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INDEPENDENT COMMISSION AGAINST CORRUPTION

THERESA HAMILTON ASSISTANT COMMISSIONER

PUBLIC HEARING

OPERATION PETRIE

Reference: Operation E11/0534

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 29 FEBRUARY 2012

AT 2.23PM

Any person who publishes any part of this transcript in any way and to any person contrary to a Commission direction against publication commits an offence against section 112(2) of the Independent Commission Against Corruption Act 1988.

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

ASSISTANT COMMISSIONER: Thank you. Please be seated. Yes, Mr Watson.

<KENNETH JOHN FOSTER, on former affirmation [2:23pm]

MR WATSON: Thank you Commissioner. Mr Foster you remember being here once before and giving some evidence in a private session?---Sir, could I just, I just wanted to make a quick statement that I'm sorry for what I said earlier about the, the colour and I apologise to this gentleman over here because, look it's me medical condition that doesn't, makes real uncomfortable and nervous and (not transcribable) just because of the roof and getting out the elevator, so, I, I apologise for what I said earlier.

Look apology is accepted and I hope I haven't been rude to you in return, Mr Foster?---Yeah.

Mr Foster, do you remember having been here once before and answering questions - - -?---Yeah.

- - - in a private circumstance? Do you remember that?---Yep.

Well I asked if you remember some questions about it and you were asked fairly carefully over a prolonged period to try and recall how much work you did for Gattellari or people associated with Gattellari and over what period of time. Do you remember me asking you a lot of questions like that?---Yep.

And what I want to do is just show you, we've kept a record of transcript of what you said on that day, 3 November, 2011.

ASSISTANT COMMISSIONER: Excuse me Mr Watson, do I need to remove the suppression order on this?

MR WATSON: I'm so sorry, yes. Could I seek a lifting of the suppression order in respect of the compulsory examination of Mr Foster conducted before you Commissioner on 3 November, 2011? We've got a copy of the transcript for distribution which has also been further amended so that it takes out any references to people who are irrelevant in this inquiry or anything which is potentially embarrassing to outsiders. And should it be requested we would certainly show Mr Foster's lawyers a full copy so that they could determine for themselves whether that was fair. I seek that lifting of the order.

ASSISTANT COMMISSIONER: Yes, well I consider it in the public interest to remove the suppression order made in respect of this amended transcript of the proceedings of 3 November, 2011.

**SUPPRESSION ORDER LIFTED IN RESPECT OF MR FOSTER'S  
COMPULSORY EXAMINATION OF 3 NOVEMBER 2011**

MR WATSON: You see that it's numbered in the bottom right hand corner and I've had it opened for you, Mr Foster, at page 196. Do you see that?  
---Yep.

10

Do you see in the left hand column that there are numbers going down the side?---Yep.

They're line numbers. What I want you to do is look at page 196, line 42, question, You spend a lot of time with Gattellari. Answer, Not a lot. Question, When did you work for him? Answer, I think about 2005/2006, 7. Question, and this is what I want you to focus upon, question, What were you doing? Answer, He asked me to, well there was a funeral fund that they'd established and he asked me would I be willing to do a few days work enrolling people in the funeral fund. Was that answer accurate?---Yes.

20

And over the page 197, line 1, question, A few days work in total? Answer, Yeah, only one or two days every now and again. Question, Only one or two days ever or one or two days a week? Answer, No, no, one or two days a week. Question, For how many weeks? Answer, I think I done it for about five or six weeks on and off. Question, That would be between five and 12 days work ever for Gattellari? Answer, Yeah. Question, Did you get paid for it? Answer, Yeah. And that's the only work you ever did for Gattellari was it? Answer, Yeah. You'll see further down at line 22 there's a reference that when you would do a days work you would get \$200?  
---Yep.

30

Now Mr Foster, was that evidence all honest and accurate?---Yes.

I tender the transcript of the compulsory examination of Mr Foster.

ASSISTANT COMMISSIONER: Yes, that transcript of the compulsory examination will be Exhibit 12.

40

**#EXHIBIT 12 – COMPULSORY EXAMINATION OF MR  
KENNETH FOSTER DATED 3 NOVEMBER 2011**

MR WATSON: Mr Foster, I regret that I have to put to you that during the time you were working at Wagonga as coordinator, you were in the pay of Gattellari and the Medich Group and you were being paid from them to make decision favourable to their position. Do you accept that?---No.

Well Mr Foster, I'm going to ask that you be shown a particular exhibit, Exhibit 8 and I'm going to get a paper copy given to you as well as to the affect that parts of it will be available on the screen. You've seen this I think before, it's Mr Lockley's report and what I want you to do is have a look at the bottom of the first part of the exhibit, you'll see that it says page number so and so of 33. Do you see that?---Yep.

10 What I want to show you is this, that on page 18 there is at the very top of the page a heading "Deposits to Ken Foster Bank Account". Do you see that on page 18?---Not just yet.

Now in respect of this matter you'll see that in paragraph 43 Mr Lockley has gone through and said that there were 23 transactions and he's worked out where they came from and where they went. Do you see that?---Page 18, yep.

20 Yes. And now Mr Lockley referred to what he called annexure 15. The exhibit has tabs and you'll see one is numbered 15?---Yeah.

And when you open up the document behind tab 15 you'll see that there is a list of events, a list of events, you'll see there's a reference on the left-hand side to the tab number, then to date and then to what's called particulars and it follows through on their accounts. Now, a copy of this report of Mr Lockley, Exhibit 8, was provided to your lawyers last Friday. Have you seen it before today?---Yes.

Did you look at this document before today?---Yes.

30 You would have seen then that in respect of each and every one of these payments Mr Lockley has traced it from a document belonging to Gattellari or from a bank account belonging to Gattellari?---Yeah.

And through that bank account into a bank account owned by you and you'll see that there are substantial payments made to you. Is that right?---Yeah, \$200 and yeah, there's a lot if you total, yeah.

40 Well, 200 here, 200 there. The point is that they occur between 27 April, 2005 - I want to suggest that that's very close to the time, we can't establish the precise date but that's very close to the time you started at Wagonga, you'd agree with that, wouldn't you?---Yes.

And then it goes right through until 7 December, 2005, that's very close to the time that you left Wagonga?---Yes.

There were 23 payments I want to suggest made into your bank account by Mr Gattellari totalling \$9,200 during that period, April to December 2005, precisely the period when you were working at Wagonga considering

matters relevant to Gattellari and the Medich Group interests in the joint venture. Do you, do you see that?---Yes.

Can you explain that?---Well, like I said I was doing the stuff on the funeral fund for him.

Well, you did refer to that before. Now I want to tie you down. Precisely what was it that you were doing you say on the funeral fund?

---Memberships, looking at memberships.

10

Right. What does that mean?---Well, talking to people to see if they was interested in joining the funeral fund.

Right. And if they were what would you do?---Well, you know, we, we was talking about establishing it and what it would cost to, to join it, things like that.

Did you get anybody to join it?---When, when it actually started, yes.

20

Well, when did it actually start?---2007 I think, I'm not sure but I think it started in 2006/2007.

You see, one of the points I was going to make to you is that these payments, all 23 of them, are a time well before the funeral fund ever started, isn't that, isn't that the fact?---Yes.

30

And on your evidence that you gave here you said honestly and accurately during the private session you said that you had done about 12 days' work that came about through one or two days every now and then over five or six weeks. Do you remember I showed you that just five minutes ago?  
---Yeah.

Now that evidence that you gave here on the earlier occasion was either wrong or it was right. What was it?---Well, what I, what I failed to tell you that we also looked at setting up a, an employment agency.

An employment agency?---Yes.

40

I'm going to come back to the employment agency. What I want to know now is when you gave evidence here earlier and I asked you about the only times that you'd worked for Gattellari, you said you worked for one or two days every now and again, five or weeks on or off, get paid \$200 for 12 days' work. Was that honest and accurate evidence? Was it wrong or was it right?---Well, according to this it's wrong.

It's wrong?---Yes. Well, well, I, I was wrong with my, my statement because like I said it was over a long period of time but I didn't know

whether, that it went, you know, whether it was consistent or not. It was always off and off.

Well, you see, you're saying that the true amount that you were paid by Gattellari for work was \$9,200 or something more or something less?  
---Well, I don't know whether that's the right figure but if that's what's in the thing on the bottom then I've got to agree with what's there but, you know - - -

10 You said - - -?--- - - - I wasn't sure of the actual amount.

All right. Well, let's just try and get to the bottom of it. What are you saying, were you working very regularly for Gattellari during 2005?---Only when he, when he wanted me to do work on the funeral fund.

Well, just have a look at it?---Yeah, I can see that.

If you, if we're looking at it now and your rate of pay was \$200 a day, according to this you must have done five days work between 28 June, 2005  
20 and 1 July, 2005, five days work in three days. Good if you can, good work if you can get it?---I don't understand. I didn't understand that question. What was that again?

