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PUBLIC
HEARING

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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE PETER M. HALL QC
CHIEF COMMISSIONER

PUBLIC HEARING (HELD IN PRIVATE)

OPERATION SKYLINE

Reference: Operation E17/0549

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 26 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, Mr Petroulias has, consistent with your direction yesterday, served or sent via email to Mr Broad another application, which was sent through early this morning. He's also in the hearing room now, Commissioner, and perhaps we could hear from him first.

10 THE COMMISSIONER: Yes, thank you. Now, Mr Petroulias, is there anything you want to say at this point?

MR PETROULIAS: I, well, plenty - - -

THE COMMISSIONER: We were due to start yesterday. You were not here. You are here now, so you might just address the position so far as yesterday is concerned, and your position today.

20 MR PETROULIAS: Yeah. Yeah, yeah, I mean, you received a lot of information, including the statement, including the, the applications. The statement needed to be made because it's used as evidence to support the applications. The statement was a year's work. It's, it's a proof of evidence that I tried to get to engage barristers, it's been involved in for over a, well over a year. Now, I, I understand your pressure, you want to get things wrapped up and finished and, and all the rest of it. I'm saying that's, that's grossly unfair. I've been absolutely humiliated. I've tried very hard to get to the Commission that you're making, you're, you're basically, you're asking the wrong questions. You're on, you, you've just misconceived the whole concept. I've been trying to get information to this Commission from, from delivering the boxes, it, it, before it even started. No-one's, you
30 haven't listened to me. You - - -

THE COMMISSIONER: Mr Petroulias, I'm just going to ask you to pause there for a moment.

MR PETROULIAS: Yeah.

THE COMMISSIONER: The first question I think you need to address is why you weren't here yesterday.

40 MR PETROULIAS: Okay. I, I don't know if, I'm here because, I'm here today, I'm still just as bad, just as sick.

THE COMMISSIONER: All right. Well, Mr Petroulias, just before you go on then, there's nothing you want to produce or tender in relation to your non-appearance yesterday or your present position? You don't have any documents you want to tender on that question, or those questions?

MR PETROULIAS: Well - - -

THE COMMISSIONER: I'm just enquiring, that's all. Do you have anything you want to tender on this, or not?

MR PETROULIAS: On Thursday I went to Croydon to the psychiatrist - - -

THE COMMISSIONER: Now, just, please. Just answer my question. Is there any material you now wish to tender or hand up?

10 MR PETROULIAS: I am unable to tender anything. My psychiatrist resigned from their roles, at Croydon.

THE COMMISSIONER: Oh, no, just please, just answer my question.

MR PETROULIAS: Oh.

THE COMMISSIONER: I'm simply making an enquiry of you.

MR PETROULIAS: Yes.

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THE COMMISSIONER: And it's just a simple enquiry.

MR PETROULIAS: Yes.

THE COMMISSIONER: Is there any material, I mean by that documents or anything else that you want to hand up in relation to either your non-appearance yesterday or your present position?

30

MR PETROULIAS: No, I didn't think it was in dispute.

THE COMMISSIONER: You don't have any, all right. So Mr Petroulias, what I think we'll do is, rather than deal with this from the bar table, in relation to all the other material, I want what you say to be given either on affirmation or on oath as you may choose.

40

MR PETROULIAS: Yeah. Yes.

THE COMMISSIONER: And then we can hear from you, and deal with the matters that I want to raise with you, and we'll deal with it in an orderly fashion like that. So if you wouldn't mind just coming forward into the witness box.

MR PETROULIAS: Yes. Absolutely.

THE COMMISSIONER: And if there's any material you want to take with you, feel free to do that.

MR PETROULIAS: I, what do you mean by material?

THE COMMISSIONER: Oh, anything. Pens, writing paper, anything else.

MR PETROULIAS: Oh. Okay.

THE COMMISSIONER: No, if you – I'm not suggesting you should, I'm just giving you the opportunity to do so if you wish. All right. Mr Petroulias, do you want to take an oath or an affirmation?

10 MR PETROULIAS: An oath, please.

THE COMMISSIONER: All right. Would you mind standing?

MR PETROULIAS: Yes, yes.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

THE COMMISSIONER: I had intended to suppress the evidence but I will make that order so that Mr Petroulias is aware for now. Thank you for raising that, Dr Chen. The evidence that Mr Petroulias is giving in this inquiry, which may be likened in some senses to voir dire, is suppressed. Accordingly, I propose to make an order. Being satisfied that it is necessary and desirable in the public interest to do so, I direct pursuant to section 112 of the Independent Commission Against Corruption Act that the evidence given by Mr Petroulias today, or the contents of any documents that may be shown to him, shall not be published or otherwise communicated to anyone except by Commission officers for statutory purposes or pursuant to further order of the Commission.

