

GREERPUB00270
12/05/2016

GREER
pp 00270-00305

PUBLIC
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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 12 MAY 2016

AT 2.17PM

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

THE COMMISSIONER: Yes, my apologies. Yes. Yes.

<CAROL BROWN, on former affirmation

[2.17pm]

10 MR MACK: Ms Brown, my name's James Mack. I appear on behalf of the Registrar of the Aboriginal Land Rights Act. I just want to ask you a few questions. I don't propose to take you to any documents. I just really want to understand a bit more about your relationship with Mr Johnson, or Jack as you call him. You say that you became a director in 2009 of GLALC. Is that correct?---Sounds right, yes.

Yeah. And did you know Mr Johnson at that time?---No.

No. So you - - - ?---I met Mr Johnson when he applied for the job and got it. That was my first meeting of Mr Johnson.

20 Okay. And do you know Cinderella Cronan?---Yes.

Do you call her Cindy or - - - ?---Yes.

And how long have you known Cindy for?---Since I've been a member of the Land Council.

Okay. So, that's a fair, that's long before 2009?---Yes.

30 Yes, all right. And since you've known Mr Johnson, have you met him on other occasions besides Board meetings?---We had Christmas dinner one night.

One night. So just one occasion you had at Christmas together? There was no other social meetings or gatherings? You didn't hang out together, for instance?---No. We were, the Board, at a Gandangara ball.

Ah hmm.---And we didn't even sit at all at the one table.

40 And you said you don't really care much about the monetary side of, of things?

MR TAYLOR: I object to that, I don't think that was her evidence, Commissioner.

MR MACK: Sorry, I'll withdraw - - -

THE COMMISSIONER: I think her evidence - - -

MR MACK: The monetary side doesn't come to me, sorry, that was the - -
-

THE COMMISSIONER: Are we talking about the finance committee issue?

MR TAYLOR: Her evidence was I think, Commissioner, in summary that she did care about the money, but she didn't have the details.

10 MR MACK: Yes, sorry. That's where I'm going with this.

THE COMMISSIONER: I think that was in relation to the transfer of funds, her evidence was this was on the subject of transfers from GLALC to GFF, that she cared about that issue, but couldn't recall - - -

MR MACK: The detail.

THE COMMISSIONER: - - - the detail.

20 MR MACK: So I'll just start that again. You recall that you weren't across the detail of these transactions. That was your evidence this morning. Is that correct?---I recall saying that at the time I would probably have known the details but it's such a long time after that, that I don't recall.

Okay. Do you think that Mr Johnson would know the detail of all those transactions?

MR HENRY: Can I just object, not because I oppose the question per se but just what transactions are the subject of the question.

30 THE COMMISSIONER: Yes. I think you better clarify it Mr Mack because, because I think if this is going to the questions asked of Ms Brown in relation to the proceeds of sale from the Gandangara Estate No.2, essentially passing whether by transfer or loan from GLALC to GFF, then we need to be precise about that being the subject of the question.

MR MACK: Okay. I won't pursue it. I'll see if I can just come back a little bit.

40 THE COMMISSIONER: All right.

MR MACK: As a general proposition would you agree with this, would Mr Johnson know the financial operations of GLALC in more detail than you? ---Yes.

Yes. And would Ms Cronan, as a general proposition know the financial details of transactions in GLALC better than you?---Yes.

All right. Did you rely on Mr Johnson, did you rely on Mr Johnson's knowledge of the law and the transactions when you were making decisions as a Board member of GLALC?---No.

All right. And did you rely on Cindy's knowledge of the law or transactions and the accounts at GLALC when you were a Board member in making decisions?---No.

No. Okay.

10

THE COMMISSIONER: So - - -

MR MACK: And just - - -

THE COMMISSIONER: Yes, go on.

MR MACK: I was going to move on to a different - - -

20 THE COMMISSIONER: Well sorry, I just want to make sure, I appreciate what Ms Brown is saying, so if you didn't rely on Mr Johnson and Ms Cronan for the purposes of making Board decisions both in relation to what the Aboriginal Land Rights Act permitted and the financial transactions does it follow then that you made up your own mind in each and every case that you agreed with a resolution about those matters?---We worked as a collective.

30 Well yes, but the question was asked of you personally and you said you didn't rely on the advice that you might have got from Mr Johnson and Ms Cronan. So what I'm asking is does it follow from that that you made your own independent assessment of all of the resolutions concerning those matters and when you supported them? That's what I'm asking?---Yes,, at the time.

Right.

MR MACK: Did you ever, can you ever recall an occasion when you disagreed with Mr Johnson on any issue relating to GLALC personally? ---No.

40 Can you ever recall any occasion when you disagreed with Ms Cronan on any issue relating to GLALC?---I don't remember.

Okay. All right. And just finally Ms Brown, I think your evidence earlier was that you were also a director of Marumali, GHS and GTS. Is that correct?---Yes.

Yes. Did you ever receive any sitting fees from any of those entities for, sorry - - -?---No.

No. Okay.---No.

And did you ever receive any reimbursement for any expenses from any of those entities?---No.

All right. They're my questions, Commissioner.

10 THE COMMISSIONER: Thank you. Yes, Mr Docker.

MR DOCKER: Thank you, Commissioner. Could Ms Brown – sorry, Ms Brown, my name is Sean Docker. I appear for Mr Johnson. Could Ms Brown please be shown volume 20 and also Exhibit G3 please. Now, just firstly, Ms Brown, in relation to volume 20, do you have that in front of you?---Yes.

20 And if you could please turn to page 250 using the, the small numbers in the right-hand corner. There's some larger numbers that are four digits and don't use those, use the smaller numbers.---Yes.

Do you have page 250?---Yes.

Now, you can recall that you were asked – or do you recall you were asked some questions about this letter by Counsel Assisting?---Yes.

Now, and you were also asked about a meeting in which there was a resolution to approve the sending of this letter. Do you recall that too?
---(No Audible Reply)

30 Just the questions.---Yeah.

Do you recall being asked about the, the meeting where this letter being sent was approved by the Board?---I can't remember.

All right. Now, and you recall, Ms Brown, you were asked some questions in particular in respect to this letter about the table that's there in front of you on page 250. Do you recall that?---I can't remember.

40 All right. Now, as at the year 2012 Mr Johnson was being paid a salary by GLALC. That's right?---Yes.

And it's true isn't it that his remuneration package in terms of payment for his services also included payments to Waawidji from GMS. That's right isn't it?---I can't remember.

I think you were asked some questions and I think you gave an answer that – can I have the answers. You said it was the same contract in two places. Do you remember giving that answer yesterday?---No.

All right. But just coming back to the letter. You recall don't you that as at 2012 Mr Johnson's salary package was more than 82,000 wasn't it?---Yes.

10 And you, you recall don't you that as of 2010, May, 2010 his salary – base salary package was 180,000. You remember that?---Yes.

Right. But your evidence was, on a couple of occasions, that you thought he was doing great work for the community. That's correct, isn't it?---Yes.

