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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE MEGAN LATHAM

PUBLIC HEARING

OPERATION GREER

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 24 MAY 2016

AT 2.10PM

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

THE COMMISSIONER: Just before we recommence with the evidence of this witness, could I just confirm that we won't be sitting next Monday morning so we'll resume next Monday at 2.00pm. Thank you.

<STEPHEN WRIGHT, on former affirmation

[2.09pm]

10 MR HENRY: Thank you, Commissioner. Just pardon me for one minute. Mr Wright, I'm going to ask you some questions about events now that occurred late 2013/early 2014 and for that purpose I'll ask for you to be provided with volume 1 at page 103. Volume 1 at page 103 is the first page of the second report to the Minister from the Administrator and you will see on page 103 that the report is dated 8 November, 2013. Can you see that? ---Yes.

Right. If I could ask you please to turn to page 107.---Yes.

20 It says under the heading Appointment and Compliance on the left-hand side of the page that, "The Administrator was appointed on 20 August, 2013 for a period of three calendar months and that uncertainty surrounds the status of GLALC's Board as a result of my appointment. The Registrar is considering whether to exercise his discretion under the Act. The Registrar is of the view that the Board members are now not disqualified until he has made a final decision." Do you see that?---Yes.

30 Now, where it says, "The Registrar is considering whether to exercise his discretion under the Act", what discretion is that a reference to do you know?---The section in – the discretion in section 66(2) of the Aboriginal Land Rights Act.

Right.---(3), my apologies, subsection (3).

That's all right. So that's the discretion to determine that a person is not disqualified, that is, disqualified from holding office as a Board member. Is that right?---That's one of the two reasons. Sections 66(2) and (3) go to different facts.

40 Yes.---66(3) goes to being a Board member immediately prior to the appointment of an administrator.

Yes, right, within the last five years of an administrator being appointed. ---That's correct.

Excuse me. So as at November, 2013 you were considering whether to disqualify a person or, in effect, the opposite isn't it?---Yes, the opposite.

It's, it's - - -?---They were disqualified. I was given a function to perhaps ignore that disqualification.

In effect, grant a dispensation from the disqualification?---It can be described that way, Counsel.

10 All right. And it says in that second sentence in the paragraph – sorry, the last sentence in that paragraph that I've just read that, “The Registrar is of the view that the Board members are now not disqualified until he has made a final decision”. Can you just explain that – or first of all, was that your view at the time, November, 2013?---Yes. That correctly expresses my view.

All right. And was that because in your view the position was until you had made a decision as to whether or not to grant the, I've just called – I called it a dispensation, the Board members continued in office. Is that right?---I had received an application to exercise my discretion under section 66(3).

20 Right.---And on the basis that I'd accepted an application my practice has been, not just in relation to GLALC but any LALC, that until such time as I can make a determination - - -

Right.--- - - - they are not disqualified.

All right. If you go forward then in the bundle to page 109. So this is still in the November, 2013 Administrator's report.---Yes.

30 You will see the – under the heading Appointment on the left-hand side of the page there's some dot points. If you go down to the fourth one it says, “The Administrator being given power to administer all of the functions of GLALC except those that are specified in the statutory provisions that are there stated, the powers under these sections are respectively, first, to make claims to Crown Lands and two, to promote awareness in the community of the culture and heritage of Aboriginal persons in the Council's area. During the administration the Board of GLALC will remain in place to perform the functions that remain with the Board.” Do you see that?---Yes.

40 Now, was it your understanding that first of all, the Board members remained in place pending your determination of this application concerning a discretionary dispensation?---Yes.

And then, secondly, so far as the Board members remained in office, that their powers were confined to the matters described in this paragraph that I've read to you?---Yes.

All right. All right. So that's the position as at November 2013. If I could move forward in time chronologically to page 203, you'll see there, Mr Wright, the front page of the fourth report by the Administrator to the

Minister. And that report's dated 21 January, 2014.---Yes, I see that, Counsel.

This is several months later. If you go, please, to page 207, you'll see a heading on the left-hand side "Board Meetings". "The newly elected GLALC Board has been unable to have its first meeting," et cetera. So the position was, presumably between November 2013 and 21 January, 2014, a new Board was voted in. Were you aware of that?---I assume this refers to the annual – was there an annual meeting?

10

Yes. I don't know. As I stand here, this doesn't say. We can perhaps have a look to see if we can dig out some minutes. But it says in this sequence of dot points that, at the third one, the Administrator notes that eight of the ten Board members still facing potential disqualification are awaiting a determination from the Registrar. Was it your understanding in early January of 2014 that there had been a newly elected Board but you were still considering whether or not to exercise the discretion under section 66, to which you've referred?---Counsel, any assistance you can give me about the newly elected Board will be helpful. My recollection is not with you.

20

However, those Board members who would have been in office when the Administrator was appointed still, as individuals, faced a five-year disqualification from holding office - - -

Yes.--- - - - pending my decision. So even if they were not re-elected, they would benefit if my discretion was exercised.

In other words, you still had to make a determination in respect of those people, even if they weren't re-elected, is that what you're saying?---Yes.

30

Then if you go forward again in time, to page 295, you'll see there the front page of the sixth report from the Administrator to the Minister. This date is 11 March, 2014. And then over to page 299, again there's a heading "Board Meetings" on the left-hand side of the page. And it says the newly elected GLALC Board met for the first time on 24 February, 2014. And then you can read for yourself, if you like, the rest of that dot point and the second dot point. And then the third dot point is "The Administrator notes that the remaining eight Board members still facing potential disqualification are awaiting a determination by the Registrar." My question for you is how did this end up? What happened? Do you recall?---I did not exercise my discretion in relation to any of the people who had applied to me.

40

So does that have the consequence that those persons were then disqualified under the Act for five years?---Yes.

Do you recall who they were?---I can. I have that in documents.

But you don't have it off the top of your head?---I'm not, from the top of my head, no.

All right.---I wouldn't necessarily be able to name all of them, and I would prefer to provide you that.

10 I understand. All right. You can hand back that volume. I suppose I should ask you, and I realise this is a general question that may or may not apply to all of the people in respect of whom you didn't exercise your discretion, what was the reason for not exercising your discretion?---I took into account a number of issues leading up to the appointment of the Administrator, and viewed that in all the circumstances they should not be relieved of their disqualifications.

And do you recall what the things leading up to the appointment of the administrator were that weighed in your mind?---Again, I would direct you to the letters I sent to those people setting that out as the best source of that information.

So there were letters sent to each of them with stated reasons but - - -?  
---Correct.

20

I see. All right. I'll now move to a different topic. And this topic deals with the period earlier in time towards the end of January, 2012. Are you aware that in late January, 2012 that the Board of GLALC suspended Mr Johnson's role as CEO for one week?---Yes.

All right. I want to ask you about something that there's evidence occurred at about that time. Do you recall a Wendy Morgan or Wendy Maybury?---She prefers I understand it to be called Wendy Morgan, yes.

30 Yes. All right. Do you recall her contacting you after or shortly after the period in time at which Mr Johnson was reinstated as CEO of GLALC, immediately following his suspended period?---Yes.

All right. And did she call you like on the telephone or - - -?---Yes. It was a telephone call.

40 All right. What's your best recollection of that conversation?---She called saying that she was concerned about matters of the GLALC and my recollection is that she was, shall we say, upset by her treatment as an individual and that she wished to resign.

Did she explain what she was upset about?---Her treatment by fellow Board members as I understand it.

All right. Did she say what they had done that made her upset or not?---My recollection is that it was the tone of behaviour a Board meetings.

All right. Do you recall her in the conversation – was there only one conversation with her at about that time?---There could've been, there could've been two conversation with her, I can't say.

Well whether it was one or two. At about that time do you recall her seeking advice from you in relation to whether or not she should resign?--- She asked me could she resign or should she resign and I was clear in saying that she could. Board members can simply resign. And it was a matter she would need to consider in all the circumstances.

