

**INQUIRY INTO THE CENTENARY HOUSE LEASE**

Before the Hon David Hunt AO QC

Held at Level 5, 55 Market Street, Sydney

On Tuesday, 7 September 2004 at 10.25am  
(Day 17)

1 <JOHN SEYMOUR MCFADDEN, on former affirmation: [10.25am]

2  
3 MR SACKAR: Mr Commissioner, counsel assisting was kind  
4 enough to inform myself and Mr Beech-Jones that tomorrow  
5 morning you may be momentarily distracted with an  
6 interesting argument. From past experience, I wondered  
7 whether, in the event that if there were to be any  
8 evidentiary material put before you - and I don't  
9 know - there is any element of confidentiality about which  
10 we, perhaps, ought not to be privy. I am perfectly  
11 happy --

12  
13 THE COMMISSIONER: They haven't asked for the hearing to  
14 be in private.

15  
16 MR SACKAR: However, there may be a discussion - if it is  
17 about content, there may well be a confidentiality issue.

18  
19 THE COMMISSIONER: Affidavits have been filed which  
20 reveal the general nature of the documents and they are  
21 not marked confidential. They may, knowing the  
22 Commonwealth, ask for confidentiality.

23  
24 MR SACKAR: The problem often arises that if it becomes a  
25 contents argument --

26  
27 THE COMMISSIONER: That's something which isn't clear  
28 from the affidavit.

29  
30 MR SACKAR: If it does, there may be an element about it.  
31 However, we aren't inconvenienced whatever way. We are  
32 certainly happy to stay away or be here.

33  
34 THE COMMISSIONER: I thought of making an arrangement of  
35 letting you know when we are coming to a conclusion, if  
36 that's all right.

37  
38 MR SACKAR: We won't be inconvenienced anyway.

39  
40 THE COMMISSIONER: Thank you, Mr Sackar. We will  
41 certainly look after all of your interests.

42  
43 MR FOSTER: Could I indicate to my learned friends that  
44 at the conclusion of that argument tomorrow we will call  
45 Mr McPhee. I think we may have said Mr Ireland, but he  
46 has some personal commitments tomorrow which are such that  
47 we feel we should allow him to meet them. Today we will

1 have Mr McFadden, Mr Hurrell, Mr Jeffress, and no-one  
2 else. Tomorrow morning there will be argument and then  
3 Mr McPhee. Thursday, at the moment, it is Mr Hogg and  
4 no-one else. Friday we have in mind Mr Cooney, as  
5 Mr Sackar requires him, followed by Mr Ireland, followed  
6 by Mr Wojcik. I'm not sure that there are any others at  
7 this stage. That's the plan for the week. I do think it  
8 has been changed from what we advised yesterday.

9  
10 THE COMMISSIONER: Mr McFadden, you are still bound by  
11 the affirmation you made the other day.

12  
13 THE WITNESS: Yes, Commissioner.

14  
15 MR FOSTER: Could I tender, as a bundle, the material  
16 that I identified yesterday, which is extracts from four  
17 Lend Lease files, contained in one folder, identified as  
18 AUSLIG Fitout, AUSLIG General Part 1, AUSLIG General  
19 Part 2 and AUSLIG Investors. I tender that as one  
20 exhibit.

21  
22 **EXHIBIT #58 EXTRACTS FROM FOUR LEND LEASE FILES CONTAINED**  
23 **IN ONE FOLDER IDENTIFIED AS AUSLIG FITOUT, AUSLIG GENERAL**  
24 **PART 1, AUSLIG GENERAL PART 2 AND AUSLIG INVESTORS**

25  
26 MR FOSTER: I will provide copies of that to my learned  
27 friends.

28  
29 Secondly, Commissioner, could I tender as a bundle  
30 extracts from several files of Freehills going to the same  
31 general subject matter - that is, the AUSLIG transaction.  
32 They commence with a document dated 20 December 1989,  
33 which has the barcoding FREE.007.0183 and which ends with  
34 a letter from the AGS to Freehills of 6 November 1991,  
35 which bears the barcode FREE.006.0005.

36  
37 **EXHIBIT #59 EXTRACTS FROM SEVERAL FILES OF FREEHILLS**  
38 **REGARDING THE AUSLIG TRANSACTION**

39  
40 **<EXAMINATION BY MR FOSTER CONTINUING:**

41  
42 MR FOSTER: Q. I just want to ask one question about  
43 all of this AUSLIG material. In terms of the lease  
44 negotiations for AUSLIG, were you personally involved in  
45 those either at the beginning or at any later point in  
46 time?

47 A. I would think that I possibly had some involvement in

1 the negotiations. A lady in our office, Anne Lenehan, I  
2 believe, was primarily the development manager charged  
3 with that job. I don't recall my involvement, but I  
4 probably would have had some involvement in the  
5 negotiations with her.  
6

7 Q. And the principal person, from the Lend Lease  
8 perspective, dealing with that matter in terms of  
9 organising and negotiating the lease to AUSLIG was  
10 Anne Lenehan, was it not?

11 A. I believe so. I don't resile from my responsibility  
12 as branch manager at the time.  
13

14 Q. I'm not suggesting that.

15 A. But I think Anne was the designated development  
16 manager. We had other development managers in the office  
17 at the time looking after other projects. She may have  
18 had some assistance from some of our senior people from  
19 Sydney as well, as well as myself, but I cannot recall.  
20

21 MR FOSTER: They are the only questions I have for  
22 Mr McFadden.  
23

24 **<EXAMINATION BY MR SACKAR:**  
25

26 MR SACKAR: Q. Mr McFadden, does your knowledge of the  
27 AUSLIG transaction permit you to agree that the  
28 provenance, as it were, of the AUSLIG arrangement, was the  
29 Tax Office in Bankstown?

30 A. I don't recall that, Mr Sackar.  
31

32 Q. All right. In 1991/1992, were you aware of long-term  
33 leases being entered into by the Tax Office in various  
34 parts of Australia in which there were fixed escalators  
35 and, in some cases, ratchet clauses?

36 A. I believe I was aware of ATO undertaking projects  
37 around Australia. I cannot recall the detail of those  
38 projects. Probably the one that comes to mind most,  
39 though, is, from memory, the Adelaide Tax Office, which  
40 was occurring at the time. And there were other Tax  
41 Office projects around. There was quite a program going  
42 on with the Tax Office.  
43

44 Q. All right. Apart from the program going on, was it  
45 your impression in 1991/1992 that either as a result of  
46 the introduction of fringe benefits tax or capital gains  
47 tax, the Tax Office staff was expanding and requiring

1 increased office accommodation?

2 A. Yes, I understand they did have an expansion program,  
3 yes.

4

5 Q. When you say you are aware of Tax Office matters,  
6 were you aware more specifically of long-term leases with  
7 escalators, et cetera?

8 A. Yes.

9

10 Q. And, in some cases, ratchet clauses?

11 A. I cannot recall that detail.

12

13 Q. One last question: you did not regard this  
14 transaction, did you, as uncommercial and over the market?

15 A. The AUSLIG transaction?

16

17 Q. No, no, this transaction involving Centenary House -  
18 you did not regard this as uncommercial and over the  
19 market, did you?

20 A. No, I didn't.

21

22 Q. Why not?

23 A. It was a commercial transaction from the point of  
24 view that that's the way we had to structure the  
25 arrangement so that the development could proceed. I  
26 think I have explained that before - that John Curtin  
27 House or the ALP, as an owner builder, did not have access  
28 to equity funds as a large developer like Lend Lease  
29 would, but needed to rely on debt financing. So,  
30 therefore, as I explained before, I believe the term for  
31 the amortised debt needed to be 15 years, so that was the  
32 commercial arrangement.

33

34 I understood that the other part of the commercial  
35 arrangement would be the pursuing of a tenancy agreement  
36 with a tenant from the Commonwealth. My experience in  
37 Canberra in all the previous years was that those  
38 negotiations always proceeded with great care from the  
39 government's point of view, and there had been many  
40 transactions done before in Canberra. As I explained in  
41 one of my documents, the Commonwealth owned some 450,000  
42 metres of office space and leased some 450,000 metres of  
43 office space in the ACT, and had quite a large workforce  
44 to manage their interests in those properties. Obviously  
45 negotiations had been going on with numerous property  
46 owners for years, and had, prior to this - prior to the  
47 Centenary House arrangement - been going on with Civil &

1 Civic and some financier in relation to Tuggeranong Office  
2 Park. I understand my interest in the Tuggeranong Office  
3 Park was that it was a long-term lease, I understand in  
4 excess of 20 years. I didn't fully understand the terms  
5 of that lease when I first made some recommendations to  
6 Mr Hogg in July 1991.

7  
8 I was particularly interested in the long-term nature  
9 of that lease, though. I was aware the Patents Office in  
10 Canberra were looking for a long-term lease with either a  
11 reversionary ownership arrangement at the end or some  
12 extension of lease offer as well, because there was  
13 a - but I hadn't gone into that one. That probably would  
14 have been another lease pursued by Civil & Civic - an  
15 arrangement. As a matter of fact, I think Civil & Civic  
16 ended up building that project some years later.

17  
18 So, all in all, I just saw the Centenary House  
19 opportunity as an opportunity because the ALP or John  
20 Curtin House had been able to procure, in principle, a  
21 block of land from the ACT government, which was their  
22 right to do so. They had engaged the builder to design  
23 and construct the build - a good quality building - Civil  
24 & Civic. They had sought or would seek to gain a tenant  
25 for the building going through what I would consider to be  
26 normal negotiation processes with the government agencies  
27 responsible. And possibly the one element which was  
28 missing, as explained to me, was the finance arrangements,  
29 and so I sought to pursue commercial finance arrangements  
30 on behalf of ALP and John Curtin House. So, all in all, a  
31 commercial arrangement.

32  
33 Q. Can I ask you about one document in the bundle of  
34 documents? I don't know whether you have the bundle of  
35 documents that was supplied to us as part of your  
36 statement - that folder, perhaps?

37 A. I think so, yes.

38  
39 Q. Would you be kind enough to turn to tab 14, please?  
40 I will go directly to the particular page, it is  
41 FREE.003.0133.

42 A. Yes, I have that page.

43  
44 Q. I will just wait for it to come up on the screen.  
45 Can I take you to the second dot point on that page. You  
46 may have answered a question yesterday put by Mr Foster,  
47 and, if he has asked it, I apologise for repeating it, but

1 that bullet point there:

2  
3 *Rental growths in Canberra are expected to*  
4 *remain steady in the 8-12% range...*

5  
6 Was that something that you formed a view about from your  
7 own materials - that is, your own research - or was it a  
8 combination of your own research together with what people  
9 told you? What was the source, I suppose, of that bullet  
10 point, if you like?

11 A. I would have had my own research, but in making a  
12 comment like that I believe I would have been reflecting  
13 the views of other experts in the market.

14  
15 Q. I take it you did not believe it was unreasonable to  
16 request the Commonwealth to consider and agree, if they  
17 will, to a fixed escalator over a 15-year period?

18 A. No, I didn't.

19  
20 MR SACKAR: Thank you.

21  
22 **<EXAMINATION BY MR BEECH-JONES:**

23  
24 MR BEECH-JONES: Q. Can I just take you behind tab 9 of  
25 your statement, Mr McFadden, if I could ask the operator  
26 to bring up ALP.014.0431?

27 A. I have that document.

28  
29 Q. Do you see that is a letter to you from Barclays,  
30 dated 9 September 1991?

31 A. Yes.

32  
33 Q. Could I take you over the page to 0432. Do you see  
34 that Barclays advised you that they had been negotiating  
35 with the Commonwealth in relation to the lease to the ATO  
36 in Adelaide for some time?

37 A. Yes.

38  
39 Q. Was that the source of your knowledge, back in 1991,  
40 about a deal involving the ATO in Adelaide - namely,  
41 information from Barclays?

42 A. It may have been.

43  
44 Q. I will hand you a copy of a document from your file,  
45 and I will have it brought up on the screen. It is  
46 JM.001.001.0356. Just bear with us while it comes up on  
47 the screen.

1 A. Yes.  
2  
3 Q. Is that now on the screen?  
4 A. Oh, no, that's not - yes, it is now.  
5  
6 Q. You have the hard copy in front of you?  
7 A. Yes.  
8  
9 Q. You will see it is a two-page document which has the  
10 word "BZW Conditions" on the top?  
11 A. Yes.  
12  
13 Q. Is that your handwriting?  
14 A. I believe it is, yes.  
15  
16 Q. Was that a document that was provided to you by BZW?  
17 A. I believe so, if I wrote "BZW" on the top.  
18  
19 Q. In what context did you receive it?  
20 A. I cannot say for sure, but probably as an example of  
21 a lease which they had been working on with the  
22 Commonwealth somewhere.  
23  
24 Q. Do you see under the heading, as against "Rent  
25 Reviews" it says:  
26  
27 *Rent increases are set at 8% pa compound*  
28 *for years 1-15 and 4% compound or annually*  
29 *to market for years 16-20 (whichever is the*  
30 *greater)...*  
31 Do you see that?  
32 A. Yes.  
33  
34 Q. Did anyone indicate when they supplied it to you  
35 whether this was the proposed terms of the lease for the  
36 AT0 in Adelaide?  
37 A. I cannot recall that. All I could say there is that  
38 it was a large building, because the initial rent was  
39 \$9.5m, so it would be a much larger building than  
40 Centenary House, but I - whether it is the Adelaide  
41 office, I'm not sure.  
42  
43 MR BEECH-JONES: I tender that document, the two pages.  
44  
45 THE COMMISSIONER: Just the two pages?  
46  
47 MR BEECH-JONES: Yes, just the two pages.

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MR FOSTER: Would you mind identifying the numbers?

MR BEECH-JONES: JM.001.001.0356. I am assuming Mr Foster didn't tender the whole file.

MR FOSTER: No.

**EXHIBIT #60 PAGES JM.001.001.0356-0357 FROM THE FILE OF JOHN McFADDEN (MF12), BARCODED JM.001.001.0356-0357**

MR BEECH-JONES: Q. Could the operator bring up page CH94.004.0068. You will see this on the screen, Mr McFadden. It is the letter of 5 December 1991, requesting a fee of \$400,000 for Lend Lease Developments, to which you were taken yesterday?

A. Yes, that is on the screen.

Q. If it is any help, there is a hard copy behind tab 11 of your statement.

A. I have that copy.

Q. If you just look at the letter to yourself, please, and could I draw your attention to the bottom of page 3 of the letter, that's CH94.004.0070, and what is set out there under the heading "Additional Services Provided by LLD"?

A. Yes. I see that.

Q. You were asked a question yesterday by Mr Foster in relation to the letter, and the fee, and you said:

*And that creativity, if I can call it brain work, --*

That's a reference to conceiving the termination of the transaction --

*was part of the reason why you considered, when you drafted this letter, that there was good reason to justify an increase in the fee to be paid to LLD?*

And your answer was:

*A. Well, it was that creativity, plus the fact that I didn't expect to be involved in*

1                    *the project to the degree that I was.*

2

3                    Do you remember giving that?

4                    A.    Yes.

5

6                    Q.    Referring to your involvement, were you referring to  
7                    the amount of time you spent on it?

8                    A.    Yes, to the amount of time, yes.

9

10                   Q.    And just by reference to what you have set out under  
11                   the heading "Additional Services Provided by LLD", could  
12                   you just briefly describe what, in your terms, your time  
13                   was directed towards - in other words, what was the work  
14                   you did on it?

15                   A.    My key role was identifying financiers and analysing  
16                   the information that they provided to me, on the basis of  
17                   terms of reference that I provided to them.

18

19                   Q.    And, as part of that, you met with the financiers?

20                   A.    Yes, I believe so, yes.

21

22                   Q.    And spoke to them?

23                   A.    Yes.

24

25                   Q.    Was dealing with the financiers the bulk of the time  
26                   that you spent on the project?

27                   A.    Yes.

28

29                   Q.    On a number of occasions I think you were asked about  
30                   the phrase "finance lease", and I think at a point  
31                   yesterday you said this, page 1453:

32

33                            *I wasn't into the differences particularly*  
34                            *between what are now referred to as finance*  
35                            *leases and operating leases.*

36

37                    Do you remember giving that answer?

38                    A.    Yes.

39

40                    Q.    And you also said at the bottom of pages 1403 to  
41                    1404, in explaining what you meant by "structural lease":

42

43                            *... It's a lease which you can take to a*  
44                            *financier, as opposed to a market review*  
45                            *lease, which these sort of financiers were*  
46                            *not interested in.*

47

1 Do you remember that answer?

2 A. Yes; that's correct.

3

4 Q. What did you mean by "market review lease"?

5 A. A market review lease would be a lease where a rent  
6 review would occur to market every two years, based on  
7 rentals in other buildings.

8

9 Q. And when you used the phrase "finance lease", were  
10 you meaning to draw some distinction between a finance  
11 lease and a market review lease, in your mind?

12 A. Yes, I was, yes.

13

14 Q. And what was the distinction?

15 A. The distinction is that a finance lease, for  
16 financiers, has to have a fixed escalator, so the cash  
17 flow is known; and lots of other contingent property risks  
18 are taken out of the lease document itself - such as  
19 inherent defects in risks, structural risks, those sort of  
20 risks. So that basically the cash flow is more of a  
21 finance cash flow, such as a bond without property risks.

22

23 Q. When you used the phrase "finance lease", were you  
24 using that phrase in contradistinction to a market review  
25 lease, and not adverting to the distinction in accounting  
26 terms between a financing lease and an operating lease?

27 A. That is correct.

28

29 Q. I think you also taken yesterday to your memo to  
30 Mr Banek, who was, I think, in charge of Lend Lease  
31 developments. If we could just perhaps bring that up,  
32 that's at LEND.017.0057. Do you remember being asked some  
33 questions about this memo yesterday?

34 A. Yes.

35

36 Q. In the opening sentence you say this:

37

38 *Macquarie Bank is nervous about funding the*  
39 *ALP project on the grounds of potential bad*  
40 *publicity, not commercial grounds.*

41

42 Do you see that?

43 A. Yes.

44

45 Q. Do you accept that it is likely that by the time you  
46 wrote this you were aware that there was bad publicity  
47 concerning the Centenary House proposal?

1 A. 26 February 1992 - I think there may have been, yes.  
2  
3 Q. And do you recall that it was being, in effect,  
4 pushed along, if I could use it, by opposition  
5 politicians?  
6 A. I think I have mentioned yesterday that I didn't  
7 recall that till I had it mentioned to me last week - I  
8 think it was Senator Parer.  
9  
10 Q. Do you accept that it is likely that by the time you  
11 wrote to Mr Banek, you were aware of that?  
12 A. I believe so, yes.  
13  
14 Q. Now, just dealing with the proposition you are  
15 putting to Mr Banek that Lend Lease Corporation, in  
16 effect, become the financier, I think you explained  
17 yesterday that that wasn't taken up?  
18 A. That's correct.  
19  
20 Q. And, just in terms of how good or bad a financial  
21 deal this was, it is right, isn't it, that this deal was  
22 taken to Westpac who said no?  
23 A. Yes.  
24  
25 Q. National Australia Bank who said no?  
26 A. Correct.  
27  
28 Q. The Commonwealth Bank who said no?  
29 A. Correct.  
30  
31 Q. Lend Lease Corporation who said no?  
32 A. Correct.  
33  
34 Q. Whatever role they were approached for, the  
35 Australian Industry Development Corporation said no?  
36 A. Correct.  
37  
38 Q. The financiers that were approached - the other ones  
39 were what one might call less traditional financiers -  
40 were BZW and Hambros and Macquarie Bank?  
41 A. Yes, they - I think BZW or one of those offered  
42 participating share structures and other vehicles, which  
43 were a bit complex.  
44  
45 Q. BZW and Hambros's conditions were generally not  
46 acceptable; is that a fair statement?  
47 A. That decision was made eventually, yes.

1  
2 Q. Did you also approach a firm known as SBC Dominguez  
3 Barry Limited, who is, again, a subsidiary of a Swiss bank  
4 corporation?  
5 A. I cannot specifically recall - it may have.  
6  
7 Q. Could the operator bring up the following document -  
8 JM.001.001.0002. This is an extremely clear handwritten  
9 spreadsheet which I think you were taken to yesterday,  
10 Mr McFadden?  
11 A. Yes.  
12  
13 Q. I just want to ask you, I think you said yesterday  
14 that when you wrote this you appear to have in mind the  
15 Macquarie Bank proposal; is that right?  
16 A. I believe so, yes.  
17  
18 Q. Is it likely, and do you recall that, in effect, you  
19 went to Macquarie Bank after Westpac pulled out?  
20 A. Yes.  
21  
22 Q. Do you remember that was around early 1992?  
23 A. Yes.  
24  
25 Q. The memo I have just taken you to indicated that you  
26 were aware of that bad publicity surrounding the project?  
27 A. Yes.  
28  
29 Q. When dealing with Macquarie Bank. So is it likely  
30 when you wrote this you were aware of bad publicity  
31 surrounding the project?  
32 A. What's on the screen, do you mean?  
33  
34 Q. Yes.  
35 A. Possibly, yes.  
36  
37 Q. Because it is all around the same time?  
38 A. It is around the same time.  
39  
40 Q. Now, down the bottom, I think that reads  
41 "ALP" - something else?  
42 A. I cannot see that, sorry.  
43  
44 Q. You will see that --  
45 A. Sorry, whereabouts?  
46  
47 Q. Do you see along the X axis?

