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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 MONDAY 23 MAY 2016

AT 10.10AM

Any person who publishes any part of this transcript in any way and to any person contrary to a Commission direction against publication commits an offence against section 1122) of the Independent Commission Against Corruption Act 1988.

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

THE COMMISSIONER: Yes, now, I think we've got Mr Bloomfield. No, not Mr Bloomfield. Mr Tobler.

MR HENRY: Yes, Mr Tobler. But before he comes to the witness box, could I indicate, Commissioner, that I propose to tender an affidavit that has been sworn by him in Supreme Court proceedings.

THE COMMISSIONER: Yes.

10 MR HENRY: And that is in volume 44, at pages 252 to 271.

THE COMMISSIONER: 252 to 271?

MR HENRY: Yes. So I propose to tender that affidavit. And Mr Johnson's legal representatives have indicated to me that they don't oppose that course, but they wish to have the exhibit to the affidavit tendered as well and I'm content to tender the exhibit as well. So the exhibit is not in the bundle of material.

20 THE COMMISSIONER: What is the exhibit precisely?

MR HENRY: It's a collection of documents. I have a hard copy here. I can hand it up, Commissioner.

THE COMMISSIONER: Thank you.

MR HENRY: Most of the documents that are in the exhibit are also at various points in the - - -

30 THE COMMISSIONER: Right, yes.

MR HENRY: - - - the bundle, but there are some that aren't.

THE COMMISSIONER: Yes. So they're minutes and things of that nature.

MR HENRY: Yes.

THE COMMISSIONER: Yes.

40

MR HENRY: And some correspondence. So - - -

THE COMMISSIONER: Yes, well, then that exhibit will be G6.

**#EXHIBIT G6 - AFFIDAVIT OF ROHAN JAMES TOBLER
AFFIRMED ON 23 FEBRUARY 2016 & EXHIBIT RT-1**

MR HENRY: Thank you. And as far as the affidavit itself goes, presumably that can just fall part of Exhibit G1.

THE COMMISSIONER: Oh, sorry, the affidavit. That's right. You're right. It's already in volume 44, isn't it?

MR HENRY: Yes, volume 44 - - -

10 THE COMMISSIONER: Yes. So, yes.

MR HENRY: - - - hasn't been. I haven't tendered volume 44 as part of that Exhibit G1, but this, I suggest, could just be added to G1, as it's in the volumes. Unless you'd prefer to have it marked separate.

THE COMMISSIONER: I think we'll mark it separately, and that way it'll make sense as an exhibit. Part of the problem with separating these is if, at some stage in the future, you go back, you can't always remember what it was attached to. So the affidavit and the annexure, Exhibit T1, is Exhibit
20 G6. Yes?

MR HENRY: I call Rohan James Tobler.

THE COMMISSIONER: Yes, come forward, Mr Tobler. You're unrepresented today, as I understand it?

MR TOBLER: Yes.

THE COMMISSIONER: Could I explain to you something about the way
30 in which we proceed? You can take a seat. You are obliged to answer questions truthfully, even if those answers should incriminate you or involve you in the admission of some form of wrongdoing. You don't have the option of refusing to answer the questions. And so in order to, in effect, protect you in future proceedings, I can make an order under section 38 of the Act, which means that your answers can't be used against you in civil or criminal proceedings. But the order does not protect you if it should be found that you've given false or misleading evidence to the Commission because, in that event, you would nonetheless be liable to prosecution under the ICAC Act, and your answers could be used in relation to those
40 proceedings. You understand that?

MR TOBLER: Yes.

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.

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

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

20 MR TOBLER: Affirmed, please.

THE COMMISSIONER: Yes, can we have the witness affirmed?

MR HENRY: Thank you, Commissioner. Mr Tobler, you've sworn an affidavit, haven't you? I'll withdraw that. You've affirmed an affidavit in civil proceedings between Gandangara Local Aboriginal Land Council and Mr Johnson, is that right?---Yes.

10 I'll ask you to be provided with a copy of volume 44, which contains Exhibit G6, which is a copy of your affidavit. You'll see, sir, at page 252, excuse me, it starts. So you'll see that page is up on the screen now, but you're also being provided with a hard copy of it.---Yeah. Thank you.

That's the affidavit to which I've just referred, isn't it?---That's correct.

Could I ask you, please, to turn to page 254 in the bottom right-hand corner, which is page 3 of the affidavit?---Yeah.

20 You'll see in paragraph 11, you say, "I always read the Board papers before each meeting. The Board papers were provided in advance of each meeting, along with the agenda for the meeting." Do you see that?---Yes.

Now, I understand you've sat in on this hearing for part of the time at least, and heard evidence from other directors. Is that right?---Yes.

30 And you will have heard me ask some questions of those directors about the papers that were provided for the purposes of Board meetings. Do you recall hearing questions about that subject matter?---Vaguely, vaguely, yeah.

All right. When you say in your affidavit, in the first sentence, "I always read the Board papers before each meeting," what papers are you referring to there? What was contained, as you recall it generally, in the Board papers?---Generally we'd receive reports from each manager about the areas of the organisation. So you'd receive a report from Health and what have you. Then you'd receive financial statements, and sometimes you'd receive reports around proposed developments or progress on our developments and things like that.

40 Now, do you say that that material that you've just described was provided prior to a Board meeting commencing?---Prior, yes.

And when was it provided to you?---The times would vary. Sometimes you'd get it a week in advance. Other times you'd get it exactly before the Board meeting officially commenced. So it varied.

So when you say you received Board papers a week in advance, by what means did you receive them?---Usually via email.

And who did you get the email from?---From Jack.

So Mr Johnson would email you?---Oh, sorry, or possibly Tina.

Tina, as in Mr Johnson's assistant?---Yes.

Do you recall, the email you received had attachments to it containing the material that you've just described, is that right?---Yes.

10

Do you recall whether those emails were addressed to you alone?---
Vaguely, I - - -

Sorry, just before you start, don't guess. If you can recall, please give the answer. But if you can't, I don't want you to speculate.---I can't recall.

20

All right. You'll see back at paragraph 11 in this second sentence, it says the Board papers were provided in advance of each meeting, along with the agenda for the meeting. Now, do you agree with this, that when you turned up for a Board meeting at GLALC's offices, there would be a folder made available to you with Board papers in it?---Yes.

And that folder, ordinarily, I understand, contained an agenda?---Yes.

It ordinarily also contained the minutes from the preceding meeting. Is that right?---Preceding, meaning?

The meeting before.---Yes.

30

For the purposes of the meeting, considering whether to approve those minutes.---So we would review the minutes to see if they were true and correct and what we all agreed on, and then we would vote that these minutes were confirmed.

Yes. So, in the folder there was the agenda and the minutes. Was there anything else, generally speaking?---There would be reports that were going to be tabled for the night. They'd be in there in hard copy. A copy of the financials. Anything that was going to be discussed on the night would be in the Board papers.

40

So, I appreciate it would have differed with various Board meetings, but are you suggesting that in the folders that were provided to you for the purposes of Board meetings, there might be up to, say, a hundred pages' worth of documents in the folder?---I can't answer that. I don't know how many pages.

Well, how long before the commencement of the meeting was the folder made available to you?---On the night, we would receive the folder.

Yes. And so you'd turn up for the meeting, and then how long between then, when you had access to the folder, and the commencement of the meeting?---When everybody had had the chance to review the Board papers.

Yes? And about how long was that?---I don't know. Can't answer.

10 For example, did you turn up to the offices and you'd all sit and read for two hours and then start the meeting? Or not?---I can't answer. You don't want me to guess, do you?

No, I don't.---No. I can't answer that.

All right. In any event I rather understand from your evidence that – well, I withdraw that. Do you say you had sufficient time to read the Board papers that were provided to you before the commencement of each Board meeting?---Majority of the time, yes.

20 All right. Could you go please over the page to page 255 which is page 4 of your affidavit and you say in the first sentence there, “I attended retreats with the rest of the Board in Wollongong.” Can you see that?---Yes.

Do you recall – and I rather understand from your evidence that the extent to which you received training for the purposes of being a Board member of GLALC that was at Wollongong training sessions. Is that right?---Yes.

30 Now, at that Wollongong training – at any Wollongong training sessions did you receive instruction about the Aboriginal Land Rights Act?---I can't recall.

All right. Do you recall ever receiving any instruction about the Aboriginal Land Rights Act?---From, from anybody?

Yes.---Often, yeah, we'd receive instruction or we'd receive not instructions but people would discuss sections of it in the Board meeting. Often Cindy would refer to it and so would Jack.

All right.---Yeah, and other Board members would refer to the Act.

40 So is the extent to which you had any understanding of the Aboriginal Land Rights Act that derived from what people said about parts of it during Board meetings. Is that right?---Yeah.

All right.

THE COMMISSIONER: Mr Tobler, do you mean to say that people referred to specific provisions like section 112 or did they simply refer to some provision in the Act which had a general effect so they would

summarise something that the Act provided, how – what was said about the Act?---Oh, depending on the situation. If there was a discussion around a certain situation and we referred to the Act to ensure that we were in line and we were doing the right thing by the Act so - - -

And I understand that but my question is did Ms Cronan or Mr Johnson or some other member of the Board actually refer to specific sections in the Act or was it just a general discussion about we need to look at the Act to make sure that we're complying?---No, specific sections.

10

So people actually referred to specific sections in the context of the discussions you were having?---Yes.

And was there a copy of the Act at the Board meeting so that other – so that people could look up the section and see what it said?---We all received a copy at the start when we became Board members and there was a copy available in the Board room at the time that we would often refer to.

20

So everyone could look at a copy of the Act when they were discussing it? ---Yes.

MR HENRY: I'll show you an extract from the Act. This is section 78B of the Aboriginal Land Rights Act. Have you seen this section before?---I can't say I have.

Do you recall it being referred to during the course of discussions at Board meetings?---No, I don't recall.

30

Do you recall anyone opening up the Act at a Board meeting and referring to this section?---Can I read it for a sec so - - -

Of course. By all means.---Okay. What was your question?

Well, I asked you whether you'd ever seen this section of the Act before. Now that you've had an opportunity to read it - - -?---Hey?

Now that you've had an opportunity to read it I'll ask the question again. Have you seen this section of the Act before?---Before this today?

40

Yes.---No.

So no one ever referred to it during the course of a Board meeting?---I can't recall.

No one ever opened up the Act during the course of a meeting and showed you a copy of it?---Of this section?

Yes.---Not to my recollection, no.

