

Form 40 (version 3)

UCPR 35.1

AFFIDAVIT OF CINDERELLA ANN CRONAN
SWORN 9 FEBRUARY 2016

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity
List	Corporations
Registry	Sydney
Case number	2015/160350

TITLE OF PROCEEDINGS

First plaintiff	Gandangara Local Aboriginal Land Council
Number of plaintiffs	5
First defendant	Mark Julius Johnson (also known as Mark (Jack) Johnson)
Second defendant	Waawidji Pty Ltd (ACN 112 654 163)

FILING DETAILS

Filed for	Mark Julius Johnson , the first defendant
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AFFIDAVIT

Name Cinderella Ann Cronan
Address [REDACTED]
Occupation Aboriginal Client Service Officer with Housing NSW
Date 9 February 2016

I say on oath:

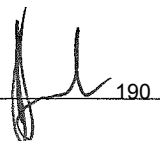
1. I am an Aboriginal Client Service Officer with Family and Community Services Housing, formerly known as Housing NSW, a position I have held since 26 November 2012.
2. I have been a member of Gandangara Local Aboriginal Land Council (**GLALC** or the **Council**) since around 1994. I was first appointed as an office holder of GLALC in or around 1996 and since that time, I have held various positions with the Council, including Secretary at various times after 1997 and Chair of the Board from 2009 until March 2014. I have not continuously been an office holder or held a position on the Board because those positions are regularly elected following a vote held at the annual general meetings of the members of GLALC.
3. My involvement with GLALC ended on 2 April 2014. I recall that I was on my way to work at Housing NSW on or about 20 March 2014 and I walked past the GLALC office. I saw security guards in front of the door and two employees standing outside the office. One of them, Annie, was crying and said to me words to the effect of "*how am I going to feed my kids?*" I saw there was a notice on the roller shutters at the office, which was on Smith Hancock letterhead and said words to the effect:

"An administrator has been appointed to Gandangara Local Aboriginal Land Council. If you have further enquiries, contact the following number..."

4. Annie then said words to me to the following effect:

"I called the number. They told me that all our positions have been terminated. We aren't allowed to enter the office. Arrangements are going to be made for us to collect our belongings another time. I've got personal belongings in there."

5. I called Jack, who said to me words to the effect of "*I don't know what's going on. Shalesh and Alfred have just called me. They're around the corner in the coffee*



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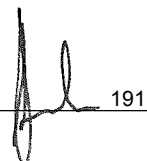
shop because they have nowhere else to go." I sent Annie to see Shalesh and Alfred and then I went to work.

6. I continued to be involved with other entities in the GLALC Group until about late May 2015 when Mr Hillig was appointed Receiver & Manager. I discuss what I mean by "GLALC Group" in paragraph 23 below.
7. I am no longer involved in the management or operation of GLALC. I was automatically disqualified under the *Aboriginal Land Rights Act 1983* (NSW) (**ALRA**) from being a Board member of GLALC, or of any other Local Aboriginal Land Council (**LALC**) because I was a Board member when an Administrator was appointed to the Council.
8. I have read the affidavit of Peter Hillig sworn in these proceedings on 22 October 2015 (**Hillig's Affidavit**).
9. Exhibited to me at the time of swearing this affidavit and marked "CC-1" is a bundle of documents that I refer to in this affidavit. Where I refer to a document in Exhibit CC-1, I do so by reference to the page number in the Exhibit, for example:

*"A copy of the document is at **page ##**".*

Mr Johnson's appointment as Chief Executive Officer

10. I first became aware of Mark Johnson (known as Jack) when I found out he was applying for the job of Chief Executive Officer of GLALC in 2007. He was appointed as CEO at an Extraordinary Meeting of the members of GLALC held on or about 11 April 2007. I was an ordinary member of GLALC at the time because I had resigned from the position of Secretary the year before. I attended the meeting and participated in the vote. I voted for Jack. By that stage, I had never met Jack. I note that Jack's employment contract is dated 26 February 2007. I don't exactly recall the course of events but my recollection is that there was an ongoing issue over at least two meetings about whether Jack or Paul Newman should be the CEO.
11. Under the ALRA as it was at this time, LALCs did not have a Board and only had three office holders: a Chair, a Secretary and a Treasurer. The decisions of a LALC were at that time made by vote at members' meetings. This changed with the amendments to the ALRA which came into effect on 1 July 2007, from which point onwards a LALC was required to have a Board consisting of 7 to 10 members of the LALC elected at a general meeting. The Board was required to elect a Chair and



Deputy Chair, which GLALC generally did at the first Board meeting following the members' meetings at which the Board was elected. Certain other decisions (for example, those relating to land dealings) are still required to be approved by the members in a general meeting.

12. I recall that I came late to the Extraordinary Meeting on 11 April 2007. I recall there were between 50 and 70 members present out of roughly 400 members. At the meeting, Allan Hudson gave a presentation to the members of GLALC on the candidates for the position of chief executive officer. Allan Hudson was the acting manager of GLALC at the time. I recall that Allan was joined by one of the office bearers at the time, which would have been Tracey Ontiveros, Mark Donoghue or Sandra Williamson (the Secretary, Chair and Treasurer, respectively), but I do not remember who it was.

13. At the meeting, Allan Hudson told the members words to the effect of:

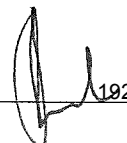
"The Interview Panel has interviewed candidates for the position of CEO. We have narrowed down the candidates to a short-list of two: Jack Johnson and Paul Newman."

14. Allan then gave a short presentation on the background and experience of the two candidates. I do not remember what he said.

15. Paul Newman was well-known in the community. I didn't want to vote for Paul because I didn't think he had the skills to progress land developments for GLALC. This would have been the first time most of the members of GLALC were introduced to Jack, including me. Jack was from Queensland and was not known in the community. I was aware that Jack had a law degree and he had some experience in Native Title issues so I thought he would be a much more suitable candidate. I remember that opinions in the room were sharply divided between supporting Jack or Paul Newman for the position.

16. Allan Hudson also gave a brief oral presentation on the proposed terms of the CEO's employment contract. I recall that he said words to the effect of:

"The CEO will be paid a base entitlement along with an allowance for reimbursement of expenses. The salary is set at a level that can be paid by GLALC out of the allocation of funds given to us by the New South Wales Aboriginal Land Council each year. The CEO will also be entitled to a review of his salary based on his performance against key performance indicators."



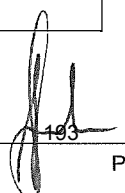
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He will also be entitled to payment of a bonus based on the profit from successful land sales."

A copy of the proposed contract was tabled at the meeting and the members were allowed to inspect the contract.

