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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE RUTH McCOLL AO  
COMMISSIONER

PUBLIC HEARING

OPERATION KEPPEL

Reference: Operation E17/0144

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON FRIDAY 22 OCTOBER, 2021

AT 2.00PM

Any person who publishes any part of this transcript in any way and to any person contrary to a Commission direction against publication commits an offence against section 112(2) of the Independent Commission Against Corruption Act 1988.

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

THE COMMISSIONER: Yes, Mr Robertson.

MR ROBERTSON: Mr Ayres, I just want to clarify one matter arising out of this morning. Is it your evidence that insofar as you can recall, there was no one who, in advance of the ERC decision coming to your attention, who in effect said to you there are difficulties or problems or things that are  
10 unsatisfactory about the business case that you regarded as validating your view that the ACTA project was a project that could be the subject of support?---Sorry? I'm not quite sure what you're asking.

I'll try and cut that up in bites. I take it that you accept that by the time that the ERC's decision of 14 December, 2016, came to your attention, you were aware that at least the ERC was of the view that a satisfactory business case would need to be prepared. Correct?---Yes. Yeah.

And I take it that in light of that, you appreciated that at least from the view  
20 of the ERC, the business case that was presently in play, as it were, the one that you presently had, was not at least according to the ERC of sufficient standard or sufficient rigour to support a grant and payment of funding from the NSW Government. Do you agree with that?---ERC definitely asked for additional work to be done, yes. No doubt.

Well, that's not quite the way I put it. Do you agree that, as you understood it, the ERC had come to the view that the business case that was then in place did not provide a sufficiently satisfactory basis for the expenditure of money from the NSW Government?---No, I don't agree with that because  
30 ERC resolved to fund \$5.5 million. They just asked for a, more, more work to be done on a business case.

So are you saying that as you read the decision which said that the grant was subject to the finalisation of a satisfactory business case, that didn't carry with it any implication that the previous business case was unsatisfactory in any respect. Is that what you're saying?---No. I'm saying that the business case was of a satisfactory enough nature to warrant the allocation of funding and that there were more safeguards, additional work on the business case and the INSW assurance to come after.  
40

So are you saying that, as you understood it, it was of a sufficient standard and rigour to support expenditure? Is that what you're saying? Is that what you understood the ERC decision to be?---Well, I took it forward because that's what I believed, and if ERC resolved to do more work on the business case afterwards, that was a decision for ERC.

Well, we'll come back to your view about it at the moment but is this right? You're saying that although the ERC decision, as I showed you on the

screen, approved the grant subject to the finalisation of a satisfactory business case you are not prepared to accept the proposition that the ERC regarded the business case that was then in place as being sufficiently satisfactory to support the expenditure of \$5.5 million, is that what you're saying?---Yes, because they approved \$5.5 million.

10 Now, prior to the ERC decision coming to your notice, did anyone indicate to you any concerns that they had regarding the level of robustness or rigour of the business case that was then in operation, or then in place?---So I, I think I said earlier, I don't recall if that took place.

So it may have taken place, it may not have taken place, you don't recall one way or another?---No. I think I've said a number of times that my staff were doing a lot of the work between offices around the Cabinet preparation. So I don't recall that interaction at all.

No doubt that's right but you at least had some involvement, this was your proposal at the end of the day, correct?---Yeah.

20 You read the ERC submission before it was uploaded as a final submission to the eCabinet system, correct?---Yeah, it would have been part of my normal course of action.

Well, part of your normal course of action but you did it in relation to this particular case, correct?---Yeah, yes.

30 You satisfied yourself that the ERC submission was providing an appropriate case in support of the decision that you were asking the ERC to make?---Yes.

And you satisfied yourself that the matters that were raised in the ERC submission, the arguments put, and the summary and things of that kind were at least, insofar as you were aware, accurate?---Yeah. I have no reason, or no knowledge to suggest that they weren't.

You wouldn't knowingly put before the ERC any material that would be inaccurate, correct?---Yeah.

40 Can we go, please, to the submission itself, page 208 of volume 26.3. I just want to show you an aspect of it that may assist your recollection on the questions that I've just been asking you post the luncheon adjournment. Commissioner, this is part of Exhibit 423 and I'm going to page 5 of the submission itself.

THE COMMISSIONER: 433 did you say, Mr Robertson?

MR ROBERTSON: Exhibit 423.

THE COMMISSIONER: Thank you.

MR ROBERTSON: This is page 5 of the submission itself, page 208 of the bundle. Can we zoom into paragraph 3.17, please? I just want to draw that to your attention, Mr Ayres. See there it says that “In the absence of a feasibility study and because cost capital” – I withdraw that. “And because capital cost estimates have not been market tested, it is unlikely that the cost and revenue estimates are within the levels of robustness recommended in the NSW Treasury’s guidelines for capital business case.” Do you see that there?---Yep.

So does that refresh your memory that it was brought to your attention in advance of the ERC submission being finalised that there was a concern within government that the cost and revenue estimates may not be within the levels of robustness recommended in the NSW Treasury guidelines for capital business case?---No, it doesn’t. I don’t recall that discussion at all.

If you have a look at paragraph 3.14, see there it says, “The business case does not include an independent market-demand analysis or event calendar for the facility to compete with other local venues for corporate events, including Charles Sturt University.” Do you see that there?---Yep.

Does that refresh your memory that one of the concerns raised within government as to whether or not this proposal should be supported was the fact that the business case did not include an independent market-demand analysis or event calendar for the facility to compete with other local venues for corporate events?---No, I don’t recall that either.

And then look at paragraph 3.15. Do you see there it says “The business case has not been subject to any independent review.” Do you see that there?---Ah hmm, yes.

Does that refresh your memory that one of the concerns that was raised within government as to the business case to which you had regard was that it has not been the subject of an independent review?---I knew it hadn’t been subject to an independent review. I don’t recall all of these discussions. I think this will be part of the submission that would have been drafted initially by the Office of Sport. I would have been, I think at the time, comfortable with that information being presented in the minute and the ERC making the decision.

When you say comfortable with that material being in the ERC minute, I take it from that that you mean that you read the draft ERC submission carefully and you were satisfied with its contents, correct?---Well, I did submit the minute, so yeah, I was satisfied with its contents.

And so it follows from that, doesn’t it, that as at the time that you approved the ERC submission you were aware of the matters that we can see raised in

paragraph 3.14, 3.15 and 3.17?---That, that may well have been the case but I didn't see that as a significant factor in the way I took this minute forward and, in fact, the robustness, I would say, given INSW's assurances that later took place, the costings were quite robust.

10 But you weren't suggesting in your submission that it should be the subject to any Infrastructure NSW processes. That was something that was added in the meeting room, as I understood your evidence this morning. Is that right?---Yes. Indeed. So I'm saying that's correct but I, I, I didn't see these as factors that should have stopped me from presenting this minute forward and, in fact, they've been highlighted here.

Whether or not there were factors that would or should have caused you to not bring it forward, there were at least factors of which you were aware at the time that you decided to authorise the uploading of this submission to the eCabinet system. Correct?---Yeah. I, I don't know the level of detail. I can't remember this being a, a significant issue for me.

20 Are you agreeing with me or not?---No, I'm saying I don't recall this being an issue. I accept that they're in the, the submission but I don't recall it being - - -

I'm not asking you whether it's an issue or not. What I'm asking you is whether you agree that at the time that you authorised this submission to be uploaded to the eCabinet system, you agreed that you were aware of the matters raised at paragraphs 3.14, 3.15 and 3.17?---Only in the context that they were in this minute, so not, I don't recall - - -

30 Is that yes or no or something else?---No, no, that's not a yes or no. You're asking me whether this makes it, whether I know the detail behind these paragraphs?

No, no. Let me put it clearly. What I'm asking you is whether you accept that as at the time that you authorised this ERC submission to be uploaded to eCabinet, you were aware of the matters raised at paragraph 3.14, 3.15 and 3.17?---Only in the, only in that they, they were in the minute, not any detail behind them.

40 Well, let me put it this way. You were aware that there was a concern within the bureaucracy that the business case that you relied on did not include an independent market demand analysis. Correct?---So, no, that's not what this minute says. It says the business case hasn't been independently reviewed, it also says the absence of a feasibility study and it also says the cost estimates haven't been market tested. That's, they're all factual points.

So are you saying you were aware of the factual points but you weren't aware that those factual points were matters of concern to anyone within

government. Is that what you're saying?---Yeah, I, I don't recall any discussions about those.

But have I correctly summarised your evidence? You were aware of the factual matters at paragraph 3.14, 3.15 and 3.17 but you say you weren't aware that those were matters that were matters of concern within the bureaucracy?---Yes.

10 And then is that the same answer for 3.16 where it says, "The business case does not seek NSW Government support for operating and a maintenance cost for the facility." Do you see that there?---Yes.

Now, as a factual matter, that's correct, I take it, that the business case did not seek NSW Government support for operating and maintenance cost for the facilities. Correct?---From memory, we were only seeking the allocation of capital funding and all other costs were to be borne by ACTA.

20 And are you aware as to whether anyone within government was concerned about the fact that the business case didn't deal with the question of operating or maintenance costs, in other words, didn't either seek government support for them or otherwise explain how the operating and maintenance costs would be paid for in the event that the proposed facility was built?---No, I'm not aware and I actually don't think it's relevant.

30 You don't think it's relevant in deciding whether or not to build a new facility whether there'll be money available to pay for operating and maintenance costs? You don't think that's relevant to the decision of whether to support a particular submission to build a building?---No, the government is appropriating funds to ACTA, a non-government organisation. They've not sought funds for operating costs. It, it's a capital request only. I, I can't see why it would be relevant to the ERC.

Do you seriously say you don't see that as relevant at all?---It, it's not our building. Why would, why would they call on the government for operating costs?

THE COMMISSIONER: It's funded with public funds, Mr Ayres.---Sorry?

