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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO, QC, COMMISSIONER

PUBLIC HEARING

OPERATION CALPURNIA

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 2 FEBRUARY 2010

AT 10.25AM

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

THE COMMISSIONER: Mr Gormly?

MR GORMLY: Commissioner, thank you. Commissioner, I have now a copy of the transcript as it presently stands, it's an ongoing saga and I don't expect this transcript to fully resolve all issues but we met yesterday afternoon, that is, all the parties affected met, we went through the transcript and various changes have been either made by agreement or noted where there is disagreement. And they're noted in brackets where any change that one party seeks but is not agreed by me or others - the Commission or others
10 their initials appear next to the alteration.

Now, I think it's fair to say that everybody was pretty much of one mind last night except Mr Medich who needed to go away and listen to the recording or Mr Medich and his lawyers but apart from that I think everybody else was agreed on what could be agreed and what could not. So those changes as of yesterday afternoon are as I've described. This morning we received a list of other suggested changes from Mr Bamford who is the solicitor for Mr Medich. It's not possible and from my looking at the list of changes not
20 necessary to try and achieve agreement on the incorporation, if we did it would just cause more delay. But what we have done is to insert Mr Medich's suggestions for changes into the transcript in brackets with Mr Bamford's initials after it so that we know what is what of this part of the process.'

So we have now a transcript which I am prepared to say is the best transcript currently available that has been the subject of review by those affected and that marks areas of agreement and disagreement. My own view, Commissioner, and I accept that others may not have this view, is that the areas where there have been changes made as of last night and this morning
30 are not significant perhaps accepted with one area. I think I am quite happy to tender this transcript as a reasonable and acceptable transcript of the tape always bearing in mind that the tape is the ultimate source. It may be, Commissioner, that at some stage you'll be asked to rule on differences of view but otherwise this seems to me to be a reasonable transcript and I tender it.

THE COMMISSIONER: Yes. Well, the amended transcript will be exhibit 2.

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**#EXHIBIT 2 - AMENDED TRANSCRIPT OF RECORDED
CONVERSATION BETWEEN MEDICH AND MCGURK**

MR GORMLY: Thank you. And I tender also, Commissioner, if I may now to keep them together I tender notionally a copy of the recording of the

conversation between Mr McGurk and Mr Medich of the 6th of February, 2009.

THE COMMISSIONER: Yes. The recording of the 6th of February, 2009 will be exhibit 3.

#EXHIBIT 3 - CD - COPY OF THE RECORDING OF CONVERSATION BETWEEN MEDICH AND MCGURK

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MR GORMLY: Now, there is one other matter and I'll raise it now. We have had obviously Mr, as I said yesterday in the opening, Mr Medich come here with his lawyers to listen to the tape and to make suggestions, this is in the past. I have also received a transcript from Mrs McGurk's team which had some handwritten markings up on the basis that I would receive it and not pass it on which obviously I have complied with. So we've received suggestions from both parties.

20 We, this morning had a request from Mr Game that we provide to the, to him all communications relating to the meeting that we had with Mr Medich and his lawyers and a list of the changes that were made when Mr Medich listened to the tape. Now, Commissioner, I, I expect that my friend still wants that. What he wants, I think, is to go back into the history of changes to the tape. And I presume that he is happy for his marked-up transcript also to be provided to Mr Medich.

Commissioner, I am going to oppose that course, principally because going back into the history of changes is simply going to cause more delay.
30 Ultimately the recording is the only test and on that basis, I decline, subject to any ruling you may make, Commissioner, obviously, to provide Mr Game with that kind of historical and investigative material.

Subject to that, Commissioner, we are ready to go and I would like now to play excerpts from the tape, which is where we ended up yesterday. Those excerpts are the ones that I thought should be played, because they're reasonable extracts that provide an indication of what the tape is like. But I understand that Mr Game has also put in a list of excerpts that he would like played and obviously, we're happy to play them and any other excerpt that
40 anyone else wants to play, subject to practicability and time.

