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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE PETER HALL QC
CHIEF COMMISSIONER

PUBLIC HEARING

OPERATION SKYLINE

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON FRIDAY 10 AUGUST, 2018

AT 10.00AM

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

THE COMMISSIONER: Dr Chen.

MR CHEN: Commissioner, on Tuesday I think I indicated that there was a difficulty with the transcript in the afternoon session. We have circulated what we believe is the very minor matter that was not picked up by the transcript recording and thus transcribed, and I don't understand anyone to have responded to that, in which case in due course I'll seek a direction that the transcript be rectified in accordance with - - -

10 THE COMMISSIONER: Yes. Well, I think that can be taken I think as being the form the transcript will take, unless somebody during the course of today raises some matter about it.

MR CHEN: Thank you, Commissioner.

THE COMMISSIONER: Thank you. Yes, thank you, Ms Bakis. If you'd return to the witness box I'll have you re-sworn.

MR PETROULIAS: Commissioner, can I - - -

20

THE COMMISSIONER: Yes, Mr Petroulias.

MR PETROULIAS: - - - make, raise some issues?

THE COMMISSIONER: Just take a seat there, Ms Bakis. Just come up here. Just a moment. Yes.

30 MR PETROULIAS: Yesterday, contrary to what I was suggesting to you on the, on the, on the mental illness side, I was taken into the worst case scenario, which was the dry cell, as they call it, you know, in underwear with lights on, nothing in there. I don't know how that's supposed to assist in any way. I don't know. They say, Corrective Services say the order came from this side. Can I have some clarification, please, as to what the status is, because that's just cruel and, cruel punishment.

THE COMMISSIONER: Sorry, you're raising a complaint about your cell conditions, is it?

40 MR PETROULIAS: Yesterday I said to you that, that the only solution Corrective Services has to any mental health problems is to put you in a dry cell in your underwear with the lights on, no access to anything, and I said to you that's why we, we, we never admit any mental health problems in gaol. And that's exactly what happened. So a faeces-covered wall in those conditions is cruel. If that's to continue, please, I don't want, I won't have anything to do with this. This is - - -

THE COMMISSIONER: Well, Mr Petroulias, I have no idea at all what the position is where you're being held in custody. It's entirely a matter for

Corrective Services. But as you've raised the matter, we will ask, we'll pass on your complaint so that Corrective Services know that it's been brought to attention and Corrective Services would normally act to look into the complaint and deal with it, but I have no power over the Corrective Services to do so but - - -

MR PETROULIAS: Yes, you - - -

10 THE COMMISSIONER: I can request them however to - - -

MR PETROULIAS: Certainly.

THE COMMISSIONER: - - - look into it.

20 MR PETROULIAS: Your power, I understand, is trying to afford, as best you can, procedural fairness. So, the, rather than, if you like, and I don't mean (not transcribable), rather than a "it's their problem" scenario, what you can do is say that until you've got evidence that it's satisfactory that you can adjourn.

THE COMMISSIONER: Well, Mr Petroulias, all I can do is, as I've said, I'll have one of the Commission officers make contact with Corrective Services, pass on what you've stated so that that matter can be looked into and one hopes that your situation will improve.

MR PETROULIAS: Yes.

THE COMMISSIONER: All right.

30 MR PETROULIAS: There apparently is, there's some issues now about restraining my communication, my movements, who I can speak to outside, all the rest of it - - -

THE COMMISSIONER: I don't know what you're talking about, really. It doesn't result from the Commission. You are obviously in the hands of Corrective Services at the moment and they will deal with you as they would be expected to deal with you.

40 MR PETROULIAS: They have, it's just that they've been told that you've imposed conditions on - - -

THE COMMISSIONER: No.

MR PETROULIAS: Well, if that's not true then can we make - - -

THE COMMISSIONER: Look, Mr Petroulias, these matters can be all looked into. I can assure you that nothing emanated from me about this matter. Now, I want to get on with this investigation as you do, so let's deal

with that and if there are any matters during the course of the day, then I'll have the Commission officers take on board what you're telling them, and if there's a need for that to be passed on to Corrective Services, that will be done. All right - - -

MR CHEN: Well, Commissioner, can I just simply put on the record, as Mr Broad has told me, is that there's no constraint so far as he's aware on the communication or movements he has in the Commission. It's a matter for Corrective Services.

10

THE COMMISSIONER: That's right. I agree. Thank you. We'll have the oath readministered.

THE COMMISSIONER: Yes. Thank you, Ms Bakis, just take a seat.
---Thank you.

Yes.

10 MR CHEN: Ms Bakis, you know that Clayton Hickey was appointed the
auditor for the Land Council in around the second half of 2015, don't you?
---I thought he, I thought he'd been the auditor for a long, a longer time than
that.

In any event, he was the auditor who was appointed to conduct an audit of
the financial records of the Land Council for the year ending 30 June, 2015,
wasn't he?---Yes.

20 And you had dealings in the course of him undertaking that work, did you
not?---Yes.

He made requests of you, generally speaking, to provide information in
connection with matter of a finance kind?---Yes.

And also he required of you to provide a representation letter on the basis
that you were acting for the Land Council in a legal capacity as well, isn't
that right?---I believe so.

30 Well, would you have a look, please, this will come up on the screen, Ms
Bakis, Exhibit 83, page 244. And you recognise that as the letter that Mr
Hickey or his staff emailed to you or sent to you requesting that you provide
a - - -

MS NOLAN: I don't mean to interrupt, we just don't have this up on any of
the screens in this row.

THE WITNESS: I have it.

40 MR CHEN: All right. We'd better look into that. Perhaps my learned
friend could just go to the third row. I'm told we can't access it. I just
wondered whether my learned friend and Mr Petroulias could move back to
the third row? I'm not sure - - -

THE COMMISSIONER: Are you suggesting the screens further back are
working?

MR CHEN: I'm told that's right.

MALE SPEAKER: The third row they're working.

THE COMMISSIONER: Mr Lonergan, are you getting a visual?

MR LONERGAN: Yes, Commissioner,

THE COMMISSIONER: All right. Well, perhaps, Ms Nolan, perhaps I could suggest if there's a space behind you.

MS NOLAN: I'll just check.

10

THE COMMISSIONER: If you could take that up, Mr Petroulias. We'll have the technical problem with the others examined during the morning. Yes, all right.

MR CHEN: Thank you, Commissioner. Now, Ms Bakis, it's certainly been on the screen in front of you, I believe. Is that right?---Yes.

20

And you can see that's the letter, the first page. I'll have that turned to page 2, 4, 5, and you can see that's the letter, was it not, that was sent to you, as the lawyer representing the Land Council, for you to complete and return, is that not right?---I, it might have been sent to me, yes.

Well, you certainly recall sending a response to this letter, don't you?
---Vaguely, yes.

30

Well, we'll have a look at that now. If you have a look, please, at page 31. Do you see on the screen in front of you, Ms Bakis, there's a letter from Knightsbridge North Lawyers directed to Mr Hickey dated 19 July, 2016?
---Yeah.

And you recall preparing that letter, do you not?---I do. And I, and I do recall having very little time to prepare this, yes.

And you emailed that letter, did you not, to Mr Hickey, didn't you?
---Somebody of his firm, yeah.

Well, I'll just show it to you, Ms Bakis, so you're under no disadvantage. If you look at page 30 you can see - - -?---For Hayley, yeah.

40

- - - the email there dated 19 July, 2016 at 5.04pm.---Yes.

And you can see the attachment was your representation letter. The email is signed off by you. Do you see that?---Yes.

Now, one of the things that you were also asked about during the course of this process by Mr Hickey was the role of Advantage, isn't that right?---I was never asked about Advantage by Mr Hickey.

Well - - -?---Oh, no, sorry, sorry, I had a few phone calls with Hayley, I think.

And you certainly knew from those phone calls that they were wanting to find out a bit more about Advantage, isn't that so?---Yes.

And indeed they sent you a number of emails, didn't they, about that very topic, namely what's the position with respect to Advantage, isn't that so? ---Yes.

10

And you provided a couple of responses to that, of course, did you not? ---Yes.

And I'll just take them to you now if I can. If you have a look, please, at page 33. That should come up in a moment, Ms Bakis. You just need to look from the bottom first, Ms Bakis, if you'd be good enough. You can see that there's an email from Hayley Keagan on 19 July, 8.49pm, directed to you?---Yes.

20

And although the header is Awabakal Solicitor Representation Letter, you can see that she makes references to the Advantage Group and in particular the minutes that refer to their involvement. Do you see that?---Yes.

And you can see that she asks in the second, I'm sorry, the third paragraph of that letter, for copies of the agreements. Do you see that?---Yes.

And also some details about this New Zealand company in the second-last paragraph. Do you see that?---I do.

30

Now, above that you can see that you provided a response at 10.26pm? ---The time is significant, yes.

What's the significance of the time?---The audit needed to be signed off, there was an AGM the following day at 5.00pm, we needed the board to approve the signed audited accounts by, by about 3.00 at the latest and I was still getting emails about things that had not been raised with me prior to this time and I was literally answering emails at all hours of the night and I haven't even read what I've said, but I'm sure it was short.

40

Well, it does look short, but if you'd like to read it, please feel free to do so. ---Yeah, I, I, yeah. So I would have said to them, look, this may be important but it's 10.30 at night, it's not relevant to you, bye bye.

Right.---Yeah.

Well, you didn't quite express it in those terms because you sent this email back, didn't you?---Yes, okay.

And that reflected, I take it, your understanding of what needed to occur for this Advantage deal to go through. Is that so?---Well, that was the first step.

Are you agreeing with me?---Well, the board had already approved it so the next step was that it had to go to the community, yeah.

And in particular, without community meeting approval, to quote your words, there is nothing. Is that the position?---That's right, it's a void contract.

10

It's a, I'm sorry?---Void contract.

Void, did you say?---Yes.

All right. Now, if you have a look, please, at page 35 you can see that you responded more fully the next morning?---Yes.

Do you see that, Ms Bakis?---I do.

20

And you can see that you attached the Advantage collaboration agreement and the collaboration agreement addendum. Do you see that?---Yes, I do.

But you in fact only attached the unsigned agreements, did you not?---Yes.

And what you didn't attach were the range of other documents that were signed by the board on 7 June, 2016. Isn't that right?---That's right.

You didn't, to be clear, attach to this document, sorry, email, the call option agreement of either 7 or 10 June, did you?---No.

30

Or indeed any of the other documents at all?---No.

And you didn't in fact disclose in any email or other communication you had with Mr Hickey or anyone else at that office that in fact there were such agreements that had been entered. Isn't that right?---I told Hayley over the phone that there were such agreements.

Is that right, is it?---Yeah.

40

So - - ?---It might have been on this morning actually.

Right. So rather than perhaps conveniently putting it in an email and setting it all out in an email and attaching a document which provides a full and complete answer, you say, do you, that you provide an incomplete answer, attach some of the agreements and then ring up Hayley Keagan perhaps and tell her there is a number of other ones?---I didn't say any of that. They're your, they're your words, Mr Chen.

Well, I'm trying to understand what really you are saying, Ms Bakis. What we do have here is an email which you would accept, would you not, provides an incomplete response to clear questions to provide the agreements, wouldn't you agree?---Mr Chen, these auditors, this, firstly, this, these were the 2015 accounts. All these questions were post-balance date events. Okay. These auditors had, had six to seven months to ask all these questions. They chose to do it literally on the morning that the thing had to be signed off. Okay. I, I do remember this day distinctly because I needed to be in Newcastle to get ready for this AGM and I was getting all these questions. My documents were in my office. I was at home. I was sending these from home because I needed to get to Newcastle. I didn't have my signed documents with me. So their incompetence, I was infuriated by all these questions, and not because they were inconvenient to anyone, because they were being asked at such a late stage, which I would have had to go back to the city, get my files, and they had months to ask these questions.

THE COMMISSIONER: Ms Bakis - - -?---They're incompetent.

