



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

DEPUTY PRESIDENT MASSON

C2023/5806

s.739 - Application to deal with a dispute

"Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union"
known as the Australian Manufacturing Workers' Union (AMWU)
and
CSL Limited T/A Seqirus
(C2023/5806)

Seqirus Enterprise Agreement 2021

s.739 - Application to deal with a dispute

National Secretary
and
Mr Travis Millen
(C2023/6060)

Seqirus Enterprise Agreement 2021

Mebourne

10.00 AM, MONDAY, 25 MARCH 2024

PN1

THE DEPUTY PRESIDENT: I will start by taking appearances, please.

PN2

MR WHITE: Thank you, your Honour. I continue to appear for the two applicant unions.

PN3

THE DEPUTY PRESIDENT: Thank you.

PN4

MR HOWARD: I continue to appear for the respondent, your Honour.

PN5

THE DEPUTY PRESIDENT: Thank you. Mr White?

PN6

MR WHITE: Thank you, your Honour. In this matter pursuant to directions you made there were submissions which have been filed, and to that extent, and also bearing in mind two previous interlocutory matters which have been before your Honour, and also bearing in mind your Honour's involvement during the conciliation stages of the dispute your Honour is well aware of the dispute.

PN7

In short compass the unions contend that the obligation to consult under clause 1.8.3 of the agreement obliges the company to provide sufficient information, both as to the content of any changes, but also the rationale, explanation, et cetera, of any changes. That's to be provided in writing. The purpose of that is to enable consultation to occur. Consultation - if the Commission pleases, you would be well aware of - I think referred to in earlier submissions - Logan J in the *CEPU v Queensland Rail*, but also in this agreement consultation, and its purpose is defined.

PN8

So the ability to consult we say is dependent upon the provision of information in writing, 1.8.3(e), and we contend that information has not been given, such that consultation has not occurred and been able to occur, and that consultation needs to be given, such that consultation can occur. That's as complicated as the dispute gets. If the Commission please.

PN9

THE DEPUTY PRESIDENT: Mr White, do I need to mark some documents of yours?

PN10

MR WHITE: We have only filed submissions. I don't know whether or not your practice is to file - - -

PN11

THE DEPUTY PRESIDENT: I thought there were some - - -

PN12

MR WHITE: There was some material attached to the submissions.

PN13

THE DEPUTY PRESIDENT: I see. Yes.

PN14

MR WHITE: But I'm happy - well, content with whatever - - -

PN15

THE DEPUTY PRESIDENT: I will just ask Mr Howard. The documents that were attached to the respondent's submission are they also included to your knowledge in the respondent's material?

PN16

MR HOWARD: They are, but what your Honour is referring to is the index to the applicant's bundle of documents, including the digital court book. I wouldn't ask you to tender that, just because that's the applicant's case.

PN17

THE DEPUTY PRESIDENT: Yes, I see.

PN18

MR HOWARD: There is, to answer your question, every document here is in our documents.

PN19

THE DEPUTY PRESIDENT: All right. Well, it's probably unnecessary for me to identify them twice. Do you disagree?

PN20

MR HOWARD: I do. If you could just tender the index.

PN21

THE DEPUTY PRESIDENT: I see. Okay. You're asking me to tender the index for each document.

PN22

MR HOWARD: Yes, you can do that. That would be a marking of the applicant's case.

PN23

THE DEPUTY PRESIDENT: All right.

**EXHIBIT #A1 BUNDLE OF CORRESPONDENCE AT COURT
BOOK PAGE 3, WHICH IS THE LIST OF CORRESPONDENCE
WHICH IS ALSO PROVIDED**

PN24

MR HOWARD: Your Honour, I think it's a different document.

PN25

THE DEPUTY PRESIDENT: There's so many different documents. Maybe, Mr White, you can identify for my benefit.

PN26

MR WHITE: Yes. It's - - -

PN27

THE DEPUTY PRESIDENT: Just a sec. I have the applicant's outline of submissions. That appears to be at court book 195.

PN28

MR WHITE: Yes. Well, 194 for me.

PN29

THE DEPUTY PRESIDENT: My apologies. Yes. And then there is various documents which I understand run from court book 3 - - -

PN30

MR WHITE: Page 204.

PN31

THE DEPUTY PRESIDENT: Sorry?

PN32

MR WHITE: I've got court book page 204 is the index to the applicant's bundle.

PN33

THE DEPUTY PRESIDENT: I see. My apologies. So this is the index that you're referring to, Mr Howard?

PN34

MR HOWARD: Yes.

PN35

THE DEPUTY PRESIDENT: All right. Are you content for me just to mark the index and - - -

PN36

MR WHITE: I'm in your Honour's hands.

PN37

THE DEPUTY PRESIDENT: All right. Is that what you seek, Mr Howard?

PN38

MR HOWARD: Yes, your Honour.

EXHIBIT #A1 INDEX TO THE APPLICANT'S BUNDLE

PN39

THE DEPUTY PRESIDENT: Thank you. Mr Howard?

PN40

MR HOWARD: Has your Honour read the respondent's written submissions?

PN41

THE DEPUTY PRESIDENT: Yes, I have.

PN42

MR HOWARD: The arbitration asks two questions, or two substantive questions, being (1) has the respondent discussed the move to Tullamarine with employees; and (2) has the respondent provided relevant information about the move to Tullamarine. The applicant must present an evidentiary case in relation to this matter for those answers to be answered in their favour.

PN43

The case, your Honour, turns on your synthesis about that information, its quality, its clarity, and its fulsomeness, and so on. Your Honour has to make a finding subjectively on that information from two perspectives; the employer's perspective and the employees' perspective, and your Honour is to make a finding as to whether the information that's been exchanged and the discussions have been of a nature to comply with the clause.

PN44

What's extraordinary about this case is that there's no - well, the union has made a decision not to call a witness in relation to this dispute, so as to enable your Honour to assess the effectiveness of that information. I have been deprived of cross-examining anyone, and your Honour has been deprived of hearing that cross-examination as to whether or not that person understood that information, whether it was clear, whether it was effective, so on and so forth. Your Honour is left to guess as to that issue. An invidious task because your Honour is not an electrician or a maintenance employee at the respondent, and your Honour isn't aware of the features of that employment and the employment relationship between CSL and its engineering team.

PN45

Your Honour, this engineering, team I will call it, at present comprises of 12 employees. Parkville you will hear evidence about comprises at about 500 employees. There are two other unions not party to this dispute, the CPSU and the UWU. The respondent, CSL, doesn't shy away. It wishes to call Mr Smith, and he has provided your Honour with a witness statement, and to his knowledge all of the information in writing that's been exchanged to date. He has also given some evidence about the discussions that have occurred between employees in addition to that. He has provided your Honour with a bundle of material. It's burdensome. Did your Honour get a hard copy of that?

PN46

THE DEPUTY PRESIDENT: Of which?

PN47

MR HOWARD: The bundle of documents going to consultation. That's the one. Is your Honour going to be working from the hard copy today?

PN48

THE DEPUTY PRESIDENT: Yes. I don't have my laptop with me.

PN49

MR HOWARD: I like it. Old school. I was going to spend a few minutes just orientating your Honour with the key documents in that bundle, and I will do so by reference to the page numbers of the bundle which appear I think at the top right-hand page - sorry, at the top of the page.

PN50

THE DEPUTY PRESIDENT: I think the court book that's been provided on Friday is paginated with I understand the page number at the bottom right.

PN51

MR HOWARD: Yes. I don't have those page numbers.

PN52

THE DEPUTY PRESIDENT: All right.

PN53

MR HOWARD: But I do have if you look at the top - if you go to the first document - - -

PN54

THE DEPUTY PRESIDENT: Yes.

PN55

MR HOWARD: - - - do you see an email there of 15 November 2020?

PN56

THE DEPUTY PRESIDENT: No.

PN57

MR HOWARD: Just one second, I will get you the page, the red page. Page 445 in the red.

PN58

THE DEPUTY PRESIDENT: All right. I just say I know the respondent provided a hard copy of all of this material I believe some approximately a week ago.

PN59

MR HOWARD: Yes.

PN60

THE DEPUTY PRESIDENT: But my normal practice is to provide a single document which includes all relevant material, and that's what I asked my associate to provide on Friday. So if we're now going to be going to different pages then that's going to take a little bit longer to orientate myself.

PN61

MR HOWARD: Yes.

PN62

THE DEPUTY PRESIDENT: But anyway, we will endeavour to do that anyway. What was the page number?

PN63

MR HOWARD: It was black page 1, red 445.

PN64

THE DEPUTY PRESIDENT: 445. Okay. Yes, and it has '1' at the top?

PN65

MR HOWARD: It does.

PN66

THE DEPUTY PRESIDENT: All right.

PN67

MR HOWARD: And they were the page numbers I will be referring to when I come to - - -

PN68

THE DEPUTY PRESIDENT: But it doesn't look for some reason - I'm just trying to check that - yes, I see. Okay. It does seem to have the page numbers. I thought it may not have. Okay. Thank you.

PN69

MR HOWARD: Just starting there that's the first announcement of the move, and you will see that's 15 November 2020, and that's about a year before the enterprise agreement before you came into operation. Can your Honour turn to page 20.

PN70

THE DEPUTY PRESIDENT: Court book 464?

PN71

MR HOWARD: Court book 464. You will see an email there sent a day after the announcement. I just identify a couple of things. It's a useful document. In order to do so you will see that this change is called 'Project Banksia', and you will see in the heading 'A replay of the town hall.' You will hear evidence about town hall meetings, which is the respondent's colloquial phrase for all staff meetings about the change.

PN72

In the last sentence of the first paragraph you will see a hyperlink where you can see that employees are able to watch replays of these town halls after they occur. And you will see in the next sentence an announcement of a dedicated intranet page. And then in the next sentence you will see a hyperlink to FAQs; that's frequently asked questions. Then you will see in the next paragraph the establishment of an email address, askbanksia, so that employees are able to ask questions about the change, and it says, 'Questions submitted will help form frequently asked questions published throughout the document.'

PN73

Can your Honour turn to page 23, black 23, red 467. That's just an example of these Q&As that you will see throughout the bundle. And if your Honour turns to black 32 - - -

PN74

THE DEPUTY PRESIDENT: Court book 476.

PN75

MR HOWARD: - - - you will see answers being provided in the email, which commences for about 70 per cent of the page, being distributed throughout the organisation. So these questions being asked and individually being shared to a broader audience.

PN76

THE DEPUTY PRESIDENT: So I understand it, it may be relevant to ask the question of Mr Smith, but it appears that the questions were anonymised.

PN77

MR HOWARD: Yes. And if your Honour turns to black 34, red 478, that's an example of a PowerPoint slide used in a town hall meeting. If your Honour turns next to black 125, red 569, we have moved into 2023 with this presentation, and you will see that there's a road map with three phases in relation to people transition, and this is where the project reaches the stage where that type of consideration has become a focus. You will see up until now, I quote:

PN78

Our project has been on the detailed design of the facility, what needs to be built and how we built it. Now we turn attention to the most critical input for operation, our people.

PN79

And there's the three phases of work set out there. Phase 1 being, 'The proposal of future state design to be completed by December 2022.' Phase 2: 'A review of the proposal and mapping the movement of positions across to the future state operations to be completed by March 2023.' And then Phase 3, 'Sharing the outcomes from the position map exercise to be completed by June 2023.'

PN80

And if you turn over to black 129, red 573, you will see just there further detail about these phases and the planning of them for the next six months. Could your Honour next turn to black 152.

PN81

THE DEPUTY PRESIDENT: Court book 596. I am going to say that also for the purpose of the transcript.

PN82

MR HOWARD: Yes. We move into those phases at a later point in time and we're in Phase 2, and we're at a stage where the transition principles can be shared, which appears at page 153.

PN83

THE DEPUTY PRESIDENT: Court book 597.

PN84

MR HOWARD: And those transition principles are the transition of people to jobs, the prioritisation of CSL secures its employees, an upskilling process, keeping employees informed and engaged with this project, and then also acknowledging and celebrating the path of a legacy.

PN85

These phases progress, your Honour, until we get to a stage where you will hear about departmental briefings. These were briefings specific to each of the respondent's lines or departments, and in relation to these employees there was one called the engineering functional briefing in July 2023, which you will see at black 175.

PN86

THE DEPUTY PRESIDENT: Court book 619.

PN87

MR HOWARD: Thank you, your Honour. And if we just quickly turn a page you will see in this presentation the foreshadowed role mapping is set out to this department; for example at court book black 181, red 625, and it follows on from there. If you keep turning the page at black 184, red 628, you will see that those page propose structures. And if we just go back to the cook's tour of the chronology if your Honour turns to black 303, red 747, there is a completion of those phases, and then the announcement of three more phases, which you will see at black 326, red 770. And these phases after the mapping exercise has been done are to do with training, and that's Phase 4. Phase 5, a one on one process where employees are to know their individual outcome for future state involving one on one conversations. Then Phase 6 is the sharing of site exit, the remediation plans for Parkville.

PN88

MR WHITE: Your Honour, I'm not feeling particularly well today. That's all right. But can I just have five minutes off, 10 minutes?

PN89

THE DEPUTY PRESIDENT: Yes. No, certainly. Are you well enough to continue, Mr White?

PN90

MR WHITE: Absolutely. I've taken drugs, but - - -

PN91

THE DEPUTY PRESIDENT: Well, if at any point during the proceedings you feel unable to just let me know. All right?

PN92

MR WHITE: Maybe if I could have 10 minutes now.

PN93

THE DEPUTY PRESIDENT: All right. So 10 minutes?

PN94

MR WHITE: Thank you.

PN95

THE DEPUTY PRESIDENT: Thank you.

SHORT ADJOURNMENT

[10.36 AM]

RESUMED

[10.48 AM]

PN96

MR HOWARD: Thank you, your Honour. Prior to the adjournment I was just identifying the six phases. I just wanted to continue on with the chronology at black 336, red 780.

PN97

THE DEPUTY PRESIDENT: Was that 780?

PN98

MR HOWARD: Yes, your Honour.

PN99

THE DEPUTY PRESIDENT: Yes, thank you.

PN100

MR HOWARD: Where it (indistinct) August 2023, and this is the dispute notification that led to this dispute. You will see the characterisation of the dispute at paragraph 5, being an obligation to consult over the major change, being the move from Parkville to Tullamarine, and at paragraph 16 of this letter a request from the AMWU for a meeting. Now, I won't go through all of what happens next in relation to the progress of that dispute, nor the information exchanged with the AMWU and the ETU.