10

In the context of that discussion did she explain to you that there was, sorry, that the reason for Mr Johnson's suspension from his position as CEO was that there had been a complaint made in relation to Waawidji receiving benefits from DLALC?---I don't recall her mentioning those matters specifically although there was some media attention at the time as I understand it about those issues.

Did she – do you recall asking her if she had any documentation to give you in relation to her call and concerns?---No, I don't recall.

20

Do you recall if she provided any to you?---I don't think she did.

Right. Do you recall her saying that Mr Johnson was reinstated as CEO of GLALC upon Ms Cronan and Mr Tobler ringing around and gathering support for him?---No. I don't recall that.

30

All right. I'll move onto other matters and these matters to which I'll now refer are of a general nature. They're not necessarily specific to the facts pertaining to GLALC, though I'm not suggesting they don't include GLALC. Are you able to describe generally the assistance that your office provides to LALCs in their daily operations?---So the functions of said Registrar are principally grouped in section 165.

Yes.---And there are other functions scattered throughout the Act and the regulation. If you look at the scope of the section 165 functions they form into what I call three general groups. One is a registry role principally in relation to Aboriginal land claims and the register of Aboriginal owners which is a register maintained for the purposes of the joint management of conservation estate pursuant to the National Parks and Wildlife Act.

40

Ah hmm.---There is then a larger group of general regulatory functions concerning boundaries and names and areas of Land Councils. You then sweep into an ADR function, mediation, conciliation and arbitration and you then sweep into a regulatory function by way of investigations principally in relation to breaches of the Act or failures to disclose pecuniary interests. Otherwise in the Act a couple of the functions I would draw your attention to is the preparation of membership roles for the purpose of Local Land Council elections and the four year election of the

New South Wales Aboriginal Land Council conducted by the Electoral Commission. So there is a suite of functions, some of them very different from the others, and they fall to be attended to by the Registrar as they're needed.

10 And in relation to the third of those functions which you describe as regulatory, so in this instance we're talking about the investigation of complaints, issuing of compliance directions and so on, are there recurring matters that arise in that context that you're attending to?---Counsel, are you asking what sort of complaints?

I mean I understand they could be varied but is it possible – in the same way that you've described by reference to if you like categories, the functions that you perform, is it possible – and I accept it may not be – but is it possible to identify recurring complaints or issues that require your attention and investigation?---So that, that has been a process coloured by history, if you understand my meaning. So there's been a number of iterations of the Land Rights Act as we know.

20 Yeah.---If we were talking about the present time - - -

Yes.--- - - - potential areas where a lot of our time is taken up is in relation to questions arising from the validity of actions that are required under the Act. By that I mean, for example, the proper calling and convening of meetings, so matters of quorum, matters of advertising. There's a raft of regulatory requirements so there's a lot of that work. There is work concerning the relationship between Boards and CEOs of Local Land Councils, that's emerging, and there is often work concerning Board members being concerned or raising issues about the conduct or propriety of other Board members. So essentially general governance issues arise. There's also questions arise often from Local Land Councils about the conduct of the New South Wales Aboriginal Land Council. There is of course also complaints by Land Councils about the conduct of said Registrar which are rightfully referred to the Ombudsman or perhaps the ICAC and generally in relation to Local Land Councils it's now – the picture if you like of those complaints is much to do with the conduct of business within the framework of the Act.

40 In relation to the New South Wales Aboriginal Land Council, to what extent do you, or does your office, interact with the New South Wales Aboriginal Land Council in addressing these sorts of issues?---So, at the moment there is a practical relationship, which is essentially a relationship I have predominantly with what they call their zone officers, which are five regional officers who look after matters of compliance, if you like, in relation to Local Land Councils. And I would interact quite regularly with those officers to assist with Local Land Council matters as is appropriate. On a higher level, it's normally issue based, and it waxes and wanes as to the extent of the relationship, remembering that I also have functions which

are applicable to the New South Wales Aboriginal Land Council. So one has to be careful how that relationship is maintained.

All right. And in relationship to one of the matters that you referred to as a recurring theme, if I can put it that way, CEOs and Local Aboriginal Land Councils, does that arise in a context where a member of a Land Council or a Board member makes a complaint to you about a CEO? Is that how - - - ?  
---Both that path and the reverse path.

- 10 I see. Now, in dealing with these issues that you've identified, what resources are available to you?---So, the Registrar is supported at the moment through the Department of Education funds, because there is a business unit within the Department of Education referred to as Aboriginal Affairs. And that business unit has a budget, and part of that budget is allocated to the Registrar. That budget concerns people and money. Currently, in terms of people, I have a grade 11-12 clerk, a grade 9-10 clerk, a grade 7-8 clerk and a grade 5-6 clerk, and myself. And the total operating budget, not including a recent grant from the Department of Planning for an unrelated culture and heritage matter, is approximately \$900,000 per annum  
20 jobs and operational expenditure.

And does that include paying, for example, for your office? Does that include paying for your office?---Yes.

Yeah, right. And you mentioned, I think, there were five zone, what is it, managers or - - - ?---I think their job title is zone director, and each of those has a staff in those five zones. But they're New South Wales Aboriginal Land Council - - -

- 30 Yes.--- - - - employees, non-government employees.

And is each of those - well, the combined total of the Local Aboriginal Land Councils in New South Wales, as I understand it, is about 120.---Yes.

Is that right? So the zones are each, those are divided up into the zones.  
---So five zones are distributed across the nine regions. So there's not parity in the numbers.

- 40 No.---But it's distributed in that way across a geographical area.

All right. And you've identified the resources available to you. What, if anything, do you have to say about the adequacy of those resources for the tasks that you're called upon to discharge?---They're inadequate.

How, if you were granted a wish, would you change it?---Rather than a wish, I was in negotiations with the government about what resources would be made available to me with the commencement of all of the amendments in the 2014 Aboriginal Land Rights Amendment Bill.

I see.---And so I put an offer to government, which is still there if you would like me to share it, Counsel.

If things are in discussion it's probably better that they're not canvassed here I suspect?---They're not in discussion now, Counsellor.

Oh, okay.

10 THE COMMISSIONER: I think everything is off the table. But I think did you say early 2014 that that discussion took place?---No, no. Well the discussions - - -

I'm sorry, the amendments were early 2014?---So Commissioner, in 2011/12 I was asked to Chair a working group between the Government and Land Councils to arrive at a number of recommendations for amendments to the Land Rights Act. Commissioner, we delivered that report in late 2012. There were then some conversations, discussions I was involved in leading up to a draft amendment bill and beyond. I was asked what in my opinion  
20 what resources would be necessary to carry out those amended functions. And I suggested three further positions at the grades of 11, 12, 9, 10 and 7, 8 and the provisions of a further \$300,000 in operational expenses. And Commissioner, I have to say there's as much art as there is science in that offer. Because it was unknown given that much of the work we do is demand driven. But that was what I said would be a starting point.

Just following on from that. Given that one of the functions is an investigative function, when you decide to carry out that function who physically does it?---It depends on whether or not I've got resources to  
30 retain external investigators or whether they have to be done internally. And it also depends on the scale.

So you'd have to if you engaged an external investigator it would have to be met from your budget would it?---Yes.

But I take it that none of the four clerks that you presently have would be undertaking that function themselves?---Yes. In fact I, sometime ago now, and I recently in my mind lost the person holding the 11/12 position who I had had trained in investigation skills. And so at times that person would do  
40 that work. Remembering that the Act as it stands includes an investigation power, the Minister can appoint an investigator under section 216. That was one of the powers that was to come to me that that budget bit was made upon. Part of the reason for the 300,000 was to ensure some more adequate resources for the use of external investigators.

But that power hasn't come to you as yet?---There are a number of uncommenced provisions in the 2014 Bill and I'm informed as of April this year they will not commence.