Oh, come on. Have a look at the money there?---Yeah.

Were you working that regularly for Gattellari to justify all of these payments, a thousand here, a thousand there?---Well, they're, they're, they're spread over the 12 months. One's on the 27<sup>th</sup> of the 4<sup>th</sup>, one's on the 12<sup>th</sup> of the 5<sup>th</sup>.

30 Yeah, I can read that?---Yeah.

I'm asking you another question. Were you working that regularly for Gattellari so that according to my maths, that's 46 days' work during that period of time for Gattellari?---Yeah, yeah.

Would that be right, would it?---Yes.

Right. So you're now saying, sorry, got it wrong before, it wasn't 12 days  
40 and \$2,400, I'm sorry, it was exactly 46 days?---Well, I'm only going by what I'm reading here.

So you're making it up, aren't you?---No, I'm reading it here.

Well, how do you explain the fact that on the fourth entry you were paid \$200 on 28 June, three days later you were paid \$1,000. If it's \$200 a day you've been paid for five days' work in only three days? As I say, good

work if you can get it. How do you explain that one?---I, I can't 'cause I don't know anything about that thousand dollars.

Have a look at the, if you look at the tab numbers down the left-hand side - - -?---I am.

- - -you'll see tab number 26 is 23 August?---Yes.

10 Two days later you're paid \$1,500. Seven and a half days' work in two days. How did you do that?---I, I don't know.

It doesn't work out, does it?---No.

It's got to be wrong. This can't be explicable by reference to you doing work for the funeral fund, can it?---Well, sir, I, alls I know is that he paid me to do work on the funeral fund.

20 Yeah, but- - -?---And, and then, like I said the last time I was here, the employment agency.

Well, we're going to come back to the employment agency because that is something which I'm going to suggest to you you invented in the last 10 minutes. I'm coming back to that. What I want to do is get to the bottom of this, this \$9,200 worth of payments to you into your bank account from Gattellari. Did you reveal that to the people of Wagonga?---It wasn't work for the Land Council but- - -

Did you or did you not reveal it to the people of Wagonga?---No.

30 Now, did you understand that as the coordinator, and given a position as I've shown you under a motion that you were to negotiate directly with Lucky Gattellari, it could place you in a conflict of interest to be receiving payments for him, from him?---Yeah.

You understood that at the time, did you?---Yeah.

40 Well, why did you do it?---Well, it's because I was keen on, on, on trying to establish a funeral fund because that's the most needed service that Aboriginal people need in the state of New South Wales, it's- - -

That's fine and that's a very good thing, but just let it be understood, you owed your first duty to your employer, the people of Wagonga. If you were doing this for a charitable motive, why did you not tell them, I am also working on a much-needed funeral plan?---Well, I, I didn't think it was, it was something that, you know, um, I needed to because, you know- - -

Come on. You were working for Gattellari, taking cash payments, it seems in one instance in two days \$2,500, at the same time you were charged with

the responsibility by the people of Wagonga to deal with Gattellari over a financial transaction. Surely you recognised that they had to be told?  
---Like I said, I thought it was um, you know, for me to, to set up a funeral fund and doing that sort of business didn't involve me telling the Land Council members.

10 You kept it a secret because you knew that it was a wrong thing to do?---  
No, people down there knew that I was, that I was doing stuff for, you know, to try and establish a funeral fund because I was talking to them every day about it.

Rightio. Two or three times I did ask you if you had told them or - - -?  
---Yeah, I, I know but I didn't - - -

- - - not and you denied telling them?--- - - - I didn't disclose in a meeting.

All right. Okay. Who did you tell that you were working for the funeral fund?---Kooris from um, you know, Batemans Bay to Eden.

20 Anybody at Wagonga?---Yeah, a lot of people down there knew.

Not knew, I want to know, who did you tell at Wagonga? Who do you say you told?---Oh, a lot of different families there.

Names?---Well, the Paton family, the - - -

30 You told the Paton family that you were working and receiving money from Gattellari?---Well, I told them I was working on a funeral fund. I didn't tell them I was being paid by him.

You see, I want to show you something else. During these proceedings we have had some evidence from Mr Gattellari and what we found was that Mr Gattellari had received a visit from the police who took a lot of his documents and when they took a lot of his documents they found some records which related to payments which Gattellari had made to you. Did you know about that?---No.

You didn't know about it?---No.

40 You see - if the witness is shown Exhibit 3 and at the present time what I'll do is I'll show it to you, you'll see that this, this document is numbered in the top-right corner from 1 through to 37, do you see that?---(NO AUDIBLE REPLY)

Do you see that?---Yeah.

What I want to show you is the list of names on the first page, you're there, KJ?---Yeah.



The second page a reference to KJ?---Yeah.

The third page there's a reference to KJ and just above the blackened out area where it says loan to KJ - - -?---Yeah.

- - - and you'll see that there's three figures, 100, 200, 1,000. Then if you leap ahead and go to page 5 you'll see that Mr Gattellari has made an entry which relates to money which was paid over a period of time to 19  
10 December, 2005 to Ken Foster, \$25,701.25. Was that work you did on the funeral fund or maybe this employment agency?---He never paid me anywhere near that sort of amount.

So you're saying Gattellari's a liar?---Well, I am.

Rightio. So you see there under that he's got \$5,000 for Christmas money?  
---He never give me 5,000 for anything.

20 Sorry?---He never give me 5,000 for anything.

All right. What I'm going to put to you is that in fact Gattellari was telling the truth and that over a period of time you received from him cash or other benefits which tallied in excess of \$30,000. Do you accept that?---No, I don't.

What's more I want to show you page 9 of the same document. I want to just show this to you and ask you whether you could explain it.  
Mr Gattellari says that he took down and kept a note of a discussion he had with you. He said that you came to him and said that for \$15,000 you, KJ,  
30 would deliver a letter from someone, we've blocked out their name, which would provide for exclusive dealing with the deed for Isabel Street. Did you do that?---No.

Are you sure?---Yes.

Might have done it?---No.

Memory not failing you now?---No.

40 Memory dimmed; you know, remember seven years ago?---Yeah.

No trouble saying I didn't do that?---Yes.

What about Isabel Street, have you ever heard of that?---No.

Never heard of it, it's down in Narooma even though you were coordinator and paid a substantial sum for being the coordinator of the area?---I don't know Isabel Street.

All right. What about the golf club down there, know anything about that?  
---Yeah, I do.

Yeah. Was there golf club land that could have been developed?---I don't know.

Wouldn't know. You don't know anything about this?---I know the golf club.

10

You see, let's just face it, I mean, your memory's so bad about those events earlier on it could well be the fact that you went along and said for \$15,000 I'll, I'll do this for you and it's just slipped out of your mind. Isn't that consistent with your memory operation?---Well, I don't know.

You see, down the middle of the page, didn't Mr Gattellari say yeah, sure, I'll give you the \$15,000 but I want your car as security?---No.

20

No. Are you saying no absolutely or are you saying - - -?---Absolutely no.

- - - look I don't really recall these things seven years ago? What's, which way is it?---I don't - - -

You're denying, was there a discussion that maybe he'd pay you 7,000 but you wouldn't have to put up your car as security?---No.

You see these notes, are you just suggesting that Gattellari is just making them up are you?---Well I, I'd say he would be.

30

All right. Well for example if I show you page 11, if I show you there that there's some entries about you - - -?---Yeah.

- - - and one says rent 6 October, 2005 and 9 November, 2005. Do you see that?---Yeah.

That's just a lie made up by Gattellari is it?---What, what's that say, 15,000?

40

No, \$1,530 and \$1,000. What's that, just something he's invented?---I know nothing about it.

Well but you're saying Gattellari's lied in these notes are you?---Yeah.

Well I showed you earlier documents which seemed to prove as a stone cold hard fact that Gattellari had put those two payments of rent into an account for Whale Coast Realty. Remember I showed you that?---Yeah.

It's a very, very intricate lie that Gattellari has invented because he's actually apparently making some of these payments?---Well the thing that

I've got to say about Gattellari, if he was consistently paying me, like you're saying, and he's only been giving me \$200 here and there, all of a sudden you say that he's given me 15,000 and you know, 1500, you know, I don't know what the story is there.

10 Well I was asking you about the rent. Do you see that it seems like perhaps Gattellari's note there is perfectly accurate. He's writing down that he's paid your rent on those two dates in those two sums when there are banking records which would support the note. That seems as though Gattellari at least there was accurate doesn't it?---Well it does but you know, I didn't know he was doing these things.

All right. Well what about Foxtel, did you have Foxtel down at Narooma?  
---No, Austar down there.

Austar. All right. Well actually we do have an entry that Mr Gattellari paid for your Austar?---Yes.

20 Now did he do that?---Yes.

Why?---Well instead of paying me for work on the funeral fund.

