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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE MEGAN LATHAM

PUBLIC HEARING

OPERATION GREER

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 1 JUNE 2016

AT 2.05PM

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

MR HENRY: Thank you, Commissioner. Mr Johnson, during the period as CEO of GLALC who had access to the internet banking of Waawidji?---I had the ability to access.

10 Yes. Did anyone else during that period have internet access to Waawidji's bank account?---I didn't have access, I had ability, the access was through, via Shelsh Gundar.

THE COMMISSIONER: Sorry, this is the Waawidji bank account not the GLALC bank account?---Oh, sorry.

MR HENRY: Yes, I'm asking you about - - -?---My apologies.

- - - I'm asking about the period during which you were CEO of GLALC? ---Yes.

20 But I'm asking about the Waawidji bank account?---Oh my apologies, Mr Henry.

That's all right. So who had access to the Waawidji bank account during that period on the internet?---Me and two accountants at times.

Right. And were you the only person who had authority to transact business on the account?---Yes.

30 And you did that?---Yes.

All right. And I'll ask for you to be shown volume 13, please. I'm not sure if that's one that you have. You can hand back the other volumes if that assists because I see that you've got quite a collection there. At page 228. You should have there Mr Johnson the Waawidji bank account for the period 26 May, 2010 to 25 June, 2010. Do you see that?---Yes.

Now do you see there's an entry down the page on 2 June, an internet withdrawal?---Yes.

40 For 17 hundred dollars?---Yes.

Now that withdrawal was made by you was it not over the internet?---I assume so.

Well there's no one else it could have been made by. Is that right?---Yes.

Do you agree?---Yes.

And then do you see further down the page there's a number of withdrawals, there's three withdrawals. The first is for \$264 and that's an internet withdrawal again. Do you see that?---Yep.

Again made by you. Yes?---Yes.

The next one is for \$297. Another Internet withdrawal again made by you?--Yes.

10 And then there's a BPAY – excuse me – transfer withdrawal again 9 June for \$35. Do you see that?---Yes.

And was that made by you?---Yes.

If you go over the page to page 229 you will see on 23 June there's five withdrawals each of which I suggest firstly, was made on the Internet. Do you agree?---Yes.

And secondly, made by you?---Yes.

20

And then on 25 June three withdrawals each on the Internet. Do you agree?---Yes.

And made by you?---Yes.

Now, I've taken – and – excuse me – it's generally correct to say is it not that in the Waawidji bank account during the period whilst you were CEO of GLALC you made withdrawals from the account on the Internet.---Yes.

30 That's how you did your banking with - - -?---Yes.

Through Waawidji I mean. You agree?---Yes.

Now, if you go back to page 228 you will see the second entry from the top that is a credit entry is an entry styled Gandangara GLACL reimburse 1,617.26. Do you see that?---Yes.

And then further down the page at 22 June there's Gandangara GLACL expenses 4,655.90. Do you see that?---Yes.

40

Now, I suggest to you, Mr Johnson, that you observed deposits into this account made by GLALC in the course of performing your Internet banking on the account. Do you agree with that?---I observed the deposits. I didn't take notice of from whom.

Well, if you go forward to page 225 you will see the top entry – sorry, there's an opening balance of \$9,884.77. Do you see that?---Yes.

And then there's a credit from GLALC on 29 June of almost \$10,000. Do you see that?---Yes.

So the balance of the account almost doubled as a consequence of that deposit. Do you agree?---Yes.

And you will see – excuse me – further down that page there's further Internet withdrawals aren't there?---Yes.

10 And they would have been performed by you?---Yes.

You saw didn't you in the course of your Internet banking that GLALC was making deposits into this account. Do you agree with that?---No. I saw the deposits. I would have noticed that. I would have noticed Gandangara generically. That was it.

So are you suggesting for example in respect of the 29 June entry on page 225 that you read the word Gandangara but you overlooked the letters G-L-A-L-C?---I would have glanced at who put it in.

20

Yes, but what I suggest to you is that you were fully aware during the period of your tenure as CEO of GLALC that GLALC made deposits into Waawidji's account throughout that time.---No.

That's just not an honest answer is it, sir?---It is an honest answer, sir.

You seriously suggest that you read the words other than GLALC that appeared on your bank account at the time?---It's pretty hard to sit up here and not be serious, Mr Henry. Yes.

30

All right. You can hand back that volume. Now, I'll return Mr Johnson to a topic that I was asking you about before the luncheon break and that is transfers of funds from GFF to GLALC. You recall that I showed you letters signed by you addressed to Duffy's solicitors by which you authorised transfers of funds from GLALC to GFF?---Yes.

Do you agree that all of the transfers that you authorised from 1 July, 2011 to 12 November, 2012, you authorised contrary to the Board resolution of 11 July, 2011?---Contrary to the Board resolution?

40

Yes.---I'd have to have a look.

All right. I'll take you back to it.---Sorry, Mr Henry.

No, I was trying to cut it short. Volume 9.---I'm not trying to muck you around.

Volume 9 at page 114. You recall I took you before to this.---Could you repeat the question, Mr Henry?

Yes, and to give you further context. This is a Board meeting of 11 July, 2011. The question is that you authorised transfers of funds from GLALC to GFF in contrary to this Board resolution. Do you agree?---The point in time you're referring to is now or then?

10 All right. I'll give you the other volume that you'll need for this. Volume 20 commencing at page 87. Now, you recall, Mr Johnson, page 87 is the email from Mr Gundar of 30 June, which requests a transfer of funds the following day to GFF. And your evidence is that you authorised that transfer. Do you agree?---Yes.

And then between that page and coming forward in the volume, through to page 73, there's a sequence of letters signed by you with one exception, by which you authorised transfers from Duffys account to GFF. Do you recall? ---Yes.

20 All right. Now, each of the transfers that you authorised after this Board resolution of 11 July, 2011 were authorised by you contrary to the resolution.---At that time, unwittingly, yes.

Well, no, you were aware of the resolution because you were at the Board meeting, weren't you?---At the time of authorising the letters, I can't remember that.

Well, take it a step at a time. You were at the Board meeting, correct? ---Yes.

30 You appreciated that the resolution at motion 17 was passed at the Board meeting?---Yes.

Now, you understood, didn't you, as a consequence of that resolution, that firstly GLALC could only lend money to GFF, it could not give it. You understood that?---Yeah.

And you understood any loans had to be on a commercial basis.---Yeah.

40 And that they had to be secured by a charge registered with ASIC?---Yeah.

Now, none of the transfers the subject of the authorisation letters of yours after that resolution complied with the requirements of the resolution, did they?---It was our intention to make sure that they did.

At the times as which you authorised the transfers?---No, I think I was governed by our intention, our intention was to do it properly, Mr Henry.

THE COMMISSIONER: Sorry, your intention was what?---Our intention was to do it properly in line with the motions and our advice.

Well there was no, there was no urgency I take it in these transfers was there?---Yeah, well I believe so. I believe, I always understood, on the understanding those transfers were made only because we were removing them from the high interest bearing account only as they would have been required. That was my full understanding from Mr Gundar.

10 Sorry, from Mr Gundar. But I thought you agreed earlier that you were the person who directed that these transfers be made?---Mr Gundar would prepare the letter, apply my electronic signature. He'd never spoken to me and my question was always the same, why do we need the funds, in other words, what are they going to be spent on? And he would tell me. So that was always the basis that we would only move money from the high interest account to pay expenses. That was as I was led to believe.

20 You mean, you mean Mr Gundar was the person who in effect tallied the amount that was required to be transferred for the purposes of paying these expenses?---Absolutely.

And you had no hand in that at all?---No.

And he simply presented it to you and you asked him for the reason, the reason was given and the funds were transferred?---Yes.

MR HENRY: And then I rather understand from your answers that you authorised the transfers for the purposes of expenses being paid?---That was my understanding, yes.

