INVESTIGATION INTO THE CONDUCT OF A FORMER CHIEF EXECUTIVE OFFICER AND MEMBERS OF THE BOARD OF THE GANDANGARA LOCAL ABORIGINAL LAND COUNCIL

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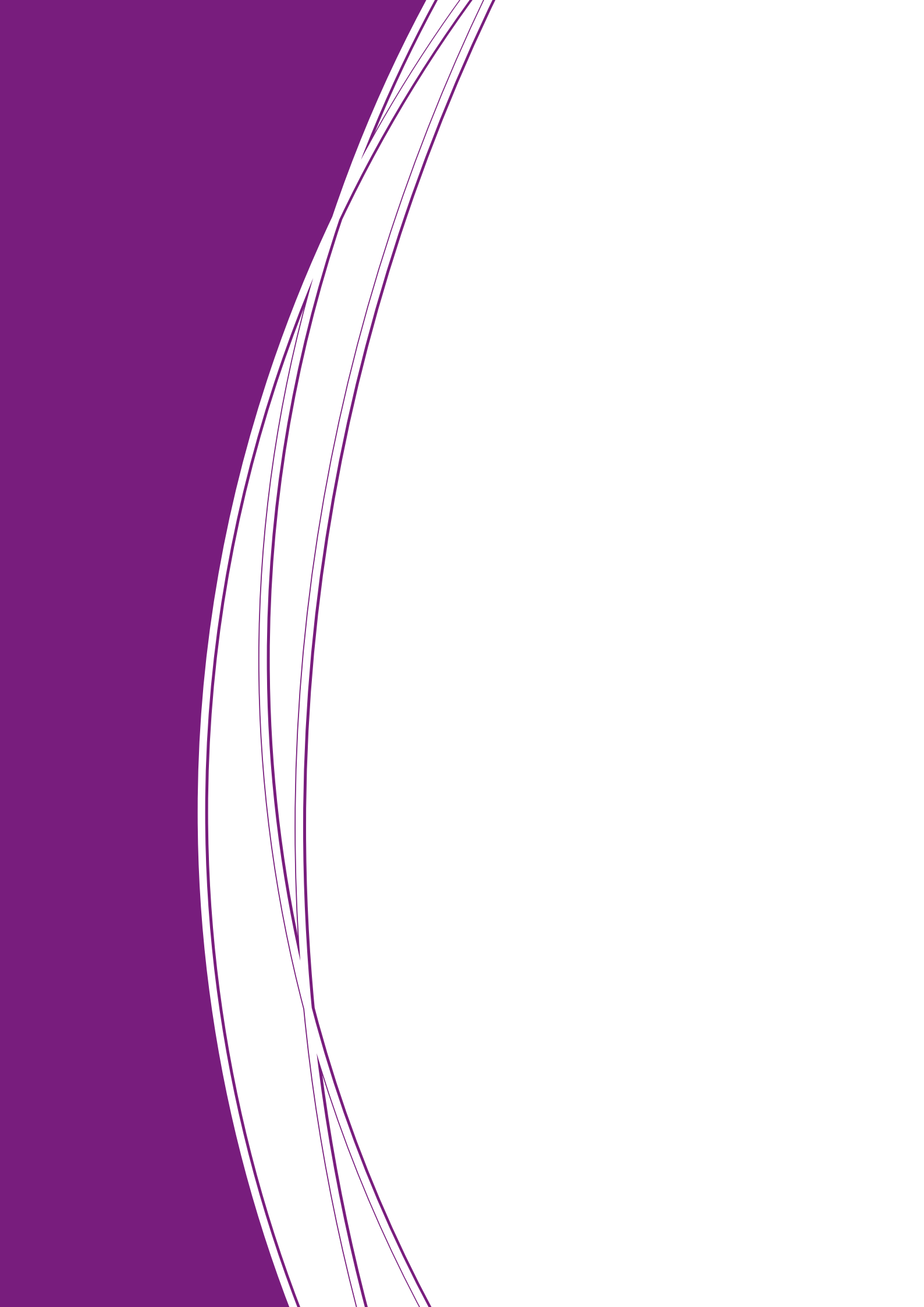
INDEPENDENT COMMISSION AGAINST CORRUPTION

NEW SOUTH WALES

ICAC REPORT
FEBRUARY 2017



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Mr President
Madam Speaker

In accordance with s 74 of the *Independent Commission Against Corruption Act 1988* I am pleased to present the Commission's report on its investigation into the conduct of a former chief executive officer and members of the board of the Gandangara Local Aboriginal Land Council.

The former Commissioner, the Hon Megan Latham, presided at the public inquiry held in aid of the investigation.

The Commission's findings and recommendations are contained in the report.

I draw your attention to the recommendation that the report be made public forthwith pursuant to s 78(2) of the *Independent Commission Against Corruption Act 1988*.

Yours sincerely

The Hon Reginald Blanch AM QC
Acting Commissioner

Contents

Summary of investigation and results

This investigation by the NSW Independent Commission Against Corruption ("the Commission") primarily concerned the conduct of Mark Johnson, the chief executive officer (CEO) of Gandangara Local Aboriginal Land Council (GLALC). The investigation examined whether Mr Johnson and members of the GLALC board partially exercised their official functions by agreeing to employment arrangements with Mr Johnson under which his company, Waawidji Pty Ltd, derived benefits from GLALC or its associated entities, contrary to s 78B(1)(e) of the *Aboriginal Land Rights Act 1983* ("the ALR Act"), whether Mr Johnson dishonestly and partially exercised his public official functions by authorising the transfer of GLALC funds to another entity on unfavourable terms to the detriment of GLALC and contrary to the provisions of s 152 and s 176(1) of the ALR Act, and whether Mr Johnson dishonestly and partially exercised his public official functions to financially benefit himself or Waawidji.

Results

The Commission found that Mr Johnson engaged in serious corrupt conduct by:

- from about June 2010, continuing to act as CEO of GLALC despite knowing that his company, Waawidji, was receiving benefits from GLALC by way of deposits of funds into the Waawidji bank account (which, between June and December 2010, totalled $107,023.28, paid by GLALC on invoices issued by Waawidji) and knowing that, under s 78B(1)(e) of the ALR Act, he was not entitled to continue to be employed as the CEO of GLALC because he was a person who had an interest in a corporation that received a benefit from GLALC (chapter 2)
- on 14 occasions, between 30 June 2011 and 12 November 2012, improperly favouring Gandangara Future Fund Ltd (GFF) by authorising the transfer of funds, totalling $5,370,000, from the GLALC trust account to GFF knowing that he did so contrary to legal advice he had obtained that any transfer of funds from GLALC to GFF had to be by way of a commercial loan secured by a charge. He authorised 13 of the 14 transfers, totalling $4,970,000, knowing that they did not comply with the GLALC board resolution of 11 July 2011, authorised 12 of the transfers, totalling $4,670,000, knowing they did not comply with the GLALC members' resolution of 27 July 2011, and authorised three of the transfers, totalling $960,000, despite knowing that his actions in doing so contravened the Registrar's compliance direction of 31 August 2012 (chapter 3)
- improperly exercising his official functions as GLALC CEO to arrange the payment by GLALC of invoices, totalling $70,568.58, for the purpose of funding Deerubbin Local Aboriginal Land Council's development for sale of 10 lots at Terrace Falls Road in Hazelbrook, in order to ensure that the lots could be sold so that his company, Waawidji, would benefit by receiving $5,500 (inclusive of GST) for each lot sold (chapter 4).

The Commission is not of the opinion that consideration should be given to obtaining the advice of the Director of Public Prosecutions with respect to the prosecution of Mr Johnson for any criminal offences.

As Mr Johnson is no longer employed by GLALC, the possibility of taking disciplinary action against him or taking action with a view to his dismissal as a public official does not arise.

The Commission has not made any corruption prevention recommendations in this report. The evidence obtained during the course of this investigation will help to inform the Commission's forthcoming report on the governance of Local Aboriginal Land Councils (LALCs).

Recommendation that this report be made public

Pursuant to s 78(2) of the ICAC Act, the Commission recommends that this report be made public forthwith. This recommendation allows either Presiding Officer of a House of Parliament to make the report public, whether or not Parliament is in session.

Chapter 1: Background

This chapter sets out some relevant background information on how this investigation originated, how it was conducted, why the NSW Independent Commission Against Corruption ("the Commission") decided to conduct a public inquiry, and information concerning Gandangara Local Aboriginal Land Council (GLALC) and Mark Johnson.

How the matter came to the Commission's attention

By letter dated 25 February 2014, the then minister for Aboriginal affairs, the Hon Victor Dominello MP, made a report to the Commission pursuant to s 11 of the *Independent Commission Against Corruption Act 1988* ("the ICAC Act"). This section of the ICAC Act requires certain persons, including a minister of the Crown, to report to the Commission any matter that the person suspects on reasonable grounds concerns or may concern corrupt conduct.

The report concerned personal expenses that it was alleged had been incurred by Mr Johnson, the chief executive officer (CEO) of GLALC, but paid for by GLALC. This matter had been brought to the minister's attention by David Lombe, who the minister had appointed as administrator of GLALC. Mr Lombe had identified $69,404.37 in payments to Mr Johnson that appeared to relate to personal expenses incurred by Mr Johnson.

The Commission received a further s 11 report from Mr Dominello on 26 February 2014. That report concerned a management letter prepared by the auditors for the GLALC audit for the year ended 30 June 2013. The management letter referred to "a fundamental breakdown in basic internal control and oversight" by the GLALC board and management in relation to loans of over $7.5 million made by GLALC to Gandangara Future Fund Ltd (GFF) and involving a possible loss of over $930,000 to GLALC members. The management letter noted that unsecured loans had been made to GFF and that the GLALC board and Mr Johnson had failed to follow external advice to secure the loans.

On 27 February 2014, the Commission received a letter from Mr Lombe concerning the payment of personal expenses to Mr Johnson. Mr Lombe noted that he had only reviewed payments back to July 2010 but that, as Mr Johnson had been employed as CEO since 2007, there could be other payments of personal expenses not identified by him. Mr Lombe also noted that he had only identified the most obvious personal expenses and that further investigation might identify other payments before July 2010. He considered that, apart from Mr Johnson, others may have been involved in arranging for the payments to be made to Mr Johnson.

On 5 March 2014, the Commission received an s 11 report from Lesley Turner, acting CEO of the NSW Aboriginal Land Council (NSWALC), concerning the payment by GLALC of personal expenses incurred by Mr Johnson.

On 30 April 2014, the Commission received an s 11 report from Stephen Wright, then Registrar, *Aboriginal Land Rights Act 1983* ("the ALR Act"), concerning possible breaches of the ALR Act in relation to financial dealings between GLALC and GFF, including the failure of the GLALC board to comply with a compliance direction issued by the Registrar requiring GLALC to recover the loans made to GFF, and the engagement of Mr Johnson as CEO of a number of corporate entities that received a benefit from GLALC. With respect to the latter, s 78B(1)(e) of the ALR Act provides that a person who is an employee of, or concerned in the management of, a corporation that receives a benefit from a Local Aboriginal Land Council (LALC) must not be, or continue to be, employed as the CEO of that LALC. The Registrar was concerned that Mr Johnson's engagement as CEO of the corporate entities may have infringed s 78B(1)(e) of the ALR Act.

Why the Commission investigated

One of the Commission's principal functions, as specified in s 13(1)(a) of the ICAC Act, is to investigate any allegation or complaint that, or any circumstances which in the Commission's opinion imply that:

(i) corrupt conduct, or

(ii) conduct liable to allow, encourage or cause the occurrence of corrupt conduct, or

(iii) conduct connected with corrupt conduct,

may have occurred, may be occurring or may be about to occur.

The role of the Commission is explained in more detail in Appendix 1.

The information brought to the Commission's attention indicated possible serious and systemic corruption resulting in significant financial loss to GLALC. The information also indicated the likelihood of inadequate internal oversight and poor governance within GLALC, which raised significant corruption prevention issues.

In these circumstances, the Commission decided that it was in the public interest to conduct an investigation to establish whether corrupt conduct had occurred, the extent of any corrupt conduct, and whether there were corruption prevention issues that needed to be addressed.

Conduct of the investigation

During the course of the investigation, the Commission:

- obtained documents from various sources by issuing and serving 39 notices under s 22 of the ICAC Act requiring the production of documents
- interviewed and took statements from a number of people
- conducted seven compulsory examinations.

Evidence obtained by the Commission supported the concerns set out above concerning the management of the financial affairs of GLALC by Mr Johnson and members of the GLALC board.

The public inquiry

After taking into account each of the matters set out in s 31(2) of the ICAC Act, the Commission determined that it was in the public interest to hold a public inquiry, for the purpose of furthering its investigation. In making that determination, the Commission had regard to the following matters:

- cogent evidence had been obtained in the course of the investigation indicating the likelihood of corrupt conduct
- the allegations were serious because they involved significant amounts of money, took place over a number of years and involved senior public officials of a major LALC, being the CEO and members of the GLALC board
- a public inquiry would help identify any inadequacies in LALC management, supervision and regulation, and assist in the promotion of any necessary reform
- while there was a risk to the reputation of some witnesses to be called before a public inquiry, that risk was not undue in the light of the seriousness of the allegations, the cogency of the evidence then available to the Commission, and the public interest in exposing conduct of the kind alleged
- the prospect that conducting a public inquiry would encourage the reporting of other instances of similar conduct
- public exposure of the relevant conduct would

educate the public and serve as an important deterrent to others who might be minded to engage in similar conduct.

The allegations under investigation at the commencement of the public inquiry were that:

- between April 2010 and March 2014, members of the GLALC board partially exercised their official functions by agreeing to employment arrangements with Mr Johnson under which his company, Waawidji Pty Ltd, derived benefits from GLALC or its associated entities, contrary to s 78B(1)(e) of the ALR Act
- between March 2011 and April 2013, Mr Johnson dishonestly and partially exercised his public official functions as the CEO of GLALC by authorising the transfer of GLALC funds to GFF on unfavourable terms to the detriment of GLALC and contrary to the provisions of s 152 and s 176(1) of the ALR Act
- between 2009 and 2013, Mr Johnson partially exercised his public official functions as the CEO of the GLALC by authorising the payment of GLALC funds for the benefit of Deerubbin, Walgett and La Perouse LALCs on unfavourable terms to the detriment of GLALC contrary to the provisions of s 152 and s 176(1) of the ALR Act and, in part, for the benefit of his company, Waawidji
- between 2010 and 2014, Mr Johnson dishonestly exercised his public official functions as the CEO of the GLALC by claiming the provision of benefits from GLALC or its associated entities for himself or his company, Waawidji, including money to which he knew was not lawfully entitled.

The public inquiry was conducted over 19 days, commencing on 9 May and concluding on 16 June 2016. The Hon Megan Latham, Commissioner, presided at the public inquiry. Michael Henry SC and Simon Fitzpatrick acted as Counsel Assisting the Commission. Evidence was taken from 23 witnesses and 41 volumes of exhibits were tendered in evidence.

At the conclusion of the public inquiry, Counsel Assisting prepared submissions setting out the evidence and indentifying the findings and recommendations the Commission could make based on the evidence. These submissions were provided to relevant parties on 30 August 2016. The final submission in response was received on 12 September 2016. All the submissions received in response have been taken into account in preparing the report. In addition, Mr Johnson requested that a summary of his response to the adverse findings contended for by Counsel Assisting in their submissions be included in the Commission's report in the event the Commission made such findings. That summary is Appendix 3 to this report.

GLALC

GLALC is a LALC established under the ALR Act. The area for which GLALC is constituted is around Liverpool in south-west Sydney.

Section 248 of the ALR Act provides that each Aboriginal Land Council is taken to be a public authority for the purposes of the ICAC Act.

Under s 51 of the ALR Act, the objects of each LALC are to improve, protect and foster the best interests of all Aboriginal persons within the LALC's area and other persons who are members of the LALC.

In 2007, GLALC commenced using incorporated entities for various purposes.

In March 2010, the GLALC board voted to effect a corporate restructure whereby GLALC would incorporate new subsidiary public companies limited by guarantee. By 2013, this had resulted in a relatively complex structure involving a number of companies. For the purposes of this report, they included GLALC Development Services Ltd (GDS), Gandangara Management Services Ltd (GMS), and GFF.

GLALC was the founding and only member of GDS. GDS was the founding and only member of GMS. GMS was meant to provide services to other entities within the GLALC corporate structure and to other LALCs. GMS was the founding and only member of a number of other entities, including a special purpose vehicle established to enable development of GLALC land.

On 11 July 2011, the GLALC board passed a resolution that all funds surplus to GLALC's operational needs would be loaned to GFF. GLALC subsequently entered into a series of undocumented loan agreements with its related companies, including GFF. Some $4.8 million was loaned to GFF between 1 July 2012 and 1 July 2013.

On 31 August 2013, the Registrar issued a compliance direction requiring the rescinding of the GLALC board resolution and repayment of all unpaid loans to GLALC-related companies.

On 10 September 2012, the GLALC board rescinded its 11 July 2011 resolution but passed a new resolution purporting to validate new loans and security deeds. These matters are dealt with in more detail in chapter 3 of this report.

On 15 October 2012, the then minister for Aboriginal affairs appointed Kelvin Kenney to investigate the financial

affairs of GLALC. In his April 2013 report to the minister, Mr Kenney found that GLALC funds had not been properly applied or managed, and identified in excess of $500,000 of write-downs of loans made by GLALC to its related entities due to a lack of security for those loans. He also noted that Mr Johnson was employed by multiple entities within the GLALC group of companies, which was arguably in breach of s 78(2)(e) of the ALR Act, and in each case the employment contracts included "elements of an uncommercial nature". Mr Kenney recommended that the minister appoint an administrator of GLALC and its group of companies.

By instrument dated 20 August 2013, the minister appointed Mr Lombe as administrator of GLALC.

Between 20 September 2013 and 11 February 2014, Mr Lombe provided five reports to the minister dealing with a number of issues, including the financial arrangements between GLALC and its related companies, the employment of Mr Johnson, through his company Waawidji, by GLALC-related companies, the lack of information on important GLALC board decisions and the payment by GLALC of personal expenses incurred by Mr Johnson.

On 15 January 2014, two sets of circulating resolutions resulted in changes to the GLALC group structure. One set of resolutions resulted in Gandangara Services Ltd (GSL) replacing GDS as the member of GMS. The other set of resolutions resulted in Gandangara Health Ltd replacing GMS as the member of Gandangara Health Services Ltd (GHS). These changes were made without consulting or seeking the approval of Mr Lombe as administrator. In his fifth report to the minister, Mr Lombe noted his concern that these structural changes "effectively removed GLALC member control from all but one of the old GLALC corporate entities". This restructure was challenged in legal proceedings brought in the NSW Supreme Court by the administrator, and orders reversing it were made on 17 June 2014.

On 17 February 2014, the GLALC auditors provided Mr Lombe with the management letter for the GLALC audit for the year ended 30 June 2013. It identified GLALC loans to GFF of $4.83 million in the 2012 financial year and $2.76 million in the 2013 financial year, and a breakdown in control and oversight arrangements with respect to those transactions, resulting in the possible loss of over $930,000 to GLALC members.

The GLALC board

Section 61 of the ALR Act provides that each LALC is to have a board consisting of not less than five and not more than 10 members. The functions of the board include directing and controlling the affairs of the LALC.

LALC board members are public officials for the purposes of the ICAC Act.

Cinderella (Cindy) Cronan was the chairperson of the GLALC board from 2009 to March 2014. Membership of the GLALC board changed over the period relevant to this investigation.

