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HEARING

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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE PETER M. HALL QC
CHIEF COMMISSIONER

PUBLIC HEARING

OPERATION SKYLINE

Reference: Operation E17/0549

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 7 MAY, 2019

AT 10.00AM

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THE COMMISSIONER: Thank you. Yes.

MR CHEN: Commissioner, there was some difficulty with microphone, hence the short delay. Commissioner, as I understand it, in line with what transpired yesterday, we're dealing with Mr Petroulias's application to tender transcripts of interview conducted of Ms Dates and Mr Green, as well as transcripts, and to use them during the course of his cross-examination of those witnesses during the course of this week.

10 THE COMMISSIONER: All right. Now, have we got copies of the transcript of those two interviews?

MR CHEN: We do, Commissioner.

THE COMMISSIONER: So what I think I'll do is I'll have them marked for identification so that I'll have them before me on the application.

MR CHEN: Yes, Commissioner. And I was proposing as well to formally tender upon the application as well the two recordings.

20

THE COMMISSIONER: Yes, very well. Well, they'll be tendered on the application but not in the public inquiry proceedings otherwise in any substantive way.

MR CHEN: Yes, Commissioner.

THE COMMISSIONER: Yes, very well. Thank you. You may hand those out.

30 MR O'BRIEN: Commissioner, might I inquire if those transcripts are the transcripts provided by Mr Petroulias or whether they've been independently transcribed?

THE COMMISSIONER: Yes, I'll have that clarified. Firstly, clarify one matter. In relation to the last statement I've made about the actual recordings themselves, their admissibility of course turns upon whether or not the application made by Mr Petroulias is to be granted. For the purposes of dealing with the application itself, I'll have the two copies of the transcript. Firstly the interview of Richard Green, dated 31 March, 2019, marked for identification. That will be MFI 54. Thank you. And the transcript of the interview with Debbie Dates bearing date 26 March, 2019, will become MFI 55.

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**#MFI-054 – TRANSCRIPT OF RECORDED INTERVIEW
CONDUCTED BY NICHOLAS PETROULIAS WITH RICHARD
GREEN**

**#MFI-055 – TRANSCRIPT OF RECORDED INTERVIEW
CONDUCTED BY NICHOLAS PETROULIAS WITH DEBORAH
DATES**

10 THE COMMISSIONER: Now, Dr Chen, are you able to respond to Mr O'Brien's query about the transcript, as to whether this is a transcript prepared by Commission officers or whether it was prepared by somebody else?

MR CHEN: I am, Commissioner. They are the transcripts as provided by Mr Petroulias to the Commission and as uploaded.

THE COMMISSIONER: And the copies that were provided to counsel yesterday of these two interviews, were they copies of the transcript provided by Mr Green or were they transcripts of recordings made by Commission officers?

20 MR CHEN: No, they are what has been provided by Mr Petroulias to the Commission. So, to be clear, what has been provided in hard copy, if not by uploading on the restricted website, are the transcripts of the interviews conducted by Mr Petroulias, transcribed either by or on behalf of Mr Petroulias as provided to the Commission.

THE COMMISSIONER: Right. Thank you.

30 MR PETROULIAS: Commissioner, can I inquire? Did you receive the supplemental submissions that I sent you yesterday?

THE COMMISSIONER: Yes. That's the document's supplemental submission, 6 May, 2019, prepared by you, is that right?

MR PETROULIAS: Yes.

THE COMMISSIONER: Yes, I've received those. I've read those.

40 MR PETROULIAS: No, okay, can we just clarify for the record that this, this has been a long-standing matter that I've brought to the Commission's attention and to the public. It's not a surprise inquiry. And insofar as prejudice to third parties are concerned, I was, I, there was enormous correspondence, including with yourself, including in dialogue with yourself on the 17th - - -

THE COMMISSIONER: Mr Petroulias, you're going into submissions at the moment.

MR PETROULIAS: No.

THE COMMISSIONER: We're not dealing with submissions.

MR PETROULIAS: No, I'm simply, I'm simply wanting to make the record that I did ask for it to be independently transcribed, and it's on the record on 17 April. I - - -

THE COMMISSIONER: That's post the interviews.

10 MR PETROULIAS: Yeah, before I transcribed them, yes.

THE COMMISSIONER: That's all right, thank you.

MR PETROULIAS: And you wanted them objectively, independently transcribed, so I don't want to be accused of misleading anybody.

20 THE COMMISSIONER: Thank you. Now, firstly, Mr Petroulias, is there anything you want to say of a factual nature or any documents or anything you want to tender or provide by way of evidence in support of your application to have these records of interview of Mr Green and Ms Dates admitted into evidence in the substantive inquiry. Is there anything else you want me to have?

MR PETROULIAS: Well, there, there's, there's a context that led up to it. Yesterday you suggested you were going to make an inquiry.

THE COMMISSIONER: Yes, and that's what I'm doing right now.

30 MR PETROULIAS: Oh, right now.

THE COMMISSIONER: Were in it, you're there.

MR PETROULIAS: Okay. And, and if we're going to do that, can I, I would like to ask some additional questions of Ms Dates in particular.

THE COMMISSIONER: Sorry, questions of?

40 MR PETROULIAS: Ms Dates in particular, about, about how the recording came about.

THE COMMISSIONER: Questions dealing with what matters?

MR PETROULIAS: If there is any suggestion that this, that this was anything but above board and proper, I want to have the opportunity to, to, to cross-examine them about how, with both witnesses, about how the recordings came about and why.

THE COMMISSIONER: Yes. Well, there may be suggestions that it was improper because you didn't give notice to either the legal advisers that you were going to conduct interviews and record them of their clients.

MR PETROULIAS: Sure. I don't mind that. I don't have a problem with that.

THE COMMISSIONER: You don't care about that, you don't mind that?

10 MR PETROULIAS: No.

THE COMMISSIONER: And you don't want to adduce any evidence of that topic?

MR PETROULIAS: No. Well, they, they could - - -

THE COMMISSIONER: You accept that you did undertake those two interviews with Mr Green and - - -

20 MR PETROULIAS: Well - - -

THE COMMISSIONER: Please don't talk over me.

MR PETROULIAS: Sure.

THE COMMISSIONER: Do you accept that you conducted, firstly, the interview with Mr Green without having given notice of your intention to do so to his lawyers or legal representatives?

30 MR PETROULIAS: That's correct.

THE COMMISSIONER: Do you accept that you undertook the interview of Ms Dates without having given prior notice to her legal representatives?

MR PETROULIAS: That's correct.

THE COMMISSIONER: Thank you. Do you accept that you undertook the interviews of Mr Green and Ms Dates without any notice to the Commission prior to you doing so?

40

MR PETROULIAS: I thought I was following the Commission's instructions, that's what - - -

THE COMMISSIONER: No, please. Just answer my question.

MR PETROULIAS: The answer is, no, the, sorry, the answer is I thought I did provide notice to the Commission because I was following the Commission's instructions.

THE COMMISSIONER: Okay. What do you rely upon to support that proposition?

MR PETROULIAS: I've quoted the transcript where you had asked me that if I want to put anything forward, I should go and get statements. And if you notice from the transcript of Ms Dates, for example, I asked her, I said to her, "If we, if this goes to a statement" - - -

10 THE COMMISSIONER: All right. Well, you say it's in the transcript. You rely upon something I said in the transcript, is that right?

MR PETROULIAS: Which is in the supplemental submissions, yes.

THE COMMISSIONER: All right. Well, let's identify what it is in the transcript that you specifically rely upon in relation to this application to admit the recorded interviews. You set out in your supplemental submission, 6 May, 2019, some extracts from the transcript. Could you just confirm, are they the transcripts you rely upon to support the proposition
20 you just stated a moment ago?

MR PETROULIAS: That's correct.

THE COMMISSIONER: And what page of your supplemental submissions do we find the references to statements I made that you rely upon?

MR PETROULIAS: They're quotes to - - -

THE COMMISSIONER: Well, have you got a copy of your supplemental
30 submissions?

MR PETROULIAS: Well, I, I'm going to have to pull them up if I - - -

THE COMMISSIONER: I'm sorry, Mr Petroulias, I can hardly see you, let alone hear you.

MR PETROULIAS: Sorry, I'll, I'll, I'll have to pull them up if I - because I thought, I thought, I thought you laid it all out.

40 THE COMMISSIONER: No, have you got a copy of your document, supplemental submissions?

MR PETROULIAS: I'm going to have to pull it up because I thought it was - - -

THE COMMISSIONER: Has anybody got a copy of it? Okay, Mr Broad will give you his copy for the moment.

MR PETROULIAS: Yes, thank you. Thank you, Mr Broad.

THE COMMISSIONER: All right. You said you rely upon something I said which is recorded in the transcript in which you've incorporated into your supplemental submissions. Could you just confirm where do I find it in that document?

MR PETROULIAS: Okay, see - - -

10 THE COMMISSIONER: Just give me a page reference first.

MR PETROULIAS: Page 2, paragraph 3.

THE COMMISSIONER: Page 2, paragraph 3. Yes.

MR PETROULIAS: Where you, you tell me I, I have to bring things to the, and, to the Commission's attention and then you talk about go and get a statement from Mr Faraj, go get a statement from Keagan. Then in your reasons for decision, paragraph 5, you, on page 3, you say, you recognise
20 that I had approached Mr Vaughn and provided a copy. That's the person who's been cross-examined. Ms Keagan is a person who'd been examined, sorry.

THE COMMISSIONER: It's all right. I'm just trying to get you to identify the paragraphs in the documents you rely upon.

MR PETROULIAS: Yeah. And then if I take you to page 2, paragraph 2, this is the 17 April hearing. And we're, you're making, we're basically, I'm
30 pleading that you don't make a decision until you've heard these transcripts. You make reference to the transcripts.

THE COMMISSIONER: But this is after the records of interview have been undertaken - - -

MR PETROULIAS: Yes, yes.

THE COMMISSIONER: - - - and recorded?

MR PETROULIAS: That's correct.

40

THE COMMISSIONER: Yes. But let's deal with the situation before the records of interview. Is there any material in any of the statements from the transcript you rely upon which supports the proposition that you gave notice to the Commission before you undertook the interviews of Mr Green and Ms Dates that you were going to have an interview with each of them and record?

MR PETROULIAS: Yes, I'm talking about the 8 February hearing, where you're - - -

THE COMMISSIONER: Sorry, whereabouts in your document is this?

MR PETROULIAS: Page 3, paragraph 4, where, no, paragraph 3 and paragraph 4, starting at page 2, going to page 3.

10 THE COMMISSIONER: Well, there is nothing in those extracts at all which indicates that you were giving notice to the Commission before you undertook these.

MR PETROULIAS: You told me to go and get a statement.

THE COMMISSIONER: Please. Let's deal with them one at a time.

MR PETROULIAS: Yeah.

20 THE COMMISSIONER: Paragraph 3.

MR PETROULIAS: Yes.

THE COMMISSIONER: There is nothing in paragraph 3, is there, which supports the proposition that you were giving notice to the Commission that you were proposing to interview and record the interview of Mr Green or Ms Dates, is that correct? So it's paragraph 3.

MR PETROULIAS: There's an invitation - - -

30 THE COMMISSIONER: Paragraph 3 at the moment.

MR PETROULIAS: There's an invitation if I want to bring evidence to the Commission that I do so, and that you are bound to look at it.

THE COMMISSIONER: No, no. Just deal with my question.

MR PETROULIAS: Yeah.

40 THE COMMISSIONER: Is there anything in paragraph 3 - - -

MR PETROULIAS: Yeah.