30 Whose expenses?---Operating expenses in general.

So not GLALC's expenses?---GLALC have very few expenses. I wouldn't have thought so.

So you would have thought it was, the money was to be used for the payment of expenses of companies other than GLALC. Is that right?---Yes.

40 Now do you agree with me that using GLALC funds for the payments of expenses of other entities did not involve the making of a loan?---Could you repeat that please?

Do you agree with me that the payment using GLALC money of expenses of entities other than GLALC did not involve GLALC making a loan to GFF?---I believe it did.

Well when was the money repayable?---I don't believe we had got that far yet, Mr Henry, as I've said.

What was the interest that was payable on the loan?---From GFF to GLALC?

You tell me. You're the one who says it was a loan?---You to ask me a question that I can answer, Mr Henry, please.

Well what was the interest rate applicable to the loan you assert existed? ---Are you talking about a loan from GLALC to GFF?

10

Mr Johnson, I say there was no loan created by these transfers - - -?---All right.

- - - by GLALC to GFF. Do you understand that?---Yes.

You say that that's wrong and that there was a loan don't you?---Can you guide me to a transaction, please?

20

All right. I can assist you. Go if you would please to page 73 of volume 20?---Yes.

This is a letter signed by you?---Yes.

It reads, in the bold text under "Dear Patrick", "Transfer from Gandangara trust funds". Do you see that?---Yes.

"Could you please make arrangements to transfer EFT payment \$310,000 from our trust account into Gandangara Future Funds Limited bank account. Details below." Do you see that?---Yes.

30

Then the bank account details are there set out. Do you agree?---Yes.

And then it says, "We ask that you please confirm when transfer is complete." Do you see that?---Yes.

Now, the word "transfer" is referred to on that page at least three times, isn't it?---Yes.

40

The word "loan" doesn't appear, does it?---No.

Yes. You wanted an example. I'm providing you with this. That \$310,000 transfer was not a loan from GLALC to GFF, was it?---I believe it was a loan, Mr Henry.

Right. When was the \$310,000 repayable?---I'm not sure, Mr Henry. I don't believe we got that far yet.

So you can have a loan that's never repayable. Is that what you're saying?

---I didn't say that at all. I said we had not got that far yet.

At the time of the transfer, as far as you were concerned, there was no date by which the \$310,000 was repayable. That's right, isn't it?---I believe that's right.

10 And in addition, at the time of the transfer, there was no interest rate applicable to the \$310,000 so far as repayments – I'll withdraw that. So far as interest payable by GFF to GLALC existed.---I thought there was interest.

I see. What rate?---RBA.

What does RBA stand for?---Reserve Bank of Australia.

When did you learn about that?---I read it here.

20 Right.---Today, all over the last three weeks, and my, what do you call it, examination.

All right. When you say the RBA, are you talking about the RBA cash rate?---I believe so.

All right. Do you say that that's the rate at which commercial loans are made?---I actually raised that question with our lawyers. And you're testing my memory here, Mr Henry, but I believe they told me commercial was defined by a profit.

30 Just to be clear, do you say the RBA cash rate is a rate at which commercial loans are made?---Not all commercial loans, no.

I suggest to you no commercial loans are made at the RBA cash rate. Do you agree with that proposition?---Well, it would be hard to, but in our instance I saw it, after speaking to lawyers, as a possibility, yeah.

When do you say you spoke to these lawyers about it?---When they referred me to the RBA rate as interest. This is cut-and-paste. These motions that you've referred me to, they cut and paste for lawyers.

40 Excuse me. Do you agree with this? That the transfers of funds that you authorised following the motion on 11 July, 2011, being transfers from GLALC to GFF, were unsecured?---I believe they were unsecured.

Right. And do you then accept that those transfers were made contrary to the resolution at motion 17 of 11 July, 2011?---No. Because our intention was to get all of that in place.

THE COMMISSIONER: Well, when was that going to happen, Mr Johnson?---We were working on it with our lawyers.

Well - - - ---For documents to be brought up. First of all, I had to come to grips with exactly what a secured charge was.

10 Can I come back to something else that you've raised, though? When I asked you what the urgency was for the transfers to take place without the proper documentation, you said that it was to pay expenses of other entities in the GLALC group. Do you recall that?---Yes.

Well, there was absolutely no compelling reason why those expenses couldn't have been paid by direct transfers from GLALC or direct transfers from the trust account of Duffys solicitors directly to the relevant entity that had the operational expenses. It didn't have to go to GFF at all for that purpose, did it?---I was in Mr Gundar's hands over that. He had his systems in place and I was guided by him.

20 MR HENRY: You were his boss weren't you?---Yes.

He did what you said not you do what he said. Isn't that right?---When I take my car to a mechanic I don't tell him how to fix it, I rely on his skills. I did that Mr Gundar as well.

30 THE COMMISSIONER: Mr Johnson, wasn't this corporate structure your idea, this was your effort if you like to create what you saw as a corporate structure that would allow the Gandangara Council to operate in a kind of a commercially viable way. Wasn't that the idea behind it?---I was one of the architects, yes, Commissioner.

Well, then, Mr Gundar had to have been operating under your instructions in terms of which of the entities – from which of the entities and to which of the entities these funds were transferred.---Again, I'm, I'm not referring to the corporate structure, I'm referring to his systems, his accounting systems. I relied on him and he's mentioned his systems. I relied on his systems.

40 But regardless of the systems, can you just answer me this question, there was no compelling reason was there why the operational expenses of these entities could not have been paid by a direct transfer of funds from GLACL or from the Duffy solicitor trust account to that relevant entity. It didn't have to go through GFF did it?---Mr – Shalesh had provided both myself and the Board with information that convinced us that this was the best route for those funds. At the time I had nothing that he raised that I disagreed with. I don't believe the Board did either.

So can I just understand this. So at the end of the day both Mr Gundar and the members of the Board accepted that the funds had to be transferred into the GFF account notwithstanding that that would bring the Board and

GLALC into conflict with an advice that they had received to the effect that a transfer unsecured without any relevant commercial rate was in effect prohibited by the Land Rights Act?---All of those parties you've mentioned including myself had the intention to get all of the documentation in place.

Mr Johnson, you appreciate don't you as a lawyer that one of the things that one infers intention from is actions. So you look at somebody's actions over a period of time and you infer what their intention was from their course of conduct don't you?---Yes.

10

Well, you would also appreciate that if someone standing outside these transactions looked at them and the lack of terms that surrounded them they would arrive at the inference that this was a contravention of the advice you've been given wouldn't they?---I can see how someone could possibly draw that option amongst a couple of others, yes, Commissioner.

MR HENRY: Mr Johnson, you authorised the transfer of \$5.67 million from GLALC to GFF in the 18 months or so following 1 July, 2011. Do you understand that?---I've heard that mentioned, yes.

20

That's a substantial amount of money isn't it?---Yes.

And it was all transferred on an unsecured basis wasn't it?---The intention was to make sure all of that was put in place.

You're familiar with the concept of security aren't you?---Well, outside of security of a purchase not really.

30

You understand don't you that a lender – I withdraw that. That a secured lender does not advance the funds until a security is in place?---This was – and I was consistently told this by all our advisers, internal transfers were exactly that. From a governance perspective we were all made aware that be aware of what leaves the group not what happens within.

40

THE COMMISSIONER: Yes, but that doesn't answer Mr Henry's specific question. But can I just also point out Mr Johnson, because this is something that puzzles me, the \$5.67M that was transferred, was transferred over a period beginning 1 July, 2011 and ending 12 November, 2012. So that's a period of eighteen months. Over that entire period you didn't get around to drawing up any of these loan documents or putting any of the security in place. Is that the position?---Yes.

MR HENRY: And security was never obtained was it?---At that point, no.

No, never?---We never got to that point.

So you agree with me? You agree with me security was never obtained? ---We never got to that point, Mr Henry.