Each member of the GLALC board was subject to s 176(1) of the ALR Act. That section provides that LALC board members must:

(a) act honestly and exercise a reasonable degree of care and diligence in carrying out his or her functions under this or any other Act, and

(b) act for a proper purpose in carrying out his or her functions under this or any other Act, and

(c) not use his or her office or position for personal advantage, and

(d) not use his or her office or position to the detriment of an Aboriginal Land Council.

Mr Johnson

Mr Johnson was the CEO of GLALC between 26 February 2007 and 6 March 2014, when his appointment was terminated by the administrator.

Prior to being appointed as CEO of GLALC, Mr Johnson had managed community-based non-profit Aboriginal organisations, mostly in Queensland. In 2005, he had completed a bachelor of laws at the Queensland University of Technology and obtained his masters of laws in 2006.

As the CEO of GLALC, Mr Johnson was a "public official" for the purposes of the ICAC Act. This is because he was a person in the service of a public authority, it being GLALC.

As a member of staff of GLALC, s 176(1) of the ALR Act applied to Mr Johnson.

Mr Johnson was also the sole director and secretary of Waawidji, a company registered in January 2005. He owned half the shares in this company. The other half of the shares were owned by his partner.

Chapter 2: Did Mr Johnson's company derive benefits from GLALC?

This chapter examines whether Mr Johnson's company, Waawidji, derived benefits from GLALC at a time when Mr Johnson was employed as CEO of GLALC.

The answer to this is significant because of the operation of s 78B(1)(e) of the ALR Act. That section provides that "a person who has an interest in, or is an employee of or concerned in the management of, a corporation that receives a benefit from the Council" must not be, or continue to be, employed as the CEO of a LALC. This prohibition is intended to ensure that CEOs of LALCs perform their functions in an impartial and honest manner, without being affected by other pecuniary interests. If Waawidji did receive benefits from GLALC, then it is necessary to establish whether members of the GLALC board and Mr Johnson understood that, in those circumstances, Mr Johnson's continuation as CEO was in breach of s 78B(1)(e) of the ALR Act.

The 2007 contract

Mr Johnson was initially employed as the CEO of GLALC under a contract entered into in 2007 between himself and GLALC. This contract specified the period of employment as being from 26 February 2007 to 31 May 2010.

Under this contract, Mr Johnson's remuneration was $110,000, with a statutory superannuation contribution of $9,900. The remuneration comprised a salary of $61,900, with provision for payment of vehicle expenses of $22,100, accommodation expenses of $15,600, and $10,400 for purchase or hire of office equipment. Mr Johnson was also entitled to payment of a performance allowance of up to 15% of his total remuneration package, a "remuneration package increment of 50% of the bonus amount … payable during the ensuing 'contract' year", and a "'results' bonus".

The 2010 contracts

Two new contracts were entered into in 2010.

One contract was between Mr Johnson and GLALC for the employment of Mr Johnson as CEO of GLALC for the period from 1 May 2010 to 31 May 2015. Under this contract, Mr Johnson was entitled to receive an annual remuneration of $87,200 and reimbursement of work-related expenses.

The other contract was between Waawidji and GMS. Under this contract, Waawidji was engaged to provide Mr Johnson's services as CEO of GMS for the period from 1 May 2010 to 31 May 2015. In return, Waawidji was to be paid by GMS an annual amount of $109,000 (exclusive of GST). Waawidji was also entitled to claim from GMS reimbursement of certain expenses incurred in the course of Mr Johnson's work as CEO of GMS.

Both contracts provided for a "performance allowance", "remuneration package increment" and a "results bonus" along the lines of the earlier 2007 contract.

Mr Johnson told the Commission that it was his idea to have two contracts and that he prepared both contracts for consideration by the GLALC board. His reason for arranging for his services as CEO of GMS to be engaged through Waawidji was to minimise his personal liability to pay income tax.

On first blush, the contract between Waawidji and GMS does not appear to infringe s 78B(1)(e) of the ALR Act because any benefit Mr Johnson was due to receive in his role with Waawidji was to come from GMS, not GLALC. However, GLALC could exercise control over GMS and, if it directed GMS to confer contractual benefits on Waawidji, then s 78B(1)(e) became relevant. That section would also apply if the payments made to Waawidji actually came from GLALC.

The GLALC board and the 2010 contracts

The minutes of the 3 May 2010 GLALC board meeting record that "[t]he Board resolves to accept the new CEO contracts as tabled" and "authorizes the Chair to sign the Contracts."

It is not clear which directors voted in favour of the motion to accept the contracts. According to the 3 May 2010 GLALC board minutes, the directors present at the meeting were Ms Cronan, George Bloomfield, Vicki Wade, Ian Edwards, Carol Brown, Shane Luke, Mervin Donovan, Rohan Tobler and John Dickson. All gave evidence at the public inquiry except for Mr Dickson.

It is not possible to say whether or not the contracts were tabled at the meeting. Ms Cronan told the Commission that they were tabled. Ms Wade said they were not. Ms Wade, Mr Bloomfield and Mr Luke each told the Commission that they did not understand that they were being asked to vote on whether GMS should enter into a contract with Waawidji. Mr Donovan recalled that a contract between Mr Johnson and GLALC was tabled at the meeting but, while he did not deny that any other contract was tabled, he could not recall whether a contract between GMS and Waawidji was tabled. The other directors who gave evidence to the Commission could not recall whether any contracts were tabled at the meeting.

Ms Cronan, Mr Donovan and Mr Tobler told the Commission that they voted in favour of the motion. The evidence is insufficient to enable the Commission to determine which of the other directors voted in favour of the motion. Ms Wade, Mr Edwards, Ms Brown and Mr Luke told the Commission that they could not recall voting for the motion. Ms Wade, however, is recorded in the minutes as moving the motion and it is therefore probable that she voted in favour of the motion she had moved. Mr Bloomfield initially told the Commission that he "would have voted" for the motion but later said that he could not recall if he did. Mr Dickson is recorded in the minutes as having seconded the motion. In these circumstances, it is probable that he too would have voted in favour.

Ms Wade, Ms Brown, Mr Donovan and Mr Tobler told the Commission that, at the time the motion was passed, they were unaware of the prohibition in s 78B(1)(e) of the ALR Act. Ms Cronan and Mr Luke said that they were aware of s 78B(1)(e). Mr Bloomfield said he understood that Waawidji could not receive payments from GLALC, or any other Gandangara group company as long as Mr Johnson was the CEO of GLALC. However, Mr Bloomfield said that he was unaware that Waawidji received payments from either GLALC or any other company in the GLALC group. Mr Edwards could not remember whether or not he was aware of s 78B(1)(e).

Ms Cronan told the Commission that, in May 2010, she did not understand that the approval of the 2010 Waawidji contract involved the conferral of a benefit on Waawidji by GLALC. She also denied that GLALC caused GMS to enter into the 2010 Waawidji contract. These denials reflect Ms Cronan's understanding at relevant times and are consistent with her assertion that the members of GLALC, not GLALC, controlled the subsidiaries of GLALC. The Commission accepts the submissions of Counsel Assisting that, because of her lack of experience of corporate governance, Ms Cronan did not appreciate that GLALC conferred a benefit on Waawidji by exercising control over GMS and causing it to confer contractual entitlements on Waawidji.

Even if Ms Cronan understood that GLALC could exercise control over GMS, the Commission is not able to determine on the available evidence whether or not GLALC caused GMS to enter into the 2010 Waawidji contract. That contract was about the use of Mr Johnson's services as CEO of GMS, not of GLALC. That GLALC had the capacity to cause GMS to enter into the 2010 Waawidji contract does not mean that

GLALC, in fact, caused GMS to do so. The directors who approved the 2010 Waawidji contract could do so on behalf of GMS without any exercise of control by GLALC. There is no evidence that GLALC directed GMS to enter into the 2010 Waawidji contract.

The Commission accepts the submissions of Counsel Assisting that no findings should be made that Ms Cronan or the other directors who voted in favour of the resolution acted partially or corruptly.

Mr Johnson and the 2010 Waawidji contract

Mr Johnson told the Commission that, prior to the commencement of the 2010 contract, he was aware of s 78B(1)(e) of the ALR Act and understood that that section meant he could not continue as GLALC CEO if Waawidji was receiving a benefit from GLALC.

Two principal issues for consideration by the Commission were whether the money to pay Waawidji came from GMS or GLALC and, if the money came from GLALC, whether Mr Johnson was aware of that fact.

In an affidavit dated 18 February 2016, which Mr Johnson prepared for the purposes of the Supreme Court proceedings commenced against him by GLALC in 2015, Mr Johnson deposed that the contract between Waawidji and GMS reflected the fact that, by 1 May 2010, a large proportion of his work involved management of the GLALC group of companies and this work was being done through GMS. In his evidence to the Commission Mr Johnson maintained this statement was correct. He also deposed in his affidavit that:

> *This work was being done by* [GMS]*, not only for other GLALC Group entities but also for other LALCs. This included liaising with other LALCs and their corporate groups for the purposes of bringing in work for* [GMS] *and generating revenue.*

Mr Johnson told the Commission that he could not recall whether GMS was generating any revenue as of 1 May 2010. When it was pointed out to him that GMS was only registered as a company on 16 April 2010 and was, therefore, unlikely to be generating any revenue as of 1 May 2010, he told the Commission that, while GMS may not have received any revenue by then, he had anticipated that it would generate revenue in the future.

Under clause 6.3 of the contract between GMS and Waawidji, remuneration was to be paid "by equal weekly instalments". Mr Johnson told the Commission this provision was "never implemented" and that instead payments were made on monthly invoices submitted by Waawidji. On this basis, it would be expected that the first payment made by GMS to Waawidji would have been made no later than early June 2010.

GMS bank records obtained by the Commission showed that GMS only opened a bank account on 22 June 2010. Between then and 21 December 2010, only $200 was deposited into the account. It was not until 22 December 2010 that substantial deposits, totalling over $293,000, were made into the account. This demonstrates that, from 1 May to 21 December 2010, GMS was not in a financial position to pay Waawidji. Indeed, according to the GMS cash disbursements journal, the first payment made by GMS to Waawidji was on 7 February 2011 for $9,241.66. Thereafter, payments for the same amount were made on 7 March and 7 April 2011. Three payments of $9,991.66 each were made between 11 May and 28 June 2011 and, thereafter, there were fairly regular payments in different amounts.

Karen Maltby was the GLALC finance manager between late February 2007 and March 2011. In her evidence to the Commission, she agreed that GMS was not in a position to make monthly payments to Waawidji until the end of 2010. Until then, she needed another account from which to pay Waawidji. She told the Commission that she was instructed on which account to use. Initially, she claimed she could not recall who instructed her but when pressed she conceded that Mr Johnson was the only person who could have issued such an instruction to her. The Commission accepts her evidence that she was instructed on which account to use and is satisfied that because, as CEO of GLALC he had the authority to do so, Mr Johnson was the person who so instructed her.

The Waawidji bank statements confirmed that the first payment received from GMS was on 7 February 2011 for $9,241.66. These statements, however, also recorded substantial deposits, exceeding over $300,000 from GLALC over a period of about 17 months, between May 2010 and September 2011. A deposit on 7 June 2010 of $9,241.66 was described in the statement as "GANDANGARA GDS invoice 92" . This is the number of an invoice addressed to GDS and submitted by Mr Johnson on behalf of Waawidji, which was expressed as being for payment of "Contractual Agreement (May 2010)". The statements recorded other deposits of $9,241.66 made on 2 August, 20 August, 27 September, 5 November, 1 December and 23 December 2010. In his evidence to the Commission, Mr Johnson agreed that the regular deposits of $9,241.66 indicated monthly payments of remuneration under the contract between GMS and Waawidji, and that these would have been paid in response to invoices he prepared.

Mr Johnson provided the Commission with 14 Waawidji invoices covering the period from 26 May 2010 to 30 March 2012. Details are provided in the table below.

Invoice No.	Date	Addressee	Amount
92	26/05/2010	GDS	$9,991.66
93	25/06/2010	GDS	$9,991.66
94	26/07/2010	GMS	$9,991.66
95	20/08/2010	GMS	$9,991.66
96	17/09/2010	GMS	$32,340.00*
97	22/09/2010	GMS	$9,991.66
98	28/10/2010	–	$9,991.66
100	24/11/2010	GMS	$9,991.66
102	19/12/2010	GMS	$9,991.66
114	9/09/2011	GMS	$32,034.18
116	30/12/2011	GMS	$12,587.79
117	30/12/2011	GMS	$12,587.79
119	1/03/2012	GMS	$12,587.79
120	30/03/2012	GMS	$12,587.79

*The original invoice amount was $32,373.00 but this was corrected to $32,340.00.

The invoices for $9,991.66 relate to the service fee Waawidji was entitled to receive from GMS under the 2010 contract. Invoice number 96 for $32,340 relates to the bonus due to Mr Johnson under his 2010 contract with GLALC and the bonus due to Waawidji under its contract with GMS. Ms Maltby told the Commission that Mr Johnson requested the bonuses be paid to Waawidji.

As can be seen from the table, the first two invoices were addressed to GDS. Mr Johnson was not able to explain why these invoices were addressed to GDS rather than GMS. Eleven invoices were addressed to GMS. Invoice 98 was not addressed to any entity. The last five invoices bear dates in 2011 or 2012, by which time GMS had sufficient funds to cover payments to Waawidji. There is no evidence that GLALC paid any of these five invoices.

Invoice 92, dated 26 May 2010, is reproduced on page 16. It demonstrates how the $9,241.66 amount, which was paid into the Waawidji bank account on 7 June 2010, was calculated. Under the 2010 contract, Waawidji was entitled to payment of $100,000 per annum by way of a salary for the CEO and $9,000 per annum for superannuation (both exclusive of GST). The $9,166.66 "Contractual Agreement" amount in the 26 May 2010 invoice is a one-twelfth part of $110,000 (the salary component plus GST). The $825 "Pre Tax deposit into AMP Super" is a one-twelfth part of $9,900 (the superannuation component plus GST). These amounts total $9,991.66. After deducting the $750 payment to "AMP Super", the amount left to be paid to Waawidji is $9,241.66. This represented the monthly amount payable to Waawidji under the 2010 contract prior to any "remuneration package increment".

There is other evidence confirming payment of money by GLALC to Waawidji. The GLALC cash disbursements journal recorded payments totalling $213,756.22 from GLALC to Waawidji between 7 June 2010 and 5 September 2011. The payment on 7 June 2010 was for $9,241.66, which coincides with the monthly amount due to Waawidji under its contract with GMS. The journal describes the payment as a "Contractual Payment".

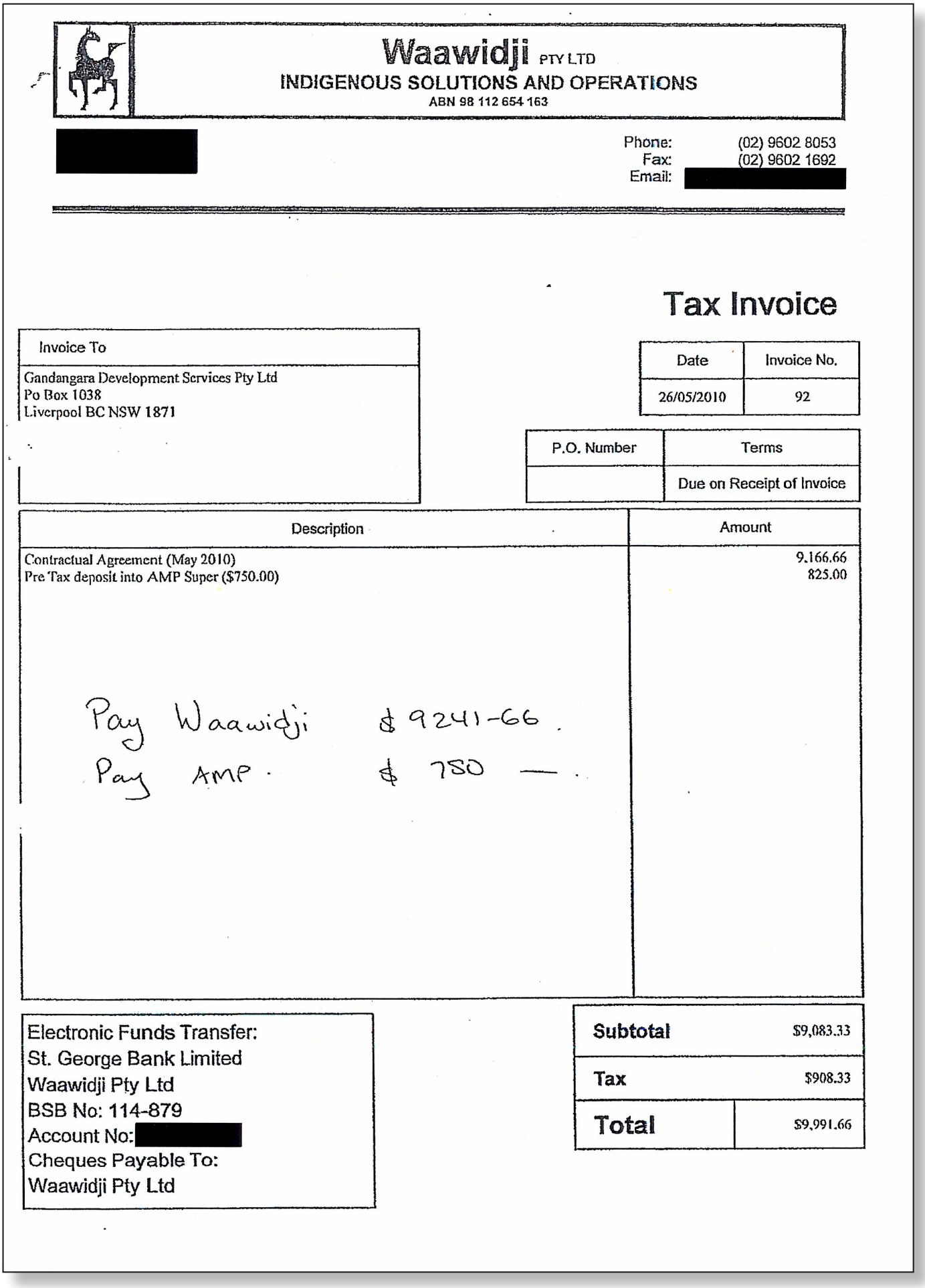
Payments recorded as having been made on 2 August, 27 September, 5 November, 30 November and 23 December 2010 correspond with deposits made into the Waawidji bank account on, or around, those dates. The cash disbursements journal also recorded one payment of $9,991.66 made on 29 June 2010. This amount corresponds with the amount in Waawidji invoice number 93. The Commission is satisfied this is a monthly payment under the Waawidji contract but without the $750 superannuation payment having been deducted. The Waawidji bank statements recorded a deposit of $9,991.66 on that date. The transaction description was "GANDANGARA GLALC".

The GLALC cash disbursements journal recorded a payment to Waawidji of $32,340 on 17 September 2010. This corresponds with the amount in Waawidji invoice number 96 addressed to GMS for "Contractual Services" and the deposit of that amount recorded in the Waawidji bank account statement as a deposit from "GANDANGARA GLALC" on the same date.

The GLALC cash disbursements journal does not record any payment corresponding with invoice 97. The Commission is satisfied, however, that GLALC paid Waawidji $9,241.66 on this invoice. This is because the Waawidji bank statements recorded a deposit for this amount on 27 September 2010, just five days after the date on the invoice. The transaction description that appeared on the bank statement was "GANDANGARA 97". The Commission is satisfied the "97" refers to Waawidji invoice number 97.