So, what I would propose, Commissioner, is that we move ahead and play those excerpts.

THE COMMISSIONER: Yes. All right.

MR GORMLY: The first one is the opening of the, of the conversation.

MR GAME: (not transcribable)

THE COMMISSIONER: Sorry, Mr Game. Can you just explain what's happening with the transcript? How is the transcript going to be shown in relation to the extracts that are going to be played?

MR GORMLY: The transcript - - -

10 THE COMMISSIONER: We had trouble with this microphone yesterday, is that, can the people at the back hear me? Yes.

MR GORMLY: What's proposed is that the transcript as amended and as tendered will be shown.

THE COMMISSIONER: So the transcript which, the transcript which was Exhibit 2 will be shown.

MR GORMLY: Yes. Yes.

20 THE COMMISSIONER: Yes, very well.

MR GORMLY: Let me just check that. We're not, we're not rolling the totality of the transcript, just those segments of the transcript that relate to that part.

THE COMMISSIONER: Yes. That's what I want.

MR GAME: Can I just raise a couple of matters, Mr Commissioner.

30 THE COMMISSIONER: Mr Game.

MR GAME: First of all - - -

THE COMMISSIONER: I think you should be careful about interrupting. And yesterday you interrupted several times. This is not really an adversarial procedure and you will have an opportunity to put all matters you wish to put in due course. Is there any reason why we should not now listen to the tape in accordance with the Exhibit which has been agreed, subject to reservations by the parties?

40

MR GAME: Yes.

THE COMMISSIONER: Why is that Mr Game?

MR GAME: The reason is this, that we were asked to identify extracts to Mr Gormly or Mr Broad that we wished to be played. We did that this morning. But this morning, Mr Broad asked us if we could, he wouldn't be able to play our extracts unless we gave him the references according to the

new pagination. But we haven't seen the document which is about to be tendered. So there is no means by which our extracts can be played because we haven't had an opportunity to see that tape. So how could it possibly be that the tape can be played - - -

THE COMMISSIONER: But you haven't seen the tape.

MR GAME: I'll explain that again. This is just a basic thing, and I did not mean to interrupt out of any discourtesy. There is a case - - -

10

MR GORMLY: Mr Game is right, Commissioner. He's quite right. I'm sorry, I have understood it that Mr Game's extracts were also being played. What we have to play right at the moment is the extracts that I've identified and the one that Mr Game wants still require queuing, because we need to know where they are in the new transcript. So, as I understand it, that is not yet complete.

20

MR GAME: That's the first thing. The second thing is we have not seen the transcript as it now appears. We have not seen Mr Medich's input. I should also put on record that just a moment ago, Mr Gormly said that most excerpts were not significant except for one area. Well, there were major significant changes that included reference to payments, references to tip-offs. It's completely misleading to suggest that these are not significant.

30

THE COMMISSIONER: Mr Game, you will get your chance to deal with that. You keep on making, interrupting and making submissions which are more appropriately made at another time. This results in Mr Gormly having to respond and a great deal of time being wasted. You will have your chance.

MR GAME: Your Honour, there has been no time wasted by my interruptions. All I have done is attempted to bring to a head the issues in relation to the transcript.

THE COMMISSIONER: Well, what is the point you now, your second point?

40

MR GAME: Sorry. I would, I would like to also raise this, sorry, the second point is that we haven't seen at all the Medich amendments and my - - -

THE COMMISSIONER: So you want to see the amendments?

MR GAME: We do wish to see them.

THE COMMISSIONER: Well, that is perfectly legitimate and if you'd asked that without any other argumentative matters I would agree.

MR GAME: But the first thing I asked was just to tell you that our input was not capable of being seen. That was the first logical thing to tell you.

THE COMMISSIONER: I said that, Mr Game.

