

Form 40 (version 3)

UCPR 35.1

AFFIDAVIT OF MARK JULIUS JOHNSON**AFFIRMED 18 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
Legal representative	Jonathan Gregson Melville Hunt, Lander & Rogers Lawyers
Legal representative reference	JHU:2045189
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AFFIDAVIT

Name Mark Julius Johnson

Address [REDACTED]

Occupation Aboriginal Affairs

Date 18 February 2016

I affirm:

1. My name is Mark Julius Johnson. I am also known as Jack Johnson. I am the first defendant in these proceedings.
2. Exhibited to me at the time of swearing this affidavit and marked "MJ-1" is a bundle of documents that I refer to in this affidavit. Where I refer to a document in Exhibit MJ-1, I do so by reference to the page number in the Exhibit, for example:

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

3. I am the sole director of Waawidji Pty Limited (**Waawidji**) and holder of 50% of the shares on issue. A copy of the Australian Securities and Investments Commission (**ASIC**) historical company extract for Waawidji is at **pages 1 to 3**.
4. I was employed as the Chief Executive Officer (**CEO**) of Gandangara Local Aboriginal Land Council (**GLALC** or **the Council**) from 26 February 2007 until about 17 March 2014.
5. I provided services as CEO of Gandangara Management Services Limited (**GMSL**) from 1 May 2010 until 30 June 2012, pursuant to an agreement entered into by Waawidji in or about May 2010.
6. I provided services as CEO of Gandangara Health Services Limited (**GHSL**), Gandangara Transport Services Limited (**GTSL**) and Marumali Limited (**Marumali**) from 1 July 2012 until about May 2015, pursuant to an agreement entered into by Waawidji in or about November 2012.
7. I have read the affidavit of Peter Hillig sworn in these proceedings on 22 October 2015 (**Hillig's Affidavit**).

Background

8. I was born in Sydney, New South Wales, on [REDACTED] I lived in Queensland from about 1987 until I moved back to New South Wales in 2007.

9. I studied law at Queensland University of Technology completing a Bachelor of Laws in 2005, a Graduate Diploma of Law and a Master of Laws in 2006. I did my articles of clerkship with Sparke Helmore and Gadens in Brisbane, Queensland.
10. I have over twenty years' experience in managing community based, not-for-profit Aboriginal organisations in Queensland and elsewhere. Most of these organisations were Incorporated Aboriginal Associations registered under the *Aboriginal Councils and Associations Act 1976* (Cth) and regulated by the Office of the Registrar of Aboriginal Corporations, as it was then known. Of these, I was the CEO of the Krurungal Aboriginal Corporation and the Piabun Aboriginal Corporation in Queensland for a total of about 15 years between them. These organisations did not undertake land claims or development.

My employment with GLALC

11. In or around November 2006 I saw an advertisement in a paper for the position of CEO of GLALC. I decided to apply for the position. I did not hear anything in response to my application until around mid-January 2007, when I was invited to attend an interview in Sydney in or around late January or early February 2007.
12. At the time, I was living in Harpers Creek, Queensland. I had never had anything to do with GLALC or any other Local Aboriginal Land Council (**LALC**) before. I did not know any member, office-holder or employee of GLALC, or indeed any person involved in the Council, in any other LALC, or in the New South Wales Aboriginal Land Council (**NSWALC**). I had never before encountered the *Aboriginal Land Rights Act 1983* (NSW) (**ALRA**), which I remember reading for the first time on my flight to Sydney for the interview.
13. The dysfunction of the organisation was apparent to me from my first introduction to GLALC. The office at the time of my interview was a mess. There were papers strewn over the counter, floors and tables. There was no apparent filing system. I recall that while I waited for my interview, I answered the phone and spoke with people who came to the counter because the office was otherwise unattended.
14. The interview was conducted by a panel which included Alan Hudson, who was then the Acting CEO of GLALC, Noel Robinson (a member of GLALC), Tracey Ontiveros (the Secretary of GLALC at the time) and another person whose name I cannot now recall. I remember that they asked me questions about the ALRA, which I was able to answer because I had the copy with me which I had been reading on the plane. I understood that the interview panel had been tasked with preparing a short list of




candidates for the CEO position which would be put to the members at a general meeting.

15. After my interview, there was a series of further telephone and email correspondence between me and Alan Hudson. Except for those which I describe in the following two paragraphs, I do not have any records of this correspondence and I cannot recall exactly what was said or discussed.
16. On 11 February 2007 I sent Alan Hudson a memo. A copy of this memo is at **pages 4 to 6**. I remember thinking that the salary on offer for the position was quite low but I understood that GLALC could not afford to support a higher salary because of its inconsistent cash flow, which at the time was largely dependent on government grants, collection of rent from some houses managed by GLALC and from time to time, by the sale of land acquired by GLALC.
17. On 14 February 2007 Alan Hudson sent me a letter. A copy of this letter is at **pages 7 to 8**. I flew to Sydney and attended the members' meeting on 21 February 2007 and the NSWALC forum on 22 February 2007 as requested by Mr Hudson.
18. The members' meeting on 21 February 2007 was the first time I was introduced to the members at a general meeting. Alan Hudson introduced me. Ms Karen Maltby was introduced at the same meeting as a candidate for the position of Finance Manager. I don't remember if the members voted for their preferred candidates at this meeting, or if that occurred at a subsequent meeting. I do remember that the contract for the position was not ready to be put before the members at this meeting.
19. The NSWALC forum on 22 February 2007 was about amendments to the ALRA which were due to come into effect in July of that year. Those amendments lifted many of the restrictions on the way that LALCs were able to deal with land they had acquired through successful claims over Crown land.
20. The amendments also radically changed the governance structure of LALCs. Before these amendments, the principal decision making body of a LALC was the members of the LALC, who made decisions in general meetings. LALCs had only three office holders: the Chairperson, Treasurer and Secretary. After July 2007, LALCs were required to elect from their membership a Board, which in turn was to elect a Chair and Deputy Chair. The day-to-day management of the LALC was the responsibility of the CEO.

21. At some point after the meeting on 21 February 2007 or the NSWALC forum on 22 February 2007, Alan Hudson said words to me to the following effect:

"Jack, you're going to get the job. We still have to have the contract approved by the members but in the meantime, can you move to Sydney and start working immediately?"

