

**ROYAL COMMISSION INTO TRADE UNION
GOVERNANCE AND CORRUPTION**

Level 19, 55 Market Street, Sydney, NSW, 2000

On Friday, 16 October 2015 at 10.00am

**AWU OCTOBER
(Day 5)**

Before the Commissioner: The Hon. John Dyson Heydon AC QC

Counsel Assisting: Mr Jeremy Stoljar SC and
Mr Richard Scruby

Instructed by: Minter Ellison, Solicitors

1 MR STOLJAR: Commissioner, the first witness this morning
2 completes for the time being the inquiries into the Downer
3 matter that was looked at yesterday. That witness will be
4 Mr McGuire. I will invite Mr Scruby to take that witness.

5
6 THE COMMISSIONER: Yes.

7
8 <WILLIAM JAMES McGUIRE, sworn: [10.00am]

9
10 MR SCRUBY: There is an appearance for Mr McGuire,
11 Commissioner.

12
13 MR P TOMPKINS: Commissioner, I seek leave to appear on
14 behalf of Mr McGuire. I'm in-house counsel or Downer.
15 Tompkins T-O-M-P-K-I-N-S.

16
17 THE COMMISSIONER: Thank you, Mr Tompkins. Yes,
18 Mr Scruby?

19
20 <EXAMINATION BY MR SCRUBY:

21
22 MR SCRUBY: Q. Could you state your full name, please?
23 A. William James McGuire.

24
25 Q. Mr McGuire, you gave evidence at a private hearing
26 before this Commission on 1 October 2015?
27 A. Yes, I did.

28
29 MR SCRUBY: Commissioner, I tender the transcript of that
30 hearing.

31
32 THE COMMISSIONER: Yes. That will be McGuire MFI-1.

33
34 **McGUIRE MFI-1 - PRIVATE HEARING TRANSCRIPT OF**
35 **WILLIAM JAMES McGUIRE DATED 01/10/2015**

36
37 MR BORENSTEIN: Commissioner, before my friend goes on
38 with that, can I indicate that there are parts of that
39 transcript that are in a form that would be regarded as
40 objectionable if the witness gave the evidence now. I had
41 proposed to ask the witness some questions about that, but
42 can I just raise that issue for the moment.

43
44 THE COMMISSIONER: You can certainly raise it. Do you
45 want to identify the parts?

46
47 MR BORENSTEIN: I think I'll wait and cross-examine the

1 witness on that to clarify it, but I just wanted to
2 indicate that we have that problem.

3

4 THE COMMISSIONER: Yes. Thank you.

5

6 MR SCRUBY: Q. Mr McGuire, in 2012, you were the
7 Executive General Manager of Industrial Relations of
8 Downer EDI Engineering?

9 A. Yes, I was.

10

11 Q. I am not going to go back over what you told the
12 Commission in your private hearing in any detail, but could
13 I just get this clear in relation to what happened on
14 10 August. That's the day, do you recall, that the picket
15 disbanded and the employees, who were the subject of the
16 418 applications, went back to the barge?

17 A. That's correct. I do remember that.

18

19 Q. On the morning of that day, you had a meeting with
20 Union officials?

21 A. Yes, I did.

22

23 Q. I think you said that was from 7am to 8am on that
24 morning?

25 A. Yes, it was approximately from 7 to 8 o'clock on
26 Friday, 10 August.

27

28 Q. You said that Mr Mighell of the ETU and is it Mr Deem
29 of the AMWU attended?

30 A. Correct.

31

32 Q. Did you invite any AWU representative to that meeting?

33 A. No, I didn't.

34

35 Q. Why?

36 A. I had spoken to Mr Melhem on the Monday, 6 August, and
37 said that there was a former official of his Union,
38 Mr Terry Lee, and, therefore, it was not an issue as far as
39 that Union was concerned. They said you've got a problem
40 with one of our former officials, plus two former
41 employees.

42

43 Q. I see. As you understood it from the 418
44 applications, the AWU did not oppose --

45 A. No, they didn't.

46

47 Q. Neither did the ETU, though, did they?

1 A. Correct.
2
3 Q. And neither did the AMWU?
4 A. Correct.
5
6 Q. So what was the purpose of inviting Mr Mighell and
7 Mr Deem to the meeting but not Mr Melhem?
8 A. Well, if you go back to the Monday - Monday, 6 August
9 2012 and Tuesday, 7 August 2012, I rang - when I found out
10 early on the Monday morning - I got a call from one of our
11 recruitment managers to tell me that there was a picket at
12 the helipad at Essendon Airport. I then rang Mr Melhem to
13 advise him that his former official of Latrobe Valley,
14 Mr Terry Lee, was there with two former employees of
15 Downer, plus a number of other unidentified individuals.
16 He did sound surprised that there was a picket at Essendon
17 Airport. He genuinely believed - I genuinely believe that
18 he wasn't aware of it.
19
20 Q. Yes. Did the picket, so far as you understood it,
21 have anything to do with the ETU or the AMWU?
22 A. Only in the sense that it prevented their members, our
23 employees, crossing that picket to go to work.
24
25 Q. Yes. What then was the purpose of inviting Mr Mighell
26 and Mr Deem to a meeting on the morning of the 10th?
27 A. Well, primarily, to update them on the developments of
28 what the company was doing in terms of the 418 applications
29 that were filed with the Fair Work Commission, and that
30 those orders were issued on the Wednesday and the Thursday.
31 So, the meeting was all about advising them of
32 developments, and they volunteered to come out to Essendon
33 Airport.
34
35 Q. You didn't think it necessary to update Mr Melhem
36 about that?
37 A. He wasn't interested.
38
39 Q. After the meeting with Mr Mighell and Mr Deem, you
40 went out to the heliport?
41 A. Correct.
42
43 Q. By that time the picket had disbanded?
44 A. Correct.
45
46 Q. And then you spent some time at the heliport, but
47 ultimately went back to your office on that day?

1 A. That's correct.
2
3 Q. Is this right - when you went back, you spoke to
4 Mr Sirsen about his meeting with Mr Lee --
5 A. That's correct.
6
7 Q. -- Mr Spencer and Mr Cesar Melhem? You told the
8 Commission at the private hearing that Mr Sirsen told you
9 that he and Mr Lee had agreed that Downer would provide
10 training for eight employee representatives for five days?
11 A. Correct. Now, if I could just add to that, you know,
12 I can't speculate or second-guess, because I wasn't at that
13 meeting at the Essendon Airport, that was Mr Sirsen and
14 Mr Lee. All that I can sell you is what Mr Sirsen told me
15 when I arrived back in the office at around 12 noon on
16 Friday, 10 August 2012.
17
18 Q. I accept that. Did you hear the evidence of Mr Susa,
19 Mr Spencer and Mr Lee yesterday?
20 A. No, but I have read their witness statements.
21
22 Q. You have read their witness statements?
23 A. I've skimmed across their witness statements.
24
25 Q. You understand that, in substance, they claim there
26 was no arrangement about training?
27 A. That's what they say.
28
29 Q. As you say, you weren't there in the car or at the
30 heliport when they were talking to Mr Sirsen, but you stand
31 by your account of what Mr Sirsen told you?
32 A. Yes, I do.
33
34 Q. You say you skimmed those payments. If that is so,
35 I wonder if you could be shown paragraph 30 of Mr Susa's
36 statement. (Shown to witness).
37 A. Was that paragraph 30?
38
39 Q. That's correct, yes. Read as much as you like, but
40 I wanted to direct your attention to the last six lines on
41 page 4.
42 A. Yes.
43
44 Q. You see there that, according to Mr Susa, Mr Sirsen
45 told the three gentlemen that they would have to wait a
46 month or so for their money. In substance, that was
47 because the Commission would be looking at Downer. Do you

1 see that's what Mr Susa says he was told by Mr Sirsen?
2 A. The evidence of Mr Sirsen has given is contrary to
3 that. His evidence was extremely clear that the
4 arrangement he entered into with Mr Lee was to provide
5 safety training for - I think the number was eight employee
6 reps over a period of five days; then in the following week
7 the general protection applications were filed by the AWU
8 in the Fair Work - or in the Fair Work Australia on behalf
9 of Mr Susa and Mr Spencer, and the Union were alleging that
10 those two former employees were terminated because we had
11 discriminated against them because of their trade union
12 status, their employee rep status.

13
14 Q. I will come to that in a moment, Mr McGuire. At the
15 moment I am just directing your attention to what Mr Susa
16 says in that paragraph. I can tell you - and if you need
17 to look at it, say so - but Mr Spencer says that Mr Sirsen
18 said something similar to him about a week later?

19 A. That's what those statements that I've skimmed across
20 certainly say, but that's contrary to what Mr Sirsen has
21 told me.

22
23 Q. Did you know on 10 August that the FWBC was looking
24 into this picket?

25 A. Yes, I was, because we would have made contact with
26 the Inspectorate. That's normal company practice.

27
28 Q. You contacted them, did you?

29 A. Not me personally, but probably one of the industrial
30 relations staff that at that time worked with me.

31
32 Q. Do you know when that was?

33 A. I know the interviews that were conducted: Mr Sirsen
34 and Mr French. That would have been sometime in probably
35 mid to late August and then I followed, I think it was
36 either September or October of 2012.

37
38 Q. I'm talking about what you knew on 10 August, though.
39 Did you know at that time that the FWBC were looking into
40 the pickets that had happened on the Monday and the
41 Tuesday?

42 A. I would have thought so. And I know it's company
43 practice that if we have a stoppage, any illegal
44 disruption, that we would have contacted the Inspectorate
45 or our industrial solicitors, but I'd be certain that we
46 would have made that call.

47

1 Q. I can tell you that an FWBC representative spoke to
2 one of the solicitors involved in the section 418
3 applications on 8 and 9 August?
4 A. Yes.
5
6 Q. Does that refresh your recollection about contact with
7 the FWBC in the period before 10 August?
8 A. It sounds correct.
9
10 Q. As you say, the FWBC, in fact, commenced a full
11 investigation into the pickets?
12 A. Yes, they did.
13
14 Q. Were you the person responsible for Downer's response
15 to the FWBC?
16 A. Not at that stage, no.
17
18 Q. At any stage?
19 A. Not that I can remember. I certainly - I certainly
20 attended an interview in St Kilda Road, their offices in
21 St Kilda Road in either late September or October, but
22 I may not have had carriage of that particular event.
23
24 Q. Was there a person at Downer who did have carriage of
25 it?
26 A. If it wasn't me, it would have been Mr Simon French.
27
28 Q. Who I think - is this right, he reported to you?
29 A. Yes, he did at that time.
30
31 Q. You appreciated that one of the matters that the FWBC
32 was looking into was the payment of strike pay during the
33 picket?
34 A. Correct.
35
36 Q. Another matter was coercion?
37 A. I'm not quite certain about the coercion part of their
38 investigation.
39
40 Q. You understood, didn't you, that one of the things the
41 FWBC was looking at was why the picket came to an end?
42 A. Correct.
43
44 Q. Did you understand that the FWBC might have been
45 interested to know whether or not any payment was made in
46 connection with the termination of the picket - did you
47 understand that?

1 A. Yes, I do. It's their normal practice, I would have
2 thought.
3
4 Q. As you say, you were interviewed by the FWBC and you
5 gave some dates. I can tell you that that happened on
6 8 October 2012?
7 A. That sounds right.
8
9 Q. Did you tell the FWBC at that interview about the
10 arrangement that Mr Sirsen reported to you that he'd struck
11 with Mr Lee on the 10th?
12 A. I don't recall whether I did or didn't. Certainly not
13 on the Friday because that arrangement was only entered
14 into very early Friday morning, 10 August.
15
16 Q. Yes, and I'm asking about what happened on 8 October.
17 A. Sorry, 8 October, I'd need to have a look at the
18 transcript from the Inspectorate.
19
20 Q. You've got a transcript of that interview?
21 A. Not with me, no.
22
23 Q. You've got one at Downer's offices?
24 A. I would have a copy of that.
25
26 Q. Are you able to provide that to the Commission?
27 A. Yes. I guess it's subject to legal privilege; I'd
28 have to get the approval of the Inspectorate.
29
30 Q. Is the position that you don't recall what questions
31 were asked or answered at that interview without recourse
32 to the transcript?
33 A. I'd need to go back and refresh my memory. These are
34 events that occurred over three years ago.
35
36 Q. You were asked some questions at the private hearing
37 about an invoice, I can take you to it, if you like, but
38 you've seen it on a number of occasions. Do you recall
39 whether you told the FWBC about that invoice?
40 A. Again, I really can't recall. I'd have to refer to
41 the transcript.
42
43 Q. I think you said at the private hearing that you
44 weren't responsible for authorising payment of that
45 invoice.
46 A. Correct. I don't have the financial delegation of
47 authority where Mr Sirsen did.

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Q. Did you and Mr Sirsen, in fact, have any discussions about the invoice?

A. Not around September. He had the authority on behalf of the company to commit those costs. There was no reason for him to discuss that with me.

Q. Did you know that that invoice was paid on 5 October?

A. Yes, I do.

Q. Did you know that on 8 October when you spoke to the FWBC?

A. Probably not. Again, I'm not quite certain when Mr Sirsen showed me that invoice. It could have been weeks, months after the date of 18 September 2012. I just can't remember. There was probably no need for him to show me that invoice. He'd entered into an arrangement and told me the arrangement that he'd entered into.

Q. Well, do you remember if you ever told the FWBC that no payments had been made to end the picket? I'm asking do you remember either way?

A. No.

Q. But your position, as at 8 October, was that no payments in fact had been made to end it; is that right?

A. No payments had been made to those two individuals, that's correct.

Q. Well, no payments at all for the purposes of ending the picket, that was your position as at 8 October?

A. Correct.

Q. Is that the position you take today, sitting there in the witness box?

A. Yes, I do. The invoice reflected the arrangement that Mr Sirsen and Mr Lee had entered into. I wasn't there, so all I can recall is what Mr Sirsen told me on the afternoon of Friday, 10 August, that it was for training of eight employee representatives over a five-day period. That's what he agreed to.