20 I let you make that speech but - - -?---It's not a speech. It's an answer.

Would you come back to the point of the question? Do you recall what the question actually was before you started that long - - -?---Why did, why didn't I send him all the documents.

It was put to you that the email your attention has been drawn to provided an incomplete response.---And I just gave you the reason for the incomplete response.

30 Well, you accept that it was an incomplete response?---Oh - - -

It was put to you that it was an incomplete response for the reasons - - -? ---I'm just reading, I'm just reading it. I'm - incomplete according to their - - -

Incomplete in respect of what matters?---Okay. According to them, yeah. I should have provided them with a 100-page brief about these transactions. I'm sure they'd want it a lot but - - -

40 MR CHEN: Let's come back, Ms Bakis, please - - -?---I'm sorry.

- - - respectfully, to the question - - -?---I'm sorry.

- - - that I have asked, the Commissioner has asked. This email from Hayley Keagan asks you for copies of all agreements.---Yes.

I've taken you to that, did it not?---Yes.

That's a simple unambiguous request made to a lawyer and an accountant, yourself, isn't that right?---Yes.

You don't have any difficulty understanding that request or what it seeks, do you?---No, Mr Chen, no.

10 And your response provided an incomplete answer, did it not, to that simple, unambiguous request?---It was incomplete because I was unable to meet her request at that time.

So you couldn't type in the email that, "There was a call option agreement signed. I'm unable to provide you with a copy of that at the present time." Is that the effect of your explanation, Ms Bakis?---I, this is hard because I remember having a chat to her after I sent this.

THE COMMISSIONER: See, look - - -?---So, and, and - - -

20 What's been put to you is this. Listen to this, that you've got a clear request from the auditors to produce all relevant agreements in relation to this transaction.---Yes.

Now, if you were responding in an appropriate way, you would have said, "I'm enclosing the agreements available to me. Time hasn't permitted me up to this stage to send them all to you but I'll do my best and get them to you," but you didn't make mention - - -?---No.

30 - - - in this response that there were any further agreements.---Which is why I - - -

So, the obvious course of action by you would be to tell them as much, that you can't deliver all the agreements but there are more than the agreements I'm referring to in this letter.---And I, and I did. I did.

You did - - -?---I had a chat, I had a call with her after this.

Yes. But about this letter? Why didn't you put it in the letter?---I was in a hurry. I was in a big hurry. I was rushing.

40 MR CHEN: So, you couldn't type out, "There is a call option agreement as well"? You couldn't type out those words?---No. I was in a hurry.

Or that you had in fact executed versions of these agreements that you attached, didn't have time to do that. Is that your explanation?---I told her over the, I told her over the phone that I had signed copies of these documents.

So you had enough time to speak to her but you didn't have enough time to type out - - -?---She called - - -

Please, Ms Bakis, do not interrupt me. You didn't have enough time to type out five or six extra words into this email, is that your serious evidence, is it?---That is my serious evidence because - - -

10 THE COMMISSIONER: Why didn't time - - -?---I think she, she was lucky to get this.

Why didn't time permit you to type just a few extra words into this email? ---Because I was in a huge hurry.

Oh, were you?---Huge hurry?

Why? Where were you going?---I had to get to Newcastle for the AGM.

20 MR CHEN: But this is at 9.59, Ms Bakis.---Yeah. Newcastle's, three, two/three hours away and there was still things to prepare for that AGM and we had to have a board meeting to sign off on these accounts.

THE COMMISSIONER: Ms Bakis, I think what's being put to you, in fairness, so that you can identify what's being put, is that a lawyer doesn't act like this. That if the lawyer knows there's more to be supplied to an auditor upon request, a lawyer would be expected to make it plain, "Look, I'm enclosing what I have available. I know there's more but I need more time." Put it in writing.---Can you, can you scroll down to the bottom of that email, please, Mr Chen, someone?

30 No, don't do that. Answer my question. You would agree that a lawyer would normally be expected to give a written response if he or she is aware that there are more agreements than presently available. Simply say, "There are more. I haven't got them at the moment. It will take a day or two to get them together."---Yes, that's correct, Commissioner.

Why didn't you do it?---I did do it.

40 Why didn't you put it in the letter?---I didn't have time. I can't repeat myself - - -

You see - - -?---I, I - - -

You say you didn't have time.---No, I did not have time.

But in a serious matter like this, with an auditor's request, it may be put that that is a nonsense answer, that to type another line into this email is not a life-and-death situation that you're dealing with, that you could easily – and should have, consistent with what would be normal practice expected of a

solicitor – have simply added another sentence or two to say what I said, that “There is more. I’ll get hold of them and send them as soon as I can.” Why wouldn’t you type it into the email so there’ll be no arguments that you’ve made a clean breast of it and indicated full cooperation with the auditor? And to say, “I didn’t have time,” with respect, sounds like a nonsense answer.

MS NOLAN: Commissioner, is that even a question or is that just a remark?

10

THE WITNESS: I just, I don’t even know - - -

MS NOLAN: Because I don’t understand it to be a question.

THE COMMISSIONER: I’m giving her an opportunity to respond.

MS NOLAN: Well, it’s, I don’t understand the question myself, so perhaps you may need to rephrase.

20 THE COMMISSIONER: Yes, well, that’s your deficiency, I’m afraid.

MS NOLAN: I beg your pardon, Commissioner? It’s not a question.

THE COMMISSIONER: Ms Bakis, would you care to respond to that?
---Okay.

I’m giving you an opportunity to explain yourself, if it’s not apparent to your barrister. I’m giving you an opportunity that if it’s been put that your evidence can’t be accepted because it’s in effect nonsense, how do you
30 respond to that?---Well, I, I take great offence to the fact that it’s nonsense. The fact that the auditors were asking this question on the morning of the AGM suggested to me that this wasn’t a critical issue. They had had plenty of opportunities to discuss these matters and I thought, well, this must be one of these last-minute things that they’ve got to disclose. I’ll send them this response. I did call her. I absolutely, a hundred per cent called her and had a chat to her about, “I’ve got signed agreements. They’re in my office. There is no way I can get them to you today.” So that, that is what happened. These people were putting a lot of pressure on me at the last
40 minute, and if we didn’t get the AGM done that day, the Land Council had a big problem. It was the absolute last day that the AGM could be held and I, and I felt that Hickey was creating excuses to, to avoid that.

MR CHEN: So, Ms Bakis, do you have a file note of this conversation that you apparently had with either Ms Keagan or Mr Hickey at all that - - -?---I don’t, I don’t know. I don’t know if I’ve got one. I, I - - -

THE COMMISSIONER: Well, it’s normal practice for a solicitor to keep file notes, isn’t it?---It is, yes.

In relation to important communications.---It is.

MR CHEN: And you said in your own answer, Ms Bakis, that you knew it was a question that was being asked because they needed to disclose it. It is an important matter, surely, on what you perceive to be the position, isn't that right?---I just, my answer was I perceived it to be not important because it was raised at such a late stage. And this is a good audit firm, so I figured if this was a critical issue they would have brought this up months ago. But they didn't, they didn't ask any, any of these questions, these post-balance date questions, until the morning of the AGM. And I thought, well, it must be just one of these stupid things that auditors ask, and they do.

And that tailored your response, didn't it, Ms Bakis? Isn't that right?
---Well, I was in a hurry. I can't, there's, I, I made it clear to the auditors that there wasn't much I could assist them with on this particular day.

You see, Ms Bakis, what you were doing by providing this answer was simply concealing this, isn't that right? These arrangements.---Why would I, why, why would we conceal it? It was in the board minutes. There was no, there was no secret. The thing was being presented to the community that day. There was no secret.

Well, Ms Bakis, because you knew that if you did reveal it that the auditors would have asked further questions about the nature of the transaction and some of the parties involved in it, surely.---Yeah, but that, that's not why I didn't give them information.

I'm suggesting to you, Ms Bakis, that's precisely one of the reasons why you didn't give it.---Well, I'm suggesting to you, Mr Chen, that's not the truth.

Now, Ms Bakis, it's also clear, is it not, that at no stage did you disclose to the auditors at any time, any of these Gows Heat agreements. Isn't that right?---Um, that's probably right, yeah.

You didn't disclose, did you, Ms Bakis, at any stage to the auditors the acquisition proposal that was entered into between the Land Council and Mr Zong's company, Sunshine, did you?---That's right.

And you didn't disclose at all, did you, Ms Bakis, the surrender and release agreement between the Sunshine companies, Gows Heat and the Land Council, did you?

MR PETROULIAS: There wasn't a – objection, there is no agreement between the Sunshine companies and the - - -

THE COMMISSIONER: Just don't interrupt.

MR PETROULIAS: Well, the question is unfair. He's assuming an agreement doesn't exist.

THE COMMISSIONER: Yes.

MS NOLAN: Well, I object then because that agreement doesn't exist and it's been unfairly put, Commissioner, and I'd ask that my friend withdraw the question and - - -

10

MR CHEN: Commissioner, I'll withdraw it.

MS NOLAN: - - - correct himself.

MR CHEN: Commissioner, I'll withdraw it. Well, if I've made an error, I've made an error and I'll withdraw it and I'll come back to it. You didn't disclose, Ms Bakis, did you, at all the Sunshine heads of agreement that were entered on 23 October, 2015, did you?---No, because they didn't care. All they wanted to know about was depreciation and, and, and what, what the board were doing with their personal expenses, et cetera.

20

And you didn't disclose - - -?---They've never asked me about post-balance date events, ever, until the - - -

Well, I'm speaking - - -?--- - - - until the day before the audit.

And - - -?---Until the day before the audit.

And you never provided that information, did you, Ms Bakis because you didn't - - -?---I had no time - - -

30

Please, please, Ms Bakis.---No.

THE COMMISSIONER: Ms Bakis, would you stop - - -

MR CHEN: Do me the courtesy - - -?---I just - - -

- - - and allow me to ask the question.---I'm just offended, sorry. Keep going, Mr Chen.

40

THE COMMISSIONER: Ms Bakis - - -?---I'm just offended by these questions.

I think you've been asked a number of times now to cooperate by not talking over the questioner.---Sorry.

Now, would you just get control of yourself and just do what you've been asked to do and wait until the question's finished?---Yes, Commissioner.

MR CHEN: And you didn't disclose, did you, Ms Bakis, the variation agreement that was entered on that same day, did you?---Which variation agreement?

The one that you drafted, Ms Bakis.---Which one? What are you talking about?

10 The Sunshine variation agreement that was executed on 23 October, 2015.
---No.

I'm sorry, did you audibly respond then?---I said no, and I don't recall you mentioning that date earlier, but I didn't disclose that. I wasn't asked to disclose any of these matters.

And you did not disclose, Ms Bakis, did you, at all, the deed of acknowledgement and guarantee that apparently had been drafted and signed by Mr Green on 21 December, 2015?---No. I wasn't asked to.

20 And I put to you as well, Ms Bakis – that before Mr Petroulias and Ms Nolan objected – that you did not disclose the surrender agreement and release that was entered between the Land Council, Gows Heat and Sunshine. I think there was some objection to it but I was accurate. It's MFI 11.---Okay. No, I didn't.

Now, Ms Bakis, you again deliberately failed to disclose those matters to the auditor. Isn't that right?---I wasn't asked.

30 You were asked to do it, Ms Bakis, and you knew it was important. Isn't that right?---When was I asked?

You were asked in the course of your interactions, be it by email or otherwise, with the auditors.---I wasn't - - -

MS NOLAN: Well, can my friend take her to a document?

THE WITNESS: I wasn't. I wasn't asked.

40 MS NOLAN: I mean this is - - -

THE WITNESS: Yeah, if you can show me where I was asked I'd be happy to - - -

MS NOLAN: If the request can be shown to - - -

THE COMMISSIONER: We've been through these agreements.---No, we haven't.

You drafted them, didn't you?---No. He's asking me when the auditor asked me to provide these details.

You were last asked about the surrender agreement. You drafted that, didn't you?

MS NOLAN: No, Commissioner, that's not - - -

10 THE WITNESS: No, that's not the question.

THE COMMISSIONER: No, I know, but - - -

MR CHEN: Commissioner, I can - - -

THE COMMISSIONER: Anyway, take her to them.