22. I decided to take the position, subject to approval by the members, and to start work. I did this because I thought that leading GLALC would be an interesting challenge. I had seen for myself the state of disorganisation that the Council was in. I was aware that GLALC was on the verge of being put into Administration. I was excited by the prospect of leading GLALC under the new ALRA, even though I did not have any experience in land acquisition or development. I thought that under the new ALRA, there was an exciting opportunity to benefit the local Aboriginal community and help them achieve financial independence from social welfare.
23. Although the salary which I had previously discussed with Alan Hudson was low, I was attracted by the incentive scheme in the contract. At the time, however, I was not aware of GLALC's potential in terms of the amount of Crown land it was able to claim. I did not appreciate the amount of money GLALC could potentially make through development and sale of successfully acquired land. I had no experience in land claims or development at the time, whether under the ALRA or otherwise. In my mind, the potential benefit of the incentive scheme was whatever I could salvage from good management of Government grants, principally by saving money on the expenditure of these grants by the Council. Management of the expenditure of Government grants was my experience with Krurungal and Piabun Aboriginal Corporations.
24. The terms of my employment contract with GLALC (**the 2007 Contract**) were not formally approved until an extraordinary general meeting of the members of GLALC on or about 11 April 2007. A copy of the 2007 Contract, which I have only recently located, is at **pages 9 to 32**. I have some recollection, but I cannot be certain, that there was at least one other general meeting between the meeting on 21 February 2007 and the extraordinary general meeting on 11 April 2007. At one of these meetings - I cannot remember which one - there was a lawyer present who answered members' questions about the contract. I was not present for this discussion.

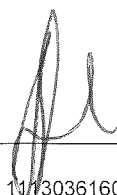


25. I attended the extraordinary general meeting on 11 April 2007 but I left the room when my contract was discussed and the vote was taken. I signed the contract shortly after this meeting and it was back dated to 26 February 2007.
26. At or around this time, Karen Maltby was also employed by GLALC in the role of Finance Manager. An unsigned copy of Karen's employment contract is at **pages 33 to 46**. I do not know if the signed copy was in the same form. Karen remained in the position of Finance Manager until she was replaced by Shalesh Gundar in April 2011.

Affairs of GLALC at the time

My plans for GLALC in 2007

27. Soon after joining GLALC, I set about introducing a number of initiatives which I thought could improve the operational and financial affairs of the Council as well as provide more services for the members. A number of these initiatives are listed in my Chief Executive Officer's Report in the Annual Report to members presented at the annual general meeting in or around early October 2007. A copy of the Annual Report is exhibited to Hillig's Affidavit. The initiatives include:
- (a) the retention of consultants with experience in land development (which I describe at paragraphs 29 and 30 below);
 - (b) the implementation of an asset register to keep track of the assets of GLALC and reduce asset write-downs in future accounts;
 - (c) the implementation of the Future Fund, which was a fund in which GLALC would set aside 80% of the profit realised from the sale of land developments.
 - (d) the establishment of a webpage to improve communication with members and facilitate the increase of member participation and involvement in the Council;
 - (e) an employment and training scheme to help local Aboriginal persons find employment by hosting resume writing and interview skills sessions; and
 - (f) the incorporation of companies related to GLALC to isolate the costs and expenses associated with particular land developments and manage the risks of those developments.



Land claims and developments

28. Soon after commencing work with GLALC, I began to familiarise myself with the land claims process. I did this by reading the ALRA and by inspecting whichever documents I could locate at GLALC. The filing system at GLALC was so poorly maintained that I could not easily identify which claims had been rejected, approved or remained pending and which were yet to be lodged. I recall reading all of documents relating to land claims I could find. I wanted to know why some claims were successful and why others were unsuccessful.

29. I recall a telephone conversation I had with David Wing at around this time. I knew David from my time with Gadens in Brisbane. He was employed by Gadens in an operating officer role on a part-time basis. Our conversation included words to the following effect:

David: *"Jack, why have you moved to New South Wales?"*

Me: *"I've read about these opportunities down here David. I've taken a job with a Local Aboriginal Land Council called Gandangara. They have a huge opportunity for claiming land and doing developments, but they have had some developments in the past that have gone badly. There's even an Act about one of them."*

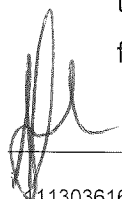
David: *"Land developments? That's what I do in my consultancy business!"*

Me: *"Is it really? Would you like to have a look at our situation please? I don't have any experience in land development."*

30. David began working with GLALC as a consultant assisting with land developments and from the second half of 2007, he regularly reported to meetings of the Board on the progress of developments.

31. One of the first tasks David and I undertook together was to look at maps of the Gandangara area and to identify which parcels of land were claimable. We decided that we needed to invest in software to keep track of which parcels of land were claimable and of those parcels, which ones GLALC had lodged claims for and what the result of those claims were.

32. There were several land developments which were contemplated by GLALC at the time. The most significant of these was Stage 2 of "Gandangara Estate". The land for Gandangara Estate had been successfully acquired by GLALC several years



earlier. Stage 1 of the development involved subdivision into multiple lots, which were sold then off individually. About half of the lots in Stage 1 of the Gandangara Estate development had been sold before 2007 but some of them had not yet been sold because of a dispute with NSWALC (which was required to approve land dealings of this kind). Stage 2 was another part of the estate and was anticipated to be capable of subdivision into another 30 or 40 lots. Other anticipated developments were known as Sproule Road and Lot 101.

33. A copy of a map which shows part of the Gandangara area is at **page 441**. I do not remember the circumstances in which this map was produced. The areas with the following markings roughly correspond with the following developments:

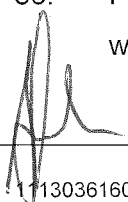
- (a) the area marked "D" is Stage 2 of Gandangara Estate;
- (b) the area marked "E" is Stage 1 of Gandangara Estate;
- (c) the area marked "H" is Lot 101;
- (d) the areas marked "A", "B", "C", "F", and "G" are other land claims which had been granted to GLALC at the time this map was produced, which I believe was in 2009 or 2010 but I cannot be certain.

The financial records and my pay

34. When I was first employed with GLALC in early 2007, the Council had been very poorly managed. Its financial records were not well maintained. It had accrued significant debts to the Australian Tax Office, to superannuation funds and to NSWALC which were unpaid. There was a large amount of plant and equipment on the books, which we did not have and which resulted in a write-down of assets in the audited accounts for the 2006-07 financial year of over \$750,000.

35. The task of reviewing GLALC's financial records was Karen's responsibility. This task involved working with the auditors to try and achieve an unqualified audit for the 2006-07 financial year. To do this, Karen essentially had to reconstruct the entire financial records of GLALC for the financial year to date because they were in such a state of disorganisation. The auditors were Lawler Partners. I understand this was the first year they were appointed auditors for GLALC from a list of approved auditors maintained by NSWALC.

36. I was very reliant on Karen in relation to the financial management of GLALC. This was especially the case in the first six months or so after I commenced working with



GLALC when our primary task was getting the Council's records into order. My pay was one of the things I was reliant on Karen to manage. I remember a conversation with her in or around mid-2007, which included words to the following effect

Karen: *"Jack, I don't quite understand how to process these payments in your contract. It's very complex and I'm confused about what to pay you."*

Me: *"Karen, I'm relying on you to work that out. You're doing a great job dealing with the auditors and the tax office. I don't have time to worry about the wording in my contract."*


37. My remuneration had a component payable to me and a component payable to Waawidji. I don't understand exactly how the payments were broken down by Karen, but I remember that I received a salary of about \$80,000 per annum.

