

AEROPUB00710
05/09/2019

AERO
pp 00710-00761

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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 1.50PM

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: Mr McInerney, just before you get going, I understand that you may want to deploy material that would normally be privileged, legal professional privilege. As you appreciate, the provisions of our Act abrogate privilege in accordance with the terms of the Act. There always remains the question, however, as to whether or not, notwithstanding that abrogation, it's appropriate that some restriction be put on publication of what would otherwise be privileged material. There's no way I think in advance that I can make a general order about this. I think I'll leave it to you to deploy the documents in a way in which you wish, but if you foreshadow any material that would normally be privileged, so that at least Mr Moses will be on notice, the two of you somehow will have to try and work it out. Do I make myself clear? I'm not going into the detail, but I don't want to be too Delphic about it, but there has to be some working arrangement whereby in the interests of what's relevant to this inquiry is received, but on the other hand, not unnecessarily expose what might otherwise be regarded as privileged material which might contain confidential information of some kind. As I understand it, the documentation that you may wish to use doesn't contain material from client third parties, as it were, it's all ALP material. Is that right?

MR McINERNEY: That's correct, yes.

THE COMMISSIONER: Having said that, is there anything you want to say or we just meet any difficulties as they arise?

MR McINERNEY: No, certainly, Chief Commissioner. A copy was provided to Mr Moses of the material. We have had a discussion about it and that was the proposal with respect to a provisional section 112 regime, so I - - -

THE COMMISSIONER: Could you just use that microphone?

MR McINERNEY: Yes.

THE COMMISSIONER: Sorry, that one hasn't been extended by the looks of it. It's not very satisfactory.

MR McINERNEY: If it's convenient, I can move elsewhere.

THE COMMISSIONER: It's all right. We'll see how we go anyway. Perhaps I might get somebody, we might get somebody from that technical area to make any adjustments to your microphone. We'll see how we go anyway, Mr McInerney.

MR McINERNEY: Yes, certainly, Chief - - -

THE COMMISSIONER: All right.

MR McINERNEY: Certainly, Chief Commissioner. Ms Murnain, my name is McInerney. I appear for Mr Robertson. Ms Murnain, you attended a compulsory examination on 29 July, 2019.---Yes, yes.

And a few weeks later, on 20 August, 2019, you attended a second compulsory examination?---Yes.

10

And you instigated the second compulsory examination. Is that correct? ---Yes.

And one can understand from the second compulsory examination that you'd spent some two weeks before that reviewing records. Is that correct? ---Some time, but it wasn't two weeks, but there was some time in there, I don't remember what day.

20

And over a two-week period or so before 20 August, you'd set upon the task of reviewing the contemporaneous records available to you. Is that right? ---Yes.

30

And you gave an answer to a question to Mr Hale, it was before the morning tea adjournment, so a couple of hours ago now, where he was asking you some questions about Mr Wong. I just wanted to get you to reflect back on before the morning tea adjournment and as I understood your evidence it was to the effect that as at the compulsory examination on 29 July, 2019, at that point in time and before you'd reviewed your records, you'd forgotten the conversation with Mr Wong. Correct?---It certainly wasn't at the forefront of my mind.

And you made no mention of it at the compulsory examination on 29 July, 2019. Correct?---That's correct.

40

And not having reviewed your records before 29 July, 2019, is it fair to say that you'd forgotten any conversation with Mr Robertson?---It's fair to say that I certainly wasn't thinking about it and I, when I presented at the first examination it wasn't something that I was focussed on, I was more focussed on the dinner itself and not subsequent conversations.

And you made no mention of any conversation with Mr Robertson during the course of your compulsory examination on 29 July, 2019. Correct? ---Correct.

Ms Murnain, you were working in the head office in Sussex Street for the NSW ALP from about 2008. Is that correct?---Yes.

And part of your function when you joined the head office is that you were responsible for running the political campaigns at a federal, state and local government level. Is that correct?---No. When I started I was a membership officer for the party and I eventually started running campaigns.

And when you say eventually, at what point in time was that?---Sometime in 2008, 2009.

10 And as someone who was in charge of running the political campaigns at a federal, state and local government level, it was an important function of yours that you understood the relevant political donation disclosure obligations. Correct?---It should be, yes.

And back in 2008, the time you assumed that role, you made it as part of your function to understand the obligations on the party with respect to disclosure of political donations, do you agree?---I wouldn't say that, no. My job in 2008 was to run the campaigns and not have a role in the disclosure or even to necessarily understand it.

20

But for anyone within the party who was involved in active campaigning for, at a state level, from about 2009, there were reforms made, correct? ---Yes, correct.

Which required reportable political donations to be notified to the Electoral Commission, correct?---Correct.

30 And from about 2009, once the reforms were introduced, you understood what a reportable political donation was under the Act, do you agree?---I can't say I, I can't remember what I understood in 2008. I was, I was 20 years old.

Well, certainly by the time, you'd been in the position from sometime in 2008, through until 2000, let's say, '14, you were well familiar with the obligations on the party imposed by the Electoral Funding, Expenditure and Disclosures Act, correct?---I would like to say that I, I do my best to understand the legislation as it constantly changes, but I, I can't tell you what I remember about what I knew and didn't know about the legislation in that period of time.

40

Well, you're aware, aren't you, that there were campaign material which was produced for those involved in the campaigns, which was directed to the obligations imposed by the Electoral Funding, Expenditure and Disclosures Act, do you agree?---Can you ask the question again?

Well, the documentation - - -?---Mmm. Yep.

- - - for party members who were assisting with campaigns - - -?---Yep, yep.

- - - explaining to them their obligations under the Electoral Funding, Expenditure and Disclosures Act, correct?---Yes, there were documents, yep.

The campaign finance guides.---Yep.

Fact sheets.---Yep.

10 Other documents.---Yes, yep.

Setting out what the obligations were.---Yep.

And you were familiar with those documents, correct?---I wouldn't say – if you put one in front of me now, I probably wouldn't be able to tell you what was in them back then, but they do exist, and that's what I can tell you.

20 But certainly by 2015, you understood a reportable political donation was a donation of or exceeding \$1,000 for the benefit of the party, correct?---I, yep.

And you understood in 2015, certainly before March, 2015, that it was unlawful for a political donation to a party to be accepted unless, in the case of an individual, the individual was enrolled on the roll of electors for state elections, or on the roll of electors for federal elections, or on the roll of electors for local government elections, correct?---Well, I can't remember what the law was at that particular time, but there were guidelines around who could and couldn't donate, so - - -

30 Well, in - - -?---I don't know whether individuals or businesses or whatever the rule was at that particular time. I'm sure I was aware of laws. I can't tell you exactly what I was aware of and what I wasn't aware of with respect to that, sitting here now.

THE COMMISSIONER: Mr McInerney, can I interrupt you for a moment? We'll just make an adjustment to your microphone that might assist.

40 MR McINERNEY: Thank you. Ms Murnain, in 2015, you well understood that in respect of a political donation made by an individual, in respect of a state election, that the individual had to be enrolled on the roll for electors, correct?---I believe so, but I, I don't remember what the law was back then, but I, if you say it was, then it was.

And you understood back in 2015, didn't you, that it was unlawful for a person to accept a reportable political donation that was required to be disclosed unless the name and address of the person who made the donation and the name of the person accepting the donation were disclosed, and with their personal details, correct?---Yes.

And then after 2015 you understood that a property developer was a prohibited donor and that it was unlawful for a prohibited donor to make a political donation?---Yes.

10 And you also knew in March of '15, didn't you, that a person, that it was unlawful for a person who entered into or carried out a scheme – whether alone or with others – for the purpose of circumventing a prohibition or a requirement of that part of the legislation. You were aware of that, weren't you, in March 2015?---I actually don't know if I was but I am certainly aware of it now.

And from your understanding being involved in the running of the political campaign certainly at a state level for ALP NSW in March 2015 that you appreciated that if there was a reportable political donation \$1,000 or more that at the time the money was handed over there needed to be a form?
---Correct, yes.

20 And the form had to disclose the name and details of the person who was providing the money.---That's right.

And the name and details of the person who was accepting the money. Correct?---Yes, that's correct.

30 And you understood that if at the time of the handing over of the money there was no form, that that would be a contravention of the legislation. Correct?---No, I wouldn't characterise it of that. If there was no form but the person who collected the money knew who the donor was, they would disclose it accordingly. A form was the process that our office used. It wasn't, it wasn't a requirement by law, I don't think. I mean I, I don't think so.

You might have misunderstood my question.---Mmm.

40 At the time of the handing over of the money there needed to be a form completed identifying the name of the individual providing the money with their personal details. Do you agree?---That was a, it was a process that the office had, had understood or that I certainly understood and that was something I would certainly expect.

Now, if I can just ask you about the first compulsory examination. Now, at the time that you were before the Commission on 29 July, 2019 is it your evidence now that you were seeking to give your best recollection of the events you were asked about?---Yes.

And is it your evidence now that you were seeking to tell the truth?---Yes.

And one of the matters you told the Commission about on 29 July was that in respect of this Chinese Friends of Labor dinner held on 12 March, 2015 that around April or May 2015 you became aware that there was a large amount of money, some \$100,000, which had been received by ALP NSW. Correct?---No. I had said that there was a large amount of money.

10 All right. If Ms Murnain might be shown the private examination transcript of 29 July, 2019 at page 1693. 1693. Ms Murnain, if you could look at the top of the screen and you see it starts, “And then one further follow-up question”.---Ah hmm.

And then your answer commences, “I’m just trying to think when that 100,000 had come to the ALP.” Are you reading there?---Yeah.

And then it says, “I’ll just clarify it by saying I knew that there had been money that had been received for the dinner and that’s what I’ve known from the office from the fundraising meetings that \$100,000 had been received by the office. That specific amount.”---Yeah, so what that means is if - - -
20

No, don’t tell me what it means, that’s what you said, didn’t you?---Yep.

MR NEIL: Well, I object. The sentence continues.

THE COMMISSIONER: Yes. I think the whole of the answer should be put to the witness, Mr McInerney.

MR McINERNEY: Certainly, Chief Commissioner. I wasn’t – having heard the whole answer, have you done that?---Yes.
30

Isn’t the effect of your answer there that you knew that a large amount of money had been received following the Chinese Friends of Labor dinner? Correct?---Yes.

And it was cash of about \$100,000, in that order?---No. What that is saying is that I became aware that \$100,000 specifically around that figure was spoken about at the fundraising meeting and that I was aware that a large amount of money had come in from the dinner, if you want clarification.

40 And the fundraising meeting, you put a little after the dinner and I think in your next, if you see the Commissioner’s question, 1693 PT, you were asked, “Around what time?” And you say, “Around the time of April, sometime in April or May, early May.”---Yeah. I don’t know when the fundraising meeting was.

But your evidence at the time you gave it, doing the best, with the best recollection that you could was that you found out there had been about

\$100,000 received from the dinner, you found that out in about April or May 2015.---Yes, yes.

And if you go down, further down the page, do you see a question commencing at about line 26, at least at that point in time?---Yeah. Ah, where?

Can you just read that answer to the question?---Yes.