40 It's funded with public funds.---Yes, but I'm not working on any expectation, Commissioner, that they will seek operating costs from the government. I have no expectation of that, none at all.

MR ROBERTSON: But what if you have a great building but no one's got any money to keep the lights on? Surely that's at least a matter that you would want considered as a minister?---Yeah, the, all of the risks associated with the construction of this project were to be borne by ACTA after the \$5.5 million.

So therefore it is a matter that would be a matter of concern, you'd want to satisfy yourself or you'd want someone to satisfy themselves that there was a commitment and ability to meet the operation and maintenance costs. Is that what you're saying?---Well, that would be, that's for ACTA to determine, not, not the NSW Government.

10 But at least in your mind, as the minister, irrelevant to the consideration of whether the ERC submission should be supported or not, is that what you're saying?---Yes, and I'm, I, I'm fairly, I'm recalling that we make a reference point that the only funding that will be allocated here is the \$5.5 million for the capital construction costs.

Can we go, please, back to volume 26.4, which was Exhibit 449. This is the document that you and I were discussing, Mr Ayres, briefly before lunch. There was an aspect of it that I didn't draw to your attention because we ran out of time before the adjournment. I just want to draw it to your attention to see if it assists with your recollection around this point in time. So we go, if we go to the very bottom of the next page, page 15. And zoom in and see the full email. You and I have discussed the first paragraph, the second  
20 paragraph and the third paragraph. The one that I didn't draw to your particular attention was the final paragraph. "Were you saying before the Deputy Premier's Office has been allocating projects to this fund already? Do you deal direct with the DP's Office or are they trying to kill this project?" Do you see that there?---Mmm.

Now, does that refresh your memory as to any concern about the fact, or any concern as to whether the Deputy Premier's Office – which is to say Deputy Premier Barilaro's office – might be considering trying to kill the project?  
---No, I, I, I think this is consistent with what I said before lunch. I think  
30 Marc is asking a question. He's got a business, he's got a decision before him that allocates the funds but also has this requirement for additional business case work. That would look quite confusing to someone like Marc. I think he's just asking that question for clarification.

But just have a look at that again in context. If we just zoom up the screen a little bit, please, or pan up the screen. Your response, as we discussed before lunch, "This project is legit. Perhaps Gladys and I need to write to Daryl." Do you see that there?---Yes.

40 Is at least a possibility as to why you thought both Ms Berejiklian and you should write to Daryl was with a view of having Ms Berejiklian support, as Treasurer to this project, on in effect a letterhead of a senior minister with a view to avoiding any risk that the Deputy Premier's Office was trying to kill the project?---No, I was very confident about the project. ERC just approved \$5.5 million towards it.

Do you agree that what I put to you is at least a plausible possibility as to the course of events that we can see on 20 December and 21 December?---I

think this is more relating to the communications back to the local member about the fact that the project has been through ERC and what are, what are the arrangements for how that project's going to be delivered in their electorate.

So does that mean no, that's not a plausible possibility of what was taking place at this point in time? Noting that you said before that your recollection of what occurred about this point of time is at least not perfect? ---So it's plausible but highly unlikely.

10

And, what, your best recollection, sitting there now, or your best inference to be drawn, sitting there now, is what? Why were you of the view that perhaps Ms Berejiklian and you needed to write to Daryl?---Because ERC had just resolved to fund a project in his electorate. We would write to him and inform him of the conditions on which that project had been approved.

20

So the possibility that writing on the Treasurer's letterhead was, with a view to avoid the project being killed in the Deputy Premier's Office, isn't something that you would, sitting there now, regard as a reasonable or possible conclusion to draw, is that what you're saying?---No, I, I think it's unlikely. I, my, the most likely scenario here is a decision that, a Cabinet minute I took to Cabinet, reasonable expectation if it's supported is that it will come back to the Office of Sport. That's not the case. And so therefore I think it's a reasonable thing for us to say, "Let's write to, let's write to Daryl and tell him what has, what, what's transpired, what is his responsibilities."

30

Commissioner, I apply for the direction that was made under section 112 of the Independent Commission Against Corruption Act on 3 May, 2021, in relation to the compulsory examination of Stuart Ayres to be lifted insofar as it would otherwise prohibit the publication of the fact that Mr Ayres gave evidence on that date, and insofar as it would otherwise prevent publication of any question asked or answer given in this public inquiry.

THE COMMISSIONER: Yes, I make that order.

40

**VARIATION OF SUPPRESSION ORDER: THE DIRECTION MADE UNDER SECTION 112 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT ON 3 MAY, 2021 IN RELATION TO THE COMPULSORY EXAMINATION OF STUART AYRES IS TO BE LIFTED INsofar AS IT WOULD OTHERWISE PROHIBIT THE PUBLICATION OF THE FACT THAT MR AYRES GAVE EVIDENCE ON THAT DATE, AND INsofar AS IT WOULD OTHERWISE PREVENT PUBLICATION OF ANY QUESTION ASKED OR ANSWER GIVEN IN THIS PUBLIC INQUIRY.**

MR ROBERTSON: Mr Ayres, you gave evidence before this Commission in a private compulsory examination on 3 May, 2021, is that right?---I don't remember the date specifically but I'll take your word for it.

But that's about the period of time, earlier this year in around April or May of this year, is that right?---Ah hmm, yes.

10 And I think that it was in fact a compulsory examination that spanned over two days I think because of your parliamentary commitments. Is that consistent with your recollection?---It was definitely over two days.

I'm focusing on the second of those days at the moment, 3 May, 2021. Do you recall that during the course of that compulsory examination I was asking you some questions about the email chain that you and I have been discussing today?---I remember the email chain but I don't remember all of the evidence that I gave. It's hard to remember everything that I said in that hearing.

20 Can we have on the screen, please, page 2821? I just want to remind you about what you said on that occasion. We'll zoom into the bottom half of the page, please, page 2821. Now see, Mr Ayres, on the left-hand side, there's line numbers, and can you just have look above the number 30, starting at 27, I'm asking about the same email chain as what I've been asking you about today, and I asked you this, I say, "As part of the explanation, what you've essentially said before, that there was a concern at least for Mr Landrigan the Deputy Premier's office might be trying to kill the project and having a letter out there on not just your letterhead but on a very senior minister's letterhead, that of the Treasurer, would make it more difficult for the Deputy Premier's Office to kill the project if the Deputy  
30 Premier's Office was so inclined?" Do you see that question there, Mr Ayres?---Yep.

And you're transcribed as saying, "I think that's a reasonable conclusion to draw from what's here, but I don't have, I don't have all of the -- well, personally, I don't have the recollection and I, I don't have the context for all of this discussion." I then intervene and say, "But that's at least a plausible explanation?" And then you say, "I think it's pretty plausible." Do you see that there?---Yes.

40 Does that remain your view sitting there now or have you reconsidered the matter in light of events since 3 May, 2021, or in light of any other since 3 May, 2021?---No. I'm, I, I said to you that, just in my remarks earlier that it was plausible but highly unlikely, and I am reflecting on what's in front of me here, and I can't remember the full suite of emails that we discussed, but the discussion that we've had today makes me think that that discussion was, was more about communicating the decision to Daryl, not a risk about the Deputy Premier killing the project, to use that phrase. But I accept that it's plausible.

So is this right, sitting there now you don't actually have a recollection of what was going on around the time of the email chain that I've shown you today, and also on 3 May, 2021?---No, I don't. Yeah, I don't have that recollection. I'm merely working from what's in the documents in front of me.

10 And what you were doing on 3 May, as you're doing today, is attempting to draw inferences as best you can based on what you're seeing on the screen, correct?---Yes.

You accept that at, at least a plausible explanation, a possible explanation is the one that I was putting to you on 3 May, 2021, is that right?---I accept it's plausible because I don't recall all of the information.

And an alternative explanation is the one that you've given to this Commission today, is that right?---That's correct.

20 Commissioner, a little bit later I'll tender the relevant excerpt of that transcript but I won't do that immediately.

THE COMMISSIONER: Very well.

MR ROBERTSON: You're aware I take it, Mr Ayres, that Ms Berejiklian gave evidence before this Commission to the effect that she was in a close personal relationship with Mr Maguire from at least about the time of the 2015 election or slightly after or thereabouts? You're aware that she gave evidence to that effect?---I am aware.

30 When did you first become aware that Ms Berejiklian was in a personal relationship with Mr Maguire?---When she gave that information to this body in the public hearing.

It's not something that you knew about before at least there was reporting of the evidence that Ms Berejiklian gave to this body?---No, not at all.

40 In the event that you were aware of that information at the time that you were involved in the ACTA proposal that you and I have been discussing today, would have that led you to take any different steps or anything particular steps?---I would have, I would have been concerned that a conflict may need to be managed but I would not have, yeah, I would have been concerned about the conflict matter, if it needed to be managed and the Ministerial Code does provide ways for doing that.

So having regard to that concern, what steps, if any, would have you taken? ---Well, I think, I, I was not at all concerned, and even upon reflection I can't see where Gladys Berejiklian or Daryl Maguire, subsequently knowing that they were in a relationship, derived any private benefit from

this project. So I don't think there was a conflict around the decision. I do think it, however, would have been a prudent course of action for the then Treasurer to declare her relationship with the Premier, so that any actions to avoid or manage conflicts could have been taken. And had I known that Gladys was in a relationship with Daryl, I would have asked her whether any conflicts needed to be managed.

10 So is this right, you would have had a concern which you would have raised with her, with a view to asking her whether there was any conflicts that needed to be managed, is that right?---Yes, so the Ministerial Code effectively creates a two-step process here. The, the, for me the critical step is in the Cabinet meeting itself around the declaration of any conflict of interest. That makes it very clear that that interest only exists if it's a private benefit. But I think we also have a responsibility to manage the perception around conflicts, and so I would have raised with her whether that needed to take place.

20 I'll let the lawyers debate whether that interpretation is correct, but just to be clear as to what steps you would have taken, you would have at least raised it with Ms Berejiklian with a view to, in effect, asking her to consider what steps, if any, she should take, is that right?---If I was aware of the relationship.