17. At the time, GLALC had already completed three land developments, being six lots at Jonquil Place at Alford's Point, 12 lots in Windle Place at Menai, and about 40 lots known as "Stage 1" of "Gandangara Estate". At the time, the most significant anticipated development was "Stage 2" of Gandangara Estate, which was another 39 lots. The delivery of Stage 2 was anticipated to be one of the most significant tasks to be undertaken by the incoming CEO.
18. As I referred to above, amendments to the ALRA came into effect on 1 July 2007 which required LALCs to be governed by a Board. In late 2007, GLALC held its annual general meeting and I was elected to the Board along with nine other members. From this point until my position on the Board was terminated by the appointment of Mr Hillig as Administrator in March 2014, I attended every Board meeting and every meeting of the members of GLALC. A copy of each set of minutes available to me is in Exhibit CC-1 at the following pages:

Board Meetings	Page
8 October 2007	1 to 4
22 October 2007	29 to 31
19 November 2007	32 to 35
12 December 2007	36 to 39
4 February 2008	40 to 43
10 March 2008	44 to 45
31 March 2008	46 to 47
28 April 2008	48 to 49
26 May 2008	50 to 53
28 July 2008	54 to 56
6 August 2008	57
22 September 2008	80 to 82

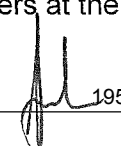


Board Meetings	Page
10 November 2008	83 to 86
15 December 2008	87 to 88
19 January 2009	89 to 91
9 March 2009	92 to 94
27 April 2009	95 to 97
29 June 2009	98 to 100
7 September 2009	101 to 104
12 October 2009	105 to 108
14 December 2009	118 to 120
15 February 2010	121 to 123
29 March 2010	124 to 125
3 May 2010	126 to 127
5 July 2010	133 to 135
13 September 2010	140 to 142
15 November 2010	143 to 151
28 February 2011	203 to 205
18 April 2011	206 to 208
11 July 2011	209 to 214
5 September 2011	215 to 216
10 October 2011	229 to 232
12 December 2011	233 to 234
20 January 2012	235 to 236
27 January 2012	237
13 February 2012	238 to 241
19 March 2012	242 to 243
7 May 2012	244 to 245
30 July 2012	247 to 248




Board Meetings	Page
10 September 2012	251 to 255
30 October 2012	256 to 258
10 December 2012	358 to 360
18 February 2013	365 to 368
25 March 2013	436 to 441
27 May 2013	455 to 456
24 June 2013	457 to 459
22 July 2013	606
19 August 2013	607 to 608
16 September 2013	609 to 610
18 November 2013	611 to 612
Members' Meetings	
20 February 2013	371 to 372
4 December 2013	613 to 614

19. The first meeting of the newly constituted Board of GLALC was held on 8 October 2007. A copy of the minutes of this meeting is at **pages 1 to 4**. Although it is not recorded in the minutes, Jack was present at the meeting. He was not a Board member, and he was not permitted to be a Board member under the ALRA, but he was invited to attend the Board meetings as a member of staff of GLALC. Jack became a member of GLALC at around this time. Jack always attended Board meetings and usually presented a 'CEO's Report' to the Board, which was often oral and sometimes accompanied by a power point presentation projected onto the screen from Jack's laptop. Jack also took the minutes of the meetings as they occurred so that the Board members could follow along on screen. He did not record his own attendance in the minutes. Sometimes, Jack would be asked to leave the room when the Board considered it was appropriate for certain matters to be discussed in his absence and when this occurred, it would usually (but not always) be expressly noted in the minutes. At the meeting on 8 October 2007, the Board passed a resolution confirming Jack's employment on the terms and conditions provided in the employment agreement which was approved by the members at the

Extraordinary Meeting on 11 April 2007. A copy of Jack's employment agreement is at **pages 5 to 28**.

20. Jack also spoke at the meeting on 8 October 2007. His presentation was on the basic roles and responsibilities of Board members. In his presentation, Jack discussed some of the ways these duties can be breached, including trading whilst insolvent and also conflicts of interest. Jack also discussed the importance of declaring any pecuniary interests which the Board members may have. He displayed a slide with a written declaration of his pecuniary interest in Waawidji Pty Limited. Jack gave a similar presentation to the Board annually, usually on the first Board meeting after the annual general meeting of the members of GLALC. This is because it was usually at these meetings that the Board elected a Chair and Deputy Chair, and the Board reviewed the delegations to Jack. I do not have a copy of the presentation given by Jack on 8 October 2007. However, a copy of a similar presentation to the Board on 12 October 2009 is at **pages 110 to 117**. The meeting on 12 October 2009 is discussed in further detail in paragraph 35 of this affidavit.

Overview of the GLALC Group

21. The statutory objects of GLALC are to improve, protect and foster the best interests of all Aboriginal persons within the GLALC area and other persons who are members of GLALC. To achieve these objects, GLALC has the functions conferred upon it by the ALRA, which include the acquisition, use, management, control, holding, disposal or otherwise dealing with land which is vested in it. Other functions include the protection of the culture and heritage of Aboriginal persons in the area and the facilitation of business enterprises in accordance with the law and consistent with a community, land and business plan (**CL&BP**) which was required to be prepared by GLALC and approved by the New South Wales Aboriginal Land Council (**NSWALC**). A copy of the CL&BP for 2008 to 2011 is exhibited to Hillig's Affidavit.
22. As part of its business enterprises and consistent with the vision and strategy set out in the CL&BP, GLALC provides the Aboriginal community in the GLALC area with a number of services in several distinct areas which includes housing, transport and health, employment and education, and child services (such as playgroups and early intervention programs). The housing services include the provision of housing which had been acquired by GLALC for rent by members of the Council. This was one of the first and one of the most prominent services provided by GLALC. The transport services include community shuttle services and other similar services. The health services have been an area of significant growth over the last ten years and now

include a medical centre employing general practitioners and providing other medical services to the Gandangara Aboriginal community by bulk billing.

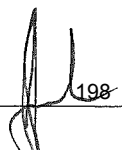
23. One of the features of the CL&BP was the establishment of a corporate group managed by the directors of each entity, who were also the Board members of GLALC. There was at that time a company called Murrin Ngura Pty Limited, which was responsible for managing the housing, and a public company limited by guarantee which became known as Marumali Limited and was responsible for a health brokerage service. There were also a number of proprietary limited companies incorporated in 2007, but they were inactive. It was not until early to mid-2010 that a number of public companies limited by guarantee were incorporated to be responsible for the activities of GLALC and the services provided by GLALC to the Gandangara community. I will refer to GLALC along with these companies collectively as the **GLALC Group**.
24. Prior to the incorporation of these entities, GLALC operated as a number of separate business units for the different services it provided. The process of regularising and formalising the arrangements was a gradual process which occurred throughout my time on the Board of GLALC. One significant feature is that the constitutions of all the companies in the GLALC Group were drafted so that they would perform their activities consistently with the objects for LALCs set out in the ALRA. Another significant feature is that the Boards of all the entities were required to be identical with the Board of GLALC. Although it was not a requirement in the constitutions of the companies, the Board appointed Jack as CEO of each entity to facilitate the different entities working under the same direction. Jack was expected to fulfil his duties as CEO for each company (and for GLALC itself).
25. Gandangara Management Services Limited (**GMSL**) was a company in the GLALC Group. It provided management services to GLALC, as well as to other entities in the GLALC Group and other LALCs (including corporate entities under their management). GMSL also did the vast majority of work involved in the making and processing of land claims for GLALC, as well as the development and sales of land which had been acquired. The arrangement between GLALC and GMSL, which was not initially fully documented, was that GLALC would retain the proceeds of sales (80% of which was set aside in the Future Fund, which I will discuss below) which represented the value of the unimproved land and GMSL would be entitled to the difference, representing the value added by the work GMSL had done in developing and selling the land. This arrangement was discussed at many meetings of the Board and to the best of my recollection, was the subject of resolutions of the Board.

These arrangements were reflected in intercompany loan agreements which were formalised in or around 2012.