And what did you mean by great work?---In our capacity as Board members, and going forward as a Land Council.

20 Okay. And did you know he was, well, you don't have any legal background, do you?---No.

Do you know of anybody else on the Board or that attended meetings that did?---I believe Jack was or may be a solicitor.

Okay. All right.---But that's all.

And yesterday you said that you were given a copy of the Aboriginal Land Rights Act, and you read it from cover to cover.---Yes.

30 But you found it very complex.---I did.

Would you rely – sorry, I'll withdraw that. Do you think that Mr Johnson had an understanding of the Aboriginal Land Rights Act that was better than yours?---Yes.

And do you think Ms Cronan, Cindy, had a better understanding of the Aboriginal Land Rights Act than you did?---Yes.

40 Yes. All right. And earlier today you said that the monetary side, you recall a few questions about millions of dollars, and you thought there was \$4.5 million, and it came out that there was \$9 million in total in relation to some income, if you recall that.---Yes.

And you were aware, weren't you, that Mr Johnson had in his contracts a clause which allowed for his salary package to increase by increments each year?

THE COMMISSIONER: Mr Docker, that was the purpose of the concession I made first thing this morning, about the basis of those questions I asked Ms Brown. I mean, that's a matter, as I understand it, that's borne out by the documentary evidence.

MR DOCKER: Yes.

THE COMMISSIONER: I mean, if that's where this is going, I don't think

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MR DOCKER: It's not, it's not, Commissioner.

THE COMMISSIONER: All right.

MR DOCKER: I'm trying to get to something else, but I ---

THE COMMISSIONER: Yeah.

MR DOCKER: --- I need to ---

20

THE COMMISSIONER: Yeah, all right.

MR DOCKER: --- her to appreciate this before I get to the next thing.
And I completely appreciate it's the ground that you ---

THE COMMISSIONER: Yes.

MR DOCKER: --- covered this morning. I'm just not sure that the witness appreciated it, that's all.

30

THE COMMISSIONER: Well, whether she does or not, the evidence before the Commission will bear that out. I think the best thing to do is to just formulate the question ---

MR DOCKER: All right.

THE COMMISSIONER: --- on the assumption that that will be established.

40

MR DOCKER: Right. So, just coming back to this table on page 250, Ms Brown. If you could just go to Exhibit G3, please. I'm not quite sure what form Exhibit -- yes, that's the document. You can see there that this is an email from Mr Johnson to Clayton Hickey and some others, dated 25 September, 2012. You can see that?---Yes.

And it's been copied to Mikael Smith and some others. You see that? Cc?
---Yes.

And then there's Bcc and a whole list of people that starts with you. That's right, isn't it?---Yes.

Now, firstly, is that your email address back in September 2012?---Yes.

Do you recall receiving this email?---I really don't remember.

Right. Do you have any reason to doubt that you received the email?---No.

10 Right. Now, if you just look past the two pages that are the email itself to the document behind there, which is a document that begins 20 December, 2012, and has Mr Clayton Hickey on it. Do you see that?---Yes.

Now, do you recognise that as being an earlier draft of the letter at page 250 in volume 20?---I don't recall.

20 Okay. Now, could you just have a read, please, of Mr Johnson's email, this is back to the front page of Exhibit G3, to Clayton. And Clayton, you understand, is Clayton Hickey, who was the auditor of GLALC at the time? ---Yes.

All right. So if you just read that to yourself and just tell me when you've finished, please.---Finished.

Now, reading that email does that jog your memory at all about – reading that email now does that jog your memory at all about receiving it at the time?---Vaguely.

30 Vaguely. Do you recall that there was a debate or – sorry, withdraw that. Firstly, do you recall that the original draft of this letter was prepared by Mr Hickey or someone of his firm?---I don't recall.

Do you recall that there was some debate about the contents of the letter?---I don't remember.

Right. Now, could I just ask you to turn to the last page of G3 and you can see that it contains a table?---Yes.

40 Which you'd agree with me wouldn't you is similar but different to the one that's in the letter?---Can I go back to the letter?

Yeah. If I could just point out to you, Ms Brown, a difference which is that in the table at the back on the page at the back there's an extra column which has services rendered and that's in between the payroll expense and the reimbursement of expenses column.---Yes.

Do you see that difference?---Yes.

And do you see that some of the entries which in the letter are in the reimbursement of expenses column are in the document at the back in the services rendered column. Do you see that?---Yes.

And did you – do you – I suggest to you that the services rendered column was in fact payments of part of the salary package that is the part that was paid to Waawidji and not in fact reimbursement of expenses. What do you say about that?---I really can't recall.

10 Right. Now, you were asked some questions about the amount of the reimbursement of expenses in the letter that's at volume 20, page 250. Do you remember that?---Yes.

And the, and the amount of them.---Yes.

Do you remember that?---Yes.

Now, Ms Brown, do you recall – sorry, I withdraw that. Are you able to tell me in 2012 approximately how many employees there were of the GLALC group?---No, I can't tell you that.

Could you give me an estimate?---30 or 40.

And were you, were you aware of a system whereby expenses of employees, which included Mr Johnson, but other employees as well were paid for in the first instance by Mr Johnson's credit card and then reimbursed to Mr Johnson?---I don't recall.

30 All right. You, in relation to, coming back to the letter at page 250 on volume 20, you were, do you recall at one stage giving some evidence that something to the effect of, it was a one off?---Vaguely.

Were you referring to the bonus?---Yes.

Now you understood - - -

THE COMMISSIONER: You mean you weren't, you mean when you answered that question it was a one off, you weren't referring at all to the, to the expenses?---It could have been to the reimbursements. I'm not sure.

40 But that was the question that was asked. The question that was asked of you before the luncheon adjournment was in relation to the reimbursement of expenses, whether you thought that was a reasonable figure and you said, it was a one off?---I thought it was a one off.

Yes, I know that but your answer, was your answer directed to the reimbursement of the expenses or was it directed to the amount of the bonus?---(No Audible Reply).

Anyway the transcript will speak for itself, Mr Docker. But I thought she was talking about reimbursement of expenses.

MR DOCKER: I must say, Commissioner, I thought it was unclear which one it was, but, I can ask it another way. You were aware weren't you that Mr Johnson's employment contracts included provision for a results bonus. Is that right?---Yes.

10 And did you understand by that that if profits were made by the GLALC group that that would entitle him to a bonus?---Yes.

And it's true isn't it that in the year when the lots were sold from Gandangara Estate No.2 that there was a large amount of profit that year?
---Yes.

And that's the year that Mr Johnson received a large bonus isn't it?---It makes sense to me.

20 And is that your understanding of what is being recorded there in terms of the bonus in this letter?

THE COMMISSIONER: Well there are two parts to that question. One is, is that her understanding of the figure that's recorded as a bonus, but I understood the witness to say earlier on today that she had no idea how the bonus was calculated. So are you only asking her about the fact that the bonus appears in the column? Because it's the calculation that was the subject of the question earlier on.

