employees on 30 July 2013. He pretended to be a Cbus representative, and informed those employees that their employer had not paid their superannuation entitlements on time;
- (g) Mr Fitzpatrick admitted his part in these events to this Commission at an early stage. However Ms Zanatta, Ms Butera and Mr Parker each gave deliberately false evidence to this Commission about their involvement. Ms Zanatta went so far as to create an entirely fictitious account of why she came to Sydney on 29 July 2013 and what she did while she was there. When those lies were exposed, she admitted she had committed perjury in order to protect Mr Parker and others;

- (h) the misuse of the Lis-Con employees' personal information constituted a breach by Cbus of the *Privacy Act 1988* (Cth), the Cbus trust deed and Cbus' contracts with its members. Mr Parker induced those breaches;
- (i) by disclosing information and records to Mr Parker in the circumstances described, Ms Zanatta and Ms Butera contravened the *Corporations Act 2001* (Cth);
- (j) by seeking and accepting the information, Mr Parker was involved in those breaches of the *Corporations Act 2001* (Cth), and as such, himself contravened those provisions of the *Corporations Act 2001* (Cth);
- (k) Ms Zanatta, Ms Butera and Mr Parker each gave evidence to this Commission which they knew to be false. They have committed perjury, and in the process put this Commission to great expense and inconvenience; and
- (l) by so acting, Mr Parker engaged in gross misbehaviour in contravention of the professional standards expected of an officer of the CFMEU.

RELEVANT FACTS

- 4. It is submitted that the relevant factual findings should be as follows.

A Cbus

- 5. Cbus provides superannuation services to construction, building and allied industry workers and retirees, their families and employers. The trustee of the Cbus superannuation fund is United Super Pty Ltd. As at 31 March 2014, it managed approximately \$26 billion of member funds.
- 6. Superpartners Pty Ltd is retained by Cbus to act as the administrator of its member and employer records.

7. Cbus has close links to the trade union movement. Its board of directors includes representatives from a number of trade unions, particularly the CFMEU. Currently three CFMEU officials sit on the Cbus board - Ms Rita Mallia, Mr Frank O'Grady and Mr David Noonan.

B RELEVANT CBUS STAFF

B1 Mr Atkin

8. Mr David Atkin is the chief executive officer of Cbus, and was so at the relevant time.

B2 Ms Butera

9. In July 2013 Ms Butera held the position of Executive Manager, Workplace Distribution with Cbus. She holds a Bachelor of Commerce, and commenced working for Cbus 17 years ago.¹
10. Ms Butera reported directly to Mr Atkin, and therefore sat at the second highest level of management in Cbus.²
11. Ms Butera emphasised many times in her evidence that her role was such that she did not deal with operational matters, including dealing with employer arrears, on a day to day basis.³ That was not to be the case in relation to the events of late July 2013 identified later in these submissions.
12. Although an accountant by training and a senior manager of a financial services provider by profession, Ms Butera has been a member of the CFMEU since starting employment with Cbus. She joined the union as part of a 'culture of collaboration' that exists within Cbus, and because she wanted to show the CFMEU that she wished to work closely with it.⁴

¹ Maria Butera, 7/7/14, T:67.20ff

² Maria Butera, 23/10/14, T:934.11ff.

³ Maria Butera, 7/7/14, T:72.4ff; T73.3-4.

⁴ Maria Butera, 23/10/14, T:970-973.

B3 Ms Zanatta

13. Ms Zanatta was employed by Cbus and, as at July 2013, held the position of Senior Adviser, Member Relationships.⁵ In that role she was responsible for overseeing the day to day activities of the National Coordinator Team.⁶
14. She reported to Ms Cath Noye (General Manager, Key Relationships), who in turn reported to Ms Butera. This put Ms Zanatta at the fourth highest management tier within Cbus.⁷ It was a senior advisory position.⁸
15. Ms Zanatta has at all times been a member of the CFMEU, even though she is manager working in the financial services sector.⁹
16. Ms Zanatta began her employment at Cbus in 1998, and as such, by mid-2013, had been with the company for 15 years. She was a highly experienced Cbus employee, and therefore had an intimate knowledge of its workings and systems.
17. Initially Ms Zanatta was employed by Cbus as a member co-ordinator, providing services and advice to employers and members,¹⁰ and interacting with the CFMEU regularly. Ms Zanatta was more than capable of handling an enquiry from a union in relation to arrears. Indeed it was her 'bread and butter'.¹¹
18. Ms Zanatta's employment with Cbus has now been terminated as a result of the role she played in the matters described in these submissions.

⁵ Lisa Zanatta, 7/7/14, T:17.5-6.

⁶ Lisa Zanatta, 7/7/14, T:18.4-6.

⁷ Lisa Zanatta, 7/7/14, T:18.9ff.

⁸ Lisa Zanatta, 7/7/14, T:19.6-8.

⁹ Lisa Zanatta, 7/7/14, T:17.26-30.

¹⁰ Lisa Zanatta, 7/7/14, T:17-32-18.6.

¹¹ Maria Butera, 23/10/14, T:936.8-14.

C LIS-CON

19. The Lis-Con companies are sub-contractors in the construction industry and operate across Australia, with a focus on formwork, concreting and steel fixing services.
20. On average Lis-Con Concrete Constructions Pty Ltd employs approximately 40 workers. Lis-Con Services Pty Ltd employs approximately 300 workers. Most Lis-Con employees are not members of the CFMEU.
21. Mr Eoin O'Neill is the construction manager, tender manager and an authorised spokesperson for the Lis-Con companies.
22. Cbus was the default superannuation fund for Lis-Con from about 2003 to 2013.¹² As a result of the matters the subject of this chapter of the submissions, Lis-Con workers voted to abolish Cbus as its default superannuation fund.¹³

D THE GASKE LEAK OF JUNE 2013

23. As at June 2013, issues had arisen in relation to the extent to which Lis-Con was paying workers' superannuation entitlements on time, and officers of the CFMEU had taken an interest in that matter.
24. To this end, on 18 June 2013, Mr Steve Gaske, who was both a Cbus employee and the honorary President of the Queensland Branch of the Construction and General Division of the CFMEU, sought and obtained from Superpartners certain information in relation to the extent of the arrears for the two Lis-Con companies.¹⁴
25. The information provided came in two forms. First, there were two emails from Ann-Marie Hughes from Superpartners setting out the aggregated arrears position of each particular Lis-Con company; that is, the total amounts owed by the

¹² Eoin O'Neill, witness statement, 15/7/14, para 41, p 8.

¹³ Eoin O'Neill, 15/7/2014, T:58.6-T:58.9.

¹⁴ Zanatta MFI-1, 7/7/14, tabs 5 and 6.

company for particular months. Second, attached to each email was a schedule which identified the names of the Lis-Con employees, their Cbus membership number, their date of birth, and superannuation entitlements for each Lis-Con company. No personal contact details were disclosed.

26. Mr Gaske passed Ms Hughes' emails and their attachments on to Mr Toyer, a CFMEU organiser in Queensland, by email dated 18 June 2013.¹⁵ The first email to Mr Toyer read 'Here ya go mate. Call if you need any clarification'. Mr Gaske signed off on those emails as a Cbus co-ordinator.

E CBUS DEBT COLLECTION PROCESSES IN JUNE 2013

27. Cbus' debt collection activities were managed by its appointed debt collection agent, Industry Funds Credit Control (IFCC).¹⁶
28. On 18 June 2013, solicitors retained by IFCC sent correspondence to Lis-Con in relation to its arrears position.¹⁷
29. Mr O'Neill responded to that letter on 20 June 2013 advising that he had already paid the superannuation entitlements for February 2013 and would pay March 2013 by 27 June 2013. It was agreed by IFCC that Lis-Con would have until that date to make that payment.¹⁸
30. Some days later, however, on 25 June 2013, Mr Gaske contacted Ms Hughes and requested that Lis-Con's files be 'referred to legal' – that is, referred to lawyers for action.¹⁹ In circumstances where Mr Gaske had recently been in communications with the CFMEU about Lis-Con and arrears, and Mr Gaske was himself an honorary official of the CFMEU, it may reasonably be inferred that the 'referral to legal' was the CFMEU's idea, and Mr Gaske was prepared to ensure that this action was taken.

¹⁵ Zanatta MFI-1, 7/7/14, tab 1A, pp 1A-1H and tab2, pp 7-9.

¹⁶ Lisa Zanatta, 7/7/14, T:19.46.

¹⁷ Atkin MFI-1, 3/10/14, tab 5, p 5.

¹⁸ Atkin MFI-1, 3/10/14, tab 5, p 5.

¹⁹ Atkin MFI-1, 3/10/14, tab 5, p 5.

31. Ms Hughes obliged, and asked Mr Andrew Grabski (an employee of IFCC) to arrange for the Lis-Con files to be ‘referred to legal’.²⁰
32. Two days later, on 27 June 2013, Ms Zanatta met with IFCC and asked to be advised of all payment terms on any future arrears, and that this had been requested because of ongoing issues the CFMEU was having with Lis-Con.²¹
33. Later that same day she called IFCC and requested an email setting out the current arrears position, the estimated debt, and the implications of issuing proceedings or holding off.²²
34. While this was occurring on 27 June 2013, Mr O’Neill called Mr Grabski and advised that Lis-Con would not commit to monthly superannuation payments and that the payments for April 2013 and May 2013 would be paid by 27 June 2013 as per the guidelines from the Australian Tax Office.²³
35. That same day, in answer to Ms Zanatta’s request described above, Mr Grabski sent an email to Ms Zanatta with the Lis-Con arrears information. He also took the opportunity to advise her of the results of his conversation with Mr O’Neill.²⁴
36. Mr Grabski set out in this email the nature and extent of the arrears position for Lis-Con. He identified that one Lis-Con company was four months behind and the other was three months in arrears. Precisely calculated estimates were given in respect of the total amount owed by each company for those months.
37. The arrears information in this email was ‘aggregated’ information – that is, total amounts owed by each company for particular months, not broken down by reference to individual employees of the company.

²⁰ Zanatta MFI-1, 7/7/14, tab 3, p 10 and tab 4, p 18.

²¹ Atkin MFI-1, 3/10/14, tab 5, p 4.

²² Atkin MFI-1, 3/10/14, tab 5, p 4.

²³ Zanatta MFI-1, 7/7/14, tab 5, p 22-23.

²⁴ Zanatta MFI-1 7/7/14 tab 5, p 22.

38. The following day, 28 June 2013, Ms Zanatta forwarded Mr Grabski's email to Mr Jade Ingham, the Assistant Secretary of the Queensland Branch of the construction and General Division of the CFMEU.²⁵
39. Ms Zanatta's email to Mr Ingham read 'Jade please read update below regarding Lis Con. If you are available to chat now please call on [phone number]. Thanks lisa'. Ms Zanatta's evidence was that Mr Ingham had asked her for a current update on Lis-Con's arrears.²⁶
40. Ms Zanatta had no qualms about sending quite detailed arrears information of this kind to the CFMEU. She was perfectly able to deal with an arrears query coming from a very senior official of the CFMEU. None of this called for any form of secret communications or subterfuge. Nothing had to be hand delivered. Ms Zanatta did not need to fly it to Brisbane to give to Mr Ingham. The information was simply sent by Ms Zanatta by email. This is how a request from a senior CFMEU official to Ms Zanatta for arrears information would be handled, and how she would be expected to handle it.
41. That same day, 28 June 2013, this email chain was then forwarded on by Mr Ingham to Mr Michael Ravbar, the Secretary of the Queensland Branch of the Construction and General Division of the CFMEU. Mr Ravbar in turn sent it to Mr Noonan, the CFMEU's National Secretary.
42. After Mr Noonan received this email chain he sent it on to Mr Atkin. Mr Atkin said in his evidence that he must have spoken with Mr Noonan about the email, but that he could not recall what was said.²⁷
43. Mr Ravbar also had a conversation with Mr Atkin about it.²⁸ In that conversation, Mr Ravbar said that he wanted further information from Cbus about the extent of

²⁵ Zanatta MFI 1 7/7/14, tab 5, p 22.

²⁶ Lisa Zanatta, 7/7/14, T:23.19-26.

²⁷ David Atkin, 23/10/14, T:844.20-24.

²⁸ Michael Ravbar, 23/9/14, T:253.44-46.

the arrears. Mr Atkin says that he subsequently gave Mr Ravbar aggregate arrears information during a trip to Brisbane.²⁹

44. Mr Atkin then sent this email chain of 28 June 2013 on to Ms Butera, with a request that she touch base with him about it.³⁰
45. Later that same day Ms Butera sent an email on to Ms Noye (a Cbus manager who sat in the management chain between Ms Zanatta and Ms Butera) and said ‘Cath – can you please follow up. M’.³¹ This was at 11.29am.
46. At 11.33am, that is only several minutes later, Ms Zanatta sent an email to IFCC advising that the CFMEU in Queensland had ‘requested’ that Cbus ‘go ahead with legal proceedings ‘asap’.³² In a telephone call a few moments later, Ms Noye said to IFCC that ‘the union wanted files referred to legal asap’.³³ Proceedings were then commenced on 19 July 2013 in the District Court of New South Wales.³⁴
47. It is plain that the CFMEU played a significant role in the decision that was made by Cbus to commence proceedings against Lis-Con. Indeed the evidence demonstrates that Cbus was, in substance, acting at the direction of the CFMEU.

F CFMEU ‘WAR’ ON LIS-CON

48. At about the same time, on 25-27 June 2013, executives from the Construction and General Division of the CFMEU were participating in a Divisional Executive Meeting.
49. The meeting was attended by Mr Parker, Mr Ravbar, Mr Dave Noonan, Mr Tom Roberts (Senior National Legal Officer), Mr Fitzpatrick (an organiser from the NSW Branch) and a large number of other officials from around the country.

²⁹ David Atkin, 23/10/14, T:844.38ff.

³⁰ Zanatta MFI-1, 7/7/14, tab 5, p 21.

³¹ Zanatta MFI-1, 7/7/14, tab 5, p 21.

³² Atkin MFI-3, 23/10/14; David Atkin 23/10/14, T:891.28-40.

³³ Atkin MFI-7, 23/10/14.

³⁴ Atkin MFI-1, 3/10/14, tab 7.

50. The minutes of the meeting note that there were various discussions in relation to Lis-Con, that the union had received complaints of breaches of awards and statutory entitlements, and that the branches were requested to provide information of breaches to the National Office via Mr Roberts³⁵.
51. The minutes paint an overly cultivated picture of what was actually discussed and agreed at the meeting. What was agreed, in substance, was that the CFMEU would 'go to war' with Lis-Con.³⁶ Everyone who attended the meeting agreed with this course.³⁷

G INSTRUCTIONS FROM MR PARKER TO MR FITZPATRICK

52. At the June 2013 National Executive Meeting, it was agreed that Mr Parker, with Mr Fitzpatrick's assistance, would obtain certain information in relation to Lis-Con and that this information would be passed onto the other States as part of this 'war'.³⁸
53. Mr Parker told Mr Fitzpatrick that he wanted to find out information about Lis-Con's workers and use that information to try and attack Lis-Con. Mr Parker admitted that he said this to Mr Fitzpatrick.³⁹
54. Mr Fitzpatrick was told that the plan was to 'get contact details for Lis-Con employees off Cbus and then contact the employees and encourage them to stir up trouble with Lis-Con over unpaid entitlements'.⁴⁰

H THE MCWHINNEY TABLE

55. After taking instructions from Mr Parker, and in July 2013, Mr Fitzpatrick contacted Mr Bob McWhinney of Cbus and asked him what information he could provide to the CFMEU about Lis-Con. Mr McWhinney advised he could email Mr

³⁵ Parker MFI-1, 3/10/14, p 76.

³⁶ Brian Fitzpatrick, witness statement, 15/7/14, para 97-98.

³⁷ Brian Fitzpatrick, 15/7/14, T:40.26-46.

³⁸ Brian Fitzpatrick, witness statement, 15/7/14, para 99.

³⁹ Brian Parker, 3/10/14, T:637.25-27.

⁴⁰ Brian Fitzpatrick, witness statement, 15/7/14, para 102.