Services provided by GLALC

38. At the time, GLALC mostly only provided housing and related services to the Gandangara community. GLALC owned more than 60 houses which it managed and rented out to members. It was essentially a social housing arrangement. The rent was below market. It was not well collected and in many instances the rent was significantly in arrears. The housing services provided were largely related to the management of the houses and included a small lawn mowing business.

The Future Fund

39. The Future Fund, which I refer to in sub-paragraph 27(c) above was approved by the members at a meeting in 2007. I do not have a copy of the minutes of this meeting. The idea was to set aside 80% of the profits achieved from any successful land developments undertaken by GLALC into a fund. The money in the Future Fund was not to be used for daily operational expenses of the Council but was only to be used for the growth of GLALC, for example by funding future developments.
40. The idea for the Future Fund came about because I saw how mismanagement of the funds which GLALC had received from the sale of the first set of lots in Stage 1 of Gandangara Estate had resulted in much of that money being lost. I was also aware that many of the other LALCs which had done land developments had spent all their money and had not retained profits for the growth of their organisations.



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41. I remember a discussion I had sometime in May 2007 with the Administrator of NSWALC at the time, William ("Smiley") Johnstone, which included words to the following effect:


Me: *"I want to set up this Future Fund. We're going to set aside 80% of the profits from developments and only reinvest them in the growth of the Council. I don't want our hard earned profits being squandered like they have been in the past and like they are at other LALCs."*

Smiley: *"I think that's a great idea. If you put that as a condition, I will approve the sale of the final lots in Stage 1."*

42. I do not have any records relating to this discussion or the agreement with NSWALC. I note, however, that the GLALC Annual Report for 2007-08, which is exhibited to Hillig's Affidavit refers under heading 13 to the resolution of the fall-out from the NSWALC-GLALC Gandangara Estate dispute and the establishment of the Future Fund from 80% of the profits from the remaining Lots in Gandangara Estate Stage 1. It also refers under heading 20 to the agreement between me and the NSWALC Administrator for the disposal of the final sixteen lots from the Gandangara Estate Stage 1 development during the 2007-08 fiscal period.
43. The sales of the final lots from the Gandangara Estate Stage 1 Development are recorded in the audited financial statements for the year ended 30 June 2008 (which is in the GLALC Annual Report for 2007-08 and is exhibited to Hillig's Affidavit) as bringing in \$5,752,141 in revenue to the Council.

The Board of GLALC

44. I was not a Board member of GLALC. I was not permitted to be under the ALRA. I attended each Board meeting on invite as a member of staff of GLALC. I presented a "CEO's Report" at each Board meeting, usually accompanied by a PowerPoint presentation which I projected from my laptop onto the wall. I also took the minutes of the Board meetings on my laptop. I did not record my attendance in the minutes. The minutes of each meeting were placed in the papers for the following Board meeting and on each occasion, were considered and accepted.
45. I attended the first Board meeting on 7 October 2007. A copy of the minutes of this meeting are at **pages 47 to 50**. At the meeting, the Board formally approved my position as CEO of GLALC, on the terms approved at the extraordinary general meeting on 11 April 2007 discussed above.



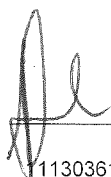
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46. Also at the meeting on 7 October 2007, I gave a PowerPoint presentation to the Board on the duties and responsibilities of Board members. I gave a similar presentation to the Board each year, usually in the first Board meeting after the annual general meeting in around early October, because often new Board members were elected at the annual general meeting. I no longer have a copy of my presentation on 7 October 2007, but I do have copies of later presentations, including one which I discuss below in paragraph 51 of this affidavit. One of the topics covered in my presentation was the declaration of pecuniary interests. I showed a slide which had a written declaration of my pecuniary interest in Waawidji. I showed this same slide each year when I gave this presentation, amended to show the dates at which I had previously made the same declaration.
47. The members of the Board of GLALC were required to attend training sessions held by NSWALC on corporate governance. However, I thought that it was in the interests of the Gandangara community that the Board of GLALC receive additional training. I arranged John Mero to provide this training. John was a consultant who gave sessions to boards on corporate governance. I can't remember how I was introduced to John Mero.
48. From around this time, John regularly gave the Board training. This occurred at retreats held in North Wollongong. I sometimes went to the retreats in North Wollongong. I would commute during the day on the Saturdays but I never stayed overnight. The Board usually went down on Friday nights and stayed the night. There were a couple of occasions on which I only attended half sessions but the Board preferred that I attend the full sessions. We did these retreats around twice a year.

My delegations

49. Each year, the scope of my authority to act on behalf of GLALC was described in a set of delegations which were passed by a motion of the Board. In the first two years after the formation of the GLALC Board, I was delegated authority by the Board to undertake activities on behalf of GLALC on an ad hoc basis. This often arose because I sought the authority of the Board to undertake certain activities referred to in my presentations to the Board at each meeting. In each case, the Board would debate and vote on the proposed delegation in the ordinary way.
50. From about 2009 onwards, the Board considered a set of delegations annually as well as the other delegations on an ad hoc basis. These (and other) delegations



were often hotly debated by the Board. I drafted a set of proposed delegations for the Board's consideration each year, usually for the first Board meetings after the annual general meeting. I usually started with the delegations from the previous year and worked out which delegations were still relevant. I also added proposed delegations for things which I expected to arise during the year.

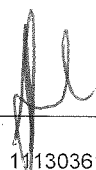
51. I was present for the debates about my delegations and often had to answer questions from the Board about the purpose and meaning of the proposed delegations. The Board meetings at which my annual delegations were discussed were usually the first Board meetings after the annual general meeting. This is because new members of the Board were elected at the annual general meetings. For the same reason, these Board meetings were also the same meetings at which I gave my presentation on the roles and responsibilities of Board members, including my declaration of pecuniary interest in Waawidji. Copies of the minutes and agenda of one such Board meeting on 12 October 2009 along with my presentation at that meeting are at **pages 64 to 76**.
52. Examples of specific delegations are set out in the following table, along with the date of the relevant Board meeting and the page reference of the copies of the minutes of that meeting. Also included are the annual sets of delegations, the dates on which they occurred and the page references to copies of the minutes of the relevant meeting.

