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PUBLIC
HEARING

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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 MONDAY 17 SEPTEMBER, 2018

AT 10.30AM

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

THE COMMISSIONER: Yes, Dr Chen.

MR CHEN: Commissioner, there's a couple of developments which I should draw to the attention of those in the hearing room. The first, Mr Petroulias, apparently there's some delay in bringing him up that Corrective Services are working on, but he should be able to be brought from, as I understand it, the basement within the next 10 minutes. That explains his lack of presence here.

10 THE COMMISSIONER: I understand just on that before we move on, Mr Robinson, you're seeking leave to appear for Mr Petroulias. Is that right?

MR ROBINSON: Chief Commissioner, the full answer to that question - - -

THE COMMISSIONER: Sorry, if you wouldn't mind just moving closer to the microphone. It's a bit hard sometimes to pick up. Thank you.

MR ROBINSON: The full answer to that question can be given to the Chief Commissioner after I've had a conference with him this morning.

20

THE COMMISSIONER: Right. Very well. Well, Mr Robinson, what I propose to do shortly after we just assess where we're at is to allow you time to speak to Mr Petroulias and then you might let me know when you're in a position to do so.

MR ROBINSON: That's much appreciated.

THE COMMISSIONER: Thank you. Yes, I'm sorry, Dr Chen.

30 MR CHEN: Commissioner, the next matter is Ms Dates was on the hearing list today but notice was given by Mr O'Brien that Ms Dates is unwell and would not be attending. I'm not sure whether Mr O'Brien, who I think is in the hearing room, oh, he is, he might be in a position to give you, Commissioner, an update and also to advise what the nature of the incapacity of Ms Dates is now.

THE COMMISSIONER: Mr O'Brien?

40 MR O'BRIEN: Yes. Regrettably Ms Dates, I was in contact with Ms Dates - - -

THE COMMISSIONER: Again if you wouldn't mind standing closer to the microphone. Thank you.

MR O'BRIEN: I was in contact with Ms Dates this morning. She indicated to me that she was unwell and would not be able to attend. I have asked her to make sure that that is, there's some sort of certification as to that and notified the solicitor for the Commission this morning. So I don't know

what the situation is in terms of her sickness or her being unwell, what the ailment might be, but - - -

THE COMMISSIONER: Has she sought medical treatment as at the time you spoke to her?

10 MR O'BRIEN: I'm not aware of that. I understand she's seeking ongoing medical treatment of different types or of, of a certain type, but I'm not aware as to whether this particular illness is something that's been ongoing or has recently come about.

THE COMMISSIONER: When do you hope to have the medical report?

MR O'BRIEN: She has told me that the - - -

20 THE COMMISSIONER: Just to interrupt you, I'm sorry. My experience is that sometimes people just get a medical certificate which says Mr so-and-so or Ms so-and-so is unfit from now to then, full stop, which is of no use to a court or to a tribunal whatsoever. There's a need for a medical report to detail what it is that we're dealing with and what's the basis for her current claim of unfitness. I'm sure I don't have to spell it out to you, but my experience is that medical certificates are rarely sufficient.

MR O'BRIEN: No. I've communicated the need for a detailed medical certificate.

THE COMMISSIONER: Not certificate, report.

30 MR O'BRIEN: Well, I've said certificate in my communication with her, but I - - -

THE COMMISSIONER: Well, I think you should make it clear to her that I would want a report.

MR O'BRIEN: I will, I will make that clear to her.

THE COMMISSIONER: Ah hmm.

40 MR O'BRIEN: She has advised me that she'll be seeing a doctor at 10 o'clock, so hopefully she'll be in a surgery somewhere in Newcastle now, and I've asked that it document the illness and the reason for the incapacity and how long that might be in effect or be overcome.

THE COMMISSIONER: Right. Okay. Thank you. All right. Well, Mr O'Brien, you might keep Counsel Assisting informed as to what you learn during the course of the morning so that we can try and program a hearing that was scheduled to start at 10 o'clock today.

MR O'BRIEN: Yes, I will.

THE COMMISSIONER: Thank you. Yes.

