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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE PETER M. HALL QC  
CHIEF COMMISSIONER

PUBLIC HEARING

OPERATION AERO

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON FRIDAY 6 SEPTEMBER, 2019

AT 10.00AM

Any person who publishes any part of this transcript in any way and to any person contrary to a Commission direction against publication commits an offence against section 112(2) of the Independent Commission Against Corruption Act 1988.

This transcript has been prepared in accordance with conventions used in the Supreme Court.

THE COMMISSIONER: Mr Robertson, before we recommence taking evidence, I make the following statement. Articles have been published today in the print media, in particular the Australian Financial Review and The Australian newspaper, and I understand in other media publications including online publications, in which a number of statements are attributed to Mr Huang Xiangmo in the nature of factual assertions by him concerning matters that are the subject of this public inquiry. I understand that such factual assertions were based upon and contained in a statement by Mr Huang Xiangmo. If it is his wish that any such statement form part of the evidentiary materials before the Commission in this public inquiry, there would need to be compliance by him with the Commission's processes that apply to any witness, which include a preparedness by Mr Huang Xiangmo to submit to any questioning by Counsel Assisting upon the matters raised by him in his published statement as part of the hearing processes of this Commission. Mr Unsworth, that statement is entirely a matter for you to seek instructions as and when, if at all, you wish, of course.

MR UNSWORTH: Thank you, Chief Commissioner. Thank you.

THE COMMISSIONER: Thank you. Yes.

MR ROBERTSON: There were some housekeeping matters first. Today we'll continue with Ms Murnain's evidence. I previously announced that the Commission intended to adjourn at lunch and have a short day today. In the event that Ms Murnain's evidence is not complete but it looks like it could be completed within a relatively short period of time, my suggestion will be that either the Commission sits into lunch or alternatively adjourns for the usual lunch hour and comes back at 2.00pm to finish at about 3.00pm, as I understand there's some practical issues that prevent the Commission from sitting beyond about 3.00pm this afternoon. But arrangements have been made to at least be in a position to sit until then.

Next, the tentative program of witnesses has been made available, as I understand it, on the public website. That will commence with Mr Robertson on Monday. It's conceivable that some changes will need to be made to that program to meet availability and other issues. At the moment I do continue to apprehend calling Mr Robertson to give evidence on Monday morning. Next, can I make a note in relation to paragraphs 24 and 25 of the standard directions that you, Chief Commissioner, confirmed applied to this inquiry. As those behind me will know, they require any documents proposed to be put to a witness in cross-examination to be provided to me as soon as possible, and in any event in advance of it being used in cross-examination. Can I make a general request of those behind me that that material be provided in an electronic form to the Commission staff and that the document be provided both in an unredacted form and in a form that's redacted in accordance with the general directions under section 112 that you made, Chief Commissioner, on the first day of the inquiry. That will ensure that the inquiry can proceed promptly and that documents can be

shown on the screen if need be. Can I then deal with some formal tenders. On page 640 of the transcript, line 1, in my examination of Mr Kenny Zhan, Z-h-a-n, Mr Zhan referred to a company called Tongda, T-o-n-g-d-a, International Tobacco Pty Ltd. I tender an Australian Securities and Investments Commission historical and current company extract in relation to that entity.

10 THE COMMISSIONER: Yes. Very well. Where are we up to? Yes, the document so described concerning Tongda Tobacco will be admitted and become Exhibit 207.

**#EXH-207 – ASIC CURRENT AND HISTORICAL EXTRACT  
TONGDA INTERNATIONAL TOBACCO PTY. LIMITED**

20 MR ROBERTSON: Next, and I neglected to do this yesterday, I tender a copy of the compulsory examination transcript of Ms Murnain of 29 July, 2019, in a form that's redacted in accordance with the directions that have been made by the Chief Commissioner. That's 29 July, 2019.

THE COMMISSIONER: Yes. The transcript of the compulsory examination of Ms Murnain, conducted on 29 July, 2017 [sic], as redacted will be admitted. It will become Exhibit 208.

**#EXH-208 – COMPULSORY EXAMINATION OF KAILA  
MURNAIN DATED 29 JULY 2019**

30 MR ROBERTSON: And I tender the compulsory examination transcript of Ms Murnain of 20 August, 2019, again in a form redacted in accordance with the directions made by the Chief Commissioner.

THE COMMISSIONER: Transcript of the compulsory examination of Ms Murnain on 20 August, 2019, becomes Exhibit 209.

40 **#EXH-209 – COMPULSORY EXAMINATION OF KAILA  
MURNAIN 20 AUGUST 2019**

MR ROBERTSON: Finally can I have on the screen please Exhibit 204. I just want to draw to attention a matter arising from that document. Nothing turns on it, but for abundant caution and accuracy I'll draw this matter to attention. Would you go please to the final page of that document. This is the communications document that I tendered yesterday, Exhibit 204, and I draw the parties and other interested observers' attention to line 47, which

records a call between Ms Murnain and Mr Hollywood. That accurately describes a call between those two individuals. Can I note that in the redacted column marked Phone Service B, the last two digits are identified as being 5-2. Those are not in fact the last two digits of Mr Hollywood's telephone, but the telephone call was in fact between Ms Murnain and Mr Hollywood. So there's no error of substance but there is an error in the sense that the last two digits of Mr Hollywood's telephone number are not 5-2.

10 THE COMMISSIONER: Thank you.

MR ROBERTSON: Those are the housekeeping matters from my perspective.

THE COMMISSIONER: Yes, thank you. Is Ms Murnain there? Thank you. Would you mind coming forward. Do the affirmation again. Yes, if you wouldn't mind just standing there for a moment.

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

MR McINERNEY: Thank you, Chief Commissioner. Ms Murnain, since you left the witness box yesterday afternoon have you spoken to anyone about your evidence?---Only my lawyers and my husband.

10 You're saying you spoke to your lawyers about your evidence that you gave yesterday?---No, they told me to go home and not pay attention to the news and not read things.

All right. And did you read things last night?---Only notifications on Twitter but I haven't read the news today, no.

Did you do any research, Google or otherwise, to reflect back on the events during the week of 12 to 16 September, 2016?---I started to while I was here yesterday and then stopped because I thought it best to stop and not - - -  
20

And where did you get to yesterday in your research?---I didn't get very far and left it alone and decided it's better to rewind my memories.

And when were you doing that research?---I don't remember, yesterday sometime. But while I was here at the Commission I do remember that.

And what did you discover on your research?---Text messages.

Text messages from your phone?---Yes.  
30

And text messages with whom?

MR NEIL: Scott, this is what you asked for.

MR ROBERTSON: I may just need to intervene very quickly to confirm something I said on the transcript yesterday, just in fairness really to Mr McInerney. I'm not suggesting that this is not an appropriate line of questioning, but I should I think in fairness to the witness indicate, as I indicated on the transcript I think yesterday, that during the course of an adjournment I made a request of my learned friend, Mr Neil, to ask certain specific questions of his witness and that was done on my request. I'm  
40 happy to tell my learned friend, Mr McInerney, outside of public, outside the public inquiry session as to the nature of those. I don't propose to say that on the transcript. If he wants to know those answers I'm quite happy to request that the Commission adjourns for a few minutes to indicate that.

THE COMMISSIONER: Just in general terms do I understand those communications you've referred to are directed to ascertaining whether any particular matter could be relevant or not to the inquiry or if you're not - - -

MR ROBERTSON: I'd prefer not to – but the answer to your question is yes in general terms, but that's not a complete answer to your question and I'd prefer not to answer it in full in an open session.

THE COMMISSIONER: Yes, thank you.

10

MR McINERNEY: Chief Commissioner, from what Counsel Assisting has said, I can infer and I can move on.

THE COMMISSIONER: I understand there's been some discussion between you and Mr Robertson and I'm just trying to ascertain whether - - -

MR McINERNEY: I will perhaps double-check – I don't mean to cut across you, Chief Commissioner. I'll double-check with him perhaps at a later point.

20

THE COMMISSIONER: Perhaps you can quarantine that for the moment and come back to it.

MR ROBERTSON: Perhaps with your leave, Chief Commissioner, I might have a whisper into Mr McInerney's ear right now. I don't apprehend it will take longer than about 30 seconds.

THE COMMISSIONER: Yes, very well.

30

MR ROBERTSON: And then he can take his course as to whether he wishes to pursue this line.

THE COMMISSIONER: Yes, perhaps if you do that, that would - - -

MR ROBERTSON: If you just pardon me for a moment.

THE COMMISSIONER: Yes, all right.

MR ROBERTSON: I'm grateful for that indulgence, Chief Commissioner.

40

MR NEIL: Yes. Just - - -

THE COMMISSIONER: Yes, Mr McInerney - - -

MR NEIL: I'm sorry, Chief Commissioner. Could I take the opportunity just to raise one matter? Yesterday when you continued the declaration under section 38, you did so in terms that can, that might be construed as confining it to the evidence that Ms Murnain gave on that day.

THE COMMISSIONER: Yes, sorry.

MR NEIL: Would you, Chief Commissioner, be good enough to formally continue the declaration for today?

10 THE COMMISSIONER: Yes, certainly. Yes, thank you. As I recall that on the first day of Ms Murnain's evidence in this public inquiry, I made a declaration under section 38 of the Independent Commission Against Corruption Act. I indicated yesterday that that declaration continued to apply to her evidence yesterday. I confirm that that declaration also continues to apply to the evidence that she gives today.

MR McINERNEY: Ms Murnain, other than the matter which has just been the subject of some discussion raised by Counsel Assisting about the speaking with Mr Neil yesterday and requesting certain information from you - - -?---Mmm.

20 - - - so other than the research you did looking for text messages directed to that issue, you haven't done any other research - - -?---Mmm. No.

- - - from yesterday to today, correct?---No, that's right.

And so should we understand the position that in respect of 16 September, 2016, other than the meetings with Mr Wong, with Mr Dastyari, and Mr Robertson - - -?---Yep.

30 - - - the rest of the day is still a blank page, correct?---Yeah, I don't recall the circumstances of that particular day. Yes.

Now, I just want to move onto a slightly different topic, and understand something about the structure of the decision-making within the ALP.  
---Yep.

You were the Assistant General Secretary, then the General Secretary of NSW ALP, but once you had the position of General Secretary NSW ALP, what's the split in terms of the functions that you had between federal and state?---I do both.

40 And so once you achieved the position of General Secretary ALP NSW, does that confer on you some position in terms of the federal decision-making?---Not automatically, but I am on the National Executive of the Labor Party.

And was that, are you still a member at the moment, or has the suspension, in effect, put an end to that?---It's unclear, but I, I believe I am suspended, and, and that's certainly the way I've been treating it.

Now, the National Executive, what is that, oh, is there somebody from the Left and Right within each state and territory, or how does that work?---It's, it, it's elected at the national conference.

And what are the elected positions for the National Executive?---20 positions for the National Executive, and they're elected at the national conference.

10 And what's the, what title do they hold?---Members of the National Executive.

What's the national convenor of the NSW Right? Is that fit in - - -?  
---That's not a position.

Right.---The - - -

Is that just a, in effect, within the political apparatus for the NSW Right, that's their – they're the person who convenes the politics on behalf of the Right faction for the executive, or what, where does that fit in?---So I'm  
20 happy to go into a full explanation of factions in the Labor Party for you - - -

No, I'm just interested in this national convenor position.---Okay. So, it's a, a position that organises people while they're on the National Executive. There is a Left national convenor, and a Right national convenor, and essentially, their job is to manage the matters through the National Executive so that you get to a resolution on different points of conflict through the processes of the National Executive. The National Executive tends to operate by consensus and not through votes, as opposed to our State Executive which does operate through a majority vote. But the National  
30 Executive, because of its nature and consensus operations, where it likes to work by consensus, the convenors help manage those processes.

Now, so you were the national, or you are the national convenor for New South Wales up until your suspension?---Yes. Up until my suspension.

And for how long before that?---Well, you're the convenor when you're the general secretary.

40 So that's automatic, is it?---The national or the state?

The national convenor.---The national convenor isn't. I don't remember when I took that over but it was sometime after Stephen Conroy resigned from parliament.

So Stephen Conroy was the previous national convenor, is that right?---Yes.

Is it a feather in your cap, to become the national convenor?---I wouldn't describe it as that.

But it's another step in terms of the career of someone who's working within the political apparatus, like yourself, is that correct?---It's a lot of work and it's really for someone who understands how the National Executive works, so it's, it's just a lot of work in managing people.