THE COMMISSIONER: - - - which indicates that a statement was made by myself or any other officer of the Commission that you were either permitted to conduct these interviews or that you told the Commission and its officers that you were proposing to do so? Is there anything in paragraph 3 dealing with either of those issues?

MR PETROULIAS: I'm saying that whole transcript - - -

THE COMMISSIONER: No, no. Paragraph 3, please. Focus on paragraph 3.

MR PETROULIAS: Yeah, yeah, I get that.

THE COMMISSIONER: Is there anything in paragraph 3 which supports either of those propositions?

10

MR PETROULIAS: No, not paragraph 3.

THE COMMISSIONER: Right. Let's go to - - -

MR PETROULIAS: The rest of that day's transcript.

THE COMMISSIONER: All right. Let's go to paragraph 4. Is there anything in paragraph 4 which supports either of those propositions?

20 MR PETROULIAS: Yes. "Put in a statement." Because that's in response to my suggestion "How am I going to do that?"

THE COMMISSIONER: Well, firstly we're dealing with Mr Faraj, not Mr Green or Ms Dates, is that right?

MR PETROULIAS: That's correct.

THE COMMISSIONER: In paragraph 4.

30 MR PETROULIAS: That's correct.

THE COMMISSIONER: Right. And secondly, there's nothing in paragraph 4 which says that you are to go and get a statement from Mr Faraj, is there?

MR PETROULIAS: It says - - -

40 THE COMMISSIONER: And it's distinct from you requesting one of the officers of the Commission to interview him and take a statement. You agree with me?

MR PETROULIAS: Yeah, sure.

THE COMMISSIONER: Thank you. All right. Well, that deals with paragraph 3 and 4. Now, is there any other material you want to put before the Commission on this application by you to have the two records of interview admitted into evidence?

MR PETROULIAS: Well, I'd like to examine Ms Dates about how - - -

THE COMMISSIONER: About what?

MR PETROULIAS: About how they came about, yes, and why, and why they were - - -

THE COMMISSIONER: And what do you want to ask her?

10 MR PETROULIAS: Pardon?

THE COMMISSIONER: What do you want to ask her?

MR PETROULIAS: I want to ask her about what I, what led to these interviews being necessary.

THE COMMISSIONER: Yes. Specifically what?

20 MR PETROULIAS: What she had told me during the course of the inquiry, what we had heard during the course of the inquiry, what concerned us as to why she needed to stay at a hotel one, one, one evening.

THE COMMISSIONER: When you say during the inquiry, you mean during the hearing of the public inquiry?

MR PETROULIAS: During the hearing of the public inquiry.

THE COMMISSIONER: Yes. Anything else?

30 MR PETROULIAS: Why we stayed at that hotel that she was examined about.

THE COMMISSIONER: You stayed at the same hotel she stayed at?

MR PETROULIAS: That's correct.

THE COMMISSIONER: Yes.

40 MR PETROULIAS: Why we stayed over from what we were surprised to have heard. What was the last thing? And, and the various concerns we expressed to each other about what we had heard.

THE COMMISSIONER: Yes. Mr Petroulias, none of those matters are relevant to the issue you've asked me to determine – that is, the admissibility of the records of interview – so I decline your request to ask Ms Dates questions on those matters.

MR PETROULIAS: Okay.

THE COMMISSIONER: Now, is there anything else?

MR PETROULIAS: Well, problem. Admissibility. Test, test one is consent, which I, which we have.

THE COMMISSIONER: You say you had consent of both of them?

10 MR PETROULIAS: Both of them. And they're on the record, and they're on the record.

THE COMMISSIONER: Well, those documents will speak for themselves in that regard, won't they?

MR PETROULIAS: Well - - -

THE COMMISSIONER: The transcripts.

20 MR PETROULIAS: Yes, I'm just making sure that we've got that. The, the second test would be if it's for the purpose of protecting my interests, and that was the purpose of the cross-examination, was to go to that test.

THE COMMISSIONER: Which cross-examination are you now referring to?

30 MR PETROULIAS: The purpose of my examination of Ms Dates that I just asked you, that I just asked for was to satisfy the second test that if for some reason there isn't consent or insufficient consent or, that, that it's nevertheless admissible on the basis that it protects, it, it's for the purpose of protecting my interests.

THE COMMISSIONER: I understand the submission. All right. Now, Dr Chen, is there anything you want to – or perhaps before I call upon you, Mr Lonergan, Mr O'Brien, is there any matters you want to raise for my attention on this application?

40 MR O'BRIEN: There are. I mean, I'll make submissions but I'm content to go after Counsel Assisting, for I might be advancing the same type of submissions as learned counsel.

THE COMMISSIONER: I'm really addressing whether there's any factual matters you want to draw to my attention before we get to submissions.

MR O'BRIEN: No, I'll simply be relying on submissions, Your Honour.

THE COMMISSIONER: All right. Mr Lonergan?

MR LONERGAN: No factual issues.

THE COMMISSIONER: All right.

MR CHEN: Commissioner, we've prepared a short outline, but I propose to speak to it in some detail.

THE COMMISSIONER: Yes.

10 MR CHEN: We'll circulate a copy of that outline now to those behind us, to Mr Petroulias, Mr Lonergan and to Mr O'Brien.

Commissioner, I'll start with setting out, as it were, some background facts, if I might, which I apprehend to be uncontroversial, but ultimately the submission that is put, Commissioner, is that you should refuse to admit the recordings and the transcript, and, to be clear, to preclude their use by Mr Petroulias during his cross-examination of each witness.

20 Commissioner, the initial matter of background is, Mr Petroulias sought, in line with the Commission's standard directions, to have this material tendered and he was advised that I declined to tender that material and he was invited to make application to you, Commissioner, if he saw fit to use those recordings, and that is the application that's before you today. Commissioner, may I move really – Commissioner, I'll just hand you if I can a copy as well.

THE COMMISSIONER: This is the document, yes, perhaps you can hand it up.

30 MR CHEN: It's dated 7 May, 2019. Can I move to some other matters of important background, and this is essentially part A. Ms Dates gave evidence, Commissioner, before the Commission on 16 and 17 August, and on 19, 20 and 21 September, 2018, and she has relevantly been cross-examined by all parties except Mr Petroulias. On 8 February, 2019, in response to Mr Petroulias's application to cross-examine a number of witnesses, Commissioner, you granted Mr Petroulias leave – admittedly provisionally – to cross-examine Ms Dates amongst other witnesses, and despite this ruling, Commissioner, Mr Petroulias has interviewed, to express the matter neutrally at the present time, Ms Dates, and he's done so without the notice and consent of her legal representatives.

40 In relation to Mr Green, Commissioner, Mr Green gave evidence before the Commission on 15 and 16 May, 2018, and again on 16, 17, 18 and 20 July, 2018, and again on 6 August, 2018, and as with Ms Dates, Commissioner, you granted Mr Petroulias leave to cross-examine Mr Green on 8 February, 2019. Again, consistent with the position of Ms Dates, despite this ruling, Mr Petroulias has interviewed Mr Green and he's done so without notice to or the consent of his legal representative.

Commissioner, moving to paragraph 11 and part B, Commissioner, in our submission the Commission should reject the tender of these recordings and the transcripts and preclude their use for essentially four reasons. The principal and first reason, Commissioner, is that there is a significant question mark over the propriety of what Mr Petroulias has done and the integrity of the evidence that he says is the result. It's submitted, Commissioner, that the evidence is contaminated and we'll invite you in due course to make that finding, and for that reason alone should be rejected.

10 Commissioner, the second, third and fourth points are very much fall-back points, but add to what in our submission is the proper conclusion which should result. The second was the form of the questions and answers is both unhelpful and would not assist the Commission in its fact-finding and deliberative process, Commissioner, and I'll demonstrate by taking you to some parts of the transcript in due course. Much of the questioning is, in our submission, inaccurate at best and misleading at worst.

20 Thirdly, Commissioner, there is a divergence in the evidence on key issues between a number of the witnesses, a number of essential witnesses and the Commission, in our submission, would be better assisted by hearing and seeing the witnesses rather than by following the process that Mr Petroulias urges.

30 And fourthly, Commissioner, the process that Mr Petroulias suggests is productive of delay. Commissioner, although the Commission is not bound by the rules of evidence, in our submission a useful guide in determining this application would be by reference to section 135 of the Evidence Act 1995, and it is our submission, Commissioner, that by reference to subparagraphs (a) to (c) inclusive, a consideration would reinforce the conclusion the tender of the recordings and the transcripts should be rejected and their use precluded.

40 Commissioner, may I start with developing what we submit is the first and fundamental reason why the material should be rejected and that is the propriety and integrity point. Commissioner, there are, in both the civil and criminal context, as you would well know, a number of well-established and well-known principles that apply to witnesses in proceedings. They include discussions between witnesses is impermissible and the evidence of witnesses should not be disclosed to others. In our submission, Commissioner, these cardinal principles have been infringed by Mr Petroulias in what he has done and the Commission should so find.

To be clear, Commissioner, it is not, in our submission, necessary or indeed appropriate to make any finding as to whether Mr Petroulias did so deliberately or unintentionally or inadvertently. The fact is that it has occurred and the evidence has been, as we've submitted, contaminated as a consequence.

Commissioner, I won't pause to take you and the parties through what we submit are the relevant legal principles and the number of cases that have identified them and explained them in both a criminal and civil context in paragraphs 14 to 16.

10 Can I move really to some of what we submit are the more relevant and directly appropriate principles that apply here, in paragraph 17 of the outline. Obviously whether or not there has been on the one hand witness coaching or witness preparation on the other is inevitably, as the case is made clear, a matter of degree and is obviously fact-dependent.

Commissioner, in our submission, what has gone on here goes well beyond and significantly well beyond witness familiarisation and amounts to coaching because we would ask you to find that what has truly occurred is that, in each of the cases of Mr Green and Ms Dates, what is really being put to each of the witnesses is the substance of Mr Petroulias' version of key events, key matters and key facts, including documents and in effect, as he's accepted today, as I understand it, undertaken a form of cross-examination of each of the witnesses to, in some cases, reach a position that he obviously
20 takes to be favourable to the position that he wishes to advance before the Commission.

Commissioner, fundamentally, what has occurred is that what Mr Petroulias has done has subverted the witness's true and real recollection of events and replaced it with evidence based on a different source, namely, his version of the events and his version of the facts, and in our submission that is not only wrong but entirely inappropriate, particularly in the context on which it has occurred.

30 Commissioner, here the finding, as we perhaps submitted, is that there has been impermissible coaching and it's particularly significant because, firstly, it was carried out by a central witness to the Commission's investigation. Secondly, it involved two other central witnesses to the Commission's investigation, and in the case of Green, Commissioner, it partly at least in the presence of a fourth central witness, namely Ms Bakis, who is a legal practitioner. This has occurred, and this is the third point, after each has been examined by me and after cross-examination by all other persons to whom leave to appear has been granted by you. Fourthly, this
40 training or coaching has occurred by reference to the evidence so far given and, fifthly, in substance, as I've mentioned, what Mr Petroulias has done in effect is provided Ms Dates and Mr Green with his version of events, which is something akin to providing each of them with a proof of his evidence.

Commissioner, two further observations in our submission are appropriate. First, it is well known that providing a witness statement of one witness to another is a means of facilitating collusion concerning the evidence of witnesses. And, secondly, providing the witness statement of one witness to

another is likely to result in witness coaching by identifying matters with which the witness must agree or disagree.

Commissioner, can I now take you to some references, which we would submit bear out the findings that we seek, firstly by reference to the transcript, which is of Ms Dates's interview on 26 March, 2019, MFI 55. Commissioner, could I start with page 1 of that transcript, and line 13-15, which is where Mr Petroulias sets out his purpose, namely to help him and to give an idea of the questions which he wishes to pursue with the particular witness, and he even makes it clear that he will in that process sufficiently prompt her.

