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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE PETER M. HALL QC  
CHIEF COMMISSIONER

PUBLIC HEARING

OPERATION SKYLINE

Reference: Operation E17/0549

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 19 MARCH, 2019

AT 11.00AM

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.

THE COMMISSIONER: Yes, Dr Chen.

MR CHEN: Commissioner, as Mr Petroulias indicated yesterday, there are two applications by him that were submitted. The first is dated 14 March, 2019, which is an application of a fairly substantive kind, and there was a second application which he sent to the Commission on Sunday, dated 17 March, 2019, the thrust of which was to, as best we understand it, Commissioner, have the public hearing proceed in private. Commissioner, the upshot of those two applications by Mr Petroulias has been that the proceedings and the program has been disrupted and the progression of the public hearing obviously delayed, which is regrettable in the circumstances, but that is the consequence of those applications, Commissioner. There had been, perhaps, a slight development, Commissioner, in that Mr Petroulias has sent an email to Mr Broad this morning at 9.23am. Commissioner, I propose to tender that but I seek an order under section 112 in relation to that communication, Commissioner.

THE COMMISSIONER: Yes, very well.

MR CHEN: It's an email, 19 March, 2018 at 9.23am.

THE COMMISSIONER: Thank you. What's the exhibit number? Yes, very well. The email from Mr Petroulias, dated today, 19 March, 2019, 9.23am will be admitted and it will be marked Exhibit 123.

**#EXH-123 – EMAIL CHAIN BETWEEN MR PETROULIAS, THEO VOROS, PATRICK BROAD AND DR JONATHON ADAMS DATED 19 MARCH 2019**

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THE COMMISSIONER: I make an order under section 112 of the Independent Commission Against Corruption Act 1988 suppressing publication of the email and its contents unless and until further order of the Commission.

**SUPPRESS EMAIL CHAIN IN EXHIBIT 123, WHICH SHALL NOT BE PUBLISHED OR OTHERWISE COMMUNICATED TO ANYONE EXCEPT BY COMMISSION OFFICERS FOR STATUTORY PURPOSES OR PURSUANT TO FURTHER ORDER OF THE COMMISSION**

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THE COMMISSIONER: Yes.

MR CHEN: Commissioner, it seems to me, with respect, that perhaps Mr Petroulias might be able to give some clarity to the Commission about what his position is in light of that email.

THE COMMISSIONER: Yes, all right, well, thank you, Dr Chen. Yes, Mr Petroulias.

MR PETROULIAS: Yep. Commissioner, I take some offence at the concept that I'm cause of any delay. I, I'm not a cause of any delay, and I thought my applications, especially the first substantial one, should be treated on its merits and, and promptly. But I responded, so as you can see a chain of emails, [REDACTED], and I agree with that position as well, and if that is the case, let's start immediately.

THE COMMISSIONER: Well, Mr Petroulias, in fairness to you, I've noted that you have said to the doctors you want to get on with this.

MR PETROULIAS: Yes.

THE COMMISSIONER: But could I just deal with a couple of matters before we decide on the way forward. Mr Petroulias, just a couple of matters I wanted to raise. Firstly, if your evidence were to be taken, part of the evidence at least were to be taken in private hearing as part of the enquiry that's underway at the moment, it raises the question then that if we were to proceed in that way today, we can't ignore the applications that you have made, the ones Counsel Assisting has referred to, and that is the 14 March application, which you have styled as Application for Proceedings to be Discontinued, et cetera. And the second one is the, it's called an Application to be Accorded Procedural Fairness in Light, et cetera, dated 17 March, 2019. Now, Mr Petroulias, if I were to proceed to take your evidence, or at least part of your evidence, in a private hearing, then the question would still remain if you wanted to proceed today, and the Commission's available to proceed today of course as per program, what do you want to do with your application for discontinuance? In other words, you need to consider either that you are withdrawing the application, and so the hearing can go on on that basis, or not. That's the first question. And that's really a matter for you. It's your application.

MR PETROULIAS: Sorry, Commissioner, I, I didn't want to quibble, I didn't want to quibble about today or tomorrow. I'm a day behind in the emails, so when I saw the email today, I thought it meant a delay till tomorrow and therefore start on Thursday. But I'm happy to start tomorrow. That, that's not - - -

THE COMMISSIONER: Yes. That's what was just questioned.

MR PETROULIAS: Yeah.

THE COMMISSIONER: Whether the application, see, the Commission, as you know, set this matter down for this week and next week.

MR PETROULIAS: Yep.

10 THE COMMISSIONER: And we've lost a day in dealing with preliminary matters. I'm not making any complaint about that, just stating the obvious. If we are to use the scheduled times set aside this week, that would include today, then it needs to be ascertained and have a clear understanding as to what you're, in effect, proposing. You've proposed, in effect, to proceed by way of a private hearing, and I'm contemplating whether that should be the course followed. But I need to know, well, where does your application to discontinue stand? If you withdraw that application, then we can go forward.