MR GAME: Now I'm telling you secondly that we are being denied the opportunity until this moment to see those changes.

10 THE COMMISSIONER: You will get the opportunity and you will, your first request will be acceded to.

MR GAME: Right, now - - -

THE COMMISSIONER: What I'm objecting to is your argument about the merits of what Mr Gormly has said about the issues in this case. It is those matters which are more properly raised at a different time.

MR GAME: But, your Honour, I have a deep concern, a deep concern that the press go out and report that the changes are not significant when they are highly significant and Mr Gormly must accept that - - -
20

THE COMMISSIONER: I am not going to allow this matter to proceed in argument in dribs and drabs.

MR GAME: All right. I wish to raise a third matter, which is this. Mr Gormly has, and I don't see how I could raise these matters at some other time, the third matter is this. Mr Medich has apparently had some input into the transcript. We do not know what input that is, has been in relation to the transcript and it was not notified to us until we indicated our problems with the transcript. We are, we are very concerned to know things that may have been changed in the transcript - - -
30

THE COMMISSIONER: You're entitled to know that, Mr Game.

MR GAME: Mr Gormly is denying us access to that material. I'm seeking it and I'm seeking a ruling that I'm entitled to it and each of these three things I've raised, this is the appropriate time to raise them.

40 THE COMMISSIONER: Yes, Mr Gormly.

MR GAME: I seek rulings on those matters.

MR GORMLY: Commissioner, if, if, I continue to oppose that.

THE COMMISSIONER: But Mr, why, Mr Game is entitled to know what Mr Medich changes.

MR GORMLY: Mr Game was quite insistent on Sunday when he provided me a handed up a transcript with their notations on it that it not be shown to Mr Medich under any circumstances. Now I understand why he, he did that because that is a partisan interest. Mr Medich had a partisan interest when he made his suggestions. What we did was to ignore partisan interests and sit down and listen to the transcript ourselves and, listen to the tape ourselves and decide whether we would or would not accept various amendments. If Mr Game is given access to the changes that Mr Medich suggested and if we are then to go into the changes that Mr Game has suggested and if we bear in mind the constant over and over listening that occurred last night when we tried to work out what exactly the doubtful bits might mean, we are going to end up in an historical analysis of who changed what in the transcript and we are then going to have that followed up with Mr Game endeavouring to suggest that it's all unfair to Mr McGurk because more than 50 per cent or less than 50 per cent or whatever number of changes favour Mr Medich. That was his allegation yesterday. Now, Commissioner, we've listened to the transcript. We've listened to the tape. We've checked it against the transcript. If we go back into an historical path we are going to lose a lot of time.

20

THE COMMISSIONER: Well, I just need to understand one or two things, Mr Gormly.

MR GORMLY: Yes.

THE COMMISSIONER: I understood yesterday that all parties were going to meet to settle - - -

MR GORMLY: Yes.

30

THE COMMISSIONER: - - - the transcript. Those parties, did they include Mr Medich?

MR GORMLY: Mr Medich's lawyers.

THE COMMISSIONER: Yes.

MR GORMLY: Yes.

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THE COMMISSIONER: And did that happen?

MR GORMLY: Yes, it did.

THE COMMISSIONER: So why is it that Mr Game says he doesn't know what Mr Medich wanted?

MR GORMLY: Because this morning, and this copy of the transcript that Mr Game rightly says he hasn't seen, is still hot, physically hot from the

photocopier because this morning Mr Medich or Mr Medich's lawyers came along with a list of changes that they said should be made to the transcript in accordance with the instructions for Mr Medich.

THE COMMISSIONER: The changes, they did not make, they did not request that changes be made last night. They asked that changes be made this morning and unlike last night the changes that they asked to be made this morning were not made known to the other parties.

10 MR GORMLY: Exactly. (not transcribable)

THE COMMISSIONER: They were authorised and I cannot understand why Mr Medich's lawyers did not do this last night.