26. Once GMSL took on this management role, it also took over as employer of all GLALC staff (with the exception of Jack Johnson, who remained employed by GLALC) and engaged consultants providing services to the GLALC Group. This was because GMSL was providing management services, including for the claiming and development of land. Also, GLALC had very little income other than a small allocation of about \$130,000 per annum from the NSWALC and the income it received from the sales of land (being the unimproved land value) was irregular and varied dramatically from year to year. Therefore GLALC could not afford to maintain employment contracts with fixed salaries for staff other than the CEO.
27. One initiative which Jack introduced in 2007 was the establishment of a fund called the "Future Fund", into which 80% of the profit from the amount paid to GLALC on the basis described in paragraph 25 above. The Future Fund was approved by the members at a meeting some time in 2007. I do not have a copy of the minutes of this meeting. It is referred to in the CL&BP which was approved by NSWALC.

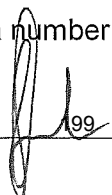
The GLALC Board

28. The Board of GLALC had regular bimonthly meetings. Management issues were discussed by the Board in detail and were often the subject of heated debate. The Board members were usually given about half an hour to review board papers in advance of the meetings. The Board papers (also known as the "Board packs") would usually include an agenda and copies of documents to be tabled and discussed at the meetings. The meetings were usually held in the evenings as many of the Board members had other jobs. Meals were generally served beforehand to encourage the Board members to come early and start going through their packs. For the most part, the Board members were aware of the issues to be discussed well in advance of the Board meetings. This is because the Board members maintained email and telephone contact with each other.
29. When the Board was first elected in 2007, the Board members generally had very little experience in corporate governance. Another of Jack's early initiatives was to retain a consultant to conduct regular training sessions for the Board on corporate governance and directors' duties. In or around 2007 or 2008, the Board retained a consultant by the name of John Mero of Vision Method Consulting to provide this training and advice. John Mero was a First Nations Person from Canada, resident in



Australia and had experience with Board training of blue chip companies. He conducted training sessions with the Board every six months, usually on a retreat in Wollongong. At these sessions, John presented on various topics including our duties and responsibilities, case law, finances, identifying the signs of insolvency, and the nature of the relationship between the CEO and the Board. A copy of the presentation materials from one such retreat in 2011 is at **pages 58 to 79**. John Mero's training was additional to the required training from NSWALC which the Board members undertook and which was more basic in nature.

30. Following the incorporation of many of the companies in the GLALC Group in early 2010, the Board meetings for all entities were held concurrently. This was possible because the Boards were constituted identically. Accordingly, where I refer to the "Board" in this affidavit, I also mean the Board of all relevant entities unless I say otherwise.
31. From 2007 until 2012, the financial documents (which included the management accounts) for discussion at each Board meeting were usually sent to the Board members several days in advance of the meeting. At the meetings, the management accounts were usually presented to the Board by the Finance Officer (initially Karen Maltby and later, Shalesh Gundar). The management accounts were discussed in detail, usually on a line-by-line basis, by the Board. The documents were closely scrutinised and there were frequently errors in them which were identified and discussed at the meetings.
32. From around 2012 onwards, the financial affairs of GLALC became quite complicated because of the rapid growth of the enterprises and the activities undertaken by various entities in the GLALC Group. During one of our workshops, John Mero said words to the effect of *"you should set up a Finance Sub-committee to consider the finances in detail prior to the Board meetings. The Finance Sub-committee would then present to the Board at the meetings on any major issues arising out of the accounts."* I will discuss the Finance Sub-committee in further detail later in this affidavit.
33. The Board was permitted under the ALRA to make delegations to the CEO. Those delegations were required to be reviewed yearly after the election of the Board. In addition to the general set of delegations to Jack, which were reviewed on a yearly basis, from time to time the Board also delegated specific powers to Jack which are recorded in the minutes of the relevant meeting. For example, on 22 September 2008, I attended a meeting of the GLALC Board at which the Board passed a number

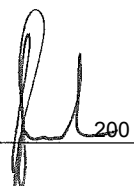
of motions authorising the CEO to do certain things in relation to a number of pending land claims and developments. A copy of the minutes of this meeting is at **pages 80 to 82.**

My election as the Chair of the Board of GLALC on 9 March 2009

34. I was elected Chair of the GLALC Board for the first time at a meeting of the Board on 9 March 2009. The position became vacant because Sandra Williamson, who was the Chair at the time, resigned. I was elected in her place and I remained the Chair continuously from this day until my position was terminated by the appointment of Peter Hillig in March 2014. A copy of the minutes of the meeting on 9 March 2009 is at **pages 92 to 94.**
35. On 12 October 2009, I attended a meeting of the Board of GLALC, which immediately followed the annual general meeting of the members of GLALC for that year. This Board meeting involved the election of Chair and Deputy Chair and the confirmation of delegations as described in paragraph 33 above. As was my usual practice, I reviewed the proposed delegations (a copy of which was provided in the Board pack) word-for-word in advance of this meeting and considered the implications of each delegation. Copies of the minutes of this meeting, the agenda, and Jack's presentation to the Board are at **pages 105 to 117.**

Jack's 2010 agreements

36. Jack's employment agreement with GLALC was due to expire on 1 May 2010. I expected, and I believe this expectation was shared by the Board and by Jack at the time, that a new employment agreement would be entered into. As far as I was aware, the Board and the members of GLALC were generally very happy with Jack's performance and achievements since his appointment as CEO. I was aware of these things because I regularly spoke with other Board members and members of GLALC and I also encouraged them to speak at Board meetings and members' meetings.
37. By this time, some of things that Jack had helped the GLALC Group achieve were:
- (a) Gandangara Employment and Training Services, providing education and employment services to the local community;
 - (b) Gandangara Transport, which by this stage was providing transport services such as shuttle busses;

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- (c) development services, which had progressed Stage 2 of Gandangara Estate almost to completion;
- (d) extensive claiming of Crown land in the Gandangara area which resulted in over 4000 land claims being lodged;
- (e) GMSL's engagement by other LALCs, including Deerubbin LALC (**DLALC**), to assist them, for remuneration, in processing land claims and managing developments, which included a land development for DLALC at Lawson;
- (f) improved governance of GLALC itself which was reflected in higher community involvement and member attendance at meetings;
- (g) improved collections of rental arrears, raising rent to market rates and better maintenance of the properties; and
- (h) significant growth in staffing and also financial turnover.

38. In or around March or April 2010, Jack and I began to have discussions about the proposed terms of his new employment agreement and in particular, his remuneration, which would be put to the Board for approval. These discussions were informal in the sense that I had no authority to agree to anything with Jack on behalf of GLALC or the GLALC Group on my own but they were a part of the process of me making a proposal to the Board for the continuation of Jack's employment. I wanted Jack to agree with what I proposed to the Board before I made the proposal. I also knew that DLALC, which is GLALC's neighbour to the North-West, were seeking to poach Jack from GLALC. I knew this because Jack had been providing services to them and was spending time with not only their CEO but also their Chair, both for work and socially, and Jack had said to me words to the effect of *"Deerubbin want me to go and work for them."* Also around this time, Jack was given leave from his job to attend a job interview in Western Australia. I had a sense that Jack was getting bored with the job with GLALC and wanted new challenges. Eventually this challenge became setting up the medical centre.

39. In or about February 2010 I had a conversation with Jack at the GLALC office which included words to the following effect:

Me: *"Jack, we need to make some progress on our medical centre. I've been getting questions from members in the community about what*



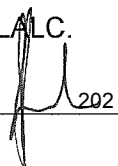
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services we're providing. We need to get the medical centre up and running. We need to do it by NAIDOC in the first week of July."