And you were given a copy of the Act you said when you became a director of GLALC. Is that right?---Yes.

But you don't recall ever seeing this section before?---No.

All right.

10 THE COMMISSIONER: Just for the transcript, Mr Henry, is it 78B that the witness is looking at?

MR HENRY: Yes. I'm sorry.

THE COMMISSIONER: Yes. Thank you.

MR HENRY: Section 78B is the section to which I'm referring, and you understand that, don't you, Mr Tobler?---What's that?

20 You understand that the section about which I was just asking you questions was section 78B, the one I've just provided you with. Correct?---Yes.

Now, you see it says in subsection (1), "The following persons must not be or continue to be employed as the Chief Executive Officer of a Local Aboriginal Land Council." Can you see that?---Yeah.

30 And then at subparagraph (e) down the page it 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?---In section B?

Subparagraph (e).---(e).

Do you see it 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 those words?---Yes, I see that.

40 Now, I suggest to you, Mr Tobler, that the effect of this section is that a person who meets the description in subparagraph (e) cannot be the Chief Executive Officer of a Local Aboriginal Land Council. Do you understand that?---What it says there, yeah.

Right. Now, were you aware of that whilst you were a director of GLALC?---I can't say. I can't recall. No, I wasn't aware of it.

All right. And no one told you that?---No.

If you go over to the last page of the printout, section 152. Have a read of that and tell me when you've done that please.---Yeah.

Have you seen section 152 of the Aboriginal Land Rights Act before?---No.

All right. And no one ever referred to it in a Board meeting?---Not that I can recall.

And no one ever showed you a copy of it during the course of a Board meeting?---Not that I recall.

10 All right. You see it says in subsection (1), “Each Local Aboriginal Land Council is to establish in an authorised deposit-taking institution an account called the Local Aboriginal Land Council’s Account.: Can you see that?
---Yes.

And then if you go down to subsection (3) it says, “The following is to be paid from the Local Aboriginal Land Council’s Account.” Three things, firstly, “(a) amounts required for the acquisition of land by the Council where that acquisition has been approved in accordance with this Act.” Do you see that?---Yeah.

20 Secondly, “(b) amounts required to meet expenditure incurred by the Council in the execution of administration of this Act.” Do you see that?
---Yeah.

And thirdly, “(c) any other payments authorised by or under this or any other Act.” Do you see that?---Yeah.

30 Now, I suggest to you that the effect of this section or at least subsection (3) is that as far as GLALC was concerned the only purposes for which money could be paid out of its bank account were the purposes stated at (a), (b) and (c) that I’ve taken you to. Do you understand that?---Yeah.

Did anyone tell you that whilst you were a director of GLALC?---Not that I can recall.

All right. Were you aware of it whilst you were a director of GLALC?
---No.

40 All right. Now, if you go back to section 78B subsection – sorry, subparagraph (e) on that first page.---Yeah.

“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 again?---Yes.

Now, were you aware whilst you were a director of GLALC of a company by the name of Waawidji Pty Limited?---Yes.

What did you understand that company to do?---For, for the LALC?

Just generally. What did you understand it to do?---I, I don't know what exactly it did. I just knew that Jack was the owner of Waawidji.

All. So your understanding was in effect Mr – Waawidji was Mr Johnson's company. Is that right?---Yes.

10 And did you understand that if that company received a benefit from GLALC Mr Johnson could not be the CEO of GLALC?---No, I can't say I did.

All right. And was it your understanding whilst you were a director of GLALC that Waawidji received benefits from GLALC?---Not, not until the new contracts were discussed.

20 Which contracts are you referring to there?---So when Jack received his new contracts and we allocated the, the salaries – part of the salaries to Waawidji from the subsidiaries.

So you're talking about 2010, are you?---No, 2012, I think it was. I can't recall the – testing my memory now.

If it assists you, in your affidavit, which you still should have, if you go to paragraph 66, on page 287, sorry, 267, you'll see a reference there to a Board meeting of 3 May, 2010.---What page, sorry?

Sorry, 267. Page 16 of the affidavit, if that assists. Paragraph 66.---Yeah.

30 You've read paragraph 66, Mr Tobler?---Oh, yes. In 2010, yeah.

So is it - - - ?---So that's, yeah, back in 2010.

All right. So as far as you were aware, Waawidji commenced receiving benefits from GLALC in May 2010. Is that right?---As far as I was aware, yes.

40 All right. You can hand back the printout of the legislation, thank you. Now, I'll ask for you to be provided with – if you can retain your affidavit, open at paragraph 66, and I'll ask you to be provided with volume 8 at page 245, Mr Tobler.---What page was it?

Page 245, in the bottom right-hand corner.---Yeah.

You should have in front of you there minutes of the GLALC Board meeting of May 2010. Is that what you have?---Yes.

And you're recorded as being an attendee at the meeting.--- Yes.

And I suggest to you they're the minutes of the meeting that is referred to in paragraph 66 of your affidavit. Would you agree?---Yes.

All right. Now, you'll see, I want to direct your attention, Mr Tobler, to motion 2 on page 245, where it says, "The Board resolves to accept the new CEO contracts as tabled, effective as at 1 May, 2010, and authorises the chair to sign the contracts." Can you see that?---Yes.

10 Now, do you recall this resolution being put to the Board at that Board meeting?---Not in detail, no. I recall parts of the meeting, but not in detail this motion.

All right. Do you recall this motion being put up on an overhead screen? The words of the motion being put up on an overhead screen?---I remember this whole page being up on the screen, yes.

The page of the minutes?---Yes.

20 I see, so in relation to the way in which this meeting was conducted, were the draft minutes put up and you've proceeded through the minutes? Is that how it worked?---Yes.

I see. And those minutes had been prepared by Mr Johnson? Is that right? ---Usually Jack and Cindy would put them together, from memory, yeah.

Well, did you actually see them do that?---No.

30 Okay. So - - - ---In saying that, I don't know who put them together, then.

All right. They were put up, were they, by the use of Mr Johnson of his computer, is that right?---That's correct.

So he's sitting in the meeting on his computer, and whatever's projected up on the screen is coming from his computer. Is that correct?---That's correct.

40 All right. And do you say that all of the motions, as formulated in these minutes, were, in effect, drafted prior to the commencement of the meeting and contained in a template of the Board minutes for the purposes of the conduct of the meeting?---Sorry, can you say the question again?

Yes. Do you say that the motions referred to in the minutes were drafted prior to the commencement of the meeting and projected up on the screen for the Board to see as the meeting progressed?---All I know is when I come to the meeting, these minutes would be on the screen, ready for us to proceed through.

I see.---So, given that I didn't see who drafted or how it was done, I can't answer on that.

No, I understand. All right. You'll see motion 2 says, "The Board resolves to accept the new CEO contracts as tabled." Do you see that?---Yes.

Now, am I correct in understanding that you don't recall any contracts being tabled in relation to the Board's consideration of that motion?---Not saying that there wasn't, I just don't recall it myself.

10

All right. Now, you see it refers to contracts as well, that motion.---Yeah.

It doesn't refer to one contract. You see that?---Yeah.

Well, do you recall discussion at the meeting of more than one contract?---I don't recall.

All right. Excuse me. I'll show you volume 11. If you just hold the volumes you've got and I'll ask you to go to volume 11, at page 131.---No, you're right, thank you.

20

You'll see page 131 of volume 11, Mr Tobler, a copy of a PowerPoint slide headed, "CEO's Current Base Salary Package, \$148,951." Is that what you're looking at?---Yes.

Now, if you have a look on pages 131 through to 134, you'll see four slides. ---Yeah.

30

Do you recall at the May 2010 Board meeting a presentation being made based on those slides?---Yes.

Right. And who made that presentation?---I think it was Cindy. I remember Cindy.

All right. Do you remember what, if anything, Ms Cronan said about the slide at page 131?---I don't recall the discussion, no.

All right. Do you recall any discussion as to how the number, 148,951, was calculated?---I don't recall.

40

Right. And you don't recall any document being provided to you that explained that?---Don't recall.

All right. If you go over to the next slide, it says, "CEO's base salary package as at 1 July, 2010, \$160122." Can you see that?---Yes.

Now, if it assists you, the May Board meeting was held on 2 or 3 May. ---Yeah.

Now, this slide, on page 132, refers to a base salary package as at 1 July, 2010.---Yes.

Do you recall any explanation given as to why consideration of the CEO's base salary package as at 1 July 2010 was made?---I don't recall.

10 All right. And do you recall anything being said about the 160-odd thousand dollars?---Don't recall.

Or provided any document explaining how it was arrived at?---No, I don't recall.

All right, if you go to the next one, please, page 133. Excuse me. You'll see it says, "CEO's proposed salary, effective 1 May, 2010, \$180,000." Can you see that?---Yes.

20 You'll appreciate that this slide refers to a proposed salary effective at a date a couple of days before the Board meeting itself. Do you understand?---No, I don't.

All right. You'll see it says, "CEO's proposed salary, effective 1 May, 2010"?---Yeah.

The Board meeting occurred after 1 May, 2010 by a day or two.---Yeah.

30 Do you recall any explanation being provided as to why consideration should be given to giving Mr Johnson an increased salary that's backdated? ---I don't recall talking about it being backdated, no.

Right. Do you recall discussion about the figure of \$180,000?---I can only remember what I said in terms of the pay rise on the day, and that was for the amount of responsibility that we had put on Jack, and with the growth of the organisation, I thought that salary was appropriate.

Right. In coming to that view that that salary was appropriate, did you undertake any research as to what other CEOs of LALCs were paid?---We weren't a regular LALC, so - - -

40 What's the answer to my question, please?---Sorry?

Did you undertake any research?---No.

Right. I asked a question about whether you undertook research in relation to other CEOs of LALCs. Do you recall?---That question you just asked?

Yes.---Yes, and I said no.

Yes. I'm now asking you a broader question. Did you undertake any research at all as to whether or not \$180,000 was an appropriate amount to be paid to Mr Johnson?---No.

Do you recall anyone else on the Board making a presentation to the Board at the meeting as to research that person had undertaken?---I don't recall.

So on what basis did you consider \$180,000 was an appropriate amount to pay?---Just my personal opinion.

10

All right. If you go to page 134, please, you'll see it says, "CEO's proposed contract, effective 1 May, 2010."---Yeah.

Do you recall any discussion by reference to this slide?---I don't recall.

All right. If you have a look at the second dot point, it refers to a term of contract, five years plus five year option. Do you see that?---Yes.