MR CHEN: I can deal with that. Ms Bakis, you were in the hearing room, weren't you, when Mr Hickey gave evidence, weren't you?---I think I was here for part of that, yeah.

20

Well, you were here for this part when your barrister cross-examined, weren't you?---I believe so.

Yes. And Mr Hickey's evidence, Ms Bakis, as you would recall, was to the effect that one of the things that's important is, to pick up your language, these post-balance disclosures. Isn't that right?---Yes.

30 And he specifically gave evidence that that was expected of a person in your position, namely an accountant and a lawyer, to disclose those matters because they were important matters that might otherwise qualify the audit, isn't that so?---Which sounds like something someone would say when they haven't asked me for them, right.

THE COMMISSIONER: Now, you might answer the question.---Yeah. This, this particular audit was different to other audits I've done.

Would you answer the question?---Okay. What was the question?

40 Put it again.

MR CHEN: You knew that - - -?--- Or the speech.

- - - that post - I'm sorry, have you finished, Ms Bakis?---Yes.

You knew that Mr Hickey in the request, at the very least, that he made of you in the representation letter - - -?---Which he backdated.

- - - expected you as an accountant and a lawyer to disclose matters that might affect the reliability of the audit that he was undertaking for the period ending 30 June, 2015, isn't that right?---Mr Hickey expected me to?

That's the question - - -?---Are you asking me what Mr Hickey expects of other people?

Ms Bakis, I asked you in the context of a letter.

10 THE COMMISSIONER: Listen to the question. It's going to be put a third time. Put it again and I'm going to see if this witness is going to be evasive or will answer the question. Put it again.

MR CHEN: Ms Bakis, you knew that what you described as post-balance matters were important for an auditor to receive when auditing accounts for a particular financial year, isn't that right?---I knew that they, they, they were required. I don't know how important they are.

20 Well, you're an accountant, aren't you?---Yes.

You've got some familiarity with the audit process, don't you?---Yes.

And if they were asked, then it's perhaps, at least in the auditor's mind important for them, isn't that fair?---Yes.

And these matters – namely, these agreements and moneys that were apparently paid pursuant to them – were all matters for disclosure to Mr Hickey, isn't that right, Ms Bakis?---Yes.

30 And you did not disclose any of them, did you?---I, I, because he never asked for these things, I thought that these, these audit, this audit that he was doing was something I don't think I'd done very often before.

Really, Ms - - -?---And - - -

Sorry, keep going, Ms Bakis.---And I felt that because of the, the fact that it hadn't been asked up until that point and it hadn't been raised, that perhaps it wasn't important in this sector.

40 THE COMMISSIONER: Is that a truthful answer?---That's a hundred per cent honest answer. I'm not lying. This is what, I thought it was the weirdest audit.

With your experience with auditing?---Yes, yes. I thought this was a very odd audit because they were very obsessed with, with what the board were doing and what, it was a very strange audit. That, I, I can show you a lot of correspondence I had with them and that, nothing ever came, was raised about the post-balance date and I thought maybe in this sort of sector, in

what he does, these issues mustn't be important. They have not asked me – you don't, you don't volunteer information.

Mr Bakis, stop, stop making speeches.---You don't volunteer information.

10 Just so that you are aware of what's being put or the effect of what's being put, I don't think you would have missed it but I think, in fairness to you, you should be aware of the fact that's what being put is that you had full knowledge of the agreements that have been identified in recent questions, you having drafted them, you would have appreciated the significance of them to an audit, and that you deliberately held them back and did not disclose them to the auditor for dishonest reasons. Now, I can't make it any clearer. That's the charge in effect being made against you. How do you respond to that if you want to respond at all?---So, first of all, none of those agreements had any implications for the Land Council except for the Advantage one. And they were void agreements because they hadn't been approved by the community, they were going to the community. So, from a legal perspective, they were a nullity, they were a nothing. So, I, that might have been my thought process when I received that email at 10.30 on the night before the audit was, oh, well I better tell them about Advantage because that, that, that might be important to what they want to know. The rest of them weren't important because they were legally void.

MR CHEN: And by these void agreements you're including these Gows agreements, are you?---Yes.

30 Now, Ms Bakis, Mr Hickey also was asking for information that was relevant to his assessment of the accounts that he was auditing up to 30 June, 2015, wasn't he?---Yes, he was obsessed with that, yes.

And by that do you mean that he's particular and thorough?---That was all he cared about, was what was going on up to 30 June '15.

Well, Ms Bakis, as I understood part of what you say in your last answer and part of what your barrister was putting to Mr Hickey, in relation to Sunshine, for example, you could just dismiss the materiality of those agreements because they're a nothing. Is that the position?---That's right.

40 And so you made the conscious decision, did you, that you would not disclose the existence of those agreements because you thought they were, in your words, "a nothing or void". Is that the case?---They weren't relevant to the audit.

And I take it, Ms Bakis, that the fact that a letter of demand had been received by you from the lawyers representing Sunshine was again something that you thought you could just dismiss, could you?---What letter of demand?

Well, Ms Bakis, you know, don't you, that Sunshine had retained lawyers Mutton & Holm by July 2016, isn't that right?---Not, I, I do know that they did, they did get those lawyers at some point, yes.

And they sent you a letter of demand, didn't they, on 15 July, 2016?---Did they?

Well, do you recall receiving a letter of demand at all from them?---I, it's coming back to me now.

10

Well, have a think about it. What's come back to you, Ms Bakis?---I can't remember what this letter said.

Well, I'm just asking you at the moment whether you recall. You were saying things were coming back to you. Do you recall receiving a letter of demand from them?---My recollection, I don't recall it but that doesn't mean it didn't happen.

20

Just so it's clear, do you say you don't recall at all receiving a letter of demand?---No, that's not what - - -

That's why I'm asking you. What are you saying?---I probably did get a letter of demand.

All right. Well, let's have a look at it, Ms Bakis. It's volume 16, page 146. ---Thank you.

30

Now, Ms Bakis, you received that letter, could I suggest to you, by email on that day.---Yes.

And presumably you read it.---Yes.

And if you look under the heading Demand you'll see that Mr Zong and his company are asking for the money that they had paid to your client, identified at least as the Land Council, back. Do you see that?---Yes.

And they then set out some background to some of the circumstances which they say give rise to their demand. Do you see that?---Yes.

40

Don't need to be troubled about whether they're right or wrong at the moment, but if you look at page 148, you can see that again the demand is repeated under the heading Demand. They want to know whether, for example, the Land Council will honour the agreements. Do you see that? ---Yes.

And they ask for a response within seven days. Do you see that?---I do.

And they also ask that in default of the Land Council honouring an agreement they'd want a response to whether or not the moneys would be returned. Do you see all that in the last part of that letter?---Yes.

And indeed it goes on to threaten legal proceedings. You can see that?
---Yes.

10 It also uses fairly robust language in the second-last paragraph about the way they view the conduct that has been engaged in by people by or on behalf of the Land Council. Do you see that?---I do.

Now, Ms Bakis, you would know as an experienced lawyer that that is a letter of demand that cannot be dismissed on the face of it. Isn't that right?
---But it's all nonsense.

Well - - -?---I mean it was illegally incorrect. There was nothing about this letter that had any grounding in anything, it was - I actually don't remember what I responded with but - - -

20 Well, Ms Bakis, you knew at this time as well that the companies behind these transactions, Sunshine Properties and Sunshine Warners Bay, had in fact lodged caveats over these lots that were the subject of the Sunshine heads of agreement. Isn't that right?---Had they done that by this stage? I don't remember.

Well, I'm going to suggest you did know and you had copies of these caveats on your file.---Perhaps I did, yes.

30 So at this time, can I suggest to you these caveats were lodged on or about 6 July, 2016?---Yes.

You accept that, don't you?---I, I accept that you were giving me the right date, yes.

Right. Well, let's be clear. You accept that you knew that caveats were lodged, don't you?---Yes.

40 And what you're uncertain about at the present time is the date of when they were lodged. Is that so?---Oh, look, it was probably around this time, yeah.

All right. So what you have, Ms Bakis, armed with at this point in time, namely 15 July, 2016, is a lawyer representing those parties, threatening legal action against the Land Council.---Yes.

You also know that in aid of whatever steps they may seek to take, they've lodge caveats over the various lots that were the subject of the Sunshine heads of agreement.---Yes.

And they are threatening in clear and unambiguous terms that they will commence proceedings. Do you see that?---Yes.

Because they feel that the conduct was not only serious, but outrageous. Do you see that?---Yes.

And as it turned out, that's in fact what they did, they did commence proceedings, didn't they?---Yes, but they settled them.

10 Well, but as at this - - -?---Sorry, they withdrew them.

All right. But as at this point in time, 15 July, 2016, this was clearly and obviously a matter that you should have disclosed to the auditor, Ms Bakis. Isn't that right?---Perhaps, yeah.

And you did not, did you?---No.

20 And you did not, Ms Bakis, because you did not want to reveal to the auditor the fact that there was not only these Advantage agreements floating around but a whole suite of other ones, including the Gows Heat ones that you had not disclosed. Isn't that right?---I didn't disclose them because I wasn't asked for them.

I'm putting to you, Ms Bakis, and so you're under no disadvantage, that you deliberately refrained from disclosing the existence of this demand because it would reveal not only the Sunshine heads of agreement and the suite of other agreements that go with it, but also the Gows Heat agreement upon which it rested. What do you say to that?---That's completely untrue.

30 And what is your explanation then for the non-disclosure, Ms Bakis?
---Because I wasn't asked for them. They weren't interested in post-balance date events. Look, in hindsight, yes, that letter of demand should have been disclosed to him. I, I don't even know if I responded to anyone about that. It could just be that I saw it and I thought, oh, that's, that's rubbish, and moved on, because I do remember this time being particularly busy. Now, that's not an excuse I know, but there was no deliberately withholding information. It was, it was, it was a chaotic time.

40 Well, there's a whole series of transactions, Ms Bakis - - -?---Yes.

- - - that are simply not disclosed to this auditor, which you accept, as I understood your last bit of evidence, should have been disclosed.

MS NOLAN: No, that's not - - -

THE WITNESS: No, I never said that. I never said that. I was never asked for them.

THE COMMISSIONER: Do you accept that they should have been disclosed?---Yes, I accept that the auditor should have asked me a lot earlier for those, for details about post-balance date transactions.

That was not my question. Do you accept that you had an obligation to disclose these - - -?---No, I did not. No, I do not accept that.

And again the reason why you didn't have an obligation was?---It's not up to me to volunteer information to auditors.

10

I see.---It is their, their role is to ask for information.

Ask for information even if they're not aware of the existence of the documents?---It is their job to ask the pertinent questions when, to ask for what they need. I can't guess what these people want.

MR CHEN: Well, let's be clear about it, Ms Bakis. The existence of that letter of demand is relevant, is it not?---Yes, I accept that.

20

And it's also material because it can affect the financial position of the Land Council. Do you accept that?---Yes.

And if you were asked to provide any information which was relevant, then you would accept of course, would you not, Ms Bakis, that that was something that you should have disclosed?---If I accept that what? If I accept that - - -

30

Well, Ms Bakis, I understood you to accept this basic proposition, that the letter of demand was relevant to the inquiries that Mr Hickey may have been interested in.---The, the letter of demand is something that they probably should have known when they were doing their post-balance date analysis, yes.

And so you accept, Ms Bakis, let's just be straightforward about this, that it was relevant. You've accepted that a moment ago.---I accept it's relevant.

Right.---Now, there's a question there about the relevance and whether, how then it's notified to an auditor.

40

Well, one of the ways they can do it is by asking you a question.---Well, they sure can, and they didn't.

Well, in fact – sorry, you go, Ms Bakis.---They didn't ask me.

You have your say.---They didn't ask.

Didn't ask you. Well, in fact what they do say in the letter to you, Ms Bakis, I'll quote it back to you - - -?---Which letter?

