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HEARING

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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE MEGAN LATHAM

PUBLIC HEARING

OPERATION GREER

Reference: Operation E14/0362

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 25 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. Yes, can Mr Gundar come forward please. Yes, Mr Gundar, you are on your former promise to tell the truth and the section 38 order continues to apply. Yes, Mr Fitzpatrick.

<SHALESH GUNDAR, on former oath

[10.12am]

10 MR FITZPATRICK: Thank you, Commissioner. Mr Gundar, I just wanted to follow up on a matter that we were discussing yesterday afternoon. You gave some evidence in relation to training that GMS provided to the Board and to yourself.---Yes.

For the benefit of it, the evidence that I'm referring to is at pages 993, lines 38 to page 994, 33, and the effect of your evidence was that that training occurred on about a six-monthly basis and - - -?---That's correct.

- - - and you may have attended as many as, as many as four times.---Yes.

20 Mr Gundar, before you gave evidence in this inquiry there's been evidence from a number of directors of GLALC from over the period 2007-2014 that covers the period that you're talking about. There's not been any evidence consistent with that much training or that many occasions of training. I just wanted to in fairness alert you to that. Could you be overstating the amount of occasions in which training was offered to the GLALC Board?---No.

Could you be overstating the number of times you, you attended training?  
---No.

30 Okay.

THE COMMISSIONER: Was this training that was carried out by Mr Mero?---That's correct, John Mero.

MR FITZPATRICK: Mr Gundar another topic that we discussed yesterday afternoon was what material was before Mr Johnson and the finance committee in relation to management, management accounts in relation to the review of those management accounts before they were provided to the Board. Do you recall that, do you recall us discussing that topic?---Yes.

40 The evidence is at page 992, line 26 to 993, line 1 and you may be able to bring that up on the screen. Mr Gundar, if you see it there's – the passage that I'm talking about commences with my name at line about 26 on the page and I asked you whether or not you brought to either your meeting with Mr Johnson or to the finance subcommittee the underlying materials transaction documents and you said yes, you did. Do you see that?---Yes.

And we then discussed – you explained that you had the MYOB information and then – with you. Do you see that?---Yes.

And you could access the supporting documentation if you had to.---Yes.

And in fact you said that you did.---Yes.

Okay. Commissioner, I have an application in respect of some previous evidence given by Mr Gundar.

10

THE COMMISSIONER: Yes. You seek relief from the suppression order in relation to compulsory examination?

MR FITZPATRICK: Yes. It's - - -

THE COMMISSIONER: On what date was it, Mr Fitzpatrick?

MR FITZPATRICK: 22 April and it's page 350, lines 18-29.

20

THE COMMISSIONER: Yes. The section 112 order made in respect of the transcript of 22 April, 2016 at page 350 to the extent indicated by the cross-examination is varied accordingly. Thank you.

**THE SECTION 112 ORDER MADE IN RESPECT OF THE TRANSCRIPT OF 22 APRIL, 2016 AT PAGE 350 TO THE EXTENT INDICATED BY THE CROSS-EXAMINATION IS VARIED ACCORDINGLY**

30

MR FITZPATRICK: Thank you. Mr Gundar, can I show you the evidence that you gave in your compulsory examination. We were discussing paragraph 34 of your affidavit where you explain what the Board papers were and I then asked you – and I, sorry, I then said, “And that’s – and we discussed this earlier. That’s the document of the kind that are C5 and C6.” And you agreed. Now, for the benefit of others in the room, C5 and C6 correspond to volume 7, pages 5 and 16 of the, of Exhibit G1. And I then – you agreed and I then said, “These are one page summaries. Did the finance subcommittee get more than that?” You answered, “No.” Do you see that?-

40

--Yeah, that’s correct, yes.

Okay. And you continued, “Everybody – all the Board members were emailed all the accounts way prior to the meeting.” And then I asked, “Did either Mr Johnson or the finance subcommittee receive underlying documentation that supported the numbers that appeared on, for example, a profit and loss statement?” And you answered, “No.” Do you see that?

---(No Audible Reply)

I'm only asking if you can see that on the transcript.---I can't recall what, what, what did I say now. Can I, can I have a look.

THE COMMISSIONER: Well, it's there on the transcript, Mr Gundar. We're just asking you to confirm that what's on the transcript is an accurate record of what you said on that day.---Yeah.

MR FITZPATRICK: Okay.---But - - -

10 So you accept what you, what you told the Commission on 22 April is inconsistent with what you said yesterday?

MR CRAWFORD-FISH: Well, I object to that, Commissioner.

THE COMMISSIONER: On what basis?

MR CRAWFORD-FISH: That what was said in the private hearing, it's not clear exactly what, what it is that he's referring to when he said that the underlying material was not provided.

20

THE COMMISSIONER: Well, I think it is reasonably clear but anyway, let's make it clear. Mr Gundar, you see, if you look at the screen the question relates to whether the finance committee, the finance subcommittee I'm sorry or Mr Johnson received the underlying documentation that supported the numbers that appeared on the profit and loss statement. You see that?---Yes.

And you said, "No, they all got the same information namely, the same information being the profit and loss statement figures".---That is correct.

30

Do you see that?---(No Audible Reply)

Do you see that?---Yes, I can see it, yes.

Right. Now, let's go back to yesterday. Yesterday you said that your meetings with Jack or the finance subcommittee included all the underlying material, the transaction documents for example, to demonstrate the accuracy of the line items. That's what you said yesterday.---That's right.

40 Now, to the extent that those two answers appear inconsistent with each other, which is the accurate evidence?---Can I see the documents again? Is it possible?

We're not talking about the documents. We're talking about the answers to the questions that were asked. Yesterday you said, in answer to a question from Mr Fitzpatrick, that you took to your meetings, with Jack or the finance committee, all the underlying material, that is, the transaction

documents, to demonstrate the accuracy of the line items.---That's correct, yes.

All right? The line items in the profit-and-loss statements.---Yes, yes.

10 Back on 22 April, you said that you didn't take that material to either the subcommittee or to the meetings with Jack, that they all got the same information. Now, out of those two statements, which is the accurate statement? Did you take the underlying material to the subcommittee meetings or did you not take the underlying material to the subcommittee meetings?---What was provided to me, as shown to me yesterday, that it was taken to the subcommittee. I may have mentioned the detailed breakdown. Didn't take it to the subcommittee.

What do you mean by that?---The hard copies of the invoices or whatever. That's what I would imagine.

20 Well, yesterday, you said that you took to your meetings with Jack or the subcommittee your laptop computer with the software open, where you could call up the information of the individual transactions.---That is correct.

So that's what you did, did you?---I did, yes.

And did you do that at every subcommittee meeting?---Yes.

So your evidence on 22 April, to that extent, was incorrect?---I may have been wrong there, yes.

30 You mean on that occasion, not yesterday?---That's correct, yes.

40 MR FITZPATRICK: On the occasion of your compulsory examination, the line item that we were interested in was a travel and accommodation line item. And if the witness could be shown volume 7, page 16. It's there on the screen. This is one of the documents that we looked at briefly yesterday, and this is one of the exhibits that you were shown in your compulsory examination. It's a profit-and-loss statement for GMS as at October 2013. Now, on the occasion of your compulsory examination, we were discussing the travel and accommodation line item under expenses, where the numbers are that the actual year-to-date number is 10,171, against a budget number of 2,000. You see that? In relation to the information that reached the Board, either through Mr Johnson in the early days or through the finance subcommittee at this point, it's fair to say that the Board relied on you to confirm the propriety of every expense that was reimbursed to Mr Johnson. ---That's correct, yes.

Because by the time the travel and accommodation line item in the profit – it was a line item in the profit-and-loss statement. If Mr Johnson had submitted a fraudulent invoice, he wasn't going to raise that issue, was he? ---No. There was nothing such like that.

And the Board wasn't in a position to know one way or another because all they had was the line item.---Correct.

10 And so the Board relied on the accuracy and the legitimacy of the numbers that were in the papers that were provided to them.---Correct.

Okay. Now, Mr Gundar, in your affidavit, at paragraph 15 – my apologies, that might be an incorrect reference. But it's correct that you were the person who had authority to approve expense payments by GLALC and the other entities, is that right?---That is correct.

And who gave you that authority?---Delegation came from the CEO.

20 And did anyone else have authority to approve a reimbursement to Mr Johnson for expenses in the time that you were the finance manager of GLALC and its entities.---No.