1 A. Yes, sorry, "ALP payment".  
2  
3 Q. "ALP payment"?  
4 A. Yes.  
5  
6 Q. What that gap, as it were, between the X axis and the  
7 line above it, indicates is the, as it were, cash flow to  
8 ALP?  
9 A. Yes.  
10  
11 Q. In years 1 to 5 you scribbled some lines diagonally  
12 at the top of the graph?  
13 A. Yes.  
14  
15 Q. Does that indicate that the rent revenue was not  
16 sufficient to meet the interest and the differential was  
17 being capitalised?  
18 A. That's correct.  
19  
20 Q. Does it follow that, in effect, if the ALP was  
21 nevertheless drawing moneys out in those years, it was, in  
22 effect, borrowing against its later revenues from the  
23 project?  
24 A. Yes; that's correct.  
25  
26 Q. And indeed --  
27 A. I believe it is, yes.  
28  
29 Q. Indeed, all that would happen if you took away the  
30 cash flow to the ALP was that you would change the  
31 residual figures towards the end of the end years of the  
32 project, wouldn't you?  
33 A. It would have an effect, yes.  
34  
35 Q. Yes. In other words, by asking for their cash  
36 earlier, rather than later, wasn't the ALP just borrowing  
37 against its end interest in the building?  
38 A. Yes, it was.  
39  
40 Q. Could I take you to JM.001.001.0003. I think  
41 Mr Foster took you to that yesterday?  
42 A. Yes.  
43  
44 Q. Was that document prepared around the same time as  
45 the one we have just looked at?  
46 A. Oh, yes, I believe it would have been, yes - the same  
47 time, probably.

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Q. Does it follow that it is likely that was referring to the Macquarie Bank proposal?

A. I believe it was, because down the bottom you have the 8.5 factor, which is 8 and a half years into the lease, which was part of the Macquarie Bank deal.

Q. And, therefore, do you accept that it is likely that when you wrote this you were aware of the bad publicity that had been created concerning the project?

A. I believe I would have been, yes.

Q. And in point 4 you have headed some risks, and I think that says:

*\* ALP at risk if in opposition.*

Do you see that?

A. Yes.

Q. In answer to some questions yesterday when you were asked about this risk, what you were adverting to, you said at the bottom of page 1438:

*A. I can't recall, but I can see that there might be some risk to this proposal, I suppose, if the ALP was in Opposition, yes, of some action taken by the other side, I guess - the other government - by the other party who would be in power*

And then were you asked:

*Q. Why?*

And you answered:

*A. Because that's the nature of politics in Canberra.*

Do you remember those questions and answers?

A. Yes, I do.

Q. When you referred to "some action taken by the other side" who would then be in government, what type of action were you talking about?

A. The possibility of getting a new tenant at the expiry

1 of the 15-year lease term, because the existing lease  
2 was - the first lease expired at year 15, so there is a  
3 chance - there was a chance, from my point of view, that  
4 if another government was in, they may not commit another  
5 tenant to the building. Therefore, there would be zero  
6 cash flow going to the ALP, and that was a risk.

7  
8 Q. And when you said, "Because that's the nature of  
9 politics in Canberra," what did you mean by that?

10 A. It is pretty aggressive politics in Canberra, with  
11 all the parties going at each other and trying to find  
12 anything to pick at which might be political, especially  
13 around election time. We also have - it is Canberra, it  
14 is full on with that, because we have self-government down  
15 there too, so you cop it from both ends, federally and at  
16 territory level will - it is just constant, that people  
17 are looking for issues to have a go at.

18  
19 Q. And the nature of politics being that the tendency of  
20 the one side to relentlessly attack the other, and vice  
21 versa?

22 A. I think there is some evidence of that with the  
23 Centenary House project.

24  
25 Q. You were then asked some questions about the Patents  
26 Office advert. Could that perhaps be brought up. It is  
27 JM.001.001.0205. I just perhaps want to draw your  
28 attention to that. I think you will see in the first  
29 paragraph it states:

30  
31 *The Commonwealth of Australia is seeking*  
32 *expressions of interest to provide*  
33 *carpeted, airconditioned office*  
34 *accommodation for a long-term lease (15-20*  
35 *years) of approximately 20,000 square*  
36 *metres net lettable area to be located on*  
37 *Block 1 Section 4 Phillip (land area*  
38 *approximately 1.2 ha).*

39  
40 Do you see that?

41 A. Yes.

42  
43 Q. I think you indicated in your statement that you may  
44 have seen that in 1991 and been aware of the interest of  
45 the Commonwealth in long-term leases?

46 A. That's my writing at the bottom of the page.

47

1 Q. And then the next paragraph says:

2  
3 *The land will be made available for*  
4 *development at an annual ground rent by the*  
5 *Commonwealth for the period of the lease.*  
6 *The Commonwealth may seek reversionary*  
7 *rights on the property, an option on*  
8 *reversionary rights, or may extend the*  
9 *lease.*

10  
11 Do you see that?

12 A. Yes.

13  
14 Q. To your knowledge the Centenary House lease involved  
15 an option to the Commonwealth to extend the lease at the  
16 end of the 15-year term, did it not?

17 A. It did, yes.

18  
19 MR FOSTER: I object to that for two reasons: which  
20 lease are you referring to? And, if it is the one to the  
21 Commonwealth in respect of the Audit Office accommodation,  
22 I don't think that's an accurate proposition to put to the  
23 witness. The option was exercisable at the beginning of  
24 year 10, I think, or the end of year 9.

25  
26 MR BEECH-JONES: I see.

27  
28 MR SACKAR: Slightly in advance of year 10, I think.

29  
30 MR BEECH-JONES: I will stand corrected on that.

31  
32 Q. To your knowledge, the Centenary House lease gives  
33 the Commonwealth the option to extend the lease, with the  
34 option being exercisable around year 10?

35 A. Yes.

36  
37 Q. Did you see back then any difference in those  
38 respects between what was being suggested and expressions  
39 of interest for the Patents Office and Centenary House?

40 A. Not in terms of the option for renewal. There are  
41 others issues there which make this project different to  
42 Centenary House, though.

43  
44 Q. One difference being the size; is that right?

45 A. The size - it is a much larger project, yes.

46  
47 Q. Do you remember you were asked some questions about

1 how you came to be in possession of the instructions - the  
2 valuation instructions that had been given to the AV0?  
3 A. Valuation instructions?  
4  
5 Q. I will start that again. Perhaps I will bring up the  
6 document. Could the operator bring up JM.001.001.0206.  
7 A. Yes, I have that on the screen.  
8  
9 Q. Do you remember Mr Foster pointed out to you  
10 yesterday that that was in your file?  
11 A. Yes.  
12  
13 Q. And he asked you if you could recall how you came  
14 into possession of it - do you remember being asked that?  
15 A. I believe I do, yes.  
16  
17 Q. I think, correct me if I am wrong, but your evidence  
18 is you can't recall?  
19 A. Rightio, sorry, I stand corrected if that was my  
20 evidence.  
21  
22 Q. I will start again --  
23  
24 THE COMMISSIONER: Have you remembered something since --  
25  
26 MR BEECH-JONES: I asked for that.  
27  
28 Q. Mr McFadden, do you recall how it is you came to be  
29 in possession of that document?  
30 A. Well, no, I - no, I don't recall.  
31  
32 Q. Perhaps I might ask you to look at this document. It  
33 is an extract from some PCG minutes, CH94.004.0104. You  
34 will see there is a reference to the PCG meeting held on  
35 6 November --  
36 A. Yes.  
37  
38 Q. -- and if you then just go to page 106, and item 9.4,  
39 you will see that there is a reference to:  
40  
41 *Dominic Collins is to be requested to*  
42 *confirm his brief to the Australian Valuers*  
43 *Office re agreement on a rent escalator for*  
44 *the 15 year lease period.*  
45  
46 A. I see that, yes.  
47

1 Q. Did you usually attend PCG meetings?  
2 A. I don't believe I attended all of them, but I may  
3 have.  
4  
5 Q. Do you have any recollection of being in a meeting  
6 where the meeting resolved to request Mr Collins to  
7 confirm that he had briefed the Australian Valuers Office?  
8 A. I don't recall that, no.  
9  
10 Q. You didn't ask Mr Collins or Mr Ireland to forward  
11 you a copy of the brief?  
12 A. I don't believe so, no. It was pretty common in  
13 Canberra at the time for this sort of work to be conducted  
14 between valuers and the AV0 - and still is, to a large  
15 degree.  
16  
17 Q. That is negotiations on the terms of a lease prior to  
18 it being entered into?  
19 A. On rent reviews, terms of leases, yes - probably more  
20 rent reviews.  
21  
22 Q. Is that negotiations after the lease has been entered  
23 into?  
24 A. Quite often it is, yes.  
25  
26 Q. But does it often also extend to negotiations before  
27 the lease is entered into?  
28 A. It may.  
29  
30 Q. Could the operator bring up JM.001.001.0063? This  
31 was a memorandum to you and another gentleman of  
32 3 November 1993 from Mr Jordan, which you were asked about  
33 yesterday?  
34 A. Mmm-hmm.  
35  
36 Q. Do you remember being asked some questions about  
37 that?  
38 A. Yes.  
39  
40 Q. Just to be clear, who was Mr Jordan?  
41 A. He was the marketing manager or business development  
42 manager for Civil & Civic at the time.  
43  
44 Q. When you say "at the time", do you mean in November  
45 1993?  
46 A. I believe so, yes.  
47

1 Q. And how long had he worked for Civil & Civic at that  
2 time?

3 A. I cannot recall. He may not have been involved with  
4 Lend Lease for too much before that time.

5  
6 Q. To your knowledge, did he have any personal  
7 involvement in the dealings with the ALP or the APG or in  
8 any other aspect concerning Centenary House in 1990-1992?

9 A. I cannot exactly recall. I don't believe he did. I  
10 think the running was with Richard McKeon and Glen  
11 Nicholson from the Canberra office.

12

13 Q. Together with Mrs Morris from the Sydney office and  
14 yourself?

15 A. I believe she was from the Sydney office, yes.

16

17 Q. Did you, at any time during the period 1991 to 1992  
18 think that the independence of the APG had been  
19 compromised or that it had been prevailed upon or  
20 overborne?

21 A. No, I didn't.

22

23 Q. Did any of Mrs Morris or Mr Nicholson or Mr McKeon  
24 ever state that to you?

25 A. No - not that I recall, I should say. I don't recall  
26 it.

27

28 Q. If they had, is that something that you would expect  
29 that you would recall?

30 A. I would think so, yes.

31

32 Q. If we just go down three paragraphs, in the very last  
33 sentence, that paragraph is directed to what the inquiry  
34 would do if it subpoenaed documents and the last sentence  
35 is:

36

37 *The true extent of the benefit to the ALP*  
38 *has not to my knowledge been correctly*  
39 *disclosed publicly.*

40

41 Do you see that?

42 A. Yes.

43

44 Q. When you were asked about this at page 1503, at  
45 line 39, Mr Foster asked you this:

46

47 Q. No. What Mr Jordan appears to be

1           *saying, would you agree, is that the true*  
2           *extent of the benefit to the ALP has not,*  
3           *as at November 1993, been correctly*  
4           *disclosed publicly, isn't he?*

5  
6           And your answer was:

7  
8           *A. He does say that, and I would - that*  
9           *was a confidential arrangement, matter, I*  
10           *thought.*

11  
12           Do you see that?

13           A.    Yes.

14  
15           Q.    Did you, during 1993, or indeed at any time, regard  
16           it as any part of Lend Lease Development's role to  
17           voluntarily disclose to the public the commercial terms  
18           and dealings that led to the Centenary House lease?

19           A.    No.  No.

20  
21           Q.    Would you have regarded it as appropriate for Lend  
22           Lease developments and Civil & Civic to maintain the ALP's  
23           confidentiality on that?

24           A.    Very much so.  I mean, it was the ALP's business.

25  
26           Q.    Yesterday you were asked some questions about  
27           government policy and the location of government offices;  
28           do you recall that?

29           A.    Yes.

30  
31           Q.    Was that the policy of the ACT government or the  
32           Commonwealth Government or joint, or what?

33           A.    No, those policies would be Commonwealth Government  
34           policies.  They are normally included in what we call the  
35           National Capital Plan, but the Commonwealth - the  
36           Commonwealth set those policies.  There is an issue,  
37           though, in Canberra, that the ACT Territory plan has to  
38           generally follow the National Capital Plan, but those  
39           policies were set by the Commonwealth.

40  
41           Q.    I see.  I think in answer to a question from  
42           Mr Sackar, when you nominated that figure of 8 to 12 per  
43           cent, to the best of your recollection, I think you said  
44           that was based on some work you had done and information  
45           you had received about previous rental growths?

46           A.    Correct, yes.

47

1 Q. What period of time, do you recall, did that period  
2 relate to?  
3 A. I cannot recall exactly. Sorry, I would have to read  
4 the document again.  
5  
6 Q. A period of 10 years, that you can recall, or  
7 20 years?  
8 A. I think that was a long-term period.  
9  
10 Q. Just in terms of government policy, in the 10 years  
11 prior to this transaction, there had been a change at  
12 Federal Government level - that is, a change of  
13 government; do you recall?  
14 A. Yes, I think there was - there was a change  
15 from - sorry, in the 10 years before, did you say?  
16  
17 Q. In the 10 years before.  
18 A. Yes, I believe there was a change in government, yes.  
19  
20 Q. And a change in the governmental arrangements  
21 concerning the ACT - that is, the entire structure of its  
22 government?  
23 A. Yes. I believe self-government came in in around  
24 '89/'90.  
25  
26 Q. And the planning arrangements within the Territory  
27 had at least passed through various bodies, had it not,  
28 between the National Capital Development Commission and  
29 then some successor bodies to that as well?  
30 A. There were, yes, under the ACT government, yes.  
31  
32 Q. Within the period of the government that was then in  
33 office, that is from 1983 to the time of Centenary House,  
34 do you recall whether its approach to its preparedness to  
35 fund capital works and the location of government  
36 departments had changed from time to time as well?  
37 A. Of the Commonwealth Government?  
38  
39 Q. Yes.  
40 A. I was aware that that was changing around or before  
41 the time of Centenary House lease, as evidenced by  
42 Tuggeranong Office Park.  
43  
44 Q. And at least so far as you were aware, the observable  
45 rent growth had continued, notwithstanding all those  
46 various changes that had occurred just in that 10-year  
47 period?

1 A. Yes, I think we saw figures to that effect yesterday.

2

3 MR BEECH-JONES: I have no further questions.

4

5 <EXAMINATION BY MR FOSTER:

6

7 MR FOSTER: Q. I think you told Mr Beech-Jones that  
8 often terms of leases were, in the first instance,  
9 negotiated between valuers representing the commercial  
10 party and the AVO representatives representing the  
11 Commonwealth from time to time, to your appreciation; is  
12 that right?

13 A. I said sometimes they were.

14

15 Q. Yes. More often, in your experience, those two  
16 groups of people would meet to discuss market rents for  
17 the purposes of market rent review clauses; would you  
18 agree?

19 A. I would agree with that, yes.

20

21 Q. And that was the more common circumstance in which  
22 they would be getting together in respect of leases,  
23 wasn't it?

24 A. It would have been up to - prior to Tuggeranong  
25 Office Park, yes.

26

27 Q. Being an experienced commercial individual as you  
28 are, and were at the time, you would expect, on the one  
29 hand, the valuer retained by the non-government entity  
30 and, on the other hand, the AVO representative to be doing  
31 the best they could to represent the interests of their  
32 respective clients in their discussion?

33 A. I would expect that, yes.

34

35 Q. Each of them seeking to persuade the other to their  
36 point of view?

37 A. That's normal negotiation, yes.

38

39 Q. Indeed, a bit of toing and froing to occur in that  
40 regard?

41 A. Normal negotiation, yes.

42

43 Q. You would not expect, in that context, for the  
44 instructions given to one of the valuers, for example, the  
45 AVO, in connection with such a rent review, to be handed  
46 across to the other side of the transaction, would you?

47 A. If it was a position they wanted to put on the table

1 it may have been put across to them.  
2  
3 Q. But that would come through the valuer himself if  
4 that was the case, wouldn't it?  
5 A. Sorry, what, the evidence?  
6  
7 Q. The position that you just described?  
8 A. I can't be sure how it would always happen in  
9 negotiations with the valuers.  
10  
11 Q. What I am getting at is you would not expect, would  
12 you, that in the case of an instruction coming from the  
13 APG to the AVO, in relation to what it was that the APG  
14 wanted from the AVO in terms of advice and assistance,  
15 that that instruction would be handed across to the valuer  
16 representing the other side of the so-called negotiation?  
17 A. Well, I can't comment on why APG would do something,  
18 if that's what you are saying.  
19  
20 Q. No, but I'm testing your common sense appreciation of  
21 what an ordinary commercially-driven negotiation would  
22 ordinarily lead to. What I am suggesting to you is simply  
23 this: you wouldn't expect, would you, for the APG's  
24 instructions to the AVO in connection with the rent review  
25 to be handed across to the valuer representing the other  
26 side of the transaction?  
27 A. There may have been reasons why APG wanted that.  
28 Sorry, I just can't speak for APG.  
29  
30 Q. You wouldn't expect, would you, an AVO operative to  
31 reveal the private discussions that had occurred between  
32 him and his instructing party, in the context of a rent  
33 review discussion with another valuer, unless it was  
34 revealed as part of stating a position for the purpose of  
35 that rent review discussion; would you not agree?  
36 A. I'm sorry, but I'm just not across those sort of  
37 negotiations enough to comment on how they would do it.  
38  
39 Q. Well, people in the position of an AVO valuer, on the  
40 one hand, and a valuer representing the other entity in  
41 the hypothetical example I'm putting to you, would be  
42 there to do the best they could for their clients,  
43 wouldn't they?  
44 A. I agree with that, yes.  
45  
46 Q. And they would be discussing appropriate rental  
47 levels by reference to whatever justification for the

1 position they were taking they could summon up?  
2 A. I would think so, from either party, yes - as parties  
3 would come in.

4  
5 Q. And if a party attended such a rent review  
6 discussion, having done no homework at all on the one  
7 hand, and dealt with someone who had done a great deal of  
8 homework, albeit selectively, the party who had done no  
9 work would be at a significant disadvantage in any  
10 commercial negotiation about rent reviews?

11  
12 MR BEECH-JONES: Commissioner, I object. The basis of  
13 the objection is that this could not possibly assist you.  
14 What is being asked is a series of hypothetical questions  
15 about a hypothetical negotiation process between two  
16 valuers, divorced from the context of what information  
17 they did have, what information they didn't have, what was  
18 discussed, who they were, when we know, when we actually  
19 have the source material and we have the actual witnesses  
20 and they are actually coming, and whether or not something  
21 unusual has occurred in the negotiation process can be  
22 raised with those witnesses in the context of what  
23 actually happened.

24  
25 MR FOSTER: I will ask another question.

26  
27 Q. You would not have expected, ordinarily, in your  
28 experience, to have found within your file the APG  
29 instruction to the AVO in respect of this matter, would  
30 you?

31 A. I think we talked yesterday about draft letters being  
32 prepared from different parties to help speed things up,  
33 et cetera, and didn't mention draft leases, but it was  
34 common for somebody to initiate the draft lease and then  
35 use that as a basis of negotiation, or a draft letter of  
36 intent on the basis of speeding things up. I could  
37 imagine that a draft position from valuers might be tabled  
38 for the same reason.

39  
40 Q. Do you think that's an answer to my question?

41 A. Well, I just gave the answer to the question, sorry.

42  
43 Q. What I am putting to you is that you would not have  
44 expected to have found in your file - that is, in a Lend  
45 Lease Development file - the actual instructions provided  
46 by the APG to the AVO in respect of the upcoming so-called  
47 negotiation with Mr McCann concerning rent escalators,

1 would you?  
2 A. Well, I just receive documents - I don't know whether  
3 I would expect it or not, but just documents passed to me.  
4  
5 Q. But you can't tell us the circumstances in which that  
6 letter is to be found in your file, can you?  
7 A. No, I said, I don't believe I could recall it.  
8  
9 Q. No. What I am putting to you is that, in your  
10 experience, receiving that letter in the circumstances  
11 which were then under way - that is, an upcoming so-called  
12 negotiation about rent escalators - was an unusual matter  
13 as far as your experience went?  
14 A. Documentation to me, like that, was just probably not  
15 unusual in Canberra. That's --  
16  
17 Q. It's not like the letter of intent, is it?  
18 A. I would have to look at the letter again.  
19  
20 Q. The letter of intent was prepared by Lend Lease,  
21 given to Mr Collins, and then he operated on it and sent  
22 it back. This is a case of a letter of a private nature  
23 going between APG and AVO coming into the possession of  
24 Lend Lease, isn't it, and the circumstances are different;  
25 would you not agree - at least to an observer?  
26 A. To an observer --  
27  
28 MR BEECH-JONES: I object. How can he possibly --  
29  
30 MR FOSTER: Q. To you.  
31  
32 MR BEECH-JONES: I ask that the question be rephrased.  
33  
34 MR FOSTER: I don't think so. I will have a go at that  
35 one.  
36  
37 THE COMMISSIONER: The objection led to a reformulation,  
38 and I can see that was the basis of your objection.  
39  
40 MR BEECH-JONES: Indeed. I don't criticise. When I said  
41 "rephrased", I meant repeated. It was quite a long  
42 question, I objected to part of it and then part was  
43 substituted.  
44  
45 THE COMMISSIONER: The interchange between counsel has  
46 probably diverted the witness's attention anyway, so it  
47 would probably be fairer.

