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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 THURSDAY 2 JUNE 2016

AT 2.10PM

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

THE COMMISSIONER: Yes, Mr Henry.

MR HENRY: Commissioner, before I recommence questioning Mr Johnson, there are two matters to raise. The first is in relation to the transcript of yesterday. There's a correction that I'd ask to be made in relation to a question, the answer to which may prove of some significance. It's on page 1353 at line 23.

10 MR STEWART: Excuse me, Commissioner. We can't hear.

THE COMMISSIONER: Sorry, it's a transcript correction at page 1353, line – what was it? 23?

MR HENRY: 23.

THE COMMISSIONER: “And at the time at which you arranged for that finance to be given by GLALC”, that should be to GFF?

20 MR HENRY: No, it should be to DLALC.

THE COMMISSIONER: Oh, I'm sorry.

MR HENRY: GLALC to - - -

THE COMMISSIONER: Oh, GLALC to DLALC.

MR HENRY: To DLALC.

30 THE COMMISSIONER: Right. So I'll make that correction. The second reference to GLALC should read “D” for “Dennis”, DLALC.

MR HENRY: And the other matter is a matter that Mr Stewart wishes to raise. If I can just ask him to raise that.

THE COMMISSIONER: Yes, Mr Stewart.

40 MR STEWART: Yes, thank you, Commissioner. Commissioner, the other day some pay slips were tendered on behalf of Ms Cronan in Exhibit G18. Ms Cronan's given me some other documents today, another five pay slips. I've given copies to Counsel Assisting. Just for consistency, I think they should be joined in with that Exhibit G18.

THE COMMISSIONER: Yes, all right. I'll join those with Exhibit G18.

MR STEWART: Thank you, Commissioner.

THE COMMISSIONER: Thank you, Mr Stewart.

MR HENRY: So, unless there's anything else, Commissioner, I can continue with Mr Johnson.

THE COMMISSIONER: Sorry, I just wanted to – it wasn't G18, I'm sorry, it was G15.

MR STEWART: I do apologise.

10 THE COMMISSIONER: G15. They should be joined with G15. Yes.  
Yes, Mr Henry.

MR HENRY: Thank you. Mr Johnson, I'll show you an email from Mr Beatty to yourself of 29 October, 2012. It'll come up on the screen and I can give you a hard copy if you wish. Would you like a hard copy as well? ---Could I have it? Ta.

10 It's on the screen but you also should have a hard copy now, Mr Johnson. You'll see this is an email from Mr Beatty to yourself on 29 October, 2012. You see that?---Yes.

And Mr Beatty, sorry, to put this into some context, do you recall yesterday, firstly, that the compliance direction was issued on 31 August, 2012? Do you recall that?---I'll take your word for it, Mr Henry, thank you.

All right. There was a letter - - - ---What was that date again?

20 31 August, 2012.---Thank you.

Then there was a letter dated 19 October, 2012 from the Registrar to you, saying there was non-compliance with the compliance direction.---What was that date?

19 October, 2012.---Thank you.

Do you recall that letter?---Yes.

30 Then following that you said in your evidence that you referred the letter to your lawyers to get some advice?---Correct.

Which brings me back to the email. On 29 October, 2012, you were sent this email by Mr Beatty, and I suggest that this was at least part of the advice that you received following the Registrar's 19 October, 2012 letter. Do you agree with that?---Yes.

40 And you'll see at the base of the email Mr Beatty says, "I expect that an alleged failure to comply with a direction, especially one going to the disposition of LALC funds, would be treated seriously by the court." Do you see that?---Yes.

"And that it would be amenable to granting injunctive relief from making other orders." Do you see that?---Yes.

He also says in the penultimate sentence, "This is another issue which ought to be canvassed with counsel on Thursday." Do you see that?---Yes.

Now, this email was written on a Monday, 29 October. The Thursday would have been 1 November, 2012. Do you agree?---Yes.

Now, I take you to this because if I go back to volume 20, page 73. So I'll ask you to be provided with that. You'll see this is a letter to which I took you yesterday. Do you recall?---Yes.

A letter dated 12 November, 2012.---Yes.

10 And this letter was signed by you, wasn't it, after the conference with counsel on the Thursday, referred to in Mr Beatty's email. Is that right? ---Yes.

So you attended the conference on the Thursday? You appear to be looking for something. Are you - - - ?---That email.

Oh, you don't have the email?---I'm sorry.

20 No, sorry, so if you stick with the email in the hard copy.---I can't remember, Mr Henry.

All right. Nonetheless, prior to the letter of 12 November, 2012, at page 73 of volume 20, you had been told by Mr Beatty in this email, hadn't you, that in his opinion an alleged failure to comply with the direction, especially one going to the disposition of LALC funds, would be treated seriously by the court. You knew that, didn't you?---Yes.

30 Now, when you gave the authority in the letter of 12 November, 2012, for the transfer of funds from GLALC to GFF, you were fully aware, firstly, of the terms of the direction, weren't you?---Yes.

You were aware that by the transfer of funds that you authorised you were proceeding contrary to the direction?---Yes.

And you understood that that may be treated seriously by a court?---Yes.

And that it may give rise to injunctive relief or other orders?---Yes.

40 All right. I'll tender that email.---However, at that point in time I still did not join the dots. My answer remains the same as yesterday, Mr Henry.

Well - - -

THE COMMISSIONER: That email Exhibit G19.

**#EXHIBIT G19 - EMAIL FROM ANDREW BEATTY TO MARK JOHNSON DATED 29 OCTOBER 2012**

MR HENRY: Thank you. That last part of your answer commencing with however is just not true is it?---It's absolutely correct, Mr Henry.

Right. I will now ask you to be provided with volume 5 at page 131 and you can hand back whatever else – whatever other documents you have. ---What page, Mr Henry, sorry?

10 131.---131. Thank you.

You should have in front of you a circulating resolution of GLALC Development Services Limited. Is that what you have?---Yes.

And you will see there's a sequence of circulating resolutions from page 131 through to 138. Do you agree?---Yes.

20 You're familiar with these circulating resolutions aren't you?---I don't – really don't remember them, Mr Henry. I'll read one now.

Well, if you read the first one perhaps and let me know when you've done that please.---Okay. Okay.

Do you recall what – I withdraw that. You're familiar with this resolution aren't you on page 131?---I believe this is the one you often referred to with those corporate structure diagrams.

30 Yes. I can provide you with the diagram if it assists.---Not really at this point. I'll ask you if necessary.

All right. Thank you. Now, you see the resolutions are each dated 15 January, 2014?---Yes.

Did you draft the resolutions?---I may have had some input. I tend to think most of it would have been done by Alfred Sing. I may be wrong but that's my recollection.

40 In any event, did you approve of the terms of the resolutions before they were put to the Board members for signature?---I thought they were correct. That was the best I can do.

Yes, but you reviewed the circular resolutions - - -?---Yes.

- - - prior to them being signed?---Prior to them going to the Board.

Yes.---Yes.

Now, did you provide these circular resolutions to the Board for signature?

---I was part of the provision of that, yes, with Mr Sing.

How was it done do you recall?---No, I don't remember I'm sorry.

All right. You understood didn't you that the purpose of these circulating resolutions was to effect a restructure of the Gandangara group of companies?---Yes.

10 And that restructure was your idea wasn't it?---I was part of the architecture.

Well, you were the architect weren't you?---No, not entirely.

Who do you say was?---Many other people including the Board. They had to have final signoff.

I appreciate they had to have final signoff but it was your idea wasn't it?  
---Don't think that the Board didn't have active and dynamic input into most things put to them.

20 THE COMMISSIONER: Are we talking about the architecture of the corporate structure?

MR HENRY: In January, 2014, the subject of the restructure.

THE COMMISSIONER: So this is the second structure as it were that's been shown to various people?