So it's not 46 days, there's more days, he's doing things and paying you out - - -?---No, this was, that was in that same period.

30 Well but that's the point, at \$200 a day while you were supposedly working full time for Wagonga in a period of only eight months you've spent 46 days working for Gattellari on the funeral fund. That's what came from those other documents. That's according to you if you're telling the truth?  
---Yes.

So but now you're saying it wasn't just 46 days, you were doing other work for him which he was repaying you by paying for your Austar subscription. Is that right?---Yes.

Now tell us about the employment fund?---The employment fund - - -

40 You might start by telling us is this the first time that you have ever raised the employment fund?---No.

Right. You've raised it before did you?---With the solicitor, yes.

All right. Today?---No.

All right. Okay. Is there some reason you wouldn't have revealed it during the compulsory examination?---Well I was never asked about it.

Oh, I think you were Mr Mason. You were asked about every scrap of work you did for Gattellari?---I can't remember you asking me about the employment stuff.

No, I asked you open ended questions. I didn't ask you what you were doing, I asked you what work you did, how often you did it and how much you were paid?---Well I can tell you now the, we spoke about setting up an employment agency similar to Campbell Page that operates out at Narooma and Moruya.

10

All right?---Sorry, Narooma and Batemans Bay.

Was this work you did for Gattellari?---Yes.

When?---Oh, the same time.

And how did he pay you?---Cash.

Cash for, how much per day?---\$200.

20

\$200 per day and how many days did you - - -?---See it'd be mixed in with all that there.

How many days did you spend working on the funeral fund?---Well in that period of time there.

No, how many days did you, sorry, how many days did you spend working on the employment agency?---I can't remember.

30

Well it's pretty important, you're also the one who's giving the evidence that you did it. How many days?---Yeah, I can't remember.

What did you do?---(not transcribable) over six months.

I know that you've got high qualifications in accounting and the like, what were you doing for an employment agency?---Well we were just going through the rigmarole of looking at how many numbers we could enrol into membership, the same with the funeral fund.

40

Who's we? Who's we?---Well, that's what Lucky wanted me to do.

Right. So he's sitting down there at Narooma with you, is he?---No, he rang me up about it.

Well- - -?---And we had a meeting one day and spoke about it, yes.

Right. How many days' work did you do on the employment agency, Mr Foster?---Well, it's off and on, mixed in with all this here, the funeral fund and the employment agency.

I see. Did you reveal to the people of Wagonga that you were also working for Gattellari and being paid for him for working on the employment agency?---People knew about it, yes.

10 Oh, right. Who?---The same people that I spoke to about the funeral fund.

Who?---The people within the community down there.

Did they have names by any chance?---Well, like I said, I just mentioned a few families, the Moores, Pattens, even people out at Wallaga Lake.

Right.

20 ASSISTANT COMMISSIONER: Yes, you told us that you didn't tell them you were working for Lucky Gattellari though?---No, no, I didn't, I didn't say- - -

You didn't say you were being paid by him?---No, that's right.

But they knew you were working for the employment agency?---Yeah, yeah.

Or on the employment agency.

30 MR WATSON: I'll just show you on page 2- - -?---The same document?

Yes. You'll see that there's an entry in the first few lines, "KJ, \$100 credit card payment, Austar." So he's paying your Austar?---Yep.

Could I ask you now if you'd look at Exhibit 5. You'll see this is a very similar kind of a document to the last because it's a, it's numbered in the top right-hand corner, this time 1 goes right through to 58. Could you have a look at page 47. Page 47 shows a search that we undertook for anybody called Kenneth Foster who'd been a director of a company?---Yep.

40 Now, the first one there you'll see Kenneth Foster is born unknown, birthplace unknown, but it's to do with the United States of America, that's not you. Down the bottom there's Kenneth Foster who was a director of Ken Foster Heating Pty Limited, but that doesn't sound like you?---No.

If you turn over to page 48 however, you'll see that about the middle of the page there's a Kenneth John Foster, that's your name- - -?---Yeah.

- - -and your date of birth. Were you ever a director of Kumarra, K-U-M-A-R-R-A, Limited?---Yeah, I think I, I, yeah, it was a Land Council business.

All right. Well, so that's you. And then down below a Kenneth John Foster who was a director of ANS Lighting and Electrical Pty Limited. Do you see that?---Yes.

And if you turn over the page you can see that you were appointed a director of that company on 16 August, 2010. Do you see that?---Yep.

10

What would you know about lighting and electrical businesses, Mr Foster?  
---Nothing.

Right. Have a look at the next entry. It seems as though- - -?---On the next page?

The, the next entry in respect of the companies there is Global Power Employment Pty Limited. Do you know anything about that?---No.

20 PES Management Pty Limited?---No.

Project Electrical Services Pty Limited?---No.

I could go on but I think you're going to say you don't know anything. What were you doing as a director of an electrical company if you don't know anything about the business?---Well, Lucky Gattellari asked me would I become a member of the board.

30 Right?---Um, I said I would only for the purpose of trying to get employment for me sons.

All right. Well, it is suggested that ANS Lighting and Electrical Pty Limited was an Australian business. Do you know where its business place was?---I haven't got a clue.

What did it do for a business?---I don't know.

Did it have an office?---I don't know.

40 Did it have a phone number ?---I don't know.

How could your son work for a company which didn't have a phone number?---I, I was out at a company called IC Lights.

All right?---That's the company I thought that he wanted me to be a director of.

All right. Well, were you a director of this company, IC Lights?---Well, that's what I thought I was signing on to be.

All right?---A director of that company.

Were you being paid to do this by Gattellari?---Only, only when it started.

Well, hold on, were you being paid - - -?---When I signed the document.

10 - - - or not?---Yes.

And how much were you being paid?---Well, the same thing again, \$200.

\$200 a day and what were you doing to earn your money?---No, no, that was \$200 a week.

\$200 a week and what were you doing to earn your money?---Well, nothing, I went out there and I never even got invited to a meeting.

20 So hold on, how many weeks were you out there getting \$200 a week for doing nothing?---About a month.

And so what was the rationale behind that? Was it an honest relationship that you had with Gattellari in the respect?---I, I don't know how to answer that because I think I was being used by - - -

You think you were being used by Gattellari?---I do.

30 What, you think you were being duped by him into a kind of corrupt relationship?---Well, once I signed on as a director and then I got a, a bill from some company, I can't even remember the name of the company, you know, I wrote to the Taxation like I told you last time and, and told them I'm resigning from that company 'cause I think I'm being set up to take the fall for something I, I know nothing about.

Could it be that in that event that you were so horrified that you returned the money you've been paid for doing nothing?---Well, it was too late, I'd already given it to me kids, the money.

40 Well, hold on, you could always just go and draw on your bank account or other earnings and refund the money which you'd received for doing nothing?---You know, I, I went out there to, to try and go to the meetings but I was never allowed in.

All right. You see, Mr Foster, wasn't the arrangement that you had with Gattellari there was one that you'd effectively just become a dummy director of a dummy company?---Well, I didn't know at the time that that's what he wanted me to do.

Right. But you'd do anything that Gattellari asked you to do if it involved the payment of money would you?---No.

Right. Well - - -?---I thought it was a legitimate business.

Well, you did it for a couple of months and you never found out whether it had an office, a telephone, you say you went there, wherever there was?  
---That's IC Lights, I thought that was - because it was operating, people were working there.

10

But they wouldn't even, they wouldn't let you in?---Well, I went into the building and sat in the office but I never got into a meeting.

All right. Well, what, did you just sit there all day?---(NO AUDIBLE REPLY)

Did you have an office?---Mostly.

20

Did you have an office and a desk?---No, I sat in one of the other offices there.

Right. And so what were you doing while you were there?---Nothing.

It must have been very dull just to sit there, what, 9.00 to 5.00 sitting on a chair?---Well, I, I didn't stay there long.

Right. Thank you.

30

ASSISTANT COMMISSIONER: Thank you. Does anybody seek to examine this witness further?

MR STITZ: Just very briefly, Commissioner.

ASSISTANT COMMISSIONER: Yes, Mr Stitz.

MR STITZ: Mr Foster, my name is Stitz and I appear for Mr Medich, you understand that?---Yeah.

40

Your de facto partner or your de facto wife is Leanne Mason, is that right?  
---Yes.

And her uncle is Ron Mason Senior?---Yes.

Thank you.

ASSISTANT COMMISSIONER: Thank you. Yes, Mr Halstead.



MR HALSTEAD: Mr Foster, when you started at the Wagonga Land Council in the role as coordinator were you given any training?---No.

Was there any period of the handover from the outgoing coordinator?---No.

Were you ever provided with a statement of duties?---No.

Did anyone ever explain to you what the role of that position was?---Yes.

10 Who was that?---The (not transcribable)

And what did they tell you the role of the position was?---Oh, just basically what they wanted me to do in the office and basically all the properties, all the housing properties were being managed by another Aboriginal company.