Now, over the period between March 2011 and early 2014, who worked for you in the finance department?---There was an accountant and the other two finance officers.

30 And could you give us their names, please?---Olivia and I can't remember his name. Anthony or Tony Cividan. And there was another girl called Susan.

Thank you. Now, your affidavit – do you have the copy of your affidavit still?---No.

40 If he can be provided with that, please. And just while he's being provided with it, the affidavit reference for Mr Gundar's evidence, he was the person authorised to reimburse expenses, paragraph 65. If I could take you to, sorry, page 18 of that, in paragraph 68, you explain the process by which expenses were reimbursed. And that is that – you can take a moment to look at that if you'd like, but I'd just like to take you through the elements of it.---68, did you say?

Yes, thank you. Thank you. So, first, Mr Johnson would provide receipts and invoices for his expenses?---That's correct.

And they would then be input into the system of some sort. Into an Excel spreadsheet it refers to here.---That's initially.

And then they would go into the MYOB system. Is that right?---That's correct, yes.

And when it came to approving the reimbursement, there would be a stamp applied to a printout of the spreadsheet.---That's correct, yes.

And there would then be an authority to make an electronic transfer.  
---That's correct, yes.

10 Okay. Now, the first steps were carried out by the finance officers?---Yes.

And the approval stage and the payment stage were at your level, your responsibility?---That's correct, yes.

At what point in this process was the legitimacy of an expense checked?  
---Level one, which is when they're preparing their spreadsheet. Right?  
The accountant preparing the spreadsheet. And then the other level when I normally check the receipts through when I'm approving their payments.

20 So it's your evidence that there were – that there was a check done by at the first instance that there was a legitimate claim and it wouldn't reach the spreadsheet through the finance officer if there was a problem with it?---  
Yes, that's correct.

And then when you reviewed it you were checking for the same issues and you would reject claims at that stage as well?---If required, yes.

Okay. And reasons you might reject claims would be that, for example, it was – the document was not a receipt or a tax invoice. Is that right?---That  
30 is correct, especially the EFTPOS receipts.

THE COMMISSIONER: The what, sorry?---The EFTPOS printouts. I was rejecting - - -

MR FITZPATRICK: EFTPOS, like a credit card receipt document or a - - -  
?---That's right. That's not a legit receipt.

Okay. And how was it, how was it checked that, for example, an expense was actually a work expense?---The receipt will explain to you. It's a  
40 payment for diesel or whatever, maintenance or, you know, whatever - - -

What if it's - - -?--- - - - or travel.

What if it's a flight, how do you know that the flight is being taken for a work reason?---That will link it back to the meetings, whoever is going, so it's not necessary only Mr Johnson going for that meeting. It can be other staff booked with his credit card gone for a meeting in Walgett or a Board meeting or wherever has – they has to go for - - -

Sorry, but do you say that you confirmed when you saw an invoice for a flight that it was connected with a meeting that was being undertaken by someone from Gandangara - - -?---That's right.

- - - for a business purpose?---That's correct, yes.

10 THE COMMISSIONER: How did you do that, did you have access or did the finance officers have access to a Gandangara calendar, for example, whereby the meetings appeared in the calendar and the names of the officers who would be attending the meetings appeared in the calendar?---Normally the PAs will confirm – like CEO's PA will confirm where the meeting was or I would know if there was a – because we're providing services to Walgett as well so there was a lot of travelling of other team members as well regularly to, to go to Walgett and places to – so I would know, you know, if there was a meeting or there was a travel I would know.

Yes, but that's what I'm asking.---Yeah.

20 How did you know? I mean, apart from the fact that the flight was a flight was a flight to Walgett which was – which you took on its face to be related to the activities of the GLALC - - -?---Yeah.

- - - assisting Walgett. Apart from that - - -?---Yeah.

I mean, if you saw a receipt for a flight to Dubbo, for example - - -?---Yes.

30 - - - would you in each and every case either ask Mr Johnson's PA or whoever the relevant officer was whether or not there was a meeting and then check in relation to that meeting having occurred?---Let me give you an example. If there was a meeting in Walgett I would have access to the minutes of the meeting so I would know there was a meeting in Walgett and that's - - -

But how would you have access to the minutes, sorry, how did you get access to the minutes of the meeting?---I would request for it. I would request for the - - -

40 So wherever you saw a flight you sought confirmation of the fact that the meeting occurred by asking for the minutes of that meeting?---Minutes of the meeting or whom, whom they were meeting.

And is that - - -?---What was the reason.

Is that the same inquiries that the finance officers would undertake?---I was taking it anyway for finance officers. Yeah, if – yeah, they have to attach that behind the, you know, normal claims if there was a flight taken or whatever.

MR FITZPATRICK: And, Mr Gundar, did you check when an expense claim was made that it hadn't already been reimbursed to Mr Johnson previously?---Yeah, I would check most of the time – all the time.

Okay. If the witness could be given volume 36 please. Start please on page 12 of that volume, Mr Gundar. Now, this is a Qantas e-ticket receipt and tax invoice. Do you see that?---Yes.

10 And the passenger's name is identified as Mark Johnson.---That's correct.

And the date that this was issued is 19 March, 2011. Do you see that?  
---Yes.

Okay. And the amount that is charged by Qantas is \$1,305.70. See that?  
---Yes.

20 Okay. We'll come back to looking at the booking reference for this so just for the record it's 4-3-Q-S-C-G. Now, that expense was entered into a spreadsheet. The spreadsheet is page 4 in the volume, page 11 and you'll see at about five entries from the bottom of the list there's 19 March, 2011 a Qantas amount and the amount across to the right is \$1,305.70. Do you see that?---Yes.

Okay. Now, we have that stamp that we were talking about and there's the line there approved finance manager. Is that your signature?---That's correct, yes.

30 Okay. And then in this volume the way it's arranged page 10, the page before, shows the credit from the GLALC account to Waawidji for the amount of 20,217 which corresponds with the amount at the bottom of the spreadsheet on the following page. So that's an example of the process that we were discussing. Correct?---That's correct.

Okay. Now, look at page 17. This is a different spreadsheet and that's again your signature at the bottom?---Yes.

And this time the amount for the total reimbursements is \$10,389.64.---Yes.

40 Yes. Okay. Do you see four entries from the bottom we have that same Qantas charge, again 19 April – sorry, on this occasion it's marked as 19 April but it's the same amount \$1,305.70.---Yes.

And two lines below it we also have a charge for \$1,325.70. Do you see that?---Yes.

Okay. The document that explains those – well, I put to you that the first entry there that we looked at is just a duplicate of the one that we looked at

before. It's just been miss-entered as an April transaction rather than a March transaction. It's the 19<sup>th</sup> of the month and it's in the same exact dollar and cents amount.---Yes.

Okay. Now, the \$1,325 number we draw from page 18. Now, this is a again Qantas e-ticket itinerary receipt and tax adjustment. Do you see that? ---Yes.

10 Okay. The booking reference is the same one that we looked at before. ---Yes.

Now, the total number here towards the top of the page is identified as being \$1,315.70. Do you see that?---Yes.

Okay. Now, if you look then in the receipt – your receipt details box this shows that this is only an incremental change of \$10 from what has previously been paid for this booking.---Right.

20 So there's the additional ticket charge of \$10. Do you see that?---Yes.

Okay. Now, what's happened in the spreadsheet is that rather than entering an initial \$10, the \$10 number has been added to the \$1315 number with 70 cents, and been entered a second time as \$1325.70. Do you see that?---Yes.

So, Mr Johnson had been reimbursed before. We saw that. Now on the spreadsheet, on page 17, he's reimbursed more than twice over - - - ---Yes.

30 - - - for the same expense. Okay. And that's paid by the transfer that is on the previous page, page 16. Do you see that?---Yes.

And Mr Johnson's repaid the \$10 again as well. You'll see that on – if you look at the spreadsheet on page 23. About eight lines down, there's a charge on 9 April, 2011, Qantas Mascot, \$10. You see that?---Yes, yes.

And that's an amount that's incorporated into the payment that's made by the transfer at page 22 of the volume. And that's your initials or your signature on that page?---That's right.

40 Okay. So this is an example where your system for checking Mr Johnson's expense reports broke down.---That's right.

Okay. You accept that he shouldn't have been paid three times for that charge?---Correct.