Q. Can we take it that if the FWBC had asked you whether a payment was made to end the picket, you would have said "no"?

A. Correct.

1 Q. And do you say - well, let me ask --
2 A. Certainly not a payment to the employees.
3
4 Q. Or to anyone?
5 A. Correct.
6
7 Q. Let me ask you this - have you, in giving your
8 evidence to this Commission, been concerned to ensure that
9 it doesn't cut across anything that you told the FWBC?
10 A. I don't think that anything that I have said cuts
11 across the evidence that I've provided, or the interview
12 that I had with the Fair Work Building and Construction
13 Inspectorate.
14
15 Q. You made reference in your private hearing to some
16 notes that you had. I can take you to the reference if you
17 like, but do you have any notes that you made in around
18 August about what happened in relation to the termination
19 of the picket?
20 A. No. If I remember, at the private hearing I would
21 have talked about a paper calendar, a desk calendar, that
22 I would have had in 2012.
23
24 Q. Could I just ask that McGuire MFI-1 be brought up at
25 page 4, line 44. Do you see there there's a question and
26 then at line 46 you say "Without referring to my notes",
27 and then you go on to explain about your paper calendar.
28 What were the notes you were referring to at line 46?
29 A. I would suggest that was the bunch of dates, the paper
30 calendar.
31
32 Q. So you don't have any notes any more, is that the
33 position?
34 A. Correct, not going back to 2012, apart from the
35 negotiating notes when we negotiated the construction
36 agreement and the memorandum of understanding. I kept
37 quite detailed, comprehensive file notes over those - that
38 period of negotiations.
39
40 Q. Did you know that Mr Sirsen was first interviewed by
41 the FWBC on 16 August?
42 A. Yes, I do.
43
44 Q. You appreciate that the AWU commenced applications to
45 deal with the general protection disputes in relation to
46 Mr Spencer and Mr Susa?
47 A. Correct.

1
2 Q. You appreciate that was commenced on the next day,
3 that is 17 August?
4 A. That's correct.
5
6 Q. You had carriage of those proceedings on behalf of
7 Downer?
8 A. I did have.
9
10 Q. Did you receive any letter of demand prior to the
11 commencement of those proceedings?
12 A. Not to my knowledge, no.
13
14 Q. Did you receive any offers of settlement during the
15 course of those proceedings?
16 A. Again, not to my knowledge.
17
18 Q. Anything orally?
19 A. No, I can't remember anything orally to settle those
20 two general protection applications.
21
22 Q. Were there any negotiations at all between you and
23 anyone on the part of the AWU about those proceedings
24 during their course?
25 A. If I remember, we did have a - there was a hearing
26 listed in the then Fair Work Australia in front of
27 Commissioner Blair, and I would have had discussions either
28 during the course of that or after that --.
29
30 MR BORENSTEIN: I object to the witness speculating about
31 what would have happened rather than what did happen.
32
33 MR SCRUBY: I embrace what my learned friend said, and
34 I ask that the witness be directed to answer the question.
35
36 THE COMMISSIONER: The question was: "Were there any
37 negotiations between you and anyone on the part of the AWU
38 about those proceedings?", something like that?
39
40 THE WITNESS: I may have spoken to Mr Winter.
41
42 MR SCRUBY: Q. Would you remember it or not?
43 A. Not really. Again, we're talking about a period
44 exceeding three years.
45
46 Q. Is the position that there were no negotiations at all
47 because prior to the commencement of the proceedings, an

1 arrangement had already been made to pay Mr Susa and
2 Mr Spencer?
3 A. Not that I was aware of. And we certainly would have
4 vigorously defended the position of the termination of
5 those two employees.
6
7 MR BORENSTEIN: Again, Commissioner, I object to this
8 evidence. It's speculation.
9
10 THE COMMISSIONER: Well, "We would certainly have
11 vigorously objected" could be the royal plural, or it could
12 be a class of which he speaks. I do not think it is
13 necessarily speculation. You object to the "would have"
14 part?
15
16 MR BORENSTEIN: Yes.
17
18 MR SCRUBY: Perhaps I could ask a further question to
19 clarify.
20
21 Q. You say you would have. What did you actually do to
22 vigorously defend Downer's position? What actually did you
23 do.
24 A. Again, I don't want to speculate or second-guess, but
25 I would have --
26
27 Q. No, no, no, what did you do?
28 A. I would have told them that they had a week --
29
30 Q. No, what did you tell them?
31
32 THE COMMISSIONER: Q. Mr McGuire, there are a number of
33 possibilities. One is that you actually remember what you
34 did. Another is that you don't actually remember what you
35 did, but you had a practice. I mean, someone might say,
36 "I can't remember what time I had dinner on Tuesday of last
37 week, but my practice is to have dinner at half past 7
38 after the news." Do you actually remember what you did, if
39 anything?
40 A. I certainly can't recall, Commissioner.
41
42 THE COMMISSIONER: All right.
43
44 MR SCRUBY: Q. Well, is the position that you did
45 nothing?
46 A. That could have been the position.
47

1 Q. Could I ask that the witness be shown a bundle that's
2 marked Downer MFI-1. Would you look at page 232 of that
3 bundle, please.

4 A. 232?

5

6 Q. Yes. Do you see there, that's an email from Mr Sirsen
7 to representatives of the Unions, and it's copied to you.
8 Read as much as you like, but I wanted to direct your
9 attention to the last sentence which says:

10

11 *All those that were previously terminated*
12 *will have their money in the bank by*
13 *Friday, 5/10 with separate pay slips being*
14 *posted out today.*

15

16 Do you see that?

17

A. Yes, I do.

18

19 Q. That's a reference, is it, to payment of a number of
20 employees who had been terminated during the downsizing
21 process, if I can call it that, that was underway at this
22 time?

23

A. No, it's not. It's in relation to a dispute we had
24 over the muster arrangements on the JASCON 25.

25

26 Q. What was that dispute?

27

A. It was more about those on dayshift being disturbed
28 during their sleep time to muster, which is the requirement
29 in the maritime industry. So, we had a disturbance
30 allowance, but when you're working on a vessel in
31 Bass Strait with sea conditions, and disconnecting from the
32 platform, a number of sirens go off from time to time which
33 wakes up people that have come off a 12-hour shift, so we
34 had disturbance payments and we had a dispute over muster
35 payments and, if I remember, a former Commissioner,
36 Commissioner Simmonds, was an independent arbitrator that
37 heard that matter and I'm pretty certain that matter would
38 have - was also heard within the then Fair Work Australia.
39 Those payments were for another issue and would have been
40 paid to employees that had been terminated by reason of
41 redundancy.

42

43 Q. Could I just take you to page 29 of Sirsen MFI-1.
44 That's the invoice that you've seen a number of times.

45

A. Yes.

46

47 Q. That invoice was paid on 5 October?

1 A. Yes, according to the stamp. The stamp is dated that
2 it was paid on 5 October 2012.
3
4 Q. Is it just a coincidence it was paid on the same day
5 as the payments that Mr Sirsen was referring to in the
6 email that I just took you to?
7 A. There's no connection. They're both different issues.
8
9 Q. Were you responsible for training?
10 A. No.
11
12 Q. Not at all?
13 A. No, not at all.
14
15 Q. You had no authority to approve invoices?
16 A. Correct.
17
18 Q. But you say Mr Sirsen discussed this invoice with you
19 at some point?
20 A. He did.
21
22 Q. What were the circumstances, do you say, that he came
23 to talk about this invoice with you?
24 A. Well, it was some time after the invoice which was
25 dated 18 September 2012, and I can't remember whether it
26 was, as I said before, weeks, months or a year after that
27 he told - I guess it was really confirming what he'd told
28 me on 10 August, and the arrangement that he'd entered into
29 with Terry Lee. I wasn't there.
30
31 Q. I understand that. At some point, presumably after
32 18 September 2012, you and Mr Sirsen had a discussion about
33 this invoice; is that right?
34 A. Correct.
35
36 Q. You didn't have authority to approve it, correct?
37 A. That's correct.
38
39 Q. That is, approve the payment of it?
40 A. Mmm-hmm. I don't have the financial delegation of
41 authority; neither does any of the other industrial
42 relations staff at the time that worked for me.
43
44 Q. And you had no responsibility for the provision of
45 training; correct?
46 A. Correct.
47

1 Q. Isn't the reason that Mr Sirsen talked to you about
2 this invoice, that, in fact, the invoice was not about
3 training?
4 A. I don't accept that. All I can rely on is what
5 Mr Sirsen told me on the afternoon of Friday, 10 August
6 2012, and he told me two things. One, that he and Mr Lee
7 had agreed to the training and, secondly, that if Mr Susa
8 and Mr Spencer were aggrieved by their termination, that
9 there was another avenue that they could take by filing -
10 by the Union filing a general protections application
11 within the Fair Work Australia, and that's what they did.
12
13 MR SCRUBY: If the Commission please.
14
15 THE COMMISSIONER: Yes. Mr Borenstein?
16
17 MR BORENSTEIN: Commissioner, I don't need to ask him any
18 questions now. Thank you.
19
20 THE COMMISSIONER: You have no objections?
21
22 MR BORENSTEIN: Commissioner, they're dealt with.
23
24 THE COMMISSIONER: Very well. Dr Hanscombe?
25
26 DR HANSCOMBE: Thank you, Commissioner, I have a couple of
27 questions.
28
29 **<EXAMINATION BY DR HANSCOMBE:**
30
31 DR HANSCOMBE: Q. The account you've given this morning
32 of your conversation with Mr Melhem on 6 August over the
33 phone is somewhat different from the account you gave in
34 your private hearing. You said then that Mr Melhem said to
35 you he didn't know anything about it. Today you've said
36 something much more specific, that he said, "That's about a
37 former official and former employees and I'm not
38 interested". Which is right?
39 A. At the private hearing, I think I said something
40 similar, if not the same.
41
42 Q. You say Mr Melhem referred to "former official and
43 former employees", you say that, do you?
44 A. Words to that effect, yes.
45
46 Q. You said that at the private hearing?
47 A. I'd need to go back and have a look at the transcript

1 of two weeks ago.
2
3 Q. No, I'm asking you what you remember. The private
4 hearing was only 15 days ago. I'm asking you what you
5 remember.
6 A. What I - what I remember is ringing Mr Melhem on the
7 morning of Monday, 6 August --
8
9 Q. Yes.
10 A. -- and he was genuinely surprised that there was a
11 picket at Essendon Airport --
12
13 Q. Yes, that's not what I asked you, Mr McGuire --
14 A. -- and then I --
15
16 Q. -- I asked you did he use the term "former Union
17 official and former employees", which is what you have said
18 this morning?
19 A. He certainly would have used the terminology "a former
20 official".
21
22 Q. I'm asking you what he said. I don't want the
23 subjunctive, I want just the ordinary old perfect tense.
24 What did he say?
25 A. I stay with what I said before.
26
27 Q. He mentioned "former employees and a former official"?
28 A. Yes, he did.
29
30 Q. You stick by that?
31 A. I stick by that.
32
33 Q. That's not what you told the private hearing; is that
34 right?
35 A. I am certain that I would have used the same or
36 similar words.
37
38 Q. Not the subjunctive. What did you say?
39 A. I'd like to have a look at the transcript.
40
41 Q. I see.
42 A. Can you take me --
43
44 Q. You need to read your own transcript to remember that
45 conversation, do you?
46 A. If it's a sticking point, yes, I'd like to refresh my
47 memory of two weeks ago.

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Q. Well, I'm not going to take you to the transcript, you've got your counsel here.

MR SCRUBY: Commissioner, I ask that if a submission is going to be made that there is some inconsistency, that my learned friend put that to him.

DR HANSCOMBE: I have put it.

MR SCRUBY: He should be taken to the transcript, in my submission.

DR HANSCOMBE: Q. Page 8 of your private hearing. Your account of this conversation - let's be clear, there's only one conversation, isn't there? Mr McGuire, you only had one conversation with Mr Melhem; is that right?

A. That's my understanding, on the Monday morning.

Q. Go to line 36.

A. Yes.

Q. Your account begins at line 36. Do you see that?

A. At 136?

Q. Line 36 of page 8. It should be on the screen in front of you?

A. Oh, sorry.

Q. Do you see that?

A. I'm just reading it now.

Q. At line 44:

So I rang Mr Melhem ...

Do you see that?

A. Yes.

Q. Line 46:

... he was genuinely surprised.

Line 46, "He said he wasn't"; that is, aware:

When I explained to him when I'd been told he appeared to be genuinely surprised,

1 wasn't aware of it, and basically said it
2 was nothing to do with the Australian
3 Workers' Union.
4

5 So that account does not use the terms "former employees or
6 former Union official", does it?

7 A. No, it doesn't.
8

9 Q. All you know about the settlement of this dispute is
10 what Mr Sirsen told you; correct?

11 A. Correct.
12

13 Q. You have no personal knowledge whatever?

14 A. That's right.
15

16 Q. As I understand it, correct me if I'm wrong, Downer's
17 task was to transport workers to the Bass Strait rig?

18 A. Correct.
19

20 Q. You were doing that effectively as a subcontractor for
21 Origin Energy; is that correct?

22 A. We were a contractor, yes with Origin Energy.
23

24 Q. And it is the case, is it not, that your contractual
25 arrangements with Origin Energy were such that if Downer
26 provided training that cost it money, Origin Energy had to
27 pay for that training?

