

GREER PUB01035
25/05/2016

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pp 01035-01064

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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 2.05PM

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

THE COMMISSIONER: Yes.

MR FITZPATRICK: Commissioner, there was a document that I neglected to tender in the last session.

THE COMMISSIONER: Oh, yes.

MR FITZPATRICK: It was just an email of 13 January, 2014.

10 THE COMMISSIONER: Yes. With the attached documents?

MR FITZPATRICK: Yes. They come with the, you know, I didn't take the witness to them. They're not significant.

THE COMMISSIONER: Yes.

MR FITZPATRICK: But they're some of the - - -

20 THE COMMISSIONER: Company structure details.

MR FITZPATRICK: Yes.

THE COMMISSIONER: Yes. That will be Exhibit G10.

30 **#EXHIBIT G10 - EMAIL FROM SHALESH GUNDAR TO TONY MURDOCCA AND ISABEL VEGARA DATED 13 JANUARY 2014 AND ATTACHED REGISTRATION CHECKLISTS AND DRAFT CONSTITUTIONS FOR GANDANGARA SERVICES LIMITED AND GANDANGARA HEALTH LIMITED**

<SHALESH GUNDAR, on former oath

[2.08pm]

MR FITZPATRICK: Thank you, Commissioner. Mr Gundar, if you don't already have it can I ask that you be provided with volume 19.---I've got it.

40 And you also need volume 20.---I've got 19 I think.

Mr Gundar, if you could open volume 19 to page 117. Now, Mr Gundar, we looked at this document before. This is the ledger of GLALC indicating the loans from the – from GFF. Do you agree?---Yes

And I think I asked you earlier to confirm that this occurred prior to the resolutions that had been passed by the members and the Board - - -?---Yes.

- - - of the Council and those were in July. Now, the items refer to Duffy's or Duffy or Duff's. Do you see that?---Yes, Duffy.

What does that refer to?---That's the trust account.

Of who?---GLALC's trust account.

With?---It was a trust account for the sale of land. Money was in the trust account, Duffy's – lawyer's trust account.

10

So it's the – it reflects a transfer from a trust account of GLALC's solicitors?---That's correct, yes.

Can you explain how a transfer from the trust account of GLALC's solicitors to GLALC is a loan by GLALC – a borrowing from the future fund?---Look, as I mentioned to, to you this was done only for the recording purpose so that money can – how much money was transferred was for development purpose or – that was for recording purpose only.

20 THE COMMISSIONER: Does that, sorry, does that mean that the money never actually moved from the trust account into the GLALC account?

---No, it did from, from the trust account it came to GLALC account.

Right. So what do you mean it was only done for recording purposes?

---The description used there, it's only done as a record purpose only.

MR FITZPATRICK: So, now, in volume 20, if you could be shown page 88. This is a letter of instructions from Mr Johnson to someone at the Duffy firm?---Yes.

30

And it's 24 June, 2011.---Yes.

The instruction that asks for a transfer from the trust account into GLALC's own bank account.---Correct.

And the nominated account, the details are there.---That's correct.

So, in terms of the transaction that took place, there was money in the trust account, which into GLALC's own bank account.---Correct.

40

But that is recorded in the other document that we were looking at as a borrowing from the Future Fund.---It's just recorded, yes.

So, at this point, the money didn't go into a Future Fund bank account, and from there to be transferred to GLALC?---Looks that way. Looks that way, yes.

Okay. That's the fifth of the transactions that are on the ledger. If you turn over the page, we have, and I'll ask you to confirm this, the Duffy instruction letter which corresponds to the second-to-last entry in the ledger.---That's correct, yes.

And on page 90 of volume 20, we have the instruction letter for the \$400,000 amount that we see in the third entry on the ledger.---Yes.

10 On page 91 of volume 20, we have the second entry in the ledger.---Correct.

And page 92 of volume 20, we have the first entry.---Correct.

And they're all, and just asking you to confirm this, these are all instructions to Duffys to make transfers to GLALC's own bank account?---Correct.

20 Okay. Now, when you explain that this is for recording purposes, do you mean by that that these are – I guess my question is, are these loans?---They were not loans. It was purely a record how much we're spending on development. That's the purpose. And at that time, GFFL didn't have a bank account.

When you say "record of spending on development" - - - ---Correct. Land development.

The amounts in the trust account of the solicitors are the settlement funds of the sale?---Correct.

30 So they certainly don't show what was spent by GLALC or its entities on development, do they?---The trust account will not, no.

And nor will a ledger which shows the proceeds of sale being received by GLALC.---Proceeds of sale went to the trust account.

And then, according to the ledger, to GFF in some manner.

THE COMMISSIONER: I'm just having some trouble understanding how the ledger records the monies going to GFF, when you've said a moment ago that GFF didn't have a bank account at this time.---That's right.

40 So that - - - ---It then went to GFFL.

So the entry in the ledger is at least inaccurate, at most simply wrong?---No, entry in the ledger is correct. It came to the right bank account and right ledger. It's the description on the ledger is not reflective to what it's saying.

Well, that's what I just said. The entry on the ledger is at best inaccurate or at most simply wrong, because it didn't go into a GFF bank account.---That is correct.

Right.

MR FITZPATRICK: If the witness could be shown volume 15 at page 41. Mr Gundar, this is a bank statement, and if you see under the "Account Details" heading?---Right.

Gandangara Future Fund Limited. Do you see that?---Yes.

10 And in the transaction details section, you'll see the date 1 March, 2011?
---Right.

Okay. So, GFFL had a bank account as at 1 March, 2011, correct?---Yeah. My mistake on that one.

And 1 March, 2011 precedes all of these transactions in the ledger.---That is correct, yes.

20 Okay. So - - - ---I was guessing. My mistake on that one.

THE COMMISSIONER: Don't guess, Mr Gundar.---Sorry.

MR FITZPATRICK: Picking up the Commissioner's point, the ledger entries, at least the second, third and fourth ones, read, "Transfer from Future Funds." Do you see that?---Yes.

Okay. So there was no transfer from Future Funds.---That is correct.

30 Okay. We're in volume 20. If you could go to page 29. Sorry, 29. In the bottom half of this page, there's an email exchange between Ms Jennifer Hughes of Baker & McKenzie, and yourself. Ms Hughes's email is dated 10 September, 2012, and she asks you, "Are you able to tell us what assets are in the Future Fund?" Do you see that?---Yes.

