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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE PETER M. HALL QC
CHIEF COMMISSIONER

PUBLIC HEARING

OPERATION AERO

Reference: Operation E18/0093

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 9 OCTOBER, 2019

AT 5.25PM

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

MR ROBERTSON: Can I thank the Commission for reconvening, particularly at this late hour. Can I inform the Commission as to at least in general terms the discussions I've had with my learned friend Mr Lawrence since the Commission has adjourned. It's apparent during the course of those discussions that there are one or more what I'll describe as chat groups within the WhatsApp app that may include legal advice. It seems that at least one of the forms of communication between Mr Lawrence's team and his client that was connected with this inquiry was done by way of WhatsApp group. Plainly enough, that's material that should not be seen by anyone that has any involvement in the investigation. I'm told as a matter of practicality in order to extract the particular messages that are or are likely to be relevant to the investigation – by which I draw particular attention, in fact sole attention, to the communications between Mr Wong and Mr Clements – because they appear in a single file, it's necessary for those involved in forensic matters to download the whole of that file. The consequence of that is at least in the original download there will be, it seems, some communications that are privileged and in respect of which I accept should not be seen by me and should not be seen by the investigation team associated with this matter. The approach that I propose to my learned friend, consistent with approaches that have been taken by this Commission on other occasions, is for a person unconnected with the investigation team for this investigation to perform the download that is necessary and then, by way of inclusion, to extract and query the particular WhatsApp messages that are sought.

In other words, what that person will be instructed to do is to provide Mr Johnston with a copy of, and only of, the communications between Mr Wong and Mr Clements. They'll be instructed that they're not to provide any communications that are or might appear to be privileged. But of course if it's performed in the manner that I've just summarised, there won't be any privileged communications because I have no reason to believe that any communications between Mr Wong and Mr Clements may be connected with the provision of legal advice. It's then proposed that that larger download will then be deleted, and thus all that would remain is the messages between Mr Clements and Mr Wong, both the text of the messages themselves but also the metadata that underlies that material as well. You'll recall, Chief Commissioner, that a similar protocol was followed in relation to Mr Dastyari. You'll recall early in the public inquiry Mr Dastyari was required to produce his telephone for that purpose. Some legitimate questions were raised by his counsel involving or dealing with matters of privilege and matters of that kind, and a similar although not identical protocol was followed in relation to that matter, and that's the course that I would respectfully suggest is the appropriate course in this case.

THE COMMISSIONER: So the officer who does the download would be required to search only.

MR ROBERTSON: Can you just pardon me for a moment, Chief Commissioner? I'm just checking the position with respect to the iMessages.

THE COMMISSIONER: With, sorry, the position?

10 MR ROBERTSON: In relation to the iMessages or text messages. I might just ask it through Mr Clements. He's still sitting in the witness box. Can you just remind me, Mr Clements, I'm sorry, I didn't take a note, that the iMessages that you've printed out and thought might be relevant are iMessages between who and who?---So there's one set, they're not iMessages, the first set are text messages between myself and Tim Xu on 7 April, and then there's a set of iMessages on 10 April between myself and Sarah Adams, who was deputy chief of staff to Bill Shorten, and then there's a whole series of messages between myself and Ernest Wong.

20 And those are all messages that you've had printed out and appear in the hard copy document that you've given to the Commission, is that right?
---That's correct.

And so just to make that clear, Chief Commissioner, the particular messages and metadata that I would seek via the forensic people are, firstly, in relation to WhatsApp, communications between Mr Wong and Mr Clements, and in relation to text messages, by which I mean short-message service messages and iMessages, the particular messages that Mr Clements has printed out and no more.

30 THE COMMISSIONER: Sorry, the text messages, the ones that have been printed out.

MR ROBERTSON: The ones that have been printed out by Mr Clements and no more. In the event that there's some other request that needs to be made, that can be done separately, but in terms of what the instructions should be to the forensics people, it's two categories, it's WhatsApp messages between Mr Wong and Mr Clements and no more, and in relation to short-message service messages and iMessages, the ones that Mr
40 Clements has printed out and that you've marked as marked for identification, and no more.