Do you have difficulty agreeing with that proposition?---I believe it's too simplistic. I prefer my answer if you don't mind, Mr Henry.

Could I ask Mr, excuse me, Johnson to be provided with volume 20 at page 16? Sorry, you do have volume 20 with you. It's the volume with the Duffy letters in it?---Yep.

10 Page 16 is a letter addressed to you from the Registrar of the Aboriginal Land Rights Act dated 31 August, 2012. Is that what you're looking at? ---Yep.

And it encloses a compliance direction. Do you see that?---Yep.

You're familiar with this compliance direction?---Yes.

20 You understood didn't you that following the compliance direction you weren't to transfer – I'll withdraw that. That you weren't to cause transfers of funds from GLALC to GFF?---Yep.

And you'll see that the – I'll withdraw that. You, you would have read the, the compliance direction on or about 31 August, 2012. Correct?---Yes.

All right. If you go back in the – sorry forward in the volume to page 75 you'll see there you authorised a transfer on 13 September, 2012 of \$450,000. Do you see that?---Yes.

30 And you were aware of the compliance direction at the time of that transfer. Do you agree?---Yes.

And you made the transfer nonetheless?---I made the transfer.

Yes. You understood at the time at which you made the transfer that was in breach of the compliance direction didn't you?---No.

Well you understood what the compliance direction said didn't you?---I didn't put the two together at that point in time, Mr Henry.

40 The compliance direction Mr Johnson, squarely addressed the Board resolution to which I've taken you in July, 2011. Do you recall?---Yes, yes.

And you understood the effect of the compliance direction was that you were not to further implement that Board resolution. You understood that didn't you?---Yes.

Isn't that precisely what you did – I'll withdraw that. By authorising the transfer on 13 September, 2012 you understood that you were proceeding in defiance of the compliance direction?---No.

Is that because you say you forgot?---I didn't put the two together at that point in time. That's how I remember it, Mr Henry. I became aware of this error on day 2 of my examination.

I suggest to you that's not a truthful answer, Mr Johnson. Do you agree?
---No.

10 I'll ask you please to turn – have you got, have you got volume 10 still there?---No, Mr Henry.

All right. Well, perhaps if you could be provided with that volume at page 113.---I missed that, Mr Henry, please.

Page 113, sir.---Thank you.

These are the minutes of 10 December, 2012. Is that what you're looking at?---Yes.

20 And you're in attendance at this Board meeting?---I believe so, yes.

All right. If you go over the page to 114, you'll see, in a rectangle, item 5, CEO's report. Do you see that?---Yes.

So motion 5 is a motion that presumably is founded on a report prepared by you. Correct?---Motion 5 is based on advice from lawyers, I would suggest.

30 Yes. But it comes as part of the CEO's report in this meeting, doesn't it?
---It's under that heading, Mr Henry.

Mmm. Motion 5, do you see paragraph 1 of motion 5 is to rescind motion number 17 of the GLALC Board meeting of 11 July, 2011. Do you see that?---Yes.

That was the motion to which I've taken you, concerning loans as between GLALC and GFF. Do you recall?---Yes.

40 What I suggest happened is this. Firstly, as at 10 September, 2012, you were well aware of the terms of the compliance direction. Do you agree?
---Yes.

The Board's attempt to address the compliance direction was to rescind the motion of 11 July, 2011. Do you agree?---Yes.

And then you within two days authorised the transfer to which I've just taken you. Sorry, not within two days. Within three days, you authorised, on 13 September, \$450,000 to be transferred from GLALC to GFF.---Yes.

Now, your evidence before that you didn't put the two and two together, that is, the compliance direction and the transfer, was not true, was it?---That's absolutely true. There's no benefit otherwise, Mr Henry. It's absolutely true.

Well, what happened after 10 September, 2012 was that there was a letter from the Registrar. Do you recall that?---I recall the letter. As I keep saying, the time lines I struggle with.

10 All right. If you go back to volume 20, I'll take you to the letter, at page 92. I'm sorry, that's an incorrect reference. Hang on. Sorry, that's the wrong reference. I'll find it. 93, I think it is. Ah, yes. Sorry. Page 93 of volume 20.---Volume 20? Thank you.

So this is a letter dated 19 October, 2012, from the Registrar to you. Is that what you're looking at?---Yeah.

20 You'll see in the letter the Registrar has, in the subject heading, in bold type, "Compliance direction issued 31 August, 2012. Notice of intention to issue a new compliance direction." Do you see that?---Yes.

Now, on page 93, you'll see at paragraphs 1 and 2 reference to the Board resolution and the general resolution to which I've taken you. Do you see that?---On page 1 and 2.

Yes, that's right.---Yes.

30 And then there's a heading "The Compliance Direction" on page 93, on the right-hand side of the page, and the substance of the compliance direction is then set out at pages 93 and 94.---Yes.

And at 94 at about – on the right-hand side of the page about two-thirds of the way down there's paragraph 6 that reads, "On 31 August, 2012 Gandangara LALC by its solicitors Baker & McKenzie sent me an email message in the following terms, 'I am instructed by my client that it is the intention of GLALC to comply with the terms of the compliance direction'." Do you see that?---Yes.

40 Now, does that reflect instructions you gave to Baker & McKenzie to pass on to the Registrar?---I can't remember, Mr Henry.

It was your intention was it to comply with the - - -?---Absolutely.

Right. Then if you go to paragraph 7 you will see what's referred to as the second Board resolution. Do you see that on the page?---Yes.

And that's what I might describe as the rescission motion to which I have just taken you of 10 September, 2012. Do you agree?---Yes.

Now, you will see then at page 95, paragraph 8, bottom right-hand corner the Registrar says, "On 21 September, 2012 I was sent a copy of the second Board resolution along with a copy of an extract of the report to the GLALC Board for the meeting and a copy of the draft security deed and loan deed which we've referred to in the second Board resolution." Do you see that?
---Yes.

10 Paragraph 8. And I won't read to you paragraph 9 but if you wish you can read it for yourself and let me know when you've done that. Have you read paragraph 9?---(a) through (d), yes.

Right. And then you will see the letter reads on at paragraph 10 that, "The draft loan deed (a) did not include a date for the repayment of either loan and (b) stated that the purpose of the loan is resources for development purposes." Do you see that?---Yes.

20 Then it says, "I have not been advised whether the – excuse me – general resolution has been rescinded or varied." Do you see that?---Yes.

And as far as you're aware was the general resolution ever rescinded or varied?---I can't remember, Mr Henry.

You will see then - - -?---I thought it had.

I'm sorry?---I just have a fairly – no, I can't remember.

30 You will see at paragraphs 12 – paragraph 12 the Registrar sets out his view that the compliance direction had to be complied with. Do you see that?
---Yes.

And then at paragraph 13 he indicates, "I give notice that I intend, subject to receiving the undertakings sought below, to refer GLALC's non-compliance to the Land and Environment Court unless I am persuaded that before then compliance direction is – will be complied with." Do you see that?---Yes.

And then the undertaking sought is at paragraph 16. Do you see that undertaking that's sought?---Yes.

40 An undertaking not to implement the second Board resolution which is the rescission motion. Do you recall?---I'm just trying to get the order of it.

I'm sorry?---Yes, Mr Henry.

Now, you read this letter did you not shortly - on or about the date it bears 19 October, 2012?---I would have read it and referred it immediately to our lawyers.

Yes. And then if you go back to page 74 in the same volume. Do you have page 74, Mr Johnson?---Yes, Mr Henry.

You proceeded to authorise the transfer of \$200,000 from GLALC to GFF didn't you?---Yes.

Now, you did that in defiance of the compliance direction didn't you?---Not in defiance. In my mind I – no, I would never have defied the Registrar. It was an error.

10

THE COMMISSIONER: But sorry, I'm just, I'm just trying to understand, what was the error? Was the error - - -?---I didn't put the two points together.

