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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE RUTH McCOLL AO
COMMISSIONER

PUBLIC HEARING

OPERATION KEPPEL

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 19 OCTOBER, 2021

AT 10.00AM

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This transcript has been prepared in accordance with conventions used in the Supreme Court.

THE COMMISSIONER: Yes, Mr Robertson.

MR ROBERTSON: Commissioner, today I'll be calling Mr Paul Doorn. I don't expect to be the whole day with him, although it may well spill over into the afternoon. After I've finished with Mr Doorn, I'll be tendering various material arising out of the Commission's investigation to date, but as I say I anticipate not requiring the whole day for today's purposes.

THE COMMISSIONER: Thank you.

10

MR ROBERTSON: I call Paul Doorn.

THE COMMISSIONER: Good morning, Mr Doorn. Do you wish to take an oath or make an affirmation?

MR DOORN: An oath, please.

THE COMMISSIONER: Mr Crawford-Fish, have you explained to Mr Doorn his rights and obligations as a witness?

MR CRAWFORD-FISH: Yes, I have, Commissioner, and he seeks the section 38 declaration.

10 THE COMMISSIONER: Thank you very much. Mr Doorn, will you listen very carefully to the explanation I'm about to give you before I make that declaration.---Mmm.

As a witness you must answer all questions truthfully and produce any items described in your summons or required by me to be produced. You may object to answering a question or producing an item. The effect of any objection is that although you must still answer the question or produce the item, your answer or the item produced cannot be used against you in any civil proceedings or, subject to two exceptions, in any criminal or
20 disciplinary proceedings.

The first exception is that this protection does not prevent your evidence from being used against you in a prosecution for an offence under the Independent Commission Against Corruption Act, including an offence of giving false or misleading evidence, for which the penalty can be imprisonment for up to five years. The second exception only applies to New South Wales public officials, and I don't understand you to be one any longer.---That's true.

30 Very well. I can make a declaration that all answers given by you and all items produced by you will be regarded as having been given or produced on objections. This means you do not have to object with respect to each answer or the production of each item, and I understand you wish me to make such a declaration. Very well.

Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by this witness and all documents and things produced by him during the course of his evidence at this public inquiry are to be regarded as having been given or produced on objection,
40 and there is no need for him to make objection in respect of any particular answer given or document or thing produced.

DIRECTION AS TO OBJECTIONS BY WITNESS: PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY THIS WITNESS AND ALL DOCUMENTS AND THINGS PRODUCED BY HIM DURING THE COURSE OF HIS EVIDENCE

AT THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION, AND THERE IS NO NEED FOR HIM TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.

THE COMMISSIONER: Do you understand that, Mr Doorn?---I do.

10 Very well. Thank you. Yes, Mr Robertson.

MR ROBERTSON: Can you state your full name please, sir.---It's Paul Anthony Doorn.

Is it right that from May 2012 to April 2017 you were an Executive Director within the Office of Sport?---That's correct.

I think between May 2012 and August 2015 you were an Executive Director responsible for Sport and Recreation. Is that right?---Correct. Yes.
20

And then you moved on to being the Executive Director responsible for the Sport Infrastructure Group. Is that right?---Correct.

You are now the Chief Executive Officer of NSW Rugby Union and NSW Waratahs. Is that right?---That is correct.

When you were Executive Director within the Office of Sport, Mr Michael Toohey reported to you. Is that right?---That is correct.

30 And so he had a position of Director within the Office of Sport. Is that right?---Yes.

And so he reported to you and you reported to the Chief Executive Officer of the Office of Sport. Is that right?---That's correct, yes.

You hold a bachelor's degree and a master's degree in education. Is that right?---Yes.

And a Graduate Diploma in Public Administration.---Yes.
40

I take it through your role in the Office of Sport you have a familiarity and understanding of government processes for procurement.---Yes, I am familiar.

And also with the process of making submissions to Cabinet and Cabinet committees.---Yes.

You're aware, I take it, that this Commission is investigating grant funding that was promised and/or awarded to the Australian Clay Target Association Incorporated?---Yes.

10 When did you first become aware that the Australian Clay Target Association was seeking funding from the NSW Government?---Look, I think it was in 2016. That's probably my memory from that particular time. I can't say exactly when in 2016 but I think we received, the minister received a letter, the Minister for Sport received a letter requesting grant funding in some point in 2016.

And that was grant funding for what at that point in time?---The building of a shooting centre in Wagga Wagga.

20 When you say "shooting centre" are you just focused on the shooting facilities themselves or are you focusing on some larger proposal, for example, clubhouse facilities or something along those lines?---Oh, no, it was a, yeah, a broader facility. So not just a shooting range but it included other things as well.

But do you have any recollection of ACTA seeking funding through the Office of Sport at any prior time, prior to 2016? Or was 2016 your first recollection?---No, I think what, I don't recall anything earlier than that, but, yeah.

30 Let me try and assist you this way. Can we go, please, to volume 26.0 and start at page 9, please. This will just come up on the screen in front of you, Mr Doorn. Volume 26.0, page 9. Zoom into the top half of the page so that you can see it clearly, Mr Doorn. This is on page 9.---Yep.

Now, do you see there a document that looks like it's in the format of a briefing note to a minister?---Ah hmm.

And do you see it's a heading Office of Community Sport and Recreation?---Yes.

And title The Minister's Meeting with the Australian Clay Target Association.---Yep, I can see that.

40 Now, just to give you the context, we'll just turn to the next page so I can give you a sense of timing before I refer you to the body of the document. So we'll go to page 10. Do you see there "Electronic approval, Paul Doorn, Executive Director"?---Yep.

And I'll just draw your attention to 11 September, 2012, being the date of this document. You need to answer out aloud.---Oh, sorry, yes, I, I can see the date. Yep.

Now, this document looks like it's produced on a pink bit of paper. Can you see that on the screen?---I can.

Is there any significance in it being on a pink bit of paper as opposed to a white one, a blue one or any different one?---Yeah, it's, you know, it's a while ago, a pink one in those days meant that it was a briefing for the minister.

10 And so sometimes in the language of government, a document of this kind is known as "a pink", which - - -?---Yeah, yeah, no, it hasn't been called that for a while, but, yeah, back in the day that was certainly the case.

And so when a document of this kind is referred to as a pink, that's not just an indication that it was printed on pink paper, but rather that it was a ministerial briefing, is that right?---That is correct.

20 And so if we go back to the preceding page, you'll see there, title, The Minister's Meeting with the Australian Clay Target Association, see that there?---I do, yes.

And if you look at Background, it's referring to "Mr Daryl Maguire, MP, Member for Wagga Wagga, wrote to the minister on behalf of Mr Gibson, Executive Officer of the Australian Clay Target Association, requesting a meeting to discuss a proposal to develop their national grounds in Wagga Wagga to meet international standards." Do you see that there?---I do.

Does that refresh your memory - - -?---It does, yes, thank you. It's - - -

30 And so what do you now recall, having had your memory refreshed, as to any attempt or proposal on the part of the ACTA to seek or obtain funding in around 2012?---Yeah, oh, well, yeah, so obviously the, my recollection should have been much earlier than that. I, I, to be fair, I hadn't remembered that. But, so they'd obviously written, according to this note, they'd written to the minister seeking some grants, and I think this is a briefing going back saying this is the, these are the grant funding that might be available for such a project.

40 And so do you have a particular recollection now, appreciating this is now almost a decade ago, of an approach from Mr Maguire to the minister seeking funding during or about 2012?---Yep, so I certainly have a recollection of an approach, but I just didn't realise the dates. My apologies for that.

Don't need to apologise. I'm asking about things some time ago. But does that jog your memory as to a recollection as to what was going on at that point in time or is your recollection just limited to what I've shown you on the page so far?---No, no, I think - no, I, I can remember the sorts of things

that we were talking about at that particular time when this, this request came.

10 And what were the kinds of things that were being talked about at that point in time?---'Cause this is actually relatively new in my role as the Executive Director for Sport and Recreation, so part of my responsibility was also managing ex-Olympic venues as well. And so one of the challenges we've always had post the Sydney 2000 Games was being able to develop a business case or develop enough revenue to be able to maintain the facilities as they were for the Olympic Games, as the users would expect. So I think that for me, you know, starting to introduce a concept of another shooting range when we're struggling to maintain our existing one is the sort of memories that I have around that time.

So you're drawing attention to the fact, are you, that there was an Olympic-standard shooting facility, in fact and still is an Olympic-standard shooting facility in Greater Sydney that was used for the 2000 Sydney Olympics? ---That is correct, yes.

20 And are you saying that that then raises a question as to whether any further Olympic-standard shooting facilities should be built elsewhere in New South Wales in circumstances where there is an Olympic-standard one in Greater Sydney?---Yeah, that is correct.

30 And is one of the aspects of what you were saying before, there's a practical issue, or at least there was a practical issue in 2012, in seeking to maximise or seeking to give proper use to the Olympic-level facilities, including the shooting facility?---Yep, no, that's, I think, I apologise about not remembering all the dates, but I do remember that we were trying to bid for a World Cup bid for the Sydney International Shooting Centre ourselves, and part of that required an upgrade on the targets that were required, so electronic targets, which were expensive at the time. And so I do distinctly remember there was a process that we were trying to apply for Treasury for those funds, so it just sort of sounded, seemed a bit counterproductive to introduce a competitor into the marketplace.

40 In circumstances where, presumably, the Greater Sydney or the Sydney International Shooting Centre had at least additional capacity to run things, including international shooting events?---Yeah, it would have been a duplication of facilities.

If we then just scan a little bit further down to the document, so you're referring to various funding programs potentially available, but can I ask you to have a look in particular towards the bottom of the page, the comment, "No specific funding amount requested. The development of an international competition standard clay target shooting facility in Wagga Wagga is likely to exceed any funding available under Sport and Recreation grant programs." See that there?---I do, yes.

So is this just in the nature of a note or advice to the minister as to funding programs available and, in particular, whether there would be any money available for what Mr Maguire was putting forward back in 2012?---Yeah, I mean, that is correct. So it wasn't uncommon for MPs to write to ministers seeking funding for various projects. And obviously we have to work within the constraints of our own budgets, so we would normally write back saying, "Here are the grant opportunities and people can apply through that process."

10

Now, the letter that's referred to in this ministerial pink in 2012, did that lead to any funding to the ACTA for developing a facility along the lines of what was suggested in Mr Maguire's letter and referred to in this ministerial pink?---I don't believe so, yeah.

As in did it lead to any funding in 2012 or 2013, somewhere around that time?---I don't believe so.

And we'll just, I'll just draw your attention, before we move off this document, "The meeting will be attended by Mr Daryl Maguire MP, Minister Souris." S-o-u-r-i-s. See that there?---Yes, I do.

20

That was the minister at the relevant time?---Um, no, no, I think - - -

In fact, I think – in fact, I'm sorry, I think that was the Minister for Hospitality and Tourism - - -?---For a different portfolio.

- - - Racing and Major Events at that point in time.---Yeah, that is correct.

Or a representative from his office and Mr Chris Gibson as well. See that there?---I do.

30

Commissioner, I tender the ministerial pink dated – withdraw that, electronically approved by Mr Doorn on 11 September, 2012, pages 9 and 10, volume 26.0, public inquiry brief.

THE COMMISSIONER: Exhibit 402.

#EXH-402 – SUBMISSION TO THE MINISTER FROM OFFICE OF COMMUNITIES ABOUT AUSTRALIAN CLAY TARGET ASSOCIATION APPROVED BY PAUL DOORN ON 11 SEPTEMBER 2012

40

MR ROBERTSON: Now, having given this advice to your minister, and it's contemplating a meeting attended by Mr Maguire and others, do you

recall whether you had any involvement post the meeting that was contemplated?---I don't, do not recall, no.

Can we go then to page 41 of volume 26.0, and I hope this will jog your memory on that account. Appreciating I'm asking you about almost a decade ago. And I'll show you another ministerial pink. So I'm showing you the first page of the document at the moment. We'll come back to the content of it in a moment, but if I just go to page 42, so to the next page, we'll just scan down a little bit just so you've got some timing. See
10 electronic approval by you on the 23rd of October, 2012. See that?---I do.

So the first ministerial pink I showed you was 11 September, 2012. This one is approved by you on the 23rd of October, 2012. But if we then go back to the first page, see the issue is "Request for government funding to build an international standard clay target facility in Wagga Wagga." Do you see that there?---I do, yes.