28 A. I don't know the specifics in terms of the contract,
29 it's not an area that I'm involved in.
30

31 Q. You are not aware of that?

32 A. No, I'm not.
33

34 Q. You are the, or you were --

35 A. I'm the Industrial Relations Manager, not the
36 commercial manager.
37

38 Q. I see.

39 A. I haven't read the contract, the special conditions of
40 contract.
41

42 Q. I didn't ask you about reading the contract. I'm
43 asking you quite a specific question. If Downer trained
44 employees on behalf of Origin Energy to work on the rig,
45 Origin Energy was obliged to pay for that training. You
46 say you don't know that, is that your evidence?

47 A. I don't know that Origin would pay for it. That's not

1 an area that I'm involved in

2

3 DR HANSCOMBE: Nothing else, Commissioner.

4

5 THE COMMISSIONER: Thank you. Mr Tompkins?

6

7 <EXAMINATION BY MR TOMPKINS:

8

9 MR TOMPKINS: Q. I just have a couple of matters I wish
10 to clarify. Mr McGuire, in the private hearing transcript,
11 page 18, line 39, there is a reference here to the
12 discussion you had with Mr Sirsen on 10 August 2012 which
13 was on the Friday. The statement and the question in one
14 was:

15

16 *And it's just ridiculous, isn't it, to say*
17 *that what Mr Sirsen and what Mr Lee were*
18 *agreeing had anything to do ...*

19

20 With the MOU. That reference there, Mr McGuire, is to the
21 training, is that correct?

22

A. Correct.

23

24 Q. Your evidence is still that Mr Sirsen told you about
25 that training that had been agreed to be paid for?

26

A. He did.

27

28 Q. Was there anything else said in that account of what
29 had been agreed at the picket that morning?

30

31 A. What also Mr Sirsen had mentioned in that was two
32 parts to it. One was a commitment to provide training, and
33 the second part was that if the two former employees were
34 aggrieved by their termination of employment by reason of
35 redundancy, that they could file, in his words, unfair
36 dismissal applications with Fair Work Australia and that
37 matter could be dealt with through that process.

37

38 Q. Would you find it odd, if there had been an agreement
39 reached in relation to the payment of workers, then for a
40 claim to be issued by those workers subsequent?

41

42 MR BORENSTEIN: Commissioner, this is not a proper
43 question.

44

45 MR TOMPKINS: I will withdraw that and ask it another way,
46 Commissioner.

47

1 Q. If I could take you to page 100 of the Downer bundle.
2 sorry, I will go back a step. Could I please take you to
3 page 79 of the Downer bundle.
4 A. Yes.
5
6 Q. Do you see the date 17 August is when that application
7 was lodged?
8 A. Correct.
9
10 Q. That was a number of days after your conversation with
11 Mr Sirsen?
12 A. That was.
13
14 Q. Is that application consistent with what Mr Sirsen had
15 told you?
16 A. Correct.
17
18 Q. Thank you. The next matter I just want to clarify
19 with you, Mr McGuire, relates to page 100 of the Downer
20 bundle.
21 A. Yes.
22
23 Q. The question was put to you that there had been no
24 negotiations or other discussions with the Union, or the
25 workers in relation to that application. Page 100 here
26 refers to, or is an email noting that the redundancy
27 selection matrix had been resent to the Union; is that
28 correct?
29 A. Correct.
30
31 Q. Did that form the defence that Downer was putting up
32 in relation to that hearing?
33 A. It would have, yes.
34
35 Q. And that assessment matrix, Mr McGuire, could you
36 describe what that process entailed?
37 A. It's a very robust process that we have, an internal
38 process, that assesses employees in terms of their
39 selection for redundancy and it covers off - it's a
40 weighted process on a points system. It covers safety
41 awareness, skills, attendance, timekeeping, and a number of
42 other areas that they were assessed, is we were coming to
43 an end with certain trades that would not be required,
44 especially as we go into commissioning phase of a project.
45
46 Q. If you felt that the company's position was weak in
47 relation to this hearing, would you have recommended a

1 settlement be made?
2
3 MR BORENSTEIN: I object to that, Commissioner. It is
4 speculating.
5
6 MR TOMPKINS: This is actually in relation to Mr McGuire's
7 involvement in the defence of the application,
8 Commissioner.
9
10 THE COMMISSIONER: I will allow your question.
11
12 MR TOMPKINS: Thank you.
13
14 THE WITNESS: Yes, we would have. We would have had the
15 ability if that hearing had proceeded to reach a settlement
16 assisted by a member of the Fair Work Commission. It's
17 common practice across many industries.
18
19 MR TOMPKINS: No further questions.
20
21 THE COMMISSIONER: Thank you, Mr Tompkins. Yes,
22 Mr Borenstein?
23
24 MR BORENSTEIN: Could I ask about a point of clarification
25 about one of the emails that's just been asked about? It's
26 addressed to certain people by their first name.
27
28 THE COMMISSIONER: Do you want to ask Mr McGuire?
29
30 MR BORENSTEIN: If I might.
31
32 THE COMMISSIONER: Yes, certainly.
33
34 MR BORENSTEIN: Thank you.
35
36 **<EXAMINATION BY MR BORENSTEIN:**
37
38 MR BORENSTEIN: Q. You were just looking at page 100,
39 Mr McGuire?
40 A. Yes.
41
42 Q. There's an email there that you were taken to.
43 I think the email is in the middle of the page; it is from
44 Simon French?
45 A. Correct.
46
47 Q. And it is addressed to Steven Dodd?

1 A. Correct.
2
3 Q. Could you identify Steven Dodd?
4 A. He is an organiser of the AMWU located in the Latrobe
5 Valley.
6
7 Q. Yes. And Jeff Sharp?
8 A. Jeff Sharp replaced Mr Lee as an organiser with the
9 Australian Workers' Union, also located in the Latrobe
10 Valley.
11
12 Q. And "Peter"?
13 A. That would refer to Peter Mooney, the ETU organiser,
14 also located in the Latrobe Valley.
15
16 Q. Where the email refers in its text to the selection
17 matrix that was previously forwarded to Peter, Terry and
18 Steve, is the "Peter" in that, to your understanding,
19 Peter Mooney from the ETU?
20 A. Correct.
21
22 Q. And "Terry" is Mr Lee who, in July, was still with the
23 AWU?
24 A. Yes.
25
26 Q. And "Steve" is Mr Dodd from the AMWU?
27 A. Correct.
28
29 MR BORENSTEIN: Thank you. That's all. Thank you.
30
31 THE COMMISSIONER: Thank you, Mr Borenstein. Mr Scruby?
32
33 MR SCRUBY: Mr McGuire can be excused.
34
35 THE COMMISSIONER: Yes. Mr McGuire, thanks for attending
36 today. You are excused from further attendance on the
37 summons.
38
39 THE WITNESS: Thank you.
40
41 MR BORENSTEIN: Commissioner, may I be excused as well?
42
43 THE COMMISSIONER: Certainly.
44
45 MR TOMPKINS: I also, Commissioner.
46
47 THE COMMISSIONER: Yes.

1 <THE WITNESS WITHDREW

2

3 MR STOLJAR: Commissioner, if we now move to the topic of
4 Unibuilt. I tender two private interview transcripts. The
5 first is Lance Wilson of 15 April 2015.

6

7 THE COMMISSIONER: That will be Wilson MFI-1.

8

9 **WILSON MFI-1 - PRIVATE HEARING TRANSCRIPT OF LANCE WILSON**
10 **DATED 15/04/2015**

11

12 MR STOLJAR: The second is Fiona Ward of 9 September 2015.

13

14 THE COMMISSIONER: That will be Ward MFI-1.

15

16 **WARD MFI-1 - PRIVATE HEARING TRANSCRIPT OF FIONA WARD DATED**
17 **09/09/2015**

18

19 MR STOLJAR: The news as far as quick progress today is
20 that no-one wishes to examine either of those persons, so
21 that material can just be received. I now call Mr Lockyer.

22

23 <EDWARD ALLAN LOCKYER, sworn: [10.53am]

24

25 <EXAMINATION BY MR STOLJAR.

26

27 MR STOLJAR: Q. Your name is Edward Allan - A-L-L-A-N -
28 Lockyer?

29

A. Yes.

30

31 Q. You're a resident of Victoria?

32

A. Yes.

33

34 Q. You're retired?

35

A. Yes.

36

37 Q. You attended a private hearing on 18 August 2015?

38

A. Yes.

39

40 MR STOLJAR: I tender the transcript of that private
41 hearing. I note for the record there are some excisions on
42 pages 34 and following where the discussion related to a
43 matter that need not detain the Commission. The complete
44 copy has been provided to all affected persons and if any
45 difficulty is raised in respect of that excision, it can
46 be.

47

1 THE COMMISSIONER: Yes. It will be Lockyer MFI-1.
2
3 MR STOLJAR: May it please the Commission.
4
5 Q. The background or your training, study and experience
6 is set out in that private hearing. I won't take you
7 through that. Can I show you a bundle of materials that
8 you were shown at the private hearing.
9
10 I ask that that be received into evidence,
11 Commissioner. It is volume 1 only.
12
13 MR ADDISON: Could I have a copy?
14
15 MR STOLJAR: Do you want a hard copy?
16
17 MR ADDISON: Yes, please.
18
19 THE COMMISSIONER: May I, in order to avoid confusion,
20 just say this: the bundle which is being tendered was,
21 I think, marked Lockyer MFI-1 in the private hearing.
22
23 MR STOLJAR: Yes, Commissioner.
24
25 THE COMMISSIONER: I will retain that marking for it and
26 change what I said about Mr Lockyer's statement to MFI-2.
27
28 MR STOLJAR: His transcript, Commissioner?
29
30 THE COMMISSIONER: His transcript. That will be MFI-2.
31
32 **LOCKYER MFI-2 - PRIVATE HEARING TRANSCRIPT OF EDWARD ALLAN**
33 **LOCKYER DATED 18/08/2015**
34
35 MR STOLJAR: Mr Addison can look on with me if he wants a
36 hard copy. It will come up on the screen in front of him.
37
38 Q. Could you go to page 154, please. That's the bundle
39 that's now been marked Lockyer MFI-1. You should be
40 looking at an email to you from Michael Chen of 19 February
41 2007. Is that what you've got?
42 A. An email from where?
43
44 Q. From Michael Chen?
45 A. To me?
46
47 Q. Yes.

1 A. Yes, I am.
2
3 Q. You can either look at it in hardcopy or on the
4 screen, whatever's easier?
5 A. I'm look at it on here.
6
7 Q. He says in there, in the middle of the page, the email
8 sent at 12.28pm:
9
10 *Bill asked me to email you this letter of*
11 *offer. Any questions please contact me*
12 *on ...*
13
14 A particular number. You had had some discussion with
15 Mr Shorten in advance of receiving that email?
16 A. Yes, at a meeting some days or - some days prior. I'm
17 not sure how long, but some time prior to that.
18
19 Q. Had there been discussion about somebody sending you a
20 draft contract?
21 A. No, there wasn't.
22
23 Q. If you come to page 155, you will find the draft
24 contract itself.
25 A. Yes. No, 155 is not the draft contract. Oh, sorry,
26 it is. Yes, it is.
27
28 Q. It is in the form of a letter addressed to Mr Wilson
29 from Unibuilt with a U, that is to say Unibuilt - U-I-L-T?
30 A. Yes.
31
32 Q. And it contemplates that he would be offered the
33 position of research officer, do you see that?
34 A. Yes, I do.
35
36 Q. Unibuilt at that time was operating a labour hire
37 company?
38 A. Yes, it was.
39
40 Q. It had no need for a research officer, did it; is that
41 right?
42 A. He wasn't going to be a research officer for Unibuilt.
43 He was going to be a research officer for Bill Shorten.
44
45 Q. Well, he was going to be doing work for Bill Shorten?
46 A. That's right.
47

1 Q. You didn't know what sort of work he was going to be
2 doing, did you?
3 A. I assumed that that's what he would be doing.
4
5 Q. Had someone told you he was going to be a research
6 officer?
7 A. No, they didn't. They just suggested he would be
8 working in Bill's office.
9
10 Q. He was going to be working in Bill's office?
11 A. That's right.
12
13 Q. The position is that he was never going to be a
14 research officer with Unibuilt, he was going to be doing
15 work for Mr Shorten in his campaign office; is that right?
16 A. Correct.
17
18 Q. In fact, just to be clear, he wasn't going to be doing
19 any work at all for Unibuilt, was he?
20 A. That's correct.
21
22 Q. Did you write back to Mr Chen or Mr Shorten and say,
23 "Look, this isn't right, he's not in truth " --
24 A. No, I didn't.
25
26 Q. -- "going to be a research officer or, indeed, in any
27 meaningful sense an employee of Unibuilt?
28 A. No, I didn't.
29
30 Q. You just went along with this arrangement?
31 A. I did.
32
33 Q. Just as a matter of interest, if you go back to
34 page 154, the middle of the page, 12.28, there's an email,
35 he says:
36
37 *Bill asked me to email you this letter of*
38 *offer.*
39
40 If you go further up the page, Mr Chen has written at 12.59
41 a further email saying:
42
43 *Hi Ted,*
44
45 *Here it is. Sorry for that*
46
47 Did you have a conversation with Mr Chen between 12.28 and