And your response is, "Please note that Future Fund is cloud-based asset centre only." Do you see that?---Yes.

40 What is a cloud-based asset centre?---How can I explain? I can't recall. I have to think about this. Sorry. I can't recall. I have to think about this.

Well, is it an accounting term?---No.

Is it a term – you've used inverted commas.---Yes.

Is that an expression that was used by others at Gandangara?---No.

Can you help us understand how that response assists Ms Hughes?---No, I can't explain, sorry.

Are you intending to convey that the future fund did not have any assets?
---Probably not at that time, no.

THE COMMISSIONER: Sorry, you're not meaning to convey that they didn't have any assets?---Correct, yes.

So why didn't you tell her what the assets were?---Because there was no assets.

10

So why didn't you just say there are no assets?---I, I don't know.

MR FITZPATRICK: Mr Gundar, is a synonym for cloud based asset centre imaginary?---You can say that.

THE COMMISSIONER: Are you talking about a virtual asset centre are you?---No, I'm not, no.

20

Are you referring to a cloud data bank, an Internet cloud data bank?---No. No.

Well, so what does cloud based refer to?---Let me think about it. This – it was as a centre set for, for future funds so at the time it was – when I say cloud based asset centre was still – was there for future – that's, that's what my understanding was there for future but at that time was no, no assets in it, right. This was set up for future land sales and whatever so that centre will, will generate income from loans and, and, and may receive some donations because it had a DGR status and all that. Sorry, at that time it was still in the cloud to, to happen. That's, that's what I thought.

30

Sorry, in what cloud?---Just a, just a figure of speech.

MR FITZPATRICK: Well, Mr Gundar, at this time there was an entity.
---Correct, yes.

And it had a bank account.---Correct.

40

And you're simply being asked by Ms Hughes what are the, what are its assets.---There was no assets at that time apart from future interest rate to be earned on it. There was no other money was there in the account.

Well, you mention interest rates.---Yes.

We had a discussion before the break about - - -?---Correct, yes.

- - - the fact that there was no differential interest rate so that was your view.---That's right. So there was no accrued interest into that account at that time, no.

And how could there be in future?---Well, we, we had – money was paid on behalf of the other Land Councils so the interest end will be generated and will be contained in that, that bank account for future.

Sorry, are you saying that – now, I think you mentioned earlier that GMS had relationships with other Land Councils?---Correct, yes.

10 Okay. So are you suggesting now that GMS's loans to other Land Councils would generate interest and that interest would find its way into the future fund's bank account?---My understanding, yes, that that would be put back, yes.

Now, what is, what is your, what is that understanding based on, who told you that that's what was going to go into the future fund?---That was my understanding, that was my understanding, discussion I had with Mr Johnson.

20 And did you - - -?---And the Board, Board was aware of that too.

Did you ever with the bank toggle make a transfer from a GMS bank account of interest that was paid to GMS by another Land Council to the future fund's bank account?---No.

Okay. So when you say this was your understanding, are you talking about at the time you wrote the email to Ms Hughes?---Yes.

30 Now, the future fund later began to have deposits made into it – or the future fund's bank account and I'll show you some documents about that. We're still in volume 20, page 73. Sorry, do you have page 73. This is another instruction letter to Duffy's.---Yes.

And it's later, this is 12 November, 2012.---Yes.

And now the transfer is to be made into the GFFL bank account.---Correct.

Do you agree with that?---Yes.

40 I'll take you to the bank statement. The witness will need volume 15.---Oh, yeah. Page 20. No, 15. Page 20 did you say?

Sorry, it's 81 of volume 15. Now, Mr Gundar, one, one question before that. The document at page 73 of volume 20, the Duffy's letter.---Yes.

The account was GLALC's solicitor's account. Correct?---Correct, yes.

The money in it belonged to GLALC?---Correct, yes.

Okay. So by authorising a transfer of it to GFFL, from an accounting perspective is that a loan by GLALC to GFFL?---Yes.

Okay. So page 81 of volume 15 is the bank account statement of that period for GFFL.---Yes.

The amount that's the subject of the instruction letter is 310,000 and that is seen as a credit to the GFFL account. Do you see that?---Correct.

10 Okay. Now, the next two entries are debits from the GFFL account, one a transfer to GMS.---Yes.

And one a transfer back to GLALC.---Yes.

Okay. Let's look at the first one first. The transfer from GFF to GMS. ---Yes.

You made that transfer using the toggle?---Yes.

20 Who instructed you to make the transfer?---Nobody instructed me, no.

Were you allowed to move substantial amounts of money from GFFL's bank accounts without specific instructions?---Yes.

THE COMMISSIONER: Sorry, are we - - - ---Yes. For operational purpose, yes.

Sorry, can I just confirm. Sorry, which transaction are we talking about now?

30 MR FITZPATRICK: This is the debit of \$179,000.

THE COMMISSIONER: Oh, right. Thank you.

MR FITZPATRICK: So, for operational purposes, you didn't need anyone's approval to move funds between the entities?---No, when I moved that \$310,000, that's the instruction from Mr Johnson, to transfer the money into the GFFL account. And at the time, we'd give Mr Johnson a breakdown of what the purpose of the transfer is. So we give them a list
40 behind that transfer, the letter which was sent to Duffy, discussion with Mr Johnson. We're going to use - we provide him a spreadsheet how the funds are going to be used.

Sorry, I don't understand. The letter of instruction to - - - ---Duffy.

- - - Duffy is signed by Mr Johnson.---Correct, yes.

Okay. So, he authorised that transfer?---Yes. During this authorisation, that's what I'm trying to explain, I give a breakdown and discuss with Mr Johnson what is the reason for we have to make that transfer. So we give a list of transaction or invoices pending to be paid by GMS or by, in that case, GLALC's transaction or GLALC's invoices to be paid, the suppliers' invoices. And then the transfer is made.

10 Sorry. I'm sorry. You prepared or requested the preparation of an instruction letter to have money transferred from Duffy's Trust Account to GFFL?---Yes, yes.

Okay. And you did that in conjunction with the preparation of a document which identified what would be done with that money once it was received into GFFL's account?---Correct, yes.

Okay. And Mr Johnson signed the letter?---Yes.