PN101

THE DEPUTY PRESIDENT: It's in the bundle as I recall.

PN102

MR HOWARD: It is, and your Honour has seen a lot of it already, because - - -

PN103

THE DEPUTY PRESIDENT: Yes, there was quite a bit of additional material.

PN104

MR HOWARD: Can I just go to black 339, red 783. This is a second departmental briefing for the AMWU and ETU members, and your Honour has seen this, but if you just page turn it you come to learn that this particular briefing was about a proposed roster model. You will see that at black 344. And then at black 348 there's a discussion about training, and that turns on to 350. Can I just

identify some acronyms at 350 for your Honour, because you will see there's a fair bit.

PN105

THE DEPUTY PRESIDENT: Court book 794.

PN106

MR HOWARD: FCC Manufacturing stands for Flu Cell Culture. That's the technology and the facility being built at Tullamarine. And you will see in these departmental briefings in particular the language of CF3456. They're the classifications.

PN107

Now, you will recall that bargaining was to commence, and if your Honour turns to black 450, red 894, you will see the AMWU and ETU officials being advised about an update that CSL wish to commence bargaining the next year. Now, your Honour is across the chronology after that, being involved in interlocutory matters.

PN108

What your Honour hasn't seen is how bargaining has commenced. Can your Honour turn to black 492, red 936. You will see there's an email there, and this email appears a bit throughout. It's an EA today number 2. So that's the publication about the enterprise agreement, and for example the first sentence there it says:

PN109

Early today we met with the unions to commence bargaining for the Tullamarine enterprise agreement.

PN110

And then it notifies for meetings, so and so forth. Over the page at the last paragraph you will see a hyperlink establishing an iNet page for this. INet is reference to CSL's intranet. And then an establishment of an email, which is easay.au. So a separate email account for (indistinct) negotiations for the purpose of sending questions.

PN111

Now, can your Honour turn to black 500, red 944, and if you leaf through that you will see that it's a document that was presented at bargaining meeting number 2 explaining CSL's proposed agreement and its objects. If your Honour then turns to black 511, red 955, you will see the draft agreement.

PN112

THE DEPUTY PRESIDENT: Sorry, that was court book 955, was it?

PN113

MR HOWARD: Yes. I just ask your Honour to note something that I've volunteered to you earlier at clause 1.3, black 514, red 958, the proposed term of the agreement, which is that it's proposed that CSL negotiate a short term 18

month agreement, lining up, if you do the maths, with the completion of the project in 2026.

PN114

So they're the documents that inform us of the key steps. This is a six year task project. Consultation has some way to go of course, but that's where we're at. With that cook's tour having been completed I wish to call Mr Jonah Smith to give evidence.

PN115

THE DEPUTY PRESIDENT: Thank you. Does Mr Smith have access to these documents?

PN116

MR HOWARD: He is just about to, yes. Mr Smith is being handed the bundle with red page numbers and black. I just note Mr White has also got black. And then the balance of the digital hearing book.

PN117

THE DEPUTY PRESIDENT: Yes. We will navigate our way through I'm sure.

PN118

THE ASSOCIATE: Please state your full name and address.

PN119

MR SMITH: Jonah Smith, (address supplied)

<JONAH CALLUM SMITH, AFFIRMED [10.58 AM]

EXAMINATION-IN-CHIEF BY MR HOWARD [10.58 AM]

PN120

MR HOWARD: Mr Smith, good morning. Could you state your full name to the Deputy President?---Jonah Callum Smith.

PN121

And your position?---Vice President Project Banksia, program leader.

PN122

You've made a witness statement in this proceeding?---Yes.

PN123

Could you turn to the first folder. Not that one, the - and does that one have red numbers down the bottom there?---Yes.

PN124

Could you turn to red page 1112?---Yes.

PN125

Did you find your witness statement there?---Yes.

*** JONAH CALLUM SMITH

XN MR HOWARD

PN126

That's the one with 30 paragraphs in it and referring to eight annexures?---Correct.

PN127

And it's the one that annexes the chronology of events?---Yes.

PN128

And refers to the bundle of information?---Yes.

PN129

Now, that bundle is the one before you at the moment. I understand you wanted to provide some further documents to complete that chronology?---Yes, that's correct.

PN130

If the witness could be provided these. I've provided a copy to - - -

PN131

THE DEPUTY PRESIDENT: The Commission already has a copy, so if you've got a spare that's colour it can be provided to Mr White.

PN132

MR HOWARD: The first document chronologically looks like this one. Have you got that one there?---(No audible reply)

PN133

Can you just explain to his Honour what that document is?---So this document is a series of screen prints of our communication platforms at CSL Seqirus which highlights updates on the business, which we use for town hall updates, enterprise agreement updates or bargaining updates as you can see on the first page. So the first page is CSL NOW, which is our internal communications platform. The third page is our intranet site for Project Banksia with direct access to documents and communications that relate to the enterprise agreement bargaining for this year. And the fourth page is an internal communication sent by email with a link to the latest updates on bargaining.

PN134

I seek to tender that bundle, your Honour.

PN135

THE DEPUTY PRESIDENT: Mr White?

PN136

MR WHITE: No objection.

EXHIBIT #R1 BUNDLE OF DOCUMENTS

PN137

MR HOWARD: Could you identify that one for us.

*** JONAH CALLUM SMITH

XN MR HOWARD

PN138

THE DEPUTY PRESIDENT: Sorry, which one is that?

PN139

MR HOWARD: The one called Tullamarine Operating Model Assumptions. Can you just explain to his Honour what this document is?---So this is a series of slides that summarised discussions we had with ETU and AMWU members in relation to the Tullamarine operating model and proposed roster. So on the second page is the roster that we have proposed for the Tullamarine site where we require 24/7 coverage. This covers at least three consultation meetings with these members, and we receive feedback from the members regarding potential alternative rosters, which we said we were happy to consider. The slides we use to summarise the alternative options from the members, and then we summarise what were the key differences between the options provided and Seqirus' preferred model.

PN140

And when was this version of the document provided?---I'd have to check my chronology.

PN141

Can you give us a month?---I think December 23.

PN142

I seek to tender that pack, your Honour.

PN143

THE DEPUTY PRESIDENT: Mr White?

PN144

MR WHITE: No objection.

EXHIBIT #R2 BUNDLE OF DOCUMENTS

PN145

THE DEPUTY PRESIDENT: Just to be clear it's four pages, is it, with the last page of the document being the comparison between the company's proposed model and the trades model; is that correct?---Six pages from my count.

PN146

What's the final page in the document?---The final page is the option 3.

PN147

I see. Yes. Thank you.

*** JONAH CALLUM SMITH

XN MR HOWARD

PN148

MR HOWARD: And then if you could turn to the third document which is a red email?---So this document is a communication to all CSL Seqirus employees highlighting that we've commenced bargaining for the new Tullamarine

agreement, and that the notice of employee representational rights had been issued to all employees in the scope.

PN149

I seek to tender that email dated 6 February 2024.

EXHIBIT #R3 EMAIL DATED 06/02/2024

PN150

And then the final document is a blue email. Can you just explain to his Honour what that email is?---So this is an email communication to all CSL Seqirus employees following on, and there's number 4 with three previous communications about the progression of bargaining, and this email was to communicate that the meeting for bargaining that was originally scheduled was cancelled by the unions.

PN151

I seek to tender the email dated 7 March 2024.

EXHIBIT #R4 EMAIL DATED 07/03/2024

PN152

Your Honour, may I tender the witness statement of Mr Smith and all its annexures, including the bundle.

PN153

THE DEPUTY PRESIDENT: Yes.

EXHIBIT #R5 WITNESS STATEMENT OF JONAH SMITH

PN154

And all the annexures that you refer to are the documents which were variously - some of which were referred to in your earlier chronology; is that right?

PN155

MR HOWARD: Yes, correct.

PN156

THE DEPUTY PRESIDENT: Are each of those documents separately marked, for example as a particular attachment?

PN157

MR HOWARD: No. You will see that the way Mr Smith's evidence proceeds is his evidence is that he has endeavoured to find all of the information in writing. I will just find the particular paragraph - paragraph 17, where he gives evidence that he prepared a chronology, which is annexure JS1. Then if your Honour turns to that chronology - - -

PN158

THE DEPUTY PRESIDENT: What page is that at?

*** JONAH CALLUM SMITH

XN MR HOWARD

PN159

MR HOWARD: Page 7 of the statement, black 7. Your Honour, I have red 344, but there's two versions of the statement I'm learning. I'm told there's another version of the chronology at red 1118.

PN160

THE DEPUTY PRESIDENT: Yes, I am not sure why that might be, but anyway.

PN161

MR HOWARD: I'm not sure either.

PN162

THE DEPUTY PRESIDENT: I have got it at court book 344.

PN163

MR HOWARD: You will see that Mr Smith has cross referenced in that chronology the documents at the right most column.

PN164

THE DEPUTY PRESIDENT: Yes.

PN165

MR HOWARD: And that right most column Mr Smith's page number references are the black ones that I took your Honour to in opening.

PN166

THE DEPUTY PRESIDENT: Yes.

PN167

MR HOWARD: And accordingly I just seek to tender it as a job lot.

PN168

THE DEPUTY PRESIDENT: The annexure JS1?

PN169

MR HOWARD: And the statement and all of its annexures.

PN170

THE DEPUTY PRESIDENT: Yes. So I'm taking what you are tendering is the witness statement which has annexed to it a chronology, which then refers to all the other documents which are in the bundle as one single document, that being R5.

PN171

MR HOWARD: R5, and there are seven other exhibits as well.

PN172

THE DEPUTY PRESIDENT: Sorry?

*** JONAH CALLUM SMITH

XN MR HOWARD

PN173

MR HOWARD: There are seven other exhibits as well.

PN174

THE DEPUTY PRESIDENT: Yes.

PN175

MR HOWARD: So that would be R5. Your Honour, there's no questions in-chief.

PN176

THE DEPUTY PRESIDENT: Thank you. Mr White.

CROSS-EXAMINATION BY MR WHITE

[11.13 AM]

PN177

MR WHITE: So my learned friend noted this was a six year project. The project was announced, what, in October 2020, or thereabouts, November 2020?---(No audible reply)

PN178

Now, the proceedings are being recorded, so - - -?---Yes.

PN179

- - - you have to answer rather than nod your head, Mr Smith?---Yes.

PN180

And obviously before the project was announced there would have been a significant amount of work done internally in CSL to determine whether or not to even think about developing a new facility; is that right?---Yes.

PN181

And how long did that process take; when was the first time a proposed new facility was the subject of discussion?---I can't answer that question. I joined the project in August 2020. It's the first time I was involved in the project planning.

PN182

And from what you saw when you joined the project you saw that clearly there had been significant amounts of work done?---I saw that there was planning for a potential new site, correct.

PN183

Yes. And the potential new site it's an \$800m facility, isn't it?---That's correct.

*** JONAH CALLUM SMITH

XXN MR WHITE

PN184

It's not a small project by any stretch of the imagination. And it's fair to say, isn't it, that before the company determined to proceed with such a large project that it undertook its own studies as to whether it would be profitable for them to engage in such a large project?---I can't speak to any profitability studies for the project, but the company routinely will look at options and a new site was looked at as an

option, investment in the Parkville site was looked at as an option. There were a number of options to be reviewed.

PN185

Yes. But it's fair to say that if it was determined that the Tullamarine project was going to be unprofitable then it wouldn't have been proceed with. That's fair to say, isn't it?---CSL is not a company that pursues unprofitable projects.

PN186

Indeed, and it's not a lone wolf in that regard, is it, companies exist to make a profit?---Correct, we're a public company.

PN187

And it's not just a profit in one year, but a business has to be sustainable and you look at year on year profit in terms of determining whether a project or an endeavour is to be embarked upon?---Correct.

PN188

In order to achieve the year on year profit, or the year on year growth - does profit equate to growth?---Not necessarily. There are many factors that contribute to profit, and growth is a function of pricing and volume of revenue.

PN189

All right. But in terms of a year on year profit obviously - I think it's obvious, that there has to be a great deal of planning to ensure that you don't end up with a white elephant and that the profit is sustainable on a year on year basis?---I would assume so, but in my role I'm not directly involved in profit and loss analysis for a project like this.

PN190

Well, in any event a large project such as this requires a large amount of planning. That's a statement of the obvious, isn't it?---Yes, that's true, but the planning can vary in scale depending on the phase of the project.

PN191

Planning also, at least at an initial or early stage, involves mapping out what future steps are to be performed or undertaken?---Yes, that's correct, and it also involves mapping out alternative paths or options, so scenario planning.

PN192

And whilst there are many variables which go into whether a company is profitable one such variable, and the fairly important variable is the workforce and the efficiency of the workforce; that's right?---When you say the workforce do you mean - I'm not sure what you mean.

PN193

Well, CSL when it moves into Tullamarine and is functioning fully from 2026 - - -?---So you're referring to the relocation of the workforce, is that correct?

*** JONAH CALLUM SMITH

XXN MR WHITE

PN194

I beg your pardon?---Are you referring to the relocation of the workforce, or the workforce required for the new site?

PN195

I'm talking about the workforce at the new site, 2026 when its fully operational. That's when it's fully operational - - -?---That's correct.

PN196

- - - the company will have obviously done its studies as to whether or not that's a profitable venture to embark on?---Typically, and again I'm not directly involved in the financial analysis of the project, but in the context of a project like this there would be estimates for the amount of people required to operate the facility.

PN197

So once again 2026 when its fully operational there would be a view in the company as to the size of the workforce required to run the operation?---Yes, and we communicated that in July of last year.

PN198

If you could just limit yourself to answering my questions. Secondly, in terms of the workforce planning there would be planning as to the skills required?---Correct, but the planning - there are certain phases where that planning would occur.

PN199

And importantly there is planning in relation to the cost of the workforce?---Correct.

PN200

In terms of all of that planning numbers, skills, cost of the workforce, there would have been internal analyses done by the company to look at how efficient the workforce might be utilised in terms of the production to be undertaken?---I haven't seen any studies of that type.

PN201

All right. But the numbers, skills, cost of the workforce, these are all matters, just to clarify that these are essential as part of forward planning of the company to develop such a large project as the Tullamarine facility?---I would say to operationalise the project, yes.

PN202

Certainly such a large facility, such a large planning component to it, is certainly not done on an ad hoc basis, is it, it's a fairly structured planning process?---Yes, we take a structured workforce planning approach.