1 12.59 about a missing attachment, can you remember?
2 A. Cannot recall.
3
4 Q. I'm sorry?
5 A. I cannot recall.
6
7 Q. Did you have any conversation with Mr Chen about this
8 draft contract?
9 A. Not to my knowledge.
10
11 Q. It was sent to you at an email address "ted@cssa". Is
12 that Capital Sites Services Australia?
13 A. It was.
14
15 Q. Was that another labour hire company that you were
16 involved with?
17 A. Yes, it was.
18
19 Q. You'd met Mr Wilson at that stage, I think you
20 indicated that earlier?
21 A. I met him once.
22
23 Q. At the meeting in Errol Street?
24 A. Correct.
25
26 Q. That was a meeting attended by you, Mr Shorten and
27 Mr Wilson?
28 A. Correct.
29
30 Q. That was the first time you met Mr Wilson?
31 A. First and only.
32
33 Q. First and last time you met Mr Wilson. How long was
34 the meeting?
35 A. Probably 15 or 20 minutes.
36
37 Q. No-one took any notes or anything like that?
38 A. No.
39
40 Q. In the private hearing, I can take you to the passage
41 if you need to, but you said that the conversation was to
42 this effect: Mr Shorten asked whether you would take
43 Lance Wilson on as an employee and provide him to his,
44 that's Mr Shorten's, office?
45 A. Correct.
46
47 Q. Was a figure mentioned as to how much Mr Wilson would

1 be paid?
2 A. I can't recall.
3
4 Q. You read through the draft contract, I take it, when
5 you received it?
6 A. I did.
7
8 Q. You noted that it contemplated a length of employment
9 from the commencement date, that is to say, 19 February up
10 to the next Federal election, that appears on page 155.
11 You noted that, I take it?
12 A. Yes, I did.
13
14 Q. Was that something that you discussed with Mr Shorten
15 at that meeting or elsewhere?
16 A. No, not to my knowledge.
17
18 Q. Did you have any other discussion with Mr Shorten
19 about this matter, save for the two you identify in your
20 private hearing, namely, the one in late 2006 and the one
21 in early 2007 which was also attended by Mr Wilson?
22 A. Not that I can recall.
23
24 Q. The information that you drew about the arrangement,
25 other than what you'd been told in those short meetings,
26 you drew from the draft contract on page 155?
27 A. Yes.
28
29 Q. You understood from that time that the salary would be
30 in the order of \$50,000 per annum, plus super?
31 A. Correct.
32
33 Q. Plus a mobile phone allowance?
34 A. Correct.
35
36 Q. And then page 156, there's provision for signature by
37 both yourself and Mr Wilson?
38 A. Yes, that's correct.
39
40 Q. To your recollection, was the contract ultimately
41 signed?
42 A. Not to my knowledge.
43
44 Q. Do you not recollect one way or the other?
45 A. I certainly didn't sign it.
46
47 Q. You didn't sign it?

1 A. No.
2
3 Q. But you proceed - you didn't have any other form of
4 employment contract?
5 A. No.
6
7 Q. So is it fair to say that you just proceeded on the
8 basis of this contract, this draft contract?
9 A. Yes.
10
11 Q. Mr Wilson then sent you an email, that is on page 158.
12 He says:
13
14 *I was just wondering whether Michael at the*
15 *AWU had sent you the draft contract he*
16 *prepared?*
17
18 That's Michael Chen, of course. Then he says:
19
20 *Also, please find attached a copy of my CV*
21 *for your reference.*
22
23 Do you see that?
24 A. Correct.
25
26 Q. Why was he sending you a copy of his CV to your
27 knowledge?
28 A. I would assume so that we had some record of what he'd
29 done in the past and we had a record of all his
30 information.
31
32 Q. What for? He was not doing any work for you.
33 A. I know, but he was being paid and employed by us.
34
35 Q. Yes, but he wasn't - you never saw him again?
36 A. I understand that.
37
38 Q. And he did no work for you?
39 A. Pardon?
40
41 Q. He did no work for you?
42 A. He didn't do any work for me. We were paying him.
43
44 Q. So what did you want his CV for?
45 A. It was normal practice for us to have a CV of anyone
46 we paid.
47

1 Q. Was that just to keep a record to give the appearance
2 that he was a genuine employee?
3 A. Well, he was. He was a genuine employee, we were
4 paying him.
5
6 Q. Well, you were paying - well, no, I thought you said
7 it was some sort of donation in your view?
8 A. I didn't say it was a donation.
9
10 Q. I'm sorry, I understood you to say that at the private
11 hearing. What do you say the funds that you paid in
12 relation to Mr --
13 A. We viewed it as a donation, correct, but we needed to
14 have a record to put on file of who that person was.
15
16 Q. What for?
17 A. Well, that's just normal procedure of employing
18 people.
19
20 Q. Is this normal procedure to employ someone who you
21 never meet again and you have no control over?
22 A. Occasionally that happens.
23
24 Q. Occasionally it happens?
25 A. Yes.
26
27 Q. Can you point to some other instance?
28 A. Well, you employ a person to go and work for someone
29 to do a job for them and you don't see them again. They do
30 - they work for a week; you never see them again.
31
32 Q. Did you get any record from Mr Wilson about what he'd
33 been doing?
34 A. No.
35
36 Q. Get any time sheets?
37 A. No.
38
39 Q. Did you get any report at all as to what his
40 activities were on a day-to-day basis?
41 A. No.
42
43 Q. And he never set foot in the Unibuilt office, so far
44 as you know?
45 A. No.
46
47 Q. His wages were paid by a different company again,

1 Maintenance Resources, that was another company in the
2 group?
3 A. It was a company that held the bank accounts
4 originally.
5
6 Q. Held the bank accounts? All right. And then you had
7 some further email exchanges on page 159. They just relate
8 to the organisation of the payment of Mr Wilson's wages.
9 And then from page 160 and following, we have some pay
10 slips?
11 A. Correct.
12
13 Q. Certainly in the early months of 2007, Mr Wilson was,
14 on paper, an employee of Unibuilt with a U, his wages are
15 paid by Maintenance Resources, he's the research officer,
16 but in --
17 A. Excuse me, that's an account reference, if you read
18 that form.
19
20 Q. Thank you.
21 A. Account reference.
22
23 Q. The account reference, but didn't --
24 A. It doesn't say that MRE or Maintenance Resources paid
25 it. It just says "Account reference".
26
27 Q. Do you say the funds emanated from Unibuilt with a U?
28 A. I'm sorry.
29
30 Q. Do you say the funds which were --
31 A. I don't know whether they were paid by Unibuilt with a
32 U. I would imagine they were, yes. I don't know, though.
33
34 Q. You understand when I make the point of saying
35 "Unibuilt with a U", I'm endeavouring to draw the
36 distinction between Unibilt spelt B-I-L-T?
37 A. I understand.
38
39 Q. I asked you a little bit about the meeting in early
40 2007 at Errol Street. You told us something about what was
41 said at that meeting. Can I just take you back to the
42 context in a bit more detail. You had a meeting in late
43 2006, you told us, in the private hearing in the AWU
44 office; correct?
45 A. I assume so. Yes.
46
47 Q. You told us that you were in the Union offices and you

1 discussed --
2 A. I was in the Union, I said, yes.
3
4 Q. You had a discussion with Mr Shorten?
5 A. Yes.
6
7 Q. Just tell us what he said about this arrangement?
8 A. He asked me whether I'd be interested in assisting him
9 with his election.
10
11 Q. His election?
12 A. Yes.
13
14 Q. Or his election campaign?
15 A. Or words to that effect.
16
17 Q. Are you able to recollect, having thought about it,
18 what you were doing in the Union offices on that day?
19 A. No, I could have been there talking to a number of the
20 organisers. It's seven or eight years ago, so --
21
22 Q. But that's just a guess when you say you could have
23 been in there?
24 A. That's a guess, yes.
25
26 Q. Could you have been discussing your EBA?
27 A. No.
28
29 Q. You had an EBA expiring the following year, didn't
30 you?
31 A. The following year?
32
33 Q. Mmm. This is dated 2006 and you had one expiring in
34 2007?
35 A. I wouldn't have been going to discuss it, no.
36
37 Q. But you can't proffer any explanation as to what took
38 you there?
39 A. Other than that I would have been - no, I can't.
40
41 Q. Can you come through to page 161. This is a letter
42 sent on 16 May 2007 from Unibuilt with an "I"?
43 A. Yes.
44
45 Q. You were the principal of Unibuilt with an I?
46 A. Yes.
47

1 Q. I take it you drafted this letter?
2 A. I don't recall.
3
4 Q. It is likely, in the ordinary course of practice, that
5 you drafted this letter; correct?
6 A. It could have been, yes. I don't recall, though.
7
8 Q. It's signed by you?
9 A. It was signed by me.
10
11 Q. I take it you had read through it, if nothing else?
12 A. I certainly would have read through it, yes.
13
14 Q. The opening words of the letter are:
15
16 *As per our agreement ...*
17
18 Do you see that?
19 A. Yes.
20
21 Q. It is a letter addressed to Mr Melhem?
22 A. Yes.
23
24 Q. What was the agreement?
25 A. I can't recall what I was referring to.
26
27 Q. Had you had a discussion about these arrangements with
28 Mr Melhem?
29 A. Well, "Unibilt agrees to pay you weekly" - it goes on
30 to say:
31
32 *Unibilt agrees to pay you weekly for work*
33 *completed by Lance ...*
34
35 At the rate of whatever it is.
36
37 Q. Yes, it does say that. Why do you draw attention to
38 that matter?
39 A. Just the way that I've - the way the letter has been
40 written and I don't know whether I wrote the letter or one
41 of my staff did.
42
43 Q. Whoever wrote it, you signed it?
44 A. Yes.
45
46 Q. And you read through it before you signed it and made
47 sure it was accurate, I take it?

1 A. Yes, I would assume so.
2
3 Q. When it refers to "our agreement", is that a reference
4 to a discussion that you had had with Mr Melhem?
5 A. I can't recall, I --
6
7 Q. Did you have a discussion with anyone else about this?
8 A. No.
9
10 Q. Did you have a discussion with Mr Shorten about it?
11 A. No.
12
13 Q. What was the agreement to which you make reference in
14 the opening four words of this letter?
15 A. The agreement I assume - and I can only assume, I'm
16 only guessing, that "Unibuilt agrees to pay you weekly" for
17 work completed by Lance.
18
19 Q. What is being effected by this correspondence is a
20 great deal more than a change to the frequency of payments
21 to Mr Wilson, isn't it? Just have a read of it.
22 A. I'm not sure what you're alluding to.
23
24 Q. Let's go through it slowly.
25
26 *As per our agreement, Lance Wilson will be*
27 *contracted to Unibuilt as of 17 May 2007.*
28 *Unibuilt agrees to pay you --*
29
30 That's Mr Melhem:
31
32 *-- weekly for work completed by Lance.*
33
34 At a particular rate. Do you see that?
35 A. Yes
36
37 DR HANSCOMBE: I object to that. It is not Mr Melhem,
38 it's the Union. The puttage should be accurate.
39
40 MR STOLJAR: It is.
41
42 DR HANSCOMBE: The letter is addressed to Mr Melhem but in
43 his capacity as the Secretary of the Branch.
44
45 MR STOLJAR: I press the question.
46
47 THE COMMISSIONER: Yes, I will allow the question.

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MR STOLJAR: Q. The letter is addressed "Dear Cesar", and it says:

Unibuilt agrees to pay you weekly for work completed by Lance ...

At a particular rate. Do you see that?

A. Yes.

Q. Isn't this the position, that as at about 16 May 2007, Mr Wilson became an employee of the AWU, who was then contracted to Unibilt with an I?

A. I can't recall. That could well have been. It's some --

Q. That's what the letter --

A. -- some eight years ago.

Q. I didn't mean to cut you off. Have you finished your answer?

A. Pardon?

Q. To complete your answer, you wish to say this is some seven or eight years ago?

A. Well, I'm just saying I can't - I said to you I can't recall. My understanding of what's been written there refers to what Unibilt would be paying to the AWU.

Q. Yes. In exchange for services apparently provided by the AWU to Unibilt?

A. No, for what Lance Wilson did for Unibilt in exchange for work that he did with Bill Shorten's office. That would be - and it probably didn't - it didn't spell it out in enough detail.

Q. You had been in business a long time by this stage, hadn't you, Mr Lockyer; correct?

A. I'm not sure what point you're trying to make.

Q. You had been in business --

A. I'm not - I still --

Q. -- by 2007 you had been in business?

A. I'm still not sure what point you're trying to make.

Q. My question is: you had been in business for a long

1 time by 2007?

2 A. Yes.

3

4 Q. You understood the importance of accurately and
5 precisely describing legal relations?

6 A. I'm not a lawyer.

7

8 Q. You understood the importance of accurately and fully
9 describing legal relations?

10 A. I'm not a lawyer.

11

12 Q. And you understood, as at 16 May 2007, that a very
13 deliberate shift in the arrangement was being effected,
14 wasn't it?

15 A. It was [sic] significant as far as the arrangement
16 with myself and Lance and the AWU. It wasn't considered --

17

18 Q. I'm not suggesting it made any practical difference to
19 what Mr Wilson was doing, he was over in Moonee Ponds
20 working for Mr Shorten; correct? Mr Wilson's evidence
21 about this is that he knew nothing about this letter.

22

23 DR HANSCOMBE: Before the witness answers that question,
24 I am sorry to interrupt Mr Stoljar, but the running draft
25 transcript has the witness saying "It was significant as
26 far as the arrangement with myself and Lance and the AWU",
27 and then he went on, "It wasn't considered", and was cut
28 off. I wonder if Mr Stoljar would clarify with the witness
29 whether he means "was" or "wasn't", because I heard
30 "wasn't" and so did my instructor.

31

32 THE COMMISSIONER: I got the impression it was "wasn't"
33 was the general tenor of the answer.

34

35 MR STOLJAR: Certainly.

36

37 Q. The question I put was that there had been a
38 deliberate shift in the arrangement, in effect, and you
39 said, "It was significant as far as the arrangement with
40 myself and Lance and the AWU", and then you heard what was
41 just said. I won't suggest one thing or the other to you,
42 but what did you wish to say after that?