“Please” – just a moment. “Please disclose to us any other information you consider relevant which is not contained above in relation to your dealings with the Land Council during the period up to 1 July, 2015, up to the date of this letter.” Now, that’s a question they asked of you squarely in the representation letter that I showed to you earlier.---Which I received on the day before the audit, yes.

10 I see. And so your response is, it’s a bit late, I don’t need to fully and honestly respond to it. Is that it?

MS NOLAN: I have to object.

THE WITNESS: No.

20 MS NOLAN: Because this, this, what my friend read out, and I don’t have the benefit of the document, but my note says, “Please disclose information you consider relevant up to 1 July, 2015.” As I understand it, from my recollection of the chronology, the Sunshine agreements and a number of other of the suite, as my friend has, the appellation he’s given to it, came after that date. So there’s a disparity in this question that my learned friend perhaps needs to correct.

MR CHEN: I didn’t, because it’s the date of this letter which is exactly what I’ve put to this witness.

MS NOLAN: Well, I haven’t got the benefit of it. It’s not on the screen, so I’ve qualified that.

30 THE COMMISSIONER: Well, that’s your disadvantage, but - - -

MR CHEN: Well, I’ll put it up on the screen.

THE COMMISSIONER: We’ll revisit it once you’ve tracked it back, Ms Nolan, if there’s anything else to be revisited about this we’ll come back to it. I’ll allow the question. Would you put it again?

40 MR CHEN: Would you answer it, please, Ms Bakis.---Okay. I, I’ve been dealing with these auditors for four months. I get a letter on the day before the audit needs to be signed off and they’ve asked me about post-balance date events, and I don’t remember what your question was, sorry. Sorry, I lost my train. I’m not being evasive, I really truly don’t remember the question.

THE COMMISSIONER: Well, I’m concerned as to whether you are being evasive or not.---I’m tired. Just - - -

So we’ll have the question put again and see how we go this time.

MR CHEN: Well, Ms Bakis, I'll quote it back again to you. This is what they asked of you in the representation letter. "Please disclose to us any other information you consider relevant, which is not contained above, in relation to your dealings with the Land Council during the period 1 July, 2015 up to the date of this letter." Now, the letter is dated 18 June and you responded on 19 July, 2016.---I, I didn't - - -

10 So we are squarely in the period of all these transactions, Ms Bakis.---I did not receive that letter on the 18th - - -

THE COMMISSIONER: Don't interrupt, please.

MR CHEN: I'm sorry?---Sorry.

Please, what's your response?---You haven't finished. Finish your question.

20 THE COMMISSIONER: What did you just say?---I didn't receive that letter on 18 June. That letter was sent to me the day before the audit. I, I - - -

MR CHEN: On 19 - - -?---I, I completely deny the date on that letter and I did at the time. I dispute it.

30 Ms Bakis. Let's accept that, that you got it on 19 July. I've not put a contrary proposition to you, in fact I've established through your evidence that you did receive it on 19 July. Let's accept that date and move forward to the real question that I've been asking for the last number of minutes of you, Ms Bakis. You were asked the question, "And you did not disclose it?" That's the simple position, isn't it?---Yes. I was put in a position where I could not adequately disclose, yes.

So this is another thing you couldn't adequately disclose, Ms Bakis?---I couldn't. I've, I've been telling you this for what, the last hour now, that I, I, there was, I was put in a position where I could not adequately advise these people.

40 THE COMMISSIONER: Why couldn't you?---Because they did not give me enough time.

But you could have said, "You haven't given me enough time. If you give me another day or two, I'll be able to - - -?---We didn't have a day or two. We'd been to court to order, the Supreme Court ordered that this AGM had to go ahead on this date.

All you had to say in the letter is, "There's more, there's a letter of demand." That's all you had to say.---Perhaps, yeah.

Against the Council.---Perhaps, yeah. Perhaps I, I was, I was just, I, I, yeah.

You haven't finished answering?---I just feel I'm being attacked by the, the conduct of that audit and there, there was nothing dishonest about any of this.

Well, there's no doubt you were being challenged about your conduct in relation to the audit, that's very plain.---Yeah, but it's not my conduct.

10 It is a real issue in these proceedings, so let's be under no misunderstanding about it and it's being put, in effect, that you were not disclosing relevant information, known to you to be relevant to the auditor.---Well, I, I, I dispute that because they put me in a position where it was impossible. I mean, I knew that Clayton Hickey would be at the meeting that, that, that night to listen to the presentation that Advantage would give. There was no trying to hide anything here. Any errors that have been made here are obviously incompetence on my part or, or just sheer busyness and I just haven't had time to put things to them properly. That's all it is.

20 Well, again, it's been put to you squarely that you were acting dishonestly, let there be no mistake about what's being put to you.---And I'm putting squarely to you that it's not dishonesty when you're, when you look at this subjectively, it's, there is no way you can construe it that way.

All right. Let's have the next question.

MR CHEN: Now, Ms Bakis, coming back to this Advantage arrangement that was in place in June of 2016, the auditor's asked you as well, not only for information about the party's documents, which I've asked you about,
30 but they also asked you for a bit more detail about the entities involved, particularly Awabakal LALC trustees, isn't that right?---Yes.

And you provided a response, did you not, to that broad request about Awabakal LALC trustees, isn't that so?---Well, I suppose I did.

Yes. Well, let's have a look at them, Ms Bakis. So, if you turn please to page 35. Now, Ms Bakis, I've just got to take you to these slightly out of order, just so I can enable you to familiarise yourself with the questions asked of you, but you can see down the bottom of page 35, there's an email
40 from Hayley Keagan to you, dated 19 July of 2016 and that goes over to page 36. Do you see that?---Yes.

And you can see that she's asking, in effect, four questions because she's a little bit puzzled about why that entity is there. Do you see that?---I do.

And have you had an opportunity to read that, Ms Bakis?---Yes.

And if you look up, then, back on page 35, you can see that you provided a response. Just a moment, Ms Bakis. We'll just sort this out. So page 35. Now, I took you to this email earlier, Ms Bakis, of course, did I not?---Yes.

And so you then provided a response about why that entity had been incorporated in New Zealand rather than in Australia. Do you see that?
---Yes.

10 And you also described how it would benefit the Land Council and what it would do, et cetera, and how the transactions would take place.---Yes.

Now, if you go back, please, to page 36, and you can see down the bottom of the email of 19 July, you can see there's an email response from you as well. Do you see that?---Yes.

20 And what you can see, Ms Bakis, at the bottom of page 36 is that you attached an extract of the entities involved no longer existing. Do you see that? And I'll show you the extract. I'm just asking whether you see that you're attaching that extract.---Yes.

And if you turn, please, to page 38, you can see that that's the extract that you attached and provided to her, isn't that right?---Yes.

And what you told Ms Keagan or the recipients of this email in relation to this entity was in fact that the name that was to be registered is the one third from the bottom, that is Awabakal LALC Trustees Limited, reserved name. Do you see that?---Yes.

30 And you also said that you were in the process of incorporating that entity, isn't that so?---Okay. Is that what I said? Yes.

Well, would you like to look at the email again? It says, "We are in the process of incorporating Awabakal LALC Trustees, et cetera, which will be owned by the Land Council but has not been incorporated as yet." Do you see that?---Yes. Sorry, what's your question?

40 That the extract or the identity on the extract that was being incorporated was the one that I drew your attention to, the third from the bottom.---So you're saying that it was already in existence?

No. I'm asking you that the one that you are representing in your email is to be incorporated is the one third from the bottom.---Yes.

I'll show you the extract again, Ms Bakis, so there's no confusion. Do you see that?---Yes.

But you never disclosed at all in your communications with the auditor that in fact the entity that was transacting and had been involved already was the

one immediately above it. That is to say, Awabakal LALC Trustees. Do you see that?---Yes.

That had been involved, that entity, in, for example, the proposed Solstice transaction, isn't that right?

MR PETROULIAS: The entity doesn't exist. That's why it's removed from the registry. So it's an unfair question.

10 THE WITNESS: It's just so confused.

MR PETROULIAS: It's entirely confusing.

THE WITNESS: I just don't remember this stuff. I'm, I'm just, I'm just trying to just remember.

MR PETROULIAS: The company that transacted no longer exists. The transactions are invalid in any event. So what is he asking here?

20 MR CHEN: Well, what I would ask Mr Petroulias to do, if he has an objection as to form that he should make that rather than give evidence. But, Commissioner, I'm putting a proposition, which I'll just put it squarely to this witness so there's no doubt in anybody's mind. This entity - - -

THE COMMISSIONER: I think you should do that, yes.

MR CHEN: - - - in fact was already in existence – that is to say, Awabakal LALC Trustees – with the New Zealand Business Number of 9-4-2-9-0-4-2-1-4-2-6-2-1, and had been involved in these arrangements that you had been
30 involved with at least during the early parts of 2016.---But it's been deregistered.

Well, Ms Bakis - - -?---It's a new entity with the same name.

I see. So let's be clear about it. What you were doing is deregistering the entity that in fact had been involved in these transactions and then, within the space of a few days, re-registering it in the same form with just a different business number. Is that it?---Yeah, there was, there was a good reason for doing that, and I can't remember what it was.

40

Well, tell us. What is the good reason?---I can't remember.

Well, what is the purpose of setting up this trustee company in the Land Council transacting any form of business?---My recollection was it was a nominee company.

What is the purpose of it, Ms Bakis, for this Land Council conducting any of these transactions to have a trustee company as an intermediary?---It was

to be a nominee company for a steering committee. Perhaps that was overcomplicating a simple situation but, yeah.

Well, why did you recommend, as the lawyer for the Land Council, that that take place?---Set up a company?

Well, no. A bit more than that, Ms Bakis. Why? What was the advice you gave the board of the Land Council to get on board and pursue these transactions throughout 2016 with Awabakal LALC trustees involved?
10 ---Because I felt that the, that structure needed a corporate entity and it's just cheaper to do these in New Zealand and, and that was my advice.

So how much does it cost to set up the company in New Zealand?---Oh, it's less than \$100 from memory.

And how much does it cost to do it in New South Wales?---\$800.

So how do you arrange for somebody to go and set up a company in New Zealand?---You just go online.
20

And so you researched this, did you, and thought, "I can save the Land Council \$700. I'll go and incorporate a company in New Zealand"?---It's, it's just easier.

I'm sorry? It's just what?---It's just easier. It's just easier to do.

I thought you said it's cheaper.---And cheaper, yeah. And it's more transparent. They've got a registry that's more transparent than ours.

30 I see. So you've got all this in a detailed advice to the Land Council, do you, Ms Bakis?---Oh, I'm sure I've put this in, in, in an advice somewhere or - - -

So what's the law about the establishment of this company, Ms Bakis? Is there any requirements or statutory or regulatory provisions that require compliance for the Land Council?---For the ongoing, for setting the company up or - - -

Well, you set it up. You presumably researched it all as part of your advice that you gave to the Land Council, that this is the way forward. What's the statutory position?---In terms of - - -
40

Well, setting up this company.---Well, you, you have directors, shareholders. You have minutes to set up the company.

Well, is there any embargo on setting up a company for a land council?---I don't know.

Really? You're advising on it. What are the regulatory requirements, Ms Bakis, that enabled this all to take place? Are there any? Please don't keep looking at the back of the room, Ms Bakis.---No, I'm just looking for human faces, sorry. Sorry, what was your question?

What are the regulatory requirements to establish such a company for a land council, if any?---I've completely forgotten.

10 Well, are there any? I don't know, Ms Bakis. You tell us. You're setting up this transaction.---I, I mean, if I've done it, it must have been okay. I must have researched it at the time.

Right. And what were you researching?---The New South Wales AL, Aboriginal Land Rights Act.

And what were you looking for?---I would have been looking for anything that prohibits establishing an entity like this.

20 You never looked at this at all, did you, Ms Bakis?---I don't remember. I honestly don't.

You never did, Ms Bakis, did you?---I don't remember. I don't. I honestly don't.

You never did, Ms Bakis, and you've got no idea whatsoever whether there are or are not any regulatory prohibitions on this occurring. Isn't that right? ---Right now I don't.