Delegation(s)	Date of Board meeting	Page reference of minutes
Pending approval of the members at an extraordinary meeting, to proceed with the future finance and development with the aim of future sale and/or lease of Stage 2 Gandangara Estate, Lot 101 and Sproule Road.	19 November 2007	pages 51 to 54
Ensure all Crown Lands within the GLALC Statutory area are identified, indexed in an appropriate data base and GIS system and that Land Claims are lodged on behalf of the GLALC upon all Crown Lands.		
Commence negotiations with the NSW Government for all outstanding Land Claims and re-zoning in lieu of litigation.	10 March 2008	pages 55 to 56
The signing of all Stage 2 Contracts.	7 September 2009	pages 60 to 63

Delegation(s)	Date of Board meeting	Page reference of minutes
Annual set of delegations.	12 October 2009	pages 64 to 67
Investigate and if necessary make the necessary arrangements to purchase real property as required to ensure the progress of the Medical Centre.	14 December 2009	pages 88 to 90
Annual set of delegations.	15 November 2010	pages 116 to 124
Annual set of delegations.	10 October 2011	pages 131 to 134
Purchase a new bus for GTSL	13 February 2012	pages 141 to 144
Ensure that the draft CL&BP complies with legislation and Gandangara's needs and once this is established, to seek resolution by the GLALC membership, at the first opportunity available.	30 October 2012	pages 150 to 152
Annual set of delegations.	18 February 2013	pages 229 to 232

The GLALC Group

53. GLALC was required under the amended ALRA to prepare a Community Land & Business Plan (**CL&BP**) in consultation with the Gandangara community. The CL&BP was required to be approved by the members of GLALC and submitted to NSWALC for approval.
54. The first CL&BP is exhibited to Hillig's Affidavit (**2008 CL&BP**). It was approved by the members of GLALC in or about late 2007 or early 2008. At the time GLALC was preparing its 2008 CL&BP, I understood the purpose of the plan to be primarily a way of increasing the community's engagement in the Council, including by keeping them informed of the direction that the Council was going. GLALC struggled to get the community engaged and involved in the formulation of the 2008 CL&BP.
55. To the best of my understanding, the 2008 CL&BP has a "DRAFT" watermark because it was never officially approved by NSWALC. The 2008 CL&BP was sent to NSWALC with the watermark on it because I understood that it was not a final version until it had been approved by NSWALC.
56. I did not appreciate that the CL&BP was or would become a document which NSWALC would expect GLALC to strictly and inflexibly adhere to. I do not mean that



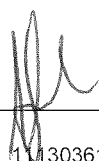
the 2008 CL&BP was not accurate, but it quickly became outdated because it did not anticipate (and could not have anticipated at the time it was drafted) the rapid growth which GLALC subsequently experienced. When this became apparent, GLALC took measures to update the CL&BP, which despite member approval, was not approved by NSWALC. I refer to this at paragraph 79 below.

57. One of the features of the CL&BP is the establishment of a corporate group to facilitate the growth of the business enterprises undertaken by GLALC. I refer to these corporate entities together with GLALC as "**the GLALC Group**". The purpose of the companies in the GLALC Group was to segregate different aspects of the GLALC business, to quarantine and manage risk, and to improve management and accounting.
58. Initially the corporate entities were predominately used for particular developments. Later, corporate entities were incorporated to manage particular services provided by the Council. This was in part because GLALC hoped to secure some government grants which would only be given to corporate entities (ie not LALCs).
59. The first companies in the GLALC Group were incorporated in or around September or October 2007 and were approved in Motion 6 passed at the Board meeting on 7 October 2007. Some of these companies related solely to particular developments (for example, Gandangara Estate Stage 2 Pty Ltd), while others related to particular aspects of the operational affairs of GLALC (for example Murrin Ngura Pty Ltd). Murrin Ngura was responsible for housing services. It collected rent, employed lawn mowers and was responsible for the maintenance of the houses. Murrin Ngura was always treated as a separate "cost centre" for many years prior to me joining GLALC. This was because the housing up until about 2007 was the primary service offered to the community.

The growth of GLALC from 2007 to 2010

Land claims and development

60. The number of land claims lodged by GLALC increased rapidly following the introduction of the software and the register which GLALC maintained, which are discussed in paragraph 31 above and which were the subject of the Board resolution at the meeting on 19 November 2007 set out in the table after paragraph 52 above.



61. By the end of the 2008-09 financial year, GLALC had lodged over 2000 new land claims. The vast majority of these lay unresolved but each year GLALC would typically be granted several parcels of land.
62. Many of the developments in this period encountered significant opposition from Sutherland Shire Council. Because of my legal background, I was often closely involved in the process of retaining lawyers to conduct litigation with the Shire Council and other entities in relation to development applications, native title declarations and other similar matters.
63. The most significant completed development in this time was the sale of the remaining lots in Stage 1 Gandangara Estate in the 2007-08 financial year, which I refer to above in paragraph 43.
64. Lot 101 and Stage 2 Gandangara Estate were sold off in the 2010-11 financial year. Ultimately, Lot 101 was sold off undeveloped because disputes with Sutherland Shire Council about the development application became too burdensome for the development to be profitable. Sproule Road was also sold off undeveloped because of similar difficulties in 2013.
65. The largest anticipated development to be undertaken by GLALC was known as "Barden Ridge", and later became known as "Heathcote Ridge". It had the potential to be designated a State Significant Site and achieved this designation in or around early 2011. I began investigating the potential for this development in late 2007 or early 2008. In a Board meeting on 22 September 2008 the Board resolved to authorise me to investigate one particular land claim which was for a parcel within Barden Ridge for the purpose of instigating a development which may reach the size of a project that attracts the status of a State Significant Project. A copy of the minutes of this meeting is at **pages 57 to 59**.
66. Barden Ridge was anticipated to be a long term project of GLALC which occupied a large amount of our efforts right until GLALC was put into Administration in 2013. An example of some of the steps taken include entering into an agreement with the Federal Government for a strategic assessment of the development of Heathcote Ridge which I signed on 27 October 2011. A copy of this agreement is at **pages 135 to 140**.

Rent

67. As I mentioned in paragraph 38 above, the rent for the community housing owned and managed by the GLALC Group was below the Aboriginal Housing Office (AHO) rates and was often in arrears. I wanted to take steps to raise the rent to more closely reflect AHO rates because I wanted GLALC to help achieve financial independence and security for the Aboriginal population, not to increase what I considered to be a cycle of dependence on social welfare. I also thought the enforcement of rent collections was important for the financial stability of GLALC. This included evicting tenants who failed to keep up with their rent payments.
68. The issue of rent was difficult for the Board to confront. This is because the Board was composed of members of the community who were closely involved with, and often directly related to, the tenants in question. I was given wide authority to deal with the rent situation because the Board wanted to remain distant from the issue, whereas I was not from the community itself and was in a better position than anybody else to be responsible for this role.
69. My efforts raising the rent to more closely reflect AHO rates and enforcing collections of rent lead to an increase in receipts from tenants over the years. For example, the audited accounts (which are in the Annual Reports for each year, which are exhibited to Hillig's Affidavit) show the improvement in rental income and recoveries as set out in the following table. I note that the number of properties rented out by GLALC did not increase during this time.