10 Have you read that?---“There was a large amount of money received from the Chinese Friends of Labor dinner, yes.”

Do you see where you say, “I do recall conversations back then about there not being forms for everybody from the dinner.” Do you see that?---Yeah.

And that was the best recollection you had at the time you gave that evidence?---Yep.

20 And that was the truth, wasn't it?---Yep. There's frequently people who haven't filled in forms at dinners.

I was just – that's not directed to a question I was asking.---Sure. Keep interrupting me. I was trying to explain to you that we would sometimes not receive forms at the dinners that we held and that I vaguely recall there not being forms for some people who had attended this dinner.

30 Now, going further down in your answer you say, “But I do remember there being a large sum of money that was fundraised from the dinner and that it was, and I remember Jamie in the meeting being very happy about it.” Correct?---Yes.

So the evidence you gave as at 29 July at least had the components that there had been a large amount of money, \$100,000 or so received at or following the dinner.---Yeah.

That you became aware of it at the fundraising meeting?---Yeah.

40 And that you were aware from conversations in the office that there were not forms for everybody in respect of the \$100,000. Is that correct? ---That's, no, that's not what I'm saying.

Well, you say, “I do recall conversations back then about there not being forms for everybody from the dinner.”---From the dinner. That's true.

And some of the missing forms related to the \$100,000, didn't it?---That's not what I said.

But that's the truth, isn't it?---I don't know what the truth is in relation to the \$100,000, but I do remember there not being forms from the dinner.

Well, you knew at the time that you gave the compulsory examination on 29 July, you told the Commission, didn't you, that there were some missing forms - - -?---From - - -

- - - with respect to this amount of money, the \$100,000?---No, I said, "From the dinner."

10

But you intended to convey to the Commission, didn't you, that there were some missing forms with respect to what you were being asked about, the \$100,000?---No, I was being asked about the dinner and I was answering the questions that were put to me.

Well, as at 29 July, 2019, what did you understand the position to be, that there were missing forms with respect to the \$100,000 or there were not missing forms?---There were missing forms in respect to the dinner.

20 Please answer the question. As at 29 July, 2019, did you understand there to be missing forms with respect to \$100,000?---I didn't, I didn't know.

Are you saying as at 29 July, 2019, you did not know one way or the other? ---Whether, yes, whether it was for that money or the money more broadly for the dinner.

Focussing your attention to the \$100,000 and some missing forms with respect to the \$100,000, do you understand that?---I am saying to you that from the dinner - - -

30

Please, do you understand that?

MR NEIL: No, no. We object. The witness is answering the question, it's our learned friend who's confusing the issue.

THE COMMISSIONER: Let me just clarify something. When you said in your answer on page 1693, "Do recall conversations back then about there not being forms for everybody from the dinner, but that's all I do remember. And I don't recall whether that was before or after the 9th." Now, what did you mean by that?---That I remember there were missing forms and that I don't remember whether it was before or after the \$100,000 had come in or been banked.

40

You proceed, Mr McInerney.

MR McINERNEY: Do you recall that you gave some evidence at the compulsory examination on 20 August, 2019, about this issue?---I'm sure you'll show me. Yes.

If the witness could be shown page 1884 of the private transcript examination on 20 August, 2019. Now, could I ask you to go towards the bottom of page 1884 from about line 40. (not transcribable) "Just pause there, just collect yourself."---Sure.

If you could read your answer to that question, please.--- Yep.

You've read your answer?---Yep.

10

If you look at your answer - - -?---Did we flick to the next page as well?

If the operator could please show the witness over the next page, so she has the full extent of her answer.---Yep. And back, sorry. Sure, yep.

Now you've read that question and answer?---Yep.

20

Now, you see where it says, "He would frequently ask us to do things, including back then in 2015, and that includes when these funds were discovered not to have forms with them, or some of the funds."---Yep.

"I didn't, I didn't quite know that all of them, at the time I was only told that some didn't have forms."---From the dinner, yep.

Your answer there was directed to these funds, meaning the \$100,000, wasn't it?---It was geared towards the dinner funds more generally.

30

Can you go up to about line 10 on the page. You see at about line 10 it says, "Now, Ms Murnain"?---Yep.

Now, as I would read it, that was a question directed to you by the Chief Commissioner?---Yep.

And you were being afforded an opportunity, in effect, to make a clean breast of things with respect to the \$100,000 and the Chinese Friends of Labor dinner, correct?---Ah hmm, ah hmm.

And you see that from about lines 27 down to 33?---Yes. Yep.

40

So that was the context in which the question was being asked towards the bottom of the page, correct?---Yes. The context, the, the Commissioner asked any more information about money from, or the \$100,000, I was speaking generally about the funds from the dinner.

Well, we're at line 40 - - -?---Ah hmm.

- - - of the question and answer, and that includes when these funds were discovered not to have forms. Your answer is not directed to forms for the

dinner. It's directed to these funds, correct?---It was directed towards funds for the dinner.

These funds were discovered not to have forms. You see that?---(No Audible Reply)

You see that?---I, the, that's referring to the money from the dinner.

10 Your evidence isn't truthful, is it?---What do you mean, it, it is absolutely truthful.

In your answer, you were telling the Commissioner that you discovered that these funds, being the \$100,000, were discovered not to have forms with them or some of them, do you see that?---The, some funds from the dinner didn't have forms with them. I couldn't tell honestly when, which amount of money didn't have forms and did have forms, because I didn't handle it. So I wanted to be as honest as possible about what I knew when.

20 Well, I just want - - -?---And I knew that at some point I knew that there were not forms with some of the money. And I was very clear that it was some, and that it was in relation to the dinner.

So are you drawing a distinction between whether it's the \$100,000, which is the subject of this Commission, or whether it was other funds received on the eve, from the Chinese Friends of Labor dinner, as a political donation, but there were some forms missing, is that the distinction you're drawing? ---Yeah, but I, I want to be clear - - -

30 Yes or no? Is that the distinction you're drawing?---Yes, but I wasn't, I, I didn't know whether that was before or after the 9th. The evidence is the same as the original interview, as is the second interview.

But what you're here telling the ICAC was that you were aware that there were funds received by ALP NSW, which were donations, correct?---Yes.

And there were missing forms, correct?---Which would happen frequently. Yes.

40 And then, as we move further in your answer, "So then in the office I was told by several people, including Jamie, that this money was from the dinner, and this was the dinner money, so when they told him that there were no forms, as in the staff told me there were no forms, I'd ask Kenrick Cheah to go and speak to Wong and Yee to get the forms filled in by the donors," do you see that?---Yep.

So the chronology is there's been money which has been received from the dinner, correct?---There's been money received from the dinner, yes, yep.

For political donations, correct?---Yep, yep.

There were missing forms?---Yep, not sure how many, yep.

And then you'd asked Kenrick Cheah to go and speak to Wong and Yee to get the forms filled in by the donors, correct?---Yes.

10 And then the next part of the chronology is that Ernest had called you on a number of occasions after the dinner to say there was, that there were money being dropped off, or funds being dropped off, correct?---Yeah, that would happen frequently, yeah.

And then, towards the end of your answer, that you checked with Jamie Clements?---Yep.

And you remembered at least two separate occasions where he said he wanted the forms for the dinner?---Yep. One was at a fundraising meeting, which I made clear.

20 And your evidence was to the effect that you understood that he was asking you to get forms for moneys which had already been received, correct? ---Yes, which would happen frequently, yes.

And that in effect he was asking or inferring that something improper should be done, correct?---I think when I was asked the question of the Commissioner, it was what I believed he was asking, and my understanding of Mr Clements was that I had probably not the most favourable views of him, and so I thought him, or I believed that he may be not asking in a way that would mean obtain them legally. That was what I believed.

30 But the chronology we have at this point in time, on the answers you gave on 20 August, 2019, from my understanding of the legislation, that there'd been a contravention, correct?---No. People can hand money in to people and they let them know who they are. It, the, the legislation doesn't require forms. You just have to know who the donor is. So frequently after a fundraiser, say you've got a room of 10 people, if you know who those people are and they make donations, they may not have filled in the form, but you know who they are because they're members of the party, or they've attended functions. Not having a form is not a contravention of the
40 Act.

You're wrong about that, aren't you?---No.

You know you're to be wrong, don't you?---No.

You're not seriously suggesting that was your understanding back in 2015, are you?---That there would be missing forms occasionally from functions and people would have to follow them up, absolutely.

But that would be a contravention of the Act, wouldn't it?---That is, that is not – perhaps you should read the legislation, sir. What it says is you need to know who the donor is and their address and there would frequently be events where people had not read, had not filled in their form. You would have a list of someone that may have booked online, for example, and they might not have paid and they pay on the night but you've got their address and details. Does that make sense?

10 No, it doesn't, because it's not the legislation at the time, was it?---The legislation does not require forms.

It required, as you told us I think earlier, that at the time the money, the cash is received that you have the names and details of the person making the donation and the names and details of the person accepting the money. Correct?---Correct.

And there's a form which is filled in to reflect that, isn't there, at that time?
---The form was a practice that we used and people could book through
20 other means including online or individually with the organisation or LAC that was running the event.

THE COMMISSIONER: But other than booking online you would have to have something on paper, wouldn't you, to be able to be accountable for the donations?---Well, that's when - - -

So call it a form, call it what you will, but there has to be a record created, surely, to be able to keep track of and be able to be accountable for the donations.---That's the idea. That's why we have them so - - -
30

Whether it's in the Act or not, I mean, it goes without saying, doesn't it, that you have to have a system, a record which enables should the Electoral Commission, for example, raise a query to be able to answer?---Yes. That was the practice but the legislation didn't require us to have forms. That was something we did to track people.

Well, the legislation may – accepting what you say for the moment because I haven't looked at the section recently – but even if it didn't specify forms there's no other way of doing it, is there, practically speaking, I mean other
40 than to get those who donate to identify themselves and say they consent if it's going to go to one party or the other the branch, Country or NSW and the amount and (not transcribable) whether it's in the Act expressly or not it's implied, isn't it, that you've got to have some form of record keeping?
---Or that you've got to know their address as to who is handing you the money so say if there was a, there might have been a booking or, an online booking or a list of people who attended the function or event.

MR McINERNEY: Isn't the reason that you instigated the second compulsory examination on 20 August, 2019 is that once you've disclosed in your evidence that you knew about the \$100,000 being received at or following the dinner from the fundraising meeting and that you knew there were missing forms with respect to money received from the Chinese Friends of Labor fundraising dinner, that you knew you had acted in contravention of the Act. Correct?---No.

10 And isn't it the case that following 29 July, 2019 that you've set upon the task of reviewing your contemporaneous records. Correct?---I did that, yes.

And having done that you appreciated that your text message communications with Mr Wong would come to the attention of this Commission. Correct?---I didn't know what would come to the attention of this Commission but I'm a pretty open book.

Are you an honest person, Ms Murnain?---Yes.

20 Would you agree that to knowingly make false answers in a statement made to the Electoral Commission with respect to a statutory notice would be the conduct of a dishonest person?---Could you ask that question again.

Wouldn't you agree that to make knowingly false answers in a statement in answer to a statutory notice from the NSW Electoral Commission would be the conduct of a dishonest person?---It would be something that is the wrong thing to do.