I see.

MR HENRY: Can I just go through what those, the powers that I understand now from what you said aren't to come in force involve. There's a power to appoint advisors to Local Aboriginal Land Councils?---Yes.

A power to appoint investigators?---Yes.

10 And a power to appoint administrators, that's right?---Yes. The two points, one is there was an existing power to appoint advisors. The power was vested in the Minister and whereby the Registrar could recommend. The power was both to come to the Registrar but the terms of what that role or thing called advisor would do was to change. And in relation to administrators there was both, there was an interim administrator process as well as a full blown administrator process. So all of those powers were to transfer to the Registrar.

20 And I go from what you're saying none of that's to happen?---I was advised in April it's not happening.

There was also wasn't there, a proposed power for the Registrar to notify a Local Aboriginal Land Council that's prohibited from doing certain Acts for a period pending the appointment of an administrator?---Yeah. That's the interim administrator provision I was referring to. And interestingly in the Council there two other powers which did come to me which was the power to issue subpoenas and the power to obtain adjunctions which perhaps may have been implicit anyway but was made explicit. So those two powers came to me the others didn't.

30 I appreciate what you're saying that you now have those powers that you previously didn't have. In view of the resource constraints that you have are you in a position to use those powers in a way that you consider is appropriate?---I have been in dialogue with the Government since early 2015 arguing that even if the provisions which have not commenced do not commence I still require further resources to pick up the additional functions from the 2014 amending bill.

40 In relation to – you've obviously got a power and have had a power, independently of these proposed amendments, to issue compliance directions.---Yes.

Do you consider that the issuing of compliance directions is an effective tool for you?---Yes.

Is there an issue with, shall I say, supervising the compliance with compliance directions, in view of your resource constraints?---So, in fact, since the compliance direction power has been with us, I have issued

formally one direction. I have foreshadowed another direction in another matter which the Commissioner is aware of. And in all other cases, it's a very useful tool when it's explained to people that it's available if there aren't other remedies applied. So if I can take you back to the tension in the functions between these regulatory or investigative powers and what effectively are ADR powers, alternative dispute resolution powers. That's a porous membrane, Counsel, and often it's the case that formal or otherwise conversations with affected people about the existence of that power is more than sufficient. And in relation to resources, a much better use of resources than simply applying it and then hoping for the best.

I see. And I touched upon this earlier, that one of the options for you in the event of non-compliance with a compliance direction is to seek the court's assistance - - - ---Yes.

- - - to enforce the compliance direction. Is that ever something you've had to do?---Not in relation to compliance directions, no.

All right. If you did have to do it, could you afford to do it?---Currently I could afford to do it perhaps once per annum without receiving notice of going over budget. More resources would make that more amenable.

I rather understand from your evidence, though, and I don't suggest this as being anything other than quite proper, that that's a last resort?---I find litigation is always a last resort, Counsel.

All right. Now, can I ask you about rules and codes. You'll be aware, obviously, that at the back of the regulations there's a model set of rules for Local Aboriginal Land Councils, and there's also a model code - - - ---Yes.

- - - of conduct for Local Aboriginal Land Councils. And under the statutory regime, a Local Aboriginal Land Council can elect to register its own rules and code, or either, or by default adopts the model ones. That's correct, isn't it?---Yes.

Do many LALCs register their own rules or codes?---Not to date. It's often talked about, but the only two clear examples are the Mutawintji Local Aboriginal Land Council, which is a non-residential Land Council in Western New South Wales, which principally owns and controls the Mutawintji National Park. And they made significant changes to their rules, within power, obviously, to provide for meetings out of area and other utilities for their purposes. And the Metropolitan Land Council changed its rules in a minor way some time ago in relation to delegations, as I recall. But there has not been much move towards crafting of individual rules or codes of conduct.

Are you able to say whether LALCs registering their – I'll withdraw that. Are you able to say whether, in your view, a LALC being required to

register its own rules or code would improve the conduct of the affairs of the LALC?---I think the way I would answer that question is to say there is always scope for considering the evolving governance relationships of any organisation. Also remembering that all Local Land Councils are not the same, either in scale, member number, activity, et cetera. There is certainly much scope for further conversations about crafting rules to suit individual needs. As to whether that would improve conduct, one would hope so.

10 For example, under the model code one of the provisions, and this is clause 7, says, "Officers must not enter into any agreement or undertake any activity that may be in conflict with the interests of the Local Aboriginal Land Council or that would prejudice the performance of their duties." Now, that I suggest is a reasonably common theme in the context of the organisation and the obligations of officers of just about any corporate entity.---Yes.

20 But if a Local Aboriginal Land Council is not required to itself approve a code of conduct, whilst by default this model code applies it's something that may never be brought to the attention of the relevant officer.---You may need to refresh my memory but I think you'll find in section 177 I can issue a model code. I think that's the relevant provision, Counsel.

Is that something you've ever done?---I haven't gone so far as to issue a model code. I only draw your attention to it. It could certainly amplify or pick up the issues you're alluding to.

30 Yes, you're right. Section 177(4) states, "The Registrar may prepare and issue a model code of conduct. The Council may but need not adopt the model code".---Yes.

I suppose my question is really directed towards whether it's a potential source of concern that model codes and rules apply by default without as I understand it necessarily a Local Aboriginal Land Council having to address the content of the code or the rules.---I would understand they're made well aware of the content.

40 All right. Well, perhaps I'll move then to the next issue which is one of training. The position with respect to training is that all Local Aboriginal Land Council Board members must do New South Wales Aboriginal Land Council governance training within six months of being elected. Is that correct?---Yes.

And the regulations provide in clause 30 for, in effect, a catalogue of topics or issues that are to be the subject of the training. Are you familiar with the training that is actually provided?---I was given a copy of the most recent iteration of the New South Wales Aboriginal Land Council training materials so, yes, I am aware.

I gather that you don't have a role in formulating what is to be the subject of the training, that's done by New South Wales Aboriginal Land Council?  
---Yes.

The training that is provided by New South Wales Aboriginal Land Council as I understand it includes some instruction about the Aboriginal Land Rights Act including the disqualification provisions relevant to Chief Executive Officers. Does that accord with your understanding?---I, I can't recall that, reading that, I'm sorry, Counsel.

10

All right. Are you able to recall whether the training includes instruction about the Aboriginal Land Rights Act itself and the - - -?---Yes.

- - - provisions relevant to a director?---Yes. I recall that involves a general discussion about the Act and then a focus on the roles and obligations of Board members.

All right. And are you aware of any system that's in place to ensure that that statutory requirement for the training to occur within six months of the  
20 election of a director actually occurs?---I think you'll find there's provisions for the New South Wales Council to suspend Board members if they don't do the training. I think you'll find that. Is that what you're referring to?

Yes. But I was more concerned with – I understand the legislation makes provision for it. But if there's actually a system that implements it in legislation as in it's well and good to have a power to do something or a punishment for not doing it but is it something that is the subject of supervision to know if it's in fact happened? Are you aware of any system that's in place in relation to that?---Are you referring to supervision of  
30 ensuring the training is undertaken?

Yeah. At a practical level, yeah?---I am aware that the New South Wales Aboriginal Land Council records those who are trained and takes action against those who do not undertake the training. And I understand does their best to ensure people are trained, as much as possible.

All right. That I gather is not under your purview now anyway?---Never has been.

40 All right. There's also in the more recent amendments to the Aboriginal Land Rights Act a requirement for a Local Aboriginal Land Council to conduct a risk assessment in relation to any proposed transfer of funds to other entities and that is as I understand is coupled with a requirement for approval by a majority of 80 per cent of members at a meeting before any transfer occurs?---Yes.

