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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE PETER HALL QC
CHIEF COMMISSIONER

PUBLIC HEARING

OPERATION SKYLINE

Reference: Operation E17/0549

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 15 AUGUST, 2018

AT 2.00PM

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

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

<DESPINA BAKIS, on former oath

[2.07pm]

THE COMMISSIONER: Yes, Mr Chen.

MR CHEN: Commissioner, could I tender volume 40. I omitted to do that earlier.

10 THE COMMISSIONER: Volume 40. Yes, that will be marked as Exhibit 105.

#EXH-105 – FINANCIAL BRIEF - VOLUME 40

MR CHEN: And Commissioner, could I also tender volume 54, described as “Resolutions and minutes prepared by Bakis/Petroulias”.

20 THE COMMISSIONER: Yes. That volume 54 as so described will become 106.

#EXH-106 – RESOLUTIONS & MINUTES PREPARED BY BAKIS/PETROULIAS - VOLUME 54

MR CHEN: And Commissioner, could I also tender volume 60, which just has the description “Bakis” but contains the traffic material.

30 THE COMMISSIONER: Yes, that volume as so described becomes 107. Thank you.

#EXH-107 – BAKIS BRIEF - VOLUME 60

MR CHEN: Thank you, Commissioner. That’s it.

40 THE COMMISSIONER: That completes your - - -

MR CHEN: Subject to those documents which I've asked Ms Bakis to return to, I see that as being discrete, Commissioner. If something arises I'd seek your leave to further examine if necessary but subject to that matter, that's the examination.

THE COMMISSIONER: Yes, very well. Thank you. Just pardon me a moment. Ms Bakis, if you wouldn't mind coming back in the witness box.

Just take a seat, thank you. Now, just before we start, Mr O'Brien, you intend to be the first cab off the rank, as it were?

MR O'BRIEN: Well, in discussion with Mr Lonergan, if it's okay with you, Commissioner, I've agreed that he should go first. I've mentioned that to Counsel Assisting and there appears to be no difficulty.

THE COMMISSIONER: Yes. Thank you.

10 MR O'BRIEN: But, yes, I do seek leave to cross-examine this witness.

THE COMMISSIONER: Yes, very well. And are you able to give me some sort of an estimate?

MR O'BRIEN: I think 45 minutes to an hour should do it.

THE COMMISSIONER: Right. Thank you. Mr Lonergan, how long do you think you might be?

20 MR LONERGAN: Commissioner, I'll be probably the rest of the afternoon.

THE COMMISSIONER: All right. Well, we'll proceed in a moment, Mr Lonergan, with you commencing your cross-examination, followed by Mr O'Brien and then Ms Nolan can examine her client on the basis I've earlier articulated. Just before you start, Mr Lonergan, Ms Bakis, just in relation to what might be seen on the evidence to be something of a pattern of conduct involving Mr Petroulias and Mr Green and Debbie Dates in the period approximately 2014 to '16, as at late 2014 those three persons had really only known each other for a relatively short period of time. Is that right, as
30 you understand that?---Well, I think Nick had known Richard for at least six months.

Yes. And they had – that is, Mr Petroulias and Mr Green and Ms Dates – had really come to know each other in the context of the Awabakal land transactions?---Oh, Mr Green and Mr Petroulias, no, I think they had, they were looking at other things prior to that.

In any event, that was the main context in which they worked together, was it not?---I don't think so.

40

The three of them I'm talking about?---Oh, with Debbie, yes.

And Mr Petroulias seems, on the evidence, had no – that is, before the period 2014-16 – any prior association or interests in common with the Aboriginal community, so far as you're aware?---I think that's right.

And as you say, a relationship developed between Mr Green and Mr Petroulias in the sense that they commenced a business association or interest in the course of that 2015 or '14-'15, is that right?---'14, yes, yes.

And that business relationship between Mr Petroulias and Mr Green, as it were, sat alongside or existed at the time of the Awabakal land transactions going forward from late 2014. Is that right, is that your recollection?---Yes, yes.

10 You would have noticed on the evidence that what appears on one view of it at least to be a pattern of conduct occurred involving Mr Green and Ms Dates that had the appearance at least, it might be said, suggests some of them were, that the activities those two engaged in in respect of the Awabakal land transactions were directed to advancing the interests of Gows Heat or of Mr Petroulias or both of those two. I'm referring, when I talk about pattern of conduct, to matters such as the conduct of Mr Green and Ms Dates of signing, it seems on the evidence, without hesitation a series of complex agreements concerning the Awabakal Land Council transactions whenever their signature was sought, then placing resolutions relevant to the land transactions before the board that could be said, on one view of it at least, to have potential favourable outcomes or influence on outcomes favourable to Gows or Mr Petroulias's interests. Additionally, that there's evidence of them consistently supporting motions that were placed before the board in respect of the land transactions that could potentially bring some benefit at least to Gows Heat. That sort of conduct over time, it did appear, did it not, to be a pattern of conduct of them working, as it were, in conjunction with Mr Petroulias in those respects at least?---That's one way of, one way of viewing it. But they all had one thing in common and that was – I mean, Mr Green was very passionate about the Aboriginal cause and looking after his people, et cetera, and Mr Petroulias could see, sorry, I, I know I'm deviating, but they, I sat through a lot of conversations with the three of them where they were really passionately talking about improving their community and selling their land.

30 But insofar as their conduct did, on one view at least, appear to reflect a pattern of conduct, did you ever consider whether or not, in the light of such conduct, that the working relationship between them could possibly be seen as, as it were, in the nature of an alliance or an arrangement, working arrangement, between them to advance the interests and objectives of Mr Petroulias?---I, I never got that impression.

40 Well, I refer to some of the pattern of conduct which, on one view of the evidence, seems to come through, it might be said plainly, in relation to important matters such as executing a series of complex land transaction agreements whenever Mr Petroulias has asked for signatures, placing resolutions before the land transactions as I've earlier indicated, and then supporting motions that could be said to favour the Gow interests in the land transaction, that sort of conduct. Insofar as it could be seen to be a pattern,

did you – as the solicitor for the Awabakal Land Council whilst also acting at the same time for Gow – not obliged to be vigilant to ensure that there was no such alliance or working arrangement as I've indicated in order to be sure that there was no prejudice or disadvantage from these land transactions flowing to the Awabakal Land Council?---There's no doubt Mr Petroulias was putting a lot of pressure on me to make sure certain things happened. But at the same time I did my best to make sure that Debbie and Richard understood the effect of what they were doing, of what they were signing, and that was my vigilance. In hindsight, you know, probably
10 should have stepped out of the whole thing but I, I had a lot of pressure on me. And I, I, I was comforted by the fact that there was a formal approval process in place and that these land dealings would never go through in any event. I, you know, I, I, my personal view was, when I saw Solstice, I said none of these land dealings will ever be passed by this community or by NSWALC and I expressed that opinion many times. Having spoken to the community, because I was in the Land Council a lot, I spoke to a lot of members. My gut feeling was that even though Debbie and Richard personally believed that their land should be sold and that, you know, a joint
20 venture with the community would be a great thing – and other board members agreed with this – I don't think that that was perhaps the view of the rest of the community. So in terms of answering your question, I, yes, look, I was vigilant to that, I did understand that issue, and I was very much comforted by the fact that there was a formal approval process in place and that these people were self-governing and they would look after their own community as a group.

And just so that you can deal with this, if it was said that Mr Petroulias was, in effect, using Mr Green and Ms Dates as his agents or instruments to achieve his commercial ends, what would you say to any such suggestion?
30 ---I would say that's wrong from the discussions I heard. Richard knew that his involvement in United Land Councils was completely separate to Awabakal and we were all fully aware of, you know, corruption, that sort of thing, and very, very careful to make sure that there was a separation so that, you know, if he was, it was made clear to him when he was acting as a member of the Land Council versus when he was acting for ULC. And as for Debbie, well, there was nothing in it for her. She genuinely, passionately believed – and she's a very smart woman – she believed that the, all these deals were good for the community. She expressed that to me many, even recently. It's like, "We're all living in squalor. Something
40 needs to be done."

What was done to separate the interests – that is, of Green and Dates – in terms of their responsibilities as directors on the one hand and their participants working with Mr Petroulias on the other in the transactions in which he was interested in at Sunshine, Solstice, Advantage?---Well, they were interested in them as well.

No, but he had a commercial interest. Their responsibility and obligation, their stewardship as directors of the Land Council placed obligations and restrictions upon them. What was done to ensure that those obligations were not undermined and that they were starting to work as agents for Mr Petroulias?---Their, they were both fully aware of their obligations. They were fully aware of their act - - -

Yes, but what was done - - -?---No.

10

No, I'm sorry to interrupt you. My question is related to what steps were taken or precautions adopted to ensure that any potential conflict of interests concerning Mr Green, Ms Dates would be properly managed and would not undermine or impair their obligations to the Land Council?---I actually don't see that Debbie had a conflict.

All right. Well, you were solicitor for both parties.---Yes.

20

The Land Council and Gows. Did you take any steps to ensure that insofar as there was a plain potential for conflict of interests, that it would not turn into an actual conflict? In other words, that it would be managed.---They were always made aware of the conflict. They knew that Gows was making money.

30

Did you take any steps to ensure that those, that conflicts of interests would not materialise?---Apart from speaking to them and telling them, "Look, you've got other lawyer, use your other lawyers if you need to, if you're not comfortable." You know, I, there's a suggestion here that there was a conflict of interest between Richard and Debbie on one hand and Gows. They were aware of the conflict. I, I'm not sure what else I could have done.

All right.---Apart from telling them that they had, they had options. They could have sacked me if they wanted to.

Yes, all right. Well, now, Mr Lonergan?

MR LONERGAN: Ms Dates, I represent the interests of Mr Green.---Ms Bakis.

40

Sorry, Ms Bakis. My apologies. Just starting, the Commissioner asked you a couple of questions regarding Mr Petroulias and Mr Green first when they first met. Is it true that you and Mr Petroulias went to Wollombi and met with Mr Green in mid-2014 to talk about Aboriginal rehab centres up there? ---Yes.