Well, it would be dishonest, wouldn't it?---If you're telling a lie, yes.

30 Well, knowingly giving a false answer is a lie, isn't it? Isn't it?---Giving a false answer is a lie, yes.

And doing do knowingly, knowing that you're doing it, that the answer is false. Correct?---Yes.

And to do that, engage in that conduct, is to act dishonestly, isn't it? ---Yes.

40 You knew at the time of your compulsory examination on 29 July, 2019 that you had knowingly and falsely given untrue statements to the NSW Electoral Commission with respect to the statutory notice you'd received, that is NSW ALP and Country Labor, which you signed on about 6 December, 2016. Correct?---Please ask the question again.

At the time of your compulsory examination you knew that you had knowingly given false answers to the statutory notice received from the NSW Electoral Commission - - -?---No.

- - - on behalf of NSW ALP and Country Labor, didn't you?---No. In fact I'd forgotten about that document entirely.

You'd forgotten about the NSW Electoral Commission statutory notice at the time of your private examination on 29 July, 2019?---Yes.

10 Well, you were taken to it during the course of that examination, weren't you?---And anyone who was here for that would realise that I had forgotten about the document entirely and when they showed me I had to refresh my memory.

And you'd agree, wouldn't you, that to knowingly give false evidence to this Commission would be the conduct of a dishonest person?---Yes.

And to knowingly mislead this would be the conduct of a dishonest person? ---Yes.

20 And to knowingly mislead this Commission would be the conduct of a dishonest person. Do you agree?---Yes.

And before the Commission and your examination of 20 August, 2019, you accepted, didn't you, that you'd given knowingly false answers to the NSW Electoral Commission notice on 6 December, 2016 with respect to questions 1 and 4. Correct?---I had acknowledged that I could have answered those questions much more accurately.

30 Well, you acknowledged, didn't you, to Counsel Assisting that you'd made false statements and you'd done so knowingly, to that statutory notice? ---I didn't do anything knowingly, but what I do acknowledge is that there are better answers to the question given what the Electoral Commission was seeking to determine or find out from the party at the time.

If Ms Murnain could be taken to page 1876, the examination, 20 August, 2019. Could you have a look at your answers, please, from about, the questions and answers from about point 8 on the page down to about point 34.---Yep. Yes.

40 You see there, don't you, you accepted that you'd given knowingly false answers?---I had accepted that the answers were false, yeah.

Knowingly so?---That wasn't the intent at the time and I tried to explain that. I'm not sure entirely where I did that, but I tried to explain that to the Commission, that when I signed it I'd sought legal advice from your client before signing off any documents.

On 20 August, 2019, there facts were clear to your mind, weren't they, first that at or following the Chinese Friends of Labor dinner that there had been \$100,000 received. Correct?---Sorry, ask the question again.

At or following the Chinese Friends of Labor dinner of 12 March, 2015, that there'd been \$100,000 received?---Yes.

That the \$100,000 had been accepted at the New South Wales head office by Mr Clements, correct?---Yes.

10 That Mr Clements had then spoken to Mr Cheah about the money?---Well, that has been in Cheah's evidence but I, I'm only relying on other people's information at this point.

And that there were forms missing with respect to moneys received following the dinner by NSW ALP, the head office?---Could you ask the question again?

There were missing forms with respect to moneys received by the head office with respect to this political donations made at this dinner?---For the dinner, yes, yep.

20 And that you had asked Mr Cheah to follow-up and obtain forms?---Yeah.

From Mr Yee and Mr Wong?---Yes.

And that Mr Clements had then followed you up or told you that he wanted the forms?---Yeah.

In at least two conversations, correct?---Yes. It was pretty standard practice, but yes, yes.

30 But you knew, by 20 August, 2019, that you were part of a scheme to engage an unlawful conduct under the Act, weren't you?---No, but what I wanted to do was come forwards with what I knew and when I knew it.

The true position is, isn't it, that - - -

40 THE COMMISSIONER: Just a moment. Did you have an understanding as to what Mr Clements was asking of you when he said he wanted forms in respect of the donations that have not already been the subject of forms, what he was asking you to do?---I had the belief that he didn't really, that the way he behaved was that he didn't really care how they would be - - -

What do you mean by that?---That he, he didn't, he didn't – I, I think you or someone at this Commission had put it, that the way I knew Mr Clements was that, the way I understood him to be, that when he asked for such things - - -

MR LAWRENCE: I object.

THE COMMISSIONER: No, no. Mr Lawrence, don't interrupt the answer
- - -

MR LAWRENCE: I object to the question.

THE COMMISSIONER: No, no. I'll let the witness finish the answer and then we'll strike it out if it's to be struck out. Had you finished?---No. That Mr Clements, the, the way he was, that I understood his saying to need
10 forms to mean go and make sure that the people who donated the money gave the money and filled them in.

Well, Mr Lawrence, you'll have an opportunity to cross-examine.

MR LAWRENCE: Yes. I do press an objection to that answer. It's based on no facts.

THE COMMISSIONER: Yes. I'll allow the question.

MR LAWRENCE: And not even asserted fact.
20

THE COMMISSIONER: The answer will stand and you'll have a right to cross-examine.

MR McINERNEY: And Ms Murnain, as at 20 August, 2019, you knew, didn't you, that there was a document that is an email sent to you by Mr Cheah before the Chinese Friends of Labor dinner, where he provided you with a budget for the Chinese Friends of Labor dinner for \$100,000. Are you aware of that?---I, I'd forgotten about that until we came back here.

30 But the true position is, isn't it, with the facts I've just given to you a moment ago, let's work through the chronology. So you got the email from Mr Cheah in February '15 about the budget for \$100,000, correct?---Yes.

And the budget refers to the Chinese Friends of Labor and Ernest Wong, correct?---Yes.

And the \$100,000?---Yep.

40 The \$100,000, to your understanding, was received by Mr Clements?---Yes.

There's an interaction then following that there were some forms missing with funds received following this dinner?---Following the - - -

MR NEIL: We object, we object. That is not the evidence. If my learned friend is purporting to put and summarise the evidence that has been given, that's not the evidence.

MR McINERNEY: I'm asking for her evidence.

MR NEIL: The word “then” does not reflect the evidence.

THE COMMISSIONER: I’m sorry, Mr Neil.

MR NEIL: Our learned friend was purporting - - -

MR MOSES: No, he wasn’t

10 MR NEIL: - - - to summarise the evidence that was given.

THE COMMISSIONER: I think the question was summarising, as I understand, a number of matters. One of which was that subsequent to the money having been received, it was noted that forms were missing.

MR NEIL: Yes.

THE COMMISSIONER: Well, what’s wrong with that?

20 MR NEIL: That’s not the evidence.

THE COMMISSIONER: Doesn’t that capture the evidence?

MR NEIL: No.

THE COMMISSIONER: Why not?

MR NEIL: With respect. Not, not that it – I’m sorry You Honour. If I answer Your Honour’s question directly, I shall be, in front of the witness
30 then I shall be - - -

THE COMMISSIONER: Well, I’m going to allow the question, Mr Neil. Yes, you continue, Mr – start again if you wish.

MR McINERNEY: Yes, you recall the last question was directed to the chronology.---And I don’t agree with your chronology.

Well, let’s take, go through the chronology.---Oh, you can do it again if you like, yes. But I don’t agree with it.
40

Well, there’s an email from Mr Cheah to you in February, ’15, with the budget, correct?---Correct.

The budget refers to Ernest Wong, and the Chinese Friends of Labor dinner, and \$100,000, correct?---Correct.

You became aware, well, shortly after this dinner, well, certainly no later than April/May, 2015, that \$100,000 had been received.---Yes.

And that Mr Clements had received the money.---Yes. I'm, yes.

And that there were missing forms.---That there were missing forms from the dinner. I didn't necessarily know it was the \$100,000.

And then, you've spoken to Mr Cheah, told him to talk to Mr Yee and Mr Wong to get the missing forms, correct?---At some point, but not – I, I don't know when that happened, and I've been very clear about that.

10

And Mr Clements had spoken to you on at least two occasions about following up what was happening with the missing forms, correct?---Yes, correct.

And you knew all that at the time you came before the Commission on 29 July, didn't you?---No.

You didn't tell the Commission about that at the 29 July, did you?---I don't remember what I said in the first examination.

20

But as you sit here now, they are the true facts, aren't they?---No. You've, you've laid out a chronology that works for you, and what I, and what my memory is, is that, that there were missing forms from the dinner. I just, I just didn't know at what point that came to my attention. So, no. Your chronology doesn't represent what I gave as evidence.

THE COMMISSIONER: Trying to get your understanding, if it was accepted there were missing forms from the dinner, what could it relate to other than part of the sum takings from that dinner?---Well, it - - -

30

Donations, I'm talking about, as distinct from raffles and so on.---Could be raffle, it could be raffles that it was missing for.

No, but we talk about forms, which were employed at the time to record donations.---Yep. Yep.

Well, if there were missing forms from the dinner, we're talking about missing forms in relation to donation money, is that right?---For the ticket sales. Yep.

40

But isn't that part, wouldn't that have to relate to the \$100,000 that was brought into head office?---Not necessarily, I mean, I - - -

Why do you say not necessarily?---Because I understand that there was more money that had come in around this dinner, and I don't remember at what point – and I said it could be before or after the 9th – that I became aware that there were missing forms. There was other money banked for, for this dinner.

Well, what other moneys are you referring to?---I, I don't know that there are other moneys from the dinner that were received, according to the disclosures, I mean, I don't remember, it was a very long time ago.

10 MR McINERNEY: You know, don't you, that there were only two lots of money banked following this dinner? There was approximately \$19,000-odd which came in with credit card receipts and the like, and some cash. And then there's the \$100,000 in cash which was banked, correct?---I'm now aware, and now aware of other money that was banked as well in other accounts. It was - - -

Yes, I'm not asking you about that.---Sorry?

20 Just asking you about the cash received from the – I'm asking you about the moneys received from this dinner. We've got, I think you've agreed, two lots. \$19,000-odd, which is a mixed lot of some cash, credit card, other forms of payment, and a second, which was \$100,000 in cash.---I'm obviously aware of that. That's what this Commission is looking into as well.

But when you're talking, when you refer in your answers to moneys from the dinner and missing forms, that's what we're talking about.---Mmm.

Missing forms related to a total of about \$119,000, correct?---I think it was more than that, but yes.

30 Well, if you accept that the figure is approximately \$119,000 - - -?---But there was more, I mean, obviously we've learnt a lot in the last few days that there was more money banked in other accounts that we didn't know at the time.

Ms Murnain, please. I wasn't asking you about money in other accounts. I was asking about the moneys banked by the NSW ALP from the Chinese Friends of Labor dinner.---Yes.

Please direct your attention to the question.---So please ask the question again.

40 We established that there were two lots of money. Approximately \$19,000 - - -?---I don't know and that's the answer to that question, but yes, \$100,000 and another sum of money.

All right. Whatever the sum of money is, there's a total sum of money and in respect of the total sum of money received following this dinner there were missing forms. Correct?---Yes.

And you have participated in a scheme to obtain forms after the event with respect to the moneys received, haven't you?---No.