Fitzpatrick with the names and amount of the last payment for the Lis-Con employees.⁴¹

56. On 12 July 2013 Mr McWhinney sent this information to Mr Fitzpatrick as an attachment to an email.⁴² The attached documents (**McWhinney table**) were schedules which set out the name, Cbus number, date of birth and superannuation payment information in respect of particular Lis-Con employees for each Lis-Con company. The McWhinney table was a relatively short document, and did not contain any personal contact information for Lis-Con employees. It was radically different, in terms of appearance, length and content, from the documents that Mr Parker later obtained from Ms Zanatta.
57. Upon receiving the McWhinney table, Mr Fitzpatrick reported back to Mr Parker and noted that the information he was able to get did not include what Mr Parker had wanted in terms of being able to contact Lis-Con employees. Mr Parker told Mr Fitzpatrick that he would talk to Mr McWhinney.⁴³

I MR PARKER SEEKS AND OBTAINS THE ZANATTA SPREADSHEETS

58. In the period from 18 to 29 July 2013, Mr Parker sought and obtained from Cbus the personal contact details of the Lis-Con employees. He did so by enlisting the help of Ms Zanatta and Ms Butera. The events which occurred are described below. Although occasional passing references are made in this section of this chapter to the false evidence given by Ms Butera, Ms Zanatta and Mr Parker, for the most part their perjured evidence is addressed in a separate section of this chapter.

I1 18 July 2013

59. On the morning of 18 July 2013, at 8.35am, Mr Parker called Mr Atkin.⁴⁴ Their conversation was a short one, during which Mr Parker asked Mr Atkin for

⁴¹ Brian Fitzpatrick, witness statement, para 103.

⁴² Zanatta MFI-1, 7/7/14, tab 10, p 38.

⁴³ Brian Fitzpatrick, witness statement, 15/7/14, para 105.

⁴⁴ Parker MFI-1,24/10/14, p 26.

assistance in terms of providing further information about Lis-Con's arrears history. Mr Atkin said he would see what Cbus could do to help the union where it could.⁴⁵ Mr Parker did not tell Mr Atkin that he wanted detailed records to enable him to contact employees of Lis-Con.⁴⁶

60. Mr Atkin reported his conversation to Ms Butera, and Ms Butera spoke with Ms Zanatta about it.
61. At 2.06pm the same day, Ms Zanatta called Mr Parker and they spoke for a little over seven minutes.⁴⁷ Ms Zanatta made no mention of this conversation with Parker when she gave evidence on 7 July 2014. Nor did Mr Parker when he gave evidence on 23 October 2014.
62. Within half an hour of the conclusion of that call, Ms Zanatta sent an email to Mr Walls of Superpartners asking him to run an enquiry for the accounts for Lis-Con for the past 12 months.⁴⁸
63. When Mr McWhinney had earlier sought and obtained the McWhinney table from Superpartners, he had been careful to set particular limits on the information that was to be provided by Superpartners to him.⁴⁹
64. Ms Zanatta's request of Mr Walls on 18 July 2013 contained no such limitation. She simply asked for a 'query' to be run. As Mr Walls explained in his evidence, the effect of this was to request Superpartners to conduct an automated trawl of its database that would result in the extraction of all of the information on that database in respect of Lis-Con employees.⁵⁰ It was obvious to someone of Ms Zanatta's vast experience within Cbus that the results of such a query would include the contact details of the employees in question.

⁴⁵ David Atkin, 3/10/14, T:772.31-32, David Atkin, 23/10/14,T:868.26-33.

⁴⁶ David Atkin, 3/10/14, T:772.221-24.

⁴⁷ Zanatta MFI-2, 3/10/14, p 2.

⁴⁸ Zanatta MFI-1, 7/7/14, tab 11, p 46.

⁴⁹ Zanatta MFI-1 7/7/14, tab 9, p 36.

⁵⁰ Anthony Walls, 7/7/2014, T:108.

65. The query that Ms Zanatta caused Mr Walls to run was the only query run by Superpartners in relation to Lis-Con in the relevant period.⁵¹ Although various less intrusive searches of the Superpartners' database were undertaken through the period, this was the only full query, and thus the only search that produced results which included the personal contact details of the Lis-Con employees.
66. The very fact of the 7 minute call from Ms Zanatta to Mr Parker referred to above (which immediately prompted Ms Zanatta to proceed to request the Superpartners' query soon after) was highly unusual. Mr Parker was the most senior CFMEU official in the whole of New South Wales. Ms Zanatta was in Cbus' management. Routine requests for arrears information about a company were not usually handled in this way.
67. It is submitted that during this telephone call on 18 July 2013 Mr Parker told Ms Zanatta that he wanted to obtain a full set of Cbus' records in relation to Lis-Con, and that in particular he wanted to get hold of information that would enable the CFMEU to contact Lis-Con employees.
68. Ms Zanatta subsequently told Ms Butera that this is what was being arranged. So much is obvious from the events of 24 July 2013 and following, as set out shortly.

12 22 July 2013

69. On 22 July 2013 Mr Walls sent Ms Zanatta an email with the results of the query she had requested on 18 July 2013. The email attached two large spreadsheets.⁵² Those documents contained information in respect of a large number of Lis-Con employees, including their names, email addresses, telephone and mobile numbers.

⁵¹ Butera MFI-2, 23/10/14.

⁵² Zanatta MFI-1, 7/714, tab 14, p 51.

70. Those spreadsheets were excel documents, capable of manipulation in various ways, including the removal of columns.⁵³
71. Included in the evidence before the Commission are two original printed spreadsheets with handwriting upon them in blue and black ink⁵⁴. These documents (**Zanatta spreadsheets**) are in identical form to the spreadsheets attached to Mr Walls' email of 22 July 2013 to Ms Zanatta, save that various columns have been removed so as to reduce the width of the document. The column containing the telephone numbers of the Lis-Con employees was *not* removed, a significant fact that is telling in and of itself.
72. When Mr Walls sent his email of 18 July 2013 to Ms Zanatta, he copied Mr McWhinney into the email.⁵⁵
73. This caught Ms Zanatta by surprise, because when she had made the request of Mr Walls, she had been careful not to include any other person as an addressee. She did not want anyone else to know about it.
74. Upon receiving the information and becoming aware that it had also been copied to other people, Ms Zanatta emailed Mr McWhinney and stated 'Bob please don't pass this on at this stage. Thank you', to which Mr McWhinney replied 'OK'.⁵⁶
75. Ms Zanatta also replied to Mr Walls stating 'Thank you Anthony **this request was private**. I would have appreciated if was okey before ccing others' (emphasis added).⁵⁷
76. It is plain from these communications that Ms Zanatta had intended that her request of Mr Walls be kept a secret. She did so because she understood, at the time, that it was wrong for her to be seeking and obtaining documents which

⁵³ Anthony Walls, 7/7/2014, T116.22.24.

⁵⁴ Fitzpatrick MFI-3, 24/9/14.

⁵⁵ Zanatta MFI-1, 7/714, tab 14, p 51.

⁵⁶ Zanatta MFI-1, 7/714, tab 15, p 112.

⁵⁷ Zanatta MFI-1, 7/714, tab 16, p 113..

contained private information for the purpose of supplying it to Mr Parker to assist the CFMEU in its war with Lis-Con.

77. Mr Walls replied to Ms Zanatta's reprimand by way of a short email in which he said 'I'm so sorry about that. I thought CC'ing Bob would be ok given that he asked for the same query 2 weeks ago but changed his mind. My apologies, I'll remember for next time'.⁵⁸ Ms Zanatta then replied stating 'No problem at all. I understand exactly why you did it. I have sorted it'.⁵⁹ Ms Zanatta's reference to having 'sorted it' was a reference to the fact that she had sought and obtained Mr McWhinney's assurance not to pass it on at that stage.⁶⁰

13 24 and 25 July 2013

78. On 24 July 2013, Ms Zanatta emailed Ms Butera stating:⁶¹

We now have the data requested by Brian Parker.
I have spoken to Anthony for passing it on to others without consent.
How would you like to proceed with the information?
I'll catch up with you to discuss tomorrow if you have available.
Thank you.

79. The email attached the query results document that Mr Walls had sent to Ms Zanatta. The reference in Ms Zanatta's email to Ms Butera to the 'data requested by Brian Parker' was that information.
80. Later that same day Ms Butera emailed back requesting that they discuss the matter the following day, and Ms Zanatta agreed.⁶²
81. The following day, 25 July 2013, Ms Butera and Ms Zanatta had the meeting as planned.

⁵⁸ Zanatta MFI-1, 7/714, tab 16, p 113.

⁵⁹ Zanatta MFI-1, 7/714, tab 16, p 113.

⁶⁰ Zanatta MFI-1, 7/714, tab 15, p 112.

⁶¹ Zanatta MFI-1, 7/714, tab 18, p 119.

⁶² Zanatta MFI-1, 7/714, tab 19, p 173.

82. The above communications and sequence of events are telling in a number of respects.
83. First, they make it clear that the data on the spreadsheets from Mr Walls was data that Mr Parker had requested, and both women knew that to be so. Ms Zanatta said so in terms in her email of 24 July 2014.
84. Second, it demonstrates complicity between Ms Zanatta and Ms Butera in relation to the covert nature of Mr Parker's request and Cbus' response to it. Secrecy was the order of the day, to the point where meetings were being organised between two senior Cbus executives to discuss how to 'proceed with the information'. The disclosure of arrears information would not be improper and would not call for secrecy. The wrongful disclosure of sensitive information would. The sensitive information held by Ms Zanatta in this case was the personal contact details of the Lis-Con workers.
85. Third, the email demonstrates that Ms Butera was playing the lead role in this subterfuge. Ms Zanatta was reporting back to her, and her question to Ms Butera in the email of 24 July 2013 was 'how would **you** like to proceed with the information?' (emphasis added).
86. The only reason why Ms Butera and Ms Zanatta needed to meet on 25 July 2013 was that they both knew that the information that Mr Parker had asked for was highly sensitive information that they were not supposed to be handing over. A discussion about how to get such information to Mr Parker could not take place via email or in casual office conversation.
87. Ms Zanatta and Ms Butera met on 25 July 2014 in order to discuss how to convey that sensitive information to Mr Parker without getting caught. They agreed that Ms Zanatta would act as a courier and take it up to Mr Parker in Sydney. They agreed it could not be emailed or couriered in the ordinary way, because to do so would leave a paper trail leading back to them.

14 **26 July 2013**

88. On Friday, 26 July 2013, Ms Zanatta was not in the Cbus office in Melbourne. She was travelling to and from Geelong.

89. At 2.30pm that afternoon Ms Zanatta telephoned Mr Parker while she was on the road.⁶³ They spoke for four and a half minutes.

90. At 2.37pm, Ms Zanatta sent an iMessage to Ms Butera's mobile phone in the following terms⁶⁴:

I have made arrangement to drop off information to Brian Parkers PA. he is expecting a call from you. When you can.

91. As that contemporaneous record reveals, in the context in which it was written, during the phone call between Ms Zanatta and Mr Parker, arrangements were made for the Zanatta spreadsheets to be dropped by Ms Zanatta to Mr Parker's personal assistant on 29 July 2013. Ms Zanatta was telling Mr Parker that she was planning to fly the documents to Sydney and deliver them to Mr Parker's assistant. As shortly described, Mr Parker's assistant needed to receive the documents because Mr Parker was not going to be in the office that day.

92. Ms Butera did not write back expressing any confusion as to the subject matter of the email, or what information was being referred to.⁶⁵ She did not communicate back to Ms Zanatta asking her what she was supposed to say.⁶⁶ She knew exactly what was being planned, and what Ms Zanatta had been discussing with Mr Parker. The plan was for Ms Zanatta to take the Zanatta spreadsheets and drop them off at the NSW Branch office with Mr Parker's personal assistant.

93. At 2.40pm Ms Butera telephoned Mr Parker.⁶⁷ The call lasted for 2 minutes.

⁶³ Zanatta MFI-3, 3/10/14, p 198/422.

⁶⁴ Butera, MFI-3, 28/10/14, p 2, item 26.

⁶⁵ Maria Butera, 28/10/14, T:1136.34-39.

⁶⁶ Maria Butera, 28/10/14, T:1137.6-10.

⁶⁷ Butera MFI-1, 23/10/14, p 162 item 104.

94. At 2.43pm Ms Butera sent an iMessage to Ms Zanatta in response to her iMessage of 2.37pm referred to above. In that message she said:⁶⁸

Done – he understands completely and is committed to using info very carefully. M

95. That iMessage records the substance of the phone conversation that Ms Butera had with Mr Parker at 2.40pm that day. It is clear that Ms Butera considered that the information that was being delivered to Mr Parker's personal assistant was very sensitive, and she wanted to ensure that Mr Parker would use that sensitive information very carefully. Mr Parker committed to doing so. Arrears information is not sensitive information. Arrears information does not need to be personally delivered by Ms Zanatta in order to avoid detection. The information that was sensitive was the personal contact details of the Lis-Con workers. That was the information that Ms Butera was so concerned about, and was what she discussed with Mr Parker.

96. While Ms Zanatta had been waiting for this response, and at 2.37pm on 26 July 2013, having just finished her conversation with Mr Parker, Ms Zanatta then called Jackie Heintz, Project Officer at Cbus.⁶⁹

97. Within 20 minutes of that call, Ms Heintz had arranged flights for Ms Zanatta from Melbourne to Sydney (return) for the following Monday, 29 July 2013.⁷⁰ The booking form described the purpose of the trip as a union meeting. Ms Zanatta's electronic diary for 29 July 2013 records she had flights to and from Sydney that day.⁷¹

98. At 2.56pm on 26 July 2013 Ms Zanatta made a further call to Ms Heintz.⁷²

⁶⁸ Butera MFI-3, 28/10/14, p 2, item 27.

⁶⁹ Zanatta MFI-3, 3/10/14.

⁷⁰ Zanatta MFI-4, 3/10/14.

⁷¹ Zanatta MFI-1, 3/10/14.

⁷² Zanatta MFI-3, 3/10/14, p 198/422, item 258.

99. About an hour later, at 3.57pm, an express courier service was booked by Cbus for the purpose of delivering a package from Cbus' office to Ms Zanatta's home address.⁷³ The package was collected at 4.40pm and was delivered at 5.20pm.
100. The package contained the Zanatta spreadsheets, which had been printed out at the Cbus office. Being away from the office on the afternoon of 26 July 2013, arrangements had to be made for them to be delivered to Ms Zanatta so that she could take them to Sydney and give them to Mr Parker on the following Monday.
101. At 5.47pm that evening Ms Zanatta sent an iMessage to Mr Parker. It read as follows:⁷⁴
- Hey Comrade just confirming that Jenny or is it Jennifer operates out of the Lidcombe office. Is that correct? In unity lisa cbus.
102. Mr Parker responded with an iMessage of his own at 6.10pm to Ms Zanatta, which read:⁷⁵
- Jennifer comrade thankyou.
103. Mr Parker's personal assistant is Jennifer Glass. Ms Zanatta's iMessage to Ms Butera of earlier in the day referred to the fact that she was going to deliver the information to Mr Parker's personal assistant. The reference to Jennifer in these messages between Mr Parker and Ms Zanatta is clearly a reference to Ms Glass.
104. Arrangements had to be made for someone other than Mr Parker to take receipt of the documents being delivered by Ms Zanatta on 29 July 2013 because he was going to be in Canberra that day.⁷⁶

⁷³ Zanatta MFI-5, 3/10.14.

⁷⁴ Parker MFI-1, 28/10/14.

⁷⁵ Parker MFI-1, 28/10/14.

⁷⁶ Brian Parker, 24/10/14, T:996.40.

15 Conversation between Mr Parker and Mr Fitzpatrick

105. Mr Fitzpatrick gave evidence that Mr Parker told Mr Fitzpatrick in July 2013 that he had arranged for two women at Cbus secretly to give him private information about Lis-Con's employees.

106. Mr Fitzpatrick's evidence was that Mr Parker said to him 'words to the effect "*We are getting what we want. I've spoken to her and she has agreed to give it to us on the quiet*"'.⁷⁷ Mr Fitzpatrick recollected that Mr Parker mentioned the first name of a woman in Cbus and that it was Liz⁷⁸ or Lisa.⁷⁹

107. Mr Parker told Ms Fitzpatrick that one of the Cbus women involved was one of the bosses and that she had not told her own boss about what she was doing because it was illegal. Mr Parker said words to the effect of:

We have gotta be very careful we don't tell anyone about it. If this comes out I'm dead, the girls are dead and they'll be sacked and I'll be sacked.⁸⁰

108. Mr Fitzpatrick's evidence is that during this conversation, Mr Parker asked Ms Glass to come into the room and get in touch with a woman from Cbus whose name Mr Parker gave at the time (and which Mr Fitzpatrick recalled as being Liz or Lisa), for the purpose of making arrangements for the woman to send the information up to Mr Parker through Ms Glass.⁸¹

109. Mr Fitzpatrick's evidence in relation to this conversation has now been corroborated by the iMessages of 26 July 2013 referred to above (which neither Mr Fitzpatrick nor the Commission staff knew anything about when Mr Fitzpatrick gave his evidence).