Now, so when Stephen Conroy was the national convenor, did you hold some convenor's position? So were you his assistant or secretary or was there - - -?---No.

10

But you can't tell us when you became national convenor?---Well, when, sometime after he resigned, in the months after he resigned, or days.

But in terms of your career, that would have been an important matter, wouldn't it?---I didn't really talk about it but it sort of happened because Stephen suddenly left politics. It wasn't something I was seeking out, that's for sure.

Do you recall that Mr Conroy tabled his resignation in the Senate on the evening of 15 September, 2016?---Vaguely remember that, yeah.

20

Well, you didn't remember it a moment ago, did you?---No.

And do you remember that in the events of the morning of 16 September, there was a flurry of media activity because it was a shock resignation, correct?---Probably, yes. There's lots of resignations but - - -

Well, there were media interviews given by Mr Albanese, correct?---I don't remember but sure, there must have been.

30

Ms Plibersek, correct?---Possibly.

And on 16 September, 2016, that's when you were elevated to the position of national convenor of the NSW Right, weren't you?---I don't think so. Is that right it was on the 16<sup>th</sup>? I don't, I actually don't know when it was. It may have been earlier, it may have been later.

If Ms Murnain could be taken to an SMS message, 120. Can you have a look at the screen, please. Can you read those messages, they are small.

40

THE COMMISSIONER: It's very difficult.

THE WITNESS: Sure.

MR McINERNEY: So I'll try and assist because I know the print's very small and we're all straining our eyes with it. But message 120, so 16 September, '16, 10.37 in the morning from Michael Lee to you. "Hi Kaila.

Media are reporting Conroy tabled a resignation speech last night.” Do you see that?---Yep.

And then your message in response, a minute or so later, “He did,” correct? ---Sure, sure, yes. I can see that.

And if the witness, Ms Murnain, could then be shown SMS 344.---Yep.

You see SMS message 344?---Yeah.

10

So that’s from you to Mr Joel Fitzgibbon?---Yes.

3.53 in the afternoon?---Yep.

“PS, I’m national Right convenor.”---Sure.

Well, it happened that day, didn’t it?---Well, I don’t, I don’t remember if it happened that day, it may have happened earlier than that, it may have happened much earlier than that.

20

Well, it couldn’t have happened any earlier than Mr Conroy tabling his resignation in the Senate the evening before, could it?---I think you can talk to Mr Conroy about this, but he was keen - - -

No, I’m asking you, Ms Murnain.---Well, no, yes, it could have happened before that because Mr Conroy was keen, I vaguely remember, to get out of the national Right convenor’s spot, it’s a lot of work, administrative work in managing the National Executive.

30 Before Mr Conroy resigned, tabled his resignation on 15 September, 2016, you had no idea he was resigning, did you?---No.

No one in the ALP did, did they?---No.

And so the true position is you became national Right convenor on 16 September. Correct?---I don’t actually – it may have been the day before or the days before when we had our national Right meetings, you don’t just become the national Right convenor.

40 If I could move to, for the benefit of the operator, a different bundle. It’s the contemporaneous documents, September 2016. Counsel Assisting might be able to provide some assistance. And if I could go to page 157 in that bundle, please. Page 157, I think it’s a telephone record. Sorry, Mr Operator, before you move on, thank you. If you have a look at page 157 of this bundle, it’s a record of outgoing telephone calls made by Mr Robertson. Just assume that from me for the moment. If you look down, highlighted in yellow you’ll see, “16 September, 16.49 Martin Place.”---Yep.

And there's a reference to Sarah Butler. Do you see that?---Above my name, yeah.

And then at 16.49 there's a reference to you. Do you see that?---Yep.

And this refreshes your memory, doesn't it, that at about 16.49 you were joined to a telephone call between Mr Robertson and Ms Butler. Do you agree?---I don't remember that, but it's likely it happened because it happened all the time.

10

But as you sit there you don't remember what it was about?---No, but I'm sure that again we spoke frequently.

And, Mr Operator, if the witness could then be taken to page 11 within the same bundle. Just have a look at page 11 of this bundle once it comes up on the screen.---Yep.

Just have a look at that for a moment. See it's an email you sent to Mr Robertson at 4.48pm?---Ah hmm.

20

So it's just before you were joined to the telephone conversation with Mr Robertson and Ms Butler, do you see that?---It looks like something I've sent, yes.

Yes. Does that assist your recollection at all?---No.

You can't recall anything about why you're sending that email to them in the afternoon?---No but I'm sure there is an explanation and I'm happy to answer any questions about it.

30

Well, why don't you give the explanation.---Well, I, I don't remember but I, I can hazard a guess if you wish, that it was relating to the Lalich matter because that was what was in my text message and, but I just don't remember it because this is all run-of-the-mill stuff. Like, this is normal, normal problems that MPs get into at - - -

Well, what text message are you referring to?---There was a text message to Luke Foley where I said I was on the phone to the lawyers and - - -

40 When have you last seen that text message?---That was, I don't know, was it yesterday?

Well, you tell me.---I don't, I don't know.

Is it something that you found or discovered as part of your research?  
---Well, not, I'm not researching anything, I was asked to find, to have a look at it and so I did.

When were you asked to have a look at it?---In the last day, I think, so - - -

You're saying by Counsel Assisting?---Well, I, I just don't remember why I was looking at it. I mean it's all a lot of information from five years ago that you're asking me to remember here. I don't remember sending this email but I am very happy to answer questions that relate to it.

10 In your evidence, I ask you to draw on your recollection about this day, you tend to have an approach where you say, "Well, I don't remember but I'm happy to answer questions about it," in effect, "if you prompt me."---Well, you keep giving me information that I have only just seen and I'm very happy to answer questions that relate to any of the information you put to me.

But as you sit there, you can't remember anything about asking for advice concerning Mr Lalich on the evening of Friday, 16 September, 2016?---No, sorry.

20 And other than the text message which you're referred to, which you've seen in the last day or two, I think, you have no recollection of any other text messages concerning obtaining advice about Mr Lalich, is that right? ---That's right. But there, I mean there could be. He was, there were lots of issues back then with Mr Lalich. There were lots of issues with many MPs.

MR ROBERTSON: Just so the transcript makes sense, I might tender, subject to my learned friend's convenience, I might tender the document on the screen now.

30 MR McINERNEY: Certainly.

MR ROBERTSON: So first I tender the document that my learned friend, Mr McInerney went to briefly before this document, which was a document that appears to be a call itemisation document with certain handwritten annotations, being pages 156 and 157 of the cross-examination bundle prepared on behalf of Mr Ian Robertson.

THE COMMISSIONER: Is was 156 and 157 of?

40 MR ROBERTSON: Of the, what I will call the cross-examination bundle, prepared on behalf of Mr Ian Robertson.

THE COMMISSIONER: Yes. The call itemisation document, 156 to 157 of the cross-examination bundle provided on behalf of Mr Robertson will become Exhibit 210.

**#EXH-210 – CALL ITEMISATION RECORD DATED SEPTEMBER 2016 AT PAGES 156 TO 157 OF THE ROBERTSON CROSS EXAMINATION BUNDLE**

MR ROBERTSON: And to be clear, the version that I tendered is the one that was redacted for telephone numbers and contained handwritten annotations on blue. And then next, I tender the document that is presently on the screen, being an email from Ms Murnain to Mr Robertson of 4.48pm, 16 September, 2016, being page 11 of Mr Ian Robertson’s cross-examination bundle.

MR McINERNEY: I might just raise for Counsel Assisting - - -

THE COMMISSIONER: The copy of the email of Ms Murnain to Mr Robertson, 16 September, 2016, 4.48pm will be admitted and become Exhibit 210. Yes, Mr McInerney?

MR McINERNEY: Yes, certainly, Chief - - -

MR ROBERTSON: Perhaps that should have been 211. I think that exhibit number may have had to have been 211.

THE COMMISSIONER: 211, is it. Yes, I’m sorry, quite right. The email 16 September, 2016, 4.48pm from Ms Murnain to Mr Robertson will become Exhibit 211.

**#EXH-211 – EMAIL FROM KAILA MURNAIN TO IAN ROBERTSON DATED 16 SEPTEMBER 2016 AT PAGE 11 OF THE ROBERTSON CROSS EXAMINATION BUNDLE**

MR ROBERTSON: Would you just pardon me for a moment, Chief Commissioner?

THE COMMISSIONER: Yes.

MR McINERNEY: If the witness could then be shown in the SMS messages, SMS message 364. Ms Murnain, if you can look at the screen, you should have SMS messages 364, and then 365.---Yep.

364 is at 4.56pm, on 16 September, from you to Mr Foley, “Can I call you later?” Do you see that?---Yep.

And then only 10 seconds later, from you to Mr Foley, “On phone to lawyers re Lulich,” do you see that?---Yes.

And then there's a response, there's a further SMS 365, 4.56.28pm. 366, I apologise, for the operator. You see 366?---Yep.

From you to Pat Garcia, Rose Jackson, and Luke Foley?---Yep.

So the comment is, "Great," is that related to this telephone conversation you were having at the time with Mr Robertson and Ms Butler, or something totally unrelated, you don't know?---It looks to be related, but I just can't remember. I mean, it, it looks all related.

10

And if you then go to SMS 367, from you to Luke Foley, Pat Garcia, and Rose Jackson, "I'll SMS her details," do you know what that's a reference to?---I assume the dial-ins, but I, I don't know who I'm referring to.

And is that related to the telephone conversation you were having with Mr Robertson and Ms Butler, or you can't remember?---It must be, but I can't remember, I'm sorry.

20

As a matter of timing, it appears that it's, you're making, sending these SMS messages whilst you're on the phone, as part of this telephone conversation with Mr Robertson and Ms Butler.---Possibly. Possibly. I have to multitask in my job.

Could Ms Murnain then go, be shown SMS message 381, please, Mr Operator? So do you have the SMS 381, from you to Mr David Dobson, do you see that?---Yep.

"On phone to Luke"?---Yep.

30

That's a reference, is it, to Luke Foley?---There weren't many other Lukes. I can only presume so.

And do you recall whether that was a conversation with respect to the legal advice you were seeking concerning Mr Lalich?---I don't, but all the text messages certainly point in that direction, which I'm happy to say I agree with. But I, I just want to be very clear, this is, Mr Lalich's issue is a number of, dozens of issues that I would pepper Mr Robertson with. So I just, I don't remember the details of it.

40

That last part really wasn't an answer to my question, was it, Ms Murnain? ---Oh, if you could ask it again, I'm very happy to answer your question.

No, do you agree, you heard the question.---No, if you could answer, ask the question again, if you could, that would be great.

You're not prepared to accept that the last part of what you just said was totally non-responsive.

MR NEIL: I object.

THE WITNESS: If you could please answer [sic] the question again.

MR NEIL: The witness has asked to have the question put again and in fairness that ought to be done, if this line is to be pursued.

THE COMMISSIONER: You continue, Mr McInerney.

10 MR McINERNEY: Yes. Could the witness then be shown SMS 385, please.

THE WITNESS: Did you want to ask the question again?

THE COMMISSIONER: No, just a moment, just wait. 385.

MR McINERNEY: If we go to SMS 385, 5.16 from you to Chris Willis. Do you see that?---Yes.

20 "Good news."---Yes.

Any recollection what that's about?---No, but I - - -

Chris Willis was the chief of staff for Mr Foley?---Yes, that's right.

And then SMS 386 just below that.---Yes.

16 September, '16, 5.16.57, so what, two seconds later, from yourself to Mr Willis.---Sure.

30 "CAL."---Yes.

Does that jog your memory about anything?---No.

Is it an acronym for something?---No. I don't know. I mean I assume I haven't spent call properly.

You think it might have been autocorrect or something?---Or just sent very quickly.

40 And if Ms Murnain could then be taken to SMS 397. So this is a text at September 16, 5.33.---Yep.

From yourself to Mr Chris Willis and Mr Luke Foley.---Yep.

"A foundation paid for it."---Sure.

What's that a reference to?---Well, I don't remember, but I assume it's a reference to the Lalich matter sent to Mr Robertson.

So as you sit there you can't remember what it's about?---No, but I assume it's in relation to the Lalich matter.

And there's an attachment to this text. As you look at the screen, without going to the attachment, do you recall what the attachment was about?  
---No, sorry.

10

Well, if Ms Murnain could be shown the attachment, please, Mr Operator. Could you have a look at this document, please, Ms Murnain.---That is an MP disclosure.

So are you able to relate by reference to that disclosure, which was the attachment to the SMS, the statement made, "A foundation paid for it?"  
---I, I can relate those things, yes.