In the context of the risk assessment are you able to say what in your view should be considered at a general level?---So the first point I would make is

that that amendment in the 2014 bill arose as a matter recommended by the working group from 2011/12 and attempts to include other asset classes other than land in a similar regulatory scheme as land. And that regulatory scheme for land was a result of the 2009 amendments to the Land Rights Act. As to what the risk assessment should be I will have to say Council that's a matter for financial advice, I don't know that I have a general view.

All right. Just pardon me for one minute. They're my questions, Commissioner.

10

THE COMMISSIONER: Mr Wright, can I just ask you just on that last topic of training of the Board members where you said that it is carried out by the New South Wales Aboriginal Land Council and you don't have an input into that. It strikes me as, I mean this might be a comment, but I'd be interested to know what you think. It strikes me as somewhat odd that the relevant body who is responsible for managing the relationship between the CEO and the Board and complaints about governance issues and matters relating to the conduct of Board meetings and things of that nature. Doesn't actually have a mechanism by which the New South Wales Aboriginal Land Council can be informed of the issues that are in fact arising on the ground so that the training can actually target those particular matters?---So they often informed as is – as much as they can be. There are considerations, Commissioner, of privacy or of - - -

20

Oh, no I'm not suggesting - - -?--- - - - et cetera, but there is - - -

I'm not suggesting that. But I mean - - -?---No, no. Your point is well taken and so they are, they are aware of issues that come to me within the scope they can and they are and there are issues coming back the same way.

30

There is some tension between a large non-Government entity and a regulator having that relationship. This is one of the tensions under the Act. How that often manifests in the training or educational framework is from time to time I will be involved in assisting Boards, incoming Boards in certain circumstances. For example, a Local Land Council was reconstituted a couple of years ago after events that saw it dissolved. That incoming Board was the subject of a couple of days focused training by the New South Wales Aboriginal Land Council and myself for various reasons. So I wish I could put it higher, Commissioner, but there's an ad hoc relationship but there is no formal training relationship in the hands of the Registrar.

40

One of the recurring themes in the course of this inquiry, it's not by any means a reflection on the individuals, but a significant number of the Board members indicated that they'd had no previous experience with reading accounts or understanding financial accounts, and that at the Board meetings the understanding of the financial accounts was limited both by their own capacity to absorb the information but also by the fact that the accounts were presented to them in a kind of conclusionary way, so that what they

saw was a line item that related to the whole of the expenditure on that issue but not the breakdown of how that was arrived at. But just in terms of how Board members are equipped to deal with those financial issues, is that something that the training focuses upon?---I would understand the New South Wales Aboriginal Land Council training addresses those issues, but I can't recall the weight it's given, Commissioner.

Yeah.---It'd be a question for them.

10 And apart from the requirement to have training within the first six months of election, is there any process whereby there's kind of a regular follow-up, like - - - ---I don't know, I'm sorry.

You don't know?---I would say to you, Commissioner, that often when I'm working with Local Land Councils, which is the majority of the time, there is always an ad hoc training component to that. There is always an explanation. There is always an issue that's arising, whatever it might be. So there is an ongoing conversation which has an educational purpose, but I don't know if there's any formal follow-up training in relation to the training  
20 delivered by the New South Wales Council.

I mean, one of the comments made by one of the Board members, which struck a chord with me, was that he said that he thought two days' training was wholly inadequate, and that he thought the training was a little too patronising, if I could paraphrase what he said. But it just struck me that, whatever that training is within the first six months of election, as we all know, unless those things are reinforced they quickly fall away. But it struck me, I mean, if you do a company directors' course in New South  
30 Wales, it takes you the best part of six weeks and then you sit an exam. I'm not suggesting that we do anything as rigorous as that, but it seemed to me that at least a series of modules, like a financial module, a governance module, or something like that, that was regularly put in place - - -  
---Commissioner, I would encourage you to see where they're up to, the New South Wales Council's up to with that.

Right.---That would be my first response to that, because I know they are concerned about those issues. I just don't know where they've taken those issues of late. The two days being inadequate, the answer is probably yes. To some extent, that's historically driven by the compliance requirement  
40 that the Act creates. If they don't do it, there's a suspension tool which - - -

So it's more stick than carrot, really.---Well, it's a strange stick, with respect, Commissioner that educational skills come with.

Yes, punishment.---I find it odd. But, again, Commissioner, I would have to take you to, in my opinion, this is an issue of resources, remembering that the New South Wales Aboriginal Land Council is a non-government organisation, principally existing on its income from its fund. So it has

wealth, but it's non-government wealth. And there is always a question here about at what point does the government have an obligation, where it doesn't as opposed to the private money involved. So, again, I would encourage you to talk to the New South Wales Aboriginal Land Council about what it's costing them even at this level of educational engagement. Because I would agree with you that more is necessary. And in my experience, this sort of educational engagement often removes a lot of the tensions that people feel when they come to the Board table by not having a clear understanding. So it can often reduce conflict that might be  
10 exacerbated by fear of that lack of capacity. But it does need to be fairly rigorous and ongoing.

There was just one other question I had, which was to do with the Act itself. Tell me if I'm wrong, but is there anything in the act that prevents, for example, a Local Aboriginal Land Council determining to provide services for its community, such as health services, transport services or childcare services? There's nothing in the Act that prevents a council from providing those services without setting up separate service delivery vehicles?---I  
20 think you have to look at that question through the lens of this concept of community benefit scheme, which seems to be the vehicle in the Act that has been designed. There's also the capacity to create trusts, and clearly capacity to create legal entities such as companies. But I think that delivery of services question either revolves around the use of separate entities or the use of these things called community development schemes, and I think they're a largely untested part of the Act.

Right. So the tendency has been to set up separate corporate vehicles?---  
Yes.

30 The last thing is, just in relation to this particular inquiry, Mr Johnson came as CEO to the GLALC from Queensland. Queensland has no system remotely similar to what New South Wales has but my particular question is in your many discussions with Mr Johnson was there any attempt to engage with him in terms of what the Aboriginal Land Rights Act in New South Wales required and the fact that the GLALC was subject to the structural – subject to that Act, that they had to operate within the confines of that Act? ---They were principally my discussions with Mr Johnson.

40 Right. Did he seem to accept that that was the case?---He certainly understood it.

Right.

MR HENRY: I'm sorry - - -

THE COMMISSIONER: Any questions arising?

MR HENRY: It's actually not arising but I've been asked to follow up one thing if I may and that is, Mr Wright, you've just given some evidence to the Commissioner concerning training and your views about it in the context of Board members. What about in relation to CEOs, in your view is there any need for a minimum training or qualification - - -?---Yes.

- - - requirement?---Oh, there's two parts to that question.

Yes, all right.---Training, yes. Qualifications, no.

10

All right.---I don't think you can prejudge those matters.

All right. What about – what do you say about the training aspect then?

---Yes, absolutely there should be training.

And at the moment unless I've overlooked it, there is provision as you've indicated for training of Board members but there doesn't appear I don't think to be anything requiring a CEO to train.---Unless I've also overlooked it I agree with you.

20

And the training that – would the training that you'd suggest for a CEO be different, more rigorous, what would the position be?---Counsel, there is an underpinning to this question which if it's okay I'll explain.

Yes.---And that is that the power sharing if you like or the decision making within this single organ or what used to be single organ corporation called the Land Council is now members, Boards and CEO and relevantly sections 52G section 60-something and section 78A or B delineate that decision – those decision making – there's differences where the powers lie. So at the very least what is critical is for members, Board members and CEOs to understand the limits of those powers, the nature of those powers and where they become problematic. And why I say that is that I have many inquiries come to me about what is the meaning of day-to-day management because that's a functional power given to a CEO of a Land Council and of course it's not necessarily a clear point. So to come back to your question, it's critical that CEOs understand that relationship within that corporate body called the Land Council and then obviously how to exercise those functions.

30

And presumably consistently with what you said in respect of directors that the – any training requirement for CEOs should be an ongoing or recurring thing rather than a static thing?---Subject to resources it's always better to be trained more than less, Counsel.