⁷⁷ Brian Fitzpatrick, witness statement, 15/7/14, para 107.

⁷⁸ Brian Fitzpatrick, witness statement, 15/7/14, para 107.

⁷⁹ Brian Fitzpatrick, 15/7/2014, T:44.16.

⁸⁰ Brian Fitzpatrick, witness statement, 15/7/14, para 107.

⁸¹ Brian Fitzpatrick, 15/7/14, T:44.12ff.

16 29 July 2013

110. On the morning of 29 July 2013 Ms Zanatta caught her flight from Melbourne to Sydney, taking with her the Zanatta spreadsheets. She landed in Sydney at about 10.55am.⁸²

111. As the taxi records demonstrate, through the GPS co-ordinates, Ms Zanatta travelled in the taxi from Sydney airport to the CFMEU's office at Lidcombe.⁸³ The taxi arrived at 11.33am. It waited for her for 2 minutes, after which she returned to the taxi at 11.35am and was taken back to the airport for her flight home.

112. As Ms Zanatta ultimately admitted, she personally delivered documents, which she suspected were the Zanatta spreadsheets to the CFMEU at 11.33am on 29 July 2013,⁸⁴ with a request that they be provided to Mr Parker.⁸⁵ She identified no other document that could have been delivered by her on that day, and positively rejected the suggestion raised by the CFMEU's counsel that the documents she delivered could have been the totality of the attachment to the email of 22 July 2013 from Mr Walls.⁸⁶

113. At 11.46am that day Ms Butera sent Ms Zanatta an iMessage. It read:⁸⁷

Everything ok? M

114. Ms Zanatta immediately responded to that message with her own iMessage, which read⁸⁸:

Yes thank you – done delivered.

⁸² Zanatta MFI-4, 3/10/14.

⁸³ Zanatta MFI-7, 3/10/14.

⁸⁴ Lisa Zanatta, 3/10/14, T:754.22-25; T:768.1-32.

⁸⁵ Lisa Zanatta, 3/10/14, T:754.35-41.

⁸⁶ Lisa Zanatta, 3/10/14, T:766-7.

⁸⁷ Butera MFI-3, 28/10/14, p 2, item 32.

⁸⁸ Butera MFI-3, 28/10/14, p 2, item 31.

115. This contemporaneous record demonstrates that Ms Butera knew that Ms Zanata was in Sydney delivering the Zanatta spreadsheets to Mr Parker's personal assistant.
116. Ms Zanatta caught her flight back to Melbourne on 29 July 2014.
117. When she arrived home, at 4.53pm that day, she telephoned Mr Parker (who was out of the office that day) and they spoke for three and a half minutes.⁸⁹ She was ringing Mr Parker to tell him that she had dropped off the documents to Ms Glass earlier that day.
118. The following morning, 30 July 2013, Mr Parker called Ms Zanatta, and they spoke for further three minutes.⁹⁰ Mr Parker was now back in the CFMEU office, having not returned to the office the previous evening.⁹¹ He had taken receipt the documents Ms Zanatta had dropped off the previous day. He was ringing to let her know that he had received the documents.

17 Mr Parker's receipt and use of the documents

119. On 30 July 2013 Mr Parker provided Mr Fitzpatrick with the Zanatta spreadsheets.
120. Mr Parker told Mr Fitzpatrick that he had received the lists from Cbus headquarters in Melbourne and told Mr Fitzpatrick to 'follow up on it'.⁹² This meant that Mr Fitzpatrick was to use the contact details in the documents provided to contact employees of Lis-Con and carry out the plan to attack Lis-Con.
121. The following day, 30 July 2013, Mr Fitzpatrick made a number of telephone calls to employees of Lis-Con.⁹³ The numbers he rang appear on the Zanatta spreadsheets. They do not appear on any other documents which were provided by Cbus to the CFMEU.

⁸⁹ Zanatta MFI-3, 3/10/14, p 233/426, item 11.

⁹⁰ Parker MFI-1, 24/10/14, p 32.

⁹¹ Brian Parker, 24/10/14, T:1000.1-17.

⁹² Brian Fitzpatrick, witness statement, 15/7/14, para 111.

⁹³ CFMEU MFI-7, 24/10/14, p 2.

122. On those calls Mr Fitzpatrick advised the employees that Lis-Con was behind in paying their entitlements using words to the effect:⁹⁴

I'm from Cbus. I'm letting you know that your Bus and ACIRT payments, I believe your ACIRT payments are the same, are well behind. You should do something about it.

123. The purpose of these calls to was to get these employees to contact Mr O'Neill about outstanding superannuation payments.⁹⁵ This was the tactic agreed between himself and Mr Parker in order to achieve the 'best and quickest response'.⁹⁶
124. Ms Zanatta and Mr Parker spoke again on the phone later on 30 July 2014 – at 4.42pm⁹⁷ for one minute and again at 4.43pm for four minutes.⁹⁸ Mr Parker was telling her that the plan they had discussed had been put into action, and the Zanatta spreadsheets had been very useful.

J THE GASKE LEAK OF 30 JULY 2013

125. On 30 July 2013 Mr Gaske sought and obtained further information from Ms Hughes of Superpartners in relation to Lis-Con arrears. Ms Hughes responded, providing Mr Gaske with an email of the same date listing the employees of Lis-Con Services by name and identifying amounts owed to them. The information did not include any of the personal contact details of the Lis-Con employees.⁹⁹
126. Upon receipt of that email on 30 July 2013, Mr Gaske sent it on to Mr Gareth Baines, who was the construction manager at Civil, Mining and Construction Pty Ltd.¹⁰⁰ He stated in that email 'I think we have covered off on information you requested. If there is anything else don't hesitate to call. Cheers'.

⁹⁴ Brian Fitzpatrick, 24/9/2014, 15/7/14, T:303.35-38.

⁹⁵ Brian Fitzpatrick, witness statement, para 112.

⁹⁶ Brian Fitzpatrick, 24/9/2014, T:305.32-3.

⁹⁷ Parker MFI-1, 24/10/14, p 32.

⁹⁸ Zanatta MFI-3, 3/10/14, p 224/426, item 31.

⁹⁹ Zanatta MFI-2, 7/7/14, tab 42, p 368.

¹⁰⁰ Zanatta MFI-2, 7/7/14, tab 42, p 367.

K COMPLAINT FROM LIS-CON AND THE REACTIONS TO THAT COMPLAINT

127. On 1 August 2013 Cleary Hoare, the solicitors for Lis-Con, wrote to Mr Noonan of the CFMEU and raised concerns that Mr Gaske had obtained confidential information in respect of Lis-Con and forwarded that information externally to Cbus.¹⁰¹ In that correspondence, Cleary Hoare noted that a number of Lis-Con's workers had been contacted from telephone numbers that originated in Bowen Hills (the suburb of Brisbane in which the Queensland Divisional Branch has its office), and that those workers had reported that they had been threatened by CFMEU officials.
128. On the same day, Cleary Hoare also sent correspondence of a similar kind to Mr Atkin at Cbus¹⁰². The letter to Mr Atkin attached a copy of Mr Gaske's email of 30 July 2013 to Mr Baines. Several days later Cleary Hoare also wrote to Mr Bracks, the Cbus chairman.¹⁰³
129. When Mr Atkin received the Cleary Hoare letter on 1 August 2013, he forwarded it on to Ms Butera. He said 'This has just come through this afternoon. Could we discuss how best to respond?'¹⁰⁴
130. Ms Butera then forwarded this email on to Ms Zanatta at 5.17pm. The text of her email to Ms Zanatta read: 'In-confidence. I need to speak to you about this. M'.¹⁰⁵
131. At 5.23pm, Ms Butera rang Ms Zanatta and they had a 5 minute telephone conversation.¹⁰⁶
132. The next day, 2 August 2013, the following telephone calls took place:

7.29am Ms Zanatta rings Mr Parker (7 minutes 30 seconds)¹⁰⁷

¹⁰¹ Zanatta MFI-2, 7/7/14, tab 37, p 351.

¹⁰² Zanatta MFI-2, 7/7/14, tab 42 p 365.

¹⁰³ Zanatta MFI-2, 7/7/14, tab 42 p 364.

¹⁰⁴ Zanatta MFI-1, 7/7/14, tab 28, p 219.

¹⁰⁵ Zanatta MFI-1, 7/7/14, tab 28, p 219.

¹⁰⁶ Butera MFI-1, 23/10/14, p 164/426, item 21.

12.00pm Ms Butera rings Ms Zanatta (4 minutes)¹⁰⁸

3.21pm Mr Parker rings Ms Zanatta (6 minutes)¹⁰⁹

3.57pm Ms Butera rings Ms Zanatta (5 minutes)¹¹⁰

133. Plainly Ms Butera and Ms Zanatta were afraid that they were going to be caught out, and that the Lis-Con complaint had really arisen because of the use that had been made of the Zanatta spreadsheets that Ms Zanatta had delivered on 29 July 2013. The complaint from Lis-Con had, however, directed attention to Mr Gaske, and they wanted things to stay that way. These conversations between the parties to this intrigue were about these matters. This flurry of communication was quite out of the ordinary.
134. While this is going on, and in response to the complaint from Lis-Con, Mr Atkin asked Ms Thurston, the Cbus Executive Manager of Governance and Risk, to undertake an investigation into the matter.¹¹¹ Ms Butera and Ms Zanatta were called upon to assist in that process.¹¹²
135. Following the completion of the brief internal investigation by Cbus into Mr Gaske's position, Cbus' lawyers (Holding Redlich) were instructed to send a letter to Cleary Hoare on 7 August 2013 noting that Cbus accepted it was inappropriate for Mr Gaske to have acted as he did, but indicating that Cbus was 'satisfied that this incident is an isolated occurrence'.¹¹³ That letter was sent following a conference with Holding Redlich attended by Mr Atkin, Ms Butera and Ms Zanatta.¹¹⁴

¹⁰⁷ Zanatta MFI-3, 3/10/14, p 224/426, item 50.

¹⁰⁸ Butera MFI-1, 23/10/14, p 165/426, item 25.

¹⁰⁹ Parker MFI-1, 24/10/14, p 34.

¹¹⁰ Butera MFI-1, 23/10/14, p 165/426, item 29.

¹¹¹ David Neil Atkin, 3/10/14, T:783.10-16.

¹¹² David Neil Atkin 23/10/14, T:914.21-23.

¹¹³ Zanatta MFI 2, 7/7/14, tab 27A, p 424D.

¹¹⁴ Lisa Zanatta, 7/7/14, T:56.19,

136. Ms Butera and Ms Zanatta knew that statement made in Holding Redlich’s letter of 7 August 2013 was not true, but were happy for it to be made. They wanted the matter to be shut down.

137. The complaint about the leakage of Lis-Con workers’ information to the CFMEU so shortly after their own escapade of late July 2013 had given Ms Butera and Ms Zanatta a fright. They were anxious to ensure that there would be no further complaints from Lis-Con that might result in a further investigation and a revelation of their own misconduct.

138. Records of activity on 8 August 2013 establish the following occurred:

8.41am Ms Zanatta rings Mr Parker (1 minute 30 second call);¹¹⁵

11.52am Ms Butera rings Ms Zanata (30 second call);¹¹⁶

11.53am iMessage from Ms Butera to Ms Zanatta:¹¹⁷

‘Lisa – did BP call you back? M’;

11.53am iMessage from Ms Zanatta to Ms Butera:¹¹⁸

‘No ill call him now’;

11.54am Mr Parker rings Ms Zanatta (1 minute call);¹¹⁹

11.55am Ms Zanatta rings Mr Parker (4 minute call);¹²⁰

11.59am iMessage from Ms Zanatta to Ms Butera:¹²¹

¹¹⁵ Zanatta MFI-3, 3/10/14.

¹¹⁶ Butera MFI-1, 23/10/14, p 165.

¹¹⁷ Butera MFI-3, 28/10/14, p 3, item 39.

¹¹⁸ Butera MFI-3, 28/10/14, p 3, item 38.

¹¹⁹ Parker MFI-1, 24/10/14, p 36.

¹²⁰ Parker MFI-1, 24/10/14, p 36.

'Everything is still safe in his hands only'.

139. These records demonstrate that Ms Butera and Ms Zanatta were anxious, on 8 August 2013, to ensure that Mr Parker still had the Zanatta spreadsheets and that there would be no more activity that could result in their exposure. Mr Parker gave them that comfort, telling Ms Zanatta that everything was still safe and in his hands only.
140. As an aside, the fact that Mr Gaske had been caught out was the source of some amusement for Mr Parker. Mr Parker told Mr Fitzpatrick that Mr O'Neill might mistakenly suspect that the trouble that Mr Fitzpatrick and Mr Parker were causing was caused by someone in the Queensland Branch of the CFMEU.¹²² Mr Parker found this amusing at the time, and he had a chuckle with Mr Fitzpatrick about it.¹²³

L DECEITFUL EVIDENCE GIVEN BY WITNESSES TO THE COMMISSION

141. A striking feature about this case study has been the staggering scale of the dishonesty displayed by a number of the witnesses who have been called to give evidence.
142. The following witnesses have given evidence to this Commission on this case study which they knew to be untrue – Ms Butera, Ms Zanatta, Mr Parker and Mr Roberts.
143. There is much to be said as to why the accounts of these witnesses was false, and deliberately so. It is for this reason that the recitation of the key events in the chronology set out above did not deal with such matters in any detail. To do so would have disrupted the orderly flow of a section of the submissions devoted to an identification of the facts that should be found. Having given that exposition, it is now convenient to turn and address the dishonest evidence of these witnesses and why it should be treated as such.

¹²¹ Butera MFI-3, 28/10/14, p 3, item 40.

¹²² Brain Fitzpatrick, witness statement, 15/7/14, para 114.

¹²³ Brain Fitzpatrick, witness statement, 15/7/14, para 114.

L1 The fictional position adopted up to the mid-afternoon of 3 October 2014

144. Mr Parker, Ms Butera and Ms Zanatta presented a fictional account of the relevant events in the evidence given by each of them up to the mid-afternoon of 3 October 2014 when Ms Zanatta was recalled to give further evidence.

145. According to Ms Zanatta's evidence given 7 July 2014, the sequence of events was that:

- (a) she had been asked by Ms Butera to 'review the company's arrears' because Mr Atkin had received a call from Mr Parker raising serious concerns about Lis-Con's arrears;¹²⁴
- (b) she was surprised by the volume of personal information contained in the spreadsheet sent to her by Mr Walls on 22 July 2013 and sought to take action to make sure it did not get leaked;¹²⁵
- (c) she provided Ms Butera with an update on 25 July 2013 and told her that Lis-Con was four months in arrears and it was agreed that Ms Zanatta would call Mr Parker to tell him that;¹²⁶
- (d) she called Mr Parker and said 'Lis-Con is four months in arrears';¹²⁷
- (e) she was not personally involved in the provision by Cbus of any information concerning the employees of Lis-Con to the CFMEU.¹²⁸ She said she did not know what information had been released to the CFMEU, had never seen the data that was released, and did not know who had released it.¹²⁹

146. Ms Butera's evidence was that:

¹²⁴ Lisa Zanatta, 7/7/14, T:28.43-29.42.

¹²⁵ Lisa Zanatta, 7/7/14, T:35-36.

¹²⁶ Lisa Zanatta, 7/7/14, T:38-46.

¹²⁷ Lisa Zanatta, 7/7/14, T:40.2.

¹²⁸ Lisa Zanatta, 7/7/14, T:21.7-9, 21.30.

¹²⁹ Lisa Zanatta, 7/7/14, T:35.3, 35.28.