So what specifically were your duties that you were told that you would be performing if you took on the job?---Look, supposed to be file and um, and, and ah, record all of the Aboriginal sites that the Land Council had within its boundaries.

20

Now, there was some discussion earlier with Mr Counsel Assisting that you may or may not have started at the Land Council in February of 2005? ---Yes.

Is there any reason that you think that you may not have started that early? ---Because I was, I was coaching the ah, football team at La Perouse, Your Honour, and we don't start the comp till March. Training is in February through to mid-March and that's when the comp starts and I was coaching the team.

30

So how would that have had an affect on when you started with the Land Council?---Well, that's why I, I'm disputing the actual starting date because, you know, I was still coaching the team in La Perouse and, you know, I, I, I, I'm pretty confident about, you know, the time frame, you know, with, with starting the comp in March it's always been part of the South Sydney Juniors Rugby League's league program that the comp starts in March.

40 And when you did eventually start with the Land Council, did you become aware of this joint venture project with The Medich Group?---Only after I started there.

All right. To the best of your recollection, what stage was that up to when you started there?---Well, as far as I can remember it had already been signed off by the office bearers with um, their solicitor, Eddie um, Eddie Neumann, you know, telling me a bit about it when he come down for a meeting.

And as far as that joint venture agreement went, did you ever see it?

---I saw pieces of it when Eddie showed it to me, the solicitor.

When did he show it to you?---Oh, I think about a month after or a couple of, look, anywhere between two to three weeks after I started he came down for a meeting with the members about it.

Did you have any involvement in drafting the agreement or- - -?---None, none whatsoever.

10 Did you have any input into the terms?---No.

Did you have any discussions with anyone about the terms?---No.

As far as your involvement with the Land Council in the coordinator position, you used to attend meetings?---At the request of the members.

And did you have any voting rights at those meetings?---No, I don't.

20 When you went to those meetings what would your typical functions be?  
---Well, if members wanted to ask a question about certain things, you know, as far as the Land Council was concerned, I'd, I'd give a, I'd give them a response, but mainly it was about the site recordings that we was doing.

And you indicated earlier in your evidence that you prepared at least one report to the meeting?---Yes.

30 Is that a common thing?---Yeah, every, every, every meeting I had to supply a report.

And when you did make a report did you take advice from anybody?

---Well, there was one, one ah, ah, meeting there were um, the accountant asked me to provide a list of properties, get them evaluated and present it to the members so that they knew exactly what assets they owned.

So that was for all of the properties owned by the Council?---All of the properties owned by the Land Council.

40 And you provided a report in relation to that?---Beg yours?

You provided a report to the meeting in relation to that?---Yes, I did, yeah.

And you did that with the assistance of the accountant. Was that- - -?---Yes. Well, it was on the accountant's advice that we do that.

Now, when you first went to Narooma in 2005, what was the purpose of going to Narooma?---Well, I actually applied for two jobs in the town, one was at the medical centre, Katungul Medical Centre, and one was at the

Land Council and I applied for both jobs at the same time. The reason I wanted to get out of the city is because of me health. I wasn't feeling real good at the time and I thought a change of, you know, ah, places, it might, might help me.

And it was the case wasn't it that you didn't get the job with the medical centre, you later got the job with the Land Council?---Yes. That was the first job I applied for was the medical centre.

10 And while you were there in this role as the coordinator on a day to day basis what sort of duties were you undertaking?---Oh, we, we, doing, you know reviews of the housing assets for the housing company that owned, when I was managing the properties, doing home visits to make sure that people's properties were, you know, of a liveable standard. Things like that.

Did you ever meet with Mr Ron Medich in Narooma?---Never.

And you indicated before that you had on at least one occasion met with Mr Gattellari?---Beg yours?

20

Mr Gattellari, you met with him on at least one occasion?---Yeah, one or two, yeah.

And when you met with him – and that was in Narooma was it?---Yes.

When you met with him in Narooma what would you – the first occasion if you can remember that?---Yes, we, we spoke about a funeral fund.

30 Okay. When you spoke to him about the funeral fund where were you?  
---We was at - - -

Where were you physically?---In the coffee shop.

And where was the coffee shop?---Right next to the real estate.

And so to get from your office to the coffee shop - - -?---You've got to walk past the real estate.

40 Now did you have a car while you were in Narooma?---Yeah.

What sort of car was it?---I had me Land cruiser down there.

Have you ever owned a Holden GTS?---I did.

When did you own that?---Beg yours?

When did you own that?---I think about 2002/2003.

So you owned that car before you had the Land Cruiser. Is that right?---  
Yes. Yes, I did, yeah, I did.

Just so the Commissioner is clear on this point Mr Foster, were you ever involved in any negotiations with Mr Medich or Mr Gattellari in relation to property developments in Narooma?---No.

Now a short time ago you were asked about some directorships of companies that were associated with Mr Gattellari?---Yeah.

10

Can you tell the Commission the circumstances in which those directorships came about?---I wrote to Lucky Gattellari because he rang me up one day out of the blue, I hadn't spoken to him for a couple of years and he rang me up out of the blue and, and asked me, do you want to have a coffee, I said, yeah. And just got to talking about you know things and then he, he offered me a thing on the, to be a director of the company and I thought about it for a while and, and then in between all that, you know, I was trying to have a fundraising day for, it would have been at La Perouse and (not transcribable) sponsorship for our golf day and he said he'd do it if I became  
20 a director of one of his companies, so that's exactly what I done.

And now what, what company was that?---I signed a document, I thought it was IC Lights.

When you signed the document that you thought was for IC Lights - - -?  
---Yes.

- - - whereabouts were you?---Beg yours?

30 Whereabouts were you exactly?---Leichhardt.

And who else was present?---A guy by the name of Kim Shipley.

And to the best of your knowledge did you sign any papers that related to other companies?---No, I never, I only signed, I signed one, two papers and I thought that was all for the one company.

And after you signed those papers we've heard some evidence that you went out to the office on occasions, the IC Lights office?---Yes.

40

That was a couple of times after you became a director?---Yep, yep.

And you went to an office there?---Yeah.

For how long was that?---Oh look, it would have been anywhere between four weeks to five weeks.

Okay, so did anything start happening after that period in relation to your directorships?---Well, I got a um, letter in the mail saying that you know, I owed five hundred or a \$1 million or something like that because something to do with the company and I, and I sent it straight back out to Gattellari because I said, "Well, what's going on here, you know?" Like I said, I'm sure he used me and used me good to you know, as a dummy for his company.

10 Did you receive any other correspondence?---I've been getting letters daily from companies I didn't even know I was a director of, I was getting letters, yeah, from everywhere.

So if you could just have a, the Volume 4 Exhibit, page 47 (not transcribable) was pulled up on the screen. About page 49 I think where it's with a list of companies. These companies Mr Forster, PNS Management for example, Project Electrical Services Pty Limited, Project Electrical Group Pty Limited, did you ever sign any documents, to your knowledge, that would relate to becoming a director of any of those companies?---Look, I, the only document I signed and I thought it was for IC Lights I knew  
20 nothing about any of these other companies, none whatsoever. Like I said, I've been set up to, you know, where some of the blame for things I didn't even know nothing about.

Did Mr Gattellari or any other person ever ask you to become a director of any of those companies?---No.

Did you start those companies?---No.

30 Any of your relatives, to your knowledge, involved in your companies?---I don't know, I couldn't say that without, but to the best of my knowledge no.

Did Mr Gattellari, if I might just have Volume 3 Page 9 on the screen, can you see that Mr Foster?---Yep.

Did Mr Gattellari at any stage ever discuss that with you?---No.

When he made those notes were you present?---No.

40 Could I have page 11 on the screen page, sorry page 10?---Page what?

Page 10, it's the next page. Were you present when Mr Gattellari made these notes?---No.

Did he ever discuss these notes with you?---No.

Were you ever aware of these notes before this hearing?---No.

And I'll ask you the same question on page 11. Were you present when Mr Gattellari made those notes?---No.

Have you ever seen those notes before this hearing?---First time I seen them.

Did Mr Gattellari ever discuss the contents of those notes with you?  
---Never.

10 I just want to be clear about this Mr Foster, you've told the hearing today that Mr Gattellari made payments to you in relation to work which you did for a funeral fund.---Exactly.

An employment agency?---Exactly.

And more recently, directorship of what you thought was IC Lights. Is that correct?---Yes, exactly.

20 And in relation to the funeral fund we've heard some evidence from you that you undertook some tasks in relation to trying to recruit some members of the Aboriginal community?---Yes, I did.

Is that right?---Yes. Like I said, you know, the biggest - well, the biggest problem we got facing Aboriginal people is related to funeral costs, a lot of our people cannot afford to pay for funerals so, you know, it's something that's been a major problem in, in Aboriginal communities, you know, for, for a very long time so, you know, the chance for me to be involved in the establishment of a, of a funeral fund was something that I really wanted to be part of.