The Commission is satisfied that, between 7 June and 23 December 2010, Waawidji received $107,023.28 from GLALC, which was paid by GLALC based on invoices provided by Waawidji. This amount comprised seven payments each of $9,241.66, one payment of $9,991.66 and one payment of $32,340.00.

The GLALC bank statements and cash disbursements journal and the Waawidji bank statements show that Waawidji received significantly more funds from GLALC than can be accounted for by the monthly payments due under the Waawidji contract with GMS or the



Waawidji PTY LTD
INDIGENOUS SOLUTIONS AND OPERATIONS
ABN 98 112 654 163

[redacted]

Phone: (02) 9602 8053
Fax: (02) 9602 1692
Email: [redacted]

Tax Invoice

Invoice To
Gandangara Development Services Pty Ltd Po Box 1038 Liverpool BC NSW 1871

Date	Invoice No.
26/05/2010	92

P.O. Number	Terms
	Due on Receipt of Invoice

Description	Amount
Contractual Agreement (May 2010)	9,166.66
Pre Tax deposit into AMP Super ($750.00)	825.00
Pay Waawidji $9241-66.	
Pay AMP. $ 750 —.	

Electronic Funds Transfer:
St. George Bank Limited
Waawidji Pty Ltd
BSB No: 114-879
Account No: [redacted]
Cheques Payable To:
Waawidji Pty Ltd

Subtotal	$9,083.33
Tax	$908.33
Total	$9,991.66

Figure 1

bonus payments. The majority of the payments to Waawidji recorded in the cash disbursements journal are merely described as "Trade Creditors". Some of the payments recorded in the bank statements are described as reimbursements, while others have no description. The purpose of many of the payments is not clear from the evidence.

In his evidence to the Commission, Mr Johnson agreed that Waawidji was not entitled to receive financial benefits directly from GLALC, although he considered that that prohibition did not extend to reimbursement of expenses incurred by Waawidji. He agreed, however, that any payments that constituted the salary component of the contract between GMS and Waawidji did not constitute a reimbursement of expenses. The submissions made on behalf of Mr Johnson contended that "repayment of an expense incurred confers no benefit, it is simply restorative". These assertions may be doubted but, as submitted by Counsel Assisting, it is unnecessary to determine whether they are correct. This is because there is clear evidence that Waawidji received other payments from GLALC, which were clearly not reimbursements for expenses.

After being shown the Waawidji bank statements at the public inquiry, Mr Johnson agreed that, between the commencement of the May 2010 contract and 7 February 2011, Waawidji had received payments from GLALC. He denied, however, that he had been aware of this at the time the payments had been made.

It was submitted on Mr Johnson's behalf that the fact he caused the Waawidji invoices to be addressed to GDS and GMS indicated that he was not aware the payments for these invoices were being made to Waawidji by GLALC. Why, it was submitted, would he continue to address invoices to GDS or GMS if he knew payment was being made by GLALC?

The Commission does not accept that the way Mr Johnson chose to address the invoices demonstrates that he was not aware GLALC was in fact making the payments. That the majority of the invoices were addressed to GMS merely reflects the fact that, under the contract with Waawidji, it was GMS that was responsible for payment. In these circumstances, it was appropriate that the invoices be addressed to GMS, not GLALC. There is other evidence from which the Commission infers that Mr Johnson was aware the actual payments on the invoices were being made by GLALC.

Even a cursory glance at the Waawidji bank account statements makes it plain that GLALC was depositing large amounts of money into the Waawidji account. These include monthly payments under the Waawidji contract with GMS. These monthly payments are generally described in the transaction description appearing in the statements as "GANDANGARA GLALC" and, on a number of occasions, also refer to the Waawidji invoice number. Mr Johnson admitted that he attended to all of Waawidji's affairs during the relevant period, read the Waawidji bank statements from time to time and made internet withdrawals from the account. The bank statements show that business was transacted on the account many times each month and most of that business was done over the internet where the identity of each depositor would have been evident. His claim that he saw the amount for which deposits were made but overlooked that part of each entry recording GLALC as the depositor is not credible. He eventually conceded that "I would have noticed Gandangara [in the statements] generically" and "I would have glanced at who put [the deposits] in".

The minutes of the GLALC board meetings on 15 November 2010 and 10 October 2011 contain declarations by Mr Johnson that he was a director of Waawidji and that it "does not hold any role with the GLALC as a consultant". These declarations are consistent with knowledge on the part of Mr Johnson that Waawidji was receiving payments from GLALC.

Section 52D(1) of the ALR Act provides that a LALC must ensure that no part of its income or property is transferred directly or indirectly to a consultant to the LALC. Mr Johnson initially told the Commission that he could not recall why he made these declarations. Later in his evidence, he said that he first made such a declaration in 2007 because Waawidji had been reimbursed certain expenses by GLALC and he wanted to make it clear that those payments were not related to any consultancy. He said that, "I just kept the standard declaration going and made it clear that payments to Waawidji were as if it – well, it wasn't a consultant to GLALC as such".

The Commission is satisfied that the declarations accord with Mr Johnson's awareness that s 52D(1) of the ALR Act prohibited GLALC from transferring its income or property to a "consultant". The declarations would not have been necessary if Mr Johnson did not know Waawidji was receiving payments from GLALC. Since Mr Johnson knew about s 52D(1) of the ALR Act, it was in his interest to make clear that any funds received by Waawidji from GLALC were not the result of any consultancy arrangement between Waawidji and GLALC. The Commission is satisfied that Mr Johnson made the declarations because he knew that Waawidji was receiving payments from GLALC and did not want to fall foul of s 52D(1) of the ALR Act.

It was submitted on behalf of Mr Johnson that the contractual payments Waawidji received from GLALC were not benefits for the purpose of s 78(1)(e) of the ALR Act. The basis of that submission was that the

payments were paid by GLALC on behalf of GMS and, therefore, GLALC conferred a benefit on GMS, not Waawidji. The Commission rejects this submission. Waawidji received funds from GLALC and the receipt of these funds was clearly of substantial financial benefit to Waawidji.

The Commission is satisfied that, from about May 2010, Mr Johnson continued to be employed as CEO of the GLALC despite knowing that he was a person who had an interest in, or was concerned in the management of, Waawidji, it being a corporation that received benefits from GLALC, contrary to s 78(1)(e) of the ALR Act.

It was also submitted for Mr Johnson that, even if he knew Waawidji received payments from GLALC, that did not mean he knew that he was not entitled to continue to be employed as CEO of GLALC. The Commission rejects that submission. Mr Johnson's evidence was that he was aware of the prohibition in s 78(1)(e) of the ALR Act prior to the commencement of the May 2010 employment contracts. The Commission is satisfied that he knew he could not continue to be employed as the CEO of GLALC if his company was receiving a benefit from GLALC.

The 2012 contracts

The contract between Waawidji and GMS was not due to expire until 31 May 2015. It was terminated well before that date and three new contracts were entered into between Waawidji, GHS, Gandangara Transport Service Ltd (GTS) and Marumali Ltd, another GLALC-related entity.

Mr Johnson told the Commission he requested these contracts for the purpose of "tax minimisation".

According to the minutes of the "GLALC, GDS, GMS, GTS, GHS, M[arumali], GFF & Ors" board meeting on 10 December 2012, the board resolved that the contract between Waawidji and GMS "be terminated by mutual consent, retrospectively, on 30 June 2012" and be replaced by contracts, commencing 1 July 2012 and expiring on 31 May 2015, between Waawidji and GHS, Waawidji and GTS, and Waawidji and Marumali. The amount to be paid to Waawidji under each contract was $47,871.15 per annum. According to the minutes, "[a]ll other terms and conditions are to remain identical to the previous GMS-Waawidji contract". The contracts required Waawidji to provide Mr Johnson's services as CEO of GHS, GTS and Marumali. Remuneration under these contracts was effectively the same as under the 2010 Waawidji contract with GMS as at 2012, except that that payment was split into three equal amounts.

The GLALC board and the 2012 contracts

The directors who attended the 10 December 2012 board meeting were Ms Cronan, Ms Brown, Gloria Provest, Mr Bloomfield, Keira Edwards, Mr Tobler and Mr Dickson.

Ms Cronan told the Commission that there was a unanimous vote to approve the three contracts. Mr Tobler told the Commission that he voted in favour of the motion to approve the contracts but could not recall who else voted in favour of the motion. Ms Brown could not recall whether she, or anyone else, voted in favour of the motion. Ms Provest told the Commission that she did not disagree with the motion but could not recall anyone voting on it. Mr Bloomfield said that he had never seen the motion prior to the public inquiry and that, if he had seen it at the board meeting, he would not have voted in favour of the motion. Ms Edwards said she could not recall a vote on such a motion.

Mr Johnson told the Commission that he was at the 10 December 2012 board meeting. According to his evidence, there was a vote, by show of hands, on the motion to approve the three contracts. He could not recall anyone voting against the motion.

Apart from Ms Cronan and Mr Tobler, the Commission is not able to determine which directors approved the three contracts.

Ms Brown, Ms Provest, Ms Edwards and Mr Tobler told the Commission that they were unaware of s 78B(1)(e) of the ALR Act. Ms Cronan told the Commission that she was aware of the section, while Mr Bloomfield understood that Waawidji could not receive payments from GLALC, or any other Gandangara group company, as long as Mr Johnson was the CEO of GLALC but he told the Commission that he was unaware Waawidji received any payments from GLALC or its related entities.

The Commission is not satisfied that, as at 10 December 2012, either Ms Cronan or any of the other directors were aware that Waawidji would receive any benefit from GLALC. None of the contracts provided for GLALC to make payments to Waawidji. In these circumstances, the Commission accepts the submissions of Counsel Assisting that no findings should be made that Ms Cronan or the other directors who voted in favour of approving the three 2012 contracts acted partially or corruptly.

Mr Johnson and the 2012 Waawidji contracts

For the reasons set out above, the Commission has found that Mr Johnson knew that GLALC made substantial

payments to Waawidji during the period he was CEO of GLALC. Most of these payments were made during the period from 1 May 2010 to 6 September 2011, well before the three 2012 contracts were entered into.

The GLALC cash disbursements journal, however, records a payment of $20,000 to Waawidji on 24 June 2014. The entry in the journal records the purpose of the payment as being reimbursement of legal costs. The payment is reflected in the Waawidji bank statement as a deposit from "Gandangara GLALC". This appears to be the only payment made by GLALC to Waawidji during the period the 2012 contracts were in place. Mr Johnson asserted that GLALC reimbursement of Waawidji expenses did not constitute a "benefit" from GLALC for the purposes of s 78B(1)(e) of the ALR Act. In any event, this payment was received after Mr Johnson's employment as CEO of GLALC had been terminated.

Corrupt conduct

The Commission's approach to making findings of corrupt conduct is set out in Appendix 2 to this report.

First, the Commission makes findings of relevant facts based on the balance of probabilities. The Commission then determines whether those facts fall within the terms of s 8(1), s 8(2) or s 8(2A) of the ICAC Act. If they do, the Commission then considers s 9 of the ICAC Act and the jurisdictional requirements of s 13(3A) of the ICAC Act. In the case of subsection 9(1)(a), the Commission considers whether, if the facts as found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that the person has committed a criminal offence. In the case of s 9(1)(b) and s 9(1)(c), the Commission considers whether, if the facts as found were to be proved on admissible evidence to the requisite standard of on the balance of probabilities and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would, in relation to s 9(1)(b), find that the person has committed a disciplinary offence or, in the case of s 9(1)(c), find there were reasonable grounds for dismissal.

The Commission then considers whether, for the purpose of s 74BA of the ICAC Act, the conduct is sufficiently serious to warrant a finding of corrupt conduct.

Before proceeding, it is necessary to address a submission made on behalf of Mr Johnson that it would be a denial of procedural fairness for the Commission to make any finding that Mr Johnson engaged in corrupt conduct in relation to continuing to act as GLALC CEO while Waawidji was receiving benefits from GLALC. The basis of this submission was that the relevant allegation at the time the public inquiry commenced was that members of the GLALC board acted contrary to s 78B(1)(e) of the ALR Act and that allegation did not refer to Mr Johnson (the allegation is set out in chapter 1 of this report). It was submitted that any finding of corrupt conduct against Mr Johnson would be "a long way outside the ambit of the allegation", and that such a finding would involve a denial of procedural fairness because no allegation had been fairly articulated against Mr Johnson, thereby denying him the opportunity to properly respond during the public inquiry.

The Commission rejects this submission. A public inquiry is not a criminal trial on indictment or a civil trial subject to formal pleadings and particulars. It is part of an ongoing investigation. During an investigation undertaken by the Commission, the nature and scope of allegations under investigation are likely to change. As stated in *Glynn v ICAC (1990) 20 ALD 214* (at 218), the Commission is not "shackled by formal rules of pleadings and particulars".

The fact that the allegation at the commencement of the public inquiry did not specifically refer to Mr Johnson does not preclude the Commission from, during the course of the public inquiry, investigating the extent, if any, to which he was aware that his continuing in the role of GLALC CEO was in breach of s 78B(1)(e) of the ALR Act.

The real issue is whether Mr Johnson was put on notice that his conduct was under scrutiny and that he had the opportunity to respond appropriately to any allegations involving him. The allegation, as framed, clearly indicated that an issue under investigation was whether Waawidji derived benefits from GLALC contrary to s 78B(1)(e) of the ALR Act. Mr Johnson could have been in no doubt that his conduct would come under scrutiny.

That the Commission was interested in his conduct was made abundantly clear from the questions he was asked by Counsel Assisting in the public inquiry, which went directly to his knowledge of that section and his knowledge of payments made by GLALC to Waawidji. Mr Johnson had the opportunity to put his version of events through his answers to those questions and through examination by his counsel. He had the opportunity, as provided for by the Commission's standard directions for public inquiries, to notify the Commission of further witnesses whose evidence he wanted placed before the Commission and to place documents before the Commission. He availed himself of the latter opportunity to place before the Commission the Waawidji invoices referred to above.

The submissions of Counsel Assisting squarely put to Mr Johnson that it was open to the Commission to make findings adverse to him and the evidentiary basis for such findings. Mr Johnson then had the opportunity, of which he availed himself, to make submissions in response

that addressed the relevant evidence and advance reasons why particular findings should not be made. No application was made to re-open the public inquiry so that Mr Johnson could put forward further evidence. Indeed, the submissions made on his behalf were clear that no application to re-open the public inquiry for that purpose was being made. The Commission is satisfied that Mr Johnson was afforded procedural fairness and that it is not precluded, on that basis, from making a finding of corrupt conduct.

The Commission finds that, from about June 2010, Mr Johnson continued to act as CEO of GLALC despite knowing that his company, Waawidji, was receiving benefits from GLALC by way of deposits of funds into the Waawidji bank account (which, between June and December 2010 totalled $107,023.28, paid by GLALC on invoices issued by Waawidji) and knowing that, under s 78B(1)(e) of the ALR Act, he was not entitled to continue to be employed as the CEO of GLALC because he was a person who had an interest in a corporation that received a benefit from GLALC.

This is corrupt conduct for the purpose of s 8(1)(a) of the ICAC Act because it is conduct that adversely affected, either directly or indirectly, the honest and impartial exercise of official functions on the part of Mr Johnson. It is also corrupt conduct for the purpose of s 8(2A)(c) of the ICAC Act, as it is conduct on the part of Mr Johnson that could impair public confidence in public administration and could involve dishonestly obtaining or dishonestly benefitting from the payment of public funds for private advantage, being the payment of his salary as CEO of GLALC, despite knowing that he was not entitled to remain CEO of GLALC.

For the purposes of s 9 of the ICAC Act, it is relevant to consider the definition of "disciplinary offence" in s 9(3) of the ICAC Act. The definition includes "any misconduct" that may constitute grounds for disciplinary action under any law. Section 181A(1) of the ALR Act provides that "misconduct", for the purposes of the ALR Act, includes a contravention of a provision of the ALR Act. Under s 181B(b) of the ALR Act, the grounds on which disciplinary action may be taken against an officer or member of staff of an Aboriginal Land Council include where the officer or member of staff has engaged in misconduct of a sufficiently serious nature as to justify the taking of disciplinary action.

The Commission considers that Mr Johnson's conduct was of a serious nature. As CEO of GLALC, he was the senior administration officer of GLALC and, as such, was responsible for ensuring both GLALC staff (including himself) and GLALC complied with relevant legislative requirements. He had legal training and was aware of the prohibition in s 78(1)(e) of the ALR Act. Despite this, he deliberately ignored the legislative provision and continued to act as CEO of GLALC over a prolonged period of time.

The Commission is satisfied for the purposes of s 9(1)(b) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the civil standard of on the balance of probabilities and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Johnson had engaged in a disciplinary offence of misconduct.

The Commission is also satisfied for the purposes of s 9(1)(c) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the civil standard of on the balance of probabilities and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that there were reasonable grounds for dismissing, dispensing with the services of, or otherwise terminating the services of Mr Johnson as CEO of GLALC.

Accordingly, the Commission is satisfied that the jurisdictional requirements of s 13(3A) of the ICAC Act are satisfied.

The Commission is satisfied for the purposes of s 74BA of the ICAC Act that this is serious corrupt conduct. This is because, although being responsible for ensuring compliance with the ALR Act, Mr Johnson continued to act as CEO of GLALC for a prolonged period of time despite knowing that he was prohibited from doing so because his company was receiving a substantial amount of money from GLALC.

Section 74A(2) statement

In making a public report, the Commission is required by s 74A(2) of the ICAC Act to include, in respect of each "affected" person, a statement as to whether or not in all the circumstances the Commission is of the opinion that consideration should be given to the following:

a. obtaining the advice of the Director of Public Prosecutions (DPP) with respect to the prosecution of the person for a specified criminal offence

b. the taking of action against the person for a specified disciplinary offence

c. the taking of action against the person as a public official on specified grounds with a view to dismissing, dispensing with the services of or otherwise terminating the services of the public official.

An "affected" person is defined in s 74A(3) of the ICAC Act as a person against whom, in the Commission's opinion, substantial allegations have been made in the

course of, or in connection with, the investigation. For the purposes of this chapter, the Commission considers Mr Johnson and the GLALC board members referred to in this chapter are affected persons.

As Mr Johnson is no longer employed by GLALC, the possibility of taking disciplinary action against him, or taking action with a view to his dismissal as a public official, does not arise.

The Commission accepts the submissions of Counsel Assisting that there is no evidentiary foundation for consideration to be given to any action with respect to the members of the GLALC board.

Chapter 3: Transfer of GLALC funds to GFF

On 14 occasions between 30 June 2011 and 12 November 2012, Mr Johnson authorised the transfer of funds to GFF from a solicitors' trust account held on behalf of GLALC. These funds totalled $5,370,000. This chapter examines whether Mr Johnson dishonestly or partially exercised his public official functions as CEO of GLALC by authorising the transfer of these funds on unfavourable terms to the detriment of GLALC and contrary to the provisions of s 152 and s 176(1) of the ALR Act.

The relevant statutory provisions

Section 152 of the ALR Act requires each LALC to establish a bank account for receipt of money and constrains the use of that money. For the period under investigation by the Commission, the section was in substantially the same form and provided as follows:

*(1) Each Local Aboriginal Land Council is to establish in an authorised deposit-taking institution an account (the **"Local Aboriginal Land Council's Account"**).*

(2) The following is to be deposited in the Local Aboriginal Land Council's Account:

(a) money received from the New South Wales Aboriginal Land Council for or in respect of the acquisition of land,

(b) any other money received by the Local Aboriginal Land Council and not required by or under this or any other Act to be paid into any other account or fund.