MR HENRY: Yes. Do you need me to put it up for you on the screen, Mr Johnson?---Not necessarily, no.  
30

All right. You – do you say that it was someone else's idea apart from you?---Mr Henry, it wasn't an event. It was a very long process to get to that point.

Well, wasn't this attempted restructure done by way of circulating resolution rather than at a regularly convened Board meeting on notice because you wanted to implement the restructure in January of 2014?---No.

40 Is there any reason you say as to why these resolutions, the subject of the circulating resolutions, could not have waited until the then next Board meeting?---I had no idea when the next Board meeting was. The Board or the Chair normally formed Board meetings not me, Mr Henry.

THE COMMISSIONER: Well, whether or not you knew when it was the question was, was there any reason why this could not have waited until a Board meeting where the proposed restructure could have been the subject of discussion?---I was not part of that decision making.

Well, I'm sorry, once again that's actually not responsive. Was there any reason why these resolutions could not have been put before the next Board meeting so that it could be part of a discussion?---I personally have no reason but I'm not sure that that counts for much.

MR HENRY: You were aware weren't you prior to these resolutions being signed that the Administrator of GLALC had proposed a hub and spoke corporate structure?---I don't agree with that statement.

10 You say that you were unaware of that do you say?---No, I'm not saying that either.

Right. Well, do you – I'll ask for you to be shown volume 1 at page 257 please.---Thank you.

You see the diagram at page 257?---Yes.

20 That diagram reflects doesn't it the hub and spoke corporate structure that the Administrator had proposed to implement in December, 2013?---That diagram represents a diagram presented to us at mediation by NSWALC some years prior to the Administrator. The Administrator put that up at his, his initial Board meeting at Gandangara, referred to it obliquely. At no time did he mention he was going to, what was your words, was it implement it or whatever. That's my understanding of that diagram, Mr Henry. It has its origins with NSWALC and that was presented in the Registrar's office at mediation.

30 Well, if you have a look at the text on the right-hand side of the page under the heading Corporate Structure Background you will see a number of dot points.---Yes.

You will see that the sixth dot point from the top it reads, "The Administrator had requested a Board meeting. However, the CEO of GLALC advised the Administrator that the Board was unable to meet until late January or early February, 2014. Do you see that?---Yes.

40 Is that – do you say that's incorrect?---No. That was – the Administrator asked me sometime after the return from Christmas break. I approached the Chair as I always do and I responded to the Administrator with the Chair's response.

THE COMMISSIONER: I'm sorry, are you suggesting Ms Cronan was the relevant person who decided to circulate this resolution prior to any Board meeting?---Ms Cronan advised me when there would be Board meetings yes.

Yes, but my question was, are you saying it was Ms Cronan's decision to circulate that resolution, that was previously on the screen, before there was

any opportunity to have the further Board meeting?---Well, I'm answering the question regarding document 6, Commissioner.

Yes, all right. I understand that. But I'm asking you a different question. Are you suggesting that it was Ms Cronan who made the decision to put the circulating resolution to the Board before there was an opportunity to hold a Board meeting? Are you suggesting it was her decision?---I can't remember that, Commissioner, the exact detail.

10 You don't know?---I can't remember the detail.

MR HENRY: Well, I'll ask for you now to be shown volume 6 at page 221, Mr Johnson. Now, this is a letter to Mr Lombe from you. Do you agree? Do you agree, Mr Johnson?---Yes.

Now, you say to Mr Lombe – I'll withdraw that. The letter's dated 13 February, 2014. You see that on page 221?---Yes.

20 If you go to page 222, you see the second paragraph from the top of the page reads as follows. "Any control of or over the corporate entities that deliver services to Aboriginal people by NSWALC and/or the Office of the Registrar was always and remains to the present strongly opposed by the GLALC members due to the constant and damaging opposition by the regulators to any and all attempts by GLALC to further improve service delivery to Aboriginal people." Do you see that?---Yes.

30 Now, was your position, wasn't it, prior to this attempted restructure on 15 January, 2014 that any control of or over the corporate entities in the Gandangara group was strongly opposed by the GLALC members. That was your view, wasn't it?---The members had expressed that in a meeting, yes.

Yes. And the purpose of the circulating resolutions, as you understood it, was to decrease the control of or over the Gandangara corporate entities by NSWALC or the Office of the Registrar, correct?---No.

Wasn't that the effect of the restructure in January, 2014?---In your mind, but not in mine.

40 Well, you understood, didn't you, that GLALC itself was subject to certain controls by NSWALC and the Office of the Registrar, correct?---Yes.

But you also held the view that the other companies in the Gandangara group were not subject to the same controls, correct?---I was of the view that that was clearly an issue unresolved.

THE COMMISSIONER: It was an issue, wasn't it, that you discussed many times with the Registrar?---Absolutely.

And so you knew the Registrar's position was that the structure didn't comply with the Land Rights Act.---No. That was never put to me, Commissioner. The Registrar was very rarely that clear.

MR HENRY: Well, even if you had a degree of uncertainty in your own mind about the position, what you wanted to do, didn't you, was to create what you have described at times as a firewall between GLALC and Gandangara group companies that provided services. Isn't that right?---I  
10 believe there was a firewall between the two, yes.

Yes, but the purpose of the restructure was to fortify the firewall, wasn't it? ---No, that's not the purpose at all, Mr Henry, at that point in time.

What do you say the purpose was?---Two reasons. We had clear and concise advice from, I think, they're known as the AH&MRC. They're the peak body in New South Wales for AMSes, Aboriginal Medical Services. They have continually advised us of two things. One, they would not allow an AMS to be attached to a LALC, because of course they believed a LALC  
20 was a creature of statute, not a community-based organisation. And two, our corporate structure didn't allow for the medical centre to be a community-based organisation. So one of the aims was to create a community-based organisation that had oversight of the medical centre, Marumali and any future health services we may provide, and get them in under the AH&MRC. It was merely a matter of economics. The AH&MRC and NACCHO controlled the fact that AMSes could have registrars rather than fully qualified GPs. The cost difference was very great. Matter of money.

30 Now, you agree, though, don't you, that the restructure simply created a new company under the Corporations Act, which became the sole member of Gandangara Health Services Limited and Marumali, It did not involve the creation of any community-based organisation.---Yes, it was going to be the community-based organisation, Mr Henry.

It was another company. That's all it was, wasn't it?---It was a company limited by guarantee, as most not-for-profits are nowadays, Mr Henry. No different.

40 Mr Johnson, it had one member upon incorporation, didn't it? And that was Ms Cronan.---I was advised that the application form only allowed for one member.

Well, it never changed, did it?---Never had time. We were stood on almost immediately. In fact, we were trampled.

Mr Johnson you'd also agree too, wouldn't you, that the effect of the proposed restructure, if implemented in January 2014, was to take all

Gandangara group companies, other than Gandangara Development Services Limited, out from under, and by that I mean in direct membership of GLALC?---Yes, and I've explained to you why.

That had nothing to do with the provision of health services, did it?---You're absolutely wrong, Mr Henry.

THE COMMISSIONER: Why was it necessary to move all the other entities, that is, not the health service entities, in the Gandangara group?  
10 Why was it necessary to move them away from that subsidiary corporate structure that existed before January 2014?---If you'll bear with me, I'll gladly explain that, Commissioner. The day Mr Lombe walked in to Gandangara and produced his notice, signed by the Minister, one of the first questions he was asked was, "Do you have any power or authority over any of the entities?" His response was, "No, I have none." He then asked for control of the banking. The banking of GLALC and all its entities was linked to one toggle. We handed over that toggle. At that point in time, the corporate entities and directors lost their control of the finances. We consistently asked Mr Lombe to transfer it back. He refused. And there's  
20 much correspondence to that effect. I even reminded him that I believed he was acting as a shadow director of the entities. The reason the other entities were moved was purely and simply based on economics, so that we could apply to the banks to get our accounts, control of the accounts, back where it should be, with the Board.

