

GREERPUB01272  
01/06/2016

GREER  
pp 01272-01324

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HEARING

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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE MEGAN LATHAM

PUBLIC HEARING

OPERATION GREER

Reference: Operation E14/0362

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 1 JUNE 2016

AT 9.50AM

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This transcript has been prepared in accordance with conventions used in the Supreme Court.

THE COMMISSIONER: Yes, yes Mr Henry.

MR HENRY: Commissioner, I have Mr Johnson's affidavit affirmed 18 February, 2016 to tender and Mr Mack has some objections to specific paragraphs of that. So I tender it but Mr Mack wishes to be heard.

THE COMMISSIONER: Yes.

10 MR HENRY: And I should indicate there's also an exhibit which I tender together with the affidavit.

THE COMMISSIONER: All right. Yes. I'll hear from Mr Mack then. What's the, what's the relevant point Mr Mack? Is it to do with the undertaking that was previously given?

MR MACK: Yes, Commissioner.

20 THE COMMISSIONER: And can I just have a look at the copy of the affidavit for the purpose – or perhaps if you just - -

MR MACK: Oh, so it's – I can hand up a copy of the undertaking as well.

THE COMMISSIONER: That's all right. Just give me, give me an indication of the relevant paragraphs.

MR MACK: Paragraph 88 to 91.

THE COMMISSIONER: Sorry?

30 MR MACK: 88 to 91.

THE COMMISSIONER: Yes, well I recall – just, just before you proceed Mr Mack, I recall, I recall that yesterday there was some, there was some cross examination or there was some questions asked in relation to this issue, mainly whether or not in the correspondence with Mr Wright, Mr Wright was in fact – and I think this came from you – Mr Wright was in fact raising issues rather than giving any kind of acknowledgement so I think that was drawn out from Ms Cronan's affidavit. Was it not?

40 MR MACK: Yes.

THE COMMISSIONER: And that wasn't traversed by Mr Johnson's representative as I understand it.

MR MACK: Yes.

THE COMMISSIONER: So you say this traverse is the same ground.

MR MACK: Yes.

THE COMMISSIONER: All right. Well perhaps we better hear from Mr Johnson's representative then. Sorry, yes, what's Mr Johnson's position in relation to these paragraphs? Is it, is it going to be relied upon for the purpose of ultimately making a submission that the Registrar was in fact completely aware of the restructure and raised no relevant objection or raised no issue in relation to it. Because if that is what is sought to be made of it then, then it would cut across the undertaking.

10

MR GANDAR: There's a few points that we would like to make in relation to that, Commissioner. The first is that I don't know Counsel Assisting's view but as far as we're aware it's Counsel Assisting that wishes to read the affidavit, not us, in the sense that we're not putting forth this material for the purposes of making any submission which is contrary to our undertaking. But the second point is that the undertaking, as least as I read it relates to the compliance directions in the loans of the Gandangara Future Fund. I'm not sure that that's the same thing which is covered by the Restructure which refers to the incorporation of the entities in early 2010. As far as I can tell, and Mr Mack will correct me if I'm wrong, none of the correspondence which his exhibited to Mr Johnson's affidavit in those paragraph, and which he's already gone into evidence through Ms Cronan relates to any loaning of funds to Gandangara Future Fund. But the short point is that we won't be putting any submission which is contrary to the undertaking which we have proffered.

20

THE COMMISSIONER: Well, all right, well Mr Mack, I'm just wondering in so far as the paragraphs 89 to 91 simply as it were refer to history of the correspondence that the sting in the tail I suppose is, is constituted by the first sentence in paragraph 88. Is it not?

30

MR MACK: That's correct. And I think 89 to 91 go to that point in 88 and that's the reason why it's annexed. That's my reading of that, so, and 86 gives you a bit of a flavour as well that there's done after extensive consultation with legal advisors and it drops down to 88 and it mentions Mr Wright.

THE COMMISSIONER: Well I suppose it's already a fact in issue isn't it that whether or not Mr Johnson's interpretation of his consultation with Mr Wright is, is a correct one or not. And that has been put in issue through Mr Cronan. As long a positive assertion isn't made, I mean you're free to, you're free to cross examine Mr Johnson that point.

40

MR MACK: The problem I have is in relation to Ms Cronan, I didn't have the opportunity to object to that before it went in and the concern only arose after reading Ms Cronan's affidavit in relation to Mr Johnson. The second point is that my reading of the undertaking is a lot broader than my friend's in that it raises and I don't want to descend too far into it, because this is all

raised in closed court. But it clearly states and I can hand up a copy, but will make no positive case against my client and if this goes in, it goes in as a statement of truth and then I'm in a position of having to challenge that statement of truth in circumstances where there's no positive case. And just final point is that I understand that this is being read in the civil proceedings and the relevance I see of it in civil proceedings is that the Board acted in full knowledge of all the material facts. And this goes to the material facts that were before the Board and also immaterial facts that Mr Johnson acted under. So they're my submissions and (not transcribable). And the only, I'd  
10 only ask that 88 to 91 be redacted, I don't want to hold up proceedings any further than they have to this morning. And just the annexures to that just be put to one side and we proceed to avoid this difficulty whereby I'm forced to cross examine and traverse everything we traversed in the closed session again.

THE COMMISSIONER: Well, sorry. Are you suggesting that all of the correspondence shouldn't be part of the annexure, because I mean I think it's all gone in under another - - -

20 MR MACK: All right. I'm content with 88 to 91 as being redacted or not read.

THE COMMISSIONER: Well can I suggest this. Perhaps the better course is that we simply don't read the first sentence of paragraph 88, because the rest of it is simply recitation of the correspondence that was entered into?

MR MACK: But perhaps the whole of 88 because I kept the Board informed of my ongoing discussions with Mr Wright.

30 THE COMMISSIONER: Well he may have done that. But discussions is a fairly neutral term. I mean he did have discussions with Mr Wright, there's no dispute about that.

MR MACK: It's more of the global, I kept, my suggestion would be the whole of 88 goes out.

40 THE COMMISSIONER: Well, in a sense 88 doesn't add anything, does it? Because it's really surplus if you look at what follows in 89 to 91. Because if that sets out the history of the correspondence then it speaks for itself. But anyway - - -

MR MACK: Except discussions are broader than the correspondence and there was clearly discussions - - -

THE COMMISSIONER: I appreciate that, yeah. Yes, all right. Well is there any problem with paragraph 88 being redacted?

MR HENRY: Sorry, not from part. I put forward the affidavit in its entirety because I wanted - - -

THE COMMISSIONER: I understand.

MR HENRY: - - - to have parts of it in but I rather apprehended Mr Johnson's team might say well it's unfair to portions of it in, which is fine. I don't have an objection to what you're proposing, Commissioner. Really it's a matter for Mr Johnson's people whether they, they object to it. But if they don't for example, want 88 to 91 in, I don't need it.

MR GANDAR: Commissioner, it's our position that the material should go in because the affidavit should go in unredacted unless there's a good reason for this specific sections to be taken out. We've given an undertaking not to leave the positive case. The fact that the material's in evidence doesn't mean we're going to lead a positive case on it and we're going to abide by our undertaking. But in relation to the undertaking, as I read it and I wasn't in the room for the closed camera session. Is it, we've undertaken to make no positive case to the effect that there was any miscarriage and proprietary or unlawfulness on the part of the Registrar, and then the three numbered paragraphs. It's not an undertaking at large to make no positive case against the Registrar. I have one other point and that's that Mr Mack just referred to the preceding paragraphs in the affidavit giving context to these paragraphs that we're currently discussing. The issue of the loans to the Future Fund is simply not raised in the pleadings in the Supreme Court case at all. It's not in fact an issue. The affidavit was not prepared to be directed towards that issue and to the extent that it's submitted that certain paragraphs in here are directed towards some submission and we might make in this inquiry on that topic, we have to oppose that submission.

THE COMMISSIONER: You have to what, sorry?

MR GANDAR: Oppose the suggestion. They're simply directed towards the restructure of the group which in fact an issue in civil proceedings.

THE COMMISSIONER: Well I take that point. But if paragraph 88 is redacted it doesn't effect - I mean, if one looks at paragraph 88 it's simply descriptive of what follows, namely the history of the correspondence which speaks for itself, doesn't it? I don't regard paragraph 88 as substantially adding to the preceding or following paragraphs.

MR GANDAR: Perhaps not substantially, Commissioner. At least the second sentence of 88 I read as being broader than the immediately following correspondence.

THE COMMISSIONER: Well, I mean, he can make that assertion. He can make the assertion that he kept the Board informed, and I don't see that as any attempt to assert that there was any compliance with that or - sorry, that

there was any reflection in relation to that on the Registrar. But, look, in the circumstances, I don't think it adds anything much. I come back to my original view. I think the first sentence of paragraph 88 is problematic from the point of view of the restructure. And I take your point in relation to the undertaking.

10 But the undertaking, insofar as it refers to the compliance direction, the circumstances under which the compliance direction was issued to some extent arises out of this correspondence, doesn't it? See, point 3 of the undertaking is in relation to the circumstances in which the compliance directions, plural, were issued. And this is a forerunner to that compliance direction issue.

MR GANDAR: It may be a forerunner. I hadn't interpreted that paragraph of the undertaking to be as broad as to preclude matters that far back.

20 THE COMMISSIONER: I think it's pretty broad. But, look, in any event, I don't want to take up much further time. I think, in the circumstances, the appropriate thing to do is redact the first sentence of paragraph 88 of the affidavit, and I so rule.

MR GANDAR: As the Commissioner pleases.

THE COMMISSIONER: All right. Thank you, Mr Mack. I think that's the best that we could do in the circumstances. So the affidavit of Mr Johnson and the annexures, with the exception of the first sentence of paragraph 88, become exhibit G18.

30 **#EXHIBIT G18 - AFFIDAVIT OF MARK JULIUS JOHNSON  
AFFIRMED ON 18 FEBRUARY 2016 & EXHIBIT MJ-1**

MR MACK: Sorry, Commissioner. You just said "with the exception of paragraph 88" and before that you said - - -

THE COMMISSIONER: The first sentence of paragraph 88. Yes, Mr Henry.

40 MR HENRY: I call Mr Johnson.

THE COMMISSIONER: Yes, Mr Johnson, I take it, understands the effect of the section 38 order?

MR GANDAR: Yes, Commissioner.

THE COMMISSIONER: And he wants to take advantage of that?

MR GANDAR: Yes, Commissioner. And Mr Johnson will be affirmed.

THE COMMISSIONER: Thank you. Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by this witness and all documents and things produced by this witness during the course of the witness's evidence at this public inquiry are to be regarded as having been given or produced on objection and there is no need for the witness to make objection in respect of any particular answer given or document or thing produced.

10

**PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY THIS WITNESS AND ALL DOCUMENTS AND THINGS PRODUCED BY THIS WITNESS DURING THE COURSE OF THE WITNESS'S EVIDENCE AT THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION AND THERE IS NO NEED FOR THE WITNESS TO MAKE OBJECTION IN RESPECT**

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THE COMMISSIONER: Yes, can we have the witness affirmed, please.

THE COMMISSIONER: Yes, Mr Henry.

