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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 10.00AM

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MR ROBERTSON: Chief Commissioner, could I first confirm matters pertaining to the program. First, there are no applications for cross-examination of Mr Xu, and my learned friend, Mr Watson, has indicated that he doesn't wish to ask any questions by way of re-examination, so therefore I don't intend to recall Mr Xu this morning. In my submission he shouldn't be formally released from his summons, at least at this point, in case he is further required, and the Commission officers can let Mr Watson or Mr Xu know in relation to that matter. I will shortly recall Mr Cheah. There has been no applications for cross-examination of Mr Cheah, but my learned friend Mr Dixon wants to briefly re-examine Mr Cheah and then I will then call Mr Clements. I expect to be finished with Mr Clements during the course of the day. I'm not sure at this point whether there'll be any applications for leave to cross-examine but that's a matter that can be dealt with later in the day and then I intend to call Mr Wong tomorrow. I will do my best to finish with Mr Wong during the course of tomorrow but there is a risk that it will spill into Friday. As I understand it, the Commission doesn't intend to sit until 10.30am tomorrow.

THE COMMISSIONER: That's right.

MR ROBERTSON: So at least at this point I think it's likely that the main part of the public inquiry will continue until Friday but I'm hopeful that it will continue until no later than lunchtime on Friday, but we'll of course need to see what happens in coming days. One other housekeeping matter. At page 2200, line 46 of the transcript of my examination of Mr Cheah yesterday, I put to Mr Cheah that he did not mention during this compulsory examination that Mr Huang had handed money to Mr Clements, who in turn had handed it to Mr Cheah. I was wrong to put that proposition to Mr Cheah. Mr Cheah did in fact refer to that matter in his compulsory examination, as he had during his interview with the Electoral Commission. What I intended to put to Mr Cheah was that he didn't volunteer during his compulsory examination his involvement in what I described as the switcheroo and I in fact put that proposition to Mr Cheah as page 2208 of the transcript, line 11. So that was the particular proposition that I was intending to put and did put to Mr Cheah but the proposition that I put starting at page 2200, line 46 and following, I shouldn't have put and I won't be seeking to rely on that aspect of the transcript in any submissions that I make going forward.

THE COMMISSIONER: Yes. Thank you.

MR ROBERTSON: Those are the only housekeeping matters.

THE COMMISSIONER: Very well.

MR ROBERTSON: I recall Mr Cheah.

THE COMMISSIONER: Yes. Thank you, Mr Cheah.

MR DIXON: Chief Commissioner, before I commence the re-examination could I just say something about - - -

THE COMMISSIONER: Just take a seat there for the moment.

10 MR DIXON: Could I just say something about what Counsel Assisting just said.

THE COMMISSIONER: Just use the microphone if you would.

MR DIXON: Yes. I beg your pardon. What Counsel Assisting just said about his examination yesterday of Mr Cheah. It was put after lunch that he was inadvertent in what he put, and today he stated that he was wrong and that he intended to put something else. I think it goes deeper than that and I fear that an injustice might have been occasioned upon Mr Cheah. What
20 was in fact put was very squarely that he didn't say in the course of his private session in ICAC on 25 May, 2018, that he didn't mention that Mr Huang came into the ALP offices with the money, he didn't mention that Mr Huang gave the money to Mr Clements and he didn't mention that Mr Clements then gave the money to Mr Cheah. There was a series of questions that involved the proposition that there was some type of late amendment to Mr Cheah's story or a late invention, and the injustice is this. It was then coupled up with a proposition that he has come here not to assist the Commission but he has sought to minimise his own evidence. Now, that was put directly in the context that he came to the private session and didn't
30 say anything about the key feature of his evidence, and that is he is the principal witness in this matter concerning the money coming in in a bag. Now, are we to take it that that proposition, that he's not here to assist the Commission any further, sorry, that he's not here to assist the Commission is now to be withdrawn or am I to re-examine my client on the basis that that proposition somehow still stands, notwithstanding that a central plank that underpinned that submission has now been withdrawn? I fear that an injustice has been done, Chief Commissioner, in that respect and I - - -

40 THE COMMISSIONER: Mr Dixon, I just want to take you back to how this arose.

MR DIXON: Yes.

THE COMMISSIONER: It was just before lunch yesterday when this matter was put to Mr Cheah. It was over the lunch period that Counsel Assisting checked the matter and it was, as I recall it, immediately after the luncheon adjournment that he indicated that there he thought might be an error in what he had said, and it was left on the basis that he would check

from the transcript whether in fact there was an error in that statement. So the matter was raised at the first available opportunity. I myself indicated that any reporting of the matter should be done with some caution because the matter was still being reviewed. Counsel Assisting has made it plain today that Mr Cheah did give evidence on those matters at the private hearing. He has acknowledged that it was in error to put to him what he put yesterday. With great respect, in those circumstances, to say there's been some form of injustice is without a basis. The fact of the matter is, as Counsel Assisting has made clear, and in due course it may well be that the actual transcript will be provided and form part of the evidence of this public inquiry, no injustice has been done to date, no injustice will be done so far as the issue you've raised in the future, by reason of the fact that the matter, the record firstly has already been corrected, and secondly, the evidence as to what was given on the matter as necessary will find its way into evidence. So the matter, Mr Dixon, does not give rise to any form of injustice at all because it was dealt with promptly, flagged as a possible error, acknowledged today that it was an error and furthermore Counsel Assisting has stated the effect of what the evidence was on that matter in the private hearing by your client. In those circumstances you can cut your own cloth as to what you ask Mr Cheah in evidence, but I apprehend that if you want to go back over this area it won't be extensive because Counsel Assisting has already put on the record what the true position is.

So I don't want these matters raise by way of statements or grandstanding. I understand your concern that evidence given of an important matter by your client be accurately acknowledged and recorded as it has already been and will continue to be acknowledged as to what his evidence was in that respect. But I just want to state, because you have introduced this notion of some injustice arising, that there is no basis at all for any injustice and there's no warrant for any statement being made which might suggest otherwise. Now, if you're raising this matter so that you can get guidance as to what you want to raise with your client in effect by further re-examination, then that's a matter for you, but you will no doubt take into account the matters I have just raised and what Counsel Assisting has said today in deciding whether or not you wish to go down that path. If you do, then we'll deal with it as and when that position arises, if you still persist and want to go through into that area.

MR DIXON: Yes. Thank you, Chief Commissioner. It was indeed my purpose to raise it because I intend, in the absence of fully understanding the proposition put to my client that he has sought to minimise his evidence when that was coupled to an obviously incorrect premise - - -

THE COMMISSIONER: Well, you have now heard Counsel Assisting this morning.

MR DIXON: I beg your pardon?

THE COMMISSIONER: You have now heard what Counsel Assisting has said this morning.

MR DIXON: Yes. Well, with respect, he hasn't - - -

THE COMMISSIONER: Does that not satisfy any error or inadvertence that has been referred to?

10 MR DIXON: He's referred to the premise as being an error. He has left - -
-

THE COMMISSIONER: Has not been left in doubt at all. He has made an unequivocal statement this morning, has he not, Mr Dixon?

MR DIXON: With respect, no.

THE COMMISSIONER: Why not?

20 MR DIXON: He has stated that the premise was incorrect but the question
of whether it remains the fact that Counsel Assisting is putting to my client
that he has sought to minimise his evidence because inter alia he sought to
rely upon that incorrect premise remains with a question mark over it.

THE COMMISSIONER: All right.

MR DIXON: And that's something I will seek to explore in the re-examination.

30 THE COMMISSIONER: Yes, very well. Anything further?

MR DIXON: They're the matters.

THE COMMISSIONER: Now, just before you do examine Mr Cheah, Mr Cheah, I just want to ask you a couple of matters. You were asked about the 2016 question, there were six invoices sent to Mr Wong, you recall, four of which had email addresses?---Okay.

You remember that segment of the evidence?---Yes.

40 And then yesterday you dealt with the question of the, what's now come to be known as the switcheroo, that is to say - - -?---Separate - - -

Separate issue.---Yep.

But involving the changing of the invoices, so that in effect it was put to you, you ended up with 22 invoices.---Okay, yeah. I understand what you mean.

In any event, that came about after you had some discussions with Mr Wong and then there was a message sent to urgently stop those invoices from going out?---Yes.

Those two issues. Now, on both those issues, as I understand it, you acted upon what Mr Wong expressed should happen in both instances. That is to say the invoices he requested in the 2016 scenario be sent to him and you acted on that basis.---I think I was just acting on trying to be helpful to the Finance Department on the occasion of the six invoices you referred, the
10 \$50,000, is that what you - - -

Yes, that's right.---Yes.

But wasn't that a matter you had discussed with Mr Wong?---Not specifically about how the invoices should get to those donors.

But you had discussed the, what we called the switcheroo with Mr Wong and after that discussion you contacted the Finance Department and said, "Don't send those invoices out"?---I wouldn't call it a discussion but yeah,
20 yeah. We had the interaction.

You were at Parliament House - - -?---And I gave the, I gave the, the, the message to hold the invoices.

And that was after the discussion you had, it seems, in the Parliament House earlier that day with Mr Wong?---Yeah.

About that matter?---It was, yeah. Yes.

30 Now, as an employee of the ALP branch, your obligation in terms of the discharge of any functions that you were involved in were obligations owed to the ALP NSW Branch as employer, is that right?---Sorry, I don't really understand what you're - - -

All right. In discharging any functions or duties on behalf of the ALP NSW in respect of what we're now calling the switcheroo, your duty was to your employer, the ALP NSW Branch.---Yes.

40 To make sure that once funds were received through a fundraiser, a practice in effect had been in place whereby the funds would, as soon as possible, be in the hands of the ALP NSW.---Yes.

Which would then be passed on to the Finance Department to process. ---Yes.

And the processing of funds received from a fundraiser included a number of steps, did they not? There was the actual receipt of the funds and handing them to head office.---Issuing of receipt to the donor.

I'm coming to that, yes.---Is that what you mean?

But the first obligation is to get the money into the hands of ALP NSW, the moneys that have been raised in the fundraiser.---Yes, yes.

The second is then the Finance Department comes into play and does the processing of invoices.---Yes.

10 Matching money with invoices.---Yes.

So that is part of the function of accounting.---Right.

The accounting function. And then the final step is the actual banking function, is that right?---Yes.

So there's a number of those steps in the processing of funds raised.---Yes.

20 Now, if there is to be any departure from accepted practice, in particular with the practice of sending invoices to donors, then that was not a matter you would make of your own initiative and say, "No, I'm not going to send the invoices to that donor. I'm going to send them somewhere else." You would not make that decision yourself.---Ah - - -

Because it represents a departure from accepted practice, is that right?---I wouldn't, I wouldn't ordinarily do that.

No.---No.

30 Well, you wouldn't have had the authority to change what is accepted practice and say, "From now on I'm not going to send invoices to that person or that group." You wouldn't do that.---I don't have that authority.

If there was to be a change in practice in the processing of donations, including invoicing, if there were to be any changes in the processes, that would have to be authorised by somebody with the requisite authority within ALP NSW Branch.---That's correct.

40 Which would presumably be the general secretary of the day, or delegated authority that he gave to someone else.---At least delegated authority.

MR LAWRENCE: I object to that question. I object.

THE COMMISSIONER: What are you objecting?

MR LAWRENCE: I object on the basis that there is no foundation in fact or reason for the assumption that is embedded in that question.

THE COMMISSIONER: Yes, no, thank you. You wouldn't of your own motion change accepted practice in terms of invoicing, as discussed a moment ago?---No.

To do that you would need to get the authority of somebody to – if it was to be done – to do it.---Yes.

10 And the authority would come from where within ALP Branch, NSW Branch?---Could come from the governance director or the general secretary or someone higher ranking than me.

But in relation to what we're calling the switcheroo, there was no authority given, was there, either by the general secretary or by the governance officer or any other officer of NSW ALP to do the switcheroo?---Correct.

So no one gave any authority, that you're aware of, not to send the invoices to the particular donors, but to send them to Mr Wong?---That was, that's, that's not the switcheroo.

20 We're talking about in this particular case two invoices.---Yes.

And the identity of the donors was the subject of the switcheroo.---Right, right.

I think you accept that nobody that you're aware of gave authority for that to be undertaken with those two invoices - - -?---Correct.

- - - within ALP NSW.---Correct.

30 Mr Wong had no such authority to authorise what we're calling the switcheroo, did he?---No.

Because firstly he was not an officer of the ALP or an employee of the ALP. Is that right?---Right.

He was at that time a member of the Upper House?---Yes.

40 But he wasn't a person who could authorise activities within ALP NSW Branch, at the time of the switcheroo. Is that right?---Correct.

Well, then if no authority had been properly given by any officer of ALP NSW to do the switcheroo, by you undertaking the exercise of implementing the switcheroo, telling Finance to hold and not send the other two invoices out to the donors, the only person whose suggestion or instructions you were implementing were those of Mr Wong.---Yes.

So why would you undertake such a significant activity as what we're calling the switcheroo when nobody had authorised that to be done?

---Well, he was the main organiser of the function.