30 MR DOCKER: I'll break it up, Commissioner, thank you. Now Ms Brown just coming back to the letter on, on volume 20, page 250 and you can see that there's an amount there of \$316, 738 for a bonus?---Yes.

Is it your understanding that that was referring to, at least in part, the results bonus that Mr Johnson was entitled to under his employment contract?

MR HENRY: Well, what employment contract is being referred to here?

THE COMMISSIONER: Yeah.

40

MR HENRY: And who is entitled? There's different parties to these agreements.

THE COMMISSIONER: In any event, Mr Docker, I mean, I'm not trying to cut you off, but to be frank, I don't know that this witness is really capable of giving you reliable evidence in relation to what was and what wasn't an appropriate bonus in that year. And that's not being critical of

her, it's just a reflection of all of her answers that were focused on this issue being constituted by "I don't know."

MR DOCKER: Well - - -

THE COMMISSIONER: Does it get any better?

MR DOCKER: In respect to the justification of the amount - - -

10 THE COMMISSIONER: Well, she's agreed - - -

MR DOCKER: - - - maybe not. But I haven't asked her - - -

THE COMMISSIONER: No.

MR DOCKER: - - - about that.

20 THE COMMISSIONER: No, well, fair enough. But she's agreed already with the question that was focused on the justification for the payment of a bonus per se. She's already agreed with that, namely the profits of the development that year. So I just don't know where we go from there.

MR DOCKER: No, I think that's right, Commissioner. Now, I'll just move on to something else, then. Just bear with me a moment. Don't know what that - oh, okay, all right. I'm sorry. Now, Ms Brown, are you aware of any performance reviews that were carried out in respect of Mr Johnson's performance as the CEO.---I don't remember them.

30 And would it be correct to say that you never carried one out yourself?
---I can't recall.

Right. All right. Now, you were asked some questions yesterday, Ms Brown, about your folder for meetings.---Yes.

40 With the meeting documents. And you were asked this question, "There wasn't usually any reports in the folder?" And your answer was, "From previous things, yes." Did you mean by that answer that in the folder - sorry, withdraw that. There were then some subsequent questions to ask you whether the reports for the upcoming meeting were in the folder, and you said no. Do you remember that? Anyway, you did. Okay? Now, what I want to ask you is, in relation to your director's folder, is it the case that it had in it the reports that had been tabled at the previous meeting?---Yes.

Right. And is that what you meant by "previous things"?---Yes.

Right. And is it the case that you were able to come into the Land Council office at any time and access your director's folder?---No.

Is it the case that – sorry, I withdraw that. Now, if Ms Brown could please be shown volume 11. I don't need G3 or volume 20 anymore. Do you have volume 11 now?---Yes.

Oh, good. Now, if you could please turn to page 131 of volume 11 and if you can just look at pages 131 through to 134 you can see that these are pieces of paper – well, I suggest to you that these are copies of a PowerPoint presentation made at the meeting on 3 May, 2010 when discussion was being – was occurring in relation to, amongst other things, whether
10 Mr Johnson would get a pay rise.---Sorry, could you ask me that again.

Yes. I suggest to you these, these documents are copies of the overheads or the PowerPoint presentation that was given at the meeting on 3 May, 2010 whether Mr Johnson would get a pay rise was being discussed.---I don't remember.

Right. Now, you said yesterday that Mr Johnson was in the room for that discussion. I want to suggest to you that that's not right and that he wasn't present in the room for that discussion.---He was definitely not in the room
20 for the discussion over his wages and I don't remember saying yesterday that he was.

Right.

THE COMMISSIONER: Are you saying that he was - - -?---I don't remember being asked - - -

Are you saying he was definitely - - -?--- - - - yesterday even that.

30 Are you saying he was definitely not in the room?---Definitely not in the room.

I see. Well, in that event, Ms Brown, we might have to revisit that because it's important that you appreciate that that evidence is directly contradictory to what she said yesterday. Anyway, we'll move on. Yes, Mr Docker.

MR DOCKER: I must, Commissioner, that I had apprehended what you did about what the evidence was yesterday which was why I asked the question.

40 THE COMMISSIONER: Well, I have it in the transcript so as I said we'll have to revisit that. Go on, Mr Docker.

MR DOCKER: Yes. Now, Ms Brown, you were – you gave some evidence yesterday about there being a discussion about this meeting of comparable salary packages to what was being proposed that Mr Johnson would be paid for other CEOs. Do you remember that?---Yes.

Now was the discussion about the comparison of other CEO's, was it limited to a discussion about other CEO's of Land Councils or was it broader than that to include other organisations?---To my knowledge it was general.

So do you mean by that it was broader than just Land Council, it was other organisations as well. Is that right?---Yes.

10 Now Ms Brown, you said this morning that there were audio recordings at all Board meetings, I want to suggest to you that there, that there was an ability to record meetings but the meetings were never recorded because the Board never approved that?---I don't remember.

They're my questions, Commissioner.

20 THE COMMISSIONER: Just so that we can clarify this issue Ms Brown, yesterday, and I'm looking at page 219 of the transcript at about point 5, you were asked, do you recall a slide presentation being made at the May 2010 Board meeting involving these slides and you answered, yes. And the next question was, who made that presentation and you said, Jack. And then the next question was, do you recall what he said when making the presentation, answer, no. Do you want to change that evidence do you? ---How I see it was at this meeting when we discussed this - - -

Yes?--- - - - it might have been up on there, as in the beginning of the presentation, then the Board had the discussion while Jack Johnson was out of the room.

30 So he made the slide presentation and then left the room while the Board discussed it. Is that what happened?---I can't recall the exact details of it, your Honour, Commissioner.

Well a moment ago you said emphatically in answer to Mr Docker that Mr Johnson was definitely not in the room, now you're saying you don't recall the details?---He was not in the room when the Board had the discussion about the pay raise.

40 Well that's what I was asking you. Are you now saying that he made the slide presentation and then left the room when the Board had the discussion? Was that what happened?---I can't say exactly because I don't remember.

Well what part don't you remember?---I remember the discussion being held while Jack Johnson wasn't in the room.

And do you remember that he made the slide presentation, because that was what you said yesterday?---Yes. But whether it was the whole lot of it or not, I don't remember.

Well, but you weren't asked whether or not you remembered all of it. You simply were asked who made that presentation and you said Jack. Are you now saying that he may not have made the presentation?---He may not of -- I'm sorry, Commissioner.

Any further questions of Ms Brown?

10 MR LIM: Commissioner, I've got a couple of questions for Ms Brown.

THE COMMISSIONER: Yes.

MR LIM: Lim, Michael Lim, I'm the solicitor for the Gandangara Local Aboriginal Land Council, Ms Brown.

THE COMMISSIONER: Yes, Mr Lim.

MR LIM: I've just got a couple of questions Ms Brown. The first question
20 is, how long have you been a member of the Land Council? Since what year?---I don't know the exact year, but it'd be around 15 to 20 years.

So in 2007 you were a member of the Land Council?---Yes.

