

GREERPUB00061
10/05/2016

GREER
pp 00061-00104

PUBLIC
HEARING

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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE MEGAN LATHAM

PUBLIC HEARING

OPERATION GREER

Reference: Operation E14/0362

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 10 MAY 2016

AT 10.30AM

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

THE COMMISSIONER: Yes. My apologies for that delay. We're ready to resume the public inquiry. Mr Docker has leave to appear on behalf of Mr Johnson subject to the conditions that are set out in MFI 1 and, Mr Leggat, I grant leave for you to appear on behalf of the Registrar for the present purposes.

MR LEGGAT: Thank you, Commissioner.

10 **#MFI 1 – UNDERTAKING BY SEAN DOCKER AND MARK JOHNSON DATED 10 MAY 2016**

THE COMMISSIONER: Yes, Mr Henry. Oh, I'm sorry, we have another - -

MR TAYLOR: Commissioner, before you start.

THE COMMISSIONER: Yes.

20

MR TAYLOR: Taylor, solicitor.

THE COMMISSIONER: Yes, Mr Taylor.

MR TAYLOR: I'm seeking your authorisation to appear on behalf of the witness Carol Brown.

THE COMMISSIONER: Yes, Mr Taylor. You don't – you haven't previously sought leave to appear have you?

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MR TAYLOR: No.

THE COMMISSIONER: No.

MR TAYLOR: No, I wasn't here yesterday, Commissioner.

THE COMMISSIONER: Yes. Sorry. Yes, Mr Taylor, that leave is granted.

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MR TAYLOR: I should place on the record, Commissioner, that my business partner, Mrs Hughes, has already been granted authorisation

THE COMMISSIONER: Oh, yes, yes.

MR TAYLOR: - - - to appear on behalf of another Board member, Mr Edwards.

THE COMMISSIONER: Yes, thank you.

MR TAYLOR: At this stage I apprehend no conflict of interest but if that changes I'll certainly bring it to the Commission's attention.

THE COMMISSIONER: Yes, thank you. I think we had that brought to your attention and I can't for the present purposes see any conflict. Thank you, Mr Taylor.

MR TAYLOR: Thank you, Commissioner.

10

THE COMMISSIONER: Yes, sorry, Mr Henry.

MR HENRY: Thank you, Commissioner. Before I call the first witness I'll tender an exhibit if I may. It's comprised of volumes 1 through to 41. Yeah, volumes 1-41 I tender of the exhibit for the public hearing.

THE COMMISSIONER: Yes, that collection of documents will be Exhibit G1.

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#EXHIBIT G1 - PUBLIC INQUIRY BRIEF (FOLDERS 1-41)

MR HENRY: Thank you. And having done that, I propose to call Mr Shane Luke.

THE COMMISSIONER: Is Mr Luke here? Thank you. If you could come forward, Mr Luke. Just take a seat. Mr Luke, you are unrepresented?

30

MR LUKE: That's correct.

THE COMMISSIONER: Right. Can I just explain to you something about the procedure that we follow in the Commission. You are obliged to answer the questions that are asked of you truthfully and you must answer them truthfully even if that should implicate you in some form of wrongdoing and because you don't have the option of refusing to answer questions on that basis you could object to each and every question that's asked but for convenience I can make an order under section 38 of the Act and the effect of that order is that your answers cannot then be used against you in any

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MR LUKE: Yes.

THE COMMISSIONER: However, the order does not protect you if it should be found that you have given deliberately false or misleading evidence to the Commission because if that were the case you could nonetheless be prosecuted for an offence under the ICAC Act and your answers could be used in evidence against you. Do you understand that?

MR LUKE: Yes.

THE COMMISSIONER: Do you want the protection of the order?

MR LUKE: Yes.

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

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

30 THE COMMISSIONER: Do you wish to be sworn or affirmed, Mr Luke?

MR LUKE: Sworn please, Commissioner.

THE COMMISSIONER: Could we have the witness sworn please.

MR HENRY: Mr Luke, when did you become a director of Gandangara Local Aboriginal Land Council?---I believe it was October of 2009.

Right. And I'll refer to Gandangara Local Aboriginal Land Council as GLALC. Do you understand that?---I understand.

10 All right. If there's any confusion just ask?---Thank you.

So sorry, you said in 2009, and when did you cease to become a director – when did you cease as a director of GLALC?---I can't remember the exact month but it as in 2011 so it may have – end of term September of 2011.

All right. Now, prior to becoming a director at GLALC, had you been a director of an Aboriginal Land Council?---No.

20 Right. Prior to that time had you been a director of a corporation?---No.

All right. When you – upon becoming a director of GLALC, were you provided with any training?---Not initially, there was, from what I remember there was a request for some training in governance but at the time it was presented, I think it was January 2010, I was unable to attend and there was one that was issued at a later date, I can't remember the year, which I did participate in.

So you went to a training session?---A training session.

30 And I asked you upon becoming a director did you have any training, were you, had you had any training prior to becoming a director?---No.

Right. So you went to this one training session – and sorry, when did you say it was approximately?---It was either later of 2010, I'm not 100 per cent sure of the date.

Sure?---I'd have to go back through my records.

40 All right. And where was it, where did you go?---It was in the Novotel I believe was the hotel where it was hosted at, in Wollongong.

In Wollongong?---Yes.

And for how long did the session last?---Ah, weekend, so we came in on a, some of us came in on a Friday night, the training went throughout Saturday day and we departed on the Sunday.

And who conducted the session, do you recall?---I don't recall, no.

Was it run by the New South Wales Aboriginal Land Council?---I cannot recall.

Can you recall what was covered, what topics were covered?---Not, not in detail. It was, I guess it was more of an education sense, to give any Board members an understanding or an idea of the concept moving forward as Board members within the Land Council.

10 Well, do you recall for example whether there was any instruction about directors' duties?---Not that I can recall, no.

What about conflicts of interest?---Yes.

There was. Are you able to recall in substance what you were told about that?---No.

Was there any instruction given about understanding financial statements?
---Sorry, can you repeat the question?

20

Yes. Was there any instruction given to you about understanding financial statements?---Ah, yes.

I don't suppose you recall the substance of - - -?---We - - -

- - - that?---It was presented to us to get a better understanding of the financial statements. One of the elements I do recall was looking at a baseline percentages as opposed to dollar figures, because dollar figures can be a little bit overwhelming, but still having those dollar figures there, by seeing things as a percentage gave us a bit of a grasp as to where the expenditure was over all throughout the businesses.

30

So this is a genuine question?---Yes.

When you say percentages, are you talking about for example what percentage of income is constituted by expenses or what are you referring to?---Well, incomings and outgoings.

Incomings and outgoings. I see. And what about instruction about reading accounts?---No, not that I - - -

40

And sorry, to be clear, I asked a question before about financial statements, I'm now asking about internally-generated management accounts. Do you understand the distinction?---Ah, no, I don't, no, sorry.

All right. Do you recall ever whilst you were a director of GLALC being shown internally-generated management accounts?---Not that I can recall to identify to answer that question, sorry.

Well, for example a ledger printout of expenses. Did you ever see anything of that nature?---I think we did have a ledger in one of our meetings leading up to the end of financial year period.

Right. All right. And at the training session do you recall being, receiving any instruction about corporate governance?---Not that I remember.

10 All right. Prior to becoming a director of GLALC, had you had any experience in reading financial statements?---No.

What was, I know this is a very broad question, but can you just identify for the commission, what was your employment experience prior to becoming a director at GLALC?---I worked in a materials handling organisation as a procurement officer.

As a what, sorry?---Procurement or purchasing.

20 I see.---Yeah. And had facilitated that role for close to seven years.

Okay. And was that, though, prior to you becoming a director of GLALC as well?---Yes.

All right. And in the course of that role, just explain what you do or did? ---Purchasing of goods. So, you know, requisitions of orders, filling the orders, expenditure. Budgets are laid down as to how much you can spend over a period of time.

30 Were you responsible for preparing a budget yourself or not?---No. The budget was laid down to me by my management line.

All right. And it was your obligation to comply with it. Is that - - - ? ---That's correct.

I see. All right. Now, either before or during your period as a director of GLALC, were you ever provided any training or instruction about the Aboriginal Land Rights Act?---Prior, no.

40 What about during?---During, it was at that governance training where we're going through elements throughout the Aboriginal Land Rights Act.

All right. Do you recall the substance of what you were told about?---No, I don't.

Was that the only occasion upon which you received any instruction about the Aboriginal Land Rights Act?---Yes.

All right. When you were a director of GLALC, did you understand that under that Act you were obliged to appoint a chief executive officer?---I believe it was brought to our attention.

What do you understand the chief executive officer's role to be?---I believe that he functioned in his capacity as directed by the board, through the membership of our Land Council.