PN203

A structured workforce planning approach. What do you say is entailed in a structured workforce planning approach?---It's an analysis of the work drivers to operate a new facility.

*** JONAH CALLUM SMITH

XXN MR WHITE

PN204

The work, sorry?---The work drivers.

PN205

Work drivers?---So what's the work - - -

PN206

What's work drivers?---What is the work being performed. We draw on multiple source of information, in particular the project involves transferring the manufacturing technology for our influenza vaccine from our plant in Holly Springs in North Carolina, USA, and also manufacture of what we call the products of national significance, or PNS products, anti-venoms, Q fever vaccine, products that are unique to Australia. We currently manufacture them at our Parkville site and also our Broadmeadows site, CSL Behring site in Broadmeadows. We need to analyse the physical design of the facility as it translates to the new site. We need to understand the hours of operation required, and we need to understand the scale that that facility would operate at, and that's - they're a number of factors that feed into workforce planning.

PN207

And the cost?---And cost, correct.

PN208

And so the workforce planning, once you've determined what the aim is or the end result, the desired end result, you then set about developing a plan in order to be able to deliver that end result?---Correct.

PN209

And that plan once again in respect of each of the workplace drivers that you talk about is not an ad hoc process, but rather a structured process?---It's a structured process.

PN210

And part of that structured process addresses the anticipated cost of the workforce?---It considers estimates, but when workforce structures are developed there's often factors which aren't determined at that point, which can contribute to the cost. They can include shift patterns, penalty calculations, terms and conditions, and in the absence of an enterprise agreement currently those - those factors are estimates.

PN211

Well, they might be estimates, but in terms of developing internally an assessment of the cost, the labour cost, the workforce costs, the company as part of its structured process sets out what it desires, or what it would consider to be desirable in terms of the workforce drivers?---We determine estimates of cost, and we determine if they're in the range of what we expect for the project.

*** JONAH CALLUM SMITH

XXN MR WHITE

PN212

Well, the workplace drivers, you formed a view, just an estimate, but you formed a view about the numbers of workers you require?---Yes, we have.

PN213

And whilst you describe it as an estimate can I suggest you also formed a view that certain conditions were desirable to apply at the new facility?---When we formed a view on the numbers the conditions were not a large function of the structure, the determination of a number of people.

PN214

When you say conditions weren't a large function what do you mean by that?---As I said there are - there are inputs to the calculation of employee cost, and understanding of the way the site will operate, which includes things like what shift penalties would be applied, what terms and conditions would be incorporated in enterprise agreement, and I said previously they are estimates.

PN215

But estimates nonetheless which reflect the desire of the company in terms of an outcome?---There are estimates that feed into analysis, and assessing at a pretty high level whether that represents a cost that would be - would meet expectations.

PN216

And as planning goes along, as it progresses, those estimates are refined, are they not?---Yes, they're refined. They're refined as things like terms and conditions are confirmed, enterprise agreement is formed. We have to always remain agile to changes in volume or demand, and particularly in the business of flu vaccines it can be quite - quite tumultuous in terms of high and low volume, and if the volume changes we have to adjust our staffing to correct for the change in volume, and we'll continue to do that until we start the facility in 2026.

PN217

Sure. But just sticking with workforce at the moment, and I understand demand impacts on size of the workforce, but just sticking with the workforce where the development of the plan or the progression of the plan moves estimates to the stage of what the company desires or wants. Is that correct? Did I misunderstand you or is that correct?---Sorry, can you repeat the question.

PN218

As I understand you start off with some estimate of labour costs?---(No audible reply)

PN219

Sorry, Mr Smith?---Sorry. Yes. So in a model for assessing a project like this one there are estimates for labour cost, construction cost, qualification cost, many factors, yes.

PN220

And then I think you agreed or volunteered that as things move along things become more refined and initial estimates might become much more defined?---Correct.

*** JONAH CALLUM SMITH

XXN MR WHITE

PN221

And that includes initial estimates as to I think costs relating to shift patterns, or cost in relation to terms and conditions of employment?---So initial estimates are usually quite high level. They will not typically have the granular detail of penalties or terms and conditions. There'd be quite a broad labour cost applied to the model.

PN222

But the plan progresses and things become more detailed, and to use your expression more granular. That's right, isn't it?---That's correct.

PN223

And so as part of the process in this case, once again limiting to workforce and terms and conditions, I assume that that process also entailed a comparison with existing conditions operating at Parkville?---Not to my knowledge.

PN224

All right. So is it correct to say that the workforce planning at what you say is at the general or high level assessment, that started occurring prior to the announcement of the new facility in or about late 2020?---Not to my knowledge.

PN225

Well, to your knowledge did the development of the workforce planning continue after the announcement of the new facility in late 2020?---The development commenced after the announcement. I can't remember exactly when that commenced.

PN226

What do you mean specifically when you say the development commenced after 2020?---So the process I've referred to before of understanding what facility design contributes to the specific facilities required on site, what demand we need to plan for, what shift structures we need to consider, what hours of operation we need to consider, those factors.

PN227

And what terms and conditions of employment?---Not at that stage, not in an early
- - -

PN228

When you say not at that stage - - -?---Not in an early stage.

PN229

Not at an early stage. You say not prior to 2020?---Not prior to 2020.

PN230

All right. In 2021 one would have thought that the workforce planning would well and truly been underway by then, would it not?---Not - I would have to check the chronology, but not to my - I can't remember the date.

*** JONAH CALLUM SMITH

XXN MR WHITE

PN231

Who reports to you in terms - sorry, is your overall responsibility - does your overall responsibility include responsibility for workforce matters such as terms and conditions?---Yes, it does.

PN232

You're not directly responsible yourself for the day to day analysis and development of terms and conditions of employment; is that right?---Not myself, no.

PN233

Whoever is responsible for that do they report to you?---In the project structure, yes, they report to me.

PN234

And who is as part of the project structure responsible for developing this plan about the workforce, numbers, skills, terms and conditions?---So the Human Resources lead for the project is responsible for leading the process.

PN235

Who is that?---That's a gentleman called Joshua Iser.

PN236

Okay?---Then there are functional leads within the project, so we have operational representatives for manufacturing, quality, engineering. They are responsible for analysing the inputs for workforce planning and determining the work - - -

PN237

Sorry, and analysing inputs for workforce planning, that includes terms and conditions of employment to apply?---Not at that stage, no.

PN238

All right. Okay. So the process, the refining, the development of the planning, moving from the general to the more granular, is Mr Iser the person who is primarily responsible for that?---He's responsible for leading that process.

PN239

For leading that process. All right. And he reports to you?---He reports to me in a matrix relationship in the project structure. He reports directly to the global HR lead for operations and quality, CSL Seqirus.

PN240

And those reports include, do they not, what he would consider to be desirable in terms of terms and conditions of employment to apply?---At a point in the process, but as I said the initial focus is it's purely an operational assessment, how to resource the plant.

*** JONAH CALLUM SMITH

XXN MR WHITE

PN241

All right. And then the point in the process Mr Iser would be expected to provide to both you and the global HR his proposals in relation to terms and conditions to

apply; is that right?---He would be expected to present an understanding of potential options, and what would be expected of a facility like that in Melbourne.

PN242

Yes. Including terms and conditions of employment?---Correct.

PN243

Has he provided reports to you in which he has set out his views about the appropriate terms and conditions of employment to apply at the Tullamarine site?---The terms and conditions that are proposed are what's set out in the draft enterprise agreement for Tullamarine.

PN244

That's not the question I asked, Mr Smith?---So Joshua Iser presented a draft agreement proposed for the site, and that's what we have issued for employees to -
- -

PN245

All right. And you say that that's the first time that Mr Iser reported to you and the global HR manager what he considered to be terms and conditions desirable to apply at Tullamarine?---No, I don't say that it's the first time he reported that.

PN246

When was the first time?---Late last year.

PN247

So your evidence to the Commission is that the terms and conditions to apply only came to your attention late last year?---Correct.

PN248

And do you have the report from Mr Iser accessible to you where he sets out those - - -?---I don't have it accessible. It's not in these documents.

PN249

I know. All right. Did Mr Iser in his report to you late last year in his recommendations set out a comparison between the desired conditions to apply and those that applied at Parkville?---He presented a summary of the proposed conditions, and he presented a reference of the current conditions at Parkville.

PN250

Are you able to be more accurate in terms of the date that Mr Iser made that report to you?---Not right now. I don't have the detail in front of me.

PN251

You're not able to recall?---You're asking for a specific date, I don't have the specific date.

*** JONAH CALLUM SMITH

XXN MR WHITE

PN252

So once that report was given to you is it to you to approve Mr Iser's recommendations?---It's not my decision alone. We have a committee within CSL Seqirus with more senior leaders who would review options.

PN253

And when did that occur?---I'd have to - I don't have the date in front of me.

PN254

In terms of the process, so I can have a little bit of understanding, there would have been a written report from Mr Iser with references to past and current conditions, or past and current and proposed future conditions; yes?---There is a report or a summary of the enterprise agreement. We don't expect our leaders to read every page of a draft enterprise agreement, and it summarises anything which is to remain the same in the draft agreement versus Parkville, and if there were any changes there would be - any significant changes, they would be referred.

PN255

All right. Do you have a laptop with you, is your laptop in court today?---It is, yes.

PN256

If you were able to have access to your laptop would you be able to provide the date on which Mr Iser provided his first report to you about proposed terms and conditions?---Potentially. I would have to have a look.

PN257

Your Honour, might I ask that Mr Smith have an opportunity to look on his laptop to see if he's able to determine that date?

PN258

THE DEPUTY PRESIDENT: Mr Howard, do you have anything to say?

PN259

MR HOWARD: I can get instructions on the date of when that presentation was made.

PN260

THE DEPUTY PRESIDENT: I think the evidence is that a summary document was provided.

PN261

MR HOWARD: Late last year.

PN262

THE DEPUTY PRESIDENT: Yes, late last year, and it might assist to get a specific date. So I see no reason why Mr Smith might not be provided with an opportunity to check his records.

*** JONAH CALLUM SMITH

XXN MR WHITE

PN263

MR HOWARD: Of course. How would you like to facilitate that? I was just going to volunteer that if we can find it for him.

PN264

THE DEPUTY PRESIDENT: Well, I prefer Mr Smith to be able to confirm the document he's referred to in his evidence as having been received from Mr Iser is in fact the document, and the date of that document. Mr White, are you content for the discovery of the date of that document be provided by the respondent, or would you prefer Mr Smith to check his records?

PN265

MR WHITE: I would prefer Mr Smith to check it, because if he goes to the document he may see a number of other things about which he's able to give evidence.

PN266

THE DEPUTY PRESIDENT: Yes, I am going to ask Mr Smith to do that. Thank you. Shall we do that now?

PN267

MR WHITE: I am content with that, your Honour.

PN268

THE DEPUTY PRESIDENT: All right. We will adjourn for 15 minutes. Will that be sufficient do you think, Mr Smith?---It should be.

PN269

Anything else before we adjourn?

PN270

MR WHITE: No, thank you, your Honour.

PN271

THE DEPUTY PRESIDENT: Thank you.

<THE WITNESS WITHDREW [11.41 AM]

SHORT ADJOURNMENT [11.41 AM]

RESUMED [11.55 AM]

<JONAH CALLUM SMITH, RECALLED [11.55 AM]

CROSS-EXAMINATION BY MR WHITE, CONTINUING [11.55 AM]

PN272

MR WHITE: Thank you, your Honour. Mr Smith, were you able to locate the document that you were describing to his Honour?---I wasn't able to locate the document.

*** JONAH CALLUM SMITH

XXN MR WHITE

PN273

All right. In paragraph 28 of your statement, Mr Smith, which is in my court book 1116 - - -

PN274

THE DEPUTY PRESIDENT: Which paragraph, sorry?

PN275

MR WHITE: Paragraph 28, your Honour. You refer to an article which appeared in The Australian newspaper, the title of which was 'Industrial bastardry'. Have you got your statement there in front of you?---Yes.

PN276

And you attach as annexure JS6 a copy of that article. That's in my court book 1206, your Honour. That article refers to a document which was produced in-house at CSL Seqirus about proposed conditions of employment; is that right?---The document's a confidential document, I can't disclose information.

PN277

I didn't ask that question?---Can you repeat the question, please.

PN278

The document that the article refers to was a document prepared in-house about proposed conditions, and the approach to conditions that would apply at Tullamarine.

PN279

MR HOWARD: Your Honour, I object to the question. It's eliciting information about the contents of a document that's confidential. It's not a question that identifies the document, but it's asking about its content, which I object to.

PN280

MR WHITE: I will take it a different way. In the document at court book 1208 the article says as follows:

PN281

In a statement a CSL spokesman said, 'The work in progress document was produced in 2020 outlining a range of options for discussion as part of a potential enterprise agreement for a new facility to be opened in 2026.'

PN282

Do you understand that is in the article that you attached to your statement?---I understand the article says that, yes.

PN283

All right. Is what is reported to have been said by a CSL spokesman there correct?---I cannot disclose any contents of that document.

*** JONAH CALLUM SMITH

XXN MR WHITE

PN284

Is it correct that it was a work in progress document produced in 2020?---The document's confidential, I can't disclose any contents.

PN285

THE DEPUTY PRESIDENT: I don't think that was the question.

PN286

MR HOWARD: Your Honour, again this witness is subject to obligations of confidence.

PN287

THE DEPUTY PRESIDENT: The last question as I understand it didn't ask the witness to disclose the content of the document.

PN288

MR HOWARD: That's how I read the question.

PN289

THE DEPUTY PRESIDENT: Can you repeat the question, Mr White.

PN290

MR WHITE: The question I thought I asked was, was the CSL spokesman correct when he is quoted or she is quoted as saying, 'The work in progress document was produced in 2020.'

PN291

THE DEPUTY PRESIDENT: That's not asking disclosure of content.

PN292

MR HOWARD: It's not the question he was asking. I withdraw the objection if that's the question.

PN293

THE WITNESS: Are you referring to the top of page 1208?

PN294

MR WHITE: Yes?---Yes, that's what this spokesperson said.

PN295

And was the spokesperson when they said that the work in progress document was produced in 2020 correct?---That the document was produced in 2020?

PN296

Yes?---That's what they've said, correct.

PN297

That's not the question I asked, Mr Smith?---Sorry, repeat the question, please.

*** JONAH CALLUM SMITH

XXN MR WHITE

PN298

Was the spokesman correct that the document, the work in progress document, was produced in 2020?---I thought I just confirmed that.

PN299

THE DEPUTY PRESIDENT: No. To your knowledge is that statement correct?---As far as I'm aware, yes.