MR GORMLY: Because they said they wanted instructions, Commissioner.

THE COMMISSIONER: Well, that's nonsense. Honestly, you should know that - - -

20 MR FAULKNER: No, Commissioner, you should be told that we were only given the tape to go away and listen to last night by agreement and that's what we did and we worked until midnight to do it.

THE COMMISSIONER: I have a strong sense that steps are being taken to delay the production of evidence in this case but the fact is that if Mr Game alone has not been told what the changes are that Mr Medich wants he should be told and I so order.

30 MR GORMLY: We've done that, Commissioner, by marking in the transcript available to the public and to everyone what changes Mr Medich wants in the transcript and they are marked with the letters JB.

THE COMMISSIONER: Now, Mr Game, when you get those details how long would you need to be ready so that we can play the tapes and call our witnesses?

MR GAME: It's about, it will be able a dozen pages. Sorry, there is, I don't, I would say we could look at that in 20 minutes or so, your Honour.

40 THE COMMISSIONER: All right.

MR GAME: But can I say this. We don't have the client who we can ask what was said on the tape. What I was asking for in addition and before was whether or not there was input into any changes in the transcript by Mr Medich before which have effected that which the transcript is now or has been, as it were, deleted or changed now as a result of further listening. I should make it clear yesterday - - -

THE COMMISSIONER: I don't understand that. I don't understand the proposition.

MR GAME: The proposition is this that we learnt on Sunday that Mr Medich has had an input into this transcript. We don't know what the input was into this transcript nor do we know if any of the changes that we have requested have brought about a changing of the position in respect of that which was, shall I say, changed at Mr Medich's instance but no longer is the case.

10

THE COMMISSIONER: Mr Game, if you listened to the transcript last night and you agreed it what difference does that make?

MR GAME: That's fine, your Honour, but what - the situation yesterday was that there was no input at all of any kind from Mr Medich's lawyers.

THE COMMISSIONER: I understand that. That's why and I have held that you are entitled to be told what material has been changed since last night at the request of Mr Medich.

20

MR GAME: Yes, I just - - -

THE COMMISSIONER: I ordered that. What I don't understand is why you need to know what Mr Medich previously wanted change when you listened to the transcript last night and agreed it.

MR GAME: I understand that, your Honour, but the situation is that the transcript as it was provided to us on Friday contained, as I said yesterday, a series of errors of particular kind. Our case is that we are entitled to know what input it was that Mr Medich had to, the errors that appear in the transcript, if any. That is the question that we submit we're entitled to know, the answer.

30

THE COMMISSIONER: Sorry, you want to know. I'm still not understanding this. You want to know what errors that subsequently were remedied last night - - -

MR GAME: Correct.

40 THE COMMISSIONER: - - - were brought about - - -

MR GAME: That's correct.

THE COMMISSIONER: - - - by requests made by Mr Medich?

MR GAME: Yes, if any. That's correct.

THE COMMISSIONER: I think that's a fair request.

MR GORMLY: They're marked up in the transcript with the letters JB.

MR GAME: No, the ones before, the ones that related to the transcript as we had it on Friday not the ones that have come this morning.

MR GORMLY: My friend doesn't want the tape played, Commissioner.

10 MR GAME: No, I ask Mr Gormly to withdraw that statement.

MR GORMLY: That we need to hear this tape - - -

MR GAME: I ask him to withdraw that statement.

20 MR GORMLY: There is one sound way to determine the transcript and that is by listening to the tape, that is the way to do it. Mr Game had that opportunity last night and he agreed the transcript, Commissioner. It's also quite untrue of him to say that Mr Medich's lawyers had no role in the discussion last night. They did. They quite understand that we wanted to take the, the recording away. A fact that was known to Mr Game.