So is that another way of saying that the new corporate structure in January 2014 was designed to defeat the intention of the Administrator?---Not the intention of the Administrator, his actions.

30 Well, all right then. So the effect of the new corporate structure in January '14 was designed to defeat the proposed actions of the Administrator?  
---The Administrator had advised he had no power and control - - -

Yes, I know. Could you – I'm just asking a simple question and I expect  
- - -?---Based on - - -

- - - you to be able to say yes or no. The effect of what you've just said, I take it, is that the new corporate structure in January 2014 was designed to defeat the proposed actions of the Administrator. Is that the effect of the  
40 evidence that you've just given? It either is or it isn't?---Partly, yes.

MR HENRY: And an effect of the new structure was to remove control of the Gandangara Group companies other than GLALC from under the control of GLALC. Correct?---I don't believe GLALC ever controlled them, so no, I disagree with you.

I see. And so far as the resolutions of 15 January, 2014 are concerned, they were presented by you on your behalf to the Board when they were for

signature for the purpose of beating the Administrator in his attempts to implement the hub and spoke corporate structure. Do you agree?---No.

All right. You can hand back volumes 5 and 1, Mr Johnson, and volume 6 if you have that, and I'll ask for you to be provided with volume 20 at page 250?---Yes.

Now, this is a letter dated 29 October, 2012, signed by you to Mr Hickey. Do you agree?---Yes.

10

And you're familiar with this letter, aren't you?---Yes.

The subject matter of the letter is payments that were made, or it says between Gandangara and you in the year ended 30 June, 2012. Do you agree?---That would be part 1 of the letter, yes.

And that includes a bonus paid to Waawidji of \$316,738. Do you agree? ---Yes.

20

Now, you'll see on the second page of the letter it says in regards to the bonus that was paid during the year, "We confirm that this relates to performance to 30 June, 2011, which is in accordance with his," which means your, "employment contract with GLALC." Do you see that? ---Yes.

And then it says underneath that, that the bonus was based on 3 per cent of the surplus generated in Gandangara funds as follows, and then there's two dot points. Do you see?---(No Audible Reply)

30

There's then a, excuse me, heading, Statement by the Chief Executive Officer and Directors. Now, the first statement is, "We confirm the completeness and accuracy of the information provided regarding the payments to Mark Johnson during the year ended 30 June, 2012." Do you see that?---Yes.

40

"And we confirm," this is the second sentence, sorry, I didn't realise it's not up on the screen – page 251 volume 20 is where I'm at. Excuse me. And then under the heading Statement by the Chief Executive Officer and Directors, the second sentence is, "We confirm that the transactions above have occurred in accordance of the employments contracts between Mark Johnson, Waawidji and Gandangara." And you see those statements? ---Yes.

Now, at the time at which you signed this letter you were not in any position to give the confirmations in those two sentences, were you?---Could you repeat the question, please?

Yes. If you look at the heading, Statement by the Chief Executive Officer and Directors?---Yes.

There's two sentences underneath that heading in the first paragraph underneath it. Do you see?---Yes.

And they both say we confirm certain things?---Yes.

10 And my proposition to you is, at the time at which you signed this letter you were unable to confirm the things that you stated in the letter as being confirmed. Correct?---I didn't agree with the statements at all.

You didn't agree with the statements in the letter?---I didn't agree with the letter in total.

20 All right. Now, so far as your bonus was concerned, you were unable – excuse me – at the time of the letter to say, weren't you, that what the bonus – I withdraw that – that the amount of the bonus that had been paid was an amount that had been calculated in accordance with Waawidji's contractual entitlements. That's right, isn't it?---I had – there were some figures – there's another table attached to this that you haven't shown in the past four weeks that was drawn up by Mr Gundar that I agreed with.

I'll provide you with Exhibit G3 in case this is what you're referring to. You should have in front of you now, Mr Johnson, an email of 25 September, 2012 from you to Clayton Hickey and others?---Yep.

30 And this is an email that I've shown to quite a number of directors who've given evidence in the course of this hearing. Do you understand?---Yes.

You'll see you say in the letter, "Clayton. I would ask you to consider the format and contents of the table attached." You say, "Following the review requested by you this afternoon we have concluded that the attached format and contents represent a more understandable account of the payments made. You will not that there is only a subtle variation to the bottom line." Do you see that in the email?---Yes.

40 And then you say this, "I would be very comfortable to sign off your requested letter with the table attached but placing the table provided in your draft letter," and then you say, "Accordingly I would without reservation recommend to the Gandangara Board that they endorse and sign the attached letter at the earliest opportunity, that being immediately prior to the AGM tomorrow evening." Do you see that?---At that point I agree with that, yes.

Yes, then you see – I won't read the rest of the email - - -?---No.

- - - to you, but if you look over to the attachment you'll see a draft letter dated 20 September, 2012. Correct?---Yes.

Now, that is a draft of the letter that was signed dated 29 October, 2012, to which I've taken you. Correct?---Yep.

Now, there are some changes to the text of the letter?---Yep.

Did you make the changes?---Yes.

10

All right. So you made those changes between 25 September and 29 October. Is that right?---Yes.

You'll see on the draft letter there's the table that's in the same form as the table in the ultimate letter of 29 October, 2012?---Sorry, I missed that.

If you look at the table on the draft letter - - -?---Yes.

20

- - - that's the same table as appears in the signed letter on 29 October, 2012?---Yep.

And the table which I apprehend you refer to is the table on the last page of Exhibit G3?---Correct.

You say that's a table that was prepared by Mr Gundar?---Yes.

And you say you wanted that table inserted into the letter?---And the Board, yes.

30

So you say you want it – you and the Board you say?---Yes.

Right. Now, you will see in Mr Gundar's table the amount under the bonus column is the same other than 41 cents isn't it?---Yes.

Now, you were content weren't you to sign the 29 October, 2012 letter with a bonus being recorded as \$316,738. Correct?---Can I just confirm you're only talking about the bonus figure, you're only asking me about the bonus figure of 316,738. Is that correct?

40

That was what my question was directed to.---Thank you. Yes.

Yes. Now, what I'm putting to you is that at the time of signing the 29 October, 2012 letter you were not able to say that Waawidji was entitled to a bonus of that amount were you?---I relied entirely on Mr Gundar.

You made no attempt yourself to refer to the contractual provisions that governed the amount of the bonus and whether it was payable. Correct?---I

have never interfered with the Finance Department in working out my bonuses ever. I saw no reason to change now.

So you - - -?---At that point.

You agree with me then?---Could you repeat the question.

10 You made no attempt to satisfy yourself that the amount that you had been – I withdraw that. That the amount that Waawidji had been paid by way of a bonus was an amount that accorded with the contractual entitlements of Waawidji to any bonus under this agreement?---No.

You agree?---No.

You had gone to the contract?---No.

So you're agreeing with me then?---No.

20 You see in the letter itself, that is, the one on 29 October that you signed - - -?---Yes.

- - - you say at page 251 under the heading Statement by the Chief Executive Officer and Directors, "We confirm that the transactions above have occurred in accordance of the employment contracts between Mark Johnson, Waawidji and Gandangara." Do you see that?---Yes.

30 You – do you say that the bonus referred to in the letter was in accordance with the employment contracts?---I had made inquiries with Mr Gundar which is all I was capable of doing without being in my mind improper and satisfied myself that Mr Gundar had worked them out correctly.

THE COMMISSIONER: To satisfy yourself that Mr Gundar had worked them out correctly you must have had some regard to the terms of the contract in order to do a calculation of some kind to know that he was, let's say, in the ballpark?---I hadn't gone to that extent. I relied on Mr Gundar.