Commissioner, if one looks further down to line 16 or 18, you will see, this is in the context of an email that passed between on the one hand Mr Petroulias and Ms Steadman, and attaches or purports to attach a report from Able Consulting. And what occurs here, Commissioner, in our submission, is a reasonable illustration of the problem and the contamination that has occurred because what Mr Petroulias does on line 18-20 is to provide, "to remind" Ms Dates about what had occurred. But instead of taking the witness specifically to the real purpose to which one assumes the email was sent for the purposes of this inquiry – namely the provision of the Able Consulting report – that appears to be passed over, but if one looks down to line 32 and 33, affirmative propositions which seemingly are put or possibly are put on behalf of him and Ms Bakis at line 32 and 33, which in our submission is improper.

Commissioner, may I also draw your attention to page 4 and line 21 in particular. Commissioner, this is one of the key matters that the investigation is looking into, that is to say the nature of this Gows agreement. Now, Commissioner, what occurs here is Mr Petroulias is putting – clearly in my submission – his version of what he says occurs in relation to this entire transaction to the witness. You'll see that he provides some explanation to it and provides, between lines 21 and 27, what he says is "the true complexion of the facts". Commissioner, he then takes up plainly, in light of the evidence that Ms Dates has given, about the issue about whether or not there was or was not a board meeting. And, Commissioner, if you turn then, please, to page 5 you can see that what Mr Petroulias then does is purport to quote inaccurately what the resolution of the board was to say or did say in relation to what was approved on 31 October, 2014 in relation to IBU.

Moreover, Commissioner, it's put, despite there being no cross-examination upon this topic, that Mr Gabey, who is referred to there as Cyril, had some other relationship with Mr Petroulias and other matters of background and detail. And, Commissioner, then it's sought to be suggested that somehow Ms Dates was involved in all of these arrangements.

Commissioner, just pausing there at line 12, where you can see that Ms Dates is being asked to agree to a proposition, in our submission, and I deal with this briefly later, the problem with what Mr Petroulias does repeatedly throughout the transcript is to load questions and to invite Ms Dates to agree to propositions when the propositions themselves are not clear or not clear upon a careful and considered reading of the transcript and clear understanding of the factual issues as they arise in this investigation, and the witness is being put, in our submission, at a disadvantage by it. If the question was asked in the hearing room, Commissioner, it's unlikely it would be allowed, it certainly wouldn't be, the witness would not be compelled to answer it in the current form, and that is a recurring theme throughout.

What has happened and what repeatedly happens, Commissioner, on key topics, Ms Dates's attention is drawn to multiple facts and she's asked to assent to propositions which are frankly, in our submission, unclear and in that sense unfair.

THE COMMISSIONER: I understand that questions and answers on page 5, or at least some of them, address the question as to whether there was a presentation made to the board of the Land Council, in effect being a presentation made by Mr Gabey, but not just in Mr Gabey's interests, but also in Mr Petroulias's interests or Gows' interest. Is that - - -

MR CHEN: That's the way I read that.

THE COMMISSIONER: It seems to me that the questions and answers seem to try and fuse, as it were, the Gabey presentation, and there's some brochures and so on that were tendered in evidence which were produced by Mr Gabey and his associate, the questions seem to be suggesting to Ms Dates in these questions that in fact Cyril and Mr Petroulias were working together as partners in that presentation.

MR CHEN: That's the thrust of what - - -

THE COMMISSIONER: That's not the evidence.

MR CHEN: It's certainly not the evidence to this point, it may become Mr Petroulias's position, and I gather from these questions that's what - - -

THE COMMISSIONER: On the evidence thus far. All right.

MR CHEN: And if you look further, Commissioner, between lines 11 to 14, it seems to be suggested that with Mr Green, that he then is tasked with this process that the board had approved.

THE COMMISSIONER: Well, it refers to a board approval in relation to matters presented in what's referred as Gows meetings, but I understand the evidence is there was no board approval at all.

MR CHEN: Commissioner, I think - - -

THE COMMISSIONER: But that depends upon which version of the minutes you accept I suppose.

10 MR CHEN: I accept that theoretically that is a possible view of the evidence.

THE COMMISSIONER: But in any event, the board itself, there's no evidence that the board itself met to approve any land transaction, is there?

MR CHEN: Commissioner, on 31 October there is no doubt that there was a resolution which the board members have all consistently agreed was that relating to IBU, and there is no other version from any board member that there was a presentation or a resolution or a proposal put by or approved by
20 the board at that meeting.

THE COMMISSIONER: That's right.

MR CHEN: There is of course a resolution that purports to record that a transaction was approved on the 31st involving Gows.

THE COMMISSIONER: That's the handwritten correction to the minutes.

MR CHEN: That's the handwritten, but there's also the resolution that is
30 typed that apparently was stapled into the book that refers to Gows. But, Commissioner, the evidence as it stands is consistent about how that came about, but in any event it theoretically remains an issue for you to decide in due course about whether that was a truly approved proposal or not and whether the minute is accurately reflected of that proposal.

THE COMMISSIONER: In any event that matter is a central issue.

MR CHEN: It is. And Mr Petroulias has taken the witness through this, in
40 our submission, at the very least inaccurately by leading her and by not in any sense fairly inviting her to consider the matters, to do so in light of her evidence that she has given the Commission, but instead he's embarked upon a cross-examination to apparently get her to agree to a proposition that on one view may favour Mr Petroulias and on that same view may not assist Ms Dates, and that's the real vice in our submission or the unfairness that attends to what has occurred here.

Commissioner, could I also draw your attention to, just to follow this Gows theme through, page 7. And, Commissioner, Mr Petroulias returns to this

theme at around line 25, and now it becomes, “which we agree was implementing,” it’s not clear who, and you’ll see down the bottom, Commissioner, that leading into other topics Mr Petroulias is advocating that in this Gows deal he’s taking all the risks. Commissioner, if you then turn to the next page, page 8, you’ll see Mr Petroulias makes some point about this, “That’s my risk, not your risk. This is important. Do you remember that?” And again you’ll see at line 4, “The reason why it is important,” et cetera, et cetera. Those risks, by the way, Commissioner, as you would see, aren’t identified to Ms Dates, she’s not taken through the agreement in any event, I’m not suggesting that would somehow correct what has occurred here, but it demonstrates again in our submission why this process is improper.

Commissioner, could I take you to another example where Mr Petroulias is really placing and coaching Ms Dates, and if you turn, Commissioner, to page 10 of the transcript you’ll see there’s a reference to model rules at line 17. And there’s some introduction to minority protection measures, but it’s really at about line 24, again, “Remember that rule 19, because that is going to be important.” He then goes on to tell Ms Dates that it gave her special powers and was absolute.

Commissioner, whilst we’re following through this, if you turn, please, to page 11 you’ll see that there’s a reference to a performance guarantee.

THE COMMISSIONER: Yes.

MR CHEN: Commissioner, that’s a document that is not in the public brief and has not, I’m instructed, been produced by any party at any time before Mr Petroulias made them available to the Commission most recently in relation to these interviews. It’s clear, Commissioner, that what has occurred here is, Mr Petroulias has shown Ms Dates an email and then purports to get her to adopt – I should say this, Commissioner, the email itself is not in the public brief and I’m instructed again has not been produced, I’m sorry, until recently as part of the process of Mr Petroulias providing documents that were involved in this or these interviews, and it purports to attach a number of documents and Ms Dates has not had the benefit of being shown, as I would read this transcript, the email, the documents behind it, or asked to comment upon whether she’d ever seen these documents in clear terms.

Commissioner, may I just end by taking you to one other part which we’d submit illustrates that coaching has plainly occurred. And if you look, please, at page 15, you’ll see that really what is happening from about, you could start at the top of the page, simply cross-examination of the witness across a topic which is central to the investigation.

Commissioner, that's all I wish to you show you in relation to MFI 55, but could I provide some examples of where similar issues arise in relation to the transcript of Mr Green.

10 Commissioner, MFI 54, at page 1, at about line 13, identifies, which we'd respectfully submit, quite inaccurately and quite misleadingly the purpose of why he's doing this, namely because you, Commissioner, wanted to shut him down and restrict your cross-examination, "And now he wants me to provide witness statements from people like you." That's the footing, at least one of the footings, upon which he requests Mr Green to participate in that interview.

Commissioner, could I just draw your attention to the following parts of this transcript, page 2. You'll see, Commissioner, at line 26 that what's sought to be done here is Mr Green is sent to what would be, as I would count them, something like nine or 10 propositions contained within one question. It's a clear case of commentary and compound questions, which shows you that this has very little practical utility in any event but also it's potentially unfair to Mr Green.

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Could I ask you, Commissioner, to turn please to page 5. And Commissioner, at line 28, there seems to be some discussion about or around the minister being "happy" for the Advantage proposal to go ahead. Commissioner, that is, respectfully, inaccurate. Commissioner, you would remember that, in the process of the litigation that was taking place between the Land Council and the minister in connection with the appointment of the administrator, that a term of the status quo being maintained in those proceedings was that a certain agreement could be put before the members, and it was referred to in an affidavit that Ms Bakis swore, namely that unless this agreement is put before, an agreement, not all of them, an agreement is put before the members, the opportunity contained within it might be lost.

30

What this, as I understand it, is purporting to do, this part of the transcript, is to distort that very limited way in which the minister had approved a certain meeting being discussed or even agreed upon by the members to the entire Advantage proposal. And, Commissioner, again, that as the form of a question is inappropriate, the subject matter is, in our submission, inaccurate at best but, more fairly, probably misleading and Mr Green is being asked to assent to all of these propositions by the last question, "So this was in the open, wasn't it?"

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Commissioner, could I illustrate – I might just take you, Commissioner, to a couple more. Page 13, and you'll see, Commissioner, that this is in the context of the transaction with Sunshine and at line 12 - - -

THE COMMISSIONER: Sorry, what page again?

MR CHEN: 13, Commissioner. And Mr Petroulias is cross-examining Mr Green here, and you'll see that at line 13 Mr Petroulias asks the question, "Is that fair?" and Mr Green says, "It's fair," to which Mr Petroulias takes issue with that and says, "It's not fair." And he's then cross-examined around into the position that you can see at line 21, and presumably the position that Mr Petroulias wants Mr Green to adopt.

10 Commissioner, I think, in our submission, that sufficiently illustrates the problem with the use of the material and why we submit the findings that we've asked you to make should be made.

20 Could I just add this following matter in relation to Ms Dates, and to return to her briefly, Commissioner, because it touches upon an issue, namely fairness. Commissioner, you would remember that the effect of Ms Dates, or at least part of her evidence, was that she trusted Mr Petroulias, and that on one view of her evidence at least she has said that she trusted Mr Petroulias a lot, and that may explain or may provide an explanation for why her signatures appear on some of the documents. The issue as well, Commissioner, of gratuitous concurrence has been raised by her legal representative in the context of the cross-examination of Ms Bakis, and, of course, because of the way things have occurred, we haven't heard any examination of Ms Dates by her counsel or by her legal representative. But, Commissioner, it raises the point that what Ms Dates was potentially saying is that, on one view of her evidence – and I accept that it's not complete at this point – she was influenced by Mr Petroulias and that she may well have been doing things because of that influence, and in our submission that reinforces why what has occurred is inappropriate.

30 Commissioner, can I move – and perhaps I'll do so briefly – to the remaining matters, form and, thirdly, the issues should adopt the traditional format of question and answer procedures, which Mr Petroulias is quite entitled to do, Commissioner, in the witness box with each of these witnesses. And I won't trouble you, Commissioner, with developing what I think are common sense propositions which follow.