30 And you had a discussion about that issue with Mr Gattellari at some point?  
---Yes, I did, yeah.

And he made a proposal to you, did he, in relation to that fund?---Yeah.

Ort the proposed fund at least?---Yeah.

40 Now, when you were in the early stages or when in Narooma did you discuss membership of that fund with people, members of the Aboriginal community who were also on the Executive of the Land Council?---Yes, I did, yeah.

Were they aware of your - - -?---Everybody was aware. Like I said, it was something that people had been talking about for a long time so, you know, made, we let everybody know.

So for example the chairman of the fund, sorry of the Land Council, was aware of your involvement with this funeral fund you were proposing?

---Yeah, yeah.

Did you try and recruit any of the members of the Land Council as members of the funeral fund, prospective members of the funeral fund?---Well, you know, like we spoke about everyone trying to get involved in becoming a member, not just, not just the chairman, secretary, treasurer, everybody that lived in the township.

10 Did that include the members of the Land Council?---That includes the members of the Land Council, every member. If people look at the, the records of Aboriginal deaths they'll understand the reason for why.

Now, Mr Foster, you suffer a medical condition?---I do, yeah.

And that's an anxiety related condition?---My oath, yeah.

20 And have you suffered some symptoms of that condition here today?---Yes, I have. Just, like just getting on the escalator makes me head spin and if I've got to get into an elevator well, it makes it even worse for me.

And did you visit your medical practitioner on the 25<sup>th</sup> of this month, last Saturday, in relation to that condition?---Yeah.

And did your medical practitioner provide a certificate in relation to that condition?---He did, yeah.

30 Yes, I seek to tender that medical - firstly I'll show you a certificate. Is that the medical certificate that was provided to you on Saturday the 25<sup>th</sup>?  
---Yeah.

I seek to tender that, Commissioner.

ASSISTANT COMMISSIONER: On what grounds is this being tendered, Mr Halstead.

40 MR HALSTEAD: Well, it's been, it's been suggested by Mr Counsel Assisting, Commissioner, that he has the potential or potential intentions I suppose to make adverse submissions about Mr Foster, the medical condition goes some way to explain Mr Foster's behaviour this morning. I think in fairness to Mr Foster that his medical condition has been a relevant issue in relation to his evidence today to the Commission so I, I press the tender of the document.

ASSISTANT COMMISSIONER: Well, look, I really must question the relevance. I, I will tender the document for what it's worth but it talks about a fear of heights, claustrophobia and panic attacks, none of which in my review would be relevant to memory but I'll make this medical certificate Exhibit 13.

**#EXHIBIT 13 – MEDICAL CERTIFICATE OF MR KEN FOSTER**

MR HALSTEAD: Thank you, Commissioner, I have nothing further.

ASSISTANT COMMISSIONER: Thank you, Mr Halstead. Yes,  
Mr Watson, may this witness be excused now?

10

MR WATSON: Yes, Commissioner, thank you.

ASSISTANT COMMISSIONER: Yes. Mr Foster, you are now excused  
from further attendance?---Thank you, ma'am.

**THE WITNESS EXCUSED**

**[3.20pm]**

20 MR WATSON: Commissioner, I call Vivienne Mason.

MS McGLINCHEY: Commissioner, I think she might be outside.

ASSISTANT COMMISSIONER: Yes, thanks, Ms McGlinchey.

MS McGLINCHEY: Commissioner, I think that she's outside. I've just  
sent her husband to look for her. He thinks she might have just ducked out  
for a cigarette.

30 MR WATSON: I'll call Ron Binge, if I may.

ASSISTANT COMMISSIONER: Yes, yes. Is Mr Binge here?

MR LEWIS: Yes, Commissioner, he's here.

ASSISTANT COMMISSIONER: Yes, take a seat. You're Mr Ronald  
Binge?

40 MR BINGE: Yes.

ASSISTANT COMMISSIONER: Yes. You may sit down. Mr Binge,  
you've been called here to give evidence. You are required to answer all of  
the questions asked of you. You may seek a declaration under our Act. Mr  
Lewis, is he seeking a declaration?

MR LEWIS: He's seeking a declaration, Commissioner.



ASSISTANT COMMISSIONER: Yes. The effect of this declaration I'm about to make is that nothing you say here can be used against you in any future criminal, civil or disciplinary proceedings, however if it's found that you've breached the Act by for example giving false or misleading information, then the evidence could be used. Do you understand the effect of that?

MR BINGE: Yes, Commissioner.

- 10 ASSISTANT COMMISSIONER: Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by this witness and all documents and things produced by him during the course of his evidence at this public inquiry are to be regarded as having been given or produced on objection and there is no need for the witness to make objection in respect of any particular answer given or document or thing produced.

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

- 30 ASSISTANT COMMISSIONER: Mr Binge, you are required to take an oath on the Bible or make an affirmation to tell the truth.

MR BINGE: Affirmation, please.

ASSISTANT COMMISSIONER: Yes. Could the witness be affirmed, please

<RON BINGE, affirmed

[3.22pm]

MR WATSON: Is your name Ron Binge?---Yes, it is.

Is that your actual name or is your name Ron Jeffries?---Binge.

Binge. Was your name originally Ron Binge?---Yes.

10 And for a time were you known as Ron Jeffries?---Yes.

Why?---I'd lost my licence in '89, '88.

ASSISTANT COMMISSIONER: Mr Binge, I'm sorry, could you keep your voice up, please?---Yes.

MR WATSON: I don't understand. You'd lost your licence so your name changed or did you change your name to acquire a licence?---No, no, I changed my name to get a job.

20

Right. Did you actually change your name or did you just go under an alias?---An alias.

What, so you could fool a potential employer?---Sorry?

MR LEWIS: Commissioner, is it necessary for Counsel Assisting- - -

MR WATSON: I won't press, I won't press that. You knew Gattellari from days of Princeton Holden?---Correct.

30

In 2005 you sought him out again?---I spoke with him, yes.

In 2005, by that stage you were aware that you had some contacts within Aboriginal Land Councils?---Yes.

In particular, Gil Saunders?---Yes.

And you spoke to Gattellari in 2005 about the potential that you could speak to connections that you had in the Land Councils. Is that so?---Yes.

40

With a view to doing property deals?---Yes.

And when you spoke to Gattellari you, to be blunt about it, you told him that it may be necessary to make some side payments to gain favour of some of these people?---No.

You don't admit to that?---No.

Never suggested anything like that?---No, I said that we would have to support the local Land Council because they had no money.

Well when you say you had to support local Land Councils did you mean individuals who were serving on the Councils?---Sorry?

10 What were the words that you used as close as you can remember?---I have a proposal that I put towards him in regard to helping Land Councils finance them and to help them develop the land. And the requirements would be that everything would have to be upfront, no dodgy business and that we'd have to support them.

Sorry, this was all done to help to use your word?---Sorry?

You used the word that you said you wanted to "help"?---Well to help them develop their land.

Help, so that you were doing them a favour?---Well it was a business idea.

20 Well, but help so that you weren't doing it for personal gain you were doing it to help them?

ASSISTANT COMMISSIONER: Well look I think that's fair, he does seem to be suggesting it was some sort of a charitable enterprise?---No, it was a business venture, Commissioner.

30 MR WATSON: Well you were the one who said that you said to Gattellari that it was designed to help the Land Councils, so that's not the right word? ---Well it was, it was an idea to enable them to develop their land.

Right. And you said that you then said to Gattellari there'll be no dodgy business?---As we said - - -

Why did you say that? What would make you think that you had to say that - - -?---I said - - -

- - - to somebody on the time you first put such a proposal?---Well I said the proposal - - -

40 Yes?--- - - - was that everything had to be above board.

No, you also said that there would be nothing dodgy?---Well that was a figure of speech.

All right. But why would you go to somebody and say look I'm going to do a land deal with these Aboriginal Land Councils. There will be, everything would be aboveboard. Why would you say that?---Because Land Councils previously had been, how would I say it - - -

Been taking secret payments?---Taken advantage of, yes.

Well why would you say it to a man like Gattellari? I mean what would make you think that Gattellari would propose anything which was less than aboveboard?---Well I didn't think that. I'd stated that from the beginning.

Well but you said it, why would you think you would need to say it to somebody?---Well I suppose there was no need.

10

Now of all the people in New South Wales why fix on Lucky Gattellari? ---I'd known him for a number of years and knew him to be a businessman.

You hadn't had contact with him for some years before 2005?---I had spoken to him a few times. But I hadn't spoken to him for probably five or six years.

So there had been a five or six year hiatus before you made contact with him again. Is that right?---Yes.

20

Just tell us again why was it that you went to somebody who you hadn't spleen to for five or six years with your idea that you could help the Land Councils?---Well I thought I knew him on a personal level that I was able to do that.