30 No, you never have, Ms Bakis.---Well, that's not true, I would have done ---

Well, tell me - - ?---I would have done the research at the time.

I'm sure, Ms Bakis, that you've looked at this carefully, but I'm asking you specifically, what did you do, what does it say?

40 MS NOLAN: Well, I object. My friend's, okay, my friend's tone is starting to become incredibly inflammatory and it's not his role. Secondly, this witness has said she doesn't remember. That's the end of the inquiry in my respectful submission.

THE COMMISSIONER: I'll allow the question.

MR CHEN: Well, also, Commissioner, I am, with great respect, not being inflammatory. I am asking a witness who, with great respect, is not responding directly to my question, so I do not accept for one moment the assertion by my learned friend.

So, Ms Bakis, would you assist the Commission, please, in telling us what are the regulatory requirements?---Didn't I just say I'd forgotten what they were?

So even casting your mind back now, thinking about it now, I'm not asking you to tie it to any point in time, are there any regulatory requirements that prohibit it or not?---I don't think there are.

10 Right. And are there any policies issued by the New South Wales Aboriginal Land Council that cover this area, Ms Bakis?---I'm not sure. There may well be.

THE COMMISSIONER: Is your position that you don't even remember now whether you did any research?---I don't remember. I honestly don't. I would have, I would have done the research and I would have known at the time.

You keep saying you "would have" done things, but - - -?---Yeah, well - - -
20 - - - you have many times now said, "I don't remember." Your memory doesn't seem to be very good on a number of matters. Is this one of them, that you just can't remember whether you did any research in setting up this New Zealand company?---I don't remember.

MR CHEN: Well, coming back to the company anyway, I mean what's the need for this to be set up in any event, Ms Bakis? Aside from the fact that you saved 600 or \$700 and the New Zealand business companies organisation is more transparent apparently, on your say-so, than the Australian one, what are the benefits to this Land Council in establishing
30 and structuring the transaction in this way?---I felt that this project needed a steering committee and I felt that the steering committee needed a nominee company to protect it.

THE COMMISSIONER: But why go to New Zealand? It just doesn't seem to make sense. You're dealing with a potentially very significant land transaction involving a New South Wales Aboriginal Land Council and here you're suggesting you're going off to New Zealand to incorporate this trustee company. It just doesn't seem to make sense. Why would anybody do that?---I'm trying to visualise my file notes. I don't know. I don't know.
40

See, I think what's being suggested is there was an ulterior motive in setting it up in New Zealand.---Well, and what would that be? I mean I'm not sure, I'm not sure what, what that would have achieved.

Your reject that suggestion, that there was an ulterior motive, that is - - -?
---There was, there was no ulterior motive for going to New Zealand. I use New Zealand a lot.

MR CHEN: Well, you do know of course, Ms Bakis, that the original Awabakal LALC company was incorporated in New Zealand on 20 January, 2016, don't you?---Yes.

And of course at that time when it was incorporated, Mr Petroulias was the sole director and shareholder of that company, wasn't he?---Oh, was he?

10 What, you don't know that?---That would explain why I removed it. That would have, that would have been an error, a massive error, if that's what I did.

THE COMMISSIONER: What would have been a massive error?---Having Mr Petroulias as a shareholder, a director of that entity. That would be why I removed it, I deregistered it.

MR CHEN: And what's the error?---Well, having him as the director/shareholder but I, I just can't remember.

20 Well, you don't need to remember the precise day or anything, you just need to say what's the error on Mr Petroulias being the sole director and shareholder of that entity.---If that entity was doing anything with the Land Council, then he shouldn't have been, he, he shouldn't have had a role there.

Why?---Well, it should have been the Land Council.

THE COMMISSIONER: Should have been - - -?---Yeah.

30 Sorry, I didn't hear you. What did you say?---Should, should have been the Land Council.

MR CHEN: But what's the problem, though, with him being the director and the shareholder in this company that's in these transactions?---Which transactions?

Well, this trustee company was used by you for other transactions, Ms Bakis. Surely you know that?---Solstice? What's your question? What - - -

40 Well, my question is, you've said it's an error. What is the precise problem that you say arises because Mr Petroulias is the sole director and shareholder of this company involved in these transactions?---Well, he just, just shouldn't be. It's the wrong person, it's the wrong entity.

Right. And you're saying it's an administrative error?---Yes, yes.

Or are you saying that it's something else?---It's an administrative error.

THE COMMISSIONER: It doesn't involve an error of principle of any kind or does it?---It probably is an error of principle.

And to be clear about it, that principle is?---Well, conflict for one.

Well, it would be a very significant conflict of interest, wouldn't it?---It would be. Yep, yes.

MR CHEN: I'll need to come back to that, Ms Bakis, but I want to press on with – so, what you didn't disclose to the auditors, Ms Bakis, was that that was in fact the company that had had some involvement in these
10 transactions at least until, or as proposed, until it was removed from the register on 15 July, 2016, isn't that right?---But it was a different entity.

Well, no, my question was linked to a point in time, Ms Bakis. I'll put it again. The Awabakal LALC company that had been involved in transactions in the past with the Land Council was on the register until 15 July, 2016, wasn't it?---Yes.

And you didn't disclose the fact that either Mr Petroulias was the sole shareholder or that Mr Green was the sole director of that company, isn't
20 that right?---Because it didn't relate to the question that I was answering in relation to the Advantage deal. That wasn't the entity.

Well - - -?---And no, sorry, I think we did disclose it, didn't we? I'm sure I disclosed it. I'm sure it's in their disclosure, that Richard was the – I'm sure, it's in the report.

So, what you did advise, Ms Bakis, is that Awabakal LALC trustee would be incorporated, you did say that.---Yes.

30 And will be owned by the Land Council. That's right, isn't it?---Yes.

And it was the ultimate holding company, was it not, of that company?
---Yes.

And with its registered office at your business address, correct?---Yeah, yes.

And that the shareholder and sole director of that was Mr Green.---Yes. That's correct.

40 Now, Ms Bakis – is that convenient time?

THE COMMISSIONER: Yes, that is. Yes, we'll take the morning tea adjournment.

SHORT ADJOURNMENT

[11.31am]

THE COMMISSIONER: Yes.

MR CHEN: Thank you, Commissioner. Ms Bakis, the Land Council commenced proceedings in the Land and Environment Court in the middle of 2017, seeking - - -?---'16.

'16, I apologise. I'll start again, I think it's easier if I start again, Commissioner. Ms Bakis, the Land Council commenced proceedings in the Land and Environment Court in June of 2016?---Yes.

10

And in those proceedings the respective parties were on the one hand the Land Council and on the other it involved at least the Minister and the Registrar, did it not?---Yes.

And when those proceedings were commenced or filed in the Land and Environment Court, the relief that was sought included interim injunctions, isn't that right?---Yes.

20

It also involved longer term a challenge – don't worry about the legal footing – but it was really a challenge to any proposed appointment by the Minister of an administrator to this Land Council, is that right?---Yes.

And orders were also sought in connection with the Registrar as well and some of the steps that he had taken to undertake investigations into this Land Council, is that right?---Yes, yes.

30

And in these proceedings you were – I withdraw that. The Land Council was seeking to have decisions made by the Registrar essentially set aside on legal grounds. Is that a fair summation of what the broad intent of those proceedings were, as against the Registrar?---Yes.

Now, as I understood some of the evidence that may have been given by other witnesses before the Commission, Ms Bakis, is that a firm, sorry, is that you were not able to devote all of your time to managing that aspect of the litigation, is that right?---That's correct.

40

And so, another firm was appointed, a Sydney based firm, Jackson & Co, to, as it were, run that aspect obviously with – well, at least run that aspect of the case. Is that a fair summation of what their role was?---Yes.

And you obviously had some dealings with them in terms of assisting in the course of the litigation, did you?---I did.

But they also had a substantial role in doing all the necessary steps to bring the proceedings before the court and to prosecute them in due course, is that right?---That's right.

Now, the firm Jackson & Co, I think your barrister might have suggested to Mr Green that maybe he knew of them and suggested their appointment. What's the position, Ms Bakis? How did they come to be appointed?---No. That, that wouldn't have been what she suggested. They were appointed by me. I, I have known Peter Jackson for a long time but I think the, the issue that was raise that he, Jackson & Associates then did some personal work for Richard later.

I understand.---Right.

10

So, you had, prior to this time, did you, some professional dealings with the principal of that firm, is that the position?---Yeah. Over the years. There might have been some time before that.

And is that the firm or that's the solicitor who came to mind when you thought you needed some assistance to bring this case for the Land Council. Is that right?---Yeah, I wanted, I wanted someone who was, had a lot of experience and wasn't going to charge a ridiculous amount of money for this and was, you know, sympathetic to, you know, what we were trying to do.

20

Now, the summons was actually filed in the Land and Environment Court on 27 June, 2016, wasn't it?---Yes.

I'll show you it if you like. I'll just show you this document on the screen, Ms Bakis, just the summons if I can. So you can see that's the summons that was filed?---Yes.

30

And if you have a look at, I'll just show you the full summons, so if you look at page 2 you can see that I took you to some of the orders that were sought. Do you see that?---Yeah. You are aware there were two lots of summonses, but I think this was the first one.

You mean there was an amended summons filed?---No.

Do you mean something else?---Sorry. No, I've forgotten.

Well - - ?---I don't remember. I can't remember if this was the substantive one we ran later.

40

Well, I'll put it in a different way, just so that at least I believe we're talking about the same document. This was the initiating summons filed to bring the proceedings to stop the appointment of the administrator. That's right? ---Yes, that's right. Okay. Yeah.

Yes. And I think in due course the court may have ordered that points of claim be filed?---Yes.

Is that what you're thinking of when you mentioned that there may have been something else?---Yeah, yeah. No. We had taken the Registrar to court at some point to, to force the AGM to go on but I think that, that was something else altogether. It's okay. So I'm happy that this is what it is, yeah.

All right. Well, anyway, and you can see on page 3 that Mr Jackson has identified or signed that as a city agent for the Land Council, that's the solicitor?---Yes.

10

And you also swore an affidavit, did you not, in support of at least the interim orders that were sought?---Yes.

And I'll just show you your affidavit, if you would, on the screen. So this is page 6. And do you recognise that as the -- I'll take you to it all, but that's the cover page of your affidavit?---Yes.

20

And just pause there for a moment. You recall that you had to swear this affidavit in order to file the summons at least to pursue the interlocutory relief?---Yes.

And this was the evidence that was filed on behalf of the Land Council for that purpose?---Yes.

We'll just scroll through if you can. You can see, Ms Bakis, that your signature there appears?---Yes.

30

And if you keep going through, a bit further down you can see that there's the annexures as well. You remember there was a series of annexures to this, Ms Bakis?---I don't, but I see them now, yeah.

All right. Anyway, I might need to take you to some of the detail, but you recall that it was an affidavit, it attached a number of other documents as well?---Yes.

Okay. Now, Ms Bakis, you can see from the first page of your affidavit or the cover sheet -- I withdraw that -- that it was filed I think in court on 1 July, 2016?---Yes.

40

And that appears I take it to be the first return date of the summons. Is that right?---I can't remember.

All right. In any event, it was read in court to secure some of the orders or interim preservation orders that were ultimately obtained. Isn't that right?---Yes.

And that may have been in the form of an undertaking given - - -?---Yes.

- - - on behalf of the Land Council accepted by the Minister and approved by the court?---Yes, that's right.

Now, Ms Bakis, you can see, or you may know that Mr Wright – I'll withdraw that – that Mr Jackson's address was in, I think it was York Street?---Yes.

Did you ever go to his office?---Yes.

10 And his office has always been the same address, Level 11, 65 York Street?
---He's moved, but yeah.

All right. Well, at the time this litigation was on foot, that was his address, was it?---Yes.

Right. Now, Ms Bakis, you can see that this affidavit has been sworn by you. Do you see that?---I do.