Okay. If we can move forward into the volume at page 186. Sorry, Mr Gundar, can I just ask a follow-up question? The circumstances that we've seen with that Qantas, now, is that an indication that those invoices were presented multiple times? Is that how they would have reached the

spreadsheet multiple times?---That's a possibility. At that time, early days starting with Gandangara, so the volume must have been huge.

I'm asking about how, perhaps, Mr Johnson's conduct. If he'd only submitted the material once, it wouldn't have been paid three times. Is that right?---Mr Johnson's PA submitted that, because she did all the bookings.

Well, you didn't mention that before. You said that you received the - - -  
---Via - - -

10

Finance officers received them from Mr Johnson.---Yeah, via his secretary, via PA.

Well, if Mr Johnson's PA submitted the charge only once, would it have been reimbursed through the finance department more than once?

THE COMMISSIONER: In other words - - - ---Yeah.

20

- - - you're relying on the presentation of the invoices to enter these amounts in the spreadsheet, aren't you?---That's correct.

So the invoices must have been presented more than once for you to have made those entries more than once.---Yeah, the PA must have given the invoices to us more than once, because she was in charge of booking all the travelling for Mr Johnson or other people, using his credit card. Because Gandangara didn't have their own credit card at that time.

MR FITZPATRICK: But we're not talking about a credit card charge here.

30

THE COMMISSIONER: No.

MR FITZPATRICK: We're talking about an invoice for a flight for Mr Johnson.---Yeah.

Okay.

40

THE COMMISSIONER: And just in relation to your last answer, Mr Gundar, as I understand it, you're saying the PA was responsible for the booking. Insofar as the presentation of invoices were concerned, she was presumably given those invoices by Mr Johnson to pass on to you. Is that how the system worked?---No, if she did the bookings, she provided the invoices.

We're not talking about the booking. We're not talking about the booking. We're talking about invoices for monies that had been spent.---That's what I'm saying. The PA provided us the invoices - - -

Yes.--- - - - related to Mr Johnson.

So I come back to the question. If the PA submitted the invoices for the same expense more than once, that was because the PA was given those invoices by Mr Johnson to present to you.

MR DOCKER: I object to that.

THE WITNESS: Not necessarily.

10 THE COMMISSIONER: All right. Well, I'm asking the question. He says not necessarily.---No.

Right, what, so you're saying it may have been a fault with the PA?  
---Correct.

All right. So, let me come back to this. When the invoices were presented to you.---Yes.

20 And you entered them in the spreadsheet.---My accountant must have entered it, yes.

Well - - - ---Yeah.

But you said - - - ---That's my department.

Yes. But you said you always checked the flights. You always made sure it related to a meeting.---Correct, yes.

30 So after you'd entered that particular invoice in the spreadsheet, did you mark the invoice in some way? Or did you retain the invoice by way of, as you said yesterday, collection in a folder?---Yes.

You did?---Yes, we did.

So that document did not get returned to the PA?---No.

Right.

40 MR FITZPATRICK: We'll look at another example. Page – apologies. We need a different volume. Volume 35. And start at page 186. Sorry, 191. We'll start at 191. Now, there's two car hire charges that are of interest to you. This one, at page 191, the tax invoice is dated 1 June. Do you see that?---Yes.

And the rental period is 27 May to 1 June. Do you see that?---Yes.

And there's then another one on page 196. That's a tax invoice dated 2 June. And the other rental period is 1 June to 2 June. Now, one's in Brisbane, one's in Melbourne. Presumably there's a flight in between. ---Yes.

Now, at pages 187 and 197, we have I think what you would refer to as the credit card machine receipt - - - ---Yes.

10 - - - from Avis for the same amount. You can confirm that by comparing the document at 191, the amount was \$500.56. We see that on page 187, in the middle of the top. And that's the same number and it's the same rental period. There's an "Out, Brisbane Airport" code on 27 May, and in on 1 June. Do you see that?---Yes.

And on 197, we have, similarly, the credit card transaction record for the other charge, which is the one-day charge in Melbourne for \$97.78.---That's correct.

20 Okay. So, then there's a spreadsheet at page 184 to 185. Now, at the bottom of 184. I apologise that it's sideways on the screen for people. But we have, towards the bottom of the page, there are three Avis charges. There's \$500.56, \$97.78, then another one for \$500.56. And over the page, another Avis charge in the sixth row, again \$97.78.---Yes.

Do you see that?---Yes.

And this was repaid by the document on page 183, an EFT transaction. And that is your initials or mark on the approval.---Correct.

30 Thank you. So this is an instance in which Mr Johnson has been paid on an invoice for each of the two transactions?---Yes.

And he's been paid on the credit card transaction record, correct?---That's correct, yes.

Okay. So, he's been paid twice on both charges.---Correct, yes.

40 Okay. So the system has fallen down in respect of, firstly, you've done a reimbursement on a credit card document when you shouldn't have.---Yes.

And you've done duplicate reimbursements.---Yes.

Okay. This is on the same record, so they were all in front of you at the same time. Is that right?---Yes.

And again, this is expenses submitted on behalf of Mr Johnson.---Yes.

Okay. Now, is it the case that you assumed that Mr Johnson was careful and honest in submitting reimbursement claims?---Look, Mr Johnson would have provided, as I mentioned before, all the invoices to his PA. PA must have liaised with my accounts officer, finance officer or my accountant to prepare the spreadsheet. And in the process there must be a slip-up, because there was a volume and mistakes could have been made.

10 THE COMMISSIONER: Mr Gundar, that's actually not the question. The question from Mr Fitzpatrick is, in going through this process, did you at every stage assume that what Mr Johnson was submitting through his PA was being submitted on the basis that he was being honest and careful in relation to those expenses? That's the question. Did you make that assumption from the outset?---As far as I know, he was, yes.

So you did make that assumption?---Yes.

MR FITZPATRICK: But you appreciate that the system that you explained before, where there were two levels of checks - - - ---Yes.

20 - - - was intended to ensure that instances like this didn't occur.---Correct, yes.

Okay. Now, when a payment was finally made, did something go back to Mr Johnson, or through Mr Johnson's secretary, to confirm that the reimbursement payment had been made?---Yeah, we would have emailed that we have processed the payment or something like that. But we never gave the invoices back to the PA.

30 Okay. At the very least, he would have seen the money go into his bank account.---That's right. And it was filed in the archive.

If we could move forward in the bundle to – sorry, forward meaning closer to the front of the bundle, to page 124. Now, this is a tax invoice dated 26 July, 2011.---Yes.

And we have rental car booking for 24 to 26 July, picking up and returning at Brisbane Airport, correct?---Yes.

40 Okay. And there's a charge there, \$267.82. We have a transaction record on page 128, which is for a different number, \$241.41. But this is the same car hire. You see the code "Out, BNE", which is the Brisbane Airport code, 24 to 26 July.---Yes.

And those two charges are both included on page 122, a spreadsheet for expenses from Mr Johnson. 122. Sorry, Mr Gundar. It's 122 in your volume if you care to look at it. And 121 is your signature on the EFT authority.---Sorry, I can't find page 122.

Perhaps could - - - ---On the screen?

- - - 122 please go on the screen? It might be easier on the screen. The page numbers are a little difficult - - - ---Yeah.

- - - in this part of the volume. Ah, yeah, there you go. So, 122, you see about eight lines down there's an Avis car hire number, the 2-6-7-8-2 number. And then closer to the bottom of the page, 2-4-1-4-1.---Yes.

10 Okay. And on page 121, we have your mark on the authority to transfer the funds.---Yes.

So, again, shouldn't have been paid on the transaction record, is that right?  
---Yes.

And whatever checking was done, it wasn't careful enough to pick up that the dates were the same on that charge as the charge that's in the invoice?  
---That's correct.

20 Back to volume 36. Start at page 50. Mr Gundar, this is a receipt for a delegation registration fee for the World Indigenous Peoples Conference on Education, which is hosted in Peru. You see the charge there. It's in US dollars for \$770.---Yes.

There's then an entry in that amount in Australian dollars on the previous page of the volume, page 49.---Yes.

Okay. Now, the receipt is clearly in US dollars. The entry has been made in Australian dollars. That's not right.---Yes, correct, yes.

30 And you can take it from me that that's a mistake that's favourable to Mr Johnson because at that time the US dollar was worth less than the Australian dollar.---I can't recall.

