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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 WEDNESDAY 9 OCTOBER, 2019

AT 2.00PM

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

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

MR ROBERTSON: Chief Commissioner, I'm starting to be a little bit concerned in terms of timing. Would it be convenient for the Commission to sit until at least 4.15pm today?

THE COMMISSIONER: Yes, that's quite in order, we'll go through until 4.15.

10

MR ROBERTSON: Thank you, Chief Commissioner. Mr Clements, back to the gap that we discussed before the adjournment. So you're saying someone other than you would calculate that gap. Is that right?---Yes.

And just to understand what you mean by the gap, you're referring to the fact that in 2015 there were caps on what was described as electoral communication expenditure. Correct?---That's correct, yes.

20

And you referred correctly to the fact that that is based in general terms on the number of seats from the last election. Correct?---No, no, that's not correct. I think that's the administration funding from the last election, I think it's done on the number of seats contested.

Well, let's unpack that. So there are two separate, on the revenue side there's two separate payments that were relevant in 2015, one was on the administration fund side and one is reimbursement of electoral communication expenditure. Is that right?---That's correct, yes.

30

And so on the administration fund side, that's a semi-regular payment to deal with the administration of the party more generally. Correct?---That's correct, yes.

So that in effect is the place from which at least some of the funding for, for example wages for the general secretary would be drawn from. Is that right?---That's correct.

But there's then a separate category to which you've just drawn attention to of electoral communication expenditure. Is that right?---That's correct, yes.

40

And so whilst the administration fund is based on the number of seats won at the last election, the electoral communication expenditure is based on the number of seats contested in the particular election that we're talking about. Is that right?---Look, I, I think, I think.

That's your best recollection?---That's, that's, that's my recollection.

That's your best recollection of how it works. Is that right?---Yes.

But then in terms of the electoral communication expenditure, that is then reimbursed at least in part after the election. Is that right?---Yeah, I think it comes in chunks.

But that reimbursement is based on the number of votes rather than the number of seats. Do you agree with that, as at 2015?---No, I don't think so.

10 I think that may have been why you and I were at cross-purposes this morning, that you were correct to note that electoral communication expenditure for an election is based on a number of seats contested, I think you and I agree at least on that part. Is that right?---Mmm. Sorry?

Electoral communication expenditure caps, the amount that you might spend - - -?---Yes, yes.

- - - is based on the number of seats being contested at an election. Correct? ---That's correct, yes.

20 That was your understanding of the position in 2015?---Yes, yes, yes, yes.

But where you and I may have been at cross-purposes this morning was, would you agree that in terms of reimbursement of electoral communication expenditure, that is based on the number of votes, it's a little bit more complicated, but the focus of it is on the number of votes that are received at that particular election?---That's not my recollection.

That's not your recollection of how it worked in 2015?---No, no.

30 But in any event, it wasn't for you to work out – I withdraw that. At the very least, regardless of how it's calculated, there would always be a gap between the amount that you would want to spend and the amount that would be anticipated to be received by way of reimbursement of public funding. Correct?---That's correct. And, and, and, and the third element is the amount that we could spend, so there was a maximum we could spend, and we wanted to spend the maximum and then there was an amount that would be reimbursed and there was a calculus for that, which was quite complicated.

40 But it was someone else who did that complicated calculation. Is that right? ---That's correct.

And so in terms of within your office at Sussex Street, who would do that calculation?---It would be between Kaila and, and Maggie I believe.

And you said a moment ago that you'd want to spend the maximum. When you say that are you referring just to NSW Labor or are you referring to NSW Labor and to Country Labor as well?---Yeah, I think they, at the time

I thought they went together, so yeah, because it goes on the amount of seats contested.

Well, just to be clear, you understand that NSW Labor and Country Labor are treated as separate parties - - -?---That's correct.

- - - for the purposes of state electoral law. Correct?---That's right, yes.

And you knew that as at 2014 and 2015. Correct?---Yes.

10

And are you saying that in terms of wanting to spend up to the cap, was that a view taken in relation to just NSW Labor or NSW Labor and Country Labor?---I, I think it was both, but - - -

So your best recollection was that at least for the 2015 election the intent was to spend the maximum possible or the maximum permissible for electoral communication expenditure, both for NSW Labor and for Country Labor. Is that right?---Yeah, from my recollection, yeah.

20

Now, as well as being general secretary of NSW Labor, at the same time you were also general secretary of Country Labor. Is that right?---Yeah.

And that's in effect an ex officio position, the person who is general secretary of NSW Labor is also general secretary of Country Labor. Correct?---That's correct.

Country Labor doesn't have a separate staff or organisational structure. Is that right?---It has a Country organiser.

30

But it doesn't have a separation organisational structure other than the fact that there is as committee, there's an organiser and people of that sort. Is that right?---That's correct, yeah.

And it's right, isn't it, that members of Country Labor are also members of the Australian Labor Party more generally, is that right?---I think that's the case, yes.

40

So in effect, if you were a member of the Australian Labor Party but you reside in a seat that has been identified as a country seat by the Administrative Committee, you also count as a member of Country Labor. Is that right?---I think that's correct, yeah.

And so there's not like a separate form you fill out to say I want to be a member of Country Labor. If it's the case that I apply to the general secretary to become a member of the Australian Labor Party and I'm from a country area, or at least one designated as such, then I get to be a member both of NSW Labor and Country Labor. Is that right?---I, I understand that's correct, yes.

It's right, isn't it, that in 2014, Country Labor was in some financial difficulty. Do you agree?---I, I, I'm not aware of that.

Well, if it was in financial difficulty, it's something that you would be aware as general secretary at the time. Do you agree?---Yes.

In point of fact, a loan of \$1.68 million was advanced from NSW Labor to Country Labor in October of 2014. Do you agree?---No.

10

You say no, do you?---I don't believe so, no.

If such a loan was advanced, it's something that you'd know about as general secretary. Would you agree?---Oh, yes.

Can I help you this way. Can we go to Exhibit 150, please, Exhibit 150. Do I take from your reaction to that question that – with both the “no” but a, at least as I read it, an exasperated “no” – that the first time you heard about such a loan was when I just said it?---No, I've heard that a deed agreement was back dated after I left office.

20

I see. Well let's go to the details of this. I'll start with Exhibit 150 and I'll ask you some more questions about that in a moment. PDF page 133, now this is a disclosure that was submitted by the Country Labor Party. They've since amended it further to remove the \$50,000 in donations that were first recorded as being received by donors in the subject of this investigation. Do you see there, Mr Clements, that there's a reference to a loan of 1 October, 2014?---Yes.

30 In an amount of \$1.68 million. Do you see that there?---Yes.

Now, are you saying that during your tenure there was no such loan? Is that what you're saying? And note there that the date of the loan is 1 October, 2014, which is while you were general secretary.---I have no recollection of this and I don't believe that happened.

So in fairness to you, I should indicate that this particular disclosure was lodged, it seems, after you had resigned as general secretary but it does say that a loan was made on 1 October, 2014. Do you see that on the screen?

40

---I'd know that.

And so are you saying firstly if there was such a loan you'd know about it, correct?---Yes.

And you have no knowledge as general secretary of such a loan?---I have no recollection of it.

No recollection of it at all?---No.

It wasn't discussed at a Finance Committee meeting?---Not that I recall.

You said, well, it's something that you would recall, though, it's a significant matter?---I believe so, yes, yes.

It's not \$10 or \$1,000, it's \$1.68 million, correct?---That's correct.

10 But it's something that you have no recollection of being even discussed while you were general secretary. Is that right?---No.

And you said a moment ago you believe that there was a deed that was backdated. Did I get that right?---I've heard, I've heard, I've, I've heard on the grapevine that after my time in office that a deed of agreement was effectively backdated between the two parties.

THE COMMISSIONER: What's the identity of the grapevine?---Oh, look, I can't recall, Commissioner. I, I understand hear a lot of stuff.

20 Well, it's nothing more than rumour or scuttlebutt, is it?---Well, yes, Commissioner.

MR ROBERTSON: Wouldn't you at least agree that when you were general secretary, Country Labor would receive substantially less funding and donations than NSW Labor?---Yes.

To such a point, I suggest, that Country Labor was in a deficit of funds. Would you agree?---No.

30 Would you at least agree that there was a priority at the Sussex Street office in 2014 and 2015 of seeking to raise money within the Country Labor? Do you agree with that?---I don't recall that.

Well, would you at least agree that steps were taken at the Sussex Street office with the view of fundraising money to find its way in the Country Labor bank account?---I, I can't recall that.

40 Do you accept that as at 2015 there were separate bank accounts for NSW Labor and Country Labor?---I think that's the case, yes.

And was it at least the practice at that point in time that only donations earmarked for Country Labor should go into the Country Labor bank account?---I, I, I'm not sure of the particular procedure with that.

Well, as general secretary, what practices or procedures did you put in place as to the circumstances in which money should find its way into a Country Labor bank account?---I would have relied on the practices and procedures that were already in place.

And what were the practices and procedures that were already in place in connection with that matter? In other words, when money should find its way into the Country Labor bank account?---I just don't know.

You're the general secretary of the party and you don't know what the practices were in terms of receipt of money? Are you serious?---I can tell you that my expectation would be that there would need to be some indication that the money would be donated to Country Labor.

10

So at least at the level of expectation, your view would be as general secretary that absent some sort of earmarking that a particular sum of money should go to Country Labor, then it should not go into the Country Labor bank account, is that right?---I would expect that there would be some indication from the donor that that's where the money wanted to go, yes.

20

So your expectation, I think we're agreeing on this, but your expectation would be absent there being an indication from the donor – perhaps expressly, perhaps impliedly – that I want to donate to Country Labor rather than NSW Labor or to the federal account, then the money shouldn't find its way into Country Labor, would you agree? That's your expectation as general secretary?---Yes, yes, yes.

And that's an expectation that you communicated to your staff, is that right?---Oh, look, this is at a level that I, I, I don't recall.

So it's an expectation that you had at the time, is that right?---That would have been the expectation, yeah.

30

Your expectation, correct?---That's right, yes.

But you don't recall communicating that expectation to anyone, is that right?---No. No.

THE COMMISSIONER: That would be also, in addition to being an expectation, it would have to be a principle, wouldn't it? That is to say that unless a donor indicates her intention for a donation to go to Country Labor, it should not go there. Would you agree?---Yeah, I, yes.

40

So in other words, unless there is a clear enough indication of the intention of the donor that it's not to go to Labor NSW but it's to go to Country Labor, otherwise it should not end up in the Country Labor bank account. ---I think there would need to be an indication of where it should go, yeah.

That's right. And the indication is looked for on the disclosure form that the donor signs, is that right?---That's, that, well, that's, that's the principal way that you would get it, yeah.

That would be the easiest and I suppose the most effective way - - -?
---That's correct, yeah.

- - - of ascertaining the intention of the donor?---Yes, yes.

How else would one be able to establish the intention of the donor if it wasn't done that way?---I suppose you could confirm with the donor themselves.

10 But that would be very ad hoc, I suppose.---Yeah.

There would be practical issues around that.---Yes.

So the expectation would be to look for the indication of the donor on the form, the disclosure form signed by the donor.---That would be the best indication.

20 If in fact a practice had grown up where that didn't occur and that money was going to be, was put in the account of Country Labor without any evidence that that's what that donor intended, that would be a matter of considerable concern, wouldn't it?---If I was aware of it.

Yes. Well, I'm not coming to your awareness about it, I'm just simply saying as a matter of fact, if it occurred, it would be a matter of considerable concern, wouldn't it?---I mean not, not at the level that, you know, prohibited donors doning [sic] donating, that was, that was the, that was the sort of top level.

30 Well, that's legislative, yes.---Pardon?

That's a legislative barrier, isn't it?---Yes, that's correct, yes.

Well, I'm not talking about legislative barriers, I'm just simply talking about matters of principle.---As a matter of practice it is, it would be a matter of concern, but - - -

Well, did you ever hear of any such practice in your time?---Not that I can recall.

40 Or become aware of such practice?---Not that I can recall, Commissioner.

MR ROBERTSON: You've given two examples of circumstances in which it might be appropriate to bank money in Country Labor's bank account, one being where it's clear on the face of a disclosure form and secondly where the donor has otherwise indicated that they want to donate to Country Labor. Is that the extent of the appropriate circumstances in your mind as general secretary from August 2013 to January 2016, or are there any others?---Not that I can think of.

What about if a particular donor had provided two identical forms, each for say \$5,000, in circumstances where the cap was either \$5,000 or at least some figure less than \$10,000, would that be a circumstance in which you as general secretary at the time would regard it as appropriate or permissible for the Sussex Street office to say, well, it's obvious that this donor wants to make donations to two parties and so therefore I'll infer that one lot of \$5,000 goes to NSW Labor and one set of \$5,000 goes to Country Labor?
---I think in those circumstances, and I understand that that is the
10 circumstances that we're dealing with here, my, my expectation would be that that donor would be contacted to confirm, considering those forms didn't have any specified it was going to the Prospect campaign account or something.

Well, let's move away from Prospect campaign account for the moment. Let's assume that there's two identical forms that refer to NSW Labor, not to Country Labor at all, and for the time being let's ignore Prospect campaign account, are you saying that your expectation as general secretary
20 would be that it wouldn't be appropriate to bank any of the \$10,000 into the Country Labor's bank account without at least first making contact with the donor to say, well, look, you can't donate \$10,000 to NSW Labor, but would you like to donate \$5,000 to NSW Labor and \$5,000 to Country Labor?---Yes, that would be the expectation.

That would be your expectation not just now, but most importantly your expectation when you were general secretary. Is that right?---Yeah, that would, yes.

Is that an expectation that you communicated to anyone?---Not that I can
30 recall.

The Commission has heard that there would always be an instruction or understanding at the head office level regarding where money for particular events should be deposited. For example, there may be a particular event that is earmarked as a Country Labor event, perhaps as a federal campaign event, perhaps as a NSW Labor event or perhaps both a NSW Labor and a Country Labor event. Do you agree with that evidence from your perspective when you were general secretary?---That's a, that's quite a long
40 question. Can I, can I answer it this way. My expectation, and this is how Business Dialogue, which, which is what I dealt with for quite a while, was that people would be given an option, because there would be people who would attend something who couldn't donate to the state campaign, they would be given an option of ticking a box to say that they wanted their money to go to the federal campaign account, or their Chifley Forum membership would go to the federal campaign account, rather than the state one. So my, my, that, that, that was my view of what the practice should be.

Well, let me try and unpack it this way. It's right, isn't it, that as part of the fundraising efforts of the Australian Labor Party in its various manifestations, federal, NSW and Country Labor, there would be fundraising events. Correct?---Yes.

Fairly regular fundraising events. Correct?---Reasonably regular.

In particular in the lead-up to elections you would seek to have regular fundraising events. Correct?---Yes.

10

And those events could be of all sorts of kinds, they could be lunches or dinners. Correct?---That's right.

They could be, for example, an event that had a speaker and that people attend, correct?---Yes.

Is it the case though that in advance of those particular events there was some instruction or understanding at the head office level to say this event is a NSW Labor event or this event is a Federal Party event, for example?

20

---Not always, no. Sometimes there would be events where you would be raising money for both.

So you've given an example of where there may be a particular event where there might be an option given to attendees at an event to say I want to donate on a federal level or I might want to donate on a state level, correct? ---That's correct.

30

And so one example might be there may be someone who is a prohibited donor as a matter of state law, for example a property developer, who can't donate to the state party, the state campaign account but nevertheless is permitted to donate at the federal level, correct?---That's correct.

And so there's examples of events where people are given an option at least as to whether they donated at the federal level or the state level. Is that right?---Yeah, that's correct.

40

But those kinds of options, are they always decided in advance, in other words, here we've got an event which is going to be NSW Labor, here's an event that's going to be federal party and here's an event that there's going to be an option. Is that something that's done in advance or is that something that might only be effectively decided after the event?---You, no, no, it'd be before and, and, and can I help perhaps this way by saying you would, it would, that would normally happen with a federal fundraiser because you'd be taking money that you could put in the state campaign account but it would be for a federal election. So if it was a federal election fundraiser, if we were in the lead-up to a federal election, that you would say that this is a federal fundraiser but if you had a, a normal, in the normal course, people should have been given the opportunity of doing either.

I'm still not quite clear on your answer. Are you saying that in advance of each event there's an instruction or understanding as to the particular part of the party that the event is for, is that right?---Yes, yes.

And it may be a particular party, or party of the party – NSW Labor, Country Labor, Federal Party – or it may be decided that for a particular event people should be given the option. Is that right?---Yes. The second, the latter.

10

Always the latter?---That, that would be the practice, yeah.