20 And did he, by doing that, approve the other transfers that you've mentioned, the ones out of the GFFL account?---That is correct. That's the reason for the transfer, initial transfer.

THE COMMISSIONER: But why would the money have to go through the GFF at all if it was going to come out of the GFF and go to another entity? What was the point of that?---The recording purpose only. We wanted to record. All the transfers coming from the Duffy's Trust Account has to come through the GFFL account.

30 But you keep saying "for recording purposes". You knew where the money was coming from. The Duffy Trust Account held the proceeds of sale. So for recording purposes, you knew exactly what the proceeds of the land development were. They were the monies coming from the Duffy Trust Account. Why did it have to go into GFF for that purpose?---I don't know the nitty-gritties of it now, but that's how we practised at that time.

MR FITZPATRICK: Mr Gundar, let's look at the second transaction. So, you say that when you provided Mr Johnson with the Duffy's instruction letter to sign - - - ---Yes.

40 - - - it had behind it or with it information about what would be done with the money once it reached GFFL.---Yes.

Okay. So, the second transaction here is a debit from GFFL back to GLALC's account - - - ---Yes.

- - - in amount of \$131,000. Why didn't that money go from the Duffy's Trust Account directly to GLALC?---I don't know. I don't know. That's how we practised, basically, from there onwards. That's how we practised

doing all the transfers from Duffy's into the GFFL account, and then distributed from there.

But beyond "that was the practice", you don't have an explanation for why?---That's right. It was merely for – maybe Mr Johnson can answer that later. But it was merely for recording purpose, how much money is being taken out of the Duffy's trust. So it's, yeah, merely for recording purpose.

10 So you did it on instructions from Mr Johnson?---That's correct, yes. That's how we practised.

If the witness could be shown page 87 of volume 20. Mr Gundar, this is an occasion on which you yourself gave the instruction to Duffy's. Is that right?---Yeah, I, no. Instructions? Yes.

So this is an email dated 30 June, 2011.---Yes.

And it's from you to Mr Patrick Duffy.---Yes.

20 And Sean at Peters Lawyers. Correct?---Yes, yes.

And it's an instruction to transfer \$400,000 from a trust account to the GFFL bank account.---Yes.

Okay. Did you have approval from someone else at Gandangara to make that transfer?---No. All the transfers are signed by Mr Johnson, so the email would have a document which you were showing before. Patrick Duffy will only transfer the money unless it's signed by Mr Johnson.

30 You agree that this looks like an instruction from you?---Yes.

You say they would have ignored this?---Yes. Unless it's a document signed on the letterhead, like you shown me before.

I'll show you the bank account for GFFL.---Yes.

That's volume 15 at page 49. There's a credit to the GFFL bank account on 4 July for \$400,000.---Yes.

40 And corresponds to the amount that's the subject of your email a couple of days earlier?---Yes.

So you say that there must have been some intervening communication from Mr Johnson himself to Duffy's?---No, no. It would still go via me. I would have prepared Mr Johnson to sign off on that document so there may be – there will be a letter sent to Mr Duffy with that instruction either faxed or, you know, delivered or – if it's not attached there on that attachment. Mr Duffy will not make any transfers unless it's signed by Mr Johnson.

If you knew that why did you send the email on 30 June giving Mr Duffy an instruction?---Instruction that followed with the attachment.

Well, let's look at the, look at the email carefully here. Volume 20 at page 87.---Yes.

There's no attachment.---Yeah, that's, that's what I'm saying is maybe faxed to him.

10

So you're saying you sent an email giving an instruction to do something but you had no expectation that that would be done?---Correct. He will not transfer the money unless it's signed off by Mr Johnson.

So the fact that it was apparently transferred when we looked at the bank account - - -?---Yes.

20

- - - that, that suggests to you that there was some separate communication where there was some document signed by Mr Johnson that was received by Duffy's?---I would prepare the letter and Mr Johnson will sign on it. So there's always there's a transaction followed Mr Johnson's signature on it.

That wasn't the answer to my question.---Yes, sorry.

On 30 June you sent an email giving an instruction.---Yes.

You don't think that that, that that email will be complied with, that request?---Correct.

30

Okay. You expect there to be some separate communication where there's a document signed by Mr Johnson that will follow your email. Is that right? ---The document signed by Mr Johnson will be prepared by me and sent to Mr Duffy so document may have sent by fax as well not necessarily had to be in the attachment.

40

And so the fact that on page 49 of volume 15 there's a bank account which shows that \$400,000 showed up to GFFL for you confirms that there was some other communication with Mr Johnson's signature on it?---Correct, yes.

If we can look at the text of this email. Let's just read, let's just read the first sentence, "Could you please make arrangements to transfer funds tomorrow EFT payment in total \$400,000 from our trust account into the following bank account as below with the details".---Yes.

Now, we can compare that to the other letters if you would like but with perhaps one word variation, that's the exact terms in which Mr Johnson's instructions would come.---Ah hmm.

You don't think that by your email on 30 June you were intending to give instructions for the movement of money from the Duffy trust account to GFFL?---That is correct. Like as I mentioned to you Patrick Duffy will not transfer the money unless it's signed off from Mr Johnson.

10 Thank you. The witness can give back those volumes. Mr Gundar, in paragraph 44 of your affidavit you indicate that you were familiar with certain contracts that Mr Johnson and Mr Johnsons company Waawidji had with different entities of the GLALC group. Do you see that?---Yes.

Okay. So when you arrived at Gandangara in March of 2011 the relevant contracts were, there was an agreement between Mr Johnson and GLALC. Yes?---Yes.

And a separate agreement between Mr Johnson's company Waawidji and the GMS entity?---Yes.

20 Okay. And in this paragraph 44 you also indicate that you were then aware of the contracts that replaced that Waawidji/GMS contract in 2012?---Yes.

Okay. Now, I'll just – well, I'll ask you this. Under the 2010 contracts do you agree that there was no entitlement for Waawidji to be paid any amount by GLALC?---Correct, yes.

Okay. So page 58 of this volume 11 is – if you have it in front of you it's the cash disbursements journal for GLALC.---What was the page number?

30 58.---Yes.

Now, from the fifth entry down to then the bottom of the page those are, please correct me if I'm wrong, reflecting cash disbursements from GLALC to Waawidji in the period in which the 2010 contracts were in effect?---Yes.