Mr Gundar might have miscalculated to your disadvantage for all you knew.---I had to rely on him, Commissioner.

40 You didn't have to in the sense that there were terms in the contract to which you had access. You could have made the calculation yourself. ---That's right. I felt I was far too close to it. I had to rely on him. I didn't intervene in any way, shape or form with those processes.

MR HENRY: So do you say you've made no attempt yourself to calculate what bonus Waawidji may be entitled to?---Not at that point in time, no.

Now, you will see in the letter at page 251, further up the page to where I've been referring it says, "The bonus was based on three per cent of the surplus generated in Gandangara funds as follows." Do you see that?---Yes.

Then it says, "80 per cent of profit on sale of stage 2 and lot 101 in the books of GLALC." Do you see that?---Yes.

10 You were aware weren't you at the time at which you signed this letter that the bonus to which Waawidji may be entitled was not a bonus calculated by reference to 80 per cent of the profit on the sale of those two properties?  
---That's right. I disagreed with that.

Yeah. And you also knew didn't you that the bonus wasn't calculated by reference to any increase in loans to Gandangara related entities?---That's right. That's why I wasn't – didn't want to sign the letter.

Well, you might say you didn't want to sign the letter but you did didn't you?---I did sign it under great duress, Mr Henry.

20 Mr Johnson, if I take you back to your email of 25 September, subject to the replacement of the table - - -?---Yes.

- - - you were very comfortable to sign off on the requested letter. Correct?  
---And I don't mind saying I was very incorrect in that email.

THE COMMISSIONER: But sorry, at that point in time where you expressed that view you were comfortable.---And I was very incorrect with that statement. Wrong, I was wrong. I have no problems with that.

30 MR HENRY: Do you say you were wrong because the bonus was overpaid?---I, I say I was wrong because I hadn't taken into consideration the two arrow points on page 2. I was wrong.

Well, did you read the letter before you signed it?---Yes, but not well enough clearly. I'm saying that very clearly to you, Mr Henry.

Yes. Well, do you accept now then that you were overpaid when you were paid that bonus?---I wouldn't have had a clue about that at that point in time.

40 No, I didn't ask you that. Do you accept now that you were overpaid?  
---Yes. I was made aware of it at a Board meeting sometime later.

And at the time at which – I withdraw that. You were paid the bonus – sorry, I withdraw that as well. You had ample time didn't you between the letter of – the draft letter of 25 September attached to the email and 29 October, 2012 to make any inquiries you needed to about the calculation of the bonus?---I never ever did that. I never intervened with - - -

THE COMMISSIONER: Mr Johnson, with respect, you see - - -?---No.

- - - this process takes a lot longer if you don't answer the question that is asked and the question was, you had ample time to do that had you chosen. That was the question. Did you or did you not?---If, if all other things had stopped I would have had ample time.

10 MR HENRY: Well, you also had ample time to make any changes you wished to make to the letter before signing it didn't you?---The - our request for changes was never responded to as best I know.

Mr Johnson, you made changes to the draft letter didn't you before you signed it?---Yes. Yeah.

And then having made the changes you signed the letter didn't you?---And I've explained the duress at the time, Mr Henry. Goodness me.

20 THE COMMISSIONER: Well, I'm a bit confused because you say on 25 September you would sign the letter without reservation. Then you said when you did sign the letter with the changes that you had effected to the letter that the - that there were aspects of the letter that you subsequently found were incorrect but at the time you signed the letter you were comfortable with signing it. Is - - -?---At that point - - -

Is that the position?---At that point in time but I - - -

All right.--- - - - then found out I was wrong, Commissioner.

30 All right. I'm content to accept that you found out you were wrong but I'm coming back to this, 25 September you say you're happy to sign the letter. You make changes. You sign the letter. You say that you were unaware of certain inaccuracies in the letter but nonetheless when you signed it you were happy with it.---I wasn't happy with it. That's incorrect, Commissioner.

40 Well, in what way weren't you happy with it? You see what I'm struggling with is you say that you were content to sign the letter subject to some inaccuracies that you later discovered and then on the other hand you say you signed it under duress. The word duress tends to suggest that you didn't sign the letter willingly and freely so I'm - that's why I'm having some trouble understanding the conflict in those two things.---All right. Well, if I may respectfully use your terms, I didn't sign the letter willingly and freely.

MR HENRY: I'll provide you with an email. Now, Mr Johnson, this is an email in response to your email in Exhibit G3. It's come from Ms Keagan, K-e-a-g-a-n, to you on the evening of 25 September at 9.23. Do you see that?---Yes.

And she says – I withdraw that. She was an employee of Mr Hickey’s wasn’t she?---I don't know. I’ve never heard of her I’m sorry.

Well, her email to you says, “Hi, Jack. Please find attached the amended representation letter incorporating your suggested table.”---I can’t remember this email, Mr Henry.

10 Yes. And then attached to the email is a draft, a revised draft, of the letter incorporating Mr Gundar’s table that you rely on. Correct?---It’s there. It was clearly part of Ms Keagan’s email trail.

Yes. So you were provided with the opportunity to sign the letter with the table that you wanted in it, and you signed the other table.---Let me repeat. I never heard of Ms Keagan. I can't remember this email. I'm not sure I ever opened it, not knowing her.

20 THE COMMISSIONER: Do you deny that you ever saw this email? And do you deny that you ever saw that letter with the table that corresponded with Mr Gundar’s table?---I've seen the correspondence with Mr Gundar. It’s part of a previous email trail. But I can never remember reading this email from Ms Hayley Keagan.

So you can’t deny that you did read it and that you in fact declined to sign the attached letter. You simply have no memory of it?---I believe I remember this. I don’t believe I’ve ever seen it.

30 MR HENRY: Well, you said a moment ago that you don’t recall Ms Hayley Keagan, correct?---Yeah.

She’s one of the people that you sent an email to in Exhibit G3.---I'm sorry. I don't know.

Well, have a look at your email. Whether you use G3 or you use the document I've just provided you with. The email from you to Mr Hickey of 25 September, at 4.37pm, do you have that?---No.

Well, have a look at the document I've just provided you, sir.---Yeah.

40 There’s an email in the middle of the page.---Which page?

THE COMMISSIONER: It’s also on the screen in an enlarged form. ---Yeah.

MR HENRY: You sent an email on 25 September, 2012 at 4.37pm to Ms Keagan as well as Mr Hickey, didn't you?---That’s “reply all”, Mr Henry. That’s simply press the button “reply all”.

Mr Johnson, you say that this letter was highly contentious, don't you?  
---Yes.

You also say that it was of sufficient importance that you blind-copied the Board. Correct?---Yes.

Now, an email of that importance does not get sent to anyone who happens to be on an email chain, does it?---I would have pressed "reply all". I tend to think most people would.

10

Well, you didn't, because you included all the members of the Board on a blind copy. So you didn't - - - ---That's a separate addition. Then, two, I wouldn't have put all that in. It would have simply been, for the third time, Mr Henry, "reply all".

Yes.

THE COMMISSIONER: In any event, all the people listed in that email are all Lawler Partners, aren't they? They're all from Lawler Partners?---Yes.

20

You can see that?---Yes.

MR HENRY: All right. Well, I'll tender that email.

THE COMMISSIONER: That email is exhibit G20.

**#EXHIBIT G20 - EMAIL FROM HAYLEY KEAGAN TO MARK JOHNSON DATED 25 SEPTEMBER 2012**

30

MR HENRY: Now, in relation to this bonus, Mr Johnson, you created two invoices for the payment of it, didn't you?---Yes.

Now, the first of those, if you've still got volume 20, you'll see page 219. There's an invoice dated 30 June, 2011 on Waawidji's letterhead. Is that what you're looking at?---Yes.

