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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE PETER HALL QC  
CHIEF COMMISSIONER

PUBLIC HEARING

OPERATION SKYLINE

Reference: Operation E17/0549

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 10 APRIL, 2018

AT 10.15AM

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

THE COMMISSIONER: Yes, Mr Chen

MR CHEN: Commissioner, just before we commence, can I raise a matter in relation to some proposed cross-examination that Mr Petroulias seeks to undertake of the witness, Mr Kelly? Commissioner, we received notification this morning by email shortly after 7.00am that Mr Petroulias purports to have a recorded conversation, involving himself and Mr Kelly, that was taken by Mr Petroulias on 5 August, 2016, apparently at a meeting that occurred on that day. Commissioner, you recall, Mr Kelly gave some  
10 evidence about that yesterday the broad effect of which was that having seen the minutes, he'd never seen minutes in that detailed form before and, secondly, he didn't agree that he was present during the course of the discussion that was had. There may be an issue about that, Commissioner, of course, which I accept.

Commissioner, just returning to this issue of the recorded conversation or what's said to be a recorded conversation, the Commission does not have that recording. It's not been handed over to the Commission. It's apparently  
20 30 minutes, Commissioner. Before that recording would be handed over to the Commission, it would need, in my submission, Commissioner, to be established that that was not illegally obtained and in particular there may need to be, as I would see it, some evidence given by Mr Petroulias on that topic before you would be in a position, in my submission, to rule on whether that was so. There then may be a practical question about whether it can be used and, if so, the extent to which it could be used and when.

THE COMMISSIONER: I might also add here a practical question for Mr Petroulias to consider and perhaps take advice on as to whether any recording made by him was or was not in conformity with legislation and  
30 whether or not he may be at risk in that respect. That's again a matter about which I know nothing and offer no advice but I think, just in fairness to Mr Petroulias, he would need to consider if he wanted this material produced as to how that would place him if he were to give an explanation as to how the recording was made and in what circumstances. In any event, it can't be resolved here now this morning but you've flagged it as a matter that needs to be looked in to.

MR CHEN: Yes, Commissioner. Thank you.

40 THE COMMISSIONER: Thank you. Mr Petroulias, you've heard what I've said. I don't think we'll deal with it now but we'll need to deal with it at some point in time but, in fairness to you, I think you need to consider your position in relation to any such recording.

MR PETROULIAS: If, if I can respond, it's really not controversial. The, the, the, the, yeah, the necessary facts have been established by Mr Kelly anyway. There's a specific exemption under the Surveillance Act

which I've referred to. I have submissions ready if that argument comes up so if can really proceed without any undue delay.

THE COMMISSIONER: Well, we'll see how we go. Thank you. Yes, Mr Chen. Now, Mr Kelly, did you take an oath or an affirmation yesterday?

MR KELLY: I think I took an oath.

10 THE COMMISSIONER: Oath. I'll just have you sworn again for the purpose of today's evidence.

THE COMMISSIONER: Thank you, Mr Kelly. Mr Kelly gave evidence before the Commission yesterday. In respect of that evidence, I made a declaration under section 38 of the Independent Commission Against Corruption Act. For the purpose of today's order, I make a further declaration under section 38 in the same terms.

10

**MR KELLY GAVE EVIDENCE BEFORE THE COMMISSION YESTERDAY. IN RESPECT OF THAT EVIDENCE, I MADE A DECLARATION UNDER SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT. FOR THE PURPOSE OF TODAY'S ORDER, I MAKE A FURTHER DECLARATION UNDER SECTION 38 IN THE SAME TERMS.**

THE COMMISSIONER: Yes, Ms Curtin.

20

MS CURTIN: Mr Kelly, we left off yesterday discussing a board meeting that occurred on 5 August, 2016. Do you remember that?---Ah hmm.

Before we go back to that meeting, I just want to cast your mind back to the annual general meeting which occurred on 20 July. Your evidence yesterday was that you recall an annual report being tabled at that meeting. ---I, I believe so, yeah.

30

Yes. Do you also recall that Mr Hickey from PKF Lawler was in attendance at the annual general meeting?---I do.

And do you recall that he presented an audit report and financial statements? ---I do, yes.

Do you remember, Mr Kelly, that one of the Awabakal members, Mr Sean Gordon, pointed out at that meeting that the handouts provided to members was different to that which Mr Hickey was presenting on?---Yes, I remember that comment, yes.

40

Do you remember what Mr Gordon said?---I think he asked the question, and it may have been directly to Mr Hickey, why is there a difference in what's being reported and what's, what's in the document and what's being reported, there are two different - - -

Was it the case, Mr Kelly, that the members hadn't in fact been provided with a copy of Mr Hickey's audit report?---Prior to that meeting, no, but there were two different accounts being, two different, two different accounts being presented at that, on that evening.

THE COMMISSIONER: By that you mean which, which accounts?  
---I think there was a position from PKF Lawler's, which was the accountant, and I think there may have been prepared, a prepared summary or a position of finances. I recall the, I recall the comment by Sean Gordon, why is there a difference, specially to what I'm not sure that I can point to that.

10 MS CURTIN: And was it the case that Mr Hickey tried to deal with that issue by examining some of the handouts that the members were holding?  
---I believe that that's, that's where we were heading in, in terms of that, in terms of them trying to deal through the material.

And do you recall Mr Hickey then trying to deal with the issue by reading out parts of the audit report verbatim to the meeting?---Yes, I do.

Now, do you recall that a motion was moved about the audit report at that meeting?---I do, yes, I do.

20 The motion was something to the effect of that members not accept the qualified audit report?---That's right, that's right.

But that motion wasn't carried?---It may not have been carried, no.

But in any event, do you recall yourself moving a motion?---Yes, I do.

And what was that motion?---There were a couple of -- I'm sorry, I'm not sure specifically which one you're talking to.

30 Yes. Sorry. I was referring to the motion in relation to PKF Lawler's.  
---Oh, the returning of them as, as the auditors?

As the auditors, yes.---I can confirm that, yes.

And so your motion was the PKF Lawler be returned - - -?---Be returned, yes.

- - - as the auditors - - -?---As the auditors, yes.

40 - - - for the Awabakal Land Council.---That's right.

Thank you. Another meeting that we discussed, Mr Kelly, yesterday was a meeting that took place on 28 July. That was a board meeting, the first that you attended in your capacity as a board member.---Ah hmm. Ah hmm.

Now, do you recall that that meeting was on, you may not, but do you recall if that meeting was on a Thursday, 28 July, does that sound correct?---(No Audible Reply)

If it can assist I can take you to the minutes for that.---Yeah, you might need to do that.

Could we please have volume 16, page 322. You can see there those are the minutes of the board on 28 July, Thursday, 28 July. Do you see that?---Yes, I do.

10 Do you recall a meeting being held the previous day?---(No Audible Reply)

On Wednesday, 27 July?---Is it possible just to read through and so I can get  
- - -

Yes, of course. Scroll down.---Just another page might be okay. Yeah, there was, there's a possibility of a number of two-day meetings, so whether or not there was in fact a meeting on the 27<sup>th</sup> I can't say just off the top of my head, but there were on, I think on two occasions at least there were meetings that either flowed into the next day or unfinished business.

20 Okay. But yesterday we discussed this meeting. If you could just scroll up the page, please, and in particular the motion that can be seen at point 7 on the page, and that is a motion that you moved that Nick Bakis, which we established yesterday is incorrect and must, it should read Nick Petroulias?--  
-Ah hmm.

Said he was employed by the accountant. Do you remember discussing, do you remember your evidence in relation to that yesterday?---Yeah. Yes, I do. Yeah.

30 And your evidence was that you moved that motion on the basis that you perceived there to be a conflict?---Yes, I do. Indeed.

And can you remember whether that, the way that that is characterised, that motion is characterised, does that accurately set out the basis of your motion and the basis of your objection?---Well, it's not the entire piece but it's, in essence, it, it says something, essentially it says what the motion was about, that Nick Petroulias was, in fact, employed by Knightsbridge Solicitors and I felt there was a conflict of interest.

40 You don't recall giving any other reason why you wished Mr Petroulias to be removed as the Land Council solicitor, do you?---I, I mentioned yesterday but I'm not sure that I made this statement, at some point that I'd realised that Ms Bakis and Mr Petroulias were actually in a relationship, so I'm not sure if, in fact, I raised it on this occasion or on another occasion.

Do you recall at any point saying that either Mr Petroulias or Ms Bakis should be removed as solicitors, and if they weren't to be removed then an

administrator would be appointed as a certainty?---No. I wouldn't have said that as a certainty.

Would you at all have suggested that an administrator would be appointed if Knightsbridge North Lawyers was not removed as solicitors for the Land Council?---I think that's very shaky ground, I'm not sure that I would've put myself out, put my neck out that far to make a statement - - -

10 You don't recall saying something to that effect. Is that right?---I may have said something in that vein but I may not, I certainly wouldn't have said that there would have been a certainty.

Okay?---And sorry, might I add it would just have been a passing comment.

Thank you. Now, if we could, the next meeting that I wanted to discuss with you, Mr Kelly, was a meeting that took place on the 24<sup>th</sup> of August, 2016. Do you recall attending a board meeting on that date? There were two consecutive meetings, one on the 24<sup>th</sup> of August and one on the 25<sup>th</sup>?  
20 ---Yeah. Yeah. That may be the one I'm talking specifically about, yes.

When they were two consecutive meetings?---When they were two consecutive meetings, yeah.

Do you recall the first of those meetings on the 24<sup>th</sup> of August?---In detail, no, but I think I've got a firm recollection of the, if I can be shown something?

30 Yes, of course I will. Do you recall in any event that Ms Bakis was in attendance at both the meetings on 24 August and 25 August?---I believe so, yes.

And what about Mr Petroulias?---No, I certainly wouldn't have seen him two days in a row and he may not have even been at either one of the next two.

40 Okay. And in general terms, do you recall the Land and Environment Court proceedings against the Minister and the Registrar being discussed at any of those meetings?---It certainly would have been, in my mind, to continue talking about the ongoing challenges for the Land Council, so I would say that it was highly likely that it was communicated about.

If I could take you to the minutes for this first meeting on 24 August which are at volume 17, page 133. And you see, sorry, if you just scroll up a page, the first page, so those are the minutes of the extraordinary board meeting on Wednesday, 24 August, 2016. Do you see that?---Yes.

And if you go back down, please, yes, up toward the top of that page in bold it says Raymond Kelly questions. Do you see that?---Yes.

And there it says, "Can win, money be refunded." Do you see that?---Can win, money be refunded?

Yes.---Ah hmm.

It's written as a question there. Do you recall asking something to that effect?---It may have been a question in that, somewhere in that vein.

10 And was that going to perhaps your concern that if you didn't win, in the Land Council didn't win that considerable costs - - -?---It was the ongoing - - -

- - - would be incurred?---It was my ongoing concern that we were just continually pouring money out without any measure of, or, or opinion about what our chances of success were other than to be told that, you know, we'd win.

20 Do you recall a response being given to that query?---I would imagine that it was something along the lines that the Minister will, you know, the Minister will pay for costs.

Is this Ms Bakis who would have given that response?---No, it certainly wouldn't have been Ms Bakis. It must have been Nick.

30 I think your evidence is that you don't recall Mr Petroulias being at that meeting or not at both of them.---I'm just trying to think about the two people who, who might say something and my, and from my experience I would feel certain that Nick would say it, Mr Petroulias, but I can't say whether or not, specifically who may have said that.

So it was your evidence the best of your recollection it was either Ms Bakis or Mr Petroulias?---There's a possibility that it's either one of those two but I would have still considered that Nick would probably have been, Mr Petroulias would have probably been the person to have said something like that.

40 If we go over the page to page 134 you will see at point 20 "litigation is". Can you see that?---Yeah.

And underneath that a sentence beginning "Minister decision June".---Yes, I see that point.

And it says, "Administrator for Land Council we are fighting against this act." Can you recall whether that's how the proceedings against the Minister were characterised?---Generally in very short non-descriptive ways that's generally how things were, were being transferred, being conveyed back to

the board. We'll do this. We'll win. You'll get your money back. All of those sorts of very short, sharp, no detail.

