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HEARING

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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 WEDNESDAY 20 NOVEMBER, 2019

AT 10.00AM

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, the matter was listed yesterday for directions but at Mr Petroulias's request was deferred until today. He's in the hearing room now and as I understand it may have a copy of the statement which was the subject of the direction made by you at the previous directions hearing. Perhaps if Mr Petroulias could indicate the position now.

10 THE COMMISSIONER: Yes, very well. Now, Mr Petroulias, you're appearing on your own behalf.

MR PETROULIAS: Yes.

THE COMMISSIONER: Do I understand Mr Voros who previously appeared for you is no longer acting for you?

MR PETROULIAS: That's correct.

20 THE COMMISSIONER: Sorry?

MR PETROULIAS: Yes, that's right. He's no longer acting.

THE COMMISSIONER: Right. Thank you. And just before we proceed, Ms Bakis, you appear here in your own right on this directions hearing. Is that right?

MS BAKIS: On my own right. My counsel couldn't attend.

30 THE COMMISSIONER: I'm sorry?

MS BAKIS: Counsel couldn't attend this morning so I'm just here on my own.

THE COMMISSIONER: I see. Thank you. Yes, Mr Petroulias. Now, Mr Petroulias, the directions I gave on the last occasion concerned firstly providing you with the opportunity of giving evidence by way of a statement. Now, I understand you have prepared a statement and so what I propose to do is – do you have it there?

40 MR PETROULIAS: Yes.

THE COMMISSIONER: Then, Mr Petroulias, as you're not legally represented it's my obligation to remind you that in terms of giving evidence of producing a document, there are provisions in the Independent Commission Against Corruption Act whereby a person may object to producing the document or giving the evidence, and you've heard that throughout the hearing of the matter, however I do remind you that the provisions of the Act do entitle you to object to producing the document and

I am then enabled to make the requisite order or declaration that the document is produced under objection and you'll have the protection that the Act then provides in respect of the document, in this case your statement. So do I take it that you wish to produce the document subject to that, subject to objection?

MR PETROULIAS: That's correct. Thank you.

10 THE COMMISSIONER: All right. We'll proceed on that basis then. Then if you produce the document then, Mr Petroulias. My associate will take it from you. Thank you. So, Mr Petroulias, just to seek your assistance and just confirm what I'm dealing with here, there's two folders been handed up.

MR PETROULIAS: Ah hmm.

20 THE COMMISSIONER: A smaller folder contains what appears to be your statement, bearing a date 18 November, 2019, and it appears to be divided into sections - - -

MR PETROULIAS: That's correct.

THE COMMISSIONER: - - - with 10 guide cards. So that's the structure of it?

MR PETROULIAS: That's right.

30 THE COMMISSIONER: So in effect there are 10 parts to your statement. And then the larger volume contains - - -

MR PETROULIAS: Annexures.

THE COMMISSIONER: - - - materials which are in the nature of annexures which are cross-referenced I take it in your statement?

MR PETROULIAS: Yes. And there's a USB stick in the - - -

THE COMMISSIONER: Sorry?

40 MR PETROULIAS: A USB stick in the middle.

THE COMMISSIONER: I see, yes. Thank you. Very well.

MR PETROULIAS: Oh, the last, sorry, the last tab is some originals that I had related in correspondence, I think it was Glynnes Taylor or something.

THE COMMISSIONER: That's the last tab in your statement volume?

MR PETROULIAS: In the black folder, yeah. It's just simply a plastic sleeve containing some original documents that we've already dealt with I think, but yeah.

THE COMMISSIONER: Yes, I understand. Now, Dr Chen, you haven't got a copy of this statement?

MR CHEN: No, I haven't, Commissioner. I've recently seen it.

10 THE COMMISSIONER: What I propose to do is to deal with the objection and then deal with the question as to how the statement is to be utilised in the proceedings in terms of access on the restricted website and such like matters.

MR CHEN: Yes, Commissioner. I mean it would be my submission that, Commissioner, you'd make a suppression order with a suitable exception to enable those to whom leave has been granted to appear would be given access, and that way those parties can review the statement and the annexures produced by Mr Petroulias and that would be subject to review in  
20 due course.

THE COMMISSIONER: All right. Well, I'll deal with the first matter first.

In accordance with directions previously given, Mr Petroulias has produced a statement by him. The statement was due for production to the Commission yesterday but on request that return date, as it were, has been extended till this morning. Mr Petroulias, who appears on his own behalf, has produced two volumes, the first, the smaller volume, contains his statement which is divided into parts, separated by dividers, and he has  
30 conveniently provided a USB stick attached to that volume. The second volume is entitled Annexure A, Petroulias Statement, comprises photocopies of various documents which it appears will be cross-referenced in the statement volume. Mr Petroulias objects to the production of his statement and by inference the second volume containing the annexures to his statement. Those circumstances are considered appropriate to make a declaration under section 38 of the Independent Commission Against Corruption Act in respect of the two volumes to which I've referred.