And you'd agree with me that in comparison to the Avis receipts this one is a little unusual. This one jumps out at you as a different sort of receipt.  
---Correct, yes.

You'd be surprised if you paid this one twice having seen this?---Yes.

40 Okay. You'll be surprised. Page 53, 54, 55. 55 is the same receipt again. 52, sorry, is that same charge again in Australian dollars on a different spreadsheet and 51 is the authority to make the funds transfer with your mark.---Yes.

Okay. Start at page 79. The invoice that we're interested in is the one that's sideways towards the bottom of the page. This is a charge at a BP station, presumably a fuel charge.---Yeah.

Indicates that there's diesel fuel and there's an amount \$42.29.---Yes.

That amount finds its way onto the spreadsheet on page 78, the second entry on that page.---Yes.

And you authorised the payment in that amount – of the relevant amount on – by your signature or your mark on page 77.---Yes.

- 10 That amount is reimbursed again. If you look at page 80 – sorry, which one did we just do, we did – yes, sorry, 82 we have the same receipt and it's clearly been – it's again a different time because if you compare page 79 with page 82 it's grouped with different invoices in whatever copying has been done to collect numbers. And there's then a reimbursement including the amount on page 80 with your mark. Do you see that?---Yes.

Did Mr Johnson ever discuss that he raced horses?---Yes.

- 20 Did you know he attended an endurance horse ride called the Tom Quilty Event in Tasmania?---I'm not aware of it.

Would you be surprised that you reimbursed him for his flights and car hire while he went to that race?---I'm not aware of that, sorry.

Okay. Also in this volume and to establish the other – well, establish Mr Johnson's participation in this race and the dates of it by the documents but for your purposes, Mr Gundar, we have at page 295 a Jetstar reservation for an amount \$580.94 and you note the dates 7 June, 2012 to 11 June, 2012.---Yes.

- 30 Okay. Now, you said that when you, when you looked at flight details you knew that there was a relevant meeting and you checked minutes to confirm that a trip was a business trip. Did Gandangara Local Aboriginal Land Council have any business in Tasmania?---I'm not aware of that.

Okay. So if you had checked this you wouldn't have been under any misapprehension that there was a business reason for a flight between Sydney and Launceston would you?---That's correct, yes.

- 40 And am I right that this is over the Queen's birthday long weekend? And the dates of this are over a long weekend. Would that have been something that you might have checked about when Mr Johnson was travelling on business?---I'm not – I don't know. I'm not aware.

Okay. Well, looking at the dates again, June 7 to June 11, you also have a car hire and that's – that invoice is page 298 and there's a charge there of \$188.55. The car hire is on the spreadsheet at 297. It's about the tenth entry the same number appears. Your mark is on the EFT transfer on page 296.

For the flight we have the spreadsheet at page 294 and the Jetstar charge of \$380 is about the seventh entry on that page and the transfer number is on page 293 and that's your mark on that page. Do you see that?---Yes.

Now, did you know that Mr Johnson had a horse float?---I'm aware of that, yes.

10 Okay. And was it your understanding – what was your understanding about any relevance the horse float had to Gandangara's business?---What's your question?

THE COMMISSIONER: What was the relevance of a horse float to Gandangara's business as far as you knew?---The truck and the horse float was used for trialling for – as far as I know Mr Johnson was trialling for a mobile dental unit to go around the community, Aboriginal community especially. Take the dental unit to them so we were – I'm aware we were trialling – Mr Johnson was trialling the truck and the trailer to go around those roads where, you know, where those communities can be reached and the trucks can go in those roads or not. So I'm aware of that and also  
20 Mr Johnson used the truck for the corps to be transferred if a member died in the, you know, the Aboriginal community member died and the corps have to be transferred to remote locations of the country. Mr Johnson was approached to provide his truck for those services, for the corps to be transferred.

Sorry, who approached Mr Johnson to carry out that service?---The community members. Like, the members of the community.

30 Sorry, which community?---Aboriginal community, yeah.

Yes, but which community?---Gandangara. Yeah, mainly Gandangara.

The Gandangara community?---Yeah, yeah, yeah.

Not the communities in the remote locations to which the person was being returned?---Can be both. Can be both. They're approaching - - -

40 Well, is that information that you had? Or are you just guessing?---No, I'm aware of it. Mr - - -

Where did you receive that information from?---I had a discussion with Mr Johnson regularly on that basis, and some of the Board was aware of that too, pretty sure.

Some of the Board members?---Yes.

MR FITZPATRICK: All right. Well, the Board, who told you that it was okay to reimburse Mr Johnson for expenses relating to a horse float?

---Nobody told me. I had a discussion with Mr Johnson about the use of this truck.

Okay. So this isn't an instance in which you've confirmed it with meeting minutes in relation to a meeting that there's been a need to travel to. Do you agree with that?---Yes.

10 And you don't say that there's any document from anyone in authority at Gandangara, saying Mr Johnson is entitled to be reimbursed for the use of his horse float?---There was no documents, no.

And was it anyone other than Mr Johnson who told you that it was okay to reimburse Mr Johnson for the expenses relating to his horse float?

MR DOCKER: I object to that question. He didn't say Mr Johnson said that to him.

MR FITZPATRICK: Excuse me, he did.

20 THE COMMISSIONER: He just said he had discussions with Mr Johnson about it and no documents were provided.

MR DOCKER: Yes, I accept that, but he didn't say that Mr Johnson told him that it was okay to repay those expenses.

THE COMMISSIONER: Well, Mr - - -

MR DOCKER: It's not what he said.

30 THE COMMISSIONER: Mr Gundar, what were the nature of the discussions you had with Mr Johnson about that, about the expenses associated with the horse float?---I had a discussion with Mr Johnson. The claims for the - - -

Yes, what was the discussion? That's what I'm asking you. What did he say? Did he say, "I'm using this horse float to transport corpses and I'm using it for trialling a dental clinic, so I'm claiming these expenses"? Was that the gist of the discussion?---Yes, and Board knew about that too. He was trialling for the dental as well as the corpse.

40 And so, sorry, I just want to clarify. His discussion with you included the claim that the Board knew about this purpose?---Yes.

And did that information come from anywhere other than Mr Johnson?  
---No.

MR FITZPATRICK: I'll show you the documents, since it's relevant. We'll start at page 142, and this is volume 37. Page 142 is an invoice for insurance of a horse float. Do you see that?---Yes.

And the period of cover is the full year, from 16 April, 2011 to 16 April, 2012. You see that?---Yes.

10 Did you understand that the trials that Mr Johnson was conducting in respect of the horse float were going to take an entire year?---I didn't ask that question, no.

Were you told that it was okay to reimburse Mr Johnson's insurance for an entire year for his horse float because he was running these trials that you've mentioned?---Yes.

You were told that?---I was told what, sorry. I'm confused.

20 THE COMMISSIONER: Were you told that it was within Mr Johnson's legitimate expense claim to claim the insurance for the entire year on the basis that there was some trials being conducted with the horse float? In other words - - - ---There was no time given.

No time given for what?---Using the horse trailer for the dental. There was no time period.

No, but we're talking about the horse float being used to trial - - - ---Yes.

- - - the provision of a dental clinic, aren't we?---Yes.

30 Well, so are you saying that the trial was going to take an entire year? Or are you saying something else?---There was no time period for a year. Can be two years. There was no time period.

So you weren't - - - ---So I'm not aware of it.

You weren't given any information about how long this trial was going to take?---No, no.

40 MR FITZPATRICK: In your discussions in relation to the extent to which Mr Johnson was entitled to make claims for expenses in relation to his horse float, were there any parameters on what was allowed and what was not allowed?---No.

So he had carte blanche to make claims in respect of the use of his horse float?---Yes.

Okay. And I'll ask the question that Mr Docker objected to earlier. Apart from Mr Johnson, did anybody tell you that?---No.

So, the invoice at page 142 finds its way onto a spreadsheet, which is on 139. And the reimbursement is made via the transfer on 137, which - - -  
---Sorry, can I correct that previous statement. [REDACTED] [REDACTED]  
[REDACTED]

THE COMMISSIONER: [REDACTED]  
[REDACTED]

10 Knew about what precisely?---The use of the horse trailer. And I had a discussion with her as well about that.

MR FITZPATRICK: [REDACTED]  
[REDACTED]

What was the discussion that you had with Ms [REDACTED] about the horse float issue?---Similar discussion.