And the objective was to prevent an administrator being appointed. Is that how the - - -?---At this point, at this point this is what the, this is what the ongoing legal challenge was for.

I see. And do you recall the property proposal being discussed at this meeting, Mr Kelly?---(No Audible Reply)

10

I can assist. I can - - -?---I'm not sure that I, I can recall a conversation.

If we go up one page, please. Okay. Point 17 about halfway down the page you see "advice make income, generate income wages." Can you see that? --- (No Audible Reply)

And underneath that a sentence beginning "Property deal on table." Do you read that?---I can read that, yes.

20

And the second sentence there says, "Joint adventure", which I assume is meant to read joint venture, "with developers."---That's right.

And underneath that it's a question that you appear to have raised.---Yes.

Does that assist your recollection of a property deal being discussed at this meeting?---Certainly, if I would have raised that question it must have been, there must have been a, it must have been an item on the agenda.

30

And do you recall raising a concern specifically about the relationship with lawyers and accountants under contract?---Yes, I would have raised that question.

Do you recall what words you would have used or what the nature of your concern was?---Well, by that, by this, by this time we're, everybody, just about everybody is aware of the relationship between a number of parties in the Land Council and some of these external entities and clearly there, there appeared to be a relationship and I was trying to ascertain whether or not there was in fact a direct relationship.

40

Well, the external entity in particular that was on the table at this point, Mr Kelly, was a company by the name of Advantage.---Ah hmm.

Do you recall having a concern about that company?---I would have had a concern about any company coming to the table, but certainly if it was, if it was Advantage at this point I would have been raising the concern about advantage.

THE COMMISSIONER: Just if I could interrupt – point 17, second sentence where it says, “Joint adventure with developers,” and then, “Ray wanted to know about their relationship with lawyers.” Is the “their” reference back to developers, whoever they may be?---I think that’s probably taken out of context. My line of questioning, Commissioner, would have been directly against the account and the lawyer and asking their relationship to external.

10 Yes, to external?---External parties perhaps they will be people bringing the joint venture to the table, Advantage.

MS CURTIN: Thank you, Commissioner. And did you get a response about that concern from - - -?---I don’t believe I’ve ever got a satisfactory response to any of my questions ever directed towards either Mr Petroulias or Ms Bakis or in fact any of the board members during my period of time on the board.

20 Were any documents or agreements between Advantage and the Land Council brought to the board’s attention at this meeting, Mr Kelly?  
---There could have been, but I made a response yesterday that I wouldn’t have been party to a conversation about any, any venture externally because of the nature in which I’d taken office and a number of us had joined the Land Council to ensure that there was some sense of transparency and accountability.

30 Yes. But just talking about the specific documents that may or may not have been tabled to the board, if I could just take you to one of them. It’s at volume 16, page 131. A document which you can see on the screen in front of you, Mr Kelly, titled Agreement Addendum Awabakal Economic Advancement Strategy dated 8 July, 2016. Do you see that?---Ah hmm.

You can see that the Council is listed as the owner and the first party to the agreement?---Ah hmm.

If you go over the page you’ll see at the bottom there that it appears to have been signed by the owner and that is, you may not recognise, but that is Ms Dates’ signature. Do you see that?---Yes, I see that signature.

40 I just wanted to draw your attention to clause 5 – I withdraw it. I take it, Mr Kelly, that you haven’t seen this agreement before?---I, I, I couldn’t say that I have, no.

You don’t, you certainly don’t recall it being tabled?---I don’t recall ever seeing it, no.

At any board meeting?---Not at a board meeting, no. I may have, I may have seen this document or - - -

Is it possible that you saw the document after the administrator was appointed?---I'm thinking so, yeah.

Yes. But certainly not during the time that you were serving as a board member?---I don't believe that I was shown this document.

And not at this meeting on 24 August?---No, because there would have been, I would have made further complaints and there would be records of that on the minutes.

10

I see. And if you see at clause 5, which is about halfway down the page, it refers to a fee proposal for Forlife Development Pty Limited, dated 13 June. ---Yes.

Do you recall that fee proposal being tabled at the board meeting?---I think I recall a conversation being had about this at some point but I don't recall reading the document or being given a copy of the document.

20

And you don't recall a motion being moved for that document to be accepted by the Land Council at any board meeting?---I certainly, I certainly would have fought against any document or any proposal in that period of time. If in fact there was a motion moved I would have, I would have had my objections noted and - - -

And in fact you don't recall a motion being moved to that effect?---No, I don't.

30

As far as you're aware the Land Council while you were a board member did not move to accept a fee proposal with Forlife Development?---I'm pretty diligent. I don't think it's been, I can't recall that motion.

And if I draw attention now to clause 7 which is at the bottom of the page there, it says the owner, which we know to be the Awabakal Aboriginal Land Council, hereby further and/or separately charges in favour of the developer, Knightsbridge, which is Knightsbridge North Lawyers, and other parties engaged by them, its right title and interest over its assets. Do you see that?---Yes, I see that.

40

Do you recall at any board meeting that you attended - - - ?---I do not recall that conversation, nor do I recall agreeing to anything of that nature.

Okay. I take it then that Ms Bakis certainly didn't mention that a charge was to be provided over the Land Council's assets at that meeting on 24 August?---I don't recall her producing that at all.

If I could take you now to the fee proposal that we just discussed with Forlife Development, that's at page, sorry, volume 16, page 133. Do you see that document there?---Mmm hmm.

I take it that you hadn't seen that document before?---I have not, no. No.

It wasn't tabled at any board meeting that you - - -?---It certainly wasn't tabled at a board meeting when I was in the room.

And if I could just draw your attention to the next page of that document. So, page 136. If you see halfway down the page it refers to an initial payment of \$300,000. Do you see that?---Yes, I see that.

10

And that payment was to be made to Forlife Development Pty Ltd. Do you recall that payment being discussed at any board meeting that you attended?---No, I do not.

You don't recall Ms Bakis mentioning that payment?---Not at all. No.

And finally, Mr Kelly, at Exhibit 43, page 22, do you see this is a memorandum of agreement regarding the procedural process for the Awabakal Advancement Agreements?---I can read that, yes.

20

Yes, dated 8 July 2016?---Mmm.

Do you recall seeing this document before?---No, I do not.

You don't recall that being tabled at any board meeting that you attended?---No, I do not.

Can you see at clause 2 there, it refers to an unsolicited intrusion of the New South Wales Aboriginal Land Council?---Yes, I read that.

30

Do you recall that so called unsolicited intrusion being discussed at any board meeting?---In terms of this document, no.

Right. What do you recall about- - -?---I would say that I've heard people say it, it was improper for the minister to come in and do, but this would've been in general conversation, but I do not recall this being articulated in a document, nor presented to the board for discussion.

I see. And at Clause 3 there you'll see that it refers to you in particular?---Righto. Well I certainly haven't seen this document because you would've heard about it.

40

It's possible that you may have seen this document, Mr Kelly, after the administrator had been appointed?---Sorry, after, but not at that time.

Not at any board meeting that you went to?---No, otherwise there would be, there would be some record of it in, in, in the minutes to refute what's being articulated here.

It refers to Ray Kelly making ongoing, false undermining statements regarding the governance of the Awabakal Local Aboriginal Land Council. Do you see that?---Mmm hmm. Correct. That's what's written.

10 Do you know what that was referring to?---I would imagine that it's to do with me asking the question of the solicitor and the accountant and directors about how they're making decisions, about the notion of transparency, about these ongoing external relationships that keep finding their way into the board. So, I would imagine that they, that's what's being construed here, is, you know, improper behaviour.

To the extent that you made those comments, Mr Kelly, you didn't perceive that those comments were improper, did you?---Not at all, no, I thought it was just a director acting in the best interests of the Land Council.

20 Yes, and to the extent that you made those comments you did so considering that it was in fact your duty as a board member?---Absolutely. Absolutely. And a responsibility under the Land Rights Act to, to follow policies and procedures.

If we just return to that document. The last page, Exhibit 43, page 22, the last page of that document, scroll down to the bottom of that, please. You will see that it's been signed there. If you accept from me that that signature is the signature of Mr Green. Yes, the one on the left is Mr Green's signature. Do you recall Mr Green, did Mr Green ever tell you that he had signed this agreement?---No, Mr Green never told me that he'd signed this agreement.

30 THE COMMISSIONER: Do you know whether he was ever given any authority by the board to sign this agreement?---He certainly wasn't given any authority, Commissioner, in my time to, to act on behalf of the board at all.

40 MS CURTIN: Now, if we return to the minutes of this meeting. This is on 24 August which is at volume 17, page 133. It refers, sorry, I'll wait for that to be brought up. If you go to page 133 of those minutes towards the bottom under point 19, "Despina page 6 summary legal expenditure ref (big handout)." Do you see that towards the bottom of the - - -?---Yes, I read that, yes.

Do you recall a big handout being provided to members or being discussed at that meeting?---Sorry, is this a board of directors' meeting or a members' meeting?

Yes, a board meeting.---It's possible that a, a big handout - - -

A big handout was provided to members?---No, no, I'm trying to think what's a big handout.

Yes. Well, I can assist you. If we go to the documents that were tendered yesterday. Exhibit 60. Exhibit 60, page 42. Sorry, that document is going to be brought up on the screen I understand. Sorry, Mr Kelly. There's a hard copy that could be provided instead, Mr Kelly. I beg your pardon.  
---Ah hmm.

10 If you turn to page 42, Mr Kelly, which is actually only a number of pages into that volume of documents.---Yes, I have that.

On the first page is an email from Ms Bakis to Sophie and Teresa of the Land Council which is an email that you wouldn't have received but if you go to the next page it refers to a joint legal and financial brief to the board. Do you see that?---Yes, I see that now.

If you perhaps just have a look at the hard copy in front of you, Mr Kelly, and have a flick through this document and I'm going to ask you whether  
20 you recall whether that was the large handout that was provided to the board at either the meeting on 24 August or 25 August?---It's possible.

It's possible?---It's possible that it was.

Do you recall that document being emailed to you, Mr Kelly, before the meeting?---No, I certainly wouldn't have received it before the meeting.

Okay. So if you did see it you would have just seen it at the meeting itself?  
---If, if I saw it, yes, it would have been at the meeting.  
30

And you'll see that it's a number of pages in length. In this bundle of documents it goes from page 42 to page 176. Do you see that?---Sorry, the, the entirety of the - - -

Yes, the entirety of the brief.---Yes, yes, yes.

So it consists of a written brief or Word document that's a number of pages at the outset.---Sorry, I thought you were just talking specifically about the front.  
40

Yes. So the front section goes from pages 43 to 53. Do you see that?  
---Okay. So we're talking about a single document here?

Yes, a single document which is referred to as - - -?---I don't recall reading this document.

You don't?---It may have been at the board meeting.

Ah hmm.---There was a time when I left the room.

Yes.---If, if, if this document was put on the table at that point I wouldn't have been in the room.

Okay. But if you see after page 53 there are a number of what appear to be annexures to this legal brief, going from page 54 to 176. Do you see that?

---Yes, I do.

10 It's a fairly voluminous brief, would you agree with me, Mr Kelly?---I think it's enormous.

It's enormous. And you don't recall it going through at the board meeting. Is that your evidence?---I don't recall reading this document at a meeting, no.

If it was expected of you as a board member to read this it would have been fairly difficult for you to do so at the meeting, wouldn't it?---Considering the state of affairs of the Land Council at the time it would have been  
20 extremely difficult for anybody to consume this amount of material in the space of 10 or 15 minutes which is generally the time for each item at that point.

You wouldn't have been able to digest all of that material - - -?---Not at all, not at all, no.

- - - at that meeting?---No, I wouldn't have.

30 If you go to page 4 of the legal brief itself, which is page 46 of the bundle of documents in front of you, the third quarter of the page under the heading Incoming Funding Sources - - -?---Yes.

- - - at Roman numeral V it refers to a JV with Advantage, and then 30 million, or 30M plus development.---Yes, I read that.

Was that discussed, do you recall, at this meeting?---I can't, I can't, can't say that I recall that conversation happening, no.

40 Okay. If we return perhaps to the minutes of this meeting, which is at volume 17, page 134, you'll see there that you've made another comment under point 21, "Raymond Kelly, finances and conflict of interest, calling for more transparency." Do you see that?---Yes, I do.