20

Well, from the document, is there a reference on the document to a foundation paid for it or - - -?---I, I don't know if it directly does, but I assume - - -

Well, as you look at the document it doesn't make any reference to a foundation, does it?---Well, I don't know what ABC Hearing Express is, so perhaps that's a foundation, I mean I'm sure you can do a Google.

All right. But as you sit there you don't know one way or the other?  
---I assume if I've said it in a text message and put an attachment that they're related.

30

Well, there's two possibilities at least, aren't there, if I just take you to them. One is ABC Hearing Express is a foundation, that's one possibility, you'd agree as you sit there?---Yeah, I agree with that.

And the other possibility is that ABC Hearing Express is not a foundation, but you found out independently that a foundation paid for the relevant trip.  
---Or that someone disclosed it to me. I don't know. So I mean I don't remember, it's a long time ago, but possibly.

40

But as you sit there you don't know which of those two possibilities it is or something else?---Yeah.

Correct?---That's correct, yeah.

And if Ms Murnain could then be taken to SMS 413. 413. Have a look at SMS 413 and then 414, please, Ms Murnain, which are on the screen.---Yes.

16 September, '16. And we're now at 6.09pm.---Yes.

An SMS from you to Mr Willis.---Ah hmm.

“Can I call you later?”---Yep.

You don’t recall what that text is, why you needed to call him later?---No. It’s an automated thing that I send when I’m on the phone normally.

10 But at this time, so far as you have any recollection about these text messages, you - - -?---No, don’t remember.

You don’t know whether it’s related to Lalich or not?---This is all pretty straightforward but, no, I don’t, sorry.

And SMS 414?---Ah hmm.

6.10pm at 16 September, ’16, from Chris Willis to you.---Yep.

20 You see it says, “Yep, Jenny’s done a company search. We’ll give you the results.”---Sure, yep.

Is that related to Lalich or you just don’t know?---I just don’t know, but I presume it is but I don’t remember. This is run-of-the-mill stuff.

These text messages look like Mr Foley’s office had become involved with his chief of staff, Mr Willis, to seek urgent advice through you from Ian Robertson concerning Mr Lalich, correct?---That would appear so, yes.

30 And during the course of the afternoon and early evening, further information is being brought forward concerning the inquiries being made about Mr Lalich, correct?---That appears so, yes.

Now, I want to ask you something about your evidence from yesterday. ---Yep.

If the witness could be shown, please, transcript of 7-5-6, 756, please, Mr Operator. So it’s the transcript from yesterday, page 756, about halfway down the page.

40 MR ROBERTSON: Just for the benefit of my learned friend, I’m not in a position to put that up on the screen immediately.

MR McINERNEY: Well, if I may - - -

MR ROBERTSON: I’m happy to provide a hard copy if my learned friend wishes to proceed in that fashion.

MR McINERNEY: Well, perhaps I can read the question and answer to the witness, and Ms Murnain can indicate whether she understands the evidence she gave yesterday. Ms Murnain, the question and answer, page 756 of the transcript.---Yep.

It's at about line 25 or thereabouts. "But you now know that the meeting happened after the meeting with Mr Robertson?" And that's a reference to the meeting with Mr Dastyari.---Ah hmm.

10 And you said, "I think you've asked me this question six times, so I'll 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. It does not change that he told me to go see Ian, which is what I did." Now, having that in your mind.---Yes.

First point is that you said it's absolutely possible that meeting, meaning the meeting with Mr Dastyari, happened after the meeting with Mr Robertson. ---The person-to-person, yeah. I said it's absolutely possible.

20 Yes, but I just want to be clear about this.---Yep.

You know that there was a meeting with Mr Dastyari after the meeting with Mr Robertson, correct?---I can't change what I remember - - -

No, please, please.--- - - - which is the conversation I had with Sam Dastyari where he said to go and see Ian Robertson.

Please - - -?---And I accept that it's absolutely possible, in answer to your question.

30 One step at a time.---Of course.

You said it's absolutely possible that there was a meeting after, with Mr Dastyari, after the meeting with Mr Robertson?---Yes.

Not that it happened, that it's possible.---Yes.

You see the difference?---Yes, I see the difference.

40 All right. But I'm just asking, you know, sitting there, that there was in truth, in fact, a meeting with Mr Dastyari after you met with Mr Robertson, correct?---I'm happy to acknowledge that it's possible.

Why can't you accept that it happened? Why is there only a possibility? ---Because I have a memory of having a discussion with Sam and, and that is absolutely what happened prior to meeting with Mr Robertson.

I understand you've got a recollection of having a discussion with Mr Dastyari. I just want to focus on the meeting, not the discussion, okay? I just want to focus on whether there was a meeting. So was there a meeting with Mr Dastyari which occurred after the meeting with Mr Robertson? As a fact, did that happen?---It is absolutely possible that that happened.

Are you clutching onto this possibility rather than accepting that it in fact happened - - -?---No.

10 - - - because if you accept that the meeting happened afterwards, your story's implausible about the conversation with Mr Robertson?---No. I still maintain I spoke to Mr Dastyari prior to meeting with Mr Robertson. I've acknowledged that it's possible that that was over the phone and that the meeting took place afterwards, and that's absolutely possible, but, but, and I am happy to answer any other questions.

20 I'm not asking you about whether there may also have been a telephone conversation. I just want you to focus on a meeting.---And I have acknowledged that it's absolutely possible that I met with Mr Dastyari after I met with Mr Robertson. It's five years ago.

I'll try it another way, because I don't think you're being responsive. All right. I'll try it another way.

MR NEIL: Ah - - -

MR McINERNEY: Mr Dastyari – no please, let me ask the question.

30 MR NEIL: But it's the comment, the comment is unfair.

THE COMMISSIONER: Yes. Mr McInerney, with respect - - -

MR McINERNEY: Chief Commissioner, if I've - - -

THE COMMISSIONER: I think - - -

MR McINERNEY: - - - overstepped - - -

40 THE COMMISSIONER: I don't think it's your function to comment on that last answer but let's move on.

MR McINERNEY: Certainly, Chief Commissioner. Ms Murnain, I think we're coming to it now, if there wasn't a meeting, you say in any event you had a telephone conversation with Mr Dastyari, correct?---Yes, that's possible, yes.

You can't remember whether you did or you didn't but you say it's possible?---I spoke to Sam prior to meeting with Ian Robertson, yes.

And your recollection is that you spoke with Sam Dastyari and he said, "Go see the lawyers"?---Go see Ian Robertson, yes.

That's the best recollection you've got?---Yes.

And you're quite clear about that?---Yes.

10 So even if the meeting didn't happen, there was a telephone conversation where the same thing was said?---Yes.

Now, if Ms Murnain could be taken to Exhibit 204. So just before, I'll just ask you some general questions first, Ms Murnain. The position is, on your evidence, you say that there was a telephone conversation with Mr Dastyari, he said, "Go see Ian Robertson," correct? That's the sequence of events?---I may, I may have had that conversation, I just remember a conversation with Sam where he said, "Go see Ian Robertson."

20 And so the sequence of events, on your version, is that you had that conversation with Mr Dastyari, go see Ian Robertson and then you had to speak with Mr Robertson to arrange the meeting, correct?---I spoke with Ian Robertson at some point to arrange the meeting, I don't know when.

Well, on your – this is your evidence.---Yes.

You accept it had to happen after the conversation you say you had with Mr Dastyari?---I've given the evidence that I have given and I absolutely took advice to go see Ian Robertson and I went to see Ian Robertson.

30 But you wouldn't have spoken with Ian Robertson before that conversation you've said with Mr Dastyari, would you?---I don't know. I don't know. I'm happy to go through this with you, if we can go to the next page.

No, please. Yes but I'm just asking you about what your recollection is.

My recollection was that I spoke to Sam Dastyari and that I went to see Ian Robertson.

40 And in between you say you had to speak with Mr Robertson to arrange the meeting, don't you?---At some point I spoke to Ian Robertson to arrange the meeting, yes. I was quite upset and needed to talk to a lawyer.

So on your version of events, there had to be a conversation with Mr Robertson after you spoke on the telephone with Mr Dastyari, correct?---I actually, I, I don't remember but I definitely spoke to Sam Dastyari, definitely said go see Ian Robertson, and that was definitely prior to going and seeing Ian Robertson.

Well, when did you arrange to see Mr Robertson?---Some time before I saw Mr Robertson.

Well, in this sequence of events, before or after the conversation with Mr Dastyari?---I, I, I'm not entirely sure but I thought it was after I spoke to Mr Dastyari.

Well, if we could move to the next page in Exhibit 204.---Ah hmm.

10 Have a look at that page.---Yep.

And you know on the previous page it's got the text messages between you and Mr Wong, correct?---Yes, that's correct, yep.

And so the last text message on the previous page at 6.41pm, Ms Murnain to Wong, "Come out the back." Okay?---Ah hmm.

So then as we move down this page in Exhibit 204.---Yep. Yep.

20 You've spoken to Mr Robertson at 18.59pm for 35 seconds. Do you see that?---Sorry, what line?

Line 40.---Yep. Oh, line 40, sorry. It wasn't on that page. Yes, it's to me. Like, I've spoken to Ian Robertson, yes.

And then line 42.---Yep.

You've spoken to Ian Robertson.---Yep.

30 And then if you look down through lines 43, 44, 45, 46, 47, 48 - - -?---Yep.

- - - there's no telephone conversation with Mr Robertson. Do you see that?---Yep.

So you didn't speak with Mr Robertson after you spoke with Mr Dastyari at nine minutes past 7.00. Do you see?---I can only speak to what I remember, and that I remember speaking to Sam prior to meeting with Ian Robertson.

40 But this record demonstrates there was no conversation with Mr Robertson after you spoke with Mr Dastyari, correct?

MR NEIL: We object. The question is not fair. The record does not purport to be a complete account of all of the telephonic communications on that day. It doesn't include WhatsApp communications, for example. We know that.

THE COMMISSIONER: Well, Mr McInerney?

MR McINERNEY: I thought I said on the telephone.

THE COMMISSIONER: Sorry, I'm having trouble hearing you.

MR McINERNEY: I thought I said on the telephone, Chief Commissioner.

THE COMMISSIONER: All right. Well, put it again. Make sure.

10 MR McINERNEY: There was no telephone call to Mr Robertson after you spoke with Mr Dastyari at nine minutes past 7.00 on 16 September, 2016. ---What would your definition of a telephone call be?

Using the telephone and speaking to someone. What's your definition?  
---That I spoke to Sam Dastyari prior to meeting with Ian Robertson to go and see Ian Robertson to get advice on this matter, and it was quite possible that it was – and probable, in fact, looking at all the records – that it was on the telephone.

20 And you can see from these records, which record the telephone calls, there was no telephone call to Mr Robertson after you spoke to Mr Dastyari. Do you agree with that or not?---According - - -

MR NEIL: We object. That question is not fair.

THE COMMISSIONER: Well - - -

30 MR NEIL: This record does not purport to show WhatsApp communications, including conversations in the telephone using WhatsApp. That fact has already been established. If the question is to be put, then the witness should be reminded of that circumstance as well as this document.

THE COMMISSIONER: Mr McInerney?

MR McINERNEY: Grateful to Mr Neil for his help and assistance.

THE COMMISSIONER: Could you just keep your voice up? I'm sorry, I'm having - - -

40 MR McINERNEY: It's all right, Chief Commissioner. I'm moving on. I think Mr Neil heard me. Ms Murnain, you never, ever communicated with Mr Robertson using WhatsApp, did you?---I don't know if Mr Robertson has WhatsApp. I don't know.

Well, as you sit there you can't recall ever doing it, do you?---Not that I remember.

No.---It doesn't mean I didn't.

Well, are you saying you did or you didn't?---That I don't remember if I did or I didn't. Lots of people use lots of different ways to communicate.

I'm asking how you communicated with Mr Robertson.---I would call him on the telephone and I'm not sure other, if there were other mechanisms in which I've contacted him on the phone, but I certainly emailed him as well.

Ms Murnain, the true position is, you understand the difficulty.---Ah hmm.

10 The meeting with Mr Dastyari was after the meeting with Mr Robertson, so it's entirely implausible that Mr Dastyari in the meeting would say, "Go see the lawyers," because you'd already seen the lawyers earlier that evening, do you agree?---No.

And the difficulty with falling back to the telephone conversation is that there's no telephone conversation that you had with Mr Robertson after you'd spoken with Mr Dastyari, so it's implausible that Mr Dastyari would say, "Go see the lawyers," and that you then called Mr Robertson. Don't you agree?---No, I don't agree with you.

