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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE PETER M. HALL QC
CHIEF COMMISSIONER

PUBLIC HEARING

OPERATION AERO

Reference: Operation E18/0093

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY 5 SEPTEMBER, 2019

AT 10.15AM

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.

MR ROBERTSON: Chief Commissioner, in terms of the program for the end of the week, as I indicated yesterday I'll shortly call Ms Murnain for some further brief re-examination on my part and as well as to permit her to be cross-examined by anyone with leave to cross-examine. Assuming that that exercise is completed today I'll call Mr To Yip tomorrow, not Mr Ian Robertson as previously announced, I'll instead call Mr Robertson on Monday morning which is a change in the program that my learned friend Mr McInerney, who appears for Mr Robertson, has consented to. Those are the only housekeeping matters from my perspective.

10

THE COMMISSIONER: Just a couple of transcript matters I just have noted. Page 231, line 38, it reads, "Can I ask you this. When you met with Mr Wong on this evening what was high school demeanour?" It should read, "What was his demeanour," not high school. That correction can be made unless anybody wants to dispute that correction. Now, there's another minor correction on page transcript 243, third-last line. The question, "It is the case of course that's there's a real question as to whether privilege has been aggregated," should read "abrogated." Those are the only matters at this stage concerning transcript corrections.

20

Very well, ready for Ms Murnain.

MR ROBERTSON: I recall Kaila Murnain.

THE COMMISSIONER: Just take a seat there, Ms Murnain. We'll just have an affirmation – is it an affirmation?

MS MURNAIN: Yes.

30 THE COMMISSIONER: Yes, thank you.

THE COMMISSIONER: Just take a seat. Just for the record, again would you state your full name.---Kaila, Kaila Leah Murnain.

Thank you. Ms Murnain, you previously gave evidence in this matter on 29 August, 2019, and you gave evidence under cover of a section 38 declaration and you recall what section 38 provides for?---Yes,
10 Commissioner.

That is to give evidence on objection. And is it your wish to continue to proceed on that basis?---Yes.

Yes, very well. I note that the declaration previously made in respect of Ms Murnain pursuant to section 38 continues to have application to the evidence that she is giving today.

Yes, very well. Yes, Mr Robertson.
20

MR ROBERTSON: Can we please have on the screen the document entitled Communications (Including CCRs) 16 September, 2016. Ms Murnain, I'm just going to put on the screen a document that identifies the data from a series of what's called call charge records, which is data that comes from mobile telephone companies or telephone companies that identifies things such as who calls who and the length of the calls. Before I ask you some questions about the detail of this, can I just explain this document to you. As you can see from the first two columns, the first one's called Date and the second one is called Time. That's the time at which,
30 and the date on which the, a particular call originates from a telephone. The next two columns concern what's referred to as Phone Service A. That's the originating telephone. We've redacted the telephone numbers in the third column, but the user in relation to that telephone is identified in the fourth column. Phone Service B is the recipient telephone, again with redacted telephone numbers, but identifying the individuals who the Commission understand maintain the particular phones. The next column is a Duration column, the duration of the call. And then there's Phone Service Location A, which is the approximate location of the originating telephone, and Phone Service B is the approximate location of the recipient telephone.
40 Can I just ask you to note that towards the top of this document, to note there's a series of calls that seem to have been made to Mr Foley, one quite early in the morning at about 7.35 in the morning, and another at 7.41?---
(No Audible Reply)

Did those calls have anything to do with the question of whether there was any illegality in connection with donations in 2015?---I honestly don't remember, and that's not my memory.

Well, to attempt to assist you with the bearings, you gave evidence earlier in this public inquiry that you met with Mr Wong on 16 September, 2016, correct?---That's correct, yep.

And if you just have a look at the top of the screen, these are all records from 16 September, 2016.---Yep.

10 And you gave evidence that you spoke to Mr Ernest Wong, about the matter that's been critical to this investigation of this Commission, towards the evening of that day, is that right?---Yes.

And is it your evidence that you were not aware of any questions of illegality in connection with 2015 until Mr Wong told you on the evening of 16 September, 2016, is that right?---Not that I could – I, I believe so.

I understood your evidence – and perhaps I misunderstood it.---Yep, yep.

20 I understood your evidence to be the first time that you had any information to suggest that there was illegality in connection with the Chinese Friends of Labor event in 2015 was when you had the discussion with Mr Wong out the back of Parliament House, is that right?---I believe, I believe so.

Well, sitting there now, do you have any recollection of information of that kind being received before you had your discussion with Mr Wong?
---About Chinese Friends of Labor, not that I can remember.

Well, I want to be clear about this. I understood your evidence from earlier in the public inquiry to be - - -?---Yes.

30 And I may have misunderstood it.---Yes.

That the first time that you had any information about illegality in connection with donations in 2015 was when Mr Ernest Wong broached the subject on the evening of 16 September, 2016.---That is my best recollection, yes.

40 And sitting there now, you have no other recollection to suggest that you had other information of that kind, is that right or not right?---That's right, mmm.

And so does it follow from that that the telephone calls that you had with Mr Foley in the early morning of 16 September, 2016, had nothing to do with the question of illegality in connection with 2015 and donations, is that right, given that they happened before your meeting with Mr Wong?---I, I don't believe so, but I don't know what I spoke to Mr Foley about on that day, I'm sorry.

And can I help you this way - - -?---Yep.

If you have a look at Phone Service Location A, do you see it's in Manuka?
---Yes, yep.

And you know Manuka's in the Australian Capital Territory?---Yes, yep.

And to assist you further, 16 September was a Friday.---Yep.

But of a Commonwealth Parliament sitting week.---Yes. Yes.

10

And does that refresh your memory that you were in or around Canberra on the morning of 16 September?---I, I don't remember it, but it would be definitely possible that there was a national executive that day, so - - -

And, but you're saying sitting there now, you have no particular recollection about what the subject matter of the conversations with Mr Foley that we see at lines, at rows 1 and 2 that are presently on the screen, is that right?
---That's correct, yeah.

20

If we then go down a little further, have a look at rows 4, 6, and 7. Do you see that there's a series of calls with Mr Dastyari, one where Mr Dastyari calls you?---Yes.

And two where in fact, or a number where you have conversations with Mr Dastyari?---Yes.

Do you see that there?---Yep.

30

Was it common around September of 2016 for you to have regular calls with Mr Dastyari of the kind that we can see on the screen?---Yeah, we would talk frequently.

Do you have any recollection as to what the subject matter of those calls were with Mr Dastyari? And at the moment I'm focusing on telephone calls before you met with Mr Wong on the evening of 16 September?---I don't, I'm sorry.

40

Well, you know that around that period of time Mr Dastyari, then Senator Dastyari, was a figure of some controversy, at least in the media. Correct?
---Yes, yes.

And he had resigned from the front bench two weeks or so earlier. Correct?---That's correct.

Does that refresh your memory as to the subject matter of the conversations with Mr Dastyari?---I'm sorry, it, like, I wish it could but I, I don't. I mean we spoke all of the time.

Can we then – I'll just note as we go through you'll see calls with Mr Dastyari in row 4, row 6, row 7, row 8 seems to be an attempted but unsuccessful call because you see zero seconds, row 9, row 11 and row 16. Do you see all of those there?---Yeah.

10 And I'll note in passing, row 7 a nine-second call with Mr Foley which may be an attempted but unsuccessful call. If we then turn the page. Similarly a three-second attempted call with Mr Foley. Can I then ask about row number 19. You see that there's a longish call with Mr Ian Robertson that goes for 825 seconds. Do you see that there?---Yes.

Do you have any recollection as to the general subject matter of that telephone call?---I, I actually don't remember that conversation but I have provided a text message to, that suggests that I was on the phone to Ian Robertson at that time.