MR CHEN: Commissioner, once we had or Mr Broad had the notice that Ms Dates was unable to attend, Mr Broad has made contact with the only other Sydney witness who we thought could conveniently be brought forward, and that is Mr Kavanagh, who was, as I understand it, to come on tomorrow. We're yet to hear back from his legal representative,
10 Commissioner, as to whether Mr Kavanagh will be available to come forward to give evidence today. We're hopeful he can. I thought I should indicate to those behind me that that's a possibility so that today is not wasted. That's as far as I think I can take it, Commissioner.

THE COMMISSIONER: Yes. Very well. Ms Nolan, do you want to be heard at all? Do you wish to be heard on anything?

MS NOLAN: No. No, thank you.

20 THE COMMISSIONER: Thank you. Now, who else? Now, Ms Dates is – I think you should liaise anyway with Mr O'Brien just to follow through so that we can keep things on track.

MR CHEN: I'll do that, Commissioner.

THE COMMISSIONER: Ms Lonergan, is there anything you want to raise?

30 MR LONERGAN: No, Commissioner.

THE COMMISSIONER: All right. Mr Robinson, how long do you think you might need? I'm not trying to tie you down, but what I propose is this. It's now 10.30. If I gave you an hour and then if you need more time if you'd speak to Counsel Assisting or the Commission staff and let me know just how you're going at that point, is that satisfactory to you?

MR O'BRIEN: Thank you, Commissioner.

40 THE COMMISSIONER: All right. We'll do that. I propose to adjourn and I will resume in about an hour's time unless I receive a request for further time from Mr Robinson, and we'll chart our course from there.

MR CHEN: Yes, Commissioner. Thank you.

THE COMMISSIONER: I'll adjourn.

SHORT ADJOURNMENT

[10.32am]

THE COMMISSIONER: Yes, Mr Chen.

MR CHEN: I think Mr Robinson has an application, Commissioner.

THE COMMISSIONER: Yes. Yes, Mr Robinson.

MR ROBINSON: Chief Commissioner - - -

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THE COMMISSIONER: Firstly you seek leave to appear, do you?

MR ROBINSON: (No Audible Reply)

THE COMMISSIONER: For the purposes of the application you want to make?

MR ROBINSON: Yes, Chief Commissioner.

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THE COMMISSIONER: Yes. All right. I grant leave.

MR ROBINSON: Thank you for the time. In terms of what I'm doing in this place, Commissioner, I'm not instructed to appear for Mr Petroulias at large anymore.

THE COMMISSIONER: Could you just use the microphone a bit. Thank you. Yes?

30

MR ROBINSON: We need to get some longer black stems on these things.

THE COMMISSIONER: Yes, I think that is a problem, yes.

MR ROBINSON: I'm not instructed at large to appear for Mr Petroulias. I've been given limited instructions to appear on an adjournment application.

THE COMMISSIONER: Yes.

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MR ROBINSON: Now, with discussions with the Commission there was, there was talk that that might proceed by way of some expert evidence, but I'm in the Commission's hands in terms of I realise that might be a fluid situation, Commissioner.

THE COMMISSIONER: Yes. All right. Well, now, Mr Robinson, in that respect the evidence that you would rely upon would be what, medical evidence or - - -

MR ROBINSON: There, there was, there was talk with the Commission about obtaining an expert and I think I'm, I think I'm saying things that you might be familiar with.

THE COMMISSIONER: Yes. I have seen some medical reports.

MR ROBINSON: And that that, and that that could be facilitated in person here, a psychiatrist visiting this place on Wednesday, with some oral evidence directly after assessing Mr Petroulias as to the psychiatrist's expert opinion so we don't need to wait for a report to be produced. But the proposal as I understood it – and I'm not putting any work or any wording at Mr Broad – is just that we had discussed a psychiatrist. I believe one has been booked, coming in, seeing Mr Petroulias on Wednesday. I myself am unavailable until 2.00pm, but then what I would suggest is that at 2.00pm the psychiatrist and I just be in a closed inquiry, would give his expert opinion, and then my proposal was to make an adjournment application based on that evidence.

THE COMMISSIONER: Yes.

MR ROBINSON: I think that because of the type of application, mental health being the clear and obvious bases, that's why it's, I think it's appropriate that I can still appear on that basis and probably preferable for that application, but in terms of the matter in general, I'm no longer instructed.