And to listen to it. And that's what occurred. We now have a transcript that, as I understand it, is agreed by Mr Game and that separately identifies any changes that Mr Medich wants to make. (not transcribable)

THE COMMISSIONER: Mr Gormly, I understand Mr Game, before Sunday, I think he said, changes were made to the transcript the instance of Mr Medich.

30 MR GORMLY: Well, we were given a list of changes that Mr Medich wanted.

THE COMMISSIONER: Is there any objection to giving Mr Game that list?

MR GORMLY: Commissioner, if you direct it, we will do it. It will take - - -

40 THE COMMISSIONER: What is the problem?

MR GORMLY: Because what happened was that Mr Medich and his then barrister, Mr Kelly sat in a room, which we provided with a copy of the tape and listened to it and as I understand that they made some kind of a list. Mr Broad then went through the list, some of them he agreed and most of them he did not, as I understand the position. But we would need to go and find those - - -

MR BROAD: We've got them.

MR GORMLY: Oh, you've got them have you. All right. O.K. Well, perhaps we can do that, Commissioner.

THE COMMISSIONER: All right. Would you give Mr Game that list?

MR GORMLY: Yes, Commissioner.

THE COMMISSIONER: Now, Mr Game - - -

10

MR GORMLY: Commissioner, we should expect to hear cross-examination of this.

THE COMMISSIONER: Well, we'll see.

MR GAME: Well, we just wish to have a short opportunity to view this.

20

THE COMMISSIONER: Mr Game, I, there is going to come a time when you and I will have to debate what your interests are and what you're entitled to ask questions about. Now, I think it's fair that you be given what you've asked for. And you, I have order that you be given what you've asked for. But I want to make it clear that by making that order, I have not given any indication one way or the other of the kind of questions that you'd be allowed to ask.

MR GAME: Yes, I do, I just - - -

THE COMMISSIONER: No, no. All I now need to know is when can you start?

30

MR GAME: Half an hour would be - - -

THE COMMISSIONER: Mr Faulkner, are you ready to start in half an hour?

MR FAULKNER: Yes.

MR GAME: (not transcribable) your Honour.

40

THE COMMISSIONER: Mr Galasso, are you ready to start in half an hour?

MR GALASSO: I'm ready to start, Commissioner. I'm trying to withhold myself from raising the matter that I raised yesterday. But, you will note at the time as well - - -

THE COMMISSIONER: I'm - - -

MR GALASSO: I'm trying to be reserved in this respect.

THE COMMISSIONER: I am very conscious of that, Mr Galasso. The issue is that for personal reasons, Mr Haddad wishes to leave for overseas tonight.

MR GALASSO: He had returned for this hearing.

THE COMMISSIONER: He returned for it.

10 MR GALASSO: Yes.

THE COMMISSIONER: And this delay has caused him great personal inconvenience.

MR GALASSO: I cannot describe the significance of it. And I cannot portray the significance of his need to - - -

20 THE COMMISSIONER: I recognise that and that partly underlies what might seem to be some impatience on my part at the delays that have occurred.

MR GALASSO: I apprehended that might've been the case, Commissioner.

THE COMMISSIONER: But there is nothing that I can see that I can do about that now.

MR GALASSO: Well, maybe - - -

30 THE COMMISSIONER: Other than apologise for what has happened and to say that this is simply part of the procedures and I don't think that it can be attributed to the fault of any party.

MR GALASSO: I don't wish, I don't wish to embark upon pointing the finger, Commissioner, but perhaps if this morning's skirmish be left to be addressed, it may be that I'll have a discussion with Mr Gormly about the order of witnesses and if, if there can't be a satisfactory position reached, it may be that I make an application that Mr Haddad be called first for those reasons.

40 THE COMMISSIONER: Well, we'll have to deal with that. But can you, would you mind making that application once, if you do make it, once the, once the extracts from the recording have been read? I want to actually get Mr Gormly to finish his opening.

MR GALASSO: I would like him to as well.