And you know that that's a contravention of the Act, don't you?---No.

If the witness could be taken to the examination of 20 August, 2019 page 1880. If you look at the top of the page at about lines 1 to 10.---Yes.

10 So at the compulsory examination on 20 August, 2019 you accepted that the answers to questions you were asked about on top of this page 1880 which you've given on 29 July, 2019 were false and you knew that they were false at the time you gave those answers. Correct?---No. What I said was I've obviously spent a lot of time thinking about what had happened and I was trying to – I mean obviously I've said it was knowingly false but - - -

You accept that now, do you?---No. I've said that in the transcript here, but what I was trying to do was put my mind to all the other events that happened around this dinner not just the dinner itself.

20 And if you could now be taken to page 1881 of the same examination of 20 August, 2019 from about lines 10 through to 40.---Sure.

You accepted there, didn't you, that the evidence you'd given to which your attention had been directed from the private examination on 29 July, 2019 had been misleading. Correct?---Please ask the question again.

30 If you look at lines 10 and about 20 you accepted, didn't you, that the evidence you had given at the private examination of 29 July, 2019 had been misleading?---I, I don't think that was my answer. That's not what I've said there, and I came back to do the right thing and to shed more light on the matter for the Commission. It wasn't intentionally misleading of anything but you can infer that as much as you wish but I came back. I mean, I'm not sure why anyone would come back to do that unless they were trying to do the right thing, with all respect, sir.

40 Ms Murnain, in your position as running the federal, state and local government election campaigns from some late point in 2008 certainly part of that role involves, doesn't it, identifying moneys being received and moneys being spent in respect of the campaigns, you'd agree?---As general secretary, yes.

No, in your position - - -?---As general secretary, yes.

I'm not talking, I'm talking about back in 2008, from the time that you assumed this role of running on behalf of NSW ALP the federal, state and local government campaigns.---I ran local campaigns. My job was to run the campaigns and do the material. That was, that was the job or the membership obviously which is what I started off as.

You're aware, aren't you, that in the 2012/2013 financial year that NSW ALP reported receipt of \$150,000 from Mr Huang Changran?---No, I didn't know that.

And you're aware certainly by 30 June, 2013, weren't you, or at least during 2013 that the Yuhu Group, which Mr Huang controls, had made at least two donations of \$100,000 to the NSW ALP for their federal campaign?---I don't believe I was aware of that at that time, no.

10

Certainly by 2013 you're the assistant general secretary.---Ah hmm.

Part and parcel of that role is to keep on top of current affairs. Correct? ---It's to do as the general secretary wish, but sure.

Part and parcel of that role is to keep abreast of what's happening in the media?---Sure.

And for example, you'd be an avid watcher of The 7.30 Report, wouldn't you?---Not really, no.

20

Well, you'd be keeping up with it, wouldn't you?---I would try to.

Certainly by 10 June, 2015, the mysterious billionaire Mr Huang had come to the attention of the public through The 7.30 Report.---By when, sorry?

10 June, 2015.---Possibly, I don't know.

Well, by that time it was well known in the press that Mr Huang was a significant donor to both political parties. Correct?---I don't remember him in 2015 but sure, you can, I'm sure the media knew about him in 2015.

30

Well, you recall, don't you, that Mr Wong described him as one of the largest donors to the ALP at that time?---No.

To The 7.30 Report, you weren't aware of that?---I don't remember that at all.

But you don't doubt it happened, do you?---Well, I don't know. I don't remember that.

40

Mr Wong had obtained his position in the Upper House because of his extraordinary fundraising abilities, hadn't he?---I think, I mean I was never early on quite sure why Ernest originally went into the Upper House, except that he was respected in the Chinese community, but that was about it early on.

Well, he replaced Mr Roozendaal, didn't he?---Yes.

And you knew from your dealings with Mr Roozendaal that he went to work for the Yuhu Group. Correct?---I didn't know in 20, whenever it was, that that's where he was.

Well, if you assume it was 2014, you knew that, didn't you?---I don't, I don't think I did, no.

10 And you'd attended the Chinese Friends of Labor dinner in 2014, hadn't you?---Well, I now believe I have, yes.

And you were asked to make special mention of Mr Huang. Correct? ---I don't know whether that was 2016 or 2014. I've seen other people's evidence to say it was 2014 but when I was asked to do that, because I do recall being asked to thank a random person who I wasn't, who I didn't know, I now know that is Mr Huang who I was asked to thank, but that's about it. I don't know whether it was 2016 or 2014.

20 From the time that you assumed the role of assistant general secretary, you were in very regular contact with Mr Dastyari. Correct?---Yes.

And you were in contact on a daily basis or almost, correct?---Yes, yes.

And with Sam, certainly as at 16 September, 2016, there may have been something in order of five, 10 or more phone calls with Mr Dastyari that day?---I think that day, yes, and in that period after he stepped down, yes.

30 But it wasn't uncommon for you throughout the period from 2013 through to 2016 for you to talk to Mr Dastyari on a daily basis?---I would, I don't know what, how frequently I spoke to him in 2013, I don't think it was as frequent as it was when I became secretary, so I think it was more frequent when I became secretary.

Mr Dastyari's relationship, you understand now, had been very close with Mr Huang for a number of years before 2016. Correct?---Now I understand that, yeah.

40 And Mr Dastyari was someone you were talking to on a daily basis on the telephone about a whole raft of ALP issues. Correct?---After I became secretary, yes. I didn't have many people to go to.

So he was a close confidant?---Ah hmm.

He was a mentor?---Yes.

And from your relationship with Mr Dastyari, you well knew who Mr Huang was, didn't you?---In 2016 I certainly got to know him. Prior to that it wasn't my role, the secretary's job was to have relationships with major

donors, not, not, not the assistant secretary and certainly not organisers or membership officers.

Ms Murnain, your evidence that you didn't know who Mr Huang was as at March 2015 is totally implausible, isn't it?---No, it's not.

It's not true, is it?---No, it's, it's absolutely true that I, it wasn't my job to liaise with these, these guys.

10 You've seen reports in the press that Mr Dastyari conducted a private citizenship ceremony for Mrs Huang and their children?---I've seen that now, yes.

In 2015 that occurred, didn't it?---I don't know. I don't know when that occurred.

And if one looks through the press reports going back to that time, 10 June, 2015, on The 7.30 Report, photos littered with all the heavy lifters in political life in this country, both former and present at the time, with Mr
20 Huang. Mr Rudd, Ms Gillard, Mr Robb from the Liberal Party, Mr Dastyari from the ALP. It was just common knowledge within the ALP that he was the whale, wasn't he, he was the big political donor?---That wasn't my job. I wasn't, my job wasn't to deal with major donors as assistant general secretary. I don't – in fact, I was mostly told to stay out of that sort of work, that, not to go to major fundraisers with high, wealthy individuals. Like, it wasn't, I was more focussed on the day-to-day.

Do I understand that before you looked at any of your records, you had no recollection about the event of 16 September, 2016?---I, it certainly wasn't
30 on my mind.

And is it fair to say that you reviewed your records and you found the text messages for 16 September, 2016, and then that prompted you that you must have had a meeting with Mr Wong, correct?---No. I remembered the conversation with Mr Wong and Ian Robertson and Sam Dastyari and then I went looking for my text messages because I was asked a lot of questions about the dinner and the events around the dinner and I had spent time trying to think about anything that I could remember from that time and hadn't spent time thinking about steps after the dinner and the period around
40 the dinner.

That's just not true, is it? It wasn't until you found the text messages that you constructed this fabricated story, correct?---No. That is not correct.

Ms Murnain, 16 September, 2016, you got the text message showing you met with Mr Wong, correct?---Mr Wong, yes.

And you got a text message showing that you went to the top of the escalators at MLC and you notified Mr Robertson, correct?---Correct, yes.

And as you sit there today, you can't, you have no recollection about what else you were doing that day, do you?---Well, I've seen phone records and things but - - -

Shown to you in this Commission, correct?---Yep.

10 But absent what you've been shown in this Commission, you don't have any recollection about the day of 16 September, 2016, correct?---Not much about it, no. But I do remember feeling pretty traumatised by this issue.

Yes. I'm not talking about this issue, I'm talking about the other events of the day, what you recall but you don't have a recollection, do you?---Not, not specifically, no.

20 Well, not at all, do you? It's a blank page, isn't it?---Well, there are text messages and things and phone call and, that I can't, I couldn't tell you now sitting here. It's a long time ago.

Yes. Now sitting here, you can't tell me what else you were doing on 16 September, 2016, correct?---Correct, but I can tell you what I did do, which is speak to Mr Robertson about this matter.

No, I'm not asking about that. I'm asking about what the other things were in a full day.---Okay, all right.

30 And you can't tell the Commission whether or not you were having any dealings with any other persons within the ALP on that day and who they were?---I obviously now know from phone records that I dealt with Mr Foley and other people in the ALP that day but to the, not that I can sit here and remember. If it's run-of-the-mill stuff, it doesn't come to mind as a - - -

As you sit there, you can't remember whether it was run-of-the-mill stuff or otherwise, do you?---Well, do you want to ask a specific question of me?

No, I'm just asking what you recall about that day - - -?---I - - -

40 - - - besides these text messages which you've discovered after your private examination.---I don't remember much, but I'm happy to answer any questions you have.

You said since the last occasion you were before the Commission, you did some googling. Is that correct, you gave that answer earlier today?---Yeah, I, yes. Everyone googles.

And what was the extent of the googling relevant to this Commission?---I don't, I don't know.

Well, you do know, you did the googling, didn't you?---Well, yes, but I – if you be specific.

Well, you indicated - - -?---What would you like to know?

10 I'd like to know what you googled.---In the last month?

Relevant to this Commission, between the last time you gave evidence a week or so ago, and now.---My – I don't know my full Google history. I'm happy to provide it, if it's relevant.

Is it your position that the only reason that you would be seeing Mr Robertson on the evening of 16 September, was because of this interaction you say you had with Mr Wong, followed by Mr Dastyari and his advice to you, followed by a phone call to Mr Robertson?---Yes.

20 You can't think of any other reason why you would have seen him that evening?---Not at 7 o'clock at night on a Friday night. I would have preferred to be home like a normal person.

It's a blank page that there could be any other reason at all, is that correct?---I know you will have other suggestions, and I'm very happy to answer questions about those.

But as you sit there now - - -?---Mmm.

30 Before I make any suggestions of any type, you have no recollection of any other reason for seeing Mr Robertson?---I wouldn't go see Mr Robertson about other matters. This is a significant one, and that is why I remember it.

You'd been dealing with Mr Robertson since your appointment as a general secretary from about January, 2016, is that right?---Yes.

40 When you gave your evidence at the compulsory examination on 20 August, you said that, Ian who was the party's lawyer, who'd always given very, very good legal advice, correct?---Yes.

He was a, he's a gentleman senior in age to you, correct?---Yes.

He's a person who, from the time that you dealt with him in your position as general secretary, you found to give frank advice, correct?---Yes.

You believed he was an honest person, correct?---Yes.

You respected him as a lawyer.---A great deal.

You placed a great deal of trust and confidence in him, correct?---All of my trust and confidence in him.