40

All right. Thank you.

THE COMMISSIONER: Does anyone have any questions of Mr Wright? Ms Ronalds, do you have any - - -

MS RONALDS: I do, Commissioner. I only have a few but I wanted to go last just to make sure I picked everything up.

THE COMMISSIONER: Yes. Anyone else?

MR DOCKER: I just have a few too, Commissioner.

THE COMMISSIONER: Yes, Mr Docker.

10 MR DOCKER: My name is Sean Docker. I appear for Mr Johnson.---Yes.

You just gave some evidence a moment ago, something to the effect of all LALCs are different.---Yes.

And did you mean by that different in terms of their financial resources, the services they provide and the capabilities that they have to provide those services?---Those differences are all applicable to the evidence I gave but there would also be others.

20 Such as?---Geographical location, circumstances, nature of the communities in which the Land Council exists, any number of differences.

And would you agree that in May, 2010 the Gandangara Local Aboriginal Land Council in terms of its resources and in terms of its operations was one of the largest, if not the largest, in New South Wales?---Largest in what way, Mr Docker?

30 Oh, in terms of let's start with assets.---So one of the historical anomalies of the Land Rights Act is that those Land Councils who – whose geographical area is on the coast have benefited in terms of value of assets more than those Land Councils whose areas are over the mountains shall we say simply because of the value of land and when they obtain land under the Land Rights scheme the value is greater. So Gandangara like all of the Local Land Councils in the Sydney/Newcastle region which extends from approximately Port Stephens to La Perouse shall we say and west to Gandangara and Deerubbin, in all of those Land Councils they have high value assets because they own land which is worth a lot of money.

40 So in terms of asses you would agree would you that Gandangara is up the top of the list in New South Wales?---I can only give you an anecdotal answer not knowing the exact balance sheets of ranges of Land Councils but certainly Local Land Councils in the Sydney/Newcastle region tend to be – have higher value assets than other parts of the State and Gandangara would certainly be one of the larger assets holders in the Sydney/Newcastle region.

All right. So just in relation to – well, I think it's probably easier for me to do it this way. Could Mr Wright please be shown volume 8 and page 274.

You can see there that that's the front page of the Gandangara LALC's financial statements for the year ended 30 June, 2010.---Yes.

Do you normally get provided with the financial statements for a Local Aboriginal Land Council?---Not as a matter of course.

10 Right. In relation to Gandangara did you use to be provided with them?---I may have been provided with them on an ad hoc basis. There's no reason for me to receive them. They're received by the New South Wales Aboriginal Land Council for financial compliance reasons.

All right. Now, as of May, 2010, and this is just asking you about your memory, Mr Johnson had been the CEO for just over three years. Is that, is that about your recollection?---I recall Mr Johnson arriving at Gandangara in 2007.

And by May, 2010 the Land Council had set up various subsidiary entities. That's right isn't it?---Yes.

20 And the – if I can just call the Land Council with those entities the Gandangara group. You understand that?---Sure.

And that – and Mr Johnson as you understand it was the head of – was running the whole group as the CEO?---That was never clear to me. I understood Mr Johnson as the CEO of Gandangara. How the other entities worked was at that stage not known to me clearly.

Right. But you know that now?---Yes.

30 Yeah. And those services included – the services that the group provided included transport services?---I'm not aware when the transport service commenced.

Right.---I'm aware it exists. I'm not sure when it commenced.

And there was a medical centre that was opened shortly after May 2010, in July 2010?---Yes.

40 Which Mr Johnson was in charge of arranging for it to be opened and organised? Are you aware of that, are you?---That's my recollection.

And he was also in charge of coordinating the process of developing and selling lots at Gandangara Estate Number 2?---My recollection of that, was that the matter that came to me in the form of a conciliation? Was that those lands?

I don't know.---So I don't know which lands.

All right.---Yeah.

But do you know that he was involved in coordinating the development and sale of Gandangara land?---I knew he was operating as the CEO of Gandangara, so I could presume that he was doing that. I don't recall having any specific knowledge.

10 Right. And would you agree – sorry, withdraw that. On top of that, there were also, weren't there, Gandangara had a large housing stock which it managed, rental housing?---Yes.

And Mr Johnson, as CEO, had ultimate responsibility for the operation of that?---I certainly saw correspondence signed by Mr Johnson in relation to housing at that time, as CEO of Gandangara.

20 Right. And would you agree that taking all of that work together, from your experience, Mr Johnson's job as the CEO was as large, if not larger, than any other CEO of a Local Land Council in the state?---At that time, it would have been one of the largest jobs of that nature.

Right. And just so we're clear here, about how many Local Aboriginal Land Councils were there?---At that time?

Yes.---About 119.

And when you say one of the largest, what do you mean? Something like top three? Just an estimate.---Let's say top five.

30 Right. So you would agree with me, wouldn't you, that when fixing Mr Johnson's salary package, it wouldn't be a useful comparison to compare it with the salary package for a CEO of an average Local Aboriginal Land Council?---Don't really have a view on that.

All right. Thank you.

THE COMMISSIONER: Yes, Ms Ronalds.

40 MS RONALDS: Thank you, Commissioner. Just a few questions, if I may. Earlier this morning, Mr Henry took you to some transactions between GLALC and GFF, and the transfer of funds in 2012-13 financial year. Do you recall that?---Yes.

And I hope this is a close enough quote, that "Some funds were not returned from GFF to GLALC." Do you remember that?---Yes.

And I think you said because it was operationally not possible. Do you recall that? Or do you have an understanding of why some funds were not returned?---So my recollection of events were that it was found, and I think

it was quantified in one of the subsequent audits, that of the transactions between GLALC and GFF approximately \$900,000 could not be returned to GLALC because they had been expensed by the corporations that they'd been advanced to.

And the documents you referred to, the audit, would that be the management letter for the year ended 30 June, 2013 from Lawler and Partners?---That's my recollection, yes.

- 10 Commissioner, I understand Mr Henry or one of his friends has copies of this document to provide to yourself and the witness. Could that perhaps occur? It's not currently in evidence.

Is that the document that you – just take a moment to look at it to refresh your memory?---Subject to and including the reference to \$930,000, Ms Ronalds, yes.

- 20 If I can take you to page 8 where that figure is not reflected but you'll see at about point 5 on the page on the left hand column, during the 2013 financial year the Land Council continued to act in a manner inconsistent with its legal advice despite – do you have that, sorry, page 8?---Yes, I do.

Despite the compliance directions issued by the Registrar, the Land Council continued to engage in the movement of funds from GLALC to GFF. And identified a further 2.76 million being loaned from the Land Council during 2013 in defiance of the compliance direction. Now when you received this audit and read these matters was that the first time you became aware of the quantum of transfer?---Yes.

- 30 And you'll see then the Priestly advice is address?---Yes.

And the loans are identified, for the purpose of the audit as being ultra vires?---Yes.

Again, was that the first time that you were aware there were ultra vires loans?---Yes.

And - - -?---Well, Ms Ronalds, if I can go back?

- 40 Yes?---And perhaps we consider that. You recall in my evidence concerning the compliance directions I discussed a meeting of 20 August, 2012 where there was an indication that moneys had been paid. Perhaps what I would say is that following Mr Priestley's advice I was satisfied they were clearly ultra vires. So I had notice of money but as to it being ultra vires that's a result of Mr Priestley's view.

Thank you. And in relation - - -?---And - - -

Sorry?---Sorry, Ms Ronalds, can I just say that – a reminder that on page 9 is the figure of \$930,000. So I am - - -

Yes. That's where I was about to take you?--- - - - in the right document, yes.

10 Yes. I was about to take you just so the transcript is clear. On page 9 on the right hand column, the top paragraph, there's a quantum of over 930. Do you see that at the top?---I don't see it at the top. I see at the top the figure of 7.59.