PN300

MR WHITE: Was the spokesman also correct when publicly he or she said that the document outlined a range of options for discussion as part of a potential enterprise agreement for a new facility to be opened in 2026?---As far as I'm aware that's what the spokesperson said, correct.

PN301

THE DEPUTY PRESIDENT: Again that's not the question that was asked. Mr White wasn't asking you whether the statement was made. I think the question was whether to your knowledge that statement was correct. Again you're not being asked to disclose the content?---Well, to my knowledge the spokesperson was correct.

PN302

MR WHITE: And can I suggest to you - sorry, the next paragraph attributed to the spokesman is this:

PN303

The document was not endorsed by the leadership team, although some options have since progressed.

PN304

Do you see that?---I can see that, yes.

PN305

Now, were you on the leadership team when this document was produced?---I think I had just joined the leadership team. I would have to check that.

PN306

Well, to your knowledge the leadership team nonetheless considered the document which is referred to in the article that you append to your statement; is that right?---I can't disclose what the leadership team did with that document.

PN307

That's not the question I was asking, Mr Smith?---Repeat the question, please.

PN308

To your knowledge the leadership team considered the document, but did not endorse it. Is that correct?---That's correct. That's what the spokesperson has said.

*** JONAH CALLUM SMITH

XXN MR WHITE

PN309

All right. That's what the spokesperson said, and is the spokesperson correct when they say that?---That the document was considered and not endorsed?

PN310

Yes?---Correct.

PN311

And were you part of the leadership team which considered the document?---I believe I was, but I would have to verify the timing.

PN312

All right. The spokesperson, the spokesman is also quoted as saying after the document not having been endorsed the following, 'Although some options have since progressed.' Do you see that?---I can see that, yes.

PN313

Was the spokesman correct - I assume it was a he when we say spokesman - correct when he said that some options have since progressed?---They may be, but I'm not - I'm not aware of what those options would be.

PN314

And so there's a document in 2020, a work in progress document it's described - just going back a little bit to be more precise - was the document considered, but not endorsed by the leadership team at or around the time it was produced?---I think we've already - as the spokesperson has said it was considered but not pursued.

PN315

That's not the question I asked?---Sorry, could you repeat the question, please.

PN316

Was the document considered at or around about the time that it was produced?---I can't remember the timing of it being considered versus it being produced.

PN317

As a matter of normal course Mr Iser would - well, does he produce reports to you regularly, to the leadership team regularly?---On occasion. He does it as part of his role, yes.

PN318

And the leadership team considers reports as and when they're produced, I expect?---Correct.

PN319

So it's a fair inference, Mr Smith, that the leadership team considered the document that was produced shortly after the document was provided to it?---Well, I'm not sure what shortly after means, but - - -

*** JONAH CALLUM SMITH

XXN MR WHITE

PN320

Well, in a month or so?---Not necessarily. There can be options, proposals, reports prepared which may not be looked at for a number of months.

PN321

All right. So this document talks about intentions of CSL in relation to - once again I'm backtracking, sorry, I just want to clarify a couple of matters. You see the spokesman said, 'Some options have been progressed.' What options that were contained in the document were progressed by CSL?---I can't disclose any options that are contained in that document.

PN322

I'm asking not about options that might have been considered, but ones which have been progressed. What options were progressed?---I can't answer that question right now. I don't know what they - which ones would have been progressed.

PN323

You don't know?---Not off hand, no. I don't have the information in front of me.

PN324

You put this document in evidence. Are you able to find the documents over the lunch break to see which options were progressed?---I explained earlier we have issued a draft enterprise agreement for bargaining. That contains all of our proposed conditions. I can't disclose if any of those relate to the document that you're referring to.

PN325

All right. After the document was considered by the leadership team it would beggar belief, would it not, that no further document about terms and conditions was produced until late 2023. That's correct, isn't?---There are documents produced with options routinely as part of conducting business.

PN326

And routinely considered by leadership team?---Routinely considered by leadership team.

PN327

And in terms of terms and conditions of employment routinely contain the desires of the company in respect of the terms and conditions to apply?---The terms and conditions are one element of the overall workforce conditions being considered, correct.

*** JONAH CALLUM SMITH

XXN MR WHITE

PN328

And what I have suggested to you is that it beggars belief that between 2020 and late 2023 there was no further document produced by the leadership team in respect of CSL's proposed terms and conditions of employment at the Tullamarine plant?---I'm not saying there wasn't any further document produced. There may have been documents produced. It's a long project, there's lot of options have to consider, the business environment changes, so it would be unusual not to look at some in between.

PN329

Of course. It stands to reason that the planning process, which I've commenced my cross-examination talking to you about, evolved?---Correct.

PN330

And to use your language it became more granular?---Correct.

PN331

And reports were made about that by Mr Iser to you?---Correct.

PN332

And to the leadership team?---Correct.

PN333

And the leadership team decided on options as and when they were presented to you?---Correct, through the course of the project.

PN334

Yes. And that is from the course including from the document that was the subject of the newspaper article being produced in 2020?

PN335

MR HOWARD: Your Honour, it's asking questions of content, which the witness has been very clear he cannot disclose.

PN336

THE DEPUTY PRESIDENT: Thanks, Mr Howard. I just want to summarise where I understand we're at. The evidence is that there was likely to have been a series of documents produced between the original document that's referred to in The Australian article. I think that concession has been made, it would be unusual if such documents hadn't been produced. You might request the Commission to draw an inference that there was detail progressively developed between then and when the company put its draft enterprise agreement on the table. Sorry, go on.

PN337

MR WHITE: No, I was trying to go beyond inference, but not to absolute content
- - -

PN338

THE DEPUTY PRESIDENT: Yes.

PN339

MR WHITE: - - - by saying that part of the development of the granular detail meant the receiving and approving of various reports as the planning progressed.

*** JONAH CALLUM SMITH

XXN MR WHITE

PN340

THE DEPUTY PRESIDENT: Yes. All right. Ultimately if we accept that the applicant is going to decline to disclose confidential information that may have been contained - he might argue as confidential information that was contained in that report - you will make submissions about what I should and shouldn't do with

that information. I mean I am not wanting to prevent further questions being asked, but I am just wondering beyond what's been established from your perspective what else needs to be established in relation to that element of the case.

PN341

MR WHITE: Well, the opportunity for Mr Smith to answer so I don't have to ask the Commission to draw so many inferences.

PN342

THE DEPUTY PRESIDENT: Okay.

PN343

MR WHITE: And if I stray into content no doubt my learned friend will be on his feet very quickly, but it's the process and the planning process, and the move towards granular detail.

PN344

THE DEPUTY PRESIDENT: I agree even at this preliminary stage, Mr White, that it would not normally be the case that a large organisation would progress a multi million dollar project without putting a lot of hard work into planning. I know this from my personal experience. So you won't need to convince me of that, and that would include, in my experience, the kind of information that the applicant has already - - -

PN345

MR WHITE: The respondent.

PN346

THE DEPUTY PRESIDENT: Sorry, the respondent. Sorry, thank you. Mr Howard, I think Mr White is seeking to continue his questions, but accepts that if it strays into a question about content you're going to object.

PN347

MR HOWARD: Yes, I am, and I'm going to - I don't know if my friend is going to call any of this, but I just put on record now any document that's called for needs to be reviewed for its deliberative nature, which all of this seems to be, its confidentiality, its privilege, et cetera, et cetera. I have never heard this Commission ordering the disclosure of deliberative considerations in a bargaining context or a proposal context. So I just want to flag that now.

PN348

THE DEPUTY PRESIDENT: Okay. Thank you. Mr White, continue.

PN349

MR WHITE: Thank you, your Honour. I was talking about the progression of the planning and the move from the high level to the granular - - -?---Yes.

*** JONAH CALLUM SMITH

XXN MR WHITE

PN350

- - - and reports to you and to the leadership team about terms and conditions of employment the company desired to have applied at its new Tullamarine facility. Do you understand that?---Yes.

PN351

And I have suggested to you, and I think you've agreed, that this is an ongoing process?---Correct.

PN352

And that Mr Iser made reports, if not regularly, during the course of the time from 2020 to late 2023 as and when required?---Yes, he has on occasion, correct.

PN353

On occasion. How many occasions?---I couldn't tell you off hand.

PN354

What, a monthly report?---No.

PN355

In terms of the conditions of employment which the company sought to have applied, that is at the Tullamarine site, was it a progressive process of the leadership team considering proposals made by Mr Iser and deciding to accept or reject?---It's a progressive process, yes.

PN356

And is it the case then in the course of that progressive process that you and the leadership team accepted Mr Iser's proposals in relation to terms and conditions to apply?---Yes, that's correct.

PN357

Okay. And when was the first time that you and the leadership team adopted a Mr Iser proposal in relation to one or any terms and conditions the company wanted to apply at Tullamarine?---I can't recall that sort of information from my memory. I would have to check my records.

PN358

But it's fair to say, isn't it, Mr Smith, that it was a progressive process?---Yes, I've explained already it's a progressive process.

PN359

All right. And was part of that process a comparison between the conditions which applied at Parkville and those which the company desired to apply at Tullamarine?---That may occur if there is a difference in conditions.

PN360

Is your evidence - - -

*** JONAH CALLUM SMITH

XXN MR WHITE

PN361

THE DEPUTY PRESIDENT: Sorry. I thought the earlier evidence was, and I'm going to put this to you, that Mr Iser had provided a summary of the proposed

conditions and you didn't expect members of the senior leadership team to read an entire copy of the enterprise agreement?---No. So - - -

PN362

Sorry. And as part of that summary there was also some reference to the existing terms and conditions at Parkville. Is my recollection incorrect?---No, that's correct. So Mr Iser would normally provide a summary, as you explained just then. The enterprise agreement, the full document would not normally be expected to be read by leadership, but there would be a summary of key points, and the key points may not be differences either. Sometimes there are just particular conditions which may be more topical, or more interesting for - or of concern for the leadership.

PN363

MR WHITE: For example?---I can't remember. I mean I think I've already mentioned a couple before. So terms and conditions like shift penalties, you know, and that's - and I use that example because it's a facility that will operate 24 hours seven days a week, which is different to the way Parkville operates.

PN364

Any other examples?---Not off the top of my head, no.

PN365

As part of the planning process, once again in terms of the workforce, the terms and conditions of employment, part of Mr Iser's report referred to cost of the proposals?---It may, it may not.

PN366

Well, to the best of your recollection did any of his reports refer to the cost of the proposals either in the future or compared with labour costs at Parkville?---I expect in some of the reports there was reference to cost, on occasion.

PN367

Yes, all right. So is it only Mr Iser who was responsible for the development of CSL plans or the terms and conditions to apply; were there any other officers of the company who have part of that task?---I explained before. So Mr Iser leads the process, performing into an enterprise agreement. There are other members of the project team who are responsible, including myself, responsible for determining the operating model, shift structures, to feed into the content of the draft enterprise agreement.

PN368

Over the lunch break are you able to look on your phone, or if you have access to a computer, to look at the reports that Mr Iser produced to you and the leadership team after 2020 in relation to proposed terms and conditions of employment to apply?---I won't have access to those reports on my phone.

*** JONAH CALLUM SMITH

XXN MR WHITE

PN369

Will you have access to a computer? I think Mr Iser is in court and has a computer. Are you able to use his computer?---I'm not sure, because we - the files

that I have access to are usually through enterprise business systems, and I can't access this, and I'm not sure if I can access through another user's - - -

PN370

I'm sure Mr Iser's computer would have access to the reports he produced though, wouldn't he?---Potentially.

PN371

Are you able to check using Mr Iser's computer to determine the number of reports he produced to you and the leadership team after 2020 in which terms and conditions of employment were raised?---I can have a look.

PN372

MR HOWARD: Is that a call?

PN373

THE DEPUTY PRESIDENT: Mr White, are you seeking that Mr Smith confirm the number of reports he received in the period between production of the documents being variously referred to in 2020 and then late 23?

PN374

MR WHITE: I am.

PN375

THE DEPUTY PRESIDENT: I just wonder whether a lunch break might be sufficient to do that, but if Mr Smith is able to - is that the request?

PN376

MR WHITE: Where terms and conditions of employment are the subject of the report.

PN377

MR HOWARD: I object to the call. It's fishing. It's a category of discovery. I am not clear of its relevance. It is not relevant. Your Honour, we have convened today to understand what, if anything, my client can do in the future – this is arbitration - in the future, not the past. How we can assist this two unions understand the proposal. Why are we engaging in this fishing exercise from 2020? This is a consultation dispute. We are here to understand and resolve the dispute about what we can give these unions.

PN378

THE DEPUTY PRESIDENT: I understand that, but I also understand the unions are seeking to establish whether the company has met its obligations to date in relation to the provision of relevant information to employees, and what might be important to that is identifying whether there was information and whether decisions had been made at an earlier time, as I understand, on which information may not have been provided.

*** JONAH CALLUM SMITH

XXN MR WHITE

PN379

MR HOWARD: How is that of any utility to your Honour and to this arbitration when a full draft agreement has been disclosed - - -

PN380

THE DEPUTY PRESIDENT: I know, you can make that submission in due course, Mr Howard. I understand that argument that you're putting. The union is seeking to establish whether obligations to provide the relevant information have been provided to this point. I understand you're saying, well, to the extent there may not have been - and you're not making that submission - any doubt about what the company had decided it would seek has been resolved through the provision of the draft agreement.

PN381

MR HOWARD: Correct. So the production request turns on what's directly relevant - - -

PN382

THE DEPUTY PRESIDENT: It's not a production request, I think it's simply a request to identify were there and how many proposals may have been received between 2020 and late 2023, if I'm correct.

PN383

MR WHITE: Yes, and the date of those, and dealing with the terms and conditions of employment.

PN384

THE DEPUTY PRESIDENT: The date of them as well?

PN385

MR HOWARD: Yes, well I can identify the dates of presentations.

PN386

THE DEPUTY PRESIDENT: You're talking about presentations to employees as opposed to what's - - - ?

PN387

MR HOWARD: No, I'm not.

PN388

THE DEPUTY PRESIDENT: Okay.

PN389

MR HOWARD: What I understand the call to now be is that Mr White is seeking the dates of presentations Mr Iser made to the leadership group concerning terms and conditions of employment at Tullamarine.

PN390

MR WHITE: Yes.

*** JONAH CALLUM SMITH

XXN MR WHITE

PN391

MR HOWARD: I can provide those dates.

PN392

THE DEPUTY PRESIDENT: Mr White?