(3) The following is to be paid from the Local Aboriginal Land Council's Account:

(a) amounts required for the acquisition of land by the Council where that acquisition has been approved in accordance with this Act,

(b) amounts required to meet expenditure incurred by the Council in the execution or administration of this Act, including travelling and other allowances to Board members,

(c) any other payments authorised by or under this or any other Act.

(4) Money to the credit of the account may be invested in any manner authorised by the regulations.

Under s 176 of the ALR Act, Mr Johnson, as a member of the GLALC staff, was obliged to:

- act honestly and exercise a reasonable degree of care and diligence in carrying out his functions under the ALR Act or any other Act
- act for a proper purpose in carrying out his functions under the ALR Act or any other Act
- not use his office or position for personal advantage
- not use his office or position to the detriment of an Aboriginal Land Council.

The proposal to provide GLALC funds to GFF

GLALC was the owner of several parcels of property in the south-west of Sydney. By early 2011, it had successfully completed the development of a 39-lot residential subdivision. By March 2011, 37 of these lots had been sold, generating funds of $9.7 million for GLALC. The proceeds of the sale were held in a trust account operated by GLALC's solicitors. The sale of the remaining two lots was due to settle within three months of that date.

At the time, GLALC was the founding and only member of GDS which, in turn, was the founding and only

member of GMS which, in turn, was the founding and only member of GFF. Each of GLALCs elected board members were directors of these entities and there were provisions in the constitutions of each of those entities to ensure that a person could only be a director while a member of the GLALC board.

According to a brief provided to counsel for the purpose of obtaining legal advice for GLALC, it was proposed that GLALC "move" an amount of $7,760,000, being 80% of the $9.7 million it had received in the sale, to GFF. These funds were to be used by GFF for its principal purpose as stated in its constitution, being:

> *...to improve, protect and foster the best interests of all Aboriginal persons within the GLALC Area and other persons who are GLALC Members, including by using income and property of the Company for the education, training and direct relief of poverty, sickness, destitution or helplessness of all Aboriginal persons within the GLALC Area and other persons who are GLALC Members.*

It was envisaged that this purpose would be achieved by GFF doing the following:

- providing loans to other GLALC entities to further the pursuit of the principal purposes of those entities
- acquiring assets, including land, which it could develop for the benefit of GLALC members
- engaging appropriately qualified consultants, experts and professional advisors to assist GLALC, GFF and other GLALC entities pursue their principal purposes.

According to the brief to counsel, it was proposed that GLALC would convene a meeting of its members where this proposal would be outlined in detail and a resolution to "move an amount of $7,760,000" to GFF would be put to the members to effect the transfer of money to GFF. The proposal, as outlined in the brief to counsel, did not include a requirement that GFF would be required to repay any money provided by GLALC. Mr Johnson sought legal advice as to whether GLALC could "move" funds to GFF by way of the proposed resolution.

The legal advice

A written advice was received from senior and junior counsel in April 2011. The advice was that any resolution that simply provided for GLALC funds to be "moved" would be defective and, if passed, would be liable to be challenged on the grounds of being ultra vires the scope of conduct permitted under the ALR Act. Counsel was concerned that the proposed resolution could be construed as providing GFF with the funds by way of a gift or donation. Counsels' opinion was that, to be valid, any transfer of funds could not be by way of gift but had to be subject to commercial security over the funds provided to GFF. Counsel recommended the proposed resolution be altered so that it required that the funds advanced to GFF were to be applied only in pursuit of GFF's principal purpose and secured back to GLALC on commercial terms.

In his evidence to the Commission, Mr Johnson agreed that he had received this advice and that the effect of the advice was that GLALC could lend money to GFF but such a loan had to be on a commercial basis and secured by a charge. He also agreed that the advice was that this should be achieved through a GLALC members' resolution. Mr Johnson told the Commission he disagreed with the advice that there needed to be a members' resolution.

The GLALC board and members' resolutions

On 11 July 2011, there was a meeting of the GLALC board and the boards of related entities, including GFF.

Mr Johnson was present at the meeting. The minutes of that meeting record the carrying of a motion moved by Ms Brown and seconded by Mr Bloomfield that "[t]he Board resolves that an appropriate resolution be put to the Members, in line with relevant Legal advice, that funds be transferred from GLALC to the GFF Ltd".

The minutes also record that another motion, moved by Dot Shipley and Mr Bloomfield, was also carried. That motion was in the following terms:

> *The Board resolves that all funds surplus to the operating needs of Gandangara Local Aboriginal Land Council (GLALC) shall be loaned to Gandangara Future Fund Ltd, on a commercial loan basis, secured by a charge registered with ASIC:*
>
> - *The loan shall be an Interest Only Loan, for a period of thirty (30) years at a rate identical to the Reserve Bank of Australia (RBA) Cash Rate;*
> - *The Interest rate shall be that which the RBA has in place on the 30 June each Financial Year and shall be applied respectively to all funds loaned for the previous period 1 July [previous calendar year] to 30 June [day of application];*
> - *The Board notes their intention for long term sustainability and that should Gandangara Local Aboriginal Land Council ever be wound up, and/or forcibly amalgamated, and/or placed under Administration, and/or removed from being able to be beneficial and/or remedial to the Aboriginal members of GLALC the Loan[s] shall be forgiven.*

The minutes also record a resolution of the GFF board to enter into a loan agreement with GLALC. The resolution set out that the loan was to be an interest-only loan made for 30 years on a commercial-loan basis, secured by a charge registered with the Australian Securities and Investments Commission (ASIC) and with interest at a rate identical to the Reserve Bank of Australia (RBA) cash rate.

Although Mr Johnson did not agree with that part of the legal advice that any transfer of funds to GFF should be authorised by a members' resolution, such a resolution was passed. On 27 July 2011, there was an ordinary meeting of the members of GLALC, at which Mr Johnson was also present. The following motion, moved by Ms Brown and seconded by Mr Dickson, was carried by 55 votes, with seven votes against and seven abstentions:

> *The members resolve that they totally support the GLALC Board resolution that all funds surplus to the operating needs of Gandangara Local Aboriginal Land Council (GLALC) shall be loaned to Gandangara Future Fund Ltd, on a commercial loan basis, secured by a charge registered with ASIC (substantially in the form displayed at the meeting and subject to certification by GLALC's lawyers that it is appropriate and effective):*
>
> - *The loan shall be an Interest Only Loan, for a period of thirty (30) years at a rate identical to the Reserve Bank of Australia (RBA) Cash Rate;*
> - *The Interest rate shall be that which the RBA has in place on the 30 June each Financial Year and shall be applied respectively to all funds loaned for the previous period 1 July [previous calendar year] to 30 June [day of application of interest] with such interest to be paid within 30 days;*
> - *The Members note their intention for long term sustainability and that should Gandangara Local Aboriginal Land Council ever be involuntarily wound up, and/or forcibly amalgamated, and/or placed under statutory Administration, and/or involuntarily removed from being able to be beneficial and/or remedial to the Aboriginal members of GLALC all Loan[s] outstanding at the date of such event shall be forgiven.*

At the 10 October 2011 GLALC board meeting, the GLALC board reaffirmed certain delegations to Mr Johnson. These included the following:

> *In line with both Board and Member's resolutions the CEO is authorised to ensure that all surplus funds are lent to Gandangara Future Fund Ltd in line with the resolutions.*

Mr Johnson was present at this meeting and, in his evidence to the Commission, agreed that the GLALC board resolution referred to was the GLALC board resolution of 11 July 2011 and the members' resolution was that of 27 July 2011.

It is clear from the resolutions that GLALC funds were to be loaned to GFF on a commercial basis and subject to registered charge by way of security. The Commission is satisfied that, at all relevant times, Mr Johnson understood this was the basis upon which the GLALC board and members had agreed any funds were to be provided to GFF.

The transfer of money to GFF

Between 30 June 2011 and 12 November 2012, Mr Johnson authorised the transfer of a total amount of $5,370,000 from the solicitors' trust account holding the GLALC funds from the land sales to the GFF bank account. The dates and amounts of the transfers are set out opposite.

Date	Amount
30 June 2011	$400,000
20 July 2011	$300,000
10 August 2011	$500,000
6 October 2011	$500,000
8 November 2011	$500,000
28 November 2011	$400,000
23 February 2012	$350,000
28 March 2012	$250,000
26 April 2012	$260,000
28 May 2012	$200,000
26 June 2012	$750,000
13 September 2012	$450,000
24 October 2012	$200,000
12 November 2012	$310,000
TOTAL	**$5,370,000**

With the exception of the transfer of 30 June 2011, the transfers were initiated by way of a letter from Mr Johnson to GLALC's solicitors, instructing them to electronically transfer the specified amount from the GLALC trust account to the nominated GFF bank account. The transfer of 30 June 2011 was initiated by way of an email of that date from Shalesh Gundar, GLALC's finance manager, to GLALC's solicitor. Mr Gundar told the Commission that the transfer was authorised by Mr Johnson and that the solicitor acting for GLALC would only transfer money out of the GLALC trust account on Mr Johnson's authority. In his evidence to the Commission, Mr Johnson agreed that he authorised that transfer through his electronic signature because his authorisation was required before the solicitor would make any transfer.

All the transfers were made subsequent to Mr Johnson receiving counsels' advice that any transfer of GLALC funds to GFF had to be by way of a secured commercial loan. All except the first transfer were effected subsequent to the GLALC and GFF board resolutions authorising the transfer of GLALC funds to GFF on a commercial-loan basis secured by a charge registered with ASIC. All but the first two transfers were effected subsequent to the GLALC members' resolution to the same affect.

At some stage in late 2012, GLALC and GFF did execute loan deeds, however, these did not provide security for the money advanced to GFF. The deeds followed the issuing of a compliance direction by the Registrar, which is dealt with below. It remains the case, however, that, at the time the majority of the transfers were made, they were not subject to the payment of interest by GFF and no date was provided by which repayment was to be made. None of the transfers were secured by way of a charge registered with ASIC or otherwise secured.

Mr Johnson's explanation

In his evidence to the Commission, Mr Johnson denied that he authorised the transfer of funds to GFF contrary to the legal advice he had received. He said there was an "understanding" that the transfers were made on the basis that they were loans that had to be repaid by GFF to GLALC and that the intention was that the transfers would be secured. He agreed, however, that there were no written terms upon which the transfers were made and there was no documentation in place to secure the transfers. He was unable to explain when the loans were repayable because "I'm not sure we got that far yet. We were still – all this was a work in progress" and also explained that because it was "a work in progress" arrangements had yet to be made to secure the loans.

Mr Johnson agreed that he understood, as a consequence of the GLALC board resolution of 11 July 2011, GLALC could only lend money to GFF, that any loans had to be on a commercial basis and secured by a charge registered with ASIC. Mr Johnson initially conceded that, in authorising the transfers to GFF, he "unwittingly" acted contrary to that resolution. A short while after making this concession, he changed his evidence and told the Commission that the transfers were not made contrary to the resolution because it was always the intention that steps would be put in place to ensure compliance.

The Commission does not accept this explanation. It is clear from the terms of the 11 July 2011 GLALC board resolution that funds were to be loaned on a commercial basis subject to security registered with ASIC. The resolution did not authorise the advance of funds to GFF on the basis that these arrangements might be made at some future, undetermined point in time. Having also on hand counsels' legal advice, it would have been clear to Mr Johnson that it was necessary to ensure these arrangements were in place before any money was paid to GFF.

Mr Johnson also claimed that he believed there was urgency involved in transferring the money to GFF, which meant that there was no time to prepare the necessary documentation to comply with the GLALC board resolution. Mr Johnson explained that, on each occasion, it was Mr Gundar who asked him to authorise the transfer and that Mr Gundar told him the money was needed to pay expenses.

The Commission rejects Mr Johnson's explanation that no documentation was prepared to comply with the GLALC board resolution because of urgency. The transfers occurred over a period of about 17 months. At any time

during this period, he could have taken steps to ensure the transfers complied with the GLALC board resolution. He did not do so. As CEO of GLALC, Mr Johnson had access to legal services and could have readily engaged those services to arrange the necessary documentation. None of the letters he sent to GLALC's lawyers authorising the transfer of funds to GFF indicated any of the transfers were by way of a loan or that it would be necessary to prepare documentation recording the terms of the loan or that security would be required.

The Commission is satisfied that Mr Johnson authorised the transfers of money from GLALC to GFF knowing that he did so contrary to the legal advice he had obtained that any transfer of funds from GLALC to GFF had to be by way of a commercial loan secured by a charge. The Commission is also satisfied that Mr Johnson authorised 13 of the 14 transfers knowing that they did not comply with the GLALC board resolution of 11 July 2011, and authorised 12 of the transfers knowing they did not comply with the GLALC members' resolution of 27 July 2011.

The Registrar's compliance direction

Section 235(2) of the ALR Act provides that, if the Registrar is satisfied that an Aboriginal Land Council (ALC) or an officer of an ALC has failed to comply, or is not complying, with a specified provision or provisions of the ALR Act or of any regulations or rules made under that Act, the Registrar may issue a direction to the ALC or officer requiring the ALC or officer to comply with that provision or those provisions within a time stated in the direction.

The Registrar became aware of the 27 July 2011 GLALC members' resolution and, through that, of the 11 July 2011 GLALC board resolution. He was concerned that these resolutions might constitute acts on the part of GLALC beyond its capacity. On 1 August 2012, he gave GLALC notice of his intention to issue a compliance direction on the basis that the resolutions were ineffective or void. The Registrar gave GLALC until 17 August 2012 to provide further information as to why a compliance direction should not be issued.

On 7 August 2012, GLALC wrote to the Registrar and asked whether his concerns could be addressed by amending the GLALC board resolution.

At a GLALC members' meeting on 8 August 2012, a resolution was passed amending the GLALC members' resolution by rescinding that part of the resolution that provided for forgiving the loan from GLALC to GFF.

The Registrar subsequently provided GLALC with a draft compliance direction.

On 24 August 2012, GLALC undertook, through its solicitors, not to further implement or act on the July 2011 resolutions. That undertaking was made subject to any contrary view the GLALC board might take at its meeting scheduled for 10 September 2012.

By letter dated 31 August 2012, addressed to Mr Johnson, the Registrar sent to GLALC a compliance direction of the same date. The compliance direction referred to the GLALC board resolution (and the GLALC members' resolution of 27 July 2011 to the same effect) that all funds surplus to the operating needs of GLALC would be loaned to GFF.

The compliance direction recorded three bases for the Registrar forming the view that there was a failure to comply or non-compliance with the ALR Act. The first basis was that neither of the two resolutions performed any function of GLALC conferred or imposed on GLALC by the ALR Act or any other Act. The second basis was that neither of the two resolutions were consistent with the GLALC Community Land and Business Plan 2009–2013 because each resolution directed funds to be transferred to an entity other than GLALC and/or because neither resolution required the funds to be repaid to GLALC on completion of specified projects or to be loaned at normal bank commercial interest rates. The third basis was that neither of the two resolutions directed payments to be made for any purpose set out in s 152(3) (a) or s 152(3)(b) of the ALR Act.

The compliance direction set out eight directions to GLALC. These involved not taking any act to implement the resolutions and rescinding or not implementing them or amending them so that they complied with the ALR Act. The direction required GLALC to make written demand for the repayment, within 28 days, of any amounts advanced to GFF pursuant to the resolutions or, alternatively, satisfy the Registrar that all amounts paid were duly authorised by a board resolution that was within power and complied with the ALR Act.

On 31 August 2012, the Registrar received an email from the lawyers for GLALC advising that GLALC intended to comply with the terms of the compliance direction.

At the GLALC board meeting on 10 September 2012, the GLALC board resolved to rescind its 11 July 2011 resolution. The GLALC board resolved for GLALC to enter into two loan deeds and a security deed with GFF, and it ratified prior acts of any director or authorised representative of GLALC in connection with the "First Loan".

On 21 September 2012, GLALC provided a copy of this resolution, extracts from a report prepared for the GLALC board meeting, a draft security deed, and a draft loan deed to the Registrar. The extract from the report referred to

the transfer of $1,060,000 from GLALC to GFF between 10 October 2011 and 27 August 2012 and the passing of those funds to GMS which, in turn, had passed the funds to "Gandangara Group entities". The extract also referred to GLALC entering into two loan agreements. The first was to cover the money already provided to GFF. The second was to be for a further loan to GFF of $4,043,296.

In considering this material, the Registrar formed the view that GLALC had not complied with his compliance direction because:

- the 10 September 2012 GLALC board resolution ratified the earlier loan
- no demand had been made for repayment of that loan
- he was not satisfied that the loan was duly authorised by a resolution within GLALC's power or complied with the ALR Act
- no legal action had been commenced to recover the payments made pursuant to the loan.

As a result, on 19 October 2012, the Registrar issued a letter to GLALC, which he sent to Mr Johnson by email. The letter noted GLALC's non-compliance with the compliance direction, notified GLALC of the Registrar's intention to issue a further compliance direction, requested an undertaking not to implement the GLALC board resolution of 10 September 2012, and reserved the Registrar's right to commence proceedings in the Land and Environment Court.

At some time between 10 September and 1 November 2012, GLALC and GFF executed two loan deeds. One of the deeds was dated 1 July 2011 and provided for an unsecured two-year loan from GLALC to GFF of $4,826,550 at an agreed interest rate or, in the absence of agreement, an interest rate equivalent to the 90-day bank bill swap reference rate plus 2% per annum. The other deed was also dated 1 July 2012 and provided for an unsecured two-year loan from GLALC to GFF of $4,043,296. Again, the loan was at an agreed interest rate or, in the absence of agreement, an interest rate equivalent to the 90-day bank bill swap reference rate plus 2% per annum. Both deeds were signed on behalf of GLALC by Ms Cronin and Mr Johnson and also signed on behalf of GFF by Ms Cronin and Mr Johnson.

As set out in the table on page 25, Mr Johnson authorised three transfers of money from the GLALC trust account to GFF subsequent to the Registrar issuing the compliance direction on 31 August 2012. The transfers involved a total of $960,000.

In his evidence to the Commission, Mr Johnson agreed that he received the compliance direction and read it on or about 31 August 2012. He told the Commission that he had understood the compliance direction to mean that he was not to cause transfers of money from GLALC to GFF or to further implement the GLALC board resolution of 11 July 2011. Mr Johnson also told the Commission that he read the Registrar's letter of 19 October 2012 when he received it. It is plain from that letter that the Registrar was of the view there had been a failure to comply with his earlier direction and that he was seeking an undertaking not to implement the GLALC board resolution of 10 September 2012, which Mr Johnson knew related to the transfer of GLALC funds to GFF. That Mr Johnson understood the significance of the matters raised in the Registrar's letter is demonstrated by his evidence to the Commission that after reading the letter he "referred it immediately to our lawyers".

On 29 October 2012, Mr Johnson received an email response from the GLALC lawyer. The response noted that, under the ALR Act, the Registrar could refer a person's alleged failure to comply with a direction to the Land and Environment Court for determination and that an alleged failure to comply with a direction, particularly going to the disposition of GLALC funds, would be treated seriously by that court. Despite this, Mr Johnson claimed that he had not understood at the time he authorised the post-31 August 2012 transfers that he was breaching the Registrar's compliance direction. He told the Commission that, "I didn't put the two together at that point in time" and only became aware of his error during the course of the public inquiry.