- (a) Mr Atkin told her that Mr Parker had spoken to him and expressed a concern about the arrears status of Lis-Con. The conversation was no more specific than that;¹³⁰
- (b) she asked Ms Zanatta to make enquiries in relation to the arrears status of Lis-Con.¹³¹ The enquiry that Ms Zanatta was being asked to make was a routine enquiry,¹³² and would involve Ms Zanatta collating the arrears information and ringing Mr Parker to tell him about the results, and this is what occurred;¹³³
- (c) the query and the response to it was ‘unremarkable’;¹³⁴
- (d) she did not know how the personal information of Lis-Con employees ended up with Mr Parker.¹³⁵

147. Mr Parker’s account of events, as given to the Commission on the morning of 3 October 2014, was that:

- (a) he rang Mr Atkin and asked him to ‘provide any documentation from Cbus that would assist’ the CFMEU in its investigations into Lis-Con arrears;¹³⁶
- (b) he had a conversation with Ms Zanatta during which she told him that Lis-Con was four months in arrears, but by this stage he already knew that to be so from discussions with Mr Fitzpatrick.¹³⁷

148. Even before Ms Zanatta and Ms Butera were caught perjuring themselves by reference to documents that would later be produced to the Commission, the

¹³⁰ Maria Butera, 7/7/14, T:76.11.

¹³¹ Maria Butera, 7/7/14, T:77.24.

¹³² Maria Butera, 7/7/14, T:79.5.

¹³³ Maria Butera, 7/7/14, T:82.17-19, T83.44.46

¹³⁴ Maria Butera, 7/7/14, T:83.41.

¹³⁵ Maria Butera, 7/7/14, T:83.35.

¹³⁶ Brian Parker, 3/10/14, T:639.5-6.

¹³⁷ Brian Parker, 3/10/14, T:640.3.

sequence of events described by these witnesses beggared belief in light of the objective facts and circumstances.

149. The following points are noteworthy in this regard.
150. First, Mr Fitzpatrick had given Mr Parker the McWhinney table of 12 July 2013 which set out the Lis-Con arrears position (indeed set it out in far greater detail than the usual aggregated position, by identifying what each individual worker was owed). That being so, Mr Parker had no reason at all to be ringing Mr Atkin on 18 July 2013 to ask for information about the Lis-Con arrears position. He already knew what it was. He wanted something else – he wanted private contact details of the Lis-Con employees.
151. Second, as at 18 July 2013 Ms Butera and Ms Zanatta already knew that Lis-Con was 4 months in arrears. They had both participated in the email traffic between the highest members of the CFMEU and Cbus executives in late June 2013. Ms Zanatta had thereafter been extensively involved in an examination of the precise Lis-Con position and, indeed, had only recently taken instructions directly from the CFMEU to commence legal proceedings against Lis-Con to recover those very arrears. There was no need for Ms Zanatta to run a full query through Superpartners for Mr Parker on 18 July 2013 in order to find out what the arrears position was. She already knew it, and so did Ms Butera. They could have told Mr Parker on 18 July 2013 that not only was Lis-Con four months in arrears (which he already knew), that the CFMEU had already instructed Cbus to commence litigation against Lis-Con, and the matter had been referred to IFCC and its lawyers.
152. Third, Ms Zanatta was a senior and highly experienced Cbus manager. The suggestion that she needed guidance or approval from Ms Butera on 25 July 2013 about how to tell Mr Parker that Lis-Con was 4 months in arrears is not believable. It was her ‘bread and butter’.

153. Fourth, if the communications between Ms Butera, Ms Zanatta and Mr Parker were so innocent, there would have been no need for the secretive approach evident from the email of 24 July 2013 referred to above.
154. As to the third and fourth points just noted, the terms of the 24 July 2014 email from Ms Zanatta to Ms Butera make it clear that each of them were aware, as at that date, that the ‘data Brian Parker had requested’ was highly sensitive, and the two of them needed to meet face to face about how they were to ‘proceed with the information’.
155. If it had truly been a routine arrears query for Ms Zanatta to deal with, Ms Butera would have been staggered that Ms Zanatta would have thought it necessary for her to seek guidance (let alone have a meeting) about how to relay such basic information on to Mr Parker. There would have been no need for a meeting. Ms Butera would have simply sent an email back saying ‘Ring Brian and tell him’, and in doing so would have wondered quietly to herself why on earth Ms Zanatta had not been able to figure that out for herself. There was no email, because the instructions about how the data was to be delivered to Mr Parker could not be committed to writing. Neither of them wanted to leave a paper or electronic trail.
156. Ms Butera’s evidence on these matters, and what happened at this specially convened meeting of 25 July 2013, was farcical. At first she said she asked Ms Zanatta what to do about responding to this routine arrears query from Mr Parker.¹³⁸ Realising how absurd that sounded (that is, the notion that she would have to ask such a question) she then changed her evidence and said that she spoke to Ms Zanatta, a Cbus manager with 15 years’ experience in handling arrears queries, in the following terms:¹³⁹

Lisa, you need to review this. You need to look at the arrears. You need to look at the age of the arrears. You need to look at how many people are involved and report that back to Brian Parker.

¹³⁸ Maria Butera, 23/10/14, T:949.33.

¹³⁹ Maria Butera, 23/10/14, T:950.1-7.

157. This evidence was an insult to the intelligence of everyone in the hearing room, including her own. That is the sort of instruction that might be made to a Cbus trainee on their first day on the job. It is hardly what Ms Butera would have said to a person of Ms Zanatta's seniority and experience. This evidence came from the same witness who said, shortly after, that she was not a micro-manager and did not need to micro-manage someone of Ms Zanatta's seniority.¹⁴⁰

L2 Ms Zanatta's evidence on 3 October 2014

158. As noted above, when Ms Zanatta gave evidence on 7 July 2014 she denied any involvement in or knowledge of the leak. She made no mention of a visit to Sydney on 29 July 2013. She made no mention of her telephone calls with Mr Parker on 18 July 2013 in advance of the request of Mr Walls to run a query on Lis-Con. She made no mention of her telephone calls with Mr Parker on 29 and 30 July 2013 which immediately followed the date of delivery of the Zanatta spreadsheets. She made no mention of her five calls with Mr Parker in early August 2013 at the time of the Lis-Con complaint. She made no mention of her iMessages with Ms Butera on 26 July 2013, 29 July 2013 and 8 August 2013. Indeed there are a number of these matters which she has never acknowledged.

159. When Ms Zanatta was recalled to give evidence on 3 October 2014, she was aware of the fact that the Commission had called for and reviewed her diary for 29 July 2013, and her telephone records, and records that would indicate that Ms Zanatta had paid for one large taxi fare while in Sydney.

160. In that knowledge, Ms Zanatta concocted a story as to why she had come to Sydney on that day. She told that story in her evidence to the Commission on 3 October 2014.

161. Ms Zanatta's story was that she had come to Sydney to attend a meeting in the Sydney city office of Cbus, had been dropped off by a taxi at York Street, had asked the taxi driver to wait while she checked where the meeting would be, had rung from a public phone and discovered that the meeting had been cancelled, and

¹⁴⁰ Maria Butera, 23/10/14, T:955.25-26.

had then returned to the taxi and been driven back to the airport to catch her flight to Melbourne.¹⁴¹

162. This was, of course, a scandalous lie, like almost all of Ms Zanatta's evidence to that point.

163. When confronted with the evidence available to the Commission as to her movements on 29 July 2013 Ms Zanatta admitted that she had secretly delivered the documents to Sydney for the attention of Mr Parker. She admitted to having lied to the Commission on many occasions during the course of her evidence.¹⁴² She said she had done so in order to protect a number of individuals, including Mr Parker.¹⁴³

L3 Disposing of what little remains of the fictional account

164. Almost nothing of the fictional account of Ms Zanatta, Ms Butera and Mr Parker remained in the aftermath of the tsunami of Ms Zanatta's admissions.

165. On 3 October 2014 Ms Zanatta continued with a feeble attempt to suggest that Mr Parker had not told her that he wanted to obtain records showing the personal contact details of Lis-Con employees, and contended that Ms Butera was not one of the people she had been trying to protect.

166. When Mr Parker and Ms Butera were subsequently recalled after 3 October 2014, they too tried to suggest they knew nothing about any request or supply of information as to the private contact details of the Lis-Con workers by Ms Zanatta to the CFMEU office in Lidcombe.

167. And so this was to be the bedraggled last line of defence of these witnesses.

¹⁴¹ Lisa Zanatta 3/10/14 T:732-735.

¹⁴² Lisa Zanatta 3/10/14, T:750.31-38, T:752.1-5.

¹⁴³ Liza Zanatta, 3/10/2014, T:750.43ff.

168. Their evidence as to that matter beggared belief even before Ms Zanatta's admissions and the discovery of the evidence which led to her further examination on 3 October 2013, for reasons which have already been explained.
169. That same evidence had now become utterly incredible in the face of Ms Zanatta's admissions. The landscape had changed. Now, on top of all of the problems which bedevilled that evidence prior to 3 October 2014, there was direct evidence of a secret delivery of the Zanatta spreadsheets to the union's office for the attention of Mr Parker. There was no need for covert behaviour of this kind if it was just routine arrears information that had been sought and provided. Mr Parker accepted that to be so.¹⁴⁴ Ms Zanatta would hardly take it upon herself to act in this covert and deliberately improper way in order to supply information that nobody had ever asked for.
170. The conclusion that the denials as to the involvement of Ms Butera and Mr Parker were incredible is reinforced by the further materials produced to the Commission, being the iMessages set out earlier in these submissions. They evidence a deeply held concern by each of Ms Butera, Ms Zanatta and Mr Parker in July and August 2013 that the information that the Cbus officers would be providing, and did provide, was highly sensitive and needed to be handled carefully. They also reveal the panic that set in when they became aware of Lis-Con's complaint that employees were being contacted by CFMEU officials, and Mr Parker's assurance that the information remained safe in his hands.
171. The denial by each of these three witnesses of Ms Butera's and Mr Parker's knowledge of and involvement in the affair is out-and-out perjury.
172. Ms Butera's and Mr Parker's involvement in the leak is obvious from the records now before the Commission. In order to demonstrate that fact it is necessary to circle back, if only summarily, over some of the evidence already addressed.
173. In this regard, the important matters for consideration include the following:

¹⁴⁴ Brian Parker, 28/10/14, T:1175.25.

- (a) as previously explained, Mr Parker had no reason to ask Cbus for information about the Lis-Con's arrears position on 18 July 2013. He already knew what that was. Mr Fitzpatrick had only just told him and given him the McWhinney table;¹⁴⁵
- (b) each of Ms Zanatta and Ms Butera knew that Lis-Con was four months in arrears as at July 2013. If that was all Mr Parker was asking for, they could have told him that on 18 July 2013 and that would have been the end of the matter;
- (c) Mr Parker told Mr Fitzpatrick that he was getting what he wanted from Cbus and they had agreed to give it to him on the quiet.¹⁴⁶ Arrears information would not have to be dealt with in this way. Only sensitive information would need to be given "on the quiet";
- (d) on 24 July 2013 Ms Butera received a guarded email from Ms Zanatta about "the data requested by Brian Parker", and calling for a meeting the next day in order to agree on how "to proceed with the information", which meeting took place;¹⁴⁷
- (e) there was no need for such communication between Ms Zanatta and Ms Butera if all Ms Zanatta had to do was pass on arrears information to Mr Parker;
- (f) the sensitive information that Ms Zanatta had at the time, and which could not be dealt with in a routine way, and which would need to be dealt with "on the quiet", was the personal contact details of the Lis-Con workers;

¹⁴⁵ Fitzpatrick MFI-1, 15/7/14, p 103-107.

¹⁴⁶ Brian Parker, 24/10/14, T:992.42.

¹⁴⁷ Zanatta MFI-1, 7/7/14, p 119.

- (g) that sensitive information was actually attached to the email that Ms Zanatta sent Ms Butera on 24 July 2013;¹⁴⁸
- (h) Ms Zanatta sent Ms Butera an iMessage on 26 July 2013 telling her she had made arrangements to drop off the information to Brian Parker’s personal assistant, and that Mr Parker was expecting a call from Ms Butera;¹⁴⁹
- (i) Ms Butera then rang Mr Parker,¹⁵⁰ and after doing so, sent an iMessage to Ms Zanatta that Mr Parker understood completely and was committed to using the information carefully¹⁵¹;
- (j) on the very day Ms Zanatta was in Sydney dropping the Zanatta spreadsheets off to Mr Parker’s assistant, Ms Butera sent an iMessage to Ms Zanatta asking if everything was okay, to which Ms Zanatta responded “yes thank you – done delivered”;¹⁵²
- (k) Ms Butera’s immediate response upon hearing of a complaint by Lis-Con about a leak from Cbus was to send Ms Zanatta an email headed “In-confidence” saying that they needed to speak.¹⁵³ They then had a 5 minute conversation.¹⁵⁴ This led to a flurry of calls between Ms Zanatta and Mr Parker and between Ms Zanatta and Ms Butera the following day;¹⁵⁵
- (l) when Cbus wrote back to Lis-Con indicating that the leak had come from Mr Gaske alone, and was an isolated occurrence, there was then another flurry of calls between Ms Zanatta and Ms Butera, and also between Ms

¹⁴⁸ Zanatta MFI-1, 7/7/14, p 119.

¹⁴⁹ Butera MFI-3, 28/10/14, p 2.

¹⁵⁰ Butera MFI-2, 23/10/14, p 2.

¹⁵¹ Butera MFI-3, 28/10/14, p 2.

¹⁵² Butera MFI-3, 28/10/14, p 2.

¹⁵³ Zanatta MFI-1, 7/7/14, p 219.

¹⁵⁴ Butera MFI-1, 23/10/14, p 3.

¹⁵⁵ See, for example, Zanatta MFI-3, 3/10/14, p 8; Butera MFI-1, 23/10/14, p 4 and Parker MFI-1, 24/10/14, p 34.

Zanatta and Mr Parker.¹⁵⁶ In between those calls Ms Butera sent an iMessage to Ms Zanatta indicating she was worried about whether Ms Zanatta had been able to speak with Mr Parker, and Ms Zanatta sent a message back saying that “everything is still safe in his hands only”.¹⁵⁷

174. As described shortly, Ms Butera and Mr Parker gave farcical evidence in relation to the messages referred to in (h), (i), (j) and (l) above, and could not provide any sensible explanation for them.
175. The evidence described above as to Ms Butera’s and Mr Parker’s knowing involvement in the delivery and receipt of the personal contact information of Lis-Con workers is not just compelling. It is irrefutable.
176. Each knew in July and August 2013 that Ms Zanatta had made arrangements to drop information off to Mr Parker’s personal assistant. Not only are there documentary records of Ms Zanatta having made these arrangements with Mr Parker, and a record of Ms Zanatta telling Ms Butera that she had done so, but there is also a record which establishes that Ms Butera herself had made a highly remarkable telephone call to Mr Parker (the most senior officer of the CFMEU in New South Wales) to obtain a personal commitment from him to use very carefully the information that was to be delivered. And of course, the evidence is that Ms Zanatta did deliver the documents for Mr Parker’s attention on 29 July 2013.
177. These events were relatively recent, and highly remarkable. It was a most unusual series of events that led to the delivery of the Zanatta spreadsheets. According to Mr Parker, there had never been another case where an arrangement was made for a Cbus employee to drop a document off in the Lidcombe office for his personal assistant (‘no, definitely, no’).¹⁵⁸ It was a ‘very unusual’ event.¹⁵⁹

¹⁵⁶ See, for example, Zanatta MFI-3, 3/10/14, p 8; Butera MFI-1, 23/10/14, p 4 and Parker MFI-1, 24/10/14, p 36.

¹⁵⁷ Butera MFI-3, 28/10/14, p 3.

¹⁵⁸ Brian Parker, 28/10/14, T:1175.45.

¹⁵⁹ Brian Parker, 28/10/14, T:1179.34-35.