20

MR ROBERTSON: Can I, I'm sorry to intervene my learned friend. Can I respectfully suggest that, for the assistance of the Commission, my learned friend needs to be very clear that, when he uses the term "telephone conversations", whether he means telephone conversations in the traditional form of using the telephone network to make it, as distinct from using a telephone and having an oral communication that may not use the telephone network in the traditional sense, but instead use some other application to do so, such as WhatsApp. It's at least not clear to me whether the last question was directed to the broader sense of the concept of telephone call, or the earlier sense, and in my submission it would assist the Commission in its fact finding for that to be made clear in the questions my learned friend's asking.

30

THE COMMISSIONER: All right. Would you deal with that, Mr McInerney?

MR McINERNEY: Yes, certainly, Chief Commissioner. Whether it's a traditional telephone call or whether it's WhatsApp, you didn't have any conversation with Mr Robertson after your telephone call with Mr Dastyari, did you?---Could you please ask the question again? Sorry, it's a negative.

40

Whether it's a traditional telephone call or using WhatsApp - - -?---Yep.

- - - you didn't have any, you didn't speak to Mr Robertson after you spoke to Mr Dastyari, did you, on the telephone?---You're sort of asking a double negative, so I'll, I spoke to Sam Dastyari prior to meeting with Ian Robertson.

THE COMMISSIONER: No, but just listen to the question again.---Okay.

MR McINERNEY: You didn't have any conversation with Mr Robertson -  
--?---Didn't - - -

10 - - - whether by traditional telephone call or WhatsApp, or otherwise, after  
you spoke on the telephone with Mr Dastyari at about nine minutes past  
7.00, on 16 September, 2016, did you?---So I, sorry, can, can you just ask  
the question again very clearly? Because you, didn't and did you, a, a lot,  
so please, can you just slow down a little bit?

THE COMMISSIONER: Look, Ms Murnain - - -?---I'm sorry.

The question is dealing with - - -?---Yeah.

- - - whether you had communicated by some form on the telephone with  
Mr Robertson.---Yep.

20 Following the discussion you say you had with Mr Dastyari. That's the  
subject matter. But just listen to the question. I'll have it put again.---Yeah.

MR McINERNEY: You didn't have any conversation with Mr Robertson  
after you spoke with Mr Dastyari at about nine minutes past 7.00 on 16  
September, 2016, did you?---I didn't have conversations, like, did have a  
conversation with Ian Robertson when I met him at 7.18.

Before you sent the text at 7.18 - - -?---Yeah.

30 - - - between nine minutes past 7.00 and 7.18 - - -?---Yep.

- - - you didn't have any conversation with Mr Robertson, did you?---I don't  
believe so. It doesn't look like it in the records. But it's a very long time  
ago, so - - -

40 So doesn't it follow that the meeting with Mr Robertson had to have been  
arranged sometime before the telephone call you had with Mr Dastyari?---I  
maintain that I spoke to Mr Dastyari, and asked him for advice, and he said,  
"Go see the lawyers," and I went to see the lawyers. I can't speak to these  
records, because I don't remember every single phone call, I'm sorry.

Do you understand the logic of the question?---I understand what, what  
you're trying to get to, but it doesn't change what I know to be true, which  
is I asked Mr Dastyari for advice. He said, "Go see the lawyers," and I went  
to see Ian Robertson, and that's what happened.

That conversation with Mr Dastyari on your version could only have  
occurred after you'd spoken with Mr Wong?---Correct.

And isn't the true position that the arrangement to see Mr Robertson had occurred earlier than the telephone conversation you rely on with Mr Dastyari?---According to these phone records, but that's not my memory. That's not my recollection.

But you'd agree, according to these phone records, that must be correct.

MR NEIL: We object.

10 THE WITNESS: No, it's not my recollection.

MR NEIL: We object, we object.

THE COMMISSIONER: Just, just – yes.

MR NEIL: The witness is being asked to comment on the phone records, not about her, what she remembers. The question was directed expressly not to that, but asking her to comment on the phone records. She's not the author of the phone records. And all she knows about them is what she's  
20 been told about them.

THE COMMISSIONER: Well, I don't think so, Mr Neil, with respect.

MR McINERNEY: What I'm putting to you is the true position is staring you in the face in effect, that you'd arranged the meeting with Mr Robertson before you spoke with Mr Dastyari.---That's just not my recollection I'm sorry.

30 But if that's the true position, that you had to have arranged the meeting with Mr Robertson before you spoke with Mr Dastyari, it makes no sense at all, does it, for you in the telephone conversation with Mr Dastyari to be told, "Go see Ian Robertson," because you're already seeing him. Correct? ---I can only tell you what I remember, sir, and that is that I was given advice to go see Ian Robertson and after Ernest Wong had told me that information, that is what I did, at 7 o'clock on a Friday night.

If Ms Murnain could be taken to page 12 of the contemporaneous bundle. All right. Now, just before we scroll down the screen, as you sit there do you recall the substance of the advice given to you with respect to the Lalich  
40 issue?---No, I don't remember.

You see on the screen, page 12, it's an email from Sarah Butler to Ian Robertson. Do you see that?---Ah hmm.

It starts at 4 minutes past 7.00 on 16 September.---Yep.

And the attachment to the email is a draft advice concerning Mr Lalich. If we can scroll down to that, please, Mr Operator, pages 13 and 14. Do you

want to just take a moment to read through this.---It's legal advice for an MP, again it's run-of-the-mill stuff.

Well, it's legal advice concerning Mr Lalich and the circumstances in which a trip taken by him to China was paid for by a company called ABC Tissues and a Mr Henry Ngai. Correct?---It looks to be that way, yes.

10 And it was concerning whether or not a state MP had unlawfully accepted a gift from a prohibited donor. Correct?---Yep.

And that was the urgent advice which was being sought through you at the request of Mr Foley and his chief of staff, Mr Willis, this afternoon, on 16 September, 2016. Correct?---Could well have been, yes.

Well, that's the very reason you attended for a meeting with Mr Robertson on the evening of 16 September, 2016, didn't you?---No. You don't show up to Ian Robertson's office to talk about an MP matter like this, given this is pretty standard.

20 Now, if Ms Murnain could then be taken to the document at page 18.

MR ROBERTSON: It might be sensible for that document to be tendered now, if that's convenient to my learned friend.

THE COMMISSIONER: Page 12?

MR ROBERTSON: Before I formally tender it I'll pause, though, in case Mr Moses wants to say anything about it.

30 MR MOSES: Well, just in relation to this, I mean we have indicated issue waiver so that the Commission has material before it to assist it with its investigation. I won't object to this going into evidence if it's Mr Ian Robertson's position that he will say that that was what was specifically discussed at that meeting that evening. If he doesn't say that, then there is no reason why privileged material should be put onto public display, but if it's part of Mr Robertson's case that he's putting to this witness that that was what was discussed at that meeting where she's turned up to his office and he's going to say that on oath, then no objection, it should be put before the Commissioner, but we just need to know what's going on here.

40 THE COMMISSIONER: Well, Mr Moses, it's reasonable for me to proceed on the basis that it's likely to be, isn't it, deployed in that way.

MR MOSES: Well, I don't know, Chief Commissioner.

THE COMMISSIONER: Well, I don't think Mr McInerney would be spending time on it if it wasn't.

MR MOSES: Well, you may assume that, Chief Commissioner, but as you know, privilege exists for certain reasons and we need to be clear about it before it's abrogated. So if that's the position, then that's the position and I'll act on that assumption.

THE COMMISSIONER: All right, well, let's clarify it. Mr McInerney, do you want to - - -

10 MR McINERNEY: Can I just have a moment? Chief Commissioner, the position is that the likelihood there was a discussion concerning this draft email advice - - -

THE COMMISSIONER: I'm sorry, I can't hear you.

MR McINERNEY: The likelihood that there was a discussion concerning this email advice in the evening of 16 September, 2016, and that's for the reason I'll take the witness to the following day where the formal advice was provided. So that's the sequence of events and that's what I'm putting forward, that it's a likelihood that that's the discussion which was had.  
20

THE COMMISSIONER: So you rely upon this document from the contemporaneous bundle to support the likelihood, as you specify?

MR McINERNEY: Yes.

THE COMMISSIONER: Yes, all right. Do you want to be heard again, Mr Moses?

30 MR MOSES: No, Chief Commissioner, that's on the record and we'll see how that pans out when Mr Robertson's called.

THE COMMISSIONER: Yes, very well. Yes, thank you.

MR ROBERTSON: Can I deal with a formal tender, then.

THE COMMISSIONER: Yes.

40 MR ROBERTSON: I tender the email from Ms Sarah Butler to Mr Ian Robertson, 16 September, 2016, 7.04pm, being at pages 12 through to 14 of what I've been calling the cross-examination bundle.

THE COMMISSIONER: Yes, thank you. The email from Sarah Butler, 16 September, 2016, 7.04pm, pages 12 to 14, will become Exhibit 212.

**#EXH-212 – EMAIL FROM SARAH BUTLER TO IAN ROBERTSON  
TITLED 'NICK LALICH MP' WITH ATTACHMENT TITLED  
'EMAIL TO NSW ALP RE NICK LALICH MP' DATED 16**

**SEPTEMBER 2016 AT PAGES 12 TO 14 OF THE ROBERTSON  
CROSS EXAMINATION BUNDLE**

MR ROBERTSON: Can I also indicate that as presently advised – and this is a matter for Mr Moses rather than from me – it would seem that the principal relevance of that document is the document at page 12, plus the first paragraph, which identifies the subject matter of the legal advice, but not the balance of the document, other than the sign-off being “Kind  
10 regards, Ian.” I raise that in case my learned friend Mr Moses wishes to apply for a direction under section 112 in relation to that part of the email I’ve just identified, namely the substance of the advice as distinct from the parts of the email that indicate the subject matter of the advice. But that’s a matter for him, rather than for me. I just raise that.

THE COMMISSIONER: Mr Moses, do you want to be heard on that? Perhaps you might reflect on it over the morning tea adjournment if you want to.

20 MR MOSES: I will, Chief Commissioner. I just think in light of what’s fallen from my learned friend Mr McInerney, I’ll get some instructions about that particular issue. It might be best just to let it be all out there to assist you when it comes to dealing with matters and transparency.

THE COMMISSIONER: Yes, very well.

MR NEIL: Chief Commissioner, could we also just record we might wish to be heard about this as well, that is the scope of any 112 order made in  
30 relation to this document.

THE COMMISSIONER: Yes, well, Mr Neil, if you want to be heard on that, I’ll hear you.

MR NEIL: In due course. When the time comes.

THE COMMISSIONER: Yes.

MR NEIL: If we could just register our interest in that topic.

40 THE COMMISSIONER: Yes, certainly. All right, we’ll take the morning tea adjournment. We’ll resume about quarter to 12.00.

**SHORT ADJOURNMENT**

**[11.29am]**

MR MOSES: Chief Commissioner, I have spoken to my learned friend, Mr Robertson – that is, Scott Robertson – over the adjournment in relation to

the document that my learned friend wishes to cross-examine Ms Murnain on, being 17 September email from Ian Robertson to Ms Murnain and others. What our position is, is an order should be made pursuant to section 112 of the Act that in effect redacts the substance of what appears under each of the headings in that email, so that the first paragraph - - -

THE COMMISSIONER: Let me get the document back on the screen so that I know what you're talking about.

10 MR MOSES: Yes, of course. My learned friend has informed me that he's coming to it, so we should just leave it for the moment, Chief Commissioner, that way you don't have to do it twice.

THE COMMISSIONER: All right.

MR MOSES: Okay, thank you.

MR ROBERTSON: But I think I've already tendered the document and it's been in evidence, so it starts on page 12 of what I'll call the cross-  
20 examination bundle.

THE COMMISSIONER: Perhaps I'll follow the suggestion that I leave it for the moment and we'll see how we go.

MR ROBERTSON: May it please the Commission.

MR MOSES: Thank you, Chief Commissioner.

THE COMMISSIONER: Yes, Mr McInerney.  
30

MR McINERNEY: Yes. If Ms Murnain could be shown Exhibit 204, please, and it's at line 48, second page. So, Ms Murnain, if you have a look at Exhibit 204 on the screen at line 48 you see there that there's a telephone call from yourself to Mr Foley, 12 seconds duration, at 17 minutes past 7.00. ---Yes.