No, no, right hand column?---Ah, my apologies. Ah, yes, yes, thank you.

And that's the paragraph you're referring to?---Yes.

And that's the first time you saw a quantification of the amount?---Yes.

20 That was – it says "The depletion of member resources"?---I probably refer to the highlighted second last paragraph in the left hand column.

Oh, okay. So that 930 is unlikely to be repaid to members?---Yes.

Yes. But that was the first time you became aware of the quantum?---Yes.

Thank you. You had some discussion with the Commissioner about the process of either going to the Land and Environment Court or having some form of mediation?---Yes.

30 And it's correct, isn't it that if you go to the Land and Environment Court there are a narrow range of outcomes that the court can order?---Can you provide me help with that?

Well the court can only address the terms of the Act?---Yes. So if what you're leading to is that the court can make orders consistent with the Act whereas ADR process can be much more far reaching in its remedies.

40 Thank you. And was that a fact that you took into account when you went down the expert opinion line?---It's always a factor in my mind in any of these decisions including this one.

Because in a regulatory world there are narrow options but also there are circumstances which may be outside those narrow options but need to be considered for a full resolution of any matter?---I, I am well aware of the Registrars role being, there being tension within that role. And that's why that issue arises. There is a narrow regulatory function which could be played at the cost of other functions. It is not the way I've chosen to exercise the practice.

And you yourself have had mediation training?---I have.

Extensive mediation training as I understand it?---I have.

Can you indicate to the Commission the sort of mediation training you've undertaken over the years.---So I have had mediation training by the former Australian Commercial Dispute Centre. I have mediation training by an organisation called the Newton Group. I have undertaken a range of other mediation workshops along the way and I also hold a professional post graduate certificate in arbitration, Commissioner, which involved a mediation and conciliation component.

Thank you. Earlier Mr Henry took you to the provisions of section 66, particularly 66(3) in relation to disqualification.---Yes.

And you indicated that all the Board – previous Board of GLALC fell within that provision?---Yes.

I think there was one declaration for one member. Do you recall that?---I don't.

So if we search the records later - - -?---Yes, please do.

- - - and we can provide them to the Commission.---I don't recall, I don't, I don't recall, which went to my reluctance to name people for Mr Henry.

Yes.---I could not recall it but those - - -

We can - - -?--- - - - those documents are on my file.

Yes, and we can provide those to the Commission by the morning. Yes? ---Yes.

Thank you. In relation to the amendments, the undeclared amendments if I can call them that from the 2014 Act, if I could show you this document and I note there's one for Mr Henry and one for you, Commissioner. I don't have for my friends but I won't be long on it. Sorry, have to come the other way. This is just a compilation, Commissioner, of the undeclared amendments, not those that were declared.---Thank you.

In relation – do you have that now, Mr Wright?---I do.

In relation to section 216 that's appointment of investigator into Aboriginal Land Councils, that is the provision currently held by the Minister?---Yes.

And it was proposed that that would be transferred to you?---Yes.

And if I could ask you to turn over the page. You were talking earlier with Mr Henry about interim administrators and perhaps its overfamiliar language but if you look at 223B - - -?---Yes.

- - - on the bottom of page 2, that's the section you were talking about?

---Yes, it is.

And that's actions that could be taken after certain situations were drawn to your attention but prior to the appointment of an Administrator?---Yes.

10

And it's correct in relation to GLALC that there was – you were unable to operate in the absence of such a specific statutory power?---I did not have that power and do not have that power.

So despite the fact that these laws – these amendments have been passed by the Parliament they haven't been declared, that's your understanding?--- That is correct.

20

And then over the page is just the rest of the ones that haven't been declared.---Yes.

Yes.---Ms Ronalds, might I add just to – it refreshes my answer to Mr Henry in relation to section 234 advisors. You will notice the language in – on the last page of the document you've given says, "The Registrar my appoint and advisor to the Board of a Local Land Council if the Registrar is of the opinion that the Council or the Board of the Council requires assistance in the exercise of its functions."

30

Yes.---The existing provision which is currently still in the Act unamended talks about that only being available if the Land Council is in fear of failing, whatever that might mean. This provision was to be designed to provide both a negative context, that is, LALCs in trouble perhaps, but also and very importantly in my mind a positive context whereby these things called advisors funded by the Government via the Registrar could be provided to Local Land Councils for matters such as advance training, assistance with land dealings, whatever their business might be.

40

And so that if there was an issue they could act proactively rather than merely reactively?---Yes.

THE COMMISSIONER: Just on that question, Mr Wright. That doesn't – well, I don't know, maybe I'm wrong but it doesn't strike me as potentially a very expensive measure because if you're only talking about appointing an advisor to the Board even if it was funded by the Registrar through Government funds, you wouldn't be talking about, you know, a retainer of any magnitude would you?---These amendments were premised on the three jobs plus \$300,000 - - -

I see. All right.--- - - - I mentioned earlier, Commissioner.

All right.---So these were to be funded by those additional resources.

By that. I see. Right. Thank you.

MS RONALDS: And that was for all the amendments?---Yes.

Including the investigator one?---Yes.

10

And in your experience of handling complaints or issues, would your view be that advisors would be more common than investigators, were these provisions to be implemented?---The concept of an amended advisor provision arose in the work of the working group in 2011-12, because it became apparent that there was as much need for positive assistance to Local Land Councils as there was negative, and that it would be appropriate to craft such a resource.

20

Right. Thank you, Commissioner. I think, sorry, there's just a little discussion about documents. Thank you, Commissioner.

THE COMMISSIONER: Thank you. Anything arising?

MR HENRY: Commissioner, I might tender the management letter.

THE COMMISSIONER: Ah, yes.

MR HENRY: For the year ended 30 June, 2013.

30

THE COMMISSIONER: Yes, that's Exhibit G7.

**#EXHIBIT G7 - GLALC MANAGEMENT LETTER FOR THE YEAR ENDED 30 JUNE 2013**

THE COMMISSIONER: Yes, thank you. Thank you, Mr Wright, you may step down. You're excused.---Thank you, Commissioner.

40

**THE WITNESS EXCUSED**

**[3.26pm]**

MR HENRY: Commissioner, the next witness is Mr Gundar, and I'll ask Mr Fitzpatrick to call him.

MR FITZPATRICK: If Mr Gundar could come forward, please.

THE COMMISSIONER: Yes, Mr Crawford-Fish, you seek leave to appear for Mr Gundar?

MR CRAWFORD-FISH: Yes, I do, Commissioner.

THE COMMISSIONER: Yes, that leave is granted. Have you informed Mr Gundar about the effect of the section 38 order?

10

MR CRAWFORD-FISH: Yes, Commissioner, and he seeks that declaration.

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

20

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

30

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

MR GUNDAR: I wish to be sworn.

THE COMMISSIONER: Sworn. Swear the witness, please.

40

MR FITZPATRICK: Thank you, Commissioner. Mr Gundar, can I hand you a copy of a document, which is an affidavit of yourself, and I'll confirm the details with you in a moment. Mr Gundar, this is your affidavit, sworn 3 February, 2016, is that correct?---That's correct.

10 And that is in connection with Supreme Court proceedings between the Gandangara Local Aboriginal Land Council and some of its entities as plaintiffs, and Mr Mark Julius Johnson, also known as Mark Jack Johnson, and his company Waawidji.---That's correct.

Thank you. Commissioner, this document is not in evidence and it's - - -

THE COMMISSIONER: You wish to tender it now?

MR FITZPATRICK: Yes. And there is an exhibit that - - -

20 THE COMMISSIONER: Goes with it.

MR FITZPATRICK: - - - goes with it.

THE COMMISSIONER: All right.

MR FITZPATRICK: If I could - - -

30 THE COMMISSIONER: Well, I'll mark the affidavit with the exhibit, Exhibit G8.

**#EXHIBIT G8 - AFFIDAVIT OF SHALESH GUNDAR SWORN ON 3 FEBRUARY 2016 & EXHIBIT SG-1**

THE COMMISSIONER: And I make an order under section 112, that any identifying information contained within the affidavit or the exhibit is suppressed from publication.