Were you, so you, and you accept earlier to Mr Mack's question that you first met Mr Johnson when he was hired by the Land Council?---At the first meeting that he was brought in as - - -

30 That's correct. Is that correct?---Yes, yes.

Yep. And do you recall that in April 2007 the members at an Extraordinary General Meeting voted to appoint Mr Johnson as the CEO of the Land Council. Were you aware of that?---I'm not aware of the exact dates, but I am aware of -- we made that decision to employ - - -

What I'm saying is the members at a general level appointed Mr Johnson as CEO of the Land Council?---Yes.

40 In 2007 originally.---Yes.

In 2010, when Mr Johnson's contracts were being reviewed by the Board, was it ever discussed that it should go back to the members of the Land Council for their consideration?---I do not recall.

Okay. Do you recall attending many members' meetings?---Yes.

After 2009?---Yes.

Did any members of the community of the Land Council raise any issues regarding Mr Johnson's remuneration?---I don't remember.

Okay. All right. No further questions.

THE COMMISSIONER: Yes.

MR TAYLOR: I'll be brief, Commissioner. Ms Brown, it's correct to say, isn't it, you left school after completing year 10?---Yes.

10

Since that time, have you attained any further qualifications or degrees or anything of that sort?---I'm a hairdresser by trade.

And prior to your election to the Board of the Land Council, had you had any practical experience in running a company?---No.

Any practical experience in running a business?---No.

20 You gave some evidence yesterday about attending training. And I believe that you attended three such training events.---Yes.

How long were each of those?---Two days.

And prior to your appointment to the Board, did you have any practical legal experience in relation to employment contracts?---No.

During the course of the training sessions, did you have any training given to you about interpretation of employment contracts?---Can't remember.

30 Now, whilst you were on the Board, from time to time, is it the situation that the Board obtained legal advice?---Yes.

Now, I understand earlier this morning that you were shown a number of written documents and you couldn't recall having seen them. In a general sense, when the Board called for legal advice, how was that legal advice received by the Board?---A person would turn up and talk to the Board.

40 Can you recall how many times that might have happened whilst you were on the Board?---Not exactly.

Do you recall receiving any legal advice in relation to the restructure of the group of companies that consisted of the GLALC?---Yes.

Do you remember if that was oral or written?---I can't remember.

Do you remember anything about the actual advice itself?---We weren't doing anything illegal.

And do you know when that advice was received?---I can't remember.

Now, yesterday you were asked some questions by Senior Counsel Assisting in this Commission. It's at transcript page 227 at about line 32. You were being asked about motions. And in relation to a particular motion, you said you had a vague recollection. Then you were asked this, "If you didn't understand something that was put to you at a Board meeting, did you say, 'I don't understand'?" And you answered yes.---Yes.

10 And what would happen when you did that, when you said you didn't understand what was happening?---We would have a conversation till we were all understanding.

Who's we?---The Board.

And during those conversations, to your recollection, each time that you raised a problem with your understanding, did those discussions resolve those issues?---Yes.

20 And are you able to say as an estimate how often it was during the course of Board meetings you would say look, I don't understand and there would be a discussion subsequent?---Often.

By often what do you mean?---Regularly.

Most meetings?---Yes.

Just pardon me a moment, Commissioner. Yes, I have nothing further, thank you.

30

THE COMMISSIONER: Anything arising?

MR HENRY: No, thank you, Commissioner.

THE COMMISSIONER: Could I just ask something by way of clarification. Ms Brown, you said that at some stage the Board received advice that they were not doing anything illegal. Do you remember saying that a minute ago?---Yes.

40 Was that oral or written advice?---I can't remember.

You can't remember which it was and you can't remember when it was? ---No dates, no.

When someone did come to the Board meeting to give you oral legal advice who was that?---Legal people.

Not Board members or members of staff but someone from outside - - -?

---Yes.

- - - the GLALC was it?---Yes.

And do you ever recall an occasion when the Board was discussing Mr Johnson's expense claims and Ms Provest indicated that she was unhappy with the proposal and she was the subject of some angry exchanges and she left the meeting in tears. Do you remember that occasion?---She had just started, yes.

10

You do remember that occasion?---Not in depth but I remember that occasion.

Well, that was at least one occasion when someone expressed a lack of concurrence and there was no further discussion about satisfying Ms Provest.---I believe there was.

When did that occur?---In that meeting.

20

But she left the meeting. She left the meeting - - -?---And came back.

She left the meeting unresolved.

UNIDENTIFIED SPEAKER: No, she didn't.

THE COMMISSIONER: What, you say she came back did she?---Yeah. She never left the meeting all together. She went out and came back. She was at that meeting.

30

Well, she may have been but what I'm asking you is whether or not it appeared to you that Ms Provest's concerns were addressed by the rest of the Board?---Yes.

You say they were do you?---I believe there was a conversation and she was satisfied and stayed at the meeting.

And did she express that satisfaction to the Board did she?---Yes, by not being upset anymore and staying.

40

Did she express the satisfaction that she had with the explanation, did she say oh, I understand now?---Can't remember the exact wording but the fact that she stayed and was present at that meeting to me showed that she had moved on from the situation.

All right. So you took her presence at the Board meeting after she'd expressed that concern as an indication that she no longer held the concern?
---Yes.

Yes.

MR HENRY: Can I just ask a few questions about that subject matter, Commissioner. You said a moment ago, Ms Brown, that Ms Provest had just started. Do you recall saying that?---Yes.

The evidence is that Ms Provest commenced as a director of GLALC in May, 2012. Do you understand?---Yes.

10

Could Ms Brown please be shown volume 41, page 14. You should have in front of you now, Ms Brown, a letter dated 18 February, 2014. Is that what you have?---Yes.

And you'll see on the second page of the letter there are some signatures. Do you see that, page 15?---Yes.

One of those signatures is yours isn't it?---Yes.

20 Another one is Ms Provest's. Do you agree?---Yes.

Wasn't this the letter that was signed at the end of the meeting about which the Commissioner asked you?

MR DOCKER: I object. It hasn't been established that the, with this witness that there was a letter signed at this meeting the Commissioner was after.

THE COMMISSIONER: Well she's being asked about it now.

30

MR DOCKER: Yes, but the question contains an assumption which she hasn't agreed with.

THE COMMISSIONER: All right. Well let's clarify it.

MR DOCKER: All right.

THE COMMISSIONER: Look at the first page of the letter Ms Brown. Do you see it's a letter to the Administrator about Mr Johnson's expense claims?---Yes.

40

18 February, 2014?---Yes.

Was that a discussion that was occurring at the meeting where Ms Provest asked some questions and became concerned about the expense claims? ---Yes, but I don't, I remember Gloria being upset. It's the most part I remember of the meeting.

Yes, but it was, it was the meeting that was discussing this letter wasn't it?
---Yes.

And then after she expressed concern she signed the letter. Is that the same meeting we're talking about?---Yes.