Do you recall making a comment to that effect?---I do.

And what was this comment directed to?---Again it's just a lack of, the lack of detail being provided to, to members. I would have, I wanted to know what was in the bank, what was the, what was the bottom dollar, what did

we, what were, what were our outlays, but in truth I just wanted to know how much money was in the bank.

Yes. And Ms Bakis was the accountant for the Land Council at this point. Is that right?---Yes.

And so you would have directed that query to her. Is that right?---Indeed.

And do you recall receiving a response from Ms Bakis?---Um - - -

10

In particular, in relation to that query that you have there, that particular concern, calling for more transparency, which is recorded there in the minutes?---Well, it gets a bit difficult during that period of time because Ms Bakis and I certainly didn't have a warm relationship and it soured fairly quickly, and I believe that if, no, I'm pretty confident that her response would have been quite extreme. I mentioned yesterday that I was accused of defaming her once so I, you could imagine how we're communicating with each other.

20

And when you say quite extreme?---I think she was agitated and I think she was put on, I think she was put on tilt a little bit and may have, I can't remember the exact words but I do recall a heated discussion between the two of us.

Okay. Well, the subject of the Land Council's finances were also dealt with at the meeting on the following day on 25 August, and I'll take you to these minutes just briefly. Volume 17, page 141, do you recall the finances being discussed at this meeting as well, Mr Kelly?---I would imagine that, I'm just trying to think back into using my recall. I'm not sure that I would've received an adequate response to my request for financial reporting on the second day as well.

30

Okay. Well it says there, you see these are the minutes of the extraordinary board meeting on 25 August. Do you see that?---Mmm hmm.

And it says under heading three, Accountant, Despina handed out financials referring to the Aboriginal Land Rights Act. Do you see that?---Mmm hmm.

40

Now, it may be that the handout was still this joint legal and financial brief that I took you to earlier, Mr Kelly. Does that sound right to you?---Sorry, can you - - -

Would the handout that Ms Bakis was referring to, do you think it may have been the joint legal and financial brief that I took you to earlier, that appears in the bundled documents before you?---It's possible.

And if you can just go to that bundle of documents which is Exhibit 60, you'll see at page 91 there's a profit and loss spreadsheet?---Yes, I am there.

And then that continues for another page, and at page 93 there's a balance sheet as of June 2016?---Mmm hmm.

For the Awabakal Local Aboriginal Land Council?---Yes.

10 Do you recall seeing those documents in particular?---It's possible.

We discussed earlier, Mr Kelly, the liability to Forlife Development Pty Ltd of \$300,000 that the Land Council had reportedly incurred around about this time?---Yes.

I take it just having a look at this balance sheet here that you can't see that liability referred to anywhere?---No. No, I can't see that liable.

20 And when Ms Bakis was giving what appears to have been a fairly detailed account of the Land Council's finances, is it the case that she failed to mention that liability to Forlife Development Pty Ltd?---I would say so.

You can't recall her mentioning it?---I can't recall her mentioning the liability.

It's a fairly significant liability, \$300,000. You would agree?---Indeed.

And you can't recall her mentioning it?---No, I can't recall it.

30 Now if we leave this board meeting and go now to the board meeting that occurred on September 9 of 2016, which is at Volume 17, page 155, firstly do you recall attending a meeting of the board on September 9 2016, Mr Kelly?---Yes, I do.

And in particular, do you recall that it was decided at that meeting that Mr Nicholas Dan be appointed as the new representative, new legal representative of the Council?---I do.

40 If we scroll down to the next page, sorry. It's at motion 10 just a quarter of the way down the page, Sophia to engage Nicholas Dan, to make Nicholas Dan our new representative. Is it your recollection, Mr Kelly, that that was meant to be a motion to have Mr Dan as the Council's lawyer?---I do.

So new representative meant legal representative?---That's right.

And you supported that motion?---I did.

And you can see the next motion down is to cease litigation matters concerning the Registrar and the Minister of Aboriginal Affairs.--- Yes.

And did you support that motion?---I did.

And what discussion do you recall at that meeting about appointing Mr Dan as the Land Council's new lawyer?---Look, there were, there were a number of people who were supportive of Mr Dan. Ms Dates in particular, who obviously moved the motion. There were a number of people who I think were concerned about a relationship, a previous relationship.

10 With Knightsbridge North Lawyers?---No. With Ms Dates and Nicholas Dan. I think somebody made mention of that in a conversation to the side but in truth I felt that it was a step forward, to have at least a new representative legal conversation so that we might begin to start getting some detail.

And what discussion do you recall about ceasing the litigation against the Minister and the Registrar?---I think that, I think that quite a number of people had realised the extent of the, the ongoing challenge. The, the cost associated, the amount of lawyers that had now been, had been brought in to  
20 the, to the fight to, to keep the, the Minister and the Registrar at bay and I think people had, had finally realised that it was just unviable.

And so your recollection is that at that meeting it was resolved to make the necessary arrangements to cease that litigation?---It was.

There's nothing further, Commissioner.

THE COMMISSIONER: Yes. Thank you, Ms Curtin. Yes, Ms Nolan.

30 MS NOLAN: You've given some evidence, I think, if we start chronologically with that which Ms Curtin has taken you through. I think you started with the 29 June, 2016 members' meeting.---Yes.  
And are you aware that the Awabakal Local Aboriginal Land Council needs to have, as a matter of procedure, two community meetings – or members' meetings, rather – per year, in order to maintain voting rights of those members?---To satisfy voting rights, yes.

And you understand that that meeting which was called on 29 June, 2016 was being called specifically for the purpose to ensure the continuation of  
40 voting rights of members?---Some members.

Pardon me?---Some members.

When you say some - - -?---Quite, quite a number of members had already had, had already been to two meetings through the year. So, you only need to attend two meetings to have voting rights.

And you understand that, you're agreeing with me essentially but you're just trying to qualify your answer so that it applies only to some members.  
---That's all. Yes.

Right. So we're in agreement. Good. And that the litigation with the Minister was put on the agenda for that meeting so that there was a purpose for that meeting being called. Do you accept that?---Yes. I'll accept that.

10 And that you will accept, will you not, that the reason why the litigation with the Minister was being discussed at that meeting was because, it being the sole agenda item, it needed to be discussed?---So you're talking about the general meeting prior to the AGM?

That's what I'm talking about.---I don't recall the agenda but I, I think that's the thrust of the, the gathering, yeah.

Now, I think you've talked about in the context of that meeting you were raising your concern with the accounts. Yes?---Ah hmm.  
20

And you know that the only requirement to present accounts is at the annual general meeting don't you?---That's a, that forms part of the Act.

So you're accepting the question I've put to you?---In terms of the Act, yes.

So it's fair to characterise it this way, agree with me if you do or not, that that meeting having been called for the specific purpose I think you've accepted of ensuring that some members continue to have voting rights and the sole agenda item being the litigation with the Minister, that it would be  
30 unexpected that Ms Bakis would be in a position to be able to deal with questions from the floor about the accounts properly at that time. Would you agree with that as a matter of, do you think that's a fair proposition?  
---Prior to the AGM, I think that's fair, yeah.

At the AGM you said that the auditors turned up.---Ah hmm.

And they put on some accounts and those accounts were the subject of qualifications.---Ah hmm.

40 Do you remember the subject of qualification that was stipulated in that account?---I couldn't say on memory, no.

If I remind you of this as I understand it, and I mean I stand to be corrected but these are my instructions, that the accounts retained a qualification by the auditors with respect to payroll and accountancy fees of about \$121,000, does that refresh your memory?---Not the figure for accountancy but certainly the payroll issue was one that I recall, yes.

I can't say what the split is but I'm instructed that it was about 121,000 and the two issues - - -?---Right.

- - - that were the subject of this qualification were payroll and you agree with me that you recall that now?---I recall payroll being one of the major issues, yes.

10 And it doesn't pass strange does it that the accountancy fees were also one of the qualifications, that doesn't, it doesn't discord with your recollection?  
---No, it doesn't.

Now, was there any mention at that meeting by anybody that you recall that the auditor had only requested those receipts, receipts in respect of accountancy fees and payroll at 9.00am that morning and that the reason why this wasn't able to be dealt with was because that request had been made at 9.00am that morning, 3.00pm that afternoon, it just wasn't sufficient time for those receipts to be provided?---I believe I recall something to that nature, yes.

20 You've given some evidence I think that that meeting on the 29<sup>th</sup>, so the first members' meeting fell apart and it was somewhat disharmonious. Do you remember that?---Yes, I do.

30 Would you agree with me, and I'm trying to approach this as delicately as I can, that the meeting was just heinous, that people were being quite vulgar in things that they were saying to Ms Bakis and Mr Petroulias, do you remember that, does that accord with your recollection? I can give some examples if you like but you can understand perhaps why I may wish not to do so.---Okay. You probably need to qualify what you're asking me then for me to give you an answer.

I accept that I'm being a little bit opaque.---Yes.

My instructions are that from the floor a number of slurs in the nature of f-ing white c's, referring to Ms Bakis as a white bitch, things like that were coming from the floor. Does that accord with your recollection?---I can categorically say that I have never heard anybody use that language towards Ms Bakis. Certainly on that night, no.

40 So you don't recall that?---No, I don't.

They're my instructions?---Yes.

And yet it just doesn't accord with your recollection?---No, it doesn't. No.

All right. If that were to have occurred, that may explain though, wouldn't it, why Ms Bakis was in tears when you and she met one another after the

meeting. Do you remember that? That you've given evidence about her being in tears?---I recall her being in tears, yeah.

But you agree with me that were she called those sort of vulgarities that that may explain why she was troubled and upset?---I couldn't, I couldn't venture an opinion on whether or not she would be upset by that, I, I don't recall her being challenged in that way. I certainly didn't use those words.

I'm not suggesting you did. I'm asking you to - - -

10

THE COMMISSIONER: He's answered your question.

MS NOLAN: Yes, thank you.

THE COMMISSIONER: He can't say how she would have reacted.

MS NOLAN: Thank you, Commissioner. You've had a discussion, haven't you, with, I think, is it Mr Petroulias or Ms Petroulias, and Ms Bakis, with respect to minority protection provisions that they were suggesting be  
20 incorporated by the Aboriginal Land Council?---I'm sorry, that's not clear.

Minority protection provisions are, if I just describe them and give you some detail, perhaps that will assist you in answering the question. Have you had a discussion with Mr Petroulias and, or Ms Bakis with respect to what, I think they refer to as, minority protection provisions which is a way in which, at board meetings, the ruling faction will be unable to dominate meetings. Do you recall having conversations with them about that? And that these were a series of provisions that they were proposing being introduced. Do you remember having a conversation about that?---Not in,  
30 not in that detail, but I'm not sure that we weren't in a circling motion talking about taking care of, taking care of business.

I'm sorry, I didn't understand. We weren't in a circular, I didn't understand what you said?---Sorry. I don't recall specifically talking to Mr Petroulias or Ms Bakis, are you suggesting by myself?

I don't know the context, I'm acting on some - - - ?---I can, again, categorically tell you that I've never had a private conversation with Mr Bakis or Ms Petroulias and myself.  
40

THE COMMISSIONER: When you say Bakis, her name is Bakis, B-a-k-i-s?---Bakis, sorry.

That's all right, but that's who you're referring to, obviously?---Yes.

MS NOLAN: I don't know the context, but have you had a discussion with them in any context? Have you discussed with Mr Petroulias or Ms Bakis together or on their own with respect to this issue that I'm directing your

attention to?---I raised the issue of the conflict of interest that I believe exists within the relationship. There may have been some response, but I don't believe that we've actually sat down, nor had a conversation, nor have they tried to explain to me how that separation of powers is managed.

I understand that's your evidence. I'm directing your attention to a diff issue, perhaps I'm unclear. I'll endeavour to make myself clear?---Yeah.

10 I'm asking you whether or not you've had a conversation with either Ms Bakis or Mr Petroulias or them together, I don't know, wherein there was a discussion about a concept called minority protection provision. So, these provisions were provisions they were proposing being introduced into the board framework to avoid the balance of power being held by one family. For example, the Dates family. Do you remember having a conversation to that effect?---I have not had a broad conversation about that in any detail. I believe that Mr Petroulias tried to allude to something of that nature over the telephone, but in truth, no.