Jack looked shocked. I then said words to the following effect:

Me: *"Alright then. By September at the latest."*

40. As it happened, Gandangara Health Services Limited opened the medical centre, called the "114 Family Practice" on 30 July 2010. It provided consultations with general practitioners, as well as pathology services and Allied Health services. It worked in conjunction with Marumali, the health brokerage service. Over time the services expanded to include early intervention programmes, prenatal screenings and antenatal care, mental health services, and immunisations, amongst others.
41. From this time until around 2012, the services provided by the GLALC Group to its members continued to expand, particularly in relation to health, education, employment, transport and development services.
42. In or about April 2010, I carried out some research on the internet of salaries paid to chief executive officers of comparably sized organisations. I typed into google search terms to the effect of *"Australian CEO salary levels"*. The results included several online tools which allowed me to enter details about Jack's situation:
 - (a) the number of entities under his control;
 - (b) the number of employees he was responsible for managing, which I recall being approximately 40;
 - (c) the annual turnover of GLALC and the other entities in the GLALC Group;
 - (d) the value of the assets of the GLALC Group, being more than \$15 million, and probably much more because GLALC had large land holdings in Sutherland Shire near Menai and was, in fact, the largest land holder in the Shire; and
 - (e) the number of projects on foot at the time, which I have referred to above in paragraph 37.
43. Jack (on his own behalf) and I (on behalf of the GLALC Group) came to an in-principle agreement, subject to Board approval, for Jack's remuneration after his current employment contract expired on 1 May 2010 to be \$180,000 plus bonuses. I considered (and still consider), based on my research, that Jack was considerably underpaid given his experience and ability and what he had achieved for GLALC.

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However, I also wanted to do the best deal possible for GLALC and the GLALC Group in terms of saving expenses whilst also keeping Jack happy in his position.

44. I prepared a PowerPoint presentation for the Board on what I thought was a fair range of salaries for Jack based on these factors. I can no longer locate a copy of the presentation, which was based on the research I had conducted on the internet. The range of salaries generated by the internet tools was about \$160,000 to about \$350,000, which was significantly more than Jack was being paid at the time.
45. I did not discuss my research or the contents of this presentation with Jack or disclose its contents to him. Jack was asked to leave the Board meeting before I made the presentation and he was not present when I made it. I did not want to encourage Jack to ask to be paid more money than we had discussed. My purpose in making the presentation to the Board of my research findings, was to explain to the Board that I thought the GLALC Group was getting a very good deal with Jack's employment for the proposed package of \$180,000. I thought this was important because that amount was high compared to average salaries or the amounts members of the Board made in their various jobs, but I also thought it was good value for money and the job Jack had was no average job.
46. GLALC itself was unable to fund an increase to his salary because of its inconsistent cash-flow, the limited allocation of funding which GLALC received from NSWALC (referred to in paragraph 26 above) and the irregular nature of income from land sales. I discussed this with Jack. I thought that any increase to Jack's salary could only be paid by GMSL, which was generating more regular income from the management services it provided to GLALC and other organisations, including other LALCs. I recall that in one of our discussions, Jack said words to me to the following effect:
- "If my salary from GLALC has to remain constant because of GLALC's cash-flow, can my pay rise be covered by GMSL through an agreement with Waawidji? I will prepare you a presentation to put to the Board about what I would like in my new agreement with GLALC and Waawidji's agreement with GMSL. This will be similar to how my current agreement is structured for Waawidji to receive reimbursement of expenses."*
47. The issue of Jack's employment agreement was on the agenda at a meeting of the Board of GLALC on 3 May 2010. Copies of the minutes and agenda of this meeting are at **pages 126 to 128**. There is a typographical error in the minutes which

incorrectly state the date as 2 May 2010. All Board meetings were held on Monday nights, with the exception of emergency meetings. 3 May 2010 was a Monday night.

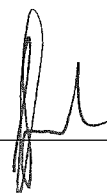
48. I gave two presentations at the meeting on 3 May 2010. The first was the presentation, which Jack had prepared for me with my input and agreement, which reflected our discussions. A copy of this presentation is at **page 129 to 132**. His current base salary was \$148,951 which was due to become \$160,122 because of the increment in his performance allowance. I said words to the Board to the following effect:

"The proposal is for Jack's remuneration to be split up into two agreements, one between Jack and GLALC and the other between Waawidji and GMSL. Jack's base salary under the new agreements will be approximately \$180,000 in total, comprising \$100,000 to be paid from GMSL to Waawidji and \$80,000 to be paid directly to Jack from the Council. Both agreements will contain an identical provision for a performance allowance and a results bonus, but in practice there will be one performance allowance and one results bonus. These payments will be made under the GMSL/Waawidji Agreement, which will also be allocated any increases to Jack's overall remuneration following his performance reviews, because GMSL has better cash-flow than the Council."

49. The second presentation was the presentation I had prepared which is referred to above at paragraph 48. Jack was asked to leave the room for the second presentation. I said words to the Board to the following effect:

"I've done some research on Jack's worth on the internet. Some other CEOs in similar positions are paid more than Jack is. The range goes from about \$160,000 to \$350,000 and the midpoint is about \$250,000. We're getting a bargain here at \$180,000. Jack is prepared to accept it and that's well below what I think he's worth. You've all seen what we've achieved over the last few years."

50. I remember George Bloomfield in particular said words to the effect of *"I think we're still undervaluing him. We should pay him even more regardless."* I responded with words to the effect of *"No, if he will accept \$180,000 then that's all we should give him."* George replied with words to the effect of *"well, if he continues to produce, we can look at increasing his salary later."*



51. During the Board meeting, draft contracts between Jack and GLALC and between Waawidji and GMSL were tabled. To the best of my recollection they had been included in the Board pack for the meeting. Following the discussion and while Jack was still absent from the room, the Board resolved to accept both contracts and authorised me to sign them.

The restructuring of the GLALC Group

52. In a meeting on 15 February 2010 (which was two meetings prior to the meeting discussed above in which Jack's 2010 agreements were approved), the Board resolved to commence the restructuring of the GLALC Group (which I refer to above at paragraph 23 of this affidavit) and to delegate to the CEO the responsibility of making the relevant alterations to the CL&BP. The CL&BP was due to be renewed in 2011 but already by this time, the GLALC Group had experienced significant growth which had propelled it beyond what was envisaged in the currently applicable CL&BP. For this reason, the Board resolved to introduce the new corporate structure and to commence drafting the relevant amendments to the next edition of the CL&BP. I do not have a copy of the Board pack for this meeting, which included a copy of the proposed corporate structure referred to in the Motion 11 of the minutes. A copy of the minutes of the meeting on 15 February 2010 is at **pages 121 to 123**.
53. The restructure of the GLALC Group was done in open consultation with the Registrar of NSWALC, Mr Stephen Wright. It was also done on the advice of solicitors, who in turn engaged eminent Queens Counsel including Mr Bernard Coles QC and Mr R J Ellicott QC to advise on particular issues in relation to compliance with the ALRA. For my part, I was very concerned that the restructure should be done in a manner which was compliant with the ALRA. I also recognised that the GLALC Group had grown significantly in its size and the scope of its activities and thought that it was appropriate for the business to be split into corporate groups for risk management and better corporate governance. I thought that by doing this the GLALC Group could take better advantage of the assets it had at hand and those available to it and could better service the Gandangara community in accordance with the objects of the ALRA. I believe the Board shared my views in these respects.
54. It was primarily Jack's responsibility to correspond with Stephen Wright and representatives of NSWALC. At and around this time, Jack was engaged in many meetings and a long series of correspondence with Stephen Wright around the proposed restructure of the Group. I had a desire to be part of these discussions but I did not have the time to do so. In any event, Jack had the authority to engage in



this correspondence and I was confident he had the experience and ability to do it. He kept the rest of the Board informed by way of presentations at Board meetings. These issues were also discussed generally at GLALC members' meetings, some of which were attended by representatives from NSWALC.