20 THE COMMISSIONER: Similar to what? You're going to have to tell us what the discussion was. We can't - - - ---About the dental trial and the use of the horses for the corpse. Use of the, sorry, truck and the horse trailer for the corpse.

Mr Gundar, did you at any stage become aware of an actual occasion when Mr Johnson did transport a corpse to some remote community using the horse float?---I don't know when.

30 Well, whether you knew when it happened or not, did you become aware of any particular occasion when Mr Johnson used the horse float to transport a corpse to a remote community?---Once or twice, from memory.

So he did that once or twice, did he?---From my memory, yes, when I was aware of it, yeah.

And how did you come by that knowledge?---Through another staff, or he or she, she was a Board member as well. Not the Board member, sorry, the member as well. Yeah.

40 Can you tell us who?---I can't recall. I can't recall.

So someone told you that that had occurred on one or two occasions?---Yes.

But not Mr Johnson?---No, no.

MR FITZPATRICK: The second horse float-related expense that I have to show you, Mr Gundar, is a tax invoice which is at page 248 of the volume.  
---Yes.

And that's some sort of accessory for a horse float. The description is "Fit ball to truck" and there's a charge of \$3,000.---Yes.

And that amount is on a spreadsheet at page 245, about 10 items from the bottom. And the reimbursement is authorised by you, by an EFT authority on page 244. Do you see that?---Yes. Yes.

10 The last reimbursement that I'd like to discuss with you is in volume 38 on page 272. In the bottom right-hand portion of that page we have – again it's a – this is – do you agree that's a credit card transaction receipt?---Yes.

So it shouldn't have been processed in accordance with the procedure that you referred to earlier?---Correct, yes.

The supplier is called the Oaks Farm – you can take it from me the business is called Oaks Farm Supplies. See that?---Yes.

And the – Gandangara wasn't in the business of farming?---No.

20 Okay. So you would have wanted to know what was being bought at a farm supply store for a business reason. Correct?---Yes.

Did you make that inquiry?---Probably not.

Okay. Now, there's actually a second charge of the same kind. Page 275. Sorry, I may have misspoken earlier, bottom left there's an ANZ customer copy for – charge for \$42.50 for the same store.---Yes.

30 And on page 271 we have – a bit below the hole punch we have those two, the Oaks Farm Supplies entries, the \$42.50 number and the \$19.95 number. They've reached this spreadsheet and your mark authorising the EFT reimbursing them is at page 270.---Yes.

Commissioner, that might be a convenient time.

THE COMMISSIONER: Yes. We'll take the morning tea adjournment and resume at quarter to 12.00. Thank you.

40 **SHORT ADJOURNMENT**

**[11.23am]**

MR FITZPATRICK: Commissioner, if I can just indicate, Mr Gundar's representative has an application to put to you.

THE COMMISSIONER: Oh, yes. Yes, Mr Crawford-Fish.

MR CRAWFORD-FISH: Commissioner, before morning tea Mr Gundar was taken to a question and answer that was asked in the private hearing.

THE COMMISSIONER: Yes.

MR CRAWFORD-FISH: In order that I better understand the context in which that question was asked and the answer given, I'm asking you that I have access to the preceding questions and answers.

10 THE COMMISSIONER: Yes, you can have access to the transcript of 22 April, Mr Crawford-Fish.

MR CRAWFORD-FISH: Thank you, Commissioner.

THE COMMISSIONER: Before we go any further, could I just indicate that insofar as there's been mention made of Aboriginal persons who have passed away that publication of any of those names be suppressed and I do so under section 112 of the Independent Commission Against Corruption Act for cultural reasons, not because of any necessity to keep the identity of those persons from the public domain. I think there has been the mention of one deceased person. I don't know if anybody else falls into that category but in the event that they do could they be removed from the transcript. Yes, thank you. Can Mr Gundar come forward please. Yes, just take a seat, Mr Gundar. Yes, Mr Fitzpatrick.

20

**INDICATE THAT INsofar AS THERE'S BEEN MENTION MADE OF ABORIGINAL PERSONS WHO HAVE PASSED AWAY THAT PUBLICATION OF ANY OF THOSE NAMES BE SUPPRESSED AND I DO SO UNDER SECTION 112 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT FOR CULTURAL REASONS, NOT BECAUSE OF ANY NECESSITY TO KEEP THE IDENTITY OF THOSE PERSONS FROM THE PUBLIC DOMAIN**

30

MR FITZPATRICK: Thank you, Mr Gundar. Do you have volume 37? ---Yes.

Thank you. If you could please turn to page 220. We discussed before the break a couple of expenses associated with Mr Johnson's horse float. This is the reimbursement claim for the horse float itself. Page 220 is - - -

40

MR DOCKER: Well, I object to that. It hasn't been established that it's for a horse float.

THE COMMISSIONER: Well, perhaps if we stick to the terms of the invoice. It's in relation to a Lacota trailer. Do you see that, Mr Gundar? ---Yes.

MR FITZPATRICK: Do you recall what this, what this reimbursement was for?---No.

You see it's for an amount of \$9,800?---Yes.

Was there any limit to your delegation to make reimbursements by dollar amount?---No.

10 The expense that is identified here in the tax invoice finds its way into the spreadsheet at page 216.

THE COMMISSIONER: Just before we, just before we leave that though, can I just ask you, Mr Gundar, do you see it says gooseneck under the description item?---Yes.

Correct me if I'm wrong but that's a reference to a form of attachment to a vehicle. A gooseneck is a method whereby the trailer attaches to the towing vehicle.---I'm not aware of that, sorry.

20

You don't know anything about that?---No. No.

So that description would have meant nothing to you?---No. No.

MR FITZPATRICK: And the description Lakota trailer didn't mean anything to you?---Trailer does, not, not Lakota.

Lacota appears to be the supplier's name as well. You can see it at the top of the page.---Right.

30

Did you know what you were being asked to reimburse?---Yes.

What was it?---For the trailer.

THE COMMISSIONER: But what in relation to the trailer, you mean the cost of the trailer or something else?---I can't, I can't recall, sorry.

MR FITZPATRICK: What was this – how as this trailer a business expense of Gandagara or its entities?---As I mentioned the trailer was used for, for  
40 the corps and for the dental reason.

You're equating it with the – our discussion before the break about a horse float?---Yes.

Thank you.---That's correct, yes.

The amount of that expense is reflected in the spreadsheet at page 216. See at about a third of the way down that spreadsheet? I apologise that it's sideways, Mr Gundar. You may use – it's identified by date as 6 July.  
---Yes.

And your mark is on page 215 on the EFT authority for that spreadsheet.  
---Yes.

10 Mr Gundar, you referred to two purposes for which the trailer or the horse float was to be used. Can I ask have you been following the evidence in this inquiry over the last two weeks?---No.

You haven't had occasion to look at the transcript which is on – available on the Internet?---No.

Have you spoken to anyone who has been here in the hearing room?---No.

Your affidavit was prepared by law firm Lander & Rogers?---Yes.

20 Since our compulsory examination on 22 April have you had any meetings with anyone from Lander & Rogers in relation to your affidavit?---Since my affidavit?

No, since your compulsory examination on 22 April of this year.---No.

And have you spoken to Mr Johnson since 22 April of this year?---I've seen him around in the foyer. Said hello and, yeah, spoken to him about golf.

30 Sorry, you play golf together?---No. No, my son plays golf.

THE COMMISSIONER: So you've spoken with Mr Johnson about golf but nothing to do with the subject matter of this inquiry?---No.

MR FITZPATRICK: Okay. Thank you. I think you can hand back volume 37 but I think you'll need volume 35. Oh, he has. I'm sorry. Starting on page 107 please.---1-0?

40 1-0-7. Mr Gundar, in the bottom portion of that page to the left there is a receipt for a business called Park & Fly.---Yes.

And you notice that it's itemised. There's a parking charge of \$30 and a charge that reads super wash for four-wheel drive for \$71.---Yes.

And with a total of \$101.---Yes.

The date is on the receipt you will see in the bottom line, 24 March.

THE COMMISSIONER: I think it's February is it.

MR FITZPATRICK: February.

THE COMMISSIONER: February, 24 Feb.

MR FITZPATRICK: 24 February of 2011.---Yes.

And you see that the receipt is printed at 7.35pm? You see that?---Yes.