And if you look at the first substantive paragraph under the heading Background, the last sentence, "These are not Olympic event ranges."---Ah
20 hmm.

So in other words it seems to be saying "existing facilities to accommodate down the line American skeet and sporting field ranges but not Olympic event ranges". Do you see that?---I do, yes.

And then the next paragraph refers to a request of \$1.2 million to build "an international standard clay target facility capable of conducting events in the International Shooting Sports Federation discipline".---Ah hmm. Yes.

30 "Which are events conducted at the Olympic and Commonwealth Games". Do you see that?---I do, yes.

So do we take it from that, at least as you understood it, that's in effect a suggestion to build a second Olympic standard facility in New South Wales. We've got the existing one for the 2000 Sydney Olympics in the Sydney International Shooting Centre and we have a second one in Wagga Wagga. ---That is exactly it. Yes, correct.

40 Do you recall whether you gave any advice to your minister in or around 2012, either directly or up the chain – through, for example, a CEO – as to whether that might or might not have been a good idea in the sense of a good use of public funds?---I think the third paragraph there sort of indicates my, my perception was that it would be in contradiction or a competitor to the existing facility, so we would always explore it to go to perhaps another level but, you know, we had to compare it to the fact that we already owned our own facility as well.

So do we take it from that that you have a recollection of a view in or about 2012 that the idea of setting up a new Olympic standard shooting facility in Wagga Wagga wasn't necessarily a good use of public funds in circumstances where the Sydney International Shooting Centre exists in greater Sydney?---Yes, I agree with you.

10 Do you recall whether you gave that advice up the chain as it were?---Well, I'm quite sure that there were other documentation that I wrote to the minister at the time saying, comparing the two that's for sure. Would have given that advice to the minister's office.

Well, let's turn to the next page then so I can remind you of some of the advice given in this ministerial pink.---Ah hmm.

If you just have a look under the heading of Financial Implications. So it says, "\$1.2 million has been requested to build an international standard clay target facility in Wagga Wagga." See that there?---I do.

20 And then the advice says, "The amount exceeds any funds available through Sport and Recreation grant programs or existing budget allocation. In accordance with a direction from the Minister for Sport and Recreation on 16 October, 2012, Sport and Recreation will seek specific grant funding to support this project in its Office of Communities," in the text it says, "2012/13 recurrent funding submission from NSW Treasury." Do you see that there?---I do, yes.

30 And so do we take it from that that the idea of building an international standard clay target facility in Wagga Wagga was the subject of at least an application for specific grant funding through Sport and Recreation? Is that how we read that sentence?---Yeah. I read that that's, that's, we're suggesting here that they should apply through a grant process.

Just have a look at the second sentence of the second paragraph underneath the heading Financial Implications. See how it refers to "a direction from the Minister for Sport and Recreation on 16 October, 2012"?---Sorry, which paragraph was that? My apologies.

Look at the second paragraph under Financial Implications.---Yes, yes.

40 That starts, "The amount exceeds".---Yes.

Just jump to the second sentence that starts with "In accordance with a direction from". Do you see that?---I do, yes.

Can you assist as to what the nature of that direction was? It looks like the minister had made a request or in fact not made a request, made a direction that specific grant funding be sought in the Office of Communities recurrent funding submission to NSW Treasury. Do you see that?---I do, yes.

And can you assist, what was the nature of that direction? Was that an application for funding through the ordinary budget processes or was it a specific grant funding program or how do we read that sentence?---Look, it's a hard one for me to recall, but the fact that we've written in public sector language in accordance with a direction from the minister means that there was obviously a discussion about that at that particular time, and so we were drawing attention to that, that particular direction but I can't really recall what the conversation was. My apologies.

10

When you say it was "public sector language" what do you mean by that? ---Just the language there. It says, "In accordance with a direction from the minister". If, if there was a discussion from a meeting that that was an action from that, then we've just built that into two to round out and, round out the accountability side of things.

20

But is that code for saying the bureaucracy doesn't necessarily agree that this is a good idea but we are following a direction from the minister because the minister ultimately gets to make decisions of this kind as the elected representative?---Yeah. I, I don't know if it necessarily means that we disagree but it, it's obviously a, a strong point so that's why we put, we built that into there.

Well, you wanted to be clear that - - -?---This was a direction.

- - - that course was being taken pursuant to a direction from the minister rather than the bureaucracy simply proceeding on its own accord as it were. ---Yeah. And, and I think if, the, the follow-up sentence, the following sentence, really gives that indication.

30

So the follow-up sentence is the one that says, "A low priority will be given to the project"?---Correct.

Why, as you recall it, would a low priority be given to the project?---Again, I, I keep going back to my memory at the time. It was that, you know, it was potentially being built as a facility that would then compete with our existing facility.

40

Just in the preceding sentence, so you can see where it says "Recurrent funding submission to New South Wales Treasury." So the second to last sentence.---Yes, yep.

In the second paragraph of Financial Implications. See that there?---I do, yes.

How do we understand that phrase, "Recurrent funding submission to New South Wales Treasury"?---I think language like that would typically mean

recurrent funding would be built into your budget request for the following year.

So are you referring to the fact that agencies on a year-to-year basis will put, in effect, bids forwards through the Treasury process in the hope that they will be funded as part of budgetary processes?---Correct, yes. And there's a process for that.

10 That's sometimes referred to as the new policy proposals process, is that right?---Yes, the NPPs, correct.

And NPPs involve ultimately providing a ranked series of potential programs that might be funded through the ordinary budgetary processes? ---Yes, that is correct.

That's something that happens from year-to-year, I take it?---Yeah. It certainly did at that particular time, yes.

20 At that particular time and also throughout the period of time in which you were executive director?---Oh, sorry, yeah. Indeed, throughout that whole period but I'm not, given I'm not a public servant currently, I'm not saying it does still.

At least in the time that you were executive director in the Office of Sport, the new policy proposals process that you and I have just summarised was in force, is that right?---That is correct, yes.

30 And I take it that's a process that happens over some number of months in advance of a budget and appropriation bills being presented to parliament? ---Yes, very much so.

It involves a ranking of new policy proposals at the agency level, is that right?---Yep, yep. That - - -

And I take it in the real world, the fact that you might put forward a particular new policy proposal gives no guarantee at all that it will actually be funded?---Correct. And, and there were many years where we put forward a list of new, and, and none were funded.

40 And indeed if one puts forward a new policy proposal and gives a low priority to it, the likelihood is that it won't be funded at all?---Yeah, I think that's a fair assumption.

Then scan a little bit further down the page, we see some handwritten notes. Just scan to the bottom of the page. Some handwritten notes adjacent, the word "minister". So I take it, do you recognise that as being the handwriting of the minister at the relevant time?---Yes. Yeah. I think the signature is Graham Annesley perhaps, I think. Yeah.

So it looks like Mr Annesley's signature. We then see he says, "Wrong financial year identified above." In other words should be referring to 13-14, rather than 12-13. Then he says, "Can correspondence be drafted to the Member for Wagga advising of this action and noting the final decision will be made by the Treasurer as part of the" – see that there?---I do, yes.

10 Now that seems to have been cut off in the records kept by government but at very least you read that as being an instruction back to the agency to advise the Member for Wagga Wagga of the course that's being taken as recommended in this ministerial pink?---Yes, correct.

And so that course is to say we'll put it forward as part of, in effect, the new policy proposals process, is that right?---Yeah. Yes, that's correct.

No guarantee that you're going to get any money one or the other, we'll just put it through the process and it may end up with funding being provided or may not, is that right?---Correct.

20 I tender the ministerial pink authorised by Mr Doorn, 23 October, 2012, pages 41 and 42, volume 26.0.

THE COMMISSIONER: Exhibit 403.

#EXH-403 – SUBMISSION TO THE MINISTER FROM OFFICE OF COMMUNITIES ABOUT AUSTRALIAN CLAY TARGET ASSOCIATION APPROVED BY PAUL DOORN ON 23 OCTOBER 2012

30

MR ROBERTSON: Do you happen to recall what occurred in relation to the new policy proposal contemplated by the ministerial pink, in other words, did that lead to funding or not?---I, I don't think it led to funding. I think we did some preliminary work but I don't really recall.

Well, in your time as an executive director of the Office of Sport, did the state of New South Wales move from one Olympic standard facility in Greater Sydney to two - - -?---No, it did not.

40

- - - one in Greater Sydney and one in Wagga Wagga? And just to close that off, I'll show you page 313 of volume 26.0 which appears to be the letter that was sent in relation to this issue. So do you see there a letterhead of Minister Annesley then the Minister for Sport and Recreation?---Yes, I see it.

And if you have a look in the second paragraph, it says, "As you're aware, Sport and Recreation provided to NSW Treasury a list of its funding

priorities for 2013/14, which included the association's proposal to construct an ISCT," which stands for international standard clay target facility, "in Wagga Wagga." See that there?---I, yes.

The next paragraph. "NSW Treasurer has now delivered the NSW Government's priorities and projects to be funded in 2013/14. Unfortunately, this proposal was not part of the Treasurer's announcement and I regret to inform you funds have not been made available to assist with this project." See that there?---I do.

10

So is that consistent with your recollection as to what happened? Mr Maguire writes in, gets a meeting, you advise or at least the agency advises and you participate in the advice that says we'll put it forward but a low priority will be given to the project, Treasury, as part of ordinary budget processes, says, "No, this isn't going to be funded," and that's ultimately advised to Mr Maguire?---Yeah, that's my understanding.

I tender the letter on the screen, letter from Minister Annesley to Mr Maguire, 9 July, 2013, page 313, volume 26.0.

20

THE COMMISSIONER: Exhibit 404.

#EXH-404 – LETTER FROM GRAHAM ANNESLEY MP TO DARYL MAGUIRE DATED 3 JULY 2013

MR ROBERTSON: Just pardon me for a moment, Commissioner. I should correct myself. There's a difficult to read stamp. I think it's 3 July, 2013. I may well have said the 9th.

30

THE COMMISSIONER: Thank you, Mr Robertson.

MR ROBERTSON: Come back to 2016 in a moment, which is what we started with, but do you have any recollection between July 2013, which is the letter that I've just shown you, and what you could recall at the start of the examination about 2016 as to any involvement in applications for or promises and the like in relation to funding for the Australian Clay Target Association?---No, I don't really recall any, anything further, but - - -

40

So in relation to 2016 then, what's your recollection of involvement in any application for grant funding or proposal to provide it?---I, I, I, my understanding is that the, the local MP wrote to the minister again, seeking funding to support the project because they'd done a bit more work on what was a skeleton sort of proposal previously.

And when you say "the proposal", are we just talking about international standard facilities in the sense of the shooting itself or something broader

than that, for example, clubhouses or anything of that kind?---Yeah. I, I distinctly remember discussions around a clubhouse, but, yeah. Other, other specifics I can't recall.

10 So does that mean there may well have been a development between 2012/2013 that you and I have discussed so far, and 2016 in the sense that at least part of a proposal involved the building of a clubhouse as distinct from simply focusing on the shooting facilities themselves?---The, the word that springs to mind is complex. So it was, it was more than just the ranges. It was, it was a bit bigger than that.

And are you saying your recollection is the way in which that came about was a letter that went from Mr Maguire to the portfolio minister for the Office of Sport?---Yeah, that's, that's my recollection. Yes.

And at that point in time, was Minister Ayres the minister or was that before Minister Ayres' time?---2016? I, I think Minister Ayres was the minister.

20 Now, what then happens? A letter goes to the minister. What then happens? What was your involvement in relation to that letter?---So the way that that would, and I can't recall the specifics on this but, one, but the way that that would normally work is that a person would write to the minister, then he would seek advice from the department and we would give that advice, point them in the right direction, seek additional information, et cetera.

And is that what, in fact, happened?---I can, I, I'm pretty sure that there was a letter but, yeah. Then, of course, the department did get involved.

30 But this was in relation to a facility, is that what you're talking about, coming from – as a result of the letter coming from Mr Maguire to the minister.---Yeah, I think at some point there was a proposal that was attached to it, but again my recollection of what came first was just a simple letter. And whether it was a proposal, I'm not sure.