40 May I just deal briefly with delay, Commissioner? For the process to actually work, Commissioner, each interested party would need to take the transcript away with the recording and check that the transcript is in fact accurate. There would need to be, around that, potentially resolution of some issues of dispute and all kinds of matters relating to the accuracy or otherwise of the transcript. In our submission, that would be productive of delay and wouldn't enhance the efficient progress of the inquiry.

Commissioner, those are my submissions.

THE COMMISSIONER: Yes, thank you. Thank you, Dr Chen.

MR PETROULIAS: Can I respond to that?

THE COMMISSIONER: Now, just before Mr Petroulias, before you start, it may be that Mr Lonergan and Mr O'Brien want to be heard, and it might be to your advantage to hear from them before you launch into your submissions. Are you happy with that?

MR PETROULIAS: Certainly. Thank you.

10 THE COMMISSIONER: All right. Now, who's going first? Mr O'Brien, Mr Lonergan? Mr O'Brien.

MR O'BRIEN: Thanks, Your Honour, Commissioner. I said earlier that there were no factual issues that were raised by me or my client in relation to the matter. That's not entirely correct. I've had an opportunity overnight and early this morning to listen to the recording between my client and Mr Petroulias from 26 March, 2019 and compare it with the transcript that's been provided by Mr Petroulias, now marked as MFI 55 on Mr Petroulias's application this morning, and it is clear to me that that is not an accurate nor faithful representation of the conversations that were had between them on
20 that day. It is not in any way agreed that these things have been said, and the process that would need to be undertaken as set out by Counsel Assisting would indeed need to be done, and I'd ask that it be done if this were to be admitted by Counsel, well, by the team assisting Counsel Assisting, in other words by the Commission's staff, so that it's independently transcribed.

There are some troubling, there are some troubling differences between what is transcribed and what I've been able to hear in the recording. For instance, on page 3 of MFI 55 there is a set of questions and answers related to the dealings between Mr Petroulias and Mr Dates and at line, and Ms Dates, and at line 5 there is what's said to be a transcription of what that conversation recorded. It doesn't in total record faithfully, and there is a part missing which is quite significant. The words in line 8, "You thought that I might have done something sneaky," I hear after those words, "I might have done something sneaky but underneath that," and then goes on to say, Mr Petroulias goes on to say, "I'm giving you documents you are signing in good faith," to which there's an answer by Ms Dates.
30

Another example on line 17 and 18, the transcription begins, "In one of Despina's briefing papers," there's several words of little consequence, but words before that that are not transcribed, but importantly again in the transcript it reads, line 17, "The briefing paper of 5 April, this is the reason why we are, why we gave for signing," the words that are missing there, "Remember we had," are not included. And then it goes on to say as transcribed, "I had advised you separately," the words that are not transcribed then are, "In our private meeting." No date is given, no explanation as to what was said and those words, "In our private meeting," are not transcribed. "And Despina," it goes on to transcribe, "advised you,"
40

and it says, "You separately in her briefing papers," whereas I heard, "Advised you in a briefing paper that signing means nothing." Now, these are significant differences in the manner in which the transcription's been provided to the Commission and what I hear, having listened to it over only one occasion in the passage of between the conclusion of yesterday's proceedings and this morning.

10 On page 5 at line 12 the transcription on MFI 55 says, "So me coming to you in these Gows meetings in about November to December 2014." I hear the words, "So me coming to, me coming to you."

THE COMMISSIONER: Sorry, just give me a line reference again?

MR O'BRIEN: Line 12 of page 5.

THE COMMISSIONER: Yes, I've got it.

20 MR O'BRIEN: "So me coming to you, me coming to you in these Gows meetings," is the words that I hear, and the word approved, which is in square brackets at the end of line 13 is obviously inserted there to suggest what was meant, the word that is used but not transcribed is the word signed.

THE COMMISSIONER: So are you suggesting that the word approved as recorded in the transcript is not accurate?

MR O'BRIEN: That's correct.

30 THE COMMISSIONER: Based on what you've heard?

40 MR O'BRIEN: Yes. At page 9, line 26, the words transcribed are, "Now, at the time do you remember." It then goes on to say, "Because this says a lot about how you conducted yourself." I heard the words, "Because I want to demonstrate a lot about how you conducted yourself." Page 9. On page 11 at line 19, the words, "To keep me or Gows or Cyril hidden." The words I hear are, "The plan wasn't to keep me or Gows or Cyril hidden." On page 13, the transcript simply does not reflect the much more wordy question that I hear to be, at line 31, "Yeah, so, and that was better for the community because it meant that it, that I didn't want to be putting words in, if you can, if you remember it, you remember the idea that Zong made more attractive than me, is that if Zong wanted adjoining lands, it meant the community could plan because some of these adjoining lands might not come forward." Only a portion of that has been transcribed.

THE COMMISSIONER: And that was responded to at 31, "That's right," is that right?

MR O'BRIEN: At 33.

THE COMMISSIONER: 33?

MR O'BRIEN: Yes.

THE COMMISSIONER: So those words are missing from 32 or 31?

MR O'BRIEN: Those words are missing from the transcript 31 and 32, line 31 and 31.

10

THE COMMISSIONER: Right, thank you.

MR O'BRIEN: Now, there are many, many instances where other words are not included but they're just some where there are some stark differences between the transcript as provided to me and it's transcribed by Mr Petroulias and what I can hear in the recording, but there is not a page nor even a question where there's been a faithful representation, in my listening of it, to the recording as I hear it. And I can provide a handwritten annotated copy to Counsel Assisting, if it's of utility, in relation to that but it goes to this issue of delay and it will delay these proceedings to have these matters fully fleshed out.

20

But Your Honour, there are more pertinent and substantial reasons why this material would not be admitted by you, Commissioner, in these proceedings. Ms Dates is a witness in these proceedings and has been represented since the very early stages, since September of last year, she has been represented by me and I have attended to the matters, cross-examined witnesses. Mr Petroulias has known that I've been here, he's known that Ms Dates is represented and, as I understand it, he has a legal background. It is fundamentally unreasonable, it is unfair, it is improper that he should approach Ms Dates without giving notice, not only to the Commission, but also to the representative of the witness.

30

Witnesses in these proceedings, Commissioner, are afforded certain protections under the legislation that govern its operation, legislation that sets out that the entitlement for legal representation in section 33 of the Act. Because Ms Dates, at section 32, is substantially and directly affected by these proceedings, she is entitled to be represented.

The admission of this material into evidence effectively subrogates the import and importance of those protections that witnesses have because of the very nature of these proceedings, and it would be fundamentally unfair to allow a document of this type and material of this type to be admitted into proceedings where she hasn't been given the opportunity of speaking, of at least an announcement by another party, where there might be interests which diverge – known or not known to Ms Dates – of the opportunity of having some legal advice provided to her.

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Now, she could have called me, I'm sure Mr Petroulias will say. She had my number, she could contact my office. But that's not the point. The point is he, as a legally trained person, as someone with a great deal of professional experience, ought to have properly notified her lawyer, and I note in the transcription and in listening in to it, there was no invitation to do so. There is no invitation at the outset to contact lawyers. It's simply if you want to do a statement – a written statement I presume it to be – then we will contact the lawyers. That goes nowhere near enough. And to suggest that there was some advance notice given to the Commission, as Mr Petroulias has done at the outset of these proceedings, is a nonsense. There was no suggestion at all, ever, that he would speak to my client let alone interview her in a recorded manner.

THE COMMISSIONER: Mr O'Brien, there's one matter you might be able to assist me on. The witness is entitled under the Act, as you know, to have a direction or order made to the effect that the evidence won't be used in any other proceedings, et cetera, section 38 as well. If this recorded interview of your client is tendered, are those protected provisions available to the answers incorporated into Mr Petroulias's transcript?

MR O'BRIEN: I don't believe - - -

THE COMMISSIONER: That is to say, questions and answers given not within the Commission but outside the Commission? Section 38, as you'll recall, provides that a declaration can be made that all classes of answers given by a witness or any classes of documents or other things produced by a witness will be regarded as having been given or produced on objection, et cetera.

MR O'BRIEN: It's a moot point. But the concern that I have is that if it were admitted or if it were not, it may be capable of being used against her in other proceedings. And that is the very problem that I have with this witness in these proceedings, Mr Petroulias, speaking to my client, another witness in these proceedings. Their engagement with each other is because of and resulting from their engagement as witnesses in these proceedings. Section 38 is a crucial provision as to their ability to give evidence without fear or favour, but when these type of processes are happening outside of the knowledge, purview and protections afforded by the Commission, it is troubling, it is problematic, it is not only improper, it is wrong, and for it to have occurred in these circumstances is unfavourable, sorry, is unfair in the extreme to Ms Dates.

Because the last point that I wanted to make is to touch upon some of the matters that have been raised by Counsel Assisting, and I'll just interrupt myself to say that I adopt every one of learned Counsel Assisting's reasons as to why this material would not be admitted, and I don't intend to regurgitate any of it, except to say this. Ms Dates is a woman with very limited education. She didn't attend high school. This is already in

evidence. She didn't attend high school. She attended bare minimum till year 4 or 5 in primary school. Her level of literacy is very limited indeed, and although she's a strong and determined Aboriginal woman, one can already see that she has been subject – I would say it's already evidence in these proceedings – to a deal of beguilement, a great deal of manipulation, and I would suggest that this passage of questions and answers, made all the more clearer for listening to it rather than simply reading it on a transcript, is a manifestation of those very characteristics. This is gratuitous concurrence. In essence, she, Ms Dates, has agreed with whatever Mr Petroulias has put to her.

THE COMMISSIONER: There are a lot of yeses and yeahs in there.

MR O'BRIEN: There's a lot of yeses and yeahs, and when there's a negative proposition, the response is no. It is agreement after agreement after agreement, and sometimes it's not – as Counsel Assisting has made clear – not even clear as to what she is agreeing to. This is not only a document that is troubling because of its propriety, but this is a document that is troubling because of its reliability. I would go so far as to say it's a completely unreliable document for the reasons that Counsel Assisting has suggested – the possibility of collusion and corruption and contamination – but also for reasons of it demonstrating what has been made clear for decades now, and that is that Aboriginal people in questioning of a leading, in questioning where there's a leading set of propositions will tend, will tend to agree to the proposition, and this is an example of that, and for that reason it is extremely unhelpful, extremely unhelpful, and it is indeed, as Counsel Assisting has put forward, in many instances it is misleading, at very least it is unhelpful but we say in addition to that it is thoroughly unreliable and you shouldn't admit it.

THE COMMISSIONER: Thank you, Mr O'Brien. Mr Lonergan?

MR LONERGAN: Yes, Commissioner. In relation to delay and the transcript that Mr Petroulias has put forward, I'd adopt the same position as my friend in relation to that, in that in order for it, if it was to be admitted would need to be independently transcribed so the accuracy of what is said is without question.

The second aspect of this is that if one goes to section 135 of the Evidence Act, the weighing exercise between the value, probative value of the evidence versus the prejudice that has occurred to the, well, to the person in relation to the evidence, here, whilst the Commission is not technically bound by the Evidence Act, I think that the weighing exercise is relevant.

THE COMMISSIONER: Well, it provides I suppose a guide as to how a court would evaluate probative evidence and that might, though as you say not strictly binding on the Commission, has been a well and tried, tested method.

MR LONERGAN: Yes, Commissioner.

THE COMMISSIONER: So what do you say, section 135 has three limbs to it, one, that it's unfairly prejudicial to a party, the other misleading or confusing, the other cause or result in undue waste of time. Do you rely on all of that?