THE COMMISSIONER: The objective of the second category is to obtain the metadata.

MR ROBERTSON: That's so. The metadata connected with the hard copy documents that Mr Clements has produced.

THE COMMISSIONER: Now, just going back to the first step in the process you've outlined – that's the downloading and then the interrogation or the querying of the WhatsApp message sought – the intention is that the officer doing the download would search for and obtain what was described as the messages from Mr Wong to Mr Clements, believed to be on 18 or 19 July, but whether it is actually those dates or any other date, the search made on the downloaded material would be for that particular - - -

10 MR ROBERTSON: For that particular message but also I think Mr Clements indicated there may be some further messages after that point in time.

THE COMMISSIONER: Well, then that's the second category that you mentioned.

20 MR ROBERTSON: Well, part of the first category in the sense that – so WhatsApp messages which have not been printed out at all, so WhatsApp messages between Mr Clements and Mr Wong starting from the particular message that Mr Clements gave some evidence about, and also going forward because Mr Clements later indicated there may be some subsequent messages between those two that may be relevant.

THE COMMISSIONER: I see.

MR ROBERTSON: I've got that right, Mr Clements, don't I?---That's correct.

30 THE COMMISSIONER: So the search would be made by the officer looking for, specifically looking for messages between Mr Clements and Mr Wong. Having then identified them to download them and there'd be no other search conducted on the downloaded material once they had been found and printed out?

MR ROBERTSON: That's so, and once that exercise has been done and the search query has been done and a report produced, the more detailed download or the full download is to be deleted, as that's occurred in relation to other phones that have been the subject of forensic analysis in this investigation.

40 THE COMMISSIONER: Now - - -

MR ROBERTSON: I need to deal briefly with one other matter. Because it seems that there's a suggestion of privileged communications, including ones that may be relevant to legal advice given in connection with this Commission's investigation, at least arguably a question arises as to whether the privilege that is, as it were, reinstated by section 35(5) of the Act provides some ground on which this Commission either doesn't have power to require production of the telephone or, if it does have production, it does

have power, it should not exercise that power. What's been required to be produced is a thing, the thing being a telephone. In my submission it would be an extraordinary construction of section 37(5) for one to say that just because the thing, in this case the mobile telephone, is a thing from which a privileged communication may be capable of being reproduced that the privilege that is reinstated by section 37(5) would amount to an entitlement to refuse production or perhaps a lack of power on the part of the Commission. So dealing with section 37 in parts, as you know, Chief Commissioner, subsection 2 abrogates privileges generally, the ground of privilege on any ground of secrecy, restriction on disclosure or any other ground, so here we're not talking about any general or privileges at all. If there is any privilege it's the privilege that is reinstated in part by section 37(5).

THE COMMISSIONER: That deals with the requirement, yes, by an Australian legal practitioner or other person, yes.

MR ROBERTSON: And to produce a document or other thing. So what's been required to be produced is another thing and there's at least conceivably a question of whether paragraph (b) might arise, the thing contains a privileged communication, but what subsection 5 appears to be directed to is obviously enough to maintain privilege of a particular kind, a particular character. And the contrary argument would be to say that one could, as it were, avoid any production that's ever required of a mobile telephone by ensuring you send your solicitor a single email with a request for legal advice. That in my submission would be an extraordinary construction of subsection 5, paragraph (b). Plainly enough that paragraph is directed to ensuring a privilege in relation to particular communications, communications of a particular kind, but it wouldn't be construed in my submission as allowing one to, as it were, avoid a requirement to produce a thing such as a mobile telephone for the purposes of obtaining non-privileged communications simply because as part of the exercise of obtaining what's being sought, a non-privileged communication, it may be necessary to download the underlying data associated with the privileged communication, because of course the thing itself is the mobile telephone. The mobile telephone has on it a series of zeroes and ones, so at least at that point in the analysis there is actually nothing that's privileged in the sense that it is simply a series of data in a single file.