MR HENRY: Thank you, Commissioner. Excuse me, Mr Johnson, you were the chief executive officer of GLALC from February 2007 to March 2014, weren't you?---Yes.

10 And during that time, were you aware of section 78B of the Aboriginal Land Rights Act?---From memory, not for the entire time.

Right. Were you aware, during your tenure as chief executive officer of GLALC – I'll withdraw that. Was it your understanding during that period that whilst you were CEO of GLALC, Waawidji could not receive a benefit from GLALC?---Yes, but not for the entire time.

Right. When did you become aware of that fact?---Which one? You've given me two.

20

When did you become aware that whilst you were CEO of GLALC, Waawidji could not receive a benefit from GLALC?---I can't remember that one.

Well, do you recall that it was early on in your tenure as CEO?---I can't remember, Mr Henry.

It was certainly prior to the commencement of your employment contracts on 1 May, 2010, wasn't it?---Yes, I think so.

30

Right. Now, you've been sitting in this hearing room for the duration of the hearing, correct?---Most of it.

Yes. Have you seen a copy of section 152 of the Aboriginal Land Rights Act, that I've provided to various witnesses?---I've seen it but right now I can't remember what it says.

All right. I'll provide you with a copy of it.---Thanks.

40

So if you could go to the third page of that printout, please, Mr Johnson. You'll see there's section 152 of the Aboriginal Land Rights Act. Can you see that?---Yes.

Were you, during your time as CEO of GLALC, aware of the terms of section 152?---Actually, no.

All right. If you look at subsection 3, you'll see that subsection 3 identifies the purposes for which money may be paid out of GLALC's account. Do you agree?---Yes.

And I won't read them to you, but were you aware, whilst you were CEO of GLALC, that the only purposes for which money could be paid out of GLALC's bank account were the three purposes identified in subsection 3? ---Allow me to reiterate, no.

10 All right. Did you become aware of that fact at any time during your tenure as CEO?---No.

All right. You can hand that back, thank you, Mr Johnson. Now, do you recall in 2010, there was a restructure of GLALC's corporate group?---Yes.

All right. And do you recall that that was affected by circulating resolutions?---No.

20 All right. I'll provide you with a copy of them. At volume 3, page 72. You should have in front of you, Mr Johnson, a copy of circulating resolution of the members of GLALC, pursuant to section 52G of the Aboriginal Land Rights Act. Is that what you're looking at?---Yes.

You'll see the first paragraph is headed corporate restructure and says, "Noted that the GLALC intends to effect a corporate restructure, which will include GLALC, incorporating new subsidiary companies, which will all be companies limited by guarantee as follows." And then there's reference made to three new companies. Do you see that?---Yes.

30 Now, to give you some timing, if you go to page 74, you'll see the signatures of the then directors of GLALC on 29 March, 2010. Do you see that?---Yes.

And if you go to the next page, you see a diagram that depicts the proposed new structure that was to be implemented subsequent to these resolutions. Do you see that?---Yes.

40 Now, do you recall being made aware of these circulating resolutions after they were made?---I really can't remember.

Do you know – this is said to be a circulating resolution of members and it's signed by the directors, yet do you recall if this was – these resolutions were passed by members at a meeting?---I doubt whether that would come under the members powers within the ALRA, so it would have been done by the Board. That's my suggestion.

All right. But you can't recall when you – do you recall ever being made aware of these circulating resolutions?---Well they may have Mr Henry, I don't recall it.

All right. You'll see on page 72 that the first company referred to as paragraph 1 is GLALC Development Services Limited. Do you see that?  
---Yes.

10 Now that company was registered on 16 April, 2010. You can take that from me. Do you see Gandangara Management Services Limited in the second dot point?---Yes.

Similarly that company you can take it from me was registered on 16 April, 2010. Now do you recall when you first became aware of the registration of those companies?---Not when I first became aware, no.

Right?---I have no vision of it, no.

20 Were you aware by the time of your 2010 employment contracts, which you may recall commenced on 1 May, 2010. Were you aware by that point in time that these companies, Gandangara Development Services Limited and Gandangara Management Services Limited had been registered?---Yes.

All right. So, excuse me, is this fair, you became aware of the registration of those two companies at some time between their registration on 16 April, 2010 and 1 May, 2010?---Yes.

30 Now do you recall sending an email to Ms Cronan prior to the Board meeting on 3 May, 2010 attaching a PowerPoint presentation with respect to your remuneration package?---No.

All right. I'll take you to that then. You can hand back Mr Johnson, volume 3 and I'll ask for you to be provided with volume 11 at page 130.

This is an email from yourself to Ms Cronan on 3 May, 2010 at 3.52 in the afternoon. Do you agree?---Yes.

And then there's a number of attachments to the email. You agree?---Yes.

40 And one of them is a PowerPoint presentation?---Yes.  
And that's at pages 131 through to 134. Correct?---Yes.

There's then at page 135 an agenda for the upcoming Board meeting. Correct?---Yes.

And that's dated 2 May, 2010 but that should be the 3<sup>rd</sup> shouldn't it?---I don't know.

If it assists you the 2<sup>nd</sup> was a Sunday and the 3<sup>rd</sup> was a Monday?---Thank you.

Does that assist you in recalling that the date on the agenda is the incorrect date?---It would seem so. But I don't remember it.

All right. You'll then see commencing at page 136 is a draft contract between yourself and GLALC?---Yes.

10 And that was an attachment to the email. Do you agree?---Yes.

And then commencing at page 160, excuse me, there was a draft contract between Waawidji and GNS which was also an attachment to the email. Do you agree?---Yes.

All right. And then the final attachment to the email I suggest commences at page 185 and that's a business diagnostic report prepared by the University of Western Sydney. Do you agree with that? If it assists, it goes through to page 213.---Yes.

20

Now, in relation to the two contracts or draft contracts I should say attached to the email, did you prepare those drafts?---I think so.

I suggest you've created the drafts and forwarded them to Ms Cronan as an attachment to this email. Do you agree with all of that?---I think that's possible. I don't remember.

You will see as I've pointed out that there's two draft contracts, one as between yourself and GLALC. Correct?---Yes.

30

And there's another one between Waawidji and GMS. Correct?---Yes.

Was it your idea that there be two contracts rather than one?---I think so.

All right. Now, if you have – could I ask for Mr Johnson please to be provided with his affidavit which is Exhibit G18.

THE COMMISSIONER: Yes.

40 MR HENRY: At page 22 of the affidavit. Actually, to give you some context, page 21, Mr Johnson, commencing at paragraph 92.---What paragraph, sir?

Paragraph 92 on page 21. You will see a heading at about a bit under halfway down the page, the 2010 contracts.---Yes.

And it's in this section of the affidavit that you're addressing the two contracts that were signed and commenced in May, 2010 for your

employment. I want to ask you in particular about paragraph 95 which is on page 22. Just read paragraph 95 if you would please, sir, and let me know when you've done that.---Thank you.

Do you agree that in paragraph 95 – excuse me – you set out the reasons why there was a contract as between GMS and Waawidji in May of 2010?  
---To some extent, yes.

10 Now, you say in that paragraph don't you in the second sentence, "This agreement", that is, the agreement between Waawidji and GMS, "reflected the fact that by this stage a very large proportion of my work was undertaken on the management services side of the GLALC group enterprise. This work was being done by GMS." Do you see that?---Yes.

Now, do you agree that the statement that the work to which you refer was being done by GMS is incorrect?---I don't see how.

20 Well, do you agree that it's incorrect or not?---If I don't see how I cannot agree, Mr Henry.

So you maintain the statement in your affidavit?---At this point, yes.

You then go on to say in the affidavit – excuse me – after the words, "This work was being done by GMS, not only for other GLALC group entities but also for other LALCs." Do you see that?---Yes.

30 And then it says, "This included liaising with other LALCs and their corporate groups for the purposes of bringing in work for GMS and generating revenue." Do you see that?---Yes.

So do you say that as at the beginning of May 2010, GMS was generating revenue?---I can't remember.

Well, you've sworn to that effectively in your affidavit, haven't you?  
---Doing work and generating income may not be the same, Mr Henry.

Yes. I'm asking you about generating revenue.---I can't remember.

40 So you've sworn to the fact that GMS was generating revenue in early May of 2010, but you don't stand by that statement. Is that right?---I'm sorry. Can you point out where in my affidavit it says "generating income"?

It says - - - ---I'm missing it, I'm sorry.

All right. If you have a look at paragraph 95.---Yes.

The second-last sentence. It says, "This included liaising with other LALCs and their corporate groups for the purposes of bringing in work for GMS and generating revenue."---My humble apologies, yes.

Yes? GMS wasn't generating revenue by the beginning of May of 2010, was it?---Well, the last three weeks have made me profoundly aware that my biggest vulnerability in memory is the time lines.

10 Mmm.---So I'm really unclear of the times. I can't say now whether that is definitive or not.

THE COMMISSIONER: Mr Johnson?---Commissioner.

20 Could I just go back a bit, in paragraph 95, you say that the agreement reflected the fact that, by this stage, so you're talking about early May 2010, a very large proportion of your work was undertaken on the management services. And then if one looks at the following statements, it's the following statements that give content to the description of your work at that stage. Do you see that?---Yes.

Right.

MR HENRY: Do you say that as at May 2010, GMS undertook revenue-generating activities on weekends?---I worked at that time very much on weekends.

Right. And - - - ---So I would have been doing work on behalf of GMS, other entities and the Land Council.

30 All right. So you say, do you, as at early May 2010, GMS was generating revenue seven days a week, is that right?---No, that's not a good interpretation that I would agree to.

All right. Well, how many days a week do you say GMS was generating revenue in early May 2010?---Can you define generating revenue? Is that receiving income, in your mind?

40 Mr Johnson, I'm using your terminology from your affidavit. Do you understand?---Yeah.

You have said in your affidavit, by this stage, which, if it assists, is either 1 or 3 May, 2010, work was being done by GMS which included generating revenue. You've said that in your affidavit.---To provide them with a bit of clarity on that - - -

No, I'm just - - - ---Yes.

Just answer the questions, please.---Yes.

You've said that in your affidavit.---Yes.

Now, how many days a week do you say GMS was generating revenue in early May 2010?---It was doing work up to seven days a week to generate income for some projects that wouldn't be realised for, in some instances, two decades into the future, Mr Henry.

10 Well, between the time at which your employment – I'll withdraw that. The time at which the contract as between GMS and Waawidji commenced, and the registration of GMS, there were 14 days. Do you understand?---I'll take your word for it.

You don't seriously suggest, do you, that in those 14 days GMS was generating revenue?---I think you may be missing a point, Mr Henry. May I explain?

20 Well, do you suggest that in that 14 day period GMS was generating revenue?---It was doing work in order to generate revenue for periods of time from that point to far into the future.

THE COMMISSIONER: So as at the stage at which the contract between GMS and Waawidji was entered into there was in fact no actual revenue being generated, it was what you anticipated would be generated, is that a fair summary?---To a large extent. But my memory doesn't allow me to remember whether or not we did generate income at the time. One must remember GMS took over many functions from handing over the Development Services Pty Limited.

30 MR HENRY: Now you appreciate don't you, Mr Johnson that under the contract between Waawidji and GMS, first of all the commencement date was 1 May, 2010, you're aware of that?---The contract between?