40 Accordingly, pursuant to section 38 of the Independent Commission Against Corruption Act I declare that the two volumes, being the volume containing Mr Petroulias's statement, bearing the date 18 November, 2019, and the annexures in the second larger volume, are produced and given by Mr Petroulias under objection and are to be regarded accordingly as having been given or produced on the basis of that objection, and on that basis I make a declaration under those provisions in those terms, namely that the two volumes of material are produced under objection and they are to be regarded as such.

**PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT I DECLARE THAT THE TWO VOLUMES, BEING THE VOLUME CONTAINING MR PETROULIAS'S STATEMENT, BEARING THE DATE 18 NOVEMBER, 2019, AND THE ANNEXURES IN THE SECOND LARGER VOLUME, ARE PRODUCED AND GIVEN BY MR PETROULIAS UNDER OBJECTION AND ARE TO BE REGARDED ACCORDINGLY AS HAVING BEEN GIVEN OR PRODUCED ON THE BASIS OF THAT OBJECTION, AND ON THAT BASIS I MAKE A DECLARATION UNDER THOSE PROVISIONS IN THOSE TERMS, NAMELY THAT THE TWO VOLUMES OF MATERIAL ARE PRODUCED UNDER OBJECTION AND THEY ARE TO BE REGARDED AS SUCH.**

THE COMMISSIONER: It will be necessary to consider how this material is to be utilised so that others involved in the matter will be able to take instructions as necessary in relation to any matters that might affect them that's contained in the statement of Mr Petroulias. As the statement has of course only been produced this morning, there's been no opportunity to examine the statement or the material in the other volume. I think as a first step a suppression order should be made. The suppression order will therefore prohibit publication of the material contained in the two volumes whilst the suppression order continues, that is under further order. It will enable the statement and the annexures to be placed on the restricted website which will therefore enable other persons who have been represented and/or witnesses who have given evidence to consider the material as it might affect them and to act to instruct their legal representatives if they need to, but that the publication by the restricted website means that the only persons entitled to access under the suppression order exception will be the legal representatives of any such persons and their clients, but to no other person. In that way legal representatives of any affected person or any other witness can be achieved, that is they can seek instructions from their clients if they are so advised, in relation to any material in the two volumes.

So the first things is, the two volumes will be marked for identification at this stage. The volume containing Mr Petroulias's statement of 18 November, 2009 [sic] will be marked as MFI 69.

**#MFI-069 – STATEMENT PROVIDED BY WITNESS NICHOLAS PETROULIAS WITH USB (VOLUME 1)**

THE COMMISSIONER: And the second volume, which is Annexure A to Mr Petroulias's statement will be marked as MFI 70.

**#MFI-070 – ANNEXURES PROVIDED BY WITNESS NICHOLAS PETROULIAS (VOLUME 2)**

10 THE COMMISSIONER: So before making the suppression order I indicate that I propose to make the direction under section 112 of the Independent Commission Against Corruption Act 1988 which will restrict publication of information with respect to MFI 69 and MFI 70, subject to the terms of the direction. The effect of the direction will prevent persons other than Commission officers from publishing or communicating information contained in those two MFI volumes, subject to the MFIs being placed on the restricted website in order to enable any person affected or witness to be able to determine whether there's anything in the MFIs that might affect their interest and so they can give instructions to their legal representatives or otherwise respond to the material in due course. The direction may be varied or it may be lifted by the Commission without notification if the Commission is satisfied that it is necessary or desirable to do so in those  
20 public interest. Now, I note that it is a criminal offence for any person to contravene a section 112 direction.

Accordingly, being satisfied that it is necessary and desirable in the public interest to do so, I direct that pursuant to section 112 of the Independent Commission Against Corruption Act that the material contained in MFI 69 and that contained in MFI 70 shall not be published or otherwise communicated to anyone, subject to two exceptions. The first is that the MFIs 69 and 70 is to be placed on the Commission's restricted website and that thereby legal representatives may access and obtain instructions from  
30 their respective clients in relation to any material contained within the two MFI volumes, or in the event of a person otherwise affected by the material to be able to become aware of that material through the restricted website procedure. The second exception is that the restriction does not prevent Commission officers for statutory purposes from utilising the material for the purposes of this investigation. That direction is to operate as from now and will continue until further order of the Commission.