10 MR LONERGAN: All three, Commissioner. First the undue waste of time, being that there will be a need to independently transcribe in my submission, the evidence, the interviews, and that will take time and this Commission has had a number of delays in relation to this proceeding already and another one would just, well, would further delay what has already been a very long process. The second aspect of it is that Mr Petroulias is afforded the opportunity to cross-examine both Ms Dates and Mr Green in circumstances where it is under the procedures of the Commission, in circumstances where their legal representatives are here, and in circumstances where if the questions put to the witnesses are
20 compounded questions, are not understood or potentially understood by the witnesses, that objections can be raised. So there are two aspects of the legal representation that come into play here. One, Mr Petroulias did not afford legal representatives the opportunity to respond to a request to interview the witnesses, but also secondly, that it's not just the permission or opportunity to examine the interview, it's also the ability for counsel or the solicitor to be able to object to questions as they're raised where there is, you know, compound or unfairness or potential issues in relation to the form of the question.

30 The other aspect is that as my friend has raised, the gratuitous concurrence on the part of Aboriginal persons when asked questions is a live issue in this Commission, in my submission, and in circumstances where Mr Petroulias has asked long, difficult questions, the significant risk that the persons that are asked those questions are agreeing with them without really understanding what they're saying or what the import of the questions are and agreeing because that's what they do.

40 The other aspect of the questions and the prejudice related to the admissibility of them is that there are a number of issues that are live between, well, we presume will be Mr Petroulias's evidence in relation to certain events, the evidence of Ms Dates, and the evidence of Mr Green in relation to those events as well. So the Commission is going to be in the position where they are going to have to make determination in relation to which of those witnesses is to be believed versus the other. In those circumstances, there's not just the written transcript or otherwise of the evidence given. It is going to be a question of the Commission's evaluation of the veracity of the witnesses in giving that evidence. Here the Commission has no opportunity to consider the veracity of the witness. It has no opportunity other than a transcript and a recording to observe how

the witnesses behave, the circumstances in which they gave the evidence, and in those circumstances, Commissioner, it raises serious concern as to the weight that should be given to the evidence if it were to be admitted in front of the Commission or tendered into evidence in the Commission.

10 It's trite to say that the law has evolved in a way where oral evidence is significant because the trier of fact is in a position to evaluate the credibility and the veracity of the witnesses as they give the evidence. Here, if the evidence is admitted, there is no ability for the Commission to do so. The follow-on point from that is, as the Commissioner raised, there are protections that are afforded to witnesses in the Commission – in particular, section 38 – that provides for protection in relation to the evidence that is given. Without having the opportunity to fully consider it, prima facie it would seem that any evidence that is admitted into the Commission by way of tender of the transcript and/or the voice recording is outside the scope of section 38 because it wasn't adduced in the process of the Commission. That also weighs heavily against the admission of that evidence.

20 And the final point that I make, Commissioner, is that every witness that comes into the Commission is required to do is to give an oath or an affirmation. An oath or affirmation is central to our legal system, the common law, in relation to people knowing that they are required to tell the truth, the whole truth, nothing but the truth, in relation to the evidence they are giving. Here, Mr Petroulias has undertaken to examine, interview. The context of that was not one where any, well, Ms Dates or Mr Green were required to affirm or give oath in relation to the material they were providing to Mr Petroulias.

30 THE COMMISSIONER: So in the event of a conflict between the evidence given on oath or affirmation of your client, for example, and what he said in the record of interview conducted by Mr Petroulias, there is a challenge in fact-finding as to which evidence do I accept, the evidence given on oath or affirmation on the one hand, or the evidence given in Mr Petroulias's recorded interview, or how much weight do I give to one or the other, trying to resolve any conflict. That's the sort of issue you're saying might arise out of there being the evidence given on oath or affirmation on one hand and then an account given outside the Commission on the other.

40 MR LONERGAN: Yes. Oath or affirmation being part of that matrix of problems. I mean, the other being that, you know, the compound nature of questions asked. There is a litany of issues that come to the surface when one considers the weight that should be afforded - - -

THE COMMISSIONER: Well, certainly there is lots of questions there, so far as your client's concerned, anyway, confining it to that, where there's much narrative by Mr Petroulias before agreement, of sort, to a proposition or an answer is sought and I think it's fair to say that in some cases there are

multiple propositions being put at the one time before answer is sought. That's what you're referring to, the compound element in the questioning?

MR LONERGAN: Yes, Commissioner. Yes. They're my submissions, Commissioner.

10 THE COMMISSIONER: Thank you. All right. We'll shortly take, I think we should take a morning tea adjournment, Mr Petroulias. We might do that now, 15 minutes. Are you able to give some estimate as to how long you might be? I'm not tying you down to any time but just as a general guide.

MR PETROULIAS: Not too long. If I do drift and - - -

THE COMMISSIONER: That's all right. All right. We'll resume in 15 minutes' time. I'll adjourn.

20 **SHORT ADJOURNMENT**

[11.31am]

THE COMMISSIONER: Yes. It looks like we're short on numbers, are we? Mr Lonergan's not here, but - - -

MS GOODWIN: Your Honour, my client's just outside. She'll be in shortly.

30 THE COMMISSIONER: Yes, thank you, Ms Goodwin. All right. Well, now, Mr Petroulias, you might start then.

40 MR PETROULIAS: First, Commissioner, I don't think we understand what the, what the purpose was. This, this was not in lieu of cross-examination, it wasn't in lieu of cross-examination, it wasn't a replacement of cross-examination, it was, it was not a usurpation in any shape or form of what we're here to do. Let's start with a simple proposition. My complaint to you back on 14 March was that the evidence is unbalanced, unbalanced because only one side of the case has been put forward. My, my, the helpful, evidence that is helpful to me has not been put in together, has not been put forward. It follows from, unfortunately your response in your reasoning seems to have misunderstood what my documents are, but it's very clear that my side has not been considered by the Commission. It follows from that complaint that of course there's going to be evidence that I need to put forward that hasn't been heard by the Commission, the natural consequence, that's the complaint, that I need to put my side forward. Now, when making that complaint to you, your, in response to your invitation to put all the evidence before the Commission and there's a positive duty for you guys to follow it through, you suggested, you suggested statements. Now, then Keagan, et cetera, which implied having a discussion. You don't

get a statement of evidence that I want to bring in unless I have a discussion with the person about the evidence I'm going to bring in.

THE COMMISSIONER: But I didn't authorise you to take the statement, did I?

MR PETROULIAS: Well, how was it going to, how am I going to get the statement of what I want to put in unless I - - -

10 THE COMMISSIONER: In accordance with ordinary procedure you speak to the solicitor for the Commission and say there's evidence here I want you to look into and to either summons somebody or to get some documents. That's the customary practice, as you know, and it's up to the Counsel Assisting - - -

MR PETROULIAS: No, I don't know.

20 THE COMMISSIONER: - - - then to decide, well, who's the person he wants a statement taken from and Counsel Assisting will then evaluate whether he/she considers that the evidence the person can give is material to the investigation and then take steps and arrange for an investigator to speak to the person and take a statement, if it's thought that that person can provide useful evidence. That's the way it's done.

MR PETROULIAS: I didn't know it was customary, but in any event, that can't be the exclusive, exclusive way.

30 THE COMMISSIONER: You regularly write, don't you, by email to Mr - - -

MR PETROULIAS: Yeah, that's right.

THE COMMISSIONER: Well, you regularly email the Commission with requests of one kind of another.

MR PETROULIAS: Yes. All I'm sort of saying is I didn't know - - -

40 THE COMMISSIONER: Why would you not then say, well, there's a witness I want a statement taken from?

MR PETROULIAS: Yeah. Okay. I didn't know that that was the customary, nor did I find it actually appropriate because my complaint was that there's, that there's bias against me. But nevertheless, whether it, whether it is customary or not, there is no property in witnesses and there is no legal obligation to inform a lawyer. Now, I make the choice and that leaves me open to every criticism that can, that, that you heard, right, that makes everything, whether, whether it's a statement or whether it's an interview, I'm open to, and you're open to submissions about, as it will

happen in any, in the course of, in any event anyway about anything, any evidence that I get, whether through cross-examination or otherwise, whether it's clear, vague, et cetera, et cetera, you will determine the weight of it and you will find it, but it's still evidence. It's a fact that has occurred.

Now, there is, point number 3, there is no prohibition on me making a recording of an interview by a person, either with their consent or even without their consent, when I seek to protect my own economic interest and want to, and make, and, and it becomes admissible. It's still evidence, it
10 still happened. Again, you can criticise it and you can, and you may give it little weight and you can make all the submissions you want about loaded questions or otherwise, to whether, with respect, there's no reason why you can't put a proposition to a witness.

Now, as I said, it was, it's, it's, point number 4, it's not a replacement for cross-examination. I'm not saying here it is in lieu of evidence. The witness is going to be called, I intend to say to them, "Did we have an interview?" "Yes." "Is, is this the interview?" They can ask for, and their
20 counsel can ask for a protection at that, at that point in time but I will then continue my cross-examination, and I was intending to refer to bits of it here and there as I need to, elaborate upon it as I need to, and your assessment will be of the cross-examination, not of the interview. Your assessment of the demeanour will be of the cross-examination, not of the interview. All it is, is a reference for me and a helpful instrument, whether, just like, referring to a, referring to a document.

Now, point 5, after I finish, Mr O'Brien and Mr Lonergan will follow and they will re-examine and they can, and they can, and if there's anything that needs clarification or may be misleading or confusing, they can clarify it. If
30 there's any criticisms they, they've just made to you, they can make it and clarify it before the witness.

So the mere existence of an additional instrument of referral doesn't, by me, doesn't of itself deprive any strength of their submissions. They can, they can clarify it and, and you can assess it.

Now, this question of delay, this surely cannot be used against me. I am the person who asked for an objective transcript because I wanted to refer to it and I wanted there to be no doubt about whether it's complete or, or, and it
40 follows the correct conventions. You can't, you can't use that against me.

Now, okay, so what happens, so what happens now? Well, okay, if I'm going to – these are, these are interviews that took two hours each, at least. Now, if I'm going to repeat each and every question and do it with greater specificity, which I'm happy to do, with specificity, we're going to run into the problem of time limits, which we had yesterday. We finished early, I had a lot of questions I could have asked Mr Kavanagh that I thought were

important but I'm put under time limit. How am I going to be more specific and yet cover the, the ground that I need to cover?

Point seven. This, this concept of gratuitous concurrence is seriously very scary because what that means, in effect, is that you, is that if you accept that, then you're basically, you're basically making my case of bias and I have got nothing I can defend myself with because if they gratuitously concur to me and I'm nobody, well, wouldn't they gratuitously concur to you because you've got, you're, you're, you're the man with authority, this is a man with authority, the Counsel Assisting that is sitting there - - -

THE COMMISSIONER: Sorry. What's your submission about gratuitous concurrence?

MR PETROULIAS: If that is to be taken seriously - - -

THE COMMISSIONER: What is?

MR PETROULIAS: The concept of gratuitous concurrence.

THE COMMISSIONER: What do you mean by that?

MR PETROULIAS: Well, it's been advanced by both counsel here that Aboriginal people tend to agree with, with a white person who puts something to them and particularly people with authority. Well, I don't really have a lot of authority. By contrast, if that applies, then you are a person with authority, Counsel Assisting is a person with authority, you're sitting there by compulsion that's brought them here, you've got emblems and formalities associated. That means that all the evidence that they've taken is open to be, is open to be, just simple be a matter of agree with what Counsel Assisting puts to them and what you put to them. So, I mean, I've got no chance if that, if that proposition is correct.