MR HENRY: And Ms Brown, at that meeting do you recall that Ms Provest expressed that she was not, at least in the first instance she didn't agree with approval of expenses that had been claimed by Mr Johnson?---I don't
10 remember exactly what Ms Provest spoke about at that meeting, except her being upset, as in her wording of what she was - - -

Well wasn't one of the concerns she expressed that Mr Johnson had claimed expenses in relation to the use of a horse truck or trailer?---Yes. And that's after hearing her say that yesterday as well.
I see. So you – do you have an independent recollection of this meeting or do you only know about the meeting because you were sitting in this hearing room yesterday when she gave evidence?---No I remember the
20 incident, that it was about Gloria and she was satisfied and sat back down at the table.

Do you agree that at the meeting it was suggested that Mr Johnson had driven his truck around schools, that is his horse trailer or truck to see whether it would fit between the cars down various roads?---Yes.

And that was because he claimed that it was a proposal to, there was a proposal for a dental truck to be used?---Yes.

Do you also recall that he claimed to have transported corpses in his horse
30 truck?---Never have I heard that before.

And do you agree that Ms Provest cried at the meeting?---Yes.

And you were sitting in this room when she yesterday said she signed the letter in circumstances where she felt pressured into doing so?---Yes, but I didn't see it as that on the night.

I see. Well as far as you were concerned were the expenses claimed by Mr Johnson for use of his horse truck or trailer for the benefit of GLALC?---I
40 don't believe they were for his truck and trailer.

Do you say that he - - - ?---It was to get a length of something that he already owned to the length of the truck that we would purchase for the dentist.

Didn't you understand that he was making you claim for reimbursement of costs associated with his horse truck or trailer?---Could you rephrase that again?

Didn't you understand that he was making a claim for reimbursement of expenses for using his horse truck or trailer?---I don't remember.

Well, you signed this letter, at pages 14 to 15 of volume 41, didn't you?
---Yes.

10 Before you signed this letter, did you satisfy yourself that the expense claims, the subject of the letter, that Mr Johnson had made were appropriate in your view?---I'm sure I did at the time I signed it.

Well, go back, please, in the documents to page 11. Now, you were in this hearing room yesterday. Did you see this document come up on the screen?---Vaguely.

Well, did you receive a copy of this document by email prior to signing the letter on 18 February, 2014?---I don't remember.

20 Well, have a look at page 11. You'll see, in about the middle of the page, there's an entry described as Easy Park Australia in the left-hand column. It's highlighted. Can you see that?---Yes.

The entry immediately above it is for Tuza, spelt T-u-z-a, Floats. Do you see that entry?---Horse float accessory. The one straight above that one before.

Yes. Horse float accessory. Description, or d-e-s-c, says "fit ball to truck". Or, yes, "fit ball to truck". Do you see that?---Yes.

30 And that's a \$3,000 claim that was made by Mr Johnson with respect to his horse float accessory. Do you see that?---Yes.

Now, the expenses associated with the horse float were the subject of discussion, weren't they, at the meeting at which Ms Provest became upset, isn't that right?---Yes.

40 Well, did you satisfy yourself before signing the letter that that \$3,000 expense claim for the horse float accessory was an expense that should be allowed in favour of Mr Johnson or Waawidji in connection with his role as CEO of GLALC?---Sorry, could you ask me that question again?

Yes. Did you satisfy yourself before signing the letter dated 18 February, 2014 that that expense claim of \$3,000 for a horse float accessory was an expense for which Mr Johnson or Waawidji should be reimbursed in connection with his employment as CEO of GLALC?---Yes.

What does that \$3,000 expense claim for a horse float accessory have to do with Mr Johnson being CEO of GLALC?---He was exercising a situation so

that we could see if this – vehicles this long could fit into schools to become – for us to develop a dental thing, truck.

Are you saying that it's necessary to spend \$3,000 to work out whether a vehicle goes down a road?---Do you go and buy a vehicle without knowing things?

THE COMMISSIONER: You could take measurements don't you think?
---(No Audible Reply)

10

Would that be an appropriate way to determine whether a truck would fit inside a school?---I'm a visual person.

Oh, right. Okay. So that - - -?---As in seeing - - -

So you thought it was necessary for Mr Johnson to physically drive his truck into those places and for that purpose he needed to spend \$3,000, you thought that that was an appropriate expenditure. That's the effect of your evidence?---Yes.

20

MR HENRY: And why do you say, madam, it was necessary to acquire a horse float accessory for the purposes of working out whether a dental truck would fit down a road?---To make that horse truck the length of the truck that the dental truck was going to be.

Isn't this the truth, you made no attempt to satisfy yourself at all that the expense claims referred to in the 18 February, 2014 letter were properly reimbursable to Mr Johnson before you signed the letter?---No.

30 You just signed the letter because you were asked to didn't you?---No.

All right. I have no further questions, Commissioner.

MR CHEE: Commissioner, if I may.

THE COMMISSIONER: Yes, Mr Chee.

MR CHEE: Just a few propositions that I need to put to Ms Brown.

40 THE COMMISSIONER: Yes, go on.

MR CHEE: You've been asked questions about a meeting in which Gloria Provest was upset. Do you recall if Mr Tobler was at that meeting?---Yes.

And did Mr Tobler say anything to Ms Provest in respect of her disagreement about expenses?---No.

I'd like to suggest to you that he did say things. He said words, words to the effect that she was only new, that she didn't know what was happening and that the issue had already been discussed. What do you say about that?--I don't agree with it.

All right. Thank you.

THE COMMISSIONER: Nothing else? Yes, thank you, Ms Brown, you may step down. You're excused.

10

MR TAYLOR: Is that excused from the summons, Commissioner.

THE COMMISSIONER: Yes. Yes, thank you.

MR TAYLOR: Thank you.

THE WITNESS EXCUSED

[3.23pm]

20

MR HENRY: Commissioner, I call Mr Mervyn Donovan.

MS McENIERY: Commissioner, Ms McEniery. I appear for Mr Donovan.

THE COMMISSIONER: Yes, Ms McEniery. Thank you.

MS McENIERY: Commissioner, I've explained the operation and effect of section 38 and section 37 of the Act to Mr Donovan and he is seeking that a declaration be made under section 38.

30

THE COMMISSIONER: Thank you. Just take a seat, Mr Donovan.

MR DONOVAN: Thank you.

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.

40

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**

THE COMMISSIONER: Mr Donovan, would you like to be sworn or affirmed?

10

MR DONOVAN: Sworn, thank you.

THE COMMISSIONER: Thank you. Can we have the witness sworn.

MR HENRY: Mr Donovan, am I right in understanding that you were appointed to the Board of GLALC in 2009?---If you wouldn't mind speaking up.

Sure. Am I right in understanding that you were appointed to the Board of GLALC in 2009?---Yeah, September, September 2009, 2008.

10

Oh 2008?---Yeah.

And when did you cease to be a director of GLALC?---I think, I think in 2014.

I see. Now have you ever been a director of an Aboriginal Land Council other than GLALC?---No.