The Commission rejects this explanation. It is irreconcilable with his admission that he understood the compliance direction meant he was not to cause transfers of funds from GLALC to GFF. The wording of the compliance direction is very clear and there is no doubt that, as an experienced CEO of GLALC and a person with legal qualifications, that Mr Johnson fully understood its terms.

The sequence of events recounted above following the issue of the compliance direction makes plain that it was a significant matter about which Mr Johnson was fully aware. It is not credible that he failed to understand the transfers he authorised after 21 August 2012 were contrary to the terms of the compliance direction. Despite this, he continued to arrange for the transfer of funds to GFF, including the transfer of 24 October 2012, only five days after receiving the Registrar's letter of 19 October 2012.

The Commission is satisfied that, between 13 September and 12 November 2012, Mr Johnson authorised the transfer of funds from the GLALC trust account to GFF, totalling $960,000, despite knowing that his actions in doing so contravened the Registrar's compliance direction of 31 August 2012.

How the funds were used

Mr Johnson told the Commission that the $5,370,000 of GLALC funds he authorised to be transferred to GFF were intended to be used to pay the operating expenses of companies other than GLALC. As such, the transfers were to the detriment of GLALC. However, not all of the funds appear to have been used in the way contemplated by Mr Johnson. Of the $5,370,000 that Mr Johnson authorised to be transferred by GLALC to GFF, $3,500,000 was subsequently transferred back by GFF to GLALC (and often within days of the initial transfer from GLALC to GFF). The reasons for this are unclear. Mr Johnson was unable to provide any explanation. Whatever the purpose, $3,500,000 of the funds transferred by GLALC to GFF do not appear to have been used to pay the operating expenses of companies other than GLALC. Of the remaining $1,870,000, $1,720,000 was transferred to GMS. The probabilities are that these funds were used to pay operating expenses of GMS (or another company). This was to the detriment of GLALC.

Pursuant to s 152(2)(b) of the ALR Act, the money held in GLALC's lawyers' trust account should have been deposited into the GLALC bank account, not the GFF bank account. The transfer of the funds to GFF did not comply with any of the three permissible purposes prescribed by s 152(3) of the ALR Act.

Following the dispute between GLALC and the Registrar concerning the compliance direction, GFF repaid GLALC $1,380,000 in April 2013. According to the financial statements for GLALC and its controlled entities for the year ended 30 June 2012, this was the net amount then owing by GFF to GLALC. However, GLALC's auditors found that the financial statements did not "achieve fair presentation as required by AASB 101 'Presentation of Financial Statements'" by reason of inadequate disclosures pertaining to transactions between GLALC and its subsidiaries (including GFF). Inconsistently with the repayment of $1,380,000 by GFF to GLALC in April 2013, in their management letter for the year ended 30 June 2013, GLALC's auditors noted that $930,415 of the $1,380,000 was unable to be repaid to GLALC. The evidence before the Commission is insufficient to resolve this inconsistency.

Were the transfers to GFF gifts?

It was contended by Counsel Assisting that Mr Johnson knew that the GLALC payments he authorised to be made to GFF were gifts, not loans. This contention was made on the basis that the transfers were not made subject to any terms requiring repayment, were not secured in any way and no interest charges were stipulated. It was clear from the GLALC board resolution of 11 July 2011 and the GLALC members' resolution of 27 July 2011 that the GLALC board and GLALC members intended that any transfers to GFF be by way of loan. That was consistent with the legal advice provided to GLALC. Although Mr Johnson failed to implement the resolutions or comply with the legal advice, the Commission is not satisfied that in authorising the transfers Mr Johnson intended they would be gifts to GFF.

Corrupt conduct

The Commission finds that, on 14 occasions between 30 June 2011 and 12 November 2012, Mr Johnson improperly favoured GFF by authorising the transfer of funds totalling $5,370,000 from the GLALC trust account to GFF knowing that he did so contrary to legal advice he had obtained that any transfer of funds from GLALC to GFF had to be by way of a commercial loan secured by a charge. He authorised 13 of the 14 transfers, totalling $4,970,000, knowing that they did not comply with the GLALC board resolution of 11 July 2011, authorised 12 of the transfers, totalling $4,670,000, knowing they did not comply with the GLALC members' resolution of 27 July 2011, and authorised three of the transfers, totalling $960,000, despite knowing that his actions in doing so contravened the Registrar's compliance direction of 31 August 2012. In each case, he failed to exercise a reasonable degree of care and diligence and acted to the detriment of GLALC.

This is corrupt conduct for the purpose of s 8(1)(b) of the ICAC Act because it is conduct that constitutes or involves the partial exercise of official functions on the part of Mr Johnson. His conduct was partial because it favoured GFF at the expense of GLALC to the extent that, as Mr Johnson affirmed, the transfers were made for the purpose of paying the operating expenses of companies other than GLALC.

The Commission is satisfied for the purposes of s 9(1)(b) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the civil standard of on the balance of probabilities and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Johnson had engaged in a disciplinary offence of misconduct, being conduct in contravention of s 152(2)(b), s 152(3), s 176(1)(a) and 176(1)(d) of the ALR Act. Particularly given the number of transfers and the amounts of money involved, his conduct was of a sufficiently serious nature as to justify the taking of disciplinary action under s 181F of the ALR Act.

Accordingly, the Commission is satisfied that the jurisdictional requirements of s 13(3A) of the ICAC Act are satisfied.

The Commission is satisfied for the purposes of s 74BA of the ICAC Act that this is serious corrupt conduct. This is because, although Mr Johnson did not personally benefit from the conduct, he authorised the transfer of substantial sums of public money knowing that the transfers were contrary to legal advice, the GLALC board resolution of 11 July 2011, the GLALC members' resolution of 27 July 2011, and the Registrar's compliance direction of 31 August 2012. In spite of this, he chose to authorise the transfers. Moreover, this conduct occurred over a prolonged period of time. His conduct was deliberate, repetitive and serious. The fact that he has legal qualifications and was therefore in a position to fully comprehend the terms of the legal advice, the resolutions and the Registrar's compliance direction is also material.

As submitted by Counsel Assisting, the fact that, by 30 June 2013, GFF had repaid GLALC $1,380,000 (or some part thereof) does not have the result that Mr Johnson's conduct is not serious. Mr Johnson did not authorise the transfers on the basis that GFF was obliged to repay GLALC anything. GFF repaid GLALC $1,380,000 (or some part thereof) as part of the resolution of a dispute between GLALC and the Registrar concerning the compliance direction, not as the result of any actions taken by Mr Johnson.

Section 74A(2) statement

For the purposes of this chapter, the Commission considers Mr Johnson is an affected person.

As Mr Johnson is no longer employed by GLALC, the possibility of taking disciplinary action against him, or taking action with a view to his dismissal as a public official, does not arise.

Chapter 4: Payments to other LALCs

This chapter examines whether GLALC funds were provided to Deerubbin Local Aboriginal Land Council (DLALC), La Perouse Local Aboriginal Land Council (LPLALC) and Walgett Local Aboriginal Land Council (WLALC), and whether any such payments were authorised to be made by Mr Johnson from the GLALC bank account contrary to the requirements of s 152 of the ALR Act. It will be recalled that this section of the Act imposed restrictions on the circumstances in which money could be paid from a LALC account. Money could be paid out of an account for the acquisition of land by a LALC, to meet expenditure incurred by a LALC in the execution or administration of the ALR Act and for other purposes authorised by the ALR Act or other Act.

This chapter also examines whether Mr Johnson arranged for GLALC to provide funds to DLALC so that his company, Waawidji, could obtain a financial benefit from DLALC.

Dealings with DLALC

The evidence before the Commission discloses the commencement of a relationship between GLALC and DLALC in 2009. On 6 June 2009, Mr Johnson sent an email to Kevin Cavanagh, the CEO of DLALC. In the email, he advised that GLALC had recently lodged over 200 land claims using a mapping system and that DLALC "may be missing out on substantial land claims" by not using such a mapping system. Mr Johnson went on to suggest they "sit down and start on our core business-land & development". In the email, Mr Johnson wrote that:

> *…it is important that DLALC rapidly grows as an economic strength in support of the entire Land Rights Network. GLALC is of the opinion that whilst poor we remain weak and susceptible to attack. We are therefore ready, willing and able to offer support and assistance to DLALC in this area.*

Mr Cavanagh told the Commission this email "just came out of the blue". He understood, however, that Mr Johnson was offering assistance from GLALC in respect of the mapping of potential DLALC land claims. He responded by email later that day accepting the offer.

On 8 September 2009, following discussions between Mr Johnson and Mr Cavanagh, Mr Johnson, in his capacity as CEO of GLALC, addressed a meeting of the DLALC board about land claims and the possible development of land. At that meeting, the DLALC board resolved to instruct GLALC to lodge land claims for DLALC, and for GLALC to investigate and map all claimable Crown land in the DLALC area, at a cost of $112 per land claim.

At this time, DLALC had 10 lots of land at Terrace Falls Road in Hazelbrook. DLALC held this land as a result of land claims made in the 1990s. Mr Johnson told the Commission that he knew about this land and that DLALC did not have the resources to develop it for sale. In his evidence to the Commission, Mr Cavanagh confirmed that DLALC wanted to develop the lots for sale but lacked the funds or resources to do so. He told the Commission that, in discussions with Mr Johnson, Mr Johnson proposed that his company, Waawidji, assist DLALC to develop the Hazelbrook land.

On 23 December 2009, Mr Johnson sent an email to Mr Cavanagh attaching a four-page document on Waawidji letterhead. The document was titled "HAZELBROOK PROJECT ADVISORY AND DEVELOPMENT MANAGEMENT SERVICES–RETAINER AGREEMENT" and was signed by Mr Johnson. Under the retainer agreement, Waawidji would prepare the lots for sale, arrange for "a commercial loan from GLALC for sale costs" and manage the sales and marketing process. In return, Waawidji was to receive a success fee of $5,000 (exclusive of GST) for each lot sold and would also be paid fees of other "consultants" engaged by Waawidji and "travelling expenses". After obtaining DLALC board approval, Mr Cavanagh signed the retainer agreement.

Mr Johnson told the Commission that he could not remember making any disclosure to the GLALC board that his company had entered into the retainer agreement with DLALC. There is evidence, however, from which the Commission infers that no such disclosure was made.

In a letter dated 20 January 2012 to Mr Johnson, Ms Cronan, as chairperson of the GLALC board, notified Mr Johnson that, as a result of alleged matters that were "recently … brought to the attention of the Board", Mr Johnson was suspended as the CEO of GLALC. The matters included Waawidji's retainer by DLALC. The inclusion of this as a ground for Mr Johnson's suspension in early 2012 indicates that the GLALC board had not been aware of the retainer agreement at an earlier time.

The minutes of the meetings of the GLALC board in the second half of 2009 do not reflect any discussion of, or approval for, Waawidji undertaking work for DLALC. The evidence of GLALC board members confirms that they were not told of the retainer agreement.

Ms Cronan told the Commission that she only became aware of the retainer agreement in about January 2012. Mr Bloomfield's evidence was that he was not aware that Waawidji had entered into an agreement with DLALC for the provision of services for reward and he had never been asked to approve such an agreement. Mr Donovan said he had not seen the Waawidji retainer letter before, and did not recall having been asked to agree to Waawidji assisting DLALC at any time when he was a member of the GLALC board. Mr Tobler said that he did not recall ever being informed that Waawidji was proposing to enter into an agreement with DLALC pursuant to which Waawidji would be paid money and he was never asked to approve such a proposal. Ms Shipley was asked about motions put to the GLALC board about dealings between DLALC and Waawidji in 2012 but she did not indicate any awareness in 2009 that there had been dealings between Waawidji and DLALC. Ms Wade was aware that DLALC "were having a bit of trouble" in 2009 and that GLALC was providing assistance but did not mention any awareness of Waawidji's involvement. Mr Luke, Mr Edwards and Ms Brown were not asked about Waawidji dealings with DLALC. Despite having an opportunity to do so, counsel for Mr Johnson did not raise with any of these witnesses whether Mr Johnson had told them about the retainer agreement between Waawidji and DLALC.

The Commission is satisfied that Mr Johnson did not obtain GLALC board approval for the Waawidji retainer. The Commission is also satisfied that he deliberately failed to obtain such approval because he wanted to conceal from the GLALC board the fact that his company had entered into an agreement with DLALC, whereby Waawidji would benefit from the sale of DLALC land. Any disclosure of such an agreement to the GLALC board would have alerted the GLALC board to the fact that the financial benefits due to Waawidji under the agreement were dependent upon Mr Johnson using his position as CEO of GLALC to arrange for GLALC funds to be used to develop the land for sale. That would have identified a clear conflict between Mr Johnson's interests as CEO of GLALC and his interests as an owner of Waawidji. This was a conflict he was keen to hide from the GLALC board because its disclosure would have risked the likelihood that the GLALC board would prevent the transfer of GLALC funds to DLALC in such circumstances, thereby effectively preventing Waawidji from deriving a financial advantage.

The retainer agreement made provision for Waawidji to engage consultants. During the course of 2009, Waawidji engaged Dixon Capital Pty Ltd as a consultant. Dixon Capital was owned by David Wing. Mr Wing had met Mr Johnson in about 2006 when they both worked for a law firm in Brisbane. There was no written agreement between Waawidji and Dixon Capital in relation to the consultancy but Mr Wing told the Commission the purpose of the consultancy was to "undertake the management of the sale of [the DLALC]

lots, which included the requirement to do works to some of those lots." Mr Wing knew that Waawidji was Mr Johnson's company rather than a GLALC entity, and this engagement was separate to Dixon Capital's other retainers with GLALC or its entities.

Under the arrangement between Dixon Capital and Waawidji, Dixon Capital was to receive from Waawidji half of the amount paid by DLALC to Waawidji in relation to the sale of the lots. That is consistent with invoices that were ultimately issued from Waawidji to DLALC, and from Dixon Capital to Waawidji.

The engagement of Dixon Capital and other consultants provided Waawidji with the necessary expertise to ensure the lots were made ready for sale. There remained, however, the question of how DLALC, which apparently had limited funds at the time, could afford to pay Waawidji and the consultants other than Dixon Capital for the work that needed to be done. The retainer agreement between Waawidji and DLALC provided that Waawidji would arrange for a loan from GLALC to cover the costs incurred by DLALC. This is in fact what occurred.

On 5 March 2010, Mr Johnson sent an email to Mr Cavanagh advising that, "Waawidji has arranged a loan on commercial terms for DLALC so that DLALC can meet the costs of engaging the various consultants required for disposal of these parcels of land." The signature block on the email describes Mr Johnson as "CEO & Solicitor Gandangara LALC". The Commission is satisfied the email was sent by Mr Johnson in his capacity as CEO of GLALC.

When initially questioned about the proposal for Waawidji to obtain a loan from GLALC, Mr Johnson explained that this would be done by GLALC paying relevant invoices issued to DLALC. He agreed that, without GLALC providing finance, the development of the lots would not have occurred. Later in his evidence, however, he claimed that the money came from GMS, not GLALC. That claim is contrary to other evidence, which supports Mr Johnson's initial evidence that GLALC would pay the invoices.

Between 17 May and 23 December 2010, GLALC paid invoices for services relating to the preparation for sale of the Hazelbrook lots. Some of the invoices were addressed directly to GLALC, while others were addressed to DLALC. The invoices have a stamp indicating payment was authorised by Ms Maltby, the GLALC finance manager at the time. The stamp generally describes the payment as "Loan". The Commission accepts Ms Maltby's evidence that it was Mr Johnson who authorised GLALC money to be spent for the benefit of DLALC. The Commission is satisfied that she signed the invoices authorising their payment because she understood the expenditure was approved by Mr Johnson in his role as CEO of GLALC. GLALC banking records show that the total amount paid by GLALC on behalf of DLALC was $70,568.58.

The Commission is satisfied that, at all relevant times, Mr Johnson intended and knew that funds necessary to ensure the DLALC Hazelbrook lots could be prepared for sale would come from GLALC. The Commission is satisfied that, as CEO of GLALC, Mr Johnson was responsible for ensuring that GLALC provided the funds to pay invoices submitted to DLALC and GLALC in relation to the preparation for sale of the Hazelbrook land. That was consistent with the terms of the retainer agreement between Waawidji and DLALC, in which Mr Johnson undertook, as part of his role, to "[a]rrange for a commercial loan from GLALC for sale costs". The Commission is satisfied that Mr Johnson acted in this way with the intention of obtaining a benefit for himself through his company.

Waawidji did obtain a financial benefit. All 10 Hazelbrook lots were eventually sold. In accordance with the retainer agreement between Waawidji and DLALC, Waawidji was paid $55,000 (inclusive of GST) by DLALC. It received $38,500 in December 2010 and $16,500 in September 2011. Waawidji paid Dixon Capital $27,500 (inclusive of GST), thereby leaving Waawidji a net profit of $25,000 (exclusive of GST).

Dealings with LPLALC

From about 2009, there had been discussions between Mr Johnson and Chris Ingrey, the CEO of LPLALC, concerning the models adopted by GLALC in relation to its land dealings and corporate structure and how those models might be adopted to meet the needs of LPLALC.

It appears from the evidence that, at some stage, there had been discussions between GLALC and LPLALC concerning LPLALC's unreliable information technology (IT) system, with a view to Sydney Aboriginal Services Ltd (SAS), another GLALC entity, undertaking some work to rectify the situation. On 11 August 2010, Mr Johnson received an email from the chairperson of the LPLALC. That email advised that there were continuing problems with the LPLALC IT system, including constant breakdowns involving a possible virus, which had resulted in work not being able to be done. In the email, the chairperson advised that the IT problems had become "intolerable" and asked "[a]re we able to expedite SAS/GLALC support in improving our IT?".

In response, Mr Johnson sent an email to Ms Maltby the same day asking for her advice on what could be done to assist LPLALC. She responded by email later that day that she could ask a GLALC officer to look at the LPLALC IT system or she could order a new

computer on the basis that GLALC carry the cost "until appropriate to be repaid". Mr Johnson responded by email on 12 August 2010, instructing Ms Maltby to "ensure that everything is done to get [LPLALC] up and running immediately" and advising that "we will sort through the protocols later". In another email he sent on that day to an IT subcontractor, Mr Johnson advised that "[y]ou are authorised to do what is necessary to get [LPLALC] up-and-running at the quickest speed". In his evidence to the Commission, Mr Johnson agreed that he had authorised GLALC funds to be used to fix the LPLALC IT system.

The cost to GLALC of the assistance provided in relation to the LPLALC IT system was accounted for as a loan from GLALC to LPLALC. By April 2011, the GLALC general ledger recorded the amount of the LPLALC loan as $6,558.10. This amount was not solely related to the IT work. It included payments made by GLALC to a property information service and expenditure on office equipment. By 31 October 2013, the GLALC balance sheet did not include any loan owing by LPLALC to GLALC.

There was evidence that LPLALC also had dealings with SAS. In November 2010, following a presentation by Mr Johnson, the LPLALC board resolved to engage SAS to provide "operational services" to LPLALC. SAS was also engaged in relation to an LPLALC property development and to undertake accounting work for LPLALC.

In July 2011, a newly formed LPLALC entity, La Perouse Management Services Ltd (LMS), entered into a service agreement with GMS "to assist … with the sale of land" through the provision of consultants. In July 2011, a loan agreement was entered into between GMS and LMS. There is evidence that GMS replaced SAS in relation to the provision of property, administrative and accounting matters services. A loan reconciliation document reflecting the position as at 29 February 2012, which was provided to Mr Ingrey by Mr Gundar, showed LPLALC and LMS owing $179,560.21 to GMS. That amount included GMS management fees for the period February 2011 to February 2012.