So you acted on his say-so about the matter because he was organiser of the fundraiser?---Correct.

But once the money is in the hands of the ALP NSW Branch, the organiser has nothing to do with how the money is processed and invoiced. Correct?

10 ---Correct.

So that it would appear, would it not, that Mr Wong is purportedly using some form of authority which he didn't have to get you to hold the other two invoices and to do the switcheroo?---To me it was just trying to correct the mistake.

But looking at it now, it's plain, isn't it, that you were acting on his say-so or direction when it's plain he never had any authority to give you those instructions or direction? Is that right?---That's correct, yep.

20

Well, how can a mistake of that type arise, given the standard practice that was in operation for fundraising at ALP NSW Branch?---Like I said, just in my mind I was told it was a mistake, we were just trying to correct it so that the correct, the correct receipts get to the right people.

But why wouldn't you have, as you said before, gone to the appropriate officer to tick off on this, to give authority for this, namely either the general secretary, the governance officer or some other person with delegated authority?---We didn't have any processes in place like that, so - - -

30

But it would be just simply a question of going for example to the general secretary and say, look, this has occurred, we're proposing to in effect hold those two invoices and substitute two new ones, is that okay by you. And then it would be the question for the person with authority to consider whether it should be done or should not be done.---That's one way to look at it, but if I did that for every single task I have to do then nobody would be able to get their job done.

Sure. But this was an extraordinary task, it wasn't a run-of-the-mill task we're talking about, was it?---I accept that now, but at the time I didn't, at the time it was just to fix a mistake and get on with everything else.

40

But it wasn't just fixing a mistake, was it, it was changing the identity of the donors, of each donors.---Which was a mistake, it had been communicated to me as a mistake.

But it had nothing to do with Mr Wong. If it was a mistake it was an internal mistake at ALP NSW Branch, wasn't it?---No, it was a mistake about the identity of the donors.

That had nothing to do, once the money's in, with Mr Wong. It's a mistake that would have to be addressed by the appropriate person with authority in Sussex Street.---Ah - - -

10 Not the politician in Macquarie Street.---Well, if he organised the donors to donate and then he's the one with the information that one of them is, or two of them are incorrect, I mean, how would the internal staff have that knowledge?

In any event, it is the position now, as you see it clearly, that you should not have acted on any instructions or directions from Mr Wong on this matter. --- (not transcribable)

20 It might be put, this being such an unusual incident of switching donors then not sending out the invoices to the recorded reported donors, that this is a matter that suggests that you and Mr Wong, as it were, were working together in relation to a plan, a scheme that Mr Wong had engineered or was still engineering. What would you say to such a suggestion?---I had no knowledge of any scheme, any cover-up, anything like that, and wasn't party to anything like that.

All right. Thank you. Yes, Mr Dixon.

30 MR DIXON: Thank you. Chief Commissioner, can I just say that in respect of the questioning there, I think it was clear towards the end, but you commenced by discussing what I understood to be a separate issue, which was - - -

MR ROBERTSON: I'm not sure, with respect, this should be done in the presence of the witness. If there's something to clarify, it can be done by way of re-examination.

THE COMMISSIONER: Yes, all right.

40 MR ROBERTSON: If there's something to take objection to, I'm not sure it should be done in the presence of the witness.

MR DIXON: Well, I'm content with that. I think you got there in the end.

THE COMMISSIONER: All right. Well, Mr Cheah, if you wouldn't mind just waiting outside while we clear up this aspect, and probably won't keep you very long.

MR ROBERTSON: I'm just told that the feed has now been turned off outside of this room.

THE COMMISSIONER: All right, fine. Thank you. Yes, Mr Dixon, you're talking about the six invoices from 2016.

MR DIXON: Yes.

10 THE COMMISSIONER: As against the switcheroo.

MR DIXON: Yes, exactly.

THE COMMISSIONER: I think I made it clear to him that I was directing all the questions to the switcheroo and they were all directed to that.

20 MR DIXON: I think that was clear in the end. The concern was only this, and this is something that I'm in your hands about, but you used the appellation "invoice" throughout. You were obviously talking about the forms being switched, and I think in fairness the evidence has always been when those things are discussed that they're simply referred to as forms. And when you first spoke about invoices being sent back to Mr Wong, they were in fact receipts. They weren't invoices or - - -

THE COMMISSIONER: They've been variously referred to as invoices or receipts.

30 MR DIXON: Yes, I think you incorrectly referred to the forms being sent back to Mr Wong to distribute in respect of Exhibit 298 as an invoice, and there might have been a conflation of two concepts, which could have confused the witness.

THE COMMISSIONER: Mr Dixon, I'll leave it to you. If you want to clarify that with your client, you'll have the opportunity of doing so.

MR DIXON: I'm obliged.

40 MR ROBERTSON: And can I note, just to assist, most of the documents, indeed almost all of them, are referred to as tax invoices, albeit as my learned friend I think was intending to point out, from time to time, indeed most of the time, they're issued after the money has in fact been received. So in my submission it's completely sensible to describe them both as tax invoices and receipts – tax invoices in the sense that that's what the document indicates, and receipts in the sense of it happening after the physical money had been received. But I have no difficulty at all with my learned friend seeking to clarify those matters by way of re-examination.

THE COMMISSIONER: Yes, very well. Thank you. We'll have Mr Cheah back, then.

MR ROBERTSON: I'm told that the feed outside the room has now been recommenced.

THE COMMISSIONER: Take a seat, Mr Cheah. Mr Cheah. I'll just remind you, you are aware of the fact that you're still giving evidence on the affirmation you took yesterday?---So I don't need to take the affirmation again?

10 You don't have to but you understand that you still are bound by the affirmation you took yesterday?---Of course, yes. Of course.

Yes, Mr Dixon.

MR DIXON: Thank you. Operator, could you bring up Exhibit 188, please. Mr Cheah, do you see Exhibit 188 there?---Yes.

20 Now, this is regarding an email, the Dominic Sin email of September 2014 which you were CCd into. Do you see that?---Yes.

And at transcript 2121 you were asked whether you accepted, and I'm quoting the most obvious reading of the email from Mr Wong to Mr Sin is the one that Counsel Assisting sort of summarised as, "That Mr Wong was telling Mr Sin that he should sign the form and say that he is the donor of the \$725 in the Minns raffle tickets." And then you were asked if you accepted that proposition and you said, "No." So I just want to ask you some questions about that aspect of your evidence. What is your normal practice when you go through emails that you've been CCd into?---With an email that I get CCd into, I don't take as much notice as if I was the direct
30 the recipient or only recipient.

And just - - -?---That's due to the nature of my work being very busy and I get a lot of emails that I have to go through, not to get too confused.

And just concentrating in your answer, which was, "No." How might you have read the email that you see in Exhibit 188?---I would have just skimmed through it.

40 No, but how did you understand what was being put to you, that it was an instructing from Mr Wong telling Mr Sin to sign a form that he was in fact the donor of \$725 when he wasn't the true donor of \$725?---I think it's quite unclear on the basis of the broken English in the email as to what he's trying to convey as well as the fact that there's no, there's no evidence to say that Dominic Sin isn't the, the donor of the \$725. So it was that, I mean, if, if you look at the language the word "you" can be used in a general holistic sense as well as an individual sense. So if you look at Dominic Sin's email, how best to do that advice, and Ernest could have just been giving advice, like, general advice on how to get the matter finalised.

And, operator, could you bring up Exhibit 298 please, and page 8 of that exhibit. I think it's one page above, please. Now, do you see that email from you to Jenny Zhao of 25 July, 2016, Mr Cheah?---Yes.

Now, you see that you wrote, "I think we should but instead of mailing them, email them all to Winnie in Ernest's office. I have CCd into this email." Now at transcript 2129, you were asked this question, "What do you say to the" – sorry, I beg your pardon. "Do you agree that in response to the email that you can see on screen from Ms Zhao to – you told Ms Zhao, don't mail them out to donors, send them to Ernest's office?" That was the proposition put to you. My question is what do you want to say about the proposition or suggestion that you were directing Ms Zhao what to do in this respect?---Well, firstly she asked me the question. It wasn't me bringing up any issue about receipts. So if she didn't bring it up, I wouldn't have - - -

When you say she's asking you the question, what are you referring to? ---Where she says, "Hi Kenrick. Do we need to issue the receipts?" So I was only answering her question. Regardless, the proposition that I was directing it, I mean, you can clearly see I wrote, "I think we should." I was just giving advice to her. "I think we should, instead of mailing them, email them to, email them all to Winnie in Ernest's office." So it wasn't a direction, it was just answering a question, providing advice on the receipts.

Yes. And then you were then asked, "In response to the email from Ms Zhao, did you tell Ms Zhao not to mail to the donors, mail them to the donors but instead email them to Ernest's office?" And so what do you want to say about the proposition that you told Ms Zhao not to email receipts to donors?---That I never told her not to, not to – sorry, not to do it, it was just merely advice to try and be helpful to her.

And this morning the Chief Commissioner was asking you some questions about invoices that were sent back to Mr Wong's office. Did you understand that the first part of the questioning had to do with Exhibit 298? ---Which, which is Exhibit - - -

The one in front of you, sorry.---They took it off, yeah.

So you were asked some questions this morning by the Chief Commissioner. It eventually became about the switcheroo, but I think there was a question in there that you may or may not have had a conversation with Mr Wong prior to sending back, I think the word used was invoices, but in this case it's clear that it's receipts that you were talking about. Now, was your answer in respect of this matter, that you did or didn't have a conversation with Mr Wong prior to sending this email?---In respect of this matter I didn't have any conversation with Ernest Wong.

No. So it's your evidence that when you wrote this email you did that just without any reference to anyone else?---I wrote this email off my own bat.

If you could bring up Exhibit 317, please, and onto the fifth numbered page of the MYOB file. Do you see that document?---Yes.

Now, just to refresh your memory, what was being put to you here was that you had given evidence that money is never banked without the receipt of forms. Do you recall giving that evidence?---Yes.

10

And this document was put to you as an example of where, it was put that money had been banked without the receipt of a form referable to a specific person.

MR ROBERTSON: I don't think with respect I did put this document to the witness as I understood it. Perhaps my learned friend wishes to take a different course. This witness isn't someone who knows how MYOB files work, but that may well not be the evidence (not transcribable)

20

MR DIXON: Yes. I'll rephrase the question. At transcript line, sorry, 2151, you were asked this. "Although \$50,000 in cash was noted as having been received on 20 April, 2016, it was first recorded as being received by the generic title Chinese Friends of Labor, but the records were later changed on 25 July, 2016 to identify specific donors of cash, including Mr Chan, Mr Zhou and others - - -" If you could go to page 10 of the exhibit. "- - - that we can see on the second window." That was the question. My question to you is this. What do you want to say about this apparent inconsistency in your evidence wherein you stated that money is never banked unless there is a corresponding form on the one hand, and on the other hand that information about the \$50,000 donation in 2016 apparently banked in the generic name of Chinese Friends of Labor was, we are told, banked without a corresponding form. What do you want to say about that apparent inconsistency?---These donations were for a federal fundraiser where the, the guidelines, I guess you call it, for federal donations are much more lax. When I was saying that we never bank money without a form, I was clearly talking about in terms of New South Wales state law for New South Wales fundraisers because that's what this inquiry is about.

30

40

Operator, if you could bring up Exhibit 191, please. See that, Mr Cheah? ---Yes.

Now, at transcript 2149 you were asked about what is being called the switcheroo involving the two forms that Mr Wong sent you and the email, Friday, 17 April, 2015 at 2.26pm. Do you recall that?---Yes.

And it was put to you that "It was at least suspicious, wasn't it, that Mr Wong was saying to you although you've got two signed forms from Valentine Yee and Harbour City Group, we're going to pretend as if two of

those forms never existed?” And you were asked if you agreed to that proposition. You then gave an answer to the effect that you were told there was an error by Mr Wong and, for reasons including that you were very busy processing forms and money at the time, that you didn’t suspect fraud. Do you remember giving that evidence?---Yes.

And that you didn’t consider anything to be suspicious at the time. Now, I just want to ask you, is there any plausible reason why a form might be recalled and swapped with another one?

10

MR ROBERTSON: I object. Does he know of any plausible reason, perhaps. Does he have any knowledge of any relevant matter. That might be an appropriate question.

THE COMMISSIONER: Yes, well, how can he answer that question, Mr Dixon?

MR DIXON: I think it’s a very similar question, slightly differently framed in the wording, as what has already been put.

20

THE COMMISSIONER: It hasn’t been established that it was ever done before and, if it was, what were the circumstances?

MR DIXON: Well, without leading the witness into that, I’ve asked him a general question, which the answer might include what has happened before.

MR ROBERTSON: My friend needs to be careful again.

30

THE COMMISSIONER: I’m not allowing the question in that form, but if you want to explore this issue and there have been other circumstances in which there have been switcheroos – which might be surprising if there has been – then that’s a matter for you as to whether you want to go down that path.

MR DIXON: Mr Cheah, has it ever occurred that a form has been recalled and swapped for another form in your experience?---Forms have sometimes had to go back to donors to get details corrected or if they haven’t signed the bottom bit, the signature block. They might have filled in other details but left out that. So it’s got to go back because they have to sign it, obviously.