BEING SATISFIED THAT IT IS NECESSARY AND DESIRABLE IN THE PUBLIC INTEREST TO DO SO, I DIRECT PURSUANT TO SECTION 112 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT THAT THE EVIDENCE GIVEN BY MR PETROULIAS TODAY, OR THE CONTENTS OF ANY DOCUMENTS THAT MAY BE SHOWN TO HIM, 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: All right, thank you.

MR CHEN: Commissioner.

THE COMMISSIONER: Yes?

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MR CHEN: Ms Nolan did give Mr Broad - - -

THE COMMISSIONER: I see.

MR CHEN: I haven't read it, Commissioner, obviously, but it's a statement of Ms Bakis's sworn - - -

THE COMMISSIONER: What do you want to do with it?

40

MR CHEN: It could be marked, Commissioner, for identification. It's dated 26 November, 2019.

THE COMMISSIONER: Yes. The statement of Ms Bakis, 26 November, 2019, will be marked for identification MFI 72.

#MFI-072 - STATEMENT OF DESPINA BAKIS DATED 26 NOVEMBER 2019

THE COMMISSIONER: All right. Now, Dr Chen, is there any matters you want to raise?

MR CHEN: Not at this point, Commissioner.

THE COMMISSIONER: All right. Nothing else from you at this stage, Mr Petroulias, on the areas we've been discussing?---Yes, no, thank you.

10

Nothing else?---Thank you, Commissioner, no.

Thank you. You may step down.

THE WITNESS STOOD DOWN

[10.43am]

THE COMMISSIONER: Mr Lonergan, I think I should address you firstly on alternative courses to follow. Start from the proposition that it is extremely important, both from the public interest point of view and from the position of individual persons who are participating in this inquiry, that the proceedings of this Commission always be conducted efficiently, with due regard to the interests of participants or witnesses, and witnesses, in terms of achieving that goal of an efficient and effective public inquiry.

20

[REDACTED] Until that matter is considered as necessary in due course, it also impacts on programming for the rest of this week. It's wholly unsatisfactory, of course, that we've reached this stage when, having determined a program through directions hearings in order to give everyone due notice so that witnesses can organise themselves and persons participating can make arrangements, including representation, that we come to this stage where [REDACTED]

30

[REDACTED] In those circumstances the Commission has got to consider what is the most appropriate course to follow in the interests of your client and interests of all others I've mentioned. However, this is an opportunity for you to say what you want to say from your client's point of view about programming.

40

MR LONERGAN: [REDACTED]

THE COMMISSIONER: Would or would not?

MR LONERGAN: Would be opposed. And would refer back to previous judgement of the Commission in that regard. So then presuming that is the position that the tapes are not admitted, then if I understand Mr Petroulias would want to cross-examine Mr Green, to which he's obviously entitled to do so. So in that regard, you know, we can't oppose in any way him cross-examining. However, Mr Green is here, was here on Sunday for the purposes of being cross-examined yesterday and, at a stretch, today. You know, Mr Green has a business that he is required to be in attendance for. And so my submission would be that if Mr Petroulias seeks to cross-examine Mr Green, that it should be done today.

THE COMMISSIONER: Thank you. Yes. Mr O'Brien is not here but are you able to say what – do you have any submission to make?

MS O'ROURKE: No, Your Honour.

THE COMMISSIONER: Thank you. Ms Nolan, apart from the other matter we've addressed, is there anything you want to say on this question of future programming, that is today and going forward?

MS NOLAN: I said what I wished to say, which was that Mr Petroulias is in no state to cross-examine my client.

THE COMMISSIONER: Mr Petroulias, is there anything further you wanted to say by way of submission?

MR PETROULIAS: Thank you. Just so we're (not transcribable) so one is whether you're prepared to consider one or all of the applications and the consequences to flow from those applications.

THE COMMISSIONER: Well, the real question is whether or not the, on the assumption for the moment that the recorded interviews of Mr Green are not available to be used in evidence - - -?

MR PETROULIAS: Well, then, there's the one - - -

THE COMMISSIONER: Just on that assumption. It's only an assumption at the moment for the purposes of this program discussion. Whether you would want to cross-examine Mr Green. I understand you would want to cross-examine Mr Green.

MR PETROULIAS: Yeah, but there's the second recordings, which is the one conversation different from the – the interviews are one thing and there's a second recording. One, one conversation that we need to deal - - -

THE COMMISSIONER: Which recording is that?

MR PETROULIAS: That's the recording in March 2016. So that one, we need to - - -

THE COMMISSIONER: You say that was done, recorded with the awareness and cooperation of Mr Green or not?

MR PETROULIAS: I, I say both. He, he, as he said in his evidence, he knows that I record everything. There was a practice in Awabakal to record
10 minutes. I continued that practice. Meetings.