40 I'll try and assist you this way. Can we go, please, to page 236 of volume 26.0. If we can use the redacted version of that volume, please. So what I'm going to show you is a draft of a document that is in the nature of a briefing for the minister. So I'm just showing you the covering emails. You'll see a little bit further, further down the page, Mr Egan is sending to you a document or at least an email with the subject heading "Facility funding from uncommitted funds". See that there?---Yes, I do.

And so here we're getting towards the end of the 2015-2016 financial year. ---Yes.

And if we can then just turn to the next page, page 237, do you see there, under the heading Sport Facility Funding, as at 20 June, 2016, funds of

\$700,000 are available in the Office of Sport recurrent budget, and \$900,000 is available in the Sport and Recreation Fund. Do you see that there?---Yes, I can.

But then if you just have a look under Key Information, the second paragraph, “The following projects are recommended for funding from the available funding in the recurrent budget and Sport and Recreation Fund.” See that there?---I do, yes.

10 Now, we’ve redacted a number of the dot points, but if you have a look at the last dot point, it says, “Shooting – Australian Clay Target Association Business Case.” See that there?---Ah hmm, I do.

So does that refresh your memory at all as to what was going on towards the end of the 2015-2016 financial year insofar as that was relevant to the Australian Clay Target Association?---Yeah, I think, well, my memory at the time was that one of the challenges with this project was the lack of information or a lack of detail about the proposal, and whilst I can’t really remember the specifics of the proposal here, if it was an allocation of
20 \$40,000, that’s likely to be a grant to a sporting facility to help them develop a business case or more detailed information so that things could be properly costed or cost-benefit, sort of cost-benefit analysis being developed so we could understand what the realities of the project were.

But why would the government be paying for the business case?---They, they would do that from time to time. A sporting organisation or a state sporting organisation might not have sufficient funds, but it’s a strategic project, so they might provide some seed funding. Often it would be matched by the, by the entity itself. But that’s, I, I, that’s what I’m, that’s
30 the assumption I’m making here from this particular briefing note.

But is it standard practice, in your experience from being executive director in the Office of Sport, if a sporting organisation wants money, as in substantial money for a building project, for example, the government will fund, in effect, the preparation of an application, including a business case? ---No, it’s not, it’s not standard, but it did happen from time to time, but it would be rare.

So do you recall why this was a rare case in which it was being
40 recommended and proposed that the government pay for the preparation of, in effect, an application for funding, including business case?---I can’t recall the, yeah, exactly, but, but I suggest that if there was, it was a project that the minister or someone was looking to understand more about, then this would be the, the first step to identifying it.

Well, let’s try and get some context around this.---Thank you.

So I'll jump a little bit back in time to a little bit earlier in 2016, calendar year 2016. Can we go, please, to volume 26.0, page 146. So you can see there a letter on Mr Maguire's letterhead.---Yes, I can see that.

10 And it's cut off on the screen at the moment. This is 27 January, 2016. He says, "Dear Minister, I have received the attached correspondence from Mr Tony Turner, National Executive Office" – it says "Office" but presumably means "Officer" – "of the Australian Clay Target Association seeking funding for the ACTA ISSF facilities and also new clubhouse and office complex." And you'll see it says, "I have also approached the Treasurer." ---Yes, I can see that.

I'll just pause for a moment. We've got an error message on all of our screens. So the second paragraph do you see, "I've also approached the Treasurer"?---Yes.

The Treasurer at that point in time was Ms Berejiklian, is that right?---Yeah. I, I believe so, yes.

20 And then it says, "Your advice will be appreciated." Is this the letter that you had in minutes a moment ago, as in a letter that then spawns some further consideration within the Office of Sport?---Yeah. Correct. I, I just do remember a, a, a letter and, and I thought some type of proposal that sat with it.

Commissioner, I'm told there's some technical issue. Can I respectfully ask for a short adjournment while that be fixed?

30 THE COMMISSIONER: Very well. You'll advise me when it is - - -

MR ROBERTSON: Thank you, Commissioner.

SHORT ADJOURNMENT

[10.41am]

THE COMMISSIONER: Yes, Mr Robertson.

40 MR ROBERTSON: I'm sorry about that, Mr Doorn. Can we go back, please, to page 146 of volume 26.0. That's Mr Maguire's letter to Minister Ayres, 27 January, 2016. And can I just draw your attention to the first paragraph. It's now saying, "Seeking funding for the ACTA ISSF facilities and also new clubhouse and office complex." Do you see that there? ---Yeah, I do, yes.

And so is it consistent with your recollection that by the time we get to 2016 we're not just talking about the Olympic-standard shooting facilities of the kind that were being discussed back in 2012 and 2013 and that were given a

low priority, but we're going further now in the sense of it being a request for a new clubhouse and office complex?---That is correct, yep.

And just to - - -?---I knew the word "complex" factored in there somewhere.

And then can I show you the attachment. It says, "I've received the attached correspondence." If we just go to page 147, there's an email. If we go to the next page, page 148. I just want to draw your attention, and I hope this sits with your recollection, a document titled World
10 Championships 2018 National Ground Development. Do you see that there?---I do, yes.

And I'll draw your attention to page 154. 154, which is a thing called a Draft Budget. Zoom in to the top half of the page you'll see it says, "Olympic discipline traps, required international standard stands and covers, clubhouse/national administrative block, there identified for \$4.5 million, roads and drainage \$0.4 million, total cost of \$6.1 million." Do you see that there?---I do, yes.

20 And underneath that it says, "The ACTA has committed \$1.2 million of funds to the project." Do you see that?---I do see that, yes.

So is this right, at least as you recall it, the proposal as at the start of calendar year 2016 was seeking something like \$4.9 million – that is to say 6.1 million minus 1.2 million – in relation to each of the items that we can see here in the draft budget, including the Olympic discipline traps and the expanded clubhouse and national administration block?---Yeah, no, I agree with that. That would be my reading of that but I'm a bit confused to
30 whether or not ACTA thought it was plus 1.2 or less 1.2 but.

But at least as you understood at the time what was being sought was money not just for the Olympic discipline traps, as in putting the Wagga Wagga facility up to Olympic standard, but also some substantial funds to be able to build a clubhouse and national administration block?---Correct, yes.

You saw that on the first page of the proposal document there was a reference to "World Championships 2018"?---Ah hmm.

40 Do you remember seeing that?---I do, yes.

Do you recall what that was a reference to?---Yeah, it would have been in relation to world trap shooting, a World Cup event for trap shooting. Well, clay target shooting I'm assuming.

Now, what was the connection, as you understood it, between a 2018 World Championship clay shooting event, or at least shooting event, and this particular proposal that I've put up on the screen?---Well, I think often projects are linked between funding to get a facility ready for an event. Not

necessarily having secured that event but actually trying to get the facilities in preparation for such an event.

10 And was that the nature of the proposal as you understood at the time? In other words, “We want this money in order to secure an event” or was it more in the nature of “We have secured or expect to secure this event but it would be nice to have some better facilities for the event”?---I have no recollection that they had secured the event but certainly it would have been the case of that if we build it, the events will come, and this being an example.

So as you understood it at least towards the start of 2016 this was a “build it and they will come” type proposal?---Type of program, yep.

Commissioner, I tender the email – I withdraw that. I tender the letter from Mr Maguire to Minister Ayres, 27 January, 2016, page 146, volume 26.0 including the attachments to that document.

20 THE COMMISSIONER: That will be Exhibit 405.

#EXH-405 – LETTER FROM DARYL MAGUIRE TO STUART AYRES MP DATED 27 JANUARY 2016

30 MR ROBERTSON: Now, do you recall what happened in relation to that particular letter, as in what steps, if any, took place in the Office of Sport in response to that letter?---No, I don’t really recall the specifics unfortunately, but if there was a proposal, we would have provided some advice to the minister on that proposal.

And do you recall - -?---Would be customary practice, yeah.

Do you recall what the nature of that advice was?---I don’t imagine it’s overly inconsistent with our previous advice that we already had a clay target shooting centre at Cecil Park, and unless you’d secured the event, then we couldn’t see how the benefit was going to be any better for the state of New South Wales.

40 Let me see if I can help you this way. If we go to page 166 of volume 26.0 and we’ll zoom in to the bottom of the page first so that I can give you the context. It’s an email chain I’m about to show you. So here an email from Ms Little to the Office of Sport EMS ministerials mailbox referring to attached correspondence from Mr Maguire. Do you see that there?---Yes, I do.

And that, to assist you, is a reference to the correspondence that I showed you a moment ago. If we then just scan up the page, it says, “Hi, please see

attached request from minister's office." Then, ultimately, a Ms Power seemed to forward on to you, "Hi, Paul, please see attached letter from the Member for Wagga Wagga." But she then goes on to say, I'll get you to look in the fourth line of that email, "I briefly remember that something like was being dealt with you previously." Do you see that there?---I do, yes.

10 Do you recall what that was a reference to?---Well, Ms Power's role was to create correspondence or to help generate correspondence on behalf of the minister's office, so, and she'd worked there for a fair period of time, so she would have remembered that, a proposal from the Member for Wagga would have come in previously. So I'm assuming she's just connecting the same projects.

But I'm just referring particularly to Ms Power saying, "I briefly remember that something like was being dealt with you previously." Do you see that there?---Yeah, I do. Just my area of responsibility.

20 What did you understand Ms Power to be referring to by the "something like this"?---Just a, a similar proposal had come in previously and you provided advice to the minister, Paul. And then she would allocate it to someone to have a look at.

Well, scan up a little further up the page because this might assist, because you respond and say, "We did write something previously. This was before FNOSI."---Yes.

An acronym FNOSI. See that?---Yeah.

30 Is that a reference to the Future Needs Of Sport Initiative?---Yes. Correct.

And then, "I think we put it up as an NPP." That's a new policy proposal. Is that right?---That is correct.

That's the procedure or at least the process that you and I discussed earlier today. Is that right?---Correct, yes.

And, "It was knocked back." See that?---I do, yes.

40 So does that appear to be a reference to what happened in 2012/2013 that you and I discussed a little bit earlier?---Correct. And so, and so the reference to FNOSI, or the Future Needs Of Sport, is really just the new process that we implemented to be able to compare apples with apples projects and their strategic priority going forward for, for each individual sport.

So this is a form of what I might call competitive testing where, for each particular sport, one will identify the future needs in relation to infrastructure, in relation to that sport with a view of, in effect, ranking

which ones are higher and which ones are lower?---Yeah, no, exactly. So in the, in the case of sport, you might have individual clubs seeking funding, we might have our own projects for our own centre and it just allowed us to be able to put them all together under the one heading of, of each particular sport and then try to provide some analysis on how we might rank those projects.

10 And did the Clay Target Association facility find its way into that process, as you recall it?---Yeah, I, I, well, I can't specifically remember that but, but, that, that's exactly why it was built. So if it was a project, it would have been built into our database as a comparator.

So you don't have a specific recollection but is this right, the general approach was to put into your database proposals that had been put forward in relation to particular sports with a view to being in a position to do the kind of competitive ranking that you and I discussed a few moments ago? ---That's, that was its strategic intent, yes.

20 But so far as you can recall, did this particular proposal end up getting funding through that structure or through that analysis?---Well, there was no funding attached to the FNOSI. So the, that was more just our, when opportunities came up or whether Treasury were calling for new policy proposals or other policy requests or funding requests, then at least we would have our own internal ranking of where projects would sit.

30 As at October of 2012, you were advising the then minister that a low priority would be given to the proposed upgrade of the shooting facilities in Wagga Wagga. Did that view ultimately change, in other words, a low priority in relation to the Wagga Wagga facility became a medium or high priority through the FNOSI analysis?---No, I don't think it, it went any further from a, the bureaucratic perspective.

So at least from a bureaucratic perspective, as at February of 2016, you would have still been of the view that a low priority should be given to the ACTA proposal?---Correct. And, and the context of course at that same time is that we were also seeking our own World Cup bids for the International Shooting Centre and needed to get our, our own infrastructure to that level required for those bids ourselves.

40 So is this right, there would be a real risk of what I might call cannibalisation of events? If you have an Olympic facility, Olympic-standard facility in Wagga Wagga, there's a risk that that facility, a non-government facility might actually be bidding against the bids that you're putting together in the Office of Sport for a facility in Greater Sydney? ---Yeah, most definitely. It would weaken our, our proposal to be able to host events.

I tender the email chain with the ending with the email from Mr Doorn to Ms Power, 1 February, 2016, 2.14pm, page 166 and 167 of volume 26.0.

THE COMMISSIONER: Exhibit 406.