20 Now, do you recall a discussion about a five-year option in the context of Mr Johnson's employment?---I don't recall.

All right. You'll see the third dot point refers to bonus conditions. Do you see that?---Yes.

At the time of the May 2010 Board meeting, did you understand whether Mr Johnson or Waawidji was entitled to a bonus?---Prior to this meeting?

Yes.---Yes, I understood.

30 What was your understanding about that?---I can't remember in detail, but I know that there was a bonus scheme in place in his contract.

All right. And when you say "his contract", you're talking about the contract that existed prior to this - - - ?---Prior to this one, yes.

Did you ever see that contract?---I would say I did, but I don't remember what was in it.

40 All right. When you say you would say you did - - - ?---Yeah, I did.

All right. When did that happen?---I don't recall.

Was it at the time of the May 2010 Board meeting?---I don't recall.

Was it before the May 2010 Board meeting?---Yes, it would have been.

Several years before?---I don't know.

If it assists you, that contract commenced in 2007.---Mmm. Do you want me to guess or - - -

No.---I don't recall.

All right. Page 134, you'll see the last dot point says, "Jack remains an employee of GLALC and contract employee of GMS." Can you see that?
---Yes.

- 10 Do you recall discussion at the meeting about Mr Johnson having more than one contract for his employment as CEO?---I don't recall.

All right. I'll show you two contracts that were in fact signed following the meeting. The first one's in the same volume, volume 11 of page 96.---What page?

96. Now, Mr Tobler, you'll see that's a contract between Mr Johnson and GLALC. Can you see that?---Yeah.

- 20 Now, that contract goes from page 96 through to page 110. And I'd ask you to look at those pages for the purposes of answering this question - - - ---Do you want me to read the whole contract?

Just bear with me. I'll explain what I'd like you to do. I want you to answer the question, please, was that contract tabled at the May 2010 Board meeting? So, could you look at pages 96 through to 110 so far as is necessary in order for you to answer the question?---I don't recall.

- 30 All right. Do you recall ever seeing that contract before?---Is this the previous contract? Or the contract after the May meeting?

If it assists you, Mr Tobler, if you look at page 108, you'll see there that this is a contract with a commencement, in brackets, effective date of 1 May 2010.---Yeah. I don't recall seeing this contract.

- 40 All right. If you could go then, please, to page 112. Sorry, 112. You'll see another contract. The first page of this contract. And it's a contract between Waawidji and Gandangara Management Services. Can you see page 112?---Yeah.

That contract, similarly, if you go to page 124, commenced on 1 May 2010. Do you see page 124?---yeah.

And the whole contract goes through to page 128. So it's 112 through to 128. And again I'll ask you to review those pages for the purposes of enabling you to answer this question, was that contract tabled at the May 2010 Board meeting?---I don't recall.

Do you recall ever seeing that contract before?---I don't recall.

All right. If you go back, then, please, to the minutes. You can hand back volume 11 for the moment, Mr Tobler, thank you. And if you return, please, to the minutes at volume 8, page 245, minutes of the May 2010 Board meeting. My understanding from your affidavit evidence is that you voted in support of motion 2. Is that correct?---That's correct.

10 All right. When you did place that vote or cast that vote, was it your understanding firstly that Mr Johnson's remuneration package was being increased to \$180,000?---Yes.

Was it your understanding that that amount of money was to be paid for him acting as CEO of GLALC?---Yes. Or the group of companies.

So GLALC and the other companies within the Gandangara group? Is that right?---Yes.

20 All right. Was that explained to you at the meeting?---I can't recall.

All right. Was it your understanding, when you cast your vote, that you were being asked to vote on a resolution pursuant to which Gandangara Management Services would enter into a contract with Waawidji?---I can't recall.

30 All right. When you cast your vote, did you understand that you were being asked to vote on more than one contract?---When I cast my vote, it was to the understanding that the payment was for Jack Johnson to be the CEO of our group of companies. That's what I remember from the meeting?

All right. But you don't recall understanding that you were being asked to vote for GLALC to enter into one contract with Mr Johnson and GMS to enter into another contract with Waawidji?---No, I don't recall.

All right. Now, having regard to those in attendance at the top of page 245 at the meeting.---Yeah.

40 You will see the people who – the directors who were in attendance are listed there. Do you use that?---Yes.

Can you recall who of those directors voted in favour of motion 2?---No, I can't recall.

Can you recall if anyone voted against it?---I can't recall.

All right. Are you able to provide any explanation as to why for the purposes of the \$180,000 remuneration package being implemented

GLALC entered into a contract with Mr Johnson and GMS entered into a contract with Waawidji?---Sorry, say that question again.

Perhaps I'll put it another way.---Yeah.

10 You appreciate from the contracts to which I've taken you that more than one contract was entered into following this meeting to implement the \$180,000 remuneration package. You appreciate that?---No. Like I said earlier, I recall we were voting from my understanding – what my recollection is, is that we were giving Jack a pay increase of 180,000 to manage the GLALC group. I don't recall how it was going to be administered and what the contracts were or tabled or how it – and how all that was going to happen.

All right. Are you able to provide any explanation as to why the \$180,000 remuneration package could not have been given to Mr Johnson in one contract?---No.

20 All right. You can hand back volume 8, Mr Tobler, and I'll ask you to be provided with volume 10 at page 121. Now - - -?---121?

Yes, page 121.---Yeah.

That is a copy of minutes of a Board meeting of 10 December, 2012. Is that what you're looking at?---Yes.

And you were in attendance at the meeting. Is that right?---That's correct.

30 Could I ask you please, sir, to turn to page 122 and you will see at the top of the page motion 4.---Yeah.

Could you just read motion 4 to yourself please and let me know when you've done that.---Yeah.

Do you recall that motion being put up on the overhead screen in the December, 2012 Board meeting?---Vaguely, yes.

40 When you say vaguely, yes, do you recall it being up on the screen or not? ---I don't recall.

Right. You appreciate that this motion concerned at least in part – I withdraw that. This motion in part concerned the contract between GMS and Waawidji to which I have just taken you in 2010. Do you understand that?---Yeah.

Now, the motion says firstly, that that contract, the contract between GMS and Waawidji was to be terminated. Do you see that?---Yes.

Do you recall voting to terminate that contract?---I don't recall.

All right. You see in the motion it says, "The Board resolves the contract between GMS and Waawidji be terminated by mutual consent retrospectively on 30 June, 2012." Do you see those words "retrospectively on 30 June, 2012"?---Yes.

10 Do you recall the retrospective termination of the GMS/Waawidji contract being discussed at the Board meeting?---I recall some discussion. Not about the retrospective, no, but I recall some discussion.

So you don't recall discussion about the retrospective termination?---No.

Do you understand why that contract was proposed to be terminated retrospectively?---No.

20 All right. You said you do recall some discussion. What do you recall?---I asked why that we were splitting the salaries across the companies and my understanding was cash flow was one of them and also tax minimisation for Jack as well.

Sorry, cash flow?---Cash flow for the entities listed.

Well, these three contracts, that is, the contracts between Waawidji and Marumali, GHS and GTS were contracts replacing the GMS/Waawidji contract. Correct?---Yeah. Yes, well as per the motion, yes.

30 Was that – was that your understanding of what this motion was about or not?---I can't remember.

THE COMMISSIONER: When you say cash flow in relation to the three companies, do you mean to say that someone said that those three companies could more easily meet the expense from their cash flow or that those three companies had cash flow problems, which was it?---No, they didn't have cash flow problems but my – well, what I understood was that a portion of them were generating income and we were going to – you know, part of that was going to pay Jack's salary. I mean NSWALC gave a cash allocation to Gandangara itself of X amount and it didn't – it, you know, barely covered, barely covered the rent.

40 But weren't there considerable assets sitting in GALCL at this particular time?---Yeah, but we couldn't pay Jack in assets. We had to pay him in cash.

I appreciate that but the cash flow in relation to those companies insofar as there was some income - - -?---Yeah.

- - - but otherwise it was met by transfers of funds from GLACL to those companies wasn't it?---From our subsidiaries?

Yes.---No, most - - -

From GLALC to the subsidiaries.---Some of the subsidiaries, yes, but some of the subsidiaries generated their own income.

10 I appreciate that but to the extent that the income wasn't going to be sufficient to cover that amount the funds would have had to have come from GLALC. I'm just curious why it's a cash flow issue that's all because if it's - - -?---Maybe, maybe it's not but that's what I sort of interpret it to be.

All right.---So my interpretation may not be correct.

Ah hmm.---I'm – at the end of the day I'm, I'm just – I'm a carpenter. I'm not an accountant.

20 I appreciate that but insofar as – I notice that you actually moved the motion so you must have at the end of the day been satisfied that that was an appropriate thing to do.---Yes.

All right.

MR HENRY:. Well, Mr Tobler, do you suggest that GMS had any cash flow difficulties in December, 2012?---I don't recall.

30 Because the three contracts that are proposed to be put in place by the motion between Waawidji, Marumali, Waawidji/GHS and Waawidji/GTS are put in place to substitute those contracts for the GMS/Waawidji contract. Do you understand?---Yes.

So if cash flow was a reason to terminate the GMS/Waawidji contract presumably that would only be if GMS had some sort of cash flow difficulty itself wouldn't it?---Like I said to the Commissioner it may be my wording saying about cash flow may not be correct. That was just my interpretation.

40 But on what basis did you form that interpretation?---I just, I don't know. I can't recall.

Is there any fact or facts that you can refer to which caused you to believe that?---No.

Anything anyone told you that caused you to believe that?---No.

The three contracts that were proposed as the replacement contracts, that is Waawidji-Marumali, Waawidji-GHS and Waawidji-GTS, were they tabled at this Board meeting?---The contracts?

Yeah.---I can't recall.

All right. If you go to your affidavit, please, which is volume 44 at page 19, you'll see paragraph 81. Can you see that?---Yeah.

10 You say in that affidavit, paragraph 88, 81, I'm sorry, "Jack's remuneration was discussed at a Board meeting on 10 December, 2012, which I attended. A copy of the minutes of this meeting is at pages 51 to 53." And then you say, "Tabled with the papers for this meeting were three proposed contracts between Waawidji and GTSL, GHSL and Marumali respectively." Do you see that sentence?---Yes.

I gather that sentence is untrue. Is that right?---Possibly they were tabled. I just can't remember at this point in time.

Well, no. Sir, you have affirmed in this affidavit that the contracts were tabled at the meeting. You did that, didn't you?---Yes, I did.