Right. And was that the first time that you met Mr Green?---I think that was the first time, yes.

And to your knowledge that was the first time that Mr Petroulias had met Mr Green in person?---I'm not sure. I, I have a feeling they'd met prior to that.

All right. And am I correct in my timing that that was mid-2014?---I think so, yes.

10 And what was the background of Mr Petroulias wanting to start Aboriginal rehab centres, to your knowledge?---The, the, the place we went to in Wollombi I believe was a Yarnteen, an old camp. Yarnteen is an Aboriginal corporation I think. And they were trying to sell this camp and Mr Petroulias got all excited because he thought it would be a great place to have a rehab centre because he knew that there was a big shortage of these things, and talking to Richard the community, the Aboriginal community, really wanted their own rehab centres. That, that's how the discussion – it just seemed like a perfect place for a rehab centre.

20 Right. And in this Mr Petroulias to your understanding was representing to Mr Green that he was interested in helping the Aboriginal community through these rehab centres?---Yeah, yes.

Right.---Well, not only that, but also an opportunity to perhaps make money for himself.

Mr Petroulias making money for himself?---Yes.

Right. And does the name Jimmy Wright ring a bell to you - - -?---Yes.

30 - - - in relation to that?---Yes.

And what was Mr Jimmy Wright's involvement to your understanding? ---He, I think he, he was the director of that Yarnteen corporation.

Right. So how long after this did you then see Mr Green again?---I, I really don't know. Maybe a few months after that. I'm not sure.

40 Right. Now, you gave evidence on, I believe it was Monday, in relation to going up to Newcastle and meeting Mr Green in a café in relation to the heads of agreement. Do you recall that?---Yeah. I was trying to remember where I'd met him to sign that document.

And it was in a café in Newcastle, was it?---Yeah, I, I think it was in, oh, what's that suburb, yeah, near the town centre but not quite. I forget the name of the place now. Hamilton, Hamilton.

Right. And you gave evidence that the first step – I believe that was counsel's words that he used to you – that step 1 was that the Aboriginal

Land Council, the Awabakal Aboriginal Land Council agreed to sell parcels of land and Nick Petroulias told that to you. Is that correct?---Yes.

And then you went and met with Mr Green at a café in Newcastle on the weekend?---No. There had been a few steps done before, I mean I took draft documents up with me so, oh, there had been discussions between Mr Petroulias and Mr Green around the structure of this agreement.

10 But none of them you were involved in, right?---I can't remember if Richard was at my house talking to me about it. I actually cannot remember right now.

Well, the evidence you gave, and this is the transcript at 2356/2357, was that step 1 was that there was discussions that you heard of from Mr Petroulias and then you went to Newcastle and you took up a draft agreement with you to that meeting in Newcastle and this was the meeting at the café.---Yes.

20 Right. So prior to that date had you met with Mr Green in relation to the Awabakal land sales?---I, like I said, I can't recall if, if he was at my house and we talked about these things. I must have spoken to him before this, yes, the answer is yes.

Right. So this is evidence now that's different to what you gave - - -?---No.

- - - previously to the Commission?---No, it doesn't contradict that. I can't remember. I can't remember if I spoke to Richard about it or if all the instructions came via Mr Petroulias. Right now I can't remember.

30 Okay. So when was the first time that you say you were asked to draft a heads of agreement?---I think it was around mid-November.

Okay. Ms Bakis, I take you to MFI 33, page 3. In the middle of that page – sorry, if you see at the top there it's dated 12 December, 2014?---Yes.

This is a file note.---Yes.

40 Now, your counsel took Mr Green to this file note but I ask you, is this your file note?---It, it was drafted by Mr Petroulias but I put it on my file.

Right. Okay. So does that mean that you have read this and you agree that what is in it is correct and true?---I think so.

Well, have you read it before today?---I probably read it six months ago and, and prior to that obviously.

Okay. So you'll see the RG on the, the initial on the left-hand side there? ---Yes.

And just above that it says, "DB happy to complete basic heads of agreement."---Yes.

Right. And now this is a file note dated 12 December, 2014.---Yes.

Does that refresh your memory of when you drafted the first heads of agreement?---Well, it must have been around this time.

10 Right.---That does assist.

I'll come back to that file note in a minute, but before I do that, I just want to go to the authority that you've been talking about or been asked questions about by the Commission.---Yes.

And you referred to rule 19 of the Aboriginal, well, under the Aboriginal Land Act and that would be the rules.---Yes.

20 And you were taken, and you've seen a copy of rule 19, I believe you were shown by Counsel Assisting yesterday or - - -?---Yeah, very quickly, yes.

Yes. But when did you first investigate and come to understand this rule? ---Oh, probably mid-'15.

So, going back to November/December 2014, were you or were you not aware of this rule and its purported authority for the chairman of the Awabakal Land Council?---I, I probably didn't know at that time. I might have, but I don't think so.

30 All right. So, when Mr Green signed the heads of agreement, you were aware that he was the vice or deputy chair of the Awabakal Land Council? ---Yes, yes.

What authority do you say that he had to sign that agreement at the time, to your understanding?---I had been told that, by Richard and by Debbie, that Richard had been endorsed by the board to chase up, find land dealings and that he had the authority to sign this document, and I spoke to Debbie about that as well and she confirmed it. Now, and, and I just, I assumed that they would then follow proper process, whatever that process was.

40

Because the evidence you gave, and this is transcript 2359, was that you knew that Richard Green had no authority to sign any document and then you shortly thereafter change it and said that Mr Green had been endorsed by the board to look for property transactions and, as on the basis that he had been endorsed to look for property transactions, that he had authority to sign heads of agreement.---Yes, because the fact is, he didn't have authority to sign it but I didn't know that at the time.

So, at the time, your evidence is, if I understand it, is that because Debbie told you that he had authority to sign the document, that you believed he had authority?---That's right.

There's no other basis that you understood Mr Green to have any authority to sign that document?---No, that's right.

10 Now, Ms Bakis, you said then that you later realised or came to understand rule 19, is that right?---Oh, probably a few, yeah, probably around mid-'15 when the board was in chaos.

All right, then - - -?---When the Sunshine transactions were starting.

And you realise and you've given evidence that it is that rule that allows or allowed a number of these agreements, both the Solstice transaction and the relevant documents under Sunshine to have been signed, is that correct?
---Yes, that's right.

20 I'll just take you to MFI 33, and if we go to page 80. Now, the second paragraph in there, Ms Bakis, it might need to be enlarged a little bit, but can you see that?---I can read that. Yeah, that's fine.

30 You can read that. Now, in there, it quotes – and this is dated 6 March, 2016 so it is a fair bit of time after the heads of agreement – but in there it says and quotes rule 19(1) and I'll read it out for the record. It says, “The primary duty of the chairperson of the board is to ensure successful functioning of the Council in achievement of its objectives.” And by rule 19(2), “Accordingly the chairperson must,” dot, dot, dot, (c), “represent and act,” dot, dot, dot, “on behalf of the council in the interval between meetings.” Now, it is that that you say gave Mr Green and Ms Dates the relevant authority to sign agreements on behalf of the Land Council, is that correct?---That's right.

And I believe you've given evidence to the Commission that that was somewhat unfettered authority in between meetings.---I think that was, they were their words, yes. But - - -

40 Words that you agreed with, right?---Well, they had the authority of a full board, so - - -

Right. Now, Ms Bakis, you've had an opportunity to read that rule. The second “dot, dot, dot” says “subject to the instructions of a Council meeting”. That's the bit that was left out.---It's not here?

Well, the “dot, dot, dot” – see the second “dot, dot, dot” and then it's followed by “on behalf of the Council in the interval between meetings” – says in the rules “subject to the instructions of a Council meeting”. Are you aware of that?---No.

So you have not looked at rule 19(1) in the relevant AustLII or under the New South Wales legislation website and so forth?

MS NOLAN: It's rule 19(2)(c), my friend.

MR LONERGAN: Sorry.

10 MS NOLAN: It's just not going to be correct for the transcript.

MR LONERGAN: Indebted to my friend. 19(2)(c).---Yes. I haven't looked at this rule for a while now but I don't remember seeing that there.

You'd agree with me now, accepting that what I'm telling you is the correct reading of the rule, that that is a significant fetter on any discretion that would be afforded to a member of the board in between board meetings, is that correct?---That's correct, but I thought the Registrar had advised Debbie to make decisions and run the Land Council as best she could.

20 Was that in writing anywhere?---Yes. Yes.

Where is that?---Who knows? In the 53 volumes. I've got no idea right now. I could pull it out if you wanted to.

All right. And when did this come to your attention?---It was around that, it was around mid-'15 because a lot of this correspondence was happening at the time.

30 Now, sorry, it was remiss of me to ask you, but this document at page 80 and it goes over to page 81, perhaps if we go to the bottom of page 81, you'll see your signature there. Did you write this document?---I think I did.

You can't be sure?---Can't be sure but it looks like something I would have written.

If we just go back to MFI 33, page 63, now this is a file note again. Do you see that on the screen?---Yes, I do. Yes, sorry.

40 Doesn't have a date on it, but there is a reference to 7 June, 2018 in the first line there. I presume the 2018 is wrong. Would that be your understanding?---I'd say that's a typo.

Now, the fifth or the fourth paragraph talks about Solstice getting a barrister.---Yes.

The bit underneath that talks about what are the board's duties re corruption.---Yes.

Now, it says here, “Highly qualified duties, board members, even chairperson have powers of a wet lettuce. Can’t bind the LALC for any land dealings. Can’t mortgage the land or create any right in land. Can’t give rise to estoppel or any other law. Can’t put the LALC in a position where it can be sued.” I’m picking out bits here. I’m not reading the whole thing.---Yes, I understand.

10 E.g., it says, “If a board member represents authority that it does not have, can’t bind LALC.” And there’s a section 42E(5). Now, is this file note written by yourself?---I don’t think so.

Have you seen this file note before?---Yes.

And have you read the bit about, “The power of a wet lettuce?”---Yes.