So are you saying - - -?---I'm not so sure it's always. I can't tell you on every occasion but - - -

So are you saying the practice is to always or almost always give people an option of which part of the Australian Labor Party a particular donation should be made?---That, that, that, that's, that's how I would – yes.

20 Now, you've seen the reservation forms for this particular event that this Commission's investigating, correct?---Yes, I have.

And you'd agree with me that no options at all were given in relation to that?---No.

In fact it's worse than that because, as you've pointed out, there's a reference, it seems erroneously, to the Prospect campaign account, correct? ---Yes. That's an abomination.

30 So that's, to pick up your word, that's an abomination against the practice that you would regard as appropriate in your capacity as general secretary. Is that right?---Yes.

Was there some practice or procedure of having reservation forms or disclosure forms signed off on at the head office level to avoid abominations of that kind?---In the area that I, that I was in charge of until I think mid-2014, which was Business Dialogue, yes, I, I signed off on those forms.

40 So in relation to Business Dialogue, you had at least some involvement in fundraising. Is that right?---Yes.

And that's also the case in relation to Chifley Forum, is that right?---Oh, but the Chifley Forum was a sort of set and, set and go thing that got set up when I was assistant secretary and, and I think – okay. So Patty Kandris, who was the Business Dialogue fundraiser, I think ran Chifley as well and she wanted to report to me for a while and I allowed her to.

And that happened during the time that you were general secretary. Is that right?---That's correct.

And as general secretary, at least with the Chifley Forum and the Business Forum, you had some involvement in fundraising. Is that right?---I, I supervised Patty for a, for a while, yeah.

10 THE COMMISSIONER: I think you said up to a point in time the invitation/disclosure forms you signed off on, I thought you said up to a certain time in 2014, did you say?---I don't know who did it before me.

Let's go back to square one. Talking about the disclosure form that was used in the fundraising event with which this investigation is concerned. ---Yes.

Would you have signed off on that form?---No.

20 But you had in the past signed off on such forms.---Not in that area. In, in the Business Dialogue area.

I see. Why wouldn't this have been brought to your attention in the preparations for the annual fundraiser with the Chinese Friends of Labor? ---Commissioner, I don't know.

Well, should it have been?---Absolutely.

30 Well, wouldn't you have said as the date approaches – that is, 12 March, 2015 in this case – “Nobody's shown me what we're putting out in the community by way of disclosure forms. Give me a look at them”?---Well, this wasn't in my area, so I, I, I, and, and this, this area of fundraising I had nothing to do with. In the earlier, in the early time when I was general secretary for a period, and I don't remember how long, Patty Kandris from Business Dialogue and Chifley reported to me, and I signed off on her forms. But, no, I - - -

But you were the head of the organisation at the time.---That's correct.

40 Well, surely you would have wanted a briefing at some stage to make sure, well, everything was in place, action stations, ready to go.---Commissioner, I should have asked for that and I didn't.

Well, why wouldn't you? It seems to me to be such a focal point of any fundraiser.---It's, well, this is the focal point of this inquiry, Commissioner. But I suppose if I could answer it this way. I hadn't worked in that office for very long, and when I came in, I hadn't come in the normal way.

Well, you'd come in in August 2013.---As general secretary.

We're talking about March 2015.---That's correct.

Well, by that stage you would have been well and truly across the importance, wouldn't you, of checking off to make sure everything's ready to rock'n'roll before it goes public by way of a fundraiser.---Commissioner, not at this sort of intrinsic level. And, and, and I just - - -

10 Well, so you say no responsibility on my shoulders?---Well, I'm, I'm not saying that, Commissioner. I, I, I have said that in retrospect I, I should have checked this stuff. But I took over an organisation that had been run in a certain way for a long time. I didn't know much about the organisation or how it ran, and I had some big stuff to deal with.

MR ROBERTSON: In relation to matters of this kind that you've said you had nothing to do with, you at least accept that you had ultimate responsibility as general secretary, do you agree?---Yes.

20 And in relation to fundraising matters more specifically, you had at least some role when you were general secretary in relation to the Business Dialogue and the Chifley Forum, is that right?---That's right.

It may have been in part a supervisory-type role, but you had at least some role, would you agree?---That's right.

And in relation to those on the ground, as it were, they would report directly to you rather than through Ms Murnain, is that right?---For a short period of time, Patty Kandris reported to me.

30 So it's not right, then, is it, to say that on all fundraising matters while you were general secretary it was all a matter for Kaila rather than for you, is that right?---I said that in relation to the state campaign. This was much earlier than that.

Well, is it right to say that at least in relation to some matters concerning fundraising, those are matters that would report to you rather than through Ms Murnain while you were general secretary, would you agree with that? ---For a short period of time, well before the 2015 election.

40 Well, what was that short period of time?---Look, I, I, I believe it was for six months, maybe, maybe, maybe 12.

So maybe 12 months from when you started as general secretary, is that what you're saying?---That's right.

And then after that 12 months, who then became - - -?---Well, I said could have been up to.

Well, six to 12 months. For those six to 12 months - - -?---I believe it was around six. It could have been up to 12, but I - - -

For whatever that period was, after it came to an end, who would then be responsible for the Business Dialogue and the Chifley Forum?---So essentially what happens, Patty came to me and said, "Look, this isn't working. I'm happy now to report to Kaila," and I said, "Fine."

10 So does that mean that there was at least two separate discussions between you and Ms Murnain when you orally made delegations in relation to matters of fundraising?---At least?

At least two – I'm trying to understand your process of delegation, and you've indicated there's no written document that effects the delegation. Do you agree?---It could have been as much as me saying to Kaila, "Hey, Patty's going to report to you now," or Patty going to Kaila and saying, "I'm reporting to you."

20 But you've got no specific recollection of that delegation?---I have a specific recollection of the conversation with Patty. I don't have a specific recollection with how I effected that with Kaila.

And is it right that you don't have a specific recollection of how you effected the more general delegation that you referred to of fundraising matters other than the Chifley Forum and the Business Dialogue?---That's right.

That's right?---That's correct.

30 I just want to be clear on your answer to one matter I asked a moment ago. The two forms example that I gave, two forms that look exactly the same, they say NSW Labor, no reference to Country Labor, ignore the reference to Prospect campaign account for the time being. As general secretary would you regard it as permissible to say, well, clearly this person was intending to make donations to two different political parties and therefore we'll deposit half of the money in Country Labor and half of the money in the state account?---If you, I would expect that that would be checked with the person.

40 Your expectation as general secretary would be you can't just take that on your own bat and draw that inference, it's something that might lead you to want to ask a question and that's a question that should be directed to the donor. Is that right?---Yes, yes.

Did you at least agree though that there was an emphasis at the head office level, perhaps a priority or at least a desire as at 2014 and 2015 to seek to get some money into the Country Labor account?---I don't recall that.

You don't recall any specific concerns about the funding position of Country Labor and which seems, albeit after your time, to have resulted in the record of a loan having been made on 1 October, 2014. Is that right?
---I don't recall that.

You don't recall that at all?---No, no.

10 Back to the gap then. So when you refer to the gap, do I understand it correctly to be the gap you're referring to is the gap between the revenue that comes from public funding by way of reimbursement of campaign expenses, that's the revenue side, and then on the expenditure side is the cap on the amount that can be spent on a particular state election. Is that what we're talking about with the gap?---And, and, and, and there's a third element, the amount of money you've already got saved up in, in, in the state campaign account.

20 Well, let's just deal with it in stages. So are the first two integers that we're concerned about when we're talking about the gap, the revenue side, reimbursed according to a particular formula, and expenditure, being the cap on what you're entitled to spend by way of electoral communication expenditure, that tells you an amount that needs to be funded within the party, rather than by way of public funding. Is that right?---That's correct.

So that's the magic number that needs to be found, either from accumulated revenues in the past or from fundraising activities. Is that right?---That's correct.

30 And then you said to us this morning that once that gap had been established, you would sit down with Ms Murnain to discuss how that gap would be filled. Is that right?---(No Audible Reply)

Do I have that right?---Yeah, we'd have a discussion I suppose, yeah.

And do I take it then that you would have a discussion to say, well, look, here's the gap, this is what we think we should do in order to fill the gap?
---I don't recall a discussion like that.

40 You must have at least had some discussions, if not with Ms Murnain then with someone else, to say, look, we've got this gap, we want to spend to the cap in this forthcoming election, how are we going to get the money?---I don't recall any discussion like that.

But surely as general secretary that would be something that you'd be quite interested in?---I, I delegated that to Kaila and I, and, and I trusted her to be able to do it.

You'd have to agree that one of your principal functions as general secretary is to do everything in your power to seek to win seats in elections, do you agree?---Yes.

And an important aspect of that is to ensure that the party and indeed the parties, plural, are sufficiently funded in order to spend on communications, advertising and the like where you are maximising the number of votes, seats and prospects of winning, do you agree?---Yes.

10 So it must be something that you were intimately interested in at least in connection with the 2015 state election, which was smack-bang in the middle of your tenure as general secretary, do you agree?---Sorry, could you ask the question again?

You must have been intimately interested, as part of your role in seeking to win elections, in discussing how money might be raised in order to fill the gap that you've referred to.---I needed to be confident, and I was confident.

20 THE COMMISSIONER: Sorry, I couldn't hear that.---I needed to be confident, and I was confident.

MR ROBERTSON: So does that mean someone reported to you and said, "This is how we're going to fill the gap," and you were confident on the proposal as to how to fill the gap, is that right?---I think it was probably more, more likely that the, because we'd been putting money away, the amount of money to raise was well within Kaila's abilities and she would have assured me of that.

30 THE COMMISSIONER: But if you're looking at a gap to be filled, you'd need to be on top of the nuts and bolts of (a) what the gap was and (b) how to get there to eliminate or at least reduce substantially the gap.---We didn't have to invent new ways to do it. We'd been doing dinners and emails and so forth for some time.

If the gap is a fairly large gap to be filled, the first thing you'd think about would be how do we ramp up the fundraising outcomes and how are we going to achieve that, is that right?---I would agree that if there was a big gap to be filled and Kaila felt like that that was, we were going to have challenges in it, that I would be consulted on that.

40 As a general secretary of the NSW Branch, if there was a substantial gap to be filled and you fell well short of that and lost seats, your head would be on the chopping block, wouldn't it?---Yes. Well, my head's always on the chopping block.

Well, we're just talking about funding at the moment. If the funding was seen to be inadequate – that is, the efforts and the plans and strategies failed to produce sufficient to bridge the gap or substantially bridge the gap – one

person who's going to pay the price of such a negative outcome would be the general secretary.---That's correct.

And that alone would provide enough incentive for you to remain on top of the plans, the strategies, the methodologies that would work in meeting the gap.---Commissioner, I, I, I'll put it this way. There would have been much more, from the danger of my head being on the chopping block, there would have been much bigger issues than that. The inability to win seats or manage expectations would have been the number one thing.

10

Sure.---However, ending up with a deficit or not enough money to run a campaign was something that I would rightly be concerned about, but my recollection is that I wasn't concerned about it, that I was confident that we, given the shortfall that, the amount of money that needed to be raised, that, and the ability of Kaila to get that done, that I was safe. That was something that was safe for me to leave in her hands.

20

Yes, but you wouldn't throughout a campaign and the lead-up to the campaign, when the fundraising activities were under way, just rely on blind trust in Kaila. You would want to be informed about how are we travelling this week? How are we going, you know, this month? How are we going to bridge the gap? We've only got six weeks to go. That sort of thing. ---That's, that's, that, those, I assume those conversations would have happened, Commissioner.

Yes, well, that's what I'm saying.---Yeah, yeah.

30

That doubtless you did have other pressing concerns to turn your mind to, but this would be included as one of those.---Yeah.

Is that right?---That's correct. And I'm not denying that she may have updated me from time to time on how things were going or that things were going okay. I just don't recall those conversations.

Well, is one reason why you couldn't recall the conversations is that she and you didn't talk to each other?---At, at - - -

40

And that's because neither of you liked each other. Is that right? I mean, is that the reality?---The, the reality is that we had a, during the state campaign, we had a relationship that worked and that relied on me being able to give her the trust and the space to do the things that, that I needed her to do.

Well, the understanding I have at the moment, rightly or wrongly, is that the relationship between you and her was, for a great part at least of the period of the time you occupied the office of secretary general, dysfunctional. Would that be right?---During the state campaign, absolutely not, Commissioner.

Well, I'm not just restricting to the election campaign. You're talking about the election campaign of 2015?---2015. Post that there were many strains, Commissioner and it, and it, and it broke down quite badly and it wasn't a perfect relationship and it possibly wasn't the same strength of relationship the previous secretaries and assistant secretaries had, had had. But during the state election, in my view, we worked well together. She complemented my, I complemented her and she very much complemented my, you know -
--

10

So do you say in the lead-up – I withdraw that. From the period you took up your office in August 2013 until the 2015 election, everything was fine between you and her, so far as relationship is concerned, or was it not so fine?---It wasn't perfect, Commissioner. There were strains but we had a, the, we, our relationship worked very well during that state campaign.

20

Well, leaving the campaign period to one side, how could you remain properly briefed about fundraising activities if you did not have a good relationship with the person you say you delegated the task to?---I, I had a good relationship, I had a, I had a good working relationship with her until around August 2015.

And what happened then?---We weren't, we weren't good friends, Commissioner, and we were, you know, it wasn't, you know, we weren't political partners from Young Labor days or anything like that like a lot of people were, but she was someone who, of immense abilities in what she could do and that complemented me and we made it work.

30

MR ROBERTSON: As I understood one of your answers before, in terms of the gap, what I'll call the electoral communication expenditure gap, you weren't particularly concerned about that gap in 2015. Is that right?---I don't recall being concerned about it, no.

And does that answer apply both to NSW Labor and Country Labor or does it only apply to NSW Labor?---I, I, I wasn't, I wasn't around the way that worked.

40

Well, you'd at least accept, wouldn't you, that the gap, both the reimbursement of campaign expenditures and the electoral communication expenditure reimbursement amounts apply separately for NSW Labor versus Country Labor?---Oh, I understand that now. I don't recall understanding that then.

Are you seriously saying you didn't understand that as the general secretary of Country Labor, you didn't understand that Country Labor and NSW Labor were treated as separate parties for the purposes of those caps and what you've described as the gap?---I, I am admitting I didn't understand that.

Are you quite serious about that?---I am serious, Mr Robertson.

Surely you must have known in 2015, at least towards the start of 2015, you've been in the job for over a year, surely you knew that those two parties were treated separately for the purposes of state electoral law?---I didn't understand how it worked, Commissioner.

Didn't understand how it worked?---Mr Robertson.

10

Surely you at least understood that Country Labor was having financial difficulties?---I don't remember. I don't recall that.

This is all stuff that reared its ugly head after you had moved on. Is that right, as you understand the position, at least?---My understanding was that the way that it was, and this ipso facto, the way that things were done in 2011 and 2015, the Electoral Commission decided, had a disagreement with the Labor Party and said that we'd been doing things the wrong way and that subsequently that was retrospectively fixed with the loan. That's my understanding.

20

But that's not an understanding that you gathered at the time when you were actually general secretary.---No.

Is that right?---No.

The way in which the two registered political parties worked was not something that you knew about at the time that you were general secretary. Is that right?---No.

30

You said a little while ago that one of the reason why you weren't concerned about the gap was that, this is my note, "We've been doing it for years." Do you remember that response?---(No Audible Reply)

Do you remember that response? Sorry, you need to answer out aloud. ---No, no, I, I, I, I think that was, response was in response to something that the Commissioner asked me about, and I was effectively saying that the way that we had been, you know, the way that political parties raise money had been going on for years.

40

You were certainly not the first general secretary of NSW Labor, the Australian Labor Party is a party of significant and lengthy standing in this country. Correct?---That's correct.

And is what you're really drawing attention to is that the 2015 election was not the first election, far from it, that the Australian Labor Party had contested. Correct?---No.

And so there were at least approaches in place as to how to fundraise for an election. Correct?---That's correct.

And one of those approaches was to, within the Labor Party was to run events through Labor Action Committees. Correct?---That's correct.

And so before your time, and this is another thing you inherited, there was a practice of running events to raise money by Labor Action Committees for the benefit of either a state campaign or a federal campaign. Correct?

10 ---I think that was a practice, yeah.

So there had been a practice before your time of having Labor Action Committees - - -?---Oh, yeah, you're - - -

- - - running events or launches - - -?---Sorry, you're asking me about something that happened before my time and I just can't answer that.

20 Well, what I'm focussing on is your comment, "We've been doing it for years." And as I understand why you raised that in answer to one of the Chief Commissioner's questions is in effect you're saying I didn't need to reinvent the wheel.---Exactly.

Is that a fair summary?---Exactly.

Because the wheel at least in part had already been invented because there were many elections before your time and there were, and will continue to be, many elections after your time. Correct?---That's why it's called a machine.