Can you explain why Waawidji was paid by GLALC in the 2010/2011 financial year?---No idea.

40 THE COMMISSIONER: On that cash disbursements journal there's some writing in the column. Is that your writing?---No.

Do you know what it stands for? I mean, obviously the 32,000 stands for bonus. Do you know what the initial C stands for?---No idea, no. That's not my writing.

MR FITZPATRICK: Commissioner, I have an application in respect of some earlier evidence given by Mr Gundar.

THE COMMISSIONER: Yes. Page number?

MR FITZPATRICK: 3-8-7.

THE COMMISSIONER: Yes, the suppression order in relation to the transcript of the 22 April, '16 CE at page 3, sorry?

10 **VARIATION OF THE SUPPRESSION ORDER IN RELATION TO
THE TRANSCRIPT OF THE COMPULSORY EXAMINATION
DATED 22 APRIL 2016 AT PAGE 387**

MR FITZPATRICK: 87.

THE COMMISSIONER: 387 is varied to allow the following cross-examination to occur. Thank you.

MR FITZPATRICK: Mr Gundar, the exchange that I'd like to draw your attention to is lines 1 to 5. It's at the top of the page. I asked you the
20 question that I've just asked you. "Can you explain to me why Waawidji was paid by GLALC in the 2010-2011 financial year?" And you respond, "Because GLALC never had a bank account." The Commissioner intervenes, "GLALC?" You respond, "Oh, sorry. Sorry, I'm sorry. GMS never had a bank account at that point in time."---Yes.

Is that the reason why Waawidji was paid by GLALC in the 2010-2011 financial year?---And GMS never had funds.

30 So you agree with my proposition?---Correct, yes.

If the witness could be shown volume 14. And we can just confirm the date that GMS's bank account was opened. Volume 14 at page 223. You see here, this is a bank account of Gandangara Management Services Limited?
---Ah hmm.

Sorry, you see that?---Yeah.

40 Okay. And in the transaction details it indicates that the account was opened on 22 June, 2010.---Yes.

So, GMS had a bank account. You accept that?---Yes, yes.

MR DOCKER: I object to this, Commissioner. My submission, the question needs to be fair to the witness. It needs to be clear whether it's asking for his recollection, because he wasn't actually employed at this stage. He didn't start with the council until 14 March the following year.

THE COMMISSIONER: But that's not what we're talking about. We're talking about the cash disbursements that appear in the 2010-2011 financial year. So insofar as those cash disbursements were concerned for the period that he was there, there were payments from GLALC to Waawidji on the cash disbursements journal. So that's what we're focusing upon.

MR DOCKER: Well, it hasn't been split up between the ones that were paid when he was there and the ones that weren't.

10 THE COMMISSIONER: Well, we can accept for present purposes that he has to be at least aware, from the cash disbursements journal that was shown to him, that there were payments from GLALC to Waawidji in the 2010-2011 financial year. You understand that, don't you, Mr Gundar?---Yes.

So then, from there, as I understand it, your explanation was that either GMS didn't have a bank account or it didn't have the funds to pay. Is that right?---That's correct, yes.

So now we've established that GMS did have a bank account.---Yes.

20

At least since 22 June, 2010.---'10, yes.

Right. Okay.

MR FITZPATRICK: And you had access to the bank accounts of the entities from the time that you became the finance manager?---Yes.

Okay. Then in the cash disbursements journal in volume 11, the transactions that occurred after you were employed are the bottom three on that page. Do you agree with that?---Yes.

30

THE COMMISSIONER: So we're talking May and June of 2011? Is that right?---Yes.

MR FITZPATRICK: Okay. The bank statement for that period commences at page 243 of volume 14. That's the GMS bank account for the period 30 April, 2011 to 31 May, 2011?---Yes.

Okay. Let's find the balance of the bank account on 11 May. That's on page 244.---Yes.

40

Okay. The balance was in credit to the tune of \$256,506.25.---Yes.

Okay. So as at the date of the transaction on 11 May, 2011, where GLALC paid Waawidji, it's true that GMS had a bank account?---Yes.

And GMS had enough money in the bank account to make that payment? ---Yeah.

Thank you.

THE COMMISSIONER: So, coming back to that, then, Mr Gundar, if that's not the explanation for why GLALC made payments to Waawidji, what is the explanation?---It's definitely an error.

It's an error?---Yes. Definitely an error.

10 What, each transfer to Waawidji is an error?---Like, from May onwards, I'm talking about. Definitely that's an error which has followed on from previously, when they didn't have enough funds. And then suddenly they had funds, but the practice continued. Probably my early days with Gandangara. I was still getting my head around the whole company structure and where Waawidji and Mr Johnson has to be paid from and all that. So, that's definitely legitimate error has occurred in that situation.

MR FITZPATRICK: If the witness could be shown page 62. This error that you've described, you'll agree, continued through until the end of that
20 financial year?---Yes.

THE COMMISSIONER: Sorry, did you ever discover the error?---Yeah, we did. And then it was corrected after that.

MR FITZPATRICK: So do you disagree with this proposition, that from an accounting perspective, the cash disbursements ledger shows GLALC making payments which are GMS's to make under GMS's contract with Waawidji?---That's correct, yes.

30 You accept that? Thank you.---Yes.

If the witness could be shown page 214 of volume 11. Mr Gundar, this is an email of yours, dated 29 August, 2011. Do you see that?---Yes.

And this is an email to Mr Johnson which reads, "Your calculation 7.5 per cent increase per year agrees with my calculations. You can use this worksheet for next".---Yes.

40 And there are two attachments to the email.---Yes.

The first is at 215. Is that a handwritten note of Mr Johnson's?---Yes.

And following it is an Excel spreadsheet of your creation.---Yes.

So Mr Johnson provided you with his calculations and in your email text you confirmed that you agree with him and provided, and provided it back to him. Is that right?---Yes.

Now, this is the – the 7.5 per cent increase is the amount of Mr Johnson’s raise from one year to the next - - -.---Yes.

- - - in his base compensation.---Yes.

And the calculation if we look at page 216 shows historical information. The starting salary amount in May, 2010.---Yes.

10 An increase that occurred only a couple of months later in July of 2010. ---Yes.

And the calculation that you were providing for July, 2011.---Yes.