43 A. Nothing.

44

45 DR HANSCOMBE: No, it's the transcription of the first
46 sentence. I heard "wasn't" in the first sentence.

47

1 MR STOLJAR: I am sorry, I thought you were talking about
2 "considered".

3

4 Q. Did you say "it was significant" or "it wasn't"?

5 A. It wasn't significant. I didn't consider it
6 significant. All it was was a change of employment
7 arrangements, or commercial arrangements.

8

9 Q. But the point that I'm really trying to explore with
10 you is this, Mr Lockyer - until 16 May 2007, on paper,

11 Mr Wilson was a research officer with Unibuilt with a U?

12 A. Correct.

13

14 Q. On 16 May 2007, on paper - I say "on paper" because at
15 all times he's over in Bill Shorten's office, I understand
16 that, but the way the agreement is set up is now he appears
17 to be an employee of the AWU, who the AWU is providing to
18 Unibuilt with an I?

19 A. Well, as I said to you a few minutes earlier, the
20 letter was probably not written in the best form. There
21 wasn't a lot of care taken with it, you know.

22

23 Q. You remember that, do you, that there wasn't a lot of
24 care?

25 A. No, I don't. I'm just saying in reading the letter.

26

27 Q. But isn't that what happened, Mr Wilson was then taken
28 on to the AWU payroll?

29 A. Yes, he was.

30

31 Q. And that occurred on or shortly after 16 May 2007?

32 A. I think so. I'm not 100 per cent certain.

33

34 Q. Why did you go to that trouble, Mr Lockyer? Why did
35 you change this arrangement?

36 A. I had - we had cashflow problems at the time, so I had
37 a discussion with Cesar to suggest that it would be more
38 convenient if he picked up Lance's wages from that time on.

39

40 Q. That explanation, I suggest to you, just doesn't make
41 any sense, does it?

42 A. What do you mean it doesn't make any sense?

43

44 Q. He sent you invoices and you paid them. When I say
45 "you", either Unibuilt with a U or Unibuilt with an I paid
46 them, and when I say "he", the AWU sent you invoices?

47 A. Yes, they did.

1
2 Q. So it had no impact --
3 A. But we - we --
4
5 Q. It had zero impact on your cashflow?
6 A. No, well, it did because we're bigger than - we didn't
7 pay them on time, we pay them 30 days later.
8
9 Q. Is that seriously your explanation, is it?
10 A. Pardon?
11
12 Q. That is your honest explanation to this Commission as
13 to why this arrangement was changed?
14 A. No, it's not. You're misconstruing what I'm saying.
15
16 Q. I don't wish to misconstrue anything, Mr Lockyer. You
17 take your time and give me any explanation that you feel
18 truthfully recounts what the position was.
19 A. This was eight years ago.
20
21 Q. Yes.
22 A. More than eight years ago and I don't - and I can't
23 recall exactly every detail eight years ago.
24
25 Q. Is there any other aspect of the explanation you wish
26 to provide? Take your time.
27 A. No. Not that I can recall.
28
29 Q. It says here, going back to the letter:
30
31 *... Lance Wilson will be contracted to*
32 *Unibilt ...*
33
34 Now, why have we switched companies? Why go from --
35 A. The terminology is probably incorrect, but I mean -
36 so.
37
38 Q. Why did you switch the companies, Mr Lockyer?
39 A. No idea why that was done. I can't recall.
40
41 Q.
42 *... so he will be contracted to Unibuilt as*
43 *of 17 May 2007.*
44
45 And then:
46
47 *Unibilt agrees to pay you weekly for work*

1 *completed by Lance ...*

2
3 What work did you contemplate that Mr Wilson would be doing
4 for Unibuilt?

5 A. The work that he was doing in Bill Shorten's office.
6

7 Q. Why was it necessary that he become an employee of the
8 AWU if he's going to physically remain in Bill Shorten's
9 office working on the campaign?

10 A. I said to you a few minutes ago that it would - that
11 we were having cashflow problems, from memory, and I can't
12 be very certain of that, and I thought it would be better
13 if he - if he was paid by the AWU.
14

15 Q. You didn't say anything about the cashflow problems as
16 an explanation for this change in your private hearing.

17 When did your memory improve in that regard?

18 A. Well, maybe you didn't ask me the question.
19

20 Q. I beg your pardon?

21 A. Maybe you didn't ask me the question.
22

23 Q. Let's explore the cashflow issue a little bit more.
24 There's Unibuilt with a U and Unibilt with an I. The
25 background is that there was a company that you set up at
26 one stage called EA Lockyer Pty Ltd and that changed its
27 name to Unibilt, with an "I, that is U-N-I-B-I-L-T, in
28 September 2006, some six months or so before this; is that
29 right?

30 A. I can't recall.
31

32 Q. If I suggest to you that that's what the ASIC records
33 suggest, do you have any reason to doubt that?

34 A. No, I don't.
35

36 Q. That sounds about right?

37 A. I said to you I can't recall.
38

39 Q. All right. And why did EA Lockyer Pty Ltd change its
40 name to Unibilt with an "I"?

41 A. I can't recall.
42

43 Q. Unibuilt with a "U" was the one which seemed to be
44 engaged in more significant business than Unibilt with an
45 "I"; is that right?

46 A. Correct.
47

1 Q. Did Unibilt with an "I" pay tax?
2 A. I can't recall.
3
4 Q. Did it ever submit a tax return?
5 A. I can't recall.
6
7 Q. It was wound up in due course with a very significant
8 tax bill; correct?
9 A. I think so, yes.
10
11 Q. The liquidator has said that - that's Unibuilt with a
12 "U", I'm talking about. Just to be clear, because it is
13 confusing with the two companies, Unibuilt with a "U" was
14 wound up in due course?
15 A. It was.
16
17 Q. With a significant tax bill?
18 A. It was.
19
20 Q. Just to be clear, did Unibuilt, with a "U", ever pay
21 tax?
22 A. It would have, yes.
23
24 Q. You say that. Did it ever submit a tax return?
25 A. Yes, it would have.
26
27 Q. You say it would have, but you don't have any memory
28 one way or the other, do you?
29 A. I don't have any memory, no. It wasn't something that
30 I actually had carriage of.
31
32 Q. Who had carriage of that matter?
33 A. One of my accountants, I suppose.
34
35 Q. You suppose. You see, why don't you come through to,
36 just to orient you in the document, page 33. That a
37 liquidator's report for Unibuilt a "U". It is a rather
38 long document but I just wanted to take you to a couple of
39 passages. Page 46 in the bottom right-hand corner, this is
40 in the fourth last paragraph, the liquidator says his
41 preliminary insolvent trading assessment indicates the
42 company, which is Unibuilt with a U, may have been
43 insolvent from at least 30 June 2008, and then if we go
44 back to page 43 in the bottom right-hand corner, there's
45 some information about "Related Party Loans" at 8.5.
46 In fact, Unibuilt with a U had made a loan to Unibilt with
47 an I. It says:

1
2 *Mr Edward Lockyer is the director of each*
3 *of the entities. Letters of demand were*
4 *issued to all entities and Mr Lockyer*
5 *without response. In this regard,*
6 *Mr Lockyer claimed to have never received*
7 *the demands. The demands were reissued to*
8 *him on or around November 2011. Since this*
9 *time Mr Lockyer has failed to respond to*
10 *any of my correspondence.*

11
12 So the liquidator was having a bit of trouble knowing
13 precisely what had happened, but under the heading
14 "Unsecured Creditors", he's listed the ATO which had put on
15 a proof of debt of \$734,705. Is that right?

16 A. If that's what he's saying, that's what he's saying.
17 I don't know.

18
19 Q. Isn't this the position, that Unibuilt with a U - or
20 is this the position, you tell me, Unibuilt with a U had
21 failed to pay its tax for a number of years, at least?

22 A. I can't recall.

23
24 Q. The liquidator's proposition was that it may have been
25 insolvent from at least 30 June 2008. Do you agree with
26 that?

27 A. No, I don't.

28
29 Q. It had cashflow problems in early 2007, you told us?

30 A. Correct.

31
32 Q. Was one reason for this change in arrangement, that
33 you were shifting the business from Unibuilt with a U over
34 to Unibilt with an "I"?

35 A. I can't recall.

36
37 Q. Why have two companies set up with such a similar
38 name?

39 A. Because the names were available.

40
41 Q. Well, did you have any thought of winding up one and
42 continuing with the other?

43 A. No.

44
45 Q. In any event, you didn't have any communication with
46 Mr Wilson about this change in arrangement, did you?

47 A. No, I didn't.

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Q. All this is taking place in around about May 2007. I'm just tracking down the document, but, from memory, it was 16 May 2007. Yes, on page 161. Just before we leave page 161, you say:

If you have any queries or there is any variation to the rates specified above, please contact the office to discuss.

Do you remember whether anyone did make an inquiry about that?

A. I can't recall.

Q. A week later, you send another email to Mr Melhem on page 171, attaching an EBA for the Pilkington repair project; do you see that? You were having discussions with Mr Melhem at this stage about a new EBA?

A. It's custom and practice when you went to price a contract so that you could work out how much you had to pay, you went and talked to Union about how much - about an EBA.

Q. Yes. I'm sure it is, but my question was: you were having discussions about the new EBA with Mr Melhem at around about this time, the first few weeks of May 2007?

A. I would have had discussions with Mr Melhem about the Pilkington enterprise agreement, yes.

Q. You say here in your email on page 171:

Please find attached the EBA for the Pilkington Repair Project.

A. That's right.

Q. It continues:

I have made changes to the following I am sorry it has taken so long, I will call you early next week ...

A. That's right.

Q. You didn't just send it to him completely out of the blue, did you --

A. No, no, we --

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Q. -- you told him it was coming?

A. No, I was talking to Pilkington's about being able to assist them with their repair project.

Q. You were talking to Pilkington's; you were also talking to Mr Melhem, weren't you?

A. Exactly.

Q. So, is this the case, that you talked to him and in the same conversations, you would talk to him about the change in arrangement for Mr Wilson?

A. No. There would be no reason to do that.

Q. The letter that we're looking at page 161 is 16 May 2007 and page 171 is 23 May 2007, a week later.

A. One is 23 May and the other is 16 May.

Q. And 16 May you say - we've discussed this already - in the first four words "As per our agreement", that suggests that you had been having some discussions with Mr Melhem about Mr Wilson?

A. Correct.

Q. And then page 171, a week later:

Please find attached the EBA for the Pilkington Repair Project.

It would appear that you must have been having some discussions with Mr Melhem about that EBA at about that time?

A. I can't recall.

Q. Do you say it was just a coincidence that you were having discussions about Mr Wilson and about the EBA at the same time?

A. There would be no - no, it was just a coincidence.

Q. The EBA is attached at 172 and then the first invoice is on page 195, Tax Invoice 018428. The tax invoice reads:

The work was completed by Lance Wilson in May 2007.

- 91.20 Hours @ \$34.90 ...

1 That figure reflected the figure that you had put in your
2 letter of 16 May 2007?
3 A. I'd assume that's correct. I haven't checked it.
4
5 Q. Is this the position, that Mr Wilson had not done any
6 work for the AWU in that month, he'd been, so far as you
7 knew, over at Mr Shorten's campaign office doing work for
8 Mr Shorten?
9 A. Yes.
10
11 Q. Do you accept that the invoice, to the extent it
12 suggests he was doing work for the AWU, is incorrect?
13 A. Yes, it probably is.
14
15 Q. Did you take any steps to check whether he'd actually
16 done those hours or anything like that?
17 A. No.
18
19 Q. Did you take any steps to try and correct the invoice?
20 A. No.
21
22 Q. But you knew that it was not right when you caused it
23 to be paid?
24 A. No.
25
26 Q. You did know it was not right?
27 A. No, I didn't know it was not right. I didn't -
28 I mean, I wouldn't have - I wouldn't have read the invoice.
29 I wouldn't have seen probably the invoice. All I did was
30 I would have signed the cheque, that's all.
31
32 Q. You knew that he was not working over at the AWU
33 office, didn't you?
34 A. I did.
35
36 Q. What, you say someone else approved the invoice?
37 A. Yes, one of my staff.
38
39 Q. One of your staff. Who?
40 A. Pardon?
41
42 Q. Who?
43 A. Theresa or one of the staff that I had in the office
44 at the time.
45
46 Q. Is Theresa a person who did - you tell me. What was
47 Therese's function at that time?