178. The memorable nature of those events would have been accentuated by the scare that Ms Butera, Ms Zanatta and Mr Parker obviously received not long after, when allegations started to be made by Lis-Con about the leaking of information from Cbus. Mr Parker agreed that he would have remembered events of this kind if they had occurred.¹⁶⁰
179. In these circumstances, these unusual events of August 2013 could not have, and had not, drifted out of the memories of any one or more of Ms Butera, Ms Zanatta or Mr Parker by the time they were called to give their evidence in mid 2014. They remembered the events clearly. Yet they came to this Commission and lied about these matters. The very fact they have lied is, of itself, telling. They lied because they knew that if they told the truth, they would ‘incriminate’ themselves.
180. One then adds to all of this Mr Fitzpatrick’s original evidence to the effect that: (a) Mr Parker told him that he was getting the information from two women at Cbus¹⁶¹, a ‘Liz or Lisa’ and ‘one of the bosses’, who would be sacked if they were caught out; (b) Mr Parker had said that he wanted to get the contact details for Lis-Con workers so that the CFMEU could ring them;¹⁶² and (c) Mr Parker gave him the Zanatta spreadsheets for that purpose.¹⁶³ There is no reason to doubt that this is what occurred. Mr Fitzpatrick’s account of the events has been corroborated by the materials produced to this Commission since he gave his statement.
181. By way of summary, the following matters, namely:
- (a) the terms of the communications described above involving Ms Butera and Ms Zanatta;
 - (b) the fact Ms Zanatta went to extraordinary lengths to secretly convey documents to Mr Parker’s office in person;
 - (c) the fact Ms Butera and Mr Parker knew about that;

¹⁶⁰ Brian Parker, 28/10/14, T:1171.41-45.

¹⁶¹ Brian Fitzpatrick, witness statement, 15/7/14, p 107; Brian Fitzpatrick, 15/7/14, T:44.7-8.

¹⁶² Brian Fitzpatrick, witness statement, 15/7/14, para 102.

¹⁶³ Brian Fitzpatrick, witness statement, 15/7/14, para 111.

- (d) the fact Ms Butera and Mr Parker knew that the documents that were secretly delivered contained sensitive information that had to be handled very carefully;
- (e) the fact that the information in those documents that was sensitive was the personal contact details of Lis-Con workers;
- (f) the fact that Ms Zanatta, Ms Butera and Mr Parker were prepared to go so far as to lie on their oath about these matters in the witness box in order to conceal the true position;
- (g) the fact that the story about a routine arrears query on 18 July 2013 makes no sense when assessed against what Mr Parker, Ms Butera and Ms Zanatta actually knew by that date about Lis-Con's arrears;
- (h) the fact Ms Zanatta said she lied to protect Mr Parker. If Mr Parker had done nothing wrong there would be nothing to protect him from and no need to lie; and
- (i) Mr Fitzpatrick's evidence as to what Mr Parker said he was obtaining from Cbus, and who he was obtaining it from,

all point overwhelmingly to the conclusion that Ms Zanatta, Ms Butera and Mr Parker knew that the information provided to Mr Parker, and about which such care needed to be taken, was the personal contact information of the Lis-Con workers. They knew about it both in July and August 2013, and they had not forgotten by the time they gave their evidence to this Commission in 2014.

182. Having regard to the fact that Ms Butera was Ms Zanatta's superior within Cbus, and the terms of the 24 July 2013 email addressed to Ms Butera from Ms Zanatta in which the latter asked Ms Butera how *she* would like Ms Zanatta to proceed with the information, the appropriate finding is that Ms Butera not only knew what Ms Zanatta was doing, but positively approved and authorised it.

L4 Ms Butera's perjury

183. The nature and extent of Ms Butera's perjury in this Commission is staggering.
184. When all of the evidence described above was laid before her, the only credible course for Ms Butera to have taken was to admit the falsity of her evidence to that point and provide truthful evidence that would actually assist the Commission. She declined that opportunity, several times, and in the process aggravated her perjury in such a fashion as to expose herself to consequences far more severe than would otherwise have been the case.
185. Of particular note was Ms Butera's evidence in relation to the matters the subject of the iMessage communications with Ms Zanatta. Her evidence in relation to these communications was obviously false.
186. In relation to the iMessage of 26 July 2013, from Ms Zanatta to Ms Butera in which Ms Zanatta reported to her that she had made arrangements to drop off the information to Mr Parker's personal assistant and that he was expecting Ms Butera's call¹⁶⁴ (which iMessage was sent immediately after Ms Zanatta had, in fact spoken with Mr Parker¹⁶⁵):
- (a) before Ms Butera was shown the iMessage, she said that if such information had been communicated to her that would be a 'very significant thing', and that such a thing had never happened.¹⁶⁶ She rejected such a thing ever happened;¹⁶⁷
 - (b) after she was shown the iMessage (which recorded the communication she had denied and which she said she would have remembered if it had occurred) she said 'I don't remember any of this';¹⁶⁸

¹⁶⁴ Butera MFI-3, 28/10/14, p 2.

¹⁶⁵ Zanatta MFI-3, 3/10/14, p 3.

¹⁶⁶ Maria Butera, 28/10/14, T:1122.42-1123.4.

¹⁶⁷ Maria Butera, 28/10/14, T:1126.4-11.

¹⁶⁸ Maria Butera, 28/10/14, T:1131.19.

- (c) she proceeded to deny, in the face of the iMessages, that she was acting in concert with Ms Zanatta;¹⁶⁹
- (d) she proceeded to deny, in the face of the iMessages, that she knew Ms Zanatta was going to Sydney;¹⁷⁰
- (e) when she was shown the iMessage, and in the face of it, she said she did not know what information Ms Zanatta was talking about through the communication,¹⁷¹ and said she did not know what information Ms Zanatta was dropping off;¹⁷²
- (f) when she was given every fair opportunity to give truthful evidence on the matter, and retract her previous evidence about having had no prior knowledge, involvement or participation in the release of the information, she declined to take it, and instead said “You’ve heard my evidence”.¹⁷³

187. In relation to Ms Butera’s iMessage of 26 July 2013 to Ms Zanatta in which she said she had spoken with Mr Parker, and that he understood completely and was committed to using the information very carefully¹⁷⁴ (which message was sent immediately after Ms Butera had, in fact, spoken with Mr Parker¹⁷⁵), and in relation to her conversation with Mr Parker as recorded in that iMessage:

- (a) before she was shown the iMessage, she said that such a conversation with Mr Parker ‘never happened’;¹⁷⁶
- (b) she agreed that if such a conversation had occurred, it would be unusual and she would remember it;¹⁷⁷

¹⁶⁹ Maria Butera, 28/10/14, T:1131.21-23.

¹⁷⁰ Maria Butera, 28/10/14, T:1131.38-30.

¹⁷¹ Maria Butera, 28/10/14, T:1134.5.

¹⁷² Maria Butera, 28/10/14, T:1134.40, 1135.42.

¹⁷³ Maria Butera, 28/10/14, T:1132.10 and 19.

¹⁷⁴ Butera MFI-3, 28/10/14, p 2.

¹⁷⁵ Butera MFI-1, 23/10/14, p 2.

¹⁷⁶ Maria Butera, 28/10/14, T:1126.35.

- (b) she denied having ever reported such a conversation to Ms Zanatta;¹⁷⁸
- (c) when she was shown the iMessage, and in the face of it, she said that the message ‘could mean anything’¹⁷⁹, that she had ‘no clue’¹⁸⁰ and did not remember it¹⁸¹ and that ‘it could be about anything’¹⁸², and ‘it could have been about sponsorship arrangements for all I know’.¹⁸³

188. In relation to Ms Butera’s own iMessage of 29 July 2013 to Ms Zanatta in which she asked ‘Everything ok’¹⁸⁴, which was at a time shortly after Ms Zanatta was due to drop the documents off to the CFMEU office in Lidcombe on that day:

- (a) before she was shown the iMessage, she said she did not communicate with Ms Zanatta on that day;¹⁸⁵
- (b) after being shown the iMessage, she changed her evidence and said she could not remember whether she communicated with Ms Zanatta on that day;¹⁸⁶
- (c) she then posited this possibility – ‘I could have just been asking her if everything was okay’.¹⁸⁷ This was a comical answer, and Ms Butera was warned about that.¹⁸⁸ She was given every opportunity to tell the truth,

¹⁷⁷ Maria Butera, 28/10/14, T:1126.32-42.

¹⁷⁸ Maria Butera, 28/10/14, T:1126.44-1127.11.

¹⁷⁹ Maria Butera, 28/10/14, T:1135.8.

¹⁸⁰ Maria Butera, 28/10/14, T:1136.3.

¹⁸¹ Maria Butera, 28/10/14, T:1136.8.

¹⁸² Maria Butera, 28/10/14, T:1136.18.

¹⁸³ Maria Butera, 28/10/14, T:1136.27-28.

¹⁸⁴ Butera MFI-3, 28/10/14, p 2.

¹⁸⁵ Maria Butera, 28/10/14, T:1127.42-1128.1.

¹⁸⁶ Maria Butera, 28/10/14, T:1139.39-1140.3.

¹⁸⁷ Maria Butera, 28/10/14, T:1141.18-19.

¹⁸⁸ Maria Butera, 28/10/14, T:1141, 21-22.

and every warning as to the extremely dangerous territory she was entering by giving deliberately false evidence;¹⁸⁹

- (d) it was then squarely put to her that she was checking that Ms Zanatta was okay because a secret mission was being undertaken to deliver material to the CFMEU in Lidcombe, NSW. She then gave this unusual answer – ‘I don’t know that for a fact’.¹⁹⁰

189. In relation to Ms Zanatta’s responsive iMessage of the same date, which read ‘yes thank you – done delivered’:

- (a) before she was shown the iMessage, she said that she had not communicated with Ms Zanatta in that way (‘that didn’t happen’);¹⁹¹
- (b) before she was shown this iMessage but after she had been shown the iMessages of 26 July 2013, she continued to deny that she knew on that date that Ms Zanatta was going to Sydney;¹⁹²
- (c) after she was shown the iMessage, and in the face of it, Ms Butera said she did not wonder what Ms Zanatta was referring to, and that ‘it could have been about anything’.¹⁹³

190. In relation to the iMessage exchanges of 8 August 2013 between Ms Butera and Ms Zanatta, through which anxiety was expressed about whether Ms Zanatta had spoken with ‘BP’ (i.e. Mr Parker), and in which Ms Zanatta then reported that ‘everything is still safe in his hands only’ and Ms Butera then replied ‘Thanks Lisa’:¹⁹⁴

¹⁸⁹ See, for example, Maria Butera, 28/10/14, T:1137.27ff.

¹⁹⁰ Maria Butera, 28/10/14, T:1141.44.

¹⁹¹ Maria Butera, 28/10/14, T:1128.6.

¹⁹² Maria Butera, 28/10/14, T:1131.28-30.

¹⁹³ Maria Butera, 28/10/14, T:1142.23-31.

¹⁹⁴ Butera MFI-3, 28/10/14, p 3.

- (a) before she was shown the iMessage, she said that she did not ask Ms Zanatta to chase Mr Parker after the Lis-Con complaint was raised ('I reject that'),¹⁹⁵ that Ms Zanatta did not communicate to her that everything was still safe in Mr Parker's hands, and that if that had happened it would be unusual and she would remember it;¹⁹⁶
- (b) after she was shown the iMessage, and in the face of it, she said that the initials 'BP' 'could mean Brian Parker', but that she could not be sure she understood it at the time,¹⁹⁷ and then when pressed, said she could not do better than to surmise that she 'probably' understood that.¹⁹⁸ Such were the infinite bounds of Ms Butera's dishonesty;
- (c) further, on the comment in the iMessage that 'everything is still safe in his hands only', she fancifully said 'I don't know what we were talking about' and that she did not recall it.¹⁹⁹ Later she said 'I didn't know what that that meant'²⁰⁰ (which was inconsistent with her previous answer that she did not recall the message, in that she was now saying, in effect, that she recalled the message and did not know, at the time of its receipt, what was meant by it). However she did not respond to Ms Zanatta expressing any surprise. Her response to the iMessage was an immediate 'Thanks Lisa';²⁰¹
- (d) Ms Butera was asked what her explanation was for what Ms Zanatta had said in the message. Ms Butera's response was 'I don't have one';²⁰²
- (e) when it was put to Ms Butera that this communication arose in circumstances where there had been a complaint from Lis-Con about its

¹⁹⁵ Maria Butera, 28/10/14, T:1129.22 and 129.40-44.

¹⁹⁶ Maria Butera, 28/10/14, T:1130.9-24.

¹⁹⁷ Maria Butera, 28/10/14, T:1143.20-27.

¹⁹⁸ Maria Butera, 28/10/14, T:1143.38-39.

¹⁹⁹ Maria Butera, 28/10/14, T:1144.23-39.

²⁰⁰ Maria Butera, 28/10/14, T:1146.29-32.

²⁰¹ Butera MFI-3, 28/10/14, p 3.

²⁰² Maria Butera, 28/10/14, T:1145.6.

workers being contacted, and that she was very concerned that someone at the CFMEU was using information that Ms Zanatta had dropped off to Mr Parker, a telling answer emerged. Ms Butera said ‘I couldn’t be sure that was the information’.²⁰³ This answer contained an implicit acceptance by Ms Butera that she knew Ms Zanatta had dropped that information off. She knew about that. What she could not be sure about was whether that was the information the CFMEU was using to contact Lis-Con employees.

191. This description of Ms Butera’s evidence speaks for itself. It was the most unimpressive and dishonest display of any witness who has given evidence to this Commission. It ranks above Ms Zanatta, but only because the latter was prepared to make some (but not all) appropriate admissions.
192. Time does not permit these submissions to set out, in exhaustive fashion, the full length and breadth of Ms Butera’s perjury. Some of the other more egregious examples of her false evidence (that is, in addition to those already set out above) appear in schedule 1 to these submissions.

L5 Ms Zanatta’s perjury

193. The most notable perjury committed by Ms Zanatta has been described above, when dealing with her evidence of 3 October 2014.
194. Other examples of perjured evidence given by Ms Zanatta are set out in schedule 2 to these submissions.

L6 Mr Parker’s perjury

195. The submissions set out above lead, inexorably, to the conclusion that Mr Parker has also perjured himself. The evidence he gave as to his lack of involvement of and awareness in the Cbus leak was not true, and he knew it was not true when he gave the evidence.

²⁰³ Maria Butera, 28/10/14, T:1146.14.

196. Mr Parker's evidence was a constantly moving feast, shifting here and there as more evidence came to light.
197. In August 2014 he told Ms Mallia that he had telephoned Mr Atkin in July 2013 to get information about Lis-Con compliance, and then had 'no further contact with anyone from Cbus about Lis-Con'.²⁰⁴ No mention of a single phone call with Ms Zanatta or Ms Butera.
198. On 3 October 2014 that position had changed. On that date he accepted there had been a brief phone call to Cbus for Lis-Con arrears information and a brief phone call back from Cbus with that information.²⁰⁵ This conveniently dovetailed with Ms Zanatta's evidence to that point.
199. Then, after Ms Zanatta made her admissions on 3 October 2014, other 'possibilities' or 'probabilities' began to admit themselves in Mr Parker's mind. On occasion Mr Parker would advance different possibilities in answer to the one question – for example 'I didn't', 'I can't recall' and 'I'm not privy to' in answer to the same question within the space of about 15 seconds.²⁰⁶ In the end, Mr Parker typically sought sanctuary in the harbour of 'I don't recall'. Mr Parker presented as a witness who was not prepared to tell the truth, but at the same time wanted to avoid perjury charges.
200. In this regard, on 24 October 2014 Mr Parker said in his evidence:
- (a) he 'probably' told Mr Fitzpatrick that he was getting what he wanted from Cbus and they had agreed to give it to him on the quiet;²⁰⁷
 - (b) he 'possibly' asked Ms Zanatta to get some information about Cbus members who were Lis-Con employees;²⁰⁸

²⁰⁴ Rita Mallia, witness statement, 25/8/14, para 91.

²⁰⁵ Brian Parker, 3/10/14, T:639.42-640.9 and T:639.42ff.

²⁰⁶ Brian Parker, 28/10/14, T:1187.21-34.

²⁰⁷ Brian Parker, 24/10/14, T:992.38-42.

²⁰⁸ Brian Parker, 24/10/14, T:992.11-15.