And that's very shortly before you send a text message to Mr Ian Robertson saying, "I'm at the top of the escalator."---Yes.

40 And do you have any recollection of what you spoke to Mr Foley about?  
---No.

Is it likely that you spoke to Mr Foley to inform him that you were about to attend a meeting with Mr Robertson concerning the Lalich advice?---That's not my recollection, no.

But you don't have an independent recollection of what you spoke to Mr Foley about?---The only inference I can make is a 12-second conversation is not a conversation at all, but it's - - -

That's your inference, is it?---But I, but I can't remember.

All right. Now, if I could then take the witness, please, back to the cross-examination bundle at page 18. That's the document Mr Moses was just referring the Chief Commissioner to.

10

THE COMMISSIONER: Sorry, what's the reference?

MR McINERNEY: It's page 18 of the cross-examination bundle.

20

MR MOSES: Chief Commissioner, so the application is pursuant to section 112 in relation to those words that appear under each of the headings in the two-page email. So the first paragraph will remain as it is and the headings in bold in the document will remain to be published, but everything else be redacted, but of course everybody within the hearing room may have access to the document, that is the lawyers representing each of the parties and of course it will be accessible to them.

THE COMMISSIONER: That becomes the difficulty. You're making a section 112 order, members of the public are here today.

MR MOSES: Correct.

30

THE COMMISSIONER: There's no way you can police or enforce a section 112 order for that reason.

MR MOSES: Sure.

THE COMMISSIONER: So why make an order?

40

MR MOSES: The position is simply this, the position is simply this, Chief Commissioner, the lawyer acting for, or the lawyer previously advising the party is seeking to deploy a document in a public domain which doesn't relate to the issue waiver that I outlined to the Commission and we were trying to be of assistance to the Commission. The difficulty is, if we remain silent when such material is being deployed, whether that potentially leads to other waiver, as you know from your long experience in issue waiver matters, Chief Commissioner, without going into the history of that matter, that you have to be very careful when you're seeking to put this type of info before a tribunal or a court so that it doesn't lead inadvertently to other waiver. So here we have the former lawyer for the party seeking to deploy a document that on its face has nothing to do with what is said to have been the issue waiver last week that I outlined to the Commission so the Commission could be assisted. That's the concern that we have in relation

to this issue, and we just want to be very clear that if this is to be deployed and to be publically disseminated somehow it doesn't lead to other issues arising out of this to be the subject of waiver going to those matters. That's why I have to be vigilant in relation to these matters, as much as we all want to get on with this.

10 MR ROBERTSON: Chief Commissioner, could I enquire through you of my learned friend whether his concern would be sufficiently dealt with by the tendered version of the document being redacted in the way that he's summarised? In other words, the online version that's available to the public generally would be redacted, but without a formal section 112 order being made. I'm sorry to be doing this as we're in open session, but - - -

THE COMMISSIONER: Yes. Well - - -

MR MOSES: I've got no difficulty with that.

20 THE COMMISSIONER: It seems to me that's the most practical way of handling it.

MR MOSES: Well, I've got no difficulty with that approach, Chief Commissioner.

THE COMMISSIONER: All right.

30 MR MOSES: I just want to make it clear by this being put before this Commission, there is no waiver by the Labor Party in relation to the substance of what appears in this document, which goes to different issues than those before this Commission, just want to be clear about that.

THE COMMISSIONER: Yes, all right.

MR ROBERTSON: So on the face of that, I propose not to tender documents of this nature immediately, and I'll liaise with my learned friend, Mr Moses, with a view to me later tendering a document that has some redactions on it.

THE COMMISSIONER: Yes, very well. We'll deal with it - - -

40 MR ROBERTSON: But as I apprehend it, in the meantime, there's no other impediment to my learned friend, Mr McInerney proceeding as he sees fit.

THE COMMISSIONER: Well, I think that's the preferred way of dealing with it. Mr McInerney, do you want to comment on this, or - - -

MR McINERNEY: No, Chief Commissioner.

THE COMMISSIONER: Okay.

MR McINERNEY: If Ms Murnain could be shown the document, please. So Ms Murnain, could you just take a moment to read through this document? It's an email from Ian Robertson to yourself.---Ah hmm.

Saturday, 17 September, 2016. 11.50am.---Ah hmm.

And you see it's copied to Chris Willis?---Yep.

10 And Pat?---Yep.

Which is Pat Garcia, correct?---That's correct, yep.

Just take a moment to read through the email, the advice.---Ah hmm. Yep.

And if we could go to the next page, please, Mr Operator.---Yep.

And I want to draw your attention in particular to page 19, to the three paragraphs under the bold heading, the payment for the trip was most likely a political donation. Do you see that?---Sorry.

20

Page 19.---Yep. Yep.

Do you see those three paragraphs there?---Yep.

So you've read them to yourself?---Yep.

And this is the urgent advice you'd been requesting the previous afternoon, correct?---I, according to your text messages that you've shown me.

30

And does this, my showing you this document, refresh your memory about the nature of the advice which was provided?---Not really, no.

Well, you see it's directed to the Electoral Funding, Expenditure and Disclosures Act 1981?---Yes, yep.

And it was directed to the conduct of Mr Lalich as a state MP, in 2014, and potential issues arising in relation to the trip taken by him to China, do you agree?---That's what it says, yes.

40

And paid for by the managing director of ABC Tissues, Henry Ngai, or an entity associated with him, do you agree?---That's what it says.

So Mr Robertson on the Saturday, at 11.50am, has provided you the urgent advice which is - - -

MR NEIL: We object, we object.

MR McINERNEY: Is there an objection, Mr Neil?

MR NEIL: Yes, there is. I object, I wonder if we could go back to page 18. Yes, very well, thank you. I withdraw the objection.

MR McINERNEY: So having read the advice, you can see that Mr Robertson was advising you about issues under the Electoral Funding Expenditure and Disclosures Act, correct?---Yes.

10 And whether or not the state MP concerned had received payment under the Act, which was unlawful, correct?---Yes, that's right.

No different an issue from the issue which you say Mr Robertson was talking to you about the previous evening, correct?---No. I would not say that is correct.

Well, it's directed to whether or not there was unlawful conduct under the Electoral Funding Expenditure and Disclosures Act, correct?---Yes.

20 And it's your position, is it, that the same time that Mr Robertson is giving advice about whether the conduct of the state MP concerned here had acted unlawfully, the previous evening he's giving advice to you to cover up unlawful activity, that's your evidence, is it?---Yes, it is my evidence.

It's implausible, isn't it?---No, it is not.

30 There's no rational reason why a person in Mr Robertson's position would be giving you the advice you say was given the previous evening at the same time he's giving the advice you see before you at pages 18 and 19, correct?

MR NEIL: We object. That question can only be inviting the witness to speculate about reasons of someone other than herself.

THE COMMISSIONER: Yes. Mr McInerney, haven't you sufficiently put this point at least once - - -

MR McINERNEY: Pardon, Your Honour?

40 THE COMMISSIONER: Haven't you sufficiently put this to the witness? I mean - - -

MR McINERNEY: Certainly, Chief Commissioner. I'll move on. Ms Murnain, I want to suggest to you that there's a number of further email communications you had with Mr Robertson during the course of the afternoon on the Saturday, 17 September, 2016. Do you have any recollection of them?---No, because it happened all the time.

But you don't dispute that there is a series of emails sent either by Mr Robertson to you or you to Mr Robertson or copied to Pat Garcia or others within the organisation, that those emails were sent and received?---You've just shown me them so that's conclusive proof.

Well, I'm talking about, I don't want to take you to the contents of all the emails but in due course we will want them tendered. But there's a series of emails you had that afternoon passing between you and Mr Robertson?---I don't remember them but they're there and I acknowledge that they exist.  
10 Well, I assume you're referring to that email that you just showed me.

No, I'm referring to a series - - -

THE COMMISSIONER: Just wait a minute. Wait until the next question.  
---Oh, okay.

MR McINERNEY: I'm referring to a series of emails that afternoon, passing between you and Mr Robertson, about issues other than Mr Lalich's issue.  
20

MR NEIL: I wonder if I could just object so that we can go backwards and be clear about what the question is.

THE COMMISSIONER: Sorry, I couldn't hear you.

MR NEIL: I have lost track of the question.

THE COMMISSIONER: I'm sorry, I couldn't hear you, Mr Neil.

30 MR NEIL: I have now lost track of the question, so I wonder if I can just object and we could go back to what the witness is being asked about.

THE COMMISSIONER: I think Mr McInerney was just identifying the emails. The emails he's now referring to on the Saturday afternoon related to matters other than the Lalich matter. Well, I think he'll be taking the witness to those emails so I don't see a problem at the moment.

MR NEIL: I won't pursue it. I'm afraid I've lost track of (not transcribable)

40 THE COMMISSIONER: That's all right. We'll just wait and see what comes next.

MR McINERNEY: Well, Chief Commissioner, there's a series of emails dealing with issues which concern Mr Moses's client and in light of what he's already said, and they're directed to other topics, that they're sent and received, they occurred and it's a question of whether or not I need to take this witness and identify the date and time - - -

THE COMMISSIONER: I'm not stopping you, Mr McInerney, but thank you for the outline.

MR McINERNEY: Certainly. I want to suggest to you that at 12.29pm, Saturday 17 September, 2016, Mr Robertson sent you an email copied to Pat at NSW Labor and Sarah Butler, which concerned Mr Dastyari. Do you recall that or not?---No.

10 But you don't doubt that it occurred?---I don't remember it, so - - -

Ms Murnain, Saturday afternoon, 17 September, 3.33pm, you sent an email to Pat Garcia, Sarah Butler and Ian Robertson. Do you recall that?---No.

Do you recall forwarding a case called Borsak, B-o-r-s-a-k, v Cheung, C-h-e-u-n-g?---No.

17 September, 2016 at 4.28pm you sent an email, sorry, Mr Robertson sent you an email, copied to Pat, Greg Wrobel, Sarah Butler, subject, Residence Issue in Fairfield. Do you recall that at all?---No.

20 But you don't doubt that it occurred?---I - - -

MR NEIL: We object.

THE WITNESS: I don't remember it.

MR NEIL: How can the witness answer such a question?

30 THE COMMISSIONER: Well, Mr Neil - - -

MR McINERNEY: But, Chief Commissioner - - -

THE COMMISSIONER: The question was do you recall, did the witness recall - - -

MR McINERNEY: Recall, answered, no.

40 THE COMMISSIONER: - - - an email being sent at 4.28pm in relation to the matters identified, so what's the problem?

MR NEIL: The next question, "You don't doubt that it occurred." If the answer to that question is, if it sought to tender the answer to that question - - -

THE COMMISSIONER: No, I see, yes, I see that, yes.

MR NEIL: Your Honour sees the point.

THE COMMISSIONER: Mr McInerney, I don't think you can put that. The witness says she doesn't remember it, so whether that's right or wrong is - - -

MR McINERNEY: No, no, it can simply - - -

THE COMMISSIONER: - - - yet to be seen, but you're going to take her to these emails anyway, aren't you, or are you?

10 MR McINERNEY: Well, she doesn't remember them - - -

THE COMMISSIONER: Or this particular email you're talking about or not?

MR McINERNEY: Well, Chief Commissioner, ordinarily I'd simply tender the documents once the witness indicates they don't recall them.

20 THE COMMISSIONER: All right. I think you've sufficiently raised the issue and she's responded she doesn't recall it.

MR McINERNEY: Certainly, Chief Commissioner. And, Ms Murnain, 17 September, 2016, 4.35pm, an email from you, you sent an email to Mr Robertson, copy to Pat Garcia, Greg Wrobel, Sarah Butler, again re Residence Issue in Fairfield. Do you recall that?---No.

17 September, 2016, 4.42pm, you, Mr Robertson sent you an email copied to Pat at NSW Labor, sorry, to yourself and Pat at NSW Labor, copied to Greg Wrobel, Sarah Butler, subject Dai, D-a-i, Le, L-e.---No, don't remember that.

30 Do you recall that there was a newspaper article on 20 September, 2016, concerning Mr Lalich?---I don't remember that.

And do you recall that on about 19 September, 2016, a Mr Foley had referred Mr Lalich to the NSW Electoral Commission?---I don't remember that.

40 If Ms Murnain could be shown pages 56 and 57 of the cross-examination bundle. Can you just take a moment to have a look at the article, please. ---Yes.

So just let the operator know when you've go through the first page and we'll move to the second page for you.---Yep, next page. Yep.

Have you read that?---Yep.