20 But sitting there now, we'll come to the text messages separately, but sitting there now you don't have a recollection of what that was about?---No. I don't remember it, but obviously I've done some googling about what was going on on that time, but I can't remember.

Could it have had anything to do with the question of whether any illegal donations were made in 2015?---I don't believe that, I don't believe so at that time because I hadn't met with Ernest yet.

And does the same answer apply to the next row which is a call with Mr Foley?---About the Ernest Wong conversation, yes, because I hadn't met with him yet.

30 Well, it certainly couldn't have been about the Ernest Wong conversation because that hadn't happened.---Yeah.

40 But does it follow from that and from your other answers that it couldn't have been about, and wasn't about, any question of illegality in donations in 2015?---It, it, it may well have been about issues that MPs were having at the time obviously. I don't remember any of it but I have seen text messages and looked at the news reports so obviously talking about matters relating to Nick Lalich but I, I don't remember these phone calls because this is run-of-the-mill sort of stuff.

So Mr Foley was the State Parliamentary Leader of NSW Labor at that time. Is that right?---That's right, yeah.

And do I take it, then, that it was common for you as General Secretary of NSW Labor to be in regular contact with the state leader?---Yes.

That would be a bread-and-butter type of communication that would happen regularly during the course of your work in that role. Is that right?

---Absolutely, yes.

We've then got line 21 it seems an attempted but unsuccessful call. We then have a reference to Mr Hollywood. That's your partner. Correct?

---Yes. That's correct, yeah.

10 Another call with Mr Dastyari in line 23. Do you have any recollection as to what the subject matter of that call would be about?---Sorry, can we - - -

Line 23, 16 September, 6.04pm, 94 seconds. This is before any text with - - -?---Text with Ernest.

Well, before the text that we've discussed with Mr Wong.---I just don't remember.

20 And if we then jump to line 26 we can see there at 6.06pm the text message that you and I have already discussed at some length previously in your examination.---Yeah.

And we then see a series of calls between 6.06pm and when there's the further text in terms of saying come down, on the way and things of that kind.---Yeah, yeah.

Now, do you see though that at line 30 there's a call for 214 seconds, which is about 13 minutes, with Mr Dastyari. Do you see that there?---Sorry, which line, sorry?

30 At line 30.---30, yeah.

Which is at 6.14pm, 18.14 using a 24-hour clock.---Yep, yep, yep, got it.

A call of 214 seconds. Do you see that there?---Yep, yep, that's right.

And to get your bearings, that's after Mr Wong has sent a message to you saying, "Please ring me."---Yep.

40 And it seems that it's before, it might not be, but it seems that it's before you have, in the next line you'll see a telephone call with Mr Wong of about 83 seconds. That's in the next line, line 31.---Yes, yeah, yeah. And I - - -

Do you have any recollection of the subject matter of the 13-minute call with Mr Dastyari?---I don't, I'm sorry.

But do we take it that to the best of your recollection it wasn't about any question of illegality in relation to donations in 2015, because at that point you hadn't spoken to Mr Wong?---That's correct, yeah.

Is that the effect of your evidence?---Yeah.

And then you have telephone call it seems with Mr Wong - - -?---Yeah.

- - - for just over a minute.---Yeah.

I think you gave us evidence earlier in the public inquiry to the effect that I think you recalled a telephone call with Mr Wong that made arrangements to meet with him. Is that right?---That's correct, yeah.

And doing the best you can, would have that been within short order of the message from Mr Wong saying "Please ring me?"---Yes, yeah, I - - -

So at least it wouldn't be inconsistent with your recollection that you had a call with Mr Wong say a few minutes after the message from him saying, "Please ring me." Is that right?---Yeah, that's right, yeah.

Then at lines 33 and following we've inserted the text messages.---Text messages, yeah.

And we can then go over the page, the last of those saying, "Hospital Road" is in line 38.---Yeah.

Now, if you then have a look at line 40 and line 42 do you see that these records suggest, and they're not always 100 per cent accurate, but these records suggest that you may have called Mr Robertson before you called Mr Dastyari? Just have a look at line 46 where, and line 45 and 46, also lines 43 and 44, so it looks like at least from these records, lines 43 to 45 attempted calls between you and Mr Dastyari, but within very short order of each other.---Yeah.

And if you just have a very close look at line number 45, do you see the time there, 19.08.09?---Yeah.

And then have a look at line 43, 19.08.44.---Yeah.

So the formatting of this table is a bit misleading it seems, because it would seem that the call in line 45 in point of fact happened about 30 seconds or so before the call in line 43. Do you see that there?---Yes, yeah.

So in other words it seems, at least on these records, and noting that particularly when one's within a minute or two, they're not always necessarily 100 per cent accurate, it seems that you made an attempt to call Mr Dastyari, in fact you each attempted to call each other.---Mmm.

And you got onto each other at about 7.09pm. Do you see that there?---Yeah, I see that.

And there's the explanation that I've given to you as to what appears to be the order at least of the calls between you and Mr Dastyari. Do you understand the explanation that I've just sought to give?---Yeah, yeah.

Now, what I want to draw your attention to is that it looks like that at least on these records, and with the qualification I've already given you, that after your meeting with Mr Wong you in fact called Mr Robertson before you called Mr Dastyari. Do you see that?---I do see that, yeah.

10

And do you think that that might be right, noting that – as I understood your evidence earlier in the public inquiry – your evidence was that you called Mr Dastyari first and spoke to Mr Robertson after speaking to Mr Dastyari? ---I still, my memory is that I spoke to Sam before I spoke to Ian and I, none of this changes that, that I spoke to him.

So can we just be clear about that. Is it your best recollection that after you finished the meeting with Mr Wong, your first telephone call was to Mr Dastyari. Is that right?---I, I still, yes, that is still my memory. I don't know how to explain it otherwise.

20

In your evidence on 28 August, transcript page 237, line 15, when I was asking you about this, you said, "I thought I had called the governance director at some point."---Mmm.

"But I think the governance director had gone home, so I don't know whether I had called her or not."---That's correct.

Do you remember giving that answer?---Yep.

30

Sitting there now, is it still your recollection that you may have called the governance director, or have you thought about it further since we last addressed this topic, and you have a different recollection?---I, I think when I gave that answer, I wasn't sure, and I'm, and I'm still not sure.

So it's possible that you did on your recollection, but you don't have a specific recollection of speaking to the governance director, is that right? ---That's right. Yep.

40

That was Julie Sibraa at the time, is that right?---Correct, yeah.

Do you have any recollection of actually speaking to her?---No, no.

So are you saying you have, you think you may have attempted to make contact with her, is that right?---Yes.

And are you saying you're fairly sure that you didn't get into contact with her, but you may have attempted to do so, is that right?---That's right. Yep.

And then do you see, at line 46 - - -?---Ah hmm.

- - - what appears to be a 90-second call with Mr Dastyari?---Yep.

Can I just ask you to note that the location – and again, emphasising that these locations are not always a hundred per cent accurate – says David Jones?---Yep.

10 And you know David Jones is the building on the corner of Elizabeth Street and Market Street.---Yes.

And backs onto Castlereagh Street as well.---Castlereagh. Yep, yep.

A couple of blocks away from Mr Ian Robertson’s offices in the MLC Building, is that right?---A block away, so the next block, yep.

Sort of a diagonal block, in effect, as it were.---Yep.

20 Does that data in any way refresh your memory as to when you had a telephone call, if you had a telephone call with Mr Dastyari after the meeting with Mr Wong?---It just doesn’t. I just, I remember talking to Sam, and I remember him saying, “Go see Ian Robertson,” and it is so engrained in my memory. I mean, I, I just don’t know the, I, I mean, I couldn’t tell you the, the order of the time of the phone calls, except to say that I know I spoke to Sam before I saw Ian Robertson.