40

And you created this document, didn't you?---Yes.

It's for 89-odd thousand dollars, correct?---Yes.

And I'll ask you to go backwards in the volume to page 215. And you'll see another email. Sorry, another tax invoice on Waawidji's letterhead, this one dated 1 July, 2011. Do you see that?---Yes.

And that's for \$227,700. Do you agree?---Yes.

And you created that invoice, didn't you?---Yes.

Now, you knew, didn't you, at the time at which you created both of these invoices, that Waawidji was not eligible for any bonus under its contract with GMS, correct?---No.

10 You were aware, weren't you, that under the terms of the contract between GMS and Waawidji, no bonus was – I'll withdraw that. That Waawidji was not eligible for any bonus at the very least until the audit report had been provided for the annual financial statements of GLALC. Do you agree?  
---I erred.

Well, do you agree with that or not?---Do I agree with what?

You knew that under GMS and Waawidji's contract, Waawidji was not eligible for any bonus at the very least until the audit of the GLALC annual financial reports had occurred, correct?---I didn't take that into consideration during the conversation with Mr Gundar at that time.

20 THE COMMISSIONER: Again, Mr Johnson, I'm sorry. It's just not responsive to the question. You're being asked whether you knew that Waawidji was not entitled to a bonus at least until the audit report had been provided. Now, did you know that or did you not know that?---It would have been in the back of my mind somewhere.

MR HENRY: So you did know it?---It would have been in the back of my mind somewhere. I was not aware of it at the time. Being aware at the time and knowing is two separate issues.

30 Do you agree that you were aware of it but proceeded in disregard of it?  
---No.

Do you agree that by 1 July, 2011, there was no audit report for the GLALC annual financial reports? Do you agree with that?---Yes.

Do you agree that the GLALC annual financial reports didn't exist as at 1 July, 2011?---Yes.

40 Do you agree that the surplus, by reference to which any bonus for Waawidji was to be calculated, was unknown as at 1 July, 2011?---Yes.

Nonetheless, you created these two invoices, correct?---I erred.

Now, if you have a look, please, sir, at the description in the invoices. And it doesn't matter which. Perhaps I'll stay with what's on the screen. Page 215. You'll see the description on the invoice is "Reimbursement of expenses incurred for and on behalf of Gandangara Development Services

Pty Limited during period July '08 to June 2011, bracket, continued, close bracket." Do you see that?---Yes.

Now, you drafted that, didn't you?---I wrote it, yes.

And you knew at the time at which you wrote it, it was incorrect?---It wasn't an accurate description in my mind, yes.

10 You were prepared to put a false description in the invoice, weren't you?  
---I was prepared to accept that it wasn't accurate, Mr Henry.

So, you knew, didn't you that Waawidji, at the time of the creation of the invoices, was not entitled to a bonus, correct?---No.

And you were prepared to create invoices with false descriptions in order to get the bonus, correct?---No.

20 Now, the amount of the bonus was \$316,738 in total, correct?---That was the figure that was on the table, Mr Henry.

Yes, and you can take it from me that that's the combined total of the two invoices.---Yeah.

Now, you have never understood that Waawidji was entitled to a bonus of that sum for the year ended 30 June, 2011, have you?---I've never worked it out accurately myself, no.

30 You nonetheless asserted that in the 29 October, 2012 letter, didn't you?---I nonetheless what, sorry?

Asserted that?---Asserted, did you say?

Yes, asserted that Waawidji was entitled to a bonus in that sum in the 29 October, 2012 letter. Correct?---Under duress. Unwillingly and not freely.

Yes. That's just not true, is it?---Absolutely correct.

Now, have you got volume 9 available to you?---No.

40 I'll ask you to be provided with volume 9 at page 303?---303.

Oh, sorry, I should ask you to start at 301. So you have there minutes of a Board meeting of 24 June, 2013?---Yes.

You'll see on page 303, excuse me, there's a motion 4?---Yes.

Could you read motion 4 to yourself and let me know when you've done that, please, Mr Johnson?---Yes.

Now, did you receive – I’ll withdraw that. Did you or Waawidji receive a bonus for the year ended 30 June, 2013?---I can’t remember, Mr Henry.

Did you receive a bonus for the year ended – did you or Waawidji receive a bonus for the year ended 30 June, 2014?---Just two thousand and, 2014? I’m just trying to get the timelines fixed in my head, Mr Henry. 2014, no.

10 THE COMMISSIONER: Was there any year prior to your departure from GLALC where you did not receive a bonus, you or Waawidji, at the end of the financial year?---The year of this meeting I didn’t receive a bonus.

MR HENRY: So is the position that you didn’t receive a bonus in either the 2012/2013 year - - -?---I can’t remember that one, Mr Henry, I can’t - - -

Isn’t that the year that you’ve just referred to as in the year of that meeting? ---No, the meeting was on the – oh, 24 June. So, look, I’m testing my memory here. I don’t think I would have received a bonus for the year 2012/2013.

20

Right. So you see the effect of motion 4 is that you were asked to repay \$57,000 out of the bonuses in two then upcoming completed financial years?---Yep.

Did you ever pay the money back?---Well, it wouldn’t have been paid back, I would never, or Waawidji would never have received it.

30 Yes, but you would have been made aware of it if it had have happened because - - -?---Yes, and if an Administrator hadn’t walked in and taken control, which is what happened.

Is the, is the answer this, that you never repaid out of any future bonus or otherwise any part of the \$57,000?---I believe I did.

Oh, when?---I believe when I wasn’t paid bonuses that acted as the repayment.

40 THE COMMISSIONER: Oh, so you say that you paid it back by, by in effect cancelling a bonus that you would have otherwise been - - -?---I don’t know about cancelling bonuses, Commissioner.

Well, sorry, I understood your previous answer to be that it was paid back in effect because you forewent a bonus that you would have been entitled to sometime after 24 June, 2013?---Well, I believe sometime after the audit which should have been completed by September 2013, the Finance Department would have organised its annual review.

Well, did you receive notice at some stage after September 2013 of the bonus that had been calculated pursuant to those accounts?---No.

Well, how do you know that there was any bonus that was to be paid?  
---Why would that year be different to previous years, Commissioner, in my mind.

Mr Johnson, I simply don't understand that answer?---Well, I'm struggling with your question, Commissioner.

10

Well, okay. Well, go back to what Mr Henry asked you. Did you ever repay any of that \$57,000 from bonuses or otherwise. Your answer to that was, I believe I did, I believe that I wasn't paid a bonus to which I was otherwise entitled, and that was what you said reconstituted - - -?---And that's what I believe.

All right. Well, then my next question was, after September 2013 when the accounts were done, were you notified of the amount of a bonus that had been calculated pursuant to those accounts?---No.

20

So how do you know that there was any bonus that was due to be paid?  
---Based purely and simply on precedents.

MR HENRY: You were aware, weren't you, Mr Johnson, that eligibility for a bonus depended amongst other things on a performance assessment?  
---Yes.

And the existence of a surplus?---Yes.

30

And you don't know of any performance assessment outcome do you for you in respect of the years 2012/2013?---Well, it was a contractual requirement of the companies to do so. I hadn't been advised that they were going to breach their terms.

But you don't know the outcome of any performance - - -?---No.

- - - assessment?---Now, I never did, Mr Henry, never did.

40

And you don't know, do you, whether there was any relevant surplus for the purposes of calculating a bonus?---There was a relevant surplus, it was listed in the financial statements, but that was only one part of the bonus. Now, I don't believe there was a surplus but I believe part 1 of the bonus, there was a contractual requirement for that to be reviewed.

And you can't point to one piece of paper, can you, that shows any repayment of the \$57,000?---There was a contractual requirement. I point to my contract.