1 A. She was in administration, part of administration.
2
3 Q. Go to page 196.
4 A. Yes.
5
6 Q. That's a cheque drawn on the account of Unibuilt with
7 a U?
8 A. That's right.
9
10 Q. Is that your signature?
11 A. That's my signature but not my writing on the cheque.
12
13 Q. Whose writing on the cheque?
14 A. One of the - Theresa or someone else in the office.
15
16 Q. Look at 197. Is that your handwriting?
17 A. That's a copy of a cheque butt, I assume.
18
19 Q. You were sending cheques reasonably regularly once
20 this arrangement was in place?
21 A. Probably, yes.
22
23 Q. How did that improve your cashflow or Unibuilt's -
24 with a U - cashflow?
25 A. I don't know.
26
27 Q. You don't know, is that what you said?
28 A. Maybe we had some cash come in at that time. I don't
29 know. I can't recall. As I said, it's eight years ago.
30
31 Q. That's just a guess, is it, that you had some cash
32 coming in?
33 A. I'm only having a guess, yes.
34
35 Q. Your explanation, as I understand it - this is what
36 you said in your private hearing - was that this was some
37 sort of donation to the Labor Party, the money that you
38 were - why don't you say it rather than me try and
39 summarise it. What is your understanding of the money --
40 A. I would have regarded it as a donation to the
41 Labor Party like the other donations I made to the
42 Liberal Party.
43
44 Q. You said, "I would have regarded it as a donation to
45 the Labor Party"?
46 A. Yes.
47

1 Q. Was that how you regarded it at the time?
2 A. Yes, I would have.
3
4 Q. You didn't record it as a donation in the books of the
5 company, did you?
6 A. No. Well, that was - whoever wrote the cheque out and
7 I'm not sure which one, who in the office did, but they
8 wrote - they put on the butt "the AWU" and they didn't put
9 on there "Donation".
10
11 Q. Did you ask them about that?
12 A. No, I didn't.
13
14 Q. Was it a donation to the Labor Party or the AWU?
15 A. We would have assumed - we would have regarded it as a
16 donation to the Labor Party.
17
18 Q. Who is "we"?
19 A. I would have regarded it as a donation to the
20 Labor Party.
21
22 Q. Why?
23 A. Because it was paying for Lance Wilson's wages.
24
25 Q. If you wanted to make a donation to the Labor Party
26 why not just write out a cheque in favour of the
27 Labor Party?
28 A. I don't know why we didn't do that: we didn't.
29
30 Q. Why --
31 A. I just said to you I don't know why: we didn't.
32
33 Q. Why set up this extraordinary paper trail pursuant to
34 which a person's employed as a research officer by Unibuilt
35 and then he shifts across to the AWU, why engage in all
36 that?
37 A. Because that's what was decided to do.
38
39 Q. Who decided that?
40 A. Bill asked me whether I would do that.
41
42 Q. He asked you whether you would set up that paper
43 trail?
44 A. No, no, he asked me whether I would employ Lance for
45 the time that he was working in his electoral office.
46
47 Q. Why didn't you say, "Lance can go and work in your

1 electoral office and if you want a donation, I'll make you
2 a donation. If you want to use that money to cover the
3 wages, you do that or you do whatever you want with it"?
4 A. Well, in hindsight, that probably should have been
5 done, but it was done this way and in hindsight - you know,
6 hindsight's a wonderful thing.

7
8 MR STOLJAR: Can I show you some P&L statements, profit
9 and loss statements? We have just put together a small
10 bundle of them. I'll hand them out. Commissioner, I would
11 ask that this bundle be received into evidence; it
12 comprises 11 pages.

13
14 THE COMMISSIONER: Lockyer MFI-3, subject to the rights of
15 any person represented to object in due course.

16
17 **LOCKYER MFI-3 BUNDLE OF PROFIT AND LOSS STATEMENTS**

18
19 MR STOLJAR: Q. The first page on Lockyer MFI-3,
20 Mr Lockyer, is a profit and loss statement from Unibuilt
21 with a U. Unibuilt with a U used MYOB, did it?

22 A. I think so. I have no idea.

23
24 Q. You recognise this as a copy of Unibuilt's profit and
25 loss statement?

26 A. It says it is. I don't - I don't recall seeing it but
27 it does say it was.

28
29 Q. You have no reason to doubt it, do you?

30 A. No, I don't.

31
32 Q. The profit and loss statement for the 2007 year
33 includes in "Expenses" an item, in fact, the last item
34 before "Total Expenses" is described as
35 "Gifts & Donations". Do you see that? Expenses associated
36 with Mr Wilson weren't recorded there as a donation,
37 were they?

38 A. I haven't any idea whether they were included in that
39 or not.

40
41 Q. They're not included in the figure of \$2,700,
42 are they?

43 A. I don't know.

44
45 Q. Why didn't you tell your accountants, or whoever was
46 running it, "Look, we're making this donation. Record it
47 as a donation"?

1 A. I don't know why I didn't tell them.
2
3 Q. Then if we go to page 5, there's Unibuilt's P&L for
4 the year ending in 30 June 2008, and likewise, there's a
5 figure for "Gifts & Donations" in the "Expense" column and
6 the amount is 120.
7 A. Yes.
8
9 Q. It is pretty clear that nothing associated with
10 Mr Wilson is included in that item; correct?
11 A. Correct.
12
13 Q. In fact, according to the profit and loss for the 2008
14 year, Unibuilt with a U made a net loss of \$45,000-odd?
15 A. Correct.
16
17 Q. Likewise, its balance sheet for the 2008 year -
18 I won't pursue that. Could I come to Unibuilt with an I.
19 We don't have the complete records for Unibuilt with an I,
20 they weren't available for whatever reason, but we have a
21 form of profit and loss statement on page 9. In fact,
22 Unibuilt with an I seems to have only been trading in a
23 fairly limited way in that year; is that right?
24 A. I assume so. I don't recall these balance - I don't
25 recall these profit and loss statements or the balance
26 sheets.
27
28 Q. The profit and loss statement on the next page,
29 page 10, doesn't include an item for donations and, in any
30 event, the numbers don't appear to be sufficient to cover
31 Mr Wilson; is that right?
32 A. That's correct.
33
34 Q. The position, in a nutshell, in respect of the
35 Unibuilt - whether we use the U or the I - accounts is that
36 these payments weren't being accounted for as donations?
37 A. Well, they should have been; it was sloppy accounting.
38
39 Q. You said in the private hearing that you were making
40 these contributions or donations, in effect, so that you
41 could tell customers about the relationship that you or
42 your companies had with the AWU?
43 A. No. Well, if I - weren't making the donations to our
44 customers. We had a relationship with the AWU, as we had
45 with all unions. The AWU was a more compliant union
46 compared to the CFMEU.
47

1 Q. Why don't I take you to some passages in the
2 transcript of your private hearing. At page 25 - do you
3 have a copy of that there? If not, I'll supply you with
4 one. It will come up on the screen. Will that do or would
5 you like to have a hard copy?

6 A. I would like a hard copy, please.

7
8 Q. Yes, certainly. (Shown to witness). Some questions
9 were being asked about the reason for your entering into
10 the arrangement that I've been asking you about. At
11 page 25, line 25, I was asking you more about - I was also
12 asking you about the fact that you'd stopped making the
13 payments and I'll come back to that. My question at
14 line 25 was:

15
16 *Q. Well, your evidence just then was you*
17 *didn't achieve anything. What were you*
18 *hoping to achieve?*

19 *A. As I just said to you, when you go to*
20 *talk to a customer, if you can say to the*
21 *customer - a potential customer, rather -*
22 *that you've got a good relationship with a*
23 *trade union ... then that would give you an*
24 *edge in talking to the customer.*

25
26 And then I asked you another question, you answered, and
27 then at 36:

28
29 *It would be that I could say to them,*
30 *"You can talk to the AWU, and they will*
31 *tell you that they don't have a problem in*
32 *working with me."*

33
34 Is that the position, that you wanted to facilitate or
35 improve a good working relationship with the AWU?

36 A. I wanted to continue - I wanted at all times to
37 continue a good relationship with all unions, including the
38 AWU.

39
40 Q. Was that your purpose in entering into this
41 arrangement, is that what you're saying?

42 A. No, it wasn't.

43
44 Q. Was that a side benefit of entering into this
45 arrangement?

46 A. No, it was not a benefit of anything at all.

47

1 Q. What do you say that your purpose was in entering into
2 this arrangement?

3 A. It was a donation which was incorrectly recorded in
4 the accounts, a donation to the Labor Party, like I made
5 donations to the Liberal Party through the 500 Club.
6

7 Q. Were you proposing to use Mr Shorten or anyone else
8 from the AWU as a reference?

9 A. Never used the unions ever as a reference. I just
10 suggested if they - if a client wanted to or a potential
11 client wanted to call the Union, they should talk to the
12 Union to find out whether the Union had any problem in
13 working with me. That was all, end of story.
14

15 Q. I drew that from from your own evidence in the private
16 hearing, Mr Lockyer, at page 25, 45:

17
18 *... if I'd used him as a reference by going*
19 *to a customer and saying, "Give*
20 *Bill Shorten or Cesar Melhem a ring", or*
21 *Sam Wood, or whoever it may be, "a call to*
22 *see whether there was a problem in me*
23 *getting an enterprise agreement to work*
24 *with you."*
25

26 A. Enterprise agreements from time to time - well,
27 enterprise agreements are important in Victoria.
28

29 Q. Yes, but isn't this the position, that you were going
30 to use your relationship with the AWU as a selling point
31 with your potential customers?

32 A. It was part of the process.
33

34 Q. You wanted to be able to say to customers, "Look, you
35 can talk to the AWU and they'll tell you they don't have a
36 problem in working with me"?

37 A. I've already said that in my private hearing.
38

39 Q. That was one of the reasons you entered into this
40 arrangement, wasn't it?

41 A. Which arrangement?
42

43 Q. The arrangement pursuant to which you were paying
44 these moneys for and on behalf of Mr Wilson?

45 A. No, no, it wasn't.
46

47 MR STOLJAR: Can I take you to page 343 of the bundle:

1 that's Lockyer MFI-1. I am sorry, Commissioner, I've just
2 noticed the time.

3
4 THE COMMISSIONER: Shall we press on?

5
6 MR STOLJAR: I am in your hands, Commissioner.

7
8 THE COMMISSIONER: Then let us continue.

9
10 MR STOLJAR: Q. Would you have a look at page 343. This
11 is a letter that was written from Unibuilt with a U to
12 Shell Refinery. The copy we've got isn't signed but I take
13 it you signed this letter and sent it?

14 A. I can't recall.

15
16 Q. Do you remember that Unibuilt was submitting a
17 proposal to Shell about scaffolding and crane hire at about
18 this time?

19 A. Some of my staff were interested in this particular
20 project. I wasn't in Australia, I was overseas.

21
22 Q. Where were you?

23 A. I was overseas.

24
25 Q. Where?

26 A. I was in New Zealand and the US.

27
28 Q. For how long?

29 A. I was there for about eight or nine weeks.

30
31 Q. It says in this letter, or draft letter, and I am
32 looking at the second paragraph:

33
34 *Unibuilt has had Enterprise agreement*
35 *design with the co-operation of the*
36 *Australian Workers Union who has a vested*
37 *interest in ensuring the continuing*
38 *operation and investment in the Shell Corio*
39 *Refinery. We anticipate having our*
40 *agreement certified over the next 4 weeks*
41 *(see copy attached). The management of*
42 *Unibuilt has a strong relationship with the*
43 *Australian Workers Union, which has enabled*
44 *us to have a very flexible*
45 *Enterprise Agreement as well as direct*
46 *access to both the State secretary and the*
47 *Federal secretary who have given us their*

1 *full support.*

2

3 And that was a statement that you were propounding at that
4 time, September 2004?

5 A. Well, it's written under my name.

6

7 Q. But it's accurate, isn't it, the management of
8 Unibuilt had a strong relationship with the AWU?

9 A. As I said earlier, we had a strong relationship with
10 every Union except for the CFMEU.

11

12 Q. But you had a strong relationship with the AWU?

13 A. No stronger than we had with the Metalworkers or the
14 ETU.

15

16 Q. And that "enabled us to have a very flexible
17 Enterprise Agreement as well as direct access to both the
18 State secretary and the Federal secretary ..."?

19 A. Exactly the same as we would have with the
20 Metalworkers and the ETU.

21

22 Q. " ... who have given us their full support"?

23 A. Exactly the same as we would have with the
24 Metalworkers and the ETU.

25

26 Q. Yes. I am not asking about the Metalworkers or the
27 ETU.

28 A. Well, I'm just --

29

30 Q. I am just asking you about the AWU for the time being.
31 These are all accurate statements, so far as you were
32 concerned, in relation to your relations with the AWU;
33 correct?

34 A. Correct.

35

36 Q. You wished to continue those good relations; correct?

37 A. This was 2004.

38

39 Q. Yes, I said that was a few years before.

40 A. I'd had relationships with the trade union movement
41 since 1978. Why would I want to start continuing - I've
42 had - it's always been there.

43

44 Q. You wished to continue it?

45 A. Certainly.

46

47 Q. Is it true that you had direct access to the

1 State Secretary?

2 A. I could phone the State Secretary's secretary or EA
3 and arrange to see him at his convenience.

4
5 Q. And the Federal Secretary of the AWU?

6 A. And the same thing.

7
8 Q. You were endeavouring to sell Unibuilt to customers in
9 this way?

10 A. Well, in this way and many other ways.

11
12 Q. Yes. For example, if you go to a presentation that
13 was given and you're not recorded as one of the persons who
14 gave the presentation --

15 A. I didn't even write the presentation, so I don't know
16 anything about it.

17
18 Q. 347. It is a presentation by Unibuilt to
19 Danum Engineering. On behalf of Unibuilt, John Douglas and
20 Livio Zotti - John Douglas was a legal practitioner
21 providing assistance to Unibuilt?

22 A. He was.

23
24 Q. Mr Zotti was an accountant providing accountancy
25 services?

26 A. Correct.

27
28 Q. This presentation says, among other things, at
29 page 351:

30
31 *PRINCIPLES*

32
33 *Guiding Principles of the Strategy to Be*
34 *Implemented by Unibuilt.*

35
36 And the fifth dot point:

37
38 *- Strong and Positive Relationship between*
39 *Unibuilt and Representative of Employees*
40 *(AWU).*

41
42 Correct?

43 A. I said I didn't write it.

44
45 Q. That was a selling point, wasn't it? That was what
46 you wanted to use as a selling point?

47 A. I wasn't here when this document was written. I was

1 overseas and I never wrote the document.

2

3 Q. I understand that's your evidence, but it is the
4 position, isn't it, that, as far as you were concerned,
5 your relationship with the AWU was a selling point?

6 A. As it was with all unions.

7

8 Q. But does that mean you agree with my proposition that
9 your relationship with the AWU was a selling point?

10 A. It was one of the points that we would discuss with a
11 potential client.

12

13 Q. You are disclaiming any involvement in this
14 presentation. You were happy with it, weren't you?

15 A. I didn't see it. As I said to you, I was overseas.

16

17 Q. You saw it at the time or shortly thereafter,
18 didn't you?

19 A. Well, I would have - no, I don't recall seeing it at
20 all, to be quite honest. The first I'd seen it was when
21 you showed it to me today.