- (c) Ms Zanatta ‘could have’ told him on 26 July 2013 that she was coming to Sydney to give him documents, but he could not recall;²⁰⁹
- (d) Ms Zanatta ‘possibly’ told him in the phone call on the afternoon of 29 July 2013 that she had flown to Sydney on his behalf and had then returned to Melbourne, and she probably told him she had dropped all the material he wanted into the office at Lidcombe;²¹⁰
- (e) he either ‘probably’, or ‘possibly’, had a discussion with Ms Zanatta on 30 July 2013 about the fact she had dropped some documents off, and what was happening with them, but he could not recall.²¹¹

201. After the revelation of the iMessages to Mr Parker on 28 October 2014, he said that:

- (a) he ‘could not recall’ the phone conversation recorded in Ms Butera’s iMessage of 26 July 2013 about him ‘understanding completely’ and being ‘committed to using the information very carefully’;²¹²
- (b) he denied having a recollection of it being arranged with Ms Zanatta on Friday, 26 July 2013 that she would drop off documents to his personal assistant in Lidcombe the following Monday;²¹³
- (c) he denied having said to Ms Zanatta on 8 August 2013 that everything was still safe in his hands, even though that is precisely what Ms Zanatta reported to Ms Butera in an iMessage of that date, sent immediately following a telephone call between Ms Zanatta and Mr Parker.²¹⁴ He was prepared to deny that even though, on his own evidence, he could ‘not

²⁰⁹ Brian Parker, 24/10/14, T:993.33-37.

²¹⁰ Brian Parker, 24/10/14, T:1000.36-39.

²¹¹ Brian Parker, 24/10/14, T:1002.37.

²¹² Brian Parker, 28/10/14, T:1179.8, 1183.45 and 1186.40.

²¹³ Brian Parker, 28/10/14, T:1181.32.

²¹⁴ Brian Parker, 28/10/14, T:1188.47.

recall' what was said in the conversation.²¹⁵ When the iMessage was shown to him and he was again asked if he had said this, his evidence was 'I wouldn't have a clue'.²¹⁶ On that evidence, Mr Parker appeared to accept that he may well have said it – he just would not know. If his answer does not mean that, it is yet another evasive, nonsensical and ultimately meaningless answer from Mr Parker in circumstances where he refused to give the only sensible answer that could be given, namely an admission.

202. His remaining denials, as has been explained above, are incapable of acceptance. Mr Parker has deliberately avoided telling this Commission what he knows about the Cbus leak in order to protect himself.

L7 A few further observations on the perjury

203. Before leaving the topic of the false evidence of Ms Butera, Ms Zanatta and Mr Parker, a few further observations should be made.

204. First, if these witnesses had told the truth at the outset, the Commission would have been spared great expense, and the case study could have been concluded swiftly and economically. It is anticipated that the cost, trouble and difficulty that this Commission has had to endure in dealing with this false evidence is a matter that will be of considerable significance in any subsequent prosecution.

205. Second, the fact that Ms Butera, Ms Zanatta and Mr Parker were prepared to not only lie in answer to Mr Fitzpatrick's evidence, but sit back and allow what they knew to be wild allegations to be made against Mr Fitzpatrick (which allegations he rightly described as 'nonsense' and 'rubbish')²¹⁷, makes their perjury all the more unsavoury. It also makes regrettable the CFMEU's inappropriate public criticism of what it said it perceived to be the Commission's position in relation to

²¹⁵ Brian Parker, 28/10/14, T:1189.20-22.

²¹⁶ Brian Parker, 28/10/14, T:1190.40

²¹⁷ Brian Fitzpatrick, 24/9/14, T:299.20-24 and T:340.26-33 (It is not suggested Counsel had such knowledge, nor is it suggested that Counsel was not entitled to ask the question on the information then to hand).

Mr Fitzpatrick.²¹⁸ Those comments should now be the subject of public apologies from the CFMEU to both the Commission and Mr Fitzpatrick.

L8 Mr Roberts

206. The last witness deserving of attention in this section of the chapter is Mr Roberts.
207. As earlier noted, Mr Roberts is the senior legal officer of the Construction and General Division of the CFMEU nationally.
208. The CFMEU provided the Commission with a statement from Mr Roberts, and Mr Roberts subsequently gave evidence that the statement was true.
209. In that statement Mr Roberts asserted that he received a yellow folder from Mr Fitzpatrick on 15 July 2013 containing various documents, including two copies of the Zanatta spreadsheets.²¹⁹
210. Mr Roberts annexed what he said was a copy of the contents of the yellow folder he received on 15 July 2013 to his statement, at annexure TR-9.
211. The original yellow folder was subsequently produced by the CFMEU, and was tendered as Fitzpatrick MFI-2, 24 September 2014.
212. Annexure TR-9 to Mr Roberts' statement was thicker than the yellow folder, and this was observed by the Commissioner.²²⁰ CFMEU's senior counsel stated that the originals of the Zanatta spreadsheets, plus one photocopy, had been in the yellow folder.²²¹
213. Mr Roberts did not refer to the Zanatta spreadsheets anywhere in the body of his statement, and the fact that his evidence was to this effect, and the significance of that evidence in the context of this case study, was not highlighted by the CFMEU

²¹⁸ Brian Fitzpatrick, 24/9/14, T:341.32-38.

²¹⁹ Thomas Roberts, witness statement, 23/9/14, para 18.

²²⁰ The Hon. John Dyson Heydon AC QC, 24/9/14, T:314.13-14.

²²¹ Mr Agius SC, 24/9/14, T:314.30-43.

or Mr Roberts when the statement was provided. The fact and significance of this evidence would only have been apparent to a keen eye undertaking a careful review of the bulky exhibits to his statement, keeping in mind at the time of that review the precise chronology in respect of the Cbus leak.

214. Mr Roberts' evidence was advanced in order to support a theory to the effect that Mr Fitzpatrick must have had the Zanatta spreadsheets before 18 July 2013 (the date of Ms Zanatta's request of Mr Walls), and as such, he must have got them himself and from some 'secret source' within Cbus before Ms Zanatta began her work on 18 July 2013.²²² The forensic pursuit was to try to distance Mr Parker from the conduct of Ms Zanatta on and after 18 July 2013.
215. This was done in circumstances where Mr Parker had decided not to put on a statement for the Commission denying anything that Mr Fitzpatrick had said. Without anything from Mr Parker, the CFMEU needed some shred of direct evidence to challenge Mr Fitzpatrick in the way described above. Mr Roberts' statement served this purpose.
216. Mr Roberts' statement that he had received the Zanatta spreadsheets from Mr Fitzpatrick on 15 July 2013 looked highly questionable at the time he made it. In this regard, at that time:
- (a) there was no record to indicate that anyone had sought and obtained from Superpartners or Cbus any document containing the private contact details of Lis-Con employees prior to Ms Zanatta's request of Mr Walls on 18 July 2013;
 - (b) the various internal Cbus and Superpartners emails already in evidence in the period from 18 to 24 July 2013 created a strong impression that the Zanatta spreadsheets had been created out of the documents that Mr Walls sent Ms Zanatta on 22 July 2013. They were identical, save that

²²² Brian Fitzpatrick, 24/9/14, T:299.20-23.

some columns had been deleted, and evidence had already been given by Mr Walls that his document was able to be manipulated in this way;²²³

- (c) Mr Walls' document of 22 July 2013 was sent by Ms Zanatta to Ms Butera by email on 24 July 2013, referring to the documents as the data that Brian Parker had requested.²²⁴

217. All of those matters were known to Mr Roberts at the time he prepared his statement on 15 August 2014, and when he came to give his evidence on the first occasion on 23 September 2014. He was the most senior lawyer in the entire Division,²²⁵ and had been closely following the hearings and evidence pertaining to his Division.²²⁶

218. All of those matters would have given any reasonably minded person in Mr Roberts' position cause to have real doubt as to whether they received the Zanatta spreadsheets from Mr Fitzpatrick on 15 July 2015, and prior to 22 July 2014.

219. However, Mr Roberts was not so minded. In the witness box on 23 September 2013, not only did he say that paragraph 15 of his statement was true, he went further and said he was 'very sure' about when he got the Zanatta spreadsheets from Mr Fitzpatrick, and that he could 'be sure of those matters'.²²⁷

220. There was no reason for Mr Roberts to have any confidence about such matters. He had no diary note in which he recorded receipt of those particular documents. He was working off memory. Even on his own evidence, he had only glanced at the documents in the yellow folder that Mr Fitzpatrick handed him, and then put them on his shelf where they proceeded to gather dust for almost a year.²²⁸ His evidence was that he effectively did nothing with these materials when they were given to him in July 2013, even though he was the one given responsibility by the

²²³ Anthony Walls, 7/7/14, T:116.22ff.

²²⁴ Zanatta MFI-1, 7/7/14, p119ff.

²²⁵ Thomas Roberts, 24/10/14, T:1027.33-38.

²²⁶ Thomas Roberts, 24/10/14, T:1028.17-26.

²²⁷ Thomas Roberts, 23/9/14, T: 211.31-212.20.

²²⁸ Thomas Roberts 23/9/2014, T:216.22-23; T:216.44 and T:217.35-36.

National Executive for marshalling the materials to use in the union's fight against Lis-Con.²²⁹

221. Mr Roberts' evidence therefore lacked credibility when given. In light of the matters set out above, known to Mr Roberts on 23 September 2013, he could not have been sure that the yellow folder he received from Mr Fitzpatrick on 15 July 2013 included the Zanatta spreadsheets. His evidence to the contrary was exaggerated in order to assist his union and protect Mr Parker's position.
222. The credibility of Mr Roberts' evidence is now in tatters, as a result of events which have transpired since 23 September 2013, including Ms Zanatta's evidence of 3 October 2014, his own performance in the witness box when recalled on 24 October 2014, and the content of the iMessages between Ms Butera, Ms Zanatta and Mr Parker.
223. To explain further, on 3 October 2014 Ms Zanatta admitted that she had personally delivered documents for Mr Parker on 29 July 2013. As described above, she said she suspected the documents she delivered were the Zanatta spreadsheets, and she did not identify any other documents as being ones she may have delivered. She positively rejected a suggestion raised by the CFMEU's counsel that the document she delivered was a print out of the totality of the attachment to Mr Walls' email of 22 July 2013. That possibility appears to have been raised in an attempt to save Mr Roberts' evidence and credit. That attempt failed.
224. Mr Roberts was summoned to be examined again on 24 October 2014 in light of the admission of Ms Zanatta, and in light of certain other evidence, including a Superpartners query log which indicated that the only query that had been run in respect of Lis-Con was the one Mr Walls had run on 22 July 2014.
225. On 24 October 2014, Mr Roberts was afforded the opportunity to consider a substantial list of matters (which have been set out in the submissions and not repeated here) which all weighed strongly against Mr Roberts having received the

²²⁹ Parker MFI-1, 3/10/14, p 76; Thomas Roberts, 23/9/14, T:218.34-34.

Zanatta spreadsheets in the yellow folder on 15 July 2013,²³⁰ that any reasonably minded person would have accepted that their recollection was probably faulty on that matter, and that if they did get those documents, they must have received them sometime after 22 July 2013.

226. Again, Mr Roberts proved to be not so minded. While he accepted that his memory is not infallible, he was not prepared to do better than to say that it was ‘possible’ that his recollection was faulty.²³¹
227. His refusal to make obviously appropriate concessions was unimpressive, and reflected poorly on his credit. He was too interested in trying to protect himself, Mr Parker and the CFMEU’s cause. When this was put to him, and reference was made to the fact that Ms Mallia had described working as a lawyer for the CFMEU as a vocation rather than a job, Mr Roberts played word games and pretended he did not understand what the word vocation meant in that context.²³² This reflected poorly on him.
228. It is telling that, when Mr Roberts was recalled on 24 October 2014, he said he had something he wished to say by correction or clarification. What he said had no real bearing on any issue – it was a conversation with Mr O’Grady about the fact there was a file in his room.²³³ He said he made this further statement out of a desire to be ‘open’.²³⁴
229. However, the subject matter of this short new oral statement was something he said had occurred to him after hearing Ms Zanatta’s evidence on 3 October 2014.²³⁵ Mr Roberts was quite unable to explain why, if he was seized with a

²³⁰ Thomas Roberts, 24/10/14, T:1023ff.

²³¹ Thomas Roberts, 24/10/14, T:1027.24.

²³² Thomas Roberts, 24/10/14, T:1027.43ff.

²³³ Thomas Roberts, 24/10/14, T:1021.44.

²³⁴ Thomas Roberts, 24/10/14, T:1039.26-27.

²³⁵ Thomas Roberts, 24/10/14, T:1038.28-30.

spirit of openness, he did not explain why this new information was held back from the Commission until he stepped into the witness box on 24 October 2014.²³⁶

230. Worse for Mr Roberts, although saying he wished to be ‘open’, his short additional oral statement did not allude to the fact that, quite contrary to the evidence he gave on 23 September 2014 to the effect that he was certain that he received the Zanatta spreadsheets on 15 July 2013, since 3 October 2014 his state of mind had changed, and he was now of the view that he was possibly wrong about that. This was not volunteered by Mr Roberts. He was not being open at all.
231. When Mr Roberts was pressed further about the Zanatta spreadsheets, and shown the originals, he admitted that he did not know where those originals had come from, and whether they had been in the records of the CFMEU at any time prior to the preparation of his statement, and as such he was unsure whether they had come from out of the yellow folder that Mr Fitzpatrick said he had given him on 15 July 2013.²³⁷
232. At this point, the whole of Mr Roberts’ evidence about the Zanatta spreadsheets and the yellow folder unravelled. Up to this point the entire premise of Mr Roberts’ evidence, as clarified by his counsel, was that the yellow folder had contained the original and a copy of the Zanatta spreadsheets. Yet here was Mr Roberts, on 24 October 2014, now accepting that he did not know where the original spreadsheet had come from or whether it had even been in the CFMEU’s possession, let alone inside his yellow folder. The same must be so for an identical copy of the spreadsheet.
233. It was then put to Mr Roberts that all he could really say was what had been in his yellow folder when he handed it over to the CFMEU’s lawyers in 2014. That was obviously the true position. He evaded answering that question, and ultimately fell back on the evidence he gave ‘on the last occasion’. The problem with that answer was that the evidence he gave in September 2014 was entirely different from that which he was giving on 24 October 2014.

²³⁶ Thomas Roberts, 24/10/14, T:1039.19ff.

²³⁷ Thomas Roberts, 24/10/14, T:1033.28-39.

234. The truth is that as at 24 October 2014 Mr Roberts did not genuinely believe that the folder of materials provided to him by Mr Fitzpatrick on 15 July 2013 included the Zanatta spreadsheets. His evidence to the contrary was, in this respect, quite false.

M KPMG FINDINGS OF WIDESPREAD DISCLOSURES

235. On 11 May 2014, an article was published in the Sydney Morning Herald titled ‘Super fund in union leak claim’ alleging that the private financial details and home addresses of hundreds of non-union workers employed by Lis-Con were disclosed by a Cbus employee to a whistleblower and to Mr Parker without authorisation. Cbus subsequently engaged KPMG to provide forensic investigation services on this matter.

236. A KPMG preliminary findings report of 25 June 2014 identified a number of incidents relating to the improper release of private information.²³⁸ The KPMG report identified that between 1 January 2013 and 12 May 2014, there were 59 incidents where Cbus members' personal information was e-mailed externally from Cbus email accounts. In some instances, members' information including tax file numbers was disclosed to trade union officials. The report does not identify whether Cbus had any defence or justification for making any of the disclosure.

237. The KPMG report (at paragraph 3.4.2) did not identify the transmissions of the information received by Ms Zanatta by email to any other parties. However, the report notes that the nature of the information provided to Ms Zanatta is similar to the information the subject of the 11 May 2014 article. The report also noted that it had not conducted further procedures to determine if the information was leaked through other means such as hard-copy printouts or the transfer of data using portable memory devices

²³⁸ Zanatta MFI-2, 7/7/14, tab 60, pp 613-638.

238. Surprisingly, the final KPMG report has yet to be finalised. This fact was highlighted during the examination of Mr Atkin on 23 October 2014.²³⁹

CONCLUSIONS

239. Having canvassed the facts, it is now desirable to turn to the conclusions to be drawn from the facts in terms of the unlawful conduct of Mr Parker and others, and also to deal with some broader policy issues concerning Cbus.

240. In terms of unlawful conduct, this case study raises issues with respect to:

- (a) breaches of the *Privacy Act 1988* (Cth) by Cbus;
- (b) breaches of the *Corporations Act 2001* (Cth) by Ms Zanatta, Ms Butera and Mr Parker;
- (c) breaches by Mr Parker of professional standards expected of an officer of a registered organisation;
- (d) perjury.