Does that article assist you that the advice which had been sought from Mr Robertson was to enable Mr Foley's office to make a decision about whether or not to refer Mr Lalich to the Electoral Commission?

MR NEIL: We object. The question needs to be more precise as to time if it is to be fair.

THE COMMISSIONER: I'll allow the question.

10 THE WITNESS: Could you please ask it again.

MR McINERNEY: Does that article assist you to recall that the reason for you seeking the advice from Mr Robertson with respect to Mr Lalich was to enable Mr Foley's office to make a decision about whether or not Mr Lalich should be referred to the NSW Electoral Commission?---Are you speaking of the in-person meeting or the telephone meetings?

Talking about the advice which was obtained which I've taken you to.---Ah  
hmm.

20

Can you answer the question, please.

MR NEIL: We object.

MR MOSES: Chief Commissioner, can I just make an objection again. I don't know what the purpose of this is. I mean I note the time is quarter past 12.00. If it's being suggested that this is the issue that was discussed at the disputed meeting, then so be it, I'll resume my seat, but if it's not, I do take objection to questions being asked in relation to privileged  
30 communications that have got nothing to do with the present inquiry, and I think we have to be very careful as to what we're doing here. I mean, if it's suggested this is the topic, then I'll resume my seat. But to say it's likely isn't good enough. I mean, what is the position? I mean - - -

THE COMMISSIONER: Well, Mr Moses, I think likely is good enough, quite frankly, because one doesn't know what the true position is until all the evidence is in. So I think it's sufficient if it's likely to be probative of an issue that I am dealing with, it is linked to the advice-giving in relation to the Lalich matter, and this is a newspaper report a few days later. A  
40 question is directed to establishing whether or not the work being done, whether it was done, was being done as I understand it, at the request of or for the purpose of briefing Mr Foley. I think it's part of the - - -

MR MOSES: I think you've misunderstood what I've said, Chief Commissioner. It's - - -

THE COMMISSIONER: No, no, I'm not – no, no. But I'm saying the subject matter or purpose of the evidence is it's said to be relevant to an

issue which has previously been ventilated at some length, namely the Lalich matter. And if it's related to the Lalich matter, the witness may or may not be able to answer the question, but that's another question.

MR MOSES: Sure, I think it's, yes, I think it's Lalich, but in relation - - -

THE COMMISSIONER: But I don't see that this is likely to trespass into a different area where privilege may attach at the moment, as I see it. Now, Mr - - -

10

MR MOSES: Okay. Well, that's not what we've seen in terms of the documents that have been provided to us, but you'll see that in due course yourself.

THE COMMISSIONER: Yes. Indeed.

MR NEIL: And Chief Commissioner, I'm sorry to be unduly obdurate about this, but could I return to the objection that I made earlier?

20

THE COMMISSIONER: That's all right. Mmm.

MR NEIL: The question uses the words "the advice", and to be fair, it ought to be made clear to the witness whether those words refer to the email that was sent on Saturday, 17 September, at 11.50, or to something else.

THE COMMISSIONER: Yes, all right. Well, we can clear that up, yes. So Mr McInerney, would you make that clear, if it's not already clear?

30

MR McINERNEY: You received a written advice on the morning of Saturday, 17 September, in the email I've taken you to, correct?---That appears to be the case.

And you'd been seeking advice from Mr Robertson and Ms Butler the previous afternoon, hadn't you?---Um - - -

With respect to Mr Lalich, correct?---It, it appears that, to be the case, yes.

40

And on 19 September, 2016, Mr Foley's office made a decision to refer Mr Lalich to the NSW Electoral Commission, correct?---That appears to be the story.

And it's your understanding, isn't it, that the reason the advice was being sought with respect to Mr Lalich was to enable Mr Foley's office to make a decision whether or not he should be referred to the NSW Electoral Commission, correct?---Can I clarify again which advice you're referring to?

I'm referring to the - - -?---To the meeting?

I'm referring to the email, the written email - - -?---Yep.

- - - advice you received on the Saturday morning at 11.50am. You're aware of that?---Yes. I'm now aware of it.

And the process of obtaining that advice started the previous afternoon, didn't it?---Over the phone, yes, it appears that to be the case. I don't have a recollection of it, but yes.

10

And it's your understanding that the advice with respect to Mr Lalich was being obtained to enable Mr Foley's office to make a decision whether or not he should be referred to the NSW Electoral Commission, correct?---I can't remember, but – that appears to be the sequence of events, but I can't remember that.

All right. But it's likely, isn't it?---It looks likely.

Could Ms Murnain be shown page 58 of the cross-examination bundle?

20

---Ah hmm.

Page 58 of the cross-examination bundle. Now you see there, it's a tax invoice from Holding Redlich, dated 30 September, 2016?---I see that, yes.

Have you seen it before?---Most invoices come by my desk, but I couldn't recall the exact invoice.

So back in September of 2016, the likelihood is that this invoice came to your desk, correct?---At some point, yes, it's likely.

30

And your practice was at the time, was it, that invoices would come to your desk to enable you to review them, correct?---They would be signed off by myself and other officials.

And as I understand it, so a couple of weeks before or thereabouts, on 16 September, 2016 - - -?---Ah hmm.

- - - you say there was the meeting with Mr Robertson, and in effect he said to you, "Don't tell anyone about it, don't make any record about it, and I won't bill you for the meeting."---That's correct.

40

And you know, don't you, that there was a bill in respect to the meeting, don't you, on 16 September, 2016?---That's not my recollection. I'm happy to look.

Well, can you turn to page 59, please.

MR MOSES: And again, Chief Commissioner, this document sets out topics in relation to advice. It's a document, at the end of the day, that a lawyer cannot deploy in this manner and nor can you allow for it to be abrogated, unless there's an order been issued for it. This is from, I assume, Holding Redlich's information or database. But just to be clear, it contained items on there that have got nothing to do with the inquiry. So can we please be careful about what we are doing here. A lawyer has a certain duty in relation to documents, that's the first proposition. Secondly, you can only abrogate privilege pursuant to a section in the Act in terms of the production  
10 of documents or evidence. That's a question that ought to be answered by you, Chief Commissioner, as you know. So I'm just trying to work out what we're doing here and what the purpose of all this is. If my friend wants to put a proposition to the witness, then it should be redacted to purely focus on that issue. But having a wholesale document put up on a screen is not appropriate, with all due respect, not appropriate at all, at all. So can you please be careful about this.

THE COMMISSIONER: Mr Moses - - -

20 MR MOSES: Yes, Chief Commissioner.

THE COMMISSIONER: The abrogation of the privilege by the Act, so far as class of documents that this belongs to, is completely abrogated.

MR MOSES: No, no.

THE COMMISSIONER: Yes, it is.

30 MR MOSES: No, Chief Commissioner, just so that you understand and take it a step back. This document, our friends have put together. There hasn't been the compelling of production of that document, okay? So I think you misunderstand what's happening here.

THE COMMISSIONER: But however the document comes into this hearing room, if it's utilised or deployed in some way or sought to be utilised and deployed and there's a claim for legal professional privilege, then I can rule on it, and seems to be that if it falls within the abrogating provisions of the Act, then ipso facto by the expressed provisions of parliament, the privileges never existed so far as – well, it may have existed  
40 prior to this investigation but it doesn't exist for the purposes of this investigation.

MR MOSES: Chief Commissioner, with all due respect, if you go to the provision that you're referring to, it doesn't abrogate the solicitor's duty. So let's be careful about this. Again, if you direct somebody to do something, that abrogates the privilege, but this Commission does not have the power to, in effect, ordain that somebody can come in here and just do it. There has to be a compelling of it to happen. So with all due respect, Chief

Commissioner, I think what's happened here is you've assumed, and I think my learned friend, Counsel Assisting, would probably advise you with this, because it's the correct legal position, that there has to be a direction or an order for that to happen.

THE COMMISSIONER: Well, I can issue an direction now.

10 MR MOSES: Well, you may but you have to be specific about it, Chief Commissioner. You're not just going to do a general order because you wouldn't do that. We know what the High Court has said about the sanctity of privilege. So we just need to be careful what we're doing here. It's not a free wrestling match here.

MR ROBERTSON: Can I make a submission?

THE COMMISSIONER: Yes.

20 MR ROBERTSON: In response to what's fallen from my learned friend, and can we please have section 37 of the Independent Commission Against Corruption Act on the screen. As you foreshadowed, Chief Commissioner, section 37(2) amounts to a general abrogation of the privilege in relation to including public inquiries. Subsection 2 makes clear that a witness  
summonsed to attend or appearing before the Commission at a compulsory examination or public inquiry – which plainly enough includes this and Ms Murnain has been summonsed – is not excused from answering any question on the grounds of privilege, secrecy or on any other ground that's now on the screen or is on the screen shortly. Subsection 5 then, in a limited fashion, reinstates what I'll call legal professional privilege or client  
30 legal privilege but only in a very limited sense, that is to say, dealing with advice given in accordance, in relation to an appearance or reasonably anticipated appearance at a compulsory examination or public inquiry, see subsection 5 paragraph (b). In my respectful submission, the matters that my learned friend Mr Moses is raising are not strictly speaking matters of privilege, given that they have been abrogated in the general sense indicated in subsection 2. It is open to him, as he has raised earlier, that if a matter that would otherwise be the subject of privilege of general law, but for the abrogation in subsection 2, there would in appropriate circumstances be circumstances which the Commission might stay its hand in not going down a path that would be protected by privilege at general law. Similarly it may  
40 be appropriate, an appropriate case for directions under section 112 to be issued. But in my respectful submission that's the focus of a point of the kind my learned friend Mr Moses is seeking to raise. Here there's plainly a key factual contest as to what occurred on 16 September, 2016 and there appears to be a real question as to what was discussed at the meeting on 16 September. That in my submission supports at least some inquiry into the question of what the subject matter of that meeting is, but that's not to say that some limited steps ought to be taken such as directions under section 112 and the like with a view of minimising the imposition on what would at

general law be privileged, but under subsection 2 has been abrogated in that broad sense that I've identified.

MR MOSES: I thank my learned friend for that. I mean the point I was trying to make is if this is an issue, then before the document's put up on the screen, then everything should be redacted from it that doesn't deal with the question that my friend is seeking to raise. We just have to be careful about that. So everything else should be redacted. If they want to focus on 16  
10 September entry, well, so be it, but it's not to be put up on the screen for everybody to see, it's got nothing to do with what we're doing here. That's the point that we're trying to make.

THE COMMISSIONER: Mr Moses - - -

MR MOSES: And we provided the redacted form of it to the solicitor to ICAC.

THE COMMISSIONER: It's entirely a matter of essentially discretion as to whether or not I - - -  
20

MR MOSES: He's got it crossed out.

THE COMMISSIONER: - - - accept, as to whether I accept a document, that is exclude documents from the public inquiry. As I've said before it's not - - -

MR MOSES: I don't want you to - - -

THE COMMISSIONER: - - - a question of abrogation, the abrogation has  
30 occurred, I'm satisfied of that by virtue of the Act operating on the documents such as the ones Mr McInerney wants to cross-examine on at the moment.

MR MOSES: I think we have a different view on that.

THE COMMISSIONER: It's entirely a matter of discretion. If for example there's a document which was privileged, the privilege had been abrogated by virtue of section 37(2) but it related to an entirely personal matter of a  
40 witness that had nothing to do with the subject matter of the inquiry, then proper exercise of the discretion would be to ensure that that privilege is in effect, the would-be privilege attaches to such a communication. It's plain that that's the way in which the discretion would be exercised.

MR MOSES: Yeah. Chief Commissioner - - -

THE COMMISSIONER: In cases however where the material does have a nexus to the subject matter of the investigation, it's entirely a matter for my discretion, it seems to me, as to whether or not it needs to be redacted or

whether it should, the question should be allowed or not. But I think we come back to where we started, and that is as I understand it, Mr McInerney wishes to cross-examine on a memorandum of fees. A memorandum of fees, as I recall it now, identifies the, if you like, the topic of or class of matter that was discussed, but it doesn't reveal the contents of any communication around that matter. It doesn't disclose in other words the detail of confidential advice given. It is a record which identifies perhaps the class or topic matter, but only that.

10 MR MOSES: I think the - - -

THE COMMISSIONER: And that in itself wouldn't warrant its exclusion from being the subject of questions, as I see it.