22

23 Q. Have a look at page 359. That is an email to
24 Mr Douglas:

25

26 *John,*

27

28 *Apologies for the delay. Please find*
29 *attached the presentation you put together.*
30 *I have made some adjustments ... Call me if*
31 *you need to discuss. Ted said you have*
32 *done a great job on this.*

33

34 A. Livio would have called me on the phone.

35

36 Q. He would have called you on the phone, but you don't
37 have any memory of that one way or the other, do you?

38 A. No, I don't. I mean, I don't even - I don't even -
39 I didn't even - I've never seen the emails before.

40

41 Q. When you say you've never seen them before, they've
42 been made available to your legal advisers for --

43 A. I haven't seen them.

44

45 Q. -- a week or two?

46 A. I haven't seen them.

47

1 Q. Don't you accept that a fair inference to be drawn
2 from this is that you'd reviewed the presentation and you
3 were happy with it?

4 A. No, no, it doesn't.

5

6 Q. Could we go to 373. Mr Douglas sends an email to
7 yourself and Mr Zotti. He says:

8

9 *Dear Gents*

10

11 "Gents" being yourself and Mr Zotti, plural:

12

13 *Draft presentation for comment attached.*

14

15 A. The email you referred to, the first email, was dated
16 Tuesday, 26 October 2004. You're now talking about an
17 email that is Friday, 4 February 2005.

18

19 Q. Yes, I am, Mr Lockyer.

20 A. Some months later.

21

22 Q. Yes.

23 A. It would have nothing to do with the email in
24 October 2004.

25

26 Q. Quite. Could I just ask you to have a look at this
27 email on page 373. As you correctly say, it is dated
28 4 February 2005. It is addressed to yourself and Mr Zotti.
29 It says, "Draft presentation for comment attached."
30 I take it you received this email?

31 A. I guess I did, yes.

32

33 Q. You're trying to read ahead in the bundle, are you --

34 A. No, no --

35

36 Q. -- to find out what might be coming next in the
37 questioning?

38 A. No.

39

40 Q. Why were you --

41 A. I was going through --

42

43 Q. -- racing through the bundle to try and see what was
44 coming up?

45 A. I was going through what was behind it.

46

47 Q. You might find it a lot easier, Mr Lockyer, if you

1 just focus on the question and answer the question. Just
2 have a look at 373 --

3 A. I don't recall receiving --

4
5 Q. -- and don't worry about scrambling through the rest
6 of the bundle.

7 A. I don't remember receiving the email: it's 10 years
8 ago.

9
10 Q. It attaches a presentation. Come to 374. I won't
11 take you through the whole thing, but if you need to put it
12 in context, please do. Come to 375. It says at the top:

13
14 *GUIDING PRINCIPLES FOR THE IMPLEMENTATION*
15 *OF THE STRATEGY*

16
17 And the fifth dot point:

18
19 *- Strong and Positive Relationship between*
20 *Unibuilt and Representative of Employees*
21 *(AWU.)*

22
23 A. Mmm-hmm. Correct.

24
25 Q. Because that was, I suggest to you, a selling point,
26 as far as you were concerned, for Unibuilt, certainly in
27 February 2005 when you got the email; correct?

28 A. It was one of the selling points. You read this as a
29 number of dot points.

30
31 Q. I think I said to you that it is "a" selling point and
32 it was a selling point in 2004 and, indeed, it was a
33 selling point, as far as you were concerned, for the period
34 within which Unibuilt was in business?

35 A. I'm sorry, can you say that again?

36
37 Q. It was a selling point, so far as you were concerned,
38 for the period within which Unibuilt was in business?

39 A. It was.

40
41 Q. And that applied with equal force to the period late
42 2006 and 2007; correct?

43 A. I agree.

44
45 Q. That is why you said, if we now come back to your
46 private hearing, on page 25, line 27:

47

1 ... when you go to talk to a customer, if
2 you can say to the customer - a potential
3 customer, rather - that you've got a good
4 relationship with a trade union, in
5 Victoria, because the trade unions are
6 particularly strong, then that would give
7 you an edge in talking to the customer.
8

9 And then 36:

10
11 ... I could say to them, "You can talk to
12 the AWU, and they will tell you that they
13 don't have a problem in working with me."
14

15 And at 45 you're talking about using persons at the AWU as
16 references.

17 A. I agree.

18
19 Q. Isn't this the position, that your reason or one of
20 your reasons in entering into this arrangement in relation
21 to Lance Wilson was to continue to use or continue to
22 foster what you saw as your good relationship with the AWU?

23 A. No, it wasn't. It was purely, as I said before, a
24 political donation, as I did at the same time to - through
25 the 500 Club.
26

27 Q. You wished, didn't you, to continue to use that
28 relationship as a selling point?

29 A. No, it wasn't that.
30

31 Q. Were you trying to obtain anything in exchange for the
32 arrangement?

33 A. Politicians can't deliver anything.
34

35 Q. No, I was asking about the AWU.

36 A. The AWU can deliver you an enterprise agreement.
37

38 Q. Have you ever told anyone that you were seeking to
39 help Bill out and get favours from him?

40 A. No.
41

42 Q. You never said that?

43 A. Not to my knowledge, no.
44

45 Q. Did you ever say that to the police?

46 A. Oh, I can't recall what I said to them; I have no
47 idea.

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Q. This year, I'm talking about.

A. Yes, I know.

Q. Could you come through to page 225. This is an email of 4 October 2007. You say:

Hi Cesar

I am back on deck sorry I have not been in touch; I will catch-up with you next week.

I have attached an agreement Mick and Michael Paynter have put together for me ...

Et cetera, et cetera. You say that you haven't paid the July and August accounts for Lance but that you'll bring them up to date on 15 October. When you say "an agreement", you were looking at a new collective agreement at that time?

A. Yes, because the next email says - it talks about "Visy Project in mind". This is the draft agreement.

Q. And that draft agreement appears on page 225-1 and following?

A. Yes.

Q. And then shortly thereafter you ceased, or Unibilt ceased making payments?

A. I think that's correct.

Q. In fact, there's some email traffic, 237, asking for payment of \$12,731?

A. Correct.

Q. These reflect the - well, in fact, that reflects the work done by Mr Wilson in October and November 2007, one picks that up from page 238 and 239.

A. I assume so, yes.

Q. You said in your private hearing you stopped making the payments because you weren't winning work in Victoria?

A. That's correct.

Q. And that you were fed up with making the donations?

A. Correct.

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Q. If I take you through to page 241, this is an email from yourself to Mr Smith and a copy to Mr Melhem. The context there is that you had, by this stage, decided that you weren't going to continue to make the donations?

A. Correct.

Q. And so far as you know the last two, at least, payments were made by the AWU?

A. That's my understanding.

Q. Can I show you an invoice that Unibuilt with a U submitted to Industry 2020, together with a cheque for payment of that invoice.

MR STOLJAR: Commissioner, I would ask that these two pages be received into evidence.

THE COMMISSIONER: That will be Lockyer MFI-2.

LOCKYER MFI-2 - INVOICE SUBMITTED BY UNIBUILT TO INDUSTRY 2020, TOGETHER WITH A CHEQUE FOR PAYMENT OF SUCH INVOICE

MR STOLJAR: Q. What work precisely did Unibuilt with a U do for Industry 2020?

A. Research to see how the members of the AWU viewed the Australian Workers' Union and viewed the services they were getting from the Union.

Q. How was that work effected? How was it carried out?

A. I telephoned 30 or 40 - a number of the employees that I trusted and asked them what they felt about the AWU.

Q. What they felt about the AWU?

A. Yes.

Q. Who asked you to do that?

A. Cesar.

Q. And how did he do that, in writing, or on the phone?

A. I just said to you I phoned 30 or 40 of these guys.

Q. I want you to go back in time a few days or weeks before you made these telephone calls and just explain to me how you came to be making them. Did Mr Melhem write to you, or call you, or speak to you?

A. No, he called me one day. We were talking about some

1 things, I imagine, and he asked me whether I'd do a survey
2 for him.
3
4 Q. A survey?
5 A. Yes.
6
7 Q. Did he give you any particulars?
8 A. He wanted to know what the membership thought of the
9 AWU and the service that they were getting from the AWU.
10
11 Q. Thought of the AWU and the service they were getting?
12 A. Yes.
13
14 Q. And you thereafter rang, you say, 30 or 40 employees?
15 A. Correct.
16
17 Q. What did you do with the information that you
18 obtained?
19 A. I probably would have handwritten notes, because
20 I wasn't very good with a computer in those days, so
21 I would have handwritten notes and then would have phoned
22 Cesar and given him a verbal summary.
23
24 Q. So his instruction to you was verbal. You didn't
25 prepare any survey forms, or anything like that?
26 A. No.
27
28 Q. You didn't --
29 A. No.
30
31 Q. -- have a checklist of questions or anything like
32 that?
33 A. No. The checklist of questions was I've just said to
34 you.
35
36 Q. But then you just gave him a verbal report?
37 A. Yes.
38
39 Q. How long did it take you to ring these people?
40 A. I can't recall.
41
42 Q. Why does the invoice say "voting pattern"?
43 A. Well, as I've said to you, the service that they were
44 getting from the Union, "Voting patterns" would have been,
45 you know, one of the questions that we would have asked.
46
47 Q. You didn't say that when you described the work that

1 you did. You said that you were asking them what they felt
2 about the AWU and the services they had been provided?
3 A. Well, maybe I didn't explain it to you in full detail.
4
5 Q. Did you actually do any work for this money?
6 A. Yes, we did.
7
8 Q. Which employees did you ring?
9 A. As I said to you, it's some years ago, I can't
10 remember who they were.
11
12 Q. Didn't you say they were long-term employees?
13 A. Long-term employees, yes, but that was --
14
15 Q. You can't remember them?
16 A. No, I can't.
17
18 Q. Can you remember one?
19 A. Stuart Dooley.
20
21 Q. You can't remember any others?
22 A. No, he comes to mind because I was talking to him
23 recently.
24
25 Q. When did you have a conversation with Mr Dooley?
26 A. Oh, 12 months ago.
27
28 Q. Which project were you asking these questions about?
29 A. It wasn't about any particular project.
30
31 Q. But they must have done work on a particular project?
32 A. They would have worked for me over the preceding 10,
33 15, 20 years.
34
35 Q. You were just asking them what they thought of the AWU
36 and the services they were being provided?
37 A. Yes.
38
39 Q. You say you asked them questions about voting, did
40 you?
41 A. Whether they'd be voting for the incumbent people in
42 the Union.
43
44 Q. You asked them that, did you?
45 A. I think I probably asked them that question.
46
47 Q. Are you just making this up as you go along?

1 A. No, I'm not making it up. I can't recall the exact
2 questions that I asked.
3
4 Q. We don't have any written agreement or written
5 instructions, and we don't have any clear numbers or
6 results or records of any kind?
7 A. No.
8
9 Q. You passed on the information orally, and you passed
10 it on to Mr Melhem. Why, by the way, did you issue an
11 invoice to Industry 2020?
12 A. Because he asked me to.
13
14 Q. What's it got to do with Industry 2020?
15 A. I didn't query it. He just said to me, "Invoice me on
16 Industry 2020".
17
18 Q. When did he tell you that?
19 A. Pardon? I didn't even know what Industry 2020 was at
20 that stage.
21
22 Q. Did that strike you as a bit odd?
23 A. No.
24
25 Q. Why not the AWU, if it was work about services
26 provided by the AWU?
27 A. No, it didn't.
28
29 Q. Did you ask any questions about that?
30 A. No, I didn't.
31
32 Q. When did he tell you to invoice Industry 2020? Before
33 or after?
34 A. Pardon?
35
36 Q. Before or after?
37 A. I can't recall.
38
39 Q. Why did Mr Melhem write off the debt owed by Unibuilt?
40 A. Because we couldn't pay it.
41
42 Q. You told him that, did you?
43 A. Yes, I did.
44
45 Q. Did you tell him that verbally or --
46 A. Verbally.
47

1 Q. When was that?
2 A. I don't recall.
3
4 Q. What year was this?
5 A. I don't recall.
6
7 Q. Before or after you did the work for Industry 2020?
8 A. I don't recall.
9
10 Q. That was in 2009 and it looks as though, from
11 page 346, that the debt was written off in 2008. Did you
12 have any conversation about that matter with Mr Melhem?
13 A. Can you repeat the question?
14
15 Q. I will break it up into steps. It appears from page
16 246 that the year in which the Unibuilt debt was written
17 off by the AWU was in 2008?
18 A. That's page 246 you're referring to?
19
20 Q. Yes. And then the following year, the document I've
21 just tendered, or I've just shown you was an invoice from
22 September 2009. Do you see that?
23 A. Yes.
24
25 Q. That invoice wasn't addressed to the AWU, it was
26 addressed to Industry 2020. Did you have any conversation
27 with Mr Melhem about the fact that this debt had been
28 written off the year before?
29 A. No.
30
31 Q. Did you make any complaint or comment to Mr Melhem
32 about the fact that Unibuilt wasn't winning work?
33 A. No.
34
35 Q. Did you raise it with him at all?
36 A. No, it wasn't his - no. There would be no reason to.
37
38 MR STOLJAR: Nothing further, thank you, Commissioner.
39
40 THE COMMISSIONER: Yes, Mr Clelland?
41
42 MR CLELLAND: No questions, thank you, Commissioner.
43
44 THE COMMISSIONER: Dr Hanscombe?
45
46 DR HANSCOMBE: Thank you, Commissioner.
47

1 <EXAMINATION BY DR HANSCOMBE:

2
3 DR HANSCOMBE: Q. Mr Lockyer, my name is Hanscombe. I'm
4 here for Cesar Melhem. As I understand what happened, from
5 my instructions, Lance Wilson --

6 A. I can't hear you, I'm sorry.

7
8 Q. I'm sorry. Is that any better?