20 And you can see that there's the name of the witness there. Do you see that?---I do.

And it's missing. There's no name there. Do you see that?---Yeah.

And you can see that an address is given, which is Mr Jackson's address?
---Yes.

You can see the capacity at which the person has signed it is a solicitor and it's been signed. Do you see that?---I do.

30 And whose signature is that, Ms Bakis?---I don't know.

It's not Mr Jackson's, is it?---I don't know.

Right. Well, if you look above just at the top of – I withdraw that. If you look at the bottom of page 3, which is still on the screen, you can see that the same person initialled, or that may be their full signature, I don't know, that page as well, didn't they?---Yes.

40 And if you go back to page 8 of the folder, you can see that at the bottom of that page, you can see that it's been initialled on all the other pages as well?
---Yes.

Well, do you remember swearing this affidavit, Ms Bakis?---Vaguely. I remember going to Jackson's office and Jackson wasn't there. His law clerk was there and there was a guy next door and I think he witnessed this.

Right.---And I have no idea what his name was.

You have no idea of what?---What, who, who, what this lawyer's name was. He was a solicitor.

So it's not Mr Jackson?---I, if, if it's the same thing that I'm recollecting it wasn't Mr Jackson, he wasn't there that day.

And it's not anybody that worked in Mr Jackson's office?---Well, I don't know.

10 Well, you swore it. I'm asking you.---I just explained the whole thing and you just ignored it. I said I remember going to Jackson's office, there was a guy, I remember swearing an affidavit before a solicitor, we had a good chat about various technology issues, I do remember that discussion, and he was the only person available to, to swear this, to, to witness this affidavit being done.

So was he a solicitor employed, as you understand it, within Mr Jackson's office or was he - - -?---No. No, he was, I think he was a sole practitioner.

20 What, and had an office next door?---Yes, or, or round the corner. It was just down the hallway round the corner.

And you don't know his name at all?---No.

And it's not obviously, as you can see, in the affidavit, is it?---No, it's not.

It doesn't identify the person's name at all.---No, I've never, never noticed that before, yeah. I can probably locate him but - - -

30 All right.---There would be no reason for me not, not to have done that properly.

All right. Anyway, you say a solicitor properly attested, do you, this swearing of this affidavit?---Well, yeah, someone did.

Well, we know that because it's been signed. What I'm asking you - - -?
---I, I - - -

40 - - - is your - please, just allow me to ask the question. Is it your evidence that this was an affidavit properly sworn by you before a solicitor?---I have to be careful with my words. I just told you that I think it was a solicitor, it may have been a solicitor, I might have that scenario completely mixed up with another situation in which case that might have been a JP. I don't know.

Well, you didn't - - -?---I actually do not remember. I do not remember that far back. I, I did an affidavit a few weeks back. I have no idea who swore that, who I swore that in front of. I just don't.

This is pretty substantial litigation, Ms Bakis, that the Land Council had embarked on. Isn't that right?---Yeah.

Suing a minister of the Crown?---Absolutely. Are you trying to – apologies.

THE COMMISSIONER: Did you take counsel's advice on this litigation for (not transcribable)?---Yes, I did.

10 And who was the counsel?---Sheila Kaur-Bains.

And was that written advice?---Yes.

And was the advice to the effect that there were good prospects of success? ---Oh, I don't remember what her advice was. There, I don't, I, I can't, I can't remember how, how emphatically she said – I mean no barrister ever says there is good prospects. She probably said there were prospects of success.

20 Well, your experience is different to mine but nonetheless, who on behalf of the Awabakal Land Council gave instructions to commence this litigation? ---The board did.

The board. The board met?---The board met. The, the, the report came out from the investigator and the Minister wrote to each individual board member to say that they were going to appoint an administrator and my phone started ringing and I decided to go up to Newcastle to sort it out, otherwise I would spend the whole day on the phone. There was a board meeting called at short notice. I do not remember what the date was.

30 And you were there?---I was there.

And did you address the board?---I addressed the board.

And did you, what did you say to them about commencing this litigation? ---And they said this isn't - - -

40 No, no. What did you say to the board about commencing this litigation we're now discussing?---Well, there were a lot of discussions before I got to the point of look, "One option you could consider is starting litigation. I wouldn't recommend it, but you could."

So, you were not, well you were not recommending it?---I never recommend litigation.

I see. So, how would it come about then? What happened at this meeting? ---Okay, so I've gone up to this meeting and they've all got their letters in front of them and they all agreed it was highly unfair. They had read the

report, the basis on appointing the administrator, they thought was highly unfair and across the board, I mean, I can't, I can't remember who spoke but I do remember three or four of them were quite vocal about the fact that they wanted to take on the Minister. That, that was the general - - -

10 But you say your advice was to the effect that they ought not to go down this path?---I didn't say that, I said, "Look, the options you have here are to accept it, have an administrator walk in here or the only other course you have is litigation and if you're going to go down that path, it's going to be very expensive. So, you know, you have to think about this." And then they asked me how much and I, I remember bandying a number of at least \$250,000 and - - -

Was the board provided with counsel's advice?---We hadn't gone to counsel at that point.

Well, at some point in time, then you got the advice, was it provided to the board?---Yeah, yes.

20 How was that done?---It, I would have taken it up to a board meeting.

No, you often say, "I would have done." I'm not asking that. What did happen, how did it get - - -?---Without my, without my file notes or my file in front of me, I am just guessing as to when or how I did things. My, I remember with this, I was very careful with this litigation because it was going to cost them a lot of money and I, and like I said to you, I had no time to do it, I was not going to make much money out of it. It, it was purely on their, they, they were very vocal about taking on the Minister and this advice that we got from Sheila Kaur-Bain would have been discussed in a meeting at some point.

30

Well, you say it would have been, was it?---It was discussed in a meeting.

Which meeting?---I don't know.

Were you present?---I would have been if I discussed it in a meeting.

Well, were you present?---Yes. I, I don't know, I don't know.

40 Did you address the board on what counsel's advice was?---Yes.

You did. Where did this meeting take place?---Newcastle in the Awabakal offices.

And who was present.---It would have been the normal board.

No, no, no. Who was present?---I don't know. What does the board minutes say?

Pardon?---What does the board minutes say? I don't know who was present.

I'm asking you from your recollection, who was there at the meeting? You were there. Who else was there?---I have told you I don't even remember this meeting. I, I can't, I can't, I can remember the other one, I don't remember this one where I discussed the, the opinion.

10 Do you have troubles with your memory?---I have a lot of trouble with my memory.

I can't count the number of times you've said, "I can't remember," but do you have some explanation as to why you have a bad memory?---At the moment I, I am under a lot of pressure. My sister died of cancer six weeks ago. My partner's in gaol. He's mentally ill and harming himself. There is a lot of stress in my life. I have not had any time to prepare for this. I haven't even read the board minutes before I came here. I am under ridiculous amount of pressure. So if my memory is bad, that is why.

20 I see. Yes.

MR CHEN: Now, Ms Bakis, this affidavit is, please tell me if this is wrong, but you're saying you're not sure whether it's a solicitor that just happened to be in another office on Level 11, 65 York Street that witnessed this affidavit or a JP. Is that the position?---Well, if the address was 65 York Street, it must have been someone – I'm sure it was this guy that I'm thinking of. It was that solicitor. I'm 95 per cent sure it was him. I don't, if, if it wasn't Jackson then it must have been this other guy.

30 Well, what did this person look like?---He had glasses.

Right. And what - - -?---Dark hair. That's all I remember.

Well, was he young, old?---Oh, probably in his fifties, I think.

And dark hair, do you mean black or dark brown or something to that effect? Is it - - -?---Like yours.

40 And what about his height? Can you give us an estimate as to what his height was?---He was sitting down. I don't, I've got no idea. I think he was quite short. I think. I can probably find out if you want me to.

Well, if you can, that would be of some assistance, Ms Bakis. I should, just on that topic, Ms Bakis, I think a request had been made for you to produce the loan agreement that you said existed between you and Mr Petroulias, as well as the financial – I withdraw that – the tax returns for Knightsbridge North Lawyers and Knightsbridge Tax. Have you got those documents to produce to the Commission?---I don't, I'm sorry. I'll - - -

Are you able to - - -?---I can bring them on Monday. I don't recall there being a request for a loan agreement.

I think I did ask you, Ms Bakis. So it's clear, I understood part of your evidence – just to pause on the current examination for the moment – that when moneys were paid off your credit cards, I thought your evidence was that it was a loan. Do you not recall that evidence?---I recall that, but then I said to you that it wasn't documented.

10

I see.---And the document that you requested of me was a paymaster agreement, and the Commission has that agreement.

I didn't ask for that, Ms Bakis, but I'll have a look at the transcript over lunch and perhaps we can revisit that if necessary. Now, Ms Bakis, you understood, obviously, that it was important to disclose relevantly all the material to the court in seeking these interim preservation orders, did you not?---Yes.

20

And of course you did disclose, to a point, that there was an agreement that you wanted to go before the members of this Land Council, isn't that so? ---Yes.

And the only agreement, though, that you disclosed in this affidavit was an unsigned copy of the collaboration agreement that had been entered, isn't that right?---Yes.

30

What's the explanation in seeking interlocutory injunctions from a court for you only disclosing one as opposed to all of the Advantage agreements that had been executed by the board on or around 7 June, 2016?---I have no idea.

Well, you swore the affidavit, Ms Bakis. You must have an idea.---I, I don't know what my affidavit says with respect to what you're referring to, so that might assist me.

40

All right. Well, I'll have that brought up, Ms Bakis, and you can have a look at paragraph 10 of the affidavit in volume page 7. You can see that you address this question of hardship and you attach a copy of the collaboration agreement. Just have a read, if you would, of the whole of paragraph 10. ---Yes.

And if you look, you can see that it references annexure F, can you not? ---Yes.

And if you have a look at page 33 you can see that that's the document, you can see up the top, page 33 there's an F there?---Yes.

And if you look down on the left-hand side you can see as well the annexure stamp?---Yes.

Right. And if you look at page 56 you can see this is the unexecuted version of this document. Do you see that?---Yeah, I do.

10 Now, why is it, Ms Bakis, when you're the solicitor deposing to this affidavit, seeking orders against the Minister in a court, are you only disclosing one unsigned document rather than all of them?---Is your question why, why am I producing an unsigned document or why haven't I put all the documents in?

Well, I'm in effect asking you a slightly different question which encompasses both ideas.---Well, I didn't want to, I, I, I assume, oh, God, this is going to sound stupid, but I think I was having printer troubles and I, it could well be that this was the only thing I could find, and I know that sounds silly but - - -

20 Well, Ms Bakis - - -?---And I can probably, I've probably got an email trail to that effect, but, and in terms of why I didn't put the rest of them in, I probably felt that this, this was enough to give the Minister a flavour of what was going on. And I'm sure that we subsequently provided them all with them, the Minister with these documents. I'm sure. I could be wrong. I don't know.

THE COMMISSIONER: What about the court, was it favoured with additional evidence?---I think so.

30 MR CHEN: By you?---Um, oh, I don't, because I wasn't running this litigation I just, I, I think we did. I remember there were - I don't know, I don't know is the answer.

Well, Ms Bakis, let's go back to the body of the affidavit first. You don't have printer troubles to be able to type something into an affidavit, surely? ---Oh, sorry. Um, um, no.

40 And there's no reason why, Ms Bakis, you could not say in your affidavit, rather than here's one, that here are all of the agreements that have been entered.---Yeah, but there would have been a lot of them and it would have been quite a large affidavit.

Well, let's not work out whether or not you're going to annex them at the moment, Ms Bakis, I'm talking about disclosing them. You understand the difference between the two?---Yes, I do.

All right. And my question to you, Ms Bakis, is, what is the explanation for not disclosing to a court all of these agreements when you're seeking an interlocutory injunction against the Minister?---Well, it's one paragraph

which, which is called Hardship, and it was one of the factors. It wasn't the important factor, and I - - -

THE COMMISSIONER: I don't think you're addressing the question. Would you like to hear it again?---Well, I know, I know what, I know what the script is and I know what I'm supposed to say but I'm explaining my answer.

