



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

DEPUTY PRESIDENT MILLHOUSE

C2023/1070

s.739 - Application to deal with a dispute

**United Firefighters' Union of Australia
and
Country Fire Authority
(C2023/1070)**

Country Fire Authority Professional, Technical and Administrative Agreement 2020

Melbourne

10.27 AM, TUESDAY, 16 MAY 2023

Continued from 10/05/2023

PN1

THE DEPUTY PRESIDENT: Good morning, everyone. Mr Lettau, you continue your appearance for the applicant?

PN2

MR P LETTAU: Yes, I do, yes.

PN3

THE DEPUTY PRESIDENT: Thank you very much. Ms Lucas, you continue your appearance for the respondent?

PN4

MS J LUCAS: Yes, thank you.

PN5

THE DEPUTY PRESIDENT: Thank you, everyone. Mr Lettau, is there anything you would like to address by way of housekeeping at the outset?

PN6

MR LETTAU: Yes. We have had a discussion, the parties, just now about housekeeping. The first thing is we were of the view that, given you have had carriage of the matter for some time now and have an interlocutory decision, that we could perhaps dispense with any lengthy openings and maybe address any questions you might have about the agreed questions that have been proposed by the parties instead.

PN7

In terms of witnesses, we have got three witnesses. We don't think we are going to need a lot of time with two of the witnesses, so Ms Harris and Mr Ramage shouldn't take us too long. We are hoping we can get through both of those before lunch time and, if we are really proficient, maybe even begin the third witness, but we probably won't get through all three before lunch.

PN8

THE DEPUTY PRESIDENT: All right.

PN9

MR LETTAU: So that's sort of where - that's the lay of the land at this stage, I think.

PN10

THE DEPUTY PRESIDENT: All right. Thank you very much for conferring about those matters. I am quite content to proceed without lengthy openings. If there are any questions, of course, I will raise them with you.

PN11

In terms of the witnesses, my only additional question is whether anyone requires witnesses to be out of the courtroom for the purposes of hearing the other party's evidence or whether you are all content to proceed with everyone in the room.

PN12

MS LUCAS: I can just indicate that the two witnesses that we will be calling, Ms Holding and Mr Ramage, are not present in the room.

PN13

THE DEPUTY PRESIDENT: All right.

PN14

MS LUCAS: Yes, and I think we would propose that they stay outside for the applicant's evidence.

PN15

MR LETTAU: I have taken instructions and, yes, we would prefer witnesses out of the room while - - -

PN16

THE DEPUTY PRESIDENT: Very well.

PN17

MR LETTAU: Yes.

PN18

THE DEPUTY PRESIDENT: All right.

PN19

MR LETTAU: I should also add that when I say that we propose no lengthy openings, we had actually proposed no real opening at all, just to jump straight into the witnesses.

PN20

THE DEPUTY PRESIDENT: That's fine, Mr Lettau. I would appreciate you each framing your cases at the outset anyway, thank you very much.

PN21

All right, anything else from your perspective, Ms Lucas?

PN22

MS LUCAS: No, thank you.

PN23

THE DEPUTY PRESIDENT: All right. Thanks, Mr Lettau.

PN24

MR LETTAU: Do I take it that you do wish to have a brief opening?

PN25

THE DEPUTY PRESIDENT: If that's the way you would like to proceed, then I am all ears, thank you.

PN26

MR LETTAU: Well, I haven't prepared a brief opening.

PN27

THE DEPUTY PRESIDENT: That's fine, it's not necessary.

PN28

MR LETTAU: Yes, we can jump straight to the witnesses, unless you have questions?

PN29

THE DEPUTY PRESIDENT: No, I don't have any initial questions, Mr Lettau, so I am content to proceed as you have proposed.

PN30

MR LETTAU: The applicant would like to call Ms Harris.

PN31

THE DEPUTY PRESIDENT: Thank you. Call Ms Harris.

PN32

THE ASSOCIATE: Please state your full name and address.

PN33

MS HARRIS: Jessica Siobhan Harris, (address supplied).

<JESSICA SIOBHAN HARRIS, AFFIRMED [10.31 AM]

EXAMINATION-IN-CHIEF BY MR LETTAU [10.31 AM]

PN34

THE DEPUTY PRESIDENT: Thank you, Ms Harris. Mr Lettau.

PN35

MR LETTAU: Thank you, Deputy President.

PN36

Thank you, Ms Harris. Have you got a copy of the court book in front of you?---Yes.

PN37

Have you prepared, with your lawyers, two witness statements in this matter?---Yes.

PN38

You have got copies there. I will refer you to the page numbers. The first witness statement is on page 41 of the court book - or it should be. You will see the page numbers at the bottom, they are highlighted with - - -?---Yes.

PN39

Is the first statement there 15 pages long?---Yes.

*** JESSICA SIOBHAN HARRIS

XN MR LETTAU

PN40

There should be 11 annexures as well attached to that which follow the statement. You don't need to count through all of them, but if you can find 11 in there?---Yes.

PN41

Are there any corrections you wish to make to that statement?---Yes.

PN42

Would you like to take the Commission through the corrections?---Yes. So witness statement 1, paragraph 73, just to change the word 'personal' to 'professional' with reference to PIP.

PN43

Thank you?---Paragraph 81, replace 'Rebecca' with 'Coralie Hadingham' for the reference to my substantive manager.

PN44

Sure?---For paragraph - - -

PN45

Just slow down to make sure everyone has time to drop those changes in?---Sorry.

PN46

That's okay. Yes, should be good, yes.

PN47

THE DEPUTY PRESIDENT: Sorry, just to clarify, it's the final sentence of paragraph 81 and the reference to 'Coralie' and you would like to omit the name Coralie and change it - - -?---No, sorry, it's the reference to 'Rebecca' at the start of the sentence, yes.

PN48

And you would like to change the reference to 'Rebecca' to 'Coralie'?---Correct.

PN49

Thank you?---Paragraph 83, just a change of time. It references 11.45; it should have been 10.45. And the final one for this was paragraph 90, another change of time from 1646 to 1546.

PN50

MR LETTAU: Thank you, Ms Harris. With those corrections, are the contents of that statement true and correct?---Correct.

PN51

Thank you. You have prepared also a second statement, which should be on court book page 110?---Yes.

PN52

Four pages long with 100 paragraphs?---Yes.

*** JESSICA SIOBHAN HARRIS

XN MR LETTAU

PN53

And one annexure at the end?---That's correct.

PN54

Do you wish to make any corrections to this statement?---Just one, please.

PN55

Sure?---At the end of paragraph 17(c), replace the words 'at a station' to read 'attestation'.

PN56

So 'at a station' should read the single word 'attestation'?---Yes.

PN57

A transcription error, apparently?---Yes, apologies.

PN58

Sorry - I will just confirm this for the record - the statement is 21 paragraphs long. I think I misspoke as to the 100 paragraphs, which was a reference to the first statement?---Sorry, where am I looking from?

PN59

Just in that statement. It's 20 paragraphs long that we're referring to at the moment?---Correct.

PN60

With that correction you have made, is that statement true and correct?---Correct.

PN61

Deputy President, we tender the two witness statements.

PN62

THE DEPUTY PRESIDENT: Thank you, Mr Lettau. Ms Lucas, any objection to either?

PN63

MS LUCAS: No, thank you.

PN64

THE DEPUTY PRESIDENT: Thank you. We will mark Ms Harris's witness statement dated 18 April, with annexures, as exhibit 1, and Ms Harris's reply witness statement dated 9 May 2023, with one annexure, as exhibit 2.

EXHIBIT #1 WITNESS STATEMENT OF JESSICA SIOBHAN HARRIS DATED 18/04/2023 WITH ANNEXURES

EXHIBIT #2 WITNESS STATEMENT IN REPLY OF JESSICA SIOBHAN HARRIS DATED 09/05/2023 WITH ONE ANNEXURE

*** JESSICA SIOBHAN HARRIS

XN MR LETTAU

PN65

Thank you, Mr Lettau.

PN66

MR LETTAU: I have no further questions at this stage, thank you, Deputy President.

PN67

THE DEPUTY PRESIDENT: Thank you. Ms Lucas.

PN68

MS LUCAS: Thank you.

CROSS-EXAMINATION BY MS LUCAS

[10.36 AM]

PN69

Good morning, Ms Harris. I just have some questions for you obviously arising out of your statements primarily, so I'll start by asking you some questions in relation to your first statement of 18 April. I don't need you to look at the statement; in fact, I'd prefer you didn't have a look at it unless I ask you specifically to go to a relevant paragraph?---Okay.

PN70

Thank you. Ms Harris, you have said that in September 2021 that Steve Allan made comments towards you which became later the subject of a complaint by you; is that correct?---That's correct.

PN71

During October 21, CFA had announced that Steve Allan was finishing with CFA; is that right?---I believe so, yes.

PN72

In that same month of October, there was an advertisement for the business continuity advisor position and you applied for that position?---That's correct.

PN73

In that same month, October 21, Paul Ramage commenced his role as general manager, governance, legal and risk services at the CFA?---That might have been the case. I wasn't aware of Paul's start date.

PN74

Okay. Do you accept around that time that Adriaan den Dulk, if that's how you say his name, was the CRO at CFA?---Correct.

PN75

In relation to the role of the business continuity advisor, you were offered that role on 15 November 21?---I believe that was the - - -

PN76

Around that time?---Around that time and that date, yes.

*** JESSICA SIOBHAN HARRIS

XXN MS LUCAS

PN77

Then you commenced your role around 22 November 21?---I believe that was around that date, yes.

PN78

On 7 December, you made a formal complaint about Steve Allan and other strategic team managers; is that right?---Correct.

PN79

You alleged that the strategic team managers also engaged in similar conduct to what you had contended Steve Allan had engaged in?---Correct.

PN80

Then, about a week after, in December, around 16 December, you received a letter of offer and contract for a position of manager, risk and assurance, December 21?---I believe that was the date.

PN81

So you were in the business continuity advisor role for approximately a period of four weeks, give or take; is that right?---If that's what the dates show, yes.

PN82

You would accept, wouldn't you, that the complaints you made about Steve Allan and other former employees did not affect your success in obtaining the position of both business continuity advisor and manager, risk and assurance, wouldn't you?---I don't believe that they would have. At that stage that I made the complaint, I'd received the position for business continuity.

PN83

In your statement - it's around paragraphs 25 to 26 and I don't need to take you to it specifically - you say that you were advised by Mario Marii that you were no longer allowed to undertake the secondment into the manager, risk and assurance position?---That's correct.

PN84

And that you were concerned that the resistance to your commencing was related to your complaint about Steve Allan; is that right?---That is correct, yes.

PN85

But you accept, obviously, that Steve Allan had left the organisation?---Yes.

PN86

And you did in fact commence your role as manager of risk and assurance, didn't you?---That's correct.

PN87

You accept, don't you, that there was a period of transition from the business continuity advisor role, which you held for that period of around four weeks, and then into the manager, risk and assurance role?---Correct.

PN88

Do you accept that the reason for the delayed start date in the manager, risk and assurance position was, as it was explained to you, that there would be a gap in the business continuity role and that CFA had to actually ensure that that role wasn't just left vacant? Do you agree with that?---That was what was put forward after I had received the manager, risk and assurance role.

PN89

Do you accept that you had a meeting with Robyn Harris, Paul Ramage and an HR business partner to discuss how things could be best managed from you leaving the BCA role and then entering into that risk role?---Yes.

PN90

It was explained to you at the meeting, was it not, that you couldn't perform the two roles at once?---That wasn't explained to me at that meeting, no.

PN91

So you deny that they said at that meeting that you couldn't do the two roles at once?---Paul advised that he would speak to Adriaan and make sure that my work was appropriate, so I continued managing the elements that I did as a priority.

PN92

I put it to you that, in fact, you indicated that you wanted to start in that risk role, but Paul and Robyn explained that there had to be this transition period. Would you agree or disagree with that?---I actually offered from the outset to support any transition that was required from the outset, before I'd even gone across, so I fully supported transition, yes.

PN93

You agree that you were released from that business continuity advisor role about six weeks later, so you did then in fact start the manager, risk and assurance position?---Thereabouts. I don't know how many weeks, but by the end of January, I had been released, correct.

PN94

Do you accept, based on those circumstances, that the delayed start date of your manager, risk and assurance role had in fact nothing to do with the complaint about Steve Allan or others but actually it was about having an appropriate transition period between your role of business continuity and the manager, risk and assurance?---I don't know why they delayed the transition.

PN95

Okay?---Yes. Not quite sure.

PN96

So you don't know?---No.

*** JESSICA SIOBHAN HARRIS

XXN MS LUCAS

PN97

On 20 January - so that's all occurring in December, from what I understand - so 20 January, you receive a call from the complaints case manager that your

complaint in relation to Steven Allan and others who were no longer employed by the CFA had been closed; is that right?---Correct.

PN98

A few days later, on the 24th, you received a complaint outcome letter, so that's a formality of sorts, from what I understand?---Correct.

PN99

Did you accept from that conversation that, as far as CFA was concerned, that was the end of the matter in terms of the complaints? That's where they were leaving it?---That's how I understood it at that point, yes, correct.

PN100

In other words, you had no reason to believe that the complaint would be taken any further than that?---My understanding is that they were not going to be investigating the cause of the complaint, correct.

PN101

You haven't made any complaints about the way in which the complaint was handled by the CFA, have you?---A formal complaint?

PN102

Yes?---No.

PN103

Now I'm going to jump ahead to April. This is where you undertook a spot check of the current internal audit project and your evidence is to the effect that you were concerned upon review of a document that you could see privacy and health data among some of the documents you opened; is that correct?---Correct.

PN104

These related to some historical documents; is that right?---Yes, yes, they were audit representation and demonstration that we'd actually followed for the processes.

PN105

You advised Adriaan den Dulk, the then CRO, of what you described as a suspected breach; is that right?---Correct.

PN106

You accept now that Adriaan has left the organisation?---Correct.

PN107

You say that on 12 April 2022, you received an email from Paul Ramage suggesting that you should focus on the audit project and not a privacy breach and that the compliance breach would be managed under the audit framework; is that - - -?---Yes, we received an email to say that that's the way that Paul would like it handled.

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XXN MS LUCAS

PN108

Would you agree or disagree that the characterisation is that it wasn't actually a breach but it was an issue around the correct storage of information within the system? Would you agree with not?---I disagree with that. It was information that we shouldn't have had and nor should we have provided it to a third party.

PN109

Do you agree that you weren't directly responsible for looking at this particular issue?---Sorry?

PN110

Do you agree that you weren't actually the one responsible for looking into this particular issue?---No, I disagree. I believe I was responsible because she was my direct report, so I was making sure that she was doing her job.

PN111

When you say she was your direct report, who are you referring to?---The enterprise risk advisor.

PN112

Is her name Kelly?---Correct.

PN113

Would you agree that you were never reprimanded by Paul Ramage for raising this as an issue?---Yes, I agree that I wasn't reprimanded. We didn't get to speak about it. The only information I received from Paul was about the email saying that it would be dealt with through compliance and to move on.

PN114

Do you agree that Paul never discouraged you or anyone else from ever raising issues about this sort of issue?---He never vocally said, 'Do not raise breaches or issues with that.'

PN115

Would you agree that Paul Ramage encouraged people to raise issues of this nature around the storage of information or would you disagree?---I disagree with that.

PN116

Adriaan den Dulk was replaced by an interim CEO, Richard Stanwix, on around 21 April; is that right?---I believe that it was around that date, yes.