20 So Mr Petroulias then you accept had a conversation with you over the telephone where he was talking about something to that effect. You accept that?---Only that he'd used the name of the Dates family.

Yes. And he was talking to you, was he not, about was in which the board as a collective could stop families such as the Dates family from dominating board deliberations. Do you remember that conversation?---Yes. The unfortunate thing is that he used one name though and that was Ms Debbie Dates.

30 Yes, but Debbie Dates you accept was – I mean this is uncontroversial, the Debbie Dates faction on the board which you became a member of on 20 July, 2016, were the ruling faction on that board, weren't they?---I have no idea.

40 Well, you do, you do have an idea, because you were, you joined that board very keen to get some transparency against what you and obviously other community members perceived to be a situation which had arisen whereby Debbie Dates and her faction were getting things through the board unopposed and that was not acceptable to you in your mind, was it?---Not acceptable to me?

Well, that's the tenor of your evidence, isn't it?---I think that's the way in which you're, you're drawing from it.

I don't, I don't have any difficulty with the proposition, what I'm asking you to accept is that you joined the board because you perceived there to be a real imbalance of power on it and it was controlled by the Debbie Dates faction, Debbie Dates, Richard Green, Lenny Quinlan, Jaye Quinlan, those sorts of people, and because Debbie Dates was the chair she had the ruling

vote, so she could override.---I understand your, I understand your proposition.

Yeah.---But in truth it wouldn't matter who was on the board, the reality is that it is a, it is an organisation, a council that is made up of membership and those members have a right to have a faith in the leadership of the Land Council.

10 Yes. And that is - - -?---And so - - -

Sorry, I interrupt you.---No, no.

No, I've interrupted you, please continue.---My notion of getting on that board was to provide answers for the betterment of the entire membership, regardless of, regardless of factions or groups of people. I've been, I've been, I've been on a number of boards for many, many years and I've seen this phenomena before and it will happen into the future. The truth is though that people deserve the right to have answers.

20 No, I accept that, and I accept that's the tenor of your evidence, and what I'm putting to you is I think we're in agreement, the proposition that you were particularly concerned with what you perceived to be an imbalance of power which was depriving the membership of transparency and that you joined the board so as to address that. You accept that?---I agree with that.

30 Yes. So there was a conversation, and I think you've accepted it, over the telephone where Mr Petroulias, whether comprehensively or not, I don't know, discussed with you what are called minority protection provisions. You've accepted that.

THE COMMISSIONER: Do we know when this occurred?

MS NOLAN: Pardon me?

THE COMMISSIONER: When was this?

MS NOLAN: I think the conversation occurred before you became a board member. Is that right?---That's right.

40 Yes. It was around about the beginning of July 2016.

MR PATTERSON: Commissioner, could I object at this point. I understand Counsel represents Ms Bakis and has put her questions on the basis that she's acting from instructions, but she's putting to my client supposed conversations with Mr Petroulias which couldn't be the subject of instructions.

THE COMMISSIONER: Mmm.

MS NOLAN: Well, I have, I'm going to get to that. I accept what my learned friend, but I'm going to get to the reason why it goes to - - -

10 THE COMMISSIONER: Well, we need to know whether or not you have instructions on these matters and, if so, the source of them. In other words, the cross examination has got to be linked in some way to your client's interests, that is, Ms Bakis' particular interests, not interests in a general sense but a material interest in this investigation. So, a lot of this is very interesting but we need to know the source of what has been put if it is said to have come from Mr Petroulias, because otherwise there's a risk that cross examination becomes, in effect, nothing more than a fishing expedition. So we need to know the basis upon which you, for example, are in a position to say that if necessary, you'll have an affirmative evidentiary case to put which would mean involving, calling Mr Petroulias. Now, if it's a conversation for example, in this instance, as Mr Patterson has pointed out - - -

20 MS NOLAN: I accept all that. I accept all that and I'm aware of the boundaries, and I am not doing this exceeding those. Perhaps we can do it this way because this cross examination does have a forensic purpose. Maybe I can show my learned friend a document which I will come and that may elate his concern. Is that an acceptable cause?

THE COMMISSIONER: Well, it depends on what the document is.

MS NOLAN: Well, it's this document that I hold in my hand.

30 THE COMMISSIONER: Well I don't know what that is, but if it's his document - - -

MS NOLAN: It's not his document. It's not his document but it refers to the matters about which I'm - - -

THE COMMISSIONER: Well, whose document is it?

MS NOLAN: It's my client's document.

40 THE COMMISSIONER: That's Ms Bakis'?

MS NOLAN: Yes.

THE COMMISSIONER: Is the author of the document?

MS NOLAN: Yes.

THE COMMISSIONER: And is it a communication or was it just a statement she's prepared, or what is it?

MS NOLAN: It's communication.

THE COMMISSIONER: All right. Between Mr Kelly and her?

MS NOLAN: No, but it involves reference to the matters about which I'm dealing.

10 THE COMMISSIONER: How can that affect this witness? If you're dealing with a communication between Ms Bakis and some other unknown third party, that doesn't touch or concern his knowledge. You can't cross examination from a document in ordinary sense that's passed between two other people in order to extract his own knowledge.

MS NOLAN: We're dealing with hypotheticals at the moment, Commissioner. I understand that what you're putting to me - - -

20 THE COMMISSIONER: What I suggest you do is pointedly put your instructions to the witness, he can agree, disagree or adopt some mid-position according to his notice. I think if you're putting forward a contention which you would seek in due course to establish through evidence then just put the contention to him. He can only agree or he can only disagree or take some other position. Maybe that's the quickest way to move on.

MS NOLAN: All right. I'm nearly there and I note the objection and I can assure the Commission and my learned friend that I well appreciate the boundaries.

30 THE COMMISSIONER: Right. Thank you.

MS NOLAN: You've accepted that you did have a conversation with respect to those matters, and you've also told the Commission that Mr Petroulias, you say, rang Mr Gordon. Sean Gordon, Sean Gordon, have I just muddled names?

THE COMMISSIONER: Gordon, yes.

40 MS NOLAN: Sean Gordon, pardon me. Yes. And spoke about the same topic, and it was - - - ?---I couldn't say whether it was the same topic.

MS CURTIN: Commissioner, the witness' evidence was that the same topic that Mr Gordon was - - -

THE COMMISSIONER: Sorry, I can't hear.

MS CURTIN: I apologise, Commissioner. My understanding of Mr Kelly's evidence was that Mr Petroulias had also called Mr Gordon, but Mr

Kelly's evidence was that that discussion was about the board meeting and the Advantage proposal, not that there was any discussion of minority protection provisions.

MS NOLAN: Well I'm going to challenge that specifically, and I may be wrong.

THE COMMISSIONER: Well, that is the position.

10 MS NOLAN: I'm wrong, and I withdraw my question. So, you've heard what counsel assisting has said with respect to your evidence and I stand corrected, she is correct. You said that Mr Gordon said that Mr Petroulias had rung him about this Advantage proposal, right?---Right.

Is that what Mr Gordon said to you that he, "Oh, I've actually just had a phone call from Mr Petroulias about this Advantage proposal." Is that right?---No, no. I said I had a phone call from Mr Petroulias and Sean's response was, "I had one too."

20 All right. So, you didn't say that, you didn't reveal to the Commission the content of the conversation that Sean Gordon had. Is that - - - ?---I didn't know what Sean Gordon had a conversation with him about.

Well, does this accord with your, did you discuss with Mr Gordon what he spoke to Mr Petroulias about?---No, no. What we have been talking about, sorry, do you want to respond?

No, no, I'm inquiring of you because I'm unsure because there seems to be some, a slight dispute between Counsel Assisting and me as to what you  
30 actually said and I'm asking you to clarify so please do. It's nothing to do with you, it's to do with us.---Okay. I made the comment yesterday that there was a conversation by a number of people after the meeting the week before this, before the phone call from Mr Petroulias. As a, as a continuation of conversations about the health and well-being of the Land Council I rang Sean and said just had a phone call from, from Mr Petroulias, or I called him Nick at this stage, and my, the content that he spoke to me about was a deal being good for the Land Council, that he knew that I had an issue with Ms Dates. He said something to the effect of she's, she's not in control or she doesn't have to be in control of everything. That's  
40 something that I said.

And was that, was it in that, the context of that conversation wasn't it that he said she doesn't have to be in control of everything because of these minority protection provisions that he was discussing?---I don't recall that.

Well, I'll come to the point that the Commission has asked me to come to. I'm going to show you an email, and I apologise, Commissioner. I don't

think this has made its way in the proper course but I have a number of copies.

THE COMMISSIONER: Yes, perhaps show Counsel Assisting.

MS NOLAN: I've been told that it has but what I'll do is I'll hand to the officer or whoever is going to assist - - -

10 THE COMMISSIONER: Just describe the email. What's the date and who are the parties to it?

MS NOLAN: It's an email from Ms Bakis to Mr Sean Gordon, "Suggested material for AGM resolutions subject to joint legal professional privilege." Has the Commission - - -

THE COMMISSIONER: What's the date of it?

MS NOLAN: I think it's 16 July, 2016.

20 THE COMMISSIONER: Well again, we're dealing with communications between two other parties not involving the witness so I'm not sure how far we'll get but anyway, let's have a look at the document. A copy for Counsel Assisting and for myself at this stage.

MS NOLAN: I have four copies. I'll hand them to the Commissioner's associate.

THE COMMISSIONER: A copy to Mr Patterson as well I think.

30 MS NOLAN: Yes. I intended one for the witness, one for the Commission, one for Counsel Assisting and one for Mr Patterson.

THE COMMISSIONER: Mr Petroulias, what are you doing, talking to Ms Nolan?

MR PETROULIAS: I'm trying to, all these were emailed.

40 THE COMMISSIONER: I think just don't disrupt the process for the moment, please. Ms Nolan, this is in my view not of any utility. You've got here an email we assume was drafted by Ms Bakis, is that right, being sent to Sean, sorry, what's his name, Sean?

MS NOLAN: Gordon.

THE COMMISSIONER: Gordon, thank you. Where are we going with this topic? I mean if you've got some proposition to put to the witness it's not going to be advanced by this document.

MS NOLAN: Well - - -

THE COMMISSIONER: Come back to the point and time's moving on now, we've been on this one topic for quite some time. What is your position, what do you want to put to the witness?

MS NOLAN: Shall I just put it to him?

10 THE COMMISSIONER: I think so, and let's see where we go from there.

MS NOLAN: You had a conversation with Mr Gordon in the presence of Ms Bakis and Mr Petroulias where you discussed these minority protection provisions, did you not?

THE COMMISSIONER: And again, just so that the witness is following, when did this occur?

MS NOLAN: In or around the beginning of July 2016.

20 THE COMMISSIONER: Yes, yes, you continue. Had the conversation about?

MS NOLAN: Oh, I'm sorry, I thought I'd finished the question. Should I repeat it for your benefit?

THE COMMISSIONER: Sorry, just put it again.

30 MS NOLAN: Yes. You had a conversation with Mr Gordon and Ms Bakis and Mr Petroulias in the presence of one another in or around July 2016 where you discussed these minority protection provisions to which I've been referring to you in the course of questioning, didn't you?---I don't recall specifically having a conversation about these minority procedures that you're talking about. I don't recall a time when Sean Gordon and I had set aside time to speak to Nick Petroulias or Ms Bakis unless of course it's in the consequence of a meeting and as discussed earlier, those meetings were in chaos so if a conversation was had in that space, who could follow the line of conversation?

40 I'm only asking you whether or not you recall having the conversation, so I'm asking you - - -?---I, I don't believe - - -

- - - really just to affirm or negative whether or not you recall it.---I don't believe that I've had, ever had a conversation specifically with Mr Petroulias and Ms Bakis about this issue of, and nor with Sean Gordon, specifically about what, the question you're putting to me.

Right.

THE COMMISSIONER: Well, right at that point two things. The document handed up a moment ago, being an email from Ms Bakis to Sean Gordon, 16 July, 2016, should be marked for identification. What's the MFI number? 24, 24.