40 **BEING SATISFIED THAT IT IS NECESSARY AND DESIRABLE IN THE PUBLIC INTEREST TO DO SO, I DIRECT THAT PURSUANT TO SECTION 112 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT THAT THE MATERIAL CONTAINED IN MFI 69 AND THAT CONTAINED IN MFI 70 SHALL NOT BE PUBLISHED OR OTHERWISE COMMUNICATED TO ANYONE, SUBJECT TO TWO EXCEPTIONS. THE FIRST IS THAT THE MFIS 69 AND 70 IS TO BE PLACED ON THE COMMISSION'S RESTRICTED WEBSITE AND THAT THEREBY LEGAL REPRESENTATIVES MAY ACCESS AND OBTAIN**

**INSTRUCTIONS FROM THEIR RESPECTIVE CLIENTS IN RELATION TO ANY MATERIAL CONTAINED WITHIN THE TWO MFI VOLUMES, OR IN THE EVENT OF A PERSON OTHERWISE AFFECTED BY THE MATERIAL TO BE ABLE TO BECOME AWARE OF THAT MATERIAL THROUGH THE RESTRICTED WEBSITE PROCEDURE. THE SECOND EXCEPTION IS THAT THE RESTRICTION DOES NOT PREVENT COMMISSION OFFICERS FOR STATUTORY PURPOSES FROM UTILISING THE MATERIAL FOR THE PURPOSES OF THIS INVESTIGATION. THAT DIRECTION IS TO OPERATE AS FROM NOW AND WILL CONTINUE UNTIL FURTHER ORDER OF THE COMMISSION.**

THE COMMISSIONER: All right. Now, are those two volumes marked? Thank you. Now, Dr Chen, just before I come to you, Mr Petroulias, is there anything you want to raise or have clarified?

MR PETROULIAS: There are some transcripts of recordings with Richard Green, some of which were raised in the course of the inquiry. I just didn't get enough time, I mean they're virtually together but I wanted some statements for the purpose of the Surveillance Listening Devices - - -

THE COMMISSIONER: Sorry, just speak into the microphone if you would, but I understand you're raising question about the transcript of Mr Green's evidence?

MR PETROULIAS: No, no, transcript, during the course of the inquiry, several times you made reference to recordings that I'd made - - -

THE COMMISSIONER: Oh, yes.

MR PETROULIAS: - - - am in the habit of making, with Mr Green. I've consolidated the most relevant, about maybe five, have them ready. Can I just simply make an extension to your order so that I can just email them and then you can decide what to do with them?

THE COMMISSIONER: I think what you're indicating is that there were a number of interviews you conducted with - - -

MR PETROULIAS: No, no, not interviews, these are, these are just ordinary recordings.

THE COMMISSIONER: Recordings of what?

MR PETROULIAS: Conversations with Mr Green.

THE COMMISSIONER: I see.

MR PETROULIAS: Contemporaneously at the time as well as a dispute in Terrigal in the middle of the public inquiry.

THE COMMISSIONER: Well - - -

MR PETROULIAS: So they're contemporaneous, except for that one fight.

THE COMMISSIONER: Right.

10

MR PETROULIAS: And so I've got the transcript of the recording and a brief one-page how they - - -

THE COMMISSIONER: Well, are you in a position to produce any of this material at the moment?

MR PETROULIAS: Yes. I was going to do it by today, I just didn't.

20

MR CHEN: Could I just raise, Commissioner, I think until the legality of what's occurred is established it would not be in my submission appropriate for the Commissioner to receive this material from Mr Petroulias.

THE COMMISSIONER: No, that's why I was seeking to clarify with Mr Petroulias what the material is. Mr Petroulias, is there some way you can identify particular recordings - - -

MR PETROULIAS: Yes.

30

THE COMMISSIONER: - - - by date and person and whether it was just the two persons present, you and the other person, or whether there were others present and so on?

MR PETROULIAS: That's right.

THE COMMISSIONER: So particulars in other words as to what these recordings relate to?:

MR PETROULIAS: Yes, yes, yes.

40

THE COMMISSIONER: I have to determine, as you'd appreciate, whether or not the recordings may be received or whether there's a legal restriction on a court or a Commission receiving material if it was not obtained, if there's any unlawfulness attached to the recordings, and there may not be, but I need to have that satisfied before I can receive the material. I suggest then if you could provide the solicitor to the Commission with a short list of the particular recordings, as I say, the dates and the persons, and what form then do these recordings take, are they transcripts of the recordings or are they the recordings themselves or - - -



MR PETROULIAS: The recordings and the transcript, and the plan was to have a little statement or, as to, you know, on this date this happened, this is why, and on this date, yeah.

THE COMMISSIONER: Well, could you produce that statement in effect identifying the recordings and the circumstances in which the recordings were made and what they go to. If you could do - - -

10 MR PETROULIAS: Yeah, sure.

THE COMMISSIONER: It need only be a two or three-page document summarising it, and I'll deal with it as soon as I can.

MR PETROULIAS: Okay.

MR CHEN: Could perhaps Mr Petroulias also indicate whether there was consent given to the recordings.