If you were aware of the relationship in the parallel universe in which - - -?--Yeah, I think I would have. I think my most normal course of action would have been to say, "Do we have to manage a conflict here?"

30 Would have you questioned whether Ms Berejiklian at the time should be participating in the discussion concerning the ACTA project that you and I have discussed today?---Probably not, because I don't think that, I, I never anticipated or thought or considered that Gladys or Daryl were deriving a private benefit from this project.

Would have you suggested that at least consideration be given as to whether the relevant, as to whether the Treasurer should recuse herself in relation to the decision the subject of ACTA?---I think she would have had to consider that, but I also would have thought that would be a discussion between her and the Premier, as is consistent with the code.

40 Now, you recall that I asked you questions to the same effect in relation to that issue during the course of your compulsory examination, is that right?---Yes. And - - -

For abundant caution, Commissioner, I apply for the direction that was made on 28 April, 2021, in relation to the compulsory examination of Mr Ayres, be lifted insofar as it would otherwise prevent publication of the fact that Mr Ayres gave evidence on that date, and insofar as it would otherwise

prevent publication of any answer given or question asked in this public inquiry.

THE COMMISSIONER: I make that order.

**VARIATION OF SUPPRESSION ORDER: THE DIRECTION  
MADE UNDER SECTION 112 OF THE INDEPENDENT  
COMMISSION AGAINST CORRUPTION ACT ON 28 APRIL, 2021  
10 IN RELATION TO THE COMPULSORY EXAMINATION OF  
STUART AYRES IS LIFTED INsofar AS IT WOULD  
OTHERWISE PREVENT PUBLICATION OF THE FACT THAT MR  
AYRES GAVE EVIDENCE ON THAT DATE, AND INsofar AS IT  
WOULD OTHERWISE PREVENT PUBLICATION OF ANY  
ANSWER GIVEN OR QUESTION ASKED IN THIS PUBLIC  
INQUIRY.**

MR ROBERTSON: And do you recall that when I asked questions to that  
20 effect, one of the things that you said is that you would almost certainly  
have raised the question of whether or not Ms Berejiklian should be acting,  
you almost certainly would have raised that matter in front of the committee  
if you were in the committee room at the time. Do you remember giving  
evidence along those lines?---Yeah, I think I also said to you something that  
if only Gladys could determine the status of the relationship, but if I knew of  
that, I would have asked if any conflicts needed to be managed.

But does it remain your position that, had you been in the committee room,  
it's something that you would have raised in front of the committee?---With  
30 the knowledge of the relationship, I would have asked how this was being,  
how this was going to be managed, yes.

So is that a yes?---Yes.

Would have you questioned whether the Treasurer at the time should be  
participating in the discussion, if you were in the room, in relation to the  
ACTA project?---I think I would have raised it, but I think I would have  
been raising it in the context of the way the Ministerial Code works.

40 What do you mean by that?---Well, the likelihood is I would not have been  
in the room when declarations of interest were – in fact I, whether I was in  
the room or not, declarations for the minute, declarations of interest would  
have been taken at the start of the meeting, when I wasn't in there, and had I  
been aware of Gladys's relationship with Daryl, I think I probably would  
have asked, "Is there an issue here that we need to manage under the code?"

So you would have asked to those, in effect to those present in the meeting, “Is there an issue that we should manage or that we need to manage under the code?” Is that what you’re saying?---Yes.

10 Would have you suggested that to avoid impacting the decision, that the then Treasurer, Ms Berejiklian, should at least consider recusing herself?  
---I, I would have thought that that would have been a discussion that had taken place prior to me sitting in front of that committee, given I wouldn’t  
10 have been part of it, and I would have expected that the Premier and the Treasurer would have already determined how they were going to manage that and I would have been informed on how that conflict was going to be managed. So with the absence of that, I would have, if that wasn’t provided to me, I would have asked, “Is there a conflict here that needs to be managed?”

20 And so are you drawing to attention the fact that, at least as a matter of general practice, an opportunity to declare conflicts or interests generally is ordinarily offered as the first agenda item in any meeting of Cabinet or a committee of Cabinet?---That’s correct.

And I take it you’re effectively drawing attention to the fact that because you were not a member of the ERC at the relevant time, you wouldn’t necessarily be in the room in relation to that particular agenda item. Is that right?---That’s correct. I wouldn’t have heard a declaration of interest.

30 But I think you’re saying is you would draw the matter to the attention of the committee if it wasn’t otherwise clear to you that it had already been raised with the committee and that something was put in place in terms of managing or not managing as appropriate. Is that right?---Yes, if I wasn’t informed of that when I started the minute, I would have asked, “How, how is this perceived conflict going to be managed?”

That’s the examination.

THE COMMISSIONER: Thank you, Mr Robertson. Mr Agius, do you wish to seek leave to cross-examine Mr Ayres?

40 MR AGIUS: No, I do not, Commissioner. Thank you.

THE COMMISSIONER: Thank you. Mr Harrowell, do you wish to seek leave to cross-examine Mr Ayres?

MR HARROWELL: No, Commissioner.

THE COMMISSIONER: Ms Callan, wherever you are, do you wish to seek leave to cross-examine Mr Ayres?

MS CALLAN: Yes, Commissioner. Just a few short questions.

THE COMMISSIONER: Yes.

MS CALLAN: And I recognise the limits of any leave.

10 THE COMMISSIONER: I think it might be a good idea if you move to a more forward microphone, Ms Callan. It's very hard to hear you from there.

MS CALLAN: Yes. Commissioner, I take it I have the leave?

THE COMMISSIONER: Yes, I'm sorry. I think that was implicit in my advising you to come forward.

MS CALLAN: Well, yes.

20 THE COMMISSIONER: But I should have said so. Yes, you have that leave, Ms Callan.

MS CALLAN: Mr Ayres, my name is Callan and I appear on behalf of Ms Berejiklian for the purposes of this public hearing. You were asked some questions in relation to your consideration of the ACTA grant proposal, including whether the fact of the Orange by-election in November 2016 played any role, and your clear indication is that it did not. That is – sorry, played a role in your support of that proposal. You recall those questions? ---Yes.

30 Is it then your observation that from time to time support for a funding proposal by the government may include as a relevant consideration the position as to the seat where that proposal is located, be it marginal or otherwise?---Yeah, the, I think the, the answer to that is yes, the politics of the day of seats will be a factor that is considered in, in decisions. I think the first decision that we make is is there a public benefit to be derived here, but we are in a contested political world and it is part of the decision-making process.

40 Questions that were asked of you still in relation to this grant, as I understand it, the proposal from the ACTA had not been ranked through the Future Needs of Sport study. Is that your recollection?---I, I, I think I gave evidence earlier today that I didn't recall whether it was there. It, it may well have been on the sporting side, but I, I don't recall.

You're quite right. Your evidence was that you don't know. And I'm sorry. I didn't mean to say anything other. If you assume it had not been ranked through that process, did that have any bearing, in your mind, about whether or not it was appropriate for you to support the proposal?---No, that, the

advice I gave earlier today or the evidence I gave earlier today was it was a very rich, broad dataset. It allowed us to consider different options. It allowed us to think differently about how we would prepare future funding submissions.

THE COMMISSIONER: You mean the FNOSI process, Mr Ayres?---Yes.

10 MS CALLAN: Recognising the evidence you've already given about the Orange by-election, was it your observation that the loss of that seat, in and around November 2016 was interpreted by some as a backlash against recent decisions made by the government, for instance in respect of the greyhounds?---Without doubt the greyhound decision had a huge impact on the way the Orange by-election result took place.

20 Were you aware or perhaps it was even your view that that generated a real concern within the government about the need to address a perception the Coalition was out of touch with regional voters?---That was definitely a factor that was in the mindset of the government. I think when you lose a seat that has been a seat on your side of politics, I think a National Party seat, I'm not sure it's actually had another member to be frank with you, that was a significant moment for the government, yes.

It wouldn't come as a surprise to you if that was playing on the mind of, for instance, your colleagues in the way in which it was considering from a political perspective the decision-making that was being undertaken through that part of the year?---Yes, I would expect the politics of this, the politics of the time to heavily influence the way any body of Cabinet, ERC or full Cabinet to consider decisions.

30 Can I ask for the witness to be shown Exhibit 420. I'm hoping that we'll have up on the screen Exhibit 420.

THE COMMISSIONER: I am too, Ms Callan. I'm sure it will be in a moment.

40 MS CALLAN: No problem, thanks. Mr Ayres, prior to perhaps this week, had you seen before this document, which you can assume was a memo prepared by Nigel Blunden for Premier Baird's consideration at the time, shortly before the ERC considered the ACTA proposal?---No.

Have you seen it before it's been put in front of you in the witness box at this moment?---Yes, I have, after it was presented at this hearing earlier in the week.

On that basis I'll proceed on the assumption you have some knowledge as to the content of the document, but please take whatever time you need to consider it. The reference towards the top of the page of the project

producing something that was to be known as “the Maguire International Shooting Centre of Excellence”, was that to your understanding accurate?  
---No, I would describe that as a flippant remark.

By reference to the local member who was a supporter of the proposal?  
---That’s correct.

10 You were equally supportive of this proposal, as I understand it?---Yes, given I took it forward to ERC under my name with a business case and I was confident the project had good public benefit, particularly in that community and for the sporting organisation that it had served.

So if it was to be given the name of any member of parliament – I withdraw that. Do you see towards the - - -?---I appreciate that.

20 Do you see towards the bottom of the memo there, just above the word Recommendation, is the line, “They should go away, test the assumptions, verify the business case and then come back when it’s solid”? And then in brackets, in italics “this was suggested, it was taken off the agenda” and so on. Were you aware of or alive to suggestion that the proposal needed to be effectively taken off the agenda and have assumptions tested?---No, I had no, I had no indication that this minute had been taken off an agenda.