How did you go about knowing how to calculate the amount of Mr Johnson’s raise?---By looking at his contract.

And you applied the formula in the contract for the base salary?---Basically, yes.

20 And that’s what’s reflected in your calculations in this spreadsheet?---Yes.

Now, is it true that there was a component of the raise which is a performance review?---Yes.

30 If we turn to the – sorry, if you look at your affidavit. You explain the significance of the performance review at paragraph 48. There’s the last sentence which reads, “The performance rating was used to calculate both the lump sum bonus payment and the increase to the following year’s remuneration”.---Yes.

Do you see that?---Yes.

And you give an example of how the performance rating is factored in paragraph 50. You say, “For example, if Jack scored 50 per cent in his performance rating in one year he would be entitled to 50 per cent multiplied by 15 per cent of his total remuneration package, that is, 7.5 per cent for the total remuneration package”.---Yes.

40 So what you’re explaining there is that the performance rating percentage is factored into the amount of the rates?---Correct, yes.

Okay. Now, that’s however not what you’ve done in the spreadsheet is it? ---Correct, yes.

You’ve for – and we’re talking about the item at line 12 of the spreadsheet applied the full 7.5 per cent increase.---Right.

And you explain that in the balance of paragraph 50 which goes over the page. It says, "In practice however, if Jack scored about 80 per cent he would be given the full 15 per cent."---Correct, yes.

Okay. So when you say in practice, whose practice are you talking about?
---Followed on from the previous practice.

10 THE COMMISSIONER: But where was that practice found? It wasn't in the contract was it?---No, it was from the previous payment to Mr Johnson from, from – prior to my time.

But it wasn't recorded anywhere in the contracts that that would be the practice?---That's correct, yes.

MR FITZPATRICK: But that doesn't accord with your, your reading of the contract as you explained in paragraphs – paragraph 50 and paragraph 49?
---No, I understand, yes.

20 Okay. Paragraph 59 of your affidavit – sorry, perhaps we should go to the, to the contract at this point just so that we can clear up some terminology. The 2010 employment contract between Mr Johnson and GLALC is at page 96 of this volume and the page of interest is page 109. Now, there's three things that happen at the end of each financial year under Mr Johnson's contract. There's the – there's a performance allowance. Mr Gundar, you agree with that?---Yes.

And that's an amount which is 15 per cent of the total remuneration package?---Yes.

30 There's then the remuneration package increment which is half that amount added to the next year's salary?---Yes.

And then there's what's called a results bonus?---Yes.

Okay. So what we've been discussing was effectively the remuneration package increment, the amount of Mr Johnson's raise.---Yes.

40 Okay. There's then the performance allowance. Now, your affidavit at paragraph 59 refers to page 107 of the exhibit as explaining the performance allowance for the year ended 30 June, 2011. Mr Gundar, do you have the hard copy?---Of which page were you after?

Sorry. Page 107 of the exhibit. Now, Mr Gundar, I don't think that this is the right document. Your affidavit refers to the performance allowance for the year ended 30 June, 2011. You see that?---Yes.

Can you please take a look and confirm that the document on page 107 is for the financial year 2012?---Yes.

You agree with that?---Yes.

Okay. And the giveaway is the suggestion that GHS, Marumali and GTS were involved in this.---Ah hmm.

Those entities weren't counterparties to any contract with Waawidji until 2012.---Yes.

10 Okay. So, this document doesn't do what it says, which is to explain the calculation of the performance allowance for the year ended 30 June, 2011. ---Yes.

Thank you. The results bonus. You've had a lot of discussions with lawyers, accountants, investigators, administrators, about the results bonus for Mr Johnson for the 2011 year, correct?---Yes.

Do you accept responsibility for the calculation of that bonus?---Yes.

20 And you accept that no-one agrees with your calculation?---Correct.

If the witness could be provided with volume 20. 212 of volume 20, please. Mr Gundar, this is your calculation of Mr Johnson's bonus, correct?---Yes, correct.

Now, you accept that this isn't in accordance with the terms of the contract, correct?---Correct. Yes, no, I understand.

30 THE COMMISSIONER: Sorry, did you say "isn't in accordance"?

MR FITZPATRICK: That's right. I apologise.

THE COMMISSIONER: Yes.---No, I understand, yes.

MR FITZPATRICK: Now, you'll recall I asked you earlier about your email to Mr Johnson on 30 June, 2011, which provided the Future Fund balances?---Yes.

40 And I asked you, "Was he interested in that on that date because of his bonus?"---Yes.

Now, isn't it true that the sum of that ledger, and we can go back to the ledger, but the amount is an element of your bonus calculation.---Yes.

And that's the loans to GLALC from "FF of Duffs".---Yes.

And that's \$2,685,000.---Yes.

And that was the amount on the ledger that we looked at earlier.---Correct.

Do you wish to revisit your evidence about why you understand Mr Johnson was interested in those figures at that date?---No.

Okay. Now, the odd thing about this bonus is that it appears to have been calculated before the bonus period even finished. Do you agree with that?
---Yes.

10 Let's look at that. There's the invoices that Waawidji renders for the bonus amount that you've calculated. And let's look at 215. Actually, sorry, let's look at 219. This invoice is dated 30 June, 2011, correct?---Yes.

So, Mr Johnson's company is rendering an invoice for his bonus before the bonus period has even finished.---Bonus period is 30 June.

That's right. That's the date of this document.---Yes.

20 Sorry, do you agree with my proposition that the bonus period doesn't close until the end of 30 June?---That's correct, yes.

O.K. So an invoice on 30 June is an invoice that is rendered even before the bonus period is finished.---Bonus period is 30 June, so it's the same day.

Yes. But how could you possibly know the state of Gandangara's finances until at least the next day?---We were up-to-date.

30 THE COMMISSIONER: In other words, if there was some transfers into the account at 10.00pm on 30 June, that may affect the calculation of the bonus.---Yes.

Well, this calculation is made before the end of the relevant period. It's submitted during the day of 30 June.---Yeah, we were up-to-date with the account at that time, yeah.

But doesn't that reflect on what Mr Fitzpatrick put to you earlier, namely that was why Mr Johnson wanted to know what the mounts were in that fund as at 30 June.---Not necessarily.

40 Is it one possible explanation?---No, it can be for the meeting as well, the Board meeting.

Yes, I know --- Or the members' meeting.