2005-06	\$351,150
2006-07	\$357,109
2007-08	\$407,934
2008-09	\$564,342
2009-10	\$828,759

Other services

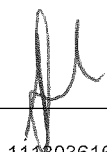
70. Over the years from 2007 to 2010, GLALC was able to introduce a number of new and expanded services which it provided to the Gandangara community. These include:


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- (a) transport services which initially were for disabled and aged care. Transport was one of the most popular services and it grew rapidly. It later was used in conjunction with our health services;
 - (b) employment and training services which grew to include cadetships and placement relationships with local businesses such as Woolworths;
 - (c) education services such as playgroups to introduce Aboriginal children to local schools as well as an Early Intervention program to identify learning difficulties in young Aboriginal children; and
 - (d) health services which culminated in the opening of a medical practice in July 2010 and which also included health services to Aboriginal children in local schools. We wanted to expand these services to include mobile general practitioner and dental health services to schools in the local community.
71. Many of the services provided by the GLALC Group, including those listed above, were not profitable by themselves. They were funded by government grants and other income received by the GLALC Group.

Finances

72. The financial affairs of the GLALC Group became more and more complex as the enterprise expanded. Between 2007 and 2010 the financial term grew to include two finance officers who assisted with book keeping and data entry. An accountant named Susan White was employed in or around September 2010. Ms White and the two finance officers reported to Karen Maltby.
73. I would often present the accounts to the Board, but sometimes I was assisted by Karen in this task. A few days before each meeting, her and I would go through the accounts on a line-by-line basis. Karen and I would discuss the entries in the accounts, consider any significant issues which arise out of them and prepare for the presentation of the accounts to the Board.
74. The accounts themselves grew considerably in complexity over the years from 2007 to 2010. This was for at least the following reasons:
- (a) the number of entities within the GLALC Group grew;



- (b) the number and size of services provided by the GLALC Group grew, which had an effect on the bills and accounts which were managed by the finance team on a day to day basis;
- (c) the number of consultants and other external parties with dealings with the GLALC Group expanded; and
- (d) the reporting and compliance obligations of the GLALC Group imposed because of the grants from various Government and other entities became increasingly onerous.


75. The GLALC Group received an unqualified audit from the auditors, Lawler Partners, in respect of the financial statements for each of the financial years ended 30 June 2007, 2008, 2009, 2010 and 2011.

Community engagement

76. Between 2007 and 2010 (and onwards) the GLALC membership expanded significantly. When I joined GLALC the membership was about 300 members. In or around September 2010, the membership was about 500. By the end of 2012 the membership had expanded to over 550.
77. During this period, I regularly presented to the members at annual, ordinary and extraordinary general meetings. These meetings were initially held at the GLALC offices at Moore St, Liverpool, but from about July 2009 we had to hire out a lecture hall at the local TAFE to accommodate the number of members who would attend the meetings.
78. My presentations at extraordinary general meetings, which were held for the purposes of seeking the members' approval for certain land dealings, were detailed. A copy of one such presentation, given at a meeting on 2 December 2009, is at **pages 77 to 87**.

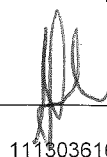
The restructure of GLALC

79. The GLALC Group was restructured in early 2010 by the incorporation of a number of new corporate entities which were public companies limited by guarantee. The Board approved this restructure in a meeting on 15 February 2010. A copy of the minutes of this meeting is at **pages 91 to 93**. At this meeting, the Board also delegated to me the responsibility to make the relevant amendments to the CL&BP.



Ultimately these (and other) amendments were made and approved by the members of GLALC but were never approved by NSWALC.

80. As part of the restructure, the existing proprietary limited companies were wound up and eventually deregistered pursuant to a motion passed by the Board on 11 July 2011. A copy of the minutes of this meeting is at **pages 125 to 130**.
81. Gandangara Development Services Limited (**GDSL**) was one of the new companies. GLALC was the sole member of GDSL. In turn, GDSL was the sole member of several other companies, including GMSL, GTSL and GHSL. The restructure was done this way because the Board decided (and I agreed) that this was the best way to achieve our goals without coming into conflict with either the ALRA or the *Darkinjung* decisions. I was aware of the litigation involving Darkinjung LALC in 2006 and which was ongoing. I had read these decisions. In very broad terms, the goals which I have just referred to were:
- (a) Aboriginal wealth creation; and
 - (b) service provision to Aboriginal people.
82. The Board considered, and I agreed, that the ALRA regulatory regime was too restrictive and that these goals could be better pursued by ASIC registered companies. I also thought that there was uncertainty about the new ALRA amendments (which I have discussed above) and their effect on proposed developments and service delivery by LALCs such as GLALC. While we endeavoured not to breach these provisions, we frequently required and sought legal advice, some of which I refer to at paragraph 86 below. In my view, there was more certainty under the *Corporations Act 2001* (Cth) and the regulatory regime under ASIC.
83. In broad terms, GMSL became the entity responsible for the management services undertaken by the GLALC Group. This included asset management, development services, finance and accounting services. GMSL was also the employer of most of the staff of the GLALC Group, with the exception of me (an employee of GLALC) and other staff who performed specific functions for GTSL or GHSL and were employed by those entities, such as drivers or health staff. GMSL was also the entity through which most of the consultants were engaged.
84. GMSL provided its services to other entities in the GLALC Group, including GLALC itself, as well as to other LALCs and their related corporate entities. These were



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done pursuant to service agreements which were initially not fully documented but which were gradually formalised.

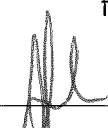
85. It was a term of the contracts of each of the GLALC Group entities incorporated in 2010 that the Board of that entity was to be constituted identically to the Board of GLALC itself. For this reason, Board meetings from 2010 were held concurrently as meetings of the Boards of all relevant entities. When I refer to Board meetings in this affidavit, I refer to the meetings of the Boards of all relevant entities, unless otherwise stated or the context otherwise requires.
86. The restructure of the GLALC Group in 2010 came after extensive consultation with legal advisors in order to ensure that the restructure was done in a way that was compliant with the requirements of the ALRA. I, on behalf of GLALC, sought legal advice from one of the firms of solicitors retained by GLALC, Baker & McKenzie, on the corporate restructure and other matters. Baker & McKenzie provided various letters and emails with advice, as well as oral advice in conference or on the telephone. They also procured written advices from:
- (a) Mr Coles QC and Mr Wright, who provided a memorandum of opinion on 5 May 2010
 - (b) Mr Ellicott QC and Mr Wright, who provided a memorandum of opinion on 15 September 2010
 - (c) Mr Galasso SC and Mr Wright, who provided memoranda of opinion on 31 May 2011, 17 April 2011 and 2 June 2011.
87. These advices appear in GLALC's response to the Minister's Show Cause letter discussed in paragraph 135 below. Copies are at **pages 309 to 361**.
88. [REDACTED]
[REDACTED] I kept the Board informed of my on-going discussions with Mr Wright.
89. On or about 29 June 2010 I received a letter from Mr Wright. A copy of this letter is at **pages 97 to 99**. The letter was included with the papers for the Board meeting on 5 July 2010 and noted by the Board. A copy of the minutes of this meeting is at **pages 96A to 96C**. I do not have copies of the earlier correspondence referred to in Mr Wright's letter. I note that we had never transferred real property to a related entity.