10 The script? What script are you talking about?---I know, I know there is a foregone conclusion to this inquiry and I'm just trying to explain my side of things so - - -

We'll put that insult to one side for the moment and we'll try and get your attention back on the question. Put it again.

MR CHEN: What is the explanation for not deposing to stating in your affidavit that there are a number of agreements, a call option agreement, rather than just one, Ms Bakis?---Can you put that paragraph up again so I can have that – sorry, my apologies – can I have another read? I, I - - -
20

THE COMMISSIONER: Why do you need to see it again?---Because it may just be that I wanted to give them an idea of, of the sort of deal that was going on, as opposed to here is the deal. Yeah, so I was just explaining, I think I was trying to generally explain a deal, there was a deal on the table and this was probably the best document that would explain the deal.

MR CHEN: Well, surely - - -

30 THE COMMISSIONER: You're doing more than explaining the deal. You were seeking judicial relief.---Not in relation to the deal.

No, but in relation to the Minister and the Registrar.---Okay.

So to get relief from the court – that is, by a court order – being convinced that the court should make an order, the court needs evidence and all relevant evidence, is that right? You would know that from your years of experience.---Yes.

40 And a court needs to have a sufficiently strong probative case before it can act, and that puts the obligation on the lawyers who are acting for those seeking the relief to make proper disclosure to the court.---Yes.

MR CHEN: But, Ms Bakis, it's a simple exercise, would it not have been, to say there's a call option agreement that involves the sale of 30 or 31 of the Land Council lots, would it not?---Well, that's probably how you would describe it. I didn't.

That's what the agreement is, Ms Bakis, surely. You know that.---I don't understand what your point is.

Well, I'll put it again.---Okay, I made an error. I probably should have included the whole suite of agreements. It's not there. I am, I am certain they were subsequently provided to the Minister.

10 You did not know – Ms Bakis, let's be clear – you did not disclose to the court the existence of these other agreements, did you, when you sought interlocutory relief, isn't that right?---Well, it doesn't appear to be from this document.

And the deal that you're referring to in this paragraph, paragraph 10, is really not in the collaboration agreement at all, this above market consideration, is it?---I don't know.

20 Well, Ms Bakis, really, you're the lawyer charged with the responsibility of drafting these documents and guiding this Land Council through this complex transaction. Why don't you know?---On, on that statement of claim, or whatever the hell it was, am I the solicitor on the record?

THE COMMISSIONER: Could you just answer the question?---No, well, I'm trying - - -

Stop asking questions.---I am trying to work out. I don't have my files here, okay? I don't have my files here.

30 You listen to the question and answer it.---No, I heard the question and I, I'm trying to understand whether in fact I drafted this affidavit.

I'm directing you to answer the question.---Okay. Why didn't I include the documents? Okay, it's an error. Let's call it an error.

MR CHEN: No, that's many questions ago, Ms Bakis, is that - - -?---I can't keep up.

40 The deal that you're referring to, quote, "the above market consideration", which you can see in paragraph 10, does not reside at all in the collaboration agreement, does it?---No.

Where does it reside, then, Ms Bakis?---It's in another document, then.

And what is the other document?---I don't know. I don't know. I don't remember what documents I drafted for that deal. I just don't know. But I'm referring to a deal. It's a deal. It's not one document. It's a deal.

But who drafted this affidavit, Ms Bakis?---This is what I'm trying to ascertain. Was it me or was it Jackson? I don't remember. That's why I'm

trying to sort of work it out, whether they didn't have enough information to go by.

Well, that's a separate question.

THE COMMISSIONER: Well, whoever drafted it, you'd have to be satisfied before you swore it.---Well, that's right. I know that. I know that.

10 MR CHEN: Did Mr Petroulias have a hand in this?---He, he may have assisted, providing me with information.

To go into this affidavit?---Yeah, I might have, I might have been, there were times when I asked for assistance. But, I mean, yeah.

20 Well, Ms Bakis, we've seen in July that you've sent Mr Hickey an unsigned copy of the collaboration agreement and you're now only disclosing to the court this one document. What is the explanation for not setting out in this affidavit all of the agreements and their effect so the court can consider it? ---Well, there would be no reason not to.

Well, there's another reason why you would not, and that is to conceal it, isn't that right?---But why would I conceal it? I've actually put it on the table. I've raised it. I've put it up there in – I mean, it's pretty evident that it's there. I'm not concealing anything. Perhaps I didn't eloquently describe it or adequately describe it to the court. That's an error on my part.

30 Well, you did not disclose it, perhaps is a better way of putting it, Ms Bakis, at any stage in your affidavit, by words or by annexing a document, all these other agreements. Isn't that right?---Well, that's right from what you're saying, yes.

And, Ms Bakis, the court then accepted an undertaking from the court, did it not, based upon what you said, to enable this collaboration agreement to be apparently discussed at a members meeting, isn't that right?---Sorry, you said the court made an undertaking at the court?

Or noted an undertaking?---Yes.

40 Did it not?---That the, sorry, can you repeat that, sorry?

Well, you know in reliance upon what you had put forward in your affidavit, the court accepted an undertaking by the Land Council, isn't that right?---Yes.

And what was the terms of the undertaking, Ms Bakis?---That the – would enter into any other deals. I don't remember. I don't remember what the undertaking was. I don't remember the specifics of it.

Well, you know in due course that a member's meeting was held with at least the intent to try and discuss some of the proposals put forward by Advantage, Ms Bakis, don't you?---Yes.

And what was discussed or attempted to be discussed, Ms Bakis, at the first of those meetings on 29 June, 2016?---What was going to be discussed?

Yes.---Oh, I don't know. What's in the AGM thing that went out to the members? That, that, that would explain it.

10

Notices were prepared, were they not?---Notices were prepared, yes.

And that set out what was to be discussed at these meetings, is that right? ---That's right.

And were you involved in that?---I was.

And you approved the notices presumably, as the lawyer for the Land Council, to go out to the members, is that right?---Yep. I assisted, yep. I - -

20 -

Who did you assist?---I remember Candy, Candy and Debbie had a hand in drafting these.

But you're the lawyer. Surely you're looking over it and supervising it and ultimately would need to sign off from a legal perspective, that it was accurate, would you not?---Yes.

30

And I'm sorry, Candy's the project officer, is she?---Yep. Oh, at that point I think she was acting CEO. I could be wrong.

And what was Mr Petroulias' role in this, if any?---I'm drafting the - - -

Notices.---He might have been helping as well. He, he might have been up there on, on United Land Council's work, he may have been assisting.

40

So, he wouldn't be doing it as a person working hand in hand with you, is that what you're saying? Just up there in a different role, is he?---He had, he had a different role, yes, but the role overlapped in terms of, in terms of the land deal. It was, that deal was put together by United Land Councils.

Sorry, this is the Advantage deal that's been put together by United Land Councils, is that what you're saying?---Is this what we're talking about? We're talking about June or July, '16?

Yes, we are, Ms Bakis.---Yes. Yes.

Ms Bakis, this is a potential land dealing involving the Awabakal Local Aboriginal Land Council, isn't that right?---Yes.

It's got nothing to do with the United Land Councils at all, does it?---Oh, I disagree.

Well, Ms Bakis, tell us. You drafted the documents. Where does the United Land Councils feature as a relevant party in any of the documents you prepared?---Well, they don't but that doesn't mean that they weren't, didn't have a hand in putting this together.

Well, that's right in a way, Ms Bakis, because United Land Councils is really just another way of saying Mr Petroulias, isn't that right?---That's completely incorrect.

So, United Land Council is not a beneficiary under any of these agreements, is it?---No.

It's not to receive money under any of these agreements, is it?---No.

It doesn't have the burden under any obligation under any of these agreements, does it?---No.

You see, what you allowed, Ms Bakis, is Mr Petroulias through your office, to assist in the preparation of these notices, isn't that right?---Not through my office.

Well, have a look, Ms Bakis, if you would at page 72. Do you see there an email of 11 July, 2016?---Yes.

And you can see it's from the email address that is your office, namely knladmin, do you see that?---I do.

And the initials, NP, are Mr Petroulias', aren't they?---They are.

So why is he, Ms Bakis, having anything to do with what goes on notices of this Land Council to a members' meeting?---Can you scroll down? Hi, Nick. Okay. Sorry. Even further. I'm just trying to get context, context in.

Well, just I'm asking you, there's an email there - - -?---No, well, he, well, he doesn't, 'cause there were occasions where they wrote to me thinking I was Nick, as in everyone was confused that, you know, Candy used to write to me thinking she was writing to Nick.

That's because he was routinely working in your office, was he not?---No, we were, we were often together up in the Land Council. They never came to my office.

And he was working hand-in-hand with you throughout these entire land transactions, Ms Bakis. Isn't that right?---Well, he put the deals together, yes.

He was working hand-in-hand with you throughout the course of these land transactions. Isn't that right?---That's incorrect

Well, Ms Bakis, you were apparently the lawyer representing the Land Council in all of them, weren't you?---Yes.

10

And so if Mr Petroulias had a hand in all the deals, presumably you must have had connections to him?---Yes. We talk.

Well, Ms Bakis, this email where he is actually, can I suggest, participating in the settling of these notices, really illustrates that point, does it not, namely that he's working with you as one?---That's completely incorrect.

Well, what is - - -?---That's, that's - - -

20

Please, Ms Bakis, continue.---No. Please, please, finish and I'll perhaps be allowed to answer a question.

I'm sorry?---Please finish.

I've finished. I'm inviting you if you want to respond further to do so. ---Thank you. So what's the, sorry, what does it say, "Hi Nick?" And what's the bottom of that? It's very hard to answer these, like that, often if Candy wrote to me as, "Hi Nick," I sometimes answered with Nick, because it was just easier. Sometimes. Seriously.

30

That, with great respect, Ms Bakis, is not a sensible believable answer, is it? ---Well, not to you.

Well, not to any person at all, Ms Bakis. That is nonsense.---Well, that's your opinion.

So rather than type "Despina" you would type "Nick", would you?---Well, in this case it was NP because it was - - -

40

So you're saying you did this, are you?---That's what I'm suggesting. I may have done this. I may well have said, oh, God, here we go, Candy, Candy just doesn't understand that, that I'm the one that's at Knightsbridge.

THE COMMISSIONER: Why would you sign it NP?---Well, because, where are we, 11 July. I don't, I don't know how this happened. It, it may have been on the phone, it just was - - -

MR CHEN: What, you were pretending to be Nick, were you, on the phone?---No. The email may have been answered on the phone. I don't remember. I don't remember this happening.

Mr Bakis, you are simply making this up, aren't you, as you go?---No.

10 That is your serious response, that NP is in fact you and that you just happen, from time to time, to use his name or his initials rather than your own?---Look, there's a few possible explanations to this. It could be that I did it. It could be that he, he's, I said to him, look, she's just written to me, can you jump on and answer it, please. Like, we're sitting next to each other often up in the Land Council or wherever and he'll just jump onto the email and just answer it.

20 Well, this is not from the Land Council, Ms Bakis. What, you're sending an email, are you, from the Land Council office in Mr Petroulias's name from your email address, are you?---No, sorry, that's probably not correct then, but it, it would have, it could have been we were driving up there and the email came through on my phone. I don't know. It doesn't, it just, it - - -

Anyway, Ms Bakis, let's, let's move on. If you have a look, please, at page 77, you can see that a response has been provided.---What's, what is this?

I'm sorry?---Sorry, what is this?

This is the follow-on.---Oh, okay. So I couldn't see the ones below but I can see the follow-on. Thank you. Okay. Candy, there should be three notices. Okay.

30 Well, Ms Bakis, I'll show you the bottom one.---No, it's okay.

It was irrelevant, but I'll show it to you because I want you to be under no disadvantage as I take you through this. So let's go back to page 72. You can see - - -?---Hi, Nick, my email is - - -

- - - "Hi, Nick." So that could be to you, could it?---Yes. Okay.