All right. You can hand back that volume, volume 9, and I'll ask for you to be provided with the exhibit to your affidavit, which is G18 at page 421. It's the exhibit to Mr Johnson's affidavit, if that assists. I'm just waiting for it to come up on the screen, Mr Johnson, 421. We're having difficulty with the electronics but we have a hard copy.

Yes.

10 MR HENRY: Okay. All right. This is, Mr Johnson, a letter from you to Mr Lombe isn't it?---Yeah.

Date 18 February, 2014?---Yes.

And it concerns expense claims - - -?---Yes.

- - - that had been questioned by Mr Lombe. You agree?---Yes.

20 Now, can I ask you to turn to page 428 please. This is a document that you attach to the letter. Correct?---Yes.

And Mr Lombe's document – I withdraw that. It's in effect a document that Mr Lombe provided to you but you added the last two columns on the right-hand side of the page. Do you agree?---Yes.

So Mr Lombe has queried each of the expenses in the document and his comment you will see on the third column from the far right-hand side of the page is, "Appears to be a personal expense". Do you see that?---Yes.

30 And you respond by saying, "Legitimate claim." Do you see that?---Yes.

And then you provide some further narrative if I can call it that or comment?---Yes.

Now, you will see there's a number of entries where your further comment or narrative is, "Isuzu truck and trailer".---Yes.

40 Now, with that in mind can I just – and you will see – and you can take it from me that those items labelled by you as Isuzu truck and trailer total \$37,103.29. Do you understand?---(No Audible Reply)

Now I'll ask you to turn - - ----On that page?

Yes. On - - ----The items marked?

Isuzu truck and trailer.---Total 37,000?

\$103.29. I'll have that checked.---Please.

It may, it may be that I've overstated it but I'll have that checked. Whilst that's happening page 430. Now this is a similar style document.---(not transcribable)

It's different from the one at page 428 because this is – you will see GMS at the top in the middle.---Yes.

Whereas the one on page 428 had GLALC at the top in the middle.---Yes.

10 Again you have inserted the far two right-hand columns. Correct?---Yes.

And there's items in this document on page 430 that you've labelled truck and/or trailer. Do you see that?---Yes.

Now, on my calculation they total \$12,596.30.---What was that figure?

\$12,596.30.---Take your word for it, Mr Henry.

20 All right.---It looks more accurate than your previous one.

All right. Now, you claim – now, I'm going to deal with these two sets of expense collectively here.---Yes.

The Isuzu truck and trailer expenses on 428 and the truck and/or trailer expenses on 430. Do you understand?---Yes.

30 Now, you claim don't you that those expenses were incurred in connection with a planned health project to provide mobile health and dental clinics for Aboriginal people. Do you agree?---Are you saying all the expenses on both pages?

That have been identified with the words truck and trailer.---All bar two of them I suggest, yes.

Which two do you say don't fall into that category?---If we can go back to page 428.

40 Yes.---I think – can we go a bit more please. Right. Thank you. I think it's the ninth item down for \$9,800.

Right.---And then the one under it 2,400.

All right. So you say those two items don't constitute expense items incurred in connection with the planned health project?---I suggest they're separate too.

All right. Well, I'll come back to those. Now, you say don't you that this proposed health and dental clinic was to be in particular for Aboriginal school students?---Initially, yes.

Well, at the times at which these expenses were incurred that's what you say don't you?---It was to – at the time it was to start servicing Aboriginal children. We believed there was a good business opportunity to grow that.

Right. And you say don't you that you took trips to 271 schools?---No.

10

You don't say that?---No. I didn't go to all those schools.

Right. If you go back in the text of the letter to page 424. You will see the third paragraph from the top of the page reads, "In order to ensure that the project was viable I've undertaken trips to 271 schools within the" - - -?  
---Yeah, that's incorrect. I reviewed 271 schools, yes.

So you misrepresented to the Administrator did you that you had undertaken trips to 271 schools?---I was incorrect, yes.

20

Well, you must have known that at the time did you?---I made an error, Mr Henry.

THE COMMISSIONER: Well, what do you mean you – what do you mean by saying you in fact reviewed 271 schools, reviewed them in what sense?  
---Over a long period – may I expand this? You only want yes and no's normally, Commissioner, and it's very hard to do.

30

I think that's a bit of a stretch, Mr Johnson. I just want to know what you mean by I reviewed 271 schools, what do you mean by that?---Initially we identified 271 schools in our Land Council area. That was step one. We were only looking at that area – oh, no, it wasn't our Land Council area, it was our Marumali health area established by Federal Government funding. We reviewed all of those. We identified them all. We felt that it was impractical to go to all – oh, we then identified all the schools with Aboriginal students. We then looked at the possibility of whether or not we could centralise some of those schools. In other words, rather than – and this was all to determine whether mobile dental and GP services were practical because to do it we'd require two chairs and that would require a prime mover and semitrailer, eight foot wide, some 40 foot long. I'm sorry, I'm old school. I can't remember the metric measurements. We then looked at whether we could gather together – hub those schools with Aboriginal students. We identified hubs. I don't have any of those notes any more. And we then looked at whether it was practical to get a semitrailer to each of the hub schools. To do that we did a desktop review of the, the bus service that serviced the school, looked at those routes desktop and drew a little map, ascertained if we could where there was obvious problems that a semitrailer couldn't negotiate. There is somewhat of a difference between a

40

bus and a semitrailer. Two classic examples, a bus generally has two axles, six wheels. A semi has six axles, up to 22 wheels. Two different vehicles, two different turning circles. Many of the schools we reviewed were in very old established areas, narrow streets. Where am I up to in the review. It wasn't a simple process.

All right.---Sorry, yeah.

Sorry, can I just clarify?---Yeah.

10

Thus far what you've described did not involve physically visiting those schools?---That's right.

20

Right. Thank you. That's - - - ---We tried to minimise the number of schools, because it was going to be substantial anyway. I think we were able to narrow it down to 40 or 50 schools, but we were still not certain whether or not a semi could get to the school and whether there would be room to park it. The only way to do that was to drive a vehicle of similar dimensions. My vehicle was 8 foot wide, 39 foot 7 inches long. Very little difference. It also was an articulated vehicle. Same as the semitrailer. Very similar turning circles. The big problem is getting into narrow streets. Generally a semitrailer can do it on the proviso the parked cars aren't parked near the corner. That reduces the turning circle often to the point the truck can't get around the circle. I only had time early in the morning. I had always started work by about 3.00am every morning. On school holidays, starting in 2011, only because traffic was always lighter then, and to ensure whether or not a vehicle that size could get around to the schools. There would be parked cars there, we presumed, at night. That was when the residences with cars would have been home. We visited as many of those schools as we could identify. Some of them we couldn't get to, so we would scratch them off. So the exercise was clearly worth its while, because some of them couldn't be accessed with a semi. Some could. That meant the project was becoming viable from an access point of view.

30

So, in summary, the actual visiting to these sights with the truck and horse trailer was something less than 40 schools?---Oh, it would have been 40 at least, Commissioner.

40

All right.---At least. If not more.

MR HENRY: Of course, the students at the schools could avail themselves already, couldn't they, of medical and dental services at any health centre? ---I don't like the humour, Mr Henry. Let me be very blunt.

They could have gone to a bulk-billed medical service.---No. We went to one school alone, which initiated this project, one primary school alone of 23 Aboriginal children we did a site test of. 11 of them needed prescription glasses immediately. They didn't have them. We provided them. That

proved to us that Aboriginal people, as well documented, do not access mainstream services.

THE COMMISSIONER: Mr - - - ---It's well documented.