What the Commission wouldn't be entitled to do would be to go through that data with a view to obtaining privileged communications of the kind protected by subsection 5(b). And of course subsection 5(b) needs to be read in conjunction with the Electronic Transactions Act, which deals with how does one deal with legislation such as an Act from 1988 when one is in the more modern era when one is talking about electronic communications. And so in my submission paragraph (b) read in light of the Electronic Transactions Act wouldn't be read as saying that simply because from your mobile telephone it is possible to produce a privileged communication by

querying it in a particular fashion that that would amount to an immunity against production of the whole thing. It would at most mean that the Commission would be prevented from querying the thing in such a way as to produce a privileged communication or at least evidence of the privileged communication.

10 THE COMMISSIONER: Mr Robertson, given the time of day and the need, I have in the back of my mind that there is some authority that might throw some light on a provision such as this, but if Mr Lawrence wants to argue that point, then it may be that the course to follow is for the phone to be impounded overnight but not subject to any form of examination at all until sometime tomorrow, at which time if there is a legal question of interpretation to be resolved it can be done.

MR ROBERTSON: I wouldn't oppose that course if Mr Lawrence wants to take that last point.

20 THE COMMISSIONER: I'm just thinking of a practical way of being able to preserve the status quo.

MR ROBERTSON: I certainly wouldn't oppose that course. That assumes that my learned friend wishes to take the point that I've just sought to summarise, and he may or may not wish to take that point, I don't know.

THE COMMISSIONER: Mr Lawrence, what's the position?

30 MR LAWRENCE: I certainly agree, Chief Commissioner, that we should take a practical course and indeed we have tried to by printing out the messages. I should say, Chief Commissioner, that I should earlier, prior to the Commission adjourning, have mentioned that we have been using a WhatsApp group that is called Operation Aero, and the reason I didn't is that I don't normally do it and it simply didn't cross my mind, but we have been operating that group and there are hundreds of messages on it I would say. The immediate consequence of the carrying into effect of the order is that all of those messages would be downloaded onto an ICAC computer. We seek to resist that. I do take the section 37(5)(b) point because I think, at least at this point, we have to. But it is not, I should hasten to say, out of any reluctance on behalf of Mr Clements to disclose any of the messages, and indeed as we stood there during the period of the adjournment,
40 Mr Clements showed Mr Robertson the messages in question and we have offered to hand them over in a proper way. But we simply hold this concern, Chief Commissioner, that in the electronic age if the entire contents of that phone go onto a computer, whether it's ICAC or otherwise, there is at least a real risk of privileged information, politically sensitive information, deeply personal information staying on that computer, and down the track it is simply, it would be simply naïve in my view to assume that that information is for all purposes destroyed and could not at some

point come out into the ether. So responsibly we do take the section 37(5) point.

THE COMMISSIONER: Yes. No, that's all right. You're quite entitled to do that.

MR LAWRENCE: Yes. The threshold question, though, of course, is whether the phone is handed over in circumstances where Mr Clements – and there may need to be a variation to the 112 order in respect of this – but
10 in circumstances where he undertook a private examination as I understand it in May, he hasn't been asked since to come back and answer questions or to produce the phone or messages, where he's attended the Commission with printouts, where he's volunteered the information, where there is a rare and live question as to the legal power to compel the handing over of the thing, the phone, in my submission the appropriate way to ensure compliance with the Act is that he retain his phone, that he return tomorrow with his phone, the issue as to the privilege be fully argued, and then any order then is obviously able to be considered.