10 Right. Did you understand that the chief executive officer was responsible for the day-to-day conduct of the affairs of GLALC?---Yes.

What responsibilities, if any, did you understand that the board of directors could delegate to the chief executive officer?---We could delegate any task that we found was detrimental to our Land Council.

20 Was what, sorry?---Detrimental to our Land Council. Or if there was an issue or an area of concern, the membership would address those issues and we, the board, would then direct the CEO on certain advices, whether it be land claims or other business dealings.

All right. I'll show you a copy of two sections of the Aboriginal Land Rights Act, if I may. One for Mr Luke and one for the Commissioner. What I've provided you is a printout of section 78B of the Aboriginal Land Rights Act in the form that it took as at 1 May 2010. Do you see that? ---Yes.

30 And you can take it from me that that section of the Aboriginal Land Rights Act remained in that form for the period during which you were a director of GLALC.---Yes.

Do you understand that?---Yes.

All right. Have you seen this section of the Act before?---Not prior to my appointment.

Right. So when you were appointed as a director, were you given a copy of the Act?---I think it was an element that was placed in our agreement when we signed up as board members, as part of our confidentiality agreement.

40 What, you were provide a copy of the Aboriginal Land Rights Act?---No, what I'm, what I'm saying is, I think that this element of the Act may have been in our confidentiality agreement.

Oh, I see. So - - -?---Just acknowledging what, what, what, certain elements that we were bound by.

All right. Well, perhaps I'll take you to the one that's of concern for present purposes. If you have a look at section 78B(1) it says, "The following

persons must not be or continue to be employed as the Chief Executive Officer of a Local Aboriginal Land Council.” Do you see that on the page, sir?---Yes.

And then if I could ask you please to turn to, down the page to subparagraph E, see subparagraph (e) says, “A person who has an interest in or is an employee of or concerned in the management of a corporation that receives a benefit from the Council.” Do you see that?---Yes.

10 Were you aware during your period as a director of GLALC that a person who satisfied the description in subparagraph (e) could not be a Chief Executive Officer of a Local Aboriginal Land Council?---Sorry, can you repeat the question?

Sure. During your period as a director at GLALC - - -?---Yes.

- - - were you aware that a person who falls within the description of paragraph (e) was not permitted to be employed as the Chief Executive Officer of a Local Aboriginal Land Council?---Yes.

20

You were aware?---Yes.

All right. If you look at subparagraph (e), it refers to a person firstly who has an interest in a corporation. Do you see that?---Are we talking about the same thing?

I’m sorry?---Sorry, are you referring to the same paragraph, 78B(1)(e)?
---Yes.

30 THE COMMISSIONER: (e), yes.

THE WITNESS: That’s right.

MR HENRY: And what I’m going to do is break up some components of it for you?---Okay.

If you don’t understand anything, please say. Subparagraph (e) refers to a person who has an interest in a corporation. That’s one of the descriptions. Do you understand that?---Yes.

40

Now, were you aware during your time as a director of GLALC that, of a company by the name of Waawidji, spelt W-a-a-w-i-d-j-i, Pty Limited?
---Yes.

And were you aware whilst you were a director of GLALC that Mr Mark Johnson was a shareholder in Waawidji?---I don’t remember.

I’m sorry?---I don’t remember.

Right?---I don't recall.

Were you aware during your period as a director of GLALC that Mr Johnson was a director of Waawidji?---There um, there is – I recall there was discussion about Waawidji - - -

Yes?--- - - - but I can't recall what communication or – had transpired during those conversations at one of our Board meetings of that time.

10

Right. So you can recall a discussion at a Board meeting about Waawidji?
---Yes.

Do you recall whether that discussion occurred shortly after you became a director in 2009 or at some later point?---I believe it was a later point.

Do you recall approximately when?---In 2010 but I don't remember the date
- - -

20 All right?--- - - - in regards to the month.

Do you recall – I'll withdraw that. Just returning then to subparagraph (e) if you would. You'll see it refers to, "a person who is an employee of a corporation." Do you see those words there?---Yes.

Was it your understanding whilst you were a director of GLALC that Mr Johnson was an employee of Waawidji?---Yes.

30 Was it your understanding whilst you were a director of GLALC that Mr Johnson was concerned in the management of Waawidji?---My interpretation of the event was that Waawidji was I guess a company set up by Mark, like, Jackson that we employ him in that company and he acted as – sorry, I don't know how to kind of explain it. That the company Waawidji which is represented by Mark acted wholly for us at the Land Council. I'm sorry, I don't know how to - - -

40 No, no (not transcribable) understanding of what you're saying. When you say it acted for you what do you mean?---The only way I know how to best explain it is that sometimes like, you know, we use truck drivers and sometimes we use – they're not necessarily – they don't necessarily work for a company so they're contract drivers. They sort of have their own business and they work for – that was the only best way I can – as an example I could identify how Jack or the company Waawidji had its dealings with Gandangara whereas we employed Jack under the dealings of Waawidji. It was like one – my interpretation was that it appeared as one entity.

THE COMMISSIONER: Sorry, that Mr Johnson and Waawidji was one entity. Is that what you mean?---That's my interpretation, yes, Commissioner.

MR HENRY: Is this a fair way of putting it as you understood it that Waawidji was Mr Johnson's company?---Yes.

10 If – whilst you've got the legislation, if I could ask you to just turn to the last page which reproduces section 152 of the Aboriginal Land Rights Act as at 1 May, 2010. Do you have that page, sir?---Yes.

And you'll see at the top of the page it says, "Working Date 1 May, 2010". You can take it from me that that legislation remained in that form whilst you were a director of GLALC. Do you understand that?---Yes.

20 All right. You'll see in subsection 1 it says, "Each Local Aboriginal Land Council is to establish in an authorised deposit-taking institution an account which is called the Local Aboriginal Land Council's Account." Do you see that?---Yes.

And then if I could ask you please to turn down the page to subsection 3. It says, "The following is to be paid from the Local Aboriginal Land Council's Account." Do you see those words?---Yes.

And then it's got A, B and C beneath those words. Do you see A, B and C? ---Yes.

30 And at A says, "Amounts required for the acquisition of land by the Council where that acquisition has been approved in accordance with this Act." Do you see those words?---Yes.

And then subparagraph B says, "Amounts required to meet expenditure incurred by the Council in the execution or administration of this Act." Do you see those words?---Yes.

And then subparagraph C says, "Any other payments authorised by or under this or any other Act." Do you see those words?---Yes.

40 Now, were you aware whilst you were a director of GLALC of section 152 of the Aboriginal Land Rights Act?---No.

Were you aware that – you'll see that subparagraph – subsection 3 that I've just taken you to identifies three ways in which money may be applied from the Local Aboriginal Land Council's Account. Do you agree?---Yes.

Were you aware – whether or not you were aware of section 152 by name, whilst you're a director of GLALC were you aware that there were three

ways identified in the Aboriginal Land Rights Act in which money from GLALC's account could be applied?---No.

All right. Did you ever receive any instruction about that?---No, not that I can remember.

All right. Commissioner, I'm not sure whether it's necessary to tender these.

10 THE COMMISSIONER: I don't think so.

MR HENRY: It's something that will be used repeatedly I anticipate but I ---

THE COMMISSIONER: Well, it doesn't need to be formally tendered.

MR HENRY: All right.

20 THE COMMISSIONER: It's a matter of public record.

MR HENRY: Yes. All right. Well, perhaps if you just hand that back, thank you, Mr Luke. And I'll next show you a document which is volume 8 of Exhibit G1. If you could turn please, Mr Luke, to page 245. 245. If it assists, the pagination is in the bottom right-hand corner?---Yeah.

You should have in front of you some minutes of the GLALC board meeting. It appears as though there's a "3" written in handwriting, and then "May, 2010". Is that what you're looking at?---Yes.

30 All right. I'm going to ask you some – I will ask you questions about this particular board meeting, but first I want to ask you some questions about the procedure adopted at board meetings generally.---Yeah.

Now, prior to a board meeting, were you, when you were a director, ordinarily provided with board papers?---No

All right. Were you provided with papers at the meeting?---Yes.

40 All right. Now, I realise this is a general question and it may differ from meeting to meeting, but were there generally certain papers, certain reports, for example, that you were routinely provided with at board meetings? ---Yes.

And what were they?---They could be financial statements. Our minutes were generally laid out in the format for the board to go over prior to approval.

THE COMMISSIONER: You mean the minutes from previous meetings?

---Minutes from previous meetings. I can't really recall any other elements.

MR HENRY: Were you provided with draft minutes for the meeting that you were at, and that was used as an agenda for the meeting? Or not?---In some cases, yes.