30 But the evidence that you gave earlier in the public inquiry, as I understood it at least, was that that conversation happened in Mr Dastyari’s car, is that right?---Yes. Yep, mmm.

Now, having looked at these records, and having thought further about it since last giving evidence, are you sure that that was how that conversation played out, or is it possible that the conversation where Mr Dastyari said, “Go and see Ian Robertson,” in fact happened by telephone between your meeting with Mr Wong and your meeting with Mr Ian Robertson?---It is definitely possible, yes.

40 Now, is it possible on your recollection that you had that discussion with Mr Dastyari after you spoke to Mr Robertson to arrange a meeting with him that evening?---It’s possible but – it’s possible I spoke to him multiple times, Sam. It’s, it’s possible. It’s possible.

But still your best recollection sitting there now was that your first contact after your meeting with Mr Wong was with Mr Dastyari, correct?---Yes, yeah.

Your recollection earlier in the public inquiry was that that was in his vehicle, but I think you're now saying it's possible that that was on the telephone, is that right?---That's correct, yeah, mmm.

And then you met with Mr Robertson after having the discussion with Mr Dastyari, correct?---Yes.

10 And is it possible that the meeting that you have given evidence about with Mr Dastyari in fact happened after your meeting with Mr Ian Robertson, rather than before, as you said in the earlier evidence in the public inquiry?
---It's possible. I mean, I, I know I keep saying this, but I, I know I spoke to Sam before going in to see Ian, because he told me to go and see Ian. So, that, that part of it, I am so certain of. But it, but it is definitely possible.

I'll come back to that aspect in a moment. But before I do that, can I just note lines 47 and 48, so again you speak to Mr Hollywood, it seems, before you start your meeting with Mr Ian Robertson, for about 48 seconds?---Yep, yep.

20 Do you recall the subject matter of that conversation?---No.

Do you recall whether you said to Mr Hollywood, "Look, Mr Wong has told me some significant information. I'm going to be home late because I need to deal with it with the lawyers," something along those lines?---I just don't remember.

So it may well have been completely mechanical "I'm going to be home at a particular time" or it may have had some substance in it. Is that right?
---That's correct.

30 You just can't recall one way or the other?---I just don't.

And do you recall, looking at line 48, whether you actually got on to Mr Foley? It's only 12 seconds so it may be that you didn't have a conversation with him.---I don't, I don't remember. I don't, that's not my, I can't remember.

40 We've then put in in line 49 the I'm at the top of the escalator text message.
---Yeah.

And then I think you've accepted from me that it's possible that the meeting that you could recall with Mr Dastyari in his vehicle in point of fact happened after the meeting with Mr Ian Robertson. Have I got that right?
---It's possible, yeah.

But if it happened that way, then the conversation that you say you had with Mr Ian Robertson had already happened at the time that you were driving in Mr Dastyari's vehicle. Correct?---Correct, yeah.

So do you have any recollection of telling Mr Dastyari words to the effect of I've just seen Ian and he has given me particular advice?---I just, I don't, I don't remember. I don't remember I'm sorry.

So are you at least quite clear in your mind that you told Mr Dastyari in his vehicle about the substance of the in-person meeting that you had with Mr Wong, are you quite sure about that?---I'm quite sure that I told him and I was quite sure that I told him that prior to meeting with Ian Robertson.

10

And are you quite sure that one of the things that you told Mr Dastyari was that Mr Wong had told you that someone had said that they donated money but they had not in fact donated money. Correct?---Yes.

And are you quite sure that you uttered the words "Mr Huang" or some other similar phraseology?---Yes.

20

I think you said before you're not quite sure whether you said Mr Huang Xiangmo or some other way of identifying the particular Mr Huang but you did make it clear to Mr Dastyari that the Mr Huang that was being spoken about was the, what I might describe as the property developer Mr Huang or the regular donor Mr Huang.---Yeah.

Is that right?---Yes, and the, the context around that is by this stage the Huang we're talking about was all over the news and it was very, he was the significant Huang so it was, it was very clear and I made it very clear.

30

When was it that you first became aware who Mr Huang Xiangmo actually was?---I don't know. I mean I, I, I know I met him at his office in early 2016. They wanted me to go and meet with him at parliament, not at parliament at, at, I'm trying to remember, his office in North Sydney in early 2016 and I met him at his office in early 2016. We were asking him for federal donations, they were, Mr Wong and Chris Bowen and I think Sam, but the other two definitely wanted me to meet Mr Huang so that I could ask him for federal donations.

40

Is it possible that Mr Huang in fact came to your knowledge before those meetings in I think 2016?---I, I mean it's possible that he was around but I didn't know his, who he was.

Is it possible that you attended a Chinese Friends of Labor dinner in 2014 and actually thanked Mr Huang for coming?---I thought that dinner had happened in 2016. Obviously have read the evidence. Obviously I know that that was the person now but at the time I had no idea who he was.

So what's your evidence as to when the significance of Mr Huang, in other words not a particular person by a particular name but the fact that an individual by the name of Mr Huang Xiangmo was a person of interest to

the party in the sense of being a potential donor? When do you say that first came to your knowledge?---2016 when I was secretary.

And that's because that was a matter that was drawn to your attention by others within the party who encouraged you to meet with this individual with a view of soliciting donations for the federal party. Is that right?
---That's correct, yeah.

10 Chief Commissioner, I tender the document that appeared on the screen entitled Communications (Including CCRs) 16 September, 2016, being a document containing 50 rows of data.

THE COMMISSIONER: Yes. The document Communications (Including CCRs) 16 September, 2016 will be admitted and become Exhibit 204.

#EXH-204 – CALL CHARGE RECORDS BETWEEN DASTYARI, WONG, MURNAIN AND ROBERTSON DATED 16 SEPTEMBER 2016

20

MR ROBERTSON: Chief Commissioner, I apply for the directions that were made on 29 July, 2019 and 20 August, 2019 that were made under section 112 of the Independent Commission Against Corruption Act to be lifted in relation to the compulsory examinations of Ms Murnain that occurred on those dates, save in relation to the following parts of the transcript which I will now read onto the public inquiry transcript. First, page 1682, line 41 through to page 1683, line 40, next page - - -

30 THE COMMISSIONER: Sorry, the first page was 168 - - -

MR ROBERTSON: 1682.

THE COMMISSIONER: 2, thank you, yes.

MR ROBERTSON: Line 41 to 1683, line 40.

THE COMMISSIONER: Yes.

40 MR ROBERTSON: Next, page 1825, line 19, after the words, "Member's partner," through to - - -

THE COMMISSIONER: Sorry, the words member?

MR ROBERTSON: Member's, M-e-m-b-e-r's partner, p-a-r-t-n-e-r.

THE COMMISSIONER: Yes.

MR ROBERTSON: To page 1825, line 20.

THE COMMISSIONER: Yes.

MR ROBERTSON: Next, page 1826, line 18, after the word, “Yep,” Y-e-p, through to page 1827, line 11. Next, page 1865, line 40, through to page 1867, line 12. I just explain the reasons for those excisions. The parties, or at least those with access to the restricted website, have had access to Ms Murnain’s compulsory examination transcripts since late last week. There was an aspect of that that was redacted. One of the excisions I’ve just identified is that excision, and so that in my submission should remain unavailable and the subject of a section 112 direction. The other matters are available on the restricted website to the parties but they deal with matters of speculation that raise at most collateral issues that are unlikely to be of assistance to the Commission in its investigation and are matters that parties or other potential witnesses may seek to respond to. So on the face of that in my respectful submission those matters, it remains in the public interest for those matters not to be the subject of general publication, but subject to that matter, given that the evidence that Ms Murnain has previously given in compulsory examinations may be relevant to the matters that the inquiry is investigating, including as to matters of credit, it’s appropriate that the section 112 directions be lifted to that extent.