**#EXH-406 – EMAIL FROM PAUL DOORN TO SHARON POWER
REGARDING AUSTRALIAN CLAY TARGET ASSOCIATION
10 DATED 1 FEBRUARY 2016 AT 2:14PM**

MR ROBERTSON: Now, I've showed you the letter from Mr Maguire to the minister. Do you recall whether the minister responded to that letter or at least whether you or your office was asked to prepare a response?---Oh, if correspondence came in – so I don't, I don't recall specifically, specifically but if correspondence came in we would have drafted something on behalf of the minister.

20 So if we go, please, to page 174 of volume 26.0. I'll show you what appears to be the response from Minister Ayres. If you have a look at the third paragraph, "The project falls outside the scope of current Sport and Recreation funding programs as the funding amount sought is in excess of the maximum amount available under current grant programs." See that there?---Ah hmm. I do, yes.

30 "As advised previously, a request was submitted to NSW Treasury in 2013-2014 for funding for the project. However, the proposal is not part of the Treasurer's budget announcement, which meant that the funds were not made available." Do you see that there?---I do, yes.

I take it that's a reference to what you and I discussed at the start of the examination, the suggestion in the ministerial pink to Minister Annesley that the ACTA proposal would go forward as a new policy proposal but ultimately didn't find favour in the 2013-2014 financial year, is that right? ---That is correct, yes.

40 It goes on to say "Sport and Recreation receives many requests for assistance from across New South Wales for a diverse range of projects and programs. Unfortunately it is not possible to meet all requests for assistance." See that?---I do, yes.

I tender the letter from Minister Ayres to Mr Maguire, 14 March, 2016, page 174, volume 26.0.

THE COMMISSIONER: Exhibit 407.

**#EXH-407 – LETTER FROM STUART AYRES MP TO DARYL
MAGUIRE DATED 14 MARCH 2016**

MR ROBERTSON: Now, that course of events having happened in the first quarter of calendar year 2016, how was it that by the time we got to June of 2016, you remember that draft minister briefing note I showed you maybe 20 minutes or so ago?---Ah hmm.

10 How did we go from the minister saying lots of requests and lots of proposals, can't fund them all, to a ministerial briefing note that says, well, why don't we at least give them \$40,000 or thereabouts to put together a business case?---Well, I think the link is the, that there was an underspend at the end of that financial year, so we would have been asked to provide some advice on what projects could be seed funded or proposed to be funded out of that underspend.

20 But why would you spend money on a low-priority project even if it's only \$40,000 to put together a business case?---Now, I think one of the, I mean, if, if I circle back to the, the language before, it must have been in discussions with the minister's office.

So is this right, that wouldn't have been put forward, the ACTA proposal, wouldn't have been put forward even as a potential funding for a business case unless the minister, or at least the minister's office, suggested that that was something that should at least be considered?---Oh, I think we would always have discussions with the minister's officer on the types of proposals. So, that would be a fair indication, yes.

30 THE COMMISSIONER: On all proposals or particularly on proposals put forward by a local member?---Oh no, on all proposals, yeah.

MR ROBERTSON: But in relation to this particular one, at least at a bureaucratic level, it was regarded as a low-priority project, including as at June of 2016, is that right?---Correct, yes.

40 And so does it follow from that bit of information that you would have only included a suggestion of funding in relation to the project, be it for the whole project or just for a business case to consider the project, if it was either the minister or the minister's office who suggested that that's something that should be put forward?---That's correct, yeah.

And so with that context in mind, we can go back to page 237 of volume 26.0, which is the draft briefing for the minister that I showed you a little while ago. 20 June, 2016. I want to zoom in to the top half of the page. See there under the heading Key Information there's a reference to "uncommitted funds"?---Ah hmm, yes.

And the date of this document, or at least the date of the consideration, is as at 20 June, 2016. Do you see that in the first substantive paragraph?---I do, yes.

And so is this an example of what can sometimes occur towards the end of a financial year within government? One looks around what I might call hollow logs to see whether there are unexpended funds that might be able to be expended before the end of the financial year?---Yeah, no, that is correct.

10 You see the dot point a little bit further down the page, after the big black box. I think you were saying before that that would have only been included in this document, having regard to the context that you and I discussed, if it was the minister's office that suggested that as a potential matter that could be funded?---Yeah, again, my recollection at that particular time is one of the challenges we always had with this particular proposal was a lack of information around where the money was, how the money was going to be spent, what the costs were for and what the benefits would be. So if that was the discussion, then, then trying to support the, the project, if you like, even in some form to actually either dispel the, their
20 beliefs as to what economic benefit it was going to bring, then some allocation of funds to that would have, that's perhaps why we've given funds on that occasion.

THE COMMISSIONER: For a business case?---Yeah, like a, a, I don't think you're going to get too much of a business case out of the \$40,000, but, yeah, an abridged version of that to help us understand their perspective of why they thought it was such an important project.

30 MR ROBERTSON: And when you say "they", who was the "they" that you're referring to?---Oh, sorry, I'm referring to the Clay Target Association, or ACTA.

And so is this right, at the bureaucratic level it was a proposal that had a low priority as at June of 2016?---Ah hmm.

But it was something that, at least from the bureaucratic level, was being considered for funding for a business case in circumstances where, at least as you understood it, the proposal had at least some political support?
---Yeah, we often, we didn't talk politics in our sort of meetings with the
40 minister, but it had some, some level of support, yes.

Or at least some support within the - - -?---Yeah.

- - - ministerial office of the then minister, Minister Ayres, is that right?
---Yes, that's correct.

Commissioner, I tender the draft briefing for the minister that appears at pages 237 through to 241 of volume 26.0, noting that the version that I

tender is redacted so as to exclude reference to projects other than the Australian Clay Target Association business case.

THE COMMISSIONER: Exhibit 408.

#EXH-408 – DRAFT BRIEFING FOR THE MINISTER

10 MR ROBERTSON: What's your next recollection of involvement in funding proposals or agreements to provide funding in relation to ACTA? ---I don't recall whether they received the \$40,000 or not, I'm sorry.

Well, do you recall whether they ultimately received agreement or approval to build either the Olympic-grade facilities and/or the clubhouse that you and I discussed before?---Yeah, oh, look, no, I, the only thing I can recall in my time in that role was that we then were asked to develop a proposal for the government's consideration. Like, I think it was an ERC in a, at the time.

20

When you say the ERC, you're referring to the Expenditure Review Committee of Cabinet, is that right?---Yes.

What were the circumstances in which the Office of Sport was asked to prepare such a minute?---I just recall the minister's office asking, based on the correspondence, that that, that there might be funding available from a different portfolio, and could we propose a, a minute, I think they're referred to, as, for that particular, for the minister's office to take to ERC, to the Expenditure Review Committee.

30

So you're saying the minister's office made contact, what, with the Office of Sport to indicate, what, there might be some other funding available outside of the Office of Sport, is that what you're saying?---Well, typically if you're taking, if, if you've been asked to develop an Expenditure Review Committee meeting, it's usually a request for funding from Treasury. So, yeah, it would be, my, the assumption here is that there were no funds within the Office of Sport for that particular project, and so it was seeking support at that level.

40 Well, let me try and assist this way. Page 144, volume 26.1. I'm going to show you an email from Mr Hall to you, 26 October, 2016. Mr Hall was the chief of staff to Minister Ayres as at October of 2016, is that right?---Yeah, he was the chief of staff, yes.

Page 144, volume 26.1. We'll start with the email at the bottom, because it's an email chain, from Mr Hall to you. "As discussed, can we get an ERC minute to build this facility in Wagga?" See that?---I can see it, yes.

And then if we move up the page, you respond by saying, “Got it. Thanks, Paul.” See that?---I do, yes.

So do you recall the discussion that’s being referred to here, which appears to have occurred on or perhaps shortly before 26 October, 2016?---I don’t recall the specifics of the conversation, but, but certainly obviously there’d been a phone call or a correspondence, or it’s an action from a meeting perhaps, to prepare a minute for ERC.

10 Do you recall whether Mr Hall or anyone else from the minister’s office identified to you any particular level of urgency or otherwise in relation to the ERC minute that Mr Hall is referring to?---Oh, look, I think, this is pretty, I think it had to be done pretty quickly. That’s all I can remember, yep.

Do you recall why it had to be done?---I think, well, my recollection of the ERC timetable was trying to find a slot through the minister’s office to get some time, when an opportunity came, to get it on the agenda. It was all a bit last minute, and we were asked to prepare something very quickly.

20

But why was it all a bit last minute? Noting that this was a matter that had been raised with the minister’s office over some period of time. Indeed, at least the Olympic-standard facilities, as we’ve seen, had been raised over a number of years and rejected through the Treasury processes. Why did this matter become all last minute in around October 2016, as you recall it? ---No, we didn’t really get information as to why, the rationale for the last-minute nature, except that, that there was an opportunity, they’d been given permission to present it, and so we were asked to turn it around very quickly.

30

Does it follow from that that it was never explained to you from the minister’s office to agency why there was any particular level of urgency in relation to, for example, preparing an ERC minute?---Outside of the rationale for the timetable to get it, there were, they’d been given permission to, like, the ERC, you have to apply in advance to get a slot in the agenda, and then there’s papers circulated, and so obviously in this particular – we weren’t given the context as to why or how that happened, it just, the, they were given an opportunity to present on a date, and we were asked to prepare something very quickly.

40

So are you saying that, as you understood it, there was a, what I might call a procedural urgency that arose? “We’ve got a slot in the ERC meeting sometime soon, therefore we’ve got to move quickly,” as opposed to a more practical urgency in the sense of “We need this money very soon because we need it for a particular, we need to build this project for a particular reason”?---No, no, this was procedural. So this, there was an opportunity to have it listed and can we prepare a minute as quickly as possible.

THE COMMISSIONER: But in terms of having it listed, Mr Doorn, should we take Mr Hall's instruction literally? Because as it reads it is that the ERC minute is to support the construction of this facility in Wagga, is it not?---Looking at the language that Mr Hall uses, yeah, that, that's exactly, that's, yeah, a fair interpretation. To build. It's not about the \$40,000. Obviously it's about more money than that.

And it's not about whether or not we build, it is to build.---To build.

10 MR ROBERTSON: I tender the email chain ending with the email from Mr Doorn to Mr Hall, 26 October, 2016, 11.26am, page 144, volume 26.1.

THE COMMISSIONER: Exhibit 409.

#EXH-409 – EMAIL CHAIN BETWEEN PAUL DOORN AND CHRIS HALL DATED 26 OCTOBER 2016

20 MR ROBERTSON: Can I now show you Exhibit 377, which is also page 187, volume 26.1, which is an email of the next day. We'll zoom in on the bottom-half of the page first. I'll show you an email from a Mr Taylor to you and others. "Hi all, as discussed in the core exec meeting, can you please send me any new policy proposals by 4 November." Do you see that there?---I do, yes.

"These will be the subject of discussions at a meeting of the core exec with Sajeev," S-a-j-e-e-v, "during November. Caroline will be in touch about a time for this." See that there?---I do, yes.

30 And if we move up the page, now you're then forwarding that email onto certain directors who report to you. Is that right?---Yeah. John, Michael and, Michael, yes, correct.

So including Mr Toohey, one of the directors who reported to you?---That is correct.

And so you say, "Matt has asked us to starting thinking about NPPs for next year." See that there?---I do, yes.

40 Matt's a reference to Matt Miller?---Yes.

Who was the CEO at that point in time, is that right?---Correct, yes.

But then your current list of potential NPPs include, have a look at the third sort of thing point, "Wagga Wagga Clay Target Shooting Centre." Do you see that there?---I do, yes.

So how is it that the day before 26 October, 2016, you're being asked from the minister's office to prepare an ERC minute to go straight to the ERC but the next day you're talking about new policy proposals, which presumably would go through the ordinary Treasury processes of the kind that you and I discussed this morning?---Oh, I think, so this list is a list that's been generated from multiple discussions with the minister's office and with the chief executive. How is it possible? I mean, clearly there's a process, there's a bureaucratic process where you would be, step-by-step, which would be the NPP process. And just because something's on the agenda of an ERC, my experience is that you can develop these things and sometimes they, they don't make it past being placed on the agenda. So, we were sort of having a bet both ways here, if you like.