20 MR PETROULIAS: No, no, Commissioner, I was hoping that you would determine as, as soon as you can, and if that's today, if - - -

THE COMMISSIONER: We only received it on Friday, and I've only - - -

MR PETROULIAS: Yeah, but - - -

THE COMMISSIONER: - - - barely had time to get across it today.

MR PETROULIAS: Fine.

30 THE COMMISSIONER: Yes, well, since then. But no, I'm just asking if we were to proceed today, what's the position about your application to discontinue?

MR PETROULIAS: Yeah, no, sorry, I, I, I thought that, that application was serious, was considered, and - - -

40 THE COMMISSIONER: Well, you haven't permitted time for it to be given full consideration. I have looked at it but, you see, there's been about six months since we were last hearing this inquiry, it was adjourned twice for reasons you're aware of.

MR PETROULIAS: Yeah, sure.

THE COMMISSIONER: This application could have been made at any time in the last six months, it just so happened the application was made on Friday last, that is the day before the first hearing day this week. So it requires time, is what I am saying, to be able to process if you want to proceed with it. If you want to, if you are asking, in effect, for the hearing to proceed on a private basis, I'm asking where you stand in relation to this

application to discontinue. On the one hand, you're indicating you're prepared to go ahead in a private hearing as of now, as I understand.

MR PETROULIAS: Yeah.

THE COMMISSIONER: But you need to resolve the question of your outstanding application to discontinue the proceedings, not going ahead with the proceedings. You understand what I'm saying?

10 MR PETROULIAS: Yeah. I, I made a serious application. I was hoping that I would get serious consideration and reasons for decision and then whatever flows from that flows from that, but - - -

THE COMMISSIONER: Well, I think you can't both seek to discontinue and proceed at one and the same time, is what I'm saying. You've got to resolve what your position is. If you're not withdrawing the application, are you saying that you want that application put on hold and dealt with in due course?

20 MR PETROULIAS: No, as soon as you can. At first possible - - -

THE COMMISSIONER: Well, that will require time as I've indicated. You, as it were, dropped it on the Commission on Friday.

MR PETROULIAS: Yeah. I'm, I'm - yeah, Commissioner, if - - -

THE COMMISSIONER: Mr Petroulias, you've just consulted with your lawyer, Mr Voros, do you require more time to discuss these matters with him?

30 MR PETROULIAS: No, no, no, no. No, I, I understand that - - -

THE COMMISSIONER: All right. You go ahead then.

MR PETROULIAS: No, I understand we're all trying to make concessions to get everything, I mean, it's everyone's best interest to get it done so we're all trying to make what concessions are possible and if it helps you that you get, that you take further time to consider it when, when amongst all these hearings that you can find time to deal with it, then let's do that.

40 THE COMMISSIONER: Well, just so that I be clear about it, are you saying that you'd be happy to go ahead with the matter on a private hearing basis?

MR PETROULIAS: Yes.

THE COMMISSIONER: And defer consideration of the application to discontinue - - -

MR PETROULIAS: I don't know what the word defer is. You, you, you - -  
-

THE COMMISSIONER: Well, it can't be done at the same time is all I'm saying.

MR PETROULIAS: Well you'll get to it when you get to it.

10 THE COMMISSIONER: So if you are saying that you're prepared to go ahead in private hearing and that the application to discontinue be determined as soon as possible when the Commission can debate the time required to consider your application, then I just want to ascertain with some clarity what your position is. If on the other hand you're saying, no, I don't want to give any evidence in private hearing or public hearing - - -

MR PETROULIAS: No, I think you've got - - -

20 THE COMMISSIONER: - - - until your application for discontinuance is decided because it, as I say, I will need time to be able to decide your application for discontinuance. I can't do it today. I'll deal with it as soon as I possibly can and I can't just nominate a day by which I will hand down reasons on it, if you want to pursue your application. So just to be clear about it.

MR PETROULIAS: No, I, no, I think, I think you've got it in one, Commissioner.

30 THE COMMISSIONER: Sorry?

MR PETROULIAS: I think you've got it in one. Let's get on with it and you'll deal with it as soon as you can, you can.

40 THE COMMISSIONER: All right. Well, look, I understand your - Mr Voros, could I just ask you this. I appreciate that you have said you have a limited retainer. I just want to ensure that Mr Petroulias has the time and the opportunity to discuss these matters, in particular the matter I've just discussed with him then. That is to say that if he is willing and wants to get on with the hearing on a private basis as of today, then what he is saying is, given that this application to discontinue was only produced to the Commission on Friday, he's prepared for him to give evidence in private hearing and to have the application for discontinuance deferred until I simply have time to deal with it, indicating to him that I will expedite my consideration of the application and hope to be able to rule upon it in a matter of days. But I just want to make sure that that is his position. I understand him to say it is but I think it's prudent for you at least have a discussion with Mr Petroulias so that he understands the position and any matters you want to raise with him, you have the opportunity of doing so.