As far as you were aware, it went on an agenda and it stayed on that agenda in the sense that it was dealt with on 14 December at the meeting?---That’s correct.

30 Do you see under the Recommendation heading there’s reference to yourself and Ms Berejiklian “No doubt having done a sweetheart deal with Mr Maguire”? Do you see that portion of the document?---I do.

Is it your evidence that that suggestion is pure and inaccurate speculation?  
---Fantasy would be a good word.

The memo then suggests that “The proposal goes against all of the principles of sound economic management.” Do you take issue with that characterisation of the proposal you put forward?---Yes.

40 You see there’s then reference to “At the very least, let’s target our marginal seats, not one of our safest.” To your mind is that a demonstration of a political consideration doing harm rather than good in terms of what is otherwise a good proposal?---Yeah. I don’t think the political – this reference to safe seats, this is a solid project in my mind. I think it’s got good merit, I think we’ve established a business case, and even though that business case has been some, has at least been questioned in both these proceedings, or in this proceeding, I think that we took forward a solid case for this project. I did make reference earlier to INSW undertaking a competitive tender arrangement that proofed up largely those costs. I think

it was very close to what was agreed to in both the proposal or in the original, in this GHD report. So, I think the process here for me was this was a good project and the fact that it was in a safe seat or a marginal seat was largely irrelevant.

Mr Ayres, when you entered parliament, Mr Maguire had been a Member for Wagga since I think about 1999. Is it the case that he was the Party Whip when you were Deputy Whip?---That's correct. I answered that question earlier in the proceedings.

10

That being the position, with what frequency did you deal with him during the period of time you were overlapping in parliament?---Well, when Daryl was the Chief Government Whip and I was the Deputy Whip, we had a lot of interactions. The whip's office is right next to the chamber, it's a, almost a, there are two separate offices but we're in sort of close proximity and we're managing the chamber and the movements of activities across the chamber. So I had a, you know, a close professional relationship with Daryl in that regard. He'd been, he was an experienced member of parliament, and in 2011 when I became the Deputy Whip I'd been in the parliament since June the year before, and I think that election was a little bit unusual in that there were more new members of parliament than returning members of parliament, so there was lots of new MPs to, you know, explain to them how the parliament worked and get them up to speed.

20

In that respect, was that a job that at least when you were Deputy Whip, was shared between yourself and Mr Maguire as whip?---Yeah, that's, that was the role. I think the, the Deputy Whip role still exists today. It helps the, the whip at the time. It's particularly long sittings during the day but also just helped managing and maintaining the welfare of MPs was also a part of our role.

30

Insofar as when newly-arrived members of – is it members of parliament or just members of parliament from the party, or from the Coalition?---So the, the, the party has its own whip but the role of the Chief Government Whip tends to work across both the National Party and the Liberal Party. Whilst the National Party does had its own whip, that role of Chief Government Whip is a longstanding traditional role in parliaments and, yeah, it's a, it's a role of importance.

40

And when members of parliament commence, insofar as you suggested that one of the tasks undertaken by the whip is to provide them with guidance as to parliamentary processes, does that include protocols including, for instance, any codes of conduct that are in existence?---Yeah, there's an induction program, or at least there's an induction program now, wasn't always the case, but there's an induction program that we provide to, to MPs, documentation around parliamentary practice. The Ministerial Code of Conduct sits with ministers. There are codes of practice and conduct for individual MPs, and whips would normally make, make new

MPs aware of those and provide documentation to them or at least where they can source that documentation and their roles and responsibilities as a member of parliament.

10 Would that, for instance, extend to explaining the administrative processes for recording declarations with conflict?---Yeah, the whips would often remind MPs when their declarations and disclosures were due. If you needed to seek some guidance, a logical first place to go to for that guidance would be, would be the whip. It's a bit like the first port of call if you need a, if you need a hand or you need to understand something.

Insofar as you've described that in general terms as the role of the whip, to your observation is that how Mr Maguire executed the role when he was in that position?---Yes.

Prior to a series of revelations about Mr Maguire that emerged in an ICAC hearing in July 2018, was he, to your observation, respected within the party room?---Yes.

20 To your observation, was he at times considered something of a go-to person in relation to regional issues?---For Liberal Party members, they might have discussed things with him. I wouldn't necessarily describe him as a, as a go-to person for regional issues. I think Daryl was a longstanding regional MP, so he was, he just had an element of experience about him.

30 Over your years in parliament, including as a minister, have you had cause to consider proposals that are in respect of electorates for members of parliament who you would regard as friends, perhaps even close friends? ---Yes.

And by reason of your friendship, did you consider you were in a position of conflict in terms of supporting or making decisions in respect of such a proposal?---No.

The fact of that friendship did not mean you lacked impartiality? There's a lot of double negatives there, but - -?---No.

Thank you, Commissioner, those are my questions.

40 THE COMMISSIONER: Thank you, Ms Callan. Mr Arnott, did you wish to seek leave to ask Mr Ayres any questions?

MR ARNOTT: No, Commissioner.

THE COMMISSIONER: Very well. Mr Robertson?

MR ROBERTSON: Yes, just a couple of very brief matters. You were asked by Ms Callan about what I might refer to as the greyhounds issue.

Was that a matter of controversy that, what I'll call the greyhounds issue, a matter that was relevant to your consideration as to whether or not to support the ACTA project?---No.

Not at all?---No.

10 So how does one reconcile that answer with the answer that you gave to Ms Callan's question, which, as I understood it, was that at least as you would see it, that would be a matter that the ERC might take into account. Why is that right for the ERC to take into account, but not you?---Because all, all Cabinet bodies would take a political consideration over their decisions. But that's not for the, well, a proponent minister can choose to do so, but that wasn't a factor for me.

Well, why wouldn't the minister take into account those kinds of political considerations?---Because I had already, I had already started a process on this project well before the Orange by-election. I just didn't think it was a relevant factor here.

20 So as far as you were concerned at least, the greyhounds issue was not a relevant factor, is that right?---No, I wasn't prosecuting this project on the basis that we just had an Orange, we'd had an election loss in the Orange by-election. I was prosecuting a case for this project because I thought it was a meritorious one.

Do you know whether the ERC in fact took into account what I'll call the greyhounds issue or the Orange by-election more generally in deciding whether or not to support this particular proposal?---No, I don't.

30 What about in relation to what I might call the Shooters issue, the related Shooters issue, as to whether or not it was desirable to support Shooters in circumstances where the Shooters, Fishers and Farmers Party had recently won a Lower House seat?---I have no idea if that was a consideration for the ERC.

Was that a factor affecting your consideration at all?---No, and I think I said that earlier too.

40 And you don't know one way or another as to whether or not it was a factor that influenced anyone on the ERC, is that right?---No.

The electorate of Wagga Wagga, or the seat of Wagga Wagga, as at 2016, did you regard that as a marginal seat, to use the phrase that Ms Callan used?---No, I thought Wagga was a pretty safe seat.

That's the questions by way of clarification.

THE COMMISSIONER: Thank you, Mr Robertson. I take it we can release Mr Ayres?

MR ROBERTSON: Yes, Commissioner.

THE COMMISSIONER: Very well. Thank you for attending today, Mr Ayres. You're released from your summons. You may step down.---Thank you, Commissioner.

10

**THE WITNESS EXCUSED**

**[2.50pm]**

MR ROBERTSON: Can I deal with one formal tender and then can I propose a brief adjournment to, in effect, press some buttons for the next witness?

THE COMMISSIONER: Yes.

20 MR ROBERTSON: In the course of the examination of Mr Ayres, I referred to an aspect of his compulsory examination transcript on 3 May, 2021.

THE COMMISSIONER: Yes.

MR ROBERTSON: Where I was asking him questions regarding what is now Exhibit 449. I tender page 2821 of the private transcript and a form that will reveal lines 26 through to 40 of that private transcript.

30 THE COMMISSIONER: 22 to 46?

MR ROBERTSON: 26 to 40, Commissioner.

THE COMMISSIONER: That will be Exhibit 450.

**#EXH-450 – EXCERPT FROM COMPULSORY EXAMINATION  
TRANSCRIPT OF MINISTER STUART AYRES**

40

MR ROBERTSON: May it please the Commission. Can I respectfully propose a brief adjournment to - - -

THE COMMISSIONER: What about the 28 April, '21, compulsory examination?

MR ROBERTSON: I didn't specifically I think put any aspects of that. I used that as a basis for some questions, but I don't, at least at the moment, propose to tender any aspects of that transcript.

THE COMMISSIONER: Very well. Very well. We'll take a short adjournment so we can press some buttons.

**SHORT ADJOURNMENT**

**[2.51pm]**

10

THE COMMISSIONER: Yes, Mr Robertson.

MR ROBERTSON: I call Gary Barnes.

THE COMMISSIONER: Mr Barnes, do you wish to take an oath or make an affirmation?

20

MR BARNES: An affirmation, thank you, Commissioner.

THE COMMISSIONER: Very well.

THE COMMISSIONER: Ms Goodwin, have you explained to Mr Barnes his rights and obligations as a witness?

MS GOODWIN: Yes, I have, Commissioner, and he seeks a section 38 declaration.

10 THE COMMISSIONER: Very well. Thank you. Mr Barnes, before I make the declaration to which Ms Goodwin referred, I'll give you an explanation of it. Will you listen very carefully, please, to what I'm about to say. As a witness, you must answer all questions truthfully and produce any item 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. Evidence given by a New South Wales public official may be used in disciplinary proceedings against the public official if the Commission makes a finding that the public official engaged in or attempted to engage in corrupt conduct. I can make a declaration that all answers given by you and all items produced by you will  
30 be regarded as having been given or produced on objection. This means you do not have to object with respect to each answer or the production of each item. I will now make that declaration, Mr Barnes.

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 this 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.

40

**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 THIS 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 Barnes?---Yes, Commissioner.

Thank you. Yes, Mr Robertson.