20 Now, was that a true statement or not?---I just, I can't recall at this time whether the contracts were there or not.

Well, could you recall at the time at which you affirmed your affidavit?---I can't recall.

You see, if you have regard to motion 4, at page 122.---Yeah.

30 That motion does not say, does it, that any of those contracts referred to in the motion were tabled.---Correct.

So on what basis did you say, in paragraph 81 of your affidavit, that they were tabled?---Possibly, at the time, when I was doing the affidavit, I recalled that they were there. Right now, I can't recall. You've asked me a lot of questions. You've taken me through a lot of things. You know, it's quite hard to be up here to remember everything.

40 THE COMMISSIONER: Did you have a copy of those minutes available to you when you affirmed the affidavit or, rather, when you drew it up? Did you have the minutes there to refresh your memory?---Possibly. I can't remember. I don't remember writing this part of the affidavit.

But there wouldn't have been any other documents that you had regard to when you drafted that part of the affidavit, is there? Or is there? Did you have any other what we call aide-memoires when you were drafting that affidavit?---Yeah, there was other documents we referred to, yeah.

What were they?---Meeting minutes, financial statements.

No, but I'm talking about this particular paragraph, where you're talking about that particular meeting.---This paragraph, yeah, I can't remember.

All right.

MR HENRY: Well, you affirmed the affidavit on 22 February this year. Do you understand?---Yes.

10 Now, that's some years, isn't it, after the December 2012 Board meeting?
---Yes.

You don't suggest, do you, that anything has happened between 22 February this year and today which would have caused your memory of what documents were tabled at this meeting to change?---

[REDACTED]
[REDACTED] So, yeah, I do forget things and things slip my mind.

20

[REDACTED]
I see. Well, if you go back in your affidavit, paragraph 66, I've taken you to this paragraph before. This is the paragraph relating to the minutes of the Board meeting of May 2010. Do you recall?---Yes.

30 You don't say in that paragraph that the contracts for Mr Johnson's employment at the May 2010 meeting were tabled, do you?---No.

And then, if you go back to paragraph 81, you do say that contracts were tabled at the 2012 Board meeting, don't you?---Yes.

I suggest to you that you've been very careful in this affidavit to say when Mr Johnson's employment contracts were tabled and when they weren't. Do you agree?---No, I don't think I've been careful. I've just gone on what I could recall on the days that we wrote affidavit.

40 So you say you weren't careful when you affirmed your affidavit? Is that right?---Weren't careful?

That's what you just said.---No, I interpreted your saying "being careful" as that I'm trying to be clever. I'm just trying to give a truthful affidavit on the day, just as I'm trying to give the truth now.

Well, what do you say now? Do you say, in 2012 at the Board meeting, the contracts referred to in motion 4 were tabled or not?---I don't recall.

And you'll see, in paragraph 81, you say about halfway through the paragraph, "My best recollection is that the Board approve these new contracts to reallocate which entities were paying Waawidji based on the cash flow of the different entities." Do you see that?---Yes.

Now, you've made reference to cash flow, haven't you, in the course of your evidence this morning?---Yes.

10 Do you actually recall any cash flow difficulties at that time?---I don't recall.

So do you stand by your statement, at paragraph 81, in relation to cash flow difficulties or not?

MR GANDAR: Excuse me, Commissioner, may I object to that? The paragraph doesn't say anything about cash flow difficulties. It simply says "based on the cash flow".

20 THE COMMISSIONER: Yes. Well, that's why I was trying to find out what the reference to cash flow was. But, well - - -

MR GANDAR: I don't understand. The witness said it was due to cash flow difficulties as consistent - - -

30 THE COMMISSIONER: I appreciate that. Well, if we remove the word "difficulties", can the witness tell us what that reference is in that paragraph, Mr Tobler? What you were referring to there? And you're referring to the cash flow of each of the entities.---I, at the time, best recollection as of now is that each entity was earning some money or we were getting some sort of revenue, and we were going to pay Jack partially out of that revenue. That's what I mean in terms of cash flow.

All right. Well, does that mean that the three companies had a cash flow that was sufficient to meet the amount that was set out in those contracts from the Board's point of view? Was that the issue?---Yes.

Right.

40 MR HENRY: Now, Mr Tobler, as the Commissioner has pointed out, you moved this motion, didn't you?---Which motion?

Motion 4 on page 122.---Yes.

So presumably you voted in favour of it, is that right?---Yes.

Do you recall, having regard to those in attendance at the meeting, listed on page 121 - - - ---Yes.

- - - do you recall who of the people in attendance at the meeting voted in favour of that resolution?---I don't recall.

Do you recall anyone voting against it?---I don't recall.

Are you able to provide any explanation as to why Mr Johnson's remuneration was not the subject of one contract between him and GLALC, rather than what ultimately become four contracts after this motion was passed?---Can you say the question again, please?

10

Yes. Are you able to provide any explanation as to why Mr Johnson's remuneration was not the subject of one contract between him and GLALC as opposed to four contracts which was the effect of this resolution?---No.

Did you understand at the time at which you were voting for motion 4 that you were voting on one contract between GMS and Waawidji being replaced with the three other contracts referred to in the motion?---Yes.

20

All right. I'll ask you to hand back volume 10 and to be provided with volume 1 at page 258, Mr Tobler. You should have in front of you there, Mr Tobler, a document with a diagram, couple of diagrams on it. Is that what you're looking at?---Yeah.

Just bear with me for a moment. Do you recognise – I withdraw that. Do you recall that in January, 2014 there was an attempt made to change the corporate structure of the GLALC group of companies?---I don't recall.

30

All right. Do you ever recall seeing the diagrams, or the diagram Original Structure on the left-hand side of the page?---At that time?

Any time prior to January, 2014.---Oh, we had, we, we – not exactly probably like that. We had looked – we had seen diagrams of our company structure, yes.

Right. Well, do you recognise the structure depicted under the heading Original Structure?---Do I recognise it. Yes.

All right. What about the structure under the heading New Structure?---No.

40

All right. And you don't recall any attempt to move from the original structure to the new structure in early 2014?---I don't recall.

All right. Can I ask you please to be shown volume 5 at page 131. You will see there at page 131 of volume 5, Mr Tobler - - -?---Yes.

- - - a circulating resolution. Can you see that?---Yes.

Your name is identified on the page on the right-hand side.---Yeah.

But there's no signature there. Correct?---Yeah.

Do you recall ever being provided with a copy of this document?---I don't recall.

All right. If you have a look at pages 131 through to 138 you will see there's a sequence of circulating resolutions each of which – sorry, do you see that?---Yeah.

10

If you go to the page 135, is that your signature about halfway down the page on the right-hand side?---Yes.

And is it your signature on page 136?---Yes.

137?---Yeah.

138?---Yeah.

20 Now, do you recall – and you'll see the date underneath your signature on each occasion is 15 January, 2014?---Yeah.

Do you recall where you were when you signed these circulating resolutions?---I don't recall.

Do you recall any occasion other than on 15 January, 2014 in which you signed a circulating resolution?---I don't recall. 2014 was a, was a blur to me. I don't remember much of the whole year.

30 All right. Well, have a look if you would please at page 135.---Yes.

You will see it says that – it provides for two resolutions. The first one is that the company nominates new member of Gandangara Management Services Limited. Can you see that?---Yeah.

Now, the company in this instance is GLALC Development Services Limited. You can see that at the top of the page.---Yeah.

40 And then the second resolution is that the company resigns appointment as member of Gandangara Management Services Limited. Can you see that?---Yeah.

Why did you sign this resolution?---I don't recall. I don't remember why.

Do you understand what it was intended to achieve?---No, I don't.

Any idea of the purpose for which you were being asked to sign it?---I don't recall.

Do you recall being provided with the document for the purposes of signing it?---I don't recall.

Do you recall turning up at a meeting in mid-January, 2014 at GLALC's offices?---No, I don't recall.

This wasn't a regular Board meeting. Do you agree?---I don't recall any of this process.

10

All right.

THE COMMISSIONER: Do I take it that you must have understood at the time, you're just claiming the lack of recollection now when one has regard to these documents?---I don't, I don't remember any of this part.

Well, I know you don't remember it but what I'm saying is, given that your signature appears on the document I take it that you - - -?---I obviously was there.

20

- - - you did know what was going on at the time, you simply - - -?---Must have.

- - - don't have any memory of it now?---I must have, yeah.

MR HENRY: Do you recall, Mr Tobler, attending GLALC's offices with the other people whose signatures appear on page 135 for the - - -?---No, I don't.

30

- - - for the purposes of a meeting called at short notice?---Don't remember.

All right. And if you have regard to page 135 through to 138 there's a sequence of resolutions each of which you've signed. Correct?---Correct.

Just take a moment to read those pages please with a view to answering this question. What do you understand now to have been the purpose of those resolutions?---To detach from the LALC I think. I'm not too sure.

40

I'm sorry, say that again.---To resign from the LALC, from GLALC. Is that correct? I'm not too sure.

For who to resign from GLALC?---I don't know.

As you sit there now do the resolutions make any sense to you?---No.

If you could have regard again please to volume 1, page 258 which is the diagrams to which I've taken you.---Yes.

I suggest to you that the purpose of the resolutions that you signed and the other resolutions to which I've taken you, the circulating resolutions, was to attempt to change the original structure to the new structure. Do you agree with that?---It's possible.

Well, do you recall that being the case?---No, I don't.

10 Do you recall – if you go back to page 257, the preceding page, you will see there's a diagram on that page and it says GLALC in the middle and then there's a spoke or a line out to each of the circles surrounding GLALC and I appreciate that it's difficult to read but in each of those circles is one of the Gandangara subsidiary companies if I can call them that. Do you understand?---Yeah.

And you will see at the top of the page there's a heading, "The Boards of GLALC's service delivery entities have changed the group's structure without the consultation or approval of GLALC members or the Administrator." Do you see that?---Yes.

20 Does that assist you in recalling why you signed the circulating resolutions?---No.

If you have a look at the heading on the page, "Corporate Structure" and then "Background", do you see those words on the right-hand side of the page?---Yeah.

30 It says, "As noted in prior reports, the administrator had conducted legal and tax reviews and drafted the documentation required to enable the Board to put the proposed hub-and-spoke corporate structure in place, diagram opposite." Can you see those words?---Yes.

Have you seen previously the hub-and-spoke corporate structure depicted in the diagram?---Possibly. I can't remember.

Do you recall that the administrator of GLALC wished to put in place the hub-and-spoke corporate structure?---Vaguely I remember the administrator saying that.