10 Okay. Immediately next to it is a receipt, a credit card receipt.---Yes.

From the same company.---Yes.

On the same date.---Yes.

At the same time.---Ah hmm.

And it's for a component of the amount that's in the printed receipt to the left, \$71.---Yes.

20

See that?---Yes.

Now, those charges are separately entered in the spreadsheet on the previous page, 106, the first two lines on that page.--- Yes.

And there's your mark on the payment stamp, or the approval stamp.---Yes.

And your mark on page 105, the EFT authority document.---Yes.

30 What appears to have happened here is the two separate invoices have been submitted and they overlap in terms of what they cover.---That's correct, yes.

And they've been, however, entered as separate charges. There's a similar example. We start at 115. To the right we have the Park & Fly itemised tax invoice. The bottom number is the Super Wash four-wheel drive charge. Do you see that?---Yes.

40 And that's for \$71. And, sorry, did you accept that?---Yes, I've looked.

Thank you. And there is a \$71 credit card EFTPOS receipt to the left. And again, if we're comparing the date and time, the departure date on the Park & Fly receipt to the right is 21 June, 2011 at 3.29pm. Do you see that? ---Yes.

And that's the same date and time in the transaction record on the left. ---Yes.

Mr Gundar, you gave some evidence before the break about who provided receipts for Mr Johnson's reimbursement expenses.---Yes.

Who did you say that was?---His PA.

What was the name of the PA?---Tina Taylor.

Tina Taylor. Would you say that she was always the person who provided Mr Johnson's receipts to the finance department?---Yes.

10

Can I take you to paragraph 68 of your affidavit? Do you have your affidavit still? I apologise. Thank you. Paragraph 68. I think you referred to it earlier in relation to the process. The second sentence reads, "He," meaning Mr Johnson, "collected receipts and invoices for expenses which had been charged to his credit card. Periodically, usually but not always monthly, Jack would provide a bundle of receipts and invoices for expenses recently incurred to one of the finance officers under my supervision." Do you see that?---Yes.

20

Okay. You didn't mention any participation by Ms Taylor - - - ---Yes.

- - - in your affidavit. Okay. Commissioner, I have an application in respect of some evidence that Mr Gundar has given earlier.

THE COMMISSIONER: Yes. This is on 24 February.

MR FITZPATRICK: 22 April.

30

THE COMMISSIONER: Sorry, 22 April, 2016. Yes, at what page, Mr Fitzpatrick?

MR FITZPATRICK: It is page 351, line 41, to 352, line 45. Sorry, that - - -

THE COMMISSIONER: Well, so that we can understand the context, I'll vary the suppression order for 22 April, 2016 at page 351 of the transcript by lifting the suppression order for the purposes of that page.

40

MR FITZPATRICK: Thank you. I'll need to provide the witness with a copy of it. Unfortunately, it can't go on the screen.

THE COMMISSIONER: Yes.

MR FITZPATRICK: Mr Gundar, we discussed paragraph 68 of your affidavit in your compulsory examination. We see a reference to paragraph 68 at line 23.---Yes.

And you can read that evidence. The exchange that I'll draw your attention to commences at line 41. I'll read it out for the benefit of those in the room.

At line 41, I say, "Okay. At what point in the process does someone check whether or not the claims are valid?" And you respond, "My, initially checked by my accountants who was working with me." There's then an intervention by the Commissioner, which reads, "No, no, no, no, no. Again, I think you're misconstruing the question. Mr Johnson simply handed a bundle of receipts to you." And you answer, "Yes." And over the page, for completeness, the Commissioner responds, "Right?" And then you say, "No, not to me, to my," and then the Commissioner says, "Well, wherever he handed." You say, "Yeah." The Commissioner states, "Wherever he handed them, yes." And then the question follows, "At what point did someone look at those receipts and determine whether the expenses were legitimately incurred as part of his CEO duties?" And you respond, "My accountant looked at it straightaway."

MR DOCKER: I'm sorry, Commissioner. I just couldn't hear that. And in circumstances where we can't see that, I just ask it be repeated.

THE COMMISSIONER: Yes, all right. Well, have we got copies of that page that can be made available? For some reason, it can't go onto the screen. Is there a problem with it going onto the screen? 351.

MR FITZPATRICK: Again, for the benefit of those in the room, the passage commences at line 41.

THE COMMISSIONER: Line 41, yes.

MR FITZPATRICK: And goes over the page.

THE COMMISSIONER: And the relevant passage is down to line 45 is it on 352? No, sorry.

MR FITZPATRICK: I stopped reading at - - -

THE COMMISSIONER: You've stopped at 351?

MR FITZPATRICK: No, I stopped on 352 at line 9.

THE COMMISSIONER: All right. Well, just for more abundant caution, I should vary the section 112 order previously made to cover the transcript at page 352 as well. Thank you.

MR FITZPATRICK: Thank you. Mr Gundar, you accept that the evidence that you gave reflected in the transcript of your CE is inconsistent with what you said earlier today?---Correct.

And you accept that your affidavit makes no mention of the participation of Ms Taylor?---Correct.

The first time – you’ve had two occasions to give sworn evidence on the way in which Mr Johnson provided receipts to the finance department. Correct?---Yes.

Before today?---Yes.

And - - -?---My, my error.

10 And on those two occasions there was no mention of Ms Taylor?---Correct.

And today for the first time you’ve introduced the participation of Ms Taylor?---Yes.

Okay. So which one do you say is in error?---Previous one.

So - - -?---In my affidavit.

20 Both your affidavit - - -?---There was a – there was a person in between, yes.

Okay. The spreadsheets that we’ve been looking at, did Mr Johnson ever see the spreadsheets?---No.

Did Ms Taylor ever see the spreadsheets?---Yes, she did, yeah.

Did Ms Taylor ever come back to you and say this spreadsheet includes duplicative reimbursements for the same expense?---No, never.

30 Did Mr Johnson ever come to you and say anything to the effect that he’d been reimbursed more than once for the same expense?---Not that I recall, no.

Okay.

THE COMMISSIONER: Did either of the two accountants that you referred to in the finance department ever point out to you that there were expenses submitted in effect in a duplicate form?---No.

40 So nobody at any point picked the matters up that have been raised with you today?---Correct.

MR FITZPATRICK: Commissioner, the pages from Mr Gundar’s compulsory examination, should they be marked as – like for identification?

THE COMMISSIONER: Well, probably we should, yes, mark them as exhibits so pages – let me just go back. The transcript of 22 April, 2016, pages, was it – the first one that you referred to was at - - -

MR FITZPATRICK: It was on page 350.

THE COMMISSIONER: 350. So pages 350 through to 352 inclusive will be Exhibit G9.

**#EXHIBIT G9 - PAGES 350 TO 352 OF THE COMPULSORY EXAMINATION TRANSCRIPT OF SHALESH GUNDAR ON 22 APRIL 2016**

10

MR FITZPATRICK: Thank you. Mr Gundar, you can return the volumes in relation to the expenses. Taking you back to the time that you joined the Gandangara group, you understood at that time that the Gandangara group was comprised of a number of companies.---When I joined, no, I didn't know that.

You knew at least that you were engaged or your company was engaged not by GLALC but by the GMS entity?---Later on, yes, I did.

20

If the witness could be shown volume 1 at page 258. Now, this is a representation of the – on the left side of the page the – what's under the heading Original Structure reflects broadly speaking the organisational chart for the Gandangara group at the time you joined.---Yes.

Now, I don't say that all of the companies existed by those names were at, at that time but broadly speaking there was an entity below GLALC which was called Gandangara Development Services. Do you agree with that? ---Yes.

30

And below it was GMS?---Yes.

And below GMS was a number of other companies?---Yes.

Okay. Now, you – if you did not know at the very beginning of your time with Gandangara about this corporate structure you had to quickly learn about it.---Yes.

40

Because you were the Finance Manager for the entire group.---Yes.

What did you understand to be the reason that GLALC was operating in this way?---My initial stage was that they were special purpose vehicles only. That's what I understood at that time when I initially joined by looking at the structure.

What do you mean by special purpose vehicles?---They all had a special task to do like, for example, health, health services.

What did you understand to be the purpose of the Gandangara Development Services entity to be?---For development.

THE COMMISSIONER: For Deerubbin did you say?---No, development.

Oh, for development. I'm sorry.---Yes.

MR FITZPATRICK: Did your understanding – was it just based on the name?---Yes.