Do you agree with me or is it your understanding presently that a board member, even the chairperson, has the power of a wet lettuce?---Yes. That’s what I said earlier. They can sign a lot of documents but there is a process in place before any of those can bind the Land Council.

20

Well, that might be true in relation to land, but this is, at least on its wording, the power of wet lettuce would extend well beyond land. It says it can’t bind the LALC.---Yes, that’s right.

You’re agreeing with me that this, the power of a board member is not the power of a wet lettuce merely in relation to land but extends to the power of a wet lettuce beyond land?---I think, on looking at this I think it’s only referring to land. The board had, you know, in relation to housing, et cetera, they did have some significant power, allocating housing et cetera, et cetera.

30

Now, we’ll just go to MFI 33, page 39 over on this authority. I’ll start at 37 if I may, just so you can see the – you’ll see there this is on Knightsbridge North’s letterhead. It says there on the top left-hand side, “Received by,” and then there’s a signature underneath. Is that, whose signature is that? ---That’s Debbie’s.

I noticed, and I’ll take you to them in due course, but that her signature and “received by” are referenced a number of times.---Yes.

40 Can you explain, what was your procedure in relation to these documents that bear her signature as received by?---My process, this, this was a briefing paper prepared for a board meeting, my process usually was to meet Debbie before the meeting, run through what it says, and if she was happy with it she would sign it so that, yeah, to acknowledge that she’d, she’d, she’d it and had, had it explained to her and that, that was the process.

Did you adopt any process with Mr Green in relation to that explanation and the like?---If he was around and he heard the same explanation, then, yeah, I'd ask him to sign as well.

Right. So am I to take it that your evidence is that if he did not sign it, that he was not there?---It doesn't mean he wasn't there but - - -

Well, your evidence was that if he was there with Mr Bakis or otherwise, then - - -?---Dates.

10

- - - he'd be briefed, he'd sign it.---Well, that's right. I mean typically these were explained to Debbie one-on-one, but like I said, if, if Richard wasn't there, if Richard had been here when I explained this to Debbie he wouldn't have signed this, he would have signed it.

But you said your practice was to explain it to Debbie one-on-one. Is that right?---Yes.

20

I'll just turn over to where I started, which was – if you want to have a look at page 38 to familiarise yourself with the document, but I do want to take you to the top of page 39. Sorry, if you want to go back and have a look at it, please - - -?---No, that's okay.

So, the top of page 39. Now, this document was dated 5 April, 2016, which is evidenced on page 37. You see the top there, Ms Bakis?---Yes, yes.

30

It says there, "You've instructed us that your designated agent, Richard Green, or the chairperson or both can sign agreements with developers." Do you see that?---Yes.

So, where and when were you instructed by the board that Richard or the chairperson, Ms Dates, or both of them can sign agreements with developers?---I think that's referring to a minute back in September or October '14 where Richard had been endorsed.

But, I mean, on your evidence, Mr Green had been endorsed merely to show developers the land, not to sign agreements with them.---Yes.

40

So where was Mr Green and/or Ms Dates as the chairperson able or authorised to sign agreements with developers?---I'm not sure.

But this letter is under your letterhead and is dated 5 April, 2016.---I know. I, I probably knew when I drafted it but - - -

Well, you referenced – sorry, I didn't mean to cut you off.---No, no. Thank you, that's all right.

You referenced a board minute in September, 2014.---Yep.

Have you see that board minute?---Oh, I haven't seen it for a while.

And you're saying that there's a board minute that authorised Mr Green to sign agreements with developers?---I don't think that's what it says.

What does it say?---I don't know right now. Sorry. I, I, there's just too much, too many documents. I, I don't think it says Richard can sign agreements with developers.

10

Well, I mean, to the best of your understanding right now or the best of your recollection, what did it say?---"Richard is endorsed to seek out appropriate development opportunities," or words to that effect.

So, for my own benefit – sorry, I'm just going back to the authority. So, your position, if I summarise, is that you were told by Debbie Dates in late 2014 that Richard Green could sign agreements on behalf of the Land Council as her delegate, is that what you're saying?---In effect, yes.

20 And was there any formal delegation that she provided, evidence to you of that delegation?---No.

And you would accept that any delegation by the chairperson would have to be approved by the board of directors?---Yes.

You never saw anything to that effect?---No.

So when then did you come to the realisation that the chairperson or the deputy chair had the power of a wet lettuce?---It was probably mid-'15.

30

So, this is pre any of the Sunshine agreements being signed, is that correct? ---That's right. But just to make clear, I mean, that, that term refers to the fact that the board can't make decisions on property dealings unless it's approved by the members and NSWALC. So, that, that's what that term refers to, as I explained earlier.

While we're on that point then, then let's go to page 38 of MFI 33. This is the, it's the bottom of that.---Yes.

40 And just so I put you in context, if you go over to the top of page 39, this is the bit I was just referring you to in relation to, well, the construction of designation regarding agreement with developers for Richard Green and Debbie Dates.---Yes.

So it's the last paragraph on page 38.---Yes.

And this is saying that signatures on contracts are, well, sorry, let me read it to you. "Whilst not binding, signatures on contracts have a tendency of discouraging tyre-kickers."---Yes.

So is it your understanding, well, at this point in time that signatures on contracts had no effect at all?---No, they had an effect, but they, they couldn't bind the Land Council until the approval process had been completed.

10 Are you saying then that they bound the person on the other side of the contract?---They, they, they, they did bind them. So if this, if these agreements went through the process they would have been bound.

Is this what you explained to Ms Dates and Mr Green from, well, November 2014 through, or, sorry, let me withdraw that and start again. Going to the heads of agreement that was dated 15 December, 2014 - - -?---Yes.

- - - with, well, on the document it says Gows Heat - - -?---Yes.

20 - - - what was the advice that you gave Mr Green in relation to that agreement and the binding of parties to it, if anything?---Well, at that point in time it would have been Richard preaching to me the fact that it was a land dealing and that it would need the approval of the members and NSWALC and we would have had a discussion about that. Richard was fully aware of this process and that that, and that that agreement was indeed a property, a property transaction.

Mr Green's evidence, and you've heard it, was that the heads of agreement dated 15 December, 2014 - - -?---Yes.

30 - - - the one that bears his signature and not Ms Dates' - - -?---Yes.

You're aware of the one I'm talking about?---Yes.

I can bring it up if you want.---No, that's okay.

Was never explained to him by you or by Mr Petroulias.---Well, that's just not true.

40 And your evidence is, well, your explanation was that sign the document because it doesn't bind you?---No. No, my evidence is sign the document, you understand that there is an approval process and it needs to go through the process. Now, and whatever your processes are, you'll need to organise them.

But by your evidence the, you know, well, you've previously given evidence to the Commission that those agreements were void.---Well, they are, they are void until they're approved.

Well, there's a difference between an agreement being void and a condition precedent to performance under a contract. You understand that, right?
---Yes.

So the contract being void means it's void. It's, well, it's finished. It's not that it can be resuscitated.---Right. So Aboriginal land councils can never sign property agreements?

10 No, that's not what I'm saying to you. I'm saying there's a difference between a condition precedent and a contract being void.---Yes.

Now, did you give Mr Green advice that these contracts were void?---I honestly don't remember. I don't know if I did.

I mean, that's the bottom line here, is that you can't remember what advice you gave Mr Green in relation to this heads of agreement. That's correct, isn't it?---No. I, I do remember the discussion but I, I, sorry, I do remember the discussion was had but what exactly was discussed? He, he appeared to
20 me as being someone who knew the Land Rights Act quite well, and we had a long chat about that.

I'm sure there's no doubt Mr Green was aware of the process of approval. He's given evidence in relation to that. But that's not my question. The question is that you did not explain the heads of agreement to Mr Green.
---Yes, I did.

And you didn't explain to him the legal effect of that agreement.---I, I don't remember explaining that but I, I, sorry - - -
30

Because on your evidence, if you had explained it to him, you would have explained to him that the transaction would have been void.---Perhaps I did, perhaps I didn't.

I mean, the most simple type of agreement is one that's void.---Yes.

And then going back – I appreciate I'm not dealing with this in sequential order – but there was a, well, an agreement, a cost agreement that you put in front of Mr Green, is that right?---Yes.
40

And that was a cost agreement dated 27 or 28 November, 2014?---Yes.

You recall that?---Yes.

Now, your evidence earlier today, I believe you were asked – I'm starting specifically with clause 20 here.---Yes.

And you gave evidence to the effect that Mr Green suggested that – sorry, I withdraw that. That’s not fair to you.---I know what you’re saying. It wasn’t this agreement.

Yes. It was - - -?---That, this is the other one, yes.

It was the one dated 27 November, 2015.---That’s right, yes.

10 And your evidence was that Mr Green had asked you to put that in.---And, yes, and it was the same with the ’14 one.

Yes. And that’s your evidence, that it was the same as the ’14 one.---Yes. Yes.

Now, the other day – this is transcript 2368 – you were asked in relation to clause 20 in the 2014 agreement.---Yes.

20 And basically you agreed with the Commissioner that there was no sensible explanation why Mr Green would suggest people that were in that clause would give instructions to Knightsbridge North Lawyers.---That’s right.

Yes. And that you were also asked and you, in effect, agreed that Mr Petroulias was the one that might have asked you to put that clause in the agreement?---No. Mr Petroulias drafted it but those two had a chat and determined that those four names need to go into that clause and that clause needs to go into the engagement letter.

30 So, Mr Petroulias drafted the agreement with clause 20 in it, did he?---He drafted clause 20.

He drafted it in both agreements, the 27 November, 2014 and the 27 November, 2015 agreement?---Yes.

All right. And were you there when this conversation was supposed to have been had between Mr Petroulias and Mr Green regarding the four names? ---I think I was, I think I was. And I, I’m sorry, I know I’m being vague but I, I do remember them being in my office in North Sydney around that time and it, we may have, oh, I don’t know. I, I really have no recollection.

40 So, you have no recollection of being part of a conversation?---I can’t remember if it came to me third hand or whether it, I was involved in the conversation.

All right. And if it came to you third hand, it would have been via Mr Petroulias?---Yes.