20 But section 37(5) speaks to the production of the thing, and leaving the phone with the Commission overnight is the handing over or production of the thing, the very thing in issue under the terms of section 37(5). If I might say this also, Mr Robertson has identified to us something of the forensic purpose as to why the metadata is required rather than, for example, a screenshot of the phone. Mr Robertson and the Commission officers have also said that the only way to get that data is to download the whole phone. I don't question any of those two propositions but this is a technical matter. I wonder if those propositions are completely unqualified. Whether or not
30 there may be some other course of action short of the proposed one that is able to be considered overnight or thereafter. It does seem to me perhaps a surprising proposition that there is no way of interrogating a phone to search for a message other than downloading the entire contents of the phone. Perhaps there is a more sophisticated method that perhaps is not used here but is in fact available.

THE COMMISSIONER: Well, sometimes it depends on the age of the phone and the model of the phone and so on too. Yes. Mr Robertson, could I just ask you by way of clarification, in terms of the particular messages that falls in what I call the first of the two categories, have you had the
40 opportunity of seeing the screenshots of all of those documents?

MR ROBERTSON: I've seen the fact of the WhatsApp messages exist. I haven't read them, if that's an answer to the question you're asking, and I haven't looked at the hard copy documents as yet.

THE COMMISSIONER: I see.

MR ROBERTSON: Which I was putting in my second category.

THE COMMISSIONER: The question is whether or not, depending upon perhaps the content and significance of the content of individual messages, the probative value of each of those messages is so high that there could be no risk taken over the integrity of the material if the phone was not kept overnight but that an undertaking was given by Mr Clements to ensure that there would be no interference with the phone. If the messages, however, if the messages rank highly, then the precaution of impounding the phone overnight would seem to suggest itself. If on the other hand the evidence says it's not to be ranked that highly, that it could be seen to be links in a chain of a series of events, then we might take a different approach to whether it's impounded or not.

MR ROBERTSON: There's force, with respect, in that analysis, but I'm not able to assist you as to which of those categories they presently fall within. And of course one matter that's of importance to this investigation is matters of timing, including timing in relation to matters that won't necessarily be easily apparent to Mr Clements or his legal advisers. It's not a point of criticism for a second, but as you'll appreciate, Chief Commissioner, some of these things may be pieces in a larger puzzle.

THE COMMISSIONER: Mr Lawrence, going back to you, it does seem to me that provided a direction is given by me that ensures that there will be no downloading of the material at all between now and tomorrow, that the appropriate course would be for the phone to be held until tomorrow, that the legal argument about whether it should be accessible to anyone will be dealt with tomorrow. Depending upon the ruling on that matter, the phone will either be immediately returned or it will be processed for downloading. It seems to me that the intention of the section is directed to or is protecting privileged communications, for example, so that answers to questions that are privileged should not be disclosed. And, similarly, with documents or other things, that the only way in which documents or other things might disclose privileged material would be if the thing is accessed in a way which would result in disclosure. I intend to make a direction that no officer of the Commission or any other person is to access the phone for any purpose, including prohibiting any downloading of it. It seems to me that that assuredly will preserve privilege absolutely, and at the same time secure the phone so that the probative value and utility of the evidence that might come from the two categories that have been identified can be assessed, and once there's been downloading, if there is to be any at all. It seems to me that that is a secure method of maintaining the status quo given that it is now five to 6.00.

MR LAWRENCE: Yes, look, I certainly, certainly - - -

THE COMMISSIONER: And I would ensure, I think you can be absolutely confident that nobody will be touching that phone until we, before we meet tomorrow. It seems to me that that's the appropriate way of dealing with it

on an interim basis, and then I would be intending to deal with this at the earliest possible opportunity tomorrow.

10 MR LAWRENCE: The only two things I would say, Chief Commissioner, is firstly the status quo is probably realistically Mr Clements retaining his phone in circumstances where he's had it always, and the Commission has not previously sought to obtain these messages, even though one might reasonably assume that they might well have believed that there would be messages in existence. In respect of the interim proposal, I would only say this, the Act is concerned with, in section 37(5), the handing over of the thing. It's not concerned with the subsequent interrogation of it or how that occurs. It doesn't purport to govern that. It purports to govern the handing over of the thing. So - - -

THE COMMISSIONER: There's a question, though, isn't there, as to whether the thing is the casing of the phone or whether it's the device within the phone that contains the message.