40

And other than the fact that someone has incorrectly filled in a form and it’s sent back, are there any other reasons why a form might be sent back? Is that it? Is it just because of a lack of signature or - - -?---If someone’s - - -

MR ROBERTSON: I object. I object. It needs to have the words “in his experience” or some words to similar effect in the form of the question.

MR DIXON: Well - - -

THE COMMISSIONER: Sorry?

MR ROBERTSON: My friend needs to add words like “in his experience” or “has he seen” or something along those lines, rather than asking the witness to speculate.

10 THE COMMISSIONER: Mr Dixon, without a factual context, the answer really can't be worth anything. And I think, in fairness to the witness, he would need to have his attention drawn to some particular circumstance which might be said to be – well, I won't say any more.

MR DIXON: Yes. Mr Cheah, in your experience, are there any other reasons why a form has been or would be sent back?---The only plausible other reason I can think of would be that if someone had filled out a form and then subsequently realised that they'd been over the cap and didn't want to break the law in terms of going over the individual cap of donations, then they would, yeah.

20

Has that ever happened in your experience?---I can't put a, can't put an exact on it.

And what were the type of things in your mind when Mr Wong had a conversation with you and directed you to swap out two of the forms with two other forms that you already had? What were the type of things that went in your mind when Mr Wong said there's been an error? Did you at all try to reconcile that in your own mind as to what that error could be? ---My first reaction was to get the error resolved by stopping the receipts going out to the wrong people, so that was the first priority, and then deal with the rest later. I wasn't looking for any, like I said yesterday, not looking for anything suspicious. I just - - -

30

My question – sorry, please finish.---No, I just wasn't looking for anything suspicious and had a ton of other work to finish off before I changed, changed role, so.

My question was, did you in your own mind try to reconcile what the possible problem might have been that Mr Wong had said to you?---No.

40

And why is that?---Like I said, it was just relayed that it was a mistake, and I wanted to get the mistake fixed, rather than why there would be a mistake or forensically look into the, the cause of the mistake.

It was put to you by the Chief Commissioner this morning that your answer in this respect or your involvement in the switch might lead to a suggestion that you had knowledge or were involved in part of the scheme that is being discussed in these proceedings. What do you say to that proposition?---I

had no knowledge of any scheme or any cover-up or, or anything of that nature. I've given all my answers honestly and tried to help.

Now, you were asked whether you ever told Kaila Murnain about what you had read in a Sydney Morning Herald article about Mr Huang and his being associated with corruption. Do you recall those questions yesterday?---Yep.

10 Now, at transcription 2176, you were asked some questions about what were termed "interesting articles" that you had sent to Mr Bryon. Do you recall that?---Yes.

And then it was put to you, "Did you bring those articles to the attention of anyone else within the Labor movement?" And you said, "I don't think so." And then it was particularly put to you, "Did you tell Ms Murnain, the general secretary at the time?" Do you recall that?---Yes.

20 Now, why wouldn't you have told Ms Murnain of an article in The Sydney Morning Herald concerning Mr Huang and possible corruption in 2016 and following, at the time that she became general secretary?---Any, any, any article that would be permanent to her job would be picked up by her on her own. Didn't need me to go tell her about it and in fact I don't have the time to go and – if every single article that mentioned NSW Labor or the NSW opposition at the time needed to go and be reported to her, then she wouldn't be able to get anything done. It was obviously, the general secretary's job, or whoever did the general secretary's job, is doing the job, is very busy.

30 How did you read – I'm focusing in at about 2016 when you were in the ALP offices in Sussex Street – how did you read The Sydney Morning Herald? Did you read it online or was there a copy there, what happened? ---There, there's usually a copy lying in the, in the reception waiting area but I, I generally don't read that one. I just open tabs if I have a spare minute or two from my work.

40 Yes. Now, at transcript 2161 you were asked some questions about the time when Ms Murnain was acting secretary in 2016 and thereafter, and you were asked whether Ms Murnain knew, as at December 2016, that the \$100,000 had been brought in by Mr Wang. Do you remember that question?---Yes, yes.

And then you were asked - - -

THE COMMISSIONER: What line are you talking about?

MR DIXON: From line 19.

THE COMMISSIONER: Yes, thank you.

MR DIXON: The question. And then you were asked, “Did she know, to your knowledge?” And I think it’s fair to say that the questioning revolved around whether or not, to suggested whether or not you had told Ms Murnain about the \$100,000 coming in from Mr Huang. Now, why wouldn’t you have told Ms Murnain in April 2015 and thereafter that Mr Huang delivered the \$100,000?---There wasn’t really much, there was no secret about the money to my knowledge. I mean, I was looking after it and counting it in an open plan office, so I guess I just assumed that people have knowledge that it was, that that was what had happened.

10

And what about the fact that Mr Huang was the, brought the money in in the bag? What about that fact?---Well, he walked right through the office, right through the open plan and, to get to, to get to the general secretary’s office, you had to walk past the assistant general secretary’s office. So like I said, I just assumed that they already had knowledge of it.

Yes. I beg your pardon. Chief Commissioner, when you asked him that question about what line, I think I mentioned transcript 2161, it should be 2169.

20

THE COMMISSIONER: 2169.

MR DIXON: From line 19. I apologise for that.

THE COMMISSIONER: That’s all right. Thank you.

MR DIXON: And then at transcript 2198, from line 39, you were asked some questions about your discussions about the private sessions at ICAC with various people. Do you recall that questioning yesterday?---Yes.

30

Now, you were asked about a discussion with Jonathan Yee after he had an interview with the Electoral Commission, and you said you think there was a short discussion at a function where you were having a cigarette. Do you recall that?---Yes.

And then other than the words that you used when you said at the function, “Are you okay,” and he said, “Yeah,” other than those words did you discuss what your evidence was in the private session with Mr Yee at all? ---Not, not my evidence, I didn’t discuss my evidence with Mr Yee, no.

40

And then at transcript 2204 from line 8, you were asked some questions about speaking to Ms Sibraa after the ICAC private session on 25 May, 2016 [sic]. You recall those questions?---Yes.

Yes. And in the course of that questioning you then referred to what you said was evidence on a previous occasion or previous evidence, that you’d also spoken to Mr Wong. Now, what you said was, “I had a short

conversation with Mr Wong about the investigation.” Do you recall giving that evidence?---Yes.

Now, other than Ms Sibraa and Mr Yee, what do you say about the notion that you spoke to Mr Wong about the evidence you gave at the private ICAC hearing?---I didn't talk, I didn't tell him about what the actual evidence I have at the hearing, it was just about the fact that there was a hearing and – is that, is that the, is that what you're asking?

10 Well, I'm asking you, you said you think you had a short conversation with Mr Wong about the investigation. And what was that, what was that discussion to do with?---Oh, well, it wasn't about the content, it was more about, sorry, not the content of my evidence, more about what was the investigation about.

And so for example what did you discuss?---General terms like I told him it was to do with the, the financial relationship between Country Labor and NSW Labor and there were some, there was some line of questioning about the \$100,000.

20

Yes. Now, yesterday at transcript 2200 from line 37, Mr Robertson asked you some questions about the compulsory examination of 25 May, 2018. You recall that?---Yes.

And it was put to you at the time, it's since been corrected, that you didn't refer to the fact that – he said, you didn't mention that the money had been given by Mr Huang to Mr Clements and then Mr Clements to you. Do you recall that being put to you?---Yes.

30 Now, it was then put to you that you've – I'll start again. What do you want to say to the proposition put to you, and this is at transcript 2200, line 49, that you didn't mention that the money had been given by Mr Huang to Mr Clements and then Mr Clements to you?---My reaction - - -

MR ROBERTSON: I think there's a better way – sorry, I just intervene briefly. I think the better way to deal with this, with respect, is I propose to tender page 35 of the compulsory examination transcript, so instead of having the witness recall what happened on 25 May, 2018, I think with your leave, Chief Commissioner, I'll tender that now and then my learned friend
40 can proceed with that if he wishes to.

THE COMMISSIONER: Thank you. Mr Dixon, the best evidence as to what he said is of course in the transcript.

MR DIXON: It is.

THE COMMISSIONER: So page 35 - - -

MR DIXON: Well, it's more than page - - -

THE COMMISSIONER: - - - is now tendered in evidence. Does that deal with any matter you wanted to raise?

MR DIXON: Well, it wasn't just a passing reference, Chief Commissioner, with respect.

THE COMMISSIONER: No, we're just - - -

10

MR DIXON: It goes to page - - -

THE COMMISSIONER: No, I'm just confining your attention to the question as to what evidence he gave.

MR DIXON: He's then - - -

THE COMMISSIONER: Counsel Assisting suggested that that part of the transcript of the compulsory examination, page 35, be tendered so that it's on the record.

20

MR DIXON: Yes, and I understood that, thank you, Chief Commissioner. And what I was trying to put was that it was more than just a passing reference in transcript page 35.

THE COMMISSIONER: Yes, I understand that.

MR DIXON: It extended to 39.

30

THE COMMISSIONER: It just comes back to your question to the witness, that's all. We're just dealing with that part of it. If the transcript's in evidence, you need to ask Mr Cheah to try and recall what he said in evidence.

MR DIXON: No, I don't need to ask him if he needs to recall.

THE COMMISSIONER: Well, let's deal with that.

MR DIXON: I'll ask a different question, yes.

40

MR ROBERTSON: Can I just formally deal with that first, Chief Commissioner.

THE COMMISSIONER: Yes. Yes, deal with it.

MR ROBERTSON: I apply for the direction that was made under section 112 of the Independent Commission Against Corruption Act on 25 May,

2018 be varied insofar as it would otherwise prevent the publication of page 35 of the private transcript of the hearing on that day.

10 THE COMMISSIONER: Thank you. On 25 May, 2018, I made a direction under section 112 of the Independent Commission Against Corruption Act. In the circumstances, it is in the interests of justice that the transcript of the evidence, the segment of the evidence in question, be tendered as Counsel Assisting has proposed. Accordingly, I vary the section 112 direction made on 25 May, 2018, insofar as it would otherwise prevent page 38 being now tendered in the public inquiry.

20 **VARIATION OF SUPPRESSION ORDER: ON 25 MAY, 2018, I MADE A DIRECTION UNDER SECTION 112 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT. IN THE CIRCUMSTANCES, IT IS IN THE INTERESTS OF JUSTICE THAT THE TRANSCRIPT OF THE EVIDENCE, THE SEGMENT OF THE EVIDENCE IN QUESTION, BE TENDERED AS COUNSEL ASSISTING HAS PROPOSED. ACCORDINGLY, I VARY THE SECTION 112 DIRECTION MADE ON 25 MAY, 2018, INsofar AS IT WOULD OTHERWISE PREVENT PAGE 38 BEING NOW TENDERED IN THE PUBLIC INQUIRY.**

MR ROBERTSON: Sorry, page 35, if the Commissioner pleases. I'm just pausing because my learned friend referred to page 39 as well.

MR DIXON: 37 from line 12, and 39 from line 1.

30 MR ROBERTSON: And I think in the face of that I should ask for the variation in relation to pages 35 through to 39 inclusive. I think that deals with my learned friend's concerns, but if he disagrees, he should say so now.

MR DIXON: No.

THE COMMISSIONER: Yes, very well.

40 MR ROBERTSON: He said no but he's nodding, so I'll take that as a yes.

MR DIXON: I don't disagree.

MR ROBERTSON: This is likely to be in your first volume, Chief Commissioner. First folder. Chief Commissioner, the key passage is at line 40, and answer - - -

THE COMMISSIONER: This is page 35?

MR ROBERTSON: Page 35.

THE COMMISSIONER: Yes, that's right.

MR ROBERTSON: The key question is at line 38, the answer starting at line 39.

THE COMMISSIONER: Yes, just pardon me a moment. Page 36 is really only, at best, context.

10

MR ROBERTSON: That's so. Although if the Chief Commissioner notes page 37, in particular about line 17.

THE COMMISSIONER: Yes, I accept 17.

20

MR ROBERTSON: So in a sense there's general context in paragraph 36, but it then gets back on more clear topics, starting at around about line 14 or so, and then note the question at line 17, and then on page 39, line 4, we get to the ALDI bag. So my application is that the variance applies to pages 35 through to 39 inclusive.

THE COMMISSIONER: Yes, thank you. In respect of the variation which I have announced, that variation will be extended to relate to pages 35 to 39 inclusive of the transcript of the compulsory examination on 25 May, 2018.

30

VARIATION OF SUPPRESSION ORDER: IN RESPECT OF THE VARIATION WHICH I HAVE ANNOUNCED, THAT VARIATION WILL BE EXTENDED TO RELATE TO PAGES 35 TO 39 INCLUSIVE OF THE TRANSCRIPT OF THE COMPULSORY EXAMINATION ON 25 MAY, 2018.

MR ROBERTSON: And that variation having been made, I tender pages 35 through to 39 of the private transcript of the compulsory examination of 25 May, 2018.