40 Right. And do you recall that you were asked to sign the circulating resolutions, to which I have taken you, for the purpose of stopping the administrator implementing the hub-and-spoke corporate structure?---No, I don't.

All right. Do you recall being told anything about the hub-and-spoke corporate structure by Mr Johnson?---I don't recall.

By anyone else?---I don't recall.

Looking back at page 258, under the heading “New Structure”, if you have a look at the new structure, you'll see that GLALC is said to control Gandangara Development Services Limited. Do you see that?---Yeah.

Then, if you move across the page to the right, Gandangara Health Limited is said to control Gandangara Health Services Limited, which is said to control Marumali Limited. Do you see that?---Yes.

10 And then moving further across to the right, you'll see Gandangara Services Limited is said to control Gandangara Management Services Limited, which is then said to control other companies listed down the page. Do you see that?---Yes.

Are you able to provide any explanation as to why an attempt was made to implement the new structure in January 2014?---No, I don't recall.

All right. You can hand back volume 1.---Which one's that?

20 That's the thicker one.---This one?

As well as volume 5, Mr Tobler.---Which one's volume 5?

And I'll ask you to be provided with volume 10, at page 118.---Thank you.

Now, at volume 10, page 118, Mr Tobler, you should see the minutes of a Board meeting of 30 October, 2012.---Yes.

And that's a meeting that you're said to have attended.---That's correct.

30 And do you recall attending this meeting?---Vaguely, vaguely.

Do you remember if it was a very long meeting?---I can't really recall, to be honest.

All right. Have you got your affidavit there, have you?---Yes.

If you look at page 269, which is page 18 of the affidavit.---Yeah.

40 I'll ask you to have regard to paragraph 77. Do you see that? Have you read paragraph 77?---Yes.

You'll see you say in the second-last sentence, “I remember this was a very long meeting.” Do you see that?---Yes.

Do you recall it being a long meeting or not?---I do now.

Why do you say that?---Because the affidavit jolted my memory.

So the affidavit of February this year has refreshed your memory about what happened on 30 October, 2012? Is that what you say?---Parts of it.

Parts of it. You don't recall whether the meeting was long or short, do you?---At the moment, no, I don't.

All right. If you go back, then, please, to volume 10, page 118, you'll see motion 2.---Yeah.

10 Now, it says, "The Board moves that the M. Johnson/Waawidji representation letter, requested by Lawlers and presented to the Board, be signed by the chair and the CEO on behalf of the Board." Do you see that? ---Yes.

Now, do you recall a representation letter being presented to the Board for its consideration at this meeting?---No, I don't recall.

20 All right. I'll ask for you to be shown volume 20, at page 250. Keep those minutes available, if you would, please. Now, you should have there in front of you now, Mr Tobler, volume 20, page 250. A letter dated 29 October, 2012.---Yeah.

And it's a two-page letter. Could you read the letter and let me know when you've done that, please?---Yeah.

Now, have you seen this letter before?---Yes.

30 If you go back to the minutes of 30 October, 2012, volume 10, page 118. ---Yeah.

Motion 2. You'll see there's a reference in that motion to a representation letter. Do you see those words?---Yeah.

Is the letter dated 29 October, 2012, to which I've just taken you, the representation letter?---I'm not too sure.

You'll see at motion 2, on page 118, you were the person who moved the motion. You see that?---Yeah.

40 What was the representation letter, the subject of the motion that you moved?---I don't recall.

If you go back to the letter itself commencing at page 250 on volume 20 you will see that it has a table on the first page. Do you see the table?---Yes.

The table records the reimbursement of expenses between Gandangara and Mr Johnson in the year ended 30 June, 2012. Do you see that?---Yes.

And those expenses total 357-odd thousand dollars. Do you see that?---Yes.

And then you will see in the next column there's a bonus of 316-odd thousand dollars. Do you see that?---Yes.

Now, over the page at page 251 it says- there's a heading Statement by the Chief Executive Officer and Directors. Can you see that in bold type?
---Yeah.

10 And it says, "We confirm the completeness and accuracy of the information provided regarding the payments to Mark Johnson during the year ended 30 June, 2012." Do you see that?---Yes.

And then it says, "We confirm that the transactions above have occurred in accordance with the employments contracts between Mark Johnson, Waawidji and Gandangara." Do you see that?---Yes.

And then further down the page it says, "For and on behalf of the Board and Directors" and there's Mr Johnson's signature. Correct?---Yeah.
20

And Ms Cronan's signature. Correct?---Yeah.

Did you ever authorise this letter to be signed on your behalf?---My – I, I remember we were forced into this – into signing this letter.

What's the answer to my question, did you authorise the signing of this letter on your behalf?---Yes.

When did you do that?---I can't recall when but I remember having to sign – approve this letter because we were going – they were going to force us into administration.
30

Did you provide the authorisation for the letter to be signed on your behalf at a Board meeting?---I can't recall. I can't recall where, where this was but I remember going – giving my authorisation for this letter.

Well, where were you when you gave the authorisation?---I just told you I can't recall.

40 Did you do it on the telephone?---I can't recall.

Did you do it by email?---I can't recall.

All right. If you have – have you still got your affidavit there?---Yes.

If you go to page 269, and this is volume 44, page 269.---Yeah.

You will see paragraph 80 at the base of the page.---Yeah.

Now, it says, paragraph 80, “Ultimately Mr Hickey did not remove his no opinion from the audit. I along with Cindy Cronan signed the audited financial statements including the no opinion on 1 November, 2012. I feared that if we did not sign the financial statements an administrator would be appointed over GLALC. Do you see that?---That’s correct.

10 Now, I appreciate in paragraph 80 you are not referring to the letter of 29 October, 2012 to which I have just taken you. Do you understand?
---Yes.

However, is this your position, that you authorised for that letter to be signed on your behalf because you feared that if you didn’t sign it an administrator would be appointed?---Yes. I feel like we were coerced into it.

20 THE COMMISSIONER: Who told you that you might be forced into administration if the letter wasn’t signed?---We were – if we had a – if, if we failed to get out unqualified audit before the AGM that the, that NSWALC would put us into administration.

Yes, but where did you get that information from?---We discussed it as a Board.

MR HENRY: But who came up with the idea, was it yours?---No.

Whose was it?---I can’t recall.

30 So having regard to the terms of this letter dated 29 October, 2012 do you say that at the time at which you authorised for the letter to be signed on your behalf you knew it was – I withdraw that. Sorry, go please to page 251, the second page of the letter.---Yeah.

Do you see the two sentences that I read to you previously under the heading Statement by the Chief Executive Officer and Directors, do you see that heading?---Yes.

40 Then that first sentence after it there’s a confirmation provided, “We confirm the completeness and accuracy of the information provided regarding the payments to Mark Johnson during the year ended 30 June, 2012.” Do you see that?---Yes.

Am I correct in understanding before you provided your authorisation for the letter to be signed on your behalf you were not in a position to confirm the completeness and accuracy of the information provided regarding the payment to Mark Johnson during the year ended 30 June, 2012?---No.

You agree with me?---Yes.

And similarly, in relation to the next sentence, “We confirm that the transactions above have occurred in accordance of the employments contracts between Mark Johnson, Waawidji and Gandangara.” You see that confirmation?---Yeah.

At the time at which you authorised this letter to be signed on your behalf you were unable to provide that confirmation. Is that right?---That’s correct.

10

All right. So you just signed this letter – I withdraw that. You authorised for this letter to be signed on your behalf irrespective of the accuracy of the contents of it. Is that correct?---Out of fear of being put into administration. That is correct.

All right. Do you recall actually being provided with the text of the letter for you to approve?---I can’t recall.

20

All right. Could I ask you – I can pause now or finish this topic.

THE COMMISSIONER: I think finish the topic and we’ll take a morning tea adjournment.

MR HENRY: All right. Thank you. Volume 9 please to be provided to Mr Tobler at page 301.---Thank you.

So, Mr Tobler, you should now have a copy of the minutes of 24 June, 2013.---Yes.

30

Though I do note these don’t appear to be signed if you look at page 303. ---Yeah.

In any event this document says that there was a Board meeting on 24 June, 2013 and you attended it.---Yeah.

40

Do you – and then for present purposes if I could ask you to turn to page 303 please. You will see at the top of page 303 it says, “The CEO left the room whilst the Board discussed the advice that the Finance Manager may have inadvertently overpaid the CEO the bonus amount of \$57,000.” Do you see that?---Yes.

Now, do you recall being at a Board meeting at which that occurred?---Yes.

All right. You will see motion 4 says, “The Board moves that the CEO was inadvertently overpaid in the last major bonus payment the amount of \$57,000. The Board acknowledges that this was an error outside of the CEO’s control. The CEO is asked to pay back the \$57,000 in two separate

instalments, one instalment from the 2012/13 bonus payment and one instalment from the 2013/14 bonus payment.” Do you see that?---Yes.

Now, do you recall that resolution being put to the Board?---Yes.

And did you vote in favour of it?---Yes.

10 At the time at which you voted in favour of it had you taken any steps for yourself to work out or calculate whether Mr Johnson had been overpaid a bonus and if so by how much?---No, I didn't.

All right. I rather understand you relied on what other people did for that calculation.---Yes.

Who did you rely upon?---I relied upon the financial controller at the time.

Was that Mr Gundar?---Yes.

20 I see. So Mr Gundar calculated did he that there was a \$57,000 overpayment?---No. There was – I think it was someone from recollection – I think it was the – I can't remember who but somebody else had brought that to our attention and that Mr Gundar confirmed that that was – to be honest I'm guessing now. I can't really remember who actually told me that but I relied on the information in the room at that time that that was the overpayment.

30 All right. Do you – you see the last sentence of the motion, “The CEO is asked to pay back the \$57,000 in two separate instalments.” You see that one?---Yes.

Are you aware whether either of those instalments that are proposed there were paid by Mr Johnson?---No, I'm not.

Or Waawidji?---Whether they have been paid?

Yes.---No, I'm not.

40 All right. That was never something that was taken up later by the Board as far as you can recall?---I think we were put into administration weren't we. We weren't – I can't remember.

All right. Is that a convenient time, Commissioner.

THE COMMISSIONER: Yes, thank you. We'll take a morning tea adjournment. Resume at 12 o'clock. Thank you.

SHORT ADJOURNMENT

[11.40am]

MR HENRY: Thank you. Could Mr Tobler please be provided with volume 9, at page 111?---Thank you.

And, Mr Tobler, you should have now in front of you minutes of a Board meeting of 11 July, 2011.---Yeah.