THE COMMISSIONER: Apart from practice, was there any express statement to him that you intended to record it?

MR PETROULIAS: Well, I recorded everything.

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

MR PETROULIAS: No, no, no, but he knows that that was the policy in
20 May 2015.

THE COMMISSIONER: All right. So you rely upon your policy or practice.

MR PETROULIAS: Yes. And then I say if you, if you don't accept the consent argument – sorry, consent, consent ground there's also the lawful interest ground.

THE COMMISSIONER: Yes, I see.
30

MR PETROULIAS: So in this statement I address that.

THE COMMISSIONER: Okay. But just - - -?

MR PETROULIAS: And then when I give that - - -

THE COMMISSIONER: Okay. Just on the assumption, and I've underlined that word assumption, it's only an assumption for the purpose, a working assumption, and my understanding is you would want to cross-
40 examine Mr Green, is that right, if those recordings could not find their way into evidence, could not be used by the Commission?

MR PETROULIAS: Yeah.

THE COMMISSIONER: All right.

MR PETROULIAS: A, a, well, yes. Hopefully not today.

THE COMMISSIONER: Whether it be today or tomorrow - - -

MR PETROULIAS: Yes.

THE COMMISSIONER: - - - let's assume that I made claim that the recordings are not available to you, are you in a position tomorrow to proceed then with the cross-examination?

10 MR PETROULIAS: Yes. Yeah, I mean it won't be good but better than nothing, but it won't be - - -

THE COMMISSIONER: So that's the cross-examination of Mr Green?

MR PETROULIAS: Yeah.

THE COMMISSIONER: All right.

20 MR PETROULIAS: And just in case you haven't – missed the point, when I say the application I don't mean just the application to re-admit the interview, I'm taking about the application as the whole conduct of the, you know, the application number 1 is as to the whole, is to address the foundations of the allegations of the inquiry and suggest that they no longer are justified to continue, at least in this form. That may then, sometimes you forgot that step, that's step number 1.

30 THE COMMISSIONER: All right. Mr Green, I think Mr Lonergan wants to speak to you, and Mr Green wants to speak to you, Mr Lonergan. I just interrupt, I'm about to say that I was going to take a short adjournment so perhaps it might be better that I do that and you can speak to Mr Green about whatever it is that he wants to talk to you about. So I'll adjourn for 15 minutes.

SHORT ADJOURNMENT

[10.52am]

40 MR CHEN: Commissioner, just before we resume, in relation to the statement of Ms Bakis, which is MFI 72, would you, Commissioner, make a suppression order in relation to that statement?

THE COMMISSIONER: Yes. The statement of Despina Bakis that has been marked as MFI 72 is suppressed. I make an order pursuant to section 112 of the Independent Commission Against Corruption Act that the statement of Ms Bakis and its contents are not to be published or otherwise communicated to anyone except by Commission officers for statutory purposes or pursuant to further order of the Commission.

SUPPRESSION ORDER: THE STATEMENT OF DESPINA BAKIS THAT HAS BEEN MARKED AS MFI 72 IS SUPPRESSED. I MAKE AN ORDER PURSUANT TO SECTION 112 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT THAT THE STATEMENT OF MS BAKIS AND ITS CONTENTS ARE NOT TO 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: Now, Mr Lonergan, is there any matters that you wanted to raise, having spoken to your client?

MR LONERGAN: Mr Green is in need of not being here tomorrow, and if the Commission is minded to grant cross-examination Friday, Mr Green could be back in Sydney.

THE COMMISSIONER: Friday - - -

20

MR LONERGAN: Could be back in Sydney this week for that.

THE COMMISSIONER: I see. All right.

MR LONERGAN: However, I support Ms Nolan's contention that Mr Petroulias is of, well, in a position where, due to his health issues, cross-examination could be difficult. That's all I have to say, Commissioner.

30

THE COMMISSIONER: Thank you. The public inquiry was previously adjourned and reprogrammed for hearing this week, commencing Monday, 25 November, 2019. Mr Petroulias advised by email yesterday, at 9.22am, that he was in effect indisposed by reason of health matters, and also he was engaged in outstanding applications, to which he said he still had edits to make. He wanted to know where the proceedings in effect were up to so that, he said, "I can continue tomorrow." The email in that respect has been produced and marked for identification. Mr Petroulias is not represented.

40

The revisiting of the inquiry this week initially for three days and then more recently was extended for the whole of this week, is fixed for the purpose of Mr Petroulias either giving evidence himself but also for cross-examining particular witnesses, namely Mr Green, Ms Bakis and Mr Vaughan. Pursuant to directions that I previously made, Mr Petroulias lodged with the Commission a statement. That statement has been marked as MFI 69 on a prior occasion. The hearing yesterday was adjourned until today. I note that yesterday Ms Bakis was in attendance represented by Ms Nolan of

counsel, Mr Green was present, represented by Mr Lonergan of counsel, and Mr O'Brien appeared yesterday and has a representative here today.