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90. My correspondence with Mr Wright was again raised at the meeting of the Board on 13 September 2010. At this meeting, the Board passed a motion for me to respond to Mr Wright's enquiries about the restructure. A copy of the minutes of this meeting are at **pages 108 to 110**.
91. The correspondence which followed was tabled with the papers at the next Board meeting on 15 November, a copy of the minutes of which are at **pages 116 to 124**. This correspondence included:
- (a) a letter from Mr Wright to me on 29 June 2010 referred to in paragraph 89 above;
 - (b) a copy of a memo from me to Mr Wright dated 2 August 2010, a copy of which is at **pages 100 to 103**;
 - (c) a letter from Mr Wright to me dated 23 August 2010, a copy of which is at **pages 104 to 107**;
 - (d) a letter from me to Mr Wright on 20 September 2010, a copy of which is at **pages 111 to 112**; and
 - (e) an email from Mr Wright to me on 12 November 2010, a copy of which is at **pages 113 to 115**. I do not have a copy of the letter from Baker & McKenzie to me dated 25 October 2010 referred to in Mr Wright's email.

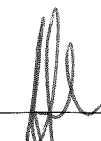
The 2010 Contracts

92. The three year term of the 2007 Contract was due to expire on 31 May 2010. At or around this time, I believed that GLALC had achieved much under my management, including the growth and particular achievements discussed in paragraphs 60 to 78 above. I thought that I was underpaid at the time, not only because of what I had achieved but also because of the increase in my responsibility as the enterprise continued to grow. I thought that it was fair to expect a pay rise when the terms of my employment were renewed. I believed that if I sought employment elsewhere, I could command a much higher salary.
93. In or around March or April 2010, I began to have discussions with Cindy Cronan, the Chair of the GLALC Board at the time, about the terms of my employment and more particularly, my salary. I knew that the CEOs of Aboriginal Medical Services organisations were being paid around \$180,000 per annum and I thought this was a fair figure to request when my employment contract was renewed. The proposal was



for my remuneration package to be split between GLALC and GMSL under two agreements (together, **the 2010 Contracts**).

94. One of the 2010 Contracts was an employment agreement entered into by me and GLALC under which I agreed to be employed as the CEO of GLALC for a further five year term (the **GLALC Agreement**). A copy is exhibited to Hillig's Affidavit. The salary under the GLALC Agreement remained the same \$80,000 plus 9% superannuation, which is about what I had been paid under the 2007 Contract.
95. The second of the 2010 Contracts was an agreement between Waawidji and GMSL under which I was required to provide my services as CEO of GMSL (the **GMSL/Waawidji Agreement**). This agreement reflected the fact that by this stage, a very large proportion of my work was undertaken on the management services side of the GLALC Group enterprise. This work was being done by GMSL, not only for other GLALC Group entities but also for other LALCs. This included liaising with other LALCs and their corporate groups for the purposes of bringing in work for GMSL and generating revenue. For these reasons, the balance of my pay increase was embodied in the GMSL/Waawidji Agreement.
96. Both of the 2010 Contracts included a "Part 7- Performance assessment" section in similar terms. Like the equivalent section in the 2007 Contract, this section provided for performance allowance made up of a lump sum payment and an incremental increase to the overall remuneration in the following year. It also provided for a results bonus based on the surplus achieved in that year.
97. I had very little involvement in the process, calculation or the payment of my lump sum payments or the results bonus. My understanding is that the performance assessments were done based on the reviewers' perceptions of my work during the year. I never saw my performance reviews. I believe, but I cannot be certain, that the Board chose the delegates to undertake the review. I do not know what any of my performance ratings were. The process was managed by the Finance Manager. I had no involvement in the calculation of any performance allowance or bonus, which was calculated by the Finance Manager. My only involvement was to raise an invoice based on the advice of the Finance Manager, which was the amount of money and the description.
98. I attended a Board meeting 3 May 2010 at which the terms of my employment were on the agenda to be discussed by the Board. Copies of the minutes and the agenda for this meeting are at **pages 94 to 96**. I was asked to leave the meeting when the



Board discussed my proposed contracts. Ultimately, the Board resolved to accept the 2010 Contracts.

My 2010-11 Bonus

99. In or about June 2011, Shalesh said to me words to the following effect:

"Jack, your bonus for this year is \$316,738.41. Draw up a Waawidji invoice described as the reimbursement for expenses incurred on behalf of GDS during the period from July 2008 to June 2011 and submit it to me so I can process the payment."

100. Copies of what Mr Hillig calls the First Bonus Invoice and the Second Bonus Invoice are exhibited to Hillig's Affidavit. They are on Waawidji letterhead and were submitted to Shalesh for payment in late June and early July 2011, respectively. I can't remember why the bonus was split into two invoices and paid as two payments.

101. I refer to paragraphs 61 and 62 of Hillig's Affidavit. I do not know what the "admissions" are of, which Mr Hillig says I made in the passage from the examination transcript set out in paragraph 61 of his affidavit. The descriptions on the First and Second Bonus Invoices were mistakes on my part only in the sense that I was aware that those invoices represented my bonus which I was contractually entitled to claim but that the descriptions on the invoices are incorrect.

102. I refer to paragraphs 63 to 66 of Hillig's Affidavit. At the time, I was not aware of the transfers referred to in paragraphs 63 and 65. Shalesh had access to and control over payments out of the bank accounts. I didn't authorise any such payments at any time. I didn't operate the bank accounts. Although I did have an electronic toggle to access the NAB bank account in my name, we kept that toggle locked in a safe. I did not use it and I did not want others to use it.

The ICAC investigation

103. In or about mid-January 2012, I was suspended from my position as CEO by the Board. This happened after the Board learned of a complaint that Deerubbin LALC (DLALC) had made about me to the Independent Commission Against Corruption (ICAC). It was me that brought the existence of the complaint to the Board's attention.

104. DLALC was one of the entities which GMSL had done work for in the way which I referred to in paragraph 84 above. There had been an ongoing dispute between

DLALC and GLALC about payments for the services provided by GMSL which had become quite bitter. I thought that the complaint to ICAC was a form of revenge by the CEO of DLALC.

105. I was surprised when the Board suspended me because I thought they would also have recognised that the complaint was disingenuous. I also thought they would have given me the opportunity to explain the situation before taking any action like they did. This incident is an example of the ebbs and flows in my relationship with the Board of GLALC. Sometimes the Board would accept my arguments and sometimes they would not.
106. In June 2012 ICAC sent a letter stating that there was no evidence to suggest I had been involved in any corrupt conduct and that their investigation had been discontinued. A copy of the letter is at **page 147**.