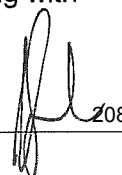
55. I attended a meeting of the Boards of the GLALC Group on 5 July 2010. This was the first Board meeting after the incorporation of many of the entities in the GLALC Group referred to in paragraph 23 above. At this meeting, the Board discussed a letter to Jack from Stephen Wright dated 29 June 2010, which was tabled. Copies of the minutes of this meeting, the agenda for the meeting, and the letter are at **pages 133 to 139**. The letter touches upon many of the issues surrounding the restructure. Jack gave an oral report to the Board on the Registrar's investigation, which included references to the letter. I cannot remember specifically what he said.
56. The Board was committed to dealing with these issues so that we could continue to grow and develop the GLALC Group and the services we could provide to the Gandangara community. Despite the suggestion to the contrary in the letter, it was never my understanding that real estate would be transferred from GLALC to any related entities and I do not recall GLALC resolving to do so. Rather, other entities (namely, GMSL) would do work for GLALC, which I have already described, on the acquisition, management, development and sale of land and that this would be done on commercial terms with GLALC.
57. The ongoing correspondence with Stephen Wright was also discussed at the next Board meeting on 13 September 2010, when a motion was passed for Jack to respond. A copy of the minutes of this meeting is at **pages 140 to 142**.
58. I attended a meeting of the Boards of the GLALC Group on 15 November 2010. At this meeting, Jack presented on duties of the Board members and again provided his declaration of pecuniary interest in Waawidji Pty Ltd. The Board reaffirmed its delegations in accordance with requirements of the ALRA. The Board also passed resolutions relating to the incorporation of the GLALC Group entities. Copies of the minutes, the agenda, and Jack's presentation at this meeting are at **pages 143 to 160**.
59. One of the items for discussion at the meeting on 15 November 2010 was a Business Diagnostic Report prepared for GLALC by the College of Business at the University of Western Sydney (**UWS**). We had requested this report because, at the time, the GLALC Group was experiencing rapid growth and we required advice on managing



this growth and on strategic planning for the future growth of the Group. In my view, by this point we had outgrown the vision set out in our CL&BP for 2008-2011 and the UWS Report provided valuable advice to assist in formulating the draft next edition of the CL&BP. A copy of the UWS report is at **pages 161 to 189**.

60. Another item for discussion at the meeting on 15 November 2010 was recent correspondence with Stephen Wright. This correspondence included:
- (a) Mr Wright had written to GLALC on 29 June 2010 (see paragraph 55 above);
 - (b) on 2 August 2010, Jack sent Stephen Wright a preliminary response, subject to legal advice, a copy of which is at **pages 190 to 193**;
 - (c) on 23 August 2010, Stephen Wright sent GLALC a letter, a copy of which is at **pages 194 to 197**;
 - (d) on 20 September 2010, GLALC sent a letter to Stephen Wright, a copy of which is at **pages 198 to 199**; and
 - (e) on 12 November 2010, Stephen Wright sent an email to Jack, a copy of which is at **pages 200 to 202**.
61. This correspondence was tabled at meetings of the Board. At least the documents referred to in paragraph 60(b), (d) and (e) were tabled at the meeting on 15 November 2010. The correspondence referred to outstanding issues and negotiations. I understand Jack subsequently attended meetings with Stephen Wright to attempt to resolve the outstanding issues in relation to the corporate restructure but they were never fully resolved. However, as far as I was concerned as a Board member of GLALC, Mr Wright had by this stage acknowledged that GLALC was acting on detailed legal advice, with full transparency and in open communication with NSWALC, and with every attempt to be compliant with the ALRA. At this meeting, a number of resolutions were passed to formally appoint the Board members of GLALC as directors of the related corporate entities and to put in place other steps to progress the restructuring of the GLALC Group.

62. Karen Maltby was the finance officer at the time I was elected to the Board of GLALC in 2007 and she remained in that role until she was replaced by Shalesh Gundar in March 2011. Shalesh attended the Board meeting on 18 April 2011 at which I was also present. I recall that we discussed the financial reporting in the GLALC Group to date and while I do not recall the specific words which were used, it was generally agreed that inaccuracies existed in the accounts. The Board resolved for Shalesh to conduct an internal audit and to bring the accounts up-to-date. Shalesh had a small finance team working for him, which included an accountant named Tony Cividin and two young Aboriginal women who he was training in bookkeeping and accountancy. A copy of the minutes of this meeting is at **pages 206 to 208**.
63. While I am not an accountant, I always took a close interest in the financial affairs of the GLALC Group. From when I was elected to the Board in 2007, I always put a lot of effort into scrutinising the management accounts and other financial papers that were put before the Board. As I understood it, the regulatory scheme under the ALRA which was overseen by NSWALC and supplemented by NSWALC financial policies placed a number of requirements on the way the financial affairs of LALCs were to be conducted. One of these requirements was that a LALC must appoint (and pay for) an auditor for the yearly financial accounts from a list of auditors approved by NSWALC. The final audited accounts (contained within the Council's annual report) were required to be submitted to NSWALC for approval as soon as practicable after the end of each financial year and by no later than 1 November. Failure to abide by these requirements could have serious consequences for a LALC, including triggering the discharge of the Board and the appointment of an Administrator.
64. On 11 July 2011 I attended a Board meeting. At this meeting Shalesh presented a report on the finances of the GLALC Group. A copy of the minutes of this meeting is at **pages 209 to 214**.
65. Lawler Partners were a NSWALC approved auditor which GLALC was required to retain to audit its financial accounts. I don't remember how many other auditors were on the list of approved auditors, but I recall that we were not given much freedom to choose our auditors. In my opinion, it was always a cause of tension that GLALC was required to pay Lawler Partners for an audit in circumstances where the Board had very little control over the auditors who it could appoint and how they conducted their audit. It often seemed to me that Lawler Partners were answering to NSWALC rather than the Board of GLALC. Jack was primarily responsible for liaising with



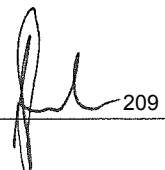
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Lawler Partners along with Shalesh. I will discuss the relationship between Lawler Partners and Jack, Shalesh and the Board in further detail later in this affidavit.

66. On 5 September 2011, I attended a Board meeting at which Clayton Hickey of Lawler Partners also attended. At this meeting, Mr Hickey presented his audited accounts and management letter for the financial year, which the Board resolved to accept. Lawler Partners had given unqualified audits in respect of the financial years ended 30 June 2007, 2008, 2009 and 2010. It was by this stage ordinary practice for Lawler Partners to present its audited accounts and management letter to the Board well in advance of the 1 November deadline in case there were any issues that needed to be dealt with by the Board. A copy of the minutes of the 5 September 2011 meeting is at **pages 215 to 216**. A copy of the Lawler Partners Management Letter for the year ended 30 June 2011, which is dated 9 September 2011, is at **pages 217 to 228**.
67. I attended a meeting of the Board on 10 October 2011, which was the first Board meeting following the annual general meeting that year. At this meeting, Jack presented to the Board, elections were held for Chair and Deputy Chair and delegations were reaffirmed, all in the manner which I describe above at paragraph 32 of this affidavit. A copy of the minutes of this meeting is at **pages 229 to 232**.