10 By reason of the late notice given by Mr Petroulias, it was necessary to, after having heard from the parties appearing here yesterday, to adjourn the matter until today. It was noted then by Mr Lonergan that his client had travelled from Tamworth to be present, having travelled on the previous Sunday to be present yesterday and for this week if necessary. I make specific mention of that because of the obvious inconvenience occasioned to witnesses by last-minute adjournments or adjournments which no notice had been given or was possible to be given. It is regrettable indeed that the matter had to be adjourned yesterday but I determined that it was important because Mr Petroulias had raised a question in his email to which I referred about his health.

It was necessary in my judgement today to have Mr Petroulias give some evidence, which he did at my direction, in the absence of there being any other material available as I understood it which would explain his failure to appear yesterday and also to have regard to what the future course of this week's hearing should be.

[REDACTED]

Be that as it may, the position Mr Petroulias has taken is, as I've just stated.

40 [REDACTED]

[REDACTED]

[REDACTED]

One reason for requiring Mr Petroulias to give evidence on these matters was so the Commission would have actual evidence before it upon which to make a judgment and a decision as to programming matters. [REDACTED]

10 [REDACTED] he question then is whether it could be adjourned to a date later this week in order to enable him to cross-examine, if he wishes, any of the witnesses. [REDACTED]

[REDACTED] I think in all the circumstances the appropriate course is for the hearing to be adjourned. I do not think it would be advisable to attempt to progress the actual hearing, whether it be a private hearing or not, throughout this week by reason of the various facts and circumstances to which I've referred.

20 I have emphasised that it is important in every matter that the Commission proceeds efficiently and fairly, having regard to the interests of all those participating and witnesses, to have regard to the public interest in the investigations of the Commission, and to balance those various interests. Sometimes they can be in conflict with one another. I think that balancing exercise is best achieved by adjourning the hearing, mindful as I am of the inconvenience, regrettably, that's being occasioned to witnesses and legal practitioners appearing here today.

30 Amongst the various applications Mr Petroulias has now made, I anticipate that I will be able to give reasons at least in some of them in the not-too-distant future, and if that be the case, the parties will be advised as to the date upon which I will hand down my decision and reasons. I otherwise propose to stand the proceedings as a whole over to a date in February. It will be in the nature of a directions hearing, in order to determine the future course of the public inquiry. The parties will be given proper notice as to what that date will be in February. I anticipate at the moment, doing the best I can, that it'll be something in the order of mid to late February 2020. Now, Dr Chen, are there any matters you want to raise? Ms Nolan raised the question of a section 38 direction. It seems to me, as has happened in the past, that it can't be said that Mr Petroulias was giving evidence
40 willingly. He did so under my direction.

MR CHEN: Yes, Commissioner.

THE COMMISSIONER: And for more abundant caution, I propose to make a declaration to that effect.

MR CHEN: Yes, Commissioner.

[REDACTED]

THE COMMISSIONER: Are there any other matters?

MR CHEN: Not for my part, Commissioner.

10 THE COMMISSIONER: No, all right, thank you. All right. I take it there's nothing else anybody else wants to raise? Mr Petroulias is required by the Commission to give evidence to explain his absence yesterday in the course of the continuation of this public inquiry, which had been adjourned to recommence yesterday, 25 November, 2019. In the circumstances, he
20 was also required to answer questions of the Commission in relation to matters directly relevant to future programming, which in turn required him to disclose whether he, what he wished to do in terms of giving evidence or not and associated matters. The evidence accordingly was given by him, in my view, under objection, in the sense that he was not giving evidence with consent. Accordingly, all answers given by him in relation to the evidence he's given are to be regarded as having been given on objection. There is therefore no need for him to specifically raise that question of objection. I make an order accordingly under section 38 of the Independent Commission Against Corruption Act.

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**PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY THIS WITNESS AND ALL DOCUMENTS AND THINGS PRODUCED BY THIS WITNESS DURING THE COURSE OF THE WITNESS'S EVIDENCE AT THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION AND THERE IS NO NEED FOR THE WITNESS TO MAKE OBJECTION IN RESPECT
30 OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.**

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THE COMMISSIONER: Before I adjourn, are there any other matters anybody else wants to raise? If not, then I'll adjourn the proceedings of the Commission to a date to be fixed in February 2020. The parties will be advised of a date and the delivery of any decision or reasons on applications made by Mr Petroulias. I adjourn.

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**AT 11.38AM THE MATTER WAS ADJOURNED ACCORDINGLY
[11.38am]**