40

THE COMMISSIONER: Yes, thank you. Pages 35 to 39 of the compulsory examination transcript, 25 May, 2018, will become exhibit 324.

#EXH-324 – PAGES 35PT TO 39PT OF THE TRANSCRIPT OF THE COMPULSORY EXAMINATION OF KENRICK CHEAH ON 25 MAY 2018

THE COMMISSIONER: Yes. Yes, Mr Dixon.

MR DIXON: Yes, thank you, Chief Commissioner. Mr Cheah, what do you want to say if anything to the proposition put to you, transcript 2207 from line 19, was this. “Is it fair to say that in both the private hearing and in the public hearing you’ve been very careful in the responses you’ve given to the specific questions with a view seeking to minimise your involvement in the 2015 Chinese Friends of Labor Dinner?---I’ve been as forthcoming as I can be about any information requested of me. I’ve gone through phone records to try and re-piece together events that have happened four years ago or three years ago, gone through old diary entries, emails, even though my work email’s been cut off, I found a way to access old emails to, to try and piece together what’s happened and I’ve been trying to be as helpful as possible.

And it was then put to you at line 31 of 2207, “You’ve been very careful in the information that you’ve given to this Commission. You’ve sought to give minimum information necessary in response to its questions.” And what do you say to that proposition?---I refute that because I’ve got nothing to hide and I’m trying to be as helpful as possible by doing everything that I just mentioned, phone records, diary records, notes, everything.

And then a slightly different proposition was then put to you at line 45 of 2207, said, “You’ve deliberately been very careful in your responses to questions, both in the private hearing and in the public hearing with a view to minimising any suggestion in involvement in illegality in connection with the Chinese Friends of Labor event in 2015.” And what do you say to that proposition?---I had no knowledge of any illegality. I didn’t try and engage in any cover-up or, or minimise my involvement or anything, apart from what it was, me just doing my job.

And then, and this is the last question, it was put to you at transcript 2208, line 1, a slightly different proposition said that the particular reason that you – and I’m interpolating, tried to minimise your involvement by not fully cooperating is that you are concerned that something went awry in connection with that dinner and you’ve sought to minimise any suggestion of detailed involvement in that matter. What do you say to that proposition? ---The only reason I thought something went awry is when I got notified that the Electoral Commission was investigating that dinner, which has led to these, down the track, these proceedings here.

But what about in respect of what’s called the switcheroo, it was suggested to you in a later question from line 10 that that put you on notice that something suspicious was going on at the time.---At the time I wasn’t looking for any fraud or any suspicious activity, so I was just doing my job, vis-à-vis how I normally would do it, in terms of trying to clear as much work off my desk as I can.

Chief Commissioner, that’s the re-examination. Thank you.

THE COMMISSIONER: Yes, thank you, Mr Dixon.

MR ROBERTSON: There's a few questions by way of clarification.

THE COMMISSIONER: Yes.

MR ROBERTSON: Mr Cheah, in answer to one of my learned friend, Mr Dixon's, questions you said, according to my note, that it was no secret that the \$100,000 had been received. Did I get that right?---Yes, I think I said that, yeah.

So do I take it then that it was discussed generally and discussed openly amongst employees at the Sussex Street office that the \$100,000 had been received in about April of 2015?---No.

You weren't deliberately trying to keep it to yourself for example, not telling others. Is that right?---Say it again, sorry.

20 You weren't deliberately trying to keep that matter to yourself. Correct? ---I wasn't trying to keep it to myself, no.

You counted the money at your workstation. Correct?---Yes.

You didn't go into some separate office in order to keep it concealed from others. Is that right?---No.

And I think you've accepted on a number of occasions that it was a significant matter for \$100,000 in cash to be received at the head office? ---Yes.

It was an unusual thing?---Unusual.

And so it must have been something that you discussed, at least in general terms, with your fellow employees. Correct?---Not really.

Well, surely you have the Aldi bag out and you tip it out with \$100,000 and you're counting through multiple notes and seeking to reconcile it, surely Mr Mooney for example, who sits next to you, said, gee, that's a lot of money, what happened here? Surely there was a discussion of that kind? ---I didn't tip the money out of the bag and let it, as you infer, all over the desk.

Well, you were counting the money at your desk. Is that right?---Discretely, as I always count money. Discretely.

But I think what you were saying is response to Mr Dixon is you weren't trying to conceal anything that you were doing. Is that right?---I wasn't, no.

There was no secret about it at all?---No.

And you don't have a separate office where you can close the door, correct?---I don't.

And you did the counting and reconciling process at your desk, correct?
---That's right, yep.

10 You weren't trying to hide what you were trying to do?---No.

So you would agree, wouldn't you, that there must have been a number of others who actually saw substantial amounts of cash on your desk when you were counting it on 7 or 8 April, 2015, correct?---They might have seen me counting money but I never took out the entire lot at once. I think that would be pretty stupid because it would get lost.

20 But what I'm suggesting to you is that entirely consistently with what you said to Mr Dixon, that there was no secret, it was a matter that was at least scuttlebutt at the office of Sussex Street. Would you agree?---I don't think -
- -

Within a few days of the money being received everyone or almost everyone know about it. Would you agree?---I don't think so.

30 People around the watercooler, if there is one, or otherwise when they're talking to each other are saying to each other, "Well, goodness me, \$100,000 in cash walked in off the street." That's an unusual thing. Do you agree?---I don't think anyone really cared to be honest, besides the people that it directly impacted on.

Well, it was at least an unusual thing for you, for \$100,000 in cash to be received on a particular day?---Yes, yes.

It was unusual, you've already accepted, that it was, all of the money was in cash in one go rather than a mix of payments, cash, credit cards, cheques and things of that kind?---Right, right.

40 Do you remember what denomination the cash was in?---I think in previous, I'd have to refer back to my Electoral Commission interview because I think I gave my best guess as to what the denominations were there, but I can't remember what they are now.

But the receipt of the money was discussed with at least some of your fellow employees within the Sussex Street office. Would you agree?---No. Why would I discuss it?

Because it's an extraordinary thing that happened and it was a matter that colleagues might discuss amongst themselves.---No. I didn't discuss it.

Well, at very least someone said to you, when you were taking the money home, "Be careful," correct?---Yes.

So at least to that extent, you had a discussion with someone. Do you agree?---To the extent that I remember someone saying, "Be careful," on the way home.

10

And they weren't saying, "Be careful," because you were taking home 50 bucks, they were saying be careful because you were taking home a substantial amount of money, correct?---In my mind I was thinking about the money but I don't know what they were, what they were referring to.

20

I'm not suggesting that you put yourself in your mind but what I'm suggesting to you is that you must have had some discussions with at least one person, perhaps more, that led someone to say, "Be careful."---I really don't recall having any discussions about the money. I, I wouldn't really want to draw attention it even though it's no secret. I wouldn't go out there and advertise the fact that there's a substantial amount of money.

But you'd at least accept that someone's attention was drawn to it given that you gave evidence when you first came before this public inquiry that someone said to you, "Be careful." Do you agree?---I think my evidence was that Kaila said to be careful on the way home and she says that to me, in retrospect, because of my condition sometimes.

30

Well, you remember we spent some time on that particular matter, and where I think your evidence was left of is that you weren't quite sure as to who had said those words to you. Would you agree?---I think my evidence was to my best recollection or best evidence was that it was Kaila that said that.

But you weren't sure whether – that was your best recollection but it may well have been someone else. Is that right?---Like I said, best recollection, you asked me to go home over the weekend and, and, and think about it and, and, and do my best to piece it all together.

40

But the particular context in which you gave that evidence first up was it wasn't, "Be careful," just because people are concerned about your general safety and look both ways when one crossed the road. It was associated with the money that you were bringing home that night. Do you agree? ---Sorry, sorry, I, I - - -

When you first gave evidence before this Commission about what I'll call the "be careful" discussion, you weren't suggesting that someone was just saying, "Be careful," in some general sense, look both ways before you

cross the road, it was a discussion that was concerned with the fact that you were bringing home substantial amounts of money that night. Is that right?
---I took it that way.

Well, at that particular point in time you had a bag and it had money in it, correct?---Yeah. That's why I took it that way.

10 But you're not suggesting that every night you go home someone says, "Okay, be careful tonight," correct?---No. I'm saying that the only one who would say something like, "Be careful," on the way home would be Kaila because she is, she knows of my narcolepsy and, like, my medical conditions.

But you're not suggesting that that "be careful" discussion was connected with narcolepsy at least directly. It was connected with the fact that you were bringing home a bag of cash, correct?---I took it to mean be careful with the money in the bag.

20 And that's because you had a conversation with at least someone where you let them know that there was a substantial amount of cash in a bag that you were bringing home, correct?---No, I took that because I was conscious of the fact that I was carrying a substantial amount of money, which you described as a significant amount and an unusual event.

So are you saying that it was just someone's general concern for you to say be careful, rather than - - -?---No, I didn't say that.

30 Well, I just want to be clear about what you're saying. What I'm suggesting to you is that the "be careful" discussion was in the context of you telling someone that you were bringing home cash, do you agree?---I don't have any recollection of telling anyone.

Well, what reason do you proffer as to why someone is saying to you "be careful" at a point in time in which you're holding a bag of cash?---They might have seen me counting money and just - - -

40 So is it right that you're not accepting that the "be careful" discussion was connected with a conversation concerning the fact that you were bringing home a bag of cash, is that right?---Sorry, can you repeat?

Are you not accepting that the "be careful" discussion occurred in connection with a discussion about you bringing home a bag of cash, is that right? You're not accepting that proposition?---I don't really, I don't know how to answer that.

I'll put it the other way. I'll put it the other way rather than as a negative. I'm suggesting to you that the "be careful" discussion was connected with a discussion that you had with someone where you told them that you were

intending to bring home a bag of cash, do you agree?---No, because I never had any, or to my best recollection I never had any discussion.

You don't have access to NSW Labor's MYOB file, is that right?---No.

You've never had access to that file, correct?---Never.

I take it you've never produced a sales and receivables report, is that right?
---Wouldn't have a clue.

10

Now you were asked some questions about the MYOB file that became, or at least the report, that became Exhibit 317. I just want to be clear on your response that if money is connected with the federal manifestation of the Australian Labor Party rather than any state manifestation, from your perspective it's completely fine for one to not know who the donors of that money is and to simply bank the money and find out who the donors are at some later stage? Was that the effect or your evidence in answering Mr Dixon's questions?---No. My evidence was that in relation to what I was quoted as saying, that we wouldn't bank any money without a disclosure form, but I was referring to state donations.

20

Would you agree that you first raised that matter, or at least one of the occasions on which you raised that matter was in your Electoral Commission interview?---Yes.

And do you agree that when you gave that answer to the Electoral Commission interview, you didn't qualify it by saying, "My answers are only associated with state donations and not with federal donations"?

30

---Yeah, I don't think I qualified it, but that's because I was being interviewed by the state body, so my assumption was the investigation goes to state donations.

Is this just another example of you being faced with evidence that's inconsistent with your story, and as soon as you find that evidence, you adjust your story accordingly?---Where is the, where are the inconsistency?

Take the switcheroo, for example. I suggest to you that you had full knowledge and recollection of that switcheroo matter, and it was only when you were faced with documents that you couldn't wriggle out of that you finally fessed up to that matter, do you agree?---I disagree.

40

And here's another example of where you're seeking to qualify or change your evidence because it doesn't sit with other material that's later presented to you, do you agree?---I'm not changing - - -

MR DIXON: I object to that question, Chief Commissioner.

THE COMMISSIONER: No, I allow it, Mr Dixon.

MR DIXON: He had nothing to do with that.

MR ROBERTSON: And this is another example in which you qualify or change your evidence to meet the documents that are later provided to you, do you agree?---I'm not changing any evidence.

10 Now, just to be clear about the 2016 sums of money, because I still don't quite understand your answer. The unqualified answer that you gave both to the Electoral Commission and to this Commission, as I understood it, was that money doesn't get banked without a form. Do I at least have it right at that point in time?---Right.

Now, you now qualify it by saying, let me make sure I understand this, money doesn't get banked without a form unless the money pertains to the federal party rather than the state party. Is that right?---(No Audible Reply)

20 Is that, is that your evidence?---To my knowledge, money for the state party needs to have a form with it or it won't get banked.

Well, let me put the proposition again. Is your evidence that money doesn't get banked without a form unless it's associated with the federal party, do I have that right?---Sorry?

I'm trying to understand that as a matter of practice and procedure, when you've been working at head office, we started with the proposition that said if there is no form there is no banking.---Yeah, I understand that, it was just your question.

30 And I now want to understand how that's been qualified. So is the procedure then, don't bank without a form but only if the money is earmarked as state money rather than as federal money. Is that - - -?
---I don't, I don't bank the money.

I'm asking you what you understood the practices and procedures to be.
---Okay.

40 You said both to the Electoral Commission and this Commission that as you understood the procedures, money doesn't get banked without a form.---
Right.

Have I at least got it right?---Right, right, yes.