40 And if you go up you can see then Candy is given a response. Do you see that?---Yes.

So if it's you, you're asking her, well, what properties are in and what properties are out?---Ah hmm.

Is that right?---I don't remember. I don't even remember what this was about.

Well, it's about the land dealing notice. You can just read it.---Okay. Okay. What's your question?

Well, I asked you about page 77 then. And you can see the notices have come back.---Yes.

And if you have a look on the back of it, that's the notice that was issued, was it not?---Yes.

And you can see that it's referring to a land dealing, Ms Bakis, can't you? ---Yes.

10

But that's not what was permitted to occur at all, was it?---Sorry?

You can see, can't you, Ms Bakis, that this is referring to a land dealing, can you not?---Oh, number 3, yes, yes.

But that's not what was permitted by the undertaking, was it?---Yes, it was.

20

So is it your evidence, Ms Bakis, that what was permitted by the Land and Environment Court undertaking was for this Land Council to put before its members the Advantage deal, namely the sale by option of the 30 or so lots. Is that your evidence?---Yes.

And that's what you drafted and approved notices to go out to the community dealing with, is that so?---Yes.

30

Now, let's have a look at some of this, Ms Bakis. If you have a look, please, at page 79, which is page 2, you can see here that there's a description about – under point 3 – “to identify the most economic and productive use of the land, et cetera, and to approve the land dealing proposed”.---Yes.

And the land dealing proposed is in fact the sale by option to Advantage, isn't that right?---Yes.

And you can see as well in the second line the sentence commences, “The board had resolved back in November 2014 to sell most of the land,” et cetera.---Yes.

40

That's not true at all, is it?---It might have been October.

Well, even if you take the day as being October, rather than November, the land that was proposed to be sold, putting to one side to whom, was only five lots, isn't that so?---Mr Chen, there was a Community Business Land, CBLP – I can't remember what that means. They're approved by the members every four or five years. The previous CBLP had approved, the members had approved the sale of all their land, so perhaps I referred to the wrong thing. I mean, I do, I do think, I mean, I don't have the minutes so I don't know, but the members had approved the sale of all their land.

And this occurred when?---I don't remember when. The Community Business Land Plan approval would have been '13, or '14, early that year.

10 But, Ms Bakis, you know full well that is a plan that identifies – as it is required to under the Act and regulations – proposals and objectives in the most general of terms, isn't that right?---Oh, what, so it has no work to do? I, I didn't take it to mean that. I, I took it to mean the members agree how they are going to run the Land Council going forward for the next four years and what the general, I mean, they're, they're like, I can't find the words now, you know, guiding principles as to what the Land Council should do. And the guiding principle in that particular one was that the land should be sold.

That is completely false, Ms Bakis, isn't that right? That is completely false that evidence, you know it.---Why is it false?

20 You know what the purpose of a business plan is, don't you?---Well, I thought I did.

And you know what is said in this document is, "The board had resolved". ---Right.

It's got nothing to do with what's in this notice at the moment, Ms Bakis. ---Okay. So, now were going back to the board minute.

30 Well, you were the one seeking to justify the statement by reference to a Community and Business Plan, pursuant to the Act and regulations.---I, I was, I was trying to justify the comment that perhaps these members didn't want to sell their land. They did. Now, the board, I thought the board, there had been a meeting sometime in October, '14 to resolve that the land should be sold.

What, do you say that resolution was all of it, do you, or most of it?---I don't recall what it said right not but I think it did that, yes.

40 And it must have, to make this notice accurate, have been all the land identified in the notice that was prepared, isn't that right?---Well, it didn't – can you show me that notice again?

Yes, I can, Ms Bakis. Of course. So, if you have a look at page 78 and 79 and if you'd like to see the properties that are identified, that can be shown to you as well.---No, I don't need to see those. I just want - - -

So, it's page 79 I'm asking you questions about.---Yes, that one. In my recollection, is that that, that October board minute resolved to sell the land.

Well, so it's clear, Ms Bakis.---All the land, all the - - -

All the land, is that right?---I think so. I could be wrong.

Well, presumably you would have checked it to ensure the accuracy of this notice?---Oh, probably would have, yeah.

And had you looked at it, at the very least you would have seen that only five lots were every mentioned. Isn't that right?---Well, I, I, I don't know where that board minute is, so - - -

10

Well, there's no doubt about that board minute, leaving aside some of the other issues about it, that it only dealt with five lots.---Yeah. And perhaps those five lots were most of the land as I have described in this notice. Well, I'll assist you a bit further, Ms Bakis, and I'll show you the notice then and the properties that have been identified. So, if you turn and have a look at page 74, please, you can see that the properties that are identified in the table which has been prepared by either you or Mr Petroulias with the assistance of Candy Towers, is 14 Vermont Place. Can you see that?---Yes.

20 291 Hillsborough Road.---Yes.

If you turn the page, 295 Hillsborough Road, Warners Bay, 110 Bayview Street and Clarence Road, Waratah West.---Yes.

Now, all the rest of these, Ms Bakis, were never the subject of any form of resolution in October, 2014.---Can you scroll down to the next page?

Yes.---Oh, that's all, okay. Sorry, this, this table on the right, what, what is this? Or is it just explaining that property?

30

There are just two columns, Ms Bakis. It's the same table.---Oh, and they're both separate. Okay, okay. Got it. Okay. Well, I don't know. I, I thought the board minute allowed the sale of most of that land.

How could that be? If you look at it, leaving aside what it says in terms of what's to be resolved, there are only five lots referred to.---How would I know?

40 Well, you told the Commissioner that you looked at it.---Well, where's the board minute? I'm not answering questions until I see this board minute, the various versions of it that you perhaps have.

Well, Ms Bakis, I will show it to you in a moment but I'm going to ask you some other questions about, why is it that the board is proposing to sell the Land Council offices? Can you explain that?---Because it was an old police station and everyone hated that place because it was an old police station and Aboriginal people hate police. It, it was, it, this, this was a general thing. They just didn't like that place. It was haunted, it was a crazy place.

Mr Green has, and no other board member for that matter, knows anything about selling the Land Council offices. You say that they all resolved did they to get out of the place because they didn't like it because it was a police station?---I don't know what you're suggesting here but there was a resolution to sell that place because the Land Council offices and the James Street property were the ones that were the most, the easiest to sell and they were the ones that had the most, they were both police stations so there was general agreement that they should be sold.

10

Ms Bakis, you can also see in page 75 that's on the screen 20 Olney Road, Adamstown is in there as well.---That had been sold before.

Yes. So why is that in there?---Well, I'd call that an error.

You see it was clear wasn't it, Ms Bakis, so far as you were concerned, that what was intended at these community meetings was for the Advantage agreements, including the call option agreements, to be put before the members for them to approve. Isn't that right?---Sorry, this is 20, 20 - - -

20

'16 as you know.---Sorry, 20 July, '16 meeting?

Either or both of them, Ms Bakis. 29 June or 20 July, '16.---And what does this notice relate to?

Well, it relates to a meeting regarding land dealings.---29 June or 20 July?

I'm asking you about what was discussed, Ms Bakis.---Oh, God. The, the purpose of these meetings was not to discuss land dealings and in fact the land dealings were never discussed.

30

Well, they were never able to be discussed but they were intended to be discussed weren't they?---The intention was to discuss them but the, they were never discussed.

Well, the intention was to try and arrange for the members to agree to them. Isn't that right?---That's right.

And as it turned out because of disunity and the fractious nature of these meetings, it was never able to be actually put, that is, the approval of the sale of these properties could never be put to the members because of that? ---Yes.

40

And that, Ms Bakis, what I'm suggesting to you was a breach of the undertaking that was given to the Land and Environment Court?---No, you've got that wrong. I assure you that's wrong.

Well, Ms Bakis - - -?---You probably don't have the full file. I don't know. I just, that can't be correct.

Ms Bakis, let's have a look at this collaboration agreement that you prepared. It's at page 33 of the folder which is annexure F to the affidavit you're prepared of 27 June, 2016. So what does that agreement do, Ms Bakis?---Can you scroll down? This, the collaboration agreement is the one that establishes a joint venture. The idea, this wasn't a sale this was a joint venture. Awabakal would share in, in the profits of any sales. Their people would work in any building developments. That was why it was called a collaboration agreement.

Well, what are the obligations then cast on any particular parties, where do we find those in this agreement, Ms Bakis?---I wouldn't have a clue.

Well, what are the promises that the Land Council has given in this agreement, Ms Bakis?---I don't know.

Well, the notice that issued for these meetings, Ms Bakis, talks about the community housing getting new bathrooms every three to five years based on this agreement. Ms Bakis, are you able to assist the Commission in identifying where is it in this document the community housing is to get new bathrooms every three to five years?---That is such an unfair question to me right now.

What would you like - - -?---I have, I have the front page of an agreement. I don't have the whole suite of agreements here.

All right. Well, I'll have the collaboration - - -?---It may, it may well be that it didn't mention it. It was still a proposal. There was, the idea was to put the idea to the community. If the community agreed then these documents would be redrafted in the correct manner in the way the community wanted. It was, the idea was to put the idea to the members.

Well, these had all been signed by board resolution which you were intimately involved in - - -?---Yes.

- - - on 7 June, 2016, the board sign all these agreements.---They're void agreements until NSWALC approves them, and I knew that, and so the idea was that these agreements would be drafted over and over and over again.

So these agreements, do you say, do not touch upon land in any way, shape or form, so as to - I withdraw that. You say, do you, that this collaboration agreement does deal with land within the meaning of the Aboriginal Land Rights Act, do you?---This particular one?

Yes.---I wouldn't have a clue.

Ms Bakis, you're the one that drafted these.---I'm sure I did and I probably
- - -

You're the lawyer responsible to guide this Land Council through these
complex arrangements that you are responsible for and you can't tell the
Commission anything about them?---Stop - - -

MS NOLAN: No, I object.

10 THE WITNESS: Stop bullying me, Mr Chen.

MS NOLAN: I object.

THE WITNESS: That's just bullying.

MS NOLAN: And I am going to enjoin that because this is bullying
conduct. That's the first point. Second point, this witness has said she
needs the agreements. It is only fair that she be given them.

20 MR CHEN: I'll provide it to her.

MS NOLAN: And she, this is not a memory test and she has given
evidence about serious matters that she is currently facing as to why it
would affect her memory and the Counsel Assisting will not assist this
witness by putting documents before her, despite her numerous requests.
I've sat here and not objected but I object now.

30 THE COMMISSIONER: Ms Nolan, Ms Nolan, you're completely out of
order. Firstly counsel is not bullying and is entitled with this witness, who's
been evasive, and if she wants to see the collaboration agreement she'll be -
- -

MR CHEN: I'll certainly make it available and I'll simply point out to my
learned friend that this witness said it's not in the agreement, that in fact this
was a nothing agreement to be developed in due course.

MS NOLAN: No, she didn't, she said - - -

40 THE WITNESS: The deal.

MS NOLAN: - - - it may not be in this agreement.

THE WITNESS: The deal.

MR CHEN: But by all means, by all means - - -

THE WITNESS: I said that the deal was.

MR CHEN: - - - I'll make it available.

THE COMMISSIONER: Just let's go to the collaboration agreement.

MR CHEN: I'll make it available of course. I'll make a hard copy of it available to you, Ms Bakis, and you can look through it and - - -?---Thank you.

10 MR PETROULIAS: Just to clarify, she asked for the whole suite of agreements?

MR CHEN: I think she did. And so could the witness be shown a hard copy, Commissioner, of volume 15, page 135.

THE COMMISSIONER: Yes.

THE WITNESS: Thank you, thanks. So you want to know where it mentions bathrooms. Was that your question?

20 MR CHEN: I want you to familiarise yourself, as you've requested, with this document.

Perhaps, Commissioner, it's close to lunchtime. Perhaps the witness could take the luncheon opportunity to review it and I'll be able to move more expeditiously through it after lunch.

THE COMMISSIONER: I think that's an excellent idea. Yes. We'll adjourn till 2 o'clock.

30

LUNCHEON ADJOURNMENT

[12.59pm]