**#MFI-024 – EMAIL FROM KNL ADMIN TO SEAN GORDON  
DATED 16 JULY 2016**

10

THE COMMISSIONER: And the second thing is we're going to take a morning tea adjournment. We'll try and confine it today to no more than 15 minutes. Just so far as time is concerned, we have two other witnesses on standby and as we are finishing earlier today at 3.00pm because of other commitments that I have in the Commission I propose to restrict the lunch period to a half hour. If that creates any particular problem for anyone they can indicate that to me when we resume after the morning tea adjournment. All right. We'll adjourn at this point.

20

**SHORT ADJOURNMENT**

**[11.38am]**

THE COMMISSIONER: Yes, Ms Nolan. Sorry.

MR CHEN: Commissioner, just before Ms Nolan commences further cross-examination of Mr Kelly, I should put on the record the discussion I had with Ms Nolan during the interval. Commissioner, Ms Nolan, as I understand it, in addition to Mr Petroulias, wants to be able to cross-examine Mr Kelly on the recording of 5 August, 2016. Commissioner, you've obviously given an indication that that's a matter that you will consider and rule upon in due course. It would be my submission, Commissioner, that the cross-examination by Ms Nolan and Mr Petroulias should complete on all issues and if, in due course, permission is given to Ms Nolan and Mr Petroulias to cross-examine further on the recording, then that would need to take place on another occasion. I say this for a practical reason as well, Commissioner, is that if, as was indicated in the email, the recording is 30 minutes, the amount of hearing time that it would take to play that back would be, one would think, at least double, probably exceeding, greatly in excess of half an hour.

40

THE COMMISSIONER: Yes.

MR CHEN: And so my submission, that's the proper course for the further cross-examination.

THE COMMISSIONER: Yes. I think in the circumstances in which this material has only been raised this morning, the course you suggest is the

only proper course so that any person's rights will be made subject to the need for further application to deal with this other segment which is said to be relevant to the investigation.

MR CHEN: Yes, Commissioner.

10 THE COMMISSIONER: Yes. Ms Nolan, you've heard what I've said. I think we'll complete the cross-examination of this witness today and when, in an orderly fashion, we're able to consider the matter concerning the tape recording and what may follow from that, if it's seen to be necessary, application can be made for the witness to be recalled and I will then determine the application. Okay?

MS NOLAN: The Commission notes, does it, that the application is made, by Ms Bakis, in addition to that which was communicated by Mr Petroulias, to rely on that material?

THE COMMISSIONER: Ah hmm.

20 MS NOLAN: Right.

THE COMMISSIONER: Right. Well, at some future time, we can revisit this question if you make application on another occasion relating to that recording.

MS NOLAN: I do make that application.

THE COMMISSIONER: No, no, no. You can't make it now.

30 MS NOLAN: No, no I - - -

THE COMMISSIONER: We're going to wait until we get into a position where we know what you're talking about.

MS NOLAN: I understand that.

40 THE COMMISSIONER: The document or the recording's only been raised for the first time, I'm told, this morning. We just need to deal with it in an orderly fashion.

MS NOLAN: I understand that but I am noting formally for the record that I do apply to rely on that and that those steps, if they are to be taken, should be.

THE COMMISSIONER: Yes. Well, then your application is it's not available to be used today for the cross-examination of this witness. As I have indicated, there will be a need for a further application to be made at a

future point in time in order to enable the Commission staff to examine and consider this material that you've referred to.

MS NOLAN: Yes. Thank you, Commissioner.

THE COMMISSIONER: All right.

MS NOLAN: I'm not sure if I was clear just before morning tea adjournment, Mr Kelly, that I didn't suggest to you that you had a meeting with Mr Gordon and Mr Petroulias and Ms Bakis. What I'm suggesting to you is, is after the community meeting, I think on 29 June, 2016, you and Mr Jordan went outside and spoke to Ms Bakis and Mr Petroulias about, among other things, these minority protection provisions. Do you remember that?---I don't recall that, no.

You've given evidence throughout the course of your responses to questions from Ms Curtin that you were particularly concerned with respect to the state of financial affairs at the Awabakal Aboriginal Land Council. Do you remember that?---I, I do recall that, yes.

20

And you've been shown, I think, the joint, I'll get just the name of it for the record, the Joint Legal and Financial Brief to the board of the ALALC, which is Exhibit 60, page 5, and you've been asked some questions about that.---Today?

Yes.---The document that I saw, yes, earlier, yep.

Now, on 24 and 25 August, there was a two-day board meeting, wasn't there? And Ms Bakis, you've told the Commission, attended. It was at that meeting that she addressed the board on that document that I'll just call it the Joint Legal and Financial Brief, to which I've referred, and it was discussed at some length, wasn't it?---There was a fairly long discussion, yes.

30

And throughout the course of that meeting, Ms Bakis was asked to leave the room on a number of occasions because the Council had to discuss issues of housing. Is that right?---I'm sorry, I don't recall.

You recall her being asked to leave the room on a number of occasions so that the Council could deliberate on matters that didn't concern her?---No, I'm sorry I can't recall that.

40

She addressed the meeting with the profit and loss statement and went through each line item, didn't she?---I'm not sure that she went through, sorry, she gave a, she gave a report, a financial report. I'm not sure that she went through each line item, no, but she gave a fairly, you know, she gave a report, a financial report.

I'm suggesting that she did go through each line item and address each and every line item in the time she had available?---Okay.

She didn't get an opportunity to discuss the legal issues that are contained in that document. Does that accord with your recollection?---Sorry, which document are we talking about?

I've given it a shorthand, it's that joint legal and financial brief?---Okay. So we're talking about the financials and then the development proposal?

10

No. On screen, see this document?---Yes.

You were taken to it earlier?---Mmm hmm.

This is Exhibit 60, page 5, I think. Yeah. And, this is what I refer to as the joint legal and financial brief, I'm just giving it a shorthand, right?---Okay.

And within that you've been taken to the profit and loss statement, and I suggested to you that Ms Bakis went through that profit and loss statement line by line?---Yeah, okay.

20

THE COMMISSIONER: Are you agreeing?---I'll agree that we went through the report, the financial report. Yes.

MS NOLAN: You've been asked a question with respect to whether or not the Forlife liability showed up on that document, and you've said no, it doesn't. I mean, it doesn't show up on the document, let's just accept that.

THE COMMISSIONER: His evidence was he could not recall any mention of the 300,000 liability to Forlife. That was his evidence.

30

MS NOLAN: Yes. And I'm going to ask you this, the Forlife, was it mentioned at all that the Forlife liability, shall we call it that, only arose in certain circumstances? Do you remember that being discussed?---I have a vague memory of something of that effect.

That the Forlife liability only arose in circumstances if the development did not proceed. Do you remember that?---I think I heard the statement made.

40

Right. So, at that time the development, you accept, don't you, that the development didn't proceed when the administrator decided not to proceed with it. Do you accept that?---I do.

At the time at which these financials were being discussed, you accept, don't you, that that liability hadn't yet arisen and that was discussed?---I'm not sure that we were talking about facts and figures, but I do remember a statement being made that as a consequence of the administrator coming in, there would have been liabilities created.

You gave some evidence with respect to Ms Bakis's disposition at that meeting and that she was upset and I think your words were "agitated, put on tilt a little bit, there was a heated discussion". Do you remember that?--- Ah hmm.

Isn't it the case that Sophie, the CEO, the acting CEO, Sophie, the name has just escaped me, can you assist?---Sophie Anna.

10 Sophie Anna, that's right, was making allegations against Ms Bakis's professionalism at that time. Do you remember those - - -?---That was, that was being alleged, yes.

Yes, there were a number of allegations with respect to her embezzling money or something to that effect. Is that right?---I couldn't say it was embezzling money.

20 And that the heated discussion actually arose as a consequence of those allegations didn't they?---Possibly.

And it was at or around that time wasn't it that Ms Bakis gave her notice of intention to cease to act, indeed it was at that time wasn't it?---Yes, she did.

You've also said that you didn't receive copies of that material by email to you, the joint financial, legal and financial brief. You've told the Commission that you didn't receive that by email before didn't you?---I don't believe I did, no.

30 The reason I'm going to suggest to you why you didn't receive that by email is because when you became a member of the board you were provided with a form which required you to give your contact details.---Ah hmm.

And you never filled that form out did you?---I couldn't say but I certainly must have filled it out at some point.

But at this time - - -?---But at that time maybe not.

40 Maybe not. You accept that. I'm about to move on to that topic I think. Most of my, the next line of questions, Commissioner, will revolved around that board meeting and I would like to deal with it in one - - -

THE COMMISSIONER: It's the board meeting of what date?

MS NOLAN: I'll give you the date. Sorry. I know I'm being imprecise. Is it 5 August?

THE COMMISSIONER: 26<sup>th</sup>.

MS NOLAN: Yes, '16.

THE COMMISSIONER: 26 August?

MS NOLAN: 5 August, 2016.

THE COMMISSIONER: 5 August.

10 MS NOLAN: So I'm about to deal with that board meeting. It's the board meeting at which the resolution was passed for the continuation of legal services to be provided by Knightsbridge North Lawyers about which this witness has given some extensive evidence and I would like to deal with that topic all in one go if I may and it does involve that - - -

THE COMMISSIONER: Is this related to the new material that was produced this morning or at least raised this morning?

MS NOLAN: Yes.

20 THE COMMISSIONER: Well, I think if you've got anything to put about it you should put it now because it may be that you won't get leave in the future to cross-examine on the recording. I'm not saying that I will so rule but there is a possibility that I may consider that for one reason or another that questioning on the so-called recording is not to be permitted so that if you don't put now any matters in relation to 25 August, '15 meeting you may not get the opportunity in the future to do so, so I suggest that you do put whatever you want to put about that meeting so far as you're able to now otherwise you might lose the opportunity.

30 MS NOLAN: Yes, Commissioner. I'm going to need to, I've just got to find the reference for the minutes for that meeting, if someone could assist me while I'm searching. I think it's volume 16, 355. Is that right? Volume 16, 355 please. If the witness could be shown that.

THE COMMISSIONER: That's 5 August?

MR NOLAN: That's correct.

THE COMMISSIONER: Is that the one you're talking about?

40

MS NOLAN: Yes.

THE COMMISSIONER: Sorry, I thought you said the 25<sup>th</sup> before, it's the 5<sup>th</sup>, is it, the 5<sup>th</sup> of - - -

MS NOLAN: Yes. I know you misheard me and I tried to correct it but maybe not clearly enough. Sorry.

THE COMMISSIONER: It's 5 August, right. Thank you.

MS NOLAN: So you've given some evidence with respect to this meeting, Mr Kelly, and you understand we've had a bit of a debate about a recording having been taken at that meeting. I'm going to now try and deal with some of the issues that arise on that meeting. You gave some evidence yesterday that you thought you left the room before Knightsbridge North Lawyers spoke about litigation.---Mmm.

10 Right. The minutes record you leaving at a certain point and you contradicted the accuracy of those minutes by reason of the fact that your recollection was, is that when Mr Petroulias started speaking you left the room. Is that right?---(No Audible Reply)

Do you remember that evidence?---I wonder if – sorry. This is, excuse me, this meeting is the very first meeting of the board.

The new board?---Yes.

20 Yes, and you have a new chairperson, Ms Towers.---Ah hmm.

And you have a new deputy chair, Mr Wright.---Ah hmm.

MS CURTIN: I object, Commissioner. The first meeting that Mr Kelly attended was on 28 July.

THE COMMISSIONER: Twenty?

30 MS CURTIN: 28 July.

MR NOLAN: No, I think we're talking about a different issue. This is a new meeting of the board. Are we all wrong?

THE COMMISSIONER: Just a moment.

MS CURTIN: Yes. The first meeting of the new board was on 28 July. This was the second meeting.

40 THE WITNESS: Okay.

THE COMMISSIONER: Right. Thank you. Yes.

MS NOLAN: Right. So it's the second meeting of the new board. I'm not in a position to contradict that, but Ms Curtin informs us reliably that it was the second. So I put a proposition to you that you gave evidence yesterday and I'm asking you to accept whether or not that is your evidence, that you left – see it's moved over to the second page here and you'll see that it

identifies that you left at a certain point?---Sorry? This may be the wrong meeting.