40

**I MAKE AN ORDER UNDER SECTION 112, THAT ANY IDENTIFYING INFORMATION CONTAINED WITHIN THE AFFIDAVIT OR THE EXHIBIT IS SUPPRESSED FROM PUBLICATION**

MR FITZPATRICK: Thank you, Commissioner. We might be short a copy of the exhibit for the moment, but I don't - - -

THE COMMISSIONER: That's all right.

MR FITZPATRICK: - - - intend to use it. Mr Gundar, looking at your affidavit, it assists us to move through some of the preliminary matters relatively quickly. Paragraph 3, you identify the time during which you were engaged by, well, the Gandangara group. Do you see that?---Yes.

And the relevant dates are 14 March, 2011 to 2 April, 2014?---Yes.

10

And that was at a time in which you acted as the finance manager of the Gandangara Local Aboriginal Land Council, which you refer to the affidavit as GLALC?---Correct.

And you also had a role as the finance manager of GLALC related entities and that, sorry?---That's correct, yes.

And that role continued a little longer into towards the end of May, 26 May, 2014, is that correct?---That's correct, yes.

20

And in both instances the conclusion of your engagement with the relevant Gandangara entities and Council came to an end in connection with an administrator being appointed for GLALC, is that right?---That is correct, yes.

And then subsequently the same individual being appointed a receiver and manager of the entities of the Gandangara Group?---That is correct.

30

Thank you. Now from a formal perspective you were engaged to provide the services as the finance manager through a company, is that correct?---Yes, yes.

And that's the Epands Pty Limited company of which you're a director and shareholder?---Correct.

And the contract of Epands was with which entity?---GMS.

GMS, Gandangara Management Services?---Yes.

40

Thank you. Your purpose in your affidavit at paragraph 28 to induction that you undertook and actually I do need to show the witness the exhibit. Commissioner, I'm afraid I can't have this on this screen for your benefit.

THE COMMISSIONER: That's all right. Have other people got access to these documents, yes. All right.

MR CRAWFORD: I've got a spare copy, Commissioner, if that helps of the exhibit?

THE COMMISSIONER: I'm right but I was just concerned about other parties in the room.

MR FITZPATRICK: Mr Johnson's representative provided ICAC with the exhibit and - - -

THE COMMISSIONER: All right, thank you.

10 MR FITZPATRICK: - - - I believe they've given it other representatives.

MR DOCKER: Commissioner, yourself and Counsel Assisting have our only two copies.

THE COMMISSIONER: No, that's all right.

MR DOCKER: I don't even have one at the moment.

20 THE COMMISSIONER: All right. Never mind. Mr Crawford-Fish, did you want to say something?

MR CRAWFORD-FISH: It's been said, Commissioner. I don't have a copy of the exhibit. I have a copy - - -

THE COMMISSIONER: All right. Well if we can keep going and then perhaps you can have access to them overnight that might solve the problem. Thank you.

30 MR CRAWFORD-FISH: Thank you.

MR FITZPATRICK: Mr Gundar, paragraph 28 of your affidavit says that you attended an induction at the GLALC offices on Monday, 14 March, 2011 and you refer to pages of the exhibit which comprise the records of your induction, is that right?---Yes.

Thank you. Looking at those pages which commence at 67 of the exhibit. The first of those pages at 67 is an employee information sheet where you provide some personal and contact information?---Yes.

40 The second page 68, is this an indication that you were issued with office keys?---Yes.

And signed as a recipient of those?---Yes.

There's there on page 69 a confidentiality agreement and then what's referred to on page 70 is an employee induction check list. Does this reflect the program or content of the information that was provided to you upon your induction and commencement of your engagement by GLALC?--- Yes.

There's a number of issues here which are of an administrative nature, under the topic of office tour and tour of office and equipment and then HR requirements and practice and procedure manuals. Which again appear to apply to polices of the organisation. Am I right in my interpretation of the document?---Yes.

And then page 71 to 72, there's a document entitled "Job Description".  
---Yes.

10

Thank you. Now, when you joined GLALC in March of 2011, were you provided with handover training from your predecessor in the role of finance manager?---No.

Do you know who that person was?---There was no training.

There was no training. Who was your predecessor?---Karen Maltby.

And she had already left GLALC by the time that you joined?---Correct.

20

And how many other accounting staff were there when you joined at 14 March in 2011?---Two.

Who were they?---Susan Wright and I can't recall the other name.

And those were people who had worked at GLALC for some time in the accounting department?---Yes.

30

Did they provide you with information about the – sorry, I'm drawing a distinction between the information that appears to have been the subject of your induction with information concerning the actual conduct of your role as the finance manager. Who was able to provide you with information about how the role of finance manager operated and what it was intended to achieve?---Initially, I had to figure out, basically. And there was minimum filing and where things were, were provided by the staff, accounting staff.

And what were you able to look to, to work out how things were done?  
---Correct, yes.

40

But what were the resources that you had? What records of the company or what information did you have access to that allowed you to do that?---The database and the filing system.

What was the database?---The MYOB database for the companies and GLALC Council.

So that was the database software that was used to maintain the accounts of GLALC and its entities?---Correct. Yes.

And the filing that you referred to, is that hard copy documents reflecting the historical books and records of GLALC and its entities?---Correct.

Identified in your affidavit, at paragraph 6C, as one of your responsibilities in the role was the preparation of management accounts. And you refer to this also in paragraph 34. Could you explain what you mean by management accounts?---Financial management accounts.

10 And the audience of that document is the Board of the company?---Correct, yes.

And how often did you prepare management accounts?---On a monthly basis.

And they were presented to meetings of the Board?---And the subcommittee as well.

20 The subcommittee, you're referring to the - - - ---The finance subcommittee.

We'll come to that, but that didn't exist at the time you joined the council in 2011, is that right?---Correct, yes.

30 You provide an example of management accounts in your affidavit, but if we could refer to one that's been the subject of the inquiry. Could the witness be shown volume 7, commencing at page 3? Mr Gundar, if you have the hard copy, it may be easier for you to flick through the pages. Could you please confirm that pages 3 through 41 are an example of the management accounts of GLALC and its related entities?---Yes.

Thank you. And this is an example of the management accounts that you created for the Board.---That is correct, yes.

And you ensured that – and sorry, to provide the context, the date of these is 31 October, 2013. You see that at the – in the header of each of the relevant documents.---Yes.

40 And these documents provide an accurate statement of the accounts of GLALC and its entities as at that date.---Yes.

Thank you. Now - - -?---Can I, can I correct this. At that time it was provided to the finance subcommittee to take it to the Board.

Sorry. Thank you. So – sorry, did you personally prepare the balance sheet documents for management accounts?---Yes.

And then you would present them to the – well - - -?---Finance subcommittee.

As at this date the subcommittee and subject to any changes that were made through that process the document that you had created reached the Board?  
---Correct.

Thank you. Can I ask you a specific question about the GLALC balance sheet. That's the document that commences on page 3 and over on page 4 under – well, there's a heading halfway down the first page which reads Other Non-current Assets and over on the second page there's a heading  
10 Loans to LALCs.---Yes.

And under that Loan to Deerubbin LALC and a figure \$422,973.---Yes.

Could you explain – well, firstly, perhaps we need to go back a step. The – you understood that there was an arrangement between GLALC and DLALC by which there were payments made or services provided by GLAL which were accounted for as loans?---Correct.

The – there wasn't however any money that was transferred from GLALC to DLALC?---That is correct.  
20

The description of these – of that liability that DLALC had to GLALC as a loan where did that come from?---Payment of DLALC's invoices.

Sorry, I apologise.---Payment – sorry, payment of DLALC's invoices relating to land development and incurred management fee for the service provided.