MR MOSES: Chief Commissioner, I think we're at cross purposes. Starting point is, if I may just put this on the record, because this is something I'll put clear so everybody knows what they're dealing with here, a party who is the former solicitor for the party is using a document which hasn't been compelled for production to cross-examine a witness in the  
20 witness box about matters that are unrelated to the subject matter of the inquiry, and by that, in effect through you, compelling answers to questions to do with privileged material. Now, that's the problem. It's the first step. Now, you may say you've got no jurisdiction to deal with that. That's a matter for you if you want to say that, Chief Commissioner, but that's a relevant factor for you to take into account because otherwise you're setting a precedent for a lawyer to potentially come in here and deploy documents in their possession to cross-examine a witness and somehow you cloak it with legitimacy. That doesn't happen, it never happens, and that's the point I was trying to make. But if I cut to the chase, all I want, then, is the  
30 redaction of everything in that document other than the entry for 16 and 17 September. Everything else on there should not be up on the screen or published. That's our pragmatic approach to it.

THE COMMISSIONER: Well, let me just inquire with Mr McInerney. Mr McInerney, the question that was objected to or which resulted in Mr Moses making this application, as I understand it, is confined to one entry in the memorandum of fees, is it?

40 MR McINERNEY: That's correct, yes, Commissioner.

THE COMMISSIONER: That's 16 September?

MR McINERNEY: Yes, Chief Commissioner.

THE COMMISSIONER: Yes.

MR MOSES: Well, I'll be pragmatic. That's fine, Chief Commissioner.

THE COMMISSIONER: No questions can be asked about anything else in the document.

MR MOSES: Okay, thank you.

THE COMMISSIONER: And then as with the other document we discussed after morning tea, a redacted version of the memorandum of fees then can be created and that can be tendered after lunch.

10 MR MOSES: Thank you.

THE COMMISSIONER: All right. It was a long way of getting to the point, but anyway.

MR MOSES: Thank you.

THE COMMISSIONER: Yes, Mr McInerney.

20 MR McINERNEY: Ms Murnain, in this tax invoice at page 59 of the cross-examination bundle, for 16 September, 2016 it records "Telephone discussions and meeting with Ms K. Murnain concerning political donation issues, and drafting email of advice to Ms K. Murnain regarding political donations." So if you accept that from me. It will come up on the screen. That invoice is directly inconsistent, isn't it, with what you say occurred at the meeting on 16 September, 2016, correct?

THE COMMISSIONER: Mr McInerney, I don't think that's, with respect, a fair way of putting it. I think you have to gain the witness's understanding as to what the entry does relate to - - -

30 MR McINERNEY: Certainly, Chief Commissioner.

THE COMMISSIONER: - - - or that she has an understanding as to what it relates to, and go from there.

MR McINERNEY: Certainly, Chief Commissioner. Well, if it can come up on the screen, and then I can develop the understanding of the witness with her.

40 MR ROBERTSON: Would it assist my learned friend if I give the witness a hard copy of that.

THE COMMISSIONER: Yes, it might.

MR ROBERTSON: And then that then at least, on a tentative basis, deals with some of the issues my learned friend Mr Moses was raising.

THE COMMISSIONER: Yes. Yes, by all means. Yes.

MR ROBERTSON: I'll hand to the witness a hard copy of pages 58 through to 62 of the cross-examination bundle, being a tax invoice for 30 September, 2016, including a schedule forming part of that document.

MR NEIL: If we could have a copy as well, we'd be very grateful.

MR McINERNEY: Ms Murnain, have you got the document in front of you?---I do, yep.

10

And you can identify the entry, 16 September, 2016? It's the second-last entry on the page.---I can see it, yep.

You can see there's no other entry directed to 16 September, 2016 in this tax invoice?---That's right, yes.

And there was only one meeting you had with Mr Robertson on 16 September, 2016, wasn't there?---There's one meeting I remember.

20

You're not suggesting there was any other meeting, are you?---I don't remember. I've said that very clearly when you asked me about teleconferences and other phone calls that you've asked me about that happened that day.

So as you sit there you don't have a recollection of any other meeting with Mr Robertson?---No. I remember the meeting at night, that night.

30

And you accept, don't you, that there's only one meeting you had with Mr Robertson on 16 September, 2016? The entry which you're looking at, the second from the bottom, page 59, is Mr Robertson billing you in respect of the meeting you attended with him, correct?---I, I don't know about that. As I've said to you when you've asked me about the other meetings that occurred that day, I barely recall them and in fact didn't when you asked me about them before. So, no, I don't know. I don't know. You'd have to ask Mr Robertson.

Well, Ms Murnain, this invoice came to your desk in all likelihood, correct?---Yes.

40

And you reviewed it at the time, didn't you?---I signed it.

And your usual practice was to review the tax invoices which would come in before you'd sign them, correct?---Normally the reviewing of invoices is the governance director and others, and I would sign off at the end of that process.

Yes, but this is two weeks after this meeting, or thereabouts, on 16 September. So you've had a look at this invoice, haven't you?---Well, I'm seeing it now. I don't actually remember looking at it at the time, I'm sorry.

But you'd agree, wouldn't you, that there's only one meeting which you had with Mr Robertson on 16 September, 2016, and that's the meeting which occurred at or shortly after 7.19pm in the evening of 16 September, correct?  
---I agree that that meeting happened. I don't know if there were other meetings that day, as I've said to you when you asked me about several  
10 other teleconferences and phone calls already, and I've made that plainly clear.

And you see the time entry, "Telephone discussions and meeting with Ms K. Murnain concerning political donation issues," do you see that?---Yep.

And you understand that that's referring to Mr, the advice provided with respect to Mr Lalich, correct?

MR NEIL: We object.  
20

THE WITNESS: No.

MR NEIL: The witness has answered the question.

THE COMMISSIONER: Wait, sorry, I couldn't hear your question, Mr McInerney. Just put it again, would you?

MR NEIL: But the witness has - - -

MR McINERNEY: That entry is directed to the advice you were taking  
30 with respect to Mr Lalich, correct?---No, I - - -

MR NEIL: We object.

THE WITNESS: I don't know. It doesn't say that.

MR NEIL: In any event, the witness has answered the question. There's no need for us to press on.

MR McINERNEY: The true position is, isn't it, that Mr Robertson billed  
40 you for the meeting you attended with him on 16 September, 2016.---I don't know, you would have to ask Mr Robertson.

Well, look at the tax invoice.---Um - - -

MR NEIL: We object.

THE WITNESS: Looking at the tax invoice.

MR NEIL: Now the witness is, on the present state of the evidence, the witness is being asked to construe someone else's document.

THE COMMISSIONER: Oh, I don't think she's been asked to construe it, really. I'll allow the question.

MR McINERNEY: This time entry, sorry, this bill, with this entry for 16  
10 September, 2016, is Mr Robertson billing you with respect to the meeting  
you attended with him on 16 September, 2016, correct?---Can you ask the  
question again?

This entry, 16 September, 2016 - - -?---Mmm.

- - - is Mr Robertson billing you for the meeting you attended with him on  
16 September.

MR NEIL: We object.

20 THE WITNESS: I don't know.

MR NEIL: We object.

THE COMMISSIONER: Yes, well, she's answered the question, she  
doesn't know.

MR NEIL: She has answered the question.

MR McINERNEY: You came unstuck, didn't you, with your version of  
30 events, once you added in that Mr Robertson said he would not be billing  
you for the meeting, correct?---No. I did not.

Mr Robertson did bill you for the meeting, didn't he?---You would have to  
ask Mr Robertson. I do not know.

Well, you received this tax invoice, and at the time you received it, back  
towards the end of September, 2016, or early October, 2016, you understood  
that you were being billed for the meeting you attended with Mr Robertson  
on 16 September, 2016, correct?---No.

40

And your evidence that he told you he wouldn't be billing you for the  
meeting is a complete fabrication, isn't it?---No.

If Ms Murnain could then be shown, in the same cross-examination bundle,  
page - - -

THE COMMISSIONER: Just pardon me for a moment.

MR McINERNEY: Certainly.

THE COMMISSIONER: Yes, you go ahead, Mr McInerney.

MR McINERNEY: If Ms Murnain could be taken to page 72.

THE COMMISSIONER: Just before we go on, the pages you've been handed, copies of the fee note or the tax invoice, if you could just hand it back to my associate, thank you. Sorry, you stay there, it's all right. I'll  
10 have those pages marked for identification, MFI 12.

**#MFI-012 – TAX INVOICE FROM HOLDING REDLICH TO THE ALP DATED 20 SEPTEMBER 2016 AT PAGES 58 TO 62 OF THE ROBERTSON CROSS EXAMINATION BUNDLE**

THE COMMISSIONER: Yes.

20 MR McINERNEY: If you have a look at page 72, please, Ms Murnain. You can see it's an email from you to Mr Robertson and Sarah Butler on 8 December, 2016.---Yes.

And it's copied to Julie Sibraa?---Yes.

And you're attaching the notices to produce information and documents issued by the NSW Electoral Commission, do you see that?---I can see that.

30 And the position is, isn't it, that you didn't, on your evidence, have any discussions with Mr Robertson concerning those notices, correct?---I, I didn't know. I wasn't sure.

I thought your evidence was that you didn't have any, that you delegated this task of dealing with these notices to Ms Julie Sibraa?---I delegated the task but I wasn't sure whether I'd spoken to Ian Robertson at any point before she went to get answers to the questions.

40 But in your evidence you haven't suggested that you did have such a conversation or any terms of such a conversation, have you?---I'm not sure. I may have said, which is what I remember, that it may or may not have happened that there was a conversation with him but I don't remember.

If you can go to page 74 and the second paragraph of this Electoral Commission letter of 6 December, 2016. Do you see that?---Yes.

And the paragraph commencing, "I enclose two notices"?---Yes.

And that paragraph identified to you that the NSW Electoral Commission was requiring you to produce certain information and documents in relation to cash political donations made at a function called the Chinese community dinner, Chinese Friends of Labor held at The Eight Modern Chinese Restaurant on 12 March, 2015. Do you see that?---I can read that, yes.

10 And at the time that you received this letter from the NSW Electoral Commission, you understood, didn't you, that it would be an offence to provide information to the Commission knowing that the document, information or answer was false or misleading in a material particular, did you understand that at the time?---Yes.

And it's correct, isn't it, that at the time you received this notice and before you signed the letter sending back the answers to the questions, you say that you knew that Mr Huang was the person responsible for the \$100,000 donation?

MR NEIL: We object.

20 THE WITNESS: That's not – no.

MR NEIL: The witness is too fast for me, she's answered the question.

THE COMMISSIONER: Well, the question may be ambiguous and that depends on whether you're suggesting to her that she had acquired primary evidence of the fact or whether she had been told it's from some person. So I think there's a question whether it's knowledge or belief, perhaps.

30 MR McINERNEY: Certainly, Chief Commissioner. Your belief at the time that you received this notice, from what Mr Wong had told you, was that Mr Huang, H-u-a-n-g, had paid the \$100,000 in respect of the Chinese Friends of Labor dinner on 12 March, 2015, correct?---I wasn't sure but you've read my evidence. I, I wasn't one hundred per cent sure.

But what was your belief, wasn't it?---I, I mean, I wasn't sure.

40 Well, the best information you had as at 6 December, 2016, was that Mr Huang had paid the \$100,000?---I think you will – could you put the question again to me, please, sorry?

The best information you had, as at 6 December, 2016, was that Mr Huang had paid the \$100,000?---I had competing evidence. So I had competing evidence with others who said they had donated. I'd had Ernest advise me one person hasn't given the money and that Mr Huang was in effect the true source and I brought it to Ian Robertson's attention in September and when I – did you want me to - - -

Well, you knew at the time that you received this notice, on about 6 September, 2016, that if you didn't disclose to the Electoral Commission that Mr Huang was someone to whom, to your belief, was the person who'd paid the \$100,000 - - -

MR NEIL: We object. There are so many premises wrapped up in that question, including the ones that you, Chief Commissioner, have already identified as to what, what, the ambiguity in the expression "know". There's all sorts of judgements wrapped up in the conclusions that follow  
10 from whatever state of mind the witness had.

THE COMMISSIONER: Yes, I think you should reformulate it, Mr McInerney.

MR McINERNEY: Certainly, Chief Commissioner. At the time you received this notice, your belief was that Mr Huang had paid the \$100,000.

MR NEIL: We object. The witness has been asked this question many, many times and has answered it. It is not fair to persist with exactly the  
20 same question over and over again.

THE COMMISSIONER: I allow it. I allow it.

THE WITNESS: Sorry. I don't know.

MR McINERNEY: I'm talking about your belief back in 6 December, 2016.---I don't know what my belief was in December 2016.