Waawidji and GMS?---Yes.

And if you want to have regard to the contract I can take you to it. Secondly, you're aware aren't you, that under that contract payments were to be made on a weekly basis?---No.

40 All right?---I'm not aware of that.

Do you still have with you volume 11. I'll ask you to turn to page 112?---What page, sorry?

112, Mr Johnson. So this is the front page of the Waawidji GMS contract. Do you have that, sir?---Yes.

If you turn please to page 124, you'll see the schedule to the contract which identifies at part 7, Annual Remuneration. Can you see the Annual Remuneration on page 124?---Yes.

And it's a salary of \$100,000 and an employee superannuation allowance of \$9,000, do you agree?---Yes.

Now if you go back in the contract at page 115 you'll see a heading Remuneration at clause 6?---Yes.

10

And it says, first of all at 6.1, "The service contract provider shall provide to the contract CEO an annual remuneration package as set out in part 6 of Schedule 1". Now I suggest to you, that that's a typographical error and it should read part 7, do you agree with that? Because - - -?---I'll take your word Mr Henry.

Well have a look at page 124. It makes no sense if part 6 is referred to, you get that?---Yes, okay.

20

Yeah. Then if you have regard please sir, at page 115 to clause 6.3. "The service fee component of the remuneration package shall accrue from day to day and shall be payable by equal weekly instalments", do you see that?---Yes.

So do you agree that the what's referred to as the salary in this contract was payable in equal weekly instalments?---The contract says that but I think you'll find the parties, due to mutual agreement, varied that.

30

I'm sorry?---That was never adhered to.

No, it may not have been adhered to but that was the contractual obligation of GMS, wasn't it, to pay Waawidji weekly?---Yes. But I think by mutual agreement the parties varied that.

When do you say that occurred?---I think this was a cut and paste from a previous contract.

40

Yes?---And I think it was varied day one of Karen Maltby. Well, no, probably from day one of May 2010. It was never implemented.

You'd prepared the contract by cutting and pasting, didn't you?---Yes.

You were aware, weren't you, that under the contract GMS was obliged to pay Waawidji weekly?---Actually, no. This is the first I'd been involved to that point.

So you say although you drafted the contract you didn't know what it said?--Actually, Allan Hudson drafted the contract. I signed the first of them in 2007.

Yes, he drafted you say the 2007 contract didn't he?---Yes, yeah.

But you drafted the 2010 contract didn't you?---Technically. I cut and pasted it. I drafted it.

10 Now, if you go back please, sir, to paragraph 95 of your affidavit.---Yes.

Isn't this the position, that as at the commencement date of the Waawidji GMS contract there was no prospect of GMS paying Waawidji as required under the contract. Do you agree?---Prior to it being amended by mutual consent, no. Well, yes, prior to mutual consent.

And you say it was amended on the first day of the contract. Is that right?---It would have had to have been. It was never adhered to, Mr Henry.

20 Yes.

THE COMMISSIONER: What did it become, fortnightly payments?---No, they were basically monthly invoices, invoice, Your Honour. Sorry, Commissioner. I'll get it right eventually.

MR HENRY: How do you say this amendment occurred, was it in an oral agreement?---It would have been.

30 Right.---Look, it was just never adhered to and - - -

You appreciate don't you there's a distinction between an amending agreement and just disregarding the terms of an agreement, you understand that distinction don't you?---You'd have to refresh me.

Well, you say the agreement was amended immediately effectively don't you?---It was just – that term was never implemented by either party.

40 Yes, but there's no – there was no amendment to the agreement the day after it was commenced was there?---Look, I would not know the technical term. That term of the agreement was never adhered to by either party.

When you said a moment ago the agreement was amended a day or so after it commenced you made that up didn't you?---Shoot me for using a wrong term.

You made it up.---That's all I did. What did I make up, Mr Henry? I don't understand.

Mr Johnson – excuse me – do you say you had a conversation with Ms Maltby?---No. As I said I never noticed this term. I said that to you. I believe I'm on record. It was never adhered to by either party.

All right. Go back to paragraph 95 please, the last sentence.---Yes.

You say, "For these reasons the balance of my pay increase was embodied in the GMS/Waawidji agreement." Do you see that?---(No Audible Reply)

10 The last sentence of paragraph 95?---Yes.

That's an incorrect statement isn't it?---I don't see it as incorrect I'm sorry.

You stand by that statement?---I don't see why I wouldn't.

All right. I'll ask for the suppression order to be lifted in respect of Mr Johnson's – excuse me – compulsory examination transcript of 11 April, 2016 at pages 62-63.

20 THE COMMISSIONER: Yes. The order under section 112 that previously applied to pages 62-63 of the transcript of 11 April is lifted to the extent required by the questions. Yes.

**THE ORDER UNDER SECTION 112 THAT PREVIOUSLY APPLIED TO PAGES 62-63 OF MR JOHNSON'S COMPULSORY EXAMINATION OF 11 APRIL IS LIFTED TO THE EXTENT REQUIRED BY THE QUESTIONS**

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MR HENRY: Thank you, Commissioner. So, Mr Johnson, I'll ask you to look at the screen and what you should see in a moment is a part of the transcript of my questioning of you on 11 April, 2016. 62. So you see there, sir, page 62 of the transcript of 11 April, 2016. Now, I'll ask you to please have regard to line 41 towards the bottom of the page. I say to you, "Thank you. Now, Mr Johnson, you should still have with you C10 which is the contract as between Waawidji and Gandangara Management Services. Do you have that one?---Yes." So just pausing there, that's the same contract to which I have taken you a moment ago. Do you understand?

40 ---Yes.

I then say, "Now why was a separate contract for your services made as between Waawidji and Gandangara Management Services from the employment, over the page, contract between yourself and GLALC?" And you respond, "Tax minimisation separate employers." And then I ask, "You don't suggest Waawidji was an employee of Gandangara Management Services?" You say, "No. It was contracted to, to Gandangara Management Services." And then I ask, "Did Waawidji contract with Gandangara

Management Services because as you understood things if Waawidji received a benefit from GLALC you could not remain CEO of GLALC.” You answered, “No. It was about tax minimisation, Mr Henry.” And I say, “All right. And how do you, how do you say tax was minimised by this arrangement?” And you answered, “Well I would have been paying PAYE.” And I say, “Under the contract as?” And you say, “At the rate of, what was it in 2010, 48 percent, 45 basic maths, Mr Henry.” And then I say, “So do you say, so you say do you because you entered into a contract for your services under the name of Waawidji you avoided that tax obligation?” Your answer, “I minimised it. I didn’t avoid it.” And I say, “I see. It was perhaps the reason for Waawidji contracting with Gandangara Management Services rather than GLALC because you understood that Waawidji could not lawfully receive payments as a consultant to GLALC.” And then you say, “I note Mr Henry, that like this morning you prefer to take that negative approach, but no, as I repeat, it was about tax minisation, Mr Henry. Now that’s the third time.” Do you see all of that?---Ah hmm.

You were adamant weren’t you when I asked you why there was a separate contract between GMS and Waawidji that there was one reason only and it was tax minimisation. Isn’t that right?---Yes.

You don’t refer to tax minisation at all do you in paragraph 95 of your affidavit?---No.

And you don’t refer to tax minisation in any other part of your affidavit as being the reason for an agreement between GMS and Waawidji do you?--- I’ll have to take your word on that Mr Henry.

Now you set out at paragraph 95 of our affidavit the reasons why there was a contract between GMS and Waawidji. Correct?---No, but it doesn’t say that’s an exhaustive list.

Look at the last sentence of paragraph 95 Mr Johnson?---Yes.

You say “For these reasons the balance of my pay increase was embodied in the GMS/Waawidji agreement. Do you see that?---That’s, that’s true.

THE COMMISSIONER: Those reasons being that as at that time according to paragraph 95 the bulk of your work was being undertaken in relation to GMS activities?---Entities?

Yes?---The bulk of my worth was, yes.

MR HENRY: And the GMS according to you was generating revenue?---It was working towards it, yes, if it wasn’t at the time.

I’ll show you volume 14 at page 223. This is the bank account of GMS for the period commencing 22 June, 2010. Can you see that?---Yes.

Do you see that GMS opened its bank account on that date. Do you see that?---Yes.

Do you agree with me if you have regard to the bank statements between paragraph 223.

THE COMMISSIONER: Page 223?

10 MR HENRY: Yes, sorry, page 223 and page 231 that until – between 22 June, 2010 when the account is opened and 21 December, 2010 the balance of the account does not rise above \$160?---I'm only getting one page.

You don't have the hard copy?---So can you repeat the question, Mr Henry.

Perhaps for the purposes of this - - -?---Sorry.

- - - you should use the hard copy, Mr Johnson. Volume 14, page 223.  
---Okay. Sorry.

20

Excuse me. Page 223 shows that the account was opened on 22 June, 2010. Do you see that?---Yes.

Now, did you cause this account to be opened?---I can't remember.

Well, you were by then the CEO of the company weren't you?---Yes.

30 You were aware were you not prior to 22 June, 2010 that the company didn't have a bank account?---The obvious belts me in the head, Mr Henry. Yes.

Yes. So an account was opened on 22 June, 2010 and then if you look from page 223 to page – through to pages, page 231 you will see that the balance of the account does not exceed \$160 until after 21 December, 2010. Do you agree with that?---Yes.

Now, with that in mind do you agree with this, that firstly, GMS was not generating any revenue in early May of 2010?---No.

40 You agree that GMS was not in a position in early May of 2010 to meet any obligations under the GMS/Waawidji contract. Do you agree?---No, I think that's too simplistic, Mr Henry.

Well, when do you say GMS would be in a position to meet its obligations under its contract with Waawidji?---As I said to you before, some of the roles that GMS took over were taken over by Gandangara Development Services Pty Limited. On 21 January – sorry, on 22 December, 2010 I respectfully suggest to you that GMS didn't blink and create \$260,000

worth of income. I believe work was in progress for quite some time before that to generate that.

By that point in time the GMS/Waawidji contract had been on foot for almost eight months hadn't it?---Yes. Yes.

The proposition that the GMS/Waawidji agreement was entered into because GMS was generating revenue in early May, 2010 is just false isn't it?---I don't agree with you at all.

10

THE COMMISSIONER: Mr Johnson, on a very basic level though if one looks at the, at the explanation in paragraph 95 of your affidavit, one would have expected to have seen, even if you say that the payments were monthly, one would have expected to have seen monthly deductions from the GMS account at least as and from 22 June. But my understanding of the accounts there's no such deduction is there?---I can't remember, Commission.

20

But I mean as a - - -?---Not from the bank accounts, you're right, yes.

Well but that's my point, if you were being paid, even on a monthly basis by GMS, sorry I should clarify that, if Waawidji was being paid monthly by GMS one would expect to see that monthly amount come out of the GMS bank account, but it's not there?---With respect I haven't seen a document that shows me that Waawidji was paid and if so by who. I would suggest as another question.

30

MR HENRY: Mr Johnson, Waawidji was entitled to be paid by GMS under the agreement wasn't it?---Under the contract, yes.