THE COMMISSIONER: Now what time, it's now 10 to 11.00. We'll take the tea adjournment for now. And we will start at 20 past 11.00, Mr Game.

MR GAME: Thank you.

THE COMMISSIONER: Yes.

SHORT ADJOURNMENT

[10.50am]

10 THE COMMISSIONER: Mr Gormly.

MR GORMLY: Commissioner, we're in a position to play now segments of the tape which are a combination of those of the Commission, my selection and Mr Game's team's selection.

THE COMMISSIONER: Yes, thank you.

MR GORMLY: Commissioner, the first extract is the start of the tape and it goes, I think, for some pages.

20

THE COMMISSIONER: Can you just, just a moment, I just need to get the exhibit, thank you. It's the beginning of the, it's the beginning of the transcript, is it?

MR GORMLY: Yes, it is.

AUDIO RECORDING PLAYED

[11.53am]

30

MR GORMLY: That's the end of the first segment, Commissioner, and that's when they start talking about finance, financial arrangements between themselves and the a second segment starts halfway down page 17, just above line 20 or just at line 20. This is 19 minutes and 20 seconds into the conversation.

AUDIO RECORDING PLAYED

[11.59am]

40

THE COMMISSIONER: I must say that so far I've seen nothing in that that's relevant and so far it's been a waste of time.

MR GORMLY: Yeah. Commissioner, I think it's a, I had four passages and it's a combination of passages that I wanted played and a combination of passages that Mr Game wanted played. I agree with the description, Commissioner, that it's a matter of just playing the tape. The next passage

starts at page 36, about line 10 and it's 41 minutes and 14 seconds into the conversation.

AUDIO RECORDING PLAYED

[12.09pm]

10 THE COMMISSIONER: Is that passage played at the instance of Mr Game?

MR GORMLY: Yes, it is, Commissioner.

THE COMMISSIONER: I'll have something to say about that.

MR GORMLY: The next passage is at page 39 line 10 and this at 43 minutes and 57.

AUDIO RECORDING PLAYED

[12.11]

20

THE COMMISSIONER: How much more of this must we endure?

MR GORMLY: We've just got a few more segments, Commissioner.

THE COMMISSIONER: I have yet to hear anything relevant to the Commission's inquiry.

30 MR GORMLY: Commissioner, I don't think there is anything relevant in any of this material. There isn't anything relevant on the tape (not transcribable) page 56 (not transcribable) perhaps fifteen minutes, Commissioner, something like that.

THE COMMISSIONER: Yes, very well.

MR GORMLY: So the next passage is at page 52 and it is 57 minutes and 55 seconds, the conversation, of the page.

40 **AUDIO RECORDING PLAYED**

[12.18pm]

MR GORMLY: Right. The next passage, Commissioner, starts at page 61, starting at line 24, so close to the bottom of the page with Mr McGurk speaking and it's at 1 hour 8 minutes and 37 seconds.

AUDIO RECORDING PLAYED

[12.22pm]

MR GORMLY: The next passage, Commissioner, is at page 73 line 16. Mr Medich starting saying, "Yes, and I signed there as (not transcribable)." And this is at 1 hour, 23 minutes and 55 seconds.

AUDIO RECORDING PLAYED [12.30]

10

MR GORMLY: The last segment, Commissioner, is one we selected.

THE COMMISSIONER: Do you have to play it again? Has to be played again?

MR GORMLY: No, we don't, Commissioner, we don't need - - -

THE COMMISSIONER: Does anybody want it played again?

20 MR GAME: It does go to the (not transcribable), it says (not transcribable), your Honour.

MR GORMLY: Commissioner, we're at page 79 at 9.14 and it starts Medich, "And what do you intend to do with Gerroa?"

AUDIO RECORDING PLAYED [12.33]

30 MR GORMLY: Page 79. So 1 hour 30 minutes and 55 seconds.

AUDIO RECORDING PLAYED [12.33]

THE COMMISSIONER: Mr Gormly, in the passage that's just been played at around line 15 on 82 I seem to hear the word Johnson. I notice that it's not anywhere on the transcript. I don't want to do anything about it now.