The ICAC investigation

68. In or around late December 2011 or early January 2012, Jack brought to my attention a complaint about him made by DLALC to the Independent Commission Against Corruption (ICAC).
69. On 20 January 2012 I called a meeting of the Board on very short notice which was held at 6.30pm that evening. I did not invite Jack to this meeting. A partial copy of the minutes of this meeting (which omits Motions 4 to 10) is at **pages 235 to 236**. I have not been able to locate a complete copy of the minutes of this meeting.
70. I called another meeting of the Board on short notice on 27 January 2012. A copy of the minutes of this meeting is at **page 237**.
71. I attended a meeting of the Board on 13 February 2012. A copy of the minutes of this meeting is at **pages 238 to 241**.
72. I received a letter in June 2012 from ICAC advising that the preliminary investigation into Jack had not disclosed any evidence to suggest corrupt conduct on the part of Jack and had been discontinued. A copy of this letter is at **page 246**.

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Other matters in early 2012

73. I attended a meeting of the Board on 19 March 2012. A copy of the minutes of this meeting is at **pages 242 to 243**. At this meeting, the Board passed Motion 4.2, which was a resolution to endorse the Jack's employment contract as it stood at May 2010. Although the minutes refer to *"the CEO's employment contract"*, it should be read as a reference to both Jack's employment contract with GLALC and Waawidji's agreement with GMSL. This is what was meant by the further phrase *"in its entirety"*. I recall that, at least as far as I was concerned, this motion was driven by a desire to show to external parties, namely NSWALC, that the Board was unified in accepting Jack's contracts and his remuneration structure. In my recollection, Jack's entitlement to the remuneration package which the Board endorsed in meeting in May 2010 was never questioned at a subsequent Board meeting. At this meeting, Jack addressed the Board and said words to the following effect:

"One of the issues that Stephen is raising with me is my pay. He says I'm double dipping being paid by GLALC and by GMS as well. That's the arrangement we agreed back in 2010. Even before that, I've always had expenses paid by GMS and I've always declared my interest in Waawidji."

74. Also at this meeting, following the advice from John Mero, the Board resolved to establish a Finance Sub-committee, which was to be deferred until casual vacancies had been filled. By this time, discussion of the GLALC Group finances was taking a large amount of time in the Board meetings. It was inefficient because of the complexity of the accounts. I also wanted the accounts to be presented in more detail. For example, I wanted to see non-consolidated figures for the different entities, and for the accounts to show comparative figures with the previous annual figures as well as with the present year's budget. I wanted this so that the GLALC Group finances could be more closely scrutinised. The purpose of the Finance Sub-committee was to allow for an opportunity for close scrutiny of the financial papers a few days prior to Board meetings at which they would be presented.
75. On 4 September 2012 Baker & McKenzie, one of GLALC's legal advisers at the time, sent a letter to the Minister. A copy of this letter is at **pages 249 to 250**.

The GLALC Group finances for the year ended 30 June 2012



76. I attended a Board meeting on 10 September 2012. At this meeting, the Board accepted the budgets for the 2012/13 financial year and the financial reports recommended by the Finance Sub-committee. A copy of the minutes of this meeting is at **pages 251 to 255**.
77. I attended a Board meeting on 30 October 2012, which commenced at or around 6.18pm and finished at around 10.32pm. A copy of the minutes of this meeting is at **pages 256 to 258**. This meeting was two days before the statutory deadline for GLALC to submit its audited accounts to NSWALC on 1 November 2012. Clayton Hickey of Lawler Partners was present as well as Bob Bell, another partner at Lawler Partners who had begun to assist Mr Hickey as the relationship between Mr Hickey and Jack and the Board had become progressively more strained over the preceding few months. At one point, the relationship became so strained that Mr Hickey refused to speak with Jack. He even took to emailing me on my personal email to avoid dealing with Jack. As I have already mentioned, there was always tension between GLALC and Lawler Partners but in this audit process, I found the conduct of the auditors to be especially unprofessional. At another point later in 2012, Mr Bell took over completely because the relationship with Mr Hickey had deteriorated to the point where it was completely unworkable.
78. Mr Hickey presented his draft audited financial statements, management letter and report to the Board at the meeting on 30 October 2012. Copies of the management letter and the report to the Board are at **pages 259 to 307**. A copy of the draft audited financial statements formed part of the Annual Report for that year, which is exhibited to Hillig's Affidavit. They included a disclaimer of opinion, which I understand to mean that Lawler Partners did not give an opinion on the audited accounts.
79. Prior to the meeting, a request had been made by Mr Hickey that he and Mr Bell meet with the Board without Jack present. At the start of the meeting, Mr Hickey said words to the effect of *"Why is Jack here? I thought we asked for this meeting to be in camera."* I replied with words to the effect *"Your request is denied. We're not having this meeting without Jack being here to take minutes and to advise us where necessary."* I note that Motion 3 passed at the meeting is to this effect. I cannot recall whether the motion was passed before or after the conversation above, but the issue had been discussed among the Board members before Mr Hickey and Mr Bell arrived.

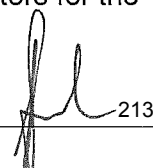



80. I cannot recall exactly what was said at the 30 October 2012 meeting in relation to the documents which Mr Hickey presented. I do remember that there was heavy debate about the content of the audited financial statements and the management letter and report, which were debated in detail with all members of the Board participating in the debate. Jack was present at the meeting with David Wing as his support person, but Jack was not permitted to engage in the debate directly. On a few occasions where a point of clarification was sought from Jack, this was provided by David Wing.
81. I recall that I felt that Lawler Partners had put GLALC in a very difficult position. I was aware that GLALC was required to provide a set of audited accounts to NSWALC within 2 days (by 1 November 2012) and if we did not, it was possible that an Administrator might be appointed over the Council. I and other members of the Board (from their statements during the meeting) were deeply concerned that there were a number of issues raised in the audit report and the management letter which were incorrect, reported incorrectly or inaccurately, and that the risk statement was exaggerated and that we could not deal with those issues adequately on such late notice. We discussed each and every item in the management letter and an agreement was reached between the Board and Mr Hickey as to amendments to be made to the audit and to the management letter. This agreement is recorded in Motion 4 passed at the meeting. I cannot recall what the precise amendments were but many of them related to the risk ascribed to matters raised in the management letter. My understanding of the agreement was that if these amendments were made, Lawler Partners would not disclaim their opinion and GLALC would sign off on the audit and the management letter.
82. Lawler Partners did not remove the disclaimer of their opinion and did not make any of the agreed amendments. Rather, Lawler Partners presented Rohan Tobler and I with a copy of the final disclaimed accounts on 1 November 2012. We signed off on them on 1 November 2012 so that they could be submitted to NSWALC that day, as required. I didn't feel like I had any other choice because GLALC needed to be compliant with ALRA by submitted its audit on time. A copy of the signed audited accounts with the disclaimed opinion is at **pages 308 to 347**.
83. The issue of having written service agreements between the various entities in the GLALC Group and with other entities such as DLALC and La Perouse LALC was raised by me with Jack in 2011 or early in 2012, and also by the auditors. Jack was in charge of managing the process of having these agreements drafted by lawyers, who to the best of my recollection were Gadens. In 2012 Baker & McKenzie were



engaged to assist GLALC to ensure that there were service agreements that covered all of the arrangements. Jack regularly reported to the Board on the progress of this project.