Did he have any money?---I thought he did.

30

Right. You didn't even know whether he had real money that could finance the project?---Oh, I thought he was a businessman and he had financial benefits that I thought of, but I also knew he had contacts with other people that had finances.

Who?---Business, on the business sector, I'm not quite sure - - -

Who?--- - - - of the individuals but throughout my association with Lucky before he spoke of his associations with well known business people.

40

Who?---He spoke that he knew of one of the blokes from Channel 9 from his boxing days, he knew - - -

Did that person have a name?---Oh, I can't remember the name.

Right?---But he also - - -

Who else?---He also mentioned a few people that were in businesses that were well known businesses, I can't remember them offhand or the name of the people.

Okay. Well let's get it straight. This is your story. After a five or six year gap of not speaking to Gattellari - - -

MR LEWIS: Sorry Commission, but I think that's, withdraw the word story.

MR WATSON: Okay. I'll withdraw that. This is what your evidence is. After a five or six gap not speaking to Gattellari, you then went along to see him and said that you had an idea to help Land Councils but everything had to be aboveboard. And you contacted Gattellari of all people in New South Wales because you had heard from him five or six years before that he knew somebody at Channel 9 whose name you cannot now recall and somebody else whose name you cannot now recall?---Actually, he, he knew quite a few business people. He actually - - -

Sorry, I hadn't finished my question, if you'd let me finish. Is that a fair summary that the Commissioner should take away from what you're telling us?---Sorry?

20 Have I fairly summarised your evidence?---I don't understand.

I'll put it again, is this your evidence, that after a five or six year break of not speaking to Gattellari, you came up with an idea that you could help land councils so you saw him about that, telling him that it all had to be above board and you selected him because of his business contacts mainly with a person at Channel 9 who's name you cannot recall and also with another person who was in business who's name you cannot now recall. Is that a fair summary of what you're saying?---I actually stated and I honestly don't know their names but Lucky was well known for his contacts within the business - - -

But you hadn't - - -?---His brother, I went to a um, a an event where his brother was running for the Liberal Party at Cabramatta when I was working with him and there were a lot of high profile people attending that function.

And you say, so you thought five or six years later that Lucky Gattellari would join with you to help land councils?---No, I didn't, I didn't know he had joined me to help and that was a phrase. As I rang Lucky Gattellari I put a business proposal towards him because land councils were having difficulty in finding funding to develop the land.

All right.---And I put a proposal to him a business proposal, would he be interested in it and he said that he'd sold his property, he wasn't financial viable but he knew of someone that would be.

All right. Well, let's just think about that. You came to him at a time with this idea of a business proposal because you were aware that land councils

had trouble funding their development – I'll just ask you. Have you ever served on the executive of a land council?---No.

Have you ever served in the management of a land council?---No.

Have you ever been a member of a land council?---No.

Doesn't sound like you are in milieu of land councils?---No, but in between the Indigenous population, everyone knows everyone and - - -

10

All right. Well, so - - -

MR LEWIS: Well, can he be allowed to finish the question Commissioner.

ASSISTANT COMMISSIONER: Well, I don't know what else he wanted to say.

20

THE WITNESS: And throughout associations between the Indigenous, everyone knows everyone and everyone listens to the Indigenous grapevine, everyone knows everyone's business.

MR WATSON: Well, you see, everybody knows everyone's business, are you saying that everyone knew that Aboriginal Land Councils were having trouble collecting the money or getting the money together to develop their land?---It was common knowledge, yeah.

Common knowledge. And so you thought you would help them?---I thought there was a business opportunity.

30

All right. I really want to press you for answer to this, why did you think immediately after introducing the idea of helping these land councils that you needed to say to Gattellari, everything has to be above board. Why did you think you needed to say that to him?---Above board because of the protocols, strict protocols within the New South Wales Land Council.

But had you ever had any dealing in your entire life with New South Wales Aboriginal Land Council?---I hadn't dealt with them in particular, no.

40

Had you ever seen any published protocol by the New South Wales Aboriginal Land Council?---Yes.

Where had you seen that?---How do you mean?

Well, you just said you'd seen a protocol published by the New South Wales Aboriginal Land Council, where had you seen that?---I hadn't seen the protocol but I've seen in the newspapers where deals have gone south.

So you're saying to the Commissioner, you said look, I've got an idea to help land councils develop their land but everything has to be above board and you had to say that because of something you'd read in what, a newspaper?---It was common knowledge that a lot of land councils were in trouble.

Was it common knowledge to you that a lot of land councils were susceptible to making deals favourable to developers if side payments were made?---I don't think so.

10

Then why did it have to be above board, what was the problem?---Well, there wasn't a problem.

Why did you say it if there was no problem?---Because of what I stated before.

What was that, I didn't understand it?---That other Land Councils were in trouble before.

20 For what?---Sorry?

For what?---I'm not quite sure.

So they could have been in trouble for example because of a sexual harassment suit?---Because of?

Well, anything, like a drink driving problem?---Oh, could be. No, I think with land deals.

30 Did, was this more like it? The subject of the possibility of things being dodgy or being above board or not above board was raised by you with Gattellari in the context that you knew that certain Land Councils were susceptible to side payments?---No.

Is that the truth of it?---No, it's not.

Look, you do know, you've been here today, you do know what we've collected in terms of bank accounts- -?---Yes, yes.

40 - - -and the payments made into Ron Mason's account and Ken Foster's account?---Ah hmm.

You've seen that, you've seen all of that?---I've seen them, yes.

Yeah. You do know that side payments were being made to these men?  
---We were- - -

MR LEWIS: Commissioner- - -

MR WATSON: I'm sorry, please do not interrupt just for the sake of it. When were you, sorry, what was, what was it you need to know, when were you aware of this or when were these payments being made, 2005?---We did make payments to the Land Councils to individuals to help us with the joint venture.

10 Now, who were they, Ron Mason?---To the Land Council. There was payments to Ron and Ken to help with the joint venture process through the Land Councils because they had no money to help.

But the money was paid privately to Ron Mason and privately to Ken Foster?---No, they were helped with financials to help them travel to meetings to collect information.

Well, let's deal with them one by one. Do you acknowledge that private payments, secret payments were being made to Ron Mason?---Not that I'm aware of.

20 Well, you just said so?---No, I said I knew of payment being made.

Right. You knew of payments being made to Ron Mason?---To help to research and help with the joint venture.

The joint venture which would be put forward on behalf of The Medich Group of which you were a member. Is that right?---That's correct.

30 Now, how were the payments made, in cash?---Deposited into the bank account.

And by cash?---Not that I'm aware of.

Well, so you knew payments were being made into Ron Mason's bank account to help in respect of research of the joint venture?---That was part of the agreement.

The agreement with Ron Mason?---No, with the Land Council, that we'd support and help them- - -

40 Well, it's- -?- - -to put the joint venture together.

Well, there's a difference between supporting the Land Council for example by paying a sum of money in a cheque made out to Wagonga Land Council and making a payment into Ron Mason's account. Do you agree?---But they were the individuals that were nominated by the councils to represent them.

And who told you that?---Sorry?



Who told you that Ron Mason and Ken Foster were nominated by the Council to receive these payments?---That was an assumption because they were part of the negotiations.

10 Well, just thinking about it, Ron Mason was the chairperson and Ken Foster was the coordinator. Were they talking to you and Gattellari and saying they had been nominated to receive payments?---Well, from the first meeting with the local members it was assume that they were head of the Land Council.

Was anything said at the meeting, we are going to make payments directly into the bank account of Ron Mason?---No, we told the, the Land Council that we'd support them to help them to finalise the joint venture.

So can we take it that, I've asked you about Mason, the same applied with Foster, you are aware that money was paid directly into his bank account? ---To whose bank account?

20 Ken Foster's?---There is knowledge of that, yes.

And the payments made to Mason tallied thousands?---I'm not aware of the amounts that were paid.

But you knew from time to time substantial sums were being paid to him? ---I don't know how much they were but I knew that there was money there to help them to travel plus to research the information that was required for the joint venture.

30 Was Medich supplying money for these sorts of payments?---Mr Medich was financing the developments.

Do you remember the occasion when the police pulled you and Gattellari over, you'd been at Mr Medich's home?---Yes.

On that occasion he gave you a large sum of money in cash?---No, he gave Lucky.

40 Well, right, okay. He gave Lucky Gattellari a large sum of cash?---And what was in the bag I didn't know how much.

You didn't know how much but you knew it was cash?---I knew it was cash, yes.

And did Medich say anything about the purpose of providing the cash to Gattellari?---Not in particular, no.

Did he say anything about it being able to be paid into the accounts of Foster or Mason or to Foster and Mason?---No. It was given to us to help us finance the developments.

And by finance the development did that mean these payments made for research that were made to Mason and Foster?---No, it was for us for, for financial. That was to help us with travelling expenses, with everything to do with the development.