30 And one of the aspects of what the machine does, and other entities associated with it such as Labor Action Committees, is to run fundraising events. Correct?---That's correct.

And so it wasn't your idea to run a Chinese Friends of Labor dinner in 2015. Correct?---No.

You knew as at 2015 that Chinese Friends of Labor would run annual dinners for the purposes of fundraising for the party. Correct?---That's correct.

40

You were also aware that other Labor Action Committees would run events as well. Correct?---Yes.

And so you must have at least had in your mind as at 2015 a rough idea as to how much you were expecting those Labor Action Committees to earn through their events. Would you agree?---I may have. I don't recall.

Well, I suggest you knew a little bit more about that. I suggest that you had at least a general idea that for example the Chinese Friends of Labor event was likely to be a large one.---It would be bigger than the others.

And you had at least a general idea as to how much you expected should be raised for such an event. Do you agree?---I may have. I can't recall.

10 THE COMMISSIONER: Well, you'd expect you would have known, I take it?---But you're talking about what I would regard as a minor detail from five years ago. I understand that it's a big deal now, but - - -

No, no, I think you misunderstand the point. We're talking about the target figure to be raised for the 2011 state election.---It would be likely that I would, it would be likely that I would have had some knowledge of that, yes.

Well, one way obviously is through the committee meetings and as the minutes probably reflect.---Or an email or something like that, yeah.

20 MR ROBERTSON: Indeed it's the kind of thing that you would likely have discussed with Ms Murnain during the discussion that you mentioned you had with her concerning the gap. Do you agree?---Oh, I'm not sure about that I got, I would have got involved in that level of detail.

Well, would you at least agrees that at a head office level there would have been expectations as to how much revenue should be earned in relation to Friends of Labor events in the lead-up to the 2015 election?---Yes.

30 And how, to your knowledge, as general secretary would those amounts be arrived at?---Kaila would do it in conjunction with the Labor Action Committees.

Not something that the Fundraising Committee would seek to settle on? ---When we call it a committee, Mr Robertson, I think it's more a group of people reporting in to Kaila. It's not a committee in the sense that they would sit around, in my view, and say, well, it would be - it would be discussed at a committee level, that's, that's correct.

40 I used the phrase Fundraising Committee because I took a note that I think that's what you called it, but did I have that wrong?---Yeah, and, and, but, yes, it's a Fundraising Committee, so - - -

But this group of people, whether you call them a committee or not, who are the members of that grouping?---It would be, I answered this question earlier, but it would be the, it would be Kenrick, it would be Patty, it would be the guys who did the emails, the online fundraising, and it would be Kaila. And, yeah.

And did you attend at least some meetings or discussions of this group, whatever we want to call it?---I think I did.

You think you did?---I think I did.

And is it possible that during the course of those meetings, or during the course of one of those meetings, there was discussions as to expectations as to what amounts of money might be raised from particular Labor Action Committees?---I don't recall any, any such conversation.

10

But you're not denying that that's one of the things that may well have been discussed?---It's a, it is a possibility, yeah.

Indeed - - -?---I couldn't categorically say that didn't happen.

- - - indeed it's the kind of thing that would be likely discussed at a Fundraising Committee or group meeting, agreed?---Yeah. Yes.

It's the essential purpose of a grouping of that kind.---I assume so, yes.

20

Presumably the purpose of the Fundraising Committee is to talk about fundraising, correct?---Yes.

And as part of fundraising, is to have some idea as to how much by way of funds might be raised, do you agree?---Yes.

I think you said before that Ms Murnain established that committee or grouping, is that right?---Yes.

30 Do you recall when she did that?---No.

But do we take it that it was sometime early, at least in your tenure, as general secretary.---No, it would have been closer to the state election.

Did that Fundraising Committee, to your knowledge, only meet in advance of the election? Or did it meet after the election as well - - -?---I'm not sure what - - -

40 - - - to do something in the nature of a wash-up to see where amounts are at?---I'd be very surprised if it met after the election.

Was it not the case, though, that although obviously enough one would make every available effort to have funds that are pledged be brought in in advance of the election so they can be spent on it, it would happen from time to time that some pledges might not actually arrive until after the election, is that right?---I understand that, yes.

Well, not just you understand that, you had experience of that as general secretary, is that right?---I can't recall specific examples.

At least from your perspective as general secretary, presumably you would be putting every emphasis on money coming in in advance of the election so you can spend it on the election, correct?---Not necessarily, no.

So from your perspective it wouldn't matter so much if the money came in after the election, so long as it ultimately came in, is that right?---Correct.

10

And is part of the reason for that that you in a sense have some money that may be accumulated in relation to past activities, is that right?---It's, it's because there's always going to be a gap between when you pay your bills and when you spend your money. You know how much money's coming in. And in the event that you don't raise enough, you can borrow or raise money after the election.

20

So there might, for example, be invoices for, say, television ads that may be sent to you around about the time of the election, or perhaps afterwards, which then give you 30 days to pay.---Oh, they're very patient, Mr Robertson.

30

Or they might give you more than that. And as long as you get the money before a debt collector comes knocking, then from your perspective as general secretary, you're not too concerned about that matter, is that right? ---The, the, the way these things work is essentially your biggest expenses are printing, pamphlets and so on, and TV ads. And the people that you use are pretty patient about money coming in. They understand, having worked with you for a long time, that the money comes in a little bit later.

But it's at least right that you want to bring in the money as quickly as possible and preferably in advance of the election rather than after it.---I mean, look, principally speaking, yes, of course, you want your money. But it's not, it's not a big deal in the way that in another business with cash flow issues that it would be.

40

I take it at least, though, that your expectation as general secretary would be that if money is raised in connection with an event, Chinese Friends of Labor or otherwise, it would find its way to head office as soon as possible after that event. Do you agree?---Sorry, could you ask me that question again?

Your expectation as general secretary in, for example, 2015 would be that if money was raised in connection with an event that that money should find its way to head office as soon as possible after the event?---Ideally, yes.

Not just ideally, that would be your expectation and that would be what you would want to achieve. Is that right?---Your, your, your, your, your, your,

ideally you would want the money to come in otherwise people are going to, if they haven't, if they've pledged money and not donated it, the longer you leave it to get the money, the less likely they're going to donate that money.

THE COMMISSIONER: I think we're talking about experience here, and past practice. In accordance with past practice were funds raised through a fundraising event such as a dinner, as a matter of practice, finds its way into head office at Sussex Street within a matter of days of the event?

10 ---Commissioner, I just don't know. Like, I, I wasn't involved in this area of it and I, I just – I mean, the area that I was involved in for a while, Business Dialogue, it was all credit cards.

Well, nonetheless it's not surprising, is it, that there is a system whereby the money has gone in as quickly as possible, as counsel put to you.---Yes.

And once the fundraiser is finished - - -?---That, that, that, that, that would be the expectation, yes.

20 And you would know that that expectation, as built upon past experience, that normally money arrived at head office within days of the event?
---Look, I, I, I assume that, Commissioner, but I, I just wasn't involved at this level. I hadn't been before I was general secretary, I hadn't been before I was assistant secretary.

Well, if the money didn't come in, it would be a major concern, wouldn't it?---Depending on the context I suppose.

30 Well, if it's a large amount of money and big fundraising event and so on, the money doesn't turn up, that would be a major concern for the branch, wouldn't it? I should say the branch office.---It, it would, it should be a concern for the person responsible for bringing the money in, yes.

And if it didn't turn up, that's a matter that would be brought to the attention of the general secretary, you would think, wouldn't you?---You would expect.

40 Yes. And if somebody did report the fact that weeks had gone by and although it appeared to be a very successful event, there were 600 odd people there, not one dollar has been received by branch office, that would be a major concern, wouldn't it?---It would be, yes, that would be a concern.

And if it came to your attention, would you be duty bound to initiate investigations into where is that money?---I would, I would ask questions, yes.

Well, you'd do more than that, wouldn't you, as general secretary? You're talking about a large amount of money and weeks went by and nobody had brought it into Sussex Street. You would not only be asking questions, you

would be launching a full investigation. Where is that money, who is responsible for its custody, what's happened to it, things like that, correct? ---Look, in retrospect, having seen everything here, Commissioner, I think that's a reasonable thing to say, but if, if, it would depend on the context and, and I would be, I would be asking significant questions if I was aware of that.

10 But this is not rocket science, this is common sense, isn't it? That if there's a big event, a lot of effort's gone into the fundraising activities, lots of people turn up, something of the order of 5 or 600, that a lot of money had been donated, the exact amount will be ascertained once the money comes in and is counted. But then, within a few days, there's no sign of the money, another week goes by, still hasn't come in, another week goes by, still no money, you as head of the branch would be duty bound, wouldn't you, to set up an investigation to track that money?---If I was aware of it.

Yes, that's what I'm saying. If you were - - -?---Well, I would be duty bound to make enquiries.

20 Why not a full-scale investigation?---Oh, I've never set up a full-scale investigation in my life, Commissioner.

Well, you know if there's a large amount of money and it's public money that's been given to the Labor Party and it's gone, it hasn't arrived, what do you think you would do if you were told that, as a matter of common sense, what would you do?---If I was told that there was, if, if we're dealing with the exact circumstances that we're dealing with here, if I was told - - -

30 No, just on the scenario I've just put in that last question, what would you do?---Say where's the money, who's got the money, why is it not here?

Right. And you'd start investigating by tracking down everyone who was present or handled that money. Is that right?---There were 600 people there, Commissioner.

I know, I'm talking about the officials who were organising and conducting - - -?---Oh, I would have talked to Kenrick, Kenrick and Ernest.

40 You'd talk to Kenrick?---Kenrick.

Who else?---Kenrick, Ernest, Kaila, Maggie.

Ernest Wong?---Yes.

Kaila?---Yes.

Yes. Who else?---Maggie.

Maggie, yes. What about police, would you call the police and say, look, we've got a problem on our hands, we had a huge fundraiser, we made lots of money and it's just vanished, it hasn't turned up?---I mean if I had evidence that it had been stolen or that, you know - - -

No, no, no. If you had evidence that the money was generated at this fundraiser but it had for some reason not appeared at Sussex Street.
---Okay, well - - -

- 10 Do you think that might be an issue that it might be a police matter, yes, indeed, the money might have been knocked off, stolen by somebody?
---Commissioner, sometimes these dinners didn't make money.

You're laughing now. I don't see much - - -?---I'm sorry, Commissioner.
- - - humour in this.---I'm not, I'm not laughing at this.

- 20 No, no, just stay with me. I said at the outset, I'm not asking question that requires a high level of professional knowledge, skill or ability as an investigator, I'm asking you as an adult man, who had experience sufficient to get you into the position of general secretary of the Labor Party NSW Branch, right. You understand I'm just asking you to exercise common sense?---Yes.

If it be the case that somebody came along to you and said, "We had a very successful fundraiser but the money hasn't arrived," and weeks went by, you would start asking questions, wouldn't you?---Yes.

- 30 Because it would be a very serious matter, the public money is not accounted for, nobody knows where it is?---Yes.

Right. And if after interrogating the people you've mentioned, still there's no satisfactory response, you'd have no option but to contact NSW Police, wouldn't you?---(No Audible Reply)

The money had gone.---I mean it depends what the people said to me. If they said, look, yes, that there was lots of money raised or, you know, someone could have said, well, we didn't raise much money, or - - -

- 40 But if you said, "Where is the money?" And nobody could tell you?
---Then I suppose at that point in time, if I, if I, if I had reason to believe that the money could have been misappropriated, then yes, involving the police would have been something to consider.

Well, you know in this case in March 2015 there was no money after the fundraising event on 12 March that entered into the premises of Sussex Street until almost four weeks later.

MR ROBERTSON: I'm sorry, Chief Commissioner, it's not no money, it's not no money, it's some money but not very much.

THE COMMISSIONER: Yes. I'll qualify that. How much came in before?

MR ROBERTSON: Can we go to Exhibit 151, please.

10 THE COMMISSIONER: Just hold that question and we'll find out how much money did come in.

MR ROBERTSON: Exhibit 151, page 1. I'll just ask some questions of Mr – well, I might just introduce this document if it assists, Chief Commissioner. To assist you, Mr Clements, this is a job profit and loss statement that's taken from the accounts of NSW Labor, and can I note for your benefit that the function donation of \$100,000 is the \$100,000 that's been the particular focus of this investigation.---Yeah.

20 And so can I draw to your attention that if that's not included, and noting the expenses, the event would run at a loss?---Yes.

Perhaps back to you, Chief Commissioner.

THE COMMISSIONER: You were aware that this fundraiser on 12 March, the Chinese Friends of Labor function, had been apparently a very successful event?---When I became aware of that I'm not sure, Commissioner.

30 No, but you did become aware of what had been a very successful fundraising event.---I'm aware of it now.

And did you become aware of the fact that at some stage the processing of donations, which were eventually undertaken, reveal that something of the order of \$100,000 had been raised through this fundraising event?---Sorry, could you ask the question again, Commissioner? Did you ask me when I – oh, I understand that now.

40 I said you became aware of the fact.---I, I, I did become aware, yes. Well, I have become aware, yes.

The facts of the matter are that the \$100,000 raised through the fundraising event didn't arrive at head office until April 2015.---I'm now aware of that.

And had you been aware of that, you would have launched the inquiries I've suggested to you that you would. You'd interrogate anybody who had anything to do with the fundraiser in terms of an organiser.---Yes.

I think you mentioned Mr Cheah, Patty, the email guys.---I didn't say Patty. That's the Fundraising Committee.

But you became aware of the fact, didn't you, after the dinner, that there had been no amount of money of that order, of \$100,000, received.---I don't recall being aware of that.

10 Well, you must have asked questions after the event, "Well, how successful were we? What sort of estimated amount did it generate?"---No, I, I, I don't think that's the sort of thing I would have asked.

Were you - - -?---I may have, but I - - -

Were you interested to know how much the fundraiser - - -?---A specific fundraiser?

No, just please don't talk over me.---Sorry, Commissioner.

20 Were you interested immediately after the fundraiser to find out how successful it had been in terms of dollars raised?---No.

Not interested?---I had massive, massive things on my plate, Commissioner.

I'm sure you did, but you've already acknowledged that this would be classed as a significant matter, the fundraising organised for March 2015? ---Yes, in a global sense, yes.

30 All right. Well, within a week or so of the event, did it not occur to you to inquire, "By the way, how successful were we?"---Commissioner, that was the busiest week of my life.

All right. Let's take it forward another week. After two weeks' time, did it not occur to you to ask questions as to the amount, estimated amount, that had been realised from the fundraiser?---So for the two weeks following this we were in the middle of a state election campaign, and I, I, I was just, this, this, I would have forgotten we had the dinner, I was that busy.

40 When did you first make an inquiry as to how successful the fundraiser had been?---I'm not sure I ever did.

You're not interested?---Not that I'm not interested, but if there's a problem, someone will raise it with me.

No, I'm not talking about a problem. I'm talking about a good outcome. I'm talking about whether you inquired as to how successful this fundraiser had been.---I don't recall ever inquiring about how successful this fundraiser was.

Was that because you were not interested?---It was because I had a lot of things to deal with on my plate, Commissioner. And - - -

It's because you were busy, is that what you say?---Exactly.

MR ROBERTSON: You at least made inquiries as to whether forms had been received in connection with money that had been raised for the 2015 election, do you agree?---I don't recall that.

10 You don't have any recollection of perhaps after the election making it clear to all and sundry that we want to bank the money but we also want forms associated with them?---No, I wouldn't have said that.

That's not the kind of thing that you would have drawn attention to, is that what you're saying?---I, I, I was constantly, it was, it was a principle that I drilled in that we had to have forms, that forms had to be signed, but I don't recall any specific conversation in relation to we can't bank this money until there's forms.

20 So did you do any drilling in between 12 March, 2015 and 9 April, 2015?
---Not that I recall.

You at least knew at that period that the Chinese Friends of Labor dinner was the largest of the Labor Action Committee fundraising events associated with the 2015 election campaign, is that right?---That would be the expectation, yes.

30 That would be the expectation because that's consistent with what we've been doing for a number of years, correct?---That's because the Chinese Friends of Labor got a lot of people to it.

And that's based on past experience.---Yes. Yes.

Chinese Friends of Labor dinners are very large, correct?---Yes.

Somewhat larger than other ones like the Arabic dinner, for example. Correct?---Yes.

40 But do you at least agree that there was an expectation at head office as to approximately how much revenue would be earned from the Chinese Friends of Labor event in that year?---I would expect so.

And what was that expectation - - -?---I don't know.

- - - as far as you can recall? Well, do you recall the \$100,000 being discussed as an expected amount to be raised from a particular dinner?
---No, I don't recall that.