THE COMMISSIONER: Yes. Thank you. Dr Chen, just before we take it any further, just on this application for an adjournment, there has been some medical material provided, as I understand it. I have seen some limited material of that kind. Do you have any submission to put as to whether or not it's necessary to have a consultant psychiatrist come here on an adjournment application or is there sufficient material to justify the granting of the adjournment? It's something you may or may not want to think about.

MR CHEN: Commissioner, I think the position is that there is other material available of a documentary kind that has dealt with Mr Petroulias's fitness or capacity to participate, at least in this week and next week. The difficulty with what Mr Robinson has suggested, Commissioner, is that one does not, well, it seems to me to be unimportant what that psychiatrist might say in light of that other material, but in any event it seems difficult for my learned friend to say he will have an application based on evidence from a doctor without knowing what that doctor may or may not say.

THE COMMISSIONER: I think, however, I think as I understand it there are a couple of other issues to take into account apart from any medical evidence. One is, as I understand it, that a laptop with relevant material about the Commission's proceedings to date was sent to Corrective Services

some time ago now by Mr Broad. In circumstances which are unclear to me, it seemed that that laptop was mislaid once in the hands of Corrective Services and has only recently apparently been found, and I'd imagine been made available to Mr Petroulias. That delay in the laptop being made available either to Mr Petroulias and/or his lawyer is a factor which had to be taken into account. And the third matter seems to me to be the opportunity or lack of opportunity for Mr Petroulias to be able to cross-examine witnesses if he's not being legally represented now and the need for either representation or preparation by Mr Petroulias to put him in a position to be able to cross-examine those witnesses if he wants to, if he wants to make application to cross-examine. It depends on of course if he makes application there may be some boundaries put around what cross-examination he could engage in. But all of those matters together, the medical, the delay in the laptop being provided and the ability for Mr Petroulias to be able to cross-examine, as I understand it, at least three, possibly up to three witnesses, seemed to operate in favour of an adjournment of some kind.

MR CHEN: I agree, Commissioner, with respect.

THE COMMISSIONER: And if that's right, then I don't think it's necessarily – it's not critically necessary for the consultant psychiatrist to come along here on Wednesday to supplement what's been said in writing about the health aspects of it, and that being the case, if an adjournment is required, it would still be necessary I think for the Commission to call the witnesses who are programmed for this week to give evidence. Whether Mr Petroulias on a future date wants to make any application to cross-examine those witnesses, well, it remains to be determined on a future date. And the other matter that would need to be taken into account would be if the Commission requires Mr Petroulias to be medically examined at some point – that is, probably a date in October some time – then that would need to take place and of course Mr Petroulias would need to cooperate in that regard if an adjournment's now granted and to permit any medical records that have been sent to the Commission to be supplied to any examining consultant psychiatrist for an examination in October some time. They're the issues and matters that occur to me and require attention in trying to program going forward. Are there any matters you want to raise about that?

MR CHEN: Not in addition to those matters, Commissioner, no.

THE COMMISSIONER: Mr Robinson, you've heard what I've said.

MR ROBINSON: Yes, Chief Commissioner. If I can just assist just on what - - -

THE COMMISSIONER: Sorry, if you could again just - - -

MR ROBINSON: If I can just assist on what was last said. I have instructions, and I'm getting nods and affirmations from Mr Petroulias next to me, that he does, he's willing to participate in any assessment and he gives the consent for the production of any material.

THE COMMISSIONER: And the last bit?

MR ROBINSON: Consent for production of any medical materials that are required in order for that process to occur properly.

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THE COMMISSIONER: All right. Well, thank you for that. Now, so I think for the benefit of others participating in the hearing this week, including Mr Petroulias, it would be my intention to take the evidence of the witnesses, who I'll have Counsel Assisting confirm in a moment by name. It would mean that although this hearing segment was set down for two weeks – that is, this week and next week – that if the proceedings are adjourned by reason of matters associated with Mr Petroulias, which I've already addressed, that they would be called, and if required on a future date for any cross-examination, that can be arranged subject to any right of cross-

20 examination of those witnesses, and that the matter be fixed probably for a date in November, dates in November, and a week and a half to two weeks would be set aside at that time. Provisionally the 19th of November is being the most suitable time that the Commission would wish to proceed if it is to be adjourned. So, Dr Chen, if you wouldn't mind, then, just confirming the list of witnesses who have been arranged for this week and your intention in terms of calling those witnesses this week?