In other words, Mr Voros, although you have said you've got a limited retainer, I do want to ensure your client has every opportunity to understand the proceedings and have legal advice in relation to them if he needs it, and it may be difficult for you to even be objecting to questions or asking him questions if you don't have an overview of what the matters that are central to this investigation are. I'm not buying into your retainer but I'm just emphasising that I want any steps taken and invite you to make any application as we go for the opportunity of conferring with Mr Petroulias if he wants to confer with you and take advice.

10

MR VOROS: If I can have a short opportunity to do so, it may be fruitful.

THE COMMISSIONER: Yes, sure. All right. Well, what I'll do is, I'll give you 15 minutes now. If you need more time than 15 minutes, if you'd let the Commission staff know and how much more time you require and then I'll extend the time.

MR VOROS: Thank you, Commissioner.

20 THE COMMISSIONER: All right. Dr Chen, anything arising?

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

THE COMMISSIONER: All right. Then I'll adjourn for 15 minutes.

#### **SHORT ADJOURNMENT**

**[11.22am]**

30 THE COMMISSIONER: Yes. Now, Mr Voros.

MR VOROS: Thank you for that opportunity, Commissioner. Can I attempt to clarify Mr Petroulias' position as follows. As I understand there are two applications. The second in time is dated 17 March, and that's an application that he be accorded, it's headed Application that I be Accorded Procedural Fairness in Light of a Mental Incapacity Impairment. In respect of that application, Mr Petroulias concedes that a way forward is the way proposed, that is, that a private hearing proceed and he be afforded the opportunity to supplement his oral evidence with some written submissions should he feel the need to clarify.

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So essentially that is the concession is made, I'm instructed, that a way forward in respect of that application is the way which is proposed in the way which I've just outlined. The first application, which is an application essentially for the proceedings to be discontinued on the grounds of bias and/or denial of procedural fairness, is an application which is still pressed. How and when that's dealt with, Commissioner – and of course it is an application which was filed essentially and served on 14 March – if the

Commission was of the view that that application can be dealt with and reasons published or given at a later stage, Mr Petroulias would be content with that position, if of course the Commission saw fit to proceed that way. If that was to occur, if that application essentially was determined today, and assuming it was, a decision was reached with a need to publish reasons thereafter, then a decision could obviously be made, depending on what the outcome is of the application, as to whether the matter could proceed tomorrow by way of public hearing or otherwise.

10 MR PETROULIAS: Private.

THE COMMISSIONER: Yes, thank you, Mr Voros.

MR VOROS: I'm sorry, if I said public, I meant private, of course,.

THE COMMISSIONER: Private, yes. Thank you. Yes, very well. Now, Dr Chen, do you have anything to add?

MR CHEN: No, I don't, Commissioner. I don't have anything to add.  
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THE COMMISSIONER: The position I think that should be taken by the Commission, and the background against which I consider the proposals to continue the enquiry are as follows, that it was not until last week that the Commission received two applications, which have been referred to by Mr Voros, the first dated 14 March, that is Friday last, dated 17 March, 2009 [sic], and the second written application made on the, sorry, on 14 March, I should say and then the second application dated 17 March, 2019. A number of matters have been raised in those written submissions. The application for 14 March, which I'll call the discontinuance application,  
30 which is still pressed, is an application that requires time for proper consideration. I note that this application was made some six months or so after the last hearing date, there having been two adjournments in the meantime. But notwithstanding the fact that the applications were made so recently, I propose to deal with both applications in the short term, as time will permit.

Accordingly, the appropriate course is that I not proceed today, either with decisions in relation to either of the applications or the taking of evidence by way of further investigation in the enquiries that's now part heard. I  
40 propose adjourning these proceedings till tomorrow at 10.30am, and I will then indicate the position concerning applications that have been made by Mr Petroulias. I regret to other parties who are interested and participating in this enquiry the inconvenience that's arisen firstly through the delay yesterday and the inability to proceed with the scheduled program yesterday. I similarly express my regret to other parties too that we've been unable to proceed today by virtue of the matters that have been developed through the course of this morning. However, it is essential that these

matters be proceeded with in an orderly fashion, and I will give both applications made by Mr Petroulias my urgent attention.

10 Before I adjourn, the program that remains cannot be mapped out for this week by reason of the fact that I need to deal with the applications I've just referred to, and depending upon my resolution of those applications, this week's program will then become clear. There is a schedule in place for the Commission to continue next week, and at the moment that schedule is as has been advised and published previously. It remains in place. Now, are there any other matters arising, Dr Chen?

MR CHEN: Not from my part, Commissioner, no.

THE COMMISSIONER: Very well. Yes, very well. I'll adjourn the hearing to tomorrow at 10.30am. Adjourned.

**AT 11.50AM THE MATTER WAS ADJOURNED ACCORDINGLY**  
**[11.50am]**