Now, as I understand it, but tell me if I've got it wrong, as I understand it, in response to Mr Dixon's questions you've said that's not an absolute proposition, because you've seen the 2016 documents and you've seen an example of where it appears that money has in fact been banked without a form.---Okay.

Have I got that right so far?---Okay, yeah.

And so the proposition as you put it at least literally to the Electoral Commission and to this Commission at first, requires some qualification. Is that right?---Yes.

10 And I'm trying to be clear as to what that qualification is. So is the qualification no banking without a form, but that only applies to state donations. Is that the qualification or is there some other qualifications?
---No banking, yeah, no banking without a form applies to state donations, yes.

And so at least as you understand the practices and procedures at head office, it's fine to bank money in the federal account without knowing who the donor is. Is that right?---I would, I would assume that they would want a form or some kind of knowledge of who the donor is too, but that's not - -
-

20 Well, that's what I'm trying to pin you down on.---I don't, I don't - - -

I want to understand what your understanding of the procedures are. You've sought to clarify it or qualify it by reference to Mr Dixon's questions. I want to be very clear on what that qualification is.---Okay.

30 So is the qualification that that procedure or practice, don't bank without a form, only applies to money earmarked on a state level. Is that the qualification that you're seeking to make?---Money only gets banked with a form – sorry, money would only get banked if there was a form with it for the state party.

THE COMMISSIONER: No, you're not dealing with the point of the question. We're trying to get to the point where - - -?---Sorry.

- - - you now say in effect the practice followed was that money did not get banked without a form.---Right.

40 But that only applies to state donations, it doesn't apply to federal. Is that the qualification that you seek to add or not?---To my best knowledge, whenever I submit the money, I submit forms, whether it be state or federal, so I don't know whether, I don't know, honestly don't know whether money gets banked to federal without a form, if there's a form not there, because I always submit money with a form.

In your experience, you haven't been faced with the dilemma or the issue as to whether the money should be banked if it's going to go federal but it hasn't got a form, you haven't been confronted with that situation. Is that what you're saying?---Yes.

All right. So if you, just in fairness to you, if you are adding a qualification to the practice money doesn't get banked without a form, then it's a qualification that doesn't have any basis in experience from your point of view. Is that right?---I'm basing that on also the fact that it's against the state law to donate, you know, over \$1 without knowing who the donors are.

Just stay with me if you would.---Sorry.

10 We're dealing not with the proposition generally, which we understand clearly you've enunciated, that money doesn't get banked without a form. That certainly applies to state donations, I understand that. The question is whether there's an exception that you're aware of from your own experience. Namely, however that doesn't apply if the donation's intended to go federal.---No. Apart from, apart from being shown that, those emails in, in this evidence. But, no, apart from that, no.

You haven't had any other such experiences?---No, sir.

20 All right.

MR ROBERTSON: So I just think, in fairness to you, Mr Cheah, I should draw your attention to the aspect of the Electoral Commission's interview to which I referred a moment ago. Operator, that's Exhibit 149, volume 1, capital A, and can we go, please, to page 14. If you can have a look, Mr Cheah, at the answer to question 98, which is about two-tenths of the way down the page. You say in your Electoral Commission interview, "Because we don't bank any money unless it comes with the appropriate form for the appropriate amount." Do you see that there?---Yes.

30 And you're saying that, at least in relation to state donations, that's the practice and procedure as you understand it, is that right?---Yes.

Is that also the practice and procedure, as you understand it, on a federal level?---To my knowledge, until the evidence that you showed me before about that money being banked.

40 So is it right to say that the only occasion -- I withdraw that. Is it right to say that you're not aware of any occasion in which money has been banked without a form, with the possible exception of the 2016 example that I showed you on the screen yesterday, is that right?---Yes. Yes.

And in terms of your answer to question number 98, is that a practice and procedure that also applies in relation to donations in connection with local council elections or candidates?---I think so because they're administered by the same, by state law, to my knowledge.

So at least as you understand the position, that question of policy and procedure applies to matters where the donation is intended to end up – local, state or federal – is that right?---To my, yeah, to my best knowledge at the time, yeah.

Not just to your best knowledge at the time, your best knowledge now. At all times that you've had anything to do with donations and the Labor Party, the practice or procedure has been, as you understand it, don't bank without a form, correct?---Yes, yes.

10

Don't bank without knowing who the donor is, correct?---Of course, yes.

And there's only one example in which you think that that matter may have been departed from, and it's the one in 2016 to which attention has been drawn, is that right?---Yes, yes.

And do I take it that you don't accept that there was also a departure in relation to the 2014 raffle money issue that we discussed a moment ago, as in the one about the \$725?---The Dominic Sin one?

20

Yes.---Do I accept what about that?

Do you accept that that was another example of a departure where it seems that \$725 at least had been received and perhaps banked without there being a form?---I don't know whether it was banked, so it's - - -

And so because of that, you don't put that in the exceptions pile, but you don't know one way or another whether that particular money has been banked, is that right?---More than likely it would be money that hasn't been banked that they know needs to be tracked down the donor form.

30

But you don't know one way or another as to whether or not that particular money had been banked or not, is that right?---I have no knowledge because I don't - - -

And nor would you because it's not your job to bank the money, is that right?---That's right. I'm not involved in the banking of the money, no.

You were asked some questions by Mr Dixon about that email concerning the raffle money – it was Exhibit 188, if we just get it ready – and what was not clear, at least to me, in your answers is whether you gave a possible reading of the email in response to Mr Dixon's questions.---Yes.

40

Are you saying that's the way you actually read the email at the time or are you simply proffering that as a possible reading of the email?---I'm saying it's a possible reading of the email because - - -

But you don't recall whether you in fact read it that way at the time that you read the email, if you read it at all, is that right?---More than likely I had a quick read of it, and if it didn't involve any specific instructions for me, then I kind of just let it go, let whoever's - - -

But you're not telling us that you recall reading the email in the way that you - - -?---No.

10 - - - said was a possible reading in answer to Mr Dixon's questions, is that right?---No, no.

Finally, you were asked some questions about Exhibit 298, which was the email chain that included a chain that said send the invoices or the receipts, instead of emailing them, which is a reference to receipts, send them to Winnie in Ernest's office.---Yep.

And according to my note you said, "It was merely advice to try and be helpful." Do I have that right?---Ah hmm.

20 You at least accept, don't you, that as least as a matter of ordinary practice and procedure, tax invoices or receipts gets sent directly to the donors rather than to anyone else. Is that right?---Normal practice and procedure?

That's the normal practice and procedure?---Yes, yes.

And you would agree, wouldn't you, that the Finance Department wouldn't depart from that normal practice and procedure without some suggestion or advice from someone outside the Finance Department. Would you agree?
---Yes.

30 Thank you, Chief Commissioner.

THE COMMISSIONER: Mr Cheah, just one matter. In relation to the occasions which the \$100,000 cash was received and you were counting it - - -?---Yes, sir.

40 You encountered the difficulty that by the time you were about due to leave, you hadn't finished the processing of counting the cash?---It was either, either I hadn't finished the - yeah. Sorry. Processing yeah, yeah. In, holistically, yeah.

So in those circumstances, in order to take such a large amount off the premises and return it the next day, you would have had a discussion, wouldn't you, with somebody about taking it home before you did?---I think I'd probably not have a discussion with anyone in terms of security of the bag, like, I wouldn't want to advertise the fact that I'm carrying so much money home.

I'm really thinking of the situation in terms of you assuming the responsibility for the safety of the money yourself, not by having it secured on the premises, and that may be because there wasn't a facility to be able to secure it on the premises, but nonetheless you were taking the responsibility of removing it from the premises and some mishap occurring which would jeopardise the money. Wouldn't you have discussed that, rather than take it upon yourself just to make the decision unilaterally, I'm going to do this?
---There was no, no formal process in place for that but, but - - -

- 10 No. I understand that because this was a unique situation of it was an unusual situation.---If I had, if I had, you know, what do you call it, the chance to redo it, I would probably get someone's okay, I guess, permission if that, that was the right course of action to take, but at the time I thought that was, like, on the balance of things, I thought that was the most, the safest way to get the money to be there again the next day.

But do you say you didn't have any discussion with anyone within the Sussex Street office about doing it before you did it?---No.

- 20 Or are you saying you may have and you can't remember whether you did or didn't?---I don't, I, I don't remember having any discussion with anyone about taking it home. So I'm, I'm, I'm very sure that it was just me thinking if I leave it here anything could happen to it over the 12 hours of the night or whatever it is until the next day. Usually when I go home I don't get robbed. I'm just carrying a bag that no one knows what's inside. Take it home, it's with me, it's safe, come back the next day with.

Thank you.

- 30 MR ROBERTSON: I'm sorry, Chief Commissioner. I missed one of my notes. Can I - - -

THE COMMISSIONER: Yes, certainly.

MR ROBERTSON: - - - just ask one further area of clarification. Mr Dixon asked you some questions about errors in forms that might need to be fixed and you gave a number of examples of where a form might come in a particular way and it may well be processed in a particular way but then errors need to be fixed. Do you remember that line of questions?---Yeah.

40

And I take it that one example of a kind of error might be where someone's name may have been typed in wrongly and you might need to issue a new tax invoice or receipt to reflect that?---More, more to the point is the disclosure form would need to be fixed, a correction.

But one example you gave of an error is where someone may have inadvertently sought to donate more than the relevant cap. Is that right?
---Yes.

So someone, for example, might have given, say, \$7,000 in cash at a time where the cap was \$5,000 or \$5,900?---No, what I meant, well, more, more likely, more likely to be the case is that someone has gone to a few functions, donated, lost track of how much, you know, that they've donated, then realised, oh, I think I might have gone over by going to this function as well.

10 So, for example, there may have been someone – to make it easier, let's talk about the original cap, which was \$5,000 – they may have donated \$4,500 through a series of different events.---Right.

Maybe credit cards, maybe cheques, maybe all sorts of thing.---Right, right.

20 They then turn up with a \$1,000 cash donation, and they may have the right form that says \$1,000 but it may be picked up that that is not a donation that can be accepted because that will put the person above the relevant cap, is that right?---More likely that they would have realised themselves. I don't think we have a, I don't know if we have a, like a trigger for someone going over the cap.

But I take it in that kind of scenario the relevant money will be either refunded or returned to the intended donor, is that right?---I would think so.

Well, your understanding of the practice and procedure when you've been working at head office would be to return the money rather than keep it, is that right?---Of course.

30 If it was a cheque that hadn't been banked, you'd give the cheque back. ---Sorry?

If there's a cheque that hadn't been banked yet, you'd give the cheque back. If it's cash, you may have to give the cash back. You may even have to withdraw it out of an account in order to give it to the putative donor, is that right?---Yeah. Whatever, whatever, whatever needs to be done to refund the money if, if there was a mistake like that.

40 So if there's an error of that kind, obviously enough you refund the money or you return the cheque/credit card form, something along those lines? ---Yes.

To your knowledge, was a refund given to Mr Valentine Yee and to the Harbour City Group in relation to the two amounts of money the subject of their forms that was then the subject of what I called the switcheroo?---Not to my knowledge.

Well, at the time that you gave the \$100,000 to the Finance Department, you had understood that Mr Valentine Yee and Harbour City Group had each donated \$10,000, correct?---Yes. Yes.

Because at that point in time, you had two forms for those people.---Yes.

And it all matched up because you had two times, sorry, you had 10 times two times \$5,000, correct?---Yep.

10 And so at least at that point in time, at least as you understood it and as you've told the Finance Department by giving them the forms and the documents, \$10,000 had been received from Valentine Yee and \$10,000 had been received from Harbour City Group, correct?---Yep.

So after you asked the Finance Department to correct the error – in other words, there wasn't money from Valentine Yee, there was money from instead Steve Tong – surely you said, well, now we need to give back \$5,000 to Valentine Yee and get \$5,000 from Steve Tong, is that right?---I think I just assumed that it would be taken care of by somebody.

20

So you left that to – well, when you say “somebody”, who was responsible for that?---Finance or - - -

So are you saying that you expected Finance to refund \$5,000 to Valentine Yee and make sure they got \$5,000 from Steve Tong?---I probably didn't, I probably didn't think of it that detailed, but in a nutshell, yes.

But you didn't have any specific discussion with the Finance Department in relation to that matter, is that right?---No.

30

You told them to do what I've called the switcheroo, and you left it to them to deal with the mechanics of that, is that right?---Yes, that's right.

Thank you, Chief Commissioner.

THE COMMISSIONER: That completes your examination today, Mr Cheah. You'll be notified by the Commission in due course as to whether there's any further requirements under your summons. You may go today. I'll adjourn. I'll take the morning tea adjournment.

40

THE WITNESS WITHDREW [11.39am]

SHORT ADJOURNMENT [11.39am]

MR ROBERTSON: I call James Ian Clements.

THE COMMISSIONER: Thank you. Mr Clements. Mr Clements, do you take an oath or an affirmation?

MR CLEMENTS: That would be an oath, Commissioner.

THE COMMISSIONER: Oath?

MR CLEMENTS: Thank you.

10

THE COMMISSIONER: Yes. Would you mind just standing.