For the purposes of GLALC's accounts, why was it described as a loan?---  
30 Well, it's just an accounting term, loan.

THE COMMISSIONER: Well, it's more than an accounting term. Loan means that the money is lent and it's expected that it will be repaid. Was that what was meant by that?---As I explained, there was no money exchanged. We paid Deerubbin's invoices on behalf – when I say "we", Gandangara paid, on that arrangement, DLALC's invoices on behalf of them.

MR FITZPATRICK: Is it usual, from an accounting perspective, to  
40 describe the outcome of that arrangement as a loan?---At that time, it was appropriate, yes.

When you say it was appropriate, is that your judgement or - - - ?---My judgement, yes.

Did you consult with anyone either within the finance team or otherwise at Gandangara about how these transactions should be described?---Not that I recall.

THE COMMISSIONER: Are we talking about the figure that's represented at the top of the page, 422,000?

MR FITZPATRICK: Yes, Commissioner.

THE COMMISSIONER: 600 and – sorry, 973?---Yes.

10 And you said none of those monies actually went anywhere?---There was no money exchanged.

Right. So how did you arrive at that figure?---That is when Gandangara paid Deerubbin's land development and management fee, and maybe some interest incurred. That's how that figure has come up.

So that was in addition, was it, that came about from all of the invoices that GLALC paid on behalf of Deerubbin?---Correct, yes.

20 MR FITZPATRICK: Thank you. So what we've been looking at has been an example of a balance sheet of GLALC. If you turn over to page 14, please. This is a profit and loss statement for the same period, also for GLALC. Do you see that?---Yes.

And the second heading on the page is "Expenses". This provides information to, ultimately, the Board about the expenses that GLALC had incurred in the October period, is that right?---That is correct, yes.

30 And it gives it on a year-to-date basis, the first column being the actual expenditures and the comparison to the budget.---Correct, yes.

In your affidavit, you state that - and we're talking about the initial period before the finance subcommittee has formed. And this is in paragraph 35. That from the time of your appointment until mid-2012, you usually discussed the finance papers with Jack, Mr Johnson, several days in advance of each Board meeting. "Jack and I would sit down with the papers and go through the items on a line-by-line basis." Do you see that?---That is correct, yes.

40 So that process would involve you, for example, in respect of the GLALC profit and loss statement for October 2013 - - - ---Yes.

- - - looking at a document of this kind, a one-page summary of line item expenses. Now, I appreciate that this is later. This is after the subcommittee has formed. But if we use this as an example, what you and Mr Johnson would have done in early 2012 or late 2011 would have been referable to a document of a similar format?---Yes.

And just to take an example, under operating expenses, there's a line item for postage and courier.---Yes.

And the actual year to date number there is \$2,288 and - - -?---Yes.

- - - the budget provision had been \$1,000?---Correct, yes.

10 So what the Board once it received it – this document would be able to discern from this was that so far this financial year more has been spent on postage and couriers than was budgeted?---Correct, yes.

However, what those, what those expenses were, what had been sent by postage or courier that – the Board was not in a position to understand that from this document were they?---If you can see, yes.

Sorry, I didn't catch your answer.---It's – unless they ask questions in detail.

20 THE COMMISSIONER: Sorry, is that an agreement with a proposition, that the Board wouldn't be able to determine what actually went into that expenditure item, it would just be presented as a conclusive figure in terms of postage and expenses, they had no breakdown of that figure from anywhere. Is that right?---That is correct, yes.

Right.

30 MR FITZPATRICK: And you didn't bring to either your meeting with Jack or to a finance subcommittee meeting all the underlying material, transaction documents for example to demonstrate the accuracy of these line items?---Yes, I did.

You did?---Yes.

So in your meeting with Jack you would have the - - -?---The copy of the MYOB. My, my copy of the MYOB.

So that's a copy of the – by that you mean you had a laptop computer with the software open where you could call up the information of the individual transactions?---Yes. We can drill down and check.

40 And supporting documentation showing that the MYOB record was correct did you have that with you as well?---Yes. Oh, supporting document will be filed away but if, if, if necessary we'll go and grab it if it's required.

Was that process that was undertaken, the questions were asked at that level and you scrutinised the MYOB records?---Yes.

And then went back to original documents?---If, if required, yes.

Well, how often were questions of that kind asked?---All the time.

For each line of each entry there would be – what would prompt questions of that kind?---Well, whatever. They’re asking questions line by line why this is over the budget or whatever is asked so the information is provided.

When – in the period when Mr Johnson was – you were providing information to Mr Johnson, it was for the benefit – for his benefit to explain the management accounts to the Board. Is that correct?---His  
10 understanding.

But his understanding was required so that he could explain the information to the Board?---That is correct.

And did you attend Board meetings, let’s talk about in the period before the finance subcommittee is established?---That is correct.

And did you present the management papers to the Board or was that Mr Johnson?---No, Mr Johnson provided the Board papers. Prior to the  
20 Board meeting the Board had the papers, the, the finances, sorry. Prior to the Board meeting. All the Board members received the financials prior to the Board meetings.

And they were then the subject of an agenda item on the Board’s – for the Board’s meeting?---That is correct.

And in connection with that agenda item was it Mr Johnson who presented the information or were you involved in that?---No, my, my job was to provide the information to Mr Johnson as I was reporting to him and he  
30 provided all the information to the Board prior, way prior to the Board meeting.

THE COMMISSIONER: How far before the Board meeting?---Oh, I can’t recall. Probably a few days before the Board meeting or, you know, 24 hours before the Board meeting, whatever the, you know, the dates and constraint at that time was for the Board meeting.

MR FITZPATRICK: The procedure that we've been talking about is that before the institution of the finance subcommittee in about the middle of  
40 2012, that committee was formed. Can you explain why?---The Board members were receiving regular – this is not by the New South Wales NSWALC. All right, the New South Wales Aboriginal Land Council. But the company so called GMS provided training for the Board members every six monthly on an average of every six monthly basis. How to read financials, how to understand. This was trained by a separate independent person. The Board were taken away for the weekend to Wollongong a separate location. And full training were provided, like governance training were provided how to read Board reports - - -

Mr Gundar this isn't - - -?--- - - - and asked questions.

This answer is not responsive to my question. Why was the finance subcommittee formed?---That was the reason. So it was going back, I'm just taking you back. That was the reason the, the trainer at that time, I can't recall his name. Trainer at the time he recommended the Board do, do, do form a subcommittee so they will understand the financiers before it goes to the Board meeting and the finance subcommittee will take any issues or concern to the Board. Because there was all these multiple companies, the Board meetings were taking too long just on the finance on one matter.

THE COMMISSIONER: Did you say that training was provided every six months?---That's what I recall, every six months were provided. This was not by the New South Wales Aboriginal Land Council to the Board members this was privately provided.

MR FITZPATRICK: So and you said that GMS - - -?---Mostly paid for it, yes.

20

When you say mostly, what do you mean?---Well all the time, sorry.

So it's your evidence then on a six monthly basis GMS paid for its entire Board to receive training in the interpretation of financial accounts?---Yes, yes.

And when do you say that that started?---From day one I started, I think. From there onwards, I can recall. And I attended them too.

30 You were engaged by GLALC from March of 2011 to April of 2014. That's about a little over three years. Are you saying that you did off-site training with the Board for the interpretation of financial accounts six times?---I may have attended about four times, but, yeah.

And, sorry, these sessions were, you said, at Wollongong?---That's right. It was on the separate weekend away, so they can focus.

So how many days was the training session?---Two days.

40 And over a weekend?---Yeah, that's correct, yes.

Commissioner, I note the time.

THE COMMISSIONER: Yes. We'll resume tomorrow morning at 10 o'clock. Thank you.

**AT 3.59PM THE MATTER WAS ADJOURNED ACCORDINGLY**  
**[3.59pm]**