10 Let's think about it. Two nights in Narooma at the most expensive motel in Narooma is not going to be 50 grand and there was 50 grand I want you to assume that?---No, it wasn't, that amount of money wasn't for a one night in Narooma, it was for a period of time.

For a what?---A period of time.

Was it also able to be used to make these payments for what you've described as research?---It was used to help the Land Council to achieve what they needed to achieve for us to do the developments.

20

I just want to make sure that we're using the right terminology. By Land Council in that sense you were talking about payments being made into the accounts of either Mason or Foster, was that right?---Sorry?

By Land Council in your previous answer you meant Mason or Foster?---I suppose you could say that.

30 So that did you understand that the purpose of the payments to Mason or Foster was to permit research which would enable the joint venture to be put through?---It was for them to use for rezoning of, of the land because it wasn't zoned for residential plus working with the Council plus to help them with any way that they needed.

With this help that you were giving to Foster and Mason was it help which if it wasn't provided to them in this money form - - -?---Maybe I'm using the wrong terminology but I don't know how to - - -

40 Well, in this instance if you didn't give them this help did that mean that the joint venture would not go through?---Well, the joint venture couldn't go ahead without the help of the local Land Council.

And by that you mean Mason and Foster?---By their not help but their anticipation because of legalities as far as their paperwork.

When you're saying "their" are you talking about Mason and Foster?---The Land Council's.

Well, in the Land Council, you weren't paying the money into the Land Council account were you?---But it was paid in respect to them doing work on behalf of the Land Council.

Them meaning Mason and Foster?---Yes.

Now, do you know whether Mason and/or Foster even spent one cent of this on getting the land rezoned or anything like that?---At the time I didn't, no.

10 But you're quite confident you know of payments being made into their accounts?---I stated that.

Were you present at any time when Gattellari paid any rent for Ken Foster? ---I'm not sure.

Are you aware of Gattellari paying rent on behalf of Ken Foster? ---Gattellari, as I was saying, was depositing money into the account for what purpose I'm not sure.

20 Thank you, Mr Binge. I'm sorry (not transcribable) before.

ASSISTANT COMMISSIONER: Mr Binge, you didn't think that Mr Mason and Mr Foster were personally paying for the legal expenses of the Council did you?---Sorry, Commissioner?

You didn't think Mr Mason and Mr Foster were personally going to pay for legal advice or rezoning expenses?---No, they had their own solicitor.

30 Yes, which the Council was paying for weren't they?---Which the Council was paying for.

What is this research - - -?---But at the time - - -

- - - what is the research? Tell me that?---Well there were parcels of - - -

What research were they going to do?--- - - - of land that were not zoned for residential or building.

40 And I'm sorry, Mr Mason and Mr Foster were going to do some research into the rezoning were they?---Yes. And to, there were parcels of land that they had which we required paperwork and that.

I'm sorry, I can't understand this?---Plus - - -

Are you seriously saying you thought Mr Mason and Mr Foster, whom we've heard give evidence here, were going to do some research into the rezoning of those properties?---Supposedly, yes.

Well that's just ridiculous isn't it?---Not really.

Come on Mr Binge, could we step into the real world for a moment. I find that evidence, I don't know what's the word, offensive because it assumes we're all idiots here?---Maybe I'm phrasing it wrong, Commissioner.

Well, yes?---But payments into those accounts were for meetings, for travelling money and everything else because they'd travel to Sydney from Narooma.

10

Well they would have had to travel to Paris and Abu Dhabi I would suggest to in any way account for even a proportion of the money that was paid?  
---Yes. But - - -

Yes, it's ridiculous isn't it?--- - - - the amount of money that was paid, Commissioner, I'm not aware. And it was news to me when it came up, the amount that was suggested.

Yes. Yes, Mr Watson.

20

MR WATSON: I mean just having a look at it in hindsight, just thinking about it as you must have over the last three days, do you think the payments were really just to get Mason and Foster on side to try and facilitate the deal?---No, because from the initial meeting that we had with them everyone was agreeable. They were, they were, approved of a joint venture.

And part of that would be they'd be paid for their research?---No.  
Thank you.

30

ASSISTANT COMMISSIONER: Yes, does anybody wish to question this witness?

MR STITZ: Yes.

ASSISTANT COMMISSIONER: Yes, Mr Stitz.

MR STITZ: Mr Binge, my name is Stitz and I appear for Mr Medich. Now you attended a function for Rocky Gattellari's spectacularly unsuccessful run for parliament?---Ah hmm. Yes.

40

And at that event Lucky Gattellari was there?---Yes.

And it was apparent to you was it that he seemed fairly well connected?  
---To be it was the image that he had.

And did he appear well politically, correct, connected?---I wasn't sure. All I knew that his brother was running for the Liberals.

All right. Were there business folk at that function?---There were a lot of people there I assumed were business people.

Okay. And would it be fair to say also that Mr Lucky Gattellari is a bit of a name dropper based on your experience of him?---Not until I read in the papers.

I'm sorry?---How do you mean a namedropper?

10 Oh, he liked to make it know that he was well connected with all sorts of important people didn't he?---Yes. And some of the names I can't remember.

Sure. But at any event you came away from that function and your other experiences with Mr Lucky Gattellari with the impression that he was potentially a man of means?---I thought he was, yes.

20 And so after the passage of some five or six years, whatever it is, I take it you needed some assistance if you were going to involve yourself in developing land for the Land Councils?---That's correct.

Did you approach anyone else other than Mr Lucky Gattellari?---No.

Was he the most obvious choice in your mind?---In my mind at the time.

So you approached him and put the proposition to him?---Yes.

30 Were the position that you were aware that other developments had gone bad because of misconduct on the part of people?---Sorry?

Was it the case that you thought that other land developments with Aboriginal Land Councils had gone bad because of misconduct by people? ---No, it was the local land councils were finding it hard to obtain finances to develop their own land because they had no way of repaying, they couldn't get a loan, they were asset rich and cash poor.

40 That was the word on the grapevine?---That was the word and I think it was a reality because a lot of land councils wanted to do something with their land but they didn't have the money to be able to do it.

Now, how did you hear about the – I withdraw that. At the time that you went to see Mr Lucky Gattellari had you heard about the Wagonga Land Council?---No.

Where did you get word of that?---Through associations with people that I knew, I asked did they know of any land councils that wanted to develop or had interests in developing or doing something with their land.

And that was, was that Gil Saunders?---That was Gil.

And from your prospective this was a commercial, a potential commercial enterprise?---How do you mean?

Well, you intended to try and make some money for yourself out of it didn't you?---No, it was going to be, well, hopefully, it was going to be a business venture.

10 Benefiting both parties mutually?---Both parties.

So was it Mr Gil Saunders that put you in contact with the Wagonga Land Council?---That's correct.

Did he arrange the meetings for you?---Yes, he did.

And as a consequence of that did you and Mr Gattellari attend a meeting with the Wagonga Land Council?---That's correct.

20 Now, I won't be a moment Commissioner. Might he be given a copy of Exhibit 1 please Commissioner.

ASSISTANT COMMISSIONER: Yes.

MR STITZ: Now, Mr Binge you'll see on the top right hand corner of those documents a number, can you turn to page 55. All right. Do you see that? ---Yes.

30 Have you seen that document before?---(NO AUDIBLE REPLY)

And it carries on over to page 56, sir. Have you finished having a look at that?---Yes.

Are you able to assist us – or firstly sir, the second page to that document page 56 bears your signature does it not?---It does.

And the document on the face of it appears to have been signed on 9 March 2005?---yes.

40 Are you able to assist us as to how this document was created?---I think Lucky prepared this letter, I don't know whether it was with his solicitor or not.

When was the first time that you saw it?---Oh, it was probably on, a couple of days before, the, the 9<sup>th</sup> I'd say, from memory, I'm not quite sure.

All right. So you were aware of the document before the meeting on 9 March. Is that what you're saying?---I assume that's correct.

Now, Mr Medich is not part of or even referred to in that document.  
Correct?---Not in this document, no.

Now, I think you're indicating to us that upon reconnecting with Mr Lucky Gattellari you learned that he was not the man of means that you had suspected that he was?---He said that financially he wasn't in a position to be able to develop the land but- - -

10 Yeah---?- - -he knew someone that would be.

Now, did he say that before or after this document came into creation?  
---Look, I honestly can't say whether it was before or after, but from the initial meeting with Gattellari he assured me that he did know someone that was- - -

He didn't name that person though, did he?---He didn't, no.

20 And it was only subsequent to this document coming into existence that he mentioned Mr Medich?---Yeah, I'm not sure whether it was before or after.

Okay. Now, now, in relation to the incident, for want of a better expression, where the police spoke to you at Point Piper, that occurred, did it not, around about 9 o'clock on a Friday night?---I think it was about 8.00, 8.30. I can't actually remember the time.