10 MR ROBERTSON: Mr Barnes, can you see and hear me clearly?---Yes, I can.

Can you state your full name, please?---Gary John Barnes.

You're the current Secretary of the Department of Regional NSW. Is that right?---Correct.

The responsible minister for that department is the Minister for Regional NSW. Correct?---That's correct.

20

That's the Deputy Premier, Mr Toole. Correct?---Correct.

Before Mr Barilaro's or at least before Ms Berejiklian's resignation as Premier, the responsible minister for the Department of Regional NSW was Deputy Privilege Barilaro. Is that right?---Correct.

When the Department of Regional NSW – sorry, was established, it became a cluster within government, as well as a department. Is that right?---That's right.

30

And is this right? The government in New South Wales, the departments and agencies of government, are all organised into a series of clusters? ---Correct.

I think there might be nine clusters at the moment of which one is Regional NSW. Correct?---Correct.

40

Is this also right that in respect of particular agencies within government, some of those agencies, there is a portfolio minister which is different to the cluster minister?---Correct.

In the case of Regional NSW, I take it that both the cluster minister and for at least most purposes, the portfolio minister is the Minister for Regional NSW. Is that right?---Correct.

But, from time to time, there will be a different portfolio minister to a cluster minister. Is that right?---That's right.

Before the Department of Regional NSW was established as a department in its own right, it was an agency within the Department of Planning, Industry and Environment. Is that right?---A business unit, yes.

And at that time, you were the Coordinator General for Regions, Industry, Agriculture and Resources. Is that right?---Correct.

That's a rank that is, at least in rough terms, equivalent to a rank of deputy secretary. Is that right?---Correct.

10

Before that point in time, there was an agency or unit referred to as Regional NSW within the Department of Premier and Cabinet. Is that right?---Yes.

And when Regional NSW had that guise within government, you were a deputy secretary?---Yes. Correct.

I'm just going to pause for a moment, Mr Barnes, because there were some noises at my end. I'll just see if that means I should pause. When Regional NSW was a unit or agency within the Department of Premier and Cabinet, the portfolio minister was the Minister Regional NSW, Mr Barilaro, is that right?---Yes, that's right, the Deputy Premier at the time.

20

I think at one point he might have been referred to as the Minister for Regional Development but at least at one other time he was known as the Minister for Regional NSW, is that right?---Correct.

And so does that provide an example of where the portfolio minister is different from the cluster minister? In that situation the portfolio minister was Deputy Premier Barilaro yet the cluster minister for the Department of Premier and Cabinet was the Premier. Have I got that right?---Yes.

30

Before Regional NSW was an agency or unit within Department of Premier and Cabinet, there were responsibilities for regional development within the Department of Industry, is that right?---Yes.

And you were a deputy secretary in the department at that point in time, is that right?---Yes.

And you were responsible for economic skills and regional development, is that right?---Correct.

40

So I take it that in light of that history that you and I have just discussed, you've had quite significant experience in regional infrastructure in New South Wales, is that right?---Yes.

And in fact I think you've had some experience in government elsewhere in Australia as well, is that right?---Correct.

You're aware this Commission is investigating grant funding that was promised and/or awarded to the Australian Clay Target Association in 2016-2017, are you aware of that?---Yes.

When did you first become aware that the Australian Clay Target Association was either seeking funding or had secured funding from the NSW Government?---I believe that the first I became aware of it was that we were asked to provide some advice in relation to an ERC paper that was coming into the agenda around about December 2016.

10

And so in relation to that particular ERC paper to which you are referring, are you saying you were asked to give advice before the ERC paper itself had been the subject of consideration by the Expenditure Review Committee?---Yes. Just before.

When you say "just before" are you able to give some assistance as to when just before? And if it assists, I can indicate that there was a ERC meeting on 14 December, 2016.---Maybe the day or the day before that we were asked to give some advice.

20

What was the nature of the advice that was requested by your particular unit within government?---So, there would have been a request that came through our Cabinet office within the department saying that there was a late paper that had been added to the ERC agenda and we would, we would have provided advice back to the Cabinet office, and I think for completeness, because everything was a bit new at the time, we probably also would have emailed that advice to someone in the Deputy Premier's Office.

30

Were you asked, in connection with the ERC submission, for advice in relation to any particular topic or was this simply a circumstance in which your unit was asked to provide such comments, if any, as it wished to do so on the ERC submission?---No. We were specifically asked for advice on the paper that was a proposal being brought forward by the Office of Sport in relation to grant funding for, let's call it, ACTA.

Just what I'm asking is whether you were asked for advice on any particular topic, was it directed to a particular issue or question or were you just asked generally to provide any comments that your unit had in relation to the paper?---I think it was of a general nature.

40

So you're aware, I take it, that at least as a matter of practice, Expenditure Review Committee submissions are ordinarily subjected to or made available for interagency comment, you're aware of that?---Correct.

So are you referring now to an invitation to comment of that kind, the general interagency comment, or are you referring to something more

specific coming out of the Cabinet office or elsewhere within government?  
---It wasn't the sort of comments that we typically made in the first phase or stage of a two stage Cabinet process. This was a late paper and we were specifically being asked to provide advice to the Deputy Premier, who was a brand new member of the ERC.

10 Do you recall what advice you provided to the Deputy Premier in relation to that particular paper to which you've now referred?---I recall at the time that it was generally supportive of the paper being brought forward. However, there was a feeling that further work would need to be done on a more robust business case.

20 So is this right – in the lead-up to the ERC meeting itself, there was some comment or perhaps concern as to the quality of the supporting material or perhaps the rigour of the supporting material underlying the proposal?  
---Look, I can't recall seeing the supporting material. The person who ran my office would have provided it to the relevant area within the division that I was running, but certainly when they provided their advice back having looked at the paper, they suggested, like generally, this looked as though it could be a good regional project, but to determine that in fullness it would need to, further work would need to be done on a business case.

So was this advice that you were personally given or giving or are you saying this is advice that you understand was given by other people within your particular unit at that point in time?---Yes, I think it would have gone to the relevant part of the unit I believe, but that's best of my recollection.

30 When you say the relevant part of the unit, what's the part of the unit to which you're now referring?---So there was an area that looked after regional development and there were people, there was a team within that group, the Office of Regional Development, and they had a network of people across the state. And it may well have been that it went there and they consulted people in generating what was very short advice because the turnaround was quite quick.

So is this right – you became aware briefly before the ERC meeting itself of a submission that had been put forward by the Office of Sport to be considered at the ERC meeting, is that right?---Yes.

40 That was then, in effect, tasked to another group within your unit, is that right?---As far as I can recall, I believe that Dan Blacker, who would have headed up my office, would have circulated that information from our Cabinet office to the relevant team, but that's to the best of my recollection.

And so this is not you directly providing the advice, although you're aware that advice was, in effect, sought and given by people subordinate to you and your team, is that right?---To the best of my knowledge.

Following the – I withdraw that. Then as you understood it, is this right, the ERC considered the Expenditure Review Committee considered the proposal in relation to the ACTA project, is that right as you understood it?  
---Yes.

10 Did it come to your knowledge as to what the ERC had decided and, if so, when did that come to your knowledge?---I believe potentially a few days after 14 December, which was the ERC meeting, that we received some sort of word from, again, the Cabinet office within the Department of Industry that a decision had been made and that the decision would impact on my particular area of responsibility because it mentioned a funding pool for a program that we had been working on with INSW.

When you say INSW, you mean Infrastructure NSW, is that right?  
---Correct. Correct.

20 And what's the particular program that you're now referring to?---So it was a Regional Growth – Environment and Tourism Fund that we had been working on with Infrastructure NSW, and my understanding was that the outcome or the decision within, that had come through ERC had said that funds would come from that source.

30 In relation to that particular program, the Regional Growth – Environment and Tourism Fund, who, as you understood it, was the relevant responsible minister in relation to that fund?---So all of the, it was a Restart fund. So all of the Restart funds in essence sat underneath the Treasurer of the day, because there was a particular piece of legislation that determined how any funds within Restart were to be treated. At the front end of that process there were three departments that were involved. One was the department that looked after tourism, the other one was the department that looked after the environment, and the other one was obviously whoever was looking after regional development. But we, we certainly were taking a read in terms of working closely with INSW around the front-end administration on that program.

40 So is this right, in terms of what I might call the back-end responsibility for the Regional Growth – Environment and Tourism Fund, as you understood it, the ultimate responsibility is with the Treasurer because it's a Restart NSW fund, is that right?---Correct.

Money, as you understand it, cannot be paid out of the Restart NSW fund unless it's approved by the Treasurer, correct?---That's correct.

As at December of 2016, the date of the ERC decision, the Treasurer was Ms Berejiklian, correct?---Yes.

Another aspect of the conditions of paying money out of a Restart NSW fund, including the Regional Growth – Environment and Tourism Fund, is

the requirement that there be a recommendation from Infrastructure NSW, is that right?---That's correct.

10 But in terms of the Regional Growth – Environment and Tourism Fund generally, does it follow from what you've said that at the front end, by which I at least mean the administrative aspect of getting papers together and assisting Infrastructure NSW, that's a matter that is dealt with by a number of departments or units, of which Regional NSW was one?---Yes, we were taking the lead on that and we would have worked very closely with Infrastructure NSW in the design of those programs, because ultimately they were the ones that were making the final assessment and, and attaching money.

20 Now, is the Regional Growth – Environment and Tourism Fund, is that what I'll describe as a competitive fund in the sense of, for example, published criteria, applications can be made, and then applications are proved in relation to projects that are viewed to be most worthy by reference to published criteria? Or is it more in the nature of a fund where particular moneys can be paid out without that kind of competitive process? Or is it a combination of the two?---In the main it's the former. It's a competitive fund with rounds that people can apply to. Occasionally within that fund and other funds, the government made decisions in respect to, in effect, making allocations or reservations from those funds without a competitive process.