There might be a number of explanations, but is it one possible explanation for why he was interested in knowing that?---Possibly.

MR FITZPATRICK: The other invoice is dated the next day, 1 July, and that's at page 215. So, you don't see any problem, as the finance manager of Gandangara, of receiving invoices for the financial year ended 30 June, one on the last day of that period, and one on the first day of the next period?---I can't see any problem.

Was another factor in the calculation of Mr Johnson's bonus what his performance review was?---Sorry, what's your question?

10 THE COMMISSIONER: Wasn't the performance review a factor in the calculation of Mr Johnson's bonus?---Yes.

MR FITZPATRICK: Did you have his performance review for the financial year ended 30 June, 2011 on 30 June, 2011?---No.

Okay. So you couldn't know what the appropriate bonus number was on 30 June, 2011.---For the performance, yeah. For the performance, I didn't know.

20 Well, no, for the results bonus.---Yes.

Okay. So it wasn't proper to invoice the amount of the results bonus on 30 June, 2011, or even on 1 July 2011, because on neither of those dates did you have a performance review for Mr Johnson.---That is correct, yes.

Okay. Now, the next problem with the invoices is the description and your position is that you just weren't concerned about what the invoices were. Is that right?---Yes, that's correct, yes.

30 And did you have any role in proposing what the language of the description on the invoice should be?---No.

You simply received it in the form that you received it?---Yes.

I'll make good the proposition that you didn't have the performance review information. If the witness could be given volume 20 and shown page 256. ---I've got it.

40 Sorry, it's this volume. No, that's not the right one. Sorry, Mr Gundar, I have to come back to that document.---Right.

THE COMMISSIONER: Just before we go further, I just wanted to understand the previous document that was on the screen which was the invoice, that as I understand it related to the results bonus did it?---Yes.

But the description on the invoice was reimbursement of expenses incurred by Waawidji Pty Limited?---That's correct. There, there was no reimbursement. It's just the description error.

Well, so how did you know that it related to the calculation of his results bonus?---By looking at the amount. Amount matched the - - -

By looking at the amount?---Yeah, of the invoice. It matched the – regardless the description it matched the, the amount to be paid.

10 Right. So I mean, wouldn't it have been important from an accounting perspective to say to Mr Johnson you'd better redraft the invoice in appropriate terms so that it's reflected properly in the accounts?---Look, we never thought of that at that time. We just - - -

But you were the accountant, you were the Finance Manager.---Yes. All his invoices said reimbursement so it didn't - - -

They all said reimbursement?---Yeah. Even some, some of them we changed it to contract but, yeah, contract payment.

20 Mr Gundar, earlier in your evidence when you were talking about the accounts prepared by the finance subcommittee for the purpose of putting these expenses, these reimbursement expenses before the Board you said that the finance subcommittee met either with Mr Johnson as I understand it or someone else prior to the Board meeting and the finance subcommittee when through these items and if there were questions in relation to the amount of money that was being paid by way of reimbursement for expenses then the finance subcommittee could ask the appropriate questions and then you would be able to drill down into the accounts and at the end of the day if it was necessary produce from your files the original invoice or the original document that found its expression in the spreadsheet.---Yes.

30 Well, then I come back to this. You see, technically this invoice would look as though in your documentary records that it related to the reimbursement of expenses.---Yeah, it's not. Yeah, I know.

And it's not.---Yeah. Miss, just can I correct that on that one. Mr Johnson never issued an invoice for reimbursement, one invoice like this.

40 Well, that may be so but still, if someone was looking for an explanation of where the expenses came from the document on its face would look as though it was reimbursement of expenses.---Yes.

MR FITZPATRICK: Sorry, Mr Gundar, if the witness could be shown page 256 of volume 20.---Yes.

And this is – there's – at the top there's an email from Mr Filewood to yourself?---Yes.

And it's dated 29 August, 2011?---Yes.

And attached is – sorry, the subject is information re CEO performance review?---Yes.

And following it is Mr Johnson’s performance review for the financial year ended 30 June, 2011?---Yes.

So the first time you had that information was 29 August?---Correct, yes.

10 And that was the date that we looked at when you did the calculation of his rates?---Yes.

Okay. Now, in terms of the way that you calculated Mr Johnson’s bonus – we can do it this way. You did it based on the amount in the future funds? ---What?

Well, let’s look at your calculations. Page 216 of this volume. Now, the top portion of the document has a number of entries culminating in a number for the total future funds. Yes?---Yes.

20

And then there is less commission paid from future funds from last year which is presumably the balance brought forward from the previous future funds total showing an amount to which a three per cent commission is applied?---Yes.

And a total bonus payment of \$287,944?---Right.

Okay. And you’ve already agreed that’s not the way the contract says to do it.---Correct.

30

Why did you do it this way?---As I mentioned before, I followed the previous method which was used when his bonus was paid previously.

So you say – now, where, where did you get that information?---From, from the files.

So you say there was a previous occasion on which Mr Johnson was paid a results bonus?---Yes.

40 And that it was calculated in this way?---A similar manner, yes.

And who do you say calculated the, that bonus?---The previous accountant. Previous Finance Manager.

Who was that?---It would have been Karen at that time.

In fairness, Mr Gundar, I’ll tell you what Ms Maltby said at this inquiry. Her evidence was that she doesn’t believe she ever calculated or paid a

results bonus under the 2007 contract and that there wouldn't have been a worksheet showing how to do that.---That is incorrect. I had this – I had the worksheet.

THE COMMISSIONER: Mr Gundar, what was the point of looking at Mr Johnson's contract at all if you were going to undertake a calculation based on some previous calculation which didn't in fact accord with the contract?---No, I just wanted to understand how it was paid before so I followed the same method.

10

But you said in your earlier evidence that you looked at the contract for the purposes of the calculation.---Yeah, that too. The contract as well as how the bonus was paid previously. That was the second time the bonus was getting paid.

Well, yes, I know, but if you looked at the contract, it would have been immediately apparent to you that the calculations under the contract were not consistent with the previous calculations of the bonus. Is that right? ---I understand now.

20

But you would have understood then, wouldn't you?---I'm not a lawyer. I couldn't understand into detail.

You're an accountant. We're talking about calculations, Mr Gundar.---Yes, I understand.