20 MR LAWRENCE: Yes, and myself and Mr Robertson talked about this.

THE COMMISSIONER: And there's two levels of access. One is to physically take hold of the phone and take custody of it, and then there's a question of accessing the chip or whatever it is inside which contains any messages.

30 MR LAWRENCE: Yes, except in this case the privileged communications sit in the same grouping of information that the messages sort to. So in my submission, rather than it being a startling proposition in the context of a 1988 Act, it's really the only interpretation that we would be handing over a thing that contains privileged information. It's hard to come to another interpretation of "the thing" rather than either the phone itself or the grouping of information sitting in that particular app.

THE COMMISSIONER: I see the force of what you're saying, but then it keeps coming back to the question, is it the thing namely called a mobile phone, or is it the thing within the mobile phone that is the thing that contains the confidential information, and I think it could be said to be - - -

40 MR LAWRENCE: Yes, it's still being handed over, though. It's still being handed over, Chief Commissioner.

THE COMMISSIONER: Yes. True.

MR LAWRENCE: We are handing over privileged information on any interpretation. That is the problem.

THE COMMISSIONER: I think if I was sitting in equity to grant interim relief, I think a holding order, if it preserves the status quo, there is no doubt

at all. Firstly I should say I am always concerned to ensure that there is no interference with privilege, other than that which this Act provides for. It is a substantive right which the High Court has, on a number of occasions, emphasised is not to be abrogated. I start from that with the proposition. And by reason of that there is a need for the adoption of precautions for holding the phone overnight which remove – not reduce but remove – any chance, possibility of it being accessed by anyone before 10.30 or 10.15 tomorrow, when we resume. I’m confident that if I make a direction to that effect, it will safeguard that phone from being accessed at all in any sense, and I think that is the practical course. I’m intent on making that order to ensure that no privilege is abrogated in the meantime.

The other matter that should be mentioned is that I would intend adopting procedures – if the material is to be downloaded, depending upon my ruling – that the process adopted will permit only that material on the memory of the phone that falls in one or other or both of the two categories that Mr Robertson has identified, and no other material contained on the memory of the phone is to be viewed, to be accessed in any way at all. The officer who undertakes the task will be given a written instruction as to what it is he or she is to do or what he or she is not to do in terms of looking at any other material, and that upon the deletion of the material after the permitted access has been completed, the officer will provide a certificate certifying that he or she has complied with the direction and that no other material has been accessed or viewed and that the deletion of the material has been completed, and the significance of its deletion in terms of whether it’s ever capable of ever being revived or captured. I think it’s important that both your client and anyone appearing before this Commission may have the assurance that material that’s not permitted to be viewed has not been viewed. I understand your concern and what lies behind the concern and I share that, as I have said, insofar as I take the strong view that legal professional privilege must be protected at all costs. So to that end, Mr Lawrence, notwithstanding your persuasive arguments to the contrary, I am going to make the interim direction that I have indicated. I’ll deal with this as promptly as I can tomorrow so that Mr Clements can get his phone back.

MR LAWRENCE: Certainly. Thank you, Commissioner.

MR ROBERTSON: Can I deal with one other matter.

THE COMMISSIONER: Yes.

MR ROBERTSON: Which we didn’t deal with at the end. I didn’t mean to interrupt anything you were about to do, Chief Commissioner.

THE COMMISSIONER: All right. The phone has been marked for identification 23. I’ll just put on the record, at the late stage in the proceedings of this public inquiry today, Mr Clements, who has been giving evidence, was required to produce his mobile phone. The phone was

produced by him. It was marked as MFI 23. The phone presently is in the custody of the Commission pending resolution of the objection made by Mr Lawrence of counsel, who appears on behalf of Mr Clements, which it has been said that by reason of the fact that the phone memory device contains legal professional privileged material, the provisions of section 37(5) – in particular the references in section 37(5)(b) to the expression “or other thing” – means that the phone itself does not have to be produced. That is to say, the person in question is entitled to refuse to comply with the requirement.