PN393

MR WHITE: I also want to know what the terms and conditions of employment were referred to. Holidays might have been one, long service leave.

PN394

THE DEPUTY PRESIDENT: You're getting into the content now, aren't you?

PN395

MR WHITE: Well, the subject matter rather than the content of any particular clause.

PN396

THE DEPUTY PRESIDENT: All right. I'm just going to ask the witness to leave.

<THE WITNESS WITHDREW

[12.25 PM]

PN397

THE DEPUTY PRESIDENT: It might, perhaps, assist to have a discussion about where all of this is heading in terms of the relevance of this because it seems to me that it may be relevant if I were to find that, at each point in the process of progressive refinement of the terms and conditions, there was an obligation for the employer to disclose that information along the way.

PN398

MR WHITE: So in broad terms, your Honour, clause 1.8.3 requires consultation.

PN399

THE DEPUTY PRESIDENT: Yes, I understand that, and in accordance with 1.8.6.

PN400

MR WHITE: Yes, but the content of that, we say, includes clearly – and we raised it as a concern at all times - - -

PN401

THE DEPUTY PRESIDENT: But if there's an iterative process of refining from a broad estimate to a much narrower proposal, is your submission that, at each point of that refinement, there is an obligation to disclose the information?

PN402

MR WHITE: Yes, because the definition of consultation and the very nature of consultation – and that's contained in 1.16, the definition – means:

*** JONAH CALLUM SMITH

XXN MR WHITE

PN403

Providing employees and, where requested, their representatives with relevant information and a bona fide opportunity to influence and contribute to the decision-making process.

PN404

THE DEPUTY PRESIDENT: Isn't it tied to the decision?

PN405

MR WHITE: There is a decision once already, yes, and discuss the decision and the decision encompasses a range of things including the change, how employees will be affected by the change, which of course includes terms and conditions of employment.

PN406

THE DEPUTY PRESIDENT: But, in turn, to make good your argument in relation to requiring Mr Smith to identify all of these dates, if he were to come up with, 'Well, there were ten documents produced over the course of 2022/2023', why do I need to know that, 'Well, this document referred to hours of work', or, 'This document referred to rates of pay', and, 'This document referred to penalty rates.' Even if we're talking at the subject matter level, how does that advance the case beyond my being satisfied that, yes, there were progressive proposals in relation to terms and conditions of employment which ultimately led into the draft agreement?

PN407

MR WHITE: But which included these types of matters.

PN408

THE DEPUTY PRESIDENT: But it would beggar belief if they didn't.

PN409

MR WHITE: I know, your Honour, but I'm a little bit gun shy to ask you to infer that. I'm giving Mr Smith the opportunity to tell you that. It would beggar belief and that's why the idea that the only document was 2023 beggar belief.

PN410

THE DEPUTY PRESIDENT: I don't think he said that, I think he said that was the point at which the company had finalised the development of its enterprise agreement proposal.

PN411

MR WHITE: My recollection was he said that was the first report.

PN412

THE DEPUTY PRESIDENT: No, but he's since accepted that there have been progressive refinement of the broad estimates which might have been in place in 2020, which no doubt have been progressively refined across a range of matters, including the technology, the design, et cetera.

PN413

MR WHITE: Your Honour, I shouldn't say gun shy.

PN414

THE DEPUTY PRESIDENT: No.

PN415

MR WHITE: Not gun shy, but if your Honour accepts all of that then I don't have to proceed with this. But, at the moment, I need that evidence that there were progressive considerations and acceptance of various terms and conditions. Now, of course it stands to reason that there were, it's just part of the iterative process, but it seems to have taken a long time for Mr Smith to fully accept that iterative process.

PN416

THE DEPUTY PRESIDENT: Well, I'll ask Mr Howard. Mr Howard, do you take issue with the summary I've provided? That between 2020 and late 2023 – and I think it's been conceded by Mr Smith – there were various proposals brought forward, they were considered which ultimately contributed to the draft enterprise agreement that was placed into the hands of bargaining representatives.

PN417

MR HOWARD: No, I don't agree with that summary.

PN418

THE DEPUTY PRESIDENT: All right.

PN419

MR HOWARD: The sum of his evidence has been, to date, that there was – using his language – a focus in 2020 on very different things. The construction, so forth. His evidence-in-chief is that there were two significant stops, pauses, throughout that which I will come to in reply. So this project has been paused twice, I think the majority of 2022 it was being rescoped. His evidence has been – and he's been shut down trying to explain it – that at July 2023 at phase two, employees were given a presentation about the numbers and then phase three, there was a mapping exercise. So I don't accept that characterisation of his evidence. His evidence has been, from the beginning of his cross-examination, that, as at the start of this announcement, there were other things on the company's mind.

PN420

THE DEPUTY PRESIDENT: I'll put to you, Mr Howard, that it would be straining credibility to suggest between 2020 and mid-2023, the employer didn't turn its mind to the detail of the terms and conditions.

PN421

MR HOWARD: Can I take you to the chronology?

PN422

THE DEPUTY PRESIDENT: No, no. We've been through the chronology; it's not referred to the proposals that may have been progressively developed.

PN423

MR HOWARD: So, can I quote:

PN424

In around early 2021, CSL experience budgetary issues regarding Project Banksia. This resulted in the project being rescope. The business needed to find ways to modify the scope of the project while sticking to the existing timeline. This resulted in a number of changes being made to the project's scope which were subsequently explained to employees in the second half of 2021.

PN425

That's nine months. I go on:

PN426

The majority of 2022 was focused on completing the basic design and detailed design phases for the revised scope at the Tullamarine site. During this phase, there was no significant new information to be shared as the design process was completed.

PN427

Now, I take issue with your Honour's characterisation that it strains credibility because this thing needs to be designed, it needs to be - - -

PN428

THE DEPUTY PRESIDENT: I don't need to be lectured about projects, Mr Howard.

PN429

MR HOWARD: Of course, so that has been his evidence. Now, his evidence to date has been that there's been a process of refinement, clarification, mapping, but my interpretation of his evidence is that this is 2023.

PN430

THE DEPUTY PRESIDENT: All right, so you're objecting to my requiring him to identify when proposals may have been advanced by Mr Iser.

PN431

MR HOWARD: Yes, and I can absolutely assist my friend by providing him with the dates of reports that Mr Iser presented to the leadership group about Ts and Cs, absolutely.

PN432

MR WHITE: And what Ts and Cs? Not the content of them, but what ones.

PN433

THE DEPUTY PRESIDENT: Well, I'll - - -

PN434

MR HOWARD: I'll have to – I'm sort of shooting in the dark.

PN435

THE DEPUTY PRESIDENT: Yes.

PN436

MR HOWARD: Just to clarify, I've not seen any of this and we haven't asked for instructions, of course, so I can't necessarily give you a complete instruction on my feet.

PN437

THE DEPUTY PRESIDENT: Well, I'll tell you what I am going to require because I understand your concern about noting the detail of the Ts and Cs. I don't know that I'm particularly interested in understanding whether it was hours of work, whether it was rates of pay, penalties, redundancy agreement, but I would be assisted in understanding dates on which proposals regarding Ts and Cs were made and that's what I'll require.

PN438

MR HOWARD: I hear the court.

PN439

THE DEPUTY PRESIDENT: Thank you.

PN440

MR WHITE: So where does that leave us now with Mr Smith? We'll deal with that over lunch and Mr Howard - - -

PN441

THE DEPUTY PRESIDENT: We can deal with that over lunch, it just depends on whether we break, whether you want to ask some more questions and return to that issue or whether you'd prefer to break now. Will now be a useful time to break for lunch, Mr White?

PN442

MR WHITE: I think – I'm just trying to look at how much further I was. Now is as good a time as any, I think. I've got some time to go on this topic.

PN443

THE DEPUTY PRESIDENT: Well, given that there might be a little bit of work to do, I just wonder whether we return at 1:30. Mr Howard.

PN444

MR HOWARD: I can accommodate that, certainly.

PN445

THE DEPUTY PRESIDENT: Mr White?

PN446

MR WHITE: Thank you, your Honour, yes.

PN447

THE DEPUTY PRESIDENT: All right. Obviously, the normal rules about the applicant not discussing his evidence apply, which I'm sure both parties are aware of.

PN448

MR WHITE: Yes, we're content with that.

PN449

THE DEPUTY PRESIDENT: Back at 1:30.

PN450

MR WHITE: Thank you, your Honour.

LUNCHEON ADJOURNMENT

[12.36 PM]

RESUMED

[1.34 PM]

PN451

THE DEPUTY PRESIDENT: Just need to tidy up where we were before lunch in terms of that request.

PN452

MR WHITE: Yes, thank you, your Honour. So, before lunch Mr Smith was going to determine if there were reports from Mr Iser to him and the leadership team in relation to terms and conditions, and I think - - -

PN453

THE DEPUTY PRESIDENT: Yes, and I understand Mr Howard undertook to enquire into that.

PN454

MR HOWARD: Yes. Mr Smith's evidence was he wasn't able to do that himself, so I did seek instructions on behalf of the respondent. Now, using the terms of the request as liberally as I can, being the extent to which Mr Iser provided presentations about proposed or potential terms and conditions at Tullamarine, he did so on six occasions. All of these presentations were to a global IR committee and they are on these dates: 13 July 2022, 30 August 2022

PN455

THE DEPUTY PRESIDENT: Hang on, 30 August 2022, yes.

PN456

MR HOWARD: 11 October 2023, 25 October 2023, 29 November 2023, and 18 January 2024. I used terms and conditions in a liberal sense to include matters such as whether there is going to be an enterprise agreement, it's scope, et cetera.

PN457

THE DEPUTY PRESIDENT: And some of the, potentially, content as well. Some of the particular.

PN458

MR HOWARD: Some particular terms and conditions?

PN459

THE DEPUTY PRESIDENT: Yes.

PN460

MR HOWARD: Yes, correct. That's right. I've used it in that way.

PN461

THE DEPUTY PRESIDENT: Yes.

PN462

MR HOWARD: Thank you, your Honour.

PN463

THE DEPUTY PRESIDENT: Thank you.

<JONAH CALLUM SMITH, RECALLED [1.36 PM]

CROSS-EXAMINATION BY MR WHITE, CONTINUING [1.36 PM]

PN464

MR WHITE: Thank you, your Honour. Are you on the global IR committee, Mr Smith?---Yes, I am.

PN465

When you listened to my learned friend, Mr Howard, read out those dates, that accords with your recollection such as you have?---With the description that he used, yes.

PN466

Do you recall, now those dates have been brought to your attention, that the global IR committee accepted recommendations that have been made by Mr Iser?---I can't remember the topic of each of those meetings.

PN467

Right?---I mean, ultimately, the most recent meeting was what lead us into starting bargaining with the draft agreement.

PN468

All right. Now, if you go back to the more general board plan or planning for the move to Tullamarine, and part of that plan, is it not, is that all current employees will have an opportunity to move to Tullamarine and continue to work?---As much as we can provide, but we have communicated that there is a smaller number of employees required at the new site.

PN469

All right. Subject to the difference in numbers, the intention – and I'm not going to hold you to specific numbers and groups – but the intention is for CSL to continue with its current employees in a gradual transition process?---Correct.

PN470

THE DEPUTY PRESIDENT: Just on that, can I just get a sense – I know numbers have been quoted – but in rough terms, the existing workforce at Parkville prior to this change was approximately 500?---Around that figure. It is in one of the attachments.

*** JONAH CALLUM SMITH

XXN MR WHITE

PN471

Yes, and the numbers required for Tullamarine?---Around 400.

PN472

Okay, thank you.

PN473

MR WHITE: To the extent that current Parkville employees would move to Tullamarine whilst the enterprise agreement now being bargained was operative, though clearly people who would be affected by the terms and conditions that are currently being bargained?---Yes.

PN474

Given the dates for the timing and perhaps given the different length of the agreement that's being bargained for, it could be a very significant number of current employees at Parkville who would be covered by the agreement now being bargained for?---I'm not sure what the definition of significant is, but yes, a number of employees, and that's one of the reasons why we're pursuing an 18-month agreement.

PN475

Well, if there was a longer agreement, then clearly more employees than might otherwise be the case would be affected by the terms and conditions currently being negotiated; that's right, isn't it?---Well, with the 18-months, the majority of our employees will be on at Tullamarine by then.

PN476

Yes, all right. It depends. I mean, there's no guarantee the date by which negotiations will have completed for the agreement and then there's the approval process so we might be looking, in any event, at the end of 2025 at least?---Potentially. There's always potential to drift, yes.

PN477

And that's just an 18-month agreement. Any longer then, as you say, the majority of employees will have transitioned. Sorry, Mr Smith?---Correct.

PN478

THE DEPUTY PRESIDENT: Don't know that the Commission can be held up as the reason for drift these days?---I agree.

PN479

MR WHITE: No.

PN480

THE DEPUTY PRESIDENT: No, I might be grateful for the opportunity to recuse myself from dealing with the application for approval of that agreement if and when it comes to the Commission.

PN481

MR WHITE: Well, your Honour, all I can say is that lies entirely in your hands now.

*** JONAH CALLUM SMITH

XXN MR WHITE

PN482

THE DEPUTY PRESIDENT: It does. As national practice lead, I will push that elsewhere, I can assure you of that.

PN483

MR WHITE: So I also take it, Mr Smith, that during the course of the progression of the plan from the general to the granular about workplace terms and conditions, quite apart from what might be negotiated with specific employees at Tullamarine, you were aware of your consultation obligations under the current Seqirus enterprise agreement?---Yes.

PN484

Did you also understand that consultation, specifically within the meaning of this agreement, provides as follows - - -

PN485

MR HOWARD: Your Honour, he can't give legal constructions to meanings of an agreement.

PN486

MR WHITE: Well, perhaps wait until I've asked the question.

PN487

THE DEPUTY PRESIDENT: Yes.

PN488

MR WHITE: Have you got the current agreement with you?---It is here – no, it's not one of the attachments.

PN489

THE DEPUTY PRESIDENT: No, it's in the court book, I believe.

PN490

MR HOWARD: I'll find that for your Honour.

PN491

THE DEPUTY PRESIDENT: Thank you.

PN492

MR WHITE: Well, perhaps I'll just read out the paragraph. Consultation is defined, Mr Smith, in the agreement as follows:

PN493

Consultation means providing employees and, where requested, their representatives with relevant information and a bona fide opportunity to influence and contribute to the decision-making process, not only in appearance but in fact, before a decision is made. Consultation is encouraged by all parties; however the parties do not need to reach agreement before Seqirus makes a decision.