So what I, what I saw about the criticisms Mr O'Brien made about what was missing in the transcript were actually more favourable to me than, I would be happy for someone to make them because they appeared very favourable to me. And to the extent to which, you know, again, to the extent to which anything was said about the minister being happy or, well, yeah, with respect, the inquiry hasn't heard any, doesn't know too much about what, about what occurred with the minister, doesn't know anything about the correspondence that was exchanged. I happened to do so. I'm much more comfortable in being in that position, but if, about my position, but if that's, if that's incorrect, well, that's why there'll be the re-examination to correct it, and I'll be open to criticism if I've, I've, if, if I leave a state of affairs that's, that's unclear.

So it follows that, general conclusion is it's one piece of evidence. It's an event that actually occurred. It's evidence whether, whether anybody here

likes it or not. It is prima facie admissible. It doesn't replace anything. It might not have, it might not have a hell of a lot of weight because of, you know, and it may be criticised and you might not give it a lot of weight. Its only intention is to be used as an aid to help me in my re-examination, the re-examination will be done anyway, and all opportunities to clarify will be given, all opportunities to observe the witness will be done. There's nothing lost other than the fact that one little, tiny piece of evidence in my favour goes in. And I, I may make submissions on it as I may choose, which you may then weigh up and agree or not agree as you see fit. So there's nothing lost by putting it in and certainly, sorry, by letting me refer to it in cross-examination, nothing lost, and the only thing that I've gained out of it is an opportunity to use it and to help me in my cross-examination and then makes such submissions as I can, which you will or will not accept. Thank you.

THE COMMISSIONER: All right. Now, Dr Chen?

MR CHEN: I don't have any submissions or additional submissions to make of any kind, be they a reply or otherwise, Commissioner.

20

THE COMMISSIONER: Now, Ms Dates is present in the precinct here somewhere?

MR CHEN: Yes, she is in the hearing room, Commissioner.

THE COMMISSIONER: And it's your intention to call her for cross-examination?

MR CHEN: It is. Commissioner, I think I outlined this yesterday, I will need to ask her some additional questions - - -

30

THE COMMISSIONER: Yes, you did.

MR CHEN: - - - of a very limited kind of two parts. One is Mr Petroulias has produced a number of documents, so it will cover that. When I say limited, Commissioner, I'm not suggesting that it's but a few minutes, it will be longer than that, and there are some other slight additional matters which I'll need to seek your leave to address further with the witness. I was proposing to do that whenever it's convenient to the Commission.

40

THE COMMISSIONER: Yes. Now, has Mr Petroulias provided an indication as to what areas he wants to cross-examine on? In other words, has he complied with the standard direction in respect of cross-examination?

MR CHEN: Yes, he has, Commissioner.

THE COMMISSIONER: Can you just take me to that?

MR CHEN: Just pardon me for a moment, Commissioner. I'll dig that up.

THE COMMISSIONER: Yes.

MR CHEN: Could I raise another matter as well before, Commissioner, any decision is made about when Ms Dates is to be asked to return to the witness box. Mr Petroulias, as you know, Commissioner, provided the witnesses – Mr Green and Ms Dates – with a number of documents or apparently had them in his possession when he undertook this interview, and he made
10 copies of them available to the Commission.

THE COMMISSIONER: Yes.

MR CHEN: A request has been made for Mr Petroulias for the originals of those documents. I'm repeating the request now. I would like them, Commissioner. I'm sure those behind me representing those interested parties would like to see those as well, and I'd like to do so, Commissioner, in a timely way, preferably before I commence my examination but not later than when I finish it.
20

THE COMMISSIONER: All right.

MR PETROULIAS: I totally accept that, Commissioner.

THE COMMISSIONER: Have you got the - - -

MR PETROULIAS: Yeah, I have the originals with me. I've had them since yesterday, whenever we get a chance we can talk about them

30 THE COMMISSIONER: Well, have you got them there?

MR PETROULIAS: Yeah, sure. I don't know which one he particularly wants but - - -

MR CHEN: Just to be clear to assist Mr Petroulias, all documents that were provided to the Commission in a copy which are 73 pages in total and which has been made available to Mr Lonergan and to Mr O'Brien and also have been put up on the website, I assume they are the documents, and if they are, I'd like the originals, Commissioner.
40

THE COMMISSIONER: You have the originals there?

MR PETROULIAS: Yeah, I think this is what we're talking about.

THE COMMISSIONER: 73 pages.

MR PETROULIAS: I haven't counted 73 pages.

THE COMMISSIONER: All right. Well, if you think that's the bundle of the originals, then just hand up the bundle. A check can be made as to whether the bundle's complete or not later.

MR CHEN: I'm sorry, Commissioner, we just have some delay in providing that application to you. Mr Petroulias has prepared one, could we return to that, Commissioner?

10 THE COMMISSIONER: Yes, very well. Well, now - - -

MR PETROULIAS: If it helps can I give you the dates?

THE COMMISSIONER: Yes.

MR PETROULIAS: There's a letter to Mr Broad which summarises it, 1 May, 2015, in relation to Mr Green, and 3 May, again to Mr Broad, in relation to Ms Dates.

20 MR CHEN: So we have the application or the most recent application in relation to Ms Dates, Commissioner, which is dated 3 May, 2019. Could I hand a copy of that to you, Commissioner.

THE COMMISSIONER: Yes. Well, I'll mark the letter 3 May, 2019, from Mr Petroulias addressed to the Commission entitled Cross-examination of Debbie Dates Transcript of Record of Interview 26 March, 2019. That will become MFI 56.

30 **#MFI-056 – LETTER FROM NICHOLAS PETROULIAS
ADDRESSED TO THE COMMISSION DATED 3 MAY 2019 RE:
TRANSCRIPT OF RECORDED INTERVIEW OF 26 MARCH 2019
OF DEBBIE DATES**

THE COMMISSIONER: We might come back to that later.

MR CHEN: Yes, Commissioner.

40 THE COMMISSIONER: Well, then I think we should proceed at this stage anyway to call Ms Dates, deal with the matters you want to deal with, and then if this is suitable to you, at the conclusion of that we'll deal with the question of cross-examination.

MR CHEN: Yes, Commissioner. It is suitable and convenient.

THE COMMISSIONER: All right. Thank you. We'll have Ms Dates, then. Ms Dates, do you take an oath or an affirmation?

MS DATES: Affirmation.

THE COMMISSIONER: Affirmation. Very well.

<DEBORAH DATES, affirmed

[12.09pm]

THE COMMISSIONER: Just take a seat there, Ms Dates.

MR CHEN: A declaration was made under section 38, Commissioner, on the last occasion. I assume my learned friend seeks an extension of that.

MR O'BRIEN: Yes, please.

10

THE COMMISSIONER: Very well. I note that on the last occasion Ms Dates gave evidence, or one of the dates on which she gave evidence, she sought and was granted a declaration under section 38 of the Independent Commission Against Corruption Act. The declaration made on that day continues to apply to her evidence given today and, if required, tomorrow.

MR CHEN: Thank you, Commissioner.

20

Would you tell the Commissioner your name, please?---Deborah Dates.

Now, Ms Dates, I want to ask you some questions of a general kind about the interview that you recently participated in with Mr Petroulias. Do you understand?---Yes.

Now, an interview was conducted with you and him on 26 March, 2019. Isn't that right?---Yes.

And where did that occur?---Carrington.

30

And that's a suburb of Newcastle, is it?---That's where I live.

I see. And did that interview go for approximately an hour and a half or the recorded part of the interview?---Yeah, about that, yeah.

And during the course of that interview you were obviously present with Mr Petroulias. Is that right?---Yes, and Warren Towers.

Right. That's your husband, is it?---Yes.

40

Was anybody else present at any time?---My sister, Pauline Dates.

And was she sitting in on the interview or was she just present in the house at the time?---Some of it she was.

She's never been a board member of the Land Council though, has she?
---No.

Was anybody else present in the house or during the interview at any time?
---No, it wasn't at a house.

I'm sorry?---It wasn't at a house.

I see.---It was at, it was at the pub.

I see. The Carrington pub, was it?---Yes.

10 Well, I'll just put these questions directly to you. Was Mr Green present?
---No.

Was Ms Bakis present?---No.

Now, how did it come to be, Ms Dates, that you participated in that interview?---Nick rang Warren's phone and he said he'd like to come down and see us.

20 Did you speak to Mr Petroulias at that time?---No.

Did your husband pass on that message?---Yes.

Did you indicate that you were happy to speak to him?---Yes.

Were you told at that stage anything about an interview being recorded?
---Not at that stage.

30 Were you told about why he wanted to come to speak to you?---No, just said he was coming to talk.

Was there no discussion or forewarning that he wanted to talk to you about the matters which were the subject of the investigation being conducted by the Commission and your evidence?---I can't recall.

So how long between the phone call and the interview – I withdraw that. How long prior to the interview did the phone call that Mr Petroulias made to Mr Towers?---I can't recall.

40 Is it days, weeks, hours?---Yeah, I can't remember, can't remember.

How did it come to be that you arranged to meet at the Carrington Hotel?
---Because he come to where I lived and there was too many family members there because we just lost somebody so we couldn't speak at the house, we had to speak at the pub.

When he either arrived at the house or at some later point did he tell you why or what the purpose of him coming to see you was?---No, not till we got to the pub.

What did he say to you?---Oh, couldn't find the address, and I said, "It's pretty simple." And then I said, "We can't meet here, we've got to go down to the pub."

All right. And when you got to the pub, what did he tell you about the purpose of him coming to Newcastle was to speak to you?---That he was going to have an interview, talk to me, would be, record me.

10 And did he tell you about what?---No, he just said about Land Council business.

Did you understand or did he tell you prior to you being interviewed by him that it was to do with the subject matter of this investigation and your evidence?---I can't remember. Can't recall.

Well, Ms Dates, why did you agree to do it? Why did you agree to speak to him and be recorded?---I know, I've got a lot, I trust Nick, I've got a lot of trust in him. He's a like a friend.

20

Did you feel obliged to do it?---No.

Did you want to do it?---Yes.

And did you – well, as I understood it, the first time that you came to be aware that you'd be asked some questions about Land Council business, and in particular matters which are the subject of this inquiry, was when he started raising these questions at the hotel. Is that the position?---Yes.

30 Do you recall actually what he was asking you questions about in any particular respect?---No, I can't recall.

Do you recall any of the document that he showed you?---I can't remember.

Did he show you any documents?---Yeah, he showed, showed me a few.

Do you know what they were?---I can't recall. I can't remember.

40 Did you have some discussions before the interview commenced to be recorded with Mr Petroulias about these land transactions at all?---No.

Are you sure of that?---I can't remember.

Well, what about after the interview stopped being recorded? Did you have any other discussions with Mr Petroulias about these Land Council transactions that have brought you to the Commission?---Is that after the recording?

Yes, after he stopped recording.---I can't remember.

This is only a matter of five or so weeks ago.---Yeah, well I just lost a sister last week and I buried her. I found her in, in her house, dead. Plus I'm looking after my 90-year-old mother and that's a big job.

10 Ms Dates, on the last occasion you were asked, or one of the days, you were asked some questions by me and also by some of the other party's legal representatives about whether or not there had been any disclosure to you about Mr Petroulias criminal background. Do you remember being asked questions generally about that?---Yeah, I think so.

20 Yes. And I think the thrust of your evidence, Ms Dates, and I'll just refer those in the hearing room to at least part of these, transcript reference, which is page 2748, lines 25 to 35 and also lines 45 and also to pages 3028 and 3029, but as I understood it, Ms Dates, the position that you, or the evidence that you gave on the last occasions was that you were not told that Mr Petroulias had any criminal background or criminal history. Do you remember giving that evidence? That is that you did not know about it.---I can't remember, I can't recall it.