84. A copy of an email dated 29 October 2012 from Baker & McKenzie to Mikael Smith, who was the Chief Operating Officer at GLALC during 2012, along with an attached document which I recall seeing at around that time, is at **pages 348 to 355**. The services agreements were prepared and ready for signing by 30 October 2012. I remember signing at least 15 of these agreements on that day, before the Board meeting held in the evening. Motion 5 passed at the Board meeting refers to some of these agreements. The motion does not refer to agreements which do not involve GLALC but I do not know why that was the case. I do not have copies of these agreements.
85. At the meeting, I had a conversation with Mr Hickey which included words to the following effect:
- Mr Hickey: *"There needs to be service agreements between the companies and the Land Council."*
- Me: *"Those agreements are now in place. You need to amend your management letter and audit opinion accordingly. You can pick up signed copies on your way out."*
86. I note that in other, general, business dealt with at the meeting on 30 October 2012, the Board approved a draft CL&BP to be reviewed by Jack and put to the members for approval before it could be submitted to NSWALC. I discuss this further below.
87. On 4 December 2012, the Minister sent a letter to Jack. A copy of this letter is at **page 356**. I do not have a copy of Jack's letter of 19 November 2012 which is referred to by the Minister.
88. On 7 December 2012, Lawler Partners sent a letter to GLALC advising that Robert Bell would be taking over responsibilities for the remaining engagement of Lawler Partners from Clayton Hickey. A copy of this letter is at **page 357**.
89. I attended a meeting of the Board on 10 December 2012. Copies of the minutes of this meeting and the agenda for this meeting are at **pages 358 to 361**. At this meeting, the Board resolved to invite Lawler Partners to show cause at the next Board meeting as to whether or not they should be re-appointed as auditors for the

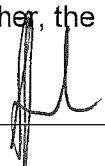
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next financial year. For my part, I felt aggrieved by the way we were treated by Lawler Partners in relation to the audit for the financial year just passed and although we had little option, I was eager to have somebody else appointed for the coming year. I believe the other Board members generally shared my views in this regard. I do not have a copy of the letter to Lawler Partners asking it to show cause.

90. One of the items on the agenda for this meeting was item 5.2 entitled "BDO Accountants", which was part of the report presented by Jack. I do not recall precisely what was discussed, but the issue for the Board was whether or not to appoint Tony Young of BDO as an independent accountant to review the financial statements, management letter and report to the Board prepared by Lawler Partners for the year ended 30 June 2012. As I have stated, the Board felt aggrieved by the conduct of Lawler Partners and by the "*no opinion*" audit they produced for this year. As far as I was aware, BDO were not on the list of auditors approved by NSWALC and I was confident Mr Young would be able to provide us with independent advice. The Board resolved to appoint BDO to undertake the review on the terms set out in an engagement letter which had been drafted by our solicitors and tabled with the Board papers. A copy of this letter, which was subsequently sent, is at **pages 362 to 364.**

Jack's 2012 contracts

91. A motion (recorded as Motion 4 in the minutes) was also passed at the meeting on 10 December 2012 to change the structure of Jack's remuneration. The proposal was for Waawidji to cease its entitlement to any remuneration from GMSL and in place of this entitlement, to enter into agreements with GTSL, GHSL and Marumali. Waawidji was to be paid a combined amount under these three agreements which was the same as its current entitlement from GMSL. The figures had to take into account the incremental pay rises Jack had accrued as part of his performance allowance since entering into the second set of contracts in May 2010. Put another way, I did not understand Waawidji (or Jack) to receive any further pay rise out of this rearrangement process. It was simply a process of reallocating how and from whom Jack would receive his remuneration for his services to the GLALC Group.
92. Copies of the proposed contracts with GTSL, GHSL and Marumali were included as part of the Board papers. The three contracts were for the most part identical with the agreement in place at the time between Waawidji and GMSL. That contract had been in place from May 2010. I do not recall exactly what was said, but my recollection is that the terms of the agreements were not discussed. Rather, the

discussion in the Board room was about which of the three entities had sufficient cash-flow to support a heavier allocation of Waawidji's total remuneration.

93. The handwritten notations on the copy of the agenda for this meeting, which is at **page 361**, were made by me during the meeting. I wrote "*tax minimisation*" next to item 3.2 of the agenda because this was the reason given for the restructuring of Jack's remuneration via Waawidji. I cannot remember why I wrote "*defer wording for bonuses*" and I do not know what this means, but it is possible we discussed some amendment to the wording of the bonus provisions in the contracts. I might have meant that the wording of the bonus provisions would need to be deferred because of inquiries by third parties such as Lawler Partners, but I cannot be sure.

The Investigator

94. A further issue on the agenda at the 10 December 2012 meeting of the Board was the recent appointment on 15 October 2012 by the Minister of a statutory Investigator to investigate the affairs of GLALC. I understand that the Investigator, who was Mr Kelvin Kenney of O'Connor Marsden was chosen from a list of investigators who had been approved by NSWALC. I know this because I recalled that O'Connor Marsden had been involved in a more confined investigation into GLALC in 2003. The appointment must have been made either on the recommendation of the Registrar or of NSWALC. GLALC had no input into the appointment. The appointment of an Investigator was a great disappointment to me because we had been attempting to mediate many of these issues with the Registrar at the time.
95. I remember being interviewed by the Investigator. I elected to have Jennifer Hughes, GLALC's solicitor attend the interview with me. I did this because I was concerned that what I would say would be misrepresented.

Further interaction with Lawler Partners and the Investigator

96. I attended a Board meeting on 18 February 2013. A copy of the minutes of this meeting is at **pages 365 to 368**. By this time, Clayton Hickey had refused to deal with Jack and Bob Bell was now the representative partner from Lawler Partners. I recall that we had asked Bob Bell to attend this Board meeting to show cause as to why Lawler Partners should be reappointed for the audit of the accounts for the financial year ended 30 June 2013 but Mr Bell did not appear, as is recorded in Motion 4 of the minutes. Motion 7 recorded on the minutes relates to the report which BDO as requested under the engagement letter referred to in paragraph 90 above.