30 So, answer my question. If you looked at the contract, it would have been immediately apparent to you that the calculation of the bonus under the contract was quite different to the calculation of the bonus on previous occasions.---Now I understand.

You would have understood then, would you not?---I should have made inquiries, yes.

40 MR FITZPATRICK: Now, one of the differences between the way in which the contract says to calculate the bonus and the way that you calculated the bonus was that the contract focuses on GLALC and doesn't mention anything about the other members of the group. Do you agree with that?---Yes.

And you, however, calculated on the basis of the Future Funds, which was a group-wide number.---Ah hmm.

And you seek to explain that in your affidavit in paragraph 47. The third sentence reads, "Jack's performance allowance and results bonus were calculated on a consolidated basis across the GLALC group. I will explain what I mean by consolidated basis in this context further below." That explanation appears in paragraph 49. And you focus on some quoted

language there “total remuneration package”. Now, the total remuneration package is the amount that Mr Johnson was paid by, in this period, two entities, GLALC and GMS.---Yes.

Correct? So, shouldn't be any other entities that are considered relevant to the payment of Mr Johnson's total remuneration. Do you agree with that?
---No, I disagree with that.

10 Well, Mr Johnson didn't receive any remuneration from any of the other entities, did he?---No, he did not.

Okay. So, you agree with me that the only two entities that paid Mr Johnson either directly or indirectly through Waawidji were GLALC and GMS?---That is correct.

Okay. And the language that you focus on here, “total remuneration package”, you're quoting from the contract, right?---Yes.

20 So, your explanation for why you depart from the contract is to quote the contract. Is that right?---Yes.

How can that possibly be an acceptable way of doing it?

MR CRAWFORD-FISH: I object.

30 THE COMMISSIONER: Perhaps we should focus on the inconsistency. Mr Gundar, the total remuneration package was the combination of what Mr Johnson was paid under his contract with GLALC and what Waawidji was paid under its contract with GMS.---And the other entities as well later on.

Yes, but at this point in time, you've already agreed with Mr Fitzpatrick that he wasn't being paid by any of the other entities.---At that time, yes.

So the total remuneration package was only from those two sources.
---Correct, yes.

40 And the fact that you've got that in quotation marks, namely “total remuneration package”, that's a quote from the contract?---Yes, that's correct, yes.

So the question is, if you've quoted from the contract for the purposes of this explanation, how is that you in fact calculated it a different way entirely?
---Well, what I understand is Mr Johnson was the CEO of the whole organisation, not only those two. So his performance is based on the whole organisation, not only by those two. That's my understand anyway.

His performance rating may be affected by that, but his total remuneration package was not affected by that, was it?---I can't explain that, sorry.

MR FITZPATRICK: Commissioner, we'll move to my last topic. Mr Gundar, there was a representation letter provided by the Board of GLALC to the auditors. Do you recall that event? The letter is at page 250 of volume 20.---Yes.

There's a table at the bottom of that page 250. And I take it from your affidavit that you disagree with the composition of the table?---Yes.

10 And you had been asked to prepare a version of this table at some point for 29 October, 2012?---Yes.

Okay. Your version of the table is at 252. Can that be shown to the witness? There's a reference in your affidavit, at paragraph 63, to an unsigned draft of the representation letter, dated 25 September. And Commissioner, I have a hard copy document to show the witness.

THE COMMISSIONER: Ah hmm.

20 MR FITZPATRICK: Mr Gundar, this is the document to which you're referring in your affidavit, is that right?---Yes.

And so the letter which ultimately is sent bears the date 29 October, or the version that's ultimately signed is dated 29 October, 2012. See that?---Yes.

So, the drafts existed at least a month in advance.---Yeah.

30 And there'd been discussions about the fact of preparing that letter even before 25 September, isn't that right?---Yeah, there's discussions with myself and Clayton Hickey, yes.

In terms of the provision of a representation letter to the Board of GLALC, there shouldn't be any criticism of the auditors for springing that request on GLALC at the last minute. You agree with that?---I know just by looking at the date of that letter, the Board and the CEO was taken as a ransom to sign that letter by Clayton Hickey. The audit was due on that date.

40 THE COMMISSIONER: What day?---The, the last day of the compliance requirement I think was 30 October so - - -

Yes, but this is – what's being pointed out to you is this is 25 September. This is a month before.---I prepared that and I was overseas when, when Mr Johnson signed that letter.

No, no. We just want to focus on this letter -?---Yes.

- - - for the time being.---The, the September one?

Yes.---Yes.

When you look at the email - - -?---Yes.

- - - it's an email to Mr Johnson from Mr Tobutt at Lawlers.---Yes.

Copied to Mr Hickey.--- Yes.

10 And it suggests that consistent with the discussions you, that is, Mr Johnson has had with Clayton - - -?---Yes.

- - - I am reattaching the specific representation letter.---Yes.

So what Mr Fitzpatrick put to you was that as at 25 September, 2012 - - -? ---Yes.

- - - a month before the audited accounts were due - - -?---Yes.

20 - - - Mr Johnson was having discussions with Clayton Hickey about these expenses. Do you see that from the terms of the email?---Yes.

Right.---Yes.

Go on, Mr Fitzpatrick.

30 MR FITZPATRICK: I'll put my proposition again. In terms of the provision of the representation letter there shouldn't be any criticism of the auditors for springing that request on GLALC at the last minute. Do you agree with that?---Yes.

Okay. From a process perspective you and Mr Johnson and the Council were given plenty of time to consider the terms of the representation letter that was finally signed.

MR DOCKER: I object to that. The question is about three different people having an opportunity. Firstly, it should be, it should be - - -

THE COMMISSIONER: Well - - -

40 MR DOCKER: It should be broken up because - - -

THE COMMISSIONER: All right. Well, we can address the question to this witness in his view but in any event, put the proposition again in terms of this witness's understanding, Mr Fitzpatrick.

MR FITZPATRICK: Mr Gundar, in your view based on your familiarity with the dealings with the auditors at that time, from a process perspective

you and Mr Johnson and the Council were given plenty of time to consider the terms of the representation letter that was finally signed.---Yes.

Thank you. Those are my questions, Commissioner.

THE COMMISSIONER: Well, I suppose we can do something in a quarter of an hour. Who wants to ask Mr Gundar some questions, Mr Mack?