PN117

You reported this alleged privacy breach issue to Richard Stanwix?---Correct, yes, to provide him the history of what had been happening in the - - -

PN118

Okay. And there's nothing in your statement to suggest that Mr Stanwix reprimanded you for raising this as an issue, is there?---No.

*** JESSICA SIOBHAN HARRIS

XXN MS LUCAS

PN119

To your knowledge, nothing further occurred in respect of the data breach issue after you raised this with Mr Stanwix?---To my knowledge, nothing occurred with regards to investigating the breach at all, so it was just the end, so I didn't follow it up any further because of the behaviour that I experienced from the former chief risk officer.

PN120

You say that in May 2022, you were known by CFA managers to have been deeply upset by comments that were made during a CFA forum incident; is that right?---Correct.

PN121

Do you agree that Paul Ramage actually followed you out when he saw that you were upset to see if you were okay?---Correct, I've said that in my statement, yes.

PN122

Would you agree, generally speaking, that Paul Ramage has been very supportive of you in your time at CFA?---I felt that he supported me when I had to interact with him.

PN123

On 25 July, around that time, if you can't recall exactly, Rebecca Holding commenced her role as CRO at CFA; is that right?---I believe it was around that time.

PN124

At paragraph 53 of your statement, you refer to - this is in the early days - the additional workload that was to create and schedule an induction plan for Rebecca?---Mm-hm.

PN125

Do you agree that this consisted of a list of people for Rebecca to meet and some documents to read? Is that what you had to do?---I had to engage with a lot of those people to make sure that they were ready and prepped to engage with Rebecca as well and work out which was the best - which were the best stakeholders for her to engage with in the first instance and then their next level down as well, who she should be engaging with in relation to certain risks that we had within the organisation.

PN126

You informed Rebecca about this privacy breach issue as well as part of briefing her?---Correct, yes.

PN127

In your statement, you refer to concerns that you raised with Rebecca when you say that you weren't confident to get work done in particular time frames. I might actually just take you to your statement, in fairness, just so that you can see which paragraph I am referring to. It's paragraph 56 of your first statement of 18 April. There you talk about:

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XXN MS LUCAS

PN128

Met with Rebecca about the assurance function to request changes to be made to the internal audit reporting approach.

PN129

Then you go on to say:

PN130

This involved a considerable workload for me that had not been planned. I raised this with Rebecca and told her I'd try to get as much as I could done over the next week but was not confident given the time frame.

PN131

Is it the case that when you advised Rebecca that you were not confident to get the work done in the time frame that, in fact, Rebecca reiterated to you that you didn't need to work Fridays and you could have Friday off?---I don't recall whether that related to that period of time. I believe I was due to go on leave, annual leave, at that period of time, so I'm not sure whether the Friday scenario related to this particular situation.

PN132

Did you have conversations with Rebecca, I guess more generally, about your workload generally and how you wanted to get more of a work/life balance in the organisation? Do you recall having conversations with Rebecca along those lines?---I don't recall having conversations specifically talking about work/life balance, but I had, at the beginning of the year, with the former chief risk officer applied for the purchased leave entitlement where I would take - with the intent to take that on a Friday to balance work/life balance, but also to remain agile enough for the organisation that if I need to do extra hours on a Friday, I could without costing them overtime or anything like that had I have gone part time.

PN133

I put it to you that Rebecca was, in fact, very supportive of you having Fridays off and that really she - - -?---Rebecca, during the period of time that I was working for her, would mention, too, a need to put up boundaries and build parameters, absolutely, yes.

PN134

Yes?---Yes.

PN135

You said in your statement at paragraph 60 - you don't have to look at your statement any more - that on 3 August 22, Rebecca said words to the effect that she comes from private industry 'and we just have to get the work done'?---Yes.

*** JESSICA SIOBHAN HARRIS

XXN MS LUCAS

PN136

I put it to you that what Rebecca actually said was words to the effect that, 'I'm from the private industry, I'm not sure, let me speak to HR on what the policy is' and that related to some leave entitlements that you were going to look into?---She said that as well.

PN137

As well?---Yes.

PN138

You say that she says she comes from private industry 'and we just get the work done'? You say that you can definitely recall her saying those words?---Yes, because I thought her words - I didn't understand the meaning.

PN139

Right?---I didn't understand what that meant.

PN140

So you disagree if I say that, in fact, Rebecca never said those words, what she said was, 'I'm from private industry, I'm not sure, let me speak to someone on what the HR policy is'?---I would agree that she said that as well.

PN141

Okay?---Yes.

PN142

On 8 September 22, Rebecca advised you by MS Teams that you were required to develop a work plan for the risk team by close of business?---Yes. I believe her wording was 'by close of business, or is that not enough time?' or something like that, yes.

PN143

So she said something along the lines of, 'Do you think it might take longer than that?' and do you recall that she also said something like, 'Don't book yourself up at a hundred per cent for four days per week from now until December'?---I was - I believe that that came out as I was trying to understand what it was that she was looking for in relation to - you say work plan - or to set what parameters for what period, and part of that, I believe I spoke to a work breakdown schedule and allocation of FTE.

PN144

You say in your statement that on 12 September - this is, just for the Commission's reference, at paragraph 66 - you were called into Rebecca's office and she said she wanted to 'performance-manage Kelly' - and you put inverted commas - 'out' as she felt she was not performing in the role as required. Is that right?---Correct.

PN145

I put it to you that, in fact, the discussions that you had with Rebecca and specifically that discussion on that day was actually around how best to support Kelly and how to put a plan in case to do so. Would you agree or disagree with that?---I certainly put forward that I would like to ensure that she was set up for success and that we would go through the appropriate plan as per the EBA. I also posed that to organise a wellbeing meeting to discuss her wellbeing so that we had a wellbeing layer over the plan as well.

*** JESSICA SIOBHAN HARRIS

XXN MS LUCAS

PN146

Do you agree that Rebecca was supportive in terms of trying to get Kelly's performance sort of up to scratch and give her an opportunity?---To me, that wasn't how it was coming across. I felt as though I was in a position that I would have to ensure that Kelly's going to be supported and that it wasn't perhaps supported. We had significant changes coming at us in relation to we were reviewing the framework, we were completely changing - or Rebecca was having the systems that we were using to record all our (indistinct) changed and, for Kelly to be able to perform at her best, or be given the chance to perform at her best, none of those things were set in stone yet and so therefore she wouldn't be able to be familiar with them, so I was trying to advocate for her to be able to utilise the existing functionality of the system and those types of things.

PN147

You say in your statement that Rebecca asked you to - sorry, at 67 of your statement, you refer to a WIP report. You said:

PN148

Rebecca emailed me giving me a new task to create a work in progress report for her to take to meetings.

PN149

Is that right?---Yes, that's correct.

PN150

If I said to you that, in fact, it was Rebecca that created the report but she asked you to update it, would you agree or disagree with that?---Rebecca provided me an Excel spreadsheet with headings and said, 'Can you please go and find all of this information.'

PN151

Yes?---So I had to manually extract it from the data that sat within the system.

PN152

Okay?---Or create it myself. Some of the data did not exist.

PN153

At paragraph 72 of your statement, you refer to another conversation you had with Rebecca in relation to Kelly where you say:

PN154

She referred to the performance management process for Kelly as to performance-manage her out again.

*** JESSICA SIOBHAN HARRIS

XXN MS LUCAS

PN155

I put it to you that the discussion that you actually had with Rebecca was about supporting Kelly as best as you both could?---I certainly put that forward to Rebecca as well and I expressed to her in that conversation that the reason that I am approaching the performance management in that way is because I believe that the job for Kelly, she's applied for it, she's got the job, it would be a great job for

anybody and I would like to see her succeed, and again reiterated the need to make sure that she was being tested or her performance was being tested against things that were reasonably familiar.

PN156

That all took place on 20 September. I just want to show you an email between yourself and Rebecca on that day and just ask you to explain that. If you could just have a look at that. The email chain, as per usual, it's sort of the last email at 12 o'clock. Do you recall that you sent that message?---Sorry, where am I looking?

PN157

The bottom email on the first page, I think that's the first email that commences there?---Mm-hm.

PN158

Who is Denise?---Denise Dellas is the HR business partner allocated to our portfolio.

PN159

Sure, sure. There you send Denise an email, is it right to say, you've put together some opportunities to support Kelly's development and improvement, so you have given an update there; yes?---Yes.

PN160

Then you send an email to Rebecca at 4.04 pm where you effectively provide her with an update?---Yes.

PN161

Then Rebecca responds to you at 5.29 pm:

PN162

Thanks, Jess, I think what you propose is fair and reasonable. I don't disagree re the coffee shop. We also need to consider the repercussions further down the track, i.e. kick it off sooner rather than later to allow time for Kelly to improve ahead of Christmas, noting she's hoping to take a few weeks off in January.

PN163

Then she provides an alternate approach, which might be to have an initial conversation to give her a week to think about it, et cetera. Then you will see there's a further email about a career planning course available in October and she suggests that:

PN164

It might be a good idea to have a conversation with Kelly before you go on leave so that there's an opportunity for her to complete the course.

PN165

You agree that all transpired?---Correct.

*** JESSICA SIOBHAN HARRIS

XXN MS LUCAS

PN166

Would you agree that the characterisation of that is, in fact, that Rebecca was supportive of Kelly and wanting to improve her performance?---I wouldn't necessarily say that it was supportive. I felt after the conversation, the first conversation that I had with Rebecca - sorry, the second conversation I had with Rebecca after the meeting with Denise was that I was certainly advocating for Kelly and pushing back on Rebecca, and so essentially asking for her to support a wellbeing approach instead of just trying to force her out.

PN167

Just to clarify, this has got nothing to do with your performance, has it? This is about another employee's performance that you are - - -?---That we're talking about here?

PN168

Yes?---I'm talking about her performance, correct.

PN169

Yes. In other words, I mean, in terms of any relevance to your roles, the relevance really only extends, doesn't it, to your role in assisting Kelly in relation to her performance?---Sorry, could you rephrase that? I'm not quite sure I understand.

PN170

Yes. I'll just withdraw that question. I probably don't need to ask it. In your statement, you say that you had a conversation in which - so you had a conversation with Rebecca in which you confirmed you were struggling and you indicated words to the effect - sorry, at your statement at 73, this is the passage where you say, on 21 September 22, you had a discussion with Rebecca via MS Teams and you say that during the discussion where you foreshadowed difficulty you were having completing work requirements, et cetera, Rebecca commented, 'What am I going to do with you? Do I need to put you on a PIP too?' and that you understood PIP to be referring to a professional improvement plan. I put it to you that, in fact, in that conversation, you indicated to Rebecca that you were struggling and you indicated words to the effect that Kelly was a drain and that maybe, in fact, it was you that should be put on a PIP?---Rebecca discussed that with me the following week when I raised issues with trying to meet the deadlines, which I believed were unreasonable for the workload that was required, which - so she certainly said that it was me who'd said that. I can't comprehend that any employee would ever ask to be put on a performance improvement plan. So, no, I've never said that.

PN171

You deny that you ever said in the course of that discussion that it was you that should be put on a PIP?---Yes, it would be shocking to me, yes.

*** JESSICA SIOBHAN HARRIS

XXN MS LUCAS

PN172

I also put it to you that in that conversation, Rebecca discussed with you how you were feeling upset and indicated that you would discuss it again the next day and

that she came to check on you the following day. Do you agree or disagree with that?---I don't recall if it was a check or if we just had a meeting.

PN173

You were never put on a performance improvement plan, obviously?---No, never.

PN174

In October 22, you commenced a period of leave and brought a WorkCover claim that was accepted by CFA's insurer; is that right?---Not in October. In October 22
- - -

PN175

Okay, 22; right?---Yes, October 2022, I went on sick leave. I didn't submit my WorkCover claim until, I believe it was December.

PN176

All right. So some time around the end of 2022, your WorkCover claim was accepted?---Correct.

PN177

There was never any indication given to you that your roles were being made - or your substantive role and the role you were in temporarily was being made redundant because of your WorkCover claim, was there?---Not because of the WorkCover claim. I felt it was perhaps because I was stressed and struggling and that I wasn't seen to be the appropriate type of person to be working for them.

PN178

The essence of your case, Ms Harris, is that you say that the redundancy of your temporary and your substantive roles, so if you understand what I mean there, the business continuity advisor and the manager, risk and assurance roles - - -?---Yes.

PN179

- - - were made redundant because of matters personal to you; is that right?---Correct.

PN180

You accept, don't you, that you only raised this as an issue at the arbitration of this matter, so, in other words, when it came on before the Fair Work Commission in the context of this hearing?---I believe we had noted that we didn't think that it was a genuine redundancy in the stage 1 or 2 meetings for the grievance process, but we didn't go into detail.

PN181

Well, you have said in your reply statement at paragraph 5 that your reasons for not raising it earlier was because of fear and that you did not want to provoke CFA to go on the attack against you; is that right?---Correct.

*** JESSICA SIOBHAN HARRIS

XXN MS LUCAS

PN182

I suggest that the reason that it wasn't raised until such a late stage is, in fact, because you know that this was not the reason for your redundancy. Would you agree or disagree with that?---I disagree with that.

PN183

You believe quite strongly that you were entitled to be put into the PTA level 6 for the new role, don't you?---Correct.

PN184

Would it be fair to say that you're quite annoyed that you haven't just been parachuted into that PTA level 6 role?---I wouldn't say 'annoyed' describes it, no.

PN185

You were told that you could apply for that role as part of a merits-based process, were you not?---Correct.

PN186

And you didn't apply for that role, did you?---I submitted a grievance.

PN187

But you didn't apply for that role?---I didn't feel that I needed to because I already had applied for it the year prior.

PN188

I am just going to address a few other things that are raised in your reply statement. At paragraph 7 of your statement in reply, and I think this is largely in reply to Ms Holding's evidence, her witness statement, you said - there's no need to have a look at this unless I indicate otherwise - you state that you were not aware of ever having been interviewed by Ms Holding. Do you recall saying that?---Yes, correct.

PN189

Do you disagree that she asked you what you considered to be the CFA's top risks?---I don't recall an interview, nor do I recall a specific conversation about the top risks. I had provided her the strategic risks, so she had those. If she had asked, I'm not sure what the context around that question would have been as to what my answer might have been.

PN190

So if Ms Holding says that in her early meetings with you, you were unable to articulate what the CFA's top risks were, would you disagree with that statement?---I'd have to understand what the context of the question was.

PN191

Okay?---I wouldn't agree that I can't articulate what the top five risks are, but I wouldn't - I'd have to understand what the context was.

*** JESSICA SIOBHAN HARRIS

XXN MS LUCAS

PN192

Would you agree that in your time working with Ms Holding, you assisted and coordinated in the development of risk reports under her guidance as CRO? Is

that a fair characterisation?---I wouldn't say that's fair. I would say that during my time in the position under all chief risk officers that I was required to engage with all stakeholders to ensure that their risks are represented accurately and that it was that information and drafts of different papers that I would be collaborating on with the relevant chief risk officer.

PN193

Would you agree that during the time you were managed by Ms Holding, you worked closely to assist and coordinate activities under her guidance? Is that a fair assumption?---I would collaborate with her on certain things, certainly, as is required by anyone who has a manager.

PN194

But would you accept that you were directed to do tasks by her specifically?---On occasions, she would ask, 'Could you go and do it this way', but, yes, a lot of the work that we were doing was already in train, it was work that we were already managing.

PN195

I put it to you that in the role of manager, risk and assurance, you did not act - you did not perform any higher duties of the role of CRO. Would you agree or disagree with that?---Whilst I was in that position?

PN196

Yes?---I haven't seen the CRO's position description; I'm not sure what it says.

PN197

In your statement, you refer to - I will just take you to your statement. This is your reply statement at paragraph 13. It is page 111 of the court book, if that assists. Paragraph 13, you said:

PN198

It was common practice for the manager, risk and assurance to act up into the CRO role when necessary.

PN199

?---Yes.

PN200

My question was - I put it to you that, in fact, you didn't act up into the CRO role?---During that period, I wasn't required to.

PN201

Okay. Is it fair to say that your view is that the duties of a former PTA level 5 role, so the business continuity advisor and manager, risk and assurance, are not materially different from the new PTA level 6 role, the new role that the senior risk - - -?---I don't believe they are.

*** JESSICA SIOBHAN HARRIS

XXN MS LUCAS

PN202

Do you base that understanding on the basis of the position description for the new role? Is that, in part, what you base that view on?---And understanding what both jobs - that, having done the jobs, I know what is required within the organisation of that job.

PN203

I guess there's a distinction between the former roles and then the new - in terms of the new role, your understanding of what is required to be performed in that new role is based on the position description document that you have seen?---The new one?

PN204

Yes. Have you considered that document?---Sorry, can you ask the question again?

PN205

I am just trying to understand - I mean you've obviously - you believe that the old level 5 roles are not materially different from the new PTA level 6 role?---Yes.

PN206

So I'm just trying to understand what do you base your understanding of what the new PTA level 6 role actually involves?---Based on the position description.

PN207

So you've reviewed the position description; yes?---Correct, and the conversations that we've had with Paul and Rebecca.

PN208

And that's as part of the consultation process about the restructure; is that correct?---I think they noted some within the consultation process.

PN209

Yes?---And throughout the grievance process.

PN210

Yes, okay, sure. You accept, though, don't you, that in terms of any involvement or oversight in terms of the CFA restructure process, you haven't been involved in that, have you?---We were asked to provide feedback during the consultation period.

PN211

Yes, the consultation, yes?---We weren't aware of a restructure or a review of positions at all until we received the email.

PN212

Do you accept that the restructure of CFA, one of the key things they wanted to do was to lift the risk maturity of the organisation? Is that a concept you are familiar with?---Yes, that's been on - I mean, yes, of course, yes.

*** JESSICA SIOBHAN HARRIS

XXN MS LUCAS

PN213

So, in effect, they identified what they considered to be - when I say 'they', I'm referring specifically to the evidence of Paul and Rebecca - identified what they considered to be deficiencies in the existing structure and the aim was to effectively lift that risk maturity function within the organisation?---That's what they've put forward, yes.

PN214

You are familiar, for example, that Paul held a view - and I'm saying this with reference to his statement, which you have obviously also considered in the context of this case in your reply evidence - that there was a view held that the risk team only focused on the administration of lower level transactional activities, such as emailing reminders that it was time to update info into the corporate risk management info system, and that it didn't involve explaining the methodologies associated with risk identification, assessment and control? Sorry, I know that's a big proposition, but - - -?---No, no, yes, that's what he - - -

PN215

In general terms, you understand that's the effect of what he was saying?---Yes, that is what Paul put forward, correct.

PN216

Do you accept, as a general proposition, that the restructure sought to transition the risk team from what they considered to be a transactional-based model to a business partnership model? Did you understand the - - -?---I understand that that's what they presented. I disagree with the transactional representation that they put forward.

PN217

Okay?---Yes. And with regards to the partnership model, it was already a strategy that we utilised where and when we could, recognising that when you're the only person in the team who can provide advice and undertake risk assessments, et cetera, you have to partner with everyone. So, it's not until you've got additional capacity, which they have drawn on by adding risk to the insurance business partner, for example, so they will be able to go and partner with a section of the organisation, whereas we would be able to go and partner with another section of the organisation, effectively to divvy up who they are going to have close contact with and provide support.

PN218

Do you disagree at a fundamental level that there was actually a need for a restructure? Is it your view that actually there was nothing wrong with the existing system and that there was no need for any change?---That's not my view.

PN219

Okay?---I provided feedback to say that I supported the restructure, during consultation as well. It had always been slated, or not always, but, for as long as I've been in the business continuity role, it had been slated that business continuity did not fit in strategic planning - - -

*** JESSICA SIOBHAN HARRIS

XXN MS LUCAS

PN220

Sure?--- - - - as CFA have noted, and that it will be going over to risk. When? That was always the big question mark. So, I fully supported that change.

PN221

But it's your view, is it, that you disagree with the assessment that was conducted that the old model, or the model prior to the restructure, was a transaction-based model as opposed to - - -?---I disagree that it was transactional.

PN222

Okay?---I don't know where they have - what evidence they have to have arrived at that. I have not seen that. We did have a new system as of July the previous year, which the former CRO had commissioned, and part of one of our projects within the team for improvement was to roll that system out. Maybe that was how they arrived at that, but that certainly was not a bulk of our role.

PN223

I don't have any further questions for the witness. I probably - sorry, I forgot to tender that email formally.

PN224

THE DEPUTY PRESIDENT: Any objection, Mr Lettau?

PN225

MR LETTAU: No, Deputy President.

PN226

THE DEPUTY PRESIDENT: Thank you. We will mark the email which concludes with an email from Ms Holding to Ms Harris dated 20 September 2022 as exhibit 3.

EXHIBIT #3 EMAIL CHAIN CONCLUDING WITH EMAIL FROM MS HOLDING TO MS HARRIS DATED 20/09/2022

PN227

Thanks, Mr Lettau.

PN228

MR LETTAU: Thank you. If I can just take one moment. I don't have any further questions, Deputy President, so, Ms Harris, you are excused.

PN229

THE DEPUTY PRESIDENT: Thank you very much for your evidence, Ms Harris?---Thank you.

PN230

You are excused and may resume your seat at the Bar table or in the courtroom, as appropriate. Thank you.

<THE WITNESS WITHDREW

[11.19 AM]

PN231

THE DEPUTY PRESIDENT: Mr Lettau, just confirming, does that conclude your evidentiary case?

PN232

MR LETTAU: That concludes our evidentiary case, Deputy President, and there's nothing further from me at this stage.

PN233

THE DEPUTY PRESIDENT: Thank you, Mr Lettau. Yes, Ms Lucas.

PN234

MS LUCAS: Thank you. I am proposing now to call Mr Ramage.

PN235

THE DEPUTY PRESIDENT: Thank you, we will call Mr Ramage.

PN236

THE ASSOCIATE: Please state your full name and address first. You may use a business address.

PN237

MR RAMAGE: Paul Ramage, (address supplied).

<PAUL RAMAGE, SWORN [11.20 AM]

EXAMINATION-IN-CHIEF BY MS LUCAS [11.20 AM]

PN238

Mr Ramage, you are the general manager, legal and risk of CFA; is that right?---Yes, governance, legal and risk services.

PN239

Sorry, governance, legal and risk?---Yes.

PN240

You have provided a statement in this proceeding and that is a statement dated 2 May 2023?---That's right.

PN241

It's 22 paragraphs long?---Yes.

PN242

And it contains a number of annexures, which I'm struggling to - it's labelled in the court book, so I don't know how many pages it is, but it's - so you've got a statement there with all the annexures? Have you got the annexures there as well?---Yes, I do.

PN243

Okay, excellent. Do you accept that that statement is true and correct in every particular?---I do.

PN244

You have no corrections to make to that statement?---No corrections, no.

PN245

I will tender that statement.

PN246

THE DEPUTY PRESIDENT: Any objection, Mr Lettau?

PN247

MR LETTAU: No, Deputy President.

PN248

THE DEPUTY PRESIDENT: Thank you. We will mark the witness statement of Mr Ramage dated 2 May 2023, with annexures, exhibit 4.

**EXHIBIT #4 WITNESS STATEMENT OF PAUL RAMAGE DATED
02/05/2023 WITH ANNEXURES**

PN249

Thank you, Mr Lettau.

PN250

MR LETTAU: Thank you, Deputy President.

CROSS-EXAMINATION BY MR LETTAU

[11.22 AM]

PN251

Hello, Mr Ramage. I have got some questions for you, mostly about the review into the risk management systems at CFA?---Yes.

PN252

And some of its objectives?---Yes.

PN253

Of the review and the restructure?---Yes.

PN254

Some of my questions will probably be a bit uncontroversial; it's just giving some context and background. You should have a court book in front of you. No need to refer to it unless I ask you to do so?---Right, okay.

PN255

You joined the CFA in October 2021?---That's correct.

*** PAUL RAMAGE

XXN MR LETTAU

PN256

In your first year at CFA, you sought to review the risk management capability of the CFA?---Along with the other functions within my portfolio, yes.

PN257

I have read through your statement and the materials and there's a lot of - you go into some depth about the changes that you were looking for and, let's say, the shortfalls of the system. It's quite wordy, there's a lot of sort of high level jargon, and I just want to try to cut to some of the major points, if I can?---Okay, yes.

PN258

One of the key issues you identified was what you call a lack of experienced risk management capability, and you stated as well that the board had expressed a loss of sort of confidence or faith in the risk management capability, and one of the key steps you took was, I guess, shifting people?---Mm-hm.

PN259

The first big step you took was getting rid of the previous CRO, Mr Adriaan den Dulk?---That's correct.

PN260

You eventually replaced him with a new CRO that was an interim?---Yes.

PN261

But the new CRO was Ms Holding and she came on in July 2022?---That's correct.

PN262

You tasked her with conducting the review of the risk management and the key goal, would you accept, was to improve, within the risk management roles and functions, the quality of people filling those roles, so the quality and level of their experience, the expertise of these people occupying risk management roles?---I suppose that was a product of working back from the outcome that we were after, which was improved product and improved timeliness and quality of information that was being provided and the support being provided to leaders in the organisation, and so, working back from that, there was a requirement to make sure we had the appropriate level of staff available to do that.

PN263

You tasked - you say this in your statement - Ms Holding with lifting staffing to exactly as you have just said then?---As part of that, yes.

PN264

And you wanted her to find the team that she required to do her job properly?---So it was more, again, about the capabilities, so, if we know what the output is, what the outcome is working back, what's the capability that we required, and that would be part of it.

PN265

Having the people with the right capabilities to get the outcomes you need?---Yes.

*** PAUL RAMAGE

XXN MR LETTAU

PN266

You said in your statement that you effectively tasked her with getting together a team who she considered was best able to support her in her role. I guess the point I'm getting at here is it's about who is in these roles, it's about their capabilities, it's about their competency?---It's about the capability of the function as a whole.

PN267

Yes?---My level of concern was the output that was coming from that function.

PN268

Yes?---And there were a number of things. Capability is one, but I suppose a clear approach and structure to providing information to the board and getting clarity about what that looked like.

PN269

Yes?---And then how you would deliver against that. So, I suppose what we're talking about there is one part of, I suppose, a plan that was much broader than just - - -

PN270

Perhaps we could put it this way, if you would agree with this: having the right staff is the means - the staff with the right capability is the means to achieving the objectives?---That's right.

PN271

You say, for example, that prior to the restructure, CFA was relying on staff without technical experience or specialist qualifications. This is from your statement?---It was - - -

PN272

Would you agree with that?---Yes.

PN273

You say as well that the people in the roles had generalist project management or admin backgrounds; would you agree?---Yes.

PN274

And that they relied too heavily on the chief risk officer; would you agree with that too?---There was certainly, from my experience, a high degree of reliance on that role, yes.

PN275

I assume, when you make these statements - I mean, I note that, as I said before, they are generalist statements, you don't name names, let's put it that way?---Yes.

*** PAUL RAMAGE

XXN MR LETTAU

PN276

But you do mean to include Ms Harris in that assessment?---So, certainly that view predates Jess because Jess came into the role on a secondment, so this, with

my experience, would start from October 2021, and that was prior to Jess being in that, but, yes, Jess was obviously in that role from - - -

PN277

Yes, and you have given a statement, obviously, after some period of being in the role?---Yes.

PN278

While you do make these sort of general comments about, you know, lack of technical experience or specialist qualifications, you haven't presented any sort of direct evidence or concrete evidence about Ms Harris's level of competency to adequately perform the risk management functions, have you?---So I suppose where I operate from is I look at the output of the area and what's coming from that function. Certainly what I saw come from that area was not what was required by the Board Risk Committee or by the chief executive officer or by my assessment of what that function should be producing, either in terms of the quality or the timeliness of that information.

PN279

Sure. So it's a sort of reverse deduction down to the competency of the people based on the outcome, but you would accept you haven't actually presented direct evidence about Ms Harris's competencies, have you?---I mean I think I probably do point out a number of examples of what I think was not working in that function. I can't prescribe that individually to anyone necessarily, except to say it was the team, led by the former chief risk officer, that was producing something that didn't meet the quality or timeliness of the information we needed.

PN280

I take it, though, that you didn't sort of pin the blame on the members of the team underneath the chief risk - I will withdraw that question and phrase it differently. I guess the key question in that, when you have identified a problem like that, the key issue is the person at the top, which is the chief risk officer, and that is the first person you sort of removed from the role and replaced with Ms Holding?---There needed to be a renewal and there needed to be a change in leader, yes.

PN281

And the renewal doesn't begin with removing all the lower staff, it begins with replacing the head staff?---It begins with getting a clear plan of what's required from that function and then understanding the capability to deliver that function.

PN282

You have never raised issues with Ms Harris directly about her competency or her performance, have you?---I'm not - I wasn't Jess's direct manager, so I've got a couple of levels between myself and that role, but certainly, I mean, there had been feedback about improvements that could be made to the work that Jess was producing around reports and information that was needed, so that feedback was provided, as I would to any staff member in one of my functions about what else needed to be done.

*** PAUL RAMAGE

XXN MR LETTAU

PN283

Constructive feedback type of thing?---Yes.

PN284

No formal warnings, no sort of ---?---No.

PN285

Nothing formally recorded that you are aware of about her performance and her capabilities?---No.

PN286

Do you recall an occasion in May 2022 when Ms Harris became upset at a CFA forum or after a CFA forum?---Yes, I do.

PN287

Do you recall, after that incident, telling Ms Harris about how you had - you told her a story, effectively, about how you had once left an organisation that you were loyal to, but that you felt, for your own health or your own wellbeing, you had to leave and you did leave?---Yes.

PN288

Do you recall suggesting to Ms Harris that she should perhaps reconsider her employment at the CFA?---I recall that I spoke to Jess about it's important that she have a good understanding of what her career objective is and that there might be an opportunity that I could provide her to get that clarity.

PN289

Did you - - -?---By offering - - -

PN290

I withdraw that question. I put to you that by suggesting, or, you know, telling this tale about your own experience of being loyal to an organisation and, you know, coming to the view that it was better for your wellbeing to leave, I put to you that, by telling that tale, you were suggesting to Ms Harris that perhaps that's something she, too, might like to do in reconsidering, as you put it, her career?---I could see Jess was very, very upset and I was concerned for her because of, I suppose, the anxiety that I was seeing and what she was describing to me, so I was looking for a way to provide, I suppose, a constructive way to sort of deal with the situation.

PN291

This happened in May, as we established earlier, which is about four weeks after you got rid of the previous chief risk officer, Adriaan den Dulk, so it's in the midst of your - in fact, it's early on in the stage, actually - it's in the midst of the review and the restructure of risk management, and would you accept that, at that stage, restructuring the risk management was on your mind?---Lifting the quality of the information coming from that function, yes.

*** PAUL RAMAGE

XXN MR LETTAU

PN292

But this was before the review had actually begun because Ms Holding is yet to have commenced her employment. It's while you were actively looking for a replacement chief risk officer?---Yes.

PN293

You would have preferred, I put to you, for Ms Harris to have resigned around that period?---No.

PN294

Isn't it sort of strange to make a suggestion to an employee that they might like to reconsider their role if them reconsidering the role wasn't of some benefit to you or in your interests?---I suppose I'll just reiterate I was responding to the distress that Jess was showing after the staff forum. I was genuinely concerned with her - for her, and I was trying to offer her, as I say, a constructive way forward.

PN295

Ms Harris has detailed in her statement several sort of complaints she made during her employment?---Yes.

PN296

I'll just go over them quickly so we don't labour on them, but she made complaints about Steve Allan about - are you aware of these complaints?---Having read the statement, I'm not aware of Mr Allan or his role at CFA.

PN297

You weren't previously aware of it?---No.

PN298

You are aware of complaints or concerns she raised about privacy breaches to the previous CRO, Adriaan den Dulk?---The data that she discovered on a secure website, yes, a shared drive, yes.

PN299

Would you agree that, you know, Ms Harris is not someone to sort of keep quiet about her opinions about matters at CFA and her role?---I suppose, certainly, Jess does share her opinions and her views, but certainly in relation to the data issue there, I mean that was something that I welcomed.

PN300

Would you agree on this point that she shares her views, would you agree that there's, perhaps amongst some members who you work with, some employees you work with, there's a view that Ms Harris, perhaps, is not easy to work with for that reason?

PN301

MS LUCAS: Sorry, I just - can you rephrase the question? I mean, if it's a view held by other individuals, I'm not sure what Mr Ramage can say in response to that.

*** PAUL RAMAGE

XXN MR LETTAU

PN302

THE DEPUTY PRESIDENT: Would you mind reframing, thanks, Mr Lettau.

PN303

MR LETTAU: Have views ever been expressed to you about, you know, Ms Harris's openness to make complaints or raise concerns? Have views been raised with you that, for those reasons, Ms Harris is not so easy to work with?---No, I wouldn't say it like that. I would say that people have said that Jess will raise issues, but not necessarily in the context of it being a bad thing.

PN304

Have you ever discussed, you know, Jess's proclivity to raise issues?---No.

PN305

Has Ms Holding ever discussed those things with you?---No.

PN306

I just want to take you - sort of a bit of a change in topic - to some comments you make - it's going back to the competency issue - comments you make about some of these issues you had identified in risk management?---Yes.

PN307

I said before, or I pointed out that there was no sort of concrete evidence you presented about Ms Harris personally, but you do rely in your statement on - you say you relayed feedback that you had from others in risk management and you say they described risk management as transactional, and I will quote what you say. You say:

PN308

There was a view that lower level transactional activities, such as emailing reminders that it was time to update information in the corporate risk management information system -

PN309

you don't actually call in these people as witnesses, though, these people you have spoken to.

PN310

MS LUCAS: I'm not sure if that's a question for Mr Ramage in terms of the running of our case.

PN311

MR LETTAU: I take your point.

PN312

None of these individuals have presented evidence in this matter, have they, Mr Ramage, that you spoke to?---Not that I'm aware of beyond what's in my statement.

*** PAUL RAMAGE

XXN MR LETTAU

PN313

Have you ever interviewed Ms Harris about her approach and her style of engagement with risk stakeholders, i.e. have you asked her about whether it's transactional or, let's say, based on a partnership model?---So my expectation would be to have those discussions with the chief risk officer, so I was not Jess's manager, so I would generally use, I suppose, the reporting line to provide that feedback.

PN314

So you would accept that you rely on comments of other people about Ms Harris's competency and her style?---So, I suppose I wasn't necessarily commenting on that so much as talking about the function and what was being delivered by the function and the outputs of the function, and the function was what was deficient, in my view, for the reasons that I have said there. I haven't directly allocated responsibility for that, except to say the team wasn't producing at the level that it needed to be.

PN315

So I mean, maybe in summary, just to wrap this up, you look at the outcome and you deduce issues about the root cause of that outcome, staffing in this case, a staffing problem, but in terms of sort of specific feedback and specific particular issues that are identified, you rely on the reporting lines, so, in this case, you - - - ?---The usual practice in CFA would be for the manager to have that discussion with the staff member.

PN316

Yes, thank you, Mr Ramage. I don't have any further questions, Deputy President.

PN317

THE DEPUTY PRESIDENT: Thanks, Mr Lettau. Is there anything arising, Ms Lucas?

PN318

MS LUCAS: Yes, thank you.

RE-EXAMINATION BY MS LUCAS

[11.38 AM]

PN319

Just a few questions, Mr Ramage. In looking at the restructure of the risk function in the organisation, were you concerned with the individuals that were in the various roles or were you concerned with the capability of the positions themselves?---It was the capability of the positions because it's the positions that provide the support that I need provided in a systemic way rather than it being personality-based, so it's what was required at the position.

PN320

You wouldn't factor into that review in any way the individuals in those positions and how they were performing in those roles?---No.

*** PAUL RAMAGE

RXN MS LUCAS

PN321

Thank you. Just in relation to what Ms Harris, I think, describes as a privacy breach issue, is that a fair representation of, in fact, what it was that she discovered and what she spoke to you about, a privacy breach issue, or would you call it something else, for example?---I think it was certainly something that needed to be investigated. I think that I would describe it as a data governance issue and absolutely should be something that we needed to look at. I wouldn't use the term 'breach' so much because it related to a permitted use of that information. It's just that it was poorly stored.

PN322

How did you respond to Ms Harris raising this as a potential issue?---So it was raised with me via the then chief risk officer, so what I had asked Adriaan to do was to make sure that we were investigating the handling of that information using our compliance framework so as to understand what our level of responsibility was under the Act to hold and manage that information, but then, equally, to make sure it was clear to Jess that, given the workload in the risk area, where the priorities in the organisation lay for work to be done, and my view, at that stage, was that the priorities lay in other risk-related roles, not so much in the storage of information for an audit that was being conducted by an external audit provider.

PN323

It was put to you that, as part of the restructure, what was important is to have the staff with the right capabilities, which is the way to achieving your ultimate objectives. You recall that?---Yes.

PN324

Would you agree, however, that there needs to be a fundamental shift, or did you consider there needed to be a fundamental shift in the frameworks that were present around the risk team at the time before those individuals could come in with those, you know, capabilities and actually perform the role?---Yes.

PN325

In other words, it's not just about the capabilities of the individuals, there has to be, I guess, a revamp of the existing way of working, would you say is a fair way to - - -?---Absolutely. It's about being clear on what the outcome is, the framework that we need to deliver that, and then capability is part of that. It is not the only consideration.

PN326

Thank you. No further questions.

PN327

THE DEPUTY PRESIDENT: Thank you. Mr Ramage, thank you for your evidence. You are now excused from the witness box and you are able to remain in the courtroom should you wish to?---Thank you.

PN328

Thank you.

*** PAUL RAMAGE

RXN MS LUCAS

<THE WITNESS WITHDREW

[11.42 AM]

PN329

THE DEPUTY PRESIDENT: Ms Lucas, do you intend to call Ms Holding now?

PN330

MS LUCAS: Yes, I think, if that's convenient. I am assuming breaks are normally around 1 o'clock, so if you're content - - -

PN331

THE DEPUTY PRESIDENT: I am in your hands. If anyone would like a break before we embark upon Ms Holding's evidence - - -

PN332

MS LUCAS: Well, maybe even a shortish break would be quite useful, I think.

PN333

MR LETTAU: Yes, I think a short break would be useful and I think, even with a short break, we might be able to get through the evidence by 1 o'clock. Maybe I'm being a bit optimistic, but it's possible.

PN334

THE DEPUTY PRESIDENT: Thanks, Mr Lettau. A short break to midday?

PN335

MS LUCAS: Yes, that would be lovely, thank you.

PN336

THE DEPUTY PRESIDENT: All right, thank you. We will adjourn on that basis.

SHORT ADJOURNMENT

[11.43 AM]

RESUMED

[12.03 PM]

PN337

THE DEPUTY PRESIDENT: Thanks, Ms Lucas.

PN338

MS LUCAS: Thank you. I call the next and final witness, Ms Holding, Rebecca Holding.

PN339

THE ASSOCIATE: Please state your full name and address. You may use a business address.

PN340

MS HOLDING: Rebecca Marie Holding, (address supplied).

<REBECCA MARIE HOLDING, SWORN

[12.04 PM]

*** PAUL RAMAGE

RXN MS LUCAS

PN341

Thank you, Ms Holding. There is a court book there in front of you, so there should be volume 1 of 2, and behind tab 3 should be a copy of your statement. Is this a witness statement that you provided in this proceeding, or is that not - - - ?---It's - - -

PN342

Sorry, that might be because there's two tab 3s. So there's a tab - it's the same folder, but it's a tab 3 that's towards the - - -?---Yes, okay.

PN343

Is that a witness statement that you have provided in the course of this proceeding that you have prepared?---Yes.

PN344

If you could just flick through it and just confirm that there are, in fact, 46 paragraphs to that statement?---Yes.

PN345

And it is followed by a table, which is also part of your statement?---Yes.

PN346

And then there are, I believe, two annexures following that?---Three.

PN347

Okay, three annexures, yes, that's right, sorry. Is that statement true and correct in every particular, so you don't wish to make any correction to any aspects of that statement?---No.

PN348

Thank you. I will tender that statement, thank you.

PN349

THE DEPUTY PRESIDENT: Any objection, Mr Lettau?

PN350

MR LETTAU: No, Deputy President.

PN351

THE DEPUTY PRESIDENT: Thank you. I will mark the witness statement of Rebecca Holding, with annexures, as exhibit 5.

EXHIBIT #5 WITNESS STATEMENT OF REBECCA MARIE HOLDING WITH ANNEXURES

PN352

Thanks, Mr Lettau.

*** REBECCA MARIE HOLDING

XN MS LUCAS

PN353

MR LETTAU: Thank you, Deputy President.

CROSS-EXAMINATION BY MR LETTAU

[12.06 PM]

PN354

Good afternoon, Ms Holding. I have some questions for you about the review and the restructure of the risk management role and then some specific questions about Ms Harris as well, in particular. You have got a court book in front of you. No need to refer to that court book unless I direct you to do so. Just by way of a bit of background, you have detailed in your witness statement a fairly extensive background, mostly in the private sector. Is it correct this is the first of your jobs in the public sector?---Yes.

PN355

You were employed as chief risk officer in July 2022 and one of the sort of first jobs you were employed to do was to review and build the risk management capabilities; do you agree with that?---Yes.

PN356

You were tasked with putting together a team that you considered would be best able to support you in the role of chief risk officer?---I was tasked to review and put forward what I believed was the right role framework to move forward.

PN357

The sort of main goal, I guess, cutting through some of - there's lots of information, obviously, that you have provided and that's been provided by the witnesses about the restructure, but the key thing is about building risk management capability and capacity?---Correct.

PN358

You prepared, as part of your review, two reports, which are annexed to your statement. The first one is the restructure proposal, which is dated 11 October 2022 and is marked RH1; that's right?---Correct.

PN359

Then you wrote a second one, which is about the outcome of the restructure after the proposal was approved, and that's dated 16 November and it's annexure RH2. Now, I guess the first point I just wanted to make and to see if you agree with this, a lot of the information in these reports is quite high level; would you agree with that?---I would agree.

PN360

High level information. And it doesn't go down to the specifics of individuals and describe in concrete detail, you know, what's happening with specific individuals and their roles and their capacities?---Correct.

*** REBECCA MARIE HOLDING

XXN MR LETTAU

PN361

There's a little bit of copy and pasting in between things, so, for example, in annexure RH1 - it's on court book page 261 just for the record - you don't need to

go to that - there's a list - actually, maybe I will ask you to go to it, just to see if you agree with this. Page 261, you will see at the top, in the second paragraph under 'Background', there's four dot points describing some background of the restructure for the proposal, and then if you go to page - actually, I don't have a page, it's paragraph 6 of your statement - I'll give you the page in one second. Page 240 of the court book, you will see that that's a sort of verbatim re your statement, and I won't take you to this, but the same thing happens in Paul Ramage's statement, that he copies and pastes the same section. It's at paragraph PH10.

PN362

I'm not suggesting, obviously, any impropriety by doing that because it's a normal thing to do. What I'm suggesting is - and I want to ask you if you would agree with this - that there is a sort of non-specificity about some of the evidence you are providing, and I would suggest to you, you could even describe it as a bit vague when we're considering specifically what's happening with Ms Harris. Would you accept that?---No.

PN363

MR LETTAU: Let's cut through to the main point, and you raise the main points of concern in risk management and they are reproduced in your statement, in particular at paragraph 8. You don't need to go to it, but some key areas you identify are immature understanding of risk amongst the team, a lack of risk management skills, a lack of flexibility and transferable skills. Would you agree that skills are about the quality of - when you talk about skills here, you are referring to the quality of experience and expertise of people who are occupying the risk management roles at CFA?---So when I'm talking about the skills and the capability, it's really about the outputs and the way the work was being performed in the team.

PN364

Yes. As part of the restructure, you proposed - and this is set out in - I guess it's well known but it's set out in your restructure proposal - that you had identified that the business continuity advisor role was best moved out of the strategic services group and that it could be incorporated - rather than have a standalone role, it could be incorporated into a new role that you wished to create. Is that correct?---Yes.

PN365

The new role, which is called the senior business partner, and business continuity role - I'm just going to call it 'the new role' just for ease of reference - the new role incorporates, obviously, this whole business - sorry, business continuity advisory role and some elements of some other functions, I guess. You admit, though, that the changes, and you say this in your statement, the changes between the old business continuity role and the new role are - I'm quoting - 'subtle' and 'terminological', or relate to the terminology used. Do you agree with that? It's in your statement?---Yes, you could read into that.

*** REBECCA MARIE HOLDING

XXN MR LETTAU

PN366

And you sort of detail, however, in explaining these subtle differences, that the new role is about, for example, partnership instead of transaction?---Mm-hm.

PN367

The new role is about leading rather than coordinating, so subtle distinctions. It's less focused, would you agree, on the actual functions, but it's more focused on the level of skill the people who occupy those roles have, the level of, I guess, if I can put it this way, the degree of initiative, leadership and expertise those people have in the roles that would enable them to sort of perform the roles in a more productive way and to produce better outcomes in terms of risk management?---I would agree that the way it was going to be done would be different business partnering. It was also in regard to the full end to end risk management of the area, and also the amount of work would be different because it would be to deliver lead and deliver business continuity and lead and deliver risk management.

PN368

But you agree that it's the functions that needed to be improved, like you needed to lift the quality of outcomes from those functions in risk management? You say that the functions were - I'm quoting you - 'deficient and not functioning at the required level'?---Absolutely.

PN369

And you would agree that what you really needed, and this is important, and obviously it's not the full story, but what you really did need, in your opinion, were better people working there, to put it simply, to put it bluntly, better people in terms of their capabilities and their experience?---I needed capable and experienced people in those roles, yes.

PN370

Just turning to your vision, I guess, of Ms Harris in this new team, you had interviewed Ms Harris quite early on, I understand, in the review and you reached a view, I put to you, pretty early on that Ms Harris probably wasn't the right person for the new roles, whatever those roles might be?---No, I would disagree with that statement.

PN371

You did reach a view, at least by the time you had put together the proposal for the restructure, that Ms Harris would not be the right person for the role?---I reached a decision that the roles needed to be different. I did not make an assessment of who and the people that should be in those roles.

PN372

You detail in the restructure proposal, the October one, that the new roles to be created will be filled through recruitment, so recruitment means recruiting new employees from within internally or externally?---That could be internally or externally.

*** REBECCA MARIE HOLDING

XXN MR LETTAU

PN373

You don't state that they would be filled through redeployment of the existing employees?---My understanding was that we would go through a merit-based recruitment process.

PN374

Did you think Ms Harris was the sort of person you wanted in the role?---I was following process.

PN375

Did you take any steps to sort of set up, you know, an arrangement whereby Ms Harris might be able to be transitioned into that role?---I discussed the process with People & Culture and it was very clear to me that roles - you couldn't get promoted into a role, you needed to through a merit-based process.

PN376

Right. You knew, for instance, that - I withdraw that question. I will say this. Before - no, I withdraw the question. I will return to this issue in a moment. I want to turn just a little bit more to Ms Harris and some of the complaints that she made, or not necessarily complaints, but more so, you know, raising issues with you about workload, and I don't want to go through all the different parts of your statement, save just to give a quick summary and see if you agree that she did make - she did raise issues of, you know, being overworked or not having the time to complete tasks within the required deadline with you between July and September. Would you accept that?---We did have lots of conversations. Ms Harris made it clear when I first commenced with the CFA that she was looking to improve her work/life balance. My understanding before I commenced with CFA was that she had put in place a paid leave arrangement, so she would use her paid leave on Fridays, and I was supporting Jess - Ms Harris - in that process.

PN377

As it eventuated, she then raised issues about actually that maybe wasn't working because she wasn't finding enough time to get the tasks done in the four days. Do you recall that?---I'm - - -

PN378

She went down to - she had the leave arranged for Fridays, but that then became an issue because she was given - she, at least, communicated this to you, and I'm asking you this - - -?---I do remember there was one scenario where Ms Harris let me know that she couldn't update a work in progress document by the Thursday afternoon.

PN379

Yes?---I wasn't meeting any of the executive until the following Wednesday, so I made it clear with Ms Harris that there was no urgency to that piece of work, so she could continue with her paid leave on that Friday and could update the work in progress document on the Monday.

*** REBECCA MARIE HOLDING

XXN MR LETTAU

PN380

Would you accept generally that Ms Harris was, in your experience of working with her, challenged with some of the deadlines you provided her?---I think it's - I learned everything about the CFA from Ms Harris when I commenced, so a lot of the timelines at the beginning of my tenure were timelines that had been set pre me.

PN381

Yes. I'm not pinning any blame on you, by the way, I'm just asking you the question?---Yes - no, so, just to your point whether I had set deadlines, I hadn't set all of the deadlines, so - - -

PN382

Sure, I know, but the general point, without the - I see where you've grabbed the imputation I'm making?---Yes, sorry.

PN383

But the point I'm making is you accept Ms Harris was struggling with deadlines at that stage?---Some deadlines.

PN384

Regardless of who set those deadlines?---Some deadlines.

PN385

Can you recall expressing opinions to Ms Harris between July and September about work ethic in the public sector versus the private sector?---We had one conversation about time in lieu. I expressed that I had come from private industry and I wasn't sure what the time in lieu policy was and that I would need to speak with HR. That's my understanding of that conversation.

PN386

Do you recall - and Ms Harris says this occurred in August 2022, after - she says in her witness statement - it's at paragraph 60 of her statement, for the record, but you don't need to look at this - she says that she worked between a Sunday and a Wednesday 39 hours, which is quite a lot of hours, I think, to meet the quarterly reporting deadline, and when she raised issues about the sort of over work, she says you said to her that you come from the private industry 'and we just get the work done'. Do you agree that you made that statement?---One hundred per cent disagree.

PN387

Would you agree that, if you did make that statement, it's not a sort of supportive statement?---I did not make that statement.

PN388

Now, some of these sort of issues she's raised with you between July and September - they obviously kind of keep kind of going along until September - did you suggest to Ms Harris, before you finalised the restructure report, did you suggest, on 21 September, that Ms Harris might need performance managing out of her job?---I disagree. No, I did not.

*** REBECCA MARIE HOLDING

XXN MR LETTAU

PN389

Did you make any statement about putting Ms Harris on a performance management plan?---No, I did not.

PN390

But you did suggest that another employee should be put on a performance management plan?---Ms Harris had raised with me since the commencement of my time at CFA that her direct report was was not performing, so, yes, we did have conversations about her direct report.

PN391

Did you say, about her direct report, that she should go on a performance management plan to manage her out of the CFA?---Absolutely not. A performance improvement plan is to help somebody perform in their role.

PN392

I put to you that you did say that?---I disagree, no.

PN393

Ms Harris says that you did say this to her and that she resisted the idea of not the performance management plan, but the idea of managing someone out and that she said she would set up Ms Spiden – I hope I have pronounced that correctly, or Spiden – for success. Do you recall that statement being made by Ms Harris?---I recall having conversations about the timing of Ms Spiden's performance improvement plan and that it was important to move on that so we could afford her the opportunity to perform in her role, and prior to Ms Harris changing back to her previous role.

PN394

I know you have denied that you made statements about putting Ms Harris on a performance management plan. Do you deny raising performance issues with her at all?---I remember the conversation that you're referring to. I remember Ms Harris making comments about feeling like she was sinking and that she was aware that the area was broken, that Kellie was a drain and was wasting a lot of Ms Harris's time, and I made notes of that occurrence. I remember the next day Ms Harris and I having a conversation and she was very upset, and I checked in with her to see how she was going, but I did not at any point raise whether Ms Harris needed to go on a performance improvement plan.

PN395

Did you raise anything about performance issues with her in that conversation?---We did talk about how Ms Harris was feeling about her workload and her ability.

*** REBECCA MARIE HOLDING

XXN MR LETTAU

PN396

Yes, but did you raise it as an issue? Did you sort of, you know, provide any caution or warning - - -?---No, no caution. What we discussed – and it was also in relation to her work-life planning; about her workload and how many hours she was working. We did talk about how we could work together to prioritise her

work, delegate meetings that were not required or push back on work if required to help her succeed.

PN397

You would agree at least that you could see – and I'm sort of inferring this from what you have said – that she was really struggling at that point with her role, or some of her duties at least?---They were Ms Harris's words, yes.

PN398

You do refer to performance issues of two employees in your first restructure proposal, the October one. It's on court page 266, you just refer to performance issues. You say that informal conversations have been had?---Sorry, which part am I looking at?

PN399

I should direct you to it, please give me a moment. Page 266; it's in the Risks table and it's the Complaint row. It says there in the third column:

PN400

There are performance issues with two of the current staff whose roles are proposed to be made redundant, but discussions have been informal at this stage.

PN401

Would you agree that putting someone on a performance management plan is not an informal discussion?---I would agree.

PN402

When you refer to informal discussions with two employees, are the two employees Kellie Spiden and Ms Harris?---Correct.

PN403

I put to you before that you raised performance issues with Ms Harris and you denied that, and now you're accepting that there were performance issues that had been raised in informal conversations?---I was saying, yes, we did talk about her workload and how we were trying to re-prioritise her work, so I would argue that that is a performance conversation or a discussion.

PN404

So you are changing what you said before; you did raise performance issues with her?---We did discuss it. I don't recall whether I raised them or whether Ms Harris raised them. Like I mentioned, in that conversation Ms Harris did say that she felt like she was struggling.

PN405

But sufficiently serious for you to record it in the Risks section of the proposal?---Absolutely, yes.

*** REBECCA MARIE HOLDING

XXN MR LETTAU

PN406

I know you've denied performance managing either of them out, but you would accept that you didn't need to performance manage either of them out because in the end both roles were made redundant under the restructure?---It was the ultimate outcome, but that's not where we started. Ms Harris was performing her role as a manager, working through the performance issues that she had identified with Ms Spiden, and I was supporting her.

PN407

Do you have exhibit 3 – yes, I think it should be marked exhibit 3. It's a copy of an email chain sent on 20 September 2022?---Mm-hm.

PN408

It's between Jess Harris and – well, the two emails I wanted to focus on are at the top, which is two from you. One at 5.59 pm at the very top?---Mm-hm.

PN409

The second one at 5.29 pm, so 30 minutes earlier. Then down the bottom of the page there is an email from Jess Harris at 12 pm. Can you recall this email chain?---Yes, I can.

PN410

Do you recall that it was in relation to the performance management plan of - - - ?---Ms Spiden, yes.

PN411

Ms Spiden, thank you. Would you accept that what Jess has sort of set out at the bottom her email is – I can give you time to quickly read over that if you like. Can you see she refers at the bottom – the first dot point at the very bottom just before she writes, 'Cheers':

PN412

She was setting Kel up for success, to begin lifting her performance to the baseline performance requirements of the PD.

PN413

Would you accept that Jess Harris was taking a sort of - I guess you could describe it as sort of a wellbeing approach to the performance improvement plan?---Yes.

PN414

I wanted to ask you about your email at 5.59 at the top of the page?---Mm-hm.

PN415

It follows actually an email 30 minutes earlier where you agree generally that the proposal that Jess has put forward – you don't disagree that she could go to the coffee shop to discuss things, but you raise issues of considering repercussions down the track?---Yes.

*** REBECCA MARIE HOLDING

XXN MR LETTAU

PN416

In addition to raising issues of repercussions down the track, you talk about the timing of the conversations. Perhaps you suggest the conversations should begin in October due to, you know, the Christmas break and those sorts of things. Then in your follow-up email you point out there is a career planning course available in October. Isn't career planning about, you know, your future role, your future positions outside your current position or is this a career - - -?---Absolutely not, no. Career planning can be all sorts of information.

PN417

What was the specific course about; do you recall?---I don't know the specifics of it, but I remember this conversation because it was around timing and who was going on leave, when, and that Ms Harris was due to return to her previous role come December and Ms Spiden was due to go on leave in January.

PN418

Okay. Thank you. I have got no more further questions on exhibit 3. We have discussed the creation of the new business continuity role and the issue of the performance management. I want to talk a bit more closely about the classification of the new business continuity role. Obviously, as you know, Ms Harris was previously occupying a role that was classified PTA 5. Now, you're aware of the Public Sector Industrial Relations Policies 2015?---Yes.

PN419

You're aware that the policy, or at least it's your understanding – and you mentioned this earlier – you only get priority placement in a redundancy situation for redeployment into roles at your level or one level below and you may recall an email that you sent to Ms Harris about this in November 2022. It's annexed to your statement. Do you recall that?---I do.

PN420

Isn't it your understanding, and it was your understanding at the time of doing the assessment of risk management, that if the new business continuity role was classified at level 5, Ms Harris would get priority to be redeployed into that role?---That would be my understanding. A 5 can be redeployed into a 5, correct.

PN421

Isn't it also true that you intentionally designed the business continuity role to be at a level 6?---I was not involved in the grading of any of the roles. I designed the roles to be the type of roles that I would like to have in the organisation to support me.

*** REBECCA MARIE HOLDING

XXN MR LETTAU

PN422

This comes up actually in both your first proposal, the October proposal, restructure proposal, and the second in particular – it's on page 260. You don't need to go to that, it's just for the record, but you raise the issue in terms of the budgeting and you say that the budgeting is costs-neutral, and the reasoning you provide is that, well, getting rid of some lower level classifications, restructuring with some high level ones so that – less of them and balancing out budget. So,

wasn't it crucial to the budgeting of it that you achieved the levels set out of level 6?---Budgeting is only one element.

PN423

But you couldn't have done the maths without the presumption that you would be creating a level 6 role?---I don't actually have access to what anybody is earning at the CFA. That is very much separate. I don't have any visibility on what the dollar value is on any role.

PN424

So you had no input into the budgeting?---No. I work with the finance business partner and they have access to all of that information, and do the analysis for you.

PN425

But you wrote the report in which - - -?---Yes, so I worked with the finance business partner and I could therefore put that comment in, but, no, it was not the main driver.

PN426

But you understood that the budget was balanced because of - - -?---Absolutely, yes.

PN427

- - - the specific levels that you were aspiring for?---The levels that had been designed, yes.

PN428

Now, this appears in the proposal as well as in the outcome. Mr Ramage says that you worked also closely with the people and culture team when you developed the new role, but you claim in your statement that you never made comments to people and culture about achieving the PTA 6 role. You sort of repeated it a moment ago. Do you stand by those comments?---So I worked with people and culture on the position description and then once you've created the position descriptions they go to a different part in people and culture is my understanding, and it's an independent part of the business unit that then grades the roles. I was not involved in that.

PN429

Is it your understanding that Denise Dellas is one of the people who performs the role?---She is the HR business partner. My understanding is she is not the person that grades the role.

PN430

Don't you think it's a little bit hard to believe that you didn't make any comments about classifying the roles at level 6 when your own budget presumed those roles would be classified at level 6?---I don't think that's hard to understand, no.

*** REBECCA MARIE HOLDING

XXN MR LETTAU

PN431

I put to you that you did have an intention to design the role to be at level 6 and that you did so under the understanding that that would prevent Ms Harris from

having priority redeployment into the role?---I'm sorry, I disagree with that statement.

PN432

I want to move on a little bit to a bit more of the way you have described the new business continuity role. In particular, some of the language you use?---Mm-hm.

PN433

One of the key words that came up in your evidence and in the reports was this phrase 'transactional style' or 'transactional approach'. I just want to sort of explore what that phrase means. Could you explain to me what a transactional style is?---What a transactional style – yes, where somebody would send emails and expect responses, either through - in this particular scenario it would be through the risk management system and then use that information to create reports. I see that as a transactional process versus a business partnership where it would be discussion in gender trust, build relationships and actually gather information to support the business that way.

PN434

Would it be correct to say that the transactional styles is a bit more sort of box-checking or something as opposed to a more initiative based partnership?---Support partnership, yes.

PN435

I hope this question doesn't come across as facetious at all, but have you heard the phrase 'quiet quitting'?---Yes.

PN436

Could you explain to me what you understand it means?---I have read that article a very, very long time. From my understanding it was about doing the minimum amount of work.

PN437

Yes, and do you think that transactional style is a bit like the quiet quitting approach where you are not sort of putting in any more than you need to perhaps?---I think that might be a bit too much of a leap.

PN438

You say that one of the key examples you just gave of the transactional approach is sort of the tick and flick, send an email (indistinct words) of what they have to do, but not actually building genuine relationships with those individuals. You don't in your evidence outline ever having physically observed Ms Harris engaging with stakeholders?---Sorry, what was the question?

PN439

In your statement you don't provide evidence about having physically observed Ms Harris engaging with stakeholders and about the style that she took with stakeholders; is that true?---Yes.

*** REBECCA MARIE HOLDING

XXN MR LETTAU

PN440

Is that because you didn't physically observe the style she had with stakeholders?---I worked with Jess for a - Ms Harris for a very short period of time. Most of that was work from home, so, no, I did not physically observe Ms Harris.

PN441

I know you did interview her early on in the stage, but you didn't interview her about her style; whether she took a transactional style or a partnership approach with her stakeholders?---No, I did not interview her on that specific question.

PN442

You based that sort of conclusion that you have made primarily on an email or on observing some emails; is that right?---No, it was also based on a lot of interviews I had with executive, senior stakeholders, risk committee, the board. Many, many different stakeholders across the business.

PN443

Sure, but you don't present evidence of those discussions you had with other stakeholders?---No, I did not go into detail about what anybody else - - -

PN444

In particular no details about Ms Harris?---No.

PN445

Would you agree that the distinction – and it's a distinction that you draw in your evidence between leading – I will withdraw that question and just explain what I'm asking. You make a point in your evidence about the difference between the transactional style and the partnership model. One of the sort of what you call subtle distinctions between them is that the transactional style is a coordinator and the partnership model is a leader. Don't you think for the sort of ordinary person that is reading those distinctions between coordination and leadership they're pretty fine distinctions, as you yourself say?---I'm not involved in the grading of the roles.

PN446

No, but this is for your own evidence. This is the way you've described – you've sought to sort of draw a distinction between - - -?---Yes.

PN447

- - - the old business continuity role and the new business continuity role?---Yes, in my view coordinating is much more about doing more of the transactional work, whereas leading is leading, facilitating, working with executive.

*** REBECCA MARIE HOLDING

XXN MR LETTAU

PN448

Sure. I know you've said that you didn't have any – you stood by the point that you didn't have any role in the reclassification or in the classification assessment of the new role. Just in relation to that, you have obviously never seen that role in practice because it's a new role. No one has ever occupied the role so you have never observed someone actually performing the role?---Sorry, the business continuity adviser role?

PN449

I beg your pardon, I should have been clear. Not the business continuity adviser role, but the new role that you propose to create which hasn't been filled is my understanding?---Yes, I have not been able to see anybody in that role, correct.

PN450

No one has done the job yet, so you've never observed how it has actually been performed in practice?---Yes.

PN451

But you would accept that you have put together a proposal and the proposal is, in a sense, an aspiration. It's an idea or a vision?---Yes.

PN452

You have also never directed Ms Harris to perform the responsibilities that are listed in the new position description, some of the ones that you say are new functions. You have never directed her to perform any of those new roles?---No.

PN453

So you can't know for sure, can you, whether she has the capacity to perform those roles – perform those functions?---Correct, we – correct.

PN454

I have a very short final question. It's more of a follow-up question. Naturally I assume you dedicated quite a lot of your time in those first couple of months to the review and the restructure proposals, and I suspect you would have had many conversations during that time as you yourself indicated?---(No audible reply)

PN455

David Johns, who is the head of workplace relations, provided a stat dec in this proceeding on 9 May 2023. He says that at least eight people would have been involved in this restructure. Would you agree with that number?---That sounds – that doesn't sound unreasonable, so, yes, I would agree.

PN456

Obviously, as I indicated before, Mr Ramage says you had lots of involvement with the people and culture team. You say you had discussions with the team in – the finance team?---Mm-hm.

PN457

I forget the actual name of the team, but finance?---Yes.

PN458

Mr Ramage also says you had lots of conversations with him. You would agree with that?---Yes.

PN459

Do you agree that during those conversations you would have spoken specifically about Ms Harris?---In which discussions?

*** REBECCA MARIE HOLDING

XXN MR LETTAU

PN460

I'll go through each of them, if you like. In the conversations with the eight - they're all unknown to me, so I can't name them?---Sorry.

PN461

The eight unknown - - -?---No, I wouldn't have had a conversation with all of them about Ms Harris, no.

PN462

With any of them would you have ever had a conversation about Ms Harris?---I would insofar as the potential risks and that certain roles would be impacted, and therefore certain people could be impacted, yes.

PN463

And you would have discussed Ms Harris with Mr Ramage, as well?---Absolutely.

PN464

You would have discussed Ms Harris with members of the people and culture team?---With everybody that would have had to have signed that document, yes.

PN465

I assume that there are emails that would have been sent, as well, between you and these people about Ms Harris?---The particular memo was an example of an email, yes.

PN466

And notes would have been taken about recording, you know, conversations? You said you took notes, for example - - -?---Absolutely.

PN467

- - - in your conversation with Ms Harris. I note that you haven't attached any of the notes of the conversations you had with Ms Harris or about Ms Harris to any of your evidence. Why is that?

PN468

MS LUCAS: I'm not sure of the relevance of this question. I mean, whether or not she has attached notes to her evidence is not, I don't think, a question for the witness.

PN469

THE DEPUTY PRESIDENT: Well, I think I would like to hear what Ms Holding's response to it is.

PN470

MS LUCAS: Yes, sure.

PN471

THE DEPUTY PRESIDENT: Thanks, Ms Lucas.

*** REBECCA MARIE HOLDING

XXN MR LETTAU

PN472

THE WITNESS: I believe that I submitted the relevant documents to the questions that were put to me.

PN473

MR LETTAU: Thank you, Ms Holding. I don't have any further questions for you.

PN474

THE DEPUTY PRESIDENT: Thank you, Mr Lettau. Anything arising, Ms Lucas?

PN475

MS LUCAS: Thank you.

RE-EXAMINATION BY MS LUCAS

[12.46 PM]

PN476

MS LUCAS: Ms Holding, it was indicated to you that in your statement you had indicated that there were key changes in some changes which were subtle and about shifting terminology. Can I just clarify that the key changes that were being referred to – and this is at paragraph 38 of your statement – were in fact in relation to the descriptions used in the position descriptions?---Yes, some of them were subtle, some of them were wholesale changes. Obviously bringing in business continuity and risk management into the role was a significant change. Also the developing and facilitating training, leading the function, yes.

PN477

That is the only question I have, thank you.

PN478

THE DEPUTY PRESIDENT: Ms Holding, thank you for your evidence. You are now excused from the witness box and can remain in the courtroom should you wish to?---Thank you.

<THE WITNESS WITHDREW

[12.47 PM]

PN479

THE DEPUTY PRESIDENT: Can I just confirm, Ms Lucas – I understand that that concludes your evidentiary case.

PN480

MS LUCAS: Yes, thank you.

PN481

THE DEPUTY PRESIDENT: All right. Thank you. Mr Lettau, I'm assuming that you will be making oral submissions today.

PN482

MR LETTAU: That was the plan, Deputy President, yes.

*** REBECCA MARIE HOLDING

RXN MS LUCAS

PN483

THE DEPUTY PRESIDENT: Are you content to do so after we have a lunch break?

PN484

MR LETTAU: I think so. I had a chat with my friend beforehand and we thought perhaps a little bit of a longer lunch break would be appropriate just to gather obviously what has just happened with the witness examination.

PN485

THE DEPUTY PRESIDENT: Indeed.

PN486

MR LETTAU: I forget the proposal.

PN487

MS LUCAS: Maybe 2.30. I think we know that we can get everything finished today.

PN488

THE DEPUTY PRESIDENT: All right.

PN489

MS LUCAS: So if that's convenient to the Deputy President.

PN490

THE DEPUTY PRESIDENT: That's fine by me. Let's proceed on that basis. We will adjourn until 2.30.

LUNCHEON ADJOURNMENT

[12.48 PM]

RESUMED

[2.31 PM]

PN491

THE DEPUTY PRESIDENT: Thanks, Mr Lettau.

PN492

MR LETTAU: Thank you, Deputy President. I will begin my closing submissions and in fact the bulk of my closing submissions will be addressed to question 2. Now, this is naturally the question about the true reason for the restructure of the redundancy, if I can paraphrase the question. I hope I'm not being controversial when I say that it's a sort of notorious thing. Everyone knows that restructures and redundancies are used sometimes to move people on, whether for good reasons or for bad reasons. We're here really to work out what the true reason was.

PN493

We say that in support of our argument there are sort of four key reasons why we think the Commission should infer that the true reason for the way Ms Harris's role was restructured was to ensure that she – it was for reasons, I would say, that were personal to her. The first reason is that the review and the restructure were primarily about people – and I'll come to this in a moment. I'll just summarise the

key reasons. We say, as well, that on the evidence it's not credible to believe that Ms Holding would have wanted Ms Harris in the new role.

PN494

We say, as well, the third reason is that the creation of a role that was designed to be level 6 prevented - at least on one interpretation of the relevant provisions of the agreement - Ms Harris having a priority redeployment in the role, so it served a purpose. The last thing we point to is the fact that the new business partner and business continuity role is not materially distinct from the previous role or functions that Ms Harris was performing in her positions at the CFA.

PN495

On the key first point, the first reason that we say the Commission can accept our argument, look, the review and the restructure were primarily about the people; that was accepted by both witnesses in cross-examination. Of course they also raised that structure was an issue, as well, and we don't deny of course that the structure is a part of it, but the key issues – and Mr Ramage accepted this in cross-examination.

PN496

He said the key issue was output - the risk management output – and he deduced or accepted that he deduced from outputs that the key causes of those outputs not being sufficient were the people behind risk management. Of course it's not disputed that one of the first actions he took when he was initiating the assessment of the risk management was to remove the chief risk officer, so it begins removing a person and it ends with removing people.

PN497

The fundamental issue we say was not the functions being performed, although of course there are some questions about functions, but the fundamental issue is not about functions, it's about people. We say it's not credible to represent this restructure, it has not been about individuals and their experience, or their perceived experience and their perceived competency.

PN498

On the second point we say that it's not credible that Ms Holding could have wanted Ms Harris in the new business partnership and business continuity role. Now, naturally she was given the task of setting up the best team she could. That was accepted in cross-examination by both witnesses. Ms Holding admitted that Ms Harris had made repeated complaints to her between July and September about excessive workload. She also admitted that she believed Ms Harris was struggling to stay afloat and we say that it's just not credible for Ms Holding to claim, as she did in cross-examination effectively, that she was neutral about whether Ms Harris would occupy that role.

PN499

There is a couple of key discussions that were had between Ms Harris and Ms Holding in the evidence; that there are some disputes about what was said in those conversations. Where that dispute lands, I think, has some bearing on this second issue about the likelihood that Ms Holding would have wanted Ms Harris in the role. There are two main discussions. The first discussion is this comment

made about work ethic in the public sector versus the private sector. The second conversation is the conversation about performance management.

PN500

Now, Ms Harris says that Ms Holding commented to her when she had raised issues about excessive workload that Ms Holding comes from the private industry and we just get the work done. Ms Holding wholesale denies having made that statement. We say that Ms Harris's evidence was compelling and it was not just compelling on its own terms, it was also compelling under the pressure of cross-examination where different possible phrases were put to her that might have been said and she accepted that and said, 'Yes, they were also so, but I remember very distinctly because it was shocking that she made this comment to me.' We say Ms Harris's evidence should be preferred.

PN501

On the performance management point – I won't sort of rehash all the details, but we allege Ms Harris says in her evidence that comments were made after she raised again issues with workload on 22 September 2022 and the comment was to the effect that, 'Perhaps we should be putting you' - and this is Ms Holding speaking – 'on a performance improvement plan or performance management plan.' It's not denied that Ms Holding had proposed to do the same thing to another employee and Ms Harris's evidence is that that proposal was put in terms suggestive that the idea was to performance manage the employee out of the business.

PN502

There was a proposal or a proposition put to Ms Harris in cross-examination that Ms Harris proposed putting herself on a PIP. I think I understood that proposition correctly. We say that's a fanciful proposition and Ms Harris denied it, and believably so. The denials about the performance management plan from Ms Holding also face inconsistencies - and these came out in cross-examination - with Ms Holding's own documentary evidence which – I will rephrase that.

PN503

Ms Holding in fact denied in cross-examination that she proposed to put Ms Harris on a performance management plan. Not only that, she denied that she raised any performance issues with Ms Harris. When it was brought to her attention that she had recorded in her restructure proposal that performance issues had been raised with Ms Harris, she effectively had to backtrack or qualify her statements because clearly she had been raising performance issues with Ms Harris.

PN504

We say that the documentary evidence - Ms Holding's own documentary evidence – corroborates our version of events or is consistent with it. I guess the key point we would make, where the Commission has to decide these two versions of events we point out that Ms Holding accepted in cross-examination that she kept notes of meetings with Ms Harris, but when asked why she had not provided the notes in her evidence to corroborate her version of events, which naturally contradicted Ms Harris's and we have known for a long time that they did contradict them, she couldn't say anything other than that she annexed everything she thought was

relevant. We say that that's a sufficient basis for the Commission to infer that those notes would not have assisted her in corroborating her version of events.

PN505

Another statement made by Ms Holding in cross-examination is sort of revealing in itself; she actually said it twice. When under pressure of cross-examination she said twice words to this effect, 'I followed the proper process. I followed the proper process.' Now, creating a level 6 role naturally is following proper process, but nonetheless creating a level 6 role does still block Ms Harris from redeployment into the new role. Ms Holding admitted that she knew this. She admitted that she understood that Ms Harris would be denied priority redeployment into the new role if it was reclassified at level 6, because Ms Harris was in a level 5 classified role.

PN506

Under pressure of cross-examination, Ms Holding went to some effort to deny that she intentionally designed the role to be a PTA level 6, but we say the documentary evidence points the other way. There are a couple of things we would point the Commission to. One is the restructure proposal itself, which we raised in cross-examination, which budgeted for the role to be a level 6 role, so it's not credible that Ms Holding could not have known that this was the intent or could not have indeed intended for the role to be level 6. It's written there in the numbers in her own evidence.

PN507

The other thing we point to is that the restructure proposal also states – this is the proposal, not the outcome – that the vacancies will be filled with recruitments, not with redeployments, so she clearly had in her mind that there would not be redeployments of existing people into those vacancies.

PN508

The last key point in support of our argument here is the lack of a real material distinction between the new role and the old role. This obviously goes to question 3, as well, what is the proper classification, were there distinctions between the roles, so we rely on what I'm about to say on those submissions, as well, and we in fact rely on our written submissions about the distinction between those two roles in regard to this question, not to question 2, but I'll just emphasise a few points.

PN509

The first point I'll emphasise is that Ms Holding accepted on her own evidence that the key changes - well, there were two key changes. She said one was incorporating two roles previously worked by Ms Harris into one, but the other key one which she said was more subtle and about shifting the terminology was to do with this idea of the transactional versus a partnership model. A key kind of linguistic distinction that was made was this idea of coordination versus leading.

PN510

In cross-examination, Ms Holding accepted that those two concepts are pretty closely – it's a pretty subtle distinction, let's put it that way, between those two concepts. In re-examination, she backtracked a little bit and emphasised that it's

actually a bit more of a larger distinction to be made. I think we just make a general point here, which is to any ordinary person the concept of coordinating versus leading is naturally a little bit different but it's a pretty minor one.

PN511

I think it would come to a great surprise to coordinators that they didn't have responsibility to lead and I think most leaders would understand that they coordinate, and most coordinators would understand that they also lead. In any case, this again is an issue about the person; it's about the way they're doing their job. Are they adopting a style of engagement that's more, you know, a partnership style of engagement that's more involved with the stakeholders that they're engaging with? Naturally the vision that Ms Holding has is that the person who will be occupying this role will have a particular style of engagement. Again, it goes back to the person.

PN512

The second point is that there's no evidence presented by the respondent that details how Ms Harris personally performed her functions, so there's nothing that goes to her style; whether she has a transactional style or a partnership style. There simply is zero evidence there about it. There is just generalised statements about the restructure and the new proposal, and both witnesses in cross-examination accepted that those statements were high level.

PN513

They accepted other descriptors such as that they were aspirational, that they were visionary and I believe even that they were jargonistic, and of course I pointed out in cross-examination that, you know, there are chunks sort of copy/pasted around witness statements, position descriptions and restructure proposals without any kind of real detail, or granular detail about these distinctions. It's high level; it's a bit sort of fluffy if I can put it that.

PN514

We just say the Commission should be cautious with that evidence about how the respondent's witnesses have described this new role which they both accept have – well, Ms Holding accepted have never been worked before. These are new roles, this is a new concept. We haven't seen it in practice and they both accepted we can't actually know at this stage how the roles will be practically performed.

PN515

Just by way of conclusion and a sort of general statement – I've made this point briefly – there is a lot of details in the evidence that are contested, especially between Ms Harris's evidence and Ms Holding's. It was put to Ms Holding in cross-examination, and Ms Holding accepted this, that she had had many discussions about Ms Harris with many different people. She said the number eight looks about the right number of people that she had conversations with. These include people in the finance department, in the people and culture department.

PN516

She accepted, as well, that in those discussions with these people she had discussed Ms Harris personally and she accepted that there would be emails, and

that there would be notes and other documents that exist recording those conversations. So, again, we just make the general point that we have already made in a particular case that where Ms Harris's evidence comes up into conflict with Ms Holding's, given that Ms Holding has admitted that there would be documents basically that might corroborate her version of events, she has not provided those to the Commission and the Commission should infer that those documents would not have helped her.

PN517

That is our argument about question 2. This is about people. There was a restructure about people. Ms Holding cannot have wanted Ms Harris in the role. She had the means to prevent her being in the role, which was to create the level 6 position, take it above board, and the fact that this new role is so materially indistinct from the old role supports that inference. If there are no questions on question 2 from the Deputy President, I'll move on to the - - -

PN518

THE DEPUTY PRESIDENT: I'm content for you to keep going, thank you, Mr Lettau.

PN519

MR LETTAU: I have already addressed the question 3 issue, which is what I brought the Commission's attention to; some key factors regarding question 3 which is what is the appropriate classification effectively of the different positions. As I've said, look, we rely on our written submissions there and in addition to that we rely on those points I've just raised with you, matters of emphasis in my written submissions on question 2. Again, if the Deputy President doesn't have any questions on that particular issue, I'll move on and quickly address just in brief a few dot points basically on the remaining questions.

PN520

THE DEPUTY PRESIDENT: This is probably not specific to question 3, although I raise it now because question 3 is obviously specifically connected to the 2021 agreement. My question is taking a big step back, the submissions appear to be framed on the basis of both the 2020 agreement and the 2021 agreement. The F10 appears to have been made by reference to the 2020 agreement and at least question 3 refers to the 2021 agreement. It's a question that I would put to both of the representatives: how do you say that the Commission is seized of jurisdiction - - -

PN521

MR LETTAU: I accede the question - - -

PN522

THE DEPUTY PRESIDENT: - - - and just as a follow-on from that is your position that the dispute settlement procedure in the 2021 agreement, which is clause 12, has been complied with?

PN523

MR LETTAU: I might need to take those two questions on notice for a couple of reasons: (1) I came into this matter pretty recently, so I don't have as much background on those early points.

PN524

THE DEPUTY PRESIDENT: Yes.

PN525

MR LETTAU: And (2) I just need to get instructions on those points.

PN526

THE DEPUTY PRESIDENT: Yes, that's fine.

PN527

MR LETTAU: But I accede the basis of those questions.

PN528

THE DEPUTY PRESIDENT: Thank you.

PN529

MR LETTAU: I will move briefly on to question 4. This is something that has already been raised in our reply submissions, but I just wanted to emphasise it in oral argument, which is that we say the question – well, I'll rephrase it. The respondent's argument rests on the idea that the Commission's task in determining what is a suitable classification within the agreement is to analyse the correct classification for the role that Ms Harris was occupying prior to the restructure and then analyse the correct classification of the role that has been created after the restructure, which is the new business continuity role, and ask whether the old role is a lower classification than the new role and, if it is lower, then it's not a suitable vacancy. That's the sort of nub of their argument.

PN530

We say that if you read the terms of the agreement, it's pretty clear it refers to the employee's substantive classification. It doesn't refer to the substantive classification of the position, so it's a focus on the employee and we say the proper question for the Commission to be asking itself in relation to this issue is what substantive classification matches Ms Harris's competencies, skills and experience. I just wanted to sort of reiterate that argument with the benefit of any oral questions or anything about that issue, if there were any.

PN531

THE DEPUTY PRESIDENT: Subject to what your answer is to the question I put to you a moment ago, does your position remain the same across each of the industrial instruments?

PN532

MR LETTAU: I believe so. I would have to double-check that. I can give you an answer to that question now. My understanding is the terms are the same.

PN533

THE DEPUTY PRESIDENT: I think a submission has been made that clause 19 of the 2020 agreement is the same as clause 20 of the 2021 agreement.

PN534

MR LETTAU: That's my understanding.

PN535

THE DEPUTY PRESIDENT: Is it?

PN536

MR LETTAU: Employee's substantive classification levels; it's the same phrase.

PN537

THE DEPUTY PRESIDENT: All right.

PN538

MR LETTAU: Yes.

PN539

THE DEPUTY PRESIDENT: Thank you.

PN540

MR LETTAU: Again, on question 5 we have sort of reiterated that there is no longer a dispute there, so we don't see any need for the Commission to resolve that question. We have raised a jurisdictional point there on considering that – I mean, the main point is also just one of efficiency; why answer a question that doesn't need to be answered.

PN541

THE DEPUTY PRESIDENT: All right.

PN542

MR LETTAU: The final thing on question 6, which is the status quo clause, the question here is effectively does the redeployment process go into a hiatus while this dispute is on foot or does it continue? The key argument made by the respondent is that you need to look at the nature of the dispute that was raised and if the dispute was about redundancy per se, then the suggestion seems to be, well, yes, the redeployment would go into a freeze effectively because how could you redeploy someone if you don't know they're redundant.

PN543

What the respondent says though is that the dispute was never originally notified as to be a dispute about redundancy per se. The argument is, 'No, this was a dispute about redeployment only', so effectively the idea is that it was implied that it was accepted that there is a redundancy and we've just had an argument about how the employee is to be redeployed.

PN544

This is not cited in our written reply submissions, so I will give the reference right now; it's annexure J of the agreed statement of facts, court book page 719, which I'm just going to bring up for myself. Yes, 719, this is the notification of the dispute and there are three dot points that are raised about what the dispute is

about. We draw the Commission's attention to dot point 3. I won't read it all out, but it pretty clearly says:

PN545

We dispute the decision to declare Jessica's position redundant.

PN546

Then it goes on to say some additional things, so we say that that pretty much settles the issue about whether or not – or what the notification of dispute was actually about. There is obviously also a pragmatic sort of factor to take into consideration in addition to that, which is Ms Harris was on WorkCover for that period so there is clearly an issue there about, you know, expectations for her to participate in the redeployment process when she is on WorkCover.

PN547

THE DEPUTY PRESIDENT: Just for the record, Mr Lettau, that reference you just made to the third bullet point on page 719 of the court book is in fact part of annexure I to the agreed statement of facts and not J.

PN548

MR LETTAU: Yes, I must have read the 'J' as an 'I'.

PN549

THE DEPUTY PRESIDENT: That's fine. Thank you.

PN550

MR LETTAU: Deputy President, if there are no further questions those are our submissions.

PN551

THE DEPUTY PRESIDENT: All right. Thank you, Mr Lettau. I might come back to you with respect to those questions that I put to you and I might put those to you at outset, Ms Lucas, if you have a view.

PN552

MS LUCAS: Yes. Thank you. Now, I'm just refreshing my memory. It was in relation to question 3 as regards which agreement, so it's reliance on the 2021 agreement, but in fact the descriptors are the same in both the 2020 and the 2021 agreements.

PN553

THE DEPUTY PRESIDENT: Well, it's really a broader issue - - -

PN554

MS LUCAS: Okay.

PN555

THE DEPUTY PRESIDENT: - - - about how is the Commission seized of jurisdiction in this dispute.

PN556

MS LUCAS: Yes.

PN557

THE DEPUTY PRESIDENT: Is it by reference to the 2020 agreement which is referred to in the F10 - - -

PN558

MS LUCAS: Yes.

PN559

THE DEPUTY PRESIDENT: - - - or is it with respect to the 2021 agreement which commenced operation in the January before the F10 was lodged in the March.

PN560

MS LUCAS: Yes.

PN561

THE DEPUTY PRESIDENT: Despite that, the parties have proceeded on the basis where at least in relation to the majority of the questions they tend to approach both agreements and the obligations that arise under each.

PN562

MS LUCAS: Yes, that's – yes.

PN563

THE DEPUTY PRESIDENT: So I'm really seeking to understand at the outset is there a basis for straddling both agreements or is it the case that the Commission need only be satisfied that it has jurisdiction pursuant to the 2021 agreement and apply the provisions that operate under that instrument.

PN564

MS LUCAS: If I can just have one moment actually. I just want to clarify something.

PN565

THE DEPUTY PRESIDENT: Thank you.

PN566

MS LUCAS: I think there were some issues potentially raised at the start of this matter, as you may recall. We certainly were never going to be in a position to stand in the way of the dispute and how it was to proceed, which is clearly to have it filed under the 2020 agreement. I guess we say, practically speaking, whether it proceeds under the 2020 or 2021 agreement there's no real material difference in the relevant clauses and so that it can proceed in effect under either agreement.

PN567

THE DEPUTY PRESIDENT: All right. Mr Lettau, what do you say about that, appreciating that it's your client's application and the F10 does refer to the 2020 agreement? I earlier put to you the question as to whether you were satisfied that all the steps in clause 12 of the dispute settlement procedure of the 2021 agreement had been complied with - - -

PN568

MR LETTAU: Yes.

PN569

THE DEPUTY PRESIDENT: - - - so that the Commission has jurisdiction to deal with a dispute under the 2021 agreement. Do you have those instructions at this stage?

PN570

MR LETTAU: Yes, there is at least no dispute about whether the disputed clauses were complied with, so there is that much - - -

PN571

MR MURPHY: Sorry to interrupt - -

PN572

MR LETTAU: My instructions are just to reiterate that it has been agreed that there was an agreement between the parties that the steps were followed. The other point raised was that there was a sort of noting, I think, of the fact that there is a new agreement on foot and the questions to be determined by the Commission were appropriately adjusted to make sure they fell exclusively under the 2021 agreement.

PN573

THE DEPUTY PRESIDENT: That is the agreed questions - - -

PN574

MR LETTAU: The agreed questions - - -

PN575

THE DEPUTY PRESIDENT: - - - don't contemplate - - -

PN576

MR LETTAU: They don't contemplate a - - -

PN577

THE DEPUTY PRESIDENT: - - - a 2020 agreement.

PN578

MR LETTAU: Correct. That's my instructions, yes.

PN579

THE DEPUTY PRESIDENT: All right. Thank you, Mr Lettau. Yes, Ms Lucas.

PN580

MS LUCAS: Similarly to my learned friend, I propose mostly to deal with question 2 and question 3 orally because they are the ones that have been the subject of the evidence today. The respondent's submission is that there has been extensive evidence provided from at least two CFA witnesses, Mr Ramage, who is the general manager of CFA's government, legal and risk services, and Ms Holding, the chief risk officer, that explain the basis for the two relevant positions, being the positions held by Ms Harris being declared redundant because

in fact they were excess to CFA's requirements. That term of course comes from the relevant clause of the agreement.

PN581

Those witnesses have provided evidence on oath at the hearing, but there obviously has been a series of changes to CFA's structure prior to October 2021. Just to summarise the effect of that, Mr Ramage in his statement assessed CFA as not being close to where it needed to be in its risk maturity function and he obviously tasked Ms Holding, who was appointed as the new chief risk officer, with the role of raising CFA's risk maturity. That included, relevantly, by considering changing to the staffing requirements that would best support her role.

PN582

As you will see in the statement of Ms Holding, she conducted a thorough review of the risk framework which revealed, among other things, that there was a lack of experienced risk management capability within the core team and an immature understanding and onerous of the risk across the CFA. She determined that these issues could be addressed with a complete restructure of the risk team.

PN583

Sorry, I should say she assessed that that's the only way it could be addressed – and to bring the business continuity function, which as you've heard also from Ms Harris sat in a separate strategic services structure, within the remit of the RAIS or the risk team. That was, in effect, to centralise the risk functions into one team and move the business from what has been referred to as a technology-led function or a transactional function to a business partnership model.

PN584

The way the evidence on that, I should just say, has been explained is that there was as part of this transactional based model a view that effectively people were sending a lot of emails, they were asking for a lot of updates from various parts of the CFA, you know, 'Can you update this audit report, can you do this, can you do that', but without having that real level of expertise and knowledge about what the risks were, and what the outputs were that were actually required to be delivered. That was obviously a key issue that was identified by those in the higher up management within CFA, including the executives and the board.

PN585

As you're aware, the new restructure proposed the redundancy of four roles within Ms Harris's team, including the role that she held as a substantive position and the role that she held as a temporary assignment for somebody that was on leave. This was, in the evidence of Ms Holding, both because there were significant changes to the way the duties were performed and because the previous duties were no longer required. That, simply stated, is that there was this real shift in focus to a business partnership model and a need for specialist risk knowledge and competence so that the new incumbents in the roles could provide actual specific guidance and advice to the business on this area of risk.

PN586

As you're aware, the new restructure that was proposed was to have two PTA level 6 roles and a PTA level 7 role, which was obviously roles that were deemed

at a higher level than the existing PTA 5 roles, and that they were to have technical expertise in the area of risk. So, across the role there was an expertise in the area of assurance, one in internal audit and one in business continuity; so it is envisaged and is the case now that there is specialist expertise in the area of risk.

PN587

In terms of corroborate evidence, there are two documents that are annexed to Ms Holding's statement that I know my learned friend has taken her to in respect of the minutes sent to the board and the sign-off of the restructure. Clearly in those documents they state that those roles that Ms Harris held were deemed excess to requirements.

PN588

Turning now to the evidence from today, it's accepted at a high level that Mr Ramage and Ms Holding's evidence should be accepted by the Commission. The respondent submits that even taken at its highest, the applicant's evidence still does not draw any causative link between the matters that she says were personal to her and the relevant roles she held being declared redundant. This was evident, in my submission, in the cross-examination of Ms Harris on these points.

PN589

Now, she accepted that despite complaints made about Steve Allan and others - who I should add are all former employees of CFA and were in the relevant time that this all occurred - she was offered the role of business continuity adviser and manager risk and assurance, and she noted that nothing occurred to her knowledge following the closure of the complaints by CFA and that as far as she was aware that was, in effect, the end of the matter in terms of those complaints.

PN590

Despite giving evidence that she felt resistance to starting the new role of manager risk and assurance being related to her complaint about Steve Allan, she accepted in cross-examination the rationale regarding the period of transition that followed and what was said to her about why that transition had to take place. Deputy President, you will recall that that was around the fact that the business continuity adviser role was obviously not filled and they had to make arrangements in order, I guess, to cover that role before she could move across into the risk team properly.

PN591

As regards to what she called the privacy breach issue – and I should say Mr Ramage characterised it as really an issue of a storage of information – she accepted that she was never reprimanded for raising it as a potential issue. In fact she accepted in her evidence that Mr Ramage was generally supportive of her and in fact he followed her out of the CEO forum when he could see that she was genuinely upset and tried to offer her some advice and guidance.

PN592

Ms Harris accepted that prior to Ms Holding's arrival there were in fact two other CROs, Adriaan den Dulk and Mr Stanwix, and then of course Ms Holding commenced in July '22. Ms Harris accepted that she discussed issues with her

workload with Rebecca Holding and she accepted that, generally speaking, Rebecca was supportive of her having Fridays off.

PN593

Now, there are a number of differences obviously when it came down to the evidence between what Ms Harris said occurred and what Ms Holding said occurred. For example, Ms Holding said that on 3 August '22, Ms Harris said something along the lines of, 'She comes from private industry. We just get the work done', that she wanted to performance manage Kelly out of the organisation and also that she asked Ms Harris whether she needed to be put on a performance improvement plan.

PN594

It's submitted that Ms Harris in her evidence is, in effect, trying to paint Ms Holding as someone who placed unreasonable demands on her and other employees. However, in my submission, this is largely inconsistent with both the way in which Ms Holding presented in her evidence today but also more broadly in Ms Harris's acceptance that she was supportive of her doing things, for example, like having Fridays off and having discussions around workload.

PN595

In any event, even if Ms Harris's evidence is taken at its highest and she were to be accepted on all of these matters, in my submission this would still not be sufficient to establish any causative link between the redundancy of the positions being for matters personal to Ms Harris. In other words, we're a long way off establishing that in fact these roles were made redundant because of issues personal to Ms Harris and that link, in my submission, still hasn't been drawn.

PN596

In terms of the WorkCover claim, I think Ms Harris actually accepted in her evidence in cross-examination that it had nothing to do with anything really. I should say that also just in terms of the cross-examination of Mr Ramage, it was put to him in fact that what was needed in the restructure was to lift the maturity of the risk function and it was about the people who could perform those roles. Mr Ramage quite rightly points out that it's about the output of the positions that were required to be delivered.

PN597

Some time was also spent in cross-examination of Ms Holding that the restructure of the PTA 5 roles was designed to be a high level position so that CFA effectively could remove Ms Harris from the role. Ms Holding was asked specifically about performance issues relating to Ms Harris and whether in fact she had ever observed Ms Harris's style when engaging with stakeholders. It's submitted that the Commission should accept the evidence of Ms Holding and Mr Ramage in terms of the restructure overall and that evidence, realistically speaking, went fairly unchallenged.

PN598

As we heard from Ms Holding, she put together the position descriptions for the new PTA 6 role, but she was not at all involved in the grading of that position. So, to the extent that it's suggested that that level 6 position was

orchestrated in a way so that Ms Harris could not be redeployed into the position, we say that that evidence should be entirely rejected and rather that the extensive evidence on the true reasons behind the restructure should be preferred on that point.

PN599

It's further submitted that the Commission should find that the failure of the applicant to raise these issues – that being the matters being personal to Ms Harris being the reason for the redundancy – was raised only in the arbitration of this matter because in fact it has been recently invented and that was, effectively, put to Ms Harris. It shouldn't be accepted, the applicant's evidence, which is that effectively she didn't put it forward at some earlier stage because she had a fear of being attacked by the CFA.

PN600

It should also be noted that the question for the determination by this Commission is not a general protections claim. The respondent does not have the onus of establishing that the identified matters which are said to be personal to Ms Harris were separately or together not the substantial and operative reasons for the redundancy. As we submitted earlier in the context of the production order, we submit it's open for the Commission to find in fact that the evidence sufficiently establishes that in fact the previous positions were made redundant because they were excess to CFA requirements within the meaning of the enterprise agreement, but may also find that there are other reasons.

PN601

I'm not suggesting that that's the conclusion the Commission should come to, but rather saying that what we have here is a very specific question surrounding the way the clause operates and whether or not the redundancy of those positions falls within the scope of the enterprise agreement. That is the question that we're really concerned with here.

PN602

Just lastly, as a matter of logic it's simply not logical to suggest that a team in which four positions were made redundant – that effectively the true reason was to get rid of Ms Harris and that the whole restructure of the team and her positions was orchestrated as such to remove her from her role, bearing in mind of course that she was also filling the temporary role of another incumbent who was on leave who would have also consequently been made redundant, as well.

PN603

So moving then to question 3 – sorry, I'll just see if there's anything else I want to say on that point. In terms of question 3, it's submitted at a high level that the three positions which are the subject of question 3 have been appropriately classified. Obviously, as we say in the written submissions, the principles of construction of enterprise agreements apply to the descriptors, et cetera, but I guess the important thing to note there is that each classification structure and the definitions have to be read in context of the higher and lower levels of similar tasks in, you know, ascending and descending orders of complexity.

PN604

In my submission, this is where some of the evidence gets a bit lost. I mean, we might be drawing this comparator between, okay, what's the difference between 'coordinate' and 'lead', but at the end of the day when we look at the descriptors and see, you know, the various changes - which I should say I've gone through in the written submissions so I don't propose to go through the descriptors themselves in detail, but the comparison is there in terms of what each level requires and, you know, as things progress further up the chain obviously the degree of complexity and specialist knowledge, and all of that, sort of becomes, you know, more and more difficult.

PN605

The applicant's central contention is that the two PTA level 5 roles and the new PTA 6 role are not materially different such that they should effectively all be classified the same. Now, in the written submissions of the applicant it's said that effectively some of the duties are in level 5, some are in level 6 and that basically they could be classified as either, but at the end of the day they should all be classified as the same.

PN606

It's submitted that what this question really calls for is an assessment or comparison to be conducted between the two level 5 and the level 6 roles – the new level 6 role. It's submitted that Ms Harris overall in her evidence sought to paint a picture that she was performing at this sort of higher level in the PTA 5 role and that she took on a lot of responsibility.

PN607

For example, with this data storage issue, you know, her evidence was she took it upon herself, she thought it was part of her role, she wanted to raise it so she raises it, which of course the evidence of the respondent is she wasn't criticised for doing so, but in turn she, you know, raising it with the subsequent CRO's when they start so she takes it upon herself to do all these things. In my submission, her opinions also extend to disagreement with a view that has been taken by high management as regards to the restructure, so for example she disagrees with this view that's held that the previous team operated in a transactional manner.

PN608

In my submission, this demonstrates that she holds the opinion of herself in high esteem and seeks to diminish perhaps those more senior in the organisation in terms of what their role involved in the restructure actually was. For example, I think she said something along the lines of, 'I understand what they have presented. I disagree with the transactional representation that has been put forward with the partnership model. It was already a strategy utilised, recognising when you're the only person who would provide the advice and under risk assessment you need to partner with everyone.' So she is relaying her understanding of what she thought, I guess, she as an individual may have already been doing in the organisation and, as I said, express sort of disagreement with the views that have been taken by higher management.

PN609

It's extended that this, I guess, attitude or view if you like has carried across in her perceived capabilities, as well, in terms of this new PTA 6 level role and the fact

that she felt particularly disgruntled, if I can put it that way, that she wasn't simply put into that new PTA level 6 position. Putting all that to one side, in my submission the question for consideration by the Commission is not actually in relation to Ms Harris personally and how she was performing in the role. The Commission is only concerned with whether or not the positions in question were appropriately classified, so that's the positions divorced from any performance or otherwise of the individuals in those roles.

PN610

Of course one can have regard to the responsibilities and duties performed in those roles, the position descriptions and the levels required, but, in my submission, a lot of weight should be given - particularly with this new PTA level 6 position - to not only the position description, but also to the overall, you know, restructure. What that restructure was about and the significance of lifting the risk maturity within the organisation through both developing new and different frameworks, but also lifting the capability of the team. Having individuals in high level roles that had very specialist risk expertise or knowledge, that had credibility with stakeholders so that those discussions could be free and open and to really, you know, raise a level of that aspect of the organisation more broadly.

PN611

In my submission, the evidence that has been presented in a sense is kind of – I guess in some ways it's not responsive of one another's case to the extent that it's the respondent's contention that the focus really needs to be on the evidence of Mr Ramage and Ms Holding, and that in effect the submission is that Ms Harris, while she performed in those PTA level 6 roles, she has got a very limited understanding of what the restructure itself was about and what is expected in that new PTA level 6 role in terms of the expertise of that role and what is required.

PN612

Again just to emphasise, there was some focus in the cross-examination of Ms Holding about whether or not she had observed Jess Harris specifically and whether she took on a transactional style or a business, you know, partnership style. It's not about a style that has been developed. This is a fundamental shift in the way the organisation functions, so again this is not a sleight on Ms Harris and the way she was performing her role. It's about fundamentally understanding that the organisation had a restructure from the bottom up and were effectively changing in entirety the way that the organisation and the risk function was to be performed in the future.

PN613

Just in terms of the comparator between the level 5 roles compared with the level 6 role, it's submitted that Ms Harris's evidence is based on what she thinks this new PTA level 6 role involves and obviously based on her review of the position descriptions. As I said, it's more than that. It's more about the fundamental shift in the way that the organisation functions. There is annexure A that has been provided attached to the applicant's submissions which is effectively - I believe Ms Harris has attempted to note sort of differences in the various position descriptions.

PN614

THE DEPUTY PRESIDENT: Yes. Is this the document on court book page 97 or includes 97?

PN615

MS LUCAS: 97, let's just - - -

PN616

THE DEPUTY PRESIDENT: It starts at court book 95.

PN617

MS LUCAS: No, that is – I think the one I was referring to was – sorry, just bear with me for a moment. I thought it was an attachment to their submissions.

PN618

THE DEPUTY PRESIDENT: Yes.

PN619

MS LUCAS: So page 30.

PN620

THE DEPUTY PRESIDENT: Page 30.

PN621

MS LUCAS: Yes.

PN622

THE DEPUTY PRESIDENT: Yes, I'm with you.

PN623

MS LUCAS: Yes, yes. Look, we say really what's contained in this document should be not really given any weight. Ultimately the question for the Commission will be to consider the various differences in the level wordings and effectively make findings of fact based on those, so in that sense Ms Harris doesn't have the sort of expertise really to point out what the relevant differences are. I should say I think that the document you were referring to, Deputy President, that's a document that Ms Holding has commented in a table at 47 of her statement.

PN624

THE DEPUTY PRESIDENT: Yes.

PN625

MS LUCAS: Yes, so that's her responsive evidence to that table.

PN626

THE DEPUTY PRESIDENT: I understand. Thank you.

PN627

MS LUCAS: I'm just kind of noting those matters, but I don't need to take the Deputy President through the intricacies of those. Yes, I think that's all I really wanted to say on that question 3. Just on question 4, if I understand the

applicant's submission they are saying that effectively the employee should be classified according to what – the classification according to their skills and experienced.

PN628

Well, in my submission the way this all works is that you're classified according to the position that you're actually in, so the classification actually attaches to the position that you hold rather than anything else. I mean, employees don't kind of - they're not assigned to a classification as an individual and, in my submission, what the suitable vacancy clause calls for is effectively if you're in a level 5 substantive role, then you have a right to redeployment into a level 5 or lower position.

PN629

Just as an aside – and this is in the written submissions – we say that the position is referable to Ms Harris's substantive position of business continuity adviser, because that is the position that she substantively holds as opposed to any temporary role that she might be feeling at the relevant time. Of course that question only becomes relevant if the Commission were to find, for example, that the role of manager risk and assurance was actually a high classification, so that's the only time that that becomes a relevant point.

PN630

As for question 5, in my submission the questions were an agreed consent position that were arrived at between the parties. That's the basis on which we say that, you know, this really needs to be decided and we see a value in the question being answered as potentially relevant to whether or not in fact there was a genuine redundancy down the track if that arises, but, as I said the questions were agreed and it would be our preference that the Commission determined the questions as they were agreed. I should say on that, that the evidence on that point is entirely limited to the statement of agreed facts.

PN631

My learned friend has made a few submissions about question 6. I don't really propose to elaborate on that question unless the Commission has any questions, but we say that, I guess, the relevant difference between the parties is primarily in framing what the issue was that was originally put into dispute. In our submission, we say that the relevant dispute was in relation to CFA redeploying Ms Harris into that PTA level 6 role and, you know, her saying that really she just needs to be put in that role.

PN632

Of course the status quo provision has operated as such where no one has filled that new level 6 position and so from fairness to the CFA that was understood the basis of the dispute, and we say that that's what the status quo provision is intended to mean. That is really all I wish to say on question 6 unless there are any further questions, Deputy President.

PN633

THE DEPUTY PRESIDENT: No, nothing further.

PN634

MS LUCAS: Thank you.

PN635

THE DEPUTY PRESIDENT: Thank you, Ms Lucas. Thanks, Mr Lettau, anything in reply?

PN636

MR LETTAU: Yes, Deputy President, just briefly.

PN637

THE DEPUTY PRESIDENT: That's fine. Thank you.

PN638

MR LETTAU: I will just address a few points raised by my friend in close. The first is the issue of the causative link. It was said that if evidence is taken at its highest no causative link has been shown. Our submission in response to that is that causation here is about motive. The question is why did they do it, effectively; because they had a motive. That motive is the reason for doing it and all our submissions on question 2 concern motive.

PN639

The first issue about the decision to have a restructure, there was a motive there to change the people in the risk management team and indeed the first action taken was to remove a person. The idea was to create a new team; to set up the ideal team that would be ideal for Ms Holding. The second point we argued again is about motive, so Ms Holding did not want Ms Harris in the role; she had a motive for Ms Harris not to be redeployed into the new position.

PN640

Again the idea about designing a level 6 role, it's about motive. It's about the reason and the reason, in our submission, is it was to prevent the redeployment of Ms Harris into that role or to prevent Ms Harris from having a priority redeployment into the role. All those questions, all those issues, address causation, they address motives.

PN641

The issue raised about sort of the credibility of the applicant's argument and pointing to the allegation that there was a failure to raise these arguments until arbitration, we again just point out - and I think this is raised in our reply submissions - that these issues were raised well before arbitration. They were raised in the dispute resolution process and Ms Harris has annexed - well, she has deposed to it in her second witness statement which is annexed - some handwritten notes to the relevant meeting that corroborates her version of events, so this has clearly been an issue that has been raised and I think it was even raised during the conciliation phase.

PN642

The issue of, sort of, logic point about that it's unbelievable that the restructure was designed to get rid of Ms Harris, obviously we don't put our argument that high. Our point is about the restructure as it applied to Ms Harris's role in

particular. Now, the point was made that she was filling someone else's role. Sure, but they also got rid of her other role, so not only that they also got rid of – they also created a new role that is level 6 that she could not be redeployed in. It's perfect, in a sense, it's perfect for getting her out of risk management.

PN643

Just moving on quickly to a point was made – this is moving on to question 3 - about whose evidence should be relied on when we're working out what the correct classification of the role is, a submission was made that Ms Harris doesn't have the expertise to comment on the roles. In particular that was made in reference to annexure A to the applicant's outline of submissions, on page 30 of the court book. I think in response to that we would say that, firstly, she is the only person, the only witness, who ever worked any of these roles.

PN644

The respondent's two witnesses, one of them started in October 2021, the other started in July 2022. Ms Harris has been at CFA for, I think, close to 17 or 18 years. Ms Holding said in her evidence that she learned everything about the CFA from Ms Harris, so I think if there is anyone with the expertise to comment about how these roles are performed, that person is Ms Harris.

PN645

A quick response to a submission made on question 4, which was – this was about the substantive role – sorry, I beg your pardon, the suitable vacancy is established by reference to the substantive role – classification substantive role. Look, the argument is made in our reply submissions, that's not the words in the agreements. That's a change to the words in order to achieve an interpretation that is desired.

PN646

The words in the agreement are, 'The employee's substantive classification', and it makes sense – it's understandable why, because the purpose of creating a suitable vacancy is for working out what roles are suitable for this person and naturally roles that are suitable for a person are roles that fall within their skillset and their experience.

PN647

On question 5, the argument was made that there is a preference to determine the question now in case it's necessary down the track. Look, we would just say that there is no dispute there now before the Commission to be resolved. If there is a future dispute, then the appropriate way to deal with that is for it to be raised if and when it arises. Those are my reply submissions.

PN648

THE DEPUTY PRESIDENT: Thank you, Mr Lettau. In fact thank you to all the parties for the submissions and the evidence that has been given today; it has been most helpful. I will reserve my decision. I will issue reasons in writing as soon as I can. Unless there is anything else that you would like to raise, Mr Lettau and Ms Lucas, we will adjourn on that basis. Good afternoon, everyone.

ADJOURNED INDEFINITELY

[3.38 PM]

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