Well, the fact is, though, is it not, that you were not aware in your dealings with Mr Petroulias that he had any criminal background of any kind, is that right or not?---What are you saying, what, what do you mean? Put that another way.

Well, did you know that Mr Petroulias had been gaoled for, convicted and gaoled for dishonesty offences?---I don't think so.

30 Now, Ms Dates, I also asked you some questions about a couple of the meetings that occurred on 2 June, 2016 and 7 June, 2016, which dealt generally with the start of this transaction with a party called Advantage. Now, do you remember me asking you generally questions about Advantage?---No. I can't remember.

40 I'm just going to show you some minutes, if I can, again, just to try and position this to see whether you have any recollection of approximately these dates, Ms Dates. Would you first have a look at volume 15, page 73. So these are up on the screen in front of you now. Can you see them, Ms Dates?---Yeah.

So you can see that that's the minutes of the meeting of the board on 2 June, 2016. Do you see that?---Yeah.

And if you have a look at page 5, sorry, page 74, you can see at point 5 about a resolution. Do you see that, about Despina spoke about a resolution they would like the board to pass?---Yeah.

And I asked you some questions about that on the last occasion, but I want to show you some other minutes and I'll come back and ask you some questions around these now, Ms Dates. If you look, please, at volume 15, page 95, you'll see that they're minutes of a meeting that occurred on 7 June, 2016. Do you see that?---Yeah.

And if you just look quickly at, say, under point 1, you can see that there's a discussion involving Advantage. Do you see that?---Yeah.

10 Now, you may not have any precise recollection of the dates, but you remember generally, as I understood it, when Advantage came to the board of the Land Council to do a presentation.---No, I can't remember.

Can't remember. All right. Well, I'm going to ask you some questions about what you recall potentially around this time. I understand that you may not have any particular recollection about this particular time of the year, but did Mr Petroulias ever tell you at or around this time – or indeed at any time – that he'd been charged with 15 counts of obtaining a financial advantage by deception covering the period 22 April to 3 June, 2013?---No, 20 can't, can't recall.

Well, that'd be something that I take it you would be troubled by, would you, if you had known that?---I didn't know that.

And did Mr Petroulias ever tell you that in fact on 6 June, 2016, so in between these two meetings that I've just drawn your attention to, he was in fact convicted of those offences? Did he ever tell you that?---Can't recall.

30 Do you think that's something you would have remembered if he would have told you?---I, I, I've lost too many deaths in my family in the last two years, so it's very hard to remember 2016.

Do you remember there being any disclosure to the board at any time about those matters?---No.

Did Ms Bakis ever tell you about these matters at all?---Can't recall.

40 What about to the board? Do you recall there being any disclosure to the board about these matters?---What matters? What matters?

That Mr Petroulias had been charged and convicted of these 15 offences involving dishonesty.---No, can't recall it.

You as the chairperson would have been troubled, I take it, if that type of disclosure had been made, would you not?---You're not allowed to sit on a board with a criminal record.

I'm not asking about you. I'm asking - - -?---But I'm just saying, if I knew that, certainly, yeah, you don't muck around with people that's got a criminal record.

And would that have affected the way you would have dealt with Mr Petroulias had you known of that fact?---Probably, yes.

And what would it have done to you as the chairperson of this board, Ms Dates, had you known of that?---Wouldn't have happened.

10

Pardon me?---It wouldn't have happened. He wouldn't have been - - -

You mean you wouldn't have dealt with him?---Yes.

You wouldn't have let the board deal with him.---Yes, that's it.

Would you have a look at a document, please, Ms Dates. This will come up on the screen but there's a hard copy as well. Now, do you see that as being what appears to be an affidavit of you, Ms Dates?---Yep.

20

And would you mind just talking to the microphone, if you would, Ms Dates.---Yes.

And if you look at page 35, you can see that your signature appears at the end of that document, can you not?---35, yep.

Do you see at the top of that document?---Yep.

30

And indeed, if you look through the document, either in hard copy or on the screen, you can see that your signature appears in fact on all of the pages, does it not?---Yep.

Did you sign this affidavit, Ms Dates?---I can't recall.

THE COMMISSIONER: Do you accept your signature's on it, the last page?---Yep.

MR CHEN: Ms Dates, you have a hard copy of the document in front of you, do you not?---Yep.

40

And it's a fairly substantial document, isn't it?---Yep.

Did you prepare it?---No.

Do you know who did?---No.

Prior to you signing this affidavit, were you taken through the contents of it by anyone?---Yeah, I think it was Despina.

Did you provide the instructions for what was to go in this, Ms Dates?---I can't recall.

Well, it doesn't look like, just by looking at this document, Ms Dates, it's something that you had prepared yourself, is that fair?---No.

So you think you did prepare it, that is to say you assisted with - - -?---Can you say that again?

10

Pardon me?---Could you say that again?

Yes, I will. When you look through the document, Ms Dates, it's long, it's detailed, it contains, at least on some reading of some of the paragraphs, quite sophisticated concepts and matters of that kinds, do you agree?---Yep.

And it doesn't look as if, may I say with respect, Ms Dates, that it's something that you have actually sat down and typed up yourself, is it? ---No.

20

Did you read this document before you signed it?---I can't recall.

Do you know where you signed it?---If I did it would have been at the Land Council.

Do you remember?---Yeah, it would have been at the Land Council. I signed everything at the Land Council.

30 THE COMMISSIONER: Did somebody ask you prepare this affidavit or to sign this affidavit?---I can't recall but I remember that this is the one for the minister, is it?

MR CHEN: No. Well, I withdraw that. Do you know why you were being asked to prepare this document, Ms Dates?---I can't recall the document, that's all.

40 All right. Well, you can assume, Ms Dates, that it actually involves a case by Knightsbridge North Lawyers against, at least, the Land Council. Did you know you were being asked to prepare an affidavit or swear an affidavit in proceedings against the Land Council?---I can't recall. I just can't recall.

Commissioner, could that be marked, that affidavit of Ms Dates?

THE COMMISSIONER: Yes. The affidavit of Ms Dates, sworn on or affirmed on what date is it, 1 April?

MR CHEN: Pardon me, Commissioner?

THE COMMISSIONER: What's the date of the affidavit?

MR CHEN: 15 June.

THE COMMISSIONER: 15 June.

MR CHEN: 2017.

THE COMMISSIONER: 2017. MFI 57.

10

#MFI-057 – AFFIDAVIT OF DEBBIE DATES DATED 16 JUNE 2017

MR CHEN: Now, Ms Dates, you remember, I think on the last time you gave evidence before the Commissioner, that there was a presentation involving a gentleman you described as an Asian gentleman as well as a gentleman who you identified as being from the Torres Strait. Do you remember?---Yes.

20

And the gentleman from the Torres Strait is somebody you came to know as being Mr Gabey. Is that right?---Yeah.

Is that the only time you've met Mr Gabey, on that occasion when he attended the Land Council to do a presentation for IBU?---Yeah.

Never seen him since?---No.

Never spoken to him since?---No.

30

Did you know, aside from what he discussed before the board on 31 October, 2014, anything else about Mr Gabey?---No.

You don't know what his background was, I take it?---No.

Still don't?---No.

40

Ms Dates, on the last occasion you referred to an organisation, perhaps you meant United Land Councils, but you described them as United Tribes on occasions. Do you remember giving some evidence about that?---Yeah.

And do you have any particular recollection, Ms Dates, about when it was that that entity came to the attention of the board of the Land Council?
---No, I can't recall.

Would it be fair to say that – I withdraw that. If there was such a connection or an introduction to that organisation, would you expect it to be in the minutes?---Yeah.

And so should the Commission take it that the best record of when it was that, at least at a board level, came to know of that organisation would be reviewing the minutes of the board of the Land Council?---Yeah.

10 If the minutes of the Land Council board record that the first mention of the United Land Councils is 22 June, 2016, you would accept, would you, that that's the first time that at least you had some recollection or some dealings with that or notice of that name?---I remember the name, I remember the presentation but I can't remember the date.

But would you be comfortable in anchoring your recollection to the dates in the minutes or do you think it's some other date?---I'll go by the dates in the minutes.

20 Commissioner, I'm going to show the witness now the material at least in copy form, over the luncheon adjournment I'll have a look at the originals that Mr Petroulias has produced to the Commission, at this stage I only have copies and my learned friend, Mr O'Brien, only obviously has a copy as well, but could I provide a copy to Ms Dates, a copy to the Commission and I'd ask you, Commissioner, to mark it at this stage.

THE COMMISSIONER: So these are described as a folder of documents, copy documents supplied by Mr Petroulias. Is that right?

MR CHEN: That's so.

30 THE COMMISSIONER: Being documents said to have been utilised in the course of the interview with Ms Dates?

MR CHEN: That's so. Yes, so that's for Ms Dates, that's right, Commissioner.

THE COMMISSIONER: And then do you want this marked as an exhibit or MFI?

MR CHEN: Marked at this stage, Commissioner.

40 THE COMMISSIONER: MFI?

MR CHEN: Yes, please. Thank you.

THE COMMISSIONER: That folder of documents will become MFI 58.

#MFI-058 – BUNDLE OF DOCUMENTS GIVEN TO DEBBIE DATES

MR CHEN: Now, Ms Dates, you have a hard copy, do you not, of that folder of material which is MFI 58?---Yeah.

Now, I want to, would you be good enough, Ms Dates, to have a look at page 1. And you'll see that appears to be a copy of a series of emails, but at least one of them is an email apparently from conrad4000@gmail.com. I'm sorry. Just pardon me for a moment, Ms Dates. Commissioner, I'm just reminded – it's more for those in the hearing room – that you have made an order, as I understand it, already that email addresses, personal email addresses, are suppressed.

THE COMMISSIONER: Yes.

MR CHEN: But I thought I should - - -

THE COMMISSIONER: Yes, well, I confirm that, that the email addresses just referred to, and which otherwise may be referred to in evidence, are suppressed from publication pursuant to the order made in that respect under section 112 of the Independent Commission Against Corruption Act.

SUPPRESSION ORDER: THE EMAIL ADDRESSES JUST REFERRED TO, AND WHICH OTHERWISE MAY BE REFERRED TO IN EVIDENCE, ARE SUPPRESSED FROM PUBLICATION PURSUANT TO THE ORDER MADE IN THAT RESPECT UNDER SECTION 112 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT.

MR CHEN: Thank you, Commissioner. Now, Ms Dates, do you have page 1 in front of you?---Yeah.

And you can see there's what appears to be an email from conrad4000, et cetera. Do you see that?---Yeah.

Do you know whose email address that is?---I think it's Despina's. I'm not sure.

And you can see it's addressed to you below, can you?---Yeah.

Is that your email address, debbiedatestowers@hotmail.com?---Yeah.

Do you use that email address?---Yeah.

You access it, do you?---Yes.

You still do?---Yeah, with help I do.

Pardon me? I didn't catch that, Ms Dates.---With help by my daughters. I don't know how to use a computer, so they do help me.

So if you need to access an email that's been sent to you, what's the position? Do you have to ask for some assistance, do you?---I'll go and get one of my nieces or my daughters to help me.

Is that the current position or has that always been the case?---It's always been the case. Still is.

10

You can see that there appears to be in this email a draft of a letter to the registrar. Do you see that?---Yeah.

Have you ever seen that before?---Yes.

Was the subject matter of that email – that is, what is contained within it, that is, the email of 2 April, 2015 – drafted by the person who sent that email to you rather than yourself?---I think I was, it's, can't recall. I can't recall this but I can, yeah, I can't recall it.