THE COMMISSIONER: Yes, thank you. Would you just state your full name for the record.---James Ian Clements.

Yes, Mr Lawrence.

10 MR LAWRENCE: Chief Commissioner, I seek a declaration under section 38 of the ICAC Act in respect of all of Mr Clements' evidence. I've explained the provisions to him and he understands them.

THE COMMISSIONER: Very good. Thank you. Mr Clements, the effect of the provisions of section 38 as I understand have been explained. In short form they provide protection that the evidence you give today can't be used against you in future proceedings, but you understand there is an exception to that, it does not prevent your evidence from being used against you in a prosecution for an offence under the Independent Commission Against Corruption Act, including a particular offence of giving false or misleading evidence. You're aware of those provisions?---I am, Commissioner.

20 Thank you. Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by Mr Clements and all documents or things that he may produce during the course of his evidence at this public inquiry are to be regarded as having been given or produced on objection That being the case there is no need for him to make objection in respect of any particular answer given or document or thing produced.

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

40

THE COMMISSIONER: Yes, Mr Robertson.

MR ROBERTSON: Mr Clements, you were the general secretary of the Australian Labor Party NSW Branch from about August of 2013 to January of 2016. Is that right?---That's correct.

And your predecessor in that role was Mr Sam Dastyari. Is that right?
---That's correct.

Your successor was Kaila Murnain. Correct?---Correct.

Whilst you were general secretary there were two assistant secretaries of what I'll call NSW Labor. Correct?---That's correct.

10 And one of them was Ms Murnain. Correct?---That's correct.

And at least in 2015 the other was Mr John Graham. Is that right?
---Correct.

Is it right that as general secretary, at least as matter of practice, you were responsible for the management and administration of NSW Labor on a day-to-day basis, albeit subject to the overall control of the Administrative Committee?---I was overall in charge but in a practical day-to-day sense it was more of an overall.

20 THE COMMISSIONER: Well, just being a bit more specific, what as general secretary were your roles and functions in that position?---So I had overall, I was overall in charge of the administration of the party and I was also the campaign director for state campaigns and for New South Wales seats during federal elections.

MR ROBERTSON: And so it would be accurate to describe yourself as the principal executive officer of the party during the period that you were general secretary. Is that right?---Yes, that's correct.

30 And it's right though, as a strict matter of form, it's the party officers generally who are responsible for the management and administration of the party between meetings of the Administrative Committee. Is that right?
---Yeah. So the party officers has the power of the Administrative Committee in between Administrative Committee meetings.

But in the real world on a day-to-day basis, as general secretary, you're the principal executive officer. Is that right?---That's correct.

40 That's obviously subject to the ultimate control of the party officers and the Administrative Committee and the conference at the high level. Is that right?---And above that conference. That's correct, correct.

Now, in terms of the party officers, it's right that that's constituted by the president, the two vice presidents, the general secretary and the assistant general secretaries. Is that right?---There's three vice presidents.

It's the president, the vice president, such as you've said, the general secretary and the two assistant general secretaries. Is that right?---That's correct, yes.

But in terms of who was working on a day-to-day basis at the Sussex Street office, that's the general secretary, the two assistant general secretaries and then obviously staff who assist the general secretary and assistant general secretaries. Is that right?---That's correct.

10 That's been your experience as general secretary?---Yes.

How though is the, at least under your stewardship, was the day-to-day responsibility divided as between you as general secretary and the two assistant general secretaries?---So the, the Right Wing assistant secretary, being Kaila Murnain, had my delegated authority for the sort of day-to-day running of the office, the management of staff. The assistant general secretary, their role, they didn't really have a role in the day-to-day or really the running of the branch. There, there is a strange - - -

20 Well, can I perhaps ask it this way. It wasn't the case, was it, that the two assistant general secretaries each had particular portfolios? You wouldn't say, well, one assistant general secretary is going to do XYZ and the other one is going to do ABC. Is that right?---So during an, during a state, during election period, the Left Wing assistant secretary would have responsibility for a couple of portfolio areas. One of them was the negotiation of preference deals and the other one, I think, was printing or how to votes. All other portfolio areas were managed by the Right Wing assistant general secretary under my delegated authority.

30 Obviously subject to your ultimate direction and control as the general secretary. Is that right?---That's correct.

And so I take it then that as the general secretary, you had overall responsibility on a day-to-day basis for fundraising. Is that right?---Sorry, could you ask the question again?

40 On a day-to-day basis, as general secretary, you had overall responsibility for matters including fundraising. Is that right?---Well, you used the term day-to-day. Ultimately the general secretary was responsible for everything, but day-to-day in a state campaign that was the responsibility of the Right Wing assistant secretary.

You at least had some involvement in matters of fundraising. Is that right? ---Well, she reported to me, yes.

THE COMMISSIONER: Well, you'd have some responsibility, wouldn't you, in respect of fundraising activities?---From time to time, yes.

Well, to ensure, for example, that the, if you like, the integrity systems associated with donations are in place?---I was overall responsible for that, yes.

And what other matters would you see as falling within the scope of your responsibility - - -?---In a state campaign, it would, it would be if there was a task or something that needed to happen that Kaila couldn't get to, get to happen without my help. For instance, getting a, a leader to attend a dinner.

10 Were there rules in place for the administration and management of fundraising activities?---I don't believe so, no.

None at all?---I don't believe so, no. Not, not written rules, Commissioner.

Well, moving away then from written rules, were there conventions, practices, or accepted procedures in relation to what I might call the administration processes for fundraising activities?---Yes.

20 And you may be asked in more detail later but in general terms, what were those conventions, practices and procedures?---In relation to state - - -

State elections.---State elections. The fundamental rule was that to ensure that money that entered the state campaign account hadn't come from a prohibited donor, that there needed to be a form signed by the donor with their details which could be checked on the Campaign Central system to ensure that they were on the – if it was an individual – they were on the electoral roll and that they had ticked a box to say that they weren't a prohibited donor and they hadn't donated over the cap.

30 What about procedures for processing donations? Was there any accepted practices or conventions in place?---That those forms needed to be replaced before they were, those forms needed to be there and checked before the money entered the state campaign account.

And in terms of banking donations, was there a procedure that had to be followed?---Are you asking about a written procedure?

40 Well, any form of procedure, written or otherwise.---The only one I'm aware of is that there had to be forms before the money was banked.

MR ROBERTSON: You used the phrase "before they entered the state campaign account". I take it you're referring to banking of the money, is that right?---That's correct.

But you'd accept, wouldn't you, that there were many circumstances in which money might be received at the Sussex Street office – either cash, perhaps cheques or credit cards – but there not being forms associated with

that money at the same time.---Look, I'm not aware of specific instances, but I assume that that, that would happen.

Well, I suggest to you that following fundraising events you have been very astute to make clear to people like Mr Cheah, and also the Finance Department, that they need to make sure that there are forms associated with money. Would you agree with that?---I would say that it was often the practice, my practice to remind everybody that there had to be forms before money was banked.

10

It was very common in the wake of fundraising events for you to make very clear to anyone who would listen that forms would be needed to match money received, is that right?---I mean, the characterisation that it would be, that it would be following a, a event, I wouldn't accept. From time to time I would make that clear and remind people.

You would make it clear regularly, you at least accept that?---I can recall instances of saying it. It was a, it was a very strict rule.

20 You've said that, for example, to Mr Cheah, is that right?---That's correct.

You've said that, for example, to Ms Murnain, correct?---I wouldn't think I'd need to say that to Ms Murnain.

You've said it to other staff within the Sussex Street office, is that right?---I would have said it to people, yes.

30 But you must accept, mustn't you, that there were circumstances in which money were received at head office but the forms were not received at the same time, do you agree?---Yes.

Indeed, it was common for events such as dinners for money to be received at head office but the forms to come later, do you agree?---I can't say that that's common. I just wasn't involved at that level.

Well, you're at least aware that that would happen from time to time, is that right?---I believe so.

40 Well, not just you believe so. You have a specific knowledge of that occurring from time to time, do you agree?---From what I've heard at this Commission, but I have no specific - - -

Well, I suggest to you that it's more than that. When you were General Secretary of NSW Labor, you were informed by people from time to time that money had been received but forms had not yet been received, do you agree?---That's possible, yes.

THE COMMISSIONER: You had, did you, the organisation comprised of committees and groups within Sussex Street who would meet with you on a periodic basis about management issues or funding issues and other issues probably?---Sorry, I'm - - -

Was there a committee system?---A committee, there was a Finance Committee, yes.

10 What else? Were there any other committees?---There was a Fundraising Committee, yes.

So Finance and the Fundraising Committees?---Well, the Fundraising Committee was sort of an ad hoc committee that, that, that Kaila put together, but the Finance Committee is enshrined in the rules and it met bimonthly.

And did you preside at the Finance Committee meetings?---That was chaired by the treasurer, but I would attend those meetings.

20 And who else would attend those Finance Committee meetings?---It was the Finance Committee, Kaila, John Graham, so the two assistant secretaries, Maggie.

Maggie Wang?---Maggie Wang, yes.

And how often did that committee meet?---Look, I think it was every second month, but it could have been every third, but I just can't recall exactly.

30 And were formal meeting procedures followed, minutes of meetings and that sort of thing?---At the Finance Committee, yes.

With the Fundraising Committee, who presided?---Well, the Fundraising Committee as I understood it was, was a group that was put, put together that Kaila would oversee those people.

And who would form the committee when it did meet?---The staff who were involved in fundraising for the state campaign.

40 And yourself?---I'm not sure if I attended any of those meetings. I may have walked in once or twice, but - - -

Well, fundraising is a key activity, isn't it, of a political party?---It is, yes.

And it was a, it really represented a major part of business, didn't it, of the branch office?---I wouldn't put it that way, no.

Well, how would you put it?---Well, it was a part of the campaign that, that you needed to raise a certain amount of money and a good proportion of that money would be already raised before the campaign started because we would be putting money away that we could, and the rest of the money would need to be raised during the campaign.

But fundraising was not an issue that came and went, it was always, as it were, on the agenda, wasn't it, as a matter that had to be managed on an ongoing basis?---On an ongoing basis, yes.

10

Well, how often did the Fundraising Committee meet?---I don't know.

Well, you were there, weren't you?---No, I wasn't often there.

Well, you didn't, what, you only attended some Fundraising Committee meetings, not all?---I think I went to, I think I may have gone to one or two meetings.

Is that all?---Yes.

20

What, in the full term that you served, it was only one or two meetings?---No, but the Fundraising Committee meeting would only have been operating in, in the, in the actual campaign period.

I see. Well, outside the campaign period how did you discharge your responsibilities as general secretary so far as fundraising was concerned? ---Well, for a state campaign you would just make sure that whatever money that you could that came in, that could be banked in the state campaign account, was. And, and you gradually raised as much money as you could over a period of time on an ongoing basis.

30

Well, what sort of strategies were used to ensure effective properly-managed fundraising, other than in election periods, campaign periods? ---Well, there was certain types of money that were allowed to go into the state campaign account. Any money that we got which, which we could verify was from those sources went into the state campaign account.

But how was the business of determining strategy and managing strategy throughout the year for example undertaken?---Well, you would set – okay, I'll give you an example, Commissioner. We set up, when I was assistant secretary, a thing was set up called the Chifley Forum, which was a way of getting members who had a big more money to, to contribute to a subscription service where they paid for a sort of gold membership, and when they filled that out they ticked a box to say that they wanted that to go toward the state campaign, and it was an annual subscription and so I think it may have even been \$1,000 a year, Commissioner, and so all of that money from the Chifley Forum would go into the state campaign account. So that would be ticking over. You would have money from Business

40

Dialogue from companies that could donate, after they changed the law, they would tick a box and their subscription to Business Dialogue would go into the state campaign account. You'd send, emails would be sent out to raise money and if people contributed, that would go into the state campaign account.

So it was part of your management functions to oversight or assist with the Business Dialogue?---The Business Dialogue, I, I did look after until sometime toward the end of 2014.

10

Now what about ethnic groups?---No, that was never part of my remit.

Well, did the party, though, did the branch office have a strategy or a mechanism for fundraising with different ethnic groups?---Yeah. And that was managed by Kenrick and under Kaila.

How was that done?---Via Labor Action Committees, which Kenrick managed under the supervision of Kaila.

20

And would he or Kaila, from time to time, bring you up to date with what was happening in that space?---She could have. I, I can't recall her doing so.

Well, as the effective CEO of the place, you must have had regular dialogue surely with Kaila and I think you said Cheah.---Oh, I never had regular dialogue with Cheah.

30

Well, how did you keep yourself informed about fundraising matters with the Action Groups?---So, essentially before the Finance Committee meeting I would ask Maggie how we would, how our state campaign was going, you know. That, that would be, and, and she would say, "Yeah, we're, you know, we've, we've got this much money."

But what about other fundraising activities with ethnic groups or through the Action Committees? How did you keep abreast of what was proposed, what was achieved funding-wise? I'm talking about donation funding issues.

---That was under Kaila's management.

40

I'm sorry?---It was under Kaila's management.

Yes, but you were sitting above her, her immediate superior, were you not?
---That's correct.