1  
2 MR FOSTER: Q. The letter of intent was prepared by  
3 Lend Lease, given to Mr Collins and then he operated on it  
4 and sent it back. This - and I am referring to the  
5 APG/AVO letter of instruction - is a letter of a private  
6 nature coming into the possession of Lend Lease, isn't it,  
7 and the circumstances between the two are, to your mind,  
8 different, aren't they?  
9 A. They could be different, yes. One is a letter of  
10 intent and the other was a - could be, but it is not  
11 something I questioned, that's what I'm saying.  
12  
13 Q. Well, what I am getting at is this: without an  
14 explanation, on the surface, it looks like somebody has  
15 given to Lend Lease a document that should not have been  
16 given to Lend Lease; would you not agree?  
17  
18 MR SACKAR: I object to that for a different reason.  
19  
20 THE COMMISSIONER: Yes. What is your reason, Mr Sackar?  
21  
22 MR SACKAR: My reason is that it hasn't been established,  
23 except at the most high level, as to why it would be  
24 inappropriate - apart from its so-called private nature.  
25  
26 MR FOSTER: I am asking him that very question.  
27  
28 MR SACKAR: Our proposition that the underlying  
29 assumption or assumptions are fallacious.  
30  
31 THE COMMISSIONER: I am sorry --  
32  
33 MR SACKAR: The assumptions are fallacious.  
34  
35 THE COMMISSIONER: What, that it is improper?  
36  
37 MR SACKAR: Yes.  
38  
39 THE COMMISSIONER: That's a matter which can be argued.  
40  
41 MR SACKAR: It might be, but the point is what this  
42 witness hasn't been asked to agree to, if that's what it  
43 is going to be suggested he has in fact implicitly agreed  
44 to, is that there is something in the letter which makes  
45 the communication of it, in the terms that it was passed,  
46 improper, except insofar it was a letter addressed to the  
47 valuation office. I'm trying to be a tiny little bit

1 oblique, for reasons --

2

3 THE COMMISSIONER: You are certainly succeeding, if I may  
4 say so.

5

6 MR SACKAR: Perhaps I can put it this way: the terms of  
7 the letter are in a particular form. My learned friend  
8 hasn't really established that the substance of the  
9 communication was a problem, rather, simply that it was a  
10 letter addressed to somebody else, is all that the  
11 evidence would establish on this basis.

12

13 THE COMMISSIONER: Is it necessary for the purpose of  
14 this witness to answer that question? You can comment  
15 upon the effect of his answer, whatever it may be,  
16 subsequently.

17

18 MR SACKAR: Well, if my learned friend doesn't want to go  
19 to the substance of the matter, then I can't provoke him  
20 to do it and I won't.

21

22 MR BEECH-JONES: Sorry, Commissioner, I was about to  
23 object, simply, as a matter of fairness to answer the  
24 question as phrased, he should at least have the document  
25 in front of him. What he is asked is this:

26

27 *...without an explanation, on the surface,*  
28 *it looks like somebody has given to Lend*  
29 *Lease a document that should not have been*  
30 *given to Lend Lease; would you not agree?*

31

32 In my submission, as a matter of fairness for a witness to  
33 answer that, they should at least have the question in  
34 front of them.

35

36 THE COMMISSIONER: The whole question proceeds upon the  
37 basis that the document should not have been given to  
38 Lend Lease.

39

40 MR BEECH-JONES: With respect, that may depend upon what  
41 is in the document.

42

43 THE COMMISSIONER: No, it is hypothetical. He is being  
44 asked that a document which should not have been given to  
45 Lend Lease should not have been passed on to its valuer.  
46 I have very much simplified it - I hope not too much.

47

1 MR BEECH-JONES: I don't think there is any question  
2 about it not being passed on to its valuer. I think the  
3 question was he shouldn't have had it, or Lend Lease  
4 shouldn't have had it without an explanation. All I am  
5 saying is, as a matter of fairness, he should have the  
6 document. It is at the bottom of page 1535.

7  
8 MR FOSTER: I don't mind if the witness requires a look  
9 at the document. I thought it was one of those documents  
10 that the witness was very familiar with.

11  
12 Q. Is that fair, Mr McFadden? If you want to look at  
13 it, please tell me.

14 A. I thought it was a document - I can't recall. I  
15 thought I might have said I couldn't recall it. I'm not  
16 sure.

17  
18 Q. No, but you couldn't recall the circumstances in  
19 which it came into your file, I think was your evidence?

20 A. I probably said that, yes. I can't recall what I  
21 said, sorry.

22  
23 THE COMMISSIONER: You said that yesterday and you were  
24 asked whether you had recollected the circumstances this  
25 morning, and I think you said that you had not. But,  
26 anyway, if it was in his file, let him see it.

27  
28 MR FOSTER: I am happy to show it to him.

29  
30 THE COMMISSIONER: I thought we were then going on to the  
31 Lend Lease's valuer. Are we doing it in stages, perhaps?  
32 If that is so, that would be perhaps fairer.

33  
34 MR FOSTER: Could I have him look at this document over  
35 the morning tea break and then I will ask him a question  
36 about it.

37  
38 THE COMMISSIONER: Yes. We will resume in 15 minutes  
39 time.

40  
41 **SHORT ADJOURNMENT**

42  
43 MR FOSTER: Q. Mr McFadden, have you found within your  
44 file the copy of the document, being the letter from the  
45 APG to the general manager Australian Valuation Office,  
46 dated November 1991, bearing the barcoding in your file of  
47 JM.001.001.0206 and 0207?

1 A. I think I have it on the screen but I can't see the  
2 bottom numbers, but I am sure that's the document.  
3  
4 Q. And it is also in your file?  
5 A. Yes.  
6  
7 Q. Did we not give you your file and open it at that  
8 point?  
9 A. Yes, you did.  
10  
11 Q. That is a letter of instruction from the APG to the  
12 AVO, isn't it?  
13 A. Yes.  
14  
15 Q. It appears to be an actual letter, not a draft,  
16 doesn't it?  
17 A. It does - it is a signed letter, yes.  
18  
19 Q. And it appears to be the letter of instruction to the  
20 AVO in respect of what was required of it in some upcoming  
21 discussions foreshadowed with Mr McCann and others over  
22 Centenary House?  
23 A. Yes.  
24  
25 Q. It contains within it various statements concerning  
26 the stage at which discussions on terms of that lease had  
27 reached up to that point, doesn't it?  
28 A. It does, yes.  
29  
30 Q. It also contains within it, on the top of the second  
31 page of the letter, a statement to the effect that the  
32 rentals will escalate as a fixed percentage over the term  
33 of the lease; do you see that?  
34 A. Yes.  
35  
36 Q. Then it goes on to say:  
37  
38 *... such an agreement represents a major*  
39 *departure from the conventional gross lease*  
40 *agreement ...*  
41  
42 Do you see that?  
43 A. Yes.  
44  
45 Q. And then it seeks the advice of the AVO on certain  
46 specific points which are described against the dot  
47 points?

1 A. Yes.  
2  
3 Q. Then another comment is made as to how the AVO should  
4 approach the tasks asked of them; do you see that?  
5 A. Yes.  
6  
7 Q. That's the comment against which there is the  
8 scratchings or markings of some kind; do you see that?  
9 A. Yes.  
10  
11 Q. First of all, would you agree that this is, on its  
12 face, a private communication between the APG and the AVO?  
13 A. Yes.  
14  
15 Q. Would you agree also it appears to have within it  
16 some confidential matters forming part of the brief to the  
17 AVO for an upcoming negotiation?  
18  
19 MR SACKAR: I object.  
20  
21 THE COMMISSIONER: Yes?  
22  
23 MR SACKAR: That's not a fair way of putting this. My  
24 learned friend should come clean and put what he says is  
25 confidential, because a reading of it may mean a  
26 reasonable mind would differ about that.  
27  
28 MR FOSTER: I will rephrase that question.  
29  
30 Q. It contains within it what appear to be statements as  
31 to what had been agreed up to that point in terms of  
32 page 1, does it not?  
33 A. Yes.  
34  
35 Q. And it contains within it at the top of page 2, in  
36 the first paragraph, what appears to be a statement as to  
37 what had been agreed up to that point, does it not?  
38 A. Yes.  
39  
40 Q. And then, in the next paragraph, followed by the dot  
41 points, and in the succeeding paragraph, it contains  
42 within it matters which, on their face, appear to be  
43 confidential as between the APG and the AVO; would you not  
44 agree?  
45 A. They are in the letter from APG to AVO, yes.  
46  
47 Q. Yes.

1 A. Yes.

2

3 Q. Would you not agree that, in your experience, it  
4 would be unusual for a letter between the APG and the AVO  
5 of instruction, containing material such as this, to be  
6 provided to a person associated with the other side of the  
7 upcoming negotiation in advance of the negotiation?

8 A. Could I just say that I read this document a couple  
9 of times through the coffee break, and I thought who would  
10 send this letter, to whom and why? And I note in the  
11 second-last line, the second-last paragraph:

12

13 *The proposal is that your office and McCann*  
14 *& Associates agree and advise on the above.*

15

16 And I agree with you that lots of the material above had  
17 been previously agreed - or seems to.

18

19 Q. On the face of it that seems to be --

20 A. On the face of it, yes. So I didn't see anything too  
21 outrageous in what had been written above. I think  
22 everything - pretty well everything was known. I think we  
23 would have known that it was a major departure from the  
24 conventional gross lease. I think we had known it was not  
25 a financial lease under some definition, and so there was  
26 nothing there that probably wasn't known.

27

28 I then went a step further and tried to establish at  
29 this particular date, which I think was 1 November, even  
30 though it is not on this letter, whether there was any  
31 reason that the person who had this letter might decide to  
32 send it to Mr McCann for a meeting coming up, to set the  
33 scene, because I don't believe there was anything in this  
34 letter which hadn't been discussed before. So I took the  
35 time - I'm not attempting to be clever, but I just thought  
36 there was something on - I wanted to establish when final  
37 agreement was reached on those escalators, and I found  
38 something on that in - at section 16 of the report, which  
39 is the statement of procedures, AVO advice to APG, and on  
40 page - can I refer to that?

41

42 Q. Not really.

43 A. Not really?

44

45 Q. No, it is a submission to the Morling Inquiry, isn't  
46 it?

47 A. No, no, it is in this document you have given me.

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47

Q. It is not what I gave you, I don't think.

A. It is in the back of the package.

Q. All right. Please do.

A. Yes, well --

Q. Do you know what it is? Do you know what you are referring to?

A. Yes, it is the Statement of Procedures from the Australian Valuation Office. Statement of procedures.

Q. Do you know who prepared it and in what circumstances?

A. It reads like it was prepared by the Australian Valuation Office.

Q. Anyway, please go on.

A. Yes, well, it says there that, 1 November, it just reports that Mr Dominic Collins advised Mr Jeffress, and gave him this letter, which I believe was this letter, and then I note that on the bottom paragraph there:

*APG requested that AVO attend a meeting with Mr McCann with a view to reaching agreement as to the rates to be applied and to provide APG with any other advice considered necessary.*

I noticed then that there was a meeting on 12 November 1991 in the office of McCann & Associates at 3.30, and Mr McCann, myself, Richard McKeon and Mr Jeffress attended. And the intention of the meeting was to enable Mr Jeffress to gather information from McCanns and Lend Lease concerning the development. It says in the bottom line:

*Mr Jeffress left the meeting with the ideas and information provided at the meeting but gave no indication of his own views.*

So, I mean, one logical explanation for this letter is that the valuation office sent it to Mr McCann as an agenda to try and establish the understanding of the project from the developer's point of view. That's the only logical explanation I can give - that rather than typing out the same, almost, instruction on an AVO

1 letterhead, he just faxed this off and said, "Listen, this  
2 is I understand where it is at and this is what we have to  
3 agree". That is a logical explanation, I would think.  
4

5 Q. Let's just explore that for a moment. You are  
6 reconstructing from some material written by somebody else  
7 what might have happened?

8 A. Well, I'm - this document is contained in here, which  
9 I had read before today.  
10

11 Q. Yes, but, Mr McFadden, surely what you have just done  
12 fits the description I just put to you - you are  
13 reconstructing from something that someone else has  
14 written, what might have happened?

15 A. Yes, I am reconstructing what might have happened,  
16 yes.  
17

18 Q. And the proposition that you are speculating about is  
19 that Mr Jeffress, or the AVO representative, who received  
20 the instruction from the APG, handed across a copy of that  
21 to Mr McCann to facilitate discussions; is that what you  
22 think might have happened?

23 A. I think that's what I suggest might have, but I don't  
24 know that that is what did happen.  
25

26 Q. Of course not. But, just taking up your present  
27 position on the matter - is that what you are suggesting  
28 might have happened?

29 A. I'm suggesting that, yes.  
30

31 Q. If that was so, then what would have been handed over  
32 would have been a copy of what the AVO had received,  
33 wouldn't it - logically?

34 A. Logically, yes.  
35

36 Q. Did you know that the letter that the AVO received  
37 actually had a date in a handwritten digit in front of  
38 "November" on page 2 of this letter?

39 A. No, I didn't - only from what I have read here.  
40

41 Q. So if that were the fact, then this letter would  
42 appear to have been sent by the APG to Lend Lease, rather  
43 than by the AVO, wouldn't it?  
44

45 MR BEECH-JONES: Commissioner, I object.  
46

47 MR FOSTER: He has entertained the speculation; why can't

1 I?

2

3 THE WITNESS: Why I - sorry.

4

5 MR BEECH-JONES: I object. We are now cross-examining  
6 Mr McFadden with a view to putting to him different  
7 scenarios based on particular assumptions about him  
8 commenting on what might have happened as to how this  
9 letter got from APG to him. He has already suggested he  
10 doesn't remember. It is not being suggested he does  
11 remember. What Mr Foster has said is, "I'm going to tell  
12 you that the letter you have just looked at has a number  
13 on it and the AVO, so it can't be them who have got it;  
14 what do you think about the other possibilities?"

15

16 THE COMMISSIONER: But why is Mr Foster not entitled to  
17 assist the witness to recall the circumstances in which he  
18 got that?

19

20 MR BEECH-JONES: With respect, he is not seeking to do  
21 that.

22

23 THE COMMISSIONER: The question is directed to that  
24 issue, whether that is his intention or not.

25

26 MR BEECH-JONES: The question doesn't invite him to  
27 recall what happened. The question is inviting him to  
28 speculate what might have happened with various  
29 possibilities.

30

31 THE COMMISSIONER: No, this is to assist him in  
32 recollecting how it got to him. I don't see the problem.

33

34 MR BEECH-JONES: Commissioner, I have made my objection.

35

36 THE COMMISSIONER: Okay, you have made it and it is  
37 rejected.

38

39 MR FOSTER: Q. I will ask you this: you just at the  
40 moment don't remember how this came into your file, do  
41 you?

42 A. That's correct.

43

44 Q. What you offered a few moments ago in relation to my  
45 first question after the morning tea break was pure  
46 speculation on your part, wasn't it?

47

A. Yes.

1  
2 Q. I am not suggesting you weren't trying to help, but  
3 that's what it was, wasn't it?  
4 A. Yes. Yes.  
5  
6 Q. In that context, would you agree that that  
7 explanation that you put forward would not run at all if  
8 the only copy of this letter in the possession of the AVO  
9 had in fact had a date written before November?  
10 A. Sorry, if the only copy of the letter?  
11  
12 Q. In the possession of the AVO had a date written -  
13 that is, handwritten - in front of the word "November".  
14 A. I probably cannot dispute that, if that's the only  
15 letter that AVO has, yes.  
16  
17 Q. I go back to my original question, which is this:  
18 given your experience, would it not have been unusual for  
19 this letter to have been sent to Lend Lease at this time,  
20 given the circumstances of the upcoming foreshadowed  
21 negotiation?  
22 A. I couldn't see it being unusual, given that all the  
23 terms there are pretty well-known, if some party wanted to  
24 advise the other party that "This is what we have got to  
25 get agreed", because there is nothing there that is really  
26 a new issue that people haven't known before.  
27  
28 Q. Well, you didn't know that. You weren't conducting  
29 the negotiations, were you?  
30 A. I am sorry.  
31  
32 Q. You weren't conducting the lease negotiations with  
33 Mr Collins, were you?  
34 A. Well, you have asked me to read this letter.  
35  
36 Q. Yes, I have.  
37 A. Yes, and I think lots of these conditions were in the  
38 letter of intent in September, and I think in that letter  
39 rentals still had to be agreed or escalators still had to  
40 be agreed. As I said, I don't know where the letter came  
41 from, but it may have been somebody trying to speed up  
42 negotiations, because it really relates to issues  
43 generally in that, I believe, letter of intent.  
44  
45 Q. Do you recall - and I'm not suggesting when I ask  
46 this question that this was necessarily the fact, but I am  
47 trying to find out what the fact was, you see - in late

1 October or early November, there being some discussion, in  
2 your presence, either at a PCG meeting or otherwise, in  
3 which there was concern expressed that Mr Collins may not  
4 yet have taken steps to get the AVO involved in this  
5 discussion that your side of things thought was going on  
6 occur with Mr McCann?  
7 A. I don't recall that.  
8  
9 Q. In other words, that he had been dragging the chain?  
10 A. I don't recall that at all.  
11  
12 Q. Doesn't ring a bell at all?  
13 A. No.  
14  
15 Q. Mr Beech-Jones also asked you about the document that  
16 Mr Jordan wrote, I think, to you, which is dated, I think,  
17 26 February. I am sorry, what's the date?  
18  
19 MR BEECH-JONES: I have lost it now.  
20  
21 MR FOSTER: Just so I get this right, I will ask  
22 Mr Beech-Jones if he wouldn't mind telling me the date of  
23 that document.  
24  
25 MR BEECH-JONES: It is 3 November 1993.  
26  
27 MR FOSTER: What's the reference?  
28  
29 MR BEECH-JONES: JM.001.001.0063.  
30  
31 MR FOSTER: Q. Could that be brought up on to the  
32 screen. I just want to revisit this last sentence in the  
33 second-last paragraph, the one beginning "The true  
34 extent"; do you see that?  
35 A. Yes.  
36  
37 Q. I think Mr Beech-Jones asked you, in effect, this:  
38 that you saw it as no part of Lend Lease's function to  
39 reveal the confidential information of the ALP, and you  
40 agreed with that?  
41 A. Yes.  
42  
43 Q. But you would not, would you, agree with the  
44 proposition that that confidential information should not  
45 be revealed in an appropriate way to a properly  
46 constituted inquiry into this transaction, would you?  
47 A. No, I would think that if somebody was seeking that

1 information, and they asked the ALP or John Curtin House  
2 for it, and had legitimate reasons and proper inquiry,  
3 that they would probably provide it.  
4

5 Q. And wasn't the thrust of this memo, as you understood  
6 it, in this particular respect, that it was likely that  
7 the full facts, or the true facts, if I can call it that,  
8 on the issue of the benefit to the ALP from the  
9 transaction, might be disclosed as part of the inquiry  
10 that was foreshadowed in the press clipping attached to  
11 the November memo?

12 A. Sorry? Your question was the negative at the front,  
13 I think.  
14

15 Q. Yes. I will repeat it for you.

16 A. Thank you.  
17

18 Q. And wasn't the thrust of this memo, as you understood  
19 it, in this respect - that is, the sentence I am  
20 addressing you to - that it was likely that the full facts  
21 or the true facts, if I can call them that, on the issue  
22 of the benefit to the ALP from the transaction, might be  
23 disclosed as part of the inquiry that was foreshadowed in  
24 the press clipping attached to the November memo?

25 A. Are you asking me if I think that's --  
26

27 Q. As you understood it when you got the document?

28 A. I just understood that the benefit to the ALP had not  
29 been disclosed publicly at the date of this document.  
30

31 Q. And might end up being disclosed publicly if an  
32 inquiry along the lines of the one in the press clipping  
33 went ahead?

34 A. But that could well have been the case, but I - all  
35 I'm seeing here is that the statement which says that the  
36 ALP benefit has not been disclosed yet, and I accept that  
37 that was a confidential document at that stage.  
38

39 Q. I will ask you again, because it is a topic I  
40 explored with you yesterday: isn't what's behind that  
41 remark, as you understood it back then, that within the  
42 Lend Lease companies there was concern that there would be  
43 disclosed publicly the true extent of the benefit to the  
44 ALP in this transaction?

45 A. There wasn't any concern that I knew of from Lend  
46 Lease, within the Lend Lease companies. I mean, we had  
47 been working on the transaction from July, July 1991, and

1 all the way through, from some time after my discussions  
2 with Mr Hogg, the concept of the ALP getting a cash flow  
3 benefit out of that arrangement or out of the lease was  
4 fairly obvious in reports and recommendations from BZW,  
5 from Hambros, from Westpac. I mean, I saw that as part of  
6 John Curtin House's right to negotiate, if they so wished.  
7 I mean, what happened - what John Curtin House did with  
8 the cash flows was its business, I thought, so I didn't  
9 have any - I mean, I personally wouldn't want to - would  
10 not think there was any problem with that.

11

12 Q. All right. Let me ask you this: did you believe,  
13 back in the end of 1991, when, as you understood it,  
14 Mrs Morris was dealing with Mr Collins and ultimately  
15 Mr McCann was dealing with an AVO person concerning this  
16 transaction, that the government was competently and  
17 appropriately represented in those discussions?

18 A. I believe so, yes.

19

20 Q. Yes. That was an assumption you made, wasn't it?

21 A. Yes, as I commented on that earlier - that the  
22 Commonwealth owned a lot of property, leased a lot of  
23 property, had a big negotiating team - had been doing it  
24 for years.

25

26 Q. But that was an assumption you made at the time?

27 A. It was a belief I had, not just an assumption.

28

29 Q. Quite. I am not suggesting something other than  
30 that.

31 A. Right.

32

33 Q. That is what you believed, yourself, at the time?

34 A. Yes.

35

36 Q. And that is why you answered the questions you were  
37 asked this morning about whether or not you thought this  
38 transaction was uncommercial in the way that you did  
39 answer those questions, isn't it?

40 A. I believe it was, yes.

41

42 Q. That your belief was that these were two big boys  
43 negotiating a commercial transaction, and they were each  
44 capable of looking after themselves?