20

Had – prior to becoming a director of GLALC had you ever been a director of a corporation?---No.

What about since becoming a director of GLALC?---Sorry, what was that, sorry?

Since becoming a director of GLALC have you become – have you been a director of a corporation?---Well, yes, part of the, part of the entities of the Gandangara.

30

Oh I'm sorry. So other than in respect of the group of Gandangara companies have you been a director of any other company?---No.

Right. Now, excuse me, what training, if any, have you had with respect to your obligations as a director of a company or GLALC?---No training as a director.

Right. Have you – and that's before or after you became a director of GLALC?---That's correct.

40

Have you been in the hearing room for the last few days of evidence?---Yes, sir.

You've heard some evidence then of other people recounting that they went to training sessions at Wollongong. You heard that evidence?---Yes.

Did you participate in any training sessions at Wollongong?---Yes.

All right. And now are you able to recall when?---No.

Are you able to recall how many?---I think there was two sessions that we went to.

Right. And were those sessions sessions that occurred shortly after you commenced as a director of GLALC in September 2008?---I don't recall.

All right. Do you remember how far apart they were?---I think they were scheduled for six months apart, but I think that it went out to a year I think.

10 All right. So you attended two sessions in Wollongong for educational purposes upon becoming a director of GLALC. Correct?---Yes.

But you haven't otherwise had any other training for the purposes of understanding your responsibilities and duties as a director. Is that correct? ---Well one other, one other training session that I went to that was organised by NSWALC.

Oh, yes?---And that was conducted at the, in Moore Street, 103 Moore Street in Liverpool, at the Gandangara office.

20

Right. And when was that? Do you recall?---I don't recall.

Do your recall what was the subject of instruction at that session?---Well they just talked about, they actually had this huge, rather huge book that we went through. I can't recall the, recall the contents.

Right. Did you, did you receive any instruction about the Aboriginal Land Rights Act?---No.

30 Did you receive any instruction about directors duties?---I, I don't recall. I don't recall the contents of the, the session.

I see. What about the sessions in Wollongong, do you recall the contents of those at all?---Vaguely, yeah, they were, they were conducted by John Miro from memory.

Yes?---And he took us through issues around corporate governance.

40 Do you recall in substance what he said about that?---I think we worked through some issues around conflict resolution, looking at some financial statements, be mindful of not to trade insolvent, so getting, getting an understanding of different jargon I guess and the concepts in, in governance.

All right. I'll show, and at those sessions in Wollongong did you receive any instruction about the Aboriginal Land Rights Act?---I don't recall. I don't recall the Land Rights Act.

I'm sorry?---I don't recall whether we talked about the Land Rights Act.

All right. I'll show you a printout of some sections of that Act. Have you seen the Aboriginal Land Rights Act before?---Sometimes I've had a look at it, just for reference.

All right.---Yeah?

You should have in front of you, sir, a copy of section 78B of the Aboriginal Land Rights Act. Do you see that?---Yes.

10

Now, have you, before this hearing, heard of section 78B of the Aboriginal Land Rights Act?---No.

Right. You'll see it's headed, "Certain persons must not be employed as chief executive officers." You can see that there?---Yes.

And then in subsection 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?---Yes.

20

And then if I could ask you, please, to look down the page to subparagraph E. You'll see there the words "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 those words?---Yes.

Now, I suggest to you that the effect of section 78B-1e is that a person who falls within the description of the person in subparagraph E cannot be or continue to be employed as the CEO of the Local Aboriginal Land Council. Do you agree with that?---Yes.

30

Now, were you aware, whilst you were a director of GLALC, that a person who met the description in subparagraph E could not be employed as the CEO of GLALC?---Could you just repeat that for me, sir?

Sure. Whilst you were a director of GLALC, were you aware that a person who met the description in subparagraph E could not be employed as the CEO of GLALC?---No, I wasn't aware of that.

No-one ever told you that?---No.

40

All right. Now, if I could ask you to please have regard to subparagraph E. It refers to a corporation. Were you aware, whilst you were a director of GLALC, of a corporation by the name of Waawidji Proprietary Limited? ---Yes.

And I'll refer to that as Waawidji for convenience. You appreciate?---Sure.

Now, did you understand that Mr Johnson owned or part-owned Waawidji?

---Yes.

Did you understand him to be a director of Waawidji?---Yes.

Did you understand him to be an employee of Waawidji?---Yes.

Did you understand him to be concerned in the management of Waawidji?
---Yes.

10 In your mind, was he effectively in control of Waawidji?---Yes.

It was his company?---Yes.

All right. Excuse me. Now, if I could ask you, please, then, to turn to section 152. Sorry, I withdraw that. Before we go to section 152, I'll just return you to section 78B. You're now aware of the contents of section 78B-1e, but I rather gather you didn't know about the contents of that piece of legislation until this hearing commenced. Is that fair?---That's correct.

20 Right. With the benefit of the knowledge of section 78B-1e, do you consider that Waawidji received a benefit from GLALC whilst you were a director of GLALC?---That Waawidji received a benefit?

Yes.---From GLALC? Yes.

And how would you describe that benefit? What was it?---Well, I mean, I consider Waawidji and Jack Johnson - - -

30 Yes?--- - - - one and the same. So if we're paying Jack Johnson anything, then Waawidji benefits.

I see.---Does that make sense?

I understand what you're saying. You drew no distinction between Mr Johnson and Waawidji. I'm just asking you.---No.

Right.---No.

40 And what about GLALC and GMS? And by GMS, I'm referring to Gandangara Management Services Limited. I'll refer to that as GMS for convenience. You understand that?---Yes.

And were you a director of GMS whilst you were a director of GLALC?
---Yes.

And did anyone ever ask you to become a director of GMS?---Of GMS? I think there was some discussion around joining GMS. I remember signing some ASIC documents.

I see.---Yeah.

So as best you can recall, you effectively agreed to become a director of GMS. Is that right?---Yes.

All right. And as far as you were concerned, in your own mind, did you draw any distinction between GLALC and GMS?---They were part of GLALC.

10

GLALC had a number of what I might describe as related companies.---Yes.

I realise this is talking generally. You were a director of each of those, were you?---Yes.

And as far as you were concerned, were those related companies, which included GMS, part of GLALC?---Yes.

20

Is a way that you would describe it as the companies were, in effect, divisions or groups within GLALC?---Yes.

Right. So, for example, turning to section 78B-1e, where it says a person who has an interest in a corporation that receives a benefit from the council, would you say that if Mr Johnson is the person, Waawidji was a corporation that benefited from GLALC? But in saying that, you include in the concept of GLALC its subsidiary companies or related companies.---You're going to have to explain that to me again, if you wouldn't mind, thanks.

30

All right. I might leave that. I'll go to section 152 on the final page. Section 152, subsection 1. This is the third of the three pages I've given you, sir. It says, "Each Local Aboriginal Land Council is to establish in an authorised deposit-taking institution an account, and that's called the Local Aboriginal Land Council's Account." Do you see that?---Yes.