241. In terms of broader policy issues, the matters that are considered are:

- (a) cultural problems within Cbus, including the unhealthy loyalty that Cbus employees have to the CFMEU; and
- (b) problems with the current Cbus privacy policy and the lack of policies and procedures within Cbus to prevent occurrences of the kind dealt with in this case study from occurring in the future.

242. Each of the above matters addressed in turn.

²³⁹ David Atkin, 23/10/14, T:905ff.

N PRIVACY ACT BREACHES

The Act

243. The *Privacy Act* 1988 (Cth) was substantially amended by the *Privacy Amendment (Enhancing Privacy Protection) Act* 2012 (Cth). However these amendments only commenced operation on 12 March 2014, after the date of the leak of the material by Cbus to the CFMEU. The conduct of Cbus and others falls to be assessed under the legislation in force as at July 2013. It is this (now superseded) legislation that is addressed below.
244. Section 16A of the *Privacy Act* 1988 (Cth) provided that an ‘organisation’ must not do an act, or engage in practice, that breached an approved privacy code that bound the organisation or, if the organisation was not bound by an approved privacy code, the National Privacy Principles (NPPs).
245. Section 13A further provided that an act or practice of an organisation is an interference with the privacy of an individual if the act or practice breaches an NPP that relates to the individual (or an approved privacy code if it is covered by one).
246. The term ‘organisation’ was defined to include a body corporate that is not a small business operator, registered political party, agency, State or Territory authority or prescribed instrumentality of a State or Territory (s6C). A small business operator was one with an annual turnover of \$3 million or less in a financial year (s6D).
247. As Cbus is a body corporate with an annual turnover of over \$3 million, it was an ‘organisation’ under the Act. Further, as Cbus was not bound by an approved privacy code, the NPPs applied in respect of information held by it.

The NPPs

248. The NPPs, which were provided as a Schedule to the *Privacy Act* 1988 (Cth), provided principles regarding, among other things, the collection, use, disclosure and handling of ‘personal information’. Section 6 of *Privacy Act* 1988 (Cth) defined personal information as information or an opinion, whether true or not,

about an individual whose identity is apparent, or can reasonably be ascertained from the information or opinion.

249. As to the disclosure of personal information, NPP 2.1 provided that, subject to various exceptions, an organisation must only disclose personal information for the primary purpose of collection.

250. The Guidelines to the National Privacy Principles (**NNP Guidelines**) in relation to NPP 2.1 recognised that:

- (a) when an individual provides and an organisation collects personal information they almost always do so for a particular purpose – for example, to buy or sell a particular product or receive a particular service;
- (b) how broadly an organisation can describe the primary purpose will need to be determined on a case by case basis and it will depend on the circumstances.

251. Disclosure for a purpose other than the primary purpose (the ‘secondary purpose’) was not permitted unless it fell under the following exceptions:

- (a) where both of the following applied:
 - (a) the secondary purpose was related to the primary purpose of collection and, if the personal information was sensitive information, directly related to the primary purpose of collection; and
 - (b) the individual would reasonably expect the organisation to use or disclose the information for the secondary purpose;²⁴⁰ or
- (b) where the individual had consented to the disclosure;²⁴¹

²⁴⁰ National Privacy Principles 2.1(a)-(b)

²⁴¹ National Privacy Principles 2.1(b)

- (c) where the organisation had reason to suspect that unlawful activity had been, or was being or may be engaged in, and used or disclosed the personal information as a necessary part of its investigation of the matter or in reporting its concerns to relevant persons or authorities;²⁴² or
- (d) where the disclosure was required or authorised by or under law.²⁴³

252. The NPP Guidelines dealt with the operation of these exceptions, providing that, amongst other things:

- (a) for a secondary purpose to be related to the primary purpose, it must be something that arose in the context of the primary purpose. The test for what the individual would 'reasonably expect' would be applied from the point of view of what an individual with no special knowledge of the industry would expect;²⁴⁴
- (b) consent to the use of disclosure could be express or implied. Implied consent would arise where the consent may reasonably be inferred in the circumstances from the conduct of the individual and the organisation. If the organisation's use or disclosure had serious consequences for the individual, the organisation would have to be able to show that the individual could have been expected to understand what was going to happen to information about them and gave their consent.²⁴⁵

253. NPP 4.1 provided that an organisation holding personal information must take such steps as are reasonable in the circumstances to protect the information from misuse, unauthorised access or disclosure.

254. The APP Guidelines stated whether reasonable steps have been taken to secure personal information will depend on the organisation's particular circumstances, including the sensitivity of the personal information, the harm that is likely to

²⁴² National Privacy Principles 2.1(f)

²⁴³ National Privacy Principles 2.1(g)

²⁴⁴ Office of the Federal Privacy Commissioner, Guidelines to the National Privacy Principles, p 35-36.

²⁴⁵ Office of the Federal Privacy Commissioner, Guidelines to the National Privacy Principles, p 37.

result to people if there is a breach of security, how the organisation stores, processes and transmits the personal information, and the size of the organisation (the larger the organisation, the greater the level of security required).²⁴⁶

255. NPP 5.1 required an organisation to set out a publicly available privacy policy setting out the organisation's general information handling practice, as well as handling notices to people whose information is collected setting out matters such as the purpose of collection. This policy had to set out the main purposes for which the organisation held the information and whether it contracted out services that involved disclosing personal information.²⁴⁷

Cbus trust deed

256. The terms of the Cbus superannuation fund are set out in a trust deed in respect of which United Super, the trustee, is a party.²⁴⁸
257. Clause 6.4 of the trust deed provides as follows:

Privacy

In accordance with the Relevant Law, the Trustee will hold, and treat as confidential, all records and information it may hold, receive or become aware of in its capacity as Trustee in relation to Employers, Members or Beneficiaries and shall not disclose or make known any such records or information to any third party except as may be required in relation to the administration of the Fund or to facilitate the provision of services or Benefits to Members or as may be required by the Relevant Law or as it may otherwise be lawfully required to do except that a Member may authorise the Trustee to release information pertaining to that Member to a third party.

258. The term 'Relevant Law' is the subject of a lengthy definition and includes, amongst other things the *Privacy Act 1988 (Cth)*.

Contracts with members

259. The Member Declaration in Cbus' Product Disclosure Statement of 1 July 2013, which forms part of the suite of contractual documents executed when a person

²⁴⁶ Office of the Federal Privacy Commissioner, Guidelines to the National Privacy Principles, p 45.

²⁴⁷ Office of the Federal Privacy Commissioner, Guidelines to the National Privacy Principles, p 47.

²⁴⁸ Atkin MFI-1,3/10/14, tab 1.

becomes a member of the Cbus fund, includes the following statement in relation to privacy:

Cbus collects, stores and discloses the personal information you provide for the specific purpose of administering your account and in accordance with the Fund Privacy Policy. Except where required by law, the Fund will not use your personal information for any other purpose. You can access the Cbus Privacy Policy at www.cbussuper.com.au or contact the Fund for a copy to be sent to you. By signing this application I consent to the use of my personal information for the establishment and ongoing administration of my superannuation account.

Cbus Privacy Policy

260. At the relevant time Cbus had a member privacy policy. It was referred to in the passage from the member declaration quoted above. That policy included the following relevant passage:²⁴⁹

Cbus outsources the administration of its member and employer records to an external superannuation administration company and contracts with life insurers and other service providers to provide services to you. They are authorised to only use your personal information under the strictest confidence.

Cbus believes it is important that employer contributions are paid regularly and any later or non-payments are identified so steps can be taken to recover late contributions. As part of the process of monitoring contributions Cbus, from time to time, supplies fund sponsors with information on contributions received for members who are working on sites where an award, industrial agreement or enterprise bargain agreement is in place.

The Fund's debt collection agency may also be provided with access to information for the purposes of collecting outstanding contributions. Confidentiality agreements with staff and service providers ensure your details are not passed on to any unauthorised third party.

Your personal information will not be used or disclosed for any other purpose without your consent, except where required by law.

261. Pausing for a moment, it ought be emphasised at this point that the paragraph of the policy dealing with disclosure of information to fund sponsors (such as the CFMEU) provided only that Cbus supplies 'information on contributions received' to sponsors 'as part of the process of monitoring contributions'. Further, the only entity to whom information would be provided for the purpose of chasing arrears was the fund's debt collection agency.

²⁴⁹ Zanatta MFI-2, 7/7/14, tab 55, p 535.

Analysis

262. Applying the above matters to the factual findings set out earlier, Cbus breached the *Privacy Act 1988* (Cth), the Trust Deed, its own privacy policy and its contracts with members. Mr Parker induced each of those breaches.
263. In this regard the following particular findings should be made.
264. First, the telephone numbers and other personal contact details of employees of Lis-Con set out in the documents provided by Cbus to Mr Parker was ‘personal information’ of ‘individuals’ within the meaning of those expressions in the *Privacy Act 1988* (Cth).
265. Second, with regard to NPP 2.1, on a broad view, the primary purpose of the personal information of each member was for the proper administration by the trustee of that member’s account within the superannuation fund. On a narrower view, the primary purpose was to enable Cbus staff to contact the member in relation to his or her superannuation account.
266. Third, that information was used or disclosed by Cbus to Mr Parker for quite a different purpose. It was disclosed in order to meet a request by Mr Parker for that information so that CFMEU staff could use that information to ring those individuals directly and speak to them about whether Lis-Con was in arrears in payment of superannuation entitlements, and if so, by how much.
267. Such behaviour by the CFMEU forms no part of the proper administration of the fund by Cbus or the administration of services to Cbus members. Cbus had its own staff, including a large number of former CFMEU organisers who became Cbus organisers, who could contact members and deal with defaulting employers. It also had a retained debt recovery agency that could pursue employers for arrears. What was contemplated by Mr Parker, Ms Zanatta and Ms Butera was the use of personal information in an entirely inappropriate and unauthorised way, hence the secrecy at the time and the campaign of concealment which continued all the way up to Ms Zanatta’s confession on 3 October 2014.

268. Fourth, the circumstances were not such as to bring Cbus within one of the exceptions to the general statutory prohibition on disclosure of the information.
269. The consent exception in NPP 2 has no application. At no point did any Lis-Con employee consent to Cbus disclosing their personal contact details to the CFMEU for any purpose, let alone for the purpose of enabling officers of the CFMEU to contact them directly.
270. The privacy policy, as earlier noted, did not contemplate such a disclosure. The only possible disclosure of information to the CFMEU identified in that policy was of ‘information on contributions received’, and only ‘as part of the process of monitoring contributions’. As such, it was not suggested that personal contact details of members would be disclosed to the CFMEU. Further and in any event, the personal contact details were not disclosed to the CFMEU for the purpose of monitoring contributions. The CFMEU already had information for this limited purpose, in the form of the statement of arrears.²⁵⁰
271. The privacy policy further expressly provided that in respect of chasing arrears, information may be provided to the trustee’s debt collection agency (i.e. not the CFMEU). It also expressly stated that the information would not otherwise be disclosed without the member’s consent. No such consent was given.
272. As to the ‘secondary purpose’ exception in NPP 2, for much the same reasons it has no application. For that exception to apply, the secondary purpose would need to be related to the primary purpose and the member would have to reasonably expect Cbus to use or disclose the information for that secondary purpose.
273. Neither of these requirements can be satisfied in circumstances where Cbus’ own privacy policy expressly provides for disclosure of limited information to the CFMEU for a limited purpose (neither which applies in the present case for

²⁵⁰ Even if this were not so, a member’s signature on the application form does not constitute an informed consent of the kind required. The application form provides for a “bundled consent” of a kind which the Privacy Act regulator has indicated will not constitute an informed and effective consent for the purposes of the legislation.

reasons given above), and where the policy expressly stated that the information would not otherwise be disclosed without the member's consent.

274. Having regard to the express terms of the privacy policy, the reasonable expectation of members would be that, if their employer fell into arrears, Cbus would pursue the employer, if necessary with the aid of its retained debt collection agency.
275. On no sensible consideration of the facts could it be said that members of a superannuation fund would reasonably have expected their private telephone numbers to be handed out by the trustee of their superannuation funds to a trade union so that trade union officials could contact them directly, and out of the blue, to discuss their superannuation position.
276. Such a call, and the retention of their private contact details by a trade union, is a significant invasion on the privacy of these members.
277. In these circumstances, Cbus acted inconsistently with, and thus breached, the NPPs set out in subclause 2.1 and 4.1 by providing the information to Mr Parker. This, in turn, constitutes a contravention by Cbus of section 16A of the *Privacy Act 1988 (Cth)*.
278. The facts make it tolerably clear that Mr Parker was the moving force behind what occurred. He sought the information out, took possession of it and used it. He induced Cbus to commit the breach described above.

O BREACH OF TRUST AND CONTRACT AND INDUCEMENT BY MR PARKER

279. By reason of the same conclusions expressed above in relation to Cbus breach of the *Privacy Act 1988 (Cth)*, it follows that Cbus has also acted in breach of clause 6.4 of the fund's trust deed, its own privacy policy and the terms of its contracts with the Lis-Con members.
280. Mr Parker, given his experience in the industry, well understood there existed a contractual relationship between Cbus and its members, and that the terms of any

such contract would have prohibited Cbus from disclosing private information for a purpose unrelated to the administration of the members' accounts.

281. Having this knowledge, and by asking for Cbus to provide him with the information in any event, Mr Parker wrongfully interfered with the contracts that members had with Cbus, and deliberately acted so as to ignore and override the benefit of privacy terms that were in the workers' favour: *Tszyu v Fightvision* [2001] NSWCA 103. His conduct was tortious, and thus in breach of the laws of the land.

P BREACH OF THE CORPORATIONS ACT 2001

282. Section 182 of the *Corporations Act 2001* (Cth) provides that an employee of a corporation must not improperly use their position to gain an advantage for someone else or cause detriment to the corporation.

283. Section 183 of the *Corporations Act 2001* (Cth) provides that a person who obtains information because they are an employee of a corporation must not improperly use that information to gain an advantage for someone else or cause detriment to the corporation.

284. Ms Zanatta and Ms Butera were employees of United Super Pty Ltd at the relevant time. They used their position improperly to obtain the information on Lis-Con's employees from Superpartners in order to pass that information on to the CFMEU in breach of the *Privacy Act 1988* (Cth) and the company's contracts with members. In doing so they used their position to gain an advantage for Mr Parker and the CFMEU in their dealings with Lis-Con.

285. As such, Ms Zanatta and Ms Butera breached sections 182 and 183 of the *Corporations Act 2001*(Cth).

Q MR PARKER'S CONTRAVENTIONS OF THE CORPORATIONS ACT

286. Under sub-section (2) of each of sections 182 and 183 of the *Corporations Act* 2001 (Cth), a person who is involved in a contravention of one of those sections also contravenes the section.
287. Section 79 of the same Act provides that a person is involved in a contravention if he has:
- (a) aided, abetted, counselled or procured the contravention;
 - (b) has induced, whether by threats or promises or otherwise, the contravention;
 - (c) has been in any way, by act or omission, directly or indirectly, knowingly concerned in, or party, the contravention; or
 - (d) conspired with others to effect the contravention.
288. It is clear that Mr Parker was involved in the contravention of sections 182 and 183 of the *Corporations Act* 2001 (Cth) by seeking and receiving the information from Ms Zanatta and Ms Butera.
289. For Mr Parker to have been 'involved' within the meaning of s 79 of the *Corporations Act* 2001 (Cth), he must have had actual knowledge of the essential events which constituted the contravention. Such knowledge may be inferred from the fact of exposure to the obvious: *ASIC v Adler* [2002] NSWSC 171 at [209], following by analogy *York v Lucas* (1985) 158 CLR 661 at 668-70.
290. Mr Parker knew that he was asking Cbus employees to use their position as such to provide him with the personal contact details of Cbus members for the purpose of assisting him and the CFMEU, and that in doing so he was asking them to act improperly. So much is obvious from the secretive nature of his request and the response to it. It is also obvious from the fact that he said to Mr Fitzpatrick that 'If

this comes out I'm dead, the girls are dead and they'll be sacked and I'll be sacked'.²⁵¹

291. Mr Parker was therefore involved in the breaches of section 182 and 183 of the *Corporations Act 2001* (Cth) by Ms Zanatta and Ms Butera in such a way that he did, himself, contravene those same sections.