So this is belts and braces as it were, it was clear to you that the minister's office wanted to get some funding for the clay target shooting centre and there's two possible ways in train. One, is through an ERC minutes and another one is through the NPP, new policy proposals, approach. Is that right?---That's correct, yes.

20 But those are, in effect, alternative processes. One is go through the ordinary Treasury processes, put in a ranked new policy proposal, hope at the end of the day, through Treasury, there's an agreement to fund this particular proposal, correct?---Correct, yes.

Whereas doing an ERC minute is, in a sense, a much more direct approach in that if the ERC approves the ERC minute, then you'll get the money now rather than through an extended process that may or may not lead to funding, and in any event it'll be in the next financial year, is that right? ---Yeah. And I, just as an extension to that, I think the NPP is about forecasting money that might be built into the state's budget for the following year, whilst an ERC minute might be around seeking funds that might be available here and now.

And so looking at that practically, this is an email of 27 October, 2016, when you were thinking about NPPs for next year, you're thinking about NPPs for the financial year 2017-2018, is that right?---That is correct, yes.

And is this a fairly typical time frame? We're talking about October 2016, the budget isn't going to be announced in the ordinary course until May or June of 2016 and the money – sorry, 2017 – and then the money flows in 2017-2018 financial year?---Yeah, that, that is a typical, typical process and I can, I recall that easily because typically Treasury wanted it done before Christmas shutdown and you wouldn't hear back until the end of January. So I, I do, that is, that is the right time frame.

When you say you wouldn't hear back until the end of January, that's in the sense you wouldn't hear back any communication at all?---Correct.

But in terms of actually whether you've got the money - - -?---Oh no, that's part of the budget process much later.

You wouldn't find that out until the budget's actually been presented in say May or June, is that right?---Yeah, that's right. That is correct.

Whereas putting forward an ERC minute, what I might call the direct ERC approach, you might actually get the money within weeks or months?
---Yeah, more, more likely to be more months than weeks but, yes, that's
10 correct.

And why is it more likely to be months than weeks?---I, I think there's a process that you have to go through. I mean, effectively, it takes time, A, to get on the agenda, B, there's often a discussion and then there's often some actions that you might need to do. It's not always cut and dry. It's not always just a straight yes or no.

And so can we go to Exhibit 378 in that context? I'm going to show you a diagram called NSW Cabinet System. Do you see there effectively a flow
20 chart called NSW Cabinet System?---I do, yes.

And do you see that it identifies a series of stages including draft submission stage, final submission stage, lodgement, et cetera?---Yeah, I do.

Does that diagram identify, at least in general terms, the kind of process that was in place as you understood it in relation to ERC, Expenditure Review Committee, submissions and decisions? In other words, a multi-stage approach?---Yeah, I don't, I don't know the source of this. It's not something I've seen before but, no, the, the, the phases definitely look right,
30 yes.

And so is that part of the explanation why, when you answered my question about is it weeks or is it months in relation to what I called the direct ERC approach, that it's more likely taken months than weeks because there's a number of stages that need to be gone through at least as a matter of procedure?---No, most definitely. I mean there's, there are, within each of those phases there are multiple steps.

And when one gets to the final step, or at least the final step above the red
40 line, Cabinet/committee meeting and decision, it might not actually come up with a yes as it were?---That is, that is correct. It mightn't even get to that particular point.

And so is that the explanation as to why we see on successive days, 26 October and 27 October, in effect two alternative processes being adopted in relation to the Clay Target Association, one the more traditional new policy proposals approach and one what I've called the direct ERC approach?
---Yeah, that's a, that's a fair assumption, yes.

Can we then go, please, to Exhibit 379. This is also volume 26.1, page 213. So you remember the last email that I showed you was of 27 October, 2016.---Okay.

10 And moving now to 14 November, 2016. Now, if we look at the email from you to Mr Miller and others 11.04am. Do you see there “Chris Hall called this morning to request the OOS urgently develop a submission for ERC requesting funds for the upgrade of the Australian Clay Target Association clubhouse on a site in Wagga Wagga.” Do you see that there?---I do, yes.

“The MO is trying to secure a slot in the ERC forward agenda, date TBC.” See that?---I do, yes.

20 So it must follow from that, mustn’t it, that the question of procedural urgency would appear not to have been in place as at 27 October, 2016, which appears to be around about the time that you were first asked to put together – sorry, 26 October, 2016 at which point you were asked, or around about the time you were asked to prepare an ERC minute for funding for the ACTA project. Is that how we should reconcile these documents?---Yes, sorry, can you say the question again. Just I was trying to, my apology, I was listening and reading at the same time.

26 October, 2016 was the email that I showed you asking you to prepare an ERC minute for funding.---Ah hmm.

Do you remember seeing that email a little while ago?---I do, yes.

30 Now, I think when you first looked at that you thought there was some level of urgency attached as at 26 October, 2016.---Yeah.

Have I got that right?---Yes, yeah.

40 Now, is that still your recollection now having seen this email where you seem to be saying the MO is trying to secure a slot in the forward ERC agenda?---Yeah. So procedurally often you’d be requested to prepare something but it would sort of float a little bit whilst, you know, the minister’s office would garner support from Treasury itself to get on the agenda, and then once a date is hardened up, then there would be an expedition of well, this needs to be done now.

But I understood you to be saying before that as at 26 October, 2016, the preceding email, you already understood this question of the ERC submission to be urgent. Have I got that right?---I’m not, well, I’m not sure, I’m not sure of the level of urgency but I knew that was something that that was going to be requested from us or had been requested.

So as at 26 October, 2016 at least something that needed to be dealt with relatively promptly.---Correct.

At least from the perspective of the minister's office.---Yes.

Is this right? It wasn't the view of your agency that the ACTA proposal was something that needed to be dealt with urgently or by way of priority?---No, we, we were, I think my recollection at the time is that we were proposing that was going down the NPP process because of the request for more information on the project.

And by definition, the NPP wouldn't have involved any confirmation or otherwise of funding until the budget was handed down in May or June of 2016?---That is correct.

Sorry – 2017 I should have said.---Yeah, the following year, yeah.

And no money to flow until the financial year 2017/2018. Is that right? ---Correct.

So at least so far as the agency was concerned, this wasn't a priority or urgent project. Is that right?---No. It was, it was in the mix of things that were being discussed regularly but it wasn't the highest of priorities.

But you then see your email to Mr Miller and others on the screen saying that Mr Hall of Minister Ayres' office is requesting the Office of Sport urgently develop a submission for ERC. Do you see that there?---I can, yes.

What was the urgency, as you understood it, as at 14 November, 2016? ---Well, I think just the urgency was that they then had a date and it was sooner than they expected.

Well, but just have a look at the next sentence. It says, "The MO is trying to secure a slot in the ERC forward agenda, date TBC."---Okay.

So at least on your email, it doesn't look like they've secured a slot yet. ---No, that's true.

So it would at least seem that that wasn't the explanation for urgency.---No. It's obviously just a direction from the minister's office. I can't, I can't recollect the, the, the specific reason but - - -

Well, is this right? So far as you can recall sitting there now, you recall that the minister's office wanted the ERC submission dealt with urgently but you don't recall why it was said to be urgent?---No. Well, I think the, the reason it had to be developed, in, in order to get on the agenda, you've got to be able to show your colleagues, your Cabinet colleagues or at least have the discussion with Treasury about what that's going to look like, what the

recommendation might be. So in order to, perhaps I'm just trying to balance the, to get to, trying to secure, if you're trying to secure a spot on the agenda, clearly, you've got to have some documentation that says this is what we're asking for.

I'm just trying to understand what you recall about the level of urgency. Have I got it right that you recall that, so far as the minister's office was concerned, it was a matter that should be dealt with urgently?---That is correct. Yes.

10

But do you recall whether you had any explanation as to why it was the minister's office view that it should be dealt with urgently?---No. The only recollection I've got is that at the time, it was about preparing something so that it could get on the agenda, but not, not a rationale as to why they believed it to be more urgent.

20

It's at least clear in your mind that it wasn't regarded as something that had a level of urgency from the perspective of the agency, noting that the agency has, as you see from this email, previously recommended that this issue be dealt with in the NPP process?---That, that is correct.

And if you have a look a little bit further along this email, do you see there's a sentence about halfway through the very lengthy paragraph. It starts with "Apparently, the announcement of."---Yes. Okay. Yes.

"Apparently, the announcement of the Invictus Games to be hosted in Sydney has ACT excited that they may be able to host this event at their site." See that there?---I can, yes.

30

And then you put in square brackets, "FYI, our own Sydney International Shooting Centre was the host of the clay target shooting discipline at the Sydney 2000 Olympics." See that?---I do, yes.

And so that's a reference to the point that you raised before, namely, we've got a sufficient Olympic-standard, perhaps underused, facility in Greater Sydney and if the Invictus Games needs it for an event, then that could potentially be used?---That's correct. And I, I think if I'm correct, I don't think the Invictus Games ended up having any shooting element of the competition, so - - -

40

So that as a potential justification for urgency, as you recall it, fell away. Is that right?---Yeah, from the ACTA perspective, that would have been, an opportunity, I think, is how I describe that.

And if we then go up the page, this is an email from you to Mr Toohey. "Fancy a challenge? MO has requested a draft ERC submission today." See that there?---I do, yes. I remember it being quick. I didn't remember it being a day.

Was it unusual for a minister's office to ask for a draft ERC submission in a day?---Yes, that was unusual.

Can you recall it ever happening on any other occasion other than on this occasion?---Look, I think from, no, no, nothing as urgent as that. We certainly had other requests to get things done quickly but not as quickly as that.

- 10 You saw from the NSW Cabinet system diagram I showed you before, Exhibit 378, there's a whole series of stages involving comments and things of that kind. I take it that, at least in the ordinary course, at least a number of days, if not a number of weeks or months, is spent in preparing an ERC submission?---Yep, yep. Weeks I'd suggest. Not months, but weeks, yes.

Well, would you agree that one of things that is ordinarily done before preparing an ERC submission is things like policy planning, project management, research, data collection, analysis, impact assessment, target consultation, things of that kind?---That, yep, yes, I do.

20

I take it that if one is seeking to put together a draft ERC submission in a day, there's not time to do all of those things?---No, that's, that's a fair assumption. And I, I just, there would have been some work done in, in the time from the previous email around what that might look like. But, yeah, that's a lot to ask.

Well, there's no time to do any of those things in a day.---The detail, yeah, yeah.

- 30 You agree?---I agree, I agree.

THE COMMISSIONER: Is that a convenient time for a morning tea adjournment, Mr Robertson?

MR ROBERTSON: Yes, thank you, Commissioner.

THE COMMISSIONER: Very well. We're going to take a 15-minute morning tea adjournment, Mr Doorn. We'll now adjourn.

40

SHORT ADJOURNMENT

[11.31am]

THE COMMISSIONER: Yes, Mr Robertson.

MR ROBERTSON: Mr Doorn, we got up to October of 2016. At that point in time there are two possible funding sources in, or at least funding mechanisms in place, namely the new policy proposals approach, which was

the recommended approach through the Office of Sport. Is that right?
---Yeah, two, two processes, yes.

Two processes in play to at least in the process of commencing to be in play, is that right?---That is correct.

The second one being what I've called the direct ERC process of preparing an ERC submission and asking the ERC to approve it, is that right?---That is correct.

10

In relation to either of those procedures, did you within the Office of Sport have any input though the FNOSI process, Future Needs of Sport Infrastructure Study, that gave any indication as to whether the ACTA project should be regarded as, as it were, high up the list or low down the list or somewhere in between?---I, I don't recall ever our, our policy position, if you like, changed in that space.

So in other words, it was and remained, at least within the Office of Sport as a low-priority project?---Yeah.

20

In terms of that study itself, the FNOSI study, that involved getting input from who as to priorities? Is it just the sport itself or is it other stakeholders, and if so, who are the other stakeholders?---No, it's predominantly, the study was set up to, to be able to verify the process we would use to getting proposals from state sporting bodies. So whether it's a, there was the state Sporting Shooters' Association or whatever, there are multiple groups of shooting in New South Wales, or if it was, an easier example would be to say if you're a soccer club or a football club, you might be, we would receive a lot of requests, we would often push back to the state body and say, "Well, where do you believe this sits?" So we try to get a little bit more of a, input from the state sporting body and then we would use that as our, our analysis to be able to rank the projects.