You didn't see the transfer of these funds as in any way contravening the compliance direction?---I wouldn't have taken notice of the internal transfer the funds and where they were going. My focus would have been on what was the money going to be spent on. That would have been my focus. That was my training in financial governance, which was as limited as the
20 Board's. My focus was a lot better taught, be very much aware of money leaving the group not travelling from left hand to right hand.

MR HENRY: You never considered the GLALC group of companies – I'll withdraw that. The Gandangara group of companies as one entity did you? ---Not if it's one entity.

You were acutely aware I suggest whilst you were CEO of GLALC that each entity within the group had its own entitlements and obligations. Correct?---Yes.

30

And you understood that a transfer of funds from GLALC to GFF was a transfer of funds from one entity to another entity. Correct?---Yes.

Now Mr Johnson, the compliance direction was issued on 31 August, 2012. On 10 September, 2012 the Board attempted to rescind the Board's resolution that was the subject of the compliance direction. Do you recall? ---Yes.

40

Then on 19 October, 2012 the Registrar wrote to you saying that the compliance direction had not been complied with. Do you recall?---Yes.

Now 24 October, 2012, which is the date of the letter at page 74 is only five days after the Registrar's letter. Do you agree?---Yes.

And you say between 19 October and 24 October, you provided the Registrar's letter to solicitors for advice. Is that right?---Yes. And their comments, yes.

Yes. It was a significant matter receiving that letter from the Registrar wasn't it?---Yes, one of many happening at that point in time, one of many.

So when you came to authorise the payment of funds on 24 October, 2012 from GLALC to GFF, the compliance direction was front and centre in your mind wasn't it?---No, Mr Henry.

10 You were fully aware of it and you acted in breach of it?---No, Mr Henry. You intentionally breached the compliance direction didn't you?---No, Mr Henry.

And the transfer on 12 November, 2012 referred to at page 73 I suggest was also done knowingly in breach of the compliance direction?---No, Mr Henry.

20 Can I ask you please to keep open that transfer at page 73 or the letter at page 73 of volume 20 and for you to be provided with volume 15 at page 81. I don't think you had volume 15, Mr Johnson. Now the, the letter, the authorisation letter of 12 November, 2012 in volume 20 authorises a payment of \$310,000 from GLALC to GFF. Do you agree?---Yes.

If you go to page 81 of volume 15 you'll see there there's a deposit – I'll withdraw that. This is a statement of the bank account of GFF for the period 1 November to 30 November, 2012. Do you see that?---Yes.

There's a deposit into the account on 13 November, 2012 of \$310,000.---Yes.

30 That's the \$310,000, the subject of the authorisation letter of 12 November, 2012. Do you agree?---Yes.

You'll see the following day, on 14 November, 2012, \$179,000 is withdrawn from the account and transferred to GMS.---Yes.

Now, as I understand your evidence, you would say that was for the payment of some expenses. Is that right?---As I was led to believe, yes.

40 Or do you say you had no idea what the \$179,000 - - - ---No, I would have asked Shalesh Gundar what it was for and been convinced it was necessary.

Well, in relation to the operation of this account - - - ---Which account?

Sorry, the GFF account.---Yes.

Who had authority to make withdrawals from that account whilst you were the CEO of GLALC?---Mr Gundar. And I'm not sure who, if at all, was signatories of the cheque account. If at all.

Well, the 14 November, 2012 withdrawal to which I'm referring, on page 81, is not a cheque withdrawal. It's an internet transfer.---Mr Gundar.

Right. Was he the only person who had authority to make withdrawals from GFF's bank account?---Yes.

You didn't have that authority?---I've never activated my toggle. It remained in the safe in whatever packaging it arrived in.

10 Was there any limit to amounts that could be withdrawn from the account by Mr Gundar?---No.

Did he, prior to making withdrawals from the account, ask you whether he can or should?---He would have asked me. He would have advised me of the use prior to the funds leaving Duffy. Then it would have been normal day-to-day operations for Mr Gundar.

20 So in relation to this particular example, are you saying that Mr Gundar, prior to the \$310,000 transfer from Duffys to GFF, would have said to you, "Need to transfer \$310,000 to GFF and then, of that, \$179,000 to GMS." Is that - - - ?---And then I would have wanted to know what use the money was. My focus was where would it be going to then externally.

And so you would give approval to him for the entire sequence. That is, the transfer of funds from Duffys to GFF, and then from GFF to whomever GFF dispersed the monies to. Is that right?---My focus was on the tail end, but the whole process was the approval.

30 Right. You'll see in this particular example, returning to page 81, of the \$310,000 deposited on 13 November, 2012, \$179,000 is withdrawn on 14 November, 2012 and transferred to GMS. You see that?---Yes.

And then the following day \$131,000 is transferred from GFF to GLALC. Do you see that?---Yes.

Now, what was the purpose of transferring the \$131,000 into GFF and then on to GLALC?---I have no idea.

40 Well, is that not something that you discussed with Mr Gundar prior to authorising the withdrawal of the \$310,000?---No. I didn't discuss that with him. I believed that was part of his system of accounting, where funds needed to traverse GFF. And a transfer into GLALC wouldn't have interested me greatly at all.

Why was the money transferred from Duffys account to GLALC via GFF? ---Via GFF. We've gone through that, Mr Henry. I and the Board were convinced of Shalesh's system to manage the funds.

But you authorised the transfer into GFF for \$310,000?---Yes.

Didn't you know what was going to happen to the money?---My interest is on funds entering the group.

I'll ask you to be provided with volume 19 at page 109. Now these are the GLALC and controlled entities financial statements for the year ended 30 June, 2012. Is that what you're looking at?---You're a bit ahead of me, Mr Henry.

10

Sorry, page 190?---Financial statements for the year?

Yes?---Yep.

Now I'll come to those in a moment. Before I do I just – sorry I forgot to ask you about this. In relation to the transfers of funds from GLALC to GFF, I've taken you to one example, that is the example of November, 2012 where you recall \$310,000 came into the GFF account and then 179,000 went out to GMS and 131,000 went out to GLALC. Do you recall that?

20

---You took me there, yes.

Of the authorisations that you made on the Duffy's letters if I can call them those. You know what I'm referring to?---Yes.

In many instances money is transferred from GLALC to GFF and then the money is either transferred from GFF to GLALC or partly to GLALC and partly to GMS. Do you understand?---In that instance we have clarity on that, yes.

30

Yes. And what I'm suggesting is that instance is a recurring theme in the context of those Duffy's letters transfers?---Quite possibly, Mr Henry.

Yes, you can take that from me?---Okay.

Are you able to provide any explanation as to why any of those funds were being in effect washed through GFF?---I don't understand the term washed.

Well transferred into the GFF account - - -?---As in a washing machine?

40

No, Mr Johnson, the monies were transferred into the GFF account and then within a day or two usually transferred out of that account to either GLALC or GFF. Do you understand?---Yes.

To GMS, I'm sorry?---Yes.

Now I've asked you about the \$310,000 transfer in particular but beyond that example are you able to provide any explanation as to why that practice of transferring funds into GFF's account from Duffy's and then within a day

or two transferring it out to either GLALC or GMS occurred?---I don't know about the timeframe, but the reason for the process as I'm led to believe was to, to fall into line with Mr Shalesh's accounting systems. That hasn't changed each time you ask the question. I don't know about this washing. Are we being promoted from Aborigines to gangsters?

I'm sorry I didn't understand that?---Yeah well I didn't really understand the term washing only apart from what I've seen in movies.

10 All right. If you return then to volume 19 at page 190, the financial statements?---Oh yes, yes, sorry.

To the year ended 30 June, 2012?---Yep.

You will see in those financial statements a note at page 219. If you could go to that please.---Yes.

And you will see a heading subparagraph (c) significant transactions between group entities. Can you see that?---Yes.

20

And it refers to loans receivable from GFF \$4.82655 million. Do you see that?---Yes.

And then two entries down loans payable to GFF \$3.44655 million. Do you see that?---Yes.