97. In relation to other business dealt with at the meeting on 18 February 2013, Motion 10 relates to the draft CL&BP which is referred to in paragraph 86 above. There is an error in the minutes for Motion 10, which should refer to the members' meeting on 20 February 2013, not 13 February 2013.
98. I attended an ordinary meeting of the members of GLALC on 20 February 2013. At the meeting, the members resolved to accept the new CL&BP for 2009-2013. Copies of the notice, agenda and minutes of this meeting are at **pages 369 to 372**. A copy of the CL&BP as approved by the members is at **pages 373 to 430**. Ultimately, this edition of the CL&BP was submitted to NSWALC, who failed to either approve or reject it. No CL&BP has been in place since the expiry of the 2008 to 2011 CL&BP.
99. On 5 March 2013 I received a letter from Clayton Hickey, sent to me on my private email address. The letter annexes email correspondence between Mr Hickey and Damien Wright, a partner at BDO, on 5 and 8 February 2013. Copies of the email, letter and its annexure are at **pages 431 to 435**. I recall thinking it was inappropriate that this was sent to my private email. I also thought that it was unfair and unprofessional that Mr Hickey refused to reconsider his opinion following the request from BDO, especially given the consequences of his disclaimed opinion for GLALC, including that it acted as a trigger for the appointment of an Administrator. I recall they issued us an invoice for the costs of their legal advice. I do not recall if we paid those costs or not.
100. I attended a meeting of the Board on 25 March 2013. At this meeting, the Board noted the report by BDO dated 12 March 2013, which had been placed with the Board papers for this meeting. Copies of the minutes of this meeting, the agenda, and the BDO report are at **pages 436 to 454**. I remember feeling a great sense of relief and vindication at the contents of the BDO Report. In my view, the BDO report refuted many of the findings made by Lawler Partners. The Board passed a number of resolutions to instruct Jack to sever ties between GLALC and Lawler Partners and to have different auditors appointed for audit for the financial year ended 30 June 2013.
101. I no longer have copies of any of the relevant correspondence, but I recall that GLALC was never able to appoint different auditors for the audit of the financial statements for the next financial year. As I remember it, we were required to go through a process of giving notice to Lawler Partners. However, NSWALC had apparently already authorised them to conduct the audit of GLALC for the 2012/2013

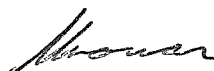
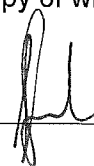


year. It struck me as unfair that we paid for Lawler Partners, who we desperately did not want to conduct the audit, and we were not able to give them notice to terminate the appointment.

102. On or about 11 April 2013, the Investigator issued his report. I understand that shortly after receiving the Investigator's report, GLALC's solicitors were instructed to retain Tony Young of BDO to undertake an independent review of the Investigator's report.
103. I attended a meeting of the Board on 24 June 2013. Mr Young of BDO also attended as a visitor to this meeting, as did Andrew Beatty of Beatty Legal, who was formerly of Baker & McKenzie and was one of GLALC's solicitors. At the meeting, Mr Young presented his draft report in response to the Investigator's report which was dated 24 June 2013. A copy of the minutes of this meeting is at **pages 457 to 459**. I recall that at this meeting, Jack was asked to leave the room while Mr Young discussed matters relating to the bonus paid to Jack for the financial year ended 30 June 2011. Mr Young addressed the Board and said words to the following effect:

"The Investigator has calculated an overpayment in Jack's bonus two years ago of about \$140,000. We have done our own calculations based on the contracts, our discussions with Shalesh and the financial documents we have been provided. I can't reach the figure which was ultimately paid to Jack, which was about \$320,000. However, I also think the Investigator's calculation of a \$140,000 overpayment is significantly overstated and according to my calculations, Jack was overpaid about \$57,000."

104. To the best of my recollection, Mr Young provided the Board with written calculations which showed how he calculated the overpayment as about \$57,000. I do not have a copy of these calculations. The Board agreed with Mr Young's calculation. For my part, I accepted Mr Young's calculations because in my view, he was completely independent. The Board passed the resolutions recorded as Motions 4 and 5 in the minutes.
105. The "Show Cause" letter referred to in Motion 6 was a letter by the Minister inviting GLALC to show cause why the Minister should not appoint an Administrator over GLALC on the basis of the findings in the Investigator's report. The response to the "Show Cause" letter was being drafted by our solicitors, with input from Jack and from consultants who were engaged by GLALC to provide public relations advice. The Board signed the cover letter to our response at this meeting, a copy of which is

referred to in paragraph 23 of Hillig's Affidavit and exhibited behind tab 5 of PH-1. However, Mr Hillig did not include the enclosure (being the actual response to the "Show Cause" letter). The enclosure includes the final signed version of the BDO Report presented to the Board in draft on 24 June 2013 (as referred to above at paragraph 103) as well as some of the written legal advices upon which GLALC acted, amongst other things. A copy of Jack's email to the Minister, the covering letter and its full enclosure is at **pages 460 to 605**.

David Lombe's Administration

106. In late August 2013, the Minister appointed David Lombe of Deloitte as the Administrator to some of the functions of GLALC. The Board of GLALC remained in place for the period of this Administration.
107. I attended an annual general meeting of the members of GLALC on 4 December 2013. A copy of the minutes of this meeting is at **pages 613 to 614**. I recall that Mr Lombe gave an oral and power-point presentation to the members at this meeting, in which he said words to the following effect:

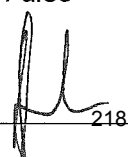
"The bonus paid to Mr Johnson in relation to the financial year for 2010-11 was miscalculated. The overpayment has been calculated as \$57,000. I have made my own calculations and arrived at a different figure. The difference is because of the interpretation in the contract and the financial documents. The matter has been resolved by the Board, who have accepted the \$57,000 calculation of the overpayment and made arrangements for repayment.

[...]

I have reviewed the financial records of GLALC and I have identified no unsubstantiated or fraudulent transactions. GLALC has kept proper records and accounting information."

108. Mr Lombe raised the issue of Jack's bonus with the Board at Board meeting in or around December 2013. I do not remember exactly when the Board meeting was and I do not have a copy of the minutes of this meeting. I do remember that he addressed the Board and said words to the following effect:

"I understand you have already ratified the calculation of the overpayment of Jack's bonus for the 2011 financial year which was made by BDO. I also



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understand you have made arrangements for Jack to repay the overpayment. However, I have arrived at a different calculation. I recommend that you reconsider your position, and pass a resolution requiring Jack to repay the overpayment based on my calculation."

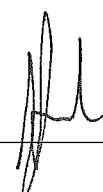
109. I do not recall exactly what was said in response, or by whom. I do remember that, at least for my part, I considered that the issue had been adequately dealt with. By this time, it had been over two years since Jack was paid the bonus and it had already been the subject of scrutiny by the Investigator and the auditor and, independently, by BDO. I considered that the matter had been put to rest by the Board and the appropriate arrangements for repayment had been made. I remember thinking that it was unfair to Jack for the Board to once more reconsider his bonus, especially considering he had done nothing wrong and the whole issue arose because of an accounting error. I also did not think there was any reason to prefer Mr Lombe's calculation over the independent review we had already received from BDO. I recall members of the Board saying words to the following effect:

"I can't believe we are discussing this again. We have dealt with this issue three or four times now."

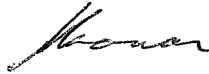
and

"It's not fair to Jack to keep reconsidering this. We've reached an agreement with him for him to pay back the overpayment that BDO has calculated."

110. I understand that Mr Lombe subsequently engaged in a series of correspondence with Jack regarding certain expenses, which he had claimed. I, along with the rest of the Board, signed a letter endorsing Jack's final response to Mr Lombe's queries on 18 February 2014. A copy of this letter is at **pages 615 to 616**. I did not hear any further about this issue and understood that to be the end of it.
111. On or about 19 March 2014 I received a letter addressed to the Board of GLALC from BDO. A copy of this letter is at **pages 617 to 622**.



Signature of deponent



Name of witness

AIDAN PATRICK MAX CAUDAR

Address of witness

C/- Lander & Rogers, Level 19, 123 Pitt Street, Sydney

Capacity of witness

Solicitor

And as a witness, I certify the following matters concerning the person who made this affidavit (the deponent):

- 1 I saw the face of the deponent.
- 2 I have confirmed the deponent's identity using the following identification document:

NSW DRIVER LICENCE

Identification document relied on (may be original or certified copy)

Signature of witness