You at least agree, don't you, that at the head office level there would be expectations as to amounts to be raised in relation to each Friends of Labor – I withdraw that – each Labor Action Committee event?---I would expect that, yes.

10 And can we go, please, to page 2 of Exhibit 161, and if we can zoom in to the top page. What I want to suggest to you is that either this document or at least the numbers in this document were drawn to your attention in advance of the events that are there referred to. Do you agree?---That's, that's probably the case, but I don't recall.

In terms of fixing the number in the Estimated Revenue column, whose job was that - - -?---Kaila.

- - - from your perspective as general secretary?---Kaila.

20 Just focussing then on Labor Action Committees generally, can you just explain in general terms what is a Labor Action Committee as you understood it when you were general secretary?---It's, it's, it's almost like a – would it be possible to leave that on the screen?

Yes.---If that's okay.

Exhibit 161, page 2, please.

THE COMMISSIONER: Is there something in that that you want to check? ---Oh, no, it'll, it'll help me explain by seeing the names of the Labor Action Committees. You don't have to leave it up there if it's, if it's - - -

30 Well, I don't want it to distract you. I've noticed you've been looking at the screen sometimes when you've been answering questions and sometimes it can inadvertently distract from the question being asked, but just bear that in mind.---I apologise, Commissioner. So it's almost, if we were to put it in catholic terms, it's almost a lay institution in the sense that you don't have to be a member of the Labor Party but you have to be a supporter, or you're expected to be a supporter or a supporter of someone that's running one of these things, and it was a way, they're ways of reaching out to broader support communities which don't require them to join the Labor Party or join a branch.

40

MR ROBERTSON: So is it right that it's actually quite possible to be a member of a Labor Action Committee, at least in your time as general secretary, without formally being a member of the Labor Party NSW Branch?---That's correct.

But one presumably is not going to join a Labor Action Committee unless one is a supporter of what I might describe as the Labor cause. Is that fair? ---I think that's fair, but people do things for all sorts of different reasons.

And plainly enough, some of the members of Labor Action Committees will also be paid-up members of the party more generally. Is that right?---Yes.

In fact that would be a fairly common situation?---Yes, someone's got to drive it.

10 Was there a particular person within the party office who was principally responsible for liaising with Labor Action Committees whilst you were general secretary?---Kenrick Cheah.

Just Kenrick Cheah or anyone else?---I think it was just Kenrick Cheah.

And who would he report to in relation - - -?---Sorry, while I was general secretary you mean?

While you were general secretary, yes.---Okay, yeah, yeah, Kenrick, Kenrick, and Kenrick would report to Kaila.

20 And then Kaila reported to you, I take it?---That's correct.

And is it right to say that at least one of the functions of a Labor Action Committee is to fundraise for the party?---Yes.

Was it permissible for Labor Action Committees during your tenure as general secretary to fundraise rather than for the party to fundraise for other organisations?---The rules of the party make it clear that any money that's raised in the name of the Labor Party has to go to the Labor Party.

30 So what's the answer to my question then?---No.

Well, was it at least, did it at least occur from time to time, to your knowledge, in the time that you were general secretary that money that might be raised by the Labor Action Committees or by some of them or by any of them, didn't find its way into an Australian Labor Party bank account?---Perhaps some of them, I think maybe Hellenic Friends of Labor, I think maybe they raised money for a charity or something once, but I, I would expect if they were doing that, that it would be made clear that, that they, that the money was being raised for that charity and it wasn't a, it
40 wasn't for NSW Labor.

So did you ever approve any Labor Action Committees raising money for things other than the Australian Labor Party?---No.

Did you ever realise that it was going on and decide to not intervene and say that's not acceptable?---No.

Other than the Hellenic organisation you referred to a moment ago, are you aware of any other circumstance in which money that was raised by a Labor Action Committee didn't find its way into an Australian Labor Party bank account?---No.

Did you reach any agreement, unofficial or otherwise, with Ernest Wong or anyone else to say, "Well, particular amount of money for an event, I'm happy for you to send to another organisation rather than the Australian Labor Party"?---Absolutely not.

10

Quite clear in your mind about that?---Yes.

If you'd found out about such a thing, what would your position be as general secretary in relation to that matter?---I would have made it very clear that that's not acceptable.

What if one of your staff - - ?---If the money was raised for NSW Labor at a NSW Labor dinner, the money goes to NSW Labor.

20

What about if one of your staff acquiesced in that or reached an unofficial agreement, what would your position be as general secretary in relation to that?---Well, he wouldn't be a member of my staff for much longer.

In your time as general secretary, did any Labor Action Committees have their own bank account or was it expected that if they raised money they'd find their way into a head office controlled bank account?---The expectation was that the bank accounts were controlled by head office.

30

So does that mean there may well have been bank accounts associated with the Labor Action Committee itself but your expectation would be that they would be controlled in some way by head office?---Yes. I wasn't aware of them during my time as general secretary as having their own bank accounts and it wasn't something that I would condone.

It's not something that you would give permission to take place. Is that right?---No.

40

So at least your expectation as general secretary is if you earn a dollar as Labor Action Committee, that money has got to find its way to an Australian Labor Party bank account. Is that right?---Only to qualify that by saying in the Hellenic Friends of Labor situation where if they put on a charity event and it was made clear the money was for charity, then that's a different kettle of fish to putting on a, a Labor dinner to raise money for Labor and that money going somewhere else.

And you would understand that Mr Wong has admitted in the seat that you're sitting in that some money for the 2015 Chinese Friends of Labor

dinner found its way into an organisation called Friends of Chinese Community. You're aware of that evidence?---Yes, I am.

When was the first time you found out about that bit of information?
---Through this inquiry.

If you'd found out about that during your time as general secretary, what would have you done?---I would have reported it to party officers.

10 And do I infer from the pause that one of the things you would do is you would get very angry about that matter?---Oh, yes.

That would be completely unacceptable in your perspective as general secretary of the party at the time. Is that right?---Yes.

Focussing then on Chinese Friends of Labor, would it be fair to describe that group, at least at the time that you were general secretary as Ernest Wong's group?---Yes.

20 He was the patron of that group, is that right?---Yes.

At that point in time, Mr Wong was known as a very prodigious and successful fundraiser, correct?---He had been, yes.

Part of his asset to the party was the fact that he was able to fundraise and fundraise in substantial amounts of money, correct?---And had been in the past.

30 That was at least part of the lead-up to his rise within the Labor Party. Would you agree?---Under Sam Dastyari, yes.

At least under your predecessor, Mr Wong was seen as a very successful fundraiser, correct?---Yes.

He was seen as someone who was very highly connected in the Chinese community, correct?---Yes, yes.

40 He was someone who was seen as a community leader within the Chinese community, correct?---Yes.

And someone who was looked up to within the Chinese community, correct?---Yes.

How would you describe your relationship with Mr Ernest Wong as at 2015?---I was coming around to him.

What do you mean by that?---Well, I didn't have a, he wasn't, he, he was Sam person but he, he, he was someone who had proven his worth who was beginning to – well, who had proven his worth in the 2015 election.

10 THE COMMISSIONER: How had he done that?---Well, we had a, we'd run a campaign which had been described as being anti-Chinese in the sense of our overall campaign, and the Liberals had very cleverly jujitsu'd us and made it on Chinese social media into an anti-China thing, and that was a big problem. And Ernest, Ernest handled that, Ernest handled our response to that brilliantly.

MR ROBERTSON: When you say you came around to him, that suggests that before you came around to him there was some concern. Is that fair or not?---I didn't really know him and I didn't, you know, I, yeah. Look, I didn't, I didn't really know him. I wasn't close to him. He was Sam's person. Yes.

20 And when you said he'd proved his worth, were you referring to the 2015 state election?---Yes.

And is one of the ways in which he'd proved his worth that he was successful in raising substantial funds in connection with that election?---I was much more interested in the, in the way he turned around the anti, the, the, the Chinese media.

THE COMMISSIONER: I don't think you've answered the question.

30 MR ROBERTSON: Is one of the ways in which he proved his worth in connection with the 2015 election the fact that he had raised substantial amounts of money?---That wasn't how I saw it.

Well, was that at least one of the reasons? It might not be the only reason. ---I don't recall, I don't recall knowing how much he raised.

So when you say he's proved his worth, you're referring only to the, what I might describe as the anti-China controversy that you referred to a moment ago.---That's a substantial reason, yeah.

40 Well, was at least one of the reasons – might be less important in your mind than the anti-China reason – but was at least one of the reasons that he successfully raised money in connection with the 2015 election?---Could have been.

Well, I'm asking about your - - -

THE COMMISSIONER: Well, was it? Was it? You've been asked, was it - - -?---In my mind, I don't recall. The, the, the, the thing that stands out for

me about Ernest Wong from that campaign was that the things that I needed him to do, which were electoral things, he did really well.

Yes, that might stand out in your mind, but you're not being asked about that. You've said that he was an acknowledged achiever in fundraising.
---Yes.

10 Right. Did he live up to his promise in the 2015 election in terms of being able to raise funds from a successful fundraiser?---I don't recall turning my mind to that, Commissioner, and I might answer the question in saying that he, my answer to the question was in my mind he proved his worth in an electoral sense.

But you were at the dinner, weren't you?---Yes.

How many people would you say were there?---Well, it was a, it's a big room.

20 Five, six hundred?---Yes, five, six hundred, yes.

Sounds like a pretty successful fundraiser to me.---Yes.

It was obviously a successful fundraiser, wasn't it?---Yeah. Well - - -

No, no, just don't - - -?---Look, it was a, but it was a fundraiser but it was also a community launch.

Yes, just stay with me, please.---Sorry.

30 It was obviously a successful fundraiser, wasn't it?---It was a successful dinner.

And who was the organiser of it?---Ernest Wong.

So it was evident, self-evident, wasn't it, that one of the things that would have operated on your mind was his success as a fundraiser, not just in the past but also in 2015.---Yeah, okay, I agree with that, Commissioner.

40 MR ROBERTSON: You sat at the head table at the Chinese Friends of Labor event on 12 March, 2015, correct?---I would have, yeah.

THE COMMISSIONER: No, no, please, just – we're never interested in answers that say "I would have". You either say "I did", "I didn't", "I don't know". Follow what I'm saying? We're interested in facts, not what would have, might have.---I don't recall exactly where I sat. However, being the general secretary at the time, I would have been sat at that table.

Now I'll ask the question, did you sit at the head table at the dinner on 12 March, 2015?---I believe I did, Commissioner.

Why do you believe you did?---Because I was the general secretary at the time and that would be where the general secretary would sit.

And that also fits in with whatever recollection you have of the night anyway.---Yes.

10 MR ROBERTSON: Mr Huang Xiangmo sat at that table as well?---Yes.

When did you first meet Mr Huang Xiangmo?---I believe it was 2014. It was after I became general secretary.

Whenabouts in 2014?---I believe it was in the first half, but I can't recall exactly.

Where were you when you met him?---Master Ken's Seafood Restaurant.

20 So the first occasion you remember meeting Mr Huang and speaking with him – presumably through an interpreter – was at Master Ken's Restaurant towards the start of 2014, is that right?---Yes, yes.

Was an interpreter also present during the course of that discussion?---Yes. Yes.

Do you recall who that interpreter was?---Ms Holly Huang.

30 And do you know who Holly Huang was at that time?---I think at that time she was his assistant, but I'm not sure.

Could have she been the General Manager of Yuhu Group within Australia?---She may have been, yeah.

At that point in time you knew Mr Huang to be associated with property development, is that right?---I'm not sure if at that point in time I did. I probably did.

40 But what's your recollection of when you first had knowledge of that matter?---Kate McClymont told me.

When?---Sometime in 2014. There was an article that you put up yesterday that she wrote I think in 2014, and I think she was working on that article and I had a coffee with her and she told me it's a property developer.

And was that the article concerning Mr Roozendaal - - -?---Yes.

- - - and him going to work for the Yuhu Group?---Yes, yes.

So either at the time of that article or perhaps in the lead-up to that article, that was a matter that came to your attention, is that right?---It was in the lead-up, yep.

And was that a matter that you knew at the first time you met with Mr Huang? Or was it something that you found out later?---I just don't know where those timings are.

10 I take it you've met with Mr Huang on a number of occasions after the first meeting at Master Ken's Restaurant.---Yes.

And is it right to say that those meetings increased over time?---Yes.

So it may have happened every month or so from the first one in 2014, is that right?---No.

Not right?---No.

20 Did it eventually get to the point at which you had meetings with Mr Huang every few weeks or so?---I'm not sure if it was every few weeks, but it was, it was, it was regular.

It was at least once a month at least at its height, is that right?---Yes.

Other than Ms Huang, has anyone else acted as an interpreter in discussions between you and Mr Huang?---Tim Xu.

Anyone else?---Winston Jiang.

30 Anyone else?---Jing Shin Lin.

Anyone else?---There's plenty. But recently there's plenty.

Does the name Wan Chee Wong ring a bell?---I know yesterday that's Gary Wong's name.

Yes. You know Gary Wong?---I do.

40 Is Gary Wong an English speaker?---Yes.

So he can speak English pretty well?---Yeah, I think so.

Has he ever acted as an interpreter for you?---I don't, I don't think in a formal sense.

But he does speak Mandarin, I take it, to your knowledge?---Yes. Yes.

So he could act as an interpreter, but you don't have any recollection of him performing that role.---Not in a formal sense. I think if we would be sitting at a, if we were in a social function and the interpreter wasn't there, he could do that.

Do you remember whether he, as in Gary Wong, was present at any meetings you had with Mr Huang?---I'm, I'm sorry, you're going to have to be a bit more specific.

10 Well, I'll put it more precisely. Do you have any recollections of having a meeting just with you and Mr Huang and with Mr Gary Wong acting as interpreter?---No.

But you do have recollections of having meetings with Mr Huang and the other sets of interpreters, or people who can do interpreting, that you referred to a moment ago, is that right?---Yes.

Is it right to say that the most regular interpreter over the period of time that you've known Mr Huang would be Mr Xu?---That's correct.
20

So is it right that Ms Holly Huang was doing it more often early in your relationship with Mr Huang?---Correct.

But over time more and more it was Mr Xu who performed that particular role.---Before Mr Xu came on, I would have had two, maybe three meetings with Mr Huang.

And was it usually Ms Huang who would act as interpreter for those meetings?---In those first two or three meetings, yes.
30

I take it that as at 2014 at least you didn't speak fluent Mandarin?---No.

I think you've been working on learning it in more recent times, is that right?---I, I have, Mr Robertson.

But would you regard yourself as having a conversational Mandarin yet or is that still down the path?---If you give me long enough in China, I'll start picking it up pretty well, but - - -

40 You can probably hold yourself at a restaurant to order things, but doing much more may be a little bit more difficult, is that fair?---Trying to impress my friends, that's right. Day-to-day in China I can, I can communicate everything I need to, but if I'm not there for a while, it starts to fall off.

Do I take it that at least one of the matters that you discussed with Mr Huang during your meetings with him were matters pertaining to donations?---Yes.

And so from time to time you would either encourage him or at least discuss him or companies with which he was involved in making donations to the Labor Party. Correct?---I, I had had conversations with him about him becoming, about him donating in the future.

So is the answer to my question yes, or is there some qualification on that?
---Well, it was a, it was a – I'm just trying to give a more precise answer, yes.

10 You sought to encourage Mr Huang to be a donor to the Australian Labor Party. Correct?---I sought to build a strong relationship with him in the future expectation that he would donate to the 2016 federal campaign.

Because he was known as and he became a very generous donor, but to both sides of politics. Correct?---Yes.

In terms of where you met Mr Huang, you've referred to Master Ken's. Have you been to Mr Huang's residence in Mosman?---Yes.

20 You've been there many times?---Yes.

Where else have you met with Mr Huang? We've referred to the Chinese Friends of Labor dinner for example, we've referred to Master Ken's, we've referred to the Mosman house, any other places you can recall?---I think I might have gone to lunch with him once at the Star, the Century at the Star, I've been to his office in North Sydney, I've been to Melbourne, Queensland.

30 Would you agree that as at March and April of 2015 you were quite close with Mr Huang?---No.

Do you agree that more recently than 2015, so after 2015, you became close with Mr Huang?---Toward the end of 2015 I became very close to him.

In part that was because Mr Huang assisted you with various personal matters. Correct?---That's correct.

40 For example, he assisted in funding your legal advice in connection with the legal difficulties you were having in 2015. Correct?---That's correct.

Do your recall how much he assisted you in terms of that funding?
---\$35,000.

How did he pay that amount of money?---Cash.

THE COMMISSIONER: What was that for?---So the circumstances, Commissioner, were that I had been, I was under investigation by the police and I had stood aside from my role as general secretary, it was August 2015,

and Mr Huang asked to see me. I went to his house and he gave me cash for my legal fees.