Then there's a heading in bold type loans receivable from and payable to Gandangara Future Fund Limited. Can you see that heading?---Yes.

30 Excuse me. The second paragraph below the heading says, "During the year the proceeds from the sale of land amounting to \$4.82655 million were loaned to GFF by GLALC at a fixed interest rate equal to the RBA cash rate as at 30 June, 2011." Do you see that?---Yes.

Now, at the times of the transfers that you authorised you were unaware weren't you that there was any loan between GFF and GLALC at the RBA cash rate?---Can you repeat that please.

40 Yes. At the times of the transfers that you authorised, the Duffy's letters transfers - - -?---Yes.

- - - you were unaware weren't you of any loan from GFF to GLALC at the RBA cash rate?---We saw those loans as loans at the RBA cash rate in line with the resolution at that time.

Now, the loans that have just been referred to – I withdraw that. You will see the next sentence reads, "GFF then loaned funds of \$3.44655 million

back to GLALC at a variable interest rate which was on average 9.14 per cent throughout the year. Do you see that?---Yes.

Now, what this is suggesting is that loans went from GLALC to GFF at the RBA cash rate.---Yes.

And moneys were lent back from GFF to GLALC at 9.14 per cent. Do you see that?---Yes.

10 And you can take it from me that the RBA cash rate as at 30 June, 2011 was 4.75 per cent. Do you understand?---Yes.

So the nett effect was that GLALC was paying 4.39 per cent interest more on money that it borrowed from GFF than it lent to GFF. Do you understand?---Yes.

Now, why was that happening?---Mr Hickey's statement makes no sense to me with regards to the loan back to GLALC. Makes no sense to me at all. I don't know where he derived that from.

20

Well, this isn't Mr Hickey's statement, this is a statement signed by Ms Cronan and Mr Tobler on behalf of the Board.---Mr Hickey wrote it or directed that it be written.

Well, do you say that firstly, there were no loans from GFF – sorry, from GLALC to GFF as referred to in this statement?---There was intention of repayments. I don't understand what Mr Hickey is talking about but that's not unusual between myself and Mr Hickey.

30 And am I correct in understanding you don't say that there was any loans from GFF to GLALC at 9.14 per cent?---I don't recall anything like that at all.

So that paragraph that I've just referred you to that's just fiction is it?---I'm sorry?

That's fiction is it that paragraph?---I don't remember anything of that. It makes no sense to me, Mr Henry. If it was fiction it wouldn't have been the only bit in there.

40

Well, do you say that this is an attempt to explain after the fact – I withdraw that. To provide a justification after the fact as to the bases upon which transfers were made between GLALC and GFF in this financial year?---I don't understand the question I'm sorry.

Well, you appreciate I've taken you to the Duffys letters?---Yes.

And I've explained that money was transferred consequent upon those letters from GLALC to GFF?---Yes.

And then within a day or two after those transfers were made, some of those funds were transferred back to GLALC.---Yes.

And you can't explain why that occurred?---No better than what I've already done, Mr Henry.

10 Yes. And what I'm suggesting to you, or asking you, is whether you say this description at page 28 of volume 19 of the loan arrangements between GLALC and GFF is an attempt to explain or provide a justification for those transfers as between the two entities?---By who?

By the Board.---No. I'm not saying that at all. I really don't get the gist of what you're saying.

All right. You can hand that volume back. Thank you. You should still have volume 15, though. Do you have that?---Yes.

20

Now, at page 81, do you still have page 81 open?---Yes.

You'll see there's a credit in the GFF bank account on 16 November, 2012 of \$1.8 million.---Yes.

Now, do you recall what that credit – I'll withdraw that. Where those funds came from?---No.

30 Does it assist you if I remind you about money being held on trust with Gadens?---Would that have been from the sale of 101?

Yes. So this money, do you agree, was GLALC's money prior to it being transferred into GFF's account?---Yes.

And why was that money transferred into GFF's account?---To follow the same route as Shalesh had arranged for Duffys. For some reason he was treating it all the same way.

40 And did you authorise the transfer to GFF of the \$1.8 million?---I can't remember. But I'd say that's on the cards.

Well, was there anyone else who had authority to do that?---That I can't remember. But I would doubt it, knowing that they're lawyers. (not transcribable) I'm not sure. But I'm sure lawyers would've wanted either my signature or the chair's.

All right. And then those funds, the \$1.8 million, were advanced to GLALC and GMS, from time to time, in the same way as the transfers from Duffys?

---I'm not sure, Mr Henry.

Well, you can accept from me that the funds – you'll see the funds are deposited on 16 November, 2012.---Yes.

That between then and 5 April, 2013, approximately \$1,050,000 of the \$1.8-odd million went to GLALC and about \$755,000 went to GMS. Do you understand?---Yes, I would have used my same rationale with Shalesh and been focused on funds exiting the group. That would have been my focus. I
10 I don't know why we would have got it back for any other reason. Because we just couldn't match those interest rates in trust funds, trust accounts.

So you say – I'll withdraw that. A large proportion of the money, the 1.8M, slightly over \$1.0M went back to GLALC. Do you understand?--- Yes.

You say that if the money had of been left in the solicitors trust account it would have earned more interest than GLALC could earn. Is that right?
---That was my thinking at the time. But look at that time there was two lines of thinking within the Gandangara group. That was mine.
20

Well what was the benefit then of paying the money into GFF and then paying about \$1.0M of it back to GLALC?---I'm not sure, but the second line of thinking was at Board level for reason, and I was always struggling to convince them, they thought that money in a solicitors trust fund was somewhat insecure.

Who expressed that?---Ms Cronan.

She said that to you?---Sorry?
30

She said that to you?---Oh at Board meetings quite often. Yes, and that's what they had the understanding of the governance of trust funds than I had. It's a less of a trust fund.

You didn't inform the Board did you of the transfers of funds from GFF to GLALC that you authorised. Do you agree?---I don't think so.

All right. Just pardon me for one minute. Just pardon me for one minute Mr Johnson?---Mmm.
40

Now in relation to the transfers at page 81 of volume 15, I know I've taken you to this already, 310 goes into the account, then there's 179 and 131,000 come out of the account within the next two days. You see that?---Ah hmm. Yes.

Now wasn't the practice in relation to the withdrawal of funds from GFF's account that you instructed Mr Gundar to do that?---What did I specifically instruct Mr Gundar to do in your mind?

THE COMMISSIONER: This isn't a question of what's in Mr Henry's mind.

MR HENRY: No, it's not my mind?---I'll (not transcribable) clarification, okay.

10 THE COMMISSIONER: I understood you to say your evidence, Mr Johnson that Mr Gundar adopted this accounting system whereby he deemed it necessary to put funds through GFF and then pay the operational expenses of other entities. That's how I understood your evidence?---Yes.

And that you essentially just went along with that?---I had no reason to disagree with him.

And there was no other reason for that practice, namely channelling the funds through the GFF?---Transferring the funds, no.

20 MR HENRY: I'll ask for you to be shown pages 1043 and 1044 of the transcript of 25 May, 2016. So this is an extract of the transcript from Mr Gundar's evidence given on 25 May at this hearing.

THE COMMISSIONER: Mr Johnson, I'm providing you with a hard copy of those pages of the transcript.---Thank you, Commissioner.

30 MR HENRY: We can actually provide one as well if you would like to follow it, Commissioner. You see the transcript at page 1043, this is of 25 May, 2016, Mr Johnson, at about line 35 you will see – excuse me – in bold type Mr Fitzpatrick. Can you see that?---Yes.

And then you will see it says, "Mr Gundar" – it's on the screen now too if you prefer. "Mr Gundar, let's look at the second transaction. So you say that when you provided Mr Johnson with Duffy's instruction letter to sign - - -" and he says, "Yes." "- - - it had behind it or with it information about what would be done with the money once it reached GFF." And he said, "Yes." Now, do you agree with that, that that was the practice?---I don't remember all of that. I do remember the conversations.