And you didn't in any way regard Mr Robertson as being a person who lacked honesty in any way, correct?---No, I mean, this, the advice I got in 2016 didn't sit right, but no, I thought, I thought Ian was a very honest person.

10 And you thought that at the time that you saw him in the evening of 16 September, 2016, correct?---Yes.

Now, when you, in your private examination of 20 August, when you recounted seeing Mr Robertson in the evening of 16 September, you didn't make mention at all of the Chinese Friends of Labor dinner, did you?---Yes, I did.

Are you saying that that's what you told the ICAC, that you told Mr Robertson in your evidence about the Chinese Friends of Labor dinner?
20 ---That I told Mr Robertson about Ernest Wong - - -

No, no, please. No. Just - - -?---We, we - - -

One step at time.---I don't know what I - - -

Did you mention at all - - -?---To Mr Robertson? Yes.

No, in the private examination of 20 August, 2019, recounting what you'd said to Mr Robertson, any reference at all to the Chinese Friends of Labor
30 dinner?---I don't know if I did or didn't. But I did to Mr Robertson on 16 September, in 2016.

Please, I just want to ask you about, the first time you recounted - - -?---I, I don't remember - - -

- - - these events to this Commission on 20 August. That's what I'm directing your attention to. Now, do you agree that you didn't make any mention that you'd made reference to the Chinese Friends of Labor dinner in the meeting with Mr Robertson on 16 September, 2016, do you agree?
40 ---Oh, I, I don't know. You can show me the transcript again if you wish. But I did.

And the version you gave on 20 August, 2019, about the meeting with Mr Robertson, you didn't mention at all, did you, that you'd told Mr Robertson that \$100,000 in cash had been received following the dinner by Mr Clements. Correct?---I don't know what I said to him about Mr Clements, I did tell him there were issues with the dinner and that I believed this, this

dinner was, had significant issues or that there were issues with donations back then.

Are you just making this up - - -?---No.

- - - about what you say you told this Commission on 20 August?---No.

10 You didn't mention to Mr Robertson in the version of events you gave on 20 August, 2019, that you'd told Mr Cheah to chase up missing forms with Mr Wong and Mr Yee, did you?---I don't know. I don't know what I told him in relation to that, but I told him there were significant issues with the dinner back then and I remembered that.

But the point is, isn't it, that ignoring any involvement of Mr Huang which you say you learnt about on the evening of 16 September, 2016, there were already issues with the moneys which had been received following this dinner. Correct?---Which is what I told Ian Robertson and told him about what Ernest had told me about Huang making a donation.

20 I'm not talking about Huang. I was directing your attention to – ignoring Huang for a moment, ignore the meeting with Mr Robertson for a moment. ---It's pretty significant.

There were issues, serious issues involving the receipt of money by the NSW ALP following this dinner. Correct?---Yes.

And those issues had been there since the dinner, 12 March, 2015, and you'd done nothing about them, had you?---We'd, well, I - - -

30 Please - in respect of the dinner and the money received from the dinner, correct, you'd done nothing about those issues?---Not to the best of my knowledge, no.

40 And when you see Mr Robertson you don't tell him, and by the way, I told Mr Cheah to chase up missing forms with respect to moneys received at the Chinese Friends of Labor dinner, did you?---I don't know if I did or didn't say that to him, but I certainly told him that I thought there were issues, pretty significant ones, and I also said that we should return the money and he said, and I don't know if I said this at the last two examinations, but he said, "We don't have to do that just yet."

That's something you've made up, isn't it?---No. And you don't go to a lawyer if you think there's nothing wrong. Certainly don't show up at a lawyer's doorstep at 7 o'clock on a Friday night when you'd prefer to be home, to talk about an issue like this.

You're offering that as a submission, are you?---I am.

Because you made mention in the first examination, you said, "I said, and I thought, like, I said, 'We should return the money or talk to the Commission.'"---Yes.

But you didn't refer to it on the, during the public examination you gave last week, did you?---I don't know if you'll recall what happened in between my two submissions last week but - - -

10 Please just answer the question.---No, I'll explain to you my state of mind last week and if I'm - - -

Please, that's not the question.---No, no. Hang on. If I missed things last week I knew that they would be tabled here, first of all. Second of all, as you can understand, that week, well, in between my evidence I had been suspended from my job as the general secretary of the Labor Party, so please forgive me if I forgot items which I'd given in my private evidence. But please, consider any of my private evidence as evidence as a whole as to what happened.

20 Ms Murnain, do you think you're doing yourself a service by giving these long speeches? That wasn't directed to the question at all, was it?---What is your question? I'm happy to answer it.

THE COMMISSIONER: Ms Murnain, just focus on the questions please and answer the questions.---Okay.

Just focus on the point of each question. I think we'll all be better off, including yourself, if you do that.---Okay.

30 MR McINERNEY: On the evening of 16 September, 2016, if you learn about Mr Huang's involvement with this money on that night, you knew that you were directly implicated personally, didn't you?---No, but I knew that, I knew that there would be significant consequences for the Labor Party.

You knew that there would be significant consequences for Mr Clements. Correct?---Yes.

Yes?---Yes.

40

Mr Cheah?---I didn't know.

Well, Mr Cheah, you'd asked him to chase up the missing forms, hadn't you?---I told the Commission that because that was something we used to do to try and shed, shed light on how processes worked in the party office back then. I wasn't sure but, you know, I was more worried about the reputational damage to the party. We were about to head into three by-elections in 2016.

You didn't refer to any difficulty for Mr Clements in your conversation with Mr Robertson, did you, did you?---I don't remember, I don't remember the exact words I used to him in relation to Mr Clements. I know his name came up but I just can't remember and I don't want to create a memory that isn't there.

Well, you've just done that, haven't you?---No.

10 You said his name came up. That's the first mention with respect to this conversation of Mr Clements being mentioned, version 3.---I just don't remember.

If the witness can be taken to 1859 of the private examination of 20 August, 2019. So if you go to 1859 and the passage starts about line 27, where you were asked, "What led you to change your view?" And you see, your answer goes down towards the bottom of the page?---Yes. Yep.

20 And all you do in that answer is in effect say, "I explained to him what Ernest had told me"?---Yes.

Do you didn't tell the Commission the words or the effect of in fact what you had told Mr Robertson there, did you?---Which – I'm not sure.

Well, the effect of it is, "I told Mr Robertson what Ernest had told me." That's the effect of it, isn't it?

MR NEIL: We object. That doesn't fairly represent what appears at lines 42 to 45.

30 THE COMMISSIONER: All right. Ms Murnain just read the whole of the segment there on page 1859 from about line 24/5, down to the end of the long passage.---Yes. Yep.

MR McINERNEY: You agree that the effect of your answer is simply to say, "Well, I told Mr Robertson what Ernest had told me," without explaining what it was in fact you said during this conversation, do you agree?---What is your question?

40 Do you agree that the effect of your answer to the Commission was that you said to Mr – that the effect of your evidence is, "I recounted to him the events that had happened with Ernest and what he told," what he told you. But you didn't give the gist or the substance of the conversation you'd had with Mr Robertson. You didn't say, "Well, I said to him, this is what I said and this is what Mr Wong said and by the way you should know that of course, you know, Mr Clements, I know independent of what Mr Wong told me that Mr Clements received \$100,000 and there were missing forms," and

so on. You didn't have a recollection of any of those things at the time you gave your answer, did you?---Yeah, I did. I remember it vividly.

What you've done is you've constructed a conversation and you've fixed into it things which you say Mr Robertson told you, but where you have no recollection of anything really that you said to him, correct?---No, I can, I can recount much of that conversation and that's what I've told the Commission, and indeed on the last occasion I came here as well.

10 So is this the position, that you say that, well, I told Mr Robertson that a Chinese billionaire, Mr Huang, had provided the \$100,000? Are we correct so far?---That Ernest had told me that, that a donor hadn't given money from the state election in 2015, which was the only fundraiser they had, the Chinese Friends of Labor dinner. Keeping in mind that I believe at this point there may have already been questions about this dinner which Ian himself may have been dealing with.

Please, I was just asking you - - -?---Oh, I thought you wanted me to recount it. Sorry.

20

No, I didn't ask you to recount it.---Okay.

I asked you about one point.---Okay. If you could ask the question again, sorry.

I'm trying to break it down.---Yes.

As to what my understanding of what you say occurred.---Yes.

30 And the elements, as I understand it, are that you met with Mr Wong, correct?---Yes.

He told you about \$100,000 from Mr Huang.---He told me about a donor who didn't give the money and I asked him who did and he said, "Mr Huang."

And you understood that was the \$100,000?---Yes.

40 And so from that point on you knew that there was \$100,000 which had come from one individual, correct?---Well, I believed that Ernest was telling the truth, and so that's why I went to Ian Robertson.

Yes, but I wasn't asking about that. I was asking what you understood from what you'd been told on your story. \$100,000 had been received from Chinese, from a property developer.---Yes.

Mr Huang.---Yes.

And that a donor had said, "I didn't donate the money."---Yes.

"Somebody else did."---Yes.

And so with \$100,000, there's more than one donor, then, isn't there, who didn't donate the money, correct?---Well, yes, yeah.

Because the cap at the time was \$5,000.---Yes.

10 So could be 20 people, correct, who didn't donate the money.---Yes.

Could be 50 people, correct?---But that – yes.

Could be 100 people.---That's, that's possible.

And did you know at the time how many people, on what you'd understood from Mr Wong, with the \$100,000 that were therefore not true donors? Did you have any idea about the number?---Ernest only told me one and that's what I told Ian. Just one.

20

But you knew, therefore, if it was one, it had to be more than one, correct? ---I wasn't thinking like that.

Well, you knew the cap was \$5,000, didn't you?---Yes.

And you knew it was \$100,000.---Yes.

30 And so you knew it had to be more than one.---Well, I inferred that, well, I, I think I gave this in my evidence originally that I wasn't entirely sure how the 100,000 came up, whether it was because of the commission at the time or other sources.

But doing the best you can, your understanding at the time was there was going to be more than one donor involved who hadn't donated the money. ---That's what I believed, which is why I went to Ian.

40 And the position was at the time that you saw Mr Robertson, your understanding was so you've got a donor who hasn't donated the money, and he knows about this situation, correct?---Yes.

You've got Mr Huang who knows about it because he donated the money, apparently.---Presumably.

You've got, to your knowledge, Mr Clements. He would know about it because he'd received the money, correct?---Yes, yeah.

You had Mr Cheah, who'd organised or been involved in the organisation of the dinner and getting the money, hadn't he, Mr Cheah?---Well, he'd been organised in the dinner, yeah.

And then you've got Mr Wong, and he knew about it because you say he told you.---Yes.

10 So, what, including yourself there's at least five, maybe more, 10 or 15 or 20 people, who knew that there was this donation but where the donors weren't responsible for it because Mr Huang was, correct?---Can you ask the question again? There's 20 people. I don't, I don't know. I don't know. I can only speak to what I was told and when.

Yes, please, it's based – well, from what you say you were told, you then understood that there was at least five people, and it could be many more people, who knew about this unlawful donation.---No, what I knew is what Ernest had told me and I went to Ian.