From September 2012, LPLALC used GMS to manage its finances pursuant to a service agreement. Amounts payable under that agreement were treated as loans under a July 2012 GMS/LMS loan agreement. By that arrangement, LPLALC only had financial dealings with GMS.

The relationship continued under a March 2013 GMS/LMS service agreement, and was then reduced in scope in August 2013 at the request of LPLALC, which wanted to "scale back that type of service" from GMS as they "were building up [their] own capacity".

The GMS balance sheet as of 31 October 2013 included a loan of $392,973, which was owed by LMS.

The restrictions in s 152 of the ALR Act on the payment out of a bank account only apply to a LALC. That section does not constrain the banking activities of other entities, such as GMS or SAS. The Commission is satisfied that, in August 2010, Mr Johnson authorised the use of GLALC funds to be used to pay for work on the LPLALC IT system. The Commission notes the submission of Counsel Assisting that Mr Johnson's conduct was not sufficiently serious to meet the threshold for a corrupt conduct finding.

Dealings with WLALC

On 2 February 2011, Mr Johnson attended a meeting of the WLALC board at which the board unanimously approved a motion that WLALC obtain "support" from GLALC to progress services for WLALC. The CEO of WLALC was provided with a delegation to develop the appropriate support and sustainability with GLALC to implement and action the WLALC's Community Land and Business Plan.

It is not apparent from the minutes of the meeting what the "support" was envisaged to entail. One aspect of "support" involved SAS assisting WLALC with the subdivision of land for sale. The SAS/WLALC relationship expanded to include the provision of administrative and financial services (including staff) to WLALC. Monies due to SAS pursuant to this arrangement were dealt with as a loan owed by WLALC to SAS.

There was other evidence before the Commission that, between April 2010 and November 2013, GMS paid invoices of third parties for the benefit of WLALC. There is also evidence that, between November 2012 and March 2014, WLALC paid GMS $239,861.63, and that there was a loan agreement between GMS and WLALC. The 31 October 2013 balance sheet for GLALC recorded "loans" from GMS to WLALC of $164,987 for "Mgt Fees", $7,350 for "Investigation", and $76,346 for "Development". This represented a total of $248,683.

The 31 October 2013 balance sheet for GLALC did not include any loan owing by LPLALC to GLALC. There was no evidence that GMS obtained funds from GLALC for the payment of invoices issued to WLALC or for other purposes.

As noted above, the restrictions in s 152 of the ALR Act do not constrain the banking activities of entities such as GMS. There is no other obligation imposed by the ALR Act to the effect that the funds of a LALC are only to be used for its benefit or the benefit of its members. There was no evidence in the public inquiry of payments made by GLALC itself for the benefit of WLALC. In these circumstances, the Commission is not satisfied that any payments made to or on behalf of WLALC were made contrary to the requirements of s 152 of the ALR Act.

Corrupt conduct

The Commission finds that Mr Johnson improperly exercised his official functions as CEO of GLALC to arrange the payment by GLALC of invoices issued to DLALC totalling $70,568.58 for the purpose of funding DLALC's development for sale of 10 lots at Terrace Falls Road in Hazelbrook, in order to ensure that the lots could be sold so that his company, Waawidji, would benefit by receiving $5,500 (inclusive of GST) for each lot sold.

This is corrupt conduct for the purpose of s 8(1)(b) of the ICAC Act because it is conduct of a public official, Mr Johnson, that constitutes or involves the dishonest or partial exercise of official functions. His conduct was dishonest and partial because he concealed from the GLALC board the contractual agreement between his company, Waawidji, and DLALC under which Waawidji was to receive a financial benefit, approved Ms Maltby to make payments from GLALC to DLALC knowing that he did not have GLALC board approval for such expenditure and because he preferred the financial interests of his company over those of GLALC.

The Commission is satisfied for the purposes of s 9(1)(b) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the civil standard of on the balance of probabilities and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Johnson had engaged in a disciplinary offence of misconduct. The relevant misconduct involves Mr Johnson's approval of the repeated use of GLALC funds, over a period of several months, for DLALC's development of the Hazelbrook land in breach of his obligations under s 176(1) of the ALR Act to act for a proper purpose, and not use his position for personal advantage or to the detriment of GLALC. Such misconduct is of a sufficiently serious nature as to justify the taking of disciplinary action for the purposes of s 181B(b) of the ALR Act.

Accordingly, the Commission is satisfied that the jurisdictional requirements of s 13(3A) of the ICAC Act are satisfied.

The Commission is satisfied for the purposes of s 74BA of the ICAC Act that this is serious corrupt conduct. This is because Mr Johnson both exploited his position as the CEO of GLALC to manufacture the opportunity for Waawidji to be retained by DLALC, and allowed the funds of GLALC to be used in the enterprise that produced a substantial financial benefit of $25,000 to him through his company. The conduct was serious having regard to his senior management role with GLALC and the amount of money involved. His conduct in favouring his interests over those of GLALC could also impair public confidence in the administration of GLALC. As submitted by Counsel Assisting, it is telling that, although Mr Wing effectively did the work for which Waawidji was retained, his company, Dixon Capital, and Mr Johnson's company shared the payments from DLALC equally. That is, Waawidji was essentially rewarded for Mr Johnson having put the deal together, a necessary component of which was the loan of GLALC funds to DLALC.

Section 74A(2) statement

For the purposes of this chapter, the Commission considers Mr Johnson is an affected person.

As Mr Johnson is no longer employed by GLALC, the possibility of taking disciplinary action against him, or taking action with a view to his dismissal as a public official, does not arise.

Chapter 5: GLALC payments to Mr Johnson

It will be recalled that the s 11 report the Commission received from the minister for Aboriginal affairs concerned personal expenses said to have been incurred by Mr Johnson that had been paid by GLALC. The Commission also received a letter from Mr Lombe, the GLALC administrator, and another s 11 report from Mr Turner, acting CEO of NSWALC, on the same issue. This chapter examines whether Mr Johnson claimed expenses from GLALC that he knew he was not entitled to because they were not work-related and whether he made false representations to the GLALC administrator concerning certain expenses paid by GLALC.

There was also evidence before the Commission of claims for reimbursement of expenses submitted to GMS. With respect to these claims, the Commission notes the submission of Counsel Assisting that the fact that GMS made the reimbursements arguably has the consequence that Mr Johnson's conduct in claiming the reimbursements was not in the exercise of his official functions. In these circumstances, the Commission has not made any findings with respect to those claims.

The relevant contractual entitlements

Each of Mr Johnson's 2007 and 2010 employment contracts provided that, "[u]pon presentation of copies of actual receipts", he was entitled to be reimbursed for work-related expenses "reasonably and properly" incurred in carrying out his duties. The contracts provided that such expenses included travel, accommodation, vehicle hire and transport, meals, telephone, fuel, IT communication, office supplies, professional association costs, professional education and training costs, and incidental expenses.

The evidence before the Commission establishes that Mr Johnson submitted numerous claims to GLALC for reimbursement of work-related expenses and was paid in respect of those claims. Before proceeding, it is relevant to consider the procedure by which Mr Johnson's expense claims were processed and paid.

Expense claim procedure

The GLALC finance manager was responsible for authorising reimbursement of expenses incurred by Mr Johnson and others. Between late February 2007 and March 2011, that person was Ms Maltby; thereafter, it was Mr Gundar.

Ms Maltby told the Commission that, in order to be reimbursed, GLALC employees needed to submit invoices to her and provide proof that they had paid the invoice. She would then confirm the expense with the employee's manager. She told the Commission that Mr Johnson presented her with his invoices. She thought that on some occasions he might have shown her a copy of his credit card statement as proof that he had paid the invoices. On some occasions, she relied on him telling her the invoice had been paid. She told the Commission that on some occasions she knew that the expense was work-related because of her general awareness of the work being performed by Mr Johnson for GLALC. She did not check each invoice to confirm that it involved a work-related expense. She gave the following evidence:

[Counsel Assisting]: So when Mr Johnson presented you with tax invoices, did you check that they were valid claims?

[Ms Maltby]: There was usually no reason. He had given it to me and he would say, "That's for my trip up in Queensland."

[Q]: So you took at face value the receipts that you were given?

[A]: Yeah, he was my boss. I don't

question the boss in everything he did.

[Commissioner]: *So did it amount to this, really? At the end of the day, if he gave you a document and said that it was an expense that was work-related, you took him at his word?*

[A]: *Yes.*

Ms Maltby did not recall ever rejecting a reimbursement claim made by Mr Johnson.

Mr Gundar's account differed somewhat between, on the one hand, his affidavit of 3 February 2016 in the civil proceedings brought against Mr Johnson by GLALC and his compulsory examination evidence and, on the other hand, his evidence given at the Commission's public inquiry.

In his affidavit in the Supreme Court proceedings, Mr Gundar deposed that Mr Johnson claimed reimbursement for expenses by giving a finance officer working under Mr Gundar's supervision a bundle of receipts and invoices that had been charged to his credit card. The finance officer then input data relating to the receipts into an Excel spreadsheet recording the expense amounts and a description or categorisation of each expense. The Excel spreadsheet was printed and stamped with an "Approved for Payment" stamp completed by the finance officer, and placed with the bundle of receipts and invoices. Mr Gundar then signed a "funds transfer authority" form to authorise payment. Mr Gundar deposed that he only approved reimbursements if he considered that they were within Mr Johnson's delegated authority or pursuant to his contract, and were legitimate business expenses. His evidence at his compulsory examination was to similar effect.

In his evidence at the public inquiry, Mr Gundar accepted that it was his responsibility to confirm the propriety of each expense that was reimbursed to Mr Johnson. He told the Commission that the propriety of each expense was checked twice; first in the preparation of the Excel spreadsheet by the finance officer, and then by him in approving the payment. In relation to checks that were done, Mr Gundar said that travel receipts were confirmed to be for a meeting by asking Mr Johnson's personal assistant in relation to his movements, or checking minutes of meetings he attended. Mr Gundar said he would check "all of the time" to determine whether or not an expense claim had not already been reimbursed to Mr Johnson. According to Mr Gundar, one basis on which claims would be rejected was if the document provided in support of the claim was not an invoice or receipt (for example, an EFTPOS or credit card receipt).

At the public inquiry, he departed from the evidence in his affidavit that Mr Johnson claimed reimbursement by providing receipts and invoices to a finance officer. Rather, Mr Gundar told the Commission that it was Mr Johnson's personal assistant, Tina Taylor, who provided travel booking documentation and receipts for other claims.

In his affidavit of 18 February 2016, Mr Johnson deposed that he collected the receipts for each expense charged to his credit card and, at the end of each month, provided them to Mr Gundar or one of the finance officers in order to be reimbursed. At the public inquiry, he said that his assistant, Ms Taylor, also submitted receipts on his behalf, particularly in respect of travel that Ms Taylor booked for him.

Ms Taylor was Mr Johnson's assistant from 2008 to 2013. She told the Commission that her responsibilities included booking travel for Mr Johnson and assisting in reimbursement of expense claims made by Mr Johnson.

She told the Commission that the process for reimbursements involved Mr Johnson providing her with a document holder containing receipts that she then passed on to Mr Gundar or a member of his staff. Occasionally, Mr Johnson provided the receipts directly to Mr Gundar or a finance officer. Ms Taylor generally received invoices or receipts for travel expenses directly. She then passed these on to Mr Gundar or a finance officer. She was not aware which reimbursement claims were allowed and which were not and, therefore, she did not play a role in determining which receipts should be submitted or paid. It was not part of her job to check that receipts had not previously been submitted for payment. Her role generally ceased after she had provided the document holder of receipts to Mr Gundar or the finance officers; although, on occasion, she might be asked by a finance officer to confirm that a particular claim for reimbursement of travel expenses related to a particular meeting. She was not notified about what happened with any expense claim.

Before becoming a director of GLALC in 2012, Ms Edwards had worked as a project officer for Gandangara Employment and Training. She gave evidence of her understanding of the claims procedure, based on her own expenses that were charged to Mr Johnson's credit card. Her evidence confirmed that Ms Taylor booked flights and accommodation, and directly received the invoices for those expenses.

There was evidence, however, that did not support Mr Gundar's claims that Mr Johnson's reimbursement claims were carefully checked by accountants working for Mr Gundar and that particular forms of documentation were required.

Anthony Cividen worked as a GLALC accountant from about the second half of 2011 to August 2014. He reported to Mr Gundar. His responsibilities included processing reimbursement of expense claims. He told the

Commission that he received receipts for Mr Johnson's expense claims from Mr Johnson, Ms Taylor and Mr Gundar. He processed the receipts by entering the amounts into a spreadsheet and sorting them into different categories. He told the Commission that "[n]othing … was really explained to" him about what sort of expenses should be reimbursed. He did not check that claims were for legitimate business expenses. He did not usually check that expenses had not previously been reimbursed, unless a receipt looked familiar from a previous month.

Mr Gundar accepted that there were instances where the system for checking Mr Johnson's claims broke down, resulting in Mr Johnson being paid more than once for the same claim or being paid on the basis of an entry in his credit card statement rather than an invoice. There were also instances where, if checks had been made, it would have been obvious that the expense incurred by Mr Johnson had no relation to his GLALC work.

The Commission is satisfied that not all claims made by Mr Johnson were subject to checking to confirm that they were related to his duties as CEO of GLALC, and that many claims were authorised for payment simply on the basis that they had been submitted by Mr Johnson and were taken on trust as being work-related expenses.

Mr Johnson's response to the GLALC administrator

On 6 December 2013, Mr Lombe, the GLALC administrator, sent an email to Mr Johnson concerning the reimbursement of Mr Johnson's expenses. In the email, Mr Lombe advised that he had identified "a number of items that appear to be personal or farm related" (Mr Johnson also operated a farm). Mr Lombe noted that, "there may be explanations for the expenses or arrangements that I am not aware of for their payment. Also these expenses may have been repaid to GLALC by you". He also noted that he was concerned that the payments might have been in breach of s 78B(1)(e) of the ALR Act and requested that Mr Johnson provide advice. He attached to his email a spreadsheet in which he set out 49 payments made by GLALC or GMS that caused him concern. They covered the period from 22 December 2010 to 29 June 2012 and came to a total of $49,872.90.

Mr Lombe wrote to Mr Johnson again on 28 January 2014. In this letter, he referred to his email of 6 December 2013 and noted that Mr Johnson had not responded:

> *…other than to inform me that you* [Mr Johnson] *have repaid a portion of the personal claims identified. You have not explained; which claims you have repaid, why they were originally claimed and why you have not repaid the remaining claims.*

Mr Lombe attached to his letter an updated spreadsheet that, in addition to the 49 items on the spreadsheet provided to Mr Johnson in December 2013, included an additional 47 "newly identified expenses from my review of your expense claims". These additional items totalled $19,531.47. Most of these related to payments made by GMS but nine payments, totalling $5,323.59, concerned payments made by GLALC. Mr Lombe asked for a "comprehensive" response to all of the claims.

Mr Johnson responded by email on 14 February 2014 and provided a "line item" response in a spreadsheet identifying nine items, totalling $1,449.20, that had been repaid by Mr Johnson and the items he maintained were legitimate work-related expenses. The items repaid included tractor parts and farm supplies.

On 18 February 2014, Mr Johnson sent a six-page letter to Mr Lombe. That letter included a further spreadsheet identifying another nine items, totalling $10,573.24, that Mr Johnson had repaid. These items included "tractor repair", "horse float accessory", "hay rack" and "garden needs". He advised Mr Lombe that the expenses he had repaid had been incorrectly paid to him due to "human error".

On 21 February 2014, Mr Lombe sent a further letter to Mr Johnson. In that letter, he noted that Mr Johnson had repaid $13,098.49 in three payments made on 9, 10 and 11 December 2013. This was more than the amount of the items Mr Johnson had identified in his letters of 14 and 18 February 2014 as having been repaid. Mr Lombe sought an explanation for the discrepancy and also for a more detailed explanation for other items Mr Johnson maintained were work-related expenses. Although Mr Lombe sought a response by 4 March 2014, no response was provided.

The truck and horse trailer expenses

Among the claims identified by Mr Lombe that were not repaid by Mr Johnson were a number of claims that Mr Johnson told Mr Lombe were legitimate on the basis that they related to an "Isuzu Truck & Trailer" or simply "Truck &/or Trailer". Information in relation to those items paid for by GLALC has been extracted in the table below from the spreadsheets attached to Mr Johnson's responses to Mr Lombe.

No.	Description	Amount
1	Car insurance. 1983 Isuzu Truck (Rego no BE11QD)	$326.52
2	Rego Transfer. 2007 Isuzu Crew Cab NPR Truck (Rego No: A069RJ)	$1,650.00
3	Car insurance. 1993 Isuzu Horse Float	$394.70
4	Car trailer purchase. Lakota trailer 8' wide 4h 13' living	$9,800.00
5	Car installations. 2007 Isuzu Crew Cab NPR Truck (Rego No: A069RJ)	$2,400.00
6	Car installations + purchase of car accessories. 2007 Isuzu Crew Cab NPR Truck	$779.90
7	Car Repair. "Cruise Package"	$907.47
8	Car installations. 2007 Isuzu Crew Cab NPR Truck. Trailer sundries	$1,340.00
9	Horse float accessory. Desc says "fit ball to truck"	$3,000.00
10	Desc: "supply and fit simulators"	$670.00
11	Supply & fit safety chain holders	$240.00
	TOTAL	**$21,508.59**

The references to "Lakota" in the table refer to a trailer for carrying four horses.

In his letter to Mr Lombe of 18 February 2014, Mr Johnson set out the following explanation for why the truck and trailer line items were work-related expenses (emphasis added):

> *The Isuzu truck has been utilized on many occasions for varied purposes. As a truck with a GVM of 7.5 tonnes its load capacity is substantially greater than any vehicle in the GLALC or Gandangara fleet and has been used to carry heavy loads on many occasions.*
>
> *Further it is a Dual Cab, with a seating capacity of seven (7) persons and this seating capacity has also caused it to be needed by both GLALC and Gandangara users, for a wide variety of uses.*
>
> *In order to provide even greater clarity the line item expenses with the notation "Truck and Trailer" have found extensive use in preliminary investigations into our planned health project which when implemented will provide mobile health and dental clinics for Aboriginal people with a strong emphasis in providing health and dental services to Aboriginal students while attending school.*
>
> *Our initial research has indicated that to provide these services would require an articulated vehicle of between 17.5 and 19.5 metres in length (very similar to the breast screening clinic vehicles in use by NSW Health). The vehicle would need to be self-sustaining in the areas of electrical 240 volt power, water and compressed air.*
>
> *A vehicle of this size, is not easy to navigate through urban roads and in many instances, uses of such vehicles may be banned, or due to the design of some of the corners that exist in urban area* [sic] *(especially where parked cars narrow the streets even further) a vehicle of the size estimated may be unable to safely use some roads.*
>
> *In order to ensure that the project was viable I have undertaken trips to two hundred and seventy one (271) schools within the Gandangara service area, to ascertain whether or not the project was viable.*
>
> *A list of those school addresses already visited is attached.*
>
> *It should be noted that to date, less than half of the school addresses identified have been visited.*
>
> *Further, it should be noted that in all instances, the visits to the listed school addresses was* [sic] *undertaken in my own free time and prior to undertaking, was approved by the Board, as an extremely cost efficient and effective manner to undertake the research for this worthy project…*

These statements and the seven-page attachment were intended to justify as work-related expenses the amounts that had been reimbursed to Mr Johnson in respect of truck- and trailer-related expenses.