20

Well, you can see down the bottom, in the last paragraph, there's references to the Act and to the regulations. Do you see that?---Not sure but I think I, I authorised Despina - - -

Pardon me?--- - - - to help me, as being our solicitor, as she was our solicitor at the time. I was having trouble with the Land Council.

30

I understand that. Ms Dates, would you be kind enough just to either move the microphone a bit closer to you or to speak into it? I'm just having a little bit of trouble hearing you.---You won't now.

Pardon me?---I said you won't now.

Good. Thank you. Now, you can see there are some references to the Act in the last paragraph. Do you see that? Or the Act and regulations.---Yeah, yeah.

40

Is that something that you had any input in or is that something that's been drafted entirely by somebody else?---No, would have been me.

Would have been you?---Yeah.

You're familiar with the Act, are you?---Yeah, I'm, yeah.

THE COMMISSIONER: Do you know about section 68 is all about?---It's about when I try to get new elections for the board. The board, most of the board wouldn't meet so I, in the Land Rights Act itself I tried to get help to

select the new board, but nobody would listen to me from the registrar's office because half of the board wouldn't meet.

You'll see there's reference there to clause 26(2) of the regulations. Do you know what that addresses?---I can't, just can't think at the moment. Not good at thinking. I'm grieving.

10 Do you know specifically what section 68 is addressed to?---I think so. Yeah, I think so. I think it's, Land Rights Act 68 is call for a new election, for me to get in contact with the registrar, if I'm right. I could be wrong.

MR CHEN: Now - - -?---(not transcribable) right.

Now, Ms Dates, would you be good enough to have a look at page 19 of that folder now, please. Do you see there, the document is described as – it's over three pages, so if you have a look, it goes over to page, I'm sorry, four pages, to page 22. Do you see that?---Yep, yes.

20 Are you familiar with these draft resolutions, Ms Dates?---I can't recall.

Well, it appears to be the case that Mr Petroulias has them. Do you know how Mr Petroulias came to have these draft resolutions of the Awabakal Local Aboriginal Land Council?---I know he did, he did some jobs for the Land Council but I can't recall it.

Did you ever know that the Land Council, whilst you were a board member, actually kept a running list of draft resolutions?---Could you say that again?

30 Whilst you were a board member of the Land Council, were you aware of whether the board or the Land Council itself kept a document such as this, Draft Resolutions?---They would have, yes.

I'm sorry, I'm asking you whether you were aware, do you know?---No, I'm not aware but that, but, yeah, I reckon they would have, yes.

But is your evidence you've never seem them before?---No, I've seen these.

You have, have you?---At a meeting, at a board meeting.

40 When would you have seen these? Which board meeting?---But I can't, I can't recall.

You're saying you've seen this document – that is, all of it – are you, at a board meeting or are you saying you've seen some parts of it?---I've seen some parts of it at a, at a board meeting, yes.

Well, I just want to make sure that I understand clearly what you're saying. Would you look just at page 19 first and you'll see that there's a reference to Olney Road, Adamstown. Do you see that?---Yep.

Now that was a land transaction involving this Land Council during the time that you were on the board, isn't that right?---I can't recall. I can't remember.

10 Is this the case, you don't know when you may have seen this document before, whilst you were a board member of the Land Council?---I've seen it but I can't remember.

My question was you can't remember when.---It would have been at a board, it would have been at a board meeting.

We accept that, I accept that at the moment. I'm just asking you cannot say when, is that your position, Ms Dates?---I can't recall, I can't remember when, what board meeting.

20 Would you have a look please, Ms Dates, at page 23 of MFI 58. Now, Ms Dates, on the screen and in front of you at page 23 of MFI 58 is a letter from Advantage to the chair of the Land Council. Do you see that?---Yes.

And you can see on the top of that letter, there appears to be some handwriting and a signature. Do you see that?---Yep.

Do you recognise the signature as being yours?---Yes.

30 Did you sign this document, Ms Dates, do you know?---Yes.

When did you sign it?---I can't recall.

You can see above the signature, you can see the word, we can see some handwriting. Do you see that?---Yeah.

Is that your handwriting?---No.

Pardon me?---No.

40 Do you know whose handwriting it is?---Despina's I think.

Well, how did you come to sign this, Ms Dates?---To take it to the community meeting. I remember Advance Property very well.

Well, who asked you to sign this?---Can't recall.

Well, would you just have a look, please, at page 24 of the document, and you can see down the bottom there appears to be some corrections and what

appears to be some initials placed there. Do you recognise any of those markings as being markings by you?---No.

Are you able to tell the Commissioner why it is you're signing that you've received this document?---Because it was to take the Land Council forward.

THE COMMISSIONER: Did somebody ask you to sign?---I can't recall.

10 MR CHEN: Did you table this document, Ms Dates?---This was, this was tabled at a board meeting, at a board level.

THE COMMISSIONER: Which one?---This, this paper here.

Tabled at what board meeting?---Should be in the board, board, board minutes.

20 MR CHEN: Anyway, you would be satisfied that if you received this document you would have tabled it before a board meeting and it would be minuted. Is that the position?---Yes.

Now, if you have a look at the letter itself, Ms Dates, you can see in the first paragraph it refers to, "As requested." Do you see that?---Yeah.

And what seems to be, well, I'll let you read it if you like, the first couple of sentences.---Yeah.

Did you seek some clarification about matters?---I can't recall. Can't remember.

30 Well, on the face of it this document is responding to a request that was made apparently of Advantage to provide some additional material. Do you agree?---Can't remember it.

Is this the position. That's your signature but you don't remember signing it?---Yeah, I can't recall signing it.

You don't know who - - -?---My signature.

40 You don't remember who presented it to you?---I can't remember, I can't even recall it.

And even by looking at this now, it doesn't assist your recollection at all about what this letter was purporting to advise the Land Council about. Is that the position?---Yes.

Do you want to read any of it or look at any of it, Ms Dates?---No. I just did.

Ms Dates, would you have a look, please, at page – Commissioner, I'll just show the witness the additional document produced by Mr Petroulias which appears to be an original. It's in a plastic sleeve and I've left it in the plastic sleeve. Would you have a look at that? Ms Dates, do you recognise that as an original signature on that document of yours?---Yes.

And what you say to the Commissioner is you don't know when you signed it.---I signed it but I can't remember when.

10 Ms Dates, I perhaps should ask you this in fairness so you can respond to this proposition, but is it the case that perhaps of quite recent times, in the last year or so, that a number of documents might have been presented to you for signing, such as documents of this class?---As a chairperson of a Land Council I sign a lot of documents.

No, let me put it again, Ms Dates. I'm not asking you about your time at the Land Council at the moment. I'm just asking about more recently. Have you been asked to sign and have you signed a number of documents such as this more recently acknowledging, for example, receipt of documents?

20 ---Can't recall. I can't recall.

THE COMMISSIONER: Is that possible?---Probably yes.

Are you able to shed any light on who or how it came about that you signed, for example, the document in front of you?---Well, this document here, I probably would have signed it with the solicitor, how, like, Despina.

30 What makes you think that?---Because it's a letter to go towards the community meeting. Because Advantage Property tried to come to the community meeting three times to do their presentation, and they couldn't do it. That's all I remember about Advantage Property.

MR CHEN: But I just want to return to perhaps the subject matter of what I was asking you, Ms Dates, and that is have a number of documents been produced for your signature of quite recent times by Mr Petroulias?---I can't recall.

40 THE COMMISSIONER: When you went to the interview at Carrington pub, did Mr Petroulias produce some documents that you've signed?---No, he just read, he read some stuff out. Just read to me.

From documents that he had with him?---Yes. Yes.

Is this one of them?---Yeah, could have been. I don't know. Could have been. I don't know.

MR CHEN: You've met Mr Petroulias on other occasions outside of the Commission, have you not, in the last 18 months?---Yes.

And that's involved either him coming to see you or you going to see him, is that correct?---I don't leave, I don't leave Newcastle.

Well, on the last occasion – or one of the last occasions – you gave evidence, you did say you did come down to Sydney and you were given a folder of documents by Mr Petroulias, so that's not completely accurate. ---Oh, yeah, I can recall that, yes.

10 Right. So is it fair to say that at least on a number of occasions Mr Petroulias has had occasion in the last 18 months to come and visit you in Newcastle?---Probably once.

Has he presented documents for you to sign on that one occasion that you've met with him?---No.

And what about when you've come to Sydney? Has he presented documents for you to sign on any of those occasions?---No.

20 What's the purpose of you meeting with Mr Petroulias on those occasions, Ms Dates?---Just he wanted to have a talk.

About what?---So we met up and spoke. I don't know. I, I, I, I've got nothing against Nick. I, I found him to, to be okay with me and my partner.

THE COMMISSIONER: So far as the - - -?---I don't know anything about the man.

30 - - - meeting in Newcastle you had with Mr Petroulias and the one in Sydney you had with Mr Petroulias - - -?---I had to pick up - - -

- - - who asked or arranged for those meetings? You or him?---He did.

MR CHEN: Do you have a close connection to Mr Petroulias, Ms Dates? ---No.

Do you regard him as a friend?---Oh, yeah, regard him as a friend, yes. I don't really know the man or Despina but - - -

40 THE COMMISSIONER: When you say you regard him as a friend, in what sense are you using that?---Oh, just like a - - -

Somebody you know or somebody that you are friendly with or what?---I don't know him, but just to be friendly, yeah.

MR CHEN: Well, Ms Dates, you had some difficulties, regrettably, with some of your accommodation, didn't you, on Sunday night?---When was that? Was that way back - - -

No, no, on Sunday night.---Yes. I had to go back home.

And did you make contact with Mr Petroulias after that or during the course of when you had some problems?---I think my partner rang, rang him,

Right. Why would your partner be ringing Mr Petroulias?---Because we class him as a friend.

10 Had you spoke to Mr Petroulias advising him that you were coming down to Sydney on Sunday night?---I can't recall. No, I don't think so. Just that we were stuck in the city and we had no numbers because I left my barrister's number at home, so I had to wait until I got all the way back to Newcastle to ring my barrister, which I did.

Commissioner, it's a few minutes before but would that be a suitable time?

20 THE COMMISSIONER: Yes, yes, very well. Ms Dates, we're going to adjourn for the luncheon period, so if you'd return here and be ready to resume at 2 o'clock.---Yes.

Thank you. You may step down.

MR CHEN: Commissioner, just before the – I'm sorry, Ms Dates, please feel free to step down.

THE COMMISSIONER: You go ahead, Ms Dates.

30 MR CHEN: There was a document in front of Ms Dates, which was the original copy produced by Mr Petroulias.

THE COMMISSIONER: That'll be marked for identification and it'll be MFI 59.

**#MFI-059 – ORIGINAL LETTER FROM HUSSEIN FARAJ
ADDRESSED TO DEBBIE DATES DATED 20 JULY 2016 RE:
CLARIFICATION OF PLANNING COSTS ARRANGEMENTS
LETTER TO BE TABLED AT THE COMMUNITY MEETING**

40

MS GOODWIN: Commissioner, given that Ms Bakis's name was mentioned a few times by the witness in connection with a number of the documents comprising part of MFI 58, I wonder if a hard copy of that bundle might be made available to us, at least over the luncheon break?

THE COMMISSIONER: Yes.

MS GOODWIN: And whilst further cross-examination on it.

THE COMMISSIONER: Would you see if that can be organised?

MR CHEN: Yes, that will be done, Commissioner.

THE COMMISSIONER: Yes. That'll be done, thank you.

MS GOODWIN: Thank you.

10

THE COMMISSIONER: Good. I'll adjourn.

LUNCHEON ADJOURNMENT

[12.56pm]