45 A. Yes.

46

47 Q. And that's why you held the view you expressed this

1 morning, that you did not regard this transaction to be  
2 uncommercial, isn't it?  
3 A. That is correct. I saw a clear line between what the  
4 ALP, John Curtin House, did with its part of the deal, and  
5 a clear line with the Commonwealth negotiating its part of  
6 the deal.  
7  
8 Q. You didn't mean to convey to the Commissioner, did  
9 you, in answering those questions this morning, that you  
10 had put yourself in the shoes of the Commonwealth in this  
11 transaction, made an assessment of it, and decided that in  
12 the interests of the Commonwealth it was a perfectly  
13 satisfactory commercial transaction?  
14 A. No, no.  
15  
16 MR FOSTER: That's all I wish to ask Mr McFadden,  
17 Commissioner.  
18  
19 THE COMMISSIONER: Thank you, Mr McFadden. You have had  
20 a long run there. We are very grateful to you for having  
21 come. You are now free to leave. If we need you again,  
22 we will let you know. I hope that won't happen.  
23  
24 THE WITNESS: Thank you, Commissioner. Thank you,  
25 Mr Foster. Do these documents stay here?  
26  
27 MR FOSTER: For the moment. I must say, Mr McFadden, we  
28 will return them to you.  
29  
30 THE WITNESS: Including the bits you took out?  
31  
32 MR FOSTER: Yes.  
33  
34 THE WITNESS: As evidence?  
35  
36 MR FOSTER: Yes.  
37  
38 THE WITNESS: Thank you.  
39  
40 **<THE WITNESS WITHDREW**  
41  
42 MR FOSTER: I call Mr Hurrell.  
43  
44  
45  
46  
47

1 <BRYAN MAXWELL HURRELL, affirmed:

[12.13pm]

2  
3 <EXAMINATION BY MR FOSTER:

4  
5 MR FOSTER: Q. Would you tell us, please, Mr Hurrell,  
6 your full name, current address and occupation?

7 A. Brian Maxwell Hurrell, with a "Y" in the Bryan. My  
8 current address is 4 Clifford Crescent, Melba, in the ACT,  
9 and I am retired.

10  
11 Q. Have you signed a statement for the purposes of this  
12 inquiry dated 23 August 2004?

13 A. I have.

14  
15 Q. Could I show you that document. Is that that  
16 statement?

17 A. It is.

18  
19 Q. Are the facts and matters stated therein true?

20 A. They are.

21  
22 **EXHIBIT #61 STATEMENT OF BRYAN HURRELL DATED 23/8/2004 AND**  
23 **DOCUMENTS REFERRED TO IN STATEMENT, BARCODED WITS.024.0001**

24  
25 MR FOSTER: Q. Do you have a copy of your statement  
26 there?

27 A. Yes, I do.

28  
29 Q. You have said in your statement in paragraph 3 that  
30 you were the regional manager of the ACT branch of the  
31 Australian Valuation Office from 1991 to 1996; do you see  
32 that?

33 A. Yes.

34  
35 Q. I think before that you were employed as a valuer; is  
36 that right?

37 A. That's correct, yes.

38  
39 Q. Had you been employed within the taxation office up  
40 until 1987?

41 A. Yes, I had.

42  
43 Q. Was that because up until that point the AVO was part  
44 of the Tax Office?

45 A. Yes.

46  
47 Q. It was established, I think, as you say in

1 paragraph 2, in 1987, as a separate business line within  
2 the Department of Administrative Services?  
3 A. Yes.  
4  
5 Q. There were other business units within the Department  
6 of Administrative Services in 1990 and 1991, were there  
7 not?  
8 A. There were.  
9  
10 Q. For example, the Australian Property Group?  
11 A. Yes.  
12  
13 Q. And Australian Estate Management?  
14 A. Yes.  
15  
16 Q. And there were others which I won't worry about at  
17 the moment. That meant, did it not, that in 1990, 1991,  
18 1992, the APG, AEM and AVO were all part of the Department  
19 of Administrative Services?  
20 A. That's correct.  
21  
22 Q. You have said in paragraph 4 of your statement that  
23 the AVO probably did about 99 per cent of the valuations  
24 required by the APG; do you see that?  
25 A. Yes.  
26  
27 Q. That had a long history, apparently, from what the  
28 next sentence says; is that right?  
29 A. That's correct.  
30  
31 Q. The valuations that you speak of there, are they,  
32 first of all, valuations of land?  
33 A. They were predominantly valuations of - for rental  
34 assessment purposes, for Commonwealth tenancies.  
35  
36 Q. Could you explain that a little more? What function  
37 did the AVO perform in that regard?  
38 A. Well, for example, the Australian Property Group may  
39 well be representing a tenant, a Commonwealth department  
40 or agency, and they will be assuming or developing a lease  
41 arrangement and within that lease arrangement, obviously,  
42 there are rental issues to be determined. We provided  
43 them with independent advice on rental levels.  
44  
45 Q. Those rental levels, generally speaking, involved,  
46 firstly, a consideration of the past and a consideration  
47 of the present?

1 A. Generally the rental advice that we provided for APG  
2 was market rentals at a particular date.  
3  
4 Q. Yes. And, of course, you were in a position, as it  
5 were, as a group of valuers within the AV0, to get a good  
6 handle on what market rentals were as at a particular  
7 date, if that date was current to the time at which you  
8 were looking at it; would that be right?  
9 A. That's correct.  
10  
11 Q. Because it was your business to understand what the  
12 current market rental rates in particular areas of  
13 Canberra were?  
14 A. Yes.  
15  
16 Q. You say in paragraph 6 that you were aware that the  
17 AV0 received a request for a valuation on or about  
18 1 November 1991, and then you give the reference to the  
19 document, it is CH94.002.0063-0064. Could the first page  
20 of that be brought up on to the screen? Then I would ask  
21 would you indicate to the reporter, when you have had a  
22 chance to read that, to move to the second page. I just  
23 want to ask you some questions about this document.  
24 A. Yes.  
25  
26 Q. I am sorry, you haven't had a chance to see the  
27 second page?  
28 A. I have seen it before.  
29  
30 Q. First of all, I think you have said in paragraph 6 of  
31 your statement that you recall that at the time of the  
32 request you were away at a regional manager's conference?  
33 A. That's correct.  
34  
35 Q. Did you go back and check your diary in order to  
36 establish that fact, or is it something you remember?  
37 A. It is something that I remember. It is something  
38 that I was - I would have checked in the - in the previous  
39 inquiry.  
40  
41 Q. Right.  
42 A. But I haven't checked it recently, because I haven't  
43 got access to diaries in that era.  
44  
45 Q. Do you recall where the regional managers' conference  
46 was?  
47 A. I don't, no. I could certainly - it would have been

1 in one of the southern states.

2  
3 Q. Do you recall for how many days you were away from  
4 Canberra on that occasion?

5 A. The regional managers' conferences generally spanned  
6 three days.

7  
8 Q. So is this the position, to the best of your  
9 recollection, you would have been back into the Canberra  
10 office fairly soon after this letter of instruction had  
11 come from the APG?

12 A. I assume so.

13  
14 Q. When a letter of instruction came from the APG in  
15 respect of advice or assistance being sought for a lease  
16 transaction, what was the procedure that was followed  
17 within your office in 1991, in terms of opening files and  
18 attending to the tasks required of you?

19 A. The request in normal circumstances would have come  
20 through the regional manager's "in" tray to me, in that  
21 position. If I was not there, then it would have gone to  
22 the next senior valuer, who deals with that particular  
23 aspect of our work, and he would then allocate that work  
24 to the appropriate valuer - he or she.

25  
26 Q. Do you know what actually happened on this  
27 occasion - that is to say, the occasion when this  
28 particular instruction came in and you were away?

29 A. No, I can't recall.

30  
31 Q. Was Mr Jeffress the next person in line who might  
32 have received the allocation task and thus allocated it,  
33 for example, to himself?

34 A. He was the senior valuer and, in fact, the head of  
35 the commercial unit within the office at that particular  
36 time. He was a valuer of about 17 years experience.

37  
38 Q. So you would have expected, in the ordinary course,  
39 if I can put it that way, that, in your absence, this  
40 letter would have been handed to him?

41 A. Yes.

42  
43 Q. Can you just tell us what happens then, in terms of  
44 what your office did in 1991 at around this time, in terms  
45 of opening files and how you stored material in relation  
46 to a task such as the one dealt with in this letter?

47 A. There more than likely would have been a file already

1 opened. There are procedures in place where if a file was  
2 not opened, a new file would be opened. It would be  
3 recorded and stored in our blocking section filing  
4 cabinets - suburb by blocking section.

5

6 Q. "Block" meaning the part of the title reference?

7 A. Part of the title, yes.

8

9 Q. When you said in this case there would probably have  
10 already been a file opened, what did you mean by that?

11 A. We do work on - for statutory purposes, we do work  
12 for sale and purchase for the ACT government, and there  
13 may well have been work done previously on advising the  
14 ACT government of the value of that particular block of  
15 land.

16

17 Q. I see. Could I show you a file from the AVO, and  
18 there is some material in it which I will take you to in a  
19 moment. The cover, for our purposes, has a barcoding on  
20 it AVO.011.0089, but in the condition in which it was kept  
21 by your office it appears to be marked as "Barton Section  
22 22, Part of Section Sec 5/22", it has on the top of it  
23 "ID 13026" and then another number to the right of it  
24 "214-Pt22-000"; do you see that file?

25

26 A. Yes.

27

28 Q. First of all, is that an Australian Valuation Office  
29 file?

30

31 A. Yes.

32

33 Q. As it appears?

34

35 A. It is.

36

37 Q. The number written across the top on the left-hand  
38 side above the printed material, "ID13026", can you tell  
39 us what that signifies?

40

41 A. That was just a property ID which was used in our  
42 computerised system to be able to link that particular  
43 block and section with a particular job, and these numbers  
44 here are job numbers and that's an ID - a property ID.

45

46 Q. When you said, "These numbers are job numbers" you  
47 were pointing to two sets of numbers under the column  
"Date"?

48

49 A. Yes.

50

51 Q. What are the numbers 214, et cetera, on the

1 right-hand side?  
2 A. 214 represents the code for Barton, and part 22  
3 represents the section, and the 000 represents the fact  
4 that there is not a block number at that particular time.  
5  
6 Q. On the front of the file, there is indicated, in the  
7 "Date" column, "Jan 91 ALP.HQ"; do you see that?  
8 A. Yes.  
9  
10 Q. And then next to that under the heading "Referred to"  
11 is the name "R Garnock". Then next to that is a column  
12 headed "Cleared by", and some initials; do you see that?  
13 A. Yes.  
14  
15 Q. What is meant to be signified by someone putting  
16 initials in the column "Cleared by"?  
17 A. It is generally meant that he has completed the task.  
18  
19 Q. The date next to that, immediately to the right of  
20 it, is 11 June 1991; do you see that?  
21 A. Right.  
22  
23 Q. Does that mean that whatever it was that Mr Garnock  
24 did in respect of a January 1991 instruction for the  
25 ALP HQ was completed by 11 June 1991?  
26 A. Or - yeah, or, in fact, it appears from those  
27 differentials in dates of six months, that it is sort of a  
28 job that may well not have been preconcluded or actioned.  
29  
30 Q. Something that might have been started but never  
31 finished?  
32 A. Mmm-hmm, or withdrawn.  
33  
34 Q. Or withdrawn?  
35 A. Yes.  
36  
37 Q. Do you have any recollection, at this stage, what it  
38 was that Mr Garnock had been asked to do in January 1991  
39 in respect of the ALPHQ in Section 22 Barton?  
40 A. I am sorry, I wouldn't know. I couldn't recall that.  
41  
42 Q. Under his name, there is written in a bracket:  
43  
44 *No Further Action.*  
45  
46 Do you see that?  
47 A. Yes.

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Q. Does that suggest anything to you?

A. Well, it appears as though the job has been withdrawn.

Q. Then it is crossed through and it recommences, as it were; is that right?

A. Well, there is another job that has been submitted. Whether it is the same job or not --

Q. You wouldn't know?

A. I don't know.

Q. Can you read those letters?

A. Yes. The first one says "UVC", which is the unimproved capital value.

Q. And it looks like November 1991, does it?

A. No, no, underneath that is "UV91". One of those represents the current market value of the land - a request for the current market value of the land. The second one represents the unimproved value for statutory purposes, for rating purposes and land tax.

Q. What is the number under those?

A. That's the job number which we enter into our valuation office information system, and that's the number under which the valuer then submits the timetable on the task, the fees generated from that process.

Q. And the job number on this particular file is 12489, is it?

A. That's correct.

Q. And then next to that, in the column "Referred to", is:

*Sup. Valuer*  
*Val. Clerk*  
*O.C. Reg.*

A. The "Sup valuer" is the supervising valuer. Mr Garnock - I just can't recall at that time whether he was the supervising valuer or not. "Val clerk" is the valuation clerk who submits the information into our valuation office information system and the "OC clerk" is the registrar who makes up the - who puts the papers on

1 the file and makes sure that folios were numbered,  
2 et cetera. They are sort of - those sort of roles within  
3 the organisation have been superseded as we have changed  
4 with - over the years, with computers, yes.

5

6 Q. Next to the first entry "Sup valuer" there is a date  
7 18/9/91; do you see that?

8 A. Yes.

9

10 Q. Does that mean that the matter was, as it  
11 were - whatever it was that was happening - closed off at  
12 that point?

13 A. No, that would have meant that her task at that  
14 particular time would have been completed, and it has then  
15 sort of been concluded by Mr Garnock on 6 January 1992.

16

17 Q. Do we take it from the set-up of what I have just  
18 taken you through, that at least in respect of what  
19 Mr Garnock signed off on as 6 January 1992, it was the  
20 same task as is referred to immediately above with the  
21 "Sup Valuer", "Val Clerk", "OC Reg"?

22 A. I would assume so.

23

24 Q. All right. This file could have had within it a  
25 bundle of papers. Have you had a chance to look at these  
26 papers that I am now showing you in recent times?

27 A. I had a look at them yesterday. They don't relate to  
28 that.

29

30 Q. They don't seem to?

31 A. No.

32

33 Q. They don't seem to be papers out of this file, do  
34 they?

35 A. No, I think you will find that they may well relate  
36 to work that has been done in that other file.

37

38 Q. On this file that I showed you the file cover  
39 appears, quite clearly, to be unconnected with the  
40 instruction that was received by your office on 1 November  
41 of 1991, in connection with the tasks that Mr Jeffress  
42 ultimately undertook at that time?

43 A. Yes. These papers on this particular file, but in  
44 fact this file was superseded by 5/22 when the blocking  
45 section changed and they should - this should in fact be  
46 part of the other file.

47

1 Q. All right. And the papers that I am showing you that  
2 are clipped together, notwithstanding that they came to us  
3 from the department in this file cover I have just been  
4 asking you about, should in fact be in the other file?

5 A. Part of that. They should have been consolidated.  
6

7 Q. But, nonetheless, they are clipped together, are they  
8 not?

9 A. Yes.  
10

11 Q. And have you had a chance to look at them with a view  
12 to satisfying yourself whether they comprise all the  
13 paperwork that you recall existed back in 1991 in  
14 connection with the task asked to be undertaken in that  
15 letter of instruction of 1 November 1991?

16 A. From my viewpoint, yes.  
17

18 Q. In other words, to the best of your recollection,  
19 this is all the paperwork that was created within the AVO  
20 at that time in connection with that task?

21 A. Yes.  
22

23 Q. And when I say "this", I am showing you the bundle of  
24 papers I took out of the file?

25 A. Yes.  
26

27 MR FOSTER: Commissioner, I will tender the file cover  
28 and I will also tender the bundle of papers that I have  
29 just shown the witness, but may I do so separately, so  
30 that we know what we are doing?  
31

32 **EXHIBIT #62 AUSTRALIAN VALUATION OFFICE FILE COVER SHEET -**  
33 **BARTON SECTION 22 PART OF SECTION 5/22, ID 12306,**  
34 **214-PT22-000, BARCODED AVO.011.0089**  
35

36 **EXHIBIT #63 MATERIAL CONTAINED WITHIN AUSTRALIAN VALUATION**  
37 **OFFICE FILE - BARTON SECTION 22 PART OF SECTION 5/22,**  
38 **ID 12306, 214-PT22-000, BARCODED AVO.011.0090-0116**  
39

40 MR FOSTER: Could I have access to those two exhibits in  
41 a moment.  
42

43 Q. I am now showing you a file which appears to be an  
44 AVO file; would you agree?

45 A. Yes.  
46

47 Q. It has information referable to this particular block

1 of land, does it not?  
2 A. It does.  
3  
4 Q. And it has an ID number of 15159?  
5 A. Yes.  
6  
7 Q. The first entry on the front of it appears to be "UV  
8 28/2/92"; do you see that?  
9 A. Yes.  
10  
11 Q. At the bottom somebody has written in red "File  
12 Commenced 1991"; do you see that?  
13 A. Yes.  
14  
15 Q. That file cover has our barcoding AV0.001.0001.  
16 When one comes to look at what is in that file cover in  
17 terms of papers - are these, by the way, meant to be filed  
18 chronologically with the --  
19 A. They are.  
20  
21 Q. -- the most recent material on the top of the file  
22 and the furthest in date at the back?  
23 A. Yes.  
24  
25 Q. The back of the file has within it what appears to be  
26 a fax and it is a fax from the Australian Capital  
27 Territory Department of Environment, Land and Planning,  
28 Land Development Branch, to Mr Garnock, apparently of  
29 11 June 1991; do you see that?  
30 A. Yes.  
31  
32 Q. That is --  
33 A. Well, the - 29 December.  
34  
35 Q. The witness has pointed out that it is in fact a fax  
36 of 29/12/1990 - or the 20th, perhaps, of the 12th, 1990?  
37 A. Yes.  
38  
39 Q. Having regard to the imprint across the top of the  
40 fax, it would appear that the document was transmitted on  
41 20 December 1990; would you agree?  
42 A. Yes.  
43  
44 Q. And the material I initially showed you, with the  
45 date 11 June 1991 on it, appears to be original black ink  
46 writing on that fax written at some later point in time;  
47 is that it?

1 A. That's correct.

2

3 Q. Did you want to add to that?

4 A. No, that's fine. It is just that there will be a job  
5 sheet on this particular file which will reconcile with  
6 that number that's on the other file that we - this one -  
7 or the one prior to that.

8

9 Q. Yes. But it is perfectly plain that filed within  
10 this folder, or file cover that I initially showed you a  
11 moment ago, is material that goes back to December 1990,  
12 notwithstanding that the first entry on the file cover is  
13 1992?

14 A. Correct.

15

16 Q. Have you had a chance to look at this bundle of  
17 papers that I have just taken out of this file cover I was  
18 currently showing you?

19 A. Yes.

20

21 Q. Are you reasonably satisfied that that bundle  
22 comprises the balance of material held at the AVO in  
23 respect of Block 5 Section 22, both in terms of land  
24 valuations and any other work done from 1990 forward?

25 A. The totality of the work, in my view, would be held  
26 on this and the other file.

27

28 Q. So, taken together, the two bundles of papers that I  
29 have just shown you over the last few minutes, would be  
30 the totality of the papers held by the AVO in connection  
31 with both the land valuation and the rental work done in  
32 1990 and 1991?

33 A. That's my understanding. Yes.

34

35 MR FOSTER: Commissioner, I will tender, if I may, again  
36 separately, the file cover I just showed the witness,  
37 which bears our barcoding AVO.001.0001, and then, as a  
38 separate exhibit, the bundle of papers that was contained  
39 within that file.

40

41 **EXHIBIT #64 AUSTRALIAN VALUATION OFFICE FILE COVER SHEET -**  
42 **BARTON SECTION 22, BLOCK 5, ID 15159, 214-22-5,**  
43 **BARCODED AVO.001.0001**

44

45 **EXHIBIT #65 AUSTRALIAN VALUATION OFFICE FILE - BARTON**  
46 **SECTION 22, BLOCK 5, ID 15159, 214-22-5,**  
47 **BARCODED AVO.001.0002-0203**

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MR FOSTER: Q. Could I show you again exhibit 63. We see towards the back of that bundle of papers comprising exhibit 63 there is the original letter from Mr Ireland to the general manager AVO of 1 November 1991, is there not?  
A. There is.

Q. In that bundle that original letter has these numbers on it for the barcoding of this inquiry, AVO.011.0105 and AVO.011.0106; is that right?  
A. That's right.

Q. You can see that the letter is addressed to the general manager of the AVO at Northbourne Avenue. Do you see that?  
A. Yes.

Q. But it is marked "Attn: Mr Jeffress".  
A. Yes.

Q. Does that suggest to you, at least, that someone may have spoken to him about this task before this letter was sent?  
A. It does.

Q. At the bottom of the page on the original there is in black ink some writing:

*\$280-\$285 net!*

And then under that:

*\$400,000 contribution to fitout over  
15 years.  
6,050m2 and amenities of 150m2.*

Do you recognise that writing?  
A. Yes.

Q. Whose is it?  
A. Mr Jeffress's writing.

Q. There is a bracket next to the first dot point on the second page, is there not?  
A. There is.

Q. The other observation I just want to secure your

1 agreement to is that the letter appears to have been  
2 signed in blue ink by Mr Ireland and dated 1 November.  
3 The "1" is in blue ink?  
4 A. That's correct.  
5  
6 Q. And it appears to be the same pen that signed the  
7 letter; would you agree?  
8 A. Yes.  
9  
10 Q. In public service behaviour at the time it was common  
11 to have letters typed up without the actual date on it and  
12 to, in hand, write the actual date before the month, was  
13 it not?  
14 A. Yes.  
15  
16 Q. The next part of the file, according to this bundle  
17 of papers, comprises the document "Valuation Report",  
18 being a document of six pages, and having in our barcoding  
19 AV0.011.0098-0104; would you agree?  
20 A. Yes, I agree.  
21  
22 Q. 0104 seems to be a schedule of outgoings prepared by  
23 someone within the AV0?  
24 A. Correct.  
25  
26 Q. I can't tell particularly, but I will suggest to you  
27 that the signature on the document within this bundle of  
28 papers appears to be an original; would you agree?  
29 A. It is.  
30  
31 Q. Does that suggest that the original valuation report  
32 was retained on this file?  
33 A. Can I just see - no, that would have been --  
34  
35 Q. A counterpart, is that what you mean?  
36 A. I would have thought that our original report would  
37 have been sent to our client, under normal circumstances.  
38 In some cases it may well have been faxed and the original  
39 report retained on our file, but under normal  
40 circumstances the original would go to our client.  
41  
42 Q. And then we see the next document in this bundle is  
43 marked with a barcoding AV0.011.0097. Have you seen that  
44 before?  
45 A. Well, I saw it yesterday - when I looked at the file.  
46  
47 Q. Do you know what that is?