And then if I could ask you, please, to look down to subsection 3. It says, "The following is to be paid from the Local Aboriginal Land Council's Account." And then three things are stated. Do you see that?---Yes.

40

The first is "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.

Secondly, B, "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 thirdly, C, "Any other payments authorised by or under this or any other Act." Do you see those words?---Yes.

Now, what I suggest to you is that section 152, subsection 3 identifies the purposes for which money may be paid out of GLALC's account. Do you understand?---Yeah.

Had anyone ever explained that to you whilst you were a director of GLALC?---No.

Were you aware of it?---No.

10

All right. All right, you can hand that back, thank you. Now, Mr Donovan, I'll ask you some general questions now about the procedure adopted at Board meetings. And in doing so, I'm conscious of the fact that you have sat in the hearing room and you're aware of the evidence that's been given about this subject matter. Is that correct?---Yes.

Just so it's clear, have you been in the hearing room for the entirety of the hearing thus far?---Yes.

20

Right. You would have heard, then, evidence about Board papers. Do you agree that Board papers were not sent to you as a director prior to Board meetings?---I don't agree.

Right. What do you say happened?---Well I think in some instances they were emailed to us.

I see?---Not, not all the papers but some, some papers were emailed to, to me. But the more, the more bulkier items were, were at meetings.

30

And in relation to the documents that were emailed to you, were they emailed to you on the afternoon of the Board meeting, and I know this is generally speaking, but how did it work?---No, I can't recall. I think, I'd be guessing if I knew what they got to me.

Right. What about this as a general proposition. In the circumstances in which documents were emailed were they emailed to you in what you considered to be sufficient time for you to read them before the meeting? ---I'm not sure.

40

All right?---I'm not sure.

Was it an irregular thing to have Board papers emailed to you?---I think that the, I think what the Board was trying to do was trying to get the papers in advance but that, that didn't happen all the time. We didn't get all of them in advance. Most of them were, you know, tabled on the night.

All right. You've also heard some evidence that when Board members that turned up at the offices of GLALC for a Board meeting each had a folder?

---Yes.

And you've heard evidence as to what the contents of the folders usually were. What, what's your recollection of, generally speaking, what was in the folders?---It was the, the minutes of the previous meeting. The agenda for that particular meeting and any, sometimes some presentations that were, were available at that point in time.

10 That is presentations to be provided at the upcoming meeting that evening. Is that right?---That's right.

All right. Do you ever recall there being written reports?---Yes.

All right. Do you recall there ever being written legal opinions?---I don't, I don't recall getting written legal, legal opinions.

20 In relation to the actual conduct of the – sorry, I'll withdraw that. And as far as you were concerned were you provided with the Board papers that you were provided with in sufficient time to read them before the meeting commenced?---Look for some of the, for some of the issues there was probably sufficient time, but for some of the, some of the other issues I'd probably, another couple of hours would have helped. But you know there was, it was hard to try and crunch stuff in.

I'm sorry, it's hard to?---Crunch it in, sort of read things - - -

To digest it do you mean?---Yeah.

30 All right. And by that I mean to understand what the issues were that were raised in the papers?---Yeah.

All right. Now in relation to the actual conduct of the meetings, you've also heard evidence as to the process adopted. What, what – and you've heard evidence to the effect that there was Mr Johnson on a computer typing and words were being projected up on to an overhead screen. Do you recall hearing people - - -?---Yes.

40 - - - give evidence about that? Can you please give us your best recollection of that process and how it worked?---Yes. My recollection is that the agenda, an agenda item would come up for discussion. We'd have the discussion. Jack would then type into either his laptop which was connected to the huge screen. There'd be some, there'd be some discussion, some debate about the, about the motion proposed. And then the, the chair would ask, would ask for people to move and second.

So when you, just taking, excuse me, a step back into your answer there. You said Mr, you said Jack would type and something would come up on the screen. What exactly came up on the screen? Was it the words of the

resolution that was proposed or was it something else?---Well sometimes, sometimes he would be typing in what, what directors around the room would be saying. Sometimes Jack would, would, would pen nose himself for want of a better word, he'd, he'd, you know, develop those.

When you say those are you referring to drafting a resolution are you?
---Yes.

10 Right.---Yes. And there would, there would then be discussion around the room about the, about the motion.

Did the discussion concern whether or not the motion should be passed or did it at times concern the wording of the motion?---Sometimes it was around wording.

20 All right. So there's up on the screen some words. At some point I understand from what you're saying a proposed resolution is formulated on the screen. There's – a point comes where what the Chairperson says does anyone move the motion. Is that right?---Yes.

And the Chairperson was relevantly Ms Cronan wasn't it?---Yes.

And then what happens after she says that?---Then those, those names would be typed onto the – typed into the minutes.

So if was yourself it would have Mr Donovan or Merv Donovan moves the motion?---Moved, moved Merv Donovan, yes.

30 And then someone else seconds it?---Yes.

That's said, I second it, is it, is that how it worked?---Yeah. Some, some people would just put up their hand say I'll second that or I'll move that.

All right. And so it's moved and seconded. Then what happens?---Well, usually – sometimes, sometimes the discussion around the room you got a sense in terms of the consensus of the agreement of the resolution.

40 Right?---So that there wasn't, you know, for – there was an agreement. Sometimes I think there was, there was asked for a show of hands.

Is this, and this is a genuine question. I want there obviously. Was it a situation where there would be discussion and if there seemed to be a consensus such that people agreed there would be no vote by show of hands but in the event of no apparent general agreement or perhaps uncertainty then a show of hands would be called for. Is that how it worked?---Yeah. Look, sometimes Cindy said carried and if someone was – objected to it will say hey, hey, it's not carried because we haven't finished here. So there'd be there those incidents where we, where we thought that we had general

consensus around the table and, you know, the motion was – well, the Chair would say the motion was carried but it – sometimes it wasn't, the discussion hadn't been completed.

So with respect to the, if I can call it the outcome of a resolution or a motion, at some point did the Chairperson say carried?---Yes.

10 And at that point if someone disagreed then they would speak up. Is that right?---Yeah. More often than not we'd get to the, you know, a carried consensus and it just – it'd be noted – then be noted in the minutes but on the odd occasions there could have been people saying well, no, it's not finished yet. It's not carried.

Well, perhaps if I can show you a set of minutes because you raise a point that I want to ask you about. If you could be shown please volume 8 at page 245. You'll see there, Mr Donovan, a set of minutes of a meeting of May, 2010 and you're recorded as being an attendee under the heading Attendance. Do you see that?---Yes.

20 You raised a moment ago the process by which a motion was carried and you'll see for example at motion 2 that it's said to be moved by Vicki Wade, seconded by John Dickson and carried. Do you see that?---Yes.

It's impossible to tell from the minutes whether there was anyone who disagreed with the resolution. That doesn't appear to have been recorded. Do you agree?---Yes.

30 Given what you've said about the process by which things occurred in the course of the meeting, was there ever a resolution that was carried that any member of the Board disagreed with?---Can you just repeat that for me, please?