I’ll take you to the agreement in a minute but your evidence also in front of this Commission was – and this was in and around Mr Petroulias paying off

your credit cards – and your evidence was that, and this is at transcript 2134, that you'd earned fees from the Awabakal transaction in the order of about \$140,000.---Yes.

And they didn't come to you, that's right?---Most of them didn't. I think one or two at the beginning had.

10 And, sorry, when you say, "The beginning," when are you talking about?---I think I issued my first invoice in March '16 and I believe \$11,000 was paid into my Westpac account. I got to spend that money. Sorry, I shouldn't laugh but that's all I got out of this.

And why did it take, – so you, I mean, you've seen the cost agreement from 28 November, 2014. If you had a valid cost agreement in place, why wouldn't you be issuing invoices throughout, you know, the, well, 2015 in its entirety?---Because Gows was paying for the costs. Because there was obviously, I was acting for the two parties, I felt that Gows should be the one that pays the fees.

20 So that was a unilateral determination by yourself, was it?---Yeah. I, I made that decision, yeah.

All right. So, it's the case that in relation to any of the work that you did through 2014/2015, you did not charge the Awabakal Land Council for any of that work?---That's right. I, that was, it was a Gows – Gows was paying for it and, and yep.

30 So, what effect did the 28 November, 2014 cost agreement with the Awabakal Land Council have in relation to your charging?---Well, I didn't charge Awabakal, so it had no effect.

And your evidence is that clause 20 you never relied on in relation to any decisions that were made by or on behalf of the Awabakal Land Council? ---Yes.

So did you tell Mr Petroulias that he was going to be fitting the bill for all the work he did through 2015?---Yes.

40 And what did he say to that?---Well, it was his idea. He said, "Look, Gows should pay for this," and I agreed and obviously I never got paid for that work either.

And to your understanding, why would Mr Petroulias agree to do that? Your previous evidence has been that he's quite, well, my words, tight-fisted?---Tight-arse, yes. Why would he? Well, the issue I had was I couldn't charge both parties for the same work, so - - -

Sorry, stopping you there, why, why is that?---Well, there was a real problem with at any point in time what work I was doing for whom. So, you know, if I'm drafting an agreement for Gows and Awabakal, who, who should pay for that work, and I understand the conflict issue there and I was aware of it, but because it was hard to separate the two it was just easier to unilaterally say that Gows would pay for it. And, and as it turned out, Gows were paid first anyway so - - -

10 If I may bring up the cost agreement which is Exhibit 43, page 1. I believe it's Exhibit 43, page 1. You see that's the - - -?---Yeah.

- - - that's the letter that accompanied this cost agreement?---Yes.

And you'll see there that it's written, "Agreed with RG on," I presume that's 28/11/14. Is that right?---Yes.

20 Now, we just go over to page 2, it shows a schedule of works. I'll just bring it up here because I can't – now, your evidence was that the Awabakal Land Council were high-touch clients and basically you didn't want to have much to do with them?---I didn't have the time to service them and deal with all the issues that it appears they had going on at the time, yes, that's right.

So your scope of works that you understood to be doing was this heads of agreement?---Heads of agreement, we had, we had talked about the, an issue about the backlog in land claims and I think I provided them with an advice in relation to that later in the month but, and I did that for them because we'd, we'd had the chats and I found it quite interesting, and that was it, I did no more.

30 I'll just take you to point 3. You see that?---Yes.

And there's a reference there to the proposed heads of agreement entered into with Gows Heat Pty Limited.---Yes.

Now, this is dated, or you say that you gave this document to Mr Green on 28 November, 2014. What proposed heads of agreement had been entered into with Gows Heat at that point in time?---Well, it says proposed.

40 Yes. And it also says, "Entered into with Gows Heat".---Yeah, it's just bad language. That's, that's the only way I can explain that. It's just bad language. It, it proposed and entered - - -

So there was no heads of agreement as of this date, is that correct?---No, because I, it was signed a few weeks after this.

Well, the date of the signature's 15 December, 2014.---Right. So, it was a month later, yep.

Yes. So at this point in time, there's no heads of agreement, right?---No.

To your understanding?---No, but it had been discussed, yes.

Never been drafted?---I don't think it had been drafted at that point.

You hadn't drafted any, had you?---I don't think I had at that point.

10 No one else to your knowledge had drafted any heads of agreement?---I don't think so.

Never provided any templates or anything like that to Mr Green?---Not sure. I am not sure.

Well, when was the first time that you met Mr Green?---Well, we've already gone through this. It was in Wollombi.

20 Sorry, that's correct. Yes. When did you, relative to 28 November, 2014, when was the first time before that you sat down with Mr Green?---This is what I was saying earlier, I can't recall if he'd been to my house to discuss these things. I, I hadn't been up to Newcastle. I don't actually recall to be honest.

So, where in this heads of agreement, Ms Bakis, did you disclose any potential conflicts of interest?---In the costs agreement?

Yes.---I may not have.

30 We'll go over to page 10. If you'd just go down a bit further. So, clause 1.4, so you're saying there your duty of care's to your client named in this agreement, that being the Awabakal Land Council?---Yes.

And no one else, right?---Yes, well that's clearly wrong.

Now, you'd given evidence that Mr Green doesn't read many documents. You recall that?---He likes to talk about things, yes.

40 Did you explain this clause to him?---I don't remember but I, I wouldn't have.

Sorry, you would not have?---I would not, I probably didn't because if I had, I, I would have picked that up as an error in the draft in there.

But you accept that anyone who read this document would think that you had, well, what a solicitor would usually have which is a complete duty of fidelity to their client?---Yes, and I did.

Well, you didn't. You just gave evidence before that you were even conflicted on who could pay you, was it Gows Heat or was it Awabakal, and it ended up being Gows Heat because it was just all too hard.---Yes. So, isn't that, isn't that a good outcome for Awabakal?

Well, I guess that's a question for submissions, Ms Bakis. So, I guess what I'm getting to here is, what did you explain to Mr Green in relation to this cost agreement?---Can you scroll up, sorry? Sorry, just to mentally remember. There was a big discussion around the security of costs issue.
10 There was a discussion about fees in, in relation to this document, and I think generally I spoke to him about how the engagement would continue and how we would do it given that he didn't like reading documents, and how that, we would overcome that. I think that was the gist of it.

So you understood that Mr Green would not understand what was going on unless you verbally explained it to him?---He could read.

Yes.---So - - -

20 According to yourself, he can read. However, that's not my question. My question is that you understood that he would not know or understand what was going on unless you verbally explained it to him?---Generally speaking, yes.

You didn't explain to him the conflict or potential conflict between Awabakal Land Council and anyone else.---No, that was explained to him.

Well - - ?---Not, not in terms of discussing this document, though. It was, it was just a general discussion about Gows is Nick's company. He knew
30 that. He knew that it was Nick's company.

Well, we'll come to Gows in a minute, but this document, my question is, what did you explain to him in relation to this cost agreement?---I've just been through that.

You didn't tell him that it was \$80,000 a month potentially that you were going to be earning from Awabakal Land Council for this, did you?---That, I have to say this, it wasn't ever meant to be 80,000 a month. That's ridiculous. It was, it was 80,000 a year. And I did explain the 80,000
40 because I wanted to make clear to them that if they're going to engage me they need to understand there's a cost. I, I did explain that and I explained that in the context of the, the security clause.

So your evidence is that you explained 80,000 bucks a year, not 80,000 bucks a month?---Yes. I haven't been asked that question before. It's, I mean, 80,000 a month, I would have definitely have continued acting for them.

THE COMMISSIONER: This cost agreement seems to have been full of errors. Very carelessly drawn up.---You could say that, Commissioner.

MR LONERGAN: You accept that the document itself says 80,000 a month, though, don't you?---Yeah, I accept, I fully accept that.

Well, I put it to you that you never explained any \$80,000, whether it be per month or per year, to Mr Green.---I did. I did.

10 You didn't explain to him any conflict that you could potentially have with anyone else.---I explained all that.

You didn't explain to Mr Green clause 20, being that there are a number of agents that can act for the Awabakal Land Council.---I did.

THE COMMISSIONER: Isn't it common practice for solicitors to have a notation, "This cost agreement has been read to me by my instructing solicitor or by my solicitor," dated X date, and then there's no argument about whether it was or wasn't read to the client? Saves this painful sort of
20 process of going through "Three years ago you told him X, you told him Y." Isn't that the standard practice?---But I did that.

No, but isn't it standard practice?---Yes. And I did it.

Well, where is it in this - - -?---Oh, I don't know. No-one refers to any of my, my - - -

Is it here?---I, I'm sure there's a file note.

30 In relation to this agreement, is there a notation that it was on a particular date read and explained to Mr Green or is there not?---There's a file note somewhere to that effect. Now, the fact that no-one's taken me to it - - -

MR LONERGAN: Well, can Ms Bakis be provided MFI 33 in hard copy?

THE COMMISSIONER: Does this deal with this point, does it?

MR LONERGAN: Sorry, I was going to ask Ms Bakis does she reference the file note, and I'm just giving her an opportunity to draw the
40 Commission's attention to it. And - - -

MR CHEN: I should, Commissioner, just tell my learned friend and the witness, MFI 33 is what we have extracted, what we believe are the file notes. We don't want anyone to be under misapprehension but there may possibly be others. We've extracted what we consider are the relevant file notes, Commissioner, so I just want the witness and those behind me to know that. If Ms Bakis says there's another file note, no doubt it can be produced or identified.

THE COMMISSIONER: Are there other file notes been separately put to one side or marked-up as a file note?

MR CHEN: Not that haven't been marked for identification or tendered so far that we're aware of. I just want - - -

10 THE COMMISSIONER: I mean the same question arises I imagine in relation to a series of agreements that Mr Lonergan may be asking questions about as to whether they were read or not read and explained to Mr Green. There could be up to a dozen or more such agreements. If there's file notes showing that Ms Bakis or recording that Ms Bakis read and explained the particular agreement to the client, Mr Green in this case, or client representative, that's the end of it and we can cut through all of this cross-examination. There's not been any suggestion at all that there's any such file notes.