1 A. Not intimately. It appears to reflect a rental level  
2 for a certain tenancy in some location, but there is  
3 nothing on there that identifies the property.  
4  
5 Q. It doesn't appear to relate to Centenary House in any  
6 way, other than perhaps to be an indication of what rents  
7 might have been being charged in some other area?  
8 A. Yes.  
9  
10 Q. Is that right?  
11 A. That's correct, yes.  
12  
13 Q. So it may be a bit of research that Mr Jeffress did?  
14 A. Yes.  
15  
16 Q. Next in the bundle is a handwritten page  
17 AV0.011.0096, is there not?  
18 A. Yes, there is.  
19  
20 Q. Is that a page which appears to have Mr Jeffress's  
21 handwriting on it?  
22 A. Certainly.  
23  
24 Q. The next page in the bundle, going forward from the  
25 back, as I have been, is AV0.011.0095; do you see that?  
26 A. Yes.  
27  
28 Q. That appears to be a typescript document upon which  
29 Mr Jeffress has written in blue ink; would you agree?  
30 A. Yes.  
31  
32 Q. It appears to have a date of 2 June 1992 on it; do  
33 you see that?  
34 A. Yes.  
35  
36 Q. Do you know anything about the circumstances in which  
37 that document came to be prepared?  
38 A. Not that I can recall.  
39  
40 Q. I think the next document, going forward in the  
41 bundle, is AV0.011.0094, which appears to be a copy of the  
42 same document but without the handwriting; would you  
43 agree?  
44 A. I agree.  
45  
46 Q. Then the next document is barcoded AV0.011.0093; do  
47 you see that?

1 A. Yes.  
2  
3 Q. That's an Excel spreadsheet of some kind?  
4 A. That's right.  
5  
6 Q. Do you know whether Mr Jeffress prepared that  
7 document or whether it was prepared by someone else and  
8 given to him?  
9 A. I can't recall.  
10  
11 Q. You didn't prepare it?  
12 A. No.  
13  
14 Q. The next document has a barcoding AV0.011.0092. Do  
15 you see that?  
16 A. I do.  
17  
18 Q. Whose handwriting is on that document?  
19 A. It appears as though it is Mr Jeffress's handwriting.  
20  
21 Q. The last three documents I showed you are all on the  
22 file above the one which is AV0.011.0095, aren't they?  
23 A. Yes.  
24  
25 Q. Then the second-last document on the file is a  
26 carbon, or a copy letter, being the covering letter to the  
27 valuation, and it has the barcoding AV0.011.0091. Do you  
28 see that?  
29 A. Yes.  
30  
31 Q. That has your original signature on it, does it not?  
32 A. It has my name typed, and my - it has been  
33 countersigned by Graham Jeffress.  
34  
35 Q. By Mr Jeffress?  
36 A. By Mr Jeffress.  
37  
38 Q. I see. So that is not your signature but it is  
39 Mr Jeffress signing over your name his own signature; is  
40 that right?  
41 A. That is it.  
42  
43 Q. Is the red ink writing on this document his?  
44 A. Yes, I believe so.  
45  
46 Q. Then the top document is a yellow document bearing  
47 the barcoding AV0.011.0090. Do you see that?

1 A. Yes.  
2  
3 Q. What is that document and what purpose did it serve  
4 in 1991 in your organisation?  
5 A. It is a valuation statistical - gather of  
6 statistical information that relates to the particular  
7 job. It is a computerised system that we have in place  
8 where we capture all the information relating to the  
9 particular task. It contains all of the property  
10 descriptions. It is also something whereby we can readily  
11 locate a job. We can look - we can keep an eye on its  
12 status, whether it is - its timeliness and, of course,  
13 eventually record all of the times so we can measure the  
14 valuer's productivity and also the fees that are earned  
15 against a particular client code for a particular job that  
16 is undertaken.  
17  
18 Q. The format that is in typescript of this document,  
19 leaving aside the box with the "Valuer's Time" heading in  
20 it, is it generated by computer?  
21 A. Yes.  
22  
23 Q. So that it required someone to input data into order  
24 to create some of that information; is that right?  
25 A. Yes. When the job is lodged within the Australian  
26 Valuation Office, the valuation clerk enters all of that  
27 particular data and then the secondary part relates to the  
28 valuer, who enters part --  
29  
30 Q. Who does the work?  
31 A. Yes, who does the work. And then the charge dockets  
32 and the billing and the like are all done by the valuation  
33 clerk when the job is finalised.  
34  
35 Q. What you indicated in that answer was that the  
36 material above the dotted line, which appears about a  
37 third of the way down the page, is entered by the  
38 valuation clerk, and that the handwriting that appears  
39 below that would basically be done by the valuer  
40 completing the task?  
41 A. Until --  
42  
43 Q. Until the last --  
44 A. Until the last entry.  
45  
46 Q. So, looking at this document, it would appear that  
47 the letter of instruction was received on 7 November,

1 would it not?  
2 A. It would either be the 7th or the day before the 7th.  
3 It just depends when the letter got into the office. If  
4 it came in late in the evening it may not have been lodged  
5 until the next day, but it would be very close to 7/11.  
6  
7 Q. And it has on there - that is, on this document,  
8 which, if I haven't mentioned, is AV0.011.0090 - a date  
9 required of 27 November 1991; do you see that?  
10 A. I can.  
11  
12 Q. That would have been information that was entered at  
13 the time this data was inputted; is that right?  
14 A. Yes; that's correct.  
15  
16 Q. The client code is shown as 45006, and the name is  
17 DAS Australian Property Group; do you see that?  
18 A. Yes.  
19  
20 Q. And the date allocated is 7 November 1991?  
21 A. That's correct.  
22  
23 Q. The job number is 13217?  
24 A. Correct.  
25  
26 Q. I think the rest of the information on that upper  
27 part of this yellow page is material about the location of  
28 the land?  
29 A. That's right.  
30  
31 Q. It doesn't record the owner's name, does it?  
32 A. No. The owner of the property wasn't - is not a  
33 significant - of significant interest to the valuer. We  
34 are doing the job under instructions for the property  
35 group.  
36  
37 Q. The line that says "Valuation Method" has four  
38 numbers on it. One of them is the number 3 and it is  
39 circled. What does that signify?  
40 A. It signifies a full report.  
41  
42 Q. Then "Valuation Type" has various numbers and the  
43 number 5 is circled. What does that signify?  
44 A. That would represent commercial properties.  
45  
46 Q. Then the next up line is "Property Usage Code" and  
47 the numbers 3 and 2 are there. What does that signify?

1 A. Which also relates to the commercial property, once  
2 again - that would relate to a commercial property lease.  
3 This is a broad commercial property factor. This relates  
4 to you doing a commercial property valuation, but you are  
5 looking at a lease (indicates).  
6  
7 Q. And you are pointing, when you said, "This is a broad  
8 factor", to the line "Valuation Type", and when you gave  
9 the answer you mentioned about "a lease", you were  
10 referring to the property usage code and the number 32?  
11 A. Yes.  
12  
13 Q. And then there is another line:  
14  
15 *Completed valuation status code.*  
16  
17 And the numbers 4 and 0 appear?  
18 A. Which designates that the valuation has been  
19 completed.  
20  
21 Q. And then also a line "Grade of Work" with a number  
22 3 circled.  
23 A. Yes.  
24  
25 Q. What does that signify?  
26 A. That means that it should be undertaken by a senior  
27 valuer within the organisation, which it was.  
28  
29 Q. And then "Valuation Fees", \$2,000?  
30 A. Yes.  
31  
32 Q. They in fact were charged and paid in this case?  
33 A. They were.  
34  
35 Q. How is the fee arrived at in a case such as this?  
36 A. The - I can't recall precisely, but it - there could  
37 have been an agreed fee prior to the commencement of the  
38 valuation, where in the normal client customer relations -  
39 client valuer relationship, or - and that's how most of  
40 the jobs that we did for APG through the 80s and through  
41 the 90s - we normally provide an indicative quotation and  
42 often that can be verbal.  
43  
44 Q. And then there is a line "Market Value Per Total" and  
45 it is \$1,680,000; do you see that?  
46 A. That would represent the estimated annual return on a  
47 rental basis. For example, if there was - if it was 4,000

1 square metres at \$150 per square metre, then it would be  
2 \$600,000 per annum.

3

4 Q. What seems to be --

5 A. So it is really just something - it is a statistical  
6 calculation of the rent recommended by the net lettable  
7 area - the estimated net lettable area.

8

9 Q. And we see that just to the right of there someone  
10 seems to have multiplied 280 by 6 to get 1,680; is that  
11 right?

12 A. Yes.

13

14 Q. And then "Date Completed" has 27 November 1991?

15 A. That's correct.

16

17 Q. And then the item "Charge Dkt" - "Dkt", is that  
18 docket?

19 A. Yes.

20

21 Q. 91/0134, the 28th. That's the invoice being raised?

22 A. The invoice would have been raised.

23

24 THE COMMISSIONER: Have you tendered that?

25

26 MR FOSTER: I was actually showing the witness the  
27 documents --

28

29 THE COMMISSIONER: That had been tendered earlier, but  
30 nothing else.

31

32 MR FOSTER: No, nothing further. Just to make clear,  
33 that's exhibit 3 which I was showing the witness at that  
34 point. Could I have access to MFI1 and exhibit 12?

35

36 THE COMMISSIONER: Given the time, we will resume at  
37 2 o'clock.

38

39 **LUNCHEON ADJOURNMENT**

40

41

42

43

44

45

46

47

1           **UPON RESUMPTION:**

2  
3           MR FOSTER:    Might I approach?

4  
5           THE COMMISSIONER:    Yes.

6  
7           MR FOSTER:    Q.    Mr Hurrell, I'm showing you a document  
8                        which is MFI1, and that's a folder from the APG.  Within  
9                        that document there is what appears to be a faxed version  
10                      of the valuation report of 27 November signed by  
11                      Mr Jeffress; do you see that?

12          A.    Yes.

13  
14          Q.    I'm showing the witness, pages DOFA.009.0156 through  
15                to 162.  Now, it would appear on the top of this document  
16                that it was transmitted at about 11.38 on 27 November  
17                1991; would you agree?

18          A.    I agree.

19  
20          Q.    Your name appears on the covering letter, but is that  
21                in fact your signature?

22          A.    No, that's the signature of Mr Jeffress.

23  
24          Q.    There's a covering fax cover sheet which has a fax  
25                imprint of 27 November 1991, 11.37; do you see that?

26          A.    Yes.

27  
28          Q.    That's page number DOFA.009.0155, isn't it?

29          A.    Yes, it is.

30  
31          Q.    It would appear that it was Mr Jeffress who faxed the  
32                report to Mr Collins at the APG on the 27th?

33          A.    Yes.

34  
35          Q.    Then subsequently, in the same file, a little later  
36                on the same day, there is a fax sheet which has the  
37                marking DOFA.009.0154, which suggests that the schedule of  
38                outgoings had been omitted from the prior fax and was then  
39                being faxed to Mr Collins by Mr Jeffress; would you agree?

40          A.    Yes.

41  
42          Q.    Within the same file, MFI1, there is what appears to  
43                be the original valuation between pages DOFA.009.0135 and  
44                0142; would you agree?

45          A.    Yes.

46  
47          Q.    And that includes the schedule of outgoings?

1 A. Correct.  
2  
3 Q. The signature over your name on folio DOFA.009.0135  
4 is Mr Jeffress signing for you again, is it?  
5 A. It is.  
6  
7 Q. Were you in the office, do you recall, at the time  
8 this report was finalised and faxed off?  
9 A. I can't recall. I can't say. Under normal  
10 circumstances, had I been there, I would have signed the  
11 covering letter.  
12  
13 Q. Because if you had been there and you hadn't signed  
14 the covering letter, that would have been an unusual  
15 circumstance; would that be right?  
16 A. Yes. The senior valuers were empowered to take on  
17 that responsibility in the event of the regional manager  
18 not being in-house.  
19  
20 Q. Did you in fact have any input into that valuation  
21 report of 27 November 1991?  
22 A. No input other than discussions with Mr Jeffress and,  
23 more than likely, Mr Robson in discussing aspects of the  
24 valuation in relation to the base rent and to the  
25 discussions which had taken place on the clause concerning  
26 the escalator.  
27  
28 Q. Could I just clear up one matter. Do you see in  
29 paragraph 16 of your statement you refer to a document  
30 called "Historical Rentals by Locale"?  
31 A. Yes.  
32  
33 Q. Which appears to be a 1992 document, do you see that?  
34 A. Yes.  
35  
36 Q. There isn't any doubt in your mind now, having looked  
37 at the file, is there, that that document so styled and  
38 referred to in that paragraph was not something that was  
39 created before the valuation report was sent out on  
40 27 November 1991?  
41 A. That appears so.  
42  
43 Q. The 1992 Historical Rentals by Locale document was  
44 created in May 1992 and for a purpose other than providing  
45 a valuation to the APG; would you agree?  
46 A. Well, I can't comment on that. The information  
47 obtained in that document may well have been - our valuer

1 may well have been privy to that prior to the date, but  
2 I'm just not sure why that document was created - or I  
3 can't recall.  
4

5 Q. Ordinarily, in your experience, would a valuer be  
6 prepared to express an opinion as to the likely rate of  
7 rental growth going forward from a given point in time for  
8 15 years?

9 A. In terms of the length of a lease, it's unusual.  
10 There have - on many occasions valuers are asked to  
11 comment into the future, and, of course, all that we can  
12 base that upon is our analysis of market conditions that  
13 have preceded, and then use our cautious approach to  
14 projecting.  
15

16 Q. What you have just spoken about is, in effect,  
17 forecasting?

18 A. Forecasting is not a term that's ever been part of a  
19 valuer's repertoire, I would have thought.  
20

21 Q. What I'm getting at is that, ordinarily, would a  
22 valuer not regard as a highly speculative exercise the  
23 task of deciding whether or not a particular fixed rate of  
24 escalation year by year, going forward for a period of  
25 15 years, was a reasonable or likely one in terms of  
26 what's actually likely to happen?

27 A. In answering that question, I think you really need  
28 to go to back to the instructions that we received from  
29 the client. If the client asks us to undertake a  
30 valuation, then we do what we consider to be  
31 professionally prudent in providing that information to  
32 our client, and there are many cases, I would suggest,  
33 that with most developments that occur anywhere, there are  
34 projections and feasibilities and the like, and valuers  
35 are often involved in producing this data for clients.  
36

37 Q. But as a valuer, and one of some experience, would  
38 you not agree that the task of predicting likely future  
39 rent movements for more than a couple of years ahead is,  
40 in essence, a speculative one?

41 A. It's something that really you need to draw on all of  
42 your expertise to be able to formulate, you know, that  
43 opinion.  
44

45 Q. If a client asks you to do that, you do your best to  
46 do it, recognising that it is, in effect, a speculative  
47 exercise, is that fair?

1 A. Well, no-one was crystal-ball gazing. In hindsight,  
2 we all have - obviously, situations differ, but the issue  
3 in terms of this exercise was to provide our client with  
4 an answer to a request which was not the most  
5 commonplace-type of request - in other words, the length  
6 of the lease was unusually - well, there had been  
7 precedent, 10-year escalators, and the like. Right  
8 through the 70s and the 80s in Canberra, the whole  
9 redevelopment of the Civic centre area and the city areas  
10 were based upon precommitments being delivered to  
11 developers - precommitments from the Commonwealth. So, it  
12 wasn't unusual for valuers, whether they be in the private  
13 or the public sector, to be involved in those sort of  
14 feasibility exercises.

15  
16 Q. There were not numerous examples of fixed rate  
17 escalators for a 10-year period in the Canberra market as  
18 at 1991, were there?

19 A. No.

20  
21 Q. I think in your statement in paragraph 11, you said:

22  
23 *In 1991 and 1992 I recall being aware of a*  
24 *couple of buildings with escalators. There*  
25 *was a 10 year escalator in the Scrivener*  
26 *Building developed by Lend Lease - about 8*  
27 *or 9%.*

28  
29 Does that record what you remember knowing about that in  
30 1991 and 1992?

31 A. The Scrivener example, or the AUSLIG building lease  
32 did not commence until - I believe it was October 1991.  
33 So, whether I was privy to that information then, I can't  
34 recall. There's obviously no reference to it in the  
35 valuation report, but that's a question you may pose to --

36  
37 Q. Mr Jeffress?

38 A. -- Mr Jeffress.

39  
40 Q. But what I'm getting at is, the point of your  
41 paragraph 11 was that your recollection was that at the  
42 time you were aware of a couple of buildings with  
43 escalators, and you mentioned one of them being the  
44 Scrivener Building?

45 A. Yes.

46  
47 Q. What you have just said to me is that you may not

1 have been aware of the material concerning that building  
2 as at the date this valuation report was done, is that the  
3 point?  
4 A. To be honest, yes.  
5  
6 Q. But at some stage, you think around about that time,  
7 you did learn that there was a fixed escalator of some  
8 kind in that lease?  
9 A. Yes.  
10  
11 Q. That's the only one that you could think of knowing  
12 about at that time when you were called upon to try to  
13 recall what you did know about that matter at that time?  
14 A. That's correct.  
15  
16 Q. All right. How did you come to learn of the  
17 instructions that had been delivered to the AV0 by the APG  
18 when you came back from the regional managers' conference?  
19 A. I couldn't recall, I'm sorry. It's --  
20  
21 Q. That's all right. At some stage you did speak to  
22 Mr Jeffress about the task; is that right?  
23 A. Yes.  
24  
25 Q. Was that, as it were, a consultation by one of the  
26 officers under your supervision in relation to a task he'd  
27 been asked to complete?  
28 A. It would have taken the form of a one-on-one, or  
29 possibly with one other party, discussing the aspects of  
30 the valuation I talked about previously, and also his  
31 interaction with the private valuer, McCann - Noel McCann.  
32  
33 Q. Did Mr Jeffress tell you that he had been asked to do  
34 something that was, in effect, limited by the form of the  
35 instructions he'd received?  
36 A. Not that I can recall.  
37  
38 Q. Well, that he'd been asked to do the following:  
39 first of all, to assess a reasonable market rent for this  
40 building as at 1 January 1991 - did he tell you that?  
41 A. I would have been aware of the instruction from APG.  
42  
43 Q. Yes.  
44 A. And our discussions would have covered those  
45 scenarios, or those request options.  
46  
47 Q. All right. Perhaps if I do it this way. Do you

1 remember earlier I showed you the letter of instruction.  
2 Do you recall seeing that in the context of discussing the  
3 matter with Mr Jeffress back in 1991?

4 A. I can't recall that.

5

6 Q. Could there be brought up on the screen  
7 CH94.002.0064. That's the second page, Mr Hurrell, of the  
8 letter of instruction. I just want to ask you this,  
9 perhaps: did you understand when you were talking to  
10 Mr Jeffress about the matter that the advice being sought  
11 was encapsulated in the three dot points that appear on  
12 that page, together with a general request for advice as  
13 dealt with in the last two paragraphs on that page?

14 A. Yes, I also was aware that the issue that was most -  
15 discussed at most length was the second-last paragraph,  
16 the wish of APG for Mr Jeffress to come to an agreement,  
17 that that was causing some difficulty in terms of  
18 differences of opinion on the escalator.

19

20 Q. Well, when you say it was causing some difficulty, it  
21 was causing some difficulty as between Mr Jeffress and  
22 Mr McCann, or internally at the AVO?

23 A. No, between Mr Jeffress and Mr McCann.

24

25 Q. Was this what was occurring: Mr Jeffress reported to  
26 you the substance of the discussion or discussions he'd  
27 had with Mr McCann on that matter and had sought your  
28 assistance in terms of perhaps getting some resolution on  
29 that matter?

30 A. No, I had no dealings at all with Mr McCann. The  
31 inference was, or the feedback from Mr Jeffress was that  
32 the escalator that Mr McCann was talking about was greater  
33 than the upper level which we suggested in our report. He  
34 wasn't - Mr Jeffress will be able to answer that with more  
35 clarity than myself, but that was certainly an issue.

36

37 Q. Well, I just want to clarify what you meant by that  
38 last answer. Are you suggesting there were meetings  
39 between McCann and Jeffress after that valuation report  
40 was delivered to the APG, or sent to the APG?

41 A. No, I'm not suggesting that at all. No.

42

43 Q. But you do know there were two meetings, apparently,  
44 between 1 November and 27 November?

45 A. Well, I can't recall whether there were two or 12,  
46 but I know that I spoke with Mr Jeffress on at least one  
47 occasion.

1  
2 Q. All right.  
3 A. From what I recall.  
4  
5 Q. That was about, as it were, the difference of opinion  
6 that had manifested itself in his discussions with  
7 Mr McCann about escalators?  
8 A. Yes, about their quantum, their level.  
9  
10 Q. Yes.  
11 A. Yes.  
12  
13 Q. Did you see the valuation report before it went out?  
14 A. To be perfectly honest, I don't think I would have.  
15 It appears that it's been concluded and gone out without  
16 my signature, but my best recollection is that I was  
17 comfortable with the rent and the recommendation.  
18  
19 Q. But may I put this to you: it's unlikely you saw the  
20 document in that form before it went out, given that you  
21 didn't sign the covering letter; would you accept that?  
22 A. Yes.  
23  
24 Q. So, whatever you knew about what was to be contained  
25 in that recommendation was whatever Mr Jeffress told you;  
26 is that right?  
27 A. Yes. I was certainly privy to the key components.  
28  
29 Q. Well, in particular, did he tell you that he had  
30 recommended that - I will just be precise about this - the  
31 escalation of what I might call the base rent, it's not  
32 really the base rent, but you know what I mean by that?  
33 A. Yes.  
34  
35 Q. The base rent from 1 January 1991 to the date of  
36 practical completion of the building was not to exceed  
37 10.5 per cent; did he tell you that?  
38 A. I was aware of that.  
39  
40 Q. Secondly, that 15 years from the date of practical  
41 completion for the term of the lease, he recommended that  
42 the escalator not exceed 9 per cent?  
43 A. That's correct.  
44  
45 Q. Did you know that he also recommended market reviews  
46 with a ratchet clause?  
47 A. Yes.