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It is now 6.00pm and counsel, of course, have not had the opportunity to determine whether there’s any relevant authorities that deal with this type of issue and whether the construction urged by Mr Lawrence is the correct one or the contrary view, as expressed by Counsel Assisting. In the circumstances, it is regrettable that the phone be not returned to Mr Clements from a convenience point of view. The question however is whether or not it should be retained, firstly to retain the integrity of the material that’s on it against any mishap or any form of activity that might impair the material that’s said to fall within two classes of material relevant to, or a possible relevance to, this investigation. Counsel Assisting, Mr Robertson, has identified the two classes as, firstly, WhatsApp material, being communications or messages between Mr Ernest Wong and Mr Clements, being communications between them that has not as yet been printed out and that do not form part of the hard copies produced by Mr Clements this afternoon, now marked as MFI 20, 21 and 22. The second category is SMS or iMessages or text messages, copies of which have been printed out and, as I understand it, are MFIs 20, 21, 22.

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The purpose of requiring the material in those two classes or categories is to obtain the best evidence of them, including the metadata from the phone itself. Time has not permitted an evaluation as to probative significance of any of this material in categories 1 and 2. It’s possible that the probative value is high or it may not be, but time has not allowed an assessment to be made in order to determine whether, as a matter of convenience, the phone should be returned to Mr Clements or not. In those circumstances I’m of the view that the phone should remain in the custody of the Commission until tomorrow. I understand, from what I’ve been told from the bar table and from my own knowledge of similar matters in other instances that the material on the phone has to be downloaded as a whole in order for the particular items of interest in the two categories can be accessed and, in effect, extracted. The officer who undertakes the downloading exercise is to be instructed not to copy any privileged material and that following completion of the permitted task the downloaded material would then be removed.

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That in summary form is a description of the process that’s envisaged. I am concerned that any material that does, as Mr Lawrence has said, that does constitute legal professional privilege be protected from any form of access

or inspection. At the moment, I am only dealing with the question of an interim solution to whether the phone is held by the Commission or not. I am of the view that it should be retained within the Commission's custody under strict conditions and those conditions are (1) that the phone is to be placed in a secured, locked facility of the Commission overnight; (2) it is not to be accessed by any person, including any officer of the Commission, before 10.15am tomorrow, when the public inquiry resumes; and (3) that a certificate will be given by an officer of the Commission that those procedures have been implemented. I intend, at the earliest possible opportunity tomorrow to hear any further submissions on a question of whether the Commission officer should undertake the downloading exercise for the purpose of obtaining access to the two categories of documents.

In the event that I uphold Mr Lawrence's arguments, then of course the phone needs to be returned immediately to Mr Clements. In the event that I rule otherwise, then the procedure I envisage will be undertaken during the course of tomorrow's hearing by technical officers of the Commission, and as I've indicated to Mr Lawrence, I will seek to have from the officer or officers involved a certificate to certify the fact that there has been no access made, no inspection made of any material other than the material that falls within the two categories to which I've referred. It seems to me that the interim solution that I've suggested overnight in the circumstances sufficiently protects legal professional privilege in any of the material to which I've referred, and that in that sense there is no risk of privileged material being accessed in any form at all, as the direction I have given prohibits any use of the phone or any access to it from the stored facility to which it is to be placed overnight. Now, are there any other matters?

MR LAWRENCE: Chief Commissioner, only that perhaps order 2 should have added to it "until further order" rather than the time of 10.15am.

THE COMMISSIONER: Yes, very well. I'll substitute that phrase "further order" in lieu of 10.15 tomorrow.

MR LAWRENCE: And I wonder if we might also have your leave to talk to Mr Clements in respect of matters that directly relate to this issue.