30 Okay. 8.30. You had been to Mr Medich's house. And did you observe Mr Gattellari be handed something or did you just assume that happened?  
---No, we were talking to Ron, I think it was the first time that I'd been to his place, and I was out the back looking at the views from his house, amazed with the way it was looking, and when I came back in, we weren't there very long and we had left and Lucky had a bag.

So you were out near the pool area, were you?---Yeah, it was just sliding doors.

Okay. So you weren't privy to whatever discussion they had?---Probably from here to you.

40 I'm sorry, sir, I didn't catch that?---Probably from here to you away.

Yeah. Okay?---Yeah.

You could hear what they- - -?---Not all of the time.

No. So am I right in thinking that you've gone in, you've been introduced to Mr Medich, g'day, how are you et cetera, and then you've moved away?

---Yeah, we were talking and Lucky's had a couple of drinks, I don't particularly drink, and I was having a look at the view.

So how long do you think you were there for?---20 minutes.

Now- - -?---Half an hour, I'm not sure.

All right. Now- - -?---It wasn't long.

10 The intention was, was it not, that having gone to Mr Medich's house on the Friday night that you and Mr Gattellari were then going to proceed down to Narooma?---The next day, yes.

That was the intention?---Yes.

Right. Except your arrest put a temporary hold on that?---Yes.

Now, was it the case, Mr Binge and if you can't assist me that's fine, but was it the case that during the course of the afternoon of that Friday  
20 Mr Gattellari asked you to drive him over to Mr Medich's place?---Yes.

And did he say to you that the purpose of the visit was to collect some money?---Yes.

Am I right in thinking that you had not been privy to any discussions between Mr Medich and Mr Gattellari that may have taken place on that Friday?---How do you mean?

Well, you were not - I'll put that another way. You didn't hear any  
30 conversations between Mr Medich and Mr Gattellari on that Friday afternoon, did you?---I don't think so, no.

You weren't listening on a speaker phone or anything like that?---No, no.

ASSISTANT COMMISSIONER: Did you hear any of their conversation at the house that evening?---Hear a bit of it, Commissioner.

Was there any discussion about the money?---No. There was - because we were entering into a joint venture we were there to pick up a cheque for the  
40 Land Council and some money for our assistance.

Yes. Was there any discussion about the money?---No.

Yes, yes, Mr Stitz.

MR STITZ: Thank you.



Now, from your discussions with Mr Gattellari was it your understanding that there was a deposit or deposits that were going to be paid that weekend in Narooma and possibly Nowra?---I think so, yes. I knew there was a deposit for Narooma. I wasn't sure about Nowra.

10 Okay. Just pardon me a moment please, Commissioner. Mr Binge, in terms of advancing the, sorry, advancing moneys in whatever form to the Land Council in order to progress these prospective developments, was it your understanding that the Land Council, and in particular Wagonga, would need assistance with legal fees?---I wasn't aware of, of them needing assistance with legal fees but I knew they needed assistance with helping us to - well, I suppose to help with the paperwork and everything else required.

Now, in terms of that exercise of providing monetary assistance, the, your understanding was that the money was coming from Mr Medich?---My understanding was, yes.

20 And the man responsible for distributing that money in whatever form was Mr Gattellari?---Yes.

It was not your department, was it?---No. See, with um- - -

ASSISTANT COMMISSIONER: I think if you just answer the question we might get through this a little more quickly.

MR STITZ: Thank you, Commissioner.

30 ASSISTANT COMMISSIONER: Thank you, Mr Stitz. Is there anybody else?

MR HALSTEAD: Yes, just briefly, Commissioner.

ASSISTANT COMMISSIONER: Mr Halstead?

MR HALSTEAD: Mr Binge, my name is Halstead. I appear for Mr Foster, Mr Ken Foster?---Yes.

40 Mr Binge, in your earlier evidence you made reference to the initial meeting with Ron Mason?---Yes.

Was the initial meeting that you speak about with Ron Mason, is that the one in Narooma?---Yes.

And the one that was attended by Gil Saunders?---Yes.

Mr Ken Foster was not at that meeting, was he?---No.

Now, are you aware at any stage of Mr Gattellari and Mr Foster being involved in a funeral fund venture?---They were involved in the, in a funeral fund from what I hear.

You made reference in your evidence earlier to being aware of payment being made to various bank accounts. Were you aware of those payments at the time or have you only become aware of those payments during this hearing?---I became aware of the payments during the course and during the hearing, but when the discussions were, were made between the Land Council and ourselves it was the joint venture was going to be financed at no cost to the Land Council, no up-front payments until the end of the process, so there was no risks put towards the Land Councils.

Yes, thank you, Commissioner.

ASSISTANT COMMISSIONER: Thank you, yes.

MR WILLIS: Can I have- - -

20 ASSISTANT COMMISSIONER: Yes, you'll have to come forward, Mr Willis.

MR WILLIS: Mr Binge, you've given evidence about being aware of payments having been made to Ron Mason and you've said in your evidence that you were aware of deposits being made in his account. Is that right?---I assumed that they were for the joint venture proposal, to help with meetings and travel expenses and everything else.

30 Yes. How did you become aware of those deposits being made?---I've loaned Mr Mason some money myself, I've given him a couple of hundred dollars here and there but with nothing connected to it um, and there has been times where we needed to have meetings where um, Mr Mason wasn't financially viable to attend those meetings and money was deposited I'm aware of into his account to help him to get there.

But how did you know that those deposits were made?---From Gattellari and from what was shown on the- - -

40 From Gattellari and from?---What was shown on the um, the thing, that was my knowledge. To whether the amounts were correct I don't know.

All right. And you said part of the deposits that were made that you were, you were told about by Mr Gattellari. Were you aware of other payments being made to Ron Mason?---Not that I'm aware of, no.

And by that I meant cash payments, do you, were you aware of any cash - - -?---If there were any cash payment made to Ron Mason it wasn't in front of me.

Right. And again in terms of your understanding of the purpose of any deposits being made into Ron Mason's account - - -?---Yes.

- - - did that come from Mr Gattellari also or where did you get that understanding from?---How do you mean?

Well you've told the Commission that it was your, I'm not sure whether you said that you assumed what the purpose of those payments was for, where did you get an understanding from as to the purpose of those? Was it from  
10 Mr Gattellari or somewhere else?---From the beginning we said we'd support them to put the joint venture together.

ASSISTANT COMMISSIONER: Mr Binge, that's not a responsive answer. You're being asked where did you get the information about deposits being made on occasion into Mr Mason's account?---Mr Gattellari mentioned that he was going to deposit some money.

MR WILLIS: And do I understand your evidence to be that until you came to this hearing this week you were unaware, and you heard evidence given,  
20 you were unaware of firstly the amount of money that might have been paid to Mr Mason. Is that right?---Yes, yes.

And the number of occasions upon which deposits were made into the account. That was something you didn't know about?---Seeing the amounts that were on display throughout the course of this hearing, I wasn't aware of that amount of money and I wasn't sure whether that was correct or whether Mr Gattellari was putting extra figures on there because I wasn't aware of a lot of those things that happened.

30 Yes, I have nothing further, thank you Commissioner.

ASSISTANT COMMISSIONER: Thank you. Yes, Mr Lewis, you don't want to ask anything?

MR LEWIS: Yes, thank you, Commissioner. Mr Binge, just to be clear, the only source of information for you as to the amounts being deposited was that Mr Gattellari?---Yes.

You had no other way of knowing what payments were being made to Mr  
40 Mason?---Mr Gattellari was in control of finances.

Did you have access to his bank statements?---To his bank statements?

Yes?---We did have an account with the company which I probably would have had access, but normally he had control of all the paperwork.

And was that, that company account used to pay money to Mr Mason?  
---Not that I'm aware of.

So would it be fair to say that you were surprised to see the amount of money that had been paid to Mr Mason when you came here to this hearing?---Yes, I was surprised.

Can you venture an idea of how much you thought it was before you came here?---Oh look I honestly couldn't say, but the amounts that were on display here were a lot more than I ever thought.

Thank you. Nothing further.

10

ASSISTANT COMMISSIONER: Thank you Mr Lewis. Mr Watson.

MR WATSON: Could Mr Binge, could he be excused, please.

ASSISTANT COMMISSIONER: Yes, Mr Binge, you are now excused from further attendance.

**THE WITNESS EXCUSED**

**[4:13pm]**

20

MR WATSON: And I cannot help but notice the time.

ASSISTANT COMMISSIONER: Yes, I did hope to do Mrs Mason today, but I really can't go beyond 4.30, so I don't - - -

MR WATSON: No.

30

ASSISTANT COMMISSIONER: No. All right. We will resume at 10.00am tomorrow.

**AT 4:14pm THE MATTER WAS ADJOURNED ACCORDINGLY**

**[4:14pm]**