All right. If you have a look, by way of example, at page 245, about three-quarters down the page there's a heading that says "Chair Report". Do you see that?---Yes.

10

It's in a box. Were you ordinarily provided with a report from the chairperson at the meeting or not necessarily?---From what I remember, yes, we did. We were.

All right. Then if you look at the next, above motion 4, it says "Finance" in a box.---Yes.

And it says, "The board accepts the report as presented by the finance manager." Do you see that?---Yes.

20

Were you ordinarily provided at a board meeting with a report from the finance manager or not necessarily?---Yes, we were.

Do you recall, generally speaking, what was in the finance report?---No. It was more – I don't recall anything specific. It was more property assets, salaries, vehicle expenditures, costs. Those elements, that is what I remember.

30

All right. And when, just to try and understand exactly how the board meetings operated, when you were presented with the finance report, was each director provided with a copy of it? Or was there one? Or how did it work?---There was usually a PowerPoint presentation.

Right.---And a member from the finance were present at those meetings. So if there was any questions required from the board, they could direct them straight to the finance.

And to whom are you referring there?---I don't remember their name.

40

Right. Does it assist if I ask you if one of those persons was a Karen Maltby?---No, it doesn't ring a bell.

What about Shalesh Gundar?---I don't think he was there. The name rings a bell, but I don't think he was there through the whole period of my term.

So someone would, what, make a PowerPoint presentation and talk to the directors about what was on the screen? Is that how it worked?---Generally, yes.

Were you given an opportunity to read the report?---Not that I can recall, no.

All right.

10 THE COMMISSIONER: Did you have a hard copy of the report in front of you while the PowerPoint presentation was being made?---We had a book that was not dissimilar to the one that I was handed, Commissioner. I don't recall if, if we had, there may have been a copy that was in there that reflected what was on the presentation but I don't remember 100 per cent so
- - -

But it wasn't as though each member of the Board was given a hard copy of all of these reports for the purposes of the meeting?---No.

Right.

20 MR HENRY: If you have a look over the page at page 246, Mr Luke, you'll see at motion 5 there's a GETS Report. Do you see that?---Yes.

And then at motion 6 there's a report presented by the Health Services Manager. Do you see that?---Yes.

Motion 7 is a Land Claims Report. Do you see that?---Yes.

Motion 8 is a Housing Report. Do you see that?---Yes.

30 Motion 9 there's a GTS Report. Do you see that?---Yes.

Then over the page, page 247, there's another report at motion 10 as presented by the CEO. Do you see that?---Yes.

There's a further report at motion 11 by the CEO. Do you see that?
---Yes.

Now, were each of these – and I appreciate this is some time ago, but there's a lot of reports referred to in this set of minutes. Do you agree?---Yes.

40 Were each of these reports written reports?---Ah, generally they were a PowerPoint presentation that was presented to the Board.

And was there an accompanying written report or not necessarily?
---Oh, I can't remember but I don't um, um, I can't recall what um, what we physically had in our folders at the time.

Right. So I gather you were given a folder, were you?---It stayed at the GLALC, in the office.

I see. So there were folders at the office. Is that right?---That's correct.

You turn up for a Board meeting?---Yes.

Is there a folder for each director?---Yes.

10 And what does the folder have in it?---Ah, current dealings that we're dealing with, so anything that was generally tabled or our minutes from the previous meeting we brought forward and then it just kind of developed from there.

Just pardon me for one tick. Now, if you have regard to the minutes, going back to page 245, you'll see that the way the minutes proceed is they refer to motions and throughout the course of the meeting there's 12 motions. Do you see that?---Yes.

20 And then in respect of each motion, say for example the first one, it says that you moved the motion. Do you see that?---Yes.

And that a Ms Vicki Wade seconded the motion. Do you see that?---Yes.

And then beneath that it says the motion was carried. Do you see that?---Yes.

30 Is this, is that in fact what occurred at a meeting, that you in this particular instance in motion 1 proposed what a resolution, someone else would second it and then, and then what, everyone voted? Is that how it worked or not as a matter of fact?---Yes.

I see. So how did you come to move the motion, was there an agenda that identified the motion, how did it work?---Ah, there was an agenda, we would normally, the first item would be to table the minutes from the previous Board meeting - - -

40 Right?--- - - - and we would just go through and just see if there was any errors or any changes that had to be applied from that meeting and once that was confirmed, then we moved the motion to accept those minutes and have them seconded.

In relation to the approval of minutes of a prior Board meeting, I gather from what you're saying you weren't provided with the draft minutes to approve prior to the Board meeting. Is that right?---No, that's right, yes.

You were provided them in a folder though?---Yes.

And did you yourself read the minutes from the previous meeting for the purposes of determining whether you agreed that they were accurate?

---Yes.

Do you ever recall suggesting an amendment to draft minutes from the previous meeting?---No.

Do you recall anyone ever suggesting amendments to the draft minutes of a previous meeting?---No.

Do you know who created the minutes?---No.

10

All right.

THE COMMISSIONER: At these Board meetings was there someone to whom was delegated the task of taking minutes, recording what was occurring?---The chairperson.

The chairperson of the Board?---Of the Board.

Was the person who took the minutes?---That's correct.

20

Did that happen routinely at every meeting?---Routinely, yes.

And was there any electronic aid, I mean, were the meetings recorded or was it just someone taking notes?---Someone taking notes.

All right.

MR HENRY: And am I correct in understanding that you say that the person who took the notes for the purposes of creating the minutes was the chairperson?---That's correct.

30

So the chairperson sat there and wrote as events unfolded. Is that the way it worked?---Well, as we already determined earlier that the – there was generally a draft copy of the minutes for that night.

I see?---So we'd just progress from there.

I see. I rather understood from what you said before that in the folder that you collected you had the draft minutes from the – sorry, the draft minutes from the previous meeting for approval. That's correct?---No. We had the minutes from the last meeting - - -

40

Yes.--- - - - that we would review to confirm that, that they were accurate before we made the motion to carry.

Yes. But I rather understood a moment ago you said there was another set of minutes being the minutes which would be draft minutes for the meeting that you're actually present at. Is that right or wrong?---No.

Okay. So my understanding about that was wrong?---Yes.

Okay. Now, if you have a look at these minutes at page 245 just by way of example, you'll see at the top of the page it says that the meeting opened at 6.35pm. Do you see that?---Yes.

And then if you turn please, sir, to page 247 it says the meeting closed at 9.15pm. Can you see that?---Yes.

10

So the meeting has gone for about two hours and 40 minutes. Do you agree?---Yes.

The minutes themselves don't provide a lot of information about any discussion at the meeting. Do you agree?---Yes.

They essentially record a motion, a mover, a seconder and whether or not it was carried. Do you agree?---Yes.

20

At these meetings was there discussion about motions and the – and whether or not people should vote in favour of them?---Depending on what the motion may have been there. I do recall that we had some discussions but as to what those discussions were I don't, don't recall.

All right. Now, you're aware aren't you that Mr Johnson was not a director of GLALC. Is that right?---Yes.

As far as you can recall was he ordinarily at the Board meetings of GLALC?---Yes.

30

Can you ever recall a Board meeting at which he wasn't present?---No.

All right. So the Board met and passed resolutions at times. I want to ask you about another way in which the Board – actually, sir, no, I'll withdraw that. I'll ask you about this particular meeting more specifically now. That is the meeting of 2 or 3 May, 2010. If I could ask you please to have a look at motion 2. Do you see motion 2 on page 245?---Yes.

40

You'll see there that it's headed CEO's Contract. Do you see that, sir? ---Yes.

It says, "The Board resolved to accept the new CEO contracts as tabled effective as at 1 May, 2010 and authorises the Chair to sign the contracts." Do you see that motion?---Yes.

Now, it refers to contracts as in more than one. Do you agree?---Yes.

And it says that they were tabled. Do you see that?---Yes.

I'll ask you to be shown two documents for the purposes of asking you about this motion. If Mr Luke could please be shown volume 11, page 96 of Exhibit 21. So you should have in front of you, sir, a document that says at the top of the page, "This agreement is made on the date set out in part 1 of schedule 1, year 2, between Mark Julius Johnson and GLALC." Is that what you have?---Yes.

10 Now, that's the first page of the document. It's an employment agreement between Mr Johnson and GLALC. Do you agree?---Yes.

You've got a hard copy of it there, do you?---Yes, I do.

If you could just, please, have a look through the document. It goes through to page 110, in the bottom right-hand corner. I'd ask you to have a look at it, because I want to ask you whether you can recall whether this document was tabled at the May 2010 board meeting. Do you understand?---Yes.

20 So if you can just have a look at the document to see if it refreshes your memory, in order to assist you in answering that question.---Unfortunately I don't recall seeing the document tabled, so I can't confirm that it was or it wasn't.