30

Was the input just from the state sporting bodies or was it from other stakeholders like, say, local councils or local members of parliament or things of that kind?---Local councils, yes. I don't recall receiving feedback from local MPs, although we did write back to them and I think they were aware of the process. So, they could submit projects but it predominantly was state sporting bodies and local government.

40

Do you recall whether the Wagga Wagga Council provided any input into the FNOSI approach in relation to the ACTA proposal?---Yeah, I don't recall, sorry.

Let me try and assist this way then. Page 312 of volume 26.0, going back in time to February of 2016 and I'm going to show you what appears to be a briefing to the chief executive arising from the correspondence from Mr Maguire to which I drew attention in this morning's session. Now, this

doesn't appear to be prepared by you, it appears to be prepared by Ms Power and Dr Hamdorf appears to have signed off on it, and then it goes to Mr Miller as chief executive. If you just have a look underneath Background, there's a reference to Member for Wagga Wagga's representations to the minister. Do you see that there?---Yes, yes. I do.

And then there's reference to the ACTA proposal stage 1, stage 2 and stage 3. Do you see that in the second and third paragraphs under the heading Background?---I do, yes.

10

But I want to draw your particular attention towards the bottom of the page. If you look at the penultimate paragraph, second to last paragraph, the project has not been included in the 2016/2017 new policy proposals being put forward to Treasury. See that there?---Okay, yeah. I do, yes.

A form of proposal from ACTA, as we saw this morning, was put forward through – well, in the time that Minister Annesley was the minister, correct? ---Correct.

20

But this seems to be suggesting that it wasn't put forward in 2016/2017. If you then look at the final paragraph, "Wagga Wagga Council is participating in the Future Needs of Sport Infrastructure study. However, the above project has not been identified as one of their priorities." See that there?---I do, yes.

Does that refresh your memory as to any input from the Wagga Wagga Council as to ACTA's proposal?---Yeah, I mean, I, I, that's obviously a statement of fact but I don't recall that, no, sorry.

30

But it at least looks like from this document that the ACTA proposal was a low priority, both within the bureaucracy and within the Wagga Wagga council, at least as at about February of 2016?---Yeah. I would agree with that assumption.

I tender the document on the screen, being a briefing note prepared by Ms Power to the Chief Executive of Sport and Recreation, page 312, volume 26.0.

40

THE COMMISSIONER: Exhibit 410.

**#EXH-410 – BRIEFING NOTE PREPARED BY SHARON POWER
TO THE CHIEF EXECUTIVE OF SPORT AND RECREATION**

MR ROBERTSON: So 15 November, 2016, you presented the challenge to Mr Toohey. Do you recall whether Mr Toohey accepted that challenge?

---No, I don't recall. I think Mr Toohey did have a good, a good go at developing something, yes.

So he accepted the challenge that you presented to him of turning around an ERC submission within short order?---I, I think Mr Toohey would have said something along the lines that, that he would do the best he possibly can, given the timeframes.

10 Mr Toohey, in your experience, was a very diligent public servant?---Very much so.

Very much took seriously his duty as a public servant to give frank and fearless advice within government and to government?---Yes, very much so.

20 Do you recall what Mr Toohey's view was on this particular proposal, as in the ACTA proposal?---I don't recall specific, I do remember multiple conversations with Mr Toohey in relation to the proposal about, you know, our concerns and then how we might potentially safeguard the government from in our own submissions, the sorts of language that we would use, but I really can't recall the specifics unfortunately.

When you say "our concerns" what are the concerns that you're referring to?---Well, the fact that we still viewed it as a, a lower priority compared to other projects and the fact that we keep coming back to the central point that they were bidding for a World Cup event that might potentially take business away from an existing state-owned facility.

30 And so is this right, as at November of 2016 you understood the international event that you've just referred to as being an event that had not yet been secured by ACTA? Is that right?---Yeah, I, I really can't recall whether it had been secured or not. I apology, I apologise.

40 Well, do you recall one way or another as to whether this funding proposal was what I'll call a must have, we need it, we've got to build this thing otherwise we can't get this event or we don't think we'll be able to get this event, or what I'll call a nice to have, we're having this event, it's going to happen in any event but it would be nice to have a nice big clubhouse when it's going to happen?---My recollection is that it was more a case of in order to get this event we need to get these, this facility built.

Build it and they'll come.---Yeah, as I had said previously, yes.

THE COMMISSIONER: And can I just go back to your previous answer, Mr Doorn, when you were concerned about protecting the government and I think, did you also refer to the fact that the Sydney shooting facility was still seeking international events and that this could again be a competitor to its success in that respect?---Well, yeah, you're correct. That is my, my recollection through that whole period was the fact that we were still going

through our own Treasury process, approval processes to seek funding to upgrade the facility, in particular the shooting ranges, and that was always competitive tension from my perspective, yes.

Thank you.---I just don't recall the, the exact timeline of when things happened so apologies.

10 MR ROBERTSON: So from your perspective, in the Office of Sport if it was a must have that would actually be a negative factor in relation to the proposal because that would potentially involve an alternative facility competing for the same kinds of events that the Sydney International Centre could host?---Yeah. I mean if, if they were planning on the event itself was to have events that would, could be done at Cecil Park, at the state government owned shooting centre, then, yeah, that would be a negative because that we would have been applying for exactly the same grant, for the same funds to run the same event potentially.

20 And indeed to the extent that any bid needed to be put into an organisation that decides where an event is going to take place you may well be bidding or the Office of Sport may well be bidding against the Wagga Wagga facility?---Yeah. I think the way the business cases are developed in that sort of a space is that if it's happening within the state of New South Wales, you're actually sort of colloquially robbing Peter to pay for Paul when why would you invest in a, in a facility when you've already got a facility that could host that event? All it needed was just some upgrade of some of the targets.

30 So that's a factor in your experience as a former public servant that is relevant to deciding on funding of this kind. Is that right?---Yeah, that, exactly. That would be a factor in why we considered it a lower priority.

And so in other words you might actually spend a whole lot of government money and the only thing that you achieve is moving benefit in effect from a facility somewhere in one place of the state to moving it to another place in the state?---Correct.

40 Go, please, to Exhibit, at page 255 of volume 26.1. That's Exhibit 380. We'll zoom in to the top half of the page. The bottom half is an email that I've already shown you. So you see Mr Toohey accepts the challenge. Sure. Refers to the Invictus events but he then says to you, "I think the ERC sub should be funds for an independent feasibility study, preliminary business case, et cetera. I can't see that the funds would be allocated on the basis of the attached business case." Do you see that there?---I do, yes.

Does that refresh your memory as to Mr Toohey's view as to what should

happen in light of the minister's office's request for an ERC submission?

---Yeah, and it also confirms our, my, my recollection that we were lost for the, the detail about the project.

So is it consistent with your recollection that it was not only Mr Toohey's view but your view that the information that was available to the Office of Sport as at 15 November, 2016, was insufficient to properly support funding for the building project proposed by ACTA?---Yeah, I think, no, that's a fair comment. And perhaps when we compare it to other projects, it just lacked the detail.

10

Do you recall whether that was advice that you or, to your knowledge, anyone else in the Office of Sport gave to the minister or the minister's office - - -?---Look, I'm - - -

- - - in other words that the quality of the information was not of a sufficient standard as should support a grant of funding for the building project?

20

---Well, I can't recall the exact discussion but certainly my practice at the time would have been to exactly have those conversations with the minister's office, yes. And, and that, because that would then structure the way in which we would present a recommendation or the language we used in a Cabinet submission.

So is this right? You don't have a specific recollection of giving that advice, but your practice at the time would be to ensure that the minister's office was given advice on questions of the kind that you and I are now discussing?---Most definitely, yes.

30

Specifically in this case, advice to the effect that the quality of the information available to the Office of Sport as at November of 2016 was not of a sufficient quality as should properly support funding for the building project?---Yeah. I think that's a, that's a, that's a fair assumption, yes.

Advice of that kind, in what form would that ordinarily be provided? Would that be ordinarily provided in writing or orally or possibly a mixture between the two?---Well, sometimes a, a bit of both. Often there'd be briefing notes, as we've seen previously, that we would write or we'd, in our discussions with the minister's office, talking about proposals and which were coming up and what, what needed to be done, we'd have that verbally discussed, as well.

40

And in terms of the mechanics of actually providing that advice, that advice directly from you to someone in the minister's office or is that advice through the chief executive officer or is that advice in a meeting with the minister or is it something that's going to depend on the circumstances? ---Well, I think, so (d) all the above, on, in that particular occurrence. So I'd be talking to my chief executive, the chief executive and I when we met with the minister and the minister's office would be having those discussions with them as well. And, then, ultimately, it's that sort of

language we would probably craft into a submission or speaking points or something along those lines, to give them, make them aware of our position.

THE COMMISSIONER: I take it you had regular meetings with the minister?---Yes. Generally, weekly.

MR ROBERTSON: With the minister, him or herself, or just with the minister's office?---Sometimes it alternated, depending on the minister's schedule in parliament and things like that. But more often than not,
10 fortnightly at the, at the minimum with the minister and their chief of staff.

And so is this right? You're quite confident that you gave advice at at least some point in time to the effect that the agency's view was that the material available as at November of 2016 wasn't of a sufficient quality to support a grant for a building project?---Yeah. I, and I, I, I guess the, yeah, you're right. That's, that would be correct. I guess the point I'm trying to make here, it, it links back to that earlier email you showed me before around why we would give money or potentially seed fund a project to do more detailed information 'cause that was a concern we had, the \$40,000 grant email you
20 showed me before.

But you'll see from this email, Mr Toohey is referring to an attached business case. Do you see that there?---I do, yes.

And so there's a business case of some kind obviously in existence at this point in time. Correct?---Yes. I'm, I'm making that inference, yeah. I do, I, I do recall seeing something along those lines.

You recall seeing something along those lines but you also recall that of not
30 being of sufficient quality to support a grant of the magnitude that ACTA was seeking?---Yes, that'd be correct.

And if we then turn, please, to Exhibit 381, which is page 256, volume 26.1. And I'll show you Mr Toohey's first cut on the ERC submission. Going back to the first page of that exhibit, please. So do you see there a document entitled Cabinet Submission?

THE COMMISSIONER: My screen has just gone totally blank, Mr
40 Robertson.

MR ROBERTSON: Yes, as has mine, Commissioner.

THE COMMISSIONER: And that sound was not propitious.

MR ROBERTSON: We might just pause for a moment if that's convenient, Commissioner.

THE COMMISSIONER: I think that's a very good idea, Mr Robertson. Can I just check that everybody in the hearing room's screens are working if they weren't working before? Thank you.

MR ROBERTSON: And I'll just check whether anyone who's joining remotely – I can see many nods behind me, Commissioner, so I think that's sufficient indication. Do you now see, Mr Doorn, a document entitled Cabinet Submission?---I do, yes, yes.

10 And if you have a look at the title, it says Development of Sporting Infrastructure at Australian Clay Target Association Facility in Wagga Wagga. See that there?---Yes, I do.

And we'll just turn to the next page, though. I might just take that off the screen because I think we've got the wrong document. We'll do it this way. Can we go to volume 26.1, page 256, which my note says is Exhibit 381, but my note may have been wrong.

20 THE COMMISSIONER: I think you've got the second cut there, Mr Robertson.

MR ROBERTSON: You may well be right, Commissioner. Page 256, volume 26.1. We'll start with the email from Mr Toohey to you, 15 November, 2016, 2.36pm, same date as the challenge emails, challenge given and challenge accepted. You see there it says, "Hi, Paul. First cut." And then jumping to the third sentence, "I'll fill in the body of the proposal if this is on the right track." See that there?---I do, yes.

30 Now if we turn to the next page, we'll see a title that was different to what I think may be the second cut, Feasibility Study for Development of Infrastructure at the Australian Clay Target Association Facility in Wagga Wagga. Do you see that there?---I do, yes.

And if we turn the page, we'll see two possible recommendations are put forward in this draft, in this first-cut draft, one approving the allocation of \$500,000 to the Office of Sport to engage consultants to prepare a feasibility study, et cetera. See that one?---I do, yes.

40 And then Roman (ii), after the word "or", "Approve the allocation of \$6.7 million to the Office of Sport for development of a large clubhouse, et cetera, but subject to certain conditions." See that?---Ah hmm, I do, yes.

Now, do you recall how the number of \$500,000 in Roman (i) came about? ---No, I think based on some work that we'd done on other projects that was sort of used as a, a benchmark for how much a comprehensive business case might cost to develop.