And I've shown you the GMS bank statement and GMS didn't have a bank account?---But you haven't shown me, with respect, and I do not remember that Waawidji was paid at all in that time.

So do you now claim Waawidji wasn't getting paid at all in May 2010?---I reiterate part of my previous sentence, I don't remember.

40

Right. So as far as you can recall you may have been working for GMS from May 2010 till when without Waawidji getting paid?---I do not know Mr Henry.

THE COMMISSIONER: You mean getting paid at all?---Well Waawidji may not have. I can't remember, Commissioner.

Well I just want to make sure I understand this. If, it may be the fact that Waawidji wasn't getting paid at all in that period that would represent a significant reduction in your annual salary that had been negotiated pursuant to those two contracts wouldn't it?---Yes.

Right.

MR HENRY: Indeed more than half of our remuneration would not have been received. Correct?---On the last day of April of 2010 I was earning considerably less, which wouldn't have been too difficult for me to keep on that but sometimes – I do not remember the details. You seem to have left that part of it out.

10 Yes, thank you, Mr Johnson. Now Johnson you received advice from your accountant didn't you before agreeing enter into the contract on behalf of Waawidji with GMS?---In 2010.

Yes? I'm not sure about that Mr Henry.

You did didn't you?---I'm not sure about that Mr Henry.

All right. Well I'll ask for the suppression of the compulsory examination transcript of 11 April, 2016 page 64 and 65 to be lifted, please.

20 THE COMMISSIONER: Yes, the order under section 112 of the Act made in relation to pages 64 to 65 of the transcript of 11 April, 2016 is lifted.

**THE ORDER UNDER SECTION 112 THAT PREVIOUSLY  
APPLIED TO PAGES 64-65 OF MR JOHNSON'S COMPULSORY  
EXAMINATION OF 11 APRIL IS LIFTED TO THE EXTENT  
REQUIRED BY THE QUESTIONS**

30 MR HENRY: Thank you, Commissioner. Now Mr Johnson, you should see on the screen a copy of that, those pages of the transcript, well page 64 at any rate. You'll see at line 30 I ask you a question, "You were the CEO of Gandangara Management Services weren't you?" And you said, "Yes. And then I said, "The proposition that Waawidji was the CEO of Gandangara Management Services was a charade wasn't it?" And you say, "Yes. Waawidji provided me, yes." And then I ask, "Well why was Waawidji interposed as a contracting party to this agreement? Why wasn't it between you and Gandangara Management Services?" You say, "I believe that there were some tax ministrations benefits, Mr Henry." And I  
40 ask, "But you can't identify what they were other than what you've said previously about them." And you say, "Well I've identified PAY tax is around about 45 to 48 percent, company tax is 30 percent. Companies have legitimate expenses which individuals don't." And then the Commissioner asks you, "Mr Johnson, the number of times that you refer to tax minimisation, do I take it that you took some advice?" And you say, "Yes." And then the Commissioner says, "Prior into entering into these - - -?"  
"Yes, ma'am. Contracts in these forms? Yes, ma'am. And from whom did you obtain that advice? My accountant at the time." Do you see that?

---Yes.

Was that true evidence or not?---Yes, I would suggest so.

So you went and saw an accountant to get advice before signing on behalf of Waawidji the agreement between Waawidji and GMS and you entered into that contract because you perceived it minimised your tax obligations. Isn't that right?---I have the advice quite some time before about starting a company. I continued that advice onto me signing the 2010 contract.

10

Didn't you show the accountant the forms of the contracts?---No.

So where you said at page 65 to the Commissioner, "Yes, ma'am" in answer to the question, "Mr Johnson, I take it that you took some advice prior to entering into these contracts in these forms?" Was that a truthful answer?

---Yes.

So you got advice on the contracts without showing them to the accountant. Is that what you say?---As I said to you, I had previous advice regarding when I first formed the company that I carried through to the 2010 contract.

20

You entered into a contract on behalf of Waawidji with GMS for tax minimisation purposes and it had absolutely nothing to do with what you've written at paragraph 95, do you agree, of your affidavit?---Could you repeat the question please.

Yes. I'll make it more simple.---Thank you.

The reasons you've advanced at paragraph 95 of your affidavit are not reasons at all as to why Waawidji entered into the contract with GMS?---I do not agree with you.

30

If you go over to – sorry, I withdraw that. Could Mr Johnson please be shown Exhibit G13 at paragraph 73.---Paragraph 73, Mr Henry?

Yes. So this is Ms Cronan's affidavit and you may recall I asked her some questions about this paragraph yesterday. You were in the hearing room at that time weren't you?---I believe so, yes.

40

And in particular I asked her whether she could recall you saying the words she attributes to you at the bottom of paragraph 73 in the quote marks. Do you recall that?---Do I recall you asking Ms Cronan?

Yes.---Yes.

All right. Now, if you – can you read those words in the quote marks please.---Italics?

Yeah.---Thank you.

Now, do you recall the Board meeting that Ms Cronan is referring to on 19 March, 2012?---Not really, no.

All right. Well, I'll provide you with a copy of the minutes to assist you. So volume 9 I'll ask you to be provided with. If you can hang onto Ms Cronan's affidavit there. Volume 9 at page 203.---Yes.

10 So this is the minutes of the GLALC Board meeting of 19 March, 2012. Is that what you're looking at?---Yes

And you were present at the meeting?---I can't remember.

Well, you see at the top of page 204 there's a motion 4.2?---Yes.

It reads, "The Board resolves to endorse the CEO's employment contract as it stands as at May 2010 in its entirety and in an unaltered state. This motion supersedes all previous motions regarding the CEO's employment."  
20 Do you see that?---Yes.

Do you recall being at a Board meeting at which a motion in those terms was put to the directors?---No, I don't.

Right. You see further down motion 4.3, "Board resolves to establish a finance subcommittee to assist the CEO with financial oversight of all finances." Do you recall being at a meeting at which that motion was put?  
---I could have been, but I don't remember.

30 All right. And then there's motion 4.4 refers to an authorisation of CEO travel expenditure not exceeding \$4,000. See that?---Yes.

Do you recall being at a meeting at which that was considered by the directors?---No.

So, having regard, then, to paragraph 73 of Ms Cronan's affidavit, you understand that paragraph 73 is addressing the meeting of 19 March, 2012, about which I've just been asking you by reference to the minutes? You understand that?---Yes.

40 You see the conversation – I'll withdraw that. Do you see the words she attributes to you at paragraph 73 in the quote marks and italics?---Yes.

Do you say you said those words or not?---I do not remember.

All right. You see in the text she says that you said to the meeting, "One of the issues that Stephen is raising with me is my pay." Do you recall Mr Wright raising an issue with you in relation to your pay?---I was trying to

remember this yesterday. Only very vaguely. I couldn't remember any details at all. Just vaguely the topic.

And then it reads on. This is Ms Cronan's version of what you said. He says, "I'm double-dipping, being paid by GLALC and by GMS as well." And she says that you said, "That's the arrangement we agreed back in 2010." And then she says that you said, "Even before that, I've always had expenses paid by GMS." Now, it's incorrect, isn't it, as a matter of fact, that you had always had expenses paid by GMS prior to the May 2010 contracts?---Prior to the 2010, it's irrelevant. There was no GMS.

Yes.---Wasn't it incorporated in April of 2010?

Yes.---So, yes?

Yes. What I'm coming to, Mr Johnson, is your, you understand now, don't you, that GMS didn't exist until April 2010?---Yes.

You also understand now that GMS didn't have a bank account until June 2010?---I repeat, yes.

And did you first become aware – I'll withdraw that. When did you first become aware that GMS did not have a bank account prior to June 2010? ---I have no idea.

Well, did you know at the time that you signed the contract on behalf of Waawidji with GMS?---I can't remember. That point, I cannot remember.

Well, on 1 May, 2010, a contract commenced pursuant to which Waawidji was entitled to be paid weekly. Agreed?---It was a term of the contract, yes.

So the first payment was due under the contract by 7 May, 2010. Do you agree?---By what date?

7 May, 2010.---Yes.

It must have come as an awful surprise to you that GMS didn't even have a bank account after that contract was entered into and the payment wasn't made?---If it was an awful surprise, Mr Henry, I do not remember it.

But you were the CEO of the company weren't you?---Yes.

You don't suggest you were unaware as to whether or not it had a bank account?---Let me take you back to my previous statement. I wouldn't have been expecting to be paid anything on 7 May.

You would have expected to have been paid on 1 June. Is that what you say?---Or thereabouts.

Yes. And that didn't happen either did it?---Again, I'm not sure. That was a question I've asked of you.

Well, the first payment GMS made to Waawidji was on 7 April, 2011.---I'll have to take your word for it.

You don't have to. I'll take you to a document.---Thank you.

10 Do you still have volume 11, sir?---(No Audible Reply)

Do you have page 57?---Yes.

You will see there's a cash disbursements journal of GMS.---Yes.

Now, that shows a payment to Waawidji by GMS on 7 February, 2011. Do you see that?---Yes.

20 That was the first payment GMS made to Waawidji. Do you understand?  
---I'll have to take your word for it, Mr Henry.

Well, are you aware of any other payment prior to 7 February, 2011 that Waawidji received from GMS?---I can't remember. It was not a point of great interest to me where the money came from.

Well, you knew that it couldn't come from GLALC and you remain CEO didn't you?---I was aware of that statutory requirement, yes.

30 Yes. So weren't you concerned to ensure it didn't come from GLALC?  
---No. I would take it that Finance would handle that.

Just bear with me. Have you got page – sorry, volume 13 available to you?  
---G13?

All right. Well, perhaps if you could be shown that. Bear with me a minute. I'm just trying to find the reference for you, Mr Johnson. Page 202 of volume 13.---Yes.

40 Now, you will see there on page 202 this is a bank statement of Waawidji's.  
Do you see that?---Yes.

For the period 26 January, 2011 to 25 February, 2011?---Yes.

You will see there's an entry on 31 January, 2011 \$8,159.16. Do you see that?---What date, sorry, Mr Henry?

31 January. Do you see that entry \$8,159.16?---Yes.

That's a payment to Waawidji from GLALC. Correct?---Yes.

And this is after the commencement of the May, 2010 contract. Correct?  
---Yes.

Now, if you look further down the page there's an entry 7 February, 2011 and it says G-a-n-d-m-a-n-a-g-s GMS 103 a deposit – excuse me – of \$9,241.66. Do you see that?---Yes.

10 Now, that's the first payment I suggest to you that GMS ever made to Waawidji. Do you agree with that?---Well, you may be correct. I'll have to take your word for it.

Well, you can have a look over lunch perhaps, Mr Johnson. I suggest to you you won't find in these bank statements of Waawidji any payments made to it by GMS prior to 7 February, 2011. Do you understand?---I'm comfortable taking your word for it, Mr Henry. I've said that.

20 All right. But what you will find, Mr Johnson, is many payments made to Waawidji by GLALC. Do you agree?---I see one, yes.

Well, go for example to page 209. Do you have page 209?---Yes.

You will see there's an entry on 17 December GLALC has paid into Waawidji's bank account \$1,786.39.---Yes.

Further down the page on 23 December GLALC has paid Waawidji \$3,036.46. Do you see that?---Yes.