No, this is the meeting where there was a discussion as to whether or not Knightsbridge North Lawyers should remain as the solicitors for the Awabakal Aboriginal Land Council. Do you remember that?---I don't see, sorry, I don't see the names of Mr Petroulias or Ms Bakis at this meeting.

10 THE COMMISSIONER: I think you need to identify the meeting you're referring to.

THE WITNESS: My comment yesterday was that the only time I'd ever left the meeting was when Mr Petroulias had produced a volume of material, so I may have got the dates wrong, so - - -

MS NOLAN: The confusion may be all mine. I have a note this morning that Counsel Assisting stood up and said that Mr Petroulias purports to have a recorded version, a conversation between him and Mr Kelly on 5 August, 2016. Now, I might be wrong but that's what my note says. I can't imagine  
20 I wrote the date down wrong, if it is a July date. This as I understand it are the minutes to which the witness was taken yesterday on this issue. If I'm wrong I'll stand corrected, but I think I'm right.

MR CHEN: Well, I did say 5 August, Commissioner.

THE COMMISSIONER: I'm sorry?

MR CHEN: I did say 5 August because I was reading an email that was sent to the Commission this morning by Ms Bakis which was copied in to  
30 my learned friend, so I did say 5 August, because that's what the email said.

MS NOLAN: Right. That may be where the confusion is arising. I'm working off my notes and that may be where the confusion is arising, but I could be wrong.

THE COMMISSIONER: I have a note, I haven't checked the transcript, that on 28 July 2016 the minutes record motion 7 which is to remove Mr Petroulias as legal representative, and that was in volume 16 at 322. Was  
40 that the meeting you have in mind, Ms Nolan?

MS NOLAN: I have that note, and that's the meeting at which, and that's why I'm saying there was a new chair and a new deputy chair and that's when Ms Curtin stood up.

THE COMMISSIONER: Well, I just want to pinpoint the meeting. Is that the meeting?

MS NOLAN: I accept that, that's probably right. Hang on.

MS CURTIN: If I could assist, Commissioner, there were two similar motions moved. The first was, as you pointed out, on 28 July.

THE COMMISSIONER: Yes.

MS CURTIN: At the second meeting on 5 August a similar motion was moved and that appears at page 360 of these minutes, volume 16, but it's a different kind of motion. The first motion which was discussed and Mr  
10 Kelly gave evidence about on 28 was moved by Mr Kelly and that was to have Mr Petroulias removed as a solicitor, that motion was defeated. At this meeting, a separate motion was moved and it was put positively that Knightsbridge North Lawyers continue to act, and that's on 5 August.

THE COMMISSIONER: Who proposed that?

MS CURTIN: It appears to have been moved by Mr Quinlan, and seconded by Mr Green.

20 THE COMMISSIONER: Right. Thank you.

MS NOLAN: Now, is that the one that's on the screen now, 360 of Volume 16? So you'll see there that Ray and Warren left the room at 1.50pm. That's what's on the screen. Are we dealing with the same meeting there about which Ms Curtin has just addressed the Commission? Just for my benefit, because I don't want to confuse this. Would you be so kind as just to scroll up and show me what meeting this – so, page 360 of Volume 16 is on the screen and that is 5 August. So, we're dealing with the right meeting?---Yeah.

30 And why the confusion arose is because we didn't go down to the correct page. Now, if we could go back to the page where it identifies here, page 360, volume 16, you gave evidence yesterday with respect to Ray and Warren left the room at 1.50pm and you said that you don't, that doesn't accord with your recollection. There was some discussion as to the accuracy of the minutes representing that because you said that you left the room prior to Mr Petroulias addressing on the litigation. Correct?---Yes.

40 All right. I suggest to you that's not right because in actual fact you stayed and you listened to Mr Petroulias and Ms Bakis and others have a healthy a discussion about the litigation. Thinking about that now, does that accord with your recollection as you sit here today?---No.

I suggest that Mr Petroulias discussed with you that there was a court date impending coming up on the following Monday, so you were meeting on a Wednesday. Is that right? And then on the following Monday you had to be in court, in the Land and Environmental Court. By you, I mean the

Aboriginal Land Council in respect of this litigation. Does that refresh your memory?---As to what?

As to that being discussed?

THE COMMISSIONER: Do you understand the question?---I do understand the question and it's a matter of sequence in terms of what was being discussed at that time.

10 Just to be clear about it then, your recollection is, if you wouldn't mind just stating it?---I would say that there were some issues raised about the ongoing legal challenge, but I see no detail about the, so, it says that we were out of the room for 10 minutes.

What do you say? Was that before Mr Petroulias spoke or after, or what? ---I believe it was, I believe I didn't, the minute Mr Petroulias entered the room with a folder, I removed myself from the room.

20 MS NOLAN: And I suggest to you that's not right, and the reason why is I'll suggest - - -

THE COMMISSIONER: Ms Nolan, I think the battlelines are well and truly and clearly drawn. You're putting a proposition, the witness disagrees with it. He has twice now given his version. Now, there's no point in putting it to him a third or fourth or fifth time. I think the issue is drawn. Let's move on and deal with something else.

30 MS NOLAN: Do you recall in the context of that meeting Mr Petroulias discussing at all the viability of the Awabakal Land Council's litigation with the Minister?---I can't say that I recall that on this particular meeting, no.

Do you recall Mr Petroulias discussing why – I withdraw that. Do you recall Mr Petroulias discussing that the purpose of having a positive resolution as to the continuation of Knightsbridge North Lawyers' retention as solicitors was so that there was somebody to turn up in court on the Monday morning?---I remember, I remember that point.

40 And that Knightsbridge North Lawyers had no difficulty with the Awabakal Aboriginal Land Council retaining different representation, their chief concern was that there was somebody representing the Awabakal people on the Monday in court. Do you remember that?---I do recall that.

Do you remember there being a discussion with respect to that the, one of the negative aspects of the appointment of an administrator being that board members who are presently sitting would be unable to sit for a further five years after the appointment of an administrator, do you remember that? ---No, but I understood that is the case but I don't recall that, no.

Do you remember that there was a discussion with respect to the administrator being appointed in that it would undo a lot of the good work that the board was doing in trying to reunify itself and move forward, do you remember that discussion?---No, I can't say that I recall that.

Do you remember that the basis upon which you said that you needed to remove yourself from the room is that you felt that you couldn't vote on whether or not Knightsbridge North Lawyers remained as the solicitors for the Awabakal people because you felt that you could not do so on good conscience?---I think you're paraphrasing but I'm, I'm - - -

Something to that effect?---I'm comfortable with that.

And that you felt you could not vote on that because you had some fairly strong views with respect to the perceived conflict situation that you said arose by Knightsbridge North Lawyers being both the solicitor and the accountant?---Yes.

And that it was on that basis, it was put to you well, if that's your view then you can object and vote against the resolution. Do you remember being, that being suggested to you by somebody on the board?---No.

Do you remember that it was at the point at which it was being discussed that the resolution was going to be moved by somebody that you said that you felt that you had to not abstain from voting, not object to the resolution but actually leave the room is the point at which you left the room, do you remember that?---It sounds, it sounds reasonable.

Mr Kelly, you have very strong views, and I don't mean that disrespectfully.---Ah hmm.

You have some very strong views about a situation as you perceived it by the retention of Knightsbridge North Lawyers and I'm going to suggest to you that wouldn't it have been more appropriate and more consistent with your role as a board member and your duty as a board member to ensure that the board acted to, in conformity with the members' interests that you remained in the room and actually voted with respect to that resolution?---In hindsight, yes.

Some of the evidence that you've given today – no, I withdraw that. I'm going to suggest to you that the characterisation that you have given to the way in which meeting were being run, board meetings were being run, is unfair because what you remember sitting here in hindsight is the fact that you held these very strong views with respect to Knightsbridge North Lawyers and the Dates family for example, that balance of power that I've referred to you earlier, and that that colours the way in which you're giving your evidence to the Commission. Would you agree with that?---I'm not sure I'd used the word coloured. I - - -

I don't mean it disrespectfully.

THE COMMISSIONER: No, just a moment, just a moment. No, wait a minute.

MS NOLAN: What's the objection?

10 THE COMMISSIONER: Just a moment, Ms Nolan. Yes?

THE WITNESS: I believe that I'm an ethical person, I believe I'm a person of principle and if I believe something is right I will fight.

MR NOLAN: And if you believe something is wrong, you will make sure that that wrong is exposed. Is that right?---You need to recognise that there were some younger people on that Council who I believe needed some guidance and they were not being allowed to have their time. I'm sorry – can I take a few minutes?

20 THE COMMISSIONER: Yes, certainly.

THE WITNESS: I feel I've been under attack and I'm sorry - - -

THE COMMISSIONER: That's all right.

THE WITNESS: - - - but I stand on my principles.

30 THE COMMISSIONER: That's all right. Now, you just go outside for a while and we'll adjourn for five minutes.

Mr Chen, just before we resume, are there any other matters we can deal with that need to be dealt with?

MR CHEN: No, there's not.

THE COMMISSIONER: All right. Well, I'll adjourn and when Mr Kelly's ready to resume we'll do so.

40 **SHORT ADJOURNMENT** **[12.33pm]**

THE COMMISSIONER: I'll deal with it this way, unless this occasions difficulties for anyone, I propose to adjourn at 1 o'clock and resume at 1.30 but does that cause any problems with staff? All right. Thank you. Yes, all right. Now, yes, Ms Nolan.

MS NOLAN: Mr Kelly, instead of telling the Commission fairly what went on in board meetings, you have instead allowed your very strong views that I accept you hold and legitimately hold to inform the way in which you've given your evidence to the Commission, haven't you?---I believe I've, I've answered honestly and correctly. As to how that's tainted my, my opinions of other people, no, I reject that.

10 You'd accept, wouldn't you, that your opinions of other people, in particular, Ms Bakis and Mr Petroulias and Ms Dates has informed the way in which you've given evidence to this Commission, wouldn't you?---I wouldn't.

I do apologise, Commissioner, I know I'm chewing up time. Will you allow me just a small indulgence just to check my notes?

THE COMMISSIONER: Yes. Certainly.

20 MS NOLAN: I think you expressed yesterday in your evidence that you had a view that the Awabakal Aboriginal Land Council should not be selling its land. Does that accord with your recollection?---In this instance, yes.

In this instance?---We sold land before.

Pardon?---We sold land before.

30 Yes. You will accept having seen the financials that the Awabakal Aboriginal Land Council was in in dire need of funds in order to be able to continue its work in the community?---Yes.

And the way in which to do that was obviously to sell land, wasn't it?---As a last resort, yes.

And at the time at which you were a board member, that last resort situation had arisen, hadn't it?---Not in my opinion, no.

Pardon me, I don't mean any disrespect, I'm just checking - - -?---That's okay.

40 - - - my email. Thank you, Commissioner. I have nothing further.

THE COMMISSIONER: Thank you, Ms Nolan. Mr Petroulias.

MR PETROULIAS: Yes. Mr Kelly, can I get the context of our first meeting? As you say, there was a lot of pent-up frustration from your point of view about having unresolved governance issues, access to finance information that had been denied to you from the board, the then board leading up to 29 June.--- Yes.

Yes. And in fact there was an informal meeting at a park called by Sean Gordon and others, and I'm not trying to name anyone in particular, but there was a lot of people who were concerned and it was an unofficial meeting because the Land Council, the then board wouldn't endorse it as an official meeting, where you tried to express these views.---I wouldn't call it a meeting. I'd call it a gathering.

10 Yes. Okay.---But - - -

Agree.---Yeah.

Yes. You received a notice of a meeting that had in fact, from the board, a notice of an official meeting, that had in fact two meetings. One was an information type session which I will call a filler and the other being an election for some board members.

THE COMMISSIONER: When, when - - -

20 THE WITNESS: To fill the - - -

MR PETROULIAS: From 29 June.---To fill vacancies?

To fill vacancies.--- I think that's probably right, yep.

30 Yes. Now, what I'm going to suggest to you is that the first meeting, the information session was actually just a filler, a community meeting simply to get the runs on the board so that people, so more people can have the right to vote. In the sense of the two meeting, twelve month rule.---Okay. I'm not sure that that, I couldn't be sure that that was correct but perhaps that was the intention of the chair to call the meeting.