The Finance Sub-committee

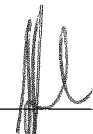
107. The process of reviewing the finances with Karen Maltby on a line-by-line basis prior to presentation of the accounts at Board meetings referred to in paragraph 73 above continued with Shalesh Gundar when he replaced Karen in April 2011. The financial accounts dramatically increased in complexity following the restructure of the GLALC Group in 2010 and the incorporation of a number of new entities which had to be accounted for separately and on a consolidated basis.
108. The management accounts were often the subject of considerable discussion at the Board meetings. Certain Board members, including Cindy Cronan, would frequently ask questions about particular entries in the accounts. By 2011, the discussion of the accounts at the Board meetings was often taking a very long time and was stretching the Board meetings out to several hours in length. The meetings were held in the evenings when most of the Board members had finished work. It was not feasible to have lengthy Board meetings to discuss the accounts in such a level of detail.
109. I attended a Board meeting on 19 March 2012 at which the Board resolved to establish a Finance Sub-committee. A copy of the minutes of this meeting is at **145 to 146**. The Finance Sub-committee held meetings around a week before each Board meeting. To the best of my recollection, Cindy Cronan, George Bloomfield and John Dickson from the Board were on the Finance Sub-committee. At the Finance Sub-committee meetings, the accounts were discussed in detail on a line-by-line basis similarly to what had previously occurred between me and Karen or Shalesh.

The Investigation

110. On 4 September 2012, Baker & McKenzie sent a letter to the Minister. A copy of this letter is at **pages 148 to 149**.
111. On 15 October 2012, the Minister for Aboriginal Affairs (**the Minister**) appointed Mr Kelvin Kenney of O'Connor Marsden as an investigator to investigate the affairs of GLALC (**the Investigator**).
112. On 19 November 2012 I sent a letter to the Minister. A copy of this letter is at **pages 213 to 219**.
113. On 4 December 2012 I received a letter from the Minister. A copy of this letter is at **page 220**.

The 2011-12 Accounts

114. The financial accounts for the year ended 30 June 2012 were the subject of prolonged debate between me and Shalesh on the one hand, and the auditors, Lawler Partners, on the other. This exchange began shortly after the end of the financial year and continued right up until when the signed accounts were provided to NSWALC on the statutory deadline of 1 November 2012. Failure to submit the accounts on time could trigger the appointment of an Administrator.
115. To meet this deadline, a practice had developed between Lawler Partners and GLALC for the audit to be provided to the Board by September each year so that there was time for the audit and management letter to be considered by the Board and any amendments made before it was submitted to NSWALC. To facilitate meeting this deadline, Lawler Partners would undertake an interim audit in or around April of each year. Lawlers Partners were retained and paid for by GLALC but they were chosen from an approved list of auditors maintained by NSWALC.
116. I was surprised by the difficulty which we experienced dealing with Lawler Partners in relation to the audit of the 2011-12 accounts. Lawler Partners had previously provided unqualified audits for the years ended 30 June 2007 to 2011 and had done so in accordance with the practice and timetable I have just described. For these earlier audits, Lawler Partners had for the most part been helpful and we had what I would consider a good working relationship. After each of these audits, I and the Board considered and attempted to follow the advice of Lawler Partners and to



implement the recommendations they made in their managements letters that accompanied each audit.

117. I attended a meeting of the Board on 30 October 2012. A copy of the minutes of this meeting is at **pages 150 to 152**. Mr Hickey and Mr Bell of Lawler Partners also attended this meeting. I recall that Mr Hickey addressed the Board and said words to the effect of *"What is Jack doing here? I thought we agreed to have this meeting without him."* I recall that the Board then passed a motion noting Mr Hickey's request to hold the meeting without me and noting the Board's rejection of this request. David Wing was also present at this meeting. He had been invited by the Board.
118. Mr Hickey presented a draft audit report which included a statement that Mr Hickey could not give an opinion on the audit, as well as a draft management letter at the meeting in the evening on 30 October 2012, which was two days before the statutory deadline for submission to NSWALC. A copy of the draft management letter is at **pages 153 to 172**. Many of the matters set out in the draft audit report and management letter were strongly disputed by the Board. The debates were detailed and lengthy and the meeting took over four hours. The Board suggested a number of changes and ultimately passed a motion to accept the Audit and the Auditor's letter subject to those changes being made.
119. Ultimately, the financial statements for the year ended 30 June 2012 were signed by Cinderella Cronan and Rohan Tobler on 1 November 2012, the day they were required to be submitted to NSWALC. A copy of the signed financial statements is at **pages 173 to 212**. The audit report contains a disclaimer of opinion in which Mr Hickey states that Lawler Partners does not express an opinion on the financial report.
120. A copy of a letter sent to me by Mr Bell of Lawler Partners dated 7 December 2012 is at **page 221**.
121. The Annual Report was received by the members of GLALC at an annual general meeting on 12 December 2012. A copy of the minutes of this meeting is at **page 228**.

My 2012 Contracts

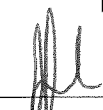
122. The structure of my remuneration (including the portion of that remuneration paid to Waawidji) was again changed in mid to late 2012. The overall total remuneration which I received from the GLALC Group remained the same (accounting for

incremental increases due to the performance allowance). That is to say, unlike when the 2010 Contracts came into effect, I was not given a pay rise when the new contracts were entered into in 2012.

123. The effect of the arrangement was that my entitlement to remuneration under the GMSL/Waawidji Agreement was split into three contracts into by Waawidji with GHSL, GTSL and Marumali, respectively (together, the **2012 Contracts**). The remuneration formerly payable to Waawidji by GMSL was split into three shares, to be paid by GHSL, GTSL and Marumali, respectively. Copies of what Mr Hillig calls the GHSL/Waawidji Agreement, GTSL/Waawidji Agreement and Marumali/Waawidji Agreement are exhibited to Hillig's Affidavit.
124. The 2012 Contracts were included with the Board papers for the meeting of the Board on 10 December 2012. A copy of the minutes of this meeting is at **pages 222 to 224**. At this meeting, the Board resolved to terminate the GMSL/Waawidji Agreement effective retrospectively to 30 June 2012, and to replace it with the GHSL/Waawidji Agreement, the GTSL/Waawidji Agreement and Marumali/Waawidji Agreement. I continued to be CEO of the whole GLALC Group.
125. The 2012 Contracts also included a "Part 7- Performance assessment" section in similar terms to the 2010 Contracts and the 2007 Contract before them. Like the equivalent section in those earlier contracts, this section provided for performance allowance made up of a lump sum payment and an incremental increase to the overall remuneration in the following year. It also provided for a results bonus based on the surplus achieved in that year.

Appointment of BDO

126. In or about early December 2012, I asked GLALC's legal advisors in relation to compliance with the ALRA and other matters, Baker & McKenzie, to retain Tony Young of BDO to review the qualified audit report and the management letter and report to the Board prepared by Mr Hickey in respect of the 2011-12 financial year. Specifically, BDO were asked to comment on the risk rating ascribed to various aspects of the corporate governance of the GLALC Group by Mr Hickey.
127. I attended a Board meeting on 10 December 2012. A copy of the minutes of this meeting is at **pages 222 to 224**. Included in the Board papers for this meeting was a letter of instruction to Tony Young of BDO prepared by Baker & McKenzie bearing the same date but not yet sent. The Board resolved to send the letter to appoint BDO. A copy of this letter is at **pages 225 to 227**.