9 A. Yes.

10
11 Q. Good. Let's begin again. Originally, Lance Wilson
12 was employed by Unibuilt?

13 A. That's correct.

14
15 Q. We're on common ground there. As I understand my
16 instructions, there came a time not far into this
17 arrangement when you were no longer paying Lance Wilson on
18 a very regular basis; is that right?

19 A. Correct.

20
21 Q. And Mr Wilson, understandably enough, was not happy
22 about that? You don't know that?

23 A. No, I don't know that.

24
25 Q. It was for that reason that his employment was
26 transferred to the AWU which would pay him on a regular
27 basis and you would reimburse the AWU. Is that your
28 memory?

29 A. No, I can't be certain of that, no.

30
31 Q. You can't remember that?

32 A. No, I can't remember. I can't be certain.

33
34 Q. Do you still have your big bundle in front of you
35 which I think is now marked MFI-1? Do you have that?

36 A. Sorry, do I have which in front of me?

37
38 Q. Do you have the big bundle of documents?

39 A. That one, yes.

40
41 Q. You do?

42 A. Yes, I do.

43
44 Q. Can you turn, please, to page 195. Can you hear me
45 better now? Do you have that?

46 A. Yes, I do.

47

1 Q. That's an invoice that was rendered by the Union to
2 you on 31 May 2007 and you paid that a little short of a
3 month later. Turning over, pages 196 and 197 referred to
4 the payment of that invoice for Lance Wilson for May; is
5 that correct?
6 A. I assume - yes, it is. Yes.
7
8 Q. Whose writing is that on the cheque?
9 A. It would have been one of my staff.
10
11 Q. Whose writing is it on the cheque butt?
12 A. One of my staff.
13
14 Q. Whose signature is it on the cheque?
15 A. Mine.
16
17 THE COMMISSIONER: I think he has answered all of those
18 questions before.
19
20 DR HANSCOMBE: I just want to go through the chronology,
21 Commissioner.
22
23 THE COMMISSIONER: I am just saying he gave very clear
24 evidence before which is identical to what he has just
25 given.
26
27 DR HANSCOMBE: Well, perhaps I was less attentive than
28 I ought to have been.
29
30 Q. The next page I want to take you to is 199. That's
31 the invoice for 27 June, the following month, 2007;
32 correct?
33 A. I assume so, yes.
34
35 DR HANSCOMBE: Commissioner, I think one question he
36 didn't answer about the May payment was at 198, which
37 appears to be the superannuation payment for the same month
38 for Mr Wilson.
39
40 Q. Is that correct?
41 A. I guess it is, yes.
42
43 Q. It is two days after the wages cheque?
44 A. Yes.
45
46 Q. Yes. The next invoice is 27 June 2007.
47 A. Yes.

1
2 Q. Correct?
3 A. Yes.
4
5 Q. And that's paid when? Turn over to 200.
6 A. On the 30th of the 7th, 2007.
7
8 Q. That's paid a month later?
9 A. Yes.
10
11 Q. The next invoice is 31 July, on page 205, and that's
12 paid - pages 206 and 207 - on 31 August; is that right?
13 A. I assume so. I don't see the cheque stub and the
14 cheque says the 30th of the 7th.
15
16 Q. Page 201 --
17 A. Yes, there's a cheque at the top of it that says the
18 30th of the 7th --
19
20 Q. Yes, we've already --
21 A. -- and the invoice is dated 27th of the 6th.
22
23 Q. We had already dealt with that. I'm sorry, it is my
24 fault, I took you to the wrong page. Page 205 is 31 July,
25 agreed? I'm sorry about that, that was my error. 205 is
26 the invoice of 31 July for the work in July?
27 A. Yes.
28
29 Q. Over the page, that's paid - pages 206 and 207 - on
30 31 August?
31 A. Correct.
32
33 Q. So far you are paying a month in arrears; correct?
34 A. Correct.
35
36 Q. Page 212 is the invoice for August and it goes out to
37 you on 31 August?
38 A. Yes.
39
40 Q. You pay it on 1 October?
41 A. Correct.
42
43 Q. That is at 213 and 214. The September invoice is at
44 page 219 and it goes out to you on 30 September. Do you
45 have that?
46 A. Yes, I have.
47

1 Q. It is paid, it appears, on 11 February, the following
2 year?
3 A. Correct.
4
5 Q. Page 220.
6 A. Yes.
7
8 Q. Then we see the email that Mr Stoljar took you to at
9 page 225. On 4 October, you were writing to Mr Melhem
10 saying, "I am sorry, I haven't paid July and August, I will
11 bring them up to date on 15 October".
12 A. What page are you talking about?
13
14 Q. 225. You've seen it before.
15 A. 225.
16
17 Q. That's your email to Mr Melhem?
18 A. Yes. Yes.
19
20 Q. Yes?
21 A. Yes.
22
23 Q. It is the case by the latter part of 2007 that you
24 were running into cashflow problems; is that correct?
25 A. Yes, it was.
26
27 Q. Is that correct?
28 A. Yes, it was. Some of our customers weren't paying us
29 on time.
30
31 Q. Well, for whatever reason. Then at page 232 is the
32 invoice rendered on 30 November for the November work;
33 correct?
34 A. Yes.
35
36 Q. Is that correct?
37 A. Yes.
38
39 Q. A little out of sequence, on page 238, is the October
40 work invoiced, it says, on 1 October?
41 A. Yes.
42
43 Q. Yes?
44
45 THE COMMISSIONER: It may be 31 October, I am not sure.
46
47 DR HANSCOMBE: It might be, yes. It might be a hole

1 punch.

2

3 THE COMMISSIONER: Yes.

4

5 DR HANSCOMBE: Q. And that would be consistent with the
6 pattern --

7 A. It is 31 October.

8

9 Q. You think it is the 31st? Okay. We saw the November
10 invoice before, and then coming back to page 237, we see an
11 email from Duc Vu. Mr Vu was an accounts person at the
12 Union, did you know that?

13 A. I would have seen it.

14

15 Q. Did you know that he was an accounts person at the
16 Union?

17 A. No, I don't know what he was.

18

19 Q. He's writing to you five months later on 3 April
20 saying:

21

22 *We require payment of the overdue*
23 *balance ...*

24

25 *Your prompt & immediate payment ...*

26

27 Et cetera. By that time you had stopped paying pretty well
28 completely, hadn't you?

29 A. Yes.

30

31 Q. Then over at page 240, we see the response from you to
32 Mr Vu the following day:

33

34 *WE will get a cheque to you by the end of*
35 *the month*

36

37 That didn't happen, did it?

38 A. No, it didn't.

39

40 Q. That's the proverbial "the cheque is in the mail",
41 isn't it?

42 A. Exactly.

43

44 Q. By that time you're not going to pay these bills, are
45 you?

46 A. Well, no, I think I probably had every intention of
47 paying them but --

1
2 Q. I'm not asking you about intention. As a matter of
3 objective fact, the funds weren't there to pay the bills in
4 the company?
5 A. At the time when I sent the email, I would have had
6 the intention of paying it.
7
8 Q. Yes.
9 A. But at the end of the day, we didn't pay it.
10
11 Q. And the reason for that was you ran out of money?
12 A. Exactly.
13
14 Q. And that had been a problem for some months about
15 paying for Mr Wilson?
16 A. Exactly.
17
18 Q. That's why in the end you say to Mr Melhem, "We're not
19 going to be able to pay", and he tells the account person
20 to write off the debt; is that right?
21 A. Yes.
22
23 Q. Can I take you to page 246 but keep your finger in
24 238, do you see that?
25 A. Yes, I do.
26
27 Q. That's not an email from or to you, but it is an email
28 from Mr Melhem to an accounts person:
29
30 *Write off Unibuilt debt.*
31
32 It has been annotated in handwriting, "Invoice 20065" and
33 in fact that's the invoice at 238, is it not?
34 A. 2358, I think it is or was it - I don't know what the
35 invoice number is.
36
37 Q. Invoice number 20065 is at 238.
38 A. 20065 and 20359.
39
40 Q. Yes. And 20359 is for November?
41 A. Exactly.
42
43 Q. Yes. So that's what was being written off, not some
44 other invoice?
45 A. Yes. Those two invoices were written off.
46
47 Q. Okay. None of the payments that were made to the

1 Union on account of Lance Wilson's work were ever made,
2 were they, to Mr Melhem personally?
3 A. No.
4
5 Q. Most of the discussions you had about the payment of
6 Mr Wilson's wages were in fact with Michael Chen at the
7 Union; not with Mr Melhem personally?
8 A. They could have been.
9
10 Q. You don't remember?
11 A. No, I don't recall.
12
13 Q. If Mr Melhem says a number of the discussions were not
14 with him but with Mr Chen, you wouldn't deny that?
15 A. I couldn't - I couldn't deny - I couldn't deny that,
16 no.
17
18 Q. Yes. You always knew, from the beginning of the
19 arrangement, that Mr Wilson was going to work for
20 Bill Shorten, effectively seconded by you into Mr Shorten's
21 office; correct?
22 A. Yes.
23
24 MR STOLJAR: I object to that, Commissioner. These
25 arrangements are so murky to say effectively to be
26 seconded --
27
28 DR HANSCOMBE: I will withdraw it.
29
30 Q. You always knew that Mr Wilson was going to work for
31 Bill Shorten in his office?
32 A. Yes.
33
34 Q. And I suggest to you that that was a form of
35 secondment from your company to Mr Shorten.
36
37 MR STOLJAR: I object to that.
38
39 DR HANSCOMBE: Why?
40
41 MR STOLJAR: Well, who would know? This witness disclaims
42 any detailed knowledge and says he's not a lawyer, so how
43 would he know? What's the point of putting to him that it
44 was a form of secondment?
45
46 DR HANSCOMBE: That's a common word in business. If he
47 says he doesn't know what it means he can say he doesn't

1 know what it means. I'm trying to get him to deal with the
2 nature of the relationship.
3
4 THE COMMISSIONER: Q. What does the word "secondment"
5 mean to you, Mr Lockyer?
6 A. It doesn't mean what this lady is saying to me.
7 Lance was - in my mind, Lance was - I paid his wages and he
8 was working for Bill Shorten in Bill Shorten's office. End
9 of story.
10
11 DR HANSCOMBE: Yes, well --
12
13 THE WITNESS: There's no grey area - there's no grey area.
14 I paid him and he worked in Bill Shorten's office and did
15 work for Bill Shorten. End of story.
16
17 DR HANSCOMBE: In light of that, I don't press the
18 question.
19
20 THE COMMISSIONER: Very well.
21
22 DR HANSCOMBE: Q. Mr Melhem always knew that Mr Wilson
23 was working for Bill Shorten, didn't he?
24 A. I can't say "yes" or "no" to that.
25
26 Q. Well, you never had any communication with Mr Melhem
27 to the contrary?
28 A. No, I didn't.
29
30 Q. And you're not aware of any other person saying
31 anything to the contrary to Mr Melhem, are you?
32 A. No, I'm not.
33
34 Q. Because it was the fact, and nobody had any confusion
35 about what Lance Wilson was doing?
36 A. Correct.
37
38 DR HANSCOMBE: Excuse me a moment, Commissioner.
39
40 Q. Are you okay? Are you all right, Mr Lockyer?
41 A. I have chronic emphysema, that's all. I'm sorry about
42 my cough. People stop me in the street and think I'm going
43 to die.
44
45 Q. I just don't want to ask you a question until you're
46 composed?
47 A. No, no, I'm fine.

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Q. Mr Stoljar put some questions to you on the premise that the invoices were false because no work was done for the AWU. It is the case, is it not, that the AWU never rendered to you, or any of your companies, an invoice that said Lance Wilson was working for the AWU?

A. No. There's an invoice on the screen; it doesn't say where Lance was working from.

Q. No. And they all --

A. His work was completed. It doesn't say that he was working at the AWU.

Q. And he wasn't, and you knew he wasn't?

A. I knew he wasn't.

Q. Yes. All the invoices, at least all the ones that we have seen, have that form, and that's the form you always got too, is it not?

A. Yes.

DR HANSCOMBE: Thank you, Mr Commissioner.

THE COMMISSIONER: Mr Addison?

MR ADDISON: I don't have any questions for the witness, Commissioner.

THE COMMISSIONER: Mr Stoljar?

MR STOLJAR: I have nothing further, thank you, Commissioner.

THE COMMISSIONER: Should the witness be excused?

MR STOLJAR: Yes, Commissioner.

THE COMMISSIONER: Mr Lockyer, you are excused from further attendance on the summons that brought you here. Thank you for attending.

THE WITNESS: Thank you, Commissioner.

<THE WITNESS WITHDREW

DR HANSCOMBE: Commissioner, for the purposes of the transcript, can I simply say that we have asked, and the

1 Commission staff have kindly uploaded into the database,
2 that the Union Rules for 2006, which were the relevant ones
3 at the time of these transactions, be on the database and
4 at some convenient time to Mr Stoljar, I would ask that
5 they be tendered in this case study. Those rules make
6 express provision for the Union to provide donations to
7 political parties.

8
9 THE COMMISSIONER: I am sure Mr Stoljar will consider that
10 carefully.

11
12 MR STOLJAR: Yes.

13
14 THE COMMISSIONER: Nothing else to be done today?

15
16 MR STOLJAR: No, Commissioner.

17
18 MR ADDISON: Jut before you rise, Commissioner, can we be
19 excused for the balance of the day?

20
21 THE COMMISSIONER: The balance of the day is about five
22 seconds.

23
24 MR ADDISON: I thought there was somebody else. My
25 apologies, Commissioner.

26
27 **AT 12.28PM THE COMMISSION WAS ADJOURNED TO MONDAY,**
28 **19 OCTOBER 2015 AT 10AM**
29

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