20 But what Ernest had told you, as soon as it's a large sum of money, which you understood it was, correct?---Yes.

If you have one donor who hasn't donated the money, and if you have Mr Huang who's donated the money, there must be other donors who also haven't donated the money, correct?---Obviously that is what appears to have happened, but that wasn't where my mind was going. But yes.

Well, so it would have been obvious to you at the time, wouldn't it?---Yes.

30 So you say you go and see Mr Robertson, and you recount to him what Mr Wong has told you?---Yes.

After a meeting with Mr Dastyari?---Or after a conversation with him, yes.

Well, your evidence was, wasn't it, that you met with – the sequence was, you met with Mr Dastyari after you met with Mr Wong, correct?---That was the, that was what I had remembered, and I understand that other information has been provided, but I, my memory is I spoke to Sam.

40 Are you trying to indicate that you've got a different version of events now, or - - -?---No. No, and I think - - -

Are you going to stick with - - -?---No.

- - - Mr Dastyari, meeting with Mr Dastyari before Mr Robertson? Are you sticking with that, or are you changing it?---No, I'm saying that I spoke to Mr Dastyari before I spoke to Mr Robertson.

But your evidence was you'd met with him, correct?---And I was doing the best to recall what happened.

Please. Answer the question. You met with him, didn't you?---Mmm, I met with him at some point.

You were in the car, correct?---And as I said to the, Mr Robertson before, is that absolutely it's possible I met with him afterwards.

10 I'm not asking about afterwards. Just the meeting before, in the car in Hospital Road. You've given that evidence at least on two occasions before, haven't you?---Yes.

And that was the best recollection you had at the time, correct?---Yeah, yes.

And it was important, it was part of your recollection, because you say Mr Dastyari said, "Go and see the lawyers," correct?---Said, "Go and see Ian," yes.

20 And that's what prompted you to immediately go and see Ian, rather than going to talk to the governance director, correct?---Yes.

But you now know that didn't happen. There was no meeting with Mr Dastyari before you saw Mr Robertson on the evening of 16 September, 2016, correct?---I can only tell you what I remember, so - - -

But you now know it didn't happen, correct?---I had a conversation with Sam Dastyari, and then I went to - - -

30 Please. You now know, you did not have any meeting with Mr Dastyari before you met with Mr Robertson, correct?---I've admitted that it's possible, but I'm, can't change what I remember. I, it's possible that the meeting happened afterwards, and I've explained that this morning.

Ms Murnain. Please. You know, sitting there in the witness box - - -?
---Ah hmm.

- - - from the material which has been provided to you - - -?---Yes.

40 - - - presented to you by Counsel Assisting, that there was no meeting with Mr Dastyari in a car before you met with Mr Robertson on the evening of 16 September, 2016, correct?---I can only tell you what I remember, which is I spoke to Sam - - -

No, just, you know, you, sitting there now, you know that is the true position. There was no meeting with Mr Dastyari before you saw Mr Robertson, correct?---I, I said that was possible.

You just won't accept that proposition, is that correct?---It, it's not, I'm not entirely sure why this is – I've tried my best to remember the sequence of events, and I, I can't change what I did because of a conversation that I had, and whether it happened in a car or over the phone is immaterial. I spoke to Sam, and he said, "Go and see Ian Robertson," and that is what I did.

But you now know sitting there, that didn't happen. You didn't have a meeting with Mr Dastyari where he said that to you before you saw Mr Robertson.---I spoke to him, and he said, "Go see him," and I - - -

10

So you're rejecting the meeting now? There was no meeting before you saw Mr Robertson?---I don't know. It's four years ago. I, I don't know. I can only go off the evidence that was put before me today, and, you know, I, I've done my best to remember, and I can only tell you that I spoke to Sam, and I acknowledge it's absolutely possible that meeting happened afterwards, we're all agreed there was only one meeting. But I absolutely spoke to him before I spoke to Ian Robertson, and his advice to me was, "Go and see Ian Robertson."

20

That's not truthful evidence, is it?---It is truthful evidence.

You've constructed this concoction based around the text messages, and you've interposed in the middle of it a meeting with Sam Dastyari - - -?
---No.

- - - as the reason for going to see Mr Robertson that evening, haven't you?
---No. I have not, sir.

30

Your evidence is a complete fabrication, isn't it?---No. It is not.

You are here to colloquially cover your own backside and to destroy Mr Robertson's reputation, aren't you?---No.

This is what your story is about.---No.

About trying to protect your position because you know that you contravened the Act. Correct?---No. And I wouldn't lie about this.

40

You wouldn't lie about this?---This is very, this entire matter has been incredibly serious.

You've already lied about this, haven't you, on more than one occasion?
---No.

Correct, haven't you? You gave false answers about the answers you'd given to the Electoral Commission and you did so knowingly.---I reject your premise.

You've accepted that, didn't you?---I have not fabricated this story. This, this absolutely happened and I went to Ian for advice.

Just like you absolutely, it absolutely happened that you had a meeting in Hospital Road in Mr Dastyari's car before the meeting with Mr Robertson. That absolutely happened too, did it?---I've acknowledged that that is possibly to have happened afterwards, but I still maintain that I spoke to Mr Dastyari about what to do and he told me to go and see Ian and that is what I did.

10

So you tell Mr Robertson, on your version of events, recounting what happened with Mr Wong, and we've got at least five other people or thereabouts who know that there's been this unlawful conduct. Correct? ---No.

Well, we'll run through it. Mr Huang, he knew about it?---(No Audible Reply)

20 Yes?---I don't know what he knew. You'll have, you will, you'll have to ask him that question.

Your understanding was that there had to be at least five other people who knew that there had been unlawful conduct.---No, no. I knew that what Ernest had told me and that there was one person who didn't give the money, so clearly that person knew.

And Mr Huang must have known?---I don't know what he knew or didn't know.

30 But he was the one who gave the money, didn't he?---But I, I don't know -- I think you're asking me to tell you what he knew - - -

No, I'm not.--- - - - and I, I'm sorry, I can't.

You can see what's happening, can't you, because if there's more than one person who knows about this unlawful conduct it is absolute nonsense that an experienced lawyer like Mr Robertson would tell you, don't tell anyone about it, don't make a record of the meeting, I won't be billing you for it, and so on. It's just nonsense, isn't it?---No, that's exactly what happened.

40

And you sitting there hearing that from Mr Robertson, and you understand I say that's a fabrication, but you sitting there, you say you heard that from Mr Robertson, you knew that such advice was absolutely ridiculous, didn't you?---It didn't sit well but, but I followed everything else Ian ever told me to do and it didn't, didn't send me in the wrong direction any other, any other time.

It didn't sit well with you?---It didn't.

Because you knew it didn't make any sense because there were other people who knew. Correct?---No, I would say that it just didn't sit well with me.

You knew it was going to come out, didn't you, at that time?---No.

From your meeting with Mr Wong, you knew that sometime down the track someone was going to look into this closer, correct?---No.

- 10 You knew at the time you spoke to Mr Wong that there must have been something which prompted the donor to speak to him and say, I didn't donate the money. Correct?---Yes, and I, yes.

And you knew that the likelihood was that the Electoral Commission or some other body had been asking questions about it. Correct?---I have speculated that that's what was going on around that time, but I don't have a memory of that.

- 20 No. But at the time that you hear that from Mr Wong, the first thing that goes through your mind is, someone is investigating this. Correct?---They may have even been doing that earlier than the point at which Mr Wong spoke to me, in fact they probably were, but, sorry, can you ask the question again?

- 30 The first thing that went through your mind when you were told what you say you were told by Mr Wong, that a donor had come forward to him saying that he hadn't donated the money, is that someone was investigating that issue.---No. The bit that was a worry was that Huang had given, that Ernest had said that Huang had given the money. That was the bit that concerned me, because by this stage he's a property developer and a pretty significant donor to the Labor Party.

And you knew as at Friday, 16 September that Mr Dastyari's name had been up in lights in the media for about the previous two weeks for his dealings with Mr Huang. Correct?---Yeah, yep.

And you say that there were three by-elections in the wings. Correct?
---Yes.

- 40 There were council elections, were there, that weekend?---I don't know what weekend but they were sometime in September.

And so this was explosive information for you, wasn't it?---Yes, which is why I went to Ian.

And did you know that The 7.30 Report were running a story about Mr Huang, involving again Mr Wong, on the following Monday evening, 19 September, 2016?---I don't remember that but that sounds plausible.

I mean, if The 7.30 Report contacted Mr Wong and said, "We're going to run a story about you," the first thing he does, doesn't he, is he'll call the general secretary and say, "They're investigating me," or, "They're looking into me, you need to be aware of this"?---I can't remember what the story was about but I don't know if he had called me or someone else had called me about it, I just can't remember.

10 But you do remember that on the following Monday evening, as a story, about Mr Huang, correct?---Huang or Wong?

One at a time. Mr Huang?---I don't know. You will - - -

You knew from the previous press reporting that Mr Wong was being put forward as his good friend, good friend of Mr Huang, correct?---I don't, I don't remember back then about what 7.30 Reports were on and which ones weren't, I'm sorry.

20 But do you agree that if someone like Mr Wong, a member of the Upper House, was approached by The 7.30 Report, he'd be telling you about that? ---Yes. Or he'd tell the leader's office.

So the likelihood is if there was a story to run on the Monday night, that you knew about that on the Friday night, correct?---I don't remember that, but that's certainly plausible and pretty run-of-the-mill.

30 You knew, didn't you, that any advice to the effect that, "Don't tell anyone about this, don't make any record about it," having regard to the other people who you knew were aware of the unlawful conduct made no sense at all, correct?---Can you repeat that question, I'm sorry?

You knew any advice from Mr Robertson to the effect that, "Don't tell anyone about it, don't make a record about it and I won't be billing you for it, so literally don't tell anyone about it," made no sense at all, correct, having regard to who knew about it, the unlawful conduct?---No. I, I trusted Ian, so - - -

40 Buy if you'd given it a second thought, on 16 September, so you're there, you're sitting there and you hear the advice which you've given evidence about, you sit there and you think this is absurd because this is explosive and there's at least five people or more who know about it, correct?---You have to ask your client about that.

I'm asking you what you were thinking, if you'd given a moment's thought on the evening of 16 September, when you say you were given this advice by Mr Robertson, if you'd given it a moment's thought, you knew it made no sense?---I think I, I said this is one of my earlier hearings that - - -

Please just answer the question.---It didn't sit well but with everything else going on, I was probably relieved in a way that that was the advice I was given.

THE COMMISSIONER: Ms Murnain, you've been asked a question which you still haven't answered. Would you put it again?

10 MR McINERNEY: If you'd given a moment's thought on the evening of 16 September to the advice you'd just received from Mr Robertson, "Don't record the meeting. Forget the conversation with Ernest happened. Don't tell anyone about it. I won't be billing you for it." Had you gave that a moment's thought on 16 September, 2016, you would have appreciated immediately that that advice made no sense at all because there was more than a few people who knew about it, the unlawful conduct, correct?---No. I trusted Ian.

20 Until you answer the question about the absurdity of the advice you say you were given, you hadn't thought your story, had you?---I, I am telling you the truth about what happened.