1  
2 Q. I think you just said a moment ago that you were  
3 comfortable with the proposition that for the 15 years of  
4 the term of the lease the escalator not exceed 9 per cent;  
5 is that right?  
6 A. That's correct, yes.  
7  
8 Q. Do we take it from that that you were prepared to  
9 support an agreement which was the effect that the 15-year  
10 escalator would be at 9 per cent?  
11 A. We were prepared to offer advice to our client that  
12 they should negotiate a lease that shouldn't exceed  
13 9 per cent.  
14  
15 Q. But that would include, wouldn't it, the proposition  
16 that if they negotiated a lease that had 9 per cent in it  
17 for the term of the lease, that was within the parameters  
18 of your advice?  
19 A. That's correct.  
20  
21 Q. Do you say you were comfortable with that, do you?  
22 A. The data that we had to use as a basis for our  
23 valuation was quite conclusive over the previous 15 - or  
24 10 to 15 years, and I was comfortable with what I was  
25 advised of prior to that recommendation.  
26  
27 Q. What data was that?  
28 A. Well, it was a variety of data from various property  
29 bulletins, property data gathered by private sector  
30 companies, property data that we held in-house, probably  
31 very similar to the data that you talked about in that  
32 historical trends document.  
33  
34 Q. But there's no record of anyone extracting data of  
35 that kind and putting it in the file as part of a research  
36 task for this valuation, is there?  
37 A. There's nothing on that file, no.  
38  
39 Q. No.  
40 A. No.  
41  
42 Q. Could I have exhibit 63 for a moment. The only  
43 material in this document that could be described as  
44 rental data, would you agree, is the folios - I will put a  
45 tag on them at the bottom so that you know, and I will  
46 nominate them as well - AV0.011.0097, and then  
47 AV0.011.0093 and AV0.011.0092.

1 A. That's correct.  
2  
3 Q. So there's no record in the file of any extraction of  
4 data or any research that was done to support this  
5 valuation, is there - apart from those three pages that I  
6 have just identified?  
7 A. On the file, those three pages are available and  
8 there would have been, you know, other data in terms of  
9 the JLW reports, the Richard Ellis reports, all of the  
10 publications that analyse property markets by capital  
11 cities and growths and the like that would have been  
12 referred to. That's what I was saying, that that sort of  
13 information would have been referred to by Mr Jeffress in  
14 arriving at --  
15  
16 Q. Well, in you expressing the view that you were  
17 comfortable with his recommendations --  
18 A. Yes.  
19  
20 Q. -- you, personally, did not go and look at  
21 publications of the kind you have just described, did you?  
22 A. No, I didn't, no. I was the manager of the office.  
23 I looked after human resources, finance, and the technical  
24 side of it as well. So it was an office of 25 to 30  
25 people. It was a --  
26  
27 Q. Yes. Well, what I'm getting at is --  
28 A. I didn't do the - I didn't sort of empower someone to  
29 do the valuation and then go in over the top of him and do  
30 it as well.  
31  
32 Q. No, you were the person in charge of the office?  
33 A. That's right.  
34  
35 Q. You expected Mr Jeffress to do the work that  
36 supported his opinions?  
37 A. Yes.  
38  
39 Q. And insofar as you had any comfort with what he  
40 recommended at all, it was a very rough and ready  
41 impression that you had, based upon no research of your  
42 own?  
43 A. Well, you can say that.  
44  
45 Q. But isn't that right?  
46 A. It's - I certainly didn't - I take offence at the  
47 "rough and ready".

1  
2 Q. It wasn't meant to be offensive.  
3 A. No.  
4  
5 Q. It was meant to be --  
6 A. It was done by a professional, a fellow of the  
7 institute.  
8  
9 Q. Quite. I wasn't trying to be offensive.  
10 A. That's all right.  
11  
12 Q. What I was getting at was this: you were relying  
13 upon him to do whatever he thought was appropriate to  
14 answer the questions he'd been asked and to provide the  
15 advice he'd been asked to provide?  
16 A. That's correct.  
17  
18 Q. You did not undertake a task of second-guessing or  
19 overriding, or accessing information of a detailed kind  
20 which was relevant to that task, yourself?  
21 A. No, personally, no.  
22  
23 Q. No. Insofar as he discussed it with you, he was  
24 discussing it with you as his superior seeking your views  
25 in relation to whatever it was that was the subject of  
26 your discussions?  
27 A. He was doing what most valuers do - bouncing ideas  
28 off not only his manager, but also other colleagues.  
29  
30 Q. You don't really know what he did to support the  
31 views expressed in the valuation report, do you?  
32 A. I would have had - during discussions with him, he  
33 would certainly have talked about the market, talked about  
34 the background and obviously convinced me that what he was  
35 recommending was reasonable.  
36  
37 Q. But you don't know, do you, yourself, really, what it  
38 was he had done to cause him to come to the position he  
39 came to which he discussed with you?  
40 A. No. He would have done his research as a valuer and  
41 he would have - he'd been through the normal sort of  
42 procedures that any professional would adopt.  
43  
44 Q. You're assuming he did that. You weren't sitting  
45 there next to him when he did whatever he did; is that  
46 right?  
47 A. Yes. I trusted him.

1  
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Q. Yes, of course you did.

A. And I - yes, I agree.

Q. You agree with my question - would you please say yes, because they can't take the nod.

A. Yes.

Q. You told Mr Morling that to have to advise on escalators of the type you were asked to advise on in the present case was not a run-of-the-mill-type situation; do you remember saying that?

A. Yes.

Q. And that was true?

A. Yes.

Q. You, yourself, did not attend any meeting with Mr McCann over this --

A. No, I --

Q. -- task that your office had been asked to complete, did you?

A. That's correct; I didn't attend any meeting.

Q. Did you understand, when you were speaking with Mr Jeffress about the task the office had been asked to carry out in November 1991, that a good deal of what I might call the commercial terms of this lease transaction had already been agreed and that your office was being asked to address three specific matters?

A. I honestly - I can't recall whether or not there was any urgency or any significance or even if a lease had actually been drafted or put together. My involvement, from what I recall, was just - and I really need to possibly have a look at where I was in November 1991, how long I was in the office for that three-week period when that request was there, I'm unsure. But I would have been aware that we were doing a job for the Australian Property Group, and that those issues that I talked about earlier were the key components of the exercise.

Q. All right. Well, the last paragraph of the letter of instruction said:

*However, if you feel this office should be given any other advice I would appreciate*

1           *it prior to agreement being reached.*

2  
3       Now, did Mr Jeffress tell you that he thought that the AVO  
4       was being asked to advise generally on the wisdom of the  
5       deal?

6       A.    I can't recall that, you know, that discussion.

7  
8       Q.    Did you think, yourself, that it was unwise of the  
9       Commonwealth to enter into a transaction which contained  
10       within it an agreement that the rent would increase year  
11       by year at a fixed percentage rate over a 15-year period,  
12       which included, as a rent review mechanism, a market  
13       review but with a ratchet clause?

14       A.    Well, I supported the recommendation.

15  
16       Q.    Well, did you think it was unwise of the Commonwealth  
17       to enter into a transaction that had those components?

18       A.    I can't say that at all, no. I wouldn't have  
19       supported the recommendation had I thought that.

20  
21       Q.    Did you think that those elements - that is to say,  
22       the length of the lease and the fact that there would be a  
23       fixed rate of escalation and the fact that the market  
24       review would be on the terms I put to you - were matters  
25       which had already been agreed before the matter came to  
26       the AVO?

27       A.    There were obviously meetings, as I said in my  
28       statement, that had gone ahead, that hadn't involved the  
29       AVO, well before we received any letter of request. So  
30       obviously whatever negotiations had taken place, they had  
31       been taken prior to us receiving our request. So there  
32       obviously had been a lot of work done behind the scenes.

33  
34       Q.    Well, did you think that it was not up to the AVO, as  
35       it were, to try to second-guess or comment upon terms of  
36       the arrangement which had already been agreed?

37       A.    No, I think - I'm not saying the terms had been  
38       agreed, or arrangements had been agreed.

39  
40       Q.    I don't mean legally, I mean in principle?

41       A.    As far as the AVO were concerned, we were asked to  
42       undertake a task for our client, and we did it in a  
43       professional manner and forwarded a recommendation. So I  
44       don't feel as though there was any undue influence. One  
45       of the great things about being a public sector valuer is  
46       you have no interest in buying, selling, leasing - you are  
47       not an agent, you are an independent valuer, and that's

1 what we've hung our hat on for the last 90 years. That's  
2 the way we approached this valuation.

3

4 Q. When you say that, you include within that your view  
5 that when it came to rent reviews, from time to time,  
6 involving the Commonwealth and its leases, the AVO had  
7 acquitted itself very well in those rent reviews?

8 A. It certainly did.

9

10 Q. That was your opinion?

11 A. Yes.

12

13 Q. Would you agree with this statement: the background  
14 research into the valuation in this case was undertaken  
15 while you were out of the office and you became aware of  
16 it when you returned?

17 A. From my memory, I would suggest that that's what had  
18 happened.

19

20 Q. And that whatever you knew about what had happened,  
21 you learnt it from what Mr Jeffress told you rather than  
22 from having any personal involvement in it?

23 A. That is correct.

24

25 Q. Would you agree that making assessments 15 years out  
26 is a very difficult thing to do?

27 A. It's a challenge.

28

29 Q. Have I put it too high?

30 A. As I said to you early on, the unusual nature of this  
31 request was the length of the term.

32

33 Q. Coupled with what you were being asked to advise on,  
34 which was a fixed rate for the length of the term;  
35 correct?

36 A. The issue was one of - as we said earlier, there were  
37 precedents - not necessarily in the commercial sector but  
38 in the retail sector - of escalators, fixed escalators  
39 over a long term, but not for the unusual term of  
40 15 years.

41

42 Q. I didn't actually say that to you. We won't worry  
43 about that. Would you agree that making an assessment  
44 15 years down the track is a very difficult assessment to  
45 make?

46 A. I'd agree with that.

47

1 Q. Yes. Would you agree that historical information,  
2 whilst obviously of some relevance to that sort of task,  
3 is of limited value when looking forward?  
4 A. I wouldn't agree with that, because when you're put  
5 in the role of a valuer, you have got very little other  
6 evidence to base your opinion upon, other than to analyse  
7 that preceding evidence and then, in terms of the future,  
8 make some sort of a judgment. As I said, it happens -  
9 it's happening all the time, with all of - you know, there  
10 are plenty of valuers around here who are making  
11 predictions for the future.  
12  
13 Q. Sure. And in a commercial context, for example, in  
14 feasibilities, as you have pointed out, people call into  
15 play their judgment on what's likely to happen in the  
16 future all the time, don't they?  
17 A. Yes.  
18  
19 Q. But it carries with it all the uncertainties and  
20 risks about predictions, doesn't it?  
21 A. Yes, it does.  
22  
23 Q. Yes. Would you agree that insofar as historical  
24 information has any value in predicting the future,  
25 usually the most relevant historical information is the  
26 most recent?  
27 A. In terms of the exercise that we were undertaking,  
28 the most recent information that we were looking at was  
29 the preceding 10 years, and we considered that to be the  
30 most relevant, particularly in a city like Canberra.  
31  
32 Q. Did you consider that perhaps the last couple of  
33 years before 1991, including 1991, was more relevant than  
34 the early one or two in that 10-year period?  
35 A. No, because you get a volatility of the market. You  
36 will know that over that period there were escalations as  
37 high as 14 per cent and as low as 6 or 7 per cent.  
38  
39 Q. In the odd building or two?  
40 A. Across the market.  
41  
42 Q. You, of course, I think you have already agreed, did  
43 not study this research, whatever it was, for the purposes  
44 of this valuation, did you?  
45 A. No.  
46  
47 Q. When you answered a question I asked you a moment ago

1 as to the most relevant historical information, you  
2 included within your answer that you considered that to be  
3 the most relevant - that is, the preceding 10 years -  
4 "particularly in a city like Canberra". What did you mean  
5 by that?

6 A. Well, I meant that it's obviously the nation's  
7 capital. It's a unique market. I talked earlier about  
8 how Canberra developed, how it redeveloped, and how  
9 precommitments and escalators were important in the  
10 development, or in previous - you know, in the previous  
11 20 years. Also the issue that, with a change of  
12 government, generally things surged in the nation's  
13 capital. That doesn't mean you should go out and purchase  
14 up big at the moment, but those issues of the fact of the  
15 political nature of the city itself.

16  
17 Q. Would you not think that the very nature of the city,  
18 in the circumstances where changes of government were part  
19 of the likely future landscape, was one of the factors  
20 that would cause one to have great pause about predicting  
21 likely future rent growths 15 years ahead?

22 A. Well, if you go back and have a look at when there  
23 were historical changes of government, in the previous  
24 20 years, you will see that there were some remarkable  
25 surges and growth.

26  
27 Q. You are quoting to me something of a general kind  
28 relating to the past, but I could just as easily quote to  
29 you what has happened since 1993, couldn't I?

30 A. Yes.

31  
32 Q. And it is to the opposite effect, isn't it?

33 A. We weren't in that predicament in 1991, were we?

34  
35 Q. My point is this: in a place which is significantly  
36 affected by government policies and needs, it would be  
37 very imprudent of anyone to predict 15 years ahead whether  
38 there would be growths in rental and at what rate they  
39 would be throughout that 15-year period, wouldn't you  
40 agree?

41 A. Well, we already discussed that earlier, that there  
42 is a danger.

43  
44 Q. Did you, as the manager of the office at the time,  
45 think that it was open to the AVO to tell the APG that  
46 that kind of structure, even if already agreed in  
47 principle, was a dangerous one for the Commonwealth to

1 undertake?

2 A. Well, I didn't, so I obviously didn't take that line.

3

4 MR FOSTER: Thank you, Mr Hurrell.

5

6 <EXAMINATION BY MR SACKAR:

7

8 MR SACKAR: Q. Mr Hurrell, if you thought that what the  
9 Commonwealth was about to embark upon by entering into an  
10 arrangement of this sort was, to quote my learned friend,  
11 "dangerous" or "imprudent", would you have said so?

12 A. Yes.

13

14 Q. Whether or not it was your role to say anything at  
15 all, if you'd formed that view, having considered what was  
16 being proposed, you would feel an obligation to say so,  
17 wouldn't you?

18 A. I would.

19

20 Q. The historic growth in Canberra, which you have made  
21 slight reference to in paragraph 10 - do you have your  
22 statement in front of you here?

23 A. Yes.

24

25 Q. You said:

26

27 *In 1991 and 1992 I was well aware of*  
28 *historical trends in rental growth rates in*  
29 *Canberra. I was also of the view that the*  
30 *9% rental escalator was an upper limit for*  
31 *future rental growth rates.*

32

33 Do you see that?

34 A. Yes.

35

36 Q. During the period that you believed that Mr Jeffress  
37 had considered, and which you, yourself, as I take it from  
38 what you said to Mr Foster, were relatively familiar with,  
39 namely the 10 or 15 years prior to that - leave aside the  
40 surges which you say occurred upon a change of  
41 government - the rental growth pattern for the previous  
42 10 to 15 years had generally been a positive one,  
43 notwithstanding differing governments being in power from  
44 time to time, of different political persuasion; would you  
45 agree?

46 A. I agree. That was the point I was trying to make.

47

1 Q. Your observation was that, whatever it was, Canberra  
2 appeared to be a unique place, for no other reason than  
3 both political parties, or all political parties, had a  
4 vested interest in making the nation's capital work;  
5 correct?  
6 A. Correct.  
7  
8 Q. You agreed that looking forward 15 years was a  
9 difficult task, but not an impossible one, was it?  
10 A. No, as I said, it was based upon the historical data  
11 that we held and the use of that data as professionals.  
12  
13 Q. Mr Foster also put to you that the most accurate  
14 indicator, presumably for the future, would be the  
15 immediate past - do you remember him asking you --  
16  
17 MR FOSTER: I object. What I put was, insofar as the  
18 past was relevant at all, the most relevant part of the  
19 past was --  
20  
21 MR SACKAR: I'm happy to accept that correction.  
22  
23 MR FOSTER: That is quite a different position.  
24  
25 MR SACKAR: Q. Mr Foster put it, and I accept the  
26 correction for the moment, insofar as the past was  
27 relevant, the immediate past was the most relevant. Do  
28 you remember him saying that?  
29 A. Yes, I do.  
30  
31 Q. I think you rejected that proposition, did you not?  
32 A. Yes - well --  
33  
34 Q. And the reason you rejected it was the commonsense  
35 reason that short periods of time can often have  
36 volatility attached to it, which would not be a true  
37 indication of past growth or trends; would you agree with  
38 that?  
39 A. That's correct.  
40  
41 Q. And no valuer, acting reasonably, would make any  
42 prediction about the immediate past, at least a short  
43 period, if you were looking to try to project forward for  
44 a lengthy period; would you agree?  
45 A. I agree.  
46  
47 Q. Can I ask you one question about your transcript

1 before Mr Morling. If I could ask for CH94.019.0079 to  
2 come up on the screen. That's page 286 of the proceedings  
3 before Mr Morling on 4 August 1994. There are two things  
4 I want to ask you about that. The first is, you will  
5 observe that the Commissioner, Mr Morling, said to you:

6  
7 *Mr Hurrell, you have given evidence before*  
8 *me previously in chambers, have you not, or*  
9 *you furnished a valuation.*

10  
11 You said:

12  
13 *Yes, I furnished a valuation.*

14  
15 Now, I know it is a long time ago, but do you recall what  
16 it was you gave to Mr Morling and what you had in mind  
17 when you answered the question, "Yes, I furnished a  
18 valuation"?

19 A. On this particular occasion, I don't think  
20 Mr Jeffress was in Canberra, or in town, and I actually  
21 provided the AVO valuation on his behalf. So the document  
22 we've been looking at --

23  
24 Q. All I wanted to clarify was that --

25 A. It's not - I didn't do a valuation.

26  
27 Q. All I wanted you to confirm was that you simply  
28 attended on behalf of the AVO and you furnished, as it  
29 were, Mr Jeffress' valuation to Mr Morling?

30 A. Yes.

31  
32 Q. Thank you. Can I ask you a couple of other  
33 questions. Would the operator be kind enough to bring up  
34 on to the screen CH94.019.0080. In your paragraph 17  
35 before this Commission - do you have your statement with  
36 you?

37 A. Yes, it's on there.

38  
39 Q. No, that's not your statement.

40 A. Oh, my statement, sorry.

41  
42 Q. Your statement. What's on the screen is a page of  
43 transcript.

44 A. Sorry.

45  
46 Q. If you look at paragraph 17, you say:  
47

1           *There is nothing in that evidence that I*  
2           *would wish to change.*

3  
4           Do you see that?

5           A.    Yes.

6  
7           Q.    I just want to raise something with you.  If you look  
8           at, please, the answers you gave to Mr Morling and the  
9           questions posed by him between lines 32 and 41, and just  
10          read that to yourself.  Sorry, I said "to Mr Morling"; the  
11          answers were given before Mr Morling but it was your  
12          counsel, that is the Department's counsel, Mr Hemmings,  
13          that asked the question.

14          A.    I think the question - I took that question as  
15          meaning your assessment of the base rental and the - you  
16          know, the escalator.

17  
18          Q.    All right.  So --

19          A.    When I said that I oversaw the valuation with  
20          Mr Jeffress, that would have included the totality of the  
21          request from APG.

22  
23          Q.    All right.  The position is this, isn't it:  when  
24          Mr Jeffress came to you, or discussed matters with you, he  
25          didn't express any concerns about his conclusions, did he?

26          A.    No, he wasn't - he was certainly - as I mentioned  
27          earlier, he was concerned about the fact that there was a  
28          differential in the escalator levels that were being  
29          talked about Mr McCann and the AVO.

30  
31          Q.    When he came to his final view, having gone through  
32          or having, as it were, ventilated such concerns has he had  
33          with you, when he finally came to see you, if that's what  
34          occurred, he expressed no hesitation at that point?

35          A.    No.

36  
37          Q.    Your appreciation was --

38          A.    It was earlier that we talked about the escalator.  
39          When he completed his report, and his recommendation, he  
40          didn't express concern.

41  
42          Q.    All right.  Can I just go back to one or two things  
43          about you for a moment.  What is required of a person to  
44          become a fellow of the Australian Property Institute?  
45          What does that involve?

46          A.    We become associates in the first instance through  
47          doing normal activities in regard to professional

1 development and viva voce examinations, et cetera. The  
2 fellowship is the next step along where you actually  
3 become more involved in Institute activities. You  
4 normally submit items - items for journals - and more or  
5 less provide additional service to the Institute, but also  
6 it's generally a measure of the fact that you have  
7 experienced a wide variety of valuation practice.

8  
9 Q. Without inviting you to be too modest, had you, in  
10 your career, between the years 1974 to, say, 1992, had  
11 fairly extensive valuation experience in the ACT and  
12 perhaps elsewhere?

13 A. All in the ACT, from '74 to last May.

14  
15 Q. Although you may not have read Mr Jeffress's November  
16 1991 valuation in full at the time, undoubtedly, for the  
17 purposes of the inquiry before Mr Morling, presumably you  
18 did go back and have a look carefully through it?