40 MR GORMLY: Commissioner, we will listen for that but I must say that that is the kind of problem that occurs with this tape, it's very difficult sometimes to pick up words and people will disagree. Commissioner, I have an immediate problem that I would ask to deal with before anyone leaves the hearing room. Can I take you back to page 20? Now page 20 starting around about line 13 there is a passage in there that has been deleted for the reasons that I referred to yesterday in the opening. I think that this has possibly occurred because of the changes in the transcript that have been occurring but the lines at line 16 where Mr Medich says, "I told them what's

written there” I would ask for a suppression order in relation to those lines because it’s not clear or it may be thought, people might draw inferences as to what that relates to and it should be suppressed.

THE COMMISSIONER: There were some passages that were suppressed is this one of them?

MR GORMLY: No, it was supposed to, it was supposed to be.

10 THE COMMISSIONER: Supposed to have been.

MR GORMLY: Yes.

THE COMMISSIONER: But was not.

MR GORMLY: Well, not in this version.

THE COMMISSIONER: Because that’s an allegation about the person mentioned in line 15.

20

MR GORMLY: Yes, that’s an inference that would be drawn. It may be, I’m not saying whether it is or it isn’t, Commissioner, it’s just - - -

THE COMMISSIONER: Right. I just want to make it clear that that person is not a Government official of any kind. It’s a private person.

MR GORMLY: Whether it’s true or false it’s outside the jurisdiction of the Commission and it’s something that ought not be there.

30 THE COMMISSIONER: Yes. Has anyone got any objections to making a suppression order in relation to lines 16 and 17 on page 20?

MR GAME: No.

MR GORMLY: No.

THE COMMISSIONER: No, well a suppression order will so be made.

40 **SUPPRESSION ORDER**

MR GORMLY: Commissioner.

THE COMMISSIONER: All right. Mr Gormly, I think you should proceed to finish your opening.

MR GORMLY: Yes. I am very close to the end, Commissioner.

THE COMMISSIONER: Now, I would like that other page to be checked to see if I am right or wrong about Johnston, please.

MR GORMLY: Yes, we'll check that, Commissioner. All right. Now, Commissioner, look, I'll just return to the text because it's been distributed so I'm at paragraph 192. I expect that at the end of the hearing, Commissioner, I will be submitting that despite the large number of
10 allegations, some of them serious and potentially damaging to those named in them, that there is no evidence of corruption. The public release of the tape is necessary because of the large claims that have been made for it in public and which are of public interest and concern and because of the circumstances under which its existence came to public notice. So the holding of this inquiry is contemplated by section 31. Commissioner, I won't go into that section, you already referred to it in your opening. The essence of it is that it is in the public interest to conduct an inquiry and there are benefits in disclosing the seriousness of the allegations and of dealing with risk to undue prejudice if there isn't a hearing.

20 So the way we'll proceed, subject to any applications, Commissioner, it's proposed is that Mr Medich needs to explain his statements, particularly as they relate to the named person, Mr Haddad and he is entitled to be heard about those statements. Mr Richardson's been asked to give evidence because of the knowledge he had about the tape and Mr McGurk's use of the tape as well as his knowledge of the Badgerys Creek Consortium and because he's entitled to be heard about an allegation concerning him for which I might say, Commissioner, there is no evidence other than the bare statements and, anyway. The allegation, the investigation of the allegation
30 not on the tape of 6 February and that only arose in the course of investigating the recording needs to be least, needed to be at least outlined and we've done and given the lack of support for them and the verifiable falsity of many of them, Mr Lang's statement is largely sufficient we say to bring a public hearing within the considerations of section 31.