THE COMMISSIONER: Yes, certainly. You have that leave.

MR LAWRENCE: Thank you.

MR ROBERTSON: Can I deal with one other matter?

THE COMMISSIONER: Yes, Mr Robertson.

MR ROBERTSON: It's on a different topic, though.

THE COMMISSIONER: Just before you get to it, then. Perhaps you should from Mr Vickery obtain information now as to where the phone's going to be placed and how it will be secured and so on.

MR ROBERTSON: Just pardon me for a moment. The suggestion, there's a storage room that is adjacent to this main hearing room, and I'm told the associate has a key to that room, so it may actually be that the phone can right now be put into that storage room and locked.

10 THE COMMISSIONER: Has anybody else got access to the room? You don't know? It should be placed in a safe, I think. Surely there must be - - -

THE WITNESS: Sorry, can I call my wife?

THE COMMISSIONER: Yes, you can.

THE WITNESS: Just to let her know I'm not going to have the phone back.

THE COMMISSIONER: Sorry about the inconvenience, Mr Clements.

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THE WITNESS: Thank you very much.

MR ROBERTSON: Mr Vickery tells me he has a locked drawer in his desk. He would be content to take possession of the phone after this telephone call is made and lock it.

THE COMMISSIONER: Nobody else has a key to your drawer, Mr Vickery? All right. Once Mr Clements has made his call, then we'll have that phone handed back to you, and if you wouldn't mind taking it immediately, locking it up.

30

MR ROBERTSON: Is it convenient to deal with the other formal matter now?

THE COMMISSIONER: Yes, I'm sorry, go ahead.

MR ROBERTSON: My learned friend referred to a matter that's presently the subject of a direction under section 112. I don't criticise him for it but I do suggest that in light of it a variation ought to be made. In my submission, you should make an order varying the order that was made under section 112 of the Independent Commission Against Corruption Act on 25 May, 2018 insofar as it would otherwise prevent publication of the fact that Mr Clements gave evidence at a compulsory examination on that date.

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THE COMMISSIONER: Very well. In relation to the order made under section 112 of the Independent Commission Against Corruption Act made on 25 May, 2018 in respect of the compulsory examination, I vary the order

so that the prohibition on disclosure of the fact that Mr Clements participated in that examination is set aside.

VARIATION OF SUPPRESSION ORDER: IN RELATION TO THE ORDER MADE UNDER SECTION 112 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT MADE ON 25 MAY, 2018 IN RESPECT OF THE COMPULSORY EXAMINATION, I VARY THE ORDER SO THAT THE PROHIBITION ON DISCLOSURE OF THE FACT THAT MR CLEMENTS PARTICIPATED IN THAT EXAMINATION IS SET ASIDE.

MR ROBERTSON: And Mr Vickery has now taken possession of that phone and will proceed to place it in a locked drawer (not transcribable) identified.

THE COMMISSIONER: Yes. Mr Vickery, would you put that in an envelope and seal it before you put it in the locked drawer? Thank you. Yes, now, I'm sorry, what was the other matter you were talking about?

MR ROBERTSON: No, the other matter was the section 112 direction, which is now dealt with, Chief Commissioner.

THE COMMISSIONER: Yes, that's been dealt with, yes. Nothing else?

MR ROBERTSON: Nothing else from my part.

THE COMMISSIONER: Nothing else, Mr Lawrence?

MR LAWRENCE: No, thank you, Chief Commissioner.

THE COMMISSIONER: All right. If time permits – there's not much time available, I appreciate – but if anyone wants to refer to any authorities, if perhaps they could just send a note to my chambers and we'll deal with it as promptly as we can. Mr Clements, if you'd return tomorrow at 10.15, we'll get this matter finalised. I'll adjourn.

40 THE WITNESS STOOD DOWN [6.16pm]

AT 6.16PM THE MATTER WAS ADJOURNED ACCORDINGLY [6.16pm]