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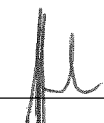
128. I attended a meeting of the Board on 25 March 2013. A copy of the minutes of this meeting is at **pages 245 to 250**. The first report produced by BDO and dated 12 March 2013 was included in the papers for this Board meeting and was noted by the Board. A copy of the 12 March 2013 BDO Report is at **pages 233 to 244**.
129. The Investigator issued his report on or about 11 April 2013. A copy of the report is exhibited to Hillig's Affidavit. I recall instructing Baker & McKenzie shortly after receiving the report to instruct Mr Young to review the contents of the Investigator's Report.
130. On or about 22 May 2013 the Minister wrote to GLALC requesting that GLALC show cause as to:
- (a) why the Minister should not appoint an Administrator to GLALC following the findings of the Investigator; and
 - (b) why the Minister should not issue a direction under section 223B of the ALRA in the interim.

A copy of this letter is at **pages 251 to 252**.

131. On 24 May 2013 I sent two letters by email to the Minister. Copies of the letters and the covering emails are at **pages 253 to 258**.
132. I attended a meeting of the Board on 24 June 2013. Mr Young also attended this meeting, as did Mr Andrew Beatty of Beatty Legal (who had formerly been a partner at Baker & McKenzie). A copy of the minutes of this meeting is at **pages 259 to 261**. I was asked to leave the meeting. I was not in the room when Mr Young presented to the Board.
133. I remember that I was called back into the Board room. When I got there, Cindy Cronan said words to the effect of:

"Jack, Mr Young has calculated that you were overpaid your 2010-11 bonus by \$57,000. We've resolved that you have to pay this money back. We think it's fair for you to pay it back out of your future bonuses."

134. I remember being shocked by this announcement. I was particularly unhappy that the Board had made this decision without giving me an opportunity to discuss it with them. I had no idea there had been any error in the calculation of my bonus and I



was not expecting to be told I had to repay any of it. After the meeting, I had a conversation with Shalesh which included words to the following effect:

Me: "Shalesh, do you agree with Tony Young's calculations?"

Shalesh: "Yes."

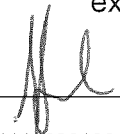
Me: "I'll just have to cop it on the chin then."

David Lombe's Administration

135. On 28 June 2013 I sent an email to the Minister attaching GLALC's response to the Minister's show cause letter dated 22 May 2013 described at paragraph 130 above. Copies of this email and its attachment are at **pages 262 to 407**.
136. On 20 August 2013 the Minister appointed Mr David Lombe of Deloitte as Administrator of GLALC.
137. I attended the annual general meeting of the members of GLALC on 4 December 2013. A copy of the minutes of this meeting is at **pages 408 to 409**. At this meeting, David Lombe gave an oral presentation to the members accompanied by PowerPoint slides. A copy of the slides is at **pages 410 to 420**.
138. At the annual general meeting, David Lombe presented the audited financial statements for the year ended 30 June 2013. A copy of these financial statements is enclosed with the GLALC Annual Report for the 2012-13 year, which is exhibited to Hillig's Affidavit. On the last page of the audited financial statements, Mr Hickey states that since the disclaimed opinion on the financial report for the previous year dated 1 November 2012, Lawler Partners has *"subsequently been able to obtain and gather sufficient and appropriate audit evidence regarding the issues raised, which resulted in the disclaimer opinion, enabling us to issue an unmodified audit opinion on the financial report for the year ended 30 June 2013."*
139. This was discussed at the annual general meeting. In the course of this discussion I had a conversation with David Lombe including words to the following effect:
- Me: "How are Lawler Partners able to provide a "no opinion" audit last year, yet this year they have provided an opinion without changing last year's report?"
- Mr Lombe: "I don't understand it either."

Expenses

140. Each of the 2007 Contract, the 2010 Contracts and the 2012 Contracts included a provision for the reimbursement of reasonably and properly incurred expenses upon presentation of an invoice supported by copies of actual receipts. These expenses were authorised for payment by Shalesh and before him, by Karen Maltby. I never authorised payment of any reimbursement of expenses to myself or to Waawidji. I relied heavily on the finance team generally and especially in relation to the processing of payments and reimbursement of expenses.
141. My credit card was used heavily for day to day operational expenses of the GLALC Group. It was not uncommon for things like flights to be put on my credit card when travelling was required to visit other LALCs or to attend conferences or meetings, not only for myself but also for other employees of the GLALC Group. From time to time my credit card was used not only by me but also by other employees of the GLALC Group for other operational expenses. These are reasons why the amount of expenses which were reimbursed to me (and which I in turn used to pay my credit card bills) appears to be quite large.
142. The process which I followed when claiming expenses was as follows. I collected the receipts for each expense which had been charged to my card. I kept the receipts in a bundle at home or at the office. From time to time, and usually at the end of each month, I would hand the bundle of receipts which I had collected to Shalesh (or Karen) or, more usually, one of the finance officers who worked for him (or her). I always collected copies of the actual receipts because I knew Shalesh or Karen would not accept a credit card statement as sufficient evidence of an expense. Occasionally one of the finance officers, the accountant, or Shalesh or Karen, would query particular expenses. When this happened, they were almost always correct and the expense was submitted in error. The exchange would usually include words to the following effect:
- Them: *"Jack, are you sure this expense is a work expense?"*
- Me: *"No, I'm sorry, you're right."*
143. My expense claims were the subject of a detailed investigation by David Lombe. He prepared a spreadsheet which set out each of the particular expenses which he wanted to query. The spreadsheet was passed back and forth between us several times between December 2013 and February 2014 as he continued to review the expenses and as I considered the queries he raised about particular expenses and


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responded to his queries. In December 2013 I repaid GLALC about \$13,000 for expenses which I had submitted in error and which had been approved for reimbursement by Shalesh.

144. I did not keep a copy of the receipts which I submitted for reimbursement. I recall a conversation I had with Shalesh in or around January or February 2014, after David Lombe had begun querying particular expenses, in which I asked Shalesh a question to the effect of "Shalesh, how do we keep all our records of these expenses? How do you store the receipts I give you?" Shalesh then showed me the records. Each of the bundles of receipts which I had given to the finance department was stored with bank records and spreadsheets which allocated the expenses to various categories. The bundles were stored in chronological order in boxes, which were clearly marked with the date range of the invoices in the box and of the paying entity.
145. On or about 18 February 2014 I sent a letter to Mr Lombe. A copy of this letter is at **pages 421 to 438**. Enclosed with the letter was a further letter signed by the Board of GLALC. A copy of the further letter is at **pages 439 to 440**. I did not hear anything further about this issue from Mr Lombe.
146. My employment with GLALC was terminated by Mr Lombe on or about 17 March 2014.

Signature of deponent



Name of witness

AEDAN PATRICK MAX CANNON

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 HEAVY VEHICLE DRIVER LICENCE

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

Signature of witness