So it wasn't just a figure plucked out of the air, as it were? It was based on experience in the Office of Sport?---Yes, that's correct.

But you see there's an "or", there's two alternatives there. Do you recall whether both of those alternatives were put forward or was only one of those put forward?---I think we would have used this document to have a discussion with the minister's office, but I can't recall which one was the final version, no.

10 So is this right? It's common in your experience for there to be a bit of an iterative process in relation to Cabinet submissions or submissions to committees of Cabinet, where the agency might do the legwork, as it were, but in consultation with the minister's office?---I think the, yeah, there would always be consultation. I think this one was a little bit more iterative than other, that were pretty, a bit more cut and dry if you like. But this one we still required some discussions with the minister's office.

20 Do you recall why this was one that involved a particularly iterative process as compared with other ones that you presently have in mind?---Yeah, no, I, I think just the, the difference between whether the minister or the minister's office were asking for the money straight upfront, or whether or not it was sort of more our position to, to seek additional support, additional support information.

30 And so are you saying that this looks like a first cut in the sense of one that presents a series of options to the minister's office for the minister's office to decide upon before the more detailed work is done to finalise the Cabinet submission?---Yeah, so effectively we would often start with recommendations to make sure that you, the – I wouldn't like to use the word "directive" but a discussion around what the government was seeking to, to, to obtain from the Cabinet submission was correct, and then you would then spend, 'cause the rest of the body is where you've got to synthesise. The hardest part about writing an ERC submission is actually how do you digest all the information you've got into the maximum 10 pages. So often starting with this and getting this bit right was really critical.

40 But do you recall what happened in relation to this particular proposal? ---No. I think we pushed for a submission around the, the feasibility side of things, as opposed to – but I can't recall the, the exact - - -

And you pushed for that essentially for the reasons that you and I have already discussed today?---Correct, yeah.

In particular the fact that your view was that the quality of the information available as at November of 2016 wasn't of a sufficient quality or detail to support funding for a building project?---Well, a building project of that, of that amount of money, yes.

THE COMMISSIONER: So by this stage, as Mr Robertson drew your attention to a few moments ago, Mr Toohey had advocated that approach because of the attached business case?---Yes.

And do you recall reading that business case yourself?---I, I most definitely would have read the business case but I, yeah, I can't really recall going through page-by-page but I certainly would have read it, yes.

10 Thank you.

MR ROBERTSON: Do you happen to recall, when the original ACTA proposal, the one that was put forward as a new policy proposal in the 2013-2014 funding period, through the Minister Annesley process that you and I discussed this morning, as I understood what you said, it wasn't at the top of the list, of the ranking list. Is that right?---Correct.

It was at least towards the bottom end, is that right?---Yeah, that's correct.

20 Do you recall where on that spectrum it was? Was it towards the bottom, at the bottom, somewhere in between?---Oh no, it would have been towards the bottom. I'm, I'm yeah - - -

Is it possible that it was at the bottom?---It's possible but I, yeah, I don't recall the, the exact list, all the other projects that were on there, but it would have been towards the bottom.

Well, this might just help with that just is passing, page 195 of volume 26.1. Page 195, volume 26.1. If we can just zoom into sort of the top-half of the page, Mr Dean to you. The context is clay target, you can see that from the subject heading. "This was submitted as grant funding application for 2013-14 funding, not last year and earlier than I thought. It was rated lowest of 15 proposals that year and not funded." See that there?---I do, yes.

30

So do we take that to mean that it was a new policy proposal in 2013-2014 but in terms of the ranking, it was right down the bottom?---Oh, well, and, and Mr Dean ran that process for us, so yeah, if he, if he says it was the last of the 15, then it would definitely be the last of the 15.

40 I tender the email chain between Mr Doorn and Mr Dean, 2 November, 2016, volume 26.1, page 195.

THE COMMISSIONER: Exhibit 411.

**#EXH-411 – EMAIL FROM PAUL DOORN TO PHILIP DEAN
REGARDING NEW PROPOSAL CLAY TARGET DATED 2
NOVEMBER 2016**

MR ROBERTSON: So can we go then, please, to Exhibit 382, volume 26.1, page 262? In fact we'll do it on the volume version. So volume 26.1, page 262, which I'm fairly sure is the second cut. So you'll see you're reporting into Mr Hall, chief of staff to Minister Ayres. "There's been a bit of a mad scramble here this afternoon to pull together a draft ERC submission regarding the clay target shooting facility. We haven't populated all the fields as yet but the recommendations and exec summary should give you a very good feeling about how this proposal reads." See that there?---I do, yes.

And you say, "If you're comfortable with where this is heading, can we complete the remaining sections tomorrow or tonight if you are desperate!" exclamation mark.---Yes.

"Do you have an ERC as yet?"

THE COMMISSIONER: A date for ERC.

MR ROBERTSON: I'm sorry. Oh, "Do you have a date for the ERC as yet?" I'm sorry, Commissioner.---Yeah.

And if then turn to the next page, you'll see the title has changed, not "Feasibility study" anymore, "Development of sporting infrastructure" et cetera. But if we then go to the following page, you'll see we have Roman (ii) has become Roman (i) and the original Roman (i) has disappeared. In other words the feasibility study has disappeared. Do you see that there?---I do, yes.

Do you recall how it was that the feasibility study option disappeared between the first cut that I showed you, 2.36pm on 15 November, and what appears to be the second cut, 5.10pm?---Yeah, I don't recall who made the changes. Are you able to advise, can I ask that as to whose document, which way this was going?

This was an email that you're sending. So we'll go back - - -?---Okay.

Go back two pages just so I can show you that.---Thank you.

So if you just have a look next to where it says "attachments".---Okay.

It says, "ERC submission". So the attachment to your email of 15 November, 2016, 5.10pm - - -?---Yeah.

- - - is the document I showed you a moment ago.---Yeah, okay.

If we just go back to those recommendations, please. Next page along. So do you recall how it was that we had the first cut that had the two options, the one preferred by the agency and the, as it were, fall back or alternative option and the one that was put forward by you or at least provided the minister's office by you a couple of hours after, maybe about three hours after the first cut prepared by Mr Toohey?---Yeah, I don't recall the, like the specifics but that would, we wouldn't make that decision ourselves. That would have been based on feedback and advice from the minister's office as to which option to go for.

10

Not something you would have taken upon yourself or the agency would have taken upon itself?---No, no. Effectively we would have taken, we would have provided a draft and then had a discussion around what that looked like, whether it was myself and the chief executive and the minister's office or myself and the minister's office or the chief of staff and then, and then effectively would have then said no, no, the minister's, minister wants to go for this version so then we would have created it that way.

20

Do you recall that in the email, the covering email that I showed you you asked me Hall, "Do we have an ERC date yet?"---Correct, yes.

Do you recall anything about the process that led to the obtaining or otherwise of a ERC date?---No. I mean my inference on that email would have been around the fact that I'm asking for time to finish off other parts of the document we could actually buy ourselves some time to work through the, the rest of the process.

30

Well, whose job was it to seek to procure an ERC date?---Oh, that's done through the minister's office liaising with the Treasurer's Office.

So from who as you understood it does one procure a ERC date? In other words, who has the decision-making authority as to whether or not to get something on a ERC agenda?---Oh, I think ultimately the, the agenda is approved by the Treasurer but the negotiation or the discussion about the timetabling and the scheduling is often done by staffers between the minister's office and the Treasurer's Office and, yeah, and that, but ultimately the decision is between the, the Treasurer sets the agenda.

40

Well, let me show you this email that may assist. Exhibit 385, volume 26.2, page 9. In fact before we go there, I'm sorry to do this to the operator, we'll go quickly to Exhibit 383, volume 26.1, page 268. Now, if we zoom in to the email at the top of the page from Mr Meulengracht to you, 16 November, 2016, 11.12am. You note that he's advising you that "If the minister wants something to go on the ERC agenda outside the six-monthly input to Cabinet forward agenda process, he needs to write a letter to the Treasurer requesting that and reasoning why this is urgent and unavoidable." Do you see that there?---I do, yes.

Do you recall whether a letter was in fact sent from your minister to the Treasurer providing reasoning as to why this is urgent and unavoidable?
---Yeah, no, sorry, I don't recall.

As you recall, did you have any understanding as to why, at least from Minister Ayres' perspective, the ERC minute or ERC submission was one that was urgent and that it was unavoidable, that it needed to get on the agenda with some degree of haste?---Yeah. No, no, no information was sort of provided in that space just that it was clear that there was a level of
10 urgency but we weren't privy to the rationale for that, no.

So it was made clear to you from the minister's office that there was a level of urgency but not the reason or reasons for that urgency, is that right?
---That is correct, yep.

If we then, please, go to Exhibit 385, volume 26.2, page 9. This is another email from – in fact there's an email from Mr Toohey to Mr Meulengracht, copied to you. We'll zoom in to the top half of the page, please. Mr
20 Toohey says, "The attached version has been approved by the minister's office for lodging. As you can see, the Treasurer has approved this to go to the ERC on 14 December." Do you see that there?---I do, yes, yes.

And so you can see that the context, we'll just jump to the next page, you'll see an email from a Mr Bentley to various individuals saying, "The Treasurer has requested the issue be put on the agenda for the ERC meeting on 14 December." Do you see that there?---I can, yes.

The Treasurer at that point in time was Ms Berejiklian, correct?---Yes, I understand that, yes.
30

Let's go back to the preceding page. If you have a look, about halfway down, the email from Mr Toohey to Mr Meulengracht. "As noted in this submission, the draft lodgement stage will be the forum for agency consultation. Paul and I appreciate that this is not standard procedure." See that there?---Yes, again.

What was it that you appreciated was not standard procedure in relation to the ERC submission for the ACTA project?---Oh, the, obviously there's a process, the diagram that you showed before. It looks like, it's inferring that
40 that, not all those steps are going to be taken in this particular case.

So here on 3 December, 2016, Treasurer Berejiklian has approved this matter to go to the ERC on 14 December, 2016. So in effect what you're saying that was - - -?---It's 11 days, mmm.

- - - insufficient time, it's only 11 days, and it's not even 11 business days, noting this is all happening on a weekend, or at least this email is being sent

on a weekend. There's not enough time to go through the ordinary procedure, is that right?---That is correct, yes.

10 And indeed isn't there another aspect of it not going through the ordinary procedure in the sense that, at least from your perspective as a public servant, one would expect the kinds of feasibility studies and analyses of the kind that your agency wanted to be done first, ordinarily you would expect that to happen before a matter would even get itself before the ERC in terms of funding a building project?---That is correct. That would be standard practice, yes.

Do you recall whether you gave advice to the minister's office to that effect?---Oh, no, I, it would have definitely been provided verbally, but I also think that we would have put some of that language into the Cabinet submission itself around the gaps in the information.

So at least as a matter of ordinary practice in the Cabinet submission, one would want to draw attention to matters of that kind?---That is correct.

20 Do you have any knowledge of the circumstances in which or the method through which this particular proposal was able to get itself on the ERC agenda for 14 December?---Can you, sorry, can you just repeat that? How, how it got on the agenda?

You'll see that as of 3 December, 2016, Mr Toohey is drawing attention to the fact that the Treasurer, Treasurer Berejiklian, had approved the ACTA matter to go to the ERC on 14 December. Do you see that there?---Yes, I do.

30 Did you have any involvement or do you have any knowledge of the process by which it was caused to be put on the agenda?---No, I, I just recall that the discussion was between the minister's office and the Treasurer's Office, which was the practice at that time, noting Mr Meulengracht's comment before around not being usual practice, but there was a negotiation because we were asking the minister's office had a date been set, so I knew that they were having conversations with the Treasurer's Office.

40 And so at least so far as you can recall it, that was a matter dealt with as between Minister Ayres' office and Treasurer Berejiklian's office?---Most definitely, yes.

Not something dealt with at a, for example, agency to agency level?---No, no.

Consistent with ordinary processes in the sense that it's a matter for the Treasurer, as you understand it, to set the agenda for an ERC meeting?
---Yeah. So, setting an agenda, most definitely, yes. There's a whole series

of other agency-to-agency procedures that you've got to follow, as well, but that wasn't, not, that's not about setting the date or getting on the agenda.

When you say "agency-to-agency procedures" do you mean things like inviting inter-agency consultation or comment - - -?---Correct, yeah.