And you say that having received this advice and trusting Mr Robertson, you didn't tell anyone else about it at all?---He told me not to.

No, please, just answer the question.---No.

So until you came before the Commission on 20 August, you didn't mention it to a soul?---I spoke to, obviously Sam but I spoke to my lawyers.

30 Well, you didn't mention it to Sam, did you?---No. Well, I, I mentioned the information from Ernest Wong to Sam.

Yes, but I'm talking about the Robertson advice you say was given.---No, I didn't.

You never mentioned that to Sam, did you?---No.

And from your experience of Mr Dastyari, he was a very experienced political operator, correct?---Yes.

40 You having told him about this allegation, he would have known – well, you would appreciate that he would understand that to be explosive, correct? ---Yes.

And isn't the first thing that would have occurred is that you would have spoken with Mr Dastyari about the advice you've received?---Well, he told me to go and see Ian, so I presume – I, I don't really remember the conversations except to say that he told me to go and see Ian and I told him what Ernest had told me.

But you can see that's implausible, can't you?---No.

Mr Dastyari says, "Go and see Ian."---And so I do.

And you appreciate that it's explosive.---Yes.

And that Mr Dastyari would appreciate it's explosive, correct?---Yes, yes.

10 And then you and Mr Dastyari don't ever talk about it again.---Because Ian told me not to, so I didn't.

But you have a conversation with Mr Dastyari which is, where he says, "Oh, how'd you go with Ian on Friday night? How'd you get on? What happened?"---If Ian told me not to talk about it, I wouldn't have talked about it. And I didn't.

That's nonsense, isn't it?---No, it's not nonsense. It's the truth.

20 You've decided, haven't you, that Mr Robertson, he's had a good run with his career at his age and his stage of life, and it's not the worst thing in the world from your perspective to throw him under the bus, correct?---No. This is incredibly difficult and Ian's someone I respect a great deal, so if you think this is some made-up story to throw someone under the bus, you're kidding yourself, because this is not easy.

They're fake tears, aren't they, Ms Murnain?---No.

30 They're not real. They're not real, are they?---Everything about this is true and real, and it is not easy.

Did you have any dealings with Mr Foley's office on the Friday, 16 September?---I spoke to their office all the time.

Anything that you can recall about 16 September that you might have spoken with Mr Foley about?---I don't remember it, but I know there are text messages.

40 Well, you know there are text messages because the Commission's got whatever they've asked for, correct? That's how you know that.---I think we provided them.

Yes. And do you remember having dealings with Mr Willis, Mr Foley's chief of staff, on 16 September?---I don't remember it but that is, that was frequent. Again, another daily occurrence for me.

And do you have any recollection of seeking any legal advice from Mr Robertson separate from anything to do with this what you say occurred at

the meeting on 16 September?---I don't remember it but I was always going to him for legal advice.

Well, as you sit there now, did you get legal advice from him? Other than what you've told us about you say occurred at the meeting, did you get any advice from him that day?---I don't remember it, but there were other occasions.

10 There are always other occasions. They regularly provided advice, correct?
---Correct, yeah.

But you can't tell us what advice, if any, you were seeking on 16 September?---No, but I know there's documentary evidence of what else I was asking for.

Well, can you tell us what it is?---There was a request I think about Nick Lalich at some point on the 15th.

20 And that's one of the things you've googled since you were last here, correct?---Yes.

And you read that in the transcript, didn't you, about Mr Lalich?---I don't know if it was in the transcript.

So what advice, if any, would you have been seeking about Mr Lalich?
---He, I don't remember this but I know that he took free trips to China from some company.

30 Do you know who the company was?---No, I can't remember.

Now, isn't it in the case that in the afternoon of Friday, 16 September, 2016, Mr Foley's office had been onto you about a story which was emerging with respect to Mr Lalich? You recall that now?---I don't remember that, but that is something that happened.

40 And during the course of the afternoon you spoke with Mr Robertson, didn't you, by telephone, do you recall that?---I don't remember it, but I was on the phone to Ian all the time about these matters, there wasn't a day or week that went by where there wasn't an MP matter to deal with.

And do you recall whether there was anyone else involved in a telephone call?---I don't remember.

So it's just a blank page?---I've only got a text message that I sent to Luke Foley to say that I was on the phone to the lawyers, Ian Robertson, about the matter.

You've got a text message to that effect?---Yep, at 4.55 or something.

And when did you see that text message?---Last night.

And were you going back through your material, were you?---Yep.

To try and prepare for this examination today?---I wouldn't say prepare, but I was trying to work out what else was happening that day.

10 All right. So what's the effect of the text message?---"I'm on the phone to the lawyers."

So you know you were on the phone to the lawyers that afternoon?
---But I don't remember it, yeah.

And you don't remember what you were talking about?---No.

And you know about Mr Lalich because you googled back as to what was happening in the press at that time. Is that correct?---That's right, yeah.

20 So you're sort of reconstructing your recollection.---It's not my, as I said to you, I don't remember any of this so I'm not reconstructing anything, I'm just telling you what was happening at the time and what advice came in later. I don't remember it. I mean you have to understand that we would go to our lawyers for legal advice all the time about these matters when MPs got into trouble and so it's not uncommon for me to not remember it.

30 So during the course of the afternoon of 16th September you made contact with Mr Robertson's office, hadn't you, about seeking some urgent advice concerning Mr Lalich?---I just don't remember what - - -

Can I ask you, what were you doing on the Saturday, the following day?
---I don't remember but I'm sure you can refresh my memory.

Well, is that a blank page?---It's three years ago. I mean if you asked me what I had for lunch yesterday I wouldn't be able to tell you.

So Saturday 17 September is a blank page?---Largely.

40 No recollection at all about what you were doing that day?---Not really, no.

You couldn't throw a dart and try and hit a board?---No, but I'm happy to answer questions about info you have.

In the afternoon at about 16.45 in the afternoon, you spoke with Mr – well, first Mr Robertson made a phone call and he spoke to a Ms Sarah Butler. Does that name ring a bell to you?---Yes, yeah.

Ms Sarah Butler was his offsider. Correct?---Yeah.

Worked with him?---Yeah.

On the ALP matters?---Ah hmm.

And then you were patched into a telephone call, weren't you?---I, I don't know. I don't remember this. This normal run-of-the-mill legal advice is not something that would stand out to me.

10 But you've been patched into, in effect a conference call so that you can give instructions involving Mr Lalich. Correct?---I don't know, but - - -

From Mr, from Mr Foley's office. Correct?---I don't know, but that, you know, that could be, that could have happened, yes.

And during the course of the afternoon you were in regular text communication with Mr Foley himself. Correct?---Yes.

20 And Mr Willis?---I don't remember it but I don't know about Willis, I don't know.

Mr Willis was the chief of staff.---Yeah, but I don't know what I texted him.

And does it refresh your memory now that there was a need for urgent advice concerning Mr Lalich?---There was always a need for Lalich to get advice, but yes.

30 Well, you knew that this was potentially a matter which could be referred to the Electoral Commission, didn't you?---If you have a look at all of our legal advice, this is pretty frequent, so it doesn't it doesn't, I can't remember it because it wasn't a significant event.

But you were seeking advice, weren't you, that afternoon - - -?---You're - - -

Please, let me finish the question.---Sure.

40 As to whether or not Mr Lalich had acted in contravention of the Electoral Funding, Expenditure and Disclosure Act. Correct?---That's possible, and I don't remember it.

And there was advice received at the meeting you had with Mr Robertson that evening, wasn't there, about Mr Lalich?---No, that's not my recollection, no.

I know you don't have a recollection about it, do you agree that that's the likely sequence of events is that you gave urgent instructions to Mr Robertson during the course of the afternoon of 16 September to provide advice

concerning Mr Lalich. Do you agree with that?---If that's what your documentation says, absolutely, but I don't have a memory of that.

And because the Opposition Leader's office was involved, Mr Foley and his chief of staff, it was a matter to be given some priority, correct?---They were always involved when MPs got into trouble.

10 But they were involved here because this was an issue which was shortly to come into the press, correct?---Which was a daily occurrence at the time, which I am sure there records will show in our billables.

THE COMMISSIONER: What do you recall was the issue concerning Mr Lalich at this time?---I don't know. I only found out from the, the story online but I don't remember discussing it. I mean, again, if, if - - -

But what position did he hold at that time?---He was a member for Cabramatta.

20 MR McINERNEY: Well you said, I think you referred to reviewing something online, so when you - - -?---It doesn't, doesn't make me remember anything.

No, but what did you review online?---There was a story about Lalich around that period.

So have you researched that in the last couple of days?---I may have googled it.

30 And what did you discover on your googling?---Just some issue he was having about, I think a trip, a trip overseas, I think. I can't remember. I mean, I, I, googled it. I mean, it's not really, it's not really relevant. I mean, MPs used to get in trouble all the time and I would talk to the leader's office and I would get legal advice. You'll see from our billables that this was pretty frequent.

And do you recall it was a matter where there was some urgency to it? ---There's always an urgency to MPs problems. I don't recall this.

40 Do you recall what the advice was?---I don't. It's not my - no.

Well, I want to suggest to you that during the course of the afternoon, so there's this phone call with Mr Robertson and Ms Butler where you're providing the instructions about Mr Lalich and they you are in regular communication with Mr Willis and Mr Foley during the course of the afternoon?---Ah hmm.

And that they were, on or the other of then, were providing you with some further information concerning the issue, do you have any recollection about that?---I'm sorry, no.

Do you recall the individual who was involved?---Mr Lalich.

Other than Mr Lalich, do you - - -?---No.

10 Did it involve somebody else?---I, I don't know.

I think you mentioned it might have been about a gift overseas?---A trip overseas, yeah, that's - - -

Yes. Can you give any details about the trip?---I can't, I'm sorry.

Where he went?---No. Oh, China, I think that's the issue.

20 The nature of the gift?---I, I don't remember but, I mean, I know there's advice that followed up but I, I'm not going to try and - I mean, I'm trying to remember but I don't remember any of this because it's, it's run-of-the-mill, day-to-day stuff that we dealt with and doesn't warrant a person to person meeting with a partner of a law firm to deal with it, given it happened frequently.

And might I suggest to you that at about 12 minutes past 7.00 in the evening of 16 September, Mr Robertson received a draft email advice from Ms Butler on this very issue?---Okay.

30 I would suggest to you there was some urgency to it, correct?---Possibly.

And do you recall that any advice was provided to you over the weekend or the following week or - - -?---I don't remember, no.

And you don't remember the substance of the advice?---No.

Do you recall what happened to Mr Lalich as the result of the advice?---I don't remember, I'm sorry.

40 Do you recall there was any other advice provided or requested of Mr Robertson over 16 and 17 September?---There was possibly a lot of advice because that's - frankly a lot of what we do is dealing with matters that come up and, from MPs in particular, there are also issues in the office and we would go to the lawyers and all of it would be urgent.

Yes but you don't recall the specifics of any advice?---No, I'm sorry.

You don't recall whether there was any - you don't recall that you'd received any advice from Mr Lalich on the Saturday?---I don't.