*** JONAH CALLUM SMITH

XXN MR WHITE

PN494

Are you aware of that provision in the current Seqirus agreement?---Yes, I am.

PN495

Can I suggest to you then that, in order to consult, the structure of the agreement provides, and I read again clearly:

PN496

For the purpose of such discussions.

PN497

Then there's a discussion with the relevant employees about the introduction of the change, the effect of the change, measures Seqirus has taken to avert or mitigate the adverse impact, and invite the relevant employees to give their views about the impact of the change. For the Commission's purposes, that's paraphrasing 1.8.3(d).

PN498

MR HOWARD: Your Honour, the agreement is at page 71 of the first bundle. If we're going to embark on this exercise, it's probably fair that the witness be shown page 71.

PN499

MR WHITE: Yes, I agree. Page 71 of the court book.

PN500

THE DEPUTY PRESIDENT: Is that the court book number?

PN501

MR HOWARD: Yes, it is. Red.

PN502

MR WHITE: Sorry. Perhaps if my instructor could hand up a hard copy for Mr Smith to use.

PN503

THE DEPUTY PRESIDENT: Does he not have a copy?---I have it here. I've got it here.

PN504

MR WHITE: Sorry.

PN505

THE DEPUTY PRESIDENT: It's in the court book.

PN506

MR WHITE: Yes, sorry, I didn't see. So, Mr Smith, I just paraphrased clause 1.8.3(d) where it is described what discussions are to occur. Do you see that?---Yes.

*** JONAH CALLUM SMITH

XXN MR WHITE

PN507

I just now ask you to look at 1.8.3(e). It says:

PN508

For the purposes of such discussions, Seqirus must provide, in writing to the relevant employees, each of those matters I to III.

PN509

Do you see that?---Yes.

PN510

All right. Do I take your evidence to be that, by reason of the material which you refer to in annexure 1 of your statement and the meetings that you refer to in your statement that you consider CSL has complied with that obligation?---Correct.

PN511

No doubt, of course, that CSL continues to want to comply with its obligations?---Correct.

PN512

Right. Having regard to – I think you've also got the proposed agreement in the court book.

PN513

THE DEPUTY PRESIDENT: I think it's court book 955.

PN514

MR WHITE: Sorry, your Honour. Yes, so 955 as your Honour says.

PN515

THE DEPUTY PRESIDENT: I think it's 511 black, 955 red.

PN516

MR WHITE: Yes?---Yes, I've got it.

PN517

Are you familiar with the contents of this proposed agreement?---Generally familiar, yes.

PN518

Generally, all right. Well, do you accept, once again in a general sense, that the terms and conditions in the proposed agreement are different from that which currently applies at Parkville?---No, I don't accept that.

PN519

You don't, all right. All right, well we'll go through?---Sorry, can I clarify – can you just repeat your question?

*** JONAH CALLUM SMITH

XXN MR WHITE

PN520

Do you accept that the – and once again, the question is asked at a general level?---Yes.

PN521

That the content of the proposed Seqirus agreement provides different terms and conditions than the current Seqirus agreement?---I would say the majority of conditions are the same and there are some differences.

PN522

Yes, all right, and you would accept, wouldn't you, that to the extent that there are differences, that they should have been discussed with the employees at Parkville who will be affected?---We are discussing with them.

PN523

Yes, and they should have been discussed I asked.

PN524

MR HOWARD: Can the question put a time on that? When should it have been discussed?

PN525

THE DEPUTY PRESIDENT: It might assist to provide some focus.

PN526

MR WHITE: Certainly when the reports had been produced on or from 13 July 2022 where terms and conditions are proposed and discussed in the leadership group, on the global IR committee, that would have been an appropriate time to discuss the changes in terms and conditions that the company desired, wouldn't it?---Not necessarily. I mean, those early presentations may have just had a number of different options or scenarios. So, yes, they were tabled at that committee but they most likely didn't represent a decision or a preferred approach.

PN527

There had been a decision, obviously, made to move to Tullamarine and then the decision to move to Tullamarine has a range of different consequences including the company desiring to have different terms and conditions of employment; you agree with that?---Yes, to match the change in operation at Tullamarine compared to the way Parkville works.

PN528

Yes, that's not what I asked, but you agree with the proposition I put to you?---I agree with the proposition that some different conditions are required to deal with the different site of operation.

*** JONAH CALLUM SMITH

XXN MR WHITE

PN529

And to the extent that different conditions are applied, certainly from the time the company formed the view that that's what it desired, at the least, from that time, they should have been discussed with employees?---It depends on the type of thing that was being discussed.

PN530

All right?---I mean, we're using the term 'terms and conditions', it can mean many different things.

PN531

Yes, all right, well perhaps we might go to more detail. Do you have the Parkville agreement handy and also the proposed Seqirus agreement handy? I can provide you with a hardcopy of the proposed Seqirus agreement if you wish if it makes it easier for you?---It might be easier, yes please. Which one are you providing? The Tullamarine?

PN532

The proposed Seqirus Tullamarine agreement?---It's okay, I can work off both folders.

PN533

THE DEPUTY PRESIDENT: So both agreements are in the material. I think the existing agreement is at court book 64 in the thinner volume and the Seqirus Tullamarine proposed agreement is at court book 955 in the thicker volume.

PN534

MR WHITE: Yes. What I want to do, Mr Smith, is go to some, but not all, matters which are different from the Parkville agreement to the proposed Tullamarine agreement?---Yes.

PN535

So can I suggest to you that the Parkville agreement in clause 1.8.5 makes provision for the consultation on use of contractors and third-party labour and that there is no such like provision in the proposed Tullamarine agreement?---I would have to go page by page to verify that. So we can do that if you want.

PN536

No. Would you just look at that one? Look at that one first?---Okay, just give me time to.

PN537

Yes.

PN538

THE DEPUTY PRESIDENT: What clause is it in the existing agreement?

PN539

MR WHITE: 1.8.5. If you looked at the index, Mr Smith, it might be of some assistance?---Thank you. I believe that's different.

*** JONAH CALLUM SMITH

XXN MR WHITE

PN540

I'll give another example. Clause 1.10 in the current Seqirus agreement requires Seqirus to give priority to the importance of work-life balance, and can I suggest that doesn't exist in the proposed agreement to apply at Tullamarine?---I can't see it explicitly, but there are a number of items in the current agreement which we

have captured under company policy. So there are examples where there are changes because things are already reflected in company policy.

PN541

So, just on that then, when Mr Iser provided reports to the management, to your seniors and including the global IR committee, do I take it that those reports included the reasons or rationales for the proposals that were contained?---They typically would but, as I explained before, they're usually a summary of changes. So without having the documents in front of me, I can't tell you what the specific detail of the rationale was.

PN542

Putting to one side the specific detail and the rationale for this change. More generally, in the reports provided by Mr Iser, did he provide the rationale or rationales for the particular proposals he made?---In general, there was a rationale.

PN543

Yes?---Yes.

PN544

In general, a rationale for each matter the subject of the report?---Not necessarily to individual clauses.

PN545

Sometimes to individual clauses?---Sometimes, but not always.

PN546

All right. I'll just take you to another example. Clause 2.4 of the current agreement removes an entitlement for a casual worker who has worked 15 hours a week to be offered permanent employment. Can I suggest that's been removed from the company's current proposal?---Which clause? 2.4, was it?

PN547

Yes?---And what was the question?

PN548

I suggest that no like provision appears in the company's proposed Seqirus agreement to apply at Tullamarine?---There is still a clause around casual employment and there have been some changes made to the agreement where there's duplication with national employment standards, and that may be an example, I'm not sure, I'm not an expert in that.

PN549

Your Honour, I want to shortcut this process but do it by - - -

PN550

THE DEPUTY PRESIDENT: I suspect that we could spend two hours going through these agreements and identify their would-be differences. It could be said to be significant or less significant.

*** JONAH CALLUM SMITH

XXN MR WHITE

PN551

MR WHITE: Only two hours, your Honour? I've got an aide-memoire prepared which will save that period of time if your Honour would be assisted by that.

PN552

THE DEPUTY PRESIDENT: I would be assisted by that, yes.

PN553

MR WHITE: There's one there for Mr Smith as well, your Honour. What this aide-memoire is is - - -

PN554

MR HOWARD: My friend doesn't have to globally confirm the contents of the aide-memoire through Mr Smith. It can just go as a submission. It's a bit unfair for Mr Smith to do that. I'm happy for the document to just go in as submission.

PN555

MR WHITE: I want to ask Mr Smith about some of these matters.

PN556

MR HOWARD: Well, if it's just going to be more confirmation - - -

PN557

MR WHITE: And about some matters which flow from the content of the matters identified in the aide-memoire.

PN558

MR HOWARD: That's fine.

PN559

MR WHITE: So, Mr Smith, what I want to suggest to you is that, perhaps with the exception of the increase in the ordinary hours of work and the proposed changes to shift work, that none of these matters identified in the aide-memoire appear anywhere in the written material that you have provided to your Parkville employees.

PN560

MR HOWARD: Well, I object to that. He's seeking to globally characterise someone's analysis. It's just an unfair question. It would take hours to work that out.

PN561

MR WHITE: Look, it might take - - -

PN562

MR HOWARD: If my friend wants to identify the written material, which is not in this cross-examination to date, he should do so by taking Mr Smith to the bundle.

*** JONAH CALLUM SMITH

XXN MR WHITE

PN563

THE DEPUTY PRESIDENT: Mr White?

PN564

MR WHITE: I can't take him to written material that's not there. Look, I'm all for trying to find a shortcut convenient way to do it, but I'm obliged to put to Mr Smith that there are changes made which have not been the subject of written information provided for the purpose of discussion. Now, how that is done, I'm open to all suggestions, your Honour, as to how it can be done timeously and efficiently.

PN565

THE DEPUTY PRESIDENT: I'm not sure that asking Mr Smith to go through all of the material that's been filed and identify whether any of these items find their way into it. I think there must be a more efficient means by which items that are raised in here can be pointed to in the written documentation, because I think it's the written documentation you're referring to, isn't it?

PN566

MR WHITE: Yes.

PN567

THE DEPUTY PRESIDENT: Yes.

PN568

MR WHITE: Yes, but I can't point to it in the written documentation because we're asserting it's not there. That's the problem, your Honour, and so, as a matter of fairness, I felt obliged to - - -

PN569

THE DEPUTY PRESIDENT: Won't it ultimately be – and I'm not sure how the parties are proposing to deal with closing submissions – but the respondents on notice now that you say, save for the hours of work, I think - - -

PN570

MR WHITE: And the shifts.

PN571

THE DEPUTY PRESIDENT: Yes, that save for that issue, your contention is that the other matters that are dealt with in this aide-memoire are not dealt with anywhere in the documentation provided as part of the material annexed to Mr Smith's statement.

PN572

MR WHITE: Purportedly evidence in compliance with the consultation process.

PN573

THE DEPUTY PRESIDENT: Yes, and so it may well be that the respondent either accepts that contention or, alternatively, if it seeks to rebut that, it will need to identify it.

*** JONAH CALLUM SMITH

XXN MR WHITE

PN574

MR WHITE: All right. So long as there's no criticism made of me that I didn't give Mr Smith an opportunity.

PN575

THE DEPUTY PRESIDENT: Mr Howard, do you?

PN576

MR HOWARD: No, I won't make that criticism and neither is Mr Smith. Mr Smith's evidence has been from the outset of these questions: there are differences, do you really want to do this? He readily accepts - - -

PN577

THE DEPUTY PRESIDENT: Yes, but I'm just thinking, rather than spend another day and a half going through each of the items in the aide-memoire and identifying, 'Well, Mr Smith, can you point to any document in that bundle where you've covered that', leaf, leaf, leaf, ten minutes later, 'No, I can't.' Okay.

PN578

MR HOWARD: We want to avoid that.

PN579

THE DEPUTY PRESIDENT: Yes. So I'm trying to identify, would the most efficient way be – before I move on, is it appropriate, from the parties, are you happy for Mr Smith to remain?

PN580

MR WHITE: About this, I have no problem, your Honour.

PN581

MR HOWARD: I am.

PN582

THE DEPUTY PRESIDENT: All right, yes. I'm just raising one way of dealing with it. The submission is that there are multiple changes between the Parkville agreement, I'll call it for shorthand, and the proposed Tullamarine agreement. The submission, as I understand it is that, save for one or two items including the hours of work, none of the other items that fall into this category of differences has been provided in writing to Parkville employees before they had access to a copy of the proposed agreement.

PN583

Now, if you don't contest that, that's fine, but if you do – I mean, obviously you'll contest whether that's relevant or not, but as a factual and evidentiary point – if you contest it, that it is in the material, then you'll have an opportunity to identify where it is in the material. That's all.

*** JONAH CALLUM SMITH

XXN MR WHITE

PN584

MR HOWARD: Correct, and we don't contest this proposition: that the first time employees came to know the proposed terms and conditions in this table was via the draft agreement.

PN585

THE DEPUTY PRESIDENT: Yes, yes. Right.

PN586

MR HOWARD: And, in terms of Mr White's obligation of fairness to Mr Smith, I think he, by furnishing this document to us all, I think that's sufficiently fair and we don't need to bother Mr Smith with it.

PN587

THE DEPUTY PRESIDENT: All right. There seems to be a concession there that there's conceded differences between the documents. It also seems to be conceded that the first point at which employees at Parkville would have had visibility of the full range of the differences – if they did this kind of analysis, mind you – would have been at the point where the copy of the agreement was made available to them.

PN588

MR WHITE: Yes.

PN589

THE DEPUTY PRESIDENT: Does that - - -

PN590

MR WHITE: That gets me 99 per cent of the way.

PN591

THE DEPUTY PRESIDENT: All right.

PN592

MR WHITE: But there's a necessary corollary – and I don't think it's contentious – but that the rationales for the changes were also not provided.

PN593

THE DEPUTY PRESIDENT: I see, I see, and I guess the same logic flows. That where differences have been identified to employees, has the rationale for those changes been provided to the employees.

PN594

MR WHITE: Yes, well, yes.

PN595

THE DEPUTY PRESIDENT: I don't want to short-circuit if you think they're important questions to be asked.

*** JONAH CALLUM SMITH

XXN MR WHITE

PN596

MR WHITE: No, your Honour. No, I think with the concessions with my additional gloss, we don't need to bother Mr Smith in relation to this aspect.