THE COMMISSIONER: Yes, thanks, Mr Robertson. The order previously made under section 112 of the Independent Commission Against Corruption Act in respect of the transcript of proceedings being compulsory examinations of Ms Murnain on 29 July, 2019 and 20 August, 2019, is lifted. That is, the direction under that provision is lifted in respect of the transcripts of those compulsory examinations, save for and except the pages and lines referred to by Counsel Assisting, which for the record I’ll repeat. Page 1682, line 41 to 1683, line 40; page 1825, line 19, after the words, “Member’s partner,” to 1825, line 20; 1826, line 18, after the word, “Yep,” y-e-a-p, to 1827, line 11; page 1865, line 40 to 1867, line 12.

VARIATION OF SUPPRESSION ORDER: THE ORDER PREVIOUSLY MADE UNDER SECTION 112 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT IN RESPECT OF THE TRANSCRIPT OF PROCEEDINGS BEING COMPULSORY EXAMINATIONS OF MS MURNAIN ON 29 JULY, 2019 AND 20 AUGUST, 2019, IS LIFTED. THAT IS, THE DIRECTION UNDER THAT PROVISION IS LIFTED IN RESPECT OF THE TRANSCRIPTS OF THOSE COMPULSORY EXAMINATIONS, SAVE FOR AND EXCEPT THE PAGES AND LINES REFERRED TO BY COUNSEL ASSISTING – PAGE 1682, LINE 41 TO 1683, LINE 40; PAGE 1825, LINE 19, AFTER THE WORDS, “MEMBER’S PARTNER,” TO 1825, LINE 20; 1826, LINE

**18, AFTER THE WORD, “YEP,” TO 1827, LINE 11; PAGE 1865,
LINE 40 TO 1867, LINE 12.**

MR ROBERTSON: May it please the Commission. Can I also make it clear that the intention with the application I made was to not affect the direction that you made, Chief Commissioner, at the start of the public inquiry regarding personal information, so as I apprehend it, that is still subject to the direction that you made at the start of the public inquiry?

10 THE COMMISSIONER: Yes, I confirm that. In respect of the transcript of those two compulsory examinations, the lifting of the order does not however, affect the suppression of personal data such as addresses, home addresses, telephone numbers, email addresses.

MR ROBERTSON: May it please the Commission. Ms Murnain, you participated in compulsory examinations before this Commission on 29 July, 2019, and 20 August, 2019?---Yep.

20 You would have to accept, wouldn't you, that you were less than forthcoming in the first of those compulsory examinations, do you agree with that?---I, I was very focused on the questions surrounding the dinner, not, and hadn't prepared myself for coming to a place like this, keeping in mind I've never been to court before, so, it wasn't – that is why I wanted to come back.

We'll come back to the explanation.---Ah hmm.

30 But you at least have to accept, don't you, that in the first of the compulsory examinations you were less than forthcoming in your evidence?---Yes.

In particular, you didn't tell the Commission about your meetings with Mr Wong, Senator Dastyari, and Mr Ian Robertson on 19 September, 2016, is that right?---Yeah, yes.

Do you accept that?---I accept that.

40 Having participated in that compulsory examination, though, you took steps to come back to the Commission and give some further evidence, is that right?---That's right.

Those are steps that you decided to take yourself?---Yes.

Did anyone from within the party and anyone other than your lawyers encourage you to take that course?---No. My lawyers, I told my lawyers and - - -

I don't want – just to be clear - - -?---Oh, no. Oh, okay.

- - - I don't want to know the detail of any legal advice that you were given.
---Yep. No, I did it freely and on my own, on my own desire, my own need to come forward.

10 Why was it, though, that in the 29 July, 2019, you were less than forthcoming on your evidence, and yet only a few weeks later, you were much more forthcoming? What's the explanation for your change in position in that regard?---I was trying to do the right thing. It is obviously very difficult to remember events of five years ago. I was very much focused on answering questions about the dinner itself. As the general secretary of the party, I've had enforced leave after that period, and thinking about it, used a whole host of mechanisms including my phone to refresh my memory about, about events, but I wanted to come forward and do the right thing. Wasn't the easy thing, but I wanted to do the right thing.

20 Is that the extent of the explanation, or was it that you were concerned that these matters may come out in the public inquiry anyway, and you were seeking to get ahead of that?---No.

So is it your evidence that you were, what, concerned about what you'd said on 29 July, and you wanted to set the record straight, is that a fair summary of what you just said to us?---I wanted to give you as much information as I could remember about what had happened, and, and I wanted to come in and do the right thing, even if it wasn't easy acknowledging the implications it has for me and everybody.

30 THE COMMISSIONER: Ms Murnain, the question might be asked as to why you didn't do the right thing in the first of the two compulsory examinations, the one on 29 July, 2019, and provide evidence of your full knowledge of any relevant matters?---I'd never, I've never been through – excuse me – through a process like this before, and afterwards, I couldn't, couldn't sit there and not say something. And so that is why I came back.

40 I was directing attention to the first examination. What was the explanation for not revealing the full extent of your knowledge in the first examination on 29 July?---I did my best to answer the questions that were asked of me but went away and tried to work out what had happened in the past and felt the need to come back. I wasn't, it wasn't at the front of my mind. I was incredibly nervous. I haven't ever been to a court let alone a commission before and I felt the need to come back and, and do the right thing.

MR ROBERTSON: But you accept that you didn't do the right thing on the first occasion. Is that fair?---That wasn't what I was thinking at the time. I was trying to answer your questions as best I could in what are very, as I'm sure you know, intimidating circumstances.

But you at least accept sitting there now that you didn't do the right thing on the first occasion. Is that fair?---Yeah.

So it wasn't just a matter of doing the best that you could on the first occasion, at least with the benefit of hindsight you accept that you didn't do the right thing on the first occasion. Is that right?---Hindsight, absolutely.

But you reflected on that matter between 29, after 29 July and then you took steps to correct the record. Is that right?---Yes, that's correct.

10

And the reason you took those steps as I understand your evidence was that you thought it was appropriate to set the record straight and give the full source of your knowledge rather than the much more limited approach that you took in the compulsory examination on 29 July, 2019?---Yeah.

So is that a fair summary of your evidence?---That's a fair summary.

20

Can I now seek to just clarify a couple of things that have arisen from other aspects of your evidence. Can we go, please, to what I'll describe as the Labor Party email. Now, I asked you at page 212 of the transcript, line 30 whether you were in attendance at the event.---Yeah.

And your answer was to the effect that you weren't sure. You may have been there but you probably weren't there for the whole night. Is that right?---Yeah.

And I think you told us that that was the time of the draw for the order of people on the ballot paper.---Yeah.

30

And a part of your role when that occurs is to sign off on the how-to-vote cards. Correct?---That's right, yeah.

I'm just going to put up a document on the screen which may assist or might not assist in jogging your memory as to whether you were in attendance. First, Ashleigh Smith, A-s-h-l-e-i-g-h, was your executive assistant in 2015. Is that right?---Yeah.

40

And that individual worked both for you and Mr Clements. Correct?---Yes, she did, yeah.

And can you see here this is an email that you weren't copied to but it's an email that seems to have been sent between Ms Smith and Mr Cheah and can you see the subject heading "FYI Kaila will not be attending tonight's event". Do you see that there?---Yeah.

Now, does that refresh your memory in any way as to whether you may have been in attendance of the event on 12 March?---I think that means I didn't but I mean I, I stand by what I'd said earlier which was I didn't think

I'd gone. I thought I'd stayed at the office to do how-to-votes but it's so long ago I can't remember.

Do you have a recollection of speaking to Ms Smith and saying please let Mr Cheah know that I won't be attending tonight's event?---I, I don't but it was how-to-vote day so I was sort of, had to look after the grunt work so to speak.

10 So still your best recollection is that you can't remember whether you were there but if you were there it probably wasn't for the whole night. Is that fair?---Yeah.