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MR CHEN: Commissioner, so the program for tomorrow, which is as per the list that has been on the Commission's website, would be Mr Vaughan; Candy Towers, who's already given evidence, Commissioner, but would be required to be cross-examined further by I think at least one other party, and there'd be some further examination by me; and then Mr Andrew Kavanagh. So that would be the three witnesses tomorrow. Wednesday would be Hayley Keagan, Sophia Anna and Theresa Towers and there would also be a need for Ms Dates to return but I haven't heard from Mr O'Brien yet about what the position is with Ms Dates. That would be it, Commissioner.

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THE COMMISSIONER: All right. Thank you. All right. Now, are there any other matters anyone else wants to raise? All right. Well now, Mr O'Brien, have you got any update on your client's situation?

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MR O'BRIEN: Yes, I believe the Commission have received, I hope, it is a medical certificate under the hand of Dr Joshua George.

THE COMMISSIONER: Have you seen that, Mr Chen?

MR CHEN: Mr Broad will go and check, sir.

MR O'BRIEN: I have a copy of that, sir.

THE COMMISSIONER: Oh, do you?

MR O'BRIEN: It was sent, apparently, to my office and also to the Commission - - -

THE COMMISSIONER: Thank you, Mr O'Brien, if - - -

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MR O'BRIEN: I'll had up my copy.

THE COMMISSIONER: Thank you. Yes, very well. I'll have the copy of the report of Dr Joshua George, 17 September, 2018, marked for identification. Have we got any MFI numbers there? 38, thank you. MFI 38.

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**#MFI 38 – MEDICAL CERTIFICATE FOR DEBORAH DATES
DATED 17 SEPTEMBER 2018**

THE COMMISSIONER: I make an order under section 112 that the report not be published other than to staff of the Commission, including Counsel Assisting, unless and until further order of the Commission.

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**I MAKE AN ORDER UNDER SECTION 112 THAT THE REPORT
NOT BE PUBLISHED OTHER THAN TO STAFF OF THE
COMMISSION, INCLUDING COUNSEL ASSISTING, UNLESS AND
UNTIL FURTHER ORDER OF THE COMMISSION.**

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THE COMMISSIONER: Yes, I'll have that handed down to Counsel Assisting, MFI 38. Mr O'Brien, thank you for that report and obtaining it so promptly. It does seem to me, on the basis of that report, it ought to be possible to arrange for Ms Dates to be giving evidence on a date other than today and other than within the dates referred to in that report, so that may mean later this week on a date which is to be sorted out by Counsel Assisting in consultation with yourself.

MR O'BRIEN: Certainly.

THE COMMISSIONER: Thank you.

MR O'BRIEN: I rang the doctor incidentally, Commissioner, and confirmed that until the 18th means in fact tomorrow she is unwell also, the earliest would be Wednesday that she is able to travel.

THE COMMISSIONER: I understand, yes.

MR O'BRIEN: The difficulty appears to be the ability to travel.

THE COMMISSIONER: Yes, thank you. It does seem to me that Wednesday would be the earliest possible date for Ms Dates.

10 MR CHEN: I think that would suit with the programming, Commissioner, because the expectation is that the three witnesses that are listed on that day are likely to finish by lunchtime, so that would be - - -

THE COMMISSIONER: All right. Could we say not before midday on Wednesday for Ms Dates?

MR CHEN: Certainly, yes, Commissioner.

20 THE COMMISSIONER: Yes, all right. Mr O'Brien I'll leave it on that basis. That gives Ms Dates more time to get down to Sydney on Wednesday. So I say not before midday for Ms Dates.

MR O'BRIEN: Thank you Commissioner.

THE COMMISSIONER: All right. Coming back to dealing with the matters concerning Mr Petroulias. I think in all the circumstances the cross-examination, if any, or application to cross-examine by Mr Petroulias of witnesses Green, Dates and there's a third one, isn't there?