19 A. Yes.

20  
21 Q. I take it when you did have the opportunity to more  
22 carefully consider it, nothing occurred to you to suggest  
23 that there was anything unusual about the methodology he  
24 had applied?

25 A. No.

26  
27 Q. And, again, even with the benefit of hindsight, so to  
28 speak, in 1992 or 1993, you saw nothing wrong with the  
29 conclusions that he reached?

30 A. Well, I think I provided that response to the Morling  
31 Inquiry.

32  
33 Q. In an answer to Mr Foster, when he was attempting to  
34 probe the question of what data or what information might  
35 have been available, you made reference to, I think, a JCW  
36 and a Richard Ellis file - sorry, JLW?

37 A. It's Jones Lang Le Salle; it was Jones Lang Wootten.  
38 They were the leaders in the industry in providing  
39 research material and various markets. Their material was  
40 fairly broadly based, so we would have had access to that,  
41 but, as I said, also we would have had access to  
42 information which we held in-house.

43  
44 Q. Where was that material stored, indeed, how was it  
45 stored, do you recall, in, say, 1991/1992? Was it  
46 electronically stored, was it kept in files?

47 A. They were in bound files within the library, within

1 our offices.

2

3 Q. Of course, they were accessed, I presume, by your  
4 staff from time to time in order to see whether there was  
5 anything in them that might be of assistance in any  
6 activity they were undertaking?

7 A. Mmm.

8

9 THE COMMISSIONER: Q. Do you mean yes?

10 A. Yes.

11

12 Q. "Mmm" is recorded in the transcript just that way.  
13 We can never tell from the transcript, do you mean "Mmm",  
14 "yes", or "Mmm", "no".

15 A. My apologies.

16

17 MR SACKAR: Q. In relation to the JLW and the Richard  
18 Ellis material, and apart from the material the AVO might  
19 have acquired through it's own activities, did it also  
20 have material from BOMA?

21 A. Yes.

22

23 Q. What is that organisation?

24 A. It's now the Australian Property Council; it was  
25 formally the Building Owners and Managers Association. It  
26 provides market reports on commercial retail - commercial  
27 retail industries.

28

29 Q. Was there a person in your office, or was it not  
30 necessarily delegated to one person, to make sure that  
31 your library database was updated from time to time?

32 A. Well, we - the AVO subscribed to the BOMA and it was  
33 quite an expensive publication - you were talking  
34 thousands of dollars a year at the time, and the AVO  
35 subscribed. It was all in hard copy and providing your  
36 subscriptions were up to date, you always got your  
37 delivery.

38

39 Q. All right. Thank you. Were you aware in 1991 or  
40 1992 of a number of long-term leases entered into around  
41 Australia by either the Tax Office, the Department of  
42 Employment and/or Department of Social Security, in which  
43 there were long-term leases with fixed escalators and, in  
44 some cases, ratchet clauses?

45 A. I can't say specifically, that I was aware of them.  
46 I know that the Tax Office were obviously major tenants  
47 throughout the country, but I can't say specifically.

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47

MR SACKAR: Thank you.

**<EXAMINATION BY MR BEECH-JONES:**

MR BEECH-JONES: Q. I think that page of the transcript is still up in front of you?

A. Yes.

Q. When you were just explaining that, I think you just indicated - I will find the page - that you took that question as meaning your assessment of the base rental and the escalator; do you see that?

A. Yes.

Q. Do we take it from that that you recall back in 1991, you looked at the base rental that was being proposed?

A. I discussed that with Mr Jeffress.

Q. Yes. And you were comfortable with that?

A. Yes.

Q. And, in particular, you understood that that was a figure of \$280 per square metre net as at 1 January 1991?

A. Yes.

Q. Just on another topic, those bound volumes that you just told Mr Sackar about, when you left in May 1994 did the AVO still have them?

A. In May 2004?

Q. May this year, I should say.

A. Oh, probably. I have got no idea. We have had several office moves since then, and they - I'm not sure if we'd keep them more than a decade, but --

Q. Sorry, do you have your statement in front of you?

A. Yes.

Q. I just want to ask you briefly about something Mr Sackar was asking you about. In paragraph 3 you say you were the regional manager of the ACT branch of the AVO from 1991 to 1996. Do you see that?

A. Yes. It's '89, in fact.

Q. From 1989?

A. Yes.

1  
2 Q. Do we take it that in that period part of your duties  
3 were, as it were, office administration; is that right?  
4 A. Well, it was the overseeing - managing the whole  
5 office, yes.  
6  
7 Q. Did you actually undertake valuations yourself in  
8 that period?  
9 A. I did a couple of trips, and did some work in Norfolk  
10 Island. I did some work in the ACT on statutory  
11 valuations. I didn't get too deep, or I didn't get  
12 involved in any of the more complex commercial work.  
13  
14 Q. Were you reviewing valuations done by other staff  
15 within the branch?  
16 A. Yes.  
17  
18 Q. Prior to 1989, do we take it that you were almost  
19 exclusively doing valuation work?  
20 A. Yes.  
21  
22 Q. Was that the case all the way back to 1974?  
23 A. Yes.  
24  
25 Q. What did you do between 1996 and your retirement in  
26 May 2004?  
27 A. I became the Director of Valuation Operations in the  
28 national office and I was the account manager for a \$12m  
29 client. For the last 12 months that I was there I acted  
30 as a general manager.  
31  
32 Q. Of the national organisation?  
33 A. Yes, of the whole organisation.  
34  
35 Q. This undoubtedly reflects my ignorance, but the  
36 Australian Valuation Office has not been privatised at any  
37 stage, has it?  
38 A. No, we're a business line within the Australian  
39 Taxation Office and we are fully self-funding.  
40  
41 Q. Are you in competition with private valuers --  
42 A. We are.  
43  
44 Q. -- for government work?  
45 A. Predominantly our major client is, or during my  
46 term in the AVO, our major clients were government - the  
47 three tiers of government - local, state and obviously

1 federal. We would only do work in the private sector, or  
2 for the private sector, if it was solicited from us. We  
3 were very conscious of the fact that we may well fail the  
4 Yellow Pages test, if we start infringing on the private  
5 sector.  
6

7 Q. Could I just ask you this: was there any period up  
8 until May 2004 where private valuers were able to provide  
9 services to government departments?

10 A. Yes, certainly. The private sector, or the  
11 government, were quite open to obtain valuation services  
12 from the private sector. We don't have any tied  
13 arrangements with anyone, but we have some contract - you  
14 know, some large contracts.  
15

16 Q. Back in 1991, was the government tied to using the  
17 AVO?

18 A. There was a Cabinet decision in '84, which was  
19 reaffirmed in '87, that tied the Department of Social  
20 Security and the Department of Veterans Affairs and the  
21 Australian Property Group to the AVO.  
22

23 Q. But no-one else?

24 A. The ATO fitted in there somewhere as well, but --  
25

26 MR BEECH-JONES: Thank you.  
27

28 **<EXAMINATION BY MR FOSTER:**  
29

30 MR FOSTER: Q. Mr Beech-Jones asked you whether you had  
31 undertaken valuations yourself after you became the  
32 manager of the regional office in the ACT from 1989 and  
33 you said:  
34

35 *I did a couple of trips, and did some work*  
36 *in Norfolk Island. I did some work in the*  
37 *ACT on statutory valuations. I didn't get*  
38 *too deep, or I didn't get involved in any*  
39 *of the more complex commercial work.*  
40

41 A. In terms of undertaking individual valuations.  
42

43 Q. Quite. But that's what you said, isn't it, to  
44 Mr Beech-Jones?

45 A. Yes.  
46

47 Q. The fact was that you had not done, yourself, a

1 valuation of commercial office space at any time from  
2 1989, coming forward, to the end of 1991, had you?  
3 A. Not that I can recall, no.  
4  
5 Q. And you hadn't done one for some time before 1989  
6 either, had you?  
7 A. I would have been involved - I was the city valuer in  
8 the 1988 city revaluation, which included the analysis of  
9 probably 15 commercial sales in Canberra, and I did the  
10 valuations.  
11  
12 Q. For what purpose?  
13 A. As I said, for statutory valuation purposes that  
14 analysed the property sales. I'd also been involved in  
15 assessments of rentals for APG, work for the AEM  
16 valuations of the Australian estate that were being sold  
17 off. But that was right up to when I took over the  
18 manager's job. Then from 1996 through to now I then went  
19 into an account management role.  
20  
21 Q. You were shown transcript 287 before Mr Morling,  
22 which I think it is still on the screen --  
23 A. Yes.  
24  
25 Q. Mr Hemmings was appearing for whom at that Inquiry?  
26 A. He was appearing for the Commonwealth.  
27  
28 Q. Right. Had you had a conference with him before you  
29 gave your evidence to Mr Morling?  
30 A. I can't recall, I'm sorry. It appears, from what is  
31 being said there, that I'd been - it might have been on  
32 the page previously. It appears that I'd had a previous  
33 meeting with the judge, Mr Morling, but I can't recall  
34 whether I met with Mr Hemmings before that.  
35  
36 Q. He asked you this, didn't he, at line 32:  
37  
38 *Q. And your knowledge of the valuation the*  
39 *subject of this inquiry is limited to your*  
40 *assessment of the base rental, is it not?*  
41  
42 Your answer was:  
43  
44 *A. That's correct.*  
45  
46 Then you go on:  
47

1            *I oversaw the valuation with Mr Jeffress*  
2            *that Mr Jeffress performed.*

3  
4            Do you see that?

5            A.    Yes.

6  
7            Q.    First of all, there isn't any doubt at all, is there,  
8            that you agreed, at line 35, with the proposition that  
9            your knowledge of the valuation was limited to your  
10           assessment of the base rental, didn't you?

11           A.    Yeah, well, I thought I'd just corrected that. I'm  
12           saying that --

13  
14           Q.    I know what you are now saying --

15           A.    I said I oversaw the valuation with Mr Jeffress that  
16           Mr Jeffress performed. The valuation, to me, was the full  
17           package.

18  
19           Q.    Yes. You want to take some responsibility for it in  
20           its entirety; that's the position, isn't it?

21           A.    Well, it's in terms of a - of discussions with  
22           Mr Jeffress. The discussions that I had with him were not  
23           focused primarily on the base rental.

24  
25           Q.    How did you come to give that answer, which is  
26           obviously, according to your current evidence, hopelessly  
27           wrong, isn't it?

28           A.    I can't recall.

29  
30           Q.    It is not ambiguous, is it? Is it?

31           A.    No, it is not at all.

32  
33           Q.    The next question, 38:

34  
35           *And did you satisfy yourself as to the*  
36           *correctness of the evaluation?*

37           A.    I did.

38  
39           Do you see that?

40           A.    Yes.

41  
42           Q.    On one view of it, that might be suggesting "Did you  
43           satisfy yourself about his evaluation of the base rental",  
44           mightn't it?

45           A.    It could.

46  
47           Q.    Is that the way you understood the question at

1 line 38, when you answered it, "I did"?  
2 A. My memory is not that good.  
3  
4 Q. Isn't this the fact, that you don't remember, do you,  
5 what you had in mind when you gave those answers back in  
6 1994, as you sit in the witness box now?  
7 A. Sorry?  
8  
9 Q. The fact is, I'm putting to you, that as you sit in  
10 the witness box now you cannot honestly tell the  
11 Commissioner what you had in mind when you gave the  
12 answers to the questions I have just referred you to back  
13 in 1994, can you?  
14 A. When I read that now, I can see exactly what you're  
15 alluding to, but the issue, or my role in the exercise  
16 during that period, involved certainly more than the base  
17 rental.  
18  
19 Q. Well, that's what you think now, as you sit in the  
20 witness box, isn't it?  
21 A. Yes, that's what I think now.  
22  
23 Q. But the questions and answers recorded there suggest  
24 otherwise, don't they?  
25 A. They do.  
26  
27 Q. May it not be that, with the best will in the world,  
28 you are mistaken when you give evidence as to a greater  
29 extent of involvement now than you did then?  
30  
31 MR SACKAR: I object to that.  
32  
33 THE WITNESS: No, I --  
34  
35 THE COMMISSIONER: Just a minute.  
36  
37 MR SACKAR: Only because my learned friend should really  
38 go to 0082, lines 42-44, which was also part of the  
39 evidence. It does suggest something --  
40  
41 MR FOSTER: I don't mind doing that.  
42  
43 MR SACKAR: -- else.  
44  
45 MR FOSTER: It doesn't. But I don't mind taking the  
46 witness to that. Could there be brought up on the screen  
47 CH94.019.0082. That is the transcript of page 289 of the

1 Inquiry that Mr Morling was conducting. It is during some  
2 examination by Mr Connolly, who was a member of  
3 Parliament. He asked a question at line 36, that you can  
4 see reproduced there. You answer it:

5  
6 *A. They did not differ. The valuation*  
7 *that Mr Jeffress did was overseen by*  
8 *myself. I had no problem with his*  
9 *recommendations.*

10  
11 Do you see that?

12 A. Yes.

13  
14 Q. That, on one view of it, is a more general acceptance  
15 of involvement, but --

16 A. Yes.

17  
18 Q. -- if it is suggestive of that, it is quite  
19 inconsistent with the evidence which your own counsel  
20 elicited, isn't it?

21  
22 MR SACKAR: I object to that. The underlying assumption  
23 is, with great respect, quite wrong.

24  
25 THE COMMISSIONER: I have looked at the second page --

26  
27 MR SACKAR: Do you want me to explain it more precisely  
28 in front of the witness?

29  
30 THE COMMISSIONER: Yes.

31  
32 MR SACKAR: The question is:

33  
34 *Q. And your knowledge of the valuation of*  
35 *the subject of this inquiry is limited to*  
36 *your assessment of the base rental, is it*  
37 *not?*

38 *A. That's correct.*

39  
40 But he was talking about "that" in the limited context of  
41 perhaps knowledge of the base rental. He then says he has  
42 no problem with the recommendations, and that's entirely  
43 consistent with what he said before you - namely --

44  
45 THE COMMISSIONER: Even when you take the two together,  
46 it is difficult to understand his first answer, and his  
47 statement that he oversaw it or --

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MR SACKAR: There is no difficulty about understanding that this man supported the valuation for the reasons he said to you and Mr Morling. There is no problem with that. Whatever may be, the fact is, the answer to the question that followed, the one at page 289, 0082, goes on to explain why that would be so, because --

THE COMMISSIONER: Mr Sackar, may I interrupt you, because it is difficult speaking about this in the presence of the witness, but surely everything put forward so far is a matter that you can raise by way of argument as to how it should be interpreted. But, on the face of it, the answer, where Mr Foster is asking him whether it is true or can't be properly explained, is inconsistent with other things he said. And he himself has conceded that. There is additional material that you put forward, and it does not appear to me to affect that situation. But, if you have some argument about it, then you can put it later. But it is surely a matter between a cross-examiner and a witness.

MR SACKAR: The witness won't be here later; that's the only problem. It's a question of you --

THE COMMISSIONER: I know that.

MR SACKAR: -- being able, fairly, with the benefit of the transcript, obviously, to put all this into context. One has to put into context not only this material, but the material that's been extracted by counsel before this Commission.

THE COMMISSIONER: That transcript is in evidence.

MR SACKAR: Quite.

THE COMMISSIONER: Then that's a matter for argument later, as to whether or not I should accept the proposition Mr Foster is putting forward. You proceed, Mr Foster.

MR FOSTER: Q. You see, aren't you attempting, in your evidence, before this Commission, to give the impression that whatever support you gave to this valuation report back in 1991 was more extensive and more considered than in fact and in truth it was?

1 A. No, I'm not. In fact, if you read, my answer at line  
2 48, or the question:  
3  
4 Q. Did you discuss any aspects of his  
5 recommendation with him?  
6 A. Yes, we met --  
7  
8 And I say --  
9  
10 ...we had several discussions during the  
11 period from the beginning of November until  
12 the end.  
13  
14 And I agreed with him. So I'm not saying anything  
15 different there to what I'm saying now. It's not  
16 "recommendation", it's "recommendations", which is plural  
17 for all of those components of the request.  
18  
19 Q. What you say at page 289 is not consistent with what  
20 you said to your own counsel at 287, is it, in your  
21 opinion?  
22 A. Well, I made the point earlier that my interpretation  
23 of that question was the base rent, the valuation, the  
24 report --  
25  
26 Q. I know you answered a question from Mr Sackar in that  
27 fashion, but that is not what is written here, is it?  
28 A. No, it's not, but --  
29  
30 Q. You describe in very general terms material that was  
31 available to valuers in the AV0, I presume in the period  
32 '89, '90, '91, '92, by way of library-type materials,  
33 being, for example, the BOMA service; is that right?  
34 A. Yes.  
35  
36 Q. I think you indicated that the AV0 subscribed to the  
37 BOMA service?  
38 A. As a national body, we did, yes.  
39  
40 Q. And did you subscribe to any other real estate  
41 analysis services, if I can call them that, at that time?  
42 A. Whether we subscribed - I know that JLL were a - they  
43 were the leaders in that research industry, in property.  
44  
45 Q. You mean JLW?  
46 A. JLW, yes. Also, --  
47

1 Q. I'm sorry, could you answer my question, though: did  
2 you subscribe to the JLW service?  
3 A. We certainly had access to it. Whether we subscribed  
4 to it, I don't know, but we certainly had very close  
5 relationships with our colleagues in the property  
6 industry.  
7  
8 Q. When you say you had access to it, how was that  
9 access provided?  
10 A. Well, for example, the people who - you are testing  
11 my memory now - that I can recall, myself, in the 70s,  
12 accessing JLW's information in their own library, giving  
13 the access to it, that was prior to our commercialisation,  
14 when we could actually afford to pay for it.  
15  
16 Q. Well, you see, I am testing your memory. Did the AV0  
17 at this time - that is, in 1991 and perhaps a year or two  
18 before - subscribe to the JLW commercial real estate  
19 service that provided information and data about the state  
20 of the market during those years?  
21 A. I couldn't say precisely whether we did or not. We  
22 would have had access to the information.  
23  
24 Q. Well, how, if you didn't subscribe to it?  
25 A. I just told you how - because we actually had  
26 relationships with - the same as we had access to Colliers  
27 Jardine, or Richard Ellis or others. The valuation  
28 profession actually helps each other.  
29  
30 Q. These were services that were commercially available  
31 in the sense that they were sold for money, weren't they?  
32 A. Yes.  
33  
34 Q. And are you saying that notwithstanding that they  
35 were sold for money to other people, these organisations  
36 quite happily made available the contents of their  
37 research to the AV0 for nothing, on an informal basis, is  
38 that what you are saying?  
39 A. The bottom line is you should go and check the AV0,  
40 or the JLW - you can go and check their papers to see  
41 whether we subscribed to them or not, but nationally, I  
42 would be fairly - I just can't say with true certainty  
43 that we subscribed or we didn't, but we certainly had  
44 access to them.  
45  
46 Q. One of the people who produced real estate reports in  
47 the Canberra market back in the 80s and early 90s was

1 McCann & Associates, wasn't it?  
2 A. That's correct, yes.  
3  
4 Q. In fact, Noel McCann was quite a prolific report  
5 producer, was he not?  
6 A. Yes.  
7  
8 Q. As you understood what was occurring in November,  
9 Mr Jeffress had met with Mr McCann, but there was a  
10 difference of opinion about escalators, at the very least;  
11 is that right?  
12 A. I agree, yes.  
13  
14 Q. And one would assume, would one, that Mr McCann had  
15 access to historical data for the purpose of discussing  
16 those matters with Mr Jeffress?  
17 A. I would assume so, yes.  
18  
19 Q. And one would assume, would one, that Mr Jeffress had  
20 access to historical data for the purpose of discussing  
21 those matters with Mr McCann?  
22 A. I would assume so.  
23  
24 Q. Would it be fair to assume that, one way or another,  
25 that data should have been telling them the same thing?  
26 A. It should.  
27  
28 Q. So did you conclude, when you discussed these matters  
29 with Mr Jeffress, that the difference of opinion was  
30 centring around interpreting that data rather than what  
31 that data was or was not to be?  
32 A. No, I didn't - I didn't get into the depths of that  
33 sort of discussion with - that I can recall.  
34  
35 Q. Did Mr Jeffress ever tell you, Mr Hurrell, that he  
36 had himself searched out any data at all for the purpose  
37 of discussing this matter with Mr McCann?  
38 A. Look, I can't remember precisely what he told me in  
39 relation to that aspect.  
40  
41 Q. He certainly gave the impression that Mr McCann had  
42 done some work, didn't he - that is, that Mr McCann had  
43 produced some data?  
44 A. I think that Mr Jeffress would have been well armed  
45 with his own data before he would want to go into start to  
46 negotiate, or to talk about agreed levels of rental  
47 escalation.

1  
2 Q. But you don't know whether he was or wasn't?  
3 A. No.  
4  
5 Q. You hoped he would have been?  
6 A. Correct.  
7  
8 Q. Because if he hadn't been, to go to talk to someone  
9 like Noel McCann would be like walking into a machine gun,  
10 wouldn't it?  
11 A. No comment.  
12  
13 Q. No comment?  
14 A. No.  
15  
16 Q. Noel McCann was a very astute and well-regarded  
17 property consultant in 1991, wasn't he, to your  
18 appreciation?  
19 A. Oh, certainly.  
20  
21 Q. He had a number of commercial clients, did he not, to  
22 your appreciation?  
23 A. He did.  
24  
25 Q. And was someone that people, to your appreciation,  
26 deployed when they wanted to conduct a successful  
27 negotiation concerning property?  
28 A. He was a fellow of the Australian Property Institute,  
29 held in - was highly regarded.  
30  
31 Q. But he was astute, was he not?  
32 A. Yes.  
33  
34 MR FOSTER: Those are the questions I have.  
35  
36 THE COMMISSIONER: Yes, thank you, sir. You may leave.  
37 If we need to have you back, we will let you know.  
38  
39 THE WITNESS: Thank you.  
40  
41 **<THE WITNESS WITHDREW**  
42  
43 MR SACKAR: Commissioner, I raised with Mr Foster just  
44 after lunch whether you may be disposed to give us a  
45 not-before marking tomorrow. I don't know whether it is  
46 too early to do that or whether you would like us to be  
47 here at 10.