PN597

THE DEPUTY PRESIDENT: It seems, I must say, when I received this material I did run a cursory, not forensic, eye over the proposed agreement and it was immediately apparent to me there was a significant number of differences. Now, it might be argued that they were or weren't significant or NES covered it but, on a fair reading of the agreement, there are differences between the two documents.

PN598

MR WHITE: And, given that current employees will be at Tullamarine - - -

PN599

THE DEPUTY PRESIDENT: Probably straying into submissions.

PN600

MR WHITE: Sorry, yes. Yes, possibly that's so. Well, with that concession and that understanding then I can move on.

PN601

THE DEPUTY PRESIDENT: Okay.

PN602

MR WHITE: Now, having regard to the extent to which Mr Iser's reports contained reasons and rationales for the changes to the conditions proposed, CSL would be in a position to provide in writing to the affected employees those reasons and rationales, would it not?---I mean, I can tell you a table like this was not presented to that IR committee. As I said, it's a high-level governing body that deals with some of the more, perhaps, critical terms and rationale would be applied to that, but it's not served with doing a line-by-line comparison and rationale for each one.

PN603

Well, who did make the decision in respect of the specific changes that are proposed?---So the IR committee reviews the summary of proposed content of the agreement and then, ultimately, we draft the agreement and that's approved for endorsed distribution to employees.

PN604

All right, but once again, go back to the question I asked. To the extent that Mr Iser's reports contained the reasons and rationales for the changes, CSL would be in a position to be able to provide that information to its employees at Parkville; that's right, isn't it?---Yes, but it depends on the timing that those proposals are put forward.

PN605

Also, CSL is able to provide to its employees at Parkville specific details about proposed changes it seeks at Tullamarine, isn't it?---Are you asking now?

*** JONAH CALLUM SMITH

XXN MR WHITE

PN606

Yes?---Well, we have. We've distributed the agreement.

PN607

That's bargaining at Tullamarine, isn't it?---Sorry, so say the question again?

PN608

CSL is able to give to its employees at Parkville detailed information about each of the changes between the current agreement and that which it seeks to apply at Tullamarine?---We've provided all employees details of the key changes to the way the sites will operate and all employees have access to the draft agreement for Tullamarine, including all Parkville employees.

PN609

That's not the question I asked. Do you want me to ask it again?---Yes please.

PN610

CSL is able to provide to its employees at Parkville a document setting out the details of change between the Parkville agreement and that which it proposes for Tullamarine?---We believe we've provided the rationale for significant change to Tullamarine already.

PN611

That wasn't the question that I asked though, Mr Smith.

PN612

THE DEPUTY PRESIDENT: As I understand, the question is that, theoretically, the company could provide employees with a document that perhaps compared the proposed terms for Tullamarine with the existing terms at Parkville. Now, without getting into whether there was or wasn't an obligation because that will be the subject of argument, but theoretically, such a comparison could be provided?---Yes, your Honour.

PN613

Is that the question?

PN614

MR WHITE: Thank you, it was.

PN615

THE DEPUTY PRESIDENT: Okay.

PN616

MR WHITE: Now, just to go back to one of your answers a short time ago, I think you – and I'll paraphrase here, Mr Smith, so please correct me if I'm wrong?---Yes.

*** JONAH CALLUM SMITH

XXN MR WHITE

PN617

That you see part of the consultation obligation being fulfilled now is the access by Parkville employees to the proposed Tullamarine agreement?---Part of the process, yes.

PN618

Yes, all right. Do you see the consultation process at Parkville running hand-in-glove with the negotiations for the Tullamarine agreement?---Well, consultation with Parkville has been continuing for some time.

PN619

Yes, about specific terms and conditions. Now we're getting to the granular level of the plan, aren't we?---Yes.

PN620

Yes, so the answer is?---So yes, I do, and as I said before in one of the documents earlier, we publish all enterprise agreement draft communications to the intranet so that anybody can access that, including Parkville employees.

PN621

Yes, but with no signposted way identifying the changes?---Not currently, no.

PN622

No. When I said that – it was probably in the vernacular – when I asked you the question about whether you see the consultation at Parkville running hand-in-glove with the negotiations in respect of Tullamarine, can I be more specific and that is it's really covering the same issues, isn't it?---Not necessarily, there are many issues that we cover in consultation which aren't related to an enterprise agreement. We can have changes in business circumstances, we can have changes in volume that impact the workforce planning. So, enterprise agreement, yes, there is some overlap, I'll agree.

PN623

But in terms of the terms and conditions which you're seeking at Tullamarine and the terms and conditions which are different from the Parkville terms and conditions, the consultation obligation and the bargaining are effectively about the same matters?---They're occurring in parallel, yes.

PN624

Occurring in, sorry?---They're occurring in parallel.

PN625

Parallel. Well, not just in parallel, they're effectively about the same matters, are they not?---In terms of terms and conditions, yes.

PN626

Yes. I'll ask another question, firstly at a general level and then, if necessary, more specifically?---Mm-hm.

*** JONAH CALLUM SMITH

XXN MR WHITE

PN627

Putting to one side for the moment the proposed shift arrangements the company wishes to apply at Tullamarine?---Yes.

PN628

And potentially, putting to one side the difference in the hours of work which I assume are proposed to facilitate that shift roster?---Correct.

PN629

I put a proposition to you: I put the proposition that there is no matter in the Tullamarine agreement which is peculiar to the specific proposed operational requirements of the site. Do you agree with that as a proposition?---No, I don't.

PN630

Are you able to point to any provision of the proposed Tullamarine agreement which is dependent upon the specific site operational requirements? I should have said, also put aside scope for the time being?---So the areas of hours of work and breaks are quite specific to Tullamarine because Parkville is not a site which typically operates 12-hour shifts. It is done very rarely on occasions. So we've tried to design the agreement that reflects the majority of the workers onsite which will be doing 12-hour shifts.

PN631

Okay, so you've identified a matter which is consequent upon the proposed shift arrangements, being the breaks. All right. Hours of work, I think we asked you to put that to one side. Anything else that you're able to identify operates peculiarly, having regard to the operational requirements of Tullamarine?

PN632

MR HOWARD: Sorry, your Honour, what's the relevance of this question?

PN633

MR WHITE: If there was a problem in consulting with the Parkville employees, they may be explicable having regard to different operations that the company had in mind. Once again, I'm providing Mr Smith an opportunity to comment.

PN634

THE DEPUTY PRESIDENT: I think the question is reasonable?---I'm sure there are others. I mean, I would have to go through it and list.

PN635

MR WHITE: Yes, all right. Now, I think you said earlier that the proposed Tullamarine agreement, the proposed Seqirus agreement to operate at Tullamarine, is on the intranet?---Correct.

PN636

All employees have access to the intranet?---Yes.

PN637

Is that on the T-drive?---No, that's a different thing.

*** JONAH CALLUM SMITH

XXN MR WHITE

PN638

Different drive. All employees have access to the T-drive as well, don't they?---In the past but, as is clear in the evidence, there has been some changes in our IT procedures so I can't answer if the T-drive is accessible now.

PN639

All right, so those changes in the IT procedures happened after the document referred to in The Australian newspaper was tabled at a consultation meeting; is that right?---Correct.

PN640

Yes, and in paragraph 21 of your statement, you start talking about the Banksia strategy and indicate that it being marked confidential, people would know that it was confidential by reason of that marking. Is that the effect of your paragraph 21?---That's correct.

PN641

Yes. Now, commencing paragraph 25, you set out a number of documents explaining CSL's confidentiality information framework. Do you see that?---Yes.

PN642

The first document you refer to is annexure JS3. That commences, if your Honour please, at court book 1141. And so this is the document, Mr Smith, titled 'CSL Limited COVID Responsible Business Practice.' Yes?---Yes.

PN643

Can I ask you to scroll down in this document, court book 1155. There's a paragraph 2.4, 'Protection of Assets and Information.' Do you see that?---Yes, yes.

PN644

It says:

PN645

CSL facilities, equipment and other assets must be well maintained and secured appropriately against theft, misuse, and unauthorised disclosure.

PN646

I won't continue to read out the rest of that paragraph 2.4, but is that part of what you're referring to – and it continues over the page – when you're relying on that to establish confidentiality obligations on the part of your employees?---Yes.

PN647

All right. Once again, can I paraphrase. The concern in paragraph 2.4 is to keep CSL information within CSL?---Correct.

PN648

Yes, and that's made clear, perhaps, when you look at – Just to sort of complete, when you scroll down to court book 1196 – you're still in the same document here, Mr Smith?---1196?

*** JONAH CALLUM SMITH

XXN MR WHITE

PN649

Yes. That's a page of definitions but you'll see in the left-hand column, second one from the bottom, heading 'Confidential and Restricted Confidential Information.'?---Yes.

PN650

Once again, that gives an emphasis, does it not, in relation to confidential information about keeping material in-house?---Yes.

PN651

JS4 is a document that you refer to in paragraph 26 of your statement, once again, as part of the confidentiality information framework, so called. Under duties - - -

PN652

THE DEPUTY PRESIDENT: What page is that at?

PN653

MR WHITE: Sorry, 1200.

PN654

THE DEPUTY PRESIDENT: 1200.

PN655

MR WHITE: Once again, under 2.2, there's obligations specified there but, paraphrasing once again, Mr Smith, that's designed to protect CSL information by keeping it within CSL?---Yes, subpoint E.

PN656

Sorry?---Subpoint E.

PN657

Yes. All right, JS5 is a document you refer to in paragraph 27. That commences at 1207, your Honour. This is an employee confidentiality agreement, this is a deed that is in common form and has been in earlier use as I understand it?---Yes, sorry, yes.

PN658

Once again, I paraphrase, this is really designed to protect CSL's intellectual property and to ensure that, once again, nothing goes outside CSL?---Correct.

PN659

Could you just bear with me a moment, your Honour. I have been tripped up by – I can't find it, but I want to put to Mr Smith and, if necessary, need a few minutes to find it.

PN660

THE DEPUTY PRESIDENT: Yes, that's fine.

*** JONAH CALLUM SMITH

XXN MR WHITE

PN661

MR WHITE: But there is a definition of confidential information and various types of information in one of these documents, Mr Smith, and it's probably fair that I put it to you.

PN662

THE DEPUTY PRESIDENT: Yes, I recall as we were flicking through, it had the definitions of each of the categories.

PN663

MR WHITE: There were three types of information.

PN664

THE DEPUTY PRESIDENT: Yes.

PN665

MR WHITE: Yes, your Honour, that is what I had thought that I had highlighted and which - - -

PN666

MR HOWARD: It's at 1196.

PN667

MR WHITE: 1196. Thank you, my learned friend.

PN668

THE DEPUTY PRESIDENT: Was it that one?

PN669

MR WHITE: I didn't think it was.

PN670

THE DEPUTY PRESIDENT: It was in one of those pages.

PN671

MR WHITE: One of the earlier ones, I thought, your Honour, yes.

PN672

THE DEPUTY PRESIDENT: Whoever gets to it first wins a prize.

PN673

MR WHITE: Sorry, I take everything back I said about my learned friend, it is 1196.

PN674

THE DEPUTY PRESIDENT: Okay.

PN675

MR WHITE: I'll just turn that up. The data classification appearing in the middle column, do you see that, Mr Smith?---Yes.

*** JONAH CALLUM SMITH

XXN MR WHITE

PN676

Then it says:

PN677

CSL classifies its information/assets into three categories: Public, which may be shared broadly inside and outside CSL, disclosure presents no risk, et cetera.

PN678

I don't read the rest of that. Second category is 'confidential', and I'll read that out in full:

PN679

It presents moderate business risk if inappropriately shared. Examples include changes to business operations, management changes, policies, and standards.

PN680

And then the third is 'restricted confidential.'

PN681

High business risk if inappropriately shared. Financial results prior to public disclosure, product pricing information and research data.

PN682

Once again, generically described, can I say designed to keep matters in-house?---Correct.

PN683

And so, for example, to the extent that the document referred to in The Australian newspaper was tabled in a consultation meeting attended by officers of the company, that's permissible within the terms of the policy because it's remaining in-house?---Yes, only for internal audience.

PN684

Yes. Your Honour, thank you, no further questions.

PN685

THE DEPUTY PRESIDENT: Thank you. Mr Howard?

RE-EXAMINATION BY MR HOWARD

[2.36 PM]

PN686

Some matters in reply, your Honour. Mr Smith, we're almost done. I'll go backwards. You were asked some questions about the T-drive and errors that were made and you gave evidence that, 'As I explained in my statement', and you wanted to refer to parts of your statement about those errors. Can you just turn to paragraph 23 of your witness statement?

PN687

THE DEPUTY PRESIDENT: Court book?

*** JONAH CALLUM SMITH

RXN MR HOWARD

PN688

MR HOWARD: Court book 4, black 4. Just one moment. Red 1115. Do you have that there?---Yes.

PN689

Is that what you were referring to?---Yes. Section 22.

PN690

Section 22?---Yes.

PN691

And 23?---Sorry, and 23, yes.

PN692

You were asked some questions about sharing the enterprise agreement with Parkville employees. Do you recall giving that evidence?---Yes.

PN693

You gave some answers to the effect that, 'As I was shown in earlier documents, we are sharing the agreement on the intranet.' Do you recall giving that evidence?---Yes.

PN694

Can the witness be shown exhibit R1?

PN695

THE DEPUTY PRESIDENT: Do you have a copy of the documents that were previously marked? I think it's - - - ?---It's not marked, but it's that one?

PN696

MR HOWARD: That's the one.

PN697

THE DEPUTY PRESIDENT: Yes.

PN698

MR HOWARD: Were they the documents you were referring to when giving that evidence?---Yes.

PN699

Can you just turn to the third page of that that looks like this?---Yes.

PN700

Could you explain to his Honour what that is a screenshot of?---So that's the intranet site for all employees and that particular page is the enterprise agreement 2024 for Tullamarine where we load a copy of all communications. We have a copy of the draft agreements, FAQs, and a copy of the notice of employee representational rights.

*** JONAH CALLUM SMITH

RXXN MR HOWARD

PN701

Just pausing on, I think you called it communications. Can you just explain what the 'EA Today 1/2/3/4'?---So each of those links is to a communication to all employees via email which also gets published in CSL now, which is our in-house communications tool, and that gives an update to all employees of the progression of bargaining meetings with the unions.

PN702

I see. Can you turn to exhibit R4 which looks like this?---This one?

PN703

Yes. Is that an example of what's hyperlinked?---Correct, that was number four.

PN704

I see. Now, you were asked some questions about the differences between the Parkville enterprise agreement and the differences between the proposed draft agreement for Tullamarine, do you recall that evidence or those questions?---Yes.