30 MR CHEN: Well, Ms Bakis as well.

THE COMMISSIONER: And Ms Bakis, be deferred. I propose in that respect to stand the proceedings over in the week commencing 19 November next. The intention is that the matter will be set down for two weeks commencing 19 November next and I note that Mr Petroulias has agreed that if required he will attend a medical examination by a consultant psychiatrist and consents to copies of any medical material that's been provided to the Commission to date to be provided to the examining consultant psychiatrist. It is not possible to specify a particular date upon which such an examination may take place, but the expectation is that it
40 would be probably some date in October next. Mr Petroulias otherwise will be kept informed as to any change in dates or, sorry, be kept informed as to any particular date that may be fixed for that medical examination.

Now, Dr Chen, so perhaps I should make it clear on the record. I accept on the material available that it would not be appropriate to require Mr Petroulias to undertake cross-examination of the witnesses to whom I've referred for the reasons I've mentioned and that his evidence, for the same reason, should not be taken in this segment but be taken in the segment to

commence on 19 November next, on which occasion he'll be required to attend to give evidence. He should in the meantime ensure that he prepares for the resumed hearing commencing 19 November, 2016 [sic] either with the assistance of a legal practitioner, which is obviously a preferable course for him, or if not represented, he will be required to be in a position to proceed without any further delay in that week or the two weeks that I've indicated.

Dr Chen, is there anything else?

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MR CHEN: No, just, just to correct, you said 2016 in that last order, so it's 2018.

THE COMMISSIONER: Sorry?

MR CHEN: In the pronouncement of the last order you said 2016.

THE COMMISSIONER: Did I? I'm sorry.

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MR CHEN: It's 2018.

THE COMMISSIONER: Thank you.

MR CHEN: Aside from that - - -

THE COMMISSIONER: November next.

MR CHEN: Yes, Commissioner.

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THE COMMISSIONER: 2018. Yes.

MR CHEN: I think it was clear but - - -

THE COMMISSIONER: Thank you.

MR CHEN: There's nothing further from my part, Commissioner.

THE COMMISSIONER: All right. Now, when are you ready to proceed? You don't have a witness today?

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MR CHEN: I'm sorry, no. We endeavoured to get Mr Kavanagh. He's not available so he'll be giving evidence tomorrow, Commissioner, as per the list on the website.

THE COMMISSIONER: All right. So we will resume then today and tomorrow is the program.

MR CHEN: Yes, Commissioner, yes.

THE COMMISSIONER: Yes. All right. If there's nothing else that anyone wants to raise, Mr Robinson, then I think it's a matter entirely for you of course as to what role you, if any, play from this point forward, but I think in terms of the application you foreshadowed for an adjournment, I have in effect granted a partial adjournment if you like, designed to achieve the application that you set out to put before the Commission, namely to provide that indulgence to Mr Petroulias so that he will be given the benefit of the delayed hearing until 19 November next. Anything else you want to raise?

MR ROBINSON: Just two final things. That's the end of my instructions, but just in terms of perhaps amicus to the Commission, in terms of Mr Petroulias's preparation I just note there is some material, I think it's of the type of material which Mr Petroulias has at some stage provided the Commission that is not on the laptop.

THE COMMISSIONER: I see.

MR ROBINSON: So he'll, I just, he'll, he's not fully equipped to look after himself as yet.

THE COMMISSIONER: No.

MR ROBINSON: And the second issue is something that was brought to my attention just then, so pardon my back. I think just for – and sorry to impose on the Commission's time – if it could just be made clear once more for Mr Petroulias's sake the status of any potential cross-examination of the witnesses in the next two days.

THE COMMISSIONER: Well, I thought I had made it clear that - - -

MR ROBINSON: I think you did but I'm just asking for indulgence to repeat it.

THE COMMISSIONER: - - - I would not be calling upon Mr Petroulias to make application to cross-examine any of the witnesses called this week. If he wants to make application to cross-examine them, then he should indicate that in writing or by some written communication, I would suggest, at least one week before 19 November in order to both give him opportunity to consider his position in that respect, put forward what his application will be – if he wants to cross-examine any one of those three witnesses or any of the witnesses to be called this week – and to state the basis upon which he would want to proceed to cross-examine them. In other words, I'm referring now to the standard directions, which puts an onus upon him to identify why he should be permitted to cross-examine any particular witness. But he won't be called upon this week to do that. It will be a matter for him to give notice seven days before 19 November if he wants to cross-examine any

witness and the basis for doing so, and in that second segment commencing 19 November, if granted leave, he or by his then lawyer – if not yourself – will, if permitted to cross-examine, be expected to cross-examine.