Chief Commissioner, I tender the document that appears on the page namely, an email from Mr Cheah to Ms Smith, 12 March, 2015.

THE COMMISSIONER: Yes, the email be admitted. It will become Exhibit 205.

20 **#EXH-205 – EMAIL FROM KENRICK CHEAH TO ASHLEIGH SMITH TITLED ‘RE: FYI – KAILA WILL NOT BE ATTENDING TONIGHT’S EVENT’ DATED 12 MARCH 2015**

MR ROBERTSON: Ms Murnain, we touched on this topic briefly early in the public inquiry and I just want to touch on it briefly again but I will do it briefly. It's right to say, isn't it, that in your time as general secretary you've made some changes in terms of practices associated with donations and the like. Is that right?---Yes, I have.

30 And can we have up on the screen, please, document 146. One of the things that you did as general secretary was – just pardon me for a moment. We'll just get up the correct document. Just bear with us for a moment. I'll do it this way. One of the things that you did was, you moved a resolution in the party officers' meeting requiring a review to be conducted in relation to matters such as donations practices. Is that right?
---Yeah. I, I don't remember doing it but I've seen the minutes of it.

40 And arising out of that exercise and other steps that you've taken, there's been some changes within NSW Labor as to donations practices. Is that right?---Yeah. The big ones were earlier when I, the week I became secretary we started putting in real time the donations on our website so that people could see who was donating to the party. That's been the most effective. We banned cash donations, but I think the bigger thing is just moving to credit card systems, particularly for things like raffles, which were notoriously difficult to reconcile unless you had credit cards.

When you say the real time disclosures have been more effective, what do you mean by that?---So, so what happens, and we think, well, I thought all parties should have to do this, but in February when I became secretary at the conference Luke Foley and I sat down to work out a plan around what he would say at conference and what I would say at conference. He made an announcement that we would do real-time disclosure, and that means when we receive a donation, once we put it into the system, within the week we would put it on the website so people could see who was donating to the party, and that was disclosable donations I think over \$1,000, and that way anyone could see them. And what that meant was if you, if we had missed anyone or forgotten anyone or someone was prohibited, you would know that there would be Libs or media trawling through that website so they might actually tell you so you could actually fix it. And the party officers were sent copies of it as well in the early days.

So when you say effective, you mean that that ensures that anyone interested, including media, knows of a donation in very short order and so if there's a problem with it, it can be dealt with within short order. Is that a fair summary of what you just said?---That was the idea, yeah.

And then in terms of the \$1,000 cap on donations, has that in your experience caused any practical difficulties in terms of actually receiving donations? In other words, has in your experience the Labor Party been hindered in its abilities to receive lawful donations by insisting that donations about \$1,000 are paid in a method other than cash?---I don't, I don't know. I mean I, I don't think so. I mean I think our fundraising seems to be going pretty well. I mean because of recurrent, well, the party's, not ours these days, recurrent donations and things of the sort are actually more effective than any other form of fundraising, so when someone continuously gives money. I don't know if that had hindered people in any way.

And does it follow from what you've just said that it may be that it would be possible to have a cap of less than \$1,000, in other words, it may be that if one wanted to make a donation of more than say \$200, they needed to do so by credit card or cheque, at least in your experience as general secretary that would seem unlikely to hinder the party's practical ability to receive lawful donations while still creating something in the nature of a money trail? ---Yeah. I think, I think it should be that no one should receive cash donations over \$1,000 anywhere, from any individual. It just, it's, it's too hard to manage. I don't know how it would, I don't think it would hinder people now, I think everyone uses credit cards these days so - - -

I'll just put the minutes of 12 January, 2017, that I referred to a moment ago, just to finalise that point. Do you see on the screen, there's two resolutions that you appear to have moved?---Ah hmm.

One regarding Labor Action Committees generally.---Ah hmm.

And one regarding donations and disclosure, do you see those there?---Yep.

And those were two resolutions you moved at the party officer's meeting, and they were both carried, correct?---Yep, that's right.

10 In moving those motions, were you in any way influenced by what Mr Wong had told you in 2016, or was this more focused on more general issues of what I'll call governance in the broad sense?---Oh, it was more in the general, in the broad sense, the – we'd obviously received lots of letters from the commission about a whole host of events and things at this stage, so, it was motivated by an ongoing desire to improve the party's processes.

Chief Commissioner, I tender the page on the screen, which is described as minutes of the party officer's meeting, Thursday, 12 January, 2017, but to be clear, I tender only that page, I don't tender the remainder of the minutes of the meeting that occurred or apparently occurred on that date.

20 THE COMMISSIONER: Yes, the minutes of the meeting marked as 124, the single page of the meeting of Thursday, 12 January, 2017, will be admitted. That'll become Exhibit 206.

**#EXH-206 – MINUTES OF THE PARTY OFFICERS' MEETING
THURSDAY 12 JANUARY 2017**

MR ROBERTSON: That's the further examination for my part.

30 THE COMMISSIONER: Yes. Just on that last subject of the changes or reforms to dealing with matters related to donations, was the Whelan enquiry relevant and part of that examination and leading to change? ---Yeah. Whelan, the Whelan enquiry with Simone Farrar came up with a whole host of changes, credit card policies, how we spend money, how people apply to spend money, because there were issues around how people were spending money. And so there were pages and pages of recommendations that we implemented. I would also, the Tarrant-Tierney report at the time had structural changes which related to this as well.

40 So as a separate enquiry?---Yeah. There were three separate enquiries done at the time, including one by Jane Needham, SC, as well, who did an enquiry about the culture of the party, because there were pretty systemic cultural issues prior to 2016.

And a third enquiry, did you say?---The three enquiries.

Three.---So John Whelan and Simone Farrar. John – and they are both lawyers who conducted an enquiry into processes and structures, but also

were helping manage what was a pretty traumatic time for the party office staff, in the, at the end of 2015, beginning of 2016. So they came in to help manage that, sort of pseudo-administrators in a way, to help manage the office. In that same period, we have a review from David Tarrant and – David Tierney, sorry, and John Tarrant, who did a review into the structure of the party, including things like our Admin Committee, our Finance and Compliance Committee, which we changed at that point to deal with compliance, because no committee was looking at matters from the Electoral Commission or disclosures. And then there was the Needham
10 report, which looked into the culture of the party, because of the issues that had come out of the fact, or out of the culture at the time of the party, which were pretty significant and terrible for a whole lot of people, and that had a lot of recommendations out of it, which then we had to implement at the conferences. But we didn't implement them all at one time. We did that over the three conferences, over the three years. There were hundreds of pages of recommendations.

When did the Whelan enquiry commence and finish?---The Whelan commenced while Jamie was the secretary. It happened as a result of sexual
20 harassment allegations, but also then broader problems within the office. I, I think it, it didn't finish for a long time. We kept them engaging with the office for at least a year, maybe even 18 months, because of the issues around staff and employment.

Were you instrumental in supporting the recommendations made by the Whelan inquiry?---Yes.

Were you involved in the implementation of recommendations coming from his inquiry?---Yes.
30

Yes, thank you.

MR ROBERTSON: Chief Commissioner, I should just indicate that as I apprehended NSW Labor intends to produce a statement for the benefit of the Commission that deals with these matters of reform in some detail.

THE COMMISSIONER: Yes.

MR ROBERTSON: They're matters that are plainly of interest to the
40 Commission at least in terms of its recommendation function so it's a matter to which the Commission may well need to return that might be further conveniently done after that statement has been provided.

THE COMMISSIONER: Yes. Yes, thank you, Mr Robertson.

MR MOSES: I can confirm that, Chief Commissioner.

THE COMMISSIONER: Yes, Mr Moses. All right. Now, Mr Hale, do you want to examine this witness?

MR HALE: Yes, yes I do.