The letter referred to an attached list of "those school addresses already visited". The attachment contained a list of 239 schools. It was divided into four columns. The columns were headed "School", "Address", "Total Enrolments" and "Access". There were ticks in the "Access" column against 236 of the listed schools, implying that those schools had been visited.

The statements in the letter referring to trips to

271 schools and the information contained in the attached list are governed by the statement in the letter that "… to date, less than half of the school addresses identified have been visited". That is more in line with Mr Johnson's evidence to the Commission that he had visited from 40 to 50 schools.

During the public inquiry, Mr Johnson identified two items in the above table that did not relate to the proposed mobile health and dental service for Aboriginal students. These are items 4 and 5 in the table for $9,800 and $2,400 respectively. The $9,800 was part of the cost of a horse trailer for four horses that Mr Johnson ordered from the United States. The $2,400 related to the installation of items, including a navigation system, in Mr Johnson's Isuzu truck. Although he told the Commission these were not related to that project, he maintained that they were work-related expenses. Those expenses are dealt with later in this chapter.

Deducting the $9,800 and $2,400 from the $21,508.59 total claimed, leaves $9,308.89 of claims that Mr Johnson said were connected with the proposed mobile health and dental service for Aboriginal students.

Mr Johnson told the Commission that his representation to Mr Lombe that he had visited 271 schools was "incorrect". He said he had identified 271 schools in the Marumali health area, conducted a "desktop review" of bus services, and drew a map to ascertain whether there were obvious problems with access for a semi-trailer. He explained that, in order to provide the proposed health and dental service, a semi-trailer of about eight-feet wide and 40-feet long was required. He said he drove his truck and horse trailer – which, being articulated and measuring eight-feet wide and just under 40-feet long, was similar to such a semi-trailer – to from 40 to 50 of the schools to ascertain whether the schools could be accessed by a semi-trailer of the requisite size. As a result of this exercise, he identified some schools could be accessed by a semi-trailer and some could not.

Mr Johnson said the money paid to him for using his truck and horse trailer to drive to schools constituted an "offset" against the cost that would have been incurred if GLALC had hired a prime mover or semi-trailer to undertake the trips. He conceded, however, that he "was not sure whether [he and the GLALC board] even knew about the detail of the cost of hiring a prime mover and trailer at that stage". One of the "offsets" is item 1 in the table opposite for car insurance. Mr Johnson explained that this was offset by the mileage he had not charged GLALC for his truck use.

Mr Johnson told the Commission that he had been authorised by the GLALC board to take "whatever steps" were necessary to investigate the possibility of providing the proposed health and dental services.

The evidence of the directors of GLALC does not specifically state that Mr Johnson was authorised in advance to investigate the feasibility of a mobile dental clinic by driving his truck and horse trailer to various schools. The evidence does establish that some members of the GLALC board were interested in the feasibility of providing mobile dental (or dental and optical) services, and that Mr Johnson was given some leeway as to how feasibility for this might be tested.

On 18 February 2014, the GLALC board sent a letter to Mr Lombe. The letter was signed by Ms Cronan, Mr Tobler, Mr Bloomfield, Ms Brown, Mr Dickson, Mr Donovan, Ms Provest and Denis Thorne. In the letter, the GLALC board members advised they had read Mr Johnson's "response" to Mr Lombe and they supported Mr Johnson's "claims and statements". The letter went on to advise that:

> *We, as the corporate governance body, have always supported the use of private vehicles and equipment, as a cost effective method, where similar resources were not readily available from Gandangara's assets, and considerate* [sic] *it only appropriate that meeting some expenses, in a measured and monitored fashion, is both fair and economically sustainable, and overcomes incurring large capital costs.*

The letter made no mention of a proposed health and dental service or that Mr Johnson had been authorised to use his truck and horse trailer in connection with that or any other project.

Ms Cronan told the Commission that Mr Johnson addressed the GLALC board when it was considering sending the 18 February 2014 letter to Mr Lombe. Mr Johnson wanted reimbursement of his expenses for using his horse trailer for "scoping out" whether it was feasible to take something that size to schools to provide "dental and optical services". She said that was the first time the GLALC board had been asked to consider an expense claim associated with the use of Mr Johnson's truck and horse trailer for this purpose. Ms Cronan believed that, given Mr Johnson's explanation, expenses in connection with his horse float were reasonably incurred in connection with his job at GLALC, and that was why she signed the 18 February 2014 letter to Mr Lombe. She was unable to provide any basis on which GLALC paid for the registration and insurance charges when, even on Mr Johnson's version of events, the vehicles were not used all year for GLALC-related purposes. She also thought that Mr Johnson may have mentioned having to use his horse trailer to transport a body.

Mr Tobler said that the GLALC board had discussed using Mr Johnson's horse trailer in connection with the proposal to establish an early intervention program for optical and dental services at schools. Mr Tobler understood it was to

be used to ensure access could be obtained to schools using a vehicle of similar size. He said that he never saw the horse trailer being used for that purpose.

Mr Bloomfield recalled Mr Lombe mentioning the horse trailer at a GLALC board meeting and Mr Johnson explaining that "it was actually for a dental bus". Mr Bloomfield understood it was to be converted into a "dental bus" for use by GLALC. He also recalled Mr Johnson said something about using the horse trailer to "…see if the bus could fit in down into the school".

Ms Brown told the Commission that, at the meeting to consider sending a letter from the GLALC board to Mr Lombe, it was suggested that Mr Johnson had driven his horse trailer around to see whether it would fit between the cars down various roads in connection with a proposal for a dental truck. At the time she gave evidence at the public inquiry, she could not remember whether Mr Johnson had sought reimbursement from GLALC for expenses incurred by him in using the horse trailer but was sure that, at the time she signed the letter of 18 February 2014, she had satisfied herself that the expense claims made by Mr Johnson, that were the subject of the letter, were appropriate.

Mr Donovan recalled that, at the GLALC board meeting to discuss sending the letter to Mr Lombe, there was some discussion about "horse floats" but he could not recall the details. He told the Commission that, in the end, "I was happy with whatever explanation Jack [Mr Johnson] gave, and then signed the letter".

Ms Provest told the Commission that Mr Johnson had explained that his reimbursement claims in relation to the horse trailer were because of the need "to transport people that had passed on back to their community for burial", and "he also said that he had been driving the truck around to schools to see if it fitted up and down the streets where the schools were located [in connection with a potential] mobile dental clinic".

Ms Provest said the mobile dental clinic plan had not been discussed at any GLALC board meeting she had attended. She told the Commission that Mr Johnson claimed that he drove the horse trailer along the routes to be used by the mobile dental clinic before commencing his daily duties at GLALC. She told him she did not believe him. Despite not believing Mr Johnson's explanation, she signed the letter to Mr Lombe. She told the Commission she did so because:

> *I was abused across the table about not knowing anything and 'cause I'm only fairly new to this committee and Jack also said that we can't move on until everyone agrees to the meeting. And in the end I was in tears, I ended up signing the letter. I just gave in but regretted it as I walked out the door.*

Mr Thorne was not asked about reimbursement for use of Mr Johnson's horse float by either Counsel Assisting or Mr Johnson's legal representative. He expressed limited understanding of the GLALC board's letter to Mr Lombe of 18 February 2014, and said he signed it on the basis that he thought it was the right thing to do given that the other GLALC board members were signing the letter.

Mr Gundar told the Commission that he understood Mr Johnson's truck and horse trailer were used "for trialing a mobile dental unit to go around the community … and also Mr Johnson used the truck for [corpses] to be transferred if a member died in the … Aboriginal community…". Mr Gundar said this understanding was based on regular discussions he had with Mr Johnson. He also believed, as a result of discussion with Mr Johnson, that some members of the GLALC board were aware of this use of the truck and horse trailer. Mr Gundar said that the only authority he acted on in reimbursing expenses for the horse trailer came from Mr Johnson and he did not seek confirmation from the GLALC board to pay the expenses. That evidence was not challenged by Mr Johnson's counsel.

Mr Johnson told the Commission that he never transferred bodies in the horse trailer, and he did not say that he used the trailer for that purpose. He also told the Commission it was never intended that his horse trailer be converted into a mobile dental clinic. The Commission accepts this evidence.

That leaves Mr Johnson's explanation that the truck and horse trailer were used to determine whether a large vehicle could be used to access schools to provide a mobile health and dental service for Aboriginal students.

It is clear that Mr Johnson was taking advantage of a very loose control over his activities by the GLALC board and that he took the opportunity to claim expenses that would have been disallowed by a more vigilant board. The evidence from the GLALC board members extends from suggesting he could claim whatever he liked to, at the most, a very broad control over his actions. His evidence, that he believed these claims were sanctioned by the board, cannot then be discounted even though, on the face of it, they seem exaggerated and inappropriate.

The $9,800 claim

Item 4 in the table on page 38 records an amount of $9,800 for "Car trailer purchase. Lakota trailer 8' wide 4h 13' living". It will be recalled that Mr Johnson told the Commission that this expense item was not associated with the proposed mobile health and dental service for Aboriginal students.

The $9,800 was the amount of an invoice dated

6 July 2011 from Lakota Trailers Australasia addressed to Waawidji. On 21 July 2011, that amount was credited from the GLALC account to an account held by Waawidji. Mr Gundar authorised the $9,800 reimbursement. He understood the expense related to a trailer that was to be used for the transportation of corpses and to trial a mobile dental service.

Mr Johnson told the Commission that the $9,800 was the cost of a generator installed in his Lakota horse trailer. The cost of the trailer, including the generator, was $106,600. On 7 July 2011, Mr Johnson sent an email to "Lakota Trailers" in which he requested the purchase price be billed by way of three invoices, breaking up the purchase price into amounts of $87,000, $9,800 and $9,800. The two latter amounts were to cover the cost of "Options" and "Additional Options". The explanation Mr Johnson's email provided for splitting the invoices was "to assist with our own internal accounting structures and procedures".

Mr Johnson told the Commission that the generator, which was one of the optional extras, was work-related because he "was required to be in contact 24/7" by "phone or computer" and having a generator allowed him to do GLALC-related work in the horse trailer. He said Ms Cronan, as chairperson of the GLALC board, authorised him to purchase the generator.

Ms Cronan's evidence was consistent with Mr Johnson's evidence. She told the Commission that she wanted Mr Johnson to be contactable at all times, including on weekends and when he was on leave. To this end, she told him that, if he was going to be out in the bush, he needed to have a generator to make sure he had power to run his computer and satellite telephone and agreed that GLALC should pay for a generator to be installed in his horse trailer. She told the Commission she could not recall the cost of the generator but did recall that Mr Johnson had told her it would be "expensive". It does not appear from her evidence that the generator got much work-related use. When asked by Counsel Assisting how many times the generator was likely to have been needed to enable Mr Johnson to keep in touch with GLALC, she told the Commission "I suppose you could count [the number of times] on one hand".

The evidence before the Commission established that, in 2011, GLALC already had a generator. On 2 March 2010, GLALC was invoiced $3,750 for a portable generator. The generator was provided to Mr Johnson. This is evident from a handwritten note on the invoice signed by Mr Johnson stating "Goods rec'd by J. Johnson" and a handwritten notation on the invoice requesting that Mr Johnson provide the serial number of the generator so that it could be entered into the GLALC asset register. There is also an email of 24 March 2010 from Ms Taylor to Mr Johnson requesting he supply her with the generator serial number. Mr Johnson told the Commission he did not know why that generator was acquired and denied knowing that he had received that generator at the time in 2011 when he ordered the $9,800 generator.

The Commission is satisfied that Mr Johnson knew a generator had been acquired by GLALC in 2010. The evidence, however, does not establish what happened to that generator or whether it was available to Mr Johnson to use in his horse trailer to undertake GLALC-related work. The facts available give rise to questions about the legitimacy of this claim but, given Ms Cronan's evidence, the Commission cannot be satisfied the claim was not legitimate.

The $2,400 claim

Item 5 in the table on page 38 records an amount of $2,400 for "Car installations. 2007 Isuzu Crew Cab NPR Truck (Rego No: A069RJ)". Mr Johnson told the Commission that this expense item was not associated with the proposed mobile health and dental service for Aboriginal students. He said, however, it was another work-related expense because it was for the installation in his truck of a "GPS satellite" device so that he could "[f]ind [his] way around … [the] Sydney environment". He explained that he spent time going to and from Sydney to attend work-related meetings.

The invoice for the $2,400 was made out to Waawidji and recorded a number of items that were installed in an "Isuzu 400 Truck", not just a navigation system. Mr Johnson was not asked how these other items were work-related. The $2,400 charge was included in Mr Johnson's GLALC expense claims for the period covering from 29 April 2011 to 13 July 2011, which totalled $40,412.11. On 21 July 2011, that amount was credited from an account held by GLALC to an account held by Waawidji.

The Commission is not satisfied that the items for which Mr Johnson sought reimbursement of $2,400 were not work-related.

The 2010 trip

Between Thursday, 26 August 2010 and Sunday, 12 September 2010, Mr Johnson was on leave from GLALC. That is reflected in his pay slips for the periods from 25 to 31 August 2010 (which includes 30 hours of "Holiday Pay"), from 1 to 7 September 2010 (which includes 37.5 hours of "Holiday Pay"), and from 8 to 14 September 2010 (which includes 30 hours of "Holiday Pay").

During his period of leave, Mr Johnson travelled from Sydney to Bangkok (on Thursday, 26 August 2010), and from Bangkok to Manila (on Sunday, 29 August 2010) at a cost of $2,835.47. He then flew from Manila to Honolulu

on Friday, 3 September 2010 at a cost of $2,379.50. He stayed at a Honolulu hotel until 11 September 2010, at a cost of $2,402.22. He flew home from Honolulu to Sydney at a cost of $4,089.08.

The flight charges, totalling $9,304.05, were included in the spreadsheet for Mr Johnson's expense claims for the period from 28 July to 4 September 2010. The total of his expense claims for this period was $10,832.50. On 17 August 2010, that amount was credited from an account held by GLALC to an account held by Waawidji.

The Honolulu hotel accommodation charge of $2,402.22 was included in a spreadsheet of Mr Johnson's expense claims for the period from 22 August to 22 September 2010. The total of his expense claims for this period was $10,913.30. On 30 August 2010, that amount was credited from an account held by GLALC to an account held by Waawidji.

Mr Johnson told the Commission that the reimbursement of travel and accommodation charges was justified on the basis that he had attended a work-related conference in Hawaii.

Mr Johnson said that he needed to travel to Bangkok for health reasons. He arranged with Ms Maltby to fly to the conference in Hawaii via Bangkok on the basis that it would be the "same cost as a direct Qantas flight, there would be no additional costs incurred by Gandangara". He "negotiated" with Ms Maltby to do this on annual leave because he had exceeded the accrued leave limit allowed by GLALC. Mr Johnson did not suggest that he had the approval of the GLALC board for this arrangement.

Ms Maltby told the Commission that it was her recollection that Mr Johnson told her he had attended a conference in Hawaii. She did not know why he had not travelled directly to Hawaii. She said that Ms Cronan told her Mr Johnson had approval to fly to Hawaii.

Ms Cronan told the Commission that she vaguely recalled that Mr Johnson had gone to a conference in Hawaii in September 2010 but she could not recall approving the travel or speaking to Ms Maltby about it.

The Commission obtained a copy of an email Mr Johnson sent to himself on 7 September 2010. The email had attached a conference schedule for Monday 6 September 2010. There were no other documents indicating other dates on which Mr Johnson may have attended the conference. Mr Johnson was not sure how many days were involved in attending the conference but thought it was "about a week".

The evidence before the Commission does not clearly establish the scope of Mr Johnson's travel or the basis on which it was reimbursed. In these circumstances, the Commission is not satisfied that the relevant costs were improperly reimbursed.

The "Flight Experience" refund

On 21 December 2010, Mr Johnson was refunded $225 by a flight simulation business called "Flight Experience". The refund appears on a customer copy docket of that date.

The Flight Experience refund amount was included as though it was a charge paid by Mr Johnson for a work-related expense in the spreadsheet for his expense claims for a period covering from 21 December 2010 to 17 March 2011, which totalled $2,193.48. That spreadsheet is stamped "Gandangara Local Aboriginal Land Council **Approved for Payment**" (emphasis in original), with the "Department/Entity" said to be "GLALC", and signed as approved by the finance manager. On 22 March 2011, that amount was credited from an account held by GLALC to an account held by Waawidji. That is, Mr Johnson was provided with $225 by GLALC for no expense incurred by him at all.

Mr Johnson told the Commission that he did not know what "Flight Experience" was or what it had to do with his work. He initially agreed that he had submitted the customer copy docket to GLALC for a reimbursement of an expense and that Waawidji had received $225. He later said that he could not recall whether he had submitted the docket and told the Commission he could not remember anything about the matter.

Duplicative claims

There was evidence that Mr Johnson was paid more than once for some expense claims.

In his evidence to the Commission, Mr Johnson accepted that he or Waawidji were reimbursed for duplicative claims but said this was due to error. He denied having caused expense claims to be made repeatedly in respect of the same expense items in order to be reimbursed more than once.

April 2011 Qantas travel

On 19 March 2011, Qantas Airways Ltd issued Mr Johnson with an invoice for $1,305.70 for return air travel between Sydney and Brisbane in April 2011.

The $1,305.70, described as "Qantas", was included in the spreadsheet for Mr Johnson's expense claims for a period covering from 19 to 31 March 2011, which totalled $20,217.94. On 5 April 2011, that amount was credited from an account held by GLALC to an account held by Waawidji.

The $1,305.70, described as "Qantas", was also included in the spreadsheet for Mr Johnson's expense claims for a

period covering from 24 January to 1 May 2011, which totalled $10,389.64. Included in that amount was a further claim for $1,325.70 for a Qantas charge dated 9 April 2011. That amount relates to a re-booking of the 19 March 2011 Qantas invoice flights to change the return date from 12 April 2011 to 11 April 2011 (the booking reference remained the same). Rather than recording the "Total Amount Payable" of $10 (being the additional ticket charge for the different travel date – $1,315.70 rather than $1,305.70), the spreadsheet records an amount of $1,325.70, which was constituted by adding the $10 amount to the "Ticket Total for all passengers" of $1,315.70.

On 11 May 2011, $10,389.64 was credited from an account held by GLALC to an account held by Waawidji.

The $10 change fee charge was then also reimbursed a second time. A spreadsheet for Mr Johnson's expense claims for a period covering from 9 April to 14 June 2011, which totalled $7,960.45, includes a Qantas charge for $10 dated 9 April 2011. On 14 June 2011, $7,960.45 was credited from an account held by GLALC to an account held by Waawidji.

The evidence, as set out above, demonstrates that GLALC reimbursed Waawidji $3,947.10 in relation to an expense totalling $1,315.70.

Mr Johnson accepted the fact of the duplicative reimbursement but claimed that it occurred due to error occasioned by the "narrow time frame during the changeover between [Ms] Maltby getting sick and leaving and [Mr Gundar] starting" when there was a "very novice accountant" working at GLALC.

August 2010 Avis car hire

An Avis car rental confirmation document sent to Mr Johnson records Mr Johnson as having booked a rental car from Avis for use between 22 and 24 August 2010. The estimated charge was $179.66.

This amount was included in the spreadsheet for Mr Johnson's expense claims for a period covering from 28 July to 3 September 2010, which totalled $10,832.50. On 17 August 2011, that amount was credited from an account held by GLALC to an account held by Waawidji. It is of interest to note that Ms Maltby was recorded as authorising this reimbursement notwithstanding that no expense had at that time been incurred, and the document presented was not an invoice.