All right. So your best recollection is it may or may not have been.---May have been. That's correct.

30 All right. And if you go, please, forward to page 112, you'll see another agreement. This time it's an agreement as between Waawidji Proprietary Limited, which I'll refer to as Waawidji for convenience.---Yes.

Do you appreciate that?---Yes.

It's an agreement between Waawidji and Gandangara Management Services Limited. Is that what you have?---Yes.

And I'll refer for convenience to Gandangara Management Services Limited as GMS. Do you understand that?---Yes.

40 Now, this agreement goes from page 112 through to 128. Again, could you please have a look through it, with a view to answering the question whether that agreement was tabled at the May 2010 board meeting?---Again, I can neither acknowledge whether it was or wasn't tabled at the meeting.

All right. Can you recall seeing either of those documents before, as in before today?---No.

All right. If you go back – if you just leave that folder where it is for the moment, please, and go back to the other one where the minutes are. Do you have that?---Yeah.

Open at page 245?---Yes.

10 All right. So for the transcript it's volume 8 at page 245. Returning then to motion 2, it says, "The Board resolves to accept the new CEO contracts as tabled." Now, just pausing there, I understand I've taken you to two particular documents and asked you whether or not you can recall either of those documents being tabled, and your position is you can't recall one way or the other?---That's correct.

Is that fair?---Yes.

Accepting that, do you actually recall any documents being tabled for the purposes of motion 2 at this meeting?---No.

20 Do you recall discussion at the Board meeting about new CEO contracts at the meeting?---No. The only thing I recall is that it was taking place, so in regards to specifics, no, I don't remember.

If you go back to the other volume, which is volume 11 where the agreements were, and turn to page 131, please, Mr Luke?---Yeah.

You should have there a document in landscape that says at the top of it, "CEO's current base salary package, \$148, 951." Is that what you have? ---Yes.

30 Now, starting at page 131 and going through to page 134 are slides which I – or reproduction of slides which I suggest were a presentation?---That, that's right.

Right?---That, that I, this I do recall, sir.

Right. Now, in relation to this, that is pages 131 to 134, do you recall a presentation being made at the May 2010 Board meeting of these slides? ---Yes.

40 Do you recall who made the presentation?---No. Jack was present but I don't recall who physically gave the presentation.

And your reference to Jack is to Mr Johnson?---Sorry, Mr Johnson.

You can refer to him as Jack?---Sorry.

I just don't want there to be confusion on the transcript. So when you refer to Jack, it's Mr Johnson?---Sorry, thank you.

Is that correct?---Yes.

All right. So Mr Johnson's present at the time of this presentation. Is that right?---Yes.

And I understand you can't otherwise recall who made the presentation. Is that right?---That's correct.

10 Do you recall what was said during the course of the presentation?---No.

Do you recall if Mr Johnson said anything during the course of the presentation?---No.

All right. The first slide says, "The CEO's current base salary package was \$148,951." Do you recall whether that accorded with your understanding of what Mr Johnson's base salary package was at that time?---I was unaware of what his salary was coming, when I came into the Board.

20 I see. Were you aware at the time of this meeting that Mr Johnson had a contract in existence for his employment as CEO of GLALC?---No.

I see?---Oh, sorry um, sorry, I thought you were referring to the element of Waawidji. Yes, I knew he had, he had a contract with Gandangara as the CEO.

Yes. Were you ever shown a copy of it?---No, not that I recall.

30 All right. Did you understand what his remuneration was under that contract?---No.

I see. If you turn over the page please, sir, to page 132. It says, "CEO's base salary package as at 1 July, 2010 \$160,122." Do you see that?---Yes.

The meeting is being held in May, 2010. Are you able to shed light on why his base salary package as at 1 July, 2010 would be different from the previous slide?---The only thing I can recall is at the time the Land Council thought we were thriving and we were quite happy to agree on the new rate that was to take place in July.

40

I see. So the 1 July, 2010 as you understood it was the date by which an increase in pay might occur. Is that right?---That was my interpretation, yes.

Right. If you go then to the next page. It says, "CEO's proposed salary effective 1 May, 2010 \$180,000." Do you see that?---Yes.

Now, can you recall any explanation for why the proposed salary effective at 1 May, 2010 on page 133 is greater than the base salary package as at 1 July, 2010 on page 132?---No, unfortunately I can't.

All right. Do you recall anyone speaking in favour or against of a salary of \$180,000 at the meeting?---No.

10 If you go to the next page please, page 134. It says, "CEO's proposed contract effective 1 May, 2010". And then it says, "All other terms and conditions remain unchanged." Do you see that?---Yes.

Do you recall anyone talking to that point during the meeting?---No, I don't.

Was it your understanding nonetheless that the reference to terms and conditions remaining unchanged was a reference to the terms and conditions of Mr Johnson's then current employment contract with GLALC?---Yes.

20 You'll see at the top of the page that it's – in bold it says, "CEO's proposed contract effective 1 May, 2010." Do you see that?---Yes.

That's a date that predates the meeting on 2 or 3 May, 2010. Do you understand that?---Yes.

Is there any reason that you're aware of as to why the proposed contract would be backdated?---No.

All right. You can't remember anyone talking about that at the meeting?---No, not at all.

30 Have a look if you would please back at page 134, the second dot point. It says, "Term of contract five years plus five year option." Do you see that?---Yes.

Now, do you recall anyone talking about that point at the meeting?---No.

As you look at that now do you understand it to be stating that the term of the contract would be for five years for Mr Johnson to remain the CEO of GLALC. Is that the case?---That was my interpretation, yes.

40 Yes. What was your interpretation of the five year option?---He – well, my interpretation was his choice to leave earlier or move on or whatever the case might be.

So did you understand it to be a reference to an option that he may or may not exercise?---Yes.

Am I correct in understanding that your – I’ll withdraw that. Your understanding was that GLALC was to grant Mr Johnson the option to stay for five further years after his five year term at his election. Is that right?
---That was my interpretation, yes.

Are you able to explain why – I’ll withdraw that. Did you consider that to be in the interests of GLALC to grant Mr Johnson that option?---I’m not sure.

10 Well, the proposal, according to this dot point, was that he would have a five-year term as CEO, correct?---Yes.

Why would it be in GLALC’s interests to leave it to Mr Johnson to determine whether he wanted to have a further five years at the end of the first five years?---My interpretation of that would be that, at any given time, Mr Johnson could technically have left for other jobs or whatever the case. So my understanding was, you know, there was – if it permitted that we could have him on for another term of another five years, that we could. And that was my understanding and my interpretation as to what he meant
20 or what I thought he meant in the plus-five-year option.

Is that what you thought he meant? Is this a proposal he put, as you understood it?---That’s correct.

Right. What led you to that understanding?---Just based on the presentation that was put together with this document.

Right. Did whoever made the presentation say this is what Mr Johnson’s proposing?---Not that I can recall specifics.
30

All right. If I could ask you to return to page 134. In relation to that second point about the option, do you agree with this, that it would be in GLALC’s interests to reserve to itself whether or not it would, in effect, be stuck with Mr Johnson for a further five years after his five-year term, rather than to leave that question to Mr Johnson?---No.

You disagree with that?---I disagree.

40 And why is that?---Because if we felt, or the membership and the board felt, that Mr Johnson was not facilitating his role as a CEO, that I guess that would be a breach of his contract. Thus that would be grounds for termination.

I see. If you could look at the last dot point on the page. It says, “Jack remains an employee of GLALC and contract employee of GMS.” Do you see that?---Yes.

Now, do you understand that what was proposed by that dot point was a change to the arrangements pursuant to which Mr Johnson was employed? In that prior to May 2010 he had a contract with GLALC and only a contract with GLALC?---Sorry, can you restate the question?

Sure. You understood prior to this May 2010 board meeting that the contract Mr Johnson had as chief executive officer of GLALC was a contract between him and GLALC?---Yes.

- 10 What's proposed by this last dot point on page 134 is, I suggest, two contracts. Do you agree?---(not transcribable) agree with that, yes.

So one of the contracts presumably is a contract between Mr Johnson and GLALC. Correct?---Yes.

And the other contract is proposed to be a contract – well, it doesn't say whether it's with him or with Waawidji, but it's with GMS not GLALC. Do you agree?---Yes.

- 20 Can you recall anyone saying why or explaining at the meeting why this change is proposed?---No.

Do you have any understanding as to why it was proposed?---No.

I rather gather from what you've said that you understood that the pay rise to which you've referred was a pay rise for Mr Johnson in his capacity as CEO of GLALC. Is that right?---That's right.

- 30 You understand that this presentation at the meeting was concerned with what terms Mr Johnson should be retained by GLALC as CEO of GLALC. ---Yes.