THE COMMISSIONER: Now, Mr Hale, just bear in mind if you would, as I said at the outset the standard direction, so that whatever you want to
10 examine this witness about has to be referrable to your client's interest, as it were. I don't think I need go through the detail of it.

MR HALE: No. I've been here before.

THE COMMISSIONER: I know you have. Yes, Mr Hale.

MR HALE: Ms Murnain, if I could just go back to the evidence you gave about the compulsory examination on 29 July, 2019.---Yeah.

20 You said after giving the evidence you looked at your records and tried to reconstruct events in your own mind, words to that effect. Can you remember saying that?---I looked at my records and remembered events from the time.

Would it be fair to say that you hadn't brought to mind on 29 July, 2019 the meeting with Mr Wong on 16 September, 2016? It didn't come to your mind at that point?---Not at that point, no.

30 And it's something you'd completely forgotten?---Possibly, yes.

And do we take it from the answers you've given to my questions and earlier that after the meeting, after giving evidence on 29 July you sat down and tried to recall everything that you could that was relevant to the issues under investigation by ICAC?---I tried, tried to, yeah.

And it was during that point of trying to remember, the events of 16 September, 2016 concerning Mr Wong came back into your mind?---Yes.

40 Because prior to that you had no recollection of those events?---It wasn't, it certainly wasn't at the forefront of my mind.

In a sense it's something you had forgotten?---Yeah.

Now, if I could go to the events of that meeting and if we could have brought up either the exhibit of the calls that was recently tendered or Exhibit 172. It doesn't matter which. 172 is the messages between Ms Murnain and Mr Wong. Yes, if I could take you to the next page which

deals with your – yes, if I could ask you to look at 33 through to 37. Do you see those?---Yeah.

That message?---Yeah.

Now, it is plain, isn't it, looking at item number 36 that it is you who chose the location of the meeting, that is to say, in Hospital Road rather than in the front of Parliament House?---Yes, and I believe that's because that's where I was parked.

10

And then you then sent a text to Mr Wong to come out the back at, as we see, at 6.41, and at some time later he came out?---Yes, yep.

And that would have been three or four minutes perhaps?---Yeah.

Maybe even five minutes.---Maybe.

And what we also know, isn't it, if we can turn to the next page, that at 6.55, item 39, Mr Wong made a telephone call at 6.55.---Ah hmm.

20

See that?---Yep.

While you were meeting with Mr Wong, Mr Wong made no telephone call? ---To the best of my knowledge, yes.

So what we're talking about here is a very short meeting.---Yeah, I was very clear with that.

Yes.---Between five and 10 minutes, no more.

30

Well, it's probably going to be considerably less than 10 minutes, isn't it, based upon - - -?---It's probably five.

Yes.---We got to the point very quickly, which is what I said in my examination.

Yes. Thank you. Now, what I'm going to ask you, the things in respect of which you have a clear memory first.---Yep.

40 Firstly, as we've discussed, you met at Hospital Road?---Yes.

It was in the evening?---Yes.

It was dark?---I don't actually remember if it was dark or not.

All right. And as we've said, it was a short conversation.---Yes.

And in that conversation Mr Wong mentioned to you in relation to the dinner of 12 March or thereabouts, that a donor, a person who was identified as a donor in fact didn't give money?---That's correct.

And that was a matter that concerned you?---Yes. Well, it seemed to concern Ernest as well.

And it concerned him.---Yeah, yeah.

10 And so far as you can recall, he didn't actually mention the name of the person he was talking about who wasn't the real donor?---Yes, that's right.

And another thing that you can remember is the mention of Mr Huang. ---Yes.

And Mr Wong in fact would have pronounced the word as "Wong" rather than "Huang," wouldn't he?---I don't remember but - - -

20 You can't, you can't remember?---Yeah.

But certainly you remember the, him mentioning Mr Huang?---Yes.

Thank you. And as you've said, another thing you can remember is that you were upset?---I was upset after the conversation, I wasn't prior to it.

All right. So immediately after the conversation you were upset?---Yeah.

30 And you were upset because of the contents of the conversation that you had had?---Yes.

And as I think you've said, Mr Wong you think was agitated or concerned. ---Yes.

Now, they're the core things that you remember. Would that be fair to say? ---That's correct.

40 Now, would it be fair to say that the reason you were upset was because of the political problem that was presenting itself having regard to the information that Mr Wong had given you?---I was upset because of the information that was given to me because it was serious.

Yes. And it would have serious repercussions for the party?---Yes. We were in the middle of by-elections.

Yes. And given your new role as general secretary, it clearly enough would give rise to considerable difficulties for you?---I was less concerned about that and more concerned about the fact that we were in the middle of by-elections.

Could I suggest that you felt – I withdraw that question. The discussion was about events in 2015 prior to you becoming general secretary.---Correct.

At a time when you were one of the two assistant general secretaries.
---Correct.

10 And would it be fair to say that you had been, as a result of this conversation, you had been left with these issues relating to funding and everyone else had walked away from the problem, leaving it in your hands?
---I have heard other people characterise it that way.

Well, isn't that what you expressed to Mr Dastyari on that evening when you met with him?---I know he recalled that but I can't recall what, I can't recall saying that to him. I can only tell you what I remember.

Well, just so we're clear about this, could Mr Dastyari's compulsory examination be brought up at page 1949.

20 MR ROBERTSON: Sorry, Chief Commissioner, just before we go to that I just need to reflect on whether there's any existing section 112 directions in relation to that.

THE COMMISSIONER: Yes.

MR ROBERTSON: If Mr Hale might just bear with me briefly.

THE COMMISSIONER: Yes.

30 MR ROBERTSON: I think the appropriate course might be for you to lift the section 112 direction to the extent necessary to permit this line of questioning, for the time being, it ought not be lifted generally at least until I have an opportunity to reflect on that transcript. I just don't immediately recall whether you've lifted that direction or not.

THE COMMISSIONER: Mr Hale, are you going to go to other portions of the compulsory examination transcript of Mr Dastyari?

40 MR HALE: Yes, yes. Yes, 1948 - - -

THE COMMISSIONER: If you're able to just indicate what pages you want to utilise we can revisit this after the morning tea adjournment and if there's no problem then I can make the lifting of the section 112 order.

MR HALE: I'm only going to take, intend to take Ms Murnain to pages 1948 to 1951. Would it be convenient to take the morning adjournment now?

THE COMMISSIONER: Yes.

MR HALE: I'm in your hands, Commissioner.

THE COMMISSIONER: Well, yes, it might be as well to do that now. Very well, we'll do that now. We'll take the morning tea adjournment a little early.

10 MR ROBERTSON: I respectfully submit that we take a longer morning adjournment than usual because there's some matters I need to raise with cross-examining counsel.

THE COMMISSIONER: Yes, I think there's a need for the morning tea adjournment to be longer than normal, so I'll say half an hour, which will take us through to approximately resume about 10 to 12.00. I'll adjourn.

SHORT ADJOURNMENT

[11.22am]

20

THE COMMISSIONER: Yes, Mr Robertson.

MR ROBERTSON: Chief Commissioner, can I apologise for the delay. The delay was entirely mine. And I also note that during the course of the adjournment my learned friend Mr Neil did speak to the witness, but that was on my request, to raise a particular matter.

THE COMMISSIONER: Yes.

30 MR ROBERTSON: It's a matter that need not trouble the Commission at the moment.

THE COMMISSIONER: Thank you. Yes, Mr Hale.

40 MR HALE: If Ms Murnain could be referred to the transcript 1949, the compulsory examination of Mr Dastyari. If it could be brought up, 1949, 22 August, 2019. If I could ask you to go to about line 38, can you read that? It's some questions and answers. Now, can I ask you firstly, have you read this transcript of Mr Dastyari's compulsory examination before?---Yeah, I have.