Well, you'd dialogue with her, no doubt, about funding issues. Is it - - -?
---If there was a, if there was a specific problem, yes, but this was a very small part of, of, of our operation.

But apart from problems, wouldn't you have a positive interest in knowing whether they were developing strategies and approaches that were going to be effective so far as fundraising was concerned?---I, I couldn't micromanage Kaila about something like this.

But it's not a question of micromanagement. This is a major activity of the branch office, isn't it, fundraising?---No. Well, fundraising in itself is a, is, is an important thing but this is a small part of that.

10 But I'm just talking about fundraising, its oversight from a management point of view in determining strategy, reviewing results, suggesting innovation, change. Those are the sort of matters one would expect a general secretary would be not only required to consider but would be very keen to consider and monitor.---That was something that was, that, that was the purview of the assistant secretary.

It was?---The purview of the assistant secretary.

Was within the purview?---Yes.

20

That's what I'm saying.---Of the assistant secretary.

Oh, assistant. No, but I'm talking about you as general secretary. It would be right within your purview too, wouldn't it? You're the boss.---The, the, it was a small part of a, of a, of a very, very busy operation and it was not the sort of thing that Kaila would come and talk to be about unless there was a specific problem.

30 Look, whether it was a small part, medium part of a large part of the overall activities of the branch office, it was an important part, wasn't it, fundraising?---Fundraising is important.

Right. So I'm trying to get a perception if you like, and understanding, as to where you as then boss would sit in terms of directing, monitoring and managing what fundraising strategies were being spoken about, suggested, implemented and whether or not they were on target, whether they were being successful or unsuccessful, what change, what innovation would be required. All of those things would have been essential business for a general secretary. Do you agree or not?---No, I don't agree.

40

Well, why don't you agree?---Because this, this, as I said, you, you, the way that office works is that there are, there are periods. There are periods where you're in federal election campaigns, there are periods where you're in no campaigns and then there's periods when you're in state campaign. Up until, I believe, about October or November 2014 when we started to, you know, really gear up for the state election, there was money in the state campaign account. We'd been raising money on an ongoing basis. Kaila was put in charge of making sure that we, that the, that the rest of the money

that we needed was, was to be raised. That was delegated to her and it wasn't my management style to be continually checking up on her or micromanaging her, and so if there were a problem, I would expect her to come and talk to me. If there wasn't, I wouldn't hear from her on it.

10 I'm not talking about micromanagement or second-guessing her. I'm just simply asking that you'd be keeping in regular contact with her so that you are being informed, and your view would be sought about innovation or doing things differently or not. What sort of level of communication did you have which puts you in the position to be able to manage in those respects?---If, if there were a problem where she felt that, that we were not going to raise enough money for the state election campaign, I would expect her to come to me and say there's a problem, but that never happened.

And if it wasn't a problem or a perceived problem, would you say nonetheless, "I want to be informed on a monthly basis or a bimonthly basis, kept informed, keep me in the loop as to how we're travelling"?---There were, there were all sorts of things - - -

20 Did you adopt that approach?---No. My approach was if there's an issue, come and talk to me about it, because there were issues all over the place on a political level that we had to deal with.

I just can't understand how a general secretary could operate on that basis if he or she is not being regularly briefed on the important matter of fundraising.---Well, that's the way it operated, Commissioner. I mean, it wasn't a great deal of money that needed to be raised.

30 Did you distance yourself from fundraising activities?---Well, in the sense that I gave Kaila responsibility for it and that my management style was to back people who you gave responsibility for, and I didn't interfere.

So you delegate the task and delegate the responsibility to her?---Well, delegate the task, the responsibility for fundraising, that's correct, unless there was a problem.

Both the task, the day-to-day work of fundraising, as well as the responsibility for fundraising - - -?---Ultimate responsibility - - -

40 - - - in the name of Labor NSW? You delegated all of that to her?---For the state campaign, yes, unless she needed my assistance.

So she carried full responsibility, you say, and you divested yourself of that responsibility by a process of delegation?---I gave her the management of the fundraising for the state campaign, and if there were a problem, then I would help her.

But otherwise you wouldn't involve yourself?---That's correct.

I see. So you really didn't know what she was doing other than if she came to you with a problem.---Yeah, but she was highly capable, Commissioner. She'd been there for eight years. You gave Kaila a task, she got it done.

MR ROBERTSON: Mr Clements, are you trying to deliberately distance yourself from fundraising issues because you know that they're of interest to this Commission?---No, I'm not.

10 Is it fair to say that you and Kaila hate each other's guts?---Um - - -

I think that was what your barrister put to Ms Murnain. I may be mistaken. I think that's what your barrister put to Ms Murnain when she was in the seat that you're sitting in.---I think she hates my guts. I don't know if I hate her.

Well, she was an important part of the circumstances in which you came to resign as general secretary of the party, correct?---No.

20 You're saying she didn't support your resignation, in other words?---Of course she did.

So you would at least agree you're not friends.---Oh, no, we're not friends.

Certainly not close friends.---Oh, no.

THE COMMISSIONER: Well, I think without putting any adjectives into it, you're being asked did you have good or bad relationships with Kaila Murnain.---I have a bad relationship with Kaila, but I, but I don't hate her.

30 No. So during the period you were general secretary, the relationship between the two of you was bad, is that right?---For some of the time.

MR ROBERTSON: But in answer to almost every question that's been asked so far in relation to fundraising, you've simply said, well, that's Ms Murnain's problem, not yours, would you agree?---I've answered every question I've been asked honestly.

40 And what you're attempting to do is distance yourself from matters with which this Commission is concerned, correct?---No, I'm answering the questions as they're asked.

MR LAWRENCE: I object. I object. It's been asked and answered already in precisely those terms. It's also an assertion - - -

THE COMMISSIONER: No, sit down. No, I'm not going to have interruptions of that nature, Mr Lawrence.

MR LAWRENCE: Well - - -

THE COMMISSIONER: Counsel Assisting is putting these questions. If he puts it a second time, there's not rule against that, certainly not here.

MR LAWRENCE: Well, he carries a responsibility when he puts assertions. It is a baseless one, with respect.

THE COMMISSIONER: You continue.

10

MR ROBERTSON: You are deliberately seeking to distance yourself from fundraising matters because you know they are of concern to this Commission. Do you agree?---No, I'm answering questions honestly.

In answer to one of the Chief Commissioner's questions you noted that the party needed to raise a certain amount of money. Do you remember that answer?---Yes.

20

Who was it that identified what that certain amount of money is?---The Electoral Commission, the legislation.

So are you saying that the party itself didn't decide that it wanted to raise a particular amount of money in connection with for example a particular election?---My recollection of the way that the legislation works, and it's been four or five years since I've looked at it, is that there is a substantially publicly funded and there's an amount that needs to be raised privately as well.

30

But do you at least accept that the party would have budgets?---Yes.

And indeed one of the important roles of the Finance Committee which you referred to a moment ago, on which you sat, was to assist the Administrative Committee in the preparation of budgets. Correct?---(No Audible Reply)

It was one of the principal functions - - -?---Oh, well, I mean the - - -

- - - of the Finance Committee?--- - - -Finance Committee set budgets and the Administrative Committee tick them off.

40

So you accept that one of the principal functions of the Finance Committee would be to prepare budgets. Is that right?---Yes.

And I take it as part of those budgets the Finance Committee would identify particular amounts of money that would be sought from particular sources. Is that right?---(No Audible Reply)

In other words, there wouldn't simply be one line item that says, well, our budget is that our total revenue will be X, rather it would be split up by

reference to categories. Would you agree?---I'm not sure if the Finance Committee did that.

Well, you at least accept, don't you, that the Finance Committee prepared budgets for the purposes of being, I think you said, "ticked off" by the Administrative Committee. Is that right?---That's, that's, they were budgets for the operation of the office.

10 But a budget has both an expenditure line and an income line on it, doesn't it?---Yes.

It's not a very good budget if it just says this is how much we're going to spend and it doesn't say how we're going to receive it. Would you agree?
---That's correct, yes.

And so at least one aspect of the budget is to identify how much revenue would sought to be achieved in a particular period. Would you agree?
---Yes.

20 So for example a budget for a year will say this is the revenue that we are budgeting or estimating or seeking to receive in relation to the year. Is that right?---Sorry, could you ask the question again?

A budget has both a revenue side and an expenditure side. Is that right?
---That's correct.

30 And so one of the things in the budgets that are prepared by the Finance Committee on which you sit or at least on which you sat, would be an estimate of revenue for a particular period. Is that right?---That's correct.

Now, were those budgets prepared on monthly bases, quarterly bases, annual bases or some other basis?---I think it was annually but we reviewed them quarterly.

40 And I take it that at least the revenue side of those budgets didn't just have one line that says, well, we're expecting to receive revenue of X for the Australian Labor Party in all its manifestations, federal, state, Country Labor, but rather split up that revenue line. Is that right?---Oh, I don't remember what the revenue line looked like.

Well, are you not accepting that in the budgets that were prepared by the committee on which you sat, there would be more than simply one line item on the revenue side?---Sorry, I'm, I'm, I'm, I'm – the - - -

It's taken in stages?---I don't, I don't think the Finance Committee had a role in setting the budget for the state election.

THE COMMISSIONER: No, we're not talking about state election yet, we're just talking about setting, that the Finance Committee, as I understood you accepted, would set budgets. Now then whether it was for a year or quarterly period is another question, but do you understand what we're addressing now, that is the budget set by the Finance Committee?---Yeah, there would be more than one, yeah, yeah, there would be a, there would be headline figures and then there would be other, other details of, of, of potential revenue.

10 And just before we go on, there's a separate concept where from time to time as required, election targets to raise funds up to a target amount?
---Yes.

Right. I've interrupted you. You continue now to the budget process.

MR ROBERTSON: So just to be clear, I think you're accepting that one of the principal functions of the Finance Committee on which you sat were to prepare budgets for "ticking off," I think was your phrase, at the Administrative Committee level. Is that right?---That's correct.

20

Do you also agree that a principal function of the Finance Committee was to consider proposals affecting finance within the party?---That's correct.

And so I take it as part of those budgets one has both a revenue side and an expenditure side, correct?---Yes.

And as part of the expenditure side, one might estimate the amount of money that may be expected to be spent on state campaigns, on local campaigns, perhaps, on federal campaigns and perhaps even by-elections, would you agree?---I don't, I don't recall how, exactly how that worked. I know I, I, I know that I would ask Maggie how much money was in the state campaign account or how much money was in the federal campaign account, but my recollection of the budgets that came to Finance were sort of overall pictures of, of where the operation of the branch was at.

30

THE COMMISSIONER: Did you use to examine the budgets?---Not in forensic detail, Commissioner.

Well, at what level of detail did you, as a practice?---We would get the budgets. I would ask Maggie to come and see me before the Finance Committee meeting to talk through whether or not there were any issues or things that we needed to work on, and I would then report to the Finance Committee. But Maggie managed the finances.

40

But presumably in that discussion you'd go through the budget papers with her.---I would essentially ask her for a briefing about anything in particular that needed, that she needed me to address, and the particular details would be, would be, would be addressed by her.

Do I take it that before those meetings she would send you the budget papers, so - -?---Well, as, as a member of the Finance Committee, we all got the finance papers, yes.

Well, when you did get them, did you examine them for the purposes of, well, (a) discharging your management responsibilities, but (b) also so that you could have useful discussions with her?---I would, I would get them printed out – understanding I was extremely, extremely busy – I would have them printed out in a folder and I would have a meeting with Maggie on the morning of the Finance Committee, and we would go through and, and any headline issues that needed to be addressed, and she would have that time with me.

Well, I suppose things like state campaigns, local campaigns, by-election campaigns, federal campaigns, they would be headline items periodically, would they not?---She wasn't particularly involved in that side of it, no.

No, I'm not worried about what she was doing, but I was just saying the budgets necessarily addressed those issues as and when election campaigns were programmed.---I think the, I think the detail that they were discussed in Finance Committee meetings was an update of, you know, how much money we would have in the state campaign account.

Well, you could determine that, those sort of issues, by looking at the budget papers, couldn't you?---I'm not sure that was in the budget papers.

Well, you got them on a periodic basis.---Yes, yes.

And presumably read them.---Yes.

But don't you remember that?---Oh, I don't recall. I mean, my recollection was that those figures weren't specifically in there.

MR ROBERTSON: Back to the budgets that we're talking about at the Finance Committee level. I think you've accepted that on the revenue side there's not simply one line. It's going to be split up into a series of categories, is that right?---That would be the way a budget works, yes.

And not just that's the way a budget works generally, that's the way that budgets worked that the Finance Committee of NSW Labor would give consideration to, do you agree?---I'd have to look at the papers again, but I assume so, yes.

Well, you'd at least agree, wouldn't you, that on the revenue side of the budgets that we're discussing one would see a series of potential sources of money, do you agree?---I'd have to look at the budget papers again, but I assume so.

Well, there must, for example, be a subcategory of revenue that refers to public funding, for example, agree?---I guess that would be correct.