Now, there's one other matter that I need to deal with. Yesterday Mr Game referred to a change in the transcript. It was particularly the use of the word "paid" which replaced an innocuous word "table" and thought that that altered the position because there hadn't been an investigation into
40 payments in the context of that statement.

THE COMMISSIONER: Well, he made that submission.

MR GORMLY: Yes, yes. And that's rejected, Commissioner. As outlined yesterday, there were two allegations involving Mr Haddad or officers of the Department. One was on the tape from Mr Medich and that's been dealt with and will be dealt with in oral evidence. The other was off the tape and that was an allegation from Z, that was allegation 3, where he said that Mr McGurk as a, at the direction of Mr Medich had offered an MP a corrupt

payment as a reward for persuading Mr Haddad to recommend a rezoning. Now, and it was said that there was a recording of that but it's never been located and the submission that I'll be making about Z is that it's worthless evidence and it's either fantasy or lies.

THE COMMISSIONER: Yes. I have told Mr Game that at present there is no prospect of any adverse inference being found against Mr McGurk arising out of allegations 3 and 12.

10 MR GORMLY: Now, in addition, Commissioner, there's also allegation 13
which, spurious as the allegation was and amounting to pub talk, there was
an allegation that there were two payments of \$15,000 to a planning
minister which must presumably have involved at some point officers of the
Department, may have. Now those allegations all led to a search for an
improper relationship between Mr Haddad, Mr Medich and Mr Medich and
other officers of the Department. We can regard ourselves as bound by the
terms of some allegation that was made. What was sought was an improper
relationship and of course it had to be one not to do with Gerroa because
part of the Gerroa allegation was that Mr Haddad was said already to be
20 amenable to being someone's contact for benefit.

Now, the terms of the tape did not prescribe the investigation. What did
was that search for the improper relationship and as I've made clear
yesterday the statement of Mr Lang, long as it is, is just a summary of the
investigation. There is a mass of documents and other evidence that can't
be put into Mr Lang's statement because that would render it something
some thousands of pages long. We have had, for example, 450 pages of
transcript from some 25 witnesses in private compulsory hearings. In
addition to that, we have literally thousands of pages, boxes of material, that
30 have been examined from the Department. There have been an array of
section 21, 22 notices and there have been numerous statements taken from
witnesses. It's been a very extensive investigation searching out for a
payment relationship, an improper relationship or a relationship of influence
on Departmental officers, bearing in mind that some of these allegations
were vague in the extreme. It's not just that they lacked evidence behind
them, they lacked any specificity even as to who the Departmental officer
might be, what the project was, how much was paid, how it was paid, how it
was received or any of the other things that one would need to have to say
that a person is corrupt.

40 Now I took part in some of those compulsory examinations and I've read all
of them and it, I do not hesitate to say that there is no evidence of a corrupt
relationship between Mr Haddad or Mr Haddad and Mr Medich and
Mr Richardson or anyone else that might reasonably fall within a category
of person that the allegations could cover. Needless to say, if anyone has
evidence of that type we would assume that they would provide it to us and
they ought to provide it to us. Quite often in an inquiry of this type once it
starts, or once it's known that there is one, there are submissions from the

public or there's information provided. We have not had so much as a skerrick of evidence provided of corruption by any person that has been named in this inquiry.

Now, Commissioner, that really concludes my opening but there is a matter of some importance to deal with now. I see the time. We have lost a lot of time, it's 10 to 1.00.

10 THE COMMISSIONER: We have to adjourn for the television cameras to depart.

MR GORMLY: All right. Can I indicate what it is, Commissioner, the, just do that, I just want to foreshadow that there is an application.

THE COMMISSIONER: Yes. Mr Galasso. Well, can we start at 1.45?

MR GALASSO: Yes.

20 THE COMMISSIONER: Is there any objection to that?

MR GORMLY: No.

THE COMMISSIONER: Well, we'll adjourn till 1.45.

LUNCHEON ADJOURNMENT

[12.50pm]