And you were in attendance at that meeting.---That's correct.

10 If you turn over to page 112, you'll see, at the base of the page, motion 8. ---Yeah.

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." Can you see that?---Yeah.

Now, do you recall being provided with legal advice concerning the transfer of funds from GLALC to GFF?---I don't recall.

20 Are you able to say whether you ever were provided with written legal advice that GLALC had obtained about that subject matter?---Not to my recollection, no. I can't recall.

You mentioned some time earlier in your evidence that you were provided with Board papers. Do you recall saying that?---Yes.

Did those Board papers ever include written legal advice?---At times, yes.

30 They did? All right. Well, I'll show you, then, volume 17, at page 78. Sorry, not 78. Page 80.---Thank you.

Page 80 of volume 17 is a memorandum of opinion. Do you see that? ---Yeah.

Now, that document goes through to page 92. And my question for you is whether you were provided with a copy of that document.---I don't recall.

40 All right. Do you recall ever seeing a document styled memorandum of opinion in the Board papers that you read?---I don't recall.

All right. Do you recall being informed that GLALC had received legal advice concerning the transfer of funds from GLALC to GFF?---In relation to that exact matter, no, I don't recall. But we would always get legal advice around certain things. It was always a request from the Board, and sometimes we'd put it to Jack to get legal advice on our behalf.

And in those circumstances, were you then provided with a copy of any written legal advice that was obtained? Or would Mr Johnson tell you at the

Board meeting what the substance of the advice was?---No, we'd always receive a copy.

You'd always receive a copy?---From my recollection, yes.

So that memorandum of opinion that I've just taken you to in volume 17 at page 80, do you say it's more likely than not that you were provided with a copy of that?---Probably we were provided. I just don't recall.

10 All right. And if you were, you say, do you, that it would have been included in your Board papers. Is that right?---Possibly, yes.

Do you recall – sorry, I'll withdraw that. If you go back to volume 9, to page 114, you'll see there, on page 114, motion 17, Mr Tobler.---Yes.

And it says, "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.

20 Do you recall being told that GLALC had received legal advice that it could not donate money to GFF?---No, I don't recall.

Do you recall being told that GLALC had received legal advice that it could not gift money to GFF?---I don't recall.

You see the motion refers to a loan?---Yeah.

Do you recall being told that GLALC could lend money to GFF?---I don't recall.

30 What did you understand GFF did?---GFF? The Future Fund?

Gandangara Future Fund Limited.---It was to hold the Future Fund, the money derived from our developments into the Future Fund. That was my understanding.

When you say "the money derived from our developments", are you referring to developments by GLALC of its land?---Yes.

40 Why was it necessary to transfer funds from GLALC to GFF, as you understood things?---I don't know.

Was it ever explained to you?---I don't recall.

Well, this motion refers to lending money from GLALC to GFF, doesn't it? ---Yes.

Did you understand – I'll withdraw that. Were you a director of GFF at the time of this motion?---I don't know.

Do you recall – perhaps I should pull it up for you again. Volume 1, page 258. If you just look at the screen, it'll be the diagram that I took you to earlier. If I could ask you please, sir, to have regard to the original structure. You'll see GLALC. Under the members there's an arrow to GLALC itself. Do you see that?---Yeah.

10 And you were a director of GLALC, weren't you?---Correct.

Now, did you understand that when you were a director of GLALC you were a director of any other companies underneath GLALC in that diagram?---My understanding was that the Board mirrored the boards for all the entities.

So does it follow from that answer that your understanding whilst you were a director of GLALC was that you were also a director of each other company identified in the original structure?---Yes.

20

All right.

MR GANDAR: Commissioner, in relation to that question, those companies didn't exist for the full period that he was a director of GLALC.

THE COMMISSIONER: I'm sorry. I can't hear you.

MR GANDAR: The question, as I heard it - - -

30 THE COMMISSIONER: Yes.

MR GANDAR: - - - was that while he was a director of GLALC, did he understand that he was a director of all of those companies in this diagram? Many of those didn't exist for a large period of that time. The question should be clarified.

THE COMMISSIONER: Well, for the time that he was a director, was he aware that he was a director of – sorry, at the time he was a Board member can be relevant to that time, can't it?

40

So at the time you were a board member, Mr Tobler, did you know that you were a director of other companies in that group?---As the companies grew I understood that I was a director of them companies. So as they come on board, so I was director from on the first board in 2007 all the way until we were put into administration. So and companies grew during that time.

MR GANDAR: Perhaps Commissioner, the origin of this document should be explained to the witness or he should be taken to it. The so called

original structure was not the original structure at 2007. I don't understand that to be put but it's confusing the way the question is framed.

THE COMMISSIONER: I don't think it's a question that goes to the structure per say, it's a question that goes to his knowledge of whether he understood that he was a director of those other companies, whether they were in that structure or not. In other words, any entity subsidiary to GLALC I think was the purport of the question. Does that solve the problem?

10

MR GANDAR: Yes.

THE COMMISSIONER: We're not talking about whether that structure was in existence, is that the position Mr Henry?

MR HENRY: Yes, and I'm obviously not going to suggest that Mr Tobler was a director of a company that didn't exist.

THE COMMISSIONER: No, yes, all right, anyway.

20

MR HENRY: Can I ask you please to have regard in particular Mr Tobler to Gandangara Future Fund Limited, that company. Do you understand? ---Yes.

If you go back to the resolution at Volume 9 page 114 Motion 17, it will come up on the screen if that assists you, this is a motion that was carried on the 11 July, 2011 so that's the time frame that I'm asking you to have regard to right now. Do you understand that?---Yes.

30 At the time of that motion, so 11 July, 2011, you were a director as you understood it, of GFF weren't you?---Yes.

All right. Now, you also see down at Motion 18 there's a resolution of the GFF Board, do you see that?---Yes.

That's a resolution of the GFF Board to enter into a loan agreement with GLALC. Do you see that?---Yep.

40 Now, did you understand - I withdraw that. Do you recall if you voted in favour of Motion 17?---I don't recall.

Motion 18?---I don't recall.

Do you, did you understand at the time of this board meeting that you were being asked to approve the entry into by GFF and GLALC of a loan agreement?---I understood that, at the time, from my vague memory of this situation is that we needed to loan money from the Future Fund to be able to

do further developments so we had to borrow cash for our next stage so we could keep revenue coming through to keep growing our entities.

So when you say we had to borrow cash, who do you say had to borrow cash?---Gandangara.

GLALC had to borrow cash?---From the Future Fund.

From GFF?---I think so.

10

Where do you say GFF was going to get the money for a loan from GFF to GLALC?---We completed one development that had generated revenue that had went into the Future Fund and then we were borrowing money out of that from Peter to Paul really. It's the same company but we're just borrowing money to do our next development, that's my understanding of why we went into the agreement.

So sorry. Who do you say was borrowing from who?---So, DLALC was borrowing from itself, from its subsidiaries.

20

Have a look at Motion 17 again please. It refers to funds surplus to the operating needs of GLALC being linked to GFF. Do you see that?---Oh right yes. So it was loaned to the Future Fund so that we were using the Future Fund to pay the expenses for our, the operation of our next developments, our next development whatever that was at the time.

Why was it necessary for money to be lent by GLALC to GFF to pay for expenses?---I don't know. Our – because we needed to pay for the expenses I suppose.

30

Is there any reason why GLALC couldn't have just paid the expenses? ---Don't know.

You will see in motion 17 it refers to a loan on a commercial loan basis. Do you see that?---Yes.

Do you recall ever being told that GLALC could lend money to GFF but it had to be on a commercial basis?---I recall something like that, yes.

40

Do you recall being told that that was the legal advice that was received? ---That was legal advice, yes.

And you recall being told that?---Yes, I recall that.

Do you also recall being told – was that at this Board meeting?---I don't know.

Do you recall who told you?---I don't.

Do you recall being told that any loan from GLALC to GFF had to be secured by a charge?---By – what do you mean by a charge?

Do you understand what a charge is?---No, I don't.

All right. Have a look at motion 17 and there's three dot points. Can you see those dot points?---Yes.

- 10 The first loan point – sorry, the first dot point says, “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.” Can you see that?---Yes.

Did you consider in July, 2011 that the Reserve Bank of Australia cash rate was a commercial loan rate?---I probably didn't, no.

All right. Are you aware what the Reserve Bank of Australia cash rate refers to?---Is it the interest rate? I don't know.

- 20 All right. Do you know what it's an interest rate for?---I'm not too sure what you're trying to get at.

All right. Do you recall ever being informed of amounts of money being transferred from GLALC to GFF?---Do I recall being informed - - -

Being informed that amounts of money were transferred from GLALC to GFF?---No, we, we – I only had line of sight in certain things.

- 30 I'm sorry?---So we only had like – we, we didn't review the bank statements. We only had line of sight on the financials that were provided at the Board meeting.

Yes. But what I'm asking you is whether you recall being informed - - -?
---No.

- - - that GLALC lent money – or transferred money to GFF?---I don't recall, no.

- 40 All right. Do you recall that the Board at any Board meeting being told that any sum of money had been transferred from GLALC to GFF?---No, I don't recall.

All right. You will see if you go ahead, like further forward in volume 9 to page 129, you will see minutes of an ordinary meeting of 27 July, 2011. Is that what you see?---Is that the members', the members' meeting?

Yes.---Yes.

You will see, Mr Tobler, if you go through to page 132 - - -?---Yes.

- - - the minutes record a motion under the heading GLALC Future Fund.
---Yes.

Can you just read that motion and tell me when you've done that please.
---Yeah.

10 Do you recall being at a members' meeting of GLALC at which that motion was considered?---No, I don't recall.

You'll see that the motion in substance confirms or approves of the motion that I've taken you to at the Board meeting, 11 July, 2011, do you agree?---
Yeah.

Were you ever told that GLALC could only lend money to GFF pursuant to a members resolution?---No, I don't recall.

20 All right. If you go forward further please in the volume to page 183. You'll see there Minutes of the GLALC Board meeting of 10 October, 2011, is that what you see?---Yes.

And you were in attendance at the meeting?---(No Audible Reply)

At the top of page 183, sir?---What was it, page what, 183?

Yes?---1-8-3?

30 That's right?---Yes.

Now see motion 1 at the base of page 183?---Yeah.

It says "The Board notes the declaration that Mark Jack Johnson, CEO holds the position of Director of Waawidji Pty Ltd and that Waawidji does not hold any role with the GLALC as a consultant". Can you see that?---Yes.