MR ROBINSON: A week before the 19th, I'm hearing.

THE COMMISSIONER: Yes. Seven days before the 19th to give notice of who he wants to cross-examine, if anyone, and why. I think I make it clear.

10 MR ROBINSON: I'm hearing if I want to do it in the next two days, can I do it? So that's something that's beyond me representing Mr Petroulias. I'll probably have to leave that in the Commission's hand.

THE COMMISSIONER: Well, Mr Petroulias will be here during the course of this week, and if he wants to raise any matter, he can do so. He's had the opportunity prior to today of communicating with the Commission staff in relation to matters, so that if he wishes to raise any matter concerning the further hearing of the proceedings, it's open to him to do so with the Commission staff who are assisting me.

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MR ROBINSON: Thank you, Commissioner. One final thing. Thursday, which I know at this stage doesn't seem to have anything programmed, but Thursday Mr Petroulias has to be in another place, which will require him to be at the MRRC to attend via AVL to the Supreme Court.

THE COMMISSIONER: Yes, I understand he has that commitment so he won't be required to be here on Thursday. Dr Chen, is there any difficulty you foresee in that?

30 MR CHEN: No, there's not, Commissioner.

THE COMMISSIONER: No, all right. Thank you.

MR CHEN: The only witness likely to fall into that date will be Ms Dates, and Mr Petroulias has full entitlement to seek your leave to cross-examine her further. Commissioner, can I just add for my learned friend's benefit and Mr Petroulias's benefit is that Mr Broad will make available that additional material that Mr Petroulias has through Mr Robinson sought, and we'll endeavour to do that this week. Mr Broad will speak to Corrective
40 Services to see whether it's permissible simply to hand in a memory stick of that material, but we'll deal with that Commissioner.

THE COMMISSIONER: Thank you. Mr Robinson, just one further matter. Mr Petroulias on an earlier occasion said he did not wish to attend the proceedings of the Commission when he was being held in custody. I pointed out to him that it was in his interests to be here so that he can actually hear what's being said rather than being put to the task of having to read transcripts to work out what evidence was given in his absence, and he

did then attend, and I think it's beneficial for him to at least be here to be able to hear the evidence so he's got an idea of the flow of the evidence. That applies to this week, as I see it. It's in his interests to be here. He won't be called upon, as I said, to cross-examine or to give evidence, but I think it's probably in his interests to be here and arrangements have been made. I've made the requisite order for him to be transported here and that will be the case tomorrow, Tuesday and Wednesday, and I just thought I should make mention of that. The requirement for him to be here is simply to facilitate his understanding of the evidence, and I think I'll say no more about that but I'm just putting it on the record that that's what's in contemplation for the next two days.

MR ROBINSON: No, thank you, Chief Commissioner, and for Mr Petroulias's behalf, he wants to be here, but the request – which I know is sort of operational requirements, which, you know, is beyond legal submission – but what happened today, which before you came on just 20 minutes ago, was perfect in terms of Mr Petroulias's position. He was not handcuffed. He walked in like anyone else into the room. His minders at an appropriate distance over there in the corner. Mr Petroulias's main concern seems to be if the room is already packed with public and press and witnesses, that if he's paraded handcuffed in – I withdraw the word paraded – if he comes in handcuffed that's something that he's complained to me about. But just so that all the staff know, what happened today 20 minutes ago was perfect. That's what - - -

THE COMMISSIONER: Yes, all right.

MR ROBINSON: At least for Mr Petroulias's, on his behalf.

THE COMMISSIONER: Well, Mr Robinson, I understand the point. As I've said on previous occasions, it's entirely a matter for Corrective Services officers as to how they conduct themselves and discharge their responsibilities. I can't dictate to them in that respect. But I'm pleased to hear things have satisfactorily been handled so far.

MR ROBINSON: Thank you.

THE COMMISSIONER: Thank you. Nothing else? Then I'll adjourn till 10.00am tomorrow.

**AT 12.51PM THE MATTER WAS ADJOURNED ACCORDINGLY
[12.51pm]**