Certainly. I'm trying to demonstrate how there's two worlds about to collide?---Okay.

You didn't know, for example, that to have that election there had to be a court hearing that morning to get an order compelling the registrar to hold an election for those two board seats?---I found out afterwards, yes.

40 Yeah. So, there's a, and a lot of people had thought that that meeting was cancelled and started to leave. The meeting on 29?---Yes, I accept that.

Now, but from your point of view, you were still desired, you had a pressing need for accountability. That's what you wanted answers for, that was your priority?---Yes.

Yeah. So, what I'm saying is against that context, some, whatever you perceive, lawyers are wheeled in to talk about something that was not your highest priority at that time?---Are you talking about governance?

Yes. You wanted governance and instead you're getting a meeting with me or Despina talking about litigation which is not what you wanted to hear as your first priority at that time?---I, I accept that, yeah.

10 Now what I'm saying is that was a deliberate device simply to get more people entitled to vote, rather than the real priority.

MR CHEN: I object, Commissioner. He needs to put, with respect, that allegation squarely and clearly to this witness. Commissioner, there is other evidence as well in any event which is Exhibit 55 which puts a completely diff complexion on why the meeting was cancelled, or why it did not proceed in the way that Mr Petroulias has suggested by his questioning.

20 THE COMMISSIONER: Mr Petroulias, you've used the expression that was a device by the witness, what that carries with it is an imputation that he was improperly orchestrating matters. If you're going to put a charge like that to the witness, you need to seal in the facts that you rely upon so he can deal with the underlying facts.

MR PETROULIAS: Sir, this is not an accusation on him or anybody. It's often a practice in order to get the runs on the boards, in terms of attendance of meetings, to have back to back meetings.

30 THE COMMISSIONER: Well you just ask the next question I think and we'll see where we go.

MR PETROULIAS: Certainly. And that wasn't the AGM. The AGM was to follow a few weeks later?---Correct.

So that was the time when, if you like, because and you agree that an auditing was still going on at the time of that first meeting?---There was, yes, there was an audit process underway, yes.

40 Great. Now, do you remember that actually Ron Gordon moved the motion that because so many people had left, that it be adjourned for three weeks?

MR CHEN: Well, I object Commissioner, because that's not the evidence so far, and so if the evidence, which is in Exhibit 55 as to what happened - - -

MR PETROULIAS: What is that? Can we call that up, please? Do you remember a motion by Ron Gordon that it be adjourned?---I don't, I don't recall that, no.

Okay. Well, it's not important what motion, what's important is the meeting was adjourned. That meeting didn't proceed very far?---It was cancelled, yes.

Okay. Now, people left the room. Advantage who were supposed to make a presentation never got to make a presentation?---No.

Okay. Now, this is what I'm suggesting. You remember me coming in with a big briefcase and suitcase full of papers?---Mmm hmm.

10

And I'm suggesting that as we were packing up, yourself, Sean Gordon and Larry Slee came to the front left hand corner of the room and effectively reflected upon the aggressive nature of the meeting?---Yeah, possibly. Yes.

To the extent to your credit of saying, listen, we're all a bit heated, you guys don't really know what's going on here, we've been demanding answers for a long time?---That could sound fair, yeah.

20

Yes. Now, now, from my point of view you understand, from my point of view and Ms Bakis's point of view, we had never met anyone outside the board who were giving us instructions.

MR PATTERSON: I object, Commissioner. Is that a question or is that a statement?

MR PETROULIAS: No, I mean - - -

30

THE COMMISSIONER: I think you need to ask him whether that is the fact.

MR PETROULIAS: Yes. Do you understand that's the first, from our reaction that that's the first time we actually had an intelligent conversation with people who were not instructing us?

THE COMMISSIONER: Well, look, I reject the question in that form.

40

MR PETROULIAS: Okay, certainly. You do, okay, you accept, don't you, that we had an intelligent conversation that was different from what we were used to in terms of it appeared to be news to us, what you were telling us? For example you talked about some gym equipment?

THE COMMISSIONER: Mr Petroulias, you, the question - - -

MR PETROULIAS: No, I understand, I'm trying to do the best I can.

THE COMMISSIONER: Yes, I know, but just I think just try and formulate a question - - -

MR PETROULIAS: Yes.

THE COMMISSIONER: - - - rather than add statements into it.

MR PETROULIAS: Yes. You recall a conversation, you raised for example the unaccountability in relation to some gym equipment?  
---I did.

10 Yes. And various other examples of unacceptable behaviour from your point of view?---Financial - - -

Yes.--- - - - responsibility, yes.

Yes.---Yes.

Now, that from our reaction, that, did you, did you appreciate was new to us?---I, I couldn't - - -

20 No, no, that's fine, that's just - - -?---I couldn't venture - - -

Okay.--- - - - an opinion.

Now, mistaken or otherwise, I'm going to suggest to you that I telephoned Mr Gordon, asked for your phone number, and the purpose of that telephone call was to discuss the plan where situations like that where people are locked out of a voice - - -

30 THE COMMISSIONER: Mr Petroulias, I'm afraid you can't have a question along those lines.

MR PETROULIAS: I'm trying to reflect a form of words - - -

THE COMMISSIONER: Well, just pause and - - -

MR PETROULIAS: Yes.

THE COMMISSIONER: You can't ask him for example about conversations you might have had with somebody else - - -

40 MR PETROULIAS: Certainly, certainly.

THE COMMISSIONER: - - - that he wasn't a party to.

MR PETROULIAS: But certainly it was, it was either a, it was a Saturday I suggest or maybe a Sunday.---Sunday it was.

You say Sunday, actually that's right. Now, and the form of words were along the lines of we, we have mechanisms we're trying to introduce that

protects, that prevents a majority controlling exclusion, excluding others from a voice in the community.---You may have mentioned that in the conversation, yes.

Right. Now, I mean clearly Debbie Dates came up because she did have the majority control at the time.---That's not what you said.

10 Yeah, yeah, yeah, but what I'm saying is, if someone was unhappy with that sort of situation they could remove her, which is, which is what the plan - - - ?---I believe that you intimated that I could get rid of Debbie Dates if I followed you, your line.

Okay. That may be a reasonable interpretation, but my, it was the, the mechanism that was allowing you to do that, not, not some - - -?---I wasn't aware of what you were trying to put.

Okay. That's, that's, that's fine as well, that's fine as well. You heard the formal reference to minority protection provisions.---Today, I have, yeah.

20 You may have seen them in the context, yeah.

THE COMMISSIONER: Today he has, he said.

MR PETROULIAS: Oh, today you have?---Yeah. I heard of it today, yeah.

They were part of that joint legal accounting brief, but it may have not been your priority to look at it at any point.---Is that one about that big that you carried into the room that day - - -

30 Well - - -?- - - along with other material?

Along with other material. Okay. So now we go to 20 July. Again that's, this is the election, the AGM. Now, again that is a back-to-back triple meeting. The first was a community meeting, the second was the AGM and the third was a proposed meeting for the Advantage Property deal. ---I wasn't aware that it was a three-day meeting.

I mean I can show you the notice of meeting but - - -?---I - - -

40 Okay.---That's fair, but I'm telling you that I don't have any recollection of there being three meetings. I believe the first one was a fill again that you talk about.

Yes, yes. Now, indeed wasn't there, if you recall there was, right off the bat there was a problem with some people couldn't vote because they didn't have enough, in fact it was Sean Gordon in particular who you were sitting close to, couldn't vote because they hadn't done enough of a tick-offs in terms of committee meetings.---Two, two meetings per year.

Yes. And can I suggest to you that I came up with a device, and I mean I'm not, maybe not using the word correctly, a, a solution, a legal solution and in fact people voted for it in order to allow people like Sean Gordon and others to vote?---I couldn't see how.

Okay.

10 MS CURTIN: I object, Commissioner. Mr Petroulias, if he wants to refer to a particular motion that was passed, should take Mr Kelly to the minutes, perhaps, of that meeting and where it was that that motion was recorded.

THE COMMISSIONER: Yes, I agree. Mr Petroulias, I'm just concerned that some of these issues might be all very interesting and ciliary to the whole picture - - -

MR PETROULIAS: No, no.

20 THE COMMISSIONER: - - - but I'm just wanting you to, if you would, focus your questions on matters that affect you directly.

MR PETROULIAS: I am. I am.

THE COMMISSIONER: Rather than talking about the ins and outs of the Land Council and so on.

MR PETROULIAS: I am. I am.

30 MS CURTIN: The minutes of this particular meeting, Commissioner, Exhibit 56 - - -

THE COMMISSIONER: Exhibit 6?

MS CURTIN: Exhibit 56, and halfway down the page, Sean Gordon is recorded as asking about the two meeting rule.

THE COMMISSIONER: I'll have a look at that. Yes. You've seen that entry, Mr Kelly?---Yes.

40 That's the minutes of 20 July 2016, paragraph 3. Yes, all right, Mr Petroulias.

MR PETROULIAS: Okay. Now, do you remember that it was my idea for a resolution to be passed in a particular form of words?---No, I'm sorry, I can't recall.

No, that's fine, it's not important. Then I proceeded to speak about the litigation as the first meeting. Mr Kelly?---I'm sorry, you've just lost me.

Okay, let's move past that. Now we go into the first of the meetings about the litigation?---Okay.

Is it fair to say that I raised somewhat inelegantly the sore issue about the whole Steven Slee split, and perhaps a little culturally insensitive, that caused a riot?---In truth, you probably brought that on yourself by raising that in such a space.

10 Accepted?---Yeah.

Accepted. But you do agree that was a combination of it was a perfect storm of events that it lead to a bit of a disquiet?---To say the least.

Exactly. Now, so, I was then hurried up to quickly finish that conversation, to quickly finish that presentation and I started to leave with my bag?---Yes.

20 Okay. Now, so, I really didn't present much about the litigation other than the minimum. I didn't promote any property deal in the course of that meeting, because Advantage was going to do that and they never got to that either.

THE COMMISSIONER: Are you able to comment on that?---I'd say it's a fair estimation of what occurred throughout the night.

30 MR PETROULIAS: Okay. Then when we come to 5 August board meeting, if you recall, I apologised that my Asperger's Syndrome sometimes makes me somewhat insensitive in what I say, and in fact that you were very cordial about that and appreciated that and also apologised that that evening was unacceptable?---Well, all parties. Yes.

Yes. So, and I would put to you that our conversation which goes on for about 30 minutes on that 5 August was to be characterised as healthy, intelligent, responsive and mature discussion on litigation and the conflict issues and the issues that you brought to the attention of the board?---Okay.

40 Would you agree with that characterisation?---I think it was a healthy conversation for a period of time. Now you're saying 30 minutes. At what point did I get up and leave the room?

THE COMMISSIONER: Mr Petroulias, I'm going to stop there because we're going to take the luncheon adjournment. How much longer will you be?

MR PETROULIAS: Not long, two minutes if you can indulge me. Two minutes maximum.

THE COMMISSIONER: All right, you finish then.

MR PETROULIAS: Yes. In fact, I would suggest to you that I discussed ways of reducing the litigation and that in fact litigation, I recommended, was not a healthy thing to do and that the energy should be focused on more productive issues?---I can imagine you having a conversation in that line.

THE COMMISSIONER: No, that's not what you're asked.---Sorry.

10 It's being put to you that that's what Mr Petroulias said at the meeting and the question is of whether you recall that or whether you agree or - - -?---I don't recall that in that way.

All right.

MR PETROULIAS: Okay. I also mentioned to you that there was some virtues of what me and Richard Green were trying to do in terms of United Land Councils and some threats to some boundary issues. Do you agree?

20 THE COMMISSIONER: : Do you recall that?---I recall you saying something about your relationship and the business that you're involved in with Richard Green, yes.

MR PETROULIAS: Yes. And in particular the threats that were faced to the Aboriginal Community as a whole, which we were trying to address, for example, boundary - - -

THE COMMISSIONER: Just a moment?---I recall a conversation.