10

Did anybody give you an explanation of the role of Gandangara Development Services?---No.

Okay. What about GMS, did anyone give you an – what was your understanding of the role of GMS?---Well, GMS provide services, like financial services to all the other entities including other LALCs.

And it also provided services to GLALC itself did it not?---Correct, yes.

20

You refer to that in paragraph 13 of your affidavit. Explain that GMSL charged GLALC fees for the administrative and financial activities it undertook on GLALC's behalf. Do you see that?---Yes.

And you note that, when you joined, these arrangements were not documented in formal contracts but they were established by business practice in an accounting sense.---Yes.

And you mean by that, that there were invoices that were lodged for payment and reflected in the accounts of both entities?---Yes.

30

Okay. So, who created the invoices by which GMS charged GLALC? ---The finance department.

So, you or someone working for you?---Yes.

And who authorised payment of those invoices by GLALC?---I did.

And these payments were, you refer to in your affidavit, authorised by a toggle.---Yes.

40

Is that a number generator issued by a bank to be the way in which passwords are entered for transfers?---Yes, yes.

Thank you. Now, returning to page 258, there's then another structure depicted, which is referred to as the new structure, which was sought to be put in place in January of 2014.---Yes.

And what was your role in giving effect to that structure?---Nothing.

Sorry, was your answer “nothing”?---Nothing.

Now, do you mean you didn't have anything involved in deciding to implement that structure?---Correct.

Did you have anything to do with implementing the structure?---No.

Okay. Commissioner, I have a document to show the witness.

10

THE COMMISSIONER: Yes. Thank you.

MR FITZPATRICK: If you could turn, please, to the third page of this bundle. This is, and it may be at the bottom of the second page that we get the date. Friday 10 January, 2014, there's an email to you by Albert Chan. ---Yes.

Who was Albert Chan?---Albert Chan worked for Business & Taxation Concepts.

20

Now, the subject of the email at the top of the third page of the bundle is “New Company Structure”. Do you see that?---Yes.

And Mr Chan is writing to you in relation to the formation of any new entities. Do you see that?---Yes.

Your response comes on 13 January. And that's on the second page of the bundle. And you're addressing two other employees of this Business & Taxation Concepts company.---Yes.

30

And that's Tony Murdocca and Isabella Vergara.---Yes.

And the email reads, “Hi Tony, Isabella. Please just to let you know that we'll be sending out today all the details for the incorporation of the companies. Once the companies have been established, please apply for the ABN, TFN and PBI status.” Can you see that?---Yes, yes.

Your next paragraph reads, “Also, as I explained to Albert last week, the incorporation of these companies are extremely important for Gandangara group's corporate existence.”---Yes.

40

Okay. So, it was the case that you were involved in the implementation of the corporate structure that we saw earlier.

MR CRAWFORD-FISH: Well, I object to that.

THE COMMISSIONER: I suppose it depends on what is meant by “role”. But anyway, the witness should be able to explain what his position is.

What do you say, Mr Gundar?---I was just passing on the information for these BTC staff to form that structure. I was just passing on the information. So they required the information. I was passing on the information to provide for their structure.

So when you said that you had no role in giving effect to the new structure -  
- - ---Yes.

10 - - - you meant to convey that it wasn't your idea. You were simply acting on instructions from someone else.---Correct, yes.

And I take it that that person that was providing the instructions was Mr Johnson, was it?---That is correct, yes.

MR FITZPATRICK: Mr Gundar, I have a question about your sentence that reads, "Also, as explained to Albert last week, the incorporation of these companies are extremely important for Gandangara group's corporate existence."---Yes.

20 What do you mean by that?---I can't recall. I can't recall. Because there was a legal advice on that. You should go back to the legal advice on that one. I can't recall what I meant.

Can you recall now whether or not you had any knowledge about the reason for the creation of the new companies?---Only reason I know, my understanding was that there was a funding that was provided for the structure we had. The existing structure we had before, the funder won't fund that existing structure, so they require, you know, there was a requirement for setting up a structure for the funding purposes for the  
30 health.

Sorry, did you say "for the health"?---Yes, health.

Who was the funder you're talking about?---I can't remember. There was a funder which we prepared. We're talking about \$20 million of funding, you know, for that project.

40 THE COMMISSIONER: So which project are we talking about?---There was a health project for the area.

A health project?---For Liverpool, South Sydney area. I can't recall.

MR FITZPATRICK: Another element of the corporate structure which arose earlier was the creation of an entity called Gandangara Future Fund Limited. Do you recall that?---Yes, yes.

And there were resolutions by the Board and by members of the Gandangara council in relation to loans between GLALC and what I'll call GFF.---Yes.

Now, just to broadly explain the arrangement that was envisaged, the only money that went to GFF came from GLALC. Is that right?---Yes.

And GFF didn't invest that money with any financial institution or third party. That's right?---Not that I'm aware of.

10

The loans from GLALC to GFF were at a low interest rate.---RBA interest rate.

Right. And GLALC borrowed back the money from GFF at a higher interest rate.---Maybe an error.

THE COMMISSIONER: I beg your pardon?---It may be an error.

20

Sorry, what may be an error?---The interest calculation may have been an error.

By whom?---By me or yeah, it might have been by me.

Well, at the moment I think what Counsel's putting to you is that, that is what occurred, do you agree with that?---Yes.

Right.---Yes.

30

MR FITZPATRICK: Was it, wasn't there an intention that there be a differential between the interest rates on the loans from GLALC to GFF and from GFF to GLALC?---My understanding is - let me explain to you - my understanding is any loans within the organisation Gandangara Group RBA rate, any other loans to outside the Gandangara Group would be at commercial NABs commercial rate as at 30<sup>th</sup> of June when it occurred every year.

40

THE COMMISSIONER: Again, I don't know that that's responsive to the question. Mr Fitzpatrick to you was, wasn't there an intention to borrow funds back from GFF at a higher interest rate than the funds were lent to GFF in the first place, wasn't there a specific intention to structure it in that way?---No.

You don't agree with that?---No.

MR FITZPATRICK: So you don't agree that there was an arrangement by which GFF was intended to make a profit by borrowing from GLALC at a low rate and charge GLALC for its loans at a higher rate?---No, there was no intention there.

THE COMMISSIONER: And where was it that you obtained the instruction that all of the transfer of funds within the GLALC Group should be at the Reserve Bank Rate?---That was discussed at board level, yeah that's um - - -

So you say the board made that decision do you?---Yes, it was discussed at board level and board made that decision that's - - -

10 So it should be reflected in the minutes of a board meeting somewhere.---It should be and I had a discussion with Mr Johnson about that too at that time, so, that's my understanding anyway.

Wasn't there an intention for GFF to obtain some kind of tax free status?---It has tax free status DGR, BGR.

And it's the only entity that has that status in the Gandangara Group?---My understanding, yes, yes.

20 MR FITZPATRICK: May be come back to - if loans were made by GLALC to GFF and back from GFF to GLALC and all the loans were at the same interest rate.---Yes.

What was the purpose of those loans?---At that time it was done for the record purpose, how much we're spending for development so it was merely a record for development reasons so how much we are spending on development.

30 THE COMMISSIONER: But it's a zero sum gain isn't it, Mr Gundar, if you transferring the money at one interest rate and transferring it back at the same interest rate there's no variation in terms of the amount being transferred is there?---Correct but, what I'm trying to explain is the transfer was done to GFFL for record purpose and we were recording how much we're spending on development. So it was merely a record, recording purpose only.

But you didn't need to add an interest rate in order to record that?---That is correct, yes.

40 MR FITZPATRICK: If the witness could be provided with Volume 19 please. If the witness could be shown, we'll start at page 155. Now this is a little after the events but this is an email of yours dated the 30 October, 2012 to the Auditors, do you agree with that?---Yes.

And you've collected for the Auditors the Board and Member Minutes and Resolutions for GLALC Loan to Gandangara Future Fund Limited?---Yes.

Yes. The first of those documents is at 157.---Yes.

And that's Board Meeting Minutes for Meeting on 11 July, 2011.---Yes.

And there's a Motion 17 on page 160 and this is the Board's resolution which authorises the making of loans of GLALC's money to GFF.---Yes.

And then Motion 18 is a motion of the GFF Board resolving to enter into a loan agreement with GLALC?---Yes.