R PERJURY

292. Section 6H(1) of the *Royal Commissions Act 1902* (Cth) provides that a person shall not, at a hearing before a Commission, intentionally give evidence that the person knows to be false or misleading with respect to any matter, being a matter that is material to the inquiry being made by the Commission.

293. The offence is punishable on conviction by imprisonment for a period not exceeding five years or by a fine not exceeding \$20,000: s 6H(2) of the same Act.

294. For the reasons set out in earlier sections of this chapter, each of Ms Butera, Ms Zanatta and Mr Parker have intentionally given false and misleading evidence on matters material to this inquiry.

295. Each of them should be prosecuted for offences under s 6H(1). Without prosecutions of witnesses of this kind, the integrity of Commissions of this kind are irretrievably damaged. Persons who are summoned will think they can mislead the Commission at will, and without adverse consequence.

296. The nature and extent of the perjury has been very significant. The lies have been egregious and premeditated. The individuals have been shameless. The perjury has been left unremedied, save for some remediation on the part of Ms Zanatta. The perjury has put this Commission (and thus the Commonwealth and taxpayers) to substantial expense, and has diverted resources that could otherwise have been applied to other lines of inquiry. All of these factors would indicate that the offences are at the most severe end of the spectrum.

²⁵¹ Brian Fitzpatrick, witness statement, 15/7/14, para 107.

S BREACH OF THE CFMEU'S PROFESSIONAL STANDARDS

297. Clause 51(b) of the Rules for the Construction and General Division of the CFMEU provide that any officer of a divisional Branch may be removed from office by a two thirds majority of the divisional Branch management committee where the officer has been charged and found guilty of 'gross misbehaviour or gross neglect of duty'.
298. This rule confirms something that is not controversial, namely that whatever be the precise nature and extent of the professional standards expected of officers of the CFMEU, at the very least officers are expected not to commit acts of gross misbehaviour.
299. In obtaining the personal information from Cbus in an improper way and by using the information to contact and harass Lis-Con employees, by inducing Cbus to breach the *Privacy Act 1988* (Cth), breaching the *Corporations Act 2001* (Cth) and encouraging Cbus employees to do likewise, by Mr Parker engaged in 'gross misbehaviour' within the meaning of that expression in the Rules. He accepted that if he had acted as alleged, he would have been guilty of gross misbehaviour.²⁵²
300. He did so quite deliberately, and then gave false evidence about it to this Commission in an attempt to conceal his part in the scandalous affair, and stood silently by while Ms Zanatta and others gave similarly perjured evidence. By so acting, Mr Parker demonstrated that he is unfit to hold office within the CFMEU.

T CULTURAL PROBLEMS WITHIN CBUS

301. Ultimately one is left with the question – why did this happen? Why did two senior executives, one an executive manager (a direct report to the Chief Executive Officer) and a 'responsible person'²⁵³ with 16 years of service and the other, a senior adviser with 15 years of service, carry out a deliberate and most serious breach of the fund's policies and their clear duties to its members?

²⁵² Brian Parker, 3/10/14, T642.38ff.

²⁵³ Ms Butera was in a sufficiently senior role to be designated as a 'responsible person' for the purposes of CBUS's 'Fit and Proper Policy' and compliance with Prudential Standard SPS 520 supervised by the Australian Prudential Regulation Authority (APRA).

302. This is not a case of inadvertence or even recklessness. It is a case of deliberate conduct undertaken by senior leaders with full knowledge at the relevant time that their actions were so seriously improper that discovery would put their future employment in jeopardy. Nor can the conduct be attributed to a mere failure of corporate governance by virtue of Cbus' deficient privacy policies and procedures.
303. The conduct can only be explained as a symptom of an unhealthy culture in play within at least the Workplace Distribution team at Cbus.
304. In all organisations, culture is critical to compliance with the law. Compliance policies and procedures are worthless in an organisation where the underlying norms of behaviour and attitude are in conflict with the intent of the policies.
305. Culture is a responsibility of leadership. Leaders set the tone. In a corporation the board sets the tone from the top. The Commission has not examined nor considered the function of the board of Cbus and makes no comment on it other than to note that its composition, so divided in interests and agendas, poses particular challenges in a modern corporate governance environment.
306. The Commission is, however, well-placed to comment on the operations of the Workplace Distribution team led by Ms Butera. Whether or not the following observations reflect on the performance of the Cbus board or the broader operations of Cbus is not the subject of these submissions.
307. The Workplace Distribution team at Cbus does not have a strong culture focussed on the integrity of Cbus, the interest of Cbus' members, and strict compliance with rules and procedures.
308. Indeed the real problem is that there is no strong and independent *Cbus* culture at all. The environment at management and operational level is infected by the separate private interests of the CFMEU, and a deep seated loyalty to those interests. Those interests and loyalties are all pervasive, and prevent the development of a true Cbus culture, where Cbus and its members come first, at the expense of the CFMEU.

309. The scale of the cultural corruption is evident from the fact that the misconduct the subject of this case study was carried out at the upper echelons of management. This was not a wayward junior staff member who did not know better. The fact senior management are prepared to behave in this fashion is a strong indicator of the existence of an invasive cultural problem. It is not just that they acted as they did. Their actions betray underlying attitudes. And those attitudes would manifest themselves through the behaviour of these managers in the workplace on a daily basis, across a whole range of tasks, and would rub off on to the staff they are supposed to be leading.
310. The problem is exacerbated by the fact that many of those staff members (whose behaviour the leadership is influencing) are highly receptive to misguided attitudes of this kind. This is because many of the staff who are exposed to these attitudes and behaviours from senior management are themselves former employees or members of the CFMEU. They come with strong loyalties to the CFMEU. Following their arrival, they are led by senior managers who share those loyalties.
311. The problem is further aggravated by the fact that Cbus is, at least to a degree, commercially dependent upon the CFMEU. It relies on the CFMEU to promote it to builders, subcontractors and workers. It relies on the fact that the CFMEU pattern enterprise bargaining agreements nominate Cbus (and not one of its competitors) as the default superannuation fund.
312. All businesses are dependent on their customers. In the ordinary course this leads businesses to seek to accommodate the wishes of those customers. However in the ordinary course businesses have a culture and a set of rules and policies that enable its management and workers to know where to draw the line in terms of the level of accommodation that can be given. That culture does not exist in Cbus.
313. Ultimately, the root cause of this cultural failure is the symbiotic relationship between the CFMEU and CBUS. Many of the employees of the Workplace Distribution team of CBUS are drawn from the retired ranks of the CFMEU. Some of those employees have concurrently held honorary positions with the CFMEU. This creates a significant risk of conflict of interest. Cbus' current

conflict policies have not been sufficient, on their own, to deal with this at the operational level.

314. If Cbus is to recruit from the ranks of the CFMEU, much more will need to be done by it to ensure that these workers receive a strong and continuous injection of an independent Cbus culture through training, performance reviews, and substantive exposure to employer representatives and non-union members of Cbus so that they can develop a more balanced perspective. Those injections will need to be administered by senior managers who are (and who are seen to be) sufficiently divorced from the CFMEU.

Schedule 1

Examples of deliberately false evidence given by Ms Butera

By way of example, the deliberately false evidence given by Ms Butera in the hearings on 7 July 2014, 23 October 2014 and 28 October 2014 are as follows:

- (a) she asked Ms Zanatta to make enquiries in relation to the arrears status of Lis-Con.²⁵⁴ The enquiry that Ms Zanatta was being asked to make was a routine enquiry,²⁵⁵ and would involve Ms Zanatta collating the arrears information and ringing Mr Parker to tell him about the results, and this is what occurred;²⁵⁶
- (b) the query and the response to it was ‘unremarkable’;²⁵⁷
- (c) she did not know how the personal information of Lis-Con employees ended up with Mr Parker;²⁵⁸
- (d) ‘I had no prior knowledge, involvement or participation in the release of that information’.²⁵⁹ This was something she repeated, even in the face of the iMessages of 26 July 2013, and even after she was given an open opportunity to retract this evidence in the face of those messages;²⁶⁰

²⁵⁴ Maria Butera, 7/7/14, T:77.23-26.

²⁵⁵ Maria Butera, 7/7/14, T:79.5-6.

²⁵⁶ See, for example, Maria Butera, 7/7/14, T:77.24-26 and T:83.44-47.

²⁵⁷ Maria Butera, 7/7/14, T:83.40-42.

²⁵⁸ Maria Butera, 7/7/14, T:83.33-35.

²⁵⁹ Maria Butera, 23/10/14, T:934.1-2.

²⁶⁰ Maria Butera, 28/10/14, T:1132.8-19.

- (e) that the only discussion she had with Ms Zanatta was about her telling Mr Parker what the arrears position was, and they discussed nothing else;²⁶¹
- (f) that she had 'no idea' that Ms Zanatta was making arrangements about a trip to Sydney;²⁶²
- (g) that her phone call with Mr Parker at 2.40pm on 26 July 2013 was to say no more than that she had actioned his request on the Lis-Con arrears, and to discuss a sponsorship program;²⁶³
- (h) that she rang Mr Parker on this occasion (even though she knew Ms Zanatta had been tasked to tell him about the Lis-Con arrears) as a 'goodwill' gesture;²⁶⁴
- (i) she had no discussion with Ms Zanatta about what she had done on Monday 29 July 2013;²⁶⁵
- (j) she was not involved in the leak and did not work in concert with Ms Zanatta ('I totally refute that');²⁶⁶
- (k) Ms Zanatta acted on her own and off her own bat entirely;²⁶⁷
- (l) to her knowledge, Ms Zanatta did not involve anyone else at Cbus;²⁶⁸
- (m) Ms Zanatta was acting without her knowledge and approval;²⁶⁹

²⁶¹ Maria Butera, 23/10/14, T:954.40-955.5

²⁶² Maria Butera, 23/10/14, T:958.38-39.

²⁶³ Maria Butera, 23/10/14, T:959.16ff.

²⁶⁴ Maria Butera, 23/10/14, T:960.31-32.

²⁶⁵ Maria Butera, 23/10/14, T:965.47-966.2.

²⁶⁶ Maria Butera, 23/10/14, T:967.43-47.

²⁶⁷ Maria Butera, 23/10/14, T:968.2-4.

²⁶⁸ Maria Butera, 23/10/14, T:968.12-14.

²⁶⁹ Maria Butera, 23/10/14, T:968.21-23.

- (n) Ms Zanatta never communicated with her about dropping off information to Brian Parker's PA;²⁷⁰
- (o) she did not set about with Ms Zanatta working out how to get that information to Mr Parker (which she said even in the face of the iMessages of 26 July 2013);²⁷¹
- (p) she did not know on 26 July 2013 that Ms Zanatta was going to go to Sydney (which she said even in the face of the iMessages of 26 July 2013);²⁷²
- (q) she did not know what information Ms Zanatta was dropping off (which was said in the face of the iMessages of 26 July 2013);²⁷³
- (r) the words in the iMessage that she sent Ms Zanatta on 26 July 2012 'could mean anything';²⁷⁴
- (s) she did not know what information Ms Zanatta dropped off.²⁷⁵

²⁷⁰ Maria Butera, 28/10/14, T:1122.42-44.

²⁷¹ Maria Butera, 28/10/14, T:1132.44-46.

²⁷² Maria Butera, 28/10/14, T:1131.28-30.

²⁷³ Maria Butera, 28/10/14, T:1134.40.

²⁷⁴ Maria Butera, 28/10/14, T:1135.8.

²⁷⁵ Maria Butera, 28/10/14, T:1135.42.

Schedule 2

Examples of deliberately false evidence given by Ms Zanata

The perjury committed by Ms Zanatta included the making of the following affirmed statements:

- (a) that she was not personally involved in the provision of information concerning Lis-Con employees to the CFMEU;²⁷⁶
- (b) that there was never an occasion on which she participated in the release of members' information to anyone at the CFMEU;²⁷⁷
- (c) that she had never provided the CFMEU with members' addresses and telephone numbers;²⁷⁸
- (d) that when Mr Walls sent her the query results she was overwhelmed by the amount of private information that was provided and she wanted to make sure it was secure;²⁷⁹
- (e) that she had been told that there was data released to the CFMEU, but she could not confirm that the data in the attachments to Mr Walls' email of 22 July 2013 was released to the CFMEU;²⁸⁰
- (f) that she did not know the contents of the data that was released to the CFMEU;²⁸¹
- (g) that she had not seen the contents of the data that was released to the CFMEU;²⁸²

²⁷⁶ Lisa Zanatta, 7/7/2014 T:21.7-9.

²⁷⁷ Lisa Zanatta, 7/7/2014 T:21.27-32.

²⁷⁸ Lisa Zanatta 7/7/2014 T:21.34-36.

²⁷⁹ Lisa Zanatta 7/7/2014 T:34.4-7.

²⁸⁰ Lisa Zanatta 7/7/2014 T:34.42-44.

²⁸¹ Lisa Zanatta 7/7/2014 T:35.3-4.

- (h) that she was unaware when the data was released to the CFMEU;²⁸³
- (i) that she was unaware who released the data to the CFMEU;²⁸⁴
- (j) that she had ‘no idea’, ‘absolutely none’ about the disclosure of the information to CFMEU;²⁸⁵
- (k) that she did not know how the information found its way to the CFMEU in New South Wales;²⁸⁶
- (l) that the information did not come from her to the CFMEU;²⁸⁷
- (m) that at no stage did she pass the information on to the CFMEU;²⁸⁸
- (n) that she has never released Cbus data to a third party containing the addresses, mobile phone numbers and email addresses of members;²⁸⁹
- (o) that she did not pass on the data to CFMEU;²⁹⁰
- (p) that she was unaware that the query that she received from Mr Walls had been leaked anywhere. ‘I had no idea. How many times do I need to tell you that?’²⁹¹;
- (q) that she did not know what methods were employed to enable the material to be passed from Cbus to the CFMEU;²⁹²

²⁸² Lisa Zanatta, 7/7/2014, T:35.3.

²⁸³ Lisa Zanatta, 7/7/2014, T:35.28.

²⁸⁴ Lisa Zanatta, 7/7/2014, T:35.28.

²⁸⁵ Lisa Zanatta, 7/7/2014, T:36.17-22.

²⁸⁶ Lisa Zanatta, 7/7/2014, T:38.22-24.

²⁸⁷ Lisa Zanatta, 7/7/2014, T:38.26-28.

²⁸⁸ Lisa Zanatta, 7/7/2014, T:39.16-17.

²⁸⁹ Lisa Zanatta, 7/7/2014, T:43.40-42.

²⁹⁰ Lisa Zanatta, 7/7/2014, T:45.7.

²⁹¹ Lisa Zanatta, 7/7/2014, T:49.37-39.

- (r) that she had come to Sydney on 29 July 2013 for the purpose of a Cbus property meeting and had gone to the locations and made the calls described earlier in these submissions;²⁹³
- (s) that she had not made up the false story described in the previous subparagraph;²⁹⁴
- (t) that she did not arrange for Ms Heintz to book her trip to Sydney on 26 July 2013 ('I absolutely did not');²⁹⁵
- (u) that she did not ring Mr Parker and tell him that she would bring the Zanatta spreadsheets to Sydney ('That's absolutely incorrect')²⁹⁶
- (v) that she did not arrange for the Zanatta spreadsheets to be couriered to her home so that she could take it to Sydney the following Monday;²⁹⁷
- (w) that she had not arranged with Mr Parker for her to bring the Zanatta spreadsheets to Sydney;²⁹⁸
- (x) that (even after being shown the taxi records indicating she had gone to the CFMEU office) her recollection was that the meeting with Cbus property (which she had made up) was to be held on 29 July.²⁹⁹ This shows that, but for the adjournment that was then granted, Ms Zanatta would have attempted to continue to lie to the Commission about what had occurred.

²⁹² Lisa Zanatta, 7/7/2014, T:59.43-46.

²⁹³ Lisa Zanatta, 3/10/2014, T:732.38ff.

²⁹⁴ Lisa Zanatta, 3/10/2014, T:736.7-10.

²⁹⁵ Lisa Zanatta, 3/10/2014, T:742.37-39.

²⁹⁶ Lisa Zanatta, 3/10/2014, T:742.44-47.

²⁹⁷ Lisa Zanatta, 3/10/2014, T:744.44-745.13.

²⁹⁸ Lisa Zanatta, 3/10/2014, T:745.25-26.

²⁹⁹ Lisa Zanatta, 3/10/2014, T:748.4-6.