1  
2 THE COMMISSIONER: Don't be here at 10. I notice in a  
3 little document which I'm occasionally given, which is the  
4 order of witnesses, the current one suggests that the  
5 first witness is not required here before noon.  
6  
7 MR SACKAR: Okay. Well, that's depressing.  
8  
9 THE COMMISSIONER: Is that still the situation?  
10  
11 MR FOSTER: May I say this: my understanding is there is  
12 to be an argument at 10 o'clock. The length and breadth  
13 is not something which I am particularly in tune with.  
14 However, from what I do understand very generally, it is  
15 probably an hour to an hour and a half, minimum, I would  
16 have thought. So, I think the presumptuousness of that  
17 note was that if it took an hour and a half, then  
18 12 o'clock seemed to be an appropriate time.  
19  
20 MR SACKAR: We are in your hands.  
21  
22 MR FOSTER: There is a possibility, Commissioner, and I  
23 must say one that I can't add to, that that argument might  
24 take longer than an hour to an hour and a half, because I,  
25 at the moment, am not sufficiently clear on the length and  
26 breadth of it, to know whether that is clear or not.  
27  
28 THE COMMISSIONER: Another problem, with which Mr Sackar  
29 will be familiar, is that we have not yet been given more  
30 than a small amount of material we have to consider - and  
31 when I say "we", I mean you and me; I'm not using the  
32 Royal plural. It is, at the moment, very difficult to  
33 estimate. I think the best idea would be for you to get  
34 on with whatever it is you need to get on with, and we  
35 will keep in touch, if necessary, by asking somebody to  
36 give you a ring - you and your colleagues.  
37  
38 MR SACKAR: That would be kind if that happened.  
39  
40 THE COMMISSIONER: If you came along at 12 it may not be  
41 worth it, whereas by 11.30 we may know that we need you  
42 at 12.  
43  
44 MR SACKAR: We are only 10-minutes away, really. We can  
45 be here shortly.  
46  
47 THE COMMISSIONER: Is that satisfactory with you,

1 Mr Beech-Jones?

2

3 MR BEECH-JONES: Yes, Commissioner.

4

5 THE COMMISSIONER: We will certainly give you plenty of  
6 time to get here. Is that the end of today's business?

7

8 MR FOSTER: It is not, really, but there is a problem,  
9 and that is this: we had planned on having Mr McPhee  
10 follow the argument tomorrow. I'm not sure whether  
11 Mr McPhee is otherwise available, but I have made a  
12 reasonably firm commitment to Mr Sackar about Mr Hogg for  
13 Thursday, which, given Mr Hogg's position, we would like  
14 to keep. Mr Jeffress is outside. It is possible we can  
15 start him today, but it is also likely that he won't  
16 resume until Friday.

17

18 THE COMMISSIONER: Does it matter much, because he'll  
19 have to come back in any event; we may as well as start  
20 him, if that's appropriate. Unless someone has an  
21 objection?

22

23 MR SACKAR: Not at all.

24

25 THE COMMISSIONER: I think given Mr Hogg's position in  
26 relation to the current election campaign, we can probably  
27 give him some priority.

28

29 MR SACKAR: No, he is no longer concerned with the  
30 apparatus of the parties. He works privately now and has  
31 done so since about 1993.

32

33 THE COMMISSIONER: I'm not really up to date with any of  
34 this, of course, I have not seen any statement. I'm not  
35 criticising anybody for that.

36

37 MR FOSTER: I would like to keep the Hogg timetable it  
38 just may mean that we will have a couple of witnesses that  
39 may not quite be finished when he comes. But if that's  
40 acceptable to you, it is acceptable to me.

41

42 MR SACKAR: If it suits, after proceedings end today, I  
43 can make contact with Mr Hogg to see if there is any  
44 flexibility and then contact counsel assisting, if that  
45 will help. We have given Mr Foster a draft statement with  
46 some annexures for Mr Hogg. We are to convey some more  
47 material tomorrow. Perhaps he and I can talk about that.

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THE COMMISSIONER: I think it would be better if you did not talk about it on the record, if I may say so.

MR FOSTER: I had made a fairly firm commitment about Mr Hogg for Thursday. It just meant that we may find ourselves with one or two witnesses not finished. That does not trouble me, if it doesn't trouble anyone else.

I call Mr Jeffress.

<GRAHAM JEFFRESS, affirmed: [3.34pm]

<EXAMINATION BY MR FOSTER:

MR FOSTER: Q. Would you please tell the Commission your full name, address and current occupation?  
A. Graham Jeffress. I reside at unit 15, 3 Delamere Street in Hawker. I'm a property valuer with Colliers International.

Q. Have you signed a statement --  
A. I have.

Q. -- for the purposes of this Inquiry?  
A. Yes.

Q. Is it dated 11 August 2004?  
A. That's correct.

Q. Do you have the original of that statement?  
A. I do.

Q. Would you mind handing that to the court officer. Mr Jeffress, are the statements of fact in that document true?  
A. There's a couple of things I wasn't happy with, having had time to review it.

MR FOSTER: All right. We will fix those up. Subject to those corrections, I tender that document.

Q. Do you have a copy of it?  
A. No, I don't.

Q. I will provide you with a copy.  
A. Thank you.

1  
2 EXHIBIT #66 STATEMENT OF GRAHAM JEFFRESS DATED 11/8/2004  
3 AND AND DOCUMENTS REFERRED TO IN STATEMENT,  
4 BARCODED WITS.007.0001  
5

6 MR FOSTER: Q. Mr Jeffress, would you please tell us  
7 what corrections you wish to make to that statement, which  
8 is now exhibit 66?

9 A. In paragraph 18, it is the third sentence:

10  
11 *However, I note that that document includes*  
12 *some figures for 1992.*  
13

14 I think that document wasn't prepared by me at the time I  
15 did the valuation. I think it might have been prepared at  
16 some later date.  
17

18 Q. Yes.

19 A. Because it refers to --  
20

21 Q. That's a document styled "Historical Rentals" --

22 A. I think so, yes. It hasn't got a reference.  
23

24 Q. -- referred to earlier in paragraph 18?

25 A. Yes.  
26

27 Q. Yes.

28 A. And the other is paragraph 29, "I said something to  
29 the effect of" --  
30

31 Q. Yes.

32 A. -- finishing with:  
33

34 *I suggested that this review should be*  
35 *carried out at the 6th and 10th years.*  
36

37 I have continued to say:

38  
39 *In my opinion an escalator of 9% for the 15*  
40 *year term was within reasonable*  
41 *parameters...*  
42

43 I don't think that was in my conversation to APG. That  
44 was just an observation I made myself.  
45

46 THE COMMISSIONER: Q. Should we move the close of the  
47 quotation marks to after "the 6th and 10th years"?

1 A. I think so.  
2  
3 MR FOSTER: Q. Any others?  
4 A. No.  
5  
6 Q. How long did you spend in Canberra doing valuations  
7 as an employee of the AVO?  
8 A. I started work as a trainee valuer in 1974, and I  
9 worked in the office in Canberra until February 1981, when  
10 I spent two and a half years in - or three and a half  
11 years in Darwin. Then I returned to the office in 1985,  
12 and I continued working with the AVO until I joined  
13 Colliers in September 1992.  
14  
15 Q. Colliers have a database, do they not, of information  
16 concerning market statistics?  
17 A. We collect historical rental evidence, yes.  
18  
19 Q. Does Colliers at the moment have, either in  
20 electronic or some non-hard-copy form, or in hard-copy  
21 form, rental evidence covering the period between 1980 and  
22 1993, in respect of Canberra?  
23 A. I couldn't answer that, I'm sorry.  
24  
25 Q. Is that because you haven't had a need to see whether  
26 or not such information is included --  
27 A. That's correct. Currently we do, but whether that  
28 information was there prior to that, I don't know - prior  
29 to my joining Colliers.  
30  
31 Q. All right. Can I just ask you not to answer until I  
32 finish the question, and I will try not to interrupt you  
33 at the same time.  
34 A. Sorry.  
35  
36 Q. I'm just trying to get clear here: does Colliers now  
37 have, as far as you are aware, a database which includes  
38 within it, as we speak, rental evidence in respect of the  
39 Canberra market covering the period from 1980 to 1993?  
40 A. As I say, I can't answer that. I know we do now, but  
41 whether --  
42  
43 Q. Well that's the question I'm asking you.  
44 A. Well, I have to say no.  
45  
46 Q. I was actually asking you whether you have it now?  
47 A. Oh, yes, we do.

1  
2 Q. You do?  
3 A. But we have current evidence. Whether it goes back  
4 to 1989, I couldn't say.  
5  
6 Q. I see. All right. Is that because you haven't had a  
7 need to go back that far during your employment with  
8 Colliers; is that right?  
9 A. Correct.  
10  
11 Q. In 1991, when you were working in Canberra, did the  
12 Australian Valuation Office have a computerised database  
13 with rental evidence in it?  
14 A. No.  
15  
16 Q. Did it have available to it, as part of its own  
17 office, hard copy publications containing statistics or  
18 information about historical rentals for Canberra?  
19 A. The only publication I can think of would have been  
20 the BOMA office market reports.  
21  
22 Q. Is it fair to say that the BOMA office market reports  
23 that were available in the office of the AVO at that time  
24 were reports which dealt with matters such as occupancy  
25 rates, developments likely to be built and matters such as  
26 that, rather than information about particular rents and  
27 particular increases in rents for particular buildings?  
28 A. I'd agree with that.  
29  
30 Q. When it came, for example, for you, or a valuer  
31 within the AVO, at that time - that is, in 1991 - to come  
32 to a view about the current, the then current, market rent  
33 for prime commercial office space in any particular area  
34 within Canberra, what data, or statistics did you consult  
35 in order to come to such a view, if you consulted any at  
36 all?  
37 A. These would be rentals that were agreed to, mainly in  
38 respect of Commonwealth occupied tenancies in the major  
39 buildings. We'd be talking about bulk lettings of  
40 multi-floor office space.  
41  
42 Q. All right. So is what you are saying that if you had  
43 to undertake the task I just put to you, because you were  
44 a Commonwealth agency, you had access to information about  
45 the terms upon which the Commonwealth itself had taken up  
46 space as a tenant in buildings in Canberra?  
47 A. That's correct.

1  
2 Q. Was there a record kept of information as to the  
3 rents and the size of building, location and other  
4 relevant terms of such buildings at that time, or was it a  
5 case of getting hold of the leases by contacting someone  
6 within the APG, for example, in order to find out that  
7 information?  
8 A. No, I think we had that information in the office  
9 that was compiled from leases that were committed to, or  
10 reviews that were done, on behalf of - most of them would  
11 have come through the Property Group.  
12  
13 Q. Right. When you say you had that information in your  
14 office, in other words, it was on pieces of paper  
15 summarising the effect of these Commonwealth leases and  
16 kept somewhere so that you could go and have a look at it  
17 if you wanted to?  
18 A. That's right.  
19  
20 Q. Was this in one folder, or several folders, or can't  
21 you recall?  
22 A. Honestly, I can't recall. That was before we had  
23 computer databases.  
24  
25 Q. Yes. Nonetheless, what it consisted of, in however  
26 many folders it was, was a series of summaries of crucial  
27 terms relating to Commonwealth leases?  
28 A. Yes.  
29  
30 Q. Did those summaries commonly inform a reader,  
31 firstly, of the address of a building?  
32 A. Yes.  
33  
34 Q. Of the type of building that it was?  
35 A. Yes.  
36  
37 Q. By reference to the style of building, et cetera?  
38 A. Yes.  
39  
40 Q. How big it was?  
41 A. Yes.  
42  
43 Q. Net lettable area?  
44 A. Yes.  
45  
46 Q. Car space numbers and the like?  
47 A. Yes.

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Q. The rents that had been paid historically in that building by the Commonwealth?

A. You would know that information going back through the file.

Q. But was it on these summaries?

A. I can't recall.

Q. Is it fair to say that one way or another, either through this summary process or looking at the actual leasing file, it was possible for you and others in your position in 1991 to find out sufficient information about buildings in which the Commonwealth had leased space, to give you an idea about rates of rent currently being paid by the Commonwealth for such space?

A. Yes.

Q. Right. Is that how you informed yourself about what could be described as the then current market rent for particular parts of Canberra?

A. Comparable rental evidence, yes.

Q. In assessing whether the information you were looking at was comparable to the task you were undertaking, you didn't just look at where the building was, you looked at the type of the building and the amount of space being taken and any other conditions that might bear upon, or influence, the rent that was fixed, would you not?

A. Yes.

Q. And you would bring to bear your judgment on those matters to see whether, for example, the starting rent was higher because they'd been given six months rent free?

A. Yes.

Q. Or the starting rent was higher because they'd been given half a million dollars worth of fitout?

A. Correct.

Q. And matters of that kind?

A. Yes.

Q. Just to jump ahead, when you came to consider what the then current market rent for good quality office space in Barton was as at 1 January 1991, when doing your valuation at the end of 1991, did you in fact consult

1 files in the fashion we've been discussing, or did you do  
2 something else?  
3 A. I think files would have been consulted.  
4  
5 Q. Do you remember which ones?  
6 A. No.  
7  
8 Q. Did you make a note of what you looked at?  
9 A. Not really. I was familiar with the accommodation  
10 provided in most of the buildings and I felt I could make  
11 a judgment on that basis.  
12  
13 Q. This is not meant to be critical, but might it have  
14 been that you were, from whatever source, carrying around  
15 in your head figures which you regarded as appropriate for  
16 the then current market rental for that kind of space in  
17 Barton as at 1 January 1991, when you came to this task at  
18 the end of 1991?  
19 A. Possibly.  
20  
21 Q. And you simply drew upon what was in your head to see  
22 whether or not what Mr McCann was putting forward to you  
23 in his meetings at to that matter was reasonable?  
24 A. No, I think that it was common knowledge, I think,  
25 that A-grade space in Barton was worth in the order of  
26 \$315 to \$320 a square metre gross.  
27  
28 Q. Right. When you say "common knowledge", that was  
29 information that you were carrying around in your head?  
30 A. Yes, from my knowledge of the market.  
31  
32 Q. Yes. By November 1991, you had in your head the idea  
33 that the current market rent as at 1 January 1991 for that  
34 kind of space in Barton was of the order you mentioned;  
35 isn't that right?  
36 A. That's correct.  
37  
38 Q. You didn't need, did you, to go and research that  
39 point or look at files particularly when it came to doing  
40 your valuation report in November, in order to ascertain  
41 that matter?  
42 A. Well, we're looking at evidence that was already  
43 there.  
44  
45 Q. But it was in your head, is what I'm getting at - you  
46 didn't go off and double-check what you already knew, if I  
47 can put it that way, did you?

1 A. Oh, I think I would have.  
2  
3 Q. You do? Can you tell us what files you looked at?  
4 A. No, I can't.  
5  
6 Q. Did you do that between the two meetings you had with  
7 Mr McCann, or before the first one, or can't you remember?  
8 A. I had researched the market before the first meeting  
9 and I think I did further research between the two  
10 meetings.  
11  
12 Q. What had you done before the first meeting?  
13 A. Investigate rentals that had been agreed to for  
14 comparable space in Barton and the city.  
15  
16 Q. What had you actually done to do that? What was the  
17 process you undertook?  
18 A. Well, as I say, referring to the office we held - the  
19 information that we held in the office.  
20  
21 Q. On the summaries or in lease files, or what?  
22 A. On the summaries.  
23  
24 Q. Do you remember which ones you looked at?  
25 A. No, I can't.  
26  
27 Q. Did you make any notes of what information you'd got  
28 from those summaries before that first meeting?  
29 A. I think I just made a table up of the evidence that I  
30 collected.  
31  
32 Q. You made a table up. Was that in the form of what  
33 might be called an excel spreadsheet?  
34 A. We didn't know what excel spreadsheets were in those  
35 days.  
36  
37 Q. Well, you mightn't have. Can I just ask to have  
38 brought up on the screen document CH94.004.0176. Are you  
39 able to read that or would you like it in hard copy?  
40 A. Oh, yes, that's better.  
41  
42 Q. Can you manage to read that?  
43 A. Yes.  
44  
45 Q. Is that a document that you compiled?  
46 A. I can't recall.  
47

1 Q. Well, is that a document that you put together by  
2 reducing on to one page information that Mr McCann had  
3 given you at some stage, and then writing information on  
4 the bottom half of the right-hand side of the page?  
5 A. That could be right.  
6  
7 Q. Well, let me ask you this question: is the writing  
8 in hand on this document yours?  
9 A. It is, yes.  
10  
11 Q. Do you recall now that perhaps you put together this  
12 document in this format?  
13 A. I think I might have.  
14  
15 Q. Do you recall whether you did that before the first  
16 meeting with Mr McCann or between the first and second  
17 meetings, or at some later point?  
18 A. I think it might have been between the first and the  
19 second meeting.  
20  
21 Q. That seems to be right, doesn't it, because Mr McCann  
22 gave you some material at the first meeting, didn't he?  
23 A. He had the same information that I had. He had his  
24 information in a different format than mine, and I think  
25 that I adopted his format and put some other evidence that  
26 I'd collected on to that format.  
27  
28 Q. Could I just have shown to you CH94.004.0172 and then  
29 173, 174 and 175. I just want to ask a question about it.  
30 Make sure you can read them. If you can't, let me know.  
31 Would you tell the operator when you have had a chance to  
32 look at each page so that she can rotate them. That's the  
33 first of them.  
34 A. Yes.  
35  
36 Q. And then could the second one come up, 173, and then  
37 174.  
38 A. Yes.  
39  
40 Q. Then 175, when you have had a chance to look at 174.  
41 A. Yes.  
42  
43 Q. Now, what I want to ask you is, those four pages I  
44 just showed you, did Mr McCann give you those at the first  
45 meeting you had with him in November in connection with  
46 the tasks you had been asked to undertake for the APG?  
47 A. I can't say, I'm sorry.

1  
2 Q. Would you agree that those documents were not  
3 prepared by you?  
4 A. No, they weren't prepared by me.  
5  
6 Q. Do you recall getting documents like this from  
7 Mr McCann at that first meeting?  
8 A. I think we may have had an exchange of information at  
9 the first meeting, and that may be where I - was where I  
10 collected them.  
11  
12 Q. What I want to suggest to you is that you did get  
13 these four pages from him at that first meeting. What is  
14 your response to that proposition?  
15 A. Well, it's possibly true.  
16  
17 Q. Is the difficulty that your recollection isn't good  
18 enough to confirm it one way or the other?  
19 A. Correct.  
20  
21 Q. But you accept that it's possibly true?  
22 A. I do.  
23  
24 Q. How did you come to be asked to do this valuation -  
25 we will call it a valuation, not being disrespectful, but  
26 it is not a valuation of land, as such.  
27 A. No.  
28  
29 Q. It is something else. How did you come to be asked  
30 to complete the tasks which you did, and brought to a head  
31 in that document called "Valuation Report"?  
32 A. I think I received a phone call from Dominic Collins  
33 asking if I could provide some valuation advice in respect  
34 of a building to be built in Barton. I think that's all  
35 the information I was given over the phone.  
36  
37 Q. And he rang you; he didn't just ring the switch, he  
38 actually rang you, did he?  
39 A. Well, I don't - I spoke to him and I think at the  
40 time, the State manager, Mr Hurrell, was away. He  
41 possibly spoke to the switch who put him through to me  
42 when Mr Hurrell wasn't there to take the call.  
43  
44 Q. Were you, in effect, the next most senior man under  
45 Mr Hurrell at that time within that office?  
46 A. There was three or four of us at the same level.  
47

1 Q. But someone at the switch may have made a decision to  
2 put Mr Collins through to you?  
3 A. Possibly.  
4  
5 Q. When he sought the State manager, or whatever?  
6 A. Possibly.  
7  
8 Q. Did you know Mr Collins at this point?  
9 A. I don't - I'd heard of him. I don't think I'd  
10 actually met him face to face.  
11  
12 Q. Had you ever done a valuation on his instructions  
13 prior to this one?  
14 A. No.  
15  
16 Q. Did you expect to receive a written letter of  
17 instruction from him?  
18 A. I think from the conversation we had on the phone, he  
19 said that he would send me an instruction.  
20  
21 Q. Did that arrive a few days later?  
22 A. I can't remember what the time frame was, but, yes.  
23  
24 MR FOSTER: All right. Well, I will take that up with  
25 you next time we meet. Is that a convenient time?  
26  
27 THE COMMISSIONER: Has Mr Jeffress been warned that that  
28 is on Friday?  
29  
30 MR FOSTER: No, he hasn't yet.  
31  
32 THE COMMISSIONER: I will leave that to somebody else to  
33 explain, but you will be required to come back on Friday.  
34  
35 MR BEECH-JONES: Sorry, Mr Commissioner, I just want to  
36 confirm. It is only Mr McPhee after the argument?  
37  
38 MR FOSTER: Yes.  
39  
40 MR BEECH-JONES: It is possible I may not be here. I  
41 don't mean any disrespect if I'm not, that's all.  
42  
43 THE COMMISSIONER: I wouldn't take any disrespect. What  
44 about Mr McPhee?  
45  
46 MR BEECH-JONES: If he's here and I'm not here to ask him  
47 questions, that's my problem.

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THE COMMISSIONER: Do you mean to say you might get your leader in to substitute for you?

MR BEECH-JONES: I don't anticipate a need to ask Mr McPhee questions.

THE COMMISSIONER: I will adjourn now until tomorrow morning.

**AT 4PM THE COMMISSION WAS ADJOURNED TO WEDNESDAY,  
8 SEPTEMBER 2004 AT 10AM**