MR ROBERTSON: And did you then bank that cash?---No.

You gave that cash directly to your lawyers at the time. Is that right?---No.

Well, how did you, what did you do with the cash then?---I took it home, put it away, and used it over time to pay.

10

So in effect, although it was ostensibly for legal advice, you effectively used it to reimburse yourself in respect of expenses you otherwise had. Is that a fair description?---I used it to pay for, for, for my legal fees, but I didn't necessarily pay it directly through cash.

Well, you didn't give that cash to your legal advisors. Is that right?---I paid some of my legal bills in cash, yes.

20

And the remainder, what, you didn't pay out of that sum, you paid it in some other fashion? I'm just trying to understand.---I paid it out of my payout.

Sorry, can you just say that again?---(No Audible Reply)

You might for example write a cheque to the lawyers and then you'd, as it were, pay yourself back?---Oh, no, I paid an invoice, I paid an invoice.

You paid a particular invoice in cash from that pile of cash?---I paid one invoice in cash and I paid the other from, from my bank account.

30

THE COMMISSIONER: When did it occur that Mr Huang Xiangmo agreed to pay you \$35,000?---When he handed me the cash.

No, but when, what period of time are we talking about, what month and year?---It was August 2015.

And how did it come about that he was prepared to pay you \$35,000 cash? ---Well, he, he - - -

40

How did the conversation go?---I got a call to come to his house, I went to his house. I, he led me upstairs to the room that I'd never been in before and he had a, he had a box, like a wine box, and he opened it and there was cash in it and he had a piece of paper, handwritten in English, it said, "For your legal fees." He closed the box, screwed the piece of paper up and we walked down and had a cup of tea.

And what happened to the money?---I took it home.

Did he hand it to you there?---I took it home.

So when you were in the room and he handed you the note, what did he do?
Did he - - -?---He handed me the box.

Oh, the box with the cash in it?---Yeah, yeah, yeah, yeah.

And you took the box downstairs with the cash?---That's right.

10 And did he say at the time how much cash was there?---No.

Well, how did you ascertain that it was \$35,000?---I counted it.

When you got home?---Yes. In the car.

Were you surprised at this act of generosity?---Well, he paid Sam's legal fees so I suppose I wasn't.

MR ROBERTSON: He paid them in circumstances of great controversy.
20 You know that, don't you?---Yes. I do know that.

THE COMMISSIONER: So were you surprised or not?---In the context, well, I had a lot, I had a lot going on at the time, Commissioner. I was about to face a police interview. I, I, I believed I was about to lose my job, like, I was told that I was going to be charged and that I would have to resign my job and, you know, I, I had just been hit by an AVO, I was on the front page of the paper, I'd admitted to my wife I'd had an affair all within the course of about 24/48 hours, Commissioner. In, in the context of all of that, I, and Sam having had his legal fees paid, I, I don't recall being overly
30 surprised.

All right. So you go downstairs with Mr Huang Xiangmo with the box containing the cash and what happens next?---Well, I had the box but it was just like a normal wine box and it was sealed up and then Tim was there in the tea room where he has tea and we sat and had - - -

That's Tim?---Tim Xu.

40 Xu, X-u?---Yeah. And we sat there and had a chat and Mr Huang talked to me about, you know, being concerned for me and that he felt that everything was going to be okay and so and so forth.

Well, doing the best you can, reconstructing the conversation downstairs through Mr Xu, the interpreter, what did Mr Huang say and what did you say to him?---And Commissioner, I will do the best I can, but this was, this was the most difficult time of my life.

Well, I don't expect it to be verbatim but what I am expecting is - - -?---The impression I came away with - - -

What I am expecting is an account which gives the essence of what he said to you and what you said in response.---He said to me that we were friends and that he, he, he cared about me as a friend and that he felt that I would be okay and, and that was his belief and that I should, and that everything would be okay. That, that was the impression I got from it.

10 Well, what did you say?---“Thank you.”

Is that it?---That's, Commissioner, I, I, I was in all sorts. I, I - - -

Sorry, you were?---I was in all sorts, Commissioner. I, I, you know, I was -
- -

Well, what happened then? Did you stay on for a meal or a drink or something?---No, no, no. I, I, I left, I, I, I - - -

20 So you just pick up the box, the wine box with the cash in it and then, what -
- -?---I, I, I had to come down to pick my suits up from, because I kept my suits at work at the office and I, I had quit on, I hadn't quit, I had stepped aside on the Thursday evening when I was served with the AVO, and I hadn't taken my suits home and I had to go in for a police interview on the Tuesday and so I had to pick my suits up, and I, I had undertaken to Mark Lennon that I wouldn't enter the office without him or come to the office while the AVO was operating and so he met me at the office so I could pick my suits up. Or I think Mark Morey did, who is, who was his assistant secretary.

30 Then what happened to the box of cash?---I took it home.

What did you do with it then?---I stored it.

Where?---In my cupboard.

How long did it stay there?---A while.

40 What do you mean? What do you mean by a while?---Six, maybe 12 months.

I see. So you hadn't used any of it for that period?---No, I did use it gradually over time.

I see. But you didn't deposit any of it into a bank account?---No.

Is there a reason why you didn't?---I had a joint bank account with my wife and I didn't particularly, given the amount of strife I was in, want to talk to her about it at that stage.

MR ROBERTSON: Do we take it that you understood that amount of money to be a gift rather than a payment in exchange for something?
---Absolutely.

10 But within, say, three months of receiving that money, did you, as it were, return the favour to Mr Huang in any way, do you recall? In other words, did you say words to the effect of, "Well, thanks very much for that money. I'm going to do something to assist you"?---No.

When you were first given the money in the wine box, do I take it that it was just you and Mr Huang alone in that room and not with Mr Xu or anyone else?---That's correct.

20 So that happens in, I think you might have said an upstairs room, is that right?---Upstairs room, yeah.

And then obviously enough you don't have a discussion at that time because you don't have the assistance of an interpreter, correct?---No, there's a piece of paper.

But there's a piece of paper that tells you, so at that point in time you know what's in the box, although – you know there's cash in the box but you don't know how much, is that right?---That's right, yeah.

30 And you first find out how much when you count it, sitting in your car after you've already left Mr Huang's residence, is that right?---Yes.

Do you happen to recall what denominations that cash was in?---They were \$100 notes.

They're all in \$100 notes. And were they organised in any particular way, do you recall?---They were, they were wrapped in, like, green paper, like a, like - - -

40 So they were organised - - -?---There was a strip of green paper, yep, and it was, it had a staple in the middle of it.

And so they were organised in maybe bundles of 10 or 100 or something along those lines, is that right?---Yes. Something like that, yeah.

Organised in some fashion that would allow you to easily count it if you wanted to do so.---Yes.

And so did that green piece of paper say, right, here's a bundle of, say, \$10,000 or \$5,000?---I think they were in \$5,000 bundles or something.

And so when you counted them, you didn't need to count out the whole 35,000. It was enough to say there's - - -?---You didn't need to count all of them, no. You'd say, well, there's five grand there and there's seven of those.

10 Is that the only time whilst you were general secretary that Mr Huang gave you any cash in relation to matters other than the Australian Labor Party? I'll come back to Australian Labor Party, but were there any other circumstances in which Mr Huang gave you personal funding for legal advice or for anything else, or funding that you might then use for purposes other than the Australian Labor Party?---No.

No money for a union campaign, for example?---Oh, yes, he, he didn't, he didn't personally give that to me but, yes, he did provide that, yes.

20 So just explain, explain that matter of money connected with a union campaign.---There was a, when I came back from Israel in May 2015, one of the right-wing unions had been, had come under challenge, an election challenge, and the incumbent secretary approached me and asked me if I could help with money for stamps. He wanted \$10,000. And I said, well, I don't have \$10,000. And then there was discussion about the fact that general secretaries were supposed to have access to cash for these things, you know, but I didn't have any of that cash.

30 So just pausing there, general secretaries are supposed to have cash available to give to unions, is that - - -?---Oh, it's like this, that's, you know, that's the, I suppose that's what people believe, yes.

But that was not your understanding of the position at the time, I take it. ---No, no.

But are you saying you then approached Mr Huang with a view to procuring money for that exercise?---Yes.

And this was in about May of 2015, is that right?---I believe so, yes.

40 And how did you make contact with Mr Huang to make that request?---We had dinner following this. It was a pre-scheduled dinner, and at that dinner I explained to him the situation and that I, you know, had this secretary who needed \$10,000, and he said, yes, okay. And then in the days that followed – maybe the next day, maybe two days later – Tim Xu arrived at my office and handed me a white envelope, I think he may have given me a business card as well, and then he left.

Is that the first time that Mr Xu was in your office?---No, that was the second.

And so when you're talking about your office, I take it that's your general secretary's office in the Sussex Street office. Is that right?---That's correct.

And when Mr Xu attended on you, he attended on you alone. Is that right?
---At the end of May, yes, yes.

10 At the end of May he didn't come along with Mr Huang or anyone else?
---No, no.

And the purpose of his visit was to simply give you the white envelope. Is that right?---I assume so, yes.

THE COMMISSIONER: Did you say this was in May 2015?---Yes, yeah, yes.

20 How do you know it was May 2015?---Because I know when the dinner, I know when I came back from Israel, I know when, I know when it was, I know when the election, the union election was on.

When did you return from Israel?---End of May, 26/27 May, something like that maybe.

30 So - - -?---I recall the specific set of events that led to this and I know that it was suggested to me at dinner on the, I believe it was 27 May, maybe it was a couple of days after that or that, it was suggested to me that I should ask Mr Huang.

So he arrives at Sussex Street office on this occasion?---Mr Xu does, yes.

Mr Xu, yes. And had there been a prior arrangement for him to attend there on that day?---I think he would have called and said, "Can I come in and see you?"

Well, doing the best you can, according to your recollection, is that what you believe happened?---Yes.

40 All right. So there was an arrangement and you expected him to therefore arrive on a certain specified time.---Yep.

Did you know why he was coming?---No. Oh, no.

Was there any message left?---No.

Did he ask to speak to you?---Mr Xu?

Mmm.---Yeah, yeah, well, I mean - - -

So he spoke to you on the phone, did he?---Yeah, he would have called me and said, "I want to come and see you, I need to come and see you."

Right. And when he called you did he say why he wanted to see you?
---No.

Nothing?---No.

10

Just said, "I want to see you?"---Yes.

All right. So did he turn up the next day or when, same day or - - -?---I think it was the same day, yeah.

All right. Well, take us through that.---Well, he just - - -

How did you know he had arrived at the Sussex Street office?---Someone would have let me know he was there, my secretary probably let me know.

20

All right. Well, I'm trying to get your best recollection. So what happened, do you go out and meet him at the door or he comes into your office or what?---Normally, normally the, someone would arrive, the receptionist would let my secretary know that the person was there, she's say so-and-so's here to see you and I'd say, "Great, bring them in."

Right. Would have there been a note in your diary for this appointment?
---I doubt it, no.

30

Why do you doubt it?---Well, I, because he would have called me and asked to see me.

Wouldn't you let your secretary know that - - -?---Not necessarily, no.

Did you sometimes get your secretary to note your diary for appointments or - - -?---Oh, if, if, if a formal appointment was arranged by my secretary it would go in my diary. If I had a lot on and I needed to remind myself, I put it in my diary, but if it was a short, if the meeting was to be within, you know, a short time frame I wouldn't go to that extent, no.

40

All right. Well, what time did he arrive that day?---Oh, I don't know.

Well, was it before or after lunch?---I don't know.

You have no recollection?---I don't know what time of day it was, no.

But you do recall him coming into your office?---I do, I do.

And he was alone?---Yes.

He speaks good English?---Yes.

And what did he say?---He handed me an envelope and said, and, and, "This is from Mr Huang."

Anything else?---No, that was it. It was a very brief meeting.

10 So he handed you a white envelope?---Yes.

What size envelope?---A4.

And did it have your name on the outside of it?---No, no.

Any writing on it?---No.

Nothing. And he didn't say anything to you about what was in it?---No.

20 All right.---I assumed what it was.

Anyway, we'll come to that, but did you say anything to him?---No, I don't recall saying anything.

How long was he there for?---A very brief period of time.

What are you talking about?---Two minutes.

Sorry?---A matter of minutes.

30

What, did you say two or 10?---No, no, no. Matter of minutes, two.

Minutes. Was there anybody else in the room when he was there with you?
---No.

So you then, what, just said goodbye and left?---Off he went.

Did you walk to the door with him?---No, normally my secretary would do that.

40

But this was a special visit though, wasn't it? I thought you might have accompanied him to the door to – and you didn't?---I wouldn't have, no.

Sorry?---I doubt it.

What happened then?---I opened the envelope and there was cash in it and I thought, oh that's the cash for the union thing and I locked it in my drawer,

organised to go and see the person who wanted the money and went and saw them and handed the money over.

Was there a note inside the envelope?---No, I don't think so, no.

Was there any indication as to what the money related to?---Well, it was clear to me that it was in relation to the money that I had asked for, for the union election.

10 But there was nothing in the envelope or on the envelope to indicate - - -?
---No, no.

- - - the purpose of the cash?---No.

And you counted the cash?---I didn't count it, no.

You didn't?---No.

20 Why not?---It wasn't mine.

Be that as it may, wouldn't you have wanted to know how much was there?
---It was not something I particularly wanted to be involved in so I put it in the drawer and got it out as soon as I could.

Well, if you didn't want to be involved in it, why wouldn't you ring up Mr Xu - - -?---Xu, Xu.

30 Why didn't you ring him up and say, "Look, I don't want to be part of this. Would you please come and get it. I don't want it."---No, no. I mean, I didn't, I was involved in it, I'd involved myself in it, I'd asked for that money and I did it. It wasn't something I, I wanted to do or particularly wanted to be involved in and I got the money out as soon as I could.

But you felt uncomfortable, I take it, knowing that it had come from Mr Huang and accepting this cash from him. Is that right?---I didn't feel great about it.

40 No. Well, why wouldn't you just simply say, "Look, I don't want to be involved in this anymore. Thanks for your generosity but I am sending it back."?---Because, well, I was uncomfortable asking him for it. I was uncomfortable being involved in it but the, the, the, the, the expectation on, on, on me was such that I would be able to deliver something like this.

But things had moved on since the time you indicated that you wanted the money. The money had now arrived and you were feeling uncomfortable about the whole thing. Why didn't you say, "Look, I don't want to" - - -?
---Oh, I was uncomfortable at the start of it.

Yes. Well you're even more uncomfortable now when the cash was in your hands as it were?---Well, I wanted it out of there and I got it out of there.

Well, why didn't you just ring him and say, "Look, I'm very uncomfortable about the whole thing. Sorry I started this. I want to do the right thing. It's coming back. I'll have it couriered back to you"?---Perhaps I should have done that, Commissioner, but at the time - - -

10 But why didn't you?---I started it and I finished it.

But why didn't you? It was open to you as an option, wasn't it?---Yes, it was.

Well, why didn't you do it?---I had started it, Commissioner.

Well, you have no other explanation than that?---No, Commissioner.

20 So, by this time you had a relationship with Mr Huang which had been in existence for about roughly 18 months, that is from the beginning or early part of 2014 to May 2015?---No. It was probably closer to 12.

And over that 12 months you had, as you've indicated in your evidence, seen him reasonably frequently, different locations, his home?---Yes, yes.

As his guest?---Yes.

Lunch?---Yes.

30 As his guest?---Yes.

And at the restaurant in particular where you first met him, was that - - -?
---Master Ken's.

Master Ken, is it. And he paid for lunch then. He was very generous?---Oh, yes.

40 So during that 12 months or so whilst you were general secretary, you had established, what would you call it, a friendship with him?---Yes. Oh, sorry, could I just go back, Commissioner, and ask what, what, what, during my period as general secretary, yes, I did, but we really became friends middle, second half of 2015. Excuse me. I got a cramp, sir.

Are you okay? Are you okay?---Yeah, I'll be right.

I'll take a break if you need one.---No, I don't need a break. Let's keep going. Too much water.

You sure?---Yeah, I'm good.

All right, well, you let me know if you're feeling uncomfortable. I'll adjourn.---No, I'm all right. Too much water, Commissioner. I've got a cramp. It's going.

Now, we've heard that one of the guests – I'll withdraw that. There were a number of guests at the dinner on the 12 March fundraiser, is that right? There were a number of guests there, non-paying guests?---Yeah, yes, yes.

10 They included the Labor luminaries Mr Bill Shorten and Luke Foley and others.---Former Labor luminaries, yes.

All right. And they were then - - -?---Then Labor luminaries.

Yes, very well. And Mr Huang Xiangmo, he was also a guest.---Huang Xiangmo, yes.