40 All right. It reads on, "Okay. So the second transaction here is a debit from GFF back to GLALC's account?" Answer, "Yes." "In an amount of \$131,000." Do you see that?---Yes.

Now, just pausing there, that's the \$131,000 to which I've been referring at volume 15, page 81.---Yes.

It reads on, "Why didn't that money go from Duffy's trust account directly to GLALC?" is the question. Answer, "I don't know. I don't know. That's how we practiced basically from here onward – from there onwards. That's

how we practiced doing all the transfers from Duffy's into the GFFL account and then distributed from there." Question, "But beyond that was the practice you don't have an explanation for why?" Answer, "That's right. It was merely for – maybe Mr Johnson can answer that later but it was merely for recording purpose how much money has been taken out of the Duffy's trust account so it's, yeah, merely for recording purpose." "So you did it on instructions from Mr Johnson?---That's correct, yes. That's how we practiced." Now do you agree with that evidence that you instructed Mr Gundar to make the withdrawal of the \$131,000 on page 81?
10 ---No.

And putting it more broadly the practice was that you instructed Mr Gundar to make withdrawals from GFF's bank account?---No.

Well, you were his boss weren't you?---Yes.

Didn't you tell him what money was to be transferred where?---No.

You say he told you?---With regards transfers from lawyers trust accounts
20 he told me – well, he explained to me what the uses were. My focus was on funds leaving the group. Funds going back to GLALC really wouldn't have attracted my attention, Mr Henry.

THE COMMISSIONER: I'm not quite sure what you mean by that, Mr Johnson. I think the point of distinction is that Mr Gundar's evidence was in effect that the transfer of moneys into the GFF account and out again was a practice adopted and promoted by you for the purposes of recording where the money came from and where it went. That was the effect of his evidence. Do you disagree with that?---Yes, I do.
30

MR HENRY: Yes, if you go to page 71 of volume 15, Mr Johnson?---
What volume?

Volume 15, page 71?---Yes.

You'll see there a transfer into the GFF account of \$750,000?---Page 21?

71?---I'm sorry, 750, yes.

40 And that transfer was authorised by you on a letter dated 26 June, 2012 to Mr Duffy which is at volume 20, page 76?---Yeah.

Now you'll see that comes into the account on 27 June on the 28 June, 200,000 of it goes to GLALC, do you see that?---Yes.

And then the following day another \$100,000 of it goes to GLALC, do you see that?---Yes.

You'll agree that they are, sorry, then continue over the page to page 73. On 4 July a further \$200,000 goes out of the account to GLALC, do you see that?---Yes.

And then on 11 July another \$120,000 goes out of the account to GLALC? ---Yes.

10 Now so my maths is that 620,000 of the 750,000 has gone from GFF to GLALC, do you agree?---I'll take your word for it, yes.

Now my point is that's a substantial amount of money, isn't it, to be transferred?---Yes.

And didn't Mr Gundar get your authorisation or instruction prior to making those transfers from GFF to GLALC?---Yes. From the Duffy's account to GFF, yes.

20 I've just asked you about the transfers out of the GFF account to GLALC?---No.

Are you saying - - ?---No, not specific instructions, no.

Was it the practice that he would get the instructions from you before making the transfers?---Not for internals, no. No.

You say even in respect of in excess of \$600,000?---(No Audible Reply).

30 MR DOCKER: I object to that question. There's not one transfer of \$600,000.

THE COMMISSIONER: No, but it's the 600,000 plus of that 750-odd thousand. In any event, Mr Johnson do you say that Mr Gundar had an unfettered discretion how he moved funds from one entity in the GLALC group to another?---In regards to internals, Commissioner, almost. Because I don't think (not transcribable) all our training ensured that we focused on funds leaving the group.

40 All right. So the answer to my question is effectively, yes, he had an unfettered discretion?---Yes.

MR HENRY: But weren't the - - ?---That doesn't mean he didn't mention it to me but I can't remember him.

Well weren't the transfers out of Duffy's bank account into GFF's bank account internal transfers?---Yes. But Duffy controlled them. My place in that process was authorising providing Duffy with authorisation. But technically, yes, internal.

All right. I'll ask you to hand back what volumes you have and for you to be provided with volume 22 at page 113. Sorry before I ask you about this document, Mr Johnson, did anyone supervise or monitor Mr Gundar's discretion to transfer funds between the companies?---There was oversight roles on all of those transactions, yes.

By whom?---By both myself, the Board and the finance subcommittee when it was in place.

10 Well you've said that you didn't inform the Board of your instructions to transfer funds from GLALC to, sorry, from Duffy's to GFF. Isn't that right?---That's right.

So the Board couldn't have had oversight of those transfers could it?---They would have been in all the financial reports that the Board received.

This is after you've - - -?---Oversight, yes.

20 After you've made the transfers occur. Is that right?---After Mr Gundar made the transfers occur, Mr Henry.

Yes, upon your instruction?---My instructions were from Duffy.

So you took instructions from Mr Duffy now?---No. Absolutely incorrect, Mr Henry. I apologise. My instructions were to Duffy to transfer the amounts that Mr Gundar had placed in the letters.

30 All right. Returning then to volume 22, page 113. This is an email from you to, it says to Deerubbin, but it's to Mr Cavanagh, I suggest the then CEO of Deerubbin Local Aboriginal Land Council. Do you agree?---Yes.

And I'll refer to that Land Council as DLALC for convenience. Do you understand?---Yes.

Excuse me. You, you send this letter don't you as a - I'll withdraw that. This email as CEO and solicitor. Do you see that?---Yep.

And that's CEO of GLALC. Correct?---Yeah.

40 Now when you say and solicitor, did you have a practicing certificate at the time?---I believe so.

And where? What jurisdiction?---New South Wales.

So you had a practicing certificate - - -?---I believe so. I'm not trying to telling lies, my timelines I'm very fuzzy on, Mr Henry. I've repeated that innumerable times now.

Yes, but you've represented in this email that you were a solicitor?---It was part of an electronic signature. (not transcribable) actually later in time that I really shouldn't – it was not a group practice, I remembered it.

10 Do you say that at this time, that is December, 2009 you're a solicitor for GLALC?---As part of the obligatory upskilling for staff I also had to do some. I went back to the College of Law. I already had done College of Law post graduate certificate. I went back and did both, I forge the right terms, corporate practicing certificate and, and another time, I don't know the correct time, it would have been an open practicing certificate or a solicitor in practice.

Well what's the answer to my question?---What was it again?

MR HENRY: It might help if you listen and try to answer it. The question was were you the solicitor for GLALC at the time?---I did a lot of legal work for them, Mr Henry. Technically I'm not quite sure.

20 Well, what did you mean when you put on your email CEO and Solicitor GLALC?---I can't remember, Mr Henry. Time.

In this email you say, "Kev", which is a reference to Mr Cavanagh. Correct?---Correct.

30 "I erred in the document that I sent to you yesterday. I have attached both the Hazelbrook project document and the land assessment project document. If you are happy with the Hazelbrook document could you please countersign, scan and return. Hopefully we can get a short break over Christmas and New Year, recharge the batteries and be ready for a big year. Regards Jack." Do you see that?---Yes.

Now, there's two attachments to this email aren't there, if you have a look at the attachments?---Yes.

The first one commences on page 114 and is a letter on Waawidji letterhead to Mr Cavanagh in relation to the Hazelbrook project advisory and development management services retainer agreement. Do you see that? ---Yes.

40 And that's the draft letter – or when I say draft, it's a letter dated – sorry, a letter from page 114 through to 117. Do you agree?---Yes.

And that's your signature on page 117?---Yeah.

Now, that letter is a letter by which you propose that Waawidji enter into a retainer agreement with DLALC. Correct?---Yeah.