And so one thing that you put in the budget is to say, well, look, we are expecting to receive roughly this number of votes and we're expecting to get public funding of roughly an amount of money, so therefore this year we're expecting a particular amount of money.---You don't get public funding on the basis of votes.

10

Well, you at least have a line item, don't you, that says we're expecting public funding from, sorry, we're expecting public funding in a particular year of an approximate amount of money, correct?---Administration funding, you would, yes.

Because you need to have budgets or estimates of those amounts otherwise you don't know what the, to use your phrase, certain amount of money that needs to be raised actually is. Do you agree?---No. That's, this is, the administration funding is paid into the administration account and used for the administration of the party. It's not used for state election campaigns.

20

THE COMMISSIONER: And how is the administration funding calculated?---I think it's based on, on, on the, on the number of seats contested or won, I, I believe but I, I can't remember exactly.

MR ROBERTSON: But so are you suggesting that the budgets that were prepared by the Finance Committee had nothing to do with state campaigns and elections? Is that what you're saying?---I don't recall those issues being -- my recollection of the Finance Committee meetings were that they were dealing with the, the, the administration of the party, not the campaigns.

30

Well, are you saying then that the budgets that you and I have been discussing for the last 20 minutes or so is only concerned with pure administration expenses, for example, head officer type expenses, employment of staff and the like, but not campaign expenses at all? ---That's, that's my recollection.

THE COMMISSIONER: Well, how would you budget for campaigns, then?---Well, you would know how much you were going to spend.

40

But how would you know?---Because it's publicly funded.

Yes, well, just explain to me then, what was the process at Sussex Street to gear up, as it were, for an election from a funding point of view. How would you determine what the targets should be and where the money would come from and so on?---So we would, we would, Kaila and I, we, we were going to, we, we, we were going to spend the full amount, which is determined, I believe by, at that point, and the legislation kept changing, but

I believe at that point it was determined by the, the number of seats that you, that you contested in the election and then you had to spend a certain amount above that to be able to spend the complete amount, which I think was 10 or \$11 million. Most of that money came in public funding. There was then a difference, a gap between the two and you needed to raise that, and Kaila and I would sit down and say, okay, we're going to, you know, we're going to spend the full amount, we've got this much in the state campaign account. Therefore this much money needs to be raised and she would go off and work, and, and raise that money.

10

But you would have to have, on paper wouldn't you, the nuts and bolts for funding 10 to \$11 million?---Most of it came from public funding that was essentially guaranteed.

Well, what percentage do you say was publicly funded of state elections? ---I couldn't tell you off the top of my head but it was, it was, I, I, I believe it was somewhere in the vicinity of 80 to 90 per cent.

It sounds like a large percentage.---Yes.

20

How certain are you that's right?---I'm, I'm, I'm not certain, Commissioner.

Well, we're still looking at a budget process of some kind by whatever name it's called in order to determine how you're going to bridge the gap between public funding and what it's going to cost to run the election campaign. I'm just interested to know, how was it done?---That was, as I said, it would have been a discussion between Kaila and I and, and she, she would then have had a responsibility for, for, for raising the different between what was in the state campaign account at that point in time and where we needed to get to.

30

MR ROBERTSON: Can I just try and unpack that. So for a particular election on a state level, one is going to spend a particularly amount of money. Is that right?---Yes.

And part of that money is going to be publicly funded, correct?---Correct.

And there is what I think you described as a gap between the publicly funded component and the total amount that you want to spend for a particular election. Is that right?---That's correct.

40

Who calculates that gap?---I, I, I think that would have been Kaila.

Well, Kaila's not an accountant, is she?---I don't think it's that difficult.

So your evidence is that Kaila works out the gap. Is that right?---I believe so, yes.

Well, what's your recollection? You were the general secretary for a substantial period of time and you've accepted from the Chief Commissioner that fundraising is an important matter.---I, I gave her, I gave her responsibility for ensuring that we had enough money for the state campaign, and as part of that she would liaise with Maggie and she would work out how much money that we were going to get and that we needed to raise and then she would come up with a way to do it and then she would do it.

10 Well, Mr Clements, I want to deal with this in stages. So in terms of the gap, are you saying you have a recollection as to who calculates the gap or are you saying you don't have a recollection of who would do that in your tenure?---That's how I assume it would be done.

That's how you assume, but you don't have any recollection. Is that right? ---No specific recollection.

20 Well, what does that mean?---That means I don't remember specific meetings but I do remember that that was something that she was in charge of.

THE COMMISSIONER: So you don't recall what processes were used or how the processed were operated?---She had responsibility for it, she had staff that reported to her.

MR ROBERTSON: I take it that you referred before to Ms Murnain being delegated in relation to these matters. I take it there's a formal instrument of delegation that dealt with those matters. Is that right?---No, no.

30 When you answered that question you sort of exhaled as if to say what an absurd proposition, that there would be a formal delegation?---I'm not saying that it's a an absurd proposition, I'm just saying that there were no, there were no, no such instruments, things were done in that office by way of convention at different times and - - -

Would you agree that under your stewardship the administration in that head office was pretty sloppy?---I, no.

40 THE COMMISSIONER: Well, it sounds as though it was an office that didn't really have any written nor recorded procedures, delegations, any reports on what was happening in Finance or other areas. Is that right, is that the way it was?---In, in, in that sense it was lax, Commissioner, yes, but in, in, in, in - - -

Is that the way it was though?---In the, in the, yes, it was lax, Commissioner, but in the position that it was in my time in office, Commissioner, I, I don't agree.

MR ROBERTSON: I should say in fairness to you, you were not the first General Secretary of NSW Labor, were you?---I was not.

And when I put that proposition to you it may well be that it was pretty sloppy before your time. At least before your time do you think it was pretty sloppy, as you understood the position?---I, I think that the laxness in procedures that the Commissioner referred to in his question to me before is something that I inherited.

10 So there was at least a laxness of procedures during your stewardship. Is that fair?---Written procedures, yes.

Well, not just written procedures, procedures generally. Would you agree?
---Oh - - -

You wouldn't agree?---Well, but, but, but - - -

20 You're suggesting that there was a wholesale – as I understand your evidence there was a wholesale delegation of fundraising responsibilities to an assistant secretary, but not recorded in any document. Is that right?
---That's correct.

Wouldn't you agree that that's pretty lax as a matter of administration?
---Why would it need to be recorded?

30 So that if there's some dispute as to the matter, such as there is before this Commission, that one can go to a document so that there can be no doubt about the matter. That's an example.---Well, I, I, I certainly wasn't envisaging anything like this at the time that I delegated that to Kaila.

No, but there might always be matters of dispute that happen within an organisation, you'd at least agree with that, wouldn't you?---I suppose any organisation, yes.

And you'd at least agree that in the ideal world, matters such as a delegation of fundraising responsibilities to an assistant general secretary would be documented in some way. Do you agree?---Oh, yes.

40 And so you'd at least agree that in terms of procedures under your stewardship there was at least room for improvement. Do you agree?---Oh, absolutely.

Some of which you may have inherited. Do you agree?---(No Audible Reply)

Some of the laxness in procedures you may well have inherited?---I would say most of the laxness in procedures was something I inherited.

THE COMMISSIONER: Did you take any steps to try and reform the procedures so that they were not continued as being inadequate?---I suppose I wasn't aware of the inadequacies, Commissioner.

Well, when did you become aware of the inadequacies?---Through the course of this, of this Commission. And I suppose there were – no, I withdraw that. That, after, after September 2016 when we started undertaking reviews I became aware.

10 Sorry, you became?---I became very much aware, yes.

In September '16?---September 2015, sorry, Commissioner.

So what happened in September 2015?---Well, I had been, there was a review into the office following allegations that were made against me and my return to the role of general secretary.

20 And who conducted that review?---Well, there were a, there were a few reviews, actually, Commissioner, I should say. There, there, but they were operating together, at the same time. There was a review that was initiated by myself called the Tarrant-Tierney review, which is - - -

Called the what?---Tarrant-Tierney review.

Tarrant.---Tarrant-Tierney review, yeah. That, that, and that was something that I instituted in July of 2014.

July - - -?---2014.

30 '14.---I, well, I, yeah. And, but it commenced after the state election. And there was a review that was conducted by John Whelan and Simone Farrar which looked into the absence of procedures in, in, in the office.

When did that review commence?---I believe it commenced in September 2015.

40 And there was a third review, was there?---Oh, there was, yeah, but not into the governance of the office. There was an audit that was done as well, a federal, a federal audit from the National Executive was done at the same time as well.

And what was the focus of the federal audit?---To see if there were, if there were issues in the governance of the branch. I, they, they, the, as I recall, I was on the National Executive, the National Executive were concerned – because they were the ultimate governing body of the Labor Party and oversaw the state branches – that they were warned I think by their insurers or their auditors that if something, if a branch went bust, that they would be

responsible. So they initiated an audit into all state branches to see, to find any administrative shortfalls. That was ongoing at the same time.

Earlier you said that you became aware of inadequacies in procedures, I think you said September 2015, and in that respect you said the review concerned your office, yourself.---Yes.

10 And did you say into your role and return as general secretary?---That was post my return. So I'd been on leave and, and, and as the, as part of me returning to the role, there was a review set up. That was the Whelan-Farrar review. The Tarrant-Tierney review was already ongoing at that stage.

So the review you referred to as being about your role and your return as general secretary. The Whelan-Farrar - - -?---If I said that, it was mistaken, Commissioner. The review was into any, any holes in written procedures in our office, and then it became about the culture of our office and - - -

20 And were you under review yourself at that time for any reason, your governance or other reasons?---No, no. No.

You weren't?---No.

Well, when you said, "There was a review of the office into me," your role and your return as general secretary, what were you referring to?---When I returned as general secretary, I'd stood aside for a month. I was under investigation by the police, and then I was, the police didn't, declined to charge me. And as part of my return, there was to be a review of, of the practices and procedures in our office.

30 How did that connect up with you, though?---Well, sorry, if I said it was into me, that was not correct. It wasn't into me, it was into the office.

In any event, coming back to the delegation of tasks and responsibility to Kaila Murnain in relation to fundraising responsibilities, there was no document, no delegation that defined the metes and bounds of her responsibilities or tasks? There's nothing, no instrument from which - - -? ---No, no, no.

40 - - - which would delineate, as it were, her responsibilities?---No. No.

So, well, then how did that operate? Is she just left to make it up as she went? I mean, she didn't consult with you as what she should do or should do?---She would come – it would be expected that if there were problems she would come to me, but other than that I gave her, I had the faith in her to get it done. And can - - -

Well, when you say get it done, that's what I'm just examining, what it meant to her. Where was she to, where were the limits of her

responsibilities? There was no, from what you've said, is this right, there was no means for determining what those limits were? The limits of her task and responsibilities, where did they start and finish? Was there anything that defined - - -?---No. There was, there was the task which was whatever the amount that we needed to raise that, that she was to get it raised.

Well, that was the objective obviously?---Yes.

10 But how she was to get there and what to - - -?---And well, that was something that we'd been doing for, for years. You, you, there was online, you know, email fundraising and there were dinners.

Is this fair to say, that so far as your approach to the role that you occupied, you're not a detail man?---That's correct, Commissioner.

And you didn't really - - -?---Unless I absolutely needed to be. I was a, I was a - - -

20 You delegated wherever you could. Is that the position?---That's correct. It was, it was the sort of role, Commissioner, where something would go wrong every couple of days and I needed to be able to be free to sort stuff out.

But although there was this wholesale delegation going on, there was no system for reports back to you on a periodic basis as to how things were travelling?---Well, Kaila was in the office next door to me. If there was a problem, she would come and talk to me. If she needed guidance, she would come and talk to me.

30

But otherwise there was no other form of communication?---No.

MR ROBERTSON: The delegation that we've just been discussing wasn't effected in writing as I understand your evidence. So how was it effected? ---Verbally.

When?---I can't give you a date. It would have been 2014.

40 So some time in 2014 you had a discussion with Ms Murnain regarding her roles and responsibilities. Is that right?---That's correct.

When in 2014?---I can't give you a date, I don't know.

What did you say to her concerning that matter?---I, I, I can't recall.

Well, doing the best you can, I know it was some time ago, as I understand your evidence you're saying that it was a wholesale delegation to Ms Murnain in relation to fundraising matters. It's not a matter that Ms

Murnain would appear to agree with. I want to understand exactly what you said to her or at least what words to the effect of what you said to her in 2014 when you effected the delegation orally.---I can't recall the words.

10 THE COMMISSIONER: Well, is this the position. Throughout the period you were general secretary, August 2013 to January 2016, you delegated the fundraising activities to Kaila Murnain because you believed and had trust in her ability, capacity to do it?---That's correct, that's correct. She had, nobody knew that office better than Kaila. Nobody was able to master details better than Kaila.

And so far as your level of trust and belief in her capacity, competence and integrity are concerned, you had no reservations?---Absolutely none.

MR ROBERTSON: Is that a convenient time, Chief Commissioner?

THE COMMISSIONER: Yes, it is. All right. We'll take the luncheon adjournment and resume at 2 o'clock.

20

LUNCHEON ADJOURNMENT

[12.59pm]