Mr Johnson, if you're carrying out a site test, you need a chart with letters on it and a chair. That's a far cry from needing a semitrailer that's fitted out as a dental clinic. But the question that Mr Henry asked you was that all of those children could have availed themselves of any bulk-billed medical service in their local government area. Whether they did or not, of course, may be a moot point. But there were services available to them, were there not?---Yes, but they weren't accessed.

Right.

MR HENRY: And, Mr Johnson, did you ever get a quote for the cost of fitting out a vehicle to provide the mobile dental and health services that you've referred to?---We never got that far. We were still going through this exercise and many others to ascertain the practicality of it.

20

Right. And did you ever get permission from any school to provide mobile health or dental services?---We were already providing health services to the schools, as I've said. We were already there, Mr Henry.

So you didn't need a mobile bus or whatever you want to call it, vehicle. You could provide the services without one. Is that right?---That's a very poor presumption. We were able to provide things like, we started with sight. Very easy to do. We were also using the existing hearing services, taking them to schools under our banner and getting hearing tested as well. But these were very limited. And we were striking problems, clearly identifying where Aboriginal families were not accessing services. We wanted to rectify that, Mr Henry.

30

THE COMMISSIONER: Mr Johnson, sorry. Could I just raise one other issue with you? Because it is important in the context of the use of this vehicle. If you were already providing those services, and they are, of course, able to be provided by the provision of appropriately qualified medical staff who have appropriate equipment for that purpose, well, that was something that you could have done without a semitrailer. It seems to me, correct me if I'm wrong, that the sole purpose of this semitrailer was really to do with the provision of dental services, because it would only be dental services that would require the kind of equipment that goes with a dental surgery that wouldn't be capable of being transported to the site by a doctor in a van or an optometrist or, I don't know, someone who was skilled in hearing tests.---Initially. You're absolutely correct.

40

So it was really about dental services, was it?---Initially.

Right.---But we were identifying the fact that Aboriginal families were not being serviced, so weren't accessing health services. We needed, in our minds, to assist rectifying that.

MR HENRY: All right.

THE COMMISSIONER: Just following on from that further question of Mr Henry's, can I just confirm, was it your intention all along that the horse trailer that you took to these various schools would be the vehicle that  
10 would be fitted out as the dental clinic?---It was absolutely never even a thought of mine.

Oh, so you weren't going to fit out the horse trailer? You were going to buy another vehicle?---Correct.

Right.

MR HENRY: Mr Johnson, if you go back to page 424, please?---Yes.

20 You'll see the third paragraph which I've taken you to where you've said, "I've undertaken trips to 271 schools." Do you see that?---Yes.

The next paragraph says, "A list of those school addresses already visited is attached?"---Yes, incorrect.

Well, then you list, commencing at page 431 going through to 437, hundreds of schools, don't you?---Yes, all of those schools were reviewed.

30 No, but you've represented to Mr Lombe to justify your expense claim that you'd visited, already visited those schools, didn't you?---Do you require me a culpa three times, Mr Henry? I erred.

No, it was a false representation to Mr Lombe to support your expense claim, wasn't it?---I erred, Mr Henry.

Now, am I correct in understanding that you claim the truck and trailer expenses subject to the two that you've isolated because you say they were business expenses incurred by reason of you driving your horse trailer to schools?---No. I believe they were an offset.  
40

I'm sorry, offset against what?---I believe at the time, and I'm testing my memory, because we're going back to 2011, I believe at the time we priced hiring prime mover and semi-trailer, the obvious first step. To do it at the times I had available, and I was the only HCMC licence in the organisation, to do it at the times I had available would require a two-day hire. The hire of both, bare minimum, without any additional like insurance, was 300 per day, so 600 per trip basically. That was the cost we were offsetting, I was offsetting.

Now, you never got the Board's approval, did you, to explore a mobile health or dental service by expensing claims in respect of your horse trailer?  
---There was approval of the Board for me to take whatever steps necessary to investigate the possibility of mobile dental GP services being provided to schools.

Do you - - -?---The Board was well aware of that, Mr Henry.

10 Well, the Board wasn't aware until after you'd been paid – I withdraw that – after these expenses had been reimbursed, that they'd been incurred. Isn't that right?---I'm not sure, Mr Henry, I'm really not sure about that.

Isn't that why, isn't that why you asked them, the members of the Board, to sign a letter to Mr Lombe in support of your expense claims?---I asked them to consider signing, yes.

And that was because they hadn't approved the expenses previously.  
Correct?---I'm not sure, Mr Henry, whether they – I believe some of them,  
20 in fact most of them were aware. Those that were around in 2011 and 12 I believe would have been aware. There were some that came on after that.

THE COMMISSIONER: You mean aware of the fact that you were using your truck and horse trailer to visit these schools?---I'm not sure we had gone into that detail, Commissioner.

Well, it's an important detail. Are you saying that they were aware generally of a proposal to look at mobile dental care for children?  
---Yes.

30 But they may not have been aware of how you were going about doing that?  
---Yes. I don't believe they were aware of what happened on a day-to-day basis in many instances.

MR HENRY: Now, you've identified in particular a \$9,800 expense?  
---Yes.

I want to ask you some questions about that. In July 2011 you ordered from the USA, didn't you, a trailer that could transport four horses?---Yes.

40 And the total cost of the trailer was \$106,600?---Ah, testing my memory.

All right. I'll show you an email?---I'll take your word for it, Mr Henry.

All right. Do you agree with this proposition, that you asked for the supplier of the trailer to render three tax invoices for the purchase price of the trailer?---I can't remember that.

All right. Well, I'll show you an email. Just pardon me for a minute. I'll provide you with an email. Now, Mr Johnson, you should have in front of you then an email from you to Michaels Excavations and Lakota Trailers of 7 July, 2011. Do you have that?---Yeah.

And do you agree that you ordered a trailer that carried or would transport four horses for \$106,600?---Yes.

10 And that you asked for that purchase price to be broken down into three tax invoices?---Yes.

Two of the tax invoices were for \$9,800?---Yes.

And the \$9,800 claim that is the subject of, or that has been the subject of evidence this afternoon is one of those two invoices, isn't it?---Yes.

So the \$9,800 invoice the subject of your evidence this afternoon was a portion of the purchase price of your horse trailer. Do you agree?---Yes.

20 Now, I'll see if we can pull up a photograph for you. Perhaps while that's happening I'll tender that email.

THE COMMISSIONER: Yes, that's Exhibit G21.

**#EXHIBIT G21 – EMAIL FROM MARK JOHNSON TO MICHAELS EXCAVATIONS AND LAKOTA TRAILERS DATED 7 JULY 2011**

30 MR HENRY: Mr Johnson, if you look at the screen you'll see a photograph of a four-horse-carrying trailer. I don't suggest that's necessarily the model that you acquired, but is it of the same type of design in the sense that it's a trailer that first of all carries four horses, your trailer, yes?---Yes.

Do you just accept, do you accept that that is, although a different model, the type of vehicle that you acquired from America in July 2011?  
---Similar design, yes.

40 Right. Now, you agree don't you that none of the Gandangara Group companies was in the business of transporting horses?---Yes.

And that costs associated with the acquisition of a horse trailer were not business-related expenses of yours in your role as CEO of any of the Gandangara Group companies?---Generally.

Do you agree then that the \$9,800 portion of the purchase price of the horse trailer that you have claimed and been reimbursed for was not a business-related expense?---No.

You say that a part of the vehicle was business related?---Yes.

But the remainder was not?---Yes.

Right. Which part - - -?---The part that generated 240 volts a/c polar.

Right. So this is the generator is it?---Yes.

10 That was an optional extra on the vehicle wasn't it?---Yes.

So you say all of the vehicle other than the generator in the vehicle was not a business related expense?---Yes.

But that particular optional extra in the vehicle was?---Yes.

What functions as CEO of GLALC did you require that generator for the purposes of performing your job?---To allow me to do much work in the trailer.