Yes. Can you ever recall a resolution of the Board being declared as carried and remaining carried if someone on the Board disagreed with it?---I don't recall any instances.

40 So I rather gather, from the way you've described the process of the Board meetings, that a resolution wasn't carried by a majority of the directors. Rather, it was carried if everyone eventually expressed agreement to it. Is that, and I'm not trying to put words in your mouth, I'm trying to understand, is that a fair way of understanding what carried means in these minutes? Or is it unfair?---Can you just say that again for me, please?

Yes. You appreciate that one possibility, when there's a group of people such as a Board making a decision, is to have a rule such as a majority of votes will carry the resolution. You appreciate that? I know you're nodding, but for the - - - ---Yes.

- - - purpose of the transcript - - - ---Yes.

- - - you need to answer.---Sorry.

Given the way you've described the process by which the Board operated, I rather understand that the Board of GLALC did carry or not carry a resolution by reference to whether there was a majority or not of voters. Rather, and this is the question, did a resolution only carry if, by the end of the discussion about it or the end of the vote if there was a vote, everybody
10 agreed to it?---Carried was usually a majority of people voting.

Well, take, for example, this motion 2 on page 245.---Yes.

You'll see it says, "The Board resolves to accept the new CEO contracts as tabled, effective as at 1 May, 2010," et cetera.---Yeah.

Now, that motion's moved, seconded and carried. Do you agree?---Yes.

20 What I'm trying to understand is whether, given the way the Board operated and the minutes are recorded, it's possible that that resolution was carried by a majority or whether it was carried because, at the end of the discussion about that subject matter at the Board meeting, all directors approved it?
---Sorry, I hear what you're saying. I'm just trying to – so, for the most part, when something was carried it was usually a general agreement. I don't think that – the minutes obviously don't reflect who was for and against. Is that what - - -

The minutes don't tell us - - - ---No.

30 - - - first of all whether there was a vote. Do you agree?---Yes.

Secondly, if there was a vote, who was for and who was against.---Yes.

Or who abstained.---Yes.

So what I'm trying to do is understand from you, to the extent that you're able to recollect of course - - - ---Yes.

40 - - - what's missing from the minutes. Does that make sense?---Yeah.
Yeah, that makes sense.

So, in relation to motion 2, clearly the resolution carried. Do you agree?
---Yes.

Can you for example recall whether you voted in favour of it? Sorry, I'll withdraw that. Can you remember if there was a vote about this particular resolution?---Yeah, there was, there was a vote.

All right?---There was a vote.

So does that mean following a discussion there was a show of hands on this resolution?---Oh I don't, I don't recall on this particular resolution.

All right. Okay. So there was a vote anyway on this resolution?---Yes.

Can you recall if anyone voted against the resolution?---Oh, I don't recall, not on, not on this, this resolution.

10 All right. Can you recall if you voted for it?---I voted for it.

Right. Can you recall looking at the list of attendees at the top of the page, are you able to say one way or the other whether you can recall any of those people voting in favour of the resolution?---Oh I can't, I can't recall who voted for it.

All right?---I know that I voted for it.

20 Yes. Can you recall – does anyone stick in your mind as voting against it?
---I don't recall.

All right. You'll see that the resolution says the Board resolves to accept the new CEO contract as tabled?---Yes.

Now are you able to recall whether any contracts were tabled in connection with motion 2?---Yeah, I remember having in my hand and reading a document, a contract.

30 All right?---Yeah, so there was a contract, there was a contract tabled.

All right. I realise this is going back some time, I'll provide you with volume 11 to see if that can assist your memory in relation to the documents that may have been tabled. And if I could ask you please, Mr Donovan to go in the first instance to page 96, please. Now page 96 sir, is the first page of an agreement between Mr Johnson and GLALC. And that agreement from page 96 through to page 110. What I'll ask you to do is to have a look through those pages with a view to answering this question, can you recall if that document was tabled at the May 2010 Board meeting? So just take as much time as you need?---Could I, could I have that question again, please?

40 Yeah. The question is that agreement that I've just referred you to - - -?
---Yeah.

- - - are you able to recall if that was tabled at the May, 2010 Board meeting?---Being that long ago I can't recall whether that, whether that specific document was, was tabled.

All right. Are you able to recall whether the document that you refer to was a contract between Mr Johnson and GLALC?---Yes. Yes.

I'm conscious of the time, Commissioner.

THE COMMISSIONER: Yes. Just before we finish, Mr Donovan, can I just ask you the minutes that you have seen on the screen just essentially records the wording of the motion that's put - - -?---Yes.

10 - - - and the acceptance of the motion?---Yes.

You said a while ago that sometimes Jack typed what the directors around the room were saying. Was that what they were saying in general discussion or was that what they were saying about the wording of the resolution?---Jack, Jack always typed in terms of the resolution.

Right.---Not, not discussion.

20 Not the discussion?---Not the discussion.

And the other thing that isn't there on the minutes is that there's no reflection for example by way of a background to the resolution so that you don't see what the rationale is for the resolution. Was that something that was given to you orally by Mr Johnson, was there some background given to the Board members about - - -?---Well, there was usually - - -

- - - what this resolution was about?---Yeah, there was usually presentations.

30 Right.---Some presentations, yeah.

And they were on the whole oral?---Some were. Some were oral, some were up on, up on the screen, some were in - - -

Like a slide presentation?---Some were in paper and in our folders.

All right. Thank you, Mr Donovan. I'm sorry you're going to have to return tomorrow morning at 10 o'clock.---That's okay.

40 MR HENRY: Commissioner, just on that.

THE COMMISSIONER: Yes.

MR HENRY: Mr Wing is coming tomorrow morning at 10.00.

THE COMMISSIONER: Oh, yes, and he's coming from out of state.

MR HENRY: Yes. So we were proposing subject to your preference obviously to interpose Mr Wing at 10 o'clock.

THE COMMISSIONER: And then go back to Mr Donovan.

MR HENRY: And then Mr Donovan continue. I have made an inquiry over lunch about how long Mr Wing is likely to be. There's a lack of clarity about it but I think we could safely say that Mr Donovan won't be required before 11.00. It may be that he's not required at 11.00 but - - -

10 THE COMMISSIONER: I think we can safely say not before 11.30.

MR HENRY: That's - I think that's probably right.

THE COMMISSIONER: Well, if for any reason we finish with Mr Wing before then we'll take an early morning tea adjournment until Mr Donovan arrives.

MR HENRY: In which event, Mr Donovan, you wouldn't be required until 11.30.

20 THE COMMISSIONER: Yes.

MR HENRY: At the earliest.

THE COMMISSIONER: All right. Thank you.---Thank you.

MR HENRY: Thank you.

THE COMMISSIONER: Yes, I'll adjourn.

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THE WITNESS STOOD DOWN [4.03pm]

AT 4.03PM THE MATTER WAS ADJOURNED ACCORDINGLY [4.03PM]