How do you pronounce it?---Huang Xiangmo.

20 Huang Xiangmo. He was a guest.---Yes.

In other words, he didn't pay his way. He was invited as a guest.---Well, I was, I'm aware of that now. I wasn't aware at the time.

Yes, well, you were happy for him to be there.---Yes.

You had no doubt arranged through Mr Wong for him to be there as a guest, is that right?---I hadn't arranged that, no.

30 Well, you would have known through Mr Wong he was going to be there, I take it.---Not necessarily. I mean - - -

Well - - -?---He, he, he, well, I would have assumed he would have been there. He was the head of the Chinese community, yes.

But Mr Huang Xiangmo was not a member of the Labor Party, was he, at the time?---No. No, Commissioner.

40 He wasn't a Labor sympathiser, was he?---I'm not sure where his sympathies lay, Commissioner.

And you have nothing to lead you to the conclusion, either then or now, that he's ever been a Labor supporter?---I'm not sure he's a Labor man, Commissioner. I just don't know.

In other words, you're I think agreeing with me. You don't believe he is, is that right?---I'm not sure what his sympathies are, but he - - -

Well, he supported both parties, didn't he?---That's correct. Even the Nationals, Commissioner.

And you knew that as at March 2015?---Yes.

You knew that as at March 2015, he'd been a very generous donor to both the Liberal Party and the Labor Party?---Yes.

10 And would it be true to say that you and he had both cultivated this relationship, which began before the March 2015 dinner and continued after through till at least the end of 2015?---When you use the term cultivated, I cultivated the relationship post 2015 election.

Well, I'm talking about the relationship from its start in 2014 through 2015. ---He had sought me out early, that's right.

Sought you out in the sense of what?---He wanted to have lunch with me.

20 So he was the one, it was evident, was wanting to cultivate the relationship with you, rather than the reverse.---At that point in time, yes, yes.

At that point in time. We're talking about 2014.---It's 2014, that's right, yeah.

And over time he had generously invited you out to other luncheons and so forth?---I think before the 2015 election it was only sort of twice, maybe three times.

30 And you'd been to his home several times before the March 2015 election, hadn't you?---I think I'd been there once, maybe twice.

Could be more than that? I'm talking about March 2015.---I, I, March 2015, I think I'd been there once, maybe twice.

MR ROBERTSON: At least before March 2015, even if you hadn't cultivated the relationship, you must have at least encouraged Mr Huang to donate money to the Australian Labor Party, do you agree?---No, not at that point in time.

40 So are you seriously saying that in the early parts of your relationship – between 2014 and, say, March of 2015 – you didn't speak about donations at all?---I don't believe so, no.

Well, at that point in time he was already known as a generous donor. Correct?---Yes.

You're the General Secretary of the NSW Branch of the Labor Party at that time. Correct?---Yes.

Part of your function is to encourage donations being made to the party, be that on a federal level or state level. Correct?---Yes.

And so you then have an exceedingly wealthy man who's a generous donor and you're seriously suggesting that you didn't broach the subject of whether he would want to be a further donor, at least on a federal level, until you're somewhat into your relationship with him?---Until we get near the federal election, yes.

10

Didn't broach the subject at all in 2014?---Well, I may have broached it but I don't recall. It wouldn't have been, it would have been a bit rude for the first couple of times I asked him to - - -

Well, you might have at least mentioned it in passing,---I could have.

Do you at least accept that?---I could have.

20 THE COMMISSIONER: Well, you knew he was receptive to making donations so there's no sort of embarrassment about raising the question of donations with him. Is that right?---Well, he was also, he was also the leader of the Chinese community and the way these things work is that you, you build rapport with people, you build relationships and then you ask them.

Sure.---And his donations don't generally come in in small, small dribbles.

But there's no embarrassment about, there was no - - -?---I, I - - -

30 No, no, just let me - please, just let me get the question out - - -?---Sorry, Commissioner.

- - - and then you can respond. Going back to 2014/15 there was no embarrassment on your part in raising the question of possible donations by him to the Labor Party because he was on the record as being ready, willing and certainly able to make very generous donations to political parties. Is that right?---I would have seen it as rude the first few times I met with him to start hitting him up for donations, Commissioner.

40 But you knew by then he was in the business of making donations, he wanted to give donations and big ones to political parties. Correct? ---I knew that he was a donor, yes.

But you knew he was a big donor?---Yes.

So you knew it wouldn't in the least bit embarrass him to be asked to make a donation because he'd indicated by his actions consistently that he was ever ready and able to do just that.---So what - - -

No, just answer that question before you - - -?---Sorry, Commissioner.

- - - say what you want to say. You were aware of those facts?---Yes.

So if there's no embarrassment in talking about donation - - -?---I, I, I, I - - -

10 - - - in fact the reverse was probably the case, that he was just waiting for you to bring that topic up, then there would be every reason why you would talk to him about donations, fairly early in the peace I would have thought.
---He, he, what - - -

No, just answer my question before you make speeches.---Sorry, Commissioner, it's difficult.

20 Just stay with me and my questions, same with Counsel Assisting. I know you want to add the story, it may be that you can add a story after you've answered my question or the question of Counsel Assisting. As you would appreciate, this is a question/answer format.---Yes.

The answer must be responsive to the point of each and every question. All right?---Yes.

And now if there's something you want to add, I'll determine in a case-by-case basis as to whether you'll be permitted to make some sort of an explanation or speech.---Okay.

30 So we're just trying to view what seemed to me to be facts that almost speak for themselves, but let's go over it again. In 2014 Mr Huang Xiangmo was known for being ever willing to make political donations to a party of whichever colour. Is that right?---He was a donor, yes.

To either party?---Yes.

Either of the main parties?---Yes.

40 Right. So that bringing up the subject of donations with him was not something that would occasion any embarrassment at all because he was in the business of making donations and - - -?---I don't, I don't agree with that, Commissioner.

You don't. But history shows, doesn't it, and then was showing during 2014/15 he was befriending political leaders and making donations to their parties. Correct?---Yes.

So it wouldn't have been any embarrassment for you to say, look, you're such a generous man, the ALP would be extremely grateful for your

continued support in making donations. That wouldn't occasion any embarrassment, knowing - - -?---No.

- - - what you knew about him - - -?---No.

- - - and his conduct. So you say he had initiated cultivating the relationship with you?---Yes.

You were then general secretary?---Yes.

10

And it would be reasonable to surmise, would it, that because you held a senior position in the Labor Party that he would see you as the sort of person that he likes to be with.---Yes.

Namely people in the power game.---Yes.

So you have sensed that he was looking to get something out of this relationship, whatever that might be.---Friendship. Friendship, proximity to power.

20

Friendship and access to people in power such as yourself at that time? ---That's correct.

And other political leaders.---That's correct.

Well, in those circumstances where you knew what he was on about – that is to say, wanting your friendship and wanting you as access in the sense of being a person in a senior political position – the question of donations must have been the most obvious topic of conversation between the two of you because obviously you were both interested in that subject.---I, I don't agree with that, Commissioner.

30

Well, I think we've agreed this far that he was certainly interested in making donations.---He was interested in building friendships.

And, secondly, you were quite legitimately interested in donations too. ---That's correct, yes.

Right, well, that's what I just put a moment ago in the previous question. The relationship was built on a situation where both parties were ever ready to talk about donations for different reasons.---When the time came, yes.

40

Well, that time had come in 2014 because he was here taking you out to lunch, entertaining you at his luxurious Mosman house and that sort of thing, right?---That was friendship-building, Commissioner.

Yes, but the friendship obviously had an objective, didn't it, so far as you could sense with him. Was that not so?---It would be more unspoken, Commissioner.

Yes, that's what I'm talking – that's why I used the word "sense". You knew, and you've already probably conceded, that's what he was about. ---Yes.

10 So I'm simply putting in that context it would come as no surprise whatsoever that you would be talking to him about donations in 2014/15 because you had an interest in donations from one perspective, he had an interest in making donations from another. Isn't that a fair construction of the situation?---That is one construction, Commissioner.

It may be one, but it's a fair construction, isn't it?---Yeah, it's a fair construction, Commissioner, yes.

20 All right. Well, you may not now recall the detail of conversations you had with him about donations, but it's inevitable, isn't it, that in 2014/15 that certainly was one of the topics of conversation amongst others, no doubt. ---As the friendship built, it certainly became a topic of conversation.

Okay. Thank you.

MR ROBERTSON: Back to the union campaign money. I have a note that you, that the union leader may have identified a sum of \$10,000, was that right?---Yes.

30 And was that the amount of money you asked Mr Huang for?---Yes.

And you said a little while ago that you were uncomfortable and you didn't feel great about accepting the cash, is that right?---It wasn't something I really wanted to do, no.

Why?---One day you could end up in a Commission like this and be answering questions about it, and it's, it's, while it's not illegal, it's not something that is within the expectations of behaviour my members have of me.

40 Is at least part of the explanation was that you were concerned that there would at least be an impression that Mr Huang was giving money in exchange for something? Is that at least one of the reasons why you were uncomfortable about accepting the cash?---No.

Well, isn't one of the reasons why you were uncomfortable is that Mr Huang may have been giving money, or at least may be perceived to be giving money, with the view of reducing his proximity to power, getting

closer – that’s your phrase – having a better proximity to power, is that right?---Sorry, could you repeat that question?

Was one of the reasons you didn’t feel great about accepting the cash that Mr Xu provided to you that you were concerned that it might create the impression that Mr Huang was giving you money and expecting something in return?---No, I don’t think that was my, my, my concern.

10 Are you denying that that was on aspect of your concern?---That, my concern was the fact that I was involved in getting cash and for a union election.

Mr Huang is a very powerful gentleman in China, correct?---I’m not sure that that’s true.

Well, between 2014 and 2017, Mr Huang was I think the president, if not the chairman of the Australian Council for the Promotion of the Peaceful Reunification of China, correct?---As far as I’m aware, yes.

20 Well, that office is on the same floor as the office that you maintain. Is that right?---Yes, no, that’s correct. The, the answer to that is that’s correct, yes.

And you know that to be a front organisation for the Chinese Communist Party, correct?---I’ve read that.

Well, you don’t know that of your own knowledge, including your friendship and relation with Mr Huang?---No. He’s never told me that.

30 You would at least accept that when Mr- - -?---I heard Tim say it yesterday.

You’d at least accept that when Mr Huang was in Australia, he’d be regarded as a very senior Chinese person within Australia, correct?---He’s the leader of the, he was the leader of the Chinese community in Australia.

And overseas he was at least at that level a person of some power within at least the Chinese community in Australia. Would you agree with that?
---Yes, yes.

40 And I think you agree that one of the things that Mr Huang was seeking to achieve, as you understood it, including in 2015, was to obtain a, to use your phrase, proximity to power. Would you agree with that?---He, he wanted friendship, yep.

Well, no, it’s more than just for friendship’s sake.---He wanted to be close to powerful people, that’s correct.

Part of the reason, at least as you understood it, that he was donating money to political parties including the Australian Labor Party, and for that matter

the Liberal Party, was to have a greater or a better proximity to power. Would you agree?---Yes.

In terms of the money, the union campaign money, white envelope, A4 envelope I think you said. Is that right?---Oh, like a, you know, like a, you know, like a, like you'd get in the mail.

And you – as in a smaller envelope?---Yeah, like that, yeah.

10 You'd fold an A4 piece of paper into three in order to get it. Is that right?
---That's correct.

And you opened it up after Mr Xu left, is that right?---That's correct, yes.

And so you could see that there was money in it, correct?---Yes.

Do you remember, was the money similar to the money in the wine box in the sense that it was organised in that sort of fashion with, I think you said green pieces of paper?---No, no. It was, it was just \$100 bills.
20

So it was all \$100 bills. Do you recall that?---Yeah, yep.

But it wasn't organised in a similar sort of way to the 35-odd-thousand dollars that you referred to a moment ago?---No, it wasn't bound at all.

Is that the only occasion – I withdraw that. Other than when Mr Xu attended a loan, were there any other occasions in which any other employees of Mr Huang attended on you alone at your Sussex Street office?---No.
30

Now, you – I'm going to come back to ask you some questions about 2015 but I'm going to need to do that tomorrow. I do want to ask you some questions about 2016. Is it right to say that you resigned as general secretary of NSW Labor in January 2016?---Yes.

And you had a discussion with Mr Huang soon after you resigned. Is that right?---Yes.

And Mr Huang offered to you a consultancy retainer. Is that right?
40 ---Eventually, yes.

What was the length of time between the first discussion and that particular offer?---Oh, look, I think it was a couple of weeks.

Was it Mr Huang - - -?---Maybe a week, I don't know.

Was it Mr Huang who first contacted you or vice versa after your resignation in January of 2016?---I sought the meeting.

And in terms of arranging a meeting with Mr Huang, I assume you don't just call him up on his phone given that you don't speak the same language, correct?---That's right.

So how practically does one organise a meeting - - -?---Call Tim Xu.

Through Mr Xu, is that right?---Yes, yes.

- 10 And so, for example, a little while ago you referred to a prescheduled diner. How mechanically does a prescheduled dinner become scheduled?
---Through Tim Xu.

So Mr Xu may call you up and say, "Mr Huang wants to meet with you. Are you available to go to Master Ken's restaurant on so and so day, so and so time," is that right?---Yes, yes.

That's how it happens practically?---Yes.

- 20 And similarly, if it's the other way around, if you want to speak to Mr Huang or have a meeting with Mr Huang, you would call Mr Xu while he was employed. Is that right?---That's correct.

After Mr Xu left that organisation, who would you contact in lieu of Mr Xu. Do you remember?---Oh, look, it just kept changing.

So, what, there was always a point person for want of a better word?---Just kept cycling.

- 30 And some of those people include some of the list you gave me earlier, is that right?---Yes, that's right. Yep.

Did that include Gary Wong or was Gary a separate category?---No. I don't think I ever organised a meeting through Gary.

Now, the consultancy retainer we just talked about, what was the fee under that retainer?---\$4,000 a week.

- 40 And during what period was that retainer on foot?---February, 14 February, 2016 until 14 February, 2019.

I won't ask you whether there was any significance to the fact that that was Valentine's Day. Was it terminated, did it come to an end of its own course or was it terminated by either you or by Mr Huang or someone else?---Yuhu terminated it.

And were you given a reason as to why it was to be terminated?
---Eventually.

What was that reason?---That he had, that Mr Huang had been, had had his permanent residency removed, which I knew, and that the grounds on which that it was removed was that he was a threat of or he was a risk of foreign interference and that by having people such as myself on retainer for Yuhu, that that could be seen as adding to that risk, and that he was worried that ASIO or whoever it was that was cracking down on you know, were going to target Yuhu.

10 Whilst that retainer was on foot what services did you provide under the retainer?---It was a variety of services. I can give you some examples.

Yes.

THE COMMISSIONER: What was the scope of the retainer?---Sorry?

20 What was the scope of the retainer?---So it was very, I sent him a letter, I was, I'd set up my legal practice and so I sent the letter as a cost disclosure from the template on the Law Society website and it was very, it was to provide advice and assistance as required. The first piece of work I remember doing for him, which was reasonably soon after the retainer started, was that he was building a set of apartments in North Sydney and he was going to tender, he'd gone to tender for the costs of building the units and he wanted me to go to industry insiders to triple-check that he wasn't being ripped off.

So do I understand that the scope of the retainer was very broad and based on some template you had used?---That's right, yeah.

30 So it wasn't specific in its scope?---No, no.

So, and it was with Yuhu Group was it, between you and - - -?---Oh, it was between, no, it was between one of the companies, the company that owns the Eastwood shopping centre which is - - -

MR ROBERTSON: Could that be a company called Mandarin International?---Yes, it's a subsidiary.

40 THE COMMISSIONER: So you signed it and what, he signed it? ---No, I don't think he signed it, no.

All right. Well, you signed it and sent it off, did you, to the company? ---Tim, Tim.

To?---Tim Xu.

Tim Xu. So at the time that the contract was signed by you, there hadn't been any definition as to what services you would actually provide?---It was, it was very broad, yeah.

Is that right?---Yes, yeah.

10 So there's no, so that you really didn't know what services you would end up rendering at the time you signed the contract?---When, when the contract was signed I expected that I would be being used for contractual legal work and, and ongoing advice as he required it, but that's not what happened.

That might have been your expectation, but the contract didn't record what you would be doing?---No, it just said provide advice and assistance on an ongoing basis as required.

And had you had any discussion with Mr Huang Xiangmo as to any particular areas that you would advise or assist?---In broad terms.

20 Well, what does that mean?---I said I could help you here, I could help you there, these are the things that I'm good at, and he said yep.

Well, can you just give us the words rather than here and there, I can help you here and there, what did you say to him?---Before I was general secretary I was a lawyer, Commissioner.