But you didn't understand it to concern Mr Johnson's retainer as CEO of GLALC, plus any other entitlements he may have or Waawidji might have with other companies within the Gandangara group. Is that right?---Yes.

All right. Do you recall that in addition to this presentation there was another presentation at the meeting in relation to remuneration comparables for Mr Johnson?---I can't remember, no.

- 40 Do you recall the Chairperson, Cinderella Cronan, making a presentation to the meeting about research she had undertaken in relation to the appropriate remuneration for Mr Johnson?---No.

All right. Going back if you would then please, Mr Luke, to the minutes on page 245 of volume 8. Do you have those?---Yes.

Returning to motion 2 it says, “The Board resolved to accept the new CEO contracts as tabled effective as at 1 May, 2010 and authorises the Chair to sign the contracts.” Do you see that?---Yes.

Do you recall Vicki Wade moving that resolution?---No.

I assume then you don’t recall Mr Dickson seconding it?---No.

10 Do you recall whether you voted in favour of the resolution?---No.

Do you recall – if you have a look at the attendees, at the attendance at the top of the page, it lists the directors who were in attendance at the meeting. Are you able to recall whether any of those, and if so whom, voted in favour of the resolution?---No.

Can you recall if anyone voted against it?---No.

20 THE COMMISSIONER: Was there any kind of discussion amongst the Board members when this presentation was made about the terms of the contract or seeking clarification of the terms of the contract?---I don’t recall, no.

Can I just ask one other question. The attendance simply refers to members of the Board. Is that correct?---That’s correct.

And there’s one apology and nil under visitors?---That’s correct.

30 But from what you tell us Mr Johnson was there and the Finance Manager was there and whoever else was required to present a report. Is that right? ---Usually that is what happened.

So was that the practice with the minutes, not to actually note the attendances of other people other than members of the Board?---I’m not – I don’t think so, no.

Well – but at least this set of minutes doesn’t give any indication that other people were present other than those that are listed?---No, that’s right.

40 All right.

MR HENRY: If you have a look, sir, at motion 4. It refers to a report as presented by the Finance Manager. Do you see that?---Yes.

So presumably the Finance Manager was there. Is that correct?---That would be correct.

And if you look over the page – I won't take you through each of the motions but for example, motion 5 refers to a GETS report as presented by the GETS manager. Do you see that?---Yes.

So is the position further to the Commission's question that the attendance at the top of the page on page 245 records the directors who were present at the Board meeting. Is that right?---Yes.

10 But there were other people who were present at the Board meeting who don't – whose attendance is not recorded. Is that right?---That would be correct.

Okay. Now, at the time of the Board meeting did you understand that one of the two contracts that was the subject of motion 2 was a contract to which Waawidji rather than Mr Johnson was a party?---No.

I've noticed the time, Commissioner. I'm in your hands.

20 THE COMMISSIONER: Yes, we'll take a short morning tea adjournment and resume at 10 to 12.00. Thank you.

SHORT ADJOURNMENT

[11.34am]

THE COMMISSIONER: Yes.

30 MR HENRY: Thank you, Commissioner. Mr Luke, you should still have in front of you volume 11. And if I could ask you, please, to return to page 96.---Sorry, I'm - - -

Oh, you don't - - - ?---I can't – I've got it, I just can't hear you very well.

Sorry. Can you hear me now?---Yes, that's better.

You should still have volume 11.---Yes.

40 Could you go to page 96 again, please? I've taken you to this contract before.---Yes.

You'll see that this was, in fact, a contract that was made between Mr Johnson and GLALC for him to be CEO of GLALC. And if you go, please, sir, to page 108, in the bottom right-hand corner, you'll see that it has a commencement or effective date of 1 May, 2010. Do you see that?---Yes.

And a nominal expiry date of 31 May, 2015. Do you see that?---Yes.

With that time frame in mind, could I then ask you, please, to turn to page 112? Which again is a document to which I've taken you. Do you recall?
---Yes.

You'll see that that's a contract between Waawidji and GMS. Correct?
---Yes.

And then if you turn, please, to page 124, in the bottom right-hand corner, you'll see the same dates to which I've just referred you in the other contract.
10 That is 1 May, 2010 to 31 May, 2015. Do you see that?---Yes.

Now, these were the two contracts that were entered into subsequent to the board meeting that I've asked you some questions about. Do you understand that?---Yes.

And as you see, at page 112, one of those two contracts is between Waawidji and GMS. Do you agree?---Yes.

Are you able to provide any explanation as to why the board of GLALC, in
20 the May 2010 board meeting, approved this contract between Waawidji and GMS?---No.

Did you understand at the board meeting that you were being asked, in motion 2, to approve a contract between Waawidji and GMS?---No.

Were you a director of GMS at the time of the board meeting in May 2010?
---I can't recall where it sat on our structure.

Right. I may be able to assist you. If Mr Luke could please be shown
30 volume 1.

THE COMMISSIONER: When you say you can't remember where it sat on the structure does that mean that there was some entity of which you were a director but you can't quite recall which one it was?---That's correct.

So your understanding was that you were not a director of every single entity that - - -?---Well, my understanding is that we were all directors of the entities. I just wanted to check - - -

40 Of all of them. Right. Thank you.

MR HENRY: If you turn please, Mr Luke, to page 258 in volume 1 you should see a diagram. Do you have the diagram in front of you, sir?---Yes.

You will see that the diagrams on the left-hand side of the page, and it's - there's a heading Original Structure. Do you see that heading?---Yes.

And there's a New Structure. Do you see the New Structure heading?

---Yes.

In May, 2010 I suggest that the original structure was in place. Just have a look at it and see if you agree with me.---Yes.

Were you in May, 2010 a director of each of the companies identified in the original structure?--- Yes.

10 And one of those was Gandangara Management Services Limited. Do you agree?---Yes.

All right. Now, if you put that to one side please and return to the minutes on page 245 of volume 8. You will see that the minutes are headed the Minutes of the GLALC Board Meeting. Do you see that?---Referring to the same minutes as (not transcribable) - - -

Yes. Do you see that?---Yes.

20 Now, did you understand that the meeting was a meeting only of GLALC or do you say that it was a meeting of GLALC plus other companies?---Sorry, I don't understand the question.

Well, for example, at the time of this meeting you accept that you were a director of GMS. Correct?---Yes.

30 Did you understand at the time of the meeting you were meeting as the directors of GLALC only or did you understand that you were meeting as the directors of GLALC and GMS?---I was of the understanding that we were acting as directors of the GLALC – sorry, the services below GLALC.

Right?---Not realising that it was a separate entity on its own.

I see. So when –excuse me. Where motion 2 says the Board resolves to accept the new CEO contracts and one of those contracts was between Waawidji and GMS, did you understand – I'll withdraw that. I rather understand from what you've said previously that you didn't understand that one of the contracts was between Waawidji and GMS. Is that right?--- That's correct.

40 Did you have any understanding who the contracts were between?---No.

Do you recall if anyone identified that at the meeting?---No, I don't believe anyone identified it.

Are you able to provide any explanation as to why instead of having one contract between Mr Johnson and GLALC there were two contracts?---No.

But I understand from your evidence that your understanding was you were asked to approve contracts for Mr Johnson's conditions upon which he would be CEO of GLALC. Correct?---That's correct.

But not, for example, CEO of GMS?---No.

You agree with me?---I agree with you.

10 Right. Was it your understanding at the time of the meeting that you were being asked to agree to an employment arrangement for Mr Johnson pursuant to which he would be Chief Executive Officer of GLALC and as part of that, Waawidji would receive benefits?---No.

As far as you understood things, Waawidji was, had nothing to do with these contracts. Is that right?---Yes.

All right. All right. You can hand those volumes back, please, Mr Luke, and I'll ask you to be shown volume 9.

20 THE COMMISSIONER: Just while that's coming, Mr Luke, do I take it that you as a director of GMS or all these other entities under that structure that you were shown, that you didn't attend any separate Board meeting for any of those individual entities? So there was no separate Board meeting for GMS, for example?---Not that I'm aware of, no.

Right.

MR HENRY: And were you actually – do you recall being asked to be a director of GMS?---No.

30 Do you recall being asked to be a director of any company in the group? ---I was only advised that we would automatically by default become directors of those companies on becoming Board members.

I see. And who advised you of that?---I think it was when the, when it was touched base on at just the governance training that we had.

I'm sorry, say that again?---When we had our governance training.

40 Oh, in Wollongong?---In Wollongong, yeah.

So you'd been elected a Board member of GLALC by that point in time. Is that right?---That's correct.

And then at the training session you were told you were also a member of, a director of the other, all other companies in the group at the time. Is that right?---Yeah, that's right.