MR CHEN: Well, perhaps Ms Nolan can indicate what the position is and we can - - -

20

THE COMMISSIONER: Yes, well, that might help. Ms Nolan, are you able to assist?

MS NOLAN: My instructions are with respect to these documents that Ms Bakis has discovered, as it would be well apparent to the Commission, the shambolic state in which the materials produced by herself under the auspices of Mr Petroulias to this Commission, putting aside any legalities with that if we may, that she really needs to sit down and on her obligations to reconstruct the file as best she can, and that is a task that she needs to embark upon and she has not yet. I understand today that the K&L Gates file has been produced to this Commission and that was something that I have identified as something we need to look at, because that to her mind is probably the most unadulterated version, but I have to confirm those instructions. So in short answer to the Commission's question and that of my learned friend, I really at this stage cannot be of the assistance that the Commission is seeking.

30

THE COMMISSIONER: Yes.

40 MR CHEN: Well, I can assist a little bit further, Commissioner. Notice has been given that the K&L Gates material was produced to the Commission late yesterday, and we yesterday evening went through it and we identified one, possibly two documents that didn't appear to be on our assessment of Ms Bakis's file produced, and one of them is now in evidence before you today, Commissioner, the letter of, I think it's Exhibit 112. I'm sorry? 104, I apologise. So, Commissioner, from our assessment there doesn't appear to be any difference, but if neither Ms Nolan or Ms Bakis can't assist, then

maybe we have to proceed further because the position may well be as my learned friend is cross-examining upon.

THE COMMISSIONER: Well, one would have expected in the course of preparation of this matter all the file documents would have been gone through and somebody would have a record as to whether there are documents of the class we're now talking about. I'm surprised that that hasn't been done, but anyway, I'm told it hasn't been done.

10 MR CHEN: Well, it's been done for, it's - - -

THE COMMISSIONER: Whether the file was in a shambolic state or not, it had to be read at some point.

MR CHEN: Well, it's been done, Commissioner, on our part.

THE COMMISSIONER: Yes.

MR CHEN: And - - -

20

THE COMMISSIONER: But you haven't found anything of that description.

MR CHEN: No, but I was leaving open the possibility that - - -

THE COMMISSIONER: Yes.

MR CHEN: - - - the potential was there that in the mass of this material that our efforts had overlooked something of significance, hence I thought those
30 behind me should know and those behind me could assist.

THE COMMISSIONER: Oh, no, you're quite correct in doing so.

MS NOLAN: Well, perhaps, Commissioner, I might inquire through you that you can inquire of this witness whether or not she's in a position to assist the Commission, because on my present instructions I'm not able to assist. I hear everything that's fallen from everyone, but - - -

40 THE COMMISSIONER: Well, I certainly can ask Ms Bakis. I don't know that she'll be able to help but are you able to shed any light on where will we find any of these file notes that might deal with the occasions on which Mr Green had documents read to him and explained to him by you?---Well, there, there are a lot of file notes in this folder that I have in front of me.

Yes, yes.---Volume 53. And if you read them carefully there is, there's references in there to - - -

All we want is the document that you said exists, that is to say, a file note recording the matter we've been talking about.---With Mr Lonergan?

No. The explanations of these agreements that were you say given to Mr Green were noted, signed or dated. Where are these file notes? Are you able to help?---Well, there's one here on 12 December, '14 and I can see in the last two paragraphs where I discuss in broad terms what I went through with Richard but the - - -

10 No. What we're talking about is does there exist within your file a class of documents that may be described as a contemporaneous notation that particular legal agreements were read and explained to Mr Green or are there no such file notes?---I'd have to read what I've got here.

Well, you don't know whether there was file notes of that kind as I - - -?
---I'm sure there are. I'm sure there are. I just have to remind myself.

20 All right. Well, look, I think rather than take up time, Mr Lonergan, is it better that Ms Bakis go through the file or any other files she wants to consult to locate any of these documents if they exist and they can be presented in the morning and you can move on with other topics if you like. Is that possible?

MR LONERGAN: Yes, Commissioner. I can do that.

30 THE COMMISSIONER: Well, Ms Bakis, let me make it clear that you're going to have access to your file to identify any file note which records that you read and gave advice to Mr Green on specific agreements. All right?
---Yes.

So that's a task for you to satisfy yourself and if there are any you can flag them so that we won't waste time tomorrow.

MR LONERGAN: So we'll leave the cost agreement behind us, Ms Bakis, and progress to the heads of agreement. Now, you did reference page 3 of MFI 33 and you have that in front of you.---Yes.

40 Now, it says there after the fourth dot point, "There is a copy of the joint presentation including Gows attached." Now, I take it that joint presentation is a reference to presentation that was made to the Awabakal Land Council board on 31 October, 2014. Is that right?

MR CHEN: I don't think that's right, Commissioner. I think that raised the issue about which one was it, whether it was the IBU/Gows one as opposed to simply the IBU one.

THE COMMISSIONER: All right. Mr Lonergan?

MR LONERGAN: Well, Commissioner, that's exactly where I'm going with my question.

MR CHEN: I apologise. I'm sorry.

MR LONERGAN: I'm indebted to counsel for his point. You see that, Ms Bakis?---I do.

10 So the word attached means it's there, right?---Yes.

You've seen it?---It's not there now.

Where is it?---I've got no idea.

Well, have you ever seen a - - -?---Yes. The IBU/Gows, yes, I have.

So if we bring up the IBU presentation which is volume 2, page 67.---Yes.

20 Is that the one you've seen?---Yes. I don't, I'm not sure if this is the presentation.

Well, we can scroll down if counsel assists. Perhaps scroll down and you can see there land details one of five, a picture, and it goes down to two of five.---Yes.

And onwards. Is this the, is this the one you're referring to or not?---I thought there was a presentation but perhaps this is it.

30 Now, the presentation that's referenced in this file note of 12 December, 2014, well it says, "Including Gows attached." You can take it from me that this particular presentation that's on the screen, which is page 67 of volume 2 of Exhibit 42, makes no mention of Gows.---Why do you think this is the presentation?

Well, this is the question I'm asking you.---I, I'm not being difficult, I'm just - - -

40 No, no. Have you seen a presentation, a joint presentation including Gows?---I think I have. I, oh God, and I don't think it looked like this.

But you don't know where it is?---No.

That's because it doesn't exist, isn't it, Ms Bakis?---No, that's not true. That's not true.

MR PETROULIAS: Commissioner, if it assists you, it's in volume C, Bakis material and it's page 5.

THE WITNESS: Thank you.

THE COMMISSIONER: Thank you.

MR LONERGAN: Well, was it volume C, page 5?

MR PETROULIAS: Yes, volume C, page 5, Bakis material or bundle of docs as they call it.

10 MR CHEN: It's Exhibit 49, page 6.

THE COMMISSIONER: Thank you. That looks like the same.

THE WITNESS: It's the same thing.

THE COMMISSIONER: The same document.

MR CHEN: No, it's different, Commissioner. I think - - -

20 THE COMMISSIONER: Oh, I see. Yes.

MR LONERGAN: Is this the document you say you've seen?---It must be it, yes. Look, to be clear, I didn't draft this document. This is IBU/Gows's, Mr Petroulias's project. It probably got lost in the file somewhere.

So, Gows Heat, you've given evidence that you're aware of Gows Heat because you did some tax work for them, is that right? And it was then a dormant company, is that right?---Well, broadly, yes.

30 And at the point in – sorry, and to your understanding and I believe it's the evidence you gave the Commission, Gows Heat has not done any substantive work that you're aware of prior to these agreements?---That's correct.

So, I take you to page 3 of volume, or MFI 33, which is the file note from 12 December. Page 3 of MFI 33. And it says there NP, "I plucked" – this is about two third of the way down – "I plucked Gows out of the air. Gows is part of a JV that was involved with Fiji developments."---Yes.

40 And you accept that that's, well, not a company that's lying dormant?
---Gows?

Yes, well, according to this note.---Yes.

So the evidence you gave to the Commission was that Gows Heat, to your understanding, was a dormant company up until the point in time that it entered into these agreements?---I'm not sure I said that.

MS NOLAN: I object. It's actually not her evidence. I mean, my friend probably needs to go to the transcript. Her evidence was with respect to it being owned by somebody else and it was an operating company then, and then there was no longer any use for it and then it became a dormant company.

THE WITNESS: And I thought I mentioned AFTA, Australian Free Trade Agreement Association or whatever the hell it's called.

10 MR CHEN: I think my learned friend, I think both of my learned friends may be right, might be the fairer position, because 208, apparently it does say that, 2082, Commissioner, at about line 25, that it became dormant. But in any event, I think both my friends might be right.

THE COMMISSIONER: Anyway, Mr Lonergan, let's press on with it if it's relevant.

THE WITNESS: It did become dormant I think after around '13, '12 or '13.

20

MR LONERGAN: Right. So the evidence you've given the Commission is, well, it's different to this company being in joint ventures in Fiji?---Well, it was. But it was prior. I, I think it was around 2012 but it did nothing after that.

I'll leave that topic. So the heads of agreement that you had Mr Green sign on 15 December, 2014, you didn't explain it to him, did you?---Yes, I did.

30 You never mentioned the word Gows Heat in relation to that agreement.
---Yes, I did.

And Mr Green never understood that that agreement was in relation to selling land.---He understood that. He was fully aware of what it was.

THE COMMISSIONER: Again, is this a matter in which there was a file note? Or don't you know?---Well, this is what I'm looking at overnight.

40 MR LONERGAN: Now, you also gave evidence in relation to Mr Petroulias stopped being a lawyer in around 2008.---Yes.

Yes. And if I understand the evidence you've given the Commission is that Mr Petroulias was never working directly for Knightsbridge North Lawyers, is that correct?---No, he wasn't. Not directly. He helped with the admin bits and pieces, but he wasn't an employee employed by me.

So if I just take you to MFI page 12, sorry, MFI 33, page 12. It's point 4. This is part of the running memorandum and declaration.---Yes.

And if you go over to page 13, down the bottom, your signature is there, is it, Ms Bakis?---Yes, it is. Yeah.