10 MR MACK: I've just a couple of quick questions for Mr Gundar.

THE COMMISSIONER: Yes.

MR MACK: Mr Gundar, my name is Mack. I appear on behalf of the Registrar of the Aboriginal Land Rights Act.

THE COMMISSIONER: I'm sorry to interrupt, Mr Mack. Should be mark this is an exhibit, Mr Fitzpatrick?

20 MR FITZPATRICK: Yes, please.

THE COMMISSIONER: Sorry. That email of 25 September, 2012 is Exhibit G11. Thank you.

#EXHIBIT G11 - EMAIL FROM SCOTT TOBBUTT TO MARK JOHNSON DATED 25 SEPTEMBER 2012 AND ATTACHED LETTER FROM THE CEO OF GLALC TO CLAYTON HICKEY DATED 20 SEPTEMBER 2012

30 THE WITNESS: Excuse me. Can I just have a toilet break please.

THE COMMISSIONER: Yes. We might take – did you say you don't have very many questions, Mr Mack?

MR MACK: Only a few.

40 THE COMMISSIONER: All right. Well, we'll just take a five minute adjournment and then we'll go as far as we can. Thank you.

THE WITNESS: Thank you.

SHORT ADJOURNMENT

[3.44pm]

THE COMMISSIONER: Yes, Mr Mack.

MR MACK: Commissioner, I have a long-standing commitment at 4.00 this afternoon, and what I propose to do is perhaps let Mr Docker ask some questions, because I understand that he wants to ask some questions today.

THE COMMISSIONER: All right.

MR MACK: And then I'll come back tomorrow before - - -

10 THE COMMISSIONER: All right. Yes.

MR MACK: Thank you.

THE COMMISSIONER: Yes, Mr Docker.

MR DOCKER: Mr Gundar, I appear for Mr Johnson.---Yes.

20 You were just asked in relation to a representation letter from the Board and Mr Johnson to the auditors, Lawlers. Do you recall that? Just been asked some questions about that?---Yes, it was from the Lawlers to Mr Johnson.

Yes. Now, Mr Gundar, do you have your affidavit there. Paragraph 63. ---Yes.

Now, just so that we're clear about this, you were just shown Exhibit G11. Could I just ask that the witness be shown that?---Yes.

30 Now, this was a document, you can see by G11, this was a document that was sent by Lawler Partners to Mr Johnson on 25 September, 2012. Do you see that?---Yes.

Now, if you turn to paragraph 63 of your affidavit, you can see there in that paragraph, and this is – just read the paragraph to yourself and tell me when you're finished.---Yes.

And you can see there that there's a reference to a representation letter dated 29 October, 2012. And then a reference to pages 120 to 121. Do you see that?---Yes.

40 Now, if you just go to pages 120 to 121. Now, that's in fact the letter that was sent, isn't it?---That is correct, yes.

And if you just go back to page 63. Sorry, paragraph 63 of your affidavit. You say in there that you had prepared your own breakdown of the payments made to Mr Johnson in the financial year that was in an unsigned draft representation letter dated 25 September, 2012. You see that?---Yes.

And that document is a document that is at pages 337 and 8 to an exhibit of Mr Hillig in the Supreme Court proceedings.---Yes.

Now, if I could just show you this document. I'm sorry, Commissioner. I understand this document's in the bundle, because there's been a discussion. My solicitor has discussed it with Counsel Assisting. We just can't find where it is. Just, unfortunately, the notice we've had, we just can't find where it is, so I'm just going to have to do it this way. Now, Mr Gundar. ---Yes.

10

Is that the draft representation letter that contains the breakdown that you prepared?---Which date are you talking about?

The one with 25 September.

THE COMMISSIONER: The document you've been shown.---No. Look, this email came to Mr Johnson.

MR DOCKER: I'm sorry.---I'm not even aware of this.

20

I'm sorry, Mr - - - ---And by the time, I, sorry. Go on.

I'm sorry, Mr Gundar. I'm not asking you about G11 and the email. I'm asking you about the document I just had brought to you in the folder.---No, I did not prepare that.

If I could ask you to look at the table that's in the document, on the first page.---Yes.

30

Does that table contain your breakdown? And if you want to, you can compare it with the one that's in - - - ---119. That is correct.

What's correct?---The table I prepared. That's inconsistent with that.

That is, the one on page 337 in front of you? Is that right?---Yes. That's correct.

Commissioner, I'm told that the reference to this document in Exhibit G1 is volume 9, page 264.

40

THE COMMISSIONER: So, the calculation is the same as the one that you did, but you didn't prepare the draft letter that appears at that page?---That is correct, yes.

Right.

MR DOCKER: All right. Now, if that could be returned, please. Mr Gundar, you gave some evidence earlier about discussing some financial

matters in relation to the Land Council with [REDACTED] [REDACTED] in your early days?---Yes.

What was her position?---[REDACTED] [REDACTED] [REDACTED] [REDACTED]

All right. Now, Mr Gundar, you were asked many questions about you authorising or approving expense claims for Mr Johnson.---Yes.

Did you ever reject any expense claims for Mr Johnson?---Yes.

10

The – could Mr Gundar please be shown volume 11. And if you could please go to page 58. Can you recall you were asked some – or a question I think about the handwriting in the right-hand column on this document which is a copy of the cash disbursements journal for the Land Council for the 10/11 year. Do you remember that?---Yes.

And you said it wasn't your writing.---That's correct.

20

Do you recognise the writing – do you recognise whose writing it is?---No.

Do you know whose writing it is?---No.

And if you go to page 62 you can see that there's some handwriting there on the right – in the right-hand column. Do you know whose handwriting that is?---No.

30

THE COMMISSIONER: What was the nature of the expense claims that you did reject on occasions, can you recall?---Mainly any invoices which came through which I sort of picked out. For example, EFTPOS statements, EFTPOS printouts mainly. Any – later on we picked on any invoices like horse hay and whatever because all the invoices were lumped into what was provided to us. So those kind of stuff.

MR DOCKER: Thank you, Commissioner. That's all my questions.

THE COMMISSIONER: All right. Well, we'll leave it there for today and resume tomorrow at 10.00am. Thank you.

40

THE WITNESS STOOD DOWN

[4.03pm]

AT 4.03PM THE MATTER WAS ADJOURNED ACCORDINGLY

[4.03PM]