THE COMMISSIONER: So do I take it from that that this training at Wollongong was solely for the benefit of directors from GLALC, so there weren't other directors from other Land Councils at that training?---No, there was only Board members from GLALC that were there.

So it was specific to GLALC, the training that you had at Wollongong?
---That's correct.

And so it was organised by somebody at GLALC?---Yes.

10

MR HENRY: And did you ever express agreement to being a director of the companies other than GLALC?---Nothing specific, no.

All right. Did you understand you had any obligations in relation to those companies, that is the companies other than GLALC?---Sorry, can you rephrase the question?

20

Did you understand that you had any responsibilities in respect of the companies other than GLALC of which you were a director?---Yes, but not – I guess without certainty of what the volume of that responsibility was.

So you say you accept you had responsibility but you just weren't sure what it was?---That's correct.

I see. Are you able to say what your understanding of your responsibilities were in relation to the other companies?---No.

30

Did you understand that those other companies, that is the companies in the group other than GLALC itself, were companies that were not governed by the Aboriginal Land Rights Act?---Sorry, can you rephrase the question?

Well, I'll rephrase it?---Sorry.

Did you have any understanding as to whether companies other than GLALC within the group of companies were governed by the Aboriginal Land Rights Act?---My understanding was they operated under the Aboriginal Land Rights Act.

40

I see. Was your understanding in relation to those companies that the same rules applied to them as applied to GLALC?---Yes.

All right. Do you have volume 9 there, Mr Luke?---No. Oh, sorry, yes.

If you could turn, please, sir, to page 50. Now, you should have in front of you minutes of the meeting of 18 April, 2011. Is that what you have?---Yes.

Now, I'll draw your attention to the fact that at page 52 there's no suggestion that the minutes are signed. And I draw that to your attention because it

may be that these were minutes that were approved or it may not. I don't know.---Right.

I assume you can't assist in that regard.---No.

According to the minutes, you were present at this meeting. Do you see that?---Yes.

10 And I want to ask you about motion 8. Actually, sorry, I'll withdraw that. Before I do, at the top of page 50 you'll see that these are recorded as being minutes of GLALC, GDS, GMS and a number of other entities. Do you see that?---Yes.

And this differs from the previous set of minutes of May 2010 to which I've taken you. Do you agree?---Yes.

20 Did you have any understanding at any point in time after May 2010 that the boards of the companies other than GLALC had meetings that were run at the same time as GLALC?---Sorry, can you repeat the question?

Yes. You see how these minutes are described as being meetings of various companies including GLALC?---Yes.

That's different from the minutes of May 2010, to which I've taken you, which were recorded as being minutes of the director's meeting of GLALC only.---Right.

You appreciate that distinction?---Yes.

30 Now, I understand you appreciate it now that I've pointed it out to you. Is that a distinction that you ever came to appreciate whilst you were a director of GLALC?---Do I appreciate it later, this way, for the future meetings?

Yes.---Yes.

40 So there was a point, was there, during your tenure as a director of GLALC at which you became aware that at times there would be meetings of the directors of GLALC for GLALC's purposes only? And there would be other times when there would be meetings of not just GLALC's directors but the directors of all the companies for the purposes of the conduct of their affairs? Is that right?---Yes.

All right. Do you recall approximately when?---No.

If you go to page 52, please, sir, you'll see there's a motion number 8, under the heading "GLALC Development Services Limited".---Yes.

Do you see that? And it says the board resolves that an appropriate resolution be put to the members, in line with relevant legal advice, that funds be transferred from GLALC to the GFF Limited. Do you see that motion?---Yes.

Do you have any recollection of that motion being put to the board meeting? Or a board meeting?---I remember it taking place. The circumstances why, I can't recall at this point in time.

10 All right. You see there's a reference to legal advice in the motion?---Yes.

I'll ask you, please, to be provided with volume 17 at page 78. Now, at page 78, there's an email from a Mr Andrew Beatty to Mr Johnson, among others. Do you have that?---Yes.

And you'll see that the date of the email is the 18 April, 2011 at the top of the page.---Yes.

20 And it's at 6.38pm. Do you agree?---Yes.

And with that in mind, if you go back to the minutes in volume 9 at page 50. Do you have page 50 there?---Yeah, yes.

Page 50 states at the top of the page, "The Board Meeting of 18 April, 2011, opened at 6.47." Do you see that?---Yes.

30 Now, as I said, I can't say to you that these minutes are signed but it would appear at least from the material that I've taken you to that this email was provided to Mr Johnson and Mr Wing shortly prior to a meeting of the Board of Directors on 18 April, 2011. Does that accord with your - - -?
---Yes.

- - - recollection or you just don't have a recollection of this?---I don't have a recollection but based on what's been presented before me - - -

All right. Well, I appreciate too that the email wasn't addressed to you, but if I could ask you to have regard to it, please, at the top of the page, it says, "Dear Jack," which is a reference to Mr Johnson, you agree?---Yes.

40 "Dave and Kate and I conferred with Senior Counsel in chambers this afternoon to discuss this draft advice." Now, just pausing there, Mr Luke, you can take it from me that Mr Beatty who's writing this letter is a solicitor at Baker & McKenzie. Do you understand?---Yes.

Did you know that independently of me telling you or not?---No.

All right. You'll see further down in the email it says, "Senior Counsel admits he has taken a conservative view and he feels the establishment of an

enterprise is likely to be construed narrowly, minds probably differ on this point.” Do you see those words?---Yes.

And then the next paragraph, which is the one I’d ask you to focus on, please. It says, “After some fairly detailed probing largely by David,” which is a reference to Mr Wing, you understand?---Yes.

“Mr Galasso,” and just pausing there, he’s a barrister, do you understand?
---Yes.

10

“Has not shifted from his view that a mere gift or donation of funds from GLALC to GFF may be found wanting by a court. Importantly though he appears to accept that an arrangement whereby GLALC members resolve to make a secured loan on simple commercial terms directly to one of the SPVs with that entity repaying the loan and interest to GLALC and gifting profits to GFF is more likely to withstand judicial scrutiny under the Act.” Do you see that?---Yes.

Now, I understand you weren’t provided with this email, that’s correct?
---Yes.

20

But you’ll see attached to the email is, starting at page 80, is a memorandum of opinion?---Ah hmm.

Can you see that?---Yes.

And it runs for some 13 pages through to page 92. Now, what I want to ask you is whether you recall being provided with a copy of this opinion at the Board meeting on 11 April – sorry, on 18 April, 2011. Do you understand?

30

---Yes.

So you recall in the minutes that I’ve taken you to, and as I say, they may be draft minutes, I don’t know, there’s a reference to legal advice in motion 8. Do you remember?---(No Audible Reply)

At page 52?---(No Audible Reply)

Do you have motion 8 there?---Yep.

40

And you see that it refers to legal advice?---Yes.

What I’d ask you to do, please, is have a look at this memorandum of opinion commencing at page 80 in volume 17 with a view to trying to recall whether or not that document was provided to you at a meeting on 18 April of the Board. Do you understand?---Yes.

All right. Well, just take a moment if you would?---I don’t recall these documents being tabled at the Board meeting.

All right. Can you recall ever being shown – I'll withdraw that. Whilst you're a director of GLALC do you recall ever being shown written legal advice?---No.

And that's at a Board meeting or otherwise. Is that right?---That's correct.

Were you aware that GLALC obtained written legal advice?---Not written. I was aware we had attained advice.

10

All right. You can hand back then please volume 17.

THE COMMISSIONER: Mr Luke, could I just ask you, and please tell me if you can't answer this question, but I'm just wanting to clarify is it that you can't recall ever being shown any legal advice or is it your position that as long as you were a director you were never shown legal advice?---As long as I was a director I recall never seeing the actual legal advice.

20 So it's a matter of memory. What you're saying is you may have been shown legal advice but you just can't remember whether you were or weren't shown it?---That's correct.

Right.

MR HENRY: I see. So is it you may or may not have been but you don't remember?---Yeah. I'm leaning more towards that it not being tabled but I don't remember.

30 All right. Can you recall this, that at about the time of this – I'll withdraw that. Can you recall being told at a Board meeting that GLALC received legal advice in relation to transferring funds from GLALC to GFF?---I recall that we were seeking advice for the terminology movement of funds from the future fund to GFF Limited.

Sorry, movement of funds from?---Our future funds to the – I think it's referred to as GFFL in your paperwork there.

Yes. So as you understood it was that GLALC moving its funds to GFF? ---Yes.

40

And were those funds as you recall it proceeds of sale of the Gandangara Estate Number 2?---I can't recall the exact estate that it was related to.

Yes. Do you recall that the legal advice that was received was to this effect, firstly, that GLALC could not gift or donate funds to GFF. Do you recall being told that?---That doesn't really – after reading those documents I can recall an element of but any more specifics, no.