30 In relation to the ACTA project, as you understood it, was that dealt with in the former category, a competitive category, or the latter category, the non-competitive category?---The Cabinet decision was clear that it, it was dealt with in the latter category, and that is that there was an allocation or an approval given to funding, subject to a range of conditions being met.

So is this right? As you understood the Cabinet decision or the Expenditure Review Committee decision, it carried with it a decision that, subject to the processes of Infrastructure NSW and the other conditions that the Expenditure Review Committee identified, this money would be spent without going through a kind of a competitive process of the kind that you and I discussed a moment ago?---That was my understanding.

40 In rough terms, within the Regional Growth - Environment and Tourism Fund, how many projects fall, at least as you understand it, in the latter category, the non-competitive category as opposed to the competitive category? Are there tens or something like in the latter, non-competitive category and tens or hundreds in the former category or at least in general terms?---Yeah. It, it, it, the vast majority would be in the competitive category. There would be a handful in the, in the other category.

So, say, two or three or a bit more than that?---I, I think, two or three, somewhere around that number.

And so is this right? One of the consequences of the Expenditure Review Committee decision, as you understood it, was that those responsible for the front end of the Regional Growth - Environment and Tourism Fund would have to, in effect, take up the cudgels in attempting to see whether the conditions of the grant of funding to ACTA could be satisfied or not. Is that right?---Correct, but we, we would keep Infrastructure NSW in the loop. We saw them as partners.

10 But in terms of the day-to-day work that was being led by your unit. Is that right?---Day-to-day work would have been done by us.

And is that principally by you personally or is that by particular people within your team?---No. I would have delegated that responsibility to those that had the necessary capacity and capability to, to do so.

20 And was there a particular individual who you assigned to lead that exercise?---Initially, it was Jane Spring, who was the executive director in the team that had Regional Development, but I also asked Chris Hanger, who had considerable expertise in infrastructure and who had spent some time working on secondment at Infrastructure NSW to become involved in that process.

Now, to assist in getting some timing around this, can we go, please, to page 1 of volume 26.11, and we'll just start at the top of the email chain. Can we just zoom in to the top half of the document. Mr Barnes - - -?---Sorry. Sorry, I can't see that.

30 Can you see a document at all on the screen?---No, I can't.

I'm just going to pause for a few seconds. Just let me know if in those few seconds, the document comes up on your screen or not.---Okay.

THE COMMISSIONER: Can you see it now, Mr Barnes?---No, I can't. My screen seems to be frozen.

MR ROBERTSON: We've just tried again. Does that assist, Mr Barnes?---No. I'm very, very sorry - - -

40 It is almost certainly not your fault. I'll just pause for a few seconds to see if - - -?---Things are starting to refresh now. No, I'm sorry. I still can't see it.

I'm sorry. It may be that we need to take an adjournment perhaps to do the usual expedient of turning things off and on again.

THE COMMISSIONER: Very well. We'll take a short adjournment to try and overcome the technological difficulties.

**SHORT ADJOURNMENT**

**[3.39pm]**

THE COMMISSIONER: Yes, Mr Robertson.

MR ROBERTSON: Mr Barnes, can you now see me and hear me relatively clearly?---Yes.

10

Let's try again. Volume 26.11, page 1, also Exhibit 425. And Commissioner, in light of that delay and although I am not particularly desirous of saying this on a Friday, I'll just (not transcribable) we sit a little bit longer beyond the usual 4.00pm.

THE COMMISSIONER: Yes.

MR ROBERTSON: Can you now see that document, Mr Barnes?---Yes, I can.

20

And so this is an email from you to Mr Hanger, 16 January, 2017. Do you see that there?---Yes.

And you're saying to him, "Need to inject yourself into this one." See that there?---Yep.

And so is it consistent with your recollection that you injected Mr Hanger into this matter of the Australian Clay Target Association towards the middle of January 2017?---Yes, yes.

30

And if we just scroll down the page, just so you can see the context. See there an email from Mr Clarke to Ms Spring but copied to you? It says, "Hi Jane, happy New Year" et cetera. Do you see that there?---Yes.

And there's a reference in the second paragraph to "Thanks for letting me know. It will be good to catch up next week and I can introduce you to Peter Minucos," M-i-n-u-c-o-s, "who has recently joined our office." See that there?---Yes, yep.

40

So is this right, as you understood it, Mr Minucos was a recent appointee to or recent person joining Deputy Premier Barilaro's office, is that right? ---That's correct.

And what was Mr Minucos' role within that office as you understood it? ---My understanding is that the Deputy Premier's chief of staff had brought him in to provide assistance with economic and regional infrastructure, as best I can remember.

And the understanding you've just identified, that's an understanding based on what? Was that something that you were told or how did you come to that understanding?---It would have been something I had received a briefing on in terms of who's who in the – well, who to go to for various things within the DP's Office, the Deputy Premier's Office, sorry.

But to be clear, he was an individual working in the ministerial office rather than at an agency level, is that right?---Yes.

10 Now, having injected Mr Hanger into this matter, were you involved in the day-to-day or did you mostly leave it to Mr Hanger to deal with?---Mr Hanger and, while we were in, still over in the Department of Industry, which was only for a brief time, Ms Spring, they would have, through their regular meetings, kept me in the loop on this, but at least at the start of this process I would have passed the running of this over to Mr Hanger and Ms Spring.

20 And so you had a general idea of what's going on because they were reporting to you, but in terms of the day-to-day work, that was performed by Mr Hanger and others, is that right?---Yep, in the main.

30 Now, having injected Mr Hanger into this matter, what steps were being taken within your group as you understood it, having regard to those reports that are coming back to you? In other words, what's going on to progress the matter that your unit was taking the running of, having regard to the Expenditure Review Committee's decision?---Oh, okay. My understanding is that the decision made reference to the fact that the business case that was presented to ERC was not sufficiently robust and that further work would need to be done to make sure that a business case was developed with further robustness. So that would have been one of the things I would imagine at, at the front end of, that Ms Spring and maybe Mr Hanger would have received a brief from the Office of Sport, given that they had the initial running with this and maybe had played a part, if not in developing the business case as a procurement process, but at least, you know, they would have had the initial running. So there would have been a handover at this point.

40 And so the objective, or at least the immediate objective sought to be achieved so far as you were concerned was to attempt to procure a satisfactory business case, is that right?---Yes. A business case, without a business case, we couldn't satisfy the requirements of the Restart fund.

And is that because one of the requirements to satisfy the requirements of the Restart Fund is to be in a position to demonstrate a benefit-to-cost ratio of 1 or more than 1?---Yeah, one of four criteria, yes.

To satisfy that particular criteria, what one needs is a business case that can then be analysed to produce a benefit-to-cost ratio, is that right?---Correct.

And is this right, the business case essentially provides the inputs, in the sense of identifies expected benefits and costs, in respect of which an analysis may be able to be performed to result in a business-to-cost ratio figure?---Yes, it would be the businesses usually contain the prerequisite data to be able to do a sort of cost-benefit analysis leading to a BCR.

10 So the business case is focused, at least as you see it, on identifying the prerequisite data, is that right?---That's part of a business case, yes.

And it's a necessary part of a business case to be in a position to produce a benefit-to-cost ratio, is that right?---Those inputs are very important.

Well, they're more than very important they are critical. You need to know the benefits and the costs in order to work out the ratio, is that right?  
---Correct.

20 I take it that in your experience the quality of the inputs is necessarily going to affect the quality of the output. Just let me explain what I mean by that.  
The output figure, the benefit-to-cost ratio, is only going to tell you something useful or robust if the inputs, the information about the benefits and the costs, are sufficiently robust. Would you agree with that as a proposition in your experience?---Correct. Yes.

And that's simply for the reason that the whole purpose of preparing a benefit-to-cost ratio is to analyse the benefits and the costs to see whether the cost to the state will be exceeded by the benefits of a particular course of action, is that right?---Correct.

30 Is it right that at least within the NSW Government the focus is on the costs and benefit at the state level? In other words, if the state of New South Wales is going to spend money, one, at least in your experience, wants to ensure that the benefit to the state as a whole will be equal to or greater than the cost to the state?---That definitely accords with the BCR guidelines that our Treasury has used.

40 To be clear, the focus is not on whether or not it would be an overall net benefit to, for example, the area of Wagga Wagga, the focus is on whether or not there would be an overall benefit to the state as a whole, correct?  
---That's correct because if money was displaced from one part of New South Wales to another part, that would not be seen as a benefit under the Treasury guidelines.

For example, a particular project at the level of theory might benefit Wagga but have a corresponding detriment to somewhere else, for example, Albury?---Correct.

And so, is this right, the principal immediate task sought to be achieved as you understood it, to bring into effect the Expenditure Review Committee's decision, was a satisfactory business case that could be then the subject of a benefit-to-cost ratio analysis, is that right?---That was the immediate task.

10 Was that immediate task achieved?---My understanding is the original business case that was there needed to be augmented, and it's my understanding that one of my teams went and began a process to liaise with potentially the existing deliverer of the original business case to make the business case more robust.

And that work was ultimately performed, is that right?---Yes, that's my understanding.

Did that then lead to a benefit-to-cost ratio analysis being performed?---Yes, there was a BCR generated as part of the cost-benefit analysis by a team that also reported to me.

20 And what was that team?---I think it was called the Investment Appraisal Unit.

Sometimes referred to by the acronym IAU, is that right?---That's correct.

And so is this right? That's a group of individuals who have special expertise in producing benefit-to-cost ratio analyses?---They have very high level expertise in this instance and I think were highly regarded.

30 And, in particular, with intimate knowledge of the relevant Treasury guidelines pursuant to which a business-to-cost ratio analysis would be performed?---Correct.

I take it that they're not, for example, experts in clay shooting, correct, or clay target shooting?---No, but they, yeah, no, I don't think they would be experts in clay pigeon shooting or clay target - - -

Is this right? Their expertise is on turning what you and I have described as the inputs from a business case into an analysis that leads to an output in terms of a benefit-to-cost ratio?---That's right.