20

You say you needed the generator to do that?---Yes.

Well I rather understand that the use to which the trailer was put for work purposes was driving around streets to go to schools in the Gandangara Local Aboriginal Land Council area. Is that right?---It was used at times for that, yes.

Yes. Well you certainly didn't need a generator to do your job for that purpose did you?---No.

30

Well what do you say you did by way of work that required this generator to be in the horse trailer?---Answer repeated, I was required to be in contact 24/7. I had up until the purchase of this trailer, I'd virtually been working seven days a week to the point where I had gotten ill and I knew that I couldn't keep functioning at that pace. I decided that I would take weekends off to the best of my ability. However, I knew that work would follow me. It always had, even on leave. Now I spoke to the Chairperson and she advised me that she needed me in contact and authorised when to purchase the generator.

40

THE COMMISSIONER: How far were you going to get on a weekend that required you to use a generator where there was no other source of power Mr Johnson?---Normally where I go there is no sources of power, Commissioner.

And when you say you had to be contactable 24/7 I assume that's by phone?---You've heard that - - -

Is that right? I assume that's by phone?---No, I did much work by email and computer.

So, so phone or computer?---Yes.

And both of those devices could be powered by a simple 12 volt socket that you plug into a cigarette lighter in a vehicle?---My laptop only had 240 volt power.

10 Mr Johnson, you were towing the trailer with a vehicle?---Yes.

The vehicle had cigarette lighter sockets in it?---Yes.

You can go to a mobile phone store and buy a device that has a male plug on one end that slots into the cigarette lighter and it has a mobile phone attachment on the other end that powers your mobile phone or your computer as the case may be?---I've never done that with a laptop. I never ever thought it'd be possible.

20 What about, what about with your mobile phone?---I've done it with my phone, yes.

You've charged your phone in your car?---Yes.

Well then you had contact with - - -?---I also bring a printer as well, Commissioner.

We were talking about contact Mr Johnson, can we - - -?---Commissioner, I'm in a (not transcribable)

30

Mr Johnson, can we stick to the point. We were talking about being contactable 24/7. You have just explained to me that you were within mobile contact on weekends. Now is that right or is that wrong?---Most of the time, Commissioner, yes.

All right. Thank you.

MR HENRY: You never got permission from Ms Cronan did you to spend \$9800 of GLALC's money on a generator to be put into your horse trailer?

40

---That's absolutely incorrect.

You say you got that from her?---Yes.

And you don't seriously suggest that you needed a \$9,800 generator for the purposes of performing your work as CEO?---That was the price, Mr Henry.

You were aware were you at the time at which you acquired the horse trailer which included the generator, that GLALC already had a generator, you

were aware of that weren't you?---I don't know what you're talking about, Mr Henry.

Do you agree or disagree?---I don't know.

Did you say you were or were not aware - - -?---I was not aware.

All right. I'll show you an email. You'll see this is an email exchange in March, 2010, Mr Johnson?---Yeah.

10

And you'll see at the base of the page on the first page email from Tina Taylor to Karen Maltby. "Has Jack supplied the number"? And then the next email up from Tina to yourself is "Please supply the number needed, see attached". And then there's an email between from Tina to you, "Please supply the number needed for the generator and also your Acer Notebook. Do you see that?---(No Audible Reply)

Do you see all of that, Mr Johnson?---I'm sorry, I've got the - - -

20 Look at the emails?---Yes. Sorry, take me through it again?

No, just read them and tell me when you've done it?---Okay, thank you.

Did you read those emails?---Yes.

If you look at the document attached it's an invoice, isn't it?---Yes.

For a Honda EU30iu generator, do you see that?---Yes.

30 And then it says "Jack, Please supply serial numbers of generator for ASIC register, also please sign below as received". Do you see that?---Yes.

And then at the base of the page it's "Goods received by", your signature isn't it?---Yes.

Now this predates, doesn't it, your acquisition of the horse trailer, Mr Johnson?---Yes.

Do you agree?---Yeah.

40

You were fully aware, weren't you, when you ordered the horse trailer with the optional extra generator that GLALC already had a generator?---I don't know what that's for, Mr - - -

I'll show you a picture.

THE COMMISSIONER: Once again Mr Johnson, whether or not you knew it what it was for, the question was, you were aware that there was

already a generator available to you at the time at which you ordered the horse trailer?---(No Audible Reply)

MR HENRY: Now in this print out I'll ask you to go through to page number 6, please. And you'll see up on the screen if that's easier, on page number 6 there's three super quiet generators, do you see that?---Yes.

And the one in the middle of the page is the EU30iu Handy, do you see that?---Yeah.

10

That's the generator you received in March, 2010 on behalf of GLALC, isn't that right?---I'm not sure, Mr Henry.

And you knew that when you spent \$9,800 to put another generator in your horse trailer, correct?---No.

I tender, I should do it sequentially, the photograph of the horse trailer first.

THE COMMISSIONER: That's Exhibit G22.

20

**#EXHIBIT G22 - 2016 LAKOTA C8413 CHARGER 4 HORSE SLANT LOAD GOOSENECK HORSE TRAILER WITH LIVING QUARTERS**

MR HENRY: The email sequence dated 24 March, 2010 from Ms Taylor to Mr Johnson with the invoice for the generator attached.

30 THE COMMISSIONER: That's Exhibit G23.

**#EXHIBIT 23 - EMAIL FROM TINA TAYLOR TO MARK JOHNSON DATED 24 MARCH 2010**

MR HENRY: And the picture of the EU30iu Handy Super Quiet Generator.

40 THE COMMISSIONER: Exhibit G24.

**#EXHIBIT G24 - PAGE 6 OF HONDA GENERATOR RANGE 2016 CATALOGUE**

MR HENRY: Commissioner, I'm sorry, I haven't finished. It's obviously now 4 o'clock. I have a difficulty, I can't continue today. I had hoped to finish with Mr Johnson but it's taking longer than I anticipated.

<WITNESS STOOD DOWN

[3.58PM]

10 THE COMMISSIONER: All right. I think there was some further dates canvassed, weren't there?

MR HENRY: The 16<sup>th</sup> of June.

THE COMMISSIONER: Is that a Thursday?

MR HENRY: Yes, it is.

THE COMMISSIONER: We should be able to conclude on 16 June.

20 MR HENRY: I'm told by Mr Collins that the 17<sup>th</sup> is available as well. Certainly from my part I would be finished by morning tea on the 16<sup>th</sup>?

THE COMMISSIONER: All right. Well anyway, I think we'll just have to proceed on the basis that people will have to make themselves available on both days just in the event that we go over into the Friday. So I'll adjourn the proceedings to 10.00am on 16 June.

MR DOCKER: Excuse me, Commissioner.

30 THE COMMISSIONER: Yes, Mr Docker.

MR DOCKER: Before you do that. I'm just mindful, I'm not quite sure of the rules here, but I'm just mindful that Mr Johnson is in some type of examination. I have a – he is a defending in some Supreme Court proceedings which are in the court on Monday. I'm going to need to get instructions from him between now and - - -

40 THE COMMISSIONER: Well there's absolutely no prohibition on him speaking to you, Mr Docker.

MR DOCKER: I wasn't aware. Thank you, Commissioner.

THE COMMISSIONER: No, there's no prohibition in relation to that. And the transcript of the public inquiries are generally available anyway so it wouldn't really matter.

MR DOCKER: I think I was driving at something slightly different - - -

THE COMMISSIONER: No, no, you are entitled to seek what instructions you wish to seek for the purposes of other proceedings.

MR DOCKER: Thank you, Commissioner.

THE COMMISSIONER: Yes, thank you.

**AT 4.02PM THE MATTER WAS ADJOURNED ACCORDINGLY**

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**[4.02PM]**