Now if you go up to point 4, please, on page 12. Just read that, please.
---“Agreed to second Nick Peterson to KNL and use, and use,” sorry, should I read it all?

10 Just that bit. That’s the bit I’m referring to here.---“Agreed to second Nick Peterson to KNL and use Knightsbridge email and not personal email. Keep record of communication under one umbrella.”

Is that true?---I don't know that “seconded” is the right word but he certainly helped me out. And in terms of the email, that’s, that’s how it was supposed to work but I didn't really like it happening like that, so that’s not really how it operated down the track.

So you accept that Mr Petroulias was to have a Knightsbridge North email account, is that your evidence?---He didn't.

20 Well, was he meant to or not?---The idea, no, the idea was that if someone wanted to ask me the question they could email me. So instead of having emails going all over the place they’d be sent to one central place.

But the evidence of “second”, right, and it’s inverted commas around it.
---Yes.

You understand what “second” means?---Yeah, it’s, it’s like you're putting someone into your organisation to work for you, yes.

30 And that's exactly what happened isn't it?---What’s the date of this file note, sorry?

2 October, 2015.---Thank you. I, I don’t think it was as strong as that. I, I wasn’t comfortable with this sort of arrangement and strictly speaking it wasn’t really a secondment. He, he helped me with admin.

Well, he went far beyond that, didn't he?---Well, he helped me draft documents.

40 Well, he signed documents.---Did he? I don’t, he - - -

Well, the evidence, if we go down to point 8. I’ll take you to the document in a minute but your evidence was that he signed that document. This is the document that was entered into with Sunshine which started the exclusivity period.

MS NOLAN: Can my friend give the witness a transcript reference, please.

MR CHEN: It's the acquisition proposal that my friend is referring to dated 8 July, 2015.

MS NOLAN: I'm indebted to my friend but the transcript reference would be probably more fair to the witness.

MR LONERGAN: The witness doesn't have the transcript in front of her.

10 MS NOLAN: Then her counsel can make the appropriate objection, please.

MR LONERGAN: Well, I'll refer you to, I'll take you to the document and perhaps that will refresh your memory of your previous evidence. Volume 3, page 148 of Exhibit 42.---Okay. Thank you. Yes, he did sign that but that was - - -

That was what, Ms Bakis?---Well, Debbie signed it I think a few days after this. It was just a holding - - -

20 So do you ever recall presenting a version of that document to Mr Green to sign?---I can't remember. I honestly can't remember. I think I did.

Well, I'm sorry, Debbie Dates signed it or Richard Green signed?---I thought Debbie signed it a few days after this.

So you don't recall Mr Green signing any document?---I don't remember. There were so many - - -

30 Or an acquisition proposal?---There were a lot of documents in this transaction. I'm not sure. He, he might have signed this one too.

Well, in fairness I'll take you to, I believe it's page - - -

MR PETROULIAS: Commissioner, if it assists anybody, the document that Ms Bakis is referring to with Debbie Dates's signature is from Bakis volume M, page 85.

40 MR LONERGAN: Now, Ms Bakis, why – just returning to the heads of agreement, dated 15 December, 2014, when you presented that document to Mr Green to sign, was it already signed by Mr Johan Latervere? I'm sorry, by Mr Petroulias signing it as Johan Latervere?---I don't remember. I think it had been.

Do you remember it being signed in pencil?---No, I don't remember.

Why would a document, a contract or heads of agreement such as this one, be signed in pencil?---I've got no idea.

But you had the agreement, didn't you, and you presented it to Mr Green?

---Yes.

So, your evidence is what, that this agreement was never signed in pencil?
---I don't remember. I honestly don't remember.

Well, if it was signed in pencil, why would it be signed in pencil?---Well, you wouldn't, would you?

10 No. I may ask if the Commission can assist me. The document, being the original document of this heads of agreement was, I viewed it at lunchtime, if it be - - -

THE COMMISSIONER: Is that available?

MR CHEN: It's in, Commissioner, if it's a Gows Heat agreement of 15 December, I believe it's in the K&L Gates material. So, we'll make steps to bring that out, Commissioner, if we can.

20 MR LONERGAN: It's in the white box. I mean, did you witness Mr Petroulias sign this document as Latervere, Johan or John?---No.

So, how is it the case that – well, sorry, have you seen this document with both the signature of Mr Latervere and Mr Green on it?---If you're saying it's in, if you're saying it's in pencil, I haven't seen it.

Okay, well - - -?---I haven't seen it since Richard signed it.

Well, I'll ask the Commission if that will be made available to the witness.

30 MR CHEN: Commissioner, what's been taken by Mr Broad from the material produced by K&L Gates is a folder described as Lawcover Insurance Pty Ltd, and within it is the Gows Heat head of agreement, held together with a bulldog clip, but otherwise – and there is a file note as well as a letter from Luk & Associates, dated 26 September, 2017 on it.

THE COMMISSIONER: We'll make that available to Mr Lonergan.

MR LONERGAN: I've seen it, Commissioner.

40 THE COMMISSIONER: Do you want access to it?

MR LONERGAN: I want the witness to view it.

THE COMMISSIONER: Yes. Very well.

MR LONERGAN: I have seen it. So - - -

THE COMMISSIONER: Put to - - -

MR LONERGAN: - - - I'm content for that to occur.

THE COMMISSIONER: - - - Ms Bakis.

THE WITNESS: Thank you.

MR LONERGAN: Ms Bakis, flick through it but I'm obviously interested
10 in the, well, the initials of the person purporting to be Mr Latervere and the
signature of Latervere on the document.---No. I, I haven't seen this before.

THE COMMISSIONER: Is there a question you want to put to - - -

MR LONERGAN: Well, yes. So, well, you've answered the question
before I even asked it but let me formalise that. Have you seen this
document before?---I haven't seen this document with the pencil on it.

So, this is not the document that you witnessed being signed?---I'm not sure
20 now. It looks like the same document that I asked Richard to sign but I
don't do pencil on agreements, so - - -

No, and there's good reason why you don't do pencil, is there, Ms Bakis?
---There's very, very good reason why you wouldn't do that.

And just tell the Commission what those reasons are.---Well, you can just
rub it out and, yeah.

THE COMMISSIONER: I don't think that's necessary. What else is there,
30 do you want to ask any other questions?

MR LONERGAN: Yes, I do, Commissioner.

THE COMMISSIONER: Yes, you go ahead.

MR LONERGAN: So there also as you'll see on the pages of that
document, looks like, I'm not sure quite what to describe it as, tape or
something over writing?---Yes.

Now, was that on the document when you asked Mr Green to sign it?
40 ---I don't remember the tape. I suggest it wasn't there.

Was the writing under the tape there when you asked Mr Green to sign the
document?---Probably not. I mean it could be that this thing's been around
the world and notations have been made on it. I don't understand this, I
really don't.

THE COMMISSIONER: Yes, well, don't, just wait for the next question.
---Sorry.

MR LONERGAN: So have you seen a heads of agreement signed in pen by Mr Latervere?---No.

So have you seen any agreement signed by both parties, other than this one? ---I'm not sure.

10 It's a peculiar state of affairs, is it not, Ms Bakis, that this was to my understanding returned at request or provided to the Commission and on the face of it has been returned from files that you've provided to K&L Gates? ---No. The K&L Gates got in first with their requests for files, so when, I hope I'm right about this, no, no, I am right, and therefore when the Commission wanted files I could only provide copies of things, which is why it was difficult. This was made clear to the Commission, that I didn't have the originals of a lot of these documents. Sorry, is that what you're asking me?

Well, yes, I mean - - -?---Yes.

20 And what I'm trying to understand is how this ends up K&L Gates has what seems like an original document of this heads of agreement.---I obviously haven't checked it before I've sent it to them. I, I would - - -

But you sent it to K&L Gates, didn't you?---I did. I took it with me in person.

Now, you can put that to one side.

30 MR CHEN: I might, I might - - -

THE COMMISSIONER: Thank you. Just retrieve that document.

MR CHEN: I might tender that, Commissioner, I think. Could I just have a look at it, just for the moment?

THE COMMISSIONER: Yes, thank you.

40 MR CHEN: I'm sorry, Commissioner, I apologise. Thank you. I apologise, Commissioner, I just wanted to check something.

THE COMMISSIONER: Thank you. Yes. The heads of agreement dated 15 December, 2014 between Gows Heat and the Awabakal Land Council will be admitted and marked Exhibit 108. It's noted that clipped to the agreement are two other documents, a handwritten document and a copy of a letter 26 September, 2017 from Luk, L-u-k, and Associates Solicitors. They will all together form Exhibit 108.

#EXH-108 – HEADS OF AGREEMENT BETWEEN GOWS HEAT AND AALC DATED 15 DECEMBER 2014 INCLUDING LETTER FROM LUK & ASSOCIATES SOLICITORS DATED 26 SEPTEMBER 2017

MR LONERGAN: So, Ms Bakis, the heads of agreement, was that prepared by yourself?---I don't think so.

10 Who prepared it?---Mr Petroulias.

Now, you gave evidence that Mr Petroulias had a power of attorney in relation to Gows Heat.---I believe so, yes.

And I believe your evidence in relation to this heads of agreement was that he, or there was some acknowledgement that he shouldn't have signed it as Latervere and needed to assign the document under the power of attorney. Is that right?---That's right, yeah.

20 So is it or is it not the case that you were aware that he signed it as John Latervere or Johan Latervere?---I assume he signed that.

But you never saw it?---No.

That's your evidence is it?---Yes.

All right. And what were these efforts that you went through to, well, to change it to sign it under his power of attorney?---Sorry, what was?

30 You said, your evidence was that there was, well, there was a recognition that he shouldn't have signed it as Mr Latervere and needed to sign it under a power of attorney presumably as himself. Was that your evidence?---I think so.

So what steps, to your understanding, did he go through to sign this in his capacity under a power of attorney as opposed to John Latervere?---I don't know. I left that to him. I, I would have, I would have got it back from Richard and said, "Look, can you sort out Gows signing this? Do what you need to do."