Well, as I understood your evidence, you said following the advice you took  
30 from Mr Robertson, you felt some disquiet. Is that - - -?---Yes. Yes.

And you felt some disquiet, didn't you, because you knew the advice was wrong, correct?---I didn't know it was wrong but I felt disquiet about it. I felt it wasn't - - -

Well, from the time that you received the information from Mr Wong that Mr Huang was the donor, a prohibited donor for the \$100,000, you knew that the right thing to do from that point in time was to disclose that information to the Electoral Commission, correct?---I don't know what I  
40 thought back then.

Well, it was a moral choice that you had, wasn't it, to do the right thing or the wrong thing, to disclose it or not, correct?---Hindsight is a wonderful thing, and obviously I'd do things differently if I could go back to that time.

Well, you knew that if you didn't disclose it to the Electoral Commission, you were at risk of misleading the Electoral Commission, correct?---No.

You knew that the right thing to do at the time was to inform the Electoral Commission, correct?---That is not, that's not my memory of that, no.

ICAC raided the Sussex Street head office in December 2018, correct?

MR ROBERTSON: I object to the word "raided".

THE COMMISSIONER: Yes, I reject that.

10 MR McINERNEY: I do apologise. No, no, I do. That's my poor phrasing.

THE COMMISSIONER: That's been dealt with in a public report. Mr McInerney should be aware.

MR McINERNEY: Yes, Chief Commissioner, it's - - -

THE COMMISSIONER: Anyway. Let's get on with it.

MR McINERNEY: Yes, it's one of those - yes.  
20

THE COMMISSIONER: Mr McInerney, just while we've interrupted you, how much longer will you be?

MR McINERNEY: I'm trying to wrap it up.

THE COMMISSIONER: Sorry?

MR McINERNEY: I'm trying to wrap it up before lunch, Chief  
Commissioner. ICAC conducted a search warrant on the premises of  
30 Sussex Street head office in December 2018, correct?---I, I think so, yes.  
Around that time.

Well, you were there at the time or you became aware shortly thereafter, didn't you, of the search warrant?---Yes.

And you became aware of the press reports shortly thereafter.---Yes.

Which indicated that it was directed to the Chinese Friends of Labor dinner,  
correct?---Yes.  
40

And it was raised in the press at about the time, directed to whether a large donation had been made by a property developer, correct?---Yes.

And you had that understanding at the time that the ICAC sent your solicitors a letter on about 17 July of this year, requesting certain answers to questions, correct?---Sorry, can you ask the question again? What was 17 July?

The ICAC sent your solicitors a letter requesting information, correct?---I, I don't know. Possibly, yes. I don't know what letter you're talking about, but - - -

It was a letter directed to Sparke Helmore solicitors, wasn't it?---Oh, Sparke Helmore. I don't, I don't know. Yes, I presume, I - - -

THE COMMISSIONER: Just hold it there for a moment.---Mmm.

10 MR McINERNEY: The ICAC sent your solicitors a letter on 17 July, 2019. I withdraw that. The ICAC sent you a letter on 17 July, 2019, correct?---I, I don't know but they've sent me a lot of letters.

Well, from about 17 July, 2019, you were informed, weren't you, by the ICAC's letter that the basis of the letter was to seek your cooperation in establishing the facts surrounding the circumstances in which moneys were donated to the Australian Labor Party NSW Branch and the Country Labor Party NSW Branch before, during and after a Chinese Friends of Labor function held at The Modern Eight Chinese Restaurant on 12 March, 2015,  
20 do you recall that?---No, but if, if that's what was received, I'm sure it was. There have been a number of communications.

And Sparke Helmore, on your behalf, responded on about 28 July, 2019, correct?

MR NEIL: I wonder if I could just object for a moment, just to hold the (not transcribable)

30 THE COMMISSIONER: Yes.

MR NEIL: Thank you.

MR ROBERTSON: I should add, I'm not sure that I've been informed of the intent to cross-examine on this document. I may have been and forgotten but if I haven't been, that's a breach of the standard directions. I'm not making that allegation, I'm just saying I don't immediately recall being given that advice.

40 MR NEIL: And the reason for my holding objection, if I can call it that, is that I don't know anything about this and I am concerned that we, about the question of whether there is an un-abrogated privilege.

THE COMMISSIONER: Well, yes. That's true.

MR NEIL: I can only raise that as a possibility because I emphasis, I don't know anything about this.

THE COMMISSIONER: However, if it's a letter from the solicitor to the – if it's a letter from the ICAC to Sparke Helmore, it wouldn't - - -

MR McINERNEY: It was to Ms Murnain, Chief Commissioner.

THE COMMISSIONER: - - - privilege, would it?

MR McINERNEY: It was to Ms Murnain, Chief Commissioner.

10 THE COMMISSIONER: Sorry?

MR McINERNEY: It was to Ms Murnain.

THE COMMISSIONER: Yes, I'm sorry. Yes, it was to - - -

MR NEIL: And one of the difficulties we have is that the dates that are being put to the witness are dates before those instructing me were instructed by Ms Murnain.

20 THE COMMISSIONER: Can we get a copy of this letter on the screen?

MR MOSES: I think the other critical objection is, how is it that somebody can use documents – I mean, how did Mr Ian Robertson come into possession of these documents? If he came into possession of them whilst he was the lawyer acting for the Labor Party, then how can he deploy them in this forum in this way? I mean, again, well we don't know, where did these documents come from? I mean, where – I mean, we have to go back to basics.

30 THE COMMISSIONER: Well, Mr McInerney might be able to answer your question. How did you come into possession of it?

MR McINERNEY: We were provided with access to them by the ICAC and I notified my intention to rely on them this morning through emails exchanged, as I would understand it, by my junior.

MR NEIL: I haven't been told anything about them and it would appear to be my client's privilege.

40 THE COMMISSIONER: Well, this is a letter not by her but by the Commission to her.

MR NEIL: My difficulty is, Chief Commissioner, I just don't know what we're talking about.

THE COMMISSIONER: Yes. Well, that's why I've asked for it to be brought up on the screen which will throw light on the subject. But are we able to find it in the system?

MR MOSES: And I withdraw my objection. If the ICAC provided it, that's a matter for it, if it decided to do that.

MR ROBERTSON: I should clarify that it's now come to my attention, an email of 8.42am advising in relation to the document but not attaching it, so I don't have it immediately to hand but I'm attempting to get it before we go further. So I'd at least want to have a look at that document before the question is persisted in. I'm not sure if my friend can - - -

10

THE COMMISSIONER: Well, now we're resuming at 2 o'clock, I would wager?

MR ROBERTSON: If the Commission pleases but the Commission has - - -

THE COMMISSIONER: Mr McInerney, can you deal with everything else in the time that you want to put to this witness and deal with this particular letter at 2 o'clock?

20

MR McINERNEY: Certainly, Chief Commissioner. As I read it, the two letters were referred to in the compulsory examination at 29 July, 2019, they're referred to in the transcript, which as I understand it has now been tendered. So that's where they emerge from.

THE COMMISSIONER: Sorry, I'm still having trouble hearing you.

MR McINERNEY: That's where the documents are referred to, in the compulsory examination of 29 July, 2019 of Ms Murnain.

30

THE COMMISSIONER: Yes. All right. Now, is there anything else you want to put?

MR McINERNEY: Well, Ms Murnain, before you came to the compulsory examination on 29 July, 2019 you had a solicitor and barrister acting for you. Correct?---Yes.

And you'd received correspondence from the ICAC. Correct?---At some point, yes.

40

And before you came to give your compulsory examination on 29 July, 2019, you knew that the subject matter concerned the Chinese Friends of Labor dinner held on 12 March, 2015. Correct?---Yes.

And as you have indicated, in the compulsory examination of 29 July, 2019, you did not disclose anything about any meeting, any meetings on 16 September, 2016. Correct?---Yes, and I should have.

And you didn't disclose any information that Mr Wong had told you that Mr Huang was the person responsible for the \$100,000 donation. Correct?  
---Yes.

Because in your evidence, as I would understand it yesterday, you indicated that part of the reason that you didn't provide that information was because it was the first time you'd given evidence?---It's the, part of it that, and also I was very focussed on the dinner itself and answering questions around the dinner itself, not events well after the dinner.

10

But you know that the identity of the persons responsible for the donations with respect to the Chinese Friends of Labor dinner had first been the subject of investigation by the NSW Electoral Commission. Correct?  
---Yes, yes.

And was the subject of an investigation by the ICAC before you came to give your compulsory examination on 29 July. Correct?---Yes, yes.

20 And so it was clearly in your mind before 29 July, 2019, as you would put it, that there were these meetings on 16 September, 2016. Correct?---Can you put the question again, I'm sorry?

It was clearly in your mind as at 29 July, 2019, that there were these meetings on 16 September, 2016?---It wasn't in my mind.

So you knew that the ICAC was interested in investigating the Chinese Friends of Labor dinner of 12 March, 2015. Correct?---Yes.

30 And you knew that the ICAC was interested to investigate the donors with respect to donations received from that dinner. Correct?---Yes.

And knowing those things, you chose not to disclose any information about the 16 September, 2016 meetings. Correct?---I came back and disclosed it, to do the right thing.

The position is, is it, that as at 29 July, 2019, you didn't remember anything about the meetings of 16 September, 2016?---It wasn't at the forefront of my mind.

40 So was it you didn't recall them or you made a deliberate decision not to disclose them?---It was that it wasn't at the forefront of my mind.

Ms Murnain, your evidence to this Commission has been a pack of lies, hasn't it?---No.

That's the only matter, subject to the matter at 2 o'clock.

MR ROBERTSON: I can indicate, Chief Commissioner, I can now make available 17 July, 2019 letter which is a letter from this Commissioner to Ms Murnain which I think is the one that my learned friend was drawing attention to. I'll have that put up on the screen now if my friend wanted to go to that.

THE COMMISSIONER: Yes, I think so.

10 MR McINERNEY: I just want the witness's attention drawn to the first paragraph, but I think I've summarised its effect for her in the questions that I've put, Chief Commissioner.

THE COMMISSIONER: All right. Thank you. Now, Mr Moses, you want to cross-examine Ms Murnain?

MR MOSES: That's correct. About 30 minutes.

THE COMMISSIONER: I think that's going to take place on another day.

20 MR MOSES: Okay.

THE COMMISSIONER: Is that right, Mr Robertson, or are we going to deal with that this afternoon and take it as far as we can?

MR ROBERTSON: I would respectfully suggest that we do commence this afternoon. That may mean that any re-examination needs to be deferred until next week.

30 THE COMMISSIONER: Yes, all right, very well. We'll - - -

MR ROBERTSON: But I'm in the Commission's hands of course.

THE COMMISSIONER: Very well. We'll continue with the evidence of Ms Murnain, Mr Moses, at 2 o'clock.

MR MOSES: Please the Commission.

THE COMMISSIONER: Yes, very well.

40 MR ROBERTSON: Oh, before you adjourn, Chief Commissioner, can I indicate one thing. On the screen in Mr McInerney's bundle, I note that there was some personal information that was not redacted. Can I just confirm of course that the general direction that you made at the commencement of the hearing will apply to that material which as you recall applies to any documents shown to the witness?

THE COMMISSIONER: Yes, it does.

MR ROBERTSON: I just thought I should formally record that.

THE COMMISSIONER: Yes, any personal identifying information is suppressed, not to be published, in the nature of addresses, phone numbers, email addresses, and the like.

MR ROBERTSON: May it please the Commission.

10 MR NEIL: If it please, Chief Commissioner, now that we've seen the letter of 17 July, and I understand what it is, I wonder if we might ask your Counsel Assisting whether it could be tendered in order to make sense of the questions that were asked earlier.

THE COMMISSIONER: Yes.

MR ROBERTSON: Yes, I intended to do that, and let me formally do that now. I tender the letter that was on the screen a moment ago, being a letter from the Commission dated 17 July, 2019, to Ms Murnain.

20 THE COMMISSIONER: Yes, the letter 17 July, 2019, from the Commission to Ms Murnain, entitled, Subject: Request for Information, will be admitted. It will become Exhibit, what is it, 213.

**#EXH-213 – LETTER FROM ICAC TO KAILA MURNAIN TITLED  
'SUBJECT: REQUEST FOR INFORMATION' DATED 17 JULY 2019**

30 THE COMMISSIONER: Yes, thank you, Ms Murnain, at 2 o'clock.  
---Thank you.

I'll adjourn.

**LUNCHEON ADJOURNMENT**

**[1.00pm]**