30 Then it's also paid on the same date Waawidji \$9,241.66. Do you see that?  
---What date was that, sorry?

The same date 23 December.---What was the amount?

\$9,241.66.---Oh, yes. Yes, thank you.

And the next amount underneath that 11,925.87.---Yes.

40 Then go, by way of further example, back to page 221.---Yes.

On 2 August, 2010 Waawidji was paid \$4,633.69 by GLALC. Correct?  
---Yes.

And on the same date \$9,241.66. Do you agree?---Yes.

Mr Johnson, between the commencement of the May, 2010 employment contracts and the 7 February, 2011 Waawidji received payments from GLALC didn't it?---Yes.

Now you were aware weren't you during that period that GLALC was making payments to Waawidji?---No.

Wasn't – I'll withdraw that. You controlled Waawidji at the time didn't you?---I controlled Waawidji, yes.

And Waawidji had one bank account at the time?---Yes.

10 And am I correct in understanding that the payments to Waawidji at that time were the primary source of your income?---No.

What was then?---My salary from GLALC was my primary source of income.

I see. Well the amount of money that – I'll withdraw that. I rather apprehend that you suggest there were two sources of money – I'll withdraw that. There were two sources from which you received money at the time. One was your salary paid by GLALC itself. Is that right?---Yes.

20

And the other was whatever money came to you through Waawidji. Is that right?---If it did. I'm not sure money came to me through Waawidji.

Now your wife's a – I'll withdraw that. Your partner at the time was a half owner of Waawidji. Is that right?---Half shareholder.

Yes. She owned 50 percent and you owned the other 50 percent of the shares in the company?---She had 50 percent of the shares.

30 But you were the sole director weren't you?---Yes.

And you were the company secretary?---Mmm. I can't remember that one Mr Henry, I'm sorry.

In any event you attended to all of the affairs of Waawidji didn't you? ---Yes.

Did you say that you – I'll withdraw that. Did you not look at the bank accounts of Waawidji from time to time?---Yes, I did.

40

How regularly?---Very irregularly.

Well monthly?---No.

Quarterly?---At best.

Well Waawidji had to complete BAS statements didn't it?---Yes.

Did you look at the bank account statements for the purposes of preparing or signing off on BAS statements?---No.

Who, who prepared the BAS statements?---An accountant.

Yes, with information provided by you?---Yes.

And that included bank statements?---Yes.

10 Didn't you have regard to the contents of the bank statements at least quarterly?---The accountant had direct access to the bank accounts.

What's the answer to my question?---No. Well at best, Mr Henry, at best quarterly.

I suggest to you that before 7 February, 2011 which is the first date upon which GMS paid Waawidji you were aware that Waawidji continued to receive payments from GLALC after 1 May, 2010. Do you agree with that?---I absolutely disagree with your statement.

20

THE COMMISSIONER: Mr Johnson, in those, in those accounts that you have in front of you, that is the payments into the Waawidji account - - -? ---Yes.

- - - there seems to be a recurring amount of \$9, 241. Do you see that figure that recurred a few times?---Yes.

And the bank statement indicates that it is paid into the account by way an invoice?---Yes.

30

Which suggests that Waawidji issued an invoice to GLALC for the purposes of receiving that money

Well you would be the issuing authority for the purposes of that invoice would you not? You, you would draw up the invoice?---I would have arranged the invoice. I can't remember who it was made to, Commissioner.

But you'd have to make out the invoice to GLALC for the GLALC account for payment on the invoice. Doesn't that follow?---I think that's an assumption, with respect, Commissioner.

40

It isn't – see what's operating on my mind is the 9, 241 because it's a recurring figure. That suggests to me that that was the salary component, whether it was fortnightly or monthly, I don't know. But that was the salary component what invoiced by Waawidji to the GLALC account that caused that amount to issue?---I would have done exactly what you're doing and drawing the same conclusion that that was the monthly contractual invoice amount.

Right?---Who it was paying from, I wouldn't have taken much regard at all.

Well bearing in mind that you accept that you knew that you couldn't derive a benefit from GLALC, then you drew up the invoice you would be careful would you not to ensure that the invoice was not issued to a GLALC account. Is that a fair, is that a fair assessment?---I would do my, I would do my best, Commissioner. No.

- 10 MR HENRY: And you would have noticed wouldn't you, maybe not for a month, maybe not for three months but you would have noticed that GLALC was repeatedly making deposits of funds into Waawidji's account?--Not necessarily Mr Henry. I'm sorry, I don't agree.

But you understood didn't you at the time at which you signed the May, 2010 contracts that Waawidji was not entitled to receive any payments from GLALC - - -?---Yes.

- - - under those contracts?---Sorry for interrupting, yes.

20

Now if you have regard to volume 11, you'll see – if you go to page 55, please?---Sorry?

Page 55 of volume 11?---Yes.

You see at the base of the page – I'll withdraw that. This is a cash disbursements journal of GLALC's for the financial year ended 30 June, 2010. Do you see that?---Yes.

- 30 And it shows payments to Waawidji during that financial year. Do you see?---Yes.

The two last payments, that is , the payments dated 7 June, 2010 and 29 June 2010, post-date the commencement of the May 2010 contracts don't they?---Yes.

And you agree that at that time that is after 1 May 2010 Waawidji was not entitled to receive any payments from GLALC. You agree?---Yes.

- 40 You go over the page to page 58, you'll see there cash disbursements journal for the year ended 30 June, 2011 showing just payments from GLALC to Waawidji. Do you see that?---Yes.

And you agree that during that entire period of time Waawidji was not entitled to receive any payments from GLALC?---Yes.

And then if you go forward, please, to page 62 a cash disbursements journal for the year ended 30 June, 2012 again showing payments by GLALC to Waawidji. Do you see that?---Yes.

And you agree that during that period of time Waawidji was not entitled to receive any payments from GLSLDD to.

10 And then page 70, you there had a cash disbursements journal, Mr Johnson for the year ended 30 June - - -?---You're a bit ahead of me, sorry Mr Henry.

I'm sorry, page 70?---Yes.

You'll see there a cash disbursements journal for the year ended 30 June, 2014.---Yes.

And that shows a payment of \$20,000 from GLALC to Waawidji. Do you see that?---Yes.

20 And do you agree that, at that point in time, Waawidji was entitled to receive any payments from GLALC?---Any benefits.

Sorry?---Any benefits, isn't it, rather than payments? I just need a bit of clarification there.

Well, do you - - - ---I can't remember the wording of the statute.

Do you suggest that a payment of \$20,000 isn't a benefit?---May not be.

30 I see. In any event, I'm not asking you about the statute. What I'm saying to you is that in the year ended 30 June, 2014, Waawidji was not entitled, as you understood it, to be paid any money by GLALC.---Any benefits by GLALC.

Any money by GLALC.---No, I can't answer that without reading the statute.

40 THE COMMISSIONER: Well, Mr Johnson, you've answered a number of previous questions in the same form in the affirmative so - - - ---Benefits, sorry, Commissioner.

Are you wishing to revisit that evidence, are you?---Look, if I've said that, then I missed it in the previous. I just need some clarity now, if you wouldn't mind.

Mr Johnson, can I just raise this before we take the morning tea adjournment. At the Board meeting of 19 March, 2012, where there was this discussion about what you've said, and you indicated you couldn't

remember being at that meeting, but you do remember, albeit vaguely, that the Registrar had raised an issue with you in relation to your pay and your double-dipping. Do you recall saying that?---Yes.

Well, that was early 2012 at the latest. Because I'm assuming that when the Registrar raised it with you, he raised it with you before that meeting. So, all of these payments that – well, sorry, I'll withdraw that. To the extent that these payments that are being shown to you post-date that discussion with the Registrar, didn't that discussion cause you to revisit this question of what monies you were receiving from GLALC?---No, Commissioner.

MR HENRY: You can't point to any entitlement of Waawidji to receive payments from GLALC after 1 May, 2010, can you?---Can you repeat that, please?

Yes, I'll go back a step. You accept that from 1 May, 2010, Waawidji was not entitled to receive any payments from GLALC?---I'm not certain of that, Mr Henry.

Well, you agreed to that proposition earlier. Do you change your evidence?---If I need to correct it, now's the perfect time. I would need to read the statute.

I'm asking you about your understanding of Waawidji's entitlements. Do you understand?---What is relevant is what form the entitlements took.

Mr Johnson, commencing 1 May, 2010, Waawidji had a contract with GMS, didn't it?---Yes.

It did not have a contract with GLALC, did it?---Correct.

And that was because you suggested, proffered indeed, draft contracts which did not include a contract between GLALC and Waawidji. Correct? ---Yeah.

Following 1 May, 2010, GLALC – I'll withdraw that. Waawidji had no entitlement to be paid money by GLALC. Correct?---Not necessarily.

MR GANDAR: Commissioner, I object to the question, if I may. The fact that Waawidji was not a party to the GLALC agreement with Mr Johnson doesn't necessarily mean it had no entitlements under it. I suggest that Mr Johnson should be shown the contract and given opportunity to read it before he has to answer that question.

THE COMMISSIONER: Well, look, you can clarify that if you wish, but there's nothing wrong with the question. But I need to come back to this, Mr Johnson.---Mmm.

At the very, very beginning of your evidence this morning, Counsel put to you, or asked you, rather, whether or not you were aware, for the entire time that you were the CEO, that Waawidji could not receive a benefit. Now, he used the word "benefit". And you said, "Well, I wasn't aware for the entire time, but I was aware of that at least before 1 May 2010." Now, that was your answer.---Yes, I agree with that, Commissioner. May I try and give us all a bit of a shortcut here?

10 I beg your pardon?---There is a – I agree that Waawidji was not entitled to benefits directly from GLALC but that would not cover reimbursements that Waawidji may have incurred that GLALC

---

Well, let's put the reimbursements aside shall we.---Okay.

20 Because we've already agreed that the \$9,241 that recurs as a payment according to you most likely constituted the salary component of your contract, that is, Waawidji's contract with GMS. You've already agreed with that. So we're not talking about reimbursements when we look at those payments are we?---Well, all I wanted to do was clarify that so - - -

Well, at the very least, Mr Johnson, do I understand your position to be that you don't regard reimbursements as coming within the term of benefit but you do not take that position in relation to the payments that constitute your salary component under the agreement between Waawidji and GMS?  
---Correct, Commissioner.

Right.

30 MR HENRY: Do you agree with this proposition, that Waawidji was not entitled to any payments from GLALC during the term of the 2010 contracts?---No.

All right. I'd ask for the suppression order in respect of page 60 of the transcript of 11 April, 2016 to be lifted please.

THE COMMISSIONER: Yes. The order under section 112 that previously applied to page 60 of the transcript of 11 April, 2016 is lifted.

40

**THE ORDER UNDER SECTION 112 THAT PREVIOUSLY APPLIED TO PAGES 60 OF MR JOHNSON'S COMPULSORY EXAMINATION OF 11 APRIL IS LIFTED TO THE EXTENT REQUIRED BY THE QUESTIONS**

MR HENRY: Thank you. So look at the screen please, Mr Johnson. You will see at about line 27 – I think that may have changed there. Sorry, about

line 17 I should say I ask you this question, “You agreed that under the contracts for 2010 to which I have taken you that Waawidji was not entitled to any payments from GLALC during that period?” And you answered, “Yes.” Do you see that?---Yes.