10 Okay. So I wanted you to note the date, that 11 July is then a couple of weeks later on 27 July and this is at page 167 a meeting of the members, do you see that?---Yes.

And on page 170 the members resolution in relation to the Future Fund. Do you see that?---Yes.

Okay. Now at page 116 of this volume there's an email from you to Mr Johnson on the 30 June, 2011.---What was the number on that?

20 Sorry, 116 is the page reference.---Yep.

And your email reads, "Jack, please find attached as requested." And the attachment is called GLALC's Borrowed Amounts Future Funds?---Yes.

Page 117 is an extract from the general ledge of GLALC.---Yes.

And these are credits to the GLALC ledger of money borrowed from GFF? ---Yes.

30 Okay. You note the dates, there's five transactions in March, April, May and June.---Yes.

Those dates all come before the resolutions that we looked at a moment ago. Do you agree with that?---I agree, yes.

Why were there loan transactions between GFF and GLALC in March, April, May and June of 2011?---No idea.

You must have been involved in making the transfers.---Yes.

40

Who told you to make the transfers?---At that time [REDACTED] I was liaising with [REDACTED] [REDACTED]

THE COMMISSIONER: [REDACTED] who?---[REDACTED] [REDACTED] My early days at Gandangara.

This is 2011.---Yes, that's right.

Mr Johnson is CEO at that time.---Yes.

You didn't take instructions from him in relation to this?---No.

MR FITZPATRICK: Why was Mr Johnson requesting this information?---I have no idea. At that time I can't recall why.

Your email appears to reflect a request of his.---Yes.

10 And it's not a reply email. Do you recall if there was a request on the telephone or in person?---Probably in person.

Do you know why Mr Johnson was interested in future fund borrowings on 30 June?---I've got no idea, no.

That's the last day of the financial year.---Correct, yes.

Was this related to Mr Johnson's bonus?---I don't know.

20 Sorry, Mr Gundar. Let's go back to those meeting minutes and those were at in this same volume page 160. Now, we discussed a few moments ago the reason – why there would be a reason for transactions where there's no nett interest rate. Now, were you ever asked about the merits or benefits of loans between Gandangara entities where there was no interest rate differential?---I don't understand your question.

Well, did anybody ever ask you for your opinion on what you described the scenario as being loans within the Gandangara group - - -

30 THE COMMISSIONER: At Reserve rates.---Yeah, I had a regular discussion with Mr Johnson about that.

MR FITZPATRICK: And what was your view on the merits of that situation?---It's fine. There's no, no, no issues.

Well, was there any benefit?---Yeah, GFFL benefit. Benefit to GFFL.

Well, what benefit was that?---Well, that was the purpose for the GFFL, created for future funds.

40 They would receive the money that was the subject of the loan from GLALC?---No. The benefit was that GFFL will, will have a benefit of the interest.

But we've also just looked at a ledger where GLALC borrowed from GFF. Do you agree with that?---That's how the money transferred, yes.

So if there were loans to GFFL and from GFFL - - -?---Yes.

- - - and there's no difference in the interest rate there's no benefit to anyone is there?---That's is correct, yes.

Well, isn't that the scenario that you say occurred?---But not with the other entities.

Which other entities?---Other Gandangara entities. There will be definitely a benefit to GFFL.

10

I'm sorry, are you saying that there were loans from GFFL to other Gandangara entities at different rates?---No, at, at RBA rate. Other means GMS was the only one.

Sorry, what was the benefit to GMS?---No, GFFL had the benefit of the interest. That's what I'm trying to explain.

Did GMS pay a different interest rate to - - -?---No. No, RBA interest rate.

20

But if it's the same pot of money just in the hands of a different entity in the Gandangara group there's no nett benefit.---Correct. But it was for recording purpose only, recording it – the – which entity is borrowing, that is for – my understanding was for how much money is borrowed for operation purposes by GMS.

How is that achieved by a loan from GLALC to GFF and a loan from GFF to GMS?---Just transfer. What do you mean achieve? Just a transfer from – of the bank account.

30

No, the purpose that you're identifying is a recording purpose.---Yes.

How does it help serve that recording purpose for there to be the transactions that I've described?---Well, for example, if – when the development is completed then we will know – after development is sold then we know how much money was spent on purpose for, for operations and how much is the, the purpose for the actual development costs. So we would know that so it was merely recording purpose how much money was transferred from GLALC to GFFL and how much was – from GFFL was transferred to GMS for operation purposes.

40

The motions that you may have in front of you are on page 160.---Yeah.

There's – reading motion 17, “The Board resolves that all funds surplus to operating needs of Gandangara Local Aboriginal Land Council shall be loaned to Gandangara Future Fund Limited on a commercial basis secured by a charge registered with ASIC.” Do you see that?---Yes.

Now, what do you understand by the expression “on a commercial loan basis”?---At NAB’s commercial rate. N-A-B’s commercial rate.

Okay. The first bullet point then reads, “The loan shall be an interest only loan for a period of 30 years at a rate identical to the Reserve Bank of Australia cash rate.” Do you see that?---Yes.

So that’s not a commercial rate?---Correct.

- 10 Okay. Now, then, in the third bullet point, there’s a notation by the Board of their intention for long-term sustainability, and that should Gandangara Local Aboriginal Land Council ever be wound up, and/or forcibly amalgamated, and/or placed under administration, and/or removed from being able to be beneficial and/or remedial to the Aboriginal members of GLALC, the loans shall be forgiven. Do you see that?---Yes.

Why was GLALC offering to make loans that it would forgive in those circumstances?---I have no idea.

- 20 Your job description in the induction materials that you received, and this is at page 71 of the exhibit, I’m not sure if you still have that. I’m not sure if this is going to go up on the screen, but it’s page 71. Do you have the document, Mr Gundar?---Of volume 90?

No, sorry, the exhibit to your affidavit.---Oh, I don’t have the exhibits.

Oh, sorry. Sorry, it’s the folder. Page 71.---Yes.

- 30 There’s a heading. Now, this is the job description of the finance manager. You agree with that?---This was the job description of the previous finance manager. It was just passed on to me.

Well, it was provided to you as part of your induction, to explain to you what your job was.---At that time, yes.

Well, do you say that you ever received a revised version of the description of your job?---No, no.

- 40 Okay. There’s a heading “Strategy”. And the fourth bullet point reads, “Provide business and investment decision support and analysis of investment decisions.” Do you see that?---Yes.

Were you ever called on to give business and investment decision support to GLALC?---No.

And did you ever provide analysis on investment decisions?---Not that I recall, no.

Commissioner, I note the time.

THE COMMISSIONER: Yes. Might resume at 2 o'clock. Just before we do, Mr Gundar, just getting back to the GFF, wasn't the point of the GFF to in fact make a profit from the funds that it loaned out to other GLALC entities?---That was the idea. Profit was from the interest only.

10 So in order for that to occur, the interest rate at which the funds were lent out to other entities had to be higher than the interest rate of the loan from GLALC to GFF, didn't it?---That is correct. But the practice we were using is at RBA rate within the entities, and commercial rate to the other LALCs, if we loans it for the other LALCs.

Were there ever any funds transferred from the GFF to other LALCs at commercial interest rates?---No.

No?---No. The invoices were paid by - - -

20 That was in fact money from GMS, wasn't it?---Correct.

Yes, we'll resume at 2 o'clock.

MR DOCKER: Excuse me, Commissioner.

THE COMMISSIONER: Yes.

MR DOCKER: Can I just raise something, please?

30 THE COMMISSIONER: Yes.

MR DOCKER: It's just a scheduling thing. I apologise for this. I personally have a problem tomorrow and can't be here in the morning, and the matter that I'm just asking the Commission to consider is that if it would otherwise be necessary for me to cross-examine a witness in that period, whether that can be delayed until after lunch.

THE COMMISSIONER: Well, we can always try and bring the witness back if they're finished in relation to that.

40 MR DOCKER: Yes.

THE COMMISSIONER: Anyway, we'll see how we go, Mr Docker. It might not come to that.

MR DOCKER: No, I understand that.

THE COMMISSIONER: I think Mr Gundar will take the rest of the afternoon. Is that right, Mr Fitzpatrick?

MR FITZPATRICK: Yes.

THE COMMISSIONER: All right. Well, we'll revisit that tomorrow.  
Thank you.

**LUNCHEON ADJOURNMENT**

**[1.01pm]**