Well, can you recall that the advice was – can you recall being told that GLALC had been given advice to this effect, that it could lend funds to GFF so long as it was pursuant to a members’ resolution and the loan would have to be on secured – on a secured basis and on commercial terms. Do you recall being told that or not?---No.

Do you recall being told that GLALC could lend funds to GFF?---Yes.

10 Do you recall being told that any such loan had to be secured?---Yes.

Do you recall being told that any such loan had to be on commercial terms? ---Yeah.

Can you recall being told that any such loan had to be pursuant to a members’ resolution?---Yes.

All right. I'll ask you, then, to be shown volume – oh, you've got volume 9. ---No. No volumes.

20 Oh, don't you? I'm sorry. Volume 9 is the one I'm after for the moment, then, please, at page 111. Now, you should have there, Mr Luke, some minutes of a meeting of the directors of GLALC and, among other companies, GFF of 11 July, 2011.---Yes.

Now, if you go to page 116, you'll see that those minutes are not signed. Do you see that?---Yes.

30 And I'm again drawing that to your attention because it may be that they're draft minutes. Do you agree?---Yes.

But if I could ask you, please, to have regard to page 117. You'll see that that's an email not to you or from you, but it's an email from Mr Gundar, who was the finance manager at GLALC at the time of the email. Do you see that on the page?---Yes.

And to Mr Hickey. Do you know who Mr Hickey was?---No idea.

40 All right. Mr Hickey was the auditor of GLALC for a period. Do you understand that?---Yes.

And the reason I'm taking you through the email is because it says, “Hi, Clayton. Please find attached the board and members’ minutes resolutions for GLALC loan to Gandangara Future Fund Limited.” Do you see that? ---Yes.

So I take you to that to suggest to you that the minutes at page 111, although not signed, appear to be the minutes of the board meeting.---Right.

Now, you'll see you're listed as an attendee on page 111.---Yes.

And then at page 114 there's, at motion 17, a resolution that the board resolves that all funds surplus to the operating needs of GLALC shall be loaned to GFF on a commercial loan basis secured by a charge registered with ASIC. Do you see that?---Yes.

10 Now, I'll come back to the terms of that resolution in a moment. But does that assist you in recalling this board meeting? That there was a board meeting at which a resolution in those terms was passed?---Yes.

You recall the meeting?---Yes.

All right. I'll come back to the minutes in a moment. At page 135 you'll see, Mr Luke, a board meeting agenda for the Monday, 11 July, 2011 meeting. Is that what you have?---Yes.

20 Now, was this typical of the type of agenda that would be provided to you in the folder which you've described when you first turned up at the offices for the purpose of a board meeting?---It wasn't always there, no.

Sometimes there was an agenda, sometimes there wasn't.---That's correct.

All right. In this particular instance you'll see, over the page, commencing at page 137, a PowerPoint presentation and some slides concerning the financial reports of June 2011. Do you see those?---Yes.

And they go for pages 137 through to 140. Do you agree?---Yes.

30 And then at page 141 there's two slides, which address a resolution concerning the GLALC Future Fund. Do you agree?---Yes.

Now, does this assist you in recalling whether there was a presentation about this resolution concerning the GLALC Future Fund at the 11 July, 2011 board meeting?---Partially.

All right. Can you recall who made a presentation – sorry, I'll withdraw that. Can you recall whether a presentation was made?---Yes.

40 Can you recall who made it?---No.

I see. Can you recall the presentation addressing the GLALC Future Fund resolution?---I can but I can't recall whether it was at the Board meeting or if it was at the membership.

Or at a membership meeting?---Yes.

All right. If it assists you, there was a members' meeting on 27 July, 2011 and I'll come to that in a moment. The Board meeting is on 11 July so before the members' resolution. Do you understand?---Yes.

All right. Do you recall that there was a presentation at each of the meetings?---Yes.

All right. Are you able to recall what was said in relation to the GLALC Future Fund resolution at the Board meeting?---No.

10

All right. If you go back to page 114 please. You'll see motion 17, "The board resolves that all funds surplus to the operating needs of GLALC shall be loaned to GFF on a commercial loan basis secured by a charge registered with ASIC." And then there are three dot points beneath that. Do you see that?---Yes.

The first is that, "The loan shall be an interest only loan for a period of 30 years at a rate identical to the Reserve Bank of Australia cash rate." Do you see that?---Yes, yes.

20

And the second one is, "The interest rate shall be that with the RBA has in place on 30 June each financial year and shall be applied respectively to all funds loaned for the previous period 1 July previous calendar year to 30 June day of application." Do you see that?---Yes.

And then there's a third dot point, "The Board notes their intention for long-term sustainability and that should Gandangara Local Aboriginal Land Council ever be wound up and/or forcibly amalgamated and/or placed under administration and/or removed from being able to be beneficial and/or remedial to the Aboriginal members of GLALC the loan shall be forgiven." Do you see that?---Yes.

30

Now, according to these minutes that resolution was passed or carried. Do you see?---Yes.

Now, do you recall that happening?---Yes.

All right. Now, do you recall whether the Board – subsequent to this resolution being passed on 11 July, 2011 do you recall the Board ever being told about transfers of funds by GLALC to GFF?---No, I don't recall.

40

Do you recall whether the Board was ever informed of the terms upon which any transfers of funds might occur as between GLALC and GFF? ---No, I don't recall.

Do you recall whether the Board was ever informed about whether – I'll withdraw that. If you go down to motion 18 on page 114 you will see it says, "The GFFL Board resolves to enter into a loan agreement with

GLALC”, and then it says the loan is to be on certain terms in the dot points there. Do you see that resolution?---Yes.

Do you recall that resolution being passed at the Board meeting?---Yes.

All right. You’ll see it refers to a loan agreement in the first line?---Yes.

Do you recall ever being told as to whether a loan agreement was entered into between GLALC and GFF?---No.

10

Were you ever shown a copy of a loan agreement?---Not that I recall, no.

All right. Now, you mentioned a moment ago the members’ meeting. If you could go forward in the volume please to page 129. You will see the minutes of the ordinary meeting of GLALC. Is that what you have?---Yes.

And that’s for 27 July, 2011. Now, again these minutes don’t appear to be signed, but you recall attending the meeting I gather from your earlier evidence?---Yes.

20

Can you recall if Mr Johnson was attending the meeting?---No.

You just can’t recall one way or the other?---I can’t recall if he was there but typically usually he was there.

All right. If you go please to page 132 you’ll see a motion headed “GLALC Future Fund,” about halfway down the page. Can you see that?---Yes.

30

I won’t read it to you but take a moment to read it if you would, please. Sorry, I didn’t mean to cut you off – have you had sufficient time to read it? ---Oh, yes.

Do you agree with me in substance the members of GLALC approved of the Board members’ resolution to which I’ve taken you of 11 July in this motion headed “GLALC Future Fund?”---Yes.

Now, you’ll see at the base of that resolution it says, “Carried 4.55 against 7, abstained 7?”---Yes.

40

Do you see that?---Yes.

I appreciate this may be pressing your memory – are you able to recall whether anyone spoke up against the resolution at the meeting?---No, I don’t recall.

Right. Now, if you go forward in the bundle, please, at volume 9 to page 183, you’ll see there minutes of the GLALC Board meeting of 10 October, 2011. Is that what you have?--- Yes.

Now, have a look at the attendance if you would, please, Mr Luke. Your name's not identified there?---No, because I wasn't on the Board at that time.

Yes. By then you had ceased being - - -?---That's correct.

10 - - - on the Board. All right. So you must have ceased being on the Board shortly after the members' meeting of 27 July, 2011?---Ah, like I said to you earlier, I started in the October but without going through my records I think it was the September that I finished my term, 'cause it was a two-year term.

All right. And I've taken you to the 11 July Board meeting and then the 27 July 2011 members' meeting?---Yes.

And at no time post the Board meeting on 11 July, 2011 were you informed of any amounts being transferred from GLALC to GFF. Is that right?---That's correct.

20 And Mr Johnson never informed you about that?---No.

So you didn't know during that period whether transfers were made from GLALC to GFF. Correct?---That's correct.

You didn't know what sums if any were transferred?---That's correct.

And you didn't know what purpose any transfers might have been made for?---That's correct.

30 Do you recall after the 11 July, 2011 board meeting, anyone at a Board meeting ever asking Mr Johnson whether any money was transferred from GLALC to GFF?---No.

Just bear with me for one moment. You can hand back that volume, thanks, Mr Luke.

I asked you some questions earlier about Finance reports at Board meetings. Do you recall that?---Yes.

40 I want to ask you some questions now about expense claims made by Mr Johnson. Do you ever recall at a board meeting being asked to review any expense claims made by Mr Johnson?---No.