You just answered no to the same question didn't you?---Different context in my, in my mind, Mr Henry.

10 You just answered no to the same question didn't you, Mr Johnson?  
---Different context in my mind, Mr Henry.

Were you telling the truth on 11 April, 2016?---Yes.

Were you telling the truth a moment ago when you answered the same question no?---Yes.

That's absurd isn't it?---Different context, Mr Henry.

20 Mr Johnson, you're making this up as you go along aren't you?---No.

Now, in relation to volume 11, do you recall I drew your attention initially to page 55 and a payment on 7 June, 2010 by GLALC to Waawidji?---Yeah.

And then I took you to various payments over subsequent years culminating in the payment of \$20,000 at page 70 on 24 June, 2014?---Yes.

Do you recall?---Yes.

30 So the period the subject of these payments by GLALC to Waawidji for present purposes span from 7 June, 2010 to 24 June, 2014. Do you understand?---Yes.

That's a period slightly in excess of four years. Do you agree?---Yes.

Now, during that period do you say you remained unaware that GLALC made payments to Waawidji?---Yes.

For that entire four year period?---Yes.

40 Do you say you didn't look at a Waawidji bank statement during that four year period?---I didn't say that.

Well, do you or not?---Do I what?

Did you – so you say you looked at a Waawidji bank statement during that four year period?---I looked at bank statements during that period.

And you noticed didn't you when you looked at the bank statements that as a recurring theme GLALC was making payments to Waawidji?---No.

You overlooked those entries did you?---That part of them, yes.

For four years?---Yes.

All right. Is that a convenient time, Commissioner?

10 THE COMMISSIONER: Yes, we'll take the morning tea adjournment.  
Thank you.

### SHORT ADJOURNMENT

[11.30am]

THE COMMISSIONER: Yes.

20 MR HENRY: Mr Johnson, whilst you were the CEO of GLALC were you familiar with section 52 (D) of the Aboriginal Land Rights Act?---Can you repeat it, which section?

Yes, sorry. Section 52 (D). I can provide you with a copy if it would assist?---Please. Yes.

30 You'll see it says at subsection (1), excuse me, A Local Aboriginal Council must ensure that no part of the income or property of the Council is transferred directly or indirectly by way of dividend or bonus or otherwise by way of profit to members of the Council, Board members or any member of staff or consultant to the Council. Do you see that?---Yes.

Now were you aware of that section, whether or not by its number, whilst you were a director of, sorry, CEO of GLALC?---I became aware of it, Mr Henry.

And do you recall when?---No, I'm sorry.

40 Well it was prior to 1 May, 2010 when the employment contracts of that time were executed. That's right isn't it?---I can't remember Mr Henry.

I'll ask you then to be shown the exhibit to Ms Cronan's affidavit which I'll just find the reference, G13, thank you. And I'll ask you please Mr Johnson to turn to page 109. You should have there at page 109 a meeting agenda for the GLALC Board of 12 October, 2009. Is that what you're looking at?--Yes.

Did you create this agenda?---I think so, yes.

And then you'll see if you go over the page to page 110 there's a slide, congratulations on your election. Do you see that slide?---Yes.

And you created that slide did you?---I think so, yes.

You see there's a sequence of slides from that page, that is page 110 through to page 117. And my question for you is did you create all of these slides? ---I think so, Mr Henry.

10 And you made a presentation by reference to the slides did you not at the Board meeting of 12 October, 2009?---I'm deducing that I would have, Mr Henry.

You'll see at page 113 there's a slide on the bottom half of the page headed, pecuniary interest. Do you see that?---Yes.

And then it asks three questions. Do you see that?---Yes.

20 And you made a presentation didn't you at the October 2009 Board meeting about pecuniary interests if you look at the – do you agree with that? ---Could you repeat the question, please?

Yes. At this Board meeting, that is the Board meeting of 12 October, 2009 you made a presentation to the Board about pecuniary interests didn't you? ---I believe I would have put that slide up.

30 Yes. And then if you look at the next page, page 114 there's slides that I might generally describe as fleshing out the concept of a pecuniary interest and people who have them. Do you agree?---Yes.

And didn't you address the Board about those subject matters at the meeting?---I believe I would have put those slides up, Mr Henry.

Yes. And made a presentation to the Board about the subject matter of the slides?---I can't remember.

All right. If you go then please, you see page 115 has two further slides concerning pecuniary interest. Do you see that?---115?

40 Yes?---Disclosure?

Yes?---Yes.

And you see in the top – number 184 it says at subparagraph (1) an officer or member of staff of an Aboriginal Land Council or a councillor who has a pecuniary interest in any matter with which the Council is concerned and who is present at a meeting of the Council at which the matter is being

considered, must disclose the nature of the interest to the meeting as soon as practicable. Do you see that?---Yes.

Now you were aware of that weren't you at the time of this Board meeting in October, 2009?---Yes.

And then if you go over the page to page 116 you'll see at the base of the page a declaration of a pecuniary interest. Do you see that?---Yes.

10 And that's a declaration of yours isn't it?---Yes.

And you made that to the meeting, that declaration to the meeting in October, 2009. Correct?---Yes.

Now, excuse me, do you agree that by the time of that meeting in October, 2009 you were familiar with section 52 (D) of the Aboriginal Land Rights Act, which I've referred you?---I'd suggest that would be right, yes.

20 And that explains does it not why in the slide at the page of 116, the second dot point states that Waawidji does not act as a consultant to the GLALC. Do you agree?---No, I just don't remember – that explanation, no.

Well if you, if you have a look at Section 52 (D) of the Act it states that a Local Aboriginal Land Council must ensure that no part of the income or property of the Council is transferred directly or indirectly to amongst other people a consultant to the Council. Do you see that?---Yes.

30 Wasn't the purpose of the declaration that you made in October, 2009 to address section 52 (D) of the Aboriginal Land Rights Act?---I really can't remember that part, Mr Henry.

Isn't that why there's a reference to consultant in the declaration?---I can't remember Mr Henry.

THE COMMISSIONER: In any event as a matter of fact it does address that issue doesn't it?---As a matter of fact yes.

40 MR HENRY: You don't suggest that that's a coincidence do you?---I'm suggesting I don't remember Mr Henry.

Well, if you – of course October, 2009 is prior to the commencement of the 1 May, 2010 contracts you agree?---Yes.

If you go forward in the volume please you will see at page 143 are minutes of a Board meeting of 15 November, 2010. Do you have that?---Yes.

Now, you agree that by this point in time the contracts of May, 2010 have commenced?---Yes.

If you go over to page 145 you will see at the top of the page motion 8.  
---Yes.

And there the Board notes the declaration that you, CEO hold the position of director of Waawidji and that Waawidji does not hold any role at GLALC as a consultant. Do you see that?---Yes.

10 Now, at this point in time Waawidji had no contractual entitlement to payments from GLALC did it?---Correct.

You nonetheless made the declaration at motion 8 didn't you?---I made the declaration prior to the Board making that resolution in motion 8, yes.

Yes. And that declaration though was made at the Board meeting of November, 2010 do you agree?---Yes.

20 And you made the declaration because you knew at that point in time that Waawidji was receiving payments from GLALC. Correct?---No.

What was the point of the declaration?---I can't remember.

Well, you made the declaration because you perceived didn't you that it was necessary for you to declare your association with Waawidji given that you knew Waawidji was receiving payments from GLALC. Isn't that right?  
---No.

30 There was no need for you to make a declaration was there if Waawidji was not receiving any payments from GLALC. Do you agree?---No.

There was no need for you to declare that you were a director of Waawidji unless Waawidji had a financial interest in GLALC's operations. Correct?  
---No.

Well, why do you say you made this declaration?---I can't remember.

40 You made the declaration didn't you because you didn't want to fall foul – I withdraw that. You didn't want Waawidji to fall foul of section 52D. Correct?---I can't remember.

And you figured didn't you – I withdraw that. You understood didn't you at the time that if Waawidji was receiving payments from GLALC absent the declaration it would fall foul of section 52D. You understood that didn't you?---Could you repeat that question, I'm sorry.

Yes. You understood at the time – this is November, 2010 that it was necessary for – I withdraw that. That if Waawidji did not make the declaration it would fall foul of section 52D?---No.

And that was because it was receiving money from GLALC. Do you agree?---No.

THE COMMISSIONER: Mr Johnson, what do you understand and what did you understand then to be the meaning of the term pecuniary interest? ---I'd have to go back to the slides that I prepared, Commissioner.

10 Can't you say now from your knowledge of the law what pecuniary interest refers to?---I'm very rusty there, Commissioner, I'm sorry.

Well - - -?---Deriving a benefit.

Well, it's quite specific - - -?---A conflict.

It's quite – no. No, I'm not asking you about conflict. It's quite specific in the sense that pecuniary usually refers to a monetary benefit. Pecuniary interest is a monetary interest isn't it?---Yes.

20 Right.

MR HENRY: And wasn't the monetary interest that you were making the declaration in respect of at the meeting of November, 2010 Waawidji's monetary interest in GLALC?---No.

Well, what was the monetary interest to which the declaration was directed?---I can't remember, Mr Henry.

30 So I rather understand you don't dispute what I'm putting to you, you just say you can't recall. Is that it?---Now, that I don't understand.

You don't disagree – I withdraw that. You don't deny that the declaration was made because at the time of the declaration Waawidji had been receiving payments from GLALC, you just say you can't remember. Is that right?---No.

40 THE COMMISSIONER: Mr Johnson, there is a significant difference between saying I don't recall or I don't remember to a proposition and saying on the other hand that you dispute the proposition. You appreciate that difference?---Yes.

MR HENRY: And you don't dispute that the reason for the declaration was that GLALC was paying Waawidji money?---I do dispute that. Well, at the time if it was happening I didn't know about it.

If that's right why did you make the declaration?---That I can't remember.

Well, go forward in the volume please to page 229.---239?

229.---229. Yes.

You see this is the minutes of the meeting of 10 October, 2011. Is that what you're looking at?---Yes.

Do you see motion 1?---Yes.

The same declaration isn't it?---Yes.

10

Why did you make that declaration?---I can't remember.

Again, you made that declaration didn't you because you knew that Waawidji was receiving payments from GLALC?---If it was I didn't know that at the time.

You just say these declarations were made by you in November, 2010 and October, 2011 by coincidence in circumstances where you can't recall any pecuniary interest of Waawidji in connection with GLALC. Is that right?

20

---Correct.

It's an unlikely coincidence isn't it?---Depends which chair you're sitting in, Mr Henry.

Yeah. You believed didn't you that the declarations were necessary because of section 52D?---I can't remember, Mr Henry.

So you say it's another coincidence is it that that section of the Aboriginal Land Rights Act refers to consultants and the declarations do?---I haven't mentioned coincidence at all.

30

Well, do you say that's a coincidence as well or not?---No, I'm not saying that.

All right.

THE COMMISSIONER: Just as a general proposition, Mr Johnson, is it correct that the evidence given by the previous Board members and by Ms Cronan is accepted by you namely, that these minutes were essentially drawn up by you by way of projecting them onto a screen and insofar as the motions were put and carried they were composed by you and then to the extent that they needed to be modified they were modified before they were put. Was that how it happened?---At times, yes.