And you moved that motion?---Yes.

40 What was your understanding as to why that declaration was made?---Jack Johnson was declaring his, that he was, how would you say it, he was declaring that Waawidji, I don't know, didn't have any role as consultant or outside of his role of the actual CEO.

Yes, but what did that have to do with GLALC as you understood it?---
Sorry, he was paid through Waawidji. I'm trying to understand it. So he wasn't paid anything extra than what he was being paid as the CEO of GLALC.

THE COMMISSIONER: So you understood it at the time that this motion was moved by you, that Mr Johnson was receiving part of his salary through Waawidji Pty Ltd?---I don't think I understood it like that. I think I understood it that he was not receiving any extra money outside of being a CEO.

So you understood it in terms that Waawidji did not have any contract with GLALC whereby it was receiving funds over and above what Mr Johnson was being paid as CEO?---That's correct.

10

MR HENRY: I'll provide you with a copy of another section of the Aboriginal Land Rights Act, Mr Tobler. It's section 52D. Just read that section to yourself, please, and let me know when you've done that?---Yeah.

Now you said earlier in your evidence that you were provided with a copy of the Aboriginal Land Rights Act when you became a director, yes?---Yes.

And reference was made at Board meetings to sections of the Act?---Yes.

20

Do you recall any reference being made to section 52D of the Act at Board meetings?---No, I don't recall.

You see that motion at page 183 to which I've taken you?---So which one, yeah, 183, yes.

Yes. Volume 9, page 183, you see that?---Yes.

30 You see how it says, as part of the declaration, that Waawidji, or WPL, does not hold any role with the GLALC as a consultant? Can you see that? ---Yes.

And going back to the terms of section 52D, subsection (i), you see the reference to the word "consultant" in the last line?---Yes.

Did you understand that the purpose of the declaration, at page 183, was an attempt to address section 52D of the Aboriginal Land Rights Act?---Could possibly, yes.

40 Was that something that was stated at the Board meeting?---I don't remember.

You recall, don't you, that Mr Johnson made declarations from time to time whilst you were a Board member?---Yes.

And the declarations followed, more or less, this formulation on page 183? ---Not always.

No, but at times they did, didn't they?---Yes.

Do you recall it being explained at a Board meeting that the purpose of the declaration was to address section 52D of the Aboriginal Land Rights Act?
---No, I don't recall.

Were you aware of the existence of that section whilst you were a director of GLALC?---No, I wasn't.

10 You were never told about it?---No.

Right. You can hand that back, thank you. If you stay, then, with the minutes, please, and turn to page 184. So this is volume 9, page 184.---Yes.

You'll see motion 4 is headed "Delegations". Can you see that?---Yes.

And then it says, "In accordance with section 72 ALRA," just pausing there. Do you have an understanding of ALRA, what that's a reference to?---
Aboriginal Land Rights Act.

20

O.K. It says, "The Board reaffirms the following delegations for the remaining 12 months or until completion or until reviewed by the Board." Do you see that?---Yes.

And then there's 25 paragraphs or sentences underneath there, which provide delegations to Mr Johnson.---Yeah.

Do you recall that when this was done that all of those delegations were put up on the overhead screen?---I don't recall, no.

30

All right. You see on page 185, item number 21?---Yes.

It says, "In line with both Board and members' resolutions, the CEO is authorised to ensure that all surplus funds are lent to Gandangara Future Fund in line with the resolutions." Do you see that?---Yes.

Do you recall voting in favour of a delegation of that?---Me personally?

Yeah.---No. I don't recall, sorry.

40

All right. Did you understand, though, that Mr Johnson was authorised to transfer funds or lend funds – I'll withdraw that. Did you understand that Mr Johnson was authorised to lend funds from GLALC to GFF?---I can't remember, no.

All right. I'll ask you to return that volume, Mr Tobler, and be provided with volume 20 at page 16. Volume 20. It's volume 20 at page 16. You should have in front of you now, Mr Tobler, a letter dated 31 August, 2012

from Mr Wright, the Registrar of the Aboriginal Land Rights Act, to GLALC. Is that what you have?---Yes.

And it refers to a compliance direction. Can you see that?---Yeah.

If you go over the page to page 17 you'll see from pages 17 through to 20 are the terms of the compliance direction.---Yep.

10 Have you seen that compliance direction before?---I've done, I can't recall seeing it.

You'll see on page 17 at paragraph three, it says under the heading, Facts, do you have that, paragraph three, sir?---Yep.

20 On or before the 27 of July, 2011 the Board of Gandangara LALC passed a resolution that all funds surplus to the operation needs of Gandangara LALC should be loaned to Gandangara Future Fund Limited on a commercial basis secured by charge registered with the Australian Securities and Investments Commission. Do you see that?---Yes.

Now that's a reference to the Board Resolution to which I've taken you, do you understand?---Yep.

Then there's a paragraph four, a reference to the members resolution at the members meeting to which I've also taken you.---Yep.

Now, if you go forward in the document to page 19, there's a heading, "Directors to Gandangara LALC," can you see that?---19 of, oh sorry.

30 Page 19.---Okay.

There's a heading in bold, "Directions to Gandangara LALC".---Yep.

And then underneath that it says, "Gandangara LALC is directed to", and there's a thought to that follow there.---Yep.

Now do you recall being informed that the Registrar had issued a direction to GLALC not to lend money from GLALC to GFF?---I don't recall.

40 You appreciate that the issue of a compliance direction by the Registrar was an important event?---Yeah, I do, yep.

And as a director of GLALC, a direction by the Registrar that GLALC could or could not do something was something that would have been important for you if you had of become aware of it as a director?---Yes.

It's something, I suggest that, if it had of happened and you were made aware of it, you would remember, do you agree?---Well possibly, possibly

not too given the circumstances I went through in 2014, I could, I could may be not, I could have lost the memory on that, so.

I see. I rather thought, and I may be wrong about this, that you said that you were, you're in 2012.---No.

[REDACTED]

[REDACTED]

[REDACTED].

MR HENRY: All right. Anyway, your position is you don't recall ever being informed about the compliance direction?---No, I don't recall.

And you don't recall seeing it?---Don't recall.

20 All right. You can hand back that volume. I'll ask you to be provided with Volume 22 at page 90. Mr Tobler, you should now have in front of you a letter on Waawidji letterhead dated the 8 December, 2009?---Yes.

And it's addressed to Mr Kevin Cavanagh a CEO of the Deerubbin Local Aboriginal Land Council. Do you see that?---Yes.

Now the letter goes from page 90 through to page 93.---Yes.

And I appreciate, it's not a letter that's addressed to you or signed by you. My question for you is, do you recall seeing this letter before?---No.

30 Do you recall ever being informed that Waawidji was proposing to enter into an agreement with DLALC pursuant to which Waawidji would be paid money?---Sorry, say that again.

Yes. Do you recall ever being informed that Waawidji was proposing to enter into an agreement with DLALC pursuant to which Waawidji would be paid money?---No.

And you were never asked to approve such a proposal?---No.

40 All right. And you never did?---No.

All right. You can hand that volume back, thank you. Now, I'll ask you next to be shown volume 10 please at page 102.---Thank you. Yes.

Now, this is a document that states at the top, "Board meeting pursuant to schedule 3 part 2 subsection 6 of the – part 2 sub 6 of the Aboriginal Land rights Act." Is that what you're looking at?---Yes.

And it says, "Date of meeting Friday, 27 January, 2012" and then it's got motion 1, "The Board resolved to revoke Jack Johnson's suspension subject to the terms outlined in the letter to him dated 27 January, 2012." Can you see that?---Yes.

And you're said to have moved the motion.---That's correct.

Do you recall there being a meeting - - -?---Yes.

10 - - - on 27 January, 2012 at which you moved that motion?---Yes.

All right. Where was that meeting held?---In the Board room at Gandangara.

And do you say that the – well, if you look down the page it says, "Board members in favour of motions" and then there's a list of six directors including you.---Yes.

20 Do you say all of those people were present at this meeting?---We, we, we phoned them in.

Who did you phone in?---The directors.

Who?---The directors listed. The only ones that didn't answer was George Bloomfield and Vicki Wade and myself and Cindy co-ordinated the dialling.

I see. So do you say that you and Ms Cronan attended the offices of GLALC?---Yes.

30 And then what, you had a – some sort of phone system available to you did you?---Yes.

And what, you could dial in multiple people into this phone hook-up?---Yes.

Yes. And the only people present do you say were you and Ms Cronan? ---Myself and Cindy.

40 Yeah.---And then we had John, Ian, Merv and Carol Brown with Wendy Maybury and Dot Shipley on the phones.

So you were all on the phone at once. Is that what you're saying?---All on – yes.

And using this system, the phone system to which you refer, was it possible for each person who was on the phone hook-up to hear what every other person on the phone hook-up was saying?---I'd say so. That's – given, given the way that they voted.

I'll ask you to be shown Exhibit G4, Mr Tobler. Now, you should have in front of you a copy of an email from Mr Leon Filewood to Cindy Cronan on 1 February, 2012. Is that what you're looking at?---Yes.

10 And it says, "Hi Cindy. Please find attached text messages that were on my phone. There are two photos for each Board member I texted the motions to. The first photo shows the time and date the text was sent and what the motions are and the second photo shows their response to the motions." Do you see all of that?---Yes. Once we had spoken to them all and we got – and confirmed on the phone we then asked them for a text message to confirm their response.

I see. So there was a discussion by phone that you say each of the people to whom you've made reference was hooked into, is that right?---Yeah.

And then that was followed by these text messages, is that right?---Correct.

20 If you go to the, excuse me, second of the text message printouts that's got your name at the top of it, Rohan Tobler, do you see that?---Yeah.

Are you able to explain why given you were present at the meeting you sent a text message indicating your position on the motions?---I just confirmed my vote in case of a situation like this I suppose.

Was Mr Filewood present at the meeting?---I can't remember.

30 Because I rather understand from this exhibit that he was the person who sent you the text message that I've taken you to, is that right?---I can't remember who sent me the text.

If you look at the base of the text message printout it says "I, R Tobler, is for motion 1 and 2", do you see that?---Yeah, yes.

Was that your text message in response to the text message that had been sent to you?---Yeah.

40 All right. Now in relation to this meeting or the motions, I should say. Why did you vote in favour of the motion to revoke Jack Johnson's suspension on 27 January?---There was two reasons. One, I, I thought that if we just stood down our CEO every time we had a complaint from another LALC then we would, you know could be standing out every month or you know, it wasn't, it was just a complaint, there needed to be an investigation. And I thought that once we – Jack should've been reinstated. We'd run our investigations and then we, then we make our decision whether we stand him down or we, or we decide that Jack was in breach of his contract. And two, we would've had a great risk without a CEO in place.