Or any advice about any other issues on the Saturday?---I mean, if you want me to remember every piece of legal advice Ian Robertson provided me, I, I couldn't and I can't and I'm not going to say I remember it just because of whatever you're about to show me but I, I just don't because it was run-of-the-mill and part of the day-to-day job.

What did you do on the Sunday? Do you remember that?---Nah.

10 What about the Thursday?---I don't know.

No?---I don't know.

Can't, couldn't identify anything as you sit there, on the Thursday?---You might be able to tell me.

On the 17th?---(No Audible Reply)

No idea?---No.

20

A blank - - ?---Was the 17th a Thursday?

Yes. Blank page?---Mmm-mmm.

I thought I said the Thursday, meaning the 15th. I might have got the date wrong.---The 15th? No, no.

So the Thursday, you can't remember, that's a blank page, Thursday, 15 September?---Yes, but I'm happy to - - -

30

I know you are, thank you for that.---Yep.

And the Saturday, 17 September, that's a blank page?---Yes.

And Sunday, 18 September, that's a blank page?---Yes.

And the Monday, 19 September?---I don't know.

Can't tell us what you were doing that day?---No.

40

Can't tell us what was happening in the press or the media?---No. I mean, you told me before, Four Corners did a story, so we were probably dealing with that, but I can't remember it - - -

The 7.30 Report.---7.30. Sorry. Yep.

All right, so, and before you go to see Mr Robertson, it's a blank page what you're doing on the Friday the 16th.---Um - - -

That's the effect of what you told us before.---Yeah, I mean, I don't remember it, but I was clearly coming back from national executive. But I don't remember that, and - - -

And the evening following the meeting with – so if you assume Mr Dastyari's meeting happened after you saw Mr Robertson - - -?---Mmm.

10 Because that's what, you accept that, don't you?---I accept that it's possible.

Yes. But other than your description of the meeting with Mr Dastyari, which you said was five to 10 minutes in the back of Hospital Road, you don't have any recollection of what else you were doing that night, correct? ---Yeah. Three years ago.

So out of, what, the Thursday, the Friday, the Saturday, the Sunday, and the Monday, you've got a recollection about this meeting with Mr Wong. ---Yep.

20 And a meeting with Mr Dastyari.---Yep.

Which you now know is wrong, correct?---I know I had a conversation with Dastyari about going to see Ian Robertson, and I absolutely stand by that.

30 But you now know that the meeting happened after the meeting with Mr Robertson.---I think you've asked me this question six times, so I will answer the same way I have previously, which is I accept, as I accepted to the Commission this morning, that it's absolutely possible that meeting happened afterwards. Does not change that he told me to go see Ian, which is what I did.

40 But it seems, don't you agree that you've been able to fix on a couple of contemporaneous documents during these days from the Thursday, the 15th, through to the Monday. You can't remember anything else about this period, except that you can focus in on a text message from Mr Wong and tell us that there was this meeting with Mr Wong, and you can focus in on a text message with Mr Robertson and then tell us about a meeting with Mr Robertson. So you can reconstruct in your mind those events, but absent anything else, you can't remember any of what was occurring on these days at all.---No, because they're pretty straightforward, and it's – if, when you're told something pretty significant, and pretty, which would have a huge impact for the party, I mean, I remember traumatic experiences pretty well. I don't remember my day-to-day job very well, is the truth, and I work seven days a week. It's, there's not, it's hard to remember every little bit of legal advice I've ever asked for, for an MP. Just, I, I mean, being asked to remember that is just, I mean, it's ridiculous.

You say in your evidence that at this meeting on 16 September with Mr Robertson, he told you he wouldn't bill you for the meeting, correct?---Yes.

And so on your version of events, he said, "Don't make a record about it, don't tell anyone about it, I won't charge you for it, and I won't be billing you for it."---Yes.

THE COMMISSIONER: Mr McInerney, I just can't hear you too well, if you just - - -

10

MR McINERNEY: I do apologise, Your Honour. Chief Commissioner, I do apologise.

THE COMMISSIONER: That's all right.

MR McINERNEY: But part of your version of the 16 September meeting is that Mr Robertson told you he wouldn't be billing you for it.---Yes.

20

And the implication meaning that this is some secret meeting which no-one can know about, correct?---I didn't think much of it. I, I didn't think much of it.

All right, well, as you sit there now, so Mr Robertson's a lawyer.---Yes.

He's a professional person.---Yes.

His practice is in providing legal services, correct?---Yes.

30

For which he gets paid.---Yes.

So he, on your case, he's providing you with a service.---Yes.

And he say, well, I, I won't get paid for it, because we've got to keep this secret, in effect, correct?---He, he was saying, I mean, to be fair to Ian, he was saying there wasn't, I didn't have, Ernest didn't give me evidence. But yes. Yes.

40

And you always believed, as you've said, Mr Robertson to be an honest, honourable man?---I trust him.

And so what, if anything, do you say he was going to get out of this meeting? What was in it for him?---I don't know.

Don't know. So you can't offer any – you've got no explanation as to why he would give you this advice?---No.

Because you understand it's strange advice, isn't it?---Well, it didn't sit right, but you've got to trust the advice. That's the job.

As general secretary, I mean, how many other lawyers would you have dealings with through the ALP?---Just Ian, really.

Well, but I mean every second member's a lawyer, aren't they?---Yeah, but you don't go to them for legal advice. You go to the party lawyers.

Well, but you knew at the time that you saw Mr Robertson this could directly implicate you, correct?---Implicate the entire party.

10

Yes, but also directly implicate you, correct?---Well, I thought it would impact upon me because I was the general secretary and I know what that means.

And you say it didn't sit well with you, and isn't the first thing that you do is you go and talk to someone else, some other lawyer, about it?

THE COMMISSIONER: Mr McInerney, I can't hear you. I'm sorry, I don't know whether that's some defect in the system or not.

20

MR McINERNEY: No, it's probably – yes, I've been moving away, yes. The position is that you say you felt some disquiet or discomfort about the advice in circumstances where you could be directly implicated, correct?---I was uncomfortable, yes.

But you didn't go and talk to anyone else, any other lawyer about it.---No. Ian was the best, so I trust Ian, trusted Ian.

30

And you can't offer any explanation as to what Mr Robertson would get out of giving this advice which you felt disquiet about?---No.

Pardon?---No. No.

In the evidence you've given, you don't ever say anywhere that when Mr Robertson gave this advice to you say, "Well, Ian, I've got some disquiet or some discomfort about this."---I think it would have been clear how upset I was and how concerned I was about the implications of this by my demeanour with Ian that night, which was, I was very upset.

40

In all your previous experiences of Mr Robertson, if advice had been sought from him and he identified that the NSW ALP had acted in contravention of a piece of legislation, he would tell you, correct?---I, I think so.

That was your experience of dealing with him before 16 September, correct?---I trusted everything he said, yes.

But he'd done that many times before, where he'd identified if there was a breach of legislation, he would tell you, correct?---Yes, yes.

And this situation was not any different from any others, was it?---This is pretty different. This is pretty significant.

So you're saying the more significant it is – in all the other circumstances if there's a contravention, he tells you and gives you advice about it, about the contravention, but in this situation he's chosen this different course.---I, I don't know his motivation. I just, I'm telling you what happened.

10 Now, didn't you say to Mr Robertson, "Mr Robertson, all my previous dealings with you as a lawyer, when I come to you with a problem and there's a breach of legislation, you tell us." Correct?---No. I didn't say that. I was very upset and - - -

But - - -?---You just asked me - - -

(not transcribable) didn't you, at this meeting, on your evidence, that there'd been a breach of the legislation.---Well, that's what I'd just been told, and I was completely - - -

20 Sorry, just been told by whom?---By Ernest that there was a breach of the legislation and that a developer had given the money, and that is why I was quite upset, and I didn't know what to do.

But so in all the other occasions where there's a breach of legislation, Mr Robertson says, "Well, there's a breach of legislation. Here's the advice." Here you know there's a breach of legislation, you go and see Mr Robertson and he says, in effect, "Cover it up." Is that your evidence?---Yes, that's my evidence.

30 And can you offer any explanation at all why an experienced person like Mr Robertson would do that?---No.

And I understand that by him doing that he would be jeopardising his whole professional career.---I understand, and I, I don't know what else to tell you other than this is exactly what happened.

A national managing partner of his firm?---Yes.

40 A person who'd been in the law for 30-plus years as a solicitor?---Yes.

Very well regarded, highly revered?---Well regarded by me, yes.

You just thought he'd pull the pin on the grenade, hold it to his, clutch it to his chest and blow himself up, is that what you're saying?---No. I can't, I can't - - -

There's no plausible explanation for the way Mr Robertson would give advice to you to the effect you've suggested, is there?---But that's what happened, so it's not for me to tell you why.

THE COMMISSIONER: Mr McInerney, I see the time. How much longer do you think you might be?

10 MR McINERNEY: Well, Chief Commissioner, there's a few, there are a number of issues which you identified at the outset relating to the bundle of documents. I think I need to review that and there's a second issue which Counsel Assisting raised with me before the break.

THE COMMISSIONER: All right. Well, then, we can't finish then with this witness today from what you're saying.

MR McINERNEY: Correct.

20 THE COMMISSIONER: Well, I think, unless there's something else you want to put before we adjourn this afternoon, I propose to adjourn until tomorrow at 10 o'clock.

MR ROBERTSON: Just subject to one matter. If my learned friend is in a position to give any indication as to timing, it would just assist me in attempting to deal with the program accordingly as well as anyone else who intends to seek leave to cross-examine.

MR McINERNEY: I might have a discussion with Mr Robertson about that after we adjourn and I will - - -

30 THE COMMISSIONER: Yes, very well.

MR McINERNEY: - - - meet his convenience.

MR ROBERTSON: And I've spoken to my learned friend, Mr Moses. I'm not sure if there's any other applications for leave to cross-examine. It would be of some assistance to have a rough indication of timing.

THE COMMISSIONER: Yes.

40 MR ROBERTSON: I'm happy to do that either in open session or my friends can speak to me after we adjourn.

THE COMMISSIONER: Mr Moses, do you have any idea as to, firstly - - -

MR MOSES: At this stage between 30 minutes to 45 minutes maximum, I (not transcribable), Chief Commissioner. See how we go.

THE COMMISSIONER: Have you identified what matters that you, the areas you want to go into yet?

MR MOSES: I think it's pretty self-evident the issues that we'll be examining.

THE COMMISSIONER: Yes. Well, if you just confer with Counsel Assisting what you intend to do. Mr Lawrence.

10 MR LAWRENCE: Yes, it's likely that if we cross-examine, Chief Commissioner, that it wouldn't be more than 20 minutes. I have had some discussions with learned Counsel Assisting but we will transmit those matters via email this evening.

THE COMMISSIONER: Look, I'll deal with your application in the morning and we'll see how we go from there.

MR LAWRENCE: Certainly. Thank you.

20 THE COMMISSIONER: Thank you. Ms Murnain, you may step down, if you'd return tomorrow for a 10 o'clock start.

THE WITNESS STOOD DOWN [4.07pm]

THE COMMISSIONER: Yes, I'll adjourn.

30 **AT 4.07PM THE MATTER WAS ADJOURNED ACCORDINGLY [4.07pm]**