40

Well, what happened at other times?---The Board would direct me to the wording of the motion and I would write it up that way. In other words, under the heading motion number whatever it would be blank.

Yes, but what I'm getting at is you were there with the computer and these minutes were being projected onto a screen and they were being composed as the meeting progressed?---Yes.

Thank you.

MR HENRY: And in relation to the declarations made by you that were the subjects of resolutions of the Board, did you draft those motions?---Could you repeat that? I'm sorry.

10

In relation to the resolutions of the Board that noted the declarations made by you, did you draft those motions?---The very first one was taken directly from the Board. And I think almost annually after that, Ms Cronan made sure we always reviewed the declarations and they were being added to, amended to as the Board saw fit.

Yes. And on each occasion, more or less annually, you made the declaration, didn't you?---Which declaration?

20

Well, if you go back to Exhibit G13 at page 116.---116? Yes.

You'll see there it refers to three dates in the declaration of pecuniary interests slide. 9 October, 2007, 22 October, 2008 and 12 October, 2009. Do you see that?---Yes.

You made this declaration more or less annually during your period of tenure as CEO of GLALC, correct?---Yes.

30

And each time, you did so willingly. Do you agree?---Yes.

And each time, I suggest to you, you did it because you were conscious of the fact that Waawidji was receiving payments from GLALC.---No.

THE COMMISSIONER: And just while we're on that point, do you see, Mr Johnson, the slide on the screen notes that in compliance with the ALRA 1983, Waawidji does not act as a consultant. Do you see that?---Yes, I do.

40

Well, if that doesn't refer to section 52 D1 of the Aboriginal Land Rights Act, what does it refer to?---As it reads, Commissioner.

Yes, but it has to be in compliance with some part of the Act.---Oh, I see what you're saying. That I can't remember.

MR HENRY: Well, can you point to any other section of the Act to which it could conceivably be referring to?---Not off the top of my head, no, Mr Henry.

If you go back to page 115, you'll see the slide at the top of the page 184 the words that I read out to you earlier. Do you see that at subparagraph 1?  
---Yes.

And you'll see in that subparagraph it says, "Must disclose the nature of the interests to the meeting." Do you see those words?---This'll take time if you don't take me to it, Mr Henry.

10 Well, have a look at the second-last line of subparagraph 1. It says, "Must disclose the nature of the interests to the meeting."

THE COMMISSIONER: That being a pecuniary interest.

MR HENRY: Yes.

THE COMMISSIONER: If you look at the - - - ---Yes.

Yes.

20 MR HENRY: You understood, didn't you, that a declaration of pecuniary interest involved the disclosure of the nature of the interest? You understood that, didn't you?---I can't remember whether I did or not at the time.

You prepared this slide, you said, didn't you?---Yes, I would have cut and pasted it from the suggested Act, or some supporting documents of the Act. I went to law school. I'm very good at cutting and pasting.

30 Well, page 116. What's the nature of the interest that you're disclosing in your declaration?---I can't remember, Mr Henry.

It's just words without any meaning. Is that it?---You're drawing that conclusion, Mr Henry. I can't remember.

You can hand that volume back, thank you. Now, in 2012, the GMS-Waawidji contract was replaced with three other contracts, wasn't it?---Yes.

Was that at your request?---Yes.

40 Why was that?---Tax minimisation.

Same reason as the 2010 GMS-Waawidji contract?---With some variations, yes.

And that was the reason, wasn't it, and the only – I'll withdraw that. That was the reason for the GMS-Waawidji contract being entered into in the first place in 2010, wasn't it?---One of the reasons, yes.

No, it was the only reason, wasn't it?---No, I can't remember.

You don't dispute that?---I don't dispute that that was one of the reasons, no.

But as you sit here now, you can't point to any other reason?---Not off the top, no.

10 And so to the extent that you've suggested otherwise, in paragraph 95 of your affidavit, that evidence should be disregarded, is that right?---I don't have it. I can't answer.

Oh, well, could Mr Johnson please be provided with his affidavit?---95?

Exhibit G18. Yes.---Thank you. What's your question, Mr Henry?

20 To the extent that paragraph 95 suggests reason for the balance – I'll withdraw that. Reasons for the GMS-Waawidji contract being entered into, that should be disregarded, is that right?---Why?

Because of the answer you just gave.---The answer I gave was that was one of the reasons. Why would I disregard - - -

No, no. Mr Johnson, you just said tax minimisation was a reason for entering into this contract between Waawidji and GMS.---A reason.

I said can you recall any other reasons, and you said no.---I'm sorry.

30 And I'm suggesting to you - - - ---I couldn't recall other reasons. You're pointing to some.

THE COMMISSIONER: Well, these were the reasons that you advanced in February of this year.---And I don't disagree with them, commissioner.

MR HENRY: All right. They weren't reasons at all, were they?---They were reasons, yes.

40 If you go to paragraph 122, on page 26, you're there, under a heading, my 2012 contracts address the replacement of the GMS-Waawidji contract with the three other contracts to which I've made reference. Do you agree? Commencing at passage 122 to 125. Do you see that?---Okay. I've read that. What was your question, Mr Henry?

It's in that section of your affidavit where you address the entry into of the 2012 replacement contracts. Do you agree?---It seems so, yes.

You don't anywhere in that part of the affidavit provide a reason for the entry into those contracts, do you?---Doesn't seem to.

And you don't provide a reason for the entry into those contracts at any other part of the affidavit, do you?---I'd have to take your word on that, Mr Henry.

Did you purposefully not include an explanation for the entry into of those contracts?---No.

10 Well, why did you include – I'll withdraw that. Why did you proffer an explanation as to why you entered into the GMS-Waawidji contract in 2010 but not include any explanation in respect of the 2012 contracts?---I have no idea.

Was it because you didn't want to reveal why you entered into the replacement contracts?---No.

Now this, these contracts were the subject of a Board meeting in December, 2012. Do you recall?---Yes.

20 I'll ask you to be shown the minutes of the meeting. It's volume 10, page 121?---Thank you.

You'll see Mr Johnson that these are the minutes of the 10 December, 2012 Board meeting. Were you present at the meeting?---Yes.

Excuse me. Volume, sorry, motion 4 is at the top of page 122. Can you see that?---Yes.

30 And that's the resolution pursuant to which the replacement contracts were entered into. Do you see?---Yes.

Now do you recall whether the replacement contracts were included in the Board papers for the meeting?---Yes, they were.

Do you recall discussion about those papers at the meeting?---About the contracts, yes.

40 So were you present were you during the discussion that the Board had about the replacement contracts?---Yes.

Do you recall if there was a vote by the Board about this motion?---Yes.

And did that vote proceed by show of hands?---In the normal fashion, yes.

All right. And do you recall who voted for the motion?---Easier for me if I say I don't recall anyone voting against it.

But you, you were present during the course of the discussion and the vote I gather?---Yes.

Do you say that the contracts were tabled at the meeting?---Yes.

If you have a look at motion 4 there's no reference to the contracts being tabled at the meeting is there?---No.

10 You say you have an independent recollection of that happening?  
---Absolutely.

Who do you say tabled the documents?---They were in the Board packs that I remember. And I can't remember who tabled them.

20 Now you've asserted that they were in the Board packs. You didn't receive the Board papers because you weren't a director. Is that right?---I think, you're testing my memory, I thought that there was two additional folders on top of one of the Board members. One was a record, an independent record and I think I may have had a folder. But I, I can't remember clearly.

Well who put the Board pack together for this meeting?---Tina Taylor and whatever additional staff she required.

THE COMMISSIONER: But you, Mr Johnson would have had to of supplied copies of these contracts to Ms Taylor wouldn't you?---Yes.

MR HENRY: And do you say that that occurred?---Yes.

30 So you've sat in this haring room and heard what various directors say about this motion and the meeting?---Yes.

And you've heard evidence given the effect that at least one director had never heard of the name Waawidji. Do you recall haring that?---Yes.

Do you say that to the extent that evidence has given that a director was not provided with a copy of a replacement contract that that evidence is incorrect?---Yes.

40 And you say that because, what you said you had access in a folder available to you, which included the contracts?---Well that would have been part of why I'm saying yes.

But you didn't check yourself? If I was – that the directors were given for the purposes of the meeting?---I had not tick-of checklist, no.

And the folders weren't prepared by you, they were prepared by Ms Taylor?---Yes.

All right. You can hand back volume 20.

THE COMMISSIONER: Mr Johnson, do I take it that the reason for the division of your Waawidji/GMS component of the salary into three just in parts was again the produce of some advice that you received from your accountant?---Correct.

10 And was that because if your salary component remained under GMS/Waawidji contract in the whole amount you would lose the company rate of tax because you'd be taxed on the basis that you were effectively receiving a wage?---I can't remember the specifics but I'm pretty sure that was (not transcribable)

20 Hence the need to divide it into three separate parts so that you will be, so that you were below the threshold, the tax threshold?---I don't know about a tax threshold. I don't think that, I don't remember that, I remember it was more, to the best of my ability, I thought the advice was if it remained under one, if my source of income was one company, one sole front, then it would be considered by the ATO to be a salary.

That's right?---However it was spent over and my accountant suggested three, then that wouldn't be the case. That's how I remember it, Commissioner.

Right. Hence the need to back date the rescission to 1 June for the beginning of the financial year?---That one I don't remember.

Right.

30 MR HENRY: But did you suggest that?---Suggest what Mr Henry?

That it be backdated to 1 June, 1 July?---I can't remember - - -

THE COMMISSIONER: I should have said 1 July, I'm sorry. I'm sorry I should have said 1 July. The question was, was it, was it your suggestion that, that the rescission be backdated to 1 July to comply with the beginning of that financial year?---I can't remember that specifically.

40 MR HENRY: But the whole concept of there being replacement contracts was your idea wasn't it?---Yes, Mr Henry.

And it came at a time didn't it when the 2010 contracts had not expired, that is their term was on foot?---Correct.

Now I'll ask for you to be shown volume 9 at page 111. You should be looking at now the minutes of the Board meeting of 11 July, 2011. Is that what you're looking at Mr Johnson?---111, yes, Mr Henry.

And if you go over to page 112 you'll see at the base of the page motion 8?  
---Yes.

And it reads, "The 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 Limited". Do you see that?---Yes.

10 Now the legal advice referred to there was legal advice received by GLALC concerning the transfer of funds from GLALC to GFF wasn't it?---I really can't remember the details offhand.

Well, don't you recall receiving legal advice to the effect that GLALC could not gift or donate money to GFF?---Yes.

And you'd received that advice by this point in time had you not?---I think so.

20 If it assists you, I'll ask you to go over to page 114 where you will see motion 17. Do you see motion 17?---Yes.

If you could just read it to yourself and let me know when you've done that please.---Yes.

Now, that motion provides for loans to be made from GLALC to GFF. Do you agree?---Yes.

30 And by this point in time, that is, the time of this meeting the legal advice to which I've referred, that is, that GLALC could not gift or donate money to GFF had been received by you. Do you agree?---Yes.

The advice also was to the effect that GLALC could lend money to GFF. Do you agree?---Yes.