Now, if you look from about line 40 or perhaps 39, "She, Kaila, made it clear that the issues with, at the time, what she felt, that she'd been left, i.e. all these issues relating to funding disclosure, donations, everything, and everyone kind of walked away and left the party in her hands and she was just venting with me." The question I ask is, that was in substance what you said to Mr Dastyari in the car?---I don't remember saying that. I just don't remember saying that.

Sorry, I didn't mean to cut you off, but is it possible that you did say it?
---Anything's possible.

Yes. And it's likely that you said it?---I wouldn't say likely, it's possible, but I don't remember saying it.

10 And you have no reason to doubt the accuracy of what Mr Dastyari said in that examination?---It was a long time ago. It's not up to me to judge whether people's memories are accurate or not.

No, but my question was, you have no reason to doubt the accuracy of what Mr Dastyari said in that passage?---Again, I can't, Sam's memory is Sam's memory, it's not mine, so - - -

20 If I can now ask you, page 1948 to be put up, the preceding page. And if I could ask you to go to line 21, where Mr Dastyari says, and I'll, it was Senator Dastyari at the time but I'll call him Mr Dastyari, "I talked to her about sticking through and seeing things through politically. She had an altercation with Ernest where she had felt Ernest had tried to put a proposition or something to her that she was responsible or that she'd agreed to things."---Ah hmm.

Now, again I ask you can you remember saying that to Mr Dastyari?
---No.

30 But again you have no reason to doubt the accuracy of what he said in his evidence in that passage?---I think asking me about someone else's memory is just not, I'm not going to judge it. I don't remember saying that, yeah.

But you, you may well have?---No, I don't believe I did, but that's not, that's not my recollection.

Well, you did have a disagreement with Ernest, Mr Wong, didn't you, in that discussion?---I wouldn't call it that, no.

Well, all right. If I can ask you, page, if I can ask that page 1951 is put up on the screen.---Ah hmm. Yeah.

40 And if I could go to line 32.---Yeah.

"So Kaila's language to me in that conversation was being very, oh, from what I remember, being very careful, was saying things like, oh, you know, complaining about Ernest, complaining about Chinese Friends of Labor and saying, oh, look, you know, their funding, you know, their funding issues, there's disclosure issues, I tried, you know, Ernest raised them with me and he shouldn't have, and she was very upset." Now, firstly, can you remember saying those things to Mr Dastyari in the car?---No.

But again you don't deny it?---I do deny it, because I remember talking to him about the disclosure issues but I deny saying he shouldn't have, absolutely I deny that.

Well, that's what I was going to put to you. What I suggest to you, that you were upset with the issues that Mr Wong had raised with you and you told Mr Dastyari that, "Ernest raised these matters with me and he shouldn't have."---No.

10

So you deny you said that to Mr Dastyari?---Yes.

You can recall going back to the conversation with Mr Wong in Hospital Road?---Yep.

He made reference to Mr Huang, I think you've told us, that's one issue upon which you have a clear recollection?---I asked him about it, yes.

20

Well, you can remember him making reference to Mr Huang?---Yes.

And what I suggest to you is that when you did that, you raised your hands and said to Mr Wong, "Look, I will not listen to it."---Ah, no.

You deny that, do you?---I deny that.

Would you accept that if that were the case, it would be consistent with what Mr Dastyari says, "Ernest raised these with me, and he shouldn't have"?

30

MR NEIL: We object. That's just inviting the witness to speculate about the - - -

THE COMMISSIONER: Yes, look, Mr Hale, it's a long bow to try and draw a comparison between the two.

MR HALE: All right, all right. Yes. But I think a submission ultimately can be made.

40

THE COMMISSIONER: Yes.

MR HALE: See, what I'm suggesting to you, that when Mr Wong mentioned the name Mr Huang, you cut him off and he didn't complete the sentence that he started.---That's not true.

You deny that, do you?---Yeah. I allowed him to talk. I, I don't recall at all cutting him off, and I certainly wouldn't if he was telling me - - -

All right. Now, do you suggest, do you, that when Mr Wong raised the matter of the donor who hadn't in fact donated the money, that you exhorted him to do his duty, and disclose this to other persons?---I asked him to get the person to come forward to us, yes.

And to you?---To the party.

10 To the party. Well, you were the general secretary of the party, so that would involve bringing the person forward to you.---Or to the governance director, or to any number of the officials.

So do we take it that when you had this discussion with Mr Wong, your intention at the time was to persuade Mr Wong to bring forward all the evidence he had?---Yes.

And that it was his duty to do so?---I just told him – I can only tell you what, what I remember, which is that I told him he needs to get the person to come forward.

20 And that's as far as it went? You say, "You should get this person to come forward"?---Yes. I said it several times.

I see, several times in this short conversation?---Yep.

And did you ask him any other questions?---I don't, I don't remember the specifics of the rest of the conversation, only what I've been able to recall in these hearings, which you are - - -

30 So, can you remember him – that is to say, Mr Wong – referring to the fact that the Electoral Commission had been making enquiries about certain donors to the Labor Party who were within the Chinese community?---I think I'd, I'd, I think it was all around the same time. I don't know whether that was what he had told me, or whether – I, I just can't remember whether that was what he had told me, or whether it was all happening at the same time.

All right.---Yep.

40 So, it may very well have been the case that Mr Wong was referring to the fact that not only was there this particular donor who wasn't a donor, but there were enquiries of donors within the Chinese community by the Electoral Commission.---A, a donor. He was very clear that there was one donor that did not donate money that they said they had. And he was very upset about it. And I don't, I don't remember whether he said the Electoral Commission was involved or not, but they were involved around that time, and so it's possible, but I don't remember him saying that.

He did raise the question of lawyers or legal advice, didn't he?---I, I had thought I had raised lawyers. But I don't remember the exact context.

So there was – your recollection is that in this conversation, there was between you and Mr Wong, discussion about lawyers?---Yes.

And lawyers in respect of the particular donor?---Yes.

10 And can you remember Mr Wong asking whether the party would somehow assist in providing a lawyer?---I, I don't remember whether he did or didn't. Like, I wish I - - -

But he might have?---It's possible.

Yes, and could it be that you declined that request on the basis that it would amount to a conflict of interest?---I, I don't remember doing that. That's not my memory, but, but it, it's, it's possible, but it's not, that's not what I remember.

20 Now, you also made mention, I think, in your evidence that Mr Wong was sweaty, I think. I think you made reference to that.

You say that you could observe that even in the light in Hospital Road or is that something that you've perhaps misunderstood or have not accurately recalled?---It's something I remember. I don't remember the light on Hospital Road but next week it will be the same week three years ago, so I'm sure someone can work it out.

30 Yes, well, 6.30 at night at this time of the year is dark, I think we all know. ---And there are light behind Hospital Road.

And of course, when you make reference to being sweaty, Mr Wong had hurried out to see you?---Yes.

And Mr Wong was perhaps of somewhat larger proportion in those days that he is today?---He certainly is healthier today, I suppose.

40 Yes. Now, could I turn to just another matter. Now, you of course know Jonathan Yee?---Yep.

And you of course know that in 2015 he was the convenor of the Chinese Friends of Australia?---Chinese Friends of what?

Oh, sorry, the Chinese Friends of Labor, I'm sorry, was the - - -?---He was involved in it, I don't know what his title was, but he ran it with Ernest.

And you met him many times?---I've met him in the past.

And of course the restaurant, the Emperor's Garden, of which he has an association, is one which is frequented regularly by members of the Australia Labor Party, is that correct?---Yes, yes.

Including yourself?---I've been there.

And in that sense, Mr Yee was well known to you and the officers of the party?---Everyone knows Jonathan Yee.

10 And it was well known that he was part of a wealthy family?---Yes.

And he was somebody who, that's to say Jonathan Yee, had political ambition?---Well, he had run for council. I'm not sure, I can't remember which council elections but I'm sure you would remember.