Now – and you will see at the base of page 114 it says, “Presently DLALC has identified a prospective project being 10 parcels of land situated at Hazelbrook but it lacks the internal resources to investigate thoroughly and due to the constraints on existing staff resources it is increasingly difficult for DLALC to manage new development opportunities.” Do you see that?
---Yes.

10 Now, it was your understanding wasn't it at the time at which you sent this email that first of all the Hazelbrook land was within DLALC's Aboriginal Land Council area?---Yes.

And that DLALC did not have the resources to develop the land for sale?
---Yes.

And that you were proposing to arrange for a loan to be made to DLALC by GLALC to enable the development of the Hazelbrook land for sale?---At that time, Mr Henry, there were several streams of conversations being undertaken between myself, Kevin Cavanagh and the DLALC Board.

20 THE COMMISSIONER: Could be just stick to the terms of the letter. That's what the letter proposes?---Sure.

Right.

MR HENRY: Do you agree?---Yeah.

Well, if you have a look at page 115 you will see a heading The Role in bold type towards the top of the page. Do you see that?---Yeah.

30 And you say underneath The Role, “It is my understanding that the role that DLALC wishes my firm to undertake could broadly be described as follows.” And then you set out a number of dot points don't you?---Yes.

And the fifth dot point under the heading Hazelbrook Land Holdings is, “Arrange for a commercial loan from GLALC for sale costs.” Correct?
---Where is that please I'm sorry.

The fifth dot point.---Yeah.

40 So the proposal was Waawidji was to arrange for a commercial loan from GLALC to DLALC for the costs of the sale?---Yeah.

And then over the page at 116 under the heading Fees you will see a dot point that says, “A success fee is only payable from the sales proceeds received by DLALC for each of the lots”?---Yes.

And that fee was \$5,000 per lot. Correct?---Yep.

Now the Hazelbrook property was developed wasn't it?---Yes.

And that development was only made possible because GLALC provided the finance for the development. Do you agree?---One of, one of the necessary things that had to be done, one off.

Yes. So without GLALC's finance the development would not have occurred. Correct?---Without that and there were several other key things the development wouldn't have occurred.

10

And the way that finance was provided by GLALC to DLALC was GLALC paid invoices for the benefit of DLALC. Correct?---Correct.

And Waawidji received the \$5,000 per lot at the end of the development process didn't it?---Yes.

Plus the \$5,000 GST. Correct?---Yes.

20 And you were the person weren't you who arranged for GLALC to provide the finance for the Hazelbrook development to occur. That's right isn't it? ---I was the person that went to bat for DLALC with our Board, yes.

And at the time at which you arranged for that finance to be given by GLALC to GLALC you knew that Waawidji stood to gain \$55,000 upon completion of the development and sale of the Hazelbrook lots didn't you? ---I knew it would get as a bare maximum, maximum, half that amount.

30 And why do you say that?---Because this document was written by David Wing.

I'm sorry?---This document was written by David Wing.

40 Yes?---The whole, not only was the loan essential for DLALC to get Hazelbrook accomplished. We had to get in place consultants. The key to them was David Wing. David Wing will not work for DLALC, he had no faith in Kevin Cavanagh. He was probably the best pick around at the time. Also necessary for DLALC to proceed was they would have to enter an agreement where we would assist them with their administration at commercial rates. Also they would have to have us do their land claims at a commercial rate. So it was not just simplistic as you're indicating. There was a whole lot of things, whole of musts that had to occur.

THE COMMISSIONER: Can we come back, can we come back to the question which is that according to the terms of this agreement you, Waawidji would receive a \$5,000 per lot success fee?---Yes.

And then as things transpired that came to \$55,000?---Yeah, maximum, yep.

But you see in the paragraph immediately below that these fees exclude GST, other consultants and travelling expenses. So presumably the fee would have excluded any fee payable to Mr Wing as a consultant?---No. That included Mr – that amount included - - -

Well that's not what it says Mr Johnson?---I know the intent and the time, Commissioner.

10 But if the intent at the time was to provide for Mr Wing out of the 5,000 per lot success fee why didn't this letter say that?---I can't remember, Commissioner.

MR HENRY: Now you said that you went to the Board for the purposes of obtaining the finance from GLALC for DLALC, do you recall saying that? ---I went to the Board for the overall commercial package.

20 Well, no. You said you went to the Board for the purposes of getting the finance for DLALC from GLALC?---Let me repeat. I went to the Board for the overall package, Hazelbrook was part of that package.

Now you never disclosed to the Board did you prior to January, 2012, that Waawidji stood to benefit from the Hazelbrook development proceeding? ---I can't remember.

Well you didn't, did you?---I can't remember, Mr Henry.

30 You've sat in this hearing room for the last few weeks and heard Directors say that they were not asked to approve this retainer letter dated 8 December, 2009, that's right isn't it?---I've sat in this room for the last three weeks and heard lots of things I don't agree with, Mr Henry.

Yes. Well you don't dispute, do you, the proposition that you never disclosed to the Board this retainer agreement?---I don't remember, Mr Henry.

40 THE COMMISSIONER: Can I just, so this then, Mr Johnson, if you don't remember whether you did or you didn't you're not in the position are you to dispute the evidence of those Board members to the effect that they were never told about Waawidji's interest in this transaction?---I didn't dispute the specific evidence on that. I said there was a lot here I've heard that I disagree with.

All right. You can't dispute it one way or the other?---No.

- - - because you don't remember?---No.

MR HENRY: If you go then please, Mr Johnson to page 140 of volume 22. You see there an email that you sent to Mr Cavanagh on 5 March, 2010?--- (not transcribable)

It's page 140?---It says "From Mr Cavanagh"?

Yes. If you read, I know at the top of the page it says that, but if you read down it says on 5 March, 2010, 2.41pm, Mark Johnson wrote - - -?---Oh, no, sorry, sorry.

10

And then it says "G'day, Kev". That's you isn't it?---Yes, yes, yes. Sorry.

You say in the email "Further to the agreement of Waawidji by DLALC", sorry. "Further to the engagement of Waawidji by DLALC in relation to 10 parcels of land at Hazelbrook, please find attached the following". And you then identify a fee proposal from Arben Management Pty Limited and a fee proposal from Urban Land & Housing Pty Ltd. You see those?---Yeah.

20

Then you set out in the email some information in relation Arben and ULH as you describe it, do you agree?---Yeah.

In the paragraph immediately below the second dot point it says "Part of the assistance being provided by Waawidji to DLALC is the recommendation of appropriately qualified consultants. Accordingly we are pleased to recommend the appointment of Arben to assist DLALC and we have negotiated the scope of work and full arrangement as set out in Arben's proposal and believe that it is commercially reasonable". Do you see that?--
-Yeah.

30

And then further down the last sentence of that paragraph reads "If this recommendation is accepted by DLALC, Waawidji would engage Arben and seek reimbursement of costs from DLALC upon completion of the engagement". Do you see that?---Yeah.

Now was Arben retained?---Yes. But directly below DLALC.

Right. And Waawidji receive any sort of payment on account of that?---No.

40

No commission?---No.

All right. Further down the page there's reference to ULH again in the paragraph "In addition to the appointment of Arben". Do you see that paragraph?---Yes.

And it says in the second sentence, "Once again we have negotiated the scope of work and fee arrangement with ULH and believe that it is commercially reasonable." Do you see that?---Yes.

And then in the last sentence, “If this recommendation is accepted by DLALC then a formal agreement will be prepared and submitted to DLALC for execution.” Do you see that?---Yes.

Now, was ULH retained?---Directly by DLALC.

And did Waawidji receive any payment on account of that occurring?---No.

10 Underneath that paragraph you say, “I look forward to DLALC’s response.”
And then you say this, “It should be noted that Waawidji has arranged a
loan on commercial terms for DLALC so that DLALC can meet the costs of
engaging the various consultants required for disposal of these parcels of
land.” Do you see that?---Yeah.