You were also advised weren't you that any loan from GLALC to GFF had to be a loan on a commercial basis?---Yes.

And secured by a charge?---Yes.

40 And pursuant to a members' resolution?---That was the advice.  
Yes.---That point I didn't agree with.

So by the time of this meeting the advice included that any loan had to be pursuant to a members' resolution but you disagreed with that part of the advice?---I couldn't see how that part of the advice was captured under the functions of the members.

Right.---Which is very specific.

Right. Excuse me. Now, so you had received the advice by the time of the meeting. Correct?---By the meeting, yes.

Yes. And then at the Board meeting itself motion 17 was carried?---Yes.

And motion 18 was also carried. Do you agree?---Yes.

10 There was then – and you were present at this meeting weren't you?---Yes.

There was then on 27 July a members' meeting and you will see the minutes for that meeting commencing at page 129.---Yes.

And you will see over at page 132 a motion styled GLALC Future Fund. ---Yes.

20 And that I suggest confirms – provides the members' approval or confirmation of what the Board had already passed as a resolution at the Board meeting on 11 July. Do you agree with that?---Just goes to show how little notice people took of me. Yes.

And you were present weren't you at the members' meeting?---I, I believe so.

All right. If I could ask you also please, sir, to turn to page 183. You will see there minutes of the Board meeting of GLALC of 10 October, 2011. Can you see that?---Yes.

30 And then you will see on page 184 motion 4 under the heading Delegations.---Yes.

And there's under motion 4 a sequence of delegations affording you authority to do things?---Yes.

And on 185 at paragraph 21 there's a delegation in these terms, "In line with both Board and members' resolutions the CEO is authorised to ensure that all surplus funds are lent to GFF in line with the resolutions." Do you see that?---Yes.

40 And that reference to resolutions I suggest is the resolutions to which I have taken you namely, the Board resolution of 11 July, 2011 and the members' resolution of 27 July, 2011. Do you agree with all of that?---I suggest you're correct, yes.

All right. And you were present at this meeting on 10 October, 2011? ---Yes.

Now, could Mr Johnson please be provided with volume 20 at page 87.

---87. Thanks. Yes.

Now, 87 – page 87 of volume 20 is an email from Mr Gundar to Patrick Duffy on 30 June, 2011.---Yes.

And it says, “Hi, Patrick, Sean. Could you please make arrangements to transfer funds tomorrow”, so that’s 1 July, 2011, “EFT payment in total \$400,000 from our trust account into the following bank account as below.” Do you see that?---Yes.

10

And it says, “Transfer \$400,000 to GFF’s bank account.” Do you see that? ---Yes.

And at this point in time, that is, 30 June, 2011 Mr Gundar didn’t have authority did he to instruct Duffy’s to transfer funds from the trust account of Duffy’s to GFF. Is that right?---Duffy wouldn’t accept Shalesh’s authorisation, yes.

20

You were the person whose authority was required for that. Isn’t that right?---I missed that I’m sorry.

You were the person whose authority was required?---Yes.

Now, at this point in time do you agree Duffy’s were firstly, a solicitors firm?---Yes.

And if it assists, page 86, the preceding page – excuse me – identifies the firm as P J Duffy & Associates. Do you see that?---Yes.

30

Now, that solicitors firm held didn’t it in its trust account money for GLALC at the time?---Yes.

And that money was the proceeds of sale of the Gandangara Estate Number 2 development. Correct?---Yes.

And that money totalled well in excess of \$6 million. Do you agree?---I can't remember the figure.

40

It was millions of dollars wasn’t it?---Yes.

If it assists you, I’ll ask Mr Johnson to be provided please with volume 17. Mr Johnson, if you could turn please to page 55. You will see there an email of 25 March, 2011 from Mr Beatty to yourself and others.---Yes.

And Mr Beatty at the time was a solicitor at Baker & McKenzie. Correct? ---Yes.

And he was – he and his firm were advising GLALC in relation to matters that included the proposed transfer of funds from GLALC to GFF. Correct?---Yes.

You will see in the email there's an attachment.---Yes.

And the attachment are the observations for a brief to advise. Do you agree?---What was that question? Sorry, Mr Henry.

10 The attachment is a – the attachment are the observations of a brief to advise.---I think so.

Well, if you go to page 57 you will see the attachment?---Oh, thank you. Yes.

And you provided Mr Beatty with instructions for the purposes of the observations?---Yes.

20 All right. If you go to page 60 in the observations, paragraph 17, at the base of the page.---17?

Yes. It says, "GLALC has recently successfully completed the development of a 39-lot residential subdivision. The lots in the subdivision were sold at arm's length to third party purchasers, and GLALC has settled 37 of these sales, with a further two lots to settle within approximately three months. Accordingly, GLALC is in receipt of a substantial amount of funds from the proceeds of the lot sales, circa \$9.7 million." Do you see that?---Yes.

30 I'm taking you to this to refresh your memory. The amount of money in the Duffys Trust Account was, I suggest, in the order of \$9.5 million. Would you agree with that?---I have nothing to disagree with.

All right. Now, you can put volume 17 to one side for the moment, and return if you would, please, Mr Johnson, to volume 20 at page 87. So this is back on the email from Mr Gundar to Mr Duffy.---Yes.

Of 30 June, 2011. Is that what you have?---Yes.

40 Now, you agree that you caused the transfer of the \$400,000, referred to in that email, from GLALC to GFF?---I authorised it through my electronic signature, yes.

All right. And if you go back in the volume to page 86, you'll see another transfer authorised by you, this time of \$300,000, and the transfer or the letter is dated 20 July, 2011?---Yes.

You'll see, Mr Johnson, from pages 73 through to 86, there's a series of letters by which you authorise transfers from GLALC – I'll withdraw that.

From Duffys Trust Account to GFF. With the exception of the document at page 81. Do you agree with that?---Yes.

Now, and the document at page 81 is Mr Filewood's document. Do you agree?---Yes.

And that document was signed by him during the period in which you were suspended as CEO of GLALC, correct?---I'd have to take your word on that.

10

All right. Now, you'll see at page 73 the last of these authorisation letters in the sequence to which I've referred, and it's dated 12 November, 2012. Do you see that?---Yes.

Now, you can take it from me that between 1 July, 2011 and 12 November, 2012, a total of \$5.67 million was the subject of authorisations by you for transfer from Duffys Account to GFF. Do you understand that?---I take it from you.

20

Now, none of those transfers were the subject of a documented loan. Do you agree?---I can't remember the time lines, Mr Henry. I'm sorry.

Do you agree that none of the transfers were made on any terms?---I can't remember.

Well, you recall the resolution of 11 July, 2011 the Board made?---What was the date of that?

30

11 July, 2011.---Right. That was a Board meeting, eh?

Yes. I can take you back to it.---No, no. Yeah, go on.

The resolution of the Board on that day provided for loans from GLALC to GFF on a commercial loan basis. Do you recall that?---Yes.

40

None of the transfers that you authorised in the period to which I've referred, that is 1 July, 2011 to 12 November, 2012 were transfers made on a commercial loan basis, were they?---Were the commercial loan documents in place at the time? I'm not quite sure, Mr Henry.

None of the transfers were made on the basis that GFF had to repay any of the money to GLALC.---Not true.

Where do you say that's recorded?---I don't.

Well, on what basis do you say the transfers were made on the basis that they had to be repaid to GLALC?---That was our understanding.

When you say our, do you mean your?---Well, mine and all the people that were advising me and all the people that I was then passing that advice to.

THE COMMISSIONER: But that was unenforceable in the absence of a written agreement wasn't it, Mr Johnson?---I missed that, Commissioner.

That was unenforceable in the absence of a written agreement or a written -  
- -?---I wouldn't have thought so.

10 - - - a written instrument?---I wouldn't have thought so.

No?---And, Commissioner, left hand lending the right hand.

MR HENRY: By that do you mean to – you were the CEO of GFF weren't you during this period?---Yes.

So you were the person authorising the transfer of GLALC's funds to GFF. Correct?---Yes.

20 And what, do you say you had in your mind at the time of the transfers that GFF would repay the money to GLALC?---Yes.

And that's what you're referring to as the basis upon which this obligation to repay existed. Is that right?---I don't quite understand that.

Well, the transfers provide don't they – your authorisations I should say provide for the transfer of funds from GLALC to GFF. Correct?---Yes.

30 There are no terms upon which the transfers are made. Do you agree?  
---Well, none written. None that I can point to.

No, but you - - -

THE COMMISSIONER: Can we agree that there are no express terms anywhere on the basis upon which the transfers are made, no express terms.

MR HENRY: Do you accept that?---Correct.

40 All of the transfers were unsecured weren't they?---In documentary form, yes.

Well, at all?---In documentary form.

No. All of the transfers were unsecured weren't they?---There were no security documents in place. Correct.

And there was no security irrespective of documents was there?---No, but there was intent, Mr Henry.

I see. What was the purpose do you say of transferring all these funds from GLALC to GFF?---Good question. I'm still trying to get my head around that. I'm led to believe to the best of my ability Finance were using GFF as the recording mechanism for all moneys flowing out of the group and, yes.

So do you say that the purpose of the transfers was ultimately to transfer the money out of the group?---We would only transfer funds from Duffy's account, because we were getting the best interest there, as required.

10

THE COMMISSIONER: As required for what?---Expenditure.

MR HENRY: So is it your evidence that the purpose of the transfers was for the money to go to GFF for the purposes of being expended on something?---My advice from Mr Gundar was he would then record what was owed back that way. Because a lot of those, yeah, he would record back that way.

20

What – I withdraw that. Do you say that these transfers constituted loans from GLALC to GFF?---Yes, that was the intent.

When were the loans repayable?---I'm not sure we got that far yet. We were still – all this was a work in progress, Mr Henry.

What I suggest to you Mr Johnson is you authorised these transfers of funds on no terms whatsoever?---Not true.

30

Do you agree that you authorised the transfers of funds contrary to the legal advice that you'd been given?---At the time, no.

Well the legal advice at the very least required the loans to be secured? ---And we had to get all that in place. I repeat, this was a work in progress, Mr Henry.

THE COMMISSIONER: Mr Johnson, you've acknowledged thus far that you were aware because of the legal advice of the prohibition on funds being gifted to GFF from GLALC. You were aware of that weren't you? ---Yes.

40

And yet you claim that these funds were transferred without any express terms so that for all intents and appearances anyone looking at these transfers would come to the conclusion that they were gifts without any security. That's right isn't it?---Well Commissioner, I would see that as one option they may come to.

But it's the only option they can come to if there's no objective evidence of any terms or any security?---If the - - -

The point I'm making Mr Johnson, is that you, you carried out these transactions in your knowledge that it directly contravened the legal advice on its face. Forget about what your intention was, on its face it contravened the legal advice didn't it?---I never looked at it from that perspective.

Oh Mr Johnson, you have a law degree, please don't insult the intelligence of the Commission. You would have to know that on its face it did not comply with the legal advice?---I repeat my answer, Commissioner.

10 MR HENRY: Is that a convenient time.

THE COMMISSIONER: We'll resume at 2 o'clock.

**LUNCHEON ADJOURNMENT**

**[1.03pm]**