But what did you say to him?---I've said that I could offer, I could help with legal services, with contracts, with advising him on any matter that he saw fit.

30 That's about it?---Yes.

So it was still left fairly well undefined as to what you would end up doing under this retainer?---Yes. And you're dealing with, through interpreters, so the level of conversation is always at a, at a reasonably basic level.

Can you tell the Commission this. Given the broad nature of the scope and the lack of definition as to what you would actually be doing, how was the figure of 4,000 per week struck?---That's what I suggested.

40 I see. So \$4,000 per week is what you wanted, and he certainly agreed to that amount even though there was no certainty as to what you'd be doing under the contract of the retainer.---I wouldn't say he just agreed, but he ultimately agreed.

Not knowing whether he's going to get \$4,000 per week value out of it or not, is that right?---No. That's, that's a matter for him, I suppose, Commissioner.

That was the reality.---Yes.

MR ROBERTSON: And was it just legal services you in fact provided under that retainer? Or was it broader than that?---No, all sorts of services. In fact, I don't think I ever provided legal services.

So you referred to a legal practice a moment ago. Is that Jamie Clements & Associates Pty Ltd?---It's James Clements & Associates.

10 I'm so sorry. James Clements & Associates Pty Ltd?---Yes. Yes.

And was that an incorporated legal practice, was it?---That's correct.

Do you still have a practising certificate?---No.

When did you cease to have a practising certificate?---June this year, July this year.

20 And are you saying that although you sent a costs agreement on the assumption that you'd be providing legal services, you in fact mostly provided services other than legal services, is that right?---That's right.

And what's the nature of those services, at least in general terms?---As I say, I, I can give you examples. It was, it was whatever was required at the time. There was a strike up at his, up at a property he was building on the Gold Coast that went on for 12 days or something, and I, I flew up there and spent almost all that time and got it resolved. Those sorts of services, whatever - - -

30 So negotiation as an example.---That's one example.

And another example might be what I might call government relations or political relations, is that - - -?---I gave him some advice from time to time, but, yeah.

But I'm just trying to get a sense. I know you've said anything and everything, but I'm trying to get a sense of what falls within anything and everything.---So he, he - - -

40 Negotiations seem to be one thing.---Yes.

Presumably he wanted your advice or counsel on matters such as how the Australian political system works in the real world. Is that an example of advice?---Actually, the sort of things that he was interested in were technical details like how was the, how, you know, after the double dissolution election, how the Senate was calculated and all that sort of stuff. That was really the only political stuff he asked about. He would ask me, he, he, he was obviously having quite a tough time in the media, and he, and

there was a team of us that helped devise a strategy to try and unsuccessfully negotiate out of that.

So that might be described in broad terms as maybe media relations/government relations.---But it was more strategy that I, he had a media guy. I, I, I was involved in the strategy side of that.

You also took up an office on Level 7 of 276 Pitt Street, is that right?
---Ultimately, yes.

10

When you say “ultimately”, when did that happen?---I can’t remember exactly. But the, he, I had an office in Miller Street next door to his office in a building that was about to be knocked down, and everybody was, it was being vacated because they were going to knock it down, and in the interim period he gave, there was a vacant office that he allowed me to use. And then they knocked that building down and I went and occupied a premises with another firm that had nothing to do with Mr Huang, and then they moved to St Peter’s and I was offered this office in Pitt Street and, yeah.

20 And did you pay rent for that office?---No.

And the first office that you mentioned that Mr Huang gave you access to, did you pay rent for that office?---There was a deed for that and I paid \$1.

THE COMMISSIONER: That was a fairly good deal.---Thank you, Commissioner.

Just one other detail. How was the 4,000 per week retainer paid?---Into my business account. I invoiced and they paid it.

30

So you’d render invoices on a monthly basis?---Yes.

MR ROBERTSON: So after resigning as general secretary, we’ve got the consultancy retainer and we’ve got access to offices either rent-free or for the princely sum of \$1. Were there any other assistance that Mr Huang provided to you beyond January of 2016? Further payments for any legal expenses, anything of that kind?---No. No, no, no, no.

40 Expenses for lawyers at the compulsory examination stage of this Commission?---No.

I take it that at least while Mr Huang was in the country you continued your fairly regular meetings even after you had - - -?---Yes.

- - - departed as general secretary, is that right?---Yes.

And again, those would be meetings arranged by Mr Xu at least when he was continuing to work at the Yuhu Group, is that right?---Yes, yes.

And after Mr Huang was no longer in this country, have you had any communications with Mr Huang?---Yes.

So, when's, I don't want to know about the detail at the moment, but when was the last time you had any communication with Mr Huang?---April this year.

10 No more recently than April of this year?---I don't believe so, no, no. I'll have to check my WeChat but I doubt it.

Not within the last couple of months?---No.

And was that Mr Huang seeking to make contact with you or you seeking to make contact with Mr Huang?---I was in Hong Kong for the, I was in Hong Kong for the Rugby 7s and when my retainer was cut, I'd been told that he had wanted to talk to me about face to face to explain why, that if I was in Hong Kong I should let him know so he could see me and that's what I did.

20 Have you ever discussed this Commission's investigation with Mr Huang?
---Absolutely not.

Never a single word regarding the matter?---No.

What about the Electoral Commission's investigation?---No.

So, you've met with Mr Huang on many, many occasions, correct?---Yes.

30 You're aware of this Commission's investigation at least as about 2017, would you agree?---Yes.

But when did you first become aware of either this Commission's Investigation or the Electoral Commission's Investigation?---I became aware of the Electoral Commission Investigation on 19th of July, 2017.

Why are you able to be so certain about that particular date?---Oh it's been in my memory Mr Robertson.

40 But why?---Because Mr Wong asked to meet me that morning, I was a week out of being sentenced of my electoral enrolment matter and I thought my life was moving on and Mr Wong asked to see me, and at the end of the conversation told me that there was an investigation from the Electoral Commission and that it was alleged that I had handed, that I had been handed an ALDI bag – he said ALDI I understand now but I thought he said Audi like the car – by Mr Huang.

Now in relation to that meeting, and again, I appreciate it was a couple of years ago but I want you to do the best you can to tell us what words Mr

Wong said to you and what words you said to Mr Wong.---He said there's an Electoral Commission investigation going on into a Chinese Friends of Labor dinner from March 2015. I remember thinking, oh yeah, so. And he said, I must have shrugged my shoulder or said, "You know, so?" And he said, "Um, anyway your name has come up." And I said, "Why has my name come up?" And he said, Because Kenrick Cheah has said that Mr Huang attended your office, gave you – I thought he said Audi – gave you an ALDI bag full of cash - - -

- 10 Audi, as in the car, is that what you're saying now?---Audi as in the car. He obviously said ALDI but it's just the U and Ls are a difficult thing for non-native English speakers to master. Gave you an ALDI bag – I thought he said Audi bag – full of cash, that you took the bag, gave it to Kenrick and said, "Count it."

And what did you say in response to that?---"Why the fuck would Kenrick say that?"

What did Mr Wong say in response to that?---I don't know.

20

And what did you say in response?---Well, where's that from, what's, what's, what's – and then he starting saying things like, I don't know what happened to the money, I left the dinner early, I don't know who took the money home um, and I'm like, are you sure, are you sure that this is true? I mean, you know - - -

To be clear, you have a clear recollection of him saying, words to the effect of, "I don't know what happened to the money"?---Oh yes.

- 30 Did he say anything to you about - - -?---No, he didn't say, "I don't know what happened to the money," he said, "I don't know who took the money home from the dinner."

So, to be quite clear about it, you have a clear recollection of Mr Wong saying, "I don't know what, I don't know who brought the money home from the dinner?" Is that right?---Yes, he said, I don't know, I don't, I left the dinner early, I don't know who took the money home from the dinner.

- 40 What else can you recall occurred at that particular discussion?---I then sat, he sat there looking at me and he's like, "Do you know anything about it?" And I sat there thinking, no and my mind was blown and I'm sitting there thinking how could this be? Like how, how, how, you know, why would Kenrick say that?

I'm just focussing on what each person said at the moment. Have you now exhausted your recollection as to what Mr Wong said to you and what you said to Mr Wong?---I think I said, "How do you know that? How do you know?"

And did he respond?---He said, “Kenrick told me,” and said, “Okay,” and I said, well, I, I just, I was just blown away. Like that’s, you know, and then I’m sit, I’m sitting there thinking, you know, could, could this have happened and I’ve forgotten about it? Like - - -

Where did this meeting take place?---It was, it was at the Starbuck’s café opposite the Capitol Theatre.

10 Who requested the meeting?---He did.

How was it requested.---Oh, via WeChat or WhatsApp.

So Mr Wong made contact with you rather than you making contract with Mr Wong?---Absolutely.

And it was done using an app, either WhatsApp or WeChat?---That was WhatsApp.

20 It was WhatsApp, is that right?---Yes.

Do you still happen to have - - -?---I do indeed.

And was as that a message?---I do indeed.

And I take it you’re willing to produce that to the Commission. If you’re not, I’ll ask the Commission to make an order requiring - - -?---I, I, look, I, I don’t have a copy of, I don’t have a printout copy of that. I’m happy to give you a printout copy of that.

30 I’d ask for a requirement to that effect.

THE COMMISSIONER: Yes. Mr Clements, when of you say this happened?---19 July, 2017.

And on that day you got a message, was it, or a - - -?---In the morning or the day before I got a message. You know, he wanted to catch up with me, you know and I was down - - -

40 This is a message from?---From, from, from Ernest.

Oh, Ernest, yes.

He wanted to catch up with me and he, you know, and was like, “Oh, well you know, we can have lunch or we can have tea or we can have dinner, whatever.” And he’s like, “Oh, well, let’s just have coffee.” And I, I, I was doing tutoring for Mandarin in, in, in the office in Pitt Street and, and then I

went, I went to the wrong café at first and then I went to the correct café and he was sitting there. It was freezing cold. Yeah.

And the best recollection you have is the message from Ernest Wong said what?---“Are you around? Are you free to catch up?” Something like that.

MR ROBERTSON: And that particular message is currently on your phone, is that right?---Yes.

10 THE COMMISSIONER: That’s 18 or 19 of July?---It’s the 19 July, 2017.

MR ROBERTSON: Do you have that telephone with you?---My lawyer’s got it, my barrister I should say, sorry, Steve.

THE COMMISSIONER: I issue a direction requiring production of Mr Clements’ mobile phone for the purposes of forensic examination in relation to a message said to have been sent by Mr Ernest Wong to Mr Clements on or about 18 July or 19 July, 2017.

20

COMMISSIONER’S DIRECTION: I ISSUE A DIRECTION REQUIRING PRODUCTION OF MR CLEMENTS’ MOBILE PHONE FOR THE PURPOSES OF FORENSIC EXAMINATION IN RELATION TO A MESSAGE SAID TO HAVE BEEN SENT BY MR ERNEST WONG TO MR CLEMENTS ON OR ABOUT 18 JULY OR 19 JULY, 2017.

30 THE COMMISSIONER: Mr Clements, the effect of that is this, that you are under an obligation to have the phone produced to the Commission.

MR LAWRENCE: Excuse me, Chief Commissioner.

THE COMMISSIONER: There will be officers, technical officers of the Commission who will undertake to download from your phone and your phone - - -

MR ROBERTSON: I’m sorry, Chief Commissioner, there seems to be a submission that my friend behind me wants to make.

40

THE COMMISSIONER: Yes, well, I just want to finish what I’m saying.

MR ROBERTSON: I’m so sorry, I didn’t mean to interrupt.

THE COMMISSIONER: And following that process the phone will be returned to you to cause minimum inconvenience. Yes, Mr Lawrence.

MR LAWRENCE: I wonder if, rather than a compulsory order being made
- - -

THE COMMISSIONER: Well, I have made it.

MR LAWRENCE: We might be able to produce the particular message that will avoid any need to any electronic accessing of the phone. There is no hesitation in cooperation in this respect and we can have it arranged in short order.

10

THE COMMISSIONER: Well, what I'll do, Mr Lawrence, it's got to be a process that's handled from start to finish by Commission officers. If that can be done by way of cooperation here on the premises this afternoon, then so much the better. I'm happy for that to be done. But if it can't be done, then it's, the phone will need to be held overnight so that the process can be done. I have already made the direction. So the direction stands but in the event of the phone being able to be produced soon after we adjourn and it can, through cooperation, be examined to identify the particular entry I have referred to then well and good. There may be an easy way to access that material.

20

MR LAWRENCE: It's only my concern, and look, it could be my ignorance of the particular electronic process, but it's only my concern that the full contents of the phone or any wholesale contents of the phone not be downloaded.

THE COMMISSIONER: Yes.

MR LAWRENCE: But rather the particular message be identified and in effect handed over.

30

THE COMMISSIONER: If it can be accessed without downloading, as you say, the full contents, that would be the desired course and that would happen because the Commission officers don't want to spend the time downloading other material.

MR LAWRENCE: Yes.

THE COMMISSIONER: So it depends on what can be achieved after I adjourn on a voluntary basis. If there is some technical reason why it's needed to be left here, I'm afraid it will have to be, and the officers of the Commission usually do this sort of process on an urgent basis for the obvious reason, that is to minimise inconvenience to the person who owns the phone.

40

MR LAWRENCE: It's just my concern, Commissioner, that the order extant might on one construction allow that, and in my submission it ought

not allow it because there is no occasion for the wholesale downloading of the phone in my submission. So I would ask - - -

THE COMMISSIONER: Mr Lawrence, I can assure you that the Commission officers will not be interested in anything else on the phone other than tracking the message from Mr Wong and downloading that. Whether that can be done without downloading the whole of the content to get that message, I'm unaware, but the officers will be able to inform me about the technical side of it.

10

MR LAWRENCE: I wonder if that's a matter that you, Mr Commissioner, might be able to inform yourself of prior to the making of that order because - - -

THE COMMISSIONER: I've already made the order.

MR LAWRENCE: - - - in my view – well, orders of course can be rescinded – but in my view it is an overly broad order, and it should be limited to achieve the objective that it seeks to achieve. I see Commission staff here. It may be that they can advise in short order (not transcribable)

20

MR ROBERTSON: I can assist in this way, Chief Commissioner. It's not practical to do it in the way that my learned friend has just identified, in other words, simply taking a screenshot or something, because what one wants to gather is not simply the message but the metadata sitting underneath it. As you know, Chief Commissioner, there are protocols in place to deal with matters of this kind.

THE COMMISSIONER: There are.

30

MR ROBERTSON: It's been dealt with on a number of occasions in relation to this very investigation. So, for example, with Mr Dastyari, there was agreement as between counsel to deal with the legitimate concerns that were then raised concerning matters such as privilege and the like. And in terms of a technical matter, it may not be as simple as simply, as it were, downloading one message. But as you know, Chief Commissioner, as a matter of protocol what will often occur is that one division within the Commission will do the initial download but on the basis that those in the investigation team and people – including me – can only see the, as it were, the querying of the overall data. But I'll have a discussion with my learned friend. In my submission, nothing that he's raised is grounds for rescinding the order that was made, but it is appropriate that I have a discussion with him with a view to achieving really two things. First of all, minimising the inconvenience to Mr Clements, and secondly ensuring that at least any searching exercise is limited to the proper purposes of this investigation, rather than a more broad gathering of data, as it were.

40

THE COMMISSIONER: I am from other matters mindful of the fact that the downloading exercise may not be able to be done immediately, as it were, that it may take a number of hours for that to be completed. Is that your understanding?

MR ROBERTSON: If a full or lengthy download is required, then that's so, because one can't – in order to maintain the metadata, which is important – one can't simply, as it were, download a single message rather than downloading a segment. But the amount of time that actually occurs varies from phone to phone and circumstance to circumstance. That's about the extent to which I can assist on that at the moment, I think.

THE COMMISSIONER: All right. Mr Lawrence, I'm not rescinding the direction I've made, but it is important, I think, that I state by way of reassurance to Mr Clements that there are, as Counsel Assisting has said, protocols of this Commission which must be complied with. Those protocols are designed to achieve a number of objectives. One is to preserve privilege, in particular legal professional privilege. Secondly, if there's downloaded material that is of no relevance at all to the purpose of the inquiry, that information is not going to be examined by any officers of the Commission. The protocols require only that the particular objective of the search – namely the Wong message to which I've referred in the order – is accessed. The complications of requiring downloading have been explained by Counsel Assisting, and officers of the Commission will need to inspect the phone to determine its make and the capacity as to whether the downloading can be done in a short or long period of time, matters such as that. So, I will ask Commission officers to do their best to see if that can be downloaded within the minimum time possible so that Mr Clements is not without his phone overnight. However, it may be that it can't be achieved in a matter of two hours or something of that kind, I have no idea until the technical officers report back to as to what's involved.