40 Sorry, can you just repeat that for me?---So I would have, I would have given it to Mr Petroulias and said, "Can you organise for Gows to sign this? Do what you need to do."

MR PETROULIAS: Commissioner, if it assists the Commission there's a document in Bakis volume M, page 64 which is the ratified sealed copy.

THE WITNESS: Is that in pencil?

THE COMMISSIONER: Yes, thank you.

MR LONERGAN: Have you seen this ratified sealed copy, Ms Bakis?
---Probably not for three years if it's around.

But this is - - ?---If it's on a file, I don't know. I don't know.

10 If that document can be brought up on the screen. Bakis volume M, page?

MR PETROULIAS: 64.

MR LONERGAN: 64. Have you seen this before, Ms Bakis?---I don't
recall seeing this exact page.

Commissioner, it's 4 o'clock.

MR CHEN: I think we're sitting till 4.30.

20 MR LONERGAN: Oh, sorry, we're sitting till 4.30. Excellent.

MR CHEN: I think we were sitting till 4.30 today weren't we,
Commissioner?

THE COMMISSIONER: Yes, that's right. That was the arrangement. Are
you able to - - -

30 MR LONERGAN: Yes, yes, I'll keep going, yes. Sorry, your evidence was
that you have or haven't seen this document before?---I don't recall seeing
it. I don't recall seeing this document.

THE COMMISSIONER: Well, unless you need to spend any more time on
this, let's move on.

MR LONERGAN: No, no, I don't. Now, there was a second Gows Heat
head of agreement that was supposedly signed on that date. We'll bring it
up for you, Ms Bakis. I don't intend to spend a lot of time on it.---Thank
you.

40 But that is volume 8, page 59. Do you recall being asked questions about
this by Counsel Assisting?---Yes.

And this is the agreement, if I understand your evidence, that you've never
seen?---Never seen this.

Never asked Mr Green to sign the document?---I didn't, no.

Never explained the document to Mr Green?---No.

Never asked Ms Dates to sign the - - -?---No.

- - - document?---No.

So is it your evidence, Ms Bakis, that in relation to the Solstice transaction, that there was no document to your understanding that referenced Gows Heat?---No, there clearly was a document there.

10 Were you aware of - - -?---No.

- - - those documents at the time?---No, no.

So in relation to the Solstice transactions did you ever give Mr Green or did you ever give Mr Green any advice in relation to Gows Heat being involved in that transaction?---No.

20 Now, you're aware that this document purports to be an option over two lots of land, being lot 101 in DP 1180001 which I believe is the post office?
---Yes.

And then there was Lot 7393 in DP 1164604 which was land the subject of a native title claim. Is that right, to your recollection?---I, I don't know what these DPs are, I don't - - -

Right.---I know, I happen to know the post office's DP.

Right.---Because of the caveats.

30 All right. But when these, when the first heads of agreement was, well, to your understanding constructed, there were no reference to DPs in it, was there?---I don't think so.

And at the time that that agreement was constructed, did you have any knowledge of what the, of the lot number or DPs were of any of the Aboriginal lands?---Probably not.

40 No. So, and the first time that you became aware of anyone having interest in the post office or this Lot 7393 was when Matt Fisk brought it to your attention and asked whether Sunshine could have a call option over it. Is that right?---Never met Matt Fisk.

Sorry, it was via email.---Um - - -

And I'll bring it up if that assists you. Volume 7, page 18 and 19, and it's the last paragraph on page 18 that I'm drawing your attention to.---Can you scroll up? Thank you.

And you know who Mark Driscoll is?---He's the lawyer for Tony Zong.

Now, you see that last paragraph there?---Yes.

It says, "Awabakal was happy to give a right of first refusal but beyond that, it is premature for the reason that we don't know what land will be awarded." Do you see that?---Yes.

10 And what land were you referring to in that discussion, can you remember?
---I don't but there was a lot of land close, in the Newcastle area, they were awaiting for ministerial approval on or court approval. I really don't recall what land this was.

If you scroll down, if you keep going. If I take you to volume 4, page 108. I know that you're not party to this email, but if you see there, the lot's currently under native title claim lot 101 in DP 1180001. Now, that's the post office, isn't it?---I think so.

20 And there's the lot subject to future claim, being lot 7393 DP 1164604.
---Yes.

Now, there's lot 101 in DP 1180001 and the second one, lot 7393, they were part of the second Gows Heat, sorry, the second heads of agreement, where there was a call option. You're now presently aware of that, right, or do you need me to take you to the document?---No, that's fine. I trust what you say.

30 So, my point is this, Ms Bakis, this is the first time, being around October, 2015, that you had any awareness of anyone having interest in those two blocks of land, is that correct?---I think it had been discussed with Tony Zong but in terms of any serious interest, that's probably right.

And you certainly weren't aware of any Gows Heat claim or interest in that land, right, at that point in time?---That's right.

So, can you offer any explanation as to how, as of 14, sorry 15 December, 2014 a call option over these two blocks of land came to exist?---I don't. Oh, is, what that - - -

40 THE COMMISSIONER: Mr Lonergan, how does this affect your client?

MR LONERGAN: Well, his signature's on that purported document.

THE COMMISSIONER: On that one, is it?

MR LONERGAN: Yes.---Sorry, that call option was Sunshine document?

No, Ms Bakis.---Or were you talking about - - -

Schedule C.---Okay, I understand. Yes, I understand. Okay. Yes.

Which was a head of agreement, dated 15 December, 2014.---Yes.

It's purportedly signed by Richard Green and Debbie Dates.---Yes.

That gives a, well, call option to Gows Heat apparently.---Yes. I, I don't know how that document came about.

10

And you accept that you, other than some reference to these blocks with Tony Zong, had no real knowledge of any interest in it prior to, well, 16 October, 2015 when you had this email correspondence with Mr Driscoll?
---I think that's right.

You certainly haven't advised Mr Green of it?---No, that's right.

Now, before I digressed to that we were talking about the acquisition proposal which was dated, or that was signed on 8 July, 2016.---Yes.

20

By – sorry, 2015.---'15.

By Mr Petroulias putting your signature on the document.---Well, yes.

Well, is it otherwise?---Well, that particular document you showed me, yes.

All right.---He wasn't trying to sign it as me.

What was he trying to sign it as?---I don't know, you'll have to ask him.

30

Well, why do you say he wasn't trying to sign it as you?---Because I don't, it doesn't even look like an attempt to me.

But it's your name?---Yeah, well, you can write my name too, Mr Lonergan. Yeah.

So, but did you explain this document to Mr Green?---Um - - -

The acquisition proposal?---Has he signed it? Sorry, my memory - - -

40

Well, there's one document with his signature on it.---Yeah, okay, sorry, yeah.

But there's one with Mr Dates' signature on it and there's one with, well, Mr Petroulias's writing of your name, so did you explain that acquisition proposal to Mr Green?---Yes.

Okay. What did you tell him about it?---I don't know.

And if you explained anything to him you would accept that there are file notes that would reference that discussion?---There should be.

And you will provide those tomorrow?---If they're there, yes.

And can I take it that's the case for all these agreements, is it, Ms Bakis?
---Yes.

10 Sorry, I'm, it's a broad statement, but in relation to Sunshine, the agreements that were entered into, being a suite of agreements on 23 October, 2015 - - -?---Yes.

- - - did you explain those documents to Mr Green?---Yes.

And there would be file notes for that?---I think so.

And you will produce those tomorrow?---Do my best.

20 And the deed of surrender and release that I believe is dated 2 December, 2015, did you explain that document to Mr Green?---Has Mr Green signed that?

That's a good question. Yes, I believe he did. But I'm asking the questions, so did you explain it to him or not?---I don't remember. I honestly don't. There, there were so many Sunshine agreements, so many versions of them, I don't recall explaining that particular document but I'll have a look at my file notes.

30 But that's the point here, isn't it, Ms Bakis, is there just, there are so many agreements - - -?---Yes.

- - - in variations of agreements and - - -?---Yes.

- - - back and forth between - - -?---Yes.

- - - parties in relation to agreements?---Yes.

40 I mean how were you able to keep your client abreast of what was going on?
---Talking to them and, and, and you've got to be aware that Mr Green was involved in a lot of these discussions in person, I think.

Well, I mean how do you – you say that he's involved in a lot of these discussions but were you involved in the similar discussions with him, sorry, in these discussions with him?---I, I wasn't, I wasn't meeting developers with Richard, no.

But you were in a meeting with Mr Zong and Mr Green whereon your evidence before the Commission Mr Green made it abundantly clear to Mr Zong the process that is required under the Aboriginal Land Act to purchase property.---That's right.

Is that right?--- Yes, that's right.

And you were a witness, you were there in that room when that was explained to Mr Zong?---Yes.

10

And when was that?---When?

Yes.---I don't know.

And what was Mr Zong's response to that, to your recollection?---He seemed to understand the point.

The point being?---There's an approval process. Richard ran through the approval process and, you know, member approval, NSWALC approval, you know, it may come back after that, et cetera.

20

And in relation to 23 October, 2015, you didn't go to Newcastle, did you, for the signing?---No, not for the signing.

So you weren't there to advise Mr Green or Ms Dates on any of the late amendments to any of these documents?---No, that's right, if there were any.

So how did you expect them to – well, sorry, you're saying if there were any? So you weren't aware?---Yeah, I'm not aware, I'm not aware right now if there were late amendments to those documents.

30

And if there were, you didn't explain it to them?---If, if there, yeah.

And why didn't you go to Newcastle? I mean, this was, well, a big day in relation to the supposed Sunshine agreements.---I didn't, I didn't think that the deal would ever be done. I was very pessimistic and it was a big time commitment.

And after they were done, after they were signed, did you explain to Mr Green or Ms Dates the effect of what those agreements were?---Yes.

40

And what was that explanation, Ms Bakis?---Don't remember right now.

And there'd be file notes if you explained it to them, is that right?---Yes.

THE COMMISSIONER: Ms Bakis, given the nature of these agreements, the terms and conditions of them and the associated complexity, there would

only be one way, wouldn't there, of properly advising the client about their significance and that is to set out in writing an explanation which they could take their time to read and absorb. There'd be no other satisfactory way of doing it, would there?---That would be a completely unsatisfactory way of doing it.