And you knew that at the March 2015 dinner that members of the Yee family had bought tables to attend at the function?---I, I know now, yes.

20 But it's likely that you knew then?---I, I didn't know much about the dinner at the time except that I knew Jonathan was helping run the dinner.

And, well, you no doubt kept in touch with those within the head office who were running the dinner together with Mr Yee and Mr Wong?---I can't remember but I suppose.

You were aware, weren't you, at the time that the Yee family was likely to donate money to the party at this particular function?---I, I wasn't aware at the time but it wouldn't be uncommon for him to do that.

30 Because they had done so, the family has done so in the past?---Yeah.

And Mr Yee had done so, Jonathan Yee had done so in the past?---Yeah.

And a donation organised by Mr Yee would no doubt boost his standing within the party?---I suppose so.

40 And you were, at the time in 2015, as you are today, well aware of the strong allegiance between certain sectors of the Chinese community and the Australia Labor Party?---I know the Chinese community are an important part of the Australian Labor Party.

They are an important part?---Yes.

And your understanding is that part of that association is due to the more liberal immigration policies that the Australian Labor Party holds, as distinct from the Coalition?---Yes.

And also because of the very sympathetic approach of the Hawke Government over the uprising at Tiananmen Square 30 years ago?---Yes.

It might be before your time.---Yes.

But you're well aware of the importance of the Hawke Government's response to Tiananmen Square within the community even today?
---Absolutely.

10 And you were also aware that there were a number of prominent people within the Chinese community who had association with the Australian Labor Party?---There are prominent people who do have – yeah.

Of which Mr Wong was one.---Ernest, yes.

And of course Henry Tsang was another.---Yes, I remember Henry.

And Mr Wong in 2015 had of course another four years on his term as a member of the Legislative Council.---That's correct.

20

If I can now come to the final issue I wish to ask you about.---Of course.

And that is donations to the party. Now, as General Secretary and Assistant General Secretary of the New South Wales Branch of the Australian Labor Party you were involved in fundraising.---Everyone was, yeah.

And it was a very important part of your role as assistant general secretary and then general secretary.---I would say it's more important as general secretary.

30

All right. Now, you in 2015 knew that Mr Huang had donated considerable sums of money in the past to Federal Labor?---I actually didn't in 2015.

All right.---Yeah.

Well, did you know that he – well, you later learnt that, did you, in 2016?
---Well, I've, I've actually been looking at returns recently but he had previously to 2015 donated large sums of money to the party.

40 And to your knowledge he also donated large sums of money to the Liberal Party.---I haven't checked that. I'm sure he has now but he, he was, I thought he was a friend of Labor but - - -

But from your experience it is not altogether unusual for large donations to be made by companies or individuals to both the Labor Party and the Coalition.---Yes.

And plainly enough in those circumstances the donations are not motivated purely by political adherence or allegiance to the party to whom the money is being donated.---There are lots of companies that don't have allegiance, yeah.

And you yourself have been involved in raising funds from organisations which donate to both parties.---Yeah. As general secretary, yeah.

10 And the purpose of companies donating large sums particularly when they do to both sides is to establish a relationship between that company or organisation, the donor - - -

THE COMMISSIONER: Mr Hale, how can she answer that question?

MR HALE: Because she is somebody who - - -

THE COMMISSIONER: I mean it depends on which companies you're talking about and so on.

20 MR HALE: Well, I'm asking as a general proposition.

THE COMMISSIONER: No, I don't think you can have it.

MR HALE: Well, it is - - -

THE COMMISSIONER: I'm struggling to see at the moment how this affects Mr Wong's interest.

30 MR HALE: It does. It does. If I can come to it.

THE COMMISSIONER: Yes, well - - -

MR HALE: I've only got about three or four minutes to go so if you, Commissioner, would - - -

THE COMMISSIONER: I won't allow that question, that last question.

40 MR HALE: All right. From your experience, one of the consequences of a donor donating substantial sums of money to the party is that that donor will tend to have access to the leadership of the party.---By leadership, can you clarify?

All right. The leader of the federal or state leader of the party.---If, it would be if, if they purchased a ticket or made a donation for an event, it would be that those people would be on their table.

And one, from your experience those people who are known to donate large sums of money tend to be able to have access to the senior leadership of the party.---Again, do you mean politicians?

Yes.---It's not, it's not explicit like that. It's not, it's not a transactional arrangement.

10 But it's to be expected, that access is expected.---I, I mean I couldn't speak for the donors in terms of what their expectations are. We do our best to be accessible to everyone and I certainly think politicians in particular expect or have to be accessible to everyone because they're elected by the people so - - -

Now, those persons who donate large sums of money tend to be known both by the politicians within the party and head office itself?
---Tend to?

Yes.---Yes, we've come to know them, yes.

20 Now, and in the case of Mr Huang, as you have already identified, he had in the past donated substantial sums of money to the Labor Party?---Yeah.

And he already had access or access to the leadership of the party, namely access to Mr Shorten?---Oh, I don't - - -

THE COMMISSIONER: Do you know?---I don't have any knowledge about before I became general secretary, I'm sorry.

30 MR HALE: What I'm going to suggest to you is a secret contribution of \$100,000 by Mr Huang to the party is hardly likely to benefit him in any way, is it?---I, I imagine it wouldn't, no.

Because people wouldn't know the generosity of his contribution if it was kept secret?---That is logical.

Yes. So far as you could see from where you sit, Mr Huang would get nothing out of a secret contribution of a sum of \$100,000.---Your premises is that you would get something from another sum publicly.

40 Yes.---And I think the premise of that question is completely incorrect, but you'd have to ask him on what his expectations would be.

Yes, they're the questions.

THE COMMISSIONER: Thank you, Mr Hale. Yes, very good.

MR ROBERTSON: I note the time. It might be convenient to call on Mr McInerney after lunch.

THE COMMISSIONER: Very well.

MR ROBERTSON: But I'm in the Commission's hands and in Mr McInerney's hands as well.

THE COMMISSIONER: Mr McInerney, is that suitable to you?

MR McINERNEY: Yes.

10

THE COMMISSIONER: All right. We'll start with you at 2 o'clock. Is there anything else we can do in the meantime?

MR MOSES: I think there's an issue, I'm sure that my learned friend has spoken to you about it, Chief Commissioner, in terms of a provisional order under section 112 in relation to some privileged documents which Mr McInerney wishes to use during the course of examination of Ms Murnain. We have proposed some form of a provisional order for your consideration and then to be followed up by, within seven days, a more directed order, because our friends I think want to use a range of documents which contain information that don't go to the question of issue waiver that I outlined last week, so they touch upon other topics, but they wish to examine in terms of contextualising exchanges between Mr Robertson and Ms Murnain. So we've proposed a form of order to my learned friend. I'm not sure whether that's been shared with you yet, it may not have been.

20

THE COMMISSIONER: Mr Robertson?

MR ROBERTSON: I'll speak to my learned friend over lunch. I've only just seen the email. I appreciate it was sent a little while ago, it's only just come to my notice.

30

MR MOSES: That's fine. No problem.

MR ROBERTSON: I'll deal with that over the luncheon adjournment.

MR MOSES: That's all for our part, Chief Commissioner.

THE COMMISSIONER: Is the better use of time then to adjourn now and you can look at those issues and then resume?

40

MR ROBERTSON: Yes. But could I respectfully suggest we come back at 10 to 2.00, if that's convenient, so as to maximise the time after lunch?

THE COMMISSIONER: Yes, very well.

MR ROBERTSON: If that's convenient to the Commission and those behind me.

THE COMMISSIONER: Very well. We'll take the hour break now. So we'll resume at 10 to 2.00. All right. Thank you. You may step down.

LUNCHEON ADJOURNMENT

[12.48pm]