PN705

You were asked some questions about what have you shared with employees. Do you recall those questions?---Yes.

PN706

Could you turn to red page 953, black page 509 and just place a finger there, but then turn back to black 500, red 944?---944, yes.

PN707

Could you just explain to his Honour what this pack is about when you've got an opportunity to look at it?

PN708

THE DEPUTY PRESIDENT: Looks like the presentation at the second meeting, doesn't it?---Correct. So this is the presentation we gave to the unions in the second negotiation meeting outlining protocols for bargaining, differences between the sites, some key elements of the draft agreement, explaining where there's changes, where there's been some removal of redundant or duplicate information with, I gave the example of the National Employment Standard earlier.

PN709

MR HOWARD: Yes. Now, when you say, I think you used the word 'key' claims or something, are you referring to the first couple of pages? So there's the bargaining objective page, which is at black 503?---Yes.

*** JONAH CALLUM SMITH

RXN MR HOWARD

PN710

And then, after that, we have what starts with a statement 'enhancing employee experience.' They're the claims?---Yes, so those slides are intended to explain our objectives with forming a new agreement, and there are some call-outs to some particular topics, for example, on court page 953 and then there's also highlighting some areas where we have referenced back directly to Seqirus policy. So, explaining that those, I guess, interactions between the agreement and the policy.

PN711

Yes, and drawing from 'What Works' on 953, summary of what is not different?---Correct.

PN712

Are you a member of the bargaining unit?---Yes.

PN713

How many meetings have there been?---We've had, I think, it's three.

PN714

Can you explain to the Deputy President what happened in January in relation to scheduling of the meetings?---Are you referring to the one that was the subject of our communication, number four?

PN715

Yes?---I think that was in March.

PN716

THE DEPUTY PRESIDENT: Bargaining didn't start until after the end of January?---Yes.

PN717

MR HOWARD: Yes, I see?---The meeting on 7 March was cancelled.

PN718

Right. Now, can you explain to the Deputy President whether the unions have asked for a comparison in those meetings?---Not in those meetings but we did have a negotiation meeting on Friday just gone.

PN719

Friday, yes?---And the topic of a comparison came up in those discussions.

PN720

Okay, Friday?---On Friday.

PN721

So one business day before this hearing?---Yes.

PN722

Now, just going back to the beginning of the day, you were asked questions about the status of this project at 2020. Now, you mightn't recall precisely the questions and answers but you gave evidence that you hadn't formed a view of numbers until, I think your words were, July 2023?---Correct.

PN723

And at that point you were cut off. Can you explain to his Honour when it was that the respondent was able to form the view as to the numbers required for Tullamarine?---That was just prior to July 2023.

*** JONAH CALLUM SMITH

RXN MR HOWARD

PN724

Can you explain that by reference to the phases of consultation? So what stage, what phase, were you at?---I just need to get my chronology.

PN725

THE DEPUTY PRESIDENT: If you find it, let me know what page it's on?---It was either phase three or two, I just need to check the slide.

PN726

I'm being facetious.

PN727

MR HOWARD: Could you turn to black 319, red 763.

PN728

THE DEPUTY PRESIDENT: This hearing might cure me of my habit of producing a court book.

PN729

MR HOWARD: I blame me, your Honour, I should have said to you last week when I was offering to print, I should have told you also not to print a digital court book.

PN730

THE DEPUTY PRESIDENT: No, no. I'm being a bit tongue-in-cheek, Mr Howard, I'm sorry.

PN731

MR WHITE: No, no, blame him.

PN732

MR HOWARD: Blame counsel, blame counsel, it's always the way.

PN733

THE DEPUTY PRESIDENT: All right, I'll blame Mr Howard, thank you.

PN734

MR HOWARD: Now, just keep a thumb on that and turn to red 744?---Yes.

PN735

Is that the evidence you were attempting to give to Mr White?---Yes, so phase three.

PN736

Yes?---Which was to complete position mapping and structures defined, yes.

PN737

And this is the point at which you disclosed that to the workforce?---Correct.

*** JONAH CALLUM SMITH

RXN MR HOWARD

PN738

Now these are CSL-wide, aren't they?

PN739

THE DEPUTY PRESIDENT: CSL what, sorry?

PN740

MR HOWARD: CSL-wide, like the entire workforce?---Correct.

PN741

Can you just explain to his Honour the changes in numbers for the maintenance team and the electricians?---I just will need to find the departmental briefing document.

PN742

I think you'll find that at red 619, I'm told?---Yes so, in particular, on court page 625.

PN743

If you turn back to – we'll go to 625 in a minute but can you turn to red 624, black 180.

PN744

THE DEPUTY PRESIDENT: Feel like I'm playing bingo?---Yes.

PN745

MR HOWARD: I prefer roulette. Can you just explain to his Honour, in light of all of that, the difference in numbers for the maintenance team?---So, on page 624, we've got a summary of the mechanical and instrumentation trade support required per shift. So, having four shifts in the pattern, it means eight mechanical fitters and eight instrumentation technicians.

PN746

THE DEPUTY PRESIDENT: Sorry, sorry. You're at court book 64?---624.

PN747

624, I see. Thank you, sorry. Yes, I'm on that page. Thank you. Sorry, Mr Smith, do I take from that you needed eight mechanical fitters and eight I and E techs?---Correct.

PN748

Right. Two per shift?---Two per shift.

PN749

Over four shifts, four crews, covering 24/7?---That's correct, your Honour.

PN750

Average 42 hours per week?---42 hours of coverage, correct.

*** JONAH CALLUM SMITH

RXN MR HOWARD

PN751

The average hours for each of those trades people based on the four-crew panel would be 42 hours, correct?---Yes, correct.

PN752

Yes, okay.

PN753

MR HOWARD: And what's the difference in numbers of staff to deliver those functions?---So for the mechanical fitters or maintenance fitters we need an extra fitter and also, we need a utility fitter which isn't in the current Parkville structure, and for electrical and instrumentation we need an additional four technicians.

PN754

All right.

PN755

THE DEPUTY PRESIDENT: Sorry, just before you move on, so I'm clear, that's because the existing Parkville hours of work are day work only?---Predominantly day work, correct.

PN756

Okay, thank you.

PN757

MR HOWARD: You were asked some questions about Mr Iser's considerations of terms and conditions over the journey, do you recall those questions?---Yes.

PN758

It was put to you that it would be unusual for something not to be looked at between 2020 and 2024, and your evidence was that, whilst you don't know for certain because you're not Mr Iser, but Mr Iser, on occasion, would have looked at proposals. Do you recall giving that answer?---Yes.

PN759

Can you just explain to his Honour two things: why the project was put on hold in January 2021?---So we had completed a, what we call, basic design phase, the project had done some cost estimates on construction and qualifying the new facilities and we could see we had a significant budget issue with the initial expectations for the project, so the project took a pause in design for around three to four months where we rescoped elements of the project, we looked at how we could leverage the CSL network and existing facilities, in particular the Broadmeadows CSL Behring facility, and find ways to deliver the same scope with a lower expense. So we developed recommendations, they were endorsed, and then we had to go through a repeat design process which took another, probably, four to five months.

*** JONAH CALLUM SMITH

RXN MR HOWARD

PN760

THE DEPUTY PRESIDENT: Right. Just while it's in my mind, does CSL use the language of the 'financial investment decision?' I.e. the point at which, I assume it's the board, makes the decision to commit the funds to proceed with the

project?---Yes, so I think – it may not be the exact wording but a similar expression, yes.

PN761

And when was that?---For the board?

PN762

Yes, when was - - - ?---That was November when the project was communicated.

PN763

Okay, so that was in 2020?---Correct.

PN764

So the board made a decision to approve the project to proceed?---Correct.

PN765

And that then lead to some further design work, because presumably there would have been some work undertaken prior to the – I'll call it the FID, I'm used to that language?---Yes.

PN766

But then, through refinement of the design work, that's what you've just been referring to there in terms of the pause?---Correct, yes.

PN767

Right.

PN768

MR HOWARD: Okay, so that, I think – you said four plus five months?---At least. I'd have to check with the timing.

PN769

When you say rescope and redesign, what do you mean by rescope and redesign?---So what that means is, we originally had a plan for Tullamarine to be a self-contained greenfield facility where all of the manufacturing operations we required for our product supply would occur on that one site. Rescoping resulted in us identifying commonalities or synergies in some parts of the manufacturing and quality control operations with the Broadmeadows site so we identified that we could, still with some investment at the Broadmeadows site, we could leverage existing facility space that could be repurposed, or we could use some of their functions with added capacity to deliver the same results. So that meant, for the design that was developed, we deleted four of the seven buildings originally proposed for the site and with that we then needed to repeat the design process for the consolidated facility site master plan.

PN770

Yes, I see.

*** JONAH CALLUM SMITH

RXN MR HOWARD

PN771

THE DEPUTY PRESIDENT: Did that ultimately have implications for – you were taken to the overall numbers that referred to, I think, the net change of costs to the business was something like 129 reduction?---Yes.

PN772

That's taking into account both Broadmeadows and a new Tullamarine facility?---And Tullamarine, yes.

PN773

So those numbers that I've just referenced there, was that post the review?---That was post the review.

PN774

So was the reduction more or less significant?---The reduction – when we had the original design and when we first communicated the project, we expected the numbers to be fairly similar. So we'd had a further reduction with the scope change.

PN775

Okay. Was there any change in the numbers expected in relation to maintenance workforce?---We hadn't really developed maintenance staffing numbers when we were at that phase of design.

PN776

Presumably, if you had have required 24/7 coverage in the original scope, if it was still 24/7, you would have needed shift and electricians and fitters?---Yes.

PN777

All right. Sorry, Mr Howard, I was just curious.

PN778

MR HOWARD: No, it's useful. You were asked some questions about the decision to release a single enterprise agreement, the draft enterprise agreement, and your evidence was that that was made 'late last year', I think your words were. Do you recall giving that evidence?---I do, yes.

PN779

Can you just explain to his Honour who made the decision to approve the agreement going out?---Sorry?

PN780

Who has the decision-making responsibility to approve that draft agreement?---That sits with Chris Larkins, our senior vice president of operations.

PN781

Can you explain, in that light, you've given some evidence of a global IR committee?---Yes.

*** JONAH CALLUM SMITH

RXN MR HOWARD

PN782

What's their decision-making role in relation to releasing the draft agreement?---So their role is to endorse, I guess, the broad content of the agreement.

PN783

Yes?---And then we have a formal step at the document itself with the sponsor for the project.

PN784

When you say 'sponsor' for the project, can you just identify who that is?---Sorry, that's – so it's just a project delivery artefact. There is a business sponsor, who is the business owner, and the business owner for this project is our global operations lead, Chris Larkins.

PN785

Chris Larkins, same person?---Yes.

PN786

No further questions, your Honour.

PN787

THE DEPUTY PRESIDENT: All right. Thank you, Mr Smith. You are free to go?---Thank you.

PN788

You can remain in the court, obviously.

<THE WITNESS WITHDREW

[3.02 PM]

PN789

MR HOWARD: Yes, I was just having a conversation with my friend about timetabling.

PN790

THE DEPUTY PRESIDENT: Yes.

PN791

MR HOWARD: I think he wants to - - -

PN792

THE DEPUTY PRESIDENT: Yes.

PN793

MR HOWARD: I was going to propose we come back tomorrow.

PN794

THE DEPUTY PRESIDENT: I'll hear from Mr White about how he proposes we proceed from this point.

*** JONAH CALLUM SMITH

RXN MR HOWARD

PN795

MR WHITE: Thank you, your Honour. First question is whether you've ordered a transcript and whether it's a same-day turn around – that is, can we have it by submissions tomorrow?

PN796

THE DEPUTY PRESIDENT: I doubt it. Normally, I think it's 24 hours. Is that right?

PN797

SPEAKER: I think the cut-off time has gone, so it won't be available by tomorrow.

PN798

THE DEPUTY PRESIDENT: We won't get it for tomorrow. If this were an unfair dismissal involving two separate, represented parties, I wouldn't be tolerant of requested delay in closing submissions but we're dealing with some complex issues so if you wish to make closing submissions having received and accessed the transcript then that would make tomorrow difficult.

PN799

SPEAKER: There's access to audio recording, but it's not the transcript.

PN800

THE DEPUTY PRESIDENT: Yes, the audio recording would be available.

PN801

MR WHITE: Can I just have a chat with - - -

PN802

THE DEPUTY PRESIDENT: Yes.

PN803

MR WHITE: Well, we'll come back tomorrow without the transcript.

PN804

THE DEPUTY PRESIDENT: Look, if a party urges me to allow time to review the transcript, obviously I'll be sympathetic to that, but it depends if the parties agree or if they want to have a discussion about that.

PN805

MR WHITE: Can I just have a chat with my instructors briefly, your Honour?

PN806

THE DEPUTY PRESIDENT: Yes. Do you want to then have a talk with Mr Howard before?

PN807

MR WHITE: Yes, if we could have five minutes?

PN808

THE DEPUTY PRESIDENT: All right, let's break for five minutes.

PN809

MR WHITE: Thank you.

SHORT ADJOURNMENT

[3.04 PM]

RESUMED

[3.09 PM]

PN810

THE DEPUTY PRESIDENT: Mr White?

PN811

MR WHITE: So, your Honour, we've got an agreed position indeed. We agree we're not going to finish tonight if we kick on submissions today, so can we come back tomorrow morning, but we'd still like the transcript ordered.

PN812

THE DEPUTY PRESIDENT: You would like the transcript ordered but you will be in a position to make closing oral submissions tomorrow?

PN813

MR WHITE: Tomorrow morning, yes.

PN814

THE DEPUTY PRESIDENT: Thank you. The transcript won't be available, I'd imagine, even if it's put on a 24-hour turn around until late tomorrow or perhaps Wednesday morning.

PN815

MR WHITE: I mean, we would still find it helpful but we are both prepared to complete it tomorrow morning.

PN816

THE DEPUTY PRESIDENT: All right, ten o'clock tomorrow?

PN817

MR WHITE: Thank you, your Honour.

PN818

MR HOWARD: Yes, and we hopefully intend to finish by lunch tomorrow.

PN819

THE DEPUTY PRESIDENT: Okay, all right, that's fine. All right, thank you. We're done. Matter's adjourned for the day, I'll see the parties in the morning.

PN820

MR WHITE: Thank you.

ADJOURNED UNTIL TUESDAY, 26 MARCH 2024

[3.10 PM]

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