Now, the loan to which you refer was a loan with GLALC. Is that right?
---No, I wouldn’t think so. I really can’t remember.

20 Well, if it wasn’t with GLALC who was it with?---Normally all those things
would have been with GMS, however I can’t remember the detail, Mr Henry
I’m sorry.

Well, are you saying it was either GLALC or GMS?---No, it would not have
been GLALC. It would have been GMS.

Right. GMS was registered on 16 April, 2010. Remember?---Yeah.

That postdates this doesn’t it?---Yeah.

30 The loan was with GLALC wasn’t it?---It may – no, it may have been with
GDS Pty Limited.

You will see in the same paragraph it says – after it says, “It should be noted
that Waawidji has arranged a loan on commercial terms for DLALC”, it
says, “so that DLALC can meet the costs of engaging the various
consultants required for disposal of these parcels of land.” Do you see
that?---I’m sorry, what paragraph?

The same paragraph, second-last from the bottom of page 140.---Yes.

40 It says after – it says, “It should be noted that Waawidji has arranged a loan
on commercial terms for DLALC”, and we’ve – I’ve just drawn your
attention to that statement. And then it says this, “so that DLALC can meet
the costs of engaging the various consultants required for disposal of these
parcels of land.” Do you see that?---Ah hmm.

Are the consultants referred to there, do they include Waawidji?---No.

All right. All right. You can hand back that volume and I'll ask you to be provided with volume 24 at page 24.---Page 24, Mr Henry?

Yes, thank you.---Thank you.

You should have there, Mr Johnson, an email sequence and I'll ask you to – it goes from pages 24-25. If perhaps you start at page 25. You will see there that it's an email from a Marcia Ella-Duncan to yourself and Tina Taylor about a computer meltdown at La Perouse LALC.---Yeah.

10

And in this email Ms Ella-Duncan in substance asks for assistance with respect to an unreliable and inefficient IT system. Do you recall this?
---Yes.

20

And that was on 11 August, 2010. You respond to Karen Maltby at the top of page 25 saying, "Can you advise me of what we can do in the immediate to assist please." And then over at page 24 – excuse me – Karen Maltby says on 11 August down the bottom of the page to you, "I could ask Chris if he could go over there and look at the old IT or better still order a new computer that will join SASL group in due course." And she says, "With your permission GLALC could carry costs for this until appropriate to be repaid." And then you say on 12 August, "Please ensure that everything is done to get LaPa up and running immediately. We'll sort through the protocols later." Do you see that?---Yeah.

In substance what happened there was you agreed didn't you for GLALC to carry the cost of fixing the IT system at La Perouse LALC. Correct?---Yep.

30

Then on page 24 the top of the page there's an email from you to Chris Koorey, now who was Chris Koorey?---IT.

At GLALC?---Subcontractor.

I see. So he was a subcontractor to GLALC?---To the Gandangara group as in GMS when it came on board and prior to that GDS.

40

You say the email to him and you copy Ms Ella Duncan, "Great Chris. Many thanks for the prompt response. You're authorised to do what is necessary to get LaPa up and running at the quickest speed". So you, you authorised didn't you GLALC's funds to be used for that purpose. Correct?---Yep.

And then if I could ask you to turn forward to page 36 you'll see an email from Mr Gundar to yourself of 20 April, 2011. Is that what you have?
---Yes.

And it says, "Jack, as we discussed today, please find attached letter for La Perouse's loan. Let me know if you have any queries." And then attached to that is a GLALC general ledger. Correct?---Yes.

And this loan, this ledger reflects the loan to La Perouse that you approved. Is that right?---Yes.

10 If you go to page 38, sorry, I withdraw that. Now Mr Johnson, at the time at which you approved the loan to La Perouse do you understand that GLALC was not permitted to lend money to other Land Councils?---As I said to you I don't think I was involved in a loan between GLALC and LaPa and nor was I involved in a loan between one of the Gandangara entities and LaPa.

Well if you have a look at page 37 it's a general ledger of GLALC isn't it? ---You'll have to speak to Mr Gundar about how that was done. I'm sorry I can't help you.

20 Well if you go back to page 24 you see Ms Moltby's email to you at the base of the page, it says, "With your permission GLALC could carry the cost for this until appropriate to be repaid." Do you see that?---I hadn't noticed that was Terry.

You agreed to it didn't you?---Yeah, I mean I hadn't noticed that GLALC - - -

Mr Johnson you understood didn't you that you were agreeing to GLALC's funds being used for the benefit of DLALC. Isn't that right?---No.

30 Sorry, La Perouse. Now if you go to page 38, please you'll see at the base of the pages Mr Gundar's email to which I've just taken you where on 20 April, 2011 he attaches the ledger for the La Perouse loan and then your response is in the middle of the page. Do you see that?---Yes.

You say, "Please note that this file is a long way from accurate." And then you set out four dot points. Correct?---Yes.

40 You were intending to convey weren't you that as far as you were concerned La Perouse Land Council, Aboriginal Land Council owed GLALC more than set out in Mr Gundar's ledger at page 37?---More than what was owed to the entity, yes.

Now, I'm conscious of the time, Commissioner. I have one or two more questions on this topic and I've finished this topic.

THE COMMISSIONER: All right. Yes, go ahead.

MR HENRY: Thank you. If I could ask you to turn forward in the bundle please, Mr Johnson, to page 267.---267?

Yes.---Thank you.

You will see there at page 267 at the top of the page an email from Mr Gundar to Mr Ingrey of 13 March, 2012.---Yes.

And I appreciate this isn't an email addressed to you but I want to show you the attachment. It says, "Hi, Chris. Please find attached Excel spreadsheet." Do you see that?---Yeah.

10 And then I'll ask you please to turn forward to page 271. Have you got page 271, Mr Johnson?---Yeah.

You will see that that is a loan reconciliation for La Perouse Aboriginal Land Council and LMS which is the management services company associated with that Land Council. Do you see that?---Yes.

And that reconciliation says that – if you look at the base of the page that there's a loan balance outstanding as at 29 February, 2012 of \$179,560.21. Do you see that?---Yes.

20

Now, that – excuse me. I appreciate that loan based on the contents of this spreadsheet includes amounts outstanding to GMS. Do you agree?---I'm not sure who they're to. Are they.

Well, you'll see there's reference for example to the invoice at the top of the - - -?---Oh, yes, yes.

- - - the first invoice GMS. Do you see that?---Yeah.

30 But as you recall is the 179-odd thousand dollar figure the total amount that was provided by GLALC and its related entities by way of loan to La Perouse Aboriginal Land Council and its related entities?---I'm not sure, Mr Henry.

All right. Is that a convenient time?

THE COMMISSIONER: Yes. Just before we adjourn for the day. Mr Johnson, do you have any recollection of telling Mr Wing that you had obtained the Board's approval to undertake the work for DLALC through
40 Waawidji Pty Limited?---I can't remember, Commissioner.

Yes. Well, I'm afraid we're going to have to resume at 2 o'clock tomorrow afternoon. I'm just wondering, Mr Henry, I know it's a longshot but can you indicate perhaps how much longer you might be with Mr Johnson?

MR HENRY: I will certainly finish tomorrow. I may finish – I can – I don't think it will be less than an hour. I think it's more likely to take - - -

THE COMMISSIONER: To be an hour?

MR HENRY: - - - up most of the two hours.

THE COMMISSIONER: All right.

MR HENRY: I think it will be unlikely that I finish much after an hour. I might be an hour and a half. I do have a difficulty in that I can't continue beyond 4.00.

10

THE COMMISSIONER: Right.

MR HENRY: But I will certainly finish my questioning by then.

THE COMMISSIONER: All right. All right. We'll see how we go. Thank you. 2 o'clock tomorrow afternoon.

20

THE WITNESS STOOD DOWN

[4.04pm]

AT 4.04PM THE MATTER WAS ADJOURNED ACCORDINGLY

[4.04PM]