20 THE COMMISSIONER: That's one of the circumstances I was referring to.

MR PETROULIAS: Sure.

THE COMMISSIONER: Were any of these recordings done with the knowledge and consent of the person or were they not aware of that?

30 MR PETROULIAS: Well, Mr Green gave evidence that he knows that I record, so it was, it was, it was known, and number 1, and number 2, it's, I'm relying on the personal legitimate interest to make recordings.

THE COMMISSIONER: Relying on?

MR PETROULIAS: The legitimate interest exception.

THE COMMISSIONER: I see. Right.

MR PETROULIAS: Protecting your legitimate rights.

40 THE COMMISSIONER: What about the others? How many are there in total?

MR PETROULIAS: Well, I was going to use five, and they're basically me and Richard Green in all cases, and I think the first one Toni Manton is present.

THE COMMISSIONER: The first one?

MR PETROULIAS: Toni Manton, his then girlfriend, was present.

THE COMMISSIONER: All right. Well, when can you produce the summary document?

MR PETROULIAS: Oh, within a day or two.

THE COMMISSIONER: All right.

10 MR CHEN: Just before, Commissioner, I just wonder whether an alternate procedure to deal with this might be rather than Mr Petroulias in fact produce the schedule or the particulars, that he by all means go about that task, but then a course may be that he give evidence and be given the protection of what he produces, the concern might be that by him producing something he may be, I don't know, taking a step that's contrary to his interests and potentially - - -

THE COMMISSIONER: What, in even producing a summary?

20 MR CHEN: Correct, potentially. And perhaps one way of - - -

THE COMMISSIONER: Well, what's your suggestion to overcome that problem?

MR CHEN: He could certainly produce it and be sworn in to give evidence and then produce it to the Commission so that he could have the protection potentially.

30 THE COMMISSIONER: Well, Mr Petroulias, I think Dr Chen's raising this question really in your protection, as well as ensuring that the matter is dealt with in a way which doesn't infringe any prohibition contained in legislation. I think the best way to deal with it is for you to produce the transcript and the recording, you'll be asked some questions about the circumstances surrounding the creation of each of them, and then I can make a ruling about whether they're available to be deployed or used in the inquiry. I think that's probably the best way to do it because you can then - - -

40 MR PETROULIAS: Certainly.

THE COMMISSIONER: - - - have the protection of any ruling I make as to whether you can or you can't use the material. So to that end, Dr Chen, the program is to resume on Monday next, so are you anticipating this will be done before then or on the Monday or some other time next week?

MR CHEN: Well, Mr Lonergan would obviously be interested in, whoever represents Mr Green would obviously be interested in the application.

THE COMMISSIONER: Yes.

MR CHEN: My submission, Commissioner, would be Mr Petroulias should marshal whatever he wants, he should be available on Monday and whatever is produced would be once he would be sworn in - - -

THE COMMISSIONER: All right.

MR CHEN: - - - and a declaration made.

10

THE COMMISSIONER: I think that is the better course.

MR CHEN: Just pardon me, Commissioner, for a moment. Perhaps he could have the material, Mr Petroulias, available and the procedure as to how, if at all, it could be dealt with by the Commission can be considered further between now and Monday and the concern that perhaps is being voiced is that receiving the material in advance of determining whether it had been lawfully obtained may create an issue, and that's something that's obviously undesirable. So perhaps, Commissioner, Mr Petroulias can just have whatever material he wants available for Monday.

20

THE COMMISSIONER: He can bring it, yes.

MR CHEN: And perhaps on Monday the procedure can be fashioned, if one can be fashioned, to deal with all the concerns that have been voiced.

THE COMMISSIONER: All right. Well, Mr Petroulias, I think that is the preferred course in everyone's interest. So if you could produce the material or bring the material with you on Monday I can deal with it then on the basis that Dr Chen has just outlined. All right.

30

MR PETROULIAS: Yes, thank you.

THE COMMISSIONER: Nothing else? Nothing else, Mr Petroulias?

MR PETROULIAS: No.

THE COMMISSIONER: Now, Ms Bakis, are there any matters you want to raise?

40

MS BAKIS: No, Commissioner, no.

THE COMMISSIONER: Nothing?

MS BAKIS: No.

THE COMMISSIONER: All right. Thank you. Then I'll adjourn the proceedings to Monday. Dr Chen, I've earlier indicated that for reasons I

think I've expressed before, the hearing next Monday will be in a, will take the form of a private hearing, and it's set down for three days I think next week, is it?

MR CHEN: Yes. In relation to Mr Petroulias's evidence it certainly is in private and there are three allocated days for the completion of the public inquiry.

10 THE COMMISSIONER: Yes. Very good. All right. Then I'll adjourn and resume 10.00am on Monday next.

**AT 11.00AM THE MATTER WAS ADJOURNED ACCORDINGLY  
[11.00am]**