MR LAWRENCE: Yes, I'm not sure Chief Commissioner if these protocols are public and I apologise if they are and perhaps I should have read them.

THE COMMISSIONER: Oh no, well it's not public, no, there is no public protocol so far as I'm aware. The protocols are protocols that are in-house and used and must be complied with by officers of the Commission for obvious reasons.

MR LAWRENCE: Yes, I'm concerned, as are you, Chief Commissioner, (not transcribable) apprehended about the retention of any complete download. Am I to take it that such things are not retained?

THE COMMISSIONER: Will not be retained, yes.

MR LAWRENCE: I wonder if we might see a copy of the protocols.

THE COMMISSIONER: I think if you speak to Mr Robertson and, as I say, if with a level of cooperation it may be that the exercise can be completed sooner rather than later, but that does depend upon those technical issues which we will need to have input from those who are going to actually do the download.

MR LAWRENCE: Certainly, may I ask, are we able to see those protocols Chief Commissioner?

10

THE COMMISSIONER: See?

MR LAWRENCE: Are we able to see those protocols?

THE COMMISSIONER: No, is the answer, sorry.

MR LAWRENCE: Thank you.

MR ROBERTSON: Just to assist my friend, what needs to happen in a particular case is obviously affected by the particular case, but hopefully should be given sufficient comfort to say that that's not the first time that this has occurred in this investigation and, for example, Mr Dastyari and others, protocols of the kind that have dealt with legitimate concerns have been able to be dealt with. There are a few matters I just need to raise with Mr Clements in order to effect and to minimise the imposition on him in relation to the procedures we've just discussed

20

THE COMMISSIONER: Yes, all right, well you proceed.

THE WITNESS: Yep, do you want me to turn the phone on now so they can start the download?

30

MR ROBERTSON: That would be helpful, Mr Clements. Now is your telephone locked with a passcode?---It is indeed.

And I'm going to ask the associate to hand you a piece of paper, can you write the passcode on that piece of paper, obviously don't say that aloud. ---What if I just, oh - - -

It may be necessary to download aspects of the data that's why I'm asking you to put it on a piece of paper. Did I see correctly that your telephone's an iPhone?---That's correct.

40

Do you know whether you have a iPhone iTunes backup password in relation to that phone?---I do indeed.

Do you happen to know what that password is? Don't say it out aloud.---I do but you won't need it.

Can I just ask you that you write that on the piece of paper as well in case that be needed, and then while you're doing that - - -

THE COMMISSIONER: Would you supply, have you got a piece of paper there and pen?

MR ROBERTSON: While you're doing that, do you have a separate password in relation to either WhatsApp or WeChat?---No.

10

So as long as you're in your phone you can access those apps without having to put in a separate password, is that right?---That's correct.

And just to confirm, the particular message you referred to from Mr Wong that was a WhatsApp message, is that right or was it a WeChat?---Yes, that's right.

20

And to your knowledge, other than that message, are there any other messages or data on your telephone that's likely to be relevant to this investigation?---Yes, yes.

And can you describe in general terms what that might be?---Perhaps if you keep questioning me you'll get to it.

Well, what I'm trying to do is minimise the imposition on you in relation to the phone and I don't want to have to ask for it twice, I want the forensic people - - -?---I assume all the messages you're looking for are in there.

30

And in which particular app are they?---In - - -

MR LAWRENCE: I think I do object because the question is asking Mr Clements to undertake a forensic exercise as to the relevance of material. If my learned friend has particular subject matters that he wishes to raise then I suppose that's fair enough, but the alternative way of course, is to deal with it as it arises in the course of the examination of Mr Clements.

THE COMMISSIONER: Yes.

40

MR ROBERTSON: Well, what I'm attempting to do is minimise the imposition on Mr Clements. Without asking questions of that kind - - -? ---The only, the only relevant - - -

THE COMMISSIONER: Yes, just a moment.---Sorry.

MR ROBERTSON: - - - I'll need a download of the whole telephone, and the kinds of search terms that might be appropriate are somewhat broader than might otherwise be the case. So the purpose of the questions is with a view to dealing with the very matters and concerns that my learned friend

was raising a moment ago when asking you to, as it were, rescind or amend your directions. I press the question.---The, the, the messages, the only messages that are relevant in WhatsApp will be the ones from Ernest. I don't think there's anything relevant in the WeChat, in any WeChat message.

THE COMMISSIONER: Are you able to – sorry, go on.---But I assume that there will be messages that you will find relevant in my general message SMSs.

10

Well, Mr Clements, just to try and clarify this matter, insofar as there are messages there from Mr Ernest to you, or you to him, concerning the subject matter of this investigation, are you able to identify and quarantine, as it were, those from anything else on the phone?---I've got printouts of the relevant messages if you want those.

MR ROBERTSON: Yes.

THE COMMISSIONER: That may assist, I think.

20

MR ROBERTSON: That may assist and that may make the imposition less on you.

MR LAWRENCE: I wonder, Chief Commissioner, if the latter part of this might be dealt with first through myself and Mr Robertson discussing it.

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

30

MR LAWRENCE: I wonder if the latter issue as to other messages might be dealt with in this way, that the Commission adjourn, I be allowed to discuss briefly with Mr Clements what messages he has in mind, and then I can discuss with Counsel Assisting what printed copies might be disclosed at this stage.

THE COMMISSIONER: Yes, well, yes, perhaps.

MR ROBERTSON: Can I attempt to just explore the printed messages?

THE COMMISSIONER: Yes, yes.

40

MR ROBERTSON: Is it right that in preparation for your examination you've printed a number of documents containing messages that you thought may be relevant to this examination?---That's correct.

And where do those documents exist?---In a folder.

And where is that folder at the moment?---Behind me.

I ask for a requirement that that folder be produced.

THE COMMISSIONER: Yes. Sorry, Mr Lawrence, do you know where the folder is? Mr Lawrence?

MR ROBERTSON: It's behind me, apparently.

THE COMMISSIONER: Sorry. Where is the folder?

10 MR LAWRENCE: It's here and I'm happy to certainly produce it, but I wonder if I might just have time to get it in order.

THE COMMISSIONER: Well, firstly, would you just produce the folder, please.

MR LAWRENCE: It's not a single folder. It's a number of folders. It's printed messages.

20 THE COMMISSIONER: Well, whatever it is, just pick them up, hand them to the court officer. And, Officer, would you hand those to Mr Clements, the witness.

MR LAWRENCE: Excuse me, Chief Commissioner.

THE COMMISSIONER: Yes.

30 MR LAWRENCE: Yes, I'm just concerned, Chief Commissioner, that there could be privileged notes, potentially, on certain of the material. There is no problem with the provision of these printed messages, but I wonder if I might just have a moment to deal with it because wasn't intending - - -

40 THE COMMISSIONER: Mr Lawrence, I'm proceeding step by step and I understand your concerns, and those concerns will be dealt with in the procedure that I intend to take now. The first step in the procedure is to hand the files to your client via the officer. Now, the next step, Mr Clements, is you said that on the files will be found the copies of messages from Mr Ernest to you or you to Mr Ernest. Could you see if you can identify from the files?---The WhatsApp messages are in here.

The WhatsApp messages. Are you able to extract those, separate those from other documents on the files?---They're not in the files.

They're not there?---The WhatsApp messages aren't in the files.

I understood you to say they would be.---They're in my phone.

MR ROBERTSON: Can I just seek to understand. I'm sorry. So the folders that you now have in front of you, in general terms what's in those folders?---They're text messages.

So you've gone through your text messages and you've looked to see whether there's any messages that you thought may be relevant to this investigation, is that right?---Yes.

And then you've printed those out.---Yes.

10

You're also aware that there are, there is at least one WhatsApp message that may be relevant to this investigation, correct?---Yes.

But you haven't printed that one out, correct?---No.

And I think you said before that there may be more than one WhatsApp message that may be relevant to this investigation, is that right?---All the WhatsApp messages between myself and Ernest, yep.

20

And was WhatsApp the only app that you used to communicate with Mr Ernest Wong or did you also use WeChat or another - - -?---I think text message, yeah.

Text message as in iMessages or SMSs. Is that right?---Yeah, SMS, yeah.

Any other form of communication?---No.

Not email for example?---No.

30

And other than WhatsApp messages between you and Mr Wong, when you've looked through your phone, is there any other material, sorry, other than WhatsApp messages and iMessages/SMSs that you've printed out, is there any other area of your phone that you've found material that may be relevant to this investigation?---No.

THE COMMISSIONER: So Mr Clements we're at this situation that there are WhatsApp message involving Mr Ernest Wong that you've referred to. They're messages that will be located on your phone but they're not, they haven't been printed out. Is that right?---No, that's right, yeah.

40

Do you know what period of time the WhatsApp messages cover? In other words, you can identify - - -?---Yeah. It'd be, it'd be from 19 July, that was the first time I ever got a WhatsApp message from him and, until, like, January or February this year.

MR ROBERTSON: Can I just ask one further question, Chief Commissioner, if it doesn't affect the train of thought.

THE COMMISSIONER: Yes. But I take it that you're not able to be precise about that? That's your best recollection.---Yeah, I think it's January. Yeah, yeah, yeah.

Okay. Yes.

MR ROBERTSON: Anything that's been printed out and that's in the folders in front of you, does that include any requests for legal advice on your part or the substance of any legal advice given to you? Don't tell me the substance of it, but just tell me whether there's anything that falls within that particular category.---No, not in here, no.

THE COMMISSIONER: Well, now, in those folders there are copies of text messages you've printed out, is that right?---That's right, yeah.

All right. Are you able to identify and extract those from the folders, separate them from the other documents in the folders?---Yes.

And just before you – how many messages are there?---Oh, look, there's one, two, three, four, five, six in the first one.

Six printouts of text messages, is that right?---Oh, no, there's two pages, in the first one.

Yes, well, six documents, is it?---They're sorted into different people. One of them's got the name of the person handwritten by me and who the person was. One of them's a number that you'll recognise, and the other one's got the person's name at the top of the message.

So let me just get this right. There are six text messages that have been printed out. Some of them have got more than one page, is that what you're saying?---Yes.

Right. And these relate to text messages between you and Mr Ernest Wong, is that so?---Yep, that's one of them, yep.

I just wanted to identify what we're dealing with.---Yeah.

Okay. Would you then just take those six printed-out text messages - - -? ---That's not six (not transcribable)

- - - and just hand those to the Commission officer, and those to be handed to Mr Lawrence. Mr Lawrence, would you have a look at these documents and see if you see if there's any problem about the Commission having access to them.

MR LAWRENCE: Yes.

THE WITNESS: Commissioner, do we have to adjourn for me to go to the toilet?

THE COMMISSIONER: Sorry? Sorry?

THE WITNESS: Do we have to adjourn for me to go to the toilet?

THE COMMISSIONER: No, it's all right. Why don't you go - - -

10 THE WITNESS: If you're sorting this out, can I duck out with the court officer or something?

THE COMMISSIONER: Yes. You go.

THE WITNESS: Thank you.

THE COMMISSIONER: Just having a toilet break, Mr Lawrence.

20 MR LAWRENCE: Certainly. There's no objection or privilege (not transcribable) in respect of those.

THE COMMISSIONER: Thank you.

THE WITNESS: Do you want me to deal with another bunch before I go.

MR LAWRENCE: No, it's okay.

30 MR ROBERTSON: I think the witness wishes to deal with the other bunch before he takes the comfort break.

THE COMMISSIONER: Yes. Yes, now, what have you got there? That's the balance, is it?---This is a, no, this is the second set of messages between me and Tim Xu on 7 April, 2015.

All right if you could just show those, hand that to the court officer and, Mr Lawrence, if you have a look at those just while Mr Clements is taking a break, okay.

40 MR LAWRENCE: Yes, there's no assertion of privilege in respect of that.

THE COMMISSIONER: The first bundle of documents produced, thank you - - -

THE WITNESS: And thirdly there's a set of messages between myself and Sarah Adams, the deputy chief of staff to Bill Shorten.

THE COMMISSIONER: All right, thank you. Just have a look at those, Mr Lawrence. Natasha, can we mark these separately as three separate MFIs, that's the first bundle, that's 20.

MR LAWRENCE: There's no assertion of privilege.

THE COMMISSIONER: Thank you. The first batch of documents produced by Mr Clements a moment ago will be MFI 20. The second will be MFI 21, and there's a third bundle that's just been handed up will be marked MFI 22. The phone itself will be marked for identification MFI 23.

#MFI-020 – SCREENSHOTS OF TEXT MESSAGES BETWEEN JAMES CLEMENTS AND ERNEST WONG FROM 20 APRIL 2014 TO 20 JULY 2015

#MFI-021 – SCREENSHOTS OF TEXT MESSAGES BETWEEN JAMES CLEMENTS AND TIM XU ON 7 APRIL 2015

#MFI-022 – SCREENSHOTS OF TEXT MESSAGES BETWEEN JAMES CLEMENTS AND SARAH ADAMS FROM 10 APRIL 2015 TO 20 APRIL 2015

#MFI-023 – JAMES CLEMENTS MOBILE PHONE WITH POST-IT NOTES CONTAINING TWO PASSCODES

THE WITNESS: Can I have the phone for a second if that's okay, just to message my wife and let her know that I don't have my phone?

THE COMMISSIONER: Yes, I'll let you do that as soon as we adjourn and Mr Lawrence can be with you when you send that message. Now the folders you've still got with you, Mr Clements, have they got any other documents in them?---That's all the same documents just copies.

Sorry?---That's just copies of the same documents I've given you.

All right. Mr Robertson? Anything else?

MR ROBERTSON: Nothing else.

THE COMMISSIONER: Very well. Mr Clements, what we're going to do is I'll adjourn - - -

MR MOSES: Commissioner, there is one issue - - -

THE COMMISSIONER: Yes.

MR MOSES: - - - that if I could raise with you, seek your indulgence about this. The witness gave evidence - - -

MR ROBERTSON: Could I just - - -

10 THE COMMISSIONER: I'm sorry, just - - -

MR ROBERTSON: I'm sorry to interrupt my friend, perhaps the witness can be permitted to have the comfort break that he's been seeking to do for the last five minutes.

MR MOSES: Yes, that's fine. Sure.

THE COMMISSIONER: You go, Mr Clements. We'll see you back here tomorrow at, what time are we resuming, 10.30?

20 MR ROBERTSON: Would it be possible for the Commission to start at 10.15?

THE COMMISSIONER: Yes, sorry, 10.15.

MR ROBERTSON: May it please the Commission.

MR MOSES: Well, Chief Commissioner, just subject to one view of course. Mr Clements, of course - - -

30 THE COMMISSIONER: Just hold it, I'm going to let this man go.

MR MOSES: If you can just hear from me on one issue - - -

THE COMMISSIONER: Just a moment Mr Moses, I'll just control this myself.

MR MOSES: Sure.

40 THE COMMISSIONER: Mr Clements you're free to go - - -?---I want to hear what Mr Moses says. Now do you want him to come back?

MR MOSES: That's correct, that's what I was about - - -

THE COMMISSIONER: All right. Well, you go, go for a comfort stop Mr Clements.

MR MOSES: Just very quickly, just - - -

THE COMMISSIONER: If you would like to?---I will.

We'll wait for your return. Sorry, Mr Moses.

MR MOSES: No, that's okay, Chief Commissioner, you didn't know, it won't take long at all.

THE COMMISSIONER: Do you want to raise anything in Mr Clements' absence?

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MR MOSES: Okay. I do feel sorry for Mr Clements because he's tried to go to the bathroom on four occasions now.

THE COMMISSIONER: Mr Clements, you know you're free to go.

MR MOSES: You should go, Mr Clements.

THE WITNESS: It's okay, I'll deal with it.

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MR MOSES: Okay. This issue has arisen, Chief Commissioner. That is, that the witness gave evidence that in or about May there was the provision of money to him that was said to be given to a union official, an unnamed union official. Now, the evidence that wasn't lead from the witness – and what we'd be keen to know because it casts an unfair shadow over all trade union leaders – is whether Mr Clements told that union official where that money came from, because if his evidence is that he told that union official where that money came from, then that union official should be named so that other individuals do not have a shadow cast over them and for this to be deployed unfairly against individuals that's the point.

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THE WITNESS: No, I didn't tell the union official.

MR MOSES: Thank you, Mr Clements, thank you.

THE COMMISSIONER: Very well. Well I'll adjourn so that the question of the phone can be examined.

MR ROBERTSON: If you please Commissioner.

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THE COMMISSIONER: Resumed 10.15 tomorrow.

THE WITNESS STOOD DOWN [4.59pm]

AT 4.59PM THE MATTER WAS ADJOURNED ACCORDINGLY [4.59pm]