Ultimately, the car was returned one day early, thereby reducing the rental charge to $111.28. This resulted in a refund of $68.38 from Mr Johnson to GLALC being included in the spreadsheet for Mr Johnson's expense claims for a period covering from 11 to 20 August 2010.

The $111.28 amount, under the entry "Avis" was included in the spreadsheet for Mr Johnson's expense claims for a period covering from 22 August to 22 September 2010, which totalled $10,913.30. On 30 September 2010, that amount was credited from an account held by GLALC to an account held by Waawidji. Ms Maltby's evidence was that this occurred while she was on leave and would have been processed by her replacement, Susan White.

The Commission is satisfied that Mr Johnson, through Waawidji, received payments totalling $222.56 from GLALC in relation to an expense of only $111.28 incurred by him.

In his evidence to the Commission, Mr Johnson accepted that Waawidji was reimbursed twice for the same expense. He also accepted that he had provided GLALC with the Avis receipt for the $111.28 payment, which had resulted in the second payment. However, he denied knowing that Waawidji had already been reimbursed when he submitted that receipt.

The Peru conference

Mr Johnson attended the World Indigenous Peoples Conference on Education in Peru as a representative of GLALC. A receipt for the payment of the US$770 registration fee for the conference was issued on 21 March 2011.

That amount was included in the spreadsheet for Mr Johnson's expense claims for a period covering from 19 to 30 March 2011, which totalled $20,217. The charge was entered as though it was in Australian dollars, which was slightly favourable to Mr Johnson, as the exchange rate was approximately $AUD1:$US1.03 at the relevant time. On 5 April 2011, that amount was credited from an account held by GLALC to an account held by Waawidji.

The same receipt was used to support a second claim for $770 that was included in the spreadsheet for Mr Johnson's expense claims for a period covering from 26 June to 4 September 2011, which totalled $12,743.13. On 8 September 2011, that amount was credited from an account held by GLALC to an ANZ credit card account by a transaction described as "MJreimburse".

In his evidence to the Commission, Mr Johnson accepted he was reimbursed twice for the conference registration fee. He denied knowing at the time that the same claim had been submitted on two occasions.

June 2011 petrol reimbursements

On 14 June 2011, Mr Johnson purchased fuel at a Rossmore service station. The receipt was for $42.29. The $42.29 amount was included in the spreadsheet for Mr Johnson's expense claims for a period covering from

9 April to 14 June 2011. On 14 June 2011, $7,960.45 was credited from an account held by GLALC to an account held by Waawidji.

The same receipt was used to support a claim for $42.29 that was made with two other charges on 15 June 2011. Those claims were paid on 15 June 2011 by GLALC into an account held by Waawidji.

Mr Johnson accepted that he was paid twice for the same expense. He told the Commission his only explanation was that "[e]rrors occur".

Evaluating the duplicate claims evidence

Mr Johnson admitted that, when he made a reimbursement claim, he did not take any steps to ensure that he or Waawidji had not been previously paid on account of that expense. There was no evidence before the Commission to suggest that the issue of duplicative claims came to his attention before Mr Lombe raised the matter in early 2014. There is reason to doubt, therefore, that Mr Johnson was aware that duplicate claims had been made. Moreover, as submitted by Counsel Assisting, the duplicative claims largely fell into the category of travel expense for which there is doubt as to Mr Johnson's participation in the submission of reimbursement claims. In these circumstances, the Commission is not satisfied that Mr Johnson intentionally submitted duplicate claims.

Corrupt conduct

For the reasons given above, the Commission is not satisfied that Mr Johnson engaged in corrupt conduct in relation to the matters dealt with in this chapter.

Section 74A(2) statement

For the purposes of this chapter, the Commission considers Mr Johnson is an affected person.

The Commission is not of the opinion that consideration should be given to any of the matters set out in s 74A(2) of the ICAC Act with respect to the conduct dealt with in this chapter.

Appendix 1: The role of the Commission

The Commission was created in response to community and Parliamentary concerns about corruption that had been revealed in, inter alia, various parts of the public sector, causing a consequent downturn in community confidence in the integrity of the public sector. It is recognised that corruption in the public sector not only undermines confidence in the bureaucracy but also has a detrimental effect on the confidence of the community in the processes of democratic government, at least at the level of government in which that corruption occurs. It is also recognised that corruption commonly indicates and promotes inefficiency, produces waste and could lead to loss of revenue.

The Commission's functions are set out in s 13, s 13A and s 14 of the ICAC Act. One of the Commission's principal functions is to investigate any allegation or complaint that, or any circumstances which in the Commission's opinion imply that:

(i) corrupt conduct (as defined by the ICAC Act), or

(ii) conduct liable to allow, encourage or cause the occurrence of corrupt conduct, or

(iii) conduct connected with corrupt conduct,

may have occurred, may be occurring or may be about to occur.

The Commission may also investigate conduct that may possibly involve certain criminal offences under the *Parliamentary Electorates and Elections Act 1912*, the *Election Funding, Expenditure and Disclosures Act 1981* or the *Lobbying of Government Officials Act 2011*, where such conduct has been referred by the NSW Electoral Commission to the Commission for investigation.

The Commission may report on its investigations and, where appropriate, make recommendations as to any action it believes should be taken or considered.

The Commission may make findings of fact and form opinions based on those facts as to whether any particular person has engaged in serious corrupt conduct.

The role of the Commission is to act as an agent for changing the situation that has been revealed. Through its work, the Commission can prompt the relevant public authority to recognise the need for reform or change, and then assist that public authority (and others with similar vulnerabilities) to bring about the necessary changes or reforms in procedures and systems, and, importantly, promote an ethical culture, an ethos of probity.

The Commission may form and express an opinion as to whether consideration should or should not be given to obtaining the advice of the Director of Public Prosecutions with respect to the prosecution of a person for a specified criminal offence. It may also state whether it is of the opinion that consideration should be given to the taking of action against a person for a specified disciplinary offence or the taking of action against a public official on specified grounds with a view to dismissing, dispensing with the services of, or otherwise terminating the services of the public official.

Appendix 2: Making corrupt conduct findings

Corrupt conduct is defined in s 7 of the ICAC Act as any conduct which falls within the description of corrupt conduct in s 8 of the ICAC Act and which is not excluded by s 9 of the ICAC Act.

Section 8 defines the general nature of corrupt conduct. Subsection 8(1) provides that corrupt conduct is:

(a) any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority, or

(b) any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions, or

(c) any conduct of a public official or former public official that constitutes or involves a breach of public trust, or

(d) any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.

Subsection 8(2) specifies conduct, including the conduct of any person (whether or not a public official), that adversely affects, or that could adversely affect, either directly or indirectly, the exercise of official functions by any public official, any group or body of public officials or any public authority, and which, in addition, could involve a number of specific offences which are set out in that subsection.

Subsection 8(2A) provides that corrupt conduct is also any conduct of any person (whether or not a public official) that impairs, or that could impair, public confidence in public administration and which could involve any of the following matters:

(a) collusive tendering,

(b) fraud in relation to applications for licences, permits or other authorities under legislation designed to protect health and safety or the environment or designed to facilitate the management and commercial exploitation of resources,

(c) dishonestly obtaining or assisting in obtaining, or dishonestly benefitting from, the payment or application of public funds for private advantage or the disposition of public assets for private advantage,

(d) defrauding the public revenue,

(e) fraudulently obtaining or retaining employment or appointment as a public official.

Subsection 9(1) provides that, despite s 8, conduct does not amount to corrupt conduct unless it could constitute or involve:

(a) a criminal offence, or

(b) a disciplinary offence, or

(c) reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of a public official, or

(d) in the case of conduct of a Minister of the Crown or a Member of a House of Parliament – a substantial breach of an applicable code of conduct.

Section 13(3A) of the ICAC Act provides that the Commission may make a finding that a person has engaged or is engaged in corrupt conduct of a kind described in paragraphs (a), (b), (c), or (d) of s 9(1) only if satisfied that a person has engaged or is engaging in conduct that constitutes or involves an offence or thing of the kind described in that paragraph.

Subsection 9(4) of the ICAC Act provides that, subject to subsection 9(5), the conduct of a Minister of the Crown or a member of a House of Parliament which falls within the description of corrupt conduct in s 8 is not excluded

by s 9 from being corrupt if it is conduct that would cause a reasonable person to believe that it would bring the integrity of the office concerned or of Parliament into serious disrepute.

Subsection 9(5) of the ICAC Act provides that the Commission is not authorised to include in a report a finding or opinion that a specified person has, by engaging in conduct of a kind referred to in subsection 9(4), engaged in corrupt conduct, unless the Commission is satisfied that the conduct constitutes a breach of a law (apart from the ICAC Act) and the Commission identifies that law in the report.

Section 74BA of the ICAC Act provides that the Commission is not authorised to include in a report under s 74 a finding or opinion that any conduct of a specified person is corrupt conduct unless the conduct is serious corrupt conduct.

The Commission adopts the following approach in determining findings of corrupt conduct.

First, the Commission makes findings of relevant facts on the balance of probabilities. The Commission then determines whether those facts come within the terms of subsections 8(1), 8(2) or 8(2A) of the ICAC Act. If they do, the Commission then considers s 9 and the jurisdictional requirement of s 13(3A) and, in the case of a Minister of the Crown or a member of a House of Parliament, the jurisdictional requirements of subsection 9(5). In the case of subsection 9(1)(a) and subsection 9(5) the Commission considers whether, if the facts as found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that the person has committed a particular criminal offence. In the case of subsections 9(1)(b), 9(1)(c) and 9(1)(d) the Commission considers whether, if the facts as found were to be proved on admissible evidence to the requisite standard of on the balance of probabilities and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that the person has engaged in conduct that constitutes or involves a thing of the kind described in those sections.

The Commission then considers whether, for the purpose of s 74BA of the ICAC Act, the conduct is sufficiently serious to warrant a finding of corrupt conduct.

A finding of corrupt conduct against an individual is a serious matter. It may affect the individual personally, professionally or in employment, as well as in family and social relationships. In addition, there are limited instances where judicial review will be available. These are generally limited to grounds for prerogative relief based upon jurisdictional error, denial of procedural fairness, failing to take into account a relevant consideration or taking into account an irrelevant consideration and acting in breach of the ordinary principles governing the exercise of discretion. This situation highlights the need to exercise care in making findings of corrupt conduct.

In Australia there are only two standards of proof: one relating to criminal matters, the other to civil matters. Commission investigations, including hearings, are not criminal in their nature. Hearings are neither trials nor committals. Rather, the Commission is similar in standing to a Royal Commission and its investigations and hearings have most of the characteristics associated with a Royal Commission. The standard of proof in Royal Commissions is the civil standard, that is, on the balance of probabilities. This requires only reasonable satisfaction as opposed to satisfaction beyond reasonable doubt, as is required in criminal matters. The civil standard is the standard which has been applied consistently in the Commission when making factual findings. However, because of the seriousness of the findings which may be made, it is important to bear in mind what was said by Dixon J in Briginshaw v Briginshaw (1938) 60 CLR 336 at 362:

> *…reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or fact to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters 'reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony, or indirect inferences.*

This formulation is, as the High Court pointed out in Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd (1992) 67 ALJR 170 at 171, to be understood:

> *…as merely reflecting a conventional perception that members of our society do not ordinarily engage in fraudulent or criminal conduct and a judicial approach that a court should not lightly make a finding that, on the balance of probabilities, a party to civil litigation has been guilty of such conduct.*

See also Rejfek v McElroy (1965) 112 CLR 517, the *Report of the Royal Commission of inquiry into matters in relation to electoral redistribution, Queensland, 1977* (McGregor J) and *the Report of the Royal Commission into An Attempt to Bribe a Member of the House of Assembly, and Other Matters* (Hon W Carter QC, Tasmania, 1991).

Findings of fact and corrupt conduct set out in this report have been made applying the principles detailed in this Appendix.

Appendix 3: Mr Johnson's response

Counsel Assisting the Commission made written submissions setting out, inter alia, what adverse findings they contended it was open to the Commission to make against Mr Johnson. These were provided to Mr Johnson's legal representative on 3 August 2016. Written submissions in response made on behalf of Mr Johnson were received by the Commission on 12 September 2016. The Commission considers that, in these circumstances, Mr Johnson had a reasonable opportunity to respond to proposed adverse findings.

Mr Johnson's response to the proposed adverse findings was that the Commission should not make any finding of corrupt conduct against him. The Commission did not accept all of the adverse findings contended for by Counsel Assisting. It is not necessary to summarise the substance of Mr Johnson's response in relation to those adverse findings not made by the Commission. The substance of Mr Johnson's response in relation to those adverse findings proposed by Counsel Assisting and made by the Commission in chapters 2, 3 and 4 is summarised below.

Chapter 2 conduct

Mr Johnson submitted that any finding of corrupt conduct would be a denial of procedural fairness. This submission is set out in more detail and dealt with in chapter 2 of the report.

It was submitted by Mr Johnson that the payments Waawidji received from GLALC were not a "benefit" under s 78B(1)(e) of the ALR Act because the payments GLALC made to Waawidji due under its contract with GMS were paid by GLALC on behalf of GMS and therefore GLALC conferred no benefit on Waawidji but rather on GMS. This submission is also addressed in chapter 2.

It was also submitted that, in any event, the payments made by GLALC to Waawidji due under its contract with GMS were outside the "mischief" to which s 78B(1)(e) of the ALR Act is directed. It was submitted that the section was intended to address a situation where a CEO may not act in the best interests of a LALC because that person has undisclosed pecuniary interests or may be in a position of conflict between his or her duties to the LALC and his or her interest in the corporation receiving a benefit from the LALC.

The Commission does not accept that the relevant payments made by GLALC to Waawidji were outside the "mischief" to which s 78B(1)(e) of the ALR Act is directed. One of the purposes of that section is to ensure that a CEO performs his or her duties unaffected by his or her pecuniary interests. There was a conflict of interest between Mr Johnson's duties as CEO of GLALC and his interest in ensuring that Waawidji received payments under its contract with GMS. The conflict is amply demonstrated by the fact that Mr Johnson affected the financial position of GLALC by instructing Ms Maltby to use GLALC funds to pay Waawidji despite GMS being the entity liable for those payments.

Mr Johnson submitted that the Commission should not find that he knew at the relevant time that GLALC was paying Waawidji. That submission is addressed in chapter 2. Mr Johnson further submitted that, even if he knew Waawidji received payments from GLALC, it did not follow that he knew he was not entitled to continue to be employed as CEO of GLALC. The Commission has found, however, that Mr Johnson was at all relevant times aware of the prohibition in s 78B(1)(e) of the ALR Act and that he knew he was not entitled to continue to be employed as CEO of GLALC because he was a person who had an interest in a corporation that received benefits from GLALC.

In relation to the requirements of s 9 of the ICAC Act, Mr Johnson contended that, as GLALC employed Mr Johnson as CEO, it was a matter for GLALC, not Mr Johnson, to terminate his employment and therefore he cannot have contravened s 78B(1)(e) of the ALR Act and therefore cannot have engaged in any disciplinary offence of misconduct. The Commission has rejected this submission. Mr Johnson knew he was not entitled to be employed as CEO of GLALC in circumstances where his

company was receiving a benefit from GLALC. Having that knowledge, he deliberately ignored the prohibition and continued in his role as CEO of GLALC.

For the purposes of s 9(1)(b) of the ICAC Act, it was submitted that it is the Registrar who must determine that conduct is of a sufficiently serious nature to justify the taking of disciplinary action and he or she may not do so until the matter has been investigated under Division 3A of the ALR Act or he or she is satisfied on the basis of a report by the Commission or the Ombudsman that disciplinary action should be taken.

It was argued that none of these preconditions had been satisfied. It is not, however, necessary for the Registrar to determine that disciplinary action should be taken before the Commission can be satisfied that the relevant conduct could constitute or involve a disciplinary offence for the purpose of s 9(1)(b) of the ICAC Act. Section 9(1)(b) requires an objective determination by the Commission as to whether, if the facts as found by the Commission were to be proved on admissible evidence on the balance of probabilities and accepted by the appropriate tribunal, they would be grounds on which such a tribunal would find that the person has engaged in conduct that constitutes or involves a disciplinary offence.

Finally, Mr Johnson submitted that his conduct was not serious corrupt conduct for the purposes of s 74BA of the ICAC Act. The reasons for the Commission concluding that his conduct was serious corrupt conduct are set out in chapter 2.

Chapter 3 conduct

Mr Johnson submitted that the Commission should find that, at the times he authorised the transfer of funds from GLALC to GFF, he intended that the requirements of the legal advice and the resolutions would be fulfilled. The Commission has rejected this submission for the reasons given in chapter 3.

Mr Johnson also submitted that his conduct did not involve the partial exercise of his official functions. It was submitted that the transfer of funds was for the purpose of paying operational expenses incurred in the pursuit of business enterprises of the GLALC group and, as such, his conduct could not be considered partial.

The Commission has found that his conduct was partial because it favoured GFF at the expense of GLALC to the extent that the transfers were made for the purpose of paying the operating expenses of companies other than GLALC. His partiality is also demonstrated by the fact that he acted contrary to legal advice and deliberately failed to comply with the GLALC board resolution of 11 July 2011, the GLALC members' resolution of 27 July 2011 and the Registrar's compliance direction of 31 August 2012.

Chapter 4 conduct

Mr Johnson submitted that his actions did not involve partiality or dishonesty in the exercise of his official functions. The Commission's reasons for concluding that his conduct involved the dishonest or partial exercise of his official functions are set out in chapter 4.

With respect to the requirements of s 9 of the ICAC Act, it was submitted that Mr Johnson's conduct could not constitute or involve a disciplinary offence because the evidence did not establish that he contravened s 176 of the ALR Act. It was argued that it was not established that Mr Johnson failed to act for a proper purpose because the loan to DLALC was to GLALC's benefit "...because of the commercial return and the strengthening of its neighbour LALC". This submission misses the point. Section 176(1) of the ALR Act requires staff to act for a proper purpose and not use their office for personal advantage.

The Commission has found that Mr Johnson exercised his official functions in order to ensure that his company would receive a financial benefit. This was not a use of his office for a proper purpose. It was also argued that it was not established that Mr Johnson personally gained any advantage from the payments to Waawidji. It was submitted that, for example, the money could have gone to pay off debts of Waawidji for which Mr Johnson was not personally liable. The Commission has rejected this submission. Mr Johnson owned half the shares in Waawidji. Any payment of funds to Waawidji, either by way of accruing assets or allowing for the reduction of liabilities such as debts, would benefit Mr Johnson by affecting the company's asset level and therefore the value of Mr Johnson's share in the company and the amount he could withdraw from company funds.

Finally, Mr Johnson submitted that, absent the Commission being satisfied that his conduct could constitute a criminal offence, his conduct was not serious corrupt conduct for the purposes of s 74BA of the ICAC Act. The possibility that conduct may constitute a criminal offence is a factor in determining whether conduct is serious corrupt conduct but it is not a determinative factor. Whether conduct is serious corrupt conduct will depend on a number of factors. The factors the Commission took into account in concluding that his conduct was serious corrupt conduct are set out in chapter 4.

Chapter 5 conduct

As no adverse findings are made against Mr Johnson in this chapter, it is not necessary to address any response made by Mr Johnson.

I·C·A·C

INDEPENDENT COMMISSION
AGAINST CORRUPTION

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