10 - - - on, for example, draft ERC submissions?---Yes. And so definitely the central agencies of, in this case, Treasury and DPC or the Department of Premier and Cabinet, would regularly be consulted and if it was a, a different type of proposal, if it engaged with Justice or someone else, you, you, you would reach out and engage with them, as well.

That's something that would ordinarily occur at the point at which there's a draft ERC or Cabinet submission as opposed to when there's one more in the nature of a final submission of the kind that we can see on 3 December, 2016. Is that right?---I, I'd suggest at both, both points of time, yes.

20 But on this particular one, one of the things that was not standard procedure, to use Mr Toohey's terms, is that that kind of a two-stage process, get some initial feedback and build it into the Cabinet submission or the submission to a committee of Cabinet, there just wasn't time to do that in relation to this particular proposal. Is that right?---Yeah, that is correct.

If we go then, please, to page 111 of volume 26.2.

THE COMMISSIONER: I think we've just had problem again, Mr Robertson, definitely.

30 MR ROBERTSON: Yes.

THE COMMISSIONER: My screen has gone blank.

MR ROBERTSON: As has mine, Commissioner.

THE COMMISSIONER: Well, it's an even bigger problem. Technology, Mr Doorn.

40 THE WITNESS: It's great when it works. I'm just grateful I'm not doing it from home and not knowing what's happening.

THE COMMISSIONER: Can I just check again that everybody in the hearing room has an operational screen? Very well. Thank you, Mr Robertson.

MR ROBERTSON: Bring up on the screen, page 111 of volume 26.2. I'll start just at the top of the email chain where you see an email from Mr Toohey to the Office of Sport EMS ministerials mailbox but copied to two individuals including you. And do you see there, Mr Toohey says, "Paul

and I spoke to Kent. We'll send you through his reply." Do you see that there?---I do, yes.

"The MO" I take it that's public service speak for minister's office?---Yeah, that's correct.

"Needs to speak to the Premier's Office. I'm out of the office all day. Don't hesitate to ring if you need to discuss." See that there?---I can, yes.

10 And then if we just scroll down a little bit, just to get the context - - -

THE COMMISSIONER: Can we just pause for a minute. I think something technical has to happen here to - - -

MR ROBERTSON: I would be content to take an early lunch if that's more convenient. I've probably got another half an hour to 45 minutes with Mr Doorn but I'm in the Commission's hands.

20 THE COMMISSIONER: This isn't going to take too long. Just try and see if we can continue and we might be able to let Mr Doorn go before lunch.

MR ROBERTSON: May it please the Commission.

THE COMMISSIONER: If we take a slightly later lunch. Very well. Please continue, Mr Robertson.

30 MR ROBERTSON: If you have a look at the email towards the middle of the page, and we'll just zoom in a bit if we can, from Mr Broadhead to various individuals that's then forwarded part of the email chain I've shown you. See it says, "We've had some significant feedback on the submission from the Premier's Office." See that, about the middle of the page?---Oh yes, yep.

So that seems to be the context behind the email that Mr Toohey sends to you at the top of the page. We'll just scroll back up to the top of the page. me having given you that context. "Paul and I spoke to Kent." That seems to be a reference to Mr Broadhead. "He and I need to speak to the Premier's Office." See all of that there?---I do, yes, yes.

40 Do you have a recollection of the discussion with Mr Broadhead and/or the concern that the Premier's Office had?---No. I, look, I don't really recall the specifics but I, but I'm assuming here that Mr Broadhurst [sic], given the DPC are the sort of keepers of the process, either had substantial feedback on the, the process or the information contained in the minute.

But you don't have a specific recollection of the nature of that feedback?
---No, sorry. Sorry.

Well, let me try and assist this way, with Exhibit 386. The document I just went, Commissioner, is Exhibit 387.

THE COMMISSIONER: Thank you.

10 MR ROBERTSON: 386, also volume 26.2, page 112. We'll just zoom into Mr Broadhead's email to you and Mr Toohey. It seems to be after a discussion. "As discussed, the Premier's Office has questioned why the Wagga Wagga Clay Target facility submission could not be delayed until the new year to allow time for market testing and costings and project planning to be completed. The submission does not make a clear case as to why it requires approval before Christmas, although discusses the broader 2018 construction deadline." Do you see that there?---I do, yes.

Does that assist in your recollection as to a discussion that you may have had with Mr Broadhead along with Toohey?---Yes, it does.

20 Regarding the concerns of the Premier's Office?---I mean, I can understand the comments but I don't recall the conversation, no, sorry.

Well, do you recall having any knowledge as to why the Wagga Wagga Clay Target facility submission could or could not be delayed until the new year?---No, I, I, no, other than the fact that they were seeking – I mean, the critical part from my recollection was trying to get it on the agenda, that was the, the, the urgency around the date, but I don't know, I can't recall why it was before or after Christmas, no. Unless there was a, again this is an assumption I'm making, not a recollection, but effectively if they were working towards a, an event then trying to get the funding sooner rather than later so they could get the building finished in time for that event might be a rationale.

30

Is that a rationale that you have a recollection of now or are you just drawing an inference based on what I've drawn - - -?---No, no, I'm drawing an inference today. Yeah, my apologies, yeah.

But are you saying your best recollection is that you're aware that the project was urgent from the perspective of the minister's office, but at least sitting there now, you can't recall what the actual justification was as to its urgency or otherwise?---Yeah, that is correct, yes.

40

And do you have any recollection of where that issue was left with the Premier's Office? Obviously enough there was a concern of some kind within Premier Baird's office. Do you have a recollection as to how that was resolved or otherwise? Obviously you had a discussion with Mr Broadhead along with Mr Toohey, but do you have a recollection as to how that ultimately played out, as it were?---No, I don't. I apologise.

What then's your next recollection after 6 December, 2016, as to any involvement in the ACTA proposal, noting that at that point in time it seems that it had an ERC date of 14 December, 2016?---No, the, the only, the only recollection I have is that, I don't recall how it was funded but I just, but I don't think it ended up being a project that was driven by the Office of Sport. That's, I'm making, jumping from an assumption that there was a, this is a snapshot in time but I don't recall the outcome of that process. I remember writing a submission and I remember doing some speaking points for that submission, but I don't know if it actually did actually happen or if it occurred somewhere else.

So when you say "speaking points", do you mean some speaking points or notes for the assistance of your minister in relation to the particular ERC submission?---Yeah, so customary practice is you would write a submission and then you would turn that into pros for the minister's office to be able to argue the case, and then you would also draft some sort of, I guess you'd describe them today as frequently asked questions, where, you know, these, you might get this, this would be the answer to that.

20 So Minister Ayres wasn't a member of the Expenditure Review Committee as at December of 2016, is that right?---Yeah, I don't recall Minister Ayres being on ERC, no.

But he was the proponent minister for the purposes of the submission, correct?---Yes, correct. And some, and some - - -

It's being prepared by one of his agencies and it's for him to present to the Expenditure Review Committee, correct?---Yeah, correct. Sometimes the minister would attend and sometimes the briefing would go ahead and the minister wouldn't be required, based on other programs and processes.

But in terms of speaking notes or questions of the kind that you've identified, that's to assist the minister in the event that the minister, as proponent of the submission, attends the ERC meeting and therefore has to present it to his or her colleagues as something that should be supported by the members of the ERC?---Yeah, yeah, that's the specific purpose of them, yes.

40 And those speaking notes, are they, at least as a matter of practice, always prepared within the agency and that's where it's left? Or is it an iterative process between the agency and the minister's office? Or is there some other form, as a matter of practice, that's adopted, at least in your experience?---Look, I don't think we get a lot of feedback as to how they're used or how they're interpreted. I think sometimes, based on other speaking points or speeches, that sometimes the minister's office might manipulate them. I don't mean that necessarily in a bad way, just to suit a particular minister's style. But, yeah, so I couldn't say that they're sent as a PDF and

they're locked and loaded and, and that they never change. I don't know really what happens once they get to the minister's office in that space.

So at least a full draft that's capable of being used will ordinarily be prepared at the agency level, but it's then sent to the minister's office and it's a matter then for the minister and the minister's office to work out what they do with those notes?---Correct. Correct.

10 And so if we go to Exhibit 392, which is volume 26.3, page 116. I'll show you the email chain first. If we start at the bottom of the chain, you'll see there's a request from the minister's office 12 December, 2016, 9.41am. "Could you please advise when the MO should be receiving speaking points for ERC on clay target shooting."---Yes, yeah, I can see that.

So the meeting is on Wednesday. If we then go up a little bit further, you'll see that's forwarded on to Mr Toohey, copied to you, "Please see below urgent request for speaking points," and then move up. Mr Toohey sends them in and notes that they've been cleared by Paul. See that?---Yes, I can.

20 And if we then turn two pages along, I'll show you first the cover page prepared by Mr Toohey, contents and accuracy endorsed by Mr Doorn, approved by Mr Miller. And if we then go to the next page, I'll show you a document called Suggested Speaking Points/Notes. Do you see that there? ---Yes, I can.

Does that look like the document that you were referring to before that you recall, namely, a document involving speaking notes?---Yeah, I mean, that is, that, that's the style of exactly what we would create for speaking points, yes.

30 And you said a little while ago that ordinarily when preparing an ERC submission, and I take it, it would also include when you're preparing notes in favour of an ERC submission, you would draw attention to the kinds of concerns that you and I have discussed today about the quality of the information and things of that kind. Is that right?---Yeah, often you would. I mean, whether that's included in the speaking points or whether it's included in the briefing, but that's not unusual.

40 Well, it was at least a potentially important point, at least for the agency to draw to the minister's attention, wasn't it, namely the agency's view that the quality of the information available wasn't of sufficient quality to support a level of funding of the kind proposed by ACTA?---Yeah, no, I, I think both Mr Toohey and myself based on our earlier draft which had, you know, a feasibility study as a, as option A, yeah, that, that we would have tried to find a way to make sure that was represented in there somewhere.

But in terms of the fearless and frank advice that you're giving as the agency to the minister is that, at least in your perspective, sort of over and

done with at the first cut when we've said here are the two options, we think a feasibility study is a good idea but if you're not going to go down that way then this is what you could put forward to the ERC. Is that over and done with or is this something that you're repeating at least as a matter of practice as you go?---I think it depends on the circumstances. I think once, once it gets to speaking points clearly the minister is going in there to argue the case. It's going to be much more of a positive stance than identifying the, the issues associated. We would have, I wouldn't be saying it's done and dusted but you would, the purpose of this particular documentation is to
10 allow the minister to argue the case.

Well, can I put it this way. Would you regard it in your experience as a career limiting move to in effect continue to give advice to the minister to the effect that, well, we think this is a bad idea?---Yeah, I think there comes a point in time where you, you would, yeah, I think that using that language, you've been given a task by the minister. You've had the robust discussion in either minister's meetings or whether it's to do with in briefing notes and then the time comes to present the information, you would present the
20 information that's going to be proactive, allow the minister to achieve his policy objectives and in this case trying to find a way to get that funded.

Is that language that you're prepared to adopt in answer to my question a career limiting move?---Oh, yes. No, no. Yeah, no. I mean I, I'm not suggesting it's a sackable offence or anything like that, but one of the things you've got to do as a senior public servant is ride that balance between giving frank and fearless advice, and then once, once that's gone, you would then say okay, well, I've given, if the decision is to still progress then we're going to clearly make our best endeavours to support the policy objectives of the government.
30

Because ultimately the minister as the elected individual rather than the agency representative has to make the decisions in relation to issues of this kind.---Yeah, correct, correct.

Now, after the draft suggested speaking points/notes that we see on the screen do you recall whether there was any amendments made to that document either at the agency level or at the ministerial level?---No, sorry, I don't recall.

40 Can I just show you this document. Exhibit 393, please, volume 26.3, page 193. I'll just pause for a moment, Mr Doorn. Just pardon me for a moment, Commissioner.

THE COMMISSIONER: Mr Robertson, my screen has now gone down. There just seems to be a recurrent problem. I'm wondering really if it is a good idea now to take the luncheon adjournment and I'm sorry, Mr Doorn, stating that to see if we can resolve what this recurrent problem is.

MR ROBERTSON: May it please the Commissioner.

THE COMMISSIONER: We'll resume at 1.45.

MR ROBERTSON: May it please the Commissioner.

LUNCHEON ADJOURNMENT

[12.44pm]