But when you say - - -?---What if, what if he had taken us on legally and what if he was found to be done the wrong the thing, didn't do the wrong thing and took us on legally?

Well you said a moment ago that if you were to stand down your CEO each time there was a complaint then you'd be standing him down regularly. You remember saying something to that effect?---Yes.

10 Were complaints about Mr Johnson from other LALC's regular?---No, they weren't. But what if they were hypothetically like.

If you go back in volume 10 to page 99, you'll see there minutes of a Board meeting of 20 January, 2012. Do you see that?---Yes.

Now you don't appear of being in attendance at that meeting?---Yes.

This was the meeting at which Mr Johnson's position as CEO was suspended?---Correct.

20 Now you weren't present for that, correct?---Yes.

But you were, I'll withdraw that. But you did vote in favour of revoking the suspension a week later, correct?--- [REDACTED]

30 Right. And at the time of the second meeting were you aware of the outcome of any investigation into the complaint that had been made about Mr Johnson?---No. Not yet.

So your position was as I understand it, that you voted to revoke the suspension because you didn't think it should've put in place until the investigation had been completed?---That's correct.

I see.

40 THE COMMISSIONER: Do I take it from that answer that there was nothing during that Board meeting, where you voted in favour of revoking the suspension, that brought to your attention the existence of any report or any investigation?---Sorry, I don't understand, Commissioner.

There was nothing during that meeting, where you voted in favour of revoking his suspension, that brought to your attention any report or any investigation that had been conducted?---No. My understanding that there was an investigation being conducted both by John Mero and ICAC itself.

MR HENRY: And what did you understand those investigations to be about?---That Jack Johnson had been accused of receiving funds from DLALC on a consultancy basis.

And your position was it was appropriate for Mr Johnson to remain in position as CEO of GLALC whilst those investigations were under way?
---Yes.

10 And that presumably he shouldn't be suspended from acting as CEO of GLALC until an investigation found that he'd done the wrong thing? Is that it?---That's right.

All right. All right. You can hand back volume 10 and I'll ask you to be provided with volume 41, Mr Tobler.---Thank you.

At page 14. You should have now in front of you, Mr Tobler, a letter dated 18 February, 2014, to Mr Lombe, a GLALC administrator.---Yes.

20 And it's a two-page letter. Is that what you're looking at?---Yeah.

And is that your signature on the second page?---Yes.

All right. Do you recall signing this letter?---Yes.

All right. What did you understand to be the purpose of you signing this letter?---My understanding, this was in regards Jack's expense claims, wasn't it?

30 Yes. Did you understand that, when signing the letter, you were saying that you approved of his expense claims?---Doesn't say that we approve of the expense claims. It says that we approve, that we support the administration and that mistakes were made and have been rectified.

Yes. Well, perhaps if you go back in the volume to page 11. You'll see there a table with GLALC at the top and then various expense items listed. Do you see that?---Yes.

40 Do you recall being provided with this table prior to you signing the letter to which I've taken you?---Yes.

All right. And that you reviewed the table before signing the letter?---Yes.

Did you understand that when signing the letter you were saying that you approved of the legitimate claims identified in the second column from the right-hand side of the page?---There was claims – my understanding at the time, why I signed the letter, is that there were claims that weren't legitimate. However, we did owe Jack expenses for some work that he'd

done, travel-related expenses, some work he'd done, and those other expenses outside of that, that he had made the repayment back.

Yes.---That was my understanding at the time and that's why I signed the letter.

Well, have a look if you would at the preceding page, page 10.---Yes.

10 Now, this is another document which identifies expenses and it says – identifies expenses that have been repaid. Do you see the far right-hand column?---Yes.

If you turn over to the next page, page 11 you will see these are expenses that some of which or most of which I suggest are identified as being legitimate claims.---Yes.

Now, was it your understanding when you signed the letter that you were approving of – or supporting I should say the legitimate claims?---Yes.

20 You will see the legitimate claims include, for example, if you look at the far left-hand column there's a claim for iTunes. Do you see that, the fifth or sixth, sixth from the top?---Yes.

And you go down two further claims to Corporate and Commercial Insurance Brokers and there's an invoice dated 21 July, 2011 for \$394.70 car insurance 1993 Isuzu horse float. Do you see that?---Yes.

30 Do you recall there being discussion before you signed the 18 February, 2014 letter about a horse float?---We – I remember from my recollection, vague recollection that the horse float and that was being used or being – we were examining because we were going to implement an early intervention program in the schools so we needed to be able to see if it could fit into the actual schools. So - - -

THE COMMISSIONER: You mean the horse trailer itself?---Horse trailer itself.

40 Because why, because that was going to be used in the program was it?---It was going to be used in the program and then we were going to deck it out. Everything from eyes to eye – for reading and dental and things like that.

MR HENRY: Who told you that?---Mr Johnson.

Was this in support of his claims concerning the costs associated with the horse float?---Sorry?

Well, you've just said that Mr Johnson told you about the use of a horse float for something connected with dental - - -?---We'd speak – from my

memory we'd spoken about this prior, way prior to these expense claims being arisen about the horse float and the Board was in support of that and then when the expense claim came up part of this – some of it was there was money owed for the travel and, and the fuel and things and out-of-pocket expenses that Mr Johnson had incurred and also some of the expenses were for the actual horse float itself so - - -

10 THE COMMISSIONER: Mr Tobler, I'm sorry, can I just ask you. You said this whole topic about using the horse float for the purposes of this early intervention program had been discussed at a previous Board meeting?---Yeah.

And why was it that it was necessary to use a horse float and to refit it for that purpose, why didn't the Board discuss actually purchasing a suitable vehicle that would serve the same purpose?---Because what if we bought the vehicle and it didn't fit in the schools or fit down the streets of the schools. We'd - - -

20 Well, normally buses do fit down public roads. I'm just curious as to why the Board didn't discuss purchasing a suitable vehicle. Did that discussion not take place?---No. We, we were – it was an interim thing that we were examining and, and if it took – if we were able to do it we were going to progress with it. It was actually more of a mandate put on us by the membership than anything, just like the medical centre and all the other services that we had provided in the past years.

30 But the idea of the service might have come from the members but the way that it was executed was a decision for the Board.---No, it wasn't a decision for the Board. We didn't, that was the operations – the CEO who was in control of the operations, that was his decision. We supported that.

So are you telling me that in the discussion about this early intervention program at the Board level, the way in which that was going to be carried out, and the necessary expenditure for carrying out that program, was entirely at the discretion of Mr Johnson?---Yes.

40 MR HENRY: And then, sir, if you go back to page 11, I identified for you an expense in the left-hand column, next to corporate and commercial insurance brokers. Do you see that?---Yeah.

Beneath that it says Lakota Trailers Australasia. Can you see that?---Yeah.

And then there's an invoice of 21 July, 2011 for \$9,800. And it says, "Car Trailer purchase, Lakota Trailer." And there's some further notations. Do you see that?---Yeah.

Was it your understanding that that \$9,800 expense claim was for the horse float?---Maybe been an oversight. I don't recall seeing that.

Do you agree that it's entirely unnecessary for the purposes of Mr Johnson conducting his role as CEO of GLALC to acquire a horse float?---I don't know. If it was for the operations within his delegations, then - - -

Well, what use do you say GLALC had for a horse float?---I just told you.

10 THE COMMISSIONER: Mr Tobler, this is 2011, this purchase was made. You were a Board member until 2014. Did you see the horse float being used in some adapted form for the purposes of this early intervention program?---No. I can't say I did.

Well, did anyone ask questions about what happened to the horse float that we paid \$9,900 for?---Well, we only saw this in – I don't even know what's the date when we received – we didn't have line of sight. There was a finance committee that went through all these, and I wasn't part of the finance committee.

20 MR HENRY: Well, when you signed the letter, on 18 February, 2014, of pages 14 and 15 of this volume, is this accurate? You relied on other people to ensure that the claims that were being pressed by Mr Johnson were properly pressed?---Yeah, I mean, we had an auditor that went through our accounts every year, and nothing arised. He would have reviewed Mr Johnson's expenses.

But you were provided, you say, the list of expenses at page 11, correct? ---Yes.

30 Were you also provided with the list of expenses at page 13?---Yes.

And you provided those lists prior to signing the letter, correct?---Yes.

Did you satisfy yourself that the expenses that were the subject of the claims that were pressed on those pages were appropriate?---Yes, I did.

And they included expenses associated with a horse float?---Yes.

40 And you say that those expenses were probably claimable by Mr Johnson in his conduct of his duties as CEO of GLALC?---Yes.

If you have a look at page 15, you'll see there's a number of names with signatures above them, you see that?---Yes.

Do you recall Ms Provest becoming upset at a meeting at which the signing of this letter was considered?---Yes.

Do you recall her crying at the meeting?---I recall Ms Provest coming in very, very disgruntled about something that had happened in her workplace.

And during the meeting she was erratic and slamming the table and speaking over everyone. And I just asked her, I said, to Gloria, I said, "From someone of your experience I'd expect better behaviour". And then she started to burst into tears and claimed that I was attacking her. Not once did I attack her or raise my voice or yell at her. Or even I've seen the statements where she said I've said that she's only new, I never said that to her.

10 THE COMMISSIONER: So what your position is that Ms Provest was disgruntled about something that happened in the workplace and she was behaving inappropriately in the meeting and that was what you spoke to her about. But was she expressing her dissatisfaction with having to sign the letter, that was the question?---No. She wasn't that, she wasn't expressing dissatisfaction about that at all.

She had no problem with signing the letter?---Not that I know. She just was, just out, out to get – in my mind she was out to get Jack for some reason and - - -

20 Well what was she thumping the table about?---When people would try and talk about the matter she would thump the table and speak over them. Gloria had a reputation especially in her workplace of bullying people continuously.

MR HENRY: Didn't she at the meeting, Mr Tobler, say that she didn't agree that expense claims associated with the horse float should be allowed?---I don't recall her saying that at all. If Gloria didn't feel like she wanted to sign the letter why did she sign it?

30 I have no further questions from Mr Tobler, Commissioner.

THE COMMISSIONER: All right. We might leave the cross examination until 2 o'clock and we'll take the luncheon adjournment. Thank you.

LUNCHEON ADJOURNMENT

[1.06pm]

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