Do you recall ever being shown receipts in support of expense claims made by Mr Johnson?---No.

Do you recall ever being shown invoices from Waawidji to either GLALC or any of the Gandangara group companies?---No.

Were you ever informed about expense claims made by Mr Johnson?---No.

Was the board, to your knowledge, ever involved in approval of expense claims made by Mr Johnson?---No.

Do you have any understanding as to the process that was adopted for the purposes of approving or declining any expense claims made by him?---No.

10 Or by Waawidji?---No.

They're the questions I have for Mr Luke, Commissioner.

THE COMMISSIONER: Mr Luke, can I ask you, were all the directors only appointed for a two-year term?---No. Each term was a two-year period. When that period would come to an end, the new sitting board could be elected through the membership, of which, if there was only 10 standing, then 10 would automatically be appointed. If there was more, then there was a vote that was put into place.

20

So every two years there was a re-election process?---That's correct.

And it was just a matter of how many people were standing?---That's correct.

Right.

MR HENRY: I'm sorry. I had said I'd finished, but I've been reminded of something.

30

THE COMMISSIONER: Yes.

MR HENRY: Sorry, if Mr Luke could please be provided again with volume 9, page 114. Mr Luke, you should have in front of you something to which I've taken you previously. That is, a resolution of the board of directors of GLALC of 11 July, 2011.---Yes.

Motion number 17. Is that what you have?---Yes.

40 All right. What was your understanding at the time of this meeting as to why this resolution was passed?---May I have a moment just to read the - - -

Yeah, by all means.---Thank you. At that time - - -

Yeah?--- - - - my understanding was that we had issues with the current government that was in place and we wanted to protect our assets. So, with that, there was a decision made to, as the term "move" was used, the funds from one account to another, enable to be a sustainable Land Council. And

I guess that would go forth to where the legal advice was required, as to how we could legally do that.

Well, the resolution refers to loans from GLALC to GFF. Do you agree?
---Yes.

As you understood things at the time of the resolution, how did you understand GLALC making a loan to GFF protected the money, the subject of the loan, from government regulation?---I can't recall.

10

Well, you said in your answer a moment ago that there was protection I gather afforded by the resolution. Is that right?---No, I didn't say that.

Well, just - - -?---Yeah.

- - - if you wouldn't mind maybe my - - -?---Sorry, I may have misunderstood what you have said but - - -

20 THE COMMISSIONER: Earlier in your evidence, Mr Luke, you said that you – that the Board was seeking advice on the movement of funds from GLALC to GFF.---Ah hmm.

Well, that suggests to me that there had been some discussion about why you needed to do that, what was the point of doing that and the terms and conditions on which that should occur. Is that a fair summary?---Yes.

30 And so from your memory what was the discussion about why you needed to move the funds from GLALC to GFF, was it because you thought if the funds remained with GLALC they were at risk of somehow being dissipated by - - -?---That was - - -

- - - by Government intervention?---That, that's correct.

Was that the concern?---That was our concern.

And so what, the discussion was if we move them to GFF they will somehow be protected from that interference?---That was the understanding of the Board, yeah.

40 And I think Mr Henry's question is directed to this, if the resolution simply declared that the funds would be moved to GFF on a loan basis, the question then is how would the loan in any way protect the assets of GLALC from that intervention or interference, they'd still be essentially the assets of GLALC wouldn't they albeit on loan to GFF?---Right.

But you - - -?---Yeah, I don't think I understand.

All right?---Yeah.

So that's not something that you recall being - - -?---No.

- - - being discussed?---No.

MR HENRY: Did you have any understanding as to how this loan arrangement would protect the assets from dissipation?---No.

All right. They're my questions. Thank you.

10

THE COMMISSIONER: Yes. Does anyone have any questions of Mr Luke? Yes.

MR STEWART: Yes, Commissioner, just briefly. Mr Luke, my name is Mr Stewart and I appear on behalf of Ms Cronan?---Yeah.

I just have a couple of questions for you. In relation – you've just given some evidence that you were elected to the Board in October, 2009?---Yes.

20 And it's a two year period?---Yes.

And I believe you were elected by the members of the Land Council?
---That's right.

Prior to being elected had you ever had any experience whatsoever in relation to sitting on a Board of any description?---No.

And in your evidence I think you also gave evidence that you attended one conference down at Wollongong?---That's correct.

30

And that's a corporate governance conference that was organised by the Council?---Yes.

And during your period they were held every six months weren't they, these conferences?---I'm not aware of the regular training advice.

But you only attended one - - -?---I only - - -

40 - - - in the two year period?---Yeah. I only know of two that were made available.

Okay. In relation to your evidence you gave earlier you said that Ms Cronan took the minutes?---Yes.

Well, I suggest to you that you're incorrect about that and in actual fact Mr Johnson took the minutes. What do you say about that?---Oh, sorry. I don't have anything to say about that.

Well, is it true or is it not true? I put to you that the sole reason that Mr Johnson was at these meetings was the fact that he took the minutes in relation to each meeting?---My understanding is that's not correct.

I have no further questions, Commissioner.

THE COMMISSIONER: Thank you. Does anyone else have any questions? Yes.

10 MR MACK: Yes, Mr Luke, my name is Mr Mack. I appear on behalf of the Registrar of the Aboriginal Land Rights Act?---Yes.

I've just got a couple of questions in relation to whether or not you received any money from the groups related to GLALC - - -?---No.

- - - in terms of director's fees, expenses paid from those - - -?---No, nothing.

Thank you. That's - - -

20

THE COMMISSIONER: Anyone else have any questions of Mr Luke? No. Nothing arising, Mr Henry?

MR HENRY: No. Thank you.

THE COMMISSIONER: No. Thank you, Mr Luke. You may step down. You're excused for the time being.

30 **THE WITNESS EXCUSED**

[12.49pm]

THE COMMISSIONER: Rather than start the next witness we might adjourn till 10 to 2.00 and resume at 10 to 2.00. Is that suitable?

MR HENRY: Thank you, Commissioner.

MR DOCKER: Commissioner.

40 THE COMMISSIONER: Yes, Mr Docker.

MR DOCKER: Before you do that I have a medical certificate for Mr Johnson which refers to a letter from my instructing solicitors to the doctor.

THE COMMISSIONER: Yes.

MR DOCKER: If I might – I tendered them together so that you need to see, read the letter to make sense of the medical certificate.

THE COMMISSIONER: Yes. All right. Thank you.

MR DOCKER: And I ask that – I’ve got a copy here for the Counsel Assisting but I ask that they be suppressed.

10 THE COMMISSIONER: Yes. All right. Well, those documents will be Exhibit G2.

#EXHIBIT G2 – MEDICAL CERTIFICATE FROM PO YEE YIP RE: MARK JOHNSON DATED 10 MAY 2016; LETTER FROM AIDAN GANDAR AND JONATHAN HUNT TO DR YIP DATED 10 MAY 2016; AND AUTHORITY TO ACCESS MEDICAL RECORDS FROM MARK JOHNSON DATED 6 MAY 2016

20 THE COMMISSIONER: Pursuant to section 112 they’re suppressed from publication.

PURSUANT TO SECTION 112 MEDICAL CERTIFICATES IN EXHIBIT G2 ARE SUPPRESSED FROM PUBLICATION.

30 THE COMMISSIONER: Could I just also indicate I hadn’t done this before, but in relation to the documents that are part of Exhibit G1, any identifying information, which includes personal addresses, telephone numbers, bank account references and matters of a like nature are suppressed from publication pursuant to section 112 of the Independent Commission Against Corruption Act.

40 **ANY IDENTIFYING INFORMATION, WHICH INCLUDES PERSONAL ADDRESSES, TELEPHONE NUMBERS, BANK ACCOUNT REFERENCES AND MATTERS OF A LIKE NATURE ARE SUPPRESSED FROM PUBLICATION PURSUANT TO SECTION 112 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT**

So, Mr Docker, did you say you had supplied a copy of the certificate to Mr Henry?

MR DOCKER: I gave it to him at the same time you got it, Commissioner.

THE COMMISSIONER: Yes. All right. Thank you.

Yes. Nothing else for the time being?

MR DOCKER: There was one other – nothing else about that, but there's one other thing.

THE COMMISSIONER: Yes.

10 MR DOCKER: And that is, could I be, and my instructing solicitor be given access to the compulsory examination transcript for Mr Johnson?

THE COMMISSIONER: Well, we'll have to deal with that application at a later time, but I'll just take the application on notice for the time being and we'll resume at 10 to 2.00.

MR DOCKER: As the Commissioner pleases.

20 THE COMMISSIONER: Right. Thank you.

LUNCHEON ADJOURNMENT

[12.51pm]