40 You agree with me, I take it, though that although the experts in the IAU may have a very high level of expertise in performing the analysis and the calculations, the quality of the number that will ultimately be the output of that exercise is likely to be affected by the quality of the inputs as identified in the business case?---I think my understanding of the process that they used is that they would, whatever inputs came through, they would test rigorously despite the fact that they might not have immediate knowledge themselves. They'd go to a reference group and they'd go to try and test

assumptions against published, assumed best practice in whatever field it was, so - - -

So, to take an example, if there's a suggestion of an increase in tourism benefits in relation to a particular project, they might look at some publicly available data as to whether the suggested nightly spend is consistent with published data or not?---Correct.

10 But I take it you would accept that that kind of checking can only go so far, for example, the IAU may not be an expert, for example, on how many international shooting events might be able to be held in the event that a shooting facility was built?---No, they, they, they would find that difficult.

They would endeavour, at least in your experience, to do their best to check the inputs to the extent that they were able to do so by reference to data available to them. Correct?---Correct.

20 But, ultimately, I think you'd agree it's important to get the business case to be a document as rigorous as possible with a view of ensuring the BCR analysis leads to a figure that is likely to have some support and science and confidence behind it. Do you agree?---Yes. I think whichever benefit-cost ratio in whatever field they undertook, they would always endeavour to make sure that the figure that they came up with was robust and could be peer reviewed and would stand up.

But you're not disagreeing with the proposition I said before, namely, that it's important to get rigour in the business case with a view to ensuring that the BCR figure that is produced is one that can be relied on?---Correct.

30 So in this case, a further business case or perhaps a further worked up business case was achieved or was procured in relation to the Clay Target Association proposal. Is that right?---That's right.

And I think you said that that was done, at least as you understood it, by your team working with the firm that prepared an original business case that was in place before the Expenditure Review Committee's decision. Have I got that right?---My understanding is that it was a, a, a sort of branch of GHD.

40 So it was a branch of GHD that prepared a further business case or perhaps an addendum to a business case after the ERC decision came to your notice. Is that right?---Correct.

And I take it that that business case was then forwarded on to the IAU that you referred to for analysis. Is that right?---That's right.

And what was the result of that analysis, do you remember? What did that bring back in terms of a BCR?---I, I thought that it was quite a solid

outcome but it didn't get to 1. I think it was around the 0.7 or 0.8 mark, something like that.

So is this right, your recollection that at least on the first benefit-to-cost ratio analysis coming from the IAU, the result was of less than 1, is that right?

---Correct.

10 And is this right, as a practical matter, that then means that you won't be able to obtain a recommendation from Infrastructure NSW because one of the criteria is demonstration of a BCR of 1 or more than 1, is that right?

---That's correct.

Can we go, please, to page 262. Sorry, we'll actually go to page 255 of volume 26.5. I'm going to show you, Mr Hanger, an email from you to Ms Davis of Infrastructure NSW, 19 April, 2017.---Yes, I can see that.

See it says, "Hi, Jenny." Jenny was someone who worked with Infrastructure NSW at that point in time, is that right?---Yes, and she would have been the lead on the program we talked about earlier.

20

THE COMMISSIONER: It's from Mr Hanger?

MR ROBERTSON: I'm sorry?

THE COMMISSIONER: It's from Mr Hanger, Mr Robertson. You said it was from Mr Barnes.

MR ROBERTSON: I'm so sorry. I'm so sorry. It's an email from Mr Hanger to Ms Davis. Do you see that, Mr Barnes?---Yes, I can see it.

30

Do you see there it says, "Sorry – Stewart's team finished this late last week." Do you see that there?---Yes.

Stewart was a gentleman who worked within the IAU, is that right?

---Stewart was the person in charge of the IAU.

And it then goes on to say, "I've also sent this to Peter Minucos in DPO, as he was asking." Do you see that there?---Yes.

40 Do you know what Mr Minucos's role was in relation to the ACTA project? Or put another way, why, as you understood it, would Mr Hanger be forwarding this document through to Ms Davis?---Sorry, could you just restate that?

If you have a look at the second paragraph, it says, "I've also sent this to Peter Minucos in DPO, as he was asking." Do you see that there?---Yes, I can.

DPO is public service speak for the Deputy Premier's Office, is that right?  
---Yes.

I'm just trying to understand what your understanding of Mr Minucos's role was in relation to the clay target shooting proposal in the Deputy Premier's Office?---Well, insofar as it would have been one of a number of regional infrastructure projects that Mr Hanger would have been keeping him abreast of.

10 So is this right, Mr Minucos was the relevant adviser within the Deputy Premier's Office relevant to this particular proposal, the ACTA proposal?  
---I believe it would have been him and maybe the person who reported to Laura Clarke.

Now, at this point in time the BCR is less than 1, correct?---Yes. As I said, I think it was either 0.7 or 0.8 or thereabouts.

20 Therefore Infrastructure NSW is not going to provide a recommendation so as to permit money to come out of the Restart NSW fund, is that right?---It would be highly unusual that they would do that, given that the custom and practice is always for Infrastructure NSW that the BCR is, is used.

And so is that then the end of the story on the ACTA project, at least so far as your unit within government was concerned, or were some further steps taken?---My understanding is that I was advised that Mr Minucos was working with Mr Hanger to have a look at the, whether further things could be added to the business case. And having a further look at things is something that we do from time to time. But my understanding is that that further look was, was occurring.

30 You were advised of that further look by who?---At the time I think I became aware of it, well, I knew that, that Mr Minucos was, had, had asked to have a look at the BCR process because I think Mr Hanger had made me aware of that at a, a meeting and I think, following that, I had it in my head that there might be some further working being undertaken by Mr Hanger in light of some of the sort of assessments or work that Mr Minucos had, had suggested.

40 Who decided that there should be another look, at least as you understand it, who decided there should be another look following the BCR coming out at less than 1?---I can't recall. At the time we always would, if something was close, it got a 0.8 or, or something like that, have a, go back and have a look at the business case, but that typically would happen, that would be led by Mr Hanger. In this instance I think I became aware that Mr Minucos had inserted himself into a process that typically would have been something that public servants would have taken control of.

Did you come to any particular view as to the appropriateness or otherwise of Mr Minucos inserting himself into the process that you've just identified?---I, I wasn't pleased about that. It wasn't something that typically was the domain of ministerial office staffers.

Why weren't you pleased?---He was, I, I was made privy to an email chain which indicated that he was working almost directly with the consulting firm to further augment the revised business case that we put forward for appraisal.

10

Can we go, please, to page 226, volume 26.6? Can we zoom into the top half of the page, please? Do you see there an email from you to Mr Hanger, 9 May, 2017, 8.37am, where you say, "Hmmm" H-m-m-m?---Yes.

Why are you saying "Hmmm"?---I was, it, it's something that as a matter of course the people that work with me would know that it was an expression of, of frustration and/or disappointment that something might have occurred.

20

Does this appear to be the email chain to which you made reference a moment ago, and we'll just scroll down the page a little but further so that I can show you the bottom of that email chain? Do you see, for example, an email from Mr Minucos to Mr Paul and a correspondence from Mr Paul, a response from Mr Paul to amongst others Mr Minucos? Do you see that there, Mr Barnes?---That was the email chain that was talking about.

I think one of the things you said, that you were disappointed, have I got that right?---I was disappointed that that engagement wasn't happening through Mr Hanger's, Mr Hanger's area.

30

Why were you disappointed?---Because we were the ones that had procured the, the work from GHD and it would have been the normal practice for engagements with a consultant that we had appointed to happen through the public service, not from someone in the Deputy Premier's office.

40

Is a reason for that a desire, at least on your part, to avoid any suggestion of political influence on the preparation of a business case?---Yes. That would be one of the considerations and the other consideration would have been to ensure that the quality of the additional information that was being sought was consistent with the people that were in the team and had carriage of the work.

And so if I go to the next page just to take an example of the kind of --and we'll zoom in towards the middle of the page -- you see just as an example, "Based on our conversation it sounded like the additional conferences might attract 5,000 new visitors," do you see that there?---Yes.

Is this right -- you regarded it as disappointing that suggestions of that kind, substantive suggestions to the preparation of the business plan, were coming

from the minister's office rather than from an agency within government, is that right?---It would be far better from a governance perspective for any ideas for improvement of the business case that Mr Minucos had to be directed to Mr Hanger, and if Mr Hanger agreed to some of things that were being suggested were relevant, then Mr Hanger's team could have put it to the consultant, rather than it going directly from an office and the Deputy Premier's office.

10 Why do you say that would be better from a governance perspective?  
---Because we're the ones that had procured the work and were leading that work.

But you've specifically referred to a governance perspective. I just want to understand what you mean by that.---Just to the point that I've made, Mr Robertson.

20 Does that include, though, a desire to avoid any suggestion of influence at the political level on the content of a business plan?---That would be, that would be something that may be perceived as inappropriate, yes.

May be perceived as inappropriate but perceived as inappropriate by you as a long-time public servant, is that right?---Yes.

Did you raise your concerns regarding this matter with anyone?---Look, I believe I, I raised it with either Laura Clarke and Fiona Dewar, or it could have been both of them, to suggest that that wasn't the way that, that wasn't the best way to conduct business.

30 Fiona Dewar was at that point in time the chief of staff to Deputy Premier Barilaro, is that right?---Correct.

40 I asked you a little while ago about who decided that there should be a further look in relation to the business plan and the BCR analysis. Do you know who made that decision or request? I take it you know that, one, that it happened and, further, a further look took place, but do you know who made the decision that that should take place?---Ultimately it was Mr Hanger that referred the updated information to Mr Stewart, but I would have been keeping all of the people that had been asking questions about this project at the political level in the loop, and they had indicated that they were supportive of having another look at this funding stream for the decision that had been made on 14 December.