30 MR PETROULIAS: Okay. Okay. Then I tried to – sorry, your position was, to summarise, that you believe the litigation was a conflict because it was protecting Debbie and Richard and not in the interest of the whole Land Council. I tried to convince you otherwise, you were unconvinced and then left the room?---I wouldn't agree with that.

Okay. Was it your position generally that the litigation was protecting Debbie and Richard and not in the best interests of the Land Council?---Did I have a position about that?

40 That was your view that was expressed at that meeting?---I don't believe I said that.

Okay, that's fine. Well, that's a matter of record. And Mr Schilling left with you?---Mr Schilling left of his own accord.

Well, he left with you at the same time?---He followed out afterwards.

That's fine. Now, are you aware of the correspondence between the Minister and Knightsbridge about this conflict between accounting and legal being in the same firm?

THE COMMISSIONER: No, I won't allow that. How are we going?

MR PETROULIAS: I'm just about finished, I'm just about done.

10 THE COMMISSIONER: I'm sorry?

MR PETROULIAS: I'm just about done.

THE COMMISSIONER: All right, well whip it up then.

MR PETROULIAS: Okay. So, can I suggest to you that whilst you may not have liked the way I conducted myself, that something or someone or whatever info that has come to light in your mind more recently has clouded how you perceive effaces on certain things in the past?---No, I don't believe so.

But I certainly did not promote litigation and say it was a sure thing you're going to win and get all your money back with that also, as you appreciate, there being a risk of loss?---You said that.

THE COMMISSIONER: He said what?---He said that there was a chance that we wouldn't win and there might be a loss.

MR PETROULIAS: Okay. And I certainly did not promote a property deal which yet we didn't even get to discuss?---But you had it ready.

Sorry?---You had it with you.

Certainly, yes, yes, absolutely. I agree with that. That's all, your Honour.

THE COMMISSIONER: Thank you, Mr Petroulias. Now, anything else? Sorry, Ms Curtin? I'm sorry, Mr Patterson?

MR PATTERSON: I will be very brief.

40

THE COMMISSIONER: Yes, certainly Mr Patterson. You proceed.

MR PATTERSON: Thank you, Commissioner. Mr Kelly, you were asked by Counsel Assisting yesterday afternoon who it was that suggested Greg Griffith be appointed as interim CEO. Do you recall that?---Yes, I do.

And do you recall what was your answer?---I think I said it was in fact Richard who suggested Greg, and I now recall that wasn't. It may have

been very much Debbie Dates that had moved that, Richard suggested a gentleman named Doc Manton for the role.

Thank you. You were asked this morning some questions about an alleged comment you made to the effect that an administrator will be appointed for sure, or words to that effect. Do you recall that?---Yes, I do.

10 Could Mr Kelly be shown volume 17, page 133, Minutes of Board Meeting, dated 24 August, 2016? Mr Kelly, if you look at the fourth line from the top of the page, do you see the words, "Problems, legals, council will go to administration"?---Yes.

Does that assist your memory as to what you may have said?---I don't believe that I made the statement.

Very well.---That sorry, the, the question that you, you, you put?

20 Well, if you don't recall making the statement, you don't recall making it. Is it your recollection that it was the board meeting of September 16, 2016 that decided to discontinue the proceedings against the Minister? If you don't recall, could Mr Kelly be shown - - -?---I, I don't recall. No.

- - - volume 117, page 157? Volume, sorry, volume 17, yes, correct. Volume 17, page 157. Do you see motion 11, "Cease litigation matters concerning Registrar and Minister of Aboriginal Affairs"?---Yes, I see that.

And that motion was passed.---It was.

30 Do you recall, subsequent to that meeting, having received an email from a journalist which you then passed to all members of the board?---In truth, the, the email was sent to the chairperson at the time, Theresa Towers, I can't think of her second name (not transcribable) but she was the chairperson who then, who then sent it on to the entire board, asking for our opinions about the, the questions she was raising.

And did you subsequently receive a response from someone?---I received a response from Richard Green in the chain email.

40 Could the witness be shown that document?

THE COMMISSIONER: Thank you. Yes.

MR PATTERSON: If you just look at that document, Mr Kelly, is that the document to which you refer?---Yes. This is the document that I was referring to. Yes.

I'm happy for Counsel Assisting to tender that document, Commissioner.

THE COMMISSIONER: Yes. Have you seen the document?

MS CURTIN: Yes, I have, Commissioner.

THE COMMISSIONER: No objection?

MS CURTIN: No. I tender this document, Commissioner.

MR PATTERSON: There are copies for other counsel.

10

THE COMMISSIONER: Yes. Thank you. The email, Friday, September 23, 2016. It's the email to Nicholas Dan from Mr Kelly. Be admitted, Exhibit 61.

**#EXH-061 – EMAIL CHAIN FROM RICHARD GREEN TO ALALC BOARD MEMBERS DATED 28 SEPTEMBER 2016**

20 MR PATTERSON: Thank you, Commissioner.

THE COMMISSIONER: Thank you.

MR PATTERSON: And finally, Mr Kelly, for the record, do you wish to say anything about your perception of the atmosphere surrounding the affairs of the Awabakal LALC from mid-2016 until the appointment of the administrator?---I would just like to make a couple of comments that it was a very stressful time for quite a number of people. I think there was a real lack of leadership around, around providing information about the affairs of the Land Council to the membership. I think it created a, a, a vacuum where tensions did become heightened. People were angry, asking for detail. I want to say that it's been a very stressful time for me and my family, my family because we have been, we have, we have been on the end of some of that violence, that lateral violence, and I believe it is a great tragedy that a community like ours is going through this, through this process and I believe it will take a long time, in fact it'll take many years I think for us to recover from this. I do not believe that the sale of land holus bolus was ever going to fix some of the community issues that we're dealing with. I believe that we've got to build economic opportunities that are sound, that require people to contribute. And I'll go to the, I'll go to the issue of the, of the, I'll go to the issue of the housing within the Land Council. Just buying more houses will not, will not fix our issues. People paying their rent will fix the issues. I won't say too much more than that, other than I realise just how difficult this has been and in particular for my family, but like, like everybody we're hoping to find solutions that will, that will bring change to our community.

30

40

MR PATTERSON: Thank you, Mr Kelly.

MS CURTIN: Commissioner, I just have two short question that arose from Ms Nolan's questions.

THE COMMISSIONER: Yes, certainly.

MS CURTIN: Mr Kelly, you recall that you've given some evidence about the Forlife Development Pty Limited fee proposal, and that was in the amount, it meant that the amount of \$300,000 would have to be paid by the Land Council and Ms Nolan asked you whether Ms Bakis had made the board aware that that liability would only arise if the development proposal did not go ahead. Do you remember that?---Yeah, and I don't think I was absolutely clear about my memory of that.

No, but your evidence was that you recall something of that nature - - -?  
---Something of that nature, yeah.

- - - being said by Ms Bakis.---Yes.

20 Do you also recall whether Ms Bakis told you and the board that she had drafted an agreement in such a way that if the members of the Awabakal Local Aboriginal Land Council did not agree with the development proposal that that liability would still be incurred by the Land Council?

MS NOLAN: I object. This completely doesn't arise because my questions were limited to that which arose during Ms Curtin's examination and that was did, this liability didn't appear on the balance sheet and it wasn't, and I dealt with why it may, whether or not it was discussed. This is a completely new issue, it doesn't arise.

30 THE COMMISSIONER: I'm afraid it's not, Ms Nolan, it arises directly out of your cross-examination as to how that clause would operate in terms of the \$300 liability.

MS NOLAN: No. I didn't make any questions directed to how the clause would operate.

THE COMMISSIONER: I think you did.

40 MS NOLAN: I was dealing with specific, I was dealing - - -

THE COMMISSIONER: Sorry.

MS NOLAN: - - - specifically with whether or not that was mentioned as to whether or not that liability arose, and that's, this doesn't arise out of that.

THE COMMISSIONER: Ms Nolan, I'm allowing the question. Yes.

MS CURTIN: Mr Kelly, would you like me to repeat the question?  
---Yes, please.

Did Ms Bakis tell you that she had drafted an agreement in such a way that if the members of the Awabakal Local Aboriginal Land Council did not agree with the development proposal that the liability would nonetheless have been incurred by the Land Council, as in that that money would still be owed by the Land Council?---I, I feel that that's correct.

10 That she, Miss Bakis - - -?---Said that.

- - - told you that that liability - - -?---I believe that she, she presented that to the board.

THE COMMISSIONER: Ms Curtin, just in the interests of fairness - - -

MS CURTIN: Yes.

20 THE COMMISSIONER: - - - I don't recall now the exact terms of the clause. Is that the way it's said that it in fact has been drafted and operates?

MS CURTIN: Well, the - - -

THE COMMISSIONER: Because if it didn't have that, if it wasn't drafted in that way it wouldn't matter really perhaps what Ms Bakis told them as to how it would operate if the terms of it are to the contrary.

30 MS CURTIN: Commissioner, Advantage and Knightsbridge North Lawyers are suing on this liability and the clause is in the agreement addendum dated 8 July.

THE COMMISSIONER: So the claim is built upon the proposition that the liability materialised.

MS CURTIN: Has been incurred by the Land Council, yes.

THE COMMISSIONER: All right. Well, we can have a look at the clause in due course of time. Yes. Very well.

40 MS CURTIN: So, Mr Kelly, Ms Bakis did say something to the effect of that that liability would be incurred by the Land Council?---I believe so.

Even if the members didn't agree to the land development proposal?---I believe so.

And did she tell you why she had drafted the agreement in that way?---I have no recollection of why.

Thank you, Commissioner.

THE COMMISSIONER: Ms Nolan, just on that issue, regardless of the evidence as to what Ms Bakis said about the clause, if it was in fact drafted by Knightsbridge upon the basis that it could, in fact, attract liability, that would be the vice in that bit of legal work to draft an agreement which could come back to bite the Land Council, her other client. So, I'm just pointing out that it may be simply a question of looking at the clause to see if it does have the effect that Ms Curtin just outlined. If, on analysis, it doesn't, well then the whole issue falls to the ground, but the material question is really not so much what Ms Bakis said, although that could be relevant. The real issue is what was the operation of that clause?

MS NOLAN: I accept that.

THE COMMISSIONER: That's really a question of legal interpretation and we will come to that in due course of time, but obviously the material would be of concern to the Council if it could come back to bite them even if the contract didn't go ahead. So, I just want to clarify that that seems to me to be the issue so far as that clause is concerned.

MS NOLAN: Thank you. And I'm grateful for that indication. My objection wasn't limited to that, my objection was limited to the fact that there's only so much this witness can deal with that proposition, in any event, I understand that's the conclusion, I have nothing arising out of what Ms Curtin has said further, despite your ruling. And that probably concludes things, thank you.

THE COMMISSIONER: Thank you, Ms Nolan. That concludes your examination. Yes, very well, Mr Kelly, thank you for your attendance, in particular coming back today. The Commission is obliged to you for the inconvenience and for you making the effort to cooperate with us. Thank you again, you're excused.

**THE WITNESS EXCUSED**

**[1.17pm]**

MR CHEN: Commissioner, just going forward, the next witness is Mr Gordon who I expect, because of some clarification as to how long he was a board member, his evidence is likely to be a degree more compressed than it otherwise would have been. I certainly will get to Mr Hickey this afternoon but he will not complete his evidence, particularly as I understand others wish to cross examine him. Commissioner, I just wanted to raise that before you rose and whether, in the circumstances, there is - - -

THE COMMISSIONER: From what you've said then, we're not going to achieve the goal of completing both witnesses today, so that in those

circumstances, perhaps I should allow everyone to have a more extensive lunch hour than I had indicated, half an hour, perhaps if we resume at 2 o'clock, would that be suitable?

MR CHEN: It would, Commissioner, and the list tomorrow will be adjusted accordingly in anticipation of what we think is likely to occur later this afternoon and thereafter.

10 THE COMMISSIONER: Very good. Well, that will leave an hour this afternoon from 2.00 to 3.00 to take that evidence.

MR PATTERSON: Commissioner, may I be excused unless and until Mr Kelly is recalled?

THE COMMISSIONER: Yes, indeed, thank you Mr Patterson. You're excused.

MR PATTERSON: Thank you, Commissioner.

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**LUNCHEON ADJOURNMENT**

**[1.19pm]**