Why?---Because they won't read advice.

10 Well, that's their responsibility, but you could – the way in which you play your part could only be fulfilled, I suggest, by setting out in writing in a letter, in a document, a summary of the nature and effect of the terms and conditions of all of these different agreements, and it would be nigh impossible to sit down with somebody like Mr Green and adequately discharge your duty to explain. What do you say?---That's why we had this concept of the running memorandum, where I would summarise, me or Mr Petroulias would summarise the effect of the documents.

20 It would take you hours to sit down and properly explain so that he, Mr Green – who's not versed, it seems, in the legal instruments – could grab hold of the concepts and be able to then give his fully informed consent on behalf of the Land Council and sign and execute these agreements, wouldn't you agree? To do the job properly would take hours.---It probably would. And in - - -

Even then he may not absorb or grab hold of the concepts you are talking about. Would you agree?---No, I disagree with that.

It seems to be just an impossible - - -?---I don't think they're that stupid.

30 - - - a mission impossible - - -?---I don't think they're that stupid, Commissioner.

And even with somebody who is educated, the only way of properly discharging your duty, I put to you, would be to set out in writing in clear terms an advice as to the nature and effect of the agreement and nothing short of that would discharge your duty in the circumstances of these transactions. What do you say?---I wish I had done it now.

40 Yes.---I wish I'd written a 30-page letter of advice.

But that would have been the effective way of doing it, wouldn't it? And the proper way of doing it?---Well, it would be helpful right now, yes. I don't think it would have had any effect in changing the way I explained it to Debbie or Richard. It would have been very effective for me as I sit here today, covering my butt.

Well, I'm not so much at the moment concerned about your position. I'm concerned about your client's position at the time.---Yep.

Do you agree with what I put?---I don't think writing a 30-page letter, letter of reply - - -

No, I'm not talking about a 30-page letter, I didn't put that to you.---Well, you said, "Quite lengthy," and I would agree with that.

No, I didn't say lengthy at all, madam. You're making this up.---Okay.

- 10 What I'm saying is, you'd write a letter appropriate to the deed and the complexity of the deed or the agreement, so that the client would be able to be fully informed as to the nature of the rights and liabilities under it. And the only effective way of doing that would be to set it out in clear terms in a document so the client can read it at his or her own time and understand it and then sign.---Yes. That, that would be the, the best practice for most clients, I agree, but not for this client.

Yes, Mr Lonergan.

- 20 MR LONERGAN: So, in relation to Sunshine, you're aware that, well, money was paid into the trust account of Knightsbridge North Lawyers and then through to Gows Heat?---Yes.

And did you advise the Land Council at any point in time of that?---Yes.

Outside of what you say Ms Dates and Mr Green understood, was there anyone else?---No, just, just them.

- 30 And you've heard Mr Green's evidence, he never heard or never knew about any money that was paid to Gows Heat?---I find that very interesting but, yes, I do know that he - - -

You're aware that Mr Green was not even aware of Gows Heat?---Yes, yes.

Now, I take you to MFI 33 and start at page 37, just so you can see the document again that I'm referring to.

- 40 MS NOLAN: I'm just going to have to object to my friend's last questions. The transcript's not going to bear out what I understand his question to be. He said, "You're not aware that Mr Green was ever, you're aware that Mr Green was never aware of Gows Heat?" and the witness has answered, "Yes." And can I just enquire through the Commission that the intention of my friend's question was not as broad – because I should have objected to it and that's my fault – but I understood it to be confined to that's his evidence.

MR LONERGAN: My friend's quite right and let me do it this way, Ms Bakis. I put it to you that you never told Mr Green that any money was received by Gows Heat in relation to any of these deals?---I, I reject that.

And I also put it to you that you never told Mr Green about Gows Heat being involved in any transaction in relation to Aboriginal Land Council? ---That's not true.

10 I take you now to MFI, page 37 and you'll see there, I believe we've had a look at this document already once but I want to take you over to page 38 and under, about three quarters of the way down under the heading of – sorry, I just lost my train there for a second. Just bear with me. Sorry, page 40, Ms Bakis, under the Sunshine group point 1. Now, three lines down, down on the right hand side, it says “Secondly”. Can you see what I'm referring to there?---Yes.

20 And it says, “Secondly, whilst they paid to cooperate with Gows and Keeju, the money they put in was directed back out.” Now, that's the sentence I want to refer you to but please read around it. Now, what does that mean, Ms Bakis?---What's, sorry, what's the date of this? I apologise.

If you go back to page 37 - - -?---Oh, it's April, it's April '16.

- - - this is April '16, right, so - - -?---Thank you. Sorry. I don't understand what that means. That doesn't make any sense to me.

Well, it doesn't make any sense because it's not true, is it?---That's right.

30 Because Gows Heat got paid substantial sums of money by Sunshine - - -? ---Yes.

- - - and kept it?---Yes, yes.

And this is a briefing paper that Counsel Assisting or sorry, this is in reference to the brief to the board that was to occur, I believe it was on 8 April, 2016, that's right, isn't it?---Yes.

40 Where Mr Petroulias was going through all of the agreements apparently and explaining them all. Is that right?---Yes, yes.

And you were there - - -?---Yes.

- - - on 8 April, but, and this, this briefing paper is for that meeting.---Yes.

And it's signed up there, “Received by Debbie Dates.” You've confirmed that, on page 37?---Yes.

But then we go over to page, as I said, page 40 and it says that all the money that was paid was directed back out.---Yes.

So how does that happen?---It's just an incorrect statement.

Is it your statement?---No.

So this briefing paper as we see on page 37 is Knightsbridge North Lawyers as the heading, that's the - - -?---Yes.

10

Who wrote it?---Well, Mr Petroulias would have written most of this.

To your understanding, why would Mr Petroulias be saying here that any money Gows got was directed back out?---He must have had something in mind that made sense to him at the time. I, I, I can't explain that.

But in no way it makes sense to you, right?---No.

THE COMMISSIONER: All right. I think on that note we'll draw stumps.

20

MR CHEN: Commissioner, could I just raise just for timetabling purposes tomorrow, the next witness will be Ms Dates, and I don't know whether there's been any change of estimates by Ms Nolan in particular as to how long she expects to be, I don't know whether she's in a position to indicate what the situation is.

THE COMMISSIONER: All right. Are you able to assist?

30

MS NOLAN: On my present instructions I'm not in a position to do anything.

THE COMMISSIONER: I'm sorry?

MS NOLAN: On my present instructions I'm not in a position to do anything.

THE COMMISSIONER: Oh, well - - -

40

MS NOLAN: And I have to clarify them and - - -

THE COMMISSIONER: Well, you'll be in a position – sorry, go on.

MS NOLAN: Sorry, I interrupted. Do you want me to continue?

THE COMMISSIONER: Yes. Just simply will you be in a position tomorrow, because tomorrow's the time to, after Mr Lonergan and, sorry, the other cross-examination

MR CHEN: Mr O'Brien.

THE COMMISSIONER: Mr O'Brien, sorry. You'd be expected to then examine if you want to Ms Bakis.

MS NOLAN: I know that and I'm being forthright. My friend's question is couched in terms of timetabling. Can I suggest this? I'll speak to my client and then I'll speak to Counsel Assisting so that he might be in a position to be able to timetable. And can I inquire through the Commission, is that an acceptable proposal? If not, can he make an alternative suggestion?
10

THE COMMISSIONER: So you want to speak to your client and then advise Counsel Assisting this afternoon?

MS NOLAN: As to how long I'm anticipated to take.

THE COMMISSIONER: Is that what you propose to do? Sorry, I'm just trying to follow what you're saying. Do you want to speak to your client first and then advise Counsel Assisting this afternoon as to what your estimate is?
20

MS NOLAN: Yes, for his timetabling purposes if that's - - -

MR CHEN: I'll have Ms Dates brought down and if there's time tomorrow we'll start with Ms Dates. But I was trying to avoid, if my learned friend was going to take all of the day as she anticipated, having Ms Dates drive down from Newcastle only to be told she's not needed. That was the only reason why I raised it, to minimise any inconvenience.

30 THE COMMISSIONER: Well, it may be that we won't get very far with Ms Dates if there's two lots of cross-examination. Mr Lonergan has got to finish and then Mr O'Brien, and then if Ms Nolan starts her - - -

MR CHEN: I agree, Commissioner. And I do know that there's a slightly shorter day tomorrow.

THE COMMISSIONER: Yes.

40 MR CHEN: That was the reason why I rose in anticipation. All right. I'll take that on board.

THE COMMISSIONER: I'll leave you to sort that and - - -

MR CHEN: We'll make arrangements for Ms Dates to be available on Friday morning early.

THE COMMISSIONER: Now, as to next week, have you advanced in your arrangements for programming next week? There was talk of Tuesday and I understand there might be a possibility of Wednesday afternoon. Is that - - -

MR CHEN: I think that's the position, Commissioner, yes.

THE COMMISSIONER: All right. Just so that everyone's on notice.

10 MR CHEN: No, I understand. Commissioner, could I speak to Mr Broad?
I must say (not transcribable)

THE COMMISSIONER: Yes. Yes, that's fine. Very good. Mr O'Brien?

20 MR O'BRIEN: Sorry, Commissioner. Before you rise, can I just ask through you, Commissioner, or perhaps put Ms Bakis on notice through you, Commissioner, that I also intend to ask questions – it won't be of any surprise to anyone – related to instructions having been taken and file notes having been prepared as to those instructions. Can I then foreshadow that to Ms Bakis through you, Commissioner, such that she might examine her notes and file notes in particular related to those particularly material sets of instructions that have apparently been given to her?

THE COMMISSIONER: Yes, certainly, Mr O'Brien. I think that's very sensible to give Ms Bakis notice so that she can check the files and have those documents ready. Very good. I'll adjourn.

THE WITNESS STOOD DOWN [4.32pm]

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AT 4.32PM THE MATTER WAS ADJOURNED ACCORDINGLY
[4.32pm]