Why did you consider you needed to take it upon yourself to ensure that the people who were supportive of the project at a political level were kept in the loop? Noting that this is a grant in relation to about \$5.5 million, and whilst that's a substantial amount of money, it's not, I'd think you'd agree, a very large amount of money in the context of a very large New South Wales budget. Would you at least agree with that last proposition?---I would agree

with the last proposition. And the reason that I took it upon myself to keep people in the loop was that this particular proposal was the topic of, of a lot of interest in terms of where it was up to and that interest came through predominantly both the Deputy Premier's Office and the Premier's Office. And, and it originated is my understanding from the local member regularly asking for updates.

10 So is this right? At least as you understood it, this was a project that had particular I think you said interest that was communicated to you from both the Premier's Office and the Deputy Premier's Office?---That's correct.

This was a project that, as you understood it, was one that had a particular focus or priority at the political level. Correct?---Amongst a small number of projects, this was one that seemed a bit different to others at the political level.

20 So this in amongst a small number of projects was a bit different and involved a particular priority, at least as you saw it, at the political level. Is that right?---Yes.

And when you refer to the political level here, you're referring to both the Premier's Office and the Deputy Premier's Office. Correct?---Correct.

30 What about the Premier and/or the Deputy Premier themselves? As you understood it, were these projects projects of particular interest to either or both of those individuals?---As, I can't recall speaking a lot with the Deputy Premier on this project but I did speak a lot with his chief of staff, who, Fiona Dewar, as I've mentioned earlier, and they regularly received either indirect or direct requests from the local member for updates on the project. In respect to the Premier's Office, I never had a one on one discussion with the Premier of the day around this particular project but, again, the various staff that I dealt with in her office gave me an impression that, that the Premier was, had an interest in this project.

40 When you say "had an interest", is that an interest over and above other projects and programs that your unit may be concerned with?---I, I think the interest, at least I surmised again, was the fact that the local member asked for regular updates and he was robust in getting updates and at least in my mind her interest would have been to make sure that that information was flowing back to him so that he was apprised of, of where things were up to.

So is this right? As you understood it, the Premier's Office had a special interest in this project that stuck out in your mind as compared with other projects for which you had responsibility in your unit. Is that right?---As, as I said, this and a number, a very small number of other projects. So this and a small number of projects had, at least as you understood it, special attention within the Premier's Office. Is that right?---In terms of the level of communication around a project, yes.

And does it follow from that that you were giving, I think what you called regular updates to the Premier's Office?---Yes, I was.

10 Was that being done directly to the Premier's Office or was that being done indirectly through the Deputy Premier's Office?---I always would have included the Deputy Premier's Office in any discussions that I was having with the Premier's Office. It was a rule that I always followed. And so if I did, I did speak directly with, and communicated directly with people in the Premier's Office about this, but I would always clear things either before with Ms Dewar or sometimes afterwards keep her in, in the loop, because ostensibly my business unit supported the Deputy Premier and, in the first instance.

So at this point in time, when you were taking steps in relation to the ACTA project, your portfolio minister, to use the terminology that I used earlier today, was the Deputy Premier, Mr Barilaro, is that right?---That's right.

20 And so on the face of that – sorry, I withdraw that. And are you saying that to the extent that you communicated with the Premier's Office, that was only ever done through the Deputy Premier's Office? Or are you saying from time to time you would make direct communications with the Premier's Office but you would seek to keep the Deputy Premier's Office informed, given that that's the office of your portfolio minister?---Yep, the latter.

30 Is it unusual, in your experience, for that kind of direct reporting to take place to the office of the Premier, rather than through the portfolio minister, in this case the Deputy Premier?---A number of the funds that we were administering required joint sign-off from the Premier, from the Deputy Premier and sometimes from the Treasurer of the day. And it also, so in this instance, reporting up to the cluster minister as well as the portfolio minister on certain projects, particularly Regional Growth Funds related projects, was something that I did as a matter of course. And I think every two weeks I met with the Premier, along with other deputy secretaries and the secretary, and I would report progress within the Regional Growth Funds work to her.

40 So did you say every couple of weeks or so you met directly with the Premier herself?---The Premier met with a group of people who were all the deputy secretaries within DPC and the secretary. It was a structured meeting that typically happened on a Monday, fortnightly.

And during the course of at least some of those Monday meetings, you gave updates directly to the Premier regarding this project, is that right?---I can't recall having spoken directly about the project, but it was mentioned in the text because we had to, we had to provide the previous week a set of dot points about things that we wanted to update the Premier on.

As you understood it, the Premier herself had a particular interest in this project, by which I mean the ACTA project, is that right? Not just her office, but the Premier herself?---That was the assumption that I had reached.

10 Well, is it more than just an assumption, that's a conclusion that you drew from your dealings with the Premier and the Premier's Office, including in the Monday meetings to which you've just referred?---I included specific mention from time to time about this project because I had made a conclusion that both she and her office would be interested in receiving that advice because of the frequent engagements that her office was having, and no doubt her, from the local member.

So your engagements with the Premier's Office led you to draw the conclusion that the Premier had a special interest in this project, is that right, the ACTA project?---Yes.

20 Commissioner, I tender the email from Mr Barnes to Mr Hanger, 9 May, 2017, 8.30am, with the text, "Hmmm", H-m-m-m, pages 226 to 228.

THE COMMISSIONER: Exhibit 451.

**#EXH-451 – EMAIL FROM GARY BARNES TO CHRIS HANGER REGARDING UPDATED WAGGA WAGGA CLAY SHOOTING ACTA BUSINESS PLAN DATED 9 MAY 2017 AT 8.37 AM**

30 MR ROBERTSON: I note the time. Can I just deal with one further document before an adjournment if that's convenient or at least not too inconvenient to the Commission. After the further look that you referred to in relation to the BCR, did that cause any change to the ultimate BCR? ---My understanding is that it took it from below 1, which is the figure that is required, to just above 1, maybe 1.1 or something like that.

40 And we'll come back to a little more detail about this next week, but I just want to show you one document in that context. Page 253 of volume 26.6. I'll show you an email from you to Ms Dewar, D-e-w-a-r, 23 May, 2017. That was the lady who was the chief of staff to the Deputy Premier, is that right?---Yes.

And it says "Fiona, please note the attached with extra info now over BCR 1. Chris is now completing paper work for INSW. Local member will be happy." Do you see that there?---I do.

Why did you care, or so far as you understood, Ms Dewar care that the local member would be happy?---My understanding is that he would have been

making life pretty difficult for both officers with his requests for information and that both – well, he, he would be happy that the, the project that had been, he'd been advocating for, funding could finally be attached.

10 Making life difficult – I'm sorry to interrupt, but making life difficult in what way?---Well, just a, a lot of local members advocate for the projects that they have under consideration but it was my understanding, as I have said, that the local member, Mr Maguire, made lots of enquiries and, and it would, it would be a bit of a, a relief that enquiries, those enquiries would, with the successful, or the capacity to attach funding, would cease.

As you understood it, was there a desire within either or both of the Deputy Premier's office and/or the Premier's office to keep the local member, Mr Maguire, happy?---I think all of the, all political officers like to keep their, their backbenchers happy. That isn't always the case but this, no doubt, would have made Mr Maguire happy because the latest round of enquiries that were being made leading up to this were around the ACTA group looking for confirmation about whether government funding might flow, because it's my understanding that they had moved to begin the process of  
20 seeking a development application through the local council and I think time frames were playing a part in the representations that were being made.

No doubt taking steps in aid of advancing money for the benefit of a particular electorate is likely to make the relevant local member happy. What I'm really drawing your attention to is why would you be concerned or, to your understanding, why would the Deputy Premier's Office, or the Premier's Office be concerned to keep this particular member, Mr Maguire happy?---At the time I, I, there was no inference that they had a particular desire to keep him happy but the decision would provide him with comfort  
30 that that project could, could proceed.

Are you saying this is the kind of thing you say as a course if it was a project with respect to somewhere else, call it Albury, you would say the local member for that electorate or that are would be happy too, there's nothing – are you saying nothing special about that particular comment?  
---There was nothing special about that comment.

I tender, Commissioner, the email from Mr Barnes to Ms Dewar 23 May, 2017, 2.06pm, page 253 of volume 26.6.  
40

THE COMMISSIONER: That will be Exhibit 452.

**#EXH-452 – EMAIL FROM GARY BARNES TO FIONA DEWAR  
DATED 23 MAY 2017 2:06PM INCLUDING ATTACHMENT - ACTA  
CBA ADDENDUM FINAL**

THE COMMISSIONER: Mr Barnes, that email was also copied to a Mr Mathieson?---That's correct. He was the - - -

Who was Mr Mathieson?---Mr Mathieson at the time was the deputy chief of staff in the Premier's Office and he had been one of a number of people that I had been updating and communicating with about this project.

Thank you.

10 MR ROBERTSON: I note the time, Commissioner.

THE COMMISSIONER: Yes.

MR ROBERTSON: I propose at least at this point and subject to any further announcements to recall Mr Barnes on Wednesday, consistent with the witness list that has been published and otherwise, at least at this point, intend to proceed as announced in relation to next week. I should indicate that I think the likelihood is that we will spill over into a third week as I warned a couple of days ago. And I suspect it's likely that we'll need to sit  
20 on Monday of what I'll call week 3 and although I understand there are some difficulties in relation to the Tuesday, so it's unlikely that, at least in my submission, we'd sit on the Tuesday, but I'll have some further inquiries made during the course of the weekend. But I'm still hopeful of, at least attempt to, have the evidence finished during the course of next week or as an immediate fallback by Monday.

THE COMMISSIONER: Monday week.

MR ROBERTSON: By the end of Monday of the next week, yes.  
30

THE COMMISSIONER: Thank you, Mr Robertson. We'll adjourn till 10.00am on Monday morning.

**THE WITNESS STOOD DOWN [4.36pm]**

**AT 4.36PM THE MATTER WAS ADJOURNED ACCORDINGLY [4.36pm]**  
40