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TRANSCRIPT OF PROCEEDINGS

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INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION

MELBOURNE

MONDAY, 26 OCTOBER 2020

(1st day of examinations)

BEFORE THE HONOURABLE ROBERT REDLICH AM, QC

Counsel Assisting: Mr Paul Lawrie  
Mr Joseph Amin

OPERATION ESPERANCE INVESTIGATION

PUBLIC EXAMINATIONS PURSUANT TO PART 6 OF THE INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION ACT 2011

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Every effort is made to ensure the accuracy of transcripts. Any inaccuracies will be corrected as soon as possible.

1 COMMISSIONER: Could you commence the recording, please,  
2 Monday, 26 October 2020. Mr Pinder, I'm the IBAC  
3 commissioner. I'm conducting this examination pursuant to  
4 powers delegated to me under the IBAC Act. The  
5 examination will be held in accordance with Part 6 of  
6 the Act. Mr Paul Lawrie will be counsel assisting and  
7 I have authorised Mr Lawrie to examine Mr Pinder. This is  
8 an inquisitorial process. The commission is not bound by  
9 the rules of evidence, but by and large the proceeding  
10 will be conducted as though they were court proceedings in  
11 which the rules of evidence will apply unless I say  
12 otherwise.

13 Counsel assisting the commission will ask you  
14 questions, Mr Pinder. I may also ask you questions as  
15 well. Following our questions, your legal representative  
16 will have the opportunity to ask you questions to clarify  
17 your answers, to add anything further that you wish to  
18 and, Ms Currie, if during the course of Mr Lawrie's  
19 questioning if you think it appropriate to intervene to  
20 clarify something at the time, I encourage you to do so.

21 The examination is being conducted by audiovisual  
22 link pursuant to Division 3 of Part 3 of the COVID-19  
23 Omnibus (Emergency Measures) (Integrity Entities)  
24 Regulations 2020. Witnesses and their legal  
25 representatives are not required to stand at the  
26 commencement, breaks or end of the examination or when  
27 taking an oath or giving their appearance. All legal  
28 representatives should mute their microphone unless  
29 seeking to make a submission or address me during the

1 course of the examination.

2 Mr Pinder, if at any stage during the hearing of  
3 the examination you have any difficulty hearing what is  
4 said or if you don't understand a question, you should  
5 indicate so immediately and we'll address the problem or,  
6 if it's a question you don't understand, it can be  
7 rephrased or asked again.

8 If there are any further questions arising out  
9 what of I have said in relation to the procedure, the  
10 Operating Procedure Virtual Examination which you would  
11 have all received a copy of may provide any further  
12 information that you require.

13 Finally by way of preliminaries, Mr Pinder, at  
14 any stage if want to have a break you should just indicate  
15 that you would like to do that. If you want an  
16 opportunity to speak with your counsel you should also  
17 indicate and we'll provide that opportunity to you.

18 Ms Currie, I note your attendance at the  
19 examination on behalf of Mr Pinder, instructed by Mr Paul  
20 Galbally and Kartya Gracer. I remind you all as  
21 Mr Pinder's legal representatives of the non-disclosure  
22 obligations with respect to the restricted matters  
23 specified in Mr Pinder's confidentiality notice.

24 <JAMES GRAHAME PINDER, sworn and examined:

25 COMMISSIONER: Mr Pinder, I now want to just cover with you the  
26 subject matter of the hearing, that is the matters about  
27 which you'll be questioned. You'll be asked questions  
28 about your knowledge of and responsibilities for the  
29 transparency and integrity of major services procurement

1 and tendering processes within the public transport sector  
2 in Victoria following the special report to parliament in  
3 December 2017 of Operation Lansdowne, including but not  
4 limited to conflicts of interest, undeclared relationships  
5 and gifts to public officers that may give rise to actual  
6 or perceived corrupt conduct, the nature and history of  
7 your relationship with George Haritos and any other owner,  
8 director, officer, employee, subcontractor, associate,  
9 representative or agent of Transclean Facilities Pty Ltd,  
10 including the frequency and the nature of your  
11 communications with them; whether you or other public  
12 officers involved in major contract tender and procurement  
13 processes have been improperly influenced through direct  
14 or indirect benefit, including but not limited to your  
15 interactions with George Haritos and any other owner,  
16 director, officer, employee, subcontractor, associate,  
17 representative or agent of Transclean; the systems and  
18 controls in place within the public transport sector, in  
19 particular as they relate to V/Line concerning  
20 procurements and tendering for major contracts, with  
21 particular focus on the existence and adequacy of systems  
22 and controls for ensuring the integrity of the procurement  
23 process, including by detecting instances of public  
24 officers obtaining corrupt benefits or being unduly  
25 influenced by contractors; and the nature and level of  
26 your knowledge and involvement in Transclean's contracts  
27 with V/Line, including the variations made to those  
28 contracts, the reasons for those variations, relevant  
29 audit processes and reports, payments to Transclean

1 arising from those contracts and the performance of  
2 Transclean's obligations under relevant legislation and  
3 those contracts.

4 Mr Pinder, at the time that you were served with  
5 a summons to attend, did you receive a document entitled  
6 'Statement of rights and obligations'?---So,  
7 Mr Commissioner, I've got six documents in front of me  
8 that I received. One is titled 'Confidentiality notice  
9 for an investigation'. Another is titled 'Witness summons  
10 for investigation'. The next one is titled 'Service of  
11 summons SE3397'. Another one is titled 'Preliminary  
12 investigation and directions for public examination for  
13 Operation Esperance'. The other one, the next one, the  
14 fifth one, is a notice cancelling a previous  
15 confidentiality notice referring to summons SD3020, and  
16 the last one is a notification about public examination  
17 welfare support services that are available to me.

18 Yes, thank you. Ms Currie, can you assist me here? Presumably  
19 you've become privy to the documents served on your  
20 client. Did he not get a rights and obligations document?

21 MS CURRIE: Commissioner, I understand, yes, it was provided.

22 It forms part of the witness summons document. It's the  
23 fourth page of that and I have explained the content of  
24 that statement of rights and obligations to Mr Pinder.

25 COMMISSIONER: Thank you very much. Do you see that part of  
26 it, Mr Pinder? Page 4?---Yes, I do, Mr Commissioner, and  
27 I have read that.

28 Very good. Have Ms Currie and Mr Galbally explained to you the  
29 contents of the document?---Yes, Mr Commissioner.

1 Do you wish to be informed again of your rights and obligations  
2 or any part of them?---No, Mr Commissioner.

3 Very good. Let me just summarise your position, Mr Pinder.

4 Your obligation is to answer questions that you're asked,  
5 unless you have a reasonable excuse for not doing so. You  
6 must answer the questions, even if they incriminate you or  
7 make you liable to a penalty. You must answer the  
8 questions truthfully, otherwise you may expose yourself to  
9 the risk of a perjury charge, which carries a penalty of  
10 up to 15 years imprisonment. Importantly, if you answer  
11 the questions truthfully, then those answers are not  
12 admissible and cannot be used against you in any court,  
13 with the exception of course of using your answers if they  
14 are false, in which case you may be prosecuted for  
15 perjury.

16 Mr Pinder, this is a warning that I give every  
17 witness that gives evidence at an examination, whether  
18 it's private or public. Counsel assisting will ask you  
19 questions. Often they are what we lawyers would describe  
20 as an open-ended question in that it doesn't suggest an  
21 answer, it doesn't convey to you any facts which the  
22 person asking the question might have. It's an open-ended  
23 question. But you should not assume because the question  
24 is an open-ended question that counsel assisting doesn't  
25 already know the answer to that question. Do you  
26 follow?---I understand.

27 So, I tell you that because it's important that you ensure that  
28 you give full and frank answers to questions. If you do  
29 so, then as I say the answers that you give can't be used

1 against you. Do you follow that?---I do, Mr Commissioner.

2 Very good. Yes, Mr Lawrie.

3 <EXAMINED BY MR LAWRIE:

4 MR LAWRIE: Thank you, commissioner. Before I deal with  
5 the formal matters of producing and having tendered the  
6 summons for Mr Pinder, I propose to just read a brief  
7 opening to this public hearing.

8 COMMISSIONER: Very good.

9 MR LAWRIE: Mr Commissioner, on 16 October 2018 the Independent  
10 Broad-based Anti-corruption Commission commenced  
11 Operation Esperance, an investigation into the award of  
12 contracts by V/Line, which is Victoria's regional railway  
13 operator. This operation followed the findings of  
14 Operation Lansdowne which were handed down in December  
15 2017. Amongst other public bodies, Operation Lansdowne  
16 considered whether V/Line contracts had been improperly  
17 awarded and whether internal processes were ignored to  
18 benefit a network of people who had previous professional  
19 and social connections.

20 In Operation Lansdowne, IBAC found evidence of a  
21 V/Line culture that placed undue emphasis on personal  
22 relationships and disregarded the requirement to declare  
23 and manage conflicts of interest. Deficiencies in  
24 V/Line's systems and controls had permitted this conduct  
25 to flourish.

26 Despite V/Line's acceptance of the  
27 recommendations of Operation Lansdowne in its response to  
28 IBAC and in its final report which was dated December 2017  
29 and its undertaking to implement new strengthened controls

1 and measures, since the findings of Operation Lansdowne  
2 investigators have uncovered new and more serious alleged  
3 conflicts of interest and impropriety in connection with  
4 major public procurements.

5 In late 2019 the investigation detected a number  
6 of suspect bank account transactions between the CEO of  
7 V/Line, Mr James Pinder, and associates of Transclean  
8 Facilities Pty Ltd, a company engaged by V/Line to provide  
9 cleaning services since May of 2018. Transclean is also  
10 engaged by Melbourne's metropolitan railway operator,  
11 Metro Trains Pty Ltd, to provide cleaning services and  
12 Melbourne's tramway operator, KDR Pty Ltd, known to  
13 Victorians as Yarra Trams, to provide security services.  
14 The investigation has uncovered suspected collusion by  
15 public officers to protect and advance Transclean's  
16 commercial interests with V/Line, Metro and possibly other  
17 public transport bodies in return for financial benefits.

18 This public examination will call Mr James  
19 Pinder, the CEO of V/Line, Mr Peter Bollas, the head of  
20 fleet operations support for Metro, and Mr George Haritos,  
21 the managing director of Transclean Facilities Pty Ltd.  
22 These three men appear to have formed a close group in the  
23 course of their professional lives which began in their  
24 common association with Metro Trains some eight years ago.

25 James Pinder moved from the UK to Melbourne in  
26 about December 2012 to take up the position of general  
27 manager of rolling stock at Metro. Mr Peter Bollas has  
28 worked at Metro since 2012 and reported to James Pinder  
29 within the rolling stock division during his time at Metro

1 with a role in the management of Transclean's carriage  
2 cleaning contract to Metro. As well as being the managing  
3 director of Transclean, George Haritos is one of the two  
4 ultimate owners of the company.

5 In 2015 James Pinder left Metro and returned  
6 briefly to the UK before he commenced as the chief  
7 executive officer of V/Line in November 2016. For a  
8 period of nearly four years James Pinder and George  
9 Haritos have used a pair of 'burner' mobile phones  
10 subscribed in the names of Transclean associates to  
11 communicate secretly with each other and with Peter  
12 Bollas, thereby attempting to keep the trio's dealings  
13 beyond detection. These secret phones came into use soon  
14 after James Pinder's appointment as the chief executive  
15 officer of V/Line in late 2016.

16 In February 2018 V/Line's carriage cleaning  
17 contract, at that time held by a competitor of Transclean,  
18 went out to tender. On 2 May 2018 the V/Line board  
19 approved the award of the V/Line contract to Transclean.  
20 The V/Line contract had an initial three year term  
21 involving an expenditure of some \$17.2 million. At the  
22 same meeting, the V/Line board delegated an authority to  
23 Mr Pinder to extend the V/Line contract by up to four  
24 years at the end of its initial three year term for an  
25 additional value of some \$23 million. This gave Mr Pinder  
26 direct control to affect Transclean's future interests  
27 with the potential expenditure of V/Line under the  
28 contract amounting to some \$40 million.

29 On 17 December 2018, the day before Mr Pinder

1 signed the final report on behalf of V/Line in response to  
2 Operation Lansdowne as its CEO, \$100,000 was  
3 electronically transferred from an associate of Transclean  
4 towards the deposit of Mr Pinder's current residence in  
5 Williamstown. This was the first of several structured  
6 payments between late 2018 and early 2019 totalling at  
7 least \$320,000 which went towards the purchase of  
8 the property and which ultimately traced back to  
9 Transclean. These payments to James Pinder were in  
10 addition to suspected regular cash payments to both him  
11 and to Peter Bollas to advance Transclean's interests in  
12 the public transport sector. These payments are also  
13 suspected to be linked to various opportunistic dealings  
14 by both James Pinder and Peter Bollas using their  
15 positions to financially benefit Transclean and  
16 themselves.

17 The treatment of Transclean may also have  
18 impacted the ability of Metro and V/Line to properly  
19 oversee and assess the quality and sufficiency of  
20 the cleaning services provided by Transclean for V/Line  
21 and Metro rolling stock under its contracts. The ability  
22 of V/Line and Metro to monitor contract performance in  
23 this regard has never been more important than now when  
24 the state faces the challenges of the COVID-19 pandemic.

25 The purposes of this hearing, Mr Commissioner.  
26 Public officers hold a high position of trust. There is  
27 an expectation that they carry out their duties with  
28 integrity, transparency and free from influence, to act in  
29 the best interests of the public and not for personal

1 gain. The purpose of these examinations is to determine  
2 whether the procurement processes in the public transport  
3 sector have been corrupted or compromised by close  
4 undisclosed relationships with contractors through the  
5 receipt of financial benefits. Understandably there is  
6 considerable public interest in exposing such conduct and  
7 ensuring that major public procurement decisions are  
8 transparent and free from influence. It is also important  
9 to identify and expose any aspect of the processes and  
10 systems that may continue to facilitate corruption or  
11 allow it to go undetected.

12 The public examination may also further assist  
13 the investigation by encouraging any relevant public  
14 officers or members of the public who may have information  
15 that would be of assistance to come forward, whilst also  
16 providing an important platform for IBAC in respect to its  
17 education and preventative function. That's the opening,  
18 commissioner.

19 COMMISSIONER: Yes, Mr Lawrie.

20 MR LAWRIE: Mr Pinder, on the screen in front of you is about  
21 to be shown a document which will be document 2 which we  
22 have already spoken about briefly. It 's the summons  
23 which contains the notice of rights and obligations, the  
24 confidentiality notice and a covering letter that will  
25 come up now. If we can scroll through those pages just  
26 taking a few seconds on each page. If you need more time  
27 on any page, Mr Pinder, please say so. Just pause there.  
28 This is the commencement of the summons that we'll scroll  
29 past now. At the end of this I'll ask you to confirm that

1           they are the documents that were served upon you and which  
2           the Commissioner spoke of a few moments ago. Coming up  
3           now is the confidentiality notice that we spoke of  
4           earlier. Do you recognise that?---Yes.

5   If we can scroll through that fairly quickly, please. Perhaps  
6           we can scroll down to the bottom. That's the list of  
7           documents that were served on you on 14 October 2020. If  
8           you can confirm that they are the documents that were  
9           served upon you on that date?---Yes.

10   Thank you. I tender the summons together with  
11           the confidentiality notice, the statement of rights and  
12           obligations and the covering letter, Commissioner.

13   COMMISSIONER: That will be exhibit JP1.

14   #EXHIBIT JP1 - Documents served on Mr Pinder on 14/10/20,  
15           comprising the summons, confidentiality notice, statement  
16           of rights and obligations and covering letter.

17   MR LAWRIE: Mr Pinder, you started as the chief executive  
18           officer of V/Line in December 2016; is that  
19           right?---That's correct, yes.

20   Were you in the UK before you got notification of your  
21           appointment?---So, between leaving Metro in late 2015 and  
22           starting to work at V/Line at the end of 2016, for the  
23           majority of that year I was in the UK, yes.

24   You were in the UK for some nine months?---I think it was  
25           probably closer to 12, Mr Lawrie. I think I left Metro in  
26           December 15 and returned full-time in November, at the end  
27           of November 16.

28   What was the recruitment process for your appointment as the  
29           CEO of V/Line?---So, when I left Metro, Mr Lawrie,

1 I decided to go back to the UK, predominantly because  
2 I felt like I had achieved what I was asked to achieve at  
3 Metro. There had been some changes at Metro that didn't  
4 particularly - - -

5 Without going into that, while you were in the UK you worked  
6 for Southern Rail, didn't you? Southern Railways?---So  
7 I worked for Southern Railways before I came to Australia  
8 for the first time in 2012. When I went back to the UK  
9 I essentially started my own company.

10 I see?---And I was consulting in the UK as a - my company was  
11 called Transform, TXM Transform, and I was doing some work  
12 in the railway industry. Your question about my  
13 recruitment, I can't remember exactly when it was but  
14 I received a phone call out of the blue from somebody who  
15 asked me if I would be interested in the vacancy of CEO at  
16 V/Line. My predecessor had left I think, from memory, in  
17 about the January, or my full-time predecessor left some  
18 time in the January or February and I think the company  
19 was called Horton International were charged with  
20 identifying potential candidates and my name - - -

21 Horton International was the recruitment firm, was it?---That's  
22 correct, yes.

23 The phone call you received, was that from Horton International  
24 or was it from someone within V/Line?---I can't remember  
25 exactly, but I think the first phone call I received was  
26 from the then deputy chair of V/Line who on behalf of  
27 the board was leading the recruitment process. He asked  
28 me if a role at V/Line would interest me. I initially,  
29 from memory, said probably not. I was either just about

1 to get married or I'd just got married and he was quite  
2 keen to progress the conversation and told me that if  
3 I was willing to continue with the conversation something  
4 along the lines of, you know, 'We'll get someone to get in  
5 touch with you,' and that was Horton International.

6 But it was the deputy chair of the board at that time who made  
7 the first approach to you, was it?---I'm conscious of the  
8 fact that, you know, I need to be as accurate as I can be.  
9 I believe so, but I'm not 100 per cent sure if it was  
10 Horton International first and then deputy chair, but  
11 I think it was the deputy chair first and then Horton  
12 International.

13 COMMISSIONER: Mr Lawrie, could you just establish please how  
14 is V/Line structured. It's run by a board and could you  
15 just explore that for a moment? I will, commissioner.

16 MR LAWRIE: I will, commissioner. Your role obviously as the  
17 CEO of V/Line, you can explain, please, Mr Pinder, how  
18 V/Line is structured from the top down commencing with the  
19 board and then through the various divisions?---Of course.  
20 So V/Line when I joined was a Pty Ltd company, but  
21 essentially the structure hasn't changed since. There was  
22 a change from a Pty Ltd structure to a public corporation,  
23 it's now a public corporation, but there is a board that  
24 sits at the top of the organisation. The board is  
25 appointed by the minister for public transport and the  
26 board is charged with appointing both the CEO and company  
27 secretary, from memory, I think. They also have some  
28 discretion on and some input into the appointment of the  
29 CFO.

1 That is the chief financial officer?---Correct. Sorry, I must  
2 try and avoid using acronyms. So there is an executive  
3 team that report to the CEO and then there are a number of  
4 different departments, Commissioner. I could run through  
5 them if you want me to.

6 Let's do it in brief. You spoke about an executive team. Is  
7 that within V/Line called the executive leadership team  
8 and we see an acronym of ELT from time to time?---That's  
9 correct, Mr Lawrie, yes.

10 And do they report directly to you?---That's correct.

11 And does the CFO report to you?---Yes.

12 Or directly to the board?---No, to the CEO.

13 And so you are the last point of contact between the executive  
14 team and the board; is that right?---I guess from a formal  
15 structure perspective, yes, although there are - at V/Line  
16 there is complete and open access from all members of the  
17 board to any member of the executive at any given time,  
18 yes.

19 Indeed, at board meetings there will be from time to time heads  
20 of other departments who will be at the board meetings to  
21 assist the board, depending on what the agenda  
22 is?---That's correct, yes.

23 But as the CEO you are expected to be at each board meeting to  
24 assist the board?---Yes, it would be exceptional  
25 circumstances for me not to be at the board meeting, but,  
26 you know, that has happened but it normally would be the  
27 case that I would be at all board meetings and all  
28 subcommittee meetings.

29 And as the CEO you're responsible, ultimately responsible for

1 the day-to-day running of V/Line's operations, aren't  
2 you?---That's correct, yes.

3 And for that purpose the board has delegated to you power to  
4 both commit V/Line to the expenditure of funds and to end  
5 funds?---Well, there's a fairly comprehensive structure  
6 around that, Mr Lawrie. It's not quite as simple as that.  
7 There are a number of levels of delegated financial  
8 authorities.

9 We'll come back to those. But just in short at the moment, you  
10 had a delegated authority for the expenditure of  
11 \$5 million, up to \$5 million, for matters that were within  
12 the V/Line budget, didn't you?---That's correct.

13 And the complication that you're talking about is that that  
14 also included an authority for up to 10 per cent overrun  
15 on any one particular instance. So, \$5 million plus  
16 perhaps a 10 per cent overrun for any particular instance  
17 for matters that were within budget; is that a fair  
18 summary of the authority that was delegated to you?---I'm  
19 aware of the \$5 million limit. I wasn't aware or I'm not  
20 aware that there is a \$500,000 or a 10 per cent, as you  
21 put it, overrun. That may be the case, but I wasn't aware  
22 of that.

23 Indeed, in a short while we'll come to those documents and we  
24 can have a look at them precisely, but I just want to  
25 understand it at least in summary at the moment. So  
26 you're responsible for the day-to-day operations and you  
27 have authority to expend \$5 million; correct?---Up to  
28 \$5 million, yes.

29 Now, can you explain the divisional structures beneath you;

1 that is, first of all what makes up the executive  
2 leadership team that reports to you?---So the CFO, as you  
3 mentioned previously, is responsible for three things: as  
4 you would expect the management of the finances of  
5 the business; management of the procurement activities in  
6 the business; and management of the IT parts of the  
7 business. There is a people - what some people may call  
8 an HR function, a people function, are responsible for  
9 largely the traditional elements of an HR department, so  
10 recruitment, training, professional development, all of  
11 those sorts of things. Sorry, I should say the CFO  
12 department is also responsible for payroll. There is an  
13 operations division. They are responsible for  
14 the day-to-day operations of the trains, the drivers, the  
15 conductors, managing the control centre, also security and  
16 things like performance management of the operation and  
17 making sure that everything is monitored on a day-to-day  
18 basis. There's also obviously - - -

19 Would that include the management of performance of contracts  
20 such as carriage cleaning contracts?---No. So, typically  
21 where the activity falls in the organisation, the member  
22 of the ELT would be responsible for that element. So  
23 cleaning, as you referred to earlier on, of rolling stock  
24 is something that is part of the asset management  
25 executive part of the executive. There are people within  
26 that part of the organisation that would have day-to-day  
27 responsibilities for ensuring that the various  
28 specifications and scopes of work, those activities, are  
29 delivered and also monitored.

1 So if we can just summarise so far, we've got beneath you the  
2 CFO who's in charge of obviously financial summaries;  
3 we've got someone who's in charge of human resources;  
4 we've got someone who's in charge of operations; and we've  
5 got someone who's in charge of assets or asset management;  
6 is that correct?---Yes.

7 So we have four major divisions so far. Are there any  
8 others?---Yes. So, also within the asset management,  
9 V/Line in the asset management space delivers all of  
10 the routine maintenance activities to the infrastructure  
11 assets that V/Line operates on. Metro - where V/Line  
12 operates on the Metro network, metropolitan railways look  
13 after that network, but everything else, the regional  
14 network is looked after by the asset management team. The  
15 V/Line rolling stock maintenance is contracted out to a  
16 few organisations, but predominantly Bombardier. There's  
17 also some work that's carried out by Downer and some other  
18 organisations, but predominantly it's Bombardier. The  
19 other thing that the asset management team are responsible  
20 for is setting all of the engineering standards and making  
21 sure that those engineering standards are maintained as  
22 they relate to our obligations under national rail safety  
23 law. So that's asset.

24 Asset management has really got two primary subdivisions, can  
25 we say that: rolling stock and then other  
26 infrastructure?---So I would say three. So rolling stock,  
27 infrastructure and engineering.

28 Okay?---So engineering standards. So there is a department  
29 within the asset team that determines what the engineering

1 standard is, and there are two departments within the team  
2 that are charged with delivering that standard. The idea  
3 of setting it up that way is that there's no - obviously  
4 there's no conflict between those that are charged with  
5 setting the standard and those that are charged with  
6 delivering the standard. Those who are charged with  
7 setting the standard also ensure that the standard is  
8 maintained and monitor the work that's done to that  
9 standard.

10 Certainly. Are there any other divisions, any other  
11 significant divisions of V/Line that we haven't discussed  
12 so far?---There are a few, yes. So there is a projects  
13 division.

14 Yes?---Actually called the program division, because there's  
15 multiple projects that are being either delivered by  
16 V/Line or where V/Line is in alliances with some of  
17 the major big build projects that are going on in the  
18 State at the moment.

19 Sorry to interrupt you, but is that things like regional track  
20 upgrades and the like?---So, regional rail revival is one  
21 of those programs where V/Line is in partnership, not  
22 charged with ultimately accountable for delivering, but  
23 certainly are in partnership with those authorities that  
24 are delivering those programs. They also are - that same  
25 part of the organisation is responsible for managing the  
26 MPM funding that V/Line receives from the government each  
27 year and that can vary in its amounts, but I think last  
28 year it was something in the order of \$110 million. So  
29 MPM stands for major periodic maintenance and that work is

1 where the asset team do the day-to-day maintenance, so in  
2 layman's terms from time to time those assets require more  
3 than routine maintenance, they might require renewal or  
4 upgrade, like a renewed bridge deck or some sleeper  
5 replacements, and that work, because it's very similar in  
6 nature to project work, is managed by the program  
7 division. So that's that department. There's a safety  
8 department. Now - - -

9 You don't have to go into a lot of detail, but you've spoken  
10 about projects?---Yes. Safety.

11 Safety. And what else?---There is an EGM who is responsible  
12 for managing risk. There's an EGM who is responsible for  
13 managing both the legal, the integrity and the company  
14 secretary type roles.

15 Governance?---Yes.

16 Yes?---You put me on the spot here now. I always forget  
17 someone.

18 It's not meant to be a memory test, but let's leave it at that  
19 for the moment. That I think for our purposes will  
20 explain the important divisions that report up through  
21 you. What I want to focus on throughout a series of  
22 questions that I will ask you about are the carriages  
23 cleaning contract that was eventually won by Transclean.  
24 Now, that would be something that would be managed within  
25 the asset group; is that right?---Well, when you say  
26 'managed', you mean the asset group would manage the  
27 contract when it was live. In terms of reaching a point  
28 where any contract is awarded at V/Line, there is a series  
29 of - depending on what type of contract it is and how big

1           it is, there is a series of procurement activities that  
2           have to happen first.

3 Including the tender process?---Correct.

4 Is the tender process run through that group as  
5           well?---Correct, yes, with input from subject matter  
6           experts. But typically, yes.

7 So what's the name of the position of the person in charge of  
8           the asset group?---Sorry?

9 What is the name of the position of the person in charge of  
10          the asset group?---He is the EGM asset.

11 Okay. And the titles of the major subgroups that report to  
12          him?---He has the GM rolling stock. So, as I said, there  
13          is - the maintenance and repair activities within rolling  
14          stock in V/Line are all outsourced, but there is still a  
15          team of people that manage the contractors that carry out  
16          that activity. There is a GM of engineering who is  
17          responsible ultimately for setting those standards that  
18          I spoke about earlier on and ensuring that they comply  
19          with best practice and national safety law.

20 A GM of infrastructure ?---There is a GM of infrastructure, who  
21          is responsible for all of the people that carry out both  
22          the routine maintenance and from time to time carry out  
23          defect repairs on infrastructure. V/Line is also at the  
24          moment on the verge of attaining ISO55001 accreditation  
25          and there is a team of people within the asset team that  
26          are responsible for delivering that piece of work, which  
27          is a new piece of work, and there is another person that  
28          reports to the EGM asset who is responsible for managing  
29          things like facilities and logistics.

1 All right. The contract that went out for tender, that is the  
2 carriages and facilities cleaning contract, went out for  
3 tender in February of 2018, didn't it?---I'm not sure of  
4 the date, but I'm happy to take your word for it, yes.  
5 That sounds about right to you?---Yes.  
6 So who was responsible for putting the tender process together  
7 and then managing the tender process as it moved  
8 forward?---Well, ultimately all tender processes within  
9 V/Line are managed by the chief procurement officer, who  
10 reports to the CFO. But typically what would happen is  
11 that somebody within the procurement team, and I don't  
12 know who specifically, would be tasked with running that  
13 process, and these things happen all of the time. You  
14 know, you've got several large contracts with third party  
15 suppliers and they are all managed through - those large  
16 contracts are all managed through that process. There is  
17 a separate process for smaller contracts, if you like,  
18 where suppliers are brought in. We have established - - -  
19 I'm not too worried about the other - - -?---Okay, yes.  
20 Looking at this one, this was a contract that had an initial  
21 term of three years with two extension options of two  
22 years each. So it had a potential contract term of seven  
23 years, didn't it?---I believe so, yes.  
24 And the potential expenditure involved if the contract was to  
25 run seven years would be just a shade over \$40 million,  
26 wouldn't it?---If the numbers that you're quoting are  
27 correct, then that doesn't surprise me.  
28 We can go to it specifically and we will in some of the  
29 documents, but if you just take those numbers from me at

1 the moment?---I'm not surprised by that number, yes.

2 Now, the expenditure, even for the initial three year term, is  
3 significantly in excess of the delegation of authority  
4 that you enjoy from the board, isn't it?---Yes.

5 Because the initial term expenditure, if the contract was only  
6 to run three years, would be \$17.2 million, wouldn't  
7 it?---Yes.

8 And your financial delegation sits at \$5 million, doesn't  
9 it?---Yes.

10 So would you describe - I'm sorry, Commissioner.

11 COMMISSIONER: Mr Lawrie, I just want to clarify. For the  
12 purpose of a contractual arrangement, Mr Pinder, of the  
13 order that Mr Lawrie is talking about in this contract,  
14 how would that process commence? That is, who would make  
15 the decision that you need to look for someone to fulfil  
16 that contract need? Does that come via the board to you  
17 and you in turn give directions to the CFO and the chief  
18 procurement officer? What's the process?---That's a good  
19 question, Mr Commissioner. There are literally hundreds  
20 of arrangements like this at V/Line and last year I think  
21 from memory our budget was something like a billion  
22 dollars, so that will give you a rough idea. All of  
23 the contracts at V/Line are time bound, so they're awarded  
24 for a period of time and from time to time obviously they  
25 expire. Now, there are some contracts that have longer  
26 periods of time. So the contract with Bombardier, the  
27 current contract with Bombardier, I think is for 10 years  
28 and is due to expire in the next 18 months, from memory.  
29 So that process will be a 1 point something billion dollar

1 exercise. But typically contracts are awarded for a  
2 period of time. Quite often there is provision within  
3 those contracts to extend them, as Mr Lawrie says, for a  
4 year or two, once or multiple times, but there's no set  
5 formula. But from memory this particular contract had  
6 reached the end of - the existing contract had reached its  
7 end and was due to be retendered, and that's how that  
8 particular one happened. So, to answer your question, no  
9 decision was made. It just reached its end and a  
10 retendering process kicked in, from memory.

11 Who initiates that process?---The chief procurement officer is  
12 responsible for initiating that process and engaging with  
13 the market, Commissioner.

14 Thank you.

15 MR LAWRIE: And does the chief procurement officer sit within  
16 the assets group?---No. The chief procurement officer  
17 reports to the chief financial officer.

18 Okay?---So the procurement team are part of the finance team.

19 Now, in fact the existing contract that you spoke of was with  
20 an organisation called Borg; do you recall that?---Yes.

21 And they had held the carriages and facilities cleaning  
22 contract since about 2012; does that accord with your  
23 memory?---I don't know, if I'm absolutely honest with you.  
24 But that probably sounds about right.

25 Do you recall that that contract was actually due to expire not  
26 in June of 2018, but in December of 2017, and was extended  
27 for six months to allow the new contract to properly go  
28 out to tender?---I don't recall that, but that wouldn't be  
29 unusual. Quite often these dates creep up on you and

1           you're not ready to renegotiate the contract, so you would  
2           extend. I think the Bombardier contract is in the same  
3           position right now, if I remember rightly. But, yes, that  
4           sounds about right.

5   Let's just focus on the Borg contract for the moment. Do you  
6           recall there being this need to just seek this six month  
7           extension to the contract so that the tender could  
8           happen?---I don't recall that precisely. Did you say it  
9           was December 17?

10   Correct?---That sounds about right to me.

11   In any event, with a tender of this size that's going to  
12           involve potentially \$40 million expenditure by V/Line over  
13           seven years, is that something that you would become  
14           involved in personally at a reasonably early stage of the  
15           process or not?---No.

16   So, by the time the chief procurement officer has put the  
17           tender process together, is that the first time you see  
18           it?---I don't really understand your question.

19   All right. I'll put it this way.

20   COMMISSIONER: Or does he see it at all, Mr Lawrie?

21   MR LAWRIE: Yes, certainly, Commissioner. I'll put it this  
22           way. That tender that eventually took place in early 2018  
23           was by select invitation to various companies, wasn't  
24           it?---I don't know that that was the case.

25   All right?---There are obviously only a limited number of  
26           people that are involved in delivering those type of  
27           services. But I don't know how the people that were  
28           selected were selected, if that's what you're asking.

29   Perhaps if we can assist you. We'll bring up the agenda paper

1 that ended up going to the board at the end of that tender  
2 process. So if we can bring up p.286 of the court book,  
3 please. If we go through to p.287. Is this a document  
4 you recognise, you've seen before?---Yes, Mr Lawrie, I've  
5 seen several of those.

6 Is this the board agenda paper for the carriages and facilities  
7 cleaning contract that went to the board on 2 May  
8 2018?---It would appear to be, yes.

9 And it contains an executive recommendation that we can see on  
10 p.287 there that the board resolved to approve entering  
11 into a services agreement with Transclean as set out in  
12 attachment 2 for an initial three year term, plus two  
13 additional terms of two, plus two years for a total value  
14 of \$40.18 million inclusive of contingency. And then to  
15 authorise you to execute the necessary documents and to  
16 delegate to you the authority to exercise the two optional  
17 terms; do you see that there?---Yes.

18 All right. I'll come back to that in a moment. But if we go  
19 forward, please, to p.291, do you see there about a third  
20 of the way down the page, 'A process of selective  
21 invitation to tender was undertaken with identified  
22 suppliers with rail experience'; do you see that  
23 there?---Yes.

24 So it was a selective invitation to tender and do you remember  
25 that there were three tenderers competing for the  
26 contract: one was Transclean, one was Borg, the current  
27 holder of the contract, one was an organisation called  
28 Wayne and one was an organisation GJK; do you recall  
29 that?---So if that was the case, then that's four; is that

1 what you're saying?

2 Yes, there were four responders?---Sorry, I thought you said  
3 three.

4 I may have. If I did, I apologise?---Yes.

5 So four responders to the tender; correct?---That would appear  
6 to be the case, yes.

7 Do you know how many were invited to tender?---No.

8 COMMISSIONER: Mr Lawrie, I'm still not clear, though, at what  
9 point Mr Pinder becomes involved at all in this process.

10 For example, was he asked to approve the process? Was he  
11 asked to approve the selection of those who were invited  
12 to tender? When does he first have any involvement in  
13 this process?---I could probably help with that, but it's  
14 up to you, Mr Lawrie.

15 MR LAWRIE: Let's just take it with this document that goes to  
16 the board. This is signed off by both you and the CFO,  
17 isn't it? We can go to p.287, if we go to the bottom of  
18 the page. Do you see there proposed by the CFO and  
19 authorised by the CEO at the bottom of the page?---Yes, so  
20 every single board paper, it goes to the board, obviously,  
21 is authorised by me and they're produced by any number of  
22 people.

23 So you had at least seen it by the time it goes to the board on  
24 2 May?---And read it, yes.

25 And seen it, read it, authorised it; correct?---Yes, every  
26 single one. I think from the top of the screen there for  
27 this board meeting there were 953 pages and that's quite a  
28 bumper pack, but not untypical.

29 COMMISSIONER: I just want to be clear, Mr Pinder. I do

1 understand the burdens that can rest on a CEO with vast  
2 numbers of papers going to a board, but can the commission  
3 assume that if you authorised the presentation of this  
4 agenda item, you approved its content?---Yes, although I'm  
5 not sure that really, as I understood it, answers your  
6 question. So this paper would have gone to the board at  
7 the end of the process.

8 MR LAWRIE: And we understand that?---This is a penultimate  
9 step in the process for any contract that seeks the  
10 approval of in excess of \$5 million expenditure, because  
11 the ultimate step in the process is for me to execute the  
12 contracts once obviously permission to do so.

13 Okay. So leaving aside other instances of tendering for  
14 various contracts and focusing on this particular tender  
15 process, when did you first become aware of the tender  
16 process?---I couldn't tell you an exact date. I recall  
17 that there was discussion about the fact that the contract  
18 was due to be renewed or retendered before that process  
19 happened and there were conversations that I was involved  
20 in about the desire from the organisation to include a  
21 higher level of specification and more detailed scope of  
22 work for a new contract because it was our - it was  
23 generally perceived that the cleanliness of the trains in  
24 particular was pretty poor and our ability to affect the  
25 quality of the cleaning was effectively stymied by the  
26 fact that the contract was not particularly prescriptive.  
27 Although you were going through that paper fairly quickly  
28 on my screen, I think that paper there, Mr Lawrie, talks  
29 to the fact that that is what the overarching objective

1 was.

2 We'll come back to some of those aspects that you are indeed  
3 correct that are included in that agenda paper for the  
4 board. The need for this contract to go out to tender,  
5 did that come to your attention in about December 2017 as  
6 the Borg contract was due to come to its original  
7 end?---I don't remember. Genuinely, if it did at that  
8 time, I don't know.

9 COMMISSIONER: Would you expect it to?---Yes, Commissioner.

10 Yes.

11 MR LAWRIE: So, as you say, this was an opportunity, wasn't it,  
12 for you as you launch into a new contract, be it with Borg  
13 or whoever might win the tender, to have tighter scope of  
14 works and tighter specifications written into the  
15 agreement to allow you to better manage performance of  
16 the supplier's contractual obligations; correct?---Yes,  
17 correct.

18 And that was an important factor?---Yes.

19 And obviously as well as price?---Of course, and things like  
20 safety, performance, all of those sorts.

21 Yes. Indeed, these are what you might call part of - well, as  
22 well as assessing the quality of the tenderer, part of the  
23 due diligence process that you engage in into potential  
24 major suppliers?---Yes, and we were in many ways trying to  
25 improve the performance of the services that were  
26 provided, and this is just one example. I think whilst  
27 it's probably paraphrasing a bit, because I can't remember  
28 exactly, I think if you were to read the specification for  
29 train cleaning for the previous contract it would have

1           been a document like that, and if you were to read the  
2           specifications for the new contract it would have been  
3           that thick. That might not be 100 per cent accurate but,  
4           you know, that's what my understanding of the intent was.  
5   That's certainly an opportunity with the new contract coming up  
6           to have a tighter and more appropriate scope of works  
7           written into the contract; yes?---Yes.  
8   Early on do you recall any discussions about who might be the  
9           tenderers?---No.  
10   Discussions that you were involved in?---No.  
11   Were you ever involved in any discussions with anyone within  
12           V/Line about who the invited tenderers might be?---I can't  
13           recall.  
14   COMMISSIONER: Mr Pinder, if one of the tenderers was an  
15           organisation that had previously been performing the  
16           relevant contract before its expiry, presumably you would  
17           be consulted about whether or not the organisation was  
18           satisfied or sufficiently satisfied with their performance  
19           so that they should be invited to tender again?---If I  
20           understand your question, Mr Commissioner, in most cases  
21           it would be usual for the current service provider to be  
22           included in the tendering process for the new contract,  
23           unless there were some exceptional circumstances at the  
24           time. Now, I think people were accepting of the standard  
25           that was being delivered previously, due largely because  
26           of the fact that the standard itself was not very high.  
27           So, in these circumstances the market is made clear that,  
28           whilst you're the incumbent and you're very - obviously  
29           unless there are those exceptional circumstances -

1 qualified to carry out these services, you should know  
2 that the specification was here and it's now there, and  
3 the tenders for those sorts of processes are evaluated  
4 against those criterias.

5 MR LAWRIE: All right. Now, you spoke about some of  
6 the qualitative assessment features that go into each of  
7 the tenders. One of those you spoke about was safety. So  
8 the occupational health and safety record and culture of  
9 the tenderer is important; correct?---It's one of the  
10 elements, yes.

11 I'll go through some of those elements?---Yes.

12 The other element is their experience in providing those sort  
13 of services, particularly in respect of rolling  
14 stock?---Well, we haven't actually mentioned it, but a  
15 large element of this contract was for cleaning stations  
16 as well. But, yes, rolling stock cleaning is perhaps more  
17 hazardous than station cleaning.

18 And indeed staff require a railway worker certificate to move  
19 in and about rolling stock, don't they; that is, the  
20 cleaning staff?---Yes, there is a competency requirement,  
21 yes.

22 Okay. The tenderers' history of employment relations would be  
23 a matter that would be of importance to you?---Can you be  
24 more specific?

25 For example, that they had not been involved in gross  
26 underpayment of workers, that sort of thing?---Well, that  
27 would be important to V/Line, yes.

28 What's come to be known now as wage theft; it would be  
29 important that they weren't involved or didn't have a

1 history of that sort of controversy, wouldn't  
2 it?---I don't know that I'm familiar with that term. Are  
3 you talking about the sort of thing that happened in the  
4 restaurant trade recently; is that what you're talking  
5 about?

6 Precisely, yes?---Yes.

7 That would be a matter of concern to V/Line, wouldn't

8 it?---Sorry, I think you were both speaking at the same  
9 time then.

10 COMMISSIONER: Mr Lawrie, there's a small time gap between the  
11 time that a witness finishes speaking and you start, and  
12 there's been a few occasions now where you've actually  
13 overlapped. So you just need to pause a second or two  
14 before you ask your question.

15 MR LAWRIE: Thank you. Thank you, commissioner. So what I was  
16 asking you, those sort of matters, the reputation and  
17 past, if I can put it that way, of the tenderer would be  
18 important, wouldn't it?---If you're asking me for my  
19 opinion, I would say yes, but I don't know if that's part  
20 of the process. I know that safety is. I don't know what  
21 you've just described to me is part of the process.

22 Did you - - -?---I've never been a procurement officer, so I  
23 don't know.

24 Did you see any of the tenders that were produced?---No.

25 Did you see any report produced by the chief procurement  
26 officer after their analysis of the tender?---So, from my  
27 recollection and, you know, it sounds like I'm - there are  
28 many hundreds of these things that happened at the time.

29 I'm just focusing on this one?---I know, but it's very

1 difficult. I mean, I've just recontracted 50 or 60 coach  
2 suppliers in the last six months. So, it's very  
3 difficult. But from my memory the chief procurement  
4 officer and some others, who I can't remember who,  
5 presented their recommendations with respect to this  
6 particular contract, and from memory that was the first  
7 involvement I had in it.

8 They presented their recommendations pretty much at the end of  
9 the process where each of the tenderers has submitted  
10 their submission?---Yes. So the procurement team identify  
11 that there's a need, there's an engagement with the  
12 relevant part of the organisation, a discussion about, you  
13 know, performance, 'What would you like to achieve,' all  
14 this kind of stuff, 'How's the current supplier going.'  
15 That's a conversation that happens. The procurement  
16 process goes through. Various suppliers are identified.  
17 Tenders are issued. Responses are received. They are  
18 evaluated. They're scored against the criteria, some of  
19 the criteria that you've mentioned, although I'm not  
20 familiar with all of it, and then at the end of that  
21 process, not a decision because they can't make a  
22 decision, but a recommendation is reached, the preferred  
23 option, and that would normally be either presented to me.  
24 We've recently introduced a procurement oversight  
25 committee, so I don't think that was established at that  
26 time. But that was one of the things that we did after  
27 the Lansdowne thing, we introduced a procurement oversight  
28 committee. So I think probably if it was now, the  
29 recommendations would go to them. But at the time

1 I remember people telling me that, 'We've gone through the  
2 process and these are our recommendations,' and then the  
3 board paper would follow and that's how the process works.  
4 Do you recall any discussions with the procurement team or the  
5 chief procurement officer after you had received their  
6 recommendation on the tenders?---I don't recall any  
7 conversations, no. But I obviously - I'm not going to say  
8 that I didn't know the people that were ultimately being  
9 recommended because obviously I did know them, if that's  
10 what you're asking. I don't know.

11 So it came as no surprise to you to see that Transclean were  
12 the recommended tenderer?---Well, based on my knowledge of  
13 them and the fact that they were an organisation that  
14 clearly operate in this sector, I knew that from my time  
15 at Metro, it could only have been one of three or four  
16 people that were recommended.

17 Can I please show you part of that board agenda paper which is  
18 at p.288?

19 COMMISSIONER: Are you proposing, Mr Lawrie, to tender the  
20 whole board paper, are you?

21 MR LAWRIE: I am, commissioner, yes.

22 COMMISSIONER: Very good.

23 MR LAWRIE: It commences at 286.

24 COMMISSIONER: Thank you.

25 MR LAWRIE: So at 288 we'll see a brief discussion of  
26 Transclean. You see it just above the heading of  
27 'Exclusions to the cleaning scope of works'. 'Transclean  
28 is a Victorian based cleaning service provider with  
29 extensive experience in the Victorian rail industry with

1 the most recent experience being an incumbent supplier to  
2 Metro Trains providing similar services of carriage  
3 cleaning, station facilities cleaning, noting a  
4 performance rating of 97 per cent based on Metro key  
5 performance indicators.' Do you see that there?---Yes.

6 So that's really, apart from the bar graphs and the like that  
7 we see about the quantitative assessment of each of the  
8 tenderers, that's really in a nutshell what the board is  
9 presented with as a profile of Transclean, isn't it, that  
10 paragraph?---That's what that paragraph says. I don't  
11 know what the rest of the paper says unless I've read it.

12 Do you want to have a moment to have a look through it?

13 Perhaps we should. Can we go to p.287, please. So that's  
14 what we just spoke about a few moments ago, the executive  
15 recommendation?---Yes.

16 The estimated time required for the board of 10 minutes. If we  
17 go through to the next page, please, 288. Just take a  
18 moment to read it, remind yourself of it.

19 COMMISSIONER: Mr Pinder has read that, Mr Lawrie.

20 MR LAWRIE: Yes, if we can go to 289. Here we see under the  
21 heading 'Discussion' the point you were making earlier,  
22 Mr Pinder, the key differential was for the scope of works  
23 to be more prescriptive with an enhanced level of contract  
24 management capability built into the contract?---Yes,  
25 I also note that comment at the top there which identified  
26 a potential for a variation at some stage.

27 Okay. I'll come back to that. That's potential for a  
28 variation to the existing Bombardier contract;  
29 correct?---Yes.

1 And is that because Bombardier at that time were providing or  
2 were meant to be providing what is known as heavy  
3 restorative cleaning services?---I believe so, yes.  
4 That is, deep cleaning of things like carriage upholstery and  
5 the like as opposed to daily cleaning?---Correct.  
6 Okay. We'll come back to that. If we go over to 290. You'll  
7 see again you're talking about improved contract  
8 management there?---Yes.  
9 291, you note that the proposed contract includes contract  
10 abatements or service credits that can be applied for  
11 non-performance; do you see that there?---Yes.  
12 Also we talk about selective invitation to tender which we've  
13 touched upon already, and also the process of qualitative  
14 assessment that we've touched upon, some of the features  
15 of that process; do you see that there?---Yes.  
16 Again, none of this, apart from that paragraph we've already  
17 touched on, describes or profiles Transclean specifically,  
18 does it?---That's right. And I think - I don't think  
19 I said it did. I just couldn't remember whether it was  
20 the only paragraph or not.  
21 If we go over the page to 292, we see the bar graphs or the bar  
22 chart which is the result of the qualitative assessment  
23 and comparison between the four tenderers?---Yes, I can't  
24 actually see what the bar graphs - that's better, yes.  
25 Yes, I see that. Experience of company, account  
26 management and resourcing approach, quality and  
27 capability, yes.  
28 And we've got pricing down the bottom of the page. There was a  
29 change to the pricing that was provided by one of the

1 tenderers which led to a variation, that is Wayne?---Yes,  
2 I think part of the procurement process is to reach a best  
3 and final offer. In fact it says that there, yes.  
4 They made a substantial amendment to their price and that was  
5 included in this, wasn't it, a variance of  
6 \$2 million?---Yes.  
7 And so Wayne and Transclean end up as the final two for  
8 consideration. We see that on p.293?---Wayne and  
9 Transclean? Oh, right, okay. Yes.  
10 Okay?---Yes.  
11 Page 294, it talks about the risk - sorry, it describes in  
12 short compass the contract term and the expenditure for  
13 both base term and any potential extensions?---Yes.  
14 Then there's a heading of 'Risk implications' which talks about  
15 the risks that come with having a single supplier for the  
16 supply of all the services as opposed to separate  
17 suppliers; do you see that there?---Yes.  
18 And there's an argument that whilst there might be competition  
19 with separate suppliers, there are also downsides for it  
20 because of the extra expense in maintaining multiple  
21 contracts and the potential for suppliers to basically be  
22 pointing fingers at each other and complications in  
23 sheeting home responsibility for non-performance; do you  
24 agree with that? Have a read of it?---Yes, I'm slightly  
25 confused about that because I was under the impression  
26 that Wayne still did some of our cleaning. But, anyway,  
27 that's what it says, yes.  
28 So that page is basically taking two positions: one, you've got  
29 multiple suppliers and what are the pros and cons of that,

1 and what are the pros and cons of having a single  
2 supplier. Do you agree with that as a summary of what is  
3 dealt with on that page?---Yes.

4 In considering those two positions it comes out in favour of,  
5 well, there are some downsides with a single supplier, but  
6 the upsides exceed the downsides; correct?---That is the  
7 logical conclusion it seems to reach, yes.

8 Page 295, just take a moment to read that, please. Do you see  
9 there where it talks of 'approach to quality assurance'?  
10 We can call that audits, perhaps, can't we?---Yes.

11 Do you agree with me that this is very important, it's the  
12 first line of defence to make sure that contractual  
13 obligations are being met?---Yes.

14 And it involves both audits conducted by the supplier of the  
15 services themselves, but also audits both scheduled and  
16 unscheduled by V/Line; correct?---Yes.

17 There's a short piece there about potential contingency and the  
18 hourly rate to be applied in the event that services have  
19 to be supplied under the contingency arrangements, and  
20 then a repetition of the recommendation that you and the  
21 CFO are making to the board; is that right?---Yes.

22 If we go over then at p.297, this is attachment 1. It's  
23 essentially what we've just dealt with but in a summary  
24 form; do you agree with that?---Yes, I think this is one  
25 of the new pro formas that's been introduced in recent  
26 years, yes.

27 Perhaps if I put it this way. If you have a look at attachment  
28 1, which is headed 'Contract approval', and it runs from  
29 p.297, 298, 299 through to 300?---Yes.

1 It contains essentially a condensed form of the paper that  
2 we've just gone through, doesn't it?---Yes.

3 All right. And then schedule 2 to the board paper was the  
4 proposed contract itself; do you recall that?---I don't  
5 recall that, but it may well have been.

6 So, having gone through that, if we go back to p.288, remember  
7 I was talking to you about the profile of  
8 Transclean?---Your question earlier on, yes.

9 Yes, and I took you to that paragraph immediately above the  
10 heading 'Exclusions to the cleaning scope of  
11 works'?---Yes.

12 Do you agree with me now that really that's the only  
13 description of who Transclean are?---Yes.

14 In this board paper?---Yes.

15 Those four lines?---Yes.

16 Did you think that that was enough of a picture to be giving  
17 the board about the real nature of Transclean, about  
18 really who they were and what their history was?---Well,  
19 now that you put it like that, I guess maybe not. But at  
20 the time I obviously didn't think that way.

21 When you read this paper before you authorised it, you read  
22 that paragraph and you were happy with that, weren't  
23 you?---I would have been happy with the whole paper.

24 But particularly that paragraph, you thought that that was both  
25 accurate and sufficient for the board's purposes?---Well,  
26 I don't remember reading that paragraph, Mr Lawrie.  
27 I don't remember reading any of the paragraphs  
28 specifically. But I would have approved the paper.

29 COMMISSIONER: Can I just ask you, Mr Pinder, at the very last

1 line there of that paragraph Mr Lawrie has drawn to your  
2 attention, it says of Transclean noting a 97 per cent  
3 performance rating. What does that mean?---So, I believe  
4 that that is a measure that Metro employ to manage their  
5 contracts in a whole range of key performance indicators,  
6 Mr Commissioner. So, Metro's contract with the government  
7 is a private sector arrangement, unlike V/Line's because  
8 V/Line is in the public sector, and their contract when  
9 renewed most recently for the MR4 period, as it's referred  
10 to, and I don't know what that means, MR4 specifically,  
11 but it's the term that's used to refer to the contract  
12 that they're currently in, it has a whole series of key  
13 performance indicators, everything from operational train  
14 performance, cleanliness, on time performance,  
15 reliability, there are hundreds of measures, and I believe  
16 that that line there refers to the performance of  
17 Transclean with respect to the cleaning of Metro Trains  
18 under their current contract.

19 Yes. And at what level would there have been communications  
20 between V/Line and Metro about the service that had been  
21 provided by Transclean to Metro?---So that's a good  
22 question. I would say that there are conversations  
23 between Metro and V/Line at every level every day, and  
24 I know that might sound a bit strange, but Metro and  
25 V/Line were up until in recent memory one organisation, so  
26 everyone in Metro knows everyone in V/Line and vice-versa.  
27 So it's not like they were - they're two separate  
28 companies. I think, again from memory, and I wasn't here  
29 at the time, but I think probably within the last 12 or

1 15 years they were the same company. So, Metro and V/Line  
2 talk to each other all the time.

3 Yes. But, as Mr Lawrie points out, this is the only passage in  
4 this agenda item where anything specifically is being said  
5 about Transclean - - -?---Yes.

6 And its performance. Am I reading this correctly, that what  
7 you as the CEO are saying to the board is that based upon  
8 the level of satisfaction which Metro has with Transclean,  
9 that's a significant factor that should lead the board to  
10 approving your recommendation?---Yes. I understand that,  
11 Mr Commissioner. I didn't say that, so I don't know where  
12 that came from, that statistic. It may have been their  
13 contract manager in Metro, it could have been anybody.  
14 I don't know where it came from. But I took it that it  
15 was a true representation because the person that authored  
16 the paper said it and I approved it.

17 Yes, but I'm just wanting to focus on your motivation. You're  
18 inserting this in the paper because you think it's a  
19 significant reason for recommending the board accept  
20 Transclean's tender?---Yes.

21 MR LAWRIE: Mr Pinder, you were also speaking about the regular  
22 conversations that are had between Metro and V/Line and  
23 they continue right up until present day; do you recall  
24 that answer?---Yes.

25 And in fact you are in a position to have some of those  
26 conversations yourself, aren't you, because you've known  
27 the manager of the rolling stock division, I think it's  
28 now called the centre for excellence at Metro Trains,  
29 Mr Peter Bollas?---So Peter Bollas is not the manager of

1 the rolling stock division. That was a position that  
2 I held. And he's not the manager of the centre of  
3 excellence. That was a position that he held previously.  
4 But everything else you just said is true.

5 What position do you understand him to currently  
6 hold?---I don't know what his job title is. I know that  
7 he's responsible for - well, let me answer it as  
8 accurately as I can. When I was at Metro, when I left  
9 Metro in late 2015 he was responsible for facilities,  
10 training and cleaning. I don't know if his role has  
11 changed substantially since, but the centre of excellence  
12 reference that you made, that was a job that he had when  
13 I first arrived at Metro.

14 You first arrived at Metro in January 2013; is that  
15 right?---I actually think it was December 2012.

16 That might have been when you were engaged, but then you  
17 effectively took up the position in January 13?---No,  
18 I took up - well, it's a bit of a story there, but my  
19 first day at Metro, from memory, and the reason I think  
20 this is true is because it's my brother's birthday, was  
21 30 November 2012. I was keen to start after Christmas.  
22 They were keen for me to start before Christmas. So  
23 I went there for three weeks, I think from memory, went  
24 home for Christmas or went back to home 2, as I now refer  
25 to it, home 1 then, and then I came back in January. But  
26 initially I wasn't recruited to do the job that I ended up  
27 doing because when I arrived that job was still occupied.

28 COMMISSIONER: Mr Lawrie, are you moving on from the agenda?

29 MR LAWRIE: I won't just tender it yet, Commissioner, if I may,

1 but I will tender it shortly.

2 COMMISSIONER: I just see the time. We might give Mr Pinder a  
3 break. It's going to be a long process. So we'll adjourn  
4 for 10 minutes, Mr Pinder. You have yourself a  
5 break?---Thank you, Mr Commissioner.

6 (Short adjournment.)

7 COMMISSIONER: Are we ready to proceed?

8 MR LAWRIE: Thank you, Commissioner. Mr Pinder, you will  
9 recall I was asking you about that brief description of  
10 Transclean that was in the agenda paper that went to the  
11 board in May. You had had previous dealings with  
12 Transclean, of course, when you were performing the role  
13 as general manager of rolling stock at Metro, hadn't you?  
14 You're on mute. Sorry, you're on mute. You'll have to  
15 come off mute, sir. If we can ask someone to assist  
16 Mr Pinder with the mute control?---Is that better?

17 There we go?---Sorry, I didn't mute it. That's what confused  
18 me, sorry.

19 That's all right?---The answer to your question was yes.

20 So when did you start in that role? You've already spoken  
21 about the 30 November 2012 start at Metro. But when did  
22 you start as the general manager of rolling stock at  
23 Metro?---I think it was a few months afterwards.

24 Metro - - -

25 Without going into the story behind it - - -?---All right,  
26 I won't go into it then. I think it was a few months  
27 afterwards.

28 So would it be fair to say that by early 2013 that's the role  
29 you were performing at Metro, the general manager of

1 rolling stock?---Yes, I think probably late summer, early  
2 spring, yes. It was about three months.

3 All right. Certainly by March or April that was the role you  
4 were performing?---Yes.

5 March or April of 2013?---Yes.

6 Within your area of responsibility there was the carriage  
7 cleaning contract that Metro had with Transclean, wasn't  
8 there?---Technically, no. Metro was set up slightly  
9 differently. So the procurement department at Metro would  
10 manage contractors, supplier contracts. My first  
11 engagement with Transclean was some time after that when  
12 they were I think in dispute with the procurement team  
13 over safety incidents or something like that, and I think  
14 the procurement team at the time was saying that  
15 Transclean had had a number of safety incidents and  
16 Transclean were saying, 'You're not paying us enough money  
17 in line with the contract,' because over a number of years  
18 the Metro fleet had grown to much bigger than what it was  
19 originally, so essentially they were cleaning more trains  
20 but only being paid for less trains. I think that was the  
21 first time I ever got involved with Transclean.

22 Even though, as you say at first instance, it's the procurement  
23 team at Metro who had responsibility for management of  
24 the contract, we'll call it the carriage cleaning  
25 contract; is that an appropriate term?---At that time,  
26 yes, that's what I said, yes.

27 But, nonetheless, as general manager of rolling stock you're  
28 going to have some considerable interest in the  
29 performance of that contract, aren't you?---Absolutely,

1           yes.

2   And you've already touched upon the dispute that emerged  
3           between Metro and Transclean. Do you remember that there  
4           was actually legal proceedings commenced by Transclean in  
5           June of 2012 and as part - - -?---Well, I don't remember  
6           that because I wasn't there at the time. But I knew that  
7           this dispute had been - I subsequently learned, because  
8           I didn't arrive until December 12, that this dispute had  
9           been ongoing. But because when I arrived it was something  
10          that was managed by the procurement team, I wasn't  
11          specifically aware of it.

12   That's what I'm saying. By the time you take up that role,  
13          proceedings have been on foot for some nine months, that  
14          is where Transclean is suing Metro and it's all about a  
15          contract that you have significant interest in as the  
16          general manager of rolling stock; is that a fair  
17          summary?---I think everything except the last sentence of  
18          what you said is a fair summary. But at the time, as  
19          I said to you, the contract was not something that I was  
20          responsible for . It was something that another  
21          department was responsible for.

22   But you understood that part of the dispute, part of the  
23          subject matter of the litigation, were alleged safety  
24          breaches by Transclean; is that correct?---Yes, I came to  
25          know that after, yes.

26   When did you come to know that?---Some time around - we are  
27          talking about eight years ago. So I would guess that  
28          within six months of me starting at Metro I became aware  
29          of the dispute. But because cleaning wasn't something

1 that I was responsible for, I would say that's why it took  
2 that time for it to come to my attention.

3 That litigation was settled in September of 2013; do you  
4 remember that happening?---Yes, I do.

5 Did you have any involvement in the machinations within Metro  
6 leading up to that settlement?---I think, yes, at some  
7 stage I was asked to try and resolve the situation, if you  
8 like, because it was causing a certain amount of  
9 consternation. I guess by way of context the main focus  
10 of their litigation had some basis because Metro was in  
11 the process - well, not Metro, but I think the fleet size  
12 had grown from something like 180 something trains to over  
13 200 and the contract was based on a number of trains being  
14 cleaned every day and there was a clause in the contract  
15 that said, 'And if it goes more than 10 over this,' this  
16 is from memory, 'then it triggers an additional payment.'  
17 That was the basis of Transclean's claim. There was an  
18 argument from the business that, 'Well, we're going to  
19 terminate your contract because of your safety  
20 performance,' but from my recollection that didn't have as  
21 much validity as the opposite argument about the number of  
22 trains.

23 In any event, leading up to the settlement in September 2013  
24 you were asked to come in and assist with those  
25 negotiations, were you?---I didn't assist with the  
26 negotiations as such because that wasn't something that  
27 I was responsible for, but I did encourage Transclean to  
28 be more transparent with their safety performance because  
29 my reading of the situation - - -

1 Without going into the 'because', can I just stop you for a  
2 moment and ask who were you communicating with at  
3 Transclean in order to provide that encouragement?---The  
4 individual responsible for the contract was a chap called  
5 [REDACTED] - I don't know his surname - and also I did speak  
6 to George Haritos as well at some stage.

7 And he's a managing director at Transclean, isn't he?---I don't  
8 know if he is now, but he was at the time, yes.

9 Was that the first time you met Mr Haritos or dealt with  
10 Mr Haritos in the September 2013 settlement of these  
11 proceedings?---All I can tell you with absolute certainty,  
12 Mr Lawrie, is that I didn't meet - I didn't know George  
13 Haritos before December 12 and I definitely knew him by  
14 September 13, but I can't remember when I first met him.  
15 That's the only thing I can tell you for absolute sure.

16 That would seem to suggest or that would seem to sit with what  
17 you just said, that he was one of the people you were  
18 communicating with at Transclean in order to encourage  
19 them to be more transparent and in order to further the  
20 potential to settle the proceedings?---My assessment of  
21 the situation was that both sides were digging their heels  
22 in and it was only going to end badly for everyone if the  
23 parties didn't communicate more effectively. So that's  
24 what I - that's how I tried to help.

25 So you were stepping outside of your normal role in doing that,  
26 weren't you? That wouldn't normally be something that  
27 would be within the ambit of Metro's procurement team, but  
28 you're stepping outside your ordinary role to try and move  
29 these discussions forward?---I think I remember being

1 asked to try and help or I may have offered to try and  
2 help without knowing any of the parties concerned or any  
3 of the background. I mean, just bear in mind by way of  
4 context, when I arrived in December or 30 November 2012  
5 I didn't know a single person in Australia apart from two  
6 previous colleagues from the railway industry, which I've  
7 been in for 36 years now, who lived and worked in Sydney  
8 at the time. I didn't even know my boss that I was coming  
9 to work for. I'd been recruited by somebody who no longer  
10 worked at the company. By the time my visa was approved  
11 he'd left. So I didn't know anybody, if that's what  
12 you're asking me.

13 No, that's not what I was asking you?---Okay.

14 Never mind that. The point I wanted to ask you about, though,  
15 was that if you've been requested by someone to assist by  
16 communicating with Mr Haritos at Transclean, you would  
17 have to have a reasonable understanding of the matters in  
18 dispute between Metro and Transclean, wouldn't you?---Yes.  
19 You would have to arm yourself with that knowledge, wouldn't  
20 you?---And I can explain how that knowledge came about, if  
21 that would be helpful or not.

22 Well, I'll come to that in a minute. But just as a general  
23 proposition that makes sense, doesn't it, that in order to  
24 communicate with the managing director of the supplier in  
25 order to move discussions forward and promote a  
26 settlement, if possible, you have to arm yourself with an  
27 understanding, at least in broad terms, of the matters in  
28 dispute; do you agree with that proposition?---No, not  
29 entirely. So, I think I said to you that the first person

1 that I contacted at Transclean or the primary contact at  
2 Transclean was the person at Transclean that was  
3 responsible for the contract, which was [REDACTED] - I think  
4 his surname is [REDACTED], but I'm not absolutely sure about  
5 the pronunciation. Ironically [REDACTED] used to work for  
6 Metro as well. And I came to know about the dispute  
7 because Metro have a management process at the time  
8 whereby every Tuesday morning, I think, there was what was  
9 called a visualisation session where every department head  
10 would present a weekly update on matters that were  
11 occurring in their department and so there would be  
12 typically 15 people in the room, one of whom was the  
13 general manager of the rolling stock division, and matters  
14 were discussed. They were called - the process was  
15 visualisation, as I said, and you would raise concerns,  
16 then there were countermeasures and then there were  
17 corrections. This Transclean dispute was raised as a  
18 concern and somehow I was tasked with approaching  
19 Transclean in order to try and resolve the situation.  
20 That's how I remember it happening.

21 That's how you come to be involved. But, Mr Pinder, you've  
22 rejected my broad proposition that in order to do that you  
23 need to arm yourself with at least a broad understanding  
24 of the matters in dispute. You've rejected that  
25 proposition. Can I ask you this?---No, I didn't reject  
26 it, I'm sorry. I don't want to appear to be rude.  
27 I became aware of the details through the process that  
28 I've just described.

29 Okay. So when I said you need to arm yourself or be armed with

1 a broad understanding of the matters in dispute, you  
2 accept that to be the case, do you?---Yes.

3 And that's what you did?---At the visualisation meeting on a  
4 Tuesday morning at some time in the first half of 2013  
5 would have been how I had come to know that, yes.

6 COMMISSIONER: Just a moment. Mr Pinder, I'm not clear. You  
7 said at one stage you were asked to intercede or see  
8 whether you could bring about some resolution?---Yes.

9 At a later point of time you said you offered to do so. Can  
10 you just clarify that? Who asked you or how did you come  
11 to be asked or offer?---So, those visualisation meetings  
12 which were the first tier of management executive meetings  
13 at V/Line, Commissioner - at Metro, sorry, Commissioner,  
14 were normally chaired by the chief operating officer, who  
15 was my boss. On occasion they were chaired by the chief  
16 executive officer, who was my boss's boss. And the  
17 purpose of those meetings was for everyone in the room to  
18 report on various different things that were happening in  
19 their business units and for specifically particular  
20 issues or concerns, as they were called, to be raised by  
21 whoever had those concerns. Now, I think the equivalent  
22 of the chief procurement officer would have probably been  
23 the person to raise it as a concern. There would have  
24 been a discussion in the room and somebody would have  
25 said, 'James, can you look into that?' I don't remember  
26 exactly, but that's probably the most likely way that it  
27 would have happened. So it was a group executive meeting  
28 where a decision was taken that I would take an action,  
29 and that action was to try and resolve this particular

1 issue that was occurring at the time. I'm sorry if that  
2 appears unclear, but I'm trying to remember something that  
3 was seven years ago.

4 Thank you. If I followed correctly, you did not know

5 Mr Haritos before that time?---Correct, or [REDACTED].

6 MR LAWRIE: Mr Pinder, you mentioned before being aware of some  
7 safety or alleged breaches in respect of safety matters as  
8 being part of the subject matter of the dispute. Do you  
9 recall giving that answer a few minutes ago?---Yes.

10 What were the nature of those safety breaches, as you  
11 understood them?---So, this is going to sound really  
12 technical, but I can't help it. So when you work on a  
13 train, Mr Lawrie, you are supposed to, before you work on  
14 that train, follow a process whereby you ensure that  
15 whilst you're working on that train it's safe for you to  
16 do so. So that can mean that you're supposed to wear  
17 personal protective equipment, High Vis vest, safety  
18 boots. You're supposed to protect the train by any number  
19 of ways from putting a 'Not to be moved' board on the  
20 train to isolating the electrical equipment on the train,  
21 a whole series of different things.

22 Okay?---And there were - - -

23 Mr Pinder, can I hold you up. Without going through a complete  
24 recital of all health and safety aspects in respect of  
25 locomotives and rolling stock, in this instance with the  
26 dispute between Metro and Transclean, what did you  
27 understand were the safety breaches? That might be  
28 workers moving around carriages where it hadn't been an  
29 area secured. If it's that, can you give us a brief

1 understanding, please?---My understanding was that the  
2 nature of the safety incidents were things that were  
3 procedural in nature, somebody wasn't wearing the right  
4 clothing, they weren't in the right place at the right  
5 time. Certainly nobody had become injured or there hadn't  
6 been any fatalities, but there had been allegations made  
7 that people weren't following the right procedure when it  
8 came to personal protection.

9 Had these matters resulted in incident reports which were  
10 raised by Metro or not?---I think actually to be very  
11 specific it was the fact that they weren't reported that  
12 was the concern, if that makes sense. So the onus is on  
13 the person to either self-report or for the supervisor to  
14 report somebody, and I think it was the fact that Metro  
15 were saying, 'This has happened,' and Transclean were  
16 saying, 'No, it hasn't,' or they were saying, 'This has  
17 happened,' and they were saying, 'Well, that's normal.  
18 Your people do it all of the time. Why are you treating  
19 us differently?' I think it was that kind of dispute.

20 But occupational health and safety in and about locomotives and  
21 carriages would fall squarely within your area, wouldn't  
22 it, as the general manager of rolling stock?---No.

23 Okay?---Not always. If it is my staff, yes. But not for staff  
24 that are not in my control like at the time. You know,  
25 everybody's my staff now, but at the time I was only  
26 responsible for rolling stock employees, not for others.

27 All right. Do you recall there had been a supplier audit in  
28 2014 in respect of the performance of Transclean under the  
29 carriage contract for Metro?---No, I don't recall that.

1 Do you recall that there were some concerns raised as a result  
2 of that audit which involved that the minimum service  
3 level target for carriage cleaning was regularly not being  
4 met and that Transclean had failed to provide monthly  
5 reports as it was contractually obligated to do? Do you  
6 remember that audit and those being the results of the  
7 audit in summary?---No.

8 Okay. Is that something that would have been under the  
9 bailiwick - under the area of responsibility of  
10 procurement, is it?---At Metro, sorry?

11 At Metro?---I was expecting to answer questions about V/Line.

12 So I'm struggling to take - I'm struggling to take my mind  
13 back that far. Could you ask the question again, please?

14 In 2014 there was a supplier audit in respect of the carriage  
15 cleaning contract that Transclean had with Metro, and some  
16 of those audit findings included a number of concerns.  
17 One of them was that the minimum service level target for  
18 carriage cleaning was regularly not being met and, two,  
19 that Transclean had failed to provide a number of monthly  
20 reports which it was obliged to do so under the  
21 contract?---Okay.

22 Were you aware of that audit and those concerns that came up  
23 out of that audit?---I don't remember the audit and  
24 I don't remember the concerns.

25 Do you remember a new contract manager of operations arriving  
26 at Metro in August of 2015, and he investigated the level  
27 of charges that were being levied by Transclean?---When  
28 I was at Metro there were four and a half thousand  
29 employees. I'm trying to remember. Have you got a name?

1 Mr Boyle, Dean Boyle?---When was the date, sorry?  
2 August 2015 he comes on board, and he's the contracts manager  
3 operations, and he conducted a validation of Transclean's  
4 costings?---I don't recall that, Mr Lawrie. But in August  
5 2015 - it was either August or September 2015 that  
6 I handed in my resignation at Metro and I left in November  
7 2015. I think I had a three-month notice period. It may  
8 have been four months. I can't remember. But around that  
9 time I was leaving.

10 COMMISSIONER: Mr Pinder, this is not a memory test for you.  
11 So it's all right for you to say that you have no  
12 recollection of something. But the matters about which  
13 you are to be questioned did include the history of your  
14 relationship with Mr Haritos. So, if you haven't looked  
15 at that relationship in the context of when you were  
16 employed by Metro, perhaps between now and tomorrow you  
17 might give that some further thought?---I am grateful to  
18 you, Mr Commissioner. I'm endeavouring to try and be as  
19 truthful and fulsome in my responses as I can be, and  
20 these dates I'm just trying to click them in. So, if  
21 I wasn't leaving already in August 2015, I soon was. So  
22 I don't remember a Dean Boyle. I apologise.

23 MR LAWRIE: That's fine. You spoke about the level of  
24 communication that happens in the industry; for example,  
25 V/Line talking to Metro and vice-versa. Did you ever hear  
26 through these sorts of channels about Transclean  
27 overcharging Metro?---No.

28 No?---No.

29 Okay. For example, you never had any conversation with

1 Mr Bollas either at that time or even in the following  
2 couple of years that Metro had audited Transclean and  
3 found that they had overcharged to a considerable extent;  
4 in other words, ISS had come in and they were quoting  
5 about half what Transclean were charging?---My  
6 understanding - and you're talking about now a time after  
7 I had left Metro, my understanding is that ISS are  
8 contracted to clean the stations, not the trains.

9 Correct?---When I was at Metro, Transclean were contracted to  
10 clean both, and the larger part of that contract was  
11 always the stations, and that was managed completely  
12 separately. So I don't know about ISS. But I'm pretty  
13 sure that, when I left Metro, ISS weren't even there. To  
14 your point about talk in the industry, I hear - and I'm  
15 not defending anybody - I hear that the performance of ISS  
16 is not as good as it was hoped that it would be. But I'm  
17 not - I don't know that for a fact. You asked me what  
18 I hear on the rumour mill. That's what I hear.

19 No, I asked you a specific question in fact, Mr Pinder. What  
20 I said was this. You leave Metro in late 2015;  
21 correct?---Yes.

22 From that time on did you ever hear through these channels,  
23 these industry channels, that there had been an audit in  
24 respect of the charges that had been levied by Transclean  
25 to Metro and that they were excessive when compared with  
26 what ISS assessed them at; in fact they were something  
27 like twice what ISS assessed? Did you ever hear anything  
28 like that?---No, I did not.

29 Okay. You became friends with one of the persons that were

1 reporting to you during your time at Metro, and that was  
2 Mr Peter Bollas, didn't you?---I became friends with  
3 several of the people that were reporting to me,  
4 Mr Lawrie, including Peter Bollas, yes.

5 Okay. In fact to the extent that when you went back to the UK  
6 in 2016 and you started up your own railway consultancy  
7 business, that period?---Yes.

8 You were married in the UK, weren't you?---Correct.

9 Was Mr Bollas invited to your wedding in the UK?---Yes.

10 Did he attend?---Yes.

11 What about Mr Haritos?---No.

12 Was he invited?---No, I don't think so.

13 We might come back to that later?---I think, from memory, there  
14 were probably - I mean, I could probably tell you exactly  
15 because I've got the place seating chart in my hallway at  
16 home - that there were 20, 25 people from my time at Metro  
17 that came to my wedding in the UK.

18 And Mr Bollas was amongst those people?---Correct.

19 All right. I want to move forward in time, back to your time  
20 at V/Line, and that tender for the carriage contract that  
21 we were talking about, the carriages and facilities  
22 cleaning contract. You will recall I took you to that  
23 paragraph which was the brief profile of Transclean that  
24 was at p.288 of the board agenda paper. Having talked now  
25 for the last half hour or so about your understanding of  
26 Transclean's history of contractual performance with Metro  
27 and your involvement in assisting the settlement of  
28 litigation between the two parties, do you think that you  
29 could have added some more particular information to that

1 paragraph based on your own direct knowledge?---Well, some  
2 of the things that you've referred to in the last  
3 conversation I didn't have direct knowledge of. It's the  
4 first thing I would say. The second thing I would say is  
5 actually I didn't write that paragraph. I don't write  
6 those papers. I authorise them. The third thing I would  
7 say is probably with hindsight could it have been a more  
8 fulsome description; possibly. My assessment, wholistic  
9 assessment of Transclean's performance when I was at Metro  
10 was overall a good performance. When I arrived at Metro  
11 every single carriage - I think we did an audit at the  
12 time and there were something like 50 to 60, if you're a  
13 Melbournian you'll remember this, bits of graffiti on  
14 every single carriage. The trains were filthy. They were  
15 strewn with litter. I got on a Metro train the other day  
16 and it was shiny and clean, and every train that I went  
17 past was shiny and clean. So I don't - I understand what  
18 you're saying. I get that. I'm offering both sides of  
19 the coin as opposed to just one side of the coin.

20 So, for example, you didn't - could I ask you this. You  
21 attended the board meeting on 2 May, didn't you?---If my  
22 name is on the list of attendees then I was there. But  
23 I don't know. I haven't got access to any emails, any  
24 calendars, anything.

25 We'll go to them?---Or any paperwork. So I don't want to say  
26 I was there if I wasn't, and I don't want to say I wasn't  
27 there if I was. I don't know.

28 I'm not trying to trick you. We'll go to the board minutes in  
29 a moment. Perhaps we'll do that now. Can we bring up,

1 please, p.301?

2 COMMISSIONER: Do they show, Mr Lawrie, that he was present?

3 MR LAWRIE: They do. They do, Commissioner.

4 COMMISSIONER: I'm sure Mr Pinder will accept that from  
5 you?---Absolutely. Absolutely, Commissioner. Thank you.

6 MR LAWRIE: But I do want to go to another part of the minutes  
7 in any event, Commissioner.

8 COMMISSIONER: Yes.

9 MR LAWRIE: So if we just bring up 301 now. Sorry, I just have  
10 a difficulty with my screen, Commissioner. I understand  
11 301 is on your screen, Mr Pinder?---Yes, it is.

12 Do you see there in attendance you're the first listed apart  
13 from those members of the board?---Yes.

14 If we go through to p.308 do you see this is agenda item 12?  
15 Very bottom of p.308, 'Carriage and facilities cleaning  
16 contract'; do you see that there?---Yes.

17 'The CEO advised that not all carriage and facilities cleaning  
18 is captured under this contract, noting that Bombardier  
19 are currently contracted to perform heavy cleaning.' We  
20 go over the page. That's the heavy restorative cleaning  
21 that we were talking about earlier, wasn't it?---Yes.

22 In response to you informing the board of that, 'The board  
23 requested that a report on the performance of the  
24 contractor be provided to the customer and brand committee  
25 in November 2018.' Now, was the purpose of that report to  
26 investigate expanding the scope of the contract that was  
27 being put to the board in May to include potentially heavy  
28 restorative cleaning within the scope of works that would  
29 be performed by Transclean?---From what that says, I would

1 say that the board asked for a performance of that element  
2 of the contract because I told them that it wasn't part of  
3 the contract that was being renewed.

4 So was that a report of the performance of Bombardier?---From  
5 what that - the way that reads, yes, and it would appear  
6 the EGM of asset was asked to prepare that report.

7 And we see there at the top of p.309 the resolutions of the  
8 board which, excluding resolution 2 for the moment,  
9 resolved to 'enter into the services agreement with  
10 Transclean as set out in attachment 2' - so that is the  
11 carriage and facilities cleaning contract that we have  
12 spoken of - 'for the three years term plus an additional  
13 optional term of two plus two years for a total value of  
14 \$40.18 million (inclusive of contingency) be approved'.

15 That was the resolution of the board, wasn't it?---Yes .

16 And resolution 3 on this agenda item was that, 'Authority be  
17 delegated to the chief executive officer to exercise  
18 optional terms (two years plus two years).' Those were  
19 both recommendations of the executive to the board,  
20 weren't they?---In the paper that we looked at earlier.

21 Yes?---Yes.

22 How long did it - do you have any recollection of the  
23 discussions at the board on this agenda item, how long it  
24 took, for example?---I don't recollect this specific  
25 discussion. No, I don't.

26 You said earlier that there were some 900 papers in the board  
27 package for that day. You remember that, don't  
28 you?---Nine hundred I think I said, yes. It says it  
29 there, 953.

1 Okay. The board didn't consider this until after a luncheon  
2 adjournment. It came back at 12.35 and it eventually  
3 concluded the meeting at 1.55, and was dealing with some  
4 12 major agenda items in that post lunch period. How long  
5 do you recall that this agenda item took the board's  
6 attention?---Well, I don't remember that. How long was it  
7 on the minutes for? That's normally a good indicator.

8 An allowance in the paper prepared for the board was  
9 10 minutes?---Well, the board meetings at V/Line normally  
10 run fairly close to time. So I can only assume, although  
11 I can't remember, that it would have been a discussion  
12 about that length of time.

13 Did you speak to the recommendation?---I don't normally speak  
14 to board papers. If you look at the agenda it would  
15 normally say who would speak to the paper in the agenda  
16 item, and that's why some of those executives are invited.  
17 I don't speak normally. I am sometimes asked questions,  
18 and it looks like I was probably asked a question to - 'Is  
19 all cleaning covered by this contract?' 'No, it's not.'  
20 'Okay. Who does the rest of it?' 'Bombardier.' 'Okay.  
21 How do they deal with that? Can we have a report on their  
22 performance?' That would have been - but I don't remember  
23 it, but that's probably the nature of the conversation.

24 That's probably the way that entry into the minutes came about,  
25 because you were asked a question by a board  
26 member?---Yes, and again if you look at the minutes it  
27 will tell you who presented the paper.

28 So it seems as though the minutes don't capture any other  
29 enquiries made by the board either of you or anyone else

1 associated with this process; is that a fair assessment of  
2 what the minutes reflect?---At this meeting it would  
3 appear that way. I don't know whether - quite often  
4 V/Line matters like this are discussed at the various  
5 committees and then a decision will be made at the  
6 committee and then a decision will be endorsed at the  
7 board. I don't know whether that was the case for this  
8 particular paper because I don't have that information to  
9 hand, but that is quite often the case.

10 Certainly the minutes don't record that a committee is  
11 reporting to the board as part of this process, do  
12 they?---No, but it does talk about another report being  
13 referred to the customer and brand committee. So I don't  
14 know. I'm just trying to be helpful; that's all.

15 All right. Is it fair to say that you were at the time of this  
16 meeting enthusiastic about the recommended contractor,  
17 Transclean?---I wouldn't have used those words.

18 You've already spoken about your own perceptions of their  
19 performance with respect to Metro. Did you have that same  
20 view at about this time that they were doing a good job  
21 ?---Yes.

22 Did you pass on any of those reflections to the board or any  
23 other persons involved in this process?---Not that  
24 I recall, no.

25 What about this delegation to you of the ability to extend the  
26 contract term for the two two-year option periods, so  
27 taking it potentially from a three-year contract to a  
28 seven-year contract and the additional expenditure being  
29 something like \$23 million; was that unusual?---No.

1 Your financial authority delegated to you by the board in the  
2 instrument of delegation for V/Line, which we can look at  
3 if we need to, is \$5 million; you agree with that?---Yes.  
4 For in budget expenditure?---Yes.  
5 Expenditure beyond that is reserved to the board amongst its  
6 reserve powers, isn't it?---Yes.  
7 And yet with this recommendation and this resolution the board  
8 is devolving itself of that power at least in respect of  
9 this contract and given you the sole ability to decide  
10 both on whether or not each of these two extensions should  
11 be applied and obviously incurring the consequent  
12 expenditure, aren't they?---Yes.  
13 How many other times had you - I'm sorry, I'll rephrase that.  
14 Had you been involved in any other processes where the  
15 board had delegated to you authority that involved  
16 expenditure beyond the level that was in the instrument of  
17 delegation?---I don't recall that specifically, although  
18 those words as they appear on that page, they look  
19 familiar to me. I would have to check every other board  
20 set of meetings and resolutions.  
21 I'm just asking from your memory. Had you been involved in  
22 any - is it fair to say this is a significant amount of  
23 money beyond your financial delegation? Is that a fair  
24 comment? It's 23 million plays 5 million,  
25 sir?---I understand what you're saying. But essentially  
26 the decision to spend the money wasn't mine. I was  
27 authorised to execute the contract based on a decision  
28 that was made by the board. What I'm saying to you is  
29 that that is not unusual. So resolutions normally read

1 something along the lines of, 'The board resolves to  
2 approve the chief executive officer authorising'; in other  
3 words, as the person that has the power of attorney for  
4 the entire company with respect to signing contracts,  
5 I sign every single contract that - - -

6 But that's not what we're talking about here?---I don't endorse  
7 the ones that are over \$5 million because it's outside of  
8 my delegated financial authority.

9 Mr Pinder, what we're talking about there is resolution 2,  
10 which resolves to give you authorisation to do essentially  
11 all that is necessary to execute the contract; do you see  
12 that?---Yes.

13 And that's a completely ordinary resolution in the terms of  
14 what's going on here, isn't it?---Yes.

15 Okay. But what is not ordinary is the board giving you an  
16 authorisation for additional expenditure on the potential  
17 contract extensions which far exceeds your financial  
18 delegation of authority; that's unusual, isn't it?---Well,  
19 I don't believe it is. But, if your next question is  
20 going to be to ask me whether or not I can give you other  
21 examples, without the paperwork readily available I can't.  
22 Until you started talking about it today, I didn't  
23 remember that that was part of this particular thing that  
24 happened two years ago.

25 COMMISSIONER: Can I just be clear, Mr Pinder. It's your  
26 recollection that it's not unusual for the board to  
27 delegate to you the power to enter into or further  
28 contractual arrangements which would involve potential  
29 liability to V/Line well in excess of the normally

1 delegated maximum amount that you could enter on behalf of  
2 V/Line?---Yes, I think that's right, Commissioner,  
3 although I would just say that I don't take that as  
4 authority to change those contractual arrangements beyond  
5 that point of time. This hasn't happened yet because it  
6 will be 2021 if it does. If at that time that this  
7 contract expires there's any desire to change that  
8 contract in any way then further approvals would normally  
9 be sought.

10 Here you were authorised to enter into these optional terms of  
11 another four years, two periods of two years; that was a  
12 delegation to you?---The way I would describe this in my  
13 head, Commissioner, if you would just indulge me, is that  
14 essentially we were entering into a seven-year contract  
15 with this organisation, Transclean, that had cut-off  
16 periods at three and five years if we chose to. Different  
17 contracts have different terms. The Bombardier contract,  
18 as I said earlier on, is 10 years. The coach contracts  
19 from memory are four years. They all have various  
20 different terms . But essentially what the board were  
21 saying to me in my head when I read that i that, 'You've  
22 our permission to contract Transclean for the next seven  
23 years in three, two and two,' or three plus two plus two,  
24 and that kind of arrangement in my experience is not  
25 unusual.

26 You didn't need to go back to the board for any further  
27 approval of either of the two-year extensions?---Correct,  
28 if and when we decided to do that, which obviously is in  
29 the future still.

1 MR LAWRIE: What's your opinion, Mr Pinder, about the  
2 appropriateness of taking that approach to potentially a  
3 seven-year contract in terms of the board's ability to  
4 fulfil its governance obligations and have a look at the  
5 contract, receive reports about performance after the  
6 first three-year term?---My opinion is that - I'll just  
7 think about that question. There are a number of KPIs  
8 that are reported every month in quite voluminous amounts  
9 that describe performance in a number of areas, including  
10 this area, some of which are rolled up in a balanced  
11 scorecard. So, for example, customer satisfaction at  
12 V/Line has just hit 80 per cent for the first time ever.  
13 One of the drivers of customer satisfaction in that  
14 balanced scorecard will be cleanliness of trains,  
15 timeliness of trains, safety, all those kinds of things.  
16 So these things are reported all of the time at V/Line,  
17 and if you've had access to all of these board reports you  
18 would also have seen that on every single board report  
19 there is a CEO report which describes, amongst other  
20 things, performance in this aspect. You would have also  
21 seen that there are 953 pages in this current board pack.  
22 That, I think, would probably be best described as a bit  
23 of a bumper pack, but not unusual, and I think we meet as  
24 a board on average every one to two months, depending on  
25 the time of the year. For me it feels like it's  
26 appropriate, if you describe it in that broad context. If  
27 you describe it in the context that you're talking about,  
28 very specifically, then I think you could form a different  
29 view. But we are after all talking about a contract that

1 represents something like - what would it be; my maths is  
2 not the best when under pressure - \$1 billion budget,  
3 I can't remember what you said now, a year, seven million,  
4 so we're talking about one or two per cent of our annual  
5 expenditure. So I think - yes, I've probably said enough.

6 COMMISSIONER: Mr Pinder, I'm just curious with your  
7 relationship with the board at this time. These are all  
8 government appointments?---So my relationship specifically  
9 with the board right now, Commissioner, or over the three  
10 and a half years I've been at V/Line?

11 Going back to May 18, the board was comprised of government  
12 appointments?---All of them, yes.

13 And what level of expertise did they have of the area of  
14 procurement and transport?---So would you mind just going  
15 back to the list of attendees, because the board has  
16 changed significantly over the last - - -

17 MR LAWRIE: This is p.301?---So the chair at the time, her  
18 expertise was in finance and banking specifically,  
19 I believe. The deputy chair, his expertise was in  
20 government and industry. So Craig passed away a little  
21 while ago, so bless him. He also worked for one of the  
22 big mining companies. I can't remember which one, but it  
23 was one of those big ones. I always get them mixed up.  
24 The next director is the current chair. So her background  
25 is in engineering and also law, I think. I'm not actually  
26 sure what Kay's background was. I think local government.  
27 The next director down has essentially worked in the  
28 private sector and managed I believe, I might have got  
29 this wrong, a portfolio of superannuation type funds. And

1 the last director there has expertise in managing risk and  
2 some finance aspects, although I don't believe she's a  
3 chartered accountant, but she does currently manage the  
4 audit finance and risk committee at V/Line. So a wide  
5 range of experience, Commissioner. And to your point,  
6 your question around relationship, Craig was the person  
7 that recruited me initially. He became a friend. He and  
8 I used to meet very regularly. The rest of the board  
9 members I had a good relationship with, but that was  
10 probably about it.

11 You mentioned that there were over 900 pages of material for  
12 this particular meeting - - -?---Yes.

13 That the board members had to get across. Was that unusual or  
14 was that common that they would have a volume of material  
15 of that order?---I would say - can you just go to the  
16 agenda, please?

17 MR LAWRIE: Commissioner, can I just interrupt for the moment  
18 to clarify this with Mr Pinder. Mr Pinder, are you taking  
19 that number from the document that's up on the screen at  
20 the moment?---Yes.

21 Okay. Can I just - - -?---It's not all this meeting?

22 That's a whole suite of documents for our purposes?---I was  
23 just going to say in answer to the Commissioner's question  
24 I think on average a board meeting would be about four or  
25 500 pages. Quite often the audit finance and risk  
26 committee meetings are 600 pages-ish. And the other  
27 committee meetings, safety et cetera, would be about three  
28 to 400 pages.

29 COMMISSIONER: And ordinarily, Mr Pinder, given that volume of

1 material, was it the general practice that the board  
2 relied significantly on your recommendations and your  
3 views as to how issues should be resolved?---No,  
4 I wouldn't say that, Mr Commissioner. In fact I would say  
5 that every single board member that I've encountered at  
6 V/Line has been extremely diligent when it comes to  
7 reading huge volumes of papers before both committee  
8 meetings and board meetings. I myself have the pleasure  
9 of reading every single one as well. So quite often, as  
10 is not unusual in circumstances like these, you would get  
11 to an agenda item and it would be - the paper is taken as  
12 read, the presenter would be offered the opportunity to  
13 bring any matters to the board's attention, and then the  
14 board would ask questions. Depending on the board member  
15 and depending on the subject matter, those questions were  
16 usually quite incisive.

17 I think Mr Lawrie has explored with you on this item, which  
18 effectively amounted to a potential of a \$40 million  
19 contract, 10 minutes was allowed on the agenda and we have  
20 looked at the material that was being supplied to the  
21 board for the purpose of approval of that item;  
22 correct?---You have - Mr Commissioner, that is correct.  
23 I don't know whether previously it was tabled at the board  
24 meeting by way of, you know, 'This is coming up' or, 'This  
25 is when you're going to get this paper on this issue.'  
26 Quite often that's the case in the lead-up to things being  
27 approved. But, as I said, I haven't got access to those  
28 papers so I couldn't tell you if it's the case with this  
29 one.

1 Just casting your mind back then to May 2018, by that stage the  
2 board and you have the draft report of IBAC in relation to  
3 Operation Lansdowne and that part of it that was focused  
4 upon the procurement issues concerning V/Line;  
5 correct?---Well, correct that the report for Lansdowne was  
6 available. I don't think it's true to say that from my  
7 memory the recommendations from Lansdowne were specific to  
8 procurement activity in this area. My recollection from  
9 the Lansdowne report was that it was targeted specifically  
10 around the procurement of contractor services and also the  
11 recruitment of consultants or specifically the recruitment  
12 of consultants. I don't remember - and you might prove me  
13 wrong; I don't know, because this is a memory  
14 test - I don't remember there being any recommendations  
15 from the Lansdowne report in respect to the procurement of  
16 what I would describe as large tier one type contracts.  
17 I think that's a more accurate way of describing the  
18 context.

19 It's not your recollection that at this time in May 18 there  
20 was any particular concern within V/Line about ensuring  
21 that procurement processes were very strictly complied  
22 with?---With respect to this kind of procurement activity,  
23 yes.

24 Yes. Thank you.

25 MR LAWRIE: Commissioner, I note the time. But perhaps if  
26 I can just finish with one or two questions, if it's  
27 convenient to take a break, Commissioner.

28 COMMISSIONER: Yes.

29 MR LAWRIE: The point I wanted to enquire with you about,

1 Mr Pinder, is this. The very purpose of structuring a  
2 contract such as this, the carriages and facilities  
3 cleaning contract, with a base term and then two options  
4 to extend is that it provides the board with the  
5 opportunity to have a good hard look after three years,  
6 doesn't it?---I think it provides the executive in this  
7 case the opportunity to have a good hard look at  
8 performance after three years. It would appear to me the  
9 way that that is written from a governance perspective  
10 that that opportunity in terms of management of the  
11 contract, I'm not saying that there weren't other  
12 opportunities provided to the board to examine the  
13 performance, but essentially my interpretation of that  
14 contract was as I described it earlier on. It was a full  
15 term seven-year contract with two break points, another  
16 way of saying it is three plus two plus two, which is not  
17 entirely uncommon.

18 So if there had not been that delegation of authority in excess  
19 of your usual financial delegation allowing you to do  
20 those contract extensions without board approval, if that  
21 resolution wasn't there, this contract would be coming  
22 back to the board after three years and then potentially  
23 after five years, wouldn't it?---I've never seen it done  
24 that way. If it's possible to do it that way, I don't  
25 know, but I have never seen it done that way.

26 Coming back to the board on those anniversaries with reports  
27 and recommendations from the executive for the board to  
28 authorise or not the extension of the contract for the  
29 appropriate term; it's the board's chance to have a good

1 hard look, isn't it?---Well, I don't agree with the way  
2 you are characterising it. I don't want to be rude, but  
3 I don't agree with the way you're characterising it.

4 COMMISSIONER: You say, Mr Pinder, that the three-year contract  
5 with options of two years and two years for renewal was  
6 not unusual?---Exactly that, Mr Commissioner.

7 MR LAWRIE: Mr Commissioner, perhaps I'll take the opportunity  
8 just to attend to two exhibits. The first is the board  
9 agenda paper for the meeting of 2 May 2018.

10 COMMISSIONER: Yes, I'll make the V/Line board agenda paper for  
11 May 2018 pp.286 to 300 JP2, and the minutes of V/Line  
12 board meeting of 2 May, p.301 and pp.308 to 309, and  
13 I think we should include the first page which contains  
14 the membership of the board, JP3.

15 #EXHIBIT JP2 - V/Line board agenda paper for May 2018, pp.286  
16 to 300.

17 #EXHIBIT JP3 - Minutes of V/Line board meeting of 2 May p.301  
18 and pp.308 to 309, including the first page which contains  
19 the membership of the board,

20 MR LAWRIE: Thank you, Commissioner.

21 COMMISSIONER: Mr Pinder, how are you feeling?---I feel okay,  
22 Mr Commissioner. I feel like my memory is being tested,  
23 but I feel okay, thank you.

24 Okay. We'll adjourn until quarter to two.

25 <(THE WITNESS